

July 26, 2000

Mr. David A. Lochbaum
Union of Concerned Scientists
1616 P Street, Suite 310
Washington, DC 20036

Dear Mr. Lochbaum:

I am responding to the Petition you filed on February 10, 2000, pursuant to Section 2.206 of Title 10 of the Code of Federal Regulations (10 CFR 2.206), as acknowledged in our letter to you on March 24, 2000. In your Petition, you requested that the U.S. Nuclear Regulatory Commission (Commission or NRC) order the Power Authority of the State of New York (PASNY), the licensee for the Indian Point Nuclear Generating Unit No. 3 (IP3), to assess both the corrective action process and the work environment, particularly the freedom that employees have to voice safety concerns, at IP3 and to take timely actions to remedy any deficiencies it may identify. You further requested that the NRC verify that all remedial actions have been completed before closing out the order and before the ownership of the Indian Point facility is transferred. The specific concerns that you cited relative to the licensee's corrective action program related to an April 20, 1999, letter from the NRC to the licensee in which the staff was critical of the licensee's Deviation Event Report (DER) screening for a problem with a feed pump; an August 9, 1999, letter in which the staff noted several discrepancies related to an inconsistent understanding of plant management's expectations for the DER process; a September 30, 1999, letter in which the staff listed a number of shortcomings that the NRC had identified in the licensee's corrective action program; and an October 13, 1999, letter in which the staff expressed a concern regarding weaknesses in the licensee's root cause analysis of a problem with a fuel oil storage tank. The specific concerns that you cited relative to the safety conscious work environment were assertions made by a former member of the licensee's Operations Review Group that the work environment is not safety conscious and is hostile toward employees who raise safety concerns, and a letter dated August 17, 1999, in which the staff informed the licensee that the NRC had identified an apparent instance in which the licensee discriminated against an employee who had raised safety concerns. In a transcribed telephone conference on February 16, 2000, you voiced your concern that under the NRC's Reactor Oversight Process, which has since been implemented, a breakdown in the licensee's corrective action program for a non-safety-related system would not be pursued. You were concerned that NRC inspectors might not be able to identify a complete breakdown in the corrective action program before such a breakdown affected plant safety.

Your request has been referred to me pursuant to 10 CFR 2.206. We agree that several of the issues you raised needed to be resolved. As a result of our inspection findings, some of which you cited in your Petition, and noting some of the issues you raised, the staff conducted an

inspection of the IP3 corrective action program and work environment in May and June 2000. In the course of this inspection, the inspection team evaluated a sample of 90 of the licensee's DERs and DER corrective actions. The team also conducted interviews with 40 employees to determine the extent to which employees feel comfortable raising safety concerns. The team's final report was issued on July 7, 2000. The team did not identify or substantiate concerns associated with PASNY's corrective action program and work environment. The staff found that IP3 has been generally effective in identifying and correcting defects in these areas and that employees are comfortable raising safety concerns.

The staff has assessed a broad spectrum of issues and concerns such as those you raised. In general, the staff has found that the licensee identified, evaluated, and resolved problems effectively using the corrective action program. The threshold for problem identification was appropriate; although areas were noted in which additional licensee attention regarding problem identification was warranted. The staff also determined that DERs were being resolved properly and that evaluations of problems were largely of good quality. Although one exception was noted in which the licensee's actions were not commensurate with risk significance, evaluations for the most part demonstrated proper consideration for common cause and extent of condition. The licensee's audits of its corrective action program were also found to contain valuable suggestions for improving the program.

In the February 16, 2000, telephone conference you commented that a complete breakdown in the licensee's corrective action program for a non safety-related system would result in a green finding and consequently would not be pursued further by inspectors in accordance with the significance determination process. You further expressed concern that although this limited sample may suggest that there is a problem in the safety-related corrective action processes, it would not be pursued. As stated above, the staff inspected a cross section of safety and non-safety-related DERs along with the implementing procedures. Again, the staff has concluded that the corrective action program is being implemented satisfactorily and there is reasonable assurance that safety-related system problems would receive proper risk-informed treatment.

The specific details of our evaluation are enclosed in the Director's Decision (Decision), which addresses the issues you raised in your Petition. With the exception of issuing an order, the actions you requested have effectively been granted through the staff and licensee actions detailed in the Decision. A copy of the Decision will be filed with the Secretary of the Commission for the Commission's review in accordance with 10 CFR 2.206(c). As provided by this regulation, the Decision will constitute the final action of the Commission 25 days after the date of issuance of the Decision unless the Commission, on its own motion, institutes a review of the Decision within that time.

D. Lochbaum

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I have also enclosed a copy of the notice of "Issuance of Director's Decision Under 10 CFR 2.206" that has been filed with the Office of the Federal Register for publication.

Sincerely,

/RA/

Samuel J. Collins, Director
Office of Nuclear Reactor Regulation

Docket No. 50-286

Enclosures: 1. Director's Decision 00-03
2. *Federal Register* Notice

cc w/encls: See next page

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

OFFICE OF NUCLEAR REACTOR REGULATION
Samuel J. Collins, Director

In the Matter of)	Docket No. 50-286
)	
POWER AUTHORITY OF THE STATE)	License No. DPR-64
OF NEW YORK)	
)	
(Indian Point Nuclear Generating)	
Unit No. 3))	

DIRECTOR'S DECISION UNDER 10 CFR 2.206

I. INTRODUCTION

By letter dated February 10, 2000, Mr. David A. Lochbaum, on behalf of the Union of Concerned Scientists (Petitioner), pursuant to Section 2.206 of Title 10 of the Code of Federal Regulations (10 CFR 2.206), requested that the U.S. Nuclear Regulatory Commission (Commission or NRC) take action with regard to the Indian Point Nuclear Generating Unit No. 3 (IP3), owned and operated by the Power Authority of the State of New York (PASNY or the licensee). The Petitioner requested that the NRC order PASNY to assess the corrective action process and the work environment at IP3 and to take timely actions to remedy any deficiencies it may identify.

II. BACKGROUND

The specific concerns that the Petitioner cited relative to the licensee's corrective action program related to an April 20, 1999, letter from the NRC to the licensee in which the staff was critical of the licensee's Deviation Event Report (DER) screening for a problem with a feed pump; an August 9, 1999, letter in which the staff noted several discrepancies related to an inconsistent understanding of plant management's expectations for the DER process; a

September 30, 1999, letter in which the staff listed a number of shortcomings that the NRC had identified in the licensee's corrective action program; and an October 13, 1999, letter in which the staff raised concerns about weaknesses in the licensee's root cause analysis of a problem with a fuel oil storage tank. The specific concerns that the Petitioner cited relative to the safety conscious work environment consisted of assertions made by a former member of the licensee's Operations Review Group (ORG) that the work environment is not safety conscious and is hostile toward employees who raise safety concerns, and a letter dated August 17, 1999, in which the staff informed the licensee that the NRC had identified an apparent instance in which the licensee discriminated against an employee who had raised safety concerns. In a transcribed telephone conference on February 16, 2000, the Petitioner voiced his concern that, under the NRC's Reactor Oversight Process, a breakdown in the licensee's corrective action program for a non-safety-related system would not be pursued. The Petitioner was concerned that NRC inspectors might not be able to identify a programmatic breakdown in the corrective action process before such a breakdown affected plant safety.

The Petitioner stated that Federal regulations require that the licensee have an effective corrective action program and provide an environment in which employees are free to raise safety concerns. The Petitioner further stated that the NRC's Reactor Oversight Process is based on the assumption that both an effective corrective action program and a safety-conscious work environment exist.

III. DISCUSSION

Issue 1: Corrective Action Program

As stated by the Petitioner, NRC inspection reports have noted several discrepancies in the licensee's corrective action program over the past months; in addition, after receipt of the Petition, problems with the implementation of the corrective action program were noted in Inspection Report 99-11, dated March 24, 2000, and in the semiannual plant performance

review dated March 31, 2000. The findings of the inspection reports cited by the Petitioner as well as those that were conducted after the date of the Petition indicate that the licensee's corrective action program should be the focus of further inspection efforts.

The licensee conducted an audit of its corrective action program in early 1999; as a result of both this audit and of weaknesses noted by the NRC, the licensee made the corrective action program an area of concern and conducted a second audit in late 1999. The second audit was performed by a six-person team headed by PASNY's Quality Assurance Director. The audits identified areas in which improvement is necessary; however, they concluded that the corrective action program meets regulatory requirements.

As a result of its previous inspection findings and the concerns raised by the Petitioner, the NRC focused additional attention on the corrective action program and the work environment at IP3 during a planned problem identification and resolution inspection. This inspection was conducted in May and June of 2000. The report of this inspection was issued on July 7, 2000 (IR-50000286/2000-003). The report concluded that, in general, the licensee identified, evaluated, and resolved problems effectively using the corrective action program. The inspection determined that the Corrective Action Review Board was effective in achieving consistent DER evaluations and corrective actions. The inspection determined that, in general, the threshold for problem identification was appropriate; however, areas were noted in which additional licensee attention regarding problem identification was warranted. The inspection also determined that DERs were being resolved properly and that evaluations of problems were largely of good quality; although one exception was noted in which the licensee's actions were weak and not commensurate with risk significance, evaluations for the most part demonstrated proper consideration for common cause and extent of condition.

In the course of the NRC's May-June 2000 inspection of the licensee's corrective action program, the licensee's audits of its own program were reviewed. The findings of the licensee's

audits were consistent with the findings of the NRC; the audits were also found to contain valuable suggestions for improving the corrective action program.

The NRC inspection findings cited by the Petitioner indicated problems with the licensee's corrective action program. These findings were of specific weaknesses and did not necessarily indicate a programmatic breakdown. It should be noted that, after being notified of the NRC findings, the licensee, on its own initiative, conducted an audit of its corrective action program in late 1999. As a result of this audit, the licensee made specific efforts to improve the corrective action program. These efforts resulted in improvements in the corrective action program, as noted in the July 7, 2000, inspection report. Notwithstanding the noted improvements, the findings cited by the Petitioner, as well as those of inspections conducted after the date of the Petition, indicate that additional resources should be allocated to inspecting the licensee's progress in continuing to improve its corrective action program.

The NRC will continue to inspect the licensee's corrective action program as part of its plant-specific inspection plan. Because the NRC will continue to focus on this area, because the licensee's Corrective Action Review Board has proven to be an effective management tool in ensuring consistent DER evaluations and corrective actions, and because the licensee has shown the willingness and ability to audit and improve its corrective action program as a result of NRC findings, an order mandating another such audit is not warranted.

Issue 2: Safety Conscious Work Environment

As stated by the Petitioner, the licensee was informed by the staff in an August 17, 1999, letter that the NRC had identified an apparent instance of discrimination against an employee who had raised safety concerns. The Petitioner also cited specific allegations made by an employee that the licensee's ORG does not foster a safety conscious work environment.

At a pre-decisional enforcement conference on September 17, 1999, and in a September 29, 1999, letter the licensee detailed the reasons that it believed that there was no

discrimination involved in the instance cited in the NRC's August 17, 1999, letter. This issue has been reviewed under the NRC's enforcement policy and it was determined that enforcement action was not warranted in this case. This decision is documented in the NRC's July 11, 2000, letter to the licensee.

The employee's allegations regarding the ORG cited by the Petitioner are being reviewed. These issues will be resolved under the NRC's allegation review process. The allegation review process includes routine review of the number of allegations received to identify significant adverse trends requiring additional NRC review. These reviews include consideration of the number of allegations made regarding licensees' safety conscious work environment programs.

By letter dated October 23, 1998, the NRC asked the licensee to describe the actions that it was taking to prevent the temporary revocation of an employee's access to the site following that employee's raising of safety concerns from having a chilling effect on the safety conscious work environment. By letter dated January 14, 1999, in response to the NRC's letter of October 23, 1998, the licensee committed to have a nuclear safety culture assessment conducted by an independent organization. This assessment was conducted by SYNERGY Consulting Services and involved employees at both of the licensee's sites as well as employees at the licensee's headquarters. The results of the assessment were generally favorable. The results indicated that almost all employees felt free to raise potential nuclear safety concerns. The assessment also showed that a large percentage of employees (95.7%) would escalate safety concerns to a higher level if they were not satisfied with the action taken by their immediate supervisor. The licensee has stated its intention to contract for another such assessment later this year.

In an inspection report dated July 7, 2000, the NRC documented the results of its May - June 2000 inspection of the work environment at IP3. During the course of this inspection, 40

of the licensee's employees were interviewed to determine whether or not conditions existed that would challenge the establishment and maintenance of a safety conscious work environment at IP3. The inspection determined that employees accepted and did not feel reluctant to use the DER and other processes to raise safety concerns.

The work environment at IP3 is observed on an almost daily basis by the Resident Inspectors. In addition, review of the safety conscious work environment is part of an inspection module that is conducted as part of the inspection program. In an inspection report dated July 7, 2000, no significant problems with the licensee's safety conscious work environment were noted; furthermore, a 1999 assessment of the licensee's work environment conducted by an independent organization returned favorable results. Because the work environment is observed routinely by the NRC, because a specific inspection of the safety conscious work environment is conducted as a part of the inspection program, because recent NRC and contractor evaluations of the licensee's safety conscious work environment have shown no significant weaknesses in the licensee's safety conscious work environment, because the NRC allegation review process includes review of the number of allegations received to identify significant adverse trends, and because the allegation review process includes consideration of allegations regarding licensees' safety conscious work environment programs, ordering the licensee to conduct an audit of its safety conscious work environment is not necessary at this time.

IV. CONCLUSION

For the reasons discussed above, the NRC staff concludes that the issues the Petitioner raised have merit; however, the issues have already been addressed through the staff and licensee actions detailed in this Director's Decision. The staff finds that the licensee has been generally effective in identifying and correcting defects in the corrective action program and that employees are comfortable raising safety concerns. Because the Petitioner's concerns have

effectively been addressed, enforcement action to order the licensee to conduct the requested audits is not necessary to provide reasonable assurance in the effectiveness of the licensee's corrective action program and safety conscious work environment. With the exception of issuing an order, the actions requested by the Petitioner have effectively been granted. Therefore, the staff's efforts regarding this Petition are complete.

A copy of the Decision will be filed with the Secretary of the Commission for the Commission's review in accordance with 10 CFR 2.206(c). As provided for by that regulation, the Decision will constitute the final action of the Commission 25 days after the date of issuance of the Decision unless the Commission, on its own motion, institutes a review of the Decision within that time.

FOR THE NUCLEAR REGULATORY COMMISSION

/RA/

Samuel J. Collins, Director
Office of Nuclear Reactor Regulation

Dated at Rockville, Maryland,
this 26th day of July 2000.

UNITED STATES NUCLEAR REGULATORY COMMISSION

POWER AUTHORITY OF THE STATE OF NEW YORK

INDIAN POINT NUCLEAR GENERATING UNIT NO. 3

DOCKET NO. 50-286

ISSUANCE OF DIRECTOR'S DECISION UNDER 10 CFR 2.206

By letter dated February 10, 2000, Mr. David A. Lochbaum, on behalf of the Union of Concerned Scientists (Petitioner), pursuant to Section 2.206 of Title 10 of the Code of Federal Regulations (10 CFR 2.206), requested that the U.S. Nuclear Regulatory Commission (Commission or NRC) take action with regard to the Indian Point Nuclear Generating Unit No. 3 (IP3), owned and operated by the Power Authority of the State of New York (PASNY). The Petitioner requested that the NRC order PASNY to assess the corrective action process and the work environment at IP3 and to take timely actions to remedy any deficiencies it may identify.

The Director of the Office of Nuclear Reactor Regulation has addressed the technical concerns provided by the Petitioner. However, the Petitioner's request for the staff to take enforcement action was not granted for the reasons that are explained in the "Director's Decision Pursuant to 10 CFR 2.206" (DD-00-03). The complete text of the Director's Decision is available for public inspection at the Commission's Public Document Room located in the Gelman Building, 2120 L Street, NW., Washington, DC., and will be accessible electronically from the agencywide documents access and management system (ADAMS) public library component on the NRC Web site, <http://www.nrc.gov> (the electronic reading room).

A copy of the Decision will be filed with the Secretary of the Commission for the Commission's review in accordance with 10 CFR 2.206(c) of the Commission's regulations. As provided for by this regulation, the Decision will constitute the final action of the Commission 25 days after the date of issuance of the Decision unless the Commission, on its own motion, institutes a review of the Decision within that time.

Dated at Rockville, Maryland, this 26th day of July 2000.

FOR THE NUCLEAR REGULATORY COMMISSION

/RA/

Samuel J. Collins, Director
Office of Nuclear Reactor Regulation

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