

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

RIVERKEEPER, INC.,)	
)	
)	Petitioner,
)	
v.)	
)	Docket No. 03-4313
)	
COLLINS, et al.)	
)	
)	Respondents,
)	
)	

**FEDERAL RESPONDENTS' RESPONSE TO MOTION FOR LEAVE TO ATTACH
SUPPLEMENTAL MATERIALS TO BRIEF OF *AMICUS CURIAE***

The U.S. Nuclear Regulatory Commission and the United States of America respond to the motion of Richard Blumenthal, Attorney General of Connecticut, seeking leave to attach two documents to the *amicus curiae* brief he filed in connection with the above captioned case. We do not oppose the request to allow attachment of the two documents, which are publicly available. However, we wish to make it clear that documents cited in the *amicus* brief, including the two attachments, that are not in the administrative record before this Court,¹ cannot be considered as part of this Court's merits review.²

Rule 16, Fed. R. App. P., defines the record as "the agency order involved, any findings or report upon which it is based, and the pleadings, evidence, and other parts of the proceedings before the agency."³ Thus, the record in this case includes all documents that became a "part[]" of the proceedings before the agency" in denying the petition filed by

¹ In accordance with 28 U.S.C. 2112(b) and Rules 16 & 17, Fed. R. App. P., the NRC has filed a certified index of the administrative record for this case.

² It is our understanding that this Court currently is set to consider our motion to dismiss on August 5, 2003. Our motion rests on jurisdictional grounds. If the case proceeds to the merits, we will discuss the administrative record issue in our merits brief.

³ 28 U.S.C. 2112(b) employs essentially the same criteria.

Riverkeeper, Inc., pursuant to 10 C.F.R. § 2.206.⁴ Upon appeal, courts are generally limited to examining the administrative record that was compiled by the agency when it made its decision. See Florida Power & Light Co. v. Lorion, 470 U.S. 729, 743-44 (1985); Camp v. Pitts, 411 U.S. 138, 142 (1973); National Audubon Soc. v. Hoffman, 132 F.3d 7, 14 (2nd Cir. 1997).

Respectfully submitted,

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⁴ It follows that documents produced *subsequent* to the agency's decision are not part of the administrative record. See Walter O. Boswell Memorial Hospital v. Heckler, 749 F.2d 788, 793-794 (D.C. Cir. 1984). The *amicus curiae* brief cites numerous documents including a GAO report, and several news articles, which were not in existence at the time of the agency's decision to deny the 2.206 petition filed by Riverkeeper, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on July 18, 2003, copies of the foregoing Federal Respondents' Response to Motion for Leave to Attach Supplemental Materials to Brief of Amicus Curiae was served by mail, postage prepaid, upon the following counsel:

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