

Core Problems of the 2.206 Process

- 1) **Lack of clear separation between the adjudicator (the Petition Review Board) and the NRC Staff.** E.g. At the Oyster Creek 2.206 pre-hearing on January 3, 2013, the PRB Chair stated that the Staff presentation to the PRB is an internal process that is not accessible to the public.
- 2) **Lack of information in the public domain.** Even though such a petition must “specify the action requested and set forth the facts that constitute the basis for the request” there is no provision for discovery.¹ Thus, the petitioner must glean all the information required from public sources. This is very difficult or even impossible if the NRC Staff reviews all relevant licensee documents on site and communicates with the licensee by conference calls.² It is made even harder if the staff’s presentation to the PRB cannot be viewed by the public.
- 3) **Staff refuse to answer questions posed by the public.** The Staff treat the public as an adversary in 2.206 proceedings. E.g. At the Oyster Creek 2.206 pre-hearing on January 3, 2013, the Staff refused to answer any of the questions posed by the public about the restart decision.
- 4) **Lack of Appeal.** Citizens groups have become disillusioned with the 2.206 process because the NRC Staff effectively reviews its own work and the rights of appeal are very limited. It is hardly surprising that the Staff normally finds that its own actions are sufficient and justified. Furthermore, petitioners do not have a right to appeal an adverse decision to the Commission, although the Commission can review the decisions upon its own motion.³
- 5) **The “Current Licensing Basis” (“CLB”) of each plant is not compiled.**⁴ The failure to compile the CLB means that the public cannot find out what standards are applicable in 2.206 proceedings. Indeed, experience at the Oyster Creek license renewal proceeding showed how difficult it is to define the CLB. In that proceeding even the NRC Staff got the CLB wrong until the ASLB rejected the Staff’s attempts not to apply an important requirement assuring the safety of the containment.⁵ Finally, reasonable assurance of

1. 10 C.F.R. § 2.206(a) (2013).

2. This is typical NRC practice and has been criticized before. E.g. NRC Office of the Inspector General, Audit of NRC’s License Renewal Program, OIG-07-A-15, 14-15 (Sept. 6, 2007) *available at* ADAMS Accession No. ML072490486.

3. 10 C.F.R. § 2.206(b) (2013); 10 C.F.R. §2.206(c) (2013).

4. In the Matter of Entergy Nuclear Operations, Inc. (Indian Point Nuclear Generating Station Units 2 and 3), Memorandum and Order (Ruling on Petitions to Intervene and Requests for Hearing), LBP-08-13, 18-19 (Docket Nos. 50-247-LR, 50 286-LR, July 31, 2008) *available at* ADAMS Accession No. ML082130436.

5. In the Matter of AmerGen Energy Co., LLC (License Renewal for Oyster Creek Nuclear Generating Station), Initial Decision (Rejecting Citizens’ Challenge to AmerGen’s Application to Renew its Operating License for the Oyster Creek Nuclear Generating Station) LBP-07-17,

compliance with the CLB is often cited as a reason to limit the scope of safety reviews,⁶ but it is impossible to verify this assurance empirically because the CLB is so poorly defined.

- 6) **Process fails to build public confidence in the NRC.** There is an old maxim that “not only must Justice be done; it must also be seen to be done” in order for the public to have confidence in decisions. The 2.206 process fails in this regard because the public do not get any answers to their questions or the ability to view most of the information upon which the Board makes its decision. The current perception is that the Staff hides information from the public and often ends up rubber-stamping its own work in the 2.206 process.⁷

Suggested Solutions

Four of the six issues above could be resolved and the other two could be partially resolved by the following changes to Management Directive 8.11 and other NRC Staff practices that would not require rulemaking, as follows:

- 1) **Create a clear separation between the Staff and the PRB.** This could be done by using ASLB judges to comprise the PRB or appointing the Staff members that serve on the PRB as adjudicatory officers who may not receive ex-parte communications from the Staff or the licensee on matters under adjudication.
- 2) **Place information in the public domain.** The Staff should be instructed to ensure that licensee documents upon which they relied when making a decision that is at issue in the 2.206 process should be brought to NRC headquarters and made available through ADAMS. In addition, the Staff should be instructed to make detailed notes on any conference calls they have with the licensee and these notes should be placed on ADAMS.
- 3) **Clarify that the Staff presentation to the PRB should be done in the presence of the public.**
- 4) **Instruct the Staff to answer questions posed by the public to the best of its ability and encourage licensees to also communicate with the public.** Public appreciation and trust of the NRC would be improved if the Staff made good faith efforts to answer questions posed by the public. Similarly, licensees would be regarded with much less

19-20, n. 20 (Docket No. 50-0219-LR, Dec. 18, 2007) *available at* ADAMS Accession No. ML073520402.

⁶ See NUREG-1412, Foundation for the Adequacy of the Licensing Bases, A Supplement to the Statement of Considerations for the Rule on Nuclear Power Plant License Renewal (10 CFR Part 54)

⁷ Of the 387 2.206 petitions that had been filed prior May 2012, hardly any provided any substantive relief. *See* In the Matter of All Operating Boiling Water Licenses with Mark I and Mark II Containments, Memorandum and Order Directing Staff to Amend Filing on 10 C.F.R. § 2.206 (June 19, 2012).

suspicious if they were prepared to explain how they had resolved issues raised by Citizens.

- 5) Instruct the 2.206 Petition Manager to clearly define the CLB for the issues to be adjudicated. Make the CLB definition and documents supporting that definition available through ADAMS within a reasonable timeframe after the 2.206 Petition is received, but before the public are requested to present to the PRB.**
- 6) The Commission could automatically review Directors decisions on 2.206 petitions and invite the petitioners to submit briefing on whether the decisions contain any errors.**

Providing a right to appeal to the Commission and requiring compilation of the full CLB would probably require rulemaking, but both are recommended.