

Official Transcript of Proceedings
NUCLEAR REGULATORY COMMISSION

Title: In the Matter of:
Entergy Nuclear Operations, Inc.
(Indian Point Nuclear Generating Units 2-3)

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

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

Location: Teleconference

Date: November 5, 2015

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UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

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ATOMIC SAFETY AND LICENSING BOARD PANEL

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HEARING

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

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Thursday, November 5, 2015

Teleconference

BEFORE:

LAWRENCE G. MCDADE, Chairman

DR. MICHAEL F. KENNEDY, Administrative Judge

DR. RICHARD E. WARDWELL, Administrative Judge

1 APPEARANCES:

2 On Behalf of the Nuclear Regulatory Commission

3 Sherwin E. Turk, ESQ.

4 David E. Roth, ESQ.

5 Brian Harris, ESQ.

6 of: U.S. Nuclear Regulatory Commission

7 Office of the General Counsel

8 Mail Stop O-15D21

9 Washington, DC 20555-0001

10 301-415-1533

11 sherwin.turk@nrc.gov

12

13 On Behalf of the Applicant, Entergy Nuclear

14 Operations, Inc.

15 Paul M. Bessette, ESQ.

16 Kathryn M. Sutton, ESQ.

17 Raphael Kuyler, ESQ.

18 of: Morgan, Lewis & Bockius, LLP

19 1111 Pennsylvania Avenue, NW

20 Washington, DC 20004

21 202-739-5796

22 pbessette@morganlewis.com

23

24 On Behalf of the State of New York

25 John J. Sipos, ESQ.

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1 Lisa S. Kwong, ESQ.
2 Mihir Desai, ESQ.
3 Assistant Attorneys General
4 of: Office of the Attorney General of the State of
5 New York
6 The Capitol, State Street
7 Albany, NY 12224
8 518-402-2251
9 john.sipos@ag.ny.gov

10

11 On Behalf of Riverkeeper, Inc.

12 Deborah Brancato, ESQ.
13 of: Riverkeeper, Inc.

14 20 Secor Road
15 Ossining, NY 10562
16 800-21-RIVER

17 dbrancato@riverkeeper.org

18

19 On Behalf of Westinghouse

20 David A. Repka, ESQ.
21 of: Winston & Strawn, LLP

22 1701 K Street, NW
23 Washington, DC 20006-3817
24 202-282-5726
25 drepka@winston.com

P R O C E E D I N G S

1:33 p.m.

JUDGE MCDADE: We're now on the record.

We are here in the matter of Entergy Nuclear Operations, Inc. Application for License Renewal for the Indian Point Nuclear Generating Units 2 and 3. These are Docket Numbers 50-247-LR and 50-286-LR.

My name is Lawrence McDade, the Chairman of this Licensing Board. With me are Judges Wardwell and Kennedy.

At this point, I would like to go through the parties and ask them to identify who is present for the parties.

For the NRC staff?

MR. TURK: Good afternoon, Your Honor. This is Sherwin Turk and with me are David Roth, Brian Harris and Michael Wentzel.

JUDGE MCDADE: From Entergy?

MR. BESSETTE: Yes, Your Honor, this is Paul Bessette and with me I have Kathryn Sutton and Ray Kuyler.

JUDGE MCDADE: From New York State?

MR. SIPOS: Hi, good afternoon, Your Honor. This is John Sipos. There are five of us

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1 here, Assistant Attorney General Lisa Kwong, K-W-O-N-
2 G, Assistant Attorney General Mihir Desai, D-E-S-A-I,
3 Legal Assistant Siobhan Blank, S-I-O-B-H-A-N, and
4 Legal Assistant Theresa Manzi, as well as myself,
5 Sipos, S-I-P-O-S.

6 JUDGE MCDADE: From Riverkeeper?

7 MS. BRANCATO: Yes, Your Honor, this is
8 Deborah Brancato from Riverkeeper.

9 JUDGE MCDADE: And, from Westinghouse?

10 MR. REPKA: This is David Repka for
11 Westinghouse. On a separate line from Pittsburgh on
12 mute are in-house counsel, Rick Coldren and Joe
13 Spadacene and I believe Bart Cowan is on the line
14 separately as well.

15 JUDGE MCDADE: Okay. There was a Motion
16 from Westinghouse to appear specially. The Motion was
17 somewhat vague as to whether it included just this
18 status conference or also the hearing.

19 We granted the Motion and Westinghouse is
20 here appearing specially at this status conference.

21 We also want to note that Westinghouse is
22 not required to but may be present appearing specially
23 during the course of the hearing in the event that
24 they wish to protect proprietary rights of any
25 documents that, hopefully, will not be an issue, but

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1 could be.

2 So, you are invited to be at the hearing
3 and to participate to the degree of offering
4 objections with regard to any public discussion of
5 documents or data that you view as to be proprietary.

6 MR. REPKA: Thank you, Your Honor and Mr.
7 Coldren does plan to be at the hearings.

8 MR. SIPOS: Your Honor, this is John Sipos
9 for the State of New York.

10 I would like to, if I may on behalf of the
11 State just briefly address that issue, if I may?

12 JUDGE MCDADE: Yes. Before you do, let me
13 just say one thing a little bit out of the order I had
14 planned to discuss it in.

15 We recognize that there is a pending
16 Motion with regard to certain proprietary documents of
17 Westinghouse. The Commission has indicated they're
18 planning to have an affirmation session this coming
19 Monday that will address the pending appeal.

20 And, we think it would be imprudent for us
21 to rule on the pending New York Motion at this time
22 until whatever guidance we might receive from the
23 Commission on Monday is received.

24 So, although that Motion, we had hoped to
25 be able to resolve that at this particular status

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1 conference, we're not going to. We are going to hold
2 off on that.

3 We will allow the parties to make any oral
4 discussion they think would be helpful at this time,
5 but also allow the parties 48 hours after the
6 Commission rules to submit any supplemental briefing
7 on that issue. And, we will then rule on the Motion
8 of New York prior to the beginning of the hearing,
9 hopefully, that prior week, but if not, at the
10 beginning of the hearing.

11 That said, Mr. Sipos?

12 MR. SIPOS: Thank you.

13 And, I understand what I -- that I'm going
14 to bring up some issues. But, right now, they will
15 only be focused on Westinghouse's Motion to Specially
16 Appear that was filed last Thursday.

17 And, the State was planning on submitting
18 a response to that. We do recognize at the State that
19 Your Honors have issued a ruling.

20 Nevertheless, we felt that the Motion by
21 Westinghouse was not accurate in its discussion of the
22 consultation process and New York's position. And, we
23 were in the process, as I said, of preparing a written
24 response and the State is interested in going forward
25 in submitting that and would like to do so and we

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1 would be able to do so by tomorrow, Friday, which
2 would be within the time that would ordinarily be
3 permitted.

4 We recognize that Your Honors would like
5 to resolve that issue and, in fact, from your
6 perspective, have resolved that issue. But, the State
7 has not been able yet to present its position on that
8 given the Board's ruling.

9 JUDGE MCDADE: Okay. Go ahead and file
10 that by close of business tomorrow. In face of what
11 New York files, which is basically going to be asking
12 us to reconsider that decision, any replies would be
13 due at the same time as any additional information
14 based on the Commission's ruling on Monday would have
15 to be in within 48 hours after the Commission's
16 ruling.

17 So, we'd anticipate just a single
18 submission that would offer the parties views on
19 whether Westinghouse should be allowed to participate
20 specially and also whether or not there's anything
21 additional that they want us to take into
22 consideration based on whatever guidance the
23 Commission give us this coming Monday.

24 MS. SIPOS: Thank you, Your Honor.

25 JUDGE MCDADE: Okay. The next thing is we

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1 have a list of individuals who are going to represent
2 the parties at the hearing. I think there's four from
3 the staff, six from Entergy, five from New York, three
4 from Riverkeeper and now two from Westinghouse. We
5 also have a list of the witnesses.

6 At the earlier hearing, there were other
7 individuals that the parties wanted to have present
8 who not necessarily would be on the proprietary list,
9 people who have signed the nondisclosure agreement.

10 But, we have no idea how many people are
11 going to show up as spectators. Last time, at the
12 beginning of the session, it was quite full. But, if
13 any of the parties have a list of people that they
14 think it is important for them for their jobs to be
15 present, whether NRC staffers, Entergy employees or
16 members from employees of the State of New York or
17 members of the Riverkeeper organization, if you can
18 put them on a list, we will have one or two rows at
19 the front of the spectator area reserved for them.
20 And, if their names are on the list, they can enter
21 the special entrance that will be marked.

22 And, it may be that we don't have a large
23 crowd the way we did at the earlier hearing in 2012
24 and that won't be necessary. But, if you do want to
25 have anyone on that list, please supply us with those

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1 list of names by the end of next week.

2 Now, if it is necessary for us to have a
3 in camera session to discuss proprietary information,
4 those people would not be present. It would be only
5 those individuals representing the parties that we
6 just listed and the witnesses who will be present at
7 those sessions.

8 Is there any question with regard to that?

9 MS. BESSETTE: Yes, Your Honor. This is
10 Paul Bessette.

11 Some of the folks who we would provide the
12 names for who would be attending are Entergy employees
13 and have access to proprietary. So, we would like to
14 add them to the authorized access list. We could
15 provide that as soon as tomorrow, if that would help.

16 JUDGE MCDADE: Yes, it's my understanding
17 we already received a list of people who would be, you
18 know, present during any closed session. But, if you
19 wish to augment that, you know, you may do so. And,
20 it's only people who are on those lists who will be
21 present. Now, and this would only be people who have
22 signed the nondisclosure agreements.

23 MR. BESSETTE: We will supplement that
24 list. Thank you, Your Honor.

25 JUDGE MCDADE: Okay. And, again, Entergy

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1 has indicated that they want six seats at the table.
2 Hopefully, I don't know if you're going to have
3 additional individuals, you know, paralegals or
4 associates who would be present as well, but we will
5 try to set up seating directly behind your counsel
6 table, you know, in the event that you are going to
7 have additional people. And, if so, you know, please
8 give us an idea of how many those might be.

9 And, the same goes for the NRC staff, New
10 York, Riverkeeper.

11 MR. BESSETTE: It's greatly appreciated,
12 thank you.

13 JUDGE MCDADE: Okay. The next, there was
14 an issue with regard to a request by New York for a
15 white board to be present.

16 Mr. Sipos, who wants the white board and
17 why?

18 MR. SIPOS: Yes, Your Honor, John Sipos
19 with the State of New York.

20 Dr. Richard Leahy has suggested and asked
21 -- has suggested that a white board be available and
22 has requested that we raise this issue with Your
23 Honors.

24 There may be occasion, there may likely be
25 occasions during his testimony where Dr. Leahy may

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1 feel that it is helpful to the parties and to the
2 Board if he could, you know, graphically present
3 something on a board to, you know, illustrate some
4 aspect of his testimony. And, we think -- or the
5 State of New York would join in that request.

6 We could also, you know, if possible --
7 I'm sorry, that's it. Thank you.

8 JUDGE MCDADE: Let me interrupt at this
9 point, Mr. Sipos, and make a suggestion here.

10 One of the problems with the white board
11 is our ability to then capture that for the record.
12 And, a question arises, we do have the ability that he
13 can have a mouse and he can draw any diagrams directly
14 on the computer which can be displayed on everybody
15 else's monitor as well as on the screens and then we
16 would be able to mark that as an exhibit and have it
17 captured in the record.

18 Is that something that you think would
19 work? And here's an alternate suggestion that I have
20 and if it is agreeable to the parties, if anybody
21 objections, then, you know, we won't do it that way.

22 We could either have Mr. Sipos or Dr.
23 Leahy contact Mr. Welkie, our technical expert,
24 directly so that they can understand exactly how our
25 technology works, how it would be available and how it

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1 could be used in a way that would then preserve the
2 drawing, the sketch, whatever as an exhibit.

3 And, only if they would not be discussing
4 any substantive aspect of the case, only that
5 technical aspect of how he could make those drawings
6 and they can be preserved.

7 Is there any objection to that procedure
8 from New York?

9 MR. SIPOS: No, we will, on behalf of the
10 State, we will ask Dr. Leahy that.

11 And, one other just logistic issue --

12 JUDGE MCDADE: Before you go on, Mr.
13 Sipos, what about from the other parties. Does New
14 York, Entergy or Riverkeeper have an objection to
15 that, to have either Dr. Leahy or counsel for New York
16 contact Mr. Welkie directly to discuss the technology,
17 again, not substance, just technology?

18 MR. BESSETTE: Your Honor, this is Paul
19 Bessette.

20 We don't have an objection, but we would
21 just foreshadow that we would object to any
22 handwritten drawings that we haven't seen being
23 entered as an exhibit. We could call it a
24 demonstrative, whatever we want to call it, but
25 because we will have not seen and will not have been

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1 presented in any testimony, we would certainly object
2 to any spontaneous drawings as an exhibit.

3 JUDGE MCDADE: Well, the evidence that
4 would be received would be the testimony of Dr. Leahy
5 and that's going to be on the record. But, any
6 drawing that he has would be, you know, an exhibit for
7 identification, you know, just so that, you know, for
8 the record, people would be able to know what it is
9 the Board looked at while he was testifying.

10 It wouldn't be received as an exhibit in
11 evidence, but it would be marked as an exhibit for
12 identification and made part of the record. Would
13 that --

14 MR. BESSETTE: Thank you, Your Honor, as
15 long as that technology would be available to others,
16 I imagine that's a good solution. Thank you.

17 JUDGE MCDADE: And, the technology would
18 be available to others and, in that regard, after the
19 status conference, we will send to the parties how to
20 get in contact with Mr. Welkie and if any of the other
21 parties have a witness who they believe would want to
22 make use of any of this technology, that, you know,
23 have, you know, contact Mr. Welkie directly with
24 regard to it.

25 And, again, what we're talking about is

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1 just if they need to do something, you know, as you
2 know from our previous hearing, if there's an exhibit
3 and someone wants to highlight it, it is very easy for
4 Mr. Welkie to do that.

5 Now, if they say, New York Exhibit 25,
6 page 14, first paragraph, he can click on that
7 immediately and then yellow highlight the section that
8 the person wants to make reference to or to draw our
9 attention to.

10 But, if there's any other kind of
11 technology that wasn't used at the previous hearing,
12 that any of the parties want to discuss, you know,
13 rather than doing it, you know, formally, you know,
14 with the witness talking to counsel, counsel talking
15 to the Board, the Board talking to Mr. Welkie and then
16 going back through that chain, just have the parties
17 contact Mr. Welkie directly. And again, not to talk
18 any substance whatsoever, all you're going to be
19 talking about is the use of the available technology.

20 MR. TURK: Your Honor, this is Sherwin
21 Turk for the staff.

22 JUDGE MCDADE: Yes, Mr. Turk?

23 MR. TURK: I would note that all the
24 parties have had an opportunity to submit testimony in
25 advance. And, any drawings or graphs or charts that

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1 a party felt were necessary to illustrate their case
2 could have been and should have been put into the
3 testimony. I'm --

4 JUDGE MCDADE: Well, what we're
5 anticipating, Mr. Turk, is the Board is going to be
6 asking the witness questions.

7 MR. TURK: Yes.

8 JUDGE MCDADE: If all of our questions
9 were answered by the testimony that was submitted, we
10 wouldn't need to have the hearing. We'd just write up
11 our initial decision and move on.

12 So, what I anticipate is that Dr. Leahy,
13 having spent years as a professor, may think that in
14 responding to our questions, it would be helpful for
15 him to be able to what professors tend to do which is
16 scribble. And, if he does, you know, we want him to
17 be able to answer our questions and we want to be able
18 to preserve for the record anything that comes before
19 us.

20 So, I agree with you, this is not
21 suggesting that this is an opportunity to introduce
22 new exhibits that could have and should have been
23 presented earlier. We have a number of graphs that
24 are already in the record that was submitted along
25 with the pre-filed testimony. And, it may be

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1 unnecessary for any of the witnesses to use any of
2 this technology because they'll be able to verbally
3 respond to our questions in a way that both they and
4 we feel is adequate.

5 But, this is just an option that is
6 available or may be available and may be utilized, not
7 necessarily will be.

8 MR. TURK: I appreciate that, Your Honor.
9 And, I certainly would support any need that the Board
10 has for clarification of answers to their questions.
11 But, I would not look at this as an opportunity for
12 Dr. Leahy to stand upon his testimony unless there's
13 something that the Board has asked him and the answer
14 that he gives by itself is not clear enough and that
15 only an illustration could help.

16 So, I ask New York to keep that in mind
17 because I don't want to be in a position of objecting
18 for the first time. I want them to understand the
19 position that we will take.

20 JUDGE MCDADE: Well, it isn't really up
21 for New York to object. The Board will take control
22 of it and we anticipate we ask questions, the
23 witnesses will answer them. It's not going to be like
24 the presidential debates where a question just sort of
25 opens it up for a new area to explore.

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1 The next question, New York had raised
2 with regard to Dr. Duquette's availability.

3 Mr. Sipos, what's the problem with Dr.
4 Duquette?

5 MR. SIPOS: Yes, some background. Dr.
6 Duquette has been working with United States Navy in
7 connection with power systems, fuel and refueling of
8 certain ships. And, in fact, there was a Presidential
9 class ship that was -- an event for that was moved
10 from the week of Thanksgiving up to the week of the
11 hearing and the Navy had asked him to be there in
12 Virginia.

13 But, I can also report to the Board and
14 the parties that I've spoke to Dr. Duquette this
15 morning and he has informed the Navy that, given the
16 importance of this hearing and the fact that it was
17 scheduled before the Navy's schedule change that Dr.
18 Duquette has informed the Navy that he will be unable
19 to attend that event in Norfolk.

20 So, I think we have --

21 JUDGE MCDADE: Is that event only on
22 Wednesday afternoon?

23 MR. SIPOS: I don't know the precise time
24 of the day. I think it is -- I don't know if it
25 starts in the morning -- it's a change of command

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1 ceremony and I do not know how long that would be.

2 JUDGE MCDADE: But, in any event, Dr.
3 Duquette is now planning to be there for this because
4 he's only going to be a witness on 38, not 25 and 26,
5 correct?

6 MR. SIPOS: That is correct. And, that
7 actually ties into another question that I was
8 thinking about in terms of scheduling. And, I know
9 the Board has said that it's going to take the
10 contentions in numerical sequence, and I realize that
11 it is, having gone through this before, I know all of
12 us have gone through this before, it's difficult to
13 predict when a contention might start, but any insight
14 that the Court could share with the State of New York
15 and others about when 38 might start, given that Dr.
16 Duquette is an expert only on that, would be greatly
17 appreciated and very helpful for numerous reasons.

18 JUDGE MCDADE: My best estimate would be
19 Thursday, although it could be Wednesday. I cannot
20 conceive, at this point, that we would get to 38 on
21 either Monday, which is a shortened day or Tuesday.
22 But --

23 MR. SIPOS: Thank you, Your Honor.

24 JUDGE MCDADE: You know, that's -- it will
25 depend very much on how the testimony comes out. It

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1 may be that witnesses will answer our questions and
2 everything will be clear in our minds and we will move
3 very quickly.

4 There's no historical precedent for that,
5 but it could happen.

6 MR. SIPOS: And, Your Honor, a related
7 question, Dr. Duquette did ask me, he's been holding
8 the week of November 30 which was segregated out a
9 long time ago, but I did not want to speak on behalf
10 of the Board, but my personal understanding is that is
11 not a week that we are likely to be in Tarrytown.

12 JUDGE MCDADE: We will finish this by the
13 20th, period. The hearing on the Track 2 contentions
14 will be over by the close of business on the 20th.

15 MR. SIPOS: Thank you. So, I'm going to
16 inform the New York expert witnesses that the week of
17 the 30th is available for whatever --

18 JUDGE MCDADE: And, as far as our schedule
19 goes, we're planning on starting on Monday at noon.
20 We want to make sure we have all the equipment set up
21 because we can't necessarily get into the room to set
22 it up early and we don't want people arriving only to
23 be told that we're still working out technical
24 difficulties. So, we're going to be starting late on
25 Monday starting at noon.

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1 We would anticipate going to 6:00.
2 There's no magic in that number. We would look for a
3 reasonable breaking point around 6:00. We would be
4 taking, you know, at least one or two short breaks
5 during the course of the afternoon.

6 The other days, we would anticipate
7 starting at 8:00, taking an hour for lunch, taking a
8 short break in the morning, a short break in the
9 afternoon and closing, again, about 6:00. No magic to
10 that number, looking for a good breaking point.

11 If we are going slower than anticipated,
12 again, with the concept that we are going to finish by
13 close of business on the 20th, we may have to start
14 earlier or stay later. But, at this point, we think
15 that schedule should work out and allow us to finish
16 by the close of business on the 20th if not before.

17 MR. TURK: And, Your Honor, one point.
18 Sherwin Turk, again.

19 JUDGE MCDADE: Yes, Mr. Turk?

20 MR. TURK: I don't know if you're planning
21 to have all witnesses for all parties together as
22 we've done in the past.

23 JUDGE MCDADE: Yes.

24 MR. TURK: That is going to be plan then?
25 For contention?

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1 JUDGE MCDADE: Yes.

2 MR. TURK: I would ask you when you're
3 scheduling the days, I think 8:00 to 6:00 is a very
4 long time for a witness to be on the stand. I think
5 it's going to affect performance.

6 And, if there's any way to make that a
7 much shorter day, I think everyone would appreciate
8 that, maybe from 9:00 to 6:00 or --

9 JUDGE MCDADE: Well, at this point, I'm
10 not going to change it. We are going to take breaks.
11 We also advise the witnesses if, at any time, they
12 felt that they needed a break, you know, that they
13 could notify the Board to allow for a short break. We
14 don't want people sitting there in discomfort.

15 At the end of the first day, we'll
16 probably have a much better idea if we're finished
17 with contention 26 by the end of the first day, you
18 know, we may be starting at noon and ending at 2:00
19 each day for the rest of the week. But, I don't
20 anticipate that.

21 So, I realize it's a long day, but I also
22 recognize the necessity that we finish this by the
23 20th, that we don't have the option that we would have
24 if the hearing were held here in Rockville at our
25 hearing where we can just have the room available the

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1 following Monday and just continue over.

2 You know, here, we need to be out of the
3 room by Friday, on Friday. So, again, we will try, if
4 it is possible and it looks like we're going quicker
5 than anticipated, you know, we certainly, you know,
6 can break earlier and would, you know. This is not a
7 test of endurance. We want the witnesses, you know,
8 we're looking to them for information, not just to,
9 you know, exhibit endurance.

10 Because, remember, all the Member of the
11 Board are pretty old and we don't have much endurance
12 either.

13 Okay, with the handling of proprietary
14 documents, if anybody calls up an exhibit, Mr. Welkie
15 is going to pull up the public copy of that exhibit so
16 that if it's a reference to an exhibit that contains
17 what has been designated as proprietary information,
18 that will not be shown.

19 If, for some reason it is necessary to put
20 up the non-public exhibit, that would be shown only on
21 the monitors in front of the witnesses and counsel and
22 not on the screens that would be viewed by the public
23 or the press.

24 And, if it is necessary to have a
25 discussion where the testimony, the questions can only

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1 be answered by discussing proprietary information, we
2 would do that in an in camera session.

3 We are hoping to avoid that as much as
4 possible, speaking in general terms. We would advise
5 the parties to advise their witnesses not to be
6 offering up information that is designated as
7 proprietary when answering the question does not
8 require. And, if they think it does require it, they
9 should note that before they just blurt it out onto
10 the public record.

11 The burden, you know, we're allowing
12 Westinghouse tentatively to be present and Entergy,
13 that they would have an obligation to speak up and
14 object. We don't want you to just sit there and be
15 quiet and then file months after the hearing
16 objections. At that point, the cat would be out of
17 the bag and any harm that would be done already would
18 have been done.

19 With regard to pending Motions, at least
20 on my record, we have the Motion to Make Public those
21 documents which we've already discussed and we have
22 the staff Motion to Correct the Record which the Board
23 is going to grant and an Order to that effect will go
24 out today.

25 With regard to the exhibit lists, we've

1 received the tailored exhibit list from the parties.
2 What we anticipate doing is to admitting all of the
3 documents listed on those exhibit lists that have not
4 previously been admitted so that they will all be part
5 of the record.

6 We realize that the opposing parties have
7 only had a short period of time to review these
8 documents, so we would direct that if you have any
9 objections to the acceptance of any of those exhibits,
10 that you should go ahead and file a Motion to Strike
11 by Thursday of next week so that we'll have an
12 opportunity to get that and read it and we can move on
13 it at the beginning of the session in Tarrytown the
14 following Monday.

15 So, at this point, we are going to admit
16 NRC Revised Document 1001 and all the exhibits listed
17 thereon, Entergy Exhibit 1000726, all of the exhibits
18 listed thereon, New York Exhibit R25001 and all the
19 exhibits listed thereon and Riverkeeper Exhibit 14001
20 and exhibits listed thereon.

21 And again, the acceptance of those
22 exhibits is subject to a Motion to Strike by any of
23 the parties that we would then rule on at the
24 beginning of the session on the 16th and any of those
25 Motions to Strike should be submitted no later than

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1 close of business next Thursday.

2 Are there any questions or objections to
3 that? Okay, apparently not.

4 As far as the set up of the room, we're
5 going to do it a little bit differently at the request
6 of my colleagues.

7 The witnesses are going to be directly in
8 front of the Judges, unlike last time where they were
9 off to the side. So, right across the front, we have
10 the witnesses for NRC, Riverkeeper, New York and
11 Entergy across.

12 That the counsel tables would be
13 perpendicular to the witnesses on the side with
14 Riverkeeper and New York on one side and the staff and
15 Entergy on the other side.

16 All the witnesses tables would have
17 monitors on them to view the exhibits as would counsel
18 table. As I said earlier, we would try to have
19 additional seating behind counsel table so any of
20 staff assistance or paralegals or associates, you
21 know, would be able to be present to be spoken to by
22 the parties, the counsel of record, in the particular
23 case.

24 The transcripts, the Board is not
25 anticipating an expedited copy of the transcript. If

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1 any of the parties to order daily transcripts, you
2 need to contact the court reporter directly.

3 With regard to security for the room,
4 it'll be the same as at the previous hearing. After
5 the sessions, the room will be locked and there will
6 be security both -- you're responsible for your own
7 security. You can either leave your equipment and
8 documents in the room or you can take them with you
9 when you leave at the end of each sessions.

10 That we will make the room available for
11 counsel at least 30 minutes before each session in
12 order for you to get set up. If anyone thinks that
13 they need more time, you know, we can be flexible on
14 that and then make sure that the room can be opened
15 for your convenience.

16 If 30 minutes is enough for you all to set
17 up, that's fine. If not, just let us know so we can
18 make arrangements to have the room opened earlier.

19 Judge Kennedy, did you have anything else
20 to be taken up at this status conference?

21 JUDGE KENNEDY: No, I have nothing to add
22 to the conference.

23 JUDGE MCDADE: Judge Wardwell?

24 JUDGE WARDWELL: Nothing.

25 JUDGE MCDADE: Okay. At this point, we're

1 not going to set a schedule for post-hearing briefs.
2 We will announce that at the end of the hearing after
3 hearing from counsel. It all depends to a degree on,
4 you know, where we are, you know, mentally at the
5 conclusion of the hearing.

6 Before we go off, I want to go through all
7 of the parties and see if they have anything further
8 to be addressed at this status conference.

9 Mr. Sipos for New York?

10 MR. SIPOS: Yes, yes, Your Honor, John
11 Sipos, State of New York.

12 Last time we -- all the parties brought
13 paper copies of their exhibits for the possible event
14 that there might be some technological glitch, Mandy
15 has reminded me about that and so the State is just
16 raising that issue with Your Honors. How do you --
17 how would you like us to proceed on that?

18 JUDGE MCDADE: We were actually discussing
19 that among ourselves immediately before this status
20 conference.

21 Mr. Welkie informs us that there is no
22 possibility that there will be a technical glitch.
23 So, what we are going to do is to allow the parties,
24 if you wish to bring hard copies, you know, go ahead.
25 But we are not going to require it the way we did last

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1 time.

2 Because last time everybody was tasked
3 with bringing those and schlepping them to Tarrytown,
4 not only preparing them in a hard copy and schlepping
5 them there but schlepping them around and we never
6 made reference to them.

7 So, we're not going to put that onus on
8 you again. If you want the insurance policy of having
9 it, you can bring them, but we're not going to require
10 it.

11 MR. SIPOS: Thank you, Your Honor.

12 JUDGE MCDADE: And, just so you know, with
13 regard to it, that each of the Judges and our law
14 clerks are going to have a laptop that all these
15 exhibits have already been loaded on as will Mr.
16 Welkie.

17 So, the likelihood of all six of our
18 laptops going down at the same time is, given the fact
19 we're using government equipment, it's less than
20 50/50.

21 We also have the general equipment that
22 we're going to have that we're going to be using for
23 the display. We can plug any of our laptops in there
24 in case there is a problem and I assume all of you all
25 will have laptops with the exhibits already on them as

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1 well.

2 So, as I said, in an abundance of caution
3 last time, you know, we required the hard copies but
4 we are going to leave it to your discretion for this
5 hearing.

6 Does that answer your question, Mr. Sipos?

7 MR. SIPOS: Yes, thank you.

8 And, Mr. Welkie and Your Honor, so you've
9 made certain people very happy.

10 JUDGE MCDADE: Okay. Anything further,
11 Mr. Sipos?

12 MR. SIPOS: Not at this time.

13 JUDGE MCDADE: Okay. Entergy?

14 MR. BESSETTE: Yes, Your Honor, just a
15 couple of follow up matters.

16 We noted that Riverkeeper on their list
17 for access included somebody named Chris Len. We're
18 not aware of that they've signed a nondisclosure
19 agreement per our records. So, we would ask Deborah
20 Brancato to perhaps follow up on that if they're going
21 to stay for any proprietary portions.

22 JUDGE MCDADE: Okay. Ms. Brancato, have
23 they signed the nondisclosure agreement?

24 MS. BRANCATO: Excuse me, Mr. Len has not
25 yet signed that. He is our new Hudson River Program

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1 Director who replaced Phillip Musegaas who previously
2 counseled in this proceeding. And, I will be sure to
3 follow up on that and have Mr. Len sign that and file
4 it and he has to be present for those portions of the
5 hearing.

6 JUDGE MCDADE: Okay, thank you.

7 Actually, while I've got you, I probably
8 right after talking to New York should have asked
9 Riverkeeper before going to Entergy. But, do you have
10 anything further to be taken up at this status
11 conference, Ms. Brancato?

12 MS. BRANCATO: Oh, you're asking me? I
13 apologize.

14 JUDGE MCDADE: Yes.

15 MS. BRANCATO: I didn't quite follow that.
16 Yes.

17 JUDGE MCDADE: Yes.

18 MS. BRANCATO: I do not. Thank you, Your
19 Honor.

20 JUDGE MCDADE: Okay. Going back to
21 Entergy, anything further to be taken up?

22 MR. BESSETTE: Yes, Your Honor, one other
23 matter.

24 As we notified the parties yesterday, we
25 intend to file a Motion to File several corrected

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1 exhibits. Westinghouse has updated some reports, so
2 we'll be filing corrected exhibits, very, very, very
3 minor notations in our testimony and just to perhaps
4 a different page number.

5 We haven't heard back from the parties
6 yet, but we just want to alert the Board to that.

7 JUDGE MCDADE: Okay. A little bit more
8 information. In the cover letter we had with the
9 exhibits listed from New York, they indicated that
10 Entergy and Westinghouse had disclosed additional
11 calculation documents and that Entergy and
12 Westinghouse informed the parties that they are likely
13 will seek to present those documents to the Board and
14 introduce them into the record.

15 Are those the documents you're talking
16 about?

17 MR. BESSETTE: I haven't reviewed the
18 filing of New York, but I'm assuming that is correct,
19 yes, Your Honor.

20 JUDGE MCDADE: Okay. Now, will this
21 require a new exhibit list? If you are going to be
22 filing them, then just file a, you know, it would just
23 be Entergy R1726, I guess it would be. You know, an
24 updated exhibit list that would have those exhibits
25 listed on them.

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1 MR. BESSETTE: Thank you, Your Honor,
2 we'll do that.

3 And, finally, we appreciate the Board
4 guidance on propriety nature of the documents and to
5 minimize that, we fully support that. But, we would
6 note that the testimony on New York State 26 is
7 largely based on proprietary documents. So, I think
8 out of the three contentions, that one will be the
9 most challenging to avoid that discussion.

10 JUDGE MCDADE: Okay. Well, although there
11 is certainly proprietary documents that relate to
12 that, we are hopeful that witnesses will be able to
13 answer the majority of our questions by discussing
14 general concepts and general understandings and, you
15 know, for example, you know, at least in our view, it
16 is perhaps if you're giving very specific tough
17 figures, it may address proprietary information
18 whereas talking about tough figures that are rapidly
19 approaching one, rapidly approaching unity, whatever
20 would not necessarily implicate proprietary
21 information.

22 So, we don't, you know, hopefully, we
23 don't have a significant difference of opinion as to
24 what constitutes proprietary information. And, as I
25 said, we ask that the parties to consult with their

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1 witnesses and advise them that when answering the
2 questions, to do it in the general before the specific
3 and, if the general answers are questioned, that may
4 be enough and, if we need more specifics, we can then
5 do that and we'd probably do it at a breaking point,
6 either, you know, at a time coming at the beginning,
7 after a lunch break or at the end of the day, you
8 know, so that, what we don't want to do is to have if
9 there are significant numbers of spectators present,
10 having a, you know, a march in and out and in and out.

11 So, hopefully, we will keep that to a
12 minimum with the nature of our questions. And, as I
13 said, to the degree that witnesses can answer in the
14 general without the specifics and to the degree that
15 we need more specifics, we can do that at a closed
16 session.

17 Does that answer your question?

18 MR. BESSETTE: Yes, Your Honor. And, we
19 have no further matters.

20 JUDGE MCDADE: Okay. Mr. Turk?

21 MR. TURK: Staff has nothing further, Your
22 Honor. Thank you.

23 JUDGE MCDADE: Okay. Westinghouse, do you
24 have anything further?

25 MR. REPKA: Yes, one minor administrative

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1 matter.

2 As I mentioned before, Mr. Coldren will be
3 at the hearing from Westinghouse. And, he would be
4 present at both any public and any closed sessions.

5 Our assumption is he would not -- he has
6 not and would not need to file a nondisclosure
7 agreement. He's cleared by Westinghouse regs with the
8 Westinghouse information. But, if the Board feels
9 otherwise, I wanted to find that out.

10 JUDGE MCDADE: It doesn't appear that it
11 would be necessary for he who has already has access
12 to the proprietary information and I assume uses it
13 every day or on a regular basis for his job at
14 Westinghouse would need to sign a nondisclosure
15 agreement which is designed to protect Westinghouse.

16 So, my initial answer to that is no, he
17 would not need to sign the nondisclosure agreement.
18 That said, if any of the parties has an objection to
19 that, file it, you know, along at that same date, 48
20 hours after the Commission rules on the pending
21 appeal.

22 MR. SIPOS: Your Honor, this is John
23 Sipos.

24 On behalf of New York or on behalf of the
25 Protective Order, I would just note that there are

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1 documents in track 2 that are designated as
2 confidential business information from entities other
3 than Westinghouse, such as EPRI. I just note that for
4 the record.

5 JUDGE MCDADE: Okay and thank you for
6 bringing that to my attention and I'm embarrassed that
7 I overlooked that.

8 I think it would be appropriate for the,
9 you know, him to sign the Protective Order prior to
10 the hearing.

11 MR. REPKA: Okay, we'll take care of that.

12 JUDGE MCDADE: Okay, anything further
13 before we cancel, terminate, end this status
14 conference? Okay, apparently, not.

15 Pending issues, one, to the degree
16 appropriate, we will send contact information for Mr.
17 Welkie to all of the parties if they wish to discuss
18 technological issues for presentations with him.

19 That, as far as the pending appeal, the
20 Commission is supposed to rule on Monday. If any
21 parties have anything to add on the pending Motion
22 based on what the Commission rules, they are to do so
23 within 48 hours after that.

24 Any other objections to anything that we
25 have discussed here today tentatively, likewise,

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1 should be done with the exception, I think I gave
2 until close of business Thursday to list any
3 objections to the admissibility of exhibits.

4 Anything further? Any corrections that
5 anyone thinks we need to make or anything further?

6 Mr. Turk?

7 MR. TURK: No, Your Honor.

8 JUDGE MCDADE: Okay, Mr. Sipos?

9 MR. SIPOS: No, not at this time, Your
10 Honor.

11 JUDGE MCDADE: Okay. Anyone from Entergy?

12 MR. BESSETTE: No, Your Honor.

13 JUDGE MCDADE: And, Riverkeeper?

14 MS. BRANCATO: No, thank you, Your Honor.

15 JUDGE MCDADE: Okay, that said, if the
16 parties could remain on the line for a little bit,
17 we're going to sign off and if the court reporter has
18 any issues with regard to spelling or any other
19 matters to make the transcript, you know, you can take
20 that up.

21 And also, if anybody wants to order a
22 daily copy, you may want to raise that with the court
23 reporter at this time to find out what the
24 availability and the pricing of that is.

25 That said, this status conference is

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1 terminated. We will see you all on Monday the 16th.

2 Thank you.

3 (Whereupon, the above-entitled matter went
4 off the record at 2:18 p.m.)

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