August 1, 2023

Chairman Hanson
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Subject: Finalizing the "Emergency Preparedness Requirements for Small Modular Reactors and Other New Technologies" Rulemaking [NRC-2015-0225].

Dear Chairman Hanson,

The purpose of the Emergency Preparedness Requirements for Small Modular Reactors and Other New Technologies rulemaking is "to add new emergency preparedness requirements for small modular reactors and other new technologies such as non-light-water reactors and non-power production or utilization facilities." It is intended to reduce the burden of the exemption process on applicants and staff.[1] This rule is the product of significant stakeholder and public engagement and boasts strong alignment between the NRC staff and stakeholders.

The original rulemaking plan from 2016[2] that the Commission approved[3] estimated the final rule's publication in April 2020. In 2018, the Advisory Committee on Reactor Safeguards (ACRS) found[4] that there were "no technical obstacles at this time to the rulemaking" and recommend that it move forward. The NRC staff submitted the rule package SECY-20-0001 to the Commission for approval on January 3, 2022[5] and added the final rule package, over 18 months ago.

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[1] Planned Rulemaking Activities, "Emergency Preparedness for Small Modular Reactors and Other New Technologies," Accessed July 28, 2023, https://www.nrc.gov/reading-rm/doc-collections/rulemaking-ruleforum/active/ruledetails.html?id=18.

[2] Rulemaking Plan on Emergency Preparedness for Small Modular Reactors and Other New Technologies, SECY-16-0069 (May 31, 2016), ML16020A388.

[3] Staff Requirements - SECY-16-0069 - Rulemaking Plan on Emergency Preparedness for Small Modular Reactors and Other New Technologies (June 22, 2016), ML16174A166.

[4] U.S. Nuclear Regulatory Commission Advisory Committee on Reactor Safeguards, Draft Proposed Rule, "Emergency Preparedness for Small Modular Reactors and Other New Technologies" (October 19, 2018), ML18291B248.

[5] Package documents for "Emergency Preparedness for Small Modular Reactors and Other New Technologies" Final Rule (January 3, 2022), ML21200A055.

Commissioners are generally expected to vote on final rules in 60 days[6], but in this case the final rule publication date has been extended multiple times without explanation, including earlier this month. Currently, the NRC rulemaking page says the final rule is scheduled for publication on January 3, 2024.[7] If this timeline holds, it would mean a duration of over 2 years since the final rule was submitted to the Commission for approval. This is in stark contrast to the NRC's Efficiency principle of good regulation which states "Regulatory decisions should be made without undue delay."[8]

The extensive delay in finalizing this rule has already caused significant regulatory uncertainty for multiple developers that are actively preparing license applications. Without a decision, any future applicants wanting to benefit from the improved procedures in the rule must now prepare two emergency preparedness plans: one based on the assumption that the rule will be in effect when they submit their applications and another contingency plan in case the rule is not yet finalized. Furthermore, this creates an additional burden on the NRC staff due to the uncertainty in the regulatory framework. This uncertainty has already resulted in applicants changing their emergency preparedness approach during the pre-application engagement process, or delaying pre-application engagement until there is greater certainty around what procedures will be available. This reduces the value of pre-application engagement both for the applicant and the NRC staff, which also discourages pre-application engagement from future applicants.

Additionally, the delay in finalizing a risk-informed emergency preparedness framework does not comport with Congressional direction. The Nuclear Energy Innovation and Modernization Act of 2019, directed the NRC to develop and implement strategies for the increased use of risk-informed and performance based licensing techniques within two years of enactment and specifically listed emergency preparedness as one of the areas.[9] The NRC is over two and a half years late on this statutory deadline.

A decision on the final emergency preparedness rule would increase regulatory predictability, reduce the regulatory burden for the applicant and the staff, and align with Congressional direction. More efficient and effective licensing contributes to meeting national environmental

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[6] U.S. Nuclear Regulatory Commission, Internal Commission Procedures (March 24, 2016), ML19296A025, Ch. 3, Page 2.

[7] Planned Rulemaking Activities, "Emergency Preparedness for Small Modular Reactors and Other New Technologies," Accessed July 28, 2023, https://www.nrc.gov/reading-rm/doc-collections/rulemaking-ruleforum/active/ruledetails.html?id=18.

[8] United States Nuclear Regulatory Commission, Values (October 13, 2022), https://www.nrc.gov/about-nrc/values.html.

[9] Public Law No: 115-439, Sec. 103(a)(2).

and energy security objectives. The Commission should act expeditiously to approve the final rule and update the associated Regulatory Guide 4.7, in the public interest.

Sincerely,

Copy:
Commissioner Wright
Commissioner Caputo
Commissioner Crowell
Brooke P. Clark, Secretary of the Commission
Dennis Andrukat, Contact for NRC-2015-0225