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NUCLEAR REGULATORY COMMISSION

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IN THE MATTER OF:

PUBLIC MEETING

SECY-78-212 - RECONSIDERATION OF BOARD NOTIFICATION  
PROCEDURES

Place - Washington, D. C.

Date - Thursday, 4 May 1978

Pages 1 - 21

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1 NUCLEAR REGULATORY COMMISSION

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3 PUBLIC MEETING

4 SECY-78-212 - RECONSIDERATION OF BOARD NOTIFICATION  
5 PROCEDURES

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10 Room 1130  
11 1717 H Street, N. W.  
12 Washington, D. C.  
13 Thursday, May 4, 1978

14 The meeting convened at 10:40 a.m., Chairman  
15 Joseph M. Hendrie presiding.

16 COMMISSION MEMBERS PRESENT:

17 Joseph M. Hendrie, Chairman

18 Peter A. Bradford

19 Richard T. Kennedy  
20  
21  
22  
23  
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P R O C E E D I N G S

1  
2 CHAIRMAN HENDRIE: Why don't we proceed on  
3 reconsideration of Board Notification Procedures?

4 MR. BOYD: Thank you, Mr. Chairman.

5 Let me make a few brief remarks.

6 The Commission last considered this on January 24,  
7 and if you recall, requested the views of the Licensing Board  
8 and the Appeal Panel on the then proposed staff procedure  
9 for Board notification.

10 The basic thrust of these views was that the  
11 safety evaluation and the FES should by definition contain  
12 all relevant and material new information up to that point,  
13 and that only thereafter should the Boards and Panels be  
14 supplied routinely with ongoing docket information.

15 The Licensing Board suggested in its memo that  
16 this procedure be something that could be adopted on a six-  
17 month trial. And the Appeal Panel suggested that it would  
18 monitor this new system over that period and decide at that  
19 time whether there were to be any further modifications.

20 Begging the question slightly as to whether this  
21 should be a trial program or not, I would say that the staff  
22 agrees with and accepts these Board and Panel views, would  
23 propose with the Commission's direction that this new system  
24 be implemented. And if in fact, it turns out 6 months, 8  
25 months, a year from now, that further modifications appear

1 appropriate, it shouldn't be at all difficult to implement  
2 them.

3 CHAIRMAN HENDRIE: That is, you can always fix  
4 something that doesn't seem to be working well, and there  
5 doesn't seem to be any very strong reason to make the pro-  
6 cedure something which self-destructs in six months unless  
7 you do something. Maybe we ought to, if we go this way,  
8 make it this is the procedure we are going to use and tell  
9 ourselves, please write down the 6-month date or whatever  
10 seems appropriate, and we promise we will take a look at it  
11 at that point.

12 You can make an information report from the staff  
13 point of view and the Board/Panel view and see how that  
14 fits.

15 MR. BOYD: Exactly, there should be no problem  
16 with that.

17 Once the staff got over the hurdle of accepting  
18 the Board and Panel recommendations, we revised the proposed  
19 memo from the EDO to the staff, implementing this procedure  
20 which is in the revised Commission paper and enclosure 2.

21 We modified the proposed public announcement which  
22 fits in enclosure 4.

23 Three comments, I would like to make associated  
24 with this, one of which can be seen graphically on the charts  
25 are in the paper in enclosure 3 and also I have passed out

1 slightly enlarged copies of these.

2 The most difficult aspect of Board notification  
3 turns out when you consider it as an agencywide procedure is  
4 to try to visualize its implementation. And in trying to  
5 visualize its implementation so there would be no loose ends  
6 or no areas subject to being ignored critically, I came up  
7 with the following 2 charts. For better or for worse, I  
8 think almost every eye is dotted and t is crossed.

9 The first chart shows the overall staff's  
10 process. The top part of it shows how internally generated  
11 information would flow. And the middle part of the chart  
12 shows how externally generated information would flow. And  
13 toward the bottom, all of this information would funnel through  
14 the office of the Legal Director and hence on to the Boards.

15 It is as you can see from the charts a rather  
16 complicated process. Trying to expand the major program  
17 office, NRR or NMSS and see just what functions would be  
18 required there, I came up with a second chart showing what  
19 the NRR system would have to be, taking into account all  
20 4 divisions being involved in the question of Board notifi-  
21 cation and how all of the information would have to pass  
22 back and forth appropriately between the divisions and as  
23 well as coming in from the other offices and thence on to  
24 OELD.

25 I think we have everything outlined in that second

1 chart that one could at that point reduce the detailed pro-  
2 cedures for all the offices.

3 Another complexity we didn't mention last time --

4 CHAIRMAN HENDRIE: Have you reviewed these charts  
5 for faults of the first kind, i.e., you look for boxes which  
6 only have incoming arrows, indicating there will be, you  
7 know, that they will suffocate, or similarly boxes with only  
8 outgoing arrows which indicate that they are some sort of  
9 source.

10 MR. KENNEDY: Mr. Chairman, I noticed at one point  
11 in the chart, they didn't indicate the idiameter of the pipes  
12 incoming and outgoing, and I was a little worried about the  
13 pressure levels that were going to be generated.

14 MR. BOYD: They are all 24 inch pipes.

15 MR. KENNEDY: Then, the suffocation will occur  
16 at the Board level.

17 CHAIRMAN HENDRIE: Sorry to interrupt you.

18 MR. CASE: I think, Mr. Chairman, although we  
19 didn't do it that way specifically, both Roger and I went  
20 over this several times.

21 CHAIRMAN HENDRIE: I haven't found one like that,  
22 by the way.

23 MR. BOYD: Eventually, it gets to the Board.

24 The second complexity that I should like to take  
25 the opportunity to bring up involves what I foresee in many



1 cases and have foreseen as the length of time that it takes  
2 in some cases for an initial decision of the Hearing Board  
3 to become the final decision of the Commission. In some  
4 cases owing to various appeals and extended times for con-  
5 sideration, some of these cases as I perceive them appear  
6 to drag on for years.

7 If you look at the guidance in the rules for a  
8 simple case, it talks, at least unless the rules have been  
9 changed, of something like 45 days for an appeal decision  
10 and 10 days for Commission review.

11 And if you envision Board notification to the  
12 Appeal Board and the Commission over a period of 55 days,  
13 it sounds rather simple. However, in practice, it appears  
14 to me that a number of them go on as I say for perhaps years.

15 As we would apply this system, we would take a  
16 case still pending in the system and say, "Yes, indeed, if  
17 something new comes up that applies to that case, it must be  
18 forwarded on through either the Appeal Board or the Com-  
19 mission, or whatever is appropriate."

20 CHAIRMAN HENDRIE: Would the material channel  
21 always to the original Board or would it deflect up the line  
22 to the Appeals Board and then to the Commission as those stages  
23 were reached?

24 MR. CASE: It would generally deflect, although  
25 I understand the Appeals Board has a procedure now that



1 everything is sent to the Board it automatically gets, but  
2 that is its choice.

3 MR. BOYD: The way the procedure is laid out and  
4 how we would probably implement it, if in fact the Commission  
5 is the appropriate source to receive this information, we  
6 would funnel it to the Commission, at the same time probably  
7 providing a copy to the Appeal Board for information and  
8 perhaps even a copy to the Licensing Board for information.

9 In the case of the Appeal Board being the focus,  
10 we would sent it to the Appeal Board directly, and at that  
11 point also probably sending an information copy to the  
12 Licensing Board.

13 CHAIRMAN HENDRIE: So that after the Licensing  
14 Board had, for instance, issued an initial decision, the  
15 primary flow then, of material from that docket would go to  
16 the Appeals Panel.

17 MR. BOYD: Yes, sir.

18 CHAIRMAN HENDRIE: If the Appeals Panel passed  
19 upon it, we would get it up here.

20 MR. BOYD: Yes, sir.

21 One of the increments of the procedure is to have  
22 OELD provide all the offices with monthly status reports  
23 on all the siting Boards, Appeal Board cases and Commission  
24 cases so that we will know who is on first and know where to  
25 send this stuff. It is easy for us to determine technically

1 where a piece of information ought to go with respect to the  
2 cases involved, but in many instances, we don't know where  
3 these cases are in the process. Is it still before the Appeal  
4 Board? Is it still before the Commission?

5 MR. KENNEDY: Could somebody describe the nature  
6 of this assessment of significance which OELD is going to  
7 provide to the Boards?

8 MR. CASE: It will be a staff submittal of what  
9 we think the technical evaluation of --

10 MR. KENNEDY: Oh, okay.

11 MR. BOYD: And it relates --

12 MR. KENNEDY: It is not talking about its signi-  
13 ficance in the case, but rather its significance in a  
14 technical sense.

15 MR. CASE: As related to the case.

16 MR. KENNEDY: Oh, I know, but I mean not saying  
17 this is something you really ought to look at.

18 MR. BOYD: No.

19 CHAIRMAN HENDRIE: It may include.

20 MR. KENNEDY: It may lead them to that conclusion.

21 CHAIRMAN HENDRIE: But it may include some input  
22 from OELD of a legal nature. I think it is best to regard it  
23 as an overall evaluation by the staff in terms of the technical  
24 meaning in the health and safety sense as well as the --

25 MR. BOYD: Let me take a crack at it. The concept

1 stems from the Appeal Board decision in Vogel where the  
2 Appeal Board said it is up to the staff to provide relevant  
3 material, new information, to the Board. It is up to the  
4 Board to determine its significance.

5 So we said logically, rather than dump all this  
6 information on the Board and say, "Hey, we think by definition  
7 this is relevant and material," we ought to go on and assess  
8 for them our view as to the significance, even recognizing  
9 it is the Board that has to make the determination of signi-  
10 ficance.

11 MR. KENNEDY: Okay.

12 MR. BOYD: It seemed like the gentlemenly thing  
13 to do.

14 MR. KENNEDY: In other words, having made the  
15 final determination of relevancy and materiality, you are  
16 explaining to them why you made that judgment in fact.

17 MR. BOYD: Yes.

18 MR. KENNEDY: Okay.

19 MR. BOYD: The last point I would like to bring  
20 up is implicit in this proposal is a need for a training  
21 program to acquaint the staff with all the Board notification  
22 and responsibilities which I see is in accordance with one  
23 of the recommendations in the GAO Report that had been  
24 prepared for Senator Hart on Board notification.

25 And so we have that essentially, not only as an

1 adjunct followup to that recommendation, but I think as an  
2 integral part of this Board notification process, especially  
3 recognizing how complicated it is.

4 CHAIRMAN HENDRIE: Let's see, since the staff has  
5 accepted or very nearly wholly accepted the Board and Panel  
6 recommendations on how to handle these things, are there  
7 objectors or commentators near and far?

8 MR. CASE: I don't know of any objectors. There  
9 may be commentators on something; I don't know.

10 CHAIRMAN HENDRIE: Well, the system has inevitably  
11 a shade more complexity this way than originally proposed,  
12 but not a great deal, it seems to me, from the Commission's  
13 viewpoint.

14 From where I sit, not from where you sit, but from  
15 where I sit, if you just put another stamp and stamp a  
16 new address on every piece of paper that comes in and just  
17 send it out, that may be an easy handling procedure for you.

18 From my standpoint, it the Licensing Boards now  
19 have to put together a great administrative staff with some  
20 technical people and some legal people and clerical people to  
21 handle it and make some sort of early determination for them  
22 of what it means and so on, that is not a help to us.

23 So I think this procedure which puts back in the  
24 hands of the more experienced and I really think expert  
25 staff on these matters the job of doing this and of sorting

1 out the papers and getting them channeled in the right  
2 place, I think that increases your problems over the original  
3 proposal.

4 But from the Commission's standpoint, at least  
5 where I sit, it is a substantial improvement in an overall  
6 sense.

7 MR. CASE: I would also consider it to be a vote  
8 of confidence on your part that the staff at least in that  
9 part of the process can handle all that material itself. That  
10 is, before we submit our SER's.

11 CHAIRMAN HENDRIE: Well, one of these days, we  
12 will go through the charts with you and see how it is all  
13 working out. And I think, indeed, it is a very helpful thing  
14 to not have to deal with all of the individual papers and  
15 assess them, get them on the Boards and so on, up through  
16 the point where the staff has submitted essentially its  
17 complete testimony before the hearing on both health and  
18 safety and environmental side, and to include in that every-  
19 thing that we think they ought to know.

20 I think that is fair enough.

21 MR. CHILK: Mr. Chairman?

22 CHAIRMAN HENDRIE: Sam, you have a comment?

23 MR. CHILK: Can I just ask one question? How much  
24 more material would you estimate is going to wind up in the  
25 Public Docket Room?

1 MR. KENNEDY: That's a good question.

2 MR. CASE: None. Because all of the material we  
3 are talking about is already --

4 MR. CHILK: Is already released.

5 MR. CASE: There may be copies of transmittal  
6 letters and things like that. So there might be some volume,  
7 but --

8 MR. BOYD: May I modify it only slightly. For  
9 externally generated information, absolutely none. Everybody  
10 is getting it now except the Boards. For internally generated  
11 information and a system that churns up internally generated  
12 information, I think it is totally unpredictable. It will  
13 depend on how much internally generated information thought  
14 to be relevant and material that later turns out in fact to  
15 be relevant and material there really is.

16 MR. CASE: Well, but the trigger of internally  
17 generated information is the staff decides that the paper  
18 says that it is important enough or significant enough to  
19 get some information from some outsider. That correspondence  
20 is put in the Docket Room anyway.

21 MR. KENNEDY: Okay.

22 CHAIRMAN HENDRIE: You were going to say?

23 MR. KENNEDY: I was going to say I'd recommend  
24 we approve of the recommendation. But I would add that I  
25 think it would be useful to anticipate a review, let the

1 Boards know that --

2 CHAIRMAN HENDRIE: Oh, yes, I think it ought to  
3 be --

4 MR. KENNEDY: We ought to say that perhaps in a  
5 notice.

6 CHAIRMAN HENDRIE: I think it ought to be explicit  
7 in the Commission decision or be reflected in the EEO  
8 memorandum.

9 MR. BARDFORD: Perhaps in the press.

10 MR. KENNEDY: I was thinking in the press, the  
11 typical short note that the Commission will review the  
12 experience with this new procedure in X months, whatever. And  
13 I would think 8 or 9 months. Six months seems a bit too  
14 short.

15 CHAIRMAN HENDRIE: Six months seems a little on  
16 the shy side. I wouldn't even object to a year as a matter  
17 of fact.

18 Why don't you decide what is reasonable?

19 Peter, what do you think?

20 MR. BRADFORD: Let me just pursue with you for a  
21 minute the sentence on page 4. The staff has already con-  
22 cluded (not intelligible) comments received in the course  
23 of development of regulations, code standards and guides should  
24 not be provided to the Boards.

25 Does that specifically have reference to the



1 situation like the connector problem?

2 MR. CASE: No. I wouldn't think so.

3 MR. BRADFORD: Why not?

4 MR. CASE: Well, there are so many things in the  
5 connector problem. I guess it depends on which part of it  
6 you are thinking of. Research results, no. If they are  
7 relevant and material, they would have gone.

8 So it is meant to deal with when Mr. Minogue  
9 develops a standard or a guide, he first -- somebody prepares  
10 a draft, and he generates a lot of comments internally, both  
11 within the staff and outside his staff.

12 Those could be considered material and relevant  
13 to some issues that the Board is considering. But they are  
14 really not directed that way. And comments that he gets from  
15 external organizations on the code or standard, quite  
16 similarly. And we are trying to exclude those as a class  
17 as long as they are commenting on something under development,  
18 regulation, both guide or standard.

19 Now, within that mass of information, it is con-  
20 ceivable that a commentor might say, "I don't agree with  
21 this particular part of your proposed guide because there has  
22 been some experiments conducted over here that show thus and  
23 so."

24 We would say that that kind of information, the  
25 experimental information, we would hope by Mr. Minoque's

1 staff would be extracted and sent over to us as perhaps  
2 relevant material.

3 So you would get the information, but not the  
4 comments and the guides is what I am trying to say. And  
5 as a matter of fact, that is what we have done. There is a  
6 letter from Congressman Dingell relevant to this subject.  
7 And, first, it was thought to mean all of the comments on  
8 guides and standards. And we went back to him and he said,  
9 no, he didn't mean that.

10 But we did take all of those comments to see if  
11 there was such material in them and did include them in the  
12 Dingell pile. So it's that kind of procedure that we meant  
13 to address. It is not too well expressed. It is hard to  
14 express it in a few sentences.

15 CHAIRMAN HENDRIE: Let's see, where are the words,  
16 Peter?

17 MR. KENNEDY: Bottom of page 4, second paragraph  
18 from the bottom, last sentence.

19 CHAIRMAN HENDRIE: Oh, yes.

20 I think what we mean is, for example, staff  
21 has already concluded the comments received in the course of  
22 development of the regulation and code should not ordinarily  
23 be provided to the Board. They may very well be matters  
24 that arise in such a proceeding where the staff would consider  
25 it appropriate when notified.

1 MR. KENNEDY: May be continually.

2 CHAIRMAN HENDRIE: But the great mass of that  
3 material routinely ebbs and flows between loads of people  
4 and their commenters outside is a general proposition, not  
5 the sort of thing that the Boards ought to have to look at.

6 MR. CASE: It is those very things that the standard  
7 setter, either you or Mr. Minogue himself, considers in the  
8 development of the standard. That is its purpose. And they  
9 are considered in that form.

10 MR. BRADFORD: Does anything that you have here  
11 change the responsibility of licensees to report information  
12 to you after the development of the staff documents?

13 MR. BOYD: Absolutely not.

14 MR. BRADFORD: How is that duty defined now?

15 MR. CASE: It is only defined in McGuire?

16 MR. BOYD: I believe.

17 With respect to relevant and material new infor-  
18 mation and Board notification, it is expressed in McGuire,  
19 Appeal Board decision in McGuire and reaffirmed in Vogel.

20 As far as information relating to safety, for  
21 example, at any time is covered in Part 21 or 5055(e), and  
22 other parts of the regulations. But that is notifying the  
23 Commission.

24 In this case, it is Mr. Case. But where Board  
25 notification is concerned, it is strictly the Commission law

1 that comes down from McGuire.

2 MR. BRADFORD: Does that also relate to NEPA or  
3 is that just safety?

4 MR. BOYD: McGuire also relates to NEPA.

5 MR. CASE: Well, it was written in the safety  
6 area. I suppose you could get some argument as to whether  
7 it applies.

8 MR. BRADFORD: The staff reads it as relating to  
9 NEPA?

10 MR. BOYD: A, we read it as relating to the  
11 environmental and the words "and environmental" is included  
12 in that decision. It is, indeed. It is somewhat of a  
13 parenthetical expression, but it's there.

14 In any event, our procedure clearly lays out a  
15 whole track for the environmental part of this. In most cases,  
16 you know, they are separate hearings.

17 Now, one adjunct made clear by the Boards is that  
18 we don't start funneling extra environmental information until  
19 after the FES. We don't start funneling in relevant material  
20 new safety information until after the SER. So in some  
21 cases, the Boards will be on one service list, but not on the  
22 other yet because of the differences in time of the 2 parts  
23 of the process.

24 MR. BRADFORD: But you are satisfied that if the  
25 licensee develops new environmental information after those

1 documents have been filed, they are under some duty to bring  
2 it to your attention?

3 MR. BOYD: And also to the attention of the Board.  
4 They are under an obligation under McGuire to inform the  
5 Board.

6 McGuire says both staff and applicants have a duty.

7 MR. BRADFORD: How does that work in practice if  
8 the only place where that duty is clearly spelled out is in  
9 an Appeals Board decision, and if that isn't done, what  
10 are the sanctions?

11 MR. BOYD: Jim?

12 MR. MURRAY: Well, the Board can criticize the  
13 staff, draw it to the Commission's attention and have the --

14 MR. BRADFORD: What about the licensee, though?  
15 It's the licensee instead of the staff.

16 MR. MURRAY: I would presume that this would  
17 bear on anything the licensee was authorized to do or was  
18 seeking authorization for. In other words, we could withdraw  
19 the authorization to do whatever he has been doing or we  
20 could recommend against him getting the authorization he  
21 might be seeking.

22 If he is before a Board, he will be seeking some-  
23 thing.

24 MR. BRADFORD: But the sanctions would be in the  
25 context of what he is seeking. It is not the same thing as

1 a violation of a regulation.

2 MR. MURRAY: That is correct.

3 CHAIRMAN HENDRIE: It doesn't fall under civil  
4 penalties and so on.

5 MR. MURRAY: I can't be sure that we couldn't make  
6 a case under some provision of the regulations under all  
7 circumstances. It would depend on the specifics of the case.  
8 But normally, if it is a violation of nothing more than the  
9 injunction laid down by the Appeal Board and doesn't, as it  
10 might, relate to some other regulation, then it would not be  
11 subject to civil penalties.

12 MR. BRADFORD: What was the Appeal Board drawing  
13 on in laying down that injunction? Were they interpreting  
14 a regulation or statute?

15 MR. MURRAY: No. My recollection is that they  
16 were just setting forth the normal what they conceived of  
17 to be the normal duties of litigants before the Board in  
18 assisting them in arriving at their decision.

19 CHAIRMAN HENDRIE: Are we --

20 MR. BRADFORD: What is needed of us today?

21 CHAIRMAN HENDRIE: If we think well of the propo-  
22 sition, I think it would be desirable to go ahead and vote it  
23 into place with any modifications necessary.

24 Let me ask about the 6-month trial period. Is  
25 that part of the memo?

1 MR. BOYD: No. It is not part of the memo, nor  
2 is it part of the press release. We would just plan -- and  
3 I really think you are probably right, a year is much better.  
4 It was Jim Yoers' suggestion of 6 months. But I think a  
5 year would probably be more appropriate.

6 At the end of that time, we would be getting input  
7 from the Appeal Panel. We, of course, would expect some  
8 input from the Licensing Boards, and we ourselves would have  
9 to go back and review this thing. And we could very easily  
10 put an information paper back to the Commission telling you  
11 how it has been going.

12 CHAIRMAN HENDRIE: To understand what is before  
13 the house, I would like us to understand that if we adopt  
14 it, it is not a thing which self-destructs after 6 months or  
15 a year, but rather a thing in which we would ask all the  
16 parties to provide us with an evaluation in about a year  
17 to see whether we ought to modify or do something else.

18 Okay. So that plus the memorandum outlining the  
19 policy here in the paper, I would define that as the issue  
20 before the house.

21 And are you ready to take a position?

22 I'll ask for the "ayes."

23 (Chorus of "Ayes.")

24 So ordered.

25 MR. GOSSICK: Also with the understanding if



1 there is a glitch that develops here, you know --

2 CHAIRMAN HENDRIE: If there is a glitch, we expect  
3 to hear from you immediately.

4 MR. BOYD: It is our view to notify Boards, Panels,  
5 and the Commission.

6 (Whereupon, at 11:10, the meeting was adjourned.)

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