

Commissioner McGaffigan's Comments on COMSECY 99-06

With incorporation of the additions below, and the changes in Commissioner Merrifield's response to the COMSECY, I approve this well-drafted notice. The additions to pages 2 and 13 make clear that we will conduct no non-Sunshine Act discussion until we have responded to comments by way of another Federal Register notice. The additions to pages 9 and 11 point to useful precedent at other agencies with oversight functions.

Add to the end of the 2nd paragraph on page 2 of the draft FRN:

, and to respond to them in a Federal Register notice.

The last sentence of the first full paragraph on page 13 of the draft FRN should read (deletions in brackets, additions underlined):

No non-Sunshine Act discussions will be held during the period for public comment and before the Commission [consideration of] has responded to those comments in another Federal Register notice.

Add the following to the second paragraph under the heading, "Further Developments", on page 9 of the draft FRN:

In the meantime, some other agencies adopted and implemented rules that permit informal discussions that clarify issues and expose varying views but do not effectively predetermine official actions, discussions of the sort that the Court's *ITT* decision said are a "necessary part of an agency's work." 466 U.S. at 469-70. See, for example, the Occupational Safety and Health Review Commission's (OSHRC) and Defense Nuclear Facility Defense Board's (DNFSB) definitions of "meeting", at 29 CFR 2203.2(d) (50 Fed. Reg. 51679, 1985) and 10 CFR 1704.2(d)(5) (56 Fed. Reg. 9609, 1991), respectively.

Add after the semicolon on the 5th line of the 1st paragraph of the "Conclusions", on page 11 of the draft FRN:

actual practice at other federal agencies, including the DNFSB and OSHRC;