



March 26, 2021

Honorable Jennifer M. Granholm
Secretary, U.S. Department of Energy
1000 Independence Ave., SW
Washington, DC 20585

Re: Long Term Storage of Radioactive Spent Nuclear Fuel at Power Plants

Dear Secretary Granholm:

On behalf of the New York State Department of Public Service, I write to congratulate you on your appointment and confirmation as Secretary of the U.S. Department of Energy. As DOE Secretary you have the opportunity to lead the nation forward on critical issues including expanding clean energy technologies, increasing energy efficiency for appliances and lighting fixtures, fostering clean energy jobs, and building an equitable clean energy future – as well as addressing various legacy challenges in the nuclear defense and energy area. My colleagues and I here in New York State look forward to working with you as you confront those issues and many others.

I also write to request your attention to concerns about the prompt removal and disposal of radioactive spent nuclear fuel that has accumulated in communities around the country where the federal government previously authorized the construction of power reactors. Initially approved for the site of one of the first power reactors in 1956 by the federal government,¹ the Indian Point nuclear power plant station, just north of New York City, is one of the oldest and longest running civilian nuclear power sites in the country. At the Indian Point site, the last power reactor will soon retire, and the restoration of the site and radiological decommissioning can commence. Nevertheless, given the presence of 60 years of accumulated radioactive spent fuel from the site's three reactors, the federal government will not release a portion of the site needed to defend and contain the radioactive waste.

Many citizens and host communities have expressed concern over the continued storage of radioactive spent nuclear fuel at the Indian Point plants and other sites. Even with a successful decommissioning and restoration of the Indian Point plants and site, the federal government's

¹ See 21 Fed. Reg. 3,085 (May 9, 1956).

failure to collect, remove, and dispose of commercial reactor spent fuel, will result in thousands of pounds of highly radioactive material remaining on site. As a past Governor of a State with four such spent fuel storage sites, you likely can understand host community concerns about the continued storage of radioactive material within their communities.

Spent radioactive nuclear fuel is one of the most dangerous substances to humans and the environment and therefore requires special handling and storage.² Within communities, that radioactive material resides in either densely packed spent fuel pools³ or facilities holding expanding number of dry storage casks. At the end of 2019, the U.S. commercial spent nuclear fuel inventory was 83,831 metric tons and that accumulated inventory increases by about 2,000 metric tons each year. In 2020, DOE reported that radioactive spent nuclear fuel is stored at 76 reactor or storage sites in 34 states. Thus, there are 76 long-term repositories holding radioactive spent fuel across the country.

During the initial construction and license stage for reactors, communities selected by the federal government to host the reactors made clear to the federal government that they did not wish to become nuclear waste repositories. When the Atomic Energy Commission and the Nuclear Regulatory Commission approved the construction and operation of the power reactors and spent fuel pools, they told the host communities and States that the radioactive spent nuclear fuel would be removed and transported away from the reactor sites shortly after it was discharged from the reactors.⁴ Given the public health risks associated with radioactive spent nuclear fuel, the Nuclear Waste Policy Act and the federal Standard Contract required the federal government to take possession of spent radioactive fuel beginning in 1998.⁵

Despite its representations to host communities during the licensing process, the Nuclear Waste Policy Act, and the Standard Contract, the federal government has failed to live up to its public

² *Nuclear Energy Institute v. U.S. Environmental Protection Agency*, 373 F.3d 1251, 1258 (D.C. Cir. 2004); *State of New York v. NRC*, 681 F.3d 471, 474 (D.C. Cir. 2012).

³ The NRC authorized the spent fuel pools for Indian Point Unit 2 and Indian Point Unit 3 to hold five times the number spent fuel assemblies as originally designed and permitted.

⁴ The federal government told host communities that spent nuclear fuel would be removed rapidly from reactor sites: *Vermont Yankee Nuclear Power Station Final Environmental Impact Statement*, U.S. Atomic Energy Commission, at 93-94, ML061880207 (July 1972) (irradiated fuel elements will be shipped after minimum 90-day cooling period); *Final Environmental Statement for Indian Point, Unit 2*, Volume I, U.S. Atomic Energy Commission, at 257, ML072390276 (Sept. 1972) (approximately 35 truckloads of irradiated fuel per year will be transported from Indian Point to Midwest Fuel Recovery Plant in Morris, IL); *id.*, at IX-3 (PDF 298), p. V-87 (PDF 258); *Final Environmental Statement for Indian Point, Unit 3*, Volume I, U.S. Nuclear Regulatory Commission, NUREG-75/002, at 412, ML072390284 (Feb. 1975) (irradiated fuel could be transported to the Allied-Gulf Nuclear Services Plant in Barnwell, SC); *see also* Statement of NRC Commissioner Victor Gilinsky, 48 Fed. Reg. 22730, 22733 (May 20, 1983) (“The current generation of nuclear power plants was licensed on the assumption that spent fuel would be retained on site for a brief period, prior to being sent away for reprocessing.”).

⁵ NWPA § 302(a)(5)(B), 42 U.S.C. § 10222(a)(5)(B); Standard Contract for Disposal of Spent Nuclear Fuel and/or High-Level Radioactive Waste, 10 C.F.R. § 961.11 at Art. II. *See Ind. Mich. Power Co. v. Dep’t of Energy*, 88 F.3d 1272, 1273 (D.C. Cir. 1996); *Maine Yankee Atomic Power Co. v. United States*, 225 F.3d 1336, 1343 (Fed. Cir. 2000) (courts can award monetary damages to an owner-operator licensee to compensate for the spent nuclear fuel storage costs incurred by owner-operators as a result of the federal government’s contract breach).

trust, statutory, and contractual obligations to take possession of, remove, and store spent and depleted radioactive nuclear fuel. I offer a few examples to establish the point. In the late 1970s and early 1980s, the federal government told the public and the D.C. Circuit Court of Appeals that a single national high level radioactive waste repository would be available in 2007.⁶ Then, in 1990 the federal government told the public that a national repository would be available in the first quarter the twenty-first century.⁷ Thereafter, in 2010, the federal government told the public that the repository would not be available by 2025, but would be available at a later unspecified time.⁸ At the 2013 NRC Regulatory Information Conference, a DOE representative told the public that DOE would commence a pilot interim storage repository in 2021.⁹ The federal government not only breached its statutory and contractual duties to collect the radioactive waste, it has also authorized the storage of ever-increasing amounts of waste in those host communities for ever-longer periods of time.

As Indian Point's last operating reactor prepares to retire, I now ask you as Secretary of the Department of Energy to inform New York State and local governments precisely when the federal government will take possession of Indian Point's accumulated spent nuclear fuel and remove it from the site. While I recognize that you are now confronting many issues and correcting the previous administration's policies, I would greatly appreciate your response to this question.

Thank you for your consideration of the concerns and question contained in this letter. I look forward to working with you in the coming months and years.

Respectfully submitted,



John Howard
Interim Chief Executive Officer

cc: New York State U.S. Congressional Delegation

⁶ *Minnesota v. NRC*, 602 F.2d 412 (D.C. Cir. 1979); Waste Confidence Decision, 49 Fed. Reg. 34,658, 34,659–60 (Aug. 31, 1984).

⁷ Waste Confidence Decision Review, 55 Fed. Reg. 38,474, 38,505 (Sept. 18, 1990).

⁸ Waste Confidence Decision Update, 75 Fed. Reg. 81,037 (Dec. 23, 2010); *see also State of New York v. NRC*, 681 F.3d 471, 474 (D.C. Cir. 2012) (vacating NRC's "waste confidence" rule).

⁹ *See, e.g., Strategy for the Management and Disposal of Used Nuclear Fuel and High-Level Nuclear Waste*, DOE (January 2013), at p. 2.