July 18, 2003

Mr. Eugene T. Kelty, Chairperson
Community Board No. 7 - Queens
45-35 Kissena Blvd.
Flushing, NY 11355

Dear Mr. Kelty:

I am responding on behalf of the U.S. Nuclear Regulatory Commission (NRC) to the letter from you and Mr. Robert LoPinto dated May 1, 2003, forwarding a resolution by the City of New York Community Board No. 7 regarding the Indian Point Nuclear Generating Unit Nos. 2 and 3 (Indian Point). In the resolution, the Board requested that the NRC: (1) convene an independent panel to review whether Indian Point should be temporarily closed based on vulnerabilities, security measures and evacuation plans, (2) mandate certain security measures, including a permanent no-fly zone, and (3) order the review and revision of the licensee's emergency response plan and the Westchester County radiological emergency response plan. In addition, you requested that the NRC take prompt action to permanently retire the facility if, after conducting these reviews, the NRC finds that it cannot sufficiently ensure the security of the IP facility against terrorist threats. Further, you requested that the NRC order the licensee to undertake the immediate conversion of the current spent fuel storage technology from a water-cooled system to a dry cask system.

On November 18, 2002, the NRC responded to a petition, pursuant to Section 2.206 of Title 10 of the *Code of Federal Regulations* (10 CFR), filed by Riverkeeper, Inc. requesting the same actions. A copy of the Decision by the NRC's Director of Nuclear Reactor Regulation is enclosed.

As discussed in more detail in the Decision, NRC regulations set high standards for effective security programs at nuclear power plants and other sensitive nuclear facilities (described in Part 73 of Title 10 of the *Code of Federal Regulations*). The NRC has required enhanced protection of licensed facilities against sabotage or attack since the agency's inception. Security has been an important part of the NRC's regulatory activities, with defense-in-depth as the guiding design and operating principle. NRC regulations ensure that nuclear power plants are among the most hardened and secure industrial facilities in our nation. The many layers of protection offered by robust plant design features, sophisticated surveillance equipment, physical security protective features, professional security forces, and access authorization requirements provide an effective deterrence against potential safety or security problems related to terrorist activities that could target equipment vital to nuclear safety.

Since the terrorist attacks of September 2001, the NRC has sought to ensure the continued protection of the nation's nuclear power plants, working in close coordination with the Federal Bureau of Investigation (FBI), the Department of Homeland Security (formerly the Office of Homeland Security), the Federal Aviation Administration, the Department of Defense, State and local authorities, and other intelligence and law enforcement agencies, as well as NRC licensees. NRC coordination with these agencies remains ongoing.

The NRC requirements for the defense of nuclear power plants are defined, in part, by the "design basis threat" (DBT). The DBT was prepared by safeguards experts on the basis of information from the Department of Energy and the intelligence community about terrorist-related information both abroad and in the United States. The DBT is a reasonable characterization of an adversary force against which nuclear power plant licensees must design their physical protection systems and response strategies.

Although there have been no credible threats against the nation's nuclear power plants, the NRC has taken a number of steps to improve the already high level of security at the nuclear power plants, including more training for security guards and requiring additional guards at the plants. Other NRC actions include issuing: (1) Orders formalizing certain security enhancements, security force fitness-for-duty and training improvements, and DBT revisions, (2) more than sixty advisories to licensees to describe threat conditions or recommend additional measures, and (3) an NRC Threat Advisory and Protective Measures System, consistent with the Homeland Security Advisory System, to rapidly respond to changes in the national threat environment. The revised DBT includes changes in the adversary characteristics that the NRC considered appropriate for inclusion in the current threat environment. These and other actions make nuclear power plants even better protected than what had been the best protected commercial facilities prior to the September 11, 2001, attacks.

The effectiveness of these security programs has been verified by the NRC, as well as other authorities, including the FBI and authorized State organizations. NRC continues to take other actions including a pilot program to result in the resumption of force-on-force exercises on a 3-year cycle which, upon completion of the pilot, are designed to test the adequacy of licensee security programs. A force-on-force exercise is planned at Indian Point in the near future. We also continue to inspect the facilities to confirm the enhanced security actions and activities taken by the licensees.

Although any security program is open to improvement, the NRC considers the Indian Point facility to be operated safely and the current security posture to be strong. On the basis of the actions taken to date, the NRC does not feel that the operation of the Indian Point facility should be suspended. The NRC continues to actively monitor safety and security at Indian Point and is prepared to take measures to ensure the continued safety of Indian Point and all of our nation's nuclear facilities.

Regarding the Indian Point offsite emergency response plans, the Federal Emergency Management Agency (FEMA) has not yet made a final determination on the adequacy of the plans. As you may know, Federal oversight of radiological emergency planning and preparedness associated with commercial nuclear facilities involves both FEMA and NRC. While NRC has overall responsibility, FEMA takes the lead in reviewing and assessing offsite planning and response and in assisting State and local governments. NRC reviews and assesses the licensee's onsite planning and response. We work closely with and support FEMA in its assessment of offsite emergency preparedness.

Federal evaluation of emergency preparedness is an ongoing process. Earlier this year, FEMA provided the final exercise report for the Indian Point biennial exercise conducted in September 2002 and updated its review of emergency response plans that were revised in 2002. In the report FEMA identified a number of areas requiring corrective action, but did not identify any issues that would preclude protection of public health and safety. FEMA identified information it needed from the State and counties in order to provide an up-to-date review of the emergency plans.

Federal law establishes the criteria for determining whether offsite plans and preparedness provide reasonable assurance that appropriate measures can and will be taken to adequately protect the public in the event of a radiological emergency. FEMA is currently reviewing State and county documents, as well as other information, to make this determination for Indian Point. If FEMA should find that the State or local plans are not adequate or cannot be implemented, we will review those findings in conjunction with our assessment of the emergency plans and make the final determination regarding reasonable assurance at the Indian Point Energy Center. We are closely monitoring the steps being taken by FEMA, the State, counties, and the plant operator, Entergy, to address the concerns at Indian Point.

Regarding the disposition of spent nuclear fuel currently on site, the NRC staff believes that spent fuel can be safely stored at Indian Point in the current system of spent fuel pools. These pools are robust structures constructed of very thick concrete walls with stainless steel liners. The spent fuel rods at Indian Point are stored at the bottom of the pools and are covered by more than 20 feet of water. As long as the fuel rods are covered by water, it is not possible for the rods to melt or burn. The risk of a breach that could drain a spent fuel pool below the level of the fuel rods is extremely low because the pools are partially below grade in all three of the pools. The risk of uncovering the fuel due to a loss of cooling that could cause the water in the pool to boil off is also very low because it would take a significant period of time for this to occur - at least 12 hours for fuel that was recently removed from the reactor, longer for fuel removed during previous outages. Several backup sources of water, some of which do not require power from off-site, could be used to keep the fuel rods covered during this time. NRC's ongoing comprehensive safeguards and security program review includes consideration of potential consequences of terrorist attacks using explosives or other methods of attack on spent fuel pools. Additional information regarding spent fuel pools can be found on the NRC website at http://www.nrc.gov/waste/spent-fuel-storage/pools.html.

Regarding the Board's resolution that the NRC explore the expeditious transition to a non-nuclear alternative for Indian Point, the NRC does not have jurisdiction over this matter. Conversion would be an economic decision made by the licensee with review by the New York State Public Service Commission.

I hope that this letter has been responsive to your concerns.

Sincerely,

/RA/

Cornelius F. Holden, Jr., Director
Project Directorate I
Division of Licensing Project Management
Office of Nuclear Reactor Regulation

Enclosure: Director's Decision

I hope that this letter has been responsive to your concerns.

Sincerely,

/RA/

Cornelius F. Holden, Jr., Director
Project Directorate I
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