



OFFICE OF COMMISSION
APPELLATE ADJUDICATION

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

COMSECY-16-0011

PLEASE RESPOND BY:
July 15, 2016

June 30, 2016

MEMORANDUM TO: Chairman Burns
Commissioner Svinicki
Commissioner Ostendorff
Commissioner Baran

FROM: Brooke P. Clark, Director */RA/*
Office of Commission Appellate Adjudication

SUBJECT: PROCEDURES FOR MANDATORY HEARINGS ON
CONSTRUCTION PERMIT APPLICATIONS FOR MEDICAL
ISOTOPE PRODUCTION AND UTILIZATION FACILITIES

In accordance with the Commission's direction in SRM-SECY-15-0088, the Office of Commission Appellate Adjudication has "examine[d] the Commission's current mandatory hearing procedures" after the mandatory hearing on SHINE Medical Technologies, Inc.'s construction permit application for the SHINE Medical Radioisotope Production Facility, the first medical isotope facility mandatory hearing to use these procedures. In our view, the current procedures served the Commission well for the *SHINE* hearing, and, going forward, we believe they can be applied effectively in future construction permit proceedings on medical isotope production and utilization facilities.

We therefore recommend that the Commission approve revisions to Chapter IV of the Internal Commission Procedures as reflected in the attached markup, which would make the mandatory hearing procedures expressly applicable to these proceedings.

During our review, two other matters came to our attention. First, the Office of the General Counsel notes that the current procedures provide flexibility to relax deadlines under certain circumstances. For example, in a case where the Commission proposes a large number of pre-hearing questions (or questions that are particularly complex in nature), the Commission may, on its own initiative or in response to a request from a party, afford the parties additional time to respond to enable the parties sufficient time to fully and comprehensively respond to the questions in a high-quality manner.

Second, the Office of the Secretary has pointed out a correction. The notice of hearing template currently includes a reference to "affected, federally recognized" Indian Tribes. The term "affected," however, is used in the definition of Part 2 to refer to participants in a high-level

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waste proceeding under the Nuclear Waste Policy Act; generally applicable Part 2 rules refer simply to “federally recognized” Indian Tribes.¹ The term “affected” was removed from the notices of hearing circulated for the *SHINE* and *Fermi* matters.² In our view, inclusion of the term “affected” from the original *Federal Register* notice template may have been in error, in view of its association with the Nuclear Waste Policy Act in the context of Part 2 adjudicatory procedures. We recommend that the term “affected” be removed from the template.

The Office of the Secretary and the Office of the General Counsel have reviewed the proposed revisions and do not object to them.

SECY, please track.

Enclosure:

Revised Internal Commission Procedures, Chapter IV – Commission Meetings/Hearings

cc: SECY
 OGC
 EDO
 ASLBP
 PDR

¹ Compare 10 C.F.R. § 2.4 (definition of “participant”), and *id.* § 2.309(h)(1)-(2) (intervention requirements applicable to, among others, federally recognized tribes seeking party status), with *id.* § 2.309(h)(3) (intervention requirements applicable to a high-level waste proceeding), and *id.* § 2.1001 (definition of “party” for the purposes of a high-level waste proceeding).

² See *SHINE Medical Technologies, Inc.*; Notice of Hearing, 80 Fed. Reg. 67,435, 67,436 (Nov. 2, 2015); In the Matter of DTE Electric Company, Combined License for Enrico Fermi Unit 3; Notice of Hearing, 79 Fed. Reg. 72,215, 72,216 (Dec. 5, 2014).