



**ANDREW M. CUOMO**  
Governor

**NYSERDA**

**RICHARD L. KAUFFMAN**  
Chair

**ALICIA BARTON**  
President and CEO

May 20, 2020

Rich Guzman, Senior Project Manager  
Division of Operator Reactor Licensing  
Office of Nuclear Reactor Regulation  
U.S. Nuclear Regulatory Commission  
One White Flint North, 0-9C7  
11555 Rockville Pike  
Rockville, MD 20852-2738  
Via electronic mail: [Richard.Guzman@nrc.gov](mailto:Richard.Guzman@nrc.gov)

Subject: Indian Point Request for Rescission of Fukushima Orders EA-12-051 and EA-12-049

Dear Mr. Guzman:

The State of New York has received Entergy's June 6, 2019, October 22, 2019, and November 20, 2019 requests for the Rescission of the Fukushima Enforcement Orders EA-12-051 and EA-12-049 for the Indian Point facilities, which are located 24 miles north of New York City in Westchester County and whose 50-mile Emergency Planning Zone includes more than 19 million residents. Indian Point's spent fuel pools, which are located outside of the containment structures, hold decades worth of spent radioactive nuclear fuel -- and will continue to do so for several years. For the reasons outlined below, the State, via the New York State Energy Research and Development Authority, oppose the premature lifting of these important Fukushima requirements any sooner than currently required by law.

In requesting the NRC rescind Fukushima Order EA-12-051, Entergy proposes to remove the regulatory commitment to have and maintain reliable spent fuel pool level instrumentation at Indian Point Unit 2 and Unit 3. The rescission of Fukushima Order EA-12-049 will eliminate the regulatory requirement for beyond design basis accident spent fuel cooling measures 244 days following the shutdown of each reactor. Further, the requested rescission would eliminate the licensee's obligation to provide back-up FLEX cooling capabilities for the nuclear fuel stored

---

**New York State Energy Research and Development Authority**

**Albany**

17 Columbia Circle, Albany, NY 12203-6399

(P) 1-866-NYSERDA | (F) 518-862-1091

[nyserdera.ny.gov](http://nyserdera.ny.gov) | [info@nyserdera.ny.gov](mailto:info@nyserdera.ny.gov)

**Buffalo**

726 Exchange Street

Suite 821

Buffalo, NY

14210-1484

(P) 716-842-1522

(F) 716-842-0156

**New York City**

1359 Broadway

19th Floor

New York, NY

10018-7842

(P) 212-971-5342

(F) 518-862-1091

**West Valley Site**

**Management Program**

9030-B Route 219

West Valley, NY

14171-9500

(P) 716-942-9960

(F) 716-942-9961

in the spent fuel pools. The reductions are proposed to occur before the transfer of the spent nuclear fuel from the spent fuel pools into dry cask storage. The State of New York strenuously objects to that timing and proposal and asks that full spent fuel pool protective measures remain in place until NRC regulations require them to be lifted.

In August 2019, NRC approved the Mitigation of Beyond Design Basis Events rulemaking. As a part of this rulemaking, Fukushima Orders EA-12-051 and EA-12-049 will be removed for reactors undergoing decommissioning beginning in September 2022. Entergy, however, is not waiting for this portion of the rulemaking to go into effect. Instead, Entergy is requesting special treatment and a premature withdrawal of the requirements of Fukushima Orders EA-12-051 and EA-12-049 shortly after the shutdown and defueling of each reactor vessel. Entergy has put forward no good reason for introducing this element of risk into Indian Point's decommissioning process any sooner than the NRC decided, through an Administrative Procedure Act notice and comment rulemaking, it would be appropriate to do so.

Fukushima Orders EA-12-051 and EA-12-049 were created to broaden and improve emergency response capabilities at United States nuclear power facilities. Until the Unit 2 and Unit 3 spent fuel pools are empty, reliable spent fuel pool level instrumentation and every available spent fuel pool cooling measure should be maintained at the Indian Point site.

The Indian Point nuclear power and spent fuel storage facilities have the highest surrounding population of any nuclear power site in the country. The federal government approved the Indian Point site before there were siting regulations concerning issues such as the surrounding population within 50 miles, design basis threats, seismic hazards, waste storage, co-located energy infrastructure, or emergency planning. Relatedly, the federal government has not conducted a site-specific analysis of severe spent fuel pool accidents for the Indian Point spent fuel pools and the means to mitigate the impacts of such accidents on surrounding communities, nor has NRC conducted an analysis of an aircraft impact on the site's spent fuel pools. Over the years, spent nuclear fuel in the Indian Point Unit 2 and Indian Point Unit 3 pools has been re-racked so that those spent fuel pools hold 5 times the amount of spent fuel assemblies than they were initially designed to hold. NRC site emergency protocols recognize that accidents with dry storage casks pose less of a site emergency risk than do accidents with spent fuel pools.

A spent fuel pool accident at Indian Point could have unique and devastating impacts on the New York metropolitan area that would be unlike the impacts at any other site in the country. Accordingly, until such time that fuel from the reactors is secured in dry cask storage, and therefore any potential risk has been truly minimized, the State of New York's position is that all on-site and off-site emergency response capabilities should be maintained at current levels. This will ensure all necessary personnel, planning, resources, and tools are in place to protect New York citizens at and near the plants and spent fuel pool storage facilities. Given its unique site-specific characteristics, Indian Point is the last site where the federal regulatory should grant a waiver and withdraw and relax public protections.

Thank you very much for your consideration of the State's position.

Sincerely,

A handwritten signature in blue ink that reads "Alyse Peterson". The signature is written in a cursive, flowing style.

Alyse Peterson, P.E.  
Senior Advisor  
Nuclear Coordination and Radioactive Waste Policy