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United States Nuclear Regulatory  
Commission  
1717 H Street, N.W.  
Washington, D.C. 20005

Re: Power Authority of the State of  
New York (Indian Point, Unit  
No. 3); Docket No. 50-286

Dear Commissioners:

On April 15, the Federal Emergency Management Agency ("FEMA") issued its Post Exercise Assessment regarding the March 9, 1983 Indian Point emergency planning exercise. As licensee of the Indian Point 3 Nuclear Power Plant, the Power Authority is concerned that the Post Exercise Assessment presents an incomplete picture of the present status of offsite radiological emergency planning in Rockland and Westchester Counties. In particular, we believe that inadequate attention has been given to the counties' actual capabilities to respond to a radiological emergency and the materiality of the cited deficiencies. We are further concerned that although the two so-called "significant deficiencies" cited by FEMA appear to have been identified at other sites, Indian Point is currently the only site facing immediate enforcement action.

In light of the dramatic progress acknowledged by FEMA in emergency planning at Indian Point, the 20-year

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safety record at the site, and the actual capabilities of the licensees and offsite governments to respond to an emergency, enforcement action by the Commission would be unwarranted and even counterproductive.

### Rockland County

#### A. Nature of the deficiency.

FEMA's apparent basis for finding the emergency planning exercise inadequate in Rockland County turns on the County's failure to adopt a plan of its own and to participate with its own personnel in the March 9 exercise. As FEMA recognized in its December, 1982 interim findings, however, these problems were created by Rockland County itself and are entirely within the County's power to correct.

Rockland County, which is not directly serviced by either of the Indian Point plants<sup>1</sup>, has consistently sought their shutdown. The County has been an active participant to that end in the special proceeding being conducted by the Atomic Safety and Licensing Board.

In May, 1982, the Rockland County Legislature passed a resolution withdrawing from further participation in the coordinated radiological emergency planning effort by the licensees, State of New York and neighboring counties. At the same time, however, the County resolved to participate fully in the event of an actual radiological emergency. Subsequently, Rockland County agreed to accept funding and training from the State of New York, and has made substantial progress on drafting its own emergency plan. Although Rockland officials participated in the early morning hours of the March 9 exercise and observed the entire event, the County Legislature prevented them from actively participating during normal business hours.

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<sup>1</sup> But although the principal electricity provider in Rockland County does not purchase power directly from Indian Point, it is a member of the New York Power Pool and would suffer significant penalties if Indian Point were shut down. (See Licensees' Testimony of Eugene T. Meehan on Commission Question 6 at p. 33, a copy of which is annexed hereto as Exhibit A.)

It appears that Rockland's stance is part of a strategy by the County to close the Indian Point plants. Indeed, the Chairman of the Legislature was recently quoted as stating, "Our strategy is working beautifully." ("Indian Point Controversy," Gannett Westchester Newspapers, Apr. 25, 1983, a copy of which is annexed hereto as Exhibit B.) We have reason to believe, however, that notwithstanding the position of its officials, Rockland County has an adequate response capability that is not reflected in FEMA's Post Exercise Assessment.

B. Rockland County's actual capabilities.

FEMA acknowledges that it did not look beyond what actually transpired at the March 9 exercise in Rockland County. Further scrutiny would suggest that Rockland County is far from unprepared for the response that would be necessary in the event of a radiological emergency.

Annexed hereto as Exhibit C is the transcript of the Examination Before Trial of Donald P. McGuire, taken on April 25, 1983 by the licensees in connection with the Indian Point special proceeding. Mr. McGuire is the Deputy Director of Rockland County's Office of Emergency Services and, as such, is the official in day-to-day charge of emergency planning.

The deposition, which probes beyond the County's official non-participation in the exercise, reveals that Rockland in fact is capable of performing its functions in conjunction with the State and licensees. Indeed, Mr. McGuire testified that county personnel could, if allowed, perform the tasks required by the exercise, and that he believed that volunteers needed to support the response would, in fact, respond to an actual emergency. (Exhibit C at pp. 18-20.)

The FEMA Post Exercise Assessment also does not reflect the substantial amount of training provided to Rockland County workers. (Documents summarizing parts of the training program are annexed hereto as Exhibit D.) Rockland County also participated in the March, 1982 exercise. Mr. McGuire opined that his observation of the recent 1983 exer-

cise was more educational than his actual participation would have been. (Exhibit C at p. 112.)

A recent practical demonstration confirms the existence of Rockland's capabilities. On April 12, the County successfully evacuated several hundred residents following a chemical fire. (See "Rockland Blast Routs Hundreds," Daily News, Apr. 13, 1983 at p. 2, a copy of which is annexed hereto as Exhibit E.) Emergency organizations promptly responded county-wide. (In fact, key officials were notified with paging devices purchased with licensees' funds contributed to the radiological planning effort. (Exhibit C at p. 104.)) Despite concern expressed about the imperceptible nature of the chemical hazard, all personnel responded. (Id. at 105.) County officials were able to set up a command and communications center at the scene. (Id. at 108.) The nearby population was alerted, and shelters for evacuees were established on an ad hoc basis. (Id. at 105-106.) Mr. McGuire testified that the evacuation was a success. (Id.)

Thus, the most critical components of any emergency response - organization, alerting, communications, and coordination - were clearly demonstrated by Rockland County in a much more realistic test than a long-planned exercise.

C. The State compensating measures.

Subsequent to Rockland County's formal withdrawal from emergency planning in May, 1982, New York State adopted a compensating plan for use in the event of a radiological emergency. The compensating plan was exercised on March 9.

FEMA's recent testimony before the Atomic Safety and Licensing Board suggests that FEMA misapprehended the nature of the compensatory measures. FEMA apparently assumed that the plan calls not only for the State to direct the response in Rockland County, but to provide the resources as well. (See hearing transcript at pp. 14926-29, a copy of which is annexed hereto as Exhibit F.) In fact, however, this is not the case. The compensating plan calls only for State personnel to direct the response, if necessary; Rockland County's own resources would be committed to the response. (The resolution withdrawing formally from the plan provides that the County will cooperate during a real

emergency.) Notwithstanding the withdrawal from the plan, Rockland County personnel have continued to work with State personnel "[a]lmost on an ongoing basis" to plan a response to a radiological emergency. (Exhibit C at p. 26.) The State's compensating plan is based on the December, 1982 draft of the plan Rockland is now engaged in finalizing. Hence, both State and Rockland County personnel are well-acquainted with the plan that would be implemented in the event of an actual emergency. (Id. at 27-29.)

Although FEMA unfortunately declined to evaluate Rockland County's capabilities, the agency did give generally high marks to the State compensating personnel:

This year, the state demonstrated an acceptable capability to sustain continuous operations in Rockland County. Sufficient back-up personnel were available and shift changes were demonstrated.

\* \* \*

Emergency operations management by the state management team in the EOC was good. The state DPC representative demonstrated effective control of emergency response and held staff briefings on a regular basis. The emergency classification system was used correctly. The state established field monitoring teams, PMCs for monitoring and decontaminating emergency workers, and a reception center for evacuees. State personnel at these facilities demonstrated good capabilities.

\* \* \*

Communications between the Rockland County EOC and the joint media center in Verplanck, New York were good. State personnel demonstrated a good capability to



replace county PIOs at the Rockland County EOC and the joint media center in Verplanck.

\* \* \*

Accident assessment functions which were carried out by state personnel normally based in Albany and Monticello were good. The two state field monitoring teams demonstrated a good capability to take radiological measurements within the 10-mile plume exposure pathway EPZ; adequate equipment was available, and teams demonstrated acceptable to good levels of familiarity with field monitoring procedures.

\* \* \*

The state dose-assessment staff in the Rockland County EOC demonstrated an excellent capability to develop independent protective action recommendations based on projected or actual considerations.

\* \* \*

State personnel demonstrated several protective actions in Rockland County during the exercise. . . . Simulation of procedures for identifying and dealing with potential impediments to evacuation was good. . . .

The capability for processing evacuees at a reception center was acceptable. State employees performed all functions that would normally be carried out by Rockland County personnel. Personnel contamination scans were demonstrated;

instrumentation and procedures complied with requirements. . . .

(Post Exercise Assessment at 38, 39, 40, 41, 42, 42-43.)

Based on the foregoing, it is entirely reasonable to expect that the State and Rockland County could jointly implement an adequate response to a radiological emergency.<sup>2</sup>

D. Plans exist for Rockland County.

FEMA's assessment procedures appear to focus on evaluating a written "plan" document approved by the appropriate governmental body. Thus, if a locally-approved "plan" is not in existence, FEMA Region II apparently looks no further.

As noted above, FEMA has consequently ignored the actual capabilities of the State and Rockland County. As a result, the Commission has been left with an inadequate record upon which to base its forthcoming determination on Indian Point.

Just as importantly, FEMA has not considered the existence of a draft compensating plan which, though not formally approved by Rockland County, has been approved by the State.<sup>3</sup> Moreover, consultants paid by the licensees have

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<sup>2</sup> There is little doubt about Rockland County's ability to direct the sheltering of any endangered residents. This would be accomplished through the siren and emergency broadcast systems, both of which FEMA found adequate. Sheltering is the most likely response to a fast-moving accident, and would alleviate any problems connected with the travel time of State personnel. Of course, if there were an actual emergency, the delay in arrival of State officials would not be a problem, since County personnel are committed to respond.

<sup>3</sup> The only significant component currently missing from the draft plan concerns the schools. But an ad hoc capability to evacuate the schools was successfully demonstrated during the March 9 exercise, and all schools are required by  
(footnote continued)

completed and distributed a voluminous plan tailored to Rockland County which, although not formally approved by the County, could be utilized during an actual emergency. Nothing in the Commission or FEMA regulations requires emergency plans to be drafted or approved by a county.

E. Local government non-cooperation is a generic problem.

The problem of local government non-cooperation is not unique to Indian Point. In reply to licensees' interrogatories, FEMA has acknowledged that the problem is generic. (A copy of FEMA's interrogatory response is annexed hereto as Exhibit G.) To our knowledge, FEMA has cited this problem as a "significant deficiency" at only one site - Indian Point. If this problem is, in fact, generic, it should be addressed by consistent enforcement, legislation or rulemaking, not by selected action against one licensee, especially since the matter is outside the licensee's control.

In summary, the Power Authority respectfully urges that the Commission fully examine the state of emergency planning in Rockland County, and not permit Rockland County to bootstrap its own refusal to participate in the formal planning process into an effort to halt that process entirely.

Westchester County

The "significant deficiency" cited by FEMA in Westchester County involves the use of buses during a radiological emergency. Specifically, FEMA appears concerned about a lack of written agreements with bus operators and the need for additional training.

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(footnote continued from previous page)

State law to have an early dismissal plan for any type of emergency.



A. Any deficiency regarding buses herein is not significant.

We question the significance of this deficiency, since it would be relevant, if at all, only in the event of a fast-developing "worst-case" scenario. FEMA itself has described such an event as "very rare." In any of the other, longer developing scenarios, planners would have ample time to instruct owners and drivers or implement compensating measures, such as mobilization of National Guard bus drivers.

Before the Atomic Safety and Licensing Board, FEMA agreed that given the requirements of the exercise scenario, the evacuation and transportation actions in Westchester County on March 9 were adequate. (See hearing transcript at p. 14893, a copy of which is annexed hereto as Exhibit H.) This evaluation was also that of the FEMA team leader in Westchester County (see hearing transcript at pp. 14776-77, 14893, Con Edison ex. 18, copies of which are annexed hereto collectively as Exhibit I), who in a report written on the evening of the exercise rated "Actions to Protect the Public" in Westchester to be a "3" or "acceptable." (See hearing transcript at pp. 14773-74, a copy of which is annexed hereto as Exhibit J.)

In addition, a member of my staff advises me that Roger Kowieski, Chairman of FEMA's Regional Assistance Committee, acknowledged to him at a meeting earlier this week that the observations regarding problems with bus drivers and routes set forth at pages 29-30 of the Post Exercise Assessment may not be accurate. This not only undercuts FEMA's conclusions regarding bus utilization in Westchester, but also raises general questions about the accuracy of the Post Exercise Assessment.

B. Necessity of buses.

FEMA also did not examine the actual need for buses. The Post Exercise Assessment seems to assume, without a stated basis, that car-pooling, ride-sharing and ad hoc transportation measures would be inadequate. But a survey introduced by the intervenors before the Atomic Safety and Licensing Board indicates that only three percent of the population believe they would require bus transportation in the event of a radiological emergency. This is a far smaller

percentage than the eleven percent or more conservatively estimated in the plans. (A copy of the survey excerpt is annexed hereto as Exhibit K.) FEMA also did not evaluate the early dismissal plan for school children, which would drastically reduce any demand for buses. Although the early dismissal plan was successfully exercised on March 9, FEMA did not evaluate it because the revised procedure allegedly had not then been incorporated into the written plan.<sup>4</sup>

Moreover, testimony based on the Indian Point Probabilistic Safety Study (the "IPPSS Study") suggests that the "sheltering-relocation" option may be virtually as effective as evacuation in the case of a rapidly developing accident. The Commission Staff has concurred in this conclusion. (See Direct Testimony of Frank Rowsome and Roger Blond concerning Commission Question 1, a copy of which is annexed hereto as Exhibit L.) This option, which would require evacuation of only a limited number of persons from a small area, would require little, if any, mass transportation.

C. Agreements with bus operators.

Before the Atomic Safety and Licensing Board, FEMA clarified that this alleged deficiency involved lack of written agreements with bus owners, not bus drivers. (See hearing transcript at p. 14977, a copy of which is annexed hereto as Exhibit M.) The Post Exercise Assessment contains no indication that bus owners will not cooperate with the plan.

Indeed, plans are now underway for a transportation study to be led by a bus owners' group in Westchester County. Since these are the same bus owners involved in the emergency plan, there is every reason to expect that the owners will cooperate with the plan and complete any remaining training in a timely manner. The Power Authority is represented on

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<sup>4</sup> Actually, the early dismissal option has always existed in the radiological emergency response plans; the revised procedure simply highlights that option. As noted above, State law requires schools to have generic early dismissal plans, so this is hardly a new or unfamiliar concept.

the task force overseeing the study, and is committed to supporting the study in any reasonable manner.<sup>5</sup>

D. Bus problems are generic.

As in the case of local government non-participation, FEMA recognizes that bus utilization problems are also generic. (See "Generic Deficiencies in Off-Site Emergency Preparedness at Commercial Nuclear Power Plants" §J, a copy of which is annexed hereto as Exhibit N.) Again, it would be unwarranted to take enforcement action against one site, especially where the alleged deficiency would pertain, if at all, only to the rarest accident scenario.

The Alleged Deficiencies  
Are Not Significant for  
the Plant in Question

In the event that the Commission should determine that the alleged deficiencies are, in fact, significant enough to warrant consideration of enforcement action, it can forego such enforcement action by determining "that the deficiencies in the plan are not significant for the plant in question." (10 CFR §50.54(s)(2)(ii).)

The deficiencies cited by FEMA are not significant enough to warrant a shutdown at Indian Point. As noted above, both of the alleged problems would materialize only in the event of a fast-moving accident. Licensees' witnesses in the special proceeding (based on the IPPSS Study) and the Commission Staff, however, have concluded that such an accident is much less likely to occur at Indian Point 2 or 3 than at other nuclear plants. The Commission's Task Force on Interim Operation reached an analogous conclusion in 1980 that the enhanced safety features engineered into the Indian Point plants make them far safer than the average nuclear plant.

For these reasons, any emergency planning deficiencies involving worst-case or rapidly developing accidents

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<sup>5</sup> A similar study by the bus owners' group was recently completed with excellent results in Orange County.

at Indian Point are not as significant as might occur elsewhere, because such an accident is much less likely to occur.

Compelling Reasons  
for Continued Operation

The Commission may also consider "compelling reasons for continued operation." (Id.) There are at least three such reasons at Indian Point 3.

First, unlike most nuclear plant operators, the Power Authority is a public agency under a statutory mandate to provide low-cost power. Our principal customers are government agencies, transit systems, and housing projects, all of which are among the least able to afford increases in electricity costs. It would be unjust to penalize the Power Authority and its customers for matters beyond their control.<sup>6</sup>

Second, with respect to the Rockland County situation, it could very well be counterproductive to close the plants, even temporarily. This is the avowed objective of the County politicians' non-cooperation with emergency planning. If the plants are shut, Rockland County will lose any incentive it now has to complete the development of its own emergency plans. This would also likely encourage local governments elsewhere to take similar actions, thereby fostering the spectre of a "local government veto" over nuclear power. If, on the other hand, the Commission allows the plants to continue operation, Rockland County will presumably honor its pledge to complete the approval process for its own plans in an expeditious manner.

Third, Commission action based upon Rockland County's unilateral actions herein would violate the rights of the Power Authority guaranteed by the supremacy, equal protection, and due process clauses of the Constitution, as well as the Atomic Energy Act of 1954, 42 U.S.C. §§ 2011 et seq. The Supreme Court's recent decision in Pacific Gas & Electric Co. v. State Energy Resources Conservation &

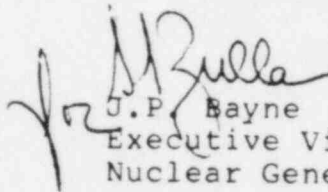
<sup>6</sup> Although Indian Point 3 is currently off line for refueling, maintenance, and repairs, the Power Authority expects to resume operations there next month.

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Development Commission, 51 U.S.L.W. 4449 (1983), holding that the states maintain their traditional rights to regulate the economic aspects of nuclear plant construction, reaffirms that the area of nuclear safety is totally pre-empted by federal law. Rockland County's action denigrates the supremacy clause of the Constitution because it "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress," (Hines v. Davidowitz, 312 U.S. 52, 67 (1941)), and makes "compliance with both federal and state regulations ... a physical impossibility" (Florida Lime & Avocado Growers, Inc. v. Paul, 373 U.S. 132, 142-43 (1963)); see also Pacific Gas & Electric Co., supra. Commission action based upon Rockland's stance would suffer from additional due process and equal protection infirmities, especially if Indian Point were singled out for generic deficiencies.

We appreciate the Commission's consideration.

Very truly yours,



J.P. Bayne  
Executive Vice President  
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cc: Robert Bores, Ph.D.  
Official Service List for  
Indian Point Special Processing



UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION  
ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:  
James P. Gleason, Chairman  
Frederick J. Shon  
Dr. Oscar H. Paris



In the Matter of	)	Docket Nos.
	)	
CONSOLIDATED EDISON COMPANY OF NEW YORK,	)	50-247 SP
INC. (Indian Point, Unit No. 2)	)	50-286 SP
	)	
POWER AUTHORITY OF THE STATE OF NEW YORK	)	May 4, 1983
(Indian Point, Unit No. 3)	)	
	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of the LETTER DATED MAY 3, 1983 FROM J. P. BAYNE, EXECUTIVE VICE PRESIDENT, POWER AUTHORITY, TO THE COMMISSIONERS OF THE NUCLEAR REGULATORY COMMISSION (without exhibits) in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class, this 4th day of May, 1983.

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