

April 21, 1981



**POLICY ISSUE**  
(Commission Meeting)

SECY-81-202A

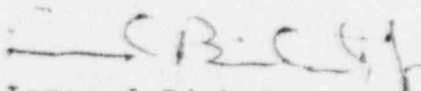


For: The Commission  
From: Leonard Bickwit, Jr., General Counsel  
Subject: PROPOSED AMENDMENT TO DRAFT POLICY STATEMENT  
ON EFFICIENT CONDUCT OF LICENSING PROCEEDINGS

Discussion:

On Wednesday, April 22, 1981, the Commission will meet on the Draft Policy Statement on the Efficient Conduct of Licensing Proceedings, SECY-81-202. A subject touched upon but not treated fully in the Draft Policy Statement is the boards' response to the failure of parties to fulfill their obligations. We believe this is worthy of more detailed Commission guidance and, therefore, have prepared a modification to the Draft Policy Statement for your consideration. The attached paragraph would be inserted in the statement in lieu of the second paragraph of Section II, General Guidance.

Comments of the Executive Legal Director and the Chairmen of the Licensing and Appeal Panels have been incorporated in this modification.

  
Leonard Bickwit, Jr.  
General Counsel

Attachment: Modification to  
Statement

Contact:  
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SECY NOTE: This paper, which is identical to advance copies which were distributed on April 20, 1981, is scheduled for discussion at an open Commission meeting on Wednesday, April 22, 1981.

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## MODIFICATION TO DRAFT POLICY STATEMENT

Fairness to all involved in NRC's adjudicatory proceedings requires that every participant fulfill its obligations imposed in accordance with applicable law and Commission regulations. While a board should endeavor to conduct the proceeding in a manner that takes account of the special circumstances faced by any participant, the board should assure that this does not result in prejudice to other parties. In this connection, the fact that a party may have personal or other obligations or possess fewer resources than others to devote to the proceeding does not relieve it of the hearing obligations that must be met to avoid such prejudice. When any participant fails to meet its obligations, the board should take whatever steps are possible to assure that no other party is adversely affected by the dereliction. A board should also consider the imposition of sanctions against the offending party. It is the Commission's view that sanctions have not been imposed in the past to the extent necessary to promote the expedition we now believe is needed. A spectrum of sanctions from minor to severe is available to the boards to assist in the management of proceedings. The Boards, for example, could warn the offending party that such conduct will not be tolerated in the future, refuse to consider a filing by the offending party, deny the right to cross-examine or present evidence, dismiss one or more of the party's contentions, impose appropriate sanctions on counsel for a party, or, in

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severe cases, dismiss the party from the proceeding. In selecting a sanction, boards should consider the relative importance of the unmet obligation, its potential for harm to other parties or the orderly conduct of the proceeding, whether its occurrence is an isolated incident or a part of a pattern of behavior, and all of the circumstances. Boards should attempt to tailor sanctions to mitigate the harm caused by the failure of a party to fulfill its obligations and bring about improved future compliance. At an early stage in the proceeding, a board should make all parties aware of the Commission's policies in this regard.

When the NRC staff is responsible for the delay of a proceeding because it has not met its obligations in a timely fashion, the Executive Director for Operations should apprise the Commission of this and provide an explanation. This may be done by separate memoranda or on a monthly basis in one memorandum covering all proceedings. This document will be served on all parties to a proceeding and the board.