

15-1330-CV

United States Court of Appeals *for the* Second Circuit

RICHARD BRODSKY, New York State Assemblyman from the 92nd Assembly
District in his Official and Individual Capacities,

Plaintiff-Appellant,

PUBLIC HEALTH AND SUSTAINABLE ENERGY (PHASE),
WESTCHESTER'S CITIZENS AWARENESS NETWORK (WESTCAN),
SIERRA CLUB,

Plaintiffs,

– v. –

UNITED STATES NUCLEAR REGULATORY COMMISSION,

Defendant-Appellee,

ENTERGY NUCLEAR OPERATIONS, INC.,

Intervenor.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

JOINT APPENDIX

BENJAMIN H. TORRANCE
UNITED STATES ATTORNEY'S OFFICE,
SOUTHERN DISTRICT OF NEW YORK
Attorney for Defendant-Appellee
86 Chambers Street
New York, New York 10007
(212) 637-2200

LISA J. FRIED
HOGAN LOVELLS US LLP
Attorneys for Intervenor
875 Third Avenue
New York, New York 10022
(212) 918-3000

DANIEL J. KRAMER
JACQUELINE P. RUBIN
PAUL, WEISS, RIFKIND, WHARTON
& GARRISON LLP
Attorneys for Plaintiff-Appellant
1285 Avenue of the Americas
New York, New York 10019
(212) 373-3000

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CLOSED,APPEAL,ECF

**U.S. District Court
Southern District of New York (Foley Square)
CIVIL DOCKET FOR CASE #: 1:09-cv-10594-LAP**

Brodsky et al v. United States Nuclear Regulatory
Commission
Assigned to: Judge Loretta A. Preska
Cause: 42:4321 Review of Agency Action-Environment

Date Filed: 12/30/2009
Date Terminated: 02/27/2015
Jury Demand: None
Nature of Suit: 890 Other Statutory
Actions
Jurisdiction: U.S. Government
Defendant

Plaintiff

Richard L Brodsky
*New York State Assemblyman, From the
92nd Assembly District in His Official
and Individual Capacities*

represented by **Richard L. Brodsky**
Richard Brodsky, Esq.
2121 Saw Mill River Road
White Plains, NY 10607
(914) 720-8830
Email: richardbrodsky@msn.com
*LEAD ATTORNEY
ATTORNEY TO BE NOTICED*

Plaintiff

**Westchester's Citizens' Awareness
Network (Westcan)**

represented by **Richard L. Brodsky**
(See above for address)
*LEAD ATTORNEY
ATTORNEY TO BE NOTICED*

Susan Hillary Shapiro
Law Firm of Milton B. Shapiro
21 Perlman Drive
Spring Valley, NY 10977
(845) 371-2100
Fax: (845) 371-3721
ATTORNEY TO BE NOTICED

Plaintiff

**Public Health and Sustainable
Energy (Phase)**

represented by **Richard L. Brodsky**
(See above for address)
*LEAD ATTORNEY
ATTORNEY TO BE NOTICED*

Susan Hillary Shapiro
(See above for address)
ATTORNEY TO BE NOTICED

Plaintiff

Sierra Club-Atlantic Chapter (Sierra Club)

represented by **Richard L. Brodsky**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Susan Hillary Shapiro
(See above for address)
ATTORNEY TO BE NOTICED

V.

Defendant

United States Nuclear Regulatory Commission

represented by **Benjamin Henry Torrance**
U.S. Attorney's Office, SDNY
(Chambers Street)
86 Chambers Street
New York, NY 10007
212-637-2703
Fax: 212-637-2702
Email: benjamin.torrance@usdoj.gov
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Intervenor Defendant

Entergy Nuclear Operations, Inc.

represented by **Lisa Jean Fried**
Hogan Lovells US LLP (nyc)
875 Third Avenue
New York, NY 10022
(212) 918-3000
Fax: (212) 918-3100
Email: lisa.fried@hoganlovells.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Tracey Ann Tiska
Hogan & Hartson L.L.P.(NYC)
875 Third Avenue
New York, NY 10022
(212) 918-3000x3620
Fax: (212) 918-300
Email: tracey.tiska@hoganlovells.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Eva Lenore Dietz
Office of the New York State Attorney

General
 120 Broadway
 New York, NY 10271
 (212) 416-6211
 Fax: (212) 416-6075
 Email: eva.dietz@hoganlovells.com
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
12/30/2009	1	COMPLAINT against United States Nuclear Regulatory Commission. (Filing Fee \$ 350.00, Receipt Number 709150)Document filed by Richard L Brodsky, Westchester's Citizens' Awareness Network (Westcan), Public Health and Sustainable Energy (Phase), Sierra Club-Atlantic Chapter (Sierra Club).(rj) (Entered: 12/31/2009)
12/30/2009		SUMMONS ISSUED as to United States Nuclear Regulatory Commission, U.S. Attorney and U.S. Attorney General. (rj) (Entered: 12/31/2009)
12/30/2009		Case Designated ECF. (rj) (Entered: 12/31/2009)
12/30/2009		Magistrate Judge George A. Yanthis is so designated. (rj) (Entered: 12/31/2009)
01/05/2010	2	NOTICE OF REQUIREMENT TO SUBMIT A SCHEDULING ORDER: Case Management Conference set for 4/9/2010 at 10:00 AM before Judge Stephen C. Robinson. (fk) (Entered: 01/06/2010)
02/22/2010	3	AFFIDAVIT OF SERVICE of Summons and Complaint,. United States Nuclear Regulatory Commission served on 1/4/2010, answer due 1/25/2010. Service was made by certified mail.(i) Richard M. Rader, Esq. Gen. counsel of the US Nuclear Regulatory Commission # 7002 2030 0001 9870 3686which was received on Jan. 7, 2010 (ii) US Attorney Gen. Eric Holder, US Dept. of Justice # 7002 2030 0001 9870 3679which was received on Jan. 13, 2010 and (iii) US Attorney for the Southern District of NY #7002 2030 0001 9870 4003 which was received on Jan. 6, 2010 Document filed by Richard L Brodsky. (ll) (Entered: 02/23/2010)
03/10/2010	4	ENDORSED LETTER addressed to Judge Stephen C. Robinson from Benjamin H. Torrance dated 3/3/2010 re:... I am writing to seek the Court's approval for the following schedule, to which the parties have agreed: Government's moving papers: April 5, 2010; Plaintiff's answering papers: May 11, 2010; Government's reply (and filing of all papers): May 25, 2010... ENDORSEMENT: Application granted. New conference date is June 25th at 10:00 AM. SO ORDERED. (Signed by Judge Stephen C. Robinson on 3/10/2010) (mml) (Entered: 03/10/2010)
03/10/2010		Set Deadlines/Hearings: Motions due by 4/5/2010. Replies due by 5/25/2010. Responses due by 5/11/2010. Conference set for 6/25/2010 at 10:00 AM before Judge Stephen C. Robinson. (mml) (Entered: 03/10/2010)

05/25/2010	5	MOTION to Dismiss., MOTION for Summary Judgment. Document filed by United States Nuclear Regulatory Commission.(Torrance, Benjamin) (Entered: 05/25/2010)
05/25/2010	6	MEMORANDUM OF LAW in Support re: 5 MOTION to Dismiss. MOTION for Summary Judgment.. Document filed by United States Nuclear Regulatory Commission. (Torrance, Benjamin) (Entered: 05/25/2010)
05/25/2010	7	DECLARATION of Benjamin H. Torrance in Support re: 5 MOTION to Dismiss. MOTION for Summary Judgment.. Document filed by United States Nuclear Regulatory Commission. (Attachments: # 1 Exhibit Certified Index of Record)(Torrance, Benjamin) (Entered: 05/25/2010)
05/25/2010	8	REPLY MEMORANDUM OF LAW in Support re: 5 MOTION to Dismiss. MOTION for Summary Judgment.. Document filed by United States Nuclear Regulatory Commission. (Torrance, Benjamin) (Entered: 05/25/2010)
05/25/2010	9	MEMORANDUM OF LAW in Opposition re: 5 MOTION to Dismiss. MOTION for Summary Judgment.. Document filed by Richard L Brodsky, Westchester's Citizens' Awareness Network (Westcan), Public Health and Sustainable Energy (Phase), Sierra Club-Atlantic Chapter (Sierra Club). (Attachments: # 1 Exhibit Exhibit A, # 2 Exhibit Exhibit B, # 3 Errata Exhibit C)(Brodsky, Richard) (Entered: 05/25/2010)
05/25/2010	10	DECLARATION of Sean Richardson in Support re: 5 MOTION to Dismiss. MOTION for Summary Judgment.. Document filed by Richard L Brodsky, Westchester's Citizens' Awareness Network (Westcan), Public Health and Sustainable Energy (Phase), Sierra Club-Atlantic Chapter (Sierra Club). (Brodsky, Richard) (Entered: 05/25/2010)
05/25/2010	11	MOTION for Oral Argument. Document filed by Richard L Brodsky, Westchester's Citizens' Awareness Network (Westcan), Public Health and Sustainable Energy (Phase), Sierra Club-Atlantic Chapter (Sierra Club). (Brodsky, Richard) (Entered: 05/25/2010)
06/25/2010		Minute Entry for proceedings held before Judge Stephen C. Robinson: Initial Pretrial Conference held on 6/25/2010. Intervener Entergy motion to intervene granted. Def't's. motion due 8/9/2010, response due 9/20/2010 or earlier, reply due 10/4/2010 or two weeks from plaintiff's response filing. Oral argument on motion set for 10/12/2010 at 10am. (Court Reporter Angela O' Donnell) (jma) (Entered: 06/29/2010)
06/25/2010		Set/Reset Hearings: Oral Argument set for 10/12/2010 at 10:00 AM before Judge Stephen C. Robinson. (jma) (Entered: 06/29/2010)
08/19/2010	12	NOTICE OF APPEARANCE by Tracey Ann Tiska on behalf of Entergy Nuclear Operations, Inc. (Tiska, Tracey) (Entered: 08/19/2010)
08/19/2010	13	NOTICE OF APPEARANCE by Eva Lenore Dietz on behalf of Entergy Nuclear Operations, Inc. (Dietz, Eva) (Entered: 08/19/2010)
08/24/2010	14	ORDER: Pending reassignment of the above-captioned case, oral argument on

		Defendant's Motion to Dismiss or for Summary Judgment, scheduled for October 12, 2010 at 10:00 a.m., is adjourned sine die. (Signed by Judge Loretta A. Preska on 8/24/2010) (jpo) (Entered: 08/24/2010)
09/01/2010	15	NOTICE All appearances scheduled in cases on the docket of Judge Stephen C. Robinson are adjourned pending reassignment. Parties of record will be notified of the case reassignment via ECF email notification (or by written correspondence from the Clerk of Court). In all cases, counsel are reminded that a magistrate judge has been designated and are urged to consider consenting to trial before a White Plains magistrate judge under 28 U.S.C. 636. Inquiries may be directed to Robert Rogers, Deputy-in-Charge at 914-390-04001. (Signed by Judge Loretta A. Preska on 08/26/2010) (mj) (Entered: 09/01/2010)
10/19/2010	16	NOTICE OF CASE REASSIGNMENT to Judge Loretta A. Preska. Judge Stephen C. Robinson is no longer assigned to the case. (fk) (Entered: 10/19/2010)
10/25/2010	17	MOTION for Susan Hillary Shaprio to Appear Pro Hac Vice, \$25.00 Fee paid, # 914547. Document filed by Public Health and Sustainable Energy (Phase), Sierra Club-Atlantic Chapter (Sierra Club), Westchester's Citizens' Awareness Network (Westcan).(jma) (Entered: 10/26/2010)
11/08/2010	18	ORDER granting 17 Motion for Susan Hillary Shaprio to Appear Pro Hac Vice for Public Health and Sustainable Energy (Phase), Sierra Club-Atlantic Chapter (Sierra Club), Westchester's Citizens' Awareness Network (Westcan). SO ORDERED. (Signed by Judge Loretta A. Preska on 11/8/2010) (jmi) Modified on 11/9/2010 (jmi). (Entered: 11/09/2010)
11/09/2010	19	SCHEDULING ORDER: Oral Argument set for 11/30/2010 at 09:00 AM in Courtroom 12A, 500 Pearl Street, New York, NY 10007 before Judge Loretta A. Preska. (Signed by Judge Loretta A. Preska on 11/9/10) (cd) (Entered: 11/09/2010)
11/17/2010	20	ENDORSED LETTER addressed to Judge Loretta A. Preska from Tracey A. Tiska dated 11/10/10 re: The parties respectfully request that the Court reschedule the November 30 hearing to another date on which all counsel are available. ENDORSEMENT: Argument is adjourned to January 12, 2011 at 9:00 a.m. So ordered. (Oral Argument set for 1/12/2011 at 09:00 AM before Judge Loretta A. Preska.) (Signed by Judge Loretta A. Preska on 11/17/10) (rjm) (Entered: 11/17/2010)
01/04/2011	21	ORDER FOR ADMISSION PRO HAC VICE ON WRITTEN MOTION. That Susan H. Shapiro is admitted to appear Pro Hac Vice for plaintiffs Public Health and Sustainable Energy (PHASE), Sierra Club-Atlantic Chapter (Sierra Club), and Westchester's Citizen Awareness Network (Westcan) in this action. (Signed by Judge Loretta A. Preska on 1/4/11) (db) (Entered: 01/04/2011)
03/04/2011	22	OPINION AND ORDER: #100005 Defendant's motion for summary judgment [dkt. no. 5] is granted in its entirety. The Clerk of the Court shall mark this action closed and all pending motions denied as moot. SO ORDERED. (Signed

		by Judge Loretta A. Preska on 3/4/2011) (lnl) Modified on 3/8/2011 (ajc). (Entered: 03/04/2011)
03/04/2011		Transmission to Judgments and Orders Clerk. Transmitted re: 22 OPINION AND ORDER, to the Judgments and Orders Clerk. (lnl) (Entered: 03/09/2011)
03/11/2011	23	CLERK'S JUDGMENT That for the reasons stated in the Court's Opinion and Order dated March 4, 2011, defendant's motion for summary judgment is granted in its entirety; accordingly, the case is closed and all pending motions denied as moot. (Signed by Clerk of Court Ruby Krajick on 3/11/11) (Attachments: # 1 notice of right to appeal)(ml) (Entered: 03/11/2011)
05/02/2011	24	NOTICE OF APPEAL from 23 Clerk's Judgment,. Document filed by Richard L Brodsky, Sierra Club-Atlantic Chapter (Sierra Club), Westchester's Citizens' Awareness Network (Westcan). Filing fee \$ 455.00, receipt number 7-000484. (sj) (Entered: 05/13/2011)
05/13/2011		Transmission of Notice of Appeal to the District Judge re: 24 Notice of Appeal,. (sj) (Entered: 05/13/2011)
05/13/2011		Transmission of Notice of Appeal and Certified Copy of Docket Sheet to US Court of Appeals re: 24 Notice of Appeal,. (sj) (Entered: 05/13/2011)
06/01/2011	25	TRANSCRIPT of Proceedings re: argument held on 1/20/2011 before Judge Loretta A. Preska. Court Reporter/Transcriber: Eve Giniger, (212) 805-0300. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 6/27/2011. Redacted Transcript Deadline set for 7/8/2011. Release of Transcript Restriction set for 9/2/2011.(McGuirk, Kelly) (Entered: 06/01/2011)
06/01/2011	26	NOTICE OF FILING OF OFFICIAL TRANSCRIPT Notice is hereby given that an official transcript of a argument proceeding held on 1/20/11 has been filed by the court reporter/transcriber in the above-captioned matter. The parties have seven (7) calendar days to file with the court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript may be made remotely electronically available to the public without redaction after 90 calendar days...(McGuirk, Kelly) (Entered: 06/01/2011)
07/20/2011		Appeal Record Sent to USCA (Electronic File). Certified Indexed record on Appeal Electronic Files for 17 MOTION for Susan Hillary Shaprio to Appear Pro Hac Vice. filed by Sierra Club-Atlantic Chapter (Sierra Club), Public Health and Sustainable Energy (Phase), Westchester's Citizens' Awareness Network (Westcan), 23 Clerk's Judgment, 16 Notice of Case Assignment/Reassignment, 8 Reply Memorandum of Law in Support of Motion filed by United States Nuclear Regulatory Commission, 9 Memorandum of Law in Opposition to Motion, filed by Richard L Brodsky, Sierra Club-Atlantic Chapter (Sierra Club), Public Health and Sustainable Energy (Phase), Westchester's Citizens' Awareness Network (Westcan), 6 Memorandum of Law in Support of Motion filed by United States Nuclear

		Regulatory Commission, 5 MOTION for Summary Judgment. MOTION to Dismiss. filed by United States Nuclear Regulatory Commission, Transmission to Judgments and Orders Clerk, 2 Notice of Hearing, 11 MOTION for Oral Argument. filed by Richard L Brodsky, Sierra Club-Atlantic Chapter (Sierra Club), Public Health and Sustainable Energy (Phase), Westchester's Citizens' Awareness Network (Westcan), 10 Declaration in Support of Motion, filed by Richard L Brodsky, Sierra Club-Atlantic Chapter (Sierra Club), Public Health and Sustainable Energy (Phase), Westchester's Citizens' Awareness Network (Westcan), 14 Order, Terminate Deadlines and Hearings, 4 Endorsed Letter, 25 Transcript, 1 Complaint, filed by Richard L Brodsky, Sierra Club-Atlantic Chapter (Sierra Club), Public Health and Sustainable Energy (Phase), Westchester's Citizens' Awareness Network (Westcan), 18 Order on Motion to Appear Pro Hac Vice, 22 Memorandum & Opinion, 21 Order Admitting Attorney Pro Hac Vice, 20 Endorsed Letter, Set Deadlines/Hearings, 7 Declaration in Support of Motion filed by United States Nuclear Regulatory Commission, 26 Notice of Filing Transcript, 12 Notice of Appearance filed by Entergy Nuclear Operations, Inc., 3 Affidavit of Service Complaints, filed by Richard L Brodsky, 24 Notice of Appeal, filed by Richard L Brodsky, Sierra Club-Atlantic Chapter (Sierra Club), Westchester's Citizens' Awareness Network (Westcan), 13 Notice of Appearance filed by Entergy Nuclear Operations, Inc., 19 Scheduling Order USCA Case Number 11-2016, were transmitted to the U.S. Court of Appeals. (tp) (Entered: 07/20/2011)
01/07/2013	27	USCA OPINION as to 24 Notice of Appeal, filed by Richard L Brodsky, Sierra Club-Atlantic Chapter (Sierra Club), Westchester's Citizens' Awareness Network (Westcan) USCA Case Number 11-2016-cv. The judgment of the District Court is AFFIRMED IN PART in accordance with summary order filed today and VACATED IN PART in accordance with this opinion, and the case is REMANDED for further proceedings consistent with this opinion, which proceedings are to be concluded within 120 days of the issuance of the mandate or such further time as this court shall authorize. Catherine O'Hagan Wolfe, Clerk USCA for the Second Circuit. Certified: 1/7/2013. (nd) (Entered: 01/08/2013)
01/22/2013	28	NOTICE OF APPEARANCE by Lisa Jean Fried on behalf of Entergy Nuclear Operations, Inc. (Fried, Lisa) (Entered: 01/22/2013)
03/01/2013	29	MANDATE of USCA (Certified Copy) as to 24 Notice of Appeal, filed by Richard L Brodsky, Sierra Club-Atlantic Chapter (Sierra Club), Westchester's Citizens' Awareness Network (Westcan) USCA Case Number 11-2016. Ordered, Adjudged and Decreed that the judgment of the District Court is AFFIRMED in par, and VACATED in part and the case is REMANDED in accordance with the 27 opinion of this court. Catherine O'Hagan Wolfe, Clerk USCA for the Second Circuit. Issued As Mandate: 3/1/2013. (nd) (Entered: 03/04/2013)
03/04/2013		Transmission of USCA Mandate/Order to the District Judge re: 29 USCA Mandate,, (nd) (Entered: 03/04/2013)
04/23/2013	30	ORDER: The parties shall confer and inform the Court by letter no later than

		May 6, 2013, how they propose to proceed. (Signed by Judge Loretta A. Preska on 4/22/2013) (djc) (Entered: 04/23/2013)
05/07/2013	31	ENDORSED LETTER addressed to Judge Loretta A. Preska from Richard Brodsky dated 5/3/2013 re: Counsel asks that the time for response set forth in the April 23 Order be extended to May 10, 2013. ENDORSEMENT: SO ORDERED. (Signed by Judge Loretta A. Preska on 5/6/2013) (djc) (Entered: 05/07/2013)
06/24/2013	32	ORDER of USCA (Certified Copy) as to 24 Notice of Appeal, filed by Richard L Brodsky, Sierra Club-Atlantic Chapter (Sierra Club), Westchester's Citizens' Awareness Network (Westcan) USCA Case Number 11-2016. Appellee Nuclear Regulatory Commission requests a 60-day extension of the deadline imposed by this Court's opinion dated January 7, 2013. It is hereby ORDERED that the Appellee is GRANTED an extension until August 30, 2013 to complete the proceedings ordered by this Court. Catherine O'Hagan Wolfe, Clerk USCA for the Second Circuit. Certified: 6/24/2013. (nd) (Entered: 06/24/2013)
09/17/2013	33	FIRST LETTER addressed to Judge Loretta A. Preska from Richard Brodsky, Esq. dated September 17, 2013 re: Schedule. Document filed by Richard L Brodsky.(Brodsky, Richard) (Entered: 09/17/2013)
10/01/2013	34	STANDING ORDER M10-468: Stay of Certain Civil Cases Pending the Restoration of Department of Justice Funding. (Signed by Judge Loretta A. Preska on 10/1/2013) ***Original Standing Order docketed in case no. 1:13-mc-00334-LAP, document no. 2 on 10/1/2013.***(tro) (Entered: 10/01/2013)
10/24/2013	35	LETTER addressed to Judge Loretta A. Preska from Richard Brodsky, Esq. dated October 23, 2013 re: Schedule Update. Document filed by Richard L Brodsky.(Brodsky, Richard) (Entered: 10/24/2013)
11/06/2013	36	LETTER addressed to Judge Loretta A. Preska from Richard Brodsky, Esq. dated 11.6.13 re: Schedule. Document filed by Richard L Brodsky.(Brodsky, Richard) (Entered: 11/06/2013)
11/26/2013	37	MEMO ENDORSEMENT on re: 36 Letter filed by Richard L Brodsky. ENDORSEMENT: SO ORDERED. (Signed by Judge Loretta A. Preska on 11/26/2013) (djc) (Entered: 11/26/2013)
11/26/2013		Set/Reset Deadlines: Responses due by 3/14/2014. Replies due by 3/28/2014. (djc) (Entered: 11/26/2013)
11/26/2013		Minute Entry for proceedings held before Judge Loretta A. Preska: Telephone Conference held on 11/26/2013. (mph) (Entered: 12/06/2013)
02/14/2014	38	BRIEF. Document filed by Richard L Brodsky. (Attachments: # 1 Affidavit, # 2 Affidavit)(Brodsky, Richard) (Entered: 02/14/2014)
03/07/2014	39	LETTER MOTION for Extension of Time to File Response/Reply as to 38 Brief addressed to Judge Loretta A. Preska from Benjamin H. Torrance dated March 7, 2014. Document filed by United States Nuclear Regulatory

		Commission.(Torrance, Benjamin) (Entered: 03/07/2014)
03/12/2014	40	ORDER granting 39 Letter Motion for Extension of Time to File Response/Reply re 39 LETTER MOTION for Extension of Time to File Response/Reply as to 38 Brief addressed to Judge Loretta A. Preska from Benjamin H. Torrance dated March 7, 2014. Application Granted. SO ORDERED. Responses due by 4/15/2014. (Signed by Judge Castel P. Kevin for Judge Preska on 3/12/2014) (ama) Modified on 3/18/2014 (ama). (Entered: 03/12/2014)
04/11/2014	41	MOTION for Summary Judgment. Document filed by United States Nuclear Regulatory Commission.(Torrance, Benjamin) (Entered: 04/11/2014)
04/11/2014	42	DECLARATION of Benjamin H. Torrance in Support re: 41 MOTION for Summary Judgment.. Document filed by United States Nuclear Regulatory Commission. (Attachments: # 1 CSR-1, # 2 CSR-2, # 3 CSR-3, # 4 JA vol 1 part 1, # 5 JA vol 1 part 2, # 6 JA vol 1 part 3, # 7 JA vol 1 part 4, # 8 JA vol 1 part 5, # 9 JA vol 1 part 6, # 10 JA vol 1 part 7, # 11 JA vol 1 part 8, # 12 JA vol 2 part 1, # 13 JA vol 2 part 2, # 14 JA vol 2 part 3, # 15 JA vol 2 part 4, # 16 JA vol 2 part 5, # 17 JA vol 3 part 1, # 18 JA vol 3 part 2, # 19 JA vol 3 part 3, # 20 JA vol 3 part 4, # 21 JA vol 4 part 1, # 22 JA vol 4 part 2, # 23 JA vol 4 part 3)(Torrance, Benjamin) (Entered: 04/11/2014)
04/11/2014	43	MEMORANDUM OF LAW in Support re: 41 MOTION for Summary Judgment.. Document filed by United States Nuclear Regulatory Commission. (Torrance, Benjamin) (Entered: 04/11/2014)
04/29/2014	44	BRIEF . Document filed by Richard L Brodsky. (Attachments: # 1 Supplement Signature)(Brodsky, Richard) (Entered: 04/29/2014)
05/15/2014	45	LETTER addressed to Judge Loretta A. Preska from Benjamin H. Torrance dated May 15, 2014 re: motion for summary judgment. Document filed by United States Nuclear Regulatory Commission.(Torrance, Benjamin) (Entered: 05/15/2014)
05/16/2014	46	LETTER addressed to Judge Loretta A. Preska from Richard Brodsky dated May 16, 2014 re: Ex Parte Communication. Document filed by Richard L Brodsky.(Brodsky, Richard) (Entered: 05/16/2014)
05/16/2014	47	LETTER addressed to Judge Loretta A. Preska from Lisa J. Fried dated 05/16/2014 re: Withdrawal of Appearances of Tracey Ann Tiska and Eva Lenore Dietz. Document filed by Entergy Nuclear Operations, Inc..(Fried, Lisa) (Entered: 05/16/2014)
02/26/2015	48	MEMORANDUM AND ORDER. Based on a review of the record, this Court concludes that the NRC has demonstrated that there are no genuine issues of material fact and that it is entitled to judgment as a matter of law. For the foregoing reasons, Defendant's motion for summary judgment [dkt. no. 41] is hereby GRANTED. The Clerk of the Court shall mark this action CLOSED and all pending motions DENIED as moot. Granting 41 Motion for Summary Judgment. (Signed by Judge Loretta A. Preska on 2/26/2015) (rjm) (Entered: 02/26/2015)

		02/26/2015)
02/26/2015		Transmission to Judgments and Orders Clerk. Transmitted re: 48 Order on Motion for Summary Judgment to the Judgments and Orders Clerk. (rjm) (Entered: 02/26/2015)
02/27/2015	49	CLERK'S JUDGMENT: That for the reasons stated in the Court's Memorandum and Order dated February 26, 2015, Defendant's motion for summary judgment is hereby granted; accordingly, the case is closed, and all pending motions are denied as moot. (Signed by Clerk of Court Ruby Krajick on 2/27/2015) (Attachments: # 1 Notice of Right to Appeal, # 2 Notice of Right to Appeal)(dt) (Entered: 03/05/2015)
02/27/2015		Terminate Transcript Deadlines (dt) (Entered: 03/05/2015)
04/24/2015	50	NOTICE OF APPEAL from 49 Clerk's Judgment,. Document filed by Richard L Brodsky. Filing fee \$ 505.00, receipt number 0208-10851659. Form C and Form D are due within 14 days to the Court of Appeals, Second Circuit. (Brodsky, Richard) (Entered: 04/24/2015)
04/24/2015		Transmission of Notice of Appeal and Certified Copy of Docket Sheet to US Court of Appeals re: 50 Notice of Appeal. (nd) (Entered: 04/24/2015)
04/24/2015		Appeal Record Sent to USCA (Electronic File). Certified Indexed record on Appeal Electronic Files for 50 Notice of Appeal filed by Richard L Brodsky were transmitted to the U.S. Court of Appeals. (nd) (Entered: 04/24/2015)

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09/09/2015 11:57:54			
PACER Login:	pw1853:3675546:0	Client Code:	017025-00028
Description:	Docket Report	Search Criteria:	1:09-cv-10594-LAP
Billable Pages:	8	Cost:	0.80

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

----- X

RICHARD L. BRODSKY *et al.*,

Plaintiffs,

v.

**UNITED STATES NUCLEAR REGULATORY
COMMISSION,**

09 Civ. 10594 (SCR)

Defendant.

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CERTIFIED SUPPLEMENTAL RECORD

I hereby certify that the documents listed and described below constitute the record for the administrative proceedings resulting in the issuance of “Entergy Nuclear Operations, Inc., Entergy Nuclear Indian Point Nuclear Generating Unit 3, LLC, Indian Point Nuclear Generating Unit No.3; Environmental assessment and finding of no significant impact; issuance,” published at 78 Fed. Reg. 52987 (Aug. 27, 2013), which is the decision that is the subject of judicial review in this case.

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Respectfully submitted,



A handwritten signature in black ink, appearing to read "Annette Vietti-Cook".

Annette L. Vietti-Cook
Secretary of the Commission

Dated at Rockville, Maryland
this 22nd day of October 2013.

**SUPPLEMENTAL CERTIFIED RECORD
List of Submissions for NRC-2013-0063**

1. Entergy Nuclear Operations, Inc., Indian Point Nuclear Generating Unit 3; Draft environmental assessment and finding of no significant impact; request for public comment, 78 Fed. Reg. 20144 (Apr. 3, 2013);
2. Entergy Nuclear Operations, Inc., Indian Point Nuclear Generating Unit 3, Environmental assessment and finding of no significant impact; issuance.78 Fed. Reg. 52987 (Aug. 27, 2013).
3. NRC Resolution of Public Comments, NRC-2013-0063, Indian Point Nuclear Generating Unit No. 3, Draft Environmental Assessment and Finding of No Significant Impact, (ADAMS Accession, No. ML13203A145 (see 78 Fed. Reg. at 52988).
4. Comments received by members of the public in response to the proposed action are listed below as formatted in the Table designated as Part 2 of NRC Resolution of Public Comments (Item 3 above). This Table includes the Commenter ID number (the circled number assigned by NRC to that comment), the name of the commenter, the NRC's ADAMS (Agencywide Documents Access and Management System) Accession Number for the submission, and references to those principal comments from Part 1 that most closely relate to the submission.

Commenter ID	Commenter Name	ML Number	Comment is Addressed in the Response Identified
1	Susan Shapiro	ML13163A186	BC 1; BC 2; BC 3, BC 4, BC 5, BC 7; BC 8, BC 9; RC 1; RC 2; SNYC 1; SNYC 2, SNYC 4, SNYC 5, SNYC 6; SNYC 8, SNYC 9
2	Lynn Flanagan	ML13163A187	BC 1; BC 2; BC 5; BC 7; BC 8; RC 1; RC 2; SNYC 1; SNYC 2; SNYC 8; SNYC 11
3	Gary Shaw	ML13163A188	BC 1; BC 3; BC 4; BC 5; BC 8; RC 2; SNYC 2; SNYC 5
4	Tania Venion	ML13163A432	BC 1; BC 2; BC 4; BC 5; BC 7; RC 1; SNYC 1; SNYC 2; SNYC 4; SNYC 6;
5	State of New York (New York State Energy Research and Development Authority)	ML13163A433	SNYC 1 through 11
6	Laurie Seeman	ML13163A434	Separate response provided in

Commenter ID	Commenter Name	ML Number	Comment is Addressed in the Response Identified
			Part 3
7	Michel Lee	ML13163A435	BC 1; BC 3; BC 4; BC 5; BC 8; RC 1; RC 2; RC 4; SNYC 2; SNYC 4; SNYC 5; SNYC 6; SNYC 8; SNYC 9; Separate response provided in Part 3
8	Moira Thielking	ML13163A436	BC 1; BC 3; BC 4; BC 5; RC 1; SNYC 2; SNYC 5; Separate response provided in Part 3
9	Judy Allen	ML13163A437	BC 1; BC 2; BC 3; BC 4; BC 5; BC 7; RC 1; SNYC 2; SNYC 4; SNYC 5
10	Steve Mantor	ML13163A438	BC 1; BC 2; BC 5; BC 7; BC 8; RC 1; RC 2; SNYC 1; SNYC 2; SNYC 8; SNYC 11
11	Debi Mohan	ML13163A448	BC 1; BC 2; BC 5; BC 7; BC 8; RC 1; RC 2; SNYC 1; SNYC 2; SNYC 8; SNYC 11
12	Amy Goldsmith	ML13163A449	BC 1; BC 2; BC 3; BC 5; BC 7; BC 8; RC 1; RC 2; SNYC 1; SNYC 2; SNYC 8; SNYC 11
13	Siobhan Towey	ML13163A450	BC 1; BC 2; BC 5; BC 7; BC 8; RC 1; RC 2; SNYC 1; SNYC 2; SNYC 8; SNYC 11
14	Edward Keller	ML13163A451	BC 1; BC 2; BC 5; BC 7; BC 8; RC 1; RC 2; SNYC 1; SNYC 2; SNYC 8; SNYC 11
15	Billie Biederman	ML13163A452	BC 1; BC 3; RC 1; Separate response provided in Part 3
16	Robert Braun	ML13163A453	BC 1; BC 2; BC 5; BC 7; BC 8; RC 1; RC 2; SNYC 1; SNYC 2; SNYC 8; SNYC 11
17	Patricia Goldsmith	ML13163A454	BC 1; RC 1; SNYC 5; SNYC 11; Separate response provided in Part 3
18	Richard Mangini	ML13163A455	Separate response provided in Part 3
19	Elizabeth Ellsworth	ML13163A456	BC 1; RC 1; SNYC 4; SNYC 5; SNYC 9; SNYC 11; Separate response provided in Part 3
20	Janet Strock	ML13163A457	BC 1; BC 2; BC 5; BC 7; BC 8; RC 1; RC 2; SNYC 1; SNYC 2; SNYC 8; SNYC 11

Commenter ID	Commenter Name	ML Number	Comment is Addressed in the Response Identified
21	Jeffrey Genser	ML13163A458	BC 1; BC 2; BC 5; BC 7; BC 8; RC 1; RC 2; SNYC 1; SNYC 2; SNYC 8; SNYC 11
22	Joanna Bagatta	ML13163A459	BC 1; BC 2; BC 5; BC 7; BC 8; RC 1; RC 2; SNYC 1; SNYC 2; SNYC 8; SNYC 11
23	Bernard Kessler	ML13163A460	Separate response provided in Part 3
24	Asher Pacht	ML13163A461	BC 1; BC 2; BC 5; BC 7; BC 8; RC 1; RC 2; SNYC 1; SNYC 2; SNYC 8; SNYC 11
25	Cheriel Jense	ML13163A462	BC 1; BC 2; BC 7; RC 1; SNYC 1
26	Joshua Farrell	ML13163A463	BC 1; BC 2; BC 5; BC 7; BC 8; RC 1; RC 2; SNYC 1; SNYC 2; SNYC 8; SNYC 11
27	Jan Emerson	ML13163A464	BC 1; BC 2; BC 7; RC 1; SNYC 1 SNYC 5
28	Kate Evanciew	ML13163A465	BC 1; BC 2; BC 5; BC 7; BC 8; RC 1; RC 2; SNYC 1; SNYC 2; SNYC 8; SNYC 11; Separate response provided in Part 3
29	Gloria Morrotti	ML13163A466	Separate response provided in Part 3
30	Louise Calabro	ML13163A467	BC 1; RC 1; SNYC 5
31	Dorothy Nusbaum	ML13165A029	BC 1; BC 2; BC 5; BC 7; BC 8; RC 1; RC 2; SNYC 1; SNYC 2; SNYC 8; SNYC 11
32	Jessica Murphy	ML13165A030	BC 1; BC 2; BC 5; BC 7; BC 8; RC 1; RC 2; SNYC 1; SNYC 2; SNYC 8; SNYC 11
33	Dinda Evans	ML13165A031	BC 1; BC 2; BC 3; BC 5; BC 7; BC 8; RC 1; RC 2; SNYC 1; SNYC 2; SNYC 3; SNYC 8; SNYC 11; Separate response provided in Part 3
34	Victoria Furio	ML13165A032	BC 1; BC 3; BC 5; BC 8; RC 1; RC 2; SNYC 2
35	Donna Henes	ML13165A033	Separate response provided in Part 3
36	Unknown	ML13165A034	Separate response provided in Part 3

Commenter ID	Commenter Name	ML Number	Comment is Addressed in the Response Identified
37	Larry Krasner	ML13165A035	Separate response provided in Part 3
38	Matt Malina	ML13165A036	BC 1; BC 3; BC 5; RC 1; SNYC 2
39	Jana Shakarian	ML13165A037	BC 1; BC 2; BC 5; BC 7; BC 8; RC 1; RC 2; SNYC 1; SNYC 2; SNYC 8; SNYC 11
40	John Raveche	ML13165A038	BC 1; BC 2; BC 5; BC 7; BC 8; RC 1; RC 2; SNYC 1; SNYC 2; SNYC 8; SNYC 11
41	Ken Gunther	ML13165A039	BC 1; BC 8; RC 2
42	William Davis	ML13165A040	BC 1; BC 2; BC 5; BC 7; BC 8; RC 1; RC 2; SNYC 1; SNYC 2; SNYC 8; SNYC 11; Separate response provided in Part 3
43	Joni Mercado	ML13165A041	Separate response provided in Part 3
44	Christina Volz	ML13165A042	Separate response provided in Part 3
45	Arthur Blum	ML13165A043	Separate response provided in Part 3
46	James Schmitt	ML13165A044	Separate response provided in Part 3
47	Edward Butler	ML13165A045	BC 1; BC 2; BC 5; BC 7; BC 8; RC 1; RC 2; SNYC 1; SNYC 2; SNYC 8; SNYC 11
48	Steven Laifer	ML13165A046	BC 1; BC 2; BC 5; BC 7; BC 8; RC 1; RC 2; SNYC 1; SNYC 2; SNYC 3; SNYC 8; SNYC 11
49	Unknown 1	ML13165A047	BC 1; BC 2; BC 5; BC 7; BC 8; RC 1; RC 2; SNYC 1; SNYC 2; SNYC 8; SNYC 11
50	Doreen Tignanelli	ML13165A048	BC 1; BC 2; BC 5; BC 7; BC 8; RC 1; RC 2; SNYC 1; SNYC 2; SNYC 8; SNYC 11
51	Barbara A. Kidney	ML13168A398	BC 1; BC 2; BC 3; BC 7; RC 1; SNYC 1
52	Jill Simon	ML13170A129	BC 1; BC 2; BC 5; BC 7; BC 8; RC 1; RC 2; SNYC 1; SNYC 2; SNYC 8; SNYC 11
53	Myra Alfreds	ML13170A133	BC 1; BC 5; RC 1; SNYC 2

Commenter ID	Commenter Name	ML Number	Comment is Addressed in the Response Identified
54	Anthony Montapert	ML13170A134	BC 1; BC 5; BC 8; RC 1; RC 2; SNYC 2
55	Nathaniel Floyd	ML13170A135	BC 1; BC 3; BC 5; RC 1; SNYC 2
56	Lynn Flanagan	ML13170A137	BC 1; BC 2; BC 5; BC 7; BC 8; RC 1; RC 2; SNYC 1; SNYC 2; SNYC 8; SNYC 11
57	Eleanor Fox	ML13170A138	BC 1; BC 2; BC 5; BC 7; BC 8; RC 1; RC 2; SNYC 1; SNYC 2; SNYC 8; SNYC 11
58	Nicole Crane	ML13170A139	BC 1; BC 3; BC 5; RC 1; SNYC 2
59	Kevin O'Neill	ML13170A140	BC 3; Separate response provided in Part 3
60	Gary Shaw	ML13170A141	BC 1; BC 3; BC 5; SNYC 2; SNYC 5
61	Wendy Fast	ML13170A142	BC 1; BC 2; BC 5; BC 7; RC 1; SNYC 1; SNYC 2
62	Lisa Gervais	ML13170A143	BC 1; BC 5; RC 1; SNYC 2
63	Mary-Alice Shemo	ML13170A145	BC 1; BC 5; RC 1; SNYC 2; SNYC 5
64	Elaine Dickinson	ML13170A146	BC 1; BC 2; BC 5; BC 7; BC 8; RC 1; RC 2; SNYC 1; SNYC 2; SNYC 8; SNYC 11
65	Lourdes Sabio	ML13170A147	BC 1; BC 2; BC 5; BC 7; RC 1; SNYC 1; SNYC 2
66	Margaret Rice Moir	ML13170A148	Separate response provided in Part 3
67	Bernard Yozwiak	ML13170A150	BC 1; BC 2; BC 5; BC 7; BC 8; RC 1; RC 2; SNYC 1; SNYC 2; SNYC 8; SNYC 11
68	Jean Naples	ML13170A152	BC 1; BC 2; BC 5; BC 7; BC 8; RC 1; RC 2; SNYC 1; SNYC 2; SNYC 8; SNYC 11
69	Michele Temple	ML13170A153	BC 1; BC 2; BC 5; BC 7; BC 8; RC 1; RC 2; SNYC 1; SNYC 2; SNYC 8; SNYC 11
70	Caroline Rider	ML13170A154	Separate response provided in Part 3
71	Michael Evans	ML13170A155	BC 1; BC 2; BC 5; BC 7; BC 8; RC 1; RC 2; SNYC 1; SNYC 2; SNYC 8; SNYC 11

Commenter ID	Commenter Name	ML Number	Comment is Addressed in the Response Identified
72	Robert Frey	ML13170A314	BC 1; BC 2; BC 5; BC 7; BC 8; RC 1; RC 2; SNYC 1; SNYC 2; SNYC 8; SNYC 11
73	Paul Ghenuiu	ML13170A315	BC 1; BC 8; RC 1; RC 2; SNYC 5
74	Millicent Sims	ML13170A316	Separate response provided in Part 3
75	Nicole Weber	ML13170A317	BC 1; BC 2; BC 5; BC 7; BC 8; RC 1; RC 2; SNYC 1; SNYC 2; SNYC 8; SNYC 11
76	Sally Smith	ML13170A318	BC 1; BC 3; BC 8; RC 2
77	Elizabeth Pasquale	ML13170A319	BC 1; BC 2; BC 5; BC 7; BC 8; RC 1; RC 2; SNYC 1; SNYC 2; SNYC 8; SNYC 11
78	Chris Hazynski	ML13170A320	Separate response provided in Part 3
79	Erma Lewis	ML13170A321	BC 1; BC 2; BC 5; BC 7; BC 8; RC 1; RC 2; SNYC 1; SNYC 2; SNYC 8; SNYC 11
80	Jamie Kruse	ML13170A322	BC 1; BC 2; BC 5; BC 7; BC 8; RC 1; RC 2; SNYC 1; SNYC 2; SNYC 8; SNYC 11
81	Dolores Baldasare	ML13170A323	BC 1; RC 1; BC 5;
82	Stephen Matlak	ML13170A324	Separate response provided in Part 3
83	Susan Didrichsend	ML13170A325	BC 1; BC 3; RC 1;
84	Ronald Lemmert	ML13170A251	Separate response provided in Part 3
85	Dennis Higgins	ML13170A252	BC 1; BC 2; BC 5; BC 7; BC 8; RC 1; RC 2; SNYC 1; SNYC 2; SNYC 3; SNYC 8; SNYC 11
86	Scott Richmond	ML13170A253	BC 1; BC 3; RC 1
87	Steve Kostis	ML13170A254	BC 1; BC 2; BC 5; BC 7; BC 8; RC 1; RC 2; SNYC 1; SNYC 2; SNYC 8; SNYC 11
88	Joseph Olejak	ML13170A255	BC 1; BC 5; RC 1; SNYC 2

Commenter ID	Commenter Name	ML Number	Comment is Addressed in the Response Identified
89	Bobbie Flowers	ML13170A256	BC 1; BC 2; BC 5; BC 7; BC 8; RC 1; RC 2; SNYC 1; SNYC 2; SNYC 8; SNYC 11
90	Barry De Jasu	ML13170A257	BC 1; BC 2; BC 5; BC 7; BC 8; RC 1; RC 2; SNYC 1; SNYC 2; SNYC 8; SNYC 11
91	Janet Azarovitz	ML13170A258	BC 1; BC 3
92	M Dean	ML13170A259	BC 1; BC 3; BC 5; RC 1; SNYC 2
93	Jennifer Valentine	ML13170A260	BC 1; BC 2; BC 5; BC 7; BC 8; RC 1; RC 2; SNYC 1; SNYC 2; SNYC 8; SNYC 11
94	Alexa Fila	ML13170A261	BC 1; BC 3; BC 5; RC 1; SNYC 2
95	Michele Johnson	ML13170A262	BC 1; BC 2; BC 5; BC 7; BC 8; RC 1; RC 2; SNYC 1; SNYC 2; SNYC 8; SNYC 11
96	Diane Buxbaum	ML13170A272	BC 1; BC 2; BC 5; BC 7; BC 8; RC 1; RC 2; SNYC 1; SNYC 2; SNYC 8; SNYC 11
97	Martin Wallace	ML13170A275	BC 1; BC 2; BC 5; BC 7; BC 8; RC 1; RC 2; SNYC 1; SNYC 2; SNYC 3; SNYC 8; SNYC 11; Separate response provided in Part 3
98	Meredith Genin	ML13170A276	BC 1; BC 2; BC 5; BC 7; BC 8; RC 1; RC 2; SNYC 1; SNYC 2; SNYC 8; SNYC 11; Separate response provided in Part 3.
99	William Wurtz	ML13170A277	Separate response to comment provided
100	Jared Cornelia	ML13170A278	BC 1; BC 2; BC 5; BC 7; BC 8; RC 1; RC 2; SNYC 1; SNYC 2; SNYC 8; SNYC 11
101	Gerson Lesser, M.D.	ML13170A279	Separate response provided in Part 3
102	Debra Winchell	ML13170A280	BC 1; BC 2; BC 5; BC 7; BC 8; RC 1; RC 2; SNYC 1; SNYC 2; SNYC 8; SNYC 11; Separate response provided in Part 3
103	Mary Brown	ML13170A281	Separate response provided in Part 3
104	Maryanne Deracleo	ML13170A282	BC 1; BC 3; RC 1; Separate response provided in Part 3

Commenter ID	Commenter Name	ML Number	Comment is Addressed in the Response Identified
105	George Costich	ML13170A283	Separate response provided in Part 3
106	Laura Levey	ML13170A284	BC 1; BC 2; BC 5; BC 7; BC 8; RC 1; RC 2; SNYC 1; SNYC 2; SNYC 8; SNYC 11
107	Deborah Ross	ML13170A285	BC 1; BC 3; RC 1
108	Joann Ramos	ML13170A286	BC 1; BC 2; BC 5; BC 7; RC 1; SNYC 1; SNYC 2
109	Susan Singer	ML13170A287	BC 1; RC 1; SNYC 5; Separate response provided in Part 3
110	T.ED. Webb	ML13170A288	BC 3; RC 1; Separate response provided in Part 3
111	Dolores Congdon	ML13170A289	BC 3; RC 1
112	Alice Farber	ML13170A290	Separate response provided in Part 3
113	Chris Blyth	ML13170A292	BC 1; BC 3; RC 1; SNYC 2;
114	Brian Fink	ML13170A293	BC 1; BC 2; BC 5; BC 7; BC 8; RC 1; RC 2; SNYC 1; SNYC 2; SNYC 8; SNYC 11; Separate response provided in Part 3
115	Linda Hartinian	ML13170A294	Separate response provided in Part 3
116	Thelma Fellows	ML13177A166	BC 1; BC 3; RC 1; Separate response provided in Part 3
117	Art Hanson	ML13177A167	BC 1; BC 2; BC 5; BC 7; BC 8; RC 1; RC 2; SNYC 1; SNYC 2; SNYC 8; SNYC 11
118	Natalie Hanson	ML13177A168	BC 1; BC 2; BC 5; BC 7; BC 8; RC 1; RC 2; SNYC 1; SNYC 2; SNYC 8; SNYC 11
119	Richard Vultaggio	ML13177A169	BC 1; BC 2; BC 5; BC 7; BC 8; RC 1; RC 2; SNYC 1; SNYC 2; SNYC 8; SNYC 11
120	Daniele Gerard	ML13177A184	BC 1; BC 2; BC 5; BC 7; BC 8; RC 1; RC 2; SNYC 1; SNYC 2; SNYC 8; SNYC 11
121	Erlend Kimmich	ML13177A185	SNYC 3; Separate response provided in Part 3
122	Richard Brodsky	ML13177A186	BC 1 through 9

Commenter ID	Commenter Name	ML Number	Comment is Addressed in the Response Identified
123	State of New York (New York State Energy Research and Development Authority)	ML13177A187 NOTE: This is a repeat of entry #5	SNYC 1 through 11
124	Riverkeeper	ML13177A188	RC 1 through 4
125	Peter Cohen	ML13177A173	BC 1; BC 2; BC 5; BC 7; BC 8; RC 1; RC 2; SNYC 1; SNYC 2; SNYC 8; SNYC 11
126	Tricia Bhatia	ML13177A174	BC 1; BC 2; BC 5; BC 7; BC 8; RC 1; RC 2; SNYC 1; SNYC 2; SNYC 8; SNYC 11; Separate response provided in Part 3
127	Nina Long	ML13177A175	BC 1; BC 3; RC 1; SNYC 2; SNYC 5
128	Gail Paybe	ML13177A176	BC 1; BC 3; BC 5; RC 1; SNYC 2
129	Richard Weiskopf	ML13177A177	BC 1; BC 3; BC 5; RC 1; SNYC 2; Separate response provided in Part 3
130	Geraldine Collins	ML13177A178	BC 1; BC 2; BC 5; BC 7; BC 8; RC 1; RC 2; SNYC 1; SNYC 2; SNYC 8; SNYC 11;
131	Stephanie Angelis	ML13177A179	Separate response provided in Part 3
132	Joan Ashton	ML13177A180	BC 1; BC 2; BC 5; BC 7; BC 8; RC 1; RC 2; SNYC 1; SNYC 2; SNYC 8; SNYC 11
133	Erica Gray	ML13177A181	BC 1; BC 2; BC 5; BC 7; BC 8; RC 1; RC 2; SNYC 1; SNYC 2; SNYC 8; SNYC 11
134	Robert L. Fishman	ML13190A006	BC 1; BC 3; BC 4; BC6; RC 1;
135	Andrew W. Dalton	ML13190A007	BC 1; BC 3; BC 4; BC6; RC 1;
136*	Allegra Dengler	ML13190A306	BC 1; BC 4; BC6; RC 1; Separate response provided in Part 3

*It should be noted that ADAMS included the State of New York comments twice as Commenter ID 5 and 123.

5. Some comments listed in Table 2 of NRC Resolution of Public Comments (Item 4 above) were deemed by NRC to be beyond the scope of the environmental review of the proposed action. Consequently, those comments did not receive any specific NRC response in Parts 1 or 2. These additional comments are nonetheless included within this Index to assure completeness of the record:
- Concerns regarding nuclear waste and storage (ML13163A456; ML13170A316; ML13170A283; ML13177A177; ML13163A435; ML13163A436);
 - Concerns regarding leaks of radioactive material into the Hudson River (ML13165A041);
 - Concerns that fish kills in the Hudson are common and constant because the river is used to dump cooling water (ML13177A179; ML13170A276);
 - Concerns expressing general support for energy alternatives (ML13170A277; ML13170A283; ML13177A177; ML13163A434; ML13170A140; ML13170A275);
 - Concerns that climate change could cause water levels to rise and flood the plant and accelerate corrosion in buried pipes and cables (ML13163A435; ML13165A041; ML13190A306);
 - Concerns regarding earthquake risks: (ML13163A435; ML13163A436; ML13163A438; ML13165A040; ML13165A04; ML13163A435; ML13165A041; ML13177A179);
 - Concerns regarding emergency planning and evacuation plans (ML13177A185; ML13163A434; ML13163A435; ML13170A316; ML13170A251; ML13170A282; ML13170A287; ML13163A436; ML13165A044; ML13170A290; ML13170A288);
 - Concerns over the safe operation of Indian Point (ML13177A177; ML13163A452; ML13163A465; ML13163A466; ML13165A031; ML13165A033; ML13165A034; ML13165A035; ML13165A041; ML13165A042; ML13170A154; ML13170A320; ML13170A324; ML13170A280; ML13170A281; ML13170A282; ML13170A283; ML13170A293; ML13170A294; ML13177A173; ML13163A434; ML13165A043; ML13170A148);
 - Opposition to license renewal of Indian Point (ML13163A436; ML13170A140);
 - Opposition to nuclear power and in support of a shut-down of Indian Point (ML13163A455; ML13170A140; ML13177A177; ML13163A434; ML13163A460; ML13165A041; ML13165A044; ML13170A277; ML13170A279; ML13170A282; ML13170A290; ML13177A166);
 - Concerns regarding the effects of aging on safe operation of a nuclear facility (ML13163A436; ML13163A456; ML13165A040; ML13165A041; ML13165A042; ML13163A435);
 - Concerns regarding the reduced number of resident inspectors at Indian Point (ML13170A316; ML13170A279);

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- Concerns regarding the natural gas lines that are located near the plant (ML13163A186; ML13163A435).



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practice to threaten, propose, take, or not take a personnel action because an appellant exercised the right to appeal, complain, or grieve an alleged violation of Subsection (b)(8); testified or otherwise lawfully assisted another's right to appeal, complain, or grieve such an alleged violation; cooperated with or disclosed information to the Inspector General or Special Counsel in accordance with applicable provisions of law; or refused to obey an order that would require a violation of law. *See 5 CFR 1209.4.* If the personnel action allegedly taken in reprisal for making a protected disclosure or engaging in protected activity is not otherwise appealable to the Board, you must first file a whistleblower complaint with the Office of Special Counsel (OSC) and exhaust the procedures of that office, *see 5 U.S.C. 1214(a)(3)*, before you may file an IRA appeal with the Board under *5 U.S.C. § 1221.*"

Finally, instructions regarding the impact of filing a formal EEO complaint

on the Board's timeliness requirements are included under the heading, "Time Limits for filing IRA, USERRA, and VEOA Appeals, and following the filing of a Formal EEO Complaint," as follows: "Formal EEO Complaints. If you have previously filed a formal Equal Employment Opportunity (EEO) complaint regarding the same matter, you must file your Board appeal within 30 days after receiving the agency's resolution or final decision as to that complaint, or you may file at any time after 120 days have elapsed from the filing of the complaint in the absence of such an agency resolution or decision. *See 5 CFR 1201.154(b).*"

Estimated Reporting Burden

In accordance with the requirements of the PRA, MSPB is soliciting comments on the public reporting burden for this information collection. The public reporting burden for this collection of information is estimated to vary from 20 minutes to 4 hours, with

an average of 60 minutes per response, including time for reviewing the form and instructions, searching existing data sources, gathering the data necessary, and completing and reviewing the collection of information.

Specifically, MSPB invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of MSPB's functions, including whether the information will have practical utility; (2) the accuracy of the MSPB's estimate of burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

ESTIMATED REPORTING BURDEN

5 CFR parts	Annual number of respondents	Frequency per response	Total annual responses	Hours per response (average)	Total hours
1201, 1208 and 1209	7,150	1	7,150	1.0	7,150

William D. Spencer,
Clerk of the Board.
[FR Doc. 2013-07692 Filed 4-2-13; 8:45 am]
BILLING CODE 7400-01-P

NATIONAL LABOR RELATIONS BOARD

Sunshine Act Meetings: April 2013

TIME AND DATES: All meetings are held at 2:00 p.m. Wednesday, April 3; Thursday, April 4; Wednesday, April 10; Thursday, April 11; Wednesday, April 17; Thursday, April 18; Wednesday, April 24; Thursday, April 25.

PLACE: Board Agenda Room, No. 11820, 1099 14th St. NW., Washington, DC 20570.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Pursuant to § 102.139(a) of the Board's Rules and Regulations, the Board or a panel thereof will consider "the issuance of a subpoena, the Board's participation in a civil action or proceeding or an arbitration, or the initiation, conduct, or disposition * * * of particular representation or unfair labor practice proceedings under section 8, 9, or 10 of the [National Labor Relations] Act, or

any court proceedings collateral or ancillary thereto." See also 5 U.S.C. 552b(c)(10).

CONTACT PERSON FOR MORE INFORMATION:
Henry Breitenreicher, Associate Executive Secretary, (202) 273-2917.

Dated: April 1, 2013.
Henry Breitenreicher,
Associate Executive Secretary.
[FR Doc. 2013-07881 Filed 4-1-13; 4:15 pm]
BILLING CODE 7545-01-P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-286; NRC-2013-0063]

Entergy Nuclear Operations, Inc., Indian Point Nuclear Generating Unit 3

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft environmental assessment and finding of no significant impact; request for public comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is reconsidering its issuance of a revision of an existing exemption from its regulations, "Fire Protection Program for Nuclear Power Facilities Operating Prior to January 1, 1979," for Fire Areas ETN-4 and PAB-

2, issued to Entergy Nuclear Operations, Inc. (the licensee), for operation of Indian Point Nuclear Generating Unit 3 (Indian Point 3), located in Westchester County, NY."

DATES: Submit comments by May 3, 2013. Comments received after this date will be considered if it is practical to do so, but the NRC is able to assure consideration only for comments received on or before this date.

ADDRESSES: You may access information and comment submissions related to this document, which the NRC possesses and is publicly-available, by searching on <http://www.regulations.gov> under Docket ID NRC-2013-0063. You may submit comments by any of the following methods:

- **Federal Rulemaking Web site:** Go to <http://www.regulations.gov> and search for Docket ID NRC-2013-0063. Address questions about NRC dockets to Carol Gallagher; telephone: 301-492-3668; email: Carol.Gallagher@nrc.gov.

- **Mail comments to:** Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration, Mail Stop: TWB-05-B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

• *Fax comments to:* RADB at 301–492–3446.

For additional direction on accessing information and submitting comments, see “Accessing Information and Submitting Comments” in the SUPPLEMENTARY INFORMATION section of this document.

FOR FURTHER INFORMATION CONTACT: Douglas V. Pickett, Senior Project Manager, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555; telephone: 301–415–1364; email: Douglas.Pickett@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Accessing Information and Submitting Comments

A. Accessing Information

Please refer to Docket ID NRC–2013–0063 when contacting the NRC about the availability of information regarding this document. You may access information related to this document, which the NRC possesses and is publicly-available, by any of the following methods:

• *Federal Rulemaking Web site:* Go to <http://www.regulations.gov> and search for Docket ID NRC–2013–0063.

• *NRC’s Agencywide Documents Access and Management System (ADAMS):* You may access publicly available documents online in the NRC Library at <http://www.nrc.gov/reading-rm/adams.html>. To begin the search, select “ADAMS Public Documents” and then select “Begin Web-based ADAMS Search.” For problems with ADAMS, please contact the NRC’s Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to pdr.resource@nrc.gov. The ADAMS accession number for each document referenced in this notice (if that document is available in ADAMS) is provided the first time that a document is referenced. The application for exemption, dated July 24, 2006, is available under ADAMS Accession No. ML062140057. The Environmental Assessment and Finding of No Significant Impact, dated September 24, 2007, is available under ADAMS Accession No. ML072110018. The NRC letter approving the exemption, dated September 28, 2007, is available under ADAMS Accession No. ML072410254.

• *NRC’s PDR:* You may examine and purchase copies of public documents at the NRC’s PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2013–0063 in the subject line of your

comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at <http://www.regulations.gov> as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

II. Introduction

The NRC is reconsidering its issuance of a revision of an existing exemption from part 50 of Title 10 of the Code of Federal Regulations (10 CFR), Appendix R, “Fire Protection Program for Nuclear Power Facilities Operating Prior to January 1, 1979,” for Fire Areas ETN–4 and PAB–2, issued to Entergy Nuclear Operations, Inc. (the licensee), for operation of Indian Point Nuclear Generating Unit 3 (Indian Point 3), located in Westchester County, NY.”

On July 24, 2006, Indian Point 3 submitted an exemption request from the requirement of 10 CFR Part 50, Appendix R, III, G.2 for a 1-hour rating fire barrier. On September 28, 2007, the NRC issued the exemption. As required by 10 CFR 51.21, the NRC prepared an Environmental Assessment (EA) and finding of no significant impact (FONSI). The EA on the impacts of the exemption and FONSI were published in the *Federal Register* (FR) on the same day the exemption was issued (72 FR 55254). The exemption was then implemented at Indian Point Unit 3. A draft EA for public comment was not issued for this licensing action.

In 2007, Mr. Richard Brodsky, then a New York State Assemblyman, and others petitioned the NRC to hold a public hearing before granting the exemption. The NRC denied Mr. Brodsky’s petition. In 2008, these petitioners filed suit in the U.S. Court of Appeals for the Second Circuit, challenging NRC’s denial of a hearing.

The Court of Appeals denied the petition for lack of jurisdiction, but afforded petitioners an opportunity to refile their claims in U.S. District Court. In 2011, the U.S. District Court for the Southern District of New York granted NRC summary judgment on the refiled claims, finding no violation of the Administrative Procedure Act, the Atomic Energy Act, or the National Environmental Policy Act (NEPA) in the denial of a hearing on the exemption. Petitioners then sought review of that decision in the U.S. Court of Appeals for the Second Circuit.

On January 7, 2013, the Second Circuit reversed and vacated the U.S. District Court decision with respect to public participation on the EA and FONSI issued in support of the exemptions. The Circuit Court remanded the case to the District Court “with instructions for it in turn to remand to the NRC so that the agency may: (1) Supplement the administrative record to explain why allowing public input into the exemption request was inappropriate or impracticable, or (2) take such other action as it may deem appropriate to resolve this issue.” The Court directed that proceedings were to be concluded within 120 days of the Mandate, which was issued on March 1, 2013.

In response to the Mandate of the U.S. Court of Appeals, the NRC is issuing for public comment, pursuant to 10 CFR 51.33, this Draft Environmental Assessment and Finding of No Significant Impact. As necessary, the underlying action (i.e., approval of the exemptions) may be modified in light of public comments.

The NRC notes that, subsequent to its action approving the requested exemptions in 2007, and petitioners’ court challenges, the agency amended 10 CFR 51.22, which describes NRC’s actions categorically excluded from further environmental review under NEPA. See 75 FR 20248 (April 19, 2010). That 2010 rulemaking expanded the scope of an existing categorical exclusion in 10 CFR 51.22(c)(9) to include approvals of licensee exemption requests. Thus, under the revised provisions of 10 CFR 51.22(c)(9), the NRC need not prepare any environmental review for exemptions from the requirements of Parts 50 and 52 “with respect to installation or use of a facility component located within the restricted area, as defined in [10 CFR Part 20], or which changes an inspection or surveillance requirement,” provided there are no significant hazards considerations, no significant increase in offsite effluents, and no significant occupational dose increase.

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Although NRC approval of exemptions that meet the criteria of this section no longer require preparation of an EA/FONSI, the NRC retains discretion to prepare an EA and FONSI, including an opportunity for public comment, where special circumstances exist. See 10 CFR 51.22(b), and 51.33.

III. Draft Environmental Assessment and Finding of No Significant Impact

Identification of the Proposed Action

The proposed action would revise the January 7, 1987, safety evaluation (SE) to reflect that the installed Hemyc electrical raceway fire barrier system (ERFBS) configurations provide either a 30-minute fire resistance rating, or in one case a 24-minute fire resistance rating, in lieu of the previously stated 1-hour fire resistance rating. The licensee states that a Hemyc ERFBS fire resistance rating will provide sufficient protection for the affected raceways, with adequate margin, to continue to meet the intent of the original requests for exemption and conclusions presented in the NRC's January 7, 1987, SE. The licensee concludes that the revised fire resistance rating of the Hemyc ERFBS does not reflect a reduction in overall fire safety, and presents no added challenge to the credited post-fire safe-shutdown capability which remains materially unchanged from the configuration originally described in previous letters and as credited in the January 7, 1987, SE.

The proposed action is in accordance with the licensee's application dated July 24, 2006, as supplemented by letters dated April 30, May 23, and August 16, 2007.

The Need for the Proposed Action

The proposed revision of existing exemptions from 10 CFR Part 50, Appendix R, is needed in response to NRC Information Notice 2005-07, dated April 1, 2005, ADAMS Accession No. ML050890089. The information notice provided licensees the details of Hemyc ERFBS full-scale fire tests conducted by the NRC's Office of Nuclear Regulatory Research. The test results concluded that the Hemyc ERFBS does not provide the level of protection expected for a 1-hour rated fire barrier, as originally designed. The proposed revision to existing exemptions would revise the fire resistance rating of Hemyc ERFBS configurations.

Environmental Impacts of the Proposed Action

The NRC has completed its SE of the proposed action and concludes that the

configuration of the fire zones under review provide reasonable assurance that a severe fire is not plausible and the existing fire protection features are adequate. Based on the presence of redundant safe-shutdown trains, minimal fire hazards and combustibles, automatic cable tray fire suppression system, manual fire suppression features, fire barrier protection, existing Hemyc configuration, and the installed smoke detection system, the NRC staff finds that the use of this Hemyc fire barrier in these zones will not significantly increase the consequences from a fire in these fire zones.

The proposed action will not significantly increase the probability or consequences of accidents. No changes are being made in the types of effluents that may be released off site. There is no significant increase in the amount of any effluent released off site. There is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed action does not have a potential to affect any historic sites. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the NRC staff concludes that there are no significant environmental impacts associated with the proposed action.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the NRC staff considered denial of the proposed action (i.e., the "no-action" alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

The action does not involve the use of any different resources than those previously considered in the Final Environmental Statement for INDIAN POINT 3, dated February 1975.

Agencies and Persons Consulted

In accordance with its stated policy, on February 13, 2007, the NRC staff consulted with the New York State official, Alyse Peterson of the New York State Energy Research and Development Authority, regarding the environmental

impact of the proposed action. The State official had no comments.

IV. Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letters dated July 24, 2006, April 30, 2007, May 23, 2007, and August 16, 2007, (ADAMS Accession Nos. ML062140057, ML071280504, ML071280504, ML072400369).

Dated at Rockville, Maryland, this 26th day of March 2013.

For the Nuclear Regulatory Commission.

Sean C. Meighan,

Acting Chief, Plant Licensing Branch I-1,
Division of Operating Reactor Licensing,
Office of Nuclear Reactor Regulation.

[FR Doc. 2013-07703 Filed 4-2-13; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[Docket No. 040-09068; License SUA-1598; NRC-2008-0391]

Lost Creek ISR, LLC, Lost Creek Uranium In-Situ Recovery Project, Sweetwater County, Wyoming

AGENCY: Nuclear Regulatory Commission.

ACTION: Environmental assessment and finding of no significant impact for license amendment; availability.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is considering an amendment to Source Materials License SUA-1598 for continued uranium production operations and *in-situ* recovery (ISR) of uranium at the Lost Creek Project in Sweetwater County, Wyoming.

ADDRESSES: Please refer to Docket ID NRC-2008-0391 when contacting the NRC about the availability of information regarding this document. You may access information related to this document, which the NRC possesses and are publicly-available, using any of the following methods:

- *Federal Rulemaking Web site:* Go to <http://www.regulations.gov> and search for Docket ID NRC-2008-0391. Address questions about NRC dockets to Carol Gallagher; telephone: 301-492-3668; email: Carol.Gallagher@nrc.gov.
- *NRC's Agencywide Documents Access and Management System*



burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

Frances Teel,

NASA PRA Clearance Officer.

[FR Doc. 2013-20894 Filed 8-26-13; 8:45 am]

BILLING CODE 7510-13-P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-286; NRC-2013-0063]

Entergy Nuclear Operations, Inc., Indian Point Nuclear Generating Unit 3

AGENCY: Nuclear Regulatory Commission.

ACTION: Environmental assessment and finding of no significant impact; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has concluded that existing exemptions from its regulations, "Fire Protection Program for Nuclear Power Facilities Operating Prior to January 1, 1979," for Fire Areas ETN-4 and PAB-2, issued to Entergy Nuclear Operations, Inc. (the licensee), for operation of Indian Point Nuclear Generating Unit 3 (Indian Point 3), located in Westchester County, NY, will remain as originally granted and will not be modified.

ADDRESSES: Please refer to Docket ID NRC-2013-0063 when contacting the NRC about the availability of information regarding this document. You may access publicly-available information related to this action by the following methods:

- *Federal Rulemaking Web site:* Go to <http://www.regulations.gov> and search for Docket ID NRC-2013-0063. Address questions about NRC dockets to Carol Gallagher; telephone: 301-287-3422; email: Carol.Gallagher@nrc.gov. For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly available documents online in the NRC Library at <http://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "ADAMS Public Documents" and then select "Begin Web-based ADAMS Search." For problems with ADAMS,

please contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, 301-415-4737, or by email to pdr.resource@nrc.gov. The ADAMS accession number for each document referenced in this notice (if that document is available in ADAMS) is provided the first time that a document is referenced.

- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1-F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Douglas V. Pickett, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-1364; email: Douglas.Pickett@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On July 24, 2006, Indian Point 3 submitted exemption requests from part 50 to Title 10 of the *Code of Federal Regulations* (10 CFR), appendix R, section III.G.2, for a one-hour rating fire barrier. On September 28, 2007 (72 FR 55254), the NRC issued the exemptions. As required by 10 CFR 51.21, the NRC prepared an Environmental Assessment (EA) and a finding of no significant impact (FONSI). The EA on the impacts of the exemptions and FONSI were published in the *Federal Register* (FR) on the same day the exemptions were issued. The exemptions were then implemented at Indian Point Unit 3. A draft EA/FONSI for public comment was not issued for this licensing action.

In 2007, Mr. Richard Brodsky, then a New York State Assemblyman, and others (the petitioners) petitioned the NRC to hold a public hearing before granting the exemptions. The NRC denied Mr. Brodsky's petition. In 2008, the petitioners filed suit in the U.S. Court of Appeals for the Second Circuit, challenging the NRC's denial of a hearing. On August 27, 2009, the Court of Appeals denied the suit for lack of jurisdiction, but afforded the petitioners an opportunity to refile their claims in the U.S. District Court (ADAMS Accession No. ML092610050). In 2011, the U.S. District Court for the Southern District of New York granted the NRC summary judgment on the refiled claims, finding no violation of the Administrative Procedure Act (APA), the Atomic Energy Act (AEA), or the National Environmental Policy Act (NEPA) in the denial of a hearing on the exemption (ADAMS Accession No. ML110660214). The petitioners then sought review of that decision in the

U.S. Court of Appeals for the Second Circuit.

On January 7, 2013, the Second Circuit reversed and vacated the U.S. District Court decision with respect to public participation on the EA and FONSI issued in support of the exemptions (ADAMS Accession No. ML13199A023). All other aspects of the U.S. District Court decision were upheld as described in the Second Circuit's Summary Order (ADAMS Accession No. ML13164A362). The Circuit Court remanded the case to the District Court "with instructions for it in turn to remand to the NRC so that the agency may: (1) Supplement the administrative record to explain why allowing public input into the exemption request was inappropriate or impracticable, or (2) take other such action as it may deem appropriate to resolve this issue." The Court directed that proceedings were to be concluded within 120 days of the Mandate, which was issued on March 1, 2013.

In response to the Mandate of the U.S. Court of Appeals, on April 3, 2013 (78 FR 20144), a *Federal Register* notice was published seeking public comment, pursuant to 10 CFR 51.33, for a draft EA and FONSI. Due to requests from the public to extend the comment period, on May 7, 2013 (78 FR 26662), a *Federal Register* notice was published that extended the public comment period to June 3, 2013. In light of this extension, the NRC sought and the Court of Appeals granted an extension until August 30, 2013, to complete its actions.

II. Environmental Assessment

Identification of the Proposed Action

The proposed action would revise the January 7, 1987, safety evaluation to reflect that the installed Hemyc electrical raceway fire barrier system (ERFBS) configurations provide either a 30-minute fire resistance rating, or in one case a 24-minute fire resistance rating, in lieu of the previously stated one-hour fire resistance rating. The licensee states that a Hemyc ERFBS fire resistance rating will provide sufficient protection for the affected raceways, with adequate margin, to continue to meet the intent of the original requests for exemption and conclusions presented in the NRC's January 7, 1987, safety evaluation. The licensee concludes that the revised fire resistance rating of the Hemyc ERFBS does not reflect a reduction in overall fire safety, and presents no added challenge to the credited post-fire safe-shutdown capability which remains materially unchanged from the configuration originally described in

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previous letters and as credited in the January 7, 1987, safety evaluation.

The proposed action is in accordance with the licensee's application dated July 24, 2006, as supplemented by letters dated April 30 (ADAMS Accession No. ML071280504), May 23 (ADAMS Accession No. ML071520177), and August 16, 2007 (ADAMS Accession No. ML072400369).

The Need for the Proposed Action

The proposed revision of existing exemptions from 10 CFR part 50, appendix R, is needed in response to NRC Information Notice 2005-07, Results of Hemyc Electrical Raceway Fire Barrier System Full Scale Fire Testing, dated April 1, 2005 (ADAMS Accession No. ML050890089). The information notice provided to licensees the details of Hemyc ERFBS full-scale fire tests conducted by the NRC's Office of Nuclear Regulatory Research. The test results concluded that the Hemyc ERFBS does not provide the level of protection expected for an one-hour rated fire barrier, as originally designed. The proposed revision to existing exemptions would revise the fire resistance rating of Hemyc ERFBS configurations.

Environmental Impacts of the Proposed Action

The NRC has completed its safety evaluation of the proposed action and concludes that the configuration of the fire zones under review provides reasonable assurance that a severe fire is not plausible and the existing fire protection features are adequate. Based on the presence of redundant safe-shutdown trains, minimal fire hazards and combustibles, automatic cable tray fire suppression system, manual fire suppression features, fire barrier protection, existing Hemyc configuration, and the installed smoke detection system, the NRC staff finds that the use of this Hemyc fire barrier in these zones will not significantly increase the consequences from a fire in these fire zones.

The proposed action will not significantly increase the probability or consequences of accidents. No changes are being made in the types of effluents that may be released offsite. There is no significant increase in the amount of any effluent released offsite. There is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed action does not have a potential to affect

any historic sites. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the NRC staff concludes that there are no significant environmental impacts associated with the proposed action.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the NRC staff considered denial of the proposed action (i.e., the "no-action" alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

The action does not involve the use of any different resources than those previously considered in the Final Environmental Statement for Indian Point 3, dated February 1975.

Agencies and Persons Consulted

Development of this EA/FONSI did not result in consultation.

Comments

The NRC received 135 submissions containing comments from interested members of the public, organizations, and the State of New York. The majority of these comments expressed opposition to the granting of the requested exemptions, and many commenters suggested that the NRC prepare an environmental impact statement (EIS) and convene a formal evidentiary hearing or other form of public hearing to consider the matter. Many of the commenters were concerned that granting the exemptions could result in a degradation of fire protection levels afforded by current regulatory requirements that would leave the licensee unable to respond to a serious fire and result in catastrophic offsite consequences.

Each comment was carefully reviewed by the NRC staff. In this document, the NRC has responded to the various comments received by category. However, many comments received did not fall into the broader categories discussed in this document and were outside the scope of the draft EA, which deals strictly with the environmental impacts of granting the exemption. These comments are not addressed in this document, but the NRC has responded to all comments received in a separate comment resolution

document (ADAMS Accession No. ML13203A145).

Legal Objections and Request for Hearing

Some commenters questioned whether the NRC has the authority to grant exemptions from its regulations, whether the NRC has complied with each applicable statute, and whether the NRC may grant permanent exemptions. These questions have recently been addressed by the U.S. District Court for the Southern District of New York and, on appeal by the U.S. Court of Appeals for the Second Circuit. These courts upheld the agency's authority and statutory compliance in these respects, except in the case of NEPA's requirement for an opportunity for public participation on the proposed exemptions. (*Brodsky v. NRC*, 783 F. Supp. 2d 448, 457 n.7 (S.D.N.Y. 2011), vacated in part on other grounds, 704 F.3d 113 (2d Cir. 2013); *Brodsky v. NRC*, No. 11-2016-cv, "Summary Order" (2d Cir. Jan. 7, 2013)). That noncompliance was corrected by the **Federal Register** issuance of the draft EA and FONSI for public comments.

The NRC is denying the commenters' request for a hearing. Neither the AEA nor the NRC's regulations grant the right to a hearing on an application for an exemption. (42 U.S.C. 2239(a); *Kelley v. Selin*, 42 F.3d 1501, 1514-17 (6th Cir. 1995); *Massachusetts v. NRC*, 878 F.2d 1516, 1521 (1st Cir. 1989)). Moreover, in the Summary Order for *Brodsky v. NRC*, the U.S. Court of Appeals for the Second Circuit recently rejected the argument that the AEA or the APA requires the NRC to hold a hearing on granting an exemption.

Safety Objections

A number of commenters questioned the NRC's technical judgment that the exemptions to the fire protection requirements of 10 CFR 50.48 and appendix R, section III.G.2, would afford equivalent protection of public health and safety in the event of a fire in the two affected areas of the plant for which exemptions had been proposed. One commenter stated that a fire lasting beyond the 24-minute fire rating of the Hemyc fire barrier would result in a reactor meltdown. Other commenters expressed concern whether the exemptions present an undue risk to the public health and safety, would compromise the AEC standard of "reasonable assurance" for the safety of plant operations, or would degrade the plant's margin of safety.

However worded, these concerns are beyond the scope of the NRC's notice of opportunity to comment on the draft EA

and FONSI, which deal strictly with the environmental impacts of granting the exemptions. Safety issues, on the other hand, pertain to the NRC's responsibilities under the AEA. As noted, the AEA does not require a hearing on the agency's consideration of an exemption. Moreover, to the extent that the NRC's technical judgment on these safety concerns is judicially reviewable, the U.S. Court of Appeals for the Second Circuit has concluded: "After reviewing the administrative record, it is apparent that the Commission conducted a detailed evaluation, considered the factors listed in the specific regulations and in the end acted reasonably. . . . This is a case where deference to the substantive decision of the Commission, as it relates to nuclear safety, is warranted." The remand by the Second Circuit to allow public participation on environmental concerns did not envision a second round of safety analysis. Nonetheless, to the extent practicable, the NRC has responded to safety concerns expressed by commenters in the comment resolution document.

Risk of Terrorism and Other Low-Probability, High-Consequence Events

Many comments raised the specter of a terrorist attack or other event that would defeat the Indian Point 3 defense-in-depth fire protection measures in place at the two affected fire areas for which exemptions have been granted. These commenters were concerned that a severe fire caused by these events could result in a loss of reactor safe shutdown capability and serious offsite consequences. As explained in this document, however, issues relating to terrorism and other low-probability, high-consequence events are beyond the scope of the EA and FONSI.

Acts of terrorism are inherently unpredictable and stochastic and, therefore, are not separately considered in preparing the NRC's environmental analyses. The NRC has, therefore, determined that NEPA "imposes no legal duty on the NRC to consider intentional malevolent acts" because those acts are "too far removed from the natural or expected consequences of agency action." (*Amergen Energy Co. LLC* (Oyster Creek Nuclear Generating Station), CLI-07-8, 65 NRC 124, 128 (2007), *aff'd*, *New Jersey Dep't of Env'tl. Prot. v. NRC*, 561 F.3d 132 (3d Cir. 2009)).¹

¹ The NRC acknowledges that a split in the circuit courts exist on this point, see *San Luis Obispo Mothers for Peace v. NRC*, 449 F.3d 1016 (9th Cir. 2006), but adheres to its position, outside of the Ninth Circuit, that NEPA does not require consideration of terrorists attacks.

Although the inherent uncertainty of terrorism precludes reliably quantifying the likelihood of a terrorist attack, under credible threat conditions assumed by the NRC, the probability of such an attack is believed to be low. To provide high assurance that a terrorist act will not lead to significant radiological consequences, the NRC has analyzed plausible threat scenarios and has defined, by regulation, a Design Basis Threat of radiological sabotage in 10 CFR 73.1 that licensees must protect against. Aside from the Design Basis Threat of radiological sabotage, the NRC has also established new physical protection requirements in 10 CFR 73.55 to protect against radiological sabotage as well as requirements for safety/security interface in 10 CFR 73.58, potential aircraft threats in 10 CFR 50.54(hh)(1), and the loss of large areas of the plant due to explosions and/or fire to mitigate potential consequences for these threat scenarios as well as accident scenarios with similar radiological consequences in 10 CFR 50.54(hh)(2). Each of these protective and mitigation measures has been taken without regard to the probability of an attack. The NRC's approach is consistent with NEPA. As the Third Circuit has held, "precautionary actions to guard against a particular risk do not trigger a duty to perform a NEPA analysis."

Whether resulting from a terrorist attack or some internally-initiated event, the NRC staff determined from its independent safety evaluation of the licensee's proposal that the configuration of the fire zones under review provide reasonable assurance that a severe fire is not plausible and the existing fire protection features are adequate. From this and related findings, the NRC concluded that the proposed action would not significantly increase the probability or consequences of accidents. This finding renders a severe fire in the affected areas resulting from granting the exemptions, however initiated or whatever its consequences, so unlikely as not to require further environmental analysis. (*New York v. NRC*, 589 F.3d 551, 554 n.1 (D.C. Cir. 2009)).

Alternatives to the Proposed Action

Some commenters claimed that the NRC did not consider denying the exemptions and requiring compliance with 10 CFR part 50, appendix R, section III.G.2, or some other alternative. In fact, the NRC did consider the alternative of denying the exemption requests. The Federal Register notice for the EA and FONSI stated clearly that the "no action" alternative would involve

the "denial of the proposed action" (*i.e.*, the denial of this exemption request). A necessary and implicit aspect of the "no action" alternative would be requiring the licensee to comply with 10 CFR part 50, appendix R.

The NRC determined, however, that denial of the exemption requests would result in no change in current environmental impacts, and that the environmental impacts of denying the exemption requests or approving the requested exemptions are similar. Thus, the NRC has considered imposing a requirement that the fire insulation be upgraded to meet the one-hour requirement in 10 CFR part 50, appendix R. Moreover, consideration of requiring the licensee to comply with the one-hour barrier requirement necessarily bounds any period less than one-hour, *i.e.*, a fixed period not tied to Hemyc test results. In any event, "the range of alternatives an agency must consider is narrower when, as here, the agency has found that a project will not have a significant environmental impact." (*Friends of the Ompompanoosuc v. FERC*, 968 F.2d 1549, 1558 (2d Cir. 1992); *City of New York v. DOT*, 715 F.2d 732, 744 (2d Cir. 1983)).

Compilation of the Record for Granting the Exemptions

Several commenters suggested that the NRC had not considered categories of relevant documents or specific documents relating to Indian Point 3 or fire protection issues. The NRC staff reviewed all information supplied by the licensee and commenters in accordance with 10 CFR 50.12 and appropriate guidance and engineering judgment in granting the exemptions. The commenters, however, have either failed to identify specific documents not considered by the NRC or have failed to demonstrate the relevance or probative value of specific documents they have cited. On this point, the Second Circuit recently found that one commenter's failure to demonstrate that specific "documents are in fact relevant or probative" was fatal to the individual's claim that the NRC improperly failed to consider specific documents.

NRC's Adoption of a New Categorical Exclusion for Exemptions

Some commenters questioned whether the NRC has applied or relied upon the recently revised provisions of 10 CFR 51.22(c)(9) in granting the exemptions. These provisions categorically exclude certain qualifying exemptions from environmental review, such as the review given the exemptions in this instance. These new provisions,

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however, were adopted after 2007, when the exemptions at issue were initially granted. Consequently, the new provisions played no part in the NRC's decision-making on the current decision to grant the exemptions.

Publication of the draft EA and FONSI for the requested exemptions included a brief discussion of this regulatory amendment to inform the public of a topically-relevant change in the NRC's regulations occurring since the NRC approved the requested exemptions in 2007 (78 FR 20144: April 3, 2013). The NRC included this information because these changes will be relevant to future exemption requests, but did not suggest that 10 CFR 51.22(c)(9) applies to the requested exemptions. Moreover, the NRC observed in the discussion that "[a]lthough NRC approval of exemptions that meet the criteria of this section no longer require preparation of an EA/FONSI, the NRC retains discretion to prepare an EA and FONSI, including an opportunity for public comment, where special circumstances exist." Finally, we note that the NRC recently published an editorial correction to 10 CFR 51.22(c)(9) (78 FR 34245: June 7, 2013) to clarify that this provision categorically excludes certain kinds of stand-alone exemptions from environmental review, not just exemptions issued as a license amendment.

III. Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letters dated July 24, 2006, April 30, 2007, May 23, 2007, and August 16, 2007 (ADAMS Accession Nos. ML062140057, ML071280504, ML071520177, ML072400369, respectively); the EA and FONSI, dated September 24, 2007 (ADAMS Accession No. ML072110018); the NRC letter dated September 28, 2007, approving the exemption (ADAMS Accession No. ML072410254); and the draft EA and FONSI, dated March 26, 2013 (ADAMS Accession No. ML13066A275).

Dated at Rockville, Maryland, this 19th day of August 2013.

For the Nuclear Regulatory Commission.

Michele G. Evans,
Director, Division of Operating Reactor
Licensing, Office of Nuclear Reactor
Regulation.

[FR Doc. 2013-20703 Filed 8-26-13; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meetings Notice

AGENCY HOLDING THE MEETINGS: Nuclear
Regulatory Commission, [NRC-2013-
0001].

DATE: Weeks of August 26, September 2,
9, 16, 23, 30, 2013.

PLACE: Commissioners' Conference
Room, 11555 Rockville Pike, Rockville,
Maryland.

STATUS: Public and Closed.

Week of August 26, 2013

Monday August 26, 2013

2:00 p.m. Discussion of Management
and Personnel Issues (Closed—Ex. 2 and
6).

Tuesday, August 27, 2013

9:00 a.m. Briefing on NRC's
Construction Activities (Public Meeting)
(Contact: Michelle Hayes, 301-415-
8375).

This meeting will be webcast live at
the Web address—www.nrc.gov.

3:00 p.m. Briefing on NRC
International Activities (Closed—Ex. 1 &
9) (Contact: Karen Henderson, 301-415-
0202).

Week of September 2, 2013—Tentative

There are no meetings scheduled for
the week of September 2, 2013.

Week of September 9, 2013—Tentative

There are no meetings scheduled for
the week of September 9, 2013.

Week of September 16, 2013—Tentative

There are no meetings scheduled for
the week of September 16, 2013.

Week of September 23, 2013—Tentative

There are no meetings scheduled for
the week of September 23, 2013.

Week of September 30, 2013—Tentative

There are no meetings scheduled for
the week of September 30, 2013.

* * * * *

The schedule for Commission
meetings is subject to change on short
notice. To verify the status of meetings,
call (recording)—301-415-1292.
Contact person for more information:
Rochelle Baval, 301-415-1651.

* * * * *

The NRC Commission Meeting
Schedule can be found on the Internet
at: [http://www.nrc.gov/public-involve/
public-meetings/schedule.html](http://www.nrc.gov/public-involve/public-meetings/schedule.html).

* * * * *

The NRC provides reasonable
accommodation to individuals with
disabilities where appropriate. If you
need a reasonable accommodation to
participate in these public meetings, or
need this meeting notice or the
transcript or other information from the
public meetings in another format (e.g.
braille, large print), please notify
Kimberly Meyer, NRC Disability
Program Manager, at 301-287-0727, or
by email at [kimberly.meyer-chambers@
nrc.gov](mailto:kimberly.meyer-chambers@nrc.gov). Determinations on requests for
reasonable accommodation will be
made on a case-by-case basis.

* * * * *

This notice is distributed
electronically to subscribers. If you no
longer wish to receive it, or would like
to be added to the distribution, please
contact the Office of the Secretary,
Washington, DC 20555 (301-415-1969),
or send an email to [darlene.wright@
nrc.gov](mailto:darlene.wright@nrc.gov).

Dated: August 22, 2013.

Rochelle C. Baval,
Policy Coordinator, Office of the Secretary.
[FR Doc. 2013-20972 Filed 8-23-13; 4:15 pm]
BILLING CODE 7590-01-P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to
the provisions of the Government in the
Sunshine Act, Public Law 94-409, that
the Securities and Exchange
Commission will hold a Closed Meeting
on Thursday, August 29, 2013 at 2:00
p.m.

Commissioners, Counsel to the
Commissioners, the Secretary to the
Commission, and recording secretaries
will attend the Closed Meeting. Certain
staff members who have an interest in
the matters also may be present.

The General Counsel of the
Commission, or her designee, has
certified that, in her opinion, one or
more of the exemptions set forth in 5
U.S.C. 552b(c)(3), (5), (7), 9(B) and (10)
and 17 CFR 200.402(a)(3), (5), (7), 9(ii)
and (10), permit consideration of the
scheduled matters at the Closed
Meeting.

Commissioner Aguilar, as duty
officer, voted to consider the items
listed for the Closed Meeting in a closed
session.

Case 1:09-cv-10594-LAP Document 42-1 Filed 04/11/14 Page 21 of 101

**NRC Resolution of Public Comments
NRC-2013-0063
Indian Point Nuclear Generating Unit No. 3
Draft Environmental Assessment and Finding of No Significant Impact**

**U.S. Nuclear Regulatory Commission
Office of Nuclear Reactor Regulation**

August 2013
ADAMS Accession No. ML13203A145



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Introduction

This document presents the U.S. Nuclear Regulatory Commission's (NRC) responses to comments received on a draft environmental assessment (EA) and finding of no significant impact (FONSI). The NRC was reconsidering its issuance of a revision of existing exemptions from Title 10 of the *Code of Federal Regulations* (10 CFR) Part 50, Appendix R, "Fire Protection Program for Nuclear Power Facilities Operating Prior to January 1, 1979," for Fire Areas ETN-4 and PAB-2, issued to Entergy Nuclear Operations, Inc., the licensee, for operation of Indian Point Nuclear Generating Unit No. 3, located in Westchester County, NY.

The notice and request for comment was issued in the *Federal Register* on April 3, 2013 (78 FR 20144). The public comment period was originally scheduled to close on May 3, 2013. However, due to requests from the public, the comment period was extended to June 3, 2013, by notice in the *Federal Register* on May 7, 2013 (78 FR 26662).

The NRC received a total of 135 submissions¹ in response to its April 3, 2013, *Federal Register* notice (FRN). The staff reviewed every submission. The staff's resolution of comments are included in three parts as described below.

Principal comments were received in letters dated June 3, 2013, from Mr. Richard Brodsky on behalf of himself and others, Mr. Phillip Musegaas on behalf of Riverkeeper, Inc., and Ms. Alyse Peterson on behalf of the New York State Energy Research and Development Authority (NYSERDA). In Part 1, the NRC staff summarized the principal comments in the three letters referenced above and provided its responses as Brodsky Comment 1, Brodsky Comment 2, and so forth. Many of the principal comments submitted are outside the scope of the environmental assessment, which deals strictly with the environmental impacts of granting the exemptions.

Most of the remaining submissions included one or more comments that were similar or substantially the same as those included in the letters of the principal submitters. Thus, these remaining comments are enveloped by those of the principal commenters. Part 2 is a table that provides a complete listing of the submissions, the submission number, the NRC's Agencywide Documents Access and Management System (ADAMS) Accession Number for each submission, and references to each of the principal comments that most closely relates to the submission.

Finally, a number of submissions included comments that were not enveloped by the principal comments. Almost all of these comments were found to be outside of the scope of the EA and FONSI, which deals strictly with the environmental impacts of granting the exemptions. Part 3 has grouped these comments and lists the ADAMS accession number for each individual submission.

¹ This document distinguishes between submissions and comments. A submission is a single document (like a letter or e-mail) that contains one or more comments.

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PART 1

.PRINCIPAL COMMENTS RECEIVED FROM RICHARD BRODSKY, RIVERKEEPER, AND
THE STATE OF NEW YORK

The NRC staff identified three submissions as having the principal comments most representative of all comments received. These submissions were letters dated June 3, 2013, from Mr. Richard Brodsky (including Mr. Brodsky's letter dated May 10, 2013 to the Hon. Loretta A. Preska, Chief United States District Judge for the Southern District of New York) on behalf of himself and others, Mr. Phillip Musegaas on behalf of Riverkeeper, Inc., and Ms. Alyse Peterson on behalf of NYSERDA. In the discussion below, the staff summarizes these comments and provides the staff's response for what we will refer to as the principal comments.

Brodsky Comment 1 (BC 1):

The NRC has not met NRC exemption requirements as they relate to NRC's statutory obligations under the National Environmental Policy Act (NEPA), the Atomic Energy Act (AEA) and the Administrative Procedure Act (APA). Confusion exists as to the legal status of the exemptions granted in 2007 and as to the reference to "exemptions" rather than a single exemption.

Documents filed in the *Brodsky v. NRC* court proceedings should be made part of the administrative record of this Environmental Assessment (EA) and Finding of No Significant Impact (FONSI), including the letter dated May 10, 2013 from the commenter to Chief U.S. District Judge Preska in the *Brodsky v. NRC* proceeding.² It is open to question whether the NRC has taken a "hard look" at the issues raised in this EA and FONSI; whether a public hearing must be held on this matter; and whether the evidentiary record compiled for consideration of the exemptions is sufficient. The NRC's refusal to accept comments by email constitutes an illegal and unfair obstacle to full public participation.

A consequence of a fire lasting longer than 24 minutes would be a meltdown of the reactor, and that issuance of this exemption would therefore jeopardize the public health, safety, and security of almost 20 million people. The adverse impacts of granting the exemption are reasonably foreseeable, are not remote or speculative, and involve catastrophic consequences even if the probability of occurrence is low. NRC should withdraw its EA and FONSI and prepare an environmental impact statement (EIS), and/or deny the request for this exemption.

² Mr. Brodsky's suit against the NRC challenging the Indian Point 3 exemptions resulted in dismissal of those claims in *Brodsky v. NRC*, 783 F. Supp. 2d 448, 457 n.7 (S.D.N.Y. 2011). The United States Court of Appeals for the Second Circuit reversed and vacated the judgment of the District Court on the ground that NRC had not adequately considered public participation in the NRC's exemptions decision to the extent required by NEPA. Its Opinion was issued in *Brodsky v. NRC*, 704 F.3d 113 (2d Cir. 2013). In a separate Summary Order, the Second Circuit affirmed all other rulings by the District Court, unrelated to the NEPA public participation claim, challenging the exemptions. See *Brodsky v. NRC*, No. 11-2016-cv, "Summary Order" (2d Cir. Jan. 7, 2013). The NRC refers to those two separate decisions as the Opinion and Summary Order of the Second Circuit.

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NRC Response:

The NRC has acted in accordance with its statutory obligations in considering Mr. Brodsky's comments as well as in making its FONSI regarding the exemptions. This comment did not offer any information, as distinct from legal argumentation, to the contrary.

The *Federal Register* notice refers to "exemptions" because the Indian Point 3 licensee was originally granted a separate exemption for each of two fire zones in the plant in 2007. The first exemption permitted the licensee to use 24-minute rated fire barriers to protect redundant safe-shutdown trains in the Upper and Lower Electrical Tunnels (Fire Area ETN-4, Fire Zones 7A and 60A, respectively), and the Upper Penetration Area (Fire Area ETN-4, Fire Zone 73A). The second exemption allowed the licensee to use a 30-minute rated fire barrier to protect redundant safe shutdown trains in the 41' Elevation CCW Pump Area (Fire Area PAB-2, Fire Zone 1). Therefore, the *Federal Register* notice for the reissued EA and FONSI has used the same plural. The legal status of the exemptions granted initially in 2007 is discussed in response to Brodsky Comment 3 below.

The NRC has included in the record of this proceeding all documents it has found relevant to its determination. This commenter and others alluded to other documents, but did not identify specific documents and/or did not explain the relevance of the document to the exemptions requests. The NRC has treated commenter's letter to Judge Preska as a separate comment letter, and has responded to any issues raised in this letter accordingly. See NRC Response to Brodsky 3, 6, 8, and 9. The legal issues the commenter briefly identifies in this comment are discussed more fully in NRC Responses to Brodsky Comments 2, 7 and 8.

The NRC disagrees with the commenter's assertion that the NRC's refusal to accept comments by email constitutes an illegal and unfair obstacle to full public participation in this proceeding. The NRC reissued the EA and FONSI for the requested exemptions with a 30-day public-comment period, which the agency extended for an additional 30 days at the request of the public. The NRC allowed the public to use several methods to submit comments, including electronically via the Federal Rulemaking Web site (<http://www.regulations.gov>), fax or mail. The NRC also provided an agency employee contact to answer any questions regarding the NRC's dockets on the Federal Rulemaking Web site. The NRC has thus granted the public a meaningful opportunity to provide input in the decision-making process for this exemption request.

Finally, the NRC disagrees with the commenter's factual assertions, for example, "that a consequence of such a fire going beyond 24 minutes is a meltdown of the reactor." Indian Point Unit 3, like all nuclear power plants, has defense-in-depth features to prevent fires and to suppress any fires that might occur. The fire barrier in place sufficiently assures that if a fire does occur and is not promptly suppressed, it will not challenge safe shutdown of the facility. The fire barrier was tested under worst-case fire conditions in a furnace with essentially unlimited fuel. Therefore, the fire-rating of 24 minutes, the lesser of the two ratings, is nonetheless conservative. The fire areas referenced in the exemptions have a limited potential for significant fires, due to limited combustible loading. Both areas feature fire protection features for detecting and suppressing fires as well as the fire barrier providing protection from credible fires that could occur in the event that a fire is not rapidly suppressed. Therefore, the NRC has determined that a fire in either area would not challenge the 24- or 30-minute rating approved by the exemptions, even under the worst foreseeable fire conditions. This led the NRC to conclude in its safety evaluation for these exemptions that Indian Point Unit 3's post-fire safe-shutdown capability would not be impacted.

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As explained more fully in response to Brodsky Comment 2 and Riverkeeper Comment 1, the NRC has concluded that granting the exemptions will not result in a decreased or otherwise unacceptable reduction in safety margins at Indian Point 3. In light of the EA prepared for the exemptions and the resulting FONSI, no EIS is warranted.

Brodsky Comment 2 (BC 2):

The EA and FONSI have not considered reasonable alternatives to the requested exemption in violation of the AEA, NEPA, the APA, the decisions issued by the Second Circuit and the Southern District of New York, and the NRC's regulations. The NRC limited its consideration to either issuing the exemption or taking no action at all, and did not consider viable alternatives: a requirement that the fire insulation be upgraded to meet the one-hour requirement, a requirement that the fire insulation be upgraded to a different time frame not tied to the Hemyc test results; other non-administrative remedies; and a modification of the Indian Point 3's fire protection program to utilize National Fire Protection Association Standard 805 (NFPA 805). The commenter requested that if the exemption is not denied, the EA and FONSI should be withdrawn until these alternatives are considered as part of a comprehensive environmental impact study.

NRC Response:

The NRC has considered several of the alternatives suggested in this comment, including the alternative of denying the exemption request. The *Federal Register* notice for the reissued EA and FONSI for these exemptions stated clearly that the "no action" alternative would involve the "denial of the proposed action" (i.e., the denial of this exemption request). See 78 FR 20144-20146 (Apr. 3, 2013). The NRC determined, however, that denial of the exemption request would result in no change in current environmental impacts. The NRC further determined that the environmental impacts of denying the exemption request and approving the requested exemptions are similar. A necessary and implicit part of the "no action" alternative would be requiring compliance with 10 CFR Part 50, Appendix R, because if the NRC denied the requested exemptions from the regulations in Appendix R, the licensee would be required to comply with these regulations. Thus, the NRC has considered imposing a requirement that the fire insulation be upgraded to meet the one-hour requirement in Appendix R. Moreover, consideration of requiring the licensee to comply with the one-hour fire barrier requirement necessarily bounds any period less than one hour, which would include any fixed period not tied to Hemyc test results, therefore, different time frames were also considered in the alternatives.

The commenter did not specify what "non-administrative remedies" might constitute an appropriate substitute for the exemptions. The NRC is not aware of any non-administrative remedies that should have been considered as an alternative in the EA for these exemptions. The NRC considered the most reasonable and obvious alternative to the proposed action – the denial of the exemption request and compliance with the requirements in 10 CFR Part 50, Appendix R.

With regard to the suggested alternative involving the use of NFPA 805, that is an option and not a requirement for Indian Point 3. As stated in 10 CFR 50.48(b)(2), plants licensed to operate before January 1, 1979, must comply with 10 CFR Part 50, Appendix R. Indian Point Unit 3 falls within the scope of 10 CFR 50.48(b), as it was licensed to operate before January 1, 1979. However, Section 50.48(c)(3)(i) provides that a licensee may choose to comply with NFPA 805 as an alternative to complying with 10 CFR 50.48(b), but does not require licensees

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to do so. Thus, if the NRC were to deny the requested exemptions, the licensee must comply with Appendix R and not with NFPA 805. Consequently, it was reasonable for the NRC not to further examine this suggested alternative.

In any event, "the range of alternatives an agency must consider is narrower when, as here, the agency has found that a project will not have a significant environmental impact." *Friends of the Ompompanoosuc v. FERC*, 968 F.2d 1549, 1558 (2d Cir. 1992); *City of New York v. DOT*, 715 F.2d 732, 744 (2d Cir. 1983). As stated in the FONSI, the NRC concluded based on its EA that the proposed action (i.e., granting the requested exemptions) will not have a significant effect on the quality of the human environment. Accordingly, the NRC does not agree that the EA and FONSI should be withdrawn for the requested exemptions, or that an EIS should be prepared for these exemptions.

Brodsky Comment 3 (BC 3):

This exemption is not authorized by law because: (A) the record contains no evidence on the requirement under 10 CFR 50.12 that the exemption is authorized by law; (B) the exemptions are permanent, rather than limited in duration; (C) the NRC's failure to consider relevant and probative evidence renders its prior approval of the exemption unauthorized by law; (D) the NRC's earlier failure to publish the exemption request for public comment invalidates its prior 2007 approval of the exemption; (E) confusion exists over the legal status of the exemption granted in 2007; (F) the NRC has invalidly characterized this proceeding as a reconsideration of the exemption granted in 2007, and has failed to provide the public with adequate information regarding the notice-and-comment process, and has not solicited the views of the State of New York as it did in 2007; and (G) the NRC has not considered denying the exemption requests and has arbitrarily limited options to modifying the exemption, thus prejudging the outcome.

NRC Response:

The NRC correctly determined that the requested exemptions are authorized by law, and will address each of the commenter's points in turn. As a general matter, it is well established that the AEA and the NRC's regulations implementing the AEA provide the NRC with authority to grant exemptions from its regulations, including the fire protection requirements in 10 CFR 50.48 and 10 CFR Part 50, Appendix R. Most recently, the U.S. Court of Appeals for the Second Circuit upheld the agency's authority to issue exemptions from its regulations. See *Brodsky v. NRC*, No. 11-2016-cv, "Summary Order" (2d Cir. Jan. 7, 2013) (slip op. at 3).

(A) The NRC record for the requested exemptions discusses why the NRC concluded that these exemptions are authorized by law. On page 11 of the safety evaluation for these exemptions, the NRC explains that granting these exemptions will not result in a violation of the AEA or the NRC's regulations, and thus concludes that these exemptions are authorized by law. The Second Circuit recently affirmed that this discussion suffices to support a finding that an exemption is authorized by law:

[W]e do not read 10 C.F.R. § 50.12, which mandates simply that the grant of an exemption be "authorized by law," to require the NRC to provide a detailed explanation as to why a grant is consistent with the provisions of the AEA, APA, or NEPA. To the extent plaintiffs allege that the exemption does not comport with any of these statutes, we address those particular contentions separately. But insofar as the NRC generally considered whether any law prohibited granting

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the exemption and concluded that none did, we hold that no more was required by § 50.12.

Id. at 5–6. This accords with earlier precedent to the same effect. *Shoreham-Wading River Central School District v. NRC*, 931 F.2d 102, 106 (D.C. Cir. 1991). Here, the NRC considered whether any law, including NEPA, prohibited the issuance of these exemptions and concluded that none did.

(B) The NRC does not agree that only temporary exemptions are valid. Section 50.12 lists the temporary nature of an exemption as only one of six possibilities in which special circumstances justify an exemption. Thus, that “[t]he exemption would provide only temporary relief from the applicable regulation,” see 10 CFR 50.12(a)(2)(v), and offers only one of six possible “special circumstances” for a valid exemption. Moreover, the U.S. District Court for the Southern District of New York rejected the argument that only a temporary exemption is valid because the plain language of 10 CFR 50.12 does not require that all exemptions be temporary. *Brodsky v. NRC*, 783 F. Supp. 2d 448, 457 n.7 (S.D.N.Y. 2011), *vacated in part on other grounds*, 704 F.3d 113 (2d Cir. 2013).

The NRC is not persuaded to the contrary by *Massachusetts v. NRC*, 878 F.2d 1516 (1st Cir. 1989). That decision upheld an exemption from the requirement to conduct an emergency preparedness exercise within 120 days of reaching full power. *Id.* at 1525. The U.S. Court of Appeals for the First Circuit upheld the exemption in that case, however, based on the reasonableness of the NRC’s exercise of discretion under the circumstances, not the temporary nature of the exemption. *Id.* Thus, this case does not stand for the proposition that an exemption may be valid only if it is temporary in nature.

(C) The commenter has not demonstrated the relevance or probative value of any evidence that the commenter believes the NRC has not considered. The NRC notes that the Second Circuit recently concluded that the same commenter’s failure to show that specific “documents are in fact relevant or probative” was fatal to the commenter’s claim that the NRC improperly limited the administrative record and failed to consider certain documents. *Brodsky v. NRC*, “Summary Order,” slip op. at 7 (2d Cir. Jan. 7, 2013). See also the NRC’s response to Brodsky Comment 7

(D) and (E) The NRC disagrees that confusion exists with regard to public participation in the NRC’s reconsideration of the exemptions. The agency has granted the public a well-explained opportunity to participate in the decision-making process for the requested exemptions. See 78 FR 20144 (Apr. 3, 2013).

Nor is there any basis for confusion over the legal status of the exemptions. The Second Circuit’s Opinion requiring NRC to consider the appropriateness of public participation in the NRC’s review of the exemptions request in *Brodsky v. NRC* did not invalidate the exemptions granted to the licensee in 2007. Moreover, the Court’s separate Summary Order made clear that the Second Circuit rejected the plaintiffs’ challenge to the exemptions, except with regard to the single NEPA issue decided by the Opinion. That Opinion remanded the case to the district court with instructions for it to remand the case to the NRC, so that the agency may either “(1) supplement the administrative record to provide an explanation, with supporting affidavits or findings of fact, as to why affording public input into the exemption request was inappropriate or impracticable; or (2) take other such action as it may deem appropriate to resolve this issue.” *Brodsky v. NRC*, 704 F.3d at 124. The Second Circuit’s related decisions thus left the exemptions in place pending further consideration by the agency.

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In response to this remand, the NRC chose to "take other such action as it may deem appropriate to resolve this issue" and thus provide the public with a full opportunity to be heard on this exemption request. Consequently, the NRC issued a draft version of the EA and FONSI for the exemption request and published a request for public comment in the *Federal Register*. The NRC also provided direct notice to several interested parties, including the commenter. The NRC stated in its issuance of the draft EA and FONSI that the NRC "is reconsidering" its grant of the exemptions, and that "[a]s necessary, the underlying action (i.e., approval of the exemptions) may be modified in light of public comments." 78 FR 20144-20145 (Apr. 3, 2013). The NRC thus explicitly left open the possibility that, as a result of public comments received, it might decide to modify or even rescind the exemptions approved in 2007. As such, the NRC's prior approval of the exemptions did not predetermine or otherwise affect the NRC's current judgment in evaluating the public comments received and deciding anew to approve these exemptions. The public has therefore had a full opportunity to participate in the decision-making process related to these exemptions.

(F) The NRC disagrees with the commenter's assertion that the agency lacks authority to reconsider the issuance of an exemption. Federal agencies possess inherent authority over their decisions to be able to reconsider them based on new information. The courts have "recognized the general rule that agencies possess implied authority to reconsider and rectify errors even though the applicable statute and regulations do not expressly provide for such reconsideration." *Ala. Envtl. Council v. EPA*, 711 F.3d 1277, 1290 (11th Cir. 2013) (internal quotation marks omitted). Moreover, without such authority, the remand by the Second Circuit to "take such further action as it may deem appropriate to resolve this issue" would be rendered meaningless.

The NRC also does not agree with the commenter's assertion that it failed to provide the public with adequate information regarding the administrative process being used. In the notice of opportunity to comment on the draft EA and FONSI for these exemptions, the NRC made clear that the public could provide comments to the agency on these documents during the specified comment period, which was extended 30 days at the request of Mr. Brodsky and others. See 78 FR 26662 (May 7, 2013). The NRC utilized its standard notice-and-comment procedure, which is frequently employed by Federal agencies for rulemaking and other regulatory activities.

Finally, the NRC did directly solicit the views of the State of New York by sending the State the *Federal Register* notice of opportunity to provide comments on the reissued EA and FONSI for these exemptions. The NRC, in fact, received comments from the State of New York, as discussed below.

(G) The NRC has neither limited its options in reconsidering the exemptions nor prejudged the outcome, as this comment asserts. As explained in response to subparts (E) and (F) of this comment, after issuing the draft EA and FONSI for these exemptions, the NRC fully considered all public comments received and has weighed whether those comments justified rescinding or otherwise modifying the exemptions approved in 2007. The NRC did not prejudge the outcome of this proceeding, but rather carefully considered the public comments and then decided anew to approve these exemptions.

The NRC considered the option of denying the exemptions as part of the "no action" alternative. The NRC determined, however, that denial of the exemptions "would result in no change in current environmental impacts," and that the environmental impacts from either granting or

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denying the exemptions were "similar." See 78 FR 20146. Therefore, the NRC has not refused to consider denying the exemption request.

Brodsky Comment 4 (BC 4):

The exemption is not consistent with the common defense and security, which is a requirement of 10 CFR 50.12. First, the NRC record contains no documents that discuss the common defense and security. Second, the Hemyc insulation material's failure to meet Appendix R affects the Indian Point Nuclear Plant's ability to withstand fires resulting from acts of terrorism and other breaches of security, and the NRC did not consider this issue. Third, the NRC did not consider the ability of the administrative controls and manual fire suppression required by the exemption to survive acts of terrorism. Fourth, the specific elements of the exemption increase the risk and consequences of a terrorist attack. Fifth, the reliance upon automatic fire detection cannot be credited because the automatic detection system is not a safety-related system. Sixth, the exemption violates the defense-in-depth approach required by federal regulations.

NRC Response:

Just as no legal requirement exists for a separate document supporting NRC's conclusion that the exemption is "authorized by law" (see response to Comment 3 above), Section 50.12 does not require that the agency's "consistent with the common defense and security" conclusion be supported by a specific document or other evidence addressing that specific point. Rather, the NRC's "consistent with the common defense and security" conclusion is supported by the agency's detailed safety analysis. In this case, this analysis shows that "standing alone," the effect of the exemptions on the common defense and national security "appears nil." *Shoreham-Wading River Central School District v. NRC*, 931 F.2d at 106.

This comment asserts that Indian Point 3's automatic fire detection system is not safety-related. In accordance with NRC regulations, a nuclear plant's fire protection systems are not safety-related unless they serve to mitigate a design basis accident. Fire protection systems like those in the fire areas of the two exemptions, however, are subject to NRC-approved Quality Assurance Programs and such systems are inspected by NRC staff. The status of fire protection for the fire areas in question are therefore no different from any other fire protection systems not required to mitigate a design basis accident. Further, the exemption does not violate NRC's "defense in depth" regulatory approach. The Hemyc fire barrier is one such component of defense-in-depth. The other components are discussed in the exemption and are sufficient to demonstrate adequate protection, e.g., the plant's use of redundant cable trains with sufficient separation.

This comment's concerns related to security and terrorism are not relevant to the environmental effects of the subject exemptions and are thus outside the scope of the NEPA review of this proposed action. Since the terrorist attacks of September 11, 2001, the NRC has required enhanced security requirements at nuclear power plants to ensure that licensees maintain vigilance and a high degree of security awareness. Through a series of security orders, the Commission supplemented its Design Basis Threat for radiological sabotage against which licensees must protect and establish new security requirements for enhanced training, access authorization, protective strategies, mitigation measures, and integrated response. The NRC rulemaking amending 10 CFR Part 73 made the requirements of these orders generally applicable to all licensees. The NRC also established new requirements for safety/security interface in 10 CFR 73.58, potential aircraft threats in 10 CFR 50.54(hh)(1), and the loss of large areas of the plant due to explosions and/or fire to mitigate potential consequences for these

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threat scenarios as well as accident scenarios with similar radiological consequences in 10 CFR 50.54(hh)(2). The NRC routinely assesses threats and security-related information provided by many federal agencies and other sources through its ongoing regulatory process.

But acts or threats of terrorism do not implicate the NRC's responsibilities under NEPA. Acts of terrorism are inherently unpredictable and stochastic and therefore are not separately considered in preparing the NRC's environmental analyses. The NRC has, therefore, determined that NEPA "imposes no legal duty on the NRC to consider intentional malevolent acts" because those acts are "too far removed from the natural or expected consequences of agency action." See *Amergen Energy Co. LLC (Oyster Creek Nuclear Generating Station)*, CLI-07-8, 65 NRC 124, 128 (2007), *aff'd*, *New Jersey Dep't of Env'tl. Prot. v. NRC*, 561 F.3d 132 (3d Cir. 2009).

Although the inherent uncertainty of terrorism precludes reliably quantifying the likelihood of a terrorist attack, under credible threat conditions assumed by NRC, the probability of such an attack is believed to be low. To provide high assurance that a terrorist act will not lead to significant radiological consequences, NRC has analyzed plausible threat scenarios and required enhanced security measures to protect against these threats. Each of these protective and mitigation measures has been taken without regard to the probability of an attack. The risk of a terrorist attack, like the risk of a severe accident, cannot be eliminated, but these protective and mitigation strategies reduce the risk from a terrorist attack to a level that reasonably assures the public health and safety.

This approach is consistent with the agency's application of NEPA. As the Third Circuit has held, "precautionary actions to guard against a particular risk do not trigger a duty to perform a NEPA analysis." *New Jersey Dep't of Env'tl. Prot. v. NRC*, 561 F.3d 132, 142-43 (3d Cir. 2009).³

With regard to the specific exemptions at hand, the NRC has determined that, even if it were required by NEPA to consider acts of terrorism, any incremental risk of terrorism is too low to require environmental analysis. *New York v. NRC*, 589 F.3d 551, 554 n.1 (D.C. Cir. 2009).

Whether resulting from a terrorist attack or some internally-initiated event, the NRC staff determined from its independent safety evaluation of the licensee's proposal that the "configuration of the fire zones under review provide reasonable assurance that a severe fire is not plausible and the existing fire protection features are adequate." 78 Fed. Reg. at 20146. From this and related findings, the NRC concluded that "[t]he proposed action will not significantly increase the probability or consequences of accidents." *Id.* This finding renders a severe fire in the affected areas resulting from granting the exemptions, however initiated and whatever the offsite consequences, so unlikely as not to require further environmental analysis.

Brodsky Comment 5 (BC 5):

The exemption will present an undue risk to the public health and safety. The NRC intentionally and impermissibly used probabilistic analysis for a regulatory scheme that is deterministic. In the NRC's decision to grant an exemption in 2007, the agency intentionally excluded evidence

³ The NRC acknowledges that a split in the circuit courts exist on this point, see *San Luis Obispo Mothers for Peace v. NRC*, 449 F.3d 1016 (9th Cir.2006), but adheres to its position, outside of the Ninth Circuit, that NEPA does not require consideration of terrorists attacks.

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that showed that the licensee's request for an exemption was inherently dangerous, that the exemption cannot and has not been implemented in a manner that is consistent with its own assertions and promises, and that there are alternatives to the exemption that would be effective and possible. Finally, the NRC must take a hard look at evidence of the heightened risk, heightened consequence, and availability of alternatives.

NRC Response:

This comment cites a statement from NRC's safety evaluation that grant of the exemptions will not increase either the probability or consequences of a postulated accident because the exemptions create no new accident precursors. From this, the commenter infers that NRC has engaged in "impermissible use of probabilistic analysis," contrary to the regulatory requirement of a deterministic analysis. But the NRC's consideration of exemptions, including these, is not based on deterministic criteria. Terms such as "probable" and "likely" are appropriate to NRC's performance-based review of such requests. The NRC staff uses regulatory guidance and engineering judgment to determine if an exemption meets the criteria of 10 CFR 50.12 under the circumstances, which requires the agency to consider, inter alia, how is the system likely to perform if the exemption were granted? There are no deterministic criteria that must be met.

Notwithstanding the assertion that the exemptions would create heightened risk, the NRC's analysis found neither increased probability nor increased consequences of an accident resulting from granting the exemptions. From its independent safety evaluation of the licensee's proposal, the NRC determined that the "configuration of the fire zones under review provide reasonable assurance that a severe fire is not plausible and the existing fire protection features are adequate." See 78 FR 20146. From this and related findings, the NRC concluded that "[t]he proposed action will not significantly increase the probability or consequences of accidents." *Id.* This finding supports the NRC's performance-based conclusion that the licensee's proposed compensatory measures will achieve the underlying purpose of the rule.

The commenter has furnished no support for his assertion that "the NRC intentionally excluded evidence that shows that the licensee's request for an exemption is inherently dangerous," and failed to take a "hard look" at evidence that the exemptions would create "heightened risk." As noted, the Second Circuit rejected the same claim. *Brodsky v. NRC*, "Summary Order," slip op. at 7-8. See also NRC response to Brodsky Comments 3 and 6. Finally, the NRC notes that inspections since grant of the exemptions in 2007 confirm, contrary to the commenter's assertions, that the licensee has implemented the exemptions in accordance with its proposal.

For a discussion regarding reasonable alternatives, see NRC response to Brodsky Comment 2.

Brodsky Comment 6 (BC 6):

The NRC record developed for the requested exemption is grossly inadequate as a matter of fact and law. The record contains no documents that raise concerns about the legality, safety, or propriety of granting the exemption. Specifically, there are no documents related to the public health, safety, and security; the legal authority for the exemption; the impact of terrorism; the need for full public participation; and the failure to establish the required "special circumstances." The NRC deliberately excluded from the record and failed to consider dozens of documents that establish that the exemption should not have been granted.

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NRC Response:

As explained in response to subpart (C) of Brodsky Comment 3, the commenter has neither identified any evidence that the commenter believes the NRC has not, but should have, considered, nor demonstrated its relevance or probative value. The NRC has provided the public with full access to each of the documents that the NRC considered in granting the exemptions — many of which relate to public health and safety. The NRC staff reviewed all information supplied by the licensee and commenters in accordance 10 CFR 50.12 and appropriate guidance and engineering judgment. Although a multitude of other documents exist in the Indian Point 3 docket, they were not deemed relevant to the NRC's review of the request for exemptions. For a further response regarding the documents purportedly identified by the commenter, see NRC response to Brodsky Comment 7. As to documents related to the NRC's legal authority to issue exemptions, see NRC response to subpart (A) of Brodsky Comment 3.

Brodsky Comment 7 (BC 7):

Specified licensing documents or categories of documents establish that the exemption request should be denied and that the EA and FONSI should be withdrawn and an EIS should be prepared.

NRC Response:

The documents cited by the commenter form a portion of the current licensing basis (CLB) for the Indian Point 3. Generally speaking, "[t]he CLB represents the set of NRC requirements applicable to a specific plant and a licensee's written commitments for ensuring compliance with and operation within applicable NRC requirements and the plant-specific design basis (including all modifications and additions to such commitments over the life of the license) that are docketed and in effect." *South Texas Project Nuclear Operating Co.* (South Texas Project, Units 1 and 2), LBP-11-21, 74 NRC 115, 130 n.86 (2011). The CLB includes all applicable NRC regulations as well as NRC orders, license conditions, exemptions and technical specifications. It also includes "the plant-specific design-basis information" defined in 10 C.F.R. § 50.2 as documented in the most recent final safety analysis report (FSAR) as well as the licensee's commitments reflected in docketed licensing correspondence and NRC safety evaluations or licensee event reports. *Id.*

Because a plant's CLB represents the NRC's approved basis for plant operation, the agency's review of an exemption request does not require the agency to reexamine its previous approval of the CLB, but only those components and systems relevant to the request. In this instance, the commenter's citation to various CLB documents does not explain why each document, though related to plant safety, has some safety implication relevant to the specific exemption requests here. While the commenter asserts that the licensee "has made binding legal commitments to operate the units in full compliance with all requirements of Appendix R including but not limited to the one-hour insulation requirement," the exemption process under 10 CFR 50.12 provides an appropriate means for changing those binding license requirements. In this regard, the exemption provisions of 10 CFR 50.12 are part of the regulatory regime to which the licensee has agreed to be bound.

Thus, the "same regulation which imposes the [one-hour fire barrier] requirement [in 10 CFR Part 50, Appendix R, Subpart III.G.2] . . . allows for exemptions to it" under 10 CFR 50.12. *Massachusetts v. NRC*, 878 F.2d at 1521. In the safety evaluation supporting that change, the NRC determined that, as provided in 10 CFR 50.12(a)(2)(ii), application of the cable separation

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requirements under 10 CFR Part, Appendix R, subpart III.G.2 "is not necessary to achieve the underlying purpose of the rule." See Indian Point Nuclear Generating Unit No. 3, Docket No. 50-286, Revision to Existing Exemptions, section 3.0 (Sept. 28, 2007). The NRC concluded that, given the existing fire protection features in the affected fire zones, the licensee continues to meet the underlying purpose of subsection III.G.2 for the affected areas." *Id.*

The commenter refers to a variety of documents relating to various Indian Point 3 analyses or systems as deserving NRC's attention, but has not explained how those general references would have affected NRC's review or led NRC to reach a different conclusion regarding the potential environmental impact of the proposed exemptions. For example, the commenter asserts that some of those documents "establish that the existing systems and plans cannot cope with fire safety dangers within 24 minutes," but does not explain why this is so. Nonetheless, the NRC staff considered these documents and concluded that they do not provide new and significant information and are not relevant to the proposed action.

To review the exemptions request, the NRC did not require review of every document relevant to the Indian Point 3 CLB, or even every document relevant to a particular system. For example, the commenter refers to the plant's Current Electrical Separation Analysis, but the licensee provided the proximity of redundant cable trains, which was sufficient to review the exemption requests. The commenter also refers to the licensee's Fire Hazards Analysis. This, however, is a licensee document that NRC did not have to review because the licensee submitted sufficient information from the analysis, e.g., relevant fire loading and ignition sources, to describe the rationale for the exemption.

The commenter notes that the licensee has taken compensatory measures to account for noncompliances with NRC fire protection requirements. But the NRC has required the licensee to take timely corrective action for noncompliances. NRC's fire protection program both permits and requires compensatory measures to be in place while the licensee achieves full compliance. The commenter also refers to Operator Manual Actions, but the exemptions do not involve operator manual actions. The exemption is from the requirement in 10 CFR 50, Appendix R, Section III.G.2, for a one-hour fire rating for a protected train of cables to achieve and maintain safe shutdown capability. Other documents to which the commenter referred were not relevant to the exemptions and are reviewed by other processes.

Brotsky Comment 8 (BC 8):

The commenter requested that the NRC grant an evidentiary hearing with respect to this exemption request.

NRC Response:

The NRC is denying the commenter's request for a hearing. Neither the AEA nor the NRC's regulations grant the right to a hearing on an application for an exemption. See 42 U.S.C. § 2239(a); *Kelley v. Selin*, 42 F.3d 1501, 1514-17 (6th Cir. 1995); *Massachusetts v. NRC*, 878 F.2d 1516, 1521 (1st Cir. 1989). Moreover, the U.S. Court of Appeals for the Second Circuit recently rejected the argument that the AEA or APA requires the NRC to hold a hearing before it could grant an exemption. *Brotsky v. NRC*, No. 11-2016-cv, "Summary Order" (2d Cir. Jan. 7, 2013)(slip op. at 4 & n.1).

Nonetheless, the NRC has provided the public with an opportunity to provide comments on the draft EA and FONSI for the requested exemptions, including a 30-day extension of the comment

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period, to bring to the NRC's attention any evidence and factors that the public would like the NRC to consider. In response to a request to extend the public-comment period for the draft EA and FONSI, the NRC granted additional time for the public to submit comments on these documents. The NRC received and carefully considered the many comments from the public on the draft EA and FONSI before making its final decision not to rescind or modify the requested exemptions. The NRC has concluded that the record is sufficient to weigh all the factors essential to exercising its judgment under NEPA reasonably.

Brodsky Comment 9 (BC 9):

Any application of the 2010 NRC regulatory change, which amended the NRC's regulations to no longer require environmental review and public notice of many exemptions, is inconsistent with the requirements of the recent decision issued by the U.S. Court of Appeals for the Second Circuit.

NRC Response:

Publication of the draft EA and FONSI for the requested exemptions in the *Federal Register* included a brief discussion of an amendment to 10 CFR 51.22(c)(9) to inform the public of a topically-relevant change in the NRC's regulations since the NRC approved the requested exemptions in 2007. See 78 FR 20144-20146 (Apr. 3, 2013). The NRC included this information because these changes will be relevant to future exemption requests. The NRC did not suggest that 10 CFR 51.22(c)(9) should apply retroactively to the requested exemptions, but merely observed that "[a]lthough NRC approval of exemptions that meet the criteria of this section no longer require preparation of an EA/FONSI, the NRC retains discretion to prepare an EA and FONSI, including an opportunity for public comment, where special circumstances exist." *Id.* at 20,146. Thus, the NRC has not applied the categorical exclusion in 10 CFR 51.22(c)(9) to the requested exemptions, but rather has prepared, and requested public comment on a draft EA and FONSI for these exemptions. It should be noted that the NRC recently published an editorial correction to Section 51.22(c)(9) to clarify that this provision categorically excludes certain kinds of stand-alone exemptions from environmental review, not just exemptions issued as a license amendment. See 78 FR 34245- 34246 (June 7, 2013).

Riverkeeper Comment 1 (RC 1):

The NRC should deny the exemption request because it is unauthorized by law and, if maintained, would unacceptably reduce safety margins. Alternatively, the commenter requested that the NRC prepare an EIS that includes reasonable alternatives other than "no action" as well as a cumulative impacts analysis of all exemptions for Indian Point Units 2 and 3.

NRC Response:

The NRC does not agree that the exemption request should be denied. The NRC has determined that issuance of the requested exemptions is authorized by law, and the Second Circuit has affirmed that conclusion. See NRC Response to Subpart A of Brodsky Comment 3. With regard to the commenter's assertion that granting the exemptions will result in a reduction of safety margins, the NRC has reached a very different conclusion. As stated in the safety evaluation, the NRC concluded that, based on the existing fire barriers, fire detectors, automatic and manual fire suppression equipment, administrative controls, the licensee's fire hazard analysis, the Hemyc configuration, and the absence of significant combustible loads and ignition

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sources, granting these exemptions would meet the underlying purpose of 10 CFR Part 50, Appendix R, Subsection III.G.2. In other words, the NRC determined that the issuance of these exemptions would provide an equivalent level of protection required by the NRC's regulations. Thus, these exemptions would not result in an unacceptable reduction in safety margins at Indian Point 3, but rather would assure an equivalent level of safety.

The NRC also does not agree that an EIS should be prepared. The NRC prepared an EA for the exemptions application. The EA determined that granting the exemptions "will not significantly increase the probability or consequences of accidents," will not result in additional radiological releases or exposure, and will not result in any potential nonradiological impacts." See 78 FR 20146. After preparing an EA, the NRC either prepares an EIS or a FONSI. See 10 CFR 51.31(a). Here, the NRC concluded that "there are no significant environmental impacts associated with the proposed action." See 78 FR 20146. Given this finding of no significant impacts, no EIS will be prepared. See 10 CFR 51.32(a)(2). It is noted that the Second Circuit considered and rejected the claim that an EIS is required for the exemptions. *Brodsky v. NRC*, "Summary Order," slip op. at 8-9.

As explained in NRC Response to Brodsky Comment 2, the NRC considered the most reasonable alternative to the proposed action in its EA, and had good reason for not considering the other alternatives proposed in public comments. The subject exemptions will not result in significant environmental impacts and the grant of other exemptions for Indian Point 2 and 3 (ADAMS Accession No. ML12172A370) have likewise not involved significant environmental impacts. Therefore, significant cumulative environmental impacts are not expected as a result of any overlapping impacts from the currently requested exemption and previously granted exemptions to Indian Point Units 2 and 3.

Riverkeeper Comment 2 (RC 2):

The NRC should hold a public evidentiary hearing within the vicinity of the Indian Point Nuclear Plant on the requested exemptions. In the alternative, the commenter requested that the NRC convene a Category III Public Meeting to inform the public of the NRC's consideration of public health and safety.

NRC Response:

The NRC is denying the commenter's request for a hearing or public meeting on this matter for the reasons discussed in NRC Response to Brodsky Comment 8.

Riverkeeper Comment 3 (RC 3):

The NRC should revise the *Federal Register* notice that solicited public comment on the EA and FONSI for this exemption to acknowledge that 10 CFR 51.22(c)(9) applies to license amendments, not exemptions that are granted without the issuance of a license amendment. Additionally, the NRC should revise that *Federal Register* notice to explain the applicability of 10 CFR 51.22(c)(9) to the requested exemption.

NRC Response:

The NRC acknowledges that the amendment of 10 CFR 51.22(c)(9) in 2010 left unclear whether the categorical exclusion of some exemptions from environmental review referred only to exemptions issued in conjunction with an amendment. This amendment was intended to

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expand the scope of the categorical exclusion in 10 CFR 51.22(c)(9) to include stand-alone exemptions (i.e., exemptions that are not issued as part of a license amendment). Thus, the Statements of Consideration for the 2010 amendment state that “[t]he final rule amends 10 CFR 51.22(c)(9) to broaden the scope of the categorical exclusion to include the granting of a power reactor licensee exemption request from a requirement pertaining to the installation or use of a facility component located within the restricted area, as defined in 10 CFR Part 20.” See 75 FR 20253 (April 18, 2010).

The NRC recently corrected this potential ambiguity in 10 CFR 51.22(c)(9). See 78 FR 34245 (June 7, 2013). The NRC corrected 10 CFR 51.22(c)(9)’s introductory text to read as follows: “Issuance of an amendment to a permit or license for a reactor under part 50 or part 52 of this chapter that changes a requirement or issuance of an exemption from a requirement, with respect to installation or use of a facility component located within the restricted area, as defined in part 20 of this chapter; or the issuance of an amendment to a permit or license . . . provided that.” See 78 FR 34249. Thus, any ambiguity in 10 CFR 51.22(c)(9) has been eliminated by the change to “issuance of an amendment” or “issuance of an exemption.”

With regard to the applicability of 10 CFR 51.22(c)(9) to the requested exemptions, the NRC has not applied the categorical exclusion in 10 CFR 51.22(c)(9) to the requested exemptions, but rather has prepared, and requested public comment on, an EA and FONSI for these exemptions. The NRC included a description of 10 CFR 51.22(c)(9) in the *Federal Register* notice for the draft EA and FONSI solely to inform the public of pertinent developments. See NRC Response to Brodsky Comment 9.

Riverkeeper Comment 4 (RC 4):

The NRC should review and consider six documents, and that these documents be made part of the administrative record for this exemption. These documents include (1) NUREG-0050, Recommendations Related to Browns Ferry Fire (Feb. 1976) (ADAMS Accession No. ML070520452); (2) List of Indian Point Exemptions, 1968–2012 (June 20, 2012) (ADAMS Accession No. ML12172A370); (3) NL-07-138, Entergy Reply to Request for Additional Information Regarding License Renewal Application (Fire Protection System and Components), dated November 16, 2007; (4) NL-08-0511, Entergy Reply to Request for Additional Information Regarding License Renewal Application (Balance of Plant, Fire Protection, and Nickel Alloy), dated March 12, 2008; (5) Entergy Nuclear Indian Point 3, LLC.; Entergy Nuclear Operations, Inc., Indian Point Nuclear Generating Unit 3; Exemption, 77 FR 8904 (Feb. 15, 2012); and (6) Letter from Eric J. Leeds, Director, NRC Office of Nuclear Reactor Regulation, to Jerome M. Hauer, Commissioner, New York State Division of Homeland Security and Emergency Services, dated January 31, 2012 (ADAMS Accession No. ML113480448).

NRC Response:

The commenter has not identified why these six documents are relevant to the licensee’s request for exemptions, or how their consideration would affect the NRC’s decision to grant the exemptions. Nor has the commenter explained why those documents are relevant to the EA or FONSI for the exemptions. While the Browns Ferry fire has been highly significant in the NRC’s analysis of severe fire risk related upgrades to fire protection requirements in 10 CFR 50.48 and Appendix R, these developments are not directly relevant to the NRC’s consideration of 10 CFR 50.12 criteria to the specific requirements of Appendix R, Subsection III.G.2 to the two subject fire areas at Indian Point 3. Nonetheless, the NRC staff considered these documents and

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concluded that they do not provide new and significant information and are not relevant to the proposed action.

Similarly, the application at hand is fact-specific, requiring a performance-based analysis for the specific features of the two subject fire areas under the terms of the proposed exemptions, and it would not be helpful to consider other exemptions granted the licensee in different contexts. The correspondence cited by the commenter, while generally related to fire protection at the Indian Point plant or other facilities, likewise has no direct bearing on the application of Section 50.12 criteria to the licensee's request for exemptions.

State of New York Comment 1 (SNYC 1):

The NRC should conduct a full environmental review for its reconsideration of this existing exemption based on the risk to public health and safety posed by the conditions that will exist if the exemption is maintained.

NRC Response:

As explained more fully in response to Riverkeeper Comment 1, the NRC has not concluded that granting the exemptions will result in a decreased or otherwise unacceptable reduction in safety margins at Indian Point 3. In light of the EA prepared for the exemptions and the resulting FONSI, no EIS is warranted.

State of New York Comment 2 (SNYC 2):

The NRC did not evaluate potential impacts from a failure of the fire systems and did not consider the risk of fire. Fire is the leading risk factor for loss of safe shutdown capability and that loss of reactor core cooling capabilities could potentially cause significant radiological environmental impacts. Redundant electrical control systems are important to maintain reactor core cooling capability. For the NRC to meet its NEPA obligations, it must consider every significant impact of a proposed action and compile a record demonstrating that it has taken those impacts into consideration.

NRC Response:

The NRC recognizes its important obligations under NEPA to evaluate all environmental impacts of a proposed action and to take a "hard look" at those impacts in compliance with its regulations governing environmental review in 10 CFR Part 51. In this instance, the NRC did evaluate the potential for a low-probability but severe-consequence fire as described by the commenter. The NRC's safety evaluation forms the basis for the agency's conclusion in the EA "that a severe fire is not plausible and the existing fire protection features are adequate." See 78 FR 20146. This conclusion is based on NRC's careful examination of the very specific fire areas and plant components encompassed by the subject exemptions here, including the existing fire barriers, fire detectors, automatic and manual fire suppression equipment, administrative controls, the licensee's fire hazard analysis, the Hemyc configuration, and the absence of significant combustible loads and ignition sources. *Id.* Because a severe fire is not plausible, it follows that offsite consequences of a severe fire, such as diffusion of reactor fission products following a meltdown from loss of reactor coolant, is very unlikely to occur. As the EA concluded: "The proposed action will not significantly increase the probability or consequences of accidents." See 78 FR 20146.

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State of New York Comment 3 (SNYC 3):

Reports by the NRC's Office of the Inspector General and the Government Accountability Office have found significant deficiencies in the NRC's fire protection program. NRC's Oversight of Hemyc Fire Barriers (Jan. 18, 2008) (ADAMS Accession No. ML080250003); GAO-08-747, NRC Oversight of Fire Protection at U.S. Commercial Nuclear Reactor Units Could be Strengthened, Government Accountability Office (June 30, 2008). The commenter also noted that most commercial nuclear power plants have not yet come into compliance with the NRC's fire protection regulations since their promulgation 30 years ago.

NRC Response:

Despite overarching concerns expressed by this commenter and others, NRC must approach each request for an exemption on a case-by-case basis, applying the regulatory criteria of 10 CFR 50.12 to circumstances of each request. Here, the NRC has completed a safety evaluation of the proposed exemptions and concluded that the configuration of the fire zones under review provide reasonable assurance that a severe fire is not plausible" and that "the existing fire protection features are adequate." See 78 FR 20146. The NRC found: "Based on the presence of redundant safe-shutdown trains, minimal fire hazards and combustibles, automatic cable tray fire suppression system, manual fire suppression features, fire barrier protection, existing Hemyc configuration, and the installed smoke detection system, . . . the use of this Hemyc fire barrier in these zones will not significantly increase the consequences from a fire in these fire zones." *Id.* Inasmuch as granting the exemptions "will not significantly increase the probability or consequences of accidents" (*id.*), the dire consequences of a severe fire, such as the Browns Ferry accident, are simply not plausible here.

Nonetheless, the NRC recognizes that these critiques of its fire protection program have raised valid concerns regarding the level of compliance by reactor licensees with the criteria of 10 CFR 50.48 and Appendix R. It is also true, however, that the agency and its licensees have made substantial progress in addressing those concerns published five years ago. Since the Government Accountability Office published its report in 2008, the GAO revisited the issue of fire protection at nuclear facilities in its report GAO 13-8, "Oversight and Status of Implementing a Risk-Informed Approach to Fire Safety" (October 2012). The first objective of this report was to provide information on, "NRC's progress in resolving the long-standing fire safety issues raised in our 2008 report at plants remaining under the deterministic approach and at those plants transitioning to the risk-informed approach" (Highlights page). The GAO 13-8 included a discussion of the NRC actions in response to the recommendations from the 2008 report and made no further recommendations.

The 2008 NRC Inspector General Special Inquiry identified delays in the NRC staff's addressing of deficient Hemyc fire barrier material. The NRC staff continued to review fire barrier materials and later published NUREG-1924, "Electric Raceway Fire Barrier Systems in U.S. Nuclear Power Plants" (May 2010). The NUREG series report summarizes the use of fire barrier materials at nuclear power plants. No additional concerns or recommendations have been made by either the GAO or NRC's Inspector General.

State of New York Comment 4 (SNYC 4):

For matters involving nuclear safety, the NRC should account for low-probability events. To assure the highest level of safety, it should be assumed that a fire will occur and prepare for the

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consequences of a worst case scenario. Assuming a fire will be a rare event and making fewer preparations for it result in a lower level of overall safety.

NRC Response:

The NRC's regulations do account for low-probability events such as a severe fire that could affect safe shutdown capability. Fire protection requirements of 10 CFR Part 50, Appendix R, account for low-probability events through the use of the defense-in-depth philosophy. As reflected in Section II of Appendix R, the defense-in-depth concept for fire protection includes three layers: (1) fire prevention; (2) fire detection and suppression features to detect rapidly, control, and extinguish promptly any fires that might occur; and (3) system redundancy achieve, for example, through physical protection by spatial separation or fire barriers, to ensure that the safe shutdown of the plant will not be prevented if a fire is not prevented or rapidly suppressed. The NRC staff examined each of these defense-in-depth components for the requested exemptions. Thus, the NRC staff did not assume that a fire will be a rare event, but rather carefully analyzed potential ignition sources and combustibles in the affected areas and concluded that there is a low likelihood of a significant fire occurring in the fire zones affected by the issuance of these exemptions. Only after this exacting analysis did the NRC conclude in granting these exemptions that the underlying purpose of 10 CFR Part 50, Appendix R, Subsection III.G.2, would be met, and would provide adequate protection of public health and safety. See also the NRC Response to Brodsky Comment 4.

State of New York Comment 5 (SNYC 5):

Actual compliance with the requirements in 10 CFR Part 50, Appendix R, is the best approach.

NRC Response:

The NRC does require licensee compliance with its regulations, including 10 CFR Part 50, Appendix R. But the exemption provisions of 10 CFR 50.12 are also found in Part 50. Thus, the "same regulation" – Part 50 – "which imposes the [one-hour fire barrier] requirement [in 10 CFR Part 50, Appendix R, Subpart III.G.2] . . . allows for exemptions to it" under 10 CFR 50.12. *Massachusetts v. NRC*, 878 F.2d at 1521. The NRC has approved other appropriate exemptions to Appendix R, and the U.S. Court of Appeals for the District of Columbia Circuit specifically found the exemption process to be "critical" to the reasonableness of these rules. *Connecticut Light & Power Co. v. NRC*, 673 F.2d 525, 530, 534 (D.C. Cir. 1982). Thus, the NRC views Appendix R as important to ensure adequate protection of the public health and safety, but recognizes through the exemption process that other suitable means exist to provide an equivalent level of protection.

State of New York Comment 6 (SNYC 6):

The decision issued by the U.S. Court of Appeals for the Second Circuit in the *Brodsky v. NRC* proceeding placed a burden on the NRC requiring greater examination of the increased probability of accidents arising from the requested exemption. The NRC has not met this greater burden in its FONSI and it should complete a full environmental impact assessment.

NRC Response:

The U.S. Court of Appeals for the Second Circuit did not, in fact, address how the NRC should exercise its technical and scientific judgment in reviewing the exemption requests, including its

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examination of the potentially increased probability of accidents. To the contrary, the Second Circuit rejected the plaintiffs' technical challenges to the exemptions granted in 2007, and remanded solely on one NEPA claim — that issuance of these exemptions failed to justify not affording public participation on the grant of the exemptions. See *Brodsky v. NRC*, 704 F.3d 113, 125 (2d Cir. 2013); *Brodsky v. NRC*, No. 11-2016-cv, "Summary Order" (2d Cir. Jan. 7, 2013)(slip op. at 2–3). Insofar as the Court did review NRC's technical judgment, it affirmed the agency's conclusions. The Court held, for example: "Plaintiffs' speculation that a terrorist attack would disable more firefighting personnel than would a significant fire, thus making increased reliance on manual fire suppression unsafe, is insufficient to demonstrate that the agency's defense-and-security finding was arbitrary and capricious." *Id.* at 6. On such issues, the Court ruled that "the agency is much better situated than is this court to make such a finding on the record presented." *Id.* As previously discussed in the response to Riverkeeper Comment 1, no EIS is warranted.

State of New York Comment 7 (SNYC 7):

The NRC's FONSI attempts to demonstrate satisfaction of 10 CFR 51.22(c)(9), but the NRC appears to have addressed the second and third criteria of that provision. The NRC did not state or adequately support a finding for the first criteria in 10 CFR 51.22(c)(9) that the exemption involves no significant hazards consideration. Instead, the NRC stated that the requested exemption will not significantly increase the probability or consequences of accidents or the consequences from a fire in the relevant fire zones. The NRC did not adequately explain why this increase was insignificant. Because the NRC did not make a finding that the exemption involves no significant hazards consideration, it is inappropriate for the NRC to presuppose that the proposed exemption is correctly attributed to the categorical exclusion in 10 CFR 51.22(c)(9).

NRC Response:

As explained in response to Brodsky Comment 9, the NRC included a description of 10 CFR 51.22(c)(9) in the *Federal Register* notice for the draft EA and FONSI solely for its informative value to the public, as this change will be relevant to future exemption requests. The NRC did not, however, apply the categorical exclusion in 10 CFR 51.22(c)(9) to the requested exemption. Rather, the NRC has prepared, and requested public comment on a draft EA and FONSI for these exemptions.

The draft EA prepared for the exemptions found no "significant" increase in the probability or consequences of accidents due to a fire. The use of this term does not imply that NRC concluded that grant of the exemptions would have some noticeable effect on the environment short of "significant." This term is commonly used for environmental assessments in determining the need for an EIS. See 10 CFR 51.14 (definition of FONSI). In this regard, the NRC's safety evaluation found that a severe fire in the affected areas was not plausible, given the lack of combustibles and ignition sources in those areas, fire detection and suppression capability, the configuration of the Hemyc-protected cable trains, and other factors. See 78 FR 20146. This analysis led NRC to conclude that granting the requested exemptions would provide an equivalent level of protection required by the NRC's regulations because the proposed exemption would meet the underlying purpose of 10 CFR Part 50, Appendix R, Subsection III.G.2.

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State of New York Comment 8 (SNYC 8):

The NRC has not met its burden to examine the probability of failure in the subjects of the fire safety examination, such as the redundant fire retardant or suppression systems. The NRC has also not fully examined or adequately measured the risk for purposes of determining whether the action constitutes a significant impact on the environment and thus whether an EIS must be prepared. These issues leave open the question of whether the NRC has accurately identified the relevant environmental concerns and adequately considered alternatives. In addition, the NRC did not inquire as to the probability that the 24-minute and 30-minute thermal protection for conduits from fire may fail and, if so, what the consequences would be to public health, safety, and the environment. The NRC also did not adequately explain what consequences would result if a fire were to occur despite the NRC's reasonable assurances.

NRC Response:

The NRC has addressed concerns relating to risk associated with granting the exemptions in response to Brodsky Comments 4 and 5 and State of New York Comment 2.

State of New York Comment 9 (SNYC 9):

The NRC's finding of reasonable assurance regarding the potential outcome of a fundamental underpinning of an environmental analysis is inadequate where it "does not describe a probability of failure so low as to dismiss the potential consequences of such failure." *New York v. NRC*, 681 F.3d 471, 478 (D.C. Cir. 2012). In *New York v. NRC*, the NRC did not adequately examine the actual probability of harm associated with the failure to thoroughly assess the consequences of fire (in that case, spent nuclear pool fires). *Id.* at 482. Even though the NRC may have offered words here diminishing the probability or harm from a fire incident, it has not caused the level of harm to reduce that probability to a level that is effectively zero, particularly given the consequences of such a failure.

NRC Response:

The NRC does not agree that the decision in *New York v. NRC* applies as suggested by the commenter. In that case, the U.S. Court of Appeals for the District of Columbia held that the NRC's analysis of environmental impacts resulting from long-term storage of spent nuclear fuel was insufficient because the NRC had not considered the consequences of a severe fire in relation to their probability. The Court ruled, however, that "the finding that the probability of a given harm is nonzero does not, by itself, mandate an EIS: after the agency examines the consequences of the harm in proportion to the likelihood of its occurrence, the overall expected harm could still be insignificant and thus could support a FONSI." *New York v. NRC*, 681 F.3d 471, 483 (D.C. Cir. 2012). Here, the NRC determined that a severe fire in the affected areas "is not plausible," given the lack of combustibles and ignition sources in those areas, available fire detection and suppression capability, the configuration of the Hemyc-protected cable trains, and other factors. See 78 FR 20146. This finding of implausibility rendered consideration of severe fire consequences in the EA unnecessary.

Also, the *New York* holding was premised on a finding that the agency's Waste Confidence rulemaking constitutes a "major federal action." Here, no "major federal action" has been proposed or taken and the proposed action does not require preparation of an EIS. See 10 CFR 51.20. The proposed exemptions revised a January 7, 1987, safety evaluation for Indian

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Point 3 "to reflect that the installed Hemyc electrical raceway fire barrier system (ERFBS) configurations provide either a 30-minute fire resistance rating, or in one case, a 24-minute fire resistance rating, in lieu of the previously stated 1-hour fire resistance rating." 78 FR 20146. The exemptions thereby allowed the licensee to implement an equivalent means of compliance with 10 CFR Part 50, Appendix R, that involved no physical changes to the facility or changes in its operation. It is noted that exemptions to NRC rules generally do not result in significant environmental consequences. While the NRC has approved the proposed exemptions based on the regulatory regime in place in 2007, recent changes to NRC regulations reflect that exemptions are now categorically excluded from environmental analysis under the circumstances described in 10 CFR 51.22(c)(9). See 78 FR 34245- 34246 (June 7, 2013).

State of New York Comment 10 (SNYC 10):

A significant reactor release would trigger implementation of protective actions for the public with significant impacts to agricultural production, wildlife, surface or drinking water resources, and the civic infrastructure. Long-term environmental and human health impacts would continue for decades given the half-life of radiological materials released.

NRC Response:

For the reasons discussed in NRC Response to Brodsky Comment 4 and State of New York Comment 9, NEPA did not require the NRC to analyze the potential consequences of a catastrophic release of radiation from Indian Point 3 as a result of a severe fire, given the NRC's conclusion that such a severe fire could not plausibly result from granting the exemptions.

State of New York Comment 11 (SNYC 11):

The NRC should have examined the alternative of having Indian Point Nuclear Plant's critical electrical cables and equipment comply with the requirements in 10 CFR Part 50, Appendix R.

NRC Response:

The NRC did indeed examine the alternative of requiring the Indian Point Unit 3 licensee to comply with the requirements in 10 CFR Part 50, Appendix R with regards to the components and systems described in the exemption requests. See NRC Responses to Brodsky Comment 2 and State of New York Comment 5.

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PART 2
List of Submissions for NRC-2013-0063

Part 2 is a table that provides a complete listing of all the submissions received. The table includes the submission number, the individual who provided the submission, the NRC's Agencywide Documents Access and Management System (ADAMS) Accession Number for the submission, and references to each of the principal comments from Part 1 that best envelopes the submission.

Commenter ID	Commenter Name	ML Number	Comment is Addressed in the Response Identified
1	Susan Shapiro	ML13163A186	BC 1; BC 2; BC 3, BC 4, BC 5, BC 7; BC 8, BC 9; RC 1; RC 2; SNYC 1, SNYC 2, SNYC 4, SNYC 5, SNYC 6; SNYC 8, SNYC 9
2	Lynn Flanagan	ML13163A187	BC 1; BC 2; BC 5; BC 7; BC 8; RC 1; RC 2; SNYC 1; SNYC 2; SNYC 8; SNYC 11
3	Gary Shaw	ML13163A188	BC 1; BC 3; BC 4; BC 5; BC 8; RC 2; SNYC 2; SNYC 5
4	Tania Venion	ML13163A432	BC 1; BC 2; BC 4; BC 5; BC 7; RC 1; SNYC 1; SNYC 2; SNYC 4; SNYC 6;
5	State of New York (New York State Energy Research and Development Authority)	ML13163A433	SNYC 1 through 11
6	Laurie Seeman	ML13163A434	Separate response provided in Part 3
7	Michel Lee	ML13163A435	BC 1; BC 3; BC 4; BC 5; BC 8; RC 1; RC 2; RC 4; SNYC 2; SNYC 4; SNYC 5; SNYC 6; SNYC 8; SNYC 9; Separate response provided in Part 3
8	Moira Thielking	ML13163A436	BC 1; BC 3; BC 4; BC 5; RC 1; SNYC 2; SNYC 5; Separate response provided in Part 3
9	Judy Allen	ML13163A437	BC 1; BC 2; BC 3; BC 4; BC 5; BC 7; RC 1; SNYC 2; SNYC 4; SNYC 5
10	Steve Mantor	ML13163A438	BC 1; BC 2; BC 5; BC 7; BC 8; RC 1; RC 2; SNYC 1; SNYC 2; SNYC 8; SNYC 11

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Commenter ID	Commenter Name	ML Number	Comment is Addressed in the Response Identified
11	Debi Mohan	ML13163A448	BC 1; BC 2; BC 5; BC 7; BC 8; RC 1; RC 2; SNYC 1; SNYC 2; SNYC 8; SNYC 11
12	Amy Goldsmith	ML13163A449	BC 1; BC 2; BC 3; BC 5; BC 7; BC 8; RC 1; RC 2; SNYC 1; SNYC 2; SNYC 8; SNYC 11
13	Siobhan Towey	ML13163A450	BC 1; BC 2; BC 5; BC 7; BC 8; RC 1; RC 2; SNYC 1; SNYC 2; SNYC 8; SNYC 11
14	Edward Keller	ML13163A451	BC 1; BC 2; BC 5; BC 7; BC 8; RC 1; RC 2; SNYC 1; SNYC 2; SNYC 8; SNYC 11
15	Billie Biederman	ML13163A452	BC 1; BC 3; RC 1; Separate response provided in Part 3
16	Robert Braun	ML13163A453	BC 1; BC 2; BC 5; BC 7; BC 8; RC 1; RC 2; SNYC 1; SNYC 2; SNYC 8; SNYC 11
17	Patricia Goldsmith	ML13163A454	BC 1; RC 1; SNYC 5; SNYC 11; Separate response provided in Part 3
18	Richard Mangini	ML13163A455	Separate response provided in Part 3
19	Elizabeth Ellsworth	ML13163A456	BC 1; RC 1; SNYC 4; SNYC 5; SNYC 9; SNYC 11; Separate response provided in Part 3
20	Janet Strock	ML13163A457	BC 1; BC 2; BC 5; BC 7; BC 8; RC 1; RC 2; SNYC 1; SNYC 2; SNYC 8; SNYC 11
21	Jeffrey Genser	ML13163A458	BC 1; BC 2; BC 5; BC 7; BC 8; RC 1; RC 2; SNYC 1; SNYC 2; SNYC 8; SNYC 11
22	Joanna Bagatta	ML13163A459	BC 1; BC 2; BC 5; BC 7; BC 8; RC 1; RC 2; SNYC 1; SNYC 2; SNYC 8; SNYC 11
23	Bernard Kessler	ML13163A460	Separate response provided in Part 3
24	Asher Pacht	ML13163A461	BC 1; BC 2; BC 5; BC 7; BC 8; RC 1; RC 2; SNYC 1; SNYC 2; SNYC 8; SNYC 11
25	Cheriel Jense	ML13163A462	BC 1; BC 2; BC 7; RC 1; SNYC 1
26	Joshua Farrell	ML13163A463	BC 1; BC 2; BC 5; BC 7; BC 8; RC 1; RC 2; SNYC 1; SNYC 2; SNYC 8; SNYC 11

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Commenter ID	Commenter Name	ML Number	Comment is Addressed in the Response Identified
27	Jan Emerson	ML13163A464	BC 1; BC 2; BC 7; RC 1; SNYC 1SNYC 5
28	Kate Evanciew	ML13163A465	BC 1; BC 2; BC 5; BC 7; BC 8; RC 1; RC 2; SNYC 1; SNYC 2; SNYC 8; SNYC 11; Separate response provided in Part 3
29	Gloria Morrotti	ML13163A466	Separate response provided in Part 3
30	Louise Calabro	ML13163A467	BC 1; RC 1; SNYC 5
31	Dorothy Nusbaum	ML13165A029	BC 1; BC 2; BC 5; BC 7; BC 8; RC 1; RC 2; SNYC 1; SNYC 2; SNYC 8; SNYC 11
32	Jessica Murphy	ML13165A030	BC 1; BC 2; BC 5; BC 7; BC 8; RC 1; RC 2; SNYC 1; SNYC 2; SNYC 8; SNYC 11
33	Dinda Evans	ML13165A031	BC 1; BC 2; BC 3; BC 5; BC 7; BC 8; RC 1; RC 2; SNYC 1; SNYC 2; SNYC 3; SNYC 8; SNYC 11; Separate response provided in Part 3
34	Victoria Furio	ML13165A032	BC 1; BC 3; BC 5; BC 8; RC 1; RC 2; SNYC 2
35	Donna Henes	ML13165A033	Separate response provided in Part 3
36	Unknown	ML13165A034	Separate response provided in Part 3
37	Larry Krasner	ML13165A035	Separate response provided in Part 3
38	Matt Malina	ML13165A036	BC 1; BC 3; BC 5; RC 1; SNYC 2
39	Jana Shakarian	ML13165A037	BC 1; BC 2; BC 5; BC 7; BC 8; RC 1; RC 2; SNYC 1; SNYC 2; SNYC 8; SNYC 11
40	John Raveche	ML13165A038	BC 1; BC 2; BC 5; BC 7; BC 8; RC 1; RC 2; SNYC 1; SNYC 2; SNYC 8; SNYC 11
41	Ken Gunther	ML13165A039	BC 1; BC 8; RC 2
42	William Davis	ML13165A040	BC 1; BC 2; BC 5; BC 7; BC 8; RC 1; RC 2; SNYC 1; SNYC 2; SNYC 8; SNYC 11; Separate response provided in Part 3

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Commenter ID	Commenter Name	ML Number	Comment is Addressed in the Response Identified
43	Joni Mercado	ML13165A041	Separate response provided in Part 3
44	Christina Volz	ML13165A042	Separate response provided in Part 3
45	Arthur Blum	ML13165A043	Separate response provided in Part 3
46	James Schmitt	ML13165A044	Separate response provided in Part 3
47	Edward Butler	ML13165A045	BC 1; BC 2; BC 5; BC 7; BC 8; RC 1; RC 2; SNYC 1; SNYC 2; SNYC 8; SNYC 11
48	Steven Laifer	ML13165A046	BC 1; BC 2; BC 5; BC 7; BC 8; RC 1; RC 2; SNYC 1; SNYC 2; SNYC 3; SNYC 8; SNYC 11
49	Unknown 1	ML13165A047	BC 1; BC 2; BC 5; BC 7; BC 8; RC 1; RC 2; SNYC 1; SNYC 2; SNYC 8; SNYC 11
50	Doreen Tignanelli	ML13165A048	BC 1; BC 2; BC 5; BC 7; BC 8; RC 1; RC 2; SNYC 1; SNYC 2; SNYC 8; SNYC 11
51	Barbara A. Kidney	ML13168A398	BC 1; BC 2; BC 3; BC 7; RC 1; SNYC 1
52	Jill Simon	ML13170A129	BC 1; BC 2; BC 5; BC 7; BC 8; RC 1; RC 2; SNYC 1; SNYC 2; SNYC 8; SNYC 11
53	Myra Alfreds	ML13170A133	BC 1; BC 5; RC 1; SNYC 2
54	Anthony Montapert	ML13170A134	BC 1; BC 5; BC 8; RC 1; RC 2; SNYC 2
55	Nathaniel Floyd	ML13170A135	BC 1; BC 3; BC 5; RC 1; SNYC 2
56	Lynn Flanagan	ML13170A137	BC 1; BC 2; BC 5; BC 7; BC 8; RC 1; RC 2; SNYC 1; SNYC 2; SNYC 8; SNYC 11
57	Eleanor Fox	ML13170A138	BC 1; BC 2; BC 5; BC 7; BC 8; RC 1; RC 2; SNYC 1; SNYC 2; SNYC 8; SNYC 11
58	Nicole Crane	ML13170A139	BC 1; BC 3; BC 5; RC 1; SNYC 2
59	Kevin O'Neill	ML13170A140	BC 3; Separate response provided in Part 3
60	Gary Shaw	ML13170A141	BC 1; BC 3; BC 5; SNYC 2; SNYC 5

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Commenter ID	Commenter Name	ML Number	Comment is Addressed in the Response Identified
61	Wendy Fast	ML13170A142	BC 1; BC 2; BC 5; BC 7; RC 1; SNYC 1; SNYC 2
62	Lisa Gervais	ML13170A143	BC 1; BC 5; RC 1; SNYC 2
63	Mary-Alice Shemo	ML13170A145	BC 1; BC 5; RC 1; SNYC 2; SNYC 5
64	Elaine Dickinson	ML13170A146	BC 1; BC 2; BC 5; BC 7; BC 8; RC 1; RC 2; SNYC 1; SNYC 2; SNYC 8; SNYC 11
65	Lourdes Sabio	ML13170A147	BC 1; BC 2; BC 5; BC 7; RC 1; SNYC 1; SNYC 2
66	Margaret Rice Moir	ML13170A148	Separate response provided in Part 3
67	Bernard Yozwiak	ML13170A150	BC 1; BC 2; BC 5; BC 7; BC 8; RC 1; RC 2; SNYC 1; SNYC 2; SNYC 8; SNYC 11
68	Jean Naples	ML13170A152	BC 1; BC 2; BC 5; BC 7; BC 8; RC 1; RC 2; SNYC 1; SNYC 2; SNYC 8; SNYC 11
69	Michele Temple	ML13170A153	BC 1; BC 2; BC 5; BC 7; BC 8; RC 1; RC 2; SNYC 1; SNYC 2; SNYC 8; SNYC 11
70	Caroline Rider	ML13170A154	Separate response provided in Part 3
71	Michael Evans	ML13170A155	BC 1; BC 2; BC 5; BC 7; BC 8; RC 1; RC 2; SNYC 1; SNYC 2; SNYC 8; SNYC 11
72	Robert Frey	ML13170A314	BC 1; BC 2; BC 5; BC 7; BC 8; RC 1; RC 2; SNYC 1; SNYC 2; SNYC 8; SNYC 11
73	Paul Ghenoiu	ML13170A315	BC 1; BC 8; RC 1; RC 2; SNYC 5
74	Millicent Sims	ML13170A316	Separate response provided in Part 3
75	Nicole Weber	ML13170A317	BC 1; BC 2; BC 5; BC 7; BC 8; RC 1; RC 2; SNYC 1; SNYC 2; SNYC 8; SNYC 11
76	Sally Smith	ML13170A318	BC 1; BC 3; BC 8; RC 2
77	Elizabeth Pasquale	ML13170A319	BC 1; BC 2; BC 5; BC 7; BC 8; RC 1; RC 2; SNYC 1; SNYC 2; SNYC 8; SNYC 11

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Commenter ID	Commenter Name	ML Number	Comment is Addressed in the Response Identified
78	Chris Hazynski	ML13170A320	Separate response provided in Part 3
79	Erma Lewis	ML13170A321	BC 1; BC 2; BC 5; BC 7; BC 8; RC 1; RC 2; SNYC 1; SNYC 2; SNYC 8; SNYC 11
80	Jamie Kruse	ML13170A322	BC 1; BC 2; BC 5; BC 7; BC 8; RC 1; RC 2; SNYC 1; SNYC 2; SNYC 8; SNYC 11
81	Dolores Baldasare	ML13170A323	BC 1; RC 1; BC 5;
82	Stephen Matlak	ML13170A324	Separate response provided in Part 3
83	Susan Didrichsend	ML13170A325	BC 1; BC 3; RC 1;
84	Ronald Lemmert	ML13170A251	Separate response provided in Part 3
85	Dennis Higgins	ML13170A252	BC 1; BC 2; BC 5; BC 7; BC 8; RC 1; RC 2; SNYC 1; SNYC 2; SNYC 3; SNYC 8; SNYC 11
86	Scott Richmond	ML13170A253	BC 1; BC 3; RC 1
87	Steve Kostis	ML13170A254	BC 1; BC 2; BC 5; BC 7; BC 8; RC 1; RC 2; SNYC 1; SNYC 2; SNYC 8; SNYC 11
88	Joseph Olejak	ML13170A255	BC 1; BC 5; RC 1; SNYC 2
89	Bobbie Flowers	ML13170A256	BC 1; BC 2; BC 5; BC 7; BC 8; RC 1; RC 2; SNYC 1; SNYC 2; SNYC 8; SNYC 11
90	Barry De Jasu	ML13170A257	BC 1; BC 2; BC 5; BC 7; BC 8; RC 1; RC 2; SNYC 1; SNYC 2; SNYC 8; SNYC 11
91	Janet Azarovitz	ML13170A258	BC 1; BC 3
92	M Dean	ML13170A259	BC 1; BC 3; BC 5; RC 1; SNYC 2
93	Jennifer Valentine	ML13170A260	BC 1; BC 2; BC 5; BC 7; BC 8; RC 1; RC 2; SNYC 1; SNYC 2; SNYC 8; SNYC 11
94	Alexa Fila	ML13170A261	BC 1; BC 3; BC 5; RC 1; SNYC 2
95	Michele Johnson	ML13170A262	BC 1; BC 2; BC 5; BC 7; BC 8; RC 1; RC 2; SNYC 1; SNYC 2; SNYC 8; SNYC 11

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Commenter ID	Commenter Name	ML Number	Comment is Addressed in the Response Identified
96	Diane Buxbaum	ML13170A272	BC 1; BC 2; BC 5; BC 7; BC 8; RC 1; RC 2; SNYC 1; SNYC 2; SNYC 8; SNYC 11
97	Martin Wallace	ML13170A275	BC 1; BC 2; BC 5; BC 7; BC 8; RC 1; RC 2; SNYC 1; SNYC 2; SNYC 3; SNYC 8; SNYC 11; Separate response provided in Part 3
98	Meredith Genin	ML13170A276	BC 1; BC 2; BC 5; BC 7; BC 8; RC 1; RC 2; SNYC 1; SNYC 2; SNYC 8; SNYC 11; Separate response provided in Part 3
99	William Wurtz	ML13170A277	Separate response to comment provided
100	Jared Cornelia	ML13170A278	BC 1; BC 2; BC 5; BC 7; BC 8; RC 1; RC 2; SNYC 1; SNYC 2; SNYC 8; SNYC 11
101	Gerson Lesser, M.D.	ML13170A279	Separate response provided in Part 3
102	Debra Winchell	ML13170A280	BC 1; BC 2; BC 5; BC 7; BC 8; RC 1; RC 2; SNYC 1; SNYC 2; SNYC 8; SNYC 11; Separate response provided in Part 3
103	Mary Brown	ML13170A281	Separate response provided in Part 3
104	Maryanne Deracleo	ML13170A282	BC 1; BC 3; RC 1; Separate response provided in Part 3
105	George Costich	ML13170A283	Separate response provided in Part 3
106	Laura Levey	ML13170A284	BC 1; BC 2; BC 5; BC 7; BC 8; RC 1; RC 2; SNYC 1; SNYC 2; SNYC 8; SNYC 11
107	Deborah Ross	ML13170A285	BC 1; BC 3; RC 1
108	Joann Ramos	ML13170A286	BC 1; BC 2; BC 5; BC 7; RC 1; SNYC 1; SNYC 2
109	Susan Singer	ML13170A287	BC 1; RC 1; SNYC 5; Separate response provided in Part 3
110	T.ED. Webb	ML13170A288	BC 3; RC 1; Separate response provided in Part 3
111	Dolores Congdon	ML13170A289	BC 3; RC 1
112	Alice Farber	ML13170A290	Separate response provided in Part 3

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Commenter ID	Commenter Name	ML Number	Comment is Addressed in the Response Identified
113	Chris Blyth	ML13170A292	BC 1; BC 3; RC 1; SNYC 2;
114	Brian Fink	ML13170A293	BC 1; BC 2; BC 5; BC 7; BC 8; RC 1; RC 2; SNYC 1; SNYC 2; SNYC 8; SNYC 11; Separate response provided in Part 3
115	Linda Hartinian	ML13170A294	Separate response provided in Part 3
116	Thelma Fellows	ML13177A166	BC 1; BC 3; RC 1; Separate response provided in Part 3
117	Art Hanson	ML13177A167	BC 1; BC 2; BC 5; BC 7; BC 8; RC 1; RC 2; SNYC 1; SNYC 2; SNYC 8; SNYC 11
118	Natalie Hanson	ML13177A168	BC 1; BC 2; BC 5; BC 7; BC 8; RC 1; RC 2; SNYC 1; SNYC 2; SNYC 8; SNYC 11
119	Richard Vultaggio	ML13177A169	BC 1; BC 2; BC 5; BC 7; BC 8; RC 1; RC 2; SNYC 1; SNYC 2; SNYC 8; SNYC 11
120	Daniele Gerard	ML13177A184	BC 1; BC 2; BC 5; BC 7; BC 8; RC 1; RC 2; SNYC 1; SNYC 2; SNYC 8; SNYC 11
121	Erlend Kimmich	ML13177A185	SNYC 3; Separate response provided in Part 3
122	Richard Brodsky	ML13177A186	BC 1 through 9
123	State of New York (New York State Energy Research and Development Authority)	ML13177A187 NOTE: This is a repeat of entry #5	SNYC 1 through 11
124	Riverkeeper	ML13177A188	RC 1 through 4
125	Peter Cohen	ML13177A173	BC 1; BC 2; BC 5; BC 7; BC 8; RC 1; RC 2; SNYC 1; SNYC 2; SNYC 8; SNYC 11
126	Tricia Bhatia	ML13177A174	BC 1; BC 2; BC 5; BC 7; BC 8; RC 1; RC 2; SNYC 1; SNYC 2; SNYC 8; SNYC 11; Separate response provided in Part 3
127	Nina Long	ML13177A175	BC 1; BC 3; RC 1; SNYC 2; SNYC 5
128	Gail Paybe	ML13177A176	BC 1; BC 3; BC 5; RC 1; SNYC 2
129	Richard Weiskopf	ML13177A177	BC 1; BC 3; BC 5; RC 1; SNYC 2; Separate response

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Commenter ID	Commenter Name	ML Number	Comment is Addressed in the Response Identified
			provided in Part 3
130	Geraldine Collins	ML13177A178	BC 1; BC 2; BC 5; BC 7; BC 8; RC 1; RC 2; SNYC 1; SNYC 2; SNYC 8; SNYC 11;
131	Stephanie Angelis	ML13177A179	Separate response provided in Part 3
132	Joan Ashton	ML13177A180	BC 1; BC 2; BC 5; BC 7; BC 8; RC 1; RC 2; SNYC 1; SNYC 2; SNYC 8; SNYC 11
133	Erica Gray	ML13177A181	BC 1; BC 2; BC 5; BC 7; BC 8; RC 1; RC 2; SNYC 1; SNYC 2; SNYC 8; SNYC 11
134	Robert L. Fishman	ML13190A006	BC 1; BC 3; BC 4; BC6; RC 1;
135	Andrew W. Dalton	ML13190A007	BC 1; BC 3; BC 4; BC6; RC 1;
136*	Allegra Dengler	ML13190A306	BC 1; BC 4; BC6; RC 1; Separate response provided in Part 3

*It should be noted that during the administrative processing of the individual submissions, the NRC staff numbered and circled each submission by hand prior to scanning the document and entering it into ADAMS. As a result, each submission found in ADAMS using the main library (ML) accession number includes a hand-written circled number (e.g., the ADAMS version of Commenter ID 26 has a hand-written "26" on the incoming document). Since ADAMS included the State of New York comments twice as Commenter ID 5 and 123, there were only a total of 135 separate submissions.

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PART 3**Additional Comments:**

A number of submissions included comments other than those covered by the principal comments of Part 1.

- Concerns regarding nuclear waste and storage (ML13163A456; ML13170A316; ML13170A283; ML13177A177; ML13163A435; ML13163A436);
- Concerns regarding leaks of radioactive material into the Hudson River (ML13165A041);
- Concerns that fish kills in the Hudson are common and constant because the river is used to dump cooling water (ML13177A179; ML13170A276);
- Concerns expressing general support for energy alternatives (ML13170A277; ML13170A283; ML13177A177; ML13163A434; ML13170A140; ML13170A275);
- Concerns that climate change could cause water levels to rise and flood the plant and accelerate corrosion in buried pipes and cables (ML13163A435; ML13165A041; ML13190A306);
- Concerns regarding earthquake risks: (ML13163A435; ML13163A436; ML13163A438; ML13165A040; ML13165A04; ML13163A435; ML13165A041; ML13177A179);
- Concerns regarding emergency planning and evacuation plans (ML13177A185; ML13163A434; ML13163A435; ML13170A316; ML13170A251; ML13170A282; ML13170A287; ML13163A436; ML13165A044; ML13170A290; ML13170A288);
- Concerns over the safe operation of Indian Point (ML13177A177; ML13163A452; ML13163A465; ML13163A466; ML13165A031; ML13165A033; ML13165A034; ML13165A035; ML13165A041; ML13165A042; ML13170A154; ML13170A320; ML13170A324; ML13170A280; ML13170A281; ML13170A282; ML13170A283; ML13170A293; ML13170A294; ML13177A173; ML13163A434; ML13165A043; ML13170A148);
- Opposition to license renewal of Indian Point (ML13163A436; ML13170A140);
- Opposition to nuclear power and in support of a shut-down of Indian Point (ML13163A455; ML13170A140; ML13177A177; ML13163A434; ML13163A460; ML13165A041; ML13165A044; ML13170A277; ML13170A279; ML13170A282; ML13170A290; ML13177A166);
- Concerns regarding the effects of aging on safe operation of a nuclear facility (ML13163A436; ML13163A456; ML13165A040; ML13165A041; ML13165A042; ML13163A435);
- Concerns regarding the reduced number of resident inspectors at Indian Point (ML13170A316; ML13170A279); and
- Concerns regarding the natural gas lines that are located near the plant (ML13163A186; ML13163A435).

NRC Response: These comments are beyond the scope of the environmental review of the proposed action and they have not resulted in any change to the final EA.

A-63

Case 1:09-cv-10594-LAP Document 42-1 Filed 04/11/14 Page 53 of 101

Fax

To: CINDY BLADEY From: Susan SHAPINO

Fax: 301 492 3446 Pages: 6

Re: IP Fire Safety ~~Docket~~ Date: 6/9/13

Urgent For Review Please Comment Please Reply Please Recycle

① Docket ID NRC - 2013-0063

5/7/2013
78 FR 26662

①

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MILTON B. SHAPIRO

SUSAN H. SHAPIRO

21 PERLMAN DRIVE • SPRING VALLEY, NEW YORK 10977

ATTORNEYS AT LAW

(846) 371-2100
(845) 371-3721 - FAX
mbs@ourrocklandoffice.com

6/3/13

Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB)
Office of Administration
Mail Stop: TWB-05-B01M
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Fax to: RADB at 301-492-3446.

Re: Indian Point Fire Safety Exemption: Docket ID NRC-2013- 0063

In 2007, without soliciting any public announcement or allowing the public a chance to comment, the Nuclear Regulatory Commission (NRC) reduced the one-hour fire-safety requirement to 24 minutes for the electric cables that turn off the reactor in an emergency to avert a catastrophic meltdown. Since that time Richard Brodsky, Esq. and Sierra Club have challenged this fire-safety “exemption,” which the NRC granted to Entergy for Indian Point. This changed a long-standing requirement that the electric cables, which control reactor shut down in an emergency, have physical insulation that lasts one-hour in a fire. Entergy and the NRC tested the insulation and found that it only lasted 27 minutes, rather than the one-hour it was supposed to, so instead of requiring it to be, they simply lowered the standard.

Brodsky (with co-plaintiffs Sierra Club) v. NRC challenged this exemption and the Court determined that the NRC had to either give the plaintiffs and the public a chance to participate in the “exemption” process or explain why they would not be given this opportunity. The NRC has opted to reopen the “exemption” proceeding.

In summary, here are our concerns.

1) The NRC must immediately require Entergy to retrofit the defective fire insulation to bring it into license compliance. It is shocks the conscious and is grossly

negligent for the NRC since 2007 to allow Indian Point to continue operating in violation of fire safety license compliance, with only 24 minutes of fire protection, less than a standard commercial building in New York State.

2) The NRC and Entergy have already spent more money defending this "exemption" in Court than retrofitting the defective fire insulation, HemyC with fire insulation which functions for the required 1 hour. It has been conservatively estimated that retrofitting the defective fire insulation would cost approximately \$500,000, which is less than ¼ of the profits Entergy makes at Indian Point on a daily basis. The NRC's failure as a regulator to require this retrofit endangers \$8.5 trillion dollars of property value, 20 million lives and countless businesses in the 50 mile radius of Indian Point.

3) The NRC's refusal to require this retrofit increases the risk of an environmental disaster which would dwarf the BP Gulf oil spill, which was caused by another federal agency refusing to require a \$500,000 retrofit. The NRC claims to use a lessons learned approach as a regulator, this blatant refusal and delay of requiring this retrofit to bring Indian Point into license compliance, is clear proof that the NRC does refuse to learn any lessons from past environmental disasters.

4) To make matters even worse the location of the defective fire insulation, HemyC is within 500 feet of 2 natural gas pipelines

5) By its own regulations the NRC is not permitted to grant this exemption as it does not meet the standards of a "Specific Exemption" set forth in 10 CFR § 50.12.

6) It violates 10 CFR § 50.12(1) since it is not *Authorized by law and creates an undue risk to public health, and consistent with common defense and security*. The drastic 60% reduction of Appendix R fire safety standards is not authorized by law as an "exemption". It is more than 10% change which significantly increases reactor core melt frequency. This reduction of fire protection in this specific situation related to a cable necessary for safe shut down, fire insulation which will only work for 24 minutes unduly increases the risk of public health and safety of a radioactive exposure.

The cable tray area which is at issue relies on 9 inches of separation (instead of 20 feet) with automatic fire detection and *preaction* automatic water spray suppression and manual action of fire brigade.

The fire suppression for the cable tray area at issue is not an automatic water spray suppression is the system used and it is not a commonly used automatic sprinkler system with standing water already in the overhead piping ready to be released when heat activated, like the ones used in commercial and office buildings. Whereas, *preaction* automatic water spray suppression depends on smoke detectors which do not

cause the fire sprinklers to flow water. The smoke detectors sends a signal that triggers a release of water from a flood header into the piping, the water then travels to the location and is only then be released. This system depends on multiple components working together and communicating which could take several minutes to function. It is not really automatic and it relies solely on smoke detection.

Fire Experts know that smoke detectors are the least reliable component in any fire safety system.

7) Additionally Appendix R forbids credit to be taken for manual actions of a fire brigade within the first hour of a fire. It is unrealistic for a fire to be detected, a fire brigaded notified and activated, arriving on location and suppressing a fire within 24 minutes.

Even is the NRC uses the 805 standard it cannot guarantee that deliberate acts of arson, terrorist attacks or human error will not introduce transient combustibles into the area and, therefore cannot claim credit for the risk informed standard of 805.

The Common Defense and Security for nuclear plants is DEFENSE IN DEPTH, meaning there is a redundancy in the systems designed for safe shut down. Neither the NRC nor Entergy considered that the site of this dramatic fire safety reduction is within 350-400 feet of Two 36" (partially above ground) natural gas pipelines; nor the real and direct threat of a terrorist attack such a 9/11 or sabotage both of which could result in a fire that could not be contained within 24 minutes. Upon information and belief Indian Point on 9/11 the terrorists targeted Indian Point and flew directly over the plant.

Entergy's untenable, unsubstantiated and conclusory claim that reducing 1 hr fire protection to 24 minutes has no effect on the common defense and security, is not only inconsistent with common defense, it is inconsistent with common sense.

8) This exemption does not comply with the standards for an exemption set forth in §50.12(2), as there are no Special circumstance present.

- i) The Application of Appendix R does not conflict with other rules;
- ii) Appendix R serves the underlying purposes of the rule and is necessary to achieve the objective purpose of deterministic fire safety standards as required by Congress;
- iii) Compliance with Appendix R would not result in undue hardship; A cost of \$500,000 to retrofit, reroute or bring the plant into compliance is far from an undue hardship for a plant that has revenues of approximately \$2 Million dollars a day.

- iv) Reducing fire safety does not benefit public health and safety in any way, and instead dramatically increases the chance for irreparable economic and environmental damage.
- v) Entergy has not made a good faith effort to comply with the regulations and the exemption is permanent, not temporary.
- vi) It is not within the public interest to grant the reduction in fire safety based on the material circumstances not considered when Appendix R was adopted; the only material circumstance that was not considered that the HemyC insulation approved by the NRC was defective.

9) When the NRC granted the exemption it did not do an Environmental Impact Statement (EIS). They issued an Environmental Assessment and a Finding Of No Significant Impact (EA and FONSI). THE NRC NEEDS TO UNDERTAKE A FULL EIS.

10) The EA and FONSI are completely silent about the ways in which the exemption makes a terrorist attack more likely and make the consequences of a terrorist attack much worse. THE EXEMPTION'S RELIANCE ON MANUAL FIRE SUPPRESSION AND ADMINISTRATIVE CONTROLS WILL MAKE A TERRORIST ATTACK MORE LIKELY AND MORE DESTRUCTIVE.

11) The EA and FONSI do not contain any serious analysis of alternatives to granting or denying the application. They did not consider the alternative of upgrading the insulation, or shifting the fire safety program at IP to other methods. THE EA AND FONSI DIDN'T LOOK AT REASONABLE ALTERNATIVES TO THE EXEMPTION.

a) THE EXEMPTION IS NOT AUTHORIZED BY LAW.

b) THE EXEMPTION ENDANGERS THE PUBLIC HEALTH, SAFETY, AND NATIONAL DEFENSE AND SECURITY.

c) When it was originally approved, the exemption in 2007 the NRC considered only 11 documents in its possession that analyze its safety and health impacts. There are dozens and dozens of other such documents that show how dangerous and unnecessary the exemption is. THE NRC MUST CONSIDER ALL THE EVIDENCE AND DOCUMENTATION THAT RAISE QUESTIONS ABOUT OR SHOW THE EXEMPTION IS DANGEROUS.

d) THE NRC FAILED TO A HARD LOOK AT A WHOLE RANGE OF ISSUES RELATED TO THIS DECISION, AND SHOULD EITHER DO A FULL EIS OR DENY THE EXEMPTION AND REQUIRE AN IMMEDIATE RETROFIT OF THE DEFECTIVE HEMYC or IMMEDIATELY SHUT DOWN INDIAN POINT 3 UNTIL IT IS LICENSE COMPLIANCE.

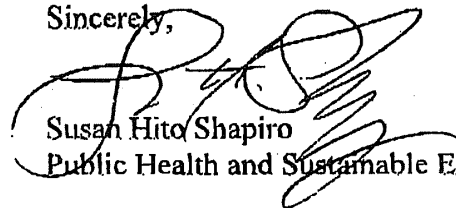
e) THE CURRENT PROCESS THE NRC IS NOW USING IS INCONSISTENT WITH THE COURT'S ORDER IN BRODSKY V. NRC.

f) A FULL PUBLIC HEARING IS NEEDED TO ADDRESS THIS MATTER.

Further delay by the NRC to require retrofit of the defective fire insulation, HemyC, which for over 15 year Congress has ordered shocks the conscious, is grossly negligent and is an arbitrary and capricious continuing violation of the Atomic Energy Act.

Thanks you for considering and addressing these concerns. Please let us know of your response.

Sincerely,



Susan Hito Shapiro
Public Health and Sustainable Energy

cc: NRC Chairwoman Allison Macfarlane
Richard Brodsky, Esq.

A-69

Case 1:09-cv-10594-LAP Document 42-1 Filed 04/11/14 Page 59 of 101

2

Gallagher, Carol

From: kernel1515@aol.com
Sent: Wednesday, May 29, 2013 8:35 PM
To: Gallagher, Carol
Subject: Docket ID NRC-2013-0063

5/7/2013

76FR 26662

- The NRC should require Entergy to comply with the regulations which were written to protect the plant and the public from the very real risk of a fire that could lead to a meltdown at Indian Point.
- The NRC failed to do an Environmental Impact Study (EIS) of the risks and impacts of granting the exemption, including looking at alternatives, such as replacing the insulation. At a minimum, the NRC must conduct a full EIS, look at all alternatives and allow time for public comment.
- The NRC should hold a public hearing in the vicinity of Indian Point to fully explain its exemption process, and take public input on Entergy's failure to comply with fire safety regulations that were established over 20 years ago.

Lynn Flanagan
Saratoga Springs, NY

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FRC Research Corporation

116 East 27th Street
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(212) 696-1000 (Voice)
(212) 889-5624 (Fax)

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To: CINDY BLADEY Date: 6/3/13

From: GARY SHAW #Pages 3
(including cover page)

Message: re: Docket ID NRC-2013-0063

5/7/2013
78 FR 26662

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E-RIDS = ADM-03
Add = J. Pickett (dup 1)

June 3, 2013

Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB)
Office of Administration
Mail Stop: TWB-05-B01M
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Fax to: RADB at 301-492-3446.

Re: Indian Point Fire Safety Exemption: Docket ID NRC-2013-0063

My name is Gary Shaw and I am a member of the Leadership Council of the Indian Point Safe Energy Coalition.

In 2007, while Samuel Collins was Administrator of Region 1, NRC granted a fire safety exemption for Hemyc fire wrap that, by regulatory guidelines, should have been able to protect critical safety cables in the automatic shutdown process for one hour, but could not sustain its protection for anywhere close to what the regulations called for. The fact that the Region 1 Administrator was the same person who had overridden on-site inspectors at Davis-Besse who recommended temporary closure to investigate buildup of corrosion, and the result was that we came within a quarter inch of breach of containment is an unfortunate example of how NRC talks about lessons learned, but acts on behalf of operator financials rather than on public health & safety. It is unacceptable that the NRC standard seems to be "it is probably good enough" when the operating mentality should be that "we should do everything possible to prevent a plant failure" because the ramifications of a nuclear plant failure are unacceptably large. This is true of all nuclear plants, but the one that is within 35 miles of midtown Manhattan and 15 miles from a critical juncture of the New York City water supply, that sits within a mile of the intersection of two seismic faults that are estimated to have potential for a 7.0 earthquake and that there are two high pressure natural gas lines running right next to the plant makes the granting of fire safety exemptions absurdly dangerous. And the fact that this was done without any public announcement or the public commentary shows that the agency would like to avoid transparency.

It is my understanding is that the agency did not even consider forcing the operator to retrofit with better protection, but simply change the regulations. It should also be noted that the NRC OIG was critical of the agency when NEI refused to perform the testing of Hemyc, claiming that there was insufficient evidence to make the industry feel it was worthwhile. One has to think that the industry dictates to the regulators, rather than the regulators directing the industry to perform due diligence in matters of public safety.

There should be public hearings and a full airing of the many issues involved, including a listing of the elements that NRC considered in rendering the exemption, a full evaluation of the on-site firefighting responses by the operator, especially during the transformer explosion and fire in 2010 for which New York State fined the operator over a million dollars. It is my understanding that the fire condition was not reported to NRC in the time dictated by NRC regulations. I also demand that an explanation be given why NRC is not complying with the NEPA requirements regarding potential and foreseeable terrorist act implications. This exemption becomes particularly egregious after the disclosure that the plant failed a force-on-force exercise conducted at the end of April. We, the concerned stakeholders, should also be informed of the fire remediation process that would be followed after the 24 minute duration if fire suppression has not been accomplished at that point.

This fire safety issue deserves a full and transparent public hearing of the issues.

CSR000000061

A-72

With all due respect,
Gary Shaw



Member of the Leadership Council of the IPSEC (Indian Point Safe Energy Coalition)
9 Van Cortlandt Place
Croton on Hudson, NY 10520

Richard Brodsky richardbrodsky@msn.com
Allison Macfarlane Allison.Macfarlane@nrc.gov
IPSEC Core core@ipsecinfo.org

FAX # RADB
301-492-3446 6/3/13

Dear Mr. Brodsky, or to whom this concerns:

Please see below reasons (2) that the "exceptions" reasons offered by the NRC are not appropriate

- 1.) The NRC did not do an Environmental Impact Statement, you issued an Environmental Assessment and a Finding OF NO SIGNIFICANT IMPACT. The NRC needs to do a Full Environmental Impact Study

5/7/2013
18 PR 26662

4

- 2.) The Exemption endangers the Public health, safety, Defense and Security.

Thank you for all your help
Tania Vernon & SW.
(914) 681-2167

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June 3, 2013

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Cindy Bladey, Chief
Rules, Announcements, and Directives Branch (RADB)
Office of Administration
Mall Stop: TWB-05-B01M
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

5/7/2013
78 FR 26662
5

Re: Docket ID NRC-2013-0063

Dear Ms. Bladey:

The State of New York welcomes the opportunity to provide comments on the NRC's Draft Environmental Assessment and Finding of No Significant Impact (EA/FONSI) for an exemption from certain fire safety regulations. The Draft EA/FONSI was published for comment in the April 3, 2013 Federal Register (78 Federal Register 20144).

The State's comments are attached. If you have any questions, please contact me.

Sincerely,

Alyse Peterson
Senior Project Manager
State Liaison Officer - Designee

SUNSI Review Complete

Template = ADM - 013

E-RIDS= ADM-03

Add= *D. Pickett (APP)*

New York State Energy Research and Development Authority

Albany
17 Columbia Circle, Albany, NY 12203-6399
(P) 1 (866) NYSERDA | (F) (518) 862-1091
nyserda.ny.gov | info@nyserda.org

Francis J. Murray, Jr., President and CEO

Buffalo
726 Exchange Street
Suite 821
Buffalo, NY
14210-1484
(P) (716) 842-1522
(F) (716) 842-0156

New York City
485 Seventh Avenue
Suite 1006
New York, NY
10018-6815
(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

Case 1:09-cv-10594-LAP Document 42-1 Filed 04/11/14 Page 65 of 101

The State of New York urges the Nuclear Regulation Commission ("NRC") to conduct a full environmental review as part of its reconsideration of an existing exemption, requested by Entergy Nuclear Operations, Inc. ("Entergy"), the owner, operator, and licensee of Indian Point, from the federal fire safety regulations, contained in 10 C.F.R. Pt. 50, App. R, III. G.2, based on the risk to public health and safety created by the conditions, at Indian Point's Unit 3, which will exist if such exemption is allowed to remain. The requested exemption is a device to excuse Entergy from a long-standing violation of federal fire safety regulations.

On September 28, 2007, NRC staff granted the exemption to Indian Point's Unit 3, which reduces the amount of time the fire barrier around certain cables and electrical equipment is required to withstand fire from one hour to as little as twenty-four minutes. 72 Fed. Reg. 56,798 (Oct 4, 2007). This exemption was granted without an opportunity for public review and comment. On April 3, 2013, the NRC published its Draft Environmental Assessment and Finding of No Significant Impact ("FONSI") and requested public comment on this action. 78 Fed. Reg. 20144 (April 3, 2013). The NRC's FONSI, without a thorough environmental review and relying on the fire safety proclamations and conclusions asserted by Entergy, without public input or challenge causes a great public safety concern to the State of New York.

Needless to say, the State of New York has a compelling interest in protecting its citizens from the health and safety risks posed by the nuclear reactors at Indian Point, especially given their location just north of the most densely populated area of the State and the country. The Indian Point reactors are located 24 miles north of New York City. More than 17 million people live, work, or travel within 50 miles of Indian Point. According to the Atomic Energy Commission, the NRC, and the Federal Emergency Management Agency, more people live within 10 and 50 miles of the Indian Point reactors than at any other operating power reactor in the nation. A fire incident at Indian Point has the potential to affect more people than an incident at any other nuclear reactor in the country.

NRC regulations require separation of cables and equipment by: (1) a fire barrier having a 3-hour rating; (2) separation of more than 20 feet with no intervening combustibles or fire hazards with fire detectors and an automatic fire suppression system in the fire area; or (3) enclosure of cables and equipment in a fire barrier having a one hour rating with fire detectors with an automatic fire suppression system in the fire area. 10 C.F.R. Part 50, Appendix R.

NRC's regulations authorize the granting of an exemption when the proposed exemption is "authorized by law, will not present an undue risk to the public health and safety, and [is] consistent with the common defense and security". 10 C.F.R. § 50.12. In addition, NRC should not grant exemptions unless "special circumstances are present", which exists where an "[a]pplication of the regulation in the particular circumstances would not serve the underlying

purpose of the rule or is not necessary to achieve the underlying purpose of the rule.” 10 C.F.R. § 50.12 (a)(2)(ii).

NRC’s granting of the aforementioned fire safety exemption to Indian Point Unit 3 from its prescriptive regulations did not evaluate the full scope of potential impacts of an exemption from a failure of the fire systems under review. The record is devoid of the consideration of the risk of fire, which could result in the loss of these control systems, and if the plant were to lose other systems, such as backup power, passive cooling system and the three primary fission product barriers, this could result in the loss of reactor core cooling capabilities, which could potentially cause significant radiological environmental impacts.

Recent reports by NRC’s own Office of the Inspector General (“OIG”) and the Government Accountability Office (“GAO”) found significant deficiencies in the NRC’s exercise of its responsibilities with respect to fire protection issues. *NRC’s Oversight of Hemyc Fire Barriers*, (Jan. 18, 2008) ML080250003; GAO Report to Congressional Requesters, *NUCLEAR SAFETY, NRC Oversight of Fire Protection at U.S. Commercial Nuclear Reactor Units Could Be Strengthened*, GAO-08-747 (June 30, 2008).

According to the GAO Report:

NRC has not resolved several long-standing issues that affect the nuclear industry’s compliance with existing NRC fire regulations, and NRC lacks a comprehensive database on the status of compliance. These long-standing issues include (1) nuclear units’ reliance on manual actions by unit workers to ensure fire safety (for example, a unit worker manually turns a valve to operate a water pump) rather than “passive” measures, such as fire barriers and automatic fire detection and suppression; (2) workers’ use of “interim compensatory measures” (primarily fire watches) to ensure fire safety for extended periods of time, rather than making repairs; (3) uncertainty regarding the effectiveness of fire wraps used to protect electrical cables necessary for the safe shutdown of a nuclear unit; and (4) mitigating the impacts of short circuits that can cause simultaneous, or near-simultaneous, malfunctions of safety-related equipment (called “multiple spurious actuations”) and hence complicate the safe shutdown of nuclear units.

Compounding these issues is that NRC has no centralized database on the use of, exemptions from regulations, manual actions, or compensatory measures used for long periods of time that would facilitate the study of compliance trends or help NRC’s field inspectors in examining unit compliance.

GAO-08-747, preface. NRC Chairman Dale Klein has acknowledged that the response of NRC and industry to the continuing problems in the fire safety area “has not been a stellar

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performance.” NRC Briefing on Fire Protection Issues, (July 17, 2008), at 4, ML08203067. Indeed, today, more than thirty years after the NRC promulgated the fire safety regulations, most of the nation’s commercial nuclear power plants have not yet come into compliance with these Appendix R regulations,¹ including Indian Point.

NRC’s supported its granting of the exemptions to IP Unit 3 through its safety evaluation which concluded that “the configuration of fire zones provide reasonable assurance that a severe fire is not plausible and the existing fire protection features adequate.” The NRC also found that there is a low probability of a fire occurring and the consequences of the fire would not be significantly increased by the use of substandard Hemyc fire barriers. These deductions were the basis for the NRC’s conclusion, through their environmental assessment, that the exemption “will not have a significant effect on the quality of the human environment.” 78 Fed. Reg. 50-286 (April 3, 2013). In matters of nuclear safety, NRC should account even for low probability events.

The State of New York asserts that to assure the highest level of safety, it should be assumed a fire will occur and prepare for the consequences of a worst case scenario. Assuming a fire will be a rare event, and making fewer preparations for it, results in a lower level of overall safety. Therefore, actual compliance with the prescriptive engineered design fire protective requirements of 10 C.F.R. 50, Appendix R, is the best approach.

The leading risk factors for a U.S. nuclear plant meltdown is fire. Approximately one-half of the core damage risk at operating reactors results from accident sequences that initiate with fire events.² Between January 1995 and December 2007, 125 fires at 54 sites were reported to the NRC, 13 of which were classified as “alerts”.³ GAO-08-747 at 4, 11-12. A primary cause of radiological environmental impacts that could result from a significant fire in a light water nuclear power reactor would be the possible loss of the redundant electrical control systems, and the increase potential for the loss of reactor core cooling capabilities.

In order for the NRC to meet its federal obligations under the National Environmental Policy Act (“NEPA”) for conducting an environmental review, it must consider every significant impact of a proposed action and compile a record demonstrating that it has taken those impacts into consideration. This same consideration is pointed out in NRC regulations that provide for a thorough environmental impact review even when a license has requested an exemption. Whereas the Court of Appeals’ decision in this matter accepted, *inter alia*, the NRC’s FONSI, the burden placed on the NRC actually requires greater examination of the increased probability of accidents arising from the proposed exemption. See below. See *Brodsky, et al. v. NRC*, 2013

¹ U.S. Government Accountability Office Report - <http://www.gao.gov/products/GAO-08-747>

² NRC Briefing on Fire Protection Issues, at 58-59 (July 17, 2008), Statement of Jack Grobe, NRC Associate Director, Office of Nuclear Reactor Regulation for Safety Systems and Engineering.

³ U.S. Government Accountability Office Report - <http://www.gao.gov/products/GAO-08-747>

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U.S. App. LEXIS 339, *10 (2d Cir. January 7, 2013). As a consequence of the NRC's not meeting this greater burden in its FONSI, the NRC should complete a full environmental impact assessment prior to determining whether to approve the requested exemption.

The NRC's FONSI attempts to demonstrate satisfaction of the regulatory provisions set forth in 10 C.F.R. § 51.22(c)(9). Section 51.22(c)(9) provides, in pertinent part, that a nuclear power reactor license may be amended to allow the type of exemption under consideration here by the NRC if three things can be demonstrated:

- (i) the amendment involves no significant hazards consideration,
- (ii) there is no significant change in the types of significant increase in the amounts of any effluents that may be released offsite, and
- (iii) there is no significant increase in individual or cumulative occupational radiation exposure.

The NRC appears to address the second and third criteria above by simply restating them in its finding that there will be no significant environmental impacts; however, the NRC does not restate the first criteria in making this finding, nor does it adequately fulfill the requirement for an underlying examination to satisfy that criteria. In other words, the NRC neither stated nor adequately supported a finding that "the amendment involves no significant hazards consideration."

Instead, the NRC states: "the NRC staff finds that the use of this Hemyc fire barrier in these zones will *not significantly increase* the consequences from a fire in these fire zones." And, "[t]he proposed action will not *significantly increase the probability* or consequences of accidents." (Emphasis supplied.) 72 Fed. Reg. 55,254 (September 28, 2007); *see also* 78 Fed. Reg. 20144, 20146 (April 3, 2013). Within these statements it is clear that some increase in the probability or consequences of a fire exists. What compounds the risk inherent in this increase is the problem evident in the NRC's conclusions, to the effect that the NRC has not met its burden to examine the scope of that probability of failure in, for instance, redundant fire retardant or suppression systems; or to fully examine and adequately measure that risk for purposes of finding whether the action constitutes a significant impact on the environment, and, if so, that an environmental impact statement must be prepared. This incomplete step in the environmental impact analysis leaves open the question of whether the NRC has accurately identified the relevant environmental concerns. This incomplete step also fails to demonstrate that the NRC adequately considered alternative measures, for instance other means for ensuring sufficient redundant fire suppression systems, and at what cost.

These are very important decision points with respect to public health, safety and the environment that the FONSI glosses over without adequately examining the probability of failure

in the subjects of the fire safety examination, e.g. the redundant systems, upon which public safety and environmental protection are based, and which may lead to a reactor accident. Another example is the lack of inquiry as to the probability that the 24-minute and 30-minute thermal protection for conduits from exposed fire may fail and, if so, what the consequences would be to public health, safety and the environment. The conclusory level of analysis provided by the NRC does not provide the kind of reasonable assurance that is needed to demonstrate that the probability of a fire hazard is so low as to be beyond consideration of risk at Unit 3. Again, the NRC's own findings point to a level of increase, identified as insignificant, without adequately expressing why it is insignificant and what consequences would result if a fire were to occur despite assurances. In a similar context, it has been demonstrated that the NRC's reasonable assurances regarding the potential outcome of a fundamental underpinning of an environmental analysis is inadequate where it "does not describe a probability of failure so low as to dismiss the potential consequences of such failure." *New York v. Nuclear Regulatory Commission*, 681 F. 3d 471, 478 (D.C. Cir. June 8, 2012)(Addressing the Environmental Assessment offered in support of the NRC's Waste Confidence Decision Update, 75 Fed. Reg. 81,037, 81,041 [Dec. 23, 2010] "[T]he EA is insufficient because a finding that 'reasonable assurance exists that sufficient mined geological repository capacity will be available when necessary' [] does not describe the probability of failure so low as to dismiss the potential consequences of such failure.") (Citations omitted.)

In *New York v. NRC*, the NRC did not adequately examine the actual probability of harm associated with the failure to thoroughly examine the consequences of fire (in that case, spent nuclear pool fires caused by spent fuel storage facility failures over the potentially sixty-year life span of spent fuel facilities). *Id.* at 482 ("[A]n agency conducting an EA generally must examine both the probability of a given harm occurring and the consequences of that harm if it does occur. Only if the harm in question is 'so remote and speculative' as to reduce the effective probability of its occurrence to zero may the agency dispense with the consequences portion of the analysis.") citing *Limerick Ecology Action, Inc. v. NRC*, 869 F.2d 719, 739 (3d Cir. 1989). While here the NRC may have offered words in a sense diminishing the probability or harm from a fire incident (*see, e.g.* letter of John P. Boska, Senior Project Manager, NRC, to Michael A. Balduzzi, Entergy Nuclear Operations, September 28, 2007, Attachment: "Revision to Existing Exemptions, p. 11, section 3.7; ADAMS accession number ML072410254.), by its own statements (above) it is clear that it has not caused the level of harm to reduce that probability to a level that is effectively zero, particularly given the consequences of such a failure as articulated below.

However, one may characterize the NRC's statements, above, as the NRC failed to expressly make the necessary finding that "the amendment involves no significant hazards consideration", and such failure demonstrates an inadequate assessment or quantification of the probability that the acknowledged additional risk will be manifested in a fire resulting in an accident at Indian

Point Unit 3. This failure is a precise and critical one as it means that the NRC did not conduct a reasoned examination of the probability of the additional risk presented by the proposed exemption. Without doing so, it is inappropriate for the NRC to presuppose that the proposed exemption is correctly attributed to the categorical exemption contained in the regulation. The result would be an uncritical inclusion of Entergy's submissions supporting the exemption proposal without fully articulating the reasoning behind the NRC's acceptance of the probability of potential harm. Furthermore, we believe that the Court of Appeals in *Brodsky, supra*, did not address this question. The NRC has not calculated the environmental and public health effects of a fire scenario that falls within the as yet unidentified probability of conflagration that the NRC itself identifies. But the NRC has not reached a point of no return with respect to its finding of no significant impact and, in taking this opportunity to reconsider its analysis, it should conclude that the facts and circumstances warrant conducting the complete assessment of impacts inherent in a full environmental impact statement in order to make a threshold determination as to whether there is an acceptable probability of risk of fire in the context of a resulting accident at Unit 3 with the potential consequences mentioned below.

A significant reactor release would trigger implementation of protective actions for the public, which could include evacuation of large numbers of people as well as the immediate, intermediate and long-term impacts that a large-scale relocation of communities would entail. A significant release could also result in interdiction or embargo of farm products and a prohibition against the taking of fish and wildlife within and beyond the directly impacted area; loss of the use of surface water as drinking water sources; as well as denial of services of significant civic infrastructure such as conventional power plants, sewage treatment and, communications systems, and transportation corridors. The impacts to communities, farming and industry would cut across all sectors of society within the affected area, and possibly beyond. Even assuming the most significant near-term impacts could be brought under control within a few weeks to months, long-term environmental and human health impacts would continue for decades given the half-life of radiological materials released.

NEPA requires federal agencies to analyze alternatives to the proposed action – here an exemption from federal fire regulations. As part of its alternatives analysis, NRC Staff and Commissioners should examine the alternative of compliance – *i.e.*, having Indian Point's critical electrical cables and equipment actually comply with the Appendix R federal fire safety regulations. 40 C.F.R. §§ 1502.14, 1507.2(d), 1508.9(b).

Conclusion

The NRC's consideration of Entergy's request for exemptions from basic fire safety measures, at the Indian Point facility, should only be decided after a full environmental review, as granting the requests would create a risk to public health and safety. The State disagrees with the NRC's Draft Environmental Assessment and proposed Finding of No Significant Impact.

A-81

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Gallagher, Carol

From: Strawtown Studio <strawtownstudio@gmail.com>
Sent: Tuesday, June 04, 2013 12:13 AM
To: Gallagher, Carol
Subject: re: Close Indian Point - Docket Number, NRC-2013-0063
Attachments: To the NRC and All Concerned.docx

Kindly accept the attached comments rather than the comments sent 12 minutes ago. That one had a strike out in the text body. Thank you. Laurie Seeman

Please see attached comments regarding the request to deny licensing to Indian Point.

Thank You,

Laurie Seeman

5/7/2013
48FR 26662

6

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2013 JUN -4 AM 8:21

RULES AND DIRECTIVES
BRANCH
LS/NRC

SUNSI Review Complete
Template = ADM - 013
E-RIDS= ADM-03
Add= *D. Pickett (dUPA)*

Case 1:09-cv-10594-LAP Document 42-1 Filed 04/11/14 Page 72 of 101

Three Mile Island - 03/28/1979 to present
Chernobyl - 04/26/1986 to present
Fukushima - 03/11/2011 to present
Verplanck - __/__/----

xx/xx/xxxx - What will the Date of the Indian Point Nuclear Disaster be?

June 3rd, 2013

To the Nuclear Regulatory Commission, and All Concerned;

Re: Docket Number, **NRC-2013-0063**

I am writing to you today to ask that you take the necessary progressive steps to retire Indian Point Power Plant. My family lives in the 10-mile target evacuation zone. I run a children's summer camp in the zone. The concern of what to do when something goes wrong weighs on me perpetually. Tomorrow there is to be an Indian Point siren drill at 10:30 am. This is no way to live. The power peaks that are said to be the reason that we need this plant are unjustified. There are many ways to ameliorate the peak demands.

The Indian Point plant is red flagged, the fire issues are too numerous, and the plant has unpredictable behaviors. In the Hudson Valley, Indian Point increasingly threatens to devastate millions of people, and with it the world economy.

The Fukushima devastation has redefined the world as we know it, and yet the NRC spokesperson at a hearing last year in Peekskill, told the audience not to worry. He said that the radiation from Fukushima was far away, and not going to affect us here. This enraged the audience who knew better. The audience was also furious that the NRC did not express real care, for caring sake, for the people of Japan.

This all leads the people to ask, will the NRC stop acting as if it does not know better about closing Indian Point?

The examples of nuclear gone wrong, combined with human error, are too many to ignore. Many of you employed with the NRC may be too young to have been called upon to respond to the partial melt down of Three Mile Island nuclear plant in Pennsylvania, so the reality of things going terribly wrong, and the shock of your needing to respond as an NRC expert, you have not experienced yet. The people of Three Mile Island call this The Accident Without End, but it seems the NRC moved on shortly after it all happened.

I have some personal experience with Three Mile Island that informs me. In July of 1982 I spent 10 days in the farmland of Three Mile Island Pennsylvania, in plain

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view of the nuclear power plant towers. I was there making a short independent film that centered upon nuclear power and the questions it raises for the citizens of the world.

When filming by the road the local people of the Three Mile Island area driving by were curious about what we were up to and many of them stopped to talk with us. There on the side of the road I saw a man lift his shirt to show me skin lesions he said he knew were from the radiation. I heard of plants and animals that were mutated, and dairy farmers who lost everything because they could not sell their milk and were not compensated for this.

One man told me that before the nuclear plant was built that the people were told that this would bring money savings to the people. He told me, "There are NO money savings with Nuclear energy. I would like to give every penny I ever made in my life to go back to the day before this happened!"

I think the worst was hearing of living in fear of the insidious, long-term effects that could not be seen or measured. Concern for their future generations of family members sickened the soul of the people.

The personal accounts of what happened to them, as individuals, as families, as community, and as farmers and business owners were so endlessly disturbing to me that it has forever moved me in my life to look for ways to bring true reason to the world where there is none.

This nuclear devastation of lives and lands in Three Mile Island was termed a "mishap" by government representatives, the NRC, and the media. Please agree with me when I say that a "mishap" is when a bucket of paint falls off a ladder, not a nuclear meltdown. Correct perception and right action are two essential components of public safety. With this letter I call upon the NRC to allow correct perception to guide the decision making process on this decision to close Indian Point. You are charged by the people to uphold your role to protect life and lands.

In 2008, I returned to Three Mile Island for the 30-year remembrance gathering. There, at the core of the vigil was a group women who were the women who in 1979 were the mothers of small babies. They told me of the long years of worry. How every year at the birthday parties they look upon their children and wonder if they will become sick. The heart of sadness is impossible to describe. Can you imagine that is your family? It takes that kind of personal realization to understand what you are charged with so you can have correct perception.

Now there is Chernobyl and Fukushima to guide us. Is there there really any question in your mind about what to do about the Indian Point nuclear plant that is well past its time of calculated risk for safe service?

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With Indian Point we have an outrageous chance of things going wrong. No amount of data collecting at this point, or agreement revisions, will put any accountability mechanism into place that have meaning. The people know about the lack of fire training and all of the rest of the fire code violations. We know that Entergy is operating in tight financial times, and this causes them as a corporation to cut corners and to add greater risk the people of the Hudson Valley.

It is time for the NRC to appropriately retire this nuclear plant that has done its service. This is the right time and place to take this step. Do this now. before the Hudson Valley has a nuclear disaster date of __/__/_____.

Imagine if xx/xx/xxx in the Hudson Valley becomes **Verplanck 10/18/2013**, during another fall super storm, and just weeks after the September deadline for responsibly closing this plant down. This will be on your shoulders as a collective and as individuals. There is no agency safety to stand behind when this happens. You will take this home with you, if you have a home, meaning you live outside of the zone. But wherever you go you will have a community to face. This must cross your mind.

The night of Sandy I sat and listened for hours in the intense wind for the sound of the Indian Point siren. It was terrifying. The fear is ever present here.

To all the individuals in the decision-making committee, I ask for the tens of millions that are at risk, and for the global community, that you listen to the people and the Governor and do the right thing. Close this plant down.

Respectfully,

Laurie Seeman, Director, Lead Artist / Educator
Strawtown Art & Garden Studio
179 South Mountain Road
New City, NY 10956

(845) 558-0877
laurieseeman@gmail.com

A-85

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Gallagher, Carol

From: Michel Lee <ciecplee@verizon.net>
Sent: Monday, June 03, 2013 9:26 PM
To: Gallagher, Carol
Subject: Resending: Comments RE: Docket ID NRC-2013-0063 Indian Point

Resending below comments via e-mail. This was mailed via postal service this afternoon, but appears to be bouncing back from e-mail transmissions to the NRC. I was also advised by other citizens that faxes were not getting through earlier today.

Many apologies if this is a duplicate.
Michel Lee

5/7/2013
78 FR 26662

From: Michel Lee [mailto:ciecplee@verizon.net]
Sent: Monday, June 03, 2013 5:05 PM
To: 'Carol.Gallagher@nrc.gov'
Subject: Comments RE: Docket ID NRC-2013-0063 Indian Point

7

Michel

Michel Lee, Esq.
Steering Committee
Indian Point Safe Energy Coalition

Chairman
Council on Intelligent Energy & Conservation Policy (CIECP)
(914) 420-5624
ciecplee@verizon.net

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2013 JUN -4 AM 8:21

RULES AND DIRECTIVES
BRANCH
USNRC

June 2, 2013

RE: Docket ID NRC-2013-0063
Entergy Nuclear Operations Inc.,
Indian Point Nuclear Generating Unit 3

Via Mail to:

Cindy Bladey
Chief, Rules, Announcements, and Directives Branch (RADB)
Office of Administration
TWB-05-B01M
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

SUNSI Review Complete
Template = ADM - 013
E-RIDS= ADM-03
Add= D. Pickett (dup)

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Via E-Mail to:

Carol Gallagher, Carol.Gallagher@nrc.gov

Douglas V. Pickett, Senior Project Manager, Office of Nuclear Reactor Regulation Douglas.Pickett@nrc.gov.
SECY@nrc.gov

Dear NRC:

I write to urge the NRC to deny the fire safety exemption provided Entergy Nuclear Operations, Inc. with respect to Indian Point Nuclear Generating Unit No. 3. Document ID NRC-2013-0063-0002.

INDIAN POINT IS A UNIQUE SITE, WHICH PRESENTS A UNIQUE RISK

Denial is mandated first and foremost, because Indian Point presents a uniquely dangerous site in which to allow reduction of fire safety margins.

Indian Point sits less than 25 miles from New York City. No nuclear power plant in the world – much less the nation – puts more human beings in proximate danger. Some 300,000 people live within 10 miles, about 1 million reside within 20 miles, and over 17 million live within 50 miles.

The roadways in the vicinity of Indian Point are exceptionally ill-equipped to handle surges in congestion. Many of the arteries are narrow and become obstructed bottlenecks when challenged by even relatively minor traffic accidents. (As in other areas, roadways, overpasses, bridges and other infrastructure have exhibited serious signs of deterioration. But infrastructure problems present a far greater hazard in a heavily populated region likely to be overwhelmed by heavy traffic.) Former FEMA Director James Lee Witt in the report of Witt and Associates (commonly called the “Witt Report”) to the State of New York details the limitations of the emergency plan with attention to public protection from radioactivity. (Please deem the findings of the Witt Report referenced and incorporated herein.) Perhaps just as crucially, the infrastructure limitations are likely to impair ingress to and egress from the Indian Point site itself during a major emergency. This manifestly would hinder implementation of mitigation measures.

Further, Indian Point is an acknowledged prime terrorist target. The terrorist threat component is addressed in the Council on Intelligent Energy & Conservation Policy Comments to Proposed Rule 10 CFR Parts 50, 72 and 73 Regarding Power Reactor Security Requirements as Licensed Nuclear Facilities, filed with the NRC in March 2007 (“CIECP Comments”). (Please deem the points in the CIECP Comments incorporated herein. They are also pasted below for easy reference.) The most notable area of both expanded and inadequately assessed threat is that posed by the full spectrum of cyberattack and cyberintrusion. The U.S. military and intelligence agencies have repeatedly identified this threat to be significant and growing. Strong evidence also indicates it is targeted particularly at U.S. energy infrastructure. It should therefore obviously be analyzed with respect to fire protection (not to mention all other safety and security capabilities) at Indian Point. There is scant evidence to date that this has been done.

Indian Point is a site uniquely at risk. It is a site which singularly places an untenable percentage of the U.S. population at risk. It is a site where the miscalculation of risk could carry consequences of historic proportion.

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Simply put, the willingness to gamble with fire safety at Indian Point is not only a willingness to compromise the health, safety, property and livelihood of millions of Americans, it constitutes a willingness to put the economic security of the nation at risk.

Whether that risk is one in one thousand, or one in million, it is untenable. For the NRC to allow that risk to continue is inexcusable.

LAW AND REGULATIONS MANDATE DENIAL OF FIRE SAFETY EXEMPTION

The Atomic Energy Act of 1954, as amended, directs the NRC to execute its regulatory authority in the service of the common defense and security of the nation and the protection of the health and safety of the public. Allowance of fire safety exemption at Indian Point is contrary to these mandates. Such allowance, furthermore, constitutes a breach of the Appendix R Defense in Depth rule; a violation of the National Environmental Protection Act's directive to consider foreseeable terrorist acts; and a disregard of the agency's duty to do an Environmental Impact Statement. The issuance of an Environmental Assessment" and a "Finding of No Significant Impact" is simply evasion of regulatory responsibility.

The NRC fire safety regulations are inadequate for conditions that may arise in concert or by happenstance with a fire. Such conditions include: hydrogen or other on-site explosions; near-site fires or explosions; multiple-reactor accidents; severe natural disasters; widespread and long-lasting loss of off-site power. For the NRC to allow the plant sited in the most demographically congested region of any nuclear plant in the nation to lower the fire safety bar further represents a simply staggering level of disregard for public health and safety.

INDIAN POINT'S AGE & THE CHANGING REALITY OF CLIMATE MUST BE TAKEN INTO CONSIDERATION

Indian Point already – in its first 35 odd years of operation – has had several fires; explosions; cooling system malfunctions; emergency sump pump defects; clogged water intakes; safety injection system degradation; boric acid corrosion; nitrogen gas accumulation; hydrogen gas buildup; steam generator accidents; reactor control rod malfunctions, electrical failures; backup generator failures; security system malfunctions; emergency communication system collapses; computer software problems; pipe breaks; and a series of radiation leaks. The NRC appears to continually ignore the reality that Indian Point is an aging plant that – like every other aging machine made by man – experiences age-related deterioration, including breakdowns that are neither planned nor anticipated.

Heavy precipitation and wide temperature swings in the region will likely take a further toll on the plants, accelerating corrosion and rusting in buried pipes and cables. Some of these systems are not susceptible to inspection. True conservatism requires such systems to be deemed likely to fail if significantly stressed.

FIRE SAFETY EXISTS WITHIN AND IS INTRICATELY LINKED TO OTHER SITE CONDITIONS: COMMON SENSE AND DUTY COMPEL INTEGRATED EVALUATION

The NRC regulatory scheme is labyrinthine, but appears to be strangling common sense out of its process.

The problem is systemic. But the fire safety exemption at issue here represents as good an illustration of the problem as any. Systems, components, conditions, threats, all of these things get lumped into various categories

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and then analyzed as if each operates independent of one another, within its own separate reality, and according to pre-specified sequences. Fires are analyzed as if they could not be happening at the same time as any number of other events that could seriously and disastrously impede effective mitigation. Such other events include: major explosions; a severe wide-spread and long-lasting natural disaster; a major terrorist attack (on-site and/or off); forest fire; an earthquake; a serious and long-lasting loss of off-site power; severe flooding, a deluge or a river surge; the sudden loss of crucial area infrastructure; multiple-coincident accidents happening on-site with the resulting distraction of personnel or dislocation of manpower.

In addition, the fire safety analytic schema disregards the multiplier and cascade effects that can result from age-related deterioration of multiple components and systems; even if each one separately falls within deemed “acceptable” margins of degradation.

FIRE IS A HIGH HAZARD

Fire presents a particularly serious threat to nuclear plants. This point is not being made to be glib. It is undisputed that the fire barrier system for critical electrical cables at Indian Point has been defective and potentially vulnerable to rapid failure for years. Independent experts are on the record warning that such defects could jeopardize safe shutdown of the reactor during fire.

There is not a computer model in existence that can calculate how the multifarious variables of air movement, explosive gases, combustive materials, falling debris, ignition of sensitive electrical controls, etc. will come into play, much less predict human behavior or capability under conditions of blinding choking smoke and intolerable heat.

The risk at Indian Point is very possibly heightened by the threat posed by two huge underground natural gas pipelines which cross within a mere few hundred feet of the nuclear site. It would seem self-evident that the possibility that a rupture of one of those pipes (which are outside the ambit of Entergy control) – both of which are extremely old – could result in a massive gas explosion and fire that spreads and threatens Indian Point .

The vulnerability of Indian Point is heightened by the subpar protection of the ancillary support structures and the spent fuel pools. The pools were built (with relatively flimsy roofs) in the 1970s outside robust containment, with the intention of being just temporary holders for high level nuclear waste.

As we have seen in Japan, a disruption of the continual flow of cooling water – through displacement or burn-off – can put spent fuel pools at risk of releasing vast quantities of the most deadly radioactive isotopes. The inventory of radiation at Indian Point far exceeds that which was released by Chernobyl. The possibility of a spent fuel fire and a cable fire at the same time is ignored. It must not be.

Earthquake risk must also be taken into the equation. Indian Point reactor 3 is ranked by the NRC as having the highest risk of core damage from an earthquake of any nuclear plant in the entire U.S. It sits at the virtual intersection of two earthquake faults. Experts at the Lamont-Doherty Earth Observatory of Columbia University’s have concluded that a magnitude 7 quake could occur at the site at any time. Indian Point was not designed with that level in mind, nor was it designed for the kind of gravitational acceleration that may occur from a smaller on-site quake.

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The real seismic threat at Indian Point may not be a major earthquake, but a small quake or some other event, perhaps another explosion, which emits enough vibration to further weaken pipes, fray wires, loosen welds, or create fissure cracks in some component or another. Problems like these have repeatedly occurred at Indian Point without discovery through ordinary maintenance and inspection. The plant could puff along for years. But that does not mean the systems would not crumble under stress.

Fukushima is the most recent lesson in the fallibility of both “fail-safe” systems and human beings.

But the lessons of Fukushima were preceded by other events that are highly relevant to the fire issue. In 2007, a fire at the Kashiwazaki-Kariwa nuclear power plant in Japan burned for nearly 2 hours before it was extinguished. In 1975, the fire at the Browns Ferry plant in the U.S. burned for nearly 7 hours. Is there no institutional memory at the NRC? Here are a few other quick reminder facts on Browns Ferry: More than 1,600 cables were damaged. The emergency core cooling system was significantly compromised. Communications broke down. Regional emergency officials were given wrong and confusing information. Human error was rampant throughout the ordeal. The plant was saved from meltdown by jury-rigging equipment to keep the reactor cooled.

And, of course, it was the Browns Ferry fire that spurred the fire safety rules the NRC is now ignoring at Indian Point.

CONCLUSION

Recent history offers a sad abundance of examples of how unexpected events can aggressively overwhelm human-engineered systems. The NRC needs to extrapolate itself from the snarl of its own schematics, lessen its enthrallment with algorithms, and start recognizing reality. No scenario mentioned here is “likely” but none are beyond plausibility. This is what matters when the stakes involve the future of the New York Metropolitan region.

Finally, a full public hearing is urgently needed to address the fire safety issue.

Sincerely,

Michel Lee, Esq.
Scarsdale, NY

(This submission is made as a citizen on my own behalf. I do wish to acknowledge, however, that I worked on the team which drafted the petition in opposition to relicensing Indian Point on behalf of the Sierra Club – Atlantic Chapter, Westchester Citizen’s Awareness Network, Public Health and Sustainable Energy (PHASE), and then NY Assemblyman Richard Brodsky).

March 27, 2007

Re: NRC Proposed Rule: Power Reactor Security Requirements (RIN 3150-AG63)

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Annette Vietti-Cook, Secretary
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Attn: Rulemakings and Adjudications Staff
Submitted via e-mail to SECY@nrc.gov

COUNCIL ON INTELLIGENT ENERGY & CONSERVATION POLICY (CIECP) COMMENTS TO PROPOSED RULE 10 CFR PARTS 50, 72 AND 73 REGARDING POWER REACTOR SECURITY REQUIREMENTS AT LICENSED NUCLEAR FACILITIES

Nearly six years after September 11, 2001, the 103 civilian nuclear reactors in the United States are still not in a position to repel attacks by adversaries with capabilities commensurate with those of either the 9/11 terrorists or with enemies of the United States currently operative on the world stage. The present Power Reactor Security Requirements (PRSR) thus fall far short of the actual threat level faced by the U.S. today, much less the escalated level the nation will face as nations such as Russia, China and Iran improve and export nuclear engineering expertise. Indeed, as numerous security experts have pointed out, a terrorist group with access to sympathetic nuclear scientists and engineers would have sufficient sophistication to target the critical systems and weak links of nuclear reactors. The assistance that Pakistani nuclear scientists reportedly offered to Al Qaeda illustrates this threat.

Recent National Intelligence Estimates and National Intelligence Council Reports describe the terrorist threat to the U.S. as real and as having no sign of abatement for many years to come. These reports further warn of a new class of "professionalized" terrorists—in part created by the Iraq war—who must be expected to have strong technical skills and English language proficiency. Such individuals should, in the future, be expected to become major players in international terrorism.

Al Qaeda and other terrorist groups have shown extraordinary tactical ingenuity and a complete lack of reverence for human life. Further there is ample evidence that U.S. nuclear power plants, particularly those sited near metropolitan areas, are viewed as attractive terrorist targets. Notably, the 9/11 Commission learned that the original plan for a terrorist spectacular was for a larger strike, using more planes, and including an attack on nuclear power plants. In an Al-Jazeera broadcast in 2002, one of the planners of 9/11 said that a nuclear plant was the initial target considered. We also know from the 9/11 Commission's investigation that, even after the plot was scaled down, when Mohammed Atta was conducting his surveillance flights he spotted a nuclear power plant (unidentified by name, but obviously the Indian Point nuclear power plant) and came close to redirecting the strike. National Research Council analyses and post-9/11 intelligence has also indicated that the U.S. nuclear infrastructure is viewed as an alluring target for a future terrorist spectacular. As the Chairman of the National Intelligence Council stated in 2004, nuclear power plants "are high on Al Qaeda's targeting list," adding that the methods of Al Qaeda and other terrorist group may be "evolving."

There is, thus, every reason to believe that a sizable, well-planned and orchestrated military operation against a U.S. nuclear facility is well within both present and near-future terrorist intent and capability. In view of these realities, the current proposed PRSR is utterly inadequate.

Consequently, the COUNCIL ON INTELLIGENT ENERGY & CONSERVATION POLICY (CIECP) urges the NRC to address the following realities in its PRSR:

ACTIVE INSIDERS

The voluminous number of security breaches which have occurred at critical infrastructure, including nuclear weapons and power facilities after 9/11 (such as the 16 foreign-born construction workers who were able to gain access to the Y-12 nuclear weapons plant with falsified documentation) demonstrates that nuclear "insiders" must be deemed potential active participants in an attack.

This threat is significantly augmented by nuclear power plant operators' increasing outsourcing of on-site work in order to cut costs.

Contractor oversight failures have been documented by the NRC. For example a December 22, 2003 NRC Special Inspection Report on the Indian Point Nuclear Generating Station in Buchanan, New York (Indian Point) operated by Entergy Nuclear Northeast (Entergy) notes "the common theme of a lack of direct contractor oversight and quality control measures, along with the absence of Entergy subject matter experts to independently assess contracted work activities...." Critically, the risk of sabotage is elevated at all power plants during periods of refueling and major construction work when hundreds of outside contract workers have site access.

The active participation of insiders, including contract workers, in a terrorist offensive need not take place during the time of attack. It may occur days or even many months prior to an attack. In addition to actions such as surveillance of plant schematics, security features and protocols, pre-attack participation may involve the sabotage of critical instrumentation, computers, piping, electronic systems or any number of other components, where such sabotage would likely not be discovered prior to an emergency event.

COMPUTER SYSTEM COMPROMISE

Nuclear power plant computer systems, like those of other critical infrastructure, are subject to a range of vulnerabilities, including power outages, attacks by malicious hackers, viruses and worms. Compromise of integrity may also occur at the level of software development via backdoors written into code or the implantation of logic bombs programmed to shut down a safety system at a particular time.

Many terrorist networks have the resources and technical savvy to wreak havoc. For example, the alleged terrorist, Muhammad Naeem Noor Khan, picked up in Pakistan in 2004, and believed to have links with Al Qaeda, is a computer engineer.

The fact that U.S. nuclear reactors are not impregnable was demonstrated by the penetration of the Slammer worm into the Davis-Besse nuclear facility. That intrusion disabled a safety monitoring system for nearly 5 hours. In addition, computer hackers have broken into U.S. Department of Energy computers. Some of such intrusions were root-level compromises, indicating that hackers had enough access to install viruses.

Computers at nuclear power stations are also vulnerable to acts of sabotage against off-site power transmission, as was evidenced at Indian Point during the 2003 blackout which struck the Northeast. At Indian Point, various computer systems had to be removed from service, including the Critical Function Monitoring System, the Local Area Network, the Safety Assessment System/Emergency Data Display System, the Digital Radiation Monitoring System and the Safety Assessment System.

It is, accordingly, a matter of pressing importance that the NRC engage independent experts to develop a comprehensive computer vulnerability and cyber-attack threat assessment. Such an assessment must evaluate the vulnerability of the full range of nuclear power plant computer systems and the potential consequences of such vulnerabilities. The PRSR must incorporate such findings and include a protocol for quickly detecting such an attack and recovering key computer functions in the event of an attack.

CHEMICAL WEAPONS

The PRSR must fully address the potential consequences of the use of toxic chemicals as part of an attack scenario. There are numerous agents that can be deployed with almost instantaneous effect and can immobilize targets via paralysis, convulsions, blinding, suffocation or death. Such agents could be employed as part of the initialization strategy. For, example, a truck or even large SUV filled with chlorine, boron trifluoride, hydrofluoric acid, liquid ammonia, or any number of other agents could be crashed into a perimeter barrier, with the resulting fumes killing or disabling plant personnel guarding the outdoor area of the facility.

Chemical agents could also be introduced surreptitiously into building ventilation systems. They may also be used strategically to neutralize workers endeavoring to maintain control of the situation.

Many such agents are easy to make and do not require sophisticated delivery systems. Some can be carried in coffee mugs or in vials within body cavities. Phenarsazine chloride, an arsenic derivative, can be transported in minute quantities, even as a powder that can be dusted on paper. It is lethal if burned and even a spoonful can cause immediate extreme irritation of the eyes and breathing passages. A chemical like chloroform acetone methanol can be transported on filter paper, then combined with a heat source to create an explosion.

CONVENTIONAL WEAPONRY

Intelligence and military analysts have repeatedly warned that extremists in Iraq, the tribal areas of Pakistan and elsewhere are currently developing a high level of military skill and experience. This reality underscores the need for nuclear plants to be able to defend against attackers utilizing the full range of potential weaponry that terrorists are known to be capable of using, including heavy caliber automatic weapons; sniper rifles; shoulder-fired rockets; mortars; platter charges; anti-tank weaponry; bunker busters; shaped charges; rocket-propelled grenades; and high-power explosives.

Numerous weapons systems posing a threat to even the best trained and equipped civilian guard force, as well as to on-site installations, are readily available and easy to transport. To wit:

- Assault rifles and other rapid-fire battlefield weapons such as AK-47's, Uzi's and TEC-9's are freely available in the U.S. A weapon like the SKS 7.62-millimeter semiautomatic assault rifle can be purchased for under \$200. In 2005 the Government Accountability Office reported that 47 individuals on a federal terrorism watch list were actually permitted to legally buy guns in 2004.

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- A standard M-24 sniper rifle with day and night scope can be carried in a canvas bag and fires 7.62-millimeter ammunition targeting up to 3000 feet
- A .50-caliber Barrett rifle, which can be purchased for \$1000 on the internet, weighs a mere 30 lbs and can hit targets up to 6000 feet away with armor-piercing bullets that can blow a hole through a concrete bunker, bring down a helicopter or pierce an armored vehicle.
- A rocket propelled grenade launcher is re-loadable, can fire at the speed of 400 feet per second and can blow a vehicle into the air.
- A TOW missile is an accessible form of military hardware used in over 40 countries and can be fired from a launcher on a flatbed truck. A 1998 test TOW fired into a nuclear waste transport cask (which is more robust than many on-site nuclear waste storage casks) blew out a hole the size of a grapefruit. The Kornet-E missile, developed by the Soviets and sold to Iraq, can travel over 3 miles and cut through over 3 feet of steel. The world's arms market is awash in thousands of Milan missiles. The 60-70 lb Milan missile system has an effective range of over 5000 feet and can blow a hole through more than 3 feet of armor plate.
- The deployment of increasingly powerful and sophisticated explosives, including shaped charges and explosively formed penetrators (or E.F.P.s) by terrorists and insurgents in Iraq show that the explosives use capabilities of enemies of the United States should not be underestimated. Notably, the 18 men arrested in Australia in November 2005, and believed to have been planning an attack on an Australian nuclear reactor, had allegedly been stockpiling materials used to make the explosive triacetone triperoxide, or TATP. Terrorists targeting a U.S. nuclear power plant may very well be able to draw on expertise developed during the Iraq insurgency as well as military experts and rocket scientists from the former Iraq government or from hostile nations such as Iran. In addition, the strategic utility of explosives is magnified when bombers are willing to blow themselves up. Suicide bombers able to gain access to the internal areas of a nuclear power plant during the course of an attack could cause untold destruction.
- Perhaps the most intractable military hardware threat is posed by shoulder-fired missiles such as Stingers, SA-7's, SA-14's and SA-18's. An estimated 500,000 such systems are scattered throughout the world and have been found in the possession of at least 27 terrorist or guerrilla groups. Some can be bought easily on the black market for as little as several thousand dollars each. Critically, shoulder-fired missiles are easy to operate (Al Qaeda training videos offer instruction) and are designed for portability, typically being 5-6 feet long and weighing 35 lbs. They can be transported by and fired from a van, S.U.V., pickup truck or recreational boat. Even a single terrorist armed with a shoulder-fired missile can cause immediate and substantial damage to a targeted structure. Traveling at more than 1,500 miles per hour, a typical shoulder-launched missile has a range of over 12,000 feet. If the target remains intact following the initial strike, the terrorist can attach a new missile tube to the grip stock launcher and fire again.

WATERBORN ATTACKS

Waterborne defenses of nuclear plants adjacent to navigable waterways must be significantly enhanced. Facilities must either be engineered to withstand damage from a waterborne attack or suited with physical barriers that prevent entry to the plant and/or critical cooling intake equipment.

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Continual cooling is an essential component of nuclear plant safety. A meltdown can be triggered even at a scrambled reactor if cooling is obstructed. Water intake is also essential to the proper function of spent fuel pools. Yet at certain nuclear plants, cooling systems may be highly vulnerable. At both Indian Point and Millstone Power Station, in particular, water intake pipes have been identified by engineering experts as exposed and susceptible to waterborne sabotage.

One or more boats laden with high energy explosives could severely compromise cooling water intakes easily and quickly. Indian Point, for instance, is located on the banks of the Hudson River in an area heavily trafficked by commercial and recreational vessels. The 900 foot "Exclusion Zone" –marked only by buoys- could be traversed by speed boats in 30 - 40 seconds, well before any Coast Guard or other patrol boat could react. Patrol boats could also be readily taken out by suicide bomber boats crashing into them (in the manner a small explosives laden boat targeted the destroyer the USS Cole in 2000) or by weaponry like shoulder-fired missiles or rocket propelled grenades.

AERIAL ASSAULT

According to a terrorist "threat matrix" issued by the National Research Council and the National Academies of Sciences and Engineering following the September 2001 attack, "Nuclear power plants may present a tempting high-visibility target for terrorist attack, and the potential for a September 11-type surprise attack in the near term using U.S. assets such as airplanes appears to be high."

In March 2005, a joint FBI and Department of Homeland Security assessment stated that commercial airlines are "likely to remain a target and a platform for terrorists" and that "the largely unregulated" area of general aviation (which includes corporate jets, private airplanes, cargo planes, and chartered flights) remains especially vulnerable. The assessment further noted that Al Qaeda has "considered the use of helicopters as an alternative to recruiting operatives for fixed-wing operations," adding that the maneuverability and "non-threatening appearance" of helicopters, even when flying at low altitudes, makes them "attractive targets for use during suicide attacks or as a medium for the spraying of toxins on targets below."

The vulnerability of nuclear power plants to malevolent airborne attack is detailed extensively in the Petition filed by the National Whistleblower Center and Randy Robarge in 2002 pursuant to 10 CFR Sec. 2.206. A number of studies of the issue are also reviewed in [Appendix A](#) to these Comments. The particular vulnerability of nuclear spent fuel pools to this kind of attack is detailed in the January 2003 report of Dr. Gordon Thompson, director of the Institute for Resource and Security Studies entitled "Robust Storage of Spent Nuclear Fuel: A Neglected Issue of Homeland Security" and in the findings of a multi-institution team study led by Frank N. Von Hippel, a physicist and co-director of the Program on Science and Global Security at Princeton University and published in the spring 2003 edition of the Princeton journal *Science and Global Security* under the title "Reducing the Hazards from Stored Spent Power-Reactor Fuel in the United States." It is worthy of note that, even post-9/11, general aviation aircraft have circled or flown closely over commercial nuclear facilities without military interception.

The NRC's sole present strategy for averting a kamikaze attack upon a nuclear power plant is reliance upon aviation security upgrades implemented by the Transportation Security Administration and the Federal Aviation Administration and faith that U.S. intelligence will provide ample warning.

It is this kind of governmental agency pass-the-buck mindset that brought the nation Katrina.

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The NRC's conjecture also betrays a reality disconnect reminiscent of the federal response to Katrina. Since 2001 there have been numerous breaches of airport security throughout the nation. Notably, in late 2005, there were three serious security breaches at Newark International Airport, one of the points of departure used by the September 11 hijackers. The most serious occurred on November 12, 2005, when a man driving a large S.U.V. barreled through the armed security checkpoint and drove in a secured area for 45 minutes before being found by NY/NJ Port Authority officers. Just this year, gaping holes in airport security were exposed when workers with access to secure areas were able to carry firearms in their carry-on bags onto a commercial jet departing from Florida.

The PRSR must furthermore be upgraded to include high-speed attack by a jumbo jet of the maximum size anticipated to be in commercial use (such as the expanded version of the Boeing 747 and the Airbus A380) as well as unexpected attack by general aviation aircraft and helicopters. The PRSR must contemplate all such aircraft to be fully loaded, fueled and armed with explosives.

It is essential that the PRSR address not only the direct effect of impact, but the full potential aftereffects of (A) induced vibrations; (B) dislodged debris falling onto sensitive equipment; (C) a fuel fire; and (D) the combustion of aerosolized fuel (especially in combination with pre-existing on-site gases such as hydrogen).

The PRSR must further take into consideration the cascading consequences of aerial assault on the full spectrum of plant installations. Inarguably, there is a wide range of on-site structures, not within hardened containment, that are critical to the safe operation of a nuclear plant. Spent fuel pools are of particular concern because the disposition of water could uncover the fuel. If plant workers are unable to effectuate replacement of the water (either because of fire or because they are otherwise incapacitated), experts warn, an exothermic reaction could cause the zirconium clad spent fuel rods to ignite a nuclear waste conflagration that would very likely spew the entire radioactive contents of the spent fuel pool into the atmosphere.

Without question, hardening a nuclear power plant against aerial threat will necessitate significant upgrades in plant fortification. However even relatively modest measures such as the installation of Beamhenge and the placement of all sufficiently cooled spent fuel into Hardened On-Site Storage Systems (known as H.O.S.S.) would add measurable protection.

STRATEGIC USES OF RIGS, TRUCKS AND S.U.V.'S

In June 1991, the NRC denied the truck bomb petition of the Committee to Bridge the Gap and the Nuclear Information Resource Service, on the grounds that it was not realistic to believe a truck bomb would be employed in the U.S. Two years later, on February 26, 1993, terrorists drove a rented van packed with explosives into the underground garage of the World Trade Center, lighted a fuse and fled. Just a couple of weeks before that, a mentally unstable individual crashed his station wagon through the gates of the protected area of the Three Mile Island nuclear power station and evaded security for several hours before finally wrecking his vehicle by crashing into the turbine building. Thereafter, the NRC reconsidered its earlier assessment and has, on a number of occasions, upgraded reactor security standard to include some protections against land vehicles. Such upgrades, however, are insufficient in a post-9/11 world.

Large Sport Utility Vehicles and pickup trucks on the road today can weigh over 8 tons, loaded, and -as do commercial vans- have considerably carrying capacity. Such vehicles could be used strategically in a number of ways.

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The first is as a mobile short range projectile bomb. A large, heavy vehicle packed with high explosives, even if not successful in penetrating concrete barriers, could result in the death or incapacitation of large numbers of plant workers, including security, personnel. Such casualties would be particularly likely to materialize if the vehicle bomb followed a previous diversionary event intended to draw security personnel to the plant perimeter.

The second is as a transport vehicle for one team of attackers who are themselves armed or who wear explosive belts and could then themselves penetrate other areas of the facility. A terrorist wearing an explosive body belt can, in effect, be a precision guided weapon.

The third and fourth scenarios are variations of the first two, with chemical agents substituted for or combined with explosives. (Indeed, insurgents in Iraq are increasingly combining explosives with chlorine gas and other chemical payloads in truck bomb detonations.) One or two such vehicles packed with the right toxins, could be expected to kill or disable a substantial number of workers, again, especially if the release followed a prior event which drew security personnel to the area, or simply to areas outside facility enclosures. Certain toxins can be lethal to anyone within miles. Using such agents, attackers wearing protective gear could then gain access to other areas of the facility.

A fifth tactical use of vehicles would not even occur on site. Vehicles carrying explosives and/or chemical agents could be set off at critical regional transportation arteries such as major bridges, tunnels and highways. Notably, such incidents could be staged in a way that would not even alert authorities to the onset of terrorist activity. In the New York metropolitan region in which Indian Point is sited, for example, a series of major accidents occurring at or about the same time would not be an unusual occurrence. In fact, on July 25, 2003, the very day the Federal Emergency Management Agency declared that the Indian Point emergency plan provided "adequate" assurance of protection to the public, the entire New York metropolitan region was brought to a virtual traffic standstill after a tractor-trailer hit a beam on the George Washington Bridge and burst into flames, several minor accidents and a car fire took place on Interstate 95, and a truck got jammed under an overpass of the Hutchinson River Parkway. In 2006, a tanker truck carrying 8000 gallons of gasoline overturned on one of New York City's busiest highways, igniting a blaze that burned for hours and weakening the steel beams of an above bridge. Earlier this month a liquid propane explosion closed a 23 mile stretch of the New York State Thruway for hours, while firefighters had to stand by and watch the fire burn out because it was too hot to approach.

The staging of a couple of incidents like those just noted, combined with an "accident" involving a tanker carrying hazardous gasses or liquids like liquefied ammonia, propane, chlorine, or vinyl chloride, prior to an assault would almost assuredly forestall the provision of outside assistance to a nuclear facility under attack.

PLANTS MUST BE ABLE TO MOUNT A FULL DEFENSE WITHOUT RELIANCE ON OUTSIDE ASSISTANCE

Whether or not an attack employs strategies designed to obstruct regional transportation routes, numerous studies and the actual events of 9/11, Katrina, and Rita (as well as relatively minor events such as the January 18, 2006 wind storm in NY) demonstrate beyond cavil that first responder forces and the National Guard do not have the resources, manpower, equipment or communications capabilities to swiftly and adequately respond to a major assault on a nuclear facility. Just this very month, a report of the Commission on the National Guard and Reserves detailed the ongoing problem of inadequate human, equipment, communications and financial resources plaguing the National Guard. This report calls into question the ability of the government to bring all necessary assets to bear in the immediate aftermath of a major domestic incident.

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In some regions - most notably the New York Metropolitan region, in which Indian Point is sited – roadway logistics and regular congestion alone would likely prevent assisting forces from reaching a nuclear plant under attack in time. It bears mention that SWAT team assembly takes approximately 2 hours, whereas an assault could be over in a matter of minutes.

It is accordingly crucial that the NRC cedes the faulty assumption that plant personnel need only fend off attackers until law enforcement or military aid arrives. The fact that most regional first responders have little detailed knowledge of either the operational or internal layout of nuclear facilities further testifies to the folly of reliance upon the “cavalry”.

ELEVATED VULNERABILITY TO INFILTRATION DURING EVENT

During a crisis event at a nuclear plant there also exists an elevated threat of infiltration by terrorists posing as first responders or National Guard. And in fact the imposter tactic has been used by terrorists in recent years with substantial success.

Terrorists disguised as firefighters could take particularly strong advantage of this stratagem. Outside firefighters often respond to fires at nuclear power plants and many attack scenarios would be expected to involve fire. Firefighters would presumptively be seen as benign by plant personnel and would have a legitimate reason to move throughout a facility and “check” components such as electrical wiring. Moreover, bulky firefighter uniforms and equipment can hold and hide a host of articles that could be used for destructive purposes.

DEFENSE AGAINST A SIZABLE MULTI-TEAM, MULTI-DIRECTIONAL FORCE

In January 1991, the Nuclear Information Resource Service and the Committee to Bridge the Gap filed a joint Petition with the NRC requesting, *inter alia*, that the DBT be upgraded to 20 external attackers. The NRC rejected the petition in June 1991, asserting that an attack involving more than 3 assailants was unrealistic.

September 11 was a demonstration of the profound limitations of governmental foresight.

The September 11 plot involved 20 attackers (although only 19 were ultimately able to participate). The tragic 2004 siege at a school in Belsan, Russia involved more than 30 armed terrorists. It should be beyond question at this point that a terrorist attack could involve scores of attackers.

Accordingly, the PRSR must assume at least two dozen attackers. Lessons learned from 9/11 and the many multiple coordinated terrorist actions that have transpired in Europe, Asia and the Middle East since then, also mandate the premise that attackers will act in several teams and that some of those teams may be sizable.

Any carefully planned attack on a nuclear facility by knowledgeable individuals, would also involve several different *modus operandi*. The PRSR should therefore take into account the consequences of near-simultaneous damage to different plant installations, systems and personnel (e.g., the effect of a small explosive-laden plane diving into the roof of a spent fuel pool coupled with the waterborne sabotage of the spent fuel pool intake system).

A COORDINATED ATTACK ON MULTIPLE ON AND OFF-SITE TARGETS

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A related point is that, following 9/11, the NRC can no longer ignore the very real possibility that an attack on a nuclear power plant would occur commensurate with an attack on other regional infrastructure such as chemical plants and bridges. A coordinated attack designed to effectively eradicate a region would very likely preliminarily target communication, electrical power and/or transportation infrastructures. This would ensure that (A) the targeted region is reduced to mass confusion, (B) local and federal officials and responders would be overwhelmed, and (C) law enforcement and other first responders would be impeded from gaining access to the nuclear plant site.

Certain areas of the U.S. offer a plethora of target opportunities and thus are particularly vulnerable to multiple target scenarios. Prime among them is the greater New York Metropolitan area (already in the terrorists' crosshairs) which contains numerous national landmarks, corporate headquarters, reservoirs, bridges, airports, transportation arteries and hazardous chemical plants, all in near vicinity to Indian Point, a mere 24 miles north of New York City.

A CREDIBLE NUCLEAR PLANT SECURITY FORCE TESTING PROGRAM

The deficiencies, failures, and chicanery that have long plagued the various manifestations of nuclear power industry security drills and force-on-force (FOF) testing have been exhaustively documented in recent years. Noteworthy investigations in this regard have been conducted by the Project on Government Oversight (augmented by testimony provided in 2002 Senate Environment and Public Works Committee hearings) and the United States General Accounting Office (which reported its findings in a September 2003 report entitled "Oversight of Security at Commercial Nuclear Power Plants Needs to Be Strengthened") as well as by the press. Problems with the FOF program are also addressed in the July 2004 Petition for Rulemaking to amend 10 CFR Part 73 to upgrade the DBT filed by the Committee to Bridge the Gap and the Comments on the DBT filed in 2006 by the Union of Concerned Scientists. CIECP fully endorses the recommendations made in previous filings by the Committee to Bridge the Gap and the Union of Concerned Scientists.

CIECP urges the NRC in the strongest possible terms to upgrade drills and testing protocols to remedy the flaws that are a matter of public record and to take into account the realities noted herein. FOF tests must be sufficiently challenging to provide high confidence in the defensive capabilities of the security forces at the nation's 103 nuclear power plants. One clear failing of the FOF program to date has been the giving of excessive warning regarding upcoming tests. While some notice is necessary, one week should suffice. In addition, staff assignments should be frozen on the day of notice. This would eliminate the all too common practice of substituting a plant's most fit and accomplished security personnel in place of underachievers.

It is also critical that drills and the FOF program be revamped to eliminate manifest conflicts of interest. Examples of blatant conflicts of interest include: (1) The NRC allowing the nuclear industry's lobbying arm, the Nuclear Energy Institute (NEI) to award a FOF contract; and (2) The NEI, with NRC approval, then selecting Wackenhut, a corporation which contracts security guards to nuclear power plants in the U.S., to also be the contractor that supplies the mock adversary teams for the FOF tests.

Such problems have reduced the value of testing to the point where the FOF program lacks public confidence. The program must be redesigned and monitored by an independent entity such as the very capable U.S. military.

HIGH TARGET APPEAL REACTORS

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Prior terrorist attacks and plots against the U.S. have focused on major cities. It is a matter of fundamental logic that plants sited in highly populated metropolitan areas, particularly those with high symbolic value, face the greatest risk of being selected as a target.

It is thus imperative that the PRSR be modified to mandate a customized approach to high target nuclear facilities.

SITE-SPECIFIC SAFETY-RELATED VULNERABILITIES

It is highly unrealistic to exclude from the PRSR calculus the reality of aging structures, deteriorated conditions and compromised systems that exist at various nuclear power plants in the U.S. A facility-customized approach must be taken which adds problems which are known or reasonably suspected and which could have a significant effect upon the ability of plant operators to maintain control during a major incident into the security equation.

Prime among factors which may be site-specific are:

- **Corrosion and Embrittlement:** For example, a risk of corrosion of the steel liner of the reactor containment at the Oyster Creek Nuclear Generating Station (Oyster Creek) was recently identified. A qualified corrosion expert has warned that the risk may be high enough to cause buckling and collapse. Manifestly, corrosion or embrittlement-weakened structures and components are more vulnerable to the effects of heat and combustion.
- **Vulnerability to Fire:** Fire detection and suppression equipment and fire barriers are crucial to reactor safety. Over 20 years ago a worker at the Brown's Ferry Unit 1 reactor accidentally started a fire which destroyed emergency cooling systems and severely compromised the plant's ability to monitor its condition. In response, the NRC increased fire safety standards. In recent years, the NRC has effectively relaxed those standards. This is exceedingly unwise. During the chaos and threat level that would surely exist during a terrorist attack, human beings cannot be presumed to be able to take the actions necessary to protect critical systems from fire. The systems themselves must have integral safeguards. Yet plants such as Arkansas Nuclear One, Catawba, Ginna, H.B. Robinson, Indian Point, James A. Fitzpatrick, McGuire, Shearon Harris, Vermont Yankee and Waterford have been identified as having fire barrier wrap systems that failed fire tests. Fireproofing problems such as these jeopardize safe shutdown and must be recognized as a degradation of defense-in-depth protection. In addition, any plant fire hazard analyses must assume damage to multiple rooms and multiple structures, a circumstance that could easily result from an aircraft impact.
- **Integrity of Structures that Support Mobility:** While the focus of NRC regulatory review is on structures and equipment directly related to safe operational function, the conditions that may prevail during an assault would likely require plant personnel to be able to move rapidly throughout the facility. The evaluation of the reliability of structural features such as stairways (which might buckle or melt during a fire) is accordingly critical.
- **Electrical System Problems:** In 2003, a cable failure knocked out power to approximately half the safety systems at Oyster Creek, including security cameras, alarms, sensors, pumps and valves. In February 2003, all 4 of the backup generators at Fermi became simultaneously inoperable. In December 2001, Indian Point reactor 2 lost power due to a malfunction of the turbine, then lost back-up power to the reactor coolant system because of a second electrical failure. During the August 2003 blackout that struck the Northeast, following the loss of off-

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site power, two of Indian Point's emergency backup generators (both of which had been previously flagged as having problems) failed to operate. In view of the severe consequences failures such as these could have were they to occur during a major incident, known plant electrical system vulnerabilities must be taken into consideration.

- Cooling System Problems: Cooling system problems and design deficiencies have plagued a number of plants in recent years. In some cases the NRC has allowed plants to operate for long periods with compromised emergency cooling systems. For example, the Salem nuclear power station had experienced two years of repeated malfunctions of its high-pressure coolant-injection system prior to the time, in October 2003, when operators unsuccessfully tried to use it to stabilize water levels following a steam pipe burst. And the NRC has allowed reactors with emergency sump pumps flagged as likely to become clogged and inoperative to remain in operation for many years without repair. The Los Alamos National Laboratory, for instance, concluded that the sump pumps at Indian Point reactors 2 and 3 could become clogged in as little as 23 minutes and 14 minutes, respectively. While, upgrades are being made, the failure of the NRC to mandate immediate correction of cooling system vulnerabilities calls its oversight capabilities seriously into question. Indeed the functional declination of critical systems must be deemed a constituent element of site-specific PRSR analyses.

ELIMINATE COMMERCIAL CONSIDERATIONS FROM THE PRSR CALCULUS

The commercial interests of the nuclear industry are of valid concern to nuclear utilities and the NEI; they should not be of concern to the NRC. There is no justification for jeopardizing national security and the health and safety of the public - even to the smallest degree - to safeguard corporate profits.

The NRC has stated that its promulgated security standards are based upon the analysis of the largest threat against which a "**private security force could reasonably be expected to defend**" [*emphasis added*] 70 FR 67385.

Both the NRC and the industry have acknowledged that, in their estimation, a private guard force should not be reasonably expected to defend against a 9/11-type attack involving aircraft. Such an attack, apparently, is deemed to fall under the loophole of 10 CFR Sec. 50.13, which exempts reactor operators from defending against "an enemy of the United States, a foreign government or other person". The perimeter of this "enemy of the United States provision has never been defined, so there is no way to know how far it extends. However, it is abundantly clear from the public record that the NRC has drawn the line at point where the profit margins of nuclear power operators might be significantly affected. Unfortunately, the terrorists are constrained by no such boundary.

Congress has charged the NRC with the obligation to protect the public health and safety. This must not be viewed simply as a guideline; it must be viewed as an uncompromised mandate.

If the NRC does not believe its licensees can afford the security upgrades necessary to protect the nation's nuclear reactors against the full potential threat, it must act with forthrightness and publicly demand that the Department of Homeland Security or the U.S. military assume responsibility for domestic nuclear power plant security.

CONCLUSION

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The 9/11 Commission observed: "Across the government, there were failures of imagination, policy, capabilities...The most important failure was one of imagination. We do not believe leaders understood the gravity of the threat."

As a public interest group we ask: What needs to happen before the gravity of the threat is not only understood, but acted upon?

Respectfully submitted,

COUNCIL ON INTELLIGENT ENERGY
& CONSERVATION POLICY

(New York)

By

Michel C. Lee, Esq.
Chairman

(914) 393-2930

APPENDIX A

Since September 11, 2001, there has been much speculation about the vulnerability of nuclear power plants to aerial attack. Certainty, however, is in short supply.

What is known is that none of the nuclear reactors presently operational in the United States were built to withstand the crash of a jumbo jet, much less the crash of super jumbo such as the A380 which will take to the air weighing 1.2 million pounds, has a wingspan almost as long as a football field, is 8 stories tall, and is 3 times as large as the 767s that brought down the Twin Towers.

Nevertheless studies that have addressed the prospect of planes hitting nuclear plants include the following:

1974: To date the only published peer reviewed study on the vulnerability of U.S. nuclear power plants was conducted by General Electric, the leading builder of nuclear plants, and published in the industry journal *Nuclear Safety*. GE looked at accidents –not terror attacks – and concluded that were a "heavy" airliner to hit a reactor building in the right place, it would almost certainly rip it apart. Such a hit would also most likely damage the reactor core and both the cooling and emergency cooling systems. [NOTE: The GE study defined a "heavy" plane as one weighing more than 6 tons. The Boeing 757 which gouged a 100 foot gash through the reinforced concrete of the Pentagon weighed between 80 and 100 tons. A fully loaded 767 weighs over 200 tons. The Airbus 380, expected to be launched into commercial use later this year, takes to the air weighing 1.2 million pounds, hundreds of thousands of pounds heavier than the Boeing 747, the current jumbo of the sky.]

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1982: A technical report (previously publicly available) of a study conducted by the U.S. Army Corps of Engineers at the NRC's behest focused on plane crash analyses at the Argonne National Laboratory. The Corps concluded that planes traveling at a speed of over 466 mph would crash through the average reactor containment structure noting "account has been taken of the internal concrete wall which acts as a missile barrier...It would appear, however, that this is too optimistic since vaporized fuel, hot gaseous reaction products, and to a certain extent portions of liquid fuel streams will flow around such obstructions and overwhelm internal defenses..." [NOTE: An FBI analysis estimated that American Airlines Flight 11, which hit the north tower of the World Trade Center, was traveling at a speed of 494 mph, and that United Airlines Flight 175, which hit the south tower, was traveling at 586 mph, a speed far exceeding its design limit for the altitude.]

2000: A NRC study published less than a year before September 11 calculated that 1 out of 2 commercial airplanes flying in the year 2000 were large enough to penetrate even a 5 foot thick reinforced concrete wall 45% of the time. Specifically, the study states, "aircraft damage can affect the structural integrity of the spent fuel pool or the availability of nearby support systems, such as power supplies, heat exchangers, or water makeup sources and may also affect recovery actions...It is estimated that half the commercial aircraft now flying are large enough to penetrate the 5 foot thick reinforced concrete walls." [NOTE: The thickness of the top of certain reactor domes is 3 and-a-half feet.]

2002: The German Reactor Safety Organization (GRS) a scientific-technical research group that works primarily for nuclear regulators in Germany conducted an extremely detailed study that determined that terrorists can, with a strategically targeted airplane crash, initiate a nuclear accident. (A secret Ministry document that summarized the report was leaked to the German and Austrian press and subsequently translated into English.) The GRS study used dynamic computation modeling that looked at the potential consequences of a wide range of impact possibilities on different plant equipment and installations. Different types of airplanes, velocities, angles of impact, weight loads and fuel effects were considered, as were various sequences of events. Aside from the basic finding of vulnerability, the GRS study is significant for recognizing the limitations of even its highly complex analyses. Key unknowns include the impacts of fire loads on many kind of materials and equipment as well as the behaviors of various combustible materials under the conditions of a plane crash.

2004: In 2004 the U.K. Parliamentary Office of Science and Technology (OST) issued a secret report on the risks of terrorist attacks on nuclear facilities to the U.K. House of Commons Defense Committee. The OST report was leaked to the magazine *New Scientist*, which reported the OST conclusion that a large plane crash into a nuclear reactor could release as much radiation as the 1986 accident at Chernobyl, while a crash into the nuclear waste tanks at the U.K.'s Sellafield facility could cause several million fatalities.

From these studies it is clear that there exists a reasonable basis for concern regarding malevolent deployment of aircraft against nuclear power facilities.

It should also be evident that all studies on this topic are, in substance, educated conjecture. The current state of computer modeling is not up to analyzing the full range of physical and chemical interactions that could occur under the incalculable range of different kinds of aircraft, approaching at different angles, at different speeds, hitting different structures, which all have facility-unique room and equipment layouts, and different substance, chemical, and ventilation-related conditions.

A lesson in the unpredictable consequences of airplane crashes was brought home on September 11 (when even the 47 story tall 7 World Trade Center that was not struck collapsed for reasons engineers have yet to fully determine). A lesson in the limitations of advanced computer modeling can also be learned from the Columbia space shuttle disaster.

A-103

Case 1:09-cv-10594-LAP Document 42-1 Filed 04/11/14 Page 93 of 101

78FR 26662

8

RULES AND DIRECTIVES
BRANCH
USNRC

Gallagher, Carol

From: Moira-Jo Trachtenberg-Thielking <flyingmtn@me.com>
Sent: Wednesday, June 05, 2013 12:51 PM 2013 JUN -5 PM 1: 08
To: Gallagher, Carol
Subject: Comments for Docket ID NRC-2013-0063

RECEIVED

Dear Carol,

Please add the comments below to the Docket ID NRC-2013-0063. I realize this is a day late, but I only recently found out about the ability to comment. I do understand that commentary sent at any time will still be included and considered.

Thank you.

I am writing to express my serious concerns about the failure of the NRC to force Indian Point Nuclear Plant to comply with important fire safety regulations and also my overall concern regarding the relicensing of Indian Point Nuclear Plant in Buchanan, NY. I live in Katonah, NY, about 13 miles due East of the facility. Given that the prevailing wind and weather pattern brings anything emitted in the air from Indian Point right over our town, I think the concerns of Katonah residents are very important.

I do not believe the NRC should grant exemptions to Indian Point for fire safety regulations meant to protect the cables necessary for a safe shutdown of the plant during an emergency fire. Since it has been determined that the HEMYC fireproofing insulation is only half as effective as initially claimed, and may last as little as 24 minutes, I believe that all insulation at the plant should be upgraded to comply with federal requirements that were set by the NRC itself! Why make critical regulations to protect citizens and then exempt the plants from complying with them? I believe the 20 million people who live within 50 miles of the plant deserve protection and their lives should not be put in jeopardy because the NRC is putting Entergy first!

I believe that the NRC should not relicense Indian Point. I implore the NRC to have the foresight to look at the big picture, take a stand and make a change. I have attended several informational public hearings and from what I can see the NRC's goal is to nurse along the plant until a major disaster occurs, and then it will be too late. Here are the big-picture facts: there is no feasible evacuation route for such a huge population, dangerous fuel waste is collecting there that is improperly stored and was never supposed to remain on site, and it is built on a fault line that could produce an earthquake. This plant would NEVER be approved to built at this site today given the value of the human real estate and proximity to New York City, the nation's financial, cultural and creative capital. The plant is old and past the life-span it was built to endure. It is entering a time of unknown decay and should be shut down as soon as possible. Until that moment, I ask you to make sure that Indian Point complies with strict fire safety measures and all safety measures that were put in place for a very

SUNSI Review Complete
Template = ADM-013

1

E-RFD3 = ADM-03

Cald = D. Pickett (dup)

CSR000000093

A-104

Case 1:09-cv-10594-LAP Document 42-1 Filed 04/11/14 Page 94 of 101

important reason: the risks are exponential and the cost of these risks far outweigh any inconvenience and cost of upgrading fire safety measures immediately.

Sincerely,

Moira Thielking

Katonah, NY

A-105

Case 1:09-cv-10594-LAP Document 42-1 Filed 04/11/14 Page 95 of 101

RULES AND DIRECTIVES
BRANCH
USNRC

Judy Allen
24 Seifert Lane
Putnam Valley, NY 10579
845 528-6643

2013 JUN -3 PM 3:10

RECEIVED

June 3, 2013

Fax to RADB at 1.301.492.3446

Attention: Cindy Bladey
Chief, Rules, Announcements, and Directives Branch (RADB)
Office of Administration
TWB-05-B01
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

5/7/2013
78 FR 26662
9

Dear Ms. Bladey:

With regard to the fire safety exemption the NRC granted to Entergy and the Indian Point Energy Center in 2007, I believe the NRC violates the Appendix R Defense in Depth by considering this fire safety exemption. Also the NRC produced an unlawful Environmental Assessment (EA) and Finding Of No Significant Impact (FONSI) analysis. The exemption isn't legal or authorized by law. The NRC did not do an Environmental Impact Statement. THE NRC NEEDS TO DO A FULL Environmental Impact Study.

Since the NRC continually assures us at public meetings that the health and safety of US citizens is its main concern, it would be derelict in its stated duty if it grants the fire safety exemption.

Further, the NRC must comply with NEPA requirements regarding foreseeable terrorist acts, as I understand that Indian Point may be the nation's #1 terrorist target. The US was totally taken by surprise on 9/11 and none of us wants New York City to be an exclusion zone for the next 10,000 years.

Recently Common Cause released a report detailing how many millions of dollars Entergy spends on lobbying politicians, contributing to their campaigns, and creating fake "grassroots" groups to campaign for relicensing. This is in addition to the money they're spending on the protracted court case to avoid fixing the cables. What disturbs me most is that Entergy could have spent the same money on replacing the defective insulation. It is totally irresponsible - and bad business practice - to endanger 20 million people instead of FIXING THE PROBLEM!

It is the NRC's responsibility to make sure the public is not endangered. The exemption endangers the public health, safety, defense and security. Do the right thing: **increase safety, don't reduce it.** Do NOT grant the fire safety exemption.

Thank you.

SUNSI Review Complete
Template = ADM - 013
E-RIDS = ADM-03
Add = D. Fickell (dvp1)

Case 1:09-cv-10594-LAP Document 42-1 Filed 04/11/14 Page 96 of 101

Gallagher, Carol

From: Judy Allen <judya814@comcast.net>
Sent: Monday, June 03, 2013 2:55 PM
To: Gallagher, Carol
Subject: Indian Point letter
Attachments: NRC letter 6-13.pdf

Dear Ms. Gallagher -

Thanks for your help in getting this over to Cindy Bladey today.
Appreciate it!

Judy Allen

24 Seifert Lane
Putnam Valley, NY 10579
845 528-6643 H
914 382-1193 C

A-107

Case 1:09-cv-10594-LAP Document 42-1 Filed 04/11/13 Page 97 of 101

7/7/2013
78 FR 24642

Gallagher, Carol

10

From: Steve Mantor <Steve@Mantors.com>
Sent: Saturday, June 08, 2013 12:21 PM
To: Gallagher, Carol
Cc: tposterli@riverkeeper.org; info1@waterkeeper.org; Paul Gallay, President and Hudson Riverkeeper; Hon. Michael F. Nozzolio, NYS Senate ; Senator Kirsten Gillibrand; Senator Schumer; Senator James L. Seward; Hon. Steve McLaughlin, Member of Assembly ; Hon. Dean Skelos, NYS Senate; Hon. Jim Tedisco, Member of Assembly; Hon. Cecilia Tkaczyk, NYS Senate
Subject: Please discontinue the granting of "Safety Exemptions" for any systems at Entergy's Indian Point reactor in NY State....

Dear Ms. Gallagher,
Nuclear Regulatory Commission

Please discontinue the granting of dangerous "Safety Exemptions" for any systems at Entergy's Indian Point reactor in NY State.

- The NRC should deny the exemption and require Entergy to comply with the regulations, which were written to protect the plant and the public from the very real risk of a fire that could lead to a meltdown at Indian Point.
- In the past, the NRC failed to do an Environmental Impact Study (EIS) of the risks and impacts of granting the exemption, including looking at alternatives, such as replacing the insulation. At a minimum the NRC must conduct a full EIS, look at all alternatives and allow time for public comment.
- The NRC should hold a public hearing in the vicinity of Indian Point to fully explain its exemption process, and take public input on Entergy's failure to comply with fire safety regulations that were established over 20 years ago.

When considering the results of the disasters that have occurred at various older reactor sites around the world it is unconscionably reckless not to assure that ALL precautions are taken at Indian Point. As you are aware, this aging installation on the lower Hudson River is located on a tectonic fault line, just north of NY City directly in the midst of tens of millions of people. Any failure of Indian Point's older, technologically deficient controls and safety systems pose an immediate threat to the northeastern United States.

Please reflect on the basic mission of the Nuclear Regulatory Commission and take immediate action.

Thank You

Steve Mantor

56 Coons Road
Coeymans Hollow, NY 12046

CC: President Barack Obama

RECEIVED

2013 JUN 10 AM 8:29

RULES AND DIRECTIVES
BRANCH
USNRC

SUNSI Review Complete
Template = ADM - 013
E-RIDS= ADM-03
Add= D. Pickett (AVPI)

A-108

RULES AND DIRECTIVES
BRANCH
USNRC

PUBLIC SUBMISSION 2013 MAY 31 PM 4: 26

As of: May 31, 2013
Received: May 29, 2013
Status: Pending Post
Tracking No. 1jx-85lv-3urm
Comments Due: June 03, 2013
Submission Type: Web

Docket: NRC-2013-0063
Draft Environmental Assessment and Finding of No Significant Impact

RECEIVED

Comment On: NRC-2013-0063-0002
Entergy Nuclear Operations, Inc., Indian Point Nuclear Generating Unit No. 3; Extension of Public Comment Period

Document: NRC-2013-0063-DRAFT-0001
Comment on FR Doc # 2013-10792

Submitter Information

5/7/2013

78 FR 26662

11

Name: Debi Mohan
Address:
420 Eglinton Ave
Miami, FL, 33199
Submitter's Representative: Mr. Bill Nelson
Organization: Bridgepoint
Government Agency Type: State

General Comment

The NRC should deny the exemption and require Entergy to comply with the regulations, which were written to protect the plant and the public from the very real risk of a fire that could lead to a meltdown at Indian Point.

The NRC failed to do an Environmental Impact Study (EIS) of the risks and impacts of granting the exemption, including looking at alternatives, such as replacing the insulation. At a minimum the NRC must conduct a full EIS, look at all alternatives and allow time for public comment.

The NRC should hold a public hearing in the vicinity of Indian Point to fully explain its exemption process, and take public input on Entergy's failure to comply with fire safety regulations that were established over 20 years ago.

SUNSI Review Complete
Template = ADM - 013
E-RIDS= ADM-03
Add= D. Pickett (dvp1)

A-109

RULES AND DIRECTIVES
BRANCH
USNRC

PUBLIC SUBMISSION

2013 MAY 31 PM 4: 24

As of: May 31, 2013
Received: May 29, 2013
Status: Pending_Post
Tracking No. ljj-85lv-mtx9
Comments Due: June 03, 2013
Submission Type: Web

Docket: NRC-2013-0063
Draft Environmental Assessment and Finding of No Significant Impact

RECEIVED

Comment On: NRC-2013-0063-0002
Entergy Nuclear Operations, Inc., Indian Point Nuclear Generating Unit No. 3; Extension of Public Comment Period

Document: NRC-2013-0063-DRAFT-0002
Comment on FR Doc # 2013-10792

Submitter Information

Name: Amy Goldsmith
Address:
132 Cleveland Drive
Croton on Hudson, NY, 10520

5/7/2013
78 FR 26662
12

General Comment

- The NRC should deny the exemption and require Entergy to comply with the regulations, which were written to protect the plant and the public from the very real risk of a fire that could lead to a meltdown at Indian Point.
- The NRC failed to do an Environmental Impact Study (EIS) of the risks and impacts of granting the exemption, including looking at alternatives, such as replacing the insulation. At a minimum the NRC must conduct a full EIS, look at all alternatives and allow time for public comment.
- The NRC should hold a public hearing in the vicinity of Indian Point to fully explain its exemption process, and take public input on Entergy's failure to comply with fire safety regulations that were established over 20 years ago.
- Rather than upgrading the insulation to comply with the federal requirements, Entergy asked the NRC for an exemption from the standards, and the NRC granted it in 2007. When asked at a public meeting how many exemptions it had given to Indian Point over the years, a NRC official literally said "I don't know, we don't keep a list."

This is important. We live in the 10 mile zone. My son is a volunteer firefighter and would be called to a fire.

SUNSI Review Complete
Template = ADM - 013
E-RIDS= ADM-03
Add= D. Pickett (dvp1)

A-110

RULES AND DIRECTIVES
BRANCH
USNRC

PUBLIC SUBMISSION

2013 MAY 31 PM 4: 25

As of: May 31, 2013
Received: May 29, 2013
Status: Pending_Post
Tracking No. 1jx-85lv-jpmt
Comments Due: June 03, 2013
Submission Type: Web

Docket: NRC-2013-0063
Draft Environmental Assessment and Finding of No Significant Impact

RECEIVED

Comment On: NRC-2013-0063-0002
Entergy Nuclear Operations, Inc., Indian Point Nuclear Generating Unit No. 3; Extension of Public Comment Period

Document: NRC-2013-0063-DRAFT-0003
Comment on FR Doc # 2013-10792

Submitter Information

Name: Siobhan towey
Address: 11201
Submitter's Representative: Siobhan Towey
Organization: NYC Massage and Healing

5/7/2013
78 FR 26662
13

General Comment

The NRC should deny the exemption and require Entergy to comply with the regulations, which were written to protect the plant and the public from the very real risk of a fire that could lead to a meltdown at Indian Point.

The NRC failed to do an Environmental Impact Study (EIS) of the risks and impacts of granting the exemption, including looking at alternatives, such as replacing the insulation. At a minimum the NRC must conduct a full EIS, look at all alternatives and allow time for public comment.

The NRC should hold a public hearing in the vicinity of Indian Point to fully explain its exemption process, and take public input on Entergy's failure to comply with fire safety regulations that were established over 20 years ago.

SUNSI Review Complete
Template = ADM - 013
E-RIDS= ADM-03
Add= D. Pickett (dvp1)

A-111

RULES AND DIRECTIVES
BRANCH
USNRC

As of: May 31, 2013
Received: May 29, 2013
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Tracking No. 1jx-85lv-lisq
Comments Due: June 03, 2013
Submission Type: Web

PUBLIC SUBMISSION

MAY 31 PM 4: 25

RECEIVED

Docket: NRC-2013-0063
Draft Environmental Assessment and Finding of No Significant Impact

Comment On: NRC-2013-0063-0002
Entergy Nuclear Operations, Inc., Indian Point Nuclear Generating Unit No. 3; Extension of Public Comment Period

Document: NRC-2013-0063-DRAFT-0004
Comment on FR Doc # 2013-10792

Submitter Information

Name: Edward Keller
Address:
Florida, NY, 10921

5/7/2013
78 FR 26662
14

General Comment

The NRC should deny the exemption and require Entergy to comply with the regulations, which were written to protect the plant and the public from the very real risk of a fire that could lead to a meltdown at Indian Point.

The NRC failed to do an Environmental Impact Study (EIS) of the risks and impacts of granting the exemption, including looking at alternatives, such as replacing the insulation. At a minimum the NRC must conduct a full EIS, look at all alternatives and allow time for public comment.

The NRC should hold a public hearing in the vicinity of Indian Point to fully explain its exemption process, and take public input on Entergy's failure to comply with fire safety regulations that were established over 20 years ago.

SUNSI Review Complete
Template = ADM - 013
E-RIDS= ADM-03
Add= D. Pickett (dvp1)

A-112

RULES AND DIRECTIVES
BRANCH
USNRC

PUBLIC SUBMISSION

2013 MAY 31 PM 4: 25

As of: May 31, 2013
Received: May 29, 2013
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Tracking No. 1jx-851w-g9b2
Comments Due: June 03, 2013
Submission Type: Web

Docket: NRC-2013-0063
Draft Environmental Assessment and Finding of No Significant Impact

RECEIVED

Comment On: NRC-2013-0063-0002
Entergy Nuclear Operations, Inc., Indian Point Nuclear Generating Unit No. 3; Extension of Public Comment Period

Document: NRC-2013-0063-DRAFT-0005
Comment on FR Doc # 2013-10792

Submitter Information

Name: Billie Biederman
Address:
New York, 10009-2144

5/7/2013
78 FR 26662
(15)

General Comment

It is incomprehensible to me that an agency, designated to monitor a dangerous industry and its sites in order to protect many citizens from any possible disaster, should be found wanting in its responsibility. That is a very frightening prospect to one who lives within the geographic area where a catastrophe could wipe it out.

I urge lawmakers and all involved in this particular area of oversight to be more than duly diligent in their observation and attention to these sites, and to be sure that they pose no threat or danger to the communities that could be seriously affected by any inattention to safety standards.

I trust you understand that you put your own communities and families at risk should you fail to protect them with your inattention. It is your duty to represent, respect and protect all in this crucial matter. Thank you. Just do your job responsibly.

SUNSI Review Complete
Template = ADM - 013
E-RIDS= ADM-03
Add= D. Pickett (dvp1)

A-113

RULES AND DIRECTIVES
BRANCH
USNRC

PUBLIC SUBMISSION

As of: May 31, 2013
Received: May 29, 2013
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Tracking No. Ijx-85lw-zfcn
Comments Due: June 03, 2013
Submission Type: Web

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Docket: NRC-2013-0063
Draft Environmental Assessment and Finding of No Significant Impact

Comment On: NRC-2013-0063-0002
Entergy Nuclear Operations, Inc., Indian Point Nuclear Generating Unit No. 3; Extension of Public Comment Period

Document: NRC-2013-0063-DRAFT-0006
Comment on FR Doc # 2013-10792

Submitter Information

Name: robert braun
Address:
248 6th ave
brooklyn, ny, 11215

5/7/2013
48 FR 26662
16

General Comment

The NRC should deny the exemption and require Entergy to comply with the regulations, which were written to protect the plant and the public from the very real risk of a fire that could lead to a meltdown at Indian Point.

The NRC failed to do an Environmental Impact Study (EIS) of the risks and impacts of granting the exemption, including looking at alternatives, such as replacing the insulation. At a minimum the NRC must conduct a full EIS, look at all alternatives and allow time for public comment.

The NRC should hold a public hearing in the vicinity of Indian Point to fully explain its exemption process, and take public input on Entergy's failure to comply with fire safety regulations that were established over 20 years ago.

SUNSI Review Complete
Template = ADM - 013
E-RIDS= ADM-03
Add= D. Pickett (dvp1)

A-114

RULES AND DIRECTIVES
BRANCH
USNRC

PUBLIC SUBMISSION

2013 MAY 31 PM 4: 25

As of: May 31, 2013
Received: May 29, 2013
Status: Pending_Post
Tracking No. 1jx-85lw-55wp
Comments Due: June 03, 2013
Submission Type: Web

RECEIVED

Docket: NRC-2013-0063
Draft Environmental Assessment and Finding of No Significant Impact

Comment On: NRC-2013-0063-0002
Entergy Nuclear Operations, Inc., Indian Point Nuclear Generating Unit No. 3; Extension of Public Comment Period

Document: NRC-2013-0063-DRAFT-0007
Comment on FR Doc # 2013-10792

Submitter Information

Name: Patricia Goldsmith
Address:
205 Schneider Road
Hudson, NY, 12534

5/7/2013
48 FR 26662
17

General Comment

The insulation used on power cables at Indian Point has been shown to be less fireproof than required. Safety should come before the convenience of the nuclear industry in this matter. Please require Indian Point to upgrade its substandard cable insulation--no delay, no excuses.

SUNSI Review Complete
Template = ADM - 013
E-RIDS= ADM-03
Add= D. Pickett (dvp1)

A-115

RULES AND DIRECTIVES
BRANCH
USNPC

PUBLIC SUBMISSION

2013 MAY 31 PM 4: 25

As of: May 31, 2013
Received: May 29, 2013
Status: Pending_Post
Tracking No. ljsx-85lw-b0xt
Comments Due: June 03, 2013
Submission Type: Web

RECEIVED

Docket: NRC-2013-0063
Draft Environmental Assessment and Finding of No Significant Impact

Comment On: NRC-2013-0063-0002
Entergy Nuclear Operations, Inc., Indian Point Nuclear Generating Unit No. 3; Extension of Public Comment Period

Document: NRC-2013-0063-DRAFT-0008
Comment on FR Doc # 2013-10792

Submitter Information

Name: Richard Mangini
Address:
163 Chatfield Road
Bronxville, NY, 10708

5/7/2013
78 FR 26662
18

General Comment

I live within the "Peak Injury Zone" of Indian Point. It is not a good feeling. I was 11 years old when I visited Indian Point on a class trip soon after it opened. That was 51 years ago. That the government continues to allow nuclear reactors to operate in such a densely populated region is ridiculous especially given the plant's poor maintenance record. Nuclear power in general is not safe, cheap or environmentally sound; Indian Point is a serious accident waiting to happen. My question is will the NRC or Entergy reimburse me for the market value of my property when something does happen?

SUNSI Review Complete
Template = ADM - 013
E-RIDS= ADM-03
Add= D. Pickett (dvp1)

A-116

RULES AND DIRECTIVES
BRANCH
USNRC

PUBLIC SUBMISSION

2013 MAY 31 PM 4: 25

As of: May 31, 2013
Received: May 29, 2013
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Tracking No. ljsx-851w-e5oc
Comments Due: June 03, 2013
Submission Type: Web

Docket: NRC-2013-0063
Draft Environmental Assessment and Finding of No Significant Impact

RECEIVED

Comment On: NRC-2013-0063-0002
Entergy Nuclear Operations, Inc., Indian Point Nuclear Generating Unit No. 3; Extension of Public Comment Period

Document: NRC-2013-0063-DRAFT-0009
Comment on FR Doc # 2013-10792

Submitter Information

Name: Elizabeth Ellsworth
Address:
372 2nd St.
Apt. 4C
Brooklyn, NY, 11215
Organization: Self

5/7/2013
78 FR 26662
19

General Comment

I am concerned about the exemptions granted to Entergy concerning fire hazards at Indian Point. I live within the potential "evacuation" zone surrounding the plant (even though there is no feasible plan for evacuating the millions of people in this zone). I urge you to start putting public safety FIRST--and to start doing that by RECOGNIZING the extent to which these plants are BEYOND THEIR LIFE EXPECTANCIES and only evermore prone to mechanical problems because of their age and because of the EVER GROWING POOLS AND PILES OF NUCLEAR WASTE that have NOWHERE TO GO. Please make your decisions and regulatory actions BASED ON FACTS AND MATERIAL REALITIES OF THESE AGING TECHNOLOGIES and not based on ECONOMICS OR POLITICAL IDEOLOGY.

SUNSI Review Complete
Template = ADM - 013
E-RIDS= ADM-03
Add= D. Pickett (dvp1)

A-117

RULES AND DIRECTIVES
BRANCH
USNRC

PUBLIC SUBMISSION 2013 MAY 31 PM 4: 25

As of: May 31, 2013
Received: May 29, 2013
Status: Pending Post
Tracking No. 1jx-851w-r0kr
Comments Due: June 03, 2013
Submission Type: Web

RECEIVED

Docket: NRC-2013-0063
Draft Environmental Assessment and Finding of No Significant Impact

Comment On: NRC-2013-0063-0002
Entergy Nuclear Operations, Inc., Indian Point Nuclear Generating Unit No. 3; Extension of Public Comment Period

Document: NRC-2013-0063-DRAFT-0010
Comment on FR Doc # 2013-10792

Submitter Information

Name: Janet Strock
Address:
154 Rosemont St.
Albany, NY, 12206

5/7/2013

78 FR 26662

20

General Comment

Docket ID number: NRC-2013-0063

NRC NEEDS TO DO THE FOLLOWING IF NOT MORE TO INSURE THE SAFETY OF AMERICANS!

The NRC should deny the exemption and require Entergy to comply with the regulations, which were written to protect the plant and the public from the very real risk of a fire that could lead to a meltdown at Indian Point.

The NRC failed to do an Environmental Impact Study (EIS) of the risks and impacts of granting the exemption, including looking at alternatives, such as replacing the insulation. At a minimum the NRC must conduct a full EIS, look at all alternatives and allow time for public comment.

The NRC should hold a public hearing in the vicinity of Indian Point to fully explain its exemption process, and take public input on Entergy's failure to comply with fire safety regulations that were established over 20 years ago.

SUNSI Review Complete
Template = ADM - 013
E-RIDS= ADM-03
Add= D. Pickett (dvp1)

A-118

RULES AND DIRECTIVES
BRANCH
USNRC

PUBLIC SUBMISSION 2013 MAY 31 PM 4: 25

As of: May 31, 2013
Received: May 29, 2013
Status: Pending_Post
Tracking No. 1jx-85lw-y6jl
Comments Due: June 03, 2013
Submission Type: Web

Docket: NRC-2013-0063
Draft Environmental Assessment and Finding of No Significant Impact

RECEIVED

Comment On: NRC-2013-0063-0002
Entergy Nuclear Operations, Inc., Indian Point Nuclear Generating Unit No. 3; Extension of Public Comment Period

Document: NRC-2013-0063-DRAFT-0011
Comment on FR Doc # 2013-10792

Submitter Information

Name: Jeffrey Genser
Address:
32 First St
Suffern, NY, 10901
Government Agency Type: Federal
Government Agency: NRC

5/7/2013
78 FR 26662

21

General Comment

Sirs, Please stop giving Entergy and Indian Point exemptions to existing safety regulations. Force them to comply with ALL existing safety regulations, do an Environmental Impact Statement, and please hold a public hearing to explain to the 20 million people who live within 50 miles of Indian Point why you ever give them an exemption to such a crucial fire safety regulation in the first place.

SUNSI Review Complete
Template = ADM - 013
E-RIDS= ADM-03
Add D. Pickett (dvp1)

A-119

RULES AND DIRECTIVES
BRANCH
USNRC

PUBLIC SUBMISSION

2013 MAY 31 PM 4: 25

As of: May 31, 2013
Received: May 29, 2013
Status: Pending Post
Tracking No. ljsx-85lw-u8sq
Comments Due: June 03, 2013
Submission Type: Web

Docket: NRC-2013-0063
Draft Environmental Assessment and Finding of No Significant Impact

RECEIVED

Comment On: NRC-2013-0063-0002
Entergy Nuclear Operations, Inc., Indian Point Nuclear Generating Unit No. 3; Extension of Public Comment Period

Document: NRC-2013-0063-DRAFT-0012
Comment on FR Doc # 2013-10792

Submitter Information

Name: joanna bagatta
Address:
7 casse ct
mahopac, NY, 10541

5/7/2013

78 FR 24642

22

General Comment

The NRC should deny the exemption and require Entergy to comply with the regulations, which were written to protect the plant and the public from the very real risk of a fire that could lead to a meltdown at Indian Point.

The NRC failed to do an Environmental Impact Study (EIS) of the risks and impacts of granting the exemption, including looking at alternatives, such as replacing the insulation. At a minimum the NRC must conduct a full EIS, look at all alternatives and allow time for public comment.

The NRC should hold a public hearing in the vicinity of Indian Point to fully explain its exemption process, and take public input on Entergy's failure to comply with fire safety regulations that were established over 20 years ago.

SUNSI Review Complete
Template = ADM - 013
E-RIDS= ADM-03
Add= D. Pickett (dvp1)

A-120

RULES AND DIRECTIVES
BRANCH
USNRC

PUBLIC SUBMISSION 2013 MAY 31 PM 4: 25

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Comments Due: June 03, 2013
Submission Type: Web

Docket: NRC-2013-0063
Draft Environmental Assessment and Finding of No Significant Impact

RECEIVED

Comment On: NRC-2013-0063-0002
Entergy Nuclear Operations, Inc., Indian Point Nuclear Generating Unit No. 3; Extension of Public Comment Period

Document: NRC-2013-0063-DRAFT-0013
Comment on FR Doc # 2013-10792

Submitter Information

Name: Bernard Kessler
Address:
2213 Mohansic Ave
Yorktown Heights, 10598

5/7/2013
78 FR 26662
23

General Comment

We are playing a very dangerous game with Indian Point Unit #3.
It clearly appears as though Entergy is making the decision, on their on their own behalf, to duck bob and weave on issues that they should respond to with action.
It is time to hold them accountable with much more than words, or shut Indian Point down.

SUNSI Review Complete
Template = ADM - 013
E-RIDS= ADM -03
Add= D. Pickett (dvp1)

A-121

RULES AND DIRECTIVES
BRANCH
USNRC

PUBLIC SUBMISSION

2013 MAY 31 PM 4: 25

As of: May 31, 2013
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Tracking No. 1jx-85lw-9umy
Comments Due: June 03, 2013
Submission Type: Web

Docket: NRC-2013-0063
Draft Environmental Assessment and Finding of No Significant Impact

RECEIVED

Comment On: NRC-2013-0063-0002
Entergy Nuclear Operations, Inc., Indian Point Nuclear Generating Unit No. 3; Extension of Public Comment Period

Document: NRC-2013-0063-DRAFT-0014
Comment on FR Doc # 2013-10792

Submitter Information

Name: Asher Pacht
Address:
20 Wilson Street
Beacon, NY, 12508

5/7/2013
78 FR 26662
24

General Comment

The NRC should deny the exemption and require Entergy to comply with the regulations, which were written to protect the plant and the public from the very real risk of a fire that could lead to a meltdown at Indian Point.

The NRC failed to do an Environmental Impact Study (EIS) of the risks and impacts of granting the exemption, including looking at alternatives, such as replacing the insulation. At a minimum the NRC must conduct a full EIS, look at all alternatives and allow time for public comment.

The NRC should hold a public hearing in the vicinity of Indian Point to fully explain its exemption process, and take public input on Entergy's failure to comply with fire safety regulations that were established over 20 years ago.

SUNSI Review Complete
Template = ADM - 013
E-RIDS= ADM-03
Add= D. Pickett (dvp1)

A-122

RULES AND DIRECTIVES
BRANCH
USNRC

PUBLIC SUBMISSION

2013 MAY 31 PM 4: 26

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Docket: NRC-2013-0063
Draft Environmental Assessment and Finding of No Significant Impact

Comment On: NRC-2013-0063-0002
Entergy Nuclear Operations, Inc., Indian Point Nuclear Generating Unit No. 3; Extension of Public Comment Period

Document: NRC-2013-0063-DRAFT-0015
Comment on FR Doc # 2013-10792

Submitter Information

Name: Cheriell Jensen
Address:
13737 Quito
Saratoga, CA, 95070

5/7/2013
78 FR 26662

25

General Comment

An Environmental Impact Statement is required for governmental decisions which may impact the environment. Certainly allowing substandard fire protection of a nuclear plant falls into this category. So do the appropriate review in full public view.

SUNSI Review Complete
Template = ADM - 013
E-RIDS= ADM-03
Add= D. Pickett (dvp1)

A-123

RULES AND DIRECTIVES
BRANCH
USNRC

As of: May 31, 2013
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Tracking No. Ijx-85lw-3hnp
Comments Due: June 03, 2013
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PUBLIC SUBMISSION

RECEIVED

Docket: NRC-2013-0063
Draft Environmental Assessment and Finding of No Significant Impact

Comment On: NRC-2013-0063-0002
Entergy Nuclear Operations, Inc., Indian Point Nuclear Generating Unit No. 3; Extension of Public Comment Period

Document: NRC-2013-0063-DRAFT-0016
Comment on FR Doc # 2013-10792

Submitter Information

5/7/2013

Name: Joshua Farrell
Address:
98 Jackson St.
Fishkill, NY, 12524

78 FR 26662
26

General Comment

The NRC should deny the exemption and require Entergy to comply with the regulations, which were written to protect the plant and the public from the very real risk of a fire that could lead to a meltdown at Indian Point.

The NRC failed to do an Environmental Impact Study (EIS) of the risks and impacts of granting the exemption, including looking at alternatives, such as replacing the insulation. At a minimum the NRC must conduct a full EIS, look at all alternatives and allow time for public comment.

The NRC should hold a public hearing in the vicinity of Indian Point to fully explain its exemption process, and take public input on Entergy's failure to comply with fire safety regulations that were established over 20 years ago.

SUNSI Review Complete
Template = ADM - 013
E-RIDS= ADM-03
Add= D. Pickett (dvp1)

A-124

RULES AND DIRECTIVES
BRANCH
USNRC

PUBLIC SUBMISSION 2013 MAY 31 PM 4: 26

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Tracking No. 1jx-85lw-g22y
Comments Due: June 03, 2013
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Docket: NRC-2013-0063
Draft Environmental Assessment and Finding of No Significant Impact

RECEIVED

Comment On: NRC-2013-0063-0002
Entergy Nuclear Operations, Inc., Indian Point Nuclear Generating Unit No. 3; Extension of Public Comment Period

Document: NRC-2013-0063-DRAFT-0017
Comment on FR Doc # 2013-10792

Submitter Information

5/7/2013

78 FR 26662

Name: Jan Emerson

General Comment

(27)

Please require Entergy to comply with safety regulations that protect the public and to conduct an impact study of possible consequences if they would not follow a safety first plan.

Commenting on notice received from Riverkeeper, but not a member.

Thank you,

Jan Emerson

SUNSI Review Complete
Template = ADM - 013
E-RIDS= ADM-03
Add= D. Pickett (dvp1)

A-125

RULES AND DIRECTIVES
BRANCH
USNRC

PUBLIC SUBMISSION

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Tracking No. 1jx-851x-n6on
Comments Due: June 03, 2013
Submission Type: Web

Docket: NRC-2013-0063
Draft Environmental Assessment and Finding of No Significant Impact

RECEIVED

Comment On: NRC-2013-0063-0002
Entergy Nuclear Operations, Inc., Indian Point Nuclear Generating Unit No. 3; Extension of Public Comment Period

Document: NRC-2013-0063-DRAFT-0018
Comment on FR Doc # 2013-10792

Submitter Information

5/7/2013

Name: Kate Evanciew
Address:
Brooklyn, NY, 11218

78 FR 24662

General Comment

28

Docket ID number: NRC-2013-0063

Safety should come first, and the NRC should serve the public, not Entergy!

The NRC should deny the exemption from fire-safe federal regulation standards and require Entergy to comply with the regulations, which were written to protect the plant and the public from the very real risk of a fire that could lead to a meltdown at Indian Point.

The NRC failed to do an Environmental Impact Study (EIS) of the risks and impacts of granting the exemption, including looking at alternatives, such as replacing the insulation. At a minimum the NRC must conduct a full EIS, look at all alternatives and allow time for public comment.

The NRC should hold a public hearing in the vicinity of Indian Point to fully explain its exemption process, and take public input on Entergy's failure to comply with fire safety regulations that were established over 20 years ago.

SUNSI Review Complete
Template = ADM - 013
E-RIDS= ADM-03
Add= D. Pickett (dvp1)

A-126

RULES AND DIRECTIVES
BRANCH
USNRC

PUBLIC SUBMISSION

2013 MAY 31 PM 4: 26

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Docket: NRC-2013-0063
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Comment On: NRC-2013-0063-0002
Entergy Nuclear Operations, Inc., Indian Point Nuclear Generating Unit No. 3; Extension of Public Comment Period

Document: NRC-2013-0063-DRAFT-0019
Comment on FR Doc # 2013-10792

Submitter Information

5/7/2013

Name: Gloria Morotti
Address:
5305 15th Street Court East
Bradenton, FL, 34203
Organization: constituent

78 FR 24662

29

General Comment

Safety should come first, and Entergy should serve the public, not the other way round.

SUNSI Review Complete
Template = ADM - 013
E-RIDS= ADM-03
Add= D. Pickett (dvp1)

A-127

RULES AND DIRECTIVES
BRANCH
USNRC

PUBLIC SUBMISSION

2013 MAY 31 PM 4: 26

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Tracking No. 1jx-851x-sg01
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Docket: NRC-2013-0063
Draft Environmental Assessment and Finding of No Significant Impact

RECEIVED

Comment On: NRC-2013-0063-0002
Entergy Nuclear Operations, Inc., Indian Point Nuclear Generating Unit No. 3; Extension of Public Comment Period

Document: NRC-2013-0063-DRAFT-0020
Comment on FR Doc # 2013-10792

Submitter Information

Name: Louise Calabro
Address:
Two Bay Club Drive • 1G
Bayside, NY, 11360-2918

5/7/2013

178 FR 26662

General Comment

30

Entergy must ensure that all safety regulations are met at Indian Point Nuclear Generating Unit No. 3 -- we can't afford another Fukushima so close to home!

SUNSI Review Complete
Template = ADM - 013
E-RIDS= ADM-03
Add= D. Pickett (dvp1)

A-128

RULES AND DIRECTIVES
BRANCH
USNRC

As of: June 05, 2013
Received: May 29, 2013
Status: Pending Post
Tracking No. Ijx-851x-mogk
Comments Due: June 03, 2013
Submission Type: Web

PUBLIC SUBMISSION

2013 JUN -5 PM 3:18

RECEIVED

Docket: NRC-2013-0063
Draft Environmental Assessment and Finding of No Significant Impact

Comment On: NRC-2013-0063-0002
Entergy Nuclear Operations, Inc., Indian Point Nuclear Generating Unit No. 3; Extension of Public Comment Period

Document: NRC-2013-0063-DRAFT-0021
Comment on FR Doc # 2013-10792

Submitter Information

Name: Dorothy Nusbaum
Address:
1619 East 36 Street
Brooklyn, New York, 11234

5/7/2013
78 FR 26662
31

General Comment

The NRC should deny the exemption and require Entergy to comply with the regulations, which were written to protect the plant and the public from the very real risk of a fire that could lead to a meltdown at Indian Point.

The NRC failed to do an Environmental Impact Study (EIS) of the risks and impacts of granting the exemption, including looking at alternatives, such as replacing the insulation. At a minimum the NRC must conduct a full EIS, look at all alternatives and allow time for public comment.

The NRC should hold a public hearing in the vicinity of Indian Point to fully explain its exemption process, and take public input on Entergy's failure to comply with fire safety regulations that were established over 20 years ago.

SUNSI Review Complete
Template = ADM - 013
E-RIDS= ADM-03
Add= D. Pickett (dvp1)

A-129

RULES AND DIRECTIVES
BRANCH
USNRC

PUBLIC SUBMISSION 5 PM 3: 18

As of: June 05, 2013
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Comments Due: June 03, 2013
Submission Type: Web

Docket: NRC-2013-0063
Draft Environmental Assessment and Finding of No Significant Impact

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Comment On: NRC-2013-0063-0002
Entergy Nuclear Operations, Inc., Indian Point Nuclear Generating Unit No. 3; Extension of Public Comment Period

Document: NRC-2013-0063-DRAFT-0022
Comment on FR Doc # 2013-10792

Submitter Information

Name: Jessica Murphy
Address:
1 E. 35th Street Apt 27B
New York, NY, 10016
Submitter's Representative: Representative Schumer

5/7/2013
78 FR 26662
32

General Comment

I'm a concerned New York Resident and I strongly believe that:

he NRC should deny the exemption and require Entergy to comply with the regulations, which were written to protect the plant and the public from the very real risk of a fire that could lead to a meltdown at Indian Point.

I am astonished that the NRC failed to do an Environmental Impact Study (EIS) of the risks and impacts of granting the exemption, including looking at alternatives, such as replacing the insulation. At a minimum the NRC must conduct a full EIS, look at all alternatives and allow time for public comment.

As soon as possible, The NRC should hold a public hearing in the vicinity of Indian Point to fully explain its exemption process, and take public input on Entergy's failure to comply with fire safety regulations that were established over 20 years ago.

SUNSI Review Complete
Template = ADM - 013
E-RIDS= ADM-03
Add= D. Pickett (dvp1)

A-130

RULES AND DIRECTIVES
BRANCH
USNRC

PUBLIC SUBMISSION

As of: June 05, 2013
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Docket: NRC-2013-0063
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Comment On: NRC-2013-0063-0002
Entergy Nuclear Operations, Inc., Indian Point Nuclear Generating Unit No. 3; Extension of Public Comment Period

Document: NRC-2013-0063-DRAFT-0023
Comment on FR Doc # 2013-10792

Submitter Information

Name: dinda evans
Address:
CA, 92117
Submitter's Representative: self
Organization: individual
Government Agency Type: Federal
Government Agency: NRC

5/7/2013
78 FR 24462
33

General Comment

public safety, not pleasing the nuclear industry, must come first at Indian Point!

Since 2007, Entergy has been using a fireproofing insulation called HEMYC to protect critical electrical cables that power the emergency shutdown system at Indian Point. HEMYC is supposed to protect the cables for one hour during a fire, but in lab tests, HEMYC only lasted 24 minutes!

Rather than upgrading the insulation to comply with the federal requirements, Entergy asked the NRC for an exemption from the standards, and the NRC granted it in 2007. When asked at a public meeting how many exemptions it had given to Indian Point over the years, a NRC official literally said "I don't know, we don't keep a list."

Instead of enforcing its own safety regulations, the NRC regularly grants exemptions from them, in order to avoid "burdening" the nuclear industry with excessive regulation!

I believe that safety should come first, and the NRC should serve the public, not Entergy, sp now is the time to speak out against the NRC's blatant favoritism!

SUNSI Review Complete
Template = ADM - 013
E-RIDS= ADM-03
Add= D. Pickett (dvp1)

The NRC should deny the exemption and require Entergy to comply with the regulations, which were written to protect the plant and the public from the very real risk of a fire that could lead to a meltdown at Indian Point.

- The NRC failed to do an Environmental Impact Study (EIS) of the risks and impacts of granting the exemption, including looking at alternatives, such as replacing the insulation. At a minimum the NRC must conduct a full EIS, look at all alternatives and allow time for public comment.

- The NRC should hold a public hearing in the vicinity of Indian Point to fully explain its exemption process, and take public input on Entergy's failure to comply with fire safety regulations that were established over 20 years ago.

A-132

RULES AND DIRECTIVES
BRANCH
USNRC

PUBLIC SUBMISSION

2013 JUN -5 PM 3: 18

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Submission Type: Web

RECEIVED

Docket: NRC-2013-0063
Draft Environmental Assessment and Finding of No Significant Impact

Comment On: NRC-2013-0063-0002
Entergy Nuclear Operations, Inc., Indian Point Nuclear Generating Unit No. 3; Extension of Public Comment Period

Document: NRC-2013-0063-DRAFT-0024
Comment on FR Doc # 2013-10792

Submitter Information

Name: Victoria Furio
Address:
37 Highland Ave
Yonkers, NY, 10705

5/7/2013
76 FR 26662
34

General Comment

It is extremely dangerous for Indian Point not to have insulation that does not last more than 25 min in a fire! Entergy should be required to upgrade, not be exempt from the federal regulations that are there to protect the public!

If it is not obvious why, please hold a Public Hearing to explain the plan to grant them an exemption. We count on YOU to enforce safety standards, not enrich the companies.

SUNSI Review Complete
Template = ADM - 013
E-RIDS= ADM-03
Add= D. Pickett (dvp1)

A-133

RULES AND DIRECTIVES
BRANCH
USNRC

PUBLIC SUBMISSION

2013 JUN -5 PM 3: 18

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Tracking No. 1jx-85lx-3b4l
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Docket: NRC-2013-0063
Draft Environmental Assessment and Finding of No Significant Impact

Comment On: NRC-2013-0063-0002
Entergy Nuclear Operations, Inc., Indian Point Nuclear Generating Unit No. 3; Extension of Public Comment Period

Document: NRC-2013-0063-DRAFT-0025
Comment on FR Doc # 2013-10792

Submitter Information

Name: Donna Henes
Address:
279 Sterling Place
Brooklyn, NY, 11238-4444

5/7/2013
76 FR 26662

General Comment

35

Please make sure that we are safe.

SUNSI Review Complete
Template = ADM - 013
E-RIDS= ADM-03
Add= D. Pickett (dvp1)

A-134

RULES AND DIRECTIVES
BRANCH
USNRC

PUBLIC SUBMISSION

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Docket: NRC-2013-0063
Draft Environmental Assessment and Finding of No Significant Impact

Comment On: NRC-2013-0063-0002
Entergy Nuclear Operations, Inc., Indian Point Nuclear Generating Unit No. 3; Extension of Public Comment Period

Document: NRC-2013-0063-DRAFT-0026
Comment on FR Doc # 2013-10792

Submitter Information

General Comment

You fucking assholes are putting millions of people at risk

5/7/2013

78 FR 26662

36

SUNSI Review Complete
Template = ADM - 013
E-RIDS= ADM-03
Add= D. Pickett (dvp1)

A-135

RULES AND DIRECTIVES
BRANCH
USNRC

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Tracking No. 1jx-85lx-o4lr
Comments Due: June 03, 2013
Submission Type: Web

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Docket: NRC-2013-0063
Draft Environmental Assessment and Finding of No Significant Impact

Comment On: NRC-2013-0063-0002
Entergy Nuclear Operations, Inc., Indian Point Nuclear Generating Unit No. 3; Extension of Public Comment Period

Document: NRC-2013-0063-DRAFT-0027
Comment on FR Doc # 2013-10792

Submitter Information

5/7/2013
78 FR 26662
37

Name: larry krasner
Address:
87-40 Francis Lewis Blvd. Apt.A-23
Queens Village,NY
NY, NY, 11427
Government Agency Type: State

General Comment

We don't need another Fukushima on US soil where it can affect 20 million people

SUNSI Review Complete
Template = ADM - 013
E-RIDS= ADM-03
Add= D. Pickett (dvp1)

A-136

RULES AND DIRECTIVES
BRANCH
USNRC

PUBLIC SUBMISSION

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Docket: NRC-2013-0063
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Comment On: NRC-2013-0063-0002
Entergy Nuclear Operations, Inc., Indian Point Nuclear Generating Unit No. 3; Extension of Public Comment Period

Document: NRC-2013-0063-DRAFT-0028
Comment on FR Doc # 2013-10792

Submitter Information

Name: Matt Malina
Address:
410 East 6th Street
New York, NY, 10009-6439

5/7/2013
78 FR 26662
38

General Comment

Do not give Indian Point a pass on fire safety standards or any standards for that matter.

SUNSI Review Complete
Template = ADM - 013
E-RIDS= ADM-03
Add= D. Pickett (dvp1)

A-137

RULES AND DIRECTIVES
BRANCH
USNRC

PUBLIC SUBMISSION

JUN -5 PM 3:19

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Tracking No. lxx-85ly-fwzo
Comments Due: June 03, 2013
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Docket: NRC-2013-0063
Draft Environmental Assessment and Finding of No Significant Impact

Comment On: NRC-2013-0063-0002
Entergy Nuclear Operations, Inc., Indian Point Nuclear Generating Unit No. 3; Extension of Public Comment Period

Document: NRC-2013-0063-DRAFT-0029
Comment on FR Doc # 2013-10792

Submitter Information

5/7/2013

78 FR 26662

Name: Jana Shakarian
Address:
Highland Falls, NY, 10928

General Comment

39

NRC should serve the public, not Entergy

The NRC should deny the exemption and require Entergy to comply with the regulations, which were written to protect the plant and the public from the very real risk of a fire that could lead to a meltdown at Indian Point.

The NRC failed to do an Environmental Impact Study (EIS) of the risks and impacts of granting the exemption, including looking at alternatives, such as replacing the insulation. At a minimum the NRC must conduct a full EIS, look at all alternatives and allow time for public comment.

The NRC should hold a public hearing in the vicinity of Indian Point to fully explain its exemption process, and take public input on Entergy's failure to comply with fire safety regulations that were established over 20 years ago.

Regulations are in fact seeking to grant some minimum of safety. Granting regular exemptions from these safety precautions is endangering the lives of 20 MILLION PEOPLE!

I would like to suggest the NRC contemplates why they would not move their families here.

SUNSI Review Complete
Template = ADM - 013
E-RIDS= ADM-03
Add= D. Pickett (dvp1)

A-138

RULES AND DIRECTIVES
BRANCH
USNRC

PUBLIC SUBMISSION

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Comments Due: June 03, 2013
Submission Type: Web

Docket: NRC-2013-0063
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Comment On: NRC-2013-0063-0002
Entergy Nuclear Operations, Inc., Indian Point Nuclear Generating Unit No. 3; Extension of Public Comment Period

Document: NRC-2013-0063-DRAFT-0030
Comment on FR Doc # 2013-10792

Submitter Information

Name: John Raveche
Address:
77 Warren Street NY NY 10007
New York, NY, 10007
Government Agency Type: Regional

5/7/2013
78 FR 26662
40

General Comment

The NRC should deny the exemption and require Entergy to comply with the regulations, which were written to protect the plant and the public from the very real risk of a fire that could lead to a meltdown at Indian Point.

The NRC failed to do an Environmental Impact Study (EIS) of the risks and impacts of granting the exemption, including looking at alternatives, such as replacing the insulation. At a minimum the NRC must conduct a full EIS, look at all alternatives and allow time for public comment.

The NRC should hold a public hearing in the vicinity of Indian Point to fully explain its exemption process, and take public input on Entergy's failure to comply with fire safety regulations that were established over 20 years ago.

SUNSI Review Complete
Template = ADM - 013
E-RIDS= ADM-03
Add= D. Pickett (dvp1)

A-139

RULES AND DIRECTIVES
BRANCH
USNRC

PUBLIC SUBMISSION

2013 JUN -5 PM 3:19

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Comments Due: June 03, 2013
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Docket: NRC-2013-0063
Draft Environmental Assessment and Finding of No Significant Impact

Comment On: NRC-2013-0063-0002
Entergy Nuclear Operations, Inc., Indian Point Nuclear Generating Unit No. 3; Extension of Public Comment Period

Document: NRC-2013-0063-DRAFT-0031
Comment on FR Doc # 2013-10792

Submitter Information

Name: ken gunther
Address:
11024 161st St. N
Jupiter, FL, 33478-6204
Organization: Gaiadigm Publishing, Inc.
Government Agency Type: Federal
Government Agency: BLM

5/7/2013
78 FR 26662
41

General Comment

The NRC should hold a public hearing in the vicinity of Indian Point to fully explain its exemption process, and take public input on Entergy's failure to comply with fire safety regulations that were established over 20 years ago.

SUNSI Review Complete
Template = ADM - 013
E-RIDS = ADM-03
Add = D. Pickett (dvp1)

A-140

RULES AND DIRECTIVES
BRANCH
USNRC

PUBLIC SUBMISSION

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Tracking No. Ijx-85ly-ilff
Comments Due: June 03, 2013
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Docket: NRC-2013-0063
Draft Environmental Assessment and Finding of No Significant Impact

Comment On: NRC-2013-0063-0002
Entergy Nuclear Operations, Inc., Indian Point Nuclear Generating Unit No. 3; Extension of Public Comment Period

Document: NRC-2013-0063-DRAFT-0032
Comment on FR Doc # 2013-10792

Submitter Information

5/7/2013

Name: William Davis
Address:
129 Wittenberg Road
Bearsville, NY, 12409
Government Agency Type: Local

78 FR 26662

42

General Comment

I am writing with the hope that the Indian Point nuclear reactors can be decommissioned NOW!

The NRC should deny the exemption and require Entergy to comply with the regulations, which were written to protect the plant and the public from the very real risk of a fire that could lead to a meltdown at Indian Point.

The NRC failed to do an Environmental Impact Study (EIS) of the risks and impacts of granting the exemption, including looking at alternatives, such as replacing the insulation. At a minimum the NRC must conduct a full EIS, look at all alternatives and allow time for public comment.

The NRC should hold a public hearing in the vicinity of Indian Point to fully explain its exemption process, and take public input on Entergy's failure to comply with fire safety regulations that were established over 20 years ago.

The NRC should also acknowledge that the Indian Point reactors stand on an earthquake fault line and that these ancient reactors would like melt down if an earthquake occurs.

The NRC should also take into consideration that the Indian Point reactors are far TOO OLD! They were not built to last this long, patches and upgrades notwithstanding. They should have been decommissioned years ago.

SUNSI Review Complete
Template = ADM - 013
E-RIDS= ADM-03
Add= D. Pickett (dvp1)

Moreover, the NRC should admit that they have NO SOLUTION to the nuclear waste problem at Indian Point and at every other nuclear reactor in the world. What will become of the spent nuclear fuel rods that are a clear and present danger to everyone within 50 miles of every reactor in the world? The NRC has NO CLUE!

Ultimately, every nuclear reactor must be shut down and decommissioned as soon as possible. Every one of them is a ticking time bomb. If we have a Fukushima incident here, the entire NRC should be assigned to not only clean up the mess, but LIVE within 10 miles of the problem they have ignored for the sake of preserving the profits of corrupt and fascist corporations like Entergy!

A-142

Case 1:09-cv-10594-LAP Document 42-2 Filed 04/11/14 Page 31 of 75

Page 1 of 1

RULES AND DIRECTIVES
BRANCH
USNRC**PUBLIC SUBMISSION**

2013 JUN -5 PM 3:19

As of: June 05, 2013
Received: May 29, 2013
Status: Pending Post
Tracking No. 1jx-85ly-8m35
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RECEIVED

Docket: NRC-2013-0063

Draft Environmental Assessment and Finding of No Significant Impact

Comment On: NRC-2013-0063-0002

Entergy Nuclear Operations, Inc., Indian Point Nuclear Generating Unit No. 3; Extension of Public Comment Period

Document: NRC-2013-0063-DRAFT-0033

Comment on FR Doc # 2013-10792

Submitter Information**Name:** Joni Mercado**Address:**266 Canopus Hollow Road
Putnam Valley, NY 10579 er,5/7/2013
78 FR 26662

43

General Comment

The Indian Point Nuclear Power Plant sits atop the Ramapo Fault line. The reactors are very old, built in the early 70's. In 20 years from now, the reactors would be over 60 years old! A lot can change in that amount of time. There presently have been no recent escape-route drills. A human error could cause a dangerous accident. There have been several accidents in the past. There had been a leak into the Hudson River of radioactive material where the rods are stored. The displaced water from the melting glaciers could cause water levels to rise and flood the plant. A similar, unpredictable life-threatening radioactive event could occur liken to the Fukushima disaster. There isn't a no-fly zone in place to protect it from an airplane attack. If an earthquake should occur, nothing can protect it if the Ramapo Fault should become dangerously active beneath it. The sirens are sometimes in audible where we live. A serious accident could take the lives of millions of people living within the danger zone. For decades we have written and demonstrated for closing the Indian Point Power Plant in Buchanan but our voices, thus far, have fallen on deaf ears. We are not dependent on Entergy for our energy. We can't predict an unexpected disaster. History has proven that. Please don't put millions of lives at stake, and don't approve 20 more years of this old plant's operation. Keep in mind many wrong decisions are based on greed for ever-increasing wealth and profit in this competitive society. The Japanese never saw the Fukushima accident coming. Mother Nature's wrath is usually a life-changing, life-taking surprise. Common sense tells me not to play Russian roulette with our lives. Please decide in favor of closing Entergy's Nuclear Power Plant!

SUNSI Review Complete
Template = ADM - 013
E-RIDS= ADM-03
Add= D. Pickett (dvp1)

A-143

RULES AND DIRECTIVES
BRANCH
USMRC

PUBLIC SUBMISSION

2013 JUN -5 PM 3: 19

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Docket: NRC-2013-0063
Draft Environmental Assessment and Finding of No Significant Impact

Comment On: NRC-2013-0063-0002
Entergy Nuclear Operations, Inc., Indian Point Nuclear Generating Unit No. 3; Extension of Public Comment Period

Document: NRC-2013-0063-DRAFT-0034
Comment on FR Doc # 2013-10792

Submitter Information

Name: Christina Volz
Address:
426 Smith Street
Peekskill, NY, 10566
Organization: Private individual
Government Agency Type: Local
Government Agency: Neighborhood Association

5/7/2013
78 FR 26662
44

General Comment

We are part of a group of individuals who live on the westside of Peekskill. We need much more accountability about the aging infrastuture of Indian Point which is less and less capable of putting out fires as it ages. I hope the Federal government will not re-license the plant to Entergy. They need now to focus on clean-up and rod storage which when they solve will reduce the threat of fire.

SUNSI Review Complete
Template = ADM - 013
E-RIDS= ADM-03
Add= D. Pickett (dvp1)

A-144

RULES AND DIRECTIVES
BRANCH
USNRC

PUBLIC SUBMISSION

2013 JUN -5 PM 3: 19

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Docket: NRC-2013-0063
Draft Environmental Assessment and Finding of No Significant Impact

Comment On: NRC-2013-0063-0002
Entergy Nuclear Operations, Inc., Indian Point Nuclear Generating Unit No. 3; Extension of Public Comment Period

Document: NRC-2013-0063-DRAFT-0035
Comment on FR Doc # 2013-10792

Submitter Information

Name: arthur blum

General Comment

SAFETY FIRST !!!

5/7/2013

78 FR 26662

45

SUNSI Review Complete
Template = ADM - 013
E-RIDS= ADM-03
Add= D. Pickett (dvp1)

A-145

RULES AND DIRECTIVES
BRANCH
USNRC

As of: June 05, 2013
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Docket: NRC-2013-0063
Draft Environmental Assessment and Finding of No Significant Impact

Comment On: NRC-2013-0063-0002
Entergy Nuclear Operations, Inc., Indian Point Nuclear Generating Unit No. 3; Extension of Public Comment Period

Document: NRC-2013-0063-DRAFT-0036
Comment on FR Doc # 2013-10792

Submitter Information

Name: James Schmitt
Address:
142 W. Mombasha RD
Monroe, NY, 10950
Submitter's Representative: S,P, Maloney
Organization: CITIZEN
Government Agency Type: Federal
Government Agency: NRC

5/7/2013
78 FR 26667
46
2

General Comment

close Indian Point Nuclear Power Plant in Westchester county, New York. Mass evacuation is un-do-able. Security is mot realisteic, This plant is a disaster in waiting. Do not re-license this plant.

SUNSI Review Complete
Template = ADM - 013
E-RIDS= ADM-03
Add= D. Pickett (dvp1)

A-146

RULES AND DIRECTIVES
BRANCH
USNRC

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Docket: NRC-2013-0063
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Comment On: NRC-2013-0063-0002
Entergy Nuclear Operations, Inc., Indian Point Nuclear Generating Unit No. 3; Extension of Public Comment Period

Document: NRC-2013-0063-DRAFT-0037
Comment on FR Doc # 2013-10792

Submitter Information

Name: Edward Butler
Address:
New York, 10021

5/7/2013
78 FR 26467
47

General Comment

Comment on NRC-2013-0063:

NRC should deny the exemption and require Entergy to comply with the regulations, which were written to protect the plant and the public from the very real risk of a fire that could lead to a meltdown at Indian Point. NRC failed to do an Environmental Impact Study of the risks and impacts of granting the exemption, including looking at alternatives, such as replacing the insulation. At a minimum the NRC must conduct a full EIS, look at all alternatives and allow time for public comment. NRC should hold a public hearing in the vicinity of Indian Point to fully explain its exemption process, and take public input on Entergy's failure to comply with fire safety regulations that were established over 20 years ago.

SUNSI Review Complete
Template = ADM - 013
E-RIDS= ADM-03
Add= D. Pickett (dvp1)

A-147

RULES AND DIRECTIVES
BRANCH
USNRC

PUBLIC SUBMISSION

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Docket: NRC-2013-0063
Draft Environmental Assessment and Finding of No Significant Impact

Comment On: NRC-2013-0063-0002
Entergy Nuclear Operations, Inc., Indian Point Nuclear Generating Unit No. 3; Extension of Public Comment Period

Document: NRC-2013-0063-DRAFT-0038
Comment on FR Doc # 2013-10792

Submitter Information

5/7/2013
78 FR 26662

Name: Steven Laifer

General Comment

48

Regarding the electrical cable fire exemption:

Since 2007, Entergy has been using a fireproofing insulation called HEMYC to protect critical electrical cables that power the emergency shutdown system at Indian Point. HEMYC is supposed to protect the cables for one hour during a fire, but in lab tests, HEMYC only lasted 24 minutes.

The NRC should deny the exemption and require Entergy to comply with the regulations, which were written to protect the plant and the public from the very real risk of a fire that could lead to a meltdown at Indian Point.

The NRC failed to do an Environmental Impact Study (EIS) of the risks and impacts of granting the exemption, including looking at alternatives, such as replacing the insulation. At a minimum the NRC must conduct a full EIS, look at all alternatives and allow time for public comment.

The NRC should hold a public hearing in the vicinity of Indian Point to fully explain its exemption process, and take public input on Entergy's failure to comply with fire safety regulations that were established over 20 years ago.

SUNSI Review Complete
Template = ADM - 013
E-RIDS= ADM-03
Add= D. Pickett (dvp1)

A-148

RULES AND DIRECTIVES
BRANCH
USNRC

PUBLIC SUBMISSION

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Docket: NRC-2013-0063
Draft Environmental Assessment and Finding of No Significant Impact

Comment On: NRC-2013-0063-0002
Entergy Nuclear Operations, Inc., Indian Point Nuclear Generating Unit No. 3; Extension of Public Comment Period

Document: NRC-2013-0063-DRAFT-0039
Comment on FR Doc # 2013-10792

5/17/2013 2
78 FR 26664

Submitter Information

49

General Comment

You get paid by me and other taxpayers. Any chance you could represent us?

If you want to sell us out and work for the nuclear companies, quit your job and I am sure they will give you one.

Deny the exemption and require Entergy to comply with the regulations, which were written to protect the plant and the public from the very real risk of a fire that could lead to a meltdown at Indian Point.

Do a proper Environmental Impact Study (EIS) of the risks and impacts of granting the exemption, including looking at alternatives, such as replacing the insulation. At a minimum the NRC must conduct a full EIS, look at all alternatives and allow time for public comment.

You should hold a public hearing in the vicinity of Indian Point to fully explain its exemption process, and take public input on Entergy's failure to comply with fire safety regulations that were established over 20 years ago.

SUNSI Review Complete
Template = ADM - 013
E-RIDS= ADM-03
Add= D. Pickett (dvp1)

A-149

RULES AND DIRECTIVES
BRANCH
USNRC

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RECEIVED

Docket: NRC-2013-0063
Draft Environmental Assessment and Finding of No Significant Impact

Comment On: NRC-2013-0063-0002
Entergy Nuclear Operations, Inc., Indian Point Nuclear Generating Unit No. 3; Extension of Public Comment Period

Document: NRC-2013-0063-DRAFT-0040
Comment on FR Doc # 2013-10792

Submitter Information

Name: Doreen Tignanelli
Address:
29 Colburn Drive
Poughkeepsie, NY, 12603

5/7/2013
78 FR 26662
50

General Comment

The NRC should deny the exemption and require Entergy to comply with the regulations, which were written to protect the plant and the public from the very real risk of a fire that could lead to a meltdown at Indian Point.

The NRC failed to do an Environmental Impact Study (EIS) of the risks and impacts of granting the exemption, including looking at alternatives, such as replacing the insulation. At a minimum the NRC must conduct a full EIS, look at all alternatives and allow time for public comment.

The NRC should hold a public hearing in the vicinity of Indian Point to fully explain its exemption process, and take public input on Entergy's failure to comply with fire safety regulations that were established over 20 years ago.

SUNSI Review Complete
Template = ADM - 013
E-RIDS= ADM-03
Add= D. Pickett (dvp1)

A-150

Case 1:09-cv-10594-LAP Document 42-2 Filed 04/11/14 Page 39 of 75

RULES AND DIRECTIVES
BRANCH
USNRC

2013 Barbara A. Kidney, Ph.D.
275 Rt. 17K, Suite 220
Newburgh, NY 12550

June 3, 2013
RECEIVED

Ms. Cindy Bladely,
Chief, RADB
Office of Administration
TWB-05-B01
US Nuclear Regulatory Commission
Washington, DC 20555-0001

5/7/2013

78 FR 26662

RE: Docket ID NRC-2013-0063
Entergy Nuclear Operations Inc.,
Indian Point Nuclear Generating Unit 3

51

Dear Ms. Bladely:

As someone who lives and has a professional practice well within the radiation and evacuation zones (in case of malfunction) of Indian Point nuclear plant, I am very concerned about the health and safety of my clients, my neighbors, my family and myself, especially in light of recent initiatives to grant Indian Point further safety exemptions in regard to fire safety. I can hardly believe (but then again I can, in these days of the only thing that matters is yet more money to the superwealthy corporate overlords, and I hardly think that that statement can be considered controversial, it's merely unfortunately factual) that the NRC is about to OK this, as it is so clearly foolhardy and also illegal. I urge the NRC to stop taking foolish and extreme risks with the health and safety of the millions of people, and their pets, and the agricultural lands and watershed area of the greater NY metropolitan area, and provide NO exemptions, extend the comment period (so more potential victims can find out about these irresponsible plans and at least advocate for themselves), and conduct a full and unbiased environmental impact study.

Sincerely,

BA Kidney PhD
Barbara A. Kidney, Ph.D.

SUNSI Review Complete
Template = ADM - 013
E-RIDS= ADM-03
Add= D. Pickett (dvp1)

A-151

5/7/2013
78 FR 26642

PUBLIC SUBMISSION

52

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Docket: NRC-2013-0063
Draft Environmental Assessment and Finding of No Significant Impact

Comment On: NRC-2013-0063-0002
Entergy Nuclear Operations, Inc., Indian Point Nuclear Generating Unit No. 3; Extension of Public Comment Period

Document: NRC-2013-0063-DRAFT-0041
Comment on FR Doc # 2013-10792

Submitter Information

Name: Jill Simon
Address:
12 E. 14 St., 3E
NYC, NY, 10003

RECEIVED
2013 JUN 11 PM 3:40
RULES AND DIRECTIVES
BRANCH
USNRC

General Comment

The NRC should deny the exemption and require Entergy to comply with the regulations, which were written to protect the plant and the public from the very real risk of a fire that could lead to a meltdown at Indian Point.

- Nuclear power plants pose enormous dangers to the areas they're in and the communities surrounding them.
- It's outrageous that they should be exempt from safety regulations!!
- My family and I are one of the many, many N.Y. households which believe that Indian Point should be totally closed down, but in the meantime, at the very least, they must be made to comply with fire safety regulations!!
- And we're in full agreement with the organization RiverKeeper, N.Y.'s clean water advocate, that--
- The NRC failed to do an Environmental Impact Study (EIS) of the risks and impacts of granting the exemption...At a minimum the NRC must conduct a full EIS, look at all alternatives and allow time for public comment.

- The NRC should hold a public hearing in the vicinity of Indian Point to fully explain its exemption process, and take public input on Entergy's failure to comply with fire safety regulations that were established over 20 years ago.

SUNSI Review Complete
Template = ADM - 013
E-RIDS= ADM-03
Add= D. Pickett (dvp1)

A-153

RULES AND DIRECTIVES
BRANCH
USNRC

PUBLIC SUBMISSION

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Docket: NRC-2013-0063
Draft Environmental Assessment and Finding of No Significant Impact

RECEIVED

Comment On: NRC-2013-0063-0002
Entergy Nuclear Operations, Inc., Indian Point Nuclear Generating Unit No. 3; Extension of Public Comment Period

Document: NRC-2013-0063-DRAFT-0043
Comment on FR Doc # 2013-10792

Submitter Information

5/7/2013
78 FR 26642
56

Name: Anthony Montapert

General Comment

I am opposed to exempting Entergy from complying with critical fire safety regulations that could prevent the kind of disaster at Indian Point that nearly led to catastrophe at the Browns Ferry plant in Alabama nearly 40 years ago.

The NRC should hold a public hearing in the vicinity of Indian Point to fully explain its exemption process, and take public input on Entergy's failure to comply with fire safety regulations.

SUNSI Review Complete
Template = ADM - 013
E-RIDS= ADM-03
Add= D. Pickett (dvp1)

A-154

RULES AND DIRECTIVES
BRANCH
USNRC

PUBLIC SUBMISSION

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Docket: NRC-2013-0063
Draft Environmental Assessment and Finding of No Significant Impact

Comment On: NRC-2013-0063-0002
Entergy Nuclear Operations, Inc., Indian Point Nuclear Generating Unit No. 3; Extension of Public Comment Period

Document: NRC-2013-0063-DRAFT-0044
Comment on FR Doc # 2013-10792

Submitter Information

5/7/2013
78FR 26662
55

Name: Dr. Nathaniel Floyd
Address:
126 Sharon Road
P.O. Box 1571
Lakeville, CT, 06039
Submitter's Representative: NA
Organization: NA
Government Agency: NA

General Comment

NRC has failed to enforce regulations governing nuclear plants like Indian Point. These NRC "exemptions" from regulation now seriously expose nearby citizens to the risks of nuclear leaks and fires. It is incumbent on the NRC to act on behalf of the safety of vulnerable communities rather than to protect the nuclear industry.

SUNSI Review Complete
Template = ADM - 013
E-RIDS= ADM-03
Add= D. Pickett (dvp1)

A-155

RULES AND DIRECTIVES
BRANCH
USNRC

PUBLIC SUBMISSION 2013 JUN 11 PM 3:40

As of: June 11, 2013
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Tracking No. 1jx-85m0-rtbm
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Docket: NRC-2013-0063
Draft Environmental Assessment and Finding of No Significant Impact

Comment On: NRC-2013-0063-0002
Entergy Nuclear Operations, Inc., Indian Point Nuclear Generating Unit No. 3; Extension of Public Comment Period

Document: NRC-2013-0063-DRAFT-0045
Comment on FR Doc # 2013-10792

Submitter Information

5/7/2013

78 FR 26662

56

Name: Lynn Flanagan
Address:
37 Jaipur Lane
Saratoga Springs, NY, 12866-9278

General Comment

The Nuclear Regulatory Commission should require Entergy to comply with the regulations, which were written to protect the plant and the public from the very real risk of a fire that could lead to a meltdown at Indian Point.

The NRC failed to do an Environmental Impact Study (EIS) of the risks and impacts of granting the exemption, including looking at alternatives, such as replacing the insulation. At a minimum, the NRC must conduct a full EIS, look at all alternatives and allow time for public comment.

The NRC should hold a public hearing in the vicinity of Indian Point to fully explain its exemption process, and take public input on Entergy's failure to comply with fire safety regulations that were established over 20 years ago.

SUNSI Review Complete
Template = ADM - 013
E-RIDS= ADM-03
Add= D. Pickett (dvp1)

RULES AND DIRECTIVES
BRANCH
USNRC

PUBLIC SUBMISSION 2013 JUN 11 PM 3: 40

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Tracking No. 1jx-85m0-9xxe
Comments Due: June 03, 2013
Submission Type: Web

Docket: NRC-2013-0063
Draft Environmental Assessment and Finding of No Significant Impact

RECEIVED

Comment On: NRC-2013-0063-0002
Entergy Nuclear Operations, Inc., Indian Point Nuclear Generating Unit No. 3; Extension of Public Comment Period

Document: NRC-2013-0063-DRAFT-0046
Comment on FR Doc # 2013-10792

Submitter Information

Name: Eleanor Fox
Address:
406 E. 80th St.
New York, NY, 10075

5/7/2013
78 FR 26662
57

General Comment

With 20 million people living within a 50 mile radius of the Indian Point plant, it is disgraceful that 20 years have gone by without Entergy complying with established fire safety regulations. The NRC shouldn't even consider granting Entergy an exemption.

- The NRC should deny the exemption and require Entergy to comply with the regulations, which were written to protect the plant and the public from the very real risk of a fire that could lead to a meltdown at Indian Point.
- The NRC failed to do an Environmental Impact Study (EIS) of the risks and impacts of granting the exemption, including looking at alternatives, such as replacing the insulation. At a minimum the NRC must conduct a full EIS, look at all alternatives and allow time for public comment.
- The NRC should hold a public hearing in the vicinity of Indian Point to fully explain its exemption process, and take public input on Entergy's failure to comply with fire safety regulations that were established over 20 years ago.

SUNSI Review Complete
Template = ADM - 013
E-RIDS= ADM-03
Add= D. Pickett (dvp1)

A-157

RULES AND DIRECTIVES
BRANCH
USNRC

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Comments Due: June 03, 2013
Submission Type: Web

Docket: NRC-2013-0063
Draft Environmental Assessment and Finding of No Significant Impact

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Comment On: NRC-2013-0063-0002
Entergy Nuclear Operations, Inc., Indian Point Nuclear Generating Unit No. 3; Extension of Public Comment Period

Document: NRC-2013-0063-DRAFT-0047
Comment on FR Doc # 2013-10792

Submitter Information

5/7/2013
78 FR 26662
58

Name: Nicole Crane
Address:
403 Simpson Place
Peekskill, NY, 10566

General Comment

As a citizen living with my family, my young son, in the immediate vicinity of Indian Point Nuclear Power Plant, I take issue with any safety exemptions granted Entergy. We deserve to live without the threat of nuclear disaster. There is no valid escape plan. We only have the safety measures that are in place. The standards should be so incredibly high that you feel comfortable that you are under NO CIRCUMSTANCES condemning the millions of people in our area to death in the unlikely event of an accident. Please.

SUNSI Review Complete
Template = ADM - 013
E-RIDS= ADM-03
Add= D. Pickett (dvp1)

A-158

RULES AND DIRECTIVES
BRANCH
USNRC

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Tracking No. 1jx-85m1-g3kl
Comments Due: June 03, 2013
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Docket: NRC-2013-0063
Draft Environmental Assessment and Finding of No Significant Impact

Comment On: NRC-2013-0063-0002
Entergy Nuclear Operations, Inc., Indian Point Nuclear Generating Unit No. 3; Extension of Public Comment Period

Document: NRC-2013-0063-DRAFT-0048
Comment on FR Doc # 2013-10792

Submitter Information

Name: Kevin O'Neill
Address:
29 High Street
Croton on Hudson, NY, 10520
Submitter's Representative: Nita Lowey
Organization: Citizen

5/7/2013
78 FR 26662
59

General Comment

Indian Point is plainly and bureaucratically a disaster to be shut down and VERY carefully taken apart and cleared of all radioactive substances. DO NOT waive ANY regulations. Do not renew either license coming up for renewal. Examine entergy's sloppy technical and financial history too. Know that we can move to renewables and leave ugly poisonous nuclear now.

SUNSI Review Complete
Template = ADM - 013
E-RIDS= ADM-03
Add= D. Pickett (dvp1)

A-159

RULES AND DIRECTIVES
BRANCH
USNRC

PUBLIC SUBMISSION

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As of: June 11, 2013
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Docket: NRC-2013-0063
Draft Environmental Assessment and Finding of No Significant Impact

Comment On: NRC-2013-0063-0002
Entergy Nuclear Operations, Inc., Indian Point Nuclear Generating Unit No. 3; Extension of Public Comment Period

Document: NRC-2013-0063-DRAFT-0049
Comment on FR Doc # 2013-10792

Submitter Information

Name: Gary Shaw
Address:
9 Van Cortlandt Pl.
Croton on Hudson, NY, 10520
Organization: Indian Point Safe Energy Coalition

5/7/2013
78 FR 26662
60

General Comment

It is unconscionable that the NRC could not get the industry to test Hemyc because the NEI said there was not enough evidence to warrant industry expenditures, so NRC had to run their own tests and found the fire protection material deficient. Yet the agency did not force the operator to retrofit with better insulation, the agency granted another regulatory exemption. This is unacceptable and should be an embarrassment to the agency that constantly touts its integrity. I believe the agency should be totally dismantled and reconstituted with nuclear engineers who actually put public health and safety ahead of industry financials. It should be noted that the Region 1 Administrator who granted that exemption is the same one who was severely criticized by the NRC Inspector General's Office for putting the financial impact of the operator above public safety when he let Davis-Besse get within one quarter of an inch of breach of containment. Where are the lessons learned? Shame on you NRC.

SUNSI Review Complete
Template = ADM - 013
E-RIDS= ADM-03
Add= D. Pickett (dvp1)

A-160

RULES AND DIRECTIVES
BRANCH
USNRC

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Docket: NRC-2013-0063
Draft Environmental Assessment and Finding of No Significant Impact

Comment On: NRC-2013-0063-0002
Entergy Nuclear Operations, Inc., Indian Point Nuclear Generating Unit No. 3; Extension of Public Comment Period

Document: NRC-2013-0063-DRAFT-0050
Comment on FR Doc # 2013-10792

Submitter Information

Name: Wendy Fast
Address:
8406 Green Rd.
Dansville, NY, 14437

5/7/2013
78 FR 26662
61

General Comment

The NRC granted Entergy an exemption from complying with the federal standards for insulation without even conducting an Environmental Impact Study. These fire safety regulations were established over 20 years ago. Those of us who live in the danger zone of Indian Point (and, a nuclear meltdown puts the whole earth in a danger zone) are, with good reason, alarmed by the lack of regulation by the Nuclear Regulatory Commission.

SUNSI Review Complete
Template = ADM - 013
E-RIDS= ADM-03
Add= D. Pickett (dvp1)

A-161

RULES AND DIRECTIVES
BRANCH
USNRC

PUBLIC SUBMISSION 2013 JUN 11 PM 3: 41

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Comments Due: June 03, 2013
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Docket: NRC-2013-0063
Draft Environmental Assessment and Finding of No Significant Impact

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Comment On: NRC-2013-0063-0002
Entergy Nuclear Operations, Inc., Indian Point Nuclear Generating Unit No. 3; Extension of Public Comment Period

Document: NRC-2013-0063-DRAFT-0051
Comment on FR Doc # 2013-10792

Submitter Information

5/7/2013

Name: lisa gervais
Address:
350 n water st
newburgh, NY, 12550

78 FR 26662

General Comment

62

The NRC should deny the exemption and require Entergy to comply with the regulations, which were written to protect the plant and the public from the very real risk of a fire that could lead to a meltdown at Indian Point.

SUNSI Review Complete
Template = ADM - 013
E-RIDS= ADM-03
Add= D. Pickett (dvp1)

A-162

RULES AND DIRECTIVES
BRANCH
USNRC

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Docket: NRC-2013-0063
Draft Environmental Assessment and Finding of No Significant Impact

Comment On: NRC-2013-0063-0002
Entergy Nuclear Operations, Inc., Indian Point Nuclear Generating Unit No. 3; Extension of Public Comment Period

Document: NRC-2013-0063-DRAFT-0052
Comment on FR Doc # 2013-10792

Submitter Information

Name: Mary-Alice Shemo
Address:
29 Champlain St,
Plattsburgh, NY, 12901

5/7/2013
78 FR 26662
63

General Comment

Granting this exception was completely inappropriate. Grow some spine! Given Indian Point's location, a runaway failure there would be much worse than any nuclear accident so far. Make them replace or reinforce the insulation. Your job is to protect the public, not a company's profits.

SUNSI Review Complete
Template = ADM - 013
E-RIDS= ADM-03
Add= D. Pickett (dvp1)

A-163

RULES AND DIRECTIVES
BRANCH
USNRC

PUBLIC SUBMISSION

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Draft Environmental Assessment and Finding of No Significant Impact

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Comment On: NRC-2013-0063-0002
Entergy Nuclear Operations, Inc., Indian Point Nuclear Generating Unit No. 3; Extension of Public Comment Period

Document: NRC-2013-0063-DRAFT-0053
Comment on FR Doc # 2013-10792

Submitter Information

Name: Elaine Dickinson
Address:
56 Hillcrest Drive
Harwich, MA, 02645

5/7/2013
78 FR 26662

General Comment

64

I have several concerns about this critical safety issue:

The NRC should deny the exemption and require Entergy to comply with the regulations, which were written to protect the plant and the public from the very real risk of a fire that could lead to a meltdown at Indian Point.

The NRC failed to do an Environmental Impact Study (EIS) of the risks and impacts of granting the exemption, including looking at alternatives, such as replacing the insulation. At a minimum the NRC must conduct a full EIS, look at all alternatives and allow time for public comment.

The NRC should hold a public hearing in the vicinity of Indian Point to fully explain its exemption process, and take public input on Entergy's failure to comply with fire safety regulations that were established over 20 years ago.

SUNSI Review Complete
Template = ADM - 013
E-RIDS= ADM-03
Add= D. Pickett (dvp1)

A-164

RULES AND DIRECTIVES
BRANCH
USNRC

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Draft Environmental Assessment and Finding of No Significant Impact

Comment On: NRC-2013-0063-0002

Entergy Nuclear Operations, Inc., Indian Point Nuclear Generating Unit No. 3; Extension of Public Comment Period

Document: NRC-2013-0063-DRAFT-0054

Comment on FR Doc # 2013-10792

Submitter Information

Name: Lourdes Sabio

Address:

30 Paulding Ave
Cold Spring, NY, 10516

5/7/2013

78 FR 26662

65

General Comment

The NRC should deny the exemption and require Entergy to comply with the regulations, which were written to protect the plant and the public from the very real risk of a fire that could lead to a meltdown at Indian Point.

The NRC failed to do an Environmental Impact Study (EIS) of the risks and impacts of granting the exemption, including looking at alternatives, such as replacing the insulation. At a minimum the NRC must conduct a full EIS, look at all alternatives and allow time for public comment.

SUNSI Review Complete
Template = ADM - 013
E-RIDS= ADM-03
Add= D. Pickett (dvp1)

A-165

RULES AND DIRECTIVES
BRANCH
USNRC

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Comment On: NRC-2013-0063-0002
Entergy Nuclear Operations, Inc., Indian Point Nuclear Generating Unit No. 3; Extension of Public Comment Period

Document: NRC-2013-0063-DRAFT-0055
Comment on FR Doc # 2013-10792

Submitter Information

5/7/2013
78 FR 26662
66

Name: margaret rice moir
Address:
121 whiffletree avenue
brewster, MA, 02631

General Comment

what is the matter with you people? aren't your children as vulnerable as ours? have you never seen photos of children damaged after hiroshima, naagasaki and fukushima? it is so dreadful, and the risk is far too high.

join the HUMAN race and close down your plants that value profit over people.

SUNSI Review Complete
Template = ADM - 013
E-RIDS= ADM-03
Add= D. Pickett (dvp1)

A-166

RULES AND DIRECTIVES
BRANCH
USNRC

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Comment On: NRC-2013-0063-0002
Entergy Nuclear Operations, Inc., Indian Point Nuclear Generating Unit No. 3; Extension of Public Comment Period

Document: NRC-2013-0063-DRAFT-0056
Comment on FR Doc # 2013-10792

Submitter Information

Name: Bernard Yozwiak
Address:
64 Sunset Drive
Croton on Hudson, NY, 10520

5/7/2013
78 FR 26662
67

General Comment

In my opinion, the NRC should deny the exemption and require Entergy to comply with the regulations, which were written to protect the plant and the public from the very real risk of a fire that could lead to a meltdown at Indian Point. I live very close to this plant! I don't want to see an accident happen.

The NRC failed to do an Environmental Impact Study (EIS) of the risks and impacts of granting the exemption, including looking at alternatives, such as replacing the insulation. At a minimum the NRC must conduct a full EIS, look at all alternatives and allow time for public comment.

In addition, the NRC should hold a public hearing in the vicinity of Indian Point to fully explain its exemption process, and take public input on Entergy's failure to comply with fire safety regulations that were established over 20 years ago.

We cannot afford to have an unsafe plant operating so close to a huge population. Please do your job at the NRC and look out FOR THE PEOPLE OF THE AREA not for Entergy.

SUNSI Review Complete
Template = ADM - 013
E-RIDS= ADM -03
Add= D. Pickett (dvp1)

A-167

RULES AND DIRECTIVES
BRANCH
USNRC

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Comment On: NRC-2013-0063-0002
Entergy Nuclear Operations, Inc., Indian Point Nuclear Generating Unit No. 3; Extension of Public Comment Period

Document: NRC-2013-0063-DRAFT-0057
Comment on FR Doc # 2013-10792

Submitter Information

5/7/2013
78 FR 26662
68

Name: Jean Naples
Address:
9 Benson Street
West Haverstraw, NY, 10993-1302
Submitter's Representative: Privaye citizen

General Comment

The NRC should deny the exemption and require Entergy to comply with the regulations, which were written to protect the plant and the public from the very real risk of a fire that could lead to a meltdown at Indian Point.

The NRC failed to do an Environmental Impact Study (EIS) of the risks and impacts of granting the exemption, including looking at alternatives, such as replacing the insulation. At a minimum the NRC must conduct a full EIS, look at all alternatives and allow time for public comment.

The NRC should hold a public hearing in the vicinity of Indian Point to fully explain its exemption process, and take public input on Entergy's failure to comply with fire safety regulations that were established over 20 years ago.

SUNSI Review Complete
Template = ADM - 013
E-RIDS= ADM-03
Add= D. Pickett (dvp1)

A-168

RULES AND DIRECTIVES
BRANCH
USNRC

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Comment On: NRC-2013-0063-0002
Entergy Nuclear Operations, Inc., Indian Point Nuclear Generating Unit No. 3; Extension of Public Comment Period

Document: NRC-2013-0063-DRAFT-0058
Comment on FR Doc # 2013-10792

Submitter Information

Name: Michele Temple
Address:
42-26 69th street
Woodside, NY, 11377

5/7/2013
78 FR 26662
69

General Comment

The NRC's purpose is to protect and serve the public. Safety comes first.

Instead of serving the public, the NRC has granted dangerous exemptions to public safety to Entergy. The NRC should deny the exemption and require Entergy to comply with the regulations, which were written to protect the plant and the public from the very real risk of a fire that could lead to a meltdown at Indian Point.

The NRC failed to do an Environmental Impact Study (EIS) of the risks and impacts of granting the exemption, including looking at alternatives, such as replacing the insulation. At a minimum the NRC must conduct a full EIS, look at all alternatives and allow time for public comment.

The NRC should hold a public hearing in the vicinity of Indian Point to fully explain its exemption process, and take public input on Entergy's failure to comply with fire safety regulations that were established over 20 years ago.

SUNSI Review Complete
Template = ADM - 013
E-RIDS= ADM-03
Add= D. Pickett (dvp1)

A-169

RULES AND DIRECTIVES
BRANCH
USNRC

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Comment On: NRC-2013-0063-0002
Entergy Nuclear Operations, Inc., Indian Point Nuclear Generating Unit No. 3; Extension of Public Comment Period

Document: NRC-2013-0063-DRAFT-0059
Comment on FR Doc # 2013-10792

Submitter Information

Name: Caroline Rider
Address:
42 E Market St
Red Hook, NY, 12571

5/7/2013
78 FR 26662
70

General Comment

As the parent and grandparent of precious lives in the fallout footprint of Indian Point, I worry that you are thinking more about politics than you are about actual safety.

It's probably easier for you, down there in Washington, to hear the voices of lobbyists and politicians than the voices of the individual people who will be killed or sickened if you let Indian Point get too close to the safety line.

And you MUST know, from decades of experience, that plant operators are ALWAYS more optimistic than reality on the ground warrants. Some of them....gasp....actually LIE and OBFUSCATE. But more usually they just make "reasonable assumptions" that are all slanted in the direction of them getting to do what they want to do.....and where is our Lorax? To make the case for the OTHER, more pessimistic assumptions?

Don't let the plant operator's muling about cost affect you. If they don't want to pay the money to make the plant SAFE, then they should not operate the plant. If it's not cost effective to run it at a high safety level, then close it.

Thank you.
Caroline Rider

SUNSI Review Complete
Template = ADM - 013
E-RIDS= ADM-03
Add= D. Pickett (dvp1)

A-170

RULES AND DIRECTIVES
BRANCH
USNRC

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Entergy Nuclear Operations, Inc., Indian Point Nuclear Generating Unit No. 3; Extension of Public Comment Period

Document: NRC-2013-0063-DRAFT-0060
Comment on FR Doc # 2013-10792

Submitter Information

Name: Michael W Evans
Address:
3731 S Sepulveda Blvd
Apt 1
Los Angeles, CA, 90034-6888

5/7/2013
78 FR 26662
76

General Comment

The NRC should deny the exemption and require Entergy to comply with the regulations, which were written to protect the plant and the public from the very real risk of a fire that could lead to a meltdown at Indian Point.

The NRC failed to do an Environmental Impact Study (EIS) of the risks and impacts of granting the exemption, including looking at alternatives, such as replacing the insulation. At a minimum the NRC must conduct a full EIS, look at all alternatives and allow time for public comment.

The NRC should hold a public hearing in the vicinity of Indian Point to fully explain its exemption process, and take public input on Entergy's failure to comply with fire safety regulations that were established over 20 years ago.

SUNSI Review Complete
Template = ADM - 013
E-RIDS= ADM-03
Add= D. Pickett (dvp1)

A-171

RULES AND DIRECTIVES
BRANCH
USNRC

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Comment On: NRC-2013-0063-0002
Entergy Nuclear Operations, Inc., Indian Point Nuclear Generating Unit No. 3; Extension of Public Comment Period

Document: NRC-2013-0063-DRAFT-0061
Comment on FR Doc # 2013-10792

5/7/2013
78 FR 26662

Submitter Information

Name: Robert Frey
Address:
876 Palmer Avenue
Mamaroneck, NY, 10543

72

General Comment

The NRC should deny the exemption and require Entergy to comply with the regulations, which were written to protect the plant and the public from the very real risk of a fire that could lead to a meltdown at Indian Point.

The NRC failed to do an Environmental Impact Study (EIS) of the risks and impacts of granting the exemption, including looking at alternatives, such as replacing the insulation. At a minimum the NRC must conduct a full EIS, look at all alternatives and allow time for public comment.

The NRC should hold a public hearing in the vicinity of Indian Point to fully explain its exemption process, and take public input on Entergy's failure to comply with fire safety regulations that were established over 20 years ago.

There are 50 million people within 40 miles, it does not seem too much to ask the NRC to be a bit more proactive.

SUNSI Review Complete
Template = ADM - 013
E-RIDS= ADM-03
Add= D. Pickett (dvp1)

A-172

RULES AND DIRECTIVES
BRANCH
USNRC

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Comment On: NRC-2013-0063-0002
Entergy Nuclear Operations, Inc., Indian Point Nuclear Generating Unit No. 3; Extension of Public Comment Period

Document: NRC-2013-0063-DRAFT-0062
Comment on FR Doc # 2013-10792

Submitter Information

Name: Paul Ghenoiu
Address:
33 West Hill Rd
Plattsburgh, NY, 12901

5/7/2013
78FR24662
73

General Comment

Entergy N O Inc should be made to comply with critical fire regulations as they exist. The current exemption regarding HEMYC insulation should be rescinded. The fire regulations as they stand meet only a minimal standard for safety and for the purposes of maintaining a robust safety system any deviation from them needs to be done with complete transparency and a catalog of such exemptions needs to be compiled and made available to the public.

SUNSI Review Complete
Template = ADM - 013
E-RIDS= ADM-03
Add= D. Pickett (dvp1)

A-173

RULES AND DIRECTIVES
BRANCH
USNRC

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Comment On: NRC-2013-0063-0002
Entergy Nuclear Operations, Inc., Indian Point Nuclear Generating Unit No. 3; Extension of Public Comment Period

Document: NRC-2013-0063-DRAFT-0063
Comment on FR Doc # 2013-10792

Submitter Information

5/7/2013

78FR 24662

Name: Millicent Sims
Address:
12 Roosevelt Place
Montclair, NJ, 07042

74

General Comment

The Nuclear Regulatory Commission's annual safety review of Indian Point concluded with another rubber stamp for the plant, and a shocking decision to decrease the number of inspectors assigned to the plant. This, despite increasingly well-documented risks ranging from overfilled pools used to store radioactive nuclear waste to dangerously unworkable evacuation plans.

The clear and present danger of Indian Point's operation and unsafe storage of toxic nuclear waste are well proven, despite the NRC's annual pep rally assuring us that the plant is safe,

Actually, as tested by Riverkeeper and a coalition of allies, "unsafe and unacceptable are the plant and its regulator for evacuation planning, nuclear waste storage, fire protection, decommissioning and emergency planning."

SUNSI Review Complete
Template = ADM - 013
E-RIDS= ADM-03
Add= D. Pickett (dvp1)

A-174

RULES AND DIRECTIVES
BRANCH
USNRC

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Comment On: NRC-2013-0063-0002
Entergy Nuclear Operations, Inc., Indian Point Nuclear Generating Unit No. 3; Extension of Public Comment Period

Document: NRC-2013-0063-DRAFT-0064
Comment on FR Doc # 2013-10792

5/7/2013

Submitter Information

78 FR 24662

Name: Nicole Weber

75

General Comment

- The NRC should deny the exemption and require Entergy to comply with the regulations, which were written to protect the plant and the public from the very real risk of a fire that could lead to a meltdown at Indian Point.
- The NRC failed to do an Environmental Impact Study (EIS) of the risks and impacts of granting the exemption, including looking at alternatives, such as replacing the insulation. At a minimum the NRC must conduct a full EIS, look at all alternatives and allow time for public comment.
- The NRC should hold a public hearing in the vicinity of Indian Point to fully explain its exemption process, and take public input on Entergy's failure to comply with fire safety regulations that were established over 20 years ago.

SUNSI Review Complete
Template = ADM - 013
E-RIDS= ADM-03
Add= D. Pickett (dvp1)

A-175

RULES AND DIRECTIVES
BRANCH
USNRC

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Comment On: NRC-2013-0063-0002
Entergy Nuclear Operations, Inc., Indian Point Nuclear Generating Unit No. 3; Extension of Public Comment Period

Document: NRC-2013-0063-DRAFT-0065
Comment on FR Doc # 2013-10792

Submitter Information

Name: Sally Smith
Address:
16 constitution drive
Cold spring, NY, 10516

5/7/2013
78 FR 26662
76

General Comment

It is clear that for the safety of those of us who live around Indian Point that the NRC should not be giving Entergy any exceptions to the regulatory process. It should be mandatory that a public hearing be held to make this process transparent and allow the input of concerned citizens. There is way too much at stake for the environment and the general population to bypass this necessary step.

SUNSI Review Complete
Template = ADM - 013
E-RIDS= ADM-03
Add= D. Pickett (dvp1)

A-176

RULES AND DIRECTIVES
BRANCH
USNRC

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Comment On: NRC-2013-0063-0002
Entergy Nuclear Operations, Inc., Indian Point Nuclear Generating Unit No. 3; Extension of Public Comment Period

Document: NRC-2013-0063-DRAFT-0066
Comment on FR Doc # 2013-10792

Submitter Information

Name: Elizabeth Pasquale
Address:
191 Main St
Ossining, NY, 10562

5/7/2013
78 FR 26662
77

General Comment

The NRC should deny the exemption and require Entergy to comply with the regulations, which were written to protect the plant and the public from the very real risk of a fire that could lead to a meltdown at Indian Point. The NRC failed to do an Environmental Impact Study (EIS) of the risks and impacts of granting the exemption, including looking at alternatives, such as replacing the insulation. At a minimum the NRC must conduct a full EIS, look at all alternatives and allow time for public comment. The NRC should hold a public hearing in the vicinity of Indian Point to fully explain its exemption process, and take public input on Entergy's failure to comply with fire safety regulations that were established over 20 years ago.

SUNSI Review Complete
Template = ADM - 013
E-RIDS= ADM-03
Add= D. Pickett (dvp1)

A-177

RULES AND DIRECTIVES
BRANCH
USNRC

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Comment On: NRC-2013-0063-0002
Entergy Nuclear Operations, Inc., Indian Point Nuclear Generating Unit No. 3; Extension of Public Comment Period

Document: NRC-2013-0063-DRAFT-0067
Comment on FR Doc # 2013-10792

Submitter Information

Name: Chris Hazynski

5/7/2013
78 FR 26662

General Comment

78

Safety first when it comes to Indian Point.

SUNSI Review Complete
Template = ADM - 013
E-RIDS= ADM-03
Add= D. Pickett (dvp1)

A-178

RULES AND DIRECTIVES
BRANCH
USNRC

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Docket: NRC-2013-0063
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Comment On: NRC-2013-0063-0002
Entergy Nuclear Operations, Inc., Indian Point Nuclear Generating Unit No. 3; Extension of Public Comment Period

Document: NRC-2013-0063-DRAFT-0068
Comment on FR Doc # 2013-10792

Submitter Information

Name: Erma Lewis
Address:
NY, 11204

5/7/2013
78 FR 26662
79

General Comment

The NRC should deny the exemption and require Entergy to comply with the regulations, which were written to protect the plant and the public from the very real risk of a fire that could lead to a meltdown at Indian Point.

The NRC failed to do an Environmental Impact Study (EIS) of the risks and impacts of granting the exemption, including looking at alternatives, such as replacing the insulation. At a minimum the NRC must conduct a full EIS, look at all alternatives and allow time for public comment.

The NRC should hold a public hearing in the vicinity of Indian Point to fully explain its exemption process, and take public input on Entergy's failure to comply with fire safety regulations that were established over 20 years ago.

SUNSI Review Complete
Template = ADM - 013
E-RIDS= ADM-03
Add= D. Pickett (dvp1)

A-179

RULES AND DIRECTIVES
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Comment On: NRC-2013-0063-0002
Entergy Nuclear Operations, Inc., Indian Point Nuclear Generating Unit No. 3; Extension of Public Comment Period

Document: NRC-2013-0063-DRAFT-0069
Comment on FR Doc # 2013-10792

Submitter Information

5/7/2013
78FR26662

Name: Jamie Kruse

General Comment

80

The NRC should deny the exemption and require Entergy to comply with the regulations, which were written to protect the plant and the public from the very real risk of a fire that could lead to a meltdown at Indian Point.

The NRC failed to do an Environmental Impact Study (EIS) of the risks and impacts of granting the exemption, including looking at alternatives, such as replacing the insulation. At a minimum the NRC must conduct a full EIS, look at all alternatives and allow time for public comment.

The NRC should hold a public hearing in the vicinity of Indian Point to fully explain its exemption process, and take public input on Entergy's failure to comply with fire safety regulations that were established over 20 years ago.

SUNSI Review Complete
Template = ADM - 013
E-RIDS= ADM-03
Add= D. Pickett (dvp1)

A-180

RULES AND DIRECTIVES
BRANCH
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Comment On: NRC-2013-0063-0002
Entergy Nuclear Operations, Inc., Indian Point Nuclear Generating Unit No. 3; Extension of Public Comment Period

Document: NRC-2013-0063-DRAFT-0070
Comment on FR Doc # 2013-10792

Submitter Information

Name: Dolores Baldasare
Address:
252 Treetop Circle
Nanuet, NY, 10954

5/7/2013
78 FR 26662
(81)

General Comment

Regarding Docket ID number: NRC-2013-0063, I think it is high-time that the NRC make public safety a priority at Indian Point and that it should do everything possible to safeguard Indian Point from a catastrophic fire. To my knowledge, the current system has only demonstrated 24 minutes of protection.

Please stop providing exemptions to nuclear power plants like Indian Point. Please do not sacrifice public safety for the sake of making it easier for these plants to exist.

SUNSI Review Complete
Template = ADM - 013
E-RIDS= ADM-03
Add= D. Pickett (dvp1)

A-181

RULES AND DIRECTIVES
BRANCH
USNRC

PUBLIC SUBMISSION 2013 JUN 11 PM 3: 56

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Docket: NRC-2013-0063
Draft Environmental Assessment and Finding of No Significant Impact

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Comment On: NRC-2013-0063-0002
Entergy Nuclear Operations, Inc., Indian Point Nuclear Generating Unit No. 3; Extension of Public Comment Period

Document: NRC-2013-0063-DRAFT-0071
Comment on FR Doc # 2013-10792

Submitter Information

Name: Stephen Matlak
Address:
405 east 69th st.
N.y., NY, 10021
Submitter's Representative: Riverkeeper
Organization: Riverkeeper
Government Agency Type: Regional
Government Agency: Nrc

5/7/2013
76 FR 26662
82

General Comment

Should we not side with good judgement protect our highly populated region from potential danger , the answer is ofcourse without question.

SUNSI Review Complete
Template = ADM - 013
E-RIDS= ADM-03
Add= D. Pickett (dvp1)

A-182

RULES AND DIRECTIVES
BRANCH
USNRC

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Docket: NRC-2013-0063
Draft Environmental Assessment and Finding of No Significant Impact

Comment On: NRC-2013-0063-0002
Entergy Nuclear Operations, Inc., Indian Point Nuclear Generating Unit No. 3; Extension of Public Comment Period

Document: NRC-2013-0063-DRAFT-0072
Comment on FR Doc # 2013-10792

Submitter Information

Name: Susan Didrichsen
Address:
229 West 16th Street Apt 1A
NYC, NY, 10011

5/7/2013
78 FR 26662
83

General Comment

How outrageous is this, giving exemptions from your own standards? Why? Indian Point should actually be shut down, it is absolutely insane that in this day where we have much knowledge and access to renewable, clean energy that we even have a nuclear plant.

Please stop giving exemptions to an industry that has so much potential for abuse and accidents that could cause extreme distraction. Really!

SUNSI Review Complete
Template = ADM - 013
E-RIDS= ADM-03
Add= D. Pickett (dvp1)

A-183

RULES AND DIRECTIVES
BRANCH
USNRC

PUBLIC SUBMISSION

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Comment On: NRC-2013-0063-0002
Entergy Nuclear Operations, Inc., Indian Point Nuclear Generating Unit No. 3; Extension of Public Comment Period

Document: NRC-2013-0063-DRAFT-0073
Comment on FR Doc # 2013-10792

Submitter Information

Name: Ronald Lemmert
Address:
Peekskill, NY, 10566
Government Agency Type: Federal
Government Agency: NRC

5/7/2013
78 FR 26662
84

General Comment

NRC-2013-0063

I am not convinced that Indian Point has a viable plan for a safe evacuation of everyone in the danger zone. In particular, there are 1750 men incarcerated at Sing Sing Prison in Ossining. The officers who guard them could not possibly evacuate them in an emergency. First of all, they don't have enough vehicles on the premises, and the roads in the area would be too jammed to get additional vehicles in there. But more importantly, the officers will be more concerned about taking care of their own families than escorting prisoners to safety. So the end result would be 1750 people being "executed" because of poor planning.

SUNSI Review Complete
Template = ADM - 013
E-RIDS= ADM-03
Add= D. Pickett (dvp1)

The NRC should hold a public hearing in the vicinity of Indian Point to fully explain its exemption process, and take public input on Entergy's failure to comply with fire safety regulations that were established over 20 years ago.

A-186

RULES AND DIRECTIVES
BRANCH
USNRC

PUBLIC SUBMISSION

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Docket: NRC-2013-0063
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Comment On: NRC-2013-0063-0002
Entergy Nuclear Operations, Inc., Indian Point Nuclear Generating Unit No. 3; Extension of Public Comment Period

Document: NRC-2013-0063-DRAFT-0075
Comment on FR Doc # 2013-10792

Submitter Information

Name: scott richmond
Address:
45 Edinburgh Drive
Peekskill, NY, 10566

5/7/2013
78 FR 24662

86

General Comment

Docket ID number: NRC-2013-0063.

As one of nearly 20 million neighbors of Indian Point, I am a little concerned about the fact that our neighbor has been given exemption from fire regulations...for some reason.

If Indian Point is to be kept open, can it please be made to comply with the most stringent safety requirements. Its 20 million neighbors would appreciate that.

SUNSI Review Complete
Template = ADM - 013
E-RIDS= ADM-03
Add= D. Pickett (dvp1)

A-187

RULES AND DIRECTIVES
BRANCH
USNRC

PUBLIC SUBMISSION

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Comment On: NRC-2013-0063-0002
Entergy Nuclear Operations, Inc., Indian Point Nuclear Generating Unit No. 3; Extension of Public Comment Period

Document: NRC-2013-0063-DRAFT-0076
Comment on FR Doc # 2013-10792

Submitter Information

Name: Steven Kostis
Address:
261 W. 28th St.
Apt. 2C
New York, NY, 10001-5946
Submitter's Representative: Member
Organization: Riverkeeper
Government Agency Type: Federal
Government Agency: NRC

5/7/2013

78 FR 26662

87

General Comment

The NRC should deny the exemption and require Entergy to comply with the regulations, which were written to protect the plant and the public from the very real risk of a fire that could lead to a meltdown at Indian Point. The NRC failed to do an Environmental Impact Study (EIS) of the risks and impacts of granting the exemption, including looking at alternatives, such as replacing the insulation. At a minimum the NRC must conduct a full EIS, look at all alternatives and allow time for public comment. The NRC should hold a public hearing in the vicinity of Indian Point to fully explain its exemption process, and take public input on Entergy's failure to comply with fire safety regulations that were established over 20 years ago.

SUNSI Review Complete
Template = ADM - 013
E-RIDS = ADM-03
Add = D. Pickett (dvp1)

A-188

RULES AND DIRECTIVES
BRANCH
USNRC

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Docket: NRC-2013-0063
Draft Environmental Assessment and Finding of No Significant Impact

Comment On: NRC-2013-0063-0002
Entergy Nuclear Operations, Inc., Indian Point Nuclear Generating Unit No. 3; Extension of Public Comment Period

Document: NRC-2013-0063-DRAFT-0077
Comment on FR Doc # 2013-10792

Submitter Information

Name: Joseph Olejak
Address:
323 delaware ave.
delmar, NY, 12054
Submitter's Representative: not applicable
Organization: Private Citizen

5/7/2013
78FR26662
88

General Comment

Entergy should not be allowed to slide on fire regulations given what happened at Chernobyl and Fukushima.

SUNSI Review Complete
Template = ADM - 013
E-RIDS= ADM-03
Add= D. Pickett (dvp1)

A-189

RULES AND DIRECTIVES
BRANCH
USNRC

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Comment On: NRC-2013-0063-0002
Entergy Nuclear Operations, Inc., Indian Point Nuclear Generating Unit No. 3; Extension of Public Comment Period

Document: NRC-2013-0063-DRAFT-0078
Comment on FR Doc # 2013-10792

Submitter Information

5/7/2013
TKFR 0662

Name: Bobbie Flowers

General Comment

89

I believe that safety should come first, and the NRC should serve the public, not Entergy, then now is the time to speak out against the NRC's blatant favoritism!

The NRC should deny the exemption and require Entergy to comply with the regulations, which were written to protect the plant and the public from the very real risk of a fire that could lead to a meltdown at Indian Point. The NRC failed to do an Environmental Impact Study (EIS) of the risks and impacts of granting the exemption, including looking at alternatives, such as replacing the insulation. At a minimum the NRC must conduct a full EIS, look at all alternatives and allow time for public comment.

The NRC should hold a public hearing in the vicinity of Indian Point to fully explain its exemption process, and take public input on Entergy's failure to comply with fire safety regulations that were established over 20 years ago.

SUNSI Review Complete
Template = ADM - 013
E-RIDS= ADM -03
Add= D. Pickett (dvp1)

A-190

RULES AND DIRECTIVES
BRANCH
USNRC

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Comment On: NRC-2013-0063-0002
Entergy Nuclear Operations, Inc., Indian Point Nuclear Generating Unit No. 3; Extension of Public Comment Period

Document: NRC-2013-0063-DRAFT-0079
Comment on FR Doc # 2013-10792

Submitter Information

Name: Barry De Jasu
Address:
P.O. Box 422
Montague, 01351

5/7/2013
78 FR 26662
90

General Comment

The NRC should deny the exemption and require Entergy to comply with the regulations, which were written to protect the plant and the public from the very real risk of a fire that could lead to a meltdown at Indian Point. The NRC failed to do an Environmental Impact Study (EIS) of the risks and impacts of granting the exemption, including looking at alternatives, such as replacing the insulation. At a minimum the NRC must conduct a full EIS, look at all alternatives and allow time for public comment. The NRC should hold a public hearing in the vicinity of Indian Point to fully explain its exemption process, and take public input on Entergy's failure to comply with fire safety regulations that were established over 20 years ago.

SUNSI Review Complete
Template = ADM - 013
E-RIDS= ADM-03
Add= D. Pickett (dvp1)

A-191

RULES AND DIRECTIVES
BRANCH
USNRC

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Docket: NRC-2013-0063
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Comment On: NRC-2013-0063-0002
Entergy Nuclear Operations, Inc., Indian Point Nuclear Generating Unit No. 3; Extension of Public Comment Period

Document: NRC-2013-0063-DRAFT-0080
Comment on FR Doc # 2013-10792

Submitter Information

Name: Janet Azarovitz
Address:
po box 58
west falmouth, massachusetts, 02574
Submitter's Representative: williw m keating
Organization: cape downwinders
Government Agency Type: State

5/17/2013
78 FR 24662
91

General Comment

The NRC MUST apply the rules put in place to protect the well being of all the citizens and SHOULD NOT EXEMPT A CORPORATION BECAUSE IT INTERFERES WITH THEIR NET PROFIT.

SUNSI Review Complete
Template = ADM - 013
E-RIDS= ADM-03
Add= D. Pickett (dvp1)

A-192

RULES AND DIRECTIVES
BRANCH
USNRC

PUBLIC SUBMISSION

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Comment On: NRC-2013-0063-0002
Entergy Nuclear Operations, Inc., Indian Point Nuclear Generating Unit No. 3; Extension of Public Comment Period

Document: NRC-2013-0063-DRAFT-0081
Comment on FR Doc # 2013-10792

Submitter Information

Name: M. Dean
Address:
371 West 117th street
NYC, New York, 10026
Organization: n/a

5/7/2013
78 FR 26662
92

General Comment

Fire safety is not an option. Nuclear reactors must insure safe operation at all costs. Regulation is not a 'burden'; it is an obligation. Do not exempt reactors from safety regs - we love the Hudson River and NYC - do not tamper with our safety for the sake of profits!

SUNSI Review Complete
Template = ADM - 013
E-RIDS= ADM-03
Add= D. Pickett (dvp1)

A-193

RULES AND DIRECTIVES
BRANCH
USNRC

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Comment On: NRC-2013-0063-0002
Entergy Nuclear Operations, Inc., Indian Point Nuclear Generating Unit No. 3; Extension of Public Comment Period

Document: NRC-2013-0063-DRAFT-0082
Comment on FR Doc # 2013-10792

Submitter Information

5/7/2013
78FR26662

Name: Jennifer Valentine
Address: NY

General Comment

93

The NRC should deny the exemption and require Entergy to comply with the regulations, which were written to protect the plant and the public from the very real risk of a fire that could lead to a meltdown at Indian Point. The NRC failed to do an Environmental Impact Study (EIS) of the risks and impacts of granting the exemption, including looking at alternatives, such as replacing the insulation. At a minimum the NRC must conduct a full EIS, look at all alternatives and allow time for public comment. The NRC should hold a public hearing in the vicinity of Indian Point to fully explain its exemption process, and take public input on Entergy's failure to comply with fire safety regulations that were established over 20 years ago.

SUNSI Review Complete
Template = ADM - 013
E-RIDS= ADM-03
Add= D. Pickett (dvp1)

A-194

RULES AND DIRECTIVES
BRANCH
USNRC

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Comment On: NRC-2013-0063-0002
Entergy Nuclear Operations, Inc., Indian Point Nuclear Generating Unit No. 3; Extension of Public Comment Period

Document: NRC-2013-0063-DRAFT-0083
Comment on FR Doc # 2013-10792

Submitter Information

Name: Alexa Fila
Address:
3715 Atlantic Avenue
Brooklyn, 11224

5/7/2013
48 FR 26662
94

General Comment

The NRC's decision to exempt Entergy from complying with safety regulations is not only inexcusable, but criminally negligent. What possible justification could they offer for such a decision.

SUNSI Review Complete
Template = ADM - 013
E-RIDS= ADM-03
Add= D. Pickett (dvp1)

A-195

RULES AND DIRECTIVES
BRANCH
USNRC

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Comment On: NRC-2013-0063-0002
Entergy Nuclear Operations, Inc., Indian Point Nuclear Generating Unit No. 3; Extension of Public Comment Period

Document: NRC-2013-0063-DRAFT-0084
Comment on FR Doc # 2013-10792

Submitter Information

Name: Michele Johnson
Address:
2764 Hedwig Drive
Yorktown Heights, NY, 10598

5/7/2013
78 FR 26462
95

General Comment

The NRC should deny the exemption and require Entergy to comply with the regulations, which were written to protect the plant and the public from the very real risk of a fire that could lead to a meltdown at Indian Point.

The NRC failed to do an Environmental Impact Study (EIS) of the risks and impacts of granting the exemption, including looking at alternatives, such as replacing the insulation. At a minimum the NRC must conduct a full EIS, look at all alternatives and allow time for public comment.

The NRC should hold a public hearing in the vicinity of Indian Point to fully explain its exemption process, and take public input on Entergy's failure to comply with fire safety regulations that were established over 20 years ago.

SUNSI Review Complete
Template = ADM - 013
E-RIDS= ADM-03
Add= D. Pickett (dvp1)

A-196

RULES AND DIRECTIVES
BRANCH
USNRC

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Comment On: NRC-2013-0063-0002
Entergy Nuclear Operations, Inc., Indian Point Nuclear Generating Unit No. 3; Extension of Public Comment Period

Document: NRC-2013-0063-DRAFT-0085
Comment on FR Doc # 2013-10792

Submitter Information

Name: Diane Buxbaum, MPH
Address:
365 Sackett St.
Brooklyn, NY, 11231

5/7/2013
78 FR 26662
96

General Comment

The NRC should deny the exemption and require Entergy to comply with the regulations, which were written to protect the plant and the public from the very real risk of a fire that could lead to a meltdown at Indian Point.

The NRC failed to do an Environmental Impact Study (EIS) of the risks and impacts of granting the exemption, including looking at alternatives, such as replacing the insulation. At a minimum the NRC must conduct a full EIS, look at all alternatives and allow time for public comment.

The NRC should hold a public hearing in the vicinity of Indian Point to fully explain its exemption process, and take public input on Entergy's failure to comply with fire safety regulations that were established over 20 years ago.

SUNSI Review Complete
Template = ADM - 013
E-RIDS= ADM-03
Add= D. Pickett (dvp1)

A-197

RULES AND DIRECTIVES
BRANCH
USNRC

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Comment On: NRC-2013-0063-0002
Entergy Nuclear Operations, Inc., Indian Point Nuclear Generating Unit No. 3; Extension of Public Comment Period

Document: NRC-2013-0063-DRAFT-0086
Comment on FR Doc # 2013-10792

Submitter Information

Name: Martin Wallace
Address:
629 W 115th St #6D
NY, NY, 10025
Submitter's Representative: Martin Wallace
Organization: Saner Living Neighborhood Association

5/17/2013
78 FR 26662
97

General Comment

Since 2007, Entergy has been using a fireproofing insulation called HEMYC to protect critical electrical cables that power the emergency shutdown system at Indian Point. HEMYC is supposed to protect the cables for one hour during a fire, but in lab tests, HEMYC only lasted 24 minutes.

Rather than upgrading the insulation to comply with the federal requirements, Entergy asked the NRC for an exemption from the standards, and the NRC granted it in 2007. When asked at a public meeting how many exemptions it had given to Indian Point over the years, a NRC official literally said "I don't know, we don't keep a list."

Instead of enforcing its own safety regulations, the NRC regularly grants exemptions from them, in order to avoid "burdening" the nuclear industry with excessive regulation.

This is unacceptable. Public safety needs to be the number one priority of the NRC.

The NRC should deny the exemption and require Entergy to comply with the regulations, which were written to protect the plant and the public from the very real risk of a fire that could lead to a meltdown at Indian Point.

The NRC failed to do an Environmental Impact Study (EIS) of the risks and impacts of granting the exemption,

*ONSE Review Complete
Template = ADM-013*

*E-R-FDS = ADM-03
Add = J. Pickett (dvpa)*

including looking at alternatives, such as replacing the insulation. At a minimum the NRC must conduct a full EIS, look at all alternatives and allow time for public comment.

The NRC should hold a public hearing in the vicinity of Indian Point to fully explain its exemption process, and take public input on Entergy's failure to comply with fire safety regulations that were established over 20 years ago.

I am one of the 20 million residents who lives in the vicinity of Indian Point and who would be affected should a meltdown occur at that facility. While I recognize that many of our energy needs are met by Indian Point, I believe it is more important for us to address the safety needs of this community first. There are better ways to supply those energy needs!

A-199

RULES AND DIRECTIVES
BRANCH
USNRC

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Draft Environmental Assessment and Finding of No Significant Impact

Comment On: NRC-2013-0063-0002
Entergy Nuclear Operations, Inc., Indian Point Nuclear Generating Unit No. 3; Extension of Public Comment Period

Document: NRC-2013-0063-DRAFT-0087
Comment on FR Doc # 2013-10792

Submitter Information

5/7/2013

78 FR 24662

98

Name: Merideth Genin
Address:
543 East 6th Street
New York, NY, 10009-6636
Submitter's Representative: Carolyn Maloney
Organization: None
Government Agency Type: Local

General Comment

Along with millions of others in NYC, I'm downwind of Indian Point. Entergy has been beyond negligent. Fish kills in the Hudson are common and constant because our river is used to dump their cooling water. However, I write to you about Entergy's desire for an exemption to necessary and logical fire safety.

The NRC should deny the exemption and require Entergy to comply with the regulations, which were written to protect the plant and the public from the very real risk of a fire that could lead to a meltdown at Indian Point.

The NRC failed to do an Environmental Impact Study (EIS) of the risks and impacts of granting the exemption, including looking at alternatives, such as replacing the insulation. At a minimum the NRC must conduct a full EIS, look at all alternatives and allow time for public comment.

The NRC should hold a public hearing in the vicinity of Indian Point to fully explain its exemption process, and take public input on Entergy's failure to comply with fire safety regulations that were established over 20 years ago.

Thank you for considering my opinion, and I wish you and yours health and peace.

SUNSI Review Complete
Template = ADM - 013
E-RIDS= ADM-03
Add= D. Pickett (dvp1)

A-200

RULES AND DIRECTIVES
BRANCH
USNRC

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Docket: NRC-2013-0063
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Comment On: NRC-2013-0063-0002
Entergy Nuclear Operations, Inc., Indian Point Nuclear Generating Unit No. 3; Extension of Public Comment Period

Document: NRC-2013-0063-DRAFT-0088
Comment on FR Doc # 2013-10792

Submitter Information

Name: william wurtz
Address:
513 grand street
new york, NY, 10002

5/7/2013
78 FR 24462

General Comment

99

I think Indian Point Nuclear Power Plant should be shut down.
It is extremely dangerous, much too old, and too near to an area with a large population.
Nuclear power is not the answer to our energy needs.

SUNSI Review Complete
Template = ADM - 013
E-RIDS= ADM-03
Add= D. Pickett (dvp1)

A-201

RULES AND DIRECTIVES
BRANCH
USNRC

PUBLIC SUBMISSION

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Docket: NRC-2013-0063
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Comment On: NRC-2013-0063-0002
Entergy Nuclear Operations, Inc., Indian Point Nuclear Generating Unit No. 3; Extension of Public Comment Period

Document: NRC-2013-0063-DRAFT-0089
Comment on FR Doc # 2013-10792

Submitter Information

5/7/2013

78FR26662

Name: Jared Cornelia
Address:
125 Denn Place
Wilmington, DE, 19804

100

General Comment

The NRC should deny the exemption and require Entergy to comply with the regulations, which were written to protect the plant and the public from the very real risk of a fire that could lead to a meltdown at Indian Point. The NRC failed to do an Environmental Impact Study (EIS) of the risks and impacts of granting the exemption, including looking at alternatives, such as replacing the insulation. At a minimum the NRC must conduct a full EIS, look at all alternatives and allow time for public comment. The NRC should hold a public hearing in the vicinity of Indian Point to fully explain its exemption process, and take public input on Entergy's failure to comply with fire safety regulations that were established over 20 years ago.

SUNSI Review Complete
Template = ADM - 013
E-RIDS= ADM-03
Add= D. Pickett (dvp1)

A-202

RULES AND DIRECTIVES
BRANCH
USNRC

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Comment On: NRC-2013-0063-0002
Entergy Nuclear Operations, Inc., Indian Point Nuclear Generating Unit No. 3; Extension of Public Comment Period

Document: NRC-2013-0063-DRAFT-0090
Comment on FR Doc # 2013-10792

Submitter Information

Name: Gerson Lesser, M.D.
Address:
5800 Arlington Ave.
Bronx, 10471
Organization: NYU School of Medicine (not specifically authorized)

5/7/2013
78 FR 26662
101

General Comment

The recent full approval of the Indian Point unit is shocking. This 40-year-old unit has had many accidents and has obvious current deficiencies including serious fire hazards and dangers storage of spent rods. There are over 15,000,000 people at hazard downwind from Indian Point; even modest potential danger should be sufficient to close this plant.

PS. I understand the number of inspectors is to be reduced!

SUNSI Review Complete
Template = ADM - 013
E-RIDS= ADM-03
Add= D. Pickett (dvp1)

A-203

RULES AND DIRECTIVES
BRANCH
USNRC

PUBLIC SUBMISSION

2013 JUN 11 PM 4: 08

As of: June 11, 2013
Received: May 30, 2013
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Tracking No. 1jx-85mi-cjly
Comments Due: June 03, 2013
Submission Type: Web

Docket: NRC-2013-0063
Draft Environmental Assessment and Finding of No Significant Impact

RECEIVED

Comment On: NRC-2013-0063-0002
Entergy Nuclear Operations, Inc., Indian Point Nuclear Generating Unit No. 3; Extension of Public Comment Period

Document: NRC-2013-0063-DRAFT-0091
Comment on FR Doc # 2013-10792

Submitter Information

5/7/2013

Name: Debra Winchell

Address:

39 Latham Village Lane #22
Latham, NY, 12110

78 FR 26662

107

General Comment

The NRC should deny the exemption and require Entergy to comply with the regulations, which were written to protect the plant and the public from the very real risk of a fire that could lead to a meltdown at Indian Point. I live in the Hudson Valley as do my family and friends. We need to be safe! The state and country are nothing without citizens.

The NRC needs to immediately conduct a full Environmental Impact Study (EIS) of the risks and impacts of granting the exemption, including looking at alternatives, such as replacing the insulation. It must, look at all alternatives and allow time for public comment.

The NRC should hold a public hearing in the vicinity of Indian Point to fully explain its exemption process, and take public input on Entergy's failure to comply with fire safety regulations that were established over 20 years ago.

The NRC has an obligation to make sure that the lives of New York State citizens are safeguarded.

SUNSI Review Complete
Template = ADM - 013
E-RIDS= ADM-03
Add= D. Pickett (dvp1)

A-204

RULES AND DIRECTIVES
BRANCH
USNRC

PUBLIC SUBMISSION 2013 JUN 11 PM 4: 08

As of: June 11, 2013
Received: May 30, 2013
Status: Pending_Post
Tracking No. 1jx-85mi-3c5k
Comments Due: June 03, 2013
Submission Type: Web

Docket: NRC-2013-0063
Draft Environmental Assessment and Finding of No Significant Impact

RECEIVED

Comment On: NRC-2013-0063-0002
Entergy Nuclear Operations, Inc., Indian Point Nuclear Generating Unit No. 3; Extension of Public Comment Period

Document: NRC-2013-0063-DRAFT-0092
Comment on FR Doc # 2013-10792

Submitter Information

Name: Mary Brown
Address: 10021

5/17/2013
78 FR 26662

General Comment

103

More oversight and repair is needed for the Indian Pt. Nucear plant. It is a danger to millions of people!!!

SUNSI Review Complete
Template = ADM - 013
E-RIDS= ADM-03
Add= D. Pickett (dvp1)

A-205

RULES AND DIRECTIVES
BRANCH
USNRC

PUBLIC SUBMISSION

2013 JUN 11 PM 4: 08

As of: June 11, 2013
Received: May 30, 2013
Status: Pending_Post
Tracking No. 1jx-85mk-4wu
Comments Due: June 03, 2013
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RECEIVED

Docket: NRC-2013-0063
Draft Environmental Assessment and Finding of No Significant Impact

Comment On: NRC-2013-0063-0002
Entergy Nuclear Operations, Inc., Indian Point Nuclear Generating Unit No. 3; Extension of Public Comment Period

Document: NRC-2013-0063-DRAFT-0093
Comment on FR Doc # 2013-10792

Submitter Information

5/7/2013

78 FR 26662

104

Name: Maryanne Deracleo
Address:
53 Penfield Avenue
Croton on Hudson, NY, 10520

General Comment

You are failing your responsibility! No more exceptions for Indian Point. Rediculous evacuation plans, outdated fire equipment and generally unsafe conditions at this plant should have forced its closure long age. Your incompetence in this matter can cause thousands to suffer who live near this plant and putting our health, and our very lives put in danger.

Please - People First - Not Profits!

SUNSI Review Complete
Template = ADM - 013
E-RIDS= ADM-03
Add= D. Pickett (dvp1)

A-206

RULES AND DIRECTIVES
BRANCH
USNRC

PUBLIC SUBMISSION

As of: June 11, 2013
Received: May 30, 2013
Status: Pending_Post
Tracking No. ljsx-85mp-h19v
Comments Due: June 03, 2013
Submission Type: Web

RECEIVED

Docket: NRC-2013-0063
Draft Environmental Assessment and Finding of No Significant Impact

Comment On: NRC-2013-0063-0002
Entergy Nuclear Operations, Inc., Indian Point Nuclear Generating Unit No. 3; Extension of Public Comment Period

Document: NRC-2013-0063-DRAFT-0094
Comment on FR Doc # 2013-10792

Submitter Information

Name: George Costich
Address:
608 Washington St.
B-206
Cape May, NJ, 08204-2364

5/17/2013
78 FR 26662
105

General Comment

Indian Point is a National Disaster that could kill at least 50 million people - that is on the verge of happening - because since the first day - all the public has ever been told are monstrous lies! Everything that Could Be Wrong with that place IS Wrong!

It is the Prime Atomic Bomb Rocket Target of our enemies!

It has Never been operated in a Safe manner!

There is NO Safe Disposal of Radioactive Waste!

Windmills and Solar Power can produce cheaper, Safe, power!

SUNSI Review Complete
Template = ADM - 013
E-RIDS= ADM-03
Add= D. Pickett (dvp1)

A-207

RULES AND DIRECTIVES
BRANCH
USNRC

As of: June 11, 2013
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Tracking No. 1jx-85mq-103m
Comments Due: June 03, 2013
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PUBLIC SUBMISSION

RECEIVED

Docket: NRC-2013-0063
Draft Environmental Assessment and Finding of No Significant Impact

Comment On: NRC-2013-0063-0002
Entergy Nuclear Operations, Inc., Indian Point Nuclear Generating Unit No. 3; Extension of Public Comment Period

Document: NRC-2013-0063-DRAFT-0095
Comment on FR Doc # 2013-10792

Submitter Information

Name: Laura Levey

5/7/2013
78 FR 26662

General Comment

106

The NRC should deny the exemption and require Entergy to comply with the regulations, which were written to protect the plant and the public from the very real risk of a fire that could lead to a meltdown at Indian Point. The NRC failed to do an Environmental Impact Study (EIS) of the risks and impacts of granting the exemption, including looking at alternatives, such as replacing the insulation. At a minimum the NRC must conduct a full EIS, look at all alternatives and allow time for public comment. The NRC should hold a public hearing in the vicinity of Indian Point to fully explain its exemption process, and take public input on Entergy's failure to comply with fire safety regulations that were established over 20 years ago.

SUNSI Review Complete
Template = ADM - 013
E-RIDS= ADM-03
Add= D. Pickett (dvp1)

A-208

RULES AND DIRECTIVES
BRANCH
USNRC

PUBLIC SUBMISSION

2013 JUN 11 PM 4: 08

As of: June 11, 2013
Received: May 31, 2013
Status: Pending_Post
Tracking No. 1jx-85mt-p82s
Comments Due: June 03, 2013
Submission Type: Web

RECEIVED

Docket: NRC-2013-0063
Draft Environmental Assessment and Finding of No Significant Impact

Comment On: NRC-2013-0063-0002
Entergy Nuclear Operations, Inc., Indian Point Nuclear Generating Unit No. 3; Extension of Public Comment Period

Document: NRC-2013-0063-DRAFT-0096
Comment on FR Doc # 2013-10792

Submitter Information

Name: Deborah Ross
Address: 14424

5/7/2013
78 FR 26662

General Comment

Fire and safety regulations are for everyone, yes, even nuclear power plants (!)

107

SUNSI Review Complete
Template = ADM - 013
E-RIDS= ADM-03
Add= D. Pickett (dvp1)

A-209

RULES AND DIRECTIVES
BRANCH
USNRC

PUBLIC SUBMISSION

As of: June 11, 2013
Received: May 31, 2013
Status: Pending Post
Tracking No. Ijx-85n4-eyp4
Comments Due: June 03, 2013
Submission Type: Web

RECEIVED

Docket: NRC-2013-0063

Draft Environmental Assessment and Finding of No Significant Impact

Comment On: NRC-2013-0063-0002

Entergy Nuclear Operations, Inc., Indian Point Nuclear Generating Unit No. 3; Extension of Public Comment Period

Document: NRC-2013-0063-DRAFT-0097

Comment on FR Doc # 2013-10792

Submitter Information

5/7/2013

Name: Joann Ramos

Address:

Iselin, NJ, 08830

78 FR 26662

General Comment

108

Safety should come first, and the NRC should serve the public, not Entergy. Instead of enforcing its own safety regulations, the NRC regularly grants exemptions from them, in order to avoid "burdening" the nuclear industry with excessive regulation.

The NRC failed to do an Environmental Impact Study (EIS) of the risks and impacts of granting the exemption, including looking at alternatives, such as replacing the insulation. At a minimum the NRC must conduct a full EIS, look at all alternatives and allow time for public comment.

The regulations were written to protect the plant and the public from the very real risk of a fire that could lead to a meltdown at Indian Point.

SUNSI Review Complete
Template = ADM - 013
E-RIDS= ADM-03
Add= D. Pickett (dvp1)

A-210

RULES AND DIRECTIVES
BRANCH
USNRC

PUBLIC SUBMISSION 2013 JUN 11 PM 4: 09

As of: June 11, 2013
Received: May 31, 2013
Status: Pending_Post
Tracking No. ljsx-85n5-k99i
Comments Due: June 03, 2013
Submission Type: Web

Docket: NRC-2013-0063
Draft Environmental Assessment and Finding of No Significant Impact

RECEIVED

Comment On: NRC-2013-0063-0002
Entergy Nuclear Operations, Inc., Indian Point Nuclear Generating Unit No. 3; Extension of Public Comment Period

Document: NRC-2013-0063-DRAFT-0098
Comment on FR Doc # 2013-10792

Submitter Information

5/7/2013

Name: Susan Singer
Address:
145 River Street
Sleepy Hollow, NY, 10591

78 FR 26662

General Comment

109

Please strengthen fire safety codes for Indian Point. Also, develop an evacuation route that is available to every household and that prevents chaos in the event of an emergency.

SUNSI Review Complete
Template = ADM - 013
E-RIDS= ADM-03
Add= D. Pickett (dvp1)

A-211

RULES AND DIRECTIVES
BRANCH
USNRC

PUBLIC SUBMISSION 2013 JUN 11 PM 4: 09

As of: June 11, 2013
Received: May 31, 2013
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Tracking No. Ijx-85n6-coil
Comments Due: June 03, 2013
Submission Type: Web

Docket: NRC-2013-0063
Draft Environmental Assessment and Finding of No Significant Impact

RECEIVED

Comment On: NRC-2013-0063-0002
Entergy Nuclear Operations, Inc., Indian Point Nuclear Generating Unit No. 3; Extension of Public Comment Period

Document: NRC-2013-0063-DRAFT-0099
Comment on FR Doc # 2013-10792

Submitter Information

5/17/2013

Name: T.Ed. Webb
Address:
825Kimry Moor, Fayetteville,NY
Fayetteville, NY, 13066-1840

78 FR 26662

General Comment

110

It Is time the NRC took responsibility for enforcing standards instead of granting exceptions.

SUNSI Review Complete
Template = ADM - 013
E-RIDS= ADM-03
Add= D. Pickett (dvp1)

A-212

RULES AND DIRECTIVES
BRANCH
USNRC

PUBLIC SUBMISSION 2013 JUN 11 PM 4: 09

As of: June 11, 2013
Received: May 31, 2013
Status: Pending Post
Tracking No. 1jx-85n8-s90p
Comments Due: June 03, 2013
Submission Type: Web

Docket: NRC-2013-0063
Draft Environmental Assessment and Finding of No Significant Impact

RECEIVED

Comment On: NRC-2013-0063-0002
Entergy Nuclear Operations, Inc., Indian Point Nuclear Generating Unit No. 3; Extension of Public Comment Period

Document: NRC-2013-0063-DRAFT-0100
Comment on FR Doc # 2013-10792

Submitter Information

Name: Dolores Congdon
Address:
Maryknoll Sisters Center
PO Box 311
Maryknoll, NY, 10545-0311
Submitter's Representative: Nita Lowey
Organization: Maryknoll Sisters

5/7/2013
78 FR 24662
111

General Comment

Indian Point Nuclear Power Plant which is in a residential area, should have to follow the most strict safety regulations.

SUNSI Review Complete
Template = ADM - 013
E-RIDS= ADM-03
Add= D. Pickett (dvp1)

A-213

RULES AND DIRECTIVES
BRANCH
USNRC

PUBLIC SUBMISSION 2013 JUN 11 PM 4: 14

As of: June 11, 2013
Received: May 31, 2013
Status: Pending_Post
Tracking No. 1jx-85n9-mko5
Comments Due: June 03, 2013
Submission Type: Web

Docket: NRC-2013-0063
Draft Environmental Assessment and Finding of No Significant Impact

RECEIVED

Comment On: NRC-2013-0063-0002
Entergy Nuclear Operations, Inc., Indian Point Nuclear Generating Unit No. 3; Extension of Public Comment Period

Document: NRC-2013-0063-DRAFT-0101
Comment on FR Doc # 2013-10792

Submitter Information

Name: alice farber

Address:

alpine way
Huntington sta.
NY, NY, 11746

Submitter's Representative: Steve Israel

Government Agency Type: State

5/7/2013

78 FR 26662

112

General Comment

Close Indian Point- It is an accident waiting to happen, and no way to evacuate.

SUNSI Review Complete
Template = ADM - 013
E-RIDS= ADM-03
Add= D. Pickett (dvp1)

A-214

RULES AND DIRECTIVES
BRANCH
USNRC

PUBLIC SUBMISSION 2013 JUN 11 PM 4:14

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Received: May 31, 2013
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Tracking No. Ijx-85nb-nk9h
Comments Due: June 03, 2013
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Docket: NRC-2013-0063
Draft Environmental Assessment and Finding of No Significant Impact

RECEIVED

Comment On: NRC-2013-0063-0002
Entergy Nuclear Operations, Inc., Indian Point Nuclear Generating Unit No. 3; Extension of Public Comment Period

Document: NRC-2013-0063-DRAFT-0102
Comment on FR Doc # 2013-10792

Submitter Information

Name: Chris Blyth
Address:
212 west 136th St
New York, Nay, 10030

5/7/2013
78 FR 26662
113

General Comment

I strongly believe better safety measures can be undertaken at Indian Point Nuclear Facility and it is inexcusable to exempt precautions in light of the catastrophes that could arise from irresponsibility.

SUNSI Review Complete
Template = ADM - 013
E-RIDS= ADM-03
Add= D. Pickett (dvp1)

A-215

RULES AND DIRECTIVES
BRANCH
USNRC

PUBLIC SUBMISSION

As of: June 11, 2013
Received: May 31, 2013
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Tracking No. 1jx-85ne-ipss
Comments Due: June 03, 2013
Submission Type: Web

RECEIVED

Docket: NRC-2013-0063
Draft Environmental Assessment and Finding of No Significant Impact

Comment On: NRC-2013-0063-0002
Entergy Nuclear Operations, Inc., Indian Point Nuclear Generating Unit No. 3; Extension of Public Comment Period

Document: NRC-2013-0063-DRAFT-0103
Comment on FR Doc # 2013-10792

Submitter Information

Name: Brian Fink
Address:
390 2nd St.
Brooklyn, NY, 11215

5/7/2013
78 FR 26662

General Comment

114

Public safety, not pleasing the nuclear industry, must come first at Indian Point.

The NRC should deny the exemption and require Entergy to comply with the regulations, which were written to protect the plant and the public from the very real risk of a fire that could lead to a meltdown at Indian Point.

The NRC failed to do an Environmental Impact Study (EIS) of the risks and impacts of granting the exemption, including looking at alternatives, such as replacing the insulation. At a minimum the NRC must conduct a full EIS, look at all alternatives and allow time for public comment.

The NRC should hold a public hearing in the vicinity of Indian Point to fully explain its exemption process, and take public input on Entergy's failure to comply with fire safety regulations that were established over 20 years ago.

SUNSI Review Complete
Template = ADM - 013
E-RIDS= ADM-03
Add= D. Pickett (dvp1)

A-216

RULES AND DIRECTIVES
BRANCH
USNRC

PUBLIC SUBMISSION

As of: June 11, 2013
Received: June 01, 2013
Status: Pending_Post
Tracking No. Ijx-85nj-s325
Comments Due: June 03, 2013
Submission Type: Web

2013 JUN 11 PM 4: 15

Docket: NRC-2013-0063
Draft Environmental Assessment and Finding of No Significant Impact

RECEIVED

Comment On: NRC-2013-0063-0002
Entergy Nuclear Operations, Inc., Indian Point Nuclear Generating Unit No. 3; Extension of Public Comment Period

Document: NRC-2013-0063-DRAFT-0104
Comment on FR Doc # 2013-10792

Submitter Information

Name: Linda Hartinian
Address:
60 2ND AVE, 10003
New York, NY, 10003

5/7/2013
78 FR 26662
115

General Comment

Indian Point is not safe. Please do not let them continue to run.

SUNSI Review Complete
Template = ADM - 013
E-RIDS= ADM-03
Add= D. Pickett (dvp1)

A-217

RULES AND DIRECTIVES
BRANCH
USNRC

PUBLIC SUBMISSION

2013 JUN 25 AM 9: 31

As of: June 25, 2013
Received: June 01, 2013
Status: Pending_Post
Tracking No. 1jx-85nx-9hzz
Comments Due: June 03, 2013
Submission Type: Web

Docket: NRC-2013-0063
Draft Environmental Assessment and Finding of No Significant Impact

RECEIVED

Comment On: NRC-2013-0063-0002
Entergy Nuclear Operations, Inc., Indian Point Nuclear Generating Unit No. 3; Extension of Public Comment Period

Document: NRC-2013-0063-DRAFT-0105
Comment on FR Doc # 2013-10792

Submitter Information

5/7/2013
78 FR 26662
(116)

Name: Thelma Fellows
Address:
163065 Crocheron Ave., Fl 1
Flushing, NY, 11358-2014

General Comment

Granting exemptions to the safety rules is inexcusable! Indian Point must be closed to remove the threat of disaster to millions of citizens.
Thelma Fellows

SUNSI Review Complete
Template = ADN-013

E-RIDS = ADN-03
Add: D. Pickett (dup 1)

A-218

PUBLIC SUBMISSION

As of: June 25, 2013
Received: June 02, 2013
Status: Pending_Post
Tracking No. 1jx-85o7-4gmx
Comments Due: June 03, 2013
Submission Type: Web

Docket: NRC-2013-0063
Draft Environmental Assessment and Finding of No Significant Impact

RECEIVED

Comment On: NRC-2013-0063-0002
Entergy Nuclear Operations, Inc., Indian Point Nuclear Generating Unit No. 3; Extension of Public Comment Period

Document: NRC-2013-0063-DRAFT-0106
Comment on FR Doc # 2013-10792

Submitter Information

5/7/2013
75 FR 26662
117

Name: Art Hanson
Address:
1815 Briarwood Dr.
Lansing, MI. 48917

General Comment

The NRC should deny the exemption and require Entergy to comply with the regulations, which were written to protect the plant and the public from the very real risk of a fire that could lead to a meltdown at Indian Point.

The NRC failed to do an Environmental Impact Study (EIS) of the risks and impacts of granting the exemption, including looking at alternatives, such as replacing the insulation. At a minimum the NRC must conduct a full EIS, look at all alternatives and allow time for public comment.

The NRC should hold a public hearing in the vicinity of Indian Point to fully explain its exemption process, and take public input on Entergy's failure to comply with fire safety regulations that were established over 20 years ago.

SUNSI Review Complete

E-ADJ: ADM-03

Template = ADM-013

Add: D. Pickett (dup 1)

A-219

RULES AND DIRECTIVES
BRANCH
USNRC

PUBLIC SUBMISSION

2013 JUN 25 AM 9: 31

As of: June 25, 2013
Received: June 02, 2013
Status: Pending_Post
Tracking No. 1jx-85ob-kjh8
Comments Due: June 03, 2013
Submission Type: Web

Docket: NRC-2013-0063
Draft Environmental Assessment and Finding of No Significant Impact

RECEIVED

Comment On: NRC-2013-0063-0002
Entergy Nuclear Operations, Inc., Indian Point Nuclear Generating Unit No. 3; Extension of Public Comment Period

Document: NRC-2013-0063-DRAFT-0107
Comment on FR Doc # 2013-10792

Submitter Information

Name: Natalie Hanson
Address:
1815 Briarwood Dr.
Lansing, MI, 48917

5/7/2013
78 FR 26662
(118)

General Comment

The NRC should deny the exemption and require Entergy to comply with the regulations, which were written to protect the plant and the public from the very real risk of a fire that could lead to a meltdown at Indian Point.

The NRC failed to do an Environmental Impact Study (EIS) of the risks and impacts of granting the exemption, including looking at alternatives, such as replacing the insulation. At a minimum the NRC must conduct a full EIS, look at all alternatives and allow time for public comment.

The NRC should hold a public hearing in the vicinity of Indian Point to fully explain its exemption process, and take public input on Entergy's failure to comply with fire safety regulations that were established over 20 years ago.

SUNSI Review Complete
Template = ADM-013

E-R105 = ADM-03
Add: D. Pickett (dvpl)

A-220

RULES AND DIRECTIVES
BRANCH
USNRC

2013 JUN 25 AM 9: 31

PUBLIC SUBMISSION

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Received: June 02, 2013
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Tracking No. 1jx-85og-tvzf
Comments Due: June 03, 2013
Submission Type: Web

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Docket: NRC-2013-0063
Draft Environmental Assessment and Finding of No Significant Impact

Comment On: NRC-2013-0063-0002
Entergy Nuclear Operations, Inc., Indian Point Nuclear Generating Unit No. 3; Extension of Public Comment Period

Document: NRC-2013-0063-DRAFT-0108
Comment on FR Doc # 2013-10792

Submitter Information

Name: Richard Vultaggio
Address:
220 Stage Rd
Vestal, NY,

5/7/2013
78 FR 26662
(119)

General Comment

• The NRC should deny the exemption and require Entergy to comply with the regulations, which were written to protect the plant and the public from the very real risk of a fire that could lead to a meltdown at Indian Point.

• The NRC failed to do an Environmental Impact Study (EIS) of the risks and impacts of granting the exemption, including looking at alternatives, such as replacing the insulation. At a minimum the NRC must conduct a full EIS, look at all alternatives and allow time for public comment.

• The NRC should hold a public hearing in the vicinity of Indian Point to fully explain its exemption process, and take public input on Entergy's failure to comply with fire safety regulations that were established over 20 years ago

SUNSI Review Complete

Template = ADM-013

E-R105 = ADM-03

Add: D. Pickett (dup)

A-221

RULES AND DIRECTIVES
BRANCH
USNRC

PUBLIC SUBMISSION 2013 JUN 25 AM 9: 31

As of: June 25, 2013
Received: June 02, 2013
Status: Pending_Post
Tracking No. 1jx-85ok-oykg
Comments Due: June 03, 2013
Submission Type: Web

Docket: NRC-2013-0063
Draft Environmental Assessment and Finding of No Significant Impact

RECEIVED

Comment On: NRC-2013-0063-0002
Entergy Nuclear Operations, Inc., Indian Point Nuclear Generating Unit No. 3; Extension of Public Comment Period

Document: NRC-2013-0063-DRAFT-0109
Comment on FR Doc # 2013-10792

Submitter Information

5/7/2013
78 FR 26662
(120)

Name: Daniele Gerard
Address:
355 Riverside Drive, Apt 7W
New York, NY, 10025
Organization: Three Parks Independent Democrats

General Comment

The NRC should deny the exemption and require Entergy to comply with the regulations, which were written to protect the plant and the public from the very real risk of a fire that could lead to a meltdown at Indian Point. The NRC failed to do an Environmental Impact Study (EIS) of the risks and impacts of granting the exemption, including looking at alternatives, such as replacing the insulation. At a minimum the NRC must conduct a full EIS, look at all alternatives and allow time for public comment. The NRC should hold a public hearing in the vicinity of Indian Point to fully explain its exemption process, and take public input on Entergy's failure to comply with fire safety regulations that were established over 20 years ago.

SUNSI Review Complete
Template = ADM-013

E-RIDS = ADM-03
Add: D. Pickett (dupl)

A-222

RULES AND DIRECTIVES
BRANCH
USNRC

PUBLIC SUBMISSION 2013 JUN 25 AM 9: 32

As of: June 25, 2013
Received: June 02, 2013
Status: Pending_Post
Tracking No. 1jx-85ol-q1al
Comments Due: June 03, 2013
Submission Type: Web

Docket: NRC-2013-0063
Draft Environmental Assessment and Finding of No Significant Impact

RECEIVED

Comment On: NRC-2013-0063-0002
Energy Nuclear Operations, Inc., Indian Point Nuclear Generating Unit No. 3; Extension of Public Comment Period

Document: NRC-2013-0063-DRAFT-0110
Comment on FR Doc # 2013-10792

Submitter Information

5/7/2013
78 FR 26662
121

Name: erlend kimmich
Organization: three parks democrats

General Comment

To the NRC Board and Inspectors,

According to your own reporting the aging plant and all the "band-aid" solutions are not sufficient to meet safety standards. What follows is an excerpt from a January, 2008 memorandum from inspector general Bell to chairman Klein regarding the failure of a fire insulation material to provide the protection that it is supposed to:

Following the August 2000 determination by the NRC that the manufacturer qualification tests for Hemyc were not sufficient to qualify Hemyc for use as a fire barrier in NPPs, the NRC initiated a program to perform NRC sponsored confirmatory testing of the Hemyc fire barriers. Efforts began in 2001 to complete confirmatory testing of Hemyc by 2002. It was not until March 25, 2005, that a confirmatory test of Hemyc was conducted by NRC. The test resulted in a finding that the Hemyc fire barrier failed to perform for 1 hour as designed. In April 2005, the NRC published the results of the tests in an NRC information notice to all licensees. The notice described problems observed with Hemyc during the testing, and the report stated that Hemyc fire barriers do not provide the level of protection expected for a 1-hour rated fire barrier. The notice did not require licensees to take any action or to provide a written response. (<http://www.nrc.gov/reading-rm/doc-collections/insp-gen/2008/el-05-46.pdf>)

And, sure enough this was followed by an alert and issuing of the test results to all holders of operating licenses with the following statement :

SUNSI Review Complete
Template = ADM-013

E-RIDS = ADM-03
Add: D. Pickett (dup 1)

PURPOSE

The U.S. Nuclear Regulatory Commission (NRC) is issuing this information notice (IN) to inform addressees of the results of Hemyc electrical raceway fire barrier system (ERFBS) full-scale fire tests. The Hemyc ERFBS did not perform for one hour as designed because shrinkage of the Hemyc ERFBS occurred during the testing. It is expected that recipients will review the information for applicability to their facilities and consider actions as appropriate.

Attachments

1 NRC fire code violations

Case 1:09-cv-10594-LAP Document 42-3 Filed 04/11/14 Page 38 of 86

To the NRC Board and Inspectors,

According to your own reporting the aging plant and all the "band-aid" solutions are not sufficient to meet safety standards. What follows is an excerpt from a January, 2008 memorandum from inspector general Bell to chairman Klein regarding the failure of a fire insulation material to provide the protection that it is supposed to:

Following the August 2000 determination by the NRC that the manufacturer qualification tests for Hemyc were not sufficient to qualify Hemyc for use as a fire barrier in NPPs, the NRC initiated a program to perform NRC sponsored confirmatory testing of the Hemyc fire barriers. Efforts began in 2001 to complete confirmatory testing of Hemyc by 2002. It was not until March 25, 2005, that a confirmatory test of Hemyc was conducted by NRC. The test resulted in a finding that the Hemyc fire barrier failed to perform for 1 hour as designed. In April 2005, the NRC published the results of the tests in an NRC information notice to all licensees. The notice described problems observed with Hemyc during the testing, and the report stated that Hemyc fire barriers do not provide the level of protection expected for a 1-hour rated fire barrier. The notice did not require licensees to take any action or to provide a written response. (<http://www.nrc.gov/reading-rm/doc-collections/insp-gen/2008/el-05-46.pdf>)

And, sure enough this was followed by an alert and issuing of the test results to all holders of operating licenses with the following statement :

PURPOSE

The U.S. Nuclear Regulatory Commission (NRC) is issuing this information notice (IN) to inform addressees of the results of Hemyc electrical raceway fire barrier system (ERFBS) full-scale fire tests. The Hemyc ERFBS did not perform for one hour as designed because shrinkage of the Hemyc ERFBS occurred during the testing. It is expected that recipients will review the information for applicability to their facilities and consider actions as appropriate to avoid similar problems. However, suggestions contained in this information notice are not NRC requirements; therefore, no specific action or written response is required. (<http://www.nrc.gov/reading-rm/doc-collections/gen-comm/info-notices/2005/in200507.pdf>)

Can you imagine our surprise when we found out that "no specific action or written response is required" ?!! Who are you working for and to what end? You don't even ask the intended recipients if they have received and read the report. This gives lie once again to the "culture of safety" at Indian Point. Even if it were made safe by all that is humanly possible, which is clearly not the case. You cannot answer questions about what would happen if a weather event strikes Buchanan. You can tell us that we are safe if the river rises a certain number of feet, but beyond that we all know that we will be forced to use inadequate and impossible evacuation plans if we even get signaled to evacuate before it's way too late. You need to grow up and stop playing footsie with our future. It's time to decommission the old plant as designed and stop sucking up to Entergy. Have a great day!

Erlend Kimmich

A-225

RULES AND DIRECTIVES
BRANCH,
USNRC

PUBLIC SUBMISSION

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Comment On: NRC-2013-0063-0002
Entergy Nuclear Operations, Inc., Indian Point Nuclear Generating Unit No. 3; Extension of Public Comment Period

Document: NRC-2013-0063-DRAFT-0111
Comment on FR Doc # 2013-10792

Submitter Information

Name: Richard Brodsky
Address:
2121 Saw Mill River Road
White Plains, NY, 10607

5/7/2013
78 FR 26662
122

General Comment

See attached file(s)

Attachments

Final NRC exemption comments 6.3.13

SUNSI Review Complete
Template = ADM-013

E-R105 = ADM-03
Add: D. Pickett (dupl)

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Hon. Richard Brodsky
2121 Saw Mill River Road
White Plains, New York 10607
914.720.8830

Cindy Bladey
Chief, Rules, Announcements, and Directives Branch (RADB),
Office of Administration
Mail Stop: TWB-05-B01M
U.S. Nuclear Regulatory Commission,
Washington, DC 20555-0001

June 3, 2013

Dear Ms. Bladey,

Please accept the following comments with respect to No. 50-286; NRC-2013-0063.

Introduction

These comments and requests are hereby submitted pursuant to an Order of the United States Court of Appeals for the Second Circuit in Brodsky v. NRC as remanded for further action to the Honorable Loretta Preska, Chief Judge of the Southern District, and a Notice of a request for public comment on a draft environmental assessment ("EA") and a finding of no significant impact ("FONSI") appearing on page 20144 of the Federal Register/ Vol. 78, No. 64 / Wednesday, April 3, 2013. The NRC has docketed the case as No. 50-286; NRC-2013-0063.

These comments are submitted by the signatories below on their own behalf and on behalf of the thousands of members of their organizations and the nearly 20 million people who live and work within fifty miles of Indian Point, whose health, safety and security have been substantially jeopardized by the issuance and application of the exemption. These comments are submitted in support of our request that the NRC deny the Entergy exemption request, and/or that it withdraw the EA and FONSI and produce a full Environmental Impact Statement, and/or that it conduct a public hearing.

Comment 1

Legal Background And Issues

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This administrative proceeding is the result of protracted litigation known as "Brodsky et. al. v. NRC" which has resulted in two rulings by the United States Court of Appeals for the Second Circuit, and one ruling by Judge Preska (collectively "the "Opinion") in the Southern District of New York ("the Court") concerning a 2007 exemption from fire safety requirements of Appendix R ("the exemption") granted to the Indian Point licensee by the Nuclear Regulatory Commission (the "NRC"). Those decisions, and their underlying filed and/or docketed documents, are hereby made part of this administrative record by reference. They are in the possession of the NRC and/or the licensee, as evidenced by statements made in the NRC announcements of this proceeding. This administrative proceeding is currently sub judice, and is the subject of communications among the parties and the Court which may affect it now or in the future. We specifically and without limitation incorporate attach a letter to Judge Preska dated May 10, 2013, which sets forth legal and factual defects in and concerns about this administrative proceeding and the NRC's response to the Opinion and is, because of its' recent submission, attached to and included in these comments as Appendix A.

We also note considerable confusion as to the legal status of the 2007 exemption, including whether or not it has been implemented, amended or withdrawn, why the NRC includes in the FONSI a reference to the plural "exemptions" rather than the singular "exemption". We and the public are entitled to an authoritative explanation of the legal status of the exemption.

There are a variety of legal issues which are raised by this proceeding and the NRC's actions. Most are raised in the legal papers referred to above and incorporated herein. They could be argued at length in these comments (these include but are not limited to the standards for determining whether the NRC has taken a "hard look" at any or all of the issues raised herein; the legal and evidentiary insufficiency of the record compiled in 2006-7 and apparently used here; whether a public hearing must be called, and many others. We are willing to present further discussion of all these issues, and reserve the right to do so either on our own motion or in response to any questions or concerns raised by the NRC.

We assert, based on repeated citizen input to us, that the refusal of the NRC to accept comments by e-mail constitutes an illegal and unfair obstacle to full public participation in this proceeding.

Factual Background

We begin by pointing out that this exemption applies to the cables that control shutdown in an emergency, and that a consequence of such a fire going beyond 24 minutes is a meltdown of the reactor, the most serious and extreme consequence of a failure of NRC regulation. The public health, safety and security

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of the nearly 20 million people who live and work within fifty miles of Indian Point have been substantially jeopardized by the issuance and application of the exemption.

We have previously set forth, in the documents referenced above, the facts that led to NRC consideration and adoption of Appendix R, and the NRC approval in 2007 of the exemption which is the subject of the litigation and this proceeding .

We reassert those factual descriptions, but in the interest of clarity offer this additional brief summary.

Almost 40 years ago the NRC, after an extremely serious fire at a nuclear facility that almost led to a reactor meltdown, promulgated rules governing fire safety, Appendix R to 10 CFR Part 50. Compliance with Appendix R required numerous safety improvements including that the insulation of electric cables which control reactor shutdown in an emergency have physical insulation that last three hours in a fire, or one hour if additional administrative and manual fire suppression systems were in place. These were intended to provide redundant and reliable protection against reactor meltdown. The Indian Point units, and many others, have used and continue to use insulation material known as HEMYC, with NRC knowledge and approval, as part of compliance with the one-hour option. Some years ago, tests revealed that HEMYC does not last the required one-hour, becoming ineffective after 27 minutes. The NRC notified licensees and asked for their plans to deal with this problem. Entergy responded by requesting an "exemption" from the one hour requirement, asking initially for a 30 minute standard and subsequently revising the request to 24 minutes, three minutes below the HEMYC test results. In 2007 without prior public notice or opportunity for participation, the NRC granted the 24 minute exemption.

Organization and Purpose

These comments are submitted in support of our request that the NRC deny the Entergy exemption request, and/or that it withdraw the EA and FONSI and produce a full Environmental Impact Statement, and/or that it conduct a public hearing. We assert that such decisions are justified and required by each comment, taken individually, or all comments read cumulatively. We reserve the right to submit further comments and evidence if requested or on our own motion.

We have, for the sake of clarity and convenience, grouped the substance of our comments to reflect the regulatory and statutory requirements governing the exemption process. They should be read together, and are numbered for convenience and not in order of importance or as unrelated comments.

We point out that these groupings are not limitations on the applicability of or

evidentiary weight assigned to any particular fact or comment, or the nature of our comments and concerns. For instance, we discuss the absence of discussion of terrorism in the EA, FONSI and exemption text in our comment entitled "The exemption is not consistent with the common defense and security." The facts and arguments presented therein are not limited to consideration of the validity of that portion of 50.12. They apply to the general sufficiency of the EA and FONSI, to our assertion that the exemption is not authorized by law, and to each and all other assertions and concerns raised herein. The same broad application of facts and argument is hereby asserted for each comment and in support of our assertion that the exemption should be denied, that a full EIS should be prepared, and that a public hearing should be called.

We assert that all the information and comments herein concern matters that are reasonably foreseeable and sufficiently likely to occur such that a person of ordinary prudence would take them into account when reaching a decision. They are neither remote nor highly speculative and "have catastrophic consequences, even if their probability of occurrence is low, provided that the analysis of the impacts is supported by credible scientific evidence, is not based on pure conjecture, and is within the rule of reason." 40 C.F.R. § 1502.22. We again point out that this exemption applies to the cables that control shutdown in an emergency, and that one clear consequence of a fire going beyond 24 minutes is a meltdown of the reactor, an unthinkable and catastrophic consequence of a kind included in the language of 1502.22.

We assert that the NRC has, to our best information, possession and detailed knowledge of the documents, both legal and administrative, that are discussed herein. If there is any confusion about such documents we offer to clarify and/or re-provide them.

All the contents of this document, and the contents of the documents and records described, referenced or incorporated, are submitted as Comments under the terms of NEPA, the APA, the AEA, all other relevant statutes rules and regulations, the April 3 Notice, and the Opinion. We assert that the information, documents, opinions and facts contained herein, considered individually and jointly, when given proper weight are sufficient to require the NRC to prepare an Environmental Impact Statement, and/or to deny the request for the exemption, and/or convene a public hearing .

Comment 2

The EA and FONSI have not considered reasonable alternatives to the requested exemption in violation of the AEA, NEPA, the AEA, the Opinion and regulatory requirements.

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Federal agencies are required to "study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources." 42 U.S.C. § 4332(2)(E). The NRC is also required as part of the EA process to examine alternatives. See 10 CFR § 51.30 (a) (ii) and §102(2)(E) of NEPA. In this case the NRC did not do so, and limited its consideration to either issuing the "exemption", or taking no action at all. This is a violation of these requirements. There are many other reasonable alternatives ignored by the NRC. We again point out that this exemption applies to the cables that control reactor shutdown in an emergency, and that a consequence of such a fire going beyond 24 minutes is a meltdown of the reactor. The availability of alternatives to the 24 minute rule must be weighed in the light of the horrific consequences of an error.

These viable unconsidered alternatives include a requirement that the fire insulation be upgraded to meet the one-hour requirement, or to a different time frame not tied to the test results showing that HEMYC lasts only 27 minutes, or that other non-administrative remedies be fashioned that leave the one-hour requirement in place.

An additional and widely known alternative that should have been and was not considered is a modification of the units fire protection programs from Appendix R to 10 C.F.R. 50.48(c), the National Fire Protection Association Standard [NFPA 805] ("805"). This would change IP's fire safety plans from a deterministic to a probabilistic model.

In other words, the Appendix R model requires full analysis of matters affecting public safety in the event of full destruction of physical structures of the plant, and other outcomes which would affect public health, safety and security. The alternative 805 model requires that upon a showing that the odds of any fire is more than one in one million, no further fire safety action is required (with the caveat that a spurious action analysis still has to be done.) The NRC has encouraged licensees across the nation to use this new system. About two thirds of American nuclear plants have opted for an 805 program. Entergy has refused to do so (probably because it cannot produce adequate information and drawings required for 805 transition). While the choice between these two fire safety alternatives is certainly subject to reasonable disagreement, it is precisely the kind of alternative to the exemption that the law and the Opinion require the NRC to consider before granting an exemption to existing safety rules.

By failing to address any of these three or other reasonable alternatives the NRC failed to protect the public health and safety and violated its' obligations under the AEA, NEPA, the APA and its' own regulations. We ask that, if the exemption is not denied, the EA and FONSI be withdrawn until these alternatives are considered as part of a comprehensive Environmental Impact Study, prepared by NRC and released for public comment prior to any final decision by the agency on

Entergy's exemption request..

Comment 3

Section 50.12 (the "exemption" regulations used herein by the NRC) requires that the exemption be "authorized by law". The EA and FONSI contain the following language on this requirement:

This exemption would allow use of a fire barrier expected to provide less than 1 hour of fire protection. As stated in Section 3.0 above, 10 CFR 50.12 allows the NRC to grant exemptions from the requirements of 10 CFR Part 50. The NRC staff has determined that granting of the licensee's proposed exemption will not result in a violation of the Atomic Energy Act of 1954, as amended, or the Commission's regulations. Therefore, the exemption is authorized by law.

We point out that, while the NRC exemption process in this case has been judicially sanctioned, the courts' have found that such exemption process is still bound by requirements of law. The record used by the NRC contains no document or evidence pertaining to this subject. The documents outlined and submitted below supplement that record and provide evidence that the exemption is not authorized by law. The EA and FONSI contain no consideration evidence or reasoned analysis of the requirement or of the following legal flaws which individually and collectively render this exemption unauthorized by law.

A) The EA, FONSI and exemption arbitrarily exclude NEPA from consideration of the laws governing issuance of the exemption.

The language of the exemption itself references only the AEA and Commission regulations ("The NRC staff has determined that granting of the licensee's proposed exemption will not result in a violation of the Atomic Energy Act of 1954, as amended, or the Commission's regulations. Therefore, the exemption is authorized by law."). The law of the cases underlying this proceeding establish what is already self-evident: NEPA and the APA are also applicable to the exemption and we are entitled to the protection and requirements of both. The This 50.12 Finding simply ignores those two statutes and do not analyze or mention their applicability to the exemption. This alone renders the EA, FONSI and exemption unauthorized by law.

B) This exemption is permanent, which renders it unauthorized by law.

Courts have held that an exemption must be limited in duration. We call the NRC's attention to Commonwealth of Mass.v.US. Nuclear Regulatory Com 'n, 878 F .2d 1516 (1st Cir. 1989) which sanctioned an exemption on the explicit grounds that it was temporary. "The exemption did not change [licensee's] duty to follow

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NRC rules; it only changed which rule applied for a brief period of time This is not a situation in which the NRC permanently exempted the licensee from following a specific license requirement. Nor is this a case where the NRC has changed [the licensee's] license in such a way that [the licensee] is no longer required to follow NRC's regulations and rules. Rather, this is a case where the NRC has temporarily exempted the licensee, on the basis of an existing rule, from one of many rules made generally applicable by the license." Mass., 878 F.2d 1521. Because this exemption is permanent the EA, FONSI and exemption itself are unauthorized by law.

C) The NRC's repeated and willful failure to consider relevant and probative evidence in its' possession renders its' earlier approval of the exemption unauthorized by law.

We bring to the NRC's attention the contents of the Motion To Supplement The Record' filed in the first 2nd Circuit case, Brodsky v. NRC, which is in the possession of the NRC and which we incorporate in its' entirety into these comments. It establishes that the original record used to approve the 2007 exemption was arbitrarily and illegally limited to a small fraction of the relevant and probative evidence in the possession of the NRC. That motion has not been subject of a court decision and more importantly, the refusal of the NRC to consider relevant and probative evidence in its' possession renders the EA and FONSI unauthorized by law and in violation of the AEA, NEPA and the APA. The documents listed below are relevant and probative and establish that the exemption request should be denied and a full EIS prepared.

D) The NRC's failure to publish the exemption request and allow for public comment and participation renders its' earlier approval of the exemption unauthorized by law.

E) We also note considerable confusion as to the legal status of the 2007 exemption, including whether or not it has been implemented, amended or withdrawn. Given that confusion we assert that the 2007 exemption was unauthorized by law, and a reconsideration of it violates the AEA, the APA, NEPA, NRC regulations and the Opinion and is therefore now unauthorized by law..

F) The NRC's characterization of this proceeding as a reconsideration of the 2007 exemption is unauthorized by law.

The NRC decision to reconsider the 2007 exemption ("The NRC is reconsidering its issuance of a revision of an existing exemption..." FONSI 20145) is not a permitted exercise of its powers under the AEA, the APA, NRC rules and regulations or the Opinion and is therefore unauthorized by law.

We are unable to find anything in the NRC's legal or regulatory scheme that authorizes a reconsideration of an existing exemption, and no description of the

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process used, or the evidentiary or legal standards to be applied. The creation of a new, ad hoc administrative process not grounded in rule or law is impermissible, leaves us unsure of their legal or administrative rights and obligations, as set forth in law, regulation and the Opinion. This is not a technical objection. We are forced to comment without knowledge of the procedures used by the NRC, the record upon which it based the issuance of the EA and FONSI, our rights and obligations, whether we may seek a public hearing, and more.

For example, the NRC in its approval of the 2007 exemption sought the opinion of officials of New York State. "In accordance with its stated policy, on February 13, 2007, the NRC staff consulted with the New York State official, Alyse Peterson of the New York State Energy Research and Development Authority, regarding the environmental impact of the proposed action. The State official had no comments." FONSI 20146. Does this "stated policy" still apply? Has the State been contacted again? If the NRC has not consulted with New York State as required by its "stated policy" then the Notice and the NRC's various actions and decisions are deficient and should be withdrawn and re-issued once such consultation has been completed.

For a second example, we have repeatedly asked the NRC to examine its own documents and records and determine whether it believes there are other relevant and probative materials in its possession or available to it. We do not know whether or not the NRC has done so, will do so or whether it rests the entire decision to issue a new EZ and FONSI on the 31 documents in the existing record. This has placed an unreasonable and prejudicial burden on us to review technical and other documents which are in the possession of the NRC. If the NRC believes that the 31 documents are its entire stock of relevant and probative evidence, fine. If it believes there are other such documents it should so state. But its silence on what evidence it may or may not have renders its decision and this process unauthorized by law.

For a third example, we have no knowledge of the legal standard the NRC will apply to the evidence in exercising its discretion over the exemption. Must the licensee show a preponderance of the evidence? Will the NRC exercise such discretion broadly, satisfying only the judicial review standard of "arbitrary and capricious"? Our burden of offering comment and evidence is affected by these considerations, and we have no knowledge of what we are required to produce.

It should be noted for the Record that we posed these and other questions to the NRC, through counsel, and were told that we would not receive answers, our only remedy being through the courts at the conclusion of the administrative process. We remind the NRC that it is required under 50.12 to evaluate whether the exemption and the process by which it is considered is "authorized by law". The failure to give us adequate information about the process and our rights and obligations renders this FONSI and EA unauthorized by law.

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G) The NRC's explicit refusal to consider the option of denial of the exemption request renders this proceeding unauthorized by law. The NRC has limited the actions it may take in this "reconsideration" process to modification of the exemption. "As necessary, the underlying action (i.e., approval of the exemptions) may be modified in light of public comments." Although the record before it is substantially different than what it considered in 2007, it has refused to consider the option of denying approval. By so doing the NRC has prejudged the outcome of the proceeding, which is inconsistent with the requirements of law, regulations and the Opinion.

This decision to prejudge the outcome and to arbitrarily limit the actions it will take renders our rights meaningless. At the outset of this proceeding, without knowledge of the nature and extent of information that we may provide, no matter how powerful the evidence may be that the exemption is both dangerous and illegal, the NRC has arbitrarily limited itself to modification of the exemption. The NRC may not, consistent with law and the Opinion, refuse to consider the option of denying the exemption request. This renders the proceeding unauthorized by law.

Comment 4

The exemption is not consistent with the common defense and security.

Section 50.12 requires that the exemption be "consistent with the common defense and security" The full text of the 2007 exemption's discussion of this requirement is as follows:

The proposed exemption would allow use of a fire barrier expected to provide less than 1 hour of fire protection based on the existing fire barriers, fire detectors, automatic and manual fire suppression equipment, administrative controls, the fire hazard analysis, the HEMYC configuration, and the absence of significant combustible loads and ignition sources. This change to the plant requirements for the specific configuration in this fire zone has no relation to security issues. Therefore, the common defense and security is not impacted by this exemption.

A review of the 31 documents which the NRC considered in reaching this conclusion shows no documents that discuss the "common defense and security".

It is self-evident that the belated discovery that HEMYC does not meet Appendix R fire safety standards affects the ability of the plant to withstand fires resulting from acts of terrorism and other breaches of security, which in turn is affected by

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the dynamics and consequences of a terrorist attack. It simply defies rationality to assert that the ability to learn of, identify the site of, mobilize human resources and extinguish a fire within 24 minutes is identical whether the fire is started by a short circuit or an attack by armed gunmen or airborne attack. While Entergy may argue that its' exemption request would, in fact, address such security and defense issues, the NRC is required to take a hard look at that assertion. It did not do so.

For example, Entergy and the exemption assert that administrative controls and manual fire suppression required by the exemption are sufficient to make up for the lost 33 minutes (the difference between the 1 hour rule and the 27 minutes HEMYC will survive). Yet the NRC did not consider any documents which analyze and discuss the ability of these administrative controls and manual suppression to survive acts of terrorism. The electric cables at issue here are not wholly contained within containment, being protected at certain locations with walls 2 inches thick.. Nor does containment have to be broken to affect plant shutdown. An insider, with a match and a five gallon can of gasoline for example, (the amount of transient combustibles required to be analyzed under the requirements of Appendix R) can find locations that are difficult to find and difficult to suppress. These are scenarios peculiar to a terrorist modality and have not been considered. Under the exemption a fire which had already started would be discovered and suppressed within 24 minutes. Can this be accomplished if the plant is under attack and fire brigades are delayed in their response?

We assert that the specific elements of the exemption increase the risk of terrorist attack. We also assert that the exemption substantially increases the consequences of a terrorist attack. Fairly summarized, this exemption takes a long-standing regulatory requirement that relied on physical fire barriers and does two things: 1) It reduces the survival time of the physical barrier and 2) it increases reliance on man-made administrative controls and manual detection and suppression. Where previously, in the event of a fire affecting electric cables that control shutdown, the licensee had at least one hour to learn of, get to and suppress the fire, all three things now have to be done in 24 minutes. We again point out that this exemption applies to the cables that control shutdown in an emergency, and that a consequence of such a fire going beyond 24 minutes is a meltdown of the reactor.

The exemption will increase the risks of a catastrophic fire in the event of a terrorist attack because, if history is a guide, such attacks are carefully planned and target the weakest and most easily disrupted security measures, which are often the marshaling and implementation of human interventions. An increased reliance on such human actions could be understood and acted on, thereby increasing risk.

The exemption will substantially worsen the consequences of such an attack because it will interfere with the marshaling and implementation of manual fire

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suppression and administrative controls. The EA and FONSI are completely silent about any analysis of the interface between the new fire-safety procedures and existing security procedures, or any other security or defense based evidence or analysis.

We assert again that reliance upon automatic detection cannot be credited given the automatic detection system is not a safety-related system. This reliance raises the question how will the fire be detected-and how much time will was improperly credited in the extraordinarily short period from ignition to suppression of less than 24 minutes. The record provided does not indicate this limit was established nor is the response time credible. The exemption violates the Defense In Depth approach to fire protection as established federal regulations including Appendix R.

We note, on information and belief, that the NRC has categorically refused to consider the impacts of terrorism with respect license amendments and exemptions. Whatever policy exists, this exemption cries out for the reasoned, hard look at the risks and consequences of a terrorist attack, which has not occurred.

We identify below documents in the possession of the NRC which address each and every such issue, including but not limited to the Fire Hazards Analysis, the Design Basis and Design Basis Threat documents, the Operator Manual Actions, and the Spurious Hazard Analyses. These documents, jointly and severally consider specific circumstances including the ability of the units to carry out public health and safety actions as planned in the event of a terrorist attack. Yet none of them are in the record of documents and evidence considered by the NRC in 2006-7 or now, and the relevant contents of which were not considered,

We ask that these documents, among others, be reviewed and that the NRC engage in a reasoned, evidence based analysis of the consequences of the exemption on the common defense and security.

Comment 5

The exemption will present an undue risk to the public health and safety:

The underlying purpose of Subsection III.G.2 of 10 CFR Part 50, Appendix R, is to ensure that one of the redundant trains necessary to achieve and maintain hot shutdown conditions remains free of fire damage in the event of a fire. Based on the existing fire barriers, fire detectors, automatic and manual fire suppression equipment, administrative controls, the fire hazard analysis, the HEMYC configuration, and the absence of significant

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combustible loads and ignition sources, the NRC staff judges that application of Subsection III.G.2 of 10 CFR Part 50, Appendix R, for these Fire Areas is not necessary to achieve the underlying purpose of this regulation. No new accident precursors are created by allowing use of a fire barrier expected to provide less than 1 hour of fire protection and the probability of postulated accidents is not increased. Similarly, the consequences of postulated accidents are not increased. Therefore, there is no undue risk (since risk is probability multiplied by consequences) to public health and safety.

We first comment on a matter raised separately herein, the intentional and impermissible use of probabilistic analysis for a regulatory scheme that is deterministic. We call attention to the two references to "probability" above, among other misuses. Appendix R is not subject to downward revision of safety standards based upon the probability of bad outcomes. If Entergy or the NRC want to apply such probabilistic analysis they may do so under the 805 program.

Second, in its approval of the 2007 exemption the NRC intentionally excluded evidence that shows that the licensee's request for an exemption is inherently dangerous, that it cannot and has not been executed in a manner consistent with its own assertions and promises, and that there are alternatives to the exemption that would be effective and possible. The 50.12 requirement is that the NRC establish that the exemption not cause "undue" risk. It is clear that such standard permits some risk. It is equally clear that the NRC must take a hard look at evidence of both heightened risk, heightened consequence and the availability of alternatives, which it has not done. The consequence of this refusal and the evidence included herein is an unacceptable risk of undue risk to the public health and safety.

We again point out that this exemption applies to the cables that control shutdown in an emergency, and that a consequence of such a fire going beyond 24 minutes is a meltdown of the reactor.

Comment 6

The existing record upon which the NRC approved the exemption and now apparently relies is grossly inadequate as a matter of fact and law. It contains: (a) the exemption applications by the licensee, (b) environmental analysis by the NRC, (c) the Petition filed by Petitioners with the NRC and related documents, (d) the denial of said Petition, (e) an information notice and generic letter sent to the licensee regarding the ineffectiveness as HEMYC as fire insulation, (f) the licensee's response to the generic letter, (g) communications between the NRC and the licensee requesting additional information from the licensee, (h) memos submitting the fire protection safety evaluation input for Indian Point Unit 3, (i) a

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letter to the licensee granting the exemption, (j) memo's and final reports of HEMYC 1-hour rated performance and test results, (k) a fire protection program description with proposed modifications submitted in 1984, (l) a proposed exemption and an exemption granted to the licensee in 1984-1985, (m) NRC internal documents concerning fire protection, and other documents.

This record contains 31 documents, 11 of which contain facts or analysis of issues and 20 of which are administrative notices, letters or documents part of the "exemption" itself. The 11 evidentiary documents tend to favor the grant of the "exemption. No documents raising concerns about the legality, safety and propriety of granting the exemption were part of the original record. The NRC deliberately excluded from the record and failed to consider dozens of specific documents in its possession which we identified and asked be considered and which tend to establish the "exemption" ought not to have been granted. Some of the issues which are raised by the exemption request and for which there are no documents in the record nor reasoned discussion of the issues include, but are not limited to the public health, safety and security, the legal authority for the exemption, the impact of terrorism, the need for full public participation, the failure to establish the required "special circumstances" and others.

Comment 7

We submit as comments the matters, documents and substance described below which refer to documents that are relevant, probative and in the possession of the NRC. The contents of these documents apply to each comment and other assertions contained herein. We offer the contents of those documents as comments and note that they are jointly and severally relevant and probative with respect to issues of public health and safety, defense and security, and the adequacy of the process formerly and currently being used by the NRC to consider the exemption request. These documents taken jointly and severally establish that the exemption request should be denied and that the EA and FONSI should be withdrawn and a full EIS prepared. We ask that they be considered and made part of the record.

A) We draw the attention of the NRC to documents called, or entitled or otherwise known as Safety Analysis Reports and Plant Technical Specifications regarding or containing references to fire protection programs, hardware or operational changes, (including but not limited to the Fire Protection Program Manual) and are in their possession.

These documents establish accurate, factual and scientific realities in the units as they affect fire safety and which contradict assertions made by Entergy Nuclear Operations, Inc. in its request for the exemption. Contrary to Entergy's assertions, these documents establish that Entergy has made binding legal commitments to operate the units in full compliance with all requirements of

Appendix R including but not limited to the one-hour insulation requirement.

These documents also establish that Entergy's subsequent attempt to modify its' original exemption request from 30 minutes to 24 minutes was not based on public health, safety and security concerns but was crafted in order to conform with the stark realities of HEYMYC test results showing it lasted on 27 minutes.

B) We draw the attention of the NRC to documents called, or entitled or otherwise known as Design Basis Documents and Design Basis Threat Documents created pursuant to 10 C.F.R. 73.1, 10 C.F.R. 50.54 (f) and other regulatory and legal sources. They contain a series of required subjects of report, analysis and effective management of the units as impacted by terrorism, attack and sabotage (DBT) and safety related systems (DB), including fire protection.

For example, the DBT requirements include a required response to the impact of terrorism on those elements of the exemption which rely on manual inspection, prevention and suppression. It is clear and unambiguous that a terrorist attack could make the enhanced human response to fire much more difficult if not impossible. The EA and FONSI simply do not consider this eventuality.

For a second example, DB documents establish that the automatic detection and suppression systems are not Safety Related. In spite of the systems not being Safety-Related the exemption relies on such systems to start the 24 minute response protocol. This is a violation of the existing fire protection program.

C) We draw the attention of the NRC to documents called, or entitled or otherwise known as the Safe Shutdown Analysis. Appendix R requires that the SSA be reviewed and updated every time an operational procedure is changed, (as well any design change, maintenance change, change in fire brigade procedures or constituents, and/or training programs). The SSA was not so reviewed and updated with respect to the exemption. The SSA was not part of the documents reviewed by the NRC when it granted the exemption. This is a violation of law and regulation. In fact, the SSA was ignored because the exemption sets up a dangerous and unsustainable practice as a substitute for the one-hour rule.

D) We draw the attention of the NRC to documents called, entitled or otherwise known as the Fire Hazards Analysis. It is a detailed analysis of the fire loading in each distinct room in the units affected by the exemption. The FHA was not so reviewed and updated with respect to the exemption. The FHA was not part of the documents reviewed by the NRC when it granted the exemption. This is a violation of law and regulation. In fact, the FHA was ignored because the exemption sets up a dangerous and unsustainable practice as a substitute for the one-hour rule, including but not limited to the loading consequences of the addition of a junction box and additional fire-enhancing heat caused by transmission of electricity through the cables. (Note that tests of the system

were run at artificially high voltage artificially decreasing amperage and therefore heat). These documents must be fully considered and weighed before any exemption is granted.

E) We draw the attention of the NRC to information and/or documents called, entitled or otherwise known as PI&Ds (Piping & Instrument Diagrams). This information and documents will provide the background and design input that are required for the Safe Shutdown Analysis and the Fire hazards Analysis. These documents were not and are not part of the record considered by the NRC in granting the exemption and in approving the FONSI and EA.

F) We draw the attention of the NRC to documents called, entitled or otherwise known as Current Electrical Separation Analysis. These documents were not and are not part of the record considered by the NRC in granting the exemption and in approving the FONSI and EA. The documents establish the physical configuration of the electrical cables subject to the exemption. This proves that the physical proximity of the electric cables is repeatedly too close to permit a 24 minute fire suppression standard. Simply stated, the cables are too close together to last 24 minutes in a fire and will fail prior to the ability of the licensee to detect and suppress fire.

G) We draw the attention of the NRC to information and/or documents called, entitled or otherwise known as types and installation dates of fire seals, fire wraps, barriers, and insulation materials. These were not reviewed and updated by the NRC with respect to the exemption, the EA or the FONSI. These documents and information establish that the licensee is currently not in compliance with NRC regulations and/or recommendations. Such a lack of compliance is significant and essential in any complete and fair analysis of the impacts on the public health safety and security of the exemption.

H) We draw the attention of the NRC to information and/or documents called, entitled or otherwise known as interim compensatory measures. These are commitments by the licensee to maintain administrative controls to ensure public health safety and security during the period it takes to make permanent design changes, training and procedural modifications. We draw the attention of the NRC to information and/or documents called, entitled or otherwise known as interim compensatory measures. This will establish that the licensee is currently non-compliant with NRC requirements a factor of great importance in determining whether it should be granted further exemptions.

I) We draw the attention of the NRC to information and/or documents called, entitled or otherwise known as Operator Manual Actions. These are permanent actions by the licensee necessary to meet the requirements of Appendix R. These were not reviewed and updated by the NRC with respect to the exemption, the EA or the FONSI. They establish that the planned fire suppression protocol cannot be successfully implemented with 24 minutes. This establishes that the public

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health safety and security is substantially endangered by the exemption.

J) We draw the attention of the NRC to information and/or documents called, entitled or otherwise known as Spurious Action Analysis including Multiple Spurious Action Analysis. These are analyses of plans and systems intended to cope with a wide variety of threats to plant safety, including unexpected and dangerous threats. These were not reviewed by the NRC with respect to the exemption, the EA or the FONSI. These documents establish that the existing systems and plans cannot cope with fire safety dangers within 24 minutes and after, and that the exemption should not have been and should not now be granted.

K) We draw the attention of the NRC to information and/or documents called, entitled or otherwise known as 50.59 reviews. These are proceedings before the NRC brought by a licensee which demonstrate the health and safety impacts of particular modifications or changes. These were not reviewed by the NRC with respect to the exemption, the EA or the FONSI. These documents establish that the public health and safety is negatively affected by a 24 minute insulation requirement and that the exemption should not be granted.

L) We draw the attention of the NRC to information and/or documents called, entitled or otherwise known as commitments (docketed or undocketed). These are promises made by a licensee to engage in actions and behaviors related to fire safety. They are referenced in the text of the exemption. These were not reviewed by the NRC with respect to the exemption, the EA or the FONSI. These documents establish that the licensee is not in conformance with its commitments and that fire safety standards can only be analyzed and understood with full knowledge of such side agreements.

M) We draw the attention of the NRC to information and/or documents called, entitled or otherwise known as Exemptions granted or rejected to any nuclear power plant in which the exemption permits said nuclear plant to reduce fire safety requirements below one hour. These are documents which establish what if any policies and practices have been adopted by the NRC as to reduced insulation fire safety.

Comment 8

Pursuant to the relevant law and regulations we ask that the NRC convene a formal hearing for the purposes of taking public comment and receiving evidence, witnesses and testimony with respect to the issues and concerns expressed herein as well as other issues relevant to the statutory and regulatory obligations of the NRC with respect to the exemption. Although we do not believe it necessary to so recite, we also submit this document as a petition for such hearing.

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For the reasons set forth above and in the documents cited and incorporated herein, we assert that the original exemption was improperly and illegally granted, that the instant administrative proceeding is illegal and inconsistent with the Opinion, that applicable statutory and case law, and regulation, require that the exemption request be denied, and/or a full Environmental Impact Statement be prepared, and or/ a public hearing take place and for such other relief as may be just and appropriate.

We reserve all legal rights in this proceeding or any litigation related to or arising from this proceeding.

Respectfully submitted,

Richard Brodsky
2121 Saw Mill River Road
White Plains, New York 10607
914.720.8830

Marilyn Elie
as and for Westchester Citizens Awareness Network

Allegra Dengler,
as and for Chair, Indian Point Task Force,
Sierra Club Atlantic Group

Manna Jo Greene
as and for Hudson River Sloop Clearwater

Ulrich K. Witte
Northern Lights Engineering, LLC.
372 Central Avenue Westville, Ct, 06515
203.389.4564

Annie Wilson,
Senior Energy Policy Advisor
as and for New York Environmental Law and Justice Project
351 Broadway, Suite 300,
New York, NY 10013
212.334.5551

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Document: NRC-2013-0063-DRAFT-0112
Comment on FR Doc # 2013-10792

Submitter Information

Name: Richard Brodsky
Address:
2121 Saw Mill River Road
White Plains, NY, 10607

General Comment

The attached document is Appendix A to a previously filed Comment letter, Document ID: NRC-2013-0063-0002
Comment Tracking Number: 1jx-85p3-8f4y, also entitled "Final NRC exemption comments 6.3.13" and is part of that document.

Attachments

Brodsky v NRC Status Order Letter 5.10.13

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Richard L. Brodsky, Esq.
2121 Saw Mill River Road
White Plains, New York, USA 10607
914.720.8830
RichardBrodsky@msn.com

Hon. Loretta A. Preska
Chief United States District Judge
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street,
New York, New York 10007-1312

May 10, 2013

Re: Brodsky v. NRC 1:09-cv-10594

Dear Judge Preska,

This letter is submitted pursuant to your amended Status Order of April 23, 2013.

On January 7, 2013 the United States Court of Appeals for the Second Circuit issued an Opinion (the "Opinion") in the above captioned case specifying the procedures, and the purposes thereof, to be followed upon remand to this Court. "...we remand the matter to the district court with instructions for it in turn to remand to the NRC so that the agency may: (1) supplement the administrative record to provide an explanation, with supporting affidavits or findings of fact, as to why affording public input into the exemption request was inappropriate or impracticable or (2) take other such action as it may deem appropriate to resolve this issue."¹ These proceedings were to be completed within 120 days of the issuance of the mandate.

On April 3, 2013 the NRC published in the Federal Register a "Draft environmental assessment and finding of no significant impact; request for public comment." (the "FONSI")² with respect to the exemption which is the subject of this litigation. Comments were to be received by May 3, 2013. Subsequently, at Plaintiff's request, the comment period was extended to June 3, 2013.³

¹ Brodsky v. NRC, p. 23

² Federal Register/Vol. 78, No. 64 / Wednesday, April 3, 2013 / Notices, page 20144.

³ As a result of this extension of the comment period the NRC has indicated that it will seek from the Court of Appeals a 30-day extension of the 120 day completion date, at which time the NRC's actions will be ripe for review by this Court. Plaintiffs will not object to such extension.

On April 23, 2013 this Court issued a Status Order directing the parties to "confer and inform the Court by letter no later than May 6, 2013, how they propose to proceed." That Order was subsequently modified by the Court by extending the response date to May 10, 2013.

Pursuant to that directive, Counsel for the parties have repeatedly conferred and exchanged ideas and information. In an abundance of caution, and to ensure that all our rights and arguments are preserved, Plaintiffs submit this letter to the Court and respectfully ask for guidance on how and when to seek clarification or disposition of our serious concerns that the NRC's April 23 action does not satisfy the requirements of the Opinion.

Counsel for Plaintiffs and the NRC agree that the NRC action on April 3 is based on its' decision to decline the Opinion's command to "supplement the administrative record to provide an explanation, with supporting affidavits or findings of fact, as to why affording public input into the exemption request was inappropriate or impracticable;". Instead the NRC has chosen to "take other such action as it may deem appropriate to resolve this issue." Plaintiffs have carefully reviewed the April 3 FONSI, have raised with opposing Counsel a number of procedural and legal questions, and sought clarification of them. These include but are not limited to the following:

- 1) Does the NRC action include a public hearing?
- 2) Will the documents and issues raised by Plaintiffs' Comments be included in the administrative record?
- 3) Will the original NRC contact with state government made in 2007 be supplemented with a new contact whose answer may be the same or different than the one set forth in the April 23 FONSI? ⁴
- 4) Will the NRC examine its own documents to determine which, if any, are relevant and probative and therefore ought to be considered in its' evaluation and decision on the exemption?

We have also sought clarification of three fundamental failures of the NRC's actions to meet the requirements of the Opinion.

- I. The NRC decision to "reconsider" the 2007 exemption is not a permitted exercise of its powers under the AEA and the APA and therefore does not conform to the requirements of the Opinion.

The FONSI describes the action taken by the NRC as a "reconsideration" of the 2007 exemption.⁵ We are unable to find anything in the NRC's regulatory scheme that authorizes a reconsideration of an existing exemption, and no description of

⁴ "In accordance with its stated policy, on February 13, 2007, the NRC staff consulted with the New York State official, Alyse Peterson of the New York State Energy Research and Development Authority, regarding the environmental impact of the proposed action. The State official had no comments." FONSI 20146

⁵ "The NRC is reconsidering its issuance of a revision of an existing exemption..." FONSI 20145

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the process used, or the evidentiary or legal standards to be applied. The NRC's position throughout this litigation has been that it is bound by the clear wording of its' regulations. The creation of a new, ad hoc administrative process not grounded in rule or law is impermissible, leaves Plaintiffs' unsure of their legal or administrative rights and obligations, and violates the requirements of the Opinion.

- II. The 2010 NRC regulatory change effectively bars Plaintiffs from asserting their rights under NEPA with respect to this and future NRC actions on the 2007 exemption, which is inconsistent with the requirements of the Opinion.

The NRC admits in the FONSI that subsequent to issuing the 2007 exemption and during the pendency of *Brodsky v. NRC* in the Federal District and Appellate Courts, it amended its regulations to no longer require environmental review and public notice of many exemptions, including the exemption litigated in *Brodsky v. NRC*.⁶ Plaintiffs understand that the general wisdom and legality of this change are not before this Court. Plaintiffs do point out however that under the terms of this change there appears to be no reliable opportunity to know of and comment on any amendments, reconsiderations, revisions or other modifications of the 2007 exemption. It is the law of the case that NEPA applies to this exemption. Any actions taken by the NRC in secret will effectively deny to Plaintiffs' their right to knowledge of and participation in the required NEPA analysis. Plaintiffs' therefore assert that such regulatory change, as applied to this exemption, is facially inconsistent with the Opinion and must be voided by this Court.

- III. The NRC, by limiting its' eventual action solely to modification of the exemption, has prejudged the outcome of the proceeding, which is inconsistent with the requirements of the Opinion.

The FONSI states that after submission of comments the NRC may take certain specified actions. "As necessary, the underlying action (i.e., approval of the exemptions) may be modified in light of public comments."⁷ The NRC, at the beginning of the process, states in the FONSI that it will not consider the option of disapproving the exemption request.⁸ This decision to prejudge the outcome of the NEPA process and to arbitrarily limit the actions it will take makes illusory Plaintiff's exercise of their rights under the Opinion.

⁶ "...the NRC need not prepare any environmental review for exemptions from the requirements of Parts 50 and 52 "with respect to installation or use of a facility component located within the restricted area, as defined in [10 CFR Part 20], or which changes an inspection or surveillance requirement," provided there are no significant hazards considerations, no significant increase in offsite effluents, and no significant occupational dose increase." FONSI 20146

⁷ FONSI, 20145

⁸ We note that the NRC characterizes the 2007 exemption as a "revision of an existing exemption." FONSI 20144 It is unclear whether this new process is about a revision of the revision, or is a new exemption. In either case, it has arbitrarily and illegally refused to consider disapproval.

We have raised these questions with the NRC and asked for responses. While our conversations have been civil and thorough, we have been told that no answers or clarifications will be forthcoming, and that our concerns should be included in our comments submitted pursuant to the FONSI. Any correction of shortcomings or defects must await an NRC decision on the issuance or modification of the exemption, and this Court's review of those actions. We understand the legal position of the NRC to be that this Court has no jurisdiction over any of these concerns because the matter has been remanded to the agency.

We have discussed this at length with Opposing Counsel and reviewed cases referred to us. We believe the cases are not apposite or persuasive, and accordingly, we respectfully disagree.

We do not seek Court intervention in the administrative process. We do assert this Court has the power and discretion to ensure that the process chosen by the NRC is consistent with the Opinion. We are actively preparing and plan to submit detailed comments. Our ability to effectively participate in this new administrative process is conditioned on its legality, our understanding of the rules and standards it will apply, and the fair application of the law of the case. This Court, while not managing the administrative process, has the power to assure that it is consistent with the Opinion. If, as we assert, the NRC has prejudged the outcome, has created an ad hoc and illegal proceeding, has left Plaintiffs' uncertain of their rights and responsibilities, and has refused to clarify or respond when asked, then it is appropriate that this Court inquire into these matters now and settle them consistently with the Opinion.

We have carefully considered the contents of this letter and believe it is prudent to raise them with this Court now. We believe that the defects in the NRC's actions are inconsistent with the Opinion and fundamentally prejudice us in the exercise of our legal rights. These are fundamental legal and procedural flaws, and it is in the interest of fairness and judicial economy to correct them now, rather than await an inevitably flawed outcome.

We respectfully request the attention and action of this Court now, in order to assure that the purposes and requirements of the Opinion are fulfilled.

Respectfully submitted,

Richard Brodsky, Esq.

A-248

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Comment on FR Doc # 2013-10792

Submitter Information

Name: Alyse Peterson
Address:
NYSERDA
17 Columbia Circle
Albany, NY, 12203
Government Agency Type: State
Government Agency: NYSERDA

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General Comment

See attached file(s)

Attachments

Fire Exemption Draft EA FONSI - State Comments to NRC 6-3-2013

SUNSI Review Complete

Template = ADM-013

E-RIDS = Aprm-03

Add: O. Pickatt (dupl)



June 3, 2013

Cindy Bladey, Chief
Rules, Announcements, and Directives Branch (RADB)
Office of Administration
Mail Stop: TWB-05-B01M
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Re: Docket ID NRC-2013-0063

Dear Ms. Bladey:

The State of New York welcomes the opportunity to provide comments on the NRC's Draft Environmental Assessment and Finding of No Significant Impact (EA/FONSI) for an exemption from certain fire safety regulations. The Draft EA/FONSI was published for comment in the April 3, 2013 Federal Register (78 Federal Register 20144).

The State's comments are attached. If you have any questions, please contact me.

Sincerely,

Alyse Peterson
Senior Project Manager
State Liaison Officer – Designee

New York State Energy Research and Development Authority

Albany
17 Columbia Circle, Albany, NY 12203-6399
(P) 1 (866) NYSERDA | (F) (518) 862-1091
nyserda.ny.gov | info@nyserda.org

Francis J. Murray, Jr., President and CEO

Buffalo
726 Exchange Street
Suite 821
Buffalo, NY
14210-1484
(P) (716) 842-1522
(F) (716) 842-0156

New York City
485 Seventh Avenue
Suite 1006
New York, NY
10018-6815
(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

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The State of New York urges the Nuclear Regulation Commission (“NRC”) to conduct a full environmental review as part of its reconsideration of an existing exemption, requested by Entergy Nuclear Operations, Inc. (“Entergy”), the owner, operator, and licensee of Indian Point, from the federal fire safety regulations, contained in 10 C.F.R. Pt. 50, App. R, III. G.2, based on the risk to public health and safety created by the conditions, at Indian Point’s Unit 3, which will exist if such exemption is allowed to remain. The requested exemption is a device to excuse Entergy from a long-standing violation of federal fire safety regulations.

On September 28, 2007, NRC staff granted the exemption to Indian Point’s Unit 3, which reduces the amount of time the fire barrier around certain cables and electrical equipment is required to withstand fire from one hour to as little as twenty-four minutes. 72 Fed. Reg. 56,798 (Oct 4, 2007). This exemption was granted without an opportunity for public review and comment. On April 3, 2013, the NRC published its Draft Environmental Assessment and Finding of No Significant Impact (“FONSI”) and requested public comment on this action. 78 Fed. Reg. 20144 (April 3, 2013). The NRC’s FONSI, without a thorough environmental review and relying on the fire safety proclamations and conclusions asserted by Entergy, without public input or challenge causes a great public safety concern to the State of New York.

Needless to say, the State of New York has a compelling interest in protecting its citizens from the health and safety risks posed by the nuclear reactors at Indian Point, especially given their location just north of the most densely populated area of the State and the country. The Indian Point reactors are located 24 miles north of New York City. More than 17 million people live, work, or travel within 50 miles of Indian Point. According to the Atomic Energy Commission, the NRC, and the Federal Emergency Management Agency, more people live within 10 and 50 miles of the Indian Point reactors than at any other operating power reactor in the nation. A fire incident at Indian Point has the potential to affect more people than an incident at any other nuclear reactor in the country.

NRC regulations require separation of cables and equipment by: (1) a fire barrier having a 3-hour rating; (2) separation of more than 20 feet with no intervening combustibles or fire hazards with fire detectors and an automatic fire suppression system in the fire area; or (3) enclosure of cables and equipment in a fire barrier having a one hour rating with fire detectors with an automatic fire suppression system in the fire area. 10 C.F.R. Part 50, Appendix R.

NRC’s regulations authorize the granting of an exemption when the proposed exemption is “authorized by law, will not present an undue risk to the public health and safety, and [is] consistent with the common defense and security”. 10 C.F.R. § 50.12. In addition, NRC should not grant exemptions unless “special circumstances are present”, which exists where an “[a]pplication of the regulation in the particular circumstances would not serve the underlying

purpose of the rule or is not necessary to achieve the underlying purpose of the rule.” 10 C.F.R. § 50.12 (a)(2)(ii).

NRC’s granting of the aforementioned fire safety exemption to Indian Point Unit 3 from its prescriptive regulations did not evaluate the full scope of potential impacts of an exemption from a failure of the fire systems under review. The record is devoid of the consideration of the risk of fire, which could result in the loss of these control systems, and if the plant were to lose other systems, such as backup power, passive cooling system and the three primary fission product barriers, this could result in the loss of reactor core cooling capabilities, which could potentially cause significant radiological environmental impacts.

Recent reports by NRC’s own Office of the Inspector General (“OIG”) and the Government Accountability Office (“GAO”) found significant deficiencies in the NRC’s exercise of its responsibilities with respect to fire protection issues. *NRC’s Oversight of Hemyc Fire Barriers*, (Jan. 18, 2008) ML080250003; GAO Report to Congressional Requesters, *NUCLEAR SAFETY, NRC Oversight of Fire Protection at U.S. Commercial Nuclear Reactor Units Could Be Strengthened*, GAO-08-747 (June 30, 2008).

According to the GAO Report:

NRC has not resolved several long-standing issues that affect the nuclear industry’s compliance with existing NRC fire regulations, and NRC lacks a comprehensive database on the status of compliance. These long-standing issues include (1) nuclear units’ reliance on manual actions by unit workers to ensure fire safety (for example, a unit worker manually turns a valve to operate a water pump) rather than “passive” measures, such as fire barriers and automatic fire detection and suppression; (2) workers’ use of “interim compensatory measures” (primarily fire watches) to ensure fire safety for extended periods of time, rather than making repairs; (3) uncertainty regarding the effectiveness of fire wraps used to protect electrical cables necessary for the safe shutdown of a nuclear unit; and (4) mitigating the impacts of short circuits that can cause simultaneous, or near-simultaneous, malfunctions of safety-related equipment (called “multiple spurious actuations”) and hence complicate the safe shutdown of nuclear units.

Compounding these issues is that NRC has no centralized database on the use of exemptions from regulations, manual actions, or compensatory measures used for long periods of time that would facilitate the study of compliance trends or help NRC’s field inspectors in examining unit compliance.

GAO-08-747, preface. NRC Chairman Dale Klein has acknowledged that the response of NRC and industry to the continuing problems in the fire safety area “has not been a stellar

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performance.” NRC Briefing on Fire Protection Issues, (July 17, 2008), at 4, ML08203067. Indeed, today, more than thirty years after the NRC promulgated the fire safety regulations, most of the nation’s commercial nuclear power plants have not yet come into compliance with these Appendix R regulations,¹ including Indian Point.

NRC’s supported its granting of the exemptions to IP Unit 3 through its safety evaluation which concluded that “the configuration of fire zones provide reasonable assurance that a severe fire is not plausible and the existing fire protection features adequate.” The NRC also found that there is a low probability of a fire occurring and the consequences of the fire would not be significantly increased by the use of substandard Hemyc fire barriers. These deductions were the basis for the NRC’s conclusion, through their environmental assessment, that the exemption “will not have a significant effect on the quality of the human environment.” 78 Fed. Reg. 50-286 (April 3, 2013). In matters of nuclear safety, NRC should account even for low probability events.

The State of New York asserts that to assure the highest level of safety, it should be assumed a fire will occur and prepare for the consequences of a worst case scenario. Assuming a fire will be a rare event, and making fewer preparations for it, results in a lower level of overall safety. Therefore, actual compliance with the prescriptive engineered design fire protective requirements of 10 C.F.R. 50, Appendix R, is the best approach.

The leading risk factors for a U.S. nuclear plant meltdown is fire. Approximately one-half of the core damage risk at operating reactors results from accident sequences that initiate with fire events.² Between January 1995 and December 2007, 125 fires at 54 sites were reported to the NRC, 13 of which were classified as “alerts”.³ GAO-08-747 at 4, 11-12. A primary cause of radiological environmental impacts that could result from a significant fire in a light water nuclear power reactor would be the possible loss of the redundant electrical control systems, and the increase potential for the loss of reactor core cooling capabilities.

In order for the NRC to meet its federal obligations under the National Environmental Policy Act (“NEPA”) for conducting an environmental review, it must consider every significant impact of a proposed action and compile a record demonstrating that it has taken those impacts into consideration. This same consideration is pointed out in NRC regulations that provide for a thorough environmental impact review even when a license has requested an exemption. Whereas the Court of Appeals’ decision in this matter accepted, *inter alia*, the NRC’s FONSI, the burden placed on the NRC actually requires greater examination of the increased probability of accidents arising from the proposed exemption. See below. See *Brodsky, et al. v. NRC*, 2013

¹ U.S. Government Accountability Office Report - <http://www.gao.gov/products/GAO-08-747>

² NRC Briefing on Fire Protection Issues, at 58-59 (July 17, 2008), Statement of Jack Grobe, NRC Associate Director, Office of Nuclear Reactor Regulation for Safety Systems and Engineering.

³ U.S. Government Accountability Office Report - <http://www.gao.gov/products/GAO-08-747>

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U.S. App. LEXIS 339, *10 (2d Cir. January 7, 2013). As a consequence of the NRC's not meeting this greater burden in its FONSI, the NRC should complete a full environmental impact assessment prior to determining whether to approve the requested exemption.

The NRC's FONSI attempts to demonstrate satisfaction of the regulatory provisions set forth in 10 C.F.R. § 51.22(c)(9). Section 51.22(c)(9) provides, in pertinent part, that a nuclear power reactor license may be amended to allow the type of exemption under consideration here by the NRC if three things can be demonstrated:

- (i) the amendment involves no significant hazards consideration,
- (ii) there is no significant change in the types of significant increase in the amounts of any effluents that may be released offsite, and
- (iii) there is no significant increase in individual or cumulative occupational radiation exposure.

The NRC appears to address the second and third criteria above by simply restating them in its finding that there will be no significant environmental impacts; however, the NRC does not restate the first criteria in making this finding, nor does it adequately fulfill the requirement for an underlying examination to satisfy that criteria. In other words, the NRC neither stated nor adequately supported a finding that "the amendment involves no significant hazards consideration."

Instead, the NRC states: "the NRC staff finds that the use of this Hemyc fire barrier in these zones will *not significantly increase* the consequences from a fire in these fire zones." And, "[t]he proposed action will not *significantly increase the probability* or consequences of accidents." (Emphasis supplied.) 72 Fed. Reg. 55,254 (September 28, 2007); *see also* 78 Fed. Reg. 20144, 20146 (April 3, 2013). Within these statements it is clear that some increase in the probability or consequences of a fire exists. What compounds the risk inherent in this increase is the problem evident in the NRC's conclusions, to the effect that the NRC has not met its burden to examine the scope of that probability of failure in, for instance, redundant fire retardant or suppression systems; or to fully examine and adequately measure that risk for purposes of finding whether the action constitutes a significant impact on the environment, and, if so, that an environmental impact statement must be prepared. This incomplete step in the environmental impact analysis leaves open the question of whether the NRC has accurately identified the relevant environmental concerns. This incomplete step also fails to demonstrate that the NRC adequately considered alternative measures, for instance other means for ensuring sufficient redundant fire suppression systems, and at what cost.

These are very important decision points with respect to public health, safety and the environment that the FONSI glosses over without adequately examining the probability of failure

in the subjects of the fire safety examination, e.g. the redundant systems, upon which public safety and environmental protection are based, and which may lead to a reactor accident. Another example is the lack of inquiry as to the probability that the 24-minute and 30-minute thermal protection for conduits from exposed fire may fail and, if so, what the consequences would be to public health, safety and the environment. The conclusory level of analysis provided by the NRC does not provide the kind of reasonable assurance that is needed to demonstrate that the probability of a fire hazard is so low as to be beyond consideration of risk at Unit 3. Again, the NRC's own findings point to a level of increase, identified as insignificant, without adequately expressing why it is insignificant and what consequences would result if a fire were to occur despite assurances. In a similar context, it has been demonstrated that the NRC's reasonable assurances regarding the potential outcome of a fundamental underpinning of an environmental analysis is inadequate where it "does not describe a probability of failure so low as to dismiss the potential consequences of such failure." *New York v. Nuclear Regulatory Commission*, 681 F. 3d 471, 478 (D.C. Cir. June 8, 2012)(Addressing the Environmental Assessment offered in support of the NRC's Waste Confidence Decision Update, 75 Fed. Reg. 81,037, 81,041 [Dec. 23, 2010] "[T]he EA is insufficient because a finding that 'reasonable assurance exists that sufficient mined geological repository capacity will be available when necessary' [] does not describe the probability of failure so low as to dismiss the potential consequences of such failure.") (Citations omitted.)

In *New York v. NRC*, the NRC did not adequately examine the actual probability of harm associated with the failure to thoroughly examine the consequences of fire (in that case, spent nuclear pool fires caused by spent fuel storage facility failures over the potentially sixty-year life span of spent fuel facilities). *Id.* at 482 ("[A]n agency conducting an EA generally must examine both the probability of a given harm occurring and the consequences of that harm if it does occur. Only if the harm in question is 'so remote and speculative' as to reduce the effective probability of its occurrence to zero may the agency dispense with the consequences portion of the analysis.) citing *Limerick Ecology Action, Inc. v. NRC*, 869 F.2d 719, 739 (3d Cir. 1989). While here the NRC may have offered words in a sense diminishing the probability or harm from a fire incident (*see, e.g.* letter of John P. Boska, Senior Project Manager, NRC, to Michael A. Balduzzi, Entergy Nuclear Operations, September 28, 2007, Attachment: "Revision to Existing Exemptions, p. 11, section 3.7; ADAMS accession number ML072410254.), by its own statements (above) it is clear that it has not caused the level of harm to reduce that probability to a level that is effectively zero, particularly given the consequences of such a failure as articulated below.

However, one may characterize the NRC's statements, above, as the NRC failed to expressly make the necessary finding that "the amendment *involves no significant hazards consideration*", and such failure demonstrates an inadequate assessment or quantification of the probability that the acknowledged additional risk will be manifested in a fire resulting in an accident at Indian

Point Unit 3. This failure is a precise and critical one as it means that the NRC did not conduct a reasoned examination of the probability of the additional risk presented by the proposed exemption. Without doing so, it is inappropriate for the NRC to presuppose that the proposed exemption is correctly attributed to the categorical exemption contained in the regulation. The result would be an uncritical inclusion of Entergy's submissions supporting the exemption proposal without fully articulating the reasoning behind the NRC's acceptance of the probability of potential harm. Furthermore, we believe that the Court of Appeals in *Brodsky, supra*, did not address this question. The NRC has not calculated the environmental and public health effects of a fire scenario that falls within the as yet unidentified probability of conflagration that the NRC itself identifies. But the NRC has not reached a point of no return with respect to its finding of no significant impact and, in taking this opportunity to reconsider its analysis, it should conclude that the facts and circumstances warrant conducting the complete assessment of impacts inherent in a full environmental impact statement in order to make a threshold determination as to whether there is an acceptable probability of risk of fire in the context of a resulting accident at Unit 3 with the potential consequences mentioned below.

A significant reactor release would trigger implementation of protective actions for the public, which could include evacuation of large numbers of people as well as the immediate, intermediate and long-term impacts that a large-scale relocation of communities would entail. A significant release could also result in interdiction or embargo of farm products and a prohibition against the taking of fish and wildlife within and beyond the directly impacted area; loss of the use of surface water as drinking water sources; as well as denial of services of significant civic infrastructure such as conventional power plants, sewage treatment and communications systems, and transportation corridors. The impacts to communities, farming and industry would cut across all sectors of society within the affected area, and possibly beyond. Even assuming the most significant near-term impacts could be brought under control within a few weeks to months, long-term environmental and human health impacts would continue for decades given the half-life of radiological materials released.

NEPA requires federal agencies to analyze alternatives to the proposed action – here an exemption from federal fire regulations. As part of its alternatives analysis, NRC Staff and Commissioners should examine the alternative of compliance – *i.e.*, having Indian Point's critical electrical cables and equipment actually comply with the Appendix R federal fire safety regulations. 40 C.F.R. §§ 1502.14, 1507.2(d), 1508.9(b).

Conclusion

The NRC's consideration of Entergy's request for exemptions from basic fire safety measures, at the Indian Point facility, should only be decided after a full environmental review, as granting the requests would create a risk to public health and safety. The State disagrees with the NRC's Draft Environmental Assessment and proposed Finding of No Significant Impact.

A-256

RULES AND DIRECTIVES
BRANCH
USNRC

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Comment On: NRC-2013-0063-0002
Entergy Nuclear Operations, Inc., Indian Point Nuclear Generating Unit No. 3; Extension of Public Comment Period

Document: NRC-2013-0063-DRAFT-0114
Comment on FR Doc # 2013-10792

Submitter Information

Name: Phillip Musegaas
Address:
20 Secor Road
Ossining, NY, 10562
Submitter's Representative: Phillip Musegaas
Organization: Riverkeeper, Inc.

5/7/2013
78 FR 26662
124

General Comment

See attached file(s)

Attachments

Riverkeeper Comment NRC Docket_2013_0063 June_3_2013

SUNSI Review Complete

Template = Adm-013

E-RIDJ = Adm-03

Add: O. Pickett (dupl)



June 3, 2013

Cindy Bladey
Chief, Rules, Announcements, and Directives Branch (RADB)
Office of Administration
Mail Stop: TWB-05-B01M
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Re: Riverkeeper, Inc. Comments on Docket ID NRC-2013-0063

Dear Ms. Bladey,

Please accept the following comments on behalf of Riverkeeper, Inc. (Riverkeeper) with respect to the above-referenced Docket, regarding the Nuclear Regulatory Commission's (NRC) reconsideration of the issuance of an exemption from fire safety requirements to Entergy Nuclear Operations, Inc. and related Environmental Assessment (EA) and Finding of No Significant Impact (FONSI).

Riverkeeper hereby incorporates by reference and fully supports in its entirety the comment letter submitted on June 3, 2013 by the Hon. Richard Brodsky and other parties in this matter.

Consistent with Mr. Brodsky, Riverkeeper urges the NRC to take the following action or actions:

- Deny the exemption request from Entergy, because it is unauthorized by law and if maintained will unacceptably reduce safety margins at the Indian Point 3 nuclear power plant, thereby endangering the public health and economic well being of the 20 million people who live and work within fifty miles of Indian Point. In the alternative,
- Conduct a full Environmental Impact Study (EIS) of the exemption, including but not limited to a robust alternatives analysis that considers other reasonable alternatives besides "no action" and cumulative impacts analysis that considers the cumulative impacts, and reasonably foreseeable future impacts, of all the fire safety and other exemptions currently in force for both Indian Point Units 3 and 2.¹ The NRC should issue a draft EIS for public comment, and a final EIS that fully responds to comments prior to making a final decision whether to deny, uphold or otherwise modify the exemption, in order to comply with the National Environmental Policy Act (NEPA).
- Hold a formal public hearing in the vicinity of Indian Point, to allow Mr. Brodsky and other Commenters the opportunity to present their concerns, including evidence not currently in the record, regarding the validity of the exemptions at issue here. In the

¹ See List of Indian Point exemptions, 1968-present, ADAMS Accession No. ML12172A370, available on the NRC's online ADAMS database, at <http://adams.nrc.gov/wba/>, last accessed June 3, 2013.

Case 1:09-cv-10594-LAP Document 42-3 Filed 04/11/14 Page 72 of 86

alternative, convene a Category III Public meeting in the vicinity of Indian Point to fully inform the public as to the NRC's process of determining whether an exemption will reduce safety margins and is otherwise consistent with the agency's mandate under the Atomic Energy Act to protect public health and safety.²

In addition, Riverkeeper offers the following comments.

First, in its April 3, 2013 Federal Register Notice soliciting public comment and publishing the EA and FONSI, the NRC asserts that it has amended its regulations to expand the scope of the existing categorical exclusion from the need to prepare an EA, to include exemptions.³ NRC states that 10 CFR §51.22(c)(9) now includes "approvals of licensee exemption requests."⁴ However, a plain reading of the language in 51.22(c)(9) suggests that the regulation applies to license amendments rather than exemption requests.

(c) The following categories of actions are categorical exclusions:...

(9) Issuance of an amendment to a permit or license for a reactor under part 50 or part 52 of this chapter, which changes a requirement, or grants an exemption from any such requirement, with respect to installation or use of a facility component located within the restricted area, as defined in part 20 of this chapter, or which changes an inspection or a surveillance requirement, provided that:

- (i) The amendment or exemption involves no significant hazards consideration;
- (ii) There is no significant change in the types or significant increase in the amounts of any effluents that may be released offsite; and
- (iii) There is no significant increase in individual or cumulative occupational radiation exposure.

10 CFR §51.22(c)(9)

The regulatory language refers to "issuance of an amendment...under part 50 or 52 of this chapter, which...grants an exemption from any such requirement..." Clearly, this regulation applies to license amendments, which are treated much differently under NRC regulation than exemptions. License amendments require full public notice and opportunity for a hearing, while NRC has long maintained that exemptions from regulations do not require the same degree of public due process. Therefore, this regulation does not apply to exemptions that are granted without the issuance of a license amendment, and as a result, the categorical exclusion from preparing an EA/FONSI does not apply to applications for exemptions submitted to NRC staff, unless they are submitted as license amendment requests, and subject to the same due process public notice and hearing rights that attach thereto. The NRC should revise its FR notice to

² In this case, Riverkeeper requests that any meeting or hearing be fully transcribed by the NRC, and the transcript made available to the public. Information on the conduct of Category 3 meetings can be found at <http://www.nrc.gov/reading-rm/doc-collections/nuregs/brochures/br0297/br0297.pdf>, last accessed June 3, 2013.

³ See 78 FR 20144, April 3, 2013 at 20145.

⁴ *Id.*

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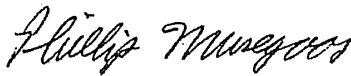
acknowledge this distinction, and correctly explain the applicability of this regulation to the exemption at issue here.

Second, Riverkeeper submits the following documents for the NRC's review and consideration in this matter, and requests that they be made part of the public record in this proceeding.

1. Recommendations Related to Browns Ferry Fire, NUREG -0050, ADAMS Accession No. ML070520452.
2. List of Indian Point exemptions, 1968 – present, Updated 6/20/12, ADAMS Accession No. ML12172A370.
3. NL-07-138, Entergy Reply to Request for Additional Information Regarding License Renewal Application, November 16, 2007 (Fire Protection System and Components)
4. NL-08-0511, Entergy Reply to Request for Additional Information Regarding License Renewal Application (Balance of Plant, Fire Protection and Nickel Alloy), March 12, 2008.
5. Federal Register Notice re: Entergy application for exemptions for Indian Point Unit 3, 77 *FR* 8904, February 15, 2012, NRC-2011-0278; Docket No.: 50-286.
6. Letter from NRC to Jerome Hauer, Commissioner, New York State Division of Homeland Security and Emergency Services, regarding fire safety exemptions at Indian Point, January 31, 2012, ADAMS Accession No. ML113480448.

Riverkeeper appreciates the opportunity to comment on the NRC's review of the above-referenced fire exemptions currently in force at Indian Point 3, and reiterates our request that the exemptions be denied, and Entergy simply be required to comply with the regulations that were developed to prevent catastrophic fires at nuclear power plants under Appendix R to Part 50.

Respectfully,



Phillip Musegaas, Esq.
Hudson River Program Director
Riverkeeper, Inc.
Phillip@riverkeeper.org

A-260

RULES AND DIRECTIVES
BRANCH
USMRC

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Comment On: NRC-2013-0063-0002
Entergy Nuclear Operations, Inc., Indian Point Nuclear Generating Unit No. 3; Extension of Public Comment Period

Document: NRC-2013-0063-DRAFT-0115
Comment on FR Doc # 2013-10792

Submitter Information

Name: Peter Cohen
Address:
201 east 25th street #8F
New York, NY, 10010

5/7/2013
78 FR 26662
125

General Comment

In reference to Docket ID number: NRC-2013-0063.

I am concerned about the safety issues at Indian Point that are being ignored by the NRC and putting millions of New Yorkers in grave danger. Especially in light of the disaster that happened in Japan last year.

I encourage the NRC to deny the exemption and require Entergy to comply with the regulations, which were written to protect the plant and the public from the very real risk of a fire that could lead to a meltdown at Indian Point.

The NRC failed to do an Environmental Impact Study (EIS) of the risks and impacts of granting the exemption, including looking at alternatives, such as replacing the insulation. At a minimum the NRC must conduct a full EIS, look at all alternatives and allow time for public comment.

The NRC should hold a public hearing in the vicinity of Indian Point to fully explain its exemption process, and take public input on Entergy's failure to comply with fire safety regulations that were established over 20 years ago.

With great concern,
Peter Cohen

SUNSI Review Complete

Template = AOM-013

E-RIDS = AOM-03

Add: O. Pickett (dupl)

A-261

RULES AND DIRECTIVES
BRANCH
USNRC

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Comment On: NRC-2013-0063-0002
Entergy Nuclear Operations, Inc., Indian Point Nuclear Generating Unit No. 3; Extension of Public Comment Period

Document: NRC-2013-0063-DRAFT-0116
Comment on FR Doc # 2013-10792

Submitter Information

5/7/2013
78 FR 26662
126

Name: tricia bhatia
Address:
156 South 1st Street
apt 14
brooklyn, ny, 11211

General Comment

The NRC should deny the exemption and require Entergy to comply with the regulations, which were written to protect the plant and the public from the very real risk of a fire that could lead to a meltdown at Indian Point. The NRC failed to do an Environmental Impact Study (EIS) of the risks and impacts of granting the exemption, including looking at alternatives, such as replacing the insulation. At a minimum the NRC must conduct a full EIS, look at all alternatives and allow time for public comment. The NRC should hold a public hearing in the vicinity of Indian Point to fully explain its exemption process, and take public input on Entergy's failure to comply with fire safety regulations that were established over 20 years ago.

SUNSI Review Complete
Template = ADM-013

E-RID = ADM-03
Add: D. Pickett (dup)

A-262

RULES AND DIRECTIVES
BRANCH
USNRC

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Comment On: NRC-2013-0063-0002
Entergy Nuclear Operations, Inc., Indian Point Nuclear Generating Unit No. 3; Extension of Public Comment Period

Document: NRC-2013-0063-DRAFT-0117
Comment on FR Doc # 2013-10792

Submitter Information

Name: Nina Long
Address:
1211 Seymour Lane
Peekskill, NY, 10566

5/7/2013
78 FR 26662
127

General Comment

It is absurd not to make Entergy accountable for fire risks. If there is nothing to hide, and we don't all believe that no harm could ever come to this plant, then why the delays, time and time again? Why exempt the plant from scrutiny. If everything is safe and sound, why not make it all transparent. What have you got to lose?

SUNSI Review Complete

Template = ADM-013

E-RIDS = ADM-03

Add: D. Pickett (dupl)

A-263

RULES AND DIRECTIVES
BRANCH
USNRC

PUBLIC SUBMISSION 2013 JUN 25 AM 9: 36

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Comment On: NRC-2013-0063-0002
Entergy Nuclear Operations, Inc., Indian Point Nuclear Generating Unit No. 3; Extension of Public Comment Period

Document: NRC-2013-0063-DRAFT-0118
Comment on FR Doc # 2013-10792

Submitter Information

5/7/2013
78 FR 26662
(128)

Name: Gail Payne
Address:
1208 Washington Drive
Centerport, NY, 11721
Organization: Sierra Club Nuclear Free Campaign. But I am a NY resident.

General Comment

Indian Point nuclear plant, about 20 miles from NYC MUST follow federal fire safety rules. NO EXEMPTIONS!

There is just way too much at risk. The rules are there to protect us.

SUNSI Review Complete
Template = A0m-013

E-RIDS = A0m-03
Add: D. Pickett (Dupl)

A-264

RULES AND DIRECTIVES
BRANCH
USNRC

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Entergy Nuclear Operations, Inc., Indian Point Nuclear Generating Unit No. 3; Extension of Public Comment Period

Document: NRC-2013-0063-DRAFT-0119
Comment on FR Doc # 2013-10792

Submitter Information

5/7/2013
78 FR 26662
(129)

Name: Richard W. Weiskopf
Address:
5031 Onondaga Road
Syracuse, New York, 13215

General Comment

Public safety should come first! Not the preference of the nuclear industry. Entergy should be required to comply totally with the fire regulations set forth by the NRC. It is disgraceful that Entergy is allowed to be below standard in this respect. This risk of fire has been know for a very long time. No more extensions! Nuclear energy is dangerous and not clean energy or sustainable. There is no solution to the radioactive waste problem. Nuclear plants should be phased out and we need to change to alternative energy such as wind, solar, geothermal.

SUNSI Review Complete
Template = AOM-013

E-RIDS = AOM-03
Add: D. Piclett (dup)

A-265

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USNRC

2013 JUN 25 AM 9:36

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Comment On: NRC-2013-0063-0002
Entergy Nuclear Operations, Inc., Indian Point Nuclear Generating Unit No. 3; Extension of Public Comment Period

Document: NRC-2013-0063-DRAFT-0120
Comment on FR Doc # 2013-10792

Submitter Information

Name: Geraldine Collins
Address:
62 Minuteman Circle
Orangeburg, NY, 10962

5/7/2013
78 FR 26662
(138)

General Comment

The NRC should deny the exemption and require Entergy to comply with the regulations, which were written to protect the plant and the public from the very real risk of a fire that could lead to a meltdown at Indian Point. The NRC failed to do an Environmental Impact Study (EIS) of the risks and impacts of granting the exemption, including looking at alternatives, such as replacing the insulation. At a minimum the NRC must conduct a full EIS, look at all alternatives and allow time for public comment. The NRC should hold a public hearing in the vicinity of Indian Point to fully explain its exemption process, and take public input on Entergy's failure to comply with fire safety regulations that were established over 20 years ago.

SUNST Review Complete

Template = ADM-03

E-R103 = ADM-03

Add: D. Pickett (dup)

A-266

RULES AND DIRECTIVES
BRANCH
USNRC

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Entergy Nuclear Operations, Inc., Indian Point Nuclear Generating Unit No. 3; Extension of Public Comment Period

Document: NRC-2013-0063-DRAFT-0121
Comment on FR Doc # 2013-10792

Submitter Information

5/7/2013
78 FR 26662

Name: Stephanie angelis

(131)

General Comment

The nuclear facilities of the US need to be reexamined and in many cases removed, especially when they impact waterways . Please do not allow this plant to continue operation despite their negative fisheries effects and possible toxic contamination from seismic activity.

SUNSI Review Complete
Template = ADM-013

E-RIDS = ADM-03
Add: D. Pickett (dup)

A-267

RULES AND DIRECTIVES
BRANCH
USNRC

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Comment On: NRC-2013-0063-0002
Entergy Nuclear Operations, Inc., Indian Point Nuclear Generating Unit No. 3; Extension of Public Comment Period

Document: NRC-2013-0063-DRAFT-0122
Comment on FR Doc # 2013-10792

Submitter Information

Name: Joan Ashton
Address:
15 Crumitie RD
Loudonville, NY, 12211

5/7/2013
78 FR 26662
(132)

General Comment

The NRC should deny the exemption and require Entergy to comply with the regulations, which were written to protect the plant and the public from the very real risk of a fire that could lead to a meltdown at Indian Point. The NRC failed to do an Environmental Impact Study (EIS) of the risks and impacts of granting the exemption, including looking at alternatives, such as replacing the insulation. At a minimum the NRC must conduct a full EIS, look at all alternatives and allow time for public comment. The NRC should hold a public hearing in the vicinity of Indian Point to fully explain its exemption process, and take public input on Entergy's failure to comply with fire safety regulations that were established over 20 years ago.

SUNSI Review Complete

Template = ADM-013

E-R105 = ADM-03

Add: D. Pickett (dup 1)

A-268

RULES AND DIRECTIVES
BRANCH
USNRC

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Comment On: NRC-2013-0063-0002
Entergy Nuclear Operations, Inc., Indian Point Nuclear Generating Unit No. 3; Extension of Public Comment Period

Document: NRC-2013-0063-DRAFT-0123
Comment on FR Doc # 2013-10792

Submitter Information

Name: Erica Gray
Address:
Henrico, VA, 23229
Submitter's Representative: self
Organization: grandmother
Government Agency Type: Federal
Government Agency: NRC

5/7/2013
78 FR 26662
133

General Comment

Docket NRC 2013-0063

The NRC should deny the exemption and require Entergy to comply with the regulations, which were written to protect the plant and the public from the very real risk of a fire that could lead to a meltdown at Indian Point. The NRC failed to do an Environmental Impact Study (EIS) of the risks and impacts of granting the exemption, including looking at alternatives, such as replacing the insulation. At a minimum the NRC must conduct a full EIS, look at all alternatives and allow time for public comment. The NRC should hold a public hearing in the vicinity of Indian Point to fully explain its exemption process, and take public input on Entergy's failure to comply with fire safety regulations that were established over 20 years ago.

SUNSI Review Complete

Template = ADM-013

E-RIOS = ADM-03

Add: D. Pickett (dupl)

A-269

Case 1:09-cv-10594-LAP Document 42-3 Filed 04/11/14 Page 83 of 86

PO Box 4
Plymouth, VT 05056
June 3, 2013

5/7/2013
78 FR 26662

134

Cindy Bladey
Chief, Rules, Announcements, and Directives Branch (RADB)
Office of Administration
TWB-05-B01
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

RE: Docket ID NRC-2013-0063
Entergy Nuclear Operations Inc.,
Indian Point Nuclear Generating Unit 3

RECEIVED

2013 JUN 28 AM 9:46

RULES AND DIRECTIVES
BRANCH
USNRC

Dear Ms Bladey:

The fire safety exemption should not be granted.

- NRC violates the Appendix R Defense in Depth by considering this fire safety exemption
- NRC produced unlawful Environmental Assessment (EA) and Finding Of No Significant Impact (FONSI) analysis
- NRC must comply with NEPA requirements regarding foreseeable terrorist acts

The Environmental Assessment and Finding Of No Significant Impact are completely silent about the ways in which the exemption makes a terrorist attack more likely and make the consequences of a terrorist attack much worse. THE EXEMPTION'S RELIANCE ON MANUAL FIRE SUPPRESSION AND ADMINISTRATIVE CONTROLS WILL MAKE A TERRORIST ATTACK MORE LIKELY AND MORE DESTRUCTIVE.

When it originally approved the exemption in 2007 the NRC considered only 11 documents in its possession that analyze its

SUNSI Review Complete
Template = ADM - 013
E-RIDS = ADM-03
Add= D. Pickett (dvp1)

A-270

Case 1:09-cv-10594-LAP Document 42-3 Filed 04/11/14 Page 84 of 86

safety and health impacts. There are dozens and dozens of other such documents that show how dangerous and unnecessary the exemption is. THE NRC MUST CONSIDER ALL THE EVIDENCE AND DOCUMENTS IT HAS THAT RAISE QUESTIONS ABOUT OR SHOW THE EXEMPTION IS DANGEROUS.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert L. Fishman". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Robert L. Fishman

CSR000000260

A-271

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93 Lake Shore Drive
Pine Bush, NY 12566

June 3, 2013

Ms. Cindy Bladely,
Chief, RADB
Office of Administration
TWB-05-B01
US Nuclear Regulatory Commission
Washington, DC 20555-0001

5/17/2013
78FR 26662

135

RECEIVED

2013 JUN 28 AM 9:45

RULES AND DIRECTIVES
BRANCH
USNRC

RE: Docket ID NRC-2013-0063
Entergy Nuclear Operations Inc.,
Indian Point Nuclear Generating Unit 3

Dear Ms. Bladely:

I am very concerned indeed to hear that the NRC is considering further safety exemptions at the Indian Point plant. As if it's not already a tremendous safety hazard and very appealing target for terrorist attacks, I am appalled to hear that the NRC is apparently ready to OK further exemptions in regard to fire safety AND that the public comment period is closed as of today. The public needs to be notified of these plans via print, TV, and internet media and to be given adequate time to absorb this information and to comment to your agency. Extend the comment period! And take safety concerns seriously at Indian Point, including by penalizing Entergy adequately with stiff fines and jail time when they fail to comply with the law.

Yours truly,

Andrew W. Dalton

SUNSI Review Complete
Template = ADM - 013
E-RIDS= ADM-03
Add= D. Pickett (dvp1)

CSR000000261

A-272

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5/7/2013
78 FR 26662

136

Allegra Dengler
60 Judson Avenue
Dobbs Ferry, NY 10522

RECEIVED

2013 JUL -3 PM 2:43

RULES AND DIRECTIVES
BRANCH
USNRC

Cindy Bladey
Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration
Mail Stop: TWB-05-B01M
U.S. Nuclear Regulatory Commission,
Washington, DC 20555-0001

Comments with respect to No. 50-286; NRC-2013-0063.

June 3, 2013

Dear Ms. Bladey,

I was a Trustee for the Village of Dobbs Ferry when the airplane flew right over Indian Point on 9/11. I became very concerned when I learned that evacuation planning was woefully inadequate and we have no insurance for our homes or businesses in case of disaster there.

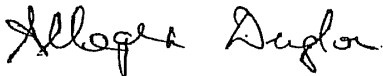
Now, 12 years later, in addition, we have the threat of a Stuxnet or similar computer virus, knowledge of a second earthquake fault, and the worsening extreme weather events brought on by climate change.

All safety regulations must be strenuously enforced. To do otherwise threatens not only public health and safety, but the viability of the nuclear industry. To make exemptions to such things as fire safety is the height of folly. The NRC must comply with NEPA requirements regarding foreseeable terrorist acts.

Keep in mind what is at risk here. It is not too much to say that capitalism itself is at risk in the event of a serious accident or terrorism. The New York Yankees in the nearby Bronx alone are ~~a~~\$2.3 billion.

Please increase safety regulations and enforcement and do not weaken them.

Sincerely,

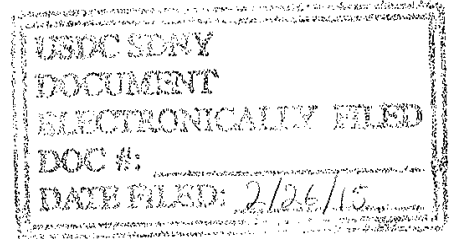


Allegra Dengler

SUNSI Review Complete
Template = ADM - 013
E-RIDS= ADM-03
Add= D. Pickett (dvp1)

A-273

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



<p>RICHARD L. BRODSKY, et al.,</p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">v.</p> <p>UNITED STATES NUCLEAR REGULATORY COMMISSION,</p> <p style="text-align: center;">Defendant.</p>

09 Civ. 10594 (LAP)
MEMORANDUM AND ORDER

LORETTA A. PRESKA, Chief United States District Judge:

This case returns for consideration following remand by the Court of Appeals, after which Defendant United States Nuclear Regulatory Commission ("NRC") initiated a public comment period regarding proposed exemptions to the fire protection standards at Indian Point nuclear power plant. Upon receiving and responding to numerous public comments, the NRC reissued its original exemptions without change. Plaintiffs now challenge that decision and the process that led to it, asking this Court to void the NRC's action on a number of theories, most of which attempt to re-litigate issues previously decided by this Court and affirmed by the Court of Appeals. Because the record demonstrates that the NRC has satisfied its public participation obligations as set out by the Court of Appeals, and because the record reveals no reason to disturb the prior rulings of this case, the Court finds in favor of the NRC.

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I. BACKGROUND

The factual background of this case is set out at length in this Court's previous Opinion and Order, dated March 4, 2011 [dkt. no. 22], with which the Court assumes familiarity. Brodsky v. NRC ("Brodsky II"), 783 F. Supp. 2d 448 (S.D.N.Y. 2011). This section accordingly presents only the background pertinent to the present motion, which is drawn from the Joint Appendix ("JA") and Certified Supplemental Record ("CSR") [dkt. no. 42] filed with the NRC's motion for summary judgment. In 2006, Entergy Nuclear Operations, Inc. ("Entergy"), which owns and operates Indian Point, applied for an exemption from the NRC's recently revised fire-safety provision requiring enclosure of certain cables and equipment in a fire barrier that can withstand fire for at least an hour. (CSR 17.) In response, the NRC undertook a thorough evaluation of the proposed exemption areas and procedures. (Id.) Following this review, the NRC issued an Environmental Assessment ("EA") and a finding of no significant impact ("FONSI") under the National Environmental Policy Act ("NEPA"), which concluded that the exemption would not significantly impact the environment.¹ (Id.)

Upon learning of the NRC's decision, Plaintiffs filed a formal objection contesting the exemption and requesting a

¹ The findings in those documents permitted the NRC to forego the more cumbersome process of preparing an Environmental Impact Statement ("EIS").

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public hearing. (Id.) The NRC rejected that request, and Plaintiffs consequently filed a petition with the Court of Appeals for the Second Circuit seeking review of that action. Brodsky v. NRC ("Brodsky I"), 578 F.3d 175 (2d Cir. 2009). On the NRC's motion, the Second Circuit dismissed Plaintiff's petition, holding that it lacked jurisdiction to hear a direct challenge regarding proceedings involving exemptions. Id. at 183-84. Plaintiffs then filed a complaint with this Court, raising twenty-one causes of action under the Atomic Energy Act ("AEA"), the Administrative Procedure Act ("APA"), and NEPA. (Compl. [dkt. no. 1] dated Dec. 30, 2009.) In its March 4, 2011 Opinion and Order, this Court granted the NRC's motion for summary judgment on all claims and dismissed the action. Brodsky II, 783 F. Supp. 2d at 465-66.

Plaintiffs appealed, and the Second Circuit affirmed this Court's ruling in a Summary Order, with a single exception. See Brodsky v. NRC ("Brodsky Summary Order"), 507 Fed. Appx. 48 (2d Cir. 2013). In a separate Opinion, the Second Circuit vacated this Court's order with respect to Plaintiffs' Eighth Cause of Action, which alleged that the NRC violated NEPA's public participation provisions by failing "to notify or solicit feedback from the public at all regarding the challenged exemption." Brodsky v. NRC ("Brodsky III"), 704 F.3d 113, 121 (2d Cir. 2013) (emphasis in original). Characterizing its

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decision as "narrow," the Court of Appeals concluded that the administrative record was insufficient to determine whether the NRC satisfied NEPA'S public participation requirements. Id. at 124. The opinion accordingly remanded to this Court with instructions "to remand to the NRC so that the agency may: (1) supplement the administrative record to provide an explanation, with supporting affidavits or findings of fact, as to why affording public input into the exemption request was inappropriate or impracticable; or (2) take other such action as it may deem appropriate to resolve this issue." Id. In so holding, the Second Circuit "pronounced[d] no rule as to the degree or form of public participation required before the NRC can grant exemptions from its protocols," though it made clear that the only remaining cause of action on remand was Plaintiffs' NEPA public participation claim, as their other challenges were "generally without merit." Id. at 124-25.

On remand, the NRC chose the second option delineated by the Court of Appeals. Specifically, the agency published notice that it would reconsider the issuance of the Entergy exemption, which included a draft EA and FONSI virtually identical to those issued in 2007, and solicited public comments on that proposed action. (CSR 14-16.) In so doing, the NRC noted that "[a]s necessary, the underlying action (i.e., approval of the exemptions) may be modified in light of public comments." (Id.

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15.) During the subsequent comment period, which was extended at Plaintiffs' request, "[t]he NRC received 135 submissions containing comments from interested members of the public, organizations, and the State of New York." (Id. 18.) The comments ranged widely in topic, including legal objections to the exemption, requests for a hearing, safety objections, objections based on the risk of terrorism, requests to consider alternatives to the proposed exemption, and requests to add documents to the record. (See id. 18-19.)

On August 19, 2013, the NRC reissued the 2007 exemptions together with an EA and FONSI. (Id. 17-20.) This time, however, the agency included responses to the public comments it received, noting that each had been "carefully reviewed by the NRC staff" and referring to a separate document responding more fully to each comment. (Id. 18.) In particular, the agency noted that the commenters' legal objections had been resolved by this Court and the Court of Appeals; that safety objections, including possible terror attacks, were beyond the scope of NEPA's strictly environmental considerations and, regardless, had already been examined by the agency; that the NRC had considered the only feasible alternative (i.e., denying the exemption) and determined that it had no discernably different environmental impacts than granting the exemption; and that the NRC staff reviewed all specific documents referenced in the

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public comments but determined that they lacked "relevance or probative value" sufficient to merit inclusion in the administrative record. (Id. 19.) The NRC also denied the commenters' request for a hearing, noting that after "carefully consider[ing] the many comments from the public," it "concluded that the record is sufficient to weigh all the factors essential to exercising its judgment under NEPA reasonably." (Id. 34.) Thus, after considering all public comments, the NRC concluded that the exemptions would "not have a significant effect on the quality of the human environment," rendering a more cumbersome Environmental Impact Study ("EIS") unnecessary and the present EA and FONSI sufficient. (Id. 20.)

Plaintiffs have returned to this Court to challenge the NRC's post-remand actions. On February 14, 2014, they filed a "Brief on Remand" [dkt. no. 38] asking this Court to hold the NRC's re-issuance of the exemption void on several different theories. First, Plaintiffs complain that the NRC's denial of a public hearing was arbitrary and capricious. (Pl. Br. at 18-19.) Second, they argue that the NRC has provided the Court with an incomplete record and that the agency based its environmental impacts assessment upon an incomplete record. (Id. at 11-16.) Third, Plaintiffs assert that the NRC's refusal to consider safety-related issues or the impacts of terrorism under NEPA was arbitrary and capricious. (Id. at 5-10, 17-18.) Finally,

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Plaintiffs request permission to file supplemental fact and argument regarding renewed AEA and APA claims. (Id. at 20.) To the extent these claims have already been covered by previous decisions in this case, Plaintiffs argue that the present exemption constitutes a distinct agency action from the 2007 issuance and can accordingly be challenged in its entirety, rather than on the narrow NEPA public participation grounds that formed the basis of the Second Circuit's remand. (Id. at 3-4.)

In response, the NRC filed a motion for summary judgment asking the Court to dismiss this action because Plaintiffs' claims are either meritless or concern issues that have already been decided in the NRC's favor. (Def. Mot. [dkt. no. 41] dated Apr. 11, 2014; Def. Mem. of Law [dkt. no. 43] dated Apr. 11, 2014.) Plaintiffs responded with a "Reply Brief on Remand" addressing the NRC's points and arguing that the agency was not entitled to file a summary judgment motion under the applicable procedural rules and scheduling orders. (Pl. Reply [dkt. no. 44] dated Apr. 29, 2014.)

II. PROCEDURAL POSTURE

As an initial matter, the parties dispute the procedural posture of the instant motion. Despite asking this Court to issue an order granting specific relief, Plaintiffs' briefs were not accompanied by any corresponding motion. Plaintiffs rely on their own inaction to object that the NRC had no right to file

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any motion under this Court's briefing schedule. But query what the purpose of briefing would be absent a motion. Cf. Fed. R. Civ. P. 7(b)(1) ("A request for a court order must be made by motion."). When setting a schedule following a conference, the Court anticipated the filing of dispositive motions mirroring the process that these same parties followed in 2011. The NRC thus complied with both this Court's Individual Practices and the Federal Rules of Civil Procedure when filing the instant motion for summary judgment.

Plaintiffs further object that the NRC's failure to file a Local Rule 56.1 Statement of Undisputed Facts is a fatal procedural defect to its motion. In so doing, Plaintiffs appear to have forgotten that no such statement was required the last time the Court considered a summary judgment motion in this case because the administrative record was sufficient. See Brodsky II, 783 F. Supp. 2d at 450. Plaintiffs have not requested any additional discovery, and the record before the Court is complete and appropriate for a summary judgment ruling, just as it was when this Court previously ruled in 2011. Moreover, Plaintiffs had the opportunity to address fully each of the NRC's arguments in their Reply and cannot claim to be prejudiced by their apparent confusion as to the status of the agency's motion. Ultimately, Plaintiffs' procedural objections appear to misunderstand the relevant procedural rules and the purpose of

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the present briefing schedule.² The Court finds that the NRC's motion for summary judgment was appropriately filed and accordingly considers that motion here.

III. APPLICABLE LAW

A party is entitled to summary judgment only where the record makes clear that "there is no genuine issue as to any material fact," and "the moving party is entitled to judgment as a matter of law." Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986) (quoting Fed. R. Civ. P. 56(c)) (internal quotation mark omitted). A fact is material if it "might affect the outcome of the suit under the governing law" Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). A dispute is genuine "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." Id. The moving party bears the burden of showing the absence of any genuine dispute of material fact, and the Court shall "resolve all ambiguities and draw all reasonable inferences in the non-movant's favor."

² Plaintiffs would be wise to consider their own glass house before complaining about their opponent's procedural adherence. While repeatedly accusing the NRC of procedural errors it did not commit, Plaintiffs themselves have violated Federal Rule of Civil Procedure 7(b) by filing a "Brief on Remand" seeking a court order without an accompanying motion. Fed. R. Civ. P. 7(b)(1) ("A request for a court order must be made by motion."). Moreover, Plaintiffs incorrectly claim that the NRC has violated this Court's Individual Practices while themselves failing to abide by the provision requiring parties to submit "[t]wo courtesy copies of all filings . . . as soon as practicable after filing . . . for both ECF and non-ECF designated cases." Individual Practices of Chief Judge Loretta A. Preska ¶ 2.B (Sept. 11, 2013). If anything, the NRC's decisions to file a motion accompanying its memorandum of law and to provide the requisite courtesy copies of its briefing materials offer a refreshing example of procedural compliance that Plaintiffs would be well-advised to follow.

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Vermont Teddy Bear Co. v. 1-800 Beargram Co., 373 F.3d 241, 244 (2d Cir. 2004).

NEPA's purpose is "to ensure that federal agencies examine and disclose the potential environmental impacts of projects before allowing them to proceed." Pogliani v. U.S. Army Corps of Eng'rs, 306 F.3d 1235, 1237 (2d Cir. 2002). The Court of Appeals for the Second Circuit has explained that "NEPA is, at its core, a procedural statute that mandates a process rather than a particular result," such that "judicial review of administrative choices under NEPA . . . focuses primarily on the procedural regularity of the decision, rather than on its substance." Brotsky III, 704 F.3d at 118 (alteration in original) (quoting Stewart Park & Reserve Coal., Inc. (SPARC) v. Slater, 352 F.3d 545, 557 (2d Cir. 2003); Sierra Club v. U.S. Army Corps of Eng'rs, 772 F.2d 1043, 1055 (2d Cir. 1985)) (internal quotation marks omitted). In considering agency action under NEPA, courts apply the APA standard of review, which asks whether a contested action is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A). This standard requires assurance "that the agency examine[d] the relevant data and articulate[d] a satisfactory explanation for its action," along with "a rational connection between the facts found and the choice made." Natural Res. Def. Council, Inc. v. EPA, 658 F.3d 200,

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215 (2d Cir. 2011) (alteration in original) (quoting Natural Res. Def. Council, Inc. v. FAA, 564 F.3d 549, 555 (2d Cir. 2009)) (internal quotation marks omitted).

Here, the Court is primarily concerned with whether the NRC satisfied NEPA's public participation requirements before issuing the EA/FONSI and granting the Indian Point exemption, as highlighted by the Second Circuit's remand. Brodsky III, 704 F.3d at 125. Federal regulations make clear that "public scrutiny [is] essential to implementing NEPA." 40 C.F.R. § 1500.1(b). Agencies are accordingly expected to "[e]ncourage and facilitate public involvement in decisions which affect the quality of the human environment" and to "[m]ake diligent efforts to involve the public in preparing and implementing their NEPA procedures." Id. §§ 1500.2(d), 1506.6(a). Specifically, when preparing an EA, agencies must involve the public "to the extent practicable," and when preparing a FONSI, agencies are expected to make the finding available "[i]n certain limited circumstances . . . for public review." Id. § 1501.4(b), (e)(2). Agencies are further required to hold public hearings regarding their NEPA actions "whenever appropriate," taking into consideration whether there is any "[s]ubstantial environmental controversy concerning the proposed action or substantial interest in holding the hearing." Id. § 1506.6(c).

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The Court of Appeals has clarified that under these provisions, an agency "must involve the public in the NEPA review process and consider the views of other interested federal, state, and local entities in making its decision." Pogliani, 306 F.3d at 1237-38. The Second Circuit has not, however, required a particular form or degree of public participation to fulfill this obligation but has rather acknowledged that agencies maintain "considerable discretion to decide the extent to which such public involvement is 'practicable.'" Brodsky III, 704 F.3d at 121 (quoting 40 C.F.R. § 1501.4(b)); see also Hanly v. Kleindienst, 471 F.2d 823, 835 (2d Cir. 1972) ("[N]either NEPA nor any other federal statute mandates the specific type of procedure to be followed by federal agencies."). Indeed, the Court of Appeals has previously upheld agency actions under NEPA both where hearings were held without prior circulation of the agency's analysis and where there was no public hearing but "public input in other forms had alerted the agency to the citizenry's concerns before the challenged decision was reached." Brodsky III, 704 F.3d at 121 (citing Pogliani, 306 F.3d at 1238; Town of Rye v. Skinner, 907 F.2d 23, 24 (2d Cir. 1990); Friends of the Ompompanoosuc v. FERC, 968 F.2d 1549, 1552 (2d Cir. 1992)). Rather than imposing a particular formulaic requirement, a reviewing court's inquiry focuses on whether the alleged "lack of public input prevented

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the agency 'from weighing all the factors essential to exercising its judgment [under NEPA] in a reasonable manner.'" Id. (alteration in original) (quoting Friends of the Ompompanoosuc, 968 F.2d at 1557).

Beyond the public participation considerations, several of Plaintiffs' points in their briefing attempt to rehash issues previously decided by this Court and affirmed on appeal. When considering these topics, the Court is guided by the law of the case doctrine, which "counsels against revisiting [] prior rulings in subsequent stages of the same case absent cogent and compelling reasons such as an intervening change of controlling law, the availability of new evidence, or the need to correct a clear error or prevent manifest injustice." United States v. Thorn, 446 F.3d 378, 383 (2d Cir. 2006) (quoting United States v. Tenzer, 213 F.3d 34, 39 (2d Cir. 2000)) (internal quotation marks omitted). Indeed, this doctrine arguably holds extra weight for this Court, where the Court of Appeals has previously affirmed this Court's rulings in its non-precedential but still persuasive summary order. See United States v. Carr, 557 F.3d 93, 104 (2d Cir. 2009) ("[T]he doctrine bars the district court on remand from revisiting issues that were adjudicated on the prior appeal"); Rezzonico v. H&R Block, Inc., 182 F.3d 144, 148-149 (2d Cir. 1999) ("[U]nder law of the case a trial court cannot reconsider on remand an issue decided by an

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appellate court."). Thus, to the extent Plaintiffs raise arguments that have previously been decided and affirmed as a matter of law in this case, this Court will be disinclined to reconsider them absent new evidence in the record justifying a different result.

IV. DISCUSSION

A. Public Participation and Denial of Hearing

Plaintiffs' only challenge to the sufficiency of public participation on this record alleges that the NRC's refusal to hold a hearing was arbitrary and capricious. Although Plaintiffs recognize that the NRC maintains discretion in determining whether a hearing is necessary, they argue that the agency's failure to evaluate expressly the extent of "substantial interest" or "substantial environmental controversy" in reaching its decision means that it failed to make a necessary assessment under NEPA. (Pl. Br. at 18-19.) Yet these assertions are belied by the record. The NRC clearly noted that it had reviewed all public comments and "concluded that the record is sufficient to weigh all the factors essential to exercising its judgment under NEPA reasonably." (CSR 34.) Although this explanation does not directly reference the degree of interest in a hearing or the extent of environmental controversy surrounding the challenged action, such formulaic recitations of regulatory factors are not the touchstone of

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NEPA's public participation requirements. Rather, the key consideration is whether the lack of a public hearing prevented the agency "from weighing all the factors essential to exercising its judgment in a reasonable manner." Friends of the Ompompanoosuc, 968 F.2d at 1557.

Here, the record reflects the NRC's conscientious consideration of and response to all public comments, (CSR 18-19, 21-42), and the agency is entitled to deference in its decision following that process that a hearing was not necessary. See Brodsky III, 704 F.3d at 121. Even if a hearing "might have been beneficial" in light of the apparently high degree of public interest, Friends of the Ompompanoosuc, 968 F.2d at 1557, the extensive notice and comment period "alerted the agency to the citizenry's concerns before the challenged decision was reached," and a hearing was therefore not required. Brodsky III, 704 F.3d at 121; see also id. at 120 ("Given the discretion afforded agencies by the regulatory text, however, we will not readily second guess an agency decision not to hold a public hearing in a particular case.").

The record demonstrates the NRC's diligence in soliciting, considering, and responding to all public input (see CSR 18-52), which confirms that the agency has indeed "taken the kind of 'hard look at environmental consequences'" expected to arise out of public commentary. Id. at 123 (quoting Coalition on W.

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Valley Nuclear Wastes v. Chu, 592 F.3d 306, 310 (2d Cir. 2009)). The NRC's actions on remand addressed the Second Circuit's concerns regarding public participation, and there appears to be no other dispute regarding the adequacy of that participation under NEPA. Accordingly, the NRC is entitled to summary judgment on Plaintiffs' challenge under the public participation provisions of NEPA.

B. Remaining Issues

Plaintiffs' remaining concerns raise legal issues that have already been addressed by prior decisions in this case. Though Plaintiffs are correct that the NRC's most recent issuance of an exemption constitutes a new agency action, the EA and FONSI are virtually indistinguishable from the agency's prior action except for the addition of public commentary and the agency's response thereto. As such, this record can only disturb prior decisions to the extent that it raises new evidence suggesting that previous legal conclusions may have been erroneous. See Thorn, 446 F.3d at 383. A complete reconsideration of all previously decided legal questions based solely on additional commentary added to the original record would otherwise waste judicial resources and render the Second Circuit's broad affirmance and "narrow" remand meaningless. Brodsky III, 704 F.3d at 124; see Rezzonico, 182 F.3d at 148-149.

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With regard to Plaintiffs' concerns about the adequacy of the record, their assertion that the original Certified Record is inadequate has already been rejected by this Court and the Court of Appeals and will not be reconsidered. See Brodsky Summary Order, 507 Fed. Appx. at 52; Brodsky II, 783 F. Supp. 2d at 464-65. Their related claim that the agency failed to consider documents raised by public comments fails for similar reasons. In support of this argument, Plaintiffs offer an affidavit listing certain documents that the NRC allegedly failed to consider. (Decl. of Richard Brodsky, Esq. [dkt. no. 38] dated Feb. 14, 2014, ¶¶ 9-21.) They did not, however, attach those documents for review or provide them to the agency for its review during the comment period, a defect that this Court and the Court of Appeals previously found "fatal" to their parallel argument regarding the original record. Brodsky Summary Order, 507 Fed. Appx. at 52; Brodsky II, 783 F. Supp. 2d at 464. Plaintiffs' conclusory affidavit fails to articulate with any specificity what particular content in these documents is "relevant or probative." Brodsky Summary Order, 507 Fed. Appx. at 52. Nevertheless, the NRC stated in response to the public comments it received that it had in fact considered at least some of the documents identified in Plaintiffs' affidavit, to the extent they could be located, and concluded that they were not pertinent. (CSR 32-33.) The NRC is entitled to

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deference in its "determination that the record represents the documents it needed to consider to evaluate the exemption," and this Court will not second-guess the agency's representation that it considered these documents and found them irrelevant, especially when Plaintiffs have not provided them for review. Brodsky Summary Order, 507 Fed. Appx. at 52.

At the same time, Plaintiffs argue that the present record is inadequate because the NRC failed to include certain documents that it indirectly considered by virtue of their identification in the public comments. (Pl. Br. at 13-16.) The NRC is presumed to have acted honestly in compiling the record, and courts accordingly "afford deference to the agency's determination that the record represents the documents it needed to consider to evaluate the exemption." Brodsky Summary Order, 507 Fed. Appx. at 52; see Estate of Landers v. Leavitt, 545 F.3d 98, 113 (2d Cir. 2008). As already discussed, the record reveals that the NRC reviewed some of the documents raised by the commenters to the extent they were identifiable, but that review on its own does not make those documents relevant to the agency's determination. (CSR 32-33.) The agency specifically found that the documents identified by the commenters "do not provide new and significant information and are not relevant to the proposed action." (Id. 33.) Nothing requires the NRC to include irrelevant documents that did not impact its decision in

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the record, and the Court will only consider extra-record documents "when the administrative record is so inadequate as to prevent the reviewing court from effectively determining whether the agency considered all environmental consequences of its proposed action." Nat'l Audubon Soc'y v. Hoffman, 132 F.3d 7, 15 (2d Cir. 1997); see Brodsky Summary Order, 507 Fed. Appx. at 52 ("We disagree that these documents should have been added to the administrative record simply because they might have influenced the decision."). The record here reflects the NRC's reasoned decision not to include documents that it reviewed but found irrelevant, and Plaintiffs' conclusory assertions to the contrary, without providing the particular documents for review, fail to demonstrate that the NRC excluded anything probative or relevant.

Plaintiffs' remaining complaints focus on the NRC's alleged refusal to consider safety-related concerns raised by public comments. To the extent these arguments focus on a potential terror attack, this Court and the Court of Appeals have already found that "Plaintiffs' speculation that a terrorist attack would disable more firefighting personnel than would a significant fire, thus making increased reliance on manual fire suppression unsafe, is insufficient to demonstrate that the agency's defense-and-security finding was arbitrary and capricious." Id. at 52. Nothing in the recent public comments

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adds credibility to Plaintiffs' concern, and NEPA does not require further consideration of the environmental impacts of terrorism-related fires "because the effect on the environment would be no worse than that of a severe accident at the plant." Brodsky II, 783 F. Supp. 2d at 462 n.10. Nevertheless, the NRC addressed commenters' concerns about a potential terrorist attack, noting that it "has analyzed plausible threat scenarios" and concluded "from its independent safety evaluation . . . that the configuration of the fire zones under review provide reasonable assurance that a severe fire is not plausible and the existing fire protection features are adequate." (CSR 19; see also id. 29-31.) This reasonable response further undermines any claim that the NRC failed to consider a potential terror attack and demonstrates that its analysis regarding such a scenario was not arbitrary and capricious.

With regard to other safety concerns, although the NRC noted that such issues were "beyond the scope" of NEPA public comments, it still addressed every safety issue raised in the public comments and again concluded that the "exemptions will not result in a decreased or otherwise unacceptable reduction in safety margins." (CSR 19, 25; see also id. 29-31.) This Court and the Court of Appeals have already emphasized that "[i]nsofar as the NRC concluded the 'change to the plant requirements for the specific configuration in this fire zone' resulting from the

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exemption bore 'no relation to security issues,' the agency is much better situated than is this court to make such a finding on the record presented." Brodsky Summary Order, 507 Fed. Appx. at 52 (quoting J.A. 515). This Court will not now "substitute [its] judgment for the substantive decisions of the [NRC]," where the record reflects the agency's diligent consideration of and response to every public comment, as well as its reasonable conclusion that none of those comments altered the NRC's original analysis. Brodsky II, 783 F. Supp. 2d at 464.

Finally, Plaintiffs have requested permission to submit "supplemental fact and argument" regarding certain "AEA and APA claims" that were previously rejected by this Court and the Court of Appeals. (Pl. Br. at 20.) Given the "narrow" purpose of the Second Circuit's remand, as well as this Court's renewed conclusion that the NRC has satisfied its obligations under NEPA and conducted a reasoned review of any new information raised by the public comments, Plaintiffs' request is denied. Brodsky III, 704 F.3d at 124.

CONCLUSION


Based on a review of the record, this Court concludes that the NRC has demonstrated that there are no genuine issues of material fact and that it is entitled to judgment as a matter of law. For the foregoing reasons, Defendant's motion for summary judgment [dkt. no. 41] is hereby GRANTED. The Clerk of the

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Court shall mark this action CLOSED and all pending motions
DENIED as moot.

SO ORDERED:

Dated: February 26, 2015
New York, New York



LORETTA A. PRESKA
Chief United States District Judge

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ELECTRONICALLY FILED
DOC #:
DATE FILED: 2/27/2015

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

-----X
RICHARD L. BRODSKY, et al.,
Plaintiffs,

09 CIVIL 10594 (LAP)

-against-

JUDGMENT

UNITED STATES NUCLEAR REGULATORY
COMMISSION,
Defendant.
-----X

Whereas this case returns for consideration following the remand by the Court of Appeals, after which Defendant United States Nuclear Regulatory Commission ("NRC") initiated a public comment period regarding proposed exemptions to the fire protection standards at Indian Point nuclear power plant; upon receiving and responding to numerous public comments, the NRC reissued its original exemptions without change; Plaintiffs now having challenged that decision and the process that led to it, asking this Court to void the NRC's action on a number of theories, most of which attempt to re-litigate issues previously decided by this Court and affirmed by the Court of Appeals, and the matter having come before the Honorable Loretta A. Preska, United States District Judge, and the Court, on February 26, 2015, having rendered its Memorandum and Order concluding that the NRC has demonstrated that there are no genuine issues of material fact and that it is entitled to judgment as a matter of law, granting Defendant's motion for summary judgment, and directing the Clerk of the Court to mark this action closed and denying all pending motions as moot, it is,

ORDERED, ADJUDGED AND DECREED: That for the reasons stated in the Court's Memorandum and Order dated February 26, 2015, Defendant's motion for summary judgment is hereby granted; accordingly, the case is closed, and all pending motions are denied as moot.

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Dated: New York, New York
February 27, 2015

RUBY J. KRAJICK

Clerk of Court

BY:



Deputy Clerk

THIS DOCUMENT WAS ENTERED
ON THE DOCKET ON _____

A-297

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

RICHARD L. BRODSKY, SIERRA CLUB-
ATLANTIC CHAPTER, WESTCAN
(List the full name(s) of the plaintiff(s)/petitioner(s).)

1:09 CV 10594 (LAP) ()

-against-

NOTICE OF APPEAL

UNITED STATES Nuclear Regulatory
Commission
(List the full name(s) of the defendant(s)/respondent(s).)

Notice is hereby given that the following parties: RICHARD L. BRODSKY,

(list the names of all parties who are filing an appeal)

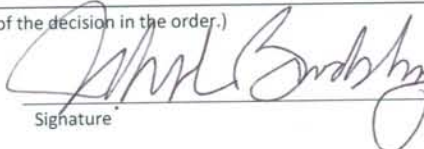
in the above-named case appeal to the United States Court of Appeals for the Second Circuit

from the judgment order entered on: 2/27/15
(date that judgment or order was entered on docket)

that: GRANTED DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

(If the appeal is from an order, provide a brief description above of the decision in the order.)

APRIL 20, 2015
Dated


Signature

BRODSKY, RICHARD L.
Name (Last, First, MI)

2121 SAW MILK RIVER ROAD, White Plains, NY 10607
Address City State Zip Code

914 720 8830
Telephone Number

RICHARDBRODSKY@MSN.COM
E-mail Address (if available)

* Each party filing the appeal must date and sign the Notice of Appeal and provide his or her mailing address and telephone number, EXCEPT that a signer of a pro se notice of appeal may sign for his or her spouse and minor children if they are parties to the case. Fed. R. App. P. 3(c)(2). Attach additional sheets of paper as necessary.