

**U.S. House of Representatives, Committee on Energy and Commerce,
Subcommittee on Energy and Power
“Legislative Hearing on Nuclear Permitting Reform: Legislation to Advance
Efficient Licensing”**

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

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Chairman Latta, Ranking Member Castor 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, decarbonize critical industrial capabilities and power our nation’s increasing data demands. I am appearing here today in my role as the Chairman of the U.S. Nuclear Industry Council (USNIC), although I am also a Partner Emeritus 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 100 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 association 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. The NRC was and remains a vital, trusted and independent overseer of our nation’s civilian nuclear fleet.

Almost three years ago, I testified before this Subcommittee on a variety of nuclear legislation pending at that time. In that testimony, I stated that while I was a big supporter of the NRC and its mission, I believed the agency had lost its way and was not meeting its mission as outlined in the Atomic Energy Act. In my view at that time, the Agency had become overly conservative and did not consistently apply common sense principles in regulating the technologies it was overseeing. Further, I felt that the Agency and its senior managers, as well as the Commission that led it, were not sufficiently risk-informed, effective, or timely and did not possess the technical competence needed to serve its vital mission. Mr. Chairman, rather than provide a fulsome repeat of those remarks, I ask that they be included in the record of today’s hearing.

With that said, my views about the NRC are quite different today. While I believe that there is additional work to be done for the NRC to again deserve its recognition as the “Gold Standard of Nuclear Regulators”, it has come a long way from where it stood three years ago.

This Committee and Congress deserve credit and thanks for engendering this change. The passage of the Advance Act of 2024 (Public Law 118-67) which required the Agency to change its mission to enable the safe deployment of advanced nuclear technologies has resulted in a positive sea change in the way the Agency behaves and regulates. As a partner in the world's oldest and largest nuclear law practice, I can attest firsthand that the management and staff of the Agency have demonstrated a new determination to be more efficient, risk informed and results oriented in the pursuit of its traditional safety mission.

The Executive Orders that President Trump issued about a year ago have also resulted in beneficial outcomes, particularly Executive Order 14300, that tasked the Agency with reviewing and reinventing its regulatory framework. Had this Committee asked me to testify a year ago, I would have expressed reservations about the scope and pace of the reforms that were envisioned by the orders. While not all of the NRC's proposed and final rules in response to the Executive Orders that have been published, as the Chairman of the U.S. Nuclear Industry Council, I can say with confidence that our members have been impressed by the degree to which these regulatory changes should enable the prompt, albeit safe deployment of promising advanced nuclear technologies.

Three years ago, I was very critical of the Agency's efforts to create a new regulatory framework for advanced reactors under Part 53 as prescribed under the Nuclear Energy Innovation and Modernization Act (NEIMA). This effort, which had dragged on for 7 years had resulted in a proposed rule that would have been neither used nor useful to the advanced nuclear community. In stark contrast, the final Part 53 rule that the Commission issued, which became effective in April of this year, addressed virtually all of the concerns raised by the members of USNIC and the nuclear industry and I believe it can be a useful framework for future advanced reactor technologies.

In my prior testimony, I was also critical of the technical prowess and efficiency of the Commission. My view today is quite different. I believe the current five members of the Commission are working in a more cohesive, collegial and technically informed manner than has been the case for almost 20 years, and I believe their spirit of collaboration to achieve a prompt revision of the Agency's regulations is vastly different than what was the case even a few short years ago. I also want to recognize both former Chairman David Wright and current Chairman Ho Nieh for their effective leadership through a time of immense change and adaptation at the Agency. I firmly believe the Commission works best when the Chairman and the Commissioners park their party affiliation at the door and render their safety decisions in an efficient and risk-informed manner. I think this is happening today at the NRC.

Before I comment on the specific pieces of legislation before this subcommittee, I do have one note of caution. There are some in Washington who would urge that the NRC should evolve toward being a more Chairman-focused agency, similar to the way in which the Federal Energy Regulatory Commission operates. I believe this would be an ill-advised mistake. At the NRC, the Commission has had a long-standing motto that first you are made a Commissioner, then you are designated Chairman with the spirit that all members of the Commission are created equal from a policy standpoint. I believe this philosophy has served the Agency and the American people well.

Over the decades since its founding in 1975, the NRC has been a pillar of stability during a time when other federal agencies have swung quite widely from left to right and vice versa. For the nuclear industry to thrive and grow, it needs a Commission structure that is collegial, efficient, risk-informed and predictable – standards that absent further tinkering it is well positioned to achieve.

USNIC has reviewed the six bills that make up this legislative hearing and is pleased to offer the following comments.

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.

As a former Commissioner, I would say that while the role of the ACRS is valuable, I have witnessed a number of examples where the ACRS or its individual members have pursued review activities that were based on personal technological preferences or predispositions that needlessly extended the time and cost of licensing review activities. For this reason, I believe the legislation is merited and the Commission should be given more discretion to oversee the ACRS activities and make it a more useful advisor to the Commission.

Efficient Nuclear Licensing Hearings Act

USNIC is supportive of the proposed legislation and concurs in the effort to eliminate the mandatory uncontested hearings included in Section 2 of the bill. Frankly, I have been calling for this change since I was a member of the Commission over 20 years ago.

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.

The NRC Staff Pay Alignment Act

USNIC is supportive of the intent to enhance the ability of the NRC to recruit and retain the qualified workforce needed to staff the Agency going forward as it prepares for an onslaught of new nuclear reactor applications. While the ADVANCE Act did provide additional flexibility for the Commission to attract qualified staff, the NRC has seen a large number of staff leave the Agency for lucrative opportunities in the private sector. For the NRC to compete in this competitive marketplace, it needs additional tools to meet this need, and the proposed discussion draft would be a meaningful step toward giving the Commission those tools.

The Department of Energy Nuclear Transparency Act

Given that we have only recently received this discussion draft, the members of USNIC have not been able to review this proposed legislation, so the views I express are my own. I have reviewed the draft and from a transparency standpoint do not have any objections to what it is seeking to accomplish in keeping the public and interested stakeholders informed about changes in DOE safety standards. That said, from a practical standpoint, the 24-hour deadline could be difficult to administer and perhaps 2-3 business days would be a more practical and implementable time frame.

The Nuclear Recycling Efficient Fuels Utilizing Expedited Licensing (REFUEL) Act

This legislation would clarify that certain types of used nuclear fuel recycling would be regulated similar to a new fuel fabrication facility. USNIC is aware that there are a number of new technologies being developed to address the recycling of used nuclear fuel that do not fit clearly within the current licensing pathways under 10 CFR Part 70 or Part 50.

Efforts to address the back end of the fuel cycle and take advantage of the significant energy potential of used nuclear fuel would benefit from more proliferation-resistant methods of recycling nuclear fuel that are being developed, rather than simply burying used fuel. USNIC has had a long-standing position of supporting fuel recycling technologies, and we believe the language included in the bill would enable the development of technologies that would appropriately recycle these materials in a manner that would not create a pathway for plutonium separation and potential proliferation concerns.

The American Enrichment Deployment Act

This discussion draft allows new enrichment companies to initiate “at risk” construction of their facilities prior to completion of an environmental impact statement and prior to a hearing on the issuance of a license for the construction and operation of an enrichment facility. Such a provision is similar to “at risk” construction that is allowed to take place at other nuclear facilities regulated by the NRC.

USNIC supports this proposed legislation as it will not diminish or avoid the need for the NRC to issue a construction license or limit the Agency’s ability to ensure that the facility is constructed properly before it is allowed to receive nuclear material and commence operation.

Given the importance of accelerating the production of domestically sourced enrichment capabilities, a need that has been severely tested over the last two decades, common-sense changes like this will help reduce the timing necessary to provide these critical enrichment services without sacrificing safety requirements.

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.