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March 29, 2001

Re: Indian Point Unit No. 2
Docket No. 50-247
NL-01-037

Mr. Brian E. Holian
Deputy Director, Division of Reactor Safety
U.S. Nuclear Regulatory Commission
475 Allendale Road
King of Prussia, PA 19406

Dear Mr. Holian,

This letter provides Con Edison's response to the specific concerns identified to us in the letter from Brian E. Holian dated February 27, 2001 regarding the activities at the Indian Point Unit 2 facility. Mr. Holian's letter relates to a letter dated December 11, 2000, from the U.S. Department of Labor's Occupational Safety and Health Administration in Albany, New York citing a complaint from a former Wackenhut Corporation Security Officer assigned at Indian Point 2.

On March 5, 2001 Con Edison retained an independent investigator to conduct an investigation in response to the request made in the Nuclear Regulatory Commission's letter. The investigator was chartered with examining all aspects of the termination of the Wackenhut Security Officer, and to make a determination if these actions affecting the Security Officer violated 10 CFR 50.7. The investigator is a former Senior Special Agent with the NRC Office of Investigations. He has over 23 years of investigative experience, including 14 years with the NRC. This experience provided Con Edison with appropriate assurance that he is proficient in the functional areas involved with this concern.

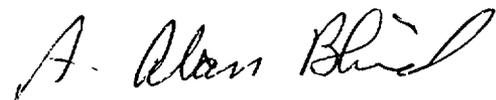
Con Edison has reaffirmed to all employees at Indian Point its requirement to foster and maintain a safety conscious work environment. The company position on this subject is very clear and is endorsed by the Chief Executive Officer of Con Edison, the President of Con Edison, the Chief Nuclear Officer at Indian Point Station, and through Con Edison's Code of Conduct. Simply stated, Con Edison ensures the ability of employees and workers to raise concerns, either internally or to an outside agency, without fear of retaliation, and to be responded to in a timely manner. In this regard, Con Edison management responds to any concerns expressed by Con Edison and contractor employees. Con Edison promotes several corporate programs for employees who desire to make concerns known, as well as numerous programs within Indian Point for expressing concerns.

This expectation is routinely reinforced and re-emphasized through training, department meetings, and correspondence. It is also monitored through culture and/or employee concerns metrics, and assessing the input into our corrective action program.

Con Edison is confident that we offer our employees sufficient independent opportunities to maintain a safety conscious work environment that promotes the identification and resolution of concerns.

As requested by your letter, Con Edison has conducted an independent investigation into the particular circumstances which formed the basis of Mr. Holian's February 27, 2001 letter. The attachment to this letter provides a summary of the results of our investigations.

Should you have any questions regarding this matter, please contact Mr. John McCann, manager Nuclear Safety and Licensing (914-734-5074).

A handwritten signature in cursive script, appearing to read "A. Alan Blund".

ATTACHMENT

Response to Nuclear Regulatory Commission Letter dated February 27, 2001

The concerns expressed in the letter and the results of our investigation are summarized below.

CONCERNS

1. Our position regarding whether the actions affecting this individual violated 10 CFR 50.7 and the basis for our position, including the results of any investigations we have conducted to determine whether a violation occurred; and
2. Actions we have already taken or plan to take to assure that this matter is not having a chilling effect on the willingness of other employees to raise safety and compliance concerns within our organization and, as discussed in NRC Form 3, to the NRC.

In Response to Concern 1:

In a letter dated February 27, 2001, the NRC advised Con Edison of the Department of Labor, Occupational Safety and Health Administration's finding of discrimination against a Con Edison Security Officer employed with Wackenhut Corporation. Accordingly, Con Edison commissioned an independent investigation of the concern raised to Occupational Safety and Health Administration, as set forth in the February 27 letter.

An outside consultant, with no prior involvement with this issue, led this investigation. This individual is a former Senior Special Agent with the NRC Office of Investigations with over 23 years of investigative experience. This experience provides appropriate assurance that he is proficient in the functional areas involved with this concern.

The investigation, which included sixteen interviews and document reviews, was conducted from March 7-16, 2001.

The investigation focused on whether a Security Officer was terminated from his employment with Wackenhut as a result of his having engaged in protected activities in violation of 10 CFR 50.7. The Security Officer's attorney would not permit him to be interviewed by our investigators since Wackenhut has appealed this decision to an Administrative Law Judge through the Department of Labor.

On June 17, 2000, the Security Officer was working his fifth twelve-hour day during an outage at Indian Point 2. At the end of his shift he had completed sixty hours of work. Numerous attempts were made to find an Officer to fill a vacancy on the 0600-1800 hour tour on June 18, 2000. The vacancy existed because another Security Officer was involved in an automobile accident and was unable to report for work.

When an off duty Officer could not be located to meet the Security needs, the on-duty Security Officers were surveyed to ask for volunteers to cover the shift. When none of the Officers volunteered for this overtime, the Lieutenant Shift Supervisor prepared a

list of those individuals who were at the site and had worked the least number of recent overtime hours. The Security Officer investigated was the first name on the list, and was, accordingly verbally directed to work the overtime hours on June 18. There were several exchanges with the Lieutenant Shift Supervisor, wherein the Security Officer declined to work, stated he was going to resign, stated he did not need the money, and then asked to be fired. That same afternoon, the Security Officer was given a memorandum mandating him to report for work at 0600 hours on June 18. Before he left the site, the Security Officer stated that he would be too tired to work the next day. He also provided the Lieutenant Shift Supervisor with an Information Report, captioned "Over Time plus Safety Concern", wherein he alleged, among other things, that the hours he was required to work were excessive, twelve more hours would be exhausting, and would not allow him to fulfill his Security Officer responsibilities.

The uncertainty surrounding the Security Officer's reporting for work on June 18 necessitated the need for mandating a second Officer to work. The second Security Officer also stated that he did not want to work the overtime hours. Like the first Security Officer he was given a memorandum requiring him to report to the site the next day; however, prior to leaving the site, he did not articulate a safety concern with the Lieutenant Shift Supervisor.

At 2250 hours, the first Security Officer called the Indian Point 2 Access Control Room and asked that the following statement be recorded in the log: "I will not be in for tomorrow's day tour because I am physically exhausted from being overworked. I am unfit for duty." At 2310 hours, the second Security Officer called and advised that he would not be at work the next day due to illness. Neither Security Officer reported for work the next morning and their access to the site was denied pending an investigation.

At the time the Lieutenant Shift Supervisor mandated the overtime assignment and the Wackenhut Project Manager decided to mandate the overtime work in writing, they were not aware that the first Security Officer had raised a safety concern. The Lieutenant Shift Supervisor first became aware of the first Security Officer's concern several hours after he first mandated him for overtime. The Project Manager first became aware of the first Security Officer's concern on the morning of June 18.

A review was conducted of the total hours per week for each Wackenhut Security Officers member during the outage period 2/20/00 to 7/10/00. In general, the Security Force members were scheduled to not exceed 60 hours. There were 60 instances where the 60-hour limit was exceeded. Each of these cases was reviewed with the Wackenhut Manager who was administering the Security Guard Force schedule. The majority of the occasions in excess of 60 hours were either due to personnel performing administrative functions in access control processing, training of Security personnel offsite for range requalification, or shift turnovers. During this outage period there were only four instances where mandated overtime occurred for Security Guard Force members; these resulted in working 66 to 66 ½ hours (this being the maximum time found) in a seven-day period. These mandated hours were necessary to maintain the proper Security Guard Force coverage.

On June 19, the Project Manager read the first Security Officer's Information Report. He discussed the report with Wackenhut corporate representatives, as well as what actions should be taken regarding the failure of both Security Officers to report for mandated overtime. Over the next several days, a decision was made by Wackenhut to terminate both individuals.

A review of the evidence indicates that the first Security Officer raised a safety concern with his management. While his management was not aware of this at the time they chose to mandate his service for June 18, his management was aware of the concern at the time they decided to terminate him. The Project Manager indicated that this fact was considered, but it was not a factor in their decision to terminate the first Security Officer; he further indicated that he did not place any merit in the first Security Officer's concern that he was "unfit for duty." Due to the first Security Officer only raising this point after several other comments and saying he wanted to be fired, the Project Manager stated that he did not believe that the first Security Officer was sincerely raising a genuine fitness for duty concern. Rather this manager believed that this was an excuse to avoid having to report to work. The Lieutenant Shift Supervisor also stated that he did not believe the first Security Officer and stated that the concern was only raised after the first Security Officer was mandated to work overtime. Wackenhut's Nuclear Division President reviewed the matter and also did not believe the first Security Officer's claim; he felt that the first Security Officer had an "ulterior motive for not reporting for work."

While the second Security Officer did not raise a safety concern, he did indicate that he was "ill" and would not be at work on June 18. Normally if an Officer states that he is not fit for duty the Officer will be excused and a replacement sought. The Project Manager stated that he did not believe that either Security Officer was truthful with their reasons for not reporting for work at Indian Point #2. Both individuals were terminated by Wackenhut.

The Project Manager noted that the Officers are required by the terms of their employment application, Collective Bargaining Agreement, and the Security Officer Handbook to report to work when directed. As reflected in the handbook, the Officers are aware that a "No show absence" is "grounds for immediate dismissal." Between 1996 and 2000, six Security Officers at Indian Point refused to work overtime. Four were terminated (2000, 1999 and 1996), one received a lengthy suspension (1996), and no action was taken against the sixth individual (1997).

The record indicates that the second Security Officer, who did not raise a safety concern, and the first Security Officer, who did raise a concern, were terminated based on their failure to report for overtime work on June 18.

As a result of Wackenhut's pending appeal of the OSHA decision, the first Security Officer, acting upon advice of his counsel, declined to be interviewed regarding the facts of this matter. These conclusions are based on the records that exist and evidence provided by interviewed witnesses. The first Security Officer raised an issue which, on its face, appears to be a safety concern, the evidence does not support that

he believed that he was unfit for duty. The first Security Officer was treated in a manner similar to others that refused mandated overtime work and exactly as the second Security Officer was treated. There is insufficient evidence to conclude that the first Security Officer's termination was in retaliation for his having engaged in protected activities.

Based on the evidence, it is concluded that the termination of the first Security Officer was not contrary to 10 CFR 50.7.

In Response to Concern 2:

With respect to the concern above, identified as number 2, Con Edison has recently taken several steps to ensure that employees are aware of the importance of raising concerns of any nature. Evidence exists which shows that employee awareness and willingness to raise concerns has been heightened.

Letter from the Chief Nuclear Officer to all Wackenhut Employees

A letter reaffirming Con Edison's position and commitment to a safety conscious work environment, and the ability of any Wackenhut employee to use any of the programs at Indian Point 2, to express a concern, was signed by the Chief Nuclear Officer and sent to each Wackenhut employee on March 22, 2001.

Employee Concerns Course

Starting in February 2001, a new course is being provided to all employees at Indian Point. First all management employees and contractors acting in a supervisory capacity are required to take this course. Once all management training is completed, this course will be provided to all weekly employees. The course is Employee Concerns – Foundations and Applications. This course consists of the following major topics: Foundations; Raising Concerns; Barriers to a Safety Conscious Work Environment; Intent, Behavior, and Impact; Resolving Concerns and Questions and Answers. To date, two classes have been given. The feedback from the trainees is overwhelmingly positive in terms of content and instruction. It is anticipated that this course will serve to raise employee awareness on how actions taken by a supervisor may ultimately encourage employees to raise concerns.

Employee Concerns Presentations to Wackenhut Security Officers

Wackenhut Corporation has regular staff meetings with all members of their Security Force on a bi-monthly basis. Con Edison Employee Concerns is presenting information on the Indian Point Employee Concerns Program to the Wackenhut Security Force at a

series of these meetings. This information includes the affirmation of both Indian Point and Wackenhut resolve in fostering and maintaining a safety conscious work environment, identification of a concern, how to express a concern, alternative methods to express concerns, a timely response to a concern, and resolution of a concern.

Station Monthly Town Hall Meetings

Each month there is an Indian Point Town Hall meeting, whereby employees can ask questions of the plant executives, or raise concerns on items of interest. These meetings are offered at various times to accommodate most personnel.

Informal Section Meetings

On a regular basis, the executives of Indian Point meet informally with the department union personnel (i.e.: maintenance mechanics, instrumentation technicians, etc.) to discuss issues that are germane to their department, and to solicit any outstanding concerns from individuals.

Year 1999 and 2000 Organizational Effectiveness Survey

In 1999, and again in 2000, as part of its efforts to improve organizational performance, Indian Point 2 conducted an overall organizational effectiveness survey. The survey was conducted by an independent consultant firm. The survey was a 72-item questionnaire that was designed to measure 21 dimensions using interval-rating scales. The scale ranged from "0" to "7", with "7" representing very effective, "5 to 6" representing effective, "4" being considered neutral and "1 to 3" indicative of less effective. Statistically, the data has a margin of error of +/- 1% at the 95% confidence level.

The number of individual employees who participated in the survey increased from 339 in 1999 to 398 in 2000. These figures show a rise in the total workforce responding from 40% of the workforce in 1999 to 46% in 2000. For year 2000, 91 contractor employees participated in the survey, while 284 Con Edison employees took part. In 1999, 55 contractor employees while 269 Con Edison employees participated in the survey. Thus, while the number of Con Edison employees participating increased by less than 1%, the number of contract employees participating in the survey increased significantly to over 60%. This is perhaps indicative of an increased emphasis to make contract employees feel more a part of the team.

With respect to the concern number 2 identified above, the following question was asked: "I feel comfortable expressing my concerns to employees at all levels of this organization". The mean rating in 1999 mean was 3.68, however in 2000 it was 4.12. The consultant firm concluded in their executive summary that this question (and 5 others) emerged as a "key driver of organizational effectiveness overall." They also concluded that these items "illustrate key issues that have the greatest influence on

employee ratings of effectiveness overall, and as such, should help guide improvement efforts.” In terms of individual ratings for this question, in 2000, 8.8% of respondents rated this question as a “7” (compared to 6.2% in 1999), 38.1% rated it “5 to 6” (28.5% in 1999), 14.6% rated it a “4” (15.4% in 1999) and 38.4% rated it a “1 to 3” (49.9% in 1999). This is evident of a *feeling* increased comfort about expressing concerns.

Allowing of Anonymous Entries into the Condition Reporting System (CRS)

From its inception, any employee has the ability to enter a concern anonymously into the Condition Reporting System. Although not overly used, this provides a mechanism for an employee to make known a concern without ever having to have his or her identity made known. During 2000, there were 98 condition reports that were submitted anonymously. This is roughly 1% of the total number of Condition Reports generated in 2000.

Use of Drop-Boxes for submitting Employee Concerns

Another mechanism by which to submit a concern is through the use of a drop box. Located at various locations throughout the plant, an employee may complete a form and drop it into a locked drop box. These boxes are checked daily by Employee Concerns. In this manner, an employee may put into writing a concern that he/she has without having to speak to Employee Concerns directly. Any person may also submit a concern via this mechanism anonymously.

General Employee Training

A portion of the general employee training discusses the Employee Concerns Program. Questions are also included on the examination that each person must complete in order to have unescorted access to the protected area.

Posters and Advertising

Throughout the plant, there are posters advertising the Employee Concerns program. The message on the posters is that any employee may submit a concern without any fear of retaliation.

Employee Concerns WEB Page

In February 2001, an Employee Concerns WEB Page became available for use by the plant. A variety of information is made available to employees at this site, including 10CFR 50.7 and Section 211 of the Energy Reorganization Act. Also, an employee may submit a concern from his or her computer. When so doing, the concern goes directly to the Outlook Inbox of the Employee Concerns Manager. The concern is electronically transmitted anonymously.

Business Ethics Hotline

All personnel employed at Indian Point have access to the corporate Business Ethics Hotline to express concerns. This service is maintained outside of Indian Point, and access to the Hotline is via a twenty-four hour a day, toll free phone line. The access number is published throughout the plant.

Corporate Ombudsman

All employees at Indian Point have available to them the ability to contact the Corporate Ombudsman to raise a concern. The Corporate Ombudsman are available via e-mail, phone conversations, or a twenty-four hour a day, toll free phone number. This number is also advertised throughout the plant.

Departmental Concerns

All employees can raise a concern to departments within Indian Point other than the Employee Concerns program. These departments include Human Resources, Quality Assurance, and Nuclear Safety and Licensing.

Conclusion

With respect to concern number 2, Indian Point Unit 2 has taken numerous actions to promote a safety conscious work environment, and to disabuse any potential for affected personnel to draw any contrary inferences or impressions from the specific events in question. Moreover, there are objective indications that Indian Point employee concerns programs are correctly functioning effectively. In the year 2000, Employee Concerns handled 170 concerns. There were 8 allegations to NRC during this period. Additionally, 97 Condition Reports were assigned to Employee Concerns for disposition.

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