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STATEMENT OF COMMISSIONER JAMES K. ASSELSTINE

BEFORE THE

SUBCOMMITTEE ON NUCLEAR REGULATION
SENATE COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
MAY 6, 1987

Mr. Chairman, your letter inviting the Commission to testify today included a rather lengthy list of issues you wanted the Commission to address. Rather than trying to comment on each of those issues, I would like to focus on one -- the Commission's proposed change to the emergency planning rule.

It is no secret by now that I do not support the Commission's proposed modification of the NRC's emergency planning regulations. In my opinion, that proposal is bad policy. It would permit licensing of a nuclear power plant in cases where there has been no participation by state and local governments in the emergency planning process. This approach would abandon the central elements of emergency planning and would, therefore, provide less effective protection of the public in the event of an accident than that required by the present rules. And, the only reason advanced by the Commission for permitting less effective emergency planning is the adverse economic consequences to the utilities of not licensing plants where the governments have refused to participate. In my view, these economic consequences cannot provide a valid basis for altering the Commission's safety regulations.

The Commission's proposed rule is fairly clear about what it does and why. The state and local governments responsible for emergency planning for two

plants have refused to submit emergency plans or to participate in utility planning. The Commission has realized that it will be very difficult, if not impossible, to license a plant under those circumstances. Where there is no participation in the process by the governments, it is difficult, if not impossible, for FEMA or the Commission to make findings that the plan meets certain of the Commission's requirements. The Commission's rule proposes to make those findings necessary under the current regulations, unnecessary.

The rule thus provides for an alternative to compliance with NRC requirements in those cases where the inability of the utility to meet the regulations is substantially the result of the failure of state and local governments to participate in the emergency planning process. The utility must submit its own plan for Commission approval. The utility must have tried to obtain governmental cooperation. The utility must have done the best it could in developing a plan and measures to compensate for lack of cooperation by government authorities given the circumstances and taking into account participation of the state and local governments in the case of an actual emergency. And, the utility must provide copies of the plan to responsible government entities.

Most recently, the Commission has been arguing that the rule is merely a procedural change, that the proposal does not substantively change the Commission's emergency planning regulations. That is simply nonsense. FEMA's comments on the Commission's proposal make this abundantly clear. As FEMA points out:

> On its face, the proposed rule incorporates a fundamental change in the way that offsite emergency planning would be evaluated by FEMA if the NRC requests findings and determinations as to whether offsite emergency plans are adequate and can be implemented. Comments of FEMA on Proposed Emergency Planning Rule, April 28, 1987, p.2.

Thus, to argue that the proposed rule is simply a procedural change ignores the facts.

The Commission says, however, that the rule is supportable because they must still make an overall "reasonable assurance" finding before licensing a plant. What the Commission does <u>not</u> tell you, however, is that what they have done is to change, to lessen, the requirements necessary to make that finding. In other words, what the Commission has done is redefine "adequate protection of the public health and safety," to be "adequate protection of the public health and safety -- given the circumstances." The Commission decided in 1980 that the requirements of its current regulations, with state and local participation as their central element, was what was necessary to provide adequate protection. There was a provision for some flexibility to allow for compensating measures by the utility to make up for some inadequacies in state and local plans, but state and local participation remained central to effective planning. Under the proposed rule, the Commission could approve an emergency plan missing that central element. As FEMA pointed out in their comments on the proposal:

> The existing regulatory scheme anticipates that there will be detailed, documented provisions in advance of an emergency for the plume exposure emergency planning zone (10 miles out from the plant)

> and that ad hoc responses will be undertaken as necessary to supplement preplanned actions. This proposed rule would, in effect, sanction extensive across-the-board ad hoc responses. p.3.
>
> The current Memorandum of Understanding between FEMA and the NRC charges FEMA with evaluating offsite emergency response plans against the criteria set out in the jointly developed guidance document, NUREG 0654/FEMA REP 1, Rev. 1. This guidance document assumes that there will be extensive involvement of state and local governments in the development and implementation of these plans. Without such involvement, many of the evaluation criteria cannot be satisfied.

Thus, there is a substantive difference between the requirements of the present emergency planning rule and the proposed rule. And, the difference is that the proposal provides for less effective protection of the public health and safety.

Central to the Commission's justification for this rule is the "realism" argument -- i.e., that in the event of an emergency, the state and local governments will in fact participate in an emergency and will use the utility's plan. There are two problems with this assumption. First, there is no evidence to support the Commission's conclusion. Second, even if we accept the Commission's assumption, an ad hoc response by the responsible government officials is simply inconsistent with the fundamental precepts of emergency planning and clearly cannot provide the same level of protection as a plan with full cooperation would. An ad hoc response means that there will be no preplanning by the governments. Officials will be forced either to improvise during an accident (something which we know did not work at TMI) or to attempt to carry out a plan with which they are not familiar and which they believe to be inadequate. They will not have been trained in the elements of the plan or their responsibilities, and they

certainly will not have rehearsed their roles. Training and rehearsal are essential, and the Commission's regulations recognize this. If a particular government has not participated in advance planning, these fundamental preparatory steps will not have been taken, and the governmental response will be less effective.

Further, an off-the-cuff emergency response like that approved by the Commission in this rule is unlikely to engender the public confidence necessary to ensure that the plan works adequately. This point is worth emphasizing. An effective emergency response depends upon public cooperation, and that cooperation depends in turn on public confidence in the adequacy of the emergency plan and the preparedness of those who must carry out that plan. The public is hardly likely to have confidence in a plan which their elected state and local officials have declared inadequate. Nor are they likely to place their trust in people who are unfamiliar with the plan and who are untrained and unrehearsed in their emergency response roles. The result in such circumstances could well be an ad hoc response by most of the people within the 10-mile Emergency Planning Zone and perhaps even beyond.

Finally, the proposed rule does not require the Commission to find that reliance only on a utility plan with no state and local participation would provide a level of protection to the public which is equivalent to an emergency preparedness plan with full cooperation. Under this proposal, whether there is adequate protection will be determined based on what the utility can reasonably accomplish given the lack of government cooperation.

This means that a plant may be licensed with the core of emergency planning missing, with a less coordinated response than would normally be possible, and where some protective actions might no longer be available.

I commend to your reading FEMA's comments on the proposed rule which raise these same concerns. I would particularly draw your attention to FEMA's conclusion that holding exercises of the plans without state and local participation would "increase the risk to the population of the affected emergency planning zones." p.3. But, you need not go outside of the Commission's proposed rule itself for support for the conclusion that this rule would provide less protection to the public than the current rule. The safety analysis prepared by the NRC staff, which accompanies the proposal, reaches the same conclusion.

The Commission cites no new safety information to support this lessening of the requirement. In fact the Commission states that the rule is not based on any source term or severe accident research. The Commission states specifically that the rule change is not based on any finding that plants are safer now than they were in 1980 when the present emergency planning rules were issued and when planning was considered to be of primary importance to public protection. The Commission does not dispute its 1980 conclusion that state and local participation is the core of emergency planning and response. In fact the Commission admits the obvious -- that an emergency response with governmental participation is better than one without. The Commission's only justification for this rule change is

adverse economic consequences. The Commission should not weaken its safety regulations simply because they have become expensive to implement.

Thank you.

QUESTION 4. (a) Please explain the rationale for the Commission's proposed modification to its emergency planning regulations.

ANSWER.

The rationale for the Commission's proposed modification to its emergency planning regulations is set forth in the attached testimony, presented by Chairman Zech on April 28, 1987, to the Subcommittee on Energy and Environment of the House Committee on Interior and Insular Affairs. Very briefly, the purpose can be described as follows: (1) to give explicit effect to Congressional intent, as expressed in 1980 and adopted at that time by the Commission, that the NRC review a utility-prepared emergency plan in the absence of a state or locally prepared plan; (2) to clarify that withdrawal of state or local officials from the emergency planning process does not automatically bar license issuance, and that final decisional authority on emergency planning issues resides with NRC; and (3) to provide more detailed criteria than the general criteria of current regulations for the evaluation of a utility plan in cases of state or local non-cooperation, with the recognition that any plan, to pass muster, must meet the 1980 Authorization Act's standard of "reasonable assurance that public health and safety is not endangered by operation of the facility concerned." Moreover, Section 182(a) of the Atomic Energy Act provides that a finding of "adequate protection to the health and safety of the public" is a prerequisite to the issuance of every operating license.

Commissioner Asselstine adds the following:

I have different views on the Commission's proposed rule. They are set out in more detail in my attached testimony.