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NUCLEAR REGULATORY COMMISSION

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Indian Point Nuclear Generating Plant

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

(1:35 p.m.)

JUDGE McDADE: We are here in the matter of Entergy Nuclear Operations, Indian Point Nuclear Generating Units 2 and 3, Docket Number 50-247-LR and 50-286-LR, ASLBP No. 07-858-03-LR-BD01.

We are here at a status conference to go over a few matters I want to run through, and then we will ask the parties whether or not there are any other matters that they believe should be addressed at this particular point in time.

First has to do with the new contention that was most recently introduced, New York 38. The question is to Entergy and the staff. First, to the NRC staff, what is the status on the mandatory disclosures with regard to New York 38? Have they been completed? And, if not, Mr. Turk, when do you anticipate they would be?

MR. TURK: Your Honor, the staff does its disclosures differently from other parties.

JUDGE McDADE: We understand.

MR. TURK: We disclose documents related to the application whether there's a pending contention or not. So any documents that we would have related to commitments from the applicant,

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1 which is the subject of Contention 38, would be
2 disclosed along with all of our other documents on a
3 routine basis as the proceeding progresses.

4 JUDGE McDADE: So what you're stating is
5 that you have no additional documents based on New
6 York 38, that in your view the disclosures necessary
7 by the staff have been made.

8 MR. TURK: Yes.

9 JUDGE McDADE: Okay. From Entergy?

10 MR. BESSETTE: Yes, Your Honor. This is
11 Paul Bessette. As I have discussed with Mr. Sipos
12 and Mr. Musegaas, because the admitted contention
13 relates to a large part to issues addressed in the
14 SER supplement and RAIs, we have already disclosed
15 numerous documents related to those contentions.

16 To the extent there are any new and
17 additional documents, particularly as to the
18 admitted contention, our disclosures are due
19 tomorrow, and there will be I think about 10 to 15
20 new documents on those, although many of them will
21 be just references.

22 We want to emphasize, though, that, you
23 know, because this is an operating plant and
24 programs are ongoing, and we are approaching the
25 period of extended operation, we will continue to

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1 implement programs and, you know, update procedures,
2 both on a site-wide and fleet basis.

3 So we just want to emphasize that there
4 is an ongoing -- there may be ongoing documents.
5 But to the extent we believe there are any new
6 documents, they will be disclosed tomorrow.

7 JUDGE McDADE: Okay. And with regard to
8 those documents, you said probably 10 to 15
9 documents. Can you give us an idea of the volume
10 involved? Can you give me the number of pages?

11 MR. BESSETTE: Yes. You mean, a
12 document could be one page or a thousand pages. I
13 need to confer with my colleagues. One second, Your
14 Honor.

15 JUDGE McDADE: Okay.

16 (Pause.)

17 MR. BESSETTE: Your Honor, they vary.
18 Some of the documents are not necessarily Entergy
19 documents. They may be industry references like
20 EPRI reports, and some of those are long. But,
21 again, those tend to be industry references, not
22 necessarily Enterty references.

23 JUDGE McDADE: Okay. What I'm trying to
24 do is the next question has to do with the
25 submission of the direct testimony, and I'm trying

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1 to get an idea -- let me ask New York, do you
2 anticipate filing your direct testimony and
3 statement of position with regard to New York 38 on
4 December 22nd with the rest, or do you need to see
5 these documents and review them before you can make
6 a commitment?

7 MR. SIPOS: Judge, this is John Sipos
8 for the state of New York. It would be the latter.
9 The state of New York respectfully requests the
10 opportunity to review these documents that Entergy
11 has alluded to producing tomorrow, and oftentimes
12 documents such as EPRI reports are, as Mr. Bessette
13 correctly pointed out, can be lengthy and can have a
14 fair amount of detail in them.

15 We would also, you know, be able to --
16 we would -- the state wishes to be able to review
17 those in a, you know, comprehensive and systematic
18 order. So we would respectfully request that -- and
19 suggest that New York 38/Riverkeeper 5, could not be
20 prepared for the 22nd of December.

21 I also have -- I would like to respond,
22 if I might, Your Honor, to a question that the Court
23 asked NRC staff counsel regarding mandatory
24 disclosures. The state is concerned about the scope
25 of staff's disclosures in -- as a general matter,

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1 and -- but with respect to corrosion and primary
2 water stress corrosion cracking, there have been
3 some documents that the state actually has located
4 on ADAMS recently concerning that phenomena. But
5 those documents have not been produced or disclosed
6 or designated by the staff.

7 There was a conference in India last
8 month discussing corrosion, and there was also some
9 PowerPoints from a month or two ago. We provided
10 the -- well, the state has disclosed those
11 documents, but it does -- the state does have some
12 concerns about what the staff understands to be the
13 scope of its discovery obligations, and the state
14 would respectfully suggest that the discovery is
15 broader than a conversation in our RAI documents or
16 responses to RAIs between the applicant and the
17 regulatory staff, that it would go to underlying
18 documents that may have provided the impetus to
19 start that discussion, such as perhaps the EPRI
20 reports or other documents from the industry or
21 industry operating experience. And so I would just
22 like to note that for the record.

23 JUDGE McDADE: Okay. Well, let me note
24 something for the record as well. I mean, the issue
25 right now, we are rapidly getting to the point where

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1 we are going to be moving ahead towards a resolution
2 of this matter. What we need to do is to resolve
3 all of the pieces, so things don't get delayed.

4 There is nothing for the Board with
5 regard to New York 38/Riverkeeper 5, to do at the
6 moment. What I would direct is that New York and
7 Riverkeeper get together with the NRC staff to
8 discuss promptly what -- and to see if you can reach
9 a meeting of the minds with regard to the scope of
10 the mandatory disclosures.

11 If there is a difference of opinion --
12 in other words, if the staff believes that documents
13 are not properly disclosed -- should not be properly
14 disclosed, or need not be disclosed, and New York
15 and Riverkeeper disagree, then it would be necessary
16 for New York and Riverkeeper -- New York or
17 Riverkeeper or the two jointly -- to file a motion
18 to compel in order that we would then have something
19 in front of us that we could rule on as to the
20 appropriate -- whether or not all of the appropriate
21 disclosures have been made.

22 And, you know, again, given the time, we
23 would urge you to do that as quickly as possible,
24 and specifically in order to make the word "quickly"
25 have, you know, some sort of specifics, would ask

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1 that within a week from today, if you anticipate a
2 motion to compel will be necessary for you to notify
3 the Board of that, and to also notify the Board as
4 to a reasonable date when that motion to compel
5 could be filed.

6 I realize that it may take a while to
7 have these discussions, but specifically they are
8 going to happen over the next week, that in the
9 event a motion to compel is necessary, it may take a
10 little time to put that together.

11 And I'm sure, based on our previous
12 experience, that any request for a period of time
13 will be reasonable. But what we would want is, in a
14 week -- you know, a week from today to be notified
15 whether you anticipate a motion to compel will be
16 necessary, and, if so, a suggested date by which
17 that could be submitted.

18 Mr. Sipos, is that agreeable?

19 MR. SIPOS: It is, Judge. We always
20 endeavor to follow the Court's directives. I will
21 note that it's coming at a time of intense resource
22 allocation, given other deadlines. But if that is
23 the Court's directive, we will move forward and
24 engage in those discussions with Mr. Turk and NRC
25 staff.

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1 We have -- the first time -- well,
2 following the November 30 disclosure, in fact that
3 night that we got it from NRC, I wrote Mr. Turk a
4 letter and said it seemed that there was an issue
5 about scope, because we had identified -- in fact,
6 we had disclosed four documents I believe that went
7 to primary water stress corrosion cracking and other
8 related issues, and hadn't seen anything in response
9 or other documents from staff.

10 And, again, this is outside of the RAI -
11 - RAI communication process. It is what we would
12 understand -- the state understands to be included
13 in the concept of relevancy. It's not just the mere
14 dialogue between the applicant and the regulator.

15 JUDGE McDADE: No. I understand, and I
16 also understand that obviously New York 38/
17 Riverkeeper 5 are going to be on a different
18 schedule than the rest. But what we anticipate is
19 that it will be done in an expedited manner, so that
20 before we get to a hearing it will be able to catch
21 up with the rest and hopefully be able to proceed to
22 the hearing on all of the contentions
23 simultaneously, if at all possible. And what we are
24 directing is just simply that there will be
25 discussions over the next week.

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1 And from the standpoint of Riverkeeper,
2 is that a problem? Do you need more time? Are you
3 available?

4 MR. MUSEGAAS: We are available, Judge,
5 to work with the Attorney General and the NRC staff,
6 yes.

7 JUDGE McDADE: Okay. Who is going to be
8 taking the lead on this? New York or Riverkeeper?

9 MR. MUSEGAAS: It -- go ahead, Mr.
10 Sipos.

11 MR. SIPOS: Well, I --

12 JUDGE McDADE: Apparently -- this is
13 Judge McDade again. Apparently, that hasn't been
14 decided between the parties yet. But within the
15 week, please let us know as well who is going to be
16 taking the lead with regard to New York 38 in
17 addition to whether or not you anticipate it will be
18 necessary to have a motion to compel.

19 Likewise, if you are making progress,
20 you know, I don't want to precipitate a motion to
21 compel, if you are making progress at reaching a
22 resolution as to the appropriate scope of the
23 document production by the NRC staff. But we do
24 want a report back no later than close of business
25 next Tuesday.

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1 Anything else with regard to New York 38
2 from New York or Riverkeeper?

3 MR. MUSEGAAS: Not from Riverkeeper,
4 Your Honor. Thank you.

5 JUDGE McDADE: From the NRC staff, Mr.
6 Turk?

7 MR. TURK: Yes, one point, Your Honor.
8 We are not prepared to discuss the issue raised by
9 Mr. Sipos today. It was not on his list of issues
10 that he wished to discuss in this conference call.
11 But I would note that the staff's disclosures have
12 been in conformance with standard staff disclosure
13 practices.

14 The documents that Mr. Sipos is taking
15 about actually are disclosed in ADAMS. In fact, he
16 cited the ADAMS numbers where he obtained,
17 apparently, these documents. And he -- his
18 discussion reflects a fundamental misunderstanding
19 of staff's disclosure obligations.

20 We have a communication with Mr. Sipos
21 two years ago, almost to the date, about the very
22 same issue, and we thought the matter was resolved
23 two years ago. So he is raising an issue that he
24 could have raised long ago with you and failed to,
25 but we will be happy to talk to New York state or

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1 Riverkeeper or both about staff disclosure
2 obligations.

3 JUDGE McDADE: And, again, from our
4 standpoint, all we need to know is, within a week,
5 whether or not there is anything that the Board
6 needs to do with regard to this. It may be that the
7 staff is correct in the scope. It may be that New
8 York is correct. We don't know. We are not part of
9 it at this point in time. See if you can work it
10 out. And if you can't work it out, then, you know,
11 the next step would be a motion to compel by the
12 party that wants the documents.

13 Okay. Entergy, I take it you have no
14 dog in that fight one way or the other, correct?

15 MR. BESSETTE: No, Your Honor. But I
16 think it's an appropriate time just to raise one
17 question with regard to the order Your Honors issued
18 a few minutes ago on the motion for clarification
19 with regard to the scope of that contention. Would
20 that be appropriate to ask a question right now?

21 JUDGE McDADE: Sure.

22 MR. BESSETTE: I understand -- we have
23 read the order quickly, and I understand Your Honor
24 has determined that the contention is, you know, as
25 you have defined, broadly admitted. But we just

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1 want to -- for purposes of mandatory disclosures, we
2 wanted to confirm, though, that it is still bounded
3 by the issues raised in the SER supplement, which
4 was the impetus for the original contention.

5 I assume that's correct, because that
6 was the basis, the whole originating point, and any
7 new commitments described in that FSER. So I just
8 want to make sure we are bounded by that, so we all
9 have a common understanding on how to meet our
10 mandatory disclosures going forward.

11 JUDGE McDADE: Okay. I am little bit
12 reluctant to give an answer off the top of my head.
13 My first reaction is to respond affirmatively to
14 what you have just said, Mr. Bessette.

15 But, you know, what we did want to make
16 clear is that it's not limited solely to Commitment
17 41, that they alleged and we admitted a broad
18 contention, that they offered multiple bases in
19 support of that contention, but that from our
20 standpoint we are not limiting them solely to a
21 challenge to Commitment 41, but, rather looking, you
22 know, broader with regard to the aging management
23 plans relating to the steam generators.

24 So with that said, hopefully that is
25 sufficient guidance for you to review the documents

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1 to see if anything else needs to be furnished to New
2 York state, again, to have any discussions with New
3 York state based on the scope of those disclosures
4 and the needed disclosures within the next week.

5 And when New York reports back to us
6 with regard to their discussions with the staff,
7 they can report back with regards to their
8 discussions with Entergy to see whether or not there
9 is a meeting of the minds, or, alternatively, there
10 will be a motion to compel filed by New York or
11 Riverkeeper or both.

12 MR. BESSETTE: Thank you, Your Honor.
13 And I think, as hopefully Mr. Sipos and Mr. Musegaas
14 would recognize, we have tried to stay out of the
15 motion to compel and work cooperatively. So based
16 on that clarification, we will address any further
17 questions they may have.

18 JUDGE McDADE: Okay. The next item I
19 wanted to raise had to do with the, you know, bio-
20 opinion that Marine Fisheries has come out with.
21 But before we do that, I wanted to take just a
22 moment to discuss a quick matter with my colleagues.
23 We are going to put you on mute, and we will be back
24 in just a moment.

25 (Whereupon, the proceedings in the

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1 foregoing matter went off the record at
2 1:53 p.m. and went back on the record at
3 1:54 p.m.)

4 JUDGE McDADE: Okay. An issue raised --
5 this is Judge McDade again. An issue raised by my
6 colleagues that I missed -- and one of the issues --
7 the direct testimony is due on December 22nd. As we
8 have already discussed, the direct testimony for New
9 York 38/Riverkeeper 5 is not going to be due on
10 December 22nd.

11 Based on our earlier discussion, the
12 state indicated that it wants to see the new
13 documents that are going to be disclosed tomorrow.
14 There also will be an issue with regard to
15 disclosures coming from the staff.

16 Mr. Sipos, what I would ask is this: if
17 you are able to now, please do so. And if not, when
18 you report back to us in a week, notify us your
19 projected date of when the staff would be prepared
20 to move forward with the direct testimony and the
21 statement of position with regard to New York 38.

22 Can you give any kind of an estimate at
23 this point?

24 MR. SIPOS: I can't right now, and I --
25 as I understand your directive, Your Honors wish me

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1 to notify you when the state would be ready to move
2 forward with its direct testimony. I am unable to
3 do that today, but I will do my best to provide that
4 information promptly.

5 One -- I guess there is two -- at least
6 two factors that I will need to review. One is the
7 -- what I would generally refer to as the discovery
8 matters that we have just discussed, but also
9 arrangements for expert assistance as well. And I
10 will endeavor to report back to Your Honors next
11 Tuesday. Is that -- was that your directive, next
12 Tuesday?

13 JUDGE McDADE: Yes. And, obviously, in
14 the event that you believe motions to compel are
15 going to be necessary, that will -- those would need
16 to be resolved before the direct testimony on 38/5
17 is due.

18 But hopefully you will be able to
19 resolve your issues with regard to the scope of
20 disclosures and either tell us next Tuesday, "Yes,
21 we are now in a position, we have reviewed the
22 documents, and we believe that we would be able to
23 proceed with the testimony by X," so that we would
24 then be able to review the reasonableness of that,
25 or, if not, report to us that you aren't able and

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1 advise us of what needs to happen in the interim
2 before you would be in a position to advise us of
3 when that testimony could be filed.

4 MR. SIPOS: Yes, Your Honor.

5 JUDGE McDADE: And, again, I'm saying
6 this to you, Mr. Sipos -- and I realize with regard
7 to who is going to take the lead in that, you or
8 Riverkeeper, you know, at this point we really --
9 you know, it could be either of you.

10 MR. SIPOS: Yes, thank you, Your Honor.
11 That's understood. Thanks.

12 JUDGE McDADE: Okay. Now, a question
13 arose with regard to a review by the ACRS. Now --
14 and with regard to the scope of that review and the
15 impact of it. From the standpoint of, first, the
16 NRC staff, do you, Mr. Turk -- does the NRC staff
17 believe there is any reason for anything to be
18 delayed pending the ACRS review?

19 MR. TURK: There is no pending ACRS
20 review, Your Honor. The ACRS completed its review
21 of the staff's SER and has indicated to the staff
22 that they do not seek to review the SER supplement.

23 The email that was made public has to do
24 with an ACRS request that they be kept up to date on
25 what is happening with the application. And I don't

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1 know that anything further will be done with that,
2 but it is not an ACRS review. It's really more in
3 the nature of a request for status reports. So
4 there is no ACRS review contemplated.

5 JUDGE McDADE: Okay. Thank you, Mr.
6 Turk.

7 MR. SIPOS: Your Honor, this is John
8 Sipos. If I may, and perhaps I'm interrupting --

9 JUDGE McDADE: No, go right ahead.

10 MR. SIPOS: The state saw that email,
11 and I'm sure -- I think it was between at least one
12 NRC person, perhaps two, and possibly Entergy or
13 maybe it went on to Entergy management. And the
14 ACRS, by our reading -- perhaps we're wrong -- said
15 that there would not be, you know, an imminent,
16 specific meeting, you know, following the SSER from
17 late August.

18 But the email is pretty clear. It says,
19 "But there is a catch," and they want to come back
20 and discuss, you know, all that is going on at the
21 plant. And if there is going to be such a review,
22 the state is not -- the state would like to be kept
23 apprised of that, and understand when it is and what
24 its schedule is going to be.

25 It didn't seem from our reading that it

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1 was, you know, carte blanche. It was perhaps,
2 "Let's look at many Indian Point issues at one
3 time," which would include license renewal.

4 MR. TURK: Again, Mr. Sipos
5 misunderstands the communication that he is
6 referring to. I have given a correct summary of it.
7 He is simply wrong.

8 JUDGE McDADE: Okay. Well, at this
9 point in time, you know, basically it falls in this
10 category. The Board does not intend, at this point,
11 to delay our proceedings pending anything further
12 from the ACRS.

13 In the event that New York or any of the
14 other parties to this proceeding felt that a delay
15 pending further review by the ACRS would be
16 appropriate, it would be necessary to promptly file
17 a motion outlining, you know, what you want and why.
18 And at that point, the Board would then be in a
19 position to rule on it.

20 But at this point in time, you know,
21 based on the, you know, representations of Mr. Turk,
22 and also based on, you know, just the face of the
23 email itself, it doesn't appear that there is
24 anything that would be coming down the road from the
25 ACRS that potentially could impact our decision in

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1 this matter.

2 We are going to be reviewing the
3 testimony where, you know, these contentions are
4 directly addressed by the parties, and the
5 interested government entities, and what, if
6 anything, the ACRS might do doesn't seem that it
7 would impact our decision.

8 But in the event that New York or any of
9 the other parties or any of the interested
10 government entities believe that there was some
11 reason to delay, it would be necessary for you to
12 promptly file a motion for that. And when we saw
13 the pleadings, we would be in a position to rule on
14 it.

15 Okay. Next is -- I started to talk
16 about the Marine Fisheries bio-opinion having to do
17 with Riverkeeper EC8. We were notified that the
18 staff anticipated that there would be a supplemental
19 final EIS that would be issued in May.

20 What we would like to get, Mr. Turk, is
21 your view and the staff's view on what the scope of
22 that supplement is going to be. Is it limited
23 exclusively to the impact of the Marine Fisheries
24 report? Is it broader than that? What is the scope
25 of it?

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1 MR. TURK: But Your Honor, the staff
2 anticipates filing a supplemental SEIS, which would
3 address the NMFS Biological Opinion, as well as some
4 other aquatic impact information that the staff
5 receives.

6 So the scope of the supplement is
7 limited to aquatic impacts. That includes
8 entrainment, impingement and thermal impacts, and it
9 affects the endangered or threatened species, which
10 are the subject of the NMFS Biological Opinion.
11 Nothing beyond aquatic impacts would be addressed.

12 JUDGE McDADE: Okay, and is it the
13 staff's position that there are no other
14 contentions, other than Riverkeeper Environmental
15 Contention 8, that could be potentially impacted by
16 it? Mr. Turk.

17 MR. TURK: Yes. No other contentions,
18 apart from ESA. The ESA contention would be
19 affected.

20 JUDGE McDADE: Okay. In your letter, it
21 described this as a draft. Does the staff have a
22 view as to when the final? I know you're going to
23 have a comment period, but when would the final
24 supplement be completed? Can you give us a good
25 estimate?

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1 JUDGE McDADE: I can't give you a very
2 clear estimate. I know that in general, the time of
3 about six to seven months from the time a draft is
4 published until a final goes out. But it all
5 depends on the scope and number of comments that we
6 receive on the draft, because the staff will address
7 those comments in its final SEIS.

8 So I would say minimum six to seven
9 months, possibly more, depending on the scope and
10 number of comments.

11 JUDGE McDADE: Okay. What is the
12 staff's view as to whether or not we would be able
13 to proceed to a hearing on Riverkeeper Environmental
14 Contention 8 prior to the publication of the final
15 supplement?

16 MR. TURK: Your Honor, we were prepared
17 to file testimony on the existing contention,
18 knowing that it's not really a factual contention.
19 It essentially alleges that the staff issued an
20 FSEIS before the NMFS Biological Opinion came out.
21 Well, so much is true. But now the staff has
22 indicated that we're going to be addressing the NMFS
23 Biological Opinion in a supplement to the FSEIS.

24 So it's really a status description of
25 where was the staff at the time of the FSEIS

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1 issuance, and where is the staff now. I personally
2 feel that the contentions could just be set aside or
3 even dismissed as moot, because we are agreeing with
4 Riverkeeper, that the NMFS Biological Opinion should
5 be addressed.

6 JUDGE McDADE: Okay. The next question,
7 then, would be given where we are in the hearing,
8 even if Riverkeeper were to agree with you that
9 their current contention is moot, I assume
10 Riverkeeper would be of the view that unless and
11 until they have an opportunity to review the EIS
12 draft that's coming down, that they would not be in
13 a position to determine whether or not their
14 interest here has been satisfied, or whether or not,
15 based on the staff action, they would need to file a
16 new or amended contention?

17 Let me go to Riverkeeper and ask, what
18 is your view with regard to Riverkeeper EC 8? Do
19 you believe, at this point, that it needs to be
20 severed and held in abeyance until the publication
21 of the draft supplement?

22 MR. MUSEGAAS: This is Philip Musegaas,
23 Your Honor. In essence yes, we do. We believe the
24 most appropriate thing to do, given the scope of our
25 contention and this news about issuing a supplement,

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1 that it would be most appropriate to hold the
2 contention in abeyance until the issuance of the
3 supplement, and that would give us an opportunity,
4 which we think is entirely within our rights and
5 within the scope of the contention, to review the
6 supplement and then if necessary, amend or revise
7 the contention as necessary, or immediately proceed
8 with, you know, with filing testimony on the
9 contention as it stands.

10 But we don't think it's appropriate to
11 go forward at this time, given the fact that at
12 least a portion of our -- that the remedy we were
13 seeking with filing a contention was the issuance of
14 a supplement.

15 If I may, Your Honor, we also are
16 concerned about how the issuance of the supplement
17 may implicate Riverkeeper EC 3. We did, I believe,
18 discuss this briefly with Entergy counsel and NRC
19 counsel over the last couple of days. I won't speak
20 for them. I think they see this differently. But
21 from Riverkeeper's perspective, we do think it may
22 be appropriate to hold that contention in abeyance
23 as well, because it does implicate the impacts of --
24 it does implicate aquatic impacts in a broad sense,
25 and it does implicate the impact of radiological

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1 water leaks on the Hudson River ecosystem.

2 This issue was mentioned to some degree
3 in the Biological Opinion, and to the extent that
4 the staff is going to be reviewing the Biological
5 Opinion over the next six months, and subsequently
6 issuing a new supplement, we don't know the nature
7 of that review. We think it would be appropriate to
8 hold EC 3 in abeyance as well, pending our ability
9 to review the content of the supplement.

10 JUDGE McDADE: As I understood it, EC 8
11 basically was a contention of omission, but that EC
12 3 was really not. Based on the representations of
13 Mr. Turk, that the draft supplement is going to be,
14 the scope of it is going to be limited, as he
15 described it, what I don't want to do is to delay EC
16 3 if we can get ahold of it at this point in time.

17 Obviously, if down the road the draft
18 supplement were issued, and it turned out that
19 after, you know, further review, the scope of it
20 expanded beyond what Mr. Turk said, it might be
21 necessary to rethink and allow additional testimony
22 with regard to EC 3.

23 But it's sort of a balancing here. I
24 don't want to force a party to submit testimony on
25 something that is going to be moot, or on an issue

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1 that is going to be so fundamentally changed that it
2 becomes pretty much irrelevant, you know. But
3 that's why I started the question out with, to the
4 staff, as far as the anticipated scope of the draft
5 supplement that will be coming out hopefully in May.

6 Let me ask first of the staff and then
7 of Entergy, what is your view with regard to the
8 possible impact on EC 3, Riverkeeper Environmental
9 Contention 3, of this draft supplement and whether
10 or not it would be appropriate for us to delay the
11 receipt of direct testimony on that. First, Mr.
12 Turk.

13 MR. TURK: Your Honor, Mr. Musegaas, Mr.
14 Philip, if he said that he's had discussions with
15 NRC staff about potential impacts on EC 3, I'm not
16 aware of any conversations with Mr. Musegaas or any
17 other party about how the FSEIS Supplement might
18 affect that contention.

19 We don't see any impact. We do not
20 intend to address radiological impact in the FSEIS
21 Supplement. As I mentioned, we're looking at
22 entrainment, impingement and thermal impacts,
23 including impacts to endangered species. We're not
24 looking at radiological impacts or, more
25 specifically, we're not looking at leaks from the

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1 spent fuel pool or elsewhere on the site into the
2 Hudson River, as affected by the FSEIS Supplement.

3 JUDGE McDADE: Okay. Mr. Bessette,
4 anything from Entergy on this issue?

5 MR. BESSETTE: Your Honor, we did speak
6 with Mr. Musegaas yesterday, I believe, or the day
7 before, and we voiced our opinion similar to what
8 Mr. Turk said, that we know of no -- there's no, we
9 know of no information that's to be included in the
10 FSEIS Supplement related to radiological impacts.
11 We know of no additional information that's pending
12 review.

13 So we would strongly urge the parties to
14 file, the follow the Board's direction and maintain
15 the current schedule, and then to the extent there
16 is new information, although we don't expect it in
17 the FSEIS Supplement, the parties can seek leave to
18 supplement their testimony at that point.

19 JUDGE McDADE: Okay. Let me put you on
20 mute for just a second. Excuse me. Judge Wardwell
21 has a question before we go on.

22 JUDGE WARDWELL: This is for
23 Riverkeeper. Even if it did impact it to some
24 degree, it being the supplemental FEIS, how would
25 you characterize the relative impact on EC 3? Would

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1 it be minor or a major impact, such that we couldn't
2 go ahead with the heart of that contention,
3 recognizing that there may be some chance that it
4 has to be modified slightly, based on the
5 supplemental FEIS?

6 MR. MUSEGAAS: Your Honor, I'm frankly
7 reluctant to speculate on what level of impact. It
8 is an element of our, of Contention EC 3 has to do
9 with radiological impacts on aquatic species.

10 So, you know, based on the limited
11 information we have and the apparent assurances from
12 NRC staff that the supplement will not address this
13 issue, you know, with all due respect, I think
14 Riverkeeper, it would not be prejudicing the parties
15 overly much to give Riverkeeper the right to review
16 the supplemental EIS and make that determination.

17 We are just, to be perfectly clear,
18 we're very intent on moving forward with the hearing
19 and the testimony. We're not seeking to do this to
20 cause any sort of delay. We are simply doing this
21 to make sure that we reserve our rights and frankly,
22 with limited resources, are able to put forth the
23 best testimony available.

24 So given the fact that this, you know,
25 in addition to EC 8, that EC 3 is the only other

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1 contention in this proceeding that really overlaps
2 to some degree, and it is not -- it is not a
3 majority of the contention. But it is an element of
4 the contention that deals with radiological impacts,
5 and that overlaps with the Biological Opinion.

6 So my short answer to you is it is
7 difficult to speculate. It potentially could be,
8 could require us to revise the Contention or revise
9 our testimony. So again, balancing, you know, the
10 inconvenience and the prejudice or the delay to the
11 rest of the parties and to the Board, we don't see
12 that as significant, and we considered that in
13 asking for this release.

14 JUDGE McDADE: This is Judge McDade
15 again, and based on the representations of the
16 staff, that they do not anticipate at this point
17 that the draft is in any way going to address
18 radiological impact, I would anticipate that we will
19 then go forward with the testimony.

20 With regard to Riverkeeper Environmental
21 Contention 8, it will be held in abeyance, that you
22 need not file any direct testimony or statement of
23 position with regard to that. It will be revisited
24 after the draft supplement is issued.

25 With regard to EC 3, we will go forward

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1 with the schedule, the December 22nd schedule, and
2 in the event that the anticipated scope of the draft
3 supplement expands, we will then address that at the
4 time, to see whether or not there needs either to be
5 a modification of Contention 3 and the testimony
6 with regard to it, or a, some way to wrap that into
7 EC 8 or a newer, amended contention later on.

8 MR. TURK: May I? This is Sherwin. May
9 I add one thing to my previous comment?

10 JUDGE McDADE: Yes, Mr. Turk.

11 MR. TURK: In Mr. Musegaas' last set of
12 remarks just before Your Honor spoke, he mentioned
13 the NMFS Biological Opinion. The NMFS Biological
14 Opinion, as I recall, does have some information
15 about radiological impacts. It's nothing new, and I
16 think NMFS has concluded, and forgive me; I don't
17 have the documents in front of me.

18 But they concluded that samples of fish
19 tissue indicated that there was no significant
20 radiological impact due to plant operations. So to
21 the extent that the NMFS Biological Opinion
22 addresses that issue, that will be reflected in the
23 staff's adoption, or what I expect will be the
24 staff's adoption of NMFS' Biological Opinion.

25 So I don't want there to be any

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1 misunderstanding. It's possible that because NMFS
2 addressed radiological impacts, that that will be
3 reflected in the supplement. However, the basis for
4 anything the staff would say is right there in front
5 of Riverkeeper at this time. They have the NMFS
6 Biological Opinion.

7 The intention of the staff's supplement
8 is not to change the findings on radiological
9 impacts, but rather to reflect what NMFS has done,
10 and to reflect other new information the staff has
11 received regarding entrainment, impingement and
12 thermal impact.

13 MR. MUSEGAAS: But Your Honor, if I may,
14 I don't -- one, I don't think this is the
15 appropriate forum to argue the merits of some of
16 this factual information, and also it's, you know,
17 it is mentioned in the Biological Opinion. I think
18 again, given -- despite Mr. Turk's assurances that
19 the staff is going to conduct a limited review and
20 issue a supplement that addresses the Biological
21 Opinion, you know, I think that Riverkeeper has the
22 right to review what that supplement says, and you
23 know, not have to rely one, on the General Counsel's
24 assertions about it and also about what it says
25 about broader aquatic impacts.

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1 So I just -- again, I don't think this
2 is -- I don't think we need to have an extended
3 discussion on this. Your Honor has made the ruling
4 and Riverkeeper will file testimony on the 22nd.

5 JUDGE McDADE: And in the event, when
6 the draft EIS comes out, in the event that you
7 believe that there needs either to be an expansion
8 of 8 or a modification of 3, we would review that at
9 the time. The next question then has to do --

10 MR. SIPOS: Your Honor, sorry. This is
11 John Sipos. Please forgive me for interrupting, but
12 may I just make an observation?

13 JUDGE McDADE: Yes.

14 MR. SIPOS: Just for the records, it
15 seems to me that what staff is proposing to do here
16 with the supplement to the EIS is perhaps broader
17 than initially I understood and perhaps others.

18 It seems that today, Mr. Turk has made
19 clear that it will include not only impacts on
20 endangered species, but I think he also mentioned
21 impacts on other species or other aquatic resources,
22 and also mentioned entrainment, impingement and
23 thermal.

24 That seems to be a broader review of the
25 cooling water technology that either is or may

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1 become available at the plant. I think, from my
2 perspective, I would just like to note that for the
3 record. It seems that that there are three possible
4 technologies that I understand are on the table.

5 One is what exists now, which is the
6 once-through system. There's another thing that has
7 been discussed called the wedge-wire screens, and
8 then third, there is also the closed-cycle cooling
9 option or possible cooling towers. So I guess my
10 sense, from hearing what Mr. Turk said, is that this
11 SEIS Supplement may be broader than just what the
12 National Marine Fisheries Service discussed with NRC
13 staff.

14 JUDGE McDADE: But one of the problems
15 that we have is exactly the scope of it. We don't
16 know at this point. The best representation is that
17 made by Mr. Turk for the staff, and when the
18 supplement comes out, we will then -- you all will
19 have the opportunity to review it, and we will then
20 be in a position to make an informed decision, as to
21 whether or not anything further needs to be added to
22 the hearing.

23 What we are making clear is that what we
24 anticipate is not that any new or amended contention
25 would be filed now, based on the Marine Fisheries

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1 report, but rather that it would be viewed timely,
2 if made based on the draft supplement, and at that
3 point in time, if it was necessary to either amend
4 Contention 8 or Contention 3, or to file a new
5 contention based on the scope, the actual scope of
6 the draft supplement, that it would be timely filed
7 at that point in time.

8 And at this point, it would be too
9 speculative to determine exactly if any impact it
10 would have on Contention 3, to justify a delay in
11 the filing of the direct testimony. So that again,
12 as we sit here right now, the direct testimony for
13 EC 8 is held in abeyance until after the filing of
14 the draft supplement.

15 We will revise that schedule once we've
16 reviewed it. With regard to Contention 3, that that
17 testimony will be due initially on the 22nd, after
18 the draft supplement is issued, hopefully no later
19 than May. In the event a further review leads us to
20 a conclusion that the scope of our hearing needs to
21 be expanded, either with an expanded 8, an expanded
22 3 or a totally new contention, we will address it at
23 that time.

24 Next has to do, Mr. Turk, we've had some
25 delays with supplemental environmental impact

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1 statements, safety evaluation reports as things
2 stand right now, as we're moving forward to a
3 hearing. Does the staff anticipate that there might
4 be any more, that we will be getting any further
5 notification of new supplements to either the EIS or
6 SER? Mr. Turk?

7 MR. TURK: Your Honor, the only
8 supplementation that we expect is the one that we've
9 describe so far, the FSEIS Supplement, and the
10 projected date is approximately May.

11 JUDGE McDADE: In the event that that
12 changes, you would notify us immediately; correct?

13 MR. TURK: Yes sir.

14 JUDGE McDADE: Okay. The next has to
15 do, there was an issue raised by Clearwater. You
16 anticipate having testimony come in from a witness
17 who's either first language is not English. Their
18 first language is Spanish and perhaps only language
19 is Spanish.

20 As I understand it, you anticipate
21 submitting the testimony in Spanish, and to proffer
22 a translation of that testimony along with it. Is
23 that a correct understanding?

24 MS. GREENE: Yes, it is, Your Honor.

25 JUDGE McDADE: Okay. What we would be

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1 predisposed to do is to accept that, and we then
2 would have an opportunity to review it, to see
3 whether or not we are satisfied with the accuracy of
4 the translation, and the other parties would also
5 have an opportunity to review it, to see whether or
6 not they had any objection to the accuracy of the
7 translation.

8 In the event that we believed, that the
9 Board had questions to ask of the witness, if we go
10 and have a hearing, if that witness is going to
11 testify, the Board would provide a translator who
12 was certified by the Administrative Office of the
13 Courts, as a simultaneous court translator in
14 Spanish, rather than having the parties do it. Does
15 Clearwater have any objection to that?

16 MS. GREENE: No, Your Honor. We have
17 discussed that and, you know, that would be
18 absolutely fine with us.

19 JUDGE McDADE: Does the staff? Mr.
20 Turk?

21 MR. TURK: I certainly don't object,
22 Your Honor. I wonder if there's any limitation that
23 would be created by the NRC rule against providing
24 assistance to intervenors. I don't have a position
25 on that. I'm just highlighting it as a possible

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1 point that we --

2 MS. GREENE: Could you repeat that
3 please, because I wasn't quite clear what your
4 concern was.

5 JUDGE McDADE: Okay. Mr. Turk, the
6 answer to that would be no, we're not providing
7 assistance to intervenors. We're providing
8 assistance to the Board. With regard to the written
9 direct testimony that's going to come in, each of us
10 would have an opportunity to review that document,
11 and if we had any objection to the translation, to
12 raise that and take corrections.

13 What I'm concerned about is when we get
14 to a hearing, the ability of various parties to
15 understand Spanish varies dramatically I'm sure, and
16 if the translation from a non-certified translator
17 were inaccurate in any way, we wouldn't know until
18 after the fact. Then it would be really very
19 inconvenient or impossible to draw everybody back
20 together.

21 Accordingly, what the Board intends to
22 do for its own purposes, not for the purposes of the
23 intervenor, is to have a certified translator, so
24 that at the hearing, if -- and again, the issue may
25 not arise, because we may not have any questions of

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1 that witness. The testimony may be perfectly clear
2 and not controversial.

3 But if we did, we would want to have our
4 translator there, so that it would not be necessary
5 for all of the parties to come back, if we had any
6 disagreement with the simultaneous translation.
7 Because all we would have on the record is what the
8 translator said, assuming that the court reporter
9 was not able to take down both the Spanish and
10 English simultaneously, I guess one with each hand.

11 So again, it's not an assistance to the
12 intervenor; it would be as an assistance to the
13 Board and to the proceeding itself. Okay. Does
14 Entergy have any objection?

15 MR. BESSETTE: No, Your Honor. We have
16 no objection or further comments at this time.

17 JUDGE McDADE: Okay. Does any of the
18 other parties or interested government agencies?

19 MR. SIPOS: No objection, Your Honor.
20 This is John Sipos.

21 JUDGE McDADE: Okay.

22 MR. MUSEGAAS: No objection from
23 Riverkeeper.

24 JUDGE McDADE: Okay. The next issue had
25 to do with the location. We would anticipate, and

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1 again, once we get an actual date for the hearing,
2 we would be able to identify the actual location.

3 Do any of the parties have any comments
4 specifically with regard to where the hearing should
5 be held? Let me just sort of run down. Entergy,
6 what's your view?

7 MR. BESSETTE: Well Your Honor, because
8 of the complexity of the issues, the number of
9 witnesses, we would propose locating it near White
10 Plains, which would have access to the majority of
11 our witnesses.

12 JUDGE McDADE: Okay. From the NRC
13 staff?

14 MR. BESSETTE: And the site, yes.
15 Sorry, yes.

16 MR. TURK: We haven't really given it
17 much thought, Your Honor. The one place where the
18 staff has held meetings in the past is this hotel or
19 motel located close to the plant. I don't know if
20 that's the most appropriate place, since it's really
21 one large room. It may be that White Plains is
22 preferable. But we really haven't considered
23 alternatives very much.

24 JUDGE McDADE: This is Judge McDade
25 again. Let me just give you a little bit of my

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1 thinking. The ideal situation, if we were to have
2 it in the White Plains area, would be back where we
3 had the oral argument on contention admissibility at
4 the courthouse in New York.

5 We won't know about the availability of
6 that courthouse until we've actually developed a
7 schedule of when we're going to have that particular
8 hearing. I'm making an assumption. One of the
9 issues raised was whether or not the hearing
10 facility would be ADA-accessible. I'm assuming that
11 a court of general jurisdiction in New York would be
12 ADA-accessible.

13 Does any party, if in the event we were
14 to go to White Plains, does any party one, have an
15 objection to the hearing going forward in the White
16 Plains area, and if so, in the state courthouse
17 there?

18 (No response.)

19 JUDGE McDADE: Okay. There doesn't
20 appear to be any objection voiced. Again, whether
21 or not that facility would be available for us will
22 depend on whether or not we're able to work our
23 schedule in with theirs, once we actually have a
24 date for the schedule.

25 The next I wanted to mention is that we

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1 are now an EIE case, and it will be necessary for
2 all of the parties to file in the, you know, through
3 the EIE system. So you know, as we're coming up to
4 the 22nd, if any of the parties have any questions
5 with regard to how to access the system, what they
6 need to do in order to utilize it, now is the time
7 to resolve it, and not on the, at 7:00 p.m. on the
8 22nd.

9 At this point in time, does any party or
10 interested government agency anticipate that they're
11 going to have any difficulty with the EIE system?
12 Is there anyone who feels at this point that they
13 are not sufficiently familiar with it to be able to
14 move ahead on the 22nd, using the EIE?

15 (No response.)

16 JUDGE McDADE: Okay, apparently not.
17 The next thing we just wanted to mention is that the
18 Board anticipates conducting a site visit at the
19 facility. We would not anticipate doing this in the
20 short term. It would be after the testimony is
21 taken, before the direct testimony. After that, but
22 before the hearing, probably some time in the
23 spring, probably in May.

24 Prior to that, we -- and what we
25 envision is a relatively focused site visit that

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1 would be relatively short, and the Board would issue
2 an order sufficiently in advance, advising the
3 parties of exactly those aspects of the facility
4 that we would want to see. But again, that would
5 not occur until some time in the spring, probably in
6 May.

7 We will give enough notice, so that
8 regards to access can be worked out of who would be
9 coming for each of the various entities, and what we
10 wanted to do is to make sure Entergy was aware of
11 this intent on the part of the Board.

12 So that with regard to the logistics,
13 that you could have that worked out, you know, so
14 that when we notify it of exactly what information
15 you're going to need about individuals who would be
16 coming and what kinds of notifications and
17 instructions need to be given to them, in order to
18 gain access to the facility, to be present when the
19 Board is looking at certain specific aspects of it.

20 And also, as I said, we were issuing an
21 order sufficiently prior to the site visit, that
22 focuses. All of us have seen nuclear plants before.
23 We don't need to start from square one. So we
24 anticipate it would be a relatively short,
25 relatively focused visit.

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1 MR. BESSETTE: Your Honor, this is Paul
2 Bessette. We appreciate the notice. I'm sure
3 Entergy can accommodate any of the needs the Board
4 may require, any location, and we welcome the Board
5 to the site.

6 JUDGE McDADE: I don't know quite what
7 the fireworks were in the background there. I don't
8 know who's phone that was on. I hope nobody's
9 exploding.

10 MR. BESSETTE: It wasn't D.C., for a
11 change.

12 JUDGE McDADE: Okay. The only other
13 thing that I wanted to mention at this point in
14 time, just for individual planning purposes, there
15 is a motion still pending, that the Board has not
16 issued an order on, having to do with the Fukushima
17 incident and the contentions, the proposed
18 contentions.

19 The Board anticipates denying the motion
20 to admit the new contention regarding the Fukushima
21 and the Fukushima Task Force report, and we will be
22 getting an order out on that in due course.

23 But we didn't want the parties, anybody
24 to be delaying or think what are we going to do on
25 the 22nd, and how is the Fukushima contention going

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1 to be handled, as far as any appeal rights the
2 parties would have. It's not based on what we say
3 here today.

4 But it would start from the date that
5 the order is actually published and served on the
6 parties. Let me just put you on mute here for a
7 second, and I will get back to you shortly.

8 (Whereupon, a short recess was taken.)

9 JUDGE McDADE: Hi, this is Judge McDade.
10 We're back on. We, the Board, has nothing further to
11 raise at this particular status conference before we
12 ring off. However, what I wanted to do is to go
13 down through the parties and the interested
14 government entities who are on the phone to see
15 whether or not there are any other issues that you
16 want to raise at this status conference that need to
17 be resolved.

18 First of all from Entergy, Mr. Bessette?

19 MR. BESSETTE: Your Honor, we have
20 nothing further to address, and we thank you for
21 holding the conference.

22 JUDGE McDADE: Okay. Mr. Turk from the
23 NRC?

24 MR. TURK: Nothing for the Staff, Your
25 Honor.

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1 JUDGE McDADE: Mr. Sipos from New York?

2 MR. SIPOS: Yes, Your Honor. There are
3 just a few things I'd like to note. One is the
4 regulatory impact of this extension of a draft
5 sometime in May, and then a six-month time line
6 following that.

7 As the State reads the NRC regulations
8 and also the CEQ regulations at 40 CFR 1506.1, it
9 does not seem possible for the NRC to issue a final
10 operating license until that NEPA process concludes,
11 which now seems that it will be later than
12 previously anticipated.

13 And, also, I guess our reading of
14 51.104, and perhaps this is what Your Honors were
15 getting at, or arriving at with the proposed order,
16 is that the Staff cannot go forward I guess at least
17 with respect to these aquatic issues in terms of
18 NEPA.

19 I'm not necessarily looking for a
20 response. I guess I'm just noting that for the
21 record from the State's perspective.

22 And, I guess, further I would just note
23 -- I mean, this -- what Staff has done here on the
24 November 30 letter, I mean, it has disrupted our
25 preparation efforts to move forward trying to

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1 understand what they were proposing and preparing
2 for today. I am loathe to ask for any type of
3 extension, but with the additional requirements that
4 we are going to go forward with now in the next
5 week, I am wondering if a very modest adjustment for
6 some contentions might be in order.

7 JUDGE McDADE: Do you want until
8 Christmas Eve?

9 MR. SIPOS: Well, that would be one more
10 day, Judge.

11 JUDGE McDADE: Let me -- my first
12 predisposition is to say no on a couple of levels.
13 One, 51.104 is something that we will need to
14 address down the road. But the first question with
15 regard to Riverkeeper Environmental Contention 8 is,
16 we are holding it in abeyance at this point in time.
17 It's going to be held in abeyance at least until the
18 draft supplement issues in May. At that point, the
19 parties will have an opportunity to see whether or
20 not the issues are adequately addressed, and to
21 address to the satisfaction of the parties, or
22 whether or not EC 8 needs to be modified or a new
23 contention filed based on the draft supplement.

24 At that point in time, we then need to
25 decide whether or not the draft is sufficiently

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1 detailed, and sufficiently focused that we would be
2 able to proceed to a hearing on EC 8 or any new or
3 amended contention, or would need to delay that
4 until the final of that supplement was issued;
5 which, as Mr. Turk pointed out, could be six to
6 seven months after the draft. But in any event, it
7 seems that until we look at the draft, it's going to
8 be very difficult to make any kind of informed
9 decision as to what our schedule should be.

10 At this point, Riverkeeper EC 8 is off
11 the track with the rest of the contentions, and it
12 may be that we go to a hearing on all of the other
13 contentions, and then come back and deal with
14 Riverkeeper 8, or any new or amended contention that
15 arises out of the draft supplement, or any final
16 supplement.

17 That said, we now have a question about
18 what to do with the remainder. It was Riverkeeper's
19 burden to submit the testimony on 8, not the other
20 parties. And if anything at this point, we're
21 submitting less material on the 22nd rather than
22 more material.

23 So, my first reaction would be to say
24 that there shouldn't be a need for an extension.
25 And the problem is, my comment about Christmas Eve

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1 was somewhat joking, is that if we give a -- let me
2 delete the word "somewhat" there.

3 If we give an extension beyond the 22nd
4 of December, we then -- what is a reasonable
5 extension? We get into the week between Christmas
6 and New Year, in that period of time, so is giving
7 an extension really of any particular value, or does
8 it just make people's schedule more complicated, as
9 opposed to less complicated.

10 In other words, in this particular
11 instance, Mr. Sipos, if I were to give you another
12 week or 10 days, wouldn't that just make things more
13 difficult for New York?

14 MR. SIPOS: It would -- there would be
15 scheduling complications, yes, Your Honor. But in
16 connection with the additional time line or
17 deadlines now for 38, and, of course, we will follow
18 those directives, I was referring I guess not so
19 much to Riverkeeper's obligation to submit
20 testimony, but reviewing what the Staff had done
21 preparing for today, and also the additional work
22 for 38. And, again, I understand that there could
23 be scheduling complications, and a one-week
24 extension, or even 10 days does not -- there would
25 be complications for that. I guess I was going to

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1 propose something on the order of 20 days, but --
2 because I do think it would materially assist us.
3 And I do think that there has been -- we are fairly
4 leanly staffed in trying to address these issues at
5 a time that we were focused on preparing and doing
6 the best effort that we could for our opening
7 submissions. It has been disruptive, but -- so, I
8 guess I'll leave it at that.

9 JUDGE McDADE: So, when you're saying 20
10 days, you're asking for an extension then from the
11 22nd of December until the 11th of January?

12 MR. SIPOS: The 11th or 12th, yes.

13 MR. MUSEGAAS: Your Honor, if I may; this
14 is Phillip Musegaas from Riverkeeper. We
15 acknowledge and we appreciate the additional time
16 and the Board's decision on EC 8. We do have limited
17 resources, and the time that we have spent preparing
18 for this call and reviewing the NRC's submission on
19 the supplement would have been time spent preparing
20 testimony. So, to the extent that we feel it's
21 appropriate, we support the idea of a very
22 reasonable extension of time to file the testimony.
23 Thank you.

24 JUDGE McDADE: Yes. What's the view of
25 the NRC Staff on this, Mr. Turk?

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1 MR. TURK: We really take no position,
2 Your Honor. If the Intervenors need more time,
3 that's something worth considering. On the other
4 hand, I haven't heard any specific dates for the
5 extension.

6 JUDGE McDADE: Well, it also has the
7 benefit for the other parties in that any response
8 to it -- now, the clock doesn't start ticking over
9 the Christmas and New Year period of time.

10 Mr. Bessette, from Entergy's standpoint,
11 what's your view?

12 MR. BESSETTE: Your Honor, one, no one
13 has consulted with us on this request. But as you
14 can imagine, the logistics of responding to three
15 Intervenors, we've been planning for this. We have
16 experts and parties in place ready to go. I think
17 we've been more than accommodating on prior
18 extension requests.

19 Of course, a 20-day extension would not
20 upset the world, but every time we change the
21 schedule requires an enormous effort on everyone's
22 part of experts, planning vacations, changing
23 vacations, because it's not just 20 days. It rolls
24 out the rest of the proceeding. So, I would urge
25 that we stay within the current schedule.

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1 JUDGE McDADE: Okay. Does anyone else
2 have a view on this, Riverkeeper? We've already
3 heard from Clearwater.

4 MS. GREENE: Yes, Clearwater supports the
5 extension request. And, Your Honor, if I may, I'd
6 also like to point out that Clearwater was
7 consolidated with Riverkeeper. It was Riverkeeper EC
8 3 and Clearwater EC 1, if I'm not mistaken. I just
9 wanted to make that point. Thank you.

10 JUDGE McDADE: Connecticut, any comment?

11 MR. SNOOK: We do support the request. We
12 do think it's important to give everyone an
13 opportunity, because -- particularly because yes,
14 the state governments, and Riverkeeper, and
15 Clearwater are dealing with fairly lean at best
16 staffing.

17 I certainly understand Entergy's
18 position, and I'm sympathetic, but on the overall
19 perspective, we would support New York's request.

20 MR. BESSETTE: Your Honor, this is Paul
21 Bessette. I just need to note one thing. I mean, I
22 can't imagine that there's going to be any 30-day
23 period in the coming two years that there's not
24 going to be some letter, or event, or a holiday.
25 And I just feel like we're continuing to delay for

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1 reasons that I think the parties should be able to
2 account for and adapt.

3 JUDGE McDADE: No, I understand. And I
4 also understand, Mr. Bessette, the logistical
5 issues. And, also, I understand the fact that you
6 have not had an opportunity to discuss this. You
7 haven't had an opportunity to talk with the people
8 who are going to be reviewing these matters for you,
9 and your experts, and the individuals that you're
10 going to be submitting direct testimony from, as
11 well. And that to a very large degree, as we sit
12 here right now, you are in no position to state
13 whether or not this thing -- an extension would
14 create problems, or whether it would solve more
15 problems than it would create, or whether it would
16 create really insurmountable problems, or very
17 significant problems. And, as you noted, the parties
18 have been very reasonable and professional with each
19 other in granting reasonable extensions.

20 At this point in time, what I would
21 propose is not to rule on this. Let me discuss it
22 with my colleagues, and we will get back to you by
23 email relatively promptly so you will be able to
24 know. And then if an extension were to be granted,
25 we would issue an order so it would be part of the

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1 record.

2 Any extension that we would grant,
3 obviously, would move forward those other deadlines
4 for the other parties. And, also, in the event that
5 it did create problems for the other parties
6 logistically with regard to the availability of
7 their legal staff, their experts and their witnesses
8 --

9 MR. BESSETTE: Your Honor, if I may just
10 interrupt, I want to make it clear from Entergy's
11 point of view that it's our current position that
12 any change in the schedule will disrupt the experts.
13 I can safely say that. I can't tell you how much,
14 but we've got numerous -- we've got 15 admitted
15 contentions with experts lined up, both factual and
16 witness lined up.
17 I can affirmatively state that it will be some
18 disruption.

19 JUDGE McDADE: I understand, Mr.
20 Bessette.

21 MR. BESSETTE: Okay. Thank you, Your
22 Honor.

23 MR. SIPOS: And, Your Honor, this is John
24 Sipos. And I certainly appreciate the opportunity
25 even to bring this up. And on behalf of the State, I

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1 would, I guess, offer the possibility that some of
2 our contention submissions could be filed -- would
3 be filed before the date proposed here. And that
4 might alleviate, or it might not, some of Entergy's
5 concerns.

6 And I understand what Mr. Bessette said
7 about disruption. I think the State has also
8 experienced some disruption, as well, unforeseen.

9 JUDGE McDADE: Okay. Let me put you on
10 mute here for a second, and we will get back with
11 you very quickly.

12 (Whereupon, the proceedings went off the
13 record at 2:52:28 p.m., and went back on the record
14 at 2:55:27 p.m.)

15 JUDGE McDADE: This is Judge McDade
16 again. Mr. Sipos, let me raise a possibility here
17 first with New York, and then go through it with the
18 other parties.

19 We have tasked New York and the Staff
20 with doing certain things with regard to Contention
21 38. We also realize that until today there was an
22 issue as to the clarification with 38.

23 What would New York's reaction -- and I
24 also understand the issue that Mr. Bessette raised
25 as a very compelling interest. If we were to direct

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1 that the testimony with regard to all contentions
2 exception Contention 38/5 were to be filed on the
3 22nd, that with regard to the discussions, with
4 regard to the scope of disclosures, and other
5 matters relating to whether or not a motion to
6 compel would be necessary on 38, that we hold those
7 in abeyance until after the rest of the testimony --
8 direct testimony is filed on the 22nd. To then
9 direct that the parties get back to us rather than
10 next week on that, to get back to us no later than
11 say the 4th of January with regard to whether or not
12 those matters would be resolved, were resolved, or
13 whether a motion to compel would be necessary. So
14 that we would then simply maintain the same track
15 for everything that have except New York 38.

16 You would not be distracted in working
17 on the scope of 38, whether you're trying to get out
18 the testimony and the remaining contentions, your
19 consultation would be completed during the first
20 week of January, and notice would be given to the
21 Board during the first week of January. That way,
22 any experts and other resources that Entergy has
23 lined up, with the exception of -- with regard to
24 the new Contention 38/5, would not be interfered
25 with.

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1 Does that resolve the problems that New
2 York would have?

3 MR. SIPOS: Your Honor, it provides some
4 little relief, and I'm not unsympathetic to that.
5 However --

6 JUDGE McDADE: Is the operative word
7 there mostly relief or little?

8 MR. SIPOS: Candidly, Your Honor,
9 respectfully, I guess the emphasis is on little,
10 because we have had other distractions leading up to
11 today trying to sort out the motion for
12 clarification on 38. I understand Entergy filed it
13 in good faith, but that did involve some diversion
14 of resources. And, again, the recent notification
15 by Staff and the preparation for this, so it has --
16 we have had some diversion of resources.

17 And it is correct that the consultation,
18 the discussion on scope of discovery, and moving --
19 making arrangements, reviewing documents,
20 solidifying expert review would also divert
21 resources. I say that with respect to 38. So, it
22 does provide some relief. It does not provide, New
23 York would respectfully submit, perhaps all the
24 relief that we believe is appropriate.

25 JUDGE McDADE: Okay. What's Riverkeeper's

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1 view?

2 MR. MUSEGAAS: Your Honor, this is
3 Phillip Musegaas. I would tend to agree with New
4 York State that it's -- that we appreciate the
5 relief offered in terms of working with New York
6 State and the Staff on Contention 38 but, frankly,
7 we still face a challenge. And in the alternative,
8 if the Board and Your Honor feels that 20 days is
9 too extensive and would unfairly burden Entergy with
10 changing their schedule, then we would propose
11 consideration of a week to 10-day extension. Even
12 that would assist us quite a bit in finalizing our
13 testimony.

14 We were involved in responding to the
15 motion for clarification from Entergy, as well, been
16 involved in reviewing the issue surrounding the
17 biological opinion and things like that, as I've
18 stated already. So, we would just suggest that even
19 a shorter extension would be appreciated. And it's,
20 essentially, extending the time to just beyond the
21 end of the holiday, we don't think that that would
22 overly prejudice Entergy in terms of their
23 scheduling.

24 JUDGE McDADE: This is Judge McDade
25 again. Unfortunately, given the fact that this was

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1 just raised here orally, I understand what Mr.
2 Bessette's position is; that there will be
3 disruption. I also understand that Mr. Bessette is
4 not in a position just on the fly to describe in
5 full exactly what that disruption would be, or
6 exactly how it would be impacted with five days, 10
7 days, 20 days; whether or not that's -- one would be
8 more or less disruptive.

9 And, also, in giving an extension, I
10 don't want the extension to be meaningless.
11 Probably that time period between Christmas and New
12 Year's is one of the most difficult times to try to
13 coordinate with individuals, and whether your
14 witnesses or experts, and Entergy's witnesses and
15 experts, unless it's been tied down ahead of time,
16 it is usually the most difficult time of the year
17 within which to try to find people in their offices
18 and get them to focus on things.

19 In any event, I think we've heard fully
20 from the parties on it, and we just need to decide.
21 And as I indicated earlier, what I would be
22 predisposed to doing is just have the Board discuss
23 it, and then notify you promptly via email so for
24 your planning purposes you would know what's coming
25 down the road. And then, if appropriate, follow

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1 that up with an order so it would be part of the
2 record.

3 Does anyone else have any -- I think
4 we've pretty much beaten this horse. Does anybody
5 have anything further on it that they would like to
6 discuss?

7 MR. SIPOS: Just, Your Honor, we would
8 also be willing to stagger and provide some --
9 perhaps the bulk even before any extended deadline.
10 But I will refrain from saying anything else.

11 JUDGE McDADE: Well, Mr. Sipos, when you
12 say "the bulk," what would you be able to file on
13 the -- and I'm sitting here right now and, quite
14 frankly, off the top of my head, I don't know how
15 many contentions New York is taking the lead on. I
16 assume you know off the top of your head. How many
17 are you taking the lead on?

18 MR. SIPOS: Let's see, one, two, three,
19 four, five, six, seven, eight, nine, ten, ten absent
20 35, and 36, and 38, which are off the -- for the
21 purposes of this discussion off the table. So, I
22 believe that's 10, and I believe we could submit
23 prior to any extended date on a number of those.

24 JUDGE McDADE: Okay. When you say "a
25 number," are there -- when you say that, are there

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1 specific ones?

2 MR. SIPOS: Yes.

3 JUDGE McDADE: Okay, 24, 25, and 26 we
4 can put in, or are you just simply saying we could
5 get in half of the 10 by the 22nd?

6 MR. SIPOS: I have -- there are specific
7 contentions that I believe we could file.

8 JUDGE McDADE: Which are?

9 MR. SIPOS: Transformers 8, no action
10 Entergy, so 37, 33, and 9 consolidated. Cables 6 and
11 7, pipes, tanks, which is number 5, population 16,
12 planned value 17, and we're not -- I'm just not sure
13 as to the remainder. So, 24, 25, 26 and 12.

14 MR. TURK: The last four you would need
15 more time on. I'm sorry, this is Sherwin Turk.

16 MR. SIPOS: Yes.

17 JUDGE McDADE: Mr. Bessette, what's your
18 reaction?

19 MR. BESSETTE: Your Honor, we continue to
20 believe that this proceeding has been going on for
21 so many years, and we believe we deserve some
22 certainty, and that the parties should file on the
23 agreed upon deadline that we agreed on not two weeks
24 ago. And we don't believe the parties have provided
25 any true basis for an extension, and we've

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1 established some harm.

2 Like I said, we have numerous experts
3 who have other obligations. We've had -- literally,
4 parties have cancelled vacations, holiday vacations
5 to be ready for this.

6 MR. SIPOS: Yes, I've got to respond to
7 that, to speak on behalf of the State of New York.

8 MR. BESSETTE: I wasn't done, Mr. Sipos.

9 MR. SIPOS: I'm sorry, Paul.

10 MR. BESSETTE: All right. Thank you,
11 Your Honor. So, I think our position is that we
12 believe Your Honor's offer with regard to New York
13 State 38 is reasonable. It addresses any
14 distractions in the coming weeks. And we believe
15 that's an appropriate offer.

16 MR. TURK: Well, it wasn't so much an
17 offer as just a proposal to get feedback on. But --

18

19 MR. BESSETTE: And one other item, Your
20 Honor. If the Board is going to -- inclined to give
21 any offer of delay, we would agree that the bulk of
22 that should move forward on time.

23 JUDGE McDADE: Okay. Mr. Sipos?

24 MR. SIPOS: Yes, sir?

25 JUDGE McDADE: Anything further? There

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1 was something you wanted to address?

2 MR. SIPOS: No, I will -- the State has
3 also over a period of years had disruptions to their
4 Staff's schedule, and I won't say anything else
5 about it.

6 JUDGE McDADE: Okay. As I said, we will
7 get back to you promptly. I anticipate that you'll
8 be getting an email from us tomorrow with regard to
9 that.

10 I believe there's nothing further to be
11 taken up. Judge Wardwell?

12 JUDGE WARDWELL: I have nothing.

13 JUDGE McDADE: Judge Lathrop?

14 JUDGE LATHROP: I have nothing further.

15 JUDGE McDADE: And I take it none of the
16 parties has anything further to address before we
17 terminate the status conference.

18 MR. TURK: I have one point in response
19 to Mr. Sipos, Your Honor.

20 JUDGE McDADE: Yes, Mr. Turk?

21 MR. SIPOS: Filings where four of the
22 State's contentions are delayed, and we really don't
23 buy anything in the way of time because, ultimately,
24 we're going to be going to hearing at the same time,
25 anyway. So, I don't see the point of staggering

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1 where some contentions are worked with testimony
2 earlier than others. So, I would say given a choice
3 between staggered filing or delay of two to three
4 weeks, or 10 days as Riverkeeper suggests, the two
5 to three weeks that Mr. Sipos would want, I believe
6 that's three weeks, I would prefer filing all
7 testimony at the same time at whatever extension
8 time the Board may decide to give, or whatever the
9 current schedule is.

10 JUDGE McDADE: Well, let me also indicate
11 and just get an impact from the Intervenors, New
12 York in particular. What I would be predisposed to
13 doing is if we were to do that, and again I haven't
14 discussed this with my colleagues so it may be
15 something entirely different; even if we were to
16 bifurcate the time for submitting -- in other words,
17 having certain contentions filed on the 22nd, the
18 end result would then give the responding parties
19 more time, because I would anticipate whenever you
20 actually worked on them would be up to you, but that
21 all of the responses would be due on the same date,
22 whether it would be for the first filed contentions,
23 or for the later filed contentions. So that we would
24 then have a -- everything would then be back on the
25 same track, as opposed to have piecemeal sort of

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1 rolling in. And I assume New York would not have an
2 objection to that.

3 And having stated it that way, it sort
4 of suggests that New York doesn't have an objection
5 to that.

6 MR. SIPOS: New York does not have an
7 objection.

8 JUDGE McDADE: Okay. We will be back to
9 you by email tomorrow. That said, this status
10 conference is terminated. Thank you very much.

11 (Whereupon, the proceedings went off the
12 record at 3:09 p.m.)

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CERTIFICATE

This is to certify that the attached proceedings
before the United States Nuclear Regulatory
Commission

Proceeding: Entergy Nuclear Operations
Indian Point Nuclear Generating Plant

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

ASLBP Number: 07-858-03-LR-BD01

Location: Teleconference

were held as herein appears, and that this is the
original transcript thereof for the file of the
United States Nuclear Regulatory Commission taken
and thereafter reduced to typewriting under my
direction and that said transcript is a true and
accurate record of the proceedings.

Neal R. Gross

Official Reporter
Neal R. Gross & Co., Inc.

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