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P R O C E E D I N G S

(9:07 a.m.)

1
2
3 CHAIR McDADE: The hearing will come to
4 order. We are here in the matter of Entergy Nuclear
5 Operations, Inc., Indian Point Nuclear Generating
6 Units 2 and 3, a proceeding relating to the
7 relicensing of those two facilities.

8 We are here in a continuation of a hearing
9 on a contention New York 37 that we began back in
10 October. We continued it because of the
11 unavailability of one of the witnesses. So we are
12 somewhat starting in the middle here. We are not
13 going to go back and repeat what we had done
14 previously.

15 The court reporter should have the
16 spelling of everybody's name. Everybody has appeared
17 here before. So, we will just start. If you could,
18 just for the record, identify who will be representing
19 Entergy here today. Ms. Sutton?

20 MS. SUTTON: Kathryn Sutton for the
21 Applicant, Your Honor. With us here today from
22 Entergy's Office of General Council is William Glew.
23 In addition, from Morgan, Lewis we have Ron Tenpas,
24 Jonathan Rund, and Paul Bessette.

25 CHAIR McDADE: From the NRC Staff?

1 MS. MIZUNO: Good morning, Your Honor.
2 Beth Mizuno for the Office of General Counsel.
3 Accompanying me at the table is Ms. Anita Ghosh and in
4 the room is lead counsel, Sherwin Turk.

5 CHAIR McDADE: Okay and from New York?

6 MS. FEINER: For New York State, Lisa
7 Feiner from the Attorney General's Office. I haven't
8 actually spoken before at the proceeding. I will hand
9 my card up to the court reporter.

10 CHAIR McDADE: Okay.

11 MR. SIPOS: And Your Honor, also John
12 Sipos and our law clerk, Adam Solomon and Mr. Peter
13 Bradford who also has not yet appeared before the
14 tribunal is with us as well.

15 CHAIR McDADE: Good morning, Mr. Bradford.

16 MR. BRADFORD: Good morning.

17 CHAIR McDADE: The remainder of the
18 witnesses have already appeared. They have also
19 already been sworn and are still under oath in the
20 preceding hearing that we had back in October. Mr.
21 Bradford, before we get started, we need to have you
22 under oath as well.

23 Do you swear that the testimony that you
24 give at this proceeding will be the truth, the whole
25 truth, and nothing but the truth?

1 MR. BRADFORD: I do.

2 CHAIR McDADE: In addition to the
3 individual who are here, I also want to put on the
4 record there are additional individuals, I hope, on
5 the phone and I hope they are able to hear us.

6 Ms. Raimundi for Clearwater, are you on
7 the line and can you hear us?

8 MR. RAIMUNDI: Yes, Your Honor, I can hear
9 you.

10 CHAIR McDADE: Okay. Ms. Jones for
11 Riverkeeper?

12 MS. JONES: Yes, Your Honor.

13 CHAIR McDADE: Is Mr. Musegaas on the line
14 as well.

15 MS. JONES: He will be here after about an
16 hour.

17 CHAIR McDADE: Okay. Ms. Dean, are you on
18 the line yet for New York? Apparently not. Mr.
19 Schlissel?

20 MR. SCHLISSEL: Yes, I'm here.

21 CHAIR McDADE: And Mr. Lanzalotta?

22 MR. LANZALOTTA: Yes.

23 CHAIR McDADE: And again Mrs. Schlissel
24 and Mr. Lanzalotta, you are reminded you are still
25 under oath from the preceding proceedings.

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1 Before we get into the actual substance,
2 there are some housekeeping matters that I wanted to
3 go over to get started. First of all, with regard to
4 Exhibit lists. It was sort of anticipated that we
5 would have one set of exhibit lists but we continue to
6 have additional exhibits that currently we are dealing
7 off Clearwater 4, Entergy 8, NRC Staff 5, New York
8 State 19, and Riverkeeper 10. We have admitted those.
9 We have also received Clearwater 5 and Entergy 9.

10 The procedure we are going to use from
11 here on out, rather than admitting and striking,
12 admitting and striking, as we do have revised exhibit
13 lists as you submit them, we are going to wait until
14 the end of the proceeding and just admit the last one.

15 But at this point as I said, we have
16 admitted Clearwater 4, Entergy 8, NRC Staff 5, New
17 York 19 and Riverkeeper 10. We do have additional
18 exhibits as well.

19 We have received from Clearwater two
20 motions, one dated November 14th and one dated
21 November 26th, asking that additional exhibits be
22 admitted. Specifically, those exhibits are numbered
23 Clearwater 61 through Clearwater 74 and along with
24 that is the updated exhibit list revision 5, which
25 includes those exhibits mentioned in the November 14th

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1 but not those mentioned in the November 26th motion.

2 At this point in time we have not received
3 a response from Entergy or the NRC staff to those
4 motions. Does Entergy anticipate filing a written
5 response to those motions?

6 MS. SUTTON: Yes, Your Honor, today.

7 CHAIR McDADE: Okay. And would that be --
8 I realize the last one was just on the 26th. Would
9 that be to both of the motions?

10 MR. BESSETTE: Your Honor, this is Paul
11 Bessette. We are primarily addressing the first
12 motion, although we are including -- we believe our
13 arguments apply to the second one but we are reserving
14 our right to more thoroughly review those new exhibits
15 and file a second reply.

16 CHAIR McDADE: Okay, and --

17 MR. BESSETTE: We believe, Your Honor, if
18 Your Honor does not admit the exhibits, we wouldn't
19 need to file the second reply.

20 CHAIR McDADE: Okay. It may be possible
21 once we receive your reply on the November 14th that
22 it will be equally applicable to the November 26th and
23 we would be able to rule on it but we will wait until
24 we receive it before we rule.

25 The NRC Staff, do you anticipate filing a

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1 written response to Clearwater's motions?

2 MS. GHOSH: Yes. This is Anita Ghosh for
3 the NRC Staff. We also intend to file a written
4 response today.

5 CHAIR McDADE: Okay and will that address
6 both the motion of 14th and the 26th?

7 MS. GHOSH: It will address the motion for
8 the 14th but we reserve our right to file another
9 response to the second motion.

10 CHAIR McDADE: Okay. On November 21st,
11 New York filed an objection to Entergy 589. At the
12 previous hearing we admitted Entergy 589 subject to
13 objection. New York has filed the objection. It was
14 filed on the 21st. Does Entergy anticipate responding
15 in writing to that?

16 MS. SUTTON: Yes, Your Honor, we do.

17 CHAIR McDADE: By when, Ms. Sutton?

18 MR. BESSETTE: By Friday, Your Honor.

19 CHAIR McDADE: By Friday of this week?

20 MS. SUTTON: That's correct, by Friday of
21 this week.

22 CHAIR McDADE: Okay. The next just by way
23 of housekeeping, the Board had admitted certain
24 exhibits or identified certain Board Exhibits, Board
25 Exhibits 1 through 7. Some of those exhibits were

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1 marked just for identification. One of those exhibits
2 was admitted as a Board exhibit. Admitted for
3 identification were Board Exhibits 1 and 2, which
4 related to the CheckWorks presentation that were made
5 on the first day of the hearing. Board Exhibit 3 was
6 identified and admitted, which was Cortland's response
7 on Riverkeeper EC3 Settlement.

8 The remaining Board Exhibits 4 through 7
9 were identified but then later were admitted: Board
10 Exhibit 4 as Entergy 590, Board Exhibit 5 as New York
11 446, Board Exhibit 6 as New York 447, and Board
12 Exhibit 7 for identification as New York 448. I just
13 wanted to make the record clear with regard to those.

14 We received on November 21st four new
15 exhibits from Entergy and also a revised exhibit list
16 revision 9 from Entergy. The exhibits were Entergy
17 591, 592, 593, and 594. Are there any objections to
18 our receiving those exhibits from the NRC Staff?

19 MS. SUTTON: No, Your Honor.

20 CHAIR McDADE: From New York?

21 MR. SIPOS: Your Honor, I would -- if New
22 York could have until Friday to provide a response to
23 that.

24 CHAIR McDADE: What we will do is the same
25 as we did with 589. I am going to admit those

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1 exhibits at this time and subject to being stricken
2 based on an objection by New York. So New York would
3 have say until Monday of next week to file any
4 objections to our receiving those documents.

5 But for the record at this point in time,
6 Entergy 591, 592, 593, and 594 are admitted.

7 (WHEREUPON, THE DOCUMENTS PREVIOUSLY
8 MARKED AS ENTERGY EXHIBITS 591 THROUGH
9 594 FOR IDENTIFICATION WERE RECEIVED IN
10 EVIDENCE.)

11 CHAIR McDADE: On November 21st, New York
12 filed a declaration relating to New York Contention
13 17. It is marked as New York 465. Is there any
14 objection to our receiving that from Entergy?

15 MS. SUTTON: No objection, Your Honor.

16 CHAIR McDADE: From the NRC Staff?

17 MS. MIZUNO: No, sir.

18 CHAIR McDADE: Okay, that declaration will
19 be admitted as New York 465.

20 (WHEREUPON, THE DOCUMENT PREVIOUSLY
21 MARKED AS NEW YORK EXHIBIT 465 FOR
22 IDENTIFICATION WAS RECEIVED IN EVIDENCE.)

23 CHAIR McDADE: I think those are the only
24 issues -- housekeeping issues that we needed to take
25 care of before we got started with the hearing here

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1 today. Are there any other housekeeping issues that
2 Entergy is aware of before we get started, Ms. Sutton?

3 MS. SUTTON: Yes, Your Honor, two issues.
4 The first, we are working with the other parties to
5 file joint transcript corrections on December the
6 third and second, we are consulting with the parties,
7 have consulted, continue to consult, and plan on
8 filing our Findings of Fact and Conclusions of Law.
9 We are proposing March the eight but we are still
10 working that out.

11 CHAIR McDADE: Okay.

12 MS. SUTTON: And that is all, Your Honor.

13 CHAIR McDADE: From the NRC Staff?

14 MS. MIZUNO: Only one matter with respect
15 to scheduling in the December 10 hearing that
16 commences up again at Tarrytown, New York. I just
17 wanted to confirm that the order of the contentions
18 that you want heard for purposes of witness
19 scheduling. Could you confirm that for us? I
20 understand that we were looking at doing New York
21 Contention 5, 6, 7 and 8 in that order.

22 CHAIR McDADE: Yes.

23 MS. MIZUNO: Thank you.

24 CHAIR McDADE: And the other thing to
25 confirm is that it is anticipated that we will start

1 on the 10th at 9:00 in Tarrytown as our start time and
2 we will have basically the same schedule. We will try
3 to, if we can finish a contention, run a little bit
4 later but run until approximately 6:00 in the evening,
5 between 5:00 and 6:00 and look for an appropriate
6 place to break. We will see how the schedule is going
7 because it is our intent to ensure that we get through
8 New York 5, 6, 7, and 8 during the week of the 10th of
9 December.

10 The other thing that I did want to raise,
11 at the last hearing there were certain exhibits
12 offered we have received and specifically New York 447
13 that there was an objection made to that. We issued
14 an order overruling that objection but indicated that
15 it could be stricken subject to relevance at the end
16 of this hearing. So with regard to that, at the end
17 of the hearing here today, if Entergy wishes to renew
18 its objection to 447, that would be the time to do it.

19 The other is at the hearing with regard to
20 that group of Exhibits, 446, 447, Entergy asked for
21 and was given the opportunity to submit a declaration
22 or other evidence relating to that that they thought
23 would explain it. Entergy took the opportunity to do
24 so. We have received those exhibits and admitted them
25 here this morning.

1 At the hearing, the NRC Staff also asked
2 for an opportunity to submit any -- either its
3 supplemental declaration or additional evidence that
4 they believed added or corrected impressions that were
5 left by those exhibits. We have not received anything
6 from the NRC Staff with regard to that. Do you
7 anticipate filing anything further with regard to
8 those exhibits?

9 MS. MIZUNO: No, sir.

10 CHAIR McDADE: Okay. And does New York
11 have anything further before we get started on the
12 evidentiary part of today's hearing?

13 MR. SIPOS: Yes, Your Honor, very briefly.
14 This is John Sipos for the State of New York. First
15 of all on behalf of the State and on behalf of former
16 Commissioner Bradford, I would like to thank the Board
17 for its understanding of the situation or the
18 circumstances that we found ourselves in the last time
19 we gathered for this contention and also for the
20 collegial response from Entergy and NRC Staff that
21 have allowed us to come back here today with
22 Commissioner Bradford on this contention. And
23 likewise, also we would like to express our
24 appreciation given the unexpected and unfortunate
25 death in Mr. Schlissel's family as well, so that he

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1 could participate via phone conference.

2 There is one additional housekeeping
3 matter. Yesterday the New York State Public Service
4 Commission issued a press release yesterday afternoon.
5 It is a three-page press release and we have disclosed
6 that early this morning to NRC Staff and to Entergy.
7 I don't know if or how it may come up today but it is
8 a follow-on to New York Exhibit 448, the Energy
9 Highway Task Force. So I just wanted to alert the
10 Board to that.

11 We do have paper copies of that document
12 here with us today. It is a press release that
13 announces the initiation of Public Service Commission
14 proceedings along the lines of what was suggested in
15 the Task Force Report.

16 CHAIR McDADE: Okay, thank you.

17 Before we do get started actually with
18 asking questions, there are certain things that I
19 wanted to go over. We do have some spectators here
20 and they may be a bit confused as to what exactly is
21 going on. This is a continuation of an earlier
22 hearing that we began back in October. We went
23 through several contentions at that time and we began
24 taking testimony with regard to New York Contention
25 37. New York Contention 37 is a NEPA contention.

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1 That is, it is brought under the National
2 Environmental Policy Act. We were able to take most
3 of the testimony at that time. Former Commissioner
4 Bradford was not available due to an injury and we
5 have continued today to allow him to provide testimony
6 as well. And we will probably hear some follow-up
7 testimony from the other witnesses during the course
8 of this.

9 Now what I wanted to do is explain that
10 NEPA is not intended to direct decisionmaking.
11 Rather, it is intended to ensure that the decision-
12 maker and the public are accurately informed of the
13 environmental consequences of the proposed federal
14 action. Here the proposed federal action is the
15 proposed relicensing of the Indian Point Nuclear
16 Facilities Units 1 and 2.

17 To comply with NEPA in the circumstances
18 present here, the NRC is required to and has prepared
19 an Environmental Impact Statement. And part of that
20 Environmental Impact Statement is a discussion of the
21 no-action alternative. That is, what are the
22 environmental consequences? What is the environmental
23 impact if the proposed action is not taken, if these
24 facilities are not relicensed?

25 New York, in Contention 37, has challenged

1 the adequacy of the Nuclear Regulatory Commission's
2 analysis of the no-action alternative. Specifically,
3 New York claims that the NRC did not adequately and
4 appropriately identify and analyze the costs, the
5 benefits, and the feasibility of energy conservation
6 and the use of other energy sources, such as wind or
7 solar, and as a result that the Environmental Impact
8 Statement inappropriately skews the environmental
9 analysis in favor of relicensing by overstating the
10 demand for energy and understanding the electric
11 generating alternatives to Indian Point.

12 Also New York has alleged that the Nuclear
13 Regulatory Commission, in its Environmental Impact
14 Statement, failed to adequately address the public
15 comments to the DSEIS, that is the Draft Supplement
16 Environmental Impact Statement.

17 So what we are here looking at is the
18 adequacy of the Environmental Impact Statement that
19 has been prepared and specifically as it addresses the
20 no-action alternative.

21 That said, we are ready to get started.
22 Judge Wardwell?

23 ADMIN. JUDGE WARDWELL: Thank you.
24 Whereupon,

25 PETER BRADFORD

1 was called as a witness by the parties, and having
2 previously first duly sworn, assumed the witness stand
3 and was examined and testified as follows:

4 ADMIN. JUDGE WARDWELL: Mr. Bradford,
5 welcome.

6 MR. BRADFORD: Thank you.

7 ADMIN. JUDGE WARDWELL: One of the items
8 that Judge McDade failed to mention that we ought to
9 bring up to you at least is the fact that if at any
10 time you need a break, make sure you let us know. The
11 other witnesses were informed that that is the way we
12 approach things. If all of a sudden you feel the need
13 for something that doesn't relate to what we are doing
14 here and needs some time, let us know, especially with
15 your recent health issues.

16 MR. BRADFORD: Thank you, Your Honor.

17 ADMIN. JUDGE WARDWELL: We will do more
18 than enough to accommodate that.

19 MR. BRADFORD: I would like to add my
20 apology and gratitude to what Mr. Sipos has already
21 said in terms of the inconvenience that my condition
22 has imposed on this proceeding and I will try not to
23 do any further damage this morning.

24 ADMIN. JUDGE WARDWELL: Getting on to your
25 testimony, and I think it is Exhibit New York 048, we

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1 will jump right into it. On page 24 you note and are
2 discussing New York's 30 X 15 renewable energy and the
3 fact that it tries to and is aiming to obtain about 30
4 percent of the electricity sales in 2015 for renewable
5 sources.

6 My question to you is do you have any idea
7 about what percentage of this goal is already met with
8 hydro or other renewables when in fact the program was
9 first proposed?

10 MR. BRADFORD: I don't remember the exact
11 percentage but it is significant. Just at a
12 guesstimate, it is on the order of half to two-thirds
13 of the originally announced program was met by
14 existing hydro.

15 ADMIN. JUDGE WARDWELL: That was already
16 there at the time that that program was initiated. Is
17 that what you are testifying to?

18 MR. BRADFORD: Yes. Don't take my word
19 for it. That is my best recollection.

20 ADMIN. JUDGE WARDWELL: At that same time,
21 wasn't Indian Point's base load power being delivered
22 to New York State electricity at that time?

23 MR. BRADFORD: Yes, it would have been.

24 ADMIN. JUDGE WARDWELL: So doesn't that
25 mean that a portion of the 30 X 15 renewable energy

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1 goal cannot be considered a replacement for Indian
2 Point under the no-action alternative? You know,
3 specifically that percentage was needed just to supply
4 the current demand.

5 MR. BRADFORD: You know, I am wary of the
6 distinction between baseline and replacement because
7 New York officials have known for a long time now that
8 the state opposed the relicensing of Indian Point.
9 And in a number of their proceedings, they have
10 indicated an awareness that the actions they were
11 taking would, among other things, strengthen the
12 system in the event the Indian Point plants in fact
13 did not continue to operate.

14 So yes, there is a sense in which plants
15 built in the past are not directly replacing Indian
16 Point Capacity on the day that it shuts down in the
17 future. But no, this distinction between a baseline
18 and replacement scenario that somehow begins cleanly
19 to take effect at the point in time that one or both
20 of the Indian Point's unit close does not seem to me
21 to be a useful way to think about which units, which
22 types of capacity truly replace Indian Point.

23 If you think of it this way, the State of
24 New Jersey has entered into an agreement such that
25 Oyster Creek will close in ten years -- ten years from

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1 the date of the agreement. So they are aware from the
2 day of that agreement forward that Oyster Creek won't
3 be there on a date certain in the future.

4 The replacement capacity and energy for
5 Oyster Creek doesn't, obviously, begin until the plant
6 is closed but it gets built, the system gets designed
7 around the certainty of that closure quite a while
8 beforehand. And so the system, as it exists on the
9 day of the closure, includes replacement capacity.

10 The Indian Point situation is less
11 certain; that is, there is no agreed upon closing
12 date. But New York's public policies have been shaped
13 around that possibility for a while now.

14 ADMIN. JUDGE WARDWELL: Yes, but as one
15 assess in EIS a no-action alternative and regardless
16 of whether we are talking baseline or peak power or
17 whatever, that wasn't the emphasis of my question.

18 The emphasis dealt more with the fact that
19 anything that existed prior to the development of that
20 30 X 15 program could not, it seems to me, be
21 accounted for when you are trying to evaluate the no-
22 action alternative and what would replace Indian Point
23 under that situation.

24 And so my question to you is, is that a
25 fair way to look at it. Because those renewables that

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1 were there when the program were instituted wouldn't
2 be -- couldn't also be there later on to replace the
3 power when in fact it is already in existence and
4 being used alongside the power being generated by
5 Indian Point at this time.

6 MR. BRADFORD: First let me apologize. I
7 did misunderstand your question. I thought you were
8 asking about the 30 X 15 program. You were actually
9 asking about the hydro that in some cases has been
10 there since the '30s.

11 ADMIN. JUDGE WARDWELL: Well that is just
12 one. Any of those renewables that were there when the
13 30 X 15 program came into existence -- strike that.
14 Let me back up.

15 You have advocated in your testimony that
16 gee, there is this 30 X 15 program and that is going
17 to produce so much power that along with other things
18 we don't need Indian Point, if I can paraphrase it in
19 a very general manner is the way I interpreted some of
20 the statements, specifically on page 24 of your
21 testimony.

22 My question is, I understand that but yet
23 isn't it true that you can't take account for those
24 renewables that were in existence at the time that
25 program was instituted to be a selling point for

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1 compensating for the lack of Indian Point, should it
2 close, under the no-action alternative?

3 MR. BRADFORD: I have two difficulties
4 with the proposition as you just phrased it. One is
5 that I hadn't intended to say that the 30 X 15 program
6 was in any way a one-for-one replacement for Indian
7 Point.

8 ADMIN. JUDGE WARDWELL: But it is part of
9 the mix of the replacement.

10 MR. BRADFORD: Yes.

11 ADMIN. JUDGE WARDWELL: I understand that,
12 yes.

13 MR. BRADFORD: Fair enough.

14 Put that to one side and look at the
15 question of older plants. And again, this issue not
16 of base load but of baseline versus replacement and
17 what can be considered replacement.

18 To me I think about replacement in the
19 context of how will a system respond when the plants
20 are not there. And the system may have to do that
21 whether they are shut suddenly by an event or by a
22 failure to relicense or by some other type of planned
23 shutdown such as has just been announced that Kewaunee
24 or at Oyster Creek.

25 The system as it exists has all the power

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1 plants that are in it. It also has reserve capacity.
2 It will respond to a shutdown, planned or unplanned.
3 The lights will stay on. The replacement power will
4 come from the system as it exists and then, over time,
5 changes will be made in order to optimize the new
6 system without the units. That is -- it happens when
7 nuclear plants go offline. Suddenly it happens if
8 they stay off for years like Crystal River. It
9 happens when they are shut down permanently.

10 So really all of the existing system, what
11 is running, what is in the reserve margin are part of
12 what is called on to do replacement duty when that
13 becomes necessary. And the effort to draw a clear
14 line between a baseline system as it exists and a new
15 system as it is designed to replace a particular unit
16 just doesn't seem to me to be a useful way to think
17 about this analysis.

18 I agree that the system will change and
19 operate differently when the unit is taken offline and
20 that the no-action alternative needs to establish the
21 parameters around what that will look like. But
22 picking through individual power plants and saying
23 this one is baseline and so we don't pay any attention
24 to it and this one is replacement and so it can be
25 counted doesn't seem to me to be a particularly

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1 helpful way to think about that situation.

2 ADMIN. JUDGE WARDWELL: Didn't your
3 testimony spend some time talking about those types of
4 energy sources that would be available to replace the
5 capacity at Indian Point?

6 MR. BRADFORD: Absolutely, yes.

7 ADMIN. JUDGE WARDWELL: And so isn't it
8 fair to say that when one is doing that, they should
9 not account for those that were presently already
10 there as a capacity supplement to compensate for
11 Indian Point, should it close under the no-action?

12 MR. BRADFORD: There is certainly a sense
13 in which common sense would tell you we agree about
14 that. That is, you are not going to build something
15 that you have already built. It won't be part of your
16 new generation plan. I think that is self-evident.

17 ADMIN. JUDGE WARDWELL: Okay, good. I
18 just wanted to make sure that was correct.

19 CHAIR McDADE: If I could interject here
20 or a moment and sort of on a macro level, as opposed
21 to a micro level. In your direct testimony, you
22 identified a lack of analysis of the energy market,
23 the applicable energy markets as a significant
24 deficiency, in your view, in the Environmental Impact
25 Statement.

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1 Can you give us sort of an overview of
2 what you think such an analysis should consist of and
3 why that is significant to the decision whether to
4 license or not to relicense the Indian Point
5 facilities?

6 MR. BRADFORD: In essence, there are two
7 types of markets that have evolved since the generic
8 Environmental Impact Statement. And as a result, the
9 economics of the different sources, both of generation
10 and of energy efficiency now compete with each other
11 both on a short-term and a long term basis in ways
12 that just wasn't true 15 to 20 years ago. And the
13 interplay between those market forces and the public
14 policies that any given state adopts will determine
15 both what gets built and what gets run.

16 CHAIR McDADE: Now are you talking about
17 the difference between a regulated market and
18 unregulated market; the difference say between North
19 Carolina and New York or are you talking about
20 something more than that?

21 MR. BRADFORD: No, I am basically talking
22 about that. And in fact, you had a fair amount of
23 discussion of that at the hearing that I was not
24 present at. But the importance of some understanding
25 of not just the market forces but their interplay with

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1 the public policies of the jurisdiction in question is
2 that those now really will determine the types of
3 generation, types of efficiency programs, types of
4 environmental impacts that will come with a decision
5 not to relicense the plant.

6 You can't portray them, though, through a
7 simple modeling exercise. It is going to require
8 looking at different scenarios and looking at those
9 scenarios in some depth and with some awareness of
10 both the economics of the market and also the public
11 policies that are going to impact those economics. In
12 New York, for example, the renewable portfolio
13 standard will require that types generation get built
14 or get bought, that the market forces alone would not
15 select.

16 CHAIR McDADE: Okay. But what
17 specifically should the NRC Staff have done in the
18 Environmental Impact Statement with regard to its
19 analysis of the energy markets that they didn't do?
20 What should they have done? Was it simply their
21 reliance on the North Carolina and Pennsylvania models
22 or is it something more than that?

23 MR. BRADFORD: No, that's part of it but
24 it would also have been helpful to have had a more
25 accurate and detailed discussion of the potential

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1 scenarios that could unfold³if New York's success with
2 regard to its renewable energy policy and its energy
3 efficiency policies continue into the future.

4 You know, my point with regard to those
5 policies, to pick up on an earlier thread from this
6 morning, isn't so much that you can say all right,
7 that renewable capacity will replace Indian Point as
8 that you can begin to say those policies are
9 succeeding to a degree, for example, well beyond what
10 could have been predicted with confidence at the time
11 of the 2006 National Research Council on Replacements
12 for Indian Point on which the Staff relied quite
13 heavily.

14 So my concern was update that discussion
15 so that you really capture what is unfolding under New
16 York's policies. Expand the discussion, the
17 commendable discussion that is in the FSEIS but expand
18 it to the point of real adequacy with regard to the
19 conversation alternative and with regard to a
20 renewables plus conservation alternative.

21 CHAIR McDADE: So with regard to an
22 analysis of the energy markets, you are looking both
23 at just sort of the structural differences between a
24 regulated market and an unregulated market like New
25 York as well as the policies that New York has put in

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1 place such as their 15 X 15 plan, they plan both on
2 demand reduction and the use of renewables. That is
3 all part of the analysis of the market that you think
4 is deficient?

5 MR. BRADFORD: Yes. If you will, those
6 policies become part of the market. I mean the market
7 then goes forward with that renewable energy component
8 that is required by the portfolio standard or with the
9 energy efficiency component that is required by the 15
10 X 15 program.

11 ADMIN. JUDGE KENNEDY: This is Judge
12 Kennedy. Is this more complicated than questioning
13 the magnitudes of conservation and efficiency that
14 were assumed in the Staff's analysis? Is there
15 something deeper here that we need to be thinking
16 about?

17 I mean you talk about the various programs
18 that the state has. And I guess that I view what the
19 Staff did, they took components of megawatts based on
20 these types of programs and used them in their various
21 analyses. But do you see something deeper than that
22 that should have been done?

23 MR. BRADFORD: The Staff included a
24 conservation alternative but in a pretty cursory way,
25 with all due respect, compared, for example, to their

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1 discussion of the coal alternative which they didn't
2 include or the cooling tower alternative which go on
3 for several pages.

4 I don't think of this as being highly
5 complex. That is, the point isn't to try and predict
6 the precise future over the 20-year term of the
7 relicensing. The point is to recognize that when
8 large plants shut down and the state adopts certain
9 policies, history and I pointed to Shoreham and
10 Seabrook -- I am sure there are other examples,
11 Rancho Seco also -- tells you that unexpected things
12 happen. And so you do have to look at different
13 scenarios. My concern is that the Staff has under-
14 emphasized what is potentially the most
15 environmentally benign scenarios, the conservation
16 alternative, the conservation renewable alternative.
17 It is not in the case of the conservation alternative
18 that they have ignored it. They just haven't done it
19 full justice.

20 ADMIN. JUDGE KENNEDY: Yes, I think we are
21 going to get to this later on when we talk with the
22 Staff about the various options. But I guess what I
23 am struggling with is we have within the Staff's
24 analysis, a full conservation and efficiency no-action
25 alternative option with the Environmental Impact

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1 Study. And I guess what I was really getting at is
2 are you trying to address the individual environmental
3 impacts underneath that option as being inadequate or
4 under-assessed? Again, I think I am trying to
5 struggle with where the complexity is.

6 We are missing something, I think, in this
7 discussion. The testimony I think tries to walk us
8 down a road and we get stuck somewhere and that is
9 what I am really struggling with. I see the options
10 in the analysis but when I listen to you, I hear a
11 complexity that is missing and I think I am looking
12 for what that complexity is.

13 MR. BRADFORD: My starting point is, as a
14 decision-maker, either NRC Commissioner or state
15 decision-maker, NEPA having said that the purpose of
16 the Environmental Impact Statement is to give
17 decision-makers a sense of what the environmental
18 impacts might be.

19 What the Staff product, at this point,
20 does is to say that one of the potentials is a
21 conservation alternative with small environmental
22 impacts, except in the case of some of the local
23 financial impacts, which are moderate. But it doesn't
24 give a decision-maker any serious sense of what the
25 realities of that alternative are. It is almost a

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1 throw-away. And so it doesn't really inform the
2 decision-maker as to whether this is something that is
3 really kind of remote but the Staff threw it in to
4 respond to the State of New York or whether there is
5 some reality and substance to it.

6 My point is if you look at what has been
7 happening in New York over the last six or seven
8 years, there is a lot of reality in substance to these
9 programs. And if the EIS had discussed that in more
10 detail in the kind of detail in which it addressed
11 some of the other things, then decision-makers would
12 have a sense of the reality of these more benign
13 alternatives and the EIS would be appropriately
14 balanced as a result.

15 CHAIR McDADE: If I could, at least to me
16 there is two aspects to your testimony and I am trying
17 to, in my own mind, figure out exactly where the line
18 is between them, if it exists at all.

19 The first has to do with the adequacy of
20 the input that, as I understand your testimony, one of
21 the criticisms of the Environmental Impact Statement
22 is it relies on outdated and inaccurate information.
23 It relies on projections that were made back in 2006
24 or earlier that haven't proven to be true. For
25 example, as far as the availability of alternative

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1 renewables, I think it was anticipated that there
2 would be 1600 megawatts available by 2010, 3300 by
3 2015 and that in reality those numbers just don't work
4 out. The same with the availability of additional
5 transmission. So it has to do with the inputs into
6 their analysis are wrong; therefore, their analysis is
7 necessarily going to skew the result.

8 But is there also a defect with the
9 structure of the analysis itself, in addition to the
10 inputs, just what they were considering? And again,
11 I am talking about the nature of the market, not just
12 the inputs, which of necessity are going to change
13 constantly, but sort of the structure of their
14 analysis.

15 MR. BRADFORD: Well you have certainly
16 accurately described some of the specific examples
17 that I gave. The general conclusion I want to draw
18 from them I suppose is structural in part. That is,
19 the point isn't just that the State has succeeded in
20 its goals in these areas to a greater extent than one
21 would have foreseen by relying on these out-of-date
22 documents but that the potential, the pleasant
23 surprises, if you will, the surprises in this area
24 seem to be running on the good side. And that
25 therefore, the efficiency and renewable alternatives

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1 have much more substance than the numbers that the
2 Staff is relying on would lead a decision-maker to
3 believe.

4 I guess I don't think of that really as a
5 structural point. But it is not just here are some
6 new numbers that are better than the old ones. It is
7 that these markets are more vibrant than one would
8 have believed based on the documents that the Staff
9 has relied on.

10 CHAIR McDADE: Okay. And the follow-on
11 question to that is how accurate is accurate. And for
12 example, one of the issues has to do on the demand
13 side. And you have pointed out that the demand for
14 electricity has been significantly less than what was
15 anticipated in the Environmental Impact Statement.
16 But part of the reduction in demand was as a the
17 result of recession which one could anticipate is a
18 temporary, not a new normal, but rather as a temporary
19 reaction to a limited economic circumstance. So I
20 mean how is the staff, I mean are they required to be
21 clairvoyant in identifying what is going to happen
22 with the economy, what is going to happen with demand
23 or why is what they have done not accurate?

24 MR. BRADFORD: Well first, of course, the
25 Staff isn't required to be clairvoyant. If they

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1 required clairvoyance of our energy policy makers, a
2 lot of us would have been out of the field a long time
3 ago.

4 The recession, though, is important not
5 just as a one-time event. It lowers the level of
6 demand not just in the year that it kicked in, the
7 2008 time frame, but then even if the growth were to
8 return to the projected growth rate, which it hasn't
9 but put that aside, it will do so from that lower
10 base. So just as an individual whose retirement
11 account may have gone from X to 75 percent of X, even
12 if it starts to grow again, it grows from that 75
13 percent number. It doesn't bounce back up to X when
14 growth returns to normal. So the absolute --

15 ADMIN. JUDGE WARDWELL: Excuse me. Do you
16 have any basis for that opinion?

17 MR. BRADFORD: Sure. I mean I intended it
18 just to be a mathematical statement. If you were
19 assuming a two percent rate of demand growth and the
20 recession came along and took your level of absolute
21 demand down to 95 percent of what it had been and then
22 a year later demand started growing at two percent
23 again, it would two percent on top of 0.95 of the old
24 level of demand, rather than two percent on top of 100
25 percent. So in each year out into the future, you

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1 would be below --

2 ADMIN. JUDGE WARDWELL: I understand the
3 math that you were -- but is that a picture of
4 reality? Is there any basis for that as being a
5 picture of what would actually take place in the
6 markets?

7 MR. BRADFORD: I think so because I don't
8 know anyone who in the energy forecasting business who
9 is saying that not only might growth return to the
10 levels --

11 ADMIN. JUDGE WARDWELL: No, I think I am
12 confusing you again. I am thinking of it in regards
13 to what needs to be evaluated for the EIS. I mean
14 just to -- those types of numbers that you are driving
15 at in regards to just the growth and demand, which is
16 the chart that you are plotting, as I understand, is
17 really just needs to be related to how much energy
18 needs to be provided at a given time in order to
19 achieve the demand side, given a lack of Indian Point
20 as a potential energy source. Isn't that what needs
21 to be evaluated under the no-action alternative?

22 MR. BRADFORD: What it does is to push out
23 further out into the future the point in time at which
24 you reserve margins without Indian Point would become
25 unsatisfactory. So, it changes what would need to be

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1 built when in order to replace Indian Point.

2 ADMIN. JUDGE WARDWELL: How much of the
3 success that you talk about in regards to New York
4 State's programs is related to the lower demand that
5 has been associated with the recession since 2008?
6 And likewise, is there any effect associated with the
7 cheaper prices for natural gas that we are
8 experiencing at the same time? Do you have any handle
9 on that?

10 MR. BRADFORD: No. I would expect -- the
11 short answer is I don't know. I would expect to some
12 extent for those two things to push in opposite
13 directions but I don't know the breakdown, for
14 example, of the impacts attributable to recession
15 versus the impacts attributable to the energy
16 efficiency programs.

17 I do know that the New York ISO and
18 NYSERDA have made those estimates. I just don't
19 recall what the numbers are but we can certainly
20 furnish them.

21 ADMIN. JUDGE KENNEDY: Before we get too
22 far away from some of the discussion you started,
23 there is something that troubled me a little bit or I
24 need some clarification.

25 You made an analogy to various shutdowns

1 at plants and the system being able to respond. And
2 I am taking that as an argument that it will just work
3 out if Indian Point needs to -- I mean the State will
4 figure out a way to deal with its energy needs. I
5 guess if I look at it at one level, there is plenty of
6 energy resources out there. It is a question of at
7 what price and maybe at what environmental
8 consequences. And what I see in the EIS is an attempt
9 to try to look at a broad range of resources and try
10 to look at the environmental consequences of those
11 choices.

12 If the State was to lose Indian Point due
13 to a failed piece of equipment at the plant, the State
14 -- the independent system operator would respond in
15 some way. I guess what I would like to pursue is how
16 much is those resource allocations driven by financial
17 versus economic factors. Does the environmental
18 impact of those choices weigh into the decision-
19 makers' thought process, if you will?

20 MR. BRADFORD: Do you mean the
21 environmental impact of whether to close Indian Point
22 or the environmental impact of the choices among the
23 replacements?

24 ADMIN. JUDGE KENNEDY: I think what I am
25 looking at is the environmental impact of the choices

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1 that could be made to replace the megawatts that are
2 lost either on a temporary basis or on a permanent
3 basis. You used a couple of examples, the upcoming
4 Kewaunee and Oyster Creek shutdowns. The systems are
5 going to have to respond to that.

6 And clearly, in the short term say in New
7 York Ginna went down for a two-week period, that power
8 would be found. It may be more expensive, it may be
9 less expensive, but those decisions in my experience
10 have always been made on a cost-basis. What is the
11 next economically available dispatchable megawatts.

12 In the EIS I see it is making decisions
13 and balancing environmental impacts. And I guess
14 before we leave that analogy of yes, there is power
15 out there, I guess I am just curious from your
16 perspective how much environmental balancing weighs on
17 the decisions of what economic dispatchable megawatts
18 are used.

19 MR. BRADFORD: I think the answer, in the
20 short run, if you have a sudden shutdown is that the
21 decision is pretty heavily economic. The power
22 markets adjust to the absence of the units and perform
23 as they normally would. But if you look at it over a
24 more extended period, what gets built in New York,
25 what is available to replace a unit, what constitutes

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1 the system plus the reserve margin now in New York is
2 a real mixture of environmental decisionmaking and
3 public policy preferences. Regional greenhouse, gas
4 initiative, the renewable portfolio standard,
5 efficiency programs are all essentially decisions to
6 intervene in the economics of the market. If you
7 will, they are decisions that climate change is an
8 externality that needs to be taken into account. And
9 Lord knows, after the recent hurricane you can see why
10 New York might feel that way.

11 So the shaping of the New York power
12 market is a mixture of these public policy decisions
13 with the standard functioning of power markets, which
14 is very much as you described it. But the system that
15 is going to be available to respond when plants are
16 shut down is going to be a product of public policy
17 plus market.

18 ADMIN. JUDGE KENNEDY: Okay, thank you.

19 CHAIR McDADE: Okay in that regard, one of
20 the things that you discussed in your direct testimony
21 had to do with the additional transmission capacity
22 into the New York City and the downstate area. You
23 talked about how that would tend to stabilize the New
24 York City power grade and also to increase
25 reliability. But can you address or expand on how

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1 that reduces the need for new capacity? Aren't you
2 just moving around available electricity more
3 efficiently? Don't you still need the same base load
4 capacity or close to it?

5 The power you are getting into New York
6 City is coming out of New Jersey. Somebody is going
7 to still need electricity.

8 MR. BRADFORD: That's right but to the
9 extent you are using capacity more efficiently, you
10 should be deferring that which you have to build
11 something more expensive and new. You are just making
12 better use of a larger population of generators and
13 efficiency opportunities.

14 CHAIR McDADE: So because you can get the
15 excess capacity from New Jersey or New England more
16 efficiently, you don't need to have that excess
17 capacity built into the system in New York itself. Is
18 that the gist of the argument?

19 MR. BRADFORD: Yes, although I don't know
20 if I would use the word excess quite the way you have.
21 You are enabling New York to access the generating
22 capacity that it couldn't previously. Whether that
23 then results in someone building more capacity at a
24 point that can now reach the city because of the
25 transmission expansion or whether it results in better

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1 utilizing the capacity that is already out there is,
2 as we sit here, it is anybody's guess. You would have
3 to know more about the system than we know.

4 CHAIR McDADE: Okay. Now with regard to
5 the issue of transmission capacity, in the
6 Environmental Impact Statement it indicated that
7 significant resources would need to be committed in
8 order to develop additional transmission capacity. In
9 Mr. Bradford's direct testimony, he points out that
10 much of that capacity is already available now without
11 the additional expenditure of those resources. Mr.
12 Stuyvenberg, doesn't that render the Environmental
13 Impact Statement inadequate on its face as just wrong
14 and giving an inaccurate impression to the decision-
15 maker as to the environmental consequences of the no-
16 action?

17 MR. STUYVENBERG: Well I think simply the
18 answer to your question is no.

19 CHAIR McDADE: Could you expand on that?

20 MR. STUYVENBERG: Yes, definitely.

21 CHAIR McDADE: Okay.

22 MR. STUYVENBERG: I think what the
23 Environmental Impact Statement does is indicates that
24 transmission is not something the staff has counted
25 against any alternative. As a matter of fact, it

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1 assumed that any of the alternatives considered would
2 not be constrained by transmission.

3 It does take a look at what we called two
4 example, something to that effect, projects for
5 transmission improvement. One of those projects, I
6 should note, is something that one of New York State's
7 witnesses actually mentioned in his pre-filed
8 testimony. Mr. Schlissel mentioned the CHPEI project,
9 I believe it is Champlain-Hudson Power Express
10 Incorporated or something to that effect.

11 So at least one of those projects we
12 looked at was similar to something New York has
13 suggested we consider in testimony it filed, I should
14 note, after the FSEIS. In addition to the extent that
15 that discussion included the New York Regional
16 Interconnect, which was a project that has since been
17 withdrawn, I should note, it was again on an
18 illustrative basis and not as a means of assigning
19 specific impacts. So it was an effort on the part of
20 the staff to say that because of projects that are
21 currently underway or expected, we think that
22 transmission shouldn't be used as a reason not to
23 consider various alternatives.

24 CHAIR McDADE: But didn't you indicate
25 that in using those alternatives it would be necessary

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1 to expend significant resources to improve the
2 transmission capacity to access them?

3 MR. STUYVENBERG: I don't think we
4 assessed that to any alternative, frankly. I think in
5 our discussions in the alternative section we talked
6 about environmental impacts but didn't assign specific
7 impacts to those alternatives from any transmission
8 construction, if I recall correctly, Your Honor.

9 CHAIR McDADE: Okay. Is it possible to
10 bring up page 9-6 of the FSEIS, Section 9.1.2?

11 MR. TENPAS: It might be New York State
12 133 A through D is the collection. I'm not sure which
13 of the volumes --

14 CHAIR McDADE: Why don't you try D?

15 MR. TENPAS: Your Honor, you may want to
16 try C is our best guess.

17 CHAIR McDADE: Okay, let's try C. Can you
18 scroll down? I'm looking for page 9-6.

19 MR. STUYVENBERG: I think this is the
20 GEIS, Your Honor.

21 MR. RUND: The FSEIS -- this is John Rund
22 for the Applicant. It is New York State 133. I think
23 you were in 131.

24 ADMIN. JUDGE WARDWELL: Exhibit 133 is the
25 FSEIS.

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1 CHAIR McDADE: That is what I am -- Okay,
2 here.

3 ADMIN. JUDGE WARDWELL: It's 9-6 that you
4 want?

5 CHAIR McDADE: Yes. Whoops, no. Go back.
6 It's 9.1.2, if you can bring that up.

7 MR. STUYVENBERG: At lines 35 and 36, Your
8 Honor?

9 CHAIR McDADE: Yes.

10 MR. STUYVENBERG: Would you like me to
11 respond to that?

12 CHAIR McDADE: Yes, please.

13 MR. STUYVENBERG: Excellent. So in
14 assessing impacts for particular alternatives, which
15 we have provided in Tables 9-1 and 9-2, which are at
16 9.9 and 9.10 of this chapter, those impact levels
17 don't include any impacts from constructing
18 transmission.

19 This particular statement here was
20 something that was in the draft and I think it was
21 something we probably should have pulled out for the
22 final because the rest of our assessment in Chapter 8
23 where decided that we weren't going to use
24 transmission as a reason not to consider any
25 particular alternative, I think is contrary to that

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1 particular statement.

2 CHAIR McDADE: Okay.

3 MR. STUYVENBERG: I would just note that
4 this is in a section that discusses irretrievable or
5 irreversible resource commitments, whereas most of our
6 assessment of alternatives occurs throughout Chapter
7 8.

8 CHAIR McDADE: Okay, thank you. Judge
9 Wardwell?

10 ADMIN. JUDGE WARDWELL: Mr. Bradford, also
11 in his testimony in Exhibit 048, page eight says that
12 each of these developments, but especially the lower
13 demand for electricity indicates that retiring the
14 Indian Point units will result in fewer environmental
15 impacts than the FSEIS suggests.

16 Mr. Stuyvenberg, could you describe how
17 you assessed it and what demand for electricity you
18 used in the impacts associated with addressing those
19 demands that were incorporated into your FSEIS?

20 MR. STUYVENBERG: One moment, Your Honor.

21 So as a preliminary matter, the NRC Staff
22 isn't required to perform a need for power as part of
23 a license renewal stage supplemental environmental
24 impact --

25 ADMIN. JUDGE WARDWELL: You said they

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1 aren't or are?

2 MR. STUYVENBERG: They are not.

3 ADMIN. JUDGE WARDWELL: Okay.

4 MR. STUYVENBERG: The regulations, and it
5 is in 51.95 and I can find the specific one for you,
6 if you would like, but the regulation indicates that
7 at license renewal stage, there is no requirement to
8 perform an analysis of need for power. So Staff
9 doesn't perform an analysis of need for power and
10 instead looks to replace the capacity generated by the
11 specific facility, in this case, Indian Point, in
12 which for purposes of our analysis was 2158 megawatts
13 -- 2158 megawatts.

14 So to the extent then that demand
15 projections have changed, because we are not looking
16 at need for power in determining how big our
17 alternatives need to be, I don't want to call it
18 irrelevant but it doesn't really have a significant
19 impact on the analysis we perform typically.

20 ADMIN. JUDGE WARDWELL: But I guess I
21 don't understand how you would do that because you
22 would have to make some assumptions, wouldn't you, in
23 regards to what types of development may take place to
24 compensate for the lack of the power that is provided
25 by Indian Point in order to assess this. And that, in

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1 turn, would have some impact on -- have some relevance
2 to the environmental impacts if say, for instance, it
3 had to be replaced by brand new plant construction to
4 meet a certain demand.

5 MR. STUYVENBERG: Sure. And as we point
6 out, all the alternatives that we consider in-depth
7 are alternatives that are potential consequences of
8 the no-action alternative as well.

9 So to the extent that we consider say
10 impacts of new natural gas-fired capacity in Chapter
11 8, that is also a potential consequence of no-action.
12 To the extent that we consider conservation and energy
13 efficiency, we point out that that is also a potential
14 consequence of no action. The same with combinations
15 of alternatives that we consider.

16 The challenge for us is we are not energy
17 planners. In putting together the rule, we received
18 a lot of input to indicate that it was important that
19 NRC Staff not step on the toes of various energy
20 planners. And so our approach looks to replace the
21 capacity at the time the licenses expire.

22 ADMIN. JUDGE WARDWELL: And how are you
23 replacing that?

24 MR. STUYVENBERG: We don't specifically
25 choose.

1 ADMIN. JUDGE WARDWELL: How do you
2 determine what environmental impacts are associated
3 with that replacement if you don't choose something
4 under the no-action alternative to replace that? That
5 is what I don't understand.

6 MR. STUYVENBERG: Sure. And if I could,
7 I would point out that our job isn't to determine the
8 most likely alternative to take its place because we
9 don't control that. What we do is point out that
10 there are a variety of consequences, which include
11 those alternatives that we looked at in-depth, which
12 include the combinations we looked at, which includes
13 energy efficiency and conservation, and which may
14 include some of the things that we have found not to
15 be individually capable of replacing the power plant
16 or to be not reasonable alternatives, such as the
17 coal-fired alternative we eliminated. We don't choose
18 a specific scenario to dictate what is going to happen
19 in the case of Indian Point shutdown. But we do
20 indicate in the no-action alternative, the impacts
21 directly from plant shutdown and then also indicate in
22 the various other alternatives we consider, the
23 environmental impacts of pursuing those alternatives.

24 ADMIN. JUDGE WARDWELL: Okay. But isn't
25 one of the alternatives, for example, at 8-27 of the

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1 FSEIS you talked about one of the impacts would be
2 high electric rates because of reliance on natural gas
3 fueled facilities. And given the significant decrease
4 in the cost of natural gas and the availability of
5 natural gas, isn't that just an inaccurate statement,
6 in light of not the circumstances of several years ago
7 but the circumstances at the time the decision-makers
8 need to make that decision.

9 MR. STUYVENBERG: So if you could point me
10 to the specific spot where we say --

11 ADMIN. JUDGE WARDWELL: Is it 8-27?

12 MR. STUYVENBERG: I see it. And is it the
13 second to the last paragraph?

14 ADMIN. JUDGE WARDWELL: Does it not
15 talking about --

16 MR. STUYVENBERG: I'm sorry. I see it
17 there. Because of the area's current dependence on
18 local power generation from natural gas and oil
19 fields, the area has high electric rates.

20 So what I would point out here is we
21 haven't assessed any particular impact as a result of
22 that. In our response to comments, if I can direct
23 you to page, we are going to Appendix A, this is of
24 the SEIS, and it is page A-102 of the SEIS. It is the
25 first full paragraph at the top of the page.

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1 In responding to comments about the
2 particular issue of electricity costs, the Staff
3 pointed out that any impact on electricity costs and
4 service impacts from the loss of IP-2 and IP-3
5 electrical generating capacity is speculative. And
6 due to the deregulation of the energy market in the
7 State of New York, competition for the sale of
8 electricity may keep electricity costs and services
9 under control.

10 So that is not the only case where we have
11 said something about that specific issue. But
12 generally again that is something that is out of the
13 NRC's control. Admittedly, this was a piece of
14 information we got from the Department of Energy. I
15 note that it wasn't just the notion of gas and oil but
16 dependence on local generation that fed into DOE's
17 determination there. But for what it is worth, we did
18 not use natural gas prices as a reason not to consider
19 an alternative. We considered a natural gas-fired
20 alternative. We didn't assign any specific impacts
21 from the price of natural gas in consideration of the
22 alternative.

23 CHAIR McDADE: Okay, thank you.

24 ADMIN. JUDGE WARDWELL: Back to what you
25 are concluding in your no-action alternative. If I

1 understand you correctly, you evaluated the direct
2 environmental impacts that occur say right in Buchanan
3 associated with the plant shutdown but do not
4 incorporate any environmental impacts from any types
5 of peripheral activity such as the replacement of that
6 power. Is that a fair assessment?

7 MR. STUYVENBERG: I think that is correct,
8 except insofar as we also point out that then the
9 alternatives we consider are also potential
10 consequences of those immediate shutdown effects, as
11 well as the effects of decommissioning would also be
12 part of that consideration. But decommissioning
13 happens, the need to decommission was incurred when
14 you constructed the plant.

15 ADMIN. JUDGE WARDWELL: I had you for a
16 while but then you lost me. Try to say that whole
17 statement again.

18 MR. STUYVENBERG: Certainly. Your Honor
19 is correct. We look at the direct impacts of
20 shutdown, which typically are fairly localized in that
21 particular no-action alternative and then indicate
22 that all the of the other alternatives we have
23 considered are potential consequences as well of that
24 no-action alternative. So that would include any of
25 those things we have considered throughout Chapter 8

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1 could potentially occur as a result.

2 ADMIN. JUDGE WARDWELL: How do you reach
3 a decision in regards to the attractiveness
4 potentially of shutting down a plant under the no-
5 action alternative, if it might have less
6 environmental impacts associated with the other
7 alternatives that you evaluate for the EIS? I guess
8 I don't understand why there is any significant
9 information available for a decision-maker to look at
10 in regards to the conclusions associated with a no-
11 action alternative as you just described it.

12 MR. STUYVENBERG: Sure. I think one of
13 the challenges in this process is that when NRC first
14 promulgated its license renewal rule and in draft or
15 proposed form, NRC indicated that there were two
16 options, license renewal or no license renewal and
17 that all alternatives were consequences of no license
18 renewal.

19 We heard from a lot of stakeholders in
20 that process -- I wasn't here directly. I am just
21 looking back at statements of consideration for that
22 information -- that that approach was deficient
23 because it didn't consider individual alternatives to
24 license renewal as direct alternatives to the actions
25 that are merely consequences of no-action.

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1 In response to those comments, they were
2 from groups like EPA, CEQ, I know the State of New
3 York commented on that proposed rule as well. The
4 staff came back with an approach where they would
5 analyze alternatives discretely as alternatives and
6 also look at no-action and they would indicate that
7 those alternatives could be consequences of no-action.

8 So now the second part to this issue is
9 the decision standard that the commission has. And so
10 the standard here is something to effect of whether
11 the environmental impacts of license renewal would be
12 so great as to make preserving the option of license
13 renewal for energy planning decision-makers
14 unreasonable. And I probably messed up the speech a
15 little bit but again that is a standard from 10 CFR
16 51.95.

17 And so the question isn't whether one
18 option is environmentally preferable but whether
19 license renewal is unreasonable in the context of the
20 other alternatives the staff considered, which include
21 no-action, which include the direct alternatives to
22 license renewal and any of the combinations the staff
23 has considered in this case.

24 So there is -- I think your confusion is
25 understandable and I hope that is helpful. I'm not

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1 sure it is.

2 ADMIN. JUDGE WARDWELL: That is. Let me
3 ask you this to fix the points. Let's say
4 hypothetically --

5 Let me ask you this before that. Have you
6 only looked at energy conservation as part of the no-
7 action alternative or have you incorporated it into
8 some of your other alternatives? I can't remember.

9 MR. STUYVENBERG: Energy efficiency and
10 energy conservation is a stand-alone alternative.

11 ADMIN. JUDGE WARDWELL: Okay.

12 MR. STUYVENBERG: And it is also a
13 potential consequence of no-action.

14 And there is another point I would like to
15 make on that. I think previously Commissioner
16 Bradford had indicated that it was based on a model
17 from North Carolina or Pennsylvania. Actually the
18 viability of that alternative was actually based on
19 New York's specific information -- I go into this in
20 my written testimony -- much of which was submitted by
21 New York State in its comments on the draft SEIS.

22 ADMIN. JUDGE WARDWELL: Let's say for a
23 hypothetical example that energy efficiency
24 conservation in lower demand accounted for all of the
25 capacity of Indian Point and everyone agreed we can

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1 project that to the future of being long-lasting. How
2 would that affect the EIS as it now stands? Where
3 would that show up?

4 MR. STUYVENBERG: I think we got that,
5 actually. If you look at the impact from no-action,
6 purely no-action, doing nothing else but the immediate
7 shutdown, the only area that no-action had some
8 significant impacts potentially greater than small was
9 in the context of socioeconomics, where the loss of
10 some tax revenues might affect public services.

11 In the case of the conservation energy
12 efficiency alternative, that is also the only place we
13 have found that there may be a significant impact.
14 And for essentially the same reason that whatever that
15 alternative does is unlikely to offset the effects to
16 public services that shutdown would have. And so in
17 my view we have an EIS that addresses what happens if
18 energy efficiency and conservation are able to replace
19 the entirety of Indian Point when Indian Point shuts
20 down. And I would also just note briefly that that
21 particular scenario of conservation replacing the
22 entirety of Indian Point, assuming that one of New
23 York State's other witnesses, Mr. David Schlissel has
24 indicated is maybe too aggressive to believe that
25 energy efficiency and conservation would simply take

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1 its place in 2015. So I think the Staff has made
2 some, I will say, generous assumptions to grant to New
3 York State that its programs are actually going to
4 over achieve, which I think is something that
5 Commissioner Bradford indicated that he thought we
6 hadn't done. But I will close with that.

7 ADMIN. JUDGE WARDWELL: Just one final
8 question on that because it reminds me of one I had
9 that I didn't cover back in October. When you looked
10 at the conservation alternative and included those
11 impacts associated with the closing of the plant, do
12 you have some recognition in there that the fact the
13 plant will close down at some time and the only
14 difference really is the amount of time, whether it is
15 going to happen in a very short time frame, i.e.,
16 within a couple, three years as far as it shutting
17 down, or it won't happen for another 20 plus years?

18 MR. STUYVENBERG: I think one way we
19 acknowledge that is by not assessing decommissioning
20 impacts against any alternatives either. I mean
21 certainly there will be environmental impacts from
22 decommissioning but that is going to happen whether
23 the plant shuts down at the end of its current license
24 or after an additional 20 years.

25 I think that is the primary way we

1 addressed that. I know you had asked some questions
2 earlier about discounting future environmental
3 impacts. I don't think there is any particular way we
4 do that. It is also not something that is in our
5 guidance or in our GEIS. But certainly
6 decommissioning I think is one of the things that
7 responds to that interest.

8 ADMIN. JUDGE WARDWELL: So I did manage to
9 get to ask that back in October.

10 MR. STUYVENBERG: You did, Your Honor.

11 ADMIN. JUDGE WARDWELL: I remember that.

12 MR. STUYVENBERG: Good.

13 ADMIN. JUDGE WARDWELL: Mr. Bradford,
14 would you like to comment on your statement on page
15 eight that each of these developments, but especially
16 the lower demand for electricity indicates that
17 retiring Indian Point units will result in fewer
18 environmental impacts than the FSEIS suggests? How do
19 you believe the Staff should have looked at these
20 lower demands and incorporated them into the FSEIS
21 after hearing what Mr. Stuyvenberg has said here
22 today.

23 MR. BRADFORD: Well first of all, as I
24 indicated in laying them out, in each case they would
25 involve some correction to the figures or statements

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1 in the FSEIS that are inconsistent.

2 Beyond that, --

3 ADMIN. JUDGE WARDWELL: And you believe in
4 that area that they should still use the lower demand
5 that is presently being experienced or would it be
6 prudent to use the higher demand prior to the
7 recession?

8 MR. BRADFORD: By demand, two possible
9 meanings; demand growth rate or projected level of
10 demand. I would think it would clearly be prudent to
11 use current projections of level.

12 ADMIN. JUDGE WARDWELL: Well what were you
13 referring to in your statement on page eight where you
14 said especially the lower demand for electricity?

15 MR. BRADFORD: Lower level of demand.
16 Demand growth rate projections may also have been
17 modified but not so much, at least looking out in the
18 future, not necessarily because of the recessionary
19 impacts as much as the energy efficiency program
20 impacts.

21 Sorry, I have lost my train of thought in
22 response to your earlier question.

23 ADMIN. JUDGE WARDWELL: My earlier
24 question was simply what would you suggest the staff
25 in regards to incorporating this lower demand into

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1 their FSEIS you seem to be criticizing on page eight.

2 MR. BRADFORD: Right. And my concern is
3 part really of my larger critique that the Staff needs
4 to expand its discussion of the conservation
5 alternative and the potential of conservation in the
6 combination alternatives. Also the potential of
7 renewables in the conservation alternative. And to
8 put those impacts in the context of the lower level of
9 demand, so that the overall level of replacement
10 capacity is at least deferred.

11 ADMIN. JUDGE WARDWELL: Mr. Stuyvenberg,
12 back to you in regards to some questions and answers
13 in your testimony on Exhibit 133. I think it is on
14 page six, the questions and answers nine and ten that
15 nine states: "Does ER discuss conservation as an
16 alternative to license renewal?" And you said no.
17 And then you said, the question was: "Is ER required
18 to discussion that?" And you also said no.

19 You have gone ahead and actually have
20 addressed energy conservation as you have already
21 stated. And what you are referring to in answer to
22 these questions is the fact that this information
23 wasn't available in Entergy's ER. Is that correct?

24 MR. STUYVENBERG: I want to make sure I
25 have a clear picture of Your Honor's question. So I

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1 am looking at the exhibit right now.

2 ADMIN. JUDGE WARDWELL: And it is
3 questions nine and ten.

4 MR. STUYVENBERG: Questions nine and ten
5 or pages nine and ten? I'm sorry. Did I
6 misunderstand?

7 ADMIN. JUDGE WARDWELL: It's page six,
8 questions nine and ten.

9 MR. STUYVENBERG: Thank you.

10 This essentially responded to what the
11 GEIS tells us about reasonable alternatives. And that
12 is to the extent that alternatives should constitute
13 single discrete sources of generation and that
14 conservation isn't specifically a single discrete
15 source of generation. Nonetheless, it is something
16 the GEIS discusses throughout its Chapter 8. And
17 certainly along with newer information and I go into
18 that somewhat later on in my testimony about what that
19 newer information was as compared to the specific
20 information available at the time Entergy proffered
21 its ER. So in combination with that kind of
22 information, Staff elected to consider it in the FEIS.

23 ADMIN. JUDGE WARDWELL: But this
24 information wasn't -- the information that you used to
25 evaluate this was not available in the ER. Is that

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1 correct?

2 MR. STUYVENBERG: That is correct.

3 ADMIN. JUDGE WARDWELL: Is there other
4 information besides this that wasn't in the ER that
5 you either had to ask the Applicant for after the
6 license renewal application was submitted in order for
7 you to complete your FEIS?

8 MR. STUYVENBERG: That is interesting. I
9 think in doing this we used primarily publicly
10 available documents that we didn't have to ask the
11 Applicant for.

12 As a threshold matter, accepting a license
13 renewal application is somewhat different than
14 completing a license renewal EIS. And so what Entergy
15 proffered in the Staff's opinion appeared to be an
16 acceptable ER. And then the Staff performs its own
17 independent review of that application and will use
18 other information as necessary.

19 In this case, Entergy wasn't primarily the
20 holder of information on specific energy alternatives
21 or specific New York State level considerations. It
22 is one of the reasons we relied to some significant
23 degree on assertions provided by New York State in its
24 comments on the draft SEIS, which came in March of
25 2009, in finding that we could consider energy

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1 efficiency and conservation as a replacement for
2 Indian Point.

3 Also I note that over that time period,
4 and I go over this somewhat in my testimony, New York
5 State's views -- or I shouldn't say views necessarily
6 -- I should say policies changed somewhat as they
7 moved towards to more binding approaches to requiring
8 energy efficiency and conservation as a state-level
9 policy. So whereas that wasn't necessarily there in
10 2007, it was there later.

11 And so as I think I have previously
12 mentioned, we wanted to grant full effect to that and
13 say we are going to consider this as a stand-alone
14 alternative.

15 ADMIN. JUDGE WARDWELL: Were there any
16 other besides the energy conservation and the
17 renewables, were there any other pieces of information
18 that you really needed from the Applicant that wasn't
19 in the ER and that you had to request that information
20 from them after submittal of the application? Which
21 is a normal activity. You do RAIs back and forth in
22 order to get this information.

23 MR. STUYVENBERG: Sure.

24 ADMIN. JUDGE WARDWELL: I'm just curious
25 on whether you remember any -- and I don't need the

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1 specifics -- I'm just saying either yes or no we
2 didn't.

3 MR. STUYVENBERG: To be clear, what I am
4 trying to think back to is that question as it applies
5 to the application as a whole versus that question as
6 it applies to alternatives. As it applies to the
7 application --

8 ADMIN. JUDGE WARDWELL: Strictly to what
9 we are dealing with here in the alternatives analysis
10 for the EIS.

11 MR. STUYVENBERG: Okay. In my
12 recollection, I don't recall many if any specific RAIs
13 to the Applicant on alternatives.

14 ADMIN. JUDGE WARDWELL: And I assume by
15 saying by the alternatives that means there were no
16 RAIs in regards to their ER, their Environmental
17 Report.

18 MR. STUYVENBERG: As relates to their
19 alternatives analysis in that ER.

20 Certainly, I apologize, I managed the rest
21 of the review, too. So I foresaw several rounds of
22 RAIs that went out related to other issues.

23 ADMIN. JUDGE WARDWELL: Non-NEPA related
24 issues.

25 MR. STUYVENBERG: No, these were NEPA

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1 related. So there were issues --

2 ADMIN. JUDGE WARDWELL: Okay.

3 MR. STUYVENBERG: This is why I am trying
4 to disambiguate this contention from the rest of the
5 ER.

6 And so to the extent that there were NEPA
7 related questions, there were multiple NEPA related
8 RAIs that went to the Applicant. Certainly we had
9 repeated exchanges with the Applicant about its
10 aquatic impacts. There were some other matters also
11 that we asked RAIs about.

12 In terms of performance and viability of
13 energy alternatives, I don't recall specifically RAIs
14 that went out about that matter. Is that responsive?

15 ADMIN. JUDGE WARDWELL: Yes, it is.

16 MR. STUYVENBERG: Okay.

17 ADMIN. JUDGE WARDWELL: That is. And you
18 don't require them to resubmit an ER incorporating
19 those RAIs in those other areas, do you?

20 MR. STUYVENBERG: No, Your Honor.

21 ADMIN. JUDGE WARDWELL: That's not normal
22 course.

23 Do you do you -- I think we asked this in
24 October and I want to affirm it now. If I remember
25 correctly, you stated that you did your own analysis

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1 of these energy alternatives that we are talking about
2 here for this contention. Is that correct?

3 MR. STUYVENBERG: That is correct. That
4 is a Staff analysis.

5 ADMIN. JUDGE WARDWELL: And so you are
6 responsible for this in defending anything that exists
7 with this particular analysis. Is that correct?

8 MR. STUYVENBERG: That is my
9 understanding. And I think that is similar to a
10 question you asked in October as well. But yes.

11 ADMIN. JUDGE WARDWELL: I just wanted to
12 fix that again.

13 CHAIR McDADE: You started talking in
14 addition to conservation the use of renewables. And
15 as I understand it, one of the alleged deficiencies
16 from New York is that your Environmental Impact
17 Statement underestimates, under-analyzes the
18 availability of renewables.

19 For example, at 8.3.5 it talks about an
20 assumption that 600 megawatts would be available by
21 2009 from wind when actually there was more than 1,300
22 available and another 7,000 megawatts in process. And
23 we are talking about 2,580 megawatts from the Indian
24 Point facilities. Is it your view that the FSEIS
25 underestimates the availability of renewals and the

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1 decision-maker would be misled then as to the impact
2 of the no-action alternative?

3 MR. STUYVENBERG: No, Your Honor, and I
4 will explain why.

5 First of all, the 600 megawatts as part of
6 the combination alternatives, and I think I addressed
7 this somewhat in October but I apologize if I repeat
8 myself here, came in large part from a combination of
9 alternatives submitted by New York State in their
10 comments on the draft supplemental environmental
11 impact statement in which they asserted that a
12 combination, among other things, should consider 600
13 to 800 megawatts of renewable capacity.

14 We elected 600 here because the rest of
15 that alternative that New York State had proffered
16 actually resulted in more megawatts than the capacity
17 of Indian Point. And in an effort not to overstate
18 potential environmental impacts, we went with the
19 slightly lower number.

20 In this case --

21 ADMIN. JUDGE KENNEDY: You mean to
22 overestimate or overstate the environmental impact of
23 the renewable.

24 MR. STUYVENBERG: That's correct. And I'm
25 sorry, did you say renewal or renewables?

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1 CHAIR McDADE: Renewables.

2 MR. STUYVENBERG: That's correct. That's
3 correct.

4 So the other things we have said here is
5 that there are an infinite number of potential
6 combinations that staff could consider and certainly
7 the GEIS notes as much as well, that there is an
8 infinite number of combinations where you could have
9 put different amounts of renewables. And we indicated
10 this was a reasonable example, based on the
11 combinations -- or based on the comments the Staff
12 received.

13 We also indicated that none of them were
14 intended to place a limit on available resource
15 capacities. And this is all just reading from that
16 same paragraph or the same first paragraph -- I mean
17 second paragraph of 8.3.5. And that they weren't
18 intended to supplant State- or utility-level planning
19 decisions about how to generate electricity or reduce
20 demand or what have you. But for our purposes in
21 looking at information from the New York State
22 Department of Public Service as well, which I believe
23 it was the Department of Public Service, had indicated
24 a projection for the State's renewable portfolio
25 standard and what it was likely to achieve. So we

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1 relied on that kind of information.

2 We didn't look back to say well there is
3 already 1,300 megawatts we are just going to use that.
4 Similarly, we also didn't look back and say well there
5 is already however many megawatts of gas-fired
6 capacity. We were looking again, not doing a need for
7 power analysis, we were looking at how could you
8 replace the two Indian Point units. And so for that
9 reason, we were looking to build an alternative of
10 2,158 megawatts or similar capacity that you could
11 rely on to serve the base load Indian Point currently
12 does.

13 CHAIR McDADE: Okay, Mr. Bradford, doesn't
14 that give the decision-maker adequate information
15 about the availability of renewables and the
16 environmental impact of them vis-a-vis that of
17 continuing the licensing of Indian Point?

18 MR. BRADFORD: Well it is problematic
19 because in some cases, and respecting Mr.
20 Stuyvenberg's point that the numbers may originally
21 have come from earlier New York submissions, still in
22 some cases the numbers are significantly below what at
23 the time of the FSEIS had already been achieved. So
24 they clearly understate the renewable potential and
25 significantly so when you take into account the pace

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1 in which those programs seem to be moving.

2 CHAIR McDADE: And in your view, the
3 decision-maker needs to be aware of the additional
4 availability of renewables, which in the position of
5 New York have lesser environmental impact than the
6 continuation of the Indian Point facility. Is that
7 correct?

8 MR. BRADFORD: Yes, it's not just a higher
9 number but the fact that the programs really seem much
10 more robust than one would have thought using the
11 information of just a few years before.

12 MR. STUYVENBERG: Your Honor?

13 CHAIR McDADE: Yes?

14 MR. STUYVENBERG: If I could also point
15 out that combination alternative isn't the only place
16 the Staff considers renewables. Throughout Section
17 8.3.4, the Staff addresses the alternatives that it
18 considered but dismissed from using as stand-alone
19 alternatives. And I think you will find in 8.3.4.1
20 wind power, beginning at 8-43, there is a discussion
21 of some very similar information, at least, to the
22 information Commissioner Bradford provided in his
23 pretrial testimony about how many megawatts wind power
24 were in the queue at the time and what would happen if
25 they had all been completed, for example?

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1 So we use that as a way to conclude that
2 it wasn't likely to replace 2,158 megawatts of base
3 load capacity but we also wanted to show that this is
4 substantial and real in New York State. So I think we
5 certainly understand some of the tension that the
6 Commission is talking about.

7 CHAIR McDADE: Okay but in understanding
8 it and addressing it, one of the things as I
9 understand Mr. Bradford addressed and New York alleged
10 in this contention is that the positive impacts of
11 renewals really weren't discussed at all as an
12 alternative to the closing of Indian Point and the
13 economic and socioeconomic impact of jobs and
14 otherwise of development of renewables. Isn't that
15 something that the NRC Commission should be aware of
16 in making the decision whether to license or not?

17 MR. STUYVENBERG: I would point out, first
18 of all, that economic costs and economic benefits
19 aren't required to be part of a license renewal
20 supplemental environmental impact statement. And
21 again, I could find the particular point in 51.95 but
22 suffice it to say that is a portion of our
23 regulations.

24 Nonetheless, we do discuss in some cases
25 that the result in local jobs. I would point out that

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1 again if we go to comment responses, in some cases we
2 have had an opportunity to address directly some of
3 these particular issues. Let me find the particular
4 point for you because essentially what we say is that
5 the variety of energy generating options in general,
6 whatever you choose to pursue, have the potential to
7 create jobs and have the potential to create effects
8 on local communities.

9 The challenging part for us is our level
10 of impact system is kind of built around adverse
11 impacts. We talk about definitions at least for large
12 that the impacts are somehow destabilizing. The
13 notion of that somehow being a positive thing is hard
14 to consider. So usually what we do is we look to how
15 we reduce adverse impacts on the levels to which it
16 reduces adverse impacts. So it is kind of perhaps a
17 flaw of the system the Agency uses but it is a
18 reality. Let me find that particular point in our
19 comment response.

20 I think you could -- one example at A-105,
21 this is again in Volume I of the FSEIS there is a
22 response that indicates, starting on that page,
23 "Nuclear power plants, like various other electrical
24 generating plants, generate a significant amount of
25 employment and income in the economies of local

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1 counties. And point out that local communities
2 provide the people good services needed to operate the
3 power plant and that power plant operations, in turn,
4 provide wages and benefits for people in payments for
5 goods and services. So the notion there is that
6 electric generating facilities in general do these
7 kinds of things. And so, while we don't assess
8 directly impacts from economic costs and economic
9 benefits, we understand that this is something that
10 has come up in the discussion.

11 CHAIR McDADE: Okay. Mr. Bradford, is it
12 part of your position that in addition to the benefits
13 just described by Mr. Stuyvenberg that the renewals
14 have additional positive impacts that need to be
15 considered, given its new technology and its capacity
16 to generate new jobs and new economic growth?

17 MR. BRADFORD: Well yes, at least to the
18 extent that, and I feel this particularly strongly
19 more for my experience in Maine than in New York, but
20 the renewables, because they keep a lot larger part of
21 the state's funds spent on electricity services in the
22 state, they don't send it out to buy natural gas or
23 coal from somewhere else, they are either buying a
24 local fuel, biomass in Maine's case or in the case of
25 wind they don't have to pay for fuel. So there is a

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1 clear improvement in the local economic impact of
2 buying electricity from renewable sources versus
3 paying for fuel.

4 It is less of a comparison with regard to
5 Indian Point because the nuclear fuel isn't a big part
6 of Indian Point's operating costs. But as to the
7 profile of renewables versus options in which a
8 greater proportion of fossil fuel replaces Indian
9 Point, it is a definite positive for renewables.

10 ADMIN. JUDGE KENNEDY: Mr. Willkie, I
11 wonder if you could put up page 19 and 20 from NRC
12 133. And I'm not sure how we are going to do this
13 because we are going to need both pages, eventually.
14 But let's start with page 19 of NRC 133.

15 CHAIR McDADE: Do you think that would be
16 A or -- oh, this is NRC.

17 ADMIN. JUDGE KENNEDY: Yes, NRC.

18 CHAIR McDADE: Sorry.

19 ADMIN. JUDGE KENNEDY: It's Table 9-1.
20 That's it there. And I guess we have hit a lot of
21 these discussions or a lot of these points related to
22 this table as we went through it. And this is a two-
23 page table. Maybe if we could just see page 20 next.
24 Mr. Stuyvenberg, I presume that page 20 is a
25 continuation of page 19.

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1 MR. STUYVENBERG: That's correct. That is
2 also a continuation of Table 9-1.

3 ADMIN. JUDGE KENNEDY: And we read across?

4 MR. STUYVENBERG: Yes.

5 ADMIN. JUDGE KENNEDY: So 19 and 20 would
6 be next to each other?

7 MR. STUYVENBERG: Yes.

8 ADMIN. JUDGE KENNEDY: I guess I have got
9 a bunch of general questions and maybe, and I don't
10 want to beat this death because we have hit some of
11 this. But if you could maybe describe this exhibit
12 and what we should take away from -- what it is and
13 what we should take away from it. And then I have got
14 some specific questions about some of the entries.

15 MR. STUYVENBERG: Sure. In general, this
16 is a table when combined with the section on the
17 previous page that provides the impact levels from the
18 various alternatives the Staff considered. So it is
19 on the NRC's impact scale of small, moderate, and
20 large ranges. In some cases we will indicate
21 uncertainty or we may, in some cases, indicate that is
22 somewhere -- falls somewhere between the values. That
23 is kind of a general overview.

24 ADMIN. JUDGE KENNEDY: Could you walk us
25 right to left the various columns?

1 MR. STUYVENBERG: Sure.

2 ADMIN. JUDGE KENNEDY: Maybe we need to
3 start at 19.

4 MR. STUYVENBERG: Okay. If it is okay
5 with Your Honor, I would like to go left to right.

6 The first one is impact category. So it
7 is the particular impact issue. The second one -- and
8 as you can see the entries in that column are kind of
9 the various resource areas in which the NRC staff has
10 assessed environmental impacts.

11 ADMIN. JUDGE KENNEDY: Is that a complete
12 list? Do we take this as the complete list of
13 impacts?

14 MR. STUYVENBERG: I believe that is
15 correct. That is the summary of our impact
16 assessment.

17 ADMIN. JUDGE KENNEDY: Thank you.

18 MR. STUYVENBERG: So the first column
19 after that where it says proposed action above it, the
20 proposed action is license renewal. Those are the
21 impacts the Staff assessed for the license renewal.
22 You will note in the aquatic ecology box there, there
23 are two different levels. That is actually because
24 for the power plant itself the GEIS has separate
25 issues areas that fall under that resource category

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1 and so we provided both. I believe the first one was
2 for effects of impingement and entrainment and the
3 second one was for thermal shock but I don't recall
4 specifically.

5 The next category is no-action
6 alternative, which is simply plant shutdown as we
7 assessed it in that column, although certainly the
8 remaining columns now of this chart can be potential
9 consequences of no action.

10 The next column was a closed cycle cooling
11 alternative that we had considered that would be
12 retrofit to cooling tower from its current ones
13 through cooling system at Indian Point.

14 Then we looked at natural gas combined
15 cycle generation. Either -- the first one of them,
16 the first column there is either at the Indian Point
17 site or at a repowered site. The second of the NGCC
18 columns is at a new site. If we could go to the next
19 page, then.

20 Then we have on this table a repeat of the
21 impact category and then we have the next column after
22 that is conservation and energy efficiency as an
23 alternative. And then the last two columns are
24 combinations of alternatives. So the first
25 combination was one Indian Point unit with some other

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1 generation means. We chose to consider one Indian
2 Point Unit because New York State's comments on the
3 draft SEIS indicated that we had failed to consider
4 such an alternative.

5 In the second option for combination of
6 alternatives is the combination of natural gas,
7 renewables, additional import of power, and
8 conservation. And that was also based in significant
9 part on a combination supplied by New York State in
10 its comments.

11 ADMIN. JUDGE KENNEDY: I think we talked
12 about this before. If I look at the combination
13 alternatives, this is where you would contend the
14 renewable contribution and conservation contributions
15 would be included. Is that --

16 MR. STUYVENBERG: I'm sorry --

17 ADMIN. JUDGE KENNEDY: Under the
18 combination of alternatives, there is a note there of
19 offsite renewables and conservation.

20 MR. STUYVENBERG: That's right. So those
21 are components of that combination. I would note that
22 the conservation energy efficiency also has its own
23 stand-alone alternative row in this chart because we
24 considered it independently and not just as a part of
25 a combination.

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1 ADMIN. JUDGE KENNEDY: And just speaking
2 of that column, the conservation/energy efficiency,
3 that would be replacing the power needs of Indian
4 Point with a pure conservation energy efficiency
5 option. So no new capacity required.

6 MR. STUYVENBERG: That's correct.

7 ADMIN. JUDGE KENNEDY: And I guess going
8 back to the combination of alternatives, with this
9 offsite renewables and conservation, I think we heard
10 Mr. Bradford contend that the amount of renewables and
11 conservation included here may be underestimated.
12 What would be the impact of say doubling the
13 renewables under the -- I mean, does it just -- well,
14 I guess maybe speak to that issue. If the Staff had
15 underestimated the amount of renewables and
16 conservation in these options, is there a way to use
17 this table to try to estimate or evaluate a greater
18 proportion of renewables and conservation?

19 MR. STUYVENBERG: I think it would be very
20 challenging to use this table to do that. I think you
21 would have to go back to the descriptions in Chapter
22 8 of those combinations. That is where we described
23 the particular elements of the alternatives that
24 triggered the impacts that we found.

25 ADMIN. JUDGE KENNEDY: I am sure you can

1 appreciate the technical judges want to interpolate
2 between the conservation energy efficiency column and
3 one of these alternative combination. I really don't
4 know how to do that. And you are saying don't do
5 that. You are suggesting we could overuse this table.

6 MR. STUYVENBERG: I think that is
7 possible, with all due respect to Your Honor.

8 It is always challenging in environmental
9 assessment to find a way to summarize impacts that may
10 be different in different impact areas and it is
11 always with regard to the specific resource and the
12 characteristics of the alternative being considered.
13 So I would say to some extent there may be as much art
14 as science to comparing some of these using the table.
15 But I think if you went to the discussions in Chapter
16 8 it would provide some more illumination.

17 ADMIN. JUDGE KENNEDY: Does this table
18 provide a good capturing of the information that is in
19 the environmental impact statement or is there more
20 information that we should be looking at? I mean, I
21 find this table to be very useful. Again, I may try
22 to overuse it.

23 MR. STUYVENBERG: Well I think that is why
24 we provide it is we wanted to provide some summation
25 of impact levels that we found in the analysis in a

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1 way that is comparative, something that NEPA tries to
2 get us to do. And I think the challenge with that is
3 when you distill things down, you might lose specific
4 definition in each area. I think it has value from a
5 comparative perspective. I think to the extent that
6 you would like to see maybe how some changes would
7 affect some of those, you might have to go back to the
8 initial discussions.

9 ADMIN. JUDGE KENNEDY: Are there
10 conclusions that can be drawn from this table or has
11 that become risky?

12 MR. STUYVENBERG: What I go back to is the
13 specific decision standard that NRC has ultimately in
14 an EIS. And that is about some recommendation about
15 whether the potential impacts of preserving license
16 renewal as an option for decision-makers, whoever
17 those energy decision-makers may be, is unreasonable.
18 And in this case, what it shows is that there are some
19 things that look like they have smaller impacts than
20 license renewal. For example, simple plant shutdown,
21 which may necessitate other things, and conservation
22 energy efficiency as a replacement. And it also
23 shows, in my view, that there are some alternatives
24 that have larger impacts: constructing and operating
25 some new natural gas-fired facilities, or some of the

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1 combination alternatives or in the case of the cooling
2 tower retrofit.

3 The hard part is making a decision about
4 trading off which categories might be most important
5 to a decision-maker. And I think for NRC purposes
6 maybe it is a higher level comparison. If somebody
7 were doing an analysis specifically related to aquatic
8 life, there would be a different type of analysis and
9 different summary presentation for issues like this.

10 Sorry if that is overlong.

11 ADMIN. JUDGE KENNEDY: No, I guess I
12 answered another question. If we could go back to
13 page 19, Andy. What I just took away from your
14 discussion at the end there is it is risky to try to
15 take let's say under the proposed action column and
16 try to compare ecology-aquatic to the small or
17 moderate socioeconomic impacts and try to make some
18 sort of decision about whether the second column
19 versus the third column is more attractive or less
20 attractive than the other.

21 Because that was the question I was going
22 to ask is can you compare some of these individual
23 rows and make some decisions there. And what I heard
24 your testimony just recently there is to caution me
25 against doing that. Is that true? Should I be

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1 cautioned? No interpolation allowed?

2 MR. STUYVENBERG: I think there is reason
3 for caution but I also think, to some extent, you can
4 make some comparisons across alternatives using this.
5 The challenge is how a decision-maker would weigh
6 impacts in various areas.

7 And I think this ultimately comes out to
8 part of the reason NRC may have the decision standard
9 it does. The NRC's decision standard isn't choose to
10 proceed with the issue -- or I'm sorry -- the
11 alternative but the lowest environmental impact. It
12 is whether the environmental impact of license renewal
13 is reasonable or not, as compared to the other
14 alternatives. Because NRC doesn't ultimately decide
15 which of these gets implemented.

16 ADMIN. JUDGE KENNEDY: What would this
17 summary table look like if the license renewal option
18 wouldn't be something that could be pursued? Would
19 the column under the proposed action all be large
20 impacts and to the right of that, less than large?

21 MR. STUYVENBERG: I think it is an
22 alternative that was just infeasible. You couldn't do
23 it. There was no way you could do it. I think that
24 column would go away. I don't think as a NEPA matter
25 agencies are required to consider actions that aren't

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1 feasible.

2 The challenging thing for the Agency is in
3 this case that is the proposed action that initiated
4 the need for NEPA review. So I apologize if I didn't
5 follow the hypothetical all the way but that is, I
6 think how we would look at that.

7 ADMIN. JUDGE KENNEDY: If I look at this
8 table as it is presented here, does it dissuade me
9 from keeping the license renewal option open?

10 MR. STUYVENBERG: I don't think it does.
11 I think it indicates that the impacts are not
12 unreasonable as compared to the alternatives.

13 ADMIN. JUDGE KENNEDY: Okay. I guess
14 saying it the other way, is there anything there that
15 would eliminate -- well, would indicate to us that the
16 reactors at Indian Point couldn't be replaced with
17 other options?

18 MR. STUYVENBERG: I didn't think there was
19 anything that says that either. And actually I touch
20 on this a bit in my written testimony, too. The NRC
21 Staff's purpose here was not to say that Indian Point
22 could not be replaced. And in fact, consideration of
23 other alternatives as reasonable alternatives, one
24 could view that as a way of saying there are options
25 that could replace Indian Point. Those options aren't

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1 up to us to pursue or to decide about as I understand.
2 So I hope that is responsive.

3 ADMIN. JUDGE KENNEDY: Mr. Bradford, is
4 there anything you would like to say to us in regard
5 to this summary table, things we should maybe pay
6 attention to, or ways to interpret this information?

7 MR. BRADFORD: Most of the specific impact
8 categories on the left-hand side are not areas in
9 which I have specific expertise.

10 ADMIN. JUDGE KENNEDY: Okay.

11 ADMIN. JUDGE KENNEDY: That's fair.
12 Anybody else want to use this table? Okay, thank you.

13 CHAIR McDADE: Actually it is about ten
14 minutes after 11:00 at this point. We have been here
15 for a while. It may be appropriate for us to take a
16 brief recess. And I would propose we stand in recess
17 until 11:30.

18 Also during that time, if the parties
19 should consider whether or not they wish to ask any
20 questions of these witnesses and if so, what those
21 questions would be, that they can use this time of the
22 break to consider that.

23 Also if there any questions of the
24 witnesses who testified in October who are here, that
25 you would want to follow up on to consider that as

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1 well.

2 Is there anything that Entergy would like
3 to take up before we stand at recess, Ms. Sutton?

4 MS. SUTTON: No, Your Honor.

5 CHAIR McDADE: Staff?

6 MS. MIZUNO: No.

7 CHAIR McDADE: Mr. Sipos?

8 MR. SIPOS: No, Your Honor.

9 CHAIR McDADE: Did you ever hear from Ms.
10 Dean?

11 MR. SIPOS: Yes, and she has sent me an
12 email that she is on the line.

13 CHAIR McDADE: Okay, good. I do want to
14 also note that there are no interested government
15 entities that indicated that they wanted a speaking
16 role in this particular proceeding and they did have
17 available the non-speaking bridge on the telephone.
18 So we are not certain whether or not any of them are
19 participating but they certainly will have the
20 transcript and we anticipate seeing them again come
21 December back in Tarrytown.

22 We are in recess until 11:30.

23 (Whereupon, the foregoing matter went off
24 the record at 11:11 a.m. and went back on
25 the record at 11:32 a.m.)

1 CHAIR McDADE: The hearing will come to
2 order. One housekeeping matter I did want to mention
3 and that has to do with the proposed transcript
4 corrections. For this session today, what I would
5 propose to do is to just blend it in with the session
6 that we are going to have in December, rather than
7 having it go through the process an additional time to
8 just have this transcript and the one in December and
9 we will then, at the end of the December hearing,
10 decide on what would be an appropriate date for
11 getting those transcript corrections in.

12 Okay, that said, Judge Kennedy.

13 ADMIN. JUDGE KENNEDY: Andy, could we have
14 New York State 48 again, and page eight of that,
15 please? The last paragraph taken altogether.

16 Mr. Bradford, this part of your pre-filed
17 testimony and I am wanting to have you elaborate a
18 little bit or clarify what you meant by the
19 shortcomings of the FEIS are consistent with
20 fundamental flaws in the NRC's approach to analyzing
21 alternatives? What are you trying to convey there?

22 MR. BRADFORD: Well as I said elsewhere,
23 the FSEIS gives relatively short shrift to the most
24 benign of the alternatives, benign in terms of the
25 environmental impacts, to continued operation of

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1 Indian Point when compared, for example, to the
2 extensive discussion of a coal alternative, which in
3 fact isn't even evaluated.

4 So from the standpoint of a decision-maker
5 looking at this document for guidance, I think the
6 sense that they get these pretty strongly in the
7 direction of saying that relicensing is -- well it
8 overstates the relative benignness of the relicensing
9 option from an environmental impact standpoint, not
10 because there isn't a conservation alternative with
11 very low impact but because the way in which
12 conservation and renewables are addressed in relation
13 to the realities of what has been happening in New
14 York just understates the practical levels of
15 assurance one can have that those are realistic
16 options.

17 And in fairness to this document and to
18 the Staff position, it is certainly not a class with
19 the environmental impact statements that I reviewed in
20 my 2007 declaration on the environmental report. But
21 it does seem to me in that lean, if you will, still to
22 reflect that pro-licensing bias that infected those
23 earlier documents to a much greater degree.

24 ADMIN. JUDGE KENNEDY: Yes, I think
25 because we went through some of the questioning

1 before, I tried to make this into a discussion about
2 the quantities of renewables. And what I am gathering
3 both from what you just said and what you said
4 subsequently to some of the earlier questions. This
5 is more in the quality of the presentation of the
6 material or the description of the various
7 alternatives than in any particular quantity of
8 megawatts that are in renewables or megawatts that are
9 in wind.

10 MR. BRADFORD: Yes, and with regard to
11 each of the specific corrections that I had occasion
12 to point out in my testimony, they all go in one
13 direction. It is not as though these are sort of
14 random errors around the question of where the
15 greatest environmental impacts lie or where the
16 potential of renewables and efficiency lies. They all
17 tend to understate. And that is the tilt I am talking
18 about.

19 ADMIN. JUDGE KENNEDY: Do you have a good
20 example that you could point us to? Is there one that
21 sticks out in your mind in terms of --

22 MR. BRADFORD: Well we talked of one
23 earlier this morning, the extent of the actual
24 renewables achievement.

25 ADMIN. JUDGE KENNEDY: Okay. The actual

1 versus what was assumed. In other words, what the
2 current state of the renewable goal. Is that what you
3 are referring to?

4 MR. BRADFORD: Yes, or the choice among
5 transmission alternatives and the impacts associated
6 therewith. I mean, there are a list of four or five
7 in the testimony and they all point in the same
8 general direction.

9 ADMIN. JUDGE KENNEDY: Okay, thank you.
10 I have no further questions.

11 CHAIR McDADE: Judge Wardwell?

12 ADMIN. JUDGE WARDWELL: I'm set.

13 CHAIR McDADE: Okay, nor I. At this
14 point, as we had discussed at earlier sessions that we
15 will allow questioning by the parties if they wish,
16 with the intent to clarify or augment the testimony
17 that has been received either in the written direct
18 testimony or in the oral testimony, if it is of the
19 nature that you believe the Board could be misled or
20 could reach erroneous conclusions without that
21 additional testimony. And what we are looking at is
22 something that is short, something that is focused,
23 and is of consequence in this particular proceeding.

24 First of all to Entergy, do you desire to
25 ask questions of the witnesses?

1 MR. TENPAS: Your Honor, could I address
2 one preliminary matter first?

3 CHAIR McDADE: Certainly.

4 MR. TENPAS: We do believe this is an
5 appropriate time for us to renew the objection with
6 respect to New York State Exhibit 447. We have now
7 been through the testimony as to all the witnesses as
8 to the major points. There has not been a reference
9 or reliance by any witnesses on that document. And --

10 CHAIR McDADE: You don't want to ask the
11 witnesses about it?

12 MR. TENPAS: We would not intend to ask
13 the witnesses about it, Your Honor.

14 CHAIR McDADE: Okay. From New York's
15 standpoint, what is the relevance of the document at
16 this point? We haven't heard any testimony. We
17 haven't heard any explanation of -- we know it was
18 commissioned by Riverkeeper but we have no basic
19 information with regard to the document. Why should
20 we rely on it and what is it supposed to convey to us?

21 MR. SIPOS: Yes, Your Honor, John Sipos
22 for the State of New York. The document was, as I
23 understand it, commissioned by Riverkeeper and NRDC,
24 Natural Resources Defense Council, and it came out a
25 few days before we started in Tarrytown.

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1 The document -- and I should also add
2 first that I agree with Mr. Tenpas that to my
3 recollection no witness has yet actually specifically
4 mentioned the document or its contents.

5 The State would note that it is another
6 document in a perhaps a continuum of documents, a
7 recent document discussing potential alternatives to
8 Indian Point and the Board may find it worthwhile for
9 that purpose. But Mr. Tenpas is correct, no witness
10 has yet discussed it.

11 CHAIR McDADE: Okay. Now in the past and
12 what we intend to do here today in allowing
13 questioning is sort of a combination of redirect and
14 cross in that you will have an opportunity to ask
15 questions of your own witnesses to clarify matters
16 that you believe need clarification and also to ask
17 questions of witnesses put forth by opposing parties.

18 Mr. Sipos, do you intend to ask
19 Commissioner Bradford anything with regard to New York
20 447?

21 MR. SIPOS: I believe at this time,
22 without any other questions being asked, that the
23 State does not plan to ask Mr. Bradford about 447.

24 CHAIR McDADE: And I was hoping you
25 weren't going to just say what do you think of it.

1 In this particular instance, we don't have
2 a jury here. The trier of fact is the Board. The
3 Board, I believe, can sort through the document and
4 determine what, if any, relevance or impact it can
5 have on our decision. And recognizing that there is
6 a basis for the objections by Entergy, nevertheless,
7 we are going to deny the motion to strike it and
8 consider it for whatever value it would have. And if
9 we view that it does have any value, that would be
10 explained in our decision. And if we don't reference
11 it in our decision, we can conclude that it did not
12 impact that decision.

13 MR. TENPAS: Thank you, Your Honor. And
14 thank you for letting us address that at this point.

15 Entergy has no questions, either by way of
16 cross-examination or redirect to our own witnesses.

17 CHAIR McDADE: Does the NRC Staff?

18 MS. MIZUNO: No, Your Honor.

19 CHAIR McDADE: Does New York?

20 MR. SIPOS: Briefly, Your Honor. If we
21 could, could Mr. Willkie pull up New York Exhibit 448?

22 CHAIR McDADE: This is the New York Energy
23 Highway Blueprint?

24 MR. SIPOS: Yes, Your Honor, and I just
25 have this first page up for illustrative purposes.

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1 And I would note that there are actually, because of
2 the size of the document from a kilobit perspective,
3 it has been broken into two 448-A and 448-B.

4 And just briefly, Mr. Bradford, have you
5 reviewed this document?

6 MR. BRADFORD: Yes, I have.

7 MR. SIPOS: And does it have any impact --
8 or what impact, if any, does it have on your opinions
9 or testimony here?

10 MR. BRADFORD: Well there is a particular
11 piece of it, the discussion of the need to commence a
12 proceeding regarding --

13 ADMIN. JUDGE WARDWELL: Excuse me, Mr.
14 Bradford, could you speak into the mike a little more?
15 I'm afraid they may not be picking you up.

16 MR. BRADFORD: I'm sorry. Your table is
17 a bit low.

18 ADMIN. JUDGE WARDWELL: It's not that you
19 are too tall, is it? It has nothing to do with it.

20 MR. BRADFORD: Fair enough. I'm sorry I
21 don't have the document in front of me but there is a
22 discussion --

23 CHAIR McDADE: Do you want a copy of it,
24 sir?

25 MR. BRADFORD: I can say what I need to

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1 say without having it in front of me. I am just not
2 able to cite you to a page number.

3 There is a discussion of the need to
4 commence a proceeding regarding essentially
5 contingency planning in the event of that the Indian
6 Point plants do not continue to operation. That is
7 importance to me in the context of the discussion we
8 had earlier with regard to what could and couldn't be
9 considered replacement capacity because it continues
10 the train of thought that appears also in decisions of
11 the Public Service Commission and I think also some
12 earlier statements from NYSERDA indicating that New
13 York is becoming increasingly fixed on the need to
14 create the capacity in energy substitutable for Indian
15 Point. They have done some of that kind of thing
16 already and the blueprint just indicates a commitment
17 on the part of the highest officials in the energy and
18 environmental side of state government to formalize
19 that process further.

20 So it is a further indication that the
21 replacement process doesn't commence with the shutdown
22 of the plant. It commences in the policies and plans
23 that are adopted and implemented in the years before
24 that.

25 MR. SIPOS: And Mr. Bradford, are you

1 familiar with a press release that was issued
2 yesterday by, I believe it was, the Public Service
3 Commission concerning the proceedings that you just
4 referenced?

5 MR. BRADFORD: Yes, actually concerning a
6 proceeding that goes a step beyond the Energy Highway
7 document.

8 MR. SIPOS: And Your Honor, at this time,
9 we have disclosed this press release, as I may have
10 mentioned earlier. It is three pages. I would -- we
11 do actually have an electronic version of it but we
12 have not submitted it to the tribunal yet.

13 My proposal or my request would be to --
14 we have paper copies of it here -- to submit that to
15 Your Honors for identification. The State would also
16 respectfully submit that it would be appropriate to
17 introduce it and that would likely be the last comment
18 or submission we would have right now.

19 CHAIR McDADE: Okay, my recollection is
20 the last New York Exhibit has been Exhibit 465.

21 MR. SIPOS: That is correct.

22 CHAIR McDADE: So this would be marked for
23 identification as 466.

24 (WHEREUPON, THE DOCUMENT REFERRED TO WAS
25 MARKED AS NEW YORK STATE EXHIBIT 466 FOR

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1 IDENTIFICATION.)

2 CHAIR McDADE: And what we will do is not
3 admit it at this time and we will take that up at the
4 beginning of the December hearing. After the other
5 parties have had an opportunity to review it, they
6 will have an opportunity to state any objections to it
7 and put on the record what those objections are and we
8 will address the admissibility of the document at that
9 time.

10 But at this point, when we break, if you
11 can furnish the electronic copy to Mr. Willkie so that
12 he can enter it into the record as New York 466 for
13 identification at this point.

14 MR. SIPOS: Very good. And we also have
15 paper copies if Your Honors wished it today as well.

16 CHAIR McDADE: And do you also have paper
17 copies for the other parties?

18 MR. SIPOS: I think we have eight copies.
19 They also have electronic copies of it as well.

20 CHAIR McDADE: Okay. So if you can also,
21 when we break, furnish those paper copies as well to
22 the copies.

23 MR. TENPAS: Your Honor, just to confirm,
24 New York State did send it to us electronically later
25 in the day yesterday. So they did provide that

1 courtesy. And the paper copies will presumably simply
2 duplicate what they provided electronically.

3 CHAIR McDADE: Okay. Is there anything
4 else that we need to take before we break until
5 December 10th at Tarrytown from Entergy?

6 MR. TENPAS: No, Your Honor.

7 CHAIR McDADE: From the Staff?

8 MS. MIZUNO: No.

9 CHAIR McDADE: From New York?

10 MR. SIPOS: No, Your Honor.

11 CHAIR McDADE: And between now and then
12 the things that we have to receive with regard to the
13 Clearwater motion on the environmental justice
14 contention, their two motions to submit additional
15 exhibits, we will receive replies from the parties and
16 then rule on that. And then we will also be receiving
17 the transcript corrections for the October. And I
18 think those are the only two things that are due
19 between now and the December 10th hearing date.

20 Is there anything else, Mr. Sipos?

21 MR. SIPOS: Your Honor, I believe also you
22 have graciously provided the State with some time
23 until next Monday to respond to some recent
24 submissions from Entergy. I think there were four
25 exhibits, 591 to 595.

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1 CHAIR McDADE: Yes, I think 494. Am I
2 correct? I was 591, 592, 593, and 594 that were
3 submitted by Entergy on November 21st.

4 MR. SIPOS: I believe those are the
5 correct numbers, Your Honor.

6 MR. TENPAS: Those are certainly numbers
7 you recited at the beginning of the hearing, Your
8 Honor.

9 CHAIR McDADE: Do they represent the
10 numbers of what Entergy submitted on the 21st?

11 MR. SIPOS: I believe they do.

12 MR. TENPAS: We believe they do, Your
13 Honor.

14 CHAIR McDADE: I don't want to just simply
15 compound the mistake that I made at the beginning
16 saying yes, that is what you said before. You were
17 wrong then, you are wrong now.

18 Okay, then --

19 MR. TURK: One more administrative matter.

20 CHAIR McDADE: Mr. Turk?

21 MR. RAIMUNDI: Your Honor?

22 CHAIR McDADE: Yes? Hold on, Mr. Turk, a
23 second.

24 MR. RAIMUNDI: Your Honor?

25 CHAIR McDADE: Who is this speaking?

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1 MR. RAIMUNDI: Karla Raimundi from
2 Clearwater.

3 CHAIR McDADE: Yes, Ms. Raimundi.

4 MR. RAIMUNDI: I just want to mention that
5 earlier today we filed through your most grand exhibit
6 list. Inadvertently, we did not include this document
7 in our November 26th filing and it includes Exhibits
8 72 through 74 submitted two days ago.

9 CHAIR McDADE: Okay and what is the
10 revision number on that exhibit list?

11 MR. RAIMUNDI: CLER-6.

12 CHAIR McDADE: Okay. Okay, thank you, Ms.
13 Raimundi.

14 MR. RAIMUNDI: Thank you, Your Honor.

15 CHAIR McDADE: Mr. Turk?

16 MR. TURK: Thank you, Your Honor.

17 CHAIR McDADE: Speak into the mike.
18 Because that is why she interrupted you because she
19 didn't know you were talking at the time.

20 MR. TURK: Okay, thank you. I'm sorry,
21 Your Honor.

22 MR. RAIMUNDI: I apologize, Mr. Turk. I
23 didn't realize.

24 MR. TURK: First, I would like to thank
25 Your Honors for allowing me to bring that class of ten

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1 attorneys to observe this morning's session. They
2 were here today with an instructor from the National
3 Institute of Trial Advocacy. We have a training
4 course going on this week and I think it was very
5 useful for them to watch the proceeding in actuality.
6 So I thank you very much.

7 MR. TURK: Second, with respect to Indian
8 Point, the parties are working to propose corrections
9 to the transcript by this coming Monday, December 3rd.
10 One of our attorneys has been out of town until now.
11 So we would like to ask that the date for submitting
12 those joint corrections be moved by two days until
13 Wednesday of next week, December 5th.

14 CHAIR McDADE: Any objection from Entergy?

15 MS. SUTTON: No objection, Your Honor.

16 CHAIR McDADE: From New York?

17 MR. SIPOS: No, Your Honor.

18 CHAIR McDADE: Okay, Riverkeeper?

19 MR. MUSEGAAS: No objection, Your Honor.

20 This is Phillip Musegaas for Riverkeeper.

21 CHAIR McDADE: Clearwater, any objection?

22 MR. RAIMUNDI: No objection, Your Honor.

23 CHAIR McDADE: Okay, that request is
24 granted. So it will be Wednesday the fifth.

25 MR. TURK: Yes, Your Honor. Thank you.

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1 CHAIR McDADE: Anything else, Mr. Turk?

2 MR. TURK: No, Your Honor.

3 CHAIR McDADE: We are in recess then. See
4 you all in Tarrytown.

5 (Whereupon, at 11:54 a.m., the foregoing
6 matter was adjourned.)

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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 Units 2 and 3

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

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

Location: Rockville, Maryland

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
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