

April 28, 2003

The Honorable Richard Brodsky
Assemblyman 86th District
Room 422
Legislative Office Building
Albany, New York 12248

Dear Mr. Brodsky:

On behalf of the Commission, I am responding to your letter of February 20, 2003, which expressed concerns about offsite emergency planning and preparedness for the Indian Point nuclear power facility, particularly with respect to a potential terrorist attack. Specifically, you raised issues regarding former NRC Chairman Meserve's letter dated February 12, 2003, to Senator Clinton on Federal oversight of emergency planning and the Nuclear Regulatory Commission's (NRC's) interactions with the public on Indian Point. You also transmitted a copy of your committee's report on Indian Point for our consideration as well as a copy of your petition to the Federal Emergency Management Agency (FEMA). We have been working deliberately on these issues.

First, let me emphasize that security of nuclear power plants across the country, long the subject of NRC regulatory oversight, remains one of the NRC's highest priorities. Within minutes of the September 11, 2001, terrorist attack, NRC directed plants across the country to go to the highest level of security. Today, our licensees remain at a heightened level of security. Although all nuclear power plants have been required for many years to have security programs sufficient to defend against violent assaults by well-armed, well-trained attackers, numerous additional steps have been taken since September 2001 to thwart terrorist acts. Over the past 19 months, the Commission has undertaken a comprehensive review of safeguards and security programs in close consultation with the Department of Homeland Security and other Federal agencies and with significant involvement by State agencies. Through formal Orders, the NRC has required increased security force staffing, additional security posts and patrols, installation of substantial additional physical barriers, greater stand-off distances to protect against vehicle bombs, and more restrictive site access controls, to mention only a few measures. Further, the NRC is conducting a number of studies to assess the potential vulnerability of nuclear plants to the new threats confronting America. Preliminary results from our studies do not indicate the need to account for a larger radiological source term or a quicker offsite release from terrorist-initiated events than is already addressed by the emergency planning basis required by NRC regulations and in place at Indian Point. If our vulnerability studies indicate that the present NRC planning basis is inadequate, we will take appropriate action.

In your letter, you questioned the NRC's position on the impact of potential terrorism on emergency planning, as expressed in the February 12, 2003 letter to Senator Clinton. Emergency preparedness is being considered in our ongoing review of our safeguards and security programs. The NRC's February 2002 security Orders specifically required licensees to review their emergency response plans to ensure appropriate consideration of the current

threat environment. Licensees were required to ensure that emergency response plans appropriately recognized the potential for security threats and that response actions were compatible with enhanced security measures. The February 2002 Orders also directed licensees to evaluate and address potential vulnerabilities that could result from a terrorist attack, such as a large fire or loss of cooling for the reactor or spent fuel pool, and to develop specific guidance and mitigative strategies. These mitigative strategies are intended to help licensees to identify and utilize onsite or offsite equipment and capabilities.

By design, the NRC's "defense-in-depth" safety philosophy for nuclear power plants is intended to minimize the potential for release of radiological material offsite. Through emergency planning and preparedness, additional mechanisms are in place to protect the public in the unlikely event of a radiological release. Emergency plans are intentionally written to be broad and flexible in order to allow for responses to a wide spectrum of events, including those involving rapid, large releases of radioactivity. Emergency planning provides a framework for monitoring and assessing onsite and offsite conditions and preestablished criteria and guidelines for making prompt decisions on protective actions such as evacuation and sheltering. This allows decision makers to determine the protective actions appropriate for a given event, considering factors such as the potential source (including the spent fuel pools), the expected duration of any release, weather conditions, and other potential hindrances to protective actions (including terrorist attacks on the emergency response infrastructure).

As you are aware, Federal oversight of radiological emergency planning and preparedness involves both NRC and FEMA. Consistent with President Carter's directive in December 1979, FEMA's role is to review and assess offsite planning and response and to assist State and local governments, while NRC reviews and assesses a licensee's onsite planning and response capability and has the responsibility for reaching an overall conclusion with respect to the adequacy of emergency planning and preparedness. In your letter, you raised concerns regarding our processes for assessing the adequacy of the emergency response plans. In addition to performance-based reviews of plan implementation during drills and exercises, both NRC and FEMA assess plan adequacy through reviews of the plans themselves. The NRC reviews onsite planning through approval of emergency plans during the initial plant licensing process and reviews or inspects subsequent changes to the plans. As they are made, FEMA, with the assistance of the Regional Assistance Committee (RAC), a panel of experts in various aspects of emergency preparedness from a number of Federal agencies, periodically reviews offsite emergency response plans. On February 21, 2003, FEMA issued its report on the September 2002 emergency preparedness exercise at Indian Point. The report addresses various planning issues, including FEMA's conclusions regarding concerns raised in the draft report prepared by James Lee Witt Associates, LLC, at the request of Governor Pataki. We are now reviewing this FEMA report and will closely monitor steps being taken in the coming months by FEMA, the State, the counties, and the plant operator (Entergy) to address these concerns.

As noted above, FEMA makes findings and determinations as to the adequacy and capability of implementing offsite plans and communicates those findings and determinations to the NRC. The NRC makes onsite findings and reviews the FEMA findings and determinations and then makes a determination on the overall state of emergency preparedness. These overall findings and determinations are used by the NRC to make radiological health and safety decisions before the issuance of licenses and during the ongoing oversight of operating reactors. With respect to your petition to FEMA, according to the January 28, 2003 letter to you

from Joseph Picciano, FEMA Region II Acting Director, we understand that FEMA does not plan to act on your petition in light of the many events that have occurred since FEMA's reasonable assurance findings of July 25, 2001. In regard to your request that the NRC consider your committee's report and petition to FEMA for the purpose of deciding whether regulatory action is warranted by this agency, the process already initiated by FEMA, along with New York State and local government agencies, is intended to address the substantive issues raised. Thus, we do not, at this time, see the need for further independent action. Please be assured, however, that we will not hesitate to act, if, in the future, circumstances warrant.

Regarding NRC's public actions at Indian Point, over the past several years, the NRC has had extensive interactions with the public, local governments, and elected officials regarding developments at the site. The NRC has regularly briefed local officials on important plant events and NRC actions. The NRC has held numerous public meetings which were open to public observation and questions. Local officials or their staffs have attended all of these meetings. On a number of occasions, the NRC conducted pre-meeting briefings for local officials to facilitate information exchange. The NRC also consistently provided early notifications to Congressional, State, and local officials of any significant site activity or significant correspondence with the licensee.

We have expanded our efforts to reach out to local officials who have vital roles in emergency response for Indian Point. The NRC has, for example, participated in a number of meetings and have frequently communicated with and supported county officials responsible for emergency planning on topics such as potassium iodide, bus resources, exercise conduct, and dose assessment. The NRC will continue to work with FEMA and other Federal agencies, as well as Entergy, New York State, and local officials in continuing efforts to maintain and strengthen, as necessary, emergency planning and preparedness at Indian Point.

Emergency preparedness is very important and one of many features we use to ensure adequate protection of public health and safety. I assure you that the NRC continues to focus on its primary mission, the protection of the public health and safety. Thank you for your continued interest in the safety and security of Indian Point.

Sincerely,

/RA/

Nils J. Diaz