



STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

LETITIA JAMES
ATTORNEY GENERAL

DIVISION OF SOCIAL JUSTICE
ENVIRONMENTAL PROTECTION BUREAU

March 19, 2020

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Honorable Kristine L. Svinicki
Chair
Nuclear Regulatory Commission
Mail Stop O-16 B33 Washington, DC 20555-0001

Honorable Neil Chatterjee
Chair
Federal Energy Regulatory Commission
888 First Street, NE
Washington, DC 20426

Honorable Howard Elliott
Administrator
Pipeline and Hazardous Materials Safety Administration
U.S. Dept. of Transportation
1200 New Jersey Avenue, SE
Washington, DC 20590

Re: Algonquin Pipeline Safety and the Indian Point Nuclear
Power Plant in Buchanan, NY

Dear Chair Svinicki, Chair Chatterjee, and Administrator Elliott:

On behalf of New York Attorney General Letitia James, we write to request your immediate attention and engagement on a matter of the utmost importance concerning the safe operation of the Algonquin Pipelines near the Indian Point Nuclear Power Plant in Buchanan, New York. While we ask that you to conduct a full, transparent, and timely re-analysis of safety risks of the pipelines associated with Indian Point, we write today to urge your agencies to evaluate in a joint, coordinated, and time-sensitive manner whether any immediate measures are necessary to mitigate potential risks from the operation of the Algonquin Pipeline

system and/or the operation of Indian Point. We believe that your agencies have express legal authority to conduct such an evaluation, and that the law and the public safety implications of pipeline accident warrant your prompt action.

As you are likely aware, the Office of the Inspector (OIG) of the U.S. Nuclear Regulatory Commission (NRC) recently called into question the accuracy of the NRC staff's confirmatory safety analyses that purported to evaluate whether the 42-inch Algonquin Incremental Market Project (AIM Project) pipeline would pose safety risks to the components and safe operation of the adjacent Indian Point (See NRC OIG Event Inquiry Case No. 16-024). The OIG found that NRC staff analyses of Indian Point operator Entergy's August 24, 2014 safety evaluation and associated hazards analysis, pursuant to 10 C.F.R. 50.59, contained multiple inaccuracies and misrepresentations, employed incorrect methodologies and models, used invalid assumptions on parameters such as pipeline shutoff capabilities, and deviated from accepted regulatory guidance. The OIG also found that NRC staff does not have a formal process in place to conduct quality assurance or peer reviews of safety assessments. A copy of the OIG report is attached.

By way of background, the Federal Energy Regulatory Commission (FERC) authorized the AIM Project in 2015 contingent upon the pipeline owner – now Enbridge – incorporating additional pipeline safety and mitigation measures prescribed in FERC's Final Environmental Impact Statement for the project. The Pipeline and Hazardous Materials Safety Administration (PHMSA) was a full participant in FERC's environmental review. These FERC-prescribed pipeline safety and mitigation measures were based in-part on the findings of the safety assessments and hazard analyses conducted by Indian Point's owner and operator – Entergy – and the subsequent confirmatory and independent analyses by the NRC. (See FERC Docket No. CP14-96: Order Issuing Certificate [Mar. 3, 2015]). As noted earlier, the OIG report has now called into question the accuracy of both Entergy's and NRC's safety assessments.

In response to the OIG findings, NRC Chair Svinicki instructed NRC staff to examine whether any immediate regulatory action is needed based on information in the OIG report. In addition, Chair Svinicki instructed staff to undertake a review of whether any information in the OIG report demonstrates a need to revisit the NRC staff safety analysis and to provide NRC with the results within 45 days (See, Memo to M. Doane, Feb. 24, 2020). At a March 4, 2020 U.S. Senate Committee on Environment and Public Works oversight hearing, Chair Svinicki stated that a task force would be established to assess the issues identified in the OIG report and develop conclusions. NRC has since established an Expert Evaluation Team comprised of representatives from NRC, PHMSA, and Sandia National Labs, to undertake the evaluation.

NRC staff reported on February 26, 2020 that it had conducted an “examination” to determine if immediate regulatory action is needed and found that there is no safety issue warranting immediate regulatory action at either Indian Point Unit 2 or Unit 3 (*See*, Memo to Commissioners, Feb. 26, 2020). However, this NRC staff examination appears to be probabilistic in nature and does not contain a consequence analysis that would likely better inform whether any immediate risk management measures should be instituted at either the AIM Project pipeline or on the Indian Point plant site. Further, that review appears to have focused solely on potential impacts to the reactor core, and only briefly mentions potential impacts to other site infrastructure (e.g., gas turbines, the switchyard) in its discussion of defense-in-depth. The review also does not provide detailed information supporting its conclusion that there is no significant degradation of defense-in-depth at Indian Point from an AIM Project pipeline rupture. Significantly, impacts to the spent fuel pools and the Independent Spent Fuel Storage Installation are omitted from the defense-in-depth discussion and the safety margin analysis. Finally, there is no evidence that NRC staff consulted any staff at PHMSA in their examination into the need for immediate risk mitigation action before issuing the February 26 memorandum.

Nuclear Regulatory Commission

First and foremost, we urge NRC to immediately revisit its initial examination undertaken by staff on February 26 and enlist the assistance of PHMSA and other pipeline safety experts in assessing the current risk profile of the AIM Project pipeline, and its proximity to the components and safe operation of Indian Point. NRC has broad responsibility and authority under the Atomic Energy Act of 1954, 42 U.S.C. § 2011, as amended by the Energy Reorganization Act of 1974, 42 U.S.C. §§ 5801(a), 5843, 5846; to ensure public health and safety, and should exercise that authority here.

Second, we urge the NRC to accept the recommendations of the New York State Department of Public Service in its March 9, 2020 letter to Chairs Svinicki and Chatterjee, and require NRC staff to undertake a new, fulsome safety analysis of all natural gas infrastructure at Indian Point, not only the AIM Project 42-inch gas pipeline that was the subject of the OIG report, but also the 26-inch and 30-inch Algonquin pipelines that are on the Indian Point site in closer proximity to Unit 3 (which will operate through April 2021). In addition to our concern about the proximity of these pipelines to the reactor and supporting equipment – including the spent fuel pool and the Independent Spent Fuel Storage Installation – we also note that the Algonquin pipelines are both over 50 years old (entering service in 1952 and 1965, respectively).

Accordingly, given the serious problems regarding the NRC staff’s safety and accident review of the AIM Project pipeline identified in the OIG report, which may

similarly taint earlier Entergy and staff safety reviews of the Algonquin 26-inch and 30-inch natural gas pipelines, we urge the NRC to require a new Part 50.59 review of *all 3 pipelines*. These same concerns regarding the Algonquin pipelines were highlighted previously by the State of New York in the context of the Indian Point license renewal proceeding in comments on NRC's Draft Second Supplement to the Final Supplemental Environmental Impact Statement for Indian Point Units 2 and 3, a copy of which is attached for your convenience. *See*, Docket ID NRC-208-0672; Docket Nos. 50-247-LR, 50-286-LR (ML16069A067). Indian Point-specific information can be found in both the Comments themselves (pp. 20-24) and Exhibit B to the Comments, International Safety Research Report No. 13014-01-02 (December 20, 2013)(pp. 28-30).

PHMSA

At the same time, pursuant to its regulatory authority under 49 CFR §190.236 *Emergency orders: Procedures for issuance and rescission*, we call on PHMSA to address the serious questions of pipeline safety related to the AIM Project pipeline implicated in the OIG Report. Specifically, we urge PHMSA to immediately determine whether an unsafe condition or combination of unsafe conditions and practices is present that requires immediate abatement, and to communicate relevant information to the community. In addition to evaluating the AIM Project pipeline, PHMSA's independent analysis should be comprehensive, and include and/or reassess any past FERC, PHMSA, or NRC assessments of the safety of the 26-inch and 30-inch pipelines that also traverse the Indian Point site adjacent to Unit 3.

FERC

Following consultation with PHMSA and NRC regarding these immediate evaluations, we urge FERC to evaluate whether any invocation of its Administrative, Investigation and/or Enforcement Authority under the Natural Gas Act (15 U.S. Code § 717) is warranted. This would include, potentially, modification of existing orders and other actions to mitigate any presently unidentified risk related to the AIM Project pipeline. Additionally, we believe it is incumbent upon FERC to review its delegation procedures and standards for agency review; proper FERC oversight of the NRC confirmatory safety analysis might have disclosed the problems identified in the OIG Report before the AIM Project pipeline was approved by FERC and placed into service in 2017.

Conclusion

The collective actions and omissions of NRC, FERC, and PHMSA on the AIM Project pipeline has introduced an unacceptable level of uncertainty as to the safe operation of the pipeline – as constructed – as it relates to the safe operation of

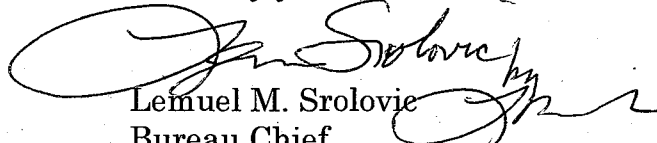
Indian Point. Accordingly, this calls into question the adequacy and rigor of prior safety assessments of the existing 26-inch and 30-inch Algonquin pipelines that traverse the Indian Point site adjacent to Unit 3.

We urge that NRC, FERC, and PHMSA undertake a joint and coordinated evaluation on a time-sensitive basis of the three pipelines that run proximate to Indian Point to identify whether any immediate safety measures must be instituted. We believe that your agencies have express legal authority to conduct such an evaluation, and that the law and the public safety implications of pipeline accident warrant your prompt action. Once your agencies have completed these forthwith evaluations, we ask you that you undertake the more comprehensive reassessments outlined herein.

To help ensure credibility in this matter, we also urge that the agencies obtain independent peer review of their comprehensive reassessment findings by a credible third party such as the National Academy of Sciences. Moreover, these agency actions should be conducted transparently and include a meaningful opportunity for public input and information sharing.

On behalf of New York State Attorney General James, we again thank you for your urgent attention to this matter. If you would like to discuss this matter further, please contact Deputy Bureau Chief for Environmental Protection Lisa M. Burianek at (518) 776-2400.

Sincerely yours,


Lemuel M. Srolovie
Bureau Chief
Environmental Protection

Enc.

cc: FERC Commissioners Glick, McNamee
NRC Commissioners Baran, Caputo, Wright
D. Lee, NRC OIG
S. Raimo, Entergy
P. Hester, Enbridge
NYS Dept. of Public Service