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Subcommittee on Clean Air, Climate, and Nuclear Safety
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Senator Markey, Representative Keating, and members of the Committee, thank you for holding this important hearing and for the invitation to testify today. My name is Seth Schofield, and I am the Senior Appellate Counsel for the Energy and Environment Bureau in the Massachusetts Attorney General's Office.

The decommissioning of a nuclear power plant is complex and expensive. The decommissioning process also poses significant safety, environmental, and economic risks to states, municipalities, and local communities.

Today, I will speak briefly about the Commonwealth's experience with the Pilgrim Nuclear Power Station in Plymouth, Massachusetts, and three fundamental flaws with the Nuclear Regulatory Commission's (NRC) proposed decommissioning rule. In short, the proposed rule does nothing to mitigate the risks associated with decommissioning nuclear power plants and totally disregards the substantial concerns consistently raised by states, the public, and NGOs.

The Commonwealth has first-hand experience with decommissioning issues. We recently engaged in a lengthy and contentious process to better ensure that the Commonwealth and its residents would be protected from the risks associated with decommissioning the Pilgrim Nuclear Power plant. In the end, we secured a settlement agreement with Pilgrim's new owner—Holtec—to remedy shortcomings in the NRC's regulatory scheme and to create certainty about the application of important state law requirements. While we were successful, we received no help from the NRC. Instead, the NRC opposed our efforts and dismissed our concerns.

The lengthy agreement covers numerous key issues, but today I will highlight three areas that are critically important to states: financial assurance, site restoration standards, and state agency funding for emergency planning and oversight.

First, the agreement includes a robust set of financial assurance requirements. Under the agreement, Holtec must maintain certain minimum trust fund balances to ensure, among other things, that the Pilgrim site is remediated and restored for unrestricted future use. If the fund dips below those minimum balances, Holtec must replenish the fund with recoveries it obtains from the U.S. Department of Energy.

Second, the agreement requires Holtec to comply with the Commonwealth's radiological and non-radiological cleanup standards. For example, Holtec must comply with the Commonwealth's significantly stricter 10-millirem-per-year residual radioactivity standard and remediate non-radiological contamination to a level that will allow for unrestricted future use unless doing so is infeasible.

Third, the agreement requires Holtec to make annual payments to two state agencies. Those payments are intended to ensure that both agencies have sufficient funds to continue to perform their important public health, safety, and emergency planning oversight responsibilities. Overtime, the annual payment amounts step-down as risks decrease.

Turning to the NRC's proposed rule, the draft rule does nothing to improve the process—for states, municipalities, or the public—or to address the significant risks associated with decommissioning nuclear power plants. Instead, the proposed rule makes the process easier for industry and the NRC itself. Today, I will highlight three ways in which the proposed rule falls far short.

First, the rule proposes to maintain a hands-off approach to decommissioning the Nation's aging nuclear power plants. As NRC Commissioner Baran stated, the proposed rule "allows licensees to make virtually all of the major decisions" without NRC approval or meaningful public input. That approach is foreign to other environmental cleanup laws in the United States such as the Superfund process under CERCLA. If the Commonwealth had been limited to that process, it never could have secured the critical agreement with Holtec that I described earlier. The Commonwealth's inroad was through a separate process—the license transfer process—that will not be available in all cases across the country.

Second, the NRC has adopted a risky approach to decommissioning financial assurance. For example, the proposed rule does not address the NRC's routine practice of granting exemptions to licensees to use decommissioning trust funds for non-decommissioning purposes such as spent nuclear fuel costs. At Pilgrim, for example, the NRC authorized Holtec—a limited liability company with no other assets—to withdraw nearly half of Pilgrim's trust fund for spent fuel management costs without any associated reimbursement requirement. In effect, the NRC authorized Holtec to take millions in Massachusetts ratepayer money as private profit while depriving the trust fund of much needed money.

And last, the rule proposes to reduce emergency preparedness requirements before all spent nuclear fuel is removed from the spent fuel pool and safely placed in dry cask storage. The NRC's rationale is based on the false premise that ten-hours provides "ample time" for all plants in all scenarios to evacuate the surrounding population without the ordinary emergency preparedness requirements. This is a dangerous mistake, and, for that reason, it is opposed by emergency planning professionals, FEMA, and states.

I commend Chairman Markey and this Committee and its staff for taking on this important matter. Thank you.