

**Official Transcript of Proceedings**  
**NUCLEAR REGULATORY COMMISSION**

Title: 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: (teleconference)

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UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

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ATOMIC SAFETY AND LICENSING BOARD PANEL

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HEARING

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In the Matter of: :  
ENTERGY NUCLEAR : Docket Nos. 50-247-LR and  
OPERATIONS, INC. : 50-286-LR

:  
(Indian Point Nuclear : ASLBP No. 07-858-03-LR-BD01  
Generating Units 2 :  
and 3) :

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Monday, June 10, 2013

Teleconference

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

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

1:03 p.m.

1  
2  
3 JUDGE McDADE: We will now go on the  
4 record. We are here in the matter of Entergy Nuclear  
5 Operations, Indian Point Nuclear Generating Units 2  
6 and 3. Docket Nos. 50-247-LR and 286-LR. My name is  
7 Lawrence McDade. I am here with judges Kennedy and  
8 Wardwell.

9 For the record, can we go through who is  
10 representing the NRC staff?

11 MR. TURK: Yes, Your Honor. Sherwin Turk  
12 with Brian Harris and Anita Ghosh.

13 JUDGE MCDADADE: For Entergy.

14 MR. BESSETTE: Yes, Your Honor. It's Paul  
15 Bessette with Kathryn Sutton and Bobby Burchfield.

16 JUDGE MCDADADE: For Riverkeeper.

17 MS. BRANCATO: Good afternoon, Your Honor.  
18 This is Deborah Brancato for Riverkeeper.

19 JUDGE MCDADADE: For New York State.

20 MR. SIPOS: Good afternoon, Your Honor.  
21 This is John Sipos, and on the line are Assistant  
22 Attorneys General Janet Dean, Kathryn Liberatore,  
23 Laura Heslin and Lisa Burianek in addition to myself.

24 JUDGE MCDADADE: And for Clearwater.

25 MS. RAIMUNDI: Good afternoon, Your Honor.

1 This is Karla Raimundi for Clearwater.

2 JUDGE MCDADE: Okay. And before we go  
3 further, just let me run down is there anyone on the  
4 line from Connecticut, Westchester, New York City,  
5 Cortland or Buchanan?

6 (No response.)

7 JUDGE MCDADE: Okay. Apparently not.  
8 There were a number of administrative matters we  
9 wanted to cover here today. The first one, let me go  
10 through, has to do with the coastal management zone  
11 issue.

12 We have before us cross-motions for a  
13 declaratory order with regard to this. Our questions  
14 and what we want to do is, first of all, ask Entergy  
15 and then ask New York, the two moving parties here,  
16 how a ruling by the ASLBP would move this proceeding  
17 forward.

18 We currently have before us, as we  
19 understand it, parallel proceedings. First of all, in  
20 December, Entergy made a submission to the New York  
21 State Department of State with regard to the  
22 consistency review. That is pending and it's now  
23 waiting for a submission of a Supplemental  
24 Environmental Impact Statement.

25 Also in March of 2013, there was a suit

1 filed in New York Supreme Court in Albany which seeks  
2 to set aside the New York State Department of State's  
3 denial of the declaratory request for declaratory  
4 ruling that the Indian Point is not subject to a  
5 consistency review.

6 Given the fact that there are those two  
7 parallel proceedings ongoing, the first reaction of  
8 the Board is that our decision would not be binding on  
9 either the State Supreme Court in Albany, nor the New  
10 York State Department of State, which would then be  
11 appealed to the Department of Commerce if an adverse  
12 ruling were sought to be appealed.

13 So, the question is first to Entergy,  
14 given the fact that these two proceedings are ongoing  
15 even if this board were to issue a ruling on the  
16 Motion for Summary Disposition, how, in your view,  
17 would that move this proceeding forward?

18 MR. BURCHFIELD: Let me answer the  
19 question. This is Bobby Burchfield on behalf of  
20 Entergy.

21 Can you hear me?

22 JUDGE MCDADE: Yes.

23 MR. BURCHFIELD: Let me answer that  
24 question in two ways. In the first instance, a  
25 favorable determination of this motion, a favorable

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1 decision for Entergy, would move the proceeding  
2 forward in that it would obviate any necessity for a  
3 consistency review under the CZMA. And, thus, clear  
4 that obstacle for licensure - for license renewal for  
5 Entergy. So, that's number one.

6 Number two -

7 JUDGE MCDADE: Mr. Burchfield, before you  
8 go on in that regard, assume for the sake of argument  
9 we did issue a ruling and we issued a favorable ruling  
10 to Entergy. But, first instance, the Supreme Court in  
11 Albany decided that a consistency review was necessary  
12 and that the New York State Department of State ruled  
13 that after conducting a consistency review, that their  
14 standards had not been met.

15 How would our ruling impact that? Is it  
16 your view then if the appeal went to the Department of  
17 Commerce and the Department of Commerce ruled that the  
18 consistency review was inadequate, that our decision  
19 would overrule that of the Secretary of Commerce?

20 MR. BURCHFIELD: That's an excellent  
21 question and I appreciate the opportunity to clarify  
22 this, because this is critically important to the  
23 entire Coastal Zone Management Act issue.

24 These proceedings, the one before - the  
25 motion we had before your board and the motion we had

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1 before the New York Supreme Court and the consistency  
2 certification, are all independent avenues toward  
3 satisfying Entergy's requirement under the Coastal  
4 Zone Management Act for clearing that hurdle prior to  
5 license renewal.

6 Let me explain. As you know under the  
7 Coastal Zone Management Act unless there is an  
8 exemption or unless there has been a prior review,  
9 coastal zone management certification and  
10 authorization by the State is necessary, unless the  
11 Secretary of Commerce sets aside the State's negative  
12 determination.

13 Our position before this board is that New  
14 York has done prior reviews. And, thus, under the  
15 regulations by NOAA Section - 15 CFR Section  
16 930.51(b)(3), this board has authority to determine if  
17 a prior review has been conducted, notably the prior  
18 review need not - it isn't specified it has to be a  
19 federal prior review, it's, in our view, any prior  
20 coastal zone consistency review - and that review is  
21 sufficient unless the coastal zone effects that are  
22 expected to result from relicensing are substantially  
23 different than the effects previously reviewed.

24 So, before this board - and the  
25 regulations, we respectfully submit, are very plain

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1 that it is this board that has authority to make the  
2 determination on that prior review issue, the prior  
3 review substantially different effects issue. So,  
4 that's number one.

5 With a favorable determination from this  
6 board, the CZMA issues are dealt with and license  
7 renewal proceedings can go forward.

8 With respect to the New York State  
9 proceeding, in that proceeding, Entergy's position is  
10 that these two facilities qualify for grandfathering  
11 under the New York Coastal Management Plan, under the  
12 terms of that plan.

13 That is an issue of State law, which is  
14 within the ambit of the New York State court system.  
15 And that issue is, thus, before the New York State  
16 Supreme Court.

17 If that court were to rule in Entergy's  
18 favor, that would mean that Entergy - that the two  
19 plants, Indian Point Unit 2 and 3, are outside the  
20 ambit of the New York Coastal Management Plan. And,  
21 thus, the consistency - the Coastal Zone Management  
22 requirement would be fulfilled that way, but they are  
23 not covered by the plan.

24 And then, thirdly, as a matter of  
25 protecting Entergy's interests, it did, as you've

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1 noted, it did, Mr. Chairman, file in December a  
2 Consistency Certification, an extensive Consistency  
3 Certification.

4 And in the event these other avenues are  
5 not - or Entergy does not achieve favorable results on  
6 one of these other two avenues, then that Consistency  
7 Certification will be before the New York Department  
8 of State for normal review as a Consistency  
9 Certification subject to appeal to the Secretary of  
10 Commerce and any judicial review after that.

11 So, they are three independent reviews.  
12 Either one of which would be sufficient, in Entergy's  
13 view, to satisfy the Coastal Zone Management Act  
14 requirement. And I'll stop and ask if you have any  
15 further questions on that.

16 JUDGE MCDADE: Well, let's go through it  
17 piecemeal. First of all, the question is whether or  
18 not a consistency review is necessary.

19 All right. It is the position of Entergy  
20 that one is not, because it has already been  
21 conducted, but the New York State Department of State  
22 has determined that a consistency review is necessary.

23 That's pending with the State Supreme  
24 Court. They will either rule that the Department of  
25 State acted consistent with New York law or not,

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1 correct?

2 MR. BURCHFIELD: That is on the  
3 grandfathering issue, Mr. Chairman. The  
4 grandfathering issue is not an issue that we have  
5 brought before this board because it is an issue of  
6 State law. It's a different issue than the issue we  
7 have brought before this board.

8 JUDGE MCDADE: If the State Supreme Court  
9 determines that the New York State Department of State  
10 acted properly consistent with New York law, then the  
11 Department of State would continue to go ahead with  
12 its consistency review.

13 MR. BURCHFIELD: That is correct, unless  
14 this board were to rule on our motion that we have  
15 pending before this board that there had been prior  
16 reviews that obviate the necessity for a further  
17 consistency review.

18 And that is an issue posed by the federal  
19 regulations within the jurisdiction of the federal  
20 licensing agency, that is to say, this board.

21 JUDGE MCDADE: Assuming for the sake of  
22 argument we were to rule. That would not preclude the  
23 New York State Department of State from continuing  
24 with its consistency review, correct?

25 MR. BURCHFIELD: Well -

1 JUDGE MCDADE: We have no authority to  
2 direct them.

3 MR. BURCHFIELD: The New York Department of  
4 State could continue with their consistency review,  
5 but it would no longer be a requirement for license  
6 renewal.

7 Under the federal Coastal Zone Management  
8 regulations, a consistency review is required only if  
9 there has not been a prior consistency review.

10 So, if this board were to rule in our  
11 favor on the motion, then it will have - then for  
12 purposes of this licensing proceeding Entergy will be  
13 deemed as a matter of federal law to be in compliance  
14 with the Coastal Zone Management Act.

15 JUDGE MCDADE: Okay. Under the statute as  
16 I understand it, any determination by the NRC needs to  
17 be done after consultation with the State and giving  
18 great weight to the State's opinion.

19 MR. BURCHFIELD: That is correct. That is  
20 correct, Mr. Chairman.

21 JUDGE MCDADE: And we have the authority to  
22 move forward given the fact that that consultation  
23 requirement has not yet been met neither by this board  
24 nor by the NRC staff.

25 In their filing, they specifically noted

1 that they had not conducted a consultation with the  
2 State. All we have from the State is one without a  
3 specific consultation.

4 From the State, we have that in the view  
5 of the single state agency who is directed to  
6 administer the Coastal Management Act, that they  
7 believe a consistency review is necessary that there  
8 is a potential to effect coastal use or resources  
9 different from that which was previously reviewed.

10 They're undertaking that consistency  
11 review without a consultation with the State. And,  
12 you know, again given the fact that we're supposed to  
13 give great weight, if not deference to State's  
14 opinion, can we rule?

15 MR. BURCHFIELD: Well, that's an excellent  
16 question, Mr. Chairman. And, in fact, Entergy is  
17 prepared today to propose in light of the statements,  
18 the regulation you referred to which is Section  
19 951(e), I believe, that we enter the consultation  
20 process.

21 And I would know that in the briefs filed  
22 both by New York State and by the staff, both have  
23 noted that consultation requirement. And as I read  
24 their papers, they can speak for themselves, they are  
25 amenable to the consultation.

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1           So, Entergy is ready, willing and able to  
2 go into that consultation noting that as we have in  
3 our papers, noting that while the State's views on the  
4 issues are entitled to weight, the regulatory - the  
5 terms of the regulation and the regulatory history in  
6 particular make very clear that it is the licensing  
7 agency's determination, not the State's determination,  
8 of whether a previous review of these coastal zone  
9 effects has been conducted.

10           JUDGE MCDADE: Okay. But given what you  
11 just said, isn't the consultation between the NRC and  
12 the State, not between Entergy and the State, doesn't  
13 that - would not we have to wait until the NRC staff  
14 has completed the anticipated consultation, and then  
15 they give great weight in making a recommendation to  
16 us before we can rule?

17           My question is, given the way the  
18 regulation is written, don't we need to defer until  
19 not Entergy, but the NRC staff completes that  
20 consultation requirement?

21           MR. BURCHFIELD: Well, almost correct, with  
22 all due respect. Let me read to you the regulation  
23 which is 930.51(e).

24           It says, the determination of  
25 substantially different coastal effects under

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1 Paragraph (b) (3), which is what we rely on, and (c) of  
2 this section, is made on a case-by-case basis by the  
3 federal agency after consulting with the State agency  
4 and applicant.

5 So, it is a tripartite consultation  
6 process during which the State's views are entitled to  
7 weight, no question about that, but they're not  
8 entitled to determinative weight. And the decision is  
9 to be made by the federal agency.

10 And so, against that background -

11 JUDGE MCDADE: But the remainder of that  
12 particular section says that the agency shall give  
13 considerable weight to the opinion of the State  
14 agency.

15 MR. BURCHFIELD: Correct.

16 JUDGE MCDADE: And that the federal agency  
17 shall do this after consulting with the State agency  
18 and the applicant.

19 MR. BURCHFIELD: Correct.

20 JUDGE MCDADE: What my question to you is,  
21 given the wording, isn't it necessary for the NRC  
22 staff to engage in a consultation with Entergy and the  
23 State of New York and then - and again giving great  
24 weight, I believe is the language used in the  
25 regulation, giving great weight to the view of the

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1 State, make the decision?

2 At this point, we don't have a specific  
3 statement from the State. Sort of derivatively we can  
4 make a view that the State feels that there is the  
5 need for a consistency review, that using the language  
6 of the regulation substantially different is to be  
7 construed very broadly to ensure that the State has an  
8 opportunity to review activities and coastal effects  
9 not previously reviewed.

10 So, why would it not be premature for us  
11 to act until that consultation process is completed  
12 and the agency has the benefit of that input from the  
13 State?

14 Wouldn't we be going forward with a very  
15 incomplete record at this point in time?

16 MR. BURCHFIELD: Mr. Chairman, I am in  
17 violent agreement with you. That is exactly correct.  
18 And that is exactly what Entergy was prepared to  
19 propose today.

20 And I would quibble a bit with some of  
21 your descriptors in your last statement, but the  
22 bottom line is Entergy is in full agreement that a  
23 consultation process, a tripartite consultation  
24 process among the staff, the State and Entergy is  
25 timely and appropriate at this point in time before

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1 the Board addresses the motion.

2 JUDGE MCDADE: From the standpoint of New  
3 York, do you have anything to add?

4 MS. BURIANEK: Well, Judge, I think -

5 JUDGE MCDADE: Who is this?

6 MS. BURIANEK: This is Lisa Burianek from  
7 Albany.

8 JUDGE MCDADE: Okay.

9 MS. BURIANEK: I think your sense of  
10 whether or not a decision at this point would add  
11 anything to the process is exactly correct. It would  
12 not.

13 Entergy has put the cart before the horse  
14 in large part here. Their ask in the declaratory  
15 ruling goes well beyond the NRC's authority to  
16 determine the coastal effects here.

17 The State has been very clear. There has  
18 been no state agency as that term is set forth in the  
19 statute in the regulations, no state agency review.  
20 And the state agency who must do the review for  
21 federal consistency is the New York State Department  
22 of State.

23 The general counsel has submitted  
24 materials saying that they have not done the review.  
25 Our responses to Entergy's motion or request for

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1 declaratory ruling have made that clear as well.

2 The question that Entergy is essentially  
3 asking the Board to determine is whether review by  
4 agencies other than the designated state agencies,  
5 whether that review that may have gone on at the time  
6 of the license transfer, whether that review is  
7 sufficient for purposes of satisfying the NRC's and  
8 the applicant's obligations under the Coastal Zone  
9 Management Act.

10 We say it's not. There aren't any  
11 decisions that we could find relating to NOAA  
12 construction of the statute.

13 Respectfully, the NRC should not be  
14 construing a programmatic question that goes to the  
15 fundamental elements of the Coastal Zone Management  
16 Act.

17 You don't have to go there in this context  
18 given the timing and the procedural posture. We  
19 respectfully submit that it is unnecessary to go there  
20 at this time.

21 JUDGE MCDADE: Okay. With regard to the  
22 documents submitted by Entergy about the prior review,  
23 is it the position of New York State that it is  
24 necessary for us to wait for State determination?

25 For example, assuming there had been a

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1 prior consistency review that was adequate back before  
2 the transfer which was in, I believe, 1990s, 1999,  
3 that the State Department of State would have to make  
4 a determination as to whether or not an effect on  
5 coastal use or resources different from that  
6 previously reviewed has occurred during the preceding  
7 15 years even if they viewed the previous consistency  
8 review to be adequate at that time?

9 MS. BURIANEK: Judge, I think that Entergy  
10 could certainly raise that in the consistency  
11 certification that they've made. That process has  
12 been commenced as of December.

13 Their remedy, you know, depending on what  
14 result comes out of the Department of State, would be  
15 to go to the Secretary of Commerce.

16 In this case, again, the Board does not  
17 need to address this particular question. It should  
18 wait for the process to proceed in an orderly fashion.

19 JUDGE MCDADE: Assume for the sake of  
20 argument the DOS completes its consistency review.  
21 The review is adverse to Entergy. Entergy appeals it  
22 to the Department of Commerce. The Department of  
23 Commerce agrees with the New York State Department of  
24 State.

25 Would this board have the authority to

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1 rule contrary to the Secretary of Commerce?

2 MS. BURIANEK: No, Judge. And at that  
3 point in time if there is an injury, a party's remedy  
4 would be to go to the federal courts.

5 JUDGE MCDADE: Okay. And am I correct that  
6 it's Entergy's view that under Subsection E, the  
7 federal agency is the NRC? So, ultimately it would be  
8 our determination, not the secretary of commerce's  
9 determination.

10 Is that the Entergy position?

11 MR. BURCHFIELD: That is correct, Mr.  
12 Chairman.

13 JUDGE MCDADE: What is the position of the  
14 NRC staff on this? Mr. Turk, is this right for review  
15 by the Board at this time in decision, or do we need  
16 to wait until after there's been a tri-party  
17 consultation and we get the official views of the  
18 State of New York to give great weight to?

19 MR. TURK: Your Honor, as you know, from  
20 reading our responses to Entergy's motion and New  
21 York's cross-motion, our view is that there has been  
22 no consultation. That consultation is required under  
23 15 CFR Section 930.51(e). And, therefore, the Board  
24 cannot rule in favor of either motion.

25 Our position is that the motion should

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1 therefore be denied for that reason, as well as other  
2 reasons discussed in our papers.

3 JUDGE MCDADE: Okay. The other question I  
4 have, Mr. Turk, is this, and the question I had just  
5 posed to the State of New York: Assume for the sake of  
6 argument the hypothetical. The Department of State  
7 completes its consistency review. It rules adverse to  
8 Entergy. Entergy appeals the Secretary of Commerce.  
9 The Secretary of Commerce upholds the decision of New  
10 York DOS.

11 Would it be within the authority of this  
12 board for the Agency to determine that the  
13 requirements have been met, or would we be bound by  
14 the decisions of New York DOS and the Secretary of  
15 Commerce?

16 MR. TURK: As I understand the papers that  
17 have been filed by Entergy with New York in their  
18 current attempts to obtain a consistency review, I  
19 believe they have argued that there was a prior  
20 consistency review and that further review is,  
21 therefore, foreclosed.

22 My understanding is that they do not raise  
23 the issue and instead say that, here, our operations  
24 are consistent with the New York Coastal Management  
25 Program.

1           If I'm wrong, I would ask Entergy to  
2 correct me. But based on that understanding, I think  
3 you're being asked, Your Honor, to decide a different  
4 issue. And that is whether there was a prior review  
5 that would it be binding on current - or that would  
6 effect current operations so that I think that the  
7 issue you're being asked to decide is independent of  
8 the issue that the New York State Department of State  
9 is being asked to decide.

10           The Department of Commerce ultimately  
11 would review both the Commission's decision if one is  
12 reached, as well as a New York State decision on the  
13 current consistency review application.

14           JUDGE MCDADE: Okay. Mr. Turk, correct me  
15 if I'm wrong or if your belief is different than mine.  
16 The Department of State has already ruled, had made a  
17 determination that there has not been a binding prior  
18 review that Entergy asked them to do, so they  
19 determined adverse to Entergy and said that a new  
20 consistency review is necessary given, you know, the  
21 changes that have occurred in the last 15 years. And  
22 that's the matter that is currently pending before the  
23 Supreme Court in Albany that there's sort of a two-  
24 step process.

25           One is, is a consistency review necessary?

1 And then once that consistency review is completed, is  
2 there anything that is contrary to the Coastal Zone  
3 Management Act? So, it's sort of a two-step.

4 Mr. Turk, what, in your view, is the  
5 Board's role in either of those two steps?

6 MR. TURK: Your Honor, my -

7 JUDGE MCDADE: Is it your opinion we only  
8 have a role in the first one whether or not there  
9 needs to be a consistency review? And if we make that  
10 determination, does that end the role of the NRC?

11 MR. TURK: I do not believe so, Your Honor.  
12 My understanding of the issue before the courts  
13 currently in New York is whether the Indian Point  
14 plants are grandfathered under the Coastal Zone - I'm  
15 sorry - under the New York Coastal Management Program  
16 as if there need never be a consistency review.

17 That is the issue that I believe was  
18 presented to the Department of State and that is now  
19 under review in the court.

20 A different question is whether a review  
21 has occurred previously. And that's the question that  
22 this board is being asked to decide.

23 JUDGE MCDADE: Okay. And if we determine  
24 that a review is necessary, does that end our role, or  
25 do we then have to make a ruling as to whether or not

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1 the review having been conducted is adequate and  
2 whether or not there is consistency with the Coastal  
3 Zone Management Act provisions?

4 MR. TURK: I do not understand that you are  
5 asked to decide whether the review has been adequate.  
6 Your decision is simply a decision as to whether or  
7 not the previous review considered the operations of  
8 Indian Point's Units 2 and 3 such that no further  
9 review need be conducted.

10 JUDGE MCDADE: Based on the motion before  
11 us.

12 MR. TURK: Yes.

13 JUDGE MCDADE: Okay. Entergy, do you agree  
14 with Mr. Turk?

15 MR. BURCHFIELD: We do agree with Mr. Turk  
16 in this respect - in two respects. The first is that  
17 the motion that was submitted to the Department of  
18 State and that is now in the New York courts relates  
19 to the issue of grandfathering under the precise terms  
20 of the New York Coastal Management Plan.

21 The issue before this board as Mr. Turk  
22 has noted and we agree with it, is different. It is  
23 whether there has been a prior consistency review as  
24 to which - that considered the Coastal Zone effects  
25 that these plants are likely to confidence.

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1           We part company with our friends in New  
2           York, because we believe that it is not necessary  
3           under the regulation that the consistency review be  
4           conducted for a federal project, because the  
5           regulation doesn't specify that it has to be a federal  
6           consistency review.

7           It says a consistency review that  
8           considered the coastal zone effects at issue here. It  
9           is not necessary to be a federal consistency review.

10          Where we depart from Mr. Turk's statement  
11          is we do not believe dismissal is appropriate. We  
12          believe that the consultation process can move forward  
13          at this point in time while the Board holds in  
14          abeyance the motion as briefed pending a report back  
15          from the staff as to the outcome of the consultation  
16          giving the appropriate weight to New York's views.

17          JUDGE MCDADE: But ultimately if this board  
18          were to determine that a consistency review is  
19          necessary, would that end our role, or would we then  
20          have a further role to determine whether or not that  
21          review allows this matter to go forward, allows the  
22          license to issue?

23          MR. BURCHFIELD: Well, if this board were  
24          to determine that there was a prior consistency review  
25          that considered the coastal zone effects at issue,

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1 then the Board's role would be at an end and Entergy's  
2 requirement for a consistency review would be at an  
3 end had it - Entergy having already demonstrated a  
4 consistency review.

5 So, there is no requirement under the  
6 regulations, nor do we believe it prudent, nor is  
7 Entergy advocating that this board engage in the  
8 action of a consistency review of these plants under  
9 the State Coastal Management Plan. That is not what  
10 we're asking and we think that would not be  
11 appropriate.

12 JUDGE MCDADE: And what would be  
13 appropriate, then, is for that to go through the  
14 procedure with the State Department of State reviewed  
15 by NOAA for the Secretary of Commerce.

16 MR. BURCHFIELD: If this board were to  
17 determine that there has not been a prior consistency  
18 review, then that would mean Entergy would need to  
19 fulfill the consistency - the Coastal Zone Management  
20 requirement in another way.

21 One of those other ways would be to go  
22 through the consistency process before NYS DOS with  
23 appeal to the Secretary of Commerce and then perhaps  
24 beyond to judicial review.

25 JUDGE MCDADE: But that this board would

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1 have no further role.

2 MR. BURCHFIELD: That would be correct  
3 other than to await the outcome of one of those other  
4 avenues for fulfilling the Coastal Zone Management  
5 Act.

6 JUDGE MCDADE: Okay, thank you. Does New  
7 York have anything to add on this?

8 MS. BURIANEK: Judge, let me just repeat  
9 that we - there is a process for this review to occur  
10 and what Entergy is asking for from the Board goes  
11 beyond what the Board's authority is. Under the  
12 Coastal Management regulations, you don't need to go  
13 there.

14 And I'm sure that were the Board or the  
15 staff to have particular questions about the  
16 applicability of prior reviews that were done in the  
17 context of state consistency, the Board could address  
18 its questions to NOAA as well.

19 And the regulations also provide for  
20 parties when there is a substantial dispute, to seek  
21 the read of NOAA.

22 So, I don't even think we have to go there  
23 at this point in time. And for the purposes of this -  
24 or the competing motions, the State maintains there  
25 has been no state agency review and you don't even get

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1 to all the other bases for board jurisdiction.

2 JUDGE MCDADE: Okay, thank you. Does the  
3 staff have anything further on this issue?

4 MR. TURK: Just two small points, Your  
5 Honor. The first, I agree with Mr. Burchfield that  
6 the Board has no role in deciding whether or not the  
7 effects of operation are consistent with the New York  
8 Coastal Management program.

9 If the Board decides that there has been  
10 no prior consistency review that embraces the  
11 operations of Units 2 and 3, then the issue goes to  
12 New York State through the Department of State to  
13 process to decide whether the effects of operation are  
14 consistent with the New York State program.

15 JUDGE MCDADE: Then it would be your  
16 position, then, that the Board and the NRC would be  
17 bound by the result of that having been reviewed by  
18 the Secretary of Commerce.

19 MR. TURK: That we would be bound by a  
20 determination whether the effects of operation are  
21 consistent with the New York program, yes.

22 JUDGE MCDADE: Okay.

23 MR. TURK: But let me point out I do agree  
24 with Mr. Burchfield that it is a federal decision. It  
25 is our decision in this agency to decide whether there

1 has been a prior review. That is not a New York State  
2 issue.

3 The NRC would make that decision following  
4 consultations with New York State and the applicant.

5 JUDGE MCDADE: Okay. Thank you, Mr. Turk.

6 MR. TURK: I have one second point that I  
7 just want to put on the record, Your Honor. It's my  
8 understanding that the New York Department of State is  
9 not participating in this telephone conference call.  
10 So, we do not have a position from the New York  
11 Department of State.

12 We are hearing argument by the New York  
13 attorney generals. It's not clear to me that they are  
14 representing the Department of State here or  
15 representing the New York Attorney General's office.

16 JUDGE MCDADE: The New York Department of  
17 State isn't a party to this proceeding. The State of  
18 New York is through the Attorney General's office, and  
19 they are here and they have spoken for the State of  
20 New York.

21 And, again, the Department of State  
22 specifically isn't a party. And, therefore, at least  
23 in my view, it wouldn't be appropriate for them to  
24 participate in this particular hearing at this time.

25 Now, as you indicated - well, let me just

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1 end there. What I'd like to do is move on to  
2 something else.

3 Specifically, we had recently revisions  
4 recently in May to various SAMA analysis. And these  
5 changes/additions to the SAMA analysis are relevant to  
6 NEPA issues.

7 And the question we have as this impacts  
8 both New York 16 and also New York 35/36, potentially  
9 impact other contentions as well, the first question  
10 I'm going to address to the NRC staff is, do we have  
11 anything currently before us ripe for any kind of  
12 adjudication until the NRC staff incorporates these  
13 new submissions relevant to a NEPA issue into a  
14 supplement to the Environmental Impact Statement?

15 Mr. Turk.

16 MR. TURK: There are several parts to that  
17 question, Your Honor. Let me see if I can parse them  
18 out.

19 The staff, first of all, has not yet  
20 reviewed the new information that Entergy submitted.  
21 We have decided, however, that we will review the  
22 information.

23 We don't know yet whether that information  
24 is new and significant such that it would trigger the  
25 issuance of an F-SEIS supplement.

1           If the staff upon completing its review of  
2 the information decides that it's new and significant,  
3 then we would undertake to supplement the EIS.

4           JUDGE MCDADE: Well, let me go back. In  
5 the event that the staff doesn't determine that it's  
6 new and significant, then doesn't our ruling on New  
7 York 35 and 36 end and decide that the license cannot  
8 issue?

9           Unless these supplements are new and -  
10 provide new and significant information, doesn't that  
11 ruling of 35 and 36 preclude the license issuing  
12 unless the Commission were to overrule our decision?

13           MR. TURK: I don't know that you need a  
14 staff EIS to reopen, Your Honor. Your decision is  
15 binding currently. There is nothing before you on 35  
16 and 36 that would cause you to reopen that. No party  
17 has moved to reopen it.

18           Theoretically, though, a party could move  
19 to reopen even before an F-SEIS supplement comes out  
20 if one was to be issued. And the party would argue to  
21 that this is significant in terms of your ruling such  
22 that you should give further consideration to  
23 summation.

24           Now, that's not dependent on the staff's  
25 decision whether to issue an F-SEIS supplement, but

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1 dependent upon a motion to reopen, and none has been  
2 filed on 35/36.

3 JUDGE MCDADE: But is it the staff's  
4 position that in the event there is - if the staff  
5 were to determine that there is nothing new and  
6 significant in this information, that given the  
7 Board's ruling on 35/36 that a license could not  
8 issue?

9 (Pause in the proceedings.)

10 MR. TURK: Your Honor, I'm hesitating to  
11 answer because our position on 35/36 is that we don't  
12 need the cost estimate information to decide that the  
13 treatment of SAMA has been adequate.

14 So, our decision in the past has been we  
15 don't need this information at all, because we had  
16 enough information.

17 So, it's the Board's decision that it puts  
18 into importance the receipt of this engineering  
19 project cost information.

20 JUDGE MCDADE: I understand, Mr. Turk, but  
21 the Board has made a ruling. And the question is, is  
22 the staff in agreement that given the Board's ruling  
23 that unless there was a determination made that this  
24 was new and significant information, that the license  
25 could not issue unless the Commission were to overrule

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1 the Board's decision to grant summary disposition on  
2 35/36?

3 Does the staff agree with that proposition  
4 as a hypothesis?

5 MR. TURK: I agree with everything except  
6 your use of the term "new and significant  
7 information." Because in our NEPA space, that's a  
8 different determination from the determination whether  
9 the Board's decision is effected by this new  
10 information.

11 JUDGE MCDADE: Okay.

12 MR. TURK: We certainly have new  
13 information. Whether it's qualified as significant  
14 under the staff's assessment under NEPA is a different  
15 question.

16 JUDGE MCDADE: Okay. Let's go back a  
17 second. You indicated that you have received the view  
18 that the NRC staff speaking broadly here, that it's  
19 under review, there's no determination made yet as to  
20 whether or not a supplement to the EIS will issue  
21 addressing this new NEPA information.

22 Can you give us an estimate as to when  
23 that decision will be made?

24 MR. TURK: I don't have a date, Your Honor.  
25 It will be near term, but I do not have a date that I

1 can commit to.

2 JUDGE MCDADE: Okay. The next question is  
3 with regard to New York 16(b). I mean, the  
4 information submitted by Entergy specifically was  
5 designed to address issues raised in 35/36. But  
6 according to New York, it also impacts issues under  
7 16(b).

8 Given the fact that this has not been  
9 subject to review by the NRC staff at this time, in  
10 the staff's view is it appropriate for us to consider  
11 that information in issuing a decision on 16(b), or  
12 should we wait until the staff makes that kind of a  
13 determination if -

14 MR. HARRIS: Your Honor, this is Brian  
15 Harris for the NRC. I think it would be appropriate  
16 for the Board to rule on the issues on 16(b) in terms  
17 of what's before it.

18 If you, as we argued, you know, in terms  
19 of New York's motion to supplement, is that the effect  
20 of New York's - Entergy's submission, you know, and  
21 New York's argument is to end up at the same points  
22 that the EIS currently indicates is that all those six  
23 SAMAs, particularly SAMA - Indian Point 2 SAMA 21 and  
24 53 in the staff's EIS are determined to be potentially  
25 cost beneficial.

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1           So, it wouldn't change the issue that's  
2 before the Board whether or not the population  
3 estimate would have any material impact on the staff  
4 analysis.

5           JUDGE WARDWELL: This is Judge Wardwell.  
6 But that was - that's only fortuitous because you  
7 differed from what Entergy had postulated when it  
8 submitted those older numbers; is that not correct?

9           They considered them not cost beneficial  
10 and you determined them to be using those previous  
11 numbers; isn't that correct?

12           MR. HARRIS: Well, based on their recent  
13 submission, Entergy's analysis is -

14           JUDGE WARDWELL: Let's just stay with when  
15 you made that decision before these numbers came out.  
16 That was - your position was different than what  
17 Entergy's were on those two SAMAs; is that correct?

18           MR. HARRIS: In their original submission -  
19 Judge Wardwell, I'm not sure I understand the  
20 question, because the point where Entergy determined  
21 that they weren't cost beneficial is in the most  
22 recent submission.

23           JUDGE WARDWELL: Correct.

24           MR. HARRIS: So, before that, Entergy's  
25 determination of what was cost beneficial was the same

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1 as what the staff reflected. So, maybe I'm  
2 misunderstanding the question.

3 JUDGE WARDWELL: I guess where I was going  
4 with this question is the fact that things change as  
5 the numbers change.

6 And as I look over these numbers, there's  
7 been a significant change in the numbers or certainly  
8 a quantifiable change.

9 In fact, they vary by an average of 62  
10 percent difference in values. And your position may  
11 very well change upon seeing these; isn't that  
12 correct?

13 MR. HARRIS: That is a possibility, Your  
14 Honor, that it might change. But the, you know, the  
15 issue at least before the Board is what were the  
16 staff's findings in terms of EIS?

17 So, the issue is the EIS, not what Entergy  
18 has submitted post, you know, after the final - after  
19 the Environmental Impact Statement was produced.

20 Should the staff go through its review and  
21 change this, then that would be, you know, potentially  
22 an opportunity for new contentions. Though, at this  
23 point, they would probably be late since Entergy  
24 submitted these, you know, significantly, you know, 30  
25 plus days ago.

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1 JUDGE MCDADE: This is Judge McDade again.  
2 As I understand what you're saying as is the staff's  
3 position, we should go ahead and rule on 16(b) based  
4 on the evidence that we had at the time of the hearing  
5 that this new information submitted in May by Entergy  
6 should not enter into our ruling on 16(b) at all.

7 That if at some time in the future the  
8 staff were to address this in an EIS, that that could  
9 serve as a trigger for the final, new or amended  
10 contentions.

11 That's the staff's position?

12 MR. HARRIS: That is true. But, you know,  
13 it's not just the change. Petitioners are - our  
14 interveners are obligated to file a new and amended  
15 contention based on the information as it becomes  
16 available.

17 So, to the extent that they wanted to  
18 challenge these costs, I think that they would have  
19 already had to raise that issue with the Board. But  
20 in principle, I agree.

21 JUDGE MCDADE: Even though the staff has  
22 not made any kind of a review, it wouldn't be  
23 premature for New York to file an amended contention  
24 unless and until it was aware that the staff would  
25 view this information as relevant, as new material?

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1 I mean, one of the things, you know, as  
2 we've gone through this, we have all of these  
3 contentions. None of the contentions is original,  
4 hardly. We have A and B, C and D as we keep moving  
5 down the line.

6 Is it the staff's position, then, that New  
7 York should have filed an amended contention just  
8 based on this raw data before any staff review without  
9 knowing how the NRC would view its significance, if at  
10 all?

11 MR. HARRIS: Well, that's the obligation  
12 that interveners have at the beginning and for every  
13 supplement, you know. Any supplement that Entergy  
14 would have submitted was to file those contentions as  
15 they become available, the information becomes  
16 available.

17 JUDGE MCDADE: Wouldn't prior board orders  
18 where in the post-hearing we have advised parties to  
19 hold off filing new and amended contentions pending  
20 submission of revised safety evaluation reports and  
21 environmental impact statements serve as a basis for  
22 New York to use the filing of an EIS, supplement to  
23 the EIS as the trigger rather than the filing or the  
24 submission of this information by Entergy?

25 MR. HARRIS: That is a possibility. I

1 believe, though, that - and I could be misremembering,  
2 but I believe at least with the EIS supplement, that  
3 it was specifically directed to those changes related  
4 to the impacts on endangered species as I believe that  
5 was the only one that was mentioned in the order.

6 JUDGE MCDADE: Well, we had an issue with  
7 regard to the supplemental environmental impact  
8 statement on Riverkeeper 8, but also the supplemental  
9 safety evaluation reports implicating 25 and 38 in  
10 Riverkeeper TC 5. But, anyway, I think I understand  
11 what the NRC's position is.

12 New York, what's your view? At this  
13 point, is it, in New York's view, premature for us to  
14 consider this new information in ruling on 16(b), or  
15 should we rule on what was submitted at the hearing  
16 and wait unless and until this is incorporated into a  
17 supplement to the SER for us to get involved with this  
18 data?

19 MR. SIPOS: Your Honor, this is John Sipos  
20 in Albany. My colleagues in New York are going to  
21 respond to questions on this issue. But at the  
22 outset, I would just note that it would not be  
23 premature with respect to contention NYS 16(b).

24 And I'm going to turn it over to Ms.  
25 Liberatore and Ms. Heslin in New York, but I also have

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1 a comment I'd like to come back to at 35 and 36, New  
2 York's - Contention New York 35 and 36 issue when  
3 they're done.

4 JUDGE MCDADE: Okay.

5 MS. LIBERATORE: Your Honor, this is  
6 Kathryn Liberatore for the State of New York. And  
7 with respect to 16(b), it's the State's position that  
8 these revised SAMA cost benefits conclusions that  
9 Entergy has presented in Table 1 of NL-13-075 are  
10 relevant only to Entergy's arguments regarding the  
11 materiality of contention 16(b).

12 So, the State is only offering this  
13 information to rebut Entergy's materiality argument on  
14 NYS 16(b). That materiality argument has also been  
15 adopted by NRC staff.

16 We haven't got into the substance of  
17 whether Entergy's revised calculations in that  
18 document are correct or not correct or should be the  
19 subject of the contention or should not be the subject  
20 of the contention.

21 It's important to know at this point, NL-  
22 13-075 is not an amendment to Entergy's environmental  
23 report, but it does represent a position that Entergy  
24 is advocating that six SAMAs are no longer cost  
25 beneficial.

1           And with all due respect to NRC staff, the  
2 Board did rule in the context of summary disposition  
3 on 35 and 36 that the SAMA cost benefit conclusions  
4 are incomplete and unreasonable under NEPA.

5           So, the cost benefit conclusions as they  
6 stand right now in the December 2010 F-SEIS are  
7 sufficient. And Entergy is now advocating a position  
8 that six of those SAMAs should no longer be deemed  
9 cost beneficial.

10           And as we set out in those papers, two of  
11 those SAMAs, IP SAMA 2021 and IP 2 SAMA 053 have small  
12 margins between the cost and benefits such that the  
13 population deficiencies outlined in NYS 16(b) would be  
14 material to those SAMA cost benefit conclusions.

15           So, this is relevant and material. It's  
16 essentially an admission by Entergy that the  
17 population deficiencies that are in NYS 16(b) are  
18 actually material to the contention.

19           So, while there may be issues regarding  
20 compliance with 36 and 36 and, you know, there may be  
21 other issues regarding, you know, staff  
22 recommendations and a future F-SEIS supplement whether  
23 to, you know, require implementation of any SAMAs with  
24 respect to NYS 16(b) this is a very - a very narrow  
25 issue that the Board can consider in the context of

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1 the State's proposed findings.

2 JUDGE MCDADE: Okay. Entergy, what's your  
3 view on that? Mr. Sipos, we'll come back to you with  
4 regard to 35 and 36 in a little bit. But, first of  
5 all, Entergy, what's your response?

6 MR. BURCHFIELD: Well, Your Honor, there  
7 were several matters discussed, but I think I'll start  
8 with 16(b).

9 As we noted in our response, the issue  
10 that New York raises, the Board doesn't even have to  
11 reach that. We've had several arguments that precede  
12 that regarding the invalidity of their commuter and  
13 census undercount arguments.

14 So, if the Board reaches those decisions,  
15 the issue of materiality that Ms. Liberatore was  
16 raising doesn't have to be reached.

17 So, again, New York's argument on this,  
18 you can only reach that if you agree 100 percent with  
19 all of New York's arguments on 16(b), which we believe  
20 are invalid.

21 Second, the fact that she is stating that  
22 we have admitted something is clearly not the case  
23 here.

24 We have, as Your Honor has noted, we have  
25 made our submission in response to the Board's order.

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1 And with that, we believe there are supported - well-  
2 supported bases for those decisions. But, you know,  
3 the staff does have - excuse me, Your Honor, the staff  
4 has to take some action for the Board's response to  
5 that.

6 Whether it's in the form of an F-SEIS  
7 supplement or some other response, we believe that  
8 they have to review that before the Board should  
9 address that as part of 16(b).

10 With regard to the need for an F-SEIS  
11 supplement, we would note that 5192 says that the  
12 staff may prepare a supplement to the final  
13 environmental impact statement when its opinion  
14 preparation of a supplement will further the purposes  
15 of NEPA.

16 So, it's not just new and significant,  
17 Your Honor. There is an option to include an F-SEIS  
18 supplement for matters like this.

19 And I know it doesn't need to be said, but  
20 there is always the matter of commission appeal of  
21 this issue. We understand the Board's order, but  
22 there is also the potential for commission appeal.

23 JUDGE MCDADE: Okay, thank you.

24 MR. TURK: I'm sorry, this is Sherwin Turk.  
25 May I ask a clarification, Your Honor?

1 JUDGE MCDADE: I don't know.

2 MR. TURK: I heard Mr. Bessette say that  
3 the staff must address the new information before the  
4 Board can rule on Contention 16(b).

5 Was that a misstatement? Did he mean to  
6 say 35/36?

7 MR. BURCHFIELD: Yes. Where we believe -  
8 the Board could rule appropriately on 16(b) now based  
9 on what we have.

10 Independent of this materiality issue,  
11 there are many other arguments that could be made that  
12 - threshold arguments that we could be reached.

13 And based on the fact that we have  
14 submitted these cost estimates, but they are not  
15 reviewed by the staff, the Board can take that and  
16 rule on 16(b) and dismiss it as we believe it should  
17 be.

18 CHAIR MCDADE: Okay. So, it's your  
19 position that based on the arguments made back at the  
20 hearing, we don't need to reach whether or not this  
21 information is material, that we could rule against  
22 New York based on the information submitted relevant  
23 to the adequacy and accuracy of the population  
24 contentions, period.

25 That's Entergy's position, correct?

1 MR. BURCHFIELD: Yes, Your Honor.

2 JUDGE MCDADE: Okay. Mr. Sipos, you had  
3 something further?

4 MR. SIPOS: Yes, I did. And based on what  
5 Mr. Turk and Mr. Bessette have said, I have more than  
6 one thing to say.

7 First of all, until and unless the - this  
8 goes to Mr. Harris' comment regarding timeliness. I  
9 should preface that.

10 But unless and until the December 2010  
11 staff F-SEIS is amended, there really would be no  
12 reason for the State to file a contention, because the  
13 SAMA issues on 35 and 36 have been resolved by this  
14 board's July 14, 2011 summary disposition ruling. So,  
15 that would be the State's response to Mr. Harris' and  
16 the staff's position there.

17 With respect - also, I guess I should also  
18 note that the material - this goes back to 16(b) now  
19 and what Mr. Bessette and Mr. Turk have just been  
20 discussing. That letter, the letter NL-13-075 from  
21 Entergy, the Entergy communication to staff, was  
22 submitted to the Board without any operative motion or  
23 request for board action and the State responded  
24 promptly with respect to contention New York State  
25 16(b). So, you know, that is - I think that should

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1 also be noted.

2 And, again, just coming back to the issue  
3 of Contention New York 35 and 36, this board has  
4 spoken on that and that is the law of the case for the  
5 parties and at least that is how the State understands  
6 it.

7 JUDGE MCDADA: Okay. Thank you, Mr. Sipos.  
8 The next issue we wanted to address in its most recent  
9 submission on June 3rd, the staff suggested that it  
10 would be appropriate to hold in abeyance a hearing on  
11 New York 25, 26, 38 - and 26 also incorporates  
12 Riverkeeper TC 1, and 38, Riverkeeper TC 5 - that we  
13 should not go forward with a hearing until the  
14 supplement to the State's evaluation report issues.

15 Is there any disagreement with that  
16 proposition from New York?

17 MR. SIPOS: No, Your Honor. New York  
18 believes it would be not only appropriate, but it  
19 would contribute to the efficient litigation and  
20 presentation of evidence if those matters were  
21 deferred.

22 There's been a - that document - that  
23 report will be important and inform the State's  
24 approach. And there has been a passage of time since  
25 the State initially submitted its opening papers on 25

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1 back in December of 2011.

2 And also on 26 and 38 as well where both -  
3 where three parties have also - three parties in total  
4 have put submissions in.

5 So, the State believes that that would be  
6 appropriate and efficient.

7 JUDGE MCDADE: Does Entergy agree?

8 MR. BURCHFIELD: Your Honor, with regard to  
9 the FSER supplement, we do agree with Mr. Sipos that  
10 contentions would be deferred, but I know we're going  
11 to discuss how we should manage 38 and 25, but we  
12 remind the Board that New York State 26 is not the  
13 subject of the pending supplement.

14 JUDGE MCDADE: Well, I understand that, but  
15 it's the same period of time. And, as I said, in the  
16 staff's most recent submission, they not only  
17 suggested that 25 and 38 be deferred, but the staff  
18 also believed that evidentiary hearings on New York  
19 26(b) and Riverkeeper TC 1(b) should be delayed as  
20 well. And that was the question that I asked New York  
21 is whether or not they agreed with the staff on that  
22 proposition.

23 And that's the question I'm asking of  
24 Entergy as well is, do you agree that it would be  
25 appropriate to hear 25, 26 and 38 together as opposed

1 to bifurcating them and moving ahead on 26?

2 And, again, understanding that as we stand  
3 right now, we've already had the direct testimony and  
4 the rebuttal testimony submitted on 26, but the  
5 question is, do you believe that the staff's  
6 suggestion to defer 26 and hear those contentions  
7 together is well taken, or does Entergy take exception  
8 to that suggestion?

9 MR. BURCHFIELD: No, Your Honor. The short  
10 answer is we agree with it.

11 JUDGE MCDADE: Okay. Now, in the last  
12 submission from the staff, you were not able to give  
13 a reasonable estimate as to when that supplemental  
14 Safety Evaluation Report would issue.

15 Mr. Turk or Mr. Harris, do you have any  
16 additional information, any update on that to suggest  
17 or are we looking at the summer of 2013, the fall of  
18 2013? Are we looking at 2014? What are we - can you  
19 give us any additional information?

20 MR. TURK: Your Honor, this is Sherwin  
21 Turk. We don't have any reliable dates that we can  
22 give you at this time.

23 As you know, we had previously hoped to  
24 have the supplement out in July as stated in our  
25 latest, I think, post to the Board of June 3rd, but

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1 delayed in EPRI's issuance of its documents has  
2 effected our ability to get the SER supplement out in  
3 July and we're not really able to commit to a date at  
4 this point until we see what the outcome is of the  
5 EPRI document.

6 So, we are expecting them to have a  
7 document out by the end of June. I think that will  
8 give us a better basis for coming back to you with a  
9 projected SER supplement date.

10 It won't be this summer. It could be in  
11 the fall. I'm hoping it's not delayed until 2014, but  
12 I would really rather wait to give you a date until we  
13 have a basis of final tweaking for that estimate.

14 JUDGE MCDADA: Okay. But in your  
15 supplement, then, if you - and I won't use the  
16 supplement too broadly. In your submission of June  
17 3rd, you indicated that there was approximately a 30-  
18 day - you anticipated a 30-day delay from May 31st to  
19 June 30th in the issuance of the EPRI document, you  
20 know.

21 But yet, that 30-day delay and the  
22 issuance of that document leads to an indefinite delay  
23 in the issuance of the SER.

24 And without giving us a specific date, can  
25 you suggest or do you still anticipate that we could

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1 see this in the summer of 2013, or are we looking at  
2 the fall of 2013, or are we looking at even longer  
3 than that?

4 MR. TURK: The fall would be the earliest,  
5 Your Honor. After the EPRI documents are issued, the  
6 staff plans to issue an REI to the applicant.

7 We will then need to get the applicant's  
8 responses. And then we would need to issue the SEI  
9 supplement taking those responses into account.

10 JUDGE MCDADE: So, we're not looking at  
11 anything - we should not anticipate seeing anything  
12 from the staff on this before Labor Day.

13 MR. TURK: That's correct.

14 JUDGE MCDADE: Okay. And we would direct  
15 that you keep us updated on this. And as soon as  
16 practicable when a reasonable date can be given, that  
17 you inform the Board and the parties as to what that  
18 date is.

19 MR. TURK: Yes, Your Honor.

20 JUDGE MCDADE: Okay. Now, the next thing  
21 has to do with the pending Environmental Impact  
22 Statement relative to Riverkeeper EC 8.

23 You indicated that that had been  
24 completed, but had not been published. That  
25 publication should take place sometime in June of

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1 2013.

2 Do you have any further update on that?

3 MR. TURK: Yes, Your Honor. Our last  
4 estimate was that it will be issued - I believe I said  
5 in June.

6 I don't think it will have to wait until  
7 the end of June. Today is the 10th. I'm hoping that  
8 in the next week that it goes out.

9 And the delay is really a function of  
10 having to wait for a final publication clearance. But  
11 I think by mid-month, by approximately in the next  
12 week we should be -

13 JUDGE MCDADE: Now, the publication, is  
14 this something just physical, or is there some editing  
15 to be done?

16 And my question is whether or not an  
17 electronic version could be furnished to the parties  
18 prior to an actual physical printing.

19 MR. TURK: Your Honor, there is a final  
20 editing process that's conducted. And that's part of  
21 the publication process.

22 JUDGE MCDADE: So, the answer is that you  
23 would not be prepared to release an electronic copy at  
24 this time, because you believe that there is a  
25 significant potential for edits to be made so that the

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1 final published version would be different than the  
2 electronic version in existence as of June 10th.

3 MR. TURK: Yes, Your Honor. We know there  
4 will be edits. I don't think there will be  
5 substantive edits. These are more in terms of getting  
6 the document to final publishing format.

7 We had an electronic version of what was  
8 sent to the Office of Administration weeks ago, but  
9 we're just not permitted to release until we get the  
10 final version. Otherwise, we have problems with our  
11 location process.

12 JUDGE MCDADE: Okay. From the standpoint  
13 of New York after receipt of the supplement to the  
14 Environmental Impact Statement, how long would the  
15 State need, do you anticipate, before you would be in  
16 the position to file any new or amended contentions  
17 based on that?

18 MR. SIPOS: Judge, this is John Sipos in  
19 Albany. Assuming optimistically that staff releases  
20 the supplement Volume 4 to the F-SEISA on June 21, the  
21 State would respectfully request approximately 60 days  
22 given other scheduled items in the summer and the need  
23 to thoroughly review it.

24 JUDGE MCDADE: Okay. And, you know, what  
25 I'm trying to do here is just figure out a basic

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1 schedule that we would use both for the ruling on any  
2 amendments to the contention, and then for the dates  
3 of submitting direct testimony and, you know, the  
4 rebuttal testimony.

5 MR. SIPOS: Right. And I can't -  
6 Riverkeeper may have other scheduling factors to  
7 account for as well.

8 MR. TURK: Your Honor, this is Sherwin  
9 Turk. May I speak for just a moment?

10 JUDGE MCDADE: Yes.

11 MR. TURK: The contention that's pending is  
12 a Riverkeeper contention. New York does not have a  
13 contention that addresses aquatic issues.

14 The sole issues to be addressed by this  
15 SEIS supplement is the aquatic issue. What are the  
16 aquatic impacts of plant operation?

17 There is no reason for New York to be  
18 offered any additional time to file contentions. As  
19 I recall five or six years ago, they had filed a  
20 contention addressing it. That contention was denied.

21 And, incidentally, the only person who  
22 could possibly be effected by this F-SEIS supplement  
23 would be Riverkeeper, because it's their contention.

24 JUDGE MCDADE: Well, going back it's still  
25 perhaps a little overbroad in that regard. And it

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1 would be for New York, a new contention under the  
2 standards for new contentions. For Riverkeeper, it  
3 would be an amended contention based on the standards  
4 for amended contentions.

5 But what I would ask is for both New York  
6 and Riverkeeper within 10 days after the issuance of  
7 the supplement to the Environmental Impact Statement,  
8 if you notify the Board and the parties of a proposed  
9 schedule.

10 In other words, take a quick look at it  
11 and, you know, it may well be that New York will  
12 decide, well, given what's here, there's nothing that  
13 would be a basis for new contention by us.

14 It may be that Riverkeeper looking at it  
15 will determine that there is something that would be  
16 a basis for an amended contention.

17 And what we would like just simply to know  
18 what the parties' views are and get an initial read on  
19 how much time they feel they would need.

20 The other parties would then have an  
21 opportunity to comment, and we can make a ruling on  
22 that so that we can move this thing along.

23 The other thing that I would ask of the  
24 parties right now is to consider - it appears that the  
25 Track 2 safety contentions, there's a possibility of

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1 their being delayed.

2 Two questions with regard to the  
3 environmental contention. Should it be delayed and  
4 heard with those other safety contentions, or could we  
5 move ahead on the environmental contention in the view  
6 of the parties alone?

7 And, also, in answering that question,  
8 understanding the logistics of holding a hearing in  
9 Tarrytown, New York, whether it would be appropriate  
10 if we heard a single environmental contention  
11 separately that that be heard in Rockville.

12 Let me turn first of all to Riverkeeper  
13 who has been very silent here for the last hour.  
14 What's Riverkeeper's view?

15 MS. BRANCATO: Yes, Your Honor. This is  
16 Deborah Brancato for Riverkeeper. I don't believe it  
17 may be the best use of everyone's resources to split  
18 this into three ways and proceed on just the  
19 environmental contention.

20 With that said, we could be amenable to  
21 considering that. However, we would take issue with  
22 hearing the RK EC 8 related to endangered species  
23 issues.

24 We would object to hearing that contention  
25 in Rockville given the fact that it is not subject to

1 any proprietary information, there's no restrictions  
2 in that regard.

3 And in the interest of having the -  
4 proceeding be as open to the concerned public and our  
5 members as possible, we would object to having that  
6 heard in Rockville versus in the vicinity of Indian  
7 Point.

8 JUDGE MCDADE: And is the position of  
9 Riverkeeper then that in setting out a balance if  
10 Riverkeeper EC 8 could be heard earlier in Rockville  
11 or later in Tarrytown, you would prefer the latter?  
12 You would prefer it to be in Tarrytown even if that  
13 meant that it were heard somewhat later in time.

14 MS. BRANCATO: Yes, Your Honor. Exactly.

15 JUDGE MCDADE: Okay. Anything further on  
16 that issue from the staff?

17 MR. TURK: Yes, Your Honor. The contention  
18 that we're addressing, Riverkeeper EC 8, raises a  
19 legal issue.

20 It's our position that there should be no  
21 hearing on it whatsoever once the F-SEIS supplement  
22 comes out.

23 JUDGE MCDADE: But we won't know that until  
24 it does.

25 MR. TURK: Pardon me?

1 JUDGE MCDADE: We won't know that until it  
2 does.

3 MR. TURK: Well, no, but my point is that  
4 it's a legal issue, not a factual issue. The  
5 contention asserts that the NRC move forward with its  
6 F-SEIS before it concluded consultations with new.

7 As the Board is aware, we concluded those  
8 consultations back in January. The F-SEIS supplement  
9 will reflect the consultation, we'll recount what is  
10 happening in our consultations with NMFS and we'll  
11 reflect the outcome of the NMFS biological opinion and  
12 its final tech statement.

13 So, once we issue the F-SEIS supplement,  
14 we will have met the requirements posed by Riverkeeper  
15 in this contention. And at that time, it would be  
16 appropriate to dismiss the contention as a legal  
17 matter.

18 JUDGE MCDADE: Which then -

19 MR. TURK: Perhaps Entergy would file a  
20 motion to do that.

21 JUDGE MCDADE: Which then raises the issue  
22 of whether or not having reviewed the staff's  
23 supplement to the Environmental Impact Statement a new  
24 or amended contention based on adequacy of the EIS may  
25 or may not be appropriate. We won't know that.

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1 I just want to discuss with Riverkeeper  
2 from a scheduling standpoint that if it is necessary  
3 to go ahead with a hearing, an evidentiary hearing on  
4 Riverkeeper 8, their input as far as scheduling and  
5 location. And that's the question that I pose to the  
6 staff as well.

7 In the event that a hearing on that  
8 contention is necessary, the staff's new on location  
9 and scheduling whether or not it could be heard in -  
10 or should be heard in Rockville and/or whether if it  
11 needs to be heard, it should be deferred until 25, 26  
12 and 38 could be heard.

13 And when I say that, I don't mean to  
14 slight the Riverkeeper input on 26 and 38. So, that's  
15 the question just with regard to scheduling and  
16 location.

17 Does the staff have anything to add to  
18 what Ms. Brancato had to say?

19 MR. TURK: Yes. Speaking for the staff,  
20 Your Honor, based on the current contention we see no  
21 reason to wait for the hearings on safety contentions.

22 So, we would say if there is to be a  
23 hearing on these current contentions, we should move  
24 forward with it quickly rather than put it off.

25 JUDGE MCDADA: Okay. Entergy.

1 MR. BURCHFIELD: Yes, Your Honor, we agree  
2 with the staff that we believe - because the F-SEIS  
3 supplement is coming out in the near term and it's a  
4 narrow issue as we agree with the characterization of  
5 Mr. Turk, we believe there's no reason to wait.

6 With regard to location, either Rockville  
7 or someplace local to the plant we believe is  
8 acceptable.

9 Also, we would, you know, the Board  
10 probably, I'm sure, is aware, but on January 15th they  
11 already issued an order that said any new or amended  
12 contentions are due within 30 days. And we believe  
13 that date is appropriate given the length of time the  
14 draft has been available and the narrow focus of this  
15 supplement.

16 JUDGE MCDADE: And as things stand right  
17 now, that is the schedule. And the question is to  
18 simply to direct the parties that after it comes out  
19 within 10 days to advise us whether or not there is  
20 any - and, again, we haven't seen it. We don't know  
21 what it's going to say, how complex it's going to be,  
22 what reaction of the parties is going to be to it.

23 But what we want to know is up front, what  
24 the party's view is and whether or not there's going  
25 to be a change in the schedule.

1                   Because at this point in time, obviously  
2 this matter has, you know, we've been doing this since  
3 2007, you know. We want to keep on top of the  
4 schedule.

5                   MR. BURCHFIELD: Yes, Your Honor.

6                   JUDGE MCDADE: So, the -

7                   MR. BURCHFIELD: Your Honor, I have one  
8 more point. I remember in one of the prior board's  
9 orders on going to hearing, the Board had determined  
10 that based on the pleadings there might not be a need  
11 for a hearing on every contention. And we would  
12 remind the Board that that might be appropriate in  
13 this circumstance as well.

14                  JUDGE MCDADE: I understand. Thank you.

15                  Okay. The next has to do just with regard  
16 to there is a motion by Clearwater to amend our record  
17 to add an additional submission.

18                  The gist of the argument there is  
19 effectively that disabled equals low income equals  
20 environmental justice.

21                  It's the position of the staff and Entergy  
22 that this does not relate to an environmental justice  
23 population. And, therefore, should not be included.

24                  Does Clearwater have anything further to  
25 say on that issue?

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1 MS. RAIMUNDI: Well, Your Honor. This is  
2 Karla Raimundi for Clearwater. I guess I believe our  
3 motion clearly explains our decision that it is  
4 certainly relevant to the contention and to what was  
5 presented in the hearing.

6 JUDGE MCDADE: Okay, thank you. Okay. One  
7 other matter to take up. New York filed on June 3rd,  
8 a Request for Clarification regarding the continuing  
9 duty to disclose whether or not it should be covered  
10 under 236(d) as published in 2007 when we started, or  
11 236(d) from 2013. There was also a scheduling order  
12 that we issued that controls.

13 At this point, is it the view of New York  
14 that the 2013 revision of 236(d) should modify the  
15 scheduling order issued by the Board, or that the  
16 scheduling order by the Board remains operative?

17 MR. SIPOS: Your Honor, this is John Sipos  
18 in Albany. I think the State's position would be that  
19 it would be best if the scheduling order were to  
20 remain the primary control.

21 And I am also reminded of a - I believe it  
22 is an August 8, 2012 order that the Board issued, I  
23 think, sua sponte after the Part 2 regulations were  
24 revised last year.

25 And I think it would help the parties -

1 and in that - well, that order speaks for itself and  
2 I'm sure the Board is familiar with it.

3 I think it would be of assistance or from  
4 New York's position the scheduling order would be  
5 appropriate to maintain it.

6 But I think from the party's perspective,  
7 taking a step back it would be helpful to make sure  
8 that everyone is on the same page with respect to the  
9 continuing obligation.

10 I would note - I guess I should probably  
11 note for the Board's perspective how New York came to  
12 make this suggestion for today's conference.

13 In some of the follow-on communications  
14 following the service of NL-13-075, some of the  
15 parties have had discussions about materials that were  
16 created to support that.

17 And so, that sort of gave the State some  
18 insight into perhaps this was an issue that should be  
19 raised and so that everyone is working off the same  
20 set of assumptions not only with regard to or not only  
21 flowing from NL-13-075, but in the contemplation that  
22 other similar situations may arise in the future  
23 depending on board rulings under its contentions.

24 JUDGE MCDADE: Okay. So, it was New York's  
25 view not to request a change, but rather just to make

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1 sure that the issue is clear to all parties.

2 MR. SIPOS: Yes, Your Honor.

3 JUDGE MCDADE: Okay. Does the staff have  
4 a view that there should be something other than what  
5 we said in the scheduling order as far as the  
6 continual order to disclose?

7 MR. TURK: Your Honor, we assume that we're  
8 operating and we are operating under your original  
9 scheduling order as amended by the Board over time.

10 I think there's a specification that I  
11 haven't heard Mr. Sipos make. And that is, well, what  
12 happens to contentions that have already been  
13 resolved?

14 Now, for the staff's purposes, it doesn't  
15 matter. We're disclosing all documents regardless of  
16 whether it's tied to an active contention or not.

17 But for other parties, are they obligated  
18 to continue to provide documents through disclosures,  
19 for instance, on Contention 35/36 that the Board has  
20 resolved already?

21 I think that's what Mr. Sipos is hinting  
22 at, but he hasn't stated on the record.

23 MR. SIPOS: Well, I wasn't - this is John  
24 Sipos. I wasn't trying to be indirect. I thought it  
25 was important to raise as a generic issue going

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1 forward.

2 It did arise. It came to my attention and  
3 it did arise in the context of NL-13-075 and potential  
4 carryover to New York 35/36.

5 JUDGE MCDADE: And it would be the general  
6 view of the Board that there's a continuing obligation  
7 to disclose if there is information that reasonably  
8 could lead to a new or amended contention, that that  
9 need to be disclosed pursuant to our scheduling order.

10 Not necessarily everything needs to be  
11 disclosed, but only matters that are potentially  
12 within the scope of this proceeding.

13 But, Entergy, do you agree with that?

14 MR. BURCHFIELD: Respectfully, Your Honor,  
15 I think that's an improper standard. I mean, on  
16 disclosure obligations, decades of ASLB precedent are  
17 tied to admitted contentions.

18 And if although we respectfully disagree  
19 with Your Honor's decision, the Board has stated that  
20 35 and 36 were resolved as a matter of law. So, it's  
21 not an active contention at this point.

22 With that said, I want to make clear that  
23 we have provided New York per their request on a  
24 voluntary basis, the documents that are relevant to  
25 this contention, but I don't see how any party has a

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1 legal obligation to disclose documents on a contention  
2 that's not active.

3 It's not with regard to the proceeding, I  
4 mean, it's not generally license renewal. It's with  
5 regard to admitted contentions.

6 JUDGE MCDADE: And specifically that you  
7 did disclose with regard to 35/36, the obligation is  
8 to be viewed broadly.

9 As I indicated, you don't have an  
10 obligation to disclose everything. In other words,  
11 just simply, you know, I mean part of the issue that  
12 generally comes up in these proceedings, if anything,  
13 there is overdisclosure rather than underdisclosure  
14 and the various parties are left with far too large a  
15 haystack to try to find the appropriate needle in.

16 So, we're not suggesting that the  
17 disclosure obligation is to disclose every document  
18 that Entergy could possibly generate, because then  
19 that makes the entire disclosure obligation somewhat  
20 meaningless.

21 The obligation is to turn over documents  
22 that are reasonably within the scope of this  
23 proceeding and to turn them over consistent with the  
24 Board's scheduling order.

25 That said, I think that is enough, but I

1 think, you know, the way that Entergy had responded  
2 with regard to 35/36 and those SAMAs is consistent  
3 with the understanding of the Board of what Entergy's  
4 discovery obligations are.

5 Again, if the matter is within the scope  
6 of these proceedings, there is an ongoing obligation  
7 to disclose and I don't know how the Board could be  
8 more specific than that. So, why don't we just leave  
9 it there as to what the Board's expectations are in  
10 this regard.

11 MR. SIPOS: Your Honor, this is John Sipos,  
12 and I'm sorry, I apologize to you and to everyone else  
13 if I'm belaboring the point, but it is the - is it the  
14 State's understanding that the Board's position is  
15 that the discovery obligations continue even after a  
16 board decision adverse or in favor of a contention one  
17 way or the other?

18 JUDGE MCDADE: I mean, part of the issue  
19 here has to do with at what point, and the Board is  
20 getting to the point of closing the record in this  
21 proceeding.

22 Because as we write our initial decision  
23 on the Track 1 contentions, we continue to get  
24 additional information in and it makes it more and  
25 more difficult to hit a moving target.

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1 I don't know that I can be more specific  
2 than I have been. I think depending on the ruling of  
3 the Board and how the Board disposes of a particular  
4 contention may well inform the discovery obligation.

5 And all I can say and will say at this  
6 point in time is if the new information is on a matter  
7 within the scope of the proceeding, that at that point  
8 there is a continuing obligation to disclose.

9 But what I want to do is to make sure that  
10 that is narrow enough so that there is not an  
11 obligation on either Entergy, the staff or New York or  
12 Riverkeeper or Clearwater, any of the parties, to turn  
13 over every piece of paper that comes into their  
14 possession, because that makes the discovery and the  
15 disclosure requirement somewhat meaningless.

16 So, you know, at this point in time it  
17 appears that Entergy is acting consistent with what  
18 our statement is with regard to the matters within the  
19 scope of the proceeding.

20 And I don't know that we can be or will be  
21 more specific than that in giving the parties  
22 direction.

23 MS. LIBERATORE: Your Honor, this is  
24 Kathryn Liberatore for the State. If I may just  
25 clarify one point with respect to Entergy's

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1 disclosures on 35 and 36?

2 The State was unaware that Entergy was  
3 even performing any work in connection with 35 and 36  
4 until Entergy filed NL-13-075 with the Board on May  
5 7th, 2013.

6 Subsequent to that we did request the  
7 underlying documents supporting NL-13-075 from  
8 Entergy. You know, Entergy did state to us at that  
9 time that it was their belief they did not have a  
10 continuing obligation to disclose those documents, but  
11 as a courtesy they did disclose those documents to us.

12 I just wanted to note that the underlying  
13 implementation cost conceptual design packages were  
14 actually dated September of 2012, September 20th,  
15 2012. So, that did create a bit of a problem for us  
16 because, you know, if we had gotten those back in  
17 September or October and if they were, you know,  
18 relevant as we believed to - potentially to other  
19 contentions.

20 So, I just wanted to note that for the  
21 Board that there was sort of a discrepancy with the  
22 State's position on disclosures with Entergy  
23 especially in the context of 35 and 36.

24 JUDGE MCDADE: Okay. And also I want to  
25 make it clear that with regard to the disclosures, it

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1 is not the intent of the Board to direct that, for  
2 lack of a better phrase, ongoing analysis, works in  
3 progress that, you know, Entergy or any of the other  
4 parties needs to disclose matters, you know, as they  
5 are occurring as they're working through particular  
6 matters.

7 But at the same time, once a matter  
8 reaches - an activity reaches maturity, you know, such  
9 that it reasonably impacts or could reasonably impact  
10 the matter within the scope of the proceeding, we  
11 would expect that it would be disclosed pursuant to  
12 the schedule set in our scheduling order.

13 MR. BESSETTE: Your Honor, this is Paul  
14 Bessette. Just could I - because it may relate to 35  
15 and 36 going forward.

16 Does the Board consider the record still  
17 open on those contentions?

18 JUDGE MCDADE: At this point in time, no.  
19 The Board does not consider it as I think I indicated  
20 earlier, you know, as far as the Board is concerned  
21 with regard to 35 and 36, we have ruled that given the  
22 state of the record at the time of our ruling, the  
23 license would not be approvable that two things could  
24 change that. Either the Commission overrules the  
25 Board's decision, or the state of the record changes.

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1           That with regard to the state of the  
2 record changing as we had some discussion earlier, is  
3 what triggers the obligation of other parties to take  
4 action either to file, for example, new or amended  
5 contentions and there has to be some availability of  
6 information in order for them to do that.

7           Information that is only within Entergy,  
8 obviously, would not implicate that. Information that  
9 is submitted by Entergy that is directly related to  
10 this proceeding, I think, is entirely different.

11           So, you know, with that said, you know, I  
12 think the intent of the submissions that Entergy made  
13 in May were to resolve issues created by the Board's  
14 decision on 35 and 36. And, therefore, I think  
15 appropriately were within the scope of this  
16 proceeding.

17           And I do think it was appropriate for  
18 Entergy to having provided that information to the NRC  
19 staff to disclose it to the other parties, because it  
20 also had the potential to impact other SAMA  
21 contentions such as 16 and 17, which New York was in  
22 the view that it did, in fact, and, again, we have to  
23 make a decision, but New York's view was that it did  
24 not only impact 35 and 36 that was ruled on, but also  
25 that it impacted 16(b) is within the scope of the

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1 ongoing proceeding. And, therefore, was properly  
2 disclosed or was properly subject to disclosure and at  
3 this point, has been disclosed.

4 If that answers your question, good. If  
5 it doesn't, I don't know that I could be more specific  
6 at this point in time.

7 And if any of the parties believe that  
8 additional clarification is necessary rather than just  
9 doing it off the top of our heads here, that I would  
10 ask you to submit a proposal with appropriate briefing  
11 and the Board would then rule in due course.

12 MR. BESSETTE: Thank you, Your Honor. Very  
13 helpful.

14 JUDGE MCDADE: Are there any other matters  
15 that New York believe should be taken up at this  
16 particular conference?

17 MR. SIPOS: Your Honor, this is John Sipos.  
18 I do not believe there are.

19 JUDGE MCDADE: Riverkeeper.

20 MS. BRANCATO: No, Your Honor. Thank you.

21 JUDGE MCDADE: Clearwater.

22 MS. RAIMUNDI: No, Your Honor. This is  
23 Karla Raimundi for Clearwater.

24 JUDGE MCDADE: Entergy.

25 MR. BURCHFIELD: No, Your Honor. Nothing

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1 further.

2 JUDGE MCDADE: The NRC staff.

3 MR. TURK: I do have one issue related to  
4 Mr. Sipos' last issue, Your Honor. And I'm not asking  
5 for any action by the Board at this time, but, Your  
6 Honor, in discussing Mr. Sipos' last request, you  
7 indicated that the Board is getting to a point where  
8 it may consider closing the record on litigated  
9 contentions. It is noted that the Board keeps getting  
10 additional information related to those contentions.

11 The staff has previously sought to close  
12 the record and, Your Honor, it is my view that it was  
13 premature, but I think it would be appropriate if we  
14 might consider filing a motion to close the record on  
15 the litigated contentions at this time given the fact  
16 that the Board does need to rule conclusively and we  
17 do need to keep additional matters from being  
18 submitted unless they're so significant that they  
19 would trigger the standards for reopening.

20 So, I don't think the Board would consider  
21 that kind of a motion now beyond the oral motion I  
22 have made at the close of hearings.

23 MR. SIPOS: Your Honor, may I - since Mr.  
24 Turk has raised that issue, may I speak briefly on  
25 that issue?

1 JUDGE MCDADE: Yes.

2 MR. SIPOS: In the past few days there have  
3 been consultations amongst the parties initiated by  
4 the State of New York concerning some documents that  
5 were very reasonably disclosed to the State.

6 I don't want to get ahead of any filings  
7 or motions, but I would not want to sit by quietly and  
8 not say anything given what Mr. Turk has said and  
9 given the standard that he has suggested which is that  
10 the documents must be so significant, quote/unquote,  
11 but just to alert Your Honors that the staff and  
12 Entergy and representatives from the State have been  
13 having discussions about some recently disclosed  
14 documents concerning one Track 1 contention.

15 JUDGE MCDADE: Okay. Well, the Board is  
16 not going to close the record at this time today based  
17 on the oral motion of Mr. Turk, but, you know, as I  
18 think I indicated that the Board is leaning heavily in  
19 the short term sua sponte to close the record, because  
20 ultimately we need to issue our initial decision on  
21 Track 1 that is impossible to do with a moving target.

22 And, you know, ultimately we need to get  
23 in the short term, get this thing out the door. And,  
24 you know, at a certain point in time given the fact  
25 that we've gone through the hearing or had a several-

1 month period of time after the hearing, at a certain  
2 point we need closure on this and so that we can issue  
3 the decision based on the record before us so we can  
4 then allow the parties to move on with either appeals.

5 So, if there is going to be further  
6 discussion on something, make it - I would urge the  
7 parties to expedite that, because I think you could  
8 reasonably anticipate the Board closing the record in  
9 the short term.

10 MR. SIPOS: Your Honor, this is John Sipos.  
11 Thank you.

12 JUDGE MCDADE: Well, let me put this on  
13 mute for a second.

14 (Pause in the proceedings.)

15 JUDGE MCDADE: Okay. At this point we're  
16 ready to terminate this particular conference. Before  
17 I do, does any party have anything further to raise  
18 before we terminate?

19 (No response.)

20 JUDGE MCDADE: Not hearing anything, I  
21 thank you very much for your participation and what  
22 you've had to offer us here today and this conference  
23 is now closed. Thank you.

24 (Whereupon, at 2:44 p.m. the hearing was  
25 concluded.)