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Agency Activities in Response to a Portion of the Nuclear Energy Innovation and Modernization Act

Comment On: NRC-2019-0073-0030

Stakeholder Input on Best Practices for Establishment and Operation of Local Community Advisory Boards in Response to a Portion of the Nuclear Energy Innovation and Modernization Act

Document: NRC-2019-0073-DRAFT-0034

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Submitter Information

Name: Alex Karlin

General Comment

See attached file(s)

Attachments

NEIMA - KARLIN COMMENTS 2019-08-12

22 BEST PRACTICES FOR CABS (1)

EXAMPLES OF BEST PRACTICES FOR NUCLEAR DECOMMISSIONING CABS

**PRELIMINARY COMMENTS TO NRC ON BEST PRACTICES
FOR THE ESTABLISHMENT AND OPERATION OF
LOCAL COMMUNITY ADVISORY BOARDS FOR
DECOMMISSIONING NUCLEAR POWER PLANTS**

(INCLUDING 22 SUGGESTED BEST PRACTICES)

(August 12, 2019)

By: Alex S. Karlin¹

Section 108 of the Nuclear Energy Innovation and Modernization Act (NEIMA) requires the Nuclear Regulatory Commission (NRC) to submit a report to Congress “identifying best practices for establishment and operation of local community advisory boards” (CABs) regarding the decommissioning of nuclear power plants. This is a timely issue because numerous nuclear power plants are currently being decommissioned and each decommissioning will take many years and cost billions of dollars. Every decommissioning profoundly impacts numerous state and local stakeholders.

Regardless of where a nuclear power plant is located the impacts of decommissioning in every such community are substantially similar. Communities facing such shutdowns tend to think they are unique and alone. This is not so. Each community does not need to “re-invent the wheel” when it grapples with the daunting, decades-long, process of responding to the closure and cleanup of a shuttered nuclear power plant site. Many commonalities exist and lessons can be learned.

The following comments are submitted in the hope that NRC will seize the opportunity granted by NEIMA section 108 by issuing a “Best Practices Report” that will be a useful guide to State and local communities confronting the shutdown and cleanup of nearby nuclear power plants.

I request that the NRC discuss and respond to each of these comments

I. FUNCTION OF ADVISORY BOARD IS TO ADVISE

A. The Primary Function of an “Advisory Board” is to Advise Decision-Makers

NRC’s analysis of the best practices for local decommissioning “community advisory boards” must focus on boards whose primary function is to give advice. Whether it is stated as the “mission” or “purpose” or “goal” or “function” of the board, the key point is that its main job is to provide advice on topics on decommissioning-related decisions that need to be made by State and local decision-makers and communities. The term “advisory” is in the title of NEIMA Section 108 “Report Identifying Best Practices for Establishment and Operation of Local Community Advisory Boards.” The word “advisory” is repeated 6 times in the text of the statute.

¹ Alex S. Karlin is an environmental attorney who previously served as an Administrative Judge with the Atomic Safety and Licensing Board Panel of the US NRC. He handled cases such as Yucca Mountain and Diablo Canyon. He now lives in San Luis Obispo, California approximately 12 miles from the Diablo Canyon Nuclear Power Plant, which plans to close in 2025, if not before. He is a member of the Diablo Canyon Decommissioning Engagement Panel. These comments are submitted by him, not the DCDEP. He can be contacted at askenvirolaw@gmail.com.

By definition, the purpose of a CAB is to give advice.

B. Federal Laws Such as FACA Set Best Practices Standards for Advisory Boards

Although the Federal Advisory Committee Act (FACA)² does not specifically govern NEIMA, the FACA definition of “advisory committee” is directly on point, and provides a clear “best practice” that should be followed:

“**Advisory committee**’ means any committee [or] board . . . that is established . . . for the purpose of providing advice or recommendations on issues of policy to an official, branch, or agency of the Federal Government.” 5 U.S.C. App. 2. See 10 C.F.R. Section 7.2.

Likewise, the Atomic Energy Act authorizes NRC to create advisory boards, making clear that their function is to advise:

“[NRC is] authorized to establish advisory boards to advise with respect and make recommendations to the Commission on legislation, policies, administration, research and other matters.” Atomic Energy Act Section 161a, 42 U.S.C. Section 2201(a).

Pursuant to the AEA, NRC has, for example, created the Advisory Committee of Reactor Safeguards (ACRS):

There is hereby established an Advisory Committee of Reactor Safeguards . . . [which] shall advise the Commission with regard to the hazards of proposed or existing reactor facilities and the adequacy of proposed reactor safety standards and shall perform such other duties as the Commission may request.” AEA section 29, 42 U.S.C. section 2039. See also 10 CFR Section 1.13.

C. Boards Whose Primary Function is to “Foster Communications,” Serve as a “Community Forum,” or to “Educate,” or “Engage” May be Nice, But They Are Not “Advisory Boards” and Either Should Not be Included in the NEIMA Report or Should be Identified as Inferior Practices.

If the primary function or activity of a local decommissioning board or committee is to “engage” the public, or to “foster communications” or “educate” the public, THEN the local decommissioning entity is NOT functioning as an “advisory board.” Such boards serve different purposes, such as public relations, giving the public an opportunity to ventilate (with no

² FACA applies to federal advisory committees. Nevertheless, FACA is an authoritative statement by the U.S. Government as to what constitute “best practices” for an advisory committee. FACA addresses many topics that are directly relevant to NRC’s NEIMA Section 108 study, such as the “establishment and purpose of advisory committees,” the “charter” of the advisory committee, and the “advisory committee procedures; meetings; notice; publication; [and] regulations.” Even though NEIMA applies to “local” community advisory boards, most of the FACA provisions (open meetings, public notice, public right to participate, the keeping of minutes, making decisions in public, making records public, avoiding conflicts of interest) are either directly essential to local CABs, or can and should easily be adapted to a local CAB.

meaningful impact) and/or giving the community the simulacrum of stakeholder involvement in the process.³

The NRC should not include “Engagement Panels” or “Community Forums” in the NEIMA section 108 study. Alternatively, if NRC chooses to discuss these public relations/educational boards in the study, then NRC should place them in an entirely separate category and identify them as inferior practices. They do not serve as best practice benchmarks for legitimate community advisory boards.

D. Best Practice: Advisory Boards Advise Their Creator(s)

Almost universally, advisory entities are created to advise their creator(s) (not third-parties).

FACA advisory committees always advise the governmental entity that created them. NRC advisory committees advise NRC. Advisory committees created by agencies within the State of California advise the agency that created them. Advisory committees established by the City of San Luis Obispo, California advise the City of San Luis Obispo. Advisory boards created by nuclear power plant operator/licensees should stick to advising the Operator/Licensee, not everyone else.

If X hires Y to advise Z, then something is amiss.

This is exemplified when a nuclear power plant operator creates a board for the purpose of advising the State or local government. In such instances, the board, usually unwittingly, is simply giving the public a good show, and running interference for the Operator/Licensee.

Something like this occurred with the Diablo Canyon Decommissioning Engagement Panel (of which I am a member). PG&E, the owner and operator of the Diablo Canyon nuclear power plant created the DCDEP. Under the charter, written by PG&E, the DCDEP was supposed help facilitate communications between PG&E and the public. Nothing in the PG&E charter mentioned the word “advice.” The charter did not establish the DCDEP as an “advisory” entity.

Regardless, the DCDEP started issuing unsolicited advice and recommendations. It issued unsolicited advice to the State of California. It issued unsolicited advice to local governmental entities. It issued unsolicited advice to NRC. It issued unsolicited advice to PG&E. PG&E solemnly agreed that it would seriously consider this advice. Meanwhile, the various governmental entities to whom the DCDEP has sent unsolicited advice have diplomatically “put it in the record.” It is just another form of public comment, labelled as “advice.”

If an entity (such as the DCDEP) issues unsolicited advice to regulators and government agencies and the entity is created and funded by the Operator/Licensee (who has a huge financial interest in the outcome), then that “advice” is always (and properly should be) heavily discounted. This kind of entity does not really deserve the name “CAB”, and is an inferior practice for an advisory board.

³ This does not mean that an advisory board may not also have the collateral benefit of educating, informing, and/or engaging the public. But if these are the board’s primary purpose, then it is not an advisory board.

E. CABs Should Be Formed at (and by) the State and Local Level -- NRC Should Not Mandate the Formation of CABs by Operator/Licensees

The NRC currently mandates the creation of local decommissioning CABs in one limited situation: when the Operator/Licensee is seeking license termination under restricted conditions. 10 C.F.R. Section 20.1403(d). If the Licensee wants to leave the site radiologically contaminated, then its License Termination Plan must propose legally enforceable institutional controls that will provide reasonable assurance that public exposures from the site will not exceed 25 mrem per year. 10 C.F.R. Section 20.1403(b). "The licensee shall document, in the LTP or decommissioning plan, how the advice of individuals and institutions in the community . . . has been sought and incorporated." 10 C.F.R. Section 20.1403(d). The licensee "shall seek advice from such affected parties" 10 C.F.R. Section 20.1403(d)(2). "In seeking advice" the licensee shall provide for "participation by representatives of a broad cross section of community interests" and "an opportunity for a comprehensive, collective discussion on the issues." 10 C.F.R. Section 20.1403(d)(2)(i) and (ii).

Such "restricted use" CABs have an important, but very limited role, i.e., advising the Licensee on one specific decision: what legally enforceable institutional restrictions should be imposed on a still contaminated site when NRC terminates the license. And, this is acceptable because the creator of the advisory board (the Licensee) is the one being advised.

It is important to note that 10 C.F.R. Section 20.1403 confirms that NRC can legally mandate the creation of local community advisory boards related to decommissioning.

In contrast with restricted use decommissionings, however, NRC should NOT mandate the creation of local CAB to advise the State or local stakeholders with regard to the normal, unrestricted use decommissionings. First, the scope of topics relevant to the latter, is much broader and longer than the single narrow topic covered by 10 C.F.R. Section 20.1403. Second, while NRC has authority over the Operator/Licensee, NRC has no authority to order the State and local communities to create a CAB. Third, and most importantly, NRC should not order an Operator/Licensee to create a CAB to "advise" OTHER people (e.g., State and local governments, communities, etc.) because it violates the fundamental premise that X cannot (legitimately) establish an advisory board to advise Z. Operator/Licensees already have enough lobbyists and "government relations" firepower.

The States of Vermont, Massachusetts, New York and Connecticut (collectively the "States") in their June 13, 2017, comments to the NRC⁴, get it right:

While the States strongly support the formation of Citizen Engagement Panels for fostering communications between the licensee and the public, the States do not recommend that NRC regulations mandate the formation of such advisory panels. The States are concerned that by doing so, the formation of these panels would become largely dictated by the licensees, which could produce inadequate representation of all stakeholders on the panel. . . These panels need to be formed at the State and local level by a means most appropriate for the communities surrounding the decommissioning power reactor. Hence, the NRC

⁴ These Four States submitted these comments on NRC's Draft Regulatory Basis and request for comments regarding regulatory improvements for decommissioning nuclear reactors, 82 Fed. Reg. 13778 (March 15, 2017), and NRC's corresponding preliminary draft regulatory analysis and request for comments, 82 Fed. Reg. 21481 (May 9, 2017).

regulations and guidance for community engagement panels need to remain flexible regarding their creation and continuation.

The States instead recommend that the NRC require licensees to support these panels once they are formed, by providing funding and other, including convenient access to meeting space, making appropriate office equipment available, etc. The States encourage the NRC to use the Vermont Nuclear Decommissioning Citizens Advisory Panel (formed by State law and incorporating an independent survey to identify key stakeholders) as one example of how to compose and create an engagement panel.⁵

I agree with Vermont, New York, Massachusetts and Connecticut. Local CABs, especially if they are going to issue advice to State and local decision-makers, should be created by and for those decision-makers. Not the Operator/Licensee.

II. TWENTY-TWO BEST PRACTICES FOR ESTABLISHMENT AND OPERATION OF LOCAL DECOMMISSIONING COMMUNITY ADVISORY BOARDS

The following are some initial and preliminary comments to the NRC with regard to best practices for the establishment and operation of CABs. I ask NRC to address each comment when it develops and issues its best practices report.

1. **Best Practice Comment: Primary Function of an “Advisory Board” Must be “Advisory.”** By definition, the function of a community advisory board is to provide advice or recommendations to a decision-maker. All NRC advisory committees meet this prime directive, and it is mandated by the Federal Advisory Committee Act for all Federal advisory boards⁶ Many States have similar laws and all of them make advice the central function of any advisory entity. While FACA and State laws do not directly apply to NEIMA, they are excellent guides for identifying “best practices” for any advisory board.
2. **Best Practice Comment: NRC Should Incorporate Federal Advisory Committee Act Principles as NEIMA Best Practices for Local Community Advisory Boards:** The provisions of FACA are an excellent starting point the “establishment and operation” of a CAB. These include principles regarding the establishment and purpose of any advisory board, charter filing and contents, specification of objective and scope, committee procedures, public notice, open meetings and decisions, recordkeeping, public access and budgeting. NEIMA best practices should fully follow FACA principles unless NRC articulates a very good reason to vary from them.
3. **Best Practice Comment: In Order to be Most Effective, an Advisory Board Must be Appointed by Persons Being Advised (i.e., the Advisees):** The best **Advisors** (i.e., advisory board) must be someone the **Advisee** is willing to listen to and consider. The CAB and its members need to have the confidence of, and thus ought to be selected or designated by, the Advisee(s), i.e., the decision-maker(s) who are seeking the advice,

⁵ Comments of the State of Vermont, the Commonwealth of Massachusetts, the New York Office of the Attorney General and the States of Connecticut and New York to NRC dated June 13, 2017. (Emphasis added). (ADAMS ML17165A385).

⁶ 5 U.S.C. App.2. See also NRC regulation 10 C.F.R. Section 7.2.

and to whom the advice is to be given. If multiple decision-makers are being advised (e.g., Governor, State Legislatures, relevant regulatory agencies, local governmental entities, Labor unions, Native American communities) then each decision-maker must buy-in to the CAB and have the opportunity to help select or designate CAB members.

4. **Best Practice Comment: CAB Should Serve the Community:** Community advisory boards (CABs) should serve the **community** that is affected by the decommissioning. An Operator/Licensee can hire its own consultants and advisors (if it really wants advice). A “best practices” CAB provides advice to the community.
5. **Best Practice Comment: CABs Should be Chartered, Established, and Operated By the Affected State and Local Decision-Makers, Not the Licensee:** See comments 3 and 4 above, as well as comments by Vermont, New York, Massachusetts and Connecticut quoted in Section I.E above. The Vermont Nuclear Decommissioning Citizens Advisory Panel (formed by State law) is a good example.⁷
6. **Best Practice Comment: Avoid Sham Advisory Boards: “Engagement Panels” Created To “Inform” the Public and To Provide a “Community Forum” Are Not Advisory Boards and Should be Avoided:** A CAB created by the nuclear power plant operator, for the nuclear power plant operator, with the mission of “educating the public” for the nuclear power plant operator, is NOT serving the community and is not a community advisory board. Instead, it is just another a public relations exercise. Nuclear plant operators already have plenty of lobbyists, PR people, government relations employees, etc. to represent and push the operator’s interests. Community advisory boards should serve the public decision-makers.
7. **Best Practice Comment: Advisee(s) Must Actually Want Advice From the CAB:** The entities or persons seeking the advice (Advisees) must actually want that advice. CAB’s should not just be “for show.” The Advisees must cooperate with the CAB and at least listen to its advice. The Advisees must meaningfully support the “establishment and operation” of the advisory board. If these conditions are absent, then it is a “best practice” NOT to create an advisory board. In such circumstances, the CAB is a sham or just a public relations ploy, and its “advice” is simply another “comment” from another interest group.
8. **Best Practice Comment: Members of Advisory Board Must Have Some Competence in Topics Under Advisement:** In order for advice to be helpful, an Advisor should have some knowledge, skills, experience, and/or competence in the topic(s) it is advising on. No one hires an advisor who lacks competence in the topic under advisement. Of course, the “topics” for a CAB are not limited to technical nuclear decommissioning expertise. Not at all. But members of the CAB should have some competence in the topics specified by the Advisees in the charter.
9. **Best Practice Comment: CAB Must Have Adequate Resources:** An effective Advisor should have the necessary logistic and technical support to facilitate its ability to provide competent and timely analysis and advice. A CAB should be able to select and to retain its own technical consultants on appropriate topics. The Advisees (who are the

⁷ <https://publicservice.vermont.gov/electric/ndcap>

ones seeking and benefiting from the advice), should provide appropriate funding. If this is the public (as it usually should be) then public funding is appropriate.

10. **Best Practice Comment: CAB Must Have Long-Term Stamina Necessary for the Long-Term Decommissioning Process:** An effective CAB must have the stamina and commitment to operate for the duration of the decision-making processes that will be needed by State and local stakeholders during the decommissioning. This may be 20 to 60 years. The term of CAB members should be sufficient to allow each one to get up to speed and to contribute meaningfully and each member should be required to commit to devoting the needed time and effort to the job. Terms should be staggered so that the CAB will maintain its institutional knowledge.
11. **Best Practice Comment: CAB Members Should Not Have Conflicts of Interest:** Members of the advisory board should have no conflicts of interest with regard to the topics under advisement. This does not merely cover individuals who have direct financial ties with the Operator/Licensee. CAB members should not be involved in organizations that are soliciting or negotiating deals or favors (e.g., land grants, donations, contractual concessions) with the Operator/Licensee.
12. **Best Practice: CAB Members Should be Selected in an Open Process:** The members selected or designated for the CAB should be evaluated and appointed via a public and independent process in a way that provides the public, and the Advisees, with confidence that the selection has been fair and open. The criteria for membership on the CAB should be fair and public. It may be appropriate to allow the public to comment on the qualifications of the applicants before final selections are made.
13. **Best Practice Comment: All CAB Meetings Should Be Public:** The CAB should conduct all meetings and make all decisions (e.g., deciding on what recommendation and advice to give) in public. Closed meetings or discussions by a quorum should be prohibited. Public notice of each CAB meeting should be published in advance. During any such meeting the CAB should not be allowed to address an unannounced/new topics not on the published agenda and not previously announced to the public.
14. **Best Practice Comment: CAB Should be Independent:** Advisors, while designated by the relevant decision-makers, must have the independence to needed to issue tough and realistic advice. Specific governmental entities (e.g., the Governor, or the Attorney General, or the State Energy Commission or Public Utility Commission) should have the right to designate a member of the CAB who has their confidence. The nuclear power plant operator should likewise be able to designate a member. But the nuclear power plant operator should NOT have the power, directly or indirectly, to veto members of the CAB or recommendations or advice by the CAB.
15. **Best Practice Comment: CAB Topics Should be Those Upon Which the Advisees Must Make Decisions, and Upon Which the Advisees Have Asked for Advice:** The best CAB will focus on topics that are relevant to the decisions under advisement, i.e., issues the decision-makers (the Advisees) must decide. The charter should instruct the CAB as to the topics upon which advice is being sought. These could include state and local governmental decisions relating to environmental protection, safety, economic impacts, taxation, business and workforce impacts, traffic, housing, land use, facility reutilization, and zoning decisions. The Advisees should determine the scope of the CAB's duties and topics it should consider.

16. **Best Practice Comment: CABs Should Stick to Topics Relevant to Needed Decisions:** The CAB should focus its inquiries, discussions, and advice to topics relevant to the decisions that the Advisees must make. The CAB should not be a “roving advisor” issuing unsolicited advice on any topic that suits its fancy. For example, the CAB should not waste time and effort on giving advice on topics (e.g., whether NRC should license Yucca Mountain) that are utterly beyond the legal or practical purview of any decisions that the Advisees (e.g., the State and local stakeholders) can make. If a CAB believes that additional topics should be added, then it can ask the Advisees to expand its charter accordingly.
17. **Best Practice Comment: The Beneficiaries of the Advice (Advisees) Should Pay the Costs of the CAB:** The entities or persons who created the CAB and who are to the recipients and beneficiaries of the CAB’s advice, should pay the logistical and technical support costs for the operation of the CAB. If the “community” advisory board (CAB) is really for the benefit of the “community” and if state and local governmental entities are the primary Advisees, then the CAB should be publicly funded. This should be done in an open process (e.g., with an annual budget) with full disclosure to the public.
18. **Best Practice Comment: Advisory Boards Should Have Authority to Require the Nuclear Power Plant Operator/Licensee to Provide Information, Answer Questions, and Attend Meetings:** It would greatly enhance the productivity of the CAB, and promote better advice, if the CAB can get dependable information from the key players. Thus, the CAB should have the power to ask questions, and obtain legally binding answers from, the nuclear power plant operator,
19. **Best Practice Comment: The Entities That Create the Advisory Board (Advisees) Must Cooperate with It and Provide It Timely and Reliable Information:** The entities that create the advisory board, and that are seeking its advice, should be willing to cooperate with it. Generally this will include the relevant State and local regulators and governmental entities that have significant roles and decisions to make during the decommissioning process.
20. **Best Practice: NRC Must Be Willing to Cooperate with The CAB:** NRC will likely be an important source of information for the CAB. While the NRC is not subject to the requirements of any CAB, it would be highly beneficial if the NRC would cooperate with CABs and provide relevant information, and NRC personnel, to help the CAB function. (Local CABs, by definition, provide advice to state and local stakeholders, not to NRC.)
21. **Best Practice Comment: NRC Should Issue a Guidance Document Providing State and Local Communities with a Summary of Best Practices for the Establishment and Operation of Local Community Advisory Boards:** In addition to simply submitting a report to Congress pursuant to NEIMA Section 108, NRC should issue a guidance document⁸ identifying and summarizing the best practices for the establishment and operation of local community advisory board. This guidance should

⁸ For example, see pages 33 – 38 (“Stakeholder Involvement”) of the “Power Reactor Transition From Operations to Decommissioning: Lessons Learned Report” issued by NRC in October 2016. ADAMS ML16085A029. This report is weak and is based on a very limited sample of sites (4). After the NEIMA Report is sent to Congress, a much better guidance document must be developed.

be designed for the communities facing the decommissioning of a nuclear power plant (not the Licensee). Thus, the guidance should be designed for the State and local governmental officials and regulatory bodies, the local chamber of commerce, local school districts, the local NGOs and public interest groups, appropriate labor unions, and relevant Native American communities.

22. **Best Practice Comment: As Soon As NRC Learns of a Planned Decommissioning, NRC Should Convene a Public Meeting of All State and Local Stakeholders to Inform Them of the Guidance and Encourage the Establishment of a CAB:** As soon as the NRC learns (formally or informally) that a nuclear power plant is planning or likely to close, the NRC should notify and inform State and local communities and stakeholders, and should invite them to a meeting, in the vicinity of that nuclear power plant. At that meeting, NRC should present and explain the best practices for the establishment and organization of local decommissioning CABs and should encourage the community to consider forming a CAB.

I wish to extend my thanks to Bruce Watson and the Decommissioning team at NMSS for conducting the NEIMA Webinar on August 8, 2019.

I respectfully request that NRC include this document in the formal record under NEIMA Section 108 and that NRC respond to each of my comments.

Thank you

Alex S. Karlin
askenvirolaw@gmail.com

**TWENTY-TWO BEST PRACTICES
FOR ESTABLISHMENT AND OPERATION OF LOCAL
DECOMMISSIONING COMMUNITY ADVISORY BOARDS**
(August 12, 2019)

By: Alex S. Karlin¹

Section 108 of the Nuclear Energy Innovation and Modernization Act (NEIMA) requires the Nuclear Regulatory Commission (NRC) to submit a report to Congress “identifying best practices for establishment and operation of local community advisory boards” (CABs) regarding the decommissioning of nuclear power plants. NRC will be conducting eleven public meetings around the country to obtain public input on what constitutes Best Practices for such local CABs.² Here is NRC’s schedule:

- August 21, 2019 – Palisades (Michigan)
- August 26, 2019 – Humboldt Bay (California)
- August 27, 2019 – Diablo Canyon (California)
- August 29, 2019 – San Onofre (California)
- September 10, 2019 – Vermont Yankee (Vermont)
- September 11, 2019 – Pilgrim (Massachusetts)
- September 24, 2019 – Kewaunee (Wisconsin)
- September 26, 2019 – Zion (Illinois)
- October 3, 2019 – Oyster Creek (New Jersey)
- October 10, 2019 – Crystal River (Florida)
- TBD – Indian Point (New York)

The following are 22 Best Practices that NRC should adopt, and that State and local communities can implement now.

**TWENTY-TWO BEST PRACTICES FOR ESTABLISHMENT AND OPERATION OF LOCAL
DECOMMISSIONING COMMUNITY ADVISORY BOARDS**

1. **Best Practice Comment: Primary Function of an “Advisory Board” Must be “Advisory.”** By definition, the function of a community advisory board is to provide advice or recommendations to a decision-maker. All NRC advisory committees meet this prime directive, and it is mandated by the Federal Advisory Committee Act for all Federal advisory boards³ Many States have similar laws and all of them make advice

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² NRC- NEIMA <https://www.nrc.gov/waste/decommissioning/neima-section-108.html>

³ 5 U.S.C. App.2. See also NRC regulation 10 C.F.R. Section 7.2.

the central function of any advisory entity. While FACA and State laws do not directly apply to NEIMA, they are excellent guides for identifying “best practices” for any advisory board.

2. **Best Practice Comment: NRC Should Incorporate Federal Advisory Committee Act Principles as NEIMA Best Practices for Local Community Advisory Boards:**⁴
The provisions of FACA are an excellent starting point the “establishment and operation” of a CAB. These include principles regarding the establishment and purpose of any advisory board, charter filing and contents, specification of objective and scope, committee procedures, public notice, open meetings and decisions, recordkeeping, public access and budgeting. NEIMA best practices should fully follow FACA principles unless NRC articulates a very good reason to vary from them.
3. **Best Practice Comment: In Order to be Most Effective, an Advisory Board Must be Appointed by Persons Being Advised (i.e., the Advisees):** The best **Advisors** (i.e., advisory board) must be someone the **Advisee** is willing to listen to and consider. The CAB and its members need to have the confidence of, and thus ought to be selected or designated by, the Advisee(s), i.e., the decision-maker(s) who are seeking the advice, and to whom the advice is to be given. If multiple decision-makers are being advised (e.g., Governor, State Legislatures, relevant regulatory agencies, local governmental entities, Labor unions, Native American communities) then each decision-maker must buy-in to the CAB and have the opportunity to help select or designate CAB members.
4. **Best Practice Comment: CAB Should Serve the Community:** Community advisory boards (CABs) should serve the **community** that is affected by the decommissioning. An Operator/Licensee can hire its own consultants and advisors (if it really wants advice). A “best practices” CAB provides advice to the community.
5. **Best Practice Comment: CABs Should be Chartered, Established, and Operated By the Affected State and Local Decision-Makers, Not the Licensee:** See comments 3 and 4 above. The Vermont Nuclear Decommissioning Citizens Advisory Panel (formed by State law) is a good example.⁵
6. **Best Practice Comment: Avoid Sham Advisory Boards: “Engagement Panels” Created To “Inform” the Public and To Provide a “Community Forum” Are Not Advisory Boards and Should be Avoided:** A CAB created by the nuclear power plant operator, for the nuclear power plant operator, with the mission of “educating the public” for the nuclear power plant operator, is NOT serving the community and is not a community advisory board. Instead, it is just another a public relations exercise. Nuclear plant operators already have plenty of lobbyists, PR people, government

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⁵ <https://publicservice.vermont.gov/electric/ndcap>

relations employees, etc. to represent and push the operator's interests. Community advisory boards should serve the public decision-makers.

7. **Best Practice Comment: Advisee(s) Must Actually Want Advice From the CAB:** The entities or persons seeking the advice (Advisees) must actually want that advice. CAB's should not just be "for show." The Advisees must cooperate with the CAB and at least listen to its advice. The Advisees must meaningfully support the "establishment and operation" of the advisory board. If these conditions are absent, then it is a "best practice" NOT to create an advisory board. In such circumstances, the CAB is a sham or just a public relations ploy, and its "advice" is simply another "comment" from another interest group.
8. **Best Practice Comment: Members of Advisory Board Must Have Some Competence in Topics Under Advisement:** In order for advice to be helpful, an Advisor should have some knowledge, skills, experience, and/or competence in the topic(s) it is advising on. No one hires an advisor who lacks competence in the topic under advisement. Of course, the "topics" for a CAB are not limited to technical nuclear decommissioning expertise. Not at all. But members of the CAB should have some competence in the topics specified by the Advisees in the charter.
9. **Best Practice Comment: CAB Must Have Adequate Resources:** An effective Advisor should have the necessary logistic and technical support to facilitate its ability to provide competent and timely analysis and advice. A CAB should be able to select and to retain its own technical consultants on appropriate topics. The Advisees (who are the ones seeking and benefiting from the advice), should provide appropriate funding. If this is the public (as it usually should be) then public funding is appropriate.
10. **Best Practice Comment: CAB Must Have Long-Term Stamina Necessary for the Long-Term Decommissioning Process:** An effective CAB must have the stamina and commitment to operate for the duration of the decision-making processes that will be needed by State and local stakeholders during the decommissioning. This may be 20 to 60 years. The term of CAB members should be sufficient to allow each one to get up to speed and to contribute meaningfully and each member should be required to commit to devoting the needed time and effort to the job. Terms should be staggered so that the CAB will maintain its institutional knowledge.
11. **Best Practice Comment: CAB Members Should Not Have Conflicts of Interest:** Members of the advisory board should have no conflicts of interest with regard to the topics under advisement. This does not merely cover individuals who have direct financial ties with the Operator/Licensee. CAB members should not be involved in organizations that are soliciting or negotiating deals or favors (e.g., land grants, donations, contractual concessions) with the Operator/Licensee.
12. **Best Practice Comment: CAB Members Should be Selected in an Open Process:** The members selected or designated for the CAB should be evaluated and appointed via a public and independent process in a way that provides the public, and the Advisees, with confidence that the selection has been fair and open. The criteria for membership on the CAB should be fair and public. It may be appropriate to allow the public to comment on the qualifications of the applicants before final selections are made.

13. **Best Practice Comment: All CAB Meetings Should Be Public:** The CAB should conduct all meetings and make all decisions (e.g., deciding on what recommendation and advice to give) in public. Closed meetings or discussions by a quorum should be prohibited. Public notice of each CAB meeting should be published in advance. During any such meeting the CAB should not be allowed to address an unannounced/new topics not on the published agenda and not previously announced to the public.
14. **Best Practice Comment: CAB Should be Independent:** Advisors, while designated by the relevant decision-makers, must have the independence to needed to issue tough and realistic advice. Specific governmental entities (e.g., the Governor, or the Attorney General, or the State Energy Commission or Public Utility Commission) should have the right to designate a member of the CAB who has their confidence. The nuclear power plant operator should likewise be able to designate a member. But the nuclear power plant operator should NOT have the power, directly or indirectly, to veto members of the CAB or recommendations or advice by the CAB.
15. **Best Practice Comment: CAB Topics Should be Those Upon Which the Advisees Must Make Decisions, and Upon Which the Advisees Have Asked for Advice:** The best CAB will focus on topics that are relevant to the decisions under advisement, i.e., issues the decision-makers (the Advisees) must decide. The charter should instruct the CAB as to the topics upon which advice is being sought. These could include state and local governmental decisions relating to environmental protection, safety, economic impacts, taxation, business and workforce impacts, traffic, housing, land use, facility reutilization, and zoning decisions. The Advisees should determine the scope of the CAB's duties and topics it should consider.
16. **Best Practice Comment: CABs Should Stick to Topics Relevant to Needed Decisions:** The CAB should focus its inquiries, discussions, and advice to topics relevant to the decisions that the Advisees must make. The CAB should not be a "roving advisor" issuing unsolicited advice on any topic that suits its fancy. For example, the CAB should not waste time and effort on giving advice on topics (e.g., whether NRC should license Yucca Mountain) that are utterly beyond the legal or practical purview of any decisions that the Advisees (e.g., the State and local stakeholders) can make. If a CAB believes that additional topics should be added, then it can ask the Advisees to expand its charter accordingly.
17. **Best Practice Comment: The Beneficiaries of the Advice (Advisees) Should Pay the Costs of the CAB:** The entities or persons who created the CAB and who are to be the recipients and beneficiaries of the CAB's advice, should pay the logistical and technical support costs for the operation of the CAB. If the "community" advisory board (CAB) is really for the benefit of the "community" and if state and local governmental entities are the primary Advisees, then the CAB should be publicly funded. This should be done in an open process (e.g., with an annual budget) with full disclosure to the public.
18. **Best Practice Comment: Advisory Boards Should Have Authority to Require the Nuclear Power Plant Operator/Licensee to Provide Information, Answer Questions, and Attend Meetings:** It would greatly enhance the productivity of the CAB, and promote better advice, if the CAB can get dependable information from the key players. Thus, the CAB should have the power to ask questions, and obtain legally binding answers from, the nuclear power plant operator,

19. **Best Practice Comment: The Entities That Create the Advisory Board (Advisees) Must Cooperate with It and Provide It Timely and Reliable Information:** The entities that create the advisory board, and that are seeking its advice, should be willing to cooperate with it. Generally this will include the relevant State and local regulators and governmental entities that have significant roles and decisions to make during the decommissioning process.
20. **Best Practice: NRC Must Be Willing to Cooperate with The CAB:** NRC will likely be an important source of information for the CAB. While the NRC is not subject to the requirements of any CAB, it would be highly beneficial if the NRC would cooperate with CABs and provide relevant information, and NRC personnel, to help the CAB function. (Local CABs, by definition, provide advice to state and local stakeholders, not to NRC.)
21. **Best Practice Comment: NRC Should Issue a Guidance Document⁶ Providing State and Local Communities with a Summary of Best Practices for the Establishment and Operation of Local Community Advisory Boards:** In addition to simply submitting a report to Congress pursuant to NEIMA Section 108, NRC should issue a guidance document identifying and summarizing the best practices for the establishment and operation of local community advisory board. This guidance should be designed for the communities facing the decommissioning of a nuclear power plant (not the Licensee). Thus, the guidance should be designed for the State and local governmental officials and regulatory bodies, the local chamber of commerce, local school districts, the local NGOs and public interest groups, appropriate labor unions, and relevant Native American communities.
22. **Best Practice Comment: As Soon As NRC Learns of a Planned Decommissioning, NRC Should Convene a Public Meeting of All State and Local Stakeholders to Inform Them of the Guidance and Encourage the Establishment of a CAB:** As soon as the NRC learns (formally or informally) that a nuclear power plant is planning or likely to close, the NRC should notify and inform State and local communities and stakeholders, and should invite them to a meeting, in the vicinity of that nuclear power plant. At that meeting, NRC should present and explain the best practices for the establishment and organization of local decommissioning CABs and should encourage the community to consider forming a CAB.

⁶ NRC has already issued some guidance on decommissioning advisory boards. See pages 33 – 38 (“Stakeholder Involvement”) of the “Power Reactor Transition From Operations to Decommissioning: Lessons Learned Report” issued by NRC in October 2016. ADAMS ML16085A029. This report is weak and is based on only a few (4) sites. Note also that NRC mandates a community advisory process in one limited situation. See 10 C.F.R. Section 20.1403(d).

EXAMPLES OF BEST PRACTICES NUCLEAR DECOMMISSIONING COMMUNITY ADVISORY BOARDS

(Alex S. Karlin --- August 12, 2019)

Vermont, New York, and Massachusetts provide three examples of decommissioning community advisory boards that embody most of the best practices. These are community advisory boards established BY the community (State and local governmental entities and stakeholders) FOR the community. They are NOT dominated by, nor tools of, the nuclear plant operator. They represent best practices because they serve the public.

A. Vermont Example: Vermont Nuclear Decommissioning Citizens Advisory Panel¹

The Vermont Nuclear Decommissioning Citizens Advisory Panel (**VNDCAP**²) is an example of an independent advisory board created BY the State and local agencies, FOR the State, local agencies, and for the PUBLIC interest. Vermont Yankee is a nuclear power plant, located in Vernon, Vermont, that has recently closed. The VNDCAP is an example of best practices.

Under Vermont law, the very first stated mission of the VNDCAP is “to advise the Governor, the General Assembly, the agencies of the State, and the public”:

To advise the Governor, the General Assembly, the agencies of the State, and the public on issues related to the decommissioning of the VYNPS, with a written report being provided annually to the Governor and to the energy committees of the General Assembly. The provisions of 2 V.S.A. § 20(d) (expiration of reports) shall not apply to this report.

To serve as a conduit for public information and education on and to encourage community involvement in matters related to the decommissioning of the VYNPS and to receive written reports and presentations on the decommissioning of the Station at its regular meetings.

To periodically receive reports on the Decommissioning Trust Fund and other funds associated with decommissioning of or site restoration at the VYNPS, including fund balances, expenditures made, and reimbursements received.

To receive reports regarding the decommissioning plans for the VYNPS, including any site assessments and post-shutdown decommissioning assessment reports; provide a forum for receiving public comment on these plans and reports; and to provide comment on these plans and reports as the Panel may consider appropriate to State agencies and the owner of the VYNPS.³

Since the primary purpose of the advisory entity – the VNDCAP - is to advise the Governor, the State Legislature, the State regulatory agencies and the public, the members of the VNDCAP

¹ <https://publicservice.vermont.gov/electric/ndcap>

² The Vermont NDCAP can be contacted at PSDNDCAP@vermont.gov.

³ Vermont Statutes – Title 18 Health, Chapter 34 - Nuclear Decommissioning Citizens Advisory Panel, Section 1700.

are designated by the Governor, the State Legislature, the State regulatory agencies, and some from the public. The Advisees designate the Advisors. The members of the VDCAP include the Secretary of Human Services (or designee), Secretary of Natural Resources (or designee), Commissioner of Public Service (or designee), the Secretary of Commerce and Community Development (or designee), A member of the State House of Representatives, a member of the State Senate, a representative of the Windham Regional Commission, a representative from the Town of Vernon, six members of the public, two representatives of the owner of the nuclear power plant, and one representative of the International Brotherhood of Electrical Workers.

When Advisees select the Advisors, it is much more likely that the Advisees will actually listen to the advice. This is a best practice.

The VDCAP has a chair and vice-chair, follows normal rules of order (quorum, voting, public agendas), follows public notice, comment, recordkeeping procedures, conducts its business, meetings and decisions in public, and is accountable to the public. Since the Vermont Public Services Commission (VPSC) is a primary regulator of the Vermont Nuclear Power Station, the VPSC provides the logistical and administrative support for the VDCAP and, where the VDCAP needs it, retains experts and other technical services to assist the VDCAP in its work. These are best practices.

B. New York Example: Indian Point Closure Task Force (IPCTF)⁴

The Indian Point Closure Task Force, created by the State of New York, is a similar example of a best practice for a decommissioning community advisory board.⁵ The mission of the IPCTF is summarized by the New York Governor, as follows:

On Feb. 28, 2017, Governor Andrew M. Cuomo announced the creation of a task force **to provide guidance and support to the communities, taxing jurisdictions, and employees** affected by the planned closure of Indian Point. The Task Force was charged with developing **recommendations** to mitigate local tax and workforce impacts, evaluating and identifying new economic opportunities and work force retraining programs and opportunities, advocating for appropriate decommissioning timelines in the best interests of local communities, and ultimately positioning the region for a prosperous and sustainable future. (Press Release from Governor Cuomo).

Again, the Advisees designate the Advisors. The members of the Indian Point Closure Task Force include State representatives such as State Senators and Assemblywomen, State agencies such as the Office of the Governor, Education Representatives, Designees from the Departments of Public Service, Environmental Conservation, Labor, Tax and Energy, and the New York Power Authority. The IPCTF members also include local representatives from the

⁴ <http://documents.dps.ny.gov/public/MatterManagement/CaseMaster.aspx?MatterCaseNo=17-00994&submit=Search>

⁵ The Indian Point Closure Task Force is chaired by Thomas Congden, who is also the Executive Deputy of the New York State Department of Public Safety. His email is Thomas.Cognden@dps.ny.gov. Meanwhile, Thomas Kaczmarek is the Executive Director of the Task Force. Thomas.Kaczmarek@dpc.ny.gov. The contact person for the Task Force is James Denn whose email is James.Denn@dps.ny.gov (518 474-7080).

affected counties, cities, villages and school districts, as well as labor representatives from the Teamsters, Utility Workers and Central Labor Council. The strength and depth of this roster of IPCTF members confirms that it has the authority and resources to monitor and follow the decommissioning process and to issue advice that will be impartial, be in the public interest, and have serious weight with the State and local decision-makers. This is a best practice.

The New York State Department of Public Service provides the administrative, logistical and technical support for the operation of the IPCTF. This is a best practice.

C. Massachusetts Example: Pilgrim Nuclear Power Station Decommissioning Citizens Advisory Panel (Pilgrim – NDCAP) ⁶

The Commonwealth of Massachusetts has established a similar independent advisory entity to monitor the decommissioning and closure of the Pilgrim Nuclear Power Station.⁷ The statutory mission of the Pilgrim - NDCAP is clearly to advise the relevant state and local officials, regulatory agencies, and the public, as follows:

The Panel shall serve in an **advisory** capacity only and shall not have authority to direct decommissioning of the PNPS. The duties of the panel shall be: (1) to commence public meetings beginning on or about June 1, 2017, at a frequency of quarterly until the shutdown of the Pilgrim Nuclear Power Station (PNPS) for the purpose of discussing issues related to decommissioning planning activities; (2) to hold a minimum of four public meetings each year for the purpose of discussing issues relating to the progress of decommissioning of the PNPS beginning on or about June 1, 2019, or when the PNPS permanently ceases power operations; provided that the panel may hold additional meetings; (3) **to advise the governor, the general court, the agencies of the commonwealth, and the public on issues related to the decommissioning of the PNPS, with a written report being provided annually to the governor and to the energy committees of the General Court;** (4) to serve as a conduit for public information and education on and to encourage community involvement in matters related to the decommissioning of the PNPS and to receive written reports and presentations on the decommissioning of the Station at its regular meetings; (5) to periodically receive reports on the Decommissioning Trust Fund and other funds associated with decommissioning of the PNPS, including fund balances, expenditures made, and reimbursements received; (6) to receive reports regarding the decommissioning plans for the PNPS, including any site assessments and post-shutdown decommissioning assessment reports; provide a forum for receiving public comment on these plans and reports; and to provide comment on these plans and reports as the panel may consider appropriate to state agencies and the owner of the PNPS and in the annual report described in clause (3).⁸

The members of the Pilgrim NDCAP again include representatives of all the key agencies to whom the advice is to be given. These include the Massachusetts Secretaries of Health and

⁶ <https://www.mass.gov/orgs/nuclear-decommissioning-citizens-advisory-panel>

⁷ Contact: Kurt Schwartz, Chair, NDCAP@state.ma.us

⁸ Section 14 of Chapter 188 of the Acts of 2016 of the Commonwealth of Massachusetts.

Human Services, Energy and Environmental Affairs, and of Housing and Economic Development, as well as the Massachusetts Commissioner of Public Utilities, Department of Public Health, and Emergency Management. The members of the PNPS – DCAP also include members appointed by the House and the Senate, representatives from the nuclear plant owner, representatives of the Town of Plymouth, and a representative of the Utility Workers Union of America. This is a powerful, meaningful, and representative group of advisors. This is a best practice.

Like the previously mentioned CABs, the Pilgrim NDCAP operates in public and follows proper public entity procedures and open meeting laws.