



May 17, 2016

Stephen G. Burns, Chairman  
Kristine L. Svinicki  
William C. Ostendorff  
Jeff Baran  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Re: *Indian Point License Renewal Proceeding, Docket Nos. 50-247-LR, 50-286-LR*

Dear Commissioners:

We support and applaud your interest in the safety issues raised by recent inspections at Indian Point Unit 2, which showed that over one-quarter of the baffle-former bolts within the plant's reactor core are degraded or missing. The continued supervisory engagement of the Commissioners on this important issue – which is unprecedented in the history of foreign and domestic nuclear plant operations – is vital for ensuring the safe operation of both Indian Point nuclear facilities, which are located 24 miles north of New York City and in the most densely populated area surrounding any nuclear facility in the nation.

While we are heartened to know of the Commissioners' attention to these safety issues at Indian Point, we write to remind you that your supervisory activities must comply with NRC regulations for the fair conduct of NRC adjudicatory proceedings, including the prohibition against *ex parte* conducts on relevant issues. *See generally* 10 C.F.R. §§ 2.347, 2.348; 5 U.S.C. § 557. We are particularly concerned that on April 19, 2016, NRC Commissioners and/or their Senior Executive Staff received two briefings from NRC Staff about the recent inspections at Indian Point Unit 2 and the safety implications of these results for both Indian Point Unit 2 and Indian Point Unit 3. Although Riverkeeper is a party to the on-going relicensing proceeding for Indian Point and has relevant contentions pending before the agency, we did not learn of the briefings until a week later via a letter from NRC Staff counsel to the Atomic Safety and Licensing Board ("ASLB"). *See* Letter from NRC Staff Counsel Sherwin E. Turk to ASLB Judge Lawrence G. McDade, et al. re: *Entergy Nuclear Operations, Inc.* (Apr. 26, 2016) (and two attachments thereto).

NRC Staff is a party and litigant in the Indian Point adjudicatory proceeding. *See* NRC Staff's Statement in Response to the Atomic Safety and Licensing Board's Order of February 3, 2012 (Feb. 8, 2012) (ML12039A298). Thus, contacts between NRC adjudicatory employees (including the Commission and its staff) and the NRC Staff are subject to the NRC's *ex parte* rules. *See Philadelphia Electric Co.* (Limerick Generating

Station, Units 1 and 2), ALAB-785 20 NRC 848, 883 n.161 (1984). While certain communications solely between NRC adjudicatory employees and NRC Staff may be permissible (*i.e.*, communications relating to generic issues or providing mere status updates), NRC Staff counsel's April 26 letter includes two attachments which suggest that NRC Staff's April 19 briefings covered more substantive issues that are directly relevant to Riverkeeper's pending contentions. *See* Memorandum from Jeremy S. Bowen to Houman Rasouli re: Summary of April 19, 2016 Briefings for the Commissioners on Indian Point Baffle Bolts (April 22, 2016); Briefing on Indian Point Baffle Bolt Inspections (April 19, 2016). Therefore, we respectfully submit that the Commission should have provided the parties to this proceeding with notice of the briefing and an opportunity to attend or participate.

We appreciate receiving from NRC Staff counsel the Staff-generated documents provided at the April 19 briefing. In order to ensure the full provision of available information regarding the briefings, we also request you to provide any relevant Commission-generated documents that may not have been provided to Staff counsel, including any transcripts, recordings, or summaries of the briefings.

Finally, we request you to provide reasonable advance notice of and opportunity to attend or participate in any future briefings of the Commissioners on important issues relevant to the resolution of the contentions at issue – including any assessments of the significance of the bolt failures at Indian Point Unit 2 and/or the implications for operational safety at both Unit 2 and Unit 3.

Sincerely,

*[Electronically signed by]*  
Paul Gallay

*[Electronically signed by]*  
James Bacon

Counsel to Riverkeeper

cc: Service List