

**NRC Resolution of Public Comments
NRC-2013-0063
Indian Point Nuclear Generating Unit No. 3
Draft Environmental Assessment and Finding of No Significant Impact**

U.S. Nuclear Regulatory Commission
Office of Nuclear Reactor Regulation

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Introduction

This document presents the U.S. Nuclear Regulatory Commission's (NRC) responses to comments received on a draft environmental assessment (EA) and finding of no significant impact (FONSI). The NRC was reconsidering its issuance of a revision of existing exemptions from Title 10 of the *Code of Federal Regulations* (10 CFR) Part 50, Appendix R, "Fire Protection Program for Nuclear Power Facilities Operating Prior to January 1, 1979," for Fire Areas ETN-4 and PAB-2, issued to Entergy Nuclear Operations, Inc., the licensee, for operation of Indian Point Nuclear Generating Unit No. 3, located in Westchester County, NY.

The notice and request for comment was issued in the *Federal Register* on April 3, 2013 (78 FR 20144). The public comment period was originally scheduled to close on May 3, 2013. However, due to requests from the public, the comment period was extended to June 3, 2013, by notice in the *Federal Register* on May 7, 2013 (78 FR 26662).

The NRC received a total of 135 submissions¹ in response to its April 3, 2013, *Federal Register* notice (FRN). The staff reviewed every submission. The staff's resolution of comments are included in three parts as described below.

Principal comments were received in letters dated June 3, 2013, from Mr. Richard Brodsky on behalf of himself and others, Mr. Phillip Musegaas on behalf of Riverkeeper, Inc., and Ms. Alyse Peterson on behalf of the New York State Energy Research and Development Authority (NYSERDA). In Part 1, the NRC staff summarized the principal comments in the three letters referenced above and provided its responses as Brodsky Comment 1, Brodsky Comment 2, and so forth. Many of the principal comments submitted are outside the scope of the environmental assessment, which deals strictly with the environmental impacts of granting the exemptions.

Most of the remaining submissions included one or more comments that were similar or substantially the same as those included in the letters of the principal submitters. Thus, these remaining comments are enveloped by those of the principal commenters. Part 2 is a table that provides a complete listing of the submissions, the submission number, the NRC's Agencywide Documents Access and Management System (ADAMS) Accession Number for each submission, and references to each of the principal comments that most closely relates to the submission.

Finally, a number of submissions included comments that were not enveloped by the principal comments. Almost all of these comments were found to be outside of the scope of the EA and FONSI, which deals strictly with the environmental impacts of granting the exemptions. Part 3 has grouped these comments and lists the ADAMS accession number for each individual submission.

¹ This document distinguishes between submissions and comments. A submission is a single document (like a letter or e-mail) that contains one or more comments.

PART 1
PRINCIPAL COMMENTS RECEIVED FROM RICHARD BRODSKY, RIVERKEEPER, AND
THE STATE OF NEW YORK

The NRC staff identified three submissions as having the principal comments most representative of all comments received. These submissions were letters dated June 3, 2013, from Mr. Richard Brodsky (including Mr. Brodsky's letter dated May 10, 2013 to the Hon. Loretta A. Preska, Chief United States District Judge for the Southern District of New York) on behalf of himself and others, Mr. Phillip Musegaas on behalf of Riverkeeper, Inc., and Ms. Alyse Peterson on behalf of NYSERDA. In the discussion below, the staff summarizes these comments and provides the staff's response for what we will refer to as the principal comments.

Brodsky Comment 1 (BC 1):

The NRC has not met NRC exemption requirements as they relate to NRC's statutory obligations under the National Environmental Policy Act (NEPA), the Atomic Energy Act (AEA) and the Administrative Procedure Act (APA). Confusion exists as to the legal status of the exemptions granted in 2007 and as to the reference to "exemptions" rather than a single exemption.

Documents filed in the *Brodsky v. NRC* court proceedings should be made part of the administrative record of this Environmental Assessment (EA) and Finding of No Significant Impact (FONSI), including the letter dated May 10, 2013 from the commenter to Chief U.S. District Judge Preska in the *Brodsky v. NRC* proceeding.² It is open to question whether the NRC has taken a "hard look" at the issues raised in this EA and FONSI; whether a public hearing must be held on this matter; and whether the evidentiary record compiled for consideration of the exemptions is sufficient. The NRC's refusal to accept comments by email constitutes an illegal and unfair obstacle to full public participation.

A consequence of a fire lasting longer than 24 minutes would be a meltdown of the reactor, and that issuance of this exemption would therefore jeopardize the public health, safety, and security of almost 20 million people. The adverse impacts of granting the exemption are reasonably foreseeable, are not remote or speculative, and involve catastrophic consequences even if the probability of occurrence is low. NRC should withdraw its EA and FONSI and prepare an environmental impact statement (EIS), and/or deny the request for this exemption.

² Mr. Brodsky's suit against the NRC challenging the Indian Point 3 exemptions resulted in dismissal of those claims in *Brodsky v. NRC*, 783 F. Supp. 2d 448, 457 n.7 (S.D.N.Y. 2011). The United States Court of Appeals for the Second Circuit reversed and vacated the judgment of the District Court on the ground that NRC had not adequately considered public participation in the NRC's exemptions decision to the extent required by NEPA. Its Opinion was issued in *Brodsky v. NRC*, 704 F.3d 113 (2d Cir. 2013). In a separate Summary Order, the Second Circuit affirmed all other rulings by the District Court, unrelated to the NEPA public participation claim, challenging the exemptions. See *Brodsky v. NRC*, No. 11-2016-cv, "Summary Order" (2d Cir. Jan. 7, 2013). The NRC refers to those two separate decisions as the Opinion and Summary Order of the Second Circuit.

NRC Response:

The NRC has acted in accordance with its statutory obligations in considering Mr. Brodsky's comments as well as in making its FONSI regarding the exemptions. This comment did not offer any information, as distinct from legal argumentation, to the contrary.

The *Federal Register* notice refers to "exemptions" because the Indian Point 3 licensee was originally granted a separate exemption for each of two fire zones in the plant in 2007. The first exemption permitted the licensee to use 24-minute rated fire barriers to protect redundant safe-shutdown trains in the Upper and Lower Electrical Tunnels (Fire Area ETN-4, Fire Zones 7A and 60A, respectively), and the Upper Penetration Area (Fire Area ETN-4, Fire Zone 73A). The second exemption allowed the licensee to use a 30-minute rated fire barrier to protect redundant safe shutdown trains in the 41' Elevation CCW Pump Area (Fire Area PAB-2, Fire Zone 1). Therefore, the *Federal Register* notice for the reissued EA and FONSI has used the same plural. The legal status of the exemptions granted initially in 2007 is discussed in response to Brodsky Comment 3 below.

The NRC has included in the record of this proceeding all documents it has found relevant to its determination. This commenter and others alluded to other documents, but did not identify specific documents and/or did not explain the relevance of the document to the exemptions requests. The NRC has treated commenter's letter to Judge Preska as a separate comment letter, and has responded to any issues raised in this letter accordingly. See NRC Response to Brodsky 3, 6, 8, and 9. The legal issues the commenter briefly identifies in this comment are discussed more fully in NRC Responses to Brodsky Comments 2, 7 and 8.

The NRC disagrees with the commenter's assertion that the NRC's refusal to accept comments by email constitutes an illegal and unfair obstacle to full public participation in this proceeding. The NRC reissued the EA and FONSI for the requested exemptions with a 30-day public-comment period, which the agency extended for an additional 30 days at the request of the public. The NRC allowed the public to use several methods to submit comments, including electronically via the Federal Rulemaking Web site (<http://www.regulations.gov>), fax or mail. The NRC also provided an agency employee contact to answer any questions regarding the NRC's dockets on the Federal Rulemaking Web site. The NRC has thus granted the public a meaningful opportunity to provide input in the decision-making process for this exemption request.

Finally, the NRC disagrees with the commenter's factual assertions, for example, "that a consequence of such a fire going beyond 24 minutes is a meltdown of the reactor." Indian Point Unit 3, like all nuclear power plants, has defense-in-depth features to prevent fires and to suppress any fires that might occur. The fire barrier in place sufficiently assures that if a fire does occur and is not promptly suppressed, it will not challenge safe shutdown of the facility. The fire barrier was tested under worst-case fire conditions in a furnace with essentially unlimited fuel. Therefore, the fire-rating of 24 minutes, the lesser of the two ratings, is nonetheless conservative. The fire areas referenced in the exemptions have a limited potential for significant fires, due to limited combustible loading. Both areas feature fire protection features for detecting and suppressing fires as well as the fire barrier providing protection from credible fires that could occur in the event that a fire is not rapidly suppressed. Therefore, the NRC has determined that a fire in either area would not challenge the 24- or 30-minute rating approved by the exemptions, even under the worst foreseeable fire conditions. This led the NRC to conclude in its safety evaluation for these exemptions that Indian Point Unit 3's post-fire safe-shutdown capability would not be impacted.

As explained more fully in response to Brodsky Comment 2 and Riverkeeper Comment 1, the NRC has concluded that granting the exemptions will not result in a decreased or otherwise unacceptable reduction in safety margins at Indian Point 3. In light of the EA prepared for the exemptions and the resulting FONSI, no EIS is warranted.

Brodsky Comment 2 (BC 2):

The EA and FONSI have not considered reasonable alternatives to the requested exemption in violation of the AEA, NEPA, the APA, the decisions issued by the Second Circuit and the Southern District of New York, and the NRC's regulations. The NRC limited its consideration to either issuing the exemption or taking no action at all, and did not consider viable alternatives: a requirement that the fire insulation be upgraded to meet the one-hour requirement, a requirement that the fire insulation be upgraded to a different time frame not tied to the Hemyc test results; other non-administrative remedies; and a modification of the Indian Point 3's fire protection program to utilize National Fire Protection Association Standard 805 (NFPA 805). The commenter requested that if the exemption is not denied, the EA and FONSI should be withdrawn until these alternatives are considered as part of a comprehensive environmental impact study.

NRC Response:

The NRC has considered several of the alternatives suggested in this comment, including the alternative of denying the exemption request. The *Federal Register* notice for the reissued EA and FONSI for these exemptions stated clearly that the "no action" alternative would involve the "denial of the proposed action" (i.e., the denial of this exemption request). See 78 FR 20144-20146 (Apr. 3, 2013). The NRC determined, however, that denial of the exemption request would result in no change in current environmental impacts. The NRC further determined that the environmental impacts of denying the exemption request and approving the requested exemptions are similar. A necessary and implicit part of the "no action" alternative would be requiring compliance with 10 CFR Part 50, Appendix R, because if the NRC denied the requested exemptions from the regulations in Appendix R, the licensee would be required to comply with these regulations. Thus, the NRC has considered imposing a requirement that the fire insulation be upgraded to meet the one-hour requirement in Appendix R. Moreover, consideration of requiring the licensee to comply with the one-hour fire barrier requirement necessarily bounds any period less than one hour, which would include any fixed period not tied to Hemyc test results, therefore, different time frames were also considered in the alternatives.

The commenter did not specify what "non-administrative remedies" might constitute an appropriate substitute for the exemptions. The NRC is not aware of any non-administrative remedies that should have been considered as an alternative in the EA for these exemptions. The NRC considered the most reasonable and obvious alternative to the proposed action – the denial of the exemption request and compliance with the requirements in 10 CFR Part 50, Appendix R.

With regard to the suggested alternative involving the use of NFPA 805, that is an option and not a requirement for Indian Point 3. As stated in 10 CFR 50.48(b)(2), plants licensed to operate before January 1, 1979, must comply with 10 CFR Part 50, Appendix R. Indian Point Unit 3 falls within the scope of 10 CFR 50.48(b), as it was licensed to operate before January 1, 1979. However, Section 50.48(c)(3)(i) provides that a licensee may choose to comply with NFPA 805 as an alternative to complying with 10 CFR 50.48(b), but does not require licensees

to do so. Thus, if the NRC were to deny the requested exemptions, the licensee must comply with Appendix R and not with NFPA 805. Consequently, it was reasonable for the NRC not to further examine this suggested alternative.

In any event, “the range of alternatives an agency must consider is narrower when, as here, the agency has found that a project will not have a significant environmental impact.” *Friends of the Ompompanoosuc v. FERC*, 968 F.2d 1549, 1558 (2d Cir. 1992); *City of New York v. DOT*, 715 F.2d 732, 744 (2d Cir. 1983). As stated in the FONSI, the NRC concluded based on its EA that the proposed action (i.e., granting the requested exemptions) will not have a significant effect on the quality of the human environment. Accordingly, the NRC does not agree that the EA and FONSI should be withdrawn for the requested exemptions, or that an EIS should be prepared for these exemptions.

Brodsky Comment 3 (BC 3):

This exemption is not authorized by law because: (A) the record contains no evidence on the requirement under 10 CFR 50.12 that the exemption is authorized by law; (B) the exemptions are permanent, rather than limited in duration; (C) the NRC’s failure to consider relevant and probative evidence renders its prior approval of the exemption unauthorized by law; (D) the NRC’s earlier failure to publish the exemption request for public comment invalidates its prior 2007 approval of the exemption; (E) confusion exists over the legal status of the exemption granted in 2007; (F) the NRC has invalidly characterized this proceeding as a reconsideration of the exemption granted in 2007, and has failed to provide the public with adequate information regarding the notice-and-comment process, and has not solicited the views of the State of New York as it did in 2007; and (G) the NRC has not considered denying the exemption requests and has arbitrarily limited options to modifying the exemption, thus prejudging the outcome.

NRC Response:

The NRC correctly determined that the requested exemptions are authorized by law, and will address each of the commenter’s points in turn. As a general matter, it is well established that the AEA and the NRC’s regulations implementing the AEA provide the NRC with authority to grant exemptions from its regulations, including the fire protection requirements in 10 CFR 50.48 and 10 CFR Part 50, Appendix R. Most recently, the U.S. Court of Appeals for the Second Circuit upheld the agency’s authority to issue exemptions from its regulations. See *Brodsky v. NRC*, No. 11-2016-cv, “Summary Order” (2d Cir. Jan. 7, 2013) (slip op. at 3).

(A) The NRC record for the requested exemptions discusses why the NRC concluded that these exemptions are authorized by law. On page 11 of the safety evaluation for these exemptions, the NRC explains that granting these exemptions will not result in a violation of the AEA or the NRC’s regulations, and thus concludes that these exemptions are authorized by law. The Second Circuit recently affirmed that this discussion suffices to support a finding that an exemption is authorized by law:

[W]e do not read 10 C.F.R. § 50.12, which mandates simply that the grant of an exemption be “authorized by law,” to require the NRC to provide a detailed explanation as to why a grant is consistent with the provisions of the AEA, APA, or NEPA. To the extent plaintiffs allege that the exemption does not comport with any of these statutes, we address those particular contentions separately. But insofar as the NRC generally considered whether any law prohibited granting

the exemption and concluded that none did, we hold that no more was required by § 50.12.

Id. at 5–6. This accords with earlier precedent to the same effect. *Shoreham-Wading River Central School District v. NRC*, 931 F.2d 102, 106 (D.C. Cir. 1991). Here, the NRC considered whether any law, including NEPA, prohibited the issuance of these exemptions and concluded that none did.

(B) The NRC does not agree that only temporary exemptions are valid. Section 50.12 lists the temporary nature of an exemption as only one of six possibilities in which special circumstances justify an exemption. Thus, that “[t]he exemption would provide only temporary relief from the applicable regulation,” see 10 CFR 50.12(a)(2)(v), and offers only one of six possible “special circumstances” for a valid exemption. Moreover, the U.S. District Court for the Southern District of New York rejected the argument that only a temporary exemption is valid because the plain language of 10 CFR 50.12 does not require that all exemptions be temporary. *Brodsky v. NRC*, 783 F. Supp. 2d 448, 457 n.7 (S.D.N.Y. 2011), *vacated in part on other grounds*, 704 F.3d 113 (2d Cir. 2013).

The NRC is not persuaded to the contrary by *Massachusetts v. NRC*, 878 F.2d 1516 (1st Cir. 1989). That decision upheld an exemption from the requirement to conduct an emergency preparedness exercise within 120 days of reaching full power. *Id.* at 1525. The U.S. Court of Appeals for the First Circuit upheld the exemption in that case, however, based on the reasonableness of the NRC’s exercise of discretion under the circumstances, not the temporary nature of the exemption. *Id.* Thus, this case does not stand for the proposition that an exemption may be valid only if it is temporary in nature.

(C) The commenter has not demonstrated the relevance or probative value of any evidence that the commenter believes the NRC has not considered. The NRC notes that the Second Circuit recently concluded that the same commenter’s failure to show that specific “documents are in fact relevant or probative” was fatal to the commenter’s claim that the NRC improperly limited the administrative record and failed to consider certain documents. *Brodsky v. NRC*, “Summary Order,” slip op. at 7 (2d Cir. Jan. 7, 2013). See also the NRC’s response to Brodsky Comment 7

(D) and (E) The NRC disagrees that confusion exists with regard to public participation in the NRC’s reconsideration of the exemptions. The agency has granted the public a well-explained opportunity to participate in the decision-making process for the requested exemptions. See 78 FR 20144 (Apr. 3, 2013).

Nor is there any basis for confusion over the legal status of the exemptions. The Second Circuit’s Opinion requiring NRC to consider the appropriateness of public participation in the NRC’s review of the exemptions request in *Brodsky v. NRC* did not invalidate the exemptions granted to the licensee in 2007. Moreover, the Court’s separate Summary Order made clear that the Second Circuit rejected the plaintiffs’ challenge to the exemptions, except with regard to the single NEPA issue decided by the Opinion. That Opinion remanded the case to the district court with instructions for it to remand the case to the NRC, so that the agency may either “(1) supplement the administrative record to provide an explanation, with supporting affidavits or findings of fact, as to why affording public input into the exemption request was inappropriate or impracticable; or (2) take other such action as it may deem appropriate to resolve this issue.” *Brodsky v. NRC*, 704 F.3d at 124. The Second Circuit’s related decisions thus left the exemptions in place pending further consideration by the agency.

In response to this remand, the NRC chose to “take other such action as it may deem appropriate to resolve this issue” and thus provide the public with a full opportunity to be heard on this exemption request. Consequently, the NRC issued a draft version of the EA and FONSI for the exemption request and published a request for public comment in the *Federal Register*. The NRC also provided direct notice to several interested parties, including the commenter. The NRC stated in its issuance of the draft EA and FONSI that the NRC “is reconsidering” its grant of the exemptions, and that “[a]s necessary, the underlying action (i.e., approval of the exemptions) may be modified in light of public comments.” 78 FR 20144-20145 (Apr. 3, 2013). The NRC thus explicitly left open the possibility that, as a result of public comments received, it might decide to modify or even rescind the exemptions approved in 2007. As such, the NRC’s prior approval of the exemptions did not predetermine or otherwise affect the NRC’s current judgment in evaluating the public comments received and deciding anew to approve these exemptions. The public has therefore had a full opportunity to participate in the decision-making process related to these exemptions.

(F) The NRC disagrees with the commenter’s assertion that the agency lacks authority to reconsider the issuance of an exemption. Federal agencies possess inherent authority over their decisions to be able to reconsider them based on new information. The courts have “recognized the general rule that agencies possess implied authority to reconsider and rectify errors even though the applicable statute and regulations do not expressly provide for such reconsideration.” *Ala. Envtl. Council v. EPA*, 711 F.3d 1277, 1290 (11th Cir. 2013) (internal quotation marks omitted). Moreover, without such authority, the remand by the Second Circuit to “take such further action as it may deem appropriate to resolve this issue” would be rendered meaningless.

The NRC also does not agree with the commenter’s assertion that it failed to provide the public with adequate information regarding the administrative process being used. In the notice of opportunity to comment on the draft EA and FONSI for these exemptions, the NRC made clear that the public could provide comments to the agency on these documents during the specified comment period, which was extended 30 days at the request of Mr. Brodsky and others. See 78 FR 26662 (May 7, 2013). The NRC utilized its standard notice-and-comment procedure, which is frequently employed by Federal agencies for rulemaking and other regulatory activities.

Finally, the NRC did directly solicit the views of the State of New York by sending the State the *Federal Register* notice of opportunity to provide comments on the reissued EA and FONSI for these exemptions. The NRC, in fact, received comments from the State of New York, as discussed below.

(G) The NRC has neither limited its options in reconsidering the exemptions nor prejudged the outcome, as this comment asserts. As explained in response to subparts (E) and (F) of this comment, after issuing the draft EA and FONSI for these exemptions, the NRC fully considered all public comments received and has weighed whether those comments justified rescinding or otherwise modifying the exemptions approved in 2007. The NRC did not prejudge the outcome of this proceeding, but rather carefully considered the public comments and then decided anew to approve these exemptions.

The NRC considered the option of denying the exemptions as part of the “no action” alternative. The NRC determined, however, that denial of the exemptions “would result in no change in current environmental impacts,” and that the environmental impacts from either granting or

denying the exemptions were “similar.” See 78 FR 20146. Therefore, the NRC has not refused to consider denying the exemption request.

Brodsky Comment 4 (BC 4):

The exemption is not consistent with the common defense and security, which is a requirement of 10 CFR 50.12. First, the NRC record contains no documents that discuss the common defense and security. Second, the Hemyc insulation material’s failure to meet Appendix R affects the Indian Point Nuclear Plant’s ability to withstand fires resulting from acts of terrorism and other breaches of security, and the NRC did not consider this issue. Third, the NRC did not consider the ability of the administrative controls and manual fire suppression required by the exemption to survive acts of terrorism. Fourth, the specific elements of the exemption increase the risk and consequences of a terrorist attack. Fifth, the reliance upon automatic fire detection cannot be credited because the automatic detection system is not a safety-related system. Sixth, the exemption violates the defense-in-depth approach required by federal regulations.

NRC Response:

Just as no legal requirement exists for a separate document supporting NRC’s conclusion that the exemption is “authorized by law” (see response to Comment 3 above), Section 50.12 does not require that the agency’s “consistent with the common defense and security” conclusion be supported by a specific document or other evidence addressing that specific point. Rather, the NRC’s “consistent with the common defense and security” conclusion is supported by the agency’s detailed safety analysis. In this case, this analysis shows that “standing alone,” the effect of the exemptions on the common defense and national security “appears nil.” *Shoreham-Wading River Central School District v. NRC*, 931 F.2d at 106.

This comment asserts that Indian Point 3’s automatic fire detection system is not safety-related. In accordance with NRC regulations, a nuclear plant’s fire protection systems are not safety-related unless they serve to mitigate a design basis accident. Fire protection systems like those in the fire areas of the two exemptions, however, are subject to NRC-approved Quality Assurance Programs and such systems are inspected by NRC staff. The status of fire protection for the fire areas in question are therefore no different from any other fire protection systems not required to mitigate a design basis accident. Further, the exemption does not violate NRC’s “defense in depth” regulatory approach. The Hemyc fire barrier is one such component of defense-in-depth. The other components are discussed in the exemption and are sufficient to demonstrate adequate protection, e.g., the plant’s use of redundant cable trains with sufficient separation.

This comment’s concerns related to security and terrorism are not relevant to the environmental effects of the subject exemptions and are thus outside the scope of the NEPA review of this proposed action. Since the terrorist attacks of September 11, 2001, the NRC has required enhanced security requirements at nuclear power plants to ensure that licensees maintain vigilance and a high degree of security awareness. Through a series of security orders, the Commission supplemented its Design Basis Threat for radiological sabotage against which licensees must protect and establish new security requirements for enhanced training, access authorization, protective strategies, mitigation measures, and integrated response. The NRC rulemaking amending 10 CFR Part 73 made the requirements of these orders generally applicable to all licensees. The NRC also established new requirements for safety/security interface in 10 CFR 73.58, potential aircraft threats in 10 CFR 50.54(hh)(1), and the loss of large areas of the plant due to explosions and/or fire to mitigate potential consequences for these

threat scenarios as well as accident scenarios with similar radiological consequences in 10 CFR 50.54(hh)(2). The NRC routinely assesses threats and security-related information provided by many federal agencies and other sources through its ongoing regulatory process.

But acts or threats of terrorism do not implicate the NRC's responsibilities under NEPA. Acts of terrorism are inherently unpredictable and stochastic and therefore are not separately considered in preparing the NRC's environmental analyses. The NRC has, therefore, determined that NEPA "imposes no legal duty on the NRC to consider intentional malevolent acts" because those acts are "too far removed from the natural or expected consequences of agency action." See *Amergen Energy Co. LLC (Oyster Creek Nuclear Generating Station)*, CLI-07-8, 65 NRC 124, 128 (2007), *aff'd*, *New Jersey Dep't of Env'tl. Prot. v. NRC*, 561 F.3d 132 (3d Cir. 2009).

Although the inherent uncertainty of terrorism precludes reliably quantifying the likelihood of a terrorist attack, under credible threat conditions assumed by NRC, the probability of such an attack is believed to be low. To provide high assurance that a terrorist act will not lead to significant radiological consequences, NRC has analyzed plausible threat scenarios and required enhanced security measures to protect against these threats. Each of these protective and mitigation measures has been taken without regard to the probability of an attack. The risk of a terrorist attack, like the risk of a severe accident, cannot be eliminated, but these protective and mitigation strategies reduce the risk from a terrorist attack to a level that reasonably assures the public health and safety.

This approach is consistent with the agency's application of NEPA. As the Third Circuit has held, "precautionary actions to guard against a particular risk do not trigger a duty to perform a NEPA analysis." *New Jersey Dep't of Env'tl. Prot. v. NRC*, 561 F.3d 132, 142-43 (3d Cir. 2009).³ With regard to the specific exemptions at hand, the NRC has determined that, even if it were required by NEPA to consider acts of terrorism, any incremental risk of terrorism is too low to require environmental analysis. *New York v. NRC*, 589 F.3d 551, 554 n.1 (D.C. Cir. 2009).

Whether resulting from a terrorist attack or some internally-initiated event, the NRC staff determined from its independent safety evaluation of the licensee's proposal that the "configuration of the fire zones under review provide reasonable assurance that a severe fire is not plausible and the existing fire protection features are adequate." 78 Fed. Reg. at 20146. From this and related findings, the NRC concluded that "[t]he proposed action will not significantly increase the probability or consequences of accidents." *Id.* This finding renders a severe fire in the affected areas resulting from granting the exemptions, however initiated and whatever the offsite consequences, so unlikely as not to require further environmental analysis.

Brodsky Comment 5 (BC 5):

The exemption will present an undue risk to the public health and safety. The NRC intentionally and impermissibly used probabilistic analysis for a regulatory scheme that is deterministic. In the NRC's decision to grant an exemption in 2007, the agency intentionally excluded evidence that showed that the licensee's request for an exemption was inherently dangerous, that the

³ The NRC acknowledges that a split in the circuit courts exist on this point, see *San Luis Obispo Mothers for Peace v. NRC*, 449 F.3d 1016 (9th Cir.2006), but adheres to its position, outside of the Ninth Circuit, that NEPA does not require consideration of terrorists attacks.

exemption cannot and has not been implemented in a manner that is consistent with its own assertions and promises, and that there are alternatives to the exemption that would be effective and possible. Finally, the NRC must take a hard look at evidence of the heightened risk, heightened consequence, and availability of alternatives.

NRC Response:

This comment cites a statement from NRC's safety evaluation that grant of the exemptions will not increase either the probability or consequences of a postulated accident because the exemptions create no new accident precursors. From this, the commenter infers that NRC has engaged in "impermissible use of probabilistic analysis," contrary to the regulatory requirement of a deterministic analysis. But the NRC's consideration of exemptions, including these, is not based on deterministic criteria. Terms such as "probable" and "likely" are appropriate to NRC's performance-based review of such requests. The NRC staff uses regulatory guidance and engineering judgment to determine if an exemption meets the criteria of 10 CFR 50.12 under the circumstances, which requires the agency to consider, inter alia, how is the system likely to perform if the exemption were granted? There are no deterministic criteria that must be met.

Notwithstanding the assertion that the exemptions would create heightened risk, the NRC's analysis found neither increased probability nor increased consequences of an accident resulting from granting the exemptions. From its independent safety evaluation of the licensee's proposal, the NRC determined that the "configuration of the fire zones under review provide reasonable assurance that a severe fire is not plausible and the existing fire protection features are adequate." See 78 FR 20146. From this and related findings, the NRC concluded that "[t]he proposed action will not significantly increase the probability or consequences of accidents." *Id.* This finding supports the NRC's performance-based conclusion that the licensee's proposed compensatory measures will achieve the underlying purpose of the rule.

The commenter has furnished no support for his assertion that "the NRC intentionally excluded evidence that shows that the licensee's request for an exemption is inherently dangerous," and failed to take a "hard look" at evidence that the exemptions would create "heightened risk." As noted, the Second Circuit rejected the same claim. *Brodsky v. NRC*, "Summary Order," slip op. at 7-8. See also NRC response to Brodsky Comments 3 and 6. Finally, the NRC notes that inspections since grant of the exemptions in 2007 confirm, contrary to the commenter's assertions, that the licensee has implemented the exemptions in accordance with its proposal.

For a discussion regarding reasonable alternatives, see NRC response to Brodsky Comment 2.

Brodsky Comment 6 (BC 6):

The NRC record developed for the requested exemption is grossly inadequate as a matter of fact and law. The record contains no documents that raise concerns about the legality, safety, or propriety of granting the exemption. Specifically, there are no documents related to the public health, safety, and security; the legal authority for the exemption; the impact of terrorism; the need for full public participation; and the failure to establish the required "special circumstances." The NRC deliberately excluded from the record and failed to consider dozens of documents that establish that the exemption should not have been granted.

NRC Response:

As explained in response to subpart (C) of Brodsky Comment 3, the commenter has neither identified any evidence that the commenter believes the NRC has not, but should have, considered, nor demonstrated its relevance or probative value. The NRC has provided the public with full access to each of the documents that the NRC considered in granting the exemptions — many of which relate to public health and safety. The NRC staff reviewed all information supplied by the licensee and commenters in accordance 10 CFR 50.12 and appropriate guidance and engineering judgment. Although a multitude of other documents exist in the Indian Point 3 docket, they were not deemed relevant to the NRC's review of the request for exemptions. For a further response regarding the documents purportedly identified by the commenter, see NRC response to Brodsky Comment 7. As to documents related to the NRC's legal authority to issue exemptions, see NRC response to subpart (A) of Brodsky Comment 3.

Brodsky Comment 7 (BC 7):

Specified licensing documents or categories of documents establish that the exemption request should be denied and that the EA and FONSI should be withdrawn and an EIS should be prepared.

NRC Response:

The documents cited by the commenter form a portion of the current licensing basis (CLB) for the Indian Point 3. Generally speaking, “[t]he CLB represents the set of NRC requirements applicable to a specific plant and a licensee's written commitments for ensuring compliance with and operation within applicable NRC requirements and the plant-specific design basis (including all modifications and additions to such commitments over the life of the license) that are docketed and in effect.” *South Texas Project Nuclear Operating Co.* (South Texas Project, Units 1 and 2), LBP-11-21, 74 NRC 115, 130 n.86 (2011). The CLB includes all applicable NRC regulations as well as NRC orders, license conditions, exemptions and technical specifications. It also includes “the plant-specific design-basis information” defined in 10 C.F.R. § 50.2 as documented in the most recent final safety analysis report (FSAR) as well as the licensee's commitments reflected in docketed licensing correspondence and NRC safety evaluations or licensee event reports. *Id.*

Because a plant's CLB represents the NRC's approved basis for plant operation, the agency's review of an exemption request does not require the agency to reexamine its previous approval of the CLB, but only those components and systems relevant to the request. In this instance, the commenter's citation to various CLB documents does not explain why each document, though related to plant safety, has some safety implication relevant to the specific exemption requests here. While the commenter asserts that the licensee “has made binding legal commitments to operate the units in full compliance with all requirements of Appendix R including but not limited to the one-hour insulation requirement,” the exemption process under 10 CFR 50.12 provides an appropriate means for changing those binding license requirements. In this regard, the exemption provisions of 10 CFR 50.12 are part of the regulatory regime to which the licensee has agreed to be bound.

Thus, the “same regulation which imposes the [one-hour fire barrier] requirement [in 10 CFR Part 50, Appendix R, Subpart III.G.2] . . . allows for exemptions to it” under 10 CFR 50.12. *Massachusetts v. NRC*, 878 F.2d at 1521. In the safety evaluation supporting that change, the NRC determined that, as provided in 10 CFR 50.12(a)(2)(ii), application of the cable separation

requirements under 10 CFR Part, Appendix R, subpart III.G.2 “is not necessary to achieve the underlying purpose of the rule.” See Indian Point Nuclear Generating Unit No. 3, Docket No. 50-286, Revision to Existing Exemptions, section 3.0 (Sept. 28, 2007). The NRC concluded that, given the existing fire protection features in the affected fire zones, the licensee continues to meet the underlying purpose of subsection III.G.2 for the affected areas.” *Id.*

The commenter refers to a variety of documents relating to various Indian Point 3 analyses or systems as deserving NRC’s attention, but has not explained how those general references would have affected NRC’s review or led NRC to reach a different conclusion regarding the potential environmental impact of the proposed exemptions. For example, the commenter asserts that some of those documents “establish that the existing systems and plans cannot cope with fire safety dangers within 24 minutes,” but does not explain why this is so. Nonetheless, the NRC staff considered these documents and concluded that they do not provide new and significant information and are not relevant to the proposed action.

To review the exemptions request, the NRC did not require review of every document relevant to the Indian Point 3 CLB, or even every document relevant to a particular system. For example, the commenter refers to the plant’s Current Electrical Separation Analysis, but the licensee provided the proximity of redundant cable trains, which was sufficient to review the exemption requests. The commenter also refers to the licensee’s Fire Hazards Analysis. This, however, is a licensee document that NRC did not have to review because the licensee submitted sufficient information from the analysis, e.g., relevant fire loading and ignition sources, to describe the rationale for the exemption.

The commenter notes that the licensee has taken compensatory measures to account for noncompliances with NRC fire protection requirements. But the NRC has required the licensee to take timely corrective action for noncompliances. NRC’s fire protection program both permits and requires compensatory measures to be in place while the licensee achieves full compliance. The commenter also refers to Operator Manual Actions, but the exemptions do not involve operator manual actions. The exemption is from the requirement in 10 CFR 50, Appendix R, Section III.G.2, for a one-hour fire rating for a protected train of cables to achieve and maintain safe shutdown capability. Other documents to which the commenter referred were not relevant to the exemptions and are reviewed by other processes.

Brodsky Comment 8 (BC 8):

The commenter requested that the NRC grant an evidentiary hearing with respect to this exemption request.

NRC Response:

The NRC is denying the commenter’s request for a hearing. Neither the AEA nor the NRC’s regulations grant the right to a hearing on an application for an exemption. See 42 U.S.C. § 2239(a); *Kelley v. Selin*, 42 F.3d 1501, 1514–17 (6th Cir. 1995); *Massachusetts v. NRC*, 878 F.2d 1516, 1521 (1st Cir. 1989). Moreover, the U.S. Court of Appeals for the Second Circuit recently rejected the argument that the AEA or APA requires the NRC to hold a hearing before it could grant an exemption. *Brodsky v. NRC*, No. 11-2016-cv, “Summary Order” (2d Cir. Jan. 7, 2013)(slip op. at 4 & n.1).

Nonetheless, the NRC has provided the public with an opportunity to provide comments on the draft EA and FONSI for the requested exemptions, including a 30-day extension of the comment

period, to bring to the NRC's attention any evidence and factors that the public would like the NRC to consider. In response to a request to extend the public-comment period for the draft EA and FONSI, the NRC granted additional time for the public to submit comments on these documents. The NRC received and carefully considered the many comments from the public on the draft EA and FONSI before making its final decision not to rescind or modify the requested exemptions. The NRC has concluded that the record is sufficient to weigh all the factors essential to exercising its judgment under NEPA reasonably.

Brodsky Comment 9 (BC 9):

Any application of the 2010 NRC regulatory change, which amended the NRC's regulations to no longer require environmental review and public notice of many exemptions, is inconsistent with the requirements of the recent decision issued by the U.S. Court of Appeals for the Second Circuit.

NRC Response:

Publication of the draft EA and FONSI for the requested exemptions in the *Federal Register* included a brief discussion of an amendment to 10 CFR 51.22(c)(9) to inform the public of a topically-relevant change in the NRC's regulations since the NRC approved the requested exemptions in 2007. See 78 FR 20144-20146 (Apr. 3, 2013). The NRC included this information because these changes will be relevant to future exemption requests. The NRC did not suggest that 10 CFR 51.22(c)(9) should apply retroactively to the requested exemptions, but merely observed that "[a]lthough NRC approval of exemptions that meet the criteria of this section no longer require preparation of an EA/FONSI, the NRC retains discretion to prepare an EA and FONSI, including an opportunity for public comment, where special circumstances exist." *Id.* at 20,146. Thus, the NRC has not applied the categorical exclusion in 10 CFR 51.22(c)(9) to the requested exemptions, but rather has prepared, and requested public comment on a draft EA and FONSI for these exemptions. It should be noted that the NRC recently published an editorial correction to Section 51.22(c)(9) to clarify that this provision categorically excludes certain kinds of stand-alone exemptions from environmental review, not just exemptions issued as a license amendment. See 78 FR 34245- 34246 (June 7, 2013).

Riverkeeper Comment 1 (RC 1):

The NRC should deny the exemption request because it is unauthorized by law and, if maintained, would unacceptably reduce safety margins. Alternatively, the commenter requested that the NRC prepare an EIS that includes reasonable alternatives other than "no action" as well as a cumulative impacts analysis of all exemptions for Indian Point Units 2 and 3.

NRC Response:

The NRC does not agree that the exemption request should be denied. The NRC has determined that issuance of the requested exemptions is authorized by law, and the Second Circuit has affirmed that conclusion. See NRC Response to Subpart A of Brodsky Comment 3. With regard to the commenter's assertion that granting the exemptions will result in a reduction of safety margins, the NRC has reached a very different conclusion. As stated in the safety evaluation, the NRC concluded that, based on the existing fire barriers, fire detectors, automatic and manual fire suppression equipment, administrative controls, the licensee's fire hazard analysis, the Hemyc configuration, and the absence of significant combustible loads and ignition

sources, granting these exemptions would meet the underlying purpose of 10 CFR Part 50, Appendix R, Subsection III.G.2. In other words, the NRC determined that the issuance of these exemptions would provide an equivalent level of protection required by the NRC's regulations. Thus, these exemptions would not result in an unacceptable reduction in safety margins at Indian Point 3, but rather would assure an equivalent level of safety.

The NRC also does not agree that an EIS should be prepared. The NRC prepared an EA for the exemptions application. The EA determined that granting the exemptions "will not significantly increase the probability or consequences of accidents," will not result in additional radiological releases or exposure, and will not result in any potential nonradiological impacts." See 78 FR 20146. After preparing an EA, the NRC either prepares an EIS or a FONSI. See 10 CFR 51.31(a). Here, the NRC concluded that "there are no significant environmental impacts associated with the proposed action." See 78 FR 20146. Given this finding of no significant impacts, no EIS will be prepared. See 10 CFR 51.32(a)(2). It is noted that the Second Circuit considered and rejected the claim that an EIS is required for the exemptions. *Brodsky v. NRC*, "Summary Order," slip op. at 8-9.

As explained in NRC Response to Brodsky Comment 2, the NRC considered the most reasonable alternative to the proposed action in its EA, and had good reason for not considering the other alternatives proposed in public comments. The subject exemptions will not result in significant environmental impacts and the grant of other exemptions for Indian Point 2 and 3 (ADAMS Accession No. ML12172A370) have likewise not involved significant environmental impacts. Therefore, significant cumulative environmental impacts are not expected as a result of any overlapping impacts from the currently requested exemption and previously granted exemptions to Indian Point Units 2 and 3.

Riverkeeper Comment 2 (RC 2):

The NRC should hold a public evidentiary hearing within the vicinity of the Indian Point Nuclear Plant on the requested exemptions. In the alternative, the commenter requested that the NRC convene a Category III Public Meeting to inform the public of the NRC's consideration of public health and safety.

NRC Response:

The NRC is denying the commenter's request for a hearing or public meeting on this matter for the reasons discussed in NRC Response to Brodsky Comment 8.

Riverkeeper Comment 3 (RC 3):

The NRC should revise the *Federal Register* notice that solicited public comment on the EA and FONSI for this exemption to acknowledge that 10 CFR 51.22(c)(9) applies to license amendments, not exemptions that are granted without the issuance of a license amendment. Additionally, the NRC should revise that *Federal Register* notice to explain the applicability of 10 CFR 51.22(c)(9) to the requested exemption.

NRC Response:

The NRC acknowledges that the amendment of 10 CFR 51.22(c)(9) in 2010 left unclear whether the categorical exclusion of some exemptions from environmental review referred only to exemptions issued in conjunction with an amendment. This amendment was intended to

expand the scope of the categorical exclusion in 10 CFR 51.22(c)(9) to include stand-alone exemptions (i.e., exemptions that are not issued as part of a license amendment). Thus, the Statements of Consideration for the 2010 amendment state that “[t]he final rule amends 10 CFR 51.22(c)(9) to broaden the scope of the categorical exclusion to include the granting of a power reactor licensee exemption request from a requirement pertaining to the installation or use of a facility component located within the restricted area, as defined in 10 CFR Part 20.” See 75 FR 20253 (April. 18, 2010).

The NRC recently corrected this potential ambiguity in 10 CFR 51.22(c)(9). See 78 FR 34245 (June 7, 2013). The NRC corrected 10 CFR 51.22(c)(9)’s introductory text to read as follows: “Issuance of an amendment to a permit or license for a reactor under part 50 or part 52 of this chapter that changes a requirement or issuance of an exemption from a requirement, with respect to installation or use of a facility component located within the restricted area, as defined in part 20 of this chapter; or the issuance of an amendment to a permit or license . . . provided that.” See 78 FR 34249. Thus, any ambiguity in 10 CFR 51.22(c)(9) has been eliminated by the change to “issuance of an amendment” or “issuance of an exemption.”

With regard to the applicability of 10 CFR 51.22(c)(9) to the requested exemptions, the NRC has not applied the categorical exclusion in 10 CFR 51.22(c)(9) to the requested exemptions, but rather has prepared, and requested public comment on, an EA and FONSI for these exemptions. The NRC included a description of 10 CFR 51.22(c)(9) in the *Federal Register* notice for the draft EA and FONSI solely to inform the public of pertinent developments. See NRC Response to Brodsky Comment 9.

Riverkeeper Comment 4 (RC 4):

The NRC should review and consider six documents, and that these documents be made part of the administrative record for this exemption. These documents include (1) NUREG-0050, Recommendations Related to Browns Ferry Fire (Feb. 1976) (ADAMS Accession No. ML070520452); (2) List of Indian Point Exemptions, 1968–2012 (June 20, 2012) (ADAMS Accession No. ML12172A370); (3) NL-07-138, Entergy Reply to Request for Additional Information Regarding License Renewal Application (Fire Protection System and Components), dated November 16, 2007; (4) NL-08-0511, Entergy Reply to Request for Additional Information Regarding License Renewal Application (Balance of Plant, Fire Protection, and Nickel Alloy), dated March 12, 2008; (5) Entergy Nuclear Indian Point 3, LLC.; Entergy Nuclear Operations, Inc., Indian Point Nuclear Generating Unit 3; Exemption, 77 FR 8904 (Feb. 15, 2012); and (6) Letter from Eric J. Leeds, Director, NRC Office of Nuclear Reactor Regulation, to Jerome M. Hauer, Commissioner, New York State Division of Homeland Security and Emergency Services, dated January 31, 2012 (ADAMS Accession No. ML113480448).

NRC Response:

The commenter has not identified why these six documents are relevant to the licensee’s request for exemptions, or how their consideration would affect the NRC’s decision to grant the exemptions. Nor has the commenter explained why those documents are relevant to the EA or FONSI for the exemptions. While the Browns Ferry fire has been highly significant in the NRC’s analysis of severe fire risk related upgrades to fire protection requirements in 10 CFR 50.48 and Appendix R, these developments are not directly relevant to the NRC’s consideration of 10 CFR 50.12 criteria to the specific requirements of Appendix R, Subsection III.G.2 to the two subject fire areas at Indian Point 3. Nonetheless, the NRC staff considered these documents and

concluded that they do not provide new and significant information and are not relevant to the proposed action.

Similarly, the application at hand is fact-specific, requiring a performance-based analysis for the specific features of the two subject fire areas under the terms of the proposed exemptions, and it would not be helpful to consider other exemptions granted the licensee in different contexts. The correspondence cited by the commenter, while generally related to fire protection at the Indian Point plant or other facilities, likewise has no direct bearing on the application of Section 50.12 criteria to the licensee's request for exemptions.

State of New York Comment 1 (SNYC 1):

The NRC should conduct a full environmental review for its reconsideration of this existing exemption based on the risk to public health and safety posed by the conditions that will exist if the exemption is maintained.

NRC Response:

As explained more fully in response to Riverkeeper Comment 1, the NRC has not concluded that granting the exemptions will result in a decreased or otherwise unacceptable reduction in safety margins at Indian Point 3. In light of the EA prepared for the exemptions and the resulting FONSI, no EIS is warranted.

State of New York Comment 2 (SNYC 2):

The NRC did not evaluate potential impacts from a failure of the fire systems and did not consider the risk of fire. Fire is the leading risk factor for loss of safe shutdown capability and that loss of reactor core cooling capabilities could potentially cause significant radiological environmental impacts. Redundant electrical control systems are important to maintain reactor core cooling capability. For the NRC to meet its NEPA obligations, it must consider every significant impact of a proposed action and compile a record demonstrating that it has taken those impacts into consideration.

NRC Response:

The NRC recognizes its important obligations under NEPA to evaluate all environmental impacts of a proposed action and to take a "hard look" at those impacts in compliance with its regulations governing environmental review in 10 CFR Part 51. In this instance, the NRC did evaluate the potential for a low-probability but severe-consequence fire as described by the commenter. The NRC's safety evaluation forms the basis for the agency's conclusion in the EA "that a severe fire is not plausible and the existing fire protection features are adequate." See 78 FR 20146. This conclusion is based on NRC's careful examination of the very specific fire areas and plant components encompassed by the subject exemptions here, including the existing fire barriers, fire detectors, automatic and manual fire suppression equipment, administrative controls, the licensee's fire hazard analysis, the Hemyc configuration, and the absence of significant combustible loads and ignition sources. *Id.* Because a severe fire is not plausible, it follows that offsite consequences of a severe fire, such as diffusion of reactor fission products following a meltdown from loss of reactor coolant, is very unlikely to occur. As the EA concluded: "The proposed action will not significantly increase the probability or consequences of accidents." See 78 FR 20146.

State of New York Comment 3 (SNYC 3):

Reports by the NRC's Office of the Inspector General and the Government Accountability Office have found significant deficiencies in the NRC's fire protection program. NRC's Oversight of Hemyc Fire Barriers (Jan. 18, 2008) (ADAMS Accession No. ML080250003); GAO-08-747, NRC Oversight of Fire Protection at U.S. Commercial Nuclear Reactor Units Could be Strengthened, Government Accountability Office (June 30, 2008). The commenter also noted that most commercial nuclear power plants have not yet come into compliance with the NRC's fire protection regulations since their promulgation 30 years ago.

NRC Response:

Despite overarching concerns expressed by this commenter and others, NRC must approach each request for an exemption on a case-by-case basis, applying the regulatory criteria of 10 CFR 50.12 to circumstances of each request. Here, the NRC has completed a safety evaluation of the proposed exemptions and concluded that the configuration of the fire zones under review provide reasonable assurance that a severe fire is not plausible" and that "the existing fire protection features are adequate." See 78 FR 20146. The NRC found: "Based on the presence of redundant safe-shutdown trains, minimal fire hazards and combustibles, automatic cable tray fire suppression system, manual fire suppression features, fire barrier protection, existing Hemyc configuration, and the installed smoke detection system, . . . the use of this Hemyc fire barrier in these zones will not significantly increase the consequences from a fire in these fire zones." *Id.* Inasmuch as granting the exemptions "will not significantly increase the probability or consequences of accidents" (*id.*), the dire consequences of a severe fire, such as the Browns Ferry accident, are simply not plausible here.

Nonetheless, the NRC recognizes that these critiques of its fire protection program have raised valid concerns regarding the level of compliance by reactor licensees with the criteria of 10 CFR 50.48 and Appendix R. It is also true, however, that the agency and its licensees have made substantial progress in addressing those concerns published five years ago. Since the Government Accountability Office published its report in 2008, the GAO revisited the issue of fire protection at nuclear facilities in its report GAO 13-8, "Oversight and Status of Implementing a Risk-Informed Approach to Fire Safety" (October 2012). The first objective of this report was to provide information on, "NRC's progress in resolving the long-standing fire safety issues raised in our 2008 report at plants remaining under the deterministic approach and at those plants transitioning to the risk-informed approach" (Highlights page). The GAO 13-8 included a discussion of the NRC actions in response to the recommendations from the 2008 report and made no further recommendations.

The 2008 NRC Inspector General Special Inquiry identified delays in the NRC staff's addressing of deficient Hemyc fire barrier material. The NRC staff continued to review fire barrier materials and later published NUREG-1924, "Electric Raceway Fire Barrier Systems in U.S. Nuclear Power Plants" (May 2010). The NUREG series report summarizes the use of fire barrier materials at nuclear power plants. No additional concerns or recommendations have been made by either the GAO or NRC's Inspector General.

State of New York Comment 4 (SNYC 4):

For matters involving nuclear safety, the NRC should account for low-probability events. To assure the highest level of safety, it should be assumed that a fire will occur and prepare for the

consequences of a worst case scenario. Assuming a fire will be a rare event and making fewer preparations for it result in a lower level of overall safety.

NRC Response:

The NRC's regulations do account for low-probability events such as a severe fire that could affect safe shutdown capability. Fire protection requirements of 10 CFR Part 50, Appendix R, account for low-probability events through the use of the defense-in-depth philosophy. As reflected in Section II of Appendix R, the defense-in-depth concept for fire protection includes three layers: (1) fire prevention; (2) fire detection and suppression features to detect rapidly, control, and extinguish promptly any fires that might occur; and (3) system redundancy achieved, for example, through physical protection by spatial separation or fire barriers, to ensure that the safe shutdown of the plant will not be prevented if a fire is not prevented or rapidly suppressed. The NRC staff examined each of these defense-in-depth components for the requested exemptions. Thus, the NRC staff did not assume that a fire will be a rare event, but rather carefully analyzed potential ignition sources and combustibles in the affected areas and concluded that there is a low likelihood of a significant fire occurring in the fire zones affected by the issuance of these exemptions. Only after this exacting analysis did the NRC conclude in granting these exemptions that the underlying purpose of 10 CFR Part 50, Appendix R, Subsection III.G.2, would be met, and would provide adequate protection of public health and safety. See also the NRC Response to Brodsky Comment 4.

State of New York Comment 5 (SNYC 5):

Actual compliance with the requirements in 10 CFR Part 50, Appendix R, is the best approach.

NRC Response:

The NRC does require licensee compliance with its regulations, including 10 CFR Part 50, Appendix R. But the exemption provisions of 10 CFR 50.12 are also found in Part 50. Thus, the "same regulation" – Part 50 – "which imposes the [one-hour fire barrier] requirement [in 10 CFR Part 50, Appendix R, Subpart III.G.2] . . . allows for exemptions to it" under 10 CFR 50.12. *Massachusetts v. NRC*, 878 F.2d at 1521. The NRC has approved other appropriate exemptions to Appendix R, and the U.S. Court of Appeals for the District of Columbia Circuit specifically found the exemption process to be "critical" to the reasonableness of these rules. *Connecticut Light & Power Co. v. NRC*, 673 F.2d 525, 530, 534 (D.C. Cir. 1982). Thus, the NRC views Appendix R as important to ensure adequate protection of the public health and safety, but recognizes through the exemption process that other suitable means exist to provide an equivalent level of protection.

State of New York Comment 6 (SNYC 6):

The decision issued by the U.S. Court of Appeals for the Second Circuit in the *Brodsky v. NRC* proceeding placed a burden on the NRC requiring greater examination of the increased probability of accidents arising from the requested exemption. The NRC has not met this greater burden in its FONSI and it should complete a full environmental impact assessment.

NRC Response:

The U.S. Court of Appeals for the Second Circuit did not, in fact, address how the NRC should exercise its technical and scientific judgment in reviewing the exemption requests, including its

examination of the potentially increased probability of accidents. To the contrary, the Second Circuit rejected the plaintiffs' technical challenges to the exemptions granted in 2007, and remanded solely on one NEPA claim — that issuance of these exemptions failed to justify not affording public participation on the grant of the exemptions. See *Brodsky v. NRC*, 704 F.3d 113, 125 (2d Cir. 2013); *Brodsky v. NRC*, No. 11-2016-cv, "Summary Order" (2d Cir. Jan. 7, 2013)(slip op. at 2–3). Insofar as the Court did review NRC's technical judgment, it affirmed the agency's conclusions. The Court held, for example: "Plaintiffs' speculation that a terrorist attack would disable more firefighting personnel than would a significant fire, thus making increased reliance on manual fire suppression unsafe, is insufficient to demonstrate that the agency's defense-and-security finding was arbitrary and capricious." *Id.* at 6. On such issues, the Court ruled that "the agency is much better situated than is this court to make such a finding on the record presented." *Id.* As previously discussed in the response to Riverkeeper Comment 1, no EIS is warranted.

State of New York Comment 7 (SNYC 7):

The NRC's FONSI attempts to demonstrate satisfaction of 10 CFR 51.22(c)(9), but the NRC appears to have addressed the second and third criteria of that provision. The NRC did not state or adequately support a finding for the first criteria in 10 CFR 51.22(c)(9) that the exemption involves no significant hazards consideration. Instead, the NRC stated that the requested exemption will not significantly increase the probability or consequences of accidents or the consequences from a fire in the relevant fire zones. The NRC did not adequately explain why this increase was insignificant. Because the NRC did not make a finding that the exemption involves no significant hazards consideration, it is inappropriate for the NRC to presuppose that the proposed exemption is correctly attributed to the categorical exclusion in 10 CFR 51.22(c)(9).

NRC Response:

As explained in response to Brodsky Comment 9, the NRC included a description of 10 CFR 51.22(c)(9) in the *Federal Register* notice for the draft EA and FONSI solely for its informative value to the public, as this change will be relevant to future exemption requests. The NRC did not, however, apply the categorical exclusion in 10 CFR 51.22(c)(9) to the requested exemption. Rather, the NRC has prepared, and requested public comment on a draft EA and FONSI for these exemptions.

The draft EA prepared for the exemptions found no "significant" increase in the probability or consequences of accidents due to a fire. The use of this term does not imply that NRC concluded that grant of the exemptions would have some noticeable effect on the environment short of "significant." This term is commonly used for environmental assessments in determining the need for an EIS. See 10 CFR 51.14 (definition of FONSI). In this regard, the NRC's safety evaluation found that a severe fire in the affected areas was not plausible, given the lack of combustibles and ignition sources in those areas, fire detection and suppression capability, the configuration of the Hemyc-protected cable trains, and other factors. See 78 FR 20146. This analysis led NRC to conclude that granting the requested exemptions would provide an equivalent level of protection required by the NRC's regulations because the proposed exemption would meet the underlying purpose of 10 CFR Part 50, Appendix R, Subsection III.G.2.

State of New York Comment 8 (SNYC 8):

The NRC has not met its burden to examine the probability of failure in the subjects of the fire safety examination, such as the redundant fire retardant or suppression systems. The NRC has also not fully examined or adequately measured the risk for purposes of determining whether the action constitutes a significant impact on the environment and thus whether an EIS must be prepared. These issues leave open the question of whether the NRC has accurately identified the relevant environmental concerns and adequately considered alternatives. In addition, the NRC did not inquire as to the probability that the 24-minute and 30-minute thermal protection for conduits from fire may fail and, if so, what the consequences would be to public health, safety, and the environment. The NRC also did not adequately explain what consequences would result if a fire were to occur despite the NRC's reasonable assurances.

NRC Response:

The NRC has addressed concerns relating to risk associated with granting the exemptions in response to Brodsky Comments 4 and 5 and State of New York Comment 2.

State of New York Comment 9 (SNYC 9):

The NRC's finding of reasonable assurance regarding the potential outcome of a fundamental underpinning of an environmental analysis is inadequate where it "does not describe a probability of failure so low as to dismiss the potential consequences of such failure." *New York v. NRC*, 681 F.3d 471, 478 (D.C. Cir. 2012). In *New York v. NRC*, the NRC did not adequately examine the actual probability of harm associated with the failure to thoroughly assess the consequences of fire (in that case, spent nuclear pool fires). *Id.* at 482. Even though the NRC may have offered words here diminishing the probability or harm from a fire incident, it has not caused the level of harm to reduce that probability to a level that is effectively zero, particularly given the consequences of such a failure.

NRC Response:

The NRC does not agree that the decision in *New York v. NRC* applies as suggested by the commenter. In that case, the U.S. Court of Appeals for the District of Columbia held that the NRC's analysis of environmental impacts resulting from long-term storage of spent nuclear fuel was insufficient because the NRC had not considered the consequences of a severe fire in relation to their probability. The Court ruled, however, that "the finding that the probability of a given harm is nonzero does not, by itself, mandate an EIS: after the agency examines the consequences of the harm in proportion to the likelihood of its occurrence, the overall expected harm could still be insignificant and thus could support a FONSI." *New York v. NRC*, 681 F.3d 471, 483 (D.C. Cir. 2012). Here, the NRC determined that a severe fire in the affected areas "is not plausible," given the lack of combustibles and ignition sources in those areas, available fire detection and suppression capability, the configuration of the Hemyc-protected cable trains, and other factors. See 78 FR 20146. This finding of implausibility rendered consideration of severe fire consequences in the EA unnecessary.

Also, the *New York* holding was premised on a finding that the agency's Waste Confidence rulemaking constitutes a "major federal action." Here, no "major federal action" has been proposed or taken and the proposed action does not require preparation of an EIS. See 10 CFR 51.20. The proposed exemptions revised a January 7, 1987, safety evaluation for Indian

Point 3 “to reflect that the installed Hemyc electrical raceway fire barrier system (ERFBS) configurations provide either a 30-minute fire resistance rating, or in one case, a 24-minute fire resistance rating, in lieu of the previously stated 1-hour fire resistance rating.” 78 FR 20146. The exemptions thereby allowed the licensee to implement an equivalent means of compliance with 10 CFR Part 50, Appendix R, that involved no physical changes to the facility or changes in its operation. It is noted that exemptions to NRC rules generally do not result in significant environmental consequences. While the NRC has approved the proposed exemptions based on the regulatory regime in place in 2007, recent changes to NRC regulations reflect that exemptions are now categorically excluded from environmental analysis under the circumstances described in 10 CFR 51.22(c)(9). See 78 FR 34245- 34246 (June 7, 2013).

State of New York Comment 10 (SNYC 10):

A significant reactor release would trigger implementation of protective actions for the public with significant impacts to agricultural production, wildlife, surface or drinking water resources, and the civic infrastructure. Long-term environmental and human health impacts would continue for decades given the half-life of radiological materials released.

NRC Response:

For the reasons discussed in NRC Response to Brodsky Comment 4 and State of New York Comment 9, NEPA did not require the NRC to analyze the potential consequences of a catastrophic release of radiation from Indian Point 3 as a result of a severe fire, given the NRC’s conclusion that such a severe fire could not plausibly result from granting the exemptions.

State of New York Comment 11 (SNYC 11):

The NRC should have examined the alternative of having Indian Point Nuclear Plant’s critical electrical cables and equipment comply with the requirements in 10 CFR Part 50, Appendix R.

NRC Response:

The NRC did indeed examine the alternative of requiring the Indian Point Unit 3 licensee to comply with the requirements in 10 CFR Part 50, Appendix R with regards to the components and systems described in the exemption requests. See NRC Responses to Brodsky Comment 2 and State of New York Comment 5.

PART 2
List of Submissions for NRC-2013-0063

Part 2 is a table that provides a complete listing of all the submissions received. The table includes the submission number, the individual who provided the submission, the NRC's Agencywide Documents Access and Management System (ADAMS) Accession Number for the submission, and references to each of the principal comments from Part 1 that best envelopes the submission.

Commenter ID	Commenter Name	ML Number	Comment is Addressed in the Response Identified
1	Susan Shapiro	ML13163A186	BC 1; BC 2; BC 3, BC 4, BC 5, BC 7; BC 8, BC 9; RC 1; RC 2; SNYC 1, SNYC 2, SNYC 4, SNYC 5, SNYC 6; SNYC 8, SNYC 9
2	Lynn Flanagan	ML13163A187	BC 1; BC 2; BC 5; BC 7; BC 8; RC 1; RC 2; SNYC 1; SNYC 2; SNYC 8; SNYC 11
3	Gary Shaw	ML13163A188	BC 1; BC 3; BC 4; BC 5; BC 8; RC 2; SNYC 2; SNYC 5
4	Tania Venion	ML13163A432	BC 1; BC 2; BC 4; BC 5; BC 7; RC 1; SNYC 1; SNYC 2; SNYC 4; SNYC 6;
5	State of New York (New York State Energy Research and Development Authority)	ML13163A433	SNYC 1 through 11
6	Laurie Seeman	ML13163A434	Separate response provided in Part 3
7	Michel Lee	ML13163A435	BC 1; BC 3; BC 4; BC 5; BC 8; RC 1; RC 2; RC 4; SNYC 2; SNYC 4; SNYC 5; SNYC 6; SNYC 8; SNYC 9; Separate response provided in Part 3
8	Moira Thielking	ML13163A436	BC 1; BC 3; BC 4; BC 5; RC 1; SNYC 2; SNYC 5; Separate response provided in Part 3
9	Judy Allen	ML13163A437	BC 1; BC 2; BC 3; BC 4; BC 5; BC 7; RC 1; SNYC 2; SNYC 4; SNYC 5
10	Steve Mantor	ML13163A438	BC 1; BC 2; BC 5; BC 7; BC 8; RC 1; RC 2; SNYC 1; SNYC 2; SNYC 8; SNYC 11

Commenter ID	Commenter Name	ML Number	Comment is Addressed in the Response Identified
11	Debi Mohan	ML13163A448	BC 1; BC 2; BC 5; BC 7; BC 8; RC 1; RC 2; SNYC 1; SNYC 2; SNYC 8; SNYC 11
12	Amy Goldsmith	ML13163A449	BC 1; BC 2; BC 3; BC 5; BC 7; BC 8; RC 1; RC 2; SNYC 1; SNYC 2; SNYC 8; SNYC 11
13	Siobhan Towey	ML13163A450	BC 1; BC 2; BC 5; BC 7; BC 8; RC 1; RC 2; SNYC 1; SNYC 2; SNYC 8; SNYC 11
14	Edward Keller	ML13163A451	BC 1; BC 2; BC 5; BC 7; BC 8; RC 1; RC 2; SNYC 1; SNYC 2; SNYC 8; SNYC 11
15	Billie Biederman	ML13163A452	BC 1; BC 3; RC 1; Separate response provided in Part 3
16	Robert Braun	ML13163A453	BC 1; BC 2; BC 5; BC 7; BC 8; RC 1; RC 2; SNYC 1; SNYC 2; SNYC 8; SNYC 11
17	Patricia Goldsmith	ML13163A454	BC 1; RC 1; SNYC 5; SNYC 11; Separate response provided in Part 3
18	Richard Mangini	ML13163A455	Separate response provided in Part 3
19	Elizabeth Ellsworth	ML13163A456	BC 1; RC 1; SNYC 4; SNYC 5; SNYC 9; SNYC 11; Separate response provided in Part 3
20	Janet Strock	ML13163A457	BC 1; BC 2; BC 5; BC 7; BC 8; RC 1; RC 2; SNYC 1; SNYC 2; SNYC 8; SNYC 11
21	Jeffrey Genser	ML13163A458	BC 1; BC 2; BC 5; BC 7; BC 8; RC 1; RC 2; SNYC 1; SNYC 2; SNYC 8; SNYC 11
22	Joanna Bagatta	ML13163A459	BC 1; BC 2; BC 5; BC 7; BC 8; RC 1; RC 2; SNYC 1; SNYC 2; SNYC 8; SNYC 11
23	Bernard Kessler	ML13163A460	Separate response provided in Part 3
24	Asher Pacht	ML13163A461	BC 1; BC 2; BC 5; BC 7; BC 8; RC 1; RC 2; SNYC 1; SNYC 2; SNYC 8; SNYC 11
25	Cheriel Jense	ML13163A462	BC 1; BC 2; BC 7; RC 1; SNYC 1
26	Joshua Farrell	ML13163A463	BC 1; BC 2; BC 5; BC 7; BC 8; RC 1; RC 2; SNYC 1; SNYC 2; SNYC 8; SNYC 11

Commenter ID	Commenter Name	ML Number	Comment is Addressed in the Response Identified
27	Jan Emerson	ML13163A464	BC 1; BC 2; BC 7; RC 1; SNYC 1SNYC 5
28	Kate Evanciew	ML13163A465	BC 1; BC 2; BC 5; BC 7; BC 8; RC 1; RC 2; SNYC 1; SNYC 2; SNYC 8; SNYC 11; Separate response provided in Part 3
29	Gloria Morrotti	ML13163A466	Separate response provided in Part 3
30	Louise Calabro	ML13163A467	BC 1; RC 1; SNYC 5
31	Dorothy Nusbaum	ML13165A029	BC 1; BC 2; BC 5; BC 7; BC 8; RC 1; RC 2; SNYC 1; SNYC 2; SNYC 8; SNYC 11
32	Jessica Murphy	ML13165A030	BC 1; BC 2; BC 5; BC 7; BC 8; RC 1; RC 2; SNYC 1; SNYC 2; SNYC 8; SNYC 11
33	Dinda Evans	ML13165A031	BC 1; BC 2; BC 3; BC 5; BC 7; BC 8; RC 1; RC 2; SNYC 1; SNYC 2; SNYC 3; SNYC 8; SNYC 11; Separate response provided in Part 3
34	Victoria Furio	ML13165A032	BC 1; BC 3; BC 5; BC 8; RC 1; RC 2; SNYC 2
35	Donna Henes	ML13165A033	Separate response provided in Part 3
36	Unknown	ML13165A034	Separate response provided in Part 3
37	Larry Krasner	ML13165A035	Separate response provided in Part 3
38	Matt Malina	ML13165A036	BC 1; BC 3; BC 5; RC 1; SNYC 2
39	Jana Shakarian	ML13165A037	BC 1; BC 2; BC 5; BC 7; BC 8; RC 1; RC 2; SNYC 1; SNYC 2; SNYC 8; SNYC 11
40	John Raveche	ML13165A038	BC 1; BC 2; BC 5; BC 7; BC 8; RC 1; RC 2; SNYC 1; SNYC 2; SNYC 8; SNYC 11
41	Ken Gunther	ML13165A039	BC 1; BC 8; RC 2
42	William Davis	ML13165A040	BC 1; BC 2; BC 5; BC 7; BC 8; RC 1; RC 2; SNYC 1; SNYC 2; SNYC 8; SNYC 11; Separate response provided in Part 3

Commenter ID	Commenter Name	ML Number	Comment is Addressed in the Response Identified
43	Joni Mercado	ML13165A041	Separate response provided in Part 3
44	Christina Volz	ML13165A042	Separate response provided in Part 3
45	Arthur Blum	ML13165A043	Separate response provided in Part 3
46	James Schmitt	ML13165A044	Separate response provided in Part 3
47	Edward Butler	ML13165A045	BC 1; BC 2; BC 5; BC 7; BC 8; RC 1; RC 2; SNYC 1; SNYC 2; SNYC 8; SNYC 11
48	Steven Laifer	ML13165A046	BC 1; BC 2; BC 5; BC 7; BC 8; RC 1; RC 2; SNYC 1; SNYC 2; SNYC 3; SNYC 8; SNYC 11
49	Unknown 1	ML13165A047	BC 1; BC 2; BC 5; BC 7; BC 8; RC 1; RC 2; SNYC 1; SNYC 2; SNYC 8; SNYC 11
50	Doreen Tignanelli	ML13165A048	BC 1; BC 2; BC 5; BC 7; BC 8; RC 1; RC 2; SNYC 1; SNYC 2; SNYC 8; SNYC 11
51	Barbara A. Kidney	ML13168A398	BC 1; BC 2; BC 3; BC 7; RC 1; SNYC 1
52	Jill Simon	ML13170A129	BC 1; BC 2; BC 5; BC 7; BC 8; RC 1; RC 2; SNYC 1; SNYC 2; SNYC 8; SNYC 11
53	Myra Alfreds	ML13170A133	BC 1; BC 5; RC 1; SNYC 2
54	Anthony Montapert	ML13170A134	BC 1; BC 5; BC 8; RC 1; RC 2; SNYC 2
55	Nathaniel Floyd	ML13170A135	BC 1; BC 3; BC 5; RC 1; SNYC 2
56	Lynn Flanagan	ML13170A137	BC 1; BC 2; BC 5; BC 7; BC 8; RC 1; RC 2; SNYC 1; SNYC 2; SNYC 8; SNYC 11
57	Eleanor Fox	ML13170A138	BC 1; BC 2; BC 5; BC 7; BC 8; RC 1; RC 2; SNYC 1; SNYC 2; SNYC 8; SNYC 11
58	Nicole Crane	ML13170A139	BC 1; BC 3; BC 5; RC 1; SNYC 2
59	Kevin O'Neill	ML13170A140	BC 3; Separate response provided in Part 3
60	Gary Shaw	ML13170A141	BC 1; BC 3; BC 5; SNYC 2; SNYC 5

Commenter ID	Commenter Name	ML Number	Comment is Addressed in the Response Identified
61	Wendy Fast	ML13170A142	BC 1; BC 2; BC 5; BC 7; RC 1; SNYC 1; SNYC 2
62	Lisa Gervais	ML13170A143	BC 1; BC 5; RC 1; SNYC 2
63	Mary-Alice Shemo	ML13170A145	BC 1; BC 5; RC 1; SNYC 2; SNYC 5
64	Elaine Dickinson	ML13170A146	BC 1; BC 2; BC 5; BC 7; BC 8; RC 1; RC 2; SNYC 1; SNYC 2; SNYC 8; SNYC 11
65	Lourdes Sabio	ML13170A147	BC 1; BC 2; BC 5; BC 7; RC 1; SNYC 1; SNYC 2
66	Margaret Rice Moir	ML13170A148	Separate response provided in Part 3
67	Bernard Yozwiak	ML13170A150	BC 1; BC 2; BC 5; BC 7; BC 8; RC 1; RC 2; SNYC 1; SNYC 2; SNYC 8; SNYC 11
68	Jean Naples	ML13170A152	BC 1; BC 2; BC 5; BC 7; BC 8; RC 1; RC 2; SNYC 1; SNYC 2; SNYC 8; SNYC 11
69	Michele Temple	ML13170A153	BC 1; BC 2; BC 5; BC 7; BC 8; RC 1; RC 2; SNYC 1; SNYC 2; SNYC 8; SNYC 11
70	Caroline Rider	ML13170A154	Separate response provided in Part 3
71	Michael Evans	ML13170A155	BC 1; BC 2; BC 5; BC 7; BC 8; RC 1; RC 2; SNYC 1; SNYC 2; SNYC 8; SNYC 11
72	Robert Frey	ML13170A314	BC 1; BC 2; BC 5; BC 7; BC 8; RC 1; RC 2; SNYC 1; SNYC 2; SNYC 8; SNYC 11
73	Paul Ghenoiu	ML13170A315	BC 1; BC 8; RC 1; RC 2; SNYC 5
74	Millicent Sims	ML13170A316	Separate response provided in Part 3
75	Nicole Weber	ML13170A317	BC 1; BC 2; BC 5; BC 7; BC 8; RC 1; RC 2; SNYC 1; SNYC 2; SNYC 8; SNYC 11
76	Sally Smith	ML13170A318	BC 1; BC 3; BC 8; RC 2
77	Elizabeth Pasquale	ML13170A319	BC 1; BC 2; BC 5; BC 7; BC 8; RC 1; RC 2; SNYC 1; SNYC 2; SNYC 8; SNYC 11

Commenter ID	Commenter Name	ML Number	Comment is Addressed in the Response Identified
78	Chris Hazynski	ML13170A320	Separate response provided in Part 3
79	Erma Lewis	ML13170A321	BC 1; BC 2; BC 5; BC 7; BC 8; RC 1; RC 2; SNYC 1; SNYC 2; SNYC 8; SNYC 11
80	Jamie Kruse	ML13170A322	BC 1; BC 2; BC 5; BC 7; BC 8; RC 1; RC 2; SNYC 1; SNYC 2; SNYC 8; SNYC 11
81	Dolores Baldasare	ML13170A323	BC 1; RC 1; BC 5;
82	Stephen Matlak	ML13170A324	Separate response provided in Part 3
83	Susan Didrichsend	ML13170A325	BC 1; BC 3; RC 1;
84	Ronald Lemmert	ML13170A251	Separate response provided in Part 3
85	Dennis Higgins	ML13170A252	BC 1; BC 2; BC 5; BC 7; BC 8; RC 1; RC 2; SNYC 1; SNYC 2; SNYC 3; SNYC 8; SNYC 11
86	Scott Richmond	ML13170A253	BC 1; BC 3; RC 1
87	Steve Kostis	ML13170A254	BC 1; BC 2; BC 5; BC 7; BC 8; RC 1; RC 2; SNYC 1; SNYC 2; SNYC 8; SNYC 11
88	Joseph Olejak	ML13170A255	BC 1; BC 5; RC 1; SNYC 2
89	Bobbie Flowers	ML13170A256	BC 1; BC 2; BC 5; BC 7; BC 8; RC 1; RC 2; SNYC 1; SNYC 2; SNYC 8; SNYC 11
90	Barry De Jasu	ML13170A257	BC 1; BC 2; BC 5; BC 7; BC 8; RC 1; RC 2; SNYC 1; SNYC 2; SNYC 8; SNYC 11
91	Janet Azarovitz	ML13170A258	BC 1; BC 3
92	M Dean	ML13170A259	BC 1; BC 3; BC 5; RC 1; SNYC 2
93	Jennifer Valentine	ML13170A260	BC 1; BC 2; BC 5; BC 7; BC 8; RC 1; RC 2; SNYC 1; SNYC 2; SNYC 8; SNYC 11
94	Alexa Fila	ML13170A261	BC 1; BC 3; BC 5; RC 1; SNYC 2
95	Michele Johnson	ML13170A262	BC 1; BC 2; BC 5; BC 7; BC 8; RC 1; RC 2; SNYC 1; SNYC 2; SNYC 8; SNYC 11

Commenter ID	Commenter Name	ML Number	Comment is Addressed in the Response Identified
96	Diane Buxbaum	ML13170A272	BC 1; BC 2; BC 5; BC 7; BC 8; RC 1; RC 2; SNYC 1; SNYC 2; SNYC 8; SNYC 11
97	Martin Wallace	ML13170A275	BC 1; BC 2; BC 5; BC 7; BC 8; RC 1; RC 2; SNYC 1; SNYC 2; SNYC 3; SNYC 8; SNYC 11; Separate response provided in Part 3
98	Meredith Genin	ML13170A276	BC 1; BC 2; BC 5; BC 7; BC 8; RC 1; RC 2; SNYC 1; SNYC 2; SNYC 8; SNYC 11; Separate response provided in Part 3
99	William Wurtz	ML13170A277	Separate response to comment provided
100	Jared Cornelia	ML13170A278	BC 1; BC 2; BC 5; BC 7; BC 8; RC 1; RC 2; SNYC 1; SNYC 2; SNYC 8; SNYC 11
101	Gerson Lesser, M.D.	ML13170A279	Separate response provided in Part 3
102	Debra Winchell	ML13170A280	BC 1; BC 2; BC 5; BC 7; BC 8; RC 1; RC 2; SNYC 1; SNYC 2; SNYC 8; SNYC 11; Separate response provided in Part 3
103	Mary Brown	ML13170A281	Separate response provided in Part 3
104	Maryanne Deracleo	ML13170A282	BC 1; BC 3; RC 1; Separate response provided in Part 3
105	George Costich	ML13170A283	Separate response provided in Part 3
106	Laura Levey	ML13170A284	BC 1; BC 2; BC 5; BC 7; BC 8; RC 1; RC 2; SNYC 1; SNYC 2; SNYC 8; SNYC 11
107	Deborah Ross	ML13170A285	BC 1; BC 3; RC 1
108	Joann Ramos	ML13170A286	BC 1; BC 2; BC 5; BC 7; RC 1; SNYC 1; SNYC 2
109	Susan Singer	ML13170A287	BC 1; RC 1; SNYC 5; Separate response provided in Part 3
110	T.ED. Webb	ML13170A288	BC 3; RC 1; Separate response provided in Part 3
111	Dolores Congdon	ML13170A289	BC 3; RC 1
112	Alice Farber	ML13170A290	Separate response provided in Part 3

Commenter ID	Commenter Name	ML Number	Comment is Addressed in the Response Identified
113	Chris Blyth	ML13170A292	BC 1; BC 3; RC 1; SNYC 2;
114	Brian Fink	ML13170A293	BC 1; BC 2; BC 5; BC 7; BC 8; RC 1; RC 2; SNYC 1; SNYC 2; SNYC 8; SNYC 11; Separate response provided in Part 3
115	Linda Hartinian	ML13170A294	Separate response provided in Part 3
116	Thelma Fellows	ML13177A166	BC 1; BC 3; RC 1; Separate response provided in Part 3
117	Art Hanson	ML13177A167	BC 1; BC 2; BC 5; BC 7; BC 8; RC 1; RC 2; SNYC 1; SNYC 2; SNYC 8; SNYC 11
118	Natalie Hanson	ML13177A168	BC 1; BC 2; BC 5; BC 7; BC 8; RC 1; RC 2; SNYC 1; SNYC 2; SNYC 8; SNYC 11
119	Richard Vultaggio	ML13177A169	BC 1; BC 2; BC 5; BC 7; BC 8; RC 1; RC 2; SNYC 1; SNYC 2; SNYC 8; SNYC 11
120	Daniele Gerard	ML13177A184	BC 1; BC 2; BC 5; BC 7; BC 8; RC 1; RC 2; SNYC 1; SNYC 2; SNYC 8; SNYC 11
121	Erlend Kimmich	ML13177A185	SNYC 3; Separate response provided in Part 3
122	Richard Brodsky	ML13177A186	BC 1 through 9
123	State of New York (New York State Energy Research and Development Authority)	ML13177A187 NOTE: This is a repeat of entry #5	SNYC 1 through 11
124	Riverkeeper	ML13177A188	RC 1 through 4
125	Peter Cohen	ML13177A173	BC 1; BC 2; BC 5; BC 7; BC 8; RC 1; RC 2; SNYC 1; SNYC 2; SNYC 8; SNYC 11
126	Tricia Bhatia	ML13177A174	BC 1; BC 2; BC 5; BC 7; BC 8; RC 1; RC 2; SNYC 1; SNYC 2; SNYC 8; SNYC 11; Separate response provided in Part 3
127	Nina Long	ML13177A175	BC 1; BC 3; RC 1; SNYC 2; SNYC 5
128	Gail Paybe	ML13177A176	BC 1; BC 3; BC 5; RC 1; SNYC 2
129	Richard Weiskopf	ML13177A177	BC 1; BC 3; BC 5; RC 1; SNYC 2; Separate response

Commenter ID	Commenter Name	ML Number	Comment is Addressed in the Response Identified
			provided in Part 3
130	Geraldine Collins	ML13177A178	BC 1; BC 2; BC 5; BC 7; BC 8; RC 1; RC 2; SNYC 1; SNYC 2; SNYC 8; SNYC 11;
131	Stephanie Angelis	ML13177A179	Separate response provided in Part 3
132	Joan Ashton	ML13177A180	BC 1; BC 2; BC 5; BC 7; BC 8; RC 1; RC 2; SNYC 1; SNYC 2; SNYC 8; SNYC 11
133	Erica Gray	ML13177A181	BC 1; BC 2; BC 5; BC 7; BC 8; RC 1; RC 2; SNYC 1; SNYC 2; SNYC 8; SNYC 11
134	Robert L. Fishman	ML13190A006	BC 1; BC 3; BC 4; BC6; RC 1;
135	Andrew W. Dalton	ML13190A007	BC 1; BC 3; BC 4; BC6; RC 1;
136*	Allegra Dengler	ML13190A306	BC 1; BC 4; BC6; RC 1; Separate response provided in Part 3

*It should be noted that during the administrative processing of the individual submissions, the NRC staff numbered and circled each submission by hand prior to scanning the document and entering it into ADAMS. As a result, each submission found in ADAMS using the main library (ML) accession number includes a hand-written circled number (e.g., the ADAMS version of Commenter ID 26 has a hand-written "26" on the incoming document). Since ADAMS included the State of New York comments twice as Commenter ID 5 and 123, there were only a total of 135 separate submissions.

PART 3

Additional Comments:

A number of submissions included comments other than those covered by the principal comments of Part 1.

- Concerns regarding nuclear waste and storage (ML13163A456; ML13170A316; ML13170A283; ML13177A177; ML13163A435; ML13163A436);
- Concerns regarding leaks of radioactive material into the Hudson River (ML13165A041);
- Concerns that fish kills in the Hudson are common and constant because the river is used to dump cooling water (ML13177A179; ML13170A276);
- Concerns expressing general support for energy alternatives (ML13170A277; ML13170A283; ML13177A177; ML13163A434; ML13170A140; ML13170A275);
- Concerns that climate change could cause water levels to rise and flood the plant and accelerate corrosion in buried pipes and cables (ML13163A435; ML13165A041; ML13190A306);
- Concerns regarding earthquake risks: (ML13163A435; ML13163A436; ML13163A438; ML13165A040; ML13165A04; ML13163A435; ML13165A041; ML13177A179);
- Concerns regarding emergency planning and evacuation plans (ML13177A185; ML13163A434; ML13163A435; ML13170A316; ML13170A251; ML13170A282; ML13170A287; ML13163A436; ML13165A044; ML13170A290; ML13170A288);
- Concerns over the safe operation of Indian Point (ML13177A177; ML13163A452; ML13163A465; ML13163A466; ML13165A031; ML13165A033; ML13165A034; ML13165A035; ML13165A041; ML13165A042; ML13170A154; ML13170A320; ML13170A324; ML13170A280; ML13170A281; ML13170A282; ML13170A283; ML13170A293; ML13170A294; ML13177A173; ML13163A434; ML13165A043; ML13170A148);
- Opposition to license renewal of Indian Point (ML13163A436; ML13170A140);
- Opposition to nuclear power and in support of a shut-down of Indian Point (ML13163A455; ML13170A140; ML13177A177; ML13163A434; ML13163A460; ML13165A041; ML13165A044; ML13170A277; ML13170A279; ML13170A282; ML13170A290; ML13177A166);
- Concerns regarding the effects of aging on safe operation of a nuclear facility (ML13163A436; ML13163A456; ML13165A040; ML13165A041; ML13165A042; ML13163A435);
- Concerns regarding the reduced number of resident inspectors at Indian Point (ML13170A316; ML13170A279); and
- Concerns regarding the natural gas lines that are located near the plant (ML13163A186; ML13163A435).

NRC Response: These comments are beyond the scope of the environmental review of the proposed action and they have not resulted in any change to the final EA.