

**U.S. House of Representatives, Committee on Energy and Commerce,
Subcommittee on Energy and Power
“Legislative Hearing on Securing America’s Energy Future”**

**The Honorable Jeffrey S. Merrifield, Commissioner, U.S. Nuclear Regulatory Commission
(1998-2007)
Partner, Pillsbury Winthrop Shaw Pittman and
Chairman of the Advanced Nuclear Working Group of the U.S. Nuclear Industry Council**

July 18, 2023

Chair Duncan, Ranking Member DeGette and members of the Subcommittee, it is an honor to testify before you today on a topic of critical importance to the United States, the role that nuclear power can play in securing the clean, reliable and resilient energy that we need to power our nation’s electric grid and decarbonize critical industrial capabilities. I am appearing here today in my role as the Chairman of the Advanced Nuclear Working Group of the U.S. Nuclear Industry Council (USNIC), although my full-time occupation is as a Partner in the nuclear energy practice group of the Pillsbury Law Firm.

USNIC is the leading U.S. business advocate for the promotion of nuclear advancement and the American supply chain globally. USNIC represents over 80 companies engaged in nuclear innovation and supply chain development, including technology developers, manufacturers, construction engineers, key utility movers, and service providers.

I anticipate that my comments on behalf of USNIC represent the views of many of our members, but they may not necessarily reflect the unanimous view of our members.

I served as an NRC Commissioner from 1998-2007, and the time I spent at the Agency remains one of the most satisfying periods in my career. To this day, I embrace the motto of the Agency – “Protecting People and the Environment” – a tagline I helped craft. I believe the Agency is staffed and led by talented, bright, well-meaning, and dedicated civil servants, and I firmly believe in the mission of the Agency and the value of its independent role. While some of my remarks today shine a critical light on the Agency, I remain a big supporter of the NRC and its mission.

With that preface, I believe the Agency has lost sight of its role. I fervently hope the NRC can become a more efficient, effective, risk-informed, timely and technically adept regulator.

Title I, Chapter 1, Section 1 of the Atomic Energy Act of 1954 outlines the vision of Congress that it is the policy of the United States that Atomic Energy shall be deployed to “promote world peace, improve the general welfare, increase the standard of living and strengthen free competition in private enterprise.”

While those words were passed into law in 1954, almost 70 years later they ring true and remain the law of the land. In a time when global climate change is a real and present threat to our common defense and security and given that nuclear energy is the only major, low-carbon, proven energy

system that can reliably dispatch 24x7 energy, enabling nuclear energy's safe usage is an obligation of the NRC under the Atomic Energy Act and Energy Reorganization Act.

In my opinion, the NRC of 2023 fails to fully recognize the positive encouragement of nuclear energy that the Atomic Energy Act put into place that frames its licensing and oversight activities for the safe use of nuclear energy in our country. Instead, it is overly conservative and does not consistently apply common sense principles in regulating the technologies it oversees. The current impasse on creating a new regulatory framework for advanced reactors under Part 53 is the most recent example of this gap.

There are a variety of reasons that underlie the behavior of the Agency which are outlined in a speech I gave at the American Nuclear Society Annual Meeting on June 13, 2023, and I would ask that these remarks be included in the record of this hearing. I will summarize a few of my thoughts below.

First, I have heard from many licensees that the NRC staff states that it is limited in what it can say to applicants seeking clarification of Agency rules and guidance, as the NRC cannot "promote" nuclear energy or act as a "consultant" due to its independent safety mission. I believe this is an incorrect reading of the Agency's legal mission and I believe the Agency can and should do more to enable the deployment of advanced nuclear technologies while maintaining its ability to independently assess the safety of those proposed technologies.

There is absolutely nothing wrong with the Agency providing clarifications and assistance to licensees who are attempting to understand and meet the complex, difficult and sometimes inscrutable guidance and rules of the NRC. Responding to questions and engaging with licensed entities and the public with direct and fulsome responses is the responsibility of the Agency, and the NRC should not hide behind its role as an "independent" safety regulator.

A second area of concern is the technical prowess of the Agency, including a diversity of experience and background both within the Agency staff as well as the Commission. One challenge I believe Congress needs to consider is the ability of the NRC to have the resources to attract capable and experienced staff, and I believe the NRC needs to be provided flexibility, such as has been provided to agencies like the Securities and Exchange Commission, to pay above the standard government pay structure.

Likewise, I believe the Agency needs to consider a more technically diverse set of candidates for Senior Executive Service level positions, including those from the private sector, the military and other Federal Departments and Agencies. For example, as the current NRC General Counsel is retiring later this year, I think the Commission should be encouraged to consider outside candidates for that role.

Another area to be considered today is the role of the Advisory Committee on Reactor Safeguards (ACRS), an independent advisory board reporting to the Commissioners, whose roots date back to the early days of the Atomic Energy Commission. Recently, Pillsbury partnered with the Nuclear Innovation Alliance to assess the current role of the ACRS and issued a report with a series of recommendations to modernize the role of this Committee. I respectfully request that a copy of

our report and recommendations also be included in the record of today's hearing. In sum, we believe the Act should be updated to focus the role of ACRS in reviewing unique and difficult nuclear technologies, and we generally support the ACRS language included in the Nuclear Advisory Committee Reform Act.

USNIC has reviewed the fifteen bills that make up this legislative hearing. While USNIC is pleased to provide comments on all of them in the context of the hearing, for efficiency's sake, USNIC will not be commenting on all of them in detail in our opening comments today, but our testimony will discuss several of them at a high level. As a general matter, USNIC is supportive of most of the legislation in its current form, so these remarks will focus on areas where USNIC has our most meaningful comments and concerns.

Nuclear Advisory Committee Reform Act

USNIC is supportive of this proposed legislation. The language is generally consistent with similar proposals previously made by the Nuclear Innovation Alliance and Pillsbury regarding ACRS. Specifically, USNIC concurs with the limitation on terms for ACRS members and the ability to have the Commission direct the work of the Committee. USNIC is happy to work with the Committee on additional possible suggestions for improvement in the legislation.

Efficient Nuclear Licensing Hearings Act

USNIC is supportive of the proposed legislation and concurs in the effort to eliminate the mandatory uncontested hearing included in Section 2 of the bill. The original justification for a mandatory uncontested hearing was based on the failure of the Atomic Energy Commission to publicly engage on proposed reactor siting decisions during the early 1960s. Given the multiplicity of opportunities for public engagement that have been incorporated into the Agency's procedures by the National Environmental Policy Act and other NRC requirements, the justification for an uncontested mandatory hearing has been satisfied by a myriad of opportunities for the public to engage in the NRC licensing process and is no longer needed. We are pleased to work with the Committee on additional ways to improve the efficiency and predictability of the NRC licensing process.

H.R. 4528, Strengthening the NRC Workforce Act of 2023

As discussed earlier, while USNIC is supportive of the intent to enhance the ability of the US NRC to recruit and retain the qualified workforce needed to staff the Agency going forward as it prepares for a bow-wave of advanced reactor applications, however, USNIC is concerned that some elements of the bill may not achieve the desired result. As a former Commissioner, I would urge that the decision to use the authority in the legislation is a policy issue that should be determined by the Commission as a whole and not merely directed toward the Chair. Additionally, the definitions and timing of the authority may not have the intended results. USNIC would be happy to work with the Committee on alternatives that would achieve the intended desire to enhance the ability of the Agency to attract a qualified and diverse workforce.

H.R. 4530, NRC Office of Public Engagement and Participation Act of 2023

USNIC appreciates and shares the concern that the NRC can do a better job of engaging in two-way communication with the public as well as its licensees. As I discussed previously, the current culture of the Agency, which utilizes an overly broad view of what constitutes “promotion” has unnecessarily limited the way in which it engages with the public, including the type and breadth of information it provides to members of the public. I am supportive of making changes that would improve this situation. With that said, I am concerned that the legislation as drafted could have unintended consequences and could degrade the ability of the Agency to meet its mission. Increasing opportunities for effective public engagement are important and USNIC is pleased to work with the Committee to identify methods to enhance this important area of concern.

In sum, since I first worked as a Senate staffer over thirty-five years ago, the need and support for nuclear energy, particularly advanced nuclear, has dramatically changed, and with the support shown by this Committee and your counterparts in the Senate, there is an overwhelming sense of support behind enabling the deployment of these technologies. Advanced nuclear and the dozens of innovative companies that are developing and deploying the next generation of clean and cost-effective nuclear technologies are putting our country in a position to address the future increased energy demand in our country while also allowing the U.S. to regain its leading position in nuclear exports. I am thankful for the hard work undertaken by the members and staff of this Committee in support of this vital technology.

Thank you for allowing me to testify on behalf of the U.S. Nuclear Industry Council on this important subject. I look forward to the dialogue with the Committee about the proposed legislation.