

June 3, 2024

Subject: SECY-24-0032 - Revisiting the Mandatory Hearing Process at the U.S. Nuclear Regulatory Commission.

Dear Chair Hanson and Commissioners Wright, Caputo, and Crowell:

The Breakthrough Institute (BTI) writes to express support for streamlining the uncontested mandatory hearing process. BTI is an independent 501(c)(3) global research center that advocates for appropriate regulation and oversight of nuclear reactors to enable the new and continued use of safe and clean nuclear energy. BTI acts in the public interest and does not receive funding from industry.

Background

The Atomic Energy Act (AEA) requires uncontested mandatory hearings for certain licensing activities, regardless of whether there is any dispute among the involved parties.¹ However, the Act does not prescribe specific procedures for these hearings,² leaving the NRC with discretion in their implementation. Unfortunately, the Nuclear Regulatory Commission (NRC) has opted for a rigidly formal structure, which poses significant drawbacks.

To its credit, an NRC task force report from 2007 recommended that “the Commission request legislative authority from Congress to eliminate the statutory requirement for a mandatory hearing (i.e., a hearing on uncontested issues) from Section 189a. of the Atomic Energy Act.”³ The report stated that circumstances have changed since that hearing requirement was written — the NRC is not tasked with promoting nuclear energy unlike its predecessor, the Atomic Energy Commission, and there are a variety of other statutes that shed light on the regulatory process, like the Freedom of Information Act and the National Environmental Policy Act.⁴ Such changes make the mandatory hearing process superfluous.

Unfortunately, Congress has not removed the mandatory hearing requirement from the Atomic Energy Act (AEA), so the NRC must do its best to streamline the process. To this end, earlier this year NRC Chair Hanson tasked the NRC’s general counsel with providing options for “revisiting

¹ Atomic Energy Act (P.L. 83-703), Sections 185(b), 189(a), and 193(b).

² Except for hearings on uranium enrichment facilities, which under AEA Sec. 193(b) are required to be “on the record,” - necessitating certain procedures under the Administrative Procedures Act.

³ Report of the Combined License Review Task Force [hereinafter Task Force Report], U.S. Nuclear Regulatory Commission, Page 4, [ML071730403](#).

⁴ Task Force Report Page 11.

the mandatory hearing process.”⁵ The Office of the General Counsel (OGC) responded on April 12th, providing 5 options for reform,⁶ which are discussed in greater detail below.

Recent reports⁷ have shed light on the origins, current implementation, and previous proposals for the removal of this process, highlighting its inefficiencies and costs. The data suggests that the current process leads to unnecessary delays and administrative burdens. Hearings are held months after the NRC Staff has already evaluated the application and made a determination. These delays can range from 4 to 7 months and have not resulted in different findings from the reports issued by the NRC Staff.⁸

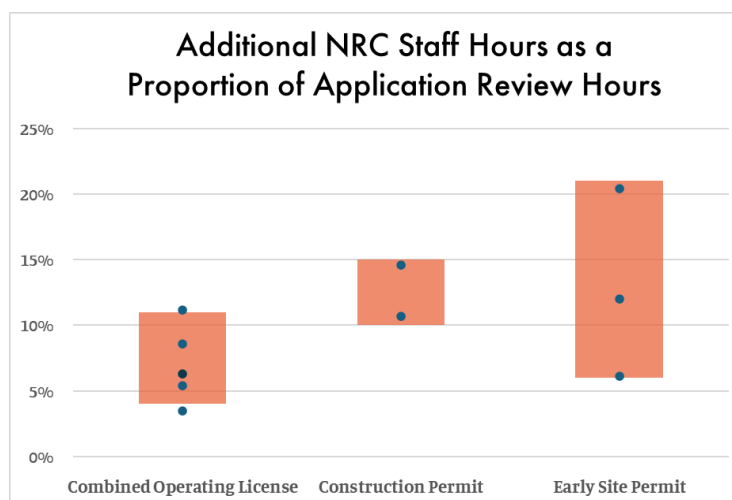


FIGURE 1: NRC hours related to an uncontested hearing as a proportion of licensing or permitting action across a range of NRC-stated values and historical cases. In most scenarios, an uncontested hearing adds 5-15% more NRC staff hours, proportionally weighted to application review hours.⁹

For instance, the recent uncontested mandatory hearing for the Construction Permit Application for Kairos's Hermes 1 incurred approximately 1,500 NRC staff hours for preparation alone, adding

⁵ Nuclear Regulatory Commission, *Revisiting The Mandatory Hearing Process At The U.S. Nuclear Regulatory Commission*, Christopher T. Hanson, Memorandum to Brooke P. Clark, February 7, 2024, [ML24038A023](#).

⁶ Nuclear Regulatory Commission, *Revisiting The Mandatory Hearing Process At The U.S. Nuclear Regulatory Commission*, SECY-24-0032, April 12, 2024, [ML24103A090](#).

⁷ Matt Bowen, Rama T. Ponangi, and Stephen G. Burns, Center on Global Energy Policy at Columbia University SIPA, *Improving the Efficiency of NRC Power Reactor Licensing: The 1957 Mandatory Hearing Reconsidered*, November 2023, https://www.energypolicy.columbia.edu/wp-content/uploads/2023/11/NRCLicensing-CGEP_Report_112123.pdf; Stephen J. Burdick, John C. Wagner, and Jess C. Gehin, Idaho National Laboratory, *Recommendations to Improve the Nuclear Regulatory Commission Reactor Licensing and Approval Process*, April 2023, [hereinafter INL Report], https://inldigitallibrary.inl.gov/sites/sti/sti/Sort_65730.pdf.

⁸ INL Report at Page 3.

⁹ The scenarios are provided in supplementary data at https://thebreakthrough.imgix.net/Hearing_hours.csv

nearly 9% more NRC hours and cost to the process.¹⁰ This excessive expenditure of time and resources seems disproportionate for matters that are uncontested and could be handled more efficiently.

Options presented in SECY-24-0032

The NRC OGC's SECY-24-0032 presents 5 options for streamlining the uncontested mandatory hearing process:

1. The Commission would handle the hearing based solely on written materials instead of holding a formal hearing.
2. Expands on Option 1 to include an in-person public meeting
3. The Commission would implement a simplified version of the current oral evidentiary hearing process to reduce preparation burdens on the parties.
4. The Commission would delegate the hearing responsibilities to the Atomic Safety and Licensing Board Panel (ASLBP).
5. The Commission would assign the hearing responsibilities to a senior agency official, using a Management Review Board-style review process.

Ultimately, the OGC does not recommend any of the provided options and instead recommends a blend of three different options. First, they supported Option 1, to base hearings on written submissions, where allowed under the AEA. They also recommended that the Commission preside over these written hearings for "first-of-a-kind" reactors and delegate hearings for "nth-of-a-kind" reactors to a senior agency official, which partially recommends Option 5. Lastly, they recommend delegation to the ASLBP as laid out in Option 4 for hearings on uranium enrichment facilities.

We are encouraged by the recent actions taken by the NRC to revisit the mandatory hearing process. All of the options presented would result in a reduced overall timeline or some increase in flexibility in the mandatory hearing process. We cannot determine if resource efficiency will be improved as the Enclosure 1 to the SECY was withheld from the public.

Option 1 - Allowing the uncontested mandatory hearing to proceed with written submissions rather than in-person formal testimony has the potential to greatly reduce the burden on both parties. The information shared in written submissions is likely to be more specific and detailed than in-person testimony. Written submissions for multiple hearings can also be collected in parallel, unlike in-person hearings which cannot physically occur at the same time, alleviating the potential for scheduling challenges.

¹⁰ Nuclear Regulatory Commission, *Hermes Construction Permit Application Mandatory Hearing Resource Estimate*, Matthew Hiser, Email, August 10, 2023, [ML23226A172](#).

Option 2 - The licensing process provides a wide variety of public meeting opportunities for members of the public to learn more and ask questions. A public meeting that, consistent with current practice, only allows for observation of the decision is an unnecessary expansion of Option 1 without meaningful change in public engagement.

Option 3 - Simplifying the current process, while preferable to maintaining the status quo, would still leave us with an unnecessarily complex formal hearing process.

Option 4 - This option has a small potential to reduce staff logistical planning due to experience with hearings. However, a formal “on the record” oral evidentiary hearing will require much more preparation time outside of the hearing, so we maintain that there is no need for a formal hearing where none is required.

Option 5 - This approach partially achieves the objective of the tasking memo, but has challenges. Delegating all hearings to a senior agency official can help avoid scheduling and overload issues on the Commission.¹¹ However, if procedures are developed for this Option, we do not see a need for a public meeting. Such a meeting is unnecessary when the Commission is involved, and it is equally as unnecessary if the Commission is not involved.

Lingering Concerns

The reforms suggested by the NRC’s OGC are a solid step in the right direction; however we do still have some concerns. One such concern involves the following quote:

[w]ith this consideration in mind, OGC recommends that the Commission retain the presiding officer function for mandatory hearings under AEA § 189a. on a first-of-a-kind technology or for the first facility at a particular site, using the written-hearing process described as Option 1 above. [Emphasis added].

It is unlikely that projects will frequently meet the criteria of being both an 'n-th of a kind' technology and being placed on a site with an existing facility. The NRC expected each module to be licensed individually in 2011.¹² Individual module licensing is in line with historical practices for large light-water reactors.¹³ However, hearing efficiency is unlikely to be increased as a single

¹¹ Procedures and guidance can be found here, [ML19213A024](#) ; [ML20192A315](#).

¹² Nuclear Regulatory Commission, *License Structure For Multi-Module Facilities Related To Small Modular Nuclear Power Reactors*, SECY-11-0079, June 12, 2011, [ML110620459](#).

¹³ For example, following the approval of Vogtle Unit 3, Vogtle Unit 4 would be a second facility of the same technology at a single site.

hearing is often held for multiple licenses.¹⁴ Additionally, almost every developer at some stage of the application process intends to build multi-reactor facilities.¹⁵

The NRC staff have indicated in the draft proposed Part 53 licensing framework¹⁶ that they would allow multiple reactors to be built on a single site with a single application instead of an application for each reactor. This would mean that if a developer intended to put multiple reactors on a site as a “pack,” they would only submit a single license or permit application, and only have one mandatory hearing, if approved. As such, it would seem to us that most new applications wouldn’t check both boxes, an approved design on an already in-use site, which means the Commission would still be presiding over the vast majority of mandatory uncontested hearings.

OGC does not provide a reason for the recommendation to use Option 1 for all new sites. However, it does recognize that the criteria for determining the use of Option 1 or Option 5 may need to be reevaluated over time.¹⁷ The threshold between using Option 1 and 5 will need to be carefully delineated to ensure that it does result in the intended efficiency improvement instead of overburdening the Commission with proceedings that it does not need to be part of.

Recommendation

The Breakthrough Institute agrees with the staff’s recommendations with the following caveats and clarifications. Proceed with Option 1 for first-of-a-kind designs and applications using already approved designs at sites where the NRC Staff have determined that significant or novel impacts or risks exist, carefully delineating the threshold between first-of-a-kind and subsequent facilities utilizing already approved technologies, such that the Commission is only involved where it needs to be. Mandatory hearings for subsequent facilities of approved technologies should follow Option 5 using only written submissions, without the need for an in-person

¹⁴ For example, the mandatory hearing for Turkey Point included both Unit 6 & 7. See Florida Power and Light Company; Turkey Point, Units 6 and 7, 82 FR 47044, <https://www.federalregister.gov/d/2017-21698>.

¹⁵ For example, X-Energy plans on building 4 reactors with Dow Chemical at the Seadrift site in Texas, and Kairos Power’s Hermes 2 is intended to be a two-unit facility. See “Dow’s Seadrift, Texas Location Selected for X-Energy Advanced SMR Nuclear Project to Deliver Safe, Reliable, Zero Carbon Emissions Power and Steam Production - X-Energy.” X-energy, May 11, 2023.

<https://x-energy.com/media/news-releases/dows-seadrift-texas-location-selected-for-x-energy-advanced-smr-nuclear-project-to-deliver-safe-reliable-zero-carbon-emissions-power-and-steam-production> ;

<https://www.ans.org/news/article-5214/kairos-applies-for-permit-to-build-twounit-hermes-plant/>

¹⁶ Draft Proposed Rule, *Risk-Informed, Technology-Inclusive Regulatory Framework for Advanced Reactors*, March 1, 2023, [ML21162A102](#) at 10 CFR 53.1103.

¹⁷ See Footnote 54 in SECY-24-0032.

meeting. We agree that for uranium enrichment facility hearings that require formal procedures under AEA 193(b), the ASLBP would likely be able to proceed in a more efficient manner given their clear experience with similar procedures.

Thank you for your attention to this matter,

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