

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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Before the Commissioners:
Nunzio J. Palladino, Chairman
John F. Ahearne
James Asselstine
Victor Gilinsky
Thomas M. Roberts

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and

Before the Atomic Safety and Licensing Board:
Louis J. Carter, Chairman
Oscar H. Paris
Frederick J. Shon

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: In the Matter of : Docket Nos. 50-247 SP
: : 50-286 SP
: CONSOLIDATED EDISON COMPANY OF :
: NEW YORK, INC. (Indian Point, :
: Unit No. 2) : June 21, 1982
: :
: POWER AUTHORITY OF THE STATE OF :
: NEW YORK (Indian Point, :
: Unit No. 3) :
: :
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LICENSEE'S RESPONSE TO UCS/NYPIRG'S MOTION
FOR RECONSIDERATION OF COMMISSION RULING
ALLOWING INTERIM OPERATION AND FOR ISSUANCE
OF A SHOW CAUSE ORDER AGAINST LICENSEES

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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Preliminary Statement

Consolidated Edison Company of New York, Inc. ("Con Edison"), licensee of Indian Point Station, Unit No. 2, hereby responds to the June 4, 1982 UCS/NYPIRG motion for Reconsideration of Commission Ruling Allowing Interim Operation and for Issuance of a Show Cause Order.

The present motion is yet another in a long series of attempts by UCS/NYPIRG to close two licensed, operational plants which save licensees' consumers hundreds of millions of dollars annually. Now, after failing in at least five*

* Movant UCS/NYPIRG, along with other intervenors herein, have been lobbying for years for the closing of the plants. Its first entry into the legal arena was the filing of a petition with the Commission in September, 1979 to close Indian Point Units 2 and 3 and to decommission Unit 1. The Commission denied the immediate shutdown request and instead, inter alia, directed that the present investigatory hearing be held and that a Staff task force examine operation of the plants. After thorough study, the task force reaffirmed the safety of the plants, and recommended their continued operation. Task Force Report on Interim Operation of Indian Point, SECY-80-283 (June 12, 1980). By its January 8, 1981 Order, the Commission adopted that recommendation, thus once again rejecting UCS/NYPIRG's efforts to close the plants.

NYPIRG followed that decision with a letter to staff dated April 1, 1981, which again sought to close the plants, this time for purported failure to comply with emergency planning regulations. The Staff denied the request pursuant to 10 CFR §2.206, also noting that the Commission itself had reaffirmed its interim operation order on April 7. 46 Fed. Reg. 28261 (May 26, 1981).

Undaunted, NYPIRG forwarded a letter to the Commission dated July 24, 1981, again requesting that the plants be closed for alleged emergency planning inadequacies. This request was also denied, as confirmed by letter of the Commission's General Counsel dated December 11, 1981.

In October, 1981, UCS/NYPIRG attempted to circumvent the Commission by filing a petition in the Second Circuit Court of Appeals seeking extraordinary relief, including continuing appellate court jurisdiction over emergency planning at Indian Point, comprehensive revision of the Commission's emergency planning rules and procedures, and a possible shutdown of the plants. UCS/NYPIRG argued, as it does herein, that the Commission's so-called "120-day clock" (see 10 CFR §50.54(5)(2)) for resolving emergency planning deficiencies was ineffective. By Order dated December 15, 1981, the Court dismissed UCS/NYPIRG petition, after first having ruled against UCS/NYPIRG from the bench.

previous attempts to close the plants, UCS/NYPIRG has filed an eleventh-hour motion for reconsideration of the Commission's January 8, 1981 order, and for issuance of a show cause order against the licensees.* UCS/NYPIRG brings its motion as investigatory hearings on a number of issues related to Indian Point -- including whether NRC emergency planning requirements are satisfied -- are about to commence before the NRC Atomic Safety Licensing Board to which the UCS/NYPIRG motion is also addressed. Employing stale assertions, and evidently fearful that the upcoming hearings will fail to support their position, UCS/NYPIRG would presume upon the Commission and Board to make dispositive rulings on emergency planning issues before the very hearings designed to consider them have commenced. Because intervenors' "new evidence" is more than six months old, and because intervenors have grossly misrepresented the present state of emergency planning, this motion, filed on the eve of the investigatory hearing directed by the Commission, should be denied.**

* UCS/NYPIRG has also erred to the extent that its present motion seeks a show cause order from the Board. The Commission's January 8 and September 18, 1981 orders herein clearly did not delegate to the Board the power to close either plant, but instead simply permitted the Board to make recommendations.

** Intervenors Friends of the Earth/New York City Audubon Society ("FOE/Audubon"), Westchester People's Action Coalition ("WESPAC"), and West Branch Conservation Association ("WBCA") have filed papers in support of the UCS/NYPIRG motion.

I. UCS/NYPIRG's Evidence Does Not Warrant
This Last Minute Motion

UCS/NYPIRG's first piece of "new evidence" which it claims warrants the interruption of the hearing process mandated by the Commission is the supposed deficiencies in the Indian Point emergency plans as recorded by the Federal Emergency Management Agency's (FEMA's) Regional Assistance Committee ("RAC") in April 1981. USC/NYPIRG Motion at 3.* UCS/NYPIRG disingenuously neglects to mention that on August 24, 1981, based on a revised FEMA review, the Staff "conclude[d] that this issue has been resolved satisfactorily." Letter from Boyce H. Grier, Director NRC Region 1, to George T. Berry, Power Priority President and Chief Operating Officer (Aug. 24, 1981). (Exhibit "A"). Thus, the April 1981 RAC comments are hardly a legitimate ground for a motion.

UCS/NYPIRG's second piece of "new evidence" dates from December 1981 and consists of further RAC comments. Such evidence is also hardly "new" in the context of this hearing, in which the Commission's suggested deadline requires such a rigorous hearing schedule.

Intervenors' months-long delay in filing this motion illustrates that their "new" information is not urgent, and

* Presumably, this is a reference to the April 6, 1981 letter from Vincent Forde, Acting Regional Director, FEMA, to William C. Hennessy, Chairman, New York State Disaster Preparedness Commission. See Exhibit "A".

certainly offers no basis for disrupting the hearing process to reconsider issues which the hearings themselves are designed to examine. UCS/NYPIRG's "new evidence" merely confirms that the FEMA's evaluations are part of the ongoing process of developing emergency plans for nuclear power plants.*

The UCS/NYPIRG Motion also purports to rely upon a FEMA Post Exercise Assessment, issued May 27, 1982, in support of its motion. The Assessment document details FEMA's comments on the radiological emergency exercise conducted at the Power Authority's Indian Point 3 Nuclear Power Plant on March 3, 1982. FOE/Audubon and WESPAC, in their papers supporting the motion, are less than candid when they claim that the Assessment's evaluation of nine functional areas as weak constitutes "substantial and significant deficiencies." See Response in Support at 3. In fact, the exercise participants also received 19 "good" ratings in 9 functional areas, and 23 "acceptable"

* The support for UCS/NYPIRG's motion by FOE/Audubon and WESPAC is similarly inadequate. See FOE/Audubon and WESPAC's Response in Support of UCS/NYPIRG Motion for Reconsideration of Commission Ruling Allowing Interim Operation and for Issuance of a Show Cause Order Against Licensee's [sic], and FOE/Audubon and WESPAC's Presentation of Additional New Evidence (June 8, 1982) (Response in Support).

FOE/Audubon and WESPAC's support for UCS/NYPIRG's motion is undercut by their admission that "no feasible emergency measures can protect against the long term consequences of a serious accident at Indian Point." Response in support at 6. Because FOE/Audubon and WESPAC claim that no level of emergency planning can be effective, their assertions a fortiori cannot support a motion premised upon the NRC's emergency planning regulations not being complied with.

ratings in 10 functional areas. (See general Attachment C, FEMA Post Exercise Assessment (May 27, 1982).) Intervenors obscure the fact that the very purpose of an exercise and critique is to identify as many deficiencies as possible so that corrections can be made. If anything, the FEMA Assessment supports licensee's argument that emergency planning is a dynamic process, and that reasonable assurance presently exists that the public could and would be protected in the event of a radiological emergency.

Indeed, the FEMA Assessment of the most important areas of emergency response was highly favorable. For example:

- (1) "[a]t the state level, all observed functions were carried out well" (Assessment at p. 10);
- (2) at the Indian Point 3 Emergency Operations Facility, all tested areas were rated from "acceptable" to "good" (Assessment at p. 12);
- (3) even in Rockland County, upon which intervenors have focused their criticism, "[c]apabilities for protection of the public were good" and "[e]vacuation and decontamination were well demonstrated" (Assessment at p. 15).

The high marks given the State of New York are particularly noteworthy since, pursuant to N.Y. Executive Law, Article 2-B, the State maintains primary responsibility for radiological emergency planning, and, in the event of a general emergency, the State would commit its extensive resources and coordination and management capabilities.

Finally, the direct testimony filed by the Commission Staff and FEMA in the Indian Point investigatory proceeding -- which contains an overall review of emergency planning simply -- contains few negative comments about the state of preparedness in either New York State or at Indian Point. Indeed, Staff witness Thomas Urbanik II suggests that the evacuation time contained in the emergency plan are even more reliable than the FEMA estimates, which enjoy a rebuttable presumption of validity in this proceeding.

II. The Rockland County Resolution Fails to Support Reconsideration or the Issuance of a Show Cause Order

UCS/NYPIRG and its intervenor-supporters also rely upon a May 18, 1982 resolution of the Rockland County legislature, one of four counties within the Indian Point plume exposure pathway emergency planning zone. The Rockland County resolution is in fact a political gesture whereby the County has determined to develop its own radiological emergency response plan independent of the State or the other counties. This resolution has no meaningful effect on the County's ability to respond to a radiological emergency. Intervenors conspicuously fail to note several key provisions of the Resolution:

[T]he County of Rockland, through its Officer of Emergency Services, has and will continue to develop such plans [Disaster Preparedness Plans] as may be necessary to insure the health, safety and welfare of Rockland County citizens from all contingencies. . .

... which program shall be funded by the County of Rockland, and be it further

RESOLVED, that the Legislature of Rockland County further directs the County Office of Emergency Services to develop a plan in response to a potential nuclear accident occurring at the Indian Point Facilities and to utilize all sources of information in preparing such plan to be presented to the Legislature of Rockland County by December 31, 1982, and be it further

RESOLVED, that in the event of a nuclear occurrence at Indian Point Facilities, the Legislature of Rockland County hereby authorizes, empowers and directs its Chairman, notwithstanding this resolution, to take any and all action in coordinating and cooperating with any and all Federal and State agencies to protect the lives and property of the citizens of Rockland County,

Appendix, A, p. 2-3 to UCS/NYPIRG Motion. (Emphasis added.)

Rockland County's own reiteration of its intention to abide by the federal and state plans in case of an emergency, while continuing to develop its own plan, hardly creates what UCS/NYPIRG calls an "emergency preparedness vacuum" (UCS/NYPIRG Motion at p. 4). Since Rockland County expressly intends to continue to use all of its resources in protecting life and property in the event of an emergency, the resolution cannot possibly have the adverse effects claimed by intervenors. Rockland County's planning for a radiological emergency substantially unaffected, and the State of New York, which maintains

primary responsibility for radiological emergency planning and for the maintenance of the written State and county plan documents, is completely unaffected.*

III. Intervenors Again Seek to Circumvent
Established Procedures

As on prior occasions, intervenors seek to circumvent the Commission's procedures. Recognizing that emergency planning is a process, 10 CFR §50.54(s)(2) allows licensees

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- * Nor is there likely to be any coordinational problems between Rockland County's emergency preparedness and the other affected governmental units while the County is preparing its own plan, because the County has expressed its intention to follow the provisions of the present county plan in the interim. By letter dated June 4, 1982, New York Disaster Preparedness Commission Chairman William C. Hennessy advised FEMA that:

"Staff also advised by the Chairman and other members of the [Rockland County] legislature that the present plan would be used if an accident wereto occur. On the basis of the resolution and statements made by Rockland County officals, I believe that the four county level of preparedness remains adequate."

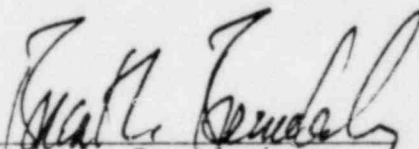
A copy of the June 4, 1982 Hennessy letter is attached hereto as Exhibit "B". Even if the Rockland County Resolution had substantive impact, FEMA has in the past noted that isolated instances of uncooperativeness by state or local governments would not seriously affect overall radiological emergency preparedness. See, e.g., NYPIRG's July 18, 1981 Legislative Memorandum (Attachment 1 at 5) to Governor's Bill Jacket for S-7122 (Exhibit "C" hereto) ("[T]he number of these [isolated instances] does not seriously affect the progress of preparedness development at this time).

four months following a formal notice in which to correct deficiencies. The Second Circuit Court of Appeals affirmed its confidence in this procedure by dismissing UCS/NYPIRG's petition for review last December. Intervenors renewed and wasteful efforts to bypass 10 CFR Part 50 reflect a continued misapprehension of the emergency planning process, a continued willingness to mischaracterize and disrupt the Commission's ongoing emergency preparedness programs, and a continued disregard of the Commission's regulations.

Conclusion:

For the reasons set forth above, the "UCS/NYPIRG motion..." should be denied in all respects.

Respectfully submitted,



Brent L. Brandenburg
CONSOLIDATED EDISON COMPANY
OF NEW YORK, INC.
Licensee of Indian Point
Unit 2
4 Irving Place
New York, New York 10003
(212) 460-4333

Dated: New York, New York
June 21, 1982



UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION I
431 PARK AVENUE
KING OF PRUSSIA, PENNSYLVANIA 19406

Docket Nos. 50-333
50-286

24 AUG 1981

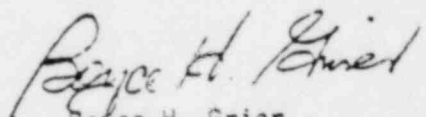
Power Authority of the State of New York
James A. FitzPatrick Nuclear Power Plant/
Indian Point 3 Nuclear Power Plant
ATTN: Mr. George T. Berry
President and Chief Operating Officer
10 Columbus Circle
New York, New York 10019

Gentlemen:

By letter dated April 24, 1981, I transmitted to you a copy of a letter from the Federal Emergency Management Agency (FEMA) dated April 23, 1981 and its attached letter from FEMA to the New York State Disaster Preparedness Commission dated April 6, 1981. The attachments to the April 6, 1981 letter listed numerous deficiencies in the New York State and local emergency response plans for the area around your reactor site.

The enclosed letter from FEMA dated August 19, 1981, refers to the deficiencies in the aforementioned April 6, 1981 letter. FEMA concludes that "the present state of planning is generally adequate to carry out the responsibilities of the State and local government in the case of an accident at these sites". We therefore conclude that this issue has been resolved satisfactorily.

Sincerely,

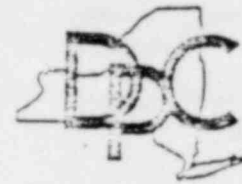

Boyce H. Grier
Director

Enclosure: As stated

Exhibit "A"

NEW YORK STATE
DISASTER PREPAREDNESS COMMISSION

Public Security Building
State Campus
Albany, N.Y. 12226



William C. Hennessy
Chairman

MG Vito J. Castellano
Secretariat

David Axelrod, M.D.
State Coordinating Officer

June 4, 1982

Mr. Frank Petrone
Regional Director
Federal Emergency Management Agency
Region II
26 Federal Plaza
New York, NY 10278

Dear Mr. Petrone: *Frank*

I share your concern about the action taken by the Rockland County Legislature in relation to the County's further participation in the Indian Point portion of the New York State Radiological Emergency Preparedness Plan.

Commission staff met with Rockland officials on May 28 to discuss the implications of the resolution adopted by the County Legislature. It was pointed out that the resolution authorizes, empowers and directs the Chairman of the Legislature to take any and all action, in conjunction with Federal and State agencies, to protect the lives and property of Rockland's citizens. Staff was also advised by the Chairman and other members of the Legislature that the present plan would be used if an accident were to occur.

On the basis of the resolution and statements made by Rockland County officials, I believe that the four county level of preparedness remains adequate. As requested, I will keep you informed as to future developments.

Sincerely yours,

William C. Hennessy
Chairman
Disaster Preparedness Commission

Exhibit "B"



NEW YORK PUBLIC INTEREST RESEARCH GROUP, INC.

5 Beekman Street • New York, N.Y. 10038 • (212) 349-6460

Offices in: Albany, Binghamton, Brooklyn, Buffalo, Long Island, Manhattan, New Paltz, Queens, Staten Island, Syracuse, Utica

LEGISLATIVE MEMORANDUM

Contact: Ellen Spiika (212) 349-6460
Joan Holt (212) 349-6460

Re: S 7122

JUL 21 RECD

AN ACT to amend the executive law and the public service law, in relation to radiological emergency preparedness and making an appropriation therefor

* * * * *

Since the 1979 accident at Three Mile Island, NYPIRG has been deeply concerned over the inadequate state of emergency preparedness for radiological accidents in New York State. Our organization has followed closely the development of federal guidelines and regulations for emergency planning for accidents at nuclear generating facilities; the preparation of emergency plans to protect the public around New York's 5 operating reactors; and the NRC/FEMA review and approval process, not only with respect to New York State and local plans, but also as this process has been applied elsewhere (for example, for the newly licensed Salem facility and for Three Mile Island).

Our monitoring and research has led us to the following conclusions, which we urge the Governor to consider before signing into law the radiological emergency preparedness bill now before him:

1. Major life-threatening accidents, once deemed "incredible" by the Nuclear Regulatory Commission, are now considered possible at nuclear generating facilities. NYPIRG is particularly concerned about the possibility of such an accident at the trouble-ridden, aging, unreliable operating reactors at Indian Point, especially since the October 1980 flooding accident at Unit 2 and the NRC's admitted concerns over possible embrittlement of that unit's reactor vessel.
2. NYPIRG considers the federal NRC/FEMA guidelines for emergency planning grossly inadequate to guarantee real protection for the public in the event of a major nuclear plant accident. Furthermore, we regard the Final NRC Emergency Planning Rule as so riddled with loopholes as to offer little hope of strict enforcement.
3. The FEMA/NRC review and evaluation process now underway across the country already provides ample proof that wholly inadequate emergency plans are receiving only cursory scrutiny by these agencies and are being hastily approved ("rubber stamped") in spite of containing many major deficiencies (see enclosed NYPIRG report on Current Problems in Emergency Planning Around Nuclear Power Plants).
4. The federal agencies are enforcing neither the letter or the spirit (intent) of the new emergency planning requirements, and officials of these agencies have indicated by public statements that they do not intend to shut plants down because of inadequate emergency plans.
5. If the public is to be guaranteed anything more than token protection from radiological disasters, that will be only because state and local governments

The New York Public Interest Research Group, Inc. (NYPIRG) is a not-for-profit, nonpartisan research and advocacy organization established, directed and supported by New York State college and university students. NYPIRG's staff of lawyers, researchers, scientists and organizers works with students and other citizens, developing citizenship skills and shaping public policy. Consumer protection, higher education, energy, fiscal responsibility, political reform and social justice are NYPIRG's principal areas of concern.

Exhibit "C"

have the authority to require (before formal submission of their plans) that emergency preparedness go beyond the federal guidelines and regulations in order to provide adequate protection for their citizens.

If, however, the states and localities accept the federal guidelines as sufficient and go no further than meeting those guidelines, the public will remain inadequately protected in the event of a nuclear plant disaster.

It was NYPIRG's hope that the State Legislature and the Governor would take the possibility of nuclear disaster more seriously than they have, and would have undertaken an extensive program of research and legislation to provide the protection New Yorkers and their neighbors in bordering states deserve.

Instead, what we have witnessed (except in some counties where local officials have raised questions about workability, nuts-and-bolts, etc.) is a willingness only to meet NRC/FEMA guidelines in writing plans that go no further, and acting as though all that matters is pleasing these agencies rather than providing real protection for the public. An obvious case in point is that the New York State plan includes no special consideration of the need for more than ad hoc emergency measures for densely populated communities such as New York City. It seems obvious to us, and to many ordinary citizens with whom we have spoken, that, in the absence of extensive planning for regions such as NYC, there can only be ad hoc disaster in the wake of any nuclear emergency. Anyone who believes that people in southern Westchester or New York City will not take to the roads in a massive self-evacuation if they learn that measures are being taken to protect people closer to Indian Point, is simply not facing facts. And to be unprepared for this possibility is irresponsible.

NYPIRG has consistently argued that for emergency planning to be meaningful, it must be based on site-specific characteristics that take into account factors such as population density, wind and weather patterns, road and transportation conditions, geographic factors, etc. It makes no sense to us to follow uniform guidelines that are not tailored to the specific characteristics of each reactor site. What may work for a sparsely populated region with an adequate road system, may not work at all for a region such as that surrounding Indian Point. Furthermore, planning criteria based on the discredited probability and consequence estimates of the old Reactor Safety Study (based on only one year of nuclear plant operating experience and systematically biased as it is) are greatly suspect.

Before signing any bill into law that will enable NRC and FEMA to rubber stamp state and local off-site emergency plans for New York, we believe the Governor should seek enabling legislation to require site-specific consequence studies for New York State's nuclear reactor sites. Such studies would enable the State and local disaster preparedness officials to develop and adopt emergency planning guidelines that would meet the needs of each plant site in terms of its particular characteristics and problems. This is what has been done in California (see enclosed NYPIRG testimony, February 12, 1981 before the Assembly Special Committee on Nuclear Power Safety, especially pages 11-12).

Because the enabling legislation now before the Governor is likely to result in the formal submission, "implementation" and approval of grossly inadequate emergency plans to protect New York State residents, NYPIRG urges the Governor not to sign it into law in its present form.

In addition to the above, NYPIRG finds the following unacceptable in S 7122:

1. The fees to licensees are wholly inadequate to cover the costs of equipment,

- administration, contractual services, maintenance, emergency personnel training, implementation, and testing of the state and local emergency plans, particularly for the region around Indian Point (where cost estimates run into the millions of dollars).
2. Licensees should not be permitted to pass costs for emergency planning onto their customers, since the plans submitted to date provide more protection for the investments and dividends of utility shareholders than they do for public health and safety.
 3. Though mentioning testing as a cost factor, this bill provides no specific requirements for emergency plan testing. A plan that exists only on paper, or which has been "exercised" only with respect to very limited components, cannot be assumed to be workable. The sorts of exercises required by the federal agencies are farcical and should not be accepted by the Governor as adequate to judge the workability of emergency plans within this state. Provision must be included in emergency preparedness legislation for frequent and extensive testing of as many aspects of the plans as can be carried out without endangering the public. Because of the rapid turnover of state and local personnel, it is essential that training and testing gaps not occur, and the only way to guarantee this is the actual participation of all emergency personnel in regular and frequent drills.
 4. The bill's limitation of radiological accident as applying only to accidents occurring at nuclear electric generating facilities, is wholly unacceptable to NYPIRG. The State should require and implement planning for non-commercial reactor sites, radiological waste dumps, and, most importantly, transportation accidents. In light of the recent decision of the Department of Transportation to supersede local bans on transportation of nuclear wastes, it would seem incumbent on the State to extend radiological emergency protection to New Yorkers endangered by such transports.
 5. One of the major lessons learned during the aftermath of the Three Mile Island accident, and a factor repeatedly stressed by experts in disaster planning, is that in order for emergency measures to work smoothly it is absolutely essential that the public believe its sources of information. This matter of credibility has been raised time and time again by public officials and citizens who simply do not trust the utilities (particularly Con Edison because of their shoddy record at Indian Point) to provide full, complete, and timely information to off-site officials and the public. For this reason, it is essential that the state and local emergency officials have independent accident assessment capability, both off-site and on-site. NYPIRG does not believe that the public will be adequately protected as long as it is largely dependent on the nuclear utilities for information about plant emergencies. The present legislation lacks any provision for on-site, independent accident assessment by a highly qualified, specifically trained public representative.

NYPIRG, as you know, favors the immediate closing of the Indian Point nuclear plants and the rapid phase-out of New York's other operating reactors, and opposes the construction and licensing of Shoreham. It is our view that as long as major radiological accidents are possible, the only real protection for the public is prevention. Nevertheless, as long as nuclear plants are still operating in our state, the public is entitled to maximum, not minimum, emergency planning. The legislation now before the Governor guarantees only that there will be some planning; it does not go nearly far enough. We fear that it will not accomplish real protection for the public, but will permit NRC/FEMA approval of inadequate, unworkable emergency plans that will spell disaster if New York is ever faced with a major

accident at one of its nuclear plants.

NYPIRG urges the Governor not to sign this legislation and to submit new legislation that will enable the state to provide a level of protection for the public beyond that deemed "adequate" by federal planning officials who still do not believe that nuclear accidents can happen -- even after Three Mile Island.

The New York Public Interest Research Group, Inc
5 Beekman Street
New York, New York 10038

encs.

July 18, 1981

(from) FEMA responses to questions from Senate Subcommittee on Nuclear Regulation, Committee on Environment and Public Works. Pages 4 through 6 of letter dated April 14, 1981.

Up to the present time, FEMA has been able to respond to the NRC without causing any documented delays, but this is true only because the major thrust of reviews imbedded in the schedules of 10 CFR Part 50 is just beginning to surface. The key policy matter over which FEMA has had little or no influence is the NRC's plan for enforcing the mass of preparedness related actions for the 49 sites now operating, for which implementation was due April 1, 1981, and the 22 units and associated sites preparing for licensing in CY 1981 and CY 1982. With all of this concurrent activity superimposed on other obligations for the non-power NRC materials licensees, and for other Federal facilities of the DOE and DOD, there is little likelihood that FEMA can complete its reviews with existing staff and financial resources before the end of CY 1982. It is important to note that under existing arrangements for using FEMA findings and determinations, these reviews must be in the hands of the NRC staff some five to seven months before any impending hearing can start, and even under the projected rule changes proposed by NRC, some 12 to 15 months before the final NRC action on a full power license.

Given this background, FEMA offers the following with respect to the six sub-questions (a) through (f):

(a) Lack of adequate resources?

At the time of the Presidential Directive of December 7, 1979, which among other things, proposed \$8.9 million in support of State plans development, there was a joint resolution in the Congress which did not allow action on FY 1980 supplementary requests until May 15, 1980. By the time \$1.9 million was appropriated in June 1980, the FY 82 budget submissions were already under development and OMB budget directions gave little opportunity for FEMA to consider a FY 81 supplementary appropriation. All other Federal agencies supporting FEMA's review process found themselves in the same position.

As things stand today, FEMA's request for additional staff submitted under the previous Administration has been turned down. The overall financial plan for FY 1981 leaves little opportunity for staff or resources reprogramming without jeopardy to the civil defense program, given high priority by the last Congress and the present Administration. Travel restrictions have impacted this activity greatly. FEMA will find it difficult to meet its obligation to the NRC in a timely manner. The budget cycle of State governments also makes their ability to meet NRC's schedule uncertain.

(b) Late submittals by the applicant?

FEMA has no direct relationship with NRC licensees and has no way of knowing the causes of delay to a process as complex as the NRC licensing procedure. FEMA's reviews of State and local preparedness under its own Rule 44 CFR Part 350 have been delayed by lack of resources on the part of State and local governments, many of which must look to NRC licensees for financial and material support in the development of their preparedness posture.

(c) Lack of cooperation by State or local governments?

FEMA is aware of isolated instances where State and/or local governments are opposed to nuclear power in principle. The number of these cases does not, however, seriously affect the progress of preparedness development at this time.

(d) Lack of coordination between NRC and FEMA?

We believe that there is good cooperation as reflected in the Memorandum of Understanding (MOU), the work of the Steering Committee, and day-to-day staff contacts. Two points of misunderstanding, both of which could affect FEMA's capacity to carry out its role, have emerged. The first is that FEMA is being asked by NRC for findings and determinations more frequently and earlier than anticipated. The second is that FEMA has been working under the assumption that its review and approval procedure (44 CFR Part 350) would be the main vehicle for developing findings and determinations. Instead we are increasingly working outside this procedure in order to comply with NRC requests under the MOU. Both of these factors are heavily influenced by the question of when FEMA findings and determinations are required in the NRC licensing process. Initially, based on NRC schedules, we understood that FEMA findings and determinations would be required close to the licensing date, but we are finding that to satisfy NRC hearings, they are required up to 14 months earlier to be incorporated into the staff Safety Evaluation Report which precedes any hearing action.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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In the Matter of :
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(Indian Point, Unit No. 2) : 50-247 SP
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CERTIFICATE OF SERVICE

I certify that I have served copies of "Licensee's Response To UCS/NYPIRG's Motion For Reconsideration Of Commission Ruling Allowing Interim Operation And For Issuance Of A Show Cause Order Against Licensees" on the following parties by deposit in the United States Mail, postage prepaid, this 21st day of June, 1982.

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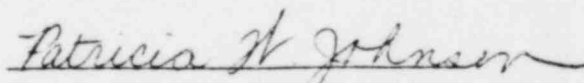
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Dated: June 21, 1982
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