

## **CHAPTER IV – COMMISSION MEETINGS/HEARINGS**

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### **COMMISSION MEETINGS/HEARINGS**

#### **GOVERNMENT IN THE SUNSHINE ACT**

The Government in the Sunshine Act (PL 94-409) (Sunshine Act) requires the collegial agencies of the Federal Government, including the NRC, to open meetings of their Commissioners to public observation except where the subject matter falls within one of the specific categories of exemption. The law is based on the premise that "the public is entitled to the fullest practicable information regarding the decision-making process of the Federal Government." The Sunshine Act applies to meetings of at least a quorum of Commissioners where deliberations determine or result in the joint conduct or disposition of official Commission business. This Chapter describes procedures for Commission meetings that are governed by the Sunshine Act, and briefly covers the scope of Non-Sunshine Act discussions.

The Sunshine Act favors open meetings. An agency, however, is allowed to close a meeting or portions of a meeting or to withhold information about a meeting or portions of a meeting if the agency determines that the meeting or portions thereof, if opened, or the information, if released, would likely disclose exempted information protected from disclosure under one or more of the 10 exemptions authorized by the Sunshine Act. A list of these exemptions is contained in 10 CFR Part 9. Determinations to close a meeting require a recorded majority vote of the entire Commission membership.

The Sunshine Act further requires NRC and similar agencies to publicly announce, at least 7 calendar days prior to each meeting, its time, place, and subject matter, and whether it is to be open or closed. The agency can provide less than 7 calendar days notice of a meeting, provided a majority of the Commission determines by recorded vote "that agency business requires" less notice.

#### **DEVELOPMENT OF COMMISSION SCHEDULE**

1. SECY prepares a schedule of Commission meetings from an assessment of the following considerations:
  - a. a projection of anticipated meeting subjects from the EDO;
  - b. projections and requirements known to SECY;
  - c. input from Commissioners, OGC, OCA, OIP, CFO;
  - d. availability of all Commissioners;
  - e. readiness of affirmation items;

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- f. requests for meetings with the Commission by outside agencies or organizations; and
  - g. requests for a meeting by any Commissioner.
2. First priority is given to the scheduling of meetings on days when all Commissioners are available.
  3. Factors such as holidays, Congressional hearings, availability of staff, and the conflicting schedules of individual Commissioners influence the dates and times available for meetings. As part of the data-gathering process, Commissioners' staffs record periods when the Commissioner will not be available for Commission meetings into an on-line automated calendaring system that provides an integrated daily schedule of Commissioner availability.
  4. SECY meets at pre-agenda sessions with the Chairman and representatives of OGC and EDO. The results of the pre-agenda meeting form the basis for the Chairman's proposed agenda to the other Commissioners.
  5. SECY provides to the Commission a package of materials in preparation for the Agenda Planning Session at least 5 business days prior to the Agenda Planning Session. The package containing the proposed Commission schedule, as approved by the Chairman, consists of: a future meetings list out to 26 weeks, the current Commission calendar for each month out to 3 months, final or proposed scheduling notes for Commission meetings out to 3 months, periodic meetings list, a list of items coming to the Commission for review (including staff-generated items), and an NRC Exercise Schedule.
  6. The purpose of the Agenda Planning Session, conducted by the Chairman and typically held monthly, is for the Commission to review, discuss, and approve the proposed meeting schedule, as well as any other agenda-related matters that the Chairman or individual Commissioners wish to address. Commissioners, their staff, and representatives from EDO, OGC, CFO, OIP, OCAA, and SECY normally attend and participate as appropriate. The Chairman presents a proposed agenda for collegial Commission discussion, but if a Commissioner desires that a meeting be scheduled, he or she should raise it at Agenda Planning or should inform SECY in writing, and provide copies of the notice and a proposed meeting scheduling note to all Commissioners. In recognition of the collegial process, an individual Commissioner's request that a meeting be scheduled will be granted unless a majority of the Commission disapproves the request.
  7. The approved schedule of upcoming Commission meetings is disseminated within NRC by SECY in the form of the Commission calendar, with approved scheduling notes. A summary of the schedule limited to the coming 6-week period is also released to the *Federal Register* for publication and posted to the NRC external web site. The Commission will cancel or delay announced meetings only when

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required by extraordinary circumstances and will provide as much notice as feasible in the event of a cancellation or delay. SECY will poll the Commission on whether to cancel or delay an announced meeting. In determining whether to cancel or delay an announced meeting, the Commission will consider inclement weather, government operating status, and any other relevant information. Cancellation or delay of an announced meeting requires support by a majority of the Commission.

### **8. Guidelines for Stakeholder Participation in Commission meetings:**

- a. In planning Commission meetings, the Commission may determine that it would be useful and practical to obtain additional information or views through stakeholder participation. Emphasis will be given to meeting topics where a decision by the Commission on the topic is required (e.g., a notation vote paper is or will be before the Commission for action). In its discretion, the Commission may also schedule meetings with stakeholders covering a broad range of issues.
- b. In preparing draft scheduling notes, SECY in coordination with the staff will prepare a list of stakeholders that could be considered for invitation to brief the Commission. The staff should identify to SECY the stakeholders that have shown interest in the particular meeting topic along with its views for participation that could assist the Commission in making its decision (e.g., particularly active stakeholders).
- c. The Commission will decide who will participate in Commission meetings through its approval of draft scheduling notes. SECY will poll the Commission on draft scheduling notes that are not resolved at Agenda Planning Sessions. Commissioners may respond to SECY's poll by proposing alternate or additional participants or topics. These proposals will be incorporated into scheduling notes if approved by a majority of the Commission. If necessary, SECY will poll the Commission to determine whether majority support exists for such proposals. In addition, if a Commission-approved participant is unavailable, SECY will poll the Commission to determine whether majority support exists for an alternate participant.
- d. The Commission will decide as part of Agenda Planning who will participate in the Commission meeting. If outside participants are invited, priority consideration will be given to other Federal agencies, states, elected officials, tribal governments, organizations, and persons that represent a broad spectrum of views, have specific interest in the meeting topic and bring a unique perspective to the briefing, and are experts on the subject matter. To the extent practical, the Commission will attempt to achieve a balance in the points of view represented at the meeting. The Commission's goal of including stakeholders in Commission meetings is to

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give the Commission information on a range of views on a given topic. It is not the Commission's intent, nor is it realistic, to try to have every different view on a given topic represented at a meeting. Other organizations and individuals who express an interest in speaking will be encouraged to submit written comments for Commission consideration, which will be included as part of the record, and/or coordinate common interests with presenters who have agreed to participate. The Commission will not normally reconsider a decision on stakeholder participation. Should a stakeholder ask to be added to the list of participants, the Commission reserves the option to consider whether the stakeholder's participation in the meeting would be helpful to the Commission. Such a request should be made in writing to the Secretary of the Commission 3 weeks in advance of the announced briefing. The written request should be clear as to who the stakeholder is representing and the unique perspective that would be provided at the briefing. Normally, the Commission will approve a final list of the participants for a Commission briefing at least 2 weeks in advance of the meeting.

- e. The Office of the Secretary will arrange the briefings and invite the participants that have been agreed to by the Commission. Only one speaker will be permitted per organization unless the Commission determines that broader participation is desirable or necessary. Outside participants will be grouped into panels as appropriate. The letter of invitation from the Secretary will state that participants should summarize their key points at the Commission meeting in 5-10 minutes. The specific amount of time for each speaker may be discussed at the Agenda Planning Session and is reflected in the scheduling note. Typically, the letter will also state that participants should submit written material no later than 5 business days in advance of the meeting. Notice will also be given that the Commission reserves the right to withdraw an invitation to speak if the written material on the presentation is not provided 5 business days in advance of the meeting date.
  
- f. NRC staff will submit to the Commission pertinent SECY Papers or other documents 15 business days in advance of the scheduled Commission meeting. The Commission will be given at least 2 business days to review the staff's meeting materials to determine if they should be released to the outside meeting participants and the public. It is the goal of the Commission to make documents that the Commission determines should be released available to meeting participants and publicly released at least 10 business days in advance of the Commission meeting. The Commission expects to receive meeting materials in a timely manner in the absence of an advance request from the staff for an extension of the due date. If meeting materials are not received in a timely manner, the Commission meeting may be rescheduled. Rescheduling an announced meeting requires support by a majority of the Commission.

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### FORMAT FOR COMMISSION MEETINGS

The Commission has conducted business in both open and closed meetings and in several different meeting formats over the years. Adjustments in style, format, and conduct are made to best suit the information gathering and decision-making needs of the Commission.

The majority of Commission meetings are open for public observation. Members of the public may attend meetings held in the Commission's main conference room, observe the presentations and discussions, and obtain copies of NRC documents released at the meeting. They may not address the Commission or other meeting participants without prior Commission approval. Most meetings are also webcast over the internet.

Under certain circumstances allowed by the Sunshine Act, the Commission may meet in closed session. A separate conference room is normally utilized for this purpose.

#### 1. Open/Public Commission Meetings

As previously noted, the Sunshine Act presumes that most Commission meetings will be conducted in public. Open meetings are held to enable the Commission to gather information in briefings by NRC staff members,<sup>21</sup> the regulated industry, and members of the public in fulfillment of the Commission's responsibilities. In addition to gathering information in staff briefings, the Commission may utilize its meetings to provide the staff with guidance on future activities and/or vote on specific issues such as restart of a nuclear plant. Commission voting and decision-making activities may occur at the end of briefings by the staff, industry, and/or public, or voting may occur at a later date after the Commission has had the opportunity to consider the information received during the briefing or from other documents and views.

Voting may also occur at short meetings (Affirmation Sessions) held to affirm final orders or rules developed in the notation voting process (see Chapter II for a description of Affirmation Papers and Chapter III "Votes at Commission Meetings"). Affirmation Sessions, which may involve a short 5-10 minute discussion of issues, are required by law<sup>22</sup> and enable the Commissioners, in the presence of each other, to formally ratify

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<sup>21</sup> The procedures for staff presentations at Commission meetings are in Appendix 8.

<sup>22</sup> The provisions of the Energy Reorganization Act of 1974 require that a "quorum for the transaction of business shall consist of at least three members present" and that "[a]ction of the Commission shall be determined by a majority vote of the members present" (42 USC 5841). The Commission has determined that the requirement of "presence" does not preclude the Commission from meeting with the participation of a Commissioner who is "present" by speaker phone, so long as there is no impairment of the Commissioner's ability to hear and be heard by all

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votes previously cast by notation vote. Affirmation Sessions are generally scheduled to obtain a formal vote of the Commission on recommended actions that legally bind those the NRC regulates or have a significant legal effect on persons outside the Commission. Such actions usually involve the issuance of final rules or adjudicatory orders. SECY will poll the Commission on scheduling the affirmation as soon as a majority position on the proposed action has been established and all extensions have expired. The Commission should strive to schedule affirmation at the earliest opportunity, giving at least 7 calendar days public notice (unless a majority of the Commission agrees to short notice) following either the establishment of a majority position of the Commission and expiration of all extensions, or direction from a majority of the Commission that affirmation should be scheduled. Significant orders of the Commission (and its Licensing Boards) are printed in a cumulative compilation of NRC adjudicatory decisions, NUREG-0750, "Nuclear Regulatory Commission Issuances."<sup>23</sup>

The Commission may also hold occasional open meetings for a collegial discussion of a variety of matters of current interest to individual Commissioners. These meetings, while open to the public, do not usually have a formal agenda, do not involve the active participation of the NRC staff, and do not result in a Commission decision on any particular issue discussed.

All open meetings are transcribed by a stenographic reporter. In addition most open Commission meetings are webcast over the Internet providing real-time viewing of the meeting. These webcasts are also archived to provide for viewing at a later time. Other than stenographic edits made by SECY, transcripts are not edited or altered. SECY edits the stenographic transcripts for accuracy, maintains the transcripts, and releases them to the public. Transcripts contain a disclaimer stating that it is not a part of the formal or informal record of decision of matters discussed and that expressions of opinion in the transcript do not necessarily reflect final determinations or beliefs.

### 2. Closed Commission Meetings

Under certain limited circumstances, the Commission may meet in closed session. The Sunshine Act allows the Commission to hold discussions in closed session when the discussion includes classified information, Safeguards Information, proprietary information, investigation and enforcement matters, internal management and personnel matters, certain adjudicatory/litigation matters, and information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed Commission action. A detailed set of "Security Procedures for Conducting Classified Meetings/Hearings" has been issued by the Division of Security and Facilities Support,

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those in the room and no effect on the public rights of attendance and observation under the Sunshine Act.

<sup>23</sup> Appendix 9 contains a description of the orders published in the Nuclear Regulatory Commission Issuances.

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Office of Administration, in consultation with the Office of the Secretary. See Appendix 10 for the procedures.

As with open meetings, closed meetings are also used to provide the Commission with information in briefings by the staff and allow the Commission to make decisions, i.e., vote, on issues requiring a decision if a majority of the Commission agrees to vote at the meeting.

The most common types of closed Commission meetings are:

**Management and Personnel** – the Commission considers management, organization, and personnel issues requiring collegial attention. Attendance is very limited -- often only the Commissioners attend.

**Security Issues** – briefings are held in closed session to discuss matters relating to the security and safeguards of nuclear material and facilities.

**Executive Branch** – briefings are held at the request of the Commission in closed session to permit representatives of Executive Branch Departments and Agencies to brief the Commission. These briefings are typically on sensitive, pre-decisional foreign policy issues, classified security matters, controlled unclassified information, and classified matters related to the Commission's responsibilities for the common defense and security of U.S. nuclear facilities and U.S.-origin facilities, equipment and materials overseas, and implementation of U.S. foreign and nonproliferation policies regarding import and export of nuclear materials and production and utilization facilities.

**Investigative Matters** – on occasion, the Commission is briefed in closed session by the Inspector General and/or the Office of Investigations on pending investigative matters.

**Adjudicatory/Litigation** – on occasion, the Commission is briefed in closed session by the General Counsel, the Solicitor, or the Office of Commission Appellate Adjudication on current adjudicatory/litigation matters.

As required by the Sunshine Act, the NRC maintains a complete verbatim transcript or electronic recording of all closed meetings, except certain adjudicatory meetings, which may be recorded by detailed minutes. For every closed meeting, the General Counsel must certify that the meeting may be properly closed. The agency must maintain a copy of the General Counsel's certification along with a statement of the presiding officer of the meeting (the Chairman) stating the time and place of the meeting and listing the persons actually present. The Secretary prepares this statement for the Chairman.

The records of closed meetings (transcripts, notes, and/or tape recordings) are normally retained by SECY, the Division of Nuclear Security in NSIR, or the Office of the Chairman, depending on the classification and sensitivity of the meeting. These records may be

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released to the public following review and approval by the Commission. The reviews are conducted by the originators, other agencies if involved, NSIR as needed, OGC, and the Commissioners. SECY coordinates the review.

### **3. Non-Sunshine Act Discussions**

Non-Sunshine Act discussions among three or more Commissioners are appropriate and legally permissible only when discussions are preliminary, informal, informational, or “big picture.” If such a discussion begins to focus on discrete proposals or issues, such as to cause or be likely to cause individual participating members to form reasonably firm positions regarding matters pending or likely to arise before the agency, the discussion should be halted and continued only in the context of a Sunshine Act meeting, scheduled in accordance with the requirements of that statute. The Office of the Secretary maintains a record of the non-Sunshine Act meeting, which includes the date, time, topic and attendees (see Appendix 11). Unless determined otherwise by a majority of the Commission, the General Counsel and the Secretary of the Commission shall attend all non-Sunshine Act discussions to ensure that all legal requirements are met. If non-Sunshine Act discussions take place via email amongst a quorum of the Commission, the General Counsel and the Secretary of the Commission should be copied on the messages.

### **CONDUCT OF COMMISSION MEETINGS**

1. The Commission desires to start its meetings promptly at the time scheduled. The Chairman can begin a meeting as soon as a quorum of Commissioners is present. A Commissioner may request that the start of a meeting be briefly delayed, which the Chairman may grant at his or her discretion.
2. Meetings are generally informal in nature; the Chairman or Acting Chairman presides at all meetings and assures equal opportunity for participation and questions by all Commissioners present.<sup>24</sup> (Energy Reorganization Act, Section 201(a)(1)).
3. On occasion the Commission conducts formal sessions at which representatives of the parties in a particular adjudicatory proceeding are invited to present their positions in an oral argument before the Commission. Procedural arrangements are established by a majority of the Commission in advance to determine the issues for discussion and to specify time limits for each party's presentation and for Commissioner questions.
4. A Commissioner who is unavoidably absent, such as because of medical leave or official travel, may take part in any Commission meeting, as described in this

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<sup>24</sup> For example, the Commission recommends following the current practice, which rotates the sequence in which Commissioners are recognized to question participants so that each member of the Commission has equal opportunity to rotate through each position in the sequence over the course of multiple meetings.

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Chapter, provided that he or she is in two-way communication with the other Commissioners in the meeting by a device (e.g., a speaker phone) that allows the voice of the absent Commissioner to be heard by all present in the meeting room and allows the absent Commissioner to hear the entire discussion in the meeting. This procedure applies whether or not the participation of the absent Commissioner is needed to create a quorum for the transaction of business. A Commissioner participating in a meeting by speaker phone has the same rights of voting possessed by every other Commissioner. When this procedure is employed, the Secretary will ensure that voices are properly identified.

### **MEETING-RELATED DOCUMENTS**

#### **1. Documents in Advance of Meetings**

In order to prepare for matters to be discussed at meetings, the following documents are required in advance so that the Commissioners may familiarize themselves with the purpose and content of matters to be presented:

- a. For staff-only briefings of the Commission, pertinent SECY papers, documents, or briefing outlines by the staff involved must (except in extraordinary circumstances) be available to Commissioners at least 10 business days before a meeting on a particular subject is held. The staff should advise the Commission, as early as possible, of any anticipated failure to meet the due date for submission of meeting materials and request approval for any necessary extension of the due date. If the document is not available 10 business days in advance, the originating office must explain the reason to the Commission in a cover memorandum. Commissioners may request postponement of a meeting if they do not have sufficient time to review late arriving documents. When such requests are made, SECY discusses the issue with the Chairman and polls the other Commissioners to determine whether the meeting will be postponed. A meeting will be postponed if agreed to by a majority of the Commission.
- b. Slides, if they are to be used, should also be received by the Commission at least 5 business days prior to meetings. Slides are routinely posted to the NRC's external web site for open meetings for use by the public when viewing a webcast Commission meeting over the Internet.
- c. Staff scripts or speaker notes, if used, should be provided to the Commission at least 24 hours in advance of the meeting.
- d. Any memoranda by Commission-level offices pertinent to the subject matter should be available at least 10 business days prior to the meeting.
- e. For Commission meetings at which stakeholders have been invited to speak, pertinent SECY papers, documents, or briefing outlines should be

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forwarded to the Commission for review at least 15 business days in advance of the meeting. This will allow the Commission time to review the documents prior to release to the meeting participants and the public. Public release will occur generally at 10 business days prior to the meeting.

### **2. Documents at Meetings**

At open Commission meetings, SECY ensures that copies of the principal documents referenced in the Commission schedule and slides are placed near the entrance of the Commission Conference Room for members of the public. Staff presenters are responsible for providing sufficient copies of the slides or other relevant written information for public availability and should ensure they arrive in the briefing room 30 minutes prior to the start of the meeting. SECY will ensure relevant SECY papers are publicly available in ADAMS and on the NRC external Web site prior to the Commission meeting. On occasion, additional copies of documents will be made available to members of the public at the meeting if it is anticipated that the discussion will draw upon information contained in the documents. SECY ensures that pertinent documents are publicly released prior to the meeting, subject to the agency's policy on the release of documents containing sensitive information.

### **STAFF REQUIREMENTS MEMORANDA (SRM)**

After Commission meetings, SECY prepares a draft SRM to memorialize the Commission decisions or actions that took place in or may arise from the meeting, as well as the associated requirements placed on staff for implementing action. Recommendations or suggestions made by individual Commissioners should be captured in the draft SRM as Additional Commissioner Comments for Commission review and approval. Final SRMs are issued to the action addressee, with copies to the Commissioners and interested staff offices. Procedures for developing, reviewing, and issuing meeting SRMs are identical to those described in Chapter III for SRMs on voting matters.

### **BRIEFINGS OF THE COMMISSION ASSISTANTS**

Briefings by the staff to the Commission Assistants (CAs) may be originated by the staff or requested by a Commissioner office. In most cases, the staff will initiate the request based on the need to inform or update the Commission staffs of progress in specific areas or ongoing events. Similarly, a Commissioner office may request a briefing to provide more information or clarification on a specific topic and will request that the appropriate staff office (such as EDO, OGC, or another office) or SECY propose briefing times. These meetings should be held as promptly as possible.

In either case, the staff office will coordinate with appropriate staff, including multiple offices if needed, to determine their availability and propose to SECY several dates and times for the CA briefing. When an urgent CA brief is required, this should be explained in the request. CA briefings will normally be scheduled for 1 hour, unless otherwise noted.

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The CA briefing request to SECY should also include a description of what is to be conveyed to the CAs. In addition, the staff should highlight if the briefing relates to a SECY paper or COMSECY that is currently before the Commission, or a paper that is expected in the near future.

SECY will forward the request to the CAs after checking the availability of the times offered against other commitments such as conference room availability, other Commission meetings, or other CA briefings. The Commission CAs are expected to respond promptly and are encouraged to support times that are mutually-convenient to all offices in order to finalize the schedule.

### **CONDUCT OF MANDATORY HEARINGS ON APPLICATIONS FOR COMBINED LICENSES AND CONSTRUCTION PERMITS FOR MEDICAL ISOTOPE PRODUCTION AND UTILIZATION FACILITIES**

#### **1. Before the hearing:**

**Notice:** 10 CFR § 2.104(a) requires that the Secretary issue a notice of hearing for publication in the Federal Register as soon as practicable after a combined license (COL) or construction permit application has been docketed (or, in certain cases, tendered (see 10 CFR § 2.101(a)(2)). The Secretary will also issue a supplemental notice of hearing – specific to the uncontested or “mandatory,” portion of the ~~COL~~ proceeding – as soon as practicable after the staff submits to the Commission the Information Paper described below under “Pre-Filed Documents.”

This supplemental notice should state: (1) the time and place of the hearing, (2) the nature of the hearing, (3) the authority under which the hearing is to be held, (4) the matters of fact and law to be considered (i.e., whether the staff’s review has been adequate to support the applicable findings) ~~set forth in 10 CFR §§ 52.97(a) and 51.107(a)~~, (5) the schedule for submittal of the pre-filed documents, and (6) the designation of the Commission itself as the presiding officer for the hearing.

**Pre-Filed Documents:** Within one week of public issuance of the Final Safety Evaluation Report (FSER) or Final Environmental Impact Statement (FEIS)/Environmental Assessment (EA), whichever comes later, the NRC staff will submit an Information Paper to the Commission. This Information Paper will be made publicly available and should, at minimum:

- (1) Address each of the findings ~~in §§ 52.97(a) and 51.107(a)~~ necessary for issuance of a COL or construction permit, and provide an adequate basis for the Commission to conclude whether each of these findings can be made. The Information Paper should not recap all matters in the safety or environmental review process, particularly routine aspects of the review where there was no actual complication or controversy. Rather, the Information Paper should be

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focused on non-routine matters. The staff should also include a discussion of issues raised by the ACRS, as well as the staff's responses thereto.

(2) In focusing on non-routine matters, the areas of particular importance in supporting the ~~Part 51 and 52 safety and environmental~~ findings would be any unique features of the facility or novel issues that arose as part of the review process. ~~The Information Paper should exclude discussion of admitted contentions that have been (or are being) addressed in a contested proceeding before the Licensing Board.~~ However Additionally, the staff's Information Paper should exclude matters that were previously addressed and resolved in the context of other reviews undertaken as part of the ~~Part 52~~ process, e.g., as part of an earlier Early Site Permit (ESP) review, an earlier reference COL review, or have been (or are being) addressed in the context of a ~~design certification~~ rulemaking. ~~The Information Paper should also exclude discussion of admitted contentions that have been (or are being) addressed in a contested proceeding before the Licensing Board.~~

(3) Include other aspects of the staff's review that are important for the Commission to make its final decision but are not necessarily tied to specific findings. For instance, if an applicable design certification rulemaking is currently ongoing, the staff's Information Paper should include a brief summary of any significant technical or policy issues that the staff believes would be of significant Commission interest and an estimate of the completion date of that rulemaking.

This Information Paper shall serve as the staff's primary pre-filed testimony. In addition to this paper, the staff shall identify its witnesses for the hearing and answer any Commission pre-hearing questions. Answers to any pre-hearing questions and the witness list would be due 21 days prior to the scheduled hearing date, unless the Commission directs otherwise.

The following documents should be referenced in the pre-filed testimony and included as enclosures to the SECY paper or otherwise made available, for example, by providing ADAMS accession numbers:

- The license application and all supplements;
- The Final Safety Evaluation Report and all supplements;
- The Final Environmental Impact Statement or Environmental Assessment and all supplements;
- The pertinent letter from the Advisory Committee on Reactor Safeguards; and
- The proposed license or permit.

In addition to the Information Paper, the staff may submit pre-filed testimony of its planned individual witnesses as late as 5 days in advance of the hearing.

The applicant should also submit pre-filed written testimony, which would also be due 21 days prior to the scheduled hearing date, unless the Commission directs otherwise. This testimony should, at minimum, include answers to any pre-hearing questions issued by

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the Commission and identify the applicant's witnesses for the oral hearing. The applicant may also include in this pre-filed testimony any additional views that it wishes to provide.

Interested States, local government bodies, and federally recognized Indian Tribes may also submit written statements to the Commission. Such statements should be filed 36 days prior to the scheduled hearing date.

No filings submitted in an uncontested (i.e., "mandatory") ~~COL~~-proceeding, whether submitted by the staff, the applicant, or an interested State, local government body, or federally-recognized Indian Tribe, may address substantive issues within the scope of the contentions that have been admitted in a contested adjudicatory proceeding for the same ~~COL~~-application. Such filings would include, for instance, the staff's Information Paper, the applicant's pre-filed testimony, answers to pre-hearing questions, question responses filed subsequent to the hearing, and any statements filed by interested States, local government bodies, or federally recognized Indian Tribes. Presentations made at the oral hearing ~~must~~ also should not address issues within the scope of admitted contentions. However, key reference documents such as the license application and supplements, the FSER, the FEIS or EA and supplements, the Advisory Committee on Reactor Safeguards letter, and the proposed license or permit need not be redacted to remove references to contested issues before being made available to the Commission for the uncontested hearing.

Commissioners have the option of issuing written questions to the applicant or the staff before the hearing. Pursuant to his or her authority, the Secretary shall compile each Commissioner's pre-hearing questions and issue them in the form of an order no later than 34 days before the scheduled hearing date. The order should specify the date by which responses to these questions must be filed (as indicated above, responses would generally be due 21 days prior to the scheduled hearing date and would be filed in conjunction with the witness list in the case of the staff and the witness list and any other pre-filed testimony in the case of the applicant). These questions could also serve to focus the parties' presentations at the oral hearing.

All documents submitted by the staff, the applicant, and interested States, local government bodies, and federally recognized Indian Tribes should be filed in accordance with 10 CFR § 2.302, docketed by SECY in accordance with 10 CFR § 2.303, and made part of the hearing record.

No later than 14 days prior to the scheduled date of the oral hearing, the Secretary will also issue a scheduling order and note, which will provide additional logistical details regarding the hearing. If the Commission intends to invite an interested State, local government body, or federally-recognized Indian Tribe to send a representative to the hearing, such an invitation will also be included in the scheduling order. Procedural arrangements are established by a majority of the Commission in advance to determine the topics for discussion and to specify time limits for each party's presentation and for Commissioner questions.

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### 2. The Hearing:

**Documents for the Hearing:** A sufficient number of copies of slides or other relevant written information should be placed in the hearing room for the public 30 minutes before the start of the oral hearing.

**Opening Remarks:** The Chairman will call the hearing to order, describe the nature of the proceeding, under what statutes and rules it is taking place, what findings the Commission would have to make before authorizing issuance of the license or permit, what the general order of the hearing will be, and when a Commission decision might be expected.

**Testimony:** Witnesses for both the applicant and the NRC staff, as well as any representatives of interested States, local government bodies, or federally-recognized Indian Tribes that the Commission has invited to participate, will be identified and sworn in by the Chairman. The applicant's presentation will come first and should address any written questions directed to the applicant by the Commission. The Commissioners will ask questions of the applicant's witnesses before hearing from the staff. The staff's presentations will follow and should address any written questions directed to the staff by the Commission. The staff's presentation will be followed by another round of Commission questions. Any invited representatives of interested States, local government bodies, or federally recognized Indian Tribes will also participate as the Commission deems appropriate. Limited appearance statements will not be entertained.

The maximum allotted time for each Commissioner to ask questions and receive answers to questions at the hearing should be established by a majority of the Commission prior to the hearing. Each Commissioner will decide how to divide his or her time for questions and answers among the witness panels not to exceed the allotted time. Any requests to extend this time may be granted by a majority of the Commissioners present. The Commission does not anticipate, even with many complex issues, that a hearing would last more than three business days.

**Post-hearing Responses to Follow-up Questions:** If Commissioners, at the hearing, ask any follow-up questions that cannot be fully answered at the hearing itself, the staff, the applicant, and/or participating interested States, local government bodies, or federally recognized Indian Tribes, as appropriate, may file supplemental responses to such questions no later than 14 days after the hearing concludes (unless the Commission sets a different deadline for such responses).

**Record:** The oral hearing would be transcribed, and the transcription reviewed for errors, corrected, and made part of the hearing record. See 10 CFR § 2.327. The applicant, staff, or any participating government or Tribal representative may submit transcript corrections within 7 days after the availability of the transcript. Also to be made part of the record will be any presentation materials used by the applicant, the staff, or representatives of interested States, local government bodies, or federally recognized Indian Tribes at the hearing and any written responses from the applicant and staff to

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orders or questions presented by the Commission. Except for the limited purpose of making any necessary transcript corrections, the record will close once the deadline for filing and post-hearing responses to questions posed at the hearing has passed or at the conclusion of the hearing if no such responses are filed.

### 3. Commission Decision after the Hearing:

The Commission adjudicatory decision after the oral hearing should address whether the staff's review has been adequate to support the findings set forth in ~~10 CFR §§ 52.97(a) and 51.107(a) Parts 50, 51, and 52, or imposed by Commission order, as appropriate,~~ or if inadequate identify which findings were insufficient, provide the basis for the Commission's determinations, list the documents that comprise the entire record considered by the Commission and upon which it relied, and authorize the ~~Director of the Office of New Reactors~~ appropriate Office Director to issue, ~~deny, or appropriately condition, or deny~~ the combined license or construction permit, ~~deny issuance of the license, or appropriately condition the license~~ or order further actions, as appropriate. See 10 CFR § 2.344.

In the event that a contested adjudicatory proceeding regarding the ~~COL~~ application is ~~taking place~~ ongoing or has already taken place, at the time the Commission issues its decision in the uncontested proceeding, the Commission will condition its uncontested hearing decision as appropriate to ensure no prejudice is done to the contested proceeding.

### 4. Schedule for Uncontested Hearings:

The Commission intends to issue adjudicatory decisions in mandatory hearings no later than 4 months after the FSER and FEIS or EA are both publicly issued, except that in the case of a COL proceeding, if an associated design certification rulemaking is still pending as of that date, the Commission will issue a decision immediately after affirming the final rule for the referenced design.

The Commission also intends, to the extent practicable, to adhere to the target dates listed below for the key milestones leading up to the Commission decision. The Commission recognizes, however, that circumstances may warrant occasional deviations from these target dates. It is not anticipated, however, that, absent extraordinary circumstances, such deviations would alter the Commission's overall objective of issuing its mandatory hearing decisions no later than 4 months from the public issuance of the later of the FSER, ~~or~~ FEIS, or EA.

Milestone	Target Date
Staff submits Information Paper to Commission	Within one week of public issuance of FSER & FEIS <u>or EA</u>

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Notice of mandatory hearing sent to Federal Register	As soon as practicable after staff's Information Paper is submitted to the Commission
Interested States, local government bodies, or federally-recognized Indian Tribes file any written statements	36 days before the hearing
Commission issues any pre-hearing questions	34 days before the hearing
Applicant files pre-filed testimony, including witness list and answers to any pre-hearing questions	21 days before the hearing
Staff files witness list and answers to any pre-hearing questions	21 days before the hearing
Secretary issues scheduling order and note	14 days before the hearing
Mandatory hearing commences	51 days after staff's Information Paper is submitted to the Commission
Staff and applicant file responses to any follow-up questions	14 days after hearing is complete
Commission affirms adjudicatory decision <del>(In the case of a COL proceeding, affirmation at this stage takes place if referenced design certification rulemaking already complete)</del>	4 months after FSER & FEIS <u>or EA</u> are both publicly issued  <del>(In the case of a COL proceeding, affirmation at this stage takes place if the referenced design certification rulemaking is already complete. If the referenced design certification rulemaking is still pending as of 4 months after FSER &amp; FEIS for COL are both publicly issued, affirmation takes place immediately after Commission affirms the final design certification rulemaking for the referenced design.)</del>
<del>In a COL proceeding, Commission affirms adjudicatory decision if referenced design certification rulemaking still pending as of 4 months after FSER &amp; FEIS for COL are both publicly issued</del>	<del>Immediately after Commission affirms final design certification rulemaking for referenced design</del>

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### TEMPLATE

#### Notice of Hearing

*A template for drafting a mandatory hearing notice for a COL proceeding is provided below. This notice is to be used to provide specific information on the uncontested (“mandatory”) portion of the hearing and will be issued by SECY after receipt of the Staff’s SECY paper supporting the mandatory hearing for each COL application. Appropriate adjustments will be made to accommodate any case-specific circumstances (e.g., if the COL application contains an ITAAC closure request pursuant to 10 CFR 52.97(a)(2) or a limited work authorization request). Notices of hearing for construction permit proceedings will follow the same format but will be tailored to the specific application at issue.*

NUCLEAR REGULATORY COMMISSION

Docket No. **[Insert Docket Number]**

TITLE: In the Matter of **[Insert name of Applicant]**; Combined License for **[Insert site name and number of units]** Notice of Hearing

#### I. BACKGROUND

The Commission hereby gives notice that, pursuant to section 189a of the Atomic Energy Act it will convene an evidentiary session to receive testimony and exhibits in the uncontested portion of this proceeding regarding the **[Insert Date of Application]**, application of **[Insert Name of Applicant]** for a 10 CFR Part 52 combined license (COL), seeking approval to construct and operate a new nuclear power generation facility at **[Insert ~~Description of the Site~~]**. This mandatory hearing will concern safety and environmental matters relating to the proposed issuance of the requested COL, as more fully described below. Participants in the hearing are not to address any contested issues in their written filings or oral presentations.

#### DATE, TIME, AND LOCATION OF THE II. EVIDENTIARY UNCONTESTED HEARING

The Commission will conduct this hearing at the specified location and time:

1. Date **[Insert Date]** Time: **[Insert Time]** Location: **[Insert Location]**

The hearing on these issues will continue on subsequent days, if necessary.

#### III. PRESIDING OFFICER

The Commission is the presiding officer for this proceeding.

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### IV. MATTERS TO BE CONSIDERED

The matter at issue in this proceeding is whether the review of the application by the Commission's staff has been adequate to support the findings found in 10 CFR § 52.97 and 10 CFR § 51.107. Those findings are as follows:

#### **Issues Pursuant to the Atomic Energy Act of 1954, as Amended**

(1) whether the applicable standards and requirements of the Act and the Commission's regulations have been met; (2) whether any required notifications to other agencies or bodies have been duly made; (3) whether there is reasonable assurance that the facility will be constructed and will operate in conformity with the license, the provisions of the Act, and the Commission's regulations; (4) whether the applicant is technically and financially qualified to engage in the activities authorized; (5) whether issuance of the license will not be inimical to the common defense and security or the health and safety of the public.

#### **Issues Pursuant to the National Environmental Policy Act (NEPA) of 1969, as Amended**

(1) Determine whether the requirements of Sections 102(2) (A), (C), and (E) of NEPA and the applicable regulations in 10 CFR Part 51 have been met; (2) independently consider the final balance among conflicting factors contained in the record of the proceeding with a view to determining the appropriate action to be taken; (3) determine, after weighing the environmental, economic, technical, and other benefits against environmental and other costs, and considering reasonable alternatives, whether the combined license should be issued, denied, or appropriately conditioned to protect environmental values; (4) determine whether the NEPA review conducted by the NRC staff has been adequate.

### V. SCHEDULE FOR SUBMITTAL OF PRE-FILED DOCUMENTS

No later than **[replace with date that is 21 days prior to the scheduled hearing date]**, unless the Commission directs otherwise, the staff and the applicant shall submit a list of its anticipated witnesses for the hearing.

No later than **[replace with date that is 21 days prior to the scheduled hearing date]**, unless the Commission directs otherwise, the applicant shall submit its pre-filed written testimony. The staff previously submitted its testimony on **[replace with date of staff testimony]**.

The Commission may issue written questions to the applicant or the staff before the hearing. If such questions are issued, an order containing such questions will be issued no later than **[replace with date 34 days before the scheduled hearing date]**. Responses to such questions are due **[replace with date that is 21 days prior to the scheduled hearing date]**, unless the Commission directs otherwise.

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### VI. INTERESTED GOVERNMENT PARTICIPANTS

No later than **[replace with date that is 36 days prior to the oral evidentiary hearing]**, any interested State, local government body, or ~~affected~~, federally-recognized Indian Tribe may file with the Commission a statement of any issues or questions that the State, local government body, or Indian Tribe wishes the Commission to give particular attention to as part of the uncontested hearing process. Such statement may be accompanied by any supporting documentation that the State, local government body, or Indian Tribe sees fit to provide. Any statements and supporting documentation (if any) received by the Commission using the agency's E-filing system<sup>25</sup> by the deadline indicated above will be made part of the record of the proceeding. The Commission will use such statements and documents as appropriate to inform its pre-hearing questions to the Staff and applicant, its inquiries at the oral hearing, and its decision following the hearing. The Commission may also request, prior to **[replace with date that is no later than 14 days prior to the oral hearing]**, that one or more particular States, local government bodies, or Indian Tribes send one representative each to the evidentiary hearing to answer Commission questions and/or make a statement for the purpose of assisting the Commission's exploration of one or more of the issues raised by the State, local government body, or Indian Tribe in the pre-hearing filings described above. The decision of whether to request the presence of a representative of a State, local government body, or Indian Tribe at the evidentiary hearing to make a statement and/or answer Commission questions is solely at the Commission's discretion. The Commission's request will specify the issue or issues that the representative should be prepared to address.

States, local governments, or Indian Tribes should be aware that this evidentiary hearing is separate and distinct from the NRC's contested hearing process. Issues within the scope of contentions that have been admitted in a contested proceeding for a COL application are outside the scope of the uncontested proceeding for that COL application. In addition, while States, local governments, or Indian Tribes participating as described above may take any position they wish, or no position at all, with respect to issues regarding the COL application or the NRC Staff's associated environmental review that do fall within the scope of the uncontested proceeding (i.e., issues that are not within the scope of admitted contentions), they should be aware that many of the procedures and rights applicable to the NRC's contested hearing process due to the inherently adversarial nature of such proceedings are not available with respect to this uncontested hearing. Participation in the NRC's contested hearing process is governed by 10 CFR § 2.309 (for persons or entities, including States, local governments, or Indian Tribes, seeking to file contentions of their own) and 10 CFR § 2.315(c) (for interested States, local governments, and Indian Tribes] seeking to participate with respect to contentions filed by others).

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<sup>25</sup> The process for accessing and using the agency's E-filing system is described in the [DATE] notice of hearing that was issued by the Commission for this proceeding. See Notice of Hearing [xx FR xx]. Participants who are unable to use the EIE, or who will have difficulty complying with EIE requirements in the time frame provided for submission of written statements, may provide their statements by electronic mail to [hearingdocket@nrc.gov](mailto:hearingdocket@nrc.gov).

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Participation in this uncontested hearing does not affect a State's, local government's, or Indian Tribe's right to participate in the separate contested hearing process.

**If necessary:** The Commission recognizes that [a request] / [requests] to participate under 10 CFR § 2.315(c) in proceedings regarding this COL application [was] / [were] previously dismissed on mootness grounds by an NRC Atomic Safety and Licensing Board. Such dismissals apply solely to the contested portion of the proceeding, and do not affect any rights to participate in this uncontested portion of the proceeding.

**If necessary:** If the COL application contains an ITAAC closure request pursuant to 52.97(a)(2) or an LWA request, appropriate language should be inserted regarding the necessary findings for those items.