

May 28, 1980

SECY-80-271

COMMISSIONER ACTION

For: The Commission

From: Leonard Bickwit, Jr., General Counsel

Subject: TMI-2 ISSUES IN NRC HEARINGS

Discussion: A question has been raised regarding possible use of the TMI Action Plan to restrict or better focus litigation of new issues raised by the TMI-2 accident in NRC licensing hearings by issuance of either a Commission statement of policy or an immediately effective rule. This memorandum discusses this legal question and makes some alternative proposals

General Administrative Law Principles

Section 4 of the Administrative Procedure Act (APA), 5 U.S.C. §553, generally requires that agency statements of general applicability and future effect which implement or prescribe law or policy be issued only after prior public notice and opportunity for public comment.

Soliciting public comment after the statement is issued in effective form does not excuse failure to comply with the APA section 4 requirement. U.S. Steel v. EPA, 595 F.2d 207 (5th Cir. 1979); Sharon Steel Corp. v. EPA, 597 F.2d 377 (3rd Cir. 1979).

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4-1465


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Recommendations:


Leonard Bickwit, Jr.
General Counsel

Commissioners' comments should be provided directly to the Office of the Secretary by
c.o.b. Thursday, June 5, 1980.

Commission Staff Office comments, if any, should be submitted to the Commissioners NLT
June 3, 1980, with an information copy to the Office of the Secretary. If the paper
is of such a nature that it requires additional time for analytical review and comment,
the Commissioners and the Secretariat should be apprised of when comments may be expected.

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