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June 25, 1984

U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Commissioners:

- Nunzio J. Palladino, Chairman
- Victor Gilinsky
- Thomas M. Roberts
- James K. Asselstine
- Frederick Bernthal

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50-286 SP

Dear Commissioners:

On April 9, 1984, one month after instead of 60 days prior to the date of Indian Point's annual emergency preparedness exercise, the Power Authority of the State of New York and Consolidated Edison Company of New York requested an exemption from NRC's current regulation requiring annual full-scale emergency preparedness exercises. Specifically, the Indian Point licensees--prompted by NRC IE Information Notice 84-05, Revision 1, dated March 28, 1984--requested an extension of time until "at least November 30, 1984."

On April 17, 1984, New York's Lieutenant Governor, Alfred B. DelBello wrote to the Commissioners pointing out that such an extension would represent "a 20 month lapse between drills" and that "with less frequent exercises, emergency forces cannot be expected to remain at peak readiness for excessive periods of time; new personnel need to be trained and drilled; systems need to be improved and tested; procedures need updating and sharpening." The Lieutenant Governor asked: "Is this not clearly in violation of the intent and letter of your annual drill requirements?"*

During the last week in April, NRC staff asked FEMA and New York State's Disaster Preparedness Commission to review and comment on the licensees' exemption request. On May 18th FEMA

*On other occasions the Lieutenant Governor is quoted as saying: "In no way can we expect to keep emergency personnel and the public up to date and in full readiness for a major nuclear accident with gaps of up to two years or longer between drills" (Citizen Register June 14, 1984) and "There's no way that these plans can remain implementable unless you have frequent exercises, and even a year isn't frequent enough" (Citizen Register, June 19, 1984).

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submitted to NRC its "Review of Exemption Request for Indian Point Exercise," and on May 25, New York's Disaster Preparedness Commission sent its comments. Attached to FEMA's memorandum was an interesting document from Regional Director Frank P. Petrone, referred to as an "April 11, 1984, status report" which actually appears to have been written at an earlier date.

On May 31, 1984--after watching in vain for notice in the Federal Register of the Indian Point exercise exemption request--NYPIRG and the Alliance to Close Indian Point wrote to the Commission. We strongly urged the Commissioners not to grant the exemption and presented a number of formal arguments to support our opposition. Commenting on the lateness of the licensees' request, we stated that "the licensees have embarked on a transparent attempt to back the Commission into a corner." As best we can determine, our letter--coming almost two months after the staff received the licensees exemption request--represented the first formal notification of the request brought to the attention of the Commissioners. Perhaps the staff, too, was attempting "to back the Commission into a corner."

During the period described above, we--and apparently members of the press as well--were repeatedly told by NRC staff representatives that the matter would have to be fully resolved by June 9, 1984, a date described as "the extended deadline" for this year's annual exercise at Indian Point. Putting aside, for a moment, the utterly questionable legality of any automatic three month extension,* we are appalled at this after-the-fact effort to gloss over two glaring facts: (1) that the Indian Point licensees were three months late in requesting exemption from NRC's annual exercise requirement,** and (2) that, with respect to the exercise requirement, Indian Point has been in violation of NRC's Emergency Planning Regulation since March 9, 1984.

* The sole basis for this "extended deadline" appears to be IE Information Notice 82-44, dated 11/18/82, which states: "It is unlikely that the Commission would take enforcement action if the annual exercise is held within three months of the anniversary of the previous annual exercise."

**IE Information Notice 84-05, Revision 1, dated 3/28/84, states: "Revision 1 identifies the lead time needed by NRC to review and process any exemption requested by licensees regarding the lack of participation by State and local governments in annual emergency preparedness exercises," and "To facilitate NRC review, any such exemption request should be submitted no less than 60 days prior to the date of the licensee's annual exercise." (emphasis is in the original) Note that the notice does not say "the extended date" of the annual exercise; nor does it offer any grace period with respect to the "60 days prior" requirement for an exemption request.

Now, despite all the staff emphasis on a June 9 date, and acknowledgements that a "10-day negative approval" decision required that a staff position would have to be brought to the Commission at least 10 days prior to June 9, dates kept slipping as usual. Ultimately, we were told that the staff report would definitely be "sent up" to the Commissioners Friday, June 15.

On Monday, June 18, word of the staff position reached the media, and the wire services carried details of the staff report granting the exemption. And, while learning from press and radio reports of the three grounds upon which the staff had based its decision, we were unable to obtain a copy of the document. In fact, for two days, while local press and radio carried the story and reaction to it, we were told by people in the General Counsel's and the Secretary's offices that the report was not a "public document." Whether or when the staff report reached the Commission itself, we have no idea.

On June 14, we wrote to the Commission formally requesting an opportunity to review and comment on the staff's impending recommendation on the Indian Point exercise exemption request. It had, of course, hit us by then that this and all other possible enforcement matters now pending with regard to Indian Point (e.g., the ASLB recommendations and the parties' comments and our new April 6, 1984 Petition for Suspension) would not be decided before the expiration of Commissioner Gilinsky's term of office.

It is ironic and disturbing that the only remaining Commissioner who participated in framing the NRC's Emergency Planning Rule and in initiating the Special Proceeding on Indian Point, will be gone from the Commission in a matter of days. This fact alone, speaks volumes about the Commission's pace and priorities. For, while exhibiting unseemly haste when it comes to churning out new operating licenses, the Commission continues to push matters relating to the health and safety of people around operating plants to the back burner. It is almost five years since the Union of Concerned Scientists petitioned the Commission to act to protect the millions of people living near Indian Point.

Mindful of Commissioner Gilinsky's imminent departure--and of his consistent support for enforcement of the Commission's emergency planning regulations at Indian Point--we have decided to do two things: one, to request--to challenge, if you will--the Commission to vote on the Indian Point exercise exemption request before June 30,* and two, to comment here and now, based on the information available to us today, on the staff's decision to grant the licensees an exemption from the annual exercise requirement. It is not really necessary for us to peruse the details of the staff report for us to make the few points we wish to emphasize--we have seen most of the relevant attachments, even though we have not seen the report itself. Furthermore, we do not want our request to review and comment on the staff's position to provide the Commission with an excuse to delay its vote.

*If that is not possible, then we urge the Commission to at least solicit Commissioner Gilinsky's vote in writing before he leaves.

We need not repeat each and every argument raised previously in our May 31 and June 14, 1984 letters (which are attached and which we hope you will consider along with this one). Nor should the following points be regarded as exhaustive. They are meant instead to highlight the most obvious objections to permitting Indian Point to go for 20 or more months without a demonstration of emergency preparedness.

- ** The March 3, 1982 and March 9, 1983 exercises at Indian Point revealed numerous deficiencies and neither demonstrated--to ours or FEMA's satisfaction--an adequate state of preparedness to protect the public in the event of a serious accident at Indian Point. (See, for example, item 1 on page 2 of our May 31, 1984 letter on this matter.)
- ** The August 24-25, 1984 test of New York State's Radiological Emergency Response Interim Plan for Implementing Compensating Measures for Rockland County was limited in scope and cannot in any way be considered a substitute for a full-scale exercise. If the State's compensating plan is the one which is operable today (and until Rockland's plan is ready) it should be tested in a full-scale integrated exercise involving all the other emergency response players and procedures.
- ** Though Rockland's readiness (or lack thereof) has been the stated basis for the request for an exemption from the current annual exercise requirement, Rockland is not alone in being unprepared to demonstrate adequate preparedness for an accident at Indian Point. Westchester is not ready either--and FEMA Region II personnel are much too busy keeping pace with expedited operating license hearings for Shoreham to be able to cope with an exercise at Indian Point.

New transportation plans for both Rockland and Westchester have yet to be finalized, adopted, and incorporated into the plans. Training of emergency personnel moves only at a snail's pace. Bus drivers are still largely untrained and uncommitted. School emergency procedures are in shambles in all counties (NYPIRG has yet to find a single school district prepared to carry out the three protective response options listed in State and County RERPs). Little if any improvement has occurred in any county with regard to procedures for the protection of non-English speaking groups, the deaf, the mobility-impaired, the institutionalized, or the frail elderly residents of the 10-mile EPZ. Public education has come to a standstill, and public information brochures are out-of-date and incorrect. AN EXERCISE HELD ON TIME, IN MARCH 1984, WOULD HAVE REVEALED THAT THE REGION AROUND INDIAN POINT IS LESS PREPARED THAN IN MARCH 1983.

** There is no reason to believe that Rockland County will be ready for a full-scale exercise by November 30, 1984. All one has to do is examine the documents to see that Rockland's count-down dates are slipping all the time. For example, in January, Rockland's Chairman, Herbert Reisman, wrote to Westchester Executive O'Rourke expressing his "appreciation for your thoughtfulness in postponing the drill from March to September." (our emphasis)

In a memorandum to FEMA headquarters (stamped April 11, 1984, but probably written some time prior to that date), Frank Petrone, Director, Region II reports: "According to New York State the /Rockland plan/ completion date is scheduled for the end of March or early April, 1984," and, later on, that "...by summer Rockland would like to hold a large scale exercise preceded by earlier drills." (our emphasis). Rockland's plan is not completed yet.

At an April 17, 1984 Task Force meeting, the desired "summer" exercise slipped and "it was learned that the County would like to reschedule the /pre-exercise/ drills, to a date in September or October 1984. This will allow for full participation of all appropriate County emergency response personnel, some of whom would not be available in the summer." (See May 18, 1984 memorandum from Richard Krimm to Edward Jordan) Let's hope there's no accident while Rockland personnel are on summer vacation!

Rockland's "own" plan was presumably to be brought before the Rockland legislature for consideration and possible approval in June. This date has not been met either; nor have promised public hearings on the plan even been scheduled in Rockland--which were to precede submission of the plan to the legislature. Things are going slowly in Rockland and already Chairman Reisman is quoted in the press (Citizen Register, June 19, 1984) as saying that a November exercise is "going to be a problem..."

We suspect that we are not alone in anticipating that the November full-scale exercise date will soon slip. Note, for example, the three references in the May 18 Krimm-to-Jordan memorandum to "late November or early December 1984."

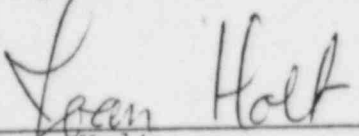
** Indian Point is currently in violation of the annual exercise requirement and has been since March 9, 1984. Furthermore, the licensees' exemption request was untimely--30 days after rather than at least 60 days prior to the March exercise date.

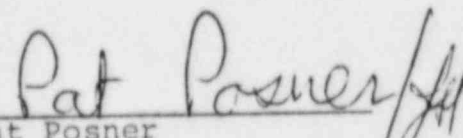
** The ASLB in the Indian Point Special Proceeding found that "A severe release at Indian Point could have more serious consequences than that same release at virtually any other site licensed by the Commission."

** Though the Commission is moving in that direction, to our knowledge it has not yet abolished its emergency planning regulation entirely.

The Commission knows already, without further help from us, why it should not relax or bend its safety regulations at Indian Point, of all plants. The only question at issue here is whether you will act accordingly.

Respectfully submitted,


Joan Holt
New York Public Interest
Research Group, Inc.


Pat Posner
Alliance to Close Indian Point

June 25, 1984
New York, New York

Commissioners
United States Nuclear Regulatory Commission
Washington, D.C. 20555

Subject: 1984 Emergency Preparedness Exercise Schedule
Docket Nos. 50-247 and 50-286

Dear Sirs:

In a letter dated April 9, 1984, the New York Power Authority and Con Edison requested "a one time extension of... time to conduct another full-scale emergency preparedness exercise at the Indian Point site until at least November 30, 1984." It is our position that the Indian Point licensees should NOT be granted an exemption from 10 CFR 50, Appendix E, Part IV F.1.a. which currently requires "a full scale exercise...at a frequency which will enable each State and local government within the plume exposure EPZ to participate in at least one full-scale exercise per year..."

The Exemption Request Does Not Meet the
Public Interest Standard of 10 CFR 50.12(a)

10 CFR 50.12(a) provides: "The Commission may... grant such exemptions from the requirements of the regulations in this part as it determines are authorized by law and will not endanger life or property or the common defense and security and are otherwise in the public interest."

In this case, the only defensible public interest standard would be the requirements of the proposed amendment to 10 CFR 50, Appendix E, Part IV F. Since "the public interest standard is a stringent one," (Project Management Corporation, Clinch River Breeder Reactor, 16 NRC 412 at 426, 1982), if the licensees cannot meet the standard of the proposed rule, then there is no justification for exemption from the existing rule.

The proposed amendment to 10 CFR 50, Appendix E, Part IV, f.2.b. requires that "each licensee at each site shall... include in its annual exercise (i) annual full participation by local government agencies (ii) annual full or partial participation by States within the plume exposure EPZs." Proposed

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Part IV, F.3. provides an exception "if FEMA recommends and NRC makes a finding that all major elements in the emergency plans were performed satisfactorily during the exercise and that another exercise is not needed for up to 2 years..."

Since deficiencies that were noted in the March 9, 1983 full scale exercise at Indian Point Unit 2 have not been corrected, the licensees do not meet this standard, and there is no basis for the recommendation or the finding required by the proposed rule to justify the exemption requested by the Indian Point licensees.

1) The "Post Exercise Assessment, March 9, 1983 Exercise of the Radiological Emergency Response Plans of New York State and Westchester, Rockland, Orange and Putnam Counties for the Indian Point Nuclear Power Station, April 14, 1983" SCHEDULE FOR CORRECTION OF DEFICIENCIES, pp. 64-79, indicates many deficiencies that are repeated ("R") in the 1983 exercise after having been identified in the 1982 exercise. The repeated deficiencies are in four major areas: public education and information, radiological exposure control, training and equipment, and communications.

The "Post Exercise Assessment, August 24-25, 1983, Exercise of the State of New York Radiological Emergency Response Interim Plan for Implementing Compensating Measures for Rockland County for the Indian Point Nuclear Power Station, September 26, 1983" SCHEDULE FOR CORRECTION OF DEFICIENCIES, pp. 42-48, again identifies many items in the areas of training, public education and information, radiological exposure control, and communications which remain incomplete, not observed, or undetermined. (See also September 26, 1983 "Post Exercise Assessment," pp. vii, viii, 17, 19, 24, 25, 26, 28, 29, 31, 32, 33, 34 and Summary of Deficiencies, pp. 38-41)

2) FEMA Region II Director Frank Petrone's cover letters to Dave McLaughlin (FEMA Deputy Associate Director, State and Local Programs and Support) of September 21, 1983 (transmitting the "Post Drill Assessment, August 23, 1983, Federal Emergency Management Agency Observed Drill of the Westchester County Bus Evacuation Procedures for the Indian Point Nuclear Power Station, September 15, 1983") and September 28 (transmitting the September 26, 1983 "Post Exercise Assessment") each refer to the fact that deficiencies "identified in the December 16, 1982 Update Report no longer exist" with no mention of the deficiencies identified in the March 9, 1983 exercise.

3) Mr. Petrone's cover letter to Mr. McLaughlin dated April 14, 1983 (transmitting the "Post Exercise Assessment" of the March 9, 1983 exercise) states:

"As to Rockland County, a judgement on adequacy will not be able to be made until the County plan is developed and exercised with full County participation."

To date, a Rockland County plan has not been developed or exercised, and Rockland County has never fully participated in an exercise.

"As for Westchester County, a judgement of adequacy will not be able to be made until the transportation plan is revised based upon completion of sufficient action items in the TSPG proposal."

The TSPG (Transportation Study Planning Group) proposal has not been presented, and NO action items based on it are complete.

4) The proposed NRC rule requires a showing that "all major elements in the emergency plan were performed satisfactorily during the exercise" (emphasis added) meaning the annual exercise referred to in 10 CFR 50, Appendix E, Part IV, F.2.b. Since the "Post Exercise Assessment" of the March 9, 1983 exercise, FEMA has made no representation concerning the status of "all major elements." The September 29, 1983, letter from Dave McLaughlin to William Dircks quoted by the licensees in their exemption request, concluding that "an adequate level of radiological emergency preparedness has been demonstrated"* referred merely to efforts to correct deficiencies, and cannot, for the purpose of the proposed rule, be related back to apply to the annual exercise, since the August activities did NOT exercise the "integrated capability to adequately access (sic) and respond to an accident at a commercial nuclear power plant" (emphasis added) (Proposed rule, 10 CFR 50 Appendix E, Part IV, F.2.b. fn. 6, 48 FR 33310), nor did they test "a major portion of the basic elements existing within emergency preparedness plans and organizations...(including) mobilization of State and local personnel and resources adequate to verify the capability to respond to an accident scenario requiring response." (NUREG 0654, Planning Standard N, Evaluation Criteria 1.)

The bus drill of August 23 did not address FEMA's major criticism of the transportation plan, which was the pos-

*In any case, this summary assessment by Mr. McLaughlin is contradicted by the actual findings in the texts of FEMA's Post Exercise Assessments: deficiencies remain in the public education and information programs, radiological exposure control (primarily because of inadequate distribution of appropriate dosimetry), training (especially in dosimetry and transportation/evacuation procedures), and communications.

sible non-response of bus drivers in adequate numbers to carry out an evacuation. The August 24-25 exercise of the New York State RER Interim Plan was not the equivalent of an annual exercise and did not address the central issue of Rockland County participation.

The Indian Point Licensees Do Not Meet the
"Exigent Circumstances" Standard for Exemption

NRC policy and case law require that exemptions be granted sparingly and only in extraordinary circumstances. "We regard this method as extraordinary...Parties should resort to this method of relief only in the presence of exigent circumstances, such as emergency situations in which time is of the essence and relief from the licensing board is impossible or highly unlikely." (WPPSS Nuclear Project #3 and #5, CLI-77-11, 5 NRC 716 at 723, 1977.) While the Commission was speaking in the context of exemption from construction permit requirements, the same reasoning should apply to operational issues.

The licensees' argument that "the State of New York and Rockland County are in the process of preparing revisions to the Rockland County plan for submittal to FEMA" does not rise to the level of "exigent circumstances." Postponing the annual exercise until November, 1984, in the hopes that Rockland County will have developed and be prepared to exercise its own plan is unrealistic in view of the repeated slippage in emergency planning deadlines at Indian Point. If it is true that "the radiological emergency response plans remain operational" as the licensees claim in their request letter, then the licensees and the off-site response agencies should be fully prepared at any point in time to exercise the plans. Otherwise they are in violation of 10 CFR 50.47 and a June exercise would reveal the weaknesses and areas of non-compliance.

This Exemption Request Involves Safety Issues

The Project Management Corporation, Clinch River Breeder Reactor decision emphasizes the fact that the exemption was granted because the Commission was convinced that no safety issues were involved: "grant of this exemption cannot endanger life or property or the common defense and security...(since it) does not include any safety related work," and "does not involve safety related construction." (16 NRC 412 at 419) Commissioner Asselstine's separate views also stressed the fact that no safety related activity was involved as the basis for the decision.

This request for an exemption is decidedly different. Radiological emergency planning at Indian Point is the bottom line safety measure for residents of the most densely populated region of the country and a crucial element in the "defense in depth" concept of nuclear safety. Any defect in radiological emergency planning in this area will be magnified by the pop-

ulation pressures. Experience in the Indian Point vicinity has shown that State and local government agencies require intensive pre-exercise rehearsals to prepare for their responsibilities during the actual annual exercise. This indicates that officials are not able to maintain a constant state of preparedness, but must be retrained at the time of the scheduled annual exercise, and must rush around borrowing equipment, putting it in place on loan, distributing last minute supplies, recalibrating equipment, etc. The fact that New York State performed in an exercise of the Radiological Emergency Preparedness Plans at the Nine Mile Point/Fitz-Patrick site on September 28, 1983, does not demonstrate the State's ability to implement the Indian Point site specific portion of the plans, and is irrelevant to the response preparedness of the Indian Point licensees and the local governments which have primary responsibilities in radiological emergencies at Indian Point.

Therefore, any delay in conducting the 1984 annual exercise is a significant safety issue which adversely affects the public interest and is contrary to 10 CFR 50.12(b)(4).

Pre-Exercise Activities

The State, the counties, and the licensees should now be fully engaged in pre-exercise activities in accordance with the "Milestones for Exercise Preparation" contained in FEMA Guidance Memorandum 17, Rev. 1, Technological Hazards. An exercise scenario, which has been modified and completed after meetings with FEMA and NRC regional staff should have been developed and submitted at the latest by May 5, 35 days before the June 9 exercise date. Furthermore, even before requesting an exemption, the licensees should have submitted "exercise objectives" developed jointly with the State in accordance with the "Milestones" which calls for this submission 75 days prior to an annual exercise and 120 days prior to a biennial exercise.

If these preparations are not well underway, the clear implication is that the licensees are presuming - or have been assured - that the Commission decision on this exemption request will be favorable and licensees are in violation of the existing requirements of 10 CFR 50, Appendix E, Part IV, F.

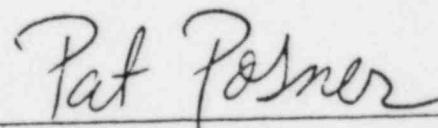
By applying for an exemption 30 days after the anniversary of the last full-scale exercise at Indian Point, and only 60 days prior to the expiration date of the Staff's 15-month year* the licensees have embarked on a transparent attempt to back the Commission into a corner. For, if the Commission were to deny the exemption, there would not be time for the licensees to follow the planning milestones for a full-scale exercise

*Although, in any case, we can find no legal justification for the staff to allow this three month "grace period."

with State and County participation prior to the June 9 deadline. Granting this extension would be tantamount to sanctioning the licensees' attempt to give the Commission no alternative but to grant the exemption.



Joan Holt
Project Director
New York Public Interest
Research Group



Pat Posner
Representative
Alliance to Close
Indian Point

To COMMISSIONERS:

Nunzio J. Palladino, Chairman
Victor Gilinsky
Thomas M. Roberts
James K. Asselstine
Frederick M. Bernthal

Dated: May 31, 1984
New York City



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Commissioners:

Nunzio J. Palladino, Chairman
Victor Gilinsky
Thomas M. Roberts
James K. Asselstine
Frederick M. Bernthal

DOCKET NUMBER
FROM & UTIL. DIV.

50-247/286
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Dear Sirs:

We wish to notify the Commission that we are requesting two copies of the Staff report regarding the Indian Point Licensees' request for an exemption from NRC's annual full-scale exercise requirement. We understand that the report will be available on June 15.

Having previously filed a formal objection to the granting of an exemption, it is our intention to review and to comment on the Staff's report when it has been made available to us. We request the Commission to take whatever action is necessary to provide us with an opportunity to have our comments on this matter—including our comments on the Staff's report—considered as part of your own review of the Staff's position.

On June 9, 1983, by a vote of three-two, the Commission decided to permit continued operation of Indian Point 2 and 3. The basis of that decision was that major deficiencies in emergency planning and preparedness at Indian Point were about to be corrected and eliminated, especially (1) the lack of a Rockland County plan and a demonstrated Rockland capability to protect the public; and (2) the lack of an adequate transportation plan for Westchester County, including needed revised bus routes, bus company and bus driver contracts, and bus driver training.

One year later, these and other deficiencies in both counties remain and the Licensees, the Counties, and the State are currently unprepared to demonstrate that they are jointly capable of protecting the public in the event of an accident at Indian Point. If they are not ready and able to conduct a test, they are not ready and able to cope with an accident.

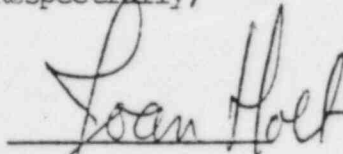
With no exercise, there will be no FEMA/NRC evaluation of the adequacy of preparedness to protect the public for many months to come. This lack of monitoring and oversight of a major safety matter at the nation's most densely populated reactor site is wholly unacceptable.

Finally, the Commission should take careful note that there is absolutely no assurance or commitment that Rockland, Westchester, New York State, the

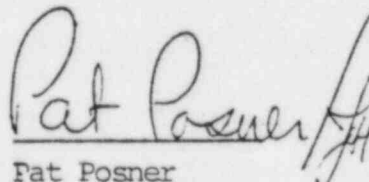
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Licensees—or, for that matter, FEMA—will be prepared to participate in a full-scale exercise in November. Words used now are "probably in November" or "until at least November 30, 1984." The history of emergency planning at Indian Point is, as we all know too well, one of missed deadlines.

Respectfully,

A handwritten signature in cursive script that reads "Joan Holt". The signature is written in dark ink and is positioned above a horizontal line.

Joan Holt
New York Public Interest Research Group

A handwritten signature in cursive script that reads "Pat Posner". The signature is written in dark ink and is positioned above a horizontal line.

Pat Posner
Alliance to Close Indian Point