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STATE OF NEW YORK
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ATTORNEY GENERAL

DIVISION OF SOCIAL JUSTICE
ENVIRONMENTAL PROTECTION BUREAU

Cindy Bladey
Chief, Rules, Announcements, and Directives Branch
Office of Administration
Mail Stop: TWB-05-B01M
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

August 20, 2012

Re: Draft Supplement to Supplement 38 to the Generic Environmental Impact Statement for License Renewal of Nuclear Plants, Regarding Indian Point Nuclear Generating Unit Nos. 2 and 3, Draft Report for Comment dated June 26, 2012
NUREG-1437; Supplement 38, Vol. 4; 77 Fed. Reg. 40091 (July 6, 2012)
Docket Nos. 50-247-LR/50-286-LR

Dear Ms. Bladey:

Enclosed please find comments submitted by the State of New York Office of the Attorney General concerning NRC Staff's draft supplemental environmental impact statement.

All citations and references mentioned in the comments are hereby incorporated by reference. Should NRC Staff have difficulty obtaining any such citations and references, they are requested to contact the Office of the Attorney General for the State of New York for assistance. Please include these comments in the record for this proceeding.

Respectfully submitted,

Signed (electronically) by

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SUNSI Review complete
template = ADM 013

E-RIDS = ADM 03
Call = M. Wentzel (msw2)

COMMENTS BY THE NEW YORK STATE OFFICE OF THE ATTORNEY GENERAL
DRAFT SUPPLEMENT TO SUPPLEMENT 38 TO THE GENERIC ENVIRONMENTAL IMPACT STATEMENT
FOR LICENSE RENEWAL OF NUCLEAR PLANTS, REGARDING INDIAN POINT NUCLEAR GENERATING
UNIT NOS. 2 AND 3, DRAFT REPORT FOR COMMENT DATED JUNE 26, 2012
NUREG-1437; SUPPLEMENT 38, VOL. 4; 77 FED. REG. 40091 (JULY 6, 2012)
DOCKET NOS. 50-247-LR/50-286-LR

Submitted: August 20, 2012

Earlier this year, the State of New York wrote to NRC to express the State's concern about the narrow scope of NRC Staff's proposed supplemental review and revision of the Final Supplemental Environmental Impact Statement for the requested extension of the operating licenses for Indian Point Unit 2 and Indian Point Unit 3. *See* March 28, 2012 letter from J. Sipos to S. Turk (NRC) ML12090A609. Recently, NRC Staff released a draft report for public comment. NUREG-1437, Supplement 38, Vol. 4 (June 26, 2012) ML12174A244. In a notice in the *Federal Register*, Staff requested comments by August 20, 2012. 77 Fed. Reg. 40091 (July 6, 2012). The scope of the draft supplemental report remains far too narrow and is inconsistent with the National Environmental Policy Act and the implementing regulations promulgated by the Council on Environmental Quality and NRC.

NRC Staff's EIS Should Include a Site Specific Examination of the Impacts of Severe Accidents on Water Resources, Including Drinking Water Resources, Within 50 Miles of Indian Point and the Alternatives to Mitigate Such Impacts

NRC Staff prepared the draft report to examine information about environmental impacts of issuing renewed operated licenses to the Indian Point facilities on aquatic resources, but the supplemental review conducted by Staff examines only a narrow aspect of such impacts. The State previously requested that NRC Staff review the impacts of a severe accident on water resources, including drinking water resources. Such a review should include a thorough analysis of the value of such resources and the cost to decontaminate and remediate those resources, or provide replacement drinking water. Several reservoirs that provide drinking water resources for New York communities – including New York City – are located within 50 miles of the Indian Point facilities, yet NRC had not examined the environmental impacts that would result from a severe accident that deposited radionuclides into those water resources or the cost to

decontaminate or replace those resources. Nor has NRC Staff examined alternatives to mitigate such impacts. Thus, NRC Staff has failed to conduct an adequate site specific analysis of the environmental impacts of a severe accident at Indian Point on water resources.

NRC Staff's EIS Should Examine the Impact of Severe Accidents to the Spent Fuel Pools at Indian Point and the Alternatives to Mitigate Such Impacts

Substantial amounts of spent nuclear fuel are contained in the spent fuel pools at Indian Point Unit 2 and Indian Point Unit 3. Recently, Entergy representatives disclosed that Entergy intendeds to maintain current dense storage practices at Indian Point during any relicensing term granted by NRC. Specifically, during the May 8, 2012 site visit to the Indian Point facilities by the Atomic Safety and Licensing Board, Entergy representatives made the following statements about Entergy's plans for spent nuclear fuel at Indian Point:

- (A) All of the spent fuel generated during since the start of commercial operation of Indian Point Unit 3 remains in the Indian Point Unit 3 spent fuel pool (as of the date of the site visit) (stated differently, the Unit 3 spent fuel pool holds 36 years worth of spent nuclear fuel);
- (B) Entergy has no current plans to construct an additional dry cask storage area (in addition to the existing dry cask storage area); and
- (C) At the end of operation under any 20-year extension of the current operating licenses, Entergy estimates that the existing dry cask storage area would be filled to capacity and that the Indian Point Unit 2 spent fuel pool and the Indian Point Unit 3 spent fuel pool would be filled to capacity as well.

NRC Staff has not examined alternatives to the continued dense storage of spent nuclear fuel in the Indian Point spent fuel pools.

NRC can no longer maintain that dry cask storage and densely packed spent fuel pools provide comparable long term storage options. The differences between the two storage methods are illustrated by the following chart reflects NRC's list of priorities five days into the

Fukushima disaster. The conditions at Fukushima Daiichi Unit 1, Unit 2, and Unit 3 were worse than that reached at any time during the Three Mile Island Unit 2 reactor accident, yet the NRC's higher priority was the Daiichi Unit 4 spent fuel pool.

Fukushima Daiichi Summary Display		
Priority	Unit	STATUS AS OF 06:00 EDT (19:00 Local) - 03/16/2011
4	1	Core Status - Severe core damage (based on the amount of hydrogen generated). Radiation has been released. Possible RCS breach. (GE) Sea water injection to RPV.
		Containment - Primary apparently intact. Secondary Containment destroyed.
		Spent Fuel Pool - No information on SFP status.
3	2	Core Status - Severe core damage likely. Radiation release has occurred. Possible RCS breach (GE). Sea water injection to RPV.
		Containment - Primary apparently intact. Secondary Containment lost.
		Spent Fuel Pool - No information on SFP status. Some reports attribute smoke/steam coming from the SFP.
2	3	Core Status - Severe core damaged (based on the amount of hydrogen generated). Radiation has been released. Possible RCS breach. (GE). Sea water injection to RPV.
		Containment - Primary apparently intact. Secondary Containment destroyed.
		Spent Fuel Pool - May be in the same condition as Unit 4 SFP below. (Monninger)
1	4	Core off-loaded to Spent Fuel Pool. Secondary Containment destroyed. Walls of SFP have collapsed. No SFP cooling is possible at this time. TEPCO requests recommendations. (Monninger)
5	5	Shutdown since January 3, 2011. Core loaded in RPV. RPV/SFP levels lower than normal and decreasing. Unit 6 D/G providing make-up water to Unit 5. (IAEA).
6	6	Shutdown since August 14, 2010. Core loaded in RPV. RPV/SFP levels lower than normal. Unit 6 D/G providing make-up water to Unit 5. (IAEA).

Source: NRC ADAMS Accession No. ML12080A196 (frame 259 of 782) (placed on public ADAMS on March 23, 2012) (highlight added). Moreover, there were concerns about radiation releases from the fuel rods in the Unit 4 spent fuel pool. *Id.* (frame 252 of 782 (“Rad release – possible from SFP”)). Not only was the Daiichi Unit 4 spent fuel pool a top NRC priority, but it appears that the Daiichi Unit 4 spent fuel pool was not as densely packed as the two spent fuel pools at Indian Point Unit 2 and Indian Point Unit 3. In contrast, the spent nuclear fuel stored in the dry cask storage facility at Fukushima Daiichi was not included in NRC's list of priorities.

NRC Staff's EIS Should Examine How the Federal Government and its Agencies Will Respond to Severe Accidents at Indian Point and Pay for the Decontamination of the New York Metropolitan Area Including its Water Resources

The State previously raised concerns about the federal government's ability to respond to a severe accident at Indian Point. Although Entergy has asked NRC to issue two operating licenses for the Indian Point reactors, spent fuel pools, and attendant facilities, it not clear that NRC has the desire, capability, or financial resources to respond to a severe accident at Indian Point and ensure the thorough decontamination of the New York metropolitan area including, but not limited to, its water resources – and drinking water resources – in the wake of such an accident.



U.S. NRC One Commissioner's Observations:
Post - Accident Policy Questions

UNITED STATES NUCLEAR REGULATORY COMMISSION
Protecting People and the Environment

- **There is no regulatory framework for environmental restoration following a major radiological release.**
 - Some point to CERCLA – which is not designed for that purpose.
 - There is an active discussion within the Executive Branch regarding this subject – unclear how stakeholders will have an opportunity to provide input.
- **No international framework is in place to facilitate accident response cooperation and information dissemination**

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Power Point Presentation, Health Physics Society (Feb. 6, 2012).

Conclusion

NRC Staff's supplemental review of the environmental impacts of the issuing 20 year operating licenses to Indian Point Unit 2 and Unit 3 is far too narrow and inconsistent with the National Environmental Policy Act and regulations promulgated by the Council on Environmental Quality and NRC. NRC should reopen its NEPA review of the requested operating licenses and conduct a comprehensive site specific analysis of the environmental impacts caused by severe accidents at Indian Point as well as the means and resources to mitigate such impacts.

John Sipos
Assistant Attorney General
State of New York