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NUCLEAR REGULATORY COMMISSION

IN THE MATTER OF:

PUBLIC MEETING

SECY-78-212 - RECONSIDERATION OF BOARD NOTIFICATION PROCEDURES

Place - Washington, D. C.

Date - Thursday, 4 May 1978 **Pages** 1 - 21

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NUCLEAR REGULATORY COMMISSION

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PUBLIC MEETING

SECY-78-212 - RECONSIDERATION OF BOARD NOTIFICATION PROCEDURES

Room 1130
1717 H Street, N. W.
Washington, D. C.
Thursday, May 4, 1978

The meeting convened at 10:40 a.m., Chairman Joseph M. Hendrie presiding.

COMMISSION MEMBERS PRESENT:

Joseph M. Hendrie, Chairman

Peter A. Bradford

Richard T. Kennedy

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P R O C E E D I N G S

CHAIRMAN HENDRIE: Why don't we proceed on reconsideration of Board Notification Procedures?

MR. BOYD: Thank you, Mr. Chairman.

Let me make a few brief remarks.

The Commission last considered this on January 24, and if you recall, requested the views of the Licensing Board and the Appeal Panel on the then proposed staff procedure for Board notification.

The basic thrust of these views was that the safety evaluation and the FES should by definition contain all relevant and material new information up to that point, and that only thereafter should the Boards and Panels be supplied routinely with ongoing docket information.

The Licensing Board suggested in its memo that this procedure be something that could be adopted on a six-month trial. And the Appeal Panel suggested that it would monitor this new system over that period and decide at that time whether there were to be any further modifications.

Begging the question slightly as to whether this should be a trial program or not, I would say that the staff agrees with and accepts these Board and Panel views, would propose with the Commission's direction that this new system be implemented. And if in fact, it turns out 6 months, 8 months, a year from now, that further modifications appear

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appropriate, it shouldn't be at all difficult to implement them.

CHAIRMAN HENDRIE: That is, you can always fix something that doesn't seem to be working well, and there doesn't seem to be any very strong reason to make the procedure something which self-destructs in six months unless you do something. Maybe we ought to, if we go this way, make it this is the procedure we are going to use and tell ourselves, please write down the 6-month date or whatever seems appropriate, and we promise we will take a look at it at that point.

You can make an information report from the staff point of view and the Board/Panel view and see how that fits.

MR. BOYD: Exactly, there should be no problem with that.

Once the staff got over the hurdle of accepting the Board and Panel recommendations, we revised the proposed memo from the EDO to the staff, implementing this procedure which is in the revised Commission paper and enclosure 2.

We modified the proposed public announcement which fits in enclosure 4.

Three comments, I would like to make associated with this, one of which can be seen graphically on the charts are in the paper in enclosure 3 and also I have passed out

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1 slightly enlarged copies of these.

2 The most difficult aspect of Board notification
3 turns out when you consider it as an agencywide procedure is
4 to try to visualize its implementation. And in trying to
5 visualize its implementation so there would be no loose ends
6 or no areas subject to being ignored critically, I came up
7 with the following 2 charts. For better or for worse, I
8 think almost every eye is dotted and t is crossed.

9 The first chart shows the overall staff's
10 process. The top part of it shows how internally generated
11 information would flow. And the middle part of the chart
12 shows how externally generated information would flow. And
13 toward the bottom, all of this information would funnel through
14 the office of the Legal Director and hence on to the Boards.

15 It is as you can see from the charts a rather
16 complicated process. Trying to expand the major program
17 office, NRR or NMSS and see just what functions would be
18 required there, I came up with a second chart showing what
19 the NRR system would have to be, taking into account all
20 4 divisions being involved in the question of Board notifi-
21 cation and how all of the information would have to pass
22 back and forth appropriately between the divisions and as
23 well as coming in from the other offices and thence on to
24 OELD.

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25 I think we have everything outlined in that second

chart that one could at that point reduce the detailed procedures for all the offices.

Another complexity we didn't mention last time --

CHAIRMAN HENDRIE: Have you reviewed these charts for faults of the first kind, i.e., you look for boxes which only have incoming arrows, indicating there will be, you know, that they will suffocate, or similarly boxes with only outgoing arrows which indicate that they are some sort of source.

MR. KENNEDY: Mr. Chairman, I noticed at one point in the chart, they didn't indicate the idameter of the pipes incoming and outgoing, and I was a little worried about the pressure levels that were going to be generated.

MR. BOYD: They are all 24 inch pipes.

MR. KENNEDY: Then, the suffocation will occur at the Board level.

CHAIRMAN HENDRIE: Sorry to interrupt you.

MR. CASE: I think, Mr. Chairman, although we didn't do it that way specifically, both Roger and I went over this several times.

CHAIRMAN HENDRIE: I haven't found one like that, by the way.

MR. BOYD: Eventually, it gets to the Board.

The second complexity that I should like to take the opportunity to bring up involves what I foresee in many

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1 cases and have foreseen as the length of time that it takes
2 in some cases for an initial decision of the Hearing Board
3 to become the final decision of the Commission. In some
4 cases owing to various appeals and extended times for con-
5 sideration, some of these cases as I perceive them appear
6 to drag on for years.
7 If you look at the guidance in the rules for a
8 simple case, it talks, at least unless the rules have been
9 changed, of something like 45 days for an appeal decision
10 and 10 days for Commission review.
11 And if you envision Board notification to the
12 Appeal Board and the Commission over a period of 55 days,
13 it sounds rather simple. However, in practice, it appears
14 to me that a number of them go on as I say for perhaps years.
15 As we would apply this system, we would take a
16 case still pending in the system and say, "Yes, indeed, if
17 something new comes up that applies to that case, it must be
18 forwarded on through either the Appeal Board or the Com-
19 mission, or whatever is appropriate."
20 CHAIRMAN HENDRIE: Would the material channel
21 always to the original Board or would it deflect up the line
22 to the Appeals Board and then to the Commission as those stages
23 were reached?
24 MR. CASE: It would generally deflect, although
25 I understand the Appeals Board has a procedure now that

1 everything is sent to the Board it automatically gets, but
2 that is its choice.
3 MR. BOYD: The way the procedure is laid out and
4 how we would probably implement it, if in fact the Commission
5 is the appropriate source to receive this information, we
6 would funnel it to the Commission, at the same time probably
7 providing a copy to the Appeal Board for information and
8 perhaps even a copy to the Licensing Board for information.
9 In the case of the Appeal Board being the focus,
10 we would sent it to the Appeal Board directly, and at that
11 point also probably sending an information copy to the
12 Licensing Board.
13 CHAIRMAN HENDRIE: So that after the Licensing
14 Board had, for instance, issued an initial decision, the
15 primary flow then, of material from that docket would go to
16 the Appeals Panel.
17 MR. BOYD: Yes, sir.
18 CHAIRMAN HENDRIE: If the Appeals Panel passed
19 upon it, we would get it up here.
20 MR. BOYD: Yes. sir.
21 One of the increments of the procedure is to have
22 OELD provide all the offices with monthly status reports
23 on all the siting Boards, Appeal Board cases and Commission
24 cases so that we will know who is on first and know where to
25 send this stuff. It is easy for us to determine technically

where a piece of information ought to go with respect to the cases involved, but in many instances, we don't know where these cases are in the process. Is it still before the Appeal Board? Is it still before the Commission?

MR. KENNEDY: Could somebody describe the nature of this assessment of significance which OELD is going to provide to the Boards?

MR. CASE: It will be a staff submittal of what we think the technical evaluation of --

MR. KENNEDY: Oh, okay.

MR. BOYD: And it relates --

MR. KENNEDY: It is not talking about its significance in the case, but rather its significance in a technical sense.

MR. CASE: As related to the case.

MR. KENNEDY: Oh, I know, but I mean not saying this is something you really ought to look at.

MR. BOYD: No.

CHAIRMAN HENDRIE: It may include.

MR. KENNEDY: It may lead them to that conclusion.

CHAIRMAN HENDRIE: But it may include some input from OELD of a legal nature. I think it is best to regard it as an overall evaluation by the staff in terms of the technical meaning in the health and safety sense as well as the --

MR. BOYD: Let me take a crack at it. The concept

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1 stems from the Appeal Board decision in Vogel where the
2 Appeal Board said it is up to the staff to provide relevant
3 material, new information, to the Board. It is up to the
4 Board to determine its significance.
5 So we said logically, rather than dump all this
6 information on the Board and say, "Hey, we think by definition
7 this is relevant and material," we ought to go on and assess
8 for them our view as to the significance, even recognizing
9 it is the Board that has to make the determination of signi-
10 ficance.
11 MR. KENNEDY: Okay.
12 MR. BOYD: It seemed like the gentlemenly thing
13 to do.
14 MR. KENNEDY: In other words, having made the
15 final determination of relevancy and materiality, you are
16 explaining to them why you made that judgment in fact.
17 MR. BOYD: Yes.
18 MR. KENNEDY: Okay.
19 MR. BOYD: The last point I would like to bring
20 up is implicit in this proposal is a need for a training
21 program to acquaint the staff with all the Board notification
22 and responsibilities which I see is in accordance with one
23 of the recommendations in the GAO Report that had been
24 prepared for Senator Hart on Board notification.
25 And so we have that essentially, not only as an

1 adjunct followup to that recommendation, but I think as an
2 integral part of this Board notification process, especially
3 recognizing how complicated it is.
4 CHAIRMAN HENDRIE: Let's see, since the staff has
5 accepted or very nearly wholly accepted the Board and Panel
6 recommendations on how to handle these things, are there
7 objectors or commentors near and far?
8 MR. CASE: I don't know of any objectors. There
9 may be commentors on something; I don't know.
10 CHAIRMAN HENDRIE: Well, the system has inevitably
11 a shade more complexity this way than originally proposed,
12 but not a great deal, it seems to me, from the Commission's
13 viewpoint.
14 From where I sit, not from where you sit, but from
15 where I sit, if you just put another stamp and stamp a
16 new address on every piece of paper that comes in and just
17 send it out, that may be an easy handling procedure for you.
18 From my standpoint, it the Licensing Boards now
19 have to put together a great administrative staff with some
20 technical people and some legal people and clerical people to
21 handle it and make some sort of early determination for them
22 of what it means and so on, that is not a help to us.
23 So I think this procedure which puts back in the
24 hands of the more experienced and I really think expert
25 staff on these matters the job of doing this and of sorting

1 out the papers and getting them channeled in the right
2 place, I think that increases your problems over the original
3 proposal.
4 But from the Commission's standpoint, at least
5 where I sit, it is a substantial improvement in an overall
6 sense.
7 MR. CASE: I would also consider it to be a vote
8 of confidence on your part that the staff at least in that
9 part of the process can handle all that material itself. That
10 is, before we submit our SER's.
11 CHAIRMAN HENDRIE: Well, one of these days, we
12 will go through the charts with you and see how it is all
13 working out. And I think, indeed, it is a very helpful thing
14 to not have to deal with all of the individual papers and
15 assess them, get them on the Boards and so on, up through
16 the point where the staff has submitted essentially its
17 complete testimony before the hearing on both health and
18 safety and environmental side, and to include in that every-
19 thing that we think they ought to know.
20 I think that is fair enough.
21 MR. CHILK: Mr. Chairman?
22 CHAIRMAN HENDRIE: Sam, you have a comment?
23 MR. CHILK: Can I just ask one question? How much
24 more material would you estimate is going to wind up in the
25 Public Docket Room?

1 MR. KENNEDY: That's a good question.

2 MR. CASE: None. Because all of the material we

3 are talking about is already --

4 MR. CHILK: Is already released.

5 MR. CASE: There may be copies of transmittal

6 letters and things like that. So there might be some volume,

7 but --

8 MR. BOYD: May I modify it only slightly. For

9 externally generated information, absolutely none. Everybody

10 is getting it now except the Boards. For internally generated

11 information and a system that churns up internally generated

12 information, I think it is totally unpredictable. It will

13 depend on how much internally generated information thought

14 to be relevant and material that later turns out in fact to

15 be relevant and material there really is.

16 MR. CASE: Well, but the trigger of internally

17 generated information is the staff decides that the paper

18 says that it is important enough or significant enough to

19 get some information from some outsider. That correspondence

20 is put in the Docket Room anyway.

21 MR. KENNEDY: Okay.

22 CHAIRMAN HENDRIE: You were going to say?

23 MR. KENNEDY: I was going to say I'd recommend

24 we approve of the recommendation. But I would add that I

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25 think it would be useful to anticipate a review, let the

1 Boards know that --

2 CHAIRMAN HENDRIE: Oh, yes, I think it ought to

3 be --

4 MR. KENNEDY: We ought to say that perhaps in a

5 notice.

6 CHAIRMAN HENDRIE: I think it ought to be explicit

7 in the Commission decision or be reflected in the EEO

8 memorandum.

9 MR. BARDFORD: Perhaps in the press.

10 MR. KENNEDY: I was thinking in the press, the

11 typical short note that the Commission will review the

12 experience with this new procedure in X months, whatever. And

13 I would think 8 or 9 months. Six months seems a bit too

14 short.

15 CHAIRMAN HENDRIE: Six months seems a little on

16 the shy side. I wouldn't even object to a year as a matter

17 of fact.

18 Why don't you decide what is reasonable?

19 Peter, what do you think?

20 MR. BRADFORD: Let me just pursue with you for a

21 minute the sentence on page 4. The staff has already con-

22 cluded (not intelligible) comments received in the course

23 of development of regulations, code standards and guides should

24 not be provided to the Boards.

25 Does that specifically have reference to the

1 situation like the connector problem?

2 MR. CASE: No. I wouldn't think so.

3 MR. BRADFORD: Why not?

4 MR. CASE: Well, there are so many things in the

5 connector problem. I guess it depends on which part of it

6 you are thinking of. Research results, no. If they are

7 relevant and material, they would have gone.

8 So it is meant to deal with when Mr. Minogue

9 develops a standard or a guide, he first -- somebody prepares

10 a draft, and he generates a lot of comments internally, both

11 within the staff and outside his staff.

12 Those could be considered material and relevant

13 to some issues that the Board is considering. But they are

14 really not directed that way. And comments that he gets from

15 external organizations on the code or standard, quite

16 similarly. And we are trying to exclude those as a class

17 as long as they are commenting on something under development,

18 regulation, both guide or standard.

19 Now, within that mass of information, it is con-

20 ceivable that a commentor might say, "I don't agree with

21 this particular part of your proposed guide because there has

22 been some experiments conducted over here that show thus and

23 so."

24 We would say that that kind of information, the

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25 experimental information, we would hope by Mr. Minogue's

1 staff would be extracted and sent over to us as perhaps
2 relevant material.
3 So you would get the information, but not the
4 comments and the guides is what I am trying to say. And
5 as a matter of fact, that is what we have done. There is a
6 letter from Congressman Dingell relevant to this subject.
7 And, first, it was thought to mean all of the comments on
8 guides and standards. And we went back to him and he said,
9 no, he didn't mean that.
10 But we did take all of those comments to see if
11 there was such material in them and did include them in the
12 Dingell pile. So it's that kind of procedure that we meant
13 to address. It is not too well expressed. It is hard to
14 express it in a few sentences.
15 CHAIRMAN HENDRIE: Let's see, where are the words,
16 Peter?
17 MR. KENNEDY: Bottom of page 4, second paragraph
18 from the bottom, last sentence.
19 CHAIRMAN HENDRIE: Oh, yes.
20 I think what we mean is, for example, staff
21 has already concluded the comments received in the course of
22 development of the regulation and code should not ordinarily
23 be provided to the Board. They may very well be matters
24 that arise in such a proceeding where the staff would consider
25 it appropriate when notified.

1 MR. KENNEDY: May be continually.

2 CHAIRMAN HENDRIE: But the great mass of that
3 material routinely ebbs and flows between loads of people
4 and their commenters outside is a general proposition, not
5 the sort of thing that the Boards ought to have to look at.

6 MR. CASE: It is those very things that the standard
7 setter, either you or Mr. Minogue himself, considers in the
8 development of the standard. That is its purpose. And they
9 are considered in that form.

10 MR. BRADFORD: Does anything that you have here
11 change the responsibility of licensees to report information
12 to you after the development of the staff documents?

13 MR. BOYD: Absolutely not.

14 MR. BRADFORD: How is that duty defined now?

15 MR. CASE: It is only defined in McGuire?

16 MR. BOYD: I believe.

17 With respect to relevant and material new infor-
18 mation and Board notification, it is expressed in McGuire,
19 Appeal Board decision in McGuire and reaffirmed in Vogel.

20 As far as information relating to safety, for
21 example, at any time is covered in Part 21 or 5055(e), and
22 other parts of the regulations. But that is notifying the
23 Commission.

24 In this case, it is Mr. Case. But where Board
25 notification is concerned, it is strictly the Commission law

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1 that comes down from McGuire.

2 MR. BRADFORD: Does that also relate to NEPA or

3 is that just safety?

4 MR. BOYD: McGuire also relates to NEPA.

5 MR. CASE: Well, it was written in the safety

6 area. I suppose you could get some argument as to whether

7 it applies.

8 MR. BRADFORD: The staff reads it as relating to

9 NEPA?

10 MR. BOYD: A, we read it as relating to the

11 environmental and the words "and environmental" is included

12 in that decision. It is, indeed. It is somewhat of a

13 parenthetical expression, but it's there.

14 In any event, our procedure clearly lays out a

15 whole track for the environmental part of this. In most cases,

16 you know, they are separate hearings.

17 Now, one adjunct made clear by the Boards is that

18 we don't start funneling extra environmental information until

19 after the FES. We don't start funneling in relevant material

20 new safety information until after the SER. So in some

21 cases, the Boards will be on one service list, but not on the

22 other yet because of the differences in time of the 2 parts

23 of the process.

24 MR. BRADFORD: But you are satisfied that if the

25 licensee develops new environmental information after those

1 documents have been filed, they are under some duty to bring
2 it to your attention?
3 MR. BOYD: And also to the attention of the Board.
4 They are under an obligation under McGuire to inform the
5 Board.
6 McGuire says both staff and applicants have a duty.
7 MR. BRADFORD: How does that work in practice if
8 the only place where that duty is clearly spelled out is in
9 an Appeals Board decision, and if that isn't done, what
10 are the sanctions?
11 MR. BOYD: Jim?
12 MR. MURRAY: Well, the Board can criticize the
13 staff, draw it to the Commission's attention and have the --
14 MR. BRADFORD: What about the licensee, though?
15 It's the licensee instead of the staff.
16 MR. MURRAY: I would presume that this would
17 bear on anything the licensee was authorized to do or was
18 seeking authorization for. In other words, we could withdraw
19 the authorization to do whatever he has been doing or we
20 could recommend against him getting the authorization he
21 might be seeking.
22 If he is before a Board, he will be seeking some-
23 thing.
24 MR. BRADFORD: But the sanctions would be in the
25 context of what he is seeking. It is not the same thing as

1 a violation of a regulation.

2 MR. MURRAY: That is correct.

3 CHAIRMAN HENDRIE: It doesn't fall under civil

4 penalties and so on.

5 MR. MURRAY: I can't be sure that we couldn't make

6 a case under some provision of the regulations under all

7 circumstances. It would depend on the specifics of the case.

8 But normally, if it is a violation of nothing more than the

9 injunction laid down by the Appeal Board and doesn't, as it

10 might, relate to some other regulation, then it would not be

11 subject to civil penalties.

12 MR. BRADFORD: What was the Appeal Board drawing

13 on in laying down that injunction? Were they interpreting

14 a regulation or statute?

15 MR. MURRAY: No. My recollection is that they

16 were just setting forth the normal what they conceived of

17 to be the normal duties of litigants before the Board in

18 assisting them in arriving at their decision.

19 CHAIRMAN HENDRIE: Are we --

20 MR. BRADFORD: What is needed of us today?

21 CHAIRMAN HENDRIE: If we think well of the propo-

22 sition, I think it would be desirable to go ahead and vote it

23 into place with any modifications necessary.

24 Let me ask about the 6-month trial period. Is

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25 that part of the memo?

1 MR. BOYD: No. It is not part of the memo, nor
2 is it part of the press release. We would just plan -- and
3 I really think you are probably right, a year is much better.
4 It was Jim Yoers' suggestion of 6 months. But I think a
5 year would probably be more appropriate.
6 At the end of that time, we would be getting input
7 from the Appeal Panel. We, of course, would expect some
8 input from the Licensing Boards, and we ourselves would have
9 to go back and review this thing. And we could very easily
10 put an information paper back to the Commission telling you
11 how it has been going.
12 CHAIRMAN HENDRIE: To understand what is before
13 the house, I would like us to understand that if we adopt
14 it, it is not a thing which self-destructs after 6 months or
15 a year, but rather a thing in which we would ask all the
16 parties to provide us with an evaluation in about a year
17 to see whether we ought to modify or do something else.
18 Okay. So that plus the memorandum outlining the
19 policy here in the paper, I would define that as the issue
20 before the house.
21 And are you ready to take a position?
22 I'll ask for the "ayes."
23 (Chorus of "Ayes.")
24 So ordered.
25 MR. GOSSICK: Also with the understanding if

there is a glitch that develops here, you know --

CHAIRMAN HENDRIE: If there is a glitch, we expect to hear from you immediately.

MR. BOYD: It is our view to notify Boards, Panels, and the Commission.

(Whereupon, at 11:10, the meeting was adjourned.)

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