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August 30, 2022

Secretary
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
ATTN: Rulemakings and Adjudication Staff

Re: Comments on NRC Regulatory Improvements for Production and Utilization Facilities Transitioning to Decommissioning (Docket ID: NRC-2015-0070)

Dear U.S. Nuclear Regulatory Commission,

Riverkeeper, Inc.¹ (“Riverkeeper”) respectfully submits its comments on the Nuclear Regulatory Commission’s (“NRC’s”) proposed rule for Regulatory Improvements for Production and Utilization Facilities Transitioning to Decommissioning, 87 Fed. Reg. 12,254 (March 3, 2022) (Docket ID: NRC-2015-0070) (“Proposed Rule”). We appreciate the opportunity to provide input on this long-awaited rulemaking. For far too long, decommissioning sites have been improperly allowed to seek broadly applied exemptions without proper public review on actions that could have major implications on the health and safety of local community members and the environment.

In these comments, Riverkeeper fully incorporates by reference and supports the set of comments submitted on August 30, 2022 by Citizens Awareness Network and Nuclear Information and Resource Service (“CAN and NIRS Comments”). In addition, Riverkeeper calls for the elimination of the widespread use of exemptions in the decommissioning process, uniform application of the Proposed Rule to all current and future decommissioning sites, increased public participation in the decommissioning process, and retention of more stringent protective measures than those within the current Proposed Rule. The comments then provide a response to select questions from Section V of the Proposed Rule.

Elimination of Widespread Exemptions

For years, the NRC has failed to fill a critical gap in its regulations pertaining to decommissioning nuclear facilities. Instead, it has relied on the broad use of exemptions, a

¹ Riverkeeper is a non-profit organization that protects and restores the Hudson River from source to sea and safeguards drinking water supplies, through advocacy rooted in community partnerships, science and law. Riverkeeper is a signatory to both April 14, 2021 Joint Proposal to decommission Indian Point Energy Center and the January 9, 2017 landmark agreement to close Indian Point, and has been involved with Indian Point issues for decades.

process that the NRC characterizes in its own guidance as, “not efficient or predictable, does not provide for public comment, and does not benefit from the thoughtful examination of an appropriate overall regulatory framework for decommissioning plants that a rulemaking would provide.”² Yet despite the NRC’s recognition of the need for rulemaking, the agency has failed to make progress on filling this regulatory gap for years and has continued to rely on exemptions as evident by exiting practice.

The NRC’s own guidance documents indicate a strong disfavor to recurring exemptions, stating that recurring exemptions should be avoided as they can reflect on the performance quality of the regulation.³ The exemption process is designed to address unique situations, thus when too many exemptions are being granted, it is a strong signifier that the rule itself needs to be updated.⁴ The NRC’s goal in making rules is to set reasonable and achievable standards without being overly prescriptive.⁵ The NRC has made it a goal to avoid frequent exemptions, therefore the rules must be updated to accommodate these less-than-unique circumstances.⁶

To continue the current application of exemptions in the decommissioning process is unacceptable and it is critical that the Proposed Rule completely fill this regulatory gap. The Proposed Rule must eliminate the need for widespread, reoccurring exemptions, and instead retain exemptions for limited use in “special circumstances” as the law intended, 10 C.F.R. 50.12(a)(2).

Uniform Application

Correspondingly, the Proposed Rule must also explicitly apply to all sites currently undergoing the decommissioning process with existing or pending exemption requests. As previously mentioned, the exemption process leaves open the possibility for inconsistencies and lacks the depth of review of the rule-making process. Therefore, to promote ongoing consistency and application of best practices identified during the current rule-making, the Proposed Rule must include a provision that would ensure the Proposed Rule apply to sites such as the Indian Point Energy Center (“Indian Point”), which are undergoing the decommissioning process currently.

Public Participation

The impermissible suppression of public participation by the NRC is an ongoing and persistent issue within the agency’s current practices. As recognized by the NRC above, the exemption process does not provide for public comment, essentially curtailing the general public’s ability to engage with the decommissioning process. Local communities, who have been forced to bear the increased risk of living near a nuclear site, had their voices stifled when it came time for the agency to make decisions that could potentially impact their health and safety.

² U.S. NRC, ML16085A029, Power Reactor Transition from Operations to Decommissioning: Lessons Learned Report 3 (October 2016), <https://www.nrc.gov/docs/ML1608/ML16085a029.pdf>.

³ Memorandum from James M. Taylor, Exec. Dir. of Operations, to The Comm’rs of the Nuclear Regul. Comm’n 1 (Jul. 1, 1996) (on file with Nuclear Regul. Comm’n).

⁴ Id. at 3-4.

⁵ Id. at 4.

⁶ Id.

Therefore, the NRC should take the current rule-making opportunity to remedy this issue and provide for robust, meaningful public participation throughout the decommissioning process, including applicable hearing rights. However, as outlined in the CAN and NIRS Comments, the Proposed Rule simply perpetuates and further ingrains the exclusion of the public from decommissioning decisions. Riverkeeper joins the call of CAN and NIRS for an overhaul of the Proposed Rule to include public participation opportunities and hearing rights as required by the Atomic Energy Act and the National Environmental Policy Act (“NEPA”).

Stringent Protective Measures

Finally, Riverkeeper calls upon the NRC to revise the proposed rule to include more stringent protective measures throughout the decommissioning process. So long as spent fuel remains on site, so too does risk. Oversight is needed to ensure the safety and health of the local communities and environment. The Proposed Rule goes too far in rolling back safety and security measures for decommissioning plants. At a minimum, Riverkeeper asks that reporting of public information be retained so long as spent fuel remains and that any reductions in protective measures should be made conservatively, and reallocation of resulting excess resources should be considered prior to reductions. In addition, all post-operational environmental impacts must be reviewed under NEPA, as set out in the CAN and NIRS Comments.

To increase transparency and public trust, as well as to facilitate meaningful public participation, annual dissemination of public information must be maintained so long as spent fuel remains on site. The Proposed Rule elimination of this requirement starting at its level 2 stage - Permanently Defueled Emergency Plans (PDEPs) is unacceptable. While the content of the information reasonably might change throughout the decommissioning process, the interest and need for information about basic emergency planning does not. Reduced risk does not equal no risk. Until all fuel is removed from the site, the sites should be obligated to educate nearby communities of the potential risk and protective measures to ensure their safety in case of a worst-case scenario catastrophe.

In addition, the NRC should review all proposed reductions in safety and security measures within the Proposed Rule in the most conservative light. The Proposed Rule takes a heavy hand in reducing protective measures across the board, from minimum insurance liability to elimination of off-site emergency plans. The Proposed Rule claims that the draft cost-benefit analysis provides justification of for its adoption, citing a net benefit of \$17,914,000 to “the nuclear industry, government, and society” and that the rule “provide[s] reasonable assurance of adequate protection of the public health and safety.” While maybe not intentional, this language shows the NRC priorities. Indian Point’s decommissioning trust fund alone is valued above \$2 billion dollars. The claimed net benefit accounts for less than 1% of the dedicated fund for decommissioning a single site. For such a merger saving in resources in exchange for reduced protective measures, the NRC should consider if these changes are really benefiting the public rather than simply bolstering the nuclear industry’s bottom line. “Reasonable” and “adequate” protection of public health and safety should not be the goal; rather the Proposed Rule should aim to be the MOST protective when dealing with the nuclear field.

Further, for any excess resources that result from changes to the safety and security measures, the Proposed Rule should first consider reallocation of these resources to benefit the local communities. For decades, the local community had to bear the increased risk and costs of hosting a nuclear facility, and increased investment in their safety and health is the least the industry can do to repay their sacrifice. For example, any excess capacity of on-site firefighting force could be used to support local firefighting forces, who remain responsible to respond to emergencies on-site. The existing siren systems could be recalibrated to provide alerts for both nuclear and pipeline emergencies in the situation of Indian Point. Such relatively minor commitments can provide much benefit and added security to the local communities who have been forced to bear increased risk for so many years and continue to bear some responsibility in the case of an emergency.

Response to Questions Posed in Section V of the Proposed Rule

Below are Riverkeeper's responses to select questions posed by the Proposed Rule:

1. PSDAR Approval: The PSDAR is a critical document that provides a roadmap for decommissioning. Riverkeeper has previously called for increased review of the PSDAR and its environmental impacts prior to approval and urge the NRC to implement such changes. Riverkeeper believe that there should be a site-specific environmental review and hearing opportunity before a licensee undertakes any decommissioning activity. In addition, increased opportunities for public participation and availability of public information can help increase transparency and public trust in the decommissioning process. The rule should absolutely provide a role for state and local governments to review and provide meaningful input in the approval process, as well as oversight of the decommissioning process. The Indian Point site Joint Proposal is an example that could be used for develop this framework, allowing for strict State oversight of the activities, including regular oversight board meetings and an on-site State inspector. This both improves coordination between State, Local, and NRC efforts, increases transparency, and provides added protection through multiple layers of review.
2. Emergency Planning: As stated above, Riverkeeper strongly urges the NRC to use the precautionary principal to assess emergency planning needs conservatively. Riverkeeper believes that an off-site emergency plan should be maintained, so long as spent fuel remains on site to ensure health and safety. The Proposed Rule must not eliminate off-site emergency plans at any stage of decommissioning. However, Riverkeeper does recognize that changes to the content and scope of the emergency plan may be acceptable due to the evolution of the site throughout the decommissioning process.
3. Emergency Response Data Systems ("ERDS"): ERDS should be maintained so long as spent fuel is on site. As previously stated, reduced risk is not equivalent as no risk. A system for prompt notification of local community members of any issues at the site can provide both transparency and a sense of security for the local communities.
4. Decommissioning Trust Fund: Riverkeeper's position is that Decommissioning Trust Funds should not be used for spent fuel management, but rather any excess should be

used to benefit the rate-payers that contributed to the fund. However, if the trust funds are used for spent fuel management, any funds as reimbursement from the Department of Energy for spent fuel management must then be returned to the Decommissioning Trust Fund.

5. Exemptions: Public participation is key to building public trust and increasing transparency. Especially for the nuclear field where the public's health and safety may be at risk, the public should have a voice. Thus, allowing the public to weigh in should be a requirement of the exemption process. In addition, as mentioned above, exemptions should only be used in truly special circumstances. The NRC cannot be allowed to skirt review required within the rule-making process and should take action to prevent the need for reoccurring exemptions in the future.

In conclusion, Riverkeeper urges the NRC to eliminate of the widespread use of exemptions in the decommissioning process, ensure uniform application of the Proposed Rule to all current and future decommissioning sites, increased public participation in the decommissioning process, and retention of more stringent protective measures than those within the current Proposed Rule. In addition, Riverkeeper supports revisions proposed in the CAN and NIRS Comments.

Thank you for the opportunity to submit these comments. Please feel free to contact us at vleung@riverkeeper.org with any questions.

Sincerely,



Victoria Leung
Staff Attorney
Riverkeeper, Inc.