

May 17, 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: CONSOLIDATED EDISON MARCH 29, 2001 RESPONSE TO NRC LETTER,
DATED FEBRUARY 27, 2001

Dear Mr. Groth:

On February 27, 2001, the NRC sent you a letter regarding a Department of Labor (DOL) OSHA determination that a security officer working for Wackenhut (security contractor) at Indian Point 2 was discriminated against for raising safety issues. At issue was the security officer's refusal to work mandated overtime, claiming he would be fatigued and unfit for duty due to excessive work hours. Our letter expressed concern as to whether a potential chilling effect on other licensee or contractor personnel at Indian Point 2 may have occurred as a result of this issue. Our letter required, pursuant, in part, to 10 CFR 50.54 (f), that you provide the NRC a response describing (1) your position regarding whether the actions affecting the security officer violated 10 CFR 50.7 and the basis for your position, and (2) actions you had taken or planned to assure that this matter is not having a chilling effect on the willingness of other employees to raise safety and compliance concerns at your facility.

In a letter dated March 29, 2001, you responded to our February 27, 2001 letter. We have carefully reviewed your response and have determined that we need additional information from you concerning these matters, which you are required to provide to this office within 30 days, 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).

With respect to Item (1), you contend, in your response, that the termination of the individual was not contrary to regulations. However, your response does not provide any information explaining how Indian Point 2 meets the requirements set forth in 10 CFR 26.10 (a) and (b), and 10 CFR 26.20(a) relating to worker fatigue. Therefore, you should describe how your written policies and procedures required by 10 CFR Part 26.20(a) address consideration of fatigue in assessing a worker's fitness-for-duty. The NRC will continue to review the discrimination issue, including the DOL findings related to this matter. We are aware that the DOL/OSHA finding has been appealed by Wackenhut to a DOL Administrative Law Judge.

With respect to Item (2), you described, in your response, a number of actions to assure that others were not chilled by the DOL finding, including: issuance of a letter from the Chief Nuclear Officer to all security contractor employees, reaffirming your position and commitment to a safety conscious work environment; development of a new employee concerns course, which began in February, 2001, for management employees; and, development of an employee concerns webpage, which became available in February, 2001, affording an employee the option of submitting a concern directly from his or her computer. Most of these and other actions described in your letter aimed at fostering a safety conscious work environment preceded the DOL/OSHA finding. In this regard, additional explanation is needed on the basis for limiting the issuance of the Chief Nuclear Officer's letter to only the security contractor force. As a minimum, your supplemental response should address actions taken to assure that employees in all work groups at the facility, specifically in the aftermath of the DOL/OSHA finding, feel free to raise concerns, either internally or to an outside agency, without fear of retaliation. Additionally, we request information on whatever steps you have taken to assess the effectiveness of your actions.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter and your supplemental 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. You should also 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.

I had previously discussed with your staff the inclusion of an update on your corrective action program at the next public meeting with NRC. I request that among other topics you address at this meeting, that you also discuss the handling of employee concerns and the maintenance of a safety conscious work environment. The NRC will finalize planning for this upcoming NRC annual meeting within the next two weeks. This meeting is currently planned for the evening of June 13, 2001, at the IP2 Energy Information Center.

Sincerely,

/RA/

Brian E. Holian, Deputy Director
Division of Reactor Safety

Docket No. 05000247
License No. DPR-26

cc:

A. Alan Blind, Vice President - Nuclear Power
J. Baumstark, Vice President, Nuclear Power Engineering
J. McCann, Manager, Nuclear Safety and Licensing
B. Brandenburg, Assistant General Counsel
C. Faison, Licensing, Entergy Nuclear Operations, Inc.
W. Smith, Operations Manager
C. Donaldson, Esquire, Assistant Attorney General, New York Department of Law
P. Eddy, Electric Division, Department of Public Service, State of New York
T. Rose, NFSC Secretary
W. Flynn, President, New York State Energy Research
and Development Authority
J. Spath, Program Director, New York State Energy Research
and Development Authority
The Honorable Sandra Galef, NYS Assembly
County Clerk, West Chester County Legislature
A. Spano, Westchester County Executive
R. Bondi, Putnam County Executive
C. Vanderhoef, Rockland County Executive
J. Rampe, Orange County Executive
T. Judson, Central NY Citizens Awareness Network
M. Elie, Citizens Awareness Network
D. Lochbaum, Nuclear Safety Engineer, Union of Concerned Scientists
Public Citizen's Critical Mass Energy Project
M. Mariotte, Nuclear Information & Resources Service
E. Smeloff, Pace University School of Law

