

REQUEST REPLY BY 12/17/99



SECRETARY

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

December 2, 1999

COMSECY-99-037

RELEASED TO THE PDR
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date initials

MEMORANDUM TO: Chairman Meserve
Commissioner Dicus
Commissioner Diaz
Commissioner McGaffigan
Commissioner Merrifield

FROM: Annette Vietti-Cook, Secretary *Annette Vietti-Cook*

SUBJECT: INTERNAL COMMISSION PROCEDURES

Attached is a proposed revision to Chapter IV "Commission Meetings" of the Commission's Internal Procedures. Chapter IV has been revised to include a process for stakeholder participation in Commission meetings and to include reference to Non-Sunshine Act discussions. May I please have your comments by c.o.b. December 17, 1999.

Attachment:
As Stated

cc: OGC
EDO
CIO
CFO

DF03

CHAPTER IV

COMMISSION MEETINGS

GOVERNMENT IN THE SUNSHINE ACT

The Government in the Sunshine Act (PL 94-409) requires the collegial agencies of the Federal Government, including the NRC, to open meetings of their Commissioners to public observation except where the subject matter falls within one of the specific categories of exemption. The law is based on the premise that "the public is entitled to the fullest practicable information regarding the decision-making process of the Federal Government." The Government in the Sunshine Act applies to meetings of at least a quorum of Commissioners where deliberations determine or result in the joint conduct or disposition of official Commission business. This Chapter primarily describes procedures only for Commission meetings which are governed by the Sunshine Act, and briefly covers the scope of Non-Sunshine Act discussions.

The Act favors open meetings. An agency, however, is allowed to close a meeting or portions of a meeting or to withhold information about a meeting or portions of a meeting if the agency determines that the meeting or portions thereof, if opened, or the information, if released, would likely disclose exempted information protected from disclosure under one or more of the 10 exemptions authorized by the Act. A list of these exemptions is contained in 10 CFR Part 9. Determinations to close a meeting require a recorded majority vote of the entire Commission membership.

The Act further requires NRC and similar agencies to publicly announce, at least one week prior to each meeting, its time, place, and subject matter, and whether it is to be open or closed. The agency can provide less than 7 calendar days notice of a meeting, provided a majority of the Commission membership determines by recorded vote "that agency business requires" less notice.

DEVELOPMENT OF COMMISSION SCHEDULE

1. SECY prepares weekly a schedule of Commission meetings from an assessment of the following considerations:
 - a. a projection of anticipated meeting subjects from the EDO;

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- b. projections and requirements known to SECY;
 - c. input from Commissioners, OGC, OCA, IP, CFO, and CIO;
 - d. availability of Commissioners;
 - e. readiness of affirmation items;
 - f. requests for meetings with the Commission by outside agencies or organizations; and
 - g. requests for a meeting by any Commissioner.
2. First priority is given to the scheduling of meetings, principally from 10:00 a.m. to 11:30 a.m., and from 2:00 p.m. to 3:30 p.m., on days when all Commissioners are available. When outside stakeholders are to be included the meeting time would be extended from 1-1/2 hours to 2 hours.
 3. Factors such as holidays, Congressional hearings, availability of staff, and the conflicting schedules of individual Commissioners influence the dates and times available for meetings. As part of the data-gathering process, Commissioners' staffs enter individual travel and leave plans and other appointment information of each Commissioner into an on-line automated calendaring system which provides an integrated daily schedule of Commissioner availability.
 4. SECY meets at pre-agenda sessions with the Chairman, and representatives of OGC, EDO, and OCA. SECY also briefs the Executive Assistants from each Commissioner's office on the agenda prior to an Agenda Planning Session. SECY provides a proposed Commission schedule with 7 planning weeks. The results of the meeting form the basis for the Chairman's proposed agenda to the other Commissioners.
 5. The schedule, as approved by the Chairman, is reviewed and approved by the Commission at Agenda Planning Sessions conducted by the Chairman. Commissioners and/or their representatives and representatives from EDO, CIO, CFO, OGC, SECY, OCA, and OPA, and OGAA normally attend and participate as appropriate. In recognition of the collegial process, an individual Commissioner's request that a meeting be scheduled will be granted unless a majority of the Commission disapproves the request. The approved schedule for the subsequent 7 6 week period is published by SECY and given wide circulation to the

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Headquarters and Regional Offices. A summary of the schedule for a 6 week period is also released to the *Federal Register* for publication and posted to the NRC Home Page on the World Wide Web.

6. In addition, the Secretary includes in the Commission's agenda scheduling package a listing of projected future meetings, projected and completed Commissioner visits to nuclear power plants and other facilities, schedules of emergency planning exercises, and a 12 month projection of Commissioners' travel and leave.
7. Guidelines for stakeholder participation in Commission meetings:
 - (a) In planning Commission meetings the Office of the Secretary, in coordination with the staff, will identify particular meetings where stakeholders could be invited to speak at a Commission meeting. Emphasis will be given to meeting topics where a decision by the Commission on the topic is required (e.g. a notation vote paper is or will be before the Commission for action).
 - (b) The Office of the Secretary, in coordination with the staff, will prepare a list of stakeholders that could be considered for invitation to brief the Commission. The staff should identify to the Office of the Secretary the stakeholders that have shown interest in the particular meeting topic, along with its views for participation that could assist the Commission in making its decision (e.g., particularly active stakeholders). The list will be distributed to the Commission and discussed as part of Agenda Planning.
 - (c) The Commission will decide as part of Agenda Planning who will participate in the Commission meeting. Priority consideration will be given to other Federal Agencies, States, elected officials, tribal governments, organizations that represent a broad spectrum of views that have specific interest in the meeting topic and bring a unique perspective to the briefing, and experts on the subject matter. To the extent practical, the Commission will attempt to balance the interests of the groups represented at the meeting. The Commission's goal of including stakeholders in Commission meetings is to give the Commission information on a cross section of views on a given topic. It is not the intent, nor is it realistic, to try to have every different view on a given topic represented at a meeting. Other organizations and individuals who wish to speak will be encouraged to coordinate common interests with presenters who have agreed to participate and/or submit written comments for Commission consideration, which will be included as part of the record. The Commission will not normally reconsider a decision

not to invite a stakeholder, assuming that the stakeholder was identified and previously considered in the Commission's deliberations on participation. Should a stakeholder who was not considered ask to speak, the Commission reserves the option to consider whether their addition to the meeting would be helpful to the Commission. Such a request should be made in writing to the Secretary of the Commission 3 weeks in advance of the announced briefing. The written request should be clear on who is being represented, and the unique perspective that would be provided at the briefing. Normally, the Commission will finalize the participants for a Commission briefing at least 2 weeks in advance of the meeting.

(d)

The Office of the Secretary will arrange the briefings and invite the participants that have been agreed to by the Commission. Only one speaker will be permitted per party unless the Commission determines that broader participation is desirable and necessary. The length of the meeting will be extended to 2 hours. Outside participants will be grouped into panels as appropriate. The letter of invitation from the Secretary will state that participants should submit written material no later than 5 business days in advance of the meeting and should summarize their key points at the Commission meeting in 5-10 minutes. The amount of time for each speaker will be determined in the context of Agenda Planning. The letter will clearly state if any different deadlines apply. The Commission reserves the right to withdraw an invitation to speak if the written material on the presentation is not provided 5 business days in advance of the meeting date.

(e)

NRC staff will submit to the Commission pertinent SECY Papers, or other documents 15 business days in advance of the scheduled Commission meeting. The Commission will be given at least 2 business days to review the staff's meeting materials to determine if they should be released to the outside meeting participants and the public. It is the goal of the Commission to make these documents available to meeting participants and placed in the Public Document Room at least 2 weeks in advance of the Commission meeting. If meeting materials are not received in a timely manner, the Commission meeting may need to be rescheduled.

FORMAT FOR COMMISSION MEETINGS

The Commission has conducted business in both open and closed meetings and in several different meeting formats over the years. Adjustments in style, format, and conduct are

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made to best suit the information gathering and decision-making needs of the Commission.

The vast majority of Commission meetings are open for public observation. Members of the public may attend meetings held in the Commission's main conference room, observe the presentations and discussions, and obtain copies of NRC documents released at the meeting. They may not address the Commission or other meeting participants without prior Commission approval. ~~Members of the public that desire to speak at a Commission meeting should submit their requests in writing to the Secretary of the Commission.~~

Under certain circumstances allowed by the Government in the Sunshine Act, the Commission may meet in closed session. A separate conference room is normally utilized for this purpose.

1. Open/Public Commission Meetings

As previously noted, the Government in the Sunshine Act presumes that most Commission meetings will be conducted in public. Open meetings are held to enable the Commission to gather information in Briefings by NRC staff members,¹³ the regulated industry, and members of the public in fulfillment of the Commission's responsibilities. In addition to gathering information in staff briefings, the Commission may utilize its meetings to provide the staff with guidance on future activities, and/or Vote on specific issues such as restart of a nuclear plant. Commission voting and decision-making activities may occur at the end of briefings by the staff, industry and/or public, or voting may occur at a later date after the Commission has had the opportunity to consider the information received during the briefing or from other documents and views. Commission meetings and briefings are generally scheduled to last 1-1/2 hours to 2 hours.

Voting does occur at short meetings (Affirmation Sessions) held to affirm positions previously taken in the notation voting process (see Chapter II for a description of Affirmation Papers and Chapter III "Votes at Commission Meetings"). Affirmation Sessions which may involve a short 5-10 minute discussion of issues, are required, by law,¹⁴ to

¹³ The procedures for staff presentations at Commission meetings are in Appendix 8.

¹⁴ The provisions of the Energy Reorganization Act of 1974 require that a "quorum for the transaction of business shall consist of at least three members present" and that "[Action of the Commission shall be determined by a majority vote of the members present" (42 USC 5841). The Commission has determined that the requirement of "presence" does

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enable the Commissioners, in the presence of each other, to formally ratify votes previously cast by paper ballot. Affirmation Sessions are generally scheduled to obtain a formal vote of the Commission on recommended actions which legally bind those the NRC regulates or has a significant legal effect on persons outside the Commission. Such actions usually involve the issuance of final rules or adjudicatory orders. Significant Orders of the Commission (and its Licensing Boards) are printed in a cumulative compilation of NRC adjudicatory decisions entitled *Nuclear Regulatory Commission Issuances*.¹⁵

The Commission may also hold occasional open meetings for a **Collegial Discussion** of a variety of matters of current interest to individual Commissioners. These meetings, while open to the public, do not usually have a formal agenda, do not involve the active participation of the NRC staff, and may or may not result in a Commission decision on any particular issue discussed.

All open meetings are transcribed by a stenographic reporting contractor for the Commission. Unedited copies of the transcripts are maintained by SECY and made available for inspection and copying by members of the public in the Commission's Public Document Room and, for meetings after September 1, 1991, may be viewed and downloaded from the NRC Home Page on the World Wide Web. Each transcript contains a disclaimer stating that it is not a part of the formal or informal record of decision of matters discussed and that expressions of opinion in the transcript do not necessarily reflect final determinations or beliefs.

2. Closed Commission Meetings

Under certain limited circumstances, the Commission may meet in closed session. The Government in the Sunshine Act allows the Commission to hold discussions in closed session when the discussion includes classified information, proprietary information, investigation and enforcement matters, internal management and personnel matters, certain adjudicatory/litigation matters, and information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed Commission action.

not preclude the Commission from meeting with the participation of a Commissioner who is "present" by speaker phone, so long as there is no impairment of the Commissioner's ability to hear and be heard by all those in the room, and no effect on the public rights of attendance and observation under the Sunshine Act.

¹⁵ Appendix 9 contains a description of the Orders published in the Nuclear Regulatory Commission Issuances document.

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A detailed set of "Security Procedures for Conducting Classified Meetings/Hearings" has been issued by the Division of Security and Facilities Support, Office of Administration, in consultation with the Office of the Secretary. See Appendix 10 for the complete procedures.

As with open meetings, closed meetings are also used to provide the Commission with information in briefings by the staff, and allows the Commission to make decisions (Vote) on issues requiring a decision.

The most common types of closed Commission meetings are:

Management and Organization – the Commission considers management, organization, and personnel issues requiring collegial attention. Attendance is very limited – often only the Commissioners attend.

Executive Branch briefings are held in closed session to permit representatives of Executive Branch Departments and Agencies to brief the Commission on classified matters related to the Commission's responsibilities for import and export of nuclear materials and production and utilization facilities or other matters relating to security and safeguards of nuclear material and facilities.

Investigative Matters – on occasion, the Commission is briefed in closed session by the Inspector General and/or the Office of Investigations on pending investigative matters.

Adjudicatory/Litigation – on occasion, the Commission is briefed in closed session by the General Counsel or the Office of Commission Appellate Adjudication on current adjudicatory/litigation matters.

As required by the Government in the Sunshine Act, NRC maintains a complete verbatim transcript or electronic recording of all closed meetings except certain adjudicatory meetings which may be recorded by detailed minutes. For every closed meeting, the General Counsel must certify that the meeting may be properly closed. The agency must maintain a copy of the General Counsel's certification along with a statement of the presiding officer of the meeting (the Chairman) stating the time and place of the meeting and listing the persons actually present. The Secretary prepares this statement for the Chairman.

The records of closed meetings (transcripts and/or tape recordings) are normally retained by SECY, the Division of Security, or the Office of the Chairman, depending on the

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classification and sensitivity of the meeting. These records may be released to the public following review and approval by the Commission. The reviews are conducted by the originators, other agencies if involved, Division of Security as needed, OGC, and Commissioners. SECY coordinates the review.

Long-hand minutes are used occasionally to record closed, adjudicatory meetings as permitted by the Government in the Sunshine Act. Minutes are prepared by SECY.

3. Non-Sunshine Act Meetings

Non-Sunshine Act discussions among three or more Commissioners are appropriate and legally permissible only when discussions are preliminary, informal, informational, or "big picture." If such a discussion begins to focus on discrete proposals or issues, such as to cause or be likely to cause individual participating members to form reasonably firm positions regarding matters pending or likely to arise before the agency, the discussion should be halted, and continued only in the context of a Sunshine Act meeting, scheduled in accordance with the requirements of that statute.

CONDUCT OF COMMISSION MEETINGS

1. The Commission desires to start its meetings promptly at the time scheduled. The Chairman or the designated Commissioner can begin a decision meeting as soon as a quorum of Commissioners is present.
2. The Chairman or designated Commissioner may begin non-decision meetings at the time scheduled but not later than 5 minutes after the scheduled start time unless a Commissioner has requested that the meeting be delayed.
3. Meetings are generally informal in nature; the Chairman or the designated Commissioner presides at all meetings and assures equal opportunity for participation and questions by all Commissioners present.
4. On occasion the Commission conducts formal sessions at which representatives of the parties in a particular adjudicatory proceeding are invited to present their positions in an Oral Argument before the Commission. Procedural arrangements are established in advance to determine the issues for discussion and to specify time limits for each Party's presentation.
5. A Commissioner who is unavoidably absent, such as because of medical leave or

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official travel, may take part in any Commission meeting, as described above in this Chapter, provided that he or she is in two-way communication with the other Commissioners in the meeting by a device (e.g., a speaker phone) that allows the voice of the absent Commissioner to be heard by all present in the meeting room, and that allows the absent Commissioner to hear the entire discussion in the meeting. This procedure applies whether or not the participation of the absent Commissioner is needed to create a quorum for the transaction of business. A Commissioner participating in a meeting by speaker phone has the same rights of voting possessed by every other Commissioner. When this procedure is employed, the Secretary will ensure that voices are properly identified.

MEETING-RELATED DOCUMENTS

1. Documents in Advance of Meetings

In order to prepare for matters to be discussed at meetings, the following documents are required in advance so that the Commissioners may familiarize themselves with the purpose and content of matters to be presented:

- a. For staff only briefings of the Commission, pertinent SECY papers, documents or briefing outlines by the staff unit involved must (except in extraordinary circumstances) be available to Commissioners at least 5 10 business days before a meeting on a particular subject is held. If the document is not available 5 10 business days in advance, the originating office should explain the reason to the Commission in a cover memorandum. Commissioners may request postponement of a meeting if they do not have sufficient time to review late arriving documents. When such requests are made, SECY discusses the issue with the Chairman and polls the other Commissioners to determine whether the meeting will be postponed.
- b. Viewgraphs, if they are to be used, should also be received by the Commission at least 5 business days prior to meetings.
- c. Any memoranda by Commission level offices pertinent to the subject matter should be available well in advance (at least 5 10 business days) of the meeting.
- d. For Commission meetings at which stakeholders have been invited to speak, pertinent SECY papers, documents, or briefing outlines should be forwarded

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to the Commission for review at least 15 days in advance of the meeting. This will allow the Commission time to review the documents prior to release to the meeting participants and the public.

2. Documents at Meetings

At open Commission meetings, SECY ensures that copies of the principal documents referenced in the Commission schedule and viewgraphs are placed near the entrance of the Commission Conference Room for members of the public. The presenters (staff unit or outside entity) are responsible for providing sufficient copies of the viewgraphs or other relevant written information for public availability and should ensure they arrive in the briefing room 20 minutes prior to the start of the meeting. SECY will provide copies of SECY papers. On occasion, additional documents will be available to members of the public at the meeting if it is anticipated that the discussion will draw upon information contained in the documents. Every document made publicly available at the meeting is placed in the Public Document Room after the conclusion of the meeting. Occasionally, documents are made available in the Public Document Room in advance of a Commission meeting on the subject.

STAFF REQUIREMENTS MEMORANDA

After meetings, Commission decisions are recorded in a Staff Requirements Memorandum (SRM) prepared by the Secretary and issued to the action addressee, with copies to the Commissioners and interested staff offices to memorialize the Commission decisions or actions that took place in the meeting and the requirements placed on the staff for implementing action. Procedures for developing, reviewing, and issuing meeting SRMs are identical to those described in Chapter III for voting SRMs.