

**RESPONSE SHEET**

**TO:** Annette Vietti-Cook, Secretary

**FROM:** Chairman Burns

**SUBJECT:** COMSECY-16-0011: Procedures for Mandatory Hearings on Construction Permit Application for Medical Isotope Production and Utilization Facilities

Approved  X  Disapproved      Abstain      Not Participating    


**COMMENTS:** Below  X  Attached      None    

I would like to thank the Office of Commission Appellate Adjudication for their thoughtful consideration of this matter.

Entered in STARS

Yes  X

No    

  
\_\_\_\_\_  
SIGNATURE

4 August 2016  
\_\_\_\_\_  
DATE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary  
FROM: COMMISSIONER SVINICKI  
SUBJECT: COMSECY-16-0011: Procedures for Mandatory Hearings on Construction Permit Application for Medical Isotope Production and Utilization Facilities

Approved XX Disapproved  Abstain  Not Participating

COMMENTS: Below XX Attached XX None

I approve the recommended revisions to Chapter IV of the Internal Commission Procedures, as further edited in the attached.

  
\_\_\_\_\_  
SIGNATURE

08/ 9 /16  
\_\_\_\_\_  
DATE

Entered on "STARS" Yes  No

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## CHAPTER IV – COMMISSION MEETINGS/HEARINGS

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KLS Edits

### 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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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. ~~Before each hearing, the Commission will approve a scheduling note that specifies the order and composition of the witness panels for the hearing, states the topics the witness panels will discuss, and identifies the appropriate witness panel for Commissioner questions on each section of the FSER and FEIS or EA (in responding to Commissioner questions, the witness panel may also invite other witnesses present at the hearing to answer). 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~~ will be transcribed, and the transcription reviewed for errors, corrected, and made part of the hearing record. See 10 CFR § 2.327. The

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**Commissioners**, 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 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
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Staff submits Information Paper to Commission	Within one week of public issuance of FSER & FEIS <u>or EA</u>
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</del>	<del>Immediately after Commission affirms final design—certification—rulemaking—for referenced design</del>

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4 months after FSER & FEIS for COL are both publicly issued	
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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

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The Commission is the presiding officer for this proceeding.

### 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]**.

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Responses to such questions are due **[replace with date that is 21 days prior to the scheduled hearing date]**, unless the Commission directs otherwise.

### 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

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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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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). 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.


RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary  
FROM: Commissioner Baran  
SUBJECT: COMSECY-16-0011: Procedures for Mandatory Hearings on Construction Permit Application for Medical Isotope Production and Utilization Facilities

Approved  X  Disapproved       Abstain       Not Participating        
COMMENTS: Below  X  Attached  X  None      

I agree with OCAA that the current mandatory hearing procedures served the Commission well for the *SHINE* hearing and that these procedures can be applied effectively in future construction permit proceedings for medical isotope production and utilization facilities. I approve the recommended revisions to Chapter IV of the Internal Commission Procedures, subject to the attached edits.

Entered in  
STARS  
Yes  ✓   
No      

   
Signature  
 8/19/16   
Date

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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.

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### 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 medical isotope production and utilization facility 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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(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.

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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~~will 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. ~~If the Commission determines that the staff's review is inadequate to support any of these findings, then the Commission adjudicatory decision should identify the findings the staff's review did not support, or if inadequate identify which findings were insufficient, The Commission adjudicatory decision should~~ 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  <u>(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.)</u>
<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 medical isotope production and utilization facility 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.