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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

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General Comment

At the NRC NEIMA meeting in Plymouth, I was given a few few minutes to express my concern that the only reason for the NRC "road-show" was that Congress required it, and that you were not in Plymouth because the NRC intends to listen to or consider public concerns. I did not have time to get into what must be done for CABs to be worthwhile, at least for anyone except the NRC or the nuclear industry.

My much more complete comments on both subjects are attached.

Please consider them.

Jim Lampert

Attachments

NEIMA Comments to NRC

Comments of James B. Lampert Regarding Citizen Advisory Boards

There is a great need for the NRC Report tell not only Congress, but also local affected communities what CAB best practices must be if CABs are to be worthwhile. Current CABs do not provide citizens a real opportunity either to have their views heard, or to advise licensees or the NRC, the entities that are ultimately responsible for decommissioning.

To be useful, not only to the local communities that will be affected by decommissioning but also to give them and their citizens a real opportunity to be involved and to have their concerns considered, CABs should adopt, and the NRC must cooperate with them in accomplishing, the following Best Practices. A CAB must:

1. Be an effective advisor – to entities – local, state and federal - that want and will consider their advice.
2. Serve the local communities and citizens that will be affected by decommissioning; not political or the nuclear industry interests.
3. Not be established, run or in any way controlled by the licensee.
4. Be structured in a way that will allow the CAB to make recommendations to local officials and state and federal (including the NRC) agencies. The Massachusetts Board, for example, has not been able to do so because the enabling legislation requires a positive vote of a majority of its total membership, regardless of how many members are present and voting.
5. Have logistic and technical support. A CAB must be able to select its own experts on appropriate topics. It is not acceptable for a CAB to have to rely on the NRC's or those of the licensee and nuclear industry. A CAB also needs the staff and money required to make a complete public record of its meetings (not only of the entire CAB), discussions (including those involving less than a quorum), documents presented to or created by it, readily available to the public. Many states have public records laws, similar to the Freedom of Information Act, requiring (with few exceptions) that all documentary materials including such things as memoranda (including drafts), books, papers, recorded tapes and emails be retained and available to the public. A CAB should post all of these on a public website.
6. Have the ability to require licensees to answer questions posed to them and to provide information that is accurate and complete. It is not enough for a licensee simply to attend meetings and make self-serving and incomplete responses.
7. Have members who:
 - a. Are selected and appointed in a public and independent process in a way that provides the public with confidence that the public interest will be served;

- b. Are tough and independent, will ask and insist on real answers to the real questions, and will provide realistic advice that may be flatly at odds with the interests of the licensee, the nuclear industry, or the NRC.
 - c. Bring to the CAB some knowledge of the issues that will be involved in decommissioning. Many of these issues have little to do with the technical aspects of nuclear engineering, and independent experts can provide what is needed to understand and deal with those that do. Many citizens and citizen groups have spent years working on and understanding the risks of both operating plants and decommissioning, and how those risks may affect the public health, safety, and pocketbook.
8. Have the ability to advise and interact with the NRC. The NRC's role in CABs should not be only to help educate the public. It should also be required to sit down, be educated by, and work with the public.
9. Have the authority to consider and advise on a wide range of decommissioning issues, including:
- a. Decommissioning plans (including PSDARs and discussions with the NRC) and progress.
 - b. Site assessment and restoration
 - c. Socio-economic and economic/financial impacts of decommissioning
 - d. The status of and expenditures made from the decommissioning trust funds, at a level of detail that makes clear exactly what work any expenditure was made.
 - e. Public safety including emergency preparedness and both on-site and off-site monitoring.
 - f. Spent fuel storage, including location, duration, ability to deal with such things as cracked or leaking casks, and costs.
10. Establish working groups to focus on specific subjects and topics such as finances and economics, safety and security, and status of decommissioning (including spent fuel storage and site restoration). Meeting of these groups must be public. It is also important to encourage and allow that participation not only of members of the CAB, but also of citizens and citizens groups and, as required by the topic, the licensee and those actually involved in decommissioning. This, not full CAB meetings, is where any real work will be done – and will often provide the only potential for real public participation.

Without these “Best Practices,” CABs will not, and in the past have not been, effective – for a variety of reasons, including only as examples:

- 1. Lack of money. Many CABs have no source of the funds needed for even administrative work, so say nothing of what is to develop an informative/comprehensive website critical for public education and meaningful involvement, and money is needed to hire their own

experts to shed light on key issues such as dry cask integrity, security etc. A CAB needs the funding necessary for it to hire staff and experts and to perform essential administrative responsibilities

2. Little or no effective coordination with other state agencies that meet and/or work with licensees with respect to decommissioning. The result can too often be that a CAB simply has no idea what other agencies are doing. Neither does it know what, if any, attention is paid to the CAB and its recommendations by any of those the CAB is required to advise.
3. Too much focus on simply the host community, and little or none on other affected communities, particularly those that are not represented on the CAB.
4. The appointing authority and CAB membership. This is a multi-faceted problem:
 - a. Too many CAB members are appointed by state governors and legislative leaders who simply do not know what individuals in impacted communities have the necessary background or long-standing interest to represent community and citizen interests. The result is an uninformed CAB membership.
 - b. Some CAB members are *ex officio* and represent the interests of state agencies. However, such agencies often themselves know little or nothing about (and may not be affected by) decommissioning; and their representatives take little or no part in CAB discussions or meetings, and may be required to abstain from voting unless or until they receive instructions “from above.”
 - c. Licensees have interests that are very different from, and often are the direct opposite of, the interests of citizens, local communities, and the state. It is important to require licensees to participate in CABs, but they should have no vote.
 - d. Too few members who are from the EPZ communities or regions outside the EPZ that are directly impacted. As a result, only host community interests may even be discussed
 - e. Members (in addition to state *ex officio* members) who take no significant part in CAB proceedings. In some instances, this is so because they and the groups they represent are simply uninformed. In others, there is an apparent reluctance to ask important questions that might “upset” some other CAB member.
11. A complete lack of any meaningful relationship with the NRC. At best, the NRC does a mediocre and incomplete job of “educating” the CAB about NRC its regulations and procedures. But the NRC has absolutely failed even to attempt to be educated by or to work with the public.

From what the NRC said during, and slides that the NRC presented at, its NEIMA “road shows,” it is unfortunately evident that the NRC has no real intention to listen to or consider public concerns.

- The “CAB Responsibilities” slides say absolutely nothing about a citizens advisory board actually working with the NRC.
- The “NEIMA 108 Report to Congress” slide refers to “interactions such a board could have with the Commission” – but the only interaction it talks about is between the advisory board and licensees (that in practice has usually proved to be a bad joke) – not between a CA. and the NRC.
- The slides say that– “The NRC Staff considers public comments and other feedback” as part of PSDAR review. So far as the public can see, that is simply not true. Two examples:
 - The Staff’s recent Safety Evaluation of Holtec’s Pilgrim PSDAR looked only at what Holtec had to say. It completely ignored the facts set forth in the Petitions filed by the Commonwealth of Massachusetts and Pilgrim Watch to intervene in the Pilgrim license transfer proceeding, and also Commonwealth and Pilgrim Watch Petitions, and also extensive comments on the PSDAR that were sent to the Staff. All of these were available to NRC Staff months before its Safety Evaluation, but there is nothing to indicate that the Staff even read any of it.
 - 2.206 petitions provide another example. During the Pilgrim relicensing proceeding., Judge Rosenthal asked the Staff how often the NRC had granted substantive relief requested in a 2.206 Petition. The answer, unfortunately not unexpected by those of us who have filed such petitions, was that requested relief had been granted, at best, in only two of the 347 petitions that were filed in 37 years.
- When asked after NEIMA meeting why the NRC did not simply sit down with CAB members, an NRC official agreed that it certainly could do so but admitted that NRC policy is such that such a change in NRC practice would require legislation.

In short, unless they adopt significant new Best Practices, and the NRC decides to work with them, CABs will accomplish little beyond providing citizens a way to vent their unrequited, but very real, concerns.

James B. Lampert
November 15, 2019