

OFFICE OF THE SECRETARY  
CORRESPONDENCE CONTROL TICKET

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**PAPER NUMBER:** LTR-07-0498 **LOGGING DATE:** 07/26/2007  
**ACTION OFFICE:** SECY

**AUTHOR:** Phillip Musegaas (Riverkeepers)  
**AFFILIATION:** NY  
**ADDRESSEE:** Mrs. Annette Vietti-Cook  
**SUBJECT:** Concerns improper withholding of public documents

**ACTION:** Direct Reply  
**DISTRIBUTION:** RF

**LETTER DATE:** 07/25/2007  
**ACKNOWLEDGED:** No  
**SPECIAL HANDLING:** Immediate release to the public via SECY/DPC

**NOTES:**  
**FILE LOCATION:** ADAMS

**DATE DUE:** **DATE SIGNED:**



## RIVERKEEPER.

July 25, 2007

Office of the Secretary  
Annette L. Vietti-Cook, Secretary  
U.S. Nuclear Regulatory Commission  
One White Flint North  
11555 Rockville Pike  
Rockville, Maryland 20852-2738  
VIA FACSIMILE AND ELECTRONIC MAIL

Re: Improper Withholding of Public Documents

On behalf of Riverkeeper and the general public, I am hereby requesting immediate public access to the following document:

- Public Meeting, "Briefing on Status of Issues and Approach to GEIS Rulemaking for Part 51," (Feb. 19, 1993) ADAMS Accession No. ML051660665. Cited as such in the Atomic Safety and Licensing Board decision *In the Matter of Entergy Nuclear Vermont Yankee, LLC, and Entergy Nuclear Operations, Inc. (Vermont Yankee Nuclear Power Station)*, 2006 NRC LEXIS 201, at 48, LBP-06-20, Docket No. 50-271-LR, ASLBP No. 06-849-03-LR (Sept. 22, 2006).

Riverkeeper is currently preparing to intervene in the relicensing process for the Indian Point nuclear facility located in Buchanan, New York.<sup>i</sup> As part of our preparation, we are reviewing recent Nuclear Regulatory Commission ("NRC") adjudicatory decisions in license renewal proceedings. While reviewing the *Vermont Yankee* Atomic Safety and Licensing Board ("ASLB") decision referenced above, Riverkeeper staff noted the ASLB relied heavily upon the above referenced public meeting transcript in forming the basis for its legal opinion regarding the Massachusetts Attorney General's contention concerning spent fuel pool fire risks.<sup>ii</sup> The *Vermont Yankee* decision is critically important to *all* nuclear facility relicensing proceedings, as it concerns the interpretation of a regulation regarding the ability of members of the public to raise contentions on generically determined, yet at times incredibly significant, safety and environmental issues. Because the *Vermont Yankee* ASLB decision effectively prohibits the public from raising concerns regarding spent fuel storage in an intervention petition, public access to the documents upon which the ASLB relied in that decision is essential for any private citizen or public interest organization preparing to challenge the relicensing of a nuclear facility.

When Riverkeeper staff observed that much of the ASLB *Vermont Yankee* decision was based on the public meeting transcript, we immediately searched the online ADAMS database using the accession number provided in the opinion and referenced above. When the ADAMS search failed to produce the document, we promptly called the NRC Public Document Room ("PDR"). To our confusion and surprise, we were informed by PDR employee Marcia that the transcript of this *public meeting* was *non-publicly available*. This bears repeating: the transcript of a *public meeting* is apparently *not*

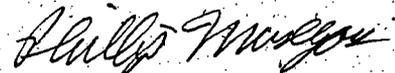
*available to the public.* The PDR has no information regarding the reasoning behind this document's "sensitive" status. We were not even able to obtain information concerning when it became unavailable, or if it has in fact ever been available to the public.

The NRC's decision to withhold the transcript for a public meeting from public view is illogical and unreasonable enough on its own, but the fact that this particular document formed the basis of an *official NRC decision* is doubly disturbing. Based on our current knowledge, the only purpose would be to hamstring the public's participation in the relicensing process. I hope that this disturbing irony is not lost on the NRC. At the very least, the document should have been cited in the decision as non-publicly available and an explanation given as to why this determination was made. Riverkeeper believes the failure to make this document public was extremely improper, and that the only appropriate remedy is to make it immediately available. The NRC's duty to serve the public is not fulfilled by withholding public documents which form the basis for a critical NRC adjudicatory order. Such a decision also reflects badly on the Atomic Safety and Licensing Board chaired by Alex S. Karlin. Perhaps Mr. Karlin was unaware a key document cited in his opinion was unavailable to the public. Irregardless, adjudicatory proceedings should be conducted with the utmost concern for transparency and impartiality. By all accounts, that does not appear to be the case here.

It is understandable that in some instances, documents must be withheld because of compelling national security concerns. However, I fail to see how this could be the case regarding a document which relates the proceedings of a public meeting. If the NRC has a compelling reason for withholding sensitive portions of this document, the agency has the ability to redact the allegedly sensitive material and make the rest immediately available. On the other hand, if the NRC illogically maintains that the entire document remains outside of the public domain, I hereby request the agency provide information as to when, if ever, the document was publicly available and the reason for its current "sensitive" status.

As an organization currently preparing to intervene in the relicensing of the Indian Point nuclear facility, Riverkeeper has an urgent need for this document. NRC accepted Entergy's application on July 25, 2007. We expect the application to be docketed and Federal Register notice posted on or before August 1, 2007. Riverkeeper's petition for intervention will then be due on or about October 1, 2007. Denying public access to this document is unreasonable and unjustifiable. Therefore, I am reiterating Riverkeeper's request for immediate electronic access to this improperly withheld public document. I look forward to a prompt response from your office to our concerns.

Sincerely,



Phillip Musegaas  
Staff Attorney

CC VIA ELECTRONIC MAIL:

Commissioner Gregory B. Jaczko

Ms. Bebbie Rhodes, NRC  
Acting Section Chief  
Technical Information Center Section

Mr. Bo Pham, NRC  
Project Manager  
Indian Point Relicensing

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<sup>1</sup> Entergy's application for relicensing of Indian Point was filed on April 30, 2007. *See* Indian Point Nuclear Generating Unit Nos. 2 and 3 – License Renewal Application, *available at* <http://www.nrc.gov/reactors/operating/licensing/renewal/applications/indian-point.html>, last accessed July 26, 2007.

<sup>2</sup> *See Vermont Yankee*, 2006 NRC LEXIS 201, at 47-49.

**From:** "phillip" <phillip@riverkeeper.org>  
**To:** <SECY@nrc.gov>  
**Date:** Thu, Jul 26, 2007 5:17 PM  
**Subject:** Riverkeeper letter to Secretary Vietti-Cook July 26 2007

Dear Madame Secretary,

Attached please find Riverkeeper's letter of July 26, 2007 to you regarding the withholding of public documents cited in an Atomic Safety and Licensing Board Decision. Please note this letter was also cc'd via electronic mail to Alex Karlin, Chairman of the ASLB in the Vermont Yankee relicensing proceeding. He was erroneously omitted from the cc list on the letter itself.

This letter was also faxed to your office this afternoon, and a hard copy will follow by regular mail in the next few days.

Thank you,

Phillip Musegaas

Staff Attorney/Policy Analyst

Riverkeeper, Inc.

828 South Broadway

Tarrytown, NY 10591

914-478-4501 x224

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**Subject:** Riverkeeper letter to Secretary Vietti-Cook July 26 2007  
**Creation Date** Thu, Jul 26, 2007 5:15 PM  
**From:** "phillip" <[phillip@riverkeeper.org](mailto:phillip@riverkeeper.org)>  
**Created By:** [phillip@riverkeeper.org](mailto:phillip@riverkeeper.org)

**Recipients**

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SECY (SECY)

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**Route**

nrc.gov

<b>Files</b>	<b>Size</b>	<b>Date &amp; Time</b>
MESSAGE comprtf.001 July 26 07 Riverkeeper Letter to NRC Re Public Documents.pdf Mime.822	1288  846259	Thursday, July 26, 2007 5:15 PM

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**Security:** Standard

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