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Secretary of the Commission
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
ATTN: Rulemakings and Adjudications Staff

Submitted via www.regulations.gov

Subject: Comments on Proposed Rule, “Streamlining Contested Adjudications in Licensing Proceedings” (Docket ID NRC–2025–1501)

Pillsbury Winthrop Shaw Pittman LLP (Pillsbury) is hereby submitting comments on the U.S. Nuclear Regulatory Commission’s (NRC) proposed rule “Streamlining Contested Adjudications in Licensing Proceedings” (Proposed Rule).¹ The Proposed Rule seeks to revise the NRC’s Rules of Practice in 10 C.F.R. Part 2 to comply with the directives in the Accelerating Deployment of Versatile, Advanced Nuclear for Clean Energy Act of 2024 (ADVANCE Act) and Executive Order 14300 (EO 14300), Ordering the Reform of the Nuclear Regulatory Commission.

Prior to providing our detailed comments on the proposed rule, Pillsbury would like to compliment the Commission and its staff for their diligent efforts to align with EO 14300 and the ADVANCE Act to transform the NRC to become a more effective and efficient regulator while maintaining its historic obligation to protect public health and safety. We appreciate and applaud the diligent efforts of the Agency to provide useful changes to the existing adjudication process that would maintain the viability and assessment of contentions that are legally and technically justified but would also provide for the prompt disposition of those which are frivolous or not based on sufficient fact or law.

Our comments below are intended to be constructive. We believe that there are some changes included in the proposed rule, which while well intended, may result in unintended and potentially counterproductive outcomes for which the authors may not have fully appreciated the consequences. Given that our firm possesses over 60 years of

¹ Proposed Rule, Streamlining Contested Adjudications in Licensing Proceedings, 91 Fed. Reg. 10,450 (Mar. 3, 2026).

experience in litigating these issues, we hope you take our comments sincerely and in the spirit of our efforts to be constructive. We appreciate and support the goals of the Advance Act and EO 14300 and hope that you review our comments in that spirit.

As you know, the ADVANCE Act directs NRC to complete certain license applications within 18 months after license application docketing, complete any necessary hearings within two years of docketing, and issue a final decision on the issuance of a license no later than 25 months after docketing. EO 14300 directs NRC to further accelerate these timelines by requiring an 18-month deadline for a final decision on an application to construct and operate a new nuclear reactor and a one-year deadline for a final decision on reactor license renewals.

To comply with the above, the Proposed Rule would (among other things): tailor the scheduling of adjudications based on the type of licensing proceeding; bifurcate filings and decisions on standing and contention admissibility for certain proceedings; tighten standards for late-filed hearing requests and contentions; and modify discovery and disclosure requirements among other procedural changes.

Pillsbury has a long history of representing applicants and licensees in licensing proceedings before the NRC and its predecessor the Atomic Energy Commission. Collectively, our attorneys possess many decades of experience in contested adjudicatory proceedings before the agency. Pillsbury applauds the NRC's efforts to reduce regulatory burdens, streamline and refine the adjudicatory process, and accelerate the deployment of nuclear power, Pillsbury strongly supports many of the NRC's proposed revisions. Pillsbury also endorses the well-considered comments submitted by the Nuclear Energy Institute (NEI).

We write separately to emphasize a few key areas of concern we have with the NRC's proposed rule. Specifically:

- Bifurcating the evaluation of a petitioner's standing from the evaluation of that petitioner's contention admissibility will not likely result in greater efficiency or streamlining and likely will result in delay if an initial adverse standing ruling is reversed on appeal, as the contention admissibility review would have to start over on remand.
- The proposal that applicants must respond to proposed contentions with merits information may be unworkable under the proposed timeframes, could potentially result in unnecessary use of applicant (and lawyer) resources if the contentions are not admitted, and conveys a high risk of complicating otherwise straightforward decisions on contention admissibility.
- The 20 days allotted for mandatory disclosures on admitted contentions is insufficient to allow for diligent review of potentially relevant information to be disclosed.

- It would be better to simplify the requirement that the NRC Staff prepare and disclose a hearing file rather than eliminate the requirement.
- The Standard Record Closure Date, as defined in the Proposed Rule, has an unintended result as it ties record closure to a specific point in time, potentially allowing third parties to bring new contentions on the eve of the closure date, even after the end of the first evidentiary hearing.

1. Bifurcating Standing and Contention Admissibility Proceedings

In the Proposed Rule, the NRC would revise 10 C.F.R § 2.309(a)(1) to bifurcate determinations on standing and contention admissibility in certain proceedings. Under the current rules, petitioners must submit a single filing addressing both legal standing and the admissibility of contentions. The Proposed Rule would instead require that petitioners file an initial hearing request addressing only § 2.309(f) standing, which the presiding officer would determine on an accelerated timeline. If standing is established, the presiding officer would then separately determine whether the petitioner has filed at least one admissible contention.

The NRC argues that this bifurcation would potentially save time and resources because, where the presiding officer determines that standing is not established, the costs of determining contentions admissibility can be avoided. However, we believe that it is more likely that bifurcation will increase procedural steps, result in no meaningful gain in efficiency, and introduce the risk of further delay, particularly from appeals.

First, the proposal is unlikely to significantly affect burdens on proceeding participants because, even where a petitioner's standing is denied and its contentions are not considered, the applicant and NRC staff will likely have already completed a significant portion of the work required to answer the contentions. Based on the NRC's proposed timelines where bifurcation is proposed, it would be nearly impossible for parties to await a standing determination before beginning to prepare answers to the submitted contentions.

Furthermore, the bifurcation process introduces the possibility of multiple rounds of appeal and review. If a presiding officer were to deny a hearing request on standing grounds, the affected party could appeal that decision to the Commission. Should the Commission reverse that decision and remand the matter to the Atomic Safety and Licensing Board (ASLB) to subsequently consider contention admissibility, at least two possible outcomes could result. One is that contentions otherwise timely proffered at the outset of the proceeding could be admitted late in the proceeding, likely after the first evidentiary hearing for timely filed contentions, thus possibly requiring another evidentiary hearing. The other is that the ASLB does not admit the contentions, but that decision could then be appealed as well. This procedural complexity creates opportunities for substantial delays that run counter to the goals of the Proposed Rule.

Pillsbury recommends that the NRC continue to address standing and contention admissibility together at the beginning of a proceeding. Allowing the presiding officer to evaluate both issues in a single decision promotes efficiency and avoids the potential for multiple rounds of appeal and review. Resolving both standing and contention admissibility together also results in one unified decision on the NRC's evaluation of the "request of any person whose interest may be affected by the proceeding" under Atomic Energy Act § 189a.(1)(A), collecting the information in one place for further review in the event of judicial appeal.

2. The NRC's proposal that applicants must respond to proposed contentions with merits information is ill-advised.

In the Proposed Rule, the NRC proposes to add § 2.309(k) requiring applicants to "front-load" additional merits information in their initial pleadings. This section would require applicants – and allow NRC staff – to address the merits of proposed contentions in their answers, including submission of supporting evidence and affidavits, while allowing petitioners to submit additional evidence to respond to those merits arguments in their replies. The NRC argues that subsequent litigation on the contentions could be conducted "more swiftly" with the additional merits information because it would provide the parties and the presiding officer with "a better understanding of the positions being taken on the contentions."²

However, as the NRC itself acknowledges, this proposal would result in additional burdens on applicants (and potentially NRC staff) because they would be required to develop merits responses to proposed contentions even though, in practice, the majority of proposed contentions are ultimately not admitted. This would place an unnecessary cost obligation on applicants to address these issues. Furthermore, the NRC's proposed deadlines would not provide applicants with adequate time to develop merits responses and produce supporting affidavits and documentary evidence.

Front-loading merits information could also result in the risk of complicating the question of contention admissibility. Under the existing rules, the presiding officer must first determine the threshold question of whether there is a genuine dispute on a material issue absent any litigation of the underlying merits. Including potentially extensive merits information would only complicate what is intended to be a threshold determination. Although the NRC's proposal would not permit the ASLB to consider the merits information when ruling on contention admissibility, one can easily foresee the Commission being asked to rule on appeal whether the presiding officer did or did not consider merits information when admitting a contention.

This proposed rule could also incentivize petitioners to file poorly constructed contentions and use the merits information in the subsequent applicant answers to cure deficiencies or supplement their initial filings. Longstanding and well-founded

² Proposed Rule, 91 Fed. Reg. at 10,456.

Commission precedent holds that replies cannot be used to expand or modify the scope of a proposed contention or provide factual support that could have been submitted in the original petition. Should petitioners be allowed to submit additional merits information in reply to an applicant's answer, the NRC is opening the door for disputes that would complicate and potentially delay the adjudicatory process, as well as impose increased legal and technical costs on applicants.

3. Mandatory Disclosures and Discovery

- a) The 20-day period for mandatory disclosures on admitted contentions is insufficient given the broader standard of disclosures under NRC rules.

Under the Proposed Rule, the NRC would revise § 2.336 to require initial disclosures within 20 days of a presiding officer order admitting contested issues into the proceeding. The NRC states that 20 days should be sufficient for litigants to prepare their initial disclosures and that shortening this period is necessary to meet accelerated evidentiary hearing timeframes.

However, we respectfully submit that this shortened timeframe is insufficient. Under current rules, the deadline for initial disclosures is 30 days and, in practice, parties (particularly applicants and licensees, which bear the greater burden in discovery) frequently request extensions due to the difficulties in assembling disclosures. The NRC argues that 20 days is greater than the general timeline for initial disclosures under the Federal Rules of Civil Procedure (FRCP); however, the standard for disclosures under § 2.336 (documents and information relevant to the admitted contentions) is significantly broader than the standard for initial disclosures under the FRCP, which is limited to materials a party may use to support its claims or defenses.

Maintaining the current broader-than-FRCP standard for disclosures while shortening the initial disclosure period from 30 to 20 days is therefore impracticable and places an increased burden on applicants. We recommend that the NRC either (1) maintain its current 30-day initial disclosure period (and allow for applicants, intervenors, and the NRC staff to extend the period); (2) or refine its initial disclosure standard to align more closely with the FRCP if it intends to shorten the initial disclosure period.

- b) NRC's proposed changes to discovery and disclosure requirements require further consideration.

In the Proposed Rule, the NRC proposes to make several changes to the discovery and disclosure processes. First, the NRC proposes to eliminate NRC staff's disclosure obligations under 10 C.F.R § 2.336(b) except for proceedings on denials of applications. The NRC argues that such disclosures are unnecessary because the NRC staff ordinarily makes applications, applicant correspondence, and other documents related to review publicly available on ADAMS.

The NRC seeks to further revise § 2.336(b) by reducing the disclosure obligations of parties by excluding from disclosure non-public draft documents that have not been circulated and eliminating the requirement that parties update disclosures during evidentiary hearings.

Pillsbury supports the intent of these modifications, subject to some changes.

First, Pillsbury believes that the NRC staff should produce a simplified hearing file largely consisting of a list of documents in ADAMS and corresponding Accession Numbers. Licensees currently rely on the NRC staff to produce licensee documents on the ADAMS database. Retaining the NRC obligation to produce a list of those documents, with Accession Numbers, would allow licensees to avoid having to reproduce the otherwise voluminous documents, often with large file sizes, that reside in ADAMS. This should be a relatively easy burden for the NRC staff to meet, and it will also alleviate any concerns from intervenors regarding the ability to navigate ADAMS to find the appropriate documents. The NRC staff is also best positioned to produce a list of the documents available within its own database. Given the increase in artificial intelligence tools available, this should simplify the ability of the Agency to provide this information in an efficient and effective manner.

Otherwise, Pillsbury strongly supports the suggestion to eliminate draft documents from disclosure, as this is already common practice amongst experienced practitioners. Pillsbury would also suggest eliminating the production of emails, which tend to be high volume and low value files.

To the extent that the NRC adopts the suggestion to narrow mandatory disclosures to documents intended to be used by a party at the hearing to support its claims and defenses (similar to initial disclosures under the FRCP), Pillsbury suggests having more than one disclosure date, as documents may be identified during hearing preparation and after the 20-day deadline has passed.

We note that such disclosure would be consistent with requirements under the Administrative Procedure Act (“APA”). As addressed in *Citizens Awareness Network, Inc. v U.S.*, 391 F.3d 338 (1st Cir. 2004), the APA does not provide for any particular discovery mechanisms in adjudication. Instead, it requires “that the agency provide a hearing before a neutral decisionmaker and allow each party an opportunity ‘to present his case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts.’” *Id.* at 349. Thus, discovery is primarily required when “necessary either to effectuate some other procedural right guaranteed by the APA or to ensure an adequate record for judicial review.” *Id.* at 350. Given that “[t]he applicant bears the burden of proof in any licensing hearing,” it remains true that the licensee “will have every incentive to proffer sufficient information to allow the agency to reach a reasoned decision” and to establish an adequate record on appeal. *Id.* Indeed, licensees would need to produce sufficient information not only to make their affirmative case, but also

to respond to questions on examination by the ASLB. As a result, we believe that limiting discovery to the information to support claims and defenses should be adequate to meet the requirements of the APA.

4. The Proposed Standard Record Closure Date Should Be Refined.

As part of the NRC's efforts to establish firm deadlines for contested adjudications in licensing proceedings, the Proposed Rule introduces a newly defined term in 10 C.F.R. § 2.4, the "Standard Record Closure Date" (SRCD). The SRCD represents the point in the proceedings at which the adjudicatory record would be closed with respect to any new or amended contentions.

Under the Proposed Rule, the NRC would set the SRCD based on the type of proceeding to allow sufficient time to conduct evidentiary hearings on timely-filed contentions. New or amended contentions introduced following the SRCD would be treated as a request to reopen the record and must meet the standards in 10 C.F.R. § 2.326, which are that the contention must be (1) timely, (2) address a significant issue, and (3) demonstrate that it would likely materially affect the outcome of the proceeding.

Pillsbury foresees that, despite the introduction of the SRCD, petitioners may attempt to manipulate the process and delay proceedings by introducing new contentions on the eve of the closure date. The Proposed Rule states that it "eliminate[s]" this possibility by establishing that "new or amended contentions would not be considered pending before the agency until the presiding officer finds there is good cause for submitting these contentions after the prescribed initial filing deadline..."³ However, the "good cause" standard for late-filed contentions under § 2.309(c) is materially lower than the standard to reopen the record, only requiring that (1) the information upon which the filing is based was not previously available, (2) the information upon which the filing is based is materially different from previously available information, and (3) the filing has been submitted in a timely fashion.

Pillsbury recommends refining the SRCD as follows. At a minimum, the record should close at the end of the evidentiary hearing on timely filed and admitted contentions, as is typical under current practice. In the Proposed Rule, it is a distinct possibility that a proceeding moves to the evidentiary hearing and concludes prior to the SRCD. In such a case, there would be a gap between the close of the evidentiary hearing and the SRCD during which intervenors and new petitioners could file new contentions without meeting the record reopening requirements. This opportunity will unnecessarily risk delaying the proceeding with no apparent benefit, an outcome we suspect was unintended by the drafters of the proposed rule.

Pillsbury also requests further clarification that, if the proceeding terminates before the SRCD (e.g., in cases where no petitioner is found to have standing or to have submitted

³ Proposed Rule, 91 Fed. Reg. at 10,452.

an admissible contention, or admitted contentions are resolved on summary disposition prior to hearing), any attempt to bring new contentions would require meeting the reopening standard rather than just the late-filed contention standard. Allowing the record to remain “open” up until the SRCD even after the proceeding has terminated invites delay by creating an opportunity to raise new contentions and issues under the less stringent late-filed standard, which undermines the intent and purpose of the Proposed Rule.

5. Other Suggestions to Improve Adjudicatory Proceedings and Minimize Disruption.

- a. The NRC should make greater use of summary dismissals where petitions to intervene are facially inadequate under the NRC rules.

The Secretary of the Commission has recently, and quite rightly, rejected some hearing requests/intervention petitions where they were legally flawed under the NRC’s rules. Pillsbury believes that petitions that wholly fail to meet NRC requirements, either by entirely failing to address standing, entirely failing to address contention admissibility, or entirely failing to supply a motion to reopen when required, should be summarily dismissed by the Secretary of the Commission without further briefing. The Secretary can either take this action of its own accord, or the NRC can create a rule clearly allowing early motions to dismiss where a petition is facially inadequate.

- b. Revised hearing schedules should provide ample time for summary disposition.

We also recommend that the proposed schedules allow sufficient time for the parties to submit and respond to motions for summary disposition on contentions, to increase overall efficiency. Summary disposition typically results in two outcomes: (1) a contention is resolved, which means no evidentiary hearing on that matter; or (2) a contention is narrowed, which means fewer issues to be resolved through adjudication at the evidentiary hearing. Allowing ample time for summary disposition on contentions is a more appropriate opportunity to develop merits information on admitted contentions before a hearing. And it may well further shorten the time needed to complete the adjudicatory proceeding, one of the NRC’s overall goals in this rulemaking.

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We thank the NRC for undertaking this significant effort to improve the NRC's procedures and applaud the significant time, effort and thoughtfulness that was expended in its preparation. As legal practitioners who have been engaged with the Agency for decades, we hope that our comments are taken in the spirit in which they are intended. We greatly appreciate the opportunity to submit comments on the proposed rule and hope that our suggested changes are helpful in assisting the NRC in achieving the intended alignment with the ADVANCE ACT and EO 14300.

Respectfully submitted,



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