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March 11, 2016

Secretary, US Nuclear Regulatory Commission
Washington, DC 20555-0001
ATTN: Rulemakings and Adjudications Staff

Re: **Docket ID NRC-2015-0070** Comment on regulatory improvements for decommissioning power reactors, submitted on behalf of the County of Oswego, NY

The County of Oswego is a municipal corporation of the State of New York and is located on the shores of Lake Ontario. The County is home to three nuclear electric generating facilities: Nine Mile Point Units 1 & 2 and the James A. FitzPatrick Nuclear Power Plant. All plants are currently licensed under 10 CFR 50.

The James A. FitzPatrick Plant has announced closure in calendar year 2017.

Having hosted these three facilities for decades, the County enjoys a good working relationship and communication with the plants' owners, Exelon and Entergy, as well as with FERC, NRC and NYS SEMO in the areas of emergency preparedness, training and response.

Both plant owners presently use dry cask storage on site, and while the County does not wish to be a depository for spent nuclear fuel in the long term, it realizes that there are no other options available at present.

The County of Oswego would offer the following by way of comments to questions in Section V of the docket:

Emergency Planning (EP)

There are at present three methods for decommissioning a nuclear plant (ENTOMB, SAFSTOR AND DECON), all of which may span decades. While the NRC and owners may view a decommissioning site as "low-risk," the local governments and the citizens they represent do not always share this view.

Emergency preparedness is necessary in the context of a decommissioned facility. The closure of FitzPatrick is looming, to be followed by a marked decline in sales tax and property tax revenues, which will impact local governments' ability to fund public safety and emergency response efforts. While this may vary state-by-state, the plants' owners should be required, as part of decommissioning, to continue to provide local governments the resources they need to deal with emergencies at no additional cost to the governments until spent fuel has been removed. Training and preparedness includes multi-jurisdiction drills, equipment and instruction. Local governments are the primary first responders in any emergency and having the resources, skills, and knowledge-base to deal with any eventuality is critical.

Licensees should be required to maintain existing on-site *and off-site* response capabilities and supports, until a reasonable time after decommissioning is complete and spent fuel is removed from the site. This requirement includes maintaining agreements with local and state authorities for emergency management and public health and safety, local emergency planning and preparedness, training, equipment, safety assessments, funding allocations, notification and reporting.

Physical Security Requirements (PSR)

The licensees should be required to maintain existing physical security requirements for spent fuel stored in storage pools and dry casks until a reasonable time after decommissioning is complete and spent fuel is removed from the site.

Fitness For Duty (FFD)

The NRC and the nuclear industry should continue Fitness For Duty requirements for security staff on site as regards drug and alcohol testing and fatigue management. If site security continues to be armed and will monitor the facility, the continuation of this program is a de minimus cost to the owner to ensure public health and safety. The federal government already requires drug and alcohol testing for CDLs and other positions. Current FFD requirements should remain in place until a reasonable time after decommissioning is complete and spent fuel is removed from the site.

Certified Fuel Handlers (CFH)

To establish uniform competency standards and maximize public safety, the NRC should establish CFH training requirements and an approval process for a licensee's CFH training program. To ensure safe transition from operations to decommissioning, the NRC should prohibit licensees from surrendering operators' licenses before CFHs who have completed approved training programs are in place on site. CFH training programs should include general and site-specific curricula. CFHs should be required to be on site until a reasonable time after decommissioning is complete and spent fuel is removed from the site.

Regulatory Approach (REG)

The role of local governments comprising the host community in decommissioning should be greatly enhanced to stakeholder in the proceeding. Local governments should have input as to whether ENTOMB, SAFSTOR or DECON is used. The NRC should also include GREENFIELD status as a decommissioning option. In fact, this should be the default option and companies should show the NRC and local governments why this cannot or should not be accomplished.

On the subject of approving a decommissioning timeframe based on the 60-year half-life of Cobalt, the attendant loss of jobs to the affected communities, financial burden, and the significant ripple effect through the economy, all require a more expedient reuse/redevelopment of former nuclear plant sites than such a lengthy timeline allows. NRC should explore and review new technologies to shorten the timeframe, and/or segment decommissioning timeframes between radiological and non-radiological facilities of a site. Rapid reuse of these facilities is critical to the economic survival of surrounding communities. Many of these sites are on scenic waterways, or could be repurposed to new combined cycle gas electric generation, or other commercial/industrial uses. Many sites have resources, such as warehouses, wastewater treatment facilities and fresh water intake tunnels, which can be utilized by local governments or other industries. Leaving those non-radiological facilities intact to local governments may be a key to future development of the site.

As a continuing requirement of decommissioning, it should be incumbent upon the license holder (owner) to be subject to a mandatory, periodic review of processes. Such review should involve local governments, state governments and the NRC. The NRC should bear in mind that many local government officials on elected boards

hold terms of office of two to four years and this alone, in the context of a decommissioning that can span 60 plus years, can result in an information asymmetry problem.

The County would propose a regulatory requirement for active Community Engagement Panels (CEP) whose membership is appointed by, and represents, the State, licensee, and each host community government. Additionally, the CEP, host community authorities, and NRC should receive an annual report concerning the site and any progress/setbacks concerning same. Additionally, the County would request a regulatory provision or order that it or the CEP can request a meeting with a site owner on recurring intervals concerning the site to discuss matters of mutual concern, and that it be a license condition the owner attend and participate in the meeting. The meetings should be held in the host community and be open to the public. If there are no requests to meet, the parties can waive the meeting. If there are new matters concerning security/threats, matters involving public health, site emergencies within the interim period, or changes extending the decommissioning schedule that cannot be resolved, this would be reported to the NRC which would possess the ability to sua sponte re-open the docket to address same.

Backfitting Protection (BFT)

The County agrees that the NRC should propose amendments to create a two-section Backfit Rule that will apply separate backfitting regulations to operating and decommissioning nuclear facilities.

Decommissioning Trust Fund (DTF)

An accounting of the decommissioning trust fund should be provided to local governments annually. The allowable uses of the DTF should be limited to decommissioning, spent fuel storage, restoration of the site to useful status, and economic relief aid for the local community. The NRC should permit a certain amount to be earmarked to local governments to ease the impact of a sudden decline in property tax revenues or sales tax revenues provided there is sufficient revenue to decommission the plant. Companies that own subsidiaries which decommission plants should be required to solicit best value quotes from competitors, or should be prohibited from utilizing same, to ensure that decommissioning funds are available to stabilize and return the site to productive use, not to merely turn it into a spent nuclear waste storage facility. If there is a residual amount left after decommissioning is completed, there should be some revenue sharing component to local governments if GREENFIELD status was not implemented.

The decommissioning trust fund should include funds adequate to pay “legitimate decommissioning activity,” the definition of which should include the cost of spent fuel storage, design, maintenance and removal; as well as non-storage/non-radiological decontamination activities, such as host community benefits designed to relieve negative economic impacts. The collection, reporting, and accounting of commingled funds in the decommissioning trust fund, that are in excess of the amount required for radiological decommissioning, should be clearly defined and regulated, with exemptions approved or denied after NRC and CEP review.

Oswego County agrees with and supports the Town of Plymouth’s assertion that *the definition of “decommissioning planning activities” should include the resolution of any and all negotiations between the licensee and local and state entities that pertain to decommissioning-induced changes to property valuation, tax revenues, emergency planning, workforce adjustments, regional economic impacts, and non-radiological site cleanup.* “Decommissioning planning activities” should also include related planning work carried out by host communities, to fairly compensate officials involved in the process. (Town of Plymouth comments NRC-2015-0070)

Liability Protection Insurance (LPI)

Off-site liability protection insurance requirements should be imposed and reviewed as risk changes over time. The \$100 million for primary liability insurance is currently adequate. In New York the free public services doctrine imposes a “general rule is that public expenditures made in the performance of governmental functions are not recoverable.” County of Erie, 2012 WL 1029542, at *2 (quoting Koch, 62 N.Y.2d at 560, 479 N.Y.S.2d 163, 468 N.E.2d 1). Any site emergency on a nuclear site bears elevated risks, decontamination and monitoring. These emergencies may require a significant initial response to be followed by longer term decontamination and monitoring.

As host communities bear the risk of a site emergency and are the first responders, all costs attributable to same should be covered by a policy of liability insurance with a specific endorsement to the municipality or other mechanism such as an escrow or trust whereby the NRC requires the licensee to reimburse same (notwithstanding any state law prohibition on recovery) to hold them harmless.

On-site Damage Protection Insurance (ODI)

The existing levels of onsite damage protection insurance should remain in place, and periodically reviewed by NRC, until a reasonable time after decommissioning is complete and spent fuel is removed from the site.

General Questions (GEN)

The NRC should develop inspection, monitoring, and maintenance requirements for long-lived passive structures and components, along with reporting requirements to the NRC and CEP, adherence to which should be a condition of license for the owners of decommissioning plants. The training of employees and staffing of shifts should be regulated and monitored by NRC.

Lastly, due to the significant detrimental impacts experienced by host communities as the result of a plant closures, the NRC should hold a series of public meetings on the ANRP throughout the nation in host communities. The socio-economic impacts can best be mitigated or lessened by providing host communities a “seat and a say at the table” during decommissioning planning, monitoring, and accounting.

Sincerely,



Kevin Gardner, Chairman
Oswego County Legislature

Cc:

US Senator Charles Schumer
US Senator Kirsten Gillibrand
Congressman John Katko
Congressman Richard Hanna
Governor Andrew Cuomo
State Senator Patty Ritchie
Assemblyman Will Barclay
Assemblyman Robert Oaks
Members of the Oswego County Legislature
Hon. Steve LeRoy, Chairman, Wayne County Legislature
Hon. Robert Astorino, County Executive, Westchester County