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Docket: NRC-2019-0073

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-0037

Comment on FR Doc # 2019-21012

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General Comment

Please see attached letter for comments on behalf of Riverkeeper, Inc., Mary Lampert, and James Lampert.

Attachments

2019.11.15 Riverkeeper Comments on NRC CABs



Via the Electronic Filing at Regulations.gov

November 15, 2019

U.S. Nuclear Regulatory Commission
Office of Administration
Mail Stop: TWFN-7-A60M
Washington, DC 20555-0001
ATTN: Program Management, Announcements and Editing Staff

Re: Comments 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 (Docket No. NRC-2019-0073)

Dear Ms. Marlayna Vaaler Doell:

Mary and James Lampert and Riverkeeper, Inc.¹ (Riverkeeper) respectfully submit our joint comments on best practices for the establishment and operation of local Community Advisory Boards (CABs) as related to Nuclear Regulatory Commission's (NRC) mandated report to Congress under the Nuclear Energy Innovation and Modernization Act (NEIMA). We appreciate the opportunity to provide input on this important initiative.

I. Background

CABs are critical to ensure the local communities most likely to be affected by nuclear power plants can both receive information and provide feedback regarding the prudent management of these risky sites. An effective CAB not only allows community members to voice their concerns, but also fosters goodwill and collaboration, and can combat the spread of erroneous information by providing a forum to for stakeholders to communicate directly one another. Thus, the ideal CAB benefits all parties involved and builds trust between the community, the NRC, and the Licensee.

To fulfill its mandate under NEIMA, the NRC must consider public comments and present a well-reasoned and substantiated report to Congress on best practices for CABs. The NRC cannot and should not present a report that merely glosses over these important issues or is otherwise arbitrary and capricious.

¹ Riverkeeper is a member-supported watchdog organization dedicated to defending the Hudson River and its tributaries and protecting the drinking water supply of nine million New York City and Hudson Valley residents. Riverkeeper is a signatory to the January 9, 2017 landmark agreement to close Indian Point and has been involved with issues related to the power plant for decades.

We hereby urge the NRC to incorporate the following recommendations in its report.

II. CAB Best Practices

There is a great need for the NRC to examine best practices to improve its CAB program. Currently, decommissioning CABs do not provide community members with a real opportunity either to have their views heard, or to advise Licensees or the NRC—the entities that are ultimately responsible for decommissioning. The ineffectiveness of CABs is frustrating to members and detrimental to the community's relationship with the Licensee and NRC. In short, and as discussed further below, unless the NRC adopts and implements new best practices, CABs will accomplish little beyond providing citizens with an empty forum to vent their very real concerns.

On the other hand, other federal agencies have created numerous community advisory frameworks that are currently used in conjunction with other federal programs, which the NRC can draw upon. For instance, the recommendations below were partially derived from Riverkeeper's participation on several successful Community Advisory Groups (CAGs) in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), or Superfund, context. Based on Riverkeeper's own experience, we urge the NRC to seriously examine the CAG framework while developing CAB best practices, especially since CAGs been studied and refined over time. As can be seen in the Environmental Protection Agency (EPA) Region 5 review of CAGs, a well-structured community advisory program can increase the community's voice in decision-making processes and can improve relationships among all interested parties.²

We broadly recommend that effective CABs engage all affected community members and stakeholders, have power to influence decision-makers, be independent from industry influences, have adequate resources to perform its functions over time, and be transparent in its activities. To achieve these goals, CABs must:

1. **Be an effective advisor to the NRC and other entities that must be willing to consider such advice.** The CAB must be empowered to make recommendations and submit comments to the NRC and other entities, and those entities must be required to consider the comments, have a discussion with the CAB, and respond to them in writing. This is the core mission of CABs: to foster a productive exchange and act as a conduit for community concerns and feedback to the regulators. Without mandatory consideration, the NRC can ignore all CAB feedback, which at best can lead to a feeling of futility, and at worst can lead to frustration, distrust, and a breakdown in the relationship between the community and the NRC.
2. **Have the ability to advise and generally interact with the NRC.** CABs should allow the community and the NRC to educate one another and work together collaboratively. In

² EPA, A REVIEW OF COMMUNITY ADVISORY GROUPS IN REGION 5: LESSONS LEARNED 8 (1998), available at <https://semspub.epa.gov/work/HQ/176376.pdf>.

existing practice, the NRC has unfortunately failed to even attempt to be educated by or to work with the public. Furthermore, the NRC's NEIMA presentation provides no reassurance that the NRC intends to really consider public concerns.³ To help ensure that the necessary interaction occurs, the NRC regional decommissioning staff and the individual responsible for decommissioning at the particular plant should be required to meet with CABs.

3. **Have a workable process that allows CABs to make recommendations.** The Massachusetts Board, for example, has been unable to make recommendations because the enabling legislation requires a positive vote of a majority of its total membership, regardless of how many members are present and voting. The Massachusetts Board process presents a significant barrier for working groups within CABs to make recommendations without engaging the entire membership. In the case of a CAB with many members or sporadic attendance at its general body meetings, this requirement can effectively bar any recommendations. An ineffective or unachievable process only serves to build frustration and distrust in the community, contrary to the purpose of CABs.

The CAB should also have the authority to consider and provide recommendations on a wide range of decommissioning issues, including but not limited to:

- a. Decommissioning plans, including Post-Shutdown Decommissioning Activities Reports (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 expenditure was used for;
- e. Public safety, including emergency preparedness and both on-site and off-site monitoring; and
- f. Spent fuel storage, including location, duration, ability to deal with such things as cracked or leaking casks, and costs.

³ For example:

- The "CAB Responsibilities" slides say absolutely nothing about CABs 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 mentioned is between the advisory board and Licensees, not between a CAB and the NRC.
- The slides state, "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, as illustrated by the recent Safety Evaluation of Holtec's Pilgrim PSDAR in which the NRC completely ignored all concerns raised by the Commonwealth of Massachusetts and Pilgrim Watch. Furthermore, over 37 years during which 347 enforcement (§2.206) petitions were filed, the NRC granted the requested relief in only two.
- When asked after a 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.

4. **Establish working groups to focus on specific subjects and topics such as finance and economics, safety and security, and status of decommissioning (including spent fuel storage and site restoration).** Working group meetings must be open to the public. It is also important to encourage and allow for participation not only from CAB members but also from community members and community groups and, as appropriate by topic, the Licensee and those actually involved in decommissioning. These forums are critical to providing more extensive public participation and collaboration on specific issues that may not be discussed in detail at full CAB meetings.
5. **Utilize a formal issue resolution process with an expert panel as needed.** To avoid confusion or additional conflict, a formal issue resolution process must be established. We recommend that the procedure be as follows:
 1. The CAB raises an issue or violation of license terms.
 2. There is a facilitated discussion between the CAB and Licensee.
 3. If there is no consensus, an expert panel will be convened. This panel will consist of three experts: one appointed by the CAB, one appointed by the Licensee, and one independent expert. This panel will examine the situation and present its findings to all parties, and ultimately make a determination on the issue.
 4. If the panel finds an issue or violation, then the Licensee will have a grace period in which to remedy the problem.
 5. If the Licensee fails to remedy the problem, the CAB can refer it to the NRC. The NRC must then investigate and issue a written decision on the matter.
6. **Serve the local communities and the people that will be affected by decommissioning; not political or nuclear industry interests.** The Licensee and governmental bodies already have control over information about decommissioning activities at these former power plants. CABs add no value if their primary purpose is to serve the industry or government. Rather, CABs must be focused on serving the local communities. To that end, the composition, structure, and processes of CABs must provide the public with a real opportunity to influencing the decommissioning process.
7. **Include members that are broadly representative of the affected communities.** The CAB should seek to have diverse membership and make genuine efforts to be inclusive of any environmental justice populations within the affected communities. For nuclear plants, the CAB should not be limited to the host community in which the facility resides. The CAB should also reach the surrounding communities that have the potential to be impacted by safety and economic failures at the site. This is crucial to ensure all voices are represented and that the CAB promotes the interests of the public at-large. In addition, the members need not be experts in nuclear matters, but instead merely have a strong interest in the decommissioning process, a willingness to learn, and a desire be a part of the CAB. To achieve the diversity of membership, community stakeholders must have opportunity for input into the selection process of the CAB, a process which cannot be administered by the Licensee.

8. **Not be established, run or in any way controlled by the Licensee.** Again, the industry already has control over the information and operations at the site, and it has a significant interest in presenting itself in the best light. Regardless of the industry's intentions, the suspicion that the CAB merely serves the Licensee's interest will exist if it is established, run, or controlled by Licensee. Instead of the Licensee, or the NRC, the state in which the facility is located should administer the CAB program.
9. **Have an independent, non-affiliated moderator/facilitator and administrative staff personnel.** Based on Riverkeeper's experience with CAGs in the Superfund context, these individuals are integral to promoting productive and civil discussion, maintaining power balances between and among community groups and agencies, and fostering effective meetings. Hiring a neutral party helps alleviate some of the concerns about bias in the management of the CABs.
10. **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 experts or those of the Licensee and the nuclear industry.
11. **Have financial resources to support its activities.** As a necessary corollary to many of these recommendations, CABs must have financial support to fund its work and administration from a combination of Licensee, NRC, and state sources. For example, in the Superfund context, Technical Assistance Grants are available to community advisory groups to fund technical consultants. As the decommissioning process can take decades, it is critical for CABs to have adequate resources to perform its functions throughout the process. Currently, many CABs have no source of the funds to cover even their basic administrative responsibilities.
12. **Have access to information that is accurate and complete.** CABs must be fully informed in a timely manner of any significant occurrences at the facility, so that they can investigate and respond to such incidents. The Licensee must have a duty of affirmative disclosure for any unusual activity at the site. For example, if spent fuel casks were scratched, as occurred in San Onofre, the Licensee would be required to notify the CAB as soon as possible.

CABs also need the ability to obtain accurate information to make useful recommendations and address community concerns. Therefore, CABs should be given subpoena power—the ability to compel provide written or oral testimony from the Licensee.

13. **Be transparent and able to provide information to the public.** CABs must keep public records of all meetings, discussions, and documents in its possession, in a manner that is

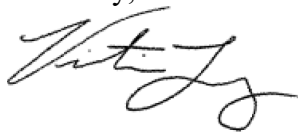
readily available to the public. We recommend that CABs maintain a public website through which they make all records available in a timely manner.

In addition to the recommendations above, we reaffirm and support Judge Alex Karlin's comments, submitted Aug. 12, 2019 to the NRC.⁴

We urge the NRC to examine and establish best practices that enable CABs to be an effective means of relationship building between the community, the NRC, and the Licensee. By simply providing the community with a real voice and opportunity to be heard, CABs promote a safer and more efficient decommissioning process through information sharing and collaborative problem-solving.

Thank you for the opportunity to submit these comments. Please feel free to contact us at 914-478-4501 ext. 254 or vleung@riverkeeper.org with any questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'Victoria Leung', written in a cursive style.

Victoria Leung
Associate Staff Attorney

and

Mary Lampert and James Lampert
Community Activists

⁴ Alex S. Karlin, *Twenty-two Best Practices for Establishment and Operation of Local Decommissioning Community Advisory Boards* (August 12, 2019), available at <https://adamswebsearch2.nrc.gov/webSearch2/main.jsp?AccessionNumber=ML19297D361>.