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May 26, 1978

Dr. Ernst Volgenau, Director
Office of Inspection and Enforcement
Nuclear Regulatory Commission
Washington, D.C. 20555

Dear Dr. Volgenau:

Thank you for your letter of April 26 transmitting a copy of the report on the Nuclear Regulatory Commission's ("NRC's") inspection of the conditions of a welding job at the Indian Point 2 nuclear power plant. I am writing to express my clients' appreciation of the prompt inspection you conducted at their request, but also to convey their dissatisfaction with some aspects of the inspection and report and with the excessive time it took them to receive the report.

My clients are welders employed by Consolidated Edison (Con Ed). They are among some of the Con Ed workers who do not ordinarily work in radiation areas and who have been coerced into doing the steam generator job at Indian Point. Two workers have been terminated for refusing the assignment; many others are extremely concerned about the danger to their health from the radiation exposure involved on the job. Their concerns stem from the recently publicized observations and scientific studies that show significant adverse health effects at doses well within the NRC occupational radiation standards, 10 C.F.R. § 20.101. The main problem in this area is that these standards are inadequate and should be improved, as has been requested by the Natural Resources Defense Council, PRM 20-6, 40 F.R. 50327 (Oct. 29, 1975).

At a minimum, given the inadequacy of the current NRC standards and the unfairness of coercing workers into accepting an unusual assignment with radiation hazard, the workers wanted assurances that existing NRC regulations were satisfied and that all practical steps were taken to reduce their exposure. On March 24, 1978, in the midst of the Indian Point job, Diane Cohn and I

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requested, on behalf of our clients, an inspection of the job site for violations of NRC regulations, which we specified. On March 27, some of the welders and I met with the NRC inspection team to elaborate further my clients' allegations. The inspection took place on March 28.

At the March 27 meeting, I expressed my clients' desire to receive the inspection report at the earliest possible time for their protection and information in this ongoing job. We were told the report would be out of Region I in less than the guideline period of twenty days. The guideline was not even met as the report was sent to Con Ed for proprietary review twenty-two days after the inspection, on April 19.

On April 13, I requested James Allan, Deputy Director of Region I, to give me, as attorney for the complaining parties, a copy of the report at the same time as Con Ed upon my promise of nondisclosure while Con Ed conducted its review. Mr. Allan told me that the "legal department" agreed to sending me the report upon receipt of a signed confidentiality form, which would be sent to me. I never received the confidentiality form, but was told by Mr. Cunningham of your office on April 25 that the matter was still being considered. I received the report on April 28.

My clients and I are disturbed at the length of time it took to receive the report and that I was not informed of the delay in sending the release form for extensive "consideration," which negated any usefulness of the confidential release. We are particularly disturbed that a report concerning possible health and safety violations should be withheld for so long while workers were continuing to be forced to receive radiation exposure on the job.

In addition to their concern with this inordinate delay, my clients did not find the investigation, as shown by the report of April 19, responsive to their allegations or helpful in relieving their anxieties or improving their working conditions. I will present their criticisms in the context of specific portions of the report.

1. Pages 11-12 of the report contain purported summaries of opinions of "non-supervisory maintenance personnel" expressed to the NRC inspectors. These opinions are to the effect that most of the protesting workers are really only concerned about getting more money for working at Indian Point and that the few with bona fide opposition to working at Indian Point at all are just afraid of the unknown rather than of real health dangers of

radiation. In the first place, the opinions are absurd and do not stand up to the facts: (1) that two workers have felt so strongly that they have taken termination rather than the Indian Point assignment; and (2) that other workers feel strongly enough to spend large amounts of their free time organizing and attending meetings to learn about the scientific evidence on the dangers of low level radiation and to discuss their options for actions so as not to have to work at Indian Point. Although the report does not adopt or endorse these scurrilous accusations, it legitimizes them by including them in the report without analysis or rebuttal.

2. The report's comments on the workers' allegation about protective clothing (pp. 14-15) is misleading and misrepresents what happened. In the first place, the report falsely designates the protective equipment as "non-radiation." The welding job was conducted on radioactive objects in a contaminated area. The protective gear was to keep radioactivity out of the welders' bodies from burns by radioactive slag and other contamination through open wounds acquired on the job.

The welders were told they would be given all the protective equipment that was needed. They were told not to bring anything of their own to the job because it would have to stay there. By telling them nothing more was needed, Con Ed was ordering the welders to do the job with the inadequate double cotton overalls provided. After the NRC inspection, the welders were provided with better protective gear.

3. My clients' main contention to the NRC was that Con Ed failed to keep radiation exposure in connection with the Indian Point steam generator job "as low as reasonably achievable," the ALARA principle. 10 C.F.R. § 20.1(c). The report concludes on this allegation (numbered 3) that Con Ed was "conservative" in this respect. What does "conservative" mean in the ALARA context? Did Con Ed keep the total person-rem exposure in conducting this job lower than was reasonably achievable? I doubt it.

At the March 27 meeting, as well as in the original complaint letter of March 24, my clients specifically expressed their concern for protection of their genital areas, either by a lead jock strap or by fixed shielding from the waist down, which was consistent with easy access to the working area. Neither of these measures was employed on the Indian Point job. Although this matter was twice stressed to the NRC, it is nowhere mentioned in the report's treatment of Allegation No. 3.

4. The report separates into an "allegation" (No. 6) and a "concern" (No. 9.a) the workers' desire to have a radiation monitoring badge whenever they enter premises where they might get significant radiation exposure. It would be an easy matter to give any worker forced to work at Indian Point or any other reactor a badge at any time he went into a radioactive or contaminated area. Such workers should not have to rely on findings of "minimal" radiation levels by "routine surveys." (p. 24.) For their own peace of mind, as insurance against an unexpected hot spot, and so that they don't get any "free" exposure that doesn't go into their NRC permitted account, the workers should have an exposure badge if they want one.

5. The NRC inspectors report that they reviewed the qualifications of all the welders involved in the Indian Point steam generator job and found them correctly qualified, so that there was no need for a weld to be redone with resultant greater radiation exposure (p. 22). My clients have learned that one of the non-coerced welders, named Charlie, took the certification test the day after the NRC inspection. This raises the possibility that he was not properly qualified when working on the job, since the main part of the welding on the steam generator was finished at about the same time as the NRC inspection. If so, the NRC should have detected this confirmation of my clients' suspicion expressed at the March 27 meeting. Con Ed may have acted after the inspection to cover up the violation and to give the appearance of compliance after the fact.

6. The pressure on the coerced welders which is referred to in Allegation No. 8 appears to stem from the last paragraph of the letter of March 24. This pressure for expressing their dissatisfaction with the safety of the Indian Point job was primarily applied to the workers in the ultimatum of Con Ed to accept the Indian Point radiation exposure or lose their jobs. Nothing was said at the March 27 meeting about any pressure specifically directed toward deterring workers from communicating with the NRC. However, it does appear that the Con Ed management has a pretty good idea which workers were at the March 27 meeting. After the NRC inspection took place, some hostile and harassing remarks were made by some of the foremen at Indian Point to the coerced welders.

In its discussion of Allegation No. 8, the report speaks of Con Ed's effort to put the hazards in "proper perspective" (p. 23). What is the proper perspective for coerced and unexpected imposition of a substantial risk of cancer and genetic damage? At the

March 27 meeting, the NRC inspection team attempted to minimize the seriousness of the workers' concerns by testimonials about having chosen to live near a nuclear power plant. This is, of course, quite irrelevant to the large allowable, and frequently exceeded, occupational radiation doses. The team further sought to absolve themselves of responsibility by stating that it was their duty only to enforce the 3 rem/quarter limit and that Con Ed would be in compliance if it burned workers up to this limit in the course of one minute. This attitude ignores the duty of the NRC to enforce the ALARA requirement. When this was pointed out to the NRC representatives, they attempted to undermine the workers' indignation and resistance by asking them what benefit they would get from a reduction of the exposure rate because they would only then be kept on the job longer. So much for the NRC's dedication to ALARA and concern for minimizing the total person-rem exposure from a given job.

7. At the March 27 meeting, my clients stated that the job site was unsafe because of the difficulty of access and egress. This is dealt with as a "concern" in section 9.b of the inspection report. Access to the job was difficult and dangerous until scaffolding was built after a worker's demand. Even with the scaffolding, it required some delicate footwork to evacuate the job site. The workers there under duress were confused by the strange setting and procedures and were in a state of mental distress. When the evacuation alarm sounded, they wanted to get out quickly. NRC's responsibility for the workers' safety includes the possibility of injury from a long fall, as well as the concomitant danger of radiation exposure if the injured worker could not evacuate quickly or lay in a highly radioactive or contaminated area for a while. Given the unusual nature of this job and the experience and mental state of the workers involved, it will not do for the NRC to dismiss the danger as not involving "undue hazard" (p. 24) or "unusual problems" (p. 25).

My clients appreciate your quick response to their complaints in conducting an inspection. They feel you could do better in the future: (1) to make the report available while the job is in progress so that the report can be of immediate benefit to the workers, and (2) to be more responsive to the violations alleged and the legitimate grievances held by the complaining workers. More generally, they expect action by the NRC to improve the occupational radiation standards in light of the recent scientific findings of greater dangers of low level ionizing radiation than had previously been expected. I look forward to working with you

further on this important matter of worker protection.

Sincerely yours,

Michael H. Bancroft
Attorney for Con Ed Welders

cc: Chairman Joseph Hendrie
Commissioner Victor Gilinsky
Commissioner Richard Kennedy
Commissioner Peter Bradford
James M. Allan
Charles O. Gallina
John F. Streeter

MHB/pse