

July 29, 2016

Mr. Paul Gallay
Mr. James Bacon
Riverkeeper
20 Secor Road
Ossining, NY 10562

Dear Messrs. Gallay and Bacon:

On behalf of the Commission, I am responding to your letter of May 17, 2016, in which you express concerns regarding recent briefings that the Commissioners and their staffs received on the status of inspections at Indian Point Unit 2 regarding baffle-former bolts. You note that two briefings were conducted by the NRC staff on April 19, 2016, but that Riverkeeper, as a party to the ongoing license renewal proceeding, did not learn of the briefings until the NRC staff's counsel informed the Atomic Safety and Licensing Board and the parties of the briefings on April 26, 2016. You state that the Commission should have provided the parties to the adjudication with notice of the briefings and an opportunity to attend or participate. You also request that the Commission provide any relevant Commission-generated documents that may not have been provided to Staff counsel. Finally, you request reasonable advance notice of, and opportunity to attend or participate in, any future Commissioner briefings relevant to the resolution of the issues in the proceeding, including future briefings related to baffle-former bolts at Indian Point.

The Commission performs dual roles, in that it has general supervisory authority over the staff's activities and also sits in a quasi-judicial capacity in adjudications. Those two roles are kept separate. The separation of functions rule, set forth in 10 C.F.R. § 2.348, protects the fairness and transparency of the agency's adjudicatory process by placing certain restrictions on communications between the Commission and the NRC staff who are involved in the technical review of an issue that is being adjudicated within a contested proceeding—in this case, the Indian Point license renewal adjudication. The separation of functions rule is designed to prevent off the record communications on the merits of contested issues; however, the rule is not intended to prevent the NRC staff from communicating to the Commission or individual Commissioners matters unrelated to the specific issue that is the subject of a contested proceeding. The staff's April 19 briefings on the baffle-former bolt inspections were limited to a description of the baffle plates and bolts, applicable regulatory requirements, and current status of the inspection results at Indian Point Units 2 and 3. No prohibited communications took place, as the matters at issue in the adjudication were not discussed.

Requests for agency documents such as the one you made in your letter are appropriately directed to the agency's Freedom of Information Act (FOIA) process. However, in response to a recent FOIA request the NRC has made public documents that are also responsive to your request; courtesy copies of those documents are provided here.

Finally, you request notice and an opportunity to attend future briefings of the Commission. The April 19 briefings were not "meetings" subject to the Sunshine Act because a quorum of Commissioners was not present for either briefing. As such, public notice was not required. The NRC will provide public notice of Commission meetings when required by law, but the Commissioners may receive additional non-public briefings as part of their obligation to supervise the NRC staff. Because the Commission continues to sit in a quasi-judicial capacity in the Indian Point license renewal proceeding, any such briefing will not address disputed issues in the license renewal proceeding.

A copy of your letter and this response will be served on the parties to the *Indian Point* license renewal adjudication.

Sincerely,

/RA/

Stephen G. Burns

Enclosures:
As stated