December 5, 2012

Diane Curran
Harmon, Curran, Spielberg & Eisenberg, L.L.P.
1726 M Street NW, Suite 600
Washington, D.C. 20036

Dear Ms. Curran:

Thank you for your recent letter dated November 8, 2012, expressing concern about the NRC's October 25, 2012, *Federal Register* Notice on the scoping process for an environmental impact statement to consider updates to the Commission's Waste Confidence Rule. Based upon our review of your letter, the Commission has determined that the *Federal Register* Notice should not be withdrawn, and that the scoping process for this environmental impact statement will continue until January 2, 2013.

Your letter identifies what you believe to be two deficiencies in the *Federal Register* Notice to comply with the NRC's requirements in 10 CFR § 51.27(a)(2). First, you comment that the Notice does not describe the proposed action. Second, you comment that the Notice does not provide possible alternatives, "to the extent sufficient information is available."

The Notice solicits public comment on the scope of an environmental impact statement that will analyze the generic environmental impacts of post-licensed life storage of spent fuel to support an update to the Waste Confidence Rule. The update to the Waste Confidence Rule is the federal action; the "no action" alternative is a decision not to prepare the rule and instead to conduct a site-specific analysis of post-licensed life spent fuel storage for each NRC licensing action that relies on Waste Confidence. As the Commission has stated, the Waste Confidence rule is not a licensing action, it does not authorize the initial or continued operation of any nuclear power plant, and it does not authorize storage of spent nuclear fuel. Thus, licensing of specific reactors or storage facilities is not the purpose of this rulemaking, or the proposed action. A separate NRC action is required before a reactor is licensed and before fuel can be stored after the expiration of a reactor's license at a specific site. The environmental analysis accompanying each of these actions to license or relicense a nuclear power plant would examine site-specific "no action" alternatives.

Your suggestion of a "no action" alternative offers an additional scenario that the staff could consider as part of the environmental impact statement. As discussed in the Notice and at the November 14, 2012 public meetings, the staff is considering a number of "[p]ossible scenarios to be analyzed in the E[nvironmental] I[mpact] S[tatement] includ[ing] temporary spent fuel storage after cessation of reactor operation until a repository is made available in either the middle of the century or at the end of the century, and storage of spent fuel if no repository is made available by the end of the century." One purpose of the scoping process is to determine whether the scope of the environmental impact statement adequately encompasses the potential impacts that should be analyzed and considered in the rule. If there are other scenarios that you believe should be considered, we will welcome your comments.

We also note that you are correct that scoping notices prepared under § 51.27(a) are required to contain the information identified in your letter, but the NRC staff, in preparing the scoping notice for this environmental impact statement, did not base the notice on 10 CFR 51.27. The requirements in § 51.27, regarding the content of scoping notices apply only to scoping notices that are prepared under § 51.26, i.e., when an NRC staff director determines that an environmental impact statement should be prepared. In this case, an NRC staff director did not determine that an environmental impact statement should be prepared; instead, the Commission exercised its discretionary authority under § 51.20(a)(2) to direct the staff to prepare an environmental impact statement to support an update to the Waste Confidence Rule. Nonetheless, the notice did describe that the action being proposed is an update of the waste confidence rule, which provides sufficient information for commenters to suggest alternatives.

Your letter further request that a second scoping notice be issued "consistent with the requirements of 10 CFR 51.47(a)(2)" (sic), "identifying the proposed action and alternatives of which the NRC is aware and seeking further comment." As noted above, 10 CFR 51.27 is not applicable here. The NRC is committed to securing meaningful and interactive public input in the scoping process. We believe that 70 days, which is comparable to scoping periods for some other NRC actions, is sufficient time for the public to develop thoughtful comments on the scope of this EIS. We are now in the midst of a 70-day public scoping period for this EIS, and have conducted a number of public meetings and webinars. The staff is planning more public meetings and webinars to collect public input, and the public will be asked to comment on the draft EIS which will be published in the Fall of 2013.

In addition, since the staff analysis will focus primarily on the three deficiencies identified in the D.C. Circuit's decision, the number of new issues identified during scoping is not expected to be extensive. Any comments submitted during this scoping period will be considered as the NRC staff begins work on the environmental impact statement. In addition, to the extent practical, the NRC staff will consider comments received after January 2, 2013. The NRC staff will consider your November 8th letter as a comment on the scope of the environmental impact statement.

Again, the Commission thanks you for your letter and your comments. As the development of the environmental impact statement continues, there will be multiple opportunities for public comment, including during this scoping period, and after the issuance of a draft environmental impact statement and any proposed rule. The NRC staff is also planning to hold a number of regional public meetings after the issuance of the draft environmental impact statement. We look forward to working with you during this process as we make progress toward the issuance of a final environmental impact statement and updated rule.

Sincerely,

/RA/

Allison M. Macfarlane

Identical letter sent to:

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