

February 27, 2001

EA 01-051

Mr. John Groth, Senior Vice President
Nuclear Operations
Consolidated Edison Company of
New York, Inc.
Indian Point 2 Station
Broadway and Bleakley Avenue
Buchanan, NY 10511

SUBJECT: ALLEGED DISCRIMINATION
(DOL OSHA FINDING, DATED FEBRUARY 8, 2001)

Dear Mr. Groth:

In a letter dated December 11, 2000, the U.S. Department of Labor's Occupational Safety & Health Administration (OSHA) in Albany, New York, received a complaint from a former employee of Wackenhut Corporation (Wackenhut), security contractor at Indian Point 2. The former employee alleged that he was fired in June 2000, in part, because he raised a concern about working excessive overtime at Indian Point 2. In response to that complaint, OSHA conducted an investigation, and in a letter dated February 8, 2000, the Area Director of OSHA found that the evidence obtained during its investigation indicated that the employee was engaged in a protected activity within the scope of the Energy Reorganization Act and that discrimination as defined and prohibited by the statute was a factor in the termination of this individual's employment.

We recognize Wackenhut has appealed this OSHA finding. While the NRC has not independently examined the matter, we consider it important in light of the DOL finding that steps be taken to assure the termination of the individual's employment does not have a chilling effect on other licensee or contractor personnel at IP2.

Accordingly, pursuant to sections 161c, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.204 and 10 CFR 50.54(f), you are required to provide to this office, within 30 days of the date of this letter, a response in writing and under oath or affirmation that describes:

1. Your position regarding whether the actions affecting this individual violated 10 CFR 50.7 and the basis for your position, including the results of any investigations you may have conducted to determine whether a violation occurred; and
2. Actions you have already taken or plan to take to assure that this matter is not having a chilling effect on the willingness of other employees to raise safety and compliance concerns within your organization and, as discussed in NRC Form 3, to the NRC.

We recognize that you and Wackenhut may not believe unlawful discrimination has occurred. Regardless of your answer to item 1 above, we request that you consider the need to address the *possible* chilling effect that this issue may have on other employees.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter and your response will be made available to the Public. Therefore, your response should not, to the extent possible, include any personal privacy, proprietary, or safeguards information so that it can be made available to the Public. If personal privacy information is necessary to provide an acceptable response, then please provide a bracketed copy of your response that identifies the personal privacy-related information and a redacted copy of your response that deletes the personal privacy-related information. Identify the particular portions of the response in question which, if disclosed, would create an unwarranted invasion of personal privacy, identify the individual whose privacy would be invaded in each instance, describe the nature of the privacy invasion, and indicate why, considering the public interest in the matter, the invasion of privacy is unwarranted. If you request withholding on any other grounds, you must specifically identify the portions of your response that you seek to have withheld and provide in detail the bases for your claim of withholding (e.g., provide the information required by 10 CFR 2.790(b) to support a request for withholding confidential commercial or financial information). If safeguards information is necessary to provide an acceptable response, please provide the level of protection described in 10 CFR 73.21.

After reviewing your response, the NRC will determine whether enforcement action is necessary at this time to ensure compliance with regulatory requirements.

Sincerely,

/RA/

Brian E. Holian, Deputy Director
Division of Reactor Safety

Docket No. 05000247
License No. DPR-26

cc w/encl:

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Mr. John Groth

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