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May 7, 2003

Mr. Jordan Fried
Acting General Counsel
Federal Emergency Management Agency
500 C St. SW
Washington, DC 20472

Re: Response to State of Connecticut's "Petition" for Withdrawal of FEMA's Approval of the Indian Point Radiological Emergency Preparedness Plan

Dear Mr. Fried:

On behalf of Entergy Nuclear Indian Point 2, LLC, Entergy Nuclear Indian Point 3, LLC, and Entergy Nuclear Operations, Inc. (collectively, "Entergy")¹ we hereby respond to the "Petition" submitted by the Connecticut Attorney General Richard Blumenthal ("Petitioner") on February 20, 2003 on behalf of the State of Connecticut. The Petition requests withdrawal of the Federal Emergency Management Agency's ("FEMA") approval of the State of New York's Radiological Emergency Preparedness Plan ("REPP") for the Indian Point 2 and Indian Point 3 nuclear power plants ("the Indian Point Units").² The Petition states that it is filed pursuant to 44 C.F.R. § 350.13(a), although neither that provision nor any other FEMA regulation authorizes the filing of such a petition.³ Indeed, other than its incorrect reference to 44 C.F.R.

¹ Entergy Nuclear Indian Point 2, LLC and Entergy Nuclear Indian Point 3, LLC are the respective owners of Indian Point 2 and Indian Point 3. Entergy Nuclear Operations, Inc. ("ENO") operates both units pursuant to U.S. Nuclear Regulatory Commission ("NRC") licenses.

² FEMA also sometimes refers to the same document as the "radiological emergency response plan" or "RERP."

³ The Petition also requests that FEMA "call Public Hearings to undertake a review of the radiological emergency preparedness plan for the Indian Point Nuclear Generating Facility." Petition at

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§350.13(a), the Petition provides no legal basis – statutory, regulatory, or judicial – for the relief it seeks. In that regard, Mr. Blumenthal’s use of the term “petition” is misleading, as it suggests the existence of a quasi-adjudicatory process whereby “petitioners” are entitled to assert individual claims for relief. No such process exists under FEMA regulations.

Apart from lacking any legal or regulatory basis, the Petition’s request that FEMA withdraw its approval of the Indian Point REPP would provide no benefit to the residents of Connecticut. With respect to most aspects of radiological protection, the REPP for the Indian Point facility is directed at the population residing in an approximate ten-mile circular area surrounding the plant, which is called the “plume exposure pathway emergency planning zone.” This zone contains portions of Orange, Putnam, Rockland, and Westchester counties, all in New York, many miles away from the Connecticut state line. As will be further discussed below, even the 50-mile, or “ingestion pathway,” emergency planning zone which encompasses additional New York cities and counties as well as portions of New Jersey and Connecticut, is only addressed by the Indian Point REPP with respect to New York residents. Therefore, withdrawal of FEMA approval would have no effect on providing protection to Connecticut residents against the effects of a radiological release from Indian Point.

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1-2. There is no provision in the FEMA regulations for holding public hearings in connection with the potential withdrawal of FEMA’s approval of a state radiological emergency plans.

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Thus, the claimed deficiencies in the Indian Point REPP alleged in the Petition, even if they existed -- which they do not -- would not affect the health or safety of the residents of Connecticut, whom the Attorney General purportedly represents in his Petition. Therefore, he has no standing to request that FEMA withdraw its approval of the New York REPP, even if one assumes that such a request were cognizable under FEMA regulations.

Petitioner's unauthorized filing also provides no regulatory basis for the actions it asks FEMA to take. As will be further discussed below, FEMA has been fully exercising its oversight of offsite emergency planning and response activities relating to the Indian Point Units, and is conducting an ongoing review of the Indian Point REPP.⁴ Therefore, there is no need for additional FEMA actions of the nature sought in the Petition.

Finally, the Petition sets forth no factual bases warranting the withdrawal of FEMA's approval of the Indian Point REPP. Most of the Petition consists of a haphazard repackaging of the allegations contained in a June 17, 2002 Petition by New York Assemblyman Richard L. Brodsky to FEMA seeking to have FEMA withdraw its approval of the Indian Point REPP,⁵ and the assertions in the January 2003 draft of the Witt Report,⁶ both of which FEMA has already reviewed and either addressed or

⁴ It is worth noting that FEMA's oversight responsibility does not extend to Entergy's onsite emergency planning and preparedness activities. 44 C.F.R. § 350.4. Therefore, to the extent that the Petition alleges or suggests that there are any deficiencies in Entergy's emergency planning and response program, such allegations are not cognizable by FEMA and must be disregarded.

⁵ Letter dated June 17, 2002 from Assemblyman Richard L. Brodsky to FEMA's General Counsel Michael D. Brown ("the Brodsky Petition").

⁶ "Review of Emergency Preparedness at Areas Adjacent to Indian Point and Millstone - James Lee Witt Associates, LLC, 2003" (the "Witt Report"), first released in draft form on January 10, 2003.

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determined to be invalid.⁷ Petitioner advances no new information regarding the Indian Point REPP that requires FEMA action of any kind. In particular, the Petition provides no new information concerning the ability of the State of New York or the local governments in the vicinity of the Indian Point facility to carry out their emergency planning and preparedness duties. Thus, there is no factual predicate for the relief requested in the Petition.

In short, no legal, regulatory, or factual basis exists for the "Petition." It must be denied.

I. THERE IS NO LEGAL BASIS FOR WITHDRAWING FEMA'S APPROVAL OF THE INDIAN POINT REPP

A. The Petition Does Not Set Forth Substantial Evidence on Which a Determination to Withdraw Approval of the Indian Point REPP can be Based

FEMA's regulatory activities regarding emergencies at nuclear power plants pertain only to "State and local planning and preparedness" for such emergencies. 44 C.F.R. § 350.4. FEMA's responsibilities include granting initial approval of state and local emergency plans. In order to grant such approval, FEMA must review the state and local plans and determine that they adequately protect public health and safety. 44 C.F.R. § 350.5(a). To make such a determination, FEMA must find that the state and local plans and preparedness provide "reasonable assurance that appropriate protective measures can

⁷ See Attachment B to Federal Emergency Management Agency Region II, "Exercise Report Indian Point 2 Nuclear Power Station -- Exercise Date: September 24, 2002," dated February 21, 2003 ("FEMA Attachment B").

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be taken offsite in the event of a radiological emergency.” *Id.* § 350.5(b). Prior to approval, state and local plans are subject to detailed FEMA review, *id.* § 350.8(d), a full participation exercise, *id.* § 350.9(a), and at least one public meeting. *Id.* § 350.10. Finally, the FEMA Associate Director must determine whether the emergency plans and preparedness (1) are adequate to protect the health and safety of the public and (2) are capable of being implemented with adequate procedures, training, resources, staffing levels and qualifications, and appropriate equipment. *Id.* § 350.12(b)(2). If so, FEMA approves the state or local plan.

FEMA approved the current versions of the REPPs for Indian Point by the State of New York and the involved local jurisdictions⁸ on May 3, 1996. 61 Fed. Reg. 24938 (1996). The REPP remains approved and in effect to date.

FEMA may withdraw its approval of state and local plans, but only for specific reasons. 44 C.F.R. § 350.13(a). To take such an action, FEMA’s Associate Director must determine that the public health and safety is no longer adequately assured based on specific, identifiable deficiencies in the emergency plan or its implementation, which must be set forth in detail in a written determination issued to the affected State. *Id.* Such a determination can be made on FEMA’s own initiative or on the basis of information supplied by another person, but the determination must be supported by substantial evidence. See 44 C.F.R. § 350.15(b). As described in the following sections, the Petition does not set forth any evidence, much less “substantial evidence,” upon

⁸ Orange County, Putnam County, Rockland County, and Westchester County.

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which to base a determination that the existing Indian Point REPP does not provide reasonable assurance of public health and safety.

B. Petitioner Lacks Standing to Seek Relief Against the Indian Point REPP

Since there are no FEMA regulations authorizing the filing of a "petition" of the type submitted by Petitioner, one would expect that the proponents of such a petition would at least be able to demonstrate that they are directly affected by the matters for which they seek redress. That, however, is not the case here. A review of the Petition readily shows that Petitioner's complaint is actually directed at the State of Connecticut and its local governments, not at the New York's REPP for Indian Point. Mr. Blumenthal asserts that he represents "the legal interests of Connecticut residents . . . residing in the 50 mile EPZ." Petition at 2. Petitioner further asserts that "substantial portions of the State of Connecticut lie within the 50-mile radius ingestion pathway zone. Bridgeport and Danbury are both within this zone." *Id.* The "50 mile EPZ" to which Petitioner refers is the ingestion pathway EPZ, that is, the pathway leading to "exposure primarily from ingestion of water or foods such as milk and fresh vegetables that have been contaminated with radiation." 44 C.F.R. § 350.2(i). For exposures in the ingestion pathway EPZ, it is the affected state's emergency plan that applies. "Each State shall specify the protective measures to be used for the ingestion pathway, including the methods for protecting the public from consumption of contaminated foodstuffs." NUREG-0654/FEMA-REP-1, Rev. 1, Criteria for the Preparation and Evaluation of Radiological Emergency Response Plans and Preparedness in Support of Nuclear Power

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Plants (1980) (“NUREG-0654/FEMA-REP-1”), Section II.J.11 (emphasis added). Thus, it is the State of Connecticut and the local Connecticut governments that are charged with preparing and implementing the “plans for the ingestion exposure pathway” for those portions of the ingestion exposure pathway EPZ within Connecticut. See 44 C.F.R. § 350.7(b).⁹

It follows from the above considerations that Petitioner has no standing to assert that the Indian Point REPP – developed and implemented by the State of New York and the interested local New York jurisdictions – contains “legal deficiencies” and “is unable to ‘adequately protect public health and safety.’” Such claims could be raised, if at all, only by members of the public (or their representatives) residing within the geographic area covered by the Indian Point REPP. No part of the State of Connecticut is within the geographic area covered by the Indian Point REPP and no Connecticut residents are affected by the alleged deficiencies in the New York plans.

In other words, to the extent that Petitioner believes that deficiencies exist in providing adequate protection for the citizens of Connecticut against exposure via the

⁹ Indeed, the State of Connecticut Radiological Emergency Response Plan (“Connecticut RERP”) includes protective actions to be taken against ingestion pathway exposure. Procedures implemented by the State in support of the Connecticut RERP specify preventive and emergency protective actions that include, *inter alia*, removal of lactating dairy cows from contaminated pasturage; withholding of contaminated milk from the market; washing, brushing, scrubbing or peeling fruits and vegetables to remove surface contamination; and isolation of food containing radioactivity. Procedure CTAP-3-3 DEPDOR – 4 (Rev. 12, Dec. 1999) on Public Protective Action Recommendations, § 3.2.7. Other implementing procedures describe how these protective actions are to be accomplished. See, e.g., Connecticut Agency Procedure CTAP-4:4 ISP-1 (Rev. 12, Dec. 1999) on Food Sampling Responsibilities, Priorities and Briefing; Connecticut Agency Procedure CTAP-4.4 ISP-2 (Rev. 12, Dec. 1999) on Sample Collection.

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ingestion pathway, such deficiencies need to be addressed by Connecticut. They cannot be remedied by FEMA taking action against the New York State Indian Point REPP.

For these reasons, Petitioner lacks standing to allege deficiencies in the New York Indian Point REPP or seek relief against them. Therefore the Petition, in addition to being without legal basis, is also legally deficient for lack of standing and for requesting relief which cannot be granted in the New York State Indian Point REPP, and must be dismissed.

Petitioner's lack of standing to challenge the Indian Point REPP is further evidenced by the deficiencies that Petitioner alleges to exist in the REPP. Petitioner challenges the adequacy of the REPP regarding the impacts of a terrorist attack, Petition at 5-6, evacuation travel time estimates, *id.* at 7-8, shadow evacuation, *id.* at 8-9, family separation, *id.* at 9-10, public information dissemination, *id.* at 10-11, and the administration of radioprotective drugs in the counties surrounding the Indian Point site, *id.* at 13-14. These issues affect individuals residing within the ten-mile plume exposure EPZ in New York and have absolutely no relevance to the protection of public food and water supplies in the ingestion pathway EPZ in Connecticut.

Even Petitioner's concern with the protection of foodstuffs and drinking water in the ingestion pathway EPZ is based on purported deficiencies affecting only New York residents. Petitioner asserts that the Indian Point REPP "fails to identify the procedures for the nearby New York counties to undertake with New York in addressing contamination" issues. *Id.* at 12 (emphases added). Further, Petitioner cites a FEMA Region II statement that New York "State needed to improve its efforts and better notify

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the nearby New York counties about what was happening in an emergency," *id.* (emphasis added). Those statements do not provide evidence of deficiencies affecting Connecticut, as Petitioner purports. As with the Petitioner's other assertions, the potential impacts of these purported deficiencies would be limited to the residents of New York. None of these concerns are relevant to Connecticut's ingestion pathway EPZ. Thus, Petitioner has failed to identify any deficiency in the Indian Point REPP potentially affecting any Connecticut resident, and thus 1) lacks standing to challenge the adequacy of the Indian Point REPP and 2) provides no evidence upon which such a challenge would be appropriately based.

II. THERE IS NO REGULATORY BASIS FOR WITHDRAWING APPROVAL OF THE INDIAN POINT REPP

The crux of Petitioner's request that FEMA withdraw its approval of the Indian Point REPP is the bald assertion that "the REPP is unable to 'adequately protect public health and safety' as required by law." Petition at 1; see also, *id.* at 15. Such an assertion, however, is directly contradicted by the results of years of successful, FEMA-supervised exercises of the Indian Point REPP, including the most recent one, conducted in September 2002.

State and local governments are required to periodically conduct joint exercises in order to maintain continued FEMA approval. 44 C.F.R. § 350.9(c)(1)-(4). The current Indian Point REPP has been successfully exercised in accordance with FEMA's policies and guidance since its approval in 1996. FEMA has evaluated each exercise and consistently determined that the Indian Point REPP adequately protects public health and

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safety. The last FEMA Exercise Report, issued in February 2003, discussed the results of the September 24, 2002, full-participation exercise for Indian Point Unit 2.¹⁰ The Report found no deficiencies and determined that the State and local organizations "satisfactorily demonstrated knowledge of their emergency response plans and procedures and adequately implemented them." Feb. 2003 Exercise Report at 1. Further, twenty-one Areas Requiring Corrective Action ("ARCA's") from previous exercises were resolved during the exercise, with only thirteen new ARCA's identified. Those ARCA's are in the process of being resolved.

There is, therefore, no basis under FEMA regulations for the agency to withdraw its approval of the Indian Point REPP.

III. THERE IS NO FACTUAL SUPPORT FOR THE CONCERNS RAISED IN THE PETITION

The Petition raises seven concerns with respect to the Indian Point REPP. It alleges that: (1) the REPP does not adequately address the possibility of a terrorist attack; (2) the evacuation travel time estimates in the REPP fail to meet the requirements of NUREG-0654/FEMA-REP-1; (3) the REPP fails to address voluntary evacuation; (4) the REPP fails to address family separation in its analysis of evacuation times; (5) the REPP fails to adequately inform the public in the event of a radiological emergency and relies on the selective release of critical information and secrecy; (6) the REPP fails to

¹⁰ Federal Emergency Management Agency Region II, "Exercise Report Indian Point 2 Nuclear Power Station -- Exercise Date: September 24, 2002," dated February 21, 2003 ("Feb. 2003 Exercise Report").

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meet the requirements for protection of foodstuffs and drinking water in the 50 mile ingestion exposure pathway EPZ; and (7) the REPP fails to address the requirement for administering radioprotective drugs to the population. Petition at 5-13. Most of these concerns merely paraphrase criticisms in the Brodsky Petition or the Witt Report. Those criticisms have been shown by both FEMA and Entergy to be without merit.

A. The REPP Adequately Addresses the Potential Consequences of Accidental and Intentional Radiological Releases

Petitioner asserts, without any factual basis, that a "deliberate (terrorist-caused) release" would have "significantly different characteristics and effects" than those anticipated in the REPP. Petition at 5. In addition, Petitioner raises the possibility of "multiple attacks" causing a shutdown of transportation routes and potential radiological consequences "worse than Chernobyl." *Id.* at 6. Based on these hypothesized scenarios, Petitioner argues that the "essential premise" of the REPP is flawed because it does not consider such "terrorist-caused" radiological releases. *Id.* at 5.

Contrary to Petitioner's assertions, which are essentially identical to those in the Witt Report, the REPP does address the potential radiological impacts of terrorist events. Since at least 1980, NRC and FEMA emergency planning guidance has required consideration of and preparation for "fast-acting" incidents:

The range of times between the onset of accident conditions and the start of a major release is of the order of one-half hour to several hours. The subsequent time period over which radioactive material may be expected to be released is of the order of one-half hour (short-term release) to a few days (continuous release).

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NUREG-0654/FEMA-REP-1, Section D.3 (emphasis added); *see also, id.*, Section I.H. (operator responsibilities during an accident include determining the “need for protective measures within short time intervals – a half-hour or perhaps even less – after determination that a hazard exists” (emphasis added)). As a result, Indian Point emergency exercises have included the “fast-acting” releases of concern to Petitioner.

In reality, Petitioner did not identify, and Entergy does not know of, any credible mechanism for causing a substantial radiological release from Indian Point in less than one-half hour. Moreover, even if such a release could occur, the practical effect of a few minutes less response time would not be expected to have a significant impact on the public’s health and safety in the ingestion pathway EPZ, which is the only one of concern to Petitioner. This is because, according to NUREG-0654/FEMA-REP-1:

[T]he time available to implement protective measures associated with the ingestion exposure pathway is generally greater than the time available to implement protective measures associated with the plume exposure pathway. The State, with support from the Federal Government, should be able to respond quickly enough to implement any desirable protective measures for the ingestion pathway.

Id., Section I.E. Thus, Petitioner’s claim that terrorist-induced radiological releases will lead to adverse consequences in the ingestion pathway EPZ is completely without merit.

Petitioner’s underlying assumption that an intentional, terrorist-caused radiation release would be more severe or occur more quickly than an accidental radiation release is similarly baseless. Two recent studies on the consequences of terrorist attacks on nuclear power plants concluded, *inter alia*, that:

- The risk to the public resulting from a core damage event caused by an armed terrorist ground attack on a U.S. commercial nuclear

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power plant is small, and less than the risk from accidental core damage events postulated for U.S. commercial nuclear power plants.

- Given an armed terrorist ground attack, core damage is unlikely because of a nuclear power plant owner's capabilities to detect insider activities, to physically deter the attackers, and to mitigate accident propagation with operator actions and safety systems. The likelihood of severe release is further reduced by the inherent strength of containment and radioactivity removal capabilities of the containment and safety systems.
- A direct hit on a nuclear power plant containment structure by a large, fully loaded commercial aircraft would not breach the containment structure, and thus the reactor fuel would be protected. Similarly, a direct aircraft hit on spent fuel storage structures would not cause a breach.
- Because of their very strong and effective security systems, safety systems, and containment structures, and the attendant likelihood that the health consequences of a terrorist-induced event would be relatively minor, commercial nuclear power plants are considered unattractive targets for terrorist groups intent on causing loss of life.

Indian Point Emergency Preparedness Independent Expert Task Force, Comments on the Draft Report: Review of Emergency Preparedness at Indian Point and Millstone, James Lee Witt and Associates, LLC January 10, 2003 (Feb. 7, 2003) ("IETF Report") at 7-8 (citing "Risk Characterization of the Potential Consequences of an Armed Terrorist Ground Attack on a U.S. Nuclear Power Plant," prepared by the Electric Power Research Institute for the Nuclear Energy Institute, draft report (Dec. 2002) and "Deterring Terrorism: Aircraft Crash Impact Analyses Demonstrate Nuclear Power Plant's Structural Strength," Nuclear Energy Institute (Dec. 2002)). These studies demonstrate that there is no difference between the magnitude and timing of radionuclide releases

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from accidental core damage events and those resulting from terrorist-induced events.

IETF Report at 7. In other words, a "terrorist attack" does not produce unique radiological conditions.

A terrorist-caused release is not expected to have a significant impact on emergency response plans because:

- Existing emergency planning guidance is based on a spectrum of accident types, including accidents with large, rapid releases as well as slower accidents.
- Existing emergency response plans, at the county level, include a process to address "impediments to evacuation" resulting from causes such as overturned tractor-trailers, downed trees, and stalled vehicles, which would be applicable in addressing potential terrorist-caused impediments.
- Most Indian Point exercises used accident scenarios with radiological consequences to the public beginning sooner than six hours after the start of the event (*i.e.*, a "fast-evolving event" as described in the Witt Report).

IETF Report, App. C. There is, therefore, no factual support for the claim (see Petition at 5) that a terrorist-caused radioactive release would have "significantly different characteristics or effects" than the accidental releases already considered in the Indian Point REPP.¹¹

¹¹ Moreover, Indian Point has security plans that meet regulatory requirements and are capable of responding to a design basis terrorist threat. FEMA has already assessed the post-September 11 security at Indian Point in rejecting the Witt Report's assertion regarding terrorism:

On February 25, 2002, the NRC issued orders to all operating nuclear power plants to implement interim compensatory security measures for the current threat environment, which included security enhancements which have emerged from NRC's ongoing comprehensive security review. These requirements include increased patrols, augmented security forces and capabilities, additional security posts, installation of additional physical barriers, vehicle checks at

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This point was recently stressed by NRC Region I Regional Administrator Hubert Miller in testimony before a Congressional Committee. Referring to the often-made distinction between emergency response actions required by an accident and those prompted by a terrorist act against a nuclear facility, Mr. Miller stated:

One of the issues raised in the Witt report involved emergency response in the event of a terrorist attack. Emergency plans are intentionally written to be broad and flexible in order to provide for responses to a wide spectrum of events, including those involving rapid, large releases of radioactivity. Necessary protective actions and offsite response are not predicated on the specific cause of an event. Nor do they consider the probability of a given accident sequence. Rather, emergency planning assumes the improbable has already occurred and develops a response to address the consequences of potential releases. Whether releases from the plant occur as a result of terrorist acts or equipment malfunctions, emergency plans provide an effective framework for decision making and response. Preliminary results from our vulnerability studies do not indicate an increased source term or quicker release from terrorist-initiated events than is al-

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greater standoff distances, enhanced coordination with law enforcement and military authorities, and more restrictive site access controls for all personnel. The order also directed licensees to evaluate and address potential vulnerabilities of spent fuel pools and the reactor plant itself, and to develop specific guidance and strategies, such as to respond to an event that damages large areas of the plant due to explosions or fire. Additionally, the order directed licensees to take specific actions as appropriate to ensure continued improvements to existing emergency response plans. Entergy [is] in full compliance with the order and enhanced security measures are in place at Indian Point.

FEMA Attachment B Section 2 (emphasis added).

Only a few days ago, the NRC issued a revised and enhanced designed basis threat against which nuclear power plant facilities must be protected. NRC Letter EA-03-086 to All Holders of Licenses for Operating Power Reactors, dated April 29, 2003. Because of the enhanced security requirements implemented after September 11, 2001 and the new design basis threat definition, Indian Point is in an even better position to respond to a terrorist attack against the facility than it was before September 11, 2001.

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ready addressed by the emergency planning basis required by NRC regulations.

Statement Submitted by the United States Nuclear Regulatory Commission to the House Subcommittee on National Security, Emergent Threats and International Relations for the Hearing on Emerging Threats: Assessing Public Safety and Security Measures at Nuclear Power Facilities, March 10, 2003, at 6.

In particular, there is no basis for Petitioner's assertion that an attack on an Indian Point spent fuel storage pool ("SFP") could produce "Chernobyl-like" results. The spent fuel pool "fire" scenario necessary to produce the postulated results has been raised in the past, litigated, and rejected as remote and speculative. See Carolina Power & Light Co. (Shearon Harris Nuclear Power Plant), LBP-01-09, 53 NRC 239 (2001), review denied sub nom. Orange County, North Carolina v. NRC, 47 Fed. Appx. 1, 2002 U.S. App. LEXIS 20121 (D.C. Cir. 2002), and cases cited therein.

The sole source cited in support of Petitioner's assertion regarding SFP vulnerability to terrorist attacks is a discussion in a New York Times article of a study by avowed anti-nuclear activists. Petition at 6 (citing "Study Warns Attack on Fuel Could Pose Serious Hazards," New York Times (Jan. 29, 2003)). Ultimately, this assertion turns on an October 2000 NRC Staff Technical Study of SFP accidents,¹² although that Technical Study only evaluated the risks from SFP operations at plants undergoing decommissioning to "identify the design and operational features necessary to ensure that

¹² U.S. NRC, "Technical Study of Spent Fuel Pool Accident Risk at Decommissioning Nuclear Power Plants" (Oct. 2000) ("Technical Study").

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the risks to the public from these shutdown facilities are sufficiently small.”¹³ However, in contrast to the limited SFP cooling systems available in a plant undergoing decommissioning, the Indian Point SFP support systems are fully operational and in compliance with NRC safety regulations. Thus, Petitioner’s spent fuel pool “disaster scenario” is based on a patently incorrect factual assumption.

In short, Petitioner’s claim that a terrorist attack on an Indian Point SFP would result in “Chernobyl-like” consequences is erroneous and unsupported by any facts or credible analysis. The threat to the Indian Point SFPs from a terrorist attack is insignificant, and the Petitioner’s allegations are without factual basis.

B. The Evacuation Travel Time Estimates in the REPP Meet Regulatory Requirements

Petitioner relies on the Witt Report to assert that the “REPP has several material weaknesses” in its evacuation travel time estimates. Petition at 7. Petitioner cites the Witt Report for the proposition that the plans are improperly “based on the premise that people will comply with official government directions” rather than their own “best interests.” *Id.* Finally, the Petition alleges that the REPP is inadequate because it is based on outdated estimates of travel time and does not take into account the congestion that now exists in the interstates and other highways in the vicinity of the Indian Point site. *Id.* at 7-8. Each of these assertions is incorrect, and each has already been expressly rejected by FEMA.

¹³ *Id.* at 1-1 (emphasis added).

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Contrary to Petitioner's allegations, the Indian Point REPP is comprehensive and fully compliant with federal regulations regarding evacuation planning. It takes fully into consideration potential impediments to evacuation. As noted below, the plan is based on an independent evacuation time study that provides estimates of the time required to evacuate commercial, resident and transient populations surrounding the Indian Point Units under favorable and unfavorable conditions. Indian Point Energy Center Emergency Plan ("IPEP") Part 2, Section J.8. The emergency plan contains six "time-based scenarios" that consider evacuation population changes due to the time of day, day of the week, and season. *See generally id.*, App. 5. These scenarios are prepared for both fair and adverse weather conditions, and vary the general population, transient population and special populations (e.g., schools, nursing homes, recreation areas). *Id.*, App. 5, 5-1. Further, the evacuation scenarios include contingencies that could cause significant variations in evacuation times during actual emergencies. These contingencies include the loss of particular routes due to construction, accidents, flooding or severe weather and special events (e.g., a West Point football game). *Id.* These considerations clearly meet, if not exceed, regulatory requirements and take into account any potential variations caused by other events including terrorist attacks as discussed above.

While the preparation of evacuation time estimates ("ETEs") is not required by a regulation, FEMA guidance recommends that ETEs be prepared by the licensee and used in the onsite and offsite emergency plans. NUREG-0654/FEMA-REP-1, Section II.J.8. However, as the Witt Report acknowledges, there "is no specific requirement for how often [ETEs] must be updated," Witt Report at 91, nor is there a maximum allowed ETE.

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See generally NUREG-0654/FEMA-REP-1, § II.J.10.1 and App. 4. The guidance states only that “the [ETEs] should be updated as local conditions change.” *Id.*, App. 4 at 4-1.¹⁴

Consistent with the NUREG guidance, Entergy has prepared updated ETES based on current population and traffic conditions and has provided it to the State of New York and the counties surrounding the Indian Point site for their comments.¹⁵ Entergy is submitting today final, updated ETES to FEMA, the State and the four counties surrounding the facility. Thus, Indian Point is current with respect to the preparation of ETES.¹⁶ The Petition’s concern is therefore groundless.

¹⁴ ETES are also discussed further in NUREG/CR-4831, “The State of the Art in Evacuation Time Estimate Studies for Nuclear Power Plants” (1992) (“NUREG/CR-4831”). The guidance in NUREG/CR-4831 is only that as “a general rule, a 10 percent increase in population indicates a need to check evacuation times.” NUREG/CR-4831 at 12 (emphasis added).

¹⁵ The updated ETES were prepared by KLD Associates, Inc. (“KLD”), one of the leaders in the development of computer simulation models for use in traffic, transit and transportation planning activities. KLD was responsible, among others, for many of the standard computer simulation models used in the industry, including most of the traffic simulation models sponsored by the US Federal Highway Administration. More information on KLD’s substantial qualifications and experience can be found online at <http://www.kldassociates.com>.

¹⁶ The same allegation with respect to the outdated nature of the Indian Point ETES was raised in the Brodsky Petition and rejected by FEMA as follows:

The petition correctly quotes several NUREG-0654 criteria and Appendix 1 from the original 1980 version of the document. What it fails to recognize is the revised Federal guidance as published in NUREG-0654 FEMA REP-1 Rev.1 Supp. 3, July 1996. The original position, as stated in Appendix 1, included the use of the ETES in the decision process and stated under the General Emergency discussion in Appendix 1, Section 4.c, sheltering should be recommended where evacuation cannot be completed before transport of activity to that location. This original position placed significant emphasis on the ETES as cited in NUREG-0654, Part II, Section J.10.m. Information and analysis not available in 1980 has led to the position expressed in Supplement 3. For core melts or potential core melt sequences, evacuation is the recommended protective action for the population near the plant if evacuation is possible (Supp. 3 at 3). There is no dependence on the ETE in this decision. Analysis has shown that for serious accidents the dose from ground contamination may become very significant. Having people shelter only increases the dose from ground contamination. Sheltering may be the preferred protective action if

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Moreover, ETEs apply only within the ten-mile plume exposure pathway EPZ. Since the plume exposure pathway EPZ for Indian Point is wholly within New York, evacuation time studies have no relevance to Petitioner's purported concern for Connecticut residents. No Connecticut residents would be evacuated in the event of a radiological emergency at Indian Point.

Petitioner also makes the speculative, unsupported prediction that the public will not comply with government directions during an actual emergency. *See* Petition at 7 (citing the draft Witt Report at vi). As with any emergency response plan, public cooperation is necessary for efficient and effective implementation of the Indian Point REPP. However, complete public conformance with protective action directions is not essential for effective Indian Point emergency response. (*See* discussion, *infra*, regarding evacuation contingency planning). The REPP actions and corresponding directions are

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evacuation is impossible or particularly hazardous, but for areas near the plant, the ETE is not determinative. If it is known that the release of radioactive material is to be of short duration, sheltering may also be the preferred protective action. Supp. 3 states that except for containment venting, short duration releases are not predictable. Early evacuation will avoid most of the release and accompanying dose for a long duration release. There is no dependence on the ETEs for any of these early decisions and while up to date ETEs are useful, their basis in the decision making process has diminished between the original publication of the NRC/FEMA guidance and the current time. The primary value of the ETE study currently is to assure that the most effective traffic management approach is included in the plans. The role of protective action decision-making is to reduce dose and based on the best available knowledge, the early evacuation, if possible, is the best means of reducing dose for those near the plant. This current Federal position was litigated as part of the Seabrook licensing hearings and was adopted by the NRC Commission in their ruling CLI-90-02. The Draft NY State report misses this current Federal position in its findings.

FEMA Attachment B, Section 6A.

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conservative in nature, and variations in individual response are accommodated by the plans and have no health and safety consequences. IETF Report at 13.

Actual evacuation experience disproves Petitioner's unsupported speculation. Actual evacuations have generally proceeded smoothly and safely. A 1989 report¹⁷ analyzed more than fifty large-scale emergencies caused by natural and industrial events. This report included review of evacuations of up to 300,000 people, all of which were conducted successfully even when managed by local officials without advance preparation or evacuation training. In particular, nuclear plant evacuation plans have been successfully implemented for non-nuclear emergencies occurring within the EPZs surrounding the Waterford and Susquehanna facilities. IETF Report at 9.

Expert research has established the following typical public behavior during emergency situations:

- Individuals actively seek relevant information on which to base their response;
- Individuals frequently take steps to ensure their own safety and the safety of others;
- Individuals frequently take steps to help others who are injured or cannot evacuate on their own; and
- Deviant behavior is usually not widespread.

Report for the Record, Committee on Transportation and Infrastructure, Subcommittee on Economic Development Public Buildings and Emergency Management, U.S. House of Representatives (March 27, 2003) at 10 (citing E. L. Quarantelli, *Lessons from Research:*

¹⁷ Roy F. Weston, Inc., NUMARC/NESP-004, "Identification and Analysis of Factors Affecting Emergency Evacuations" (1989).

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Findings on Mass Communications System Behavior in the Pre, Trans and Post Impact Periods of Disasters (1991)). Thus, even if certain individuals deviate in some respects from the evacuation directives, there would not be widespread failure to follow the directives. Any such individual deviations are accounted for in the conservatism inherent in the REPP. In any event, neither Petitioner nor the Witt Report provided any basis for supplanting a basic tenet of all emergency plans (*i.e.*, public cooperation), with the opposite assumption (*i.e.*, defiance of public safety directives from lawful government authorities).

C. The Indian Point REPP Addresses Shadow Evacuation

Petitioner asserts that the Indian Point REPP contains a “glaring omission” that “clearly violates” 44 C.F.R. § 350.5(a)(1), NUREG-0654/FEMA-REP-1, and subsequent guidance documents. Petition at 9. The “glaring omission” is purportedly that the REPP does not address “shadow evacuation.” *Id.* Petitioner provides no factual basis for this assertion, relying exclusively on statements made in the draft Witt Report.

The term “shadow evacuation” refers to the voluntary evacuation by those people who are not present in the area affected by the emergency and have not been advised to evacuate, but do so nonetheless. NUREG/CR-4831 at 4. Such unrequested evacuations can be caused by a misunderstanding of the warnings or status announcements regarding an emergency, or a perception that an imminent threat to health and safety exists, regardless of any official communications to the contrary.

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Contrary to Petitioner's claim, there is no regulatory requirement to include shadow evacuations in the Indian Point REPP. Shadow evacuation is not addressed in 44 C.F.R. § 350.5(a)(1), the regulation cited by Petitioner, which reads as follows:

Primary responsibilities for emergency response by the nuclear facility licensee, and by the State and local organizations within the Emergency Planning Zones have been assigned, the emergency responsibilities of the various supporting organizations have been specifically established and each principal response organization has staff to respond to and augment its initial response on a continuous basis.

44 C.F.R. § 350.5(a)(1). "Shadow evacuation" is neither explicitly referenced nor implicitly connected with any portion of the cited regulation. Aside from there being no regulatory basis for Petitioner's claim, the magnitude of shadow evacuation behavior in a radiological emergency is also questionable.¹⁸ Moreover, Petitioner does not explain how "shadow evacuation" would pose any health or safety threat to Connecticut residents.

¹⁸ Shadow evacuation was raised as an issue in the Brodsky Petition, and was dismissed by FEMA:

The question of the "shadow evacuation" impact has been litigated in both the Shoreham and Seabrook licensing hearings. There can be no question that "shadow evacuation" is a real possibility. There is, however, question as to the magnitude of this type of behavior. The petition cites one of the approaches to minimize the impact of such behavior, that is, establishment of traffic and access control around the impacted area. The County plans for the Indian Point Energy Center (IPEC) have provisions for this approach. The second approach involves including the "shadow" in the demand estimates when calculating the ETEs. This approach involves establishing the magnitude of the "shadow" and this is clearly not an exact science. "Shadow Evacuation" is, however, being considered in the preparation of the updated ETE for Indian Point. It should be noted that the ETE study is an NRC requirement on the utility; the offsite planners just include the values in their plans.

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In any event, both the previously existing and the updated ETEs prepared by Entergy for Indian Point take fully into account shadow evacuation. The Witt Report on which Petitioner relies finds that shadow evacuation is properly modeled in the updated ETEs prepared by KLD for Entergy. See Witt Report at 92-96. FEMA has also recognized that the updated ETEs for Indian Point account for the effects of shadow evacuation.¹⁹

D. The Indian Point REPP Addresses Family Separation

Petitioner asserts that REPP assumptions regarding evacuation are incorrect because “family members, particularly parents and school children,” will not “be willingly separated in the event of evacuation.” Petition at 9. Petitioner asserts that this action would be “contrary to everyday common sense.” *Id.* Thus, Petitioner concludes that the REPP does not contain “a logical, thorough and complete analysis” of population behavior sufficient to meet the legal requirement to “adequately protect the public health and safety.” *Id.* at 10. Petitioner also asserts that “separation of school children from

¹⁹ Just before the September 24, 2002 exercise, FEMA acknowledged the ongoing Entergy effort to update the ETEs as follows:

Throughout the development of these plans, the issue of spontaneous evacuation or shadow evacuation has been anticipated and will be handled by the establishment of traffic control points which will channel the egress from affected areas. Local law enforcement agencies routinely control traffic flow.

While not a specific objective of the exercise, the concept of shadow evacuation is a key component in the preparation of the new evacuation time estimates. The state, counties and the federal agencies will receive the new evacuation time estimates in December. This information will become the basis of future planning.

“Feds To Test Indian Point Emergency Responders,” FEMA News, September 20, 2002, available online at http://www.fema.gov/nwz02/nwz02_151.shtm. See also, FEMA Attachment B at Section 6B, *supra*.

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their parents in the event of a radiological release that requires evacuation” simply “will not happen.” *Id.* Instead, Petitioner predicts, “[w]hat will happen is that people will” act directly contrary to government direction. *Id.* Petitioner also argues that the REPP time estimates analysis also “fails to address the situation where parents may have children in multiple schools, which may have different designated reception centers for each child.” *Id.*

If the assumption that families will follow instructions with respect to the evacuation of school children is a defect of the Indian Point REPP (which it is not), it is a defect that exists in all emergency response plans for any natural disaster. In fact, FEMA has noted that “[m]any communities have plans that require the early evacuation of children before the general population.” FEMA Attachment B, Section B.5. At Indian Point, the public education and information program that is an integral part of the Indian Point REPP addresses this particular issue. The public information programs of the four counties in the vicinity of the Indian Point site also address the issue.²⁰ FEMA also encourages parents to discuss with the schools what their plans are for evacuation. FEMA Attachment B, Section 5.

Regarding the issue of families with several children having to go to multiple reception centers to pick up those children, Westchester County, the county most

²⁰ Thus, for example, information on school children evacuation is included in the Indian Point Emergency Planning booklets distributed by all counties to their residents. See, <http://www.westchestergov.com/indianpoint/emergencyplanningbooklet/WEstchester2to19.pdf>; http://www.co.rockland.ny.us/ctyreports/Emergency_Planning.pdf; <http://www.co.orange.ny.us/documentView.asp?docID=160>; <http://www.pcbes.org/Indian%20Point%20guide.htm>.

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concerned with this problem, has established district-wide reception centers so that there would be little if any sibling separation in the event of a school evacuation. This action has been completed and is in the current county emergency plan and was further brought to the public attention through the emergency planning booklet that was sent to all EPZ households in the county.

E. The REPP Addresses Public Information Dissemination

Petitioner asserts that the Indian Point REPP is deficient because it “bifurcates notice of evacuation.” Petition at 10. The Petitioner characterizes the fact that the REPP allows schools within the EPZ to “evacuate prior to the announcement of a general evacuation” as a “secret notice.” Petitioner reaches the inexplicable conclusion that, as “a matter of easily predictable fact,” such action “will lead to confusion, panic and chaos.” *Id.* at 10-11. Petitioner apparently bases this assertion on his conclusory determination that if “there is an emergency at Indian Point, individuals will immediately call spouses or friends to tell them to leave” and that this “word” will “spread virtually instantaneously.” *Id.* Apparently, Petitioner believes that allowing schools to begin evacuation prior to a general evacuation notice will cause such information to spread, and that attempts “to control evacuation information through secrecy will fail, and will undermine confidence on the overall evacuation plan.” *Id.*

Petitioner’s tortured argument does not withstand scrutiny and has already been rejected by FEMA.²¹ Assuming for the purposes of argument that information regarding

²¹ Responding to an identical argument in the Brodsky Petition, FEMA concluded as follows:

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the evacuation of a school travels through the community before a general evacuation notice takes place, Petitioner has not explained how dissemination of such information will be different from a general evacuation notice. Likewise, Petitioner fails to explain how such dissemination of information will cause confusion, panic and chaos, or undermine confidence in the overall evacuation plan. To the contrary, knowing that plans are in place to assure first and foremost the safe evacuation of school children should reassure the public, rather than undermine public confidence in the evacuation plans.²²

These gratuitous conclusions are not supported by any factual predicate. Not only are Petitioner's claims wholly speculative, the Petition does not even assert that any of these effects will result in an unsuccessful evacuation, merely that the so-called "secret

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It is true that one of the early actions that might be taken for the school population is a precautionary transfer of the students to an appropriate host facility. It should be noted that this is not an evacuation as generally understood and it does not imply that there is a need to evacuate or shelter the general population. The action is often taken to free up resources that are needed for a general public evacuation if one becomes necessary. The State and local officials have, for a considerable time, resisted the activation of the Alert and Notification system for precautionary actions.

FEMA Attachment B, Section 6E.

²²

Petitioner's "secret notice" argument is also inconsistent with its claim that evacuation will be impeded because families will seek to retrieve their children from school before evacuating (see Petition at 10). If families are aware that their children are already being evacuated, they will have no reason to attempt to retrieve them from schools.

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notice” “will undermine confidence in the overall evacuation plan.” Petition at 11. As such, this allegation fails to raise a significant concern.²³

F. The REPP Appropriately Addresses the Protection of Foodstuffs and Drinking Water in the 50 Mile Ingestion Exposure Pathway EPZ

Petitioner asserts that the “New York REPP expressly acknowledges that immediately following a radiological release, it cannot meet the requirement of ‘protecting the public from consumption of contaminated foodstuffs’ required by federal law.” Petition at 11. Petitioner also asserts that the Indian Point REPP “only summarily discusses food and water contamination,” “fails to identify the procedures for the nearby New York counties,” and “is short on specific details essential to a plan protecting the water supply of numerous Connecticut residents.” *Id.* at 12. Petitioner further asserts that the “current plans make no provisions at all regarding potential water and food contamination in Connecticut,” which is “an unacceptable situation.” *Id.*

These claims are not new and have already been rejected by FEMA. In Attachment B of its Report on the September 24, 2002 emergency preparedness exercise for Indian Point, FEMA evaluated and rejected a similar claim raised in the Brodsky Petition. FEMA noted that:

The current plans assign post plume protective action decisions to the State. In the State plan in Section III.2.6.2 and 2.6.3 options are presented to protect the milk produced within the impacted area. The most common option is to provide uncontaminated food and water to the cows (put cows on stored food and water). For the vast majority of commercial dairy op-

²³ Again, as with other evacuation issues, the implementation of the evacuation of the 10-mile EPZ is not a matter of concern to Petitioner. No Connecticut residents are covered by the Indian Point REPP evacuation plan.

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erations, the cows are on stored food and water as a standard operational protocol. For other agricultural products, one of the options is to embargo food pending evaluation thereby negating any concerns about delayed sample analysis. Procedure M contains sampling procedures for the ingestion pathway. Procedure H specifies assessment techniques for the ingestion pathway and has adopted Federal Guidance with respect to PAGs and their associated Derived Intervention Levels (DILs). The statement is made that the implementation of protective measures will be carried out by the Department of Agriculture and Markets in coordination with the Department of Health. Both of these agencies are represented in the State EOC. The following statement in the petition "There has been no such effort in the Indian Point REPP, which do not indicate which State agencies are to be contacted or how these contamination assessment process will work," is not supported by the simple language of the State plan.

FEMA Attachment B, Section 6F.

As discussed above, Petitioner's assertions highlight his basic misunderstanding of the responsibilities for protecting the public in the ingestion pathway EPZ. Under Federal regulations, the State of Connecticut, not New York or the Indian Point licensee, is responsible for taking "such actions as are appropriate to protect the [Connecticut] public from ingesting contaminated food and water." See 44 C.F.R. § 350.7(b). It is, therefore, not surprising in the least that the Indian Point REPP "is short on specific details" regarding actions in Connecticut because providing those specific details is Connecticut's responsibility.²⁴ To the extent that Petitioner finds any aspect of the Indian Point ingestion pathway EPZ emergency plans "unacceptable," he should raise his

²⁴ Even the Witt Report concedes that, with the possible exception of protection of New York reservoirs against contamination, the New York REPP addresses the "protection of food and water as required by applicable guidance in the EPA 400 and applicable Food and Drug Administration documents." Witt Report at 59.

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concerns with the cognizant State or local agencies in his own state.²⁵ No FEMA action against the Indian Point REPP would, or could, correct Petitioner's asserted concerns.

It should be noted that ingestion pathway protective actions are not required immediately after an accident, but can await the development by the affected state of suitable measures to address the levels of contamination associated with the accident. See FEMA Guidance Memorandum IN-1, The Ingestion Exposure Pathway (February 1988) at 2. For that reason, the State of Connecticut and the affected counties therein would have adequate time after the onset of an accident at Indian Point to implement the appropriate actions, in accordance with the Connecticut RERP or otherwise, to protect their citizens against ingestion pathway contamination.

G. The REPP Addresses the Requirement for Administering Radioprotective Drugs

Petitioner asserts that the "Westchester County REPP expressly defies the plain language of federal law" because it "only makes emergency workers eligible for potassium iodide [KI] as a thyroid blocking agent." Petition at 13. Petitioner further argues that the Rockland County REPP "similarly makes no provision for distribution to the general public." *Id.* Thus, Petitioner concludes that the Indian Point REPP "has failed to meet [the] clear legal requirement of 44 CFR § 350.5 and supporting guidance documents." *Id.* (emphasis in original). The Petitioner further asserts that "neither the regulations nor the plan provide at all for the possibility that KI will be needed in

²⁵ As discussed earlier, the Connecticut RERP and implementing procedures set forth provisions for protective actions to be taken against ingestion pathway exposure in that State.

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Connecticut, beyond the 10 mile EPZ.” *Id.* at 13-14. Petitioner further asserts that FEMA “admits that the State has failed to carry out this legal requirement” and “acknowledges that the Indian Point REPP does not now, nor has it been in compliance since Indian Point was required to have an emergency plan.” *Id.* at 14.

As an initial matter, contrary to Petitioner’s assertion, there is no regulatory requirement for distributing radioprotective drugs to the public in the ingestion pathway EPZ. Radioprotective drugs are not mentioned at all in 44 C.F.R. §350.5, cited by Petitioner. The FEMA planning standard for “Protective Response” provides, as an evaluation criterion, that each “state and local organization” have “plans to implement protective measures for the plume exposure pathway” that include provisions “for the use of radioprotective drugs, particularly for emergency workers and institutionalized persons within the plume exposure EPZ whose immediate evacuation may be infeasible or very difficult.” NUREG-0654/FEMA-REP-1, Rev. 1, Section II.J.10.e. (emphasis added)

Further plans should include “the method by which decisions” regarding “administering

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emergency workers.” IPEP, Part 2, Sections J. 10.e, f. Under current New York State policy, the counties affected by a radiological release are given the responsibility to provide KI to the general population.²⁶ FEMA and NRC have recently initiated discussions with the State of New York and the counties in the plume exposure EPZ to begin additional planning for the potential use of potassium iodine for people living around Indian Point. IPEP Part 2, Section J. 10.f.²⁷ Indeed, contrary to Petitioner’s assertions, Rockland County makes KI available to the public in a radiological emergency and gives notice of the availability of KI to the public on its website.²⁸ Westchester County, likewise, makes KI available to the general public.²⁹ So do Orange and Putnam Counties.³⁰

Thus, not only are current plans in full accord with regulatory guidance, but the relevant Federal, State and local authorities have undertaken the necessary steps to make radioprotective drugs available to emergency workers and the general population.

²⁶ State of New York Department of Health, Interoffice Memorandum dated April 24, 2002 from Allison C. Wakeman, P.E. to City and County Commissioners of Health, Public Health Directors and District Directors re Distribution of Potassium Iodide (KI), available online at <http://www.hcanys.org/bioterrorism/Iodine1.pdf>.

²⁷ It goes without saying that there is no legal basis for Petitioner to challenge the decisions of the local governments of the New York counties surrounding Indian Point with respect to the distribution of radioprotective drugs.

²⁸ See http://www.co.rockland.ny.us/ctyreports/Emergency_Planning.pdf and http://www.co.rockland.ny.us/Fire/potassium_iodide.htm.

²⁹ See http://www.westchestergov.com/indianpoint/KI_Info.htm and <http://www.westchestergov.com/currentnews/KIDistributionEnds.htm>.

³⁰ See <http://www.co.orange.ny.us/orgMain.asp?orgid=37&sID=&storyID=358> and <http://www.putnamcountyny.com/file/2002pr-1.pdf>.

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Petitioner's allegation of deficiencies in the current Indian Point plans regarding the potential use radioprotective drugs are therefore baseless and have no bearing on the health and safety of Connecticut residents.

IV. CONCLUSION

The Petitioner has not only failed to provide any legal basis for its Petition, but has also failed to provide any information tending to prove, as required by 44 C.F.R. § 350.13(a), that "the State or local plan is no longer adequate to protect public health and safety by providing reasonable assurance that appropriate protective measures can be taken, or is no longer capable of being implemented." Consequently, the Petition provides no legal or factual basis for FEMA's withdrawal of its approval of the Indian Point REPP.

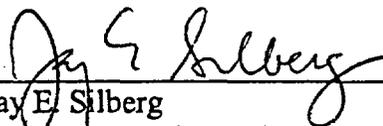
Moreover, FEMA has already considered the information underlying Petitioner's assertions and has rejected the bases of Petitioner's assertions in its recent responses to the Witt Report and the Brodsky Petition. In the February 21, 2003, Final Exercise Report and in a March 27, 2003, letter to Congressman LaTourette, FEMA discussed the Witt Report conclusions, accepting constructive comments and rejecting unsupported conclusions. The February 21, 2003 Final Exercise report also directly addresses all issues raised by the Brodsky petition. As the Petition is fundamentally based on the Witt Report and the Brodsky petition, Petitioner's assertions have already been considered and determined to require no additional FEMA response.

In short, Petitioner's legally defective filing has asserted no valid legal grounds for the withdrawal of FEMA's approval of the Indian Point REPP and has failed to

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provide any factual information that would warrant the drastic action requested. The
Petition, therefore, must be denied.

Respectfully submitted,



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