

v. *United States*, 460 U.S. 1001 (1983); see also *United States v. Alcan Aluminum Ltd.*, 605 F. Supp. 619, 622 (W.D. Ky. 1985) (approving the consent decree even though the court would have imposed a greater remedy). To meet this standard, the United States “need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms.” *SBC Commc’ns*, 489 F. Supp. 2d at 17.

Moreover, the court’s role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its Complaint, and does not authorize the court to “construct [its] own hypothetical case and then evaluate the decree against that case.” *Microsoft*, 56 F.3d at 1459; see also *InBev*, 2009 U.S. Dist. LEXIS 84787, at \*20 (“the ‘public interest’ is not to be measured by comparing the violations alleged in the complaint against those the court believes could have, or even should have, been alleged”). Because the “court’s authority to review the decree depends entirely on the government’s exercising its prosecutorial discretion by bringing a case in the first place,” it follows that “the court is only authorized to review the decree itself,” and not to “effectively redraft the complaint” to inquire into other matters that the United States did not pursue. *Microsoft*, 56 F.3d at 1459–60. As this Court recently confirmed in *SBC Communications*, courts “cannot look beyond the complaint in making the public interest determination unless the complaint is drafted so narrowly as to make a mockery of judicial power.” *SBC Commc’ns*, 489 F. Supp. 2d at 15.

In its 2004 amendments, Congress made clear its intent to preserve the practical benefits of utilizing consent decrees in antitrust enforcement, adding the unambiguous instruction that “[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene.” 15 U.S.C. 16(e)(2). The language wrote into the statute what Congress intended when it enacted the Tunney Act in 1974, as Senator Tunney explained: “[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.” 119 Cong. Rec. 24,598 (1973) (statement of Senator Tunney). Rather, the procedure for the public interest determination is left to the discretion of the court, with the recognition that the court’s “scope of review remains sharply

proscribed by precedent and the nature of Tunney Act proceedings.” *SBC Commc’ns*, 489 F. Supp. 2d at 11.<sup>3</sup>

#### VIII. Determinative Documents

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

Dated: May 21, 2010.

Respectfully submitted,  
/s/

Gregg I. Malawer (DC Bar No. 481685),  
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[FR Doc. 2010-13394 Filed 6-2-10; 8:45 am]

BILLING CODE 4410-11-P

#### NEIGHBORHOOD REINVESTMENT CORPORATION

##### Neighborworks America; Regular Board of Directors Sunshine Act Meeting

**TIME AND DATE:** 1 p.m., Tuesday, June 1, 2010.

**PLACE:** 1325 G Street, NW., Suite 800, Boardroom Washington, DC 20005.

**STATUS:** Open.

**CONTACT PERSON FOR MORE INFORMATION:** Erica Hall, Assistant Corporate Secretary (202) 220-2376; [ehall@nw.org](mailto:ehall@nw.org).

##### Agenda

- I. Call To Order.
- II. Approval of the Minutes.
- III. Approval of the Minutes.
- IV. Summary Report of the Audit Committee.
- V. Summary Report of the Finance, Budget and Program Committee.
- VI. Summary of the NHTSA Special Board Committee Meeting.
- VII. Summary of the NHTSA Special Board of Directors Meeting.

<sup>3</sup> See *United States v. Enova Corp.*, 107 F. Supp. 2d 10, 17 (D. DC 2000) (noting that the “Tunney Act expressly allows the court to make its public interest determination on the basis of the competitive impact statement and response to comments alone”); *United States v. Mid-Am. Dairymen, Inc.*, 1977-1 Trade Cas. (CCH) & 61,508, at 71,980 (W.D. Mo. 1977) (“Absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should \* \* \* carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.”); S. Rep. No. 93-298, 93d Cong., 1st Sess., at 6 (1973) (“Where the public interest can be meaningfully evaluated simply on the basis of briefs and oral arguments, that is the approach that should be utilized.”)

- VIII. Summary Report of the Corporate Administration Committee.
- IX. Board Appointments.
- X. Code of Conduct.
- XI. Investment Policy.
- XII. Strategic Planning Process Timeline.
- XIII. Financial Report.
- XIV. Corporate Scorecard.
- XV. NHTSA Update.
- XVI. Chief Executive Officer’s Quarterly Management Report.
- XVII. Adjournment

**Erica Hall,**

Assistant Corporate Secretary.

[FR Doc. 2010-12974 Filed 6-2-10; 8:45 am]

BILLING CODE 7570-02-M

#### NEIGHBORHOOD REINVESTMENT CORPORATION

##### NHTSA Special Board of Directors Meeting; Sunshine Act

**TIME AND DATE:** 12:30 p.m., Tuesday, May 11, 2010.

**PLACE:** 1325 G Street, NW., Suite 800, Boardroom, Washington, DC 20005.

**STATUS:** Open.

##### CONTACT PERSON FOR MORE INFORMATION:

Erica Hall, Assistant Corporate Secretary, (202) 220-2376; [ehall@nw.org](mailto:ehall@nw.org).

##### AGENDA:

- I. Call to Order.
- II. Discussion and Recommendation For Interim Funding.
- III. Adjournment.

**Erica Hall,**

Assistant Corporate Secretary.

[FR Doc. 2010-12975 Filed 6-2-10; 8:45 am]

BILLING CODE 7570-02-M

#### NUCLEAR REGULATORY COMMISSION

[Docket No. 52-011; NRC-2008-0252]

##### Southern Nuclear Operating Company, et al; Notice of Consideration of Issuance of Amendment to Early Site Permit, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of license amendment request, opportunity to comment, and opportunity to request a hearing.

**DATES:** Submit comments by July 6, 2010. Requests for a hearing or leave to intervene must be filed by August 2, 2010.

**FOR FURTHER INFORMATION CONTACT:** Chandu Patel, Project Manager, AP1000

Projects Branch 1, Division of New Reactors Licensing, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555-001. Telephone: (301) 415-3025; fax number: (301) 415-6350; e-mail: Chandu.Patel@nrc.gov.

**ADDRESSES:** You may submit comments by any one of the following methods. Please include Docket ID NRC-2008-0252 in the subject line of your comments. Comments submitted in writing or in electronic form will be posted on the NRC Web site and on the Federal rulemaking Web site *Regulations.gov*. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed.

The NRC requests that any party soliciting or aggregating comments received from other persons for submission to the NRC inform those persons that the NRC will not edit their comments to remove any identifying or contact information, and therefore, they should not include any information in their comments that they do not want publicly disclosed.

You may submit comments by any one of the following methods.

*Federal Rulemaking Web site:* Go to <http://www.regulations.gov> and search for documents filed under Docket ID NRC-2008-0252. Address questions about NRC dockets to Carol Gallagher 301-492-3668; e-mail [Carol.Gallagher@nrc.gov](mailto:Carol.Gallagher@nrc.gov).

*Mail comments to:* Chief, Rulemaking, Announcements and Directives Branch (RADB), Office of Administration, Mail Stop: TWB-05-B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, or by fax to RADB at (301) 492-3446.

You can access publicly available documents related to this notice using the following methods:

*NRC's Public Document Room (PDR):* The public may examine and have copied for a fee publicly available documents at the NRC's PDR, Room O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

*NRC's Agencywide Documents Access and Management System (ADAMS):* Publicly available documents created or received at the NRC are available electronically at the NRC's Electronic Reading Room at <http://www.nrc.gov/reading-rm/adams.html>. From this page, the public can gain entry into ADAMS, which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are

problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1-800-397-4209, 301-415-4737, or by e-mail to [pdr.resource@nrc.gov](mailto:pdr.resource@nrc.gov). The application dated May 24, 2010, is available electronically in ADAMS under Docket Number 052-00011.

*Federal Rulemaking Web site:* Public comments and supporting materials related to this notice can be found at <http://www.regulations.gov> by searching on Docket ID: NRC-2008-0252.

#### SUPPLEMENTARY INFORMATION:

##### I. Introduction

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Early Site Permit (ESP) No. ESP-004, issued to Southern Nuclear Operating Company (SNC), and the co-owners of the Vogtle Electric Generating Plant (VEGP) site (Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, and the City of Dalton, GA) for the VEGP ESP site located in Burke County, Georgia.

The proposed amendment would change the VEGP ESP site safety analysis report (SSAR) to allow the use of engineered granular backfill (EGB) in place of Category 1 and 2 backfill over the slopes of the Unit 3 and 4 excavations at the VEGP site. In accordance with Title 10 of the *Code of Federal Regulations* (10 CFR) Section 52.39(e), changes to the ESP SSAR require prior Commission approval through an amendment to the ESP.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that performance of limited work authorization (LWA) construction activities at the VEGP ESP site in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the applicant has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

*Response:* No.

The technical evaluation provided in the new SSAR section 2.5.2.9.4, "Study of Engineered Granular Backfill Placed over the Slopes of the Excavation," demonstrates that the results and conclusions in the Vogtle Electric Generating Plant (VEGP) ESP SSAR 2.5.2.9.2, "Study of the Effects of Backfill Geometry," remain valid; backfill material placed over the slopes of the excavation does not affect the VEGP site response analysis used to define the VEGP Ground Motion Response Spectra (GMRS) and Foundation Input Response Spectra (FIRS) or the VEGP SASSI [soil structure interaction] SSI seismic analyses of the Nuclear Island (NI). Reclassifying backfill over the slopes of the excavation does not invalidate the VEGP site-specific seismic analyses. The placement of EGB is outside the zone of influence. Use of EGB will have no effect on reported foundation bearing capacities, estimated total or differential settlements, or liquefaction potential. Because the hydraulic conductivity of EGB material is conservative relative to the values used in the hydrological analysis, the hydrological analysis will be unaffected. As such, the use of EGB material over the slopes of the excavation does not affect the accidental radiation release to groundwater evaluated in the SSAR. Therefore, the proposed SSAR change does not significantly increase the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

*Response:* No.

The sensitivity analyses described in this amendment provide a basis for concluding that the ESP SSAR seismic analyses are not sensitive to the properties of the material over the slopes of the excavation. Also, the material over the side slopes of the excavation is outside the static zone of influence of the AP1000 power block structures, and thus cannot impact the safety performance of any safety related structure. Consequently, no new accident scenarios, failure mechanisms or limiting single failures are introduced as a result of the proposed changes. The changes have no adverse effects on any safety-related system and do not challenge the performance or integrity of any safety-related system. Therefore, all accident analyses criteria continue to be met and these changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

*Response:* No.

The technical evaluation provided in the new SSAR section 2.5.2.9.4, "Study of Engineered Granular Backfill Placed over the Slopes of the Excavation," demonstrates that the results and conclusions in the VEGP ESP SSAR 2.5.2.9.2, "Study of the Effects of Backfill Geometry," remain valid, backfill material placed over the slopes of the excavation does not affect the VEGP site

response analysis used to define the VEGP GMRS and FIRS or the VEGP SASSI SSI seismic analyses of the Nuclear Island (NI). Reclassifying backfill over the slopes of the excavation does not invalidate the VEGP site-specific seismic analyses. In addition, the design function of Category 1 and 2 backfill related to bearing capacity, settlement, and liquefaction is unaffected. The evaluations and analysis results demonstrate applicable acceptance criteria are met. Therefore, the proposed changes do not involve a reduction in a margin of safety.

The NRC staff has reviewed the applicant's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Before issuing the amendment, regardless of whether a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held, if one is requested. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

## II. Opportunity To Request a Hearing

Requirements for hearing requests and petitions for leave to intervene are found in 10 CFR 2.309, "Hearing requests, Petitions to Intervene, Requirements for Standing, and Contentions." Interested persons should consult 10 CFR Part 2, section 2.309, which is available at the NRC's Public Document Room (PDR), located at O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852 (or call the PDR at (800) 397-4209 or (301) 415-4737). NRC regulations are also accessible electronically from the NRC's Electronic Reading Room on the NRC Web site at <http://www.nrc.gov>.

## III. Petitions for Leave To Intervene

Within 60 days of this notice, any person whose interest may be affected

by this amendment and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition must provide the name, address, and telephone number of the petitioner and specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order that may be entered in the proceeding on the petitioner's interest.

A petition for leave to intervene must also include a specification of the contentions that the petitioner seeks to have litigated in the hearing. For each contention, the petitioner must provide a specific statement of the issue of law or fact to be raised or controverted, as well as a brief explanation of the basis for the contention. Additionally, the petitioner must demonstrate that the issue raised by each contention is within the scope of the proceeding and is material to the findings the NRC must make to support the granting of a license amendment in response to the application. The petition must also include a concise statement of the alleged facts or expert opinions which support the position of the petitioner and on which the petitioner intends to rely at hearing, together with references to the specific sources and documents on which the petitioner intends to rely. Finally, the petition must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact, including references to specific portions of the application for amendment that the petitioner disputes and the supporting reasons for each dispute, or, if the petitioner believes that the application for amendment fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the petitioner's belief.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing. The Licensing Board will set the time and place for any prehearing conferences and evidentiary hearings,

and the appropriate notices will be provided.

Non-timely petitions for leave to intervene and contentions, amended petitions, and supplemental petitions will not be entertained absent a determination by the Commission, the Licensing Board or a Presiding Officer that the petition should be granted and/or the contentions should be admitted based upon a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)-(viii).

A State, county, municipality, Federally-recognized Indian Tribe, or agencies thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(d)(2). The petition should be submitted to the Commission by August 2, 2010. The petition must be filed in accordance with the filing instructions in section IV of this document, and should meet the requirements for petitions for leave to intervene set forth in this section, except that State and Federally-recognized Indian tribes do not need to address the standing requirements in 10 CFR 2.309(d)(1) if the facility is located within its boundaries. The entities listed above could also seek to participate in a hearing as a nonparty pursuant to 10 CFR 2.315(c).

Any person who does not wish, or is not qualified, to become a party to this proceeding may request permission to make a limited appearance pursuant to the provisions of 10 CFR 2.315(a). A person making a limited appearance may make an oral or written statement of position on the issues, but may not otherwise participate in the proceeding. A limited appearance may be made at any session of the hearing or at any prehearing conference, subject to such limits and conditions as may be imposed by the Licensing Board.

## IV. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule (72 FR 49139, August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least ten (10) days prior to the filing deadline, the participant should contact the Office of the Secretary by e-mail at [hearing.docket@nrc.gov](mailto:hearing.docket@nrc.gov), or by telephone at (301) 415-1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on NRC's public Web site at <http://www.nrc.gov/site-help/e-submittals/apply-certificates.html>. System requirements for accessing the E-Submittal server are detailed in NRC's "Guidance for Electronic Submission," which is available on the agency's public Web site at <http://www.nrc.gov/site-help/e-submittals.html>. Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through EIE, users will be required to install a Web browser plug-in from the NRC Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at <http://www.nrc.gov/site-help/e-submittals.html>.

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at <http://www.nrc.gov/site-help/e-submittals.html>. A filing is considered complete at the time the documents are submitted through the NRC's E-Filing

system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The E-Filing system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the "Contact Us" link located on the NRC Web site at <http://www.nrc.gov/site-help/e-submittals.html>, by e-mail at [MSHD.Resource@nrc.gov](mailto:MSHD.Resource@nrc.gov), or by a toll-free call at (866) 672-7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, *Attention: Rulemaking and Adjudications Staff*; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, *Attention: Rulemaking and Adjudications Staff*. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require

a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at [http://ehd.nrc.gov/EHD\\_Proceeding/home.asp](http://ehd.nrc.gov/EHD_Proceeding/home.asp), unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Petitions for leave to intervene must be filed no later than 60 days from June 3, 2010. Non-timely filings will not be entertained absent a determination by the presiding officer that the petition or request should be granted or the contentions should be admitted, based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)-(viii).

Dated at Rockville, Maryland this 27th day of May 2010.

For The Nuclear Regulatory Commission.

**Jeffrey Cruz,**

*Chief, AP 1000 Projects Branch 1, Division of New Reactor Licensing, Office of New Reactors.*

[FR Doc. 2010-13327 Filed 6-2-10; 8:45 am]

**BILLING CODE 7590-01-P**

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## SECURITIES AND EXCHANGE COMMISSION

### Proposed Collection; Comment Request

*Upon written request; Copies Available From:*  
Securities and Exchange Commission,  
Office of Investor Education and Advocacy,  
Washington, DC 20549-0213.

*Extension:* Rule 12h-1(f); OMB Control No. 3235-0632; SEC File No. 270-570.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of