

March 13, 2002

Mr. Alex Matthiessen
Executive Director
Riverkeeper, Inc.
25 Wing & Wing
Garrison, NY 10524

Dear Mr. Matthiessen:

By letter dated December 20, 2001, the U.S. Nuclear Regulatory Commission (NRC) informed you that the Petition filed by you on behalf of Riverkeeper, Inc., et.al., (Riverkeeper) dated November 8, 2001, was being reviewed pursuant to Section 2.206 to Title 10 of the *Code of Federal Regulations* (10 CFR 2.206). On January 7, 2002, members of the NRC staff held a telephone conversation with you and other representatives for Riverkeeper to discuss several items detailed in the December 20 letter regarding the processing of your Petition in light of the sensitivity of security issues. During the course of the conversation, you requested that the NRC provide: (1) the specific regulations used as the basis for the NRC's decision to not place the Riverkeeper Petition in the Federal Register; (2) copies of the report prepared by the New York State Office of Public Security (NYS OPS) regarding security at Indian Point Nuclear Generating Unit Nos. 2 and 3 (Indian Point); (3) a copy of the NRC's Commission Paper on release of security information; and (4) a list of those recommendations in the NYS OPS report that the licensee for Indian Point did not implement. You also requested a meeting with the NRC to obtain further information regarding the security at Indian Point and to dialogue with the staff on the issues in the Petition. Furthermore, you expressed concern over the possibility that the NRC staff may combine its review of the Riverkeeper Petition with several other Petitions about security at other facilities. In response to this last issue, the NRC staff told you that a final decision had not been made about combining the Petitions. However, even if it should decide to combine its review of certain matters, the NRC has now decided to prepare individual Director's Decisions.

With regard to withholding your Petition from placement in the Federal Register, the NRC made a policy decision to not make this information readily available to the public and to defer certain public portions of the 10 CFR 2.206 process. For all documents related to security, the staff is currently assessing the specific information in these documents to judge the degree of sensitivity of the particular information with respect to the level of assistance that it may provide to a potential adversary. In general, if the information could facilitate threat analysis, target identification, or vulnerability analysis that could support an act of terrorism, it will be redacted from the public record or withheld. In this regard, the staff believes that it does not serve anyone's benefit to discuss perceived vulnerabilities in public. This decision has been consistent with actions taken for other Petitions.

In response to your request for the Commission Paper about guidance to the staff on release of information to the public, the Commission has not yet approved the paper. Therefore, this document is not available.

With regard to your request that the NRC provide you with a copy of the report prepared by NYS OPS about physical security of the Indian Point facility, the NRC is not in a position to make this document available to you. Although OPS worked with various Federal and State agencies, including the Federal Bureau of Investigation, to assess the long-term security needs at Indian Point, the report was not prepared in response to an NRC requirement and remains the property of OPS. Thus, OPS is responsible for both its security classification and public releasability. As with any classified or sensitive information, the determination about its release depends on a number of factors that must be evaluated by the agency that authored and classified its security level. The NRC staff has seen the report and concurs with the sensitivity of the material.

Within its report, NYS OPS provided recommendations to enhance security at Indian Point. You are aware that many of the measures suggested have been implemented by the licensee and others are currently under advisement. Because of this knowledge, you asked for a list of those measures that the licensee has not yet implemented. The measures are recommendations by OPS to further enhance security and are not requirements in current NRC regulations. Furthermore, release of this information by the NRC would also not be appropriate because of the sensitivity of the material.

As we stated in our letter dated December 20, 2001, under normal circumstances, we would closely follow Management Directive (MD) 8.11, "Review Process for 10 CFR 2.206 Petitions," and thus, would give you an opportunity to provide additional information to the Office of Nuclear Reactor Regulation Petition Review Board (PRB) before determining whether your request is to be reviewed as a Petition pursuant to 10 CFR 2.206. However, we also stated that because your request is already being treated as a 2.206 Petition, and because of the sensitive nature of this information, the PRB determined that a public meeting or telephone conference with the PRB is not necessary or appropriate at this time. If a meeting were to occur, it would be for the staff to obtain clarification of the concerns and any additional supporting basis. In the telephone conversation with you on January 7, 2002, you indicated that your desire for a meeting was to obtain further information on Indian Point security from the staff. The purpose of the public meeting early in the 10 CFR 2.206 process is for the staff to obtain additional information from the Petitioners. Because the NRC staff has sufficient information to conduct its evaluation of your Petition and does not need further clarification of the issues, we do not need this meeting. In accordance with the Petition review activities of MD 8.11, the Petitioner or licensee may request a technical review meeting with the staff during the Petition review. The staff may hold a technical review meeting whenever it believes such a meeting would be beneficial to its review of the Petition. In this instance, the staff has decided that a technical review meeting is not needed. However, you may supplement your Petition in writing in accordance with MD 8.11.

As you are aware, the NRC recently issued orders to all commercial nuclear power plants to implement interim compensatory security measures for the high-level threat environment. Some of the requirements formalize a series of security measures that NRC licensees had taken in response to advisories issued by the NRC and others are security enhancements which have emerged from the Commission's on-going top-to-bottom security review. The Commission decided to issue Orders because the generalized high-level threat environment has persisted longer than expected and, as a result, it is appropriate to maintain the security measures within the established regulatory framework. The details of specific additional

security requirements are sensitive and will not be provided to the public, but they include such things as additional personnel access controls; enhanced requirements for guard forces; increased stand-off distances for searches of vehicles approaching nuclear facilities; and heightened coordination with appropriate local, State, and Federal authorities.

We are continuing to review your Petition and will keep you periodically updated in accordance with MD 8.11.

Sincerely,

/RA/

John A. Zwolinski, Director
Division of Licensing Project Management
Office of Nuclear Reactor Regulation

Docket Nos. 50-247 and 50-286

cc: See next page

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Sincerely,

/RA/

John A. Zwolinski, Director
 Division of Licensing Project Management
 Office of Nuclear Reactor Regulation

Docket Nos. 50-247 and 50-286

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