

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
OFFICE OF NUCLEAR REACTOR REGULATION

William M. Dean, Director

In the Matter of)	Docket Nos. 50-275 and 50-323
)	
Pacific Gas and Electric Company)	License Nos. DPR-80 and DPR-82
)	
Diablo Canyon Power Plant)	
Units 1 and 2)	

DIRECTOR'S DECISION UNDER 10 CFR 2.206

I. Introduction

By letter dated July 14, 2016 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML16196A294), as supplemented by an e-mail dated August 2, 2016, and a letter dated March 27, 2017 (ADAMS Accession Nos. ML16215A109 and ML17102A524, respectively), Mr. David Lochbaum (the petitioner) of the Union of Concerned Scientists filed a petition under Title 10 of the *Code of Federal Regulations* (10 CFR), Section 2.206, "Requests for action under this subpart." The petitioner requested that the U.S. Nuclear Regulatory Commission (NRC, the agency, or the Commission) take enforcement action against Pacific Gas and Electric Company (PG&E, the licensee) related to the Diablo Canyon Power Plant, Units 1 and 2 (DCPP).

Mr. Lochbaum's letter, dated July 14, 2016, requested that the NRC "issue a Demand for Information pursuant to 10 CFR 2.204 to PG&E requiring the company to provide the NRC with a written explanation as to why its June 17, 2015, license amendment request [ADAMS Package Accession No. ML15176A539] failed to include all the accurate information needed by the NRC staff to complete its review and the measures it will implement so as to comply with

10 CFR 50.9 ["Completeness and accuracy of information"] in future submittals to the NRC." As a basis for the request, the petitioner states, that "the NRC's RAI [request for additional information] constitutes *prima facie* evidence that PG&E violated 10 CFR 50.9 by failing to provide complete information with its license amendment request dated June 17, 2015." Also, the petitioner states, that "[t]he apparent violation of 10 CFR 50.9 required the NRC staff to expend additional resources to issue numerous requests for additional information and later to re-review the license amendment request along with the supplemental information. Had this licensee satisfied 10 CFR 50.9 with a complete and accurate license amendment request, these NRC staff resources would not have been squandered in such a non-productive way."

On August 2, 2016, the petitioner spoke with the NRC's Petition Review Board through a public and recorded telephone conference and provided additional information concerning his request (ADAMS Accession No. ML16232A570). By letter dated November 9, 2016 (ADAMS Accession No. ML16285A220), the NRC notified the petitioner that the agency had accepted the petition for review under the 10 CFR 2.206 process because the concerns meet the criteria provided in Management Directive 8.11, "Review Process for 10 CFR 2.206 Petitions" (ADAMS Accession No. ML041770328).

By e-mail dated November 21, 2016 (ADAMS Accession No. ML16326A113), the NRC staff offered PG&E an opportunity to provide information related to the petition. The staff did not receive any additional information from PG&E.

The NRC sent a copy of the proposed director's decision to the petitioner and to PG&E for comment on March 15, 2017 (ADAMS Accession Nos. ML17031A264 and ML17031A259, respectively). The NRC staff did not receive any comments from PG&E. The petitioner responded with comments by letter dated March 27, 2017. The comments from the petitioner and the NRC staff's responses to the comments are included as an Attachment to this director's decision.

II. Discussion

Under 10 CFR 2.206(b), the director of the NRC office with responsibility for the subject matter shall either institute the requested proceeding to modify, suspend, or revoke a license, or for any other appropriate action, or advise the person who made the request in writing that no proceeding will be instituted, in whole or in part, with respect to the request, and the reason for the decision. The petitioner raised two main concerns in his petition dated July 14, 2016, associated with the need to require additional information from DCPD regarding an alternative source term license amendment request (LAR) and for the NRC to issue a demand for information pursuant to 10 CFR 2.204 for the submittal of incomplete or inaccurate information during an ongoing licensing review.

The NRC staff has examined the information that the petitioner presented and determined that the petitioner did not provide any information that substantiates the need to issue a demand for information pursuant to 10 CFR 2.204 at this time. The NRC staff determined that the agency's needs in this case are adequately served by the use of the existing license amendment review process (as outlined by NRC guidance implementing various regulatory requirements in 10 CFR Part 2, "Agency Rules of Practice and Procedure," and 10 CFR Part 50, "Domestic Licensing of Production and Utilization Facilities").

License Amendment Review Process:

The purpose of the license amendment review process is for NRC staff to review proposed modifications to the current licensing and design bases of nuclear power plants per 10 CFR 50.92, "Issuance of amendment," to ensure the public health and safety is maintained. The NRC staff has several tools within the license amendment review process to obtain the necessary information to make an appropriate and informed regulatory finding. Various regulatory requirements and NRC internal processes outline the mechanisms the NRC staff can use to acquire the additional technical information necessary to support the NRC's

determination on whether a proposed licensing action continues to support adequate protection of the public health, safety, and the environment.

When the Office of Nuclear Reactor Regulation (NRR) receives an application to amend a license (i.e., an LAR), the NRR staff performs an acceptance review to determine if the application is complete and acceptable for docketing within the authority of 10 CFR 2.101, "Filing of application." The acceptance review process is detailed in NRR Office Instruction LIC-109, Revision 2, "Acceptance Review Procedures" (ADAMS Accession No. ML16144A521),¹ and addresses the process for determining whether a submittal has sufficient information for the NRC staff to begin its technical review. The acceptance review is not a detailed technical review and is not intended to determine the acceptability of the requested change, only whether the application is sufficient for the NRR staff to *begin* a detailed technical review.

Office Instruction LIC-109 describes several regulatory and technical criteria used for the acceptance review, including a determination that the licensee submitted the information under oath and affirmation. This requirement extends from the Atomic Energy Act of 1954, as amended, and is also explicitly required for license amendments per 10 CFR 50.30(b), "Oath or affirmation." The requirement provides the NRC staff confidence that the information provided is reasonably complete.

Upon completion of the various acceptance review criteria by the NRC staff, the office instruction describes in detail the three possible results of an acceptance review. During the acceptance review, if the NRC staff finds deficiencies so significant that they impede completion of the review, the staff will return the requested licensing action (RLA) to the licensee or applicant as unacceptable for review. If the NRC staff finds the RLA insufficient to begin the review, the NRC staff may request supplemental information from the licensee or applicant to

¹ During the time of the acceptance review for the DCP alternative source term LAR in 2015, the NRC staff used LIC-109, Revision 1, dated July 20, 2009 (ADAMS Accession No. ML091810088).

address any deficiencies in the RLA in a reasonable timeframe. Lastly, the NRC will accept an application for review if the NRC staff concludes that the application and supplemental information (if necessary), reasonably appear to contain sufficient technical information, both in scope and depth, for the NRC staff to begin the detailed technical review.

When the NRC accepts an LAR for review, the NRC staff begins its detailed technical review with the goal of completing an independent assessment of the proposed action against applicable regulatory requirements and guidance with the objective of assuring the protection of public health and safety, following the guidance in Office Instruction LIC-101, Revision 5, "License Amendment Review Procedures" (ADAMS Accession No. ML16061A451).² The NRC recognizes that additional information may be needed for the NRC staff to independently come to a conclusion about the technical adequacy of an LAR. As a result, Section 2.102, "Administrative review of application," of 10 CFR states that during review of an application, an applicant may be required to supply additional information. This section of the regulations provides NRC the authority to send RAIs to the licensee to obtain all relevant information needed to make a regulatory decision on an LAR that is fully informed, technically correct, and legally defensible. As described in LIC-101, the NRC staff issues RAIs when the information is needed for the NRC staff to make its regulatory decision, but the information is not included in the initial submittal, is not contained in any other docketed correspondence, or cannot reasonably be inferred from the information available to the staff.

The NRC staff can also leverage other appropriate communication means, such as public meetings and teleconferences, in order to enhance clarity and understanding both during the development of draft RAIs and after sending RAIs to the licensees. Use of such communication tools with the licensees facilitates the staff's understanding of licensee

² During the time of the beginning of the detailed technical review for the DCP alternative source term LAR in 2015, the NRC staff used LIC-101, Revision 4, dated May 25, 2012 (ADAMS Accession No. ML113200053).

submittals, can reduce the number of RAIs needed, and enhances the licensees' understanding of RAIs and their ability to respond effectively. In some cases, a regulatory audit is useful and appropriate to allow NRC staff to gain a better understanding of the requested licensing action, to verify information, and to identify information that will require docketing to support the basis of the licensing decision. Performing a regulatory audit often allows the staff to more efficiently conduct its review or gain insights on the licensees' programs or processes. However, in order for the NRC to use the information obtained during the audit to make a regulatory or technical decision, the information must be placed on the docket by the staff or be formally submitted by the licensee or applicant on the docket. Additional information on NRR's regulatory audit process can be found in Office Instruction LIC-111, "Regulatory Audits" (ADAMS Accession No. ML082900195).

If the NRC determines an LAR should not be approved, the NRC staff has several options available within the license amendment review process. In accordance with 10 CFR 2.108, "Denial of application for failure to supply information," the NRC may deny an application if a licensee or applicant fails to respond to an RAI within 30 days from the date of request, or within such other specified time. Also, 10 CFR 2.103, "Action on applications for by-product, source, special nuclear material, facility and operator licenses," allows for NRC to deny an application if the deficiencies are such that the submittal and supplements fail to comply with the AEA or NRC regulations, as applicable. If the NRC determines that the LAR does not satisfy NRC safety regulations and warrants a denial, the NRC staff will complete the necessary internal reviews, contact the licensee to discuss the determination to deny the application, and offer the licensee the opportunity to withdraw the application under 10 CFR 2.107, "Withdrawal of application." NRC staff will normally use the withdrawal and denial processes prior to pursuing enforcement action.

In summary, the NRC staff has several tools within the license amendment review process to obtain the necessary information to make an appropriate and informed regulatory

finding. If the NRC determines that the LAR cannot be approved, the NRC staff can offer the licensee the opportunity to withdraw the application or pursue a denial. As a result, the use of enforcement-related action during the license amendment review process is not typically necessary nor is it common.

Regulatory Tools Used in the DCP Alternative Source Term LAR:

The petitioner uses the example of the LAR submitted by PG&E on June 17, 2015, to revise the licensing bases to adopt the alternative source term. As discussed above, the NRC staff has several tools within the license amendment review process to obtain the necessary information to make an appropriate and informed regulatory finding.

During the acceptance review of the DCP alternative source term LAR, the NRC staff used the Office Instruction LIC-109 process to obtain supplemental information necessary to allow the NRC staff to begin its detailed technical review. In a letter dated August 13, 2015, the NRC informed the licensee of the supplemental information needed in order to begin the technical review and the licensee responded in a letter dated August 31, 2015, with the requested supplemental information (ADAMS Accession Nos. ML15219A016 and ML15243A363, respectively). The NRC staff reviewed the supplemental information and by e-mail dated September 8, 2015, NRC staff “determined that PG&E’s responses provided adequate information to begin the technical review” and stated “given the lesser scope and depth of the acceptance review as compared to the detailed technical review, there may be instances in which issues that impact the NRC staff’s ability to complete the detailed technical review are identified despite completion of an adequate acceptance review” (ADAMS Accession No. ML15252A006).

The NRC staff then used the RAI process to obtain additional clarity on the information provided by the licensee in its application dated June 17, 2015. The petitioner specifically references the NRC’s RAIs regarding meteorological (Met) data and the atmospheric dispersion

modeling analyses in staff e-mails dated October 1, 2015, and February 17, 2016 (ADAMS Accession Nos. ML15278A049 and ML16048A232, respectively). The licensee provided supplemental information in a timely manner in its letters dated November 2, 2015, and April 21, 2016 (ADAMS Accession Nos. ML15321A235 and ML16120A026, respectively).

Due to the complex nature of the atmospheric dispersion modeling analyses in the DCPD LAR, including the licensee's use of a proprietary dispersion model, the NRC staff determined that a regulatory audit was necessary and prudent to examine and gain a better understanding of specific technical information input to those analyses, including supporting calculations. The NRC's regulatory audit plan dated July 12, 2016, and the subsequent audit report dated October 27, 2016, can be found in ADAMS under Accession Nos. ML16193A332 and ML16279A343, respectively. Following the regulatory audit on August 3-4, 2016, the NRC staff submitted RAIs dated September 7, 2016 (ADAMS Accession No. ML16251A091), to obtain information discussed in the audit, on the docket, in order for NRC staff to complete that portion of the review of the DCPD alternative source term LAR. In response to the RAIs, the licensee provided supplemental information in letters dated October 6, 2016, and December 27, 2016 (ADAMS Accession Nos. ML16287A754 and ML17006A051, respectively).

Overall, the NRC staff utilized the appropriate tools for requesting supplemental and additional information, consistent with well-established licensing processes, in order to facilitate an effective regulatory review of the LAR.

Discussion on 10 CFR 50.9:

History of 10 CFR 50.9

The NRC promulgated 10 CFR 50.9 in 1987 in an attempt to codify Commission case law from the Virginia Electric Power Company (VEPCO) case, CLI-76-22 (1976). In that case, the licensee failed to disclose in its LAR certain seismic information regarding the location of North Anna Power Station. At the time, such information was evaluated under the "material false

statement” standard. The Commission concluded in the VEPCO case that there is no scienter requirement for material false statement (i.e., the licensee need not know that the statement is false at the time), that an omission can constitute material false statement, and that materiality is determined by whether information could influence NRC staff in making a regulatory decision (52 FR 49363; December 31, 1987). The NRC continued administering the enforcement program under the VEPCO holding until its codification in the 1987 rulemaking.

The concept of a “material false statement” was broken into two separate regulations. The NRC’s regulations at 10 CFR 50.9 cover information that is materially incomplete or inaccurate and 10 CFR 50.5, “Deliberate misconduct,” addresses deliberately providing information to the NRC or a licensee, etc., that the person submitting the information knows to be materially incomplete or inaccurate. The Statements of Consideration for the 10 CFR 50.9 rule demonstrate that the NRC staff explicitly contemplated the implications of the rule on RAIs in the licensing process. Specifically, the NRC staff stated that “the Commission intends to apply a rule of reason in assessing completeness of a communication. For example, in the context of reviewing an initial application or a renewal application for a license, it is not uncommon for an NRC reviewer to seek additional information to clarify his or her understanding of the information already provided. This type of inquiry by the NRC does not necessarily mean that incomplete information which would violate this rule has been submitted” (52 FR 49366; December 31, 1987).

History of Enforcement in Licensing Matters

Consistent with the basis described in the Statements of Consideration of 10 CFR 50.9, the NRC has seldom issued violations for information submitted in the licensing process. In 1994, the NRC’s Executive Director for Operations established a review team to assess the NRC enforcement program. The team’s final report, NUREG-1525, “Assessment of the NRC Enforcement Program,” dated April 1995 (ADAMS Accession No. ML092240713), discusses

deterrence as an enforcement objective and specifically contemplates that enforcement occurs “after the fact.”³ The report goes on to say that “[a]ll enforcement is, by nature, *after the fact*; while licensing, inspection, and other NRC functions can help to anticipate and prevent violations and other safety problems from occurring, enforcement action is only taken when the noncompliance has already occurred (i.e., after the other motivations for compliance have, at least in this instance, been insufficient).”⁴ In the case of licensing actions, the “other motivation” for compliance is the NRC’s acceptance of the application and/or granting of the requested licensing action. In other words, the staff’s primary, and arguably, most effective recourse for poor quality licensing submittals is to decline to accept the application and/or decline to grant the requested licensing action.

Section 182 of the Atomic Energy Act, from which NRC derives the authority to promulgate 10 CFR 50.9 states that “[t]he Commission may at any time after the filing of the original application, and before the expiration of the license, require further written statements in order to enable the Commission to determine whether the application should be granted or denied...” This suggests that a reasonable recourse for inadequate responses to RAIs is denial of the requested licensing action rather than an enforcement sanction. Furthermore, as stated above, the Statements of Consideration for 10 CFR 50.9 (52 FR 49366; December 31, 1987) make it clear that NRC staff RAIs are not necessarily indicative of a violation of 10 CFR 50.9 as suggested by the petitioner.

The Enforcement Policy provides the NRC staff the authority to take an enforcement action for submittals of incomplete or inaccurate information. Whether a particular issue constitutes a violation of 10 CFR 50.9 is determined by the facts and circumstances in a particular case. While the NRC staff seldom issues violations for information submitted in the initial phase of the licensing process, it can and has taken enforcement actions (including

³ NUREG 1525 at II.A-4.

⁴ *Id.*

escalated enforcement) for cases where licensees provide inadequate information that the NRC used or considered in reaching a decision. Examples include situations when a licensee provided inaccurate or incomplete information: (1) related to a revision to technical specifications or a license transfer application; and (2) in response to RAIs in an egregious manner.⁵

Policy Issues

Whether or not the NRC issues violations for information that is incomplete or inaccurate in the context of licensing submittals is a matter of policy. While the NRC has an interest in receiving quality products for review, the agency also has an interest in maintaining efficiency in the regulatory process. If the NRC frequently cites violations of 10 CFR 50.9 for license applications and responses to RAIs, then it is likely that licensees will naturally tend to provide as little information as possible. This could thwart the candid and fulsome exchange of information and decrease the efficiency of the licensing process. The routine use of enforcement in this area may tend to create a “chilling effect” on licensees when providing information, which is contrary to the principles of good regulation.

As previously discussed, the primary means for dealing with unacceptable licensing submittals is denying the requested regulatory action or accepting a licensee’s request to withdraw the requested regulatory action. To the extent that the NRC staff believes the licensee’s conduct is exceptionally egregious, enforcement is an available option. However, as noted earlier, in the Statements of Consideration, an NRC reviewer requesting additional information in the context of licensing is not usually indicative of a violation. The NRC Enforcement Manual contains guidance to the staff on evaluating these issues (ADAMS Accession No. ML102630150). Specifically, the manual states that “generally, no enforcement

⁵ EA-2004-189, EA-2012-030, EA-2013-058 and EA-2013-201 (ADAMS Accession Nos. ML043090082, ML12213A182, ML13239A398, and ML14094A052, respectively).

action is taken for inaccurate or incomplete information submitted in the licensing process...”

However, “the NRC has the authority to do so on a case by case basis if a particular submission warrants such action.” As explained above, given the availability of other regulatory actions that can be taken should inaccurate or incomplete information be identified, the NRC staff does not believe enforcement action is warranted for the DCPD alternative source term LAR, at this time.

RAIs and the NRC Budget:

The petitioner states in its e-mail dated August 2, 2016, that “Our concern is heightened by the downsizing being undertaken via Project [Aim]. If the NRC staff continues to inefficiently apply FTEs [full-time equivalents] to reviews and re-reviews and re-re-reviews of licensee submittals until they finally obtain complete and accurate information, those will be FTEs unavailable for more productive safety work.”⁶

Project Aim is an NRC initiative for right-sizing the agency, along with a framework and series of ongoing initiatives to enhance the NRC’s ability to plan and execute its mission in a more effective, efficient, and agile manner. Successful implementation of these strategies, along with the inculcation of the underlying tenets of Project Aim into agency culture, is expected to play a key role in helping the agency to accomplish the agency’s safety and security mission more effectively and efficiently while operating with fewer resources. More on Project Aim can be found on NRC’s external Web site at

<https://www.nrc.gov/about-nrc/plans-performance/project-aim-2020.html>.

III. Conclusion

Given that the petitioner has provided no additional information which demonstrates that the use of means other than the appropriate regulatory tools in reviewing the DCPD alternative

⁶ E-mail dated August 2, 2016.

source term LAR are necessary to address technical deficiencies within the application, the NRC staff concludes that the requested demand for information, per 10 CFR 2.204, is not warranted for the DCP alternative source term LAR. Therefore, the NRC denies the petitioner's requested enforcement action against the licensee.

As provided in 10 CFR 2.206(c), the NRC staff will file a copy of this director's decision with the Secretary of the Commission for the Commission to review. As provided for by this regulation, the decision will constitute the final action of the Commission 25 days after the date of the decision unless the Commission, on its own motion, institutes a review of the decision within that time.

Dated at Rockville, Maryland, this 12th day of May, 2017.

For the Nuclear Regulatory Commission.

/RA/

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

Attachment:
Responses to Petitioner Comments
on Proposed Director's Decision

COMMENTS RECEIVED FROM THE PETITIONER

ON THE PROPOSED DIRECTOR'S DECISION DATED MARCH 15, 2017

By letter dated March 15, 2017, the NRC sent a copy of the Proposed Director's Decision to Mr. David Lochbaum (the petitioner) for comment. By e-mail dated March 27, 2017, the petitioner responded with comments. The NRC has provided responses to the petitioner's comments below.

Overall, there are several differences between the Proposed and Final Director's Decisions. To enhance clarity, the Petition Review Board added additional information in the section titled, "License Amendment Review Process" and relocated the information regarding the review of the specific DCP alternative source term LAR to a new section titled, "Regulatory Tools Used in the DCP Alternative Source Term LAR." For example, the Petition Review Board added a description of the options NRC can take if the NRC staff has determined the LAR should not be approved, including the option to have the licensee withdraw the LAR or deny the LAR.

Comment 1: "A careful reading of LIC-109 and LIC-101 will not find a single reference to 10 CFR 50.9 (hereafter 50.9), will not find a single use of the word "inaccurate," and will find all uses of the word "incomplete" limited to the NRC's authority under 10 CFR 2.101 to return a submittal deemed to be incomplete... Likewise, both LIC-109 and LIC-101 refer to requests for additional information (RAIs) often, but never in the context of possibly indicating a 50.9 violation."

NRC Response to Comment 1:

As the petitioner stated, Office Instructions LIC-109 and LIC-101 do not reference 10 CFR 50.9. The NRC staff has many tools within the license amendment review process to obtain additional information and clarity on the application, as discussed earlier. The NRC staff also has several

tools for handling an application that NRC staff has determined to be unacceptable, including offering the licensee an opportunity to withdraw and denying the application. With these tools built into the license amendment review process, the NRC does not need to include guidance in LIC-109 or LIC-101 to screen for 10 CFR 50.9 violations. 10 CFR 50.9 is handled under the enforcement process, which is separate from the license amendment review process.

Comment 2: “Page 6 of the proposed director’s decision describes how LIC-111... can more efficiently enable the NRC to access licensees’ programs and processes. The inference I drew from this text is that these audits can gauge whether programs to ensure accurate and complete submittals are made to the NRC are adequate, or not. Oddly enough, LIC-111 mentions RAIs only in the context of obtaining additional information considered necessary for the audit report, not as potential indications of inadequate submittal assurance programs by licensees.”

NRC Response to Comment 2:

The purpose of performing a regulatory audit per LIC-111 is for the NRC staff to gain a better understanding of the application to verify information and/or identify information that will require docketing to support the basis of the licensing or regulatory decision. As discussed earlier, audits are a particularly effective tool when the staff is evaluating a technically complex LAR. If the NRC staff determines during an audit that the application in question is not acceptable, the NRC will take steps to either have the application withdrawn or the NRC will deny it.

Comment 3: “I am not aware of classroom, computer-based, or on-the-job training specifically intended to help NRC staffers determine when a licensee has violated 50.9, or even to identify evidence of potential violations.”

NRC Response to Comment 3:

The NRC has various formal training programs catered to the roles and responsibilities of NRC employees and their roles in supporting the NRC’s mission essential functions, which include

licensing, inspection, and enforcement. The technical staff qualification program focuses on the licensing process and the associated regulatory requirements, which include those requirements in the license amendment review process discussed above. The technical staff qualification also requires an understanding of 10 CFR 50.9 in relation to the acceptance review and request for additional information and the concept is specifically discussed in the qualification manual. An understanding of 10 CFR 50.9 is required in order to pass the qualification oral board for technical staff.

Comment 4: “Thus, there were over 6,268 requests for additional information (RAIs) issued by the NRC between 2009 and 2017 to date; the same period in which the NRC issued a whopping total of 11 significant enforcement actions for 50.9 violations—less than two-tenths of one percent of the number of RAIs. This is not to suggest or imply that every RAI constituted a violation of 50.9. Or that even half of them did. But it boggles the mind to suspect, yet alone believe, that less than 0.18 percent of the RAIs involved 50.9 violations.”

NRC Response to Comment 4:

Although the NRC staff did not validate the information provided, those numbers reflect that the NRC staff is properly applying the license amendment review process as intended.

Comment 5: “The rarity of NRC issuing a 50.9 violation coupled with the non-existent training for and procedural governance of potential 50.9 violations suggests that process alone does not account for the occasional violations. Instead, it seems more likely that violations are issued for other motivations, such as some NRC staffer being irked by a licensee and using the enforcement tool to retaliate.”

NRC Response to Comment 5:

As stated in response to Comment 4, the rarity of NRC issuing 10 CFR 50.9 violations during the review of license amendment requests demonstrates that the NRC staff is appropriately

using the license amendment review process. The NRC staff will issue a 10 CFR 50.9 violation for cases that are especially egregious that cannot be handled appropriately under the license amendment review process. For example, if the NRC staff relied on the inaccurate and/or incomplete information provided by a licensee to make a regulatory decision (e.g., issuing a license amendment) and the NRC would not have issued that license amendment if it had been aware of the inaccurate/incomplete information.

The process for issuing a 10 CFR 50.9 violation is a deliberative process that requires approval from several different managers and agreement from independent offices. The need for a 10 CFR 50.9 violation would be based on the merits of the case without personal biases. In response to the petitioner's comment that some NRC employees might be motivated to pursue 10 CFR 50.9 violations for personal rather than factual reasons, the concern has been forwarded to the Office of the Inspector General for consideration.

Comment 6: "Returning to Management Directive 8.11... page 26 of the handbook states that 'The letters [issuing the proposed director's decision for comments], with the enclosure, will be made available to the public through the Agencywide Documents Access and Management System (ADAMS)' ... As of 9:00 am March 27, 2017, your March 15 letter to me is not publicly available in ADAMS."

NRC Response to Comment 6:

The NRC acknowledges that the Proposed Director's Decision was not made publicly available per Management Directive 3.4 due to an administrative oversight. The NRC staff has taken corrective actions to ensure this administrative oversight does not happen in the future. Your comment has been forwarded to the Office of the Inspector General for consideration.

The following comments about the 10 CFR 2.206 process have been forwarded to the Office of the Inspector General for consideration.

Comment 7: “You offered me 14 days to review and comment on the proposed director’s decision. This comment period seemed scant compared to the 30-day comment periods typically afforded licensees to respond to NRC’s missives.”

Comment 8: “For example, the final paragraph on page 20 of the handbook states “The first goal is to issue the proposed director’s decision for comment within 120 days after issuing the acknowledgement letter.” The acknowledgement letter was dated November 9, 2016, so the NRC issued the proposed director’s decision 126 days later—I guess that’s close enough for government work.”

Comment 9: “Note that I submitted the petition on July 14, 2016. The NRC acknowledged it by letter dated November 9, 2016. So, the NRC took 116 days before even starting the 120-day clock in Management Directive 8.11.”

The Petition Review Board has determined that the comments provided by the petitioner did not provide any relevant additional information and support for the petition that had not already been considered. Thus, the comments did not change the conclusion of the proposed director’s decision. The final director’s decision denies the petitioner’s request for enforcement action. The NRC appreciates the petitioner’s comments and thanks the petitioner for raising the concerns in the interest of protecting the health and safety of the public.