



Potential Changes to the 10 CFR 2.206 Process

David Lochbaum

Director, Nuclear Safety Project

www.ucsusa.org

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Why UCS Petitions NRC

- **Petitions require formal NRC responses, generally of substantially higher quality than we receive to our letters to NRC**
- **Petitions are public whereas allegations are super-secret**
- **There's way more media cache when UCS petitions the federal government to address a safety problem than when UCS writes NRC a letter about one**
- **NRC has never granted a UCS petition, but our petitions have helped resolve numerous safety problems**

Commendable Effort

UCS reviewed the draft revisions to Management Directive 8.11.

Participation in the December 7, 2017, public meeting gave UCS fuller insights into the proposed changes.

The proposed changes will very likely increase efficiency and lessen frustrations by all participants.

Sources: ML17320A976, ML17320A996 and ML17341A027

2.206 Metrics

NRC Form 659 solicits feedback on public meetings conducted by NRC.

FOIA process affords requesters an opportunity to provide feedback on the quality of responses.

Management Directive 8.11 should include a comparable formal feedback mechanism.

2.206 Metrics

OE prepares Enforcement Program Annual Reports.

2.206 petitions seek enforcement actions. UCS found no 2.206 petition mentions in six recent annual reports.

Annual OE reports should address 2.206 petitions.

Sources: CY16 (ML17075A377), CY15 (ML16069A146), CY14 (ML15086A104), CY13 (ML14087A428), CY12 (ML13079A446), CY11 (ML12076A123)

Requests for Immediate Action

Petitioners may request that NRC take immediate action. UCS FOIA'ed* records for staff recommendations to PRB about such requests. The recommendations were casual at best, entirely lacking at worst.

*** FOIA-2017-0662 (ML17318A126)**

Requests for Immediate Action

NRC's "no immediate action" response* dated November 10, 2011, to a petition by Beyond Nuclear about seismic concerns at North Anna:

This email is to inform you that the Petition Review Board (PRB) recently discussed your petition with respect to immediate action only. The PRB denied the request for immediate action because there was no immediate safety concern to the plant, or to the health and safety of the public. In addition, the requirement to demonstrate that no functional damage has occurred to those features necessary for continued operation of the reactors without undue risk to the health and safety exists in 10 CFR 100, Appendix A.

So, 10 CFR 100, Appendix A has got it covered. Really?#

* ML12018A445

Given that the earthquake caused ground motion at North Anna above its DBE levels, one could argue that App. A failed.

Requests for Immediate Action

Then why did the NRC mandate on March 12, 2012,* that North Anna “without unnecessary delay” walk down the plant to identify and correct seismic shortcomings?

On September 9, 2011, the NRC staff provided SECY-11-0124 to the Commission (ADAMS Accession No. ML11245A158). The document identified those actions from the NTTF report that should be taken without unnecessary delay. As part of the October 18, 2011, SRM for SECY-11-0124 (ADAMS Accession No. ML112911571), the Commission approved the staff's proposed actions, including the development of three information requests under 10 CFR 50.54(f). The information collected would be used to support the NRC staff's evaluation of whether further regulatory action was needed in the areas of seismic and flooding design, and EP.

*** ML12053A340**

Requests for Immediate Action

Management Directive 8.11 must require fully and substantive reasons be formally documented for why petitioner's requests for immediate action are not granted.

Public Meeting with Petitioners

“The petition manager will invite the licensee to participate in any meeting or teleconference with the petitioner to ensure that the licensee understands the concerns about its facility or activities. The licensee may also ask questions to clarify the issues raised by the petitioner.”

Category 1 Public Meetings

“The public is invited to observe the meeting and will have the opportunity to communicate with NRC staff participating in the meeting after the business portion of the meeting but before the meeting is adjourned. This plan does not preclude the licensee, vendor, or applicant from responding to questions if it chooses to do so.”

NRC Public Meetings

Search Criteria	
Start Date:	11/25/17
End Date:	01/09/18
Records 1 - 85 of 85 Matching Records	

Category	Meetings*	Percentage
1	62	59.6%
2	37	35.6%
3	5	4.8%

*** Meetings (104) exceed the number of records (85) because some notices announced multiple meetings.**

Source: NRC Public Meeting Schedule webpage

2.206 Meetings

2.206 meetings should be held consistent with Management Directive 3.5 and treat petitioners and licensees equally.

‘Separate but equal’ made lousy public policy.

‘Separate but unequal’ makes even lousier public policy.

2.206 Isn't Very Appealing

06-23-2011: Byron submits power uprate license amendment request (ML111790026)

10-09-2015: During review, NRC informed licensee that *“the NRC staff finds that the licensee is not in compliance with GDCs 15, 21, and 29, 10 CFR 50.34(b), and the design bases with respect to prohibition of progression of Condition II events. The licensee must take action to resolve the non-compliance.”* (ML14225A871)

2.206 Isn't Very Appealing

12-08-2015: Byron appealed decision to NRR Director (ML15342A112)

05-03-2016: NRR Director denied the appeal (ML16095A024)

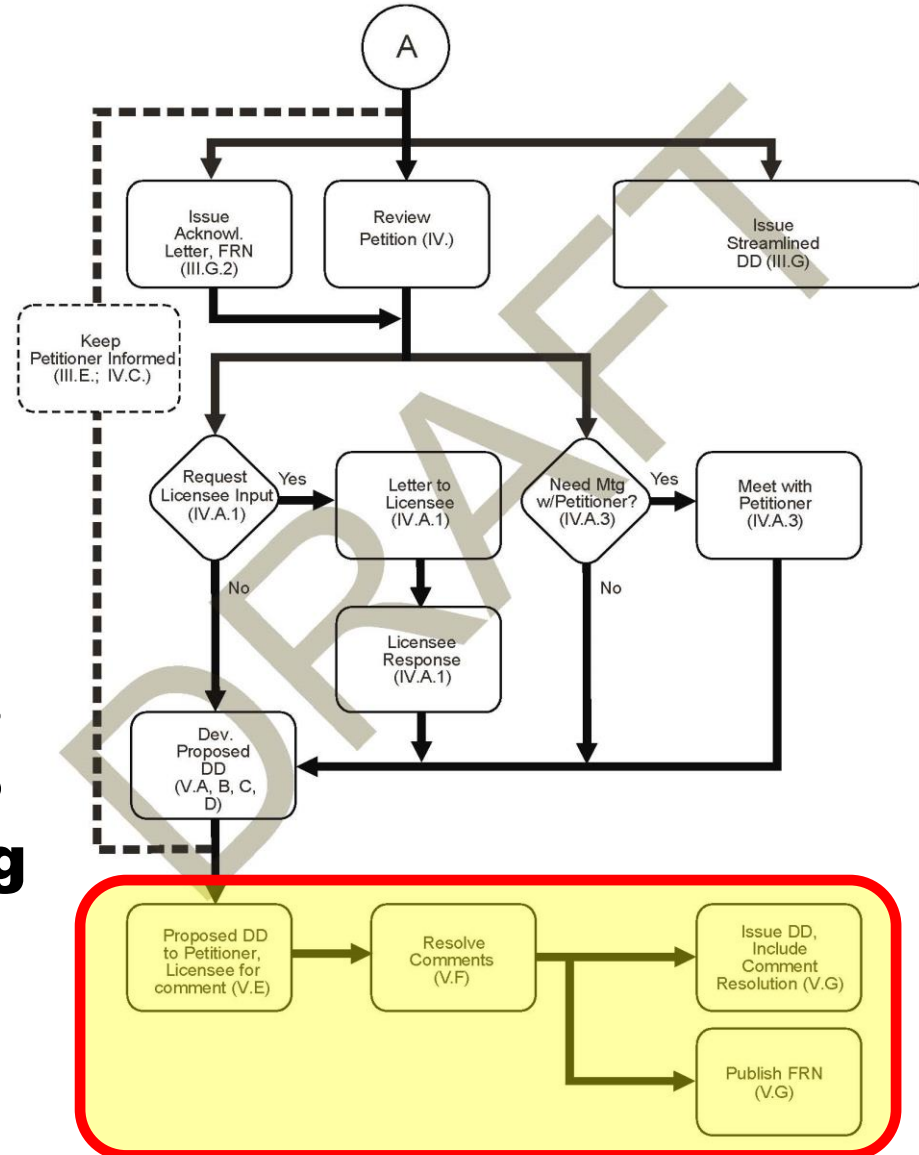
06-02-2016: Byron appealed to the EDO (ML16154A254)

09-15-2016: EDO grants appeal (ML16243A067)

2.206 Isn't Very Appealing

The 2.206 process expressly prohibits appeals.

Thus, the NRR Director, who was over-ruled in the Byron appeal case, is presumed to ALWAYS be right when denying 2.206 petitions.



2.206 Isn't Very Appealing

08-14-2017: NRC proposed a preliminary White finding for an EDG violation at Clinton (ML17226A321)

09-18-2017: Exelon submitted a 601-page letter contesting the White finding (ML17263A124)

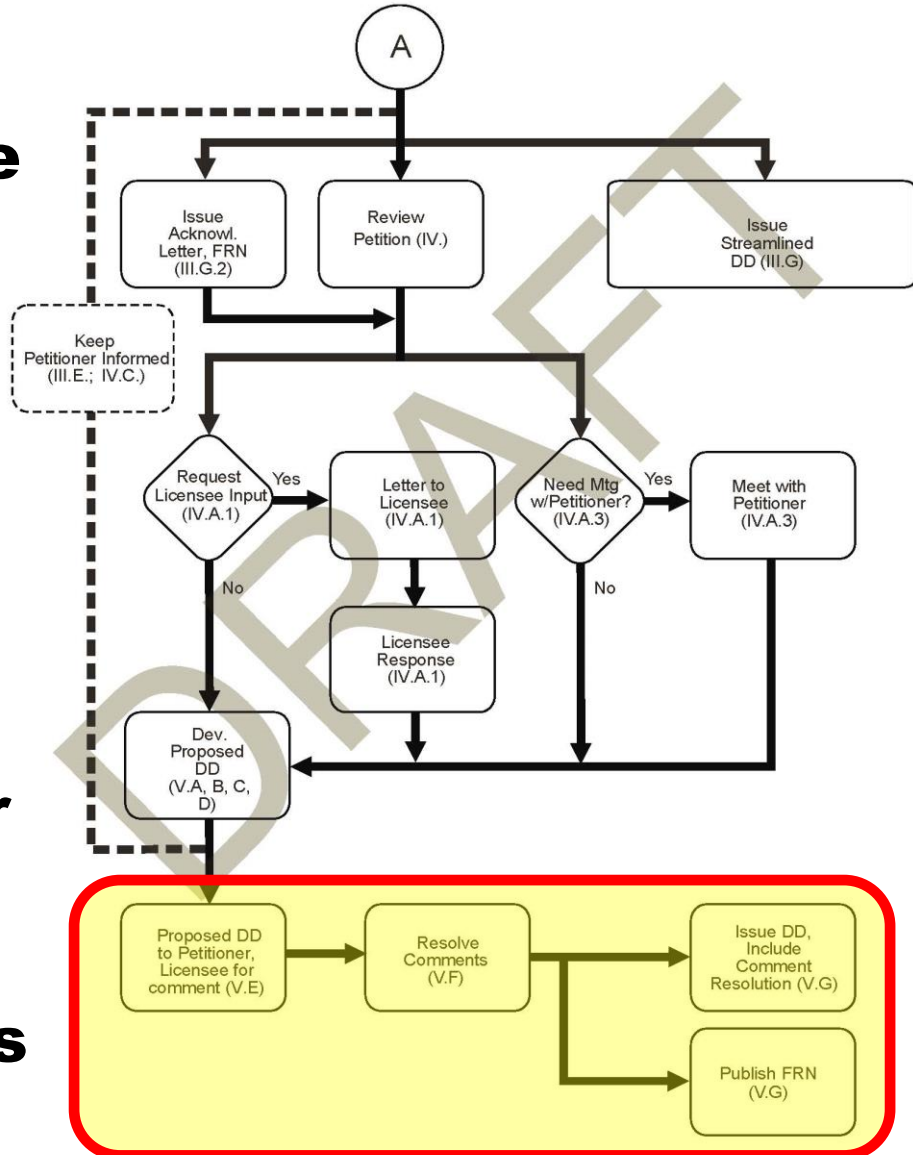
11/27/2017: NRC issued final White finding for the EDG violation at Clinton (ML17331B161)

12/21/2017: Exelon appealed the final White finding (ML17355A562)

2.206 Isn't Very Appealing

The preliminary and final SDP decisions are comparable to the proposed and final Director's Decisions in 2.206.

But licensees, not petitioners, have additional appeal rights. Manual Chapter 0609 Att. 2 (ML101400502) gives licensees appeal rights denied to petitioners.



2.206 Isn't Very Appealing

If it takes X layers of appeal to adequately protect licensees from improper imposition of enforcement actions, then it also takes X layers of appeal to adequately protect petitioners from improper denial of their requests for enforcement actions. Less than X layers is less than fair.

Our Recommendations

MD 8.11 should include formal feedback mechanism

Enforcement Program Annual Reports should cover 2.206 petitions

MD 8.11 should require reasons for denying requests for immediate action be substantively documented

Petitioners and licensees should be treated equitably in NRC meetings

Appeal processes for 2.206 petitions should match other processes

List of Acronyms

EDG – Emergency Diesel Generator

EDO – Executive Director for Operations

FOIA – Freedom of Information Act

MD – Management Directive

ML – not sure, maybe Mr. Lochbaum?

NRC – Nuclear Regulatory Commission

NRR – Nuclear Reactor Regulation

OE – NRC Office of Enforcement

PRB – Petition Review Board

SDP – Significance Determination Process

UCS – Union of Concerned Scientists