

# PUBLIC SUBMISSION

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**Docket:** NRC-2019-0062

10 CFR Part 53: Risk-Informed, Technology-Inclusive Regulatory Framework for Advanced Reactors

**Comment On:** NRC-2019-0062-0012

Preliminary Proposed Rule Language: Risk-Informed, Technology-Inclusive Regulatory Framework for Advanced Reactors

**Document:** NRC-2019-0062-DRAFT-0276

Comment on FR Doc # 2021-26877

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## Submitter Information

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## General Comment

See attached file(s)

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## Attachments

NRC Environmental Hearing Process reform



August 31, 2022

Mr. Christopher Regan  
Director, Division of Rulemaking, Environmental, and Financial Support  
Office of Nuclear Material Safety and Safeguards  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001

Subject: Comment on the hearing process for contested environmental issues  
[Regulation Identifier Number RIN-3150-AK31; Docket ID NRC-2019-0062]

Dear Mr. Regan,

This letter provides the perspective of the Breakthrough Institute on the NRC's hearing process for contested environmental issues.

The Breakthrough Institute is an independent 501(c)(3) global research center that identifies and promotes technological solutions to environmental and human development challenges. We advocate appropriate regulation and licensing of advanced nuclear reactors to enable the commercialization of innovative and economically viable emerging nuclear technologies, which we believe to represent critical pathways to climate mitigation and deep decarbonization. The Breakthrough Institute does not receive funding from industry.

One of the goals of the Nuclear Energy Innovation and Modernization Act (NEIMA) is "to provide ... a program to develop the expertise and regulatory processes necessary to

allow innovation and the commercialization of advanced nuclear reactors.”<sup>1</sup> An unnecessary hurdle to this goal is the formal hearing process for contested environmental issues.

The goal of the National Environmental Policy Act (NEPA) is to ensure that Federal officials consider the environmental impacts of major actions during the decision-making process and to inform the public of these potential impacts. In a variety of scenarios, NEPA requires the drafting of an Environmental Impact Statement (EIS). The process of drafting and issuing an EIS is essentially the same for the NRC and other Federal agencies: the difference is in the trial-type formal hearing process utilized by the NRC for contested environmental issues after the issuance of an EIS. Currently, after the final EIS has been issued, petitioners can seek to intervene by filing potential contentions, which, if accepted for review, lead to procedures similar to those for non-jury federal court lawsuits like discovery and a trial. As with a standard lawsuit, these procedures can take months or years to conclude. This process far exceeds the requirements of NEPA<sup>2</sup>, the AEA<sup>3</sup>, and the APA<sup>4</sup>; and its strict formalities are an outlier amongst federal agencies.<sup>5,6,7</sup>

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<sup>1</sup> Text - S.512 - 115th Congress (2017-2018): Nuclear Energy Innovation and Modernization Act, S.512, 115th Cong. (2019), <http://www.congress.gov/>.

<sup>2</sup> The Supreme Court stated that “NEPA does not require agencies to adopt any particular internal decisionmaking structure.” *Baltimore Gas & Electric Co. v. NRDC*, 462 US 87, 100 (1983).

<sup>3</sup> Section 189.a(1)(A) of the AEA only specifically requires that “the Commission shall grant a hearing upon the request of any person whose interest may be affected by the proceeding.”

<sup>4</sup> If adjudication is not required by the statute to be “on the record,” then the formal hearing procedures of APA sections 556 and 557 (laying out the details for a trial-type hearing) are not triggered and the process is governed by the “informal adjudication” rules in APA section 555.

<sup>5</sup> The Department of Energy, for example, “will normally combine any public hearings required for a proposed rule with the public hearings required on the draft EIS ...” 10 CFR 1021.213(d).

<sup>6</sup> The United States Army Corps of Engineers utilizes public hearings as the primary method of public involvement. See: “U.S. Army Corps of Engineers Permitting Process Information” accessible at <https://www.lrl.usace.army.mil/Portals/64/docs/regulatory/Permitting/PermittingProcessInformation.pdf>

<sup>7</sup> Lastly, the Federal Aviation Administration also uses public meetings as the primary way to involve the general public. See: “National Environmental Policy Act (NEPA) Implementing Instructions for Airport

During these trial-type hearings, many of the same issues resolved during the EIS drafting process are resurrected and rehashed again, wasting resources for all parties and unnecessarily lengthening the licensing timeline. Additionally, this trial-like process is not ideal for public participation: the administrative and procedural steps involved with litigation require far more time, effort, and knowledge than the more informal comment process. And while individuals may intervene *pro se*, potentially costly legal assistance is monumentally helpful in navigating complex procedures and efficiently raising concerns in an adjudicatory process. The use of a comment format will lower the barrier for the public to express genuine concerns compared to a trial-type hearing. The NRC has stated on numerous occasions, including this rulemaking, that public engagement is important and valued. Trial-like hearings do not sufficiently or optimally accomplish this goal.

NEIMA directed the NRC to develop a new framework for licensing advanced reactors. The NRC has responded to that mandate through the Part 53 rulemaking. In developing the new Part 53, the NRC has the opportunity to change its formal hearing process for future advanced reactors that use the Part 53 licensing framework without requiring a separate rulemaking. The NRC has previously combined separate rulemakings with Part 53. One example is the draft proposed rule on financial qualifications requirements for reactor licensing was ordered to be addressed in Part 53.<sup>8</sup>

The Breakthrough Institute recommends streamlining the environmental impact review process and improving stakeholder engagement by implementing an informal hearing process and recognizing the sufficiency of the more informal notice and comment proceedings already utilized during the EIS drafting process and adopted by other Federal agencies to resolve contentious matters.

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Actions — Order 5050.4B, Chapter 4: Public Participation” accessible at [https://www.faa.gov/airports/resources/publications/orders/environmental\\_5050\\_4/media/chapter4.pdf](https://www.faa.gov/airports/resources/publications/orders/environmental_5050_4/media/chapter4.pdf)

<sup>8</sup> See NRC Accession number ML22195A097



Sincerely,

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The Breakthrough Institute

Dr. Adam Stein  
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The Breakthrough Institute