

Main Office/MA: Box 83 Shelburne Falls, MA 01370 P/F: 413-339-5781/8768
CT: 54 Old Turnpike Road, Haddam, CT 06438 P/F: 860-345-8431
VT: Box 402, East Dummerston, VT 05346 P/F: 802-387-4050
NH: 9 Evens Road Madbury, NH 03820 P: 603-742-4261
CNY: 140 Bassett Street Syracuse, NY 13210 P: 315-425-0430
WesCAN: 2A Adrian Court, Cortland Manor, NY 10567 P: 914-739-6164
NYCAN: 144 North 11th St, Brooklyn, NY 11211P/F: 718-963-9105

CITIZENS AWARENESS NETWORK

September 14, 2001

John A. Zwolinski, Director
Division of Licensing Project Management
Office of Nuclear Reactor Regulation
U. S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

Dear Mr. Zwolinski,

On July 25, you forwarded a Proposed Director's Decision on the petition for enforcement action CAN and other groups submitted pursuant to 10 CFR § 2.206 on December 4, 2000. In the letter forwarding the proposed decision, you offered CAN and the other petitioners an opportunity to provide comments "on any portions of the decision that [we] believe to be erroneous or any issues in the petition that [we] believe have not been fully addressed."

The Petitioners are, to say the least, dismayed by the actions of the Petition Review Board as reflected in the Proposed Director's Decision. In fact, if NRC issues the Director's Decision in the form proposed, it will only serve as a further indictment of the NRC's abdication of regulatory authority to the nuclear industry. Therefore, we request that the Petition Review Board retract the proposed decision, reinstate the investigation, and take the actions described below.

Nearly half of the Proposed Director's Decision is devoted to a narrative account of the NRC's regulatory involvement with Con Edison at IP2 over the last several years (see pp. 6-13). This account is offered in an attempt to demonstrate that NRC's regulation of Con Edison has been appropriate to ensure the safety of IP2. Instead, however, it only reinforces the need for enforcement action against the IP2 licensee/s to ensure regulatory compliance, resolve the systemic mismanagement and resultant safety problems, and protect the public health and safety—which is what prompted us to submit the petition in the first place. The mere fact that "the NRC staff has consistently assessed problems and issues arising in relation to their impact on plant safety" (p. 9) since 1996 means that

THE EXPERIMENT IS OVER

Web site: www.nukebusters.org E-Mail: can@nukebusters.org

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those actions were somewhere between insufficient and utterly ineffective in preventing the increasing deterioration of safety that resulted in the August 1999 and February 2000 accidents at IP2. The numerous equipment failures and operator errors during the December 2000 restart – which the proposed decision fails even to acknowledge – further discredit the assertion that NRC staff actions and decisions were prudent and effective in ensuring longstanding problems were sufficiently addressed prior to restart.

In fact, there is nothing in Con Edison's performance since the restart which demonstrates that we have seen the end of the spiral of deteriorating safety at Indian Point 2. Prior to the August 1999 emergency, IP2 had been operated continuously for over 8 months following a previous year-long maintenance outage. Equipment problems (some of them repeated), unplanned shutdowns and power changes, and continued negative inspection findings since the December 2000 restart indicate that, despite NRC's application of the Reactor Oversight Process's "Action Matrix," oversight without enforcement has not been effective.

The Petitioners submitted evidence of ongoing safety problems in a second set of documents provided by a whistleblower. The documents consisted of Condition Reports for the period January-April, 2001, as well as the executive summary of a contractor's 1997 report on human performance and management culture at Indian Point 2. Unfortunately, the PRB decided to conclude its investigation in June and declined to review this batch of documents, claiming that they were already under review in a simultaneous proceeding on the IP2 license transfer. However, in two conversations with PRB staff, the Petitioners explained that it was neither our expectation nor NRC practice to conduct a full-scale safety review in a license transfer proceeding. It is not clear that the petition review staff fully understood the license transfer process when that decision was made. Instead, the PRB staff indicated that, if the second set of whistleblower's documents were not reviewed in the license transfer proceeding, or the findings of a review were relevant to the issues in our 2.206 petition, that the Petitioners could request the investigation be reopened.

Nevertheless, the license transfer and ownership of the reactor has been completed, and the documents in question have not been reviewed. On August 27, the Commission issued a Memorandum and Order in the license transfer proceeding (CLI-01-19), which did not include a review of the documents. Hence, the NRC has now had possession of a set of whistleblower's documents pertaining to regulatory violations and safety at IP2 for nearly 5 months, but no one in the agency has reviewed them yet. Rather than a mere mistake, however, it appears that the NRC is using its various bureaucratic arms to tie up the public in an illusion of responsiveness and participation while the agency goes about

shuttling IP2 through the regulatory process without accountability to worker or public health and safety.

Shockingly, the Proposed Director's Decision omits any mention of concerns about a "chilled work atmosphere," harassment and intimidation of workers who raise safety concerns, or management's deliberate negligence in resolving safety problems raised by workers. These concerns were clearly identified in both batches of Condition Reports (see CR 2000-00-8415 & CR 200103190), the January 24, 2001 public meeting to review the Petitioners' concerns (see, e.g., transcript at pp. 11, 13, 16-17, 26), and the contractor's 1997 report on human performance at IP2 and Con Edison's management culture. In a broad generalization, the proposed decision has only this to say:

The staff found that an overwhelming majority of reports screened by the NRC staff discussed issues that were similar to the issues identified by regional inspectors and did not conflict with previous NRC conclusions from those inspections. (p. 10)

It is not clear whether concerns about a chilled work atmosphere were included in this assessment, but if so, it defies explanation why the NRC has not taken decisive enforcement action – as the agency did during the Millstone debacle – to ensure that Con Edison resolves such problems. If an atmosphere that discourages workers from raising safety concerns has not been identified previously by the NRC, then the PRB's assessment of such a fundamental safety issue should have been addressed directly in the review. In light of these omissions, the Petition Review Board appears to have no concern for the workers at IP2, since the proposed decision does not even mention – much less address – evidence of a "chilled work atmosphere" created by IP2 management.

It is, therefore, inappropriate for the Petition Review Board to issue a decision at this time, and certainly not in the inadequate form proposed. Rather, the PRB should take the following actions before issuing a decision on the petition:

- 1) reinitiate its investigation into the effects of systemic mismanagement on nuclear safety at IP2;
- 2) review the second set of internal documents provided by a whistleblower;
- 3) evaluate the repeated failures of NRC's regulatory involvement to prevent safety problems and systemic mismanagement at IP2; and
- 4) determine how to deal with the licensees (ConEd and Entergy) in light of the recent transfer. For, while ConEd is still the primary culprit and could be subject to fines, Entergy is responsible for all station improvements and compensatory measures at this point.

The PRB's decision to curtail its investigation into the issues raised by the petition and the evidence provided by whistleblowers is not only an act of negligence; it is a violation of the NRC's mandate to take workers' safety concerns seriously. Unless

these concerns are fully assessed and fairly addressed, the PRB's actions could convince workers throughout the nuclear industry to lose confidence in the NRC's willingness to take them seriously and, when necessary, to protect them.

Sincerely,

[Original signed by Deborah Katz, CAN]

Deborah Katz, Executive Director
Citizens Awareness Network

[Original signed by Timothy L. Judson, CNY-CAN]

Timothy L. Judson
Central New York-Citizens Awareness Network

Mark Jacobs
Westchester-Citizens Awareness Network,

Paul Gunter
Nuclear Information & Resource Service

Anne Reynolds
Environmental Advocates