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11-18-03

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C. SCOTT VANDERHOEF
County Executive

November 5, 2003

Mr. James H. Purvis
U.S. Department of Homeland Security
Federal Emergency Management Agency
Radiological Emergency Preparedness Section
500 C Street, S.W. (Room 202)
Washington DC 20472
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REGION 1

Re: Appeal Pursuant to 44 CFR 350.12 and 44 CFR 350.15:
From FEMA Preparedness Division Director Paulison
Letter of July 25, 2003, to New York Governor Pataki

Dear Mr. Purvis:

I am writing on behalf of the County of Rockland to appeal the decision embodied in a July 25 letter from Federal Emergency Management Agency (FEMA) Preparedness Division Director R. David Paulison to New York Governor George E. Pataki. The appeal is made pursuant to 44 CFR 350.12 and 44 CFR 350.15,

Mr. Paulison's letter constituted FEMA's "determination of reasonable assurance that the offsite preparedness for (Indian Point) is adequate." Mr. Paulison's letter explicitly states:

"After carefully considering all available information, we have reasonable assurance that appropriate protective measures to protect the health and safety of surrounding communities can be taken and are capable of being implemented in the event of a radiological incident at the Indian Point facility."

The County of Rockland emphatically asserts that FEMA's determination embodied in that letter, "based on the available record," was unsupported by substantial evidence [44 CFR 350.12(e)]. Nor was FEMA's determination "consistent with FEMA policy" [44 CFR 350.15(b)].

The specific reasons for this appeal, and the documentation that the County of Rockland offers to support its appellate arguments are as follows:

1. The July 25 letter is unsupported by (and it arbitrarily, capriciously disregards) the collective wisdom and expertise of local, county, and state emergency services professionals and elected officials. The documents, information, and other materials that contain or evidence such wisdom and expertise were gathered by or otherwise made available to FEMA before July 25, 2003, and are incorporated in this letter by this reference.
2. The July 25 letter is unsupported by (and it arbitrarily, capriciously disregards) the findings and conclusions developed by James Lee Witt (formerly Director of FEMA and more recently

principal of James Lee Witt Associates, LLC). Those findings and conclusions were outlined in the "Review of Emergency Preparedness at Indian Point and Millstone" (the *Witt Report*) and are incorporated in this letter by this reference. The *Witt Report* was released in draft form January 10, 2003, and published in final form March 7, 2003 after a comment period that closed February 7. The report identified numerous, substantive inadequacies in the offsite emergency preparedness plan which undermine the reasonableness of the assurance asserted in the July 25 letter that approved the plan. Those inadequacies include the following:

- (a) failure of the plan to address specific conditions which would be triggered by a terrorist attack on the facility or by other "fast-breaking" radiological events;
- (b) failure of the plan to embody realistic strategies, structures, and systems designed actually to protect from radiation exposure rather than merely to comply with unrealistic regulations;
- (c) failure of the plan realistically to account for people acting in accordance with what they perceive to be in their own best interests, rather than acting in compliance with official governmental directions;
- (d) other plan failures, including failure to anticipate spontaneous evacuation and parental behavior that could compromise school evacuation; difficulties and failures in communications and alert/notification equipment, systems, styles, and procedures; use of outdated technologies and vulnerability assessments; thin public education effort and correspondingly low level of public awareness and understanding; failure to anticipate difficulties resulting from the nature of the road system and the county's high population density;
- (e) deep-seated and probably intractable unreadiness, unwillingness, or inability on the part of the licensee (Entergy) to equip its own experts, over and above scientific education and technical training, with attitudes, communication skills, and an "ear" for the urgent need of officials at all levels of government, of emergency personnel, and of the public, for information that is adequate, timely, useful, and coordinated. ("Communications are the lifeblood of an emergency. Communications can also be the Achilles heel").

3. The July 25 letter is unsupported by (and it arbitrarily, capriciously disregards) the information and documentation requested from FEMA and from the NRC by letters dated August 5, 2003, on behalf of the County of Rockland. FEMA has not completed its search for all of the requested information; the NRC has not yet provided any of the requested information. Upon receipt by the County of Rockland of all of the requested information, the County of Rockland shall promptly review the information, shall further specify or augment, as appropriate, the appellate arguments set forth in this letter, and shall provide the appropriate documentation to support such specified or augmented arguments.

4. The July 25 letter is unsupported by (and it arbitrarily, capriciously disregards) the failure on the part of the licensee (Entergy), as evidenced by the exercises held September 24 and October 29, 2003, in Rockland, Westchester, Orange, and Putnam Counties, New York, to comply with FEMA's planning standards, identified in 44 CFR 350.5. In short, the licensee (Entergy) has failed repeatedly to demonstrate an ability continuously to discharge the primary responsibilities for emergency response established for and assigned to it as licensee. Entergy is delinquent in failing to:

- (a) specify "interfaces among various onsite response activities and offsite support and response activities" [44 CFR 350.5(a)(2)]
- (b) make "arrangements for requesting and effectively using assistance resources" by state and local staff [44 CFR 350.5(a)(3)];
- (c) use a "standard emergency classification and action level scheme" and anticipate "state and local reliance on information provided by (Entergy) for determinations of minimum initial offsite response measures" [44 CFR 350.5(a)(4)];

(d) establish "procedures ... for notification," as well as "means to provide early notification and clear instruction to the populace within the plume exposure pathway Emergency Planning Zone" [44 CFR 350.5(a)(5)];

(e) provide for "prompt communications among principal response organizations to emergency personnel and to the public" [44 CFR 350.5(a)(6)];

(f) establish "procedures for coordinated dissemination of information to the public" [44 CFR 350.5(a)(7)];

(g) provide and maintain "adequate emergency facilities and equipment to support the emergency response" [44 CFR 350.5(a)(8)]; and

(h) use "adequate methods, systems and equipment for assessing and monitoring actual or potential offsite consequences of a radiological emergency condition" [44 CFR 350.5(a)(9)].

Overall, as confirmed by the September 2003 and October 2003 exercises, Entergy has failed to take the necessary steps to protect the millions of people who live in Indian Point's shadow. We believe that preparedness seems to be on compliance with regulations rather than on recognizing the real-world possibilities. Even in Entergy's attempts to comply via the "drills," for which great advance notice is given, it remains appallingly ill-prepared, as evidenced by faulty fax machines, computers that can't be operated and hotlines that haven't worked for months. In this era, Rockland County's public information team still is expected to travel more than an hour across the Tappan Zee Bridge into Westchester County to participate in the Joint News Center - rather than being participating as a faster-responding virtual team via teleconferencing. The company shows a lack of respect for the county authorities who need to make life-saving decisions and for their teams who need to respond to protect and inform the public if an emergency occurs at Indian Point.

If Entergy is unwilling or unable to aggressively improve basic components of its emergency-preparedness planning, how can we count on the company to function to help us protect public safety in a real emergency?

Even though we have an outstanding emergency-response team and continuously work to improve our response plans, the County of Rockland believes that until all of the issues raised in the Witt Report and other issues, as identified above, are addressed, we cannot assure the public that it can be adequately protected; nor can FEMA.

We appeal to FEMA to rescind its finding that the emergency plan works. In short, the County of Rockland believes that Entergy has not risen to meet the requirements of protecting the public implicit in continued licensure by the NRC.

Sincerely,


C. Scott Vanderhoef
COUNTY EXECUTIVE

Cc: Hon. Thomas Ridge, Homeland Security
Hon. George Pataki, New York State Governor
Hon. Andrew J. Spano, Westchester County Executive
Hon. Edward Diana, Orange County Executive
Hon. Robert J. Bondi, Putnam County Executive
Edward F. Jacoby, NYSEMO
James Kallstrom, NYS Office of Public Security
Peter Eselgroth, US Nuclear Regulatory Commission
Gordon Wren, Rockland Office of Emergency Services
Sheriff James Kralik
Michael R. Kansler, Entergy Nuclear Northeast
Hilda Kogut, Coordinator of Public Safety
Patricia Zugibe, County Attorney