UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

CHAIR

February 7, 2024

MEMORANDUM TO: Brooke P. Clark
General Counsel

FROM: Christopher T. Hanson

SUBJECT: REVISITING THE MANDATORY HEARING PROCESS AT THE U.S. NUCLEAR REGULATORY COMMISSION

As we approach the U.S. Nuclear Regulatory Commission's (NRC's) 50th anniversary and reflect on the significant evolution of the agency and its engagement with the public it protects, a fresh look at the mandatory hearing process is warranted. As discussed below, I direct the Office of the General Counsel (OGC) to identify efficiencies in these mandatory hearings that will enable the Commission to fulfill its statutory obligations while it promotes the responsible stewardship of time and resources.

The requirement for a mandatory hearing at the construction permit phase of new nuclear generation facilities, captured in section 189a. of the Atomic Energy Act of 1954, as amended (AEA), and the similar requirement in AEA section 193(b) associated with uranium enrichment facilities, represent a longstanding commitment to openness at the NRC.[1] These statutory mandates are part of a larger set of mechanisms that the agency uses to ensure the public is engaged in agency decision-making on major projects. Sometimes known as "uncontested" hearings, these public facing-proceedings are separate from the agency's adjudicatory processes for contested matters and aid the presiding officer in determining whether the NRC staff's safety and environmental findings are sufficient to support the issuance of a license.

In CLI-05-17, the Commission discussed the legislative background of the mandatory hearing requirements.[2] As part of its extensive overview of the topic, the Commission recounted the major concerns Congress raised with the Atomic Energy Commission's (AEC's) lack of transparency in its licensing processes, particularly regarding insufficient notice and unavailability of critical information.[3] The AEC, originally responsible for both development and licensing functions, was restructured by the Energy Reorganization Act of 1974 to separate the promotional aspects of the agency from its regulatory role. This separation resulted in the creation of the NRC as it remains today, an agency focused on independent and unbiased oversight of the commercial nuclear industry. The reorganization was a major change in the approach to regulate nuclear energy in this country, easing some of the tension caused by the

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[1] *See* 42 U.S.C. § 2239(a) and 42 U.S.C. § 2243(b)(1), respectively.
[2] *See Exelon Generation Co.* (Early Site Permit for Clinton ESP Site), CLI-05-17, 62 NRC 5, 27-28 (2005).
[3] *See id.*

original dual-interest mission of the AEC. Further shifts in the United States' overall approach to government accountability have occurred in succeeding years, including passage of the Freedom of Information Act, the Government in the Sunshine Act, and the Federal Advisory Committee Act.

The NRC's processes to enhance open and transparent regulation of nuclear power have also evolved over its history. The information landscape has drastically changed since the days of the AEC, putting critical information about the NRC's decision-making into the public sphere. The agency has had a Public Meeting Policy in place since 1978 that opens staff meetings with licensees and applicants to observation and participation. Commission meetings, with very limited exceptions, also are open to the public and made available online. Information that once required onerous in-person processes to acquire is now available instantaneously through the NRC's public website or its electronic records repository, known as the Agencywide Documents Access and Management System (ADAMS). Contact information for the Office of Public Affairs, project managers, and resident inspectors is readily available for use by the public to request additional information or ask questions.

While the NRC is bound by statute to conduct mandatory hearings for certain applications, Congress did not provide direction as to *how* those hearings are conducted. Indeed, the Commission has previously considered questions regarding the format and structure of these hearings over the years.[4] Flexibility in the statute allows the agency to adjust its processes to meet emerging needs.

Over the past 20 years, the Commission and the Licensing Boards have conducted 21 mandatory hearings. Most recently, after a five-year gap, the Commission conducted a mandatory hearing for a non-power test reactor construction permit in October 2023, signaling the beginning of an expected influx of advanced reactor applications and the potential for more mandatory hearings on the horizon. As the agency prepares for the potential increase in standardized reactor designs and applications for their deployment, it is important to balance efficiency, clarity, and openness in Commission decision-making, and to reflect on lessons learned from the past uncontested hearings held on applications for early site permits, construction permits, combined licenses, and uranium enrichment facilities under our existing procedures. Within the guardrails of our current statutory requirements, I believe significant process efficiencies can be gained.

In light of these considerations, I direct OGC to provide a paper to the Commission within 60 days of the date of this memorandum outlining applicable requirements and providing options to the Commission for conducting mandatory hearings going forward. Maintaining the important core of public engagement and transparency, OGC should broadly consider available flexibilities in the structure and format of these proceedings (including selection of an appropriate presiding officer), and the form that the agency's decision might take. In its analysis, OGC should consider whether procedures for mandatory hearings can, or should, differ for applications that represent a "first of a kind" review.

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[4] *See e.g.* Staff Requirements—SECY-10-0082—Mandatory Hearing Process for Combined License Application Proceedings under 10 C.F.R. Part 52 (Dec. 3, 2010) (ADAMS Accession No. ML103570203); *see also* Staff Requirements—SECY-21-0107—Selection of Presiding Officer for Mandatory Hearings Associated with Construction Permit Applications (Mar. 23, 2022) (ML22083A045).