Via Electronic Mail

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Re: Oversight and Funding of Offsite Decontamination Following a Severe Accident at the Indian Point Facilities

Dear Sherwin:

The State writes to request additional information regarding NRC’s oversight and funding of offsite decontamination in the event of a severe accident at Indian Point. As we discussed on our conference call yesterday, it is not clear which federal agency is responsible for decontaminating the area surrounding Indian Point or whether the Price Anderson Act covers such decontamination costs.

On March 20, 2012, NRC Staff announced that it was going to supplement its examination of the environmental impacts of the issuance of proposed operating licenses for the Indian Point Unit 2 and Indian Point Unit 3 facilities in the December 2010 Final Supplemental Environmental Impact Statement (“FSEIS”). 77 Fed. Reg. 16278 (Mar. 20, 2012). On March 28, 2012, the State sent a letter to NRC Staff regarding the proposed scope of the FSEIS supplement. See March 28, 2012 letter from J. Sipos to S. Turk (NRC), ML12090A609. In its
scoping comments, the State urged NRC Staff to address, in a proactive way, the issue of how it
deals with severe nuclear events that lead to significant environmental impacts including land
contamination. *Id.* at 13. In Attachment I to the State’s letter, the State raised the issue of
funding for decontamination costs, noting that—according to documents prepared by staff at the
U.S. Environmental Protection Agency (“EPA”)—the NRC recently informed the EPA and the
Federal Emergency Management Agency (“FEMA”) that the industry-funded account
established under the Price Anderson Act would likely not be available to pay for offsite
decontamination in the event of a severe accident at a nuclear plant. *Id.*, Attachment I at 59
discussing Douglas P. Guarino, *Agencies Struggle To Craft Offsite Cleanup Plan For Nuclear
Power Accidents*, Inside EPA (Nov. 10, 2010), and attached emails disclosed pursuant to
Freedom of Information Act (“FOIA”) Request).

On June 26, 2012, NRC Staff informed the public that the draft FSEIS supplement was
available for public comment, however, the draft did not address the State’s scoping comments.
*See* Notice of Availability of Draft Supplement to Final Plant Specific Supplement 38 to the
Generic Environmental Impact Statement for License Renewal of Nuclear Plants, Regarding
Indian Point Nuclear Generating Unit Nos. 2 and 3, June 26, 2012, ML12178A660; Generic
Environmental Impact Statement for License Renewal of Nuclear Plants, Supplement 38
Regarding Indian Point Nuclear Generating Unit Nos. 2 and 3, Draft Report for Comment, June
2012, ML12174A244.

On August 20, 2012, the State submitted comments on the draft FSEIS supplement to the
NRC, identifying and discussing the issue of funding for environmental restoration following a
major radiological release at Indian Point. *See* Comments by the New York State Office of the
Attorney General on the Draft Supplement to Supplement 38 to the Generic Environmental


Based on this information, the State commented that “it [is] not clear that NRC has the desire, capability, or financial resources to respond to a serve accident at Indian Point and ensure the thorough decontamination of the New York metropolitan area including, but not limited to,
its water resources—and drinking water resources—in the wake of such an accident.” State Comments at 4.

In response to the State’s comments, NRC Staff stated that “NRC has technical leadership for the Federal government’s response to the event,” but it also listed eight other federal agencies “who may respond to an event at an NRC-licensed facility, or involving NRC-licensed material.” Generic Environmental Impact Statement for License Renewal of Nuclear Plants, Supplement 38 Regarding Indian Point Nuclear Generating Unit Nos. 2 and 3 Final Report, Supplemental Report and Comment Responses (“June 2013 FSEIS Supplement”) at A-32, June 2013, ML13162A616. Staff’s response did not address Commissioner Magwood’s statement regarding the lack of a regulatory framework for environmental restoration following a major radiological release. Nor did Staff explain which agency is responsible for decontaminating the New York metropolitan area following a severe accident at Indian Point, or which agency’s decontamination standards will apply to a cleanup.

Staff noted that “[c]osts associated with nuclear incidents are governed by the Price-Anderson Nuclear Industries Indemnity Act” and that “[t]he main purpose of the Act is to provide prompt and orderly compensation to the public who may incur damages from a nuclear incident, no matter who might be liable.” Id. Staff added that there is a combined level of protection under the Price Anderson Act of $12 billion, and if a nuclear accident involves damages in excess of this amount, the Act “includes a provision that obligates Congress to take appropriate action to provide compensation for public liability claims.” Id. at A-33. However, while Staff’s response explains how the public will be compensated for damages incurred as a result of an accident, such as hotel stays, lost wages and property replacement costs, it does not
explain how *decontamination* costs will be funded in the event of a severe accident at the Indian Point reactors or spent fuel pools.

Given the unique characteristics of Indian Point, the State believes it is especially important that the public have access to this information. The Indian Point reactors are located 24 miles north of New York City. More than 17 million people live within 50 miles of Indian Point, a total that is projected to grow to over 20 million by 2035. According to the Atomic Energy Commission, the NRC, and FEMA, more people live within 10 and 50 miles of the Indian Point reactors than at any other operating power reactor in the nation. The communities within the 50-mile radius around Indian Point also contain some of the most densely-developed and expensive real estate in the country, critical natural resources, centers of national and international commerce, transportation arteries and hubs, and historic sites. Thus, the decontamination costs of a severe accident at Indian Point have the potential to be larger than an accident at any other reactor in the country.

Documents disclosed by the NRC and other federal agencies indicate that there are conflicting responsibilities of multiple federal agencies for offsite restoration after a nuclear incident and that NRC may not lead cleanup oversight in the event that an accident at a nuclear power plant dispersed radioactive contamination off the reactor site and into the surrounding area. *See* Douglas P. Guarino, *Agencies Struggle To Craft Offsite Cleanup Plan For Nuclear Power Accidents*, Inside EPA (Nov. 10, 2010), and attached emails disclosed pursuant to FOIA Request (reproduced in part below).
NRC-FEMA-EPA White Paper:
Potential Authorities and/or Funding Sources for Off-site Cleanup Following a Nuclear Power Plant Incident

Background:

- The Environmental Protection Agency (EPA), the Nuclear Regulatory Commission (NRC), and the Federal Emergency Management Agency (FEMA) began a series of quarterly meetings in 2009 to discuss unresolved concerns regarding off-site environmental cleanup following a nuclear power plant incident.

- NRC recently indicated to FEMA that they would not be taking the lead for off-site environmental cleanup after a nuclear power plant incident. NRC suggested FEMA would be the appropriate agency to lead such efforts.

- NRC also indicated the Price-Anderson Act would be unable to pay for environmental cleanup after a nuclear power plant incident only for compensation for damages incurred (e.g., lost wages, replacement costs for property and personnel items, lost wages, etc).

- FEMA convened a workgroup to discuss the following issues related to nuclear power plant incidents: potential Agency roles (e.g., who would lead cleanup efforts), cleanup authorities, and fund sources.

- Evaluation of language from the Price-Anderson Act, the Stafford Act, and EPA’s previous policies and expectation that the CERCLA (Comprehensive Environmental Response, Compensation, and Liability Act) would generally not be used for response actions to address releases from NRC-licensed sites including nuclear power plants, may indicate a potential gap in authority to perform or oversee and fund off-site cleanup following a nuclear power plant incident, depending on the circumstances of the incident and the subsequent declarations of the federal government.

- The Report to Congress from the Presidential Commission on Catastrophic Nuclear Accidents (See Attachment D), outlines a number of concerns regarding nuclear power plant incidents. The report covers the sourcing of funds under a “Major Disaster,” a “Catastrophe,” and how to prepare and respond to a “catastrophic disaster.”
  - Current plans do not cover “long-duration accidents that have impacts over large land areas.”
  - The authority of the Court to award damages does not extend to executive branch powers.

- The following are questions and concerns are unresolved:

These documents also indicate that money set aside by the Price Anderson Act would not be available to fund decontamination. *Id.* If there is no regulatory framework or source of funding in place to decontaminate the New York metropolitan area in the event of a severe accident at Indian Point, that fact should be disclosed by NRC Staff to the public.

Therefore, in light of Commissioner Magwood’s statements and NRC’s statements to EPA, the State requests that the U.S. Nuclear Regulatory Commission answer the following questions:

1. Which federal agency is responsible for decontaminating radiation released offsite by a severe accident at the Indian Point reactors and spent fuel pools?

2. Would the Price Anderson Act fund decontamination in the event that an accident at Indian Point caused radioactive contamination to be dispersed off the reactor site and into the surrounding area?

We appreciate your cooperation and look forward to receiving additional information regarding NRC’s oversight and funding of offsite decontamination in the event of a severe accident at Indian Point. Based on our conversation yesterday, we trust that you will forward this letter and our request to the appropriate individuals, including James Wiggins, Director, Office of Nuclear Security and Incident Response, and Robert Lewis, Director, Division of Preparedness and Response, Office of Nuclear Security and Incident Response.

Sincerely,

s/

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