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POLICY ISSUE
(Notation Vote)

February 2, 1994

SECY-94-020

For: The Commissioners
From: James M. Taylor
Executive Director for Operations
Subject: REDUCING COMMISSION REVIEW OF CERTAIN
ENFORCEMENT ACTIONS

Purpose

To obtain the Commission's approval to implement two changes in the existing enforcement review process which should enhance the process by improving the timeliness of enforcement actions and reducing staff resource expenditures in preparing certain enforcement actions.

Background

Under the current enforcement process, the staff advises the Commission of the proposed issuance of a civil penalty or an order by issuing an Enforcement Notification (EN) three days in advance of the actual issuance of the civil penalty or order.

In addition, in March 1986, the Commission directed the staff to submit for Commission review and approval those enforcement issues and proposals in which the staff disagrees with one or more findings of the Office of Investigations (OI) regarding willfulness. See 10 CFR Part 2, Appendix C, General Statement of Policy and Procedure for NRC Enforcement Actions, Section III.(9). Since this directive was issued, the staff has prepared and submitted Commission papers on potential enforcement actions in every instance in which the staff does not agree with OI's findings.

In an effort to enhance the efficiency of the enforcement process as it relates to these matters, the staff proposes that the

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following changes be made to the enforcement review process:

1. The staff would issue proposed civil penalties and orders one day, rather than three days, after issuance of the EN to the Commission; and
2. The staff would not submit Commission papers for those cases in which the staff and OI disagree on OI's findings unless the Director, OI believes that Commission consultation is warranted.

Discussion

The staff routinely evaluates the enforcement process in an effort to identify potential efficiencies that can be introduced into the process. Recent informal reviews have determined that two practices that have been introduced into the enforcement review process over the years could be modified to result in some time savings and substantial resource savings in the issuance of enforcement actions. The practices and the staff's proposals for modifying each are discussed below. The staff considers this to be a particularly appropriate time for the Commission to consider process changes of this sort in view of the present agency-wide reevaluation of program priorities and resources.

1. Enforcement Notification Period

The staff proposes that the time between Commission notification, through an EN, and the actual issuance to a regulated party of a civil penalty or an order be reduced from three working days to one working day. Since the time that the EN system was first initiated and the three-day notification time period selected, there has been a substantial improvement in both the speed and the reliability of the electronic system used to effect the distribution of the notifications. In addition, proposed enforcement actions that either present unique or novel policy questions or involve unusually large civil penalties have been, and will continue to be, submitted to the Commission for review and approval prior to issuance. Consequently, most of the cases about which the Commission would likely have questions during the EN period will have received prior Commission review and approval in any event. Shortening the length of the EN notification period would not reduce the time the Commission would have initially to review such cases. Finally, since the institution of the EN process, a period of time over which hundreds of Enforcement Notifications have been issued, the Commission has only once requested, during the notification period, that the

issuance of an enforcement action be delayed.¹ This is some indication that the Commission has not found a substantial need to delay or modify the enforcement actions covered by these ENs. As noted above, the Commission would continue its prior review and approval process for unique, novel or complex cases, and shortening the notification period should not have any significant effect on the Commission's oversight of staff enforcement activities.

2. Commission Consultation Where Staff and OI Disagree

In March 1986, the Commission directed the staff to consult with the Commission on issues where there is a disagreement on OI findings on willfulness. In SECY-91-380, dated November 25, 1991, the staff requested that the Commission revise that policy so that disagreements on OI findings involving willfulness would be brought to the Commission only when the Director of the Office of Investigations believes that the matters are of such significance that Commission consultation is warranted. In a Staff Requirements Memorandum dated January 29, 1992, the Commission declined the staff's request that this policy be revised and directed that the existing policy in this area be continued.

After reviewing the papers submitted to the Commission under this policy over the last two years, the staff requests that the Commission reconsider its position on this issue. The number of papers submitted to the Commission under this policy over the last two years has been relatively small (4)²; however, their preparation has been very resource-intensive. In order to explain the basis for the disagreements with OI's conclusions, which often are only the result of very subtle differences in the

¹ EN 85-2 dated 1/11/85 - Proposed Enforcement Action Against TVA's Sequoyah Unit 1.

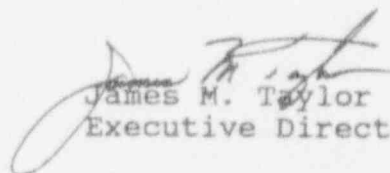
² See: SECY-91-387 (December 2, 1991) - Proposed Enforcement Action Against Georgia Power Company, Voyle Electric Generating Plant Units 1 & 2 (EA 91-141); SECY-92-112 (March 27, 1992) - Proposed Enforcement Action Against the University of Cincinnati (EA 91-071); SECY-93-065 (March 15, 1993) - Proposed Enforcement Action Regarding Harassment, Intimidation and Discrimination at Northeast Utilities Against Mr. P. Blanch and Untimely Processing of Substantial Safety Hazard Evaluation (EA 92-212); SECY-93-237 (August 24, 1993) - Proposed Enforcement Action Against the Department of Veterans Affairs VAMC, Birmingham, Alabama (EAs 92-204 and 93-174).

weighing of the evidence³, the papers usually need to discuss all aspects of the case to ensure that the Commission receives a balanced view of the issues. The staff now proposes to modify the process for this type of case by providing the Commission an extended (three day) EN notification period instead of a Commission paper provided that the Director of OI agrees that the action can go forward without Commission consultation despite the disagreement. The EN would specifically identify the staff disagrees with the OI's conclusions on willfulness.

It should be noted that, if the Commission approves this particular change to the enforcement review process, a change to the Enforcement Policy will have to be made. In particular, item 9 in the list of matters requiring Commission consultation in Section III of the Policy will have to be deleted. However, since such a change will only affect the implementation of the policy within the agency, the actual modification to the language of the Policy in 10 CFR Part 2, Appendix C can be delayed until the next formal revision to the Enforcement Policy.

Coordination: The Office of the General Counsel has no legal objection to these proposed enforcement review process changes. OI supports the proposed change involving consultation with the Commission in those cases in which the staff disagrees with OI since the Director of OI would retain the authority to require consultation with the Commission for any case in which the Director believes that Commission consultation is warranted.

Recommendation: That the Commission approve the changes to the enforcement review process that are proposed above.


James M. Taylor
Executive Director for Operations

³ It should be recognized that in many of these cases there is room for differing views on what conclusions the evidence may lead to -- i.e., reasonable persons can differ on the weight to be given to the evidence that was uncovered and on the conclusions to be drawn from such evidence. Most often where there are such differences, it is simply a reflection of differing perspectives on the issues by NRC technical staff relative to the perspectives of the OI investigative staff rather than fundamental and significant disagreements on the facts or on the adequacy of OI's investigative findings. The staff does not believe that these normal and routine differences in perspective or emphasis warrant Commission review. With the approach that is proposed here, significant disagreements likely will be brought to the Commission's attention through the Director of OI's request that the Commission be consulted in the particular case.

Commissioners' comments or consent should be provided directly to the Office of the Secretary by COB Wednesday, February 16, 1994.

Commission Staff Office comments, if any, should be submitted to the Commissioners NLT Wednesday, February 9, 1994, with an information copy to the Office of the Secretary. If the paper is of such a nature that it requires additional review and comment, the Commissioners and the Secretariat should be apprised of when comments may be expected.

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