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U.S. HOUSE OF REPRESENTATIVES

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

January 2, 1986

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

Dear Mr. Chairman:

I am disappointed by the General Counsel's December 6, 1985 "Sunshine Act Rule" memorandum and the Commission's response to it. I understand that three Commissioners have voted in favor and one Commissioner against the proposed final rule included in this memorandum. You have reportedly stated that while you favor the proposal you would prefer to cast your vote at a Commisssion meeting presently scheduled for January 17, 1985.

The General Counsel's approach would maintain much of the fatally flawed proposal that the Commission first put forth on May 21, 1985. This rule, which was pushed through without prior public notice or comment, provided for secret "gatherings" of a quorum of the Commission. These non-Sunshine Act sessions would violate the spirit of the law which is that the public's business should be done in public. This basic idea is as bad today as it was last Spring.

Notwithstanding specific concerns expressed by the Subcommittee at its hearing last Spring, the proposed final rule fails to provide implementation procedures. As the Subcommittee warned, that deficiency makes the rule susceptible to unintentional misuse and intentional abuse. Alternatives apparently rejected by the General Counsel and Commission include: having meetings only when all Commissioners are present; requiring a representative of the General Counsel to be present to assure that the discussion stays within proper bounds; keeping a transcript; and deciding upon the topic for discussion in advance. Instead the General Counsel recommended and the Commission has apparently agreed that procedures should be kept "...to a minimum,

in the interest of informality and collegiality" and that it would not be "...useful to adopt hard-and-fast rules for handling this problem." The memorandum advised that no lawyer from Office of General Counsel need monitor the secret gatherings because: "We do not believe that the Commissioners need chaperones."

Unfortunately, the Commission's handling of this matter and its overall expressed hostility to the Sunshine Act does not engender the public confidence necessary to have such an open ended rule; indeed, it has fostered an atmosphere of distrust.

At bottom, the final rule is unacceptable because there has yet to be any demonstration of valid need for it. To be sure, despite the Commission's claim that doing business in public has resulted in a loss of collegiality, the Commission has been unable to demonstrate that its old Sunshine Act regulations actually interfered with the NRC mandate of protecting public health and safety. While it is true that the agency has significant management problems, I find it hard to believe that secret meetings are really the answer to the agency's problems. Part of doing the public's business is doing it in public. The practices of other Federal agencies, which the Commission cites as justification for its rule change, are not really applicable since none of those other agencies have the same responsibiity of protecting public health and safety.

Not surprisingly, the absense of a clearly defined need for the rule change has led to a rule which is uncomfortably, and perhaps illegally, vague. The Commission's inability to publicly describe exactly what "gatherings" it would hold under the new rule that it could not previously hold as either open or closed meetings under the old Sunshine Act regulations is the best evidence of this further problem.

There is one change in the General Counsel's proposed final rule worth noting. This version would no longer specifically allow the Commission to hold "secret gatherings" on technical issues involving nuclear safety. As you know, I was particularly critical of this provision in the initial rule at the Subcommittee's May 21, 1985 hearing. While this change removes one seriously objectionable part of the rule, the entire proposal remains seriously flawed because it will lead to exclusion of the public.

I wish to advise the Commission that if it proceeds to finalize this rule on January 17th, then I intend to take two actions. First, I will continue to insist upon the reporting requirements established in the letter dated June 3, 1985 that was

also signed by the Full Committee Chairman and the Ranking Minority Members of the Full Committee and this Subcommittee. Second, I will seek to legislatively repeal the Commission's new rule through the passage of H.R. 2743.

Finally, I would like to advise you that I intend to publicly release the General Counsel's December 6, 1985 memorandum to the Commission (SECY-85-67A) because of the overriding public interest in learning in advance of the Commission's decision to further exclude the public from the regulatory process. The public should be aware of the General Counsel's response to objections raised in the public comment process prior to any final Commission vote. If you have a particularly compelling reason for why the public interest would be better served by maintaining the secrecy of this document, please personally contact me by 12:00 noon tomorrow, Friday, January 3, 1985.

There has been an outpouring of negative public response to the Commission's initial decision. I urge you to reconsider your folly. You have very little to gain and much to lose.

Sincerely,

Ed Markey

Edward J. Markey
Chairman