

## CENTER FOR NUCLEAR RESPONSIBILITY

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July 3, 1985

OFFICE OF SECRETARY  
DOCKETING & SERVICE  
BRANCH

Secretary of the Commission  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555  
Attention: Docketing & Service Branch

To whom it may concern,

The enclosed comment on the U.S. Nuclear Regulatory Commission's changes to the Sunshine Act Rules, 50 Fed. Reg. 20889, May 21, 1985, are being submitted for your consideration on behalf of the Center for Nuclear Responsibility.

This comment was express mailed on July 3, 1985, to be filed in your office by July 5, 1985. Thank you for your consideration of our views on this issue.

Respectfully submitted,

*Joette Lorion*

Joette Lorion  
Director, Center for Nuclear Responsibility

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add. Peter Gane, H-1035

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COMMENT ON THE UNITED STATES NUCLEAR REGULATORY COMMISSION'S  
CHANGES TO THE SUNSHINE ACT RULES, 50 FED. REG. 20889,  
MAY 21, 1985.

COMMENT OF JOETTE LORION  
ON BEHALF OF THE  
CENTER FOR NUCLEAR RESPONSIBILITY  
JULY 3, 1985.

## INTRODUCTION

This comment on the recent NRC amendments to its regulations under the Government in the Sunshine Act is offered on behalf of myself, and the Center for Nuclear Responsibility, a non-profit organization, which I serve as Director.

The Center for Nuclear Responsibility is actively litigating in both the federal courts and before the Commission to ensure the right of citizen participation in nuclear safety issues. Two of our cases are based on the belief that the Nuclear Regulatory Commission (NRC) is abusing its administrative discretion in dealing with public safety concerns and the right of citizens to full and meaningful participation in nuclear regulatory issues. We see the NRC's current attack on the Sunshine Act, as one of a series of extraordinary actions by the Commission that may be designed to reduce public awareness of, and participation in, the nuclear regulatory process.

Our comment today will dwell on what appears to be the closing regulatory door that will deny citizens any meaningful participation in nuclear safety issues that directly affect their health and safety.

THE CLOSING REGULATORY DOOR

The Nuclear Regulatory Commission's rule change to conform to its definition of a "meeting" under the Government in the Sunshine Act (5 U.S.C. 552 (b)) to the statutory intent, as clarified in the Supreme Court decision in Federal Communications Commission v. ITT World Communications, - U.S. - 104 S. Ct. 1936 (1984), is dangerous to both this agency's accountability to, and meaningful participation by, the public that the Sunshine Act was designed to protect. There are obvious problems in the NRC's interim rule - problems that will close the regulatory door to the public who have the right to be involved in the nuclear regulatory process.

The first problem posed by the rule is that the changes were made without public participation. This interim rule was adopted in a procedurally inadequate manner, because there are certain aspects of the rule, such as doing away with review of transcripts of proceedings, that require public input under the Administrative Procedures Act since these changes will have a substantial affect on the substantive rights of public interest citizens. The fact that the Commission felt compelled to rush this rule into effect without public comment has, in the words of NRC Commissioner James K. Asselstine, "demonstrated an arrogance and disdain for the public all too common these days." It seems that it also demonstrates a growing disinclination on the part of the Commission to follow the Administrative Procedure Act and the dictates of federal law.

The second problem posed by the rule changes involves attempts by the Commission to define a "meeting" to include "only those discussions that are sufficiently focused on discrete proposals or issues as to cause, or be likely to cause, the individual participating members to form reasonably firm positions regarding matters pending or likely to arise before the agency."

According the Commission, this new definition of "meeting" would exclude "background briefing by the NRC Staff on a technical issue common to a number of plants," and problems likely to face the Commission in the coming year " . (These could be safety problems)

No minutes or transcripts of these proceedings will be kept.

This change in the rule is particularly dangerous in this decade of the 80's, where aging nuclear plants are experiencing significant safety problems that could cause nuclear catastrophe. It is clear that the exclusion of the public from such proceedings may jeopardize citizen access to information concerning these safety problems and their resolution. Consideration of a safety problem of a generic nature common to many plants, and involving consideration and deliberation of issues should be properly conducted before the public; and not in the context of a secret proceeding. While security or other considerations might require that such meetings be held privately, it is wholly improper to conduct such proceedings without a record, because they would include Commission deliberations on factual considerations that are presently before the agency or likelt to come before them in the future. The federal Sunshine Act requires that such factual deliberations should be conducted pursuant to the terms and conditions of that Act, in public or with a record.

The Center does not feel that the agency has adequately demonstrated justification for conducting "secret meetings" on safety problems. For the Commission to suggest that it is possible to hold such "gatherings" without a record flies in the face of Congress's intent in the Sunshine Act that , "the public is entitled to the fullest practicable information regarding the decision making processes of the Federal Government," and that the "whole decision making process, not merely its results, must be exposed to public scrutiny."

The third problem posed by the rule change is that of citizen redress of wrongs committed by the agency. The fact that no record would be kept of certain Commission proceedings means that the public will not be able to challenge the Commission's decision not to open a meeting in court; nor will they ever be able to obtain factual information discussed in such a meeting.

Thus, there would be no effective remedy for harm to the public if the new standard is abused either intentionally or inadvertantly, and it will be impossible to correct harm done to the public if the agency abuses its discretion. And, should a citizen attempt to litigate an issue or redress a wrong, judicial review of the Commission's determinations will also be hampered by the absence of a record.

#### THE HIDDEN AGENDA

In Congressman Markey's Opening Statement to the Subcommittee on Energy Conservation and Power made on May 21, 1985, he stated,

We must ask if this is an artfully drafted rule, or a rule cleverly crafted to effect some specific purpose? The decision to delay public comment on the rule change, until after the rule is in place, helps to create the unfortunate but inevitable impression that the Commission majority indeed has some hidden agenda.

It appears to the Center that the Sunshine Act is an increment in a pattern of agency conduct designed to close the regulatory door to members of the public. It may well be that this interim rule, the "Sholly Amendment", and other NRC actions are a protective mechanism designed to hide serious technical and safety problems in this country's aging nuclear power reactors from the public. And, it may be easier for the Commission to keep these aging plants running, in some cases with lower safety standards, without public knowledge of the problems or public involvement in their resolution. If this is the case, the implications for both public safety and democratic principles are ominous.

In short, the implementation of the Sunshine Act as proposed in the interim rule will create an informational and public participation vacuum that will gravely undermine public confidence in the agency and nuclear power safety. It should not be allowed.