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75 FR 44992

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RULES AND DIRECTIVES
BRANCH
USNRC

In re: Docket ID NRC-2010-0242 (Review of Management Directive 8.11)

Dear Ms. Bladey:

In accordance with Federal Register Notice, Vol. 75, No. 146/Friday, July 30, 2010, the undersigned hereby responds to the U.S. Nuclear Regulatory Commission (NRC) request for public comments related to the agency's review of Management Directive 8.11 (MD) and states as follows:

BACKGROUND

On October 25, 2000, the NRC issued a revision to the agency's MD for the review process used by the NRC related to petitions filed under 10 C.F.R. §2.206, by any person seeking enforcement action on the part of the NRC against an agency licensee. In particular, the NRC's policy states:

"It is the policy of the U.S. Nuclear Regulatory Commission to provide members of the public with the means to request that the Commission take enforcement-related action (i.e., to modify, suspend, or revoke a license, or for other appropriate enforcement-related actions, as distinguished from actions such as licensing or rulemaking). This policy is codified at Section 2.206 of Title 10 of the Code of Federal Regulations (10 CFR 2.206). The Commission may grant a request for action, in whole or in part, take other action that satisfies the concerns raised by the requester, or deny the request. Requests that raise health and safety and other concerns without requesting enforcement-related action will be reviewed by means other than the 10 CFR 2.206 process"

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Id. at *(8.11-01).

Moreover, the NRC asserts in its October 25, 2000, MD revision that "*Significant Changes to the Management Directive 8.11 Review Process for 10 CFR 2.206 Petitions*" was made by the agency as follows:

- Addition of an opportunity for the petitioner to address the Petition Review Board (PRB) after the PRB has developed its recommendations on the petition. This meeting or teleconference is similar to those already offered to petitioners before the PRB meets.
- Removal of specific restrictions on the amount of time allowed for petitioners to address the PRB and also allow petitioners to be assisted by a reasonable number of representatives.
- Deletion of the criteria for meetings between the petitioner and the staff. The staff will hold these meetings whenever the staff feels it will be beneficial to its review.
- Addition of a process by which the staff requests and resolves comments from the petitioner and the licensee on the proposed director's decision (i.e., before it is signed). The comments and the staff's resolution become part of the director's decision.
- Revision of the timeliness goal to 120 days from the date of the acknowledgment letter until the date the proposed director's decision is sent out for comment. Add a new goal of 45 days from the end of the comment period until the director's decision is signed.
- Addition of a process flow chart and a petition manager's checklist to assist staff persons involved with petitions.

Id. at *(TN: DT-00-20).

Finally, the NRC states in its October 25, 2000, MD revision several objectives as follows:

- To ensure the public health and safety through the prompt and thorough evaluation of any potential problem addressed by a petition filed under 10 CFR 2.206. (021)
- To provide for appropriate participation by a petitioner in, and observation by the public of, NRC's decisionmaking activities related to a 10 CFR 2.206 petition. (022)

- To ensure effective communication with the petitioner and other stakeholders on the status of the petition, including providing relevant documents and notification of interactions between the NRC staff and a licensee or certificate holder relevant to the petition. (023)

Id. at *(8.11-02).

ANALYSIS AND DISCUSSION

Summary conclusion:

The current application of the NRC MD (1) fails to ensure the public health and safety through prompt and thorough evaluation of any potential problem addressed by a petition; (2) fails to provide for appropriate participation by a petitioner in, and observation by the public of, NRC's decisionmaking activities related to a petition; and (3) fails to ensure effective communication with the petitioner and other stakeholders on the status of the petition, including providing relevant documents and notification of interactions between the NRC staff and a licensee or certificate holder relevant to the petition.

I. THE NRC MD FAILS TO ENSURE THE PUBLIC HEALTH AND SAFETY THROUGH PROMPT AND THOROUGH EVALUATION OF ANY POTENTIAL PROBLEM ADDRESSED BY A PETITION FILED UNDER 10 C.F.R. 2.206

First, the NRC has more than amply demonstrated a failure to timely address health and safety issues raised in petitions submitted by the public. Notably, the undersigned submitted a petition to the NRC seeking enforcement action on the part of the NRC against its licensee, the Florida Power & Light Company (FPL) related to a "hostile" work environment fostered by FPL at the licensee's Turkey Point Nuclear Plant (TPN) and St. Lucie Nuclear Plant (PSL) where the licensee retaliated against nuclear workers who engage in "protected activity" by raising nuclear safety concerns. Such conduct by FPL is illegal under NRC regulations at 10 C.F.R. 50.7 and under other NRC authority. Moreover, the undersigned supported [his] petition with FPL documents which clearly evidenced the failure of the licensee's Employee Concerns Program (ECP) where licensee employees fear retaliation by FPL if they chose to raise nuclear safety concerns on the job. Notably, the aforementioned petition was submitted to the NRC on January 11, 2009; however, it took the agency 64-days for the NRC Petition Review Board (PRB) to meet with the undersigned to discuss the petition on March 5, 2009. On April 28, 2010, the NRC issued a "Proposed Director's Decision"; and on July 9, 2010, the agency issued a "Final Director's Decision". See, G20090107. Thus, it took the NRC 19-months to reach a final decision on the petition.

On June 26, 2009, a petition was submitted to the NRC by Kevan Crawford, related to a test reactor at the Idaho State Research & test facility. On September 15, 2009, the NRC PRB held a meeting with the petitioner. On March 19, 2010, the NRC issued a

Proposed Director's Decision; and on July 30, 2010, the NRC issued a Final Director's Decision. Thus, it took the NRC 13-months to reach a final decision. See, G20090374.

The above examples represent a limited sample of the many petitions filed by the public with the NRC - as there exists hundreds, if not thousands of such petitions in the NRC ADAMS database which evidence that the NRC 2.206 process fails to ensure the public health and safety through the prompt and thorough evaluation of any problem addressed by a petition filed under 10 C.F.R. 2.206, in these circumstances.

Recommendations:

The NRC should conduct a self-assessment of its current organizational structure for the handling and processing of petitions submitted to the agency under 10 C.F.R. 2.206, in order to understand how the agency can improve the petition review process to lessen the time-period in which the agency renders a final decision. Otherwise, the NRC simply cannot realistically protect the health and safety of the public as it relates to the operation of nuclear facilities licensed for operation by the agency.

II. THE NRC FAILS TO PROVIDE FOR APPROPRIATE PARTICIPATION BY A PETITIONER IN, AND OBSERVATION BY THE PUBLIC OF, NRC'S DECISIONMAKING ACTIVITIES RELATED TO A 10 C.F.R. 2.206 PETITION

As stated earlier, the NRC's prior revision of the MD intended to remove specific restrictions on the amount of time allowed for petitioners to address the agency's PRB. However, in actual practice, the NRC significantly limits the amount of time provided to petitioners who elect to address the agency's PRB. Notably, the NRC fails to even make a simple inquiry of the petitioner as to how much time the petitioner believes is necessary for the petitioner to fully express their concerns to the PRB. Instead, the NRC arbitrarily establishes the time-period for the petitioner to speak with the PRB. Notably, at the onset of the PRB meeting with the petitioner, the NRC consumes a significant amount of time through introductions at the start of the meeting; and consumes additional time by discussing the 2.206 process. Moreover, any discussion on the part of a petitioner with the PRB is limited to communications by the petitioner to the PRB. The petitioner is simply not permitted by the NRC to engage in any type of debate or challenge with the PRB members on any point raised in the petition. Thus, the petitioner is left with whatever amount of time that remains to speak with the PRB and the petitioner and the public are not provided a sufficient opportunity to participate in, and to understand, the NRC's decisionmaking activities. For these reasons, the NRC 2.206 process fails to provide for appropriate participation by a petitioner in, and observation by the public of, NRC's decisionmaking activities related to a 10 C.F.R. 2.206 petition; and fails to protect the health and safety of the public in these circumstances.

Recommendations:

When the NRC receives a petition submitted under 10 C.F.R. 2.206, that the agency accepts for review, the NRC should make an inquiry of the petitioner as to how much

time the petitioner believes is necessary for the petitioner to fully explain the concerns raised in the petition to the NRC PRB. Once the NRC receives this information, then the agency can add whatever time (to that time-period) the NRC believes is necessary to conduct preliminary introductions and process explanations at the start of any subsequent meeting between the NRC PRB and the petitioner. In addition, the 2.206 petition process should allow the petitioner to directly engage and challenge PRB members to more fully elaborate on the points raised in the petition so that the petitioner, as well as the public, can fully participate in, and make appropriate observations of, the NRC's decisionmaking activities related to a 10 C.F.R. 2.206 petition.

III. THE NRC FAILS TO ENSURE EFFECTIVE COMMUNICATION WITH THE PETITIONER AND OTHER STAKEHOLDERS ON THE STATUS OF THE PETITION, INCLUDING PROVIDING RELEVANT DOCUMENTS AND NOTIFICATION OF INTERACTIONS BETWEEN THE NRC STAFF AND A LICENSEE OR CERTIFICATE HOLDER RELEVANT TO THE PETITION

Based on information, belief and through an extensive utilization of the 2.206 petition process by the undersigned over the better part of the last 22-year period, the NRC has apparently provided petitioners and other stakeholders effective communications on the status of the petition; however, the agency has miserably failed to provide petitioners and other stakeholders with relevant documents and notification of interactions between the NRC staff and a licensee or certificate holder relevant to the petition. Indeed, petitioners must be provided all relevant documents by the NRC relevant to any petition filed under 10 C.F.R. 2.206, and the agency must provide a written copy of any and all communications between the NRC and its licensee relevant to any 2.206 petition filed with the agency. For these reasons, the NRC 2.206 process fails to ensure that the agency provides relevant documents and notification of interactions between the NRC staff and a licensee or certificate holder relevant to the petition; and therefore, the NRC fails to protect the health and safety of the public in these circumstances.

Recommendations:

The NRC must ensure that petitioners are included in any discussions held between the NRC and a licensee relevant to a 2.206 petition. Moreover, the NRC must make certain that the agency timely provides documents in its possession, custody and control to the petitioner which are relevant to the 2.206 petition.

IV. THE NRC 2.206 PETITION PROCESS AND MD FAIL TO PROVIDE THE PETITIONER WITH A FAIR AND IMPARTIAL REVIEW OF THE ISSUES RAISED IN THE PETITION IN REACHING A FINAL AGENCY DECISION

In its current format, the NRC MD fails to provide a petitioner with fair and impartial review of the issues raised in the 2.206 petition in reaching a final decision by the agency. Notably, as stated earlier, the NRC 2.206 petition process strictly prohibits any

direct debate or challenge with the NRC PRB relevant to the issues raised in the petition. The petitioner is only permitted to communicate to the PRB but not make inquiry of the PRB relevant to the NRC's decisionmaking process or relevant to any determinations made by the NRC to issues raised in the petition. Moreover, once the NRC issues a final decision on a petition, the petitioner has no further say or challenge to the determination of the NRC with respect to any issue raised in the petition.

Recommendations:

The NRC 2.206 petition process through the MD should allow for petitioners to engage the NRC PRB in debate and challenge relevant to issues raised in the petition. In addition, the NRC PRB should be required to submit a determination on the issues raised in the petition based on a findings of fact on the record evidence produced through meetings with the petitioner and from documents produced to the NRC by the petitioner and by the licensee. Finally, the petitioner should have a "right" to appeal any NRC final decision of a 2.206 petition to the NRC Atomic Safety and Licensing Board (ASLB) and request a formal public hearing on the record and leave to intervene before a panel of ASLB administrative law judges, similar to the NRC license intervention process currently utilized by the NRC when an agency licensee seeks review of an enforcement action or requests to amend a license or construct a nuclear plant. In this manner, the petitioner would be provided an opportunity to engage in discovery and be able to call witnesses (including cross-examination of NRC staff) in support of the issues raised in the 2.206 petition in a public forum where members of the public can readily benefit in understanding the NRC's decisionmaking process in these circumstances.

CONCLUSION

The NRC's MD - 2.206 process is in dire need of revision to incorporate several areas of improvement as discussed above to ensure that the agency can protect public health and safety in these circumstances. Notably, as the NRC Chairman, the Hon. Gregory B. Jaczko, recently stated to the Institute for Nuclear Power Operations (INPO) on August 10, 2010:

“ . . . As leaders of the companies that own and operate many of our nation's nuclear facilities, you have an important role to play in ensuring nuclear safety and security. I know that the companies you oversee -- some of the largest in the country -- have portfolios that cut across many energy sectors. In approaching your nuclear holdings, I encourage you to consider how nuclear power is different. It is a highly complex and sophisticated energy technology with potential consequences -- should something go wrong -- that may be significant. There was a time in our nation's history with nuclear power in which that was not fully appreciated. Insufficient caution was paid at times and the industry experienced operating and quality problems -- none greater or more impactful than the

accident at Three Mile Island in 1979. . . The challenge for you -- the leaders of the utilities that own many of the nation's nuclear plants -- is to ensure that our nation never again experiences an accident like Three Mile Island -- that no iconic image like its cooling towers ever again enters the public consciousness. . ."

Id. at *1.

Clearly, through the NRC's 2.206 petition process, the public and other stakeholders can assist the agency in protecting public health and safety related to the operation of nuclear facilities in the United States of America. Thus, it is imperative that the NRC improve the agency's 2.206 process and afford petitioners greater latitude in the 2.206 process and access to the NRC ASLB for an independent review of any NRC final decision issued on a 2.206 petition.

Respectfully submitted,



Thomas Saporito

cc: Hon. Gregory B. Jaczko, Chairman
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Washington, D.C. 20555
{Sent via electronic mail}