

NOTATION VOTE

RESPONSE SHEET

RELEASED TO THE PDR

12/13/96

date

SCW

initials

TO: John C. Hoyle, Secretary

FROM: COMMISSIONER MCGAFFIGAN

SUBJECT: SECY-96-222 - USE OF OPEN PREDECISIONAL
ENFORCEMENT CONFERENCES AND ELIMINATION OF
CERTAIN PROVISIONS FOR COMMISSION
CONSULTATION; PROPOSED REVISIONS TO THE
ENFORCEMENT POLICY TO ADDRESS RISK
SIGNIFICANT VIOLATIONS AND CERTAIN
NON-CITED VIOLATIONS

Approved X with comments Disapproved _____ Abstain _____

Not Participating _____ Request Discussion _____

COMMENTS:

My comments are attached.

Edward M. McGaffigan Jr.

SIGNATURE

11/8/96

DATE

Release Vote /X/

Withhold Vote / /

Entered on "AS" Yes X No _____

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PDR COMMS NRCC
CORRESPONDENCE PDR

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PFO2

Commissioner McGaffigan's Comments on SECY-96-222:

I approve the proposals in SECY-96-222 as follows:

1. I approve the staff's proposals with regard to open predecisional enforcement conferences and I agree with Commissioner Diaz' admonition that press releases for such conferences should be carefully crafted to make it clear that the agency has not prejudged the outcome of the conference. I suggest the addition of the noted sentence on the attached page 17 of the revised Enforcement Policy to emphasize to the public that predecisional enforcement conferences normally will be held in the NRC's regional offices or at NRC Headquarters.
2. I approve all of the staff's proposals on consultation with, and notice to, the Commission on enforcement-related matters. I do not believe that the staff should routinely consult with the Commission when it proposes to exercise discretion under Section VII.B.2 of the Enforcement Policy and refrain from taking enforcement action for violations discovered during extended shutdowns or work stoppages. The criteria for exercising discretion in those cases are very detailed and clear and should be easy to apply without Commission intervention. In addition, the staff will issue an Enforcement Notification for the first proposal to exercise discretion in these situations and that should be sufficient to allow the Commission to inquire further if it so desires.

On the matter of notice to the Commission, I agree with Commissioner Diaz' suggestion that the staff should provide a more detailed and earlier explanation of an enforcement action than an EN provides if the action is likely to have implications for broader sanctions or involves issues that are of substantial public interest. However, I don't believe that this suggestion need be incorporated into the Enforcement Policy itself.

3. I approve the staff's proposal to modify the Enforcement Policy to explicitly refer to risk significance. I also agree with Commissioner Rogers' suggestion that the staff should be asked to prepare a paper on how it intends to relate risk considerations to the assessment of civil penalties. However, I would suggest that we allow the staff to gain six months' experience in applying risk considerations to enforcement actions before the staff is required to submit its paper on the subject.
4. I approve the staff's proposed clarification to the Enforcement Policy on non-cited violations.

I also agree with the Chairman's proposed edits to the Enforcement Policy itself.

NRC's Predecisional Enforcement Conferences (whether open or closed) normally will be held at the NRC's regional offices or in NRC Headquarters Offices and not in the vicinity of the licensee's facility.

conference will be terminated if disruption interferes with a successful conference.

Members of the public attending open conferences will be reminded that (1) the apparent violations discussed at predecisional enforcement conferences are subject to further review and may be subject to change prior to any resulting enforcement action and (2) the statements of views or expressions of opinion made by NRC employees at predecisional enforcement conferences, or the lack thereof, are not intended to represent final determinations or beliefs.

When needed to protect the public health and safety or common defense and security, escalated enforcement action, such as the issuance of an immediately effective order, will be taken before the conference. In these cases, a conference may be held after the escalated enforcement action is taken.

VII. EXERCISE OF DISCRETION

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A. Escalation of Enforcement Sanctions

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1. * * *

(e) Situations when the violation results in a substantial increase in risk, including cases in which the duration of the violation has contributed to the substantial increase;

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