

November 14, 2001

MEMORANDUM TO: Suzanne C. Black, Chair
Petition Review Board

FROM: Christopher Gratton **/RA/**
Petition Manager

SUBJECT: STAFF RESPONSE TO COMMENTS ON PROPOSED DIRECTOR'S
DECISION DD-YY-XX

This memorandum documents the U.S. Nuclear Regulatory Commission (NRC) staff response to comments on proposed Director's Decision (DD) DD-YY-XX (Citizen's Awareness Network Petition requesting enforcement action against the licensee of Indian Point Nuclear Generating Unit No. 2 (IP2) for systemic mismanagement of the reactor facility). The NRC staff solicited comments from the Petitioners and the licensee on the completeness and accuracy of the proposed DD in a letter dated July 25, 2001. The licensee at the time, Consolidated Edison of New York, Inc., (ConEd) did not comment. On September 6, 2001, the license for IP2 was transferred from ConEd to Entergy Nuclear IP2 and Entergy Nuclear Operations, Inc. By letter dated September 20, 2001, Entergy Nuclear Operations requested that the NRC continue to review all requests pending with the NRC at the time of the license transfer which had been submitted by ConEd. The Petitioners replied by letter dated September 14, 2001.

In their reply, the Petitioners requested and the NRC staff evaluated four actions to be taken before issuing a decision on the Petition. In addition, the NRC staff identified and evaluated one additional comment on the completeness of the proposed Director's Decision.

Petitioners' Requested Actions

1. Reinitiate its investigation into the effects of systemic mismanagement on nuclear safety at IP2;

NRC Staff Response:

The NRC staff has completed its review and evaluation of the information turned over to the staff for this Petition by the Petitioners. The evaluation is contained in the attached final Director's Decision. The Petitioners did not provide any substantive information in their letter dated September 14, 2001, beyond their assertions that IP2 is not being operated safely. The Petitioners based their assertions on licensee performance issues that are being monitored and evaluated by the NRC staff. If any of the issues identified by the Petitioners had had high safety significance, the NRC staff would have employed procedures and practices to address the performance problem, including enforcement,

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in accordance with the Reactor Oversight Process. Based on the information presented to the staff by the Petitioners, and based on the inspections conducted by the NRC staff at IP2 to date, the staff finds no basis to reinstate its review of the effects of systemic mismanagement on safety at IP2.

2. Review the second set of internal documents provided by the whistle blower.

NRC Staff Response:

In a letter dated July 31, 2001, the NRC staff informed the Petitioners that a review of a second set of internal documents would not be conducted by the NRC staff because that information was already under review by the NRC in the IP2 license transfer proceeding. The NRC staff stated that if the IP2 license transfer proceeding did not admit the second set of internal documents or address the concerns of the Petitioners in the proceeding, that the Petitioners could request a review of the information under 10 CFR 2.206.

In Memorandum and Order CLI-01-019 dated August 22, 2001, the Commission declined to admit the issue of systemic mismanagement because the claims were not directly linked to the license transfers at issue in the proceeding. As a result, the information contained in the second set of internal documents which provided the basis for the claims of systemic mismanagement was not reviewed or addressed by the NRC staff as part of the license transfer proceeding. In their letter dated September 14, 2001, the Petitioners again requested that the information be reviewed under 10 CFR 2.206. The NRC staff agreed to review the second set of documents to determine whether they met the requirements for review under 10 CFR 2.206.

The Petitioners' second set of internal documents consists of (1) a report entitled "ConEd Indian Point II Human Performance Improvement Plan," by the Human Productivity Center, Inc., authored by William Stinnett, Ph.D., (2) a set of condition reports from the IP2 condition reporting system, and (3) an evaluation of 19 condition reports by David Lochbaum of the Union of Concerned Scientists (UCS). The NRC staff's evaluation of the three internal documents is presented below.

We were made aware of the human performance improvement plan prepared by Dr. Stinnett shortly after its issuance in October 1997. The staff review of the report, which included input from the licensee on the origin of the report, concluded that the report was not a sanctioned cultural study or survey, but rather was intended by the author to be a vehicle to initiate discussion which may have led to his engagement to conduct and facilitate structured human factored re-engineering workshops at IP2. The NRC concluded at the time that no additional actions were necessary. The staff considered the NRC actions already taken at the time the report was reviewed to address performance issues at IP2 and considered the inspections already planned at the time for IP2 by NRC regional staff in coming to their conclusions. The staff also considered the lack of specific issues in the report which would indicate possible violations of NRC requirements. Therefore, the NRC staff concludes that this report does not meet the requirements for review under 10 CFR 2.206 because the information in the report was already the subject of a previous NRC review and evaluation.

The remaining internal documents consist of randomly selected condition report (CR) summaries taken from the IP2 Corrective Action Program (CAP), and an evaluation of 19 of the CR summaries by the UCS. The CR summaries were dated between February and April 2001. Upon initial review, the CR summaries and the UCS evaluation were similar in scope and content to the CR summaries and UCS evaluation reviewed by the NRC staff for Issue 1 of this Director's Decision. Many of the summaries described out of normal conditions at the plant having low safety significance, the type expected to be resolved by the licensee through the implementation of their CAP. The NRC staff focused its review on those summaries evaluated by the UCS in internal document 3 to determine whether the summaries provided sufficient facts to support a review under the requirements of 10 CFR 2.206.

The NRC staff reviewed each of the CR summaries highlighted by the UCS in its April 17, 2001, evaluation. The NRC staff found that while none of the CR summaries were explicitly referenced in NRC inspections, the underlying issues described in the summaries were either covered in CRs on similar issues that were reviewed by the NRC staff and documented in NRC inspection reports (e.g., licensee's design basis documentation did not reflect the "as-built condition"), or were the subject of broader NRC inspections. For many of the CRs cited by the Petitioners, the NRC reviewed the full condition report which documented that the issue had been adequately identified, evaluated, and dispositioned by the licensee. For example, CR 200103186 suggested that the structural integrity of the Refueling Water Storage Tank was inadequate, and that there was an uncontrolled, unmonitored release (cesium) from the tank. The NRC reviewed the full condition report, which indicated that the licensee investigated the issue, found no problem with the structural integrity of the tank or its foundation, and concluded that what appeared to be boron leaking from the tank was in fact calcium leached from the concrete. These conclusions were confirmed by NRC inspector observations. Inspection reports 2001-04 (CR 200104222) and 2001-08 summarize the NRC reviews of the source of the cesium in the soil and verification that there was no uncontrolled, unmonitored release from the site.

The NRC staff concluded that none of the CRs identified in the UCS review indicated any unresolved safety issue or operability concern. Similarly, none of the issues in the CRs identified by UCS challenged previous NRC conclusions about the performance of the licensee for IP2. In addition, the underlying issues identified in the CRs were previously evaluated by the NRC staff. Therefore, the NRC staff concluded that the second set of internal documents do not meet the requirements for review under 10 CFR 2.206.

3. Evaluate the repeated failures of NRC's regulatory involvement to prevent safety problems and systemic mismanagement at IP2.

NRC Staff Response:

The Petitioners' request to evaluate the repeated failures of NRC's regulatory involvement to prevent safety problems and systemic mismanagement at IP2 does not meet the requirements for review under 10 CFR 2.206 and will not be addressed by this Director's Decision. However, due to the nature of the comment, the Petitioners' comments have been forwarded to the NRC's Office of the Inspector General.

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.

NRC Staff Response:

The Petitioners' request to determine how to deal with the licensees (ConEd and Entergy) in light of the recent transfer does not meet the requirements of 10 CFR 2.206 and will not be addressed by this Director's Decision. Following the transfer of the operating license from ConEd to Entergy, Entergy became the licensee for Indian Point Nuclear Generating Unit No. 2 and is subject to all NRC regulations regarding the operation of the IP2 nuclear facility.

Other Petitioners' Comments

The Petitioners commented that the proposed Director's Decision omits any mention of concerns regarding a "chilled work atmosphere," harassment and intimidation of workers who raise safety concerns, or management's deliberate negligence in resolving problems raised by workers.

NRC Staff Response:

Neither the Petitioners nor the NRC staff identified the issue of a chilled work environment and its effect on resolving problems raised by workers as an issue for resolution in this Petition (See NRC letter to Ms. Katz dated March 9, 2001, ADAMS Accession No. ML010510218). As a result, this issue was not specifically addressed in the response to the Petition.

Nonetheless, as part of the review of information turned over to the NRC staff during the January 24, 2001, public meeting, the NRC staff reviewed an NRC inspection report (IR 50-247/00-012, dated December 4, 2000) addressing this issue. The inspection report documented the results of interviews with licensee employees to assess whether an environment conducive to the identification of issues existed. The NRC inspection team found several condition reports where personnel felt that they were not encouraged to identify issues in the Corrective Action Program (CAP). The NRC inspectors found that ConEd handled these issues within the CAP and their employee concerns program. From an initial review of these issues by NRC inspectors, the corrective actions taken by ConEd appeared adequate. The NRC inspectors also noted that in discussions with personnel at IP2, there was no indication of a reluctance to identify safety issues. The NRC staff referenced the inspection report (50-247/00-12) in response to Issue 1 in the final Director's Decision.

In addition to the inspection, the NRC staff most recently requested that the licensee address actions taken to assure that employees at IP2 feel free to raise safety concerns without fear of retaliation. This request was made following a Department of Labor Occupational Safety and

Health Administration finding that a security guard had been discriminated against for raising safety concerns. In addition to the actions taken by the licensee, the NRC staff agreed with the licensee that management attention in the area of the Employee Concerns Program should continue. The NRC staff documented their findings in a letter to the licensee dated August 15, 2001.

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