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Three Empire State Plaza, Albany, NY 12223-1350  
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March 20, 2023

VIA EMAIL

Hon. Michelle L. Phillips  
Secretary to the Commission  
3 Empire State Plaza  
Albany, NY 12223-1350

Re: Matter No. 21-01188 – In the Matter of the Indian Point Closure Task Force and Indian Point Decommissioning Oversight Board.

Dear Secretary Phillips:

Please accept for filing in the above-captioned matter, responses from the U.S. Department of Energy to questions raised at the December 7, 2022 Indian Point Decommissioning Oversight Board meeting. Should you have any questions regarding this filing, please contact me. Thank you.

Respectfully submitted,

Tom Kaczmarek  
Executive Director  
Indian Point Closure Task Force  
Indian Point Decommissioning Oversight Board

**DOE Responses to Public Comments and Questions  
December 7, 2022 DOB Meeting**

The responses below were provided by the U.S. Department of Energy (DOE).

## SPENT FUEL MANAGEMENT

**1. Isn't interim storage in contradiction to the Nuclear Waste Policy Act which requires a permanent repository be designated first?**

In the FY2021, FY2022, and FY2023 appropriations language, DOE was directed by Congress to move forward under existing authority to identify a site for a federal interim storage facility. DOE was further directed to use a consent-based approach when undertaking these activities. DOE has not received funding or direction from Congress to work on a permanent repository since FY2010.

**2. Will you consider the option of providing hardened onsite storage instead of transporting the waste off-site?**

Under the Standard Contract (10 CFR Part 961) of the Nuclear Waste Policy Act of 1982, as amended, DOE's responsibility is to arrange for, and provide, a cask(s) and all necessary transportation of the SNF and/or HLW from the Purchaser's site (e.g., site owner) to the DOE facility. DOE's responsibilities under the Standard Contract do not include providing continued storage at commercial nuclear power plant sites. In addition, the choice of which storage system to deploy at a nuclear power plant site is the responsibility of the site owner, not the DOE.

**3. Will the entire length of the train tracks used to transport spent fuel be inspected to make sure that there are no damaged or stressed areas that could be a potential issue transporting these heavy casks?**

The regulations covering the inspection of railroad tracks come under the U.S. Department of Transportation Federal Railroad Administration (FRA), and are not contained in DOE regulations. The FRA is preparing the document Safety Compliance and Coordination Oversight Plan (SCCOP) for Rail Transportation of High-Level Radioactive Waste and Used Nuclear Fuel. Previous versions of this document addressed track inspections.

**4. Can DOE confidently get to some of the locations they mentioned for potential spent fuel transport (Croton, Peekskill South Street, Danbury, CT) without crossing the interstate natural gas pipeline because it goes under Rt. 9, Rt 84, Rt 684, Palisades, Taconic, etc.?**

The shipping of spent nuclear fuel transportation casks via heavy haul trucks from the Indian Point site to a heavy haul truck-to-rail transload location would require permits from the State of New York and in some cases the State of Connecticut. Any permitting requirements regarding natural gas lines imposed by the State of New York or the State of Connecticut would be considered by the DOE in determining which heavy haul truck to rail transload location to use.

**5. Has DOE considered the danger posed by shipping HLNW through Environmental Justice communities? Or the impacts on environmental justice communities in NM and TX that have been overburdened with exposure?**

While a DOE Environmental Impact Statement would discuss the potential for impacts to affected communities, including disadvantaged communities, the regulations covering the rail routing of spent nuclear fuel are contained in 49 CFR 172.820 and come under the U.S. Department of Transportation Pipeline and Hazardous Materials Administration (PHMSA). In addition, evaluation of potential impacts from industry shipments of spent nuclear fuel to the private interim storage facilities being developed in New Mexico and Texas would be the responsibility of the NRC not the DOE.

**6. What location will the casks be stored? Is there a federal site review program to implement a national spent rod storage site? When will the Federal government concentrate on and provide a permanent spent nuclear fuel storage facility?**

In the FY2021, FY2022, and FY2023 appropriations language, DOE was directed by Congress to move forward under existing authority to identify a site for a federal interim storage facility. DOE was further directed to use a consent-based approach when undertaking these activities. DOE has not received funding or direction by Congress to work on a permanent spent nuclear fuel disposal facility since FY 2010. In December 2021, DOE re-initiated a consent-based siting program to site one or more federal consolidated storage facilities. A request for information (RFI) on Using a Consent-Based Siting Process to Identify Federal Interim Storage Facilities was published in December 2021, and feedback received from the RFI informed the issuance of a DOE funding opportunity in September 2022 to Support Community Engagement with Consent-based Siting Activities. DOE currently plans to open and operate a federal consolidated interim storage facility in the 2030s.

**7. Will the NRC/DOE comply with the 2004 Appeals Court ruling and establish a deep geologic repository following the National Academy of Science Safety Containment Guidelines of 300,000 years?**

Federal agencies, including the DOE, are authorized to act in accordance with both Congressional direction and Appropriations. DOE has not received funding or direction from Congress to work on a permanent repository since FY 2010.

**8. Will the DOE forgo the safety preemption in order to engage in true Consent Based Siting?**

Prioritization of safety is one of the key consent-based siting principles. Making safety a key principle is not inconsistent with a consent-based siting process. There are many locations in the United States that could be suitable for storing spent nuclear fuel in a licensed storage facility that meets safety regulations. There are currently more than 70 operating independent spent fuel storage installations in the US, mostly at nuclear power plant sites, that have been and continue to be assessed for safety and are licensed by the Nuclear Regulatory Commission. In addition, potential

host communities may want to study the safety of a waste management facility themselves, which is why the consent-based siting process envisions providing resources to communities to support activities such as independent evaluations, and/or advisory services of independent experts.

**9. Is the DOE committed by law and regulation to accept spent fuel in order of the reactors closing?**

Section VI.B.1(b) of the Standard Contract (10 CFR Part 961) of the Nuclear Waste Policy Act of 1982, as amended, states that “Notwithstanding the age of the SNF and/or HLW, priority may be accorded any SNF and/or HLW removed from a civilian nuclear power reactor that has reached the end of its useful life or has been shut down permanently for whatever reason.”

In addition, in the December 2008 Report to Congress on the Demonstration of the Interim Storage of Spent Fuel from Decommissioned Nuclear Power Reactor Sites (DOE/RW-0596, 2008), DOE stated that:

*The contract allows the OFF [oldest fuel first] queue to be altered under certain conditions with Department consent. For instance, utility companies may, subject to Department approval, exchange places in the waste acceptance queue. Additionally, the Department may alter the queue by granting priority acceptance in cases of emergencies or by permitting priority acceptance of the SNF from reactors that have permanently ceased operations (decommissioned reactors). The Department has been asked, on numerous occasions, to exercise its discretion under the Standard Contract to allow for the priority acceptance of SNF from decommissioned reactors. In all instances, the Department has declined to grant this priority, noting that doing so would, because of the finite nature of the federal government’s planned waste acceptance capacity, adversely affect the timely removal of SNF from operating reactor sites. In other words, acceleration in waste acceptance from a decommissioned reactor site would result in a corresponding delay in removing SNF from an operating reactor site. Because of issues of equity that may result from this reallocation of waste acceptance capacity, the government has consistently advised the parties seeking such priority treatment to avail themselves of the exchange provisions of the Standard Contract that allow the utilities to exchange approved delivery commitments subject to the Department’s approval.*

While the Standard Contract may allow priority to be accorded to SNF at shutdown commercial nuclear power plant sites, for the reasons discussed in the 2008 Report to Congress, DOE has not decided whether it would exercise, or under what circumstances it would, exercise the provision in the Standard Contract that affords priority to shutdown commercial nuclear power plant sites.

**10. Given issues of transportation and processing at a repository or at a CISF what would be a reasonable expectation of how many canisters could be processed in a year?**

The rate at which canisters could be processed would be dependent on specific facility designs, available transportation infrastructure, and assumed canister sizes. If approximately 3,000 metric tons of heavy metal of SNF per year are assumed as the shipping/processing rate, this would equate to approximately 225 dual purpose canisters per year that would need to be processed at a repository or CISF in a year.

**11. Roughly how far down the queue are units 2 and 3?**

In the Acceptance Priority Ranking and Annual Capacity Report (DOE/RW-0567, July 2004), Appendix A, the first permanent discharge of SNF (40 assemblies) from Indian Point Unit 1 has a ranking date of 29 December 1972, the first permanent discharge of SNF (72 assemblies) from Indian Point Unit 2 has a ranking date of 30 March 1976, and the first permanent discharge of SNF (64 assemblies) from Indian Point Unit 3 has a ranking date of 7 June 1978.

**12. If Holtec and Orano succeed in establishing a Consolidated Interim Storage Facility, will they be able to choose how they accept spent fuel casks based upon their proprietary needs?**

If Holtec or Orano established a private Consolidated Interim Storage Facility, DOE would have no role in the shipping of spent nuclear fuel to this facility or the acceptance of spent nuclear fuel at this facility, and DOE would have no influence over the operation of the facility, including how Holtec or Orano would accept spent fuel casks based upon their proprietary needs.

**13. Given all the uncertainties of engineering, transportation and legality, would it be a fair statement to say that most of the spent fuel from Indian Point will be on site after 2050 and some may be on site a century from now?**

DOE expects that it would take approximately 10 to 15 years to get to an operational phase of a consolidated storage facility through a consent-based siting process. The rate which SNF would be removed from Indian Point would depend on the acceptance priority given to the SNF at Indian Point, the interim storage facility SNF acceptance rate, available transportation infrastructure, and other factors. These parameters have not been established so it is premature to provide an estimate of when SNF might be removed from Indian Point.