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Fred Dacimo
Vice President, Operations

August 28, 2003

Re: Indian Point, Units Nos. 1, 2, 3
Docket No. 50-3, 50-247, 50-286
NL-03-139

Document Control Desk
U.S. Nuclear Regulatory Commission
Mail Stop O-P1-17
Washington, DC 20555-0001

Subject: Document Submission

Dear Sir:

Entergy Nuclear Operations, Inc. (Entergy) hereby submits four papers and a CD-ROM containing information on various topics related to Indian Point Energy Center's emergency preparedness. These documents were requested by Mr. Brian E. Holian, Deputy Director, Division of Reactor Projects, Region I.

The CD-ROM was prepared in accordance with the guidance provided in NRC Regulatory Issues Summary 2001-05, "Guidance on Submitting Documents to the NRC by Electronic Information Exchange or on CD-ROM."

There are no commitments contained in this correspondence.

Should you or your staff have any questions regarding this matter, please contact Mr. John McCann, Manager, Licensing, Indian Point Energy Center at (914) 734-5074.

Sincerely,

John McCann
Manager, Licensing
Indian Point Energy Center

AK45

Attachment

Enclosure

c (w/out CD-ROM):

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ATTACHMENT 1

**Four Papers Containing Information on Various Topics Related to Indian Point Energy Center's
Emergency Preparedness**

Entergy Nuclear Operations, Inc.

Indian Point

Docket Nos. 50-3, 50-247, 50-286

Westchester County Must Produce its Letters of Agreement With Emergency Responders Under the New York Freedom of Information Law

INTRODUCTION

On May 1, 2003, Entergy filed a Freedom of Information Law ("FOIL") request with Westchester County ("Westchester" or the "County") for the County letters of agreement ("LOAs") on file with the Office of Emergency Management ("OEM"). Entergy also requested copies of all LOAs provided by Westchester to James Lee Witt Associates ("Witt") and Innovative Emergency Management ("IEM"), two private third-parties that acted on behalf of the State of New York (the "State"). Entergy asked Westchester to produce the requested documents to both Entergy and the Federal Emergency Management Agency ("FEMA") or, in the alternative, to FEMA alone if Westchester objected to providing the documents to Entergy.

By letter dated May 7, 2003, Westchester acknowledged receipt of Entergy's FOIL request and summarily denied as "improper" Entergy's request that responsive documents be sent directly to FEMA. This summary denial violates Westchester's legal duty to explain the basis for denying a FOIL request in whole or in part. In any event, there is no justification for Westchester's conclusion.

The County's May 7 letter also deferred until June 13, 2003, a decision on whether Westchester will provide the LOAs to Entergy.¹ This deferral is unwarranted, and the requested LOAs should be produced immediately, because FOIL requires the production of public records. Entergy's request does not fall within any FOIL exemption – including the public safety exemption, which allows government agencies to deny public access to records that "if disclosed would endanger the life or safety of any person[.]" N.Y. Pub. Off. Law § 87(2)(f). The County cannot properly invoke this FOIL exemption because there is no factual basis to any claim that the requested production of the County LOAs would endanger the life or safety of any person. To the contrary: (1) the disclosure of the LOAs to Entergy and FEMA would be consistent with the company's responsibility to coordinate emergency planning activities with the County, the State and others; and (2) the disclosure of the LOAs to FEMA alone would be consistent with FEMA regulatory guidance and practice. Moreover, Westchester waived any right to invoke a FOIL exemption by intentionally disclosing the LOAs to private third-parties, *i.e.*, Witt and IEM, and by stating on its website that the "complete emergency preparedness plan," which includes the County LOAs, is publicly available.

¹ Entergy will deem its FOIL request denied, and file an immediate appeal, if the company is not granted access to the requested documents by May 21, 2003, *i.e.*, ten business days from May 7. See Westchester County Administrative Code § 437.61(4) ("If access to records is neither granted nor denied within ten business days after the date of acknowledgement of receipt of a request, the request may be construed as a denial of access that may be appealed.").

DISCUSSION

I. Westchester Carries the Heavy Burden of Demonstrating a Legal Basis to Deny Entergy's Request for Public Access to County Records.

New York law presumes that agency records are open to the public.² The general policy underlying this presumption is highlighted in the FOIL itself:

The legislature hereby finds that a free society is maintained when government is responsive and responsible to the public, and when the public is aware of governmental actions. The more open a government is with its citizenry, the greater the understanding and participation of the public in government.

As state and local government services increase and public problems become more sophisticated and complex and therefore harder to solve, and with the resultant increase in revenues and expenditures, it is incumbent upon the state and its localities to extend public accountability wherever and whenever feasible.

*The people's right to know the process of governmental decision-making and to review the documents and statistics leading to determinations is basic to our society. Access to such information should not be thwarted by shrouding it with the cloak of secrecy or confidentiality.*³

Westchester thus carries the burden of showing that it has a legal basis to deny Entergy's FOIL request. No such legal basis exists because none of the FOIL exemptions applies to Entergy's request.⁴

II. Westchester Violated FOIL When it Summarily Denied as "Improper" Entergy's Request that the LOAs be Forwarded to FEMA.

As indicated above, on May 7, 2003, Westchester summarily denied as "improper" Entergy's request that responsive documents be sent directly to FEMA. Westchester provided no legal basis to

² See Encore College Bookstores, Inc. v. Auxiliary Serv. Corp., 87 N.Y.2d 410, 417 (1995) ("FOIL ... mandates that '[e]ach agency shall ... make available for public inspection and copying *all records*,' unless the records fall within a statutory exemption[.] ... The Legislature also added a definition of 'records' that implements the policy favoring disclosure and makes 'the vast majority of requested documents presumptively discoverable[.]'") (citation omitted); Gannett Co. v. Rochester City School Dist., 684 N.Y.S.2d 757, 759 (N.Y. Sup. Ct. 1998) ("Blanket exemptions for particular types of documents are inimical to the clear articulated policy of the FOIL statute seeking to foster open government[,]" and thus "all records of a public agency are presumptively deemed to be open to public inspection without regard to need or purpose of the applicant"); Johnson v. N.Y. City Police Dept., 649 N.Y.S.2d 14, 18 (1st Dept. 1999) (holding that "agency records are presumptively open to the public" and "exemptions from disclosure are to be narrowly construed, with the burden resting on the agency to justify the applicability of the exemption upon which it relies").

³ N.Y. Pub. Off. Law § 84 (emphasis added); see also Westchester County Administrative Code § 437.21(1) (same).

⁴ To the extent the LOAs contain provisions involving the actual or potential payment of money from the County to an emergency responder for services, those agreements are available under FOIL as a matter of public policy. See N.Y. Pub. Off. Law § 84; Encore College Bookstores, Inc., 87 N.Y.2d at 416 ("The purpose of FOIL ... is to shed light on government decision making, which in turn both permits the electorate to make informed choices regarding governmental activities[.]").

justify its position and thus, as a preliminary matter, has failed to rebut the presumption that FEMA is entitled to receive the requested County records.⁵

In any event, Westchester's position lacks merit. As a general matter, "[u]nder FOIL, any person may request *and receive* documents kept by a government agency unless they are statutorily exempted from disclosure[.]"⁶ No FOIL exemption precludes one party from requesting that a publicly-available document under FOIL be sent directly to a third-party. And the mere fact that Westchester seeks to withhold the requested documents from FEMA without an articulated basis is an insufficient ground to deny Entergy's request in whole or in part. There is thus no legal basis for Westchester's refusal to provide the LOAs directly to FEMA.

III. Westchester Would Violate FOIL if the County Refused to Release the Documents Requested by Entergy.

Only one of the FOIL exemptions, the public safety exemption, is arguably relevant to the present situation. To invoke the public safety exemption, Westchester would need to conclude that granting Entergy's request for the LOAs would endanger the life and safety of individuals by revealing to the public the participating organizations' emergency response obligations. There are at least three independent reasons why the County could not reach that conclusion.

First, Westchester's production of the LOAs to Entergy and FEMA would be consistent with the parties' coordinated efforts to protect the public in the unlikely event of an emergency at the Indian Point facility. Entergy and FEMA are active participants in the County's emergency planning activities and already have access to Westchester's radiological emergency plan ("REP") and other emergency response materials. Disclosing the LOAs to Entergy and FEMA, therefore, would not endanger the life or safety of any person. To the contrary, such disclosure would further efforts by Entergy and FEMA to make Indian Point as safe as possible.

Second, Entergy requested that the LOAs be sent to FEMA alone if the County objected to providing this information to the company. The public would not be endangered by such a limited production because the LOAs would be released only to a federal agency. Moreover, FEMA regulatory guidance materials contemplate the review by FEMA of these precise documents,⁷ and FEMA has reviewed the County LOAs in prior years.

Finally, even if Westchester could invoke a FOIL exemption, the County waived its right to deny public access to the requested materials by previously disclosing them to the public.⁸ In a letter dated

⁵ See Westchester County Administrative Code § 437.31(2)(c)(ii) (requiring the County to "explain, in writing," its decision to "[d]eny access to the [requested] records in whole or in part"); see also Johnson, 694 N.Y.S.2d at 18 (holding that "it is necessary that the agency set forth a 'particularized and specific justification for denying access'") (citations omitted).

⁶ DJL Restaurant Corp. v. Dep't of Bldgs., 710 N.Y.S.2d 564, 566 (N.Y. App. Div. 2000) (emphasis added).

⁷ See "Guidance Memorandum 5, Rev. 1: Technological Hazards: Agreements Among Governmental Agencies and Private Parties," October 19, 1983 (LOAs "must ... be available for inspection" by FEMA).

⁸ N.Y. State Comm. Open Govt. AO 10650 ("[I]f indeed the documents were disclosed at the meeting to members of the public, persons with no relationship to the Corporation different from yours, I believe that they must be disclosed, for the prior public disclosure would constitute a waiver of the ability to deny access to other members

February 7, 2003, to Witt from Westchester, the County indicated that it disclosed the documents requested by Entergy to Witt and IEM with no indicated assurance of confidentiality: "Westchester County OEM provided hard copies of all [letters of] agreements to your subcontractor, Innovative Emergency Management, (IEM) in September 2002. Westchester County has over 80 letters of agreement currently. We again offer these resources to your staff."⁹ Even were Witt and IEM acting as agents of the State, that would not justify withholding the LOAs from FEMA – which, like the State, is a government entity.

Westchester also waived any right to deny public access to the LOAs by making emergency planning materials, such as the County's "complete emergency preparedness plan," available to the public.¹⁰ Given that the LOAs – which are part of Westchester's *complete* emergency preparedness plan¹¹ – are publicly available according to the County's own website, it is now too late for Westchester to assert that these same materials are exempt from disclosure under FOIL.

of the public."); N.Y. State Comm. Open Govt. 10892 ("[I]f the records in question had been purposely disclosed, I would agree that the authority for denying access would have been waived.").

⁹ See ltr. dated Feb. 7, 2003 from A. Sutton to James Lee Witt Associates at 2.

¹⁰ See Emergency Planning for Indian Point: A Guide for You and Your Family (Westchester County) (Q. "Can I see my county's complete emergency preparedness plan?" A. "Yes. To find out how, call your county at the number listed on page two of this booklet.") (available at <http://www.westchestergov.com/indianpoint/planning/foremerg.htm>).

¹¹ See N.Y. Exec. Law § 23(2) (purpose of County emergency preparedness plan is, among other things, "to minimize the effect of disasters by (i) identifying appropriate local measures to prevent disasters" and "(ii) developing mechanisms to coordinate the use of local resources and manpower for service during and after disasters"); id. § 23(5) ("In preparing such plans, cooperation, advice and assistance shall be sought from local government officials, regional and local planning agencies, police agencies, fire departments and fire companies, local civil defense agencies, commercial and volunteer ambulance services, health and social services officials, community action agencies, organizations for the elderly and the handicapped, other interested groups and the general public."); id. § 25(7)(b)(2) (plan must include "the location, procurement, construction, processing, transportation, storing, maintenance, renovation, distribution or use of materials, facilities and services which may be required in time of disaster").

The Issues Raised by FEMA Regarding the Joint News Center Have Been Satisfactorily Addressed

EXECUTIVE SUMMARY

In its February 21, 2003 Exercise Report, Indian Point 2 Nuclear Power Station, dated February 21, 2003 ("FEMA Report"), the Federal Emergency Management Agency ("FEMA") identified the Joint News Center Procedures and Public Education Workplan ("JNCP") is inadequate and interferes with performance of the Joint News Center ("JNC"). In addition, the FEMA Report noted a number of specific areas of JNC performance requiring corrective action.

Since the exercise, the State of New York, Entergy and the four counties surrounding Indian Point – Orange, Putnam, Rockland and Westchester – have aggressively addressed all issues raised in the FEMA Report regarding the JNC. The State has issued a revised JNCP that corrects the matters raised by FEMA. The revised JNCP was successfully used in a January 2003 Tabletop Exercise, observed by FEMA, that demonstrated that the revised procedures address FEMA concerns. In addition, equipment concerns have been resolved by replacing or repairing improperly working hardware, and demonstrating its correct functioning during the January 2003 exercise. Through these actions, the open areas raised by FEMA regarding the JNCP have been properly addressed.

BACKGROUND

On September 24, 2002, the Federal Emergency Management Agency ("FEMA") evaluated an exercise in the plume exposure pathway around the Indian Point 2 Nuclear Power Station. The purpose of the exercise was to assess the level of preparedness by the State of New York ("State") and the governments and agencies of the four "risk jurisdictions" in responding to a radiological emergency in the 10-mile Emergency Planning Zone ("EPZ") around the Indian Point Energy Center ("Indian Point").¹ FEMA, Exercise Report, Indian Point 2 Nuclear Power Station, dated February 21, 2003 ("FEMA Report"), Executive Summary at 1. The review was conducted pursuant to the provisions of 44 C.F.R. § 350.9.

FEMA's review of the results of the exercise showed that "[t]he State and local organizations, except where noted in this report, satisfactorily demonstrated knowledge of their emergency response plans and procedures and adequately implemented them." *Id.* No "Deficiencies"² were identified during the exercise, although thirteen specific "Areas Requiring Corrective Action" ("ARCAs") were noted.³ *Id.*

¹ The four "risk jurisdictions" located wholly or in part within the 10-mile EPZ around Indian Point are the Orange, Putnam, Rockland and Westchester Counties.

² A Deficiency is defined as "...an observed or identified inadequacy of organizational performance in an exercise that could cause a finding that offsite emergency preparedness is not adequate to provide reasonable assurance that appropriate protective measures can be taken in the event of a radiological emergency to protect the health and safety of the public living in the vicinity of a nuclear power plant." FEMA Report at 29.

³ An ARCA is defined as "...an observed or identified inadequacy of organizational performance in an exercise that is not considered, by itself, to adversely impact public health and safety." *Id.* at 30.

In addition, the Executive Summary of the FEMA Report identified as the most significant "planning issues" the following four items:

1. Neither the State nor the counties have submitted their *Letters of Agreement* for FEMA review in order to determine the availability of resources needed by the counties in event of an incident at the plant.
2. *The Joint News Center Procedures and Public Education Workplan*, which is the basic procedure for dissemination of information to the public during a response to an emergency at the plant, is inadequate and continues to interfere with performance, as noted during both the 2000 and 2002 exercises.
3. The plans do not yet have the information from the *Updated Evacuation Time Estimates* (ETE) that have been prepared to reflect new demographics as well as shadow evacuation. Without the updated ETEs, the plans do not reflect the latest information on the time(s) it would take to evacuate the population of an emergency response planning area under various conditions (i.e., time of day, day of week, time of year, weather conditions, etc).
4. While the procedures for schools in the plans are adequate, the individual school district, preschool and day care center plans also need to be submitted to FEMA for review.

FEMA Report, Executive Summary at 2. This paper addresses the second of these four outstanding planning issues.

STATEMENT OF THE ISSUE

The JNC is the facility from which public information is coordinated and released. The Joint News Center Procedures and Public Education Workplan is a document that defines the actions needed to accomplish coordinated public information functions at the JNC in an emergency involving the Indian Point nuclear power plants. They complement the radiological emergency response plans of New York State, the four counties (Westchester, Rockland, Orange and Putnam) and the operating utility. The most recent JNCP (prepared by the State of New York) was in effect as of September 13, 2002, and was utilized during the September 2002 exercise at Indian Point Unit 2. An updated version of the JNCP, the 2003 Joint News Center Procedures and Public Education Workplan, ("the 2003 JNCP") was prepared to address concerns raised during the September 2002 exercise and is currently being reviewed by FEMA to determine if any additional changes are needed.

The executive summary of FEMA's report on the September 2002 exercise states that the Joint News Procedures and Public Education Workplan is "inadequate and continues to interfere with performance, as noted during both the 2000 and 2002 exercises." However, no deficiencies were written about the JNCP in either the 2000 or 2002 FEMA exercise reports. While there are ARCAs relevant to the JNC in both exercise reports, none of the ARCAs specifically refers to the procedures or workplan. During the 2000 exercise, three ARCAs relating to the Joint News Center were noted – failure to include the rumor control telephone number on printed information (Issue No. 75-00-11-A-03), failure to confirm receipt of faxed bulletins as provided by the JNC procedures (Issue No. 75-00-11-A-04), and conducting media briefings about events before they had occurred (Issue. No. 75-00-12-A-05). These ARCAs appear to refer to deficiencies in implementation of the JNCP rather than inadequacies with the JNCP itself. Likewise, during the 2002 exercise, issues were raised related to the coordination of information with the

county and state offices before a warning is issued to the public. The FEMA exercise report noted seven new ARCAs regarding the Joint News Center:

- Videoconference link in the Media Briefing Room and between Orange County and the Joint News Center was non-operational. Issue No. 32-02-1.d.1-A-03.
- Audio multi-box in the Main Briefing Room was non-functional during the exercise. Issue No. 32-02-1.e.1-A-04.
- Emergency Alert System (EAS) messages and Follow-On-News Bulletins (FONB) did not provide timely or accurate information to the public. Issue No. 32-02-5.a.1-A-05.
- Major delays between actual time events occurred and when information was given to members of the media. Issue No. 32-02-5.b.1-A-06.
- Emergency response protective area numbers were not described adequately in announcing protective action decisions. Issue No. 32-02-5.b.1.-A-07.
- Discrepancies between EAS and FONB messages. Issue No. 32-02-5.b.1-A-08.
- Protective action decisions were not adequately explained by the personnel at the Joint News Center in EAS and FONB messages. Issue No. 32-02-5.b.1-A-09.

In addition to the above-mentioned ARCAs, three ARCAs from the previous 2000 exercise remained unresolved. None of these issues, however, specifically relate to the JNCP.

ENTERGY'S POSITION

The State and the counties, with Entergy's assistance, have developed an updated JNCP that establishes procedures for the dissemination of information to the public in the event of a radiological emergency at Indian Point. The JNCP implements the guidance in Planning Standard E of NUREG-0654 and addresses the issues raised in the FEMA Report. That it does so successfully has been demonstrated, *inter alia*, in the January 2003 tabletop exercise.

RATIONALE FOR ENTERGY'S POSITION

Specific Issues

Between the time the September 2002 exercise was completed and the issuance of the February 2003 FEMA Report, the State and the counties took significant actions to address the deficiencies noted during the exercise. On January 29, 2003, a team of representatives from FEMA observed an Indian Point Tabletop Drill/Working Meeting that was conducted at the Indian Point Energy Center Joint News Center. FEMA's report on that tabletop exercise recognizes that the State and the counties "have undertaken a major effort to rapidly address the issues" identified during the September 24, 2002 evaluation. "Observation Report for JNC Tabletop Exercise," Memorandum for NYSEMO, Michael S. Beeman, Chief, External Affairs, FEMA, dated February 5, 2003 ("JNC Exercise Report"). The tabletop exercise also took note of several procedural changes to address the ARCAs, which are being incorporated into the 2003 JNCP by the State of New York.

Additionally, a working videoconference link between Orange County and the Joint News Center was demonstrated during the tabletop exercise, addressing ARCA Issue No. 32-02-1.d.1-A-03. JNC Exercise Report at 2. A working multi-audio box was also demonstrated during the tabletop exercise, addressing Issue No. 32-02-1.e.1-A-04.

The current status of the ten 2000 and 2002 ARCAs relating to the JNC is as follows:

- Issue No. 75-00-11-A-03 (2000 Exercise Report)-- failure to include the rumor control telephone number on printed information – Status: Addressed in the 2003 JNCP and discussed during the January 2003 tabletop exercise. See, e.g., 2003 JNCP, App. 12 at 44, see also 2003 JNCP, App. 1 and 5; see generally JNC Exercise Report at 1.
- Issue No. 75-00-11-A-04 (2000 Exercise Report) -- failure to confirm receipt of faxed bulletins as provided by the JNCP – Status: Addressed in the revised 2003 JNCP and during the January 2003 tabletop exercise. 2003 JNCP at 8.
- Issue No. 75-00-11-A-05 (2000 Exercise Report) -- conducting media briefings about events before they had occurred – Status: Addressed in the revised 2003 JNCP and during the January 2003 tabletop exercise. See, e.g., 2003 JNCP at App. 10 and 12.
- Issue No. 32-02-1.d.1-A-03 -- Videoconference link in the Media Briefing Room and between Orange County and the Joint News Center was non-operational. – Status: Demonstrated during the January 2003 tabletop exercise.
- Issue No. 32-02-1.e.1-A-04 --Audio multi-box in the Main Briefing Room was non-functional during the exercise. Status: Demonstrated during the January 2003 tabletop exercise.
- Issue No. 32-02-5.a.1-A-05 -- Emergency Alert System (EAS) messages and Follow-On-News Bulletins (FONB) did not provide timely or accurate information to the public. Status: Addressed in the revised 2003 JNCP and the January 2003 tabletop exercise. See, e.g., 2003 JNCP at 7-8, 12, and App. 2.
- Issue No. 32-02-5.b.1-A-06 -- Major delays between actual time events occurred and when information was given to members of the media. Status: Addressed in the revised 2003 JNCP and during the January 2003 tabletop exercise. See, e.g., 2003 JNCP at 3, 5-6.
- Issue No. 32-02-5.b.1-A-07 -- Emergency response protective area numbers were not described adequately in announcing protective action decisions. Status: Addressed in the revised 2003 JNCP and the January 2003 tabletop exercise. See, e.g., 2003 JNCP, App. 11.
- Issue No. 32-02-5.b.1-A-08 -- Discrepancies between EAS and FONB messages: Addressed in the revised 2003 JNCP and the January 2003 tabletop exercise. See, e.g., 2003 JNCP at 7-8, 12, and App. 2.

- Issue No. 32-02-5.b.1-A-09 -- Protective action decisions were not adequately explained by the personnel at the Joint News Center in EAS and FONB messages. Status: Generally addressed in the revised 2003 JNCP and during the tabletop exercise.⁴

Generic Issues

The preparation of a Joint News Center Procedures and Public Education Workplan is not specifically required by a regulation, nor is it directly addressed by 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 Plants (1980) ("NUREG-0654") or other FEMA guidance. NUREG-0654's Planning Standard E, "Notification Methods and Procedures," provides that the following need to be established: 1) procedures "for notification, by the licensee of State and local response organizations and for notification of emergency personnel by all response organizations"; 2) "the content of initial and follow-up messages to response organizations and the public"; and 3) "means to provide early notification and clear instruction to the populace within the plume exposure pathway Emergency Planning Zone." NUREG-0654's Planning Standard E, "Notification Methods and Procedures," ("Planning Standard E") at 43. The JNC activities, as described in the 2002 Exercise Report, address primarily three evaluation criteria under Planning Standard E: "Notification Methods and Procedures": Evaluation Criterion E.5, E.6, and Evaluation Criterion E.7.

Evaluation Criterion E.5 provides that:

The offsite response organization shall establish a system for disseminating to the public appropriate information contained in initial and follow-up messages received from the licensee including the appropriate notification to appropriate broadcast media, e.g., the Emergency Broadcast System (EBS).

Planning Standard E at 11. Evaluation Criterion E.6 further provides that "the offsite response organization shall establish administrative and physical means, and the time required for notifying and providing prompt instructions to the public within the plume exposure pathway Emergency Planning Zone." Id.

Evaluation Criterion E.7 provides, in part:

The offsite response organization shall provide written messages intended for the public, consistent with the licensee's classification scheme. In particular, draft messages to the public giving instructions with regard to specific protective actions to be taken by occupants of affected areas shall be prepared and included as part of the offsite plans.

Id. The procedures to be used to satisfy Evaluation Criteria E.5 and E.7 are not specified by FEMA guidance. NUREG-0654, Appendix 3, "Means for Providing Prompt Alerting and Notification of Response Organizations and the Population," provides guidance regarding acceptance criteria for plans by State and local governments that detail how the governments will provide prompt alerting and notification of response organizations and the public under Evaluation Criterion E.6. Such plans are to include:

⁴ While the written news release used in the September 2002 exercise does not specifically state why the protective actions are being implemented, the lead public information officer states during the media briefing that the actions are being taken to protect the public health and safety for those living within the area surrounding Indian Point. FEMA has agreed that ultimate resolution of this item can be deferred until the next biennial exercise for Indian Point.

Specific organizations or individuals, by title, who will be responsible for notifying response organizations and the affected population and the specific decision chains for rapid implementation of alerting and notification decisions;

A capability for 24-hour per day alerting and notification;

Provision for the use of public communications media or other methods for issuing emergency instructions to members of the public; and

A description of the information that would be communicated to the public under given circumstances, for continuing instructions on emergency actions to follow, and updating of information.

NUREG-0654, App.3 at 3-1 to 3-2.

With respect to the generic issue as to the adequacy of the JNCP, the 2003 JNCP has been submitted to FEMA and the Staff of FEMA's Region II is currently reviewing the document against the above cited Evaluation Criteria in Planning Standard E. After review of the 2003 JNCP, FEMA will recommend changes to the document, if any are needed. The Staff of FEMA Region II has advised Entergy that the review will not be completed by May 2, 2003 and that FEMA expects no additional actions by the State or the counties with respect to the JNCP before that date.

RECOMMENDATION

The State and the counties, with Entergy's assistance, have upgraded the JNCP to address the concerns raised by FEMA and have also taken action to remedy the outstanding JNC ARCAs. The success of these remedial actions was demonstrated in the January 2003 tabletop exercise and so recognized by FEMA. FEMA has agreed that any remaining issues can await closure until the next biennial exercise. Accordingly, this planning issue should be deemed resolved.

306012.1

FEMA Need Not Review Westchester County's Letters Of Agreement To Maintain Its "Reasonable Assurance" Finding

EXECUTIVE SUMMARY

The Federal Emergency Management Agency ("FEMA") is considering whether there is "reasonable assurance" that New York State (the "State") and the Counties of Orange, Putnam, Rockland and Westchester (the "Four Counties") can take appropriate protective measures pursuant to emergency response plans ("ERPs") in the unlikely event of a radiological emergency at the Indian Point Energy Center ("Indian Point"). One of the principal concerns expressed by FEMA relates to the refusal of Westchester County ("Westchester" or the "County") to make copies of its letters of agreement ("LOAs") with emergency response organizations available for FEMA review.

This memorandum sets forth and substantiates the view that the failure of Westchester to submit its LOAs for FEMA review does not in itself provide a basis for FEMA to consider whether to reach an initial determination, pursuant to 44 C.F.R. § 350.13(a), that the State and local plans are no longer adequate to protect the public health and safety. This memorandum also makes clear that there is "reasonable assurance" that Westchester can and will be able to adequately protect the health and safety of its residents, if that became necessary.

The following legal and practical considerations support this conclusion:

1. Westchester's failure to submit or make available for review actual copies of its LOAs to the State Emergency Management Office ("SEMO") or FEMA does not warrant a re-examination of FEMA's long-held finding that "reasonable assurance" exists.
 - FEMA regulations do not require the submittal of LOAs to either SEMO or FEMA.
 - The "periodic review" guidelines set forth in FEMA guidance also do not call for the actual submittal of the Westchester LOAs to FEMA or SEMO. Rather, the pertinent guidance refers only to the need for "verification" that the LOAs are current, and the LOAs may be incorporated into an ERP by reference.
 - FEMA can obtain the necessary "verification" of the existence and continued effectiveness of the LOAs through means other than the actual receipt of the LOAs themselves. For example, FEMA can review existing records that detail compliance, procure the LOAs from the response organizations themselves, or otherwise confirm their status from responsible persons in the organizations at issue.
 - The current Westchester ERP expressly states that the LOAs are "on file" with the County. The State of New York and Entergy further understand that all the Westchester LOAs have been updated or are currently being updated.
 - The State's emergency planning consultant, James Lee Witt Associates, LLC ("Witt"), actually reviewed and analyzed the current Westchester LOAs and identified no material concerns or issues.

2. FEMA can be further assured that, in the event of an actual radiological emergency, Westchester officials would comply with the procedures outlined in the County ERP. FEMA has approved the ERPs of the State and the Four Counties after extensive review of the plans, and these ERPs have been successfully exercised with and without FEMA evaluation on multiple, recent occasions.
 - Under the circumstances, Westchester's formal submittal of "checklists" to SEMO or the production of LOAs to FEMA are ministerial acts that in themselves have no bearing on Westchester's ability to respond to an actual radiological emergency and to protect the health and safety of the public.
 - It is reasonable to presume that Westchester will exercise its best efforts to protect the health and safety of the public in the event of an actual emergency, especially in view of actions and statements by County Executive Andrew Spano that reaffirm his intent to protect Westchester residents, and the fact that Westchester officials continue to take actions to enhance the County's emergency preparedness and response capabilities.
3. In the past, FEMA, state authorities, local authorities, and licensees have typically undertaken cooperative efforts to resolve emergency planning concerns. Consistent with this practice, Entergy has taken steps to foster such efforts and to address the planning concerns identified by FEMA. The recent decisions by Orange, Putnam, and Rockland Counties to provide access to their LOAs to FEMA bear testament to the efficacy of these ongoing efforts. FEMA can find "reasonable assurance" that the State and the Four Counties can adequately protect the public based on the current circumstances alone. In any event, however, any "initial determination" by FEMA that it cannot reach a "reasonable assurance" finding should await the results of ongoing cooperation efforts.

BACKGROUND

In late January 2003, SEMO declined to issue the Annual Letter of Certification ("ALC") for the State's emergency plan in connection with the Indian Point nuclear facility. This action resulted from the refusal of county executives for the Four Counties within the Indian Point 10-mile emergency planning zone ("EPZ") to sign-off on "checklists" requested by SEMO as part of its yearly certification letter to FEMA.¹

On February 21, 2003, Region II of FEMA issued a Final Exercise Report for Indian Point, which details the results of a full-participation exercise conducted in the Plume Exposure Pathway EPZ around the

¹ Prior to issuance of the draft report by Witt on January 10, 2003 (the "Witt Report"), a spokesperson for Westchester County Executive Andrew Spano indicated that the County would sign its "checklist" regardless of the draft Witt Report findings. See, e.g., "Officials will Certify Indian Point Evacuation Plans," The Journal News.com, Jan. 7, 2003 (App., Tab 1). In fact, Mr. Spano, in a letter to State Assemblyman Brodsky and Riverkeeper attorneys Robert Kennedy and Alex Matthiessen, stated: "We have a Radiological Emergency Response Plan that I firmly believe is designed to work and adequately protects the public health and safety." "Three County Execs. Back Emergency Plan," The Journal News.com, Jan. 16, 2003 (App., Tab 2). In response to the draft Witt Report, however, Mr. Spano later reversed his position, noting that "FEMA must, at this point, get involved, evaluate the plan, raise the standards, address the criticism in the Witt report. And if they won't do it or can't do it, the plant should be closed immediately." "Indian Point Plan Refused," The Journal News.com, Jan. 31, 2003 (App., Tab 3).

Indian Point facility on September 24, 2002.² The purpose of the exercise was to assess the level of State and local preparedness in responding to a radiological emergency in the 10-mile EPZ. In its Final Exercise Report, FEMA also described the results of its review of the State's and the Four Counties' ERPs and compared its findings to those presented in the draft Witt Report. FEMA also addressed, and dismissed, a number of the concerns raised in the Witt Report.³

Significantly, FEMA concluded that no exercise finding rose to the level of a "deficiency" as defined in 44 C.F.R. Part 350. FEMA stated, however, that "based on the absence of corrected and updated plans from the Counties and State," it could not "provide a final recommendation of 'reasonable assurance' that the county and State officials can take appropriate measures."⁴ In this regard, as part of its "updated plan review," FEMA identified as one of the "most significant outstanding planning issues" the fact that: "Neither the State nor the counties have submitted their *Letters of Agreement* for FEMA review in order to determine the availability of resources needed by the counties in the event of an incident at the plant."⁵

In the Final Exercise Report, FEMA requested that the State (and the Four Counties) provide, by May 2, 2003, complete plans with a schedule of corrective actions to address the exercise issues. Orange, Putnam, and Rockland Counties have since complied, or have agreed to comply, with the requests of FEMA. Westchester stands alone in refusing to cooperate fully by submitting its LOAs for FEMA review.

FEMA REGULATORY FRAMEWORK FOR OFF-SITE EMERGENCY PLANNING

FEMA conducts its review of state and local off-site ERPs pursuant to its emergency planning regulations (44 C.F.R. Part 350). These regulations establish procedures for submitting plans for review and approval by FEMA when a facility is first being licensed. Initial approvals of ERPs by FEMA require that FEMA find the plans to "adequately protect the public health and safety by providing reasonable assurance that appropriate protective measures can be taken offsite in the event of a radiological emergency."⁶ To make this finding, the FEMA Associate Director must determine that the emergency plans and preparedness are (1) adequate to protect the health and safety of the public, and (2) capable of being implemented with adequate procedures, training, resources, staffing levels and qualifications, and appropriate equipment.⁷ Prior to initial

² Exercise Report, Indian Point 2 Nuclear Power Station, FEMA Region II, Feb. 21, 2003 ("Final Exercise Report").

³ Final Exercise Report at 3 ("FEMA...believes that a number of issues raised by the [Witt] report are not supported by FEMA's own exercise evaluations, plan reviews and knowledge of the REP Program.").

⁴ Letter from Joseph Picciano, Acting Director, FEMA Region II to Edward F. Jacoby, Jr., Director, New York State Emergency Management Office, RE: Radiological Emergency Preparedness Program - Indian Point Energy Center, Response Due: May 2, 2003, Feb. 21, 2003, at 2 (App., Tab 4).

⁵ Final Exercise Report, Executive Summary at 2 (App., Tab 5). According to a December 3, 2002, letter from Joseph Picciano (FEMA) to Edward Jacoby (SEMO) cited in the Executive Summary, FEMA requested on March 21, 2002, that SEMO provide updated memoranda of understanding and LOAs to FEMA. The December 3, 2002, letter indicates that SEMO agreed to update any letter or memorandum more than 10 years old, or for which the signatory had left office or become deceased." (App., Tab 6.)

⁶ 44 C.F.R. §§ 350.5(b), 350.13(a).

⁷ 44 C.F.R. § 350.12(b)(2).

approval by FEMA, state and local ERPs are subject to detailed FEMA review, a full participation exercise, and at least one public meeting.⁸ Once offsite plans have been approved by FEMA, the only explicit regulatory requirements applicable to those plans are the emergency planning drills and biennial exercise requirements set forth in 44 C.F.R. § 350.9.

FEMA performs its initial review of an ERP in accordance with the sixteen planning standards enumerated in 44 C.F.R. § 350.5(a) and the associated evaluation criteria outlined in a joint NRC-FEMA guidance document, NUREG-0654/FEMA-REP-1, Revision 1, "Criteria for Preparation and Evaluation of Radiological Emergency Response Plans and Preparedness in Support of Nuclear Power Plants" (November 1980) ("NUREG-0654"). The planning standards require, *inter alia*, the assignment of "[p]rimary responsibilities for emergency response ... by State and local organizations within the Emergency Planning Zones" and the securing of "[a]rrangements for requesting and effectively using assistance resources."⁹ The NUREG-0654 evaluation criteria corresponding to these standards further identify the need for written agreements with local response organizations, i.e., the LOAs.¹⁰

FEMA construes its obligations under Part 350 to require, after the initial review, "[p]eriodic reviews by FEMA and NRC [to] verify the capability of response organizations to implement various aspects of the response plans."¹¹ In carrying out its periodic reviews, FEMA relies on reporting procedures outlined in FEMA Guidance Memorandum (GM)-PR-1, "Policy on NUREG-0654/FEMA-REP-1 and 44 C.F.R. Part 350 Requirements" ("GM-PR-1") (App., Tab 7). Pursuant to Section C of GM-PR-1, FEMA requests that states with radiological emergency preparedness responsibilities submit an ALC to the appropriate FEMA Regional Director by January 31 of each year documenting the action taken by the state and local governments during the preceding year to comply with the particular planning standards identified in GM-PR-1.¹² Among other things, the ALC should provide "[v]erification that plans and letters of agreement have been reviewed and appropriate changes made."¹³ The main mechanism for FEMA's periodic reviews of the capabilities of the response organizations are the periodic exercises to be conducted pursuant to 44 C.F.R. § 350.9.

While FEMA regulations (44 C.F.R. § 350.13) provide a mechanism for FEMA withdrawal of approval of a state or local ERP, such a withdrawal is an exceptional measure that requires a finding by FEMA that "reasonable assurance" no longer exists. To initiate this process, the FEMA Associate Director must make a threshold finding that a state or local plan is no longer adequate or capable of being implemented. If the Associate Director makes such a determination, then he or she must advise the Governor of the affected state, the appropriate Regional Director, and the NRC in writing. In this notification, the

⁸ 44 C.F.R. §§ 350.8(d), 350.9(a), 350.10.

⁹ 44 C.F.R. §§ 350.5(a)(1), (a)(3).

¹⁰ See NUREG-0654, FEMA-REP-1, Rev. 1, §§ II.A.3, II.C.4, and II.P.4.

¹¹ NUREG-0654 at 30.

¹² GM-PR-1 at 8. In New York State, SEMO prepares the ALC for submission to FEMA. In preparing its ALC, SEMO relies on the submittal of annual "checklists" sent by the Four Counties to SEMO. These checklists, which contain information concerning the Counties' ERPs and LOAs, require the Counties to certify that their required ERPs are "current."

¹³ *Id.* (emphases added).

Associate Director must "spell out in detail" the reasons for his or her "initial determination" and describe the deficiencies in the plan or the preparedness of the state. FEMA can make such a determination on its own initiative or on the basis of information supplied by another person; however, it must be supported by "substantial evidence."¹⁴

After the Associate Director makes an "initial determination," the state has four months (120 days) to correct the cited deficiencies or to submit an acceptable plan for correcting those deficiencies. If the state submits a plan, then FEMA and the state will develop a schedule and timetable to implement the plan.

If, after four months, the state in question fails to correct the deficiencies or to submit an acceptable plan for doing so, then the Associate Director of FEMA is required to withdraw its approval of the state plan and provide notice to the state governor, the NRC, and the public, as set forth in 44 C.F.R. § 350.13(a). This withdrawal is thus a measure of last resort.

In accordance with these regulatory procedures, FEMA approved the current versions of the ERPs for Indian Point provided by the State and the Four Counties on May 3, 1996, and has since supervised numerous successful emergency planning exercises, including the most recent exercise conducted in September 2002.¹⁵

ENTERGY'S POSITION

Based on the information presently available to it, FEMA has no reason to revisit its long-standing finding that New York State and the Four Counties can take appropriate protective measures in the unlikely event of a radiological emergency at Indian Point. Accordingly, FEMA should take no steps toward potentially withdrawing its approval of the ERPs prepared by the State or the Four Counties merely because Westchester has refused to submit its current LOAs to SEMO or FEMA. If necessary, FEMA should defer making an "initial determination" under 44 C.F.R. § 350.13(a) pending the outcome of ongoing efforts (including requests under New York's Freedom of Information Law) to provide FEMA with the information and documentation it seeks.

RATIONALE FOR ENTERGY'S POSITION

1. *Actual Submittal of the Westchester LOAs to FEMA is Not Required by FEMA Regulations or Guidance*

Although FEMA regulations address the need for adequate off-site response organization capabilities, they are silent with respect to the need for LOAs. The need for written agreements or LOAs is

¹⁴ 44 C.F.R. § 350.13(c) (emphasis added).

¹⁵ See Four County Nuclear Safety Committee, Minutes of January 15, 2003 Four County Directors Meeting (Andrew J. Spano, Chairman, and Raymond Albanese, Coordinator), at 1 ("The Annual Letter of Certification (PR-1) is in no way a certification or re-certification of the REP Plan. The Four Counties' REP plans for Indian Point were Certified by FEMA (James Lee Witt, Director) in 1995 [sic], in accordance with 44 CFR 350. They have been successfully exercised, with FEMA-evaluation, ever since (1996; 1998; 1999 (Ingestion Pathway); 2000 – all on Mr. Witt's watch), and again on September 24, 2002, after extensive Plan review.") (App., Tab 8).

instead identified in NUREG-0654. The three evaluation criteria from NUREG-0654 presented below address the need for and contents of LOAs, as well as the need to update them. Notably, these criteria do not actually require FEMA to inspect the LOAs:

- "Each plan shall include written agreements referring to the concept of operations developed between Federal, State and local agencies and other support organizations having an emergency response role within the Emergency Planning Zones. The agreements shall identify the emergency measures to be provided and the mutually acceptable criteria for their implementation, and specify the arrangements for exchange of information. These agreements may be provided in an appendix to the plan or the plan itself may contain descriptions of these matters and a signature page in the plan may serve to verify the agreements. The signature page format is appropriate for organizations where response functions are covered by laws, regulations or executive orders where separate written agreements are not necessary."¹⁶
- "Each organization shall identify nuclear and other facilities, organizations or individuals which can be relied upon in an emergency to provide assistance. Such assistance shall be identified and supported by appropriate letters of agreement."¹⁷
- Each organization shall update its plan and agreements as needed, review and certify it to be current on an annual basis. The update shall take into account changes identified by drills and exercises."¹⁸

As stated above, FEMA seeks "verification that plans and letters of agreement have been reviewed and appropriate changes made," typically through the ALC process that is outlined in Section C of GM-PR-1.¹⁹ GM-PR-1 does not address, however, the manner in which this "verification" should be provided by a state that submits an ALC to FEMA, or by the local risk jurisdictions that, in turn, submit information to the state. Another FEMA guidance document, "Guidance Memorandum 5, Rev. 1: Technological Hazards: Agreements Among Governmental Agencies and Private Parties," October 19, 1983 ("GM-5") (App., Tab 9), addresses this issue to a limited extent.

GM-5 purports to aid local governmental agencies in developing the information for existing LOAs, as specified in NUREG-0654/FEMA REP-1 Evaluation Criterion A.3. The stated purpose of GM-5 is to "suggest[] cataloging written agreements referring to the concept of operations developed between Federal, State, and local agencies and other support organizations having an emergency response role within the Emergency Planning Zone."²⁰ Significantly, GM-5 does not require LOAs to be submitted to FEMA:

¹⁶ NUREG-0654, FEMA-REP-1, Rev. 1, § II.A.3 (emphases added).

¹⁷ Id., § II.C.4 (emphasis added).

¹⁸ Id., § II.P.4 (emphases added).

¹⁹ The submittal of an ALC by a State to FEMA is not a regulatory requirement per se, but rather a tool intended to "facilitate the monitoring of [emergency] planning and preparedness requirements as prescribed in NUREG-0654/FEMA REP-1 and 44 C.F.R. [Part] 350." GM-PR-1 at 8 (emphases added). We understand that FEMA headquarters does not receive a copy of the ALC itself or its supporting documentation.

²⁰ GM-5 (emphasis added).

The detailed agreements required by A3 may be incorporated into [an ERP] by reference and cataloged by title, type of agreement, and government level, including signatories and effective dates. All parties would merely sign-off on a cover sheet certifying the validity of the materials referenced. The actual agreement must then be filed in the Region and be available for inspection. All parties would merely sign-off on a cover sheet certifying the validity of the materials referenced. In short, the listed agreements could be listed and treated in the same manner as procedures.²¹

GM-5 thus does not require governmental agencies to submit their LOAs directly to FEMA or SEMO.²² While GM-5 identifies the inclusion of "all agreements in a suitable appendix" to state or local ERPs as an alternative to the incorporation by reference method, it recognizes that including "[s]uch agreements could be voluminous and overburden the plan with paper."²³

Therefore, while the criteria for establishing LOAs in the first instance are rather explicit, the periodic review criteria for already existing plans only direct that the state and local entities certify that their LOAs are current. Current FEMA guidelines specifically contemplate FEMA receipt of only a "PR-1" certification letter from the state confirming that the LOAs are up to date.²⁴ Additionally, under the current framework, LOAs may be incorporated into ERPs by reference and not actually provided to FEMA.

Furthermore, there is nothing to preclude FEMA from using other means to verify the status of plan updates and LOAs. In this regard, FEMA could contact Westchester or the individual private and governmental agencies that have LOAs with the County to verify that the LOAs are still in force, or to request new or revised LOAs if warranted.²⁵ Alternatively, FEMA may accomplish its goals by reviewing existing records that detail compliance, procuring the LOAs from the response organizations themselves, or

²¹ Id. (emphases added). While the term "the Region" is not further defined in GM-5, the clear context of the discussion indicates that copies of the LOAs have to be present within the geographical confines of the FEMA Region.

²² As reported in an NRC Staff decision, the practice is to keep LOAs on file at the county level, not at the state level. The Staff noted: "There is no federal requirement to maintain copies of agreements between local governmental jurisdictions and private resource providers at the state level." Instead, they "are negotiated and maintained by the cognizant risk county where the resources are to be used." General Public Utilities Nuclear Corp. (Three Mile Island Nuclear Station, Unit 1), DD-94-3, 39 NRC 163, 174 (1994) (emphasis added) (App., Tab 10).

²³ GM-5.

²⁴ This practice is reflected in a 1995 letter from the Director of FEMA Region II to the Director of SEMO, which states in relevant part: "FEMA National concurs that PR-1 Certification is adequate to verify expiration of LOAs. It is assumed that, unless otherwise stated, the LOAs are in effect." Letter from Dr. Rita Meyninger, Regional Director, FEMA Region II to Anthony J. Germano, Director, SEMO (Mar. 8, 1995), at 1 (emphasis added) (App., Tab 11). As evidenced by this letter, the receipt of actual copies of the LOAs by FEMA is neither necessary nor required.

²⁵ In connection with its strategic review of the REP program, FEMA expressly noted that "[t]he documentation submitted in the ALC [which should include verification that plans and letters of agreement have been reviewed and appropriate changes made] may be verified during regularly scheduled site visits." Publication of Radiological Emergency Preparedness (REP) Program Strategic Review Draft Final Recommendations, 63 Fed. Reg. 48,222, 48,228 col. 1 (Sept. 6, 1998) (App., Tab 12).

confirming their status from responsible persons in the organizations at issue.²⁶ FEMA may also obtain relevant information from the licensee, i.e., Entergy. This information might include statements from personnel who have direct knowledge of an activity in question, or documents retained by Entergy. The use of some or all of these measures would obviate any perceived need for Westchester to submit its LOAs to SEMO for inclusion in the ALC or otherwise to forward them to FEMA.

2. *Actual Submittal of the Westchester LOAs to FEMA is Not Necessary in this Case*

FEMA does not need to inspect the Westchester LOAs to find that they are in place and current. Instead, FEMA can accept Westchester's representation in its 2002 ERP that the County LOAs are "on file" with the Westchester Office of Emergency Management ("OEM").²⁷ Consistent with this assertion by Westchester, it is reasonable to conclude that the County LOAs are current and valid or, at a minimum, are in the process of being updated.

The Director of SEMO recently confirmed in an April 2003 letter to FEMA the efforts of the Four Counties, including Westchester, to update their LOAs:

Since the September exercise, State and County staffs have had several conversations with FEMA regarding [LOAs]. As we have discussed, my talks with the Counties indicate that they are currently working to update their LOAs. Since the number of LOAs differs within each county, the efforts required to satisfy this requirement also differ.

I can offer the following information based on discussions with the Counties. Westchester County has put forth a program to update its LOAs, including a letter from its County Executive to organizations participating in the plan.²⁸

It is thus reasonable to conclude that Westchester has kept its LOAs current. These include, *inter alia*, agreements for transportation, fire, police and EMS support services; the use of reception facilities; and coordination with the American Red Cross and Salvation Army. Even were this updating of LOAs an ongoing process, it still would demonstrate Westchester's commitment to securing the necessary assistance resources.

Moreover, the Witt team – which actually received and analyzed the Westchester LOAs²⁹ – raised no material concerns about their content or accuracy. There is no reason to expect that a review of the LOAs by FEMA would lead to a different conclusion.³⁰

²⁶ FEMA regional personnel have used alternative methods for verifying ALC-related information in the past. In assessing off-site emergency preparedness for the Three Mile Island nuclear facility, FEMA Region III staff telephoned three bus providers for Dauphin County and verified the names and telephone numbers of the contacts, including the phone numbers for off-hours. FEMA staff also reviewed this information in the standard operating procedures and verified its accuracy. See General Public Utilities Nuclear Corp. (Three Mile Island Nuclear Station, Unit 1), DD-94-3, 39 NRC 163 (1994) (App., Tab 10).

²⁷ Westchester Radiological Emergency Plan for the Indian Point Energy Center at B-2 (App., Tab 13).

²⁸ Letter from Edward F. Jacoby, Jr., Director, SEMO to Joseph Picciano, Acting Regional Director, FEMA Region II (Apr. 18, 2003), at 1-2 (emphases added) (App., Tab 14).

²⁹ Letter from Anthony W. Sutton, Deputy Commissioner, Westchester County Department of Emergency Services to James Lee Witt, James Lee Witt Associates (Feb. 7, 2003), at 2 ("Westchester County OEM provided hard copies of all agreements to [Witt's] subcontractor, Innovative Emergency Management (IEM) in

Finally, disaster preparedness obligations imposed by State law provide further assurance that Westchester will maintain an adequate and current ERP, including up-to-date LOAs with off-site response organizations. In particular, New York Executive Law § 23 identifies the need for a local government, once it decides to prepare an ERP, “to minimize the effect of disasters” by “identifying appropriate local measures to prevent disasters” and “developing mechanisms to coordinate the use of local resources and manpower for service during and after disasters.” Executive Law § 23 further requires the Counties to coordinate with local emergency responders by seeking their “cooperation, advice, and assistance.” These coordination efforts are memorialized in written agreements such as the LOAs. For the reasons discussed in this memorandum, there is no basis to presume that Westchester has violated, or has any intention to violate, its State law obligations.

3. *FEMA Can Be Reasonably Assured that Westchester Will Comply With the Procedures Outlined in its ERP*

Of paramount importance, Westchester’s refusal to submit its LOAs for FEMA review is not an indication that it has failed to update and maintain its ERP or LOAs, or that it has done anything to jeopardize the safety of its citizens. Westchester’s refusal to cooperate in this regard appears to be intended, instead, to signal the County’s concerns over issues raised by the Witt Report, including the threat of a terrorist attack in particular.

There is no reason to believe that Westchester lacks an adequate ERP, or that it is incapable of implementing, or unwilling to implement, its plan. All evidence is to the contrary. The following actions and statements by Westchester County Executive Andrew Spano confirm that the County fully appreciates, and is dedicated to fulfilling, its emergency responsibilities:

- In the 2002-03 Westchester emergency planning booklet for Indian Point, Mr. Spano emphasized: “As your County Executive, nothing is more important to me than protecting your health and safety. When it comes to the Indian Point Energy Center, I want you to know that my Department of Emergency Services has been working around the clock to make sure that our Comprehensive Emergency Response Plan protects you and your family in the unlikely event of an emergency. In case of an emergency, you should be aware that the full resources of this county will be used to keep you safe. Over 200 people with knowledge and experience – school representatives, transportation experts, public safety officials and the medical community have been involved in making plan improvements. Over 300 county employees have been trained.”³¹

September 2002. Westchester County has over 80 letters of agreement currently. We again offer these resources to your staff.”) (emphasis added) (App., Tab 15).

³⁰ Final Witt Report at C-52 (App., Tab 16). Witt’s only criticism of the County LOAs is a technical one, namely that the LOAs are maintained under “separate cover.” Even this minor concern is dubious because FEMA regulations and guidance permit Westchester, and other local governments, to maintain LOAs under separate cover. In any event, Witt’s sole technical criticism falls far short of triggering an “initial determination” by FEMA pursuant to 44 C.F.R. § 350.13(a), particularly when the County clearly is in the process of ensuring that all LOAs “on file” are current.

³¹ Emergency Planning for Indian Point: A Guide for You and Your Family, message from Andrew J. Spano, Westchester County Executive (emphasis added) (App., Tab 17); see also Video Clip of Interview with Mr. Spano found at <http://www.westchestergov.com/indianpoint/> (“Whether the plant opens or closes, we need a plan that will allow for the safety of the people who live around the plant and surrounding areas.”).

- County Executive Spano told reporters the day after the Witt Report was issued that “The people of Westchester have to be protected today, and they are protected to the best of our ability today. I can’t think of anything else we can do. The plan works. The [Witt] report says the scenario does not address major radiation leaks or terrorist scenarios. But it is still a good plan.”³²
- Mr. Spano reiterated this position in his testimony before Congress: “Not only have we met the bar FEMA has put before us, we have exceeded it. We have moved forward in a number of areas to protect the residents of Westchester County. On our own, we have for some time pressed for better technology and more sophisticated modeling of the radiological dispersion; and have worked with IBM Research Labs and others to contribute to this effort. We have included more conservative assumptions about travel time than the current models provide. We have set up a variety of modern communications capabilities, including internal web sites for quick transmission of status information. We have distributed potassium iodide to a large number of families in the emergency planning zone surrounding the plant... I will continue to do whatever is in my power to protect the residents of Westchester County.”³³
- On March 3, 2003, Mr. Spano again testified before Congress that: “The health and safety of Westchester residents has always been my first priority. During the past five years as County Executive, that priority has translated into creating a professional Department of Emergency Services, increasing the special operations capability of our Department of Public Safety, forming a Bio-terrorism Task Force, prior to September 11th, and since September 11th, developing on-going strategies and interventions to cope with terrorism in all its possible forms – chemical, biological, and, because of Indian Point, radiological... I will continue to do whatever is in my power to protect the residents of Westchester County.” He further acknowledged that “even if the plant were to be shut down tomorrow, because of the spent fuel pools, there still would be a need for a workable response plan.”³⁴
- On March 26, 2003, Mr. Spano hosted a public forum, attended by more than 300 people, on how the County would deal with a radiation leak at Indian Point. Mr. Spano, who emphasized that “We have a plan,” opened the meeting with an hour-long presentation about Westchester’s public safety program, dubbed “Operation Safeguard,” and introduced several County department heads who would spearhead emergency

³² “Witt Report: Indian Point Evacuation Plan Can’t Work,” The Journal News.com, Jan 11, 2003 (App., Tab 18); see also “Spano Releases Details on Process for Updating IP Response Plan,” Westchestergov.com, Mar. 21, 2002 (“Let there be no doubt in anyone’s mind – we have in place already the mechanism to make sure that our emergency plan is up-to-date, realistic and workable.”) (App., Tab 19).

³³ Testimony of Westchester (N.Y.) County Executive Andrew J. Spano on Emergency Preparedness at the Indian Point Energy Center to the U.S. House of Representatives Subcommittee on Economic Development, Public Buildings and Emergency Management of the Committee on Transportation and Infrastructure, Feb. 25, 2003, at 2 (App., Tab 20).

³⁴ “Testimony of Westchester County Executive Andrew J. Spano Before a Congressional Forum on the Indian Point Energy Center Hosted by Nita M. Lowey Member of Congress,” Westchestergov.com, Mar. 3, 2003 (emphasis added) (App., Tab 21).

efforts. Mr. Spano “also stressed that the county works in cooperation with local municipalities as well as state and federal agencies.”³⁵

- As recently as April 10, 2003, Mr. Spano noted: “While only Washington has the authority to close the plant, I am doing whatever I can to push in that direction. But as long as Indian Point remains a fixture in our County, I want to make sure it is protected.”³⁶

In addition, recent and ongoing actions of Westchester with regard to emergency planning and preparedness demonstrate the County’s commitment to responding to a potential emergency at Indian Point. These actions encompass multiple facets of emergency preparedness and include participation in exercises, planning activities, equipment and facilities upgrades, and training. Some of the more salient actions aimed at ensuring local emergency preparedness are listed below:

Exercises:

- Westchester successfully participated in the September 2002 full-participation exercise with no deficiencies or ARCAs, a fact that speaks to the County’s capability to implement its ERP. (See Final Exercise Report.)
- On April 16, 2003, Westchester County emergency management officials conducted a high school reception center “out of sequence exercise” at the White Plains High School. This exercise was observed by personnel from the FEMA Region 2 office as well as emergency management personnel from the County and Indian Point. This exercise demonstrates the County’s continuing participation in the radiological emergency planning process despite its reluctance to provide FEMA with access to the LOAs. Another such exercise is being planned for July 2003. (App., Tabs 24, 25.)
- Westchester has also participated in emergency planning drills outside of FEMA’s review. (App., Tab 26.)

Planning:

- During the last quarter of 2002 and the first quarter of 2003, Westchester worked with SEMO to address new State and federal policies pertaining to Potassium Iodide (KI) distribution to the public. It is Entergy’s understanding that these plan revisions have been addressed and are pending authorization by the County Executive for submittal to State and federal authorities. (App., Tab 27.)
- From April 2002 to as recently as April 2003, the Westchester OEM participated in meetings with Entergy’s evacuation time estimate consultant and provided input. (App., Tab 28.)
- Westchester officials have participated in numerous other emergency planning meetings. (App., Tabs 29-32.)

³⁵ “Westchester Forum Discusses Security Concerns,” The Journal News.com, Mar. 27, 2003 (App., Tab 22).

³⁶ Andrew J. Spano, Westchester County Executive, State of the County Address to the People of Westchester County, Apr. 10, 2003, at 4 (emphasis added) (App., Tab 23).

Facilities and Equipment:

- Westchester invested significant resources into upgrading its Emergency Operations Facility in preparation for the September 2002 exercise. FEMA found this facility to be adequate for emergency response purposes. (App., Tab 33.)
- Westchester OEM continues to participate in the scheduling and conduct of FEMA facility baseline evaluations. Schools and reception centers remain the focus of this effort. (App., Tab 34)

Training:

- Westchester continues to schedule and conduct training for emergency responders assigned under the Radiological Emergency Preparedness ("REP") program. County employees from the Department of Health, Department of Public Works, and Department of Social Services participated in several sessions in March and April 2003 for the purpose of being trained to support reception center operations. (App., Tab 35.)
- Westchester continues to schedule training for other emergency responders, such as fire, police and transportation providers. In 2002, Westchester arranged training for several thousand workers, apparently more than any other year to date. (App., Tab 36.)

It is also noteworthy that the Four County Coordinator, who is responsible for facilitating coordination among the Four Counties on planning, training and other matters related to Indian Point, continues to operate out of the Westchester OEM. (App., Tab 37.) Additionally, Westchester continues to accept REP program assistance in the form of planning advice from consultants who are funded by Entergy and who are working with the OEM on various REP program matters.³⁷

For these reasons, FEMA can be reasonably assured that Westchester will comply with the procedures outlined in its ERP in the unlikely event of an actual radiological emergency at Indian Point. It is significant that FEMA extensively reviewed and approved the ERPs of the Four Counties, and that these ERPs – as the Four Counties themselves have publicly acknowledged – have been successfully exercised with FEMA-evaluation on multiple occasions. Moreover, Westchester is clearly taking steps, including updating its LOAs, to maintain and improve its emergency response capabilities. These facts indicate that the mere absence of signed checklists, or the failure of Westchester to provide copies of LOAs to FEMA at this juncture, have no bearing on the County's willingness or ability to respond to an actual radiological emergency at Indian Point.

Westchester's refusal to provide certain information to FEMA, therefore, cannot provide the basis for an "initial determination" by FEMA under 44 C.F.R. § 350.13 that "reasonable assurance" no longer exists. Under the existing regulatory framework, the withdrawal of approval of state and local ERPs by FEMA is an exceptional measure that can only be taken in response to extreme circumstances not present here. The present circumstances are in fact auspicious given Westchester's continuing efforts to enhance its emergency response capabilities. They certainly do not suggest an inability to protect the health and safety of

³⁷ Based on this record, the conclusion is inescapable that if confronted with an actual radiological emergency, Westchester would exercise its best efforts to protect the health and safety of its citizens by complying with the ERP. Indeed, this presumption or expectation – i.e., that state and local officials will act to protect the public from harm – underpins the "doctrine of realism" that applies to so-called "decline or fail" situations and is codified in FEMA and NRC regulations. See 44 C.F.R. 352.25(c) and 10 C.F.R. 50.47(c)(1).

the public. In reality, Westchester is using ministerial acts (such as failing to provide copies of its LOAs to FEMA) to voice broader concerns about FEMA's generic approach to emergency planning and to prod FEMA into action.

4. *FEMA Regulations, Guidance, and Relevant Precedent Emphasize Cooperative Efforts to Address the Concerns Identified by FEMA*

As noted previously, FEMA withdrawal of its approval of state or local ERPs should be taken only if no cooperative efforts are forthcoming to address known defects that make the state plan inadequate or incapable of being implemented. The strong preference is that cooperative efforts between FEMA, state authorities, local authorities, and the licensee be fully exhausted before such extreme action is even considered.

In most cases, such efforts are successful. In fact, during the period in which the most extensive litigation over emergency planning and associated FEMA involvement occurred – the 1980s to early 1990s – FEMA both facilitated and recognized NRC licensee and governmental efforts to resolve emergency planning issues. See, e.g., Toledo Edison Co. (Davis-Besse Nuclear Power Station, Unit 1), DD-86-17, 24 NRC 753, 756-57 (1986) (App., Tab 38); Consolidated Edison Co. of New York (Indian Point, Unit No. 2) & Power Auth. of the State of New York (Indian Point, Unit No. 3), CLI-83-16, 17 NRC 1006, 1012 (1983) (App., Tab 39).

The present situation should be no exception. In this regard, Entergy notes that efforts have been undertaken to resolve the impasse concerning the Four Counties' LOAs with offsite response organizations. These efforts have already proven effective, as evidenced by the recent decisions of Orange, Putnam, Rockland Counties to allow FEMA to review their LOAs. Entergy also has undertaken substantial efforts to address the other "significant outstanding planning issues" identified by FEMA in its Final Exercise Report.³⁸

Finally, Entergy is filing requests to obtain the Westchester LOAs under the New York Freedom of Information Law ("FOIL") from Westchester itself, local responders and/or Witt (as an agent of the State). Any "initial determination" by FEMA before the FOIL process runs its course would be premature.

RECOMMENDATION

For the foregoing reasons, FEMA has no basis for re-examining its long-standing determination that there is "reasonable assurance" that Westchester has sufficient agreements and resources in place to take appropriate protective measures if confronted with a radiological emergency. Accordingly, FEMA should take no steps toward potentially withdrawing its approval of the ERP prepared by the State or any of the Four Counties, particularly in view of the ongoing cooperative efforts being taken to resolve the planning concerns identified by FEMA. There has been substantial progress to date in resolving these concerns, and additional progress is reasonably anticipated. In any case, FEMA should defer taking such steps pending the outcome of all ongoing efforts to provide FEMA with the information and documentation it seeks.

³⁸ These planning issues relate to the Joint News Center Procedures and Public Education Work Plan, the Updated Evacuation Travel Time Estimates, and emergency plans for pre-schools and day care centers.

FEMA Has Verified The Adequacy Of The School Radiological Emergency Plans During Emergency Response Exercises And Has Been Provided Access To Most Of The Plans For Its Review

EXECUTIVE SUMMARY

The Federal Emergency Management Agency ("FEMA") has requested that it be allowed to review radiological emergency plans ("REPs") for school districts, preschools and daycare centers in each of the four counties – Orange, Putnam, Rockland, and Westchester – surrounding the Indian Point Energy Center ("Indian Point"). Since FEMA made its request, three of the four counties have allowed FEMA to review these plans. FEMA has reviewed the school district REPs for these three counties and has found them satisfactory. Only Westchester refuses FEMA access to its school REPs. Westchester, however, has independently committed to making sure its school plans are up-to-date and FEMA continues to seek access to its plans. The adequacy of the school plans has been demonstrated, in accordance with FEMA's guidance, through interviews conducted following the 2000 and 2002 exercises. FEMA's review of the actual school plans of three of the counties and its awareness of the steps taken by Westchester to keep its school plans up to date provide adequate resolution to this issue.

BACKGROUND

On September 24, 2002, the Federal Emergency Management Agency ("FEMA") evaluated an exercise in the plume exposure pathway around the Indian Point 2 Nuclear Power Station. The purpose of the exercise was to assess the level of preparedness by the State of New York ("State") and the governments and agencies of the four "risk jurisdictions" in responding to a radiological emergency in the 10-mile Emergency Planning Zone ("EPZ") around the Indian Point Energy Center ("Indian Point").¹ FEMA, Exercise Report, Indian Point 2 Nuclear Power Station, dated February 21, 2003 ("FEMA Report"), Executive Summary at 1. The review was conducted pursuant to the provisions of 44 C.F.R. § 350.9.

FEMA's review of the results of the exercise showed that "[t]he State and local organizations, except where noted in this report, satisfactorily demonstrated knowledge of their emergency response plans and procedures and adequately implemented them." *Id.* No "Deficiencies"² were identified during the exercise, although thirteen specific "Areas Requiring Corrective Action" ("ARCA's") were noted.³ *Id.*

¹ The four "risk jurisdictions" located wholly or in part within the 10-mile EPZ around Indian Point are the Orange, Putnam, Rockland and Westchester Counties.

² A Deficiency is defined as "...an observed or identified inadequacy of organizational performance in an exercise that could cause a finding that offsite emergency preparedness is not adequate to provide reasonable assurance that appropriate protective measures can be taken in the event of a radiological emergency to protect the health and safety of the public living in the vicinity of a nuclear power plant." FEMA Report at 29.

³ An ARCA is defined as "...an observed or identified inadequacy of organizational performance in an exercise that is not considered, by itself, to adversely impact public health and safety." *Id.* at 30.

In addition, the Executive Summary of the FEMA Report identified as the most significant "planning issues" the following four items:

1. Neither the State nor the counties have submitted their *Letters of Agreement* for FEMA review in order to determine the availability of resources needed by the counties in event of an incident at the plant.
2. *The Joint News Center Procedures and Public Education Workplan*, which is the basic procedure for dissemination of information to the public during a response to an emergency at the plant, is inadequate and continues to interfere with performance, as noted during both the 2000 and 2002 exercises.
3. The plans do not yet have the information from the *Updated Evacuation Time Estimates* (ETE) that have been prepared to reflect new demographics as well as shadow evacuation. Without the updated ETEs, the plans do not reflect the latest information on the time(s) it would take to evacuate the population of an emergency response planning area under various conditions (i.e., time of day, day of week, time of year, weather conditions, etc
4. While the procedures for schools in the plans are adequate, the individual school district, preschool and day care center plans also need to be submitted to FEMA for review.

FEMA Report, Executive Summary at 2. This paper addresses the last of these four outstanding planning issues.

The counties have been active in assisting the schools within the ten-mile EPZ in preparing their emergency response procedures in accordance with FEMA guidance and the content of the county plans. All schools within each county receive annually updated information regarding radiological emergency planning specific to the school, including information on relocation centers, evacuation routes, contact telephone numbers, and procedures to follow in the event of a radiological emergency. One of the counties, with Entergy's assistance, is in the process of developing a "model" plan for schools to use if they need to revise their existing radiological emergency plans. Entergy is committed to the ongoing provision of assistance to the schools to assure that all have adequate procedures in place.

On April 9, 2003, FEMA visited Putnam County and was able to review the plans for the school districts in Putnam County. Entergy's understanding of this visit was that FEMA was satisfied with the content of the school plans reviewed and that this issue, in regard to Putnam County, has been satisfactorily addressed. FEMA conducted similar visits to two of the remaining three counties (Rockland and Orange) on April 29 and May 1, 2003 to allow FEMA, *inter alia*, to review school plans. Entergy understands that the schools in Rockland County have adequate radiological emergency response plans in place and that the county annually provides each school with information concerning radiological emergency planning for that school. Entergy also understands that Orange County provides radiological emergency planning information for each school on an annual basis. Orange County has held a meeting with school principals during the preceding year to discuss radiological emergency planning. Entergy understands that Westchester County schools have adequate radiological emergency plans in place, and that the plans for the four Westchester school districts within the ten-mile EPZ for Indian Point are on file with the County. It is unclear whether Westchester County will voluntarily allow FEMA to review these school plans.

STATEMENT OF THE ISSUE

Schools, pre-schools, and day care centers are not specifically addressed by the planning standards of 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 Plants (1980) (“NUREG-0654/FEMA-REP-1”). However, the State and county emergency response plans are expected to address, in their evacuation time estimates, schools as “special facility populations.” See NUREG-0654, Appendix 4 at 4-2 to 4-3. FEMA provides further, specific guidance regarding State and local planning and preparedness for schools in FEMA Guidance Memorandum EV-2, “Protective Actions for School Children”, dated November 13, 1986 (“GM-EV-2”). FEMA guidance in GM-EV-2 includes criteria for reviewing school performance during exercises and drills. GM-EV-2 provides specific guidelines for federal officials to evaluate the schools’ emergency plans and preparedness during a radiological emergency. GM-EV-2 also provides guidance to State and local government officials and administrators of public and private schools in their development of emergency response plans and preparedness for protecting the health and safety of school children. GM-EV-2 at 1.

ENTERGY’S POSITION

The Counties, with Entergy’s assistance, have made certain that their schools have complete, up-to-date plans. Entergy expects that FEMA will have been able to review school plans either directly or in conjunction with technical visits in three of the four counties surrounding Indian Point by May 2, 2003.

FEMA may not be able to review the Westchester County school plans by May 2, 2003 because Westchester has declined to provide FEMA with access to its school plans. This should not be a concern for three reasons: (1) FEMA noted no problems with school plans as part of its 2000 or 2002 Exercise Reports, meaning that the performance of the schools in all counties, including Westchester, was adequate; (2) Despite Westchester County’s failure to cooperate with FEMA’s review of the school REPs, the county has recently discussed REP issues with its school districts, and has provided to the schools up-to-date planning-related materials; and (3) Entergy is committed to helping address any issues that may arise out of the review of school plans by FEMA, should FEMA eventually determine that additional follow up corrective action be necessary after review of the school plans.

RATIONALE FOR ENTERGY’S POSITION

Pursuant to FEMA’s guidance, local governments are responsible for the key planning requirements concerning the evacuation of students from schools,⁴ including identifying and contacting “all public and private school systems within the designated plume exposure pathway EPZ to assure that both public and private school officials address appropriate planning for protecting the health and safety of their students....” *Id.* at 5 (emphases omitted).

⁴ GM-EV-2 defines the term “school” to encompass “public and private schools, and licensed or government supported pre-schools and day-care centers.” *Id.* at 4.

GM-EV-2 specifies two planning standards that are partially relevant to the emergency response plans for and preparedness of schools: Planning Standard J, "Protective Response" and Planning Standard N, "Exercises and Drills."⁵ GM-EV-2 provides that the school plans should include:

- Institution-specific information, including:⁶
 1. The name and location of the school;
 2. The type of school and age grouping (e.g., public elementary school, grades kindergarten through sixth);
 3. The total population of the institution (students, faculty and other employees);
 4. The means for effecting the protective actions;
 5. Specific resources allocated for transportation and supporting letters of agreement if the resources are provided from an external source;
 6. Name and location of the relocation center(s);
 7. Transportation routes for evacuation to the relocation centers, if applicable.
- The basis for determining the proper protective action (e.g., evacuation, early preparatory measures, early evacuation, sheltering, early dismissal or a combination thereof) that includes:
 1. Identification of the organization and officials responsible for planning the protective action;
 2. Identification of the organization and officials responsible for effecting the protective action.
- Time frames for effecting the protective actions;
- Means for alerting and notifying appropriate persons and groups associated with the schools and the students, including:
 1. Identification of the organization responsible for providing emergency information to the schools;
 2. The method (e.g., siren and telephone calls) for contacting and providing emergency information on recommended protective actions to school officials;
 3. The method (e.g., siren, tone alert radios and telephone calls) for contacting and activating designated dispatchers and school bus drivers; and
 4. The method (e.g., EBS messages) for notifying parents and guardians of the status and location of their children.

Id. at 5-6. GM-EV-2 provides that "local governments should ensure that appropriate organizational officials assume responsibility for the emergency planning and preparedness for all of the identified schools," and that such planning is "integrated within the larger offsite framework for the particular

⁵ Additionally, under Planning Standard P, FEMA treats schools as one of the types of "institutions, the mobility of whose population may be impaired during a radiological emergency, because most students are dependent on school officials for transportation to and from their residences." Id.

⁶ If parts of the institution-specific information described apply to many or all schools, the information may be presented generically. Id. at 6.

nuclear power plant site.” Id. at 5. GM-EV-2 does not provide that school plans must be provided directly to FEMA.

GM-EV-2 also provides guidance as to how periodic exercises and drills are to be used to assess the preparedness of local governmental organizations for protecting school children. Evaluation Criteria N.1.a, N.1.b, and N.4 are applicable to school populations. Specifically, FEMA interprets the periodic requirements of 44 C.F.R. § 350.9 to encompass the ability to evacuate students. Id. at 8. As such, FEMA suggests that the following functions must be demonstrated and evaluated during an exercise in which it is necessary to evacuate students:

1. Alerting and notification of appropriate school officials by local emergency officials with respect to status of radiological emergency and need to implement protective actions, including evacuation;
2. The contacting and notification of dispatchers and school bus drivers, as appropriate, to inform them of any potential or actual need for them to transport students; and
3. The provision of information to the parents and guardians, as appropriate, concerning the status and intended location or destination of the students.

Id. GM-EV-2 provides that FEMA will determine compliance with NUREG-0654 Planning Standard N during a simulation of an evacuation of school children by having an exercise evaluator interview (or directly observe) relevant personnel at the Emergency Operations Center(s), the School Superintendent’s Office, the School Principal’s Office, and the Dispatcher’s office, as well as the bus driver, to determine their awareness of and preparedness for the evacuation of the school children. Id.

As called for in guidance document GM-EV-2, FEMA’s practice with respect to school emergency planning is to determine the status of school planning and preparedness by interviewing key school personnel subsequent to drills and exercises in which school evacuation is involved.

School interviews were conducted following the 2000 Exercise at Indian Point. None of the interviews conducted subsequent to the 2000 Exercise raised new ARCAs, and a number of ARCAs that had been written regarding Rockland County schools during the previous exercise were cleared during the interviews that were part of the 2000 Exercise. See Exercise Report: Indian Point 3 Nuclear Power Station, dated April 30, 2001 at 40-46 (“2000 Exercise Report”). Likewise, the 2002 Exercise included interviews with school officials and bus drivers at schools in the four counties that needed evacuation under the simulation. None of the interviews with school officials or bus drivers resulted in any deficiencies or ARCAs during the 2002 Exercise. See Exercise Report at 53-54, 64-66, 78-79, and 88-89. Indeed, in the September 2002 Indian Point exercise, FEMA found that “the procedures for schools in the plans are adequate.” FEMA Report Executive Summary at 4. FEMA has not separately requested school plans in the past, but has reviewed school plans during the process of conducting interviews with school personnel as part of the exercise evaluation process. Such review should not be necessary in this instance either.

Regardless, by May 2, 2003 FEMA will have had the opportunity to review the district school plans in three of the counties, and has substantial evidence that the school district ERPs for Westchester County are adequate and are kept up-to-date.

RECOMMENDATION

The review of the plans in these three counties, along with substantial evidence that the Westchester County school district plans are adequate, should result in the closing of the open item noted by FEMA in its review of the September 2002 emergency planning exercise.