September 17, 2001

MEMORANDUM TO: William D. Travers
Executive Director for Operations

FROM: Brian W. Sheron, Associate Director ***/RA by Jon R. Johnson/***
for Project Licensing and Technical Analysis
Office of Nuclear Reactor Regulation

SUBJECT: AUGUST 2001 REPORT ON THE STATUS OF PUBLIC PETITIONS UNDER 10 CFR 2.206

The attached monthly report gives the status of 10 CFR 2.206 petitions as of August 31, 2001. Currently, there are two open petitions in the Office of Nuclear Reactor Regulation (NRR).

Attachment 1 provides the detailed status of the two open petitions in NRR. Attachment 2 shows the age and staff hours expended on open 2.206 petitions as of August 31, 2001. Attachment 3 shows the statistics for the 2.206 petitions processed in the past 12 months.

This report and recently issued Director's Decisions are placed in the Agencywide Document Access and Management System (ADAMS), and on the NRC's external home page (within a week), making them readily accessible to the public. The URL address is http://www.nrc.gov/NRC/PUBLIC/2206/index.html.

Attachments: As stated

CONTACT: Ram Subbaratnam, NRR
415-1478

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*See previous concurrence. ** Electronic Concurrence

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DATE	9/6 /01	9/6/01	9/12 /01	9/12/01	9/6/01	9/12/01	9/12/01	9/13/01

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Report on Status of Public Petitions Under 10 CFR 2.206
August 31, 2001
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Attachment 1

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All Licensees Using Security Services Provided by Wackenhut Corporation	D. Lochbaum/UCS/G20010159	4

Attachment 1

Report on Status of Public Petitions Under 10 CFR 2.206

Facility:	Indian Point, Unit 2
Petitioner:	Deborah Katz, et al. (CAN)
Date of Petition:	12/4/2000
Director's Decision To Be Issued by:	NRR
Date Referred to Review Organization:	12/11/2000
EDO Number:	G20000568
Scheduled Completion Date:	9/21/2001
Last Contact with Petitioners:	9/4/2001
Petition Manager:	C. Gratton
Case Attorney:	J. Goldberg

Issues/Action Requested:

(1) That the licensee, ConEd, have its license suspended for the Indian Point Unit 2 (IP2) facility due to persistent and pervasive negligent management, which has endangered the public health and safety and the environment due to significant safety problems existent at the site for decades. (2) Specifically, that NRC investigate the apparent misrepresentation of material fact by the utility to determine whether the significantly insufficient engineering calculations relied on to ensure adequacy of design of key systems, including the steam generator (SG) analysis and the electric bus analysis at the IP2 reactor, were due to a lack of rigor and thoroughness or a result of deliberately misleading information. (3) Should the investigation determine that ConEd deliberately provided insufficient and false information, the petitioners specifically request that ConEd's operating license be revoked for its IP2 reactor. (4) Should NRC not revoke the license, and the IP2 reactor returns to operation, the petitioners specifically request that it remain on the list of agency focus reactors to oversee the operation of the reactor until such time as its management demonstrates that it can fulfill its regulatory requirements and commitments. (5) No license transfer requests should be approved for IP2 until such time that its management can demonstrate that the Updated Final Safety Analysis Report (UFSAR) backlog and the maintenance requirements are up-to-date and workers have been retrained to the complete and revised UFSAR. (6) NRC should keep IP2 off-line until the fundamental breakdown in management is analyzed and corrected.

Background:

With the SG replacement having been completed at IP2, and the licensee in the process of restart, the Petition Review Board (PRB) convened a meeting on December 20, 2000, to consider the Immediate Action request related to plant restart (item 6). The petitioners were informed of this decision by telephone on December 20, 2000. The PRB concluded that there was insufficient information provided and that the petitioners did not substantiate any safety concerns to justify delaying unit restart. The petitioners were, in accordance with Management Directive (MD) 8.11, offered an opportunity to address the PRB in an open meeting. This meeting was conducted on January 24, 2001, at NRC Headquarters. A PRB meeting to consider the petitioners' issues (items 1 thru 5) was held on February 7, 2001. The PRB recommended accepting the petition.

On March 9, 2001, the staff issued an acknowledgment letter to the petitioners and a summary of the public meeting held on January 24, 2001.

On June 5, 2001, the petitioners requested that information contained in an April 26, 2001, submittal to the IP2 license transfer proceedings be considered as further information to support their request for enforcement actions against the licensee for systemic mismanagement of the IP2 reactor facility. The PRB re-convened on June 28, 2001, to discuss the supplement and its impact on issuance of the proposed Director's Decision (DD). During the PRB meeting, it was determined that the supplement did not meet the requirements to be reviewed under 10 CFR 2.206 because the request is already the subject of another agency proceeding (license transfer proceeding). The petitioners were notified on July 2, 2001, that this information would not be considered in the proposed DD. A closure letter for the supplement to the petition was sent to the petitioners on July 31, 2001, explaining the reasons for the rejection.

Current Status:

The proposed DD on the original petition was issued on July 25, 2001, and a copy was provided to both the petitioner and the licensee for comments. Both parties were given 14 days to review the decision and provide their comments back to the agency before the decision was to be finalized. The petitioners requested two extensions of time, the latest one until September 14, 2001, for providing their written comments on the proposed DD. The petition manager acceded to their requests. The licensee did not have any comments on the proposed DD.

Facility:	All Licensees Using Security Services Provided by Wackenhut Corporation
Petitioner:	D. Lochbaum (UCS)
Date of Petition:	04/24/2001
Director's Decision To Be Issued by:	NRR
Date Referred to Review Organization:	4/25/2001
EDO Number:	G20010159
Scheduled Completion Date:	9/29/2001
Last Contact with Petitioners:	7/31/2001
Petition Manager:	C. Patel
Case Attorney:	J. Goldberg

Issues/Action Requested:

The petitioner requests that the NRC issue a Demand for Information (DFI) to each of the licensees listed in the petitioner's letter dated April 24, 2001, requiring each licensee to provide a docketed response as to how it complies with 10 CFR 26.10 and 10 CFR 26.20, specifically the requirements that: (1) “Fitness-for-duty programs must: Provide reasonable measures for the early detection of persons who are not fit to perform activities within the scope of this part" [10 CFR 26.10]; and (2) "Licensee policy should also address other factors that could affect fitness for duty such as mental stress, fatigue and illness." [10 CFR 26.20]

Background:

As a basis for the above requests, the petitioner stated that:

"An individual employed by Wackenhut Corporation and assigned duties as security officer at Indian Point Nuclear Unit 2 was fired on June 26, 2000. The individual had worked five straight 12-hour shifts and declined to report for a sixth straight 12-hour shift because he reported to his management—-in writing—that it would be ‘physically and mentally exhausting.' The individual reported to his management—in writing—that he was fully aware of his condition and ‘would not want to be negligent in performing [his] duties as a security officer."

"The security officer had unescorted access to Indian Point 2 and thus was covered by 10 CFR Part 26 as specified in Section 26.2."

Wackenhut has a requirement in its employment conditions that employees are required to report to work when directed, which is also ratified in its Collective Bargaining Agreement and the Security Officer's Handbook.

The petitioner claims, "Thus a worker employed by Wackenhut Corporation at an NRC-licensed facility reported to his management that he felt unfit for duty, declined to report for mandated overtime, and was terminated."

The petitioner states that, "10 CFR 26.20 requires all licensees to have formal policy and written procedures for factors that could render plant workers unfit for duty. Fatigue is specifically mentioned in 10 CFR 26.20." The petitioner claims that the contractual right conflicts with the regulations stated in 10 CFR 26.10(a) and (b), and that in the subject case, the individual essentially provided "reasonable measures for early detection" of a condition rendering him unfit to perform activities within the scope of Part 26. "Rather than respect the individual's judgment

or seek another opinion by a Medical Review Officer or other health care professional, Wackenhut fired him."

In its meeting on May 7, 2001, the Petition Review Board (PRB) recommended accepting the petition. An acknowledgment letter and *Federal Register* notice on the petition were issued on May 29, 2001.

The PRB reconvened on June 25, 2001, to review progress on the petition. The PRB considered ConEd's response to a 'chilling effect' letter on this subject.

Current Status:

The proposed Director's Decision on this petition is in concurrence and comments received from the reviewers are being incorporated. The proposed DD is on schedule to meet the planned completion date.

Attachment 2
AGE AND RESOURCE EXPENDITURES FOR AGENCY 2.206 OPEN PETITIONS
As of August 31, 2001

ASSIGNED ACTION OFFICE	PETITION NUMBER	FACILITY	Acknowledgment Date	AGE (days)*	Scheduled Completion Date	Resources Expended by Action Office (HOURS)[1]	Resources Expended by OGC (HOURS)[1]	Comments if not meeting the Agency's 120-day Completion Goal
NRR	G20000568	Indian Point 2	3/9/01	138	9/21/2001	1041	86	Proposed DD issued 7/25/2001
NRR	G20010159	All Licensees Using Wackenhut Security Services	5/29/01	94	9/29/2001	389	17	

[1] Staff professional time only; does not include management or administrative time.
*Age calculated from the date of the acknowledgment letter.

Attachment 3
Table on Status of Public Petitions
Under 10 CFR 2.206 for DDs Issued During the Last 12 Months

Petition Number	Assigned Action Office	Facility	Petition Date	DD Date	Age at Closure[1,2] (Months)	Comments
G20000133	NRR	Indian Point Unit 2	3/14/2000	10/6/2000	6	Partly Granted
G20000232	NRR	Hatch Units 1 & 2	5/3/2000	10/18/200	4	Denied
G20000138,136	NMSS	Envirosafe, Idaho	3/13/2000	12/13/2000	8	Denied
G20000345	NMSS	US Department of Defense	6/1/2000	1/9/2001	3	Denied
G20000462	NRR	Haddam Neck	9/26/2000	12/19/2000	2	Partly Granted
G19990011	NMSS	Moab Site of Atlas Corp.	1/11/1999	5/7/2001*	N/A	Petition Moot and Closed

1) Age calculated from the date of the acknowledgment letter to the proposed Director's Decision issuance.
2) Goals: Acknowledgment letter issued within 5 weeks from date of receipt; proposed DD issued within 4 months of acknowledgment letter.
* No DD issued on this petition.