March 28, 2008

The Honorable Charles E. Schumer
United States Senate
Washington, D.C. 20510

Dear Senator Engel:

I received your letter of March 11, 2008, which expressed concerns regarding the adjudicative proceeding on Monday, March 10 in White Plains, New York, where the Atomic Safety and Licensing Board (Licensing Board) heard attorneys' arguments about the Indian Point license renewal application. Although letters to the Commission relating to ongoing adjudication ordinarily are placed in the adjudicative docket without a substantive response, I felt that your concerns – which relate principally to promoting an "open and honest process" – were significant and warranted an answer.

In your letter, you stated that the proceeding convened more than one hour late. Although the proceeding started at 10:00 a.m. consistent with the Scheduling Order issued by the Licensing Board on February 29, 2008, we issued a press release that incorrectly indicated the proceeding would start at 9:00 a.m. We regret that the public was inconvenienced by the inaccurate press release, and we will endeavor to prevent such errors in the future.

Your letter also stated that a lack of microphones in the courtroom on Monday morning prevented the audience from hearing the attorneys' responses to the judges' questions. Because our adjudicative proceedings are generally open to the public, Licensing Boards strive to ensure that the attending public can hear. In the instant case, the Licensing Board was informed in advance by courtroom personnel that the sound system would be adequate. Unfortunately, the number of microphones proved to be insufficient. The Licensing Board remedied this problem during the noon recess by securing additional microphones. Thus, this problem was short-lived, lasting for only the first two hours of a three-day proceeding. We will nonetheless take additional steps in the future to verify that sound systems are adequate prior to the commencement of proceedings.

Importantly, the public has access to everything that was said. This adjudicatory proceeding – like all similar Licensing Board proceedings – was transcribed in its entirety and placed in the public domain, thus preserving the transparency of the process. Any interested person may review the transcript, which is located in the Indian Point docket on the NRC website http://www.nrc.gov.

Finally, regarding your suggestion that the Licensing Board should "hold an additional hearing" to "ensure that the public's voice will be heard," it is important to distinguish between a limited appearance session where a Licensing Board gives the public an opportunity to "mak[e] an oral or written statement of his or her position on the issues" (10 C.F.R. § 2.315(a)), and an adjudicative proceeding where a Licensing Board gives attorneys the opportunity to respond to specific inquiries regarding contention admissibility. This proceeding fell into the latter category, and, as the transcript reveals, the adjudicative purpose of the proceeding was fulfilled. If, based on the attorneys' written pleadings and oral responses, the Licensing Board determines that the petitioners' contentions are admissible, it may then schedule a limited appearance session. At that time, members of the public will have the opportunity to present their views on the issues to the Licensing Board.

I hope this letter addresses your concerns.

Sincerely,

/RA/

E. Roy Hawkens

cc: Senator Hillary Rodham Clinton
Congresswoman Nita M. Lowey
Congressman John Hall
Congressman Maurice Hinchey
Congressman Eliot Engel