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NUCLEAR REGULATORY COMMISSION

Title: Entergy Nuclear Operations, Inc.
Indian Point Nuclear Generating
Units 2 and 3

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

Location: teleconference

Date: Thursday, July 17, 2014

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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

-----x Docket Nos.

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

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Thursday,

July 17, 2014

Via teleconference

BEFORE:

LAWRENCE G. McDADE, Chairman

DR. MICHAEL F. KENNEDY, Administrative Judge

DR. RICHARD E. WARDWELL, Administrative Judge

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21 ALSO PRESENT:

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P R O C E E D I N G S

(11:09 a.m.)

CHAIRMAN MCDADE: We're now on the record.

This is Judge Lawrence McDade. We're here in the matter of Entergy Nuclear Operations, Inc., Indian Point Nuclear Generator Units 2 and 3, Docket Number 50-247-LR and 50-286-LR.

We had set a scheduling conference in our order of June 25th. We had various questions that we wanted to ask the parties, some of which have been answered in subsequent submissions that we received on July 1st and again on July 15th. So hopefully we will be able to move through this conference relatively quickly.

Before we proceed further, on the record I want parties to identify themselves. Who will be representing the NRC staff today?

MR. TURK: Your Honor, Sherwin Turk.

CHAIRMAN MCDADE: With you is Mr. Roth and Mr. Harris?

MR. TURK: Oh. Yes, Your Honor. And with me are David Roth, Brian Harris, as well as Mr. John Lubinski who is the director of the Division of License Renewal, Office of Nuclear Reactor Regulation.

CHAIRMAN MCDADE: Okay, thank you. And

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1 representing Entergy today?

2 MR. BESSETTE: Yes, Your Honor. This is
3 Paul Bessette, and with me on the phone is Bobby
4 Burchfield, Martin O'Neill, Elise Zoli, Kevin Martin
5 and Marty Healey.

6 CHAIRMAN MCDADE: Okay. Thank you. From
7 the State of New York?

8 MR. SIPOS: Good morning, Your Honor.
9 This is John Sipos, S-I-P-O-S. With me is Assistant
10 Attorney General Lisa Burianek. And also on the
11 phone, our Assistant Attorney General, Kathryn Deluca,
12 Laura Heslin, Janis Dean and also Mr. Tony Roisman.

13 CHAIRMAN MCDADE: For Riverkeeper?

14 MS. BRANCATO: Good morning, Your Honor.
15 This is Deborah Brancato for Riverkeeper. My
16 colleague, Phillip Musegaas will be joining later in
17 the call.

18 CHAIRMAN MCDADE: Okay. Thank you. And
19 again, from Clearwater, is there anybody on the line
20 representing Clearwater?

21 (No audible response)

22 CHAIRMAN MCDADE: Okay, apparently not.
23 From the interested Government entities, the only
24 parties that had called in for a speaking line was
25 Cortlandt. Is a representative from Cortlandt on the

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1 line?

2 MS. TREANOR: Yes, Your Honor. This is
3 Victoria Treanor.

4 CHAIRMAN MCDADE: Okay. Thank you.
5 Basically, what sort of led to this particular status
6 conference is this. This matter has been before the
7 Board for a considerable period of time. It arose out
8 of an April 2007 application by Entergy for a license
9 renewal for the Indian Point 2 and 3 units.

10 Unit 2 was scheduled to expire in
11 September of 2013 and did. Unit 3 is scheduled to
12 expire the current license in December of 2015.

13 Pursuant to NRC regulations, specifically
14 2.109(b), if an Applicant files a sufficient
15 application for renewal of an operating license at
16 least five years prior to the expiration, the existing
17 license will not be deemed to have expired until the
18 application has been finally determined.

19 I believe that that regulation was put in
20 place to encourage timely submissions of applications
21 which, here, the application was submitted well more
22 than six years before the first expiration date. And
23 it anticipated that we would be able to get through
24 the proceedings prior to the date of expiration.

25 But there was sort of a safety gap so that

1 the plant would not need to shut down for a period of
2 time while the adjudication continued. That said,
3 we're now more than seven years into the proceeding.

4 The Board was established in October of
5 2007. We granted a hearing for originally 16
6 petitioners. We granted hearings to three, New York,
7 Riverkeeper and Clearwater, back in July of 2008, more
8 than six years ago. And there doesn't appear to be an
9 end on the horizon.

10 So at this point in time, the intervenors,
11 New York, Riverkeeper and Clearwater, have identified
12 genuine issues of law or fact that have not been
13 adjudicated. And we are in a period of continuing
14 operation beyond the original license.

15 So understanding that granting a hearing
16 is not just having a hearing, but having a meaningful
17 right to a hearing, the Board is trying to see what we
18 can do when we issued our order of June 25th and
19 expedite this to bring this to an ultimate conclusion.

20 So that's the purpose of this. And I have
21 some basic questions. The first has to do with the
22 matters that are currently on appeal. And my
23 question, and let me just address, first of all, the
24 appeal on NY-35 and NY-36 relating to SAMAs. And I
25 want to go through each of the parties.

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1 Assume, for the sake of argument for this
2 question, that the Commission affirms the granting of
3 summary disposition on NY-35 and NY-36, how does that
4 relate to 2.309(b)?

5 Would that be a finding by the Commission
6 that a sufficient application for renewal had not been
7 filed? And would that result in the shutdown of the
8 plant?

9 Or, given the fact that there has been
10 additional information submitted, I believe that May
11 6th of 2013 engineering reports addressing the issues
12 that were raised in NY-35 and NY-36 were submitted and
13 that those are still being reviewed by the NRC. Is
14 this a situation where, again, it would be a finding
15 that a sufficient application had not been submitted
16 and the plant would need to close down?

17 Or would it be a situation where either
18 Entergy, or the staff or both would need to file a
19 motion to reopen to consider the matters presented by
20 Entergy in its May 6th, 2013, engineering reports and
21 any supplemental FSEIS that the staff might issue?

22 So that's sort of the long question, then
23 we just sort of run through, And I'm going to
24 address, first of all, to the staff, then to Entergy,
25 then to New York. Mr. Turk?

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1 MR. TURK: Your Honor, you pose a very
2 interesting question. But it's not one that I can
3 help you with today. I think what has to happen is
4 that the Commission has to review the appeals that are
5 currently pending before it from the Board's grant of
6 summary disposition on Contention NY-35, NY-36.

7 CHAIRMAN MCDADE: Do you have any insight
8 on the schedule of that? It's now been several months
9 since the initial decision was issued by the Board and
10 the briefing was completed by the parties. Are you
11 privy to any information as to when a decision from
12 the Commission on the pending appeals is likely?

13 MR. TURK: No, we are not, Your Honor. In
14 fact, we're barred from being privy to any information
15 that the other parties are now privy to.

16 CHAIRMAN MCDADE: Well, they might be
17 privy to it as well. But certainly the Board isn't
18 privy to it. And what you're saying, Mr. Turk, is
19 that you have no information. You haven't been
20 advised that the appeal is scheduled to be, you know,
21 an order issued by any particular date.

22 MR. TURK: That's correct, Your Honor.

23 CHAIRMAN MCDADE: Okay. So sort of going
24 through assume, the first part of my question, that
25 the Commission upholds the grant of summary

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1 disposition and says that the Board was correct.
2 Would that constitute a finding by the Commission that
3 a sufficient application for renewal had not been
4 submitted? And that language is used in 2.109(b).

5 MR. TURK: Your Honor, I really can't
6 comment on that. I don't know. And I would expect
7 that the Commission itself, upon ruling on the pending
8 appeals, will provide guidance on that issue. I can't
9 speak for them, and I really can't predict what they
10 will do.

11 CHAIRMAN MCDADE: And part of raising it
12 in this transcript, it certainly would be helpful for
13 the Board to get guidance on that as we proceed ahead
14 with the rest. Mr. Bessette, or anyone else, or
15 Entergy, would you care to address that particular
16 question?

17 MR. BESSETTE: Yes, Your Honor. This is
18 Paul Bessette. It would come to no surprise to the
19 Board that we believe the answer to your question is
20 no. A Commission upholding of the motion for summary
21 disposition would not constitute a finding that the
22 application is not complete.

23 That, for purposes of timely renewal, if
24 the application was complete and accepted for
25 docketing, we believe that meets the satisfaction of

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1 that standard.

2 In fact, Your Honor, it would be quite
3 ironic if the opposite were held. Because the
4 Commission states that you should not appeal these
5 matters until the end of a proceeding. And we were
6 not allowed to appeal that issue until the Board
7 issued its partial initial decision.

8 So for the Commission to say, aha, it's
9 too late, you must shut down, that's completely the
10 opposite of the intent of the regulation. So our
11 answer as no, we do not believe a finding would be
12 that the application would be insufficient.

13 And again, it would be completely opposite
14 of the Commission's guidance and regulations
15 associated with the timing of appeals.

16 We would imagine that the Commission, even
17 if they upheld the motion for summary disposition,
18 would provide some direction to the parties to go back
19 and take some further action and, as you noted,
20 particularly as Entergy has voluntarily submitted
21 additional information and that the staff has stated
22 that they're going to address that in FSEIS
23 supplement.

24 CHAIRMAN MCDADE: Okay. And in fact, that
25 information was submitted by Entergy more than a year,

1 between a year and a year a half ago, back May of
2 2013.

3 The next question, and let me address that
4 again to Entergy initially, is how do you believe this
5 would come back in front of the Board?

6 Given the fact that we have already ruled
7 on NY-35 and NY-36, is it a situation where Entergy,
8 as the Applicant, would have to file a petition to
9 reopen the record with regard to NY-35 and NY-36 in
10 order for the Board to reconsider the contention with
11 the additional information submitted by Entergy in May
12 of 2013 and any additional analysis which the staff
13 says will be forthcoming in a supplement to the FSEIS?

14 MR. BESSETTE: Yes, Your Honor. I guess
15 there's a couple of things. I mean, if the
16 Commission, I guess the premise is if the Commission
17 upholds the motion for summary disposition with that
18 premise, and based on our submission and the expected
19 FSEIS supplement, we would take it upon ourselves to
20 reopen that issue and say the issue has been cured, so
21 yes.

22 CHAIRMAN MCDADE: But the Board may be
23 faced with this prior to the time that the Commission
24 rules, that there could be an FSEIS that is submitted.

25 And I want to get back to Mr. Turk on

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1 that, because he says the schedule will be published
2 in the near future, and to try to get a little bit
3 more information as to what that means in real time.

4 But assume the FSEIS is published at that
5 time, should we procedurally, and I want to ask New
6 York, Entergy and the staff on this, should we just
7 simply set a date for the filing of any amendments to
8 Contention NY-35 or NY-36? Or would it be incumbent
9 on the Board to wait until there's a motion to reopen?
10 First of all, Entergy, what's your view?

11 MR. BESSETTE: Well, Your Honor, I think
12 we all realize that the Commission hasn't ruled on
13 this. We're going to have to resolve this. So I
14 would believe if the Board could issue a ruling with
15 regard, a date for further submission, I think that
16 would be the best bet rather than wait for the
17 parties.

18 CHAIRMAN MCDADE: Mr. Turk, what's the
19 staff's view?

20 MR. TURK: Well, Your Honor, first of all
21 let me say that the only issues before the Board are
22 those that involve pending admitted contentions. NY-
23 35, NY-36 have been resolved for the Board's purposes.
24 So there is nothing before you concerning the
25 engineering project cost information at this time.

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1 CHAIRMAN MCDADE: So it would be the
2 staff's position, then, that we would not have any
3 jurisdiction unless and until one of the parties moved
4 to reopen the record and be granted that motion?

5 MR. TURK: That's my belief, Your Honor.
6 Because there's nothing relating to that contention
7 before you at this time.

8 CHAIRMAN MCDADE: Okay. What is New
9 York's view on this, Mr. Sipos or --

10 MR. SIPOS: Yes, good morning, Your Honor,
11 John Sipos. Going back, I think there's perhaps two
12 questions pending for the State following on your
13 questions there.

14 And the parameters of your question are
15 for the parties, in responding to your question, to
16 assume for the sake of argument that the Commission
17 takes review and upholds the Board's summary
18 disposition grant.

19 And as an initial matter, I think the
20 State must note that under the December 2009 SAMA re-
21 analysis there were 20 or more cost effective
22 upgrades. That is, if we're operating under a cost
23 benefit model, these upgrades have been deemed to
24 provide more benefit to society than they cost.

25 So the State is keenly interested in those

1 upgrades and is keenly interested in their
2 implementation, if that is, you know, if that is how
3 the Commissioners ultimately rule.

4 So coming back to your question about
5 2.309, I believe that that Commission ruling, as you
6 posit, would be a determination that the application
7 was not adequate or not sufficient.

8 And it would be therefore incumbent upon
9 the owner/operator to move forward and address that
10 deficiency, you know, whether or not in concert with
11 the staff of the Commission.

12 CHAIRMAN MCDADE: Okay. Well, let me ask
13 you, Mr. Sipos, first of all. You know, part of the
14 language is that the current licenses will not be
15 deemed to have expired until the application has been
16 finally determined.

17 Assume, for the sake of argument, that the
18 Commission rules on one or more contentions that the
19 license cannot be issued. Does that constitute final
20 determination on the application or do we, as a Board,
21 need to continue on the outstanding contentions?

22 In other words, if any one of, for
23 example, if on NY-8, the staff position and Entergy's
24 position on appeal was not upheld, and the Commission
25 determined that an aging management plan was needed in

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1 that circumstance, would that end the proceeding?

2 Or would Entergy have an opportunity to
3 submit an aging management plan that would then be
4 subject to an additional period of time for filing new
5 contentions and the resolution of those? Let me just
6 go in reverse order here. New York, what's your view
7 on that?

8 MR. SIPOS: Yes, Your Honor. This is John
9 Sipos. My first observation would be that this would
10 be a situation that has not, to my knowledge, and I
11 haven't researched it extensively, but has not been
12 encountered before.

13 And I think there are some sub-questions
14 in the question that you asked me. And I hope I can
15 pick, I hope I can touch on each of them. The first
16 is would it, as I understood Your Honor's question,
17 would it end the proceeding perhaps with respect to
18 Contention NY-8 in transformers?

19 And the State's position would be, such a
20 ruling as Your Honor posits, would be a determination,
21 a final determination on the application with respect
22 to those systems, structures and components.

23 CHAIRMAN MCDADE: Well, my question is not
24 with regard to any particular contention, and I want
25 you to address it and also the other parties. Would

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1 it be a final determination pursuant to 2.101(b) and
2 end the proceeding? And we could all go home.

3 MR. SIPOS: So, Your Honor, if I could put
4 that, if I could try to recap that perhaps in another
5 term. Is your question to the State, would that be in
6 essence "game over" if the Commission were to so rule?

7 CHAIRMAN MCDADE: Yes.

8 MR. SIPOS: I think it would be a
9 determination for those contentions, and it would
10 show, I think it would be a determination that the
11 application was deficient. So I guess in short, the
12 short answer to your question, as I understand it, is
13 yes.

14 Now, I mean, there are other issues that,
15 you know, the parties have been pursuing. But I think
16 that would be a final determination that the
17 application was not adequate.

18 CHAIRMAN MCDADE: Okay. And I'm making an
19 assumption here that Entergy disagrees with that.

20 MR. BESSETTE: Yes, Your Honor. I mean,
21 I think frankly that makes no sense. That means it's
22 Russian roulette on any appeal. You can't appeal to
23 the end. But if you lose your appeal, game over.
24 That really makes no sense and has no support or
25 precedent in any licensed or known proceeding.

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1 CHAIRMAN MCDADE: And in fact, you know,
2 if you do try to look it up, as Mr. Sipos said, he
3 hadn't looked at it extensively, you're not going to
4 find any guidance.

5 And in fact here, for example, on NY-35
6 and NY-36, way back when, when we originally granted
7 some redisposition, Entergy did in fact seek appeal.
8 And it was stated by the Commission at that point in
9 time that the appeal was premature and had to wait
10 until we issued an initial decision.

11 But the question to Entergy is, in the
12 event there is that kind of a finding by the
13 Commission, that one or more of the contentions where
14 the Board found for the intervenors is affirmed, what
15 does Entergy do then?

16 Does Entergy have the ability to continue
17 to operate under 2.109(b)? If so, until when, and if
18 not, what is incumbent upon Entergy to do to file a
19 motion with the Commission to allow continued
20 operation? And if so, under what authority would the
21 Commission be able to grant a temporary license since
22 right now it's operated under 2.109(b). I

23 In other words, would Entergy have the
24 opportunity, while the license is deemed not to have
25 expired, to submit a new aging management plan? And

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1 again, we still have other aging management plan
2 contentions down the road on NY-25, NY-26, NY-38, you
3 know. Or would, for the purposes of this proceeding,
4 it be over?

5 And all I'm trying to do is raise these
6 issues, get the parties to think about these issues,
7 perhaps the people who will be writing the order from
8 the Commission will be able to give guidance in this
9 area when they rule on the appeal. But what I'm
10 trying to do is raise it and get the views of the
11 parties with regard to it.

12 So, you know, what would it be incumbent
13 upon Entergy to do, for example, if the Commission
14 rules that, in fact, an aging management plan for
15 transformers was required and that the application is
16 sufficient because that was not part of it.

17 MR. SIPOS: And, Your Honor, this is John
18 Sipos. Perhaps if I could respond in part to what Mr.
19 Bessette just said.

20 As the State is reading, and I think this
21 is an area that, you know, we will research more, but
22 as the State is reading 10 CFR Section 2.341(e), I
23 believe that section provides that neither the filing
24 or granting of a petition for review stays a Board's
25 order.

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1 So I don't know that timely renewal, you
2 know, operates as a stay for a Board or Commissioner
3 level ruling that could be contrary to Entergy's
4 wishes.

5 MS. DELUCA: And this is Kathryn Deluca
6 for the State. I think, you know, from the State's
7 perspective, just jumping off of what John said, you
8 know, we have a question specifically related to
9 2.341(e) as to whether Entergy and NRC are currently
10 engaging in aging management review of transformers
11 and sort of what the status of that is while the
12 petitions for review before the Commission are
13 pending.

14 And if we could get some more information
15 on that, I think that that might help us with our
16 analysis, both under 2.341(e) as well as under the
17 timely renewal doctrine and its, you know, potential
18 for continuing to be in effect.

19 CHAIRMAN MCDADE: Okay.

20 MR. BESSETTE: Your Honor, this is Paul
21 Bessette. I think I have to jump in here. Because I
22 don't think the determination of whether Entergy is
23 allowed to operate under timely renewal is an issue
24 for New York to decide or an issue, frankly, for the
25 people on this phone call to decide.

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1 The Commission has authorized, by the
2 Administrative Procedure Act and 10 CFR 2.109, we are
3 authorized by law to operate under timely renewal
4 until the application has been finally determined. So
5 I think we may be straying into an area that really is
6 something that the Commission should be directing.

7 CHAIRMAN MCDADE: Well, I'm sure you'll be
8 glad to hear that I agree with you fully on that and
9 that this will be an issue to be cited by the
10 Commission as to when the application has been finally
11 determined.

12 And hopefully, when we do get the order,
13 there will be some guidance to us as to whether or not
14 we have reached that point or if not.

15 What I'm trying to get from the parties is
16 just their view on what this Board should do, to use
17 the language that Mr. Sipos, more succinctly than I,
18 said is it game over if the Commission rules for the
19 intervenors on any appeal from the standpoint of the
20 Board.

21 And, you know, what the Commission does is
22 what the Commission does. And I'm only concerned with
23 what the Board does. But if the Commission rules for
24 any of the intervenors, from the Board standpoint, is
25 it game over? Or do we continue to adjudicate NY-25,

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1 NY-26, NY-38 and Riverkeeper 8 as well as all of the
2 contentions that are currently held in abeyance.

3 MR. TURK: Your Honor, Sherwin Turk for
4 the staff. May I address the question?

5 CHAIRMAN MCDADE: Please.

6 MR. TURK: What I am going to say will
7 probably not be pleasing to you, Your Honor. So I
8 apologize in advance. But in this type of proceeding,
9 in a license renewal proceeding, the Board's
10 jurisdiction pertains only to the contested issues
11 before it.

12 The Board does not have plenary decision-
13 making authority as to whether or not the license
14 should be issued. That's something that rests with
15 the Commission. So I would suggest that the issues
16 for this Board to decide are the contentions that are
17 placed before it.

18 CHAIRMAN MCDADE: And currently, Mr. Turk,
19 we have NY-25, NY-26, NY-38, RK-EC-8, NY-39, RK-EC-9,
20 Clearwater's 4 and 10. And I take it, from what
21 you're saying, it is the staff's position that,
22 regardless of what the Commission does on the appeal,
23 it is incumbent on the Board to proceed forward and
24 make factual determinations and adjudicate those
25 remaining contentions. Is that the staff's position?

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1 MR. TURK: Yes, with one clarification.
2 The only admitted contentions pending before you are
3 the three safety contentions, NY-25, NY-26, NY-38, and
4 forgive me, Riverkeeper, I know that your item to NY-
5 26.

6 CHAIRMAN MCDADE: But we'll also have
7 before us contentions that we have not ruled on the
8 admissibility of --

9 MR. TURK: Yes, Your Honor.

10 CHAIRMAN MCDADE: -- and then, based on
11 Commission rulings, have held in abeyance, such as NY-
12 39, Riverkeeper EC-9, the other ones. But the
13 question you're saying is that those contentions that
14 are still before us, either admitted or held in
15 abeyance, that regardless of what happens on the
16 appeal it is incumbent on the Board to move forward
17 and adjudicate those, correct?

18 MR. TURK: That would be the Board's role,
19 yes, Your Honor.

20 CHAIRMAN MCDADE: And does Entergy agree
21 with that?

22 MR. BESSETTE: Yes, Your Honor. But I
23 fully expect the Commission, in any decision, that
24 they would provide guidance on this matter. So I
25 don't think we'd be operating in a vacuum. But, yes,

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1 we agree.

2 CHAIRMAN MCDADE: New York?

3 MR. SIPOS: Your Honor, if I could respond
4 first, if I might, to something Mr. Bessette said a
5 few moments ago.

6 I think what Mr. Bessette said on behalf
7 of Entergy ignores, under the hypothetical that, Judge
8 McDade, you posited, in which the Commissioner affirms
9 the Board's rulings with respect to NY-8, or NY-35 and
10 NY-36, well, let's leave it with NY-8, to start with,
11 NY-8, that would be a determination by the Commission
12 that the plant is, you know, proceeding into the
13 period of extended operation, at least for Unit 2.

14 It already has extended into the period of
15 extended operation. That it's in the period of
16 extended operation without having done an aging
17 management review or aging management program for
18 transformers. So I think that's an important
19 consideration to keep in mind.

20 Coming back to the question you just asked
21 Mr. Turk, and I believe Mr. Bessette, as to the
22 Board's jurisdiction, the State is not intimately
23 familiar with all the nuances regarding the Board's
24 jurisdiction.

25 But certainly the Board would have

1 jurisdiction. I think we would agree that the Board
2 does have jurisdiction over contentions that have been
3 either presented to it for determination as to
4 admissibility or contentions which have been accepted
5 by the Board and which are proceeding towards an
6 adjudicatory hearing.

7 CHAIRMAN MCDADE: Okay. And does any
8 party disagree with the proposition that, whether or
9 not the continuation of the license under 2.109(b)
10 would be an issue for the Commission alone and not an
11 issue for the Board? Does anyone disagree with that
12 proposition?

13 MS. DELUCA: Your Honor, on behalf of the
14 State of New York, I think it would sort of, this is
15 Kathryn Deluca, and I think it would depend on the
16 actual Commission ruling and how all of that sort of
17 would come into play.

18 I think it's difficult to sort of say
19 hypothetically, you know, who would have jurisdiction
20 and how that would come out, especially with respect
21 to NY-35 and NY-36. Because we don't even know what
22 the status of that review is and when the FSEIS is
23 coming out, how that would affect the contentions. So
24 a lot of it is sort of up in the air right now. So I
25 don't --

1 CHAIRMAN MCDADE: Yes. But I take it that
2 all of the parties, as Mr. Bessette, I believe,
3 pointed out, Entergy did submit additional engineering
4 reports on this issue a year, a year and a half ago.

5 And there would seemingly be a fundamental
6 unfairness if, without the adequacy of that being
7 considered, the plant was directed to be closed down.
8 But nevertheless, that would be an issue for the
9 Commission.

10 At the other end of the spectrum is the
11 question that I raised at the beginning of this
12 conference which is the right to a meaningful hearing,
13 in other words, having factual issues resolved in a
14 timely fashion, particularly given the fact that we
15 are in a period of extended operation where the
16 original license for Unit 2 has expired.

17 In the most recent submission by the
18 staff, you indicated that a schedule for the
19 publication of a supplement to the FSEIS on this
20 matter, the schedule will be published in the near
21 future, not that the FSEIS will be published in the
22 near future.

23 Mr. Turk, can you offer us anything to
24 explain what that means, what, from the staff
25 standpoint, the near future is? Is that, you know,

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1 this year, this decade? And what needs to be done?

2 You know, it seems like this, as I said,
3 this information was submitted well more than a year
4 ago. Do we have an additional one hour of review, ten
5 hours of review, 100 hours of review that goes into
6 this?

7 Because, as I said, what bothers the Board
8 is it appears that the, you know, and again, being
9 fair to the Applicant, who submitted this information
10 and seemingly has a right to have it considered in its
11 application, but the intervenors have a right to
12 resolve this issue in a timely fashion.

13 So, Mr. Turk, what are we looking at when
14 you say the schedule will be published in the near
15 future? Do you mean July of 2014?

16 MR. TURK: Your Honor, first of all, let
17 me say I appreciate your great interest in this. I
18 know that it's a matter of concern to the Board in
19 understanding what the staff's review schedule is.

20 And let me preface what I'm about to say
21 on the schedule with a little quick synopsis of
22 history. Your Honor mentioned that the application
23 was received in April of 2007. That is correct.

24 It was subsequently slightly amended in
25 the summer of 2007. The staff then docketed the

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1 application, finding it to be sufficiently complete
2 for our reviews to commence. We did issue our SER in
3 2009. At that point, all safety issues were deemed to
4 have been resolved.

5 We issued our final SEIS in December of
6 2010. At that time, we determined that all
7 environmental issues had been resolved.

8 What happened after that is that we
9 received new information, in some instances from the
10 Applicant. For instance, they submitted new aquatic
11 impact information twice. We also received new
12 information from the Applicant on its engineering
13 project costs for implementation of SAMAs following
14 the Board's decision on Contention NY-35, NY-36.

15 So that was new information that the staff
16 then had to undertake to review after the initial
17 review of all information that had been docketed
18 originally had been completed.

19 So I'd like to comment on the Board's
20 finding and its order that the staff's review has
21 lingered. Perhaps I would say that it hasn't been
22 lingering so much as it had been completed and then
23 had to become restarted to consider new information.

24 And that applies also to other matters.
25 As Your Honor mentioned, there are several contentions

1 pending before us having to do with the waste
2 confidence decision update. The Commission has
3 directed that such contentions be held in abeyance
4 pending the Commission's review of the waste
5 confidence issue on a generic basis.

6 So whatever happens with the generic
7 rulemaking will then determine what the Board should
8 do with those contentions, whether they're to be
9 dismissed or resolved on a case-specific basis.

10 So anyway, what I'm trying to say is that
11 new information came up following the issuance of our
12 review documents. And that's what's caused the review
13 to be reinitiated and to take longer than we had
14 initially anticipated when we issued the final review
15 documents.

16 CHAIRMAN MCDADE: Now, I understand that.
17 And, you know, I understand that it is necessary for
18 the staff to do a thorough review. Again, my concern
19 is, you know, we're in the period of extended
20 operation.

21 They've only asked for an additional 20
22 years. You know, we could wind up having those 20
23 years pass while we're still adjudicating this matter
24 which would then, you know, totally deny any
25 meaningful right to a hearing.

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1 It was May of 2013 that these additional
2 reports were submitted. And I guess what I'm looking
3 for is an idea of when these initial reports are
4 submitted. Is this something that would require 100
5 man hours to complete the review, 1,000 man hours to
6 complete the review? Where are we along that line?

7 Is this something, you know, to make it
8 clear for the record and anybody who's looking at
9 this, whether it be the Commission or the Second
10 Circuit, is there something that the Commission has
11 dozens of engineers looking at? Or is it something
12 that one person is looking at two hours a week?

13 And either, Mr. Turk, or you indicated
14 that you had staff with you on the line, I guess what
15 I'm looking for is can you give us an idea of when is
16 the schedule going to be published and when, to the
17 degree that you can, can we expect to see the
18 supplement to the FSEIS?

19 MR. TURK: Your Honor, the staff currently
20 expects to issue a schedule for the FSEIS publication
21 this fall. So I don't know exactly when that will
22 occur. But that's the expectation for publishing a
23 schedule.

24 CHAIRMAN MCDADE: And would the schedule
25 then be, you know -- and I guess that leads to another

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1 question we raised in the order. And again, I mean,
2 trying to make sure that there's a meaningful right to
3 a hearing, and yet also make sure that Entergy has the
4 right to be presented up-to-date information to be
5 considered in our decision, you know, if the schedule
6 is going to be published this fall of 2014, and the
7 schedule is we expect the supplement to be issued in
8 the fall of 2016, is there a point at which it would
9 be appropriate for the Board to say that's not part of
10 the proceedings?

11 If this is going to be considered, it'll
12 be considered as a supplement to the application that
13 would require a different Board and a different
14 proceeding as an amendment to the application.

15 And again, if that were the case, then we
16 would say, look, we're not going to consider it,
17 because this proceeding is just dragging on too long.
18 There's a denial of a meaningful right to a hearing.
19 What would be the impact of that under 2.109(b)?

20 I mean, could we find ourselves, you know,
21 the request for a renewed application on Unit 2 runs
22 out in 2033. Could we be sitting here in 2032 still
23 waiting for the publication of the supplement to the
24 FSEIS?

25 And I guess, again, what I'm asking, you

1 say it'll be published this fall. It seems like
2 publishing a schedule should take about 15 minutes.
3 It seems like, given the fact that the staff has had
4 this for well over a year, there should be some
5 reasonable concept of where they are in the review
6 process.

7 Are they at the beginning, or are they in
8 the middle or are they almost at the end? I'm looking
9 to find out. And I think the intervenors and the
10 public have a right to know what is a reasonable
11 expectation where this will be, the record will be
12 available, the staff review document will be available
13 for this. Mr. Turk?

14 MR. TURK: Thank you, Your Honor. You
15 asked several questions there. First of all, with
16 respect to the Board's termination of its
17 jurisdiction, once you resolve all admitted
18 contentions so that there's nothing left pending
19 before you, all jurisdiction would have transferred to
20 the Commission.

21 The Commission, if there's later a motion
22 to reopen or new information that requires resolution,
23 the Commission could then remand to you. Or the
24 Commission could set up a different Atomic Safety and
25 Licensing Board. But, as I mentioned previously, the

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1 Board's role is to decide admitted contentions.

2 With respect to the staff's review
3 schedule, while I understand your interest and your
4 concern, there are long standing case precedents with
5 directions by the Commission which indicate that the
6 Board's function is to decide admitted contentions,
7 not to direct the staff in the performance of its
8 review.

9 For example, in 2004 the Commission
10 decided Duke Energy Corporation could solve a case, it
11 was CLI-04-06, I believe, in which the Commission
12 clearly said, "Licensing boards simply", and I'm
13 quoting here, "Licensing boards simply have no
14 jurisdiction over non-adjudicatory activities of the
15 staff that the Commission has clearly assigned to
16 other offices unless the Commission itself grants that
17 jurisdiction to the Board."

18 CHAIRMAN MCDADE: Mr. Turk, I'm fully
19 aware that I do not have the authority. If I had,
20 we'd probably be in a different position right now to
21 direct that the supplement be filed by a given date.

22 What I am trying to find out from the
23 staff is where are you in the review process? You've
24 had this information for well over a year. Are you
25 ten percent into the review process? Are you 98

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1 percent into the review process? Is it reasonable to
2 anticipate that that review will be completed by a
3 particular date?

4 You have the staff people present with
5 you. Why don't you put the phone on mute for a minute
6 and see if you can give us any further guidance as to
7 when it is likely that that will be published and
8 likewise, while you are on mute, if you can give us
9 any additional information?

10 Because the same description in your
11 letter of July 15th with regard to aquatic impacts had
12 to do with the "new schedule" will be in the near
13 future. So why don't you go on mute for a couple of
14 minutes, two or three minutes, and see whether or not
15 you can give us any other guidance in that area?

16 And then the next question to also address
17 when you come back is a matter of law. If this
18 lingers very long, what remedies does the Board have
19 and what remedies would be appropriate in order to
20 facilitate a timely, and perhaps we're already years
21 past the word timely, a timely resolution of this?

22 And I'll address that last question to
23 Entergy and New York as well after we come back. So
24 go on mute for three minutes and we'll hear from you
25 then.

1 MR. TURK: Thank you, Your Honor. We'll
2 come back to you in a few moments.

3 (Whereupon, the above-entitled matter went
4 of the record at 11:55 a.m. and resumed at 11:56 a.m.)

5 CHAIRMAN MCDADE: Okay, Mr. Turk?

6 MR. TURK: Yes. Thank you, Your Honor.
7 In my letter of July 15, I mentioned that there were
8 two specific items that will be addressed in the FSEIS
9 supplement. And I also said there will be other
10 matters.

11 The two that I pointed out to the Board
12 involved the engineering project cost information for
13 SAMA purposes and the aquatic impact information.
14 There are a number of other matters that may be
15 addressed in the FSEIS supplement, depending on their
16 status at the time that the FSEIS supplement is ready
17 for publication.

18 So there are a number of different issues
19 that are under review. A schedule will be developed
20 for publication of the FSEIS once it is more clear
21 what issues will be specifically addressed in that
22 FSEIS supplement. And --

23 CHAIRMAN MCDADE: And let me ask a very
24 specific question, and if you can't answer it now to
25 report back to us in writing by Monday, with regard to

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1 the May 6, 2013, engineering reports. And just
2 explain it in writing by Monday, what the review has
3 entailed.

4 How many people have been working on it?
5 How many man hours have been spent on it up to this
6 point in time? How many man hours need to be spent
7 before the review of that will be finalized in order
8 to submit that information into a FSEIS so that we
9 have some idea whether or not we are looking at being
10 able to move forward on this in 2014, 2015, 2020,
11 2030?

12 Looking at the information that was
13 submitted in May of 2013, it doesn't appear, and I
14 don't purport to be the review engineer on this, it
15 doesn't appear that this is something that should take
16 years to review. Obviously it's not something that is
17 going to be reviewed in minutes or hours. But it
18 doesn't appear that it's something that should take
19 years.

20 And here we are well more than a year into
21 it. And I'm trying to get information as to whether
22 or not we're a quarter of the way through, half way
23 through, 90 percent through, so we can schedule what's
24 moving forward in this.

25 And what I'm getting is it'll come when it

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1 comes. So if you can report back, and since I don't
2 want it to be just simply vague, instead of one day of
3 next week by Friday of next week.

4 MR. TURK: Your Honor, I can address it,
5 sir, right now as we speak, so that you won't need to
6 wait for any further information.

7 CHAIRMAN MCDADE: Okay.

8 MR. TURK: I had previously mentioned, in
9 the last status report, that the staff had completed
10 its preliminary review of the information. So with
11 respect to that engineering cost information, we've
12 made substantial progress already.

13 We still have to have that preliminary
14 review finalized. It has to go through management.
15 There may be questions to Entergy. I don't know. But
16 in any event, we're expecting that this fall we'll be
17 able to give you a schedule for publication of the
18 FSEIS draft.

19 And I can tell you today that the FSEIS
20 supplements draft should be issued during the coming
21 year. It's not going to be 2020, it's not going to be
22 2032. It'll be in 2015.

23 CHAIRMAN MCDADE: And what about the issue
24 with regard to aquatic impacts?

25 MR. TURK: Also, in my last status report

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1 to the Board, I indicated that the staff was looking
2 to put a contract in place to assist in its review of
3 the information. I can tell you that there is a
4 contract in place. And the staff's review is in
5 progress.

6 And again, that's something that we expect
7 to address in the FSEIS supplement which would be
8 issued in draft form in 2015.

9 CHAIRMAN MCDADE: Okay. I mean, this
10 information was submitted to the staff a considerable
11 time ago. Again, what I am looking for is, you know,
12 what is the staff's estimate? Is this kind of
13 information something that's going to take ten man
14 hours, 100 man hours, 1,000 man hours to review.

15 I mean, on the face of it, it does not
16 look that complicated that it should take years. And,
17 you know, from the standpoint and whether this thing
18 is reviewed by the Commission or by the Second
19 Circuit, and the idea of the right to a meaningful
20 hearing, you know, when we are this far, when we are
21 more than seven years into the process, at what point
22 have intervenors been denied a meaningful hearing?

23 And I'm trying to figure out what, if any,
24 remedies the Board can impose and, at the same time,
25 recognize the validity of what Mr. Bessette said where

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1 Entergy submitted this application, you know, more
2 than seven years before the expiration date.

3 They have been, you know, this most recent
4 information they submitted well more than a year ago.
5 And they should have a right to have a staff review of
6 that information be considered by the adjudicative
7 Board. But yet, the intervenors have a right to have
8 it considered timely.

9 So anyway, I think we've talked about that
10 as much. If the staff can supply any additional
11 information, and again, let me again ask you or more
12 specifically direct how many hours, you know, remain?

13 Now, you said that you put out a contract.
14 I assume the contract then specifies a, somebody had
15 a concept of how many hours that this review would
16 take if you're having to contract to do it. It's not
17 an open-ended contract where they could spend, you
18 know, 10,000 hours reviewing it. I assume it's a
19 contract for a particular number of hours.

20 So we should have some way of determining
21 when that will be completed. And likewise, you know,
22 I don't know what the term preliminary review is.

23 MR. TURK: Your Honor, may I respond
24 briefly? First, let me note that there is no
25 contention pending before you. And there has not been

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1 a contention pending before you regarding aquatic
2 species.

3 CHAIRMAN MCDADE: Mr. Turk, I understand
4 that, okay. There was a contention before us. The
5 contention had validity. The contention, it was
6 purported to be cured by actions that were
7 subsequently taken.

8 We told Riverkeeper to hold off on filing
9 any new or amended contentions based on the new
10 information about aquatic impacts. So this thing is
11 effectively held in abeyance.

12 And what we are trying to do is to work
13 out a reasonable schedule, and reasonable may be, you
14 know, well past the possibility, but a schedule for
15 the resolution of the contentions that are in front of
16 us.

17 And, I mean, you've indicated, you know,
18 with aquatic impacts, the fall of 2014. Now, is that
19 realistic, you know, is that what the contract says?

20 You can read the transcript. I'll read
21 the transcript after we get done with this and see
22 what, if any, of those questions that you can answer
23 and also if any of the intervenors are of a mind to
24 file any briefing suggestions as to what actions, if
25 any, the Board can take in order to expedite this

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1 proceeding that's already seven years off.

2 With regard to any other contentions that
3 are out there, with regard to NY-25, as I understand
4 it, it's the most recent as of your July 1st status
5 report. We can expect a supplement to the SER in
6 November of 2014. Is that still the case?

7 MR. TURK: Your Honor, there is new
8 information on the safety factor I'd like to get to.
9 But if I may, I'd like to just complete my thought on
10 that previous contention, previous issue, and then
11 move to the safety side.

12 Your Honor, I think my recollection is
13 different from yours. You did not defer the filing of
14 contentions on aquatic impact. That had to do with
15 endangered species. And that issue has now been
16 resolved.

17 The new aquatic information that we're
18 looking at does not involve endangered species. It
19 involves several other species in the river. And that
20 information was the subject of the FSEIS supplement
21 that was issued back in 2013.

22 And that's the information that the
23 Applicant has now modified in its February 24, 2014,
24 submittal. And that's the new information that would
25 be looked at in the FSEIS supplement. That does not

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1 involve endangered species. So there is no issue
2 before you that's been deferred or in any way held off
3 by the Board relating to this matter.

4 CHAIRMAN MCDADE: But you are going to be
5 filing, in your status report, you indicated that that
6 would be part of a supplement to the EIS?

7 MR. TURK: Correct.

8 CHAIRMAN MCDADE: And based on our
9 previous orders, generally speaking, parties would
10 have 60 days after the filing of the supplement to the
11 EIS or an SER to file new or amended contentions. And
12 that being the case, and hoping to resolve this matter
13 as promptly as possible, is why the Board is concerned
14 about the schedule for that.

15 Going to NY-25, is the still projected
16 date for the supplement addressing AMPs that would
17 implicate NY-25, NY-26 and NY-38 still scheduled for
18 November of 2014?

19 MR. TURK: Your Honor, I can't commit to
20 November at this point, because there is new
21 information.

22 CHAIRMAN MCDADE: New information that
23 came in since July 1st when you made that
24 representation?

25 MR. TURK: New information that has come

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1 in since then and new information that we're waiting
2 to receive. And let me back up for a moment and say
3 that the entire issue of the reactor vessel internal
4 AMP is an issue that arose following publication of
5 the SER in 2009.

6 This has to do with a generic issue that
7 has been looked at for many plants. Entergy received
8 notice from the staff that we're looking for them to
9 do more. We've been in communication with Entergy,
10 most recently on the 16th of July, just yesterday.

11 There was a further conference call with
12 Entergy in which the staff indicated it's looking for
13 clarification of Entergy's prior response to staff
14 requests for additional information.

15 In the conference call yesterday, Entergy
16 indicated that it will amend its prior response to the
17 RAIs. But they were not able to give us a date for
18 submittal of that amendment response as yet. So I
19 can't tell you today when we'll receive their amended
20 RAI response.

21 MR. BESSETTE: Your Honor, this is Paul
22 Bessette. I can jump in. Our goal is to meet the
23 date for our response that was documented in the
24 staff's July 1st notice which would be by August 7th.

25 Again, there was a conference call

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1 yesterday. We're going to make every effort to meet
2 that date which we would hope would allow the SER to
3 be published as predicted.

4 CHAIRMAN MCDADE: In November of 2014?

5 MR. BESSETTE: Yes.

6 CHAIRMAN MCDADE: Okay. Mr. Bessette, and
7 then to Mr. Sipos after that, what is your view of the
8 authority of the Board in order to resolve this
9 proceeding to set a cut-off date to say that we will
10 consider any information considered in staff review
11 documents as of a particular date?

12 Anything that is submitted later than that
13 simply won't be considered by the Board. We will rule
14 on the adequacy of the application in the review based
15 on what's submitted and that anything submitted after
16 that date would be viewed as an amendment to the
17 application that would require the filing of a new
18 notice of a hearing. And it would then be up to the
19 Commission how to treat that under 2.101(b). Mr.
20 Bessette, what's your view on that?

21 MR. BESSETTE: Your Honor, I frankly have
22 not looked at that in any detail. I would think that
23 would be maybe an issue of first impression. In fact,
24 I would recommend the Board perhaps seek guidance from
25 the Commission on such an issue.

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1 If there is a particular request for a
2 briefing, we could do it. But I think that direction
3 should be coming from the Commission.

4 We believe we have submitted a complete
5 application in 2007. We've been actively prosecuting
6 that application, responding in a timely manner to all
7 additional requests and to issues raised by
8 intervenors. So we do not believe there really is an
9 end to the proceeding if there is a good faith
10 prosecution of the application.

11 You know, if the Board has other reasons
12 for perhaps wanting to end its involvement, again, I
13 think that would be best addressed with the
14 Commission. But I can't see any legal basis to set up
15 a cut-off date if there is an ongoing good faith
16 prosecution of the application, including issues,
17 generic issues that come up from the industry.

18 CHAIRMAN MCDADE: Mr. Bessette, do you
19 appreciate the concern of the Board that the
20 intervenors, and taking for the sake of argument, and
21 I don't suggest otherwise, that Entergy is acting
22 totally in good faith, they submitted an application,
23 they have been responding to questions by the
24 Commission. They have been responding in a timely
25 fashion to those questions and, as I indicated

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1 earlier, certainly understand the dire and the
2 interest of the Applicant in having this appropriately
3 reviewed.

4 But if there is to be a meaningful right
5 to a hearing, you know, could we find ourselves 15
6 years, 20 years down the road, and finally we all
7 simply terminate the proceeding?

8 Because as of September 28th or December
9 12th, 2035, the period asked for in the period of
10 extended operation is up. And we're still in a period
11 of the staff asking additional questions from Entergy,
12 Entergy replying to those questions, the staff asking
13 additional questions, additional review documents
14 being anticipated, published, anticipated again and
15 published.

16 And we get through this entire proceeding
17 without an adjudication of the genuine issues of law
18 and fact that were raised by the intervenors. And my
19 question is how do we avoid that? Mr. Bessette?

20 MR. BESSETTE: Your Honor, I certainly
21 appreciate your question and fully understand the
22 frustration of the Board.

23 As an initial matter, I think we should
24 proceed, assuming the SER is issued in November, I
25 think we should proceed on the hearing on those safety

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1 matters. Staff noted those contentions are pending
2 before the Board, they're active. And I believe the
3 SER supplement will wrap those issues up, and we
4 should proceed to a hearing on those matters.

5 So therefore, the intervenors would have
6 a timely hearing so they could present the SER
7 addition in November on those matters. So we
8 shouldn't delay those. We should move forward on
9 those, get those issues resolved and, to the extent
10 any other issues are raised on environmental issues,
11 we can address them.

12 CHAIRMAN MCDADE: So it would be your view
13 that we should assume for the sake of argument, and
14 Mr. Turk's called into question whether or not the 7
15 November '14 date is realistic, but that once the
16 supplement to the SER issues, we should set a
17 reasonable period of time for filing any new or
18 amended contentions based on that and then, based on
19 our rulings on any new or amended contentions, move
20 directly ahead to resolve NY-25, NY-26, NY-38 and RK-
21 TC-5. That's the position of Entergy?

22 MR. BESSETTE: Yes, it is, Your Honor.
23 And in fact, I think the parties could even get
24 together and try to resolve some of those issues.
25 Because a lot has changed since that time. So yes, I

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1 believe we should move forward on those, and I think
2 that's the best path for all parties, including
3 intervenors on those issues.

4 MR. TURK: Your Honor, this is Sherwin
5 Turk. And I say that I agree with Mr. Bessette and
6 would like to suggest an amendment to what he said.
7 And that is I think there's no reason why the parties
8 cannot begin to speak with each other now to come up
9 with a joint proposal for Your Honors to consider in
10 terms of the filing of any remaining testimony,
11 statements of position and exhibits on the safety
12 contentions so that we have a schedule in place for
13 the hearing to be targeted from the date that the SER
14 actually, SER supplement actually issues.

15 We'll know ahead of time that when the SER
16 supplement issues, there's the schedule for the next
17 six months for the adjudication.

18 CHAIRMAN MCDADE: Certainly we would not
19 discourage the parties from talking to each other to
20 try to resolve anything.

21 From New York, what is your reaction to
22 what Mr. Bessette suggested, which is that it would be
23 appropriate to move ahead with a resolution on NY-25,
24 NY-25 and NY-38 and TC-5, setting a schedule as soon
25 as that FSEIS comes out or FSEIR, FSEIS?

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1 MR. SIPOS: Or perhaps SER or supplement,
2 second supplement to the SER, Your Honor. Perhaps --

3 CHAIRMAN MCDADE: At this point, you might
4 be talking 102nd supplement, but --

5 MR. SIPOS: Yes, Your Honor, this is John
6 Sipos for the State of New York. And I really, on
7 behalf of the State, I think I must address the
8 suggestion that Mr. Bessette and Mr. Turk have just
9 made.

10 The State has, you know, has followed this
11 Board's orders and has, you know, sought to comport
12 itself with the schedules that Your Honors have set,
13 in that the parties have negotiated, that is for sure.

14 But what has happened here, and just to
15 provide some context, the State went forward and
16 filed, pre-filed testimony back in, I believe it was
17 December of 2011. And so now we're at three years,
18 two and a half years beyond that. And if the SER
19 comes out, as Mr. Bessette believes it will come out,
20 in November, you know, we'll be closing in on three
21 years.

22 And I cannot overemphasize that the State
23 is very concerned that it will be given a short amount
24 of time to marshal its response and move forward.
25 Where the staff has had two-plus years, apparently

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1 there have been discussions between Entergy and NRC
2 staff, the State is not allowed to participate in
3 those. There has been, perhaps as Mr. Bessette has
4 intimated, there have been changing situations.

5 And I think if there is a concern about a
6 meaningful opportunity for a hearing, the State wishes
7 to ensure that it has a meaningful opportunity to
8 prepare, and sift through and analyze this material
9 before people start making schedules and saying, oh,
10 hurry up, State.

11 I mean, you know, we have tried to comply
12 with the orders. And these are important issues, NY-
13 25, NY-26 and NY-38, all of them, all the contentions
14 were, I'm not intending to diminish them. But these
15 are very important issues. And, you know, we'll need
16 to work with our experts.

17 CHAIRMAN MCDADE: Okay. Mr. Sipos, let me
18 just interrupt you on that. And I think this should
19 not be a concern for the State. The Board recognizes
20 that if these matters are as complex that it requires
21 years for the professional staff of the NRC to analyze
22 it and prepare a report, that it would be unfair to
23 require the State of New York, which does not have the
24 same resources in-house, to act in an inappropriately
25 expedited fashion.

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1 It is the State and the public that are,
2 in my view, adversely affected by further delay. But
3 while we want to move ahead expeditiously, it is
4 likewise important that the State of New York have a
5 full opportunity to analyze what Entergy has
6 submitted, what the staff has reviewed, has developed
7 from that and to find appropriate experts to analyze
8 it.

9 So we are not going to force the State to
10 move ahead inappropriately, starting with the basic
11 premise that, given how long it has taken the
12 professional staff of the agency to review this, that
13 this is a matter that is sufficiently complex that we
14 would be predisposed to giving the State any
15 reasonable request for time in which to resolve this.

16 And again, with the idea that we are in
17 the period of extended operation, and it's the
18 intervenors' right to a meaningful hearing that the
19 Board views as being implicated by the lengthy period
20 of time that this proceeding has continued so far and
21 appears destined to continue in the future.

22 Let me go back and move on to something
23 else. We don't have before us anything with regard to
24 the Coastal Zone Management Act. In New York's
25 letter, most recent letter of July 3rd, you indicate

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1 that there is a scheduled oral argument before the New
2 York Appellate Division this fall. Mr. Sipos, what is
3 the issue in that appeal?

4 MR. SIPOS: Your Honor, John Sipos. If I
5 may, I'd like to turn it over to Assistant Attorney
6 General Lisa Burianek, B-U-R-I-A-N-E-K, as she has
7 been the lead Attorney on those matters.

8 CHAIRMAN MCDADE: Okay, thank you.

9 MS. BURIANEK: Thank you, Judge, Lisa
10 Burianek. The issue before the Appellate Division has
11 to do with, there is an Article 78 proceeding. It was
12 involving a declaratory ruling petition filed by
13 Entergy with the New York State Department of State,
14 which is the State agency designated by Department of
15 Commerce to undertake Federal consistency
16 determination on behalf, in this kind of context with
17 the license renewal proceeding and other Federal
18 permits.

19 The issue before the Court has to do with
20 whether or not Entergy may take advantage of a
21 language regarding grandfathering of facilities for
22 review under the Coastal Management Plan.

23 And at the trial court level, Entergy's
24 petition was, and they appealed to the Appellate
25 Division, that matter is now scheduled for argument in

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1 October 2014.

2 CHAIRMAN MCDADE: Okay. And based on your
3 experience, if it were argued in October of 2014, when
4 would it be reasonable to expect a decision?

5 MS. BURIANEK: Entergy sought a
6 preference, which means that they wanted to accelerate
7 the matter being calendared with the preference. The
8 Court will also understand that the matter is of
9 pressing interest to Entergy and the State.

10 As the Board may be aware, the Department
11 of State and Entergy are currently working through
12 issues relating to the Coastal Management Review that
13 has been underway. And the current date for that
14 review to issue by the Department of State is December
15 31st of this year.

16 CHAIRMAN MCDADE: Right. And that was
17 indicated in the July 3rd letter. And what I wanted
18 to get clarified in my own mind is how do these two
19 link, this decision by the Department of State and the
20 decision by the Appellate Division. Is the --

21 MS. BURIANEK: The Appellate Division will
22 determine whether or not that grandfathering language
23 can be taken advantage of by Entergy, whether they are
24 subject to it or not. The State's position,
25 Department of State's position is that it does not

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1 apply to Entergy.

2 CHAIRMAN MCDADE: Okay. And if the
3 Appellate Court agrees with Entergy, does that
4 abrogate the need for the December 31st decision? Or,
5 yes, how will it impact that?

6 MS. BURIANEK: No. The Appellate Division
7 is an intermediate Appellate Court. I would
8 anticipate that, regardless of the decision, either
9 the State or Entergy will seek additional review by
10 the New York State Court of Appeals of any adverse
11 decision.

12 And the time frame for that, I can't tell
13 you what that would be. But my sense is that we will
14 likely have a decision by the Appellate Division by
15 the end of the year.

16 CHAIRMAN MCDADE: Okay. And from Entergy,
17 two things. One, do you disagree with any of the sort
18 of procedural description that was just given? And do
19 you agree that, until that comes to rest, it would be
20 premature for the filing of any contention, based on
21 coastal zone management issues?

22 MR. BESSETTE: Your Honor, this is Paul
23 Bessette. I'm going to turn this over to Mr.
24 Burchfield to discuss that matter.

25 MR. BURCHFIELD: Good afternoon, Your

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1 Honor. We do not disagree with the procedural
2 description that Ms. Burianek gave. Although we think
3 it may be optimistic to expect a final decision from
4 the Appellate Division by the end of this year.

5 That's obviously completely within the
6 discretion of the judges, and they will decide the
7 matter when they're ready to decide it. So
8 predictions in this area are always somewhat
9 hazardous. But that sounds a little bit aggressive to
10 us.

11 On your second question as to whether a
12 contention on the CZMA issues would be appropriate
13 before a final resolution of the grandfathering issues
14 in the New York courts, that is a difficult procedural
15 issue.

16 And I would say that, in Entergy's view,
17 grandfathering would represent an independent basis
18 upon which to fulfill the CZMA requirements. And if
19 the court, your courts were to agree with Entergy,
20 that would constitute satisfaction of the CZMA
21 requirement, in Entergy's view.

22 To the degree that that affects the
23 ongoing proceedings here before the Board, that
24 procedure would have to play out according to the
25 Board's own procedures.

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1 CHAIRMAN MCDADE: Okay. Thank you. The
2 next, in New York's July 3rd letter, there was a
3 reference made to the Danskammer Electric Generating
4 Facility.

5 And Mr. Sipos or someone else from New
6 York, that information you provided, how does that
7 have a potential impact on anything the Board might
8 do? Or was that just sort of background information,
9 you know, FYI?

10 MR. SIPOS: Your Honor, John Sipos. That
11 was provided to the Board and to the parties as
12 background information. It was a very recent decision
13 by the New York State Department of Environmental
14 Conservation.

15 The Danskammer facility had
16 documents regarding -- it, I think, from to time had
17 been the subject of disclosures, I can recall, I
18 believe at least one document that we disclosed, the
19 State disclosed regarding Danskammer.

20 Danskammer was damaged or went offline in
21 late 2012. But there is an initiative now to bring it
22 back online. I believe it's rated at 495 megawatts.
23 And DEC has precluded the use of coal as a fuel there.

24 So I know it was really for the Board's
25 background, also for the parties' background, staff's

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1 background. You know, perhaps it is a vestige of
2 Contention 37. As it was a late-breaking item, we
3 thought we should put it in there for everyone's
4 knowledge.

5 CHAIRMAN MCDADE: Okay. The next has to
6 do with the, the next information talking about the
7 updated seismic hazard analysis. And the question is,
8 and let me ask first of all of New York, then the
9 staff, then Entergy, how would this matter come before
10 the Board, if at all?

11 I mean, is this something having to do
12 with any change in event sequence in SAMAs? Or is
13 there some other way that this thing would come before
14 the Board?

15 MR. SIPOS: Your Honor, John Sipos for the
16 State of New York. I guess it is conceivably possible
17 that this matter could come before the Board, as I
18 understand it. And I am no expert.

19 The new recently developed ground motion
20 curves appear to be different, appear to be different
21 than the earthquake that was anticipated and was
22 developed as part of a proceeding back in the 1970s.

23 The State, back in 2007, did present
24 various contentions regarding seismic issues
25 including, for example but not limited to contentions

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1 NY-14 and NY-15. Your Honors, in the July 2008
2 ruling, declined to admit those contentions. But this
3 is new evolving information that, you know,
4 conceivably could have an impact here.

5 CHAIRMAN MCDADE: Okay. But what it have
6 an impact, would it require, given the fact that the,
7 you know, several years ago now the Board declined to
8 admit NY-14 and NY-15. Would New York have to file
9 new contentions?

10 Or is this part, as I said, of event
11 sequencing in the SAMA contentions that we have
12 resolved, that could come back again in the, you know,
13 upcoming FSEIS or supplement? Or is it something that
14 New York would have to file new seismic intentions
15 based on new information? And if so, what would be a
16 deadline for the filing of those or should be a
17 deadline?

18 MR. SIPOS: Your Honor, John Sipos. These
19 new curbs, as I understand the chronology, were the
20 result of an order from, I believe, March, a
21 Commissioner order or directive from, I believe, in
22 the neighborhood of March 2012, apparently one year
23 after the Japanese earthquake.

24 The State wishes or would like the
25 opportunity to review this material which, you know,

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1 has been produced only recently and would like the
2 opportunity, based on that review, to interact with
3 experts and make a determination.

4 Sitting here today, I personally am not in
5 a position to chart a path forward or a specific time
6 line forward on it. It does, to my personal
7 understanding, seem to reflect a new understanding of
8 the seismic profile near the Indian Point Power
9 Plants.

10 CHAIRMAN MCDADE: At this point, would New
11 York have any objection to having a deadline? I'm not
12 establishing one at this point in time, but a deadline
13 for the filing of the new contention based on new
14 seismic issues at the same time as any new or amended
15 contentions based on the hopeful November 2014
16 supplement. Would that seem to be a reasonable
17 schedule?

18 MR. SIPOS: I appreciate that, Your Honor.
19 I would have to double check with my management. You
20 know, the fall may or may not be a busy time, given
21 several items that Mr. Bessette and Mr. Turk have
22 noted. They're busy in terms of, you know, technical
23 issues and also, given what appears to be the schedule
24 on the waste confidence rulemaking proceeding.

25 But I appreciate that question. And if we

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1 could have some time to consider that and respond to
2 the parties and Your Honor?

3 CHAIRMAN MCDADE: Okay. Mr. Besette, is
4 it the position of Entergy that there are no seismic
5 issues currently before the Board and that it would
6 require the filing of a new contention in order to
7 bring it before the Board?

8 MR. BESSETTE: Yes, Your Honor. As you
9 noted, there are no contentions related to seismic
10 issues pending before the Board. And we will argue
11 that those issues are not within the scope of license
12 renewal.

13 We'd also argue that much of the
14 information that Mr. Sipos has stated has been out in
15 the public record for many months or years. So,
16 again, we fully agree that, if Mr. Sipos or New York
17 State wanted to bring these issues forward, they would
18 have the burden of raising them before the Board.

19 CHAIRMAN MCDADE: Part of that motion
20 would have to demonstrate that it was timely?

21 MR. BESSETTE: And within the scope of the
22 proceeding, that's correct.

23 CHAIRMAN MCDADE: Well, that's always the
24 case.

25 MR. BESSETTE: That's right, Your Honor.

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1 And frankly, Mr. Sipos saying he needs some undefined
2 time to look at this further, we believe it would be
3 adverse to Entergy's rights for timely addressing this
4 issue, just much like we've been discussing here.
5 They don't get an indefinite time to decide if they
6 want to raise an issue.

7 MR. SIPOS: Your Honor, they've had two
8 years to work on this.

9 CHAIRMAN MCDADE: In any event, I think
10 there's a consensus both with New York and Entergy,
11 and, Mr. Turk, if you disagree chime in, that we don't
12 have seismic issues currently in front of us. That it
13 would require the filing of a new contention and, in
14 any motion for the admission of a new contention, the
15 moving party would have the burden of demonstrating
16 timeliness. Mr. Turk, do you have any objection with
17 that?

18 MR. TURK: I fully agree with you, Your
19 Honor.

20 CHAIRMAN MCDADE: Okay. Last issue, are
21 there any other issues, and perhaps addressing to Mr.
22 Sipos of New York, other issues that are out there
23 pending litigation with regard to Indian Point, such
24 as issues involving the taking of water from the
25 Hudson River, other issues that you can fill us in on,

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1 on where they stand now?

2 MR. SIPOS: Yes, Your Honor. Both Ms.
3 Burianek and I will address that. And Assistant
4 Attorney General Burianek will go first.

5 MS. BURIANEK: Judge, there's a second
6 State litigation matter that Entergy brought against
7 the Department of Environmental Conservation and the
8 Department of State.

9 It relates to a routine program change
10 undertaken by those agencies for purposes of the
11 Coastal Management Plan. It establishes or modifies
12 significant habitat determinations along the Hudson
13 River.

14 In this matter, as well as at the Trial
15 Court level, the decision was that Entergy's petition
16 was dismissed. That matter, Entergy has filed a
17 notice of appeal. And we have been speaking to
18 Counsel for Entergy, and they are in the process of
19 perfecting that appeal.

20 But it is unclear at this time when that
21 appeal will be completed, the briefing will be
22 completed. It has not been scheduled. And we do not
23 know yet when it will be argued. But it's also in the
24 hopper.

25 MR. SIPOS: Your Honor, I'm going to pick

1 up and hopefully respond to your question about the
2 water issues. It is my understanding that presently,
3 for the New York State Department of Environmental
4 Conservation, there are additional hearings that have
5 been identified or scheduled by the administrative law
6 judge overseeing that.

7 And those include some limited testimony
8 next week, that would be the week of July 21st, and a
9 day to be determined in September regarding closed
10 cycle pooling issues that there will also be
11 additional evidentiary hearings to be scheduled
12 regarding, excuse me, that there will also be
13 additional evidentiary hearings regarding a scheduled
14 temporary outage alternative concept.

15 And that will take place in January 2015.
16 And perhaps I should take another crack at explaining
17 that. By scheduled temporary outage, that would be,
18 as I understand it, that would involve one, or the
19 other or both plants going offline and not withdrawing
20 water from the Hudson River. As I understand it, that
21 is a topic or an alternative that's being examined in
22 the hearing.

23 And then it is also my understanding that
24 there will be additional evidentiary hearings on
25 endangered species and possibly thermal impacts at a

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1 later date in 2015.

2 And then, at some point, the proceeding
3 will be reviewed by the administrative law judge and,
4 you know, possibly on up to the designated decision
5 making officer at the Department of Environmental
6 Conservation.

7 CHAIRMAN MCDADE: Okay, thank you. That
8 is all that I have. What I'd like to do right now is
9 two things. One, just go through the parties to see
10 whether or not anybody has anything else that they
11 want to raise at this particular status conference and
12 then put you on mute and discuss with my colleagues
13 whether or not either Judge Kennedy or Judge Wardwell
14 have other matters that they would like to inquire
15 into.

16 But at this point, Mr. Turk, does the
17 staff have anything else that they would like to
18 raise?

19 MR. TURK: Your Honor, the only thing I
20 would mention is I had expressed some uncertainty as
21 to whether the FSEIS supplement will issue in
22 November. And my reason for that is that we had not
23 yet seen Entergy's amended response to the RAIs.

24 So I don't want to leave November as a
25 firm date. It's possible that it could slip a little

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1 bit to December. But if we can make November, we
2 certainly will try to do that.

3 CHAIRMAN MCDADE: And I believe Mr.
4 Bessette said that he anticipated those responses
5 would be in no later than August 7th. So hopefully,
6 that November date is realistic. And if it slips,
7 we'd ask you to advise us immediately if that's the
8 case.

9 MR. TURK: We certainly will do that, Your
10 Honor.

11 CHAIRMAN MCDADE: Anything further?

12 MR. TURK: Not for the staff, Your Honor.

13 CHAIRMAN MCDADE: Mr. Bessette, anything
14 further from Entergy?

15 MR. BESSETTE: Yes, Your Honor. I believe
16 Mr. Burchfield, I mean, one of the issues you raised
17 in your order for scheduling the telephonic conference
18 was a status of previous review.

19 And then after Mr. Burchfield is done, I'd
20 like to refer to Ms. Zoli to see if she has anything
21 to add to the State's summary of the other
22 proceedings. Mr. Burchfield?

23 MR. BURCHFIELD: Thank you, Mr. Bessette.
24 Your Honor, as the Board knows, last year the Board
25 dismissed without prejudice Entergy's motion for

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1 declaratory order on the question of whether certain
2 prior reviews of consistency by the Indian Point
3 facilities would satisfy the need for a Coastal Zone
4 Management Act certification in this proceeding.

5 That is yet another alternative means by
6 which Entergy could satisfy the CZMA requirements
7 without going through a full new consistency
8 certification process here. That's the December 31
9 deadline that Ms. Burianek referred to.

10 The status of the previous review matter
11 now is that it's before the staff for purposes of
12 consultation. Pursuant to the Board's order from last
13 year, the staff submitted requests, certain questions,
14 six questions to the State of New York last December.
15 The State of New York responded to those at the end of
16 May of this year.

17 Just this past Tuesday, July 15th, Entergy
18 responded to the New York responses to those
19 questions. And we understand, from the staff's most
20 recent status report, that some further questions may
21 be coming to both Entergy and the State on this issue,
22 on the previous review issue. And those would be
23 anticipated, I believe the staff said in September.

24 CHAIRMAN MCDADE: Okay. Thank you, Mr.
25 Burchfield.

1 MR. BESSETTE: Elise, do you have anything
2 to add?

3 MS. ZOLI: Yes. Mr. Martin's going to
4 speak first about SCFWH and then I will add just two
5 minor clarifications.

6 MR. MARTIN: All right, just very quickly,
7 Your Honors. Ms. Burianek mentioned a second hearing
8 or a second appeal which is before the Appellate
9 Division in New York concerning the designation of an
10 obstructed river next to Indian Point as a special
11 habitat under the CZMA.

12 She basically got the schedule for that
13 correct. We'll be perfecting our appeal in the next
14 few weeks. We would expect briefing to then occur
15 over that balance of this year, perhaps into early
16 next year. And I think there'll be a decision on that
17 in 2015.

18 One thing I also wanted to mention
19 concerning that habitat designation is that when it
20 was approved by NOAA, NOAA did report back to New York
21 State that the new habitat designation would not be
22 applicable to the license renewal process, and so
23 while that appeal is out there we're not really sure
24 what relevance it has, if at all, to this proceeding.

25 CHAIRMAN MCDADE: Okay. Thank you. Ms.

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1 Zoli?

2 MS. ZOLI: Yes. Just two clarifications.
3 Mr. Sipos is absolutely correct that it is possible
4 that the Endangered Species Act concerns over one of
5 the state-listed sturgeon may occur, as may thermal
6 issues. Although the thermal issues have already been
7 resolved between the New York State DEC and Entergy.

8 And it is also possible that DSA issues
9 may be resolved between staff and Entergy. In
10 addition, there are a number of other related smaller
11 issues that have been yet resolved relating to interim
12 measures.

13 And we do not have a schedule for any of
14 those issues as of yet. But we would expect those to
15 occur after the likely trial of the outage issues in
16 January of next year.

17 In addition, I think that it's important,
18 particularly given what Mr. Sipos mentioned, about how
19 significant amount of future action in the water
20 quality proceedings will be done, including review by
21 the ASLJs, the ALJs, which is our adjudicatory
22 tribunal, and subsequently by the final decision
23 maker, the Commissioner.

24 But there also is a waiver claim with NRC
25 staff under the Federal Clean Water Act. And that

1 relates to the timeliness provided for a State action
2 on water quality certs.

3 CHAIRMAN MCDADE: Okay. Thank you.
4 Anything else from any of the parties?

5 MR. SIPOS: Yes, Your Honor. This is John
6 Sipos. I believe the Assistant Attorney General
7 Deluca has a question. And then I have a few more.

8 MS. DELUCA: Your Honor, I just had a
9 question relating back to a topic we discussed
10 earlier. We would be interested to know whether
11 Entergy and/or NRC staff have begun aging management
12 review or development of an aging management program
13 for transformers.

14 CHAIRMAN MCDADE: Well, that's something
15 that you can discuss with them. It's really not part
16 of our proceeding. We don't have a transformer issue
17 before us anymore.

18 We ruled that they needed one. And, you
19 know, what happens, we sort of kicked around and would
20 anticipate that the Commission would give some
21 guidance when they rule. They will either rule that
22 an aging management plan was not necessary or that it
23 is. And they will give some guidance as to what
24 happens then and specifically, you know, how that
25 relates to continued operation under 2.109.

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1 But I don't think this is something that
2 we, the Board, should be getting into. You know,
3 there's nothing before us with regard to that. If the
4 staff or Entergy wishes to respond, they can. If not,
5 they can respond after the Board rings off on the
6 status conference. Do you wish to respond, Mr. Turk
7 or Mr. Besette?

8 MR. SIPOS: Your Honor -- oh, I'm sorry.
9 Go ahead.

10 CHAIRMAN MCDADE: Mr. Besette, Mr. Turk,
11 did you want to respond to that, or do you want to
12 just talk with them after, as we get off the status
13 conference?

14 MR. BESSETTE: All right. Your Honor, I
15 believe our position is adequately documented in our
16 appeal to the Commission. And we concur with you,
17 it's not a matter that we need to raise with this
18 Board.

19 CHAIRMAN MCDADE: Okay. So you all are
20 going to stay on the line after we ring off in case
21 the court reporter has any questions. So you can
22 address that question to Entergy and the staff. And
23 they will decide to respond or not. But it's not a
24 matter that the Board has.

25 MS. DELUCA: Okay. Thank you, Your Honor.

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1 CHAIRMAN MCDADE: Mr. Sipos, you had
2 something additional?

3 MR. SIPOS: I did. And just to follow-up
4 on what Ms. Deluca said, you know, we thought that
5 that was relevant to some of Your Honor's questions
6 that you had noted. But we will follow your
7 suggestion and take it up with Entergy.

8 There is another issue regarding some
9 language in NRC staff's July 15, 2014, letter to Your
10 Honors regarding the supplements or the draft
11 supplements to the environmental impact statement.

12 And Mr. Turk made some reference to it.
13 And it concerns the "other matters" phrase at the end
14 of the first paragraph. And Mr. Turk discussed SAMA
15 and he discussed aquatic issues.

16 But the State, as a "host state" for these
17 facilities, you know, within the Federal system, the
18 State is curious and is trying to determine what are
19 those other issues that could be or will be
20 incorporated in the draft supplemental environmental
21 impact statement.

22 CHAIRMAN MCDADE: Mr. Turk, can you give
23 us a brief outline of what those other matters will
24 entail?

25 MR. TURK: Your Honor, I mentioned earlier

1 in the call that when it is clear what the status of
2 different matters are, we'll be able to tell you
3 whether or not those will be addressed in the FSEIS
4 supplement. But today I cannot give Mr. Sipos or the
5 Board any further information.

6 CHAIRMAN MCDADE: So when you simply, the
7 phrase that you used, "and other matters," was just
8 simply a catch phrase that there could be other
9 matters, maybe yes, maybe no? But there haven't been
10 any specific matters identified as of today?

11 MR. TURK: That's correct, Your Honor.
12 But I can give you an example.

13 CHAIRMAN MCDADE: Please.

14 MR. TURK: The Commission has before it
15 numerous petitions concerning the waste confidence
16 decision update. We've projected all along that the
17 Commission should or is expected to conclude its
18 rulemaking proceeding in October. But if that happens
19 before the FSEIS supplement issue, then I would
20 imagine we'll address that, if necessary, in the FSEIS
21 supplement.

22 I can't tell you more. I don't know what
23 the Commission will do, and I don't know if it'll
24 even be necessary to address it in and FSEIS
25 supplement. But that's an example of something that

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1 could or perhaps will not be addressed.

2 So I think we're best off at this point
3 simply to leave it at that and indicate to you that
4 those two issues which were of concern to the Board
5 will be addressed and other matters may be as well.

6 CHAIRMAN MCDADE: But as of this time,
7 there are no specific other matters that have
8 definitely been identified?

9 MR. TURK: That's correct.

10 CHAIRMAN MCDADE: Okay.

11 MR. SIPOS: And, Your Honor, I had one
12 last issue. It's a personal issue. I am scheduled to
13 take a vacation out of the country. And I will be out
14 of the office and without Blackberry or communication
15 starting on Saturday. And in my absence, Assistant
16 Attorney General Kathryn Deluca or Lisa Burianek will
17 be doing a fantastic job.

18 CHAIRMAN MCDADE: How long are you going
19 to be in that enviable position?

20 MR. SIPOS: For three weeks, 20 days, Your
21 Honor.

22 CHAIRMAN MCDADE: God bless you.

23 MR. SIPOS: Well, it's been, as Your Honor
24 has pointed out, it's been seven years on this
25 proceeding. And it's our first vacation overseas

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1 during that time. So we're looking forward to it.

2 CHAIRMAN MCDADE: Okay. Well, let me put
3 us on mute right now to see, and have a brief
4 discussion with Judge Kennedy and Judge Wardwell. And
5 we will come back on in a few minutes.

6 (Whereupon, the above-entitled matter went
7 of the record at 12:53 p.m. and resumed at 12:56 p.m.)

8 CHAIRMAN MCDADE: Okay. This is Judge
9 McDade back on the line. Before we ring off, do any
10 of the parties have anything further during this
11 hiatus that you wish to bring to our attention?

12 (No audible response)

13 CHAIRMAN MCDADE: Apparently not. We're
14 going to terminate this proceeding. I know we didn't
15 have any input from Riverkeeper here. If there's
16 anything that you wish to add on this, this is your
17 time to do it, or any questions that you have. Does
18 Riverkeeper have anything to add?

19 MS. BRANCATO: Thank you, Your Honor.
20 This is Deborah Brancato for Riverkeeper. Nothing at
21 this time. I know my colleague did join. So,
22 Phillip, did you have anything?

23 (No audible response)

24 CHAIRMAN MCDADE: Okay.

25 MS. BRANCATO: Apparently not.

1 CHAIRMAN MCDADE: And what about
2 Cortlandt? Do you have anything to say?

3 (No audible response)

4 CHAIRMAN MCDADE: Okay. Apparently not.
5 What I would ask before we ring off, and perhaps not
6 just ask but direct, Entergy indicated that they
7 should be making a submission with regard to the AMP
8 issues by August 7th.

9 What we would direct the staff to do is,
10 once they get that, to review it preliminarily and by
11 September 1st give us an estimate of how many man
12 hours it's going to take to review that and whether or
13 not the 7 November date for the submission of the
14 supplement and the SER remains realistic, or if not,
15 you know, what would be?

16 Likewise, we would direct that the staff
17 advise us with regard to the review of the May 6th,
18 2013, engineering reports on NY-35 and NY-36 to give
19 a general description of how many man hours have gone
20 into that review to date and how many man hours you
21 anticipate will be necessary or the staff anticipates
22 will be necessary prior to the publishing of the
23 supplement, understanding of course that if additional
24 information comes in that would affect it and that
25 same with regard to aquatic impacts. And if you can

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1 do that within the next two weeks.

2 The Board has nothing else. That being
3 the case, if you all could stay on the line for a few
4 moments after we ring off so that if the court
5 reporter has any questions with regards to names or
6 spellings that that can be answered. And once you've
7 satisfied the court reporter, you can then ring off.

8 The other is we will invite but not
9 require any of the parties to submit in writing to us
10 any suggestions that you have for the Board that you
11 think would help expedite a resolution of this
12 proceeding, anything that hasn't been, you know,
13 discussed so far, for example, the suggestion that we
14 move ahead on the AMP contentions as soon as possible
15 after the supplement is issued, hopefully in November,
16 to be able to hopefully resolve NY-25, NY-26 and NY-
17 38.

18 MR. TURK: Your Honor, sir, this is
19 Sherwin Turk. I hate to interrupt. We, the staff,
20 would be very happy to provide you our best estimate
21 as to SSER and FSEIS publication dates.

22 We cannot give you estimates of man hours.
23 We haven't tabulated that. And frankly, I don't think
24 that it's something that we'd be willing to do. We
25 will, however, do the best that we can to help you

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1 understand our schedules for your own scheduling
2 purposes, Your Honor.

3 CHAIRMAN MCDADE: When you say that you
4 haven't tabulated it, you know, having some
5 familiarity with the NRC time procedures, it seems
6 like when I work on a particular matter, I'm required
7 to indicate how many hours that I have spent on it.

8 So I assume that the NRC staff, as
9 reporting to the same HR people in order to get paid,
10 has a list of how many hours they spend on a
11 particular matter.

12 And what I take, what you're saying is
13 that you will not provide the information. And based
14 on that, the Board will just have to assume that, you
15 know, there have been very, we cannot assume that all
16 of the time over the past year has been spent
17 productively since you've had the information for a
18 year, more than a year, and are unable to say whether
19 or not you've spent more than an hour on it.

20 So I guess the Board should assume, since
21 you're unwilling to provide the information, that the
22 information would reflect badly on the staff and its
23 moving forward expeditiously and, when you ask for
24 time to do things in the future, to operate on that
25 assumption.

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1 That being said, the status conference is
2 terminated. Thank you, gentlemen, ladies.

3 (Whereupon, the above-entitled matter went
4 off the record at 1:02 p.m.)

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