

**Responses to Questions for the Record on
“H.R. 4979, the Advanced Nuclear Technology Development Act
Of 2016 and H.R. __ , Nuclear Utilization of Keynote Energy
Policies Act”**

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**Before the
Subcommittee on Energy and Power
Committee on Energy & Commerce
United States House of Representatives
Washington, D.C.**

**April 29, 2016 Hearing
June 9, 2016 Responses**



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FROM THE HONORABLE ED WHITFIELD

Question 1: *Your testimony references a report from the Union of Concerned Scientists that showed mandatory hearings uncovered "multiple problems" during the hearings. When was this report issued? A. Since 1992, are you aware of any other instances in which multiple problems were identified in the mandatory hearing on an uncontested license?*

Answer to Congressman Whitfield's Question 1 and 1A

As noted in my April 29 testimony, I referenced the recent, April 21, 2016 testimony of Dr. Edward Lyman, a physicist at the Union of Concerned Scientists, before the Subcommittee on Clean Air and Nuclear Safety, Committee on Environment and Public Works of the U.S. Senate. Dr. Lyman's testimony in turn referenced a 2010 report on the salience and importance of mandatory hearings authored by Ms. Diane Curran, a longtime legal counsel before the NRC and federal courts from the law firm of Harmon, Curran, Spielberg & Eisenberg. Curran Report, *Response to NEI's 10/21/09 Wish List Regarding NRC Licensing Process*, , December 3, 2009. I have attached Ms. Curran's report on the topic for your reference at Attachment A.

Since 1992 there have been multiple instances where mandatory hearings identified crucial safety concerns that might otherwise not have been rectified. For example, in 2006 in the case of the Clinton Early Site Permit (ESP), the Atomic Safety and Licensing Board (ASLB) found the Staff's review "did not supply adequate technical information or flow of logic to permit a judgment as to whether the Staff had a reasonable basis for its conclusions(s)." *Exelon Generation Company, L.L.C. (Early Site Permit for Clinton ESP Site)*, LBP-06-28, 64 NRC 460 (2006), reviewed in *Exelon Generation Company, L.L.C. (Early Site Permit for Clinton ESP Site)*, CLI-07-12, 65 NRC 203 (2006). In another example, as part of the 2012 mandatory hearing process, the Commission rejected staff's evaluation of surveillance of the "squib valves,"¹ an essential safety component for the performance of the AP1000 reactor design being used at South Carolina's Plant Vogtle Units 3 and 4. Accordingly, the Commissioners imposed a license condition requiring implementation of a substantially more rigorous "squib valve" surveillance program prior to the first loading of nuclear fuel. See <http://www.nrc.gov/reading-rm/doc-collections/commission/orders/2012/2012-02cli.pdf>.

FROM THE HONORABLE MICHAEL DOYLE

Question 1: *Mr. Fettus, in your testimony you oppose the removal of the mandatory public hearing included in Congressman Kinzinger's draft bill. My understanding is this legislation*

¹ For purely explanatory purposes, as described under *U.S. Patent US 5443088 A*, a "squib valve" is a "single action valve used for permitting rapid exit of a fluid from a pressurized fluid source. Squib valves are used to permit evacuation of a fluid stored under pressure. Typically, although not exclusively, squib valves are used to permit rapid release of fluids retained under a wide range of pressures, typically 1,000-10,000 psi. Squib valves are used, for example, in aircraft ejector mechanisms, missile firing mechanisms, missile fuel supply systems and fire extinguishing systems." See online at <http://www.google.com/patents/US5443088>.

wouldn't remove the possibility of having a public hearing, and if affected parties request it, a hearing would still happen. Could you explain why this option is unsatisfactory to you?

Answer to Congressman Doyle's Question 1

I appreciate the question Congressman. As a first matter your question suggests that a public hearing will be held if any member of the public requests that one be held. Unfortunately, a request by the member of the public that can demonstrate standing does not trigger such a straightforward path forward for public review. As I will examine in some more detail, the bars to entrance for a public hearing are remarkably high. The public is expected to file a complete set of "contentions" and supporting expert declarations within sixty days after notice of filing of the application. It should be noted that the public, unlike NRC Staff, has no direct access to the applicant and therefore no ability to examine the underlying basis of the applicant's position on any matter, and has access only to a restricted set of public documents. This brief period of time for filing contentions is simply the first step in petitioning for a hearing – one that is challenged in every instance by NRC and industry – includes substantial substantive obligations regarding the technical basis for disagreement and the evidence upon which such disagreement is based. This initial petition also includes standing and procedural requirements that are at least (and if not more) strict than what is required in a Federal District Court. In effect, the current hearing rules work as a calculated strategy that imposes unreasonable and often unachievable evidentiary burdens as prerequisites to participation.

Therefore, the option of reducing the hearing oversight process solely to intervention by affected parties is unsatisfactory for several important reasons and I will elaborate on those reasons in the paragraphs that follow.

First, per your mention of the matter at the start of your question, the mandatory hearing process has been responsible for identifying safety problems and potential areas of concern that might not otherwise have been identified but for the mandatory hearing process. And, as noted in our initial testimony, it's clear the mandatory hearing process is neither a financial nor time sensitive burden on the industry and the agency.

Second, as I briefly explained above, the NRC's current public intervention process poses huge and often insurmountable burdens effectively preventing the participation of most public intervenors and even States that might seek to wade into what is termed a "strict by design" process. NRDC has detailed these difficulties to the Commission in 2013, but seemingly to little or no avail.² The hearing process is burdensome in the extreme for a State or for the public. In

² See, Christopher Paine, Nuclear Program Director, Natural Resources Defense Council; *How NRC Rules Suppress Meaningful Public Participation In NRC Regulatory Decision-making*; Before the Nuclear Regulatory Commission Rockville, Maryland, January 31, 2013; found online at https://www.nrdc.org/sites/default/files/nuc_13020601a.pdf.

short, the NRC process is onerous and in need of reform to make it simpler and more likely to arrive at substantive issues.

First, following the Notice of Opportunity for hearing in the Federal Register, a prospective petitioner who believes [s]he may have an affected interest in the proceeding has *only 60 days* in which to: (1) study the voluminous license application and draft environmental report; (2) investigate any safety and/or environmental concerns they have identified in the report; (3) document his/her standing to pursue these concerns; (4) draft admissible safety and/or environmental contentions (these are the equivalent of a “count” in a federal complaint); (5) seek out technical declarations from experts to support these contentions, and (6) hire expert legal counsel to frame “with specificity” the contentions and their legal bases in ways that satisfy all the “strict-by design” pleading requirements of 10 CFR §2.309 (f).

Each one of these tasks is an extraordinary hurdle in a truncated time period, all taking place after the license applicant has worked with the NRC for years during the license acceptance review. Indeed, the generic licensing of the AP 1000 reactor design took a number of years and went through more than 17 design iterations – a fact entirely unrelated to the intervention of the public or a state.³ And after all of those years and exchanges of information between the license applicant and the agency, an interested member of the public must prepare what amounts to a fully formed case with expert support on a complicated topic that’s essentially a moving target (moving in the sense of multiple application iterations) in approximately two months. Further, in every instance the NRC staff aligns with the license applicant to file in opposition to each and every “contention” that is filed by the state or the public. Further, unlike a complaint in federal court that can be lodged “upon information and belief,” under the NRC hearing process that contention must be explicitly supported by expert testimony, whether the matter is a safety concern or an environmental concern raised under NEPA. Essentially, the burden for defending the viability of a license application is shifted from the industry (and its ostensibly independent regulator) to that of the public, who must prove not only standing to file the contention but go so far as to essentially make the case via expert before the process even starts and “party status” is granted.

And as high as the bar is for initial intervention contentions, there are yet more complications peculiar to the NRC process, and they can be found in the NRC’s tortured treatment of the National Environmental Policy Act (NEPA). Quite simply, the core concept in NEPA is that a federal agency must produce environmental impact statements (EIS) – the basic analysis of a major federal action’s impact on the environment, in this instance a nuclear facility or materials license – on a timetable that allows the environmental considerations to be explored and commented upon by the public and then considered on a schedule that meaningfully informs agency decision-making with respect to the proposed action. Council on Environmental Quality

³ See, *Nuclear Power: Still Not Viable Without Subsidies*; Doug Koplow, Earth Track, Inc., Union of Concerned Scientists, February 2011, at 46, n. 48; found online at http://www.ucsusa.org/sites/default/files/legacy/assets/documents/nuclear_power/nuclear_subsidies_report.pdf.

(CEQ) rules prohibit *ex post facto* use of environmental impact statements to justify decisions already taken. So, this requires the agency to determine—early in the agency’s decision process and with public input—the appropriate scope of its required environmental analysis. After which, the agency prepares a draft statement for public comment outlining various reasonable alternatives for implementing its proposed action that would either prevent, reduce, or mitigate harmful environmental impacts, and identifying the agency’s preferred alternative, if it has one. Then typically at least 30 days prior to any formal “Record of Decision” to move forward with implementing the proposed action, the Agency must issue a EIS that responds to the public comments received, and identifies any changes to the draft analysis or preferred alternative. It sounds simple enough and it is with many federal agencies.

But NEPA doesn’t work like this at the NRC, and some of the provisions in the Discussion Draft would make matters – already untenable – worse. Turning back to the initial and onerous process for lodging the initial contentions and supportive expert testimony, the Committee should be aware that the NRC staff doesn’t author the initial “first draft” of its NEPA documentation. Unfortunately, under the NRC’s system, licensees (or even potential licensees) rather than NRC staff are actually preparing the regulator’s own “hard look” at the environmental consequences of its licensing actions. Indeed, it’s the industry itself that produces an Environmental Report (ER), a document that stands in as the first cut of the project’s demonstration of compliance with NEPA. Intervenors must challenge aspects of the ER *as if it were the government’s NEPA document itself*. And if Intervenors don’t identify and bring full expert support to bear (again, in 60 days) on those flaws, they are barred from ever raising those matters in the future. After both the industry and the agency staff inevitably attack the intervention petition and the original contention on procedural and/or substantive grounds (usually both), if one or more of those contentions survive, the agency produces a Draft EIS, and the burden is shifted to the intervenor to attempt to “migrate” or amend its contentions to the draft NEPA document. Again, the time period is truncated and expert support must be marshalled. And, inevitably, the industry and agency staff again team up to challenge the migration or amendment of the contentions. And the same process happens again for the issuance of the Final EIS.

And to make the intervention process with NRC even more complicated, when the draft or final EIS is eventually produced by NRC Staff and the parties to the proceeding file new or amended contentions regarding the new document, they can do so only to the extent that there are “data and conclusions in the NRC draft or final [EIS], environmental assessment, or any supplements relating thereto, *that differ significantly from the data or conclusions in the applicant’s documents.*” This requirement places a potentially error-inducing premium on the Staff’s EIS to demonstrate consistency with an Applicant’s flawed ER, thereby insulating the EIS from further challenges. In other words, flaws not previously identified by intervenors in the ER may actually be preserved and replicated in the EIS, with the official endorsement of the NRC’s own rules.⁴ If

⁴ Say, for example, if the public or the state intervenor do not identify the problem at the very outset and challenge it (and in turn inevitably be challenged by staff and the industry for having lodged the contention in the first instance), then whatever flaw exists in the ER gets the veritable stamp of agency approval. This is so because as no party raised the matter, it’s unlikely in that NRC staff would alter a

a state or a member of the public fails to satisfy this (dysfunctional) criterion, intervenors can file new or amended contentions “only with leave of the presiding officer,” upon a showing that the contention is based on information that was not “previously available,” is “materially different than information previously available,” and has been submitted “in a timely fashion based on the availability of the subsequent information.”

Again, instead of the license applicant carrying the burden of demonstrating that a license is merited and in compliance with the law, the potential intervenor has a nearly impossible, expensive and burdensome set of tasks simply to get in the door, much less arrive a substantive resolution of the relevant safety or environmental concerns. And under the provisions of the draft legislation hearings in any form would only happen as a result of successfully navigating this process and becoming an intervenor.

In short, the NRC system requires potential intervenors, whether a small public interest group or an overburdened state government to commit significant legal resources to gain entry into the licensing process at the outset—in some case years earlier than necessary—if they want to protect their future appeal rights under NEPA (or the AEA for that matter). Comments on the Draft EIS from non-parties to the proceeding – that is, persons or governments that choose not to intervene or miss the opportunity – are barred from raising their environmental concerns in the Court of Appeals, and thus are essentially ignored by the Commission. And while state and local officials and tribes, within whose jurisdictions the license applicant’s facility is located, are granted (only) standing by rule, this does not help them that much, as they and all other persons with environmental concerns must still surmount all the previously enumerated procedural hurdles to achieving an admissible contention. We fail to see the beneficial purpose to be served by such nit-picking exclusionary rules.

Rather than continue to countenance exclusionary rules that sweep important issues raised by states or the public off the table years before they can be substantively adjudicated, we urge Congress to work with the NRC, the industry states and members of the public to improve the hearing process. Indeed, the current rules artificially constrain adjudication of the merits of environmental issues surrounding the start-up or extended operation of nuclear power plants and other production and utilization facilities. A proliferation of procedural rules designed to bat

position at the time of filing the draft EIS or especially the final EIS, as such a declaration of change would allow for the potential filing of a contention. Even more problematically, even if the issue is raised at the outset by an intervenor, and successfully brought through all the adjudicatory stages, the NRC staff has repeatedly relied on the hearing process or decisions of the Atomic Safety & Licensing Boards to ostensibly “cure” any fundamental legal defect, thereby attempting to inoculate the agency against judicial review. *See, e.g., In the Matter of Strata Energy, Inc.* (Ross In Situ Recovery Uranium Project), LBP-15-3, January 23, 2015, (“Yet, despite Joint Intervenors’ assertions to the contrary, (“The defense of the FSEIS must be confined to materials before the agency at the time the FSEIS was issued.”), the Board does not find that the absence in the FSEIS of the information on uranium concentrations renders the NEPA process legally deficient. Rather, the post-restoration uranium concentration levels reported in the staff’s prefiled testimony supplements the FSEIS so as to cure any defect in that regard.”), at 68-69 (citations omitted). Decision found online at <http://www.nrc.gov/docs/ML1502/ML15023A566.pdf>.

away issues before they can be considered on their merits lends credence to the supposition that the NRC is entirely captured agency.

We stated at the hearing that rather than ensuring NRC's licensing process continues to become yet more expedient for industry and more of a restricted venue for States and the public, Congress should be directing NRC to submit a substantially redesigned adjudicatory hearing process that simplifies the hearing requirements to for substantive, technical issues of safety or environmental concern come to fore rather than entertaining joint industry-Staff efforts to flyspeck, curtail or have dismissed literally every contention that has ever been filed before the Atomic Safety & Licensing Board. Such would new hearing process would (1) allow for more than one opportunity for intervention (for example, with release of the Draft Environmental Impact Statement along with the submission of the license application) and (2) a less administratively burdensome set of contention filing requirements (akin to Federal Civil Procedure "notice pleading") to resolve onerous issues with demonstrated standing.

In 2008 a long-serving ASLB Judge wrote:

The Petitioners were instrumental in focusing the Board's attention on the troubling matters discussed above. That they did so is a testament to the contribution that they, and others like them, can make to a proceeding. Moreover, in doing so they often labor under a number of disadvantages.

In the Matter of Shaw Areva Mox Services (Mixed Oxide Fuel Fabrication Facility), LB-08-11, Docket No. 70-3098-MLA, at 49 (June 27, 2008) (Farrar, J., concurring).

Thank you for your questions and we look forward to continuing to work with the Committee on this important topic.



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Memo

From: Diane Curran

Re: Response to NEI's 10/21/09 Wish List Regarding NRC Licensing Process

Date: December 3, 2009

The Nuclear Energy Institute's (NEI's) proposal to "streamline" the U.S. Nuclear Regulatory Commission's (NRC's) licensing process for new nuclear reactors (*see* Legislative Proposal to Help Meet Climate Change Goals by Expanding U.S. Nuclear Energy Production, 10/21/09), in fact constitutes an effort to eliminate the sole remaining avenue for public involvement in the siting of nuclear power plants in communities across America. NEI sets up a false target: what is delaying the processing of reactor applications now is not hearings but the fact that the industry has been unable to submit adequate generic design proposals or to respond in a timely fashion to NRC hearings.

Here are some realities that the NEI proposal ignores:

1. Nuclear reactors already have the most streamlined licensing process of any type of industrial facility in the U.S. For no other technology has the federal government imposed the unique structure of federal preemption that precludes any state from regulating the major emission from a plant.
2. Licensing hearings have never been a serious source of reactor licensing delay. For the first generation of nuclear reactors, licensing hearings – although often contentious – always went on while the reactors were being built and had concluded by the time the reactor was ready to operate. Furthermore, the hearings process has at all times been overseen by an NRC majority that is very supportive of the nuclear industry. Impartial studies in the 1970s and 1980s showed that not a single reactor was being delayed by licensing hearings. In the 1990s, when the last generation of reactors had been completed, only two operating licenses were delayed by hearings: Shoreham and Seabrook. Both of these plants had such serious emergency evacuation problems that they were opposed by the governors of New York and Massachusetts. Indeed, Shoreham never operated.
3. The NRC has already dramatically "streamlined" its hearing process. Over the past ten years, the NRC has established one-step licensing regulations that are designed to speed up the licensing process by providing for the use of rulemaking to approve generic designs, which can then be incorporated into individual combined construction permit and operating license applications (COLAs). Designs incorporated into individual COLAs are shielded from challenge in public hearings, thereby expediting the hearing process. Furthermore, the NRC has already stripped the public of the rights to cross examine and undertake discovery of documents that existed in all reactor licensing hearings prior to the recent changes.
4. Public involvement in NRC hearings has often led to significant safety improvements. The chairman of the NRC's Atomic Safety Licensing Boards described the benefits of the NRC public hearing process as follows in 1981: "(1) Staff and applicant reports subject to public



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examination are performed with greater care; (2) preparation for public examination of issues frequently creates a new perspective and causes the parties to reexamine or rethink some or all of the questions presented; (3) the quality of staff judgment is improved by a hearing process which requires experts to state their views in writing and then permits oral examination in detail. B. Paul Cotter, Memorandum to NRC Commissioner Ahearne at 8 (May 1, 1981). Judge Cotter's conclusion echoes the independent analysis of the Three Mile Island nuclear accident commissioned by the NRC, which stated that: "Intervenors have made an important impact on safety in some instances – sometimes as a catalyst in the prehearing stage of proceedings, sometimes by forcing more thorough review of an issue or improved review procedures on a reluctant agency." Mitchell Rogovin and George T. Frampton, Jr., *Three Mile Island: a Report to the Commissioners and to the Public*, Vol. 1 at 143-44 (1980).

5. Any delays in the NRC's licensing process are due to the industry's failure to fulfill the key prerequisite for effective use of the one-step licensing process: submission of complete and adequate standardized designs well in advance of individual license applications. Instead, the industry has submitted incomplete generic design approval applications, such as the inadequate AP1000 design. Not surprisingly, the licensing proceedings for the COLAs that rely on these inadequate designs have been delayed, as the NRC and design vendors haggle over problems that should have been resolved long before the COLAs were submitted.

Instead of acknowledging the real problem, NEI is asking Congress to further expedite the hearing process and eliminate mandatory hearings. Not only would the requested changes be ineffective in addressing the real cause of licensing delays, but they would significantly reduce the rigor of the licensing process and fatally undermine the public's already-shaky confidence in the NRC.

One of NEI's most egregious proposals is to eliminate the mandatory hearing required by the Atomic Energy Act for construction permits. [The NRC must hold a hearing on all issues that are relevant to the issuance of a construction permit, regardless of whether a member of the public requests a hearing. The scope of the mandatory hearing covers all issues that were uncontested by any member of the public. The mandatory hearing requirement applies to COLAs because they include construction permits. Thus, for a single reactor COLA, the NRC may hold one mandatory hearing, or it may hold two hearings: one on contested issues and a mandatory hearing on uncontested issues.](#)

-While NEI calls the mandatory hearing an "artifact of the old two-step licensing process," in fact – as the NRC has recognized – the mandatory hearing remains an important tool for establishing both safety and public confidence in the NRC's regulation of the construction of new reactors. In 2006, the NRC weighed the discretionary imposition of a mandatory hearing requirement on licenses to manufacture new reactors, even though the Atomic Energy Act does not technically require a mandatory hearing in those cases. Proposed Rule, Licenses, Certifications, and Approvals for Nuclear Power Plants, 71 Fed. Reg. 12,782, 12,836 (March 13, 2006). After taking comments, the Commission decided not to adopt the requirement on the ground that because manufacturing of pre-



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built reactors takes place in a different location from construction and operation of the finished plants, those licensing proceedings are unlikely to generate stakeholder interests. As the Commission reasoned, “[i]f there is no stakeholder interest in a hearing, transparency and public confidence would not appear to be relevant considerations in favor of holding a mandatory hearing.” Final Rule, Licenses, Certifications, and Approvals for Nuclear Power Plants, 72 Fed. Reg. 49,352, 49,367-68 (August 28, 2007).

In contrast to the manufacturing licensing process, the one-step licensing process for new reactors and their standardized designs is a matter of great importance to public stakeholders, as reflected by the fact that hearings have been requested in virtually every combined license application (COLA) that has been submitted for a new reactor under the one-step licensing process. The mandatory hearing plays a crucial role of supplementing the contested hearing process, in which few issues – and sometimes no issues – survive the gauntlet of NRC’s arduous procedural requirement for admission of issues to a hearing. Where members of the public raise concerns that are rejected for contested hearings, they can only turn to the licensing board for a rigorous independent evaluation of the adequacy of the NRC Staff’s review of a license application.

The mandatory hearing is all the more important given that, as discussed above, the NRC is undertaking individual license application reviews before the underlying designs have been reviewed or approved. The NRC’s decision to conduct individual COLA reviews before it has approved their underlying generic designs creates uncertainty and confusion in the relationship between reactor designs and individual COLAs. A number of other factors further heighten the importance of the mandatory hearing: (a) the pivotal role of a nuclear reactor’s design in determining its safety, (b) the novel and untested nature of the new designs, and (c) the relationship between design and siting issues.

Mandatory hearings have a proven track record of highlighting weaknesses in the NRC Staff’s review process for early site permits (ESPs), as well as regulatory questions requiring resolution by the Commission. For example, in the case of the Clinton ESP, the Atomic Safety and Licensing Board (ASLB) found that the Staff’s review “did not supply adequate technical information or flow of logic to permit a judgment as to whether the Staff had a reasonable basis for its conclusions(s).” *Exelon Generation Company, L.L.C.* (Early Site Permit for Clinton ESP Site), LBP-06-28, 64 NRC 460 (2006), reviewed in *Exelon Generation Company, L.L.C.* (Early Site Permit for Clinton ESP Site), CLI-07-12, 65 NRC 203 (2006).

The ASLB sent to the NRC Staff more than 200 requests for additional information and also required additional briefing by the Staff and Exelon. While the Board ultimately recommended that the ESP be granted, its Initial Decision it found numerous deficiencies in the quality of the Staff’s review, including:

- A “plethora of instances in which the Staff’s conclusions could only be characterized as conclusory.” 64 NRC at 480.



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- Failure, in a “large number of instances,” to “logically connect facts to conclusions.” 64 NRC at 481.
- Failure to follow “the prescribed [Standard Review Plan] and regulatory guide procedures.” 64 NRC at 481.
- “Many instances for which the Staff advised [the Board] that it had indeed followed the [regulatory] guides, but the Staff’s logic and stated facts appeared to be inadequate to make the required determination that its ‘review was sufficient’ to support the required findings.” 64 NRC at 481.
- In addition to a “lack of a clear logic flowing from the facts recited in the FSER to the conclusions the Staff reached,” a “large number of instances wherein the Staff appeared to simply accept, without checking or verifying, the facts stated by the Applicant.” 64 NRC at 491.
- In a “material number of instances,” failure of the NRC Staff’s internal work product to “rise to the level produced by contractors.” And the quality of the work product “might not have risen to a desirable level at all without [the Board’s] probing and prodding.” 64 NRC at 496.
- “[U]ntil a number of months into this review, the Staff fought [the Board’s] requests for information at every turn. This was counterproductive, led to material delays, and shifted workload for the Staff, the Applicant, and the Board toward the end of the proceeding.” 64 NRC at 497.

In the case of the Early Site Permit for North Anna, the ASLB found that the Final Environmental Impact Statement (“FEIS”) contained a “paucity of analysis, investigation, and information” regarding the subject of Environmental Justice. *Dominion Nuclear North Anna, L.L.C.* (Early Site Permit for North Anna ESP Site), LBP-07-9, 65 NRC 539, 621 (2007), reviewed in *Dominion Nuclear North Anna, L.L.C.* (Early Site Permit for North Anna ESP Site), CLI-07-27, 66 NRC 215 (2007). In a dissenting opinion, ASLB Judge Alex Karlin criticized the Final EIS for failing to provide an adequate analysis of alternative sites and system design alternatives. 64 NRC at 631. While the Commission ultimately approved the adequacy of the Staff’s alternatives analysis, it ordered the Staff to provide more details in future Final EISs. CLI-07-27, 66 NRC at 230.

Thus, NEI has no grounds for characterizing mandatory hearings as a “redundant and unneeded ‘review of the Staff’s review.’”

NEI implies that the mandatory hearing is the equivalent in time and resource consumption of a contested hearing, where the adequacy of the application itself is at issue. But the scope of a mandatory hearing is restricted to the sufficiency of the record and the adequacy of the NRC Staff’s review to support the Staff’s proposed conclusions regarding the license application. LBP-07-9, 65

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NRC at 555. Thus, the Commission has established procedures and processes for mandatory hearings that ensure that they have a reasonable scope.

Accordingly, the mandatory hearings established under the Atomic Energy Act constitute a necessary and important element of the NRC's process for maintaining accountability to the public in the hearing process which should not be eliminated.