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To:	RulemakingComments Resource
Cc:	Derek Brindisi; Olympia Bowker
Subject:	[External_Sender] Docket ID NRC-2015-0070: Comments on behalf of the Town of Plymouth, MA
Date:	Tuesday, August 30, 2022 1:59:56 PM
Attachments:	image001.png Comments on behalf of Plymouth, MA (8.30.22)(1442093.1).pdf

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Good afternoon,
Attached please find comments on behalf of our client, the Town of Plymouth, Massachusetts.
Thank you.
Mina

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August 30, 2022

Brooke P. Clark
Secretary, U.S. Nuclear Regulatory Commission
Washington, DC, 20555-0001
ATTN: Rulemakings and Adjudications Staff
Rulemaking.Comments@nrc.gov

Re: Docket ID NRC-2015-0070
Comments on Proposed Rule, Regulatory Improvements for Production and Utilization Facilities Transitioning to Decommissioning, 87 Fed. Reg. 12254 (Mar. 3, 2022) (the "Proposed Rule")

Dear Secretary Clark,

I serve as Special Town Counsel to the Town of Plymouth, Massachusetts ("Plymouth" or the "Town") with respect to the decommissioning of the Pilgrim Nuclear Power Plant ("Pilgrim"). Plymouth appreciates the opportunity to submit the following comments to the Nuclear Regulatory Commission ("NRC") regarding the NRC's Proposed Rule. Plymouth also appreciates the NRC's stated goals of maintaining "a safe, effective, and efficient decommissioning process" while preserving NRC's principles of "openness, clarity, and reliability." Proposed Rule at 12254. However, for the reasons explained below, Plymouth believes the Proposed Rule leans too heavily in favor of increased efficiency for licensees, and against safety and openness for the public and host communities like Plymouth.

I. Plymouth's Interest in the Proposed Rule

Pilgrim was constructed in 1968, part of an early wave of nuclear generating plants, and operated from 1972 to 2019. Pilgrim sits on Plymouth's historic shoreline on Cape Cod Bay, an important economic development area for the Town and the region.

When Pilgrim was first built, and for many decades thereafter, Plymouth and its neighboring communities were told that when the time came to decommission the plant, the nuclear material used there, including spent nuclear fuel, would be shipped off-site and permanently secured by the Federal government. That, of course, is no longer the plan. Holtec Decommissioning International ("Holtec"), Pilgrim's licensee, is decommissioning the plant under its 10 CFR

Part 50 license, which as of December 18, 2019, no longer authorizes operation of the reactor or emplacement or retention of fuel into the reactor vessel. Holtec's Post-Shutdown Decommissioning Activities Report ("PSDAR"), however, provides that all fuel will remain on site in dry cask storage indefinitely.

Plymouth understands that this renders Pilgrim a "Level 3" facility under the Proposed Rule. The NRC assumes "the risk of an offsite radiological release is significantly lower" at such a facility. Proposed Rule at 122267, 12254. Under the Proposed Rule, Holtec can choose whether to continue to operate with an emergency plan under 10 CFR, §§ 50.54(q)(2) or under the Proposed Rule's new § 50.200. As described in further detail below, § 50.200 does not provide a meaningful role for, sufficient communication to, or adequate financial compensation for host communities like Plymouth who are most likely to offer first response and security services to decommissioning power plants. Further, if Holtec seeks licensure for its Independent Spent Fuel Storage Installation ("ISFSI") under Part 72, it would be permitted under the Proposed Rule to follow the even less rigorous ISFSI-only emergency plan ("IOEP") requirements of 10 CFR § 72.32. Proposed Rule at 12270. Under 10 CFR § 72.44(f), changes to the emergency plan would be in Holtec's control and require notice to the NRC only *after* the changes are made, and in most situations require no public notice or comment at all.

While Plymouth supports the revision of the nuclear regulations to account for unique aspects of decommissioning, Plymouth has serious concerns regarding NRC's increased deference to licensees. As a threshold matter, the NRC justifies the regulatory changes on a "reduction of risk," but fails to incorporate site-specific concerns that are readily knowable. For example, Pilgrim is located on Cape Cod Bay, and subject to sea level rise and hurricane storm surge. Nowhere in the proposed revised regulations or new guidance does local geography, climate change impacts, or site-specific concerns impact emergency planning requirements and require host community input. This, at the least, must be addressed before the Proposed Rule is made final.

Further, even if NRC can justifiably claim that decommissioned facilities present a significantly lower risk than active facilities, the Proposed Rule remains deeply flawed. Plymouth urges that the Proposed Rule be adjusted to increase transparency for an ISFSI site, recognize host communities' central role in emergency management and planning for decommissioned sites, and provide financial compensation for those communities who will continue to be asked to shoulder the bulk of the Nation's role in protecting and securing spent nuclear fuel.

II. The Proposed 10 CFR § 50.200 Emergency Plan Creates an Unfunded Mandate for Host Communities without Corresponding Resources.

As noted above, under the Proposed Rule, Part 50 and 52 licensees have the choice to continue to prepare emergency plans pursuant to 10 CFR § 50.54(q)(7(i)(ii) or § 50.200(a). Unfortunately, § 50.200, while creating further clarity for licensees, does not adequately address the role municipalities play in emergency response, or the resources needed to carry out role.

Among the sixteen planning standards in § 50.200(b) are several sensible requirements that Plymouth fully supports, such as requiring licensees to "unambiguously" define on-shift licensee responsibilities, provide adequate staffing for "initial facility accident response in key functional areas", including interface with offsite support (§ 50.200(b)(2)); provide procedures for notification of state and local emergency response (§ 50.200(b)(5)); make provisions for prompt communication to emergency personnel (§ 50.200(b)(6)); provide "adequate emergency facilities and equipment to support the emergency response" (§ 50.200(b)(8)); prepare a range of actions to protect emergency workers and the public (§ 50.200(b)(10); and conduct regular training exercises, including with local emergency personnel (§§ 50.200(b)(14)-(16)).

What is missing from §50.200 is a mandate to licensees to include state and local emergency personnel in the emergency planning process. These entities assist in responding to emergencies, but are unable to review or assist in creating licensee's plans. Both the current and Proposed Rule lack a mandate that the licensee share adequate information with emergency personnel before an emergency occurs, to enable them to respond. Plymouth urges the NRC to include such requirements in § 50.200. In addition, Plymouth urges the NRC to provide a process for licensees to discuss and review sensitive security information with local officials, so that licensees can involve local officials without fear of disclosing confidential information.

In addition, while Plymouth appreciates NRC's requiring "emergency facilities and equipment" be provided and maintained under § 50.200(b)(8), the NRC fails to say provided and maintained *to and by whom*, again placing a burden on local personnel who may be called on to assist in an emergency. The Proposed Rule also fails to provide a funding source for this equipment, potentially leaving the cost to host communities who do not have direct access to the same financial assurance mechanisms and long-established trust funds that licensees like Holtec do. This problem is heightened by the fact that in many states, including Massachusetts, host communities cannot currently enter into payment in lieu of taxes (PILOT) agreements with decommissioned plants, significantly reducing the plants' contribution to local services. Accordingly, Plymouth urges the NRC to revise § 50.200(b)(8) in particular to require licensees to equip local public safety officials at the licensee's expense.

Further, while Plymouth public safety officials are eager to receive training to assist Holtec in case of an emergency, the NRC must recognize that training as required under § 50.200(b)(14) may strain public safety officials' ability to respond to competing obligations within Plymouth. Municipalities should be compensated for their employees' time spent training and preparing for these emergencies as well.

Other provisions of § 50.200 compound the imbalance of municipal obligations and lack of NRC or licensee support to host communities. For instance, § 50.200(c)(1)(i)(A)(5) mandates that host communities provide assistance to licensees in the event of malicious attacks on a decommissioning plant. This section appropriately requires emergency action levels to be "reviewed with the state and local authorities on an annual basis" to prepare for such attacks, but should also require that any *interim* changes to action levels, or any other portion of the

emergency plan, be immediately communicated to local public safety officials. § 50.200(c)(1)(ii)(A). Further, although Plymouth endorses the NRC's proposed § 50.200(c)(vi)(B)(3), allowing local government entities to request participation in training exercises, Plymouth suggests local involvement in such exercises should be the default. In addition as with the § 50.200(b) provisions, the mandated security training provisions in § 50.200(c)(vi)(A)(2)-(3) should include a corresponding requirement that the licensee adequately equip and compensate municipalities for their roles in emergency response.

NRC's draft guidance to accompany § 50.200, *Emergency Planning for Decommissioning Nuclear Power Reactors*, Draft Regulatory Guide DG-1346 (February 2022) ("EP Guidance") offers additional clarification on some of the above issues, but again misses the mark on properly including local governments in the emergency response process. For instance, while §§ (C)(2)(a)(3) and (b)(5) both clearly contemplate local public safety involvement in emergency response for events at an facility, the EP Guidance does not provide a host community with any ability to shape emergency plans that rely on local resources. In fact, § (C)(2)(b)(5) goes only as as far as suggesting agreements with local law agencies *may* be reached. The guidance should go further and encourage or even require such agreements so that it is clear that local agencies and licensees have a mutual understanding of their shared responsibilities and that local agencies are adequately equipped and compensated for their role in emergency response.

In short, although Plymouth appreciates the NRC's goal of tailoring an approach to emergency planning for decommissioning power reactors, the draft regulations as written place a large burden on municipalities by unilaterally assigning emergency response duties, draining emergency resources, diverting municipal funds away from municipal needs and toward plant monitoring and response, and limiting municipalities input on emergency planning processes that weigh heavily on municipal emergency response systems. Plymouth urges NRC to address these shortcomings by mandating local input on emergency planning processes, requiring municipal consent before resources are funneled to a licensee's facility, equipping local first responders, and compensating municipalities for providing vital emergency response services.

III. Section § 72.32 Also Fails to Provide Local Government a Meaningful Role in Emergency Response.

Under the Proposed Rule, an ISFSI with a Part 72 license located outside an exclusion zone may follow an emergency plan under § 72.32(a). The provisions of § 72.32(a) are largely unrevised from those that applied to a areas that were never associated with an operating plant in the first place and are therefore unsurprisingly even less protective of local communities. Section 72.32(a) contains the occasional nod that some offsite response may be required at an ISFSI outside the exclusion zone. *See* e.g., § 72.32(a)(7)(noting need to identify internal "personnel responsible for promptly notifying offsite response organizations and the NRC"); (8) (requiring a "commitment to and a brief description of the means to promptly notify offsite response organizations and request assistance"); (9) (requiring a description of the information that will be provided offsite agencies).

However, once again, NRC offers limited opportunities for local agencies to engage with licensees to actually develop emergency plans other than a semiannual "communications checks" and non-mandatory participation in training (§ 72.32(a)(12)) and an ability to comment on initial plan submittals, but not on plan changes that the licensee believes will not affect offsite response (§ 72.32(a)(14)). These measures are necessary but not sufficient. Local public safety involvement in the development of the plan, not just through public comments after a plan is designed would provide licensees and local agencies a better shared understanding of risks and potential responses. Further, NRC should also identify the costs to local agencies of preparing for an emergency, another cost that should be borne by licensees, not host communities.

IV. Safety Procedures Should be Current While Fuel Remains On-Site.

The regulatory changes proposed by the NRC reduce the safety procedures and protocols at facilities just as the facility enters a phase where fuel will stored on site for an indefinite period of time. For example, the revisions add 10 CFR § 50.54(t)(3), which provides "[t]he review of the emergency preparedness program elements is no longer required once all fuel is in dry cask storage."

Plymouth disagrees with this proposal. The lifetime of an operating nuclear plant is approximately 60 years, while the timeframe for on-site storage of nuclear fuel in casks is indefinite. Further, dry casks are only licensed by the NRC for up to 40 years, meaning there may be fuel movement on site following initial storage. *See* NRC Q&A, Waste Confidence and Future Plans, available at https://www.nrc.gov/waste/spent-fuel-storage/faqs.html. More importantly, because dry case storage technology is relatively new, its long-term reliability is not yet fully tested or known. Accordingly, Plymouth urges the NRC not to reduce emergency preparedness program update requirements at this time and to strike the proposed § 50.54(t)(3) from its final rule.

V. The Proposed Rule Limits Important Aspects of NRC's Current Public Process and Diminishes Oversight of Environmental Decisions.

In addition to weakening the requirements for safety and emergency planning for decommissioning plants, the Proposed Rule also limits public process in other troubling respects. Under the current 10 CFR § 52.110(f)(2), a licensee cannot deviate from the PSDAR and perform any decommissioning activities that result in significant environmental impacts not previously reviewed. When a licensee submits a PSDAR to the NRC, the NRC notices receipt in the Federal Register and holds a meeting to accept public comment. 10 CFR § 50.82(a)(4)(i)-(ii). Then, if a licensee wishes to deviate from the PSDAR in a way that is outside the scope of a previous Environmental Impact Statement, the licensee must seek a license amendment or change its plans. *Id*. *See also* Proposed Rule at 12291 ("The licensee would have to … submit and have approved a license amendment request or an exemption request to satisfy … 10 CFR § 52.110(d)(1) prior to conducting the subject decommissioning activity."). This process allows

for both public input, NRC oversight, and, if necessary, full environmental review under the National Environmental Policy Act ("NEPA") and other applicable laws.

The proposed changes to 10 CFR § 52.110(d)(1), (f)(2) and EP Guidance § (C)(7)(a) would eliminate this public process, contrary to the NRC's stated goals of "openness." These changes leave it to the licensee, not the NRC, to determine the severity and scope of the potential harm from their changed operation without prior public review, opportunity for public involvement, or a clear mechanism to stop widespread environmental damage before it occurs.

Unfortunately, for Plymouth, this concern is not just academic. As you are aware, on January 27, 2022, Holtec issued a written fact sheet implying that its planned discharge of over a million gallons of radioactive water from Pilgrim into Cape Cod Bay is allowed by the Clean Water Act, 33 U.S.C. § 1251. Since then, Plymouth's elected and appointed officials, residents, federal, state elected officials, and communities throughout Massachusetts' South Shore and on Cape Cod have sounded the alarm that Holtec's proposed action would undermine the integrity of Cape Cod Bay, endanger marine life, and damage the region's ability to promote recreational use of its coastline. The Environmental Protection Agency ("EPA") has also weighed in, writing: "[w]e want to make very clear that, contrary to the implication in the letter that discharges of spent fuel pool water are allowed by EPA, any such discharge is explicitly prohibited by the company's Clean Water Act (CWA) discharge permit …." Letter from Kenneth Moraff, Director of the EPA Water Division, to Mr. Kelly Trice, Holtec Decommissioning International (Feb. 17, 2022), available at https://www.mass.gov/doc/march-28-2022-ndcap-meeting-attachment-pilgrim-response-21722/download.

Under the Proposed Rule, the significant alarm Holtec's announcement has generated may have not sounded at all. Under the proposed 10 CFR § 52.110(f)(2), Holtec alone decides whether its actions fall within previous environmental review. This leaves Plymouth, its neighbors, the public, and EPA to catch up and attempt to stop Holtec from carrying out its decision after the fact, rather than having to justify it publicly in advance. The 2.206 petition process is ineffective in this specific scenario—not only is the NRC the primary entity that can enforce non-compliance, but by the time the host municipality learns of a licensee's determination on environmental significance, the damage may have occurred and no corrective action is possible.[1]

Plymouth strongly urges NRC to abandon the changes to 10 CFR § 52.110(f)(2), and to maintain at least the current level of public notice and input available for licensee change in operations.

[1] 10 CFR § 2.206(a), (b) allows any person to "file a request to institute a proceeding" with the NRC, requesting that the NRC modify, suspend, or revoke a license. The Executive Director for Operations would then refer the request to the Director of the NRC office with responsibility for the subject matter, and request appropriate action "within a reasonable time frame." Again, while this process is helpful, it is insufficient to prevent, rather than punish, potentially catastrophic damage to the environment.

VI. Conclusion

The NRC specifically requested input on whether the proposed regulatory changes have any "unintended consequences." Proposed Rule at 12317. As the above demonstrates, there are many. The Proposed Rule reduces public safety by dramatically revising or eliminating emergency procedures just as spent fuel enters a new stage on site, where it may potentially remain indefinitely. The Proposed Rule also contains a clear imbalance in the authority of the licensee to make requests of the municipality and the authority of the municipality to offer any suggestion in the application of given support, and resources. Additionally, there are no provisions guaranteeing transparency for host communities regarding shifts in emergency plans. Once emergency plans are established, there are currently no prescribed methods for host communities to have an informed understanding of the procedures the licensee plans to implement in the event of an emergency prior to their implementation. Plymouth therefore requests that the NRC make significant revisions to the Proposed Rule.

Please do not hesitate to contact me if you have any questions.

Thank you.

Sincerely,

/s/ Mina S. Makarious

Mina S. Makarious