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June 25, 2021

The Honorable Christopher T. Hanson
Chairman
U.S. Nuclear Regulatory Commission
Mail Stop O-16 B33
Washington, DC 20555-0001

Dear Chairman Hanson,

I write regarding the proposed rule on "Regulatory Improvements for Production and Utilization Facilities Transitioning to Decommissioning," which Nuclear Regulatory Commission (NRC) staff presented for the commissioners' review on May 22, 2018.[1] I share the NRC's goals of providing a safe, effective, and efficient decommissioning process for nuclear plants, but I am concerned that this draft rule falls short.

Before approving this draft rule and putting out a proposed rule for public comment, I urge the Commission to address my concerns set forth below. It is important to have a rule that makes the decommissioning process safer. Twenty-three nuclear reactors, including the Pilgrim Nuclear Power Station in Massachusetts, are undergoing decommissioning in the United States, and more nuclear retirements are projected in coming decades.[2] Eight additional nuclear power plants have already declared their intent to decommission, including Indian Point Nuclear Generating Unit No. 3 in New York, which shut down on April 30, 2021; Byron Station, Unit Nos. 1 and 2 in Illinois, which are set to go offline by September 2021; and Diablo Canyon in California, which will begin decommissioning at Unit 1 in 2024.[3] The proposed rule, as presented by NRC staff, would not establish the proper checks to ensure the safety and security of these plants as they move through the full decommissioning process.

[1] *Regulatory Improvements for Production and Utilization Facilities Transitioning to Decommissioning*, Nuclear Regulatory Commission (May 22, 2018), https://www.nrc.gov/docs/ML1801/ML18012A022.pdf.
[2] *Locations of Power Reactor Sites Undergoing Decommissioning*, Nuclear Regulatory Commission (Mar. 8, 2021), https://www.nrc.gov/info-finder/decommissioning/power-reactor/index.html.
[3] Congressional Research Service, with information from the Energy Information Administration and operator announcements.

Regulating by Exemption

In the absence of a defined and exact set of rules on how plants should navigate the decommissioning process, decommissioned plants have sought exemptions to operating reactor regulations that are no longer relevant or appropriate. This system of "regulating by exemption" results in a less transparent and less accountable outcome. Unfortunately, the staff-drafted proposed rule would serve to enshrine in regulation the existing broken system and make it even easier for plants to obtain these exemptions. This proposal misses an historic opportunity to implement specific regulations that would ensure that local communities are protected and decommissioned nuclear plants are as safe as possible.

The proposed rule would eliminate the "need to submit requests for exemptions" on emergency preparedness, physical security, offsite and onsite financial protection requirements and indemnity agreements, decommissioning funding assurance, and low-level waste transportation. According to the Regulatory Analysis for the Proposed Rule: "Most of the cost savings from [the proposed rule] are attributable to the relief of exemptions and amendments that licensees would typically submit to the NRC for review and approval during decommissioning."[4] The NRC is not only proposing to codify the system of exemptions but also to remove NRC oversight of them—a step backward that prioritizes ease for industry over safety for communities.

By failing to propose a comprehensive set of decommissioning and cleanup regulations, by automatically approving facilities' exemptions from safety, security, and emergency planning regulations, and by continuing to rubber-stamp the industry's post-shutdown decommissioning activities report, the proposed rule abdicates the NRC's responsibility to ensure the safety of these plants. This more an absence of rulemaking than the promulgation of a rule that will affirmatively guide plants and communities through the decommissioning process.

Public Participation and Awareness

The draft rule proposes "cost savings" for the general public that stem from a reduced opportunity to participate and express their concerns. That is not a tradeoff that many neighbors of decommissioning nuclear plants would be willing to make.

The proposed rule fails to improve public participation during the NRC's consideration of any license transfers requested in connection with a nuclear plant's decommissioning process. As currently written, the proposed rule would permit the NRC to approve a license transfer even if there is an adjudication pending, allowing the Commission to disregard important public input and subvert the adjudicatory process. The NRC has already displayed its willingness to undercut the review process: In August 2019, the NRC approved the transfer of the Pilgrim Nuclear Power Station license from Entergy Nuclear Operations, Inc. to Holtec International before it ruled on the petitions and motion in the proceeding docket. The NRC also displayed a similar disregard

[4] *Regulatory Analysis for the Proposed Rule: Regulatory Improvements for Production and Utilization Facilities Transitioning to Decommissioning,* Nuclear Regulatory Commission (May 22, 2018), https://www.nrc.gov/docs/ML1801/ML18012A024.pdf.

for public input in November 2020, when it approved the transfer of the Indian Point Nuclear Power Plant licenses from Entergy to Holtec International without holding a public hearing.

Several components of this proposed rule will also act to decrease public participation after the spent fuel in a reactor has been moved to the spent fuel pool. For example, starting at this stage in the process, the NRC proposed rule would no longer require annual dissemination of public information on basic emergency planning information. The important goal of public awareness and inclusion should be better maintained in this proposed rule.

The proposed rule also notes that NRC staff considered, but did not respond to, public comments. Although a response to those comments is not required in the proposed-rulemaking process, and although the NRC will respond to public comments on the final rule, it is still disappointing that the hundreds of comments did not receive more consideration at this point.

Finally, NRC staff noted that the question of whether the NRC should approve the industry's post-shutdown decommissioning activities report was a central focus of the public comments.[5] Not only is this issue not addressed in the draft rule, the proposed rule goes even further by recommending that a decommissioned plant owner's irradiated fuel management plan, which guides the handling of spent fuel, should also be exempt from NRC approval. This would amount to an unacceptable step backward on safety.

Fuel Storage

In the Regulatory Analysis, NRC staff write: "To evaluate the potential effects of alternatives considered in this analysis, the NRC assumed that the spent fuel is stored in an onsite [Independent Spent Fuel Storage Installation (ISFSI)] facility for 16 years before the spent fuel is transmitted to either an offsite storage facility or a permanent geologic repository."[6] This ignores the numerous obstacles, both political and financial, to offsite storage and to the establishment of a permanent geologic repository. Especially for plants set to retire in the near future, such as Pilgrim, Indian Point, and Diablo Canyon, and for plants such as Vermont Yankee that have just recently begun decommissioning, 16 years could seriously underestimate the decommissioning period. The analysis undergirding the decommissioning rule and the resulting directives should acknowledge and address the fact that spent fuel could remain onsite for long periods of time, perhaps indefinitely.

Financial and Physical Protection

The proposed rule would reduce financial protections for offsite and onsite liability claims for plants that are in the process of decommissioning. It would reduce from $450 million to $100

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[5] Victor M. McCree, *Proposed Rule: Regulatory Improvements for Production and Utilization Facilities Transitioning to Decommissioning (RIN 3150-AJ59),* Nuclear Regulatory Commission (May 7, 2018), https://adamswebsearch2.nrc.gov/webSearch2/view?AccessionNumber=ML18012A021

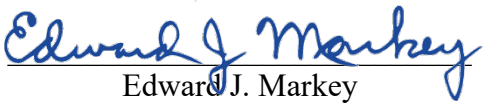
[6] *Regulatory Analysis for the Proposed Rule: Regulatory Improvements for Production and Utilization Facilities Transitioning to Decommissioning,* Nuclear Regulatory Commission (May 22, 2018), https://www.nrc.gov/docs/ML1801/ML18012A024.pdf.

million the offsite requirements and would reduce from $1.06 billion to $50 million the onsite requirements. The NRC argues that after the spent fuel has adequately cooled, the potential for a significant and costly leak goes down precipitously. The Regulatory Analysis contends that, "$100 million was sufficient to cover offsite liability claims such as those incurred as a result of Three Mile Island, Unit 2."[7] I remain concerned that this drastically underestimates the potential for a disaster, and this proposal could end up costing taxpayers and local communities millions in the event a serious accident occurs.

I urge the NRC to take into account these concerns, as well as the comments of local communities and safety experts, when drafting the final decommissioning rule. In addition to addressing these concerns and strengthening the rule to prioritize community safety over industry savings, the NRC should ensure that plants such as Pilgrim Nuclear Power Station, which have already begun the decommissioning process, adapt their operations to reflect the stronger standards.

Thank you for your consideration of my concerns. If you have any questions, please contact Hannah Vogel in my office at 202-224-2742.

Sincerely,



Edward J. Markey
United States Senator

[7] *Regulatory Analysis for the Proposed Rule: Regulatory Improvements for Production and Utilization Facilities Transitioning to Decommissioning*, Nuclear Regulatory Commission (May 22, 2018), https://www.nrc.gov/docs/ML1801/ML18012A024.pdf.