

April 11, 2001

Mr. James P. Riccio  
Public Citizen's Critical Mass  
Energy & Environment Program  
215 Pennsylvania Avenue SE  
Washington, D.C. 20003

Dear Mr. Riccio:

I am responding to your letter of February 5, 2001, in which you expressed concerns on behalf of yourself and others regarding the completeness and accuracy of Commission information paper SECY-00-0238, "Emergency Planning for Indian Point 2 and Other Co-Located Licensees," dated December 26, 2000. SECY-00-0238 informed the Commission of an ambiguity in the emergency planning regulations regarding exercise participation between licensees and offsite authorities at sites with co-located licensees. This issue was raised as a result of your petition of March 14, 2000, submitted under 10 CFR 2.206, regarding safety issues at Indian Point Unit 2 (IP2), later supplemented by a letter on June 29, 2000. In your March 14 petition, you requested that the NRC issue an order preventing IP2 from restarting based on issues related to the IP2 steam generators. In the June 29 letter, you requested that IP2 not be permitted to restart until the Consolidated Edison Company of New York (Con Ed) conducted a full participation exercise of its emergency plan in accordance with 10 CFR 50, Appendix E.

The staff addressed the biennial exercise issue for IP2 in Director's Decision DD-00-04, dated October 6, 2000. This issue was addressed in the context of the restart of IP2, consistent with the request in the March 14, 2000, petition. The Director's Decision noted that the last full participation exercise at IP2 was conducted on June 24, 1998, and that IP2 would remain in compliance with the biennial exercise requirement until December 31, 2000. Since Con Ed planned to restart before December 31, 2000, the Director's Decision stated that an emergency planning exercise was not required prior to the restart of IP2. Therefore, the request to prevent the restart of IP2 until after an emergency plan exercise was denied. The discussion in the Director's Decision was in the context of the request that IP2 not be permitted to restart without a full participation exercise.

The Director's Decision acknowledged that the petitioners identified an ambiguity in the emergency planning regulations regarding biennial exercises for co-located licensees, and stated that the staff was evaluating the ambiguity to determine whether a clarification of the regulations was warranted. Thus, at the time DD-00-04 was issued, the staff had concluded that the biennial exercise issue did not warrant an order preventing restart before December 31, 2000, but the staff had not, at that time, resolved the ambiguity identified by the petitioners and did not have a position on the issue of whether there would be a violation of the biennial exercise requirement at IP2 on January 1, 2001.

In SECY-00-0238, the staff informed the Commission that due to the ambiguities in the regulations regarding exercise requirements for "sites" vs. "licensees," different conclusions can be reached regarding whether co-located licensees are in compliance with the emergency planning regulations. As stated in a March 1, 2001, letter to you, the staff determined that the licensees are in compliance with the interpretation of the regulations that each licensee at each site conducts an exercise of its onsite emergency plan every 2 years (10 CFR Part 50, Appendix E, Section IV, Paragraph F.2.b), and that the offsite plans for each site are exercised biennially with full participation by each offsite authority having a role under the plan (10 CFR Part 50, Appendix E, Section IV, Paragraph F.2.c). The staff concluded in SECY-00-0238 that the licensees' practice of alternating participation in the biennial full participation exercises is acceptable, given the current level of other interactions between the licensees and offsite authorities, and that there is reasonable assurance that appropriate measures could be taken to protect the health and safety of the public in the event of a radiological emergency. As noted in SECY-00-0238, the staff intends to provide the Commission a rulemaking plan within 6 months to clarify the emergency planning regulations and remove ambiguities about the required conduct of exercises by co-located licensees.

In your letter of February 5, 2001, you refer to the discussion in SECY-00-0238 concerning the exchange of correspondence in 1984 and 1985 between the Nine Mile Point and FitzPatrick licensees and the NRC, and state that the NRC had no basis (in 1985) to accept the practice of alternating licensee participation in emergency planning exercises. To support this view, you refer to the applicable emergency plan exercise requirements at the time, 10 CFR Part 50, Appendix E, Section IV, Paragraphs F.3 and F.3(d), and state that while these portions of Appendix E address offsite exercises, they do not obviate the need for licensees to conduct their drills biennially. You also note that Section IV, Paragraph F.2, of the then applicable emergency plan exercise requirements states that each licensee at each site shall annually exercise its emergency plan.

The staff believes that the 1984 emergency planning regulations (49 FR 27736, July 8, 1984) are susceptible to the same ambiguous interpretation as the current regulations, and that the licensees were in compliance with the interpretation of the regulations that each licensee must conduct an annual exercise of its onsite plan (Section IV, Paragraph F.2), and each licensee at each site must exercise with offsite authorities *such that the State and local government emergency plans for each operating reactor site are exercised biennially* (Section IV, Paragraph F.3, emphasis added). Notwithstanding this previous exchange of correspondence, the staff's evaluation in SECY-00-0238 was based on a review of the development of the emergency planning regulations and an assessment of the licensees' practices against the current emergency planning regulations.

Regarding NRC inspection of exercises, you state that NRC Inspection Procedure (IP) 88050, "Emergency Preparedness," contains no guidance on how to evaluate the nonconducting licensee's performance during a biennial exercise conducted by a co-located licensee, and you contend it is specious for the NRC staff to be taking credit for nonconducting licensee participation in biennial exercises. While the inspection procedure you refer to, IP 88050, applies to fuel cycle facilities, not power reactors, the applicable inspection procedure for power reactors, IP 71114.01, "Exercise Evaluation," similarly does not contain guidance for inspection of nonparticipating co-located licensees during biennial exercises. A co-located licensee generally does not, and is not required to, participate in biennial offsite exercises conducted by the other co-located licensee on the site. Thus the NRC staff has not

taken "credit" for nonconducting licensee participation in biennial exercises. As noted in SECY-00-0238, each licensee at the Indian Point site conducts annual exercises of the onsite emergency plan and engages in various emergency plan training and coordination activities with the State of New York and the local governments in the 4-year interval between participation in the full participation exercises. These other activities include assisting the licensee scheduled to conduct the biennial exercise prepare for the exercise (e.g., developing the scenario and training the offsite emergency response organization), but do not include jointly participating in the biennial full participation exercise. The NRC staff conclusion as to the acceptability of the current practice of allowing co-located licensees to alternate participation in the biennial full participation exercises of the offsite emergency plans is based, in part, on the licensees' involvement in these other activities and interactions in the intervals between full participation exercises. The staff is currently working to revise the guidance for inspection of these other activities for co-located licensees, as indicated in SECY-00-0238.

You state that previous misinterpretation of the regulations by the NRC staff should not stand as the basis for failing to enforce the emergency planning regulations at Indian Point. As noted in SECY-00-0238, the regulations can be interpreted in two ways: (1) each co-located licensee can alternate participation in the biennial full participation exercises such that each licensee participates in an exercise with offsite authorities every 4 years, or (2) each co-located licensee must participate in an exercise with offsite authorities (either full or partial) every 2 years. Since two interpretations are possible, the staff believes rulemaking is the appropriate course of action to clarify the regulations for co-located licensees. The staff notes that the second interpretation would require offsite authorities in New York either to conduct an exercise every year or to conduct two exercises in one year at the Indian Point and Nine Mile Point/FitzPatrick sites. The second interpretation is at odds with the Commission's 1984 rulemaking (49 FR 27733, July 6, 1984), which was intended to provide relief to offsite authorities with respect to the frequency of participation in nuclear power plant exercises.

Regarding the staff's conclusion that imposing plant-specific backfits to require biennial full or partial participation exercises for each of these co-located licensees is not warranted, you state that the backfit rule does not apply if the modification is necessary to bring a facility into compliance with a license or the rules or orders of the Commission (10 CFR 50.109(a)(4)(i)). As discussed above and in SECY-00-0238, the emergency planning regulations are ambiguous about exercise requirements for co-located licensees and lend themselves to different interpretations. Imposition of a compliance backfit, as you request, would not be reasonable or justifiable in this situation.

Thank you for your interest in this matter. Your involvement has facilitated our efforts to address an ambiguity in our regulations. As noted above, the staff intends to submit a rulemaking plan to the Commission to clarify the emergency planning requirements for

co-located licensees. The proposed rulemaking will include the development of guidance, with stakeholder input, on the types of emergency planning activities and coordination that would be appropriate for co-located licensees in the intervals between full participation exercises.

I trust that this letter addresses your concerns.

Sincerely,

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Richard A. Meserve