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OFFICE OF THE ATTORNEY GENERAL

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DIVISION OF SOCIAL JUSTICE
ENVIRONMENTAL PROTECTION BUREAU

March 18, 2011

Chairman Gregory B. Jaczko
Commissioner Kristine L. Svinicki
Commissioner George Apostolakis
Commissioner William D. Magwood, IV
Commissioner William C. Ostendorff
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555
Via electronic and U.S. Mail

Re: Seismic Risk at Indian Point Nuclear Generating Station

Dear Chairman Jaczko and Commissioners Svinicki, Apostolakis, Magwood, and Ostendorff:

I am writing you as a nuclear crisis, initiated by the March 11 earthquake and subsequent tsunami in Northern Japan, is still unfolding. In addition to its potentially devastating impact on the people of Japan, this crisis serves as a graphic demonstration that nuclear power facilities in the U.S. may be vulnerable to seismic activity and experience catastrophic failures that compromise their ability to control and cool multiple nuclear reactors. Data from your staff analysis (GS-199), which demonstrates an increased risk of seismic activity at some nuclear power plants in the country add to my concern.

These factors underscore the importance of a fair, open, and full assessment of seismic risks in the relicensing of Indian Point.

New York State has raised concerns about seismic risk and other issues in relation to the relicensing of Indian Point with your staff on numerous occasions. At each turn, however, the NRC has refused to consider these critical issues in the relicensing review process.

As you know, the Indian Point nuclear power station in Buchanan, New York sits 24 miles from New York City. Of all the power reactors in the United States, the two operating Indian Point reactors have the highest surrounding population both within a 50-mile radius and a 10-mile radius. Seventeen million people live within 50 miles of these reactors. Indian Point Units 2 and 3, which initially came on line in 1973 and 1975, are currently the subject of an adjudicatory proceeding to extend their license by another 20 years (Unit 1 ceased generating in the 1970s).

As the NRC has acknowledged, Indian Point Unit 1, which was authorized in 1956, was built prior to any specific requirement for earthquake protection. Although the NRC revoked the operating license for the Indian Point Unit 1 power reactor in 1980, many of Unit 1's system, structures, and components were conjoined to Unit 2 and Unit 3 and are still in use today. These aging Unit 1 systems, structures, and components were built to inferior seismic specifications, and Unit 2 and Unit 3's continued reliance on these systems today poses significant safety questions.

The NRC has consistently blocked consideration of New York's seismic concerns, as well as related concerns about population, emergency evacuation, fire safety, and site security.

In November of 2007, the Attorneys General of New York, Connecticut, Delaware, Illinois, Kentucky, and Vermont submitted a letter to the NRC which expressed the states' serious concerns about the NRC's failure to confront issues such as local seismic activity when deciding whether to renew the operating license of a nuclear power plant beyond its initial forty-year term. The states requested that the NRC expand relicensing criteria to include seismic analysis. On December 30, 2007, the NRC rejected this request.

The NRC also disregarded New York's "scoping" comments in 2007, which noted that the Indian Point operator's Environmental Report and Updated Final Safety Analysis Reports do not reflect seismic information developed after the early 1980s, and which asked the NRC to require the owner to revise those outdated documents. The NRC subsequently issued a Draft Environmental Impact Statement (DSEIS) based on this out-of-date information. The DSEIS failed to mention new information regarding seismic activity developed recently by the United States Geological Survey (USGS) that included the area around Indian Point or to account for the findings of Columbia's Lamont-Doherty Earth Observatory 2008 study. In fact, the NRC has not revised any of its Indian Point-related environmental analyses to take into account findings from this important independent study.

Perhaps most egregious is the NRC Staff's issuance of the Final Supplemental Environmental Impact Statement (FSEIS) for Indian Point, which it issued three months after Staff issued the GS-199 analysis on seismic activity. The FSEIS did not make any reference to the NRC's own findings of increased seismic risk at Indian Point.

In November of 2007, the state submitted two contentions in the license renewal proceeding arguing that the applicant's "Updated" Safety Evaluation Report and Environmental Report insufficiently analyzed alternatives for mitigation of severe accidents like earthquakes in that it (1) failed to include recent information regarding the type, frequency, and severity of potential earthquakes and (2) failed to include an analysis of mitigation measures which could reduce the effects of an earthquake damaging the parts of inactive Indian Point Unit 1 which are currently in use at Units 2 and 3. The NRC Staff opposed acceptance of these contentions, and the Atomic Safety and Licensing Board excluded them from consideration in the adjudicatory proceeding because, it said, the state did not suggest feasible alternatives to address risks posed by the new data, or estimate the cost of the increased margin of safety that would result from any

severe accident mitigation action. This burden is clearly not the public's to bear and these contentions were excluded in error.

Earlier this week, in testimony before the Senate Committee on Environment and Public Works, Chairman Jaczko stated the NRC's intention to conduct a review of the earthquake-related risks faced by nuclear power facilities operating in the central and eastern U.S. He stated that this review would take one to two years to complete, followed by a similar period of time to consider and implement mitigation measures. Indian Point Units 2 and 3 are currently the subject of a proceeding to extend their licenses by another 20 years – a proceeding in which the NRC has consistently ignored serious consideration of the risks that earthquakes and related issues pose to the Indian Point facility.

NRC should not contemplate relicensing Indian Point without first completing an open and public review of earthquake-related risks faced by this facility.

For this reason, the NRC must undertake an immediate, full, fair, and open assessment of all public health and safety risks that earthquakes pose to this facility, and provide the public an opportunity to fully review and comment on all phases of this review.

In addition, the NRC must take the following actions:

1. Promulgate an amendment to Part 54 and any other relevant regulations, which exclude seismicity analysis from the scope of safety review in relicensing proceedings, to specifically require the preparation of a public site-specific seismic analysis for the Indian Point and other reactors;
2. Open up the GS-199 seismic analysis proceeding for meaningful participation by states and the public so that all assumptions can be identified and tested and ensure that all information used in this proceeding is made available in the public record;
3. Address the risk posed by the Indian Point Unit 1 facilities, which share many common components and systems with the other Indian Point units, in a complete and transparent way;
4. Incorporate USGS findings and Columbia Lamont-Doherty's findings into the Indian Point FSEIS for license renewal and re-issue the document for additional public review and comment;
5. Make public immediately the Commission's plans, in their entirety, for addressing seismic risk at all three Indian Point plants; and
6. Maximize public involvement in the Commission's and the NRC Staff's actions regarding seismic risk at Indian Point.

Whether or not one supports the re-licensing of Indian Point Units 2 and 3, we can all agree that we must protect the health, safety, and environment of the nearly 20 million people

living in close proximity to the facility. Only through a full, fair, and open assessment of the earthquake and related security risks surrounding this uniquely-situated plant – one that precedes any consideration of approving an extension of the Indian Point facility for another 20 years – can we provide these fundamental protections.

I thank you for your attention this request, and please do not hesitate to contact me at any time if I can provide additional information or you would like discuss this matter in greater detail.

Sincerely,

A handwritten signature in black ink, appearing to read "Eric Schneiderman". The signature is fluid and cursive, with a prominent initial "E" and a long, sweeping underline.

Eric T. Schneiderman
Attorney General