



BY FAX AND MAIL

August 20, 1999

IPN-99-091

U.S. Nuclear Regulatory Commission  
Attn: Document Control Desk  
Washington, D.C. 20555-0001

Subject: Indian Point 3 Nuclear Power Plant  
Docket No. 50-286  
NRC Investigation Report Case No. 1-1998-022

The New York Power Authority hereby requests, as discussed more fully below, that the NRC release to it a copy of NRC Investigation Report in Case No. 1-1998-022.

On August 17, 1999, the NRC issued to the New York Power Authority a letter describing, among other things, the results of an NRC investigation (Case No. 1-1998-022) into whether a performance supervisor was discriminated against for engaging in protected activities. In the letter, the NRC states that, based on the findings of the investigation, the NRC's Office of Investigations ("OI") concluded that the Power Authority management took actions that "resulted in discrimination against the performance supervisor." Accordingly, the letter indicated, the NRC is considering enforcement action and scheduled a predecisional enforcement conference on the matter.

The NRC has supplied a copy of the synopsis of the OI investigation report. However, that synopsis consists of only one sentence related to the apparent discrimination at issue. Likewise, only a brief discussion of the "apparent violation" is provided in the NRC's letter of August 17, 1999.

Given that the Power Authority will be addressing this matter at a predecisional enforcement conference on September 17, 1999, the Power Authority respectfully requests that, prior to the conference, the NRC release to it a copy of OI Report Case No. 1-1998-022. An opportunity to review the report will allow the fullest possible understanding of the issues and the particular events which will be explored at the conference. Without release of the specifics of the allegations against it, the Power Authority has no meaningful opportunity to locate and present the information which may clarify and explain its actions. Given the significant potential consequences, it is imperative that the Power Authority have access to OI's findings.

The Power Authority fully understands that, under the NRC's usual practice, the NRC does not release OI reports until after an enforcement decision is made and any enforcement action is taken. Nonetheless, fundamental fairness and good policy would dictate that an

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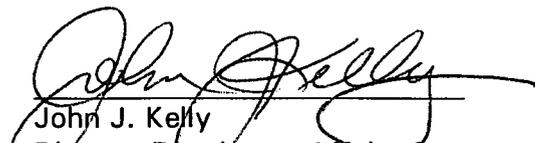
exception be made in this case. The Power Authority believes that a full and open discussion of the issues should precede *any* enforcement action, given that an enforcement action could have adverse consequences for the Power Authority and its employees. In addition, an enforcement action could send a signal in this case that would in fact be adverse to the Power Authority's extensive efforts in recent months to assure a safety conscious work environment. Accordingly, an enforcement action should only be taken after a full ventilation of the facts and issues.

We are also aware of a recent letter, dated April 8, 1999, under similar circumstances, that the NRC sent to the operator of the Seabrook Station. The NRC there declined a request for a copy of an OI report prior to an enforcement conference, but did provide "a summary of the facts that led the NRC staff to conclude that violations of regulatory requirements may have occurred." At a minimum, the Power Authority requests a similar summary in this case.

In a discrimination case under 10 C.F.R. § 50.7, we believe it particularly important to understand the facts, as understood by the NRC, with respect to 1) the identity of the protected activity; 2) the nature of the alleged adverse action; and 3) the basis for concluding that there was a causal link between the alleged adverse action and the protected activity.

The Power Authority fully recognizes the importance that the NRC attaches to a safety conscious work environment and fully recognizes that a licensee must avoid even the appearance of discrimination against those that raise safety concerns. In this environment, enforcement actions may have significant repercussions and therefore require careful assessment of the facts and circumstances of each case. The Power Authority makes this request in the spirit of cooperation with the NRC and with a desire only to assure a full exchange of information.

Very truly yours,

  
John J. Kelly  
Director Regulatory Affairs &  
Special Projects

cc: A. Randolph Blough – Region I (FAX)  
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