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NUCLEAR REGULATORY COMMISSION

Title: Entergy Nuclear Operations
Indian Point Plant Units 2 and 3

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

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

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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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STATUS CONFERENCE

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In the Matter of:	:	Docket Nos.
ENTERGY NUCLEAR	:	50-247-LR, 50-286-LR
OPERATIONS, INC.	:	
(Indian Point Nuclear	:	ASLBP No.
Power Generating Units	:	07-858-03-LR-BD01
2 and 3)	:	

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Monday, July 9, 2012

Via teleconference

BEFORE:

LAWRENCE G. McDADE,	Chairman
MICHAEL F. KENNEDY,	Administrative Judge
RICHARD E. WARDWELL,	Administrative Judge

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P R O C E E D I N G S

(1:37 p.m.)

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3 CHAIRMAN McDADE: Okay. We are on the
4 record in the matter of Entergy Nuclear Operations,
5 Inc. Indian Point Nuclear Power Generating Units 2 and
6 3, Docket numbers 50-247-LR and 50-286-LR.

7 We are here to go over a number of
8 different matters and we might as well just get
9 started first of all by having the parties introduce
10 themselves. First of all from Entergy, who is on the
11 line?

12 MR. BESSETTE: Your Honor, this is Paul
13 Bessette and I have with me John Rund and I believe my
14 colleague Kathryn Sutton may be on the line from a
15 different location.

16 MS. SUTTON: That's correct. Kathryn
17 Sutton here.

18 CHAIRMAN McDADE: Okay. Good afternoon,
19 Ms. Sutton.

20 From the NRC Staff, Mr. Turk?

21 MR. TURK: Yes, Your Honor, Sherwin Turk.
22 With me are David Roth, Beth Mizuno, and Brian Harris,
23 and also our Environmental Project Manager Mike
24 Wentzel is here.

25 CHAIRMAN McDADE: Okay, thank you Mr.

1 Turk. From New York?

2 MR. SIPOS: Good afternoon, Your Honor,
3 this is John Sipos from Albany and I believe Attorney
4 General Janice Dean is on in New York City.

5 MS. DEAN: Yes.

6 CHAIRMAN McDADE: Is that affirmative, Ms.
7 Dean?

8 MS. DEAN: Yes, Your Honor.

9 CHAIRMAN McDADE: Okay, from Riverkeeper?

10 MR. MUSEGAAS: Yes, Your Honor, this is
11 Phillip Musegaas from Riverkeeper. Musegaas is M-U-S-
12 E-G-A-A-S and I am here with Deborah Brancato.

13 CHAIRMAN McDADE: Okay, thank you. From
14 Clearwater?

15 MS. GREENE: Yes, Your Honor, Manna Jo
16 Greene from Clearwater with Karla Raimundi. And Manna
17 Jo Greene is M-A-N-N-A, J-O, Greene with an E. And
18 Karla with a K and her last name is spelled R-A-I-M-U-
19 N-D-I.

20 CHAIRMAN McDADE: Thank you. From
21 Connecticut?

22 MR. SNOOK: Robert Snook, S-N-O-O-K.

23 CHAIRMAN McDADE: From Cortlandt?

24 MS. TREANOR: Good afternoon, this is
25 Victoria Treanor, T-R-E-A-N-O-R and Adam Stolorow is

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1 with me, S-T-O-L-O-R-O-W.

2 CHAIRMAN McDADE: Okay, have I hit
3 everybody? Any other party present?

4 Okay, apparently not. And again my name
5 is Lawrence McDade. With me is Judge Wardwell and
6 Judge Kennedy.

7 Let's go through the various matters that
8 we wanted to take up first and at the end we will ask
9 the parties whether or not there are any other matters
10 that they believe need to be taken up at this point.

11 First of all we have a motion from
12 Riverkeeper relating to Riverkeeper contentions EC-3,
13 which has been consolidated with Clearwater contention
14 EC-1. The motion basically asks the Board to hold in
15 abeyance that contention which is currently on track
16 one to be heard in October of 2012, pending settlement
17 negotiations that are represented as having been
18 pending. In response to the motion, Entergy and the
19 NRC Staff filed objections to granting the motion.

20 First of all let me ask of the standpoint
21 from Riverkeeper what are the status of those
22 negotiations at this point in time?

23 MR. MUSEGAAS: Your Honor, this is Phillip
24 Musegaas. We have had preliminary negotiations. They
25 are still, in our opinion, going forward and going

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1 well. So we hope to continue to negotiate in good
2 faith as we have. As I outlined in our motion we have
3 had several preliminary discussions and would hope to
4 continue that.

5 So without going into detail which would
6 be the subject of confidential negotiation
7 discussions, I hope that answers your question.

8 CHAIRMAN McDADE: Well the answer is yes
9 and no. Let me pursue it a little bit further.

10 At this point in time, do you have any
11 time table for further meetings and a reasonable
12 estimate by which point you would know whether this
13 would settle or not?

14 MR. MUSEGAAS: We have a -- I will answer
15 briefly and then I would ask if Paul Bessette could
16 answer as well.

17 We are essentially waiting for a response
18 from Entergy. Riverkeeper counsel spoke to Entergy
19 counsel this morning briefly and I believe we are
20 expecting a response from Entergy within the next
21 couple of weeks. I don't want to speak for Mr.
22 Bessette but essentially we are waiting for a response
23 from Entergy to engage in more substantive
24 discussions. And that is -- I would like to give you
25 a more accurate estimate of time but that is the best

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1 I can give you at this point.

2 CHAIRMAN McDADE: From the Board's
3 schedule, the item that is due is rebuttal testimony
4 from Riverkeeper. That testimony would have been due
5 three days after the motion was filed back on June
6 29th. What prohibits, at this point, Riverkeeper from
7 filing that rebuttal testimony and then moving forward
8 with settlement discussions? Again, we are not
9 talking about the initial direct testimony which was
10 filed back in December. The reply testimony back the
11 end of March the 29th and 30th. At this point, you
12 have had a few months. Having seen the testimony of
13 the Staff and Entergy, rebuttal is not a regurgitation
14 of the direct testimony but only focusing on
15 differences between your direct testimony and the
16 reply testimony presented by Entergy and the Staff.
17 One would think the rebuttal testimony would be
18 relatively short comparatively.

19 Given the amount of time that you have had
20 to work on it, how would Riverkeeper be damaged if we
21 were to direct it go forward with the rebuttal
22 testimony?

23 MR. MUSEGAAS: Your Honor, we do not
24 believe we would be damaged. If Your Honor decides
25 for us to go forward, we will make our best efforts

1 and file rebuttal testimony when you require us to.
2 The larger reason for our motion was because of
3 limited resources and limited witness availabilities
4 leading up to the June 29th deadline, we were simply
5 seeking to put the contention on hold, as you well
6 know.

7 So at this point, you know, we have
8 continued to work on it and we will abide by whatever
9 Your Honor decides in terms of when we need to file.
10 We would respectfully ask if you decide that we need
11 to file in the short-term that we be given
12 approximately a week, if that is possible to file it.
13 Again, that is where we stand.

14 CHAIRMAN McDADE: If we were to grant your
15 motion, wouldn't that effectively take this
16 contention, Riverkeeper EC-3 off track one and
17 preclude us from hearing it in October? And doesn't
18 that work against Riverkeeper's interest in getting
19 this resolved? Mr. Musegaas?

20 MR. MUSEGAAS: Yes, Your Honor. I'm
21 sorry. I'm considering my response. Thank you.

22 I don't believe that putting it on track
23 two necessarily works against our interest, if that
24 would be the inevitable result, because we have other
25 potential NEPA contentions that are on track two and

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1 indeed other contentions that may be heard on that
2 later track. From our perspective, it does not go
3 against our interest to potentially have to litigate
4 that at a later date. But yes, that is --

5 CHAIRMAN McDADE: Okay, Clearwater is also
6 a party on this particular contention, although they
7 have been consolidated. Ms. Greene, do you have
8 anything further to add to what Mr. Musegaas had to
9 say?

10 MS. GREENE: No, Your Honor, we don't.

11 CHAIRMAN McDADE: Okay, Mr. Bessette, will
12 you be responding for Entergy on that?

13 MR. BESSETTE: Yes, I will, Your Honor.

14 CHAIRMAN McDADE: What is your view on the
15 status of the settlement negotiations? Is there a
16 reasonable and let me use the word here probability
17 that this contention would settle before hearing in
18 October?

19 MR. BESSETTE: Well first I think we agree
20 with Mr. Musegaas' description of it. We are going
21 forward, albeit slowly. We have had preliminary
22 discussions and again we appreciate the discussions
23 with all the parties.

24 We anticipate, if there is a potential for
25 solution, we could resolve this before going to

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1 hearings. We wanted to emphasize that part of the
2 whole process was that we would proceed with
3 settlement in parallel with going to hearing on this
4 issue. And so we were frankly somewhat surprised that
5 this motion was filed in the first place.

6 That filing has actually put some of the
7 settlement efforts -- delayed some of those efforts.
8 We hope to go forward in the next week or two, our
9 getting back to Riverkeeper. It would be helpful to
10 perhaps have face-to-face meetings in the coming weeks
11 and we should know if we are going to reach a
12 resolution, I would hope, in the next 60 days.

13 CHAIRMAN McDADE: Do you think it would be
14 helpful if we were to assign a settlement judge to
15 this matter? That would be not one of the three
16 judges assigned, a judge who would not be discussing
17 what was discussed during the settlement negotiations
18 with the members of the Board. But do you think it
19 would be helpful to have a judge assigned to
20 facilitate the settlement? First of all, Mr.
21 Bessette?

22 MR. BESSETTE: Your Honor, that may be
23 helpful at some point but at this point I think the
24 parties are in general agreement, again, without going
25 into detail on the issues to be discussed. And I mean

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1 at this point I think the parties are working well
2 together but there may be a point where perhaps if we
3 are close but not quite there where a settlement judge
4 could help. And we appreciate that opportunity but I
5 think at this point I don't see the need quite yet.

6 CHAIRMAN McDADE: Okay and let me just
7 leave that out there that in the event Mr. Musegaas or
8 Mr. Besette you believe that at some point down the
9 road a settlement judge might be helpful in helping
10 you reach an agreement, please notify us and we can
11 try to schedule a status conference to talk about the
12 logistics of that.

13 MR. BESSETTE: That is greatly
14 appreciated. Thank you, Your Honor.

15 MR. MUSEGAAS: Thank you, Your Honor. And
16 Your Honor, if I may, in further response to your
17 question about the status of negotiations, I would
18 just add my agreement to Mr. Besette that I do think
19 if we continue to go forward with negotiations that it
20 is possible we could resolve the contention before the
21 hearing date. I didn't make that clear before.

22 CHAIRMAN McDADE: Okay. Mr. Besette, is
23 it still your position that the rebuttal testimony
24 should be filed and we should move forward to keep EC-
25 3 on track one?

1 MR. BESSETTE: Yes, Your Honor, for the
2 reasons we have stated in our answer. Again, we
3 believe the discussions are moving forward but again
4 they are very preliminary. And because we do think we
5 would decide to reach agreement or not before the
6 hearing, we do not want to jeopardize the current
7 progress ongoing to hearing on this contention.

8 CHAIRMAN McDADE: Okay. Mr. Turk, I have
9 got one quick question of the Staff preliminarily.
10 And the response that you filed on July 5th is titled
11 "NRC Staff's Answer to Riverkeeper's Motion to Hold
12 Contention Riverkeeper EC-3 in Abeyance." It
13 indicates on page two that the parties are due to file
14 their proposed Board questions on all contentions four
15 weeks later on August 29, 2012. That would be a 60-
16 day period.

17 And I realize there have been an awful lot
18 of orders and an awful lot scheduling orders filed by
19 the Board in this particular case but my quick reading
20 from our July 2010 scheduling order is that those
21 questions are due 30 days after, not 60 days after.
22 Am I overlooking an order that I signed?

23 MR. TURK: Your Honor, thank you. You
24 raised a very good question that I think would be
25 useful for us to talk about during this conference

1 call.

2 When the initial scheduling order came out
3 in July of 2010 there was a fork in the road. Due
4 dates for Board questions would depend upon whether or
5 not there was any interest in governmental filing. I
6 calculate the dates. Because Connecticut has filed a
7 statement of position that we will need to address in
8 a responsive brief, under the Board's July 2010 order,
9 we are due to file that rebuttal on July 30th, which
10 is by the way also the date we are due to move to
11 strike any rebuttal testimony filed by intervenors.
12 And 30 days later we and all parties are due to file
13 Board questions, any motions for cross-examination, et
14 cetera. That is how I calculate the date. Maybe
15 other parties could comment on that also.

16 MR. BESSETTE: Your Honor, this is Paul
17 Bessette. New York at least, and I don't want to
18 speak for Mr. Sipos, but New York, the NRC, and we
19 have jointly consulted on the schedule because of the
20 various moving pieces and we were in general agreement
21 that the Board questions were due at the end of
22 August, consistent with Mr. Turk's reasoning.

23 CHAIRMAN McDADE: Okay, so you are
24 suggesting that the operative is F3 and that talks in
25 F3 no later than 60 days after the service under

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1 paragraph K.2 -- excuse me, K.3. Is that correct?

2 I'm on page 15 of the scheduling order.

3 MR. TURK: Your Honor, this is Sherwin
4 Turk. I'm going to need to run to get a copy.

5 CHAIRMAN McDADE: Why don't we go back --

6 MR. SIPOS: Your Honor, this is John Sipos
7 and if I could add, if I could make a statement while
8 Mr. Turk is obtaining that, I believe it is paragraph
9 K, capital K.3.

10 MR. TURK: Actually, Your Honor, I am
11 looking at my own schedule, I see K.5 as the operative
12 paragraph, which says that K.3 plus 30 as to the date
13 for proposed questions. And as I have written it down
14 in my own list of due dates, it is 30 days after the
15 rebuttal to governmental filings.

16 MR. BESSETTE: That is consistent with
17 Entergy's understanding as well.

18 MR. SIPOS: And I believe Judge -- this is
19 John Sipos again. I believe NRC Staff, Entergy and
20 the State have a similar understanding now about that.

21 ADMIN. JUDGE WARDWELL: But weren't the
22 intervenors -- This is Judge Wardwell. Weren't the
23 intervenors' rebuttal submitted on June 29th? Which
24 would make the date for the proposed questions as July
25 30th.

1 MR. TURK: No, Your Honor. That is the
2 date that we would be filing motions in limine on the
3 rebuttal testimony. That is how I read it, Sherwin
4 Turk. And also the date -- July 30th is also the date
5 that we would file our --

6 ADMIN. JUDGE WARDWELL: -- in regards to
7 the scheduling of the proposed questions.

8 MR. TURK: I'm sorry. I missed that, Your
9 Honor.

10 ADMIN. JUDGE WARDWELL: Where do you see
11 the motions in limine coming into play in regards to
12 the scheduling for the proposed questions as outlined
13 in the scheduling order? And I don't have it in front
14 of me so that is why I am asking that.

15 MR. TURK: Working on getting a copy of
16 the order in front of us, Your Honor. It will take us
17 a moment.

18 CHAIRMAN McDADE: Okay, just sort of
19 reading through the order, in K.3 it says the
20 intervenors may but need not submit a revised
21 statement of position and rebuttal testimony. If they
22 do, they are to submit their revised statement of
23 position and rebuttal testimony no later than 60 days
24 after service under paragraph K.2. Likewise,
25 interested government agencies may submit testimony

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1 and supporting affidavits and exhibits no later than
2 60 days after the submissions of Entergy and the NRC
3 Staff under K.2.

4 So under both of those, the rebuttal and
5 the testimony from interested government agencies
6 would come in 60 days after the testimony of Entergy
7 and the Staff, which in this case would be March 29th,
8 March 30th.

9 We then go down to paragraph K.5 --

10 MR. BESSETTE: Your Honor, if I may
11 interrupt, we were also focusing on the last sentence
12 in that paragraph. If interested government entities
13 submit written statements of position or written
14 testimony, rebuttal may be submitted within 30 days of
15 such contention -- of such --

16 COURT REPORTER: I'm sorry. This is the
17 Court Reporter. Who was speaking?

18 MR. BESSETTE: That's Paul Bessette.

19 COURT REPORTER: Thanks a lot.

20 CHAIRMAN McDADE: Okay. As I understand
21 it then, the position of the parties that because
22 Connecticut filed that you then have 30 days for
23 rebuttal and it is the date of that rebuttal that will
24 be the trigger date for the K.5.

25 MR. BESSETTE: This is Paul Bessette.

1 That is how we have evaluated it.

2 MR. TURK: Yes, Your Honor.

3 CHAIRMAN McDADE: Okay and --

4 ADMIN. JUDGE WARDWELL: How do you
5 interpret Connecticut's to being testimony?

6 MR. BESSETTE: Well as an interested -- It
7 says statements of position and/or written testimony.

8 CHAIRMAN McDADE: Okay. Mr. Bessette,
9 what was the date of that, of Connecticut?

10 MR. BESSETTE: I think it was June 29th,
11 Your Honor, I believe.

12 CHAIRMAN McDADE: Is that correct, Mr.
13 Snook?

14 MR. SNOOK: Yes.

15 CHAIRMAN McDADE: Okay. Is it the
16 position of Entergy that on or before July 29th you
17 will be filing pursuant to K.3, rebuttal testimony?

18 MR. BESSETTE: I'm looking at my schedule,
19 Your Honor.

20 CHAIRMAN McDADE: Okay.

21 MR. BESSETTE: We do plan to file I
22 believe -- my calendar says the 30th but we will
23 confirm whether it is the 29th or 30th, Your Honor.
24 It would be a rebuttal testimony to any interested
25 government entities. So yes, that would be our

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1 position. Our response to Connecticut is due at the
2 end of July.

3 CHAIRMAN McDADE: Okay and the 29th falls
4 on a Sunday, so it would be the 30th.

5 MR. BESSETTE: And that is what my
6 calendar has, Your Honor.

7 MR. TURK: Your Honor, this is Sherwin
8 Turk. That is consistent with my calendar.

9 CHAIRMAN McDADE: Okay.

10 ADMIN. JUDGE WARDWELL: Again, refresh my
11 memory. Did Connecticut file in the required 60-day
12 time frame from what I believe was to be the Entergy's
13 and NRC's Staff's testimony?

14 MR. TURK: Your Honor, this is Sherwin
15 Turk. They were timely. I don't recall if it was 60
16 or what the trigger was but they were timely.

17 ADMIN. JUDGE WARDWELL: I can't remember
18 the date of that. I just don't happen to have that.

19 MR. TURK: Well we're running to get a
20 copy right now, Your Honor.

21 MR. SNOOK: This is Bob Snook for
22 Connecticut. It is my earnest hope that it was
23 timely. Actually looking at my calendar, I think I
24 filed on the 28th. That doesn't make any difference
25 because the 30 days would end on a Saturday as opposed

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1 to a Sunday so that doesn't make any difference for
2 you guys.

3 I understood that I had until the 29th.

4 ADMIN. JUDGE WARDWELL: Of what?

5 MR. SNOOK: Of June from the March
6 deadline -- time frame.

7 ADMIN. JUDGE WARDWELL: This 60 days, as
8 I see it, from March 30th would bring you to May 29th.

9 MR. SNOOK: Yes.

10 ADMIN. JUDGE WARDWELL: Is that when you
11 submitted?

12 MR. SNOOK: I submitted it in June. I
13 thought there was a 30-day extension from that period.
14 That is where I got my date from, unless I did so in
15 error.

16 ADMIN. JUDGE WARDWELL: Where do you see
17 the 30-day extension? I'm not -- Don't get me wrong.
18 I'm not accusing anyone of anything, knowing how many
19 orders there are out there. That is why I am asking
20 where that 30 days may come from.

21 MR. SNOOK: Actually I'm not sure I can
22 find that right now.

23 MR. BESSETTE: Your Honor, I believe it
24 was a May 16th order.

25 MR. TURK: That is what I have on my

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1 schedule also, Your Honor. Sherwin Turk.

2 MR. SNOOK: Thanks, Sherwin.

3 MR. TURK: May 16th.

4 ADMIN. JUDGE WARDWELL: Okay.

5 CHAIRMAN McDADE: Given, as I said, as
6 many orders that we have issued in this, I just want
7 to make sure that we are all going to be reading off
8 the same sheet of music as we move forward to that.

9 But there seems to be a consensus among
10 the parties, in any event, that at this point the date
11 envisioned under K.3 of the scheduling order, page 15,
12 would be June 30th.

13 MR. TURK: Yes, Your Honor.

14 CHAIRMAN McDADE: And actually given the
15 fact that -- I'm sorry.

16 So we are talking about July 30th for the
17 rebuttal testimony. Is that correct?

18 MR. TURK: For rebuttal position statement
19 -- rebuttal brief, Your Honor, since they aren't going
20 to file testimony.

21 CHAIRMAN McDADE: Yes. So that would be
22 July 30th?

23 MR. TURK: Yes, Your Honor.

24 MR. BESSETTE: Yes, Your Honor, and that
25 would also be any motions in limine on the rebuttal

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1 testimony.

2 MR. TURK: From the intervenors.

3 MR. BESSETTE: Yes.

4 MR. TURK: That was Sherwin Turk finishing
5 Mr. Bessette's sentence.

6 CHAIRMAN McDADE: Okay and the motions in
7 limine and also questions to the Board under K.5 would
8 be the same day? Motions in limine under K.4 and
9 questions for the Board under K.5?

10 MR. BESSETTE: Yes, the same day, Your
11 Honor. This is Paul Bessette.

12 CHAIRMAN McDADE: No, that's not correct?

13 MR. SIPOS: This is John Sipos. Sorry to
14 interrupt. I think there was a differing
15 understanding about the questioning, the proposed
16 questions, the date for the proposed questions. I
17 think that was an August date.

18 MR. TURK: That's right, August.

19 MR. SNOOK: That was the 27th of August.
20 This is Bob Snook.

21 MR. TURK: No, it's not. It is the August
22 29th. Sherwin Turk.

23 I could simplify from the Staff's
24 perspective. Leaving out any question having to deal
25 with contention 38 because those dates are very

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1 different, we show that on July 30th the Staff and
2 Entergy are due to file a rebuttal to any interested
3 government filings. In this case, it will take the
4 form of a rebuttal position statement or a brief. And
5 on the same date, July 30th, Entergy and Staff are due
6 to file any motions in limine against intervenor
7 rebuttal evidentiary presentations. So that is July
8 30th.

9 Moving forward 30 days to August 29th,
10 which is a Wednesday, all parties, on our schedule at
11 least, are due to file their proposed Board questions,
12 motions for cross-examination, motions for subpart G
13 procedures which I even shutter to mention, but those
14 are due also August 29th.

15 ADMIN. JUDGE WARDWELL: So all that hinges
16 on -- and this is Judge Wardwell again -- on whether
17 or not this extension is --

18 MR. SIPOS: No. Judge, this is John
19 Sipos. I was just looking at the May 16, 2012 order
20 that I think Mr. Bessette was referencing and I
21 believe that also included the dates from paragraph
22 K.3 for both intervenors/petitioners and IGEs or
23 interested governmental entities.

24 ADMIN. JUDGE WARDWELL: Well we will have
25 to look that over because that is what I am not aware

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1 of. If in fact there is that and we interpret it that
2 as do you in the May 16th order, I agree with the
3 dates that you are talking about on my schedule that
4 I happen to have.

5 If that 30-day extension isn't granted,
6 then in fact the dates are off.

7 CHAIRMAN McDADE: Well this is Judge
8 McDade again. And I am just -- and let me go through
9 first and address it Mr. Turk, then to Mr. Bessette,
10 then to Mr. Sipos. Looking at K.4 and K.5, the
11 trigger dates for K.4 is the last date of submittal
12 under K.1 and K.3. If you look down at paragraph 5,
13 the trigger date is also the last day of materials
14 under K.2 or K.3. Wouldn't that suggest that those
15 are both due the same, July 30th, as opposed to the
16 rebuttal and motions in limine on July 30th and the
17 questions and cross on August 29th? Mr. Turk?

18 MR. TURK: Your Honor, if we are confused
19 I apologize. But as I understand K.3, the last
20 sentence says, "If interested governmental entities
21 submitted written statements of position and/or
22 written testimony, rebuttal may be submitted 30 days
23 after such submissions."

24 So the last thing that happens under K.3
25 is rebuttal by anyone who wants to rebut the

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1 interested governmental filing. So that is the last
2 filing under K.3, the rebuttal to the interested
3 government.

4 K.5 then says no later than 30 days after
5 service of the last material submitted under K.2 or
6 K.3. So that means that 30 days after the staff and
7 Entergy file a rebuttal to Connecticut. Thirty days
8 after that, i.e., August 29th, proposed questions are
9 due from all parties.

10 CHAIRMAN McDADE: Okay but I guess -- and
11 there is no need to apologize for being confused
12 because obviously we are asking these questions
13 because we wrote the orders and there is a bit of
14 confusion. And what we want to do is just make sure
15 as we come closer here, everyone is playing off of the
16 same sheet of music, as I said.

17 But under that, wouldn't the motions in
18 limine also be due August 29th, Mr. Turk?

19 MR. TURK: No, Your Honor, because under
20 K.4, the motions in limine are due --

21 CHAIRMAN McDADE: Thirty days after
22 service of the materials --

23 MR. TURK: -- entered by intervenors
24 and/or governmental entities.

25 CHAIRMAN McDADE: Okay.

1 MR. TURK: Or by the Staff or Entergy
2 under K.2. Well this would be a K.3 filing by Entergy
3 and the Staff. So the rebuttal to Connecticut would
4 not trigger the motion in limine. What would trigger
5 the motion in limine, as we see it, would be 30 days
6 after the intervenors' filing or if Connecticut had
7 filed testimony that would trigger a motion in limine
8 would be 30 days after that. Here there was no
9 testimony. It was just a rebuttal -- I'm sorry -- a
10 statement of position. So the motion in limine
11 doesn't go to that.

12 CHAIRMAN McDADE: Okay, fine. I
13 understand your position. And at first glance, I
14 think I agree with it.

15 MR. TURK: I would have to say, Your
16 Honor, it did take several reads of the order and we
17 did, between the parties we did exchange views several
18 times to make sure we had a common understanding.

19 CHAIRMAN McDADE: Well you probably should
20 have at least said some nasty things among yourselves
21 about the person who wrote because I am saying that at
22 the moment and I wrote it.

23 Okay. But I think at least now we are on
24 the same sheet of music and we all have the same
25 understanding that generally speaking the rebuttal on

1 K.3 is due July 30th; motions in limine due July 30th;
2 and August 29th for questions to the Board and cross-
3 examination plans. And then we still have to resolve
4 what, if anything, changes with regard to EC-3, based
5 on the pending motion.

6 Before we do that, we are going to ringer
7 off and have a -- and I say ringer off, just put you
8 on mute, and have a discussion among ourselves before
9 we get back to you on that with regard to Riverkeeper
10 EC-3.

11 The next matter we wanted to take up had
12 to do with scheduling for any new or amended
13 contentions arising out of the draft FSEIS. The draft
14 FSEIS, as I understand it, was filed June 29th. Now
15 we need to set a date for the new and amended
16 contentions arising from that, if any. And what I
17 wanted to do is to put out three possibilities and get
18 the parties to comment on them.

19 The first would be to set a trigger date
20 of the date that the draft FSEIS was filed. The next
21 would be as a trigger date the date that the public
22 comments on the draft FSEIS are submitted, which would
23 be late August, August 20th approximately of 2012.
24 And the third date would be from the date of the final
25 FSEIS as far as the date that we should use to trigger

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1 new or amended contentions.

2 First of all, let me ask the Staff. Mr.
3 Turk, what is your view as to what the appropriate
4 date would be and why?

5 MR. TURK: Well consistent with
6 traditional NRC practice, Your Honor, the publication
7 of new information would in and of itself be the
8 trigger date. So that publication occurred on June
9 26th. So consistent with standard practice, you would
10 say approximately 30 days from that date, using the
11 Board's previous orders in this proceeding.

12 CHAIRMAN McDADE: What I am concerned with
13 Mr. Turk, is this. And you know, that is the normal
14 date, the sort of presumptive date, but at the same
15 time the date can be different set by the Board. As
16 we are getting into doing a number of things here, the
17 question is do we have -- you know, basically churn
18 the same ground over and over again. If we tell the
19 parties to go ahead and start to file based on the
20 FSEIS, we get motions for new or amended contentions.

21 You all then have to take the time to
22 respond to those motions. Obviously, none of those
23 motions are going to be on track one. We are not
24 going to be hearing those in October of 2012. We have
25 to read them and rule on them and all of this is going

1 to be during the same period of time that everybody is
2 getting ready for the hearing.

3 Once we do that, as we are doing that, we
4 are going to be getting public comments on that that
5 can affect the final FSEIS. You are also going to be
6 getting the responses from Marine Fisheries which can
7 affect the final supplemental environmental impact
8 statement and also perhaps public comments on the
9 revised draft based on Marine Fisheries.

10 And my question is does it make sense,
11 given that we are moving towards a hearing both in
12 October and then in December of 2012 to be ruling on
13 three sets of motions for new and amended contentions,
14 one based on the June 26th draft, another -- and then
15 repeatedly until we finally get a final supplemental
16 environmental impact statement. There may be little,
17 if any, difference between these but there may be
18 enough that we have a whole series of new and amended
19 contentions.

20 So I guess my question is how would the
21 interest of the NRC staff be adversely impacted if the
22 Board directed the parties to hold intentions based on
23 the FSEIS until we have a final, that we have
24 something that at least has the potential for being
25 the document, the environmental review document. How

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1 would the Staff be harmed -- how would the interest of
2 the Commission be harmed by that? And wouldn't the
3 interest of the Commission be advanced by having this
4 going through this just once?

5 And after I hear from Mr. Turk, I will
6 basically ask Mr. Bessette and Mr. Sipos the same
7 question.

8 MR. TURK: Your Honor, this is Sherwin
9 Turk. I certainly understand your concerns.

10 I would not want to trigger -- I would not
11 want the final supplements to the FSEIS to be the
12 trigger date because what typically or what often
13 happens, I won't say typically, but what often happens
14 consulting with another federal agency or state agency
15 is for whatever reason they may find that they cannot
16 deliver their product to us on the originally agreed
17 upon schedule.

18 So if we, for instance, don't get NMFS'
19 biological opinion by September 28th on Atlantic
20 sturgeon, and if that is delayed, that could affect
21 what we say in the final FSEIS supplement.

22 Also if we receive extensive public
23 comments on the draft, that could affect how much time
24 we need to publish the final supplement to the FSEIS.
25 So I wouldn't want the contentions to wait for the

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1 final FSEIS supplement to come out.

2 I would not have a problem if he wanted to
3 say pick some later date after the current projected
4 time period for comments closes and after the current
5 NMFS schedule for the biological opinion on Atlantic
6 sturgeon to close, some date after that to be the date
7 for filing. I wouldn't have a great problem with that
8 but I wouldn't want to say let's wait for the final
9 supplement to come out because I can't tell you for
10 sure that that will be December. That is our best
11 estimate currently but that could change.

12 And I would also note that we will see on
13 August 20th all parties and members of the public are
14 due to file comments on the draft FSEIS supplement.
15 We will have a better feeling then what the scope of
16 comments is that we will have to address for the
17 final.

18 CHAIRMAN McDADE: Okay but wouldn't it be
19 in the interests of the NRC to wait until you have
20 completed your environmental review, instead of doing
21 this piecemeal with several successive motions to
22 amend contentions that you have to respond to, we have
23 to rule on, only to then to have them mooted by the
24 next round of the environmental review documents that
25 come out? Mr. Turk?

1 MR. TURK: Yes, Your Honor. There is a
2 certain efficiency in waiting. On the other hand, if
3 we end up waiting too long then we lose the efficiency
4 and end up having delay. So there is a balancing that
5 I think has to be done.

6 CHAIRMAN McDADE: Okay. Mr. Bessette,
7 what is the view of Entergy?

8 ADMIN. JUDGE WARDWELL: Before you can I
9 ask a question?

10 CHAIRMAN McDADE: Judge Wardwell?

11 ADMIN. JUDGE WARDWELL: Mr. Turk, you
12 wouldn't suggest that you would -- you are going to
13 issue your final final supplement addressing the
14 biological opinion, for instance, wouldn't you and
15 other public comments?

16 MR. BESSETTE: I don't know that I
17 understand, Your Honor. Could you rephrase that?

18 ADMIN. JUDGE WARDWELL: You would not
19 issue your final supplement to the final supplement of
20 the FSEIS or what the heck they call this thing, prior
21 to seeing the biological opinion, would you?

22 MR. TURK: Yes, we might, Your Honor. And
23 this goes to actually to Riverkeeper's contention,
24 where they insert that they have to wait for NMFS to
25 finish its actions before we can issue an EIS. There

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1 are cases where NMFS has taken seven years. So we
2 will not hold up a licensing action to wait
3 indefinitely for another agency to act. If we can get
4 their comments and their biological opinion in time
5 for the final supplement, then we will include them.
6 But if we have to wait an extensive amount of time, we
7 will go forward as we are permitted to do. That is
8 our legal position.

9 ADMIN. JUDGE WARDWELL: Okay.

10 CHAIRMAN McDADE: Mr. Bessette, what is
11 the view of Entergy on this matter?

12 MR. BESSETTE: Well, Your Honor, we
13 certainly appreciate your concern and our resource
14 constraints on responding to multiple rounds of
15 contentions and amended contentions. However, based
16 on the uncertainty of the FSEIS date, and as you
17 remember due to significant public comments on the
18 first FSEIS, which was delayed significantly, we are
19 concerned that postponing any new contentions until
20 the FSEIS is, final FSEIS supplement is issued,
21 because we just don't know that firm date, we are
22 concerned that this would postpone things perhaps a
23 bit too long.

24 But we would --

25 ADMIN. JUDGE WARDWELL: Yes, but as I

1 heard Mr. Turk just say, he is going to move ahead
2 regardless of when that biological comes out with a
3 final. So what is the harm of using that as our
4 target date for doing the extensions?

5 MR. BESSETTE: Well, Your Honor --

6 MR. TURK: Your Honor, this is Sherwin
7 Turk. I hope I didn't mislead you. If we see that we
8 are close to reaching resolution with NMFS, that could
9 affect the issuance date but we won't wait
10 indefinitely for NMFS to finish before we issue.

11 ADMIN. JUDGE WARDWELL: So regardless, so
12 what? I mean, still this period isn't going to be
13 completed until that document is issued. Is that not
14 a fair statement?

15 MR. TURK: Yes.

16 ADMIN. JUDGE WARDWELL: So and we are not
17 going to address any contentions that are remotely
18 related with that until that final document comes out.
19 Isn't that a fair assessment?

20 MR. TURK: Yes and that is what the
21 problem is, Your Honor. If --

22 ADMIN. JUDGE WARDWELL: Why don't we just
23 use that as the target date?

24 MR. TURK: Your Honor, because that could
25 cause inordinate delays. Let me give you a

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1 hypothetical to possibly make this more clear.

2 If the final supplement that comes up does
3 not differ in any significant way from the draft and
4 yet it comes out two years from now, well then you
5 would ask well why couldn't someone file a contention
6 when the information first became available in the
7 draft, rather than waiting two years for the final to
8 say exactly the same thing. And you would then find
9 well if we had allowed contentions to be filed
10 earlier, we could have addressed those already in the
11 proceeding rather than wait for the final to come out.

12 So I think it is a bad practice to use the
13 final supplement publication date as the trigger. But
14 I would not oppose if you wanted to say let's wait 60
15 days for example or some similar amount of time and
16 make that the trigger date. I wouldn't have a problem
17 if there was some finite date that serves as a trigger
18 rather than waiting --

19 ADMIN. JUDGE WARDWELL: But you just told
20 me you weren't going to wait.

21 MR. TURK: Pardon me?

22 ADMIN. JUDGE WARDWELL: You told me you
23 weren't going to any length of time.

24 MR. TURK: Well let me be clear. We are
25 currently scheduling the final supplement to come out

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1 in December of this year. If there is any significant
2 delay in that, we will let you know, of course. But
3 if it is only a small amount of delay, for instance,
4 if we finally can wrap up in January or February, then
5 we would do so, rather than waiting indefinitely.

6 ADMIN. JUDGE WARDWELL: All right. So
7 what is wrong with that as the date then? I still
8 don't understand what is wrong with that date. It is
9 under your control. If you are so worried about it --

10 MR. TURK: But we can't give you a date
11 now. All we can do is give you our current best
12 estimate, which is December.

13 ADMIN. JUDGE WARDWELL: Right. And you
14 state that you are not going to wait indefinitely and
15 it is under your control. So why are you worried
16 about it if that date is under your control?

17 MR. TURK: Well Your Honor, that date is
18 under our control but we can't control the date for
19 you to receive contentions and to determine is a
20 contention even admissible. So why do we have to wait
21 for that subsequent action for you to judge the
22 admissibility of a contention, even if a contention is
23 admitted and then put on hold to await the final
24 supplement? I mean, there is no reason to delay
25 everything to wait for the FSEIS supplement to come

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1 out.

2 CHAIRMAN McDADE: And you are currently
3 being told by Marine Fisheries you are going to be
4 hearing back from them in September or by September?
5 That is their target date?

6 MR. TURK: My recollection is that
7 September 28th we are due to get the biological
8 opinions. Of course that could change but that is our
9 current understanding.

10 CHAIRMAN McDADE: Okay. Mr. Sipos, what
11 is New York's view on this?

12 MR. SIPOS: Thank you, Judge McDade. John
13 Sipos for the State of New York.

14 Your Honors, the state would suggest that
15 using the data of the Final Environmental Impact
16 Statement would make sense for a number of purposes,
17 including the fact that preparation of contentions and
18 ensuring that the regulatory requirements is satisfied
19 is a resource-intensive exercise, not only for the
20 intervenors but also for the Applicant and the Staff.

21 In the past we have gone through this
22 iterative process and we certainly have done that.
23 The state has done that but perhaps resources would be
24 better spent and used to wait for the Staff to
25 determine what its final position is going to be,

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1 rather than have the iterative contention process that
2 we have gone through. And it may also contribute to
3 more fulsome public comments during the public comment
4 period and discussion, which is discussion in
5 identifications of issues which might assist in the
6 NEPA process.

7 So as of the three dates that the -- the
8 three potential dates that Judge McDade posited a
9 while, a few minutes ago, the State would suggest that
10 using the final, the date of the final NRC Staff
11 document would be optimal.

12 MR. MUSEGAAS: And Your Honor, if I may,
13 this is Phil Musegaas. May I make a brief comment on
14 this?

15 CHAIRMAN McDADE: Please.

16 MR. MUSEGAAS: Thank you. I think
17 Riverkeeper would agree with the State of New York and
18 with supporting the third option that Judge McDade
19 gave of filing contentions after the Final EIS and for
20 the reasons Mr. Sipos outlined.

21 I would also just add from a public
22 interest, public perspective, it is certainly
23 efficient to have the draft come out, have the public,
24 including Riverkeeper comment on the draft supplement
25 and it is possible that some of our concerns are

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1 addressed in the final and that that may alter the
2 need -- I am not committing to that, obviously -- but
3 that may alter the need or the scope or the number of
4 contentions that are ultimately filed following the
5 final.

6 So I don't think we are losing anything,
7 given that we are talking about track two, potential
8 track two contentions to wait until the final. I
9 think it would avoid a lot of repetitives of filing.

10 You know, if we go from 30 days from June
11 26th and then we go from again amending things after
12 the final comes out if things are not changed, then I
13 think that may not be as efficient.

14 Thank you.

15 CHAIRMAN McDADE: Okay, for Clearwater,
16 Ms. Greene, do you have anything to add on that?

17 MS. GREENE: Clearwater agrees that the
18 best date would be after the filing of the Final EIS.

19 CHAIRMAN McDADE: From Connecticut, Mr.
20 Snook?

21 MR. SNOOK: I tend to agree that the Final
22 EIS would make sense for us, from our perspective.

23 CHAIRMAN McDADE: And Cortlandt, Ms.
24 Treanor?

25 MS. TREANOR: We are not taking a position

1 on this at this time.

2 CHAIRMAN McDADE: Okay.

3 MR. BESSETTE: Yes Your Honor, I mean this
4 is Paul Besette. I think we were somewhat cut off in
5 our conversation. We understand the positions of the
6 parties but we also from, you know as Mr. Turk noted
7 in one of his correspondence, we can't guarantee there
8 is not another issue that will require another FSEIS
9 supplements.

10 Three of the intervenors filed a
11 contention late last night that calls for an FSEIS
12 supplement on an unrelated issue. So to say that we
13 are deferring all contentions until a final FSEIS
14 supplement until Entergy provides some substantial
15 uncertainty here both with regard to the date, perhaps
16 there is other supplements. So if the Board was to
17 postpone this, we would suggest they put an end date
18 or no later than to this contention. Otherwise, this
19 just could be somewhat of an endless cycle.

20 CHAIRMAN McDADE: Okay, obviously we don't
21 want this to drag on forever. There is a concern on
22 the part of the Board, you know, we originally
23 admitted contentions more than four years ago and as
24 we get closer to the hearing, the hearing that we are
25 actually going to have bears little resemblance to the

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1 contentions that were admitted more than four years
2 ago. And you wind up going through and ruling on
3 contentions that then are significantly changed before
4 you get to a hearing.

5 Specifically, if the Board were to set an
6 order directing the parties not to file any new or
7 amended contentions on the FSEIS but said that the
8 Board would issue an order establishing a time frame
9 for that later in the year, you know, specifically the
10 operative events coming up would be in August, the
11 public comments the end of September then from Marine
12 Fisheries, would we not be in a better position at the
13 end of September to determine what a reasonable date
14 was, one would be the Final Supplemental Environmental
15 Impact Statement at that point be reasonable in
16 December and all of the parties at that point be in a
17 position to use their time most efficiently?

18 Just very briefly, Mr. Turk, what if any
19 objections to that would the staff have?

20 MR. TURK: Your Honor, I would object to
21 anything to an order that used the FSEIS supplement
22 publication date as the trigger.

23 If you use the September 28th expected
24 date for NMFS to file its biological opinion on
25 Atlantic sturgeon, I would have less of a problem.

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1 But if NMFS misses that date, then I would like that
2 to be, as Mr. Bessette suggested, a fallback no later
3 than date.

4 And let me just note one thing also before
5 you rule or reach a decision on what the schedule
6 should be. The FSEIS supplement is very limited in
7 scope. It only addresses some corrections to the
8 entrainment and impingement data that had been
9 previously published in the FSEIS itself. It includes
10 a discussion of the new thermal study that Entergy
11 did, which was accepted by New York State in their
12 state's proceedings and it recounts the latest history
13 on the biological opinion for shortnose sturgeon and
14 the re-initiation of consultations on Atlantic
15 sturgeon.

16 So it is a very limited scope. The whole
17 thing is no more than a couple of dozen, maybe two
18 dozen pages.

19 So we are really not talking about a large
20 contention. If one was to be filed, it wouldn't
21 really need an extraordinary amount of time for
22 intervenors to frame a contention if they have one in
23 mind.

24 CHAIRMAN McDADE: But doesn't that cut
25 both ways, Mr. Turk? I mean basically what you are

1 saying is this document should be relatively short and
2 yet does it make any sense to have them prepare a
3 contention or rule on the contention, the prepare
4 another contention or rule on the contention there,
5 prepare another contention or rule on the contention
6 based on what could be relatively minor changes, given
7 the way you have described it as a short document that
8 should be completed before we have the track two, the
9 track one hearing completed.

10 MR. TURK: I understand your statements,
11 Your Honor, and there is certainly some merit in that
12 as well.

13 CHAIRMAN McDADE: Okay and I don't want to
14 keep this going too much longer but just very briefly,
15 Mr. Bessette, anything further on this?

16 MR. BESSETTE: No, Your Honor. If you
17 wanted to postpone a decision for several months, we
18 would not object to that. But again, we would object
19 to an open-ended date that could result in inordinate
20 delays.

21 CHAIRMAN McDADE: Okay, Mr. Sipos,
22 anything new, anything further?

23 MR. SIPOS: No, Your Honor. I believe I
24 have set out the State's position. And if Your Honor
25 has no further questions, I am happy to leave the

1 record as it is.

2 CHAIRMAN McDADE: Okay, Riverkeeper,
3 Clearwater, Connecticut or Cortlandt, anything further
4 on this?

5 MR. SNOOK: No, not from Connecticut.

6 MR. STOLOROW: No, Your Honor, I think our
7 position is clear.

8 CHAIRMAN McDADE: Okay. The next thing we
9 wanted to take up, there is a Staff motion for an
10 extension of time relating to New York 38 Riverkeeper
11 TC3 that the motion was filed. It says that the
12 motion is not opposed. It asks for an extension from
13 July 19th to August 20th.

14 The Board would be predisposed to granting
15 that unopposed motion. We will incorporate what comes
16 out of this hearing including that in an order that
17 will be issued later this week.

18 We currently also have a motion in limine
19 by Entergy but it doesn't seem that that is ripe for
20 any discussion. It was only filed on July 6th. The
21 reply isn't due yet.

22 We also have the new contention New York
23 29. But again the response to that isn't due yet, so
24 it seems premature to discuss that.

25 Let's go through with the parties. Does

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1 the NRC staff have any other matters that you believe
2 should be taken up at the status conference?

3 MR. TURK: Just one question, Your Honor.
4 I don't know that we closed off the discussion on
5 Riverkeeper's motion. Did you want any further
6 discussion on that or was there more information you
7 needed on that?

8 CHAIRMAN McDADE: We have no further
9 questions. We haven't ruled on it. I think I
10 indicated that we would put you on mute and discuss it
11 among ourselves and then bring you all back on but we
12 have not made any ruling on the motion to hold
13 Riverkeeper EC-3 Clearwater EC-1 in abeyance.

14 Anything further from the NRC Staff?

15 MR. TURK: No, we have nothing further,
16 Your Honor.

17 CHAIRMAN McDADE: Mr. Bessette for
18 Entergy?

19 MR. BESSETTE: Just one issue and I would
20 hope I think Manna Jo may address this, but we have
21 been consulted this afternoon that Riverkeeper plans
22 to file a new safety contention based on --

23 MS. GREENE: It's not Riverkeeper.

24 MR. MUSEGAAS: I'm sorry but this is Mr.
25 Musegaas. It is not Riverkeeper.

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1 MR. BESSETTE: I'm sorry. I'm sorry.
2 Manna Jo from Clearwater consulted on a new safety
3 contention regarding aging management of the spent
4 fuel pools. So that, Your Honor will also have to be
5 addressed as part of this proceeding.

6 And I just want to confirm that any
7 schedule that you put out, what new environmental
8 contentions based on the FSEIS, the draft FSEIS
9 supplement would only apply to those issues raised by
10 the supplement, not other issues.

11 MS. GREENE: Yes.

12 MR. BESSETTE: Yes, right. Okay.

13 CHAIRMAN McDADE: Mr. Sipos for New York,
14 anything further we should discuss at this hearing --
15 at this status conference?

16 MR. SIPOS: Just briefly, Your Honor, just
17 to clarify the record. The contention that the States
18 and Riverkeeper and Clearwater filed last night, I
19 believe it is the lead number is New York State
20 Contention 39.

21 CHAIRMAN McDADE: I'm sorry, what did I
22 say?

23 MR. SIPOS: I thought I might have heard
24 29 but I may have misheard that.

25 CHAIRMAN McDADE: If I said 29 I obviously

1 was in error. Thank you.

2 All right, anything further from
3 Riverkeeper? Mr. Musegaas?

4 MR. MUSEGAAS: No, Your Honor. Thank you.

5 CHAIRMAN McDADE: Okay, anything further
6 from Clearwater, Ms. Greene?

7 MS. GREENE: No, thank you, Your Honor.

8 CHAIRMAN McDADE: From Connecticut, Mr.
9 Snook?

10 MR. SNOOK: No, Your Honor.

11 CHAIRMAN McDADE: From Cortlandt?

12 MS. TREANOR: No, Your Honor.

13 CHAIRMAN McDADE: Okay, we are going to
14 put you on mute for just a moment. If you would hang,
15 we will be back with you in just a few minutes.

16 (Whereupon, the foregoing status
17 conference went off the record at 2:36
18 p.m. and went back on the record at 2:42
19 p.m.)

20 CHAIRMAN McDADE: This is Judge McDade
21 back on the line. The issue that we still have to
22 rule on had to do with the motion to hold in abeyance
23 the Riverkeeper EC-3 and Clearwater EC-1. That motion
24 is denied. The rebuttal testimony was originally due
25 on June 29th. We are setting for the submission of

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1 that rebuttal testimony the 13th of July by 4:00 p.m.
2 on Friday the 13th of July.

3 Just so there is no confusion based on
4 what we have been talking about earlier, questions for
5 the Board and cross-examination for all track one
6 issues will be August 29th.

7 Is there anything further? We will issue
8 an order later this week memorializing this telephone
9 conference. Before we ring off here, I apologize for
10 running over the hour that I told you that we
11 anticipated.

12 Mr. Turk, does the Staff have anything
13 further?

14 MR. TURK: No, Your Honor. Thank you.

15 CHAIRMAN McDADE: Mr. Bessette?

16 MR. BESSETTE: No, Your Honor. I am just
17 assuming though that the Board questions, even on this
18 Riverkeeper EC-1 would still be due on 8/29 for that
19 contention as well.

20 CHAIRMAN McDADE: Yes.

21 MR. BESSETTE: Would we have 30 days for
22 motions in limine with that?

23 CHAIRMAN McDADE: Yes.

24 MR. BESSETTE: Okay, thank you. No
25 further questions.

1 CHAIRMAN McDADE: August 13th.

2 MR. BESSETTE: Thank you.

3 MR. SIPOS: I'm sorry. I had trouble
4 following that last colloquy. I apologize.

5 CHAIRMAN McDADE: Okay. With regard to
6 the specific contention that we have been contending
7 here, EC-3, we denied the motion to hold it in
8 abeyance. The testimony had originally been due on
9 the 29th. We grant an extension. We are directly
10 Riverkeeper to submit their testimony, their rebuttal
11 testimony no later than Friday July 13th at 4:00 p.m.

12 If there are any motions in limine to be
13 filed based on that rebuttal testimony, they would
14 have until August 13th. For all other motions in
15 limine, based on rebuttal testimony that had been
16 submitted without an extension, that would be July
17 30th. For questions and cross-examination as to all
18 track one contentions, the date would be August 29th.

19 MR. SIPOS: Thank you, Your Honor. I
20 apologize. It was a little too much for me to absorb
21 at one moment but thank you very much.

22 CHAIRMAN McDADE: Okay. And again, I
23 apologize because a lot of this has resulted from an
24 understandable in reading page 15 of our scheduling
25 order. And so now we at least have clarified that and

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1 are moving forward.

2 Are there any other questions from any of
3 the other parties? Riverkeeper?

4 MR. MUSEGAAS: No, Your Honor.

5 CHAIRMAN McDADE: Okay, Ms. Greene,
6 Clearwater?

7 MS. GREENE: No, Your Honor.

8 CHAIRMAN McDADE: Connecticut?

9 MR. SNOOK: No, Your Honor.

10 CHAIRMAN McDADE: Cortlandt?

11 MS. TREANOR: Just a quick question, Your
12 Honor, to clarify. I'm not sure if I heard it
13 correctly.

14 With respect to Riverkeeper EC-3 is the
15 date for proposing questions for the Board to ask also
16 August 20 or have you set a date for proposing
17 question for the Board to ask?

18 CHAIRMAN McDADE: For proposed questions
19 to the Board for all track one contentions, including
20 Riverkeeper EC-3, it is August 29th.

21 MS. TREANOR: Thank you.

22 CHAIRMAN McDADE: Okay, Judge Wardwell,
23 anything further?

24 ADMIN. JUDGE WARDWELL: No.

25 CHAIRMAN McDADE: Judge Kennedy?

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ADMIN. JUDGE KENNEDY: No.

CHAIRMAN McDADE: Okay, thank you.

(Whereupon, at 2:46 p.m., the foregoing
status conference was concluded.)