



FOI/PA REQUEST

Case No.

2003-0398

Date Rec'd.

8-20-03

Action Off:

Brown

Related Case:

COUNTY OF BERGEN
OFFICE OF THE COUNTY COUNSEL

One Bergen County Plaza • Room 580 • Hackensack, NJ 07601-7076
(201) 336-6950 • FAX (201) 336-6966

Esther Suarez
County Counsel

Robert E. Laux
Deputy County Counsel

Assistant County Counsel

Janine S. Colletti
Cassandra A. McCloud
James X. Sattely, Jr.
Ian C. Doris
Kelly A. Durkin

August 13, 2003

Ms. Carol Ann Reed, FOIA/PA Officer
Nuclear Regulatory Commission
Washington, D.C. 20555

Re: Freedom of Information Request by the County of Bergen, New Jersey, in Connection with the Evaluation of the Off-site Emergency Preparedness Plan for the Indian Point Energy Center by the Nuclear Regulatory Commission

Dear Ms. Reed:

This is a request under the Federal Freedom of Information Act, 5 U.S.C. 522, made jointly with Westchester and Rockland Counties.

On behalf of the undersigned, the following information is hereby requested:

1. Any and all documents, studies, reports, data or information utilized, generated or maintained by the Nuclear Regulatory Commission ("NRC") relating to or which served as evidence in support of the determination, outlined in the July 25, 2003 NRC News Release, entitled "NRC Finds Indian Point Meets Reasonable Assurance Criteria for Emergency Preparedness ("NRC News Release"), of reasonable assurance that "appropriate protective measures to protect the health and safety of surrounding communities can be taken and are capable of being implemented in the event of a radiological "incident" at the Indian Point Energy Center ("Indian Point"); and
2. On February 21, 2003, the Federal Emergency Management Agency ("FEMA") issued a statement, as part of its Exercise Report: Indian Point 2 Nuclear Power Station ("Exercise Report"), that "FEMA, in the absence of fully corrected and updated plans for the counties and State, cannot provide 'reasonable assurance' that appropriate measures can be taken in the event of a radiological emergency. However, should the State of New York provide complete plans on or before May 2, 2003, with a schedule

Ms. Carol Ann Reed, FOIA/PA Officer

Nuclear Regulatory Commission

Re: Freedom of Information Request by the County of Bergen

August 13, 2003

Page 2

of corrective actions to address the exercise issues, then this decision will be re-evaluated. If the State is unable to do so, FEMA will proceed with notification to FEMA headquarters that assurance cannot be provided regarding the adequacy of the plans to protect the health and safety of the public." Thereafter, on July 25, 2003, in a letter from R. David Paulison, Director of the Preparedness Division of FEMA to Hon. George Pataki, Governor of the State of New York, FEMA stated that it had reasonable assurance that "appropriate protective measures to protect the health and safety of surrounding communities can be taken and are capable of being implemented in the event of a radiological incident" at Indian Point. Please provide any and all documents, studies, reports, data or other agency or interagency information which served as the basis for your agency's support of the reversal of FEMA's determination, as summarized above, as to the adequacy of emergency planning at Indian Point, including the specific documents and information on which FEMA relied in reversing such position and/or on which your agency relied in supporting FEMA's determination regarding same; and

3. Any and all documents, data, information, rules, regulations, or other agency materials which establish the specific criteria used by your agency in evaluating, whether individually or in conjunction with FEMA, the on-site and off-site emergency preparedness plans ("EPP") for Indian Point including, but not limited to:
 - a. the definition the term "terrorist attack", along with the specific parameters and scenarios, if any, utilized by your agency in evaluating the adequacy of the Indian Point EPP in the event of a terrorist attack at Indian Point and/or in reviewing the adequacy of FEMA's evaluation thereof; and
 - b. the definition of a "fast-breaking radiological emergency", or other term utilized by your agency in evaluating radiological emergencies which would involve a rapid release of radioactive materials (hereinafter defined as "fast breaking radiological emergency"), along with the specific parameters and scenarios, if any, utilized by your agency in evaluating the adequacy of the Indian Point EPP in the event of a fast-breaking radiological emergency

at Indian Point and/or in reviewing the adequacy of FEMA's evaluation thereof; and

4. Any and all documents, studies, reports, data or information on which your agency relied, whether individually or in conjunction with FEMA, in considering the adequacy of evacuation and/or sheltering methods as may be outlined in the EPP or otherwise in the event of: (a.) a terrorist attack at the Indian Point facility; or (b.) a fast-breaking radiological emergency at the Indian Point facility; including any supplements to the *Updated Evacuation Time Estimates* referenced in FEMA's Exercise Report, referenced above, and including the consideration of "shadow" or spontaneous evacuations by persons outside of any officially declared evacuation zone(s) and the impacts of such shadow evacuation on the ability to implement the EPP for Indian Point; and
5. Any and all documents, studies, reports, data or information which would establish whether, and to what extent, NRC and/or FEMA's evaluation of the Indian Point EPP considered emergency scenarios involving the release of nuclear materials from spent fuel pools at Indian Point in the event of: (a.) a terrorist attack at the Indian Point facility; or (b.) a fast-breaking radiological emergency at the Indian Point facility; and
6. Any and all documents, studies, reports, data or information which would establish whether, and to what extent, NRC and/or FEMA's evaluation of the Indian Point EPP considered the adequacy or inadequacy of existing security measures in, on or about the spent fuel pools at Indian Point in order to minimize the risk of the release of radioactive materials in the event of: (a.) a terrorist attack at the Indian Point facility; or (b.) a fast-breaking radiological emergency at the Indian Point facility involving the spent fuel pools; and
7. Any and all documents, studies, reports, data or information on which your agency relied, whether individually or in conjunction with FEMA, in considering the adequacy of methods to disseminate information to the public and to disseminate information among and between emergency responders during a response to an emergency at the Indian Point facility, as may be outlined in the EPP or otherwise in the event of: (a.) a terrorist

attack at the Indian Point facility; or (b.) a fast-breaking radiological emergency at the Indian Point facility, including any supplements to be *Joint News Center Procedures & Public Education Workplan* referenced in FEMA's Exercise Report, referenced above; and

8. Any and all documents, studies, reports, data or information on which your agency relied, whether individually or in conjunction with FEMA, in considering the adequacy of plans to protect drinking water supplies as may be outlined in the EPP or otherwise in the event of" (a.) a terrorist attack at the Indian Point facility; or (b.) a fast-breaking radiological emergency at the Indian Point facility, including a listing of the reservoirs and aqueducts which were considered in this evaluation and any and all documents and/or information which outline the specific plans for safeguarding such water supplies from contamination; and
9. Any and all documents, studies, reports, data or information on which your agency relied, whether individually or in conjunction with FEMA, in identifying and tracking the "plume exposure pathway" and the "ingestion exposure pathway" for the Indian Point facility, and in considering the adequacy of plans to protect the public safety and health within said exposure pathways, as may be outlined in the EPP or otherwise in the event of: (a.) a terrorist attack at the Indian Point facility; or (b.) a fast-breaking radiological emergency at the Indian Point facility, including the parameters of the "plume exposure pathway", and the "ingestion exposure pathway" for Indian Point, and the specific criteria and facts utilized by your agency and/or FEMA in defining same; and
10. Any and all documents, studies, reports, data or information on which your agency relied, whether individually or in conjunction with FEMA, in determining the adequacy of plans and procedures for schools, individual School districts, pre-school facilities, and day care centers as may be outlined in the EPP or otherwise in the event of: (a.) a terrorist attack at the Indian Point facility; or (b.) a fast-breaking radiological emergency at the Indian Point facility, including a list of all schools, individual school districts, pre-school facilities and day care centers considered in connection with such determination, as well as statistics regarding the population of children served by such facilities and specific information

regarding the transportation procedures to be utilized in the event that such facilities require evacuation; and

11. Any and all documents, studies, reports, data or information on which your agency relied, whether individually or in conjunction with FEMA, in determining the adequacy of plans and procedures for hospitals, nursing homes, and assisted care facilities as may be outlined in the EPP or otherwise in the event of: (a.) a terrorist attack at the Indian Point facility; or (b.) a fast-breaking radiological emergency at the Indian Point facility, including a list of all hospitals, nursing homes and assisted care facilities considered in connection with such determination, as well as statistics regarding the population of persons served by such facilities; and
12. Any and all documents, studies, reports, data or information on which your agency relied, whether individually or in conjunction with FEMA, in determining the adequacy or plans and procedures for persons confined to jails and/or prison facilities as may be outlined in the EPP or otherwise in the event of: (a.) a terrorist attack at the Indian Point facility; or (b.) a fast-breaking radiological emergency at the Indian Point facility, as well as statistics regarding the; population of persons served by such facilities and specific information regarding the transportation procedures to be utilized in the event such facilities require evacuation; and
13. Any and all documents, studies, reports, data or information on which your agency relied, whether individually or in conjunction with FEMA, in determining the adequacy of plans and procedures for managing transient populations, including but not limited to: persons at local hotels/motels, local employers, and local park and recreational facilities as may be outlined in the EPP or otherwise in the event of: (a.) a terrorist attack at the Indian Point facility; or (b.) a fast-breaking radiological emergency at the Indian Point facility, including all data regarding the population and possible locations of such transient populations considered in connection with such determination and specific information regarding the transportation procedures to be utilized in the event such populations require evacuation; and

14. Any and all documents, studies, reports, data or information on which your agency relied, whether individually or in conjunction with FEMA, in determining the adequacy of plans and procedures for homebound persons and self-supervised children as may be outlined in the EPP or otherwise in the event of: (a.) a terrorist attack at the Indian Point facility; or (b.) a fast-breaking radiological emergency at the Indian Point facility, including all data regarding the population and location of homebound persons and self-supervised children considered in connection with such determination, along with specific information regarding the transportation procedures to be utilized in the event such populations require evacuation; and
15. Any and all documents, studies, reports, data or information on which your agency relied, whether individually or in conjunction with FEMA, in determining the adequacy of plans and procedures for persons who are dependent upon public transportation as may be outlined in the EPP or otherwise in the event of: (a.) a terrorist attack at the Indian Point facility; or (b.) a fast-breaking radiological emergency at the Indian Point facility, including all data regarding the population and location of such transit-dependent populations and specific information regarding the transportation procedures to be utilized in the event such populations require evacuation, including the availability of buses or other public transportation methods; and
16. Any and all documents, studies, reports, data, agency or inter-agency materials or information on which your agency relied, whether individually or in conjunction with FEMA, in determining the adequacy of procedures for training of off-site emergency responders as may be outlined in the EPP or otherwise in the event of: (a.) a terrorist attack at the Indian Point facility; or (b.) a fast-breaking radiological emergency at the Indian Point facility involving a rapid radioactive release, including a list of the emergency response units considered in connection with such determination; and
17. Any and all documents, studies, reports, data, agency or inter-agency materials, or other information which would evidence whether, and to what extent, your agency, in conjunction with other federal agencies including but not limited to FEMA, has considered the imposition of a "No Fly" zone over Indian Point,

Ms. Carol Ann Reed, FOIA/PA Officer
Nuclear Regulatory Commission
Re: Freedom of Information Request by the County of Bergen
August 13, 2003
Page 7

particularly in light of the fact that the Federal Aviation Administration has issued limited flight restrictions over nuclear power plants by invoking the provisions of 14 C.F.R. 99.7, relating to matters "in the interest of national security", including, but not limited to, the criteria upon which considerations were based; and

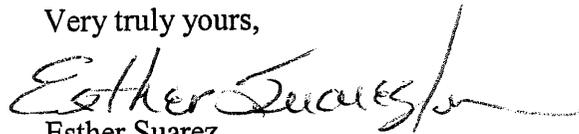
18. Any and all documents, studies, reports, data or information which would Establish whether, and to what extent, NRC and/or FEMA's evaluation of the Indian Point EPP considered the potential long-term public health and safety risks which would be created by the release of radioactive materials in the event of: (a.) a terrorist attack at the Indian Point facility; or (b.) a fast-breaking radiological emergency at the Indian Point facility, including the threat to public water supplies and agriculture, as well the threat to economic viability of the region and the individuals therein, particularly in light of the Price Anderson Act, 42 U.S.C. § 2210, and/or other federal regulations which limit the liability of nuclear power licensees and insurance companies in the event of a radiological emergency.

If it is determined that all or a portion of the documents requested herein are exempt from release, it is hereby requested that your agency release all documents that are not exempt, and identify those specific records that cannot be released, along with the reasons why they cannot be released.

The County of Bergen recognizes that, in the event it disagrees with your agency's decision regarding the release of the requested documents, it has the right to formally appeal same.

Finally, because the County of Bergen would be affected by the emergency evacuation plan for Indian Point, and because the referenced information is requested in order to enhance the activities of the Bergen County government, which will be obliged to implement the EPP which is the subject of this request in the event of a radiological incident at Indian Point, I believe that the County of Bergen is entitled to a waiver of fees in connection with same.

Very truly yours,



Esther Suarez
County Counsel

ES:sm

Ms. Carol Ann Reed, FOIA/PA Officer
Nuclear Regulatory Commission
Re: Freedom of Information Request by the County of Bergen
August 13, 2003
Page 8

c: Dennis McNerney, County Executive
John O. Susino, Chief of Staff
Timothy J. Dacey, County Administrator
Vito M. Pizzi, FEMA Region II
Hon. Hillary Rodham Clinton, U.S. Senate
Hon. Eliot L. Engel, U.S. House of Representatives
Hon. Sue Kelly, U.S. House of Representatives
Hon. Nita M. Lowey, U.S. House of Representatives
Hon. George E. Pataki, N.Y.S. Governor
Hon. Charles E. Schumer, U.S. Senate
Hon. Eliot Spitzer, N.Y.S. Attorney General
Hon. Peter C. Harvey, N.J. Attorney General
Hon. Scott Garrett, U.S. House of Representatives
Hon. Steven Rothman, U.S. House of Representatives
Hon. Frank R. Lautenberg, U.S. Senate
Hon. Jon S. Corzine, U.S. Senate
Hon. James E. McGreevey, N.J. Governor