

United States Senate

WASHINGTON, DC 20510

August 3, 2018

The Honorable Kristine L. Svinicki
Chairman
Nuclear Regulatory Commission
Mail Stop O-16G4
Washington, DC 20555-0001

Dear Chairman Svinicki,

We write regarding the proposed rule on “Regulatory Improvements for Production and Utilization Facilities Transitioning to Decommissioning,” which was presented for the commissioners’ review on May 22, 2018.¹ We share the Nuclear Regulatory Commission’s (NRC) goals of providing for a safe, effective, and efficient decommissioning process for nuclear plants, but we are extremely concerned that this draft rule falls short.

Before approving this draft rule and putting out a proposed rule for public comment, we urge The Commission to address, at a minimum, our concerns that are set forth below. It is important to have a decommissioning rule that makes the process safer. Twenty nuclear reactors, including the Vermont Yankee Nuclear Power Plant, are currently undergoing decommissioning in the United States, and more nuclear retirements are projected in coming decades. Ten additional nuclear power plants have already declared their intent to decommission from 2019 through 2050, including the Pilgrim Nuclear Power Station in Massachusetts, which is set to go offline by the start of June 2019, the Indian Point Energy Center in New York, which intends to begin shutting down in 2020, and Diablo Canyon in California, which will begin decommissioning at Unit 1 in 2024. 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.

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

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>.

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 this 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 [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.”² The NRC is not only proposing to codify the system of exemptions but also to remove NRC oversight of those exemptions—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, as currently drafted, this proposed regulation would abdicate the NRC’s responsibility to ensure the safety of these plants. This is more an absence of rulemaking than 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. After the spent fuel in the reactor has been moved to the spent fuel pool, several components of this proposed rule will also act to decrease public participation. 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.

² *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>.

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.³ 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."⁴ 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, like Pilgrim, Indian Point, and Diablo Canyon, as well as for plants like 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 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 been 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."⁵ We 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.

We 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

³ 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>

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>.

⁵ *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>.

The Honorable Kristine L. Svinicki
August 2, 2018
Page 4

savings, the NRC should ensure that plants like Pilgrim that have already begun the decommissioning process adapt their operations to reflect the stronger standards.

Thank you for reviewing these concerns. Should you have any questions in regard to this letter, please contact Lindsey Griffith in Senator Markey's office at 202-224-2742.

Sincerely,



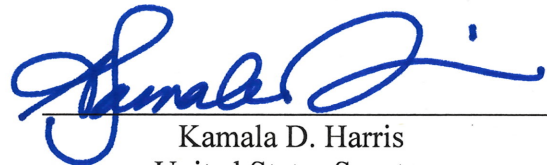
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