

**From:** David Vito  
**To:** Christopher Gratton  
**Date:** 6/1/01 12:28PM  
**Subject:** IP-2 1997 S/G Inspection issue - 2.206 response

Chris,

Per your request, the following represents my summary of the issue. Sorry about the length, but I couldn't make it any shorter and tell the whole story. I thought it was more appropriate to pull verbatim summary information out of the ARB, rather than to put it into my own words. You can use this in whatever way you feel will be responsive to the issue you are dealing with. My understanding from my discussion with you this morning is that the correspondence you are generating will also go through the Region I folks who are responsible for IP-2, so I can be confident that they will take part in the concurrence process for your letter:

The issue that prompted the joint NRR/Region I discussions about this issue was Question #17 from the IP-2 S/G Tube Failure Lessons-Learned Report. The question stated:

"The Executive Summary and Section 8.2 of the lessons-learned report discuss the phone calls held between NRC and Con Ed during the 1997 outage to discuss the results of the licensee's S/G tube examinations. The report stated that some NRC staff members interviewed by the Task Group indicated that they had specifically asked Con Ed during the phone calls if any degradation in small radius U-bends had been identified and that there was no indication that the crack discovered in the tube similar to the tube that failed was discussed (tube R2C67 in S/G 24). Why isn't the NRC taking enforcement action against Con Ed for this apparent violation of 10 CFR 50.9 or 10 CFR 50.5?"

Joint NRR/Region I ARB discussions were held on 11/15/00, 1/10/01 and 2/27/01, to assess whether there was any specific indication of potential wrongdoing related to this matter, that would prompt a wrongdoing investigation by OI. At the ARBs, there was much discussion about the content of the phone calls, the agendas and expectations related to these phone calls, when the tube indication was discovered and officially determined to be a known defect, and whether there was any appearance of wrongdoing on the part of Con Edison (or their contractors) in their interactions related to and reporting of the results of the S/G inspection during the 1997 outage. As a result of the discussions, a consensus opinion was reached that an investigation was not warranted. The basis for that conclusion, as extracted from the ARB record of 2/27/01, is provided below:

"While the representative of OGC was concerned that the information provided by the licensee was not clear and that there is still the possibility that a 50.9 violation occurred, consensus opinion among the regional and NRR staff determined that there is no specific indication that any inaccurate information was provided during the telephone calls between the licensee and NRR, or that any wrongdoing was involved, and therefore initiation of an OI investigation was not warranted. OI was in agreement with this conclusion. The basis for this conclusion is provided in the Notes section of this ARB disposition record.....

**NOTES:**

The ARB (including OI) discussed the NRR recommendation and concluded that there was not any reasonable basis for suspecting that a violation of 50.9 occurred, or that, even if one occurred, that it was deliberate. The ARB based its decisions on the following reasons:

The ARB concluded that there was not any reasonable basis for suspecting that a violation of 50.9 occurred because it was not a reasonable belief that information provided during the May 27, 1997,

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and June 2 and 3, 1997, telephone calls, was inaccurate or incomplete.

A. There was not any reasonable basis for suspecting that inaccurate or incomplete information was provided during one of those calls when the licensee's representatives were asked about any flaws, and responded that there were not any. The licensee's July 1997 letter to the NRC indicates that a flaw was found on June 8, 1997. In addition, the source document appears to also have June 8 as the date the probe was passed through the tube and the flaw was detected. Since June 8 was after each of the three referenced calls between the licensee and the NRC, there is no evidence that the statement was inaccurate. Although the June 8 date is slightly illegible on the source document, it does not appear credible that the date on the record was actually sometime in June before the latter two calls, but the licensee somehow made the record illegible and put June 8 in the July letter to conceal that they actually knew about the flaw sooner.

B. The OGC representative at the ARB questioned the possibility of Westinghouse possibly identifying the flaw during an inspection prior to the telephone calls, but perhaps not informing the licensee because additional inspection was needed. There is no evidence to suggest that such occurred, but even if it did, the NRR representatives at the ARB indicated that they did not expect to be informed of any such initial indications but rather, were interested in confirmed flaws.

C. The ARB also raised questions as to whether (1) the licensee, once they became aware of the flaw after the telephone calls, should have contacted the NRC and immediately informed the NRC, and (2) the licensee's failure to do so until the July 1997 letter constituted a material false statement by omission. Although the licensee informed the NRC in the July 1997 letter that a flaw was detected on June 8, 1997, the NRR representatives at the ARB indicated that it was not their expectation that the licensee would immediately get back to them if they identified such a flaw. Further, there was no such reporting requirement. Therefore, the staff agreed that there was not a false statement by omission.

For these reasons, the ARB did not find any indication of any violation of 50.9 on the part of the licensee with respect to providing complete and accurate information during the telephone calls, or with respect to not immediately informing the NRC when a flaw was detected. Therefore, there is no basis to suspect any deliberate violation. Further, there was not any other evidence of wrongdoing. OI agreed with this assessment.

CC: Barry Letts; Brian Holian; J. Bradley Fewell; Leanne Harrison; Pete Eselgroth;  
Sharon Johnson