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C O U N S E L O R S   A T   L A W

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USNRC

May 5, 2010 (8:30am)

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May 4, 2010

Lawrence G. McDade, Chairman  
Dr. Richard E. Wardwell  
Dr. Kaye D. Lathrop  
Atomic Safety and Licensing Board  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001

**Docket:**            *Entergy Nuclear Operations, Inc. (Indian Point Nuclear Generating Units 2 and 3), Docket Nos. 50-247-LR and 50-286-LR*

**RE:**                **Proposed Hearing Schedules for IPEC License Renewal Proceeding**

Dear Administrative Judges:

During the April 19, 2010 telephonic status call, the Board directed the hearing participants to confer regarding possible schedules for the conduct of the remainder of this proceeding, including evidentiary hearings on admitted safety and environmental contentions. Following numerous communications with the other hearing participants, NRC Staff counsel circulated two proposed hearing schedules on April 28, 2010 to facilitate this effort. The first schedule reflected a "single-track" or consolidated hearing on all remaining admitted contentions. The second schedule reflected "dual-track" or "bifurcated" hearings on safety and environmental contentions, respectively. The other hearing participants provided comments on the proposed schedules on April 30, 2010. On May 3, 2010, at 10 AM, the participants held a conference call to discuss the comments and seek reasonable agreement on a proposed hearing schedule.

As an initial matter, Entergy believes that a bifurcated hearing schedule is a viable option available to the Board that, given the status and complexity of the case (*i.e.*, number of participants, number of contentions, and delays in issuance of the Final Supplemental Environmental Impact Statement (FSEIS)), may offer certain advantages. Such advantages may include simpler logistics (*e.g.*, in convening counsel, witnesses, and Board members) and separate, focused hearings on safety and environmental issues. Also, it would allow the hearing participants and Board the opportunity to get

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a substantial portion of the evidentiary hearings “under their belts” sooner in the proceeding. For reference only, attached is a copy of the draft bifurcated schedule distributed by NRC Staff to the participants for preliminary discussions.

Nevertheless, during the May 3, 2010, 10 AM conference call, New York State, Riverkeeper, Clearwater, Cortlandt and the State of Connecticut expressed a strong preference for a single-track, consolidated hearing (which also may expedite issuance of the Board’s final merits decision on all contentions). Therefore, the majority of the remaining discussions during that conference call focused on the content of the proposed consolidated schedule.

After the 10 AM call, Entergy counsel distributed to the other representatives a revised proposed consolidated schedule that attempted to reasonably address the comments of the hearing participants. On May 3, 2010, at 4 PM, the hearing participants held a second conference call to discuss comments on the revised proposed consolidated schedule. Although the participants were able to agree on certain items, they were not able to achieve full consensus on a single proposed schedule.

After the 4 PM conference call, Entergy counsel redistributed the proposed schedule to allow the participants to submit individual comments to the Board based on the revised proposed consolidated schedule. Earlier today, counsel for New York State forwarded a revised version of the proposed schedule incorporating the recommendations and associated comments of the intervenors and interested state/government participants. That version of the schedule, which now reflects all participants’ recommendations, is enclosed as Attachment 1. Please note that Attachment 1 is based on currently-admitted contentions. Proposed contentions submitted by Clearwater (waste confidence rule) and New York (SAMA) are pending before the Commission and Board, respectively.

During the participants’ discussions, two key areas of impasse were evident: (1) the time allotted for certain filings (*e.g.*, amended/new contentions, responses to motions, rebuttal testimony) and (2) the sequence and timing of the participants’ written evidentiary presentations (initial statements of position, prefiled direct and rebuttal testimony). With regard to filing due dates, Entergy and the Staff believe that the dates reflected in the third and fifth columns of Attachment 1 represent reasonable expectations for filings that take into account established NRC deadlines, the number and complexity of admitted issues, and the concerns expressed by the other hearing participants. As noted above, however, the other participants have included comments on certain individual due dates on the attached proposed schedule that reflect their preferences and recommendations.

With regard to the second issue, the intervenors and interested governmental bodies have suggested that Entergy and NRC Staff should submit summaries of their positions on admitted contentions before the contentions’ proponents are required to submit their initial position statements and prefiled direct testimony. John Sipos of New York State suggested that requiring Entergy and the NRC Staff to file initial position statements first would enable New York (and presumably other participants) to better understand the positions of Entergy and the Staff on specific contentions and to better tailor

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their position statements and hearing testimony. Accordingly, Attachment 1 includes a placeholder for such filings (*see* line 22).

Entergy respectfully disagrees with the approach suggested by New York State. First, it is well-established that, “[w]hile an applicant has the ultimate burden of proof on any issues upon which a hearing is held, hearings are held on only those issues that an intervenor brings to the fore.” *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), LBP-05-12, 61 NRC 319, 326 (2005), *aff’d*, *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-05-19, 62 NRC 403 (2005). Therefore, “the burden of going forward on any issues that make it to the hearing process is on the intervenor that is pursuing that issue.” *Id.* Also, while Entergy believes that a focused efficient hearing is a laudable, common goal of all the participants, it is concerned that requiring preliminary applicant and NRC position statements, in addition to intervenor prefiled testimony, applicant and NRC Staff prefiled testimony, and intervenor rebuttal testimony, would add unnecessary redundancy, complexity and possible delays to the hearing schedule. Specifically, Entergy would hope to avoid the filing of motions in limine, motions for additional time to review the statements, or even new/amended contentions based on such position statements.

Therefore, Entergy proposes that the intervenors submit their initial position statements and testimony first, followed by Entergy and the NRC Staff. The intervenors, in turn, would then submit rebuttal statements and testimony. Entergy sees no prejudice in this filing sequence, which is consistent with the approach followed by the Board in the *Vermont Yankee* license renewal proceeding. *See Entergy Nuclear Vt. Yankee, L.L.C. & Entergy Nuclear Operations, Inc.* (Vermont Yankee Nuclear Power Station), Initial Scheduling Order at 10-11 (Nov. 17, 2006). Alternatively, the parties may file both their initial and rebuttal statements of position and testimony simultaneously. This approach also is consistent with NRC regulations and adjudicatory practice. *See, e.g.*, 10 C.F.R. § 2.1207(a)(1)-(2).

Entergy remains amenable to further discussions with the other participants and Board so that a firm hearing schedule is established for this proceeding. To the extent the Board prefers the filing of preliminary position statements by Entergy, the NRC, or other parties, Entergy respectfully suggests that the scope and content of such position statements, and any responses by the parties thereto, be clearly defined in advance such that the goals of an efficient, focused hearing are in fact achieved.

Finally, Entergy notes that the proposed schedule in Attachment 1 was developed to provide a common platform or basis for the participants to provide their respective views on key hearing milestones and associated filing dates. Although Entergy has agreed to transmit the proposed hearing schedule and attempted to portray accurately the events of the past two weeks, it does not purport to speak for all other participants in this transmittal letter, especially on issues where there may be differences of opinion.

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Counsel for Entergy thanks the representatives of all participants for their diligent efforts and cooperation in developing an initial proposed schedule for the Board's consideration. The process has required extensive interactions among the parties.

Respectfully submitted,

*Martin J. O'Neill for K. Sutton / P. Bessette*  
Kathryn M. Sutton, Esq.  
Paul M. Bessette, Esq.

Counsel for Entergy Nuclear Operations, Inc.

Attachments:

- (1) Proposed Hearing Schedule – Consolidated Hearings on All Safety & Environmental Contentions (Reflects Revisions and Comments by the Participants)
- (2) Proposed Schedule – Simplified to Establish a Two Track Proceeding (For Information Only – Does Not Reflect any Comments, Revisions, or Agreements by the Participants)

cc: Service List

**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION**

**BEFORE THE ATOMIC SAFETY AND LICENSING BOARD**

In the Matter of )	Docket Nos. 50-247-LR and
ENTERGY NUCLEAR OPERATIONS, INC. )	50-286-LR
(Indian Point Nuclear Generating Units 2 and 3) )	
	May 4, 2009

**CERTIFICATE OF SERVICE**

I hereby certify that copies of the letter entitled "Proposed Hearing Schedule for IPEC License Renewal Proceeding," dated May 4, 2010, were served this 4th day of May, 2010 upon the persons listed below, by first class mail and e-mail as shown below.

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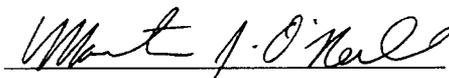
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**IPEC License Renewal Proceeding – Proposed Hearing Schedule  
Consolidated Hearings on All Safety & Environmental Contentions**

No.	Milestone	Safety Contentions (Entergy/Staff)	Safety Contentions (Intervenors)	Environmental Contentions (Entergy/Staff)	Environmental Contentions Intervenors	Entergy/Staff Comments	Intervenors' Comments
1	Motions for Summary Disposition on Admitted Safety Contentions (Except NYS-25 and NYS-26/26A—RK TC-1/1A)	Jun. 15, 2010 (Tu)	Jun. 15, 2010 (Tu)	----		Per 4/19/2010 status call with ASLB	
2	Entergy Submits RPV Internals Inspection AMP (Relevant to NYS-25)	Jun. 30, 2010 (W)	Jun. 30, 2010 (W)	----		Entergy representation	
3	Answer to Motions for Summary Disposition on Admitted Safety Contentions (Except NYS-25 and NYS-26/26A—RK TC-1/1A)	Jul. 12, 2010 (M)	Aug. 16, 2010 (M)	----		Approx. 30 days given intervening holiday (regulations allow 20 days)	New York State requests approx 60 days. New York State has potentially five safety contentions as to which SD could be filed, and such motions may contain substantial information that will require consultation with experts
4	Amended/New Contentions Based On Entergy's RPV Internals AMP	Jul. 30, 2010 (F)	Aug. 16, 2010 (M)	----		30 days to file amended/new contentions, consistent with ASLB practice and precedent	Entergy has had over 2 years to prepare this submittal. Intervenors need at least 45 days to evaluate this new data. New York State's expert (Dr. Lahey) has approx. 7 days of previously-scheduled commitments in July 2010

**Note:** This proposed hearing schedule is based on currently-admitted contentions. Proposed contentions submitted by Clearwater (waste confidence rule) and New York (SAMA) are pending before the Commission and Board, respectively.

No.	Milestone	Safety Contentions (Entergy/Staff)	Safety Contentions (Intervenors)	Environmental Contentions (Entergy/Staff)	Environmental Contentions (Intervenors)	Entergy/Staff Comments	Intervenors' Comments
5	Entergy Submits Metal Fatigue Calculations (Relates to NYS-26/26A & RK TC-1/1A)	Jul. 30, 2010 (F)	Jul. 30, 2010 (F)	----		Entergy representation	
6	Entergy & Staff Answers to Amended/New Contentions Based On RPV Internals AMP	Aug. 24, 2010 (T)	Sept. 11, 2010	----		25 days to file answers per 10 CFR 2.309(h)(1)	
7	ASLB Ruling on Summary Disposition Motions on Admitted Safety Contentions (Except NYS-25 and NYS-26/26A—RK TC-1/1A)	Aug. 30, 2010 (M)	Date TBD by the Board	---		Approx. 50 days for ASLB ruling	
8	Amended/New Contentions Based On Entergy's Completed Metal Fatigue Calculations	Aug. 30, 2010 (M)	Sept. 30, 2010 (Th)	----		30 days to file amended/new contentions, consistent with ASLB practice and precedent	Since the Vermont Yankee proceeding, Entergy has known that it would need to do a CUF/FEN calculation to address this issue, and New York State has identified this issue early in this proceeding. New York and Riverkeeper will need at least 60 days to evaluate this complicated calculation, coordinate, and consult with experts.
9	Issuance of Final Supplemental Environmental Impact Statement (FSEIS)	----		Aug. 31, 2010 (Tu)		Current NRC Staff estimated schedule	

No.	Milestone	Safety Contentions (Entergy/Staff)	Safety Contentions (Intervenors)	Environmental Contentions (Entergy/Staff)	Environmental Contentions Intervenors	Entergy/Staff Comments	Intervenors' Comments
10	Intervenor Replies to Entergy & Staff Answers Re Amended/New Contentions Based on RPV Internals AMP	Sept. 3, 2010 (F)	Sept. 21, 2010	----		10 days (7 days to file replies per 10 CFR 2.309(h)(2))	
11	Entergy & Staff Answers to Amended/New Contentions Based On Metal Fatigue Calculations	Sept. 24, 2010 (F)	Oct. 25, 2010	----		25 days to file answers per 10 CFR 2.309(h)(1)	
12	ASLB Ruling on Amended/New Contentions Based on RPV Internals AMP	Sept. 30, 2010 (Th)	Date TBD by the Board	----		30 days for ASLB ruling	
13	Amended/New Contentions Based on FSEIS	----		Sept. 30, 2010 (Th)	Sept. 30, 2010	30 days after FSEIS to file contentions per ASLB proposal	New York State representation during Apr. 19, 2010 ASLB conference.
14	Intervenor Replies to Entergy/Staff Answers to Amended/New Contentions Based On Metal Fatigue Calculations	Oct. 1, 2010 (F)	Nov. 1, 2010	----		7 days to file replies per 10 CFR 2.309(h)(2)	
15	Entergy & NRC Staff Answers to Amended/New Contentions Based on FSEIS	----		Oct. 25, 2010 (M)	Oct. 25, 2010	25 days to file answers per 10 CFR 2.309(h)(1)	
16	Intervenor Replies to Entergy/Staff Answers re Amended/New Contentions Based on FSEIS	----		Nov. 1, 2010 (M)	Nov. 1, 2010	7 days to file replies per 10 CFR 2.309(h)(2)	

No.	Milestone	Safety Contentions (Entergy/Staff)	Safety Contentions (Intervenors)	Environmental Contentions (Entergy/Staff)	Environmental Contentions (Intervenors)	Entergy/Staff Comments	Intervenors' Comments
17	ASLB Ruling on Amended/New Contentions Based on FSEIS and Entergy's Completed Metal Fatigue Calculations	Dec. 17, 2010 (F)		Dec. 17, 2010 (F)	Date TBD by the Board	Allows ASLB time to rule on both amended/new FSEIS and metal fatigue calculations	
18	Motions for Summary Disposition of Environmental Contentions (Previously- and Newly-Admitted) and NYS-25 and NYS-26/26A--RK TC-1/1A	Jan. 21, 2011 (F)		Jan. 21, 2011 (F)	35 days after ASLB ruling admitting any new/amended contentions	35 days after ASLB ruling admitting any new/amended contentions (given intervening holidays)	
19	Answers to Motions for Summary Disposition of Environmental Contentions and NYS-25 & NYS-26/26A--RK TC-1/1A	Feb. 21, 2011 (M)		Feb. 21, 2011 (M)	60 days after motions for SD are filed	Assume 30 days for responses (regulations allow for 20 days)	At present there are 7 New York State and 2 Riverkeeper contentions as to which these SD motions could be filed. New York State and Riverkeeper will need at least 60 days to respond to all these motions given how long Entergy will have had to prepare the motions.
20	ASLB Ruling on Motions for Summary Disposition of Environmental Contentions and NYS-25 and NYS-26/26A--RK TC-1/1A	Apr. 4, 2011 (M)		Apr. 4, 2011 (M)	Date TBD by the Board	Approximately 40 days for ASLB ruling	

No.	Milestone	Safety Contentions (Entergy/Staff)	Safety Contentions (Intervenors)	Environmental Contentions (Entergy/Staff)	Environmental Contentions (Intervenors)	Entergy/Staff Comments	Intervenors' Comments
21	Update of Mandatory Disclosures and Hearing File, Including Final List of Witnesses for All Admitted Contentions.  Interested states and governments identify which contentions they plan to participate.	Apr. 15, 2011 (F)	10 days after ASLB ruling on SD	Apr. 15, 2011 (F)	10 days after ASLB ruling on SD	Approximately 2 weeks before filing of initial testimony. <b>Entergy:</b> Recommend that monthly mandatory disclosure obligations end approximately 2 weeks prior to filing prefiled testimony. Thereafter, should relevant information come to light that warrants disclosure, the parties will notify the Board. <i>See</i> Memorandum and Order, Oyster Creek License Renewal Proceeding, Apr. 17, 2007. ML071070437	Intervenors believe the obligation to continue disclosures at least up to the hearing is mandated by NRC Regulations. <i>See</i> 10 C.F.R. 2.336(d) and 2.1203(c); <i>see also</i> Vermont Yankee License Renewal Scheduling Order (Nov. 17, 2006) slip op. at 4 (“The duty to update mandatory disclosures and the hearing file shall terminate at the close of the evidentiary hearing.”) ML063210212.
22	Summary of Initial Positions with a detailed statement of position as to each basis and supporting evidence and declaration in the Contention that has not been dismissed by SD.	Apr. 15, 2011 (F)	10 days after the ASLB ruling in 20 above	Apr. 15, 2011 (F)	10 days after the ASLB ruling in 20 above.	To be filed by Applicant, NRC staff, and/or intervenors. <b>Entergy:</b> <i>See</i> Entergy comments in May 4, 2010 Letter to ASLB.	To be filed by Applicant, NRC Staff. <i>See</i> Intervenors' comments in May 4, 2010 Letter to ASLB
23	Intervenors' Initial Statements of Position, Prefiled Direct Testimony, Affidavits, and Exhibits Due	May 2, 2011 (M)	21 days after disclosures in event 22 above	May 2, 2011 (M)	21 days after disclosures in event 22 above	Assume parties have been preparing testimony and file testimony 30 days after ruling on summary disposition motions.	<i>See</i> Intervenors' comments in May 4, 2010 Letter to ASLB

No.	Milestone	Safety Contentions (Entergy/Staff)	Safety Contentions (Intervenors)	Environmental Contentions (Entergy/Staff)	Environmental Contentions (Intervenors)	Entergy/Staff Comments	Intervenors' Comments
24	Entergy's and NRC Staff's Initial Statements of Position, Prefiled Direct Testimony, Affidavits, and Exhibits Due	Jun. 13, 2011(M)		Jun. 13, 2011(M)		Assume 40 days after intervenors file statements of position, testimony, etc.	
25	Intervenors' Rebuttal Statements of Position, Testimony, Affidavits, and Exhibits Due	Jul. 15, 2011 (F)	60 days after filing event 24 above	Jul. 15, 2011 (F)	60 days after filing in event 24 above	Assume 30 days after Entergy and Staff file statements of position, testimony, etc	Without joinder of issue and traditional discovery, intervenors will not know positions of Staff and Entergy until those parties file direct testimony. However, if the proposal in 22 is adopted, the proposed 30 days for intervenor rebuttal testimony would be acceptable.
26	Motions in Limine on Prefiled Direct and Rebuttal Testimony Due; Motions for Use of Subpart G Procedures (Cross-Examination) Re Specific Contentions/Witnesses	Aug. 5, 2011 (F)	21 days after intervenors' rebuttal testimony filed	Aug. 5, 2011 (F)	21 days after intervenors' rebuttal testimony filed	Assume 21 days after intervenors' rebuttal testimony filed	
27	Responses to Motions in Limine Due and Motions for Subpart G Cross-Examination Procedures	Aug. 19, 2011 (F)	14 days after motions filed	Aug. 19, 2011 (F)	14 days after motions filed	Assume 14 days after motions filed	
28	ASLB Ruling on In Limine and Motions for Subpart G Cross-Examination Procedures	Sept. 2, 2011 (F)	TBD by the Board	Sept. 2, 2011 (F)	TBD by the Board	Assume 14 days for ASLB rulings	

No.	Milestone	Safety Contentions (Entergy/Staff)	Safety Contentions (Intervenors)	Environmental Contentions (Entergy/Staff)	Environmental Contentions (Intervenors)	Entergy/Staff Comments	Intervenors' Comments
29	Proposed Direct Examination Questions for ASLB to Ask Expert Witnesses Due	Sept. 9, 2011 (F)	7 days after ASLB ruling on in limine motions	Sept. 9, 2011 (F)	7 days after ASLB ruling on in limine motions	Assume 7 days after ASLB ruling on in limine motions	
30	Evidentiary Hearings Begin	Sept. 12, 2011 (M)	TBD by the Board - Intervenors will be available during September, October 2011 for hearings	Sept. 12, 2011 (M)	TBD by the Board - Intervenors will be available during September, October 2011 for hearings	Assume parties commence hearings 7 days after filing proposed cross-examination questions - Hearing schedule requested to accommodate Jewish high holidays on 9/28-30 and 10/7-8/2011.	Hearing schedule requested to accommodate Jewish high holidays on 9/28-30 and 10/7-8/2011.

**ATTACHMENT 2**

**FOR INFORMATION ONLY – DOES NOT REFLECT ANY  
COMMENTS, AGREEMENTS OR REVISIONS BY THE HEARING PARTICIPANTS**

**Proposed Schedule – Simplified to Establish a Two Track Proceeding**

	<b>Milestone</b>	<b>Safety Contentions NYS 5, 6/7, 8, 24 Riverkeeper TC-2</b>	<b>Safety Contention NYS 25</b>	<b>Safety Contention NYS 26/26A</b>	<b>Environmental Contentions</b>
1	Further Submissions by Entergy	-----	06/30/10 (W)	07/30/10 (F)	-----
2	Issuance of FSEIS		-----	-----	08/31/10 (T)
3	New Contentions Due	-----	-----	-----	09/30/10 (Th) (30 days)
4	Responses to New Contentions	-----	-----	-----	10/25/10 (M) (25 days)
5	Replies to Responses on Contentions	-----	-----	-----	11/01/10 (M) (7 days)
6	Board Ruling on Contentions	-----	-----	-----	12/01/10 (W) (30 days)
					<i>ASLB PID on Safety Issues: 6/20/11</i>
7	Summary Disposition Motions	06/15/10 (T)	07/30/10 (F) (30 days)	08/20/10 (F) (21 days)	6/7/11 (T) (45 days after Reply Findings)
8	Answers to SD Motions	07/06/10 (T) (21 days)	08/20/10 (F) (21 days)	09/09/10 (Th) (20 days)	06/28/11 (T) (21 days)
9	Board Ruling on SD Motions	08/5/10 (Th) (30 days)	09/20/10 (M) (30 days)	10/11/10 (M) (30 days)	07/28/11 (Th) (30 days)
10	Intervenors Initial Direct Testimony, Exhibits and Position Statements	11/1/10 (M) (88 days)	11/1/10 (M) (42 days)	11/1/10 (M) (21 days)	08/29/11 (M) (30 days)
11	Entergy and NRC Staff Initial Testimony, Exhibits, and Position Statements		11/22/10 (M) (21 days)		9/19/11 (M) (21 days)
12	Intervenors Rebuttal Testimony, Exhibits & Position Statements		12/13/10 (M) (21 days)		10/10/11 (M) (21 days)
13	Motions in Limine on All Prefiled Testimony		12/23/10 (Th) (10 days)		10/20/11 (Th) (10 days)
14	Responses to Motions		1/5/11 (W) (10 days plus holidays)		10/27/11 (Th) (7 days)
15	Board Ruling on Prefiled Testimony Motions		1/19/11 (W) (14 days)		11/10/11 (Th) (14 days)

16	Parties to File Proposed Board Questions for Witnesses	2/2/11 (W) (14 days)	11/28/11 (M) 14 days plus holiday
17	<b>Hearings Commence</b>	<b>2/14/11 (M)</b> (12 days)	<b>12/5/11 (M)</b> (7 days)
18	<b>Hearings Conclude</b>	<b>No Later Than 3/4/11 (F)</b> <b>(3 weeks or 14 hearing days)</b>	<b>12/23/11 (F)</b> <b>(3 weeks)</b>
19	Applicant's Proposed Findings of Fact and Conclusions of Law	4/4/11 (M) (31 days)	1/23/12 (M) (31 days)
20	Other Parties' Proposed Findings and Conclusions	4/14/11 (Th) (10 days)	1/30/12 (M) (10 days)
21	Applicant's Reply Proposed Findings and Conclusions	4/21/11 (Th) (7 days)	2/6/12 (M) (7 days)
22	<b>Partial Initial Decision</b>	<b>06/20/11 (M)</b> <b>(60 days)</b>	<b>04/6/12 (F)</b> <b>(60 days)</b>