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County Executive

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U.S. Nuclear Regulatory Commission  
Annette L. Vietti-Cook, Secretary  
Washington, DC 20555-0001

OFFICE OF SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

Attention: Rulemakings and Adjudications Staff

Subject: Petition for Rulemaking  
*Amendment to 10 C.F.R. Part 54*

Dear Madam Secretary,

Pursuant with NRC Regulation 10 C.F.R. §2.802, which permits interested persons to petition the Commission to issue, amend, or rescind regulations, the County of Westchester (the "County") formally requests that Part 54, Requirements for Renewal of Operating Licenses for Nuclear Power Plants, of the Commission's Regulations (10 C.F.R. Part 54) be amended.

A. *The Proposed Amendment*

The County petitions that 10 C.F.R. Part 54, "Requirements for Renewal of Operating Licenses for Nuclear Power Plants", be amended so as to provide that a renewed license will be issued only if the plant operator demonstrates that the plant meets all criteria and requirements that would be applicable if the plant was being proposed *de novo* for initial construction. In particular, 10 C.F.R. §54.29 should be amended to provide that a renewed license may be issued by the Commission if the Commission finds that, upon a *de novo* review, the plant would be entitled to an initial operating license in accordance with all criteria applicable to initial operating licenses, as set out in the Commission's regulations, including Parts 2, 19, 20, 21, 26, 30, 40, 50, 51, 54, 55, 73, 100 and the appendices thereto. Corresponding amendments should be made to 10 C.F.R. §§54.4, 54.19, 54.21, and 54.23. 10 C.F.R. §54.30 should be rescinded. The criteria to be examined as part of a renewal application should include such factors as demographics, siting, emergency evacuation, site security, etc. This analysis should be performed in a manner that focuses the NRC's attention on the critical plant-specific factors and conditions that have the greatest potential to affect

public safety.  
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*B. The County's Interest in the Action Requested*

The County is a political subdivision, and municipality, of the State of New York. The County is located immediately north of New York City. It is 450 square miles in size. It has a southern border with New York City (Bronx County) and a northern border with Putnam County. It is flanked on the west side by the Hudson River and on the east side by Long Island Sound and Fairfield County, Connecticut.

The total population of Westchester County, as measured in the 2000 Census, is 923,459. The 2000 population is over 100,000 more than it was as measured in the 1960 Census.

The County is the host county for the Nuclear Generation Stations at the Indian Point Energy Facility ("Indian Point"), located in the Village of Buchanan, Town of Cortlandt. By reason of the presence of the Indian Point facility, the County has long had an interest and concern with the environmental, emergency, and public safety issues with respect to Indian Point.

There are two nuclear power plants at Indian Point: IP2 and IP3. These are presently operated by single purpose entities controlled by the Entergy Corporation ("Entergy"). IP2 & IP3's operating licenses are scheduled to expire in 2013 and 2015, respectively. In accord with industry trends, Entergy could apply for license extensions for up to an additional twenty years, provided certain operating, environmental, and safety conditions are met.

Westchester is vitally concerned with the criteria that will be used by the Commission in deciding whether to grant license extensions. In particular, Westchester is deeply concerned that the scope of present 10 CFR Part 54 is too limited and that, as a result, the safety of the residents and communities near Indian Point will be in question during any extended operating period. For example, many factors (detailed below) have changed since the construction of IP 2 & 3. These changes have a significant impact on the safety of the community, yet they are not considered under the current license renewal rules.

*C. Specific Issues Which Support the Proposal*

Building a nuclear power plant in the United States in the 1960s and 1970s represented a mutual commitment between the utility owner and the local community for a specific and limited period of time. The atmosphere during those early days (prior to 1979) was generally positive, in which local host communities would receive significant property taxes, the public would be assured of reliable low-cost power, and utility owners had a long period of time to recover their investments. The Indian Point facilities were located in Westchester, after New York City sites were rejected. The local communities perceived the benefits of having direct

access to reliable low-cost power and positive local economic impacts. The projects created massive numbers of employment opportunities and were initially seen as safe technical ventures. Both the local community and the utility had long term commitments to the facility, with the public having little recourse to question safety and operational issues once plant construction started and the utility having the right to the use of the plant for the full term of the license, often 40 years.

After living with nuclear power plants for the past three decades, several events have changed that landscape – TMI-2, the Browns Ferry fire, utility bankruptcies, the Chernobyl accident, delays at Yucca Mountain, Davis-Besse reactor head problems, and the events of 9/11. As a result, plant orders have ceased and the public has become justifiably concerned over the nuclear plant safety. These concerns are particularly sensitive at Indian Point, because of its proximity to major population centers, because of periodic leaks of radioactive material, because of difficult (if not impossible) evacuation issues, and because of its proximity to the World Trade Center.

It is timely now for the NRC to broaden the scope of license renewal investigations to assess the viability of the plants requesting license extension on a broad scale - one at least as broad as the original license hearings, and one that is site specific and site sensitive to an appropriate degree.

#### *D. The Problems with the Current Process*

It is respectfully submitted that the process and criteria presently established in Part 54 is seriously flawed. The process for license renewal appears to be based on the theory that if the plant was licensed originally at the site, it is satisfactory to renew the license, barring any significant issues having to do with passive systems, structures, and components (“SSC”s). The regulations, however, should be broadened and sufficiently comprehensive to cover all of the facets (including consideration of a worst-case scenario) that were considered for initial construction. Alternatively, the license renewal process should examine all issues related to the plant and its original license, and then concentrate on any issues that are new to that plant or has changed since the original license was issued or that deviate from the original licensing basis.

Many key factors that affect nuclear plant licensing evolve over time. Population grows, local/state /federal regulations evolve, public awareness increases, technology improves, and plant economic values change. As a result, roads, and infrastructure required

for a successful evacuation may not improve along with population density, inspection methods may not be adopted or may be used inappropriately, and regulations may alter the plant design after commercial operation. All of these factors should be examined and weighed in the formal 10 CFR Part 54 relicensing process.

Prior to concept of life extension for nuclear power plants, it was generally assumed that plants would exist as operating facilities for the rest of their design life, and then would enter a decommissioning phase. In fact, the collection of decommissioning funds from ratepayers initiated in the 1970s was based on a 40-year life.

*E. Key Renewal Issues*

It is time to review, at the end of the 40 years of life, several questions about nuclear power plants on a plant-specific basis. These questions include the following:

- Could a new plant, designed and built to current standards, be licensed on the same site today? For example, given the population growth in Westchester County, it is uncertain if Indian Point would be licensed today. The population in the areas near Indian Point has outpaced the capacity of the road infrastructure to support it, making effective evacuation in an emergency unlikely.
- Have the local societal and infrastructure factors that influenced the original plant licensing changed in a manner that would make the plant less apt to be licensed today? For example, three of four counties surrounding Indian Point have not submitted certified letters in support of the emergency evacuation plan. Under the current licensing process, that would not be a consideration. However, the inability of local governments to support the safety of the evacuation plan should, at the very least, give serious pause before the licenses of the plants are renewed.
- Can the plant be modified to assure public health and safety in a post-9/11 era? For example, Indian Point cannot be made sufficiently safe according to James Lee Witt, former head of FEMA.
- Have local/ state regulations changed that would affect the plant's continued operation? For example, Indian Point must convert from once-through cooling to a closed-cycle design using cooling towers.

- The original design basis of older nuclear power plants did not include extended on-site storage of spent nuclear fuel (SNF). At Indian Point for example, the current SNF storage plan includes one or more Independent Spent Fuel Storage Installations on-site, which increases the overall risk to the local community.

These issues should be considered in the license renewal process, along with safety, security, and certainly the condition of both passive and active SSCs. Even though a license renewal application has not yet been filed for Indian Point, we believe the NRC should address these license renewal issues for all nuclear plants when the extended operating lives raise widespread and profound safety and security concerns. The current NRC license renewal analyses ignore these issues.

*F. Conclusion*

We trust that the information provided is sufficient to support our request for amendment to 10 CFR Part 54. We would welcome the opportunity to speak with you about the specific sections with which we have concerns and provide you with any further information.

We respectfully request that a docket number be assigned to this petition, that the petition be formally docketed, and that a copy of this petition be made available for public comment.

Should you have any questions, please feel free to contact my Chief Advisor, Susan Tolchin at (914) 995-2932.

Respectfully submitted,

THE COUNTY OF WESTCHESTER

By: 

Andrew J. Spano  
County Executive