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

OFFICE OF THE
GENERAL COUNSEL

July 28, 2000

The Honorable James M. Inhofe, Chairman
Subcommittee on Clean Air, Wetlands, Private Property
and Nuclear Safety
Committee on Environment and Public Works
United States Senate
Washington, DC 20510

RE: Natural Resources Defense Council, Inc. v. NRC, No. 99-1383 (D.C. Cir., decided July 14, 2000)

Dear Chairman:

This lawsuit challenged the Commission's implementation of new Sunshine Act rules, first promulgated in 1985 but not put into effect until last summer. The new rules give the Commission more flexibility to gather as a group, and to discuss general agency business, without triggering the Sunshine Act's procedural requirements. Under the new rules, the Commission can conduct "non-Sunshine Act meetings" where the discussions are not "focused on discrete proposals or issues" and are "not likely to cause the individual participating members to form reasonably firm positions."

Petitioners attacked the new rules as inconsistent with the Sunshine Act's definition of "meeting" and as containing insufficient procedural protections against Sunshine Act violations. The court of appeals (Edwards, CJ, Garland & Randolph, JJ) rejected both arguments. The court held that the "Commission has done nothing more than adopt, verbatim, the Supreme Court's own interpretation of the meaning of 'meeting' under the Act," and that a requirement of additional Sunshine Act procedures would run afoul of the Supreme Court's "injunction against imposing non-statutory procedural requirements on agency decisionmaking." See Slip op. at 2.

Petitioners have 45 days to seek rehearing or rehearing en banc before the court of appeals, and 90 days to seek Supreme Court review.

Sincerely,

John F. Cordes, Jr.
Solicitor

cc: Senator Bob Graham

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