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A Limited Liability Partnership Including Professional Corporations

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July 7, 2003

BY FACSIMILE AND U.S. MAIL

Roseann B. MacKechnie, Clerk of the Court
U.S. Court of Appeals for the Second Circuit
United States Court House
40 Foley Square
New York, NY 10007

Attention: Operations Division, Calendar Team

RE: Riverkeeper, Inc. v. Collins et al., Docket No. 03-4313

Dear Ms. MacKechnie:

On June 3, 2003, the Federal Respondents filed a motion to dismiss this case for lack of jurisdiction. The Utility Respondents (Entergy Nuclear Indian Point 2, LLC; Entergy Nuclear Indian Point 3, LLC; and Entergy Nuclear Operations, Inc.) filed a response in support of the motion on June 16, 2003 and Petitioner filed a memorandum in opposition on June 17, 2003. We understand that the motion is scheduled to be decided on submission on July 28, 2003. In a June 26, 2003 letter, Petitioner requested that the Court hear oral argument on the motion. By letter dated July 2, 2003, the Federal Respondents stated their belief that no oral argument was necessary.

The Utility Respondents agree that oral argument is not necessary. As set forth in our June 16 response, we believe that the Supreme Court's *Heckler v. Chaney* decision, 470 U.S. 821 (1985), is clearly dispositive, a conclusion supported by the Second Circuit cases applying *Heckler v. Chaney* as well as the cases in the First, Seventh and D.C. Circuits involving the Nuclear Regulatory Commission, all of which are discussed in the pleadings already before the Court.

Nor do we believe that Local Rule 27(b) *requires* that oral argument be provided merely because the party opposing the motion requests it. Of course, should the Court

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chose to hear oral argument, the Utility Respondents would participate. However, based on the well established legal principles involved, we would request that the Court decide the case as presented.

Sincerely,



Jay E. Silberg
Counsel for Utility Respondents

cc: ✓ David Cummings, Esq.
Karl Coplan, Esq.

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