



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

September 16, 2011

The Honorable Nita M. Lowey
United States House of Representatives
Washington, DC 20515

Dear Congresswoman Lowey,

I am responding to your letter of August 15, 2011, sent to Chairman Jaczko of the U.S. Nuclear Regulatory Commission (NRC or Commission), in which you raised several concerns related to license renewal for Indian Point Nuclear Generating Units 2 and 3 (IP2 and IP3).

Due to the fact that relicensing for the Indian Point plants is currently the subject of adjudication before an NRC Atomic Safety and Licensing Board, I must advise that under agency regulations, the Commission has an appellate role in the adjudicatory proceeding. Because of that role, I trust that you will understand that Chairman Jaczko and the other Commissioners must remain impartial during the pendency of a case, whether it is before a Licensing Board or on appeal to the Commission. I am therefore referring your letter to the NRC staff for response.

A copy of your letter and this response, as well as a response by the NRC staff, when issued, will be served on the participants in the Indian Point proceeding.

Sincerely,

/RA/

Annette L. Vietti-Cook
Secretary of the Commission

cc: Indian Point Service List

COMMITTEE ON APPROPRIATIONS

SUBCOMMITTEES:

RANKING MEMBER,
STATE, FOREIGN OPERATIONS, AND
RELATED PROGRAMS

LABOR, HEALTH AND HUMAN SERVICES,
AND EDUCATION

HOMELAND SECURITY



Nita M. Lowey
Congress of the United States
18th District, New York

lowey.house.gov

WASHINGTON
2366 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515
(202) 225-6526
FAX: (202) 225-0510

WESTCHESTER
222 MANARONECK AVENUE
SUITE 310
WHITE PLAINS, NY 10605
(914) 428-1707
FAX: (914) 328-1605

ROCKLAND
(845) 633-3485

August 15, 2011

Chairman Gregory B. Jaczko
U.S. Nuclear Regulatory Commission
Mail Stop O-16G4
Washington, DC 20555-0001

Dear Chairman Jaczko:

Regulation Identification Number (RIN) 3150-AD04 (Rule) provides the Nuclear Regulatory Commission (NRC) with the power to relicense nuclear facilities. This Rule provides much more flexibility on relicensing terms than the NRC has been willing to utilize.

Specifically, the Rule states that a main concern in determining renewal terms was the ability to find replacement power. What the NRC believed to be a "10-to-15" year endeavor decades ago could be completed within a few years today. In fact, New York is on course to have enough power to replace Indian Point by the time Indian Point Reactor 3 would be relicensed. I urge you to exercise the flexibility offered to the NRC, given the special circumstances facing Indian Point in Buchanan, New York, to consider a shorter license renewal term before an orderly decommissioning of the facility.

Replacement Power

Regulations controlling the NRC's actions on relicensing are outdated. The Rule states that "Utilities contend that they will require 10 to 15 years to plan and build replacement power plants if the operating licenses for existing nuclear power plants are not renewed"¹ This statement, issued in 1991, does not reflect modern standards. Replacement power can be zoned, permitted, and built in a fraction of that time.

The Governor of New York has made clear his plan to close Indian Point. The New York State Department of Environmental Conservation has rejected a required water permit for the facility to utilize water from the Hudson River to cool reactors. Rather than support relicensing, the State has enacted a new siting law to assist in the construction of power plants, and is already in the process of approving multiple projects that should be on-line and in production before Indian Point's licenses expire in 2013 and 2015.

New York has approved a Hudson Transmission Project to provide 660 MW, projected to be in service in 2013; an NRG Repowering Station in Astoria to provide 440 MW, projected to be in service in 2013; and a U.S. PowerGen South Pier Improvement Project in Brooklyn to provide 100 MW, projected to be

¹ 56 FR 64943; December 13, 1991

in service in 2012. Additional projects in the permitting process, including the Champlain Hudson Power Express project, which will provide over 1000 additional megawatts of power. These projects alone would meet the peak-demand provided by Indian Point within the next few years.

In the coming months, we will receive additional information from New York State on replacement power and expect New York to meet expected demand without Indian Point. Therefore, a full 20-year relicense term is not needed.

Special Circumstances

You have stated that the NRC is obligated to determine relicensing based on a list of factors which do not include population density, risk of terror threat, evacuation difficulties, or seismic risk. Yet the Rule governing NRC relicensing is not exclusive. Rather, the Rule states that relicensing must take into account age degradation "but provides leeway for the Commission to consider, on a case-by-case basis, other issues unique to extended operation."²

The location and risks posed by Indian Point clearly warrant a careful, case-by-case relicensing review. Indian Point, located 35-miles of Times Square, is surrounded by 17 million people within a 50-mile radius. There is yet to be a credible evacuation plan for a ten-mile radius, let alone one that would evacuate the entire population of New York City, Westchester and Rockland Counties, and portions of Long Island, New Jersey and Connecticut. If ever issues of evacuation and population density should be addressed in relicensing, it is with the Indian Point facility.

In the wake of the Fukushima disaster, we have been forced to think about the unexpected and unimaginable potential dangers to nuclear facilities. Since that time, U.S. plants have also faced flood dangers, such as the Fort Calhoun Nuclear Power Station in Nebraska.

I am deeply concerned that there is no workable plan to evacuate the population surrounding Indian Point safely in the event of a man-made or natural disaster and that Entergy officials continue to utilize antiquated seismic data that we know underestimates potential seismic events. Without basic evacuation procedures, it is nearly impossible to give first responders and the public confidence in plans for unexpected emergencies or for the Federal Emergency Management Administration (FEMA) to plan for threats. I do not see how they can best plan for the unexpected when basic evacuation procedures are not adequate.

Five-Year License

The Rule states that "there is no minimum term for a renewed license" and that "the Commission may revisit this issue in the future as experience with licensee performance...is gained."³ I believe that this Rule, along with the special circumstances surrounding Indian Point's location, security threat, and replacement power options, should encourage the NRC to support a short-term license renewal such as a five-year renewal.

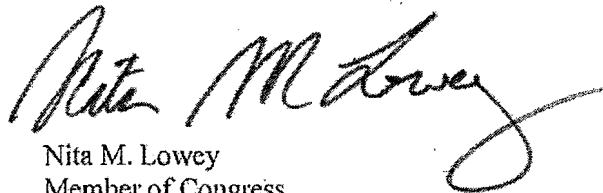
² 56 FR 64946; December 13, 1991

³ 56 FR 64964; December 13, 1991

There is precedent for the NRC to work with states and utilities to permit operations of an aging nuclear facility for a shorter time than the term of the license. The Oyster Creek Nuclear Generating Station in New Jersey recently announced that it will close in 2019, ten years before its renewal license is scheduled to expire. At Oyster Creek, the State Department of Environmental Protection required cooling towers and additional protections not required by the NRC. Rather than adhere to the State's requirements, Exelon agreed to decommission the plant in 2019, making way for adequate replacement power options and the safe closure of a plant that had become an environmental threat with a history of leaking tritium.

New York may be more willing to work with Entergy to sustain operations aimed at an orderly decommissioning of the plant. The NRC should take a realistic approach to relicensing that involves State concerns, work with New York and, if Indian Point is qualified, approve a short-term extension while simultaneously begin the decommissioning process as New York approves replacement power. A short-term relicensing, along with an orderly decommissioning, would ensure that replacement power is available and affordable and would reduce the environmental and national security threat posed to the region by the plant's continued operation.

Sincerely,

A handwritten signature in black ink, appearing to read "Nita M. Lowey", with a long, sweeping flourish extending to the right.

Nita M. Lowey
Member of Congress

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)	
)	
ENTERGY NUCLEAR OPERATIONS, INC.)	Docket Nos. 50-247-LR
)	and 50-286-LR
(Indian Point Nuclear Generating Station,)	
Units 2 and 3))	

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LETTER FROM THE SECRETARY IN RESPONSE TO CONGRESSWOMAN NITA LOWEY'S LETTER OF AUGUST 15, 2011 have been served upon the following persons by Electronic Information Exchange.

Office of Commission Appellate Adjudication
Mail Stop O-7H4M
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
E-mail: ocaamail@nrc.gov

U.S. Nuclear Regulatory Commission
Office of the Secretary of the Commission
Mail Stop O-16C1
Washington, DC 20555-0001
Hearing Docket
E-mail: hearingdocket@nrc.gov

U.S. Nuclear Regulatory Commission
Atomic Safety and Licensing Board Panel
Mail Stop T-3F23
Washington, DC 20555-0001

Sherwin E. Turk, Esq.
Edward L. Williamson, Esq.
Beth N. Mizuno, Esq.
David E. Roth, Esq.
Brian Harris, Esq.
Andrea Z. Jones, Esq.
Mary B. Spencer, Esq.
Karl Farrar, Esq.
Brian Newell, Paralegal
U.S. Nuclear Regulatory Commission
Office of the General Counsel
Mail Stop O-15D21
Washington, DC 20555-0001
E-mail:
sherwin.turk@nrc.gov
edward.williamson@nrc.gov
beth.mizuno@nrc.gov
brian.harris.@nrc.gov
david.roth@nrc.gov
andrea.jones@nrc.gov
mary.spencer@nrc.gov
karl.farrar@nrc.gov
brian.newell@nrc.gov

Lawrence G. McDade, Chair
Administrative Judge
E-mail: lawrence.mcdade@nrc.gov

Richard E. Wardwell
Administrative Judge
E-mail: richard.wardwell@nrc.gov

Kaye D. Lathrop
Administrative Judge
190 Cedar Lane E.
Ridgway, CO 81432
E-mail: kaye.lathrop@nrc.gov

Joshua A. Kirstein, Law Clerk
E-mail: josh.kirstein@nrc.gov

OGC Mail Center

Docket Nos. 50-247-LR and 50-286-LR
LETTER FROM THE SECRETARY IN RESPONSE TO CONGRESSWOMAN NITA LOWEY'S
LETTER OF AUGUST 15, 2011

OGCMailCenter@nrc.gov

William C. Dennis, Esq.
Assistant General Counsel
Entergy Nuclear Operations, Inc.
440 Hamilton Avenue
White Plains, NY 10601
Email: wdennis@entergy.com

Thomas F. Wood, Esq.
Daniel Riesel, Esq.
Victoria Shiah, Esq.
Counsel for Town of Cortlandt
Sive, Paget & Riesel, P.C.
460 Park Avenue
New York, NY 10022
E-mail: driesel@sprlaw.com
vshiah@sprlaw.com

Elise N. Zoli, Esq.
Goodwin Procter, LLP
Exchange Place
53 State Street
Boston, MA 02109
E-mail: ezoli@goodwinprocter.com

Phillip Musegaas, Esq.
Deborah Brancato, Esq.
Riverkeeper, Inc.
20 Secor Road
Ossining, NY 10562
E-mail: phillip@riverkeeper.org
dbrancato@riverkeeper.org

Kathryn M. Sutton, Esq.
Paul M. Bessette, Esq.
Martin J. O'Neill, Esq.
Jonathan M. Rund, Esq.
Counsel for Entergy Nuclear Operation, Inc
Mary Freeze
Morgan, Lewis & Bockius, LLP
1111 Pennsylvania Avenue, NW
Washington, DC 20004
E-mail: ksutton@morganlewis.com
pbessette@morganlewis.com
martin.o'neill@morganlewis.com
jrund@morganlewis.com
mfreeze@morganlewis.com

Melissa-Jean Rotini, Esq.
Assistant County Attorney
Office of Robert F. Meehan,
Westchester County Attorney
148 Martine Avenue, 6th Floor
White Plains, NY 10601
E-mail: MJR1@westchestergov.com

Michael J. Delaney, Esq.
Director, Energy Regulatory Affairs
NYC Department of Environmental Protection
59-17 Junction Boulevard
Flushing, NY 11373
E-mail: mdelaney@dep.nyc.gov

Manna Jo Greene, Environmental Director
Steven C. Filler
Karla Raimundi
Hudson River Sloop Clearwater, Inc.
724 Wolcott Ave.
Beacon, NY 12508
E-mail: mannajo@clearwater.org
stephenfiller@gmail.com
karla@clearwater.org

Docket Nos. 50-247-LR and 50-286-LR
LETTER FROM THE SECRETARY IN RESPONSE TO CONGRESSWOMAN NITA LOWEY'S
LETTER OF AUGUST 15, 2011

Joan Leary Matthews, Esq.
Senior Attorney for Special Projects
New York State Department
of Environmental Conservation
625 Broadway, 14th Floor
Albany, New York 12233-5500
E-mail: jmatthe@gw.dec.state.ny.us

Robert D. Snook, Esq.
Assistant Attorney General
Office of the Attorney General
State of Connecticut
55 Elm Street
P.O. Box 120
Hartford, CT 06141-0120
E-mail: robert.snook@po.state.ct.us

John Louis Parker, Esq.
Office of General Counsel, Region 3
New York State Department
of Environmental Conservation
21 South Putt Corners Road
New Paltz, NY 12561-1620
E-mail: jlparker@gw.dec.state.ny.us

Sean Murray, Mayor
Kevin Hay, Village Administrator
Village of Buchanan
Municipal Building
236 Tate Avenue
Buchanan, NY 10511-1298
E-mail: SMurray@villageofbuchanan.com
Administrator@villageofbuchanan.com

John J. Sipos, Esq.
Charles Donaldson, Esq.
Assistant Attorneys General
Office of the Attorney General
of the State of New York
The Capitol
State Street
Albany, New York 12224
E-mail: John.Sipos@ag.ny.gov
charlie.donaldson@ag.ny.gov

Janice A. Dean, Esq.
Assistant Attorney General
Office of the Attorney General
of the State of New York
120 Broadway, 26th Floor
New York, New York 10271
E-mail: Janice.Dean@ag.ny.gov

[Original signed by Christine M. Pierpoint]
Office of the Secretary of the Commission

Dated at Rockville, Maryland
this 20th day of September 2011