



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D. C. 20555

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May 22, 1985

MEMORANDUM FOR: Chairman Palladino  
Commissioner Roberts  
Commissioner Asselstine  
Commissioner Bernthal  
Commissioner Zech

FROM: Carlton Kammerer, Director *DK*  
Office of Congressional Affairs

SUBJECT: MARKEY HEARING ON SUNSHINE ACT REGULATIONS

This memorandum summarizes the May 21, 1985 hearing on NRC's new Sunshine Act regulations before the Subcommittee on Energy Conservations and Power of the House Committee on Energy and Commerce. A list of attendees is attached.

In his opening statement (attached), Chairman Markey charged that the new regulations would "draw a lead curtain around the Commission's deliberations." He then stated his belief that the rule would lead to diminished public trust which would in turn lead to a bleak future for nuclear power. After expressing his concern that the new rule has the potential for unintentional misuse as well as deliberate abuse, Mr. Markey indicated that Congress, industry, Wall Street and the general public had been well served by the Commission's traditional openness.

The opening remarks of Mr. Eckart (D-Ohio) and Mr. Sikorski (D-Minnesota) proceeded in much the same vein. Mr. Bilirakis (R-Florida) expressed his hope that Members would keep an open mind during the questioning, but he also indicated that he had reservations of his own.

Questioning progressed along these lines. Two recurring questions concerned the need to make the rule effective before considering public comments and the problems that Congress and the public would face in knowing whether or not the Commission had acted responsibly whenever it held a closed gathering under the new regulations.

At the end of the Commission's testimony, Mr. Eckart indicated that he was prepared to offer an amendment to the NRC authorization bill in markup the following day in order to intervene legislatively in the rule change. He mentioned three possible avenues: a requirement for notification before any closed gathering, a requirement for notification after the fact, or a one year delay in implementing the rule change.

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The other witnesses appeared together as a second panel. Mr. Nader and Miss Weiss were not supportive of the rule nor the Commission in general. Former Commissioner Ahearne found the Commission's approach disturbing, but did attempt to communicate his own frustrations and problems with the original Sunshine Act procedures. Former General Counsel Len Bickwit stated his belief that the Commission's actions fell within the recent Supreme Court ruling in this area and would be reaffirmed if challenged.

Copies of the testimony are available from this office upon request.

Attachments:  
As stated

c: OPE  
OGC  
SECY

STEWART, MARION WASHINGTON  
JOHN BRANT TEXAS  
WHEAT, LAND TEXAS  
AND LOU BY LANSAN  
N. W. WICK OREGON  
R. W. HALL TEXAS  
DONALD L. BART JR  
GERRY D. LEE MINNESOTA  
JOHN D. LEE MINNESOTA  
JANUARY 1985

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HOWARD D. NELSON TEXAS  
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ERIC J. LARLEY ALABAMA  
JAMES T. BRADSHAW NORTH CAROLINA  
ALL OFFICE

J. LAWRENCE R. EDWARDS  
CHIEF COUNSEL AND STAFF DIRECTOR

U.S. HOUSE OF REPRESENTATIVES  
SUBCOMMITTEE ON ENERGY CONSERVATION  
AND POWER  
OF THE  
COMMITTEE ON ENERGY AND COMMERCE  
WASHINGTON, DC 20515

Opening Statement of  
The Honorable Edward J. Markey  
May 21, 1985

At the Subcommittee's recent budget authorization hearing, I said that I would try to be fair and vigorous in overseeing the operations of the Nuclear Regulatory Commission (NRC). Where praise is warranted, I promised to be the first to lavish it. And, where criticism is required, I promised not to hesitate in rendering it. I am saddened to report that today is a day for criticism.

Last Thursday the Commission approved a new rule amending its Sunshine Act regulations and took the unusual step of putting the new procedures into effect prior to obtaining public comment. The new rule can more accurately be described as "Sunset Regulations", because they draw down a lead curtain around the Commission's deliberations. In effect, they establish a new type of Commission meeting. Currently, when a quorum of the Commission meets to discuss agency business, the meeting is either open or closed to the public under the Sunshine Act. If the meeting is closed under specific exemptions, a formal transcript is usually kept and subsequently reviewed for possible release. Under the amended regulations, a new category of secret meetings called "gatherings" would be created of which no transcript, minutes or other record would be kept.

To add insult to injury, the Commission also voted 3 to 2, with Chairman Palladino and Commissioner Asselstine dissenting, to preclude public comment on its decision to exclude the public until after the new rule is already implemented. What are we to make of this? Did the Commission decide to take this extraordinary action because of an emergency situation threatening public health and safety, or, because it doesn't really care about public comment? I think the answer is obvious.

The theme of the Subcommittee's NRC oversight has and will continue to be the importance of public participation in nuclear decision-making with a goal toward building public confidence in the Commission. I believe that it is axiomatic that without public participation in NRC's activities, there will be no public trust. And if there is no public trust, the future of nuclear energy will be bleak, indeed.

The Commission states that holding secret meetings "would improve its ability to do the public's business." However, part and parcel of doing the "public's business" is doing it in public. This should not be news to the Commission. Listen for a moment to the stinging conclusion of the U.S. Court of Appeals decision against the NRC just last year in Philadelphia Newspaper Inc. v. NRC:

A decade ago revelations of secret abuse of official power shocked this nation and seared in our minds a lesson vital to the health of a democratic polity: government should conduct the public's business in public. In the Sunshine Act Congress moved to ensure that those in government do not forget that they are above all accountable to the people of this nation. Nowhere is the need for accountability more acute than in the Commission's handling of the Three Mile Island controversy. Without a doubt, Congress intended that the Sunshine Act would guarantee public accountability on what is one of the most sensitive and difficult issues of our time: the safety of nuclear power. (emphasis added)

The Commission has apparently decided to strike an opposing theme. It is a motif of public exclusion, a policy emanating from apparent mistrust of the public.

The Commission's testimony begins by stating that the purpose of the rule change is to conform the Commission's procedures with the Sunshine Act as interpreted in a 1984 Supreme Court decision. That case, Federal Communications Commission v. ITT World Communications, involved a highly unusual set of specific factual circumstances which in all likelihood, will not be replicated at the NRC.

EDWARD J. MARKEY, MASSACHUSETTS, CHAIRMAN

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SUBCOMMITTEE ON ENERGY CONSERVATION  
AND POWER  
OF THE  
COMMITTEE ON ENERGY AND COMMERCE  
WASHINGTON, DC 20515

DATE AND TIME: Tuesday, May 21, 1985 at 10:00 a.m.

PLACE: 2322 Rayburn House Office Building

SUBJECT: NRC Implementation of the Sunshine Act.

WITNESSESPANEL I

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## Accompanied by:

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Commissioner James K. Asselstine  
Commissioner Frederick M. Bernthal  
Commissioner Lando W. Zech

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