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Regulatory Improvements for Power Reactors Transitioning to Decommissioning

Comment On: NRC-2015-0070-0178

Regulatory Improvements for Power Reactors Transitioning to Decommissioning; Request for Comment on Draft Regulatory Basis

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Government Agency Type: State

Government Agency: California State Energy Resources Conservation and Development Commission

General Comment

See attached file(s)

Attachments

06.13.17_Weisenmiller Letter to Secretary Vietti-Cook Docket NRC-2015-0070

CALIFORNIA ENERGY COMMISSION

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June 13, 2017

Annette Vietti-Cook
Secretary of the Commission
United States Nuclear Regulatory Commission
Washington, D.C. 20555-0001
ATTN: Docket ID NRC-2015-0070

RE: Comments on the Draft Regulatory Basis: Regulatory Improvements for Power Reactors
Transitioning to Decommissioning (Docket ID: NRC-2015-0070)

Dear Secretary Vietti-Cook:

This letter provides the comments of the California State Energy Resources Conservation and Development Commission (Energy Commission) on the above-referenced Draft Regulatory Basis. The Energy Commission is California's primary energy policy and planning agency, with core functions that include evaluating and proposing mitigation for public health, safety, and environmental impacts of proposed thermal power plants, including nuclear reactors. Since the adoption of California Assembly Bill No. 361, the Energy Commission has taken the lead role in assessing the local costs, impacts, and policy issues associated with California's active and decommissioning nuclear power plants along the state's seismically vulnerable coastline.¹

I am the Chair of the California Energy Commission and the State's Liaison Officer to the United States Nuclear Regulatory Commission (NRC). As an appointee of California Governor Edmund G. Brown, Jr., I am the primary contact between California and the NRC. In my role as the Liaison Officer, I provide the NRC with information on matters pertinent to California including the state's radiological health, emergency preparedness, Energy Commission and California Public Utility Commission actions, and state nuclear safety matters.

¹ Assembly Bill 361 (Achadjian, Chapter 399, Statutes of 2015). Retrieved from https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201520160AB361.

I appreciate the opportunity to submit comments on this important subject and welcome the dialogue necessary for the development of a comprehensive draft regulatory basis for the decommissioning of nuclear power reactors.² My comments relate to the draft regulatory basis document³ and the questions posed by the NRC in the Federal Register⁴ and augment the comments I submitted on March 17, 2016.

Comments on NRC general questions on the Draft Regulatory Basis, “Regulatory Improvements for Reactors Transitioning to Decommissioning.”

1. Is the NRC considering appropriate options for each regulatory area described in the draft regulatory basis?

The primary focus of the NRC document appears to be the relaxing of regulatory requirements during decommissioning to further reduce financial costs to licensees. Though NRC staff acknowledges comments by the states, host communities, and stakeholders it appears that NRC staff is only incorporating a small fraction of that diverse input into the draft regulatory basis document. The NRC staff recommendations appear to instead rely on the suggestions provided by industry; which results in a list of regulatory changes that limit licensee’s obligations during decommissioning.

A recent article published in Science has called into question the credibility of the analytical methods used by the NRC to justify critical safety regulations.⁵ The article also questions the independence and correctness of the NRC’s cost-benefit analysis and the commissions’ susceptibility to pressure from the nuclear utilities and sympathetic politicians.⁶ Curtailing stakeholder involvement by limiting the justification to a “compelling cost-benefit or safety basis” fails to consider the full scope of impacts that decommission has upon stakeholders. As

² Letter to Secretary of U.S. Nuclear Regulatory Commission from the Chair Weisenmiller regarding the “Amended Comment on the Draft Regulatory Basis: Regulatory Improvements for Power Reactors Transitioning to Decommissioning” (Docket ID: NRC-2015-0070). NRC Accession Number ML 16092A238.

³ U.S. Nuclear Regulatory Commission, Draft Regulatory Basis Document: Regulatory Improvements for Power Reactors Transitioning to Decommissioning. March 2017, ML17047A413, RIN Number: 3150-AJ59, Docket ID: NRC-2015-0070. Retrieved from: <https://www.nrc.gov/docs/ML1704/ML17047A413.pdf>.

⁴ Federal Register posting, Regulatory Improvements for Power Reactors Transitioning to Decommissioning; Request for Comment on Draft Regulatory Basis. March 15, 2017. Retrieved from: <https://www.regulations.gov/document?D=NRC-2015-0070-0178>.

⁵ Edwin Lyma, Michael Schoeppner, Frank von Hippel, Nuclear safety regulation in the post-Fukushima era. Science, 26 May 2017: Vol. 356, Issue 6340, pp. 808-809. DOI: 10.1126/science.aal4890

⁶ Matthew Renda, Nuclear Regulator Slammed for Putting Profit Before Safety. Courthouse News Service May 25, 2017. Retrieved from <https://www.courthousenews.com/nuclear-regulator-slammed-putting-profit-safety/>.

discussed in the referenced IAEA publications and journal articles⁷, stakeholder involvement could reduce environmental, economic, and social risks while mitigating the propagation of legacy nuclear waste sites. Consequently, to address this question and others, stakeholders would find it very helpful if NRC shared the tools and analytical processes NRC staff use to determine if a regulation constitutes a cost-justified, substantial increase in protection of the public health and safety or the common defense and security.

2. Are there additional factors that the NRC should consider in each regulatory area? What are these factors?

Please review the comments below that address the specific appendices, A through J, included in the Draft Regulatory Basis document. The question of additional factors is addressed in the appendix specific comments.

3. Are there any additional options that the NRC should consider during development of the proposed rule?

Please review the comments below that address the specific appendices, A through J, included in the Draft Regulatory Basis document. The question of additional options is addressed in the appendix specific comments.

4. Is there additional information concerning regulatory impacts that NRC should include in its regulatory basis for this rulemaking?

Please review the comments below that address the specific appendices, A through J, included in the Draft Regulatory Basis document. The question of additional information is addressed in the appendix specific comments.

5. Should the NRC address the exemption to § 50.38 for licensees of facilities in decommissioning on a generic basis as a part of this rulemaking? If so, why, and how should the NRC address this issue?

⁷ Pasqualetti, M. J. and Pijawka, K. D. (1996), *Unsitng Nuclear Power Plants: Decommissioning Risks and Their Land Use Context*^{*}. *The Professional Geographer*, 48: 57–69. doi:10.1111/j.0033-0124.1996.00057.x

I recommend that this topic not be addressed in this rulemaking. Furthermore, I recommend that no foreign power be allowed to take title to a facility while spent nuclear fuel, GTCC waste, or high-level radioactive materials remain on site.

6. *Are the physical security protection programs in 10 CFR part 37 an area of regulation that the NRC should address in this rulemaking? If so, why, and how should the NRC address this issue?*

I recommend that this topic not be addressed in this rulemaking.

7. *Should 10 CFR part 50 licensees transitioning from an operating status to decommissioning status be provided specific physical security requirements in 10 CFR part 37 for category 1 and category 2 materials, based on their decommissioning status (i.e., in DECON, SAFSTOR, and ENTOMB)?*

I recommend that processes involving security and emergency planning not turn into a “generic rule”. Security and emergency planning transitions should be based on a site by site risk assessment in coordination and consultation with the state and local regulating/response agencies. As the site moves into the later stages of decommissioning, it will be state and local resources that bear the burden of emergency response.

8. *Should the NRC establish specific security requirements for the storage of category 1 and category 2 materials contained in large components, robust structures, and in other equipment that are not likely to be subject to theft and diversion due to their inherent self-protecting features (i.e., large physical size and weight)?*

I recommend that processes involving security and emergency planning not turn into a “generic rule”. Security and emergency planning transitions should be based on a site by site risk assessment in coordination and consultation with the state and local regulating/response agencies. As the site moves into the later stages of decommissioning, it will be state and local resources that bear the burden of emergency response.

9. *Is a clarification of the exemption in § 37.11(b) needed with respect to facilities with 10 CFR part 73 security plans that are undergoing decommissioning?*

No comment at this time.

Specific Questions Regarding Appendix F, "Decommissioning Trust Funds," of the Draft Regulatory Basis

- a. The Table of Minimum Amounts in § 50.75(b) would continue to require certification of a site-specific decommissioning cost estimate that meets, or exceeds, the NRC minimum formula amount.*
- b. Implementation Period: The NRC would recommend that current licensees be provided the biennial (2 year) status report period with an additional year to provide and assure to the site-specific decommissioning plan referenced herein.*

Currently U. S. nuclear utilities report their decommissioning trust fund balances to the NRC every two years. While the California Public Utilities Commission (CPUC) formally reviews the balances and trust fund investments along with the latest decommissioning cost estimates every three years in the Nuclear Decommissioning Cost Triennial Proceedings (NDCTP), the CPUC requests licensees to update their decommissioning trust fund balances every six months showing the trust fund balances as of June 30th and December 31st of each year.

Regarding the decommissioning trust fund question on minimum amounts, (a), CPUC staff are concerned with the minimum amount currently required by the NRC in 10 CFR 50.75. This amount is extremely low and not realistic in terms of the actual costs to decommission a nuclear power plant. The trust funds for Diablo Canyon, Humboldt Bay, San Onofre, and Palo Verde are about two to three times what 10 CFR 50.75 requires in order to match the expected decommissioning costs for these plants.⁸ CPUC staff is not sure that the NRC amount serves a real purpose. The amounts outlined in § 50.75(b) need to be revised so that it would be more consistent with actual decommissioning cost estimates.

Regarding the decommissioning trust fund question on implementation period, (b), CPUC staff has concerns with a potential conflict between the federal and state reporting cycle. At the time of permanent plant shutdown, utilities submit to the NRC copies of the Decommissioning Cost Estimate, a Post-Shutdown Decommissioning Analysis Report (PSDAR), and a spent fuel management plan for the NRC's review. For nuclear plants under CPUC jurisdiction, these are also provided to the state regulator. The CPUC conducts review and approval of the Decommissioning Cost Estimates (DCE) every three years in a NDCTP. The CPUC is currently reviewing the DCEs in the 2015 NDCTP. This proceeding reviews the estimated costs for the

⁸ California Public Utilities Commission, tabulated values for California Utilities Decommissioning Trust Funds and Cost Estimates. Data available at: <http://www.cpuc.ca.gov/General.aspx?id=11369>.

proposed decommissioning activities and projects, as well as the decommissioning trust fund balances and investment information such as yields, rates of return on investment, mix of equity (stocks) and fixed income (bonds), etc., to ensure the trust funds are sufficiently funded and if any additional contributions from ratepayers are needed. Since the state regulator is on a three-year cycle, it might be somewhat disruptive to submit such information every two years should the NRC require a two-year review cycle. The CPUC recommends that the NRC stipulate that the review cycle be the same or consistent with the State's review cycle.

10. Should this area of the regulations be addressed in this rulemaking? If so, why, and how should the NRC address this issue?

The inconsistencies in Decommissioning Trust Funds must be addressed, either in this rulemaking or in a separate rulemaking. CPUC staff recommends that the NRC address the cost deficiencies in 10 CFR 50.75 and the discrepancies between the state and federal review cycles.

Onsite and Offsite Liability Insurance During Decommissioning - The NRC staff is considering a proposal to adjust the amounts of primary liability insurance that power reactor licensees in decommissioning must maintain.

11. If the NRC takes this approach, should the NRC apply this requirement to licensees who already have exemptions from insurance requirements and whose levels of insurance have not been adjusted for inflation?

I recommend that all levels of insurance should be adjusted for inflation and meet the requirements set forth by the state regulatory agencies. Reduction in emergency planning and insurance requirements should begin only after all fuel has been removed from the spent fuel pool(s). Current thresholds continue to remain low when compared to the actual cost of real-world incidents and do not include the potential impacts associated with the use of densely packed pools and high-burn up fuel. For example, a previous NRC study postulated a high economic cost estimate for a fuel pool release at \$566 billion.⁹ This figure did not include health effects or 143,000 latent fatalities.

The current NRC values do not include the broader economic, environmental, and social impacts that an incident has upon the community or host state. The continued escalating cost

⁹ Travis et al., A Safety and Regulatory Assessment of Generic BWR and PWR Permanently Shutdown Nuclear Power Plants, NUREG/CR-6451 (1997)

of the Fukushima incident is a real world example of a nuclear accident.¹⁰ Early reduction of safety systems based on incorrect assessments and hypothesis endangers the public and environment.

Specific Question Regarding Security Plan Changes During Decommissioning

12. The NRC staff requests public comments on the following options: Options 1, 2, and 3.

Please review the detailed response for question 13.

13. Which option should the NRC pursue to address this issue?

A decrease in the safeguards effectiveness of a security plan is a change or series of changes to the security plan that reduces or eliminates the licensee's ability to perform or maintain the security function that was previously performed or provided by the changed element or component without compensating changes to other security plan elements or components.

The California Governor's Office of Emergency Services (CalOES) staff recommends revision of the requirements in 10 CFR 50.54(p) to include the aforementioned definition of safeguards effectiveness and revision of the specific requirements in 10 CFR 50.54(p) (2) to more closely reflect the wording found in 10 CFR 50.54(q), specifically within 10 CFR 50.54(q) (3) and (5).

As the Liaison Officer, I support Rulemaking efforts to address this item and recommend that all levels of security plan modifications should meet the requirements and recommendations set forth by state agencies, local government, and response agencies. Reduction in emergency and security planning requirements should begin only after all fuel has been removed from the spent fuel pool(s). Please review the additional appendix specific comments below that touch upon emergency planning.

Specific Question Regarding the Community Advisory Board (CAB)

14. The staff is seeking public comment on how such a requirement might constitute a cost-justified, substantial increase in protection of the public health and safety or the common defense and security.

¹⁰ "2.4 trillion yen in Fukushima crisis compensation costs to be tacked onto power bills". Mainichi Daily News. The Mainichi. 10 December 2016. Retrieved from: <http://mainichi.jp/english/articles/20161210/p2a/00m/0na/002000c>.

I support the early engagement of the state, host communities, and appropriate local government in the nuclear reactor decommissioning process. Based upon the NRC's assessment of submitted comments, a significant portion of stakeholders support the formation of a Community Advisory Board (CAB). I support a process that requires an initial meeting between stakeholders to determine the nature of the CAB and codify/establish provisions for minimum membership levels, the extent that board input will be taken into consideration during the decommissioning process, the level of independence the board will have to implement decisions regarding decommissioning activities at the facility, and the ability of the board to request meetings with the licensee and other stakeholders, including the NRC, to discuss certain topics that may be of significant interest during the decommissioning process.

Current NRC regulations and guidance documents provide no insurance for meaningful stakeholder participation. Moreover, two separate International Atomic Energy Agency (IAEA) publications have outlined the benefits of stakeholder involvement; explicitly stating that early, active involvement of stakeholders leads to a substantial improvement in safety, general acceptability, and, when conducted well, the process normally yields indisputable benefits.¹¹ A guidance document does not safeguard host community engagement nor does it prevent the exclusion of stakeholders from the decommissioning process.

Comments on Appendices A through J of the NRC Draft Regulatory Basis document, "Regulatory Improvements for Reactors Transitioning to Decommissioning."

The appendix specific comments below are intended to address questions 2, 3, and 4 posed by the NRC in their Federal Register posting, Docket ID NRC-2015-0070, requesting comments on the Draft Regulatory Basis document. Furthermore, the state's comments address issues with items proposed by NRC staff in the identified appendices.

Appendix A - Emergency Preparedness

CalOES supports a Graded Approach to Emergency Preparedness, specifically the planning concepts involving different levels of risk. The reduction in Offsite Response Organization and offsite requirements commensurate with the risk the state of the reactor and fuel are in is the

¹¹ A) Stakeholder Involvement in Nuclear Issues A Report by the International Nuclear Safety Group INSAG Series No. 20, IAEA 2006. B) An Overview of Stakeholder Involvement in Decommissioning, IAEA Nuclear Energy Series No. NW-T-2.5, 2009.

most appropriate method presented to ensure the safety of the public. This change will require California to address the State Emergency Act and Government Code 8610.5 to allow continued offsite activity during the Level 1 period of permanently defueled emergency plan activity. The change is necessary to allow the state to continue the funding of activities that are appropriate with the risk and to continue until Level 2 is reached in the NRC proposed Graded Approach.

As the Liaison Officer, I support a graded approach to emergency preparedness predicated on a site-specific process, promoting EP levels defined by a site specific risk profile. Each tier must be defined by safety and concerns over the impact decommissioning will have on the local environment and community. I recommend a suite of robust emergency protocols, consisting of Emergency Response Data systems providing early communication with state and local agencies and a 10-mile EPZ that must remain in place while fuel is stored in a spent fuel pool. I also recommend that new regulations for decommissioning provide support, including funding, for offsite response capabilities that can integrate with onsite response.

Furthermore, I object to the NRC reliance on the 10-hour response window. The overly optimistic 10-hour timeline ignores the full impact of a disaster event. An event that triggers a nuclear incident has a high probability of introducing significant barriers to transportation and communication. A major California earthquake coupled with the associated emergencies could significantly disrupt offsite emergency response. Moreover, such an event would divert critical state and local response agencies away from normal response duties, placing the state and local community at additional risk.

Appendix B - Physical Security

CalOES staff supports Rulemaking efforts to address Physical Security. The intent being the NRC will require the physical security necessary to protect the public in a step-down of responsibility associated with the level of systems active at the plant and the state of the spent nuclear fuel. This change will require California to modify Section 115280 of the State Health and Safety Code.

As the Liaison Officer, I support Rulemaking efforts to address this item. The only justifiable security reduction is when spent nuclear fuel is moved into a more robust, segregated, passive containment facility at which point security can be appropriately scaled after consultation with state and local agencies.

Appendix C - Cyber Security

Based upon the current body of scientific knowledge and the time dependent loss of thermal energy in spent fuel assemblies, CalOES staff is recommending rulemaking to codify the timing of cyber security reductions as a function of spent fuel state and disposition.

As the Liaison Officer, I support the expedited transfer of spent nuclear fuel into a more robust, segregated, passive containment facility at which point security can be appropriately scaled after consultation with state and local agencies.

Appendix F - Decommissioning Trust Funds

The Federal government has a track record of routinely underestimating the costs of remediating radiological contamination. The inconsistencies and discrepancies in Decommissioning Trust Funds must be addressed through consultation with state and local agencies. There needs to be an increase in oversight over decommissioning trust funds, with increasing opportunities for transparency, public engagement, and hearings over the disposition and usage of these trust funds. Please review the specific questions and comments that address this topic in the previous section.

Appendix H - Current Regulatory Approach to Decommissioning

The NRC must expressly recognize state authority over the non-radiological activities associated with nuclear power reactor decommissioning. While the NRC has authority over the radiological aspects of power reactor decommissioning, it is our understanding that the host state retains some authority to regulate non-radiological activities and non-radiological waste at nuclear power plants.

- ***The Level of PSDAR Review and Approval by the NRC***

I support rulemaking to address specific issues with PSDAR review and approval. This supports two of California's recommendations regarding nuclear power plant decommissioning: state involvement in the PSDAR review process and an environmental review as part of the PSDAR. The PSDAR provides critical information regarding the licensee's decision-making on proposed decommissioning activities, information that is critical to the state and host communities for their own planning efforts. The PSDAR process must include details on potential environmental impacts and be available for state and public review. The PSDAR must be a process in which the NRC—in concert with the relevant host State and communities—approves or denies the licensee's filing.

- ***The Appropriateness of Maintaining the Three Existing Options for Decommissioning***

I recommend that both the SAFSTOR and ENTOMB decommissioning options be removed. The length of decommissioning is critical to the local community and the state. The state sees prompt, immediate decommissioning as the best method in avoiding the prolonged risks to human health, the environment, and the local economy posed by a lengthy decommissioning process.

- *The 60-Year Timeframe Associated with Decommissioning*

I support the removal of the 60-year decommissioning timeframe. The state of California sees no value in the forced dormancy of resources, especially when said action poses a potential threat to the community in the form of radiological and non-radiological hazardous contamination. I support a process for the prompt decommissioning and return of the site to unrestricted use. The NRC identified decommissioning method DECON is the only acceptable method offered that meets the criteria for a prompt decommissioning timeframe. Both SAFSTOR and ENTOMB place unnecessary burdens and restrictions on the host community and the state.

Sites which have hosted nuclear power plants must be promptly decommissioned, decontaminated, and returned to host communities and the states for unrestricted use. It is imperative that former nuclear power reactor sites not be left with subsurface contamination that will remain for generations to come.

- *The Role of State and Local Governments and Non-Governmental Stakeholders*

As previously stated, I support the early engagement of the state, host communities, and appropriate local government in the nuclear reactor decommissioning process. The NRC staff recommended option; Guidance Development/Enhancement may not align with the expectations of the state or a significant portion of stakeholders and elected officials who commented on this topic. CABs must not become a body largely dictated by the licensee, resulting in inadequate representation of all involved stakeholders. Flexibility could be maintained by allowing the licensee and stakeholders to define the nature, composition, and purpose of the CAB. Furthermore, a CAB developed via a collaborative process and relationship composed of impacted parties working together towards the common good results in an overall net increase in public health and safety and improved probability of success as supported and recommended by the previously referenced IAEA documents.

The states, host communities, and other stakeholders have a vested interest in safe and timely decommissioning. Consequently, they must be included in all non-radiological aspects of

nuclear reactor decommissioning and site restoration. An open approach that is explicitly inclusive, adaptive, arranged, and informed can provide flexibility while maintaining the community (public) trust and confidence required in supporting an extended decommissioning process. While the concerns and procedures for developing a decommissioning regulatory framework are distinct from siting a waste repository, the success of public inclusion in the more socially onerous waste facility siting process illustrates the benefits of a defined method of public participation.¹² As I have previously stated, inclusion is essential to build public trust and support for all aspects of the nuclear fuel cycle.¹³

- *Clarifying the Spent Fuel Management Requirements of 10 CFR 72.218, 10 CFR 50.54(bb), 10 CFR 50.82, and 10 CFR 52.110*

I support rulemaking to clarify spent fuel management requirements. I strongly oppose the prioritization of economic decisions over safety and environmental danger that can be substantially reduced by requiring the expedited transfer of spent fuel to a more robust, segregated, passive, dry containment facility. The NRC should codify the expedited transfer of spent fuel to a dry storage system.

Appendix I - Application of Backfit Rule

I oppose the use of 10 C.F.R. § 50.109 to alter, minimize or delay decommissioning and decontamination of the impacted sites. Accordingly, I opposes any effort to apply § 50.109 or expand backfitting as a generic patch to sites undergoing decommissioning and decontamination.

Appendix J - Aging Management

I support efforts to clarify spent fuel aging management requirements. The NRC and industry must develop more robust and consistent methods to verify the stability and safety of passive, long-lived spent fuel dry storage facilities.

The current decommissioning processes limit the beneficial areas for state, local government, and host communities to participate in. My comments and recommendations outline why local communities and States should be included in determining what defines or constitutes the

¹² Elizabeth Gibney, *Why Finland now leads the world in nuclear waste storage*. Nature, December 2015, doi:10.1038/nature.2015.18903.

¹³ Chair Weisenmiller keynote speech, DOE Consent Based Siting public meeting held April 26, 2016, in Sacramento, California.

Secretary Vietti-Cook

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adequate and appropriate timing and standards of decommissioning, site restoration, and spent fuel storage. To achieve the essential public trust required for an extended decommissioning process, this rulemaking must incorporate the States' interests. I hope that these comments, in combination with other stakeholder's recommendations, will refocus decommissioning rulemaking in such a way that the new regulations place public health and the environment before economic interest, while respecting the authority of state and local government.

I appreciate the opportunity to comment on the draft regulatory basis and request that you consider these comments prior to amending the current regulations. Please send any future notices, correspondence, and documents related to these comments to Justin Cochran, Ph.D., Senior Nuclear Policy Advisor, California Energy Commission, MS-39, 1516 Ninth Street, Sacramento, CA, 95814-5512, or via e-mail at Justin.Cochran@energy.ca.gov.

Sincerely,

A handwritten signature in black ink that reads "Robert B. Weisenmiller". The signature is written in a cursive, slightly slanted style.

ROBERT B. WEISENMILLER

Chair and State Liaison Officer to NRC

CC:

Alysia G. Bone, United States Nuclear Regulatory Commission

Robert P. Oglesby, California Energy Commission

Justin Cochran, California Energy Commission