

provisions of §§ 4.71 through 4.74. At the time an answer is filed the applicant or recipient may also submit written information or argument for the record if he does not request a hearing.

(e) An answer or stipulation may consent to the entry of an order in substantially the form set forth in the notice of opportunity for hearing; such order may be entered by the responsible Commission official. The consent of the applicant or recipient to the entry of an order shall constitute a waiver by him of a right to: (1) A hearing under the Act and § 4.48, (2) findings of fact and conclusions of law, and (3) seek Commission review.

(f) The failure of an applicant or recipient to file an answer within the period prescribed, or, if he requests a hearing, his failure to appear therefor, shall constitute a waiver by him of a right to: (1) A hearing under the Act and § 4.48, (2) conclusions of law, and (3) seek Commission review. In the event of such waiver, the responsible NRC official may find the facts on the basis of the record available and enter an order in substantially the form set forth in the notice of opportunity for hearing.

(g) An order entered in accordance with paragraph (e) or (f) of this section shall constitute the final decision of the Commission, unless the Commission, on its own motion, within forty-five (45) days after entry of the order, issues its own decision, which shall then constitute the final decision of the Commission.

(h) A copy of an order entered by the responsible NRC official shall be mailed to the applicant or recipient and to the complainant, if any.

(i) Nothing in this section shall be deemed to place the burden of proof on the applicant or recipient.

[29 FR 19277, Dec. 31, 1964, as amended at 38 FR 17928, July 5, 1973; 40 FR 8778, Mar. 3, 1975]

HEARINGS AND FINDINGS

§ 4.61 Presiding officer.

One or more members of the Commission or one or more administrative law judges appointed pursuant to section 3105 of title 5 of the United States Code shall: (a) Preside at a hearing and (b) make findings of fact and conclusions of law if an applicant or recipient

waives a hearing and submits written information or argument for the record in accordance with § 4.51(d).

[35 FR 11459, July 17, 1970]

§ 4.62 Right to counsel.

In all proceedings under §§ 4.51–4.81, the applicant or recipient and the responsible NRC official shall have the right to be represented by counsel. A notice of appearance shall be filed by counsel prior to participation in any such proceedings.

§ 4.63 Procedures, evidence, and record.

(a) The hearing, decision, and any administrative review thereof shall be conducted in conformity with 5 U.S.C. 554–557 (sections 5–8 of the Administrative Procedure Act), and in accordance with such procedures as are proper (and not inconsistent with §§ 4.61 through 4.64) relating to the conduct of the hearing, giving of notices subsequent to those provided for in § 4.51, taking of testimony, exhibits, arguments and briefs, requests for finding, and other related matters. Both the responsible NRC official and the applicant or recipient shall be entitled to introduce all relevant evidence on the issues as stated in the notice of hearing or as determined by the presiding officer at the outset of or during the hearing.

(b) Technical rules of evidence shall not apply to hearings conducted pursuant to this subpart, but rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination shall be applied where reasonably necessary by the presiding officer. The presiding officer may exclude irrelevant, immaterial, or unduly repetitious evidence. All documents and other evidence offered or taken for the record shall be open to examination by the parties and opportunity shall be given to refute facts and arguments advanced on either side of the issues. A transcript shall be made of the oral evidence except to the extent the substance thereof is stipulated for the record.

(c) Each decision made after a hearing has been held shall be based on the hearing record, and written findings of