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Lando W. Zech, Jr., Chairman
Thomas M. Roberts
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U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Dear Commissioners:

We understand that on February 23, you will be meeting to consider the promulgation of an amendment to the emergency planning rule whose sole purpose is to clear the way for the licensing of the Shoreham and Seabrook reactors, as well as any other reactors for which responsible state and local governments have refused to participate in the preparation and testing of emergency plans because they do not believe that the public health and safety can be adequately protected in the event of a radiological emergency. To achieve that end, the NRC Staff proposes to violate the Atomic Energy Act and to abandon the vital principles of emergency planning that grew out of the Three Mile Island accident. On behalf of the Union of Concerned Scientists and the New England Coalition on Nuclear Pollution, we urge you to reject the NRC Staff's emergency planning rulemaking proposal.

In violation of the Atomic Energy Act, the proposal would elevate considerations of the cost of compliance with the emergency planning rules over the safety of nuclear power plants. Instead of requiring a showing that "adequate protective measures can and will be taken" during a nuclear reactor accident at these plants, the Commission would only ask those utilities to demonstrate that they have taken "reasonable" and "feasible" (i.e. not too expensive) compensatory measures to make up for the lack of state or local plans. The proposal would allow the NRC to exempt those operating license applicants from any or all of the safety requirements for offsite emergency planning, as long as they could show they had <u>attempted</u> to meet the requirements.

By substituting a "best effort" standard for a safety standard, the proposal makes a mockery of the emergency planning rule and violates the principle that costs to licensees may not be

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considered in making safety determinations. See Power Reactor Development Corp. v. International Union, 367 U.S. 396, 408-409 (1961). All plants were given construction permits on the explicit condition that the utilities build "at their own risk." The NRC has said time and again that no consideration of utility costs will be permitted when plants come up for operating licenses -- that if all Commission rules aren't met, the license will be denied. Now the NRC is proposing to reverse 30 years of precedent. The NRC Staff is recommending to the Commission that it abandon a regulation -- one which only seven years ago the Comission decided was necesary for the protection of the public -- rather than deny an operating license. The emergency planning rules are not claimed to be any less "necessary." Instead, public protection is being traded off for the economic interests of the utilities.

By clearing a broad path for noncompliance with the emergency planning regulations, the proposal essentially guts the rule. Above all, the proposal utterly repudiates the principle of preparedness. Under the current rule, the mere existence of a written emergency plan is not enough -- the Commission must determine that the plan "can and will" be implemented. That principle is abandoned in the Staff's proposal, which explicitly deletes the requirement for the exercise of offsite plans by state or local governments, and which implicitly waives the requirement for training of government officials. The proposed rule assumes that state and local governments will "cooperate" during an accident -- but contains no explanation of how those officials will be able to respond quickly and effectively without the benefit of previous training or exercises. Thus, the proposal would take the NRC back to the days of ad hoc emergency response that proved so chaotic -- and potentially disastrous -- at Three Mile Island. As the Commission recognized six years ago when it promulgated the emergency planning rule, the mere existence of a piece of paper provides no reasonable assurance that the public health and safety can be protected during an accident. The additional vital importance of preparedness should be even more ingrained in the Commission's conscience after the Chernobyl disaster.

The rationale put forth by the Staff for this rule grossly misstates the emergency planning rulemaking record. First, the Staff claims that at the time the rule was promulgated, the Commission did not anticipate that a state might refuse to submit an emergency plan. On the contrary, one of the main complaints raised by the nuclear industry's comments on the rule was that

the rule gave states a de facto veto over plant operation. 45 Fed. Reg. at 55,405, Col. 1. The Commission responded:

> The Commission recognizes there is a possibility that the operation of some reactors may 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 operation 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.

45 Fed. Reg. at 55,404, Col. 1. It is clear that the Commission deliberately decided that the overriding importance to safety of emergency preparedness outweighed the risk that some plants might be prevented by state action from operating. As noted by the Staff, the Commission stated its "belief" that "State and local officials as partners to this undertaking will endeavor to provide fully for public protection." Id. That is exactly what Massachussetts and New York have done, based upon their findings, after responsible study, that the location of these plants makes effective emergency action impossible. The problem is that the Commission does not want "partners." It wants only passive subordinates.

Second, the Staff argues that emergency preparedness is not as important as engineered safety, basing this claim upon the fact that utilities were given time to phase into compliance with the new rules. The argument is disingenuous. In fact, the emergency planning rules were considered so important that they were "backfitted," that is applied to all operating reactors and not just new ones -- a relatively rare event in nuclear reactor regulation. In such cases, where a new rule is applied to licensed reactors, some time is always given for compliance. No inference can be drawn from this phase-in that the rule is of secondary importance. Indeed, the importance of the new emergency planning rule -- and the preparedness component which this proposal would gut -- was stressed repeatedly by the Commission:

> In order to discharge effectively its statutory responsibilities, the Commission must know ... that adequate protective actions in response to actual or anticipated conditions can and will be taken.

45 Fed. Reg. at 55,403, Col. 3 (emphasis added).

When it promulgated the existing emergency planning rules, the Commission recognized that the stringency of the rules might result in the denial of some operating license applications. The Commission refused then to compromise its safety regulations on economic grounds, and it must not do so now. This desperate bid to create a licensing loophole for Shoreham and Seabrook -- where the affected state governments have determined, after careful and responsible study, that it is impossible to assure the safety of the public during a radiological accident -- must be rejected. We urge the Commission to reaffirm its commitment to the principles established in the 1980 emergency planning rule by rejecting this proposal.

Sincerely,

Diane Curran

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