

RAS E-544

# Official Transcript of Proceedings

## NUCLEAR REGULATORY COMMISSION

Title: Entergy Nuclear Operations  
Indian Point Units 2 and 3

DOCKETED

June 6, 2011 (8:00 a.m.)

OFFICE OF SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

Docket Number: 50-247-LR and 50-286-LR

Location: (telephone conference)

Date: Monday, June 6, 2011

Work Order No.: NRC-938

Pages 955-986

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UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

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ATOMIC SAFETY AND LICENSING BOARD PANEL

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PRE-HEARING CONFERENCE

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IN THE MATTER OF: :

ENTERGY NUCLEAR : Docket Nos. 50-247-LR

OPERATIONS, INC. : 50-286-LR

(Indian Point Generating :

Station, Units 2 and 3 :

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Monday, June 6, 2011

Teleconference

The above-entitled matter came on for

pre-hearing conference, pursuant to notice, at

9:30 a.m. Eastern Daylight Time.

BEFORE:

LAWRENCE G. McDADE Chairman

KAYE D. LATHROP Administrative Judge

RICHARD E. WARDWELL Administrative Judge

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APPEARANCES:

On Behalf of Nuclear Regulatory Commission:

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9 On Behalf of Hudson River Sloop Clearwater,

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12 Environmental Director

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14 Board Member

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

(9:33 a.m.)

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2  
3 CHAIRMAN McDADE: We are here in the  
4 matter of Entergy Nuclear Operations, Indian Point  
5 Generating Units 2 and 3. Docket Number is 50-247-LR  
6 and 286-LR.

7 We are here for a status conference. The  
8 status conference has been precipitated by a letter  
9 from the NRC staff dated May 26, 2011. In that  
10 letter, the NRC staff indicates that they anticipate  
11 a supplement to the SER will be published some time in  
12 July or August. That letter also indicated that,  
13 while the staff is unable to state what impact the SER  
14 supplement will have on the parties' testimony, the  
15 staff expects the testimony would address some of the  
16 information to be discussed in the SER supplement.

17 My first question, then, to the NRC staff  
18 is, in the letter you anticipated that the supplement  
19 to the SER would be filed in July or August, but that  
20 additional -- requests for additional information will  
21 be issued shortly and anticipate that those -- the  
22 answers to those would be received by the end of June.

23 Have those RAIs been issued at this point?

24 MR. ROTH: David Roth for the staff. No,  
25 Your Honor. The RAIs have not yet been issued.

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1 CHAIRMAN McDADE: When do you anticipate  
2 that they will be? Can you give us a best estimate?

3 MR. ROTH: The best estimate, I am told,  
4 is around a week or so.

5 CHAIRMAN McDADE: Okay. Approximately a  
6 week from now. Today is the 6th of June, so we would  
7 be talking about the 13th or 14th of June?

8 MR. ROTH: Yes, Your Honor.

9 CHAIRMAN McDADE: Do you still anticipate  
10 that the answers would be due before the end of June?

11 MR. ROTH: Your Honor, that may be  
12 aggressive. It may be the early part of July before  
13 the answers arrive.

14 CHAIRMAN McDADE: Okay. And at this  
15 point, the original estimate as to the date when the  
16 supplement would be issued would be July or August.  
17 Can I get a -- sort of a degree of certainty on that?  
18 Is that relatively certain, 100 percent certain, that  
19 they'll issue in August, or is that 50 percent  
20 certain? What basically are the parameters, between  
21 when and when, and what's the degree of certainty?

22 MR. ROTH: The best estimate date right  
23 now is August 19th, rather than early August. As to  
24 degree of certainty, staff are nodding that they think  
25 that's a good date.

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1 CHAIRMAN McDADE: Okay. So the next  
2 question, then, to the NRC staff, you indicated that  
3 you anticipate that your direct testimony would  
4 address some of the information discussed in the SERs,  
5 is that correct?

6 MR. ROTH: That is correct, Your Honors.

7 CHAIRMAN McDADE: Okay. One of the issues  
8 that we have coming up is the filing of direct  
9 testimony in this particular case. Let me turn to,  
10 first of all, New York, and I turn to New York because  
11 there are I think several of their contentions -- five  
12 of their contentions that are implicated by the  
13 staff's letter.

14 You have a deadline coming up for the  
15 filing of your direct testimony. Would you be  
16 prepared to file the direct testimony before the  
17 supplement is issued?

18 MR. SIPOS: No, Your Honor. The state  
19 would not be prepared to file its direct testimony  
20 before the supplemental SER was issued.

21 CHAIRMAN McDADE: Okay. The next question  
22 is, what do we do by way of a schedule? You know, one  
23 possibility is that this supplemental information in  
24 the SER can narrow issues. Another possibility is  
25 that it can expand issues.

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1                   And my thought would be that there would  
2                   be a period of time after the SER issued in which the  
3                   parties could review it and make a determination  
4                   whether or not any contentions would be withdrawn or  
5                   any contentions amended or any new contentions  
6                   published to get an initial view as to whether or not  
7                   that would be done, and then have a second date by  
8                   which it would be done.

9                   For the State of New York, Mr. Sipos, how  
10                  long do you think you would need initially just to  
11                  review the -- well, let me go back to the staff. Can  
12                  you give us an idea -- and I realize this is an  
13                  estimate at this point in time, because the document  
14                  hasn't been written at this point in time. Are we  
15                  talking about a 10-page supplement, a 100-page  
16                  supplement? Can you give us a ballpark figure on  
17                  that?

18                  MR. ROTH: David Roth for the staff.  
19                  Probably around the 70-page range.

20                  CHAIRMAN McDADE: And the reason I ask is  
21                  just, depending how long, how voluminous it is,  
22                  depends how long it is going to take to have the  
23                  Intervenors analyze it.

24                  ADMIN. JUDGE WARDWELL: Can I ask the  
25                  staff a followup question for that? This is Judge

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1 Wardwell. What was -- what new information  
2 promulgated all of these RAIs after the FSER was  
3 issued?

4 MR. ROTH: David Roth for the staff. They  
5 are based upon operating experience.

6 ADMIN. JUDGE WARDWELL: But hasn't that  
7 operating experience been ongoing for years? Why  
8 wasn't this addressed during the regional FSER, is  
9 what I'm wondering. There must have been some new  
10 information that said, "Gee, we have -- we have to  
11 issue these official RAIs after the SER was issued."  
12 Or is that a routine activity that you often do in  
13 other cases? Do you always end up supplementing the  
14 SER?

15 MR. ROTH: In this instance, Your Honor,  
16 the staff felt that operating experience required more  
17 questions. There are examples of other ongoing SERs  
18 -- for example, an initial operating license  
19 proceeding, or in other license renewal proceedings.  
20 Additional questions and sometimes additional SERs do  
21 get asked and do get published after the original.  
22 And they are based upon operating experience.

23 ADMIN. JUDGE WARDWELL: Why would you  
24 issue a final SER if, in fact, you had more -- you  
25 didn't have sufficient operating experience to start

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1 with in regards to addressing these issues? It still  
2 doesn't seem that there's a real vivid piece of new  
3 information that has come out at Indian Point that has  
4 triggered the need for this additional analysis.

5 MR. ROTH: I think that is correct, Your  
6 Honor. I believe that it is not a matter of any one  
7 particular item, that it's just operating experience  
8 in general, both at Indian Point and reviewing other  
9 license renewal applications that prompted the  
10 questions.

11 ADMIN. JUDGE WARDWELL: Well, I applaud  
12 you for keeping on that, because certainly we want the  
13 safety issues addressed. But that doesn't help us  
14 much here in trying to get a feeling for how much  
15 effort is going to be needed in reviewing this, and  
16 then, likewise, how much additional time is needed in  
17 delaying the hearing as this will -- certainly has the  
18 potential to do.

19 MR. TURK: Your Honor, this is Sherwin  
20 Turk. My understanding is that the same types of RAIs  
21 were issued to numerous plants that are undergoing  
22 license review. There is nothing specific to Indian  
23 Point. It's a general staff determination to inquire  
24 further for many plants, maybe possibly for all plants  
25 under review. So there is nothing specific to Indian

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1 Point that would generate so many questions. I think  
2 the same types of questions are being asked elsewhere.

3 The RAIs were issued -- as noted in my  
4 letter of May 26, the RAIs were issued in February.  
5 The applicant's responses came back I believe  
6 March 28. So the types of questions that were asked  
7 are visible to all parties. The answers are visible  
8 to all parties. So what is left to do is for the  
9 staff to take those answers and evaluate the  
10 information that was produced.

11 So the parties already understand, what  
12 are the issues that were raised, and what are the  
13 responses that came back?

14 CHAIRMAN McDADE: Okay. Thank you, Mr.  
15 Turk.

16 At this point, from the State of New York,  
17 two issues arise in my mind. First of all, the  
18 supplement to the SER involves several conditions, all  
19 safety contentions. Would you be prepared to move  
20 ahead with direct testimony on the environmental  
21 contentions and bifurcate the submission of your  
22 direct testimony?

23 MR. SIPOS: Judge, the state prefers not  
24 to bifurcate, as we have discussed in the past. And  
25 I would be happy to review that if that would be

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1 appropriate for Your Honor, although -- but I am also  
2 comfortable with just referring to previous  
3 discussions that the state and the parties have had.

4 We think, in short, that it is most  
5 appropriate to move the safety and the environmental  
6 contentions together and keep them together.

7 I would also note that there are various  
8 matters with which a ruling from the Board might  
9 impact the testimony on the environmental or NEPA-  
10 based contentions, and I say that with great respect.  
11 But from the state's perspective there are some open  
12 issues on that side of the docket, so to speak.

13 CHAIRMAN McDADE: Okay. Let me ask, as  
14 Mr. Turk pointed out in his May 26th letter, and also  
15 earlier during our conversation here this morning, the  
16 initial responses to the RAIs were published back on  
17 March 28th. You have had an opportunity to review  
18 them. Based on what you have received to date, does  
19 the State of New York anticipate filing new or amended  
20 contentions?

21 MR. SIPOS: Yes. I would like to address  
22 that chronology. I believe Entergy disclosed the RAI  
23 responses in the early part of April, on or about  
24 April 4th. I think those -- that communication was  
25 produced towards the end of April, and we have gotten

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1 that out to our experts. They are still reviewing it  
2 -- the RRAI, if you will, the response to request for  
3 additional information. And I do not have a final  
4 opinion from them as to that, although we are working  
5 diligently to reach that determination.

6 CHAIRMAN McDADE: Okay. So you would --  
7 based on what you just said, it appears to be  
8 somewhere between possible and probable.

9 MR. SIPOS: Yes, Your Honor.

10 CHAIRMAN McDADE: Okay. After the SER is  
11 published -- and assuming now we are still working at  
12 a mid to late August date -- how long would the State  
13 of New York need not to file new or amended  
14 contentions, but to advise the Board and the other  
15 parties whether or not you would be filing new or  
16 amended contentions? Would a week be enough?

17 MR. SIPOS: I think that's a difficult  
18 time of the year, mid-August, with expert vacations.  
19 I would like to suggest, if it were to come out, say,  
20 on or about the 15th of -- or I guess Mr. Roth said  
21 the 19th. I would like to suggest 30 days, which  
22 would take us into the middle of September.

23 CHAIRMAN McDADE: And, again, this was not  
24 when you would actually file them, but just simply  
25 when you would be able to advise the parties whether

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1 or not you would be filing new or amended contentions.

2 MR. SIPOS: Yes. Could I suggest the 20th  
3 of September on that? And the reason I'm suggesting  
4 four weeks for that is filing a contention is -- you  
5 know, is a significant step in preparing for that, or  
6 preparing not to do it is also a significant step.

7 And I just want to make sure that our  
8 experts would have the time to fully evaluate it, not  
9 on a sort of hyper-compressed or overly aggressive  
10 schedule, yet acknowledging that it is appropriate to  
11 make a determination and to disclose that promptly to  
12 the Board and to the parties.

13 CHAIRMAN McDADE: Okay. One of the  
14 contentions filed by Riverkeeper was also implicated  
15 in Mr. Turk's letter. Riverkeeper, what do you think?  
16 Have you had an opportunity to review the RAI  
17 responses? And do you anticipate that you would be  
18 filing a new or amended contention based on what you  
19 have seen so far?

20 MS. BRANCATO: Your Honor, this is Ms.  
21 Brancato from Riverkeeper. We also, like New York  
22 State, did send this recently to our expert after we  
23 received it from Entergy in our discovery request.  
24 And he is currently reviewing it, and we are  
25 determining whether an amended contention would be

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1 appropriate.

2 CHAIRMAN McDADE: Okay. Any of the other  
3 parties -- Clearwater, Ms. Greene, have you had an  
4 opportunity to review them? Do you anticipate filing  
5 new or amended contentions?

6 MS. GREENE: Your Honor, we have really  
7 been focusing on our current contentions in  
8 preparation for the June 20th proposed deadline. And  
9 we have also submitted other contentions related in  
10 particular to our environmental justice contention and  
11 haven't heard back.

12 So not to dodge the question, but I'm just  
13 saying where our focus has been, and our concern is  
14 that it's difficult for us to submit testimony on our  
15 current contention without knowing the status of, in  
16 particular, the expanded and amended environmental  
17 justice contention.

18 CHAIRMAN McDADE: I understand. But right  
19 now, the focus is just on the supplemental SER. And  
20 my question -- and the answer can simply be, no, you  
21 know, we haven't had sufficient chance to analyze it  
22 yet to make a judgment one way or the other.

23 And I take it from what you've said that's  
24 your position at this point with regard to the SER,  
25 the request for additional information, and the

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1 responses, that you haven't had sufficient time, given  
2 your other activities, to review them to be able to  
3 offer an opinion as to the likelihood of new or  
4 amended contentions based on that. Am I correct, Ms.  
5 Greene?

6 MS. GREENE: That is correct, sir.

7 CHAIRMAN McDADE: Okay. Do any of the  
8 other parties have anything to add on this particular  
9 issue? Connecticut?

10 MR. SNOOK: No. Pretty much the same as  
11 everyone else's comments.

12 CHAIRMAN McDADE: All right. Cortlandt?

13 MS. ALBIN: No, Judge.

14 CHAIRMAN McDADE: Okay. I don't believe  
15 -- is there anyone on the line yet from Westchester,  
16 New York City, or Buchanon?

17 (No response.)

18 MS. GREENE: Your Honor, I'd like to say  
19 that I believe Steve Filler was able to get on the  
20 call, so I just -- for the record, I believe Steve is  
21 on the call now.

22 CHAIRMAN McDADE: Who was that just  
23 speaking?

24 MR. FILLER: Stephen Filler for  
25 Clearwater.

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1 CHAIRMAN McDADE: Okay. And that was Ms.  
2 Greene just speaking before, for the Court Reporter,  
3 correct?

4 MS. GREENE: Yes.

5 CHAIRMAN McDADE: Mr. Bessette, Mr.  
6 O'Neill, Ms. Sutton, for Entergy, anything that you  
7 want to add or comment on what we've discussed so far?

8 MR. BESSETTE: Yes, Your Honor. First, I  
9 would like to -- I believe the Board's original  
10 scheduling order gave the parties 30 days to file new  
11 or amended contentions, which is consistent with the  
12 -- you know, the history of ASLB proceedings. So our  
13 initial point is that the parties should have  
14 submitted any new or amended contentions based on our  
15 RAI responses that were issued in late March.

16 And we understand there may be new RAIs  
17 coming out, so I think as a threshold matter that  
18 should be, per the Board's scheduling order, the  
19 general rule of thumb. Therefore, to the extent that  
20 the parties are taking much longer to review the RAI  
21 responses, I want to make sure we are not waiving any  
22 ability to argue that they are late.

23 With regard to seeking four weeks just to  
24 review the SSER to determine if the parties are even  
25 going to submit new contentions, again, we would

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1       assert that is contrary to the Board's order. If they  
2       are going to file new contentions, they should be in.  
3       But, again, we would argue that that information is  
4       already available.

5                 With regard to bifurcation, Your Honor, we  
6       would like to explore that earlier, particularly with  
7       regard to the testimony.

8                 As the parties have mentioned, we  
9       understand there are several issues pending before the  
10       Board. That may impact some of the other contentions.  
11       But if the contentions are not impacted by the FSER or  
12       the environmental contentions, we would assert they  
13       should go forward on schedule.

14                CHAIRMAN McDADDE: This is Judge McDade  
15       again. With regard to the timeliness of that, and not  
16       making a ruling at this point in time, but just sort  
17       of initial reaction, it appears that based on the  
18       responses to the RAIs, which came in in March,  
19       March 28th, the NRC staff believes that it needs four  
20       or five months in order to properly assess this and  
21       review it.

22                Is it your position, given the fact now  
23       that we are dealing with the staff's SER, that the  
24       trigger for filing new or amended contentions would  
25       have been 30 days after March 28th, as opposed to

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1 after the staff has completed its supplemental RAIs,  
2 responses to supplemental RAIs, and then the  
3 assessment, the evaluation of the staff of this  
4 information to see what additional changes, if any,  
5 need to be made in the SER as the trigger? Is that  
6 the position of Entergy?

7 MR. BESSETTE: Well, Your Honor, like  
8 original contentions that applicants must file on our  
9 license renewal application, we believe that is  
10 similar here. I mean, once -- if applicant had a  
11 contention on our original safety evaluation -- our  
12 original application, they had to file them within 30  
13 days.

14 Of course, the other -- if there is any  
15 new and significant information, or new information in  
16 the SSER, they could consider that. But I believe the  
17 -- you know, the regulatory history of our proceedings  
18 is that they have to file their contentions based on  
19 our application.

20 So, I mean, obviously, not having the SER  
21 in hand to review, it's difficult to answer  
22 completely. But to the extent they are challenging  
23 information on any revisions to Entergy's AMP or AMP  
24 programs, I believe they have 30 days from the date of  
25 March 28th or the date that the response was

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1 available.

2 CHAIRMAN McDADE: Okay. Thank you. I  
3 think I understand your position.

4 MR. BESSETTE: Thank you, Your Honor.

5 CHAIRMAN McDADE: One other issue that I  
6 would like to raise and -- as part of this task the  
7 staff was following up on. This is not an electronic  
8 hearing case. We are getting ready to the point where  
9 direct testimony will be filed, and I anticipate at  
10 this point there will be a delay. We will be issuing  
11 an order with regard to that, and what the trigger  
12 dates will be for the filing of direct testimony.

13 But as we get towards that, the question  
14 is whether or not the parties wish to revisit the  
15 issue of electronic filing of that testimony. And  
16 what I would ask the staff to do is to coordinate, and  
17 within 30 days to get back to the Board. In order to  
18 switch this to an electronic filing case, all of the  
19 parties have to be in agreement.

20 So what I would ask the staff to do is to  
21 pull the other parties, and then just to submit to the  
22 Board within 30 days a letter indicating that the  
23 parties -- either one or more of them opposes, whether  
24 the parties wish to switch to an electronic hearing.

25 Judge Lathrop, do you have anything

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1 further?

2 ADMIN. JUDGE LATHROP: I do not.

3 CHAIRMAN McDADE: Judge Wardwell?

4 ADMIN. JUDGE WARDWELL: I do not.

5 CHAIRMAN McDADE: Do any of the parties  
6 have anything further before we ring off from this  
7 particular status conference?

8 MR. SIPOS: Judge, this is John Sipos from  
9 the State of New York. I have a couple of questions,  
10 if I may. Regarding the last item concerning  
11 electronic filing, if all the parties were to agree to  
12 transfer this case into the electronic docket, would  
13 the ASLB Judges anticipate requesting loose-leaf  
14 binders of material at the -- before the hearing  
15 containing testimony, reports, and exhibits? Or would  
16 it be the Board's experience or preference to dispense  
17 with the -- what is typically the case in federal  
18 Court of, you know, the large black binders with all  
19 the material?

20 I ask, because I have not -- I guess I do  
21 not have experience with a complete electronic docket  
22 case before an ASLB.

23 CHAIRMAN McDADE: Well, that is something  
24 we would like to have input from the parties on, not  
25 necessarily unanimous, experience with electronic

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1 docket. I, for one, based on my experience, Mr.  
2 Sipos, is very similar to yours. In my practice, when  
3 I was litigating, you would bring in the binders, that  
4 they would be tabbed, they would be highlighted, they  
5 would be made user-friendly for the trier of fact.

6 And there are some individuals who are  
7 more technically oriented than I who work through  
8 electronic documents much quicker than they work  
9 through paper documents. And, you know, what we are  
10 trying to do is something that is going to be easiest  
11 for the parties, and the Board will adjust to that.

12 So at this point, I ask you all to just be  
13 considering the options of, one, how you think it  
14 would be best for you to present your case, and decide  
15 whether or not you want to switch to an electronic  
16 filing or not.

17 Now, I can tell you that in the event that  
18 you switch to an electronic docket there will be at  
19 least one member of the Board who will print off all  
20 of the electronic documents and put them in a folder  
21 and tab them and read them and highlight them.  
22 Whether there will be more than one member of the  
23 Board who does that, as opposed to keeping them in  
24 electronic form, is speculative at this point in time.

25 But, you know, all I wanted to do is to

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1 just simply raise it for the parties. Some parties  
2 believe that it is more convenient to file  
3 electronically. Others believe that it is less  
4 convenient to file electronically.

5 So what I wanted to do is just reinitiate  
6 that discussion among the parties, and, as I said,  
7 within 30 days, to get the input of the parties of,  
8 yes, we would like to go this way, or, no, we would  
9 not.

10 MR. SIPOS: Thank you, Your Honor. I  
11 appreciate that. There was another issue that I will  
12 just raise -- and I don't know that there's any  
13 resolution about it, but I just wanted to raise it for  
14 the Board's -- just for their knowledge.

15 In December of 2010, NRC staff issued  
16 another revision to the Generic Aging Lessons Learned  
17 document known by its acronym GALL, G-A-L-L. And so  
18 this is GALL Revision 2. And when it came out, I had  
19 inquired whether there was any position on the staff  
20 as to whether staff was going to view it as  
21 applicable, recognizing that it is a guidance  
22 document. And at that time, there did not appear to  
23 be a staff position on it.

24 I have raised it recently again with both  
25 representatives from Entergy and NRC staff, and I

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1 don't wish to speak for them or even place words in  
2 their mouth. But it is my understanding, based on  
3 those discussions, that Entergy's view is that GALL  
4 Revision 2 would not apply. And it is my  
5 understanding from conversations with staff that  
6 either it would not apply or they have not reached a  
7 determination as to whether GALL Revision 2 would have  
8 any applicability here.

9 I just -- it's an issue that has come up  
10 in recent conversations, and I just wanted to place  
11 that on the record.

12 CHAIRMAN McDADE: And I assume at this  
13 point, Mr. Turk, Mr. Roth, the staff is not in a  
14 position to articulate its view on this? Or are you?  
15 Mr. Turk? Mr. Roth?

16 MR. TURK: Your Honor, Sherwin Turk. It  
17 may be that the people in the room in Rockville with  
18 Mr. Roth could advise him their current view. But  
19 it's my understanding that the staff is not applying  
20 GALL Rev 2 to plants like Indian Point -- Indian  
21 Point, whose application came in so many years ago and  
22 for which the SER was completed already some time ago.

23 We are informed by GALL Rev 2, but we are  
24 not directly applying it to Indian Point.

25 CHAIRMAN McDADE: Okay. Thank you.

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1 MR. TURK: And if anyone in the room with  
2 Mr. Roth has any other information that Mr. Roth needs  
3 to communicate, I would ask that they be given a  
4 moment to caucus to make sure that we have a clear  
5 record.

6 And while they're doing that, I wanted to  
7 mention two other things, Your Honor. First of all,  
8 with respect to the number of RAIs that are still  
9 going to be issued, that have not come out yet, from  
10 what I have seen so far it will be a very limited  
11 number, probably on the order of roughly three pages  
12 of RAIs. So it's not going to be an extensive amount  
13 of questions.

14 And the last thing I wanted to mention is  
15 the trigger dates for contentions. Our view is that  
16 NRC juris prudence requires that when new information  
17 is available, that is the trigger date. Here, the  
18 applicant's responses to the RAIs came out March 28th.  
19 They were made public some time in April. And it  
20 would be the public availability of information that  
21 should serve, in my view, as the proper trigger date  
22 for new contentions.

23 CHAIRMAN McDADE: Well, Mr. Turk, at this  
24 point, isn't the real issue not the position of  
25 Entergy but, rather, the position of the NRC staff?

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1 We're already at a point where a final SER has  
2 published, and this will impact a supplement to that  
3 SER. Isn't the real issue at this point what, if  
4 anything, the NRC staff does with this new  
5 information?

6 It may be that there is nothing new in the  
7 SER. It may be that the SER changes things  
8 significantly. Wouldn't it be prudent, from a  
9 litigation standpoint, for the -- at this point, the  
10 Intervenors, given the fact that these documents are  
11 leading towards a supplement to the SER, to -- instead  
12 of filing based on an unknown, file based on the  
13 staff's review?

14 MR. TURK: No, Your Honor. In fact, the  
15 case law is directly opposite. The case law informs  
16 us that it's the adequacy of the application that is  
17 at issue, and the information that applies to the  
18 adequacy of the information -- to the adequacy of the  
19 application. It is the information that came out in  
20 the applicant's responses to RAIs.

21 Both the staff and Intervenors are then  
22 tasked with evaluating the information. For the  
23 staff, they are required to issue their evaluation.  
24 Intervenors are required to consider the information  
25 and decide whether or not the information causes them

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1 to say that the application is inadequate. And they  
2 get that information based upon their review of what  
3 the applicant has submitted.

4 CHAIRMAN McDADE: Okay. So it's your  
5 position here that, although the -- it is -- and I'm  
6 not saying it isn't, quite frankly, I believe that it  
7 is -- that it is appropriate for the NRC staff to take  
8 five months to review and assess this information.  
9 It's the obligation of the Intervenors to do that in  
10 less than a month.

11 MR. TURK: Or they can come to the Board  
12 and file a motion asking for more time. But, yes,  
13 that is the case law, that is what they are required  
14 to do.

15 CHAIRMAN McDADE: Okay. I think I  
16 understand your position.

17 Okay. Anything further?

18 MS. GREENE: Your Honor, this is Manna  
19 Greene from Clearwater. I would just like some  
20 guidance to understand about the question that I  
21 raised. It was premature in the discussion. But we  
22 have an amended and expanded contention pending, and  
23 it's integrally related to the contention that has  
24 been accepted, and --

25 CHAIRMAN McDADE: The Board will be ruling

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1 on it very shortly.

2 MS. GREENE: Okay. Thank you. But if the  
3 ruling is favorable, it -- and I certainly hope it  
4 will be -- it would not give us very much time, by  
5 June 20th. You talked about an extension. Does that  
6 relate at all to your decision?

7 CHAIRMAN McDADE: Ms. Greene, at this  
8 point, you know, I -- I thought it was clear from our  
9 discussion that we are going to have an extension.  
10 The extension will be until some period of time not  
11 yet determined --

12 MS. GREENE: Okay.

13 CHAIRMAN McDADE: -- after the SER  
14 supplement is published, and the staff anticipates  
15 that the SER supplement will not be published prior to  
16 the 19th of August. So at this point, you can sort of  
17 view that we are in hiatus until at least the 19th of  
18 August.

19 We will be issuing an order shortly that  
20 will express the Board's opinion as to what the new  
21 trigger dates should be as far as new or amended  
22 contentions based on a supplemental SER. But there is  
23 not going to be any filing of any direct testimony  
24 prior to that date, and the ruling on your amended and  
25 new contentions will issue well before that. Does

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1 that answer your question?

2 MS. GREENE: Very clearly. Thank you,  
3 sir.

4 CHAIRMAN McDADE: Okay. Anything further  
5 before we ring off?

6 MR. MUSEGAAS: Your Honor, this is Philip  
7 Musegaas from Riverkeeper. Just a couple of very  
8 quick comments. First, I wanted to make it clear that  
9 we -- Riverkeeper supports the comments made by the  
10 New York Attorney General's Office regarding the  
11 proposed amount of time that we would be looking for  
12 to review the supplemental SER.

13 And in addition to that, we would just  
14 note, regarding the discussion about the amount of  
15 time given the staff to review responses to RAIs,  
16 first, as Intervenors, if that interpretation is  
17 correct, that seems to prejudice Intervenors' ability  
18 to participate in the hearing properly.

19 I just wanted to note that. Thank you.

20 CHAIRMAN McDADE: Okay. At this point,  
21 before we ring off, what I'd like to do is to just run  
22 through, for the Court Reporter, at least as I recall,  
23 the individuals who have spoken. For the NRC staff,  
24 it was Mr. Turk and Mr. Roth, T-U-R-K and R-O-T-H.

25 For New York State, it was Mr. Sipos, S-I-

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1 P-O-S. For Riverkeeper, it was both Ms. Brancado, B-  
2 R-A-N-C-A-D-O.

3 MS. BRANCATO: B-R-A-N-C-A-T-O.

4 CHAIRMAN McDADE: I'm sorry. And Mr.  
5 Musegaas, M-U-S-E-G-A-A-S?

6 MR. MUSEGAAS: Yes, Your Honor. That's  
7 correct.

8 CHAIRMAN McDADE: Okay. For Entergy, I  
9 wasn't quite certain who had spoken. Was that Mr.  
10 Bessette or Mr. O'Neill?

11 MR. BESSETTE: That was Mr. Bessette, Your  
12 Honor.

13 CHAIRMAN McDADE: Okay. B-E-S-S-E-T-T-E.

14 MR. BESSETTE: That's correct.

15 CHAIRMAN McDADE: For Clearwater, it was  
16 Manna Jo Greene, G-R-E-E-N-E.

17 MS. GREENE: Yes, Your Honor.

18 CHAIRMAN McDADE: Robert Snook for  
19 Connecticut, S-N-O-O-K. Ms. Albia, A-L-B-I-A, for  
20 the --

21 MS. ALBIN: A-L-B-I-N, Your Honor.

22 CHAIRMAN McDADE: I'm sorry, A-L-B-I-N.  
23 Jessica Albin for the Town of Cortlandt.

24 Was there anybody else who spoke during  
25 the course of this?

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1 MR. FILLER: This is Stephen Filler, and  
2 I just noted I was here.

3 CHAIRMAN McDADE: Okay. Thank you.  
4 Okay. Anything else to be taken up from  
5 NRC staff?

6 MR. ROTH: No, Your Honor. David Roth.

7 CHAIRMAN McDADE: From Entergy?

8 MR. BESSETTE: No, Your Honor.

9 CHAIRMAN McDADE: From the Intervenors,  
10 New York?

11 MR. SIPOS: This is John Sipos. No, Your  
12 Honor.

13 CHAIRMAN McDADE: Riverkeeper?

14 MR. MUSEGAAS: Philip Musegaas. No, Your  
15 Honor. Thank you.

16 CHAIRMAN McDADE: Clearwater?

17 MS. GREENE: Manna Greene. No, Your  
18 Honor.

19 CHAIRMAN McDADE: And from the interested  
20 government entities, Connecticut?

21 MR. SNOOK: No, Your Honor.

22 CHAIRMAN McDADE: Cortlandt?

23 MS. ALBIN: No, Your Honor.

24 CHAIRMAN McDADE: And I take it that no  
25 one from Westchester, New York City, or Buchanon has

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1 yet rung in on this conference?

2 (No response.)

3 Judge Wardwell, anything further?

4 ADMIN. JUDGE WARDWELL: Nothing from here.

5 CHAIRMAN McDADE: Judge Lathrop?

6 ADMIN. JUDGE LATHROP: No.

7 CHAIRMAN McDADE: Okay. We will be  
8 getting an order out based on this conference shortly.  
9 Thank you very much.

10 (Whereupon, at 10:13 a.m., the  
11 proceedings in the foregoing matter were  
12 concluded.)

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