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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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ATOMIC SAFETY AND LICENSING BOARD PANEL

+ + + + +

PRE-HEARING CONFERENCE

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In the Matter of: : Docket No.

ENTERGY NUCLEAR OPERATIONS : 50-247-LR

: 50-286-LR

(Indian Point Nuclear : .

Generating Station :

Units 2 and 3) :

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Wednesday, January 14, 2009

Teleconference

BEFORE:

LAWRENCE G. McDADE, Chair

KAYE D. LATHROP, Administrative Judge

RICHARD E. WARDWELL, Administrative Judge

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## P R O C E E D I N G S

(10:02:05 a.m.)

CHAIRMAN McDADE: First of all, with regard to the NRC Staff, who is on the line for the NRC Staff?

MR. TURK: Good morning, Your Honor. This is Sherwin Turk, and I'm joined today by numerous other people. I'd like to identify them for the record. Here with me is Marcia Simon, Beth Mizuno, Brian Harris, Ian Newell, Andrew Stuyvenberg, Kimberly Green, and David Wrona. Reporter, his last name is W-R-O-N-A. We'll be joined by other people during the course of the session, but I expect most of the discussion will be handled by myself, Beth Mizuno, and Marcia Simon.

CHAIRMAN McDADE: Okay. And what I would ask is, given the fact that this is all being done telephonically, everybody thinks their own voice is distinctive, and I guess to a degree it is, but when you do speak during the course of the proceeding here this morning, please identify yourself by name and the entity for which you are speaking. In other words, Mr. Turk of the NRC Staff, Mr. Sipos, New York Attorney General.

Okay. So next, Entergy, from Morgan Lewis.

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1 MR. BESSETTE: Good morning, Your Honor.  
2 This is Paul Bessette from Morgan Lewis. And I have  
3 with me Martin O'Neill. We have other people from  
4 Entergy on remotely. I would have them introduce  
5 themselves separately.

6 MS. SUTTON: This is Kathryn Sutton, also.  
7 of Morgan Lewis.

8 MS. DOWELL: Kelly Dowell with Entergy.

9 MS. ZOLI: Elise Zoli with Goodwin  
10 Proctor.

11 CHAIRMAN McDADE: Okay. And from New York  
12 State?

13 MR. SIPOS: Good morning, Your Honor.  
14 This is John Sipos from the New York State Attorney  
15 General's office. And with me on separate lines are  
16 Joan Leary Matthews, Janice Dean, and Anthony  
17 Royceman.

18 CHAIRMAN McDADE: From Riverkeeper?

19 MR. MUSEGAAS: Good morning, Your Honor.  
20 This is Philip Musegaas, and I have in the office with  
21 me here Deborah Brancato and Victor Tafur. I will  
22 probably be doing most of the speaking for us, but  
23 other people may chime in, and we'll identify  
24 ourselves. Thank you.

25 CHAIRMAN McDADE: Okay. And just as an



1       aside, I realize there are a number of people who are  
2       listening in. You don't necessarily have to introduce  
3       people who are inherently not going to be taking a  
4       speaking role. If someone is possibly going to be  
5       speaking for a particular party, then they should  
6       introduce themselves at this point. But, otherwise,  
7       there's not a need to.

8                       From Clearwater?

9                       MS. GREENE: Good morning, Your Honor.  
10       This is Manna Jo Greene from Clearwater. And I  
11       believe that Ross Gould is also on the phone.

12                      MR. GOULD: Yes. Good morning, Your Honor.  
13       This is Ross Gould from Clearwater. I'm here, as well.

14                      CHAIRMAN McDADE: Okay. Good morning.  
15       From the State of Connecticut?

16                      MR. SNOOK: This is Bob Snook from the  
17       State of Connecticut.

18                      CHAIRMAN McDADE: Good morning. From the  
19       Town of Cortlandt?

20                      MR. RIESEL: Good morning, Your Honor.  
21       This is Daniel Riesel of Sive, Paget & Riesel for the  
22       Town.

23                      CHAIRMAN McDADE: All right. Now, in  
24       addition, interested Government entities, Westchester  
25       County has been admitted as a interested Government

1 entity here. We have not heard specifically from a  
2 representative from Westchester with regard to this  
3 proceeding. Is there anyone from Westchester County  
4 present? Apparently not. Likewise, the New York City  
5 Economic Development Corporation representing the City  
6 of New York. Is there anyone from the New York  
7 Economic Development Corporation on the line?

8 MR. DELANEY: Yes, Michael Delaney.

9 CHAIRMAN McDADE: Okay. And is there  
10 anyone from the Village of Buchanan? Okay.  
11 Apparently not. I think that -- have I missed  
12 anybody? Is there anybody representing any entity  
13 that is on the line that I've not gone through so far?

14 Okay. I was specifically advised that the  
15 NRC Public Affairs wished to monitor, to listen to  
16 this. Is Mr. Sheehan on the line, Neal Sheehan?

17 MR. SHEEHAN: Yes, I am, Your Honor.

18 CHAIRMAN McDADE: Okay. Thank you.

19 Okay. Let's get started. The first issue  
20 that I wanted to discuss, let me mention, New York  
21 State had indicated that given the number of people  
22 who have come in and out of this proceeding, an issue  
23 with regard to who is and who is not a party, and who  
24 is and need not be served in this.

25 One issue I wanted to raise with all of

1 you at this point in time, when this case was  
2 originally filed, it was not part of the electronic  
3 filing system of the NRC. That system had not yet  
4 been incorporated. The rules provide, however, that  
5 if all of the participants wish, it can be transferred  
6 to the electronic system, in which case all you would  
7 do is just simply serve once. You would file through  
8 the electronic system, and then everybody else would  
9 automatically be served through that. Given the  
10 current status, given the fact that it was not  
11 originally an electronically filed case, we need to  
12 have all of the parties agree in order to switch to  
13 that.

14 What I would suggest you do, rather than  
15 having you give an opinion at this point in time, is  
16 go onto the NRC website. When you click on the NRC  
17 website, if you go to that section that says "Dealing  
18 with the NRC", there is a specific website that will  
19 then take you to electronic filings, and you can read  
20 about the electronic filing system. What I would ask  
21 you to do is to take an opportunity to review that,  
22 and perhaps within a week from today, if the -- put  
23 the burden on the NRC Staff to coordinate this. If  
24 you could coordinate with the other parties to this,  
25 and advise just simply by an email to all of the

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1 parties and the Board whether or not the group desires  
2 - and, again, it has to be unanimous - whether they  
3 desire to go to the electronic filing.

4 Absent that, in the interim, let me  
5 indicate that we do have the filings that have been  
6 made in the most recent motions, and the certificates  
7 of service. The participants in this litigation at  
8 this point are the NRC Staff, Entergy, the New York  
9 Attorney General, Clearwater, Riverkeeper, the State  
10 of Connecticut, Westchester County, the Town of  
11 Cortlandt, the Village of Buchanan, and the New York  
12 City Economic Development Corporation representing New  
13 York City, and the Board and SECY are also entities  
14 that need to be served if we stay in the current  
15 system.

16 The current system has also been that  
17 service has been made on a number of different  
18 individuals from each group. There is no requirement  
19 that that be done, but it's done as a courtesy. And  
20 one would anticipate basically in for a penny, in for  
21 a pound, that if you expect to have a number of people  
22 from your organization served as a convenience so you  
23 don't have to then transfer it. And also, if one  
24 person is out of the office, to make sure that it's  
25 received promptly, so I would suggest that we continue

1 - I would urge you to continue with that; although, we  
2 can only require that you serve one party, one person  
3 within each group. So is there any question with  
4 regard to that from anybody?

5 MS. GREENE: Yes, Your Honor. This is  
6 Manna Greene from Clearwater. Would that mean that we  
7 would no longer have to serve by paper, by mail?

8 CHAIRMAN McDADE: If we went to the  
9 electronic filing, it would mean you would no longer  
10 have to serve paper copies, that you would just simply  
11 serve an electronic copy.

12 Now, let me also mention two things from  
13 that. One, it is an awful lot easier to do if you are  
14 PC as opposed to MAC. And what you may -- and if  
15 you're a MAC user as opposed to a PC user, you may  
16 want to call. On that website, there is a phone  
17 number with a Help Desk, and they can explain to you  
18 in much better detail than I can exactly what is  
19 required in order to do this. So what we want to do  
20 is we don't want someone to commit to something that's  
21 then going to be a technological problem for them to  
22 comply with. But in the event we went to an  
23 electronic filing system, it would mean you would not  
24 have to do paper, serve paper copies. It would just  
25 be the one service, and then the electronic filing

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1 system would take care of serving everybody else.

2 MS. GREENE: Thank you very much.

3 CHAIRMAN McDADE: Okay. Any questions  
4 with regard to that from anybody else? Any questions  
5 with regard to who needs to be served, or what the  
6 expectations of service are?

7 MS. MATTHEWS: Your Honor, this is Joan  
8 Leary Matthews from the New York State Department of  
9 Environmental Conservation. I don't know that you  
10 intended to leave the DEC off as a separate entity for  
11 receiving service, but I would like to receive  
12 separate service.

13 CHAIRMAN McDADE: Okay. Well, I had  
14 considered you part of the State of New York. I hope  
15 the State of New York does, as well. As I said, the  
16 current practice has been to serve all of the people,  
17 and your name had been on the list. In the event that  
18 we go to electronic filing in this, what we would do  
19 is just make sure that your address were included in  
20 the electronic filing, and then it would just go  
21 automatically to you.

22 MS. MATTHEWS: Great. Thank you, Your  
23 Honor.

24 CHAIRMAN McDADE: And what we would do  
25 with the electronic filing is for each of the

1 entities, you would just indicate who you wish to have  
2 service made to within your organization, and then the  
3 service would automatically be sent to them from the  
4 NRC server. Any other questions on that?

5 MR. TURK: Your Honor, this is Sherwin  
6 Turk. I have one point I wanted to note. We, the  
7 Staff, have been serving until this past week other  
8 petitioners who sought intervention whose petitions  
9 were subsequently denied. They include Richard  
10 Brodsky, FUSE, The Phase WestCan Group, and the New  
11 York Affordable Reliable Electricity Alliance, and  
12 also Nancy Burton for CRORIP, C-R-O-R-I-P.

13 In light of the Board's rulings and the  
14 Commission's rulings on appeal, we are deleting those  
15 names from our official service list. But I notice  
16 that other people are still serving them. I just want  
17 to note that we do not consider a requirement to serve  
18 people whose petitions have been denied, effectively,  
19 and we will no longer serve those individuals and  
20 participants, prior participants.

21 CHAIRMAN McDADE: Okay. We do not  
22 consider them parties. They are not parties. They  
23 need not be served, so that if anybody else serves  
24 them, it's just simply they're doing it because they  
25 want to. But there is no requirement that anyone

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1 other than those that I just listed be served. And,  
2 also, I would ask that if you do serve other people,  
3 don't put it on the certificate of service, because  
4 it's not part of this proceeding. They are no longer  
5 part of this proceeding. Any question with regard to  
6 that? Okay. Apparently not.

7 The first issue that I wanted to take up  
8 is, there was a motion by New York State and  
9 Riverkeeper for an extension of time to file  
10 contentions related to the draft Supplemental  
11 Environmental Impact Statement that was issued on the  
12 22<sup>nd</sup> of December. We received a motion dated January  
13 9<sup>th</sup> with a very prompt reply filed by Entergy, Morgan  
14 Lewis on behalf of Entergy. We have not received  
15 anything from the NRC Staff. Mr. Turk, do you wish to  
16 speak to this motion?

17 MR. TURK: Yes, and I think perhaps I  
18 could just address it now, and avoid having to file  
19 the written paper. I'll be very brief.

20 We do not believe that the State has shown  
21 good cause for essentially a five or six-week  
22 extension of time to file contentions on EIS. As I  
23 read the timely filing requirements, they would  
24 normally be required to file within about 30 days  
25 after publication of the EIS, or the draft EIS. And



1 that would be with respect to any new matters  
2 contained in the EIS, not matters that already were  
3 part of the ER, the Environmental Report, prepared by  
4 Entergy, or other matters which are public knowledge,  
5 or which they could have obtained knowledge of prior  
6 to issuance of the draft EIS. I do recognize that the  
7 Christmas and New Year holidays came shortly after  
8 publication of the draft EIS, and I would not oppose  
9 a two-week extension of time to account for that  
10 period, but I don't see that a five week, or a six  
11 week extension has been justified.

12 I would also note that the Staff is on the  
13 verge of issuing the SER and the audit report, as well  
14 as publishing the hearing file, so there will be quite  
15 a lot of documentation that is going to come out in  
16 the next week or two. And whatever schedule the Board  
17 adopts for filing of contentions concerning the EIS,  
18 I think should take into account the intervenor's  
19 interest in addressing those other documents that are  
20 about to come out. So I think a uniform schedule  
21 should be devised for filing contentions based upon  
22 new documents.

23 CHAIRMAN McDADE: Okay. Thank you. Does  
24 anyone else wish to be heard on this motion?

25 MR. GOULD: Yes, Your Honor. This is Ross

1 Gould from Clearwater.

2 CHAIRMAN McDADE: Yes.

3 MR. GOULD: We had intended to file a  
4 letter joining in with Riverkeeper and the State of  
5 New York.

6 CHAIRMAN McDADE: Okay.

7 MR. GOULD: We'd like to join in at this  
8 time.

9 CHAIRMAN McDADE: Okay. Thank you.

10 MR. SNOOK: This is Robert Snook from the  
11 State of Connecticut. We also were considering  
12 joining in with New York. I would point out that as  
13 a governmental agency, there are a series of different  
14 groups within the State government I have to liaise  
15 with to coordinate just getting the technical review  
16 done of the DEIS to determine what contentions, if  
17 necessary, have to be addressed.

18 I would also point out that the point of  
19 a DEIS, as well as this entire pleading, is to allow  
20 a full and public review of these matters. Certainly  
21 an extension of time, not so much because of the  
22 holidays, but because at least from our perspective  
23 the number of government agencies that are involved in  
24 reviewing this, as well as getting a thorough and  
25 complete review of the DEIS and potential contentions,

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1 it would be very helpful to have an extension of time.  
2 I have no objection to coordinating that extension of  
3 time, or whatever schedule with the other documents  
4 that are coming through, which, in fact, sort of  
5 reinforces the point. There's an awful lot of paper  
6 to go through here, and an awful lot of people that  
7 have to look at it.

8 CHAIRMAN McDADE: Okay. Thank you.

9 I think the Board is -- we've had some  
10 discussions on this and are ready to rule on this  
11 particular motion. And before I do, let me discuss a  
12 couple of matters.

13 The first has to do with one of the  
14 issues, and there were two significant issues, in my  
15 view, raised by Entergy in their response to the  
16 motion. The first had to do with the timeliness of  
17 the motion. They indicated that under the rules, the  
18 motions are to be filed within 10 days after the event  
19 that gives rise to the motion. Under that rule, they  
20 opine that it is not a timely filed motion.

21 I understand and appreciate the position  
22 that Entergy has taken here. However, viewing it  
23 somewhat different, and not necessarily the filing of  
24 the DEIS, but rather a recognition on the part of New  
25 York of when they would need an extension of time

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1 would be the circumstance which gave rise to the  
2 motion. Under those circumstances, it seems that it  
3 would be reasonable to expect that New York would take  
4 a reasonable amount of time to review the DEIS in the  
5 hopes of being able to file within an appropriate  
6 period of time without seeking an extension.

7 Here, I think they filed for an extension  
8 in a timely manner given the nature of the document,  
9 and also sufficiently before the period of time when  
10 it would have been due. One of the things that we  
11 always want to discourage, and which we will  
12 discourage is when requests for extensions are filed  
13 at the very last minute, where basically people come  
14 in at the last day. Here, the State of New York did  
15 not do that, so it is our view that the motion is  
16 timely filed.

17 The next, which is more disturbing to the  
18 Board, has to do with the requirement for consultation  
19 under 2.323(b). We have indicated in earlier orders  
20 that we have issued in this particular case that the  
21 requirement for consultation is not just simply giving  
22 notice. It's not just simply calling the opposing  
23 parties and saying we're going to be filing a motion  
24 in ten minutes unless you agree to something.

25 The regulation envisions that there will

1 be a reasonable attempt to resolve the issues. For  
2 example, on a motion for an extension it may well be  
3 that a 37-day extension is requested. The parties  
4 would agree to a 30-day extension, and it simply could  
5 be a joint motion submitted, and the Board wouldn't  
6 have to get involved, and wouldn't have to rule on it.

7 That said, we are somewhat surprised that  
8 in this particular instance it appears that rather  
9 than true consultation, it was just simply notice.  
10 Nevertheless, we are going to entertain the motion,  
11 but we do want to put all of the parties and  
12 participants on notice that in the future we do  
13 expect, if a motion is going to be filed, that there  
14 will be a real effort on the part of the parties to  
15 resolve the issues presented before the motion is  
16 filed, not just simply a notice at the last minute  
17 that the motion is going to be filed. It's not  
18 intended as a pro forma, just check off the block.  
19 It's intended as a mechanism to resolve issues so they  
20 won't need to be litigated.

21 That said, with regard to the substance of  
22 the motion, this was a voluminous document. I mean,  
23 we're talking about a several hundred page document.  
24 We're also talking about unique circumstances in time  
25 where it was filed just immediately, Hanukkah,

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1 Christmas, New Year's, within the period of time,  
2 there was many days off normally as there would be  
3 days on. Particularly here, when we are dealing with  
4 a number of government entities that have a  
5 significant number of bases to touch in formulating  
6 responses, it seems to me that giving an additional  
7 period of time in order to allow that is in the  
8 Board's interest, and also in the interest of this  
9 particular litigation.

10 Our experience is that well thought out,  
11 well written contentions are much easier to adjudicate  
12 than contentions that need to be pushed together very  
13 quickly at the last moment under a very stringent time  
14 frame.

15 That said, it is our predisposition to  
16 grant the motion, and allow the request for 37-day  
17 extension. In doing that, of course, all we're saying  
18 is just as far as a general filing. As Mr. Turk  
19 pointed out, this does not allow an opening up of  
20 every environmental issue that could have been raised  
21 back before the original contentions were filed.  
22 We're not looking at information that was in the  
23 environmental report, but simply anything that is new  
24 that comes out as a result of information that is in  
25 the DEIS. Again, new information. But if so, we will

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1 look at the substance of any contention to see whether  
2 or not it truly is based on new information, when and  
3 if it is received. But as far as a presumptive date  
4 for timeliness, we will allow until February 27.

5 Now, with regard to the additional  
6 documents that are going to be submitted, such as the  
7 Safety Evaluation Report, the hearing file, we are not  
8 necessarily giving carte blanche for an additional  
9 period of time for each of those documents. Again, I  
10 think it has to be looked at on its face. I think  
11 this was an unusual circumstance here where you had  
12 the holidays, whether it be Inauguration Day, King  
13 Day, New Year's, Christmas, Hanukkah, you don't get  
14 that many holidays in a normal 30-day period of time.  
15 In addition, you had a significantly voluminous  
16 document, so basically what we're going to do,  
17 although what Mr. Turk suggests of having a uniform  
18 policy on this makes sense; nevertheless, at this  
19 point in time, we're going to handle it on a case-by-  
20 case basis if and when those -- well, I assume not if,  
21 but when those documents are filed, if any party  
22 believes that they wish to file a new contention based  
23 on that and need additional time, we will review it  
24 based on the motion that they file. Again, the motion  
25 that they file timely, and after consultation and an

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1 attempt to resolve it with the other parties.

2 Okay. Now, the next thing has to do with  
3 disclosures. Specifically, one of the things that has  
4 come up, Connecticut filed a document saying they want  
5 to insure that they receive, as an interested  
6 government agency participating in this litigation,  
7 all of the disclosures that are made to the specific  
8 parties, to New York, Riverkeeper, Clearwater. Is it  
9 the intent of the NRC Staff to do that with regard to  
10 each of the interested government entities, Mr. Turk?

11 MR. TURK: Yes.

12 CHAIRMAN McDADE: Okay. And with regard  
13 to Entergy?

14 MR. BESSETTE: Paul Bessette. Yes.

15 CHAIRMAN McDADE: Okay. So, basically, we  
16 don't have an issue there. Okay. Next, with the  
17 disclosures under 2.336, Mr. Turk, you alluded to a  
18 little bit earlier -- (coughing). Excuse me. I hope  
19 I make it through all of this. One of the other  
20 things that happens this time of year is everybody  
21 gets colds, which slows things down, as well. Anyway,  
22 bear with me here.

23 With regard to the disclosure of the  
24 hearing file, when do you anticipate that will occur?

25 MR. TURK: We are expecting to do that

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1 during the next week, some time between the period of  
2 January 21 to 23<sup>rd</sup>.

3 CHAIRMAN McDADE: Okay. And has Entergy  
4 begun making disclosures under 336?

5 MR. BESSETTE: Your Honor, we are on the  
6 same schedule. This is Paul Bessette, again. We're  
7 on the same schedule as NRC.

8 Just as a preliminary matter, we're making  
9 our initial disclosures through logs, and we plan on  
10 providing a log listing all the documents to all the  
11 parties and interested states approximately mid-week  
12 next week in accordance with the obligations under  
13 2.336.

14 CHAIRMAN McDADE: Okay. Now, I should  
15 note for the record that one thing we have received is  
16 a letter from Ms. Sutton and Mr. Bessette, actually  
17 signed by Mr. Bessette of Morgan Lewis indicating that  
18 they are submitting this on behalf not only of  
19 Entergy, but the NRC Staff, New York State,  
20 Riverkeeper, and Hudson River Clearwater Sloop. It  
21 has to do with various agreements that they have come  
22 to with regard to disclosure of information.

23 The Board has no objection to any of the  
24 agreements that have been entered here. Let me ask  
25 for the interested government agencies that are there

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1 on this call, specifically -- let me just sort of go  
2 through, from Connecticut?

3 MR. SNOOK: No objection.

4 CHAIRMAN McDADE: Okay. From Cortlandt?

5 MR. RIESEL: No objection, Your Honor.

6 CHAIRMAN McDADE: Okay. And who else do  
7 we have on? From New York City?

8 MR. DELANEY: Yes. Michael Delaney. No  
9 objection.

10 CHAIRMAN McDADE: Okay. And that was Mr.  
11 Snook from Connecticut. And speaking for Cortlandt  
12 was Mr. -

13 MR. RIESEL: Mr. Riesel.

14 CHAIRMAN McDADE: Okay. Thank you.

15 MR. TURK: Your Honor, this is Sherwin  
16 Turk. One point I would make is the Staff when it  
17 produces the hearing file, will do that along with the  
18 mandatory disclosures that we're required to produce  
19 under 2.336. And we will, like Entergy, be producing  
20 this electronically. We'll provide a log, and I guess  
21 that will be a paper log, which we'll also file  
22 electronically, which will indicate all the documents  
23 that compromise the hearing file, and where they can  
24 be located. And we will also produce any logs that  
25 we're required to produce under the agreement reached

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1 by the parties with respect to documents that are  
2 withheld under a privilege.

3 CHAIRMAN McDADE: Okay. Consistent with  
4 Paragraph 3 of Mr. Bessette's letter.

5 MR. TURK: Yes.

6 CHAIRMAN McDADE: Okay. The next has to  
7 do with sort of anticipated scheduling. We now know  
8 when the DEIS, December 22<sup>nd</sup>. At this point in time,  
9 what is the Staff's estimate as to when the SER will  
10 be filed?

11 MR. TURK: Well, there are two components.  
12 One is the audit report, and the second is the SER  
13 with open items. The audit report has been finalized,  
14 and that will be released within the next day or so.  
15 The SER, which refers to the audit report, is also  
16 nearing completion, and that should be out within the  
17 next day or so, as well.

18 CHAIRMAN McDADE: Okay. I think the last  
19 that was issued sort of on the internet indicated a  
20 date of July of '09 for the SER. Are you now ahead of  
21 schedule on that?

22 MR. TURK: There are two SERs that will be  
23 issued. The first one is the SER with open items, and  
24 that's the one that we're on the verge of issuing now.  
25 It's a fairly long document in paper form. It's

1 upwards of -- it's about 900 pages I'm told. I don't  
2 know how that will come out in the printed version, so  
3 that SER with open items is about to come out. I  
4 believe there's something like 20 or so open items.

5 Then after the open items have been  
6 resolved, the Staff will issue the final SER, and  
7 that's what's scheduled for July of 2009.

8 CHAIRMAN McDADE: Okay. And on the  
9 original schedule, the Safety Evaluation Report  
10 without open items was originally scheduled I think  
11 January 5<sup>th</sup>, so you're pretty much on schedule with  
12 regard to that. Is it reasonable to anticipate that  
13 the final SER, late July is still a reasonable date?

14 MR. TURK: As far as we can tell at this  
15 point, yes. And, by the way, there will be two  
16 intervening events before that is issued. After the  
17 SER with open items is issued, the Staff will refer  
18 that to the Advisory Committee on Reactor Safeguards,  
19 and there will be a Subcommittee meeting of the ACRS  
20 in March. Subsequently, there will be a full ACRS  
21 Committee meeting, and I believe that's scheduled -

22 CHAIRMAN McDADE: I think it was  
23 September, wasn't it?

24 MR. TURK: Is that September? That'll be  
25 after the SER itself is issued. And then at that

1 point, all of the safety-related documents that we  
2 expect to be issued will have come out.

3 CHAIRMAN McDADE: Okay. One of the issues  
4 that were before us was a discussion of whether or not  
5 it would be appropriate in this particular case to  
6 bifurcate the issues; in other words, to have a  
7 hearing based on safety issues, the next half on  
8 environmental issues. Mr. Turk, what is the Staff's  
9 view of that? Are you ready to speak to that at this  
10 point, or have you formed an opinion?

11 MR. TURK: Yes, we have. We believe that  
12 the principle of bifurcation is a good one, because in  
13 a case especially like this where we have so many  
14 contentions admitted, it would be difficult to go to  
15 hearing on all of them at the same time. So we see  
16 that there is a benefit to bifurcating the case into  
17 safety and environmental cases. The precise timing of  
18 when you would go to hearings on those, we don't have  
19 a comment on at this point. Presumably, the SER will  
20 be finalized and safety issues will be completed  
21 before the environmental issues are completed, so it  
22 would seem to make sense to go to hearing on safety  
23 issues before environmental issues.

24 At the same time, the Staff often finds  
25 that at the same time we're required to be in hearings

1 on safety issues, we're busy trying to get the final  
2 EIS out, so whenever we adopt a schedule for hearings,  
3 I hope that we can consider the conflict that will  
4 occur between publication of the final EIS during the  
5 hearing phase on safety issues, if you do bifurcate.

6 CHAIRMAN McDADE: Okay. Entergy, do you  
7 have anything further to say on the issue of the  
8 possibility of bifurcation?

9 MR. BESSETTE: No, Your Honor. We just  
10 wanted to raise it for the same reasons that Mr. Turk  
11 raised. We believe due to the number of contentions,  
12 the number of parties, and the substantial time frame  
13 differences between the SER and the final EIS, we  
14 thought it would be a prudent use of the resources of  
15 all the parties, and allow this proceeding to move  
16 forward on the most effective path.

17 CHAIRMAN McDADE: Okay. From New York?

18 MR. SIPOS: Good morning, Your Honor.  
19 This is John Sipos. New York State believes that this  
20 suggestion, or this request is unprecedented. It is  
21 premature, the premise is not correct. It is  
22 inefficient, and it will unduly complicate things.  
23 And if I could, I would like to expand on each of  
24 those.

25 CHAIRMAN McDADE: What you're saying is

1 you fully support it?

2 MR. SIPOS: Not exactly, Your Honor.

3 CHAIRMAN McDADE: Well, let me say, at  
4 least at this point, I don't know that we need to hear  
5 a whole lot more on it. I think that what we're going  
6 to do is defer a ruling on this. I think that at this  
7 point, one of the things that you did say is that it's  
8 premature, and I do think that our ruling on this is  
9 somewhat premature. I think we really need to wait  
10 until the SER is issued. At that point, we will be in  
11 a position to know when we would be able to move -- if  
12 we did bifurcate it, when we would be able to move  
13 forward with a hearing on the safety issues. And then  
14 also have an idea of when we would be able to move  
15 forward on the environmental issues.

16 At that point, depending what the facts  
17 show, it may well be that there is a relatively short  
18 period of time in-between, and that by going ahead and  
19 bifurcating it, we would be making it much more  
20 complicated, and interfering with the Staff getting  
21 out the final Environment Impact Statement. It may  
22 well be that there is, at that point, a significant  
23 period of time between the two, and we may want to  
24 entertain the possibility of getting part of what we  
25 need to do out of the way. But I think at this point,

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1 in a vacuum when we're pretty far down the road,  
2 there's no need for us to commit ourselves one way or  
3 the other on it. The possibility has been raised, and  
4 I think at this point it's premature. And as we get  
5 closer to a hearing, we can entertain it at that  
6 point.

7 Is there any objection to that proceeding  
8 that anybody wishes to address at this point?

9 MR. SIPOS: Judge McDade, this is John  
10 Sipos. When you say that you might take a look at it  
11 when the SER is issued, do I take that to mean that is  
12 a reference to the final SER in the July '09 time  
13 frame?

14 CHAIRMAN McDADE: Yes.

15 MR. SIPOS: Thank you.

16 MR. BESSETTE: Your Honor, this is Paul  
17 Bessette. We appreciate that clarification, but we  
18 want to assure you we weren't seeking a Board ruling  
19 on this at this time. We understand there are many  
20 intervening factors that could occur. We just wanted  
21 to raise it as a topic of discussion at this point for  
22 further consideration down the line.

23 CHAIRMAN McDADE: Okay. I understand.  
24 And I think it is a good thing also for all of us to  
25 be thinking about as we get closer to hearing, as to

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1 whether or not bifurcation will simplify or complicate  
2 ultimately what we need to do. And, particularly,  
3 also taking into consideration that there are a number  
4 of contentions that really implicate both safety and  
5 environmental issues, at least in the Board's view.  
6 So as we get closer to the hearing, we need to take a  
7 close look and see whether or not this will make  
8 things go easier, or just make it more difficult.

9 JUDGE WARDWELL: This is Judge Wardwell.  
10 I'd like to ask a clarifying question for myself, as  
11 we think about this over the upcoming months, for Mr.  
12 Turk, if I might?

13 MR. TURK: Yes, Your Honor.

14 JUDGE WARDWELL: I just want to make sure  
15 you heard me. You mentioned when you stated that you  
16 want to make sure we consider the workload you would  
17 have involved in preparing the SEIS and the FEIS. Are  
18 you implying that you would not want to have a hearing  
19 between the issuance of the SER until the final  
20 Environmental Impact Statement is out?

21 MR. TURK: That would be my preference.  
22 But also, I think it's unlikely that we go to hearing  
23 in that time frame. Based on my past experience, I  
24 would expect that after the final SER comes out, there  
25 might be motions for summary disposition, there might

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1 be rulings on what issues are actually going to go  
2 forward to hearing on safety issues. And before all  
3 of that takes place, I think we'd be on the verge of  
4 issuing the SEIS anyway. So I'm not saying that there  
5 would be a conflict, necessarily, but I would like to  
6 avoid it, if possible.

7 JUDGE WARDWELL: Okay. Thank you.

8 CHAIRMAN McDADE: Okay. The next thing  
9 that I wanted to discuss has to do with the  
10 disclosures, an issue that has been raised having to  
11 do with how documents are going to be provided,  
12 specifically having to do with electronic documents,  
13 and whether or not they would be electronically  
14 searchable.

15 From the standpoint of the disclosures at  
16 this point in time, as I understood it, the primary  
17 documents that are going to be disclosed are going to  
18 be disclosed electronically. From the Staff's  
19 standpoint, are the documents that you are going to  
20 identify that are going to be available electronically  
21 going to be searchable?

22 MR. TURK: Yes. They will be produced in  
23 ADAMS in PDF format. That is searchable.

24 CHAIRMAN McDADE: Okay. And, Entergy, are  
25 you going to be producing documents in the same way?

1 MR. BESSETTE: Your Honor, we are  
2 producing, or making our initial production, what's  
3 called a TIFF format, which is standard for us in  
4 large litigation like this. It's a format, it's an  
5 electronic format, but for a party to search it, they  
6 would have to take one additional step, which I  
7 believe is called OCR'ing those pages to make them  
8 word-searchable. But it's in a format that  
9 facilitates that next step.

10 CHAIRMAN McDADE: Okay. Is there anything  
11 by way of additional software that they would need to  
12 purchase in order to go through the OCR process?

13 MR. BESSETTE: I'm not aware that there  
14 is, Your Honor, but I haven't asked that of each  
15 party. Just to add, that the OCR'ing adds significant  
16 cost to each page, and so we believe if a party would  
17 like to word search a document, we believe that's  
18 appropriate for them to incur that cost.

19 For instance, I believe we could meet our  
20 obligations by providing paper copies, which would  
21 require them to both scan and OCR the pages, so we  
22 believe we're meeting our obligations, and  
23 facilitating that process should the parties wish to  
24 do that.

25 CHAIRMAN McDADE: Well, when you're saying

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1 it adds significant cost to each page, I guess  
2 significant is in the eye of the beholder. I mean,  
3 from our standpoint, what we would like to do is to  
4 have this thing move forward as quickly as possible.  
5 We would, therefore, like people to be able to make  
6 prompt meaningful use of the documents that are  
7 disclosed to them; also, recognizing specifically that  
8 some of the entities involved, probably New York State  
9 does not view itself as having an unlimited bank  
10 account, but other people may view it as having that,  
11 but, certainly, entities like Riverkeeper and  
12 Clearwater, and the other government entities, not to  
13 say that Connecticut isn't as well-heeled as New York,  
14 but the other government entities, such as Buchanan  
15 and Cortlandt, have limited resources. How much are  
16 we talking about?

17 MR. BESSETTE: Your Honor, we have already  
18 -- just to -- I really don't want to go into too much  
19 detail, but we have spent a substantial amount of time  
20 and money culling through thousands and thousands of  
21 documents. Our log production itself is over 500  
22 pages, and each page includes many documents and many  
23 thousands of pages of documents. It is several cents  
24 a page in addition to the cost we've already incurred  
25 to OCR each page.

1 As I stated, the format we're producing is  
2 our standard format that facilitates that next step if  
3 people would like to do that. If they would like us  
4 to OCR the pages, we'd consider that on a case-by-case  
5 basis, but we'd also like to discuss cost-sharing on  
6 that.

7 JUDGE WARDWELL: This is Judge Wardwell.  
8 If we went to the electronic filing, is TIFF an  
9 acceptable method for submittal under the Electronic  
10 Hearing process?

11 MR. BESSETTE: Your Honor, I think we're  
12 talking about two things, because under the Electronic  
13 Hearing documents, you submit on PDF, but I don't  
14 believe the disclosures would be submitted under  
15 electronic. It would still be to each other,  
16 disclosures and discovery intends to be directly to  
17 the parties.

18 CHAIRMAN McDADE: Okay. Why don't we do  
19 this at this point in time, and not make any statement  
20 or further ruling with regard to this. We're in a  
21 relatively close window here indicating that during  
22 the week of the 21<sup>st</sup> these disclosures should be made.  
23 Let the people who receive the disclosures take a look  
24 at it, see how useful it is to them, what, if  
25 anything, they need. We would expect that if they

1 need more than they have, that the first step would be  
2 to get together, reach a conclusion as to what is  
3 needed to enter into discussions with Entergy through  
4 Morgan Lewis, as to how that would be accomplished.  
5 And then only if there's a failure of agreement  
6 between the parties, and the government entities, and  
7 Entergy on this, need you get back in touch with us on  
8 it.

9 MR. BESSETTE: Your Honor, we appreciate  
10 that. And, also, I appreciate, the parties have  
11 already had substantial discussions, and we do  
12 appreciate the cooperation we've seen of all the  
13 parties. I think, I can be corrected if I'm wrong,  
14 but all the parties have agreed that at least the  
15 initial production would be in TIFF format, and that  
16 reasonable requests on further or subsequent  
17 production would be the subject of this call. But I  
18 believe all the parties have agreed at least for the  
19 format of the initial production.

20 CHAIRMAN McDADE: Okay.

21 MS. GREENE: Your Honor, this is Manna  
22 Greene from Clearwater. I want to say that I agreed  
23 reluctantly, and I want to -- I don't want to prolong  
24 this discussion, because I see a window for coming to  
25 resolution on this in the future. But what I do want

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1 to say is that Clearwater will be severely handicapped  
2 by having to apply OCR. We don't have that software  
3 in our office, and we'll work with whatever comes  
4 through next week, or within the next two weeks. But  
5 for moving forward, the amount of resources that went  
6 into using TIFF could have gone into creating PDFs  
7 that are searchable without any additional cost to  
8 Entergy or to any future parties. And in the name of  
9 accessibility of information, I would like the Board  
10 to be aware that it's much preferable when a document  
11 has no handwritten information or other information  
12 that would have to be scanned, and if it's simply a  
13 document that optical character recognition would make  
14 searchable, it's much better to use -- to create a  
15 searchable PDF initially.

16 CHAIRMAN McDADE: Okay. Thank you.

17 MS. GREENE: You're welcome.

18 CHAIRMAN McDADE: Okay. The next thing I  
19 wanted to mention is, there had been an issue raised  
20 about setting a limit on pleading length, and that's  
21 not something that we're predisposed to doing at this  
22 point in time. Quite frankly, we have been very  
23 pleased with the parties that are currently before us.  
24 Let me make no comment on the people who have been  
25 excused from the proceeding, but the parties that are

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1 currently before us have written documents that are  
2 appropriate in length to what it is that they are  
3 trying to say. And, therefore, given the fact that  
4 there's been no abuse of burying people in unnecessary  
5 paper, our predisposition at this point is to allow  
6 the parties to make the initial determination if they  
7 have a motion of how long it needs to be in order to  
8 say what they need to say, and how long the response  
9 needs to be, because our experience with the parties  
10 currently before us is that that has not been abused,  
11 that the pleadings have been very well done, and not  
12 overly wordy, unlike my explanation of this. So we're  
13 not going to rule on that at this point in time. If  
14 it becomes a problem later on, we may revisit it.

15 At this point in time, the question of  
16 whether or not any additional discovery pursuant to  
17 2.704 will be necessary seems premature, given the  
18 fact that the initial disclosures have not yet been  
19 made. And that's something that we would take up at  
20 a later point in time. The only issue would be how  
21 long after the mandatory disclosures are made before  
22 any such requests should be submitted. And rather  
23 than putting a time limit on it at this point in time,  
24 what we'll do is just use a rule of reasonableness, I  
25 think depends to a large degree on the volume of the

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1 disclosures that the individual groups have to go  
2 through, and then what the nature of the additional  
3 discovery requests might be.

4 Next, there was an issue with regard to  
5 various codes, specifically, Checkworks and the MACC  
6 codes, and the disclosures of those. From the  
7 standpoint -- let me just go through at this point,  
8 from the standpoint of New York, is there -- does  
9 there remain an issue with regard to that, at this  
10 point?

11 MR. SIPOS: Good morning, Judge McDade.  
12 This is John Sipos. Yes, the State understands that  
13 there is still an issue that there has not been  
14 closure or agreement yet with respect to the State's  
15 ability to get the MACCS 2 code in native format, so  
16 that the State can observe the inputs, observe the  
17 runs and the results of the runs, and work with that  
18 code.

19 I would also note there was some  
20 discussion of the code in the recently issued DSEIS,  
21 so it is, New York State submits, an important  
22 computer program for the State, and other participants  
23 here, to obtain.

24 CHAIRMAN McDADE: Okay. In your letter  
25 that you submitted on the 7<sup>th</sup> of January that raised

1 that particular issue, you indicated that one of the  
2 issues, from the standpoint of New York, is that these  
3 codes had been paid for by the American taxpayers;  
4 therefore, could not properly be viewed to be  
5 proprietary. And that, therefore, there should be no  
6 reason why they could not be disclosed. Is that still  
7 your view?

8 MR. SIPOS: Yes. New York State  
9 understands that the codes were developed for the  
10 Department of Energy, or for the U.S. Nuclear  
11 Regulatory Commission by a government-financed lab,  
12 the Sandia Lab, and their employees.

13 CHAIRMAN McDADE: Okay. What is the view  
14 of the NRC Staff, Mr. Turk, on this?

15 MR. TURK: Your Honor, two of us will  
16 address the question. I'd like to begin, and I'm  
17 going to pass the microphone, as it were, or the  
18 telephone to Ms. Mizuno.

19 The first thing I would note is that the  
20 MACCS 2 code is not the MELCOR code. Mr. Sipos'  
21 letter of January 7<sup>th</sup> confuses the two. The MACCS 2  
22 code, as I understand it, utilizes inputs from MELCOR.  
23 The MELCOR code is used to predict the consequences of  
24 a loss of cooling accident. That information -- I'm  
25 sorry. May I go on hold for one second?

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1 CHAIRMAN McDADE: Sure.

2 MR. TURK: I'm sorry for that  
3 interruption. The MELCOR code, apparently, is used  
4 not just for the LOCA, the loss of coolant accident,  
5 but for other accidents, as well. And it provides a  
6 source term, which is then utilized in the MACCS 2  
7 code. So the State's letter confuses the two.  
8 Apparently, they have information about MELCOR, but  
9 they're not really addressing the MACCS 2 code. The  
10 MACCS 2 code was developed by Sandia for use by the  
11 NRC. That much of the letter is correct. The MACCS  
12 2 code is available to the State. But because the  
13 MACCS 2 code was costly to produce, there is a user  
14 fee, which the NRC charges, and then turns that money  
15 over to Sandia. I believe that's a user fee of  
16 \$1,000. So upon payment of the fee, the State is able  
17 to get access to the code.

18 We don't understand what the State means  
19 when they say they'd like to get the code in native  
20 format. That's above a lawyer's knowledge here at the  
21 table, so if Mr. Sipos can explain that, we would  
22 appreciate it. And I don't know if Ms. Mizuno has  
23 anything she wants to add at this point to that  
24 discussion. No, we'll wait for the discussion.

25 MR. SIPOS: Your Honor, this is John

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1 Sipos. Would you wish me to respond?

2 CHAIRMAN McDADE: Yes.

3 MR. SIPOS: Based on what Mr. Turk has  
4 just described, the State would be interested then in  
5 obtaining the MELCOR program, and what its results  
6 are, as well as the MACCS code, and how it was used.  
7 And these two programs, if I'm understanding Mr. Turk  
8 correctly, do work as part of the SAMA analysis. And  
9 it would be appropriate, given the proposed SAMA  
10 conclusions here, for the State to have both.

11 Mr. Turk asked about native format, and in  
12 response to that, the State is interested in getting  
13 the application, the DVD, if you will, or however  
14 these two or more programs are stored, and used by the  
15 NRC, and by Entergy, and being able to use it on its  
16 own computers, so that we may have a thorough working  
17 understanding. A PDF of various computer commands, a  
18 static PDF document, if you will, with various  
19 computer commands and code is not going to meet the  
20 State's needs for this with respect to the overall  
21 SAMA issue, and the subordinate MELCOR and MACCS  
22 components of it.

23 CHAIRMAN McDADE: Okay. Why don't we do  
24 this, and rather than our trying to fashion some sort  
25 of perhaps unnecessary solution at this point in time,

1 let me direct that within the next two weeks if  
2 representatives from New York acting on behalf of the  
3 Petitioner's, government entities, and your legal and  
4 technical people could get together with the legal and  
5 technical people of the NRC Staff to discuss this  
6 issue, to see what they can make available to you,  
7 what format they could make available to you, and  
8 whether or not then that will satisfy your needs in  
9 this regard. And in the event - hopefully, you'll be  
10 able to work this out - in the event that you can't,  
11 if you would then just simply notify the Board, and at  
12 that point, hopefully, at least the issues will be  
13 fully clarified, and we will be able, at that point,  
14 to move on.

15 The next thing has to do with -

16 MR. TURK: Your Honor, this is Sherwin  
17 Turk. May I interject one more note on that last  
18 discussion?

19 CHAIRMAN McDADE: Yes.

20 MR. TURK: Just so there's no confusion,  
21 I stated that the MELCOR source code is then used by  
22 MACCS. It's not necessarily the source code from  
23 MELCOR that is used by MACCS. The Staff has not used  
24 MELCOR inputs here for the Indian Point license  
25 renewal application. It is the applicant which is

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1 using MACCS 2, and the applicant, as I understand it,  
2 uses a different source code, which is used by the  
3 industry. And I believe that's called the MAAP code.  
4 So Mr. Sipos asserts that he needs to have the MELCOR  
5 code, I think he really needs to talk to his experts  
6 to see if he needs that, because apparently no one  
7 here is using the MELCOR inputs. But we can address  
8 all of that later when the State contacts the Staff,  
9 and we can then have a good discussion about what they  
10 really need, and what we can get them.

11 CHAIRMAN McDADE: Okay.

12 MR. SIPOS: Your Honor, this is John  
13 Sipos. Just for point of clarification, Mr. Sherwin  
14 Turk mentioned another code, and I couldn't quite  
15 hear. Was it MAAP?

16 MR. TURK: -A-A-P.

17 MR. SIPOS: Thank you. And, Your Honor,  
18 we would just also note that under Council of  
19 Environmental Quality regulations, the State and other  
20 parties would be entitled to documents like this as  
21 part of the NEPA review. But we will follow up with  
22 NRC Staff, as you have directed. Thank you.

23 CHAIRMAN McDADE: Okay.

24 MR. TURK: I would also add that the MACCS  
25 2 code used by the applicant, and the MAAP inputs are

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1 in the applicant's possession, certainly, so you may  
2 want to talk to the applicant about what it is that  
3 you really want them to get copies of, or in your  
4 possession.

5 CHAIRMAN McDADE: Well, in that regard,  
6 let me ask this. I mean, at one point in Riverkeeper  
7 Contention EC-2, in support of that, Dr. Lyman said  
8 something along the lines of we've used the MACCS 2  
9 code to conduct an independent evaluation of severe  
10 accident consequences for Indian Point. That seemed  
11 to imply to me that Riverkeeper had access to the  
12 MACCS 2 code, or Dr. Lyman had access to the MACCS 2  
13 code. Is that correct?

14 MR. MUSEGAAS: Your Honor, this is Philip  
15 Musegaas at Riverkeeper. Are you -- you're asking  
16 about the MACCS 2 code, or the MAAP code?

17 CHAIRMAN McDADE: The MACCS 2.

18 MR. MUSEGAAS: MACCS 2. Yes, my  
19 understanding is Ed Lyman had access to that code,  
20 because that was the source of our challenge on that  
21 contention, was to the source terms, to the use of one  
22 source code versus the other. So yes, the answer is  
23 that he has access to that.

24 CHAIRMAN McDADE: As I remember back when  
25 we had the oral argument, I kept confusing the source

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1 term and source code, and using the two as if they  
2 were synonyms, except usually always using the wrong  
3 one. But, anyway, that's another matter. If New York  
4 would check with that, and, again, with regard to the  
5 availability of that MACCS 2 code. And then, again,  
6 if there is an issue that remains after those  
7 discussions with regard to that, if you could get back  
8 to us.

9 The next has to do with -

10 JUDGE WARDWELL: And, Judge McDade, this  
11 is Judge Wardwell. You're also asking New York State  
12 to coordinate that with both Entergy and the Staff.  
13 Is that correct?

14 CHAIRMAN McDADE: Yes.

15 JUDGE WARDWELL: Yes. Thank you.

16 CHAIRMAN McDADE: And then the next has to  
17 do with Checkworks. What is the current status on  
18 that? Is this something that New York, Riverkeeper,  
19 Clearwater believes that they need access to?

20 MR. BESSETTE: Your Honor, this is Paul  
21 Bessette. We would like to clarify one thing. The  
22 Checkworks issue is only a contention relevant to  
23 Riverkeeper. It's not an issue, it hasn't been  
24 admitted for the other parties.

25 CHAIRMAN McDADE: Okay. Thank you. And



1 that was a contention nobody else piggybacked on at  
2 this point? I believe that means adopting the  
3 contention.

4 MR. MUSEGAAS: This is Philip Musegaas at  
5 Riverkeeper. No, Your Honor, I believe Riverkeeper is  
6 the only intervener currently with that contention.

7 CHAIRMAN McDADE: Okay.

8 MR. BESSETTE: Your Honor, this is Paul  
9 Bessette. I think we can address this. This was an  
10 issue that I think perhaps Judge Wardwell is very  
11 familiar with. Checkworks, like many of these  
12 software packages, are subject to licensing  
13 agreements, non-disclosure agreements, proprietary  
14 agreements, and we cannot just release them without  
15 the appropriate legal protections and approvals from  
16 the licensing agencies who gave us these products.

17 In the VY proceeding, my understanding  
18 that the expert who Riverkeeper used, I believe  
19 they're using in this current proceeding, they never  
20 reached an agreement on the non-disclosure agreement.  
21 So I think the same issue stands here. This is an  
22 EPRI product subject to licensing agreements, and  
23 release of that product would need full approval by  
24 EPRI and appropriate legal protections. And the last  
25 time this went around, Riverkeeper's expert was not

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1 amenable to agreeing to that. So I think the issue  
2 kind of stands where it was in Vermont Yankee. We  
3 haven't had any further substantive discussions on it,  
4 but legal restrictions on that product still exist,  
5 and they haven't changed.

6 CHAIRMAN McDADE: Okay. From the  
7 standpoint of Riverkeeper, have there been discussions  
8 with regard to the possibility of a protective order  
9 with regard to the release of this information? If  
10 not, why not? And if so, what is the current status  
11 on that?

12 MR. MUSEGAAS: Your Honor, this is Philip  
13 Musegaas at Riverkeeper. We have not entered into  
14 discussions as of yet with Entergy counsel. I  
15 anticipate that we would like to do so, and we would  
16 do so. I would just note, we were not a party in the  
17 Vermont Yankee proceeding, so I understand that we are  
18 using an expert that was used by Human Coalition in  
19 that proceeding, and that's -- I think our approach  
20 may be different. So at this early stage, I don't see  
21 any -- there's no hesitation on our part to entertain  
22 entering into a protective agreement.

23 I think we agree with Paul that the  
24 Checkworks code is, from my understanding, the  
25 property of EPRI, and would have to -- Entergy, from

1 what Paul has said, would have to talk to EPRI about  
2 the conditions under which they would be allowed to  
3 release that code. So, Paul, you can correct me if I'm  
4 wrong, but I think this is something that we can  
5 discuss, and hopefully work out.

6 MR. BESSETTE: This is Paul Bessette. I  
7 agree with you, Philip; although, I think we do need  
8 to involve your expert, because I believe the  
9 restrictions apply to him, because he has a potential  
10 competitive role in this process.

11 CHAIRMAN McDADE: Okay. Well, why don't  
12 you engage in those discussions in the next couple of  
13 weeks, hopefully be able to resolve it. And in the  
14 event that you can't, get back in touch with the Board  
15 so we can review it further.

16 MR. BESSETTE: Of course, Your Honor.

17 MR. MUSEGAAS: Thank you, Your Honor.

18 CHAIRMAN McDADE: Okay. The next has to  
19 do, there was a request that we set a schedule for the  
20 filing of new or amended contentions. We're not  
21 predisposed to doing that, going back to our page 9 of  
22 our December 18<sup>th</sup> order on this matter. I think we're  
23 just predisposed to sticking with the language of  
24 2.309(f)(2). And, again, the big issue is whether or  
25 not the information was previously available, whether

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1 the new information is materially different than the  
2 information that was available, and whether or not it  
3 was submitted in a timely fashion under the  
4 circumstances. Case law seems to indicate there's  
5 sort of a presumptive 30-day period, but under certain  
6 circumstances, depending on where we are in the  
7 proceedings, 30 days may be either too short, or too  
8 long a period of time. So, at this point, we believe  
9 the case law under 309(f)(2)(3) on submitting timely  
10 is the basis of what we're going to rely on, rather  
11 than set a date just specifically in a vacuum.

12 The next has to do with the time period of  
13 responding to any new contentions. 2.309(h) has a  
14 presumed 25 days to respond. These are not treated as  
15 motions under 2.323, which has a presumptive 10-day,  
16 and we are predisposed to stick with the language of  
17 2.309(h), sort of presumed 25 days. And, again, a  
18 timely filed motion after discussions to resolve with  
19 the other side, to shorten or to extend that period of  
20 time may well be appropriate.

21 The next having to do with adopting  
22 contentions. Previously, in our order we had to adopt  
23 them within 30 days of their being granted with any  
24 new or amended contentions. We think that that would  
25 be an appropriate period of time, as well, to keep it.

1 If a new or amended contention is accepted by the  
2 Board, then any of the other parties would have up to  
3 30 days to adopt that.

4 Okay. The next has to do with  
5 discoverability of documents reviewed, but not taken  
6 into possession by the NRC Staff. I'm not really sure  
7 if there are documents that have been not taken into  
8 possession by the NRC Staff, they obviously aren't in  
9 a position to make those documents available.  
10 However, if they were reviewed by the NRC Staff and  
11 they were relevant to this, it seems like they would  
12 have reviewed them from Entergy, and they would be  
13 part of the mandatory disclosures by Entergy in any  
14 event.

15 Let me first ask the NRC Staff, Mr. Turk,  
16 if there are documents reviewed but not taken into  
17 possession, would there be any kind of a listing of  
18 those documents? How would anybody know what  
19 documents have been reviewed, but not taken into  
20 possession?

21 MR. TURK: Your Honor, the issue that  
22 you're being asked to look at there is an issue that  
23 I believe was framed by a motion filed by Riverkeeper,  
24 and by the State, if I'm not mistaken, concerning  
25 documents reviewed, or created during the Staff's

1 audit on site at the facility. By the way, I don't  
2 believe there was a ruling on that motion yet.

3 The Commission has addressed the issue.  
4 If you recall, the Commission issued CLI 08-23, which  
5 responded to a filing by Riverkeeper, and by  
6 interveners in other proceedings, in which they  
7 challenged certain aspects of the Staff's audit  
8 process, and documentation of the audit.

9 In that decision by the Commission, the  
10 Commission indicated that the Staff does not take into  
11 possession various documents that it looks at during  
12 the audit. And the Commission had no problem with  
13 that practice. The Commission also indicated that  
14 documents that are created by an individual staff  
15 reviewer that are not shared with other members of the  
16 staff, and that do not contain unique information, are  
17 the personal records of that individual, and need not  
18 be retained. So if the Board is going to issue any  
19 ruling on this issue, I would suggest that the  
20 Commission's directions in CLI 08-23 be considered.

21 There are documents that the Staff looks  
22 at on site that are in the possession of the applicant  
23 that we do not take possession of. We will be issuing  
24 an audit report shortly, as I mentioned, in the next  
25 day or two. There will be a letter that goes to the

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1 Licensing Board with the audit report attached. There  
2 are actually two audit reports. One was a TRIP report  
3 that consists of about eight or nine pages, and the  
4 other is a more extensive audit report. The Staff  
5 does list in the audit report the documents that it  
6 reviewed on site, but they are not in our possession,  
7 and we will not be making them available. We don't  
8 have them to make available. But the interveners  
9 should be able to see in that larger audit report what  
10 documents were considered by the Staff.

11 CHAIRMAN McDADE: Okay. The short answer  
12 to my question then is, the audit report would  
13 indicate those documents reviewed on site but not  
14 taken into possession by the NRC Staff.

15 MR. TURK: Correct.

16 CHAIRMAN McDADE: So that the interveners  
17 and the other government entities would be able to  
18 identify those documents.

19 MR. TURK: Yes.

20 CHAIRMAN McDADE: And then a significant  
21 number of those documents, and this is addressed to  
22 Entergy, would be disclosed by Entergy. And in the  
23 event that they were not disclosed as part of the  
24 mandatory discovery, they could be requested of  
25 Entergy by the parties. And in the event Entergy did

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1 not believe that they were appropriately disclosable,  
2 the parties having identified documents would be able  
3 to come to the Board and represent why they should  
4 have them. Do you agree with that?

5 MR. BESSETTE: Your Honor, this is Paul  
6 Bessette. We do agree. Of course, we believe we're  
7 making very fulsome initial disclosures, but we  
8 recognize there is a supplemental disclosure process,  
9 and I think in the spirit of cooperation, we would  
10 certainly agree to proceed as you discussed.

11 CHAIRMAN McDADE: Okay. Is there any  
12 objection to that on the part of New York,  
13 Riverkeeper, Clearwater, Connecticut, Cortlandt, et  
14 cetera?

15 MR. SIPOS: Judge McDade, this is John  
16 Sipos. So long as the audit report contains a full  
17 and comprehensive list of the documents, at this  
18 point, New York State would not object to that  
19 scenario that you proposed.

20 CHAIRMAN McDADE: Okay. A problem that I  
21 don't want to suggest is likely to occur, I don't  
22 think it will, but, obviously, if the audit report  
23 doesn't meet that standard from the standpoint of New  
24 York, the difficulty then is how do to identify those  
25 documents that were reviewed, unless there's some sort

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1 of a listing of those documents. But at this point in  
2 time, there's going to be disclosures made in a couple  
3 of weeks. The audit report is going to be coming out.  
4 At that point, we will be able, if there is a problem,  
5 to revisit it, again consistent with the policy  
6 expressed in CLI 08-23.

7 The next has to do with the schedule for  
8 summary disposition in this particular case. At this  
9 point, setting a date for the submission of summary  
10 disposition seems to be premature, given the fact that  
11 we have no idea at this point exactly when we will go  
12 to hearing, or whether we'll be going in a single  
13 hearing, or a bifurcated hearing.

14 It is the strong feeling of the Board that  
15 there not be late filed motions for summary  
16 disposition. And when you start getting very close to  
17 the hearing date, all of the motion for summary  
18 disposition does is tend to distract people from  
19 getting ready for the hearing, and really multiply the  
20 work. Also, at this point with regard to the nature  
21 of the hearing, at this point we haven't ruled on  
22 whether we're going to be proceeding as an L, or a G,  
23 or primarily as an L, or primarily as a G. And one  
24 could argue that the role of motions for summary  
25 dispositions in an L hearing are somewhat less

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1 helpful, than a G hearing.

2 We don't want to set a specific date of 60  
3 days, 90 days, 120 days prior to the hearing at this  
4 point in time, but we do wish to advise all of the  
5 parties that we will set a date for submission of  
6 summary disposition motions that is significantly in  
7 advance of the hearing, so that it won't just  
8 typically interfere with the preparation of the other  
9 parties and the Board for the hearing.

10 The next has to do with an issue that was  
11 raised in a motion by New York, having to do with  
12 notice of communications between the NRC Staff and  
13 Entergy. We were originally asked to direct that all  
14 of the parties be given advance notice of those. In  
15 our order of December 18<sup>th</sup>, we denied that motion.  
16 But one of the things as part of our denial of that,  
17 the Staff had indicated that they would generally give  
18 notice after-the-fact, which, to us, appeared to be  
19 satisfactory. We did not want to inhibit  
20 communications between the NRC Staff and the  
21 applicant, as we viewed that that would just simply  
22 delay and diminish the review process.

23 But, Mr. Turk, could you explain to us  
24 what the procedure is for prospectively advising the  
25 other parties, and the interested government entities

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1 of communications that occur between the NRC Staff and  
2 the applicant as part of the review?

3 MR. TURK: Yes, I'd be happy to. There  
4 are two types of communications. There are telephone  
5 communications, and there are meetings. I guess  
6 there's a third type of communication, that would be  
7 written communication. Let me start with the last  
8 one, written communication.

9 When the applicant submits documents to  
10 the Staff in writing, I do not believe that the  
11 applicant copies all parties on the adjudicatory  
12 service list. Those documents, however, do become  
13 part of our hearing file. And I imagine also they  
14 might be part of the mandatory disclosures that  
15 Entergy makes, although I can't verify that. I can't  
16 be sure without looking at the rule. But they will be  
17 put into the hearing file, and they will be available  
18 on ADAMS.

19 The Staff's documents that are sent out to  
20 Entergy are copied to whoever appears on the Technical  
21 Staff Service List, and that includes approximately a  
22 half a dozen people from New York State, and it could  
23 include any other individual or party that sought to  
24 receive a copy of the correspondence from the Staff to  
25 Entergy. In addition, those documents are placed in

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1 the hearing file and in ADAMS. And that will take  
2 place, the parties have agreed to roughly, I think a  
3 30-day update of the hearing file, and of mandatory  
4 disclosures, so every 30 days there'll be a new update  
5 that would include any other documents that have been  
6 sent out either by Entergy, or by the Staff.

7 CHAIRMAN McDADE: All right. In that  
8 letter of January 13<sup>th</sup> that was submitted by Mr.  
9 Bessette, it indicated in Paragraph 8 of that that  
10 there would be a 30-day period for that.

11 Turning to New York, is that adequate? Do  
12 you have any objection to that procedure?

13 MR. SIPOS: Your Honor, it's John Sipos.  
14 One thing New York would like to insure, and I hope  
15 this will be the case, that the documents coming in  
16 from the applicant to the Staff will be in a OCR'd,  
17 PDF format so that when they are placed on the hearing  
18 files that they are searchable. We have encountered  
19 situations in the past, and I'm not saying what  
20 happened in the past may continue, but where we have  
21 not seen documents coming in from the applicants for  
22 upwards of four or more weeks after the event. And if  
23 there is a prompt ability to put these documents,  
24 these correspondence on the hearing file, that may --  
25 the State hopes that will obviate the problem that we

1 have encountered in the past. We've included folks  
2 from Entergy on our service list whenever we file  
3 something, the attorneys here, and in the past we just  
4 haven't seen things with the same speed that we'll  
5 send things out. And Mr. Turk is right, there are  
6 documents coming in from the applicant that are not  
7 copied to the parties on the adjudicatory service  
8 list, and that's where some of the delay -- that's  
9 where the delay and the disconnect has occurred. But  
10 if there's a willingness and an ability to get this  
11 done promptly, and if it's OCR'd, I'd like to be  
12 optimistic, and hope that going forward that would  
13 obviate the issue.

14 CHAIRMAN McDADE: Well, under Paragraph 8  
15 of the agreement, we're talking about a 30-day period  
16 for updating, you indicated it's a problem if it might  
17 take as long as four weeks. Four weeks is less than  
18 30 days, usually. Is the 30-day period adequate? If  
19 not, why not? And if not, why did you agree to it?

20 MR. SIPOS: Your Honor, I had understood,  
21 and perhaps mistakenly, that documents might be placed  
22 by Staff on the hearing file on a schedule that could  
23 be shorter than the 30-day period.

24 CHAIRMAN McDADE: Mr. Turk, is there any  
25 reason why the obligation on the Staff can't be that

1 these documents are put there as soon as possible, but  
2 in any event no later than 30 days? I mean, it seems  
3 like in most instances, it would be possible to do it  
4 almost immediately.

5 MR. TURK: Your Honor, this is Sherwin  
6 Turk. The State is confusing a few things. When the  
7 documents come in from the applicant, they cross the  
8 NRC's docketing desk. From there, they go into ADAMS,  
9 regardless of the hearing file. So, actually, they do  
10 appear in ADAMS, I'm told within a matter of  
11 approximately a week after receipt by NRC. It's the  
12 hearing file update, and the disclosure update that  
13 we'll be doing through OGC that it will be done on a  
14 30-day revolving, recurring basis. So the documents  
15 should be available even sooner than the 30-day  
16 period.

17 CHAIRMAN McDADE: Well, one of the  
18 problems with documents going to ADAMS is the people's  
19 reason to look for them there. In other words, if I  
20 don't know that a document is going to be submitted in  
21 ADAMS, I'm not necessarily going to be looking in  
22 ADAMS for it, or to know that it even exists.

23 MR. TURK: No, the State -- if it really  
24 seeks documents more promptly than the 30-day update  
25 that the Staff will be making in the hearing file,

1 then they can have one of their people routinely,  
2 every day or every week, do a search in ADAMS for new  
3 documents related to Indian Point.

4 MR. SIPOS: Or the applicant could copy me  
5 on the submissions to the Staff.

6 CHAIRMAN McDADE: Well, the problem is a  
7 lot of the submissions to the Staff aren't going to be  
8 going through counsel. They're going to be technical  
9 submissions from the technical people at Entergy to  
10 the technical people at the NRC Staff. They're not  
11 necessarily - and maybe I'm wrong here - but they  
12 wouldn't necessarily be going through Morgan Lewis,  
13 and they wouldn't necessarily be going through the  
14 Office of the General Counsel at the NRC Staff.

15 That said, I understand the difficulty of  
16 why Morgan Lewis may not be able, as they would with  
17 a pleading, to serve you immediately, just as you  
18 serve them immediately. The question is, is there a  
19 mechanism that could be set up, is there anybody  
20 within the NRC, or within Entergy who is aware of  
21 these communications as they happen, so that the other  
22 parties, if not given a copy of the document, at least  
23 could be notified of the communication, so that they  
24 would be on notice that it's available to them in  
25 ADAMS, as opposed to just simply having to go -- I

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1 mean, it strikes me as somewhat burdensome to have  
2 somebody going and searching through ADAMS on the  
3 happenstance that something will be there.

4 MR. BESSETTE: Your Honor, this is Paul  
5 Bessette. I think Sherwin Turk has addressed  
6 appropriately. This hearing is very different from  
7 the process of reviewing and processing the  
8 application, and we have to treat them separately.  
9 There's an ongoing technical issue with regard to  
10 routine REIs that are not -- most of which is not the  
11 subject of this proceeding. So we're following the  
12 protocol that every other license renewal applicant  
13 follows in this country in submitting these documents  
14 directly to the Nuclear Regulatory Commission.

15 While it may be a slight burden for the  
16 parties to wait a little bit to assure that the  
17 hearing docket, or to take the effort to review ADAMS,  
18 that's just part of the regulatory process. Similar  
19 to parties have to follow and review the Federal  
20 Register notices for notices of hearing. That's just  
21 a routine part of doing business with the government,  
22 so I think we need to maintain awareness that this is  
23 -- a hearing process is different from the ongoing  
24 license renewal process. And given the length of this  
25 proceeding, and the obligations, I see no -- it would

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1 be a significant burden on Entergy. It would be  
2 contrary to the established process, established  
3 regulatory process to do, to make any special  
4 circumstances here, which we don't believe are  
5 warranted.

6 MR. MUSEGAAS: Your Honor, this is Philip  
7 Musegaas from Riverkeeper. May I comment on that?

8 CHAIRMAN McDADE: Please.

9 MR. MUSEGAAS: I would say, and maybe,  
10 Paul, you could clarify, but I would disagree, if  
11 you're suggesting that normal correspondence, whether  
12 it's technical or written correspondence between  
13 Entergy and the NRC Staff reviewing the application,  
14 that only some of that is relevant to this proceeding.  
15 If that were the case, then there would be no new  
16 information that would come to light, that would  
17 potentially be material for new contentions. So I  
18 think that in terms of the technical staff review of  
19 the license renewal application, while not all that  
20 information is relevant to current contentions, I  
21 think there is a good reason to have a mechanism by  
22 which the parties in this proceeding are able to get  
23 that correspondence, and that information in a timely  
24 manner outside of or parallel to the mandatory  
25 disclosure requirements. So I guess I'm asking for

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1 clarification, perhaps, from Entergy, and also, Your  
2 Honor, from the Board as to what kind of documents we  
3 would be expected to receive, whether that's through  
4 the NRC's hearing file, or through some other more  
5 expedited process that wouldn't burden any of the  
6 parties.

7 I have to say, it is somewhat burdensome  
8 from a small NGO's perspective to have to search ADAMS  
9 every day, look for documents. And I think because we  
10 are parties in the proceeding, it should not be -- I  
11 don't think the volume of correspondence is so massive  
12 that it would be a burden to include all that to the  
13 parties.

14 And just, if I may ask for one other point  
15 of clarification. I think it would be helpful from  
16 the petitioner's perspective if we could arrive at  
17 some kind of mechanism by which we determine if  
18 documents are let's say publicly disclosed in ADAMS,  
19 they're also put into the hearing file. Those may  
20 occur at different times, so if we have timing of  
21 public disclosures, documents that are occurring a  
22 week or two apart, or even up to 30 days apart, it  
23 would be helpful for the petitioner to know when the  
24 clock starts to run on responding to those, to the  
25 public disclosure of that information in terms of

1 filing motions and/or new contentions. Am I making  
2 sense to everyone?

3 CHAIRMAN McDADE: Well, I have no idea.  
4 This is Lawrence McDade, and we're not going to poll  
5 everybody to see.

6 MR. MUSEGAAS: Okay. Well, am I making  
7 sense to you, Your Honor?

8 CHAIRMAN McDADE: Let's start with a  
9 couple of things.

10 MR. MUSEGAAS: Okay.

11 CHAIRMAN McDADE: First of all, as Mr.  
12 Bessette pointed out, there are two things going on  
13 here that are distinct. There is the review by the  
14 NRC Staff, which is a technical review, and then there  
15 is this adjudication. The two fields overlap  
16 significantly, but they're not identical. That as Mr.  
17 Bessette indicated, that documents from that technical  
18 review are going to be furnished from the applicant to  
19 the NRC Staff on a regular basis, and a significant  
20 number, probably the vast majority of those documents,  
21 aren't going to be relevant to this adjudication.

22 Nevertheless, that said, it's really, in  
23 the first instance, the interveners and the interested  
24 government entities who are going to make that  
25 determination as to whether or not these documents are

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1 available - excuse me - are relevant to the  
2 contentions that they have raised, and to this  
3 adjudication. What we're trying to do is develop a  
4 procedure to set out so that the receipt of these  
5 documents will be done in a as convenient a way, and  
6 in as prompt way as possible, so that it won't delay  
7 the proceedings.

8 Obviously, to me, anyway, that once  
9 something is put into the hearing file, all of the  
10 participants in the litigation are on notice. And if  
11 there needs to be any action taken as a result of  
12 that, they need to do so in a timely fashion. Simply  
13 the fact that voluminous documents are furnished in  
14 ADAMS does not necessarily, in my view, have that same  
15 notice to the parties. There's a difference between  
16 when somebody knew or should have known, and when they  
17 might possibly have known. So what I am looking for,  
18 and what I had hoped to do, is to get -- at the same  
19 period of time, I don't want to put an overburden on  
20 the NRC Staff to be updating this file on an hourly  
21 basis.

22 The agreement, which I think is  
23 reasonable, is that all of the information will be --  
24 that is disclosable will be in the file within 30  
25 days, and I think that is reasonable. What I was

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1       trying to get is a understanding that although it will  
2       be in there no later than 30 days, that it would be  
3       put in there as soon as practicable from the  
4       standpoint of the NRC Staff.

5               Also, Mr. Turk, we only addressed -- you  
6       indicated that there were three types of  
7       communications, the first one being written. And  
8       that's the only one that we got through to address.  
9       First of all, with regard to the 30-day requirement,  
10      as I understood what you were talking about is there  
11      would be an update every 30 days. Now, some of the  
12      information in there might be a full 30 days, some of  
13      it might be 20, some of it might be 10, but that you  
14      would update the file on a 30-day sequence. Is that  
15      correct? Is that what's anticipated?

16             MR. TURK: We will update every 30 days,  
17      but there has to -- when we do an update, Your Honor,  
18      we have to have a cutoff date for the actual  
19      publication of the supplement to the hearing file.  
20      We'll be reviewing documents up to, for instance,  
21      approximately a week before the hearing file update  
22      appears. And it may be that someone puts a document  
23      into ADAMS after some number of days or weeks, or some  
24      period of time after the document was created. So we  
25      can't guarantee that the only documents that will

1 appear in a supplement are those documents that were  
2 created within the preceding 30-day period, or 23-day  
3 period, or whatever. It's a monthly update, and we  
4 will make our -- we will exercise our best efforts to  
5 make sure that we're timely. But we can't give you an  
6 absolute guarantee that there won't be a document that  
7 appears in the hearing file supplement that is dated  
8 more than 30 days before the supplement was made.

9 By the way, I do intend to address the  
10 other types of communication, the emails, the  
11 meetings, and the telephone calls. But before we  
12 leave this one, I want to point out that the  
13 preparation of a hearing file is a very burdensome  
14 task for the Staff. Not only do NRC lawyers have to  
15 be involved in reviewing the documents that are being  
16 produced in the hearing file, and then supplemented,  
17 but we have to have staff managers and technical staff  
18 involved in the identification of documents, the  
19 review of documents for privilege, and review of  
20 documents in order to get the certification from NRC  
21 staff managers that the hearing file supplement is  
22 complete. So it's not just a matter of throwing  
23 documents into a file and distributing it. There is  
24 a lot of review time that goes into it. And for us to  
25 undertake a review more than every 30 days would be

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1 very onerous. And I note that in virtually every  
2 other proceeding that has occurred that I'm aware of,  
3 the parties have agreed to the 30-day update, and the  
4 Boards have accepted this. There is nothing unique to  
5 Indian Point, or to the State of New York, or to  
6 Entergy that should mandate the use of procedures  
7 different in this proceeding than are used in  
8 virtually all other proceedings, notwithstanding the  
9 fact that the State has expressed an interest in  
10 timely updates.

11 And I would note that the ultimate effect  
12 is possibly if a document is received by the State  
13 late, or identified to the State late, then the State  
14 would have grounds to say we received this late. We  
15 need more time to file a timely contention, and we'll  
16 deal with that on a case-by-case basis. But there's  
17 no reason to go out from the beginning with procedures  
18 that are more onerous than they have to be for other  
19 parties.

20 CHAIRMAN McDADE: Okay. From the  
21 standpoint of New York, why does that not satisfy your  
22 legitimate needs?

23 MR. SIPOS: Well, that is a consequence,  
24 and I'm glad to hear Mr. Turk acknowledge that that  
25 would be a consequence of the late delivery and

1 production of a document. I guess I would also  
2 observe on a practical level, Your Honor - by the way,  
3 this is John Sipos speaking - that it doesn't take  
4 that much effort to add a few CC's onto a letter from  
5 the applicant coming in.

6 MS. SUTTON: Your Honor, this is Kathryn  
7 Sutton on behalf of the applicant. We are not, as  
8 counsel of record, aware of all of the communications  
9 that go on with respect to the prosecution of the  
10 application, so I don't believe that is at all  
11 practicable.

12 CHAIRMAN McDADE: Actually, I tend to  
13 agree with you. And I think I indicated that earlier,  
14 given the fact that there really are two issues going  
15 forward; one, the technical review, and did not  
16 anticipate that all of the communications, or even the  
17 majority of the communications between the NRC's  
18 technical staff and Entergy's technical staff would be  
19 run through their counsel representing them in this  
20 adjudicative proceeding. If anything, I think that  
21 would -- it might be a Morgan Lewis full employment  
22 act, but it would be certainly very expensive, and  
23 probably not needed from the standpoint of review.

24 I'm predisposed at this point to accept  
25 the representations that Mr. Turk made as a way to

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1 proceed in this, and as a way that really satisfies  
2 the legitimate interests of the parties. Mr. Turk,  
3 was there anything further you had to say with regard  
4 to the other forms of communication, other than -

5 MR. TURK: Yes. The other types of  
6 communications are also matters that would be put into  
7 the hearing file. Emails, for instance, we don't copy  
8 other people on emails, but they would be collected  
9 and put into the hearing file. When we have meetings  
10 with the applicant, we try to give advance notice of  
11 all interested persons. Again, the State of New York  
12 has six or even more people on the Staff's technical  
13 service list, so when we send out a notice to Entergy  
14 saying that there will be a meeting on X date, the  
15 State receives multiple copies of that notice. In  
16 addition, after meetings are held, there will be a  
17 meeting summary, and the meeting summary will be put  
18 into ADAMS and the hearing file.

19 The same is true with respect to telephone  
20 calls. We will not be notifying the State or other  
21 interveners of when we'll be having a telephone call  
22 with the applicant, but shortly after the call is  
23 completed, there will be a summary of the call  
24 prepared, and within approximately 30 days that will  
25 be available in the hearing file.

1 CHAIRMAN McDADE: Okay.

2 MR. SIPOS: Your Honor, this is John  
3 Sipos. If I may just briefly, the telephone call REI  
4 discussions have been especially problematic.  
5 Oftentimes, the memo is not even written until four  
6 plus weeks later, and then it is not circulated for an  
7 additional period of time, and so we are hearing about  
8 telephone communications between NRC Staff and Entergy  
9 on occasion upwards of five, six weeks later. I just  
10 want to note that for the record.

11 CHAIRMAN McDADE: I understand. The issue  
12 then seems to be of giving you additional time based  
13 on when you receive it, but it seems difficult for me  
14 to direct Mr. Turk to turn something over that he  
15 doesn't have. Just as you indicated in many  
16 instances, the memo was not going to be -- the memo of  
17 conversation isn't going to be written. Well, until  
18 that memo of conversation is written, there's no way,  
19 even if they wanted to, the NRC Staff could turn that  
20 over and make it part of the hearing file. So I think  
21 we just have to accept that people are being  
22 professional, understand that this adjudication is  
23 going on, that there's a reason to promptly  
24 memorialize the communications that they have, so that  
25 they can place them in the hearing file, with the

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1 understanding to the degree that it fails to meet  
2 those standards, there's a very strong probability  
3 that the hearing itself and the resolution of this  
4 will be delayed, which is in nobody's interest.

5 At this point in time, what I would  
6 propose is this, that we take a very short break, and  
7 by a very short break I mean just simply put your  
8 phone on mute for -- I've got -

9 JUDGE WARDWELL: We're just about through?

10 CHAIRMAN McDADE: Yes. Well, what I was  
11 proposing to do was that we put the phones on mute for  
12 about five minutes, allow all of the parties to  
13 discuss among themselves to see if anybody believes  
14 that there are additional matters that need to be  
15 discussed, to then come back together in five minutes  
16 and see what, if any, additional matters need to be  
17 discussed. Judge Wardwell, is that agreeable?

18 JUDGE WARDWELL: That's fine.

19 CHAIRMAN McDADE: Judge Lathrop?

20 JUDGE LATHROP: That's fine.

21 CHAIRMAN McDADE: Okay. Anybody have any  
22 objection to that? Apparently not. What we will do  
23 is put the phone on mute, and come back in five  
24 minutes. So we would ask that all of you be back on  
25 the line in and ready to proceed in five minutes.

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1 Again, don't hang up, don't get off the line, just put  
2 your phone on mute, so that you can discuss issues  
3 without it being -- everybody else being privy to it.  
4 Are we all set? I guess we're all set. Hearing no  
5 objection, we're all set.

6 (Whereupon, the proceedings went off the  
7 record at 11:42:31 a.m., and went back on the record  
8 at 11:47:20 a.m.)

9 CHAIRMAN McDADE: And Judge Lathrop, we  
10 have the NRC Staff on?

11 MR. TURK: Yes, Your Honor.

12 CHAIRMAN McDADE: Entergy?

13 MR. SIPOS: Yes, Your Honor.

14 CHAIRMAN McDADE: New York?

15 MR. BESSETTE: Yes, Your Honor.

16 CHAIRMAN McDADE: Clearwater?

17 MS. GREENE: Yes, Your Honor.

18 CHAIRMAN McDADE: Riverkeeper?

19 MR. MUSEGAAS: Yes, Your Honor.

20 CHAIRMAN McDADE: Connecticut?

21 MR. SNOOK: Yes, Your Honor.

22 CHAIRMAN McDADE: I should have just said  
23 who isn't on the line. Okay. Cortlandt? Cortlandt?

24 MR. RIESEL: Yes, Your Honor. We're here.

25 CHAIRMAN McDADE: Okay. And New York City

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1 Economic Development?

2 MR. DELANEY: Yes, Your Honor.

3 CHAIRMAN McDADE: Okay. Is there anything  
4 else that anyone has that they wish to raise?  
5 Actually, before we do that, let me just ask a  
6 question and address it in the first instance to  
7 Entergy.

8 We had the discussion about the TIFF  
9 files, and whether or not -- and how these things, who  
10 would pay for the OCR. Question; in creating these  
11 files initially as TIFF files, as opposed to PDF  
12 files, the PDF files would be sort of inherently  
13 searchable. It seems like, from our standpoint here,  
14 just creating a PDF file takes no additional time,  
15 takes no additional resources. Is there any reason  
16 why these can't be - haven't been prepared as PDF  
17 files?

18 MR. BESSETTE: Your Honor, this is Paul  
19 Bessette. We wouldn't necessarily agree with you that  
20 creating these in word searchable PDF is at no  
21 additional cost. I don't have my technical folks  
22 here, but there's several steps. You have to use  
23 appropriate software and OCR the document.

24 Again, we believe we're producing these in  
25 a format consistent with other litigations. And, in

1 fact, it's a format that we feel -- that we understand  
2 and we have experienced, is requested, often requested  
3 by other parties to facilitate searches of large  
4 document databases.

5 CHAIRMAN McDADE: Well, when we discussed  
6 this earlier, the way it was left is there were going  
7 to be discussions over the next couple of weeks  
8 between Entergy and New York on this. Please, as part  
9 of those discussions, discuss the issue of PDF'ing  
10 documents, and as a possible way of doing this. And  
11 during that period of time, your technical people, and  
12 their technical people should be able to discuss this,  
13 as well, to get this done as quickly as possible, as  
14 cheaply as possible, and in a format that is going to  
15 be most useful to the parties, and most useful in  
16 moving this thing along as quickly as possible, and  
17 not having any unnecessary delays.

18 MR. BESSETTE: We understand that, Your  
19 Honor, and I believe the issue is not with New York,  
20 it's with Clearwater. And we'll work with them with  
21 regard to format of subsequent productions.

22 CHAIRMAN McDADE: Okay. The other thing  
23 that I just wanted to raise is that after the  
24 mandatory disclosures are made, just to emphasize, in  
25 the event that any of the parties believe that there

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1 are additional documents that they would like to  
2 obtain discovery on, just to make sure in the first  
3 instance, go to the party to whom you are seeking the  
4 document, explain to them what it is you want, and  
5 why, and see if you could work out a resolution. But  
6 the first step is not to file a motion, or a discovery  
7 request with the Board, the first step is to go to the  
8 party from whom you are seeking disclosures, and ask  
9 them for it. And only if you can't work it out, to  
10 then contact us.

11 Okay. That said, from the standpoint of  
12 the NRC Staff, Mr. Turk, is there anything else that  
13 you would like to take up at this particular  
14 conference?

15 MR. TURK: No, Your Honor.

16 CHAIRMAN McDADE: From the standpoint of  
17 Entergy?

18 MR. BESSETTE: No, Your Honor.

19 CHAIRMAN McDADE: Was that no? There was  
20 a lot of static?

21 MR. BESSETTE: No, Your Honor. This is  
22 Paul Bessette.

23 CHAIRMAN McDADE: New York?

24 MR. SIPOS: This is John Sipos. No, Your  
25 Honor.

1 CHAIRMAN McDADE: Riverkeeper?

2 MR. MUSEGAAS: Your Honor, this is Philip  
3 Musegaas. I just -- at the risk of belaboring this,  
4 I just would like to ask for some clarification. And  
5 I apologize for probably being confused about  
6 something simple.

7 This question goes to Mr. Turk at NRC. My  
8 understanding, and this goes to the issue of the  
9 correspondence between Entergy and the NRC on the  
10 license renewal application. Sherwin, I just want to  
11 make sure I understand what you said. You're saying  
12 that all the correspondence between Entergy and the  
13 NRC Staff will be going into the hearing file, or only  
14 the correspondence relating to admitted contentions?

15 MR. TURK: The Staff's obligation to  
16 produce documents goes to all documents relevant to  
17 the application. It is not limited to individual  
18 contentions.

19 MR. MUSEGAAS: Okay. Thank you.

20 CHAIRMAN McDADE: Okay. Clearwater?

21 MS. GREENE: Your Honor, I have a  
22 question, and a comment.

23 CHAIRMAN McDADE: This is Manna Jo Greene?

24 MS. GREENE: Yes, thank you. And the  
25 question is, it's clear to me when the NRC Staff and

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1 Entergy will be forwarding their disclosures. I am  
2 not clear on the time line for the other parties, and  
3 perhaps I should be. But I was not under the  
4 understanding that it would be by the 21<sup>st</sup> to 23<sup>rd</sup>.  
5 And maybe I missed that, or it is in the schedule that  
6 I overlooked, but I'm not clear about that.

7 CHAIRMAN McDADE: Okay. What was it your  
8 -- excuse me. What was your understanding?

9 MS. GREENE: I understood that we would be  
10 given that direction at this call, and that's why I'm  
11 asking now, because it's not clear to me. Perhaps New  
12 York State or Riverkeeper are more clear about that.  
13 I only heard the discovery deadlines that Entergy and  
14 NRC were prepared to meet.

15 CHAIRMAN McDADE: Okay. Specifically,  
16 what disclosures are you discussing, as far as what  
17 disclosures, for example, would Clearwater be making  
18 to the NRC Staff at this point?

19 MS. GREENE: Well, again, I apologize. We  
20 are pro se, but in terms of discovery, is there a  
21 deadline under which we need to disclose background  
22 information that we are in the process of -- I'm now  
23 going through all of the files we used to prepare our  
24 actual contentions, and it's not clear to me when that  
25 information has to be forwarded to all the parties.

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1 CHAIRMAN McDADE: Okay. From the  
2 standpoint of the NRC Staff, were you anticipating any  
3 disclosures this week from any of the parties?

4 MR. TURK: This current week? No.

5 CHAIRMAN McDADE: Okay. I was not  
6 anticipating that the parties would be, at this point,  
7 making disclosures to the NRC Staff, or to Entergy.  
8 Entergy, did you have a different understanding?

9 MR. BESSETTE: Your Honor, we believe the  
10 disclosure obligations of 2.336, which are applied to  
11 all parties.

12 CHAIRMAN McDADE: No, I understand. But  
13 at this point in time, it seems like the information  
14 that the other parties have, it would sort of be in  
15 response to what they get from you.

16 MR. BESSETTE: No, Your Honor. That's not  
17 our understanding. I mean, this is a mandatory  
18 disclosure obligation under the party pursuant to the  
19 admitted contention. The 30-day clock applies to all  
20 the parties.

21 MS. GREENE: Okay.

22 MR. TURK: Your Honor, this is Sherwin  
23 Turk. I wonder, maybe I can make a suggestion that  
24 might help Ms. Greene, and maybe the rest of us, as  
25 well. As I understand the timing for the first

1 disclosures, it would be 30 days after the December  
2 18<sup>th</sup> order, which would get us to January 21<sup>st</sup>. We do  
3 have intervening holidays, which makes the production  
4 a little more difficult. For that reason, the Staff  
5 was indicating that we think we'd be ready somewhere  
6 between the 21<sup>st</sup> and 23<sup>rd</sup>.

7 Because of the two-day holiday next week  
8 in Washington, I wonder if we could possibly agree on  
9 a single date for which all parties should make their  
10 first disclosure, and possibly to make sure that  
11 everyone is comfortable with that, make it in the  
12 following -- some day in the following week? I might  
13 even suggest January 30<sup>th</sup>, and then the 30-day updates  
14 would take place at the end of each subsequent month,  
15 as sort of a convenient jumping off point.

16 MR. BESSETTE: Your Honor, Entergy would  
17 be amenable to a common date. We understand  
18 regulations are not easy to understand at times, and  
19 we understand Ms. Greene's question, but we do not  
20 believe it's appropriate for parties to prepare their  
21 discovery based on our discovery. 2.336(a), we  
22 believe it's clear that the obligations are on all  
23 parties, but we'd be amenable to some common date that  
24 adapts to all the parties.

25 CHAIRMAN McDADE: Okay. I'm just trying to

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1 -- thinking of 2.336(a), and then sort of going  
2 through the different categories of documents trying  
3 to anticipate the documents that, for example,  
4 Clearwater would have that would be discoverable at  
5 this point in time. Given the volume of documents  
6 that are involved, and also, as Mr. Turk pointed out,  
7 both Monday and Tuesday of next week are holidays in  
8 the D.C. metropolitan area. Even if they weren't,  
9 it's extremely difficult for people to get to work on  
10 those two days. I think all of the bridges from  
11 Virginia are closed due to the Inauguration, so having  
12 an extended period of time, I don't have a calendar in  
13 front of me, but what day of the week January 30<sup>th</sup> is.  
14 Assuming it is a weekday, it seems like that would be  
15 appropriate. And I would think that at least in the  
16 initial instance, the volume of documents that would  
17 be discoverable by the other parties to Entergy, and  
18 the NRC Staff would be relatively limited in volume to  
19 set the 30<sup>th</sup> as the date for that, as well. If any of  
20 the parties, after discussing it internally believe  
21 that that date is going to be difficult for them to  
22 meet, they should get back in touch with us  
23 immediately, and actually, again, get back in touch  
24 with us derivatively to, first of all, contact the NRC  
25 Staff, and counsel for Entergy to see whether or not

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1 you can agree to another date in the not too distant  
2 future. And, if so, then get back to us to notify us  
3 as to what date has been agreed upon. But to say that  
4 the initial disclosures by Entergy and the NRC Staff  
5 under 336(a) would be on January 30<sup>th</sup>, or no later  
6 than January 30<sup>th</sup>, I think would be appropriate; also,  
7 at this point, to suggest that additional disclosures  
8 by the other parties, the initial disclosures under  
9 336(a), such as they are, be made also on the 30<sup>th</sup>  
10 subject to reconsideration after discussions among the  
11 parties.

12 Anything else to be discussed at this  
13 point?

14 MS. GREENE: Yes. I had also a comment,  
15 Your Honor. Manna Greene from Clearwater. And that  
16 is just a final comment on the distinction between  
17 TIFF files and PDF. And just to add clarity, that  
18 whatever is going to be produced through January 30<sup>th</sup>,  
19 I realize a lot of work went into it, and we're not  
20 asking for any change retrospectively. But in terms  
21 of future documents, that is something that I think is  
22 an important precedent to set in terms of  
23 accessibility.

24 I don't agree that because it's always  
25 been done in TIFF format, which then has a second

1 layer of optic character recognition, has to be  
2 applied to make documents searchable. I don't agree  
3 that that's how it should be done moving forward. And  
4 we will discuss that, and bring that information to  
5 you, but it's really a future precedent that we're  
6 interested in establishing, at least for this case.  
7 But really, for accessibility of documents  
8 universally.

9 CHAIRMAN McDADE: Okay. I understand.  
10 And, also, let me just say one other thing. To the  
11 degree that there is time or money involved in taking  
12 documents that are now not searchable and putting them  
13 into searchable format, the possibility of all of the  
14 interveners and interested government entities doing  
15 that on a cooperative basis so that you're not making  
16 the same effort and expenditure several times. It's  
17 only done once, that somebody take the lead on that,  
18 as far as the resources go, having some way of sharing  
19 those resources. Again, part of the discussions that  
20 are going to be had during the next couple of weeks  
21 are going to involve how these documents can be  
22 produced in a way that is going to make them most  
23 useful, most quickly, at reasonable expense both to  
24 the entity producing the documents, and also to the  
25 entity receiving them.

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1 Anything else? Judge Wardwell?

2 JUDGE WARDWELL: Nothing from here.

3 CHAIRMAN McDADE: Judge Lathrop?

4 JUDGE LATHROP: Nothing else.

5 CHAIRMAN McDADE: Okay. At this point in  
6 time, I'm not going to set another date for a status  
7 conference. Let's see what happens over the next  
8 couple of weeks, whether or not you all are back in  
9 touch with us on any particular issues. We'll issue  
10 an order summarizing what we've talked about here.  
11 Given the holiday that's coming up, there's a good  
12 possibility that it may not get out during the  
13 remainder of this administration, but we will get it  
14 out as promptly thereafter as possible. And we will  
15 be setting a date for a subsequent status conference  
16 at a later date.

17 Nothing further from any of the parties or  
18 interested government entities, we'll conclude this  
19 status conference. Thank you.

20 (Whereupon, the proceedings went off the  
21 record at 12:06 p.m.)

22

23

24

25

CERTIFICATE


This is to certify that the attached proceedings  
before the United States Nuclear Regulatory Commission  
in the matter of:           Entergy Nuclear Operations,  
                                  Indian Point

Name of Proceeding: Pre-hearing Conference

Docket Number:           50-247/286-LR

Location:                 (phone conference)

were held as herein appears, and that this is the  
original transcript thereof for the file of the United  
States Nuclear Regulatory Commission taken by me and,  
thereafter reduced to typewriting by me or under the  
direction of the court reporting company, and that the  
transcript is a true and accurate record of the  
foregoing proceedings.

  
John Mongoven  
Official Reporter  
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