



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

April 12, 2016

Mr. Richard Ayres
Attorney for Friends of the Earth
Ayres Law Group, LLP
1707 L Street, NW., Suite 850
Washington, DC 20036

Dear Mr. Ayres:

On August 26, 2014, you filed, on behalf of Friends of the Earth (FOE), a Petition to Intervene and Request for Hearing (Petition) concerning Diablo Canyon Power Plant (DCPP). Within this Petition, FOE asserted concerns about DCPP's operational safety and ability to safely shut down in the event of a nearby earthquake. The Commission referred those concerns to the U.S. Nuclear Regulatory Commission's (NRC's) Executive Director for Operations (EDO)¹ for consideration under the regulations of Title 10 of the *Code of Federal Regulations* (10 CFR) Section 2.206, "Requests for Action Under this Subpart." The EDO then referred these concerns to the NRC's Office of Nuclear Reactor Regulation for consideration under 10 CFR 2.206.

On two occasions, the NRC offered FOE opportunities to address the Petition Review Board (PRB), which was established to review the FOE concerns referred to the EDO from the Commission, as discussed above. In response, on September 30, 2015, and February 8, 2016, you provided written submissions on behalf of FOE to the PRB in lieu of FOE addressing the PRB in person or via telephone (Agencywide Documents Access and Management System (ADAMS) Accession Package No. ML15226A316).

Based on the information described above, the PRB has decided to accept the FOE concerns referred to the EDO by the Commission for consideration under the 10 CFR 2.206 process because these concerns meet the criteria provided in Management Directive 8.11, "Review Process for 10 CFR 2.206 Petitions."

Following the regulations of 10 CFR 2.206, the NRC will take action on your request within a reasonable time. I have assigned Lisa Regner, Senior Licensing Project Manager, and Margaret Watford, Licensing Project Manager, to be the petition managers for the FOE concerns that the NRC is reviewing under 10 CFR 2.206. The Mechanical and Civil Engineering Branch in the Division of Engineering within the Office of Nuclear Reactor Regulation is reviewing the technical merits of the FOE concerns that the Commission referred to the EDO, and the supplemental written submissions FOE sent to the PRB. I have enclosed for your information a copy of the notice that the NRC will file with the Office of the Federal Register for publication. On August 6, 2015, you were sent by e-mail a copy of Management Directive 8.11, "Review Process for 10 CFR 2.206 Petitions" (ADAMS Accession

¹ Memorandum and Order CLI-15-14, dated May 21, 2015 (ADAMS Accession No. ML15141A084).

R. Ayers

- 2 -

No. ML15226A312). I have enclosed the associated brochure NUREG/BR-0200, "Public Petition Process," with this letter (ADAMS Accession No. ML050900248).

I would like to express my appreciation to FOE for bringing these matters to the attention of the NRC. If you have any questions, please contact Ms. Lisa Regner at Lisa.Regner@nrc.gov, 301-415-1906; or Ms. Margaret Watford at Margaret.Watford@nrc.gov, 301-415-1233.

Sincerely,

A handwritten signature in black ink, appearing to read 'W. M. Dean', with a long horizontal flourish extending to the right.

William M. Dean
Office of Nuclear Reactor Regulation

Docket Nos. 50-498 and 50-499

Enclosures:

1. *Federal Register* Notice
2. NUREG/BR-0200, "Public Petition Process"

cc: Mr. Edwin D. Halpin
Senior Vice President and Chief
Nuclear Officer
Pacific Gas and Electric Company
Diablo Canyon Power Plant
P.O. Box 56, Mail Code 104/6
Avila Beach, CA 93424

Listserv

ENCLOSURE 1

FEDERAL REGISTER NOTICE

ADAMS ACCESSION NO. ML16084A737

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-275 and 50-323; NRC-2016-xxxx]

Diablo Canyon Power Plant, Units 1 and 2

AGENCY: Nuclear Regulatory Commission.

ACTION: Request for action; receipt.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is giving notice that Friends of the Earth (FOE or petitioner) filed a Petition to Intervene and Request for Hearing concerning Diablo Canyon Power Plant (DCPP) on August 26, 2014, asserting, in part, its concerns about DCPP's operational safety and ability to safely shut down in the event of a nearby earthquake. The Commission referred those concerns to the NRC's Executive Director for Operations (EDO) for consideration. The petitioner's requests are included in the SUPPLEMENTARY INFORMATION section of this document.

ADDRESSES: Please refer to Docket ID **NRC-2016-xxxx** when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- **Federal Rulemaking Web Site:** Go to <http://www.regulations.gov> and search for Docket ID **NRC-2016-xxxx**. Address questions about NRC dockets to Carol Gallagher; telephone: 301-415-3463; e-mail: Carol.Gallagher@nrc.gov. For technical questions, contact the individual listed in the FOR FURTHER INFORMATION CONTACT section of this document.

- **NRC's Agencywide Documents Access and Management System (ADAMS):**

You may obtain publicly-available documents online in the ADAMS Public Documents collection at <http://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "[ADAMS Public Documents](#)" and then select "[Begin Web-based ADAMS Search.](#)" For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, 301-415-4737, or by e-mail to pdr.resource@nrc.gov. The ADAMS accession number for each document referenced (if that document is available in ADAMS) is provided the first time that a document is referenced.

- **NRC's PDR:** You may examine and purchase copies of public documents at the NRC's PDR, Room O1-F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Lisa M. Regner, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington DC 20555-0001; telephone: 301-415-1906, e-mail: Lisa.Regner@nrc.gov

SUPPLEMENTARY INFORMATION:

On August 26, 2014, FOE filed a Petition to Intervene and Request for Hearing (Petition) concerning DCPD (ADAMS Package Accession No. ML15226A316). Within this Petition, FOE asserted concerns about DCPD's operational safety and ability to safely shut down. The Commission referred those concerns to the NRC's EDO¹ for consideration under the regulations of title 10 of the *Code of Federal Regulations* (10 CFR) section 2.206, "Requests for Action Under

¹ Memorandum and Order CLI-15-14, dated May 21, 2015 (ADAMS Accession No. ML15141A084).

this Subpart.” The EDO then referred these concerns to the NRC’s Office of Nuclear Reactor Regulation for consideration under 10 CFR 2.206.

On two occasions, the NRC offered the petitioner opportunities to address the Petition Review Board (PRB), which was established to review the concerns referred to the EDO from the Commission, as discussed above. In response, on September 30, 2015, and February 8, 2016, FOE’s attorney provided written submissions on behalf of FOE to the PRB in lieu of FOE addressing the PRB in person or via telephone (ADAMS Package Accession No. ML15226A316).

Based on the information described above, the NRC has decided to accept the petitioner’s concerns referred to the EDO by the Commission for consideration under the 10 CFR 2.206 process because these concerns meet the criteria provided in Management Directive 8.11, “Review Process for 10 CFR 2.206 Petitions.”

Dated at Rockville, Maryland, this 12th day of April 2016.

For the Nuclear Regulatory Commission.

A handwritten signature in black ink, appearing to read 'W M Dean', written in a cursive style.

William M. Dean, Director,
Office of Nuclear Reactor Regulation.

ENCLOSURE 2

NUREG/BR-0200, REVISION 5, "PUBLIC PETITION PROCESS"

ADAMS ACCESSION NO. ML050900248

PUBLIC
PETITION
PROCESS

Introduction

The U.S. Nuclear Regulatory Commission (NRC) was established in 1975 to protect public health and safety in the civilian use of nuclear power and materials in the United States. As part of its responsibilities, NRC assesses all potential health and safety issues related to licensed activities and encourages members of the public to bring safety issues to its attention.

Section 2.206 of Title 10 of the *Code of Federal Regulations* (10 CFR 2.206) describes the petition process—the primary mechanism for the public to request enforcement action by NRC in a public process.* This process permits anyone to petition NRC to take enforcement action related to NRC licensees or licensed activities. Depending on the results of its evaluation, NRC could modify, suspend, or revoke an NRC-issued license or take any other appropriate enforcement action to resolve a problem. Requests that raise health and safety issues without requesting enforcement action are reviewed by means other than the 2.206 process.

In its effort to improve public confidence, the NRC periodically reassesses the 2.206 petition process to enhance its effectiveness, timeliness and credibility. As part of these reassessments, the NRC seeks feedback from petitioners and other stakeholders through public meetings and workshops, surveys and *Federal Register* notices, as well as from its own staff experience. Specific improvements to the 2.206 process resulting from these initiatives include:

- Offering petitioners two opportunities to discuss the petition with the NRC's petition review board (PRB). The first is to allow the petitioner to provide elaboration and clarification of the petition

*The NRC also has an allegation process in which individuals who raise potential safety concerns for NRC review are afforded a degree of protection of their identity. Other processes for public involvement are listed at the end of this pamphlet.

before the PRB meets to discuss the petition. The second opportunity comes after the PRB has discussed the merits of the petition and allows the petitioner to comment on the PRB's recommendations regarding acceptance of the petition and any requests for immediate action

- Offering an opportunity for a staff-petitioner-licensee meeting to discuss the details of the issue during the course of the review.
- Providing better, more frequent communications between the staff and petitioner throughout the process.
- Providing copies of all pertinent petition-related correspondence and other documents to the petitioners.
- Providing a copy of the proposed director's decision on the petition, both to the petitioner and the affected licensee for comments, and considering such comments before issuing the decision in final form.

The Petition Process

The 2.206 process provides a simple, effective mechanism for anyone to request enforcement action and obtain NRC's prompt, thorough, and objective evaluation of underlying safety issues. It is separate and distinct from the processes for rulemaking and licensing, although they too allow the public to raise safety concerns to NRC.

Under the 2.206 process, the petitioner submits a request in writing to NRC's Executive Director for Operations, identifying the affected licensee or licensed activity, the requested enforcement action to be taken, and the facts the petitioner believes provide sufficient grounds for NRC to take enforcement action. Unsupported assertions of "safety problems," general opposition to nuclear power, or identification of safety issues without seeking enforcement action are not considered sufficient grounds for consideration as a 2.206 petition.

After receiving a request, NRC determines whether the request qualifies as a 2.206 petition. If the request is accepted for review as a 2.206 petition, the NRC sends an acknowledgment letter to the petitioner and a copy to the appropriate licensee and publishes a notice in the *Federal Register*. If the request is not accepted, NRC notifies the petitioner of its decision and indicates that the petitioner's underlying safety concerns will be considered outside the 2.206 process.

On the basis of an evaluation of the petition, the appropriate office director issues a decision and, if warranted, NRC takes appropriate enforcement action. Throughout the evaluation process, NRC sends copies of all pertinent correspondence to the petitioner and the affected licensee. NRC places all related correspondence in its Public Document Room (PDR) in Rockville, Maryland, and in the agency document control system. However, the agency withholds information that would compromise an investigation or ongoing enforcement action relating to issues in the petition. The NRC also sends the petitioner other information such as pertinent generic letters and bulletins.

The NRC notifies the petitioner of the petition's status every 60 days, or more frequently if a significant action occurs. Monthly updates on all pending 2.206 petitions are available on NRC's web site at <http://www.nrc.gov/reading-rm/doc-collections/petitions-2-206/index.html>, and in the PDR.

Petition Technical Review Meeting

A petition technical review meeting serves not only as a source of potentially valuable information for NRC to evaluate a 2.206 petition, but also affords the petitioner substantive involvement in the review and decision-making process through direct discussions with NRC and the licensee. Such a meeting will be held whenever the staff believes that it would be beneficial to the review of the petition. Note that the meeting can be offered at any time during NRC's review of a petition and is open to public observation.

Director's Decision

The NRC's official response to a 2.206 petition is a written decision by the director of the appropriate office that addresses the concerns raised in the petition. The agency's goal is to issue a proposed decision for comment within 120 days from the date of the acknowledgment letter. However, additional time may be needed to conduct an investigation, complete an inspection, or analyze particularly complex technical issues. If the goal is not met, the NRC staff will promptly inform the petitioner of a schedule change.

The director's decision includes the professional staff's evaluation of all pertinent information from the petition, correspondence with the petitioner and the licensee, information from any meeting, results of any investigation or inspection, and any other documents related to petition issues. Following resolution of any comments received on the proposed decision, the director's decision is provided to the petitioner and the licensee, and is posted to NRC's web site and made available in the PDR. A notice of availability is published in the *Federal Register*.

Director's decisions may be issued as follows:

- A decision granting a petition, in full, explains the basis for the decision and grants the action requested in the petition (e.g., NRC issuing an order to modify, suspend, or revoke a license).
- A decision denying a petition, in full, provides the reason for the denial and discusses all matters raised in the petition.
- A decision granting a petition, in part, in cases where the NRC decides not to grant the action requested, but takes other appropriate enforcement action or directs the licensee to take certain actions that address the identified safety concerns.
- A partial director's decision may be issued by the NRC in cases where some of the issues associated with the petition can be completed promptly but significant schedule delays are anticipated before

resolution of the entire petition. A final director's decision is issued at the conclusion of the effort.

The Commission will not entertain requests for review of a director's decision. However, on its own, it may review a decision within 25 calendar days.

NRC Management Directive 8.11, "Review Process for 10 CFR 2.206 Petitions," contains more detailed information on citizen petitions. For a free copy of the directive, write to the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20013-7082, or call 202-512-1800.

Electronic Access

Those parts of the monthly status report on 2.206 petitions that are not of a sensitive nature, as well as recently issued director's decisions, and Management Directive 8.11, are placed on the NRC's web site at <http://www.nrc.gov/reading-rm/doc-collections/petitions-2-206/index.html> and in the agency's Public Document Room.

Other Processes for Public Involvement

In addition to the 2.206 petition process, NRC has several other ways that permit the public to express concerns on matters related to the NRC's regulatory activities.

- The NRC's *allegation process* affords individuals who raise safety concerns a degree of protection of their identity.
- Under the provisions of 10 CFR 2.802, NRC provides an opportunity for the public to petition the agency for a *rulemaking*.
- The NRC's *licensing process* offers members of the public, who are specifically affected by a licensing action, an opportunity to formally participate in licensing proceedings. This process

applies not only to the initial licensing actions but also to license amendments and other activities such as decommissioning and license renewals.

- For major regulatory actions involving preparation of environmental impact statements, NRC offers separate opportunities for public participation in its *environmental proceedings*.
- The public can attend a number of *meetings* including open Commission and staff meetings, periodic media briefings by Regional Administrators, and special meetings held near affected facilities to inform local communities and respond to their questions.

More information on these activities can be found in NRC's pamphlet entitled, "Public Involvement in the Nuclear Regulatory Process," NUREG/BR-0215.

Office of Public Affairs
U. S. Nuclear Regulatory
Commission
Washington, DC 20555-0001
Telephone 301-415-8200 or
1-800-368-5642

NUREG/BR-0200, Rev. 5
February 2003

R. Ayers

- 2 -

No. ML15226A312). I have enclosed the associated brochure NUREG/BR-0200, "Public Petition Process," with this letter (ADAMS Accession No. ML050900248).

I would like to express my appreciation to FOE for bringing these matters to the attention of the NRC. If you have any questions, please contact Ms. Lisa Regner at Lisa.Regner@nrc.gov, 301-415-1906; or Ms. Margaret Watford at Margaret.Watford@nrc.gov, 301-415-1233.

Sincerely,

/RA/

William M. Dean
Office of Nuclear Reactor Regulation

Docket Nos. 50-498 and 50-499

Enclosures:

1. *Federal Register* Notice
2. NUREG/BR-0200, "Public Petition Process"

cc: Mr. Edwin D. Halpin
 Senior Vice President and Chief
 Nuclear Officer
 Pacific Gas and Electric Company
 Diablo Canyon Power Plant
 P.O. Box 56, Mail Code 104/6
 Avila Beach, CA 93424

Listserv

DISTRIBUTION: SRM-M150521A-2; CLI-15-14

PUBLIC	RidsNrrLAJBurkhardt Resource	RidsRgn4MailCenter Resource
LPL4-1 Reading	RidsNrrMailCenter Resource	RidsSecyMailCenter Resource
RidsACRS_MailCTR Resource	RidsNrrOd Resource	MBanic, NRR
RidsEdoMailCenter Resource	RidsNrrPMDiabloCanyon Resource	TMcGinty, NRR
RidsNrrDorl Resource	RidsOcaMailCenter Resource	YLi, NRR
RidsNrrDorlLpl4-1 Resource	RidsOpaMailCenter Resource	

ADAMS Accession Nos. Pkg ML15226A316, Letter ML16084A717, FRN ML16084A737 *see previous concurrence

OFFICE	NRR/DORL/LPL4-1/PM	NRR/DORL/LPL4-1/LA	QTE*	NRR/DRP/PGCB*	NRR/DE/EMCB/BC*
NAME	LRegner	JBurkhardt	CHsu	MBanic	YLi
DATE	3/28/16	3/28/16	3/24/16	3/29/16	3/29/16
OFFICE	NRR/DORL/LPL4-1/BC*	OGC (NLO)*	NRR/DSS/PRB Chair*	NRR/DORL	NRR/D
NAME	RPascarelli	SLewman	TMcGinty	ABoland	WDean
DATE	3/30/16	3/29/16	3/29/16	4/1/16	4/12/16

OFFICIAL RECORD COPY