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FINAL REPLY:

James Riccio
Public Citizen's Critical Mass
Energy & Environment Program

TO:

Commission

FOR SIGNATURE OF :

** PRI **

CRC NO: 01-0117

Chairman

DESC:

ROUTING:

Concerns Regarding the Completeness and Accuracy
of SECY-00-0238, "Emergency Planning for Indian
Point 2 and Other Co-Located Licensees"

Travers
Paperiello
Miraglia
Norry
Reiter
Craig
Burns/Cyr
Miller, RI

DATE: 02/21/01

ASSIGNED TO:

CONTACT:

NRR

Collins

SPECIAL INSTRUCTIONS OR REMARKS:

OFFICE OF THE SECRETARY
CORRESPONDENCE CONTROL TICKET

Date Printed: Feb 21, 2001 14:29

PAPER NUMBER: LTR-01-0117 **LOGGING DATE:**
ACTION OFFICE: EDO

AUTHOR: JAMES RICCIO
AFFILIATION: PUB CIT
ADDRESSEE: RICHARD MESERVE
SUBJECT: EXPRESS CONCERNS REGARDING THE COMPLETENESS AND ACCURACY OF
SECY -00-0238, EMERGENCY PLANNING FOR INDIAN POINT 2 ETC;

ACTION: Signature of Chairman
DISTRIBUTION: RF

LETTER DATE: 02/05/2001
ACKNOWLEDGED No
SPECIAL HANDLING: EDO/OGC FOR ACTION.....

NOTES: COMMISSION CORRESPONDENCE
FILE LOCATION: SECY

DATE DUE: 03/15/2001 **DATE SIGNED:**

EDO --G20010084

Public Citizen

Buyers Up • Congress Watch • Critical Mass • Health Research Group • Litigation Group

Joan Claybrook, President

February 5, 2001

Chairman Richard A. Meserve
 Commissioner Nils J. Diaz
 Commissioner Greta J. Dicus
 Commissioner Jeffrey S. Merrifield
 Commissioner Edward McGaffigan, Jr.
 United States Nuclear Regulatory Commission
 Washington, DC 20555-0001

Dear Chairman and Commissioners:

We are writing you to express our concerns regarding the completeness and accuracy of SECY-00-0238, "Emergency Planning For Indian Point 2 And Other Co-Located Licensees," dated December 26, 2000. This SECY paper was specifically developed in response to the petition we submitted regarding safety issues at Indian Point 2 and later supplemented on June 29, 2000.

We are concerned that certain omissions of fact and interpretations by staff will leave the Commission at a loss to understand the ire that the staff position has provoked among petitioners, politicians and the communities placed at risk by the nuclear reactors at the Indian Point site.

When Mr. Collins denied our original petition and its supplements on Indian Point on October 6, 2000, the Director's Decision stated that:

IE Information Notice No. 85-55, "Revised Emergency Exercise Frequency Rule," dated July 15, 1985, as well as FEMA-REP-14, "Radiological Emergency Preparedness Exercise Manual," dated September 1991, allow exercises to be scheduled at any time during the calendar biennium. Therefore, the licensee will remain in compliance with the biennial requirement until December 31, 2000.

Taking Mr. Collins at his word that the licensee would remain in compliance until December 31, 2000, we filed a second petition dated January 11, 2001. We requested that the U.S. Nuclear Regulatory Commission issue an order to Consolidated Edison Company of New York suspending or revoking its license to operate the Indian Point 2 until there has been a full participation biennial emergency planning exercise required by 10 CFR Part 50, Appendix E.

Ralph Nader, Founder

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If it was the staff's position that Consolidated Edison need not conduct the full participation biennial emergency planning exercise required by 10 CFR Part 50, Appendix E because the New York Power Authority had conducted a drill, they should have stated so in their denial. They did not. Rather they relied upon the assertion that, "the licensee will remain in compliance with the biennial requirement until December 31, 2000."

If the NRC senior management can not be taken at their word, then NRC's strategic goal of boosting public confidence will never be met. Unfortunately, nowhere in the SECY paper does the staff acknowledge the December 31st deadline which was used as the premise for rejecting our petition.

The SECY paper also states that:

In a letter dated September 18, 1984, the licensees stated that full participation exercises with Oswego County will be biennially alternated between NMP and JAF so that each licensee will hold a full participation emergency preparedness exercise with Oswego County once every 4 years. In addition, the licensees stated that the licensee that does not conduct the full participation exercise with Oswego County will conduct a partial participation exercise(1) with the county and other offsite agencies. In separate letters to the licensees on February 14, 1985, the NRC stated that the licensees' stated actions are in accordance with Section IV, Paragraphs F.3 and F.3(d), of Appendix E to 10 CFR Part 50 (the applicable emergency plan exercise requirements at the time) and are, therefore, acceptable.

While the NRC letter to the licensees does in fact claim that this practice is acceptable, a review of Section IV, Paragraphs F.3 and F.3(d), of Appendix E to 10 CFR Part 50 reveals that the NRC had no basis for that assertion. The applicable emergency plan exercise requirements relied upon by the staff state:

3. Each licensee at each site shall exercise with offsite authorities such that the state and local government emergency plans for each operating reactor site are exercised biennially, with full or partial participation by States and local governments, with in the plume exposure pathway EPZ and each state with in the ingestion exposure pathway EPZ. State and local governments that have fully participated in a joint exercise since October 1, 1982 are eligible to fully participate in emergency preparedness exercises on a biennial frequency. The level of participation shall be as follows:

3. (d) Partial participation by a local government during an offsite exercise for a site is acceptable only when the local governments is fully participating in a biennial exercise at another site.

(10 CFR Part 50 Appendix E - Emergency Planning and Preparedness for Production and Utilization Facilities, 49 FR 27736, July 8, 1984.)

While these portions of Appendix E address the offsite exercises they do not obviate the licensee's need to exercise their drills biennially. We can only conclude that the practice of alternating licensee participation in emergency planning exercises was not supported by the regulations despite the NRC's claims to the contrary. In fact, the applicable emergency planning exercise requirements at the time, Section IV, Paragraphs F (2) states that: Each licensee at each site shall annually exercise its emergency plan.

The NRC Inspection Manual provides additional evidence supporting our assertion that the practice of alternating licensee's participation in emergency planning is not supported by the existing regulations. We call your attention to NRC Inspection Procedure (IP) 88050, "Emergency Preparedness." Paragraph (cc) of Section 02.05, "Drills and Exercises," of IP 88050 states:

Verify that the biennial exercises use accident scenarios postulated as the most probable for the specific site and that the scenarios are not known by most of the participants. The scenarios should be varied such that all elements of the emergency plan are tested during a two-year period.

NRC Inspection Procedure 88050 contains absolutely no guidance on how to evaluate the non-conducting licensee's performance during a biennial exercise conducted by a co-located licensee. We looked at the NRC Inspection Reports for the sites in New York and find no NRC conclusion regarding the effectiveness of anything other than the performance of the licensee conducting the biennial exercise. Hence, we find it completely specious for the NRC staff to be taking credit for non-conducting licensee "participation" in biennial exercises.

The NRC staff now acknowledges the need for rulemaking to correct the "ambiguity" in the regulations. Unfortunately for the staff, there is no ambiguity in the regulations only in the NRC's enforcement of them. Alternating licensee participation was not justified under the previous rule and the NRC's proposed rulemaking indicates that current regulations can not support this practice either. Had the NRC attempted to foist this interpretation on the public through rulemaking we would have at least been afforded the opportunity of notice and comment. The NRC staff should enforce the existing regulations rather than those they are merely proposing. Furthermore, the staff acknowledges that "no evidence has been found of explicit NRC approval of the alternating participation practice for the Indian point licensees." NRC previous misinterpretation of the regulations should not stand as the basis for failing to enforce the emergency planning regulations at Indian Point.

Finally the staff concluded that imposing plant-specific backfits to require biennial full or partial participation exercises for each of these co-located licensees is not warranted. However, the staff's assertion is again incorrect. 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))

In conclusion, we are gravely concerned that the Commission has not received complete and accurate information from the staff and that this misinformation may lead the Commission to draw incorrect and insupportable positions that will further undermine the public's confidence in the agency as a protector of the public health and safety.

Sincerely,



James Riccio
Public Citizen's Critical Mass Energy & Environment Program

Deborah Katz
Citizens Awareness Network

Kyle Rabin
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David A. Lochbaum
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CC: The Honorable Hillary Rodham Clinton
The Honorable Charles E. Schumer
The Honorable Benjamin A. Gilman
The Honorable Maurice D. Hinchey
The Honorable Sue W. Kelly
The Honorable Nita M. Lowey
The Honorable George Pataki
U.S. Nuclear Regulatory Commission Office of the Inspector General

10/20/01 11:00 AM

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