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October 28, 1987

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DOCKET NUMBER PR-50
PROPOSED RULE (52 FR 6980)
EMERGENCY PLANNING

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BY HAND

William Parler, Esquire
General Counsel
U.S. Nuclear Regulatory Commission
1717 H Street, N.W.
Washington, D.C. 20555

Dear Mr. Parler:

We are writing on behalf of our client, Suffolk County, and with the authorization of the State of New York, in reference to the attached newspaper article and documents which strongly suggest that the NRC is deliberately deceiving the public with respect to the pending emergency planning rule change.

Specifically, in the Staff's emergency planning briefing paper to the Commission, SECY-87-257, the Staff stated that the proposed rule "makes no assumptions as to the precise actions which state and local governments would take (such as whether the state and local governments would follow the utility's plan)" This statement reflects a consistent theme expressed throughout the SECY paper and your October 22 briefing to the Commission.

However, the attached documents disclose that at the very time the Staff was publicly making the foregoing representations, it was privately making the opposite representations -- indeed, the Staff was making decisions and actually taking actions in repudiation of its public pronouncements. Specifically, the attached October 21, 1987 memorandum from the NRC Staff to FEMA instructs FEMA to "assume" for purposes of FEMA's participation in the NRC's regulatory process that State and local governments will "cooperate with the utility to follow the utility offsite plan" . . . and "implement those portions of the utility offsite plan where state or local response is necessary."

Moreover, the Staff's instruction to FEMA, in the face of facts which the NRC knows to be precisely the opposite, strongly suggests that the NRC is being disingenuous. The NRC has received affidavits from the Governor of New York and the Suffolk County Executive that explain why neither the State nor County

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add: P. Crane, H-1035
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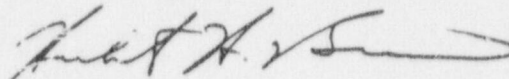
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would ever authorize, use, or otherwise implement the utility's emergency plan. The inescapable inference is that the NRC sought to conceal its instruction to FEMA in order to prevent interested State and local governments from learning what it was doing.

The irreconcilable inconsistency between the Staff's public and private statements indicates that the NRC is seeking to mislead the public, and particularly interested State and local governments such as New York and Suffolk County. This, coupled with the procedural irregularity addressed by our letter of October 27 to the Chairman and Commissioners, has further undercut the integrity and legal sufficiency of the rulemaking. Accordingly, the State and County request that: (1) the instruction to FEMA be rescinded; (2) the rulemaking be suspended pending full disclosure by the NRC of all materials and information related to the issues addressed herein; and (3) the public be afforded the opportunity to consider such materials and to file with the NRC position papers as to whether the rulemaking should be terminated or remedied by other means.

Sincerely,



Herbert H. Brown

cc: Fabian G. Palomino, Esq.
Special Counsel to the Governor
of New York
Lando W. Zech, Jr., Chairman
Commissioner Frederick M. Bernthal
Commissioner Thomas M. Roberts
Commissioner Kenneth M. Carr
Commissioner Kenneth C. Rogers

Enclosures: Newsday article, October 28, 1987
Memorandum from Victor J. Stello, dated October 16,
1987
Memorandum from Frank J. Congel, dated October 21,
1987