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STATEMENT OF HON. EDWARD J. MARKEY (D-MA)

BEFORE THE NUCLEAR REGULATORY COMMISSION

February 24, 1987

After many years of enjoying the view from the dais, I welcome the opportunity to sit before the Commission and present my views.

I add my voice to the chorus you have heard today opposing the NRC staff's draft proposed rule that would strip State and local governments of their rightful role and authority. The NRC is sworn to uphold the law and the Constitution, and the action it contemplates would violate that pledge. Most importantly, however, the proposed action would violate the Commission's obligation to protect public health and safety from the hazards of nuclear power. And for that reason, above all others, it must be rejected.

It is also disturbing that the staff has granted that this rule change is based on no new scientific evidence, but rather on vague "regulatory policy considerations" -- whatever that means. In

fact, this rule is economic regulation -- not safety regulation.

This rule proposal can be summarized succinctly in just two words: "Seabrook" and "Shoreham." I understand that in the eyes of the nuclear industry, the need to license Shoreham and Seabrook is paramount. But the perceived economic needs of the nuclear industry, or any particular utility, are not and should not be the controlling factor in determining regulatory changes that are first and foremost designed to protect the public health and safety. This is not a case of the fox guarding the chicken coop. This is a case of the fox trying to make the chicken coop a wholly-owned subsidiary.

When responsible State and local governments have made a good-faith decision not to develop or implement emergency plans because they conclude it would be impossible to adequately protect the public in the event of a serious reactor accident, the NRC should support that decision. Instead, the Commission's staff has proposed a rule change that would circumvent this historic and essential role of the States to protect the health and safety of their citizens.

Let us remember the origin of the current emergency planning requirement which the staff is trying to jettison with this rulemaking. In 1979, in the wake of the Three Mile Island accident, the Congress adopted language requiring that the adequacy of State and local emergency plans be considered as part

of the licensing process. During the 1979 debate, Congress explicitly rejected an amendment which would exclude the role of State and local governments.

The proposed rule the Commission is considering is totally inconsistent with the lessons learned from Three Mile Island. Indeed, the post-TMI emergency planning regulations mandated by Congress and promulgated by the NRC strongly and appropriately emphasize the importance of the role of State and local governments.

The Rogovin report, the NRC's own investigation into the TMI accident, examined the question of how to effectively protect the public health and safety. I quote from their conclusion:

> The principal planning responsibility for protective action including evacuation lies with the State, with FEMA's assistance. However, the ability to carry out an evacuation plan in the area of a nuclear plant depends much more on the existence of adequate county and local emergency plans than on a FEMA-approved or NRC-approved state plan. We believe that too little attention has been devoted to this aspect of emergency planning . . . The county and local levels are where the action is and where the specific details of this plan must be worked out.

In promulgating the existing regulations, the NRC acknowledged that emergency planning considerations could affect the operation of a plant. Correctly, they placed safety before economic expediency and recognized the appropriate role of State government in the emergency planning process. Let me quote from the Commission's own words:

> The Commission recognizes there is a possibility that the operation of some reactors might be affected by this rule through inaction of State and local governments or an inability to comply with these rules. The Commission believes that the potential restriction of plant operations by State and local officials is not significantly different in kind or effect from the means already available under existing law to prohibit reactor operation, such as zoning and land-use laws, certification of public convenience and necessity, State financial and rate considerations, and Federal environmental laws.

The Congressional action requiring that State and local emergency plans be considered as part of the licensing process was partly based on a Report to Congress by the General Accounting Office in the aftermath of TMI. The GAO also had recommended that the startup of nuclear plants should be made contingent upon workable emergency plans. Addressing criticism that this requirement may

give opponents of nuclear power a tool in stopping plants, the GAO was clear in its position:

> Public health and safety must be the primary consideration rather than whether this will provide intervenors a means of preventing the operation of nuclear powerplants.

The Congressional response to Three Mile Island in requiring improvements in emergency planning and preparedness were clearly warranted. The disaster at Chernobyl emphasizes the wisdom of that action. Surely we should not retreat from these commitments. The principle that I lay before the Commission can be stated in a single word: Safety. If the public is ever going to accept nuclear power, if the public is ever going to have faith in the NRC, if the public is ever to believe in the credibility of the regulatory process, then there must be a clear signal that the goal of protecting the public health and safety is the primary consideration, and economic regulation and bailing out utilities comes second.

The job of this Commission is to protect the public health and safety. The job of this proposed rule is to get two problem plants on line by gutting the legitimate concerns of State and local governments. I ask the Commission to examine its own charter and to do <u>its</u> job by rejecting this ill-considered and ill-conceived staff proposal.