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FINAL REPLY:

Assemblyman Richard L. Brodsky
The Assembly State of New York, Albany

TO:

Chairman Meserve

FOR SIGNATURE OF :

** PRI **

CRC NO: 03-0095

Chairman Meserve

DESC:

ROUTING:

NRC Policies - Indian Point

Travers
Paperiello
Kane
Norry
Craig
Burns/Cyr
Miller, RI

DATE: 02/21/03

ASSIGNED TO:

CONTACT:

NRR

Collins

SPECIAL INSTRUCTIONS OR REMARKS:

Coordinate response with Region I.

**OFFICE OF THE SECRETARY
CORRESPONDENCE CONTROL TICKET**

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| AUTHOR: | Richard Brodsky | | |
| AFFILIATION: | NY-SA | | |
| ADDRESSEE: | Richard Meserve | | |
| SUBJECT: | NRC policies...Indian Point | | |
| ACTION: | Signature of Chairman | | |
| DISTRIBUTION: | SECY to Ack, RF | | |
| LETTER DATE: | 02/20/2003 | | |
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| DATE DUE: | 03/06/2003 | DATE SIGNED: | |

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THE ASSEMBLY
STATE OF NEW YORK
ALBANY

RICHARD L. BRODSKY
Assemblyman 86th District
Westchester County

CHAIRMAN
Committee on
Corporations, Authorities
and Commissions

February 20, 2003

VIA FACSIMILE AND U.S. MAIL

Richard A. Meserve
Chairman
Nuclear Regulatory Commission
Mail Stop 016C1
Washington, DC 20555

Dear Chairman Meserve:

I've reflected on our discussion at Congressman Engel's office last Wednesday. I welcomed the opportunity to share with you, candidly, my concerns about both the substance of NRC policies, and the manner in which they are often presented. As I indicated, I'm writing to you directly, seeking both a change in the apparent policies of the Commission and a means of improving public awareness of Commission activities and positions.

With respect to your letter to Senator Clinton, several fundamental points need to be made. First, the assumption that the originating event is irrelevant to the adequacy of the Indian Point Emergency Plans needs re-examination. As Senator Clinton pointed out, it will matter deeply to those who must make evacuation decisions whether there are willing operators at their desks trying to overcome problems with plant operations, or whether those operators have been rendered incapable by actions of terrorists. It has become more and more clear that there are circumstances caused by a terrorist attack that can dramatically affect the ability to evacuate or otherwise protect our citizens. The NRC needs to rethink and change its current position.

Second, the representation in your letter that the FEMA review now underway is an "assessment of the most recent offsite emergency planning exercise" is not accurate, nor does it acknowledge the legal requirements that current law imposes on both the NRC and FEMA. Both agencies are required to address the adequacy of the Plans, and their ability to adequately protect the public health and safety. As has become painfully obvious, it is possible to have a good drill of a bad plan. FEMA had for some time tried to assert that same standard. After much discussion, FEMA has formally admitted the requirement that both drill adequacy and Plan adequacy be addressed. I refer you to the December 3, 2002 letter from FEMA to the New York State Emergency Management

Office on this point. It is distressing to read that the NRC does not understand the nature of the FEMA review, or does not share the concern for plan adequacy that the law requires. The NRC needs to rethink and change its current position.

Third, throughout our discussion the respective roles of the NRC and FEMA were never clearly addressed. As you know, FEMA will make its own determination of adequacy. Under the applicable regulations, the NRC "will base its finding" on the FEMA decision. While there are many other powers available to the NRC under its regulations, in the end a determination of adequacy must be made based upon the Commission's own work, FEMA's work, or "any report, record, inspection, or other means." Accordingly, I hereby transmit to you a copy of a Report issued by my Committee detailing the results of our investigation and a Petition submitted to FEMA challenging the existing approval of the Indian Point Evacuation Plans under FEMA regulations. They are submitted for the purpose of beginning the regulatory process, under the NRC regulations quoted above, and provide the legal basis for requiring the NRC to revoke, suspend, or modify in whole or in part the operating license for Indian Point insofar as matters concerning evacuation planning are relevant to that license. I would point out that this challenge is to the NRC's existing approval of the Plans. Any challenge to the apparently upcoming FEMA and NRC actions will be taken upon the record available there.

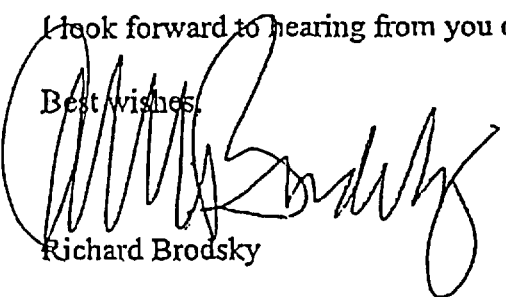
Fourth, I am in contact with Senator Clinton's office with respect to the federal-state matters affecting security that were discussed, and will keep you apprised of any actions that will be taken.

Finally, I think it is important to emphasize the depth and breadth of the perception held by fair-minded observers with respect to the NRC's public actions on the Indian Point issue. The letter to Senator Clinton seemed another example of the Commission's willingness to aggressively insert itself into the public process in defense of the plant and the Plans, no matter how weak the basis. This is not matched by the same kind of direct intervention when the news is less favorable. In this particular case it seems as if the Commission is either pre-judging the FEMA and NRC adequacy proceedings, or pressuring FEMA to disregard matters that were raised in both the attached Interim Report and by the Witt Report. This criticism seems even more valid when your letter misstates the law and facts surrounding the Indian Point Plans, and lacks the virtue of a consistent concern for Plan adequacy. It would be easier to accept your aggressively asserted disagreement with the need to consider terrorism as a complicating element in evacuation planning, if you had not ignored the Plan's abysmal failure to consider the evacuation implications of a release from the spent fuel pools. Such inconsistency merely reinforces broad public concern that the Commission is a protector of the plant, not of the public health and safety. A great deal of that public perception stems from the refusal of the Commission to appear in other than fairly closely controlled public events. You will recall that when we spoke some eighteen months ago, I invited you to appear before the relevant Committees of the Legislature to discuss the legal and factual issues before our communities and the policies and procedures of the NRC. I believe it would be in both the public interest and the Commission's interest for that process to go

forward. Accordingly, I renew my invitation to you to appear before us in the near future.

I look forward to hearing from you on these issues.

Best wishes,



Richard Brodsky

cc (w/o encl.): Sen. Hillary Rodham Clinton

Sen. Charles Schumer

Rep. Eliot Engel

Rep. Nita Lowey

Rep. Maurice Hinchey

Hubert J. Miller, NRC Region I Administrator