

March 1, 2001

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

Dear Mr. Riccio:

Your Petition dated January 11, 2001, addressed to Mr. William D. Travers, Executive Director for Operations, at the U.S. Nuclear Regulatory Commission (NRC), has been referred to the Office of Nuclear Reactor Regulation pursuant to Section 2.206 of Title 10 of the *Code of Federal Regulations* (10 CFR 2.206). In the January 11, 2001, Petition, you requested that the NRC, pursuant to 10 CFR 2.206, suspend or revoke the license of the Consolidated Edison Company of New York, Inc. (Con Edison) to operate Indian Point Unit 2 (IP2) until there has been a full participation biennial emergency planning exercise as required by 10 CFR Part 50, Appendix E. In a teleconference held on January 30, 2001, Mr. David A. Lochbaum supplemented your Petition requesting that if Con Edison's license to operate IP2 is not suspended or revoked, the NRC impose an alternative enforcement action of \$110,000/day civil penalty against Con Edison for being in noncompliance with the regulations since January 1, 2001. As the basis for your request, you asserted that:

- (1) Public Citizen had previously petitioned the Commission to prevent restart of IP2 unless and until Con Edison complied with emergency planning requirements.
- (2) Con Edison failed to restart IP2 prior to December 31, 2000, as relied upon in the Director's Decision dated October 6, 2000.
- (3) The NRC has long acknowledged the difficulty of emergency planning at IP2, and has previously acknowledged that Indian Point has the highest population within 10, 30 and 50 miles of any nuclear power plant in the U.S.

The NRC's Petition Review Board (PRB) reviewed your submittal and informed you of its initial determination by telephone on February 27, 2001. A teleconference was then held on February 28, 2001. The purpose of this teleconference was to allow you to address the PRB's preliminary decision that the January 11, 2001, Petition did not meet the Management Directive (MD) 8.11 criteria for treatment under 2.206. The information you provided did not address the MD 8.11 criteria, but rather the merits of the biennial exercise issue. The merits of that issue may be addressed in the rulemaking which will be undertaken to clarify the biennial exercise requirement for co-located licensees.

The staff, therefore, finds that your submittal does not meet the threshold for processing under 10 CFR 2.206 [Part III(C), "Criteria for Petition Evaluation," of Management Directive 8.11] because the Petition raised no new issues or safety concerns. The Petition raised issues that have already been the subject of NRC staff review and evaluation at IP2, for which resolution has been achieved. The premise of the Petition is, therefore, incorrect as discussed below.

You claim that in accordance with 10 CFR Part 50, Appendix E, IP2 is not in compliance with the biennial offsite emergency planning exercise requirement and that Con Edison failed to restart IP2 prior to December 31, 2000. The Director's Decision dated October 6, 2000, did not state that IP2 must restart prior to December 31, 2000, for Con Edison to be in compliance with the biennial exercise requirement. The Director's Decision only stated that the licensee will remain in compliance with the biennial requirement until December 31, 2000, and that the staff would evaluate the applicability of the emergency preparedness regulations for sites with co-located licensees. The question as to whether IP2 would remain in compliance with the biennial exercise requirement after December 31, 2000, and the need for clarification of the emergency preparedness regulations, was reviewed and evaluated by the staff and is documented in the Commission Information Paper, "Emergency Planning for Indian Point 2 and Other Co-Located Licensees" (SECY-00-0238) dated December 26, 2000. Pursuant to SECY-00-0238, the staff acknowledged that ambiguities exist in the regulations regarding the participation of co-located licensees in the biennial offsite emergency preparedness exercises. However, the staff concluded that the licensees' practice of alternating participation in the biennial full-participation exercises, with the current level of other interactions between the licensees and offsite authorities, is acceptable, 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. Thus, IP2 is not required to conduct another full-participation exercise with offsite authorities until 2002. In addition, the staff notes that:

- The licensees are in compliance with the staff's interpretation of the current regulations in that each licensee at each site conducts an exercise of its onsite emergency plan every 2 years (10 CFR Part 50, Appendix E, Paragraph F.2.b) and the offsite plans for each site are exercised biennially (10 CFR Part 50 Appendix E, Paragraph F.2.c).
- Each licensee engages in various emergency preparedness training and coordination activities with the State of New York and local counties in the interval between the full-participation exercises. This includes emergency preparedness training of local response organizations, medical drills with local hospitals, monthly communication system drills, participation in State evaluated drills, periodic testing of the alert and notification system, and participation in quarterly coordination meetings with the State of New York, the surrounding counties, and other licensees in the State.
- The licensees have committed to continue the activities described above while the NRC amends its regulations to specifically require such additional emergency preparedness activities for co-located licensees.
- The Federal Emergency Management Agency and the State of New York have indicated that the licensees' current practice is acceptable and expressed support for the staff's approach.
- The staff intends to provide to the Commission a rulemaking plan to clarify the emergency planning regulations within 6 months. The proposed rulemaking will include the development of guidance for the industry and offsite authorities, with stakeholder input, on the types of emergency preparedness activities and interactions that would test direction and control functions for co-located licensees and offsite authorities in the period between full-participation exercises.

J. Riccio

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For the aforementioned reasons, the NRC concludes that your Petition does not meet the criteria for processing under 10 CFR 2.206 and, therefore, plans to take no further action with regard to this Petition.

Thank you for your interest in these matters.

Sincerely,

/RA/

John A. Zwolinski, Director
Division of Licensing Project Management
Office of Nuclear Reactor Regulation

cc w/incoming petition: See next page

For the aforementioned reasons, the NRC concludes that your Petition does not meet the criteria for processing under 10 CFR 2.206 and, therefore, plans to take no further action with regard to this Petition.

Thank you for your interest in these matters.

Sincerely,

/RA/

John A. Zwolinski, Director
Division of Licensing Project Management
Office of Nuclear Reactor Regulation

cc w/incoming petition: See next page

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