



POLICY ISSUE **(Information)**

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FOR: The Commissioners

FROM: Margaret M. Doane
Executive Director for Operations

SUBJECT: PLANNED REVISIONS TO THE REVIEW PROCESS FOR
TITLE 10 OF THE CODE OF FEDERAL REGULATIONS 2.206
PETITIONS, MANAGEMENT DIRECTIVE 8.11 AND THE
ASSOCIATED DESKTOP GUIDE

PURPOSE:

The purpose of this paper is to inform the Commission of the conclusions and planned actions of the staff's working group (WG) on Title 10 of the *Code of Federal Regulations* (10 CFR) 2.206, "Requests for action under this subpart," based on its assessment of the [Algonquin Incremental Market] AIM Pipeline Indian Point Expert Evaluation Team's recommendations to improve the petition review process (Agencywide Documents Access and Management System (ADAMS) Accession No. ML20100F635). The WG considered the Expert Evaluation Team's recommendations and plans to revise the associated review guidance in Management Directive (MD) 8.11, "Review Process for 10 CFR 2.206 Petitions," dated March 1, 2019 (ADAMS Accession No. ML18296A043), and "Desktop Guide: Review Process for 10 CFR 2.206 Petitions," approved August 29, 2018 (Desktop Guide) (ADAMS Accession No. ML18176A147). The revised process will be effective 60 days after the signature of the document and will be used when evaluating all future 10 CFR 2.206 petitions sent to the U.S. Nuclear Regulatory Commission (NRC).

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SUMMARY:

In response to the Office of the Inspector General (OIG) event inquiry titled, “Concerns Pertaining to Gas Transmission Lines at the Indian Point Nuclear Power Plant” (Case No. 16-024) (ADAMS Accession No. ML20056F095), the NRC convened an Expert Evaluation Team. The Expert Evaluation Team recommended that the agency modernize petition review boards (PRBs), provide for independent petition reviews, conduct detailed reviews after petition acceptance, and document analysis supporting petition decisions. The WG considered the Expert Evaluation Team recommendations in the review process for 10 CFR 2.206 petitions and plans to implement changes in the appropriate sections of MD 8.11 and the Desktop Guide. These changes include assembling an expert core team and appointing a Senior Executive Service (SES) champion for the 10 CFR 2.206 review process, increasing the independence of PRBs, providing for accepting petitions that require detailed analysis, and clarifying the documentation of information supporting the PRB decision. In addition, the WG identified an additional consideration that petitions with multiple concerns and action requests may benefit from a holistic review that considers the requested actions in the aggregate.

BACKGROUND:

The OIG received concerns from a citizen who filed a 10 CFR 2.206 petition regarding the NRC’s oversight of a 42-inch natural gas pipeline proposed to traverse the Indian Point Energy Center property. On February 13, 2020, the NRC OIG issued an event inquiry titled, “Concerns Pertaining to Gas Transmission Lines at the Indian Point Nuclear Power Plant” (Case No. 16-024). Subsequently, on February 27, 2020, the Executive Director for Operations (EDO) chartered an NRC Expert Evaluation Team to develop recommendations to address the issues raised in the OIG event inquiry. On April 8, 2020, the Expert Evaluation Team reported the results of its review. The team determined that, “even though Entergy (the plant owner) and the NRC made some potentially optimistic assumptions in analyzing the potential rupture of the 42-inch natural gas transmission pipeline, the Indian Point reactors remain safe.” In addition, the team recommended four changes to the review process for evaluating 10 CFR 2.206 petitions:

- (1) Modernize petition review boards (PRBs).
- (2) Provide for independent petition reviews.
- (3) Conduct detailed reviews after petition acceptance.
- (4) Document analysis supporting petition decisions.

DISCUSSION:

The 10 CFR 2.206 process provides members of the public with a mechanism to request enforcement-related action, including modifying, suspending, or revoking a license, or any other action as may be proper. Generally, pursuant to MD 8.11, a petitioner should (1) submit concerns in writing to the NRC’s EDO, (2) identify the enforcement-related action requested, and, (3) include information supporting the requested action.

The NRC describes the review process for evaluating 10 CFR 2.206 petitions in MD 8.11; Directive Handbook 8.11, “Review Process for 10 CFR 2.206 Petitions”; and the Desktop Guide, which includes additional guidance and templates for staff use during the review of 10 CFR 2.206 petitions. MD 8.11 was last issued in 2019 incorporating lessons learned since the previous version was issued in 2000. As part of the process of developing the 2019 version, the

NRC held several meetings with internal and external stakeholders to obtain feedback and incorporated Commission direction as reflected in Staff Requirements Memorandum SRM-M180208, “Staff Requirements—Discussion of Potential Changes to the 10 CFR 2.206 Enforcement Petition Process,” dated February 20, 2018 (ADAMS Accession No. ML18051A998). Concurrent with issuing the MD in 2019, the NRC also developed the Desktop Guide.

The review process for 10 CFR 2.206 petitions consists of three primary activities. The first is a screening of the petition by the petition manager to determine whether immediate action is needed and whether the petition meets the initial screening criteria in MD 8.11. If it meets the initial screening criteria, it will be entered into the 10 CFR 2.206 review process for further assessment. The second activity is an initial PRB assessment to determine whether the petition meets the MD 8.11 acceptance criteria for a detailed review. Based on the PRB’s evaluation of the petition against the acceptance criteria, the staff will communicate its decision to the petitioner(s) either in an acknowledgement letter (for petitions that meet the acceptance criteria) or a closure letter (for petitions that do not meet the acceptance criteria). The third activity, performed for accepted petitions, is a detailed PRB review and evaluation to determine whether the petitioner’s requests should be granted or whether other action will be taken to address the concerns raised by the petitioner. At the conclusion of the PRB review of accepted petitions, a proposed director’s decision is issued for comment documenting the PRB’s findings, including whether enforcement action is warranted. Following an opportunity for the petitioner and licensee to comment on the proposed director’s decision, the staff issues a final director’s decision. The 10 CFR 2.206 review process includes communication to keep petitioners up to date on the status of the petition.

In response to the OIG findings on the Indian Point Generating Station petition, the NRC Expert Evaluation Team recommended that the agency modernize PRBs, provide for independent petition reviews, conduct detailed reviews after petition acceptance, and document analysis supporting petition decisions. The WG considered the Expert Evaluation Team recommendations in the review process for 10 CFR 2.206 petitions and plans to implement the following changes in the appropriate sections of MD 8.11 and the Desktop Guide.

Recommendation 1: Modernize Petition Review Boards

For the purposes of this report, modernization is the implementation of the enhancements that the WG is recommending in this report.

The Expert Evaluation Team recommended “that PRBs be improved by designating standing members for certain roles.” Currently, the only permanent 10 CFR 2.206 review process staff positions are the agency 10 CFR 2.206 petition coordinator and individual office 10 CFR 2.206 petition coordinators who perform this function as a collateral duty. When an office is assigned a petition that includes concerns under that office’s purview, the office designates a petition manager and a PRB chair who are responsible for implementing the review process with the agency and office coordinators. These petition managers and PRB chairs may be different for each petition. Thus, some of the designated staff on a given PRB may have limited experience in implementing the review process. Similarly, the variation in offices’ degree of experience in those roles (reflecting the diversity of subject matters raised in petitions) can create challenges for implementing the process consistently across the agency.

The WG proposes creating a dedicated core team that would manage the review process for all

10 CFR 2.206 petitions within the agency. An established team of process experts will result in increased consistency, reliability, and efficiency. Implementing an agency core team will also improve the effectiveness of program oversight and implementation, which will increase public stakeholder confidence in the process. Additionally, because administering the 2.206 process will now be a primary duty, petition managers will have a higher level of expertise than staff filling the role as an ancillary duty. This will benefit petitioners by ensuring effective and timely communications and providing an expert point of contact to address petitioner questions and concerns about the 2.206 process. This approach will also better serve staff and increase staff confidence in the process, since petition managers with greater expertise will be able to provide a higher level of support to the technical staff by both adding administrative efficiency (saving time) and by providing more experienced guidance to new PRB members.

The proposed 10 CFR 2.206 agency core team would comprise permanently assigned staff in the Office of Nuclear Reactor Regulation (NRR) and would reside in the Division of Operating Reactor Licensing (DORL) under the direction of a Branch Chief. During the staff's evaluation of the 2.206 process, the WG received comments that the core team should be located in the Office of Enforcement to create an additional layer of independence in administering the process. The WG evaluated this suggestion and determined that initially, the core team should remain in NRR because much of the staff that will comprise the core team resides in NRR. However, the staff will reconsider the location of the core team during the next required 3-year assessment of the program. The assigned core team staff would consist of project managers with collateral duties in addition to their role as dedicated petition managers, which will allow adding or shedding work as the petition workload fluctuates. Additionally, the WG proposes that NRR assign an SES staff member, specifically the Deputy Director of DORL, to serve as the 10 CFR 2.206 process champion who will oversee the program, foster consistency in petition determinations, and ensure strategic awareness of trends or cross-cutting technical and policy issues. The combination of a dedicated core team and process champion will provide additional assurance that the review process for 10 CFR 2.206 petitions is being executed in accordance with MD 8.11 and the Desktop Guide. Each program office (i.e., NRR, Office of Nuclear Security and Incident Response, and Office of Nuclear Material Safety and Safeguards) will also designate a small pool of SES-level staff members (two to five) to serve on a rotating basis as PRB chairs. In addition to the core team concept and the enhanced SES-level expertise and leadership, the remaining PRB would comprise staff members with the appropriate expertise. Finally, the WG plans to revise MD 8.11 and the Desktop Guide to incorporate the above changes.

Recommendation 2: Provide for independent petition reviews

The Expert Evaluation Team recommended "to the extent practicable, assign PRB members and support staff that are independent from any previous substantive work on the issues raised in the petition." The WG acknowledges that the existing processes and deliverables for the PRB remain the same and incorporating these enhancements will increase the level of independence of the process. Technical expertise for many areas may exist in offices other than the office that is charged with reviewing the petition; therefore, the WG proposes the agency should seek out relevant expertise when evaluating concerns raised in petitions. Including staff from other offices with relevant expertise who were not integral in formulating the staff's position on the concerns raised in the petition will enhance the likelihood of diversity of thought and independence. The WG also proposes that petition reviews should incorporate peer reviews, as appropriate, to obtain potential alternative perspectives on technical analysis, particularly for those petitions requiring additional analysis of issues that have significant

potential safety or security significance. In addition, if the PRB determines that the staff has limited expertise and diversity of experience, the PRB may engage the services of external contractors to supplement the staff's review of complex issues. However, even when a contractor is engaged, the staff is responsible for the final resolution of the petition. The WG plans to incorporate this guidance into the Desktop Guide.

Recommendation 3: Conduct detailed reviews after petition acceptance

The Expert Evaluation Team recommended that if detailed analysis is needed to determine whether to accept the petition, the NRC should accept the petition. The 2000 version of MD 8.11, that was in effect when the events related to the NRC OIG inquiry occurred, did not provide guidance for situations where additional technical analysis might be needed to resolve whether a petition met the acceptance criteria. This ambiguity sometimes resulted in an extended time before the NRC determined whether a petition should be accepted and notified the petitioner. The WG notes that the MD 8.11 version issued in 2019 expanded and clarified the screening and acceptance criteria, including updated guidance for accepting a petition and issuing a streamlined director's decision. However, the MD 8.11 issued in 2019 did not specifically address how to apply these acceptance criteria when more detailed technical analysis is necessary to evaluate the claims in the petition. Therefore, the WG plans to modify the Desktop Guide to incorporate additional guidance such that if the PRB determines that a petition requires detailed analyses or if there would be significant effort to identify and develop a discussion of previous NRC staff reviews in a proposed closure letter, then the petition should be accepted for review.

Recommendation 4: Document analysis supporting petition decision

Finally, the Expert Evaluation Team recommended that any staff analysis or calculations used to support a 10 CFR 2.206 petition decision should be appropriately documented. Documenting the basis for the PRB's decision is important to justify the staff's conclusions and engender public confidence. The WG plans to modify the Desktop Guide to reiterate the need to document all analyses used to support PRB decisions and recommendations at a level appropriate to ensure the documented basis for the decision is comprehensive. This would create a greater focus on documentation of the information needed to support PRB decisions and increase public stakeholder understanding of the PRB decision's basis.

STAKEHOLDER FEEDBACK

The WG solicited feedback from internal and external stakeholders during the development of the planned changes to the review process for 10 CFR 2.206 petitions. To obtain perspectives on the existing process as well as the proposed changes, the WG conducted three public meetings, on August 18, 2020; October 20, 2020; and June 8, 2021, and it interacted with a variety of internal stakeholders. Most of the feedback was solicited early in the development process, and it both influenced the direction the WG took in response to the Expert Evaluation Team's recommendations and helped the WG refine the planned changes. The candid feedback and concerns from stakeholders helped the WG develop focused clarifications to MD 8.11 and elaborate on aspects of the detailed review guidance in the Desktop Guide.

External Stakeholder Feedback

Participants in the public meetings expressed a number of concerns, including the format of public meetings not being conducive to public involvement, difficulty with finding petition-related

information, the level of rigor petitioners need to prove a safety issue exists, transparency of the petition process, communications from the staff during the petition review process, when contractors will be used, and the timeline of the petition process. To address these concerns, the staff modified several planned actions. The most significant change was the concept of creating a single 10 CFR 2.206 agency core team that would bring the process experts together to increase consistency, reliability, and efficiency in the process. In addition, having a core team will result in a dedicated, expert point of contact for petitioners, irrespective of the concerns raised in their petitions. Having an expert petition manager to address petitioner concerns and provide information on the 2.206 process will reduce stakeholder uncertainty and improve communications, since the core team experts will ensure all communication touchpoints are observed throughout the entire review process. Additionally, the core team experts will be able to respond quickly to any questions such as the use of a contractor and the anticipated timeframes for review process milestones. The WG notes that the criteria used by the PRB to evaluate petitions, including the information needed to support a petition, is articulated in MD 8.11 which is publicly available and the NRC public website page on the review process for 10 CFR 2.206 petitions has links to the guidance and other petition information to assist the public's ability to find information.

Internal Stakeholder Feedback

The WG solicited feedback from internal stakeholders who have experience with the process for reviewing 10 CFR 2.206 petitions. Feedback on the changes proposed for Recommendation 1, was mixed, with some stakeholders questioning the necessity of changing the current practice of having a different project manager for each petition, while others believed that having standing roles would enhance the process. The WG assured the staff that the goal of the planned change is to foster best practices and ensure consistency during the petition review process.

During the discussion of the changes proposed for Recommendation 2, stakeholders expressed concerns about the potential for peer reviews to decrease the efficiency of the process by encouraging redundant consideration of issues. The WG responded that the goal of using peer reviews is to ensure adequate diversity of opinion on technical issues and ensure these views are documented for transparency while appropriately resourcing the peer reviews commensurate with the issues' significance.

In response to the changes proposed for Recommendation 3, stakeholders expressed concern about delays in petition reviews (such as when a different process needs to be completed before the petition review can resume) and concern that petitions that appear to be highly complex could be accepted into the review process prematurely, creating inefficiency. The WG acknowledged process-oriented coordination challenges but reiterated the need for staff to evaluate petitions on a case-by-case basis, reflecting consideration of the facts and information that are specific to the concerns raised in the petition. Further, while the agency always strives to complete activities consistent with its schedule, a delay in PRB decisions may be appropriate when extenuating circumstances exist such as numerous petition supplements or scheduling conflicts with the petitioner.

For changes proposed for Recommendation 4, stakeholders were interested in a more efficient way to communicate with petitioners about delays and potential technical challenges. The WG informed the stakeholders that additional touchpoints will be incorporated into the process to keep petitioners apprised of review progress. The WG also noted that the current version of the Desktop Guide contains a petition manager checklist that outlines most of the timeframes

associated with the petition review process steps and it includes touchpoints for providing updates to petitioners for petitions being held in abeyance but not for petitions under review. Therefore, touchpoints for communicating with petitioners are being added to the checklist for petitions under review.

Discussions with internal stakeholders identified an additional consideration. Specifically, petitions with multiple concerns and action requests may benefit from a holistic review that considers the requested actions in the aggregate, particularly where the asserted technical concerns appear to have interrelated or cumulative effects. The WG plans to incorporate new guidance in MD 8.11 and the Desktop Guide suggesting that the staff consider the aggregate impacts of the concerns raised in petitions that contain multiple concerns.

Some internal stakeholders expressed concerns about implementing the Expert Evaluation Team's recommendations for the 10 CFR 2.206 petition review process. The enclosure to this SECY paper "Differing View" contains further information on these concerns. The WG considered these concerns and concluded that changes to the organizational structure for project management consistency of 10 CFR 2.206 petitions and enhancements to clarify the role of peer reviewers and contractor resources in the review process are necessary, and the changes enhance effectiveness and introduce efficiencies into the process.

CONCLUSION:

The staff evaluated the recommendations from the Expert Evaluation Team and identified diverse methods to incorporate the changes into the review process for 10 CFR 2.206 petitions to improve the effectiveness of the program. These changes will enhance the process by increasing the consistency and reliability of the review results. As a learning organization, NRC continually strives to evaluate program effectiveness and solicit stakeholder feedback to improve our service to the public and have determined these changes will increase public confidence in the 2.206 petition process, ensure the timely review of petitions, and improve communication with petitioners and transparency for members of the public.

COORDINATION:

The Office of the General Counsel has no legal objection to this paper.

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Enclosure:
Differing View

SUBJECT: PLANNED REVISIONS TO THE REVIEW PROCESS FOR TITLE 10 OF THE CODE OF FEDERAL REGULATIONS 2.206 PETITIONS AND ASSOCIATED GUIDANCE IN MANAGEMENT DIRECTIVE 8.11 AND THE DESKTOP GUIDE DATED:
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