

DENNIS E. ECKART
11th DISTRICT, OHIO

MEMBER:
COMMITTEE ON
ENERGY & COMMERCE

COMMITTEE ON
EDUCATION & LABOR

COMMITTEE ON
SMALL BUSINESS

AT LARGE
MAJORITY WHIP

Omb Sunshine



CONGRESS OF THE UNITED STATES
HOUSE OF REPRESENTATIVES
WASHINGTON, D.C. 20515

June 6, 1985

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

Dear Mr. Chairman:

I would like to reemphasize my dismay, first expressed to you at the May 21, 1985 Energy Conservation & Power Subcommittee hearing, at the Commission's decision to amend its Sunshine Act regulations to allow more Commission meetings to be held in secret.

The Commission's new rule, distinguishing between closed "gatherings" and open "meetings," violates both the spirit and the purpose of the Sunshine Act. It is, quite simply, bad public policy. Institution of a practice of secrecy instead of a presumption of openness is in direct contravention of Congress' historical intention that, to the maximum extent possible, agencies doing the public business should seek to do that business in the open.

In the absence of public participation in the Commission "gatherings," how are we to know whether the Commissioners have in fact crossed the line from "brainstorming" into decision-making? At the May 21st hearing, you were asked these questions, Mr. Chairman, and your response was that we would "know by the outcome." This is not acceptable. If we are to learn from the outcome that the Commission has made a decision adversely affecting the public interest, we will have learned too late.

Further, the Commission's decision to preclude public comment on the rule change until after the new rule is already in effect adds insult to injury. The record of the May 21 hearing shows that no Commissioner was able to explain to my satisfaction the reason for NRC's rush to implement the new rule prior to obtaining public comment. Instead, Commissioner Zech expressed the Commission's expectation that the public should have some trust and confidence in the Commission's decisions. Yet the Commission forced through this change in its regulations overnight,

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reversing eight years of Commission policy, without giving that public whose trust it expects any chance to be heard. In so doing, the Commission has created a definite impression that it has something to hide from the public it supposedly represents. This is hardly an effective way to inspire confidence. On the contrary, it achieves precisely the opposite effect. The Commission has succeeded in nothing but fostering mistrust and suspicion.

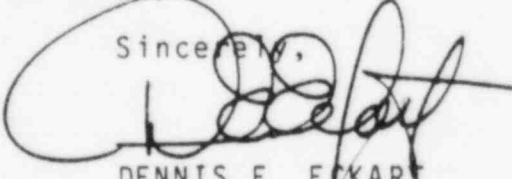
Even the Administrative Conference report so often cited by the Commission in support of its actions strongly recommends that agencies comply with long established notice and comment procedures unless it finds that public notice and comment would be "impracticable, unnecessary, or contrary to the public interest." I know of no such finding by the NRC, and doubt very much if one could be fashioned as a post-hoc rationalization. Unless some satisfactory explanation is forthcoming, I will continue to believe your action was at best "impracticable, unnecessary, and contrary to the public interest."

I am of course aware of the letter recently sent to the Commission by Chairman Dingell, Chairman Markey, Mr. Broyhill and Mr. Moorehead, requesting that the Commission provide information on procedures it will follow in implementing the new rule, as well as monthly public listings of the Commission's non-Sunshine "gatherings" and a more detailed monthly report on those gatherings for the Congress. I wish to make it clear that I view the provision of such information as the very least the Commission must do for the time being, and is, in my opinion, only a temporary measure. Telling the public you have met in secret after the fact is in effect no better than simply meeting in secret. The public is best protected when decisions affecting them are, in fact, made in public. Erecting artificial barriers or creating after the fact rationale for decisions made in secret is scant protection for the public interest.

I still intend to introduce legislation which will rescind the Commission's new closed meeting rule. Only through full and open debate will the public's fundamental right to protection of its interests be maintained.

I look forward to your reply.

Sincerely,



DENNIS E. ECKART
Member of Congress



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

June 6, 1985

The Honorable John Dingell, Chairman
Committee on Energy and Commerce
United States House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This is in response to your letter, dated June 3, 1985, concerning the Commission's changes to its Government in the Sunshine regulations.

Your letter asked that we provide the Committee with the Commission's written procedures for implementing the new rule. The Commission has not yet finalized any implementing procedures. No non-Sunshine Act gatherings have yet been held. Our staff is developing procedures for Commission review, and we will be pleased to provide them to you as soon as they have been agreed upon.

The Commission will maintain a record of all informal gatherings not subject to Sunshine Act requirements, and will keep the Congress and the public informed on a monthly basis of the nature of such gatherings as you requested. Consistent with that policy, the date, participants and subject of such gatherings, including a list of any documents that were the subject of the discussion, will be recorded and made available to the oversight Committees of the Congress. A monthly listing will also be made available to the public.

The Commission's revisions of its Sunshine regulations were intended to foster collegiality and improve its ability to do the public's business, and do not compromise or circumvent the requirements of the Sunshine Act in any way. The Commission trusts that the above procedure for advising Congress and the public, and the final procedure when adopted, will be helpful to the Congress in the exercise of its oversight responsibility.

Sincerely,

Nunzio J. Palladino
Nunzio J. Palladino

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

June 6, 1985

The Honorable James T. Broyhill
Ranking Minority Member
Committee on Energy and Commerce
United States House of Representatives
Washington, D.C. 20515

Dear Congressman Broyhill:

This is in response to your letter, dated June 3, 1985, concerning the Commission's changes to its Government in the Sunshine regulations.

Your letter asked that we provide the Committee with the Commission's written procedures for implementing the new rule. The Commission has not yet finalized any implementing procedures. No non-Sunshine Act gatherings have yet been held. Our staff is developing procedures for Commission review, and we will be pleased to provide them to you as soon as they have been agreed upon.

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Sincerely,

Nunzio J. Palladino

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

June 6, 1985

CHAIRMAN

The Honorable Edward J. Markey, Chairman
Subcommittee on Energy Conservation and Power
Committee on Energy and Commerce
United States House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This is in response to your letter, dated June 3, 1985, concerning the Commission's changes to its Government in the Sunshine regulations.

Your letter asked that we provide the Committee with the Commission's written procedures for implementing the new rule. The Commission has not yet finalized any implementing procedures. No non-Sunshine Act gatherings have yet been held. Our staff is developing procedures for Commission review, and we will be pleased to provide them to you as soon as they have been agreed upon.

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Sincerely,

Nunzio J. Palladino

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

June 6, 1985

The Honorable Carlos J. Moorhead
Ranking Minority Member
Subcommittee on Energy Conservation and Power
Committee on Energy and Commerce
United States House of Representatives
Washington, D.C. 20515

Dear Congressman Moorhead:

This is in response to your letter, dated June 3, 1985, concerning the Commission's changes to its Government in the Sunshine regulations.

Your letter asked that we provide the Committee with the Commission's written procedures for implementing the new rule. The Commission has not yet finalized any implementing procedures. No non-Sunshine Act gatherings have yet been held. Our staff is developing procedures for Commission review, and we will be pleased to provide them to you as soon as they have been agreed upon.

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Nunzio J. Palladino

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