



Union of Concerned Scientists

Citizens and Scientists for Environmental Solutions

October 26, 2007

Dr. Dale E. Klein, Chairman
Dr. Gregory B. Jaczko, Commissioner
Dr. Peter B. Lyons, Commissioner
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

SUBJECT: PUBLIC MEETING POLICY AND PRACTICE

Dear Mr. Chairman and Commissioners:

The policy statement on enhancing public participation in NRC meetings (67 FR 36920, May 28, 2002) has had many positive benefits. From our perspective, the three meeting categories provide a viable method for matching the level of public engagement to the nature of the meeting for the mutual benefit of all participants.

Over the years, however, one aspect of Category 1 meetings has repeatedly frustrated the public. Neither the policy statement nor the applicable NRC procedure (Management Directive 3.5, April 10, 2007) are explicitly clear on the point of contention. Therefore, I am asking you to review the matter and either affirm that actual practice is what the Commission intended or alter actual practice to conform to the Commission's intention.

The policy statement states the following regarding the level of public participation in Category 1 meetings:

The public is invited to observe the meeting consistent with past practice, and the public will have the opportunity to communicate with the NRC after the business portion of the meeting, but before the meeting is adjourned. This does not preclude the licensee from responding to questions if they choose to do so.*

Management Directive 3.5 states the following on this subject:

The public is invited to observe the meeting and will have the opportunity to communicate with the NRC after the business portion of the meeting but before the meeting is adjourned. This plan does not preclude the licensee from responding to questions if it chooses to do so.

The policy statement and the Management Directive each permit three different modes for licensee involvement during the public portion of Category 1 meetings:

* If this policy statement is revised or superseded, it is recommended that the description not divide the meeting into a business and non-business portion to avoid the impression that the public portion is of lesser value to the NRC. For example, phrasing like "...after the first portion of the meeting, but before the meeting is adjourned."

1. The licensee can opt to remain active during the public portion of the meeting by responding to statements and answering questions from the public.
2. The licensee can opt to remain semi-active during the public portion of the meeting by responding only to those statements or answering those questions from the public it wants to address.
3. The licensee can opt to remain passive, or even absent, during the public portion of the meeting by not responding to any statements or answering any questions from the public.

I have attended many Category 1 meetings since the policy statement was issued and have experienced all three of these licensee participation modes. The problem involves the second mode when the licensee opts for semi-active participation.

My most recent experience with semi-active participation by the licensee was October 9th public meeting for the NRC AIT exit in the Peach Bottom sleeping security guard incident. During the public portion of that meeting, Exelon representatives responded to some public statements and questions but often chose to hide behind the NRC's skirts and duck them. As a result, that portion of the meeting left the distinct impression that the NRC's role was to protect the licensee from the public.

I have attended several other Category 1 meetings when licensees also opted for the selective participation mode. Often, members of the public will pose questions that only the licensees can answer. When the licensees opt to duck such questions, the NRC staff can seldom supply the missing answers. The public's frustration turns from the suddenly-shy licensee to the non-responsive NRC.

It would be better, in my opinion, if licensee participation during the public portion of Category 1 meetings was limited to only two choices: all in or all out. The public portion of Category 1 meetings is primarily intended to allow communication between the NRC and the public regarding the subject of the meeting, so it is entirely fair and proper for licensees to opt out of that exchange. Because licensees have extensive knowledge about and a clear stake in the subject, it is also entirely fair and proper for licensees to participate in the dialogue. That fairness and propriety seems challenged when the licensees get to cherry-pick when they engage. That fairness and propriety seems undermined when the NRC is forced into the role of protecting the licensee from answering the public's probing questions.

I hasten to clarify that licensees selecting the all in option would be obligated to respond to all questions directed towards them by the public, but not in a manner that would compromise their many other rights. For example, licensees would not be obligated to answer questions about how many security officers guard their facilities with a number and could opt for qualitative responses (e.g., a sufficient number to adequately conduct the NRC-approved physical protection plan). Likewise, licensees would not be obligated to potentially impair their positions in ongoing litigation by answering questions like "why did you fire John Smith?"

It is our hope that licensees, after freely answering any and all questions from the NRC during the first portion of a Category 1 meeting, would not be so intimidated as to opt out of answering questions from the public during the second portion of the meeting. When circumstances and factors make licensees uncomfortable, they should have the right to opt out of the public portion. After all, members of the public attending Category 1 meetings have that same discretion. They can elect to stand up and speak or remain silent. The licensees deserve that same treatment. Licensees do not deserve special treatment. After they elect either to stand up and speak or sit in silence, they should sustain that role and not pop up and down like some demented jack-in-the-box.

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I hope you will agree that all participants in Category 1 meetings will be better served when licensees choose either to participate during the public portion or to only observe that portion. If so, it does not seem that a revision to the policy statement is required. A clarification added to Management Directive 3.5 would seem to fully address the matter.

Sincerely,

A handwritten signature in cursive script that reads "David Lochbaum". The signature is written in black ink and is positioned to the left of the typed name and title.

David Lochbaum
Director, Nuclear Safety Project