

June 26, 2014

The Honorable Edward J. Markey
United States Senate
Washington, DC 20510

Dear Senator Markey:

On behalf of the U.S. Nuclear Regulatory Commission (NRC), I am responding to the May 1, 2014, letter from you and your colleagues requesting that the NRC cease exempting licensees of decommissioning nuclear reactors from the agency's emergency preparedness (EP) and security regulations.

The agency's current EP and security regulations apply to both operating and shutdown reactors. However, the NRC's current EP and security regulations are silent with regard to the fact that once a reactor permanently ceases operation, the consequences of emergency and security scenarios are reduced. There are multiple reasons why an EP or security exemption may be granted while ensuring continued compliance with applicable regulatory requirements in the case of a permanently shutdown and defueled nuclear power plant. The current practice for EP and security exemptions, when granted, has not been to relieve the licensee of all EP and security requirements. Rather, the exemptions modify the licensee's EP and security plans commensurate with the site-specific risks that are present for a permanently shutdown reactor during decommissioning.

For EP exemptions, these generally relate to a reduction in radiological risk as spent fuel ages and the preclusion of accidents applicable to an operating reactor. For security, exemptions are requested, for example, to account for a reduction in the physical area that needs to be protected or a change in the nature of potential threats. As a nuclear power plant decommissions and fuel is removed from the reactor core, the area requiring protection is reduced in size. Therefore, the amount of security needed to achieve the level of protection required by the regulations could be different from that specified in the regulations, and the licensee may need to request and justify an exemption to achieve such a change.

The practice of considering exemptions acknowledges this regulatory construct and is a well-established part of the NRC's regulatory process that allows licensees to address site-specific situations or implement alternative approaches for circumstances not necessarily contemplated in the regulations for operating reactors. The exemption process, which allows the agency to provide regulatory relief in appropriate circumstances where safety and security continue to be assured, is not unique to the decommissioning of nuclear power plants or to the specific technical areas of EP and security. The agency will grant an exemption only if it concludes that the exemption does not present an undue public health and safety risk and is consistent with the common defense and security.

The Commission makes decisions on exemption requests on a site-specific, case-by-case basis, following an established process that includes the staff's assessment of a detailed technical safety evaluation submitted by the licensee. It is important to note that regardless of

the agency's decision on individual exemption requests, the agency maintains continual oversight of decommissioning facilities to verify compliance with all applicable regulatory requirements. Additionally, continuing consideration of case-by-case exemption requests for EP and security activities does not bear directly on the agency's efforts to finalize the Waste Confidence Rule and had no bearing on the Commission's recent consideration of accelerating the transfer of spent nuclear fuel to dry casks.

I appreciate you sharing your views on this very important topic. Please be assured that we give them serious consideration. At this time, the NRC believes it is reasonable and appropriate to continue following the regulatory process that allows for site-specific, case-by-case evaluation of EP and security exemption requests from licensees during the decommissioning process. If you need any additional information, please contact me or Amy Powell, Acting Director of the Office of Congressional Affairs, at (301) 415-1776.

Sincerely,

/RA/

Allison M. Macfarlane

Identical letter sent to:

The Honorable Edward J. Markey
United States Senate
Washington, DC 20510

The Honorable Barbara Boxer
United States Senate
Washington, DC 20510

The Honorable Bernard Sanders
United States Senate
Washington, DC 20510

The Honorable Patrick Leahy
United States Senate
Washington, DC 20510

The Honorable Kirsten Gillibrand
United States Senate
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