

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

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

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

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

Location: teleconference

Date: Monday, July 9, 2012

Work Order No.: NRC-1734

Pages 1141-1192

**NEAL R. GROSS AND CO., INC.**  
**Court Reporters and Transcribers**  
**1323 Rhode Island Avenue, N.W.**  
**Washington, D.C. 20005**  
**(202) 234-4433**

## 1 UNITED STATES OF AMERICA

## 2 NUCLEAR REGULATORY COMMISSION

3 + + + + +

## 4 ATOMIC SAFETY AND LICENSING BOARD PANEL

5 + + + + +

## 6 STATUS CONFERENCE

7 -----x

8 In the Matter of: : Docket Nos.

9 ENTERGY NUCLEAR : 50-247-LR, 50-286-LR

10 OPERATIONS, INC. :

11 (Indian Point Nuclear : ASLBP No.

12 Power Generating Units : 07-858-03-LR-BD01

13 2 and 3) :

14 -----x

15 Monday, July 9, 2012

16 Via teleconference

17  
18 BEFORE:

19 LAWRENCE G. McDADE, Chairman

20 MICHAEL F. KENNEDY, Administrative Judge

21 RICHARD E. WARDWELL, Administrative Judge

22

23

24

25

## 1 APPEARANCES:

2 On Behalf of Entergy, Inc.:

3 PAUL M. BESSETTE, ESQ.

4 JONATHAN M. RUND, ESQ.

5 KATHRYN M. SUTTON, ESQ.

6 of: Morgan, Lewis &amp; Bockius, LLP

7 1111 Pennsylvania Avenue, NW

8 Washington, D.C. 20004

9 (202) 739-5796 (Bessette)

10  
11 On Behalf of the Nuclear Regulatory Commission:

12 SHERWIN E. TURK, ESQ.

13 BRIAN HARRIS, ESQ.

14 BETH MIZUNO, ESQ.

15 DAVID ROTH, ESQ.

16 of: Office of the General Counsel

17 Mail Stop - O-15 D21

18 U.S. Nuclear Regulatory Commission

19 Washington, D.C. 20555-0001

20 (301) 415-1533 (Turk)

On Behalf of the State of New York:

JOHN J. SIPOS, ESQ.

JANICE A. DEAN, ESQ.

of: Office of the Attorney General

of the State of New York

The Capitol

State Street

Albany, New York 12224

On Behalf of the State of Connecticut:

ROBERT D. SNOOK, ESQ.

of: Office of the Attorney General

State of Connecticut

55 Elm Street

PO Box 120

Hartford, CT 06141

On Behalf of Riverkeeper:

PHILLIP MUSEGAAS, ESQ.

DEBORAH BRANCATO, ESQ.

of: Riverkeeper, Inc.

20 Secor Road

Ossining, NY 10562

On Behalf of Clearwater:

MANNA JO GREENE

KARLA RAIMUNDI

of: Hudson River Sloop Clearwater, Inc.

724 Wolcott Avenue

Beacon, NY 12508

On Behalf of Cortlandt:

VICTORIA SHIAH TREANOR, ESQ.

ADAM STOLOROW, ESQ.

of: Sive, Paget & Riesel, P.C.

460 Park Avenue

New York, NY 10022

(212)421-2150 (Treanor)

ALSO PRESENT:

MIKE WENTZEL, NRC

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

(1:37 p.m.)

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

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

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

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

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

From the NRC Staff, Mr. Turk?

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

CHAIRMAN McDADE: Okay, thank you Mr.

1 Turk. From New York?

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

5 MS. DEAN: Yes.

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

8 MS. DEAN: Yes, Your Honor.

9 CHAIRMAN McDADE: Okay, from Riverkeeper?

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

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

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

20 CHAIRMAN McDADE: Thank you. From  
21 Connecticut?

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

23 CHAIRMAN McDADE: From Cortlandt?

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

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

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

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

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

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

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

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



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

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

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

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

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

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

1 I can give you at this point.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 call.

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 MR. BESSETTE: That's Paul Bessette.

19 COURT REPORTER: Thanks a lot.

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

25 MR. BESSETTE: This is Paul Bessette.

1 That is how we have evaluated it.

2 MR. TURK: Yes, Your Honor.

3 CHAIRMAN McDADE: Okay and --

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

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

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

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

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

14 MR. SNOOK: Yes.

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

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

20 CHAIRMAN McDADE: Okay.

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

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

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

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

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

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

9 CHAIRMAN McDADE: Okay.

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

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

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

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

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

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

3 I understood that I had until the 29th.

4 ADMIN. JUDGE WARDWELL: Of what?

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

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

9 MR. SNOOK: Yes.

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

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

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

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

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

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

1 schedule also, Your Honor. Sherwin Turk.

2 MR. SNOOK: Thanks, Sherwin.

3 MR. TURK: May 16th.

4 ADMIN. JUDGE WARDWELL: Okay.

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

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

13 MR. TURK: Yes, Your Honor.

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

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

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

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

23 MR. TURK: Yes, Your Honor.

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

1 testimony.

2 MR. TURK: From the intervenors.

3 MR. BESSETTE: Yes.

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 CHAIRMAN McDADE: Okay.

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

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

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

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

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

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

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

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

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

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 new or amended contentions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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



1 final FSEIS supplement to come out.

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

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

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

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

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

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

10 CHAIRMAN McDADE: Judge Wardwell?

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

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

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

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

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

9 ADMIN. JUDGE WARDWELL: Okay.

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

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

24 But we would --

25 ADMIN. JUDGE WARDWELL: Yes, but as I

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

5 MR. BESSETTE: Well, Your Honor --

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

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

15 MR. TURK: Yes.

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

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

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

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

1 hypothetical to possibly make this more clear.

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

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

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

21 MR. TURK: Pardon me?

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

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

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

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

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

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

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

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 out.

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

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

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

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

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

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

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

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

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

15 CHAIRMAN McDADE: Please.

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

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



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

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

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

14 Thank you.

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

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

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

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

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

25 MS. TREANOR: We are not taking a position

1 on this at this time.

2 CHAIRMAN McDADE: Okay.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 record as it is.

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

5 MR. SNOOK: No, not from Connecticut.

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

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

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

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

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

25 Let's go through with the parties. Does

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

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

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

14 Anything further from the NRC Staff?

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

17 CHAIRMAN McDADE: Mr. Bessette for  
18 Entergy?

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

23 MS. GREENE: It's not Riverkeeper.

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

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

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

11 MS. GREENE: Yes.

12 MR. BESSETTE: Yes, right. Okay.

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

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

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

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

25 CHAIRMAN McDADE: If I said 29 I obviously



1 was in error. Thank you.

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

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

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

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

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

10 MR. SNOOK: No, Your Honor.

11 CHAIRMAN McDADE: From Cortlandt?

12 MS. TREANOR: No, Your Honor.

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

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

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

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

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

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

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

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

15 CHAIRMAN McDADE: Mr. Bessette?

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

20 CHAIRMAN McDADE: Yes.

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

23 CHAIRMAN McDADE: Yes.

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

1 CHAIRMAN McDADE: August 13th.

2 MR. BESSETTE: Thank you.

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

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

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

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

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

1 are moving forward.

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

4 MR. MUSEGAAS: No, Your Honor.

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

7 MS. GREENE: No, Your Honor.

8 CHAIRMAN McDADE: Connecticut?

9 MR. SNOOK: No, Your Honor.

10 CHAIRMAN McDADE: Cortlandt?

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

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

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

21 MS. TREANOR: Thank you.

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

24 ADMIN. JUDGE WARDWELL: No.

25 CHAIRMAN McDADE: Judge Kennedy?

1 ADMIN. JUDGE KENNEDY: No.

2 CHAIRMAN McDADE: Okay, thank you.

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

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25