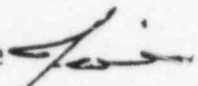


UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D.C. 20555

OFFICE OF THE  
COMMISSIONER

May 28, 1985

MEMORANDUM FOR: Commissioner Zech

FROM: James K. Asselstine 

SUBJECT: YOUR MAY 23, 1985 MEMORANDUM ON POSSIBLE TOPICS  
FOR DISCUSSION UNDER THE INTERIM SUNSHINE ACT  
REGULATIONS

I have a few comments on your memorandum. First, of the six topics which you suggest for a "gathering" under the interim Sunshine rule, I believe that three (items 1, 4 and 6) could best be handled in a personal briefing for you by OGC and your legal assistant. These three matters are really just informational, and are the types of topics that I am sure you as a relatively new Commissioner want to become familiar with. However, I see no benefit to a collegial discussion of these items, and I have no interest in a briefing on them.

The remaining three topics you suggest (items 2, 3 and 5) are a different matter. I can see some value in a collegial discussion of each of these items, particularly item 2. However, I would point out that each of these items can be discussed in a closed management meeting under the present exemptions to the Government in the Sunshine Act. While I have no objection to meeting on these topics, I believe that these should be noticed, closed management meetings and not "gatherings". This prompts a further comment. I sense that you and our other colleagues seem to be somewhat confused about what topics can now be discussed in closed management meetings. The fact that you suggested items 2, 3 and 5 for a "gathering" indicates that you may not have understood that these are appropriate topics for a closed management meeting. You may want to ask OGC or your legal assistant to give you a briefing on the scope of the present exemptions to the Sunshine Act, since a closed management meeting will accomplish the same purpose as a "gathering" without the more controversial aspects.

I have one final, and unfortunately negative, comment on the procedures proposed in your memorandum for any "gatherings" that may be held under the Commission's interim Sunshine rule. My concerns focus on your fifth suggested procedure (p. 2 of your memo), which calls for memorializing action plans which result from the discussions in these "gatherings". This concept indicates that the Commission will be using these "gatherings" to refine options for action, to develop positions and to make decisions.

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This goes to the very heart of my concern about these "gatherings"--that they will be used as a means to develop positions on regulatory issues of interest to the public and to make decisions on those issues. There is simply no legal basis whatsoever for attempting to use these "gatherings" for this purpose. I would suggest that you substitute for your proposed procedure 5 a procedure which states that the Commission will not under any circumstances use these "gatherings" to consider and refine options for Commission action, to develop positions on regulatory issues or to make decisions, and that if the Commission begins to approach these activities OGC should stop the "gathering".

cc: Chairman Palladino  
Commissioner Roberts  
Commissioner Bernthal  
SECY  
OGC  
OPE



OFFICE OF THE  
SECRETARY

0116 Sunshine  
UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D.C. 20555

May 29, 1985

IN RESPONSE, PLEASE  
REFER TO: M850516B

MEMORANDUM FOR: Herzel H.E. Plaine, General Counsel  
FROM: *for* Samuel J. Chilk, *JCH* Secretary  
SUBJECT: STAFF REQUIREMENTS - AFFIRMATION/DISCUSSION  
AND VOTE, 2:00 P.M., THURSDAY, MAY 16, 1985,  
COMMISSIONERS' CONFERENCE ROOM, D.C. OFFICE  
(OPEN TO PUBLIC ATTENDANCE)

I. Government in the Sunshine Act Regulations (SECY-85-67)

The Commission approved publication of proposed revisions to 10 CFR Part 9 Government in the Sunshine Act Regulations as follows:

1. all Commissioners<sup>1/</sup> approved publication of the proposed rule for public comment. The Commission (with Commissioners Roberts, Bernthal, and Zech agreeing) has also approved<sup>2/</sup> making the proposed rule effective on an interim basis during the public comment period. Chairman Palladino and Commissioner Asselstine disagreed with making it effective in the interim and provided separate views.

(Subsequently, on May 16, 1985 the Federal Register Notice was signed and forwarded for publication.)

<sup>1/</sup> Section 201 of the Energy Reorganization Act, 42 USC § 5841, provides that action of the Commission shall be determined by a "majority vote of the members present." Commissioner Roberts was not present when this item was affirmed. Accordingly, the formal vote of the Commission was 4-0 in favor of the decision. Commissioner Roberts, however, had previously indicated that he would approve this paper and had he been present he would have affirmed his prior vote.

<sup>2/</sup> Section 201 of the Energy Reorganization Act, 42 USC § 5841, provides that action of the Commission shall be determined by a "majority of the members present." Commissioner Roberts was not present when this item was affirmed. In order to allow the will of the majority to prevail Commissioner Asselstine did not participate in the formal affirmation on this issue. Accordingly, the formal vote of the Commission was 2-1 in favor of the decision. Commissioner Roberts, however, had previously indicated that he would approve this issue and had he been present he would have affirmed his prior vote. Commissioner Asselstine had previously indicated his disapproval and he would have affirmed his vote.

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II. SECY-85-74A - TMI-1 - Aamodt Motion for Reconsideration  
and Reopening of the Record

Chairman Palladino and Commissioners Roberts<sup>3/</sup> and Zech approved an order denying a January 15, 1985 motion by the Aamodt's to reopen the record and defer a decision on TMI-1 restart. Commissioner Bernthal approved the order, but would have preferred a modified version. Commissioner Asselstine concurred in the result of the order but did not agree with the substance and provided separate views.

(Subsequently on May 16, 1985 the Secretary signed the Order.)

cc: Chairman Palladino  
Commissioner Roberts  
Commissioner Asselstine  
Commissioner Bernthal  
Commissioner Zech  
Commission Staff Offices  
EDO  
PDR - Advance  
DCS - 016 Phillips

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<sup>3/</sup> Section 201 of the Energy Reorganization Act, 42 USC § 5841, provides that action of the Commission shall be determined by a "majority vote of the members present." Commissioner Roberts was not present when this item was affirmed. Accordingly, the formal vote of the Commission was 3-1 in favor of the decision. Commissioner Roberts, however, had previously indicated that he would approve this paper and had he been present he would have affirmed his prior vote.

OMB Sunshine

JOHN D. DINGELL, MICHIGAN, CHAIRMAN

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 HENRY A. WAXMAN, CALIFORNIA  
 TIMOTHY E. WIRTH, COLORADO  
 PHILIP R. SHARP, INDIANA  
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 RON WYDEN, OREGON  
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 MICHAEL BILIRAKIS, FLORIDA  
 DAN SCHAEFER, COLORADO  
 FRED J. ECKERT, NEW YORK

U.S. House of Representatives  
 Committee on Energy and Commerce  
 Room 2125, Rayburn House Office Building  
 Washington, DC 20515

June 3, 1985

WM MICHAEL KITZMILLER, STAFF DIRECTOR  
 THOMAS M. RYAN, CHIEF COUNSEL

Honorable Nunzio J. Palladino  
 Chairman  
 Nuclear Regulatory Commission  
 1717 H Street, N. W.  
 Washington, D. C. 20555

Dear Mr. Chairman:

At the May 21, 1985 hearing of the Subcommittee on Energy Conservation and Power, the Subcommittee examined the Nuclear Regulatory Commission's (NRC) action to amend its Sunshine Act regulations. Because of our continuing interest in these procedures, we request the Commission provide the Congress and the public with additional information as it initiates its new procedures.

At the May 21 hearing, the NRC testified that all Commissioners would be invited to all non-Sunshine Act "gatherings" and that the General Counsel or his qualified designee would also be in attendance to ensure that the discussions do not violate the Sunshine Act. Please provide us with the written implementation procedures that the NRC has drafted for applying and adhering to the new rule and to the Sunshine Act. If no such written procedures now exist, please indicate that and provide us with the procedures that will be used.

We further request that the Commission issue a monthly public listing of non-Sunshine Act "gatherings" of a quorum of the Commission, their dates and general subject matter.

Additionally, we request that the NRC provide the Committee with a more specific monthly report of all non-Sunshine Act "gatherings" of a quorum of the Commission. The reports should include the date of all such "gatherings" that took place that month, the persons in attendance, a list of the documents discussed or provided at the "gathering," and a specific description of the subject or subjects discussed. These reports will assist the Committee in fulfilling the oversight responsibilities entrusted to it under the Rules of the House of Representatives.

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Honorable Nunzi J. Palladino  
June 3, 1985  
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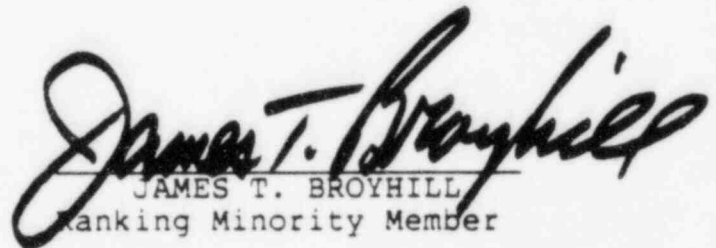
We recognize, and appreciate, the concern expressed by several Commissioners at the May 21 hearing that the Commission needs to conduct its business in an effective and efficient manner. It is no less important that the Commission, as an agency entrusted to protect the public health and safety, be fully accountable for its actions. We expect that the Commission's compliance with our request for additional accountability can be accomplished in a manner consistent with the other concerns expressed at the hearing.

We would appreciate your response to this letter by June 5, 1985. Thank you for your cooperation in this matter.

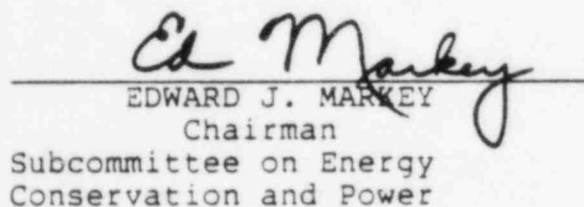
Sincerely,



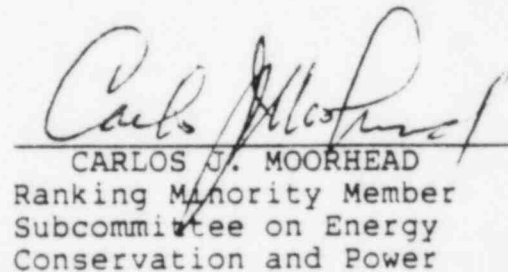
JOHN D. DINGELL  
Chairman



JAMES T. BROYHILL  
Ranking Minority Member



EDWARD J. MARKEY  
Chairman  
Subcommittee on Energy  
Conservation and Power



CARLOS J. MOORHEAD  
Ranking Minority Member  
Subcommittee on Energy  
Conservation and Power