

Submitted Answers of Jeffrey S. Merrifield
House Energy and Commerce Committee QFR
May 30, 2016

The Honorable Ed. Whitfield

Question: During your tenure at the NRC, you recommended the Commission reconsider requiring a mandatory hearing for new plant licensing. Will you tell us why you made that recommendation?

Answer: The origin of Section 189 (a) of the Atomic Energy Act, which requires a mandatory hearing for nuclear reactors, dates to 1957 when it was first introduced by Senator Clinton Anderson (D-NM) who was the then co-chair of the Joint Committee on Atomic Energy. Prior to its adoption, the Atomic Energy Commission had approved several nuclear reactors without any public involvement in the process. Senator Anderson felt that the Commission approval process should be conducted “out of doors” and that an adequate opportunity for public comment and involvement must be adopted. He was correct.

However, since that time, due to changes incorporated in the Administrative Procedures Act, as well as the NRC’s internal procedures, there are a large number of opportunities for the public to be involved in virtually all stages of the licensing process consistent with the vision of Senator Anderson. Further, an individual who brings a valid contention raising concerns about the licensing of a nuclear reactor can seek a contested proceeding to challenge that license.

In order to meet the current Mandatory Hearing requirements, the Commission and its staff expend significant time and cost, with virtually no additional benefit. For the reasons outlined above, I believed and continued to believe that the Mandatory Hearing requirement in the Atomic Energy Act is an outdated anachronism and should be repealed.

A. Would the draft legislative provision limit transparency or public stakeholder existing rights to file contentions on licensing actions?

Answer: No, it would not. The NRC process would remain transparent and the ability of public stakeholders to file contentions would remain unabridged.

The Honorable Michael Doyle

1. Commissioner Merrifield, section 7 of Rep. Kinzinger’s discussion draft sets a 12 month deadline for the draft environmental impact statement, and a 24 month cap on a complete review for the technical review and final environmental impact statement.

A. Do you think they times for review are appropriate?

Answer: I believe these timelines are appropriate and achievable as they relate to the environmental impact process. I further believe that the NRC staff will be challenged to conduct a technical review and issue a Final Safety Analysis Report in that timeframe. You may wish to consider a 36 month timeframe for a complete technical review and issuance of a FSAR.

B. Do you have any concerns that this could jeopardize the safety of these plants, or their potential impact on the environment?

Answer: No, I do not.

C. If the NRC signaled it needed additional time to review the application, what would happen?

Answer: As the legislation proposed by Representative Kinzinger does not provide a specific outcome for the failure of the NRC to meet the 24 month deadline (such as an automatic approval), it is unclear what recourse would be available to an applicant. From a practical perspective, if the Agency felt it needed additional time to consider the application, it would likely continue its review beyond the timeline included in the proposed legislation. I would prefer not to speculate how a District Court would respond to the Agency's failure to meet a statutory timeline.

2. Commissioner Merrifield, like you, I applaud the NRC for its current efforts under Project Aim to right size the agency. I also recognize that the NRC must stay true to its mission of protecting people and the environment. As someone who lived through very similar efforts to make the agency more efficient, can you comment on whether further efficiencies are feasible and desirable?

Answer: I genuinely believe that the Commissioners and their staff can identify further efficiencies and savings in operations at the NRC as I was intimately involved in a similar effort from 1998-2002 when the Agency undertook the same task. In order to accomplish this goal, the Commission will need to do what our Commission did at that time. We undertook a line by line review of the activities of the Agency and its staff, and we reviewed the specific positions needed to accomplish those tasks. We conducted a thorough prioritization of what was important to meeting the Agency's safety mission, versus that what was not. As a result of this review process, we were able to further identify savings consistent with meeting our mission.

I am not suggesting that this is an easy process, as it was not when I was a Commissioner. It will require the Commissioners to make some hard choices, including the potential for further reductions in staffing, but that is why Congress has given the Commissioners the responsibility for this role.

A. Do you feel that Project AIM and further efforts on that path would not compromise the safety the NRC has so diligently protected?

Answer: I do not believe that Project AIM and similar efforts to make the NRC more efficient would compromise the Agency's safety mission. I believe that further reductions in staffing, overhead and cost could be accomplished consistent with the Agency's goal of Protecting People and the Environment.