

John D. O'Toole
Assistant Vice President

Consolidated Edison Company of New York, Inc.
4 Irving Place, New York, N Y 10003
Telephone (212) 460-2533

January 13, 1981
RE: Indian Point Unit 2
Docket No. 50-247

Mr. Victor Stello, Jr., Director
Office of Inspection and Enforcement
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Subject: Consolidated Edison's Response to Notice of
Violation and Notice of Proposed Imposition
of Civil Penalty dated December 19, 1980

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Dear Mr. Stello:

Consolidated Edison Company of New York, Inc. ("Con Edison") submits this letter in response to your letter of December 19, 1980 to Mr. Peter Zarakas which enclosed a Notice of Violation and a Notice of Proposed Imposition of Civil Penalty resulting from a routine inspection of Control Room activities. In accordance with Con Edison Corporate Instruction CI 250-1, your letter has been referred to me for reply.

While our positions on this matter are spelled out in greater detail in our Statement in Reply to Notice of Violation and Answer to Notice of Proposed Imposition of Civil Penalty, Attachments I and II, respectively, to this letter, we wish to highlight several issues raised in your letter on which we differ with your considerations.

First, we differ with your conclusion that we approved and issued a change to a procedure that involved an unreviewed safety question. We approved and issued the change only after we determined, based on technical judgment, that the change did not involve an unreviewed safety question and that system operability was not compromised. Periodic reviews of the procedure reached the same conclusion. We do not believe that such a course of action shows "weakness in the system for approving and issuing revisions to procedures". Rather it shows that equally qualified technical people can differ in their evaluation of a technical matter -- the "operability" of the spray system with the pumps in the manual control mode. Such a difference should not be considered a "violation". It certainly should not be the basis for imposing a penalty -- an action that should be taken only in cases where violations are willful, judgments are clearly erroneous, or serious effects result. None of those situations apply in this case.

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Secondly, we point out that the procedure in question had been in effect for more than three years. During that time, there were many NRC inspections, including a specific inspection of that procedure, and the procedure content was never questioned; therefore, to characterize NRC's action as "immediate" without further discussion, is, in our judgment, inaccurate. It seems inappropriate for NRC to belatedly characterize the issuance of the procedure as a non-compliance, much less to propose assessment of a civil penalty.

It is unreasonable, in light of these facts, to impose the maximum penalty in effect at the time of the alleged violation. It is even more unreasonable, where, as your letter states, "corrective action" was taken by Con Edison "expeditiously".

Punishment and retribution are not legitimate functions of civil penalties. Their function is remedial or deterrent. In the present case, the situation has already been remedied to NRC's satisfaction, and since there were no adverse effects on anyone, no further remedy is called for. Therefore since it serves neither a remedial nor a deterrent purpose, there can be no basis for a civil penalty in this case.

We hope that the foregoing will assist the NRC in reassessing this situation and ultimately concluding that no violation occurred. Rest assured that the safety of the public and our personnel has been, and remains, the first priority of Con Edison.

Very truly yours,


John D. O'Toole
Assistant Vice President

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cc: Mr. Boyce H. Grier, Director Region I
Mr. Theodore Rebelowski, Resident Inspector