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February 2, 2001

Re: Indian Point Unit No. 2
Docket No. 50-247
NL-01-013

U.S. Nuclear Regulatory Commission
ATTN: Document Control Desk
Mail Stop P1-137
Washington, DC 20555-0001

Subject: Additional Information Concerning the 2.206 Petition Meeting Regarding
Indian Point Nuclear Generating Unit No. 2 (IP2) Management Issues
(TAC No. MB0736) Held At NRC Headquarters on January 24, 2001

Reference: NRC Memorandum from C. Gratton to M. Gamberoni dated January 11,
2001

The purpose of this letter is to provide additional Con Edison perspective on the subject meeting. During the course of the meeting, the petitioners presented a large number of Indian Point Unit 2 Condition Reports (CRs), together with an analysis of their significance, which they had requested be performed by the Union of Concerned Scientists. They contended that this represented additional information that should be considered along with that provided in their December 4, 2000 letter to the NRC initiating the petition. The petitioners also argued that since they had received this information from a plant worker whom they characterized as a "whistle-blower," the CRs comprised evidence of reluctance at Indian Point for workers to raise potential safety issues to station management.

Such an assertion cannot be reconciled with the circumstances under which the subject CRs were prepared. Each such CR was written by a plant worker on an unsolicited basis, and then reported to station management, pursuant to the Indian Point corrective action program procedures. The very purpose and intent of each worker in originating these CRs was to specifically raise an issue for management attention. Thus the examples of condition reports presented by the petitioners in fact corroborate Con Edison's contention that Indian Point employees currently have the means, capability and willingness to raise issues of potential operational or safety significance to station management for resolution.

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This evident and existent capability should not be compromised or diminished, since an effective corrective action program is essential to safe and efficient plant operations. Con Edison believes that preserving and cultivating the present willingness of station personnel to freely and openly raise potential safety issues to management through the CR process is a vital element to assuring a healthy nuclear plant operating organization. All station employees are encouraged to report problems via the condition reporting system. When a condition report is written by a named employee it is "electronically posted" to an internal station web page which is accessible to all plant workers. Similarly, manually written condition reports will, in turn, be electronically entered into the database. Con Edison makes the condition reports submitted by station employees available to the NRC Resident Inspectors for review on a "real-time" basis via the plant web site as well. Management performance monitoring indicators are in place to ensure that condition reports receive the appropriate level of attention, and that organizations are being sufficiently self-critical. Except in the instance of anonymous CRs, which are also permitted and encouraged, feedback is also provided to the initiator of each report as to its resolution.

Since the condition reports presented at the subject meeting were obtained by the petitioners from an unauthorized source which was not entitled to release them, the NRC has appropriately requested Con Edison's position as to whether or not the CRs should be made public as part of the meeting transcript. Con Edison of course recognizes that petitioners are currently in a position to disseminate this documentation, and to some extent have already done so. However, Con Edison believes that as a general matter, routine publication of CRs would be counterproductive to maintaining high levels of operational and safety readiness because the plant workers who generate them would become less likely to do so. Ultimately, the effect of such publication would be to discourage workers from the open and frank communications that exists in the condition reporting system at the plant today. For the foregoing reason, Con Edison requests that for purposes of the current 2.206 petition, CRs should be acknowledged as a general rule to be treated as proprietary information. This would be consistent with the positions taken by the NRC in previous analogous circumstances.

The ability of public interest groups to obtain non-public documents evaluating and critiquing the operations of nuclear power plants under the federal Freedom of Information Act arose in Critical Mass Energy Project v. NRC, 975 F.2d 871 (D.C.Cir., en banc, 1992). While the circumstances and factual setting there were somewhat different, what is most significant is that the NRC asserted and the federal courts recognized the chilling effect that public disclosure of unverified information about nuclear plant operations would have on the future willingness of plant personnel to come forward. In Critical Mass, the court noted that:

"It is a matter of common sense that the disclosure of information the Government has secured from voluntary sources on a confidential basis will both jeopardize its continuing ability to secure such data on a

cooperative basis and injure the provider's interest in preventing its unauthorized release. . . . [W]e conclude that financial or commercial information provided to the Government on a voluntary basis is 'confidential' [and free from public disclosure] if it is of a kind that would customarily not be released to the public by the person from whom it was obtained."

At Indian Point, CRs are generated by plant personnel with the expectation that plant management will investigate, and as appropriate remediate on a safety-prioritized basis, those conditions described in the reports that are confirmed as requiring attention. CRs that are found to be relevant to potential safety matters are typically referenced in Licensee Event Reports, which become public upon submission to the NRC. The NRC, of course, always has full access to all CRs at the station.

The station's policy is to encourage workers to generate condition reports at a low reporting threshold not only for fully verified problems, but also in the context of questions about potential, unverified problems. In this sense, there is no need or requirement for initial CRs to be complete or accurate, or to contain correct or substantiated information, since the very purpose is to get the observations, assertions and circumstances that are described into the plant maintenance and corrective action pipeline quickly.

The knowledge that the CRs are treated as internal company program documents not available outside of the station (and as such need not contain verified or accurate information) significantly facilitates their generation and submission. Current practice also serves the important privacy interests of the individuals involved, and the affected CRs may accordingly be withheld pursuant to 10 CFR § 9.17(a)(4) or (a)(6) of the Commission's regulations. If, however, contrary to well-established worker expectations and the uniform practice in the nuclear industry, it instead became accepted practice that CRs would be provided on an unauthorized basis by others to public interest groups and then docketed with the NRC, as was acknowledged in the referenced Critical Mass case, this valuable source of communication within the plant would surely be chilled, and the candor and number of condition reports would decline significantly. This in turn would be contrary to the interests of nuclear safety, the paramount objective which the licensee, NRC and the petitioners all share.

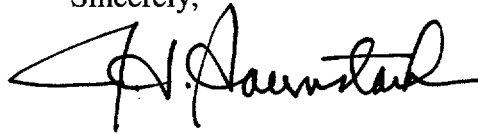
In the circumstances of the present 2.206 petition and in the context of the assertion by the petitioners that these particular CRs confirm the substance of the petition's allegations, the NRC staff may or may not conclude that some limited docketing of certain information derived from these particular CRs that have already been disseminated could be deemed appropriate and not incompatible with the NRC's past and present views on encouraging voluntary submission of information by plant personnel. We are confident that such judgment would be arrived at with due consideration to all of the relevant factors. To facilitate such consideration by the NRC, we have prepared redacted versions of the particular CRs tendered at the January 24 meeting which attempt

to preserve the identity and related information of the originating plant workers and those individuals involved in the CR evaluation and resolution process. In Con Edison's view, this redaction diminishes (but does not alleviate) the chilling effect that publication would have on CR creation in the future. These materials are currently available for the NRC's use at the plant. We also stand ready to review with the staff, and if it deems it appropriate the petitioners, those redacted CRs which the NRC wishes to consider for docketing as material that specifically explains or clarifies the particular assertions contained in the December 4, 2000 2.206 petition.

No new regulatory commitments are being made by Con Edison in this correspondence.

Should you or your staff have any questions regarding this submittal, please contact either the undersigned or Mr. John F. McCann, Manager, Nuclear Safety and Licensing.

Sincerely,



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