November 21, 2001

Ms. Deborah Katz
Executive Director
Citizens Awareness Network
P.O. Box 83
Shelburne Falls, MA 01370

Dear Ms. Katz:

This letter responds to the Petition you filed with William Travers, Executive Director for Operations, U.S. Nuclear Regulatory Commission (NRC), pursuant to Section 2.206 of Title10 of the *Code of Federal Regulations* (10 CFR 2.206) on December 4, 2000, on behalf of the Citizens Awareness Network, Nuclear Information and Resource Service, Westchester Peoples Action Coalition, Environmental Advocates, and Public Citizen's Critical Mass Energy Project. In your Petition, you requested that the NRC: (1) suspend the license for the Indian Point Nuclear Generating Unit No. 2 (IP2) reactor because of the licensee's "persistent and pervasive, negligent management of the reactor," (2) investigate whether the potential misrepresentation of material fact by the utility regarding "significantly insufficient" engineering calculations was due to a lack of rigor and thoroughness or was deliberate, (3) revoke the IP2 operating license if it is found that the licensee deliberately provided insufficient and false information, (4) if the license is not revoked, maintain IP2 on the list of "agency focus" reactors until management demonstrates it can fulfill its regulatory requirements and commitments, (5) not approve the transfer of the IP2 license until management can demonstrate that the Updated Final Safety Analysis Report (UFSAR), the condition report backlog, and the maintenance requirements are up to date and workers have been retrained, and (6) not allow the IP2 reactor to restart until the fundamental breakdown in management is analyzed and corrected.

You met with the NRC's Petition Review Board (PRB) on January 24, 2001, to clarify the bases for your Petition. At that time you also supplemented the Petition. The transcript of this meeting was provided to you and is available in the NRC's Agencywide Documents Access and Management System (ADAMS). The transcript and supplement are available in ADAMS for inspection at the Commission's Public Document Room (PRD), at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, and are accessible electronically in ADAMS through the NRC Public Electronic Reading Room at http://www.nrc.gov/reading-rm.html (ADAMS Accession No. ML010450222). Persons who do not have access to ADAMS or who encounter problems in accessing documents located in ADAMS should contact the NRC PDR reference staff by telephone at 1-800-397-4209, or locally at 301-415-4737, or by email at pdr@nrc.gov.

On March 9, 2001, the NRC staff informed you that your Petition met the requirements for review under 10 CFR 2.206 and would be acted upon within a reasonable time. You were also informed in that letter that the PRB had previously met to consider your request to prevent the restart of the IP2 reactor until the fundamental breakdown in management was analyzed and corrected (Requested Action 6). The PRB recommended and I concurred not to grant your request for immediate action. You were informed of this decision by the NRC staff by telephone on December 20, 2000.

By letter dated May 3, 2001, the NRC staff requested that Consolidated Edison of New York, Inc. (ConEd, or the licensee) provide information related to the Petition. ConEd responded on May 17, 2001, and the information provided was considered by the staff in its evaluation of the Petition.

The issues raised in your Petition pertain to the licensee's alleged systemic mismanagement of IP2 as a result of which the licensee operated the station in "flagrant disregard" of NRC regulations. Your Petition includes examples of performance problems at the plant (mostly taken from NRC documents) which you believe demonstrate the plant was not being operated safely. During the January 24, 2001, public meeting, you provided the NRC staff supplemental information justifying the enforcement actions you requested.

The NRC has reviewed the issues raised in your December 4, 2000, Petition, as supplemented on January 24, 2001. Your first request (to suspend the license for the IP2 reactor because of the licensee's "persistent and pervasive, negligent management of the reactor") was not granted because the NRC staff did not identify the multiple safety-significant violations of requirements that would cause the NRC to lose confidence in the licensee's ability to maintain and operate the facility safely. Your second and third requests (to investigate whether the potential misrepresentation of material fact by the utility regarding "significantly insufficient" engineering calculations was due to a lack of rigor and thoroughness or was deliberate, and to revoke the IP2 operating license if it is found that the licensee deliberately provided insufficient and false information) were also not granted. You did not provide any new information in the Petition or in the supplemental documents, beyond mere speculation, about wrongdoing by the licensee. Inspections conducted by the NRC staff identified human performance issues, but found no specific indication of licensee wrongdoing which would constitute the basis to initiate an investigation or revoke the operating license for IP2. Your fourth request (maintain IP2 on the list of "agency focus" plants until management demonstrates it can fulfill its regulatory requirements and commitments if the license is not revoked) was found to be consistent with the actions the NRC has already taken in accordance with the Reactor Oversight Process with respect to IP2, and therefore, was granted in part. The NRC staff concluded that the licensee for IP2 should receive enhanced NRC oversight and inspection until improving performance warrants its redesignation in accordance with the guidance of the Reactor Oversight Process. Your fifth request (not to approve the transfer of the IP2 license until management can demonstrate that the UFSAR, the condition report backlog, and the maintenance requirements are up to date and workers have been retrained) was found not to meet the requirements for review under 10 CFR 2.206. You did not provide any new information about wrongdoing by ConEd that would constitute the basis for an investigation. As previously stated, your last request (not to allow the IP2 reactor to restart until the fundamental breakdown in management is analyzed and corrected) was not granted. The findings and issues you provided as a basis for this request were all previously reviewed through the NRC's assessment processes, and did not warrant prohibiting the restart of IP2.

The staff provided all the Petitioners and ConEd a copy of the proposed Director's Decision by letter dated July 25, 2001. You responded with comments by letter dated September 14, 2001. The licensee did not comment on the proposed Director's Decision. Your comments on the proposed Director's Decision are addressed in an attachment to the final Director's Decision.

I have included a copy of the Director's Decision (Enclosure 1), which will be filed with the Secretary of the Commission for the Commission to review in accordance with 10 CFR 2.206(c). As provided by this regulation, the decision will constitute the final action of the Commission 25 days after the date of the decision unless the Commission, on its own motion, institutes a review of the decision within that time. The documents cited in the enclosed decision are also available for inspection at the Commission's Public Document Room, and electronically accessible in ADAMS through the NRC Public Electronic Reading Room at http://www.nrc.gov/reading-rm.html.

I have also enclosed a copy of the notice of "Issuance of Director's Decision Under 10 CFR 2.206" (Enclosure 2) that has been filed with the Office of the Federal Register for publication.

We appreciate your efforts to bring these issues to the attention of the NRC. Please feel free to contact Christopher Gratton at 301-415-1055 to discuss any questions related to this petition.

Sincerely,

/RA/

Samuel J. Collins, Director
Office of Nuclear Reactor Regulation

Docket No. 50-247

Enclosures: 1. Director's Decision DD-01-04
2. *Federal Register* Notice

DD-01-04

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
OFFICE OF NUCLEAR REACTOR REGULATION
Samuel J. Collins, Director

In the Matter of	)	Docket No. 50-247
	)	
Entergy Nuclear Operations, Inc.	)	License No. DPR-26
Entergy Nuclear IP2	)	
	)	
(Indian Point Nuclear Generating Unit No. 2)	)	

DIRECTOR'S DECISION UNDER 10 CFR 2.206

I. INTRODUCTION

On December 4, 2000, Citizens Awareness Network (CAN), Public Citizen, Westchester Peoples Action Coalition, Nuclear Information and Resource Service, and Environmental Advocates (Petitioners) filed a Petition pursuant to Section 2.206 of Title 10 of the *Code of Federal Regulations* (10 CFR 2.206). The Petitioners requested that the U.S. Nuclear Regulatory Commission (Commission or NRC) take the following actions with regard to Indian Point Nuclear Generating Unit No. 2 (IP2), previously owned and operated by the Consolidated Edison Company of New York, Inc. (ConEd or the licensee): (1) suspend the license for the IP2 reactor based on the licensee's "persistent and pervasive, negligent management of the reactor," (2) investigate whether the potential misrepresentation of material fact by the utility regarding "significantly insufficient" engineering calculations was due to a lack of rigor and thoroughness or was deliberate, (3) revoke the IP2 operating license if it is found that the licensee deliberately provided insufficient and false information, (4) if the license is not revoked, then maintain IP2 on the list of "agency focus" plants until IP2 management demonstrates it can fulfill its regulatory requirements and commitments, (5) not approve the transfer of the IP2 license until management can demonstrate that the Updated Final Safety Analysis Report

(UFSAR), the condition report (CR) backlog, and the maintenance requirements are up to date and workers have been retrained, and (6) not allow the IP2 reactor to restart until the fundamental breakdown in management is analyzed and corrected. The bases for the requested actions are discussed later in this section.

In a transcribed public meeting between the Petitioners and the Office of Nuclear Reactor Regulation's (NRR's) Petition Review Board on January 24, 2001, the Petitioners clarified issues in the Petition. The transcript of this meeting was treated as a supplement to the Petition and is available for inspection at the Commission's Public Document Room, at One White Flint North, 11555 Rockville Pike (first floor), Rockville Maryland, and electronically accessible in the Agencywide Documents Access and Management System (ADAMS) through the NRC Public Electronic Reading Room at http://www.nrc.gov/reading-rm.html (ADAMS Accession No. ML010450222). If you do not have access to ADAMS, or if you have problems in accessing the documents in ADAMS, contact the NRC Public Document Room (PDR) reference staff at 1-800-397-4209 or 301-415-4737 or by e-mail to pdr@nrc.gov.

During the public meeting, the Petitioners gave the NRC staff three documents to consider in deciding whether to review the Petition under 10 CFR 2.206. The documents consisted of (1) several hundred reports on the condition of the reactor and the associated facility from the IP2 condition report system, (2) a January 19, 2001, evaluation of the condition reports by the Union of Concerned Scientists (UCS), and (3) a January 10, 2001, redacted version of the document "Citizens Awareness Network, Inc.'s Revised Contention on Financial Qualifications in the License Transfers for James A. FitzPatrick and Indian Point 3 Nuclear Power Stations per Commission Memorandum & Order, November 27, 2000." The Petitioners provided the documents to supplement the bases for the requested actions in the Petition. The documents contained no new requests for NRC action. On September 6, 2001, the operating license for IP2 was transferred from ConEd to Entergy Nuclear IP2 and Entergy Nuclear

Operations, Inc. (Entergy). By letter dated September 20, 2001, Entergy requested that the NRC continue to review all requests pending with the NRC when ConEd requested the license transfer.

As a basis for the requested actions, the Petitioners stated that ConEd's systemic mismanagement of the plant had resulted in, among other things, inconsistencies and inaccuracies in the UFSAR, safety systems whose compliance with the regulations could not be verified, design basis analyses that might not be accurate, and an UFSAR that might not be up to date. The Petitioners referenced numerous NRC inspection reports, licensee event reports, letters between the NRC staff and ConEd, plant performance review summaries, and other documents. In addition, the Petitioners contended that the CRs turned over to the NRC staff during the January 24, 2001, public meeting provided further evidence of ConEd's mismanagement of the IP2 facility, evidence that may not have been previously considered by the NRC staff. The Petitioners stated that ConEd's mismanagement of the plant has compromised the health and safety of the workers and the public, potentially exposing them to radiation levels higher than warranted. The Petitioners also stated that ConEd's mismanagement had allowed ConEd to operate the plant out of compliance with the technical specifications.

The Petitioners also contended that IP2 senior management deliberately chose to continue operating the plant with deteriorating steam generators, in spite of communications and technical guidance from the NRC. The Petitioners stated that a license amendment to defer a June 1999 steam generator tube inspection to June 2000 resulted in the February 2000 steam generator tube failure event. The Petitioners further stated that the NRC's decision to approve the license amendment was based on data provided by ConEd which was later deemed inaccurate.

The Petitioners also requested that no license transfer be approved until the management of IP2 can demonstrate that the UFSAR, CR backlog, and maintenance requirements are up to date, and that the plant workers have been retrained to the modified UFSAR. The Petitioners clarified the bases of their request during the January 24, 2001, public meeting. The Petitioners stated that the plant was "too far out of its licensing bases and design bases at this point and the licensing documentation ... too inaccurate to justify a transfer at this point." In addition, the Petitioners stated: "On the basis of the violations that have occurred and the way that Con Edison has been running the reactor, ... Con Edison has not earned the privilege to be able to transfer its liability to another operator." The Petitioners also questioned the adequacy of the license transfer process to evaluate nuclear power plants with a history of poor performance. Finally, the Petitioners questioned Entergy's financial qualifications to handle a plant as troubled as IP2 in light of the many acquisitions the company has recently made. As further basis for their concerns, during the January 24, 2001, public meeting, the Petitioners submitted the document entitled "Citizens Awareness Network, Inc.'s Revised Contention on Financial Qualifications in the License Transfers for James A. FitzPatrick and Indian Point 3 Nuclear Power Stations per Commission Memorandum & Order, November 27, 2000." The document discusses CAN's financial concerns regarding Entergy's efforts to purchase James A. FitzPatrick and Indian Point 3. The Petitioners contended that their concerns about the financial qualifications of Entergy in this proceeding were also relevant to the transfer of the IP2 license to Entergy.

By letter dated May 3, 2001, the NRC staff requested that ConEd provide a voluntary response to the issues identified in the Petition. On May 17, 2001, ConEd provided a response to the issues identified in the Petition (ADAMS Accession No. ML011420230).

The NRC staff sent a proposed version of the Director's Decision to the Petitioners and ConEd by letter dated July 25, 2001, with an invitation to comment on the completeness and

accuracy of the decision. The Petitioners reply and the NRC staff's response to the Petitioners' reply are included as Attachments 1 and 2, respectively. ConEd did not comment on the proposed Director's Decision.

II. DISCUSSION

The staff reviewed the information in the Petition and the supplemental documents submitted during the January 24, 2001, public meeting. The NRC staff identified the following issues to be addressed in this Director's Decision: (1) Does the performance of the operators of IP2 warrant enforcement action to prevent the plant restart or suspend the operating license? If not, should IP2 remain on the list of plants receiving enhanced NRC oversight? (2) Is there a basis to initiate an investigation of ConEd regarding the August 1999 and February 2000 events at IP2? (3) Based on the performance problems discussed in the Petition, should ConEd be allowed to transfer the IP2 license to another owner?

Issue 1: *Does the performance of the operators of IP2 warrant enforcement action to prevent plant restart or suspend the operating license? If not, should IP2 remain on the list of plants receiving enhanced NRC oversight?*

The Petitioners contend that management of the IP2 reactor facility has degraded to the point where public health and safety are not assured and the environment is not protected. As evidence for their claim, the Petitioners provided numerous examples of plant performance problems documented in NRC inspection reports and plant performance reviews for IP2, licensee event reports submitted by ConEd to the NRC under 10 CFR 50.73, and other similar documents. These examples include errors in design and licensing basis documentation, errors in translating the design of the plant into hardware and procedures, degraded plant conditions, deficiencies in emergency preparedness, and what the Petitioners believe is a

general disregard of NRC technical and administrative communications. The Petitioners requested that the NRC keep the IP2 reactor off line until the fundamental breakdown in management described in the December 4, 2000, Petition is analyzed and corrected.

As further evidence of management problems at IP2, the Petitioners gave the NRC recent IP2 CRs and UCS's evaluation of those CRs. The UCS CR evaluation highlights a variety of out-of-normal conditions, including deficiencies in the IP2 problem identification and resolution process and deficiencies in the material condition of the plant. The Petitioners specifically requested that if the plant is allowed to operate, IP2 remain on the list of "agency focus" plants until management for IP2 demonstrates it can fulfill its regulatory requirements and commitments.

NRC Response: In a conference call prior to the December 2000 restart of IP2, the NRC staff informed Deborah Katz of CAN, the contact person for this Petition, that the Petitioners' request to prohibit the restart of the IP2 reactor until the fundamental breakdown in management is analyzed and corrected (Request Action 6) was not granted. The Director of NRR did not grant the requested action because the findings and issues that provided the basis for the requested action had all been evaluated previously during NRC's inspections and assessments of IP2. At the time of the Petitioners' request, the findings from the NRC's assessment of IP2 did not warrant prohibiting the restart of IP2. The staff informed Ms. Katz of the decision not to prevent the restart of the IP2 reactor in a letter dated March 9, 2001.

The NRC has been concerned for some time about performance weaknesses at IP2. The Petitioners' concerns about IP2 are, for the most part, the same concerns the NRC staff has been documenting for some time. Although performance issues continue to pose

challenges for this facility, recent NRC staff assessments of licensee performance indicate that IP2 is being operated safely.

In recent years, the NRC has maintained a very strong regulatory presence at IP2, as reflected by numerous inspection and assessment reports resulting in significant civil penalties. For example, inspections conducted in 1996 and 1997 brought to light a variety of performance issues, many identical to those raised by the Petitioners. The last Systematic Assessment of Licensee Performance report (issued in March of 1997) captured these issues and conveyed NRC's concerns to ConEd through significantly lowered performance ratings. In response to these concerns, NRC inspections by resident and region-based inspectors increased significantly. Performance problems continued. An independent, in-depth safety assessment was conducted at the plant in early 1998 in accordance with a confirmatory action letter. An NRC team oversaw this independent effort. In all, more than $500,000 in civil penalties were assessed by the NRC in connection with inspection findings at IP2 from 1997 to 2000. Over the period 1999–2001, the number of inspection hours logged by the NRC at IP2 was more than double the average at single-unit sites. In the last 16 months, NRC senior managers participated in 15 management meetings with ConEd, 10 in the vicinity of IP2, and 5 at either the NRC regional office or at NRC Headquarters in Rockville, Maryland. The number of meetings with NRC senior managers was significantly higher than the number for an average single-unit site.

During this period, Region I raised specific concerns with safety equipment, human performance, engineering and technical support, control of design activities, emergency preparedness and corrective action programs, the same kind of issues identified in the Petition. In response, ConEd developed improvement programs. ConEd's performance improvement efforts yielded some progress, but two recent events, the August 1999 reactor shutdown with complications and the steam generator tube failure in February 2000, indicated that these

efforts had not effectively remedied the underlying problems. Consequently, senior NRC managers determined in May 2000 that weaknesses in numerous areas warranted designating IP2 as an "agency focus" plant. Subsequently, in accordance with the plant assessment guidance established as part of the Reactor Oversight Process (ROP), IP2 was designated as a plant with "multiple degraded cornerstones," requiring heightened oversight and inspection. A detailed description of the ROP is given in NUREG-1649, Revision 3, “Reactor Oversight Process,” which is available for inspection at the Commission's Public Document Room, at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, and electronically accessible in ADAMS through the NRC Public Electronic Reading Room at http://www.nrc.gov/reading-rm.html.

Following the guidance in the ROP, NRC provided enhanced inspection and oversight at IP2 over the past year. To augment the baseline inspections, regional and Headquarters personnel have performed special reviews and inspections. Prior to the restart of the IP2 reactor on December 30, 2000, the NRC staff employed a disciplined, internal process for screening and addressing issues that could impact safety during the plant startup and subsequent power operation. In addition to inspecting steam generator replacement work and associated plant restoration activities, the NRC staff inspected numerous equipment, training, and system readiness issues. Important among these were design control deficiencies identified in ConEd’s communications with its nuclear steam supply system vendor. The NRC staff documented the preliminary results of these inspections in a letter to ConEd dated December 22, 2000 (ADAMS Accession No. ML003780263).

Notwithstanding the inspection and oversight activities prior to and during the plant restart, the NRC staff performed the supplemental inspection (95003) prescribed by the ROP for a plant with multiple degraded cornerstones. Fourteen inspectors spent 3 weeks on site examining key safety issues, such as human performance, equipment performance, design and

configuration control, emergency preparedness, and corrective action processes. This inspection evaluated many of the areas of concern identified by the Petitioners. The purpose of this inspection was to make sure the NRC had not missed important issues and to provide a supplemental assessment of the situation and the underlying causes of the performance problems at IP2. Recognizing that performance problems and weaknesses existed, the NRC charged the team with independently evaluating whether there was an acceptable margin of safety at IP2. The inspection scope was selected in a manner consistent with the 95003 procedure, a procedure developed as an integral part of the revised ROP. The procedure includes a review of the effectiveness of the IP2 management in operating the plant safely. The findings from that inspection were documented in a report dated April 10, 2001 (NRC Inspection Report 05000247/2001-002, ADAMS Accession No. ML011000373).

Throughout all of these inspections and reviews, the NRC staff has consistently assessed problems and issues in relation to their impact on plant safety. The NRC expects the licensee for IP2 to assess all deficiencies in terms of the operability of safety systems, regardless of whether the deficiency was identified during an NRC inspection or by a plant employee through the licensee's corrective action process. This is particularly important in the period before plant restart after a long shutdown. If, during any of the reviews and inspections, the NRC staff had encountered conditions which ultimately defeated the functions of safety systems, the NRC staff would have taken appropriate action to ensure the plant was placed in a safe condition and expanded the scope of reviews or inspections. During the inspections and assessments performed at IP2, the NRC staff did not identify multiple, significant violations of requirements that would cause the NRC to lose confidence in the licensee's ability to maintain and operate the facility safely. Likewise, the NRC did not identify safety-significant examples of operation of the facility outside its design basis.

In evaluating the concerns of the Petitioners, the NRC staff took additional actions to ensure that the licensee CRs submitted by the Petitioners during the January 24, 2001, public meeting contained no new safety-significant issues. CRs document out-of-normal conditions. Licensee management investigates the conditions and remediates conditions that are confirmed as requiring attention on a safety-prioritized basis. The NRC staff does not review each CR; rather, the NRC staff screens CRs for risk or safety significance as one of many inputs to inspection activities.

ConEd has set a low threshold for reporting out-of-normal conditions at the plant and encourages all members of the plant staff to initiate CRs. As a result, some reports are repetitions and others describe conditions that are of low safety significance. The CRs submitted by the Petitioners to the NRC were a sampling of the CRs entered into the CR database by ConEd employees over a 5-month period (September 2000–January 2001). Many of these reports describe out-of-normal plant conditions that are of low safety significance.

The NRC staff reviewed each of the CRs, including those highlighted in the UCS evaluation submitted to the staff during the January 24, 2001, public meeting, to determine whether the reports provided new evidence that ConEd was not operating IP2 safely. The staff screened the reports for the types of issues identified by the Petitioners. For example, the NRC staff selected CRs that repeatedly documented similar out-of-normal conditions (suggesting that ConEd had failed to fix the root causes of problems) and CRs that documented ineffective corrective actions. The NRC staff also selected CRs that highlighted discrepancies between the as-built plant and the intended design of the plant, and CRs that identified defects in the material condition of the plant. The staff identified approximately 40 such CRs. The staff compared these reports and those identified by the UCS to the findings from the region-based Problem Identification and Resolution Inspection conducted October 2–20, 2000, and the NRC Supplemental Inspection 95003 conducted January 16–February 9, 2001. 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 (see NRC Inspection Reports 50-247/00-012, dated December 4, 2000, and 05000247/2001-002, dated April 10, 2001, at ADAMS Accession Nos. ML003774212 and ML011000373, respectively). The NRC staff performed an additional inspection of reactor protection system (RPS) wiring defects at IP2 (documented in CR 200100327). Based on the inspection, the staff found no problems that would render the RPS incapable of performing its intended safety function. The NRC staff documented the results in Inspection Report 05000247/2001-005, dated June 11, 2001 (ADAMS Accession No. ML011630055). None of the remaining CRs indicated any immediate or past safety or operability concerns at IP2.

The NRC staff acknowledges that performance problems at the station require continued licensee and NRC attention. While recognizing that some progress to improve performance has been made, the NRC staff has expressed its concern to ConEd (most recently in an annual assessment letter for IP2 dated May 31, 2001, ADAMS Accession No. ML011510375) that such progress has been slow overall and limited in some areas. However, the NRC staff does not believe that the limited improvement in performance warrants a suspension of IP2's license. The NRC's recent inspections indicate that the licensee for IP2 is operating within its Technical Specifications, the NRC regulations, and its license.

Although challenges still exist for the licensee of IP2 in the areas of problem identification and resolution and design control, NRC findings from the April 10, 2001, inspection report indicate the plant is being operated safely. The staff expects that Entergy, as the new licensee for IP2, will continue to review all condition reports, determine their significance to plant safety, and take appropriate actions to correct out-of-normal conditions in a

timely manner. The NRC staff will assess the effectiveness of Entergy's corrective action program and monitor Entergy's progress in reducing the backlog of out-of-normal conditions.

The Petitioners also requested that IP2 remain on the list of "agency focus" plants until the licensee demonstrates that it can fulfill its regulatory requirements and commitments. The NRC replaced the licensee evaluation process that produced the list of agency focus plants with the ROP. Under the ROP, IP2 was designated as a plant with "multiple/repetitive degraded cornerstones." This designation requires specific agency actions, including enhanced oversight and additional inspections by the NRC (similar to the actions taken in the past for an agency focus plant). The Petitioners' request to maintain the plant on a list of plants requiring enhanced oversight and inspection is consistent with NRC actions already taken at IP2. For this reason, the NRC staff grants the Petitioners' request to maintain IP2 on the list of agency focus plants. However, the Petitioners' request also provides specific actions that must be performed by the licensee to be removed from the agency focus list ("...until the licensee demonstrates that it can fulfill its regulatory requirements and commitments"), actions that are not in accordance with the guidance in the ROP and inconsistent with the finding from this review. Therefore, the NRC staff does not grant this portion of the Petitioners' request. The NRC will continue heightened oversight of IP2 in accordance with the ROP until it gains confidence that the performance improvement program has substantially addressed the performance weaknesses that have been identified.

Issue 2: *Is there a basis to initiate an investigation of ConEd regarding the August 1999 and February 2000 events at IP2?*

The Petitioners specifically requested that the NRC investigate the potential misrepresentation of material facts by the utility to determine whether the significantly insufficient calculations relied on to insure the adequacy of design of key systems, including the calculations supporting the steam generator analysis and the electric bus analysis, were due to

a lack of rigor and thoroughness or deliberately misleading. The Petitioners stated that the NRC granted the license amendment deferring the midcycle inspection based on faulty and inaccurate information provided by ConEd; for example, tube defects were missed during the June 1997 steam generator tube nondestructive examination due to improper use of testing equipment, inadequate procedures, and inadequate analysis by ConEd. These errors contributed to the tube failure event. The Petitioners believe ConEd may have deliberately misled the NRC during the review of the license amendment. The Petitioners speculated that another event in August 1999, which involved complications following an automatic reactor shutdown, might have been caused by similar deliberate actions by ConEd. The Petitioners did not provide any additional information as to why they believe the August 1999 and February 2000 events warrant an investigation of potential licensee wrongdoing.

NRC response: The NRC staff held internal meetings following the steam generator tube failure event to determine whether there was any specific indication of wrongdoing by ConEd in obtaining the NRC's approval of the amendment to allow a one-time extension of the steam generator inspection interval. A specific indication of wrongdoing, beyond mere suspicion, would have prompted an investigation of ConEd by the NRC's Office of Investigations (OI). During these meetings, the participants discussed the facts of the steam generator tube failure event. Based on a review of the facts, the participants reached the consensus that an investigation was not warranted. The participants concluded that there was no reasonable basis for suspecting that a willful violation of 10 CFR 50.9, "Completeness and Accuracy of Information," occurred. The NRC's OI staff was present at the meetings, participated in the discussions, and agreed with the decision not to conduct an investigation.

The NRC also dispatched two Augmented Inspection Teams to review the causes and safety implications of, and ConEd's actions after, the reactor automatic shutdown with

complications in August 1999 and the steam generator tube failure in February 2000. The findings from each inspection were documented in letters to Mr. A. Alan Blind of ConEd, dated October 19, 1999 (NRC Inspection Report 05000247/99-08) and April 28, 2000 (NRC Inspection Report 05000247/2000-002) (ADAMS Accession Nos. ML992950033 and ML003709064, respectively). The staff identified human performance issues (such as configuration control, poor management oversight, and corrective action program deficiencies) as causes of the events. The staff identified no specific indication of wrongdoing on the part of ConEd. Therefore, the staff found no basis to initiate an OI investigation of the August 1999 or February 2000 events.

A specific indication of wrongdoing, beyond mere suspicion or potential, is the threshold to initiate an OI investigation. The Petitioners did not provide any new information in the Petition or in the supplemental documents, beyond mere speculation, about wrongdoing by ConEd in the August 1999 or February 2000 events. Consequently, the Petitioners' request to initiate an investigation is not granted.

Issue 3: *Based on the performance problems discussed in the Petition, should ConEd be allowed to transfer the IP2 license to another owner?*

The Petitioners requested that the NRC deny any license transfer for IP2 until the licensee's management can demonstrate that the UFSAR, CR backlog, and maintenance requirements are up to date, and that plant workers have been retrained to the modified UFSAR. During the January 24, 2001, public meeting, the Petitioners clarified their position on this request by stating that IP2 was operating too far out of its licensing basis and the licensing documentation was too inaccurate to justify a license transfer at this time. In addition, the Petitioners contended that the NRC's procedure for reviewing license transfer applications was unequipped to evaluate the transfer of an agency focus plant to a new entity which was not an electric utility. The Petitioners were concerned about Entergy's "ability to go back to ratepayers

and recover costs for an extended outage or for bringing the reactor back into compliance." Finally, the Petitioners contended that Entergy does not have the financial qualifications to address the kinds of problems posed by IP2 at this time. The Petitioners based their conclusions, in part, on the document "Citizens Awareness Network, Inc.'s Revised Contention on Financial Qualifications in the License Transfers for James A. FitzPatrick and Indian Point 3 Nuclear Power Stations per Commission Memorandum & Order, November 27, 2000," submitted to the NRC staff during the January 24, 2001, public meeting.

NRC Response: After reviewing the Petitioners' request to deny any license transfer requests for IP2, the staff determined that the Petitioners' request does not meet the requirements for review under 10 CFR 2.206. The licensee performance issues which constitute the basis for the Petitioners' request to deny any license transfers for IP2 have been addressed in the NRC staff's response to Issue 1 of this Director's Decision.

A request to transfer an NRC operating license under 10 CFR 50.80 to a new entity is processed as an amendment to the license. NRC Management Directive 8.11, "Review Process for 10 CFR 2.206 Petitions," Handbook 8.11, Part III, Section C(2)(c), specifies that petitioners who request that a license amendment be denied should address such a request in the context of the relevant licensing action, not as a petition for enforcement action under 10 CFR 2.206. At the time this Petition was submitted, there was no proceeding in which the Petitioners could address their concerns regarding the transfer of the IP2 operating license. However, on December 12, 2000, ConEd submitted a joint application to transfer the operating licenses for Indian Point Nuclear Generating Units Nos. 1 and 2. Notice of the request for approval and an opportunity to request a hearing or to submit written comments was published in the *Federal Register* on January 29, 2001 (66 FR 8122). Pursuant to the notice, on February 20, 2001, CAN filed hearing requests and petitions to intervene in the review of the license transfer applications.

The Petitioners also stated during the January 24, 2001, public meeting that the NRC should not approve any license transfer requests for IP2 due to deficiencies in the license transfer review process. Section 2.206 provides the opportunity for any person to file a request to institute a proceeding pursuant to 10 CFR 2.202, "Orders," to modify, suspend, or revoke a license, or for any other action as may be proper. However, a request that the NRC institute a proceeding under 10 CFR 2.202 due to perceived deficiencies in existing NRC regulations is not within the scope of 10 CFR 2.206. If the Petitioners consider the license transfer regulations deficient, they may address the deficiency by filing a petition for rulemaking pursuant to 10 CFR 2.802, "Petition for Rulemaking," to amend or rescind the regulation.

Consequently, the Petitioners' request that the NRC not approve any license transfer does not meet the requirements for review under 10 CFR 2.206.

It should be noted, however, that the NRC staff shares the Petitioners' concerns about the financial qualifications of a transferee. Section 50.80, "Transfer of Licenses," provides the regulatory requirements for license transfers and stipulates that an application for transfer shall include as much of the technical and financial qualifications information described in 10 CFR 50.33, "Contents of application; general information," and 50.34, "Contents of application; technical information," as would be required by those sections if the application were for an initial license. The Commission will approve an application for the transfer of a license only if the Commission determines that the proposed transferee is qualified to be the holder of the license and the transfer of the license is otherwise consistent with the applicable provisions of law, regulations, and orders issued by the Commission.

As specified in 10 CFR 50.33, a license transfer applicant must provide information that demonstrates it possesses or has reasonable assurance of obtaining the funds necessary to cover the estimated operating costs for each of the first 5 years, and must identify the source of

these funds. Using this information, the Commission determines whether the transferee's financial qualifications meet the requirements for license transfer.

The Petitioners' issues concerning the operational performance of the current licensee, including errors and inaccuracies in the UFSAR, maintenance and CR backlogs, and other operational concerns, do not have a direct bearing on the decision to approve or deny the transfer of a license. As previously stated in Commission Memorandum and Order CLI-00-20, dated October 6, 2000 (ADAMS Accession No. ML003758115), a license transfer proceeding is not a forum for a full-scale health-and-safety review of the plant. Operational issues of the kind described in the Petition and the supplement will need to be addressed by the licensee whether or not the license is transferred. The Commission cannot deny a license transfer request solely on the basis of licensee performance. If the proposed transferee meets the provisions of 10 CFR 50.80, the Commission will approve the transfer of the license.

III. CONCLUSION

The NRC has completed its review of the information provided by the Petitioners, and for the reasons discussed herein, the NRC staff concludes that the information contained in the Petition and the supplement does not warrant NRC staff action to suspend or revoke the operating license for IP2. Likewise, the staff finds no basis for initiating an investigation into wrongdoing on the part of ConEd. For these issues, the Petitioners' requested actions are not granted. However, the NRC grants in part the Petitioners' request that IP2 remain on the list of agency focus plants (i.e., plants with multiple/repetitive degraded cornerstones). The NRC staff did not grant the Petitioners' request to define under what conditions IP2 will be removed from the list of plants with multiple/repetitive degraded cornerstones.

In addition, the staff finds that the Petitioners' request to delay or deny a request to transfer the operating license for IP2 until the licensee's management can demonstrate that the

UFSAR, CR backlog, and maintenance requirements are up to date, and that plant workers have been retrained to the modified UFSAR does not meet the requirements for review under 10 CFR 2.206.

A copy of this Decision will be filed with the Secretary of the Commission for the Commission's review in accordance with 10 CFR 2.206(c). As provided for by that regulation, the Decision will constitute the final action of the Commission 25 days after the date of issuance of the Decision unless the Commission, on its own motion, institutes a review of the Decision within that time.

Dated at Rockville, Maryland, this 21st day of November 2001.

FOR THE NUCLEAR REGULATORY COMMISSION

/RA/

Samuel J. Collins, Director
Office of Nuclear Reactor Regulation

Attachments:
1. Petitioners' reply to the draft Director's Decision
2. NRC response to the Petitioners' reply

7590-01-P

U.S. NUCLEAR REGULATORY COMMISSION

DOCKET NO. 50-247

LICENSE NO. DPR-26

ENTERGY NUCLEAR OPERATIONS, INC.

NOTICE OF ISSUANCE OF DIRECTOR'S DECISION UNDER 10 CFR 2.206

Notice is hereby given that the Director, Office of Nuclear Reactor Regulation, has issued a Director's Decision with regard to a Petition dated December 4, 2000, filed by Deborah Katz, Marilyn Elie, Tim Judson, Kyle Rabin, Mark Jacobs, Paul Gunter, and Jim Riccio, hereinafter referred to as the "Petitioners." The Petition was supplemented on January 24, 2001. The Petition concerns the operation of the Indian Point Nuclear Generating Unit No. 2 (IP2).

The Petitioners requested that the Nuclear Regulatory Commission (NRC) take the following enforcement-related actions against Consolidated Edison of New York (ConEd, or the licensee) for IP2: (1) suspend the license for the IP2 reactor because of the licensee's "persistent and pervasive, negligent management of the reactor," (2) investigate whether the potential misrepresentation of material fact by the utility regarding "significantly insufficient" engineering calculations was due to a lack of rigor and thoroughness or was deliberate, (3) revoke the IP2 operating license if it is found that the licensee deliberately provided insufficient and false information, (4) if the license is not revoked, maintain IP2 on the list of "agency focus" plants until management demonstrates it can fulfill its regulatory requirements and commitments, (5) not approve the transfer of the IP2 license until management can demonstrate that the Updated Final Safety Analysis Report (UFSAR), the condition report backlog, and the maintenance requirements are up to date and workers have been retrained,

and (6) not allow the IP2 reactor to restart until the fundamental breakdown in management is analyzed and corrected. The Petitioner also requested that a public meeting be held to discuss this matter.

As the basis for the December 4, 2000, request, the Petitioners stated that the licensee's systemic mismanagement of the plant resulted in, among other things, inconsistencies and inaccuracies in the UFSAR, safety systems whose compliance with the regulations could not be verified, design basis analyses that might not be accurate, and a UFSAR that may not be up to date. The Petitioners considers the systemic mismanagement to be potentially unsafe and to be in violation of Federal regulations. In the Petition, a number of NRC inspection reports, licensee event reports, letters between the NRC staff and the licensee, plant performance review summaries, and other documents were cited that the Petitioners believe document their contentions.

On January 24, 2001, the Petitioners and the licensee met with the staff's Petition Review Board. The meeting gave the Petitioners and the licensee an opportunity to provide additional information and to clarify issues raised in the Petition. During the public meeting, the Petitioners gave the staff supplemental information which the staff considered in making its decision. The Petitioners contended that the supplemental information provided further evidence of the licensee's mismanagement of the IP2 facility.

The NRC sent a copy of the proposed Director's Decision to the Petitioners and to the licensee for comment on July 25, 2001. The Petitioners responded with comments on September 14, 2001. The licensee did not respond. The Petitioners' comments and the NRC staff responses to the comments can be found in the cover letter transmitting the Director's Decision and Attachment 1 to the Director's Decision.

The Director of the Office of Nuclear Reactor Regulation concluded that the information contained in the Petition and the supplement does not warrant NRC staff action to suspend or revoke the operating license for IP2. Likewise, the staff finds no basis for initiating an investigation into wrongdoing on the part of ConEd. These requested actions are not granted. The NRC grants the Petitioners' request that IP2 remain on the list of agency focus plants (i.e., plants with multiple/repetitive degraded cornerstones). However, the NRC staff did not grant the Petitioners' request to define under what conditions IP2 will be removed from the list of plants with multiple/repetitive degraded cornerstones.

In addition, the staff found that the Petitioners' request to delay or deny a request to transfer the operating license for IP2 until the licensee's management can demonstrate that the UFSAR, condition report backlog, and maintenance requirements are up to date, and that plant workers have been retrained to the modified UFSAR does not meet the requirements for review under 10 CFR 2.206. The reasons for these decisions are explained in the Director's Decision pursuant to 10 CFR 2.206 (DD-01-04), the complete text of which is available in ADAMS for inspection in the Commission's Public Document Room at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, and electronically accessible in ADAMS through the NRC Public Electronic Reading Room at http://www.nrc.gov/reading-rm.html (ADAMS Accession No. ML 0103030073). Persons who do not have access to ADAMS or who encounter problems in accessing documents located in ADAMS should contact the NRC PDR reference staff by telephone at 1-800-397-4209, or locally at 301-415-4737, or by email at pdr@nrc.gov.

A copy of the Director's Decision will be filed with the Secretary of the Commission for the Commission's review in accordance with 10 CFR 2.206 of the Commission's regulations. As provided for by this regulation, the Director's Decision will constitute the final action of the

Commission 25 days after the date of the decision, unless the Commission, on its own motion, institutes a review of the Director's Decision in that time.

Dated at Rockville, Maryland, this 21st day of November 2001.

FOR THE NUCLEAR REGULATORY COMMISSION

/RA/

Samuel J. Collins, Director
Office of Nuclear Reactor Regulations

I have included a copy of the Director's Decision (Enclosure 1), which will be filed with the Secretary of the Commission for the Commission to review in accordance with 10 CFR 2.206(c). As provided by this regulation, the decision will constitute the final action of the Commission 25 days after the date of the decision unless the Commission, on its own motion, institutes a review of the decision within that time. The documents cited in the enclosed decision are also available for inspection at the Commission's Public Document Room, and electronically accessible in ADAMS through the NRC Public Electronic Reading Room at http://www.nrc.gov/reading-rm.html.

I have also enclosed a copy of the notice of "Issuance of Director's Decision Under 10 CFR 2.206" (Enclosure 2) that has been filed with the Office of the Federal Register for publication.

We appreciate your efforts to bring these issues to the attention of the NRC. Please feel free to contact Christopher Gratton at 301-415-1055 to discuss any questions related to this petition.

Sincerely,

/RA/

Samuel J. Collins, Director
Office of Nuclear Reactor Regulation

Docket No. 50-247

Enclosures: 1. Director's Decision DD-01-04
2. *Federal Register* Notice

cc: Licensee
Plant Mailing List

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