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STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

ANDREW M. CUOMO
Attorney General

DIVISION OF SOCIAL JUSTICE
Environmental Protection Bureau

January 18, 2008

Chairman Dale E. Klein
Commissioner Gregory B. Jaczko
Commissioner Peter B. Lyons
The United States Nuclear Regulatory Commission
11555 Rockville Pike
Rockville, Maryland 20852-2738

Re: *January 3, 2008 Petition Regarding OIG Audit of NRC's
License Renewal Program (OIG-07-A-15)*

Dear Chairman Klein and Commissioners Jaczko and Lyons:

On behalf of Attorney General Andrew M. Cuomo, I write to support the January 3, 2008 petition submitted by Riverkeeper, Inc. and other groups¹ (the "Petition") to the extent that it requests that the Nuclear Regulatory Commission ("Commission" or "NRC") suspend its license renewal process at the Indian Point power plant pending an investigation by the Commission of the NRC Staff review process and correction of deficiencies in that process. The Petition is based on the September 2007 report issued by the NRC Office of the Inspector General ("OIG") that raised concerns about, among other things, the process by which NRC staff analyzed information and prepared reports concerning license renewal applications for various nuclear power plants. *See, e.g.,* OIG Audit of NRC's License Renewal Program (OIG-07-A-15), dated September 6, 2007 ("OIG Report") Report at pp. 7-13; *see also id.* at Appendix C, Appendix D.

The State of New York has a keen interest in ensuring the safe operation of Indian Point Units 2 and 3 and a thorough and transparent evaluation of the entirety of their operations by the NRC.² Approximately 20 million people work or reside within a 50-mile radius of these plants.

¹The other petitioners included Nuclear Information and Resource Service; Jersey Shore Nuclear Watch, Inc.; Grandmothers, Mothers and More for Energy Safety; New Jersey Public Interest Research Group; New Jersey Sierra Club; New Jersey Environmental Federation; Pilgrim Watch; and New England Coalition.

²This concern also extends to the various aging structures, systems, and components in Unit 1 that are still used by the other two units as well as the leaking Unit 1 spent fuel pool.

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This is the highest population density surrounding any active nuclear power plant in the country. Moreover, the nation's financial center lies within the facility's 50-mile emergency planning zone.

The OIG Report is profoundly troubling. The OIG found that approximately 76 percent of the audit, inspection, and safety evaluation report samples from 13 different license renewal proceedings did not provide substantive comments about operating experiences. *Id.* at 9. "In some cases, the language presented in the audit and safety evaluation reports mirrors the language provided by the licensee in its license renewal application..." *Id.* at 8. The OIG went on to note that licensees may, in turn, take such language from a document entitled Generic Aging Lessons Learned (or "GALL Report"), NUREG-1801. Thus, the OIG Report reveals that nuclear power plant operators may have copied statements from the GALL Report into their license renewal applications and that the NRC staff then, in turn, copied those statements into NRC audit, inspection, and safety evaluation reports.

Stated differently, the OIG Report plainly supports the conclusion that there have been instances of a "cut-and-paste double-play": first, from the GALL Report to the license renewal applications and, second, from the license renewal applications to the NRC's audit, inspection, and safety evaluation reports. Thus, the public is confronted with a situation where language from the GALL Report is being parroted to the NRC Staff and the NRC reports mirror this parroted language. This startling recognition requires a thorough review by independent examiners and the suspension of the license renewal process for the Indian Point nuclear power plant.

The NRC's audit, inspection, and safety evaluation reports are not meant to be meaningless collections of copied phrases. These reports form a crucial component of the license renewal process – especially given NRC's narrow interpretation of the public's involvement in the license renewal process under 10 C.F.R. Part 54.

Based on its review of the report writing process surrounding the license renewal processes for 13 nuclear power plants, the NRC OIG determined that readers of such reports could conclude that important regulatory decisions "are not adequately reviewed and documented." *Id.* at 12. The OIG further concluded that the manner in which the staff produced the reports could frustrate the oversight functions performed by the Advisory Committee on Reactor Safeguards ("ACRS"). In the words of the OIG Report:

NRC internal users – such as members of the ACRS – benefit from more substantive discussions of license renewal review methodologies and support for conclusions. ACRS members said

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Many of these Unit 1 structures date back to the late 1950's when the Atomic Energy Commission granted Consolidated Edison Co. a construction permit to build Unit 1.

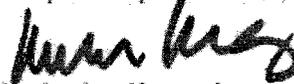
that they rely on information in all of the license renewal reports, and pointed specifically to the value of the level of detail in the audit reports.

Id. at 12. Thus, not only do we have a situation of a compounded instances of cutting and pasting, but that copied information is then presented to – and consumed by – the important Advisory Committee on Reactor Safeguards. The Advisory Committee cannot be expected to perform its functions in a meaningful way if it is essentially reviewing language lifted from the GALL Report or a license renewal application.

The deficiencies in the NRC Staff reviews that were enumerated in the OIG Report go to the very heart of the NRC review of license renewal applications: safety and the protection of the public health and welfare. Unless those deficiencies are vigorously examined and addressed by the NRC, the aging management analysis and review that should be performed by NRC Staff for license renewal applications will fall far short of ensuring safety and protecting the public health and welfare.

Accordingly, consistent with the January 2008 Petition, Attorney General Cuomo urges the Commissioners to suspend the recently-initiated Indian Point license renewal proceeding until such time that the Commission has confirmed – in a transparent and documented manner – that the Staff will conduct a thorough, independent, and objective review of all safety issues relevant to license renewal, including issues, if any, that the NRC precludes the public from raising in the license renewal hearing. Such a searching review should be a top priority of the Commissioners and the review moved to the forefront of Commission activities. The OIG Report calls for a prompt – yet searching – review by the Commissioners.

Respectfully submitted,



Katherine Kennedy
Special Deputy Attorney General

cc: Annette L. Vietti-Cook, NRC Office of Secretary

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)
)
ENTERGY NUCLEAR OPERATIONS, INC.) Docket Nos. 50-247/286-LR
)
)
(Indian Point Nuclear Generating,)
Units 2 and 3))

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LETTER FROM KATHERINE KENNEDY TO THE COMMISSIONERS REGARDING THE PETITION TO SUSPEND THE LICENSE RENEWAL PROCESS AT INDIAN POINT have been served upon the following persons by electronic mail this date, followed by deposit of paper copies in the U.S. mail, first class, and NRC internal mail.

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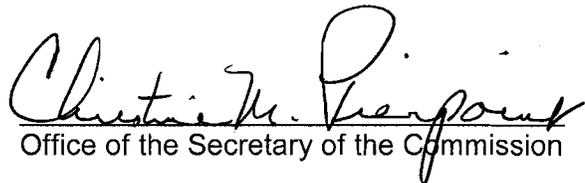
Weschester Citizen's Awareness Network
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Office of the Secretary of the Commission

Dated at Rockville, Maryland
this 25th day of January 2008