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The NRC Needs Congress to Cut the Red Tape on Licensing Hearings



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The Nuclear Regulatory Commission is exhausting all options to find a work around to a seven-decade old requirement in the Atomic Energy Act (AEA). The AEA requires the NRC to hold a hearing on each application to build a reactor, in addition to the reviews conducted by the staff, even if no one contests the application. As a result, NRC staff expend hundreds of hours conducting a procedural formality rather than moving on to the next application—and the Commission commits vital time presiding over such hearings, rather than working on other outstanding priorities. In February, NRC Chair Chris Hanson sent a memo to the NRC’s General Counsel directing the office to review the Commission’s procedures for the mandatory hearing process and identify changes to improve efficiency. In lieu of a statutory amendment to the AEA by Congress, the Chair’s directive reflects the maximum that the Commission can do to overcome this major licensing bottleneck. In April, the Office of General Counsel provided a memo to the Commission

identifying five options that could be taken to adjust the NRC's procedures and shave weeks off of new license reviews.

This review is a strong step by the Chair and an important matter for the Commission to respond to. Ultimately however, it re-emphasizes the need for Congress to modernize our nuclear energy laws and remove the outdated constraints that are hampering clean energy deployment. This blog provides a brief background on the NRC's mandatory hearing requirement, a breakdown of the NRC's recent actions, and a brief dive into the potential impacts of Congressional action on this issue.

What is the Mandatory Hearing?

As other [experts have written](#), the mandatory hearing requirement is a holdover from the early developmental period of nuclear energy. At that stage, the previous national regulator operated in a black box manner that produced opaque decisions based on confidential inputs. When Congress abolished the Atomic Energy Commission, it created the more transparent and independent NRC, as well as the Department of Energy, to oversee the nation's nuclear energy mission. The AEA remains as one of the key governing pieces of legislation for the NRC yet, this anachronistic remnant has become one of the most significant bottlenecks to efficiency and scaling new energy deployment.

How Does it Work?

The hearing is scheduled and conducted after the staff completes its safety and environmental reviews of an application, which may include separate hearings on contested matters, thereby concluding nearly all licensing work and reaching a staff recommendation on whether the Commission should approve the license. The hearing typically includes staff and applicant written submittals, oral presentations, and a panel of witnesses who may answer questions. Afterwards, the staff and applicant may submit post-hearing filings and the Commission issues a decision on the mandatory hearing. For Kairos Power's Hermes advanced reactor application, the uncontested mandatory hearing triggered a 4-month delay and \$500,000¹ in additional costs before the Commission affirmed final approval of the application last year.

The Proposed Options

The NRC's General Counsel proposed the following options to improve the mandatory hearing process while complying with this statutory burden:

- **Option One:** The Commission does not hold a formal meeting and instead relies solely on written submissions from staff, the applicant, tribal, and governmental stakeholders to make its decision. This could result in a licensing decision 2 months after the staff completes its review.
- **Option Two:** The Commission presides over an in-person public meeting with oral presentations but relies on written submissions and the record of these proceedings to make its decision. This could result in a licensing decision up to 3 months after the staff completes its review.
- **Option Three:** The Commission presides over an in-person public meeting with staff and applicant presentations and panelists who may answer questions and submit responses in writing. The Commission would use the written record of these proceedings to make its decision. This could result in a licensing decision 3 months after the staff completes its review.
- **Option Four:** The Commission delegates conduct of the public hearing to an independent board of legal and technical experts within the NRC, known as the Atomic Safety and Licensing Board Panel. The board would review the staff's work and the application to make its decision. This could result in a licensing decision 3 months after the staff completes its review.
- **Option Five:** The NRC's Executive Director for Operations or other senior agency official presides over an in-person public meeting of independent NRC experts who prepare a report on the application and the staff's review. The presiding official makes a decision by approving the expert report as submitted or supplemented. This could result in a licensing decision as soon as 2 months after the staff completes its review.

What's Next?

For the Commission:

The NRC's General Counsel recommended that the Commission adopt Option One for all applications for a first-of-a-kind design and Option Five for any subsequent applications (or nth of a kind) for a licensed design. Next, the Commissioners will need to vote—either to approve the GC's recommendation, or by reaching consensus on a different option. This will help expedite early applications and support first-movers who are currently in the licensing pipeline.

For Policymakers:

Congress must enact a statutory change to eliminate the requirement for an uncontested mandatory hearing in the AEA. Legislation to address this issue has already been drafted and

considered in Congress: the House considered a bill, the Efficient Nuclear Licensing Hearings Act—that would update hearing procedures to make such hearings optional, rather than obligatory (and therefore often performative).

Zooming in:

- The NRC's former Executive Director for Operations emphasized in a House Energy Subcommittee hearing that removing the hearing requirement: 1) "would not in any way affect the interests of any party who would want to seek a hearing"; 2) "would not impact [the NRC's] safety conclusions; and 3) "would not significantly affect public confidence".²
- A study conducted independently by Idaho National Laboratory concluded that removing the requirement to hold an uncontested mandatory hearing would allow licensing to be completed 4-7 months earlier.
- This issue has long been a thorn in the NRC's side. A 2007 task force of the NRC concluded as their primary recommendation for efficiency that the mandatory hearing should be eliminated.

The Path to Expanding Clean Energy Runs Through the NRC

The US has committed to help triple global nuclear capacity by 2050. The Department of Energy's Advanced Nuclear Liftoff report lays out the ambitious benchmark of deploying an additional 200 GW nuclear energy in the next 25 years. To achieve this, we need to unlock the potential of the NRC to effectively permit and license new reactors faster than ever before. There is currently strong bipartisan support in Congress for a bill to update US nuclear regulations and showcase a modern regulatory model to the world. Congress should move quickly to enact broad bipartisan reforms and ensure that they include the most impactful provisions possible—such as language to eliminate the uncontested mandatory hearing requirement.

ENDNOTES

1. The NRC’s hourly fee-rate is published in its annual fee-schedule and is \$321/hr for FY24 (<https://www.nrc.gov/docs/ML2403/ML24030A760.pdf>). In August 2023, the NRC estimated that preparing for the mandatory hearing would require “approximately 1,500 NRC staff hours” (<https://www.nrc.gov/docs/ML2322/ML23226A172.pdf>). The projected cost based on the NRC’s estimation is \$481,500. Note, this figure does not include the additional costs incurred by the applicant to prepare for the hearing.
2. Energy, Climate, and Grid Security Subcommittee Legislative Hearing: “American Nuclear Energy Expansion: Updating Policies for Efficient, Predictable Licensing and Deployment”. July 18, 2023. The line of questioning starts at the 3:22:40 mark.