

July 24, 2002

EA-02-140

Mr. Michael R. Kansler
Senior Vice President and
Chief Operating Officer
Entergy Nuclear Operations, Inc.
440 Hamilton Avenue
White Plains, NY 10601

SUBJECT: OFFICE OF INVESTIGATIONS REPORT NO. 1-2001-015
(DEPARTMENT OF LABOR CASE NO. 2001-ERA-0010)

Dear Mr. Kansler:

In a letter dated December 11, 2000, the U.S. Department of Labor (DOL) Occupational Safety & Health Administration (OSHA) in Albany, New York, received a complaint from a former contract security officer employed by Wackenhut at the Indian Point 2 facility. The former contractor alleged that he was fired in June 2000, in part, because he raised a concern about working excessive overtime at Indian Point 2, which was being operated, at that time, by Consolidated Edison Company of New York, Inc. (Con Edison). In response to that complaint, DOL OSHA conducted an investigation, and in a letter dated February 8, 2001, the Area Director of OSHA found that the evidence obtained during its investigation indicated that the employee was engaged in a protected activity within the scope of the Energy Reorganization Act and that discrimination, as defined and prohibited by the statute, was a factor in the termination of this individual's employment.

Subsequent to the DOL OSHA Area Director's decision on February 8, 2001, the NRC sent Con Edison letters on February 27, 2001, and May 17, 2001. The letters requested that Con Edison provide its position on this matter and any actions it had taken or planned to take concerning a chilling effect this decision may have had on the willingness of other Indian Point 2 employees to raise safety concerns. Con Edison responses, dated March 29, 2001 and June 18, 2001, provided its position that the termination of the contract security officer was not contrary to 10 CFR 50.7 and described actions taken to address any potential chilling effect.

Wackenhut subsequently appealed the OSHA finding to the DOL Administrative Law Judge (ALJ). However, prior to the DOL ALJ reaching a decision on the merits of the case, Wackenhut reached a mutually agreeable settlement with the former contract employee in this matter. The settlement was approved on June 14, 2001, by a DOL Administrative Law Judge in a Recommended Decision and Order Approving Settlement, which thereby dismissed the complaint with prejudice.

Prior to approval of the settlement by the DOL ALJ, the NRC Office of Investigations (OI) initiated an investigation to determine if the former contract security officer had been discriminated against for engaging in a protected activity. The OI investigation included extensive reviews of relevant documentation, as well as interviews with numerous Wackenhut

and Entergy personnel. Based upon the evidence developed during its investigation, OI did not substantiate that the former security officer was terminated because he raised a fitness for duty concern that he was too tired or too fatigued to work mandated overtime. The evidence discloses that the former security officer was denied site access and was subsequently terminated because he refused to work mandated overtime. The Wackenhut Security Officer Handbook lists refusal to work as one of the grounds for immediate dismissal. The enclosure to this letter contains a synopsis of the OI report.

The NRC has reviewed the results of the OI investigation and the DOL proceedings. Based on this review, the NRC did not substantiate that discrimination occurred, and therefore, no enforcement action is warranted.

The NRC notes that the OI investigation was also expanded to determine whether potential false and misleading statements were made by a Wackenhut supervisor during the DOL/OSHA investigation of this matter, and whether a Wackenhut project manager and Wackenhut lawyer allegedly harassed three Wackenhut sergeants because they prepared written statements indicating that the Wackenhut supervisor had made false and misleading statements to DOL/OSHA. Based upon the investigation, including the testimony of the three Wackenhut sergeants, OI did not substantiate that the three Wackenhut sergeants were harassed or pressured by the Wackenhut project manager or lawyer to change their statements. In addition, OI did not substantiate that the supervisor made false and misleading statements to DOL/OSHA.

You are not required to respond to this letter. In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter and its enclosure will be made available electronically for public inspection in the NRC Public Document Room or from the Publicly Available Records (PARS) component of NRC's document system (ADAMS). ADAMS is accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html> (the Public Reading Room).

Please note that final NRC documents, including the final OI report, may be made available to the public under the Freedom of Information Act (FOIA) subject to redaction of information appropriate under the FOIA. Requests under the FOIA should be made in accordance with 10 CFR 9.23, Request for Records (copy enclosed).

Should you have any questions regarding this letter, please contact Mr. J. Bradley Fewell at (610) 337-5301.

Sincerely,

/RA/

Brian Holian, Deputy Director
Division of Reactor Projects

Enclosure: As Stated

Docket No. 50-247
License No. DPR-26

cc w/encl: J. Yelverton, Chief Executive Officer
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*** *Urban received OE concurrence by phone on 7/18/02.**

SYNOPSIS

This investigation was initiated by the U. S. Nuclear Regulatory Commission, Office of Investigations (OI), Region I Field Office, on May 8, 2001, to determine if a contractor security officer employed by The Wackenhut Corporation (Wackenhut), working at the Indian Point Nuclear Power Plant, Unit 2 (IP2), was discriminated against for engaging in a protected activity. Specifically, the security officer believes that his/her site access was revoked and that he/she was subsequently terminated because he/she raised a fitness for duty concern.

Based upon the evidence developed during this investigation, OI did not substantiate that the contractor security officer's site access was revoked or that he/she was subsequently terminated as a result of having engaged in a protected activity.