

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

Title: Entergy Nuclear Operations  
Palisades Nuclear Plant

Docket Number: 50-255-LA-2

ASLBP No. 15-939-04-LA-BD01

Location: teleconference

Date: Wednesday, July 8, 2015

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Pages 1-19

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1 UNITED STATES OF AMERICA

2 NUCLEAR REGULATORY COMMISSION

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4 ATOMIC SAFETY AND LICENSING BOARD PANEL

5 + + + + +

6 HEARING

7 -----x

8 In the Matter of: : Docket No.

9 ENTERGY NUCLEAR : 50-255-LA-2

10 OPERATIONS, INC. : ASLBP No.

11 (Palisades Nuclear : 15-939-04-LA-BD01

12 Plant) :

13 -----x

14 Wednesday, July 8, 2015

15  
16 Teleconference

17  
18 BEFORE:

19 RONALD M. SPRITZER, Chair

20 GARY S. ARNOLD, Administrative Judge

21 THOMAS J. HIRONS, Administrative Judge

22

23

24

25

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

2:01 p.m.

CHAIR SPRITZER: All right, I think we are now ready to go on the record, Mr. Court Reporter. We are here in the matter of Entergy Nuclear Operations, Inc. This is Palisades Nuclear Plant, NRC Docket number 50-255-LA-2. This is the License Amendment Two request, and we're here pursuant to the Board's order of June 26, scheduling this conference call to review scheduling issues. Why don't we go around again and identify everyone who is on the call, I'm going with start with the Intervenors.

MR. LODGE: Terry Lodge, counsel for the Intervenors.

MR. KAMPS: And this is Kevin Kamps with Beyond Nuclear.

CHAIR SPRITZER: All right, and for Entergy?

MR. BESSETTE: Yes, Your Honor, this is Paul Bessette from Morgan, Lewis & Bockius, representing Entergy, and I have my colleague, Ray Kuyler with me.

CHAIR SPRITZER: And for the NRC Staff?

MS. GHOSH: Hi Your Honor, this is Anita Ghosh for the NRC Staff, with me as co-counsel Joseph

1 Lindell. I also have a member of the NRC technical  
2 staff, Kimberly Green.

3 CHAIR SPRITZER: All right, and I believe  
4 that should do it, but if anybody else is on the line  
5 and planning to participate, please speak now. All  
6 right, hearing no takers, with me of course I  
7 mentioned are Judge Hirons and Judge Arnold, also our  
8 law clerk, Nicole Pepperl and Sachin Desai, who is  
9 technically a law clerk on the other Palisades case,  
10 but is also listening in on this case.

11 So, let's go over the issues that we're  
12 going to talk about today. With respect to the  
13 deferral motion, the Motion to Defer the Mandatory  
14 Disclosure, we of course just got the response from  
15 the Intervenor today. We'll rule on that as soon as  
16 possible. In fact, we probably should have an order  
17 out by tomorrow. But I think we know the parties'  
18 positions, so I don't know if there's anything more we  
19 need to hear on that issue.

20 So why don't we move ahead and talk about  
21 the--well, let me just start off with staff, and are  
22 you all--we saw the statement on Entergy's motion that  
23 you didn't--that the Staff does not oppose the motion.  
24 Is the Staff planning to file anything on that? This  
25 is the Motion to Defer the Due Date for Mandatory

1 Disclosures?

2 MS. GHOSH: No, Your Honor.

3 CHAIR SPRITZER: Okay. So we're ready--  
4 it's ready for decision, then. Okay. On the joint  
5 proposal, first of all, we appreciate the parties'  
6 efforts at working out a joint proposal, and for the  
7 most part it seems acceptable to the Board with a few  
8 possible changes that we're interested in, and we'll  
9 give you the chance to offer your thoughts on.

10 First, on the direct and rebuttal  
11 testimony, what we're thinking might shorten things a  
12 bit and also be of benefit to the Board would be to  
13 take what is a three-stage process and basically make  
14 it a two-stage process. The first stage would be all  
15 the written direct testimony and statements of  
16 positions, that is from all the parties, Intervenor,  
17 staff and Entergy would be submitted simultaneously,  
18 and then 45 days later, the rebuttal testimony from  
19 Intervenor, Entergy and staff would be submitted.

20 So that would shorten that process from it  
21 looks like about 90 days to about 45 days, and from  
22 our point of view, it's often more helpful to get all  
23 of the direct testimony together and all the rebuttal  
24 testimony together. It certainly doesn't hurt. So  
25 let me ask if anyone wants to comment on that from the

1 parties on the line?

2 MR. BESSETTE: Your Honor, this is Paul  
3 Bessette, maybe I'll jump in. We certainly can do  
4 whatever the Board wishes to do. We can accommodate  
5 any pleading standard, any pleading schedule or  
6 process. I would note though that you know, we really  
7 do not at this point know many of Intervenor's  
8 arguments.

9 We really haven't seen our case yet, all  
10 we have is an admitted contention. So it's often hard  
11 for applicants to prepare testimony when we don't full  
12 know what their arguments are. So it is often to I  
13 think everyone's benefit to understand the  
14 Petitioner's case.

15 In fact, in the Petitioner's pleading from  
16 this morning, they note that they may be hiring a new  
17 expert, and we have no idea what that expert is going  
18 to say, because it says they have the potential need  
19 for Petitioner to identify one or more appropriate  
20 experts on metallurgical issues. So Entergy would  
21 have no way of addressing that expert testimony if we  
22 went in at the same time.

23 CHAIR SPRITZER: Okay.

24 ADMIN. JUDGE ARNOLD: Well, and that's--  
25 this is Judge Arnold -- that's what the rebuttals are



1 for. You would each have an equal opportunity to  
2 rebut the position of your opponents.

3 MR. BESSETTE: I understand, and that's  
4 why we could accommodate any process, I just wanted to  
5 provide some, just some alternate thoughts there, Your  
6 Honor. We fully respect your discussion of that  
7 issue.

8 CHAIR SPRITZER: All right, does anybody  
9 else have any thoughts on that particular possible  
10 modification?

11 MR. LODGE: Yes, Judge--go ahead.

12 MS. GHOSH: Yes, the NRC Staff, I think we  
13 would echo the same sentiments. I think it would be  
14 easier--not easier, but it would--some of the claims  
15 that are written out in the Petitioner's case would  
16 be--I think it would help to narrow the scope of the  
17 proceeding, and it would provide for a more efficient  
18 process if the Intervenor were--if we were to do the  
19 staggered filing, but we would be amenable to either  
20 process.

21 CHAIR SPRITZER: All right, from the  
22 Intervenor, did you have any thoughts on this?

23 MR. LODGE: Yes sir, this is Terry Lodge.  
24 You may recall in the 33 proceeding over which you  
25 presided, you also asked for the procedure that you're

1 proposing today, and of course we'll comply with any  
2 orders that you might make. But in 33 as well as  
3 today, my view was that as proposed, the three-step  
4 process more tends to follow what federal civil  
5 practice utilizes, and I think that as the other  
6 parties have suggested, it may actually help narrow or  
7 frame the issues better.

8 What occurs otherwise, and what happened  
9 in the 33 case, and it wasn't a terrible thing, but  
10 what it does requires that all parties essentially  
11 shotgun every conceivable position as opposed to  
12 providing a more targeted kind of expert opinion in  
13 response, and then ultimately on rebuttal.

14 CHAIR SPRITZER: Okay. Well, those are  
15 some interesting points; we'll take them under  
16 advisement. If there's nothing else on that  
17 particular issue, I would assume that this is related  
18 to the filing of the direct and rebuttal testimony;  
19 the schedule I don't think specifically mentions  
20 exhibits, but I assume they would be filed--well let's  
21 see, for the Intervenor, they would be filed with  
22 your direct testimony, same thing for the Staff and  
23 Applicant. And whenever that happens to come, and any  
24 rebuttal exhibits would be filed with the rebuttal  
25 testimony. Did you have anything else in mind, or was

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1 it just--you just didn't mention exhibits in here?

2 MR. BESSETTE: No, Your Honor. This is  
3 Paul Bessette again. We anticipated or envisioned  
4 filing the exhibits along with the testimony.

5 CHAIR SPRITZER: Okay, I just wanted to be  
6 clear on that. Now, on the 60 versus 30 day issue,  
7 this is for the filing of your amended contentions, I  
8 guess our preliminary reaction is more in line of a  
9 general idea to move this case along that we go with  
10 the 30 days.

11 Intervenors, you're not prohibited from  
12 asking for an extension, although you should do so  
13 promptly if you need it and give us a good reason why  
14 you need an extension, so you're not completely locked  
15 into 30 days. But in terms of what we're doing with  
16 the scheduling order, our inclination is to go with  
17 the 30 days. Any response on that?

18 MR. BESSETTE: Essentially what you're  
19 saying is that, procedurally, if we believe it will  
20 take 60 days to articulate a new or amended  
21 contention, we can make a request within the first 30,  
22 and--

23 (Simultaneous speaking.)

24 CHAIR SPRITZER: If you need more time,  
25 you could file a motion for extension of time. We're

1 not guaranteeing you that we'll grant it, I'm just  
2 saying--or saying that necessarily 30 days should be  
3 the time you should ask for, only that we would put in  
4 our scheduling order 30 days; if there really are  
5 extenuating circumstances--if the staff's safety  
6 evaluation comes out at the end of November, you know,  
7 then you're going into the Christmas holidays, most  
8 people like to take at least a few days off in there,  
9 so you know that kind of thing is something we would  
10 take into account. I'm not giving you a guarantee  
11 that we will give you an extra 30 days; you should ask  
12 for the smallest amount of time that you would need in  
13 addition to 30 days, if you need any at all. All I'm  
14 saying is you have the option of asking for an  
15 extension if it's really necessary, but we'd prefer to  
16 keep 30 days as the goal and see if there's any  
17 justification or need for further time down the road.

18 MR. BESSETTE: Well, we would prefer the  
19 60, but we will abide by whatever order the Board  
20 makes.

21 CHAIR SPRITZER: Okay. With respect to  
22 summary disposition motions, right now the schedule  
23 has two deadlines for summary disposition motions; of  
24 course nobody's prohibited from filing earlier than  
25 the deadline. What we thought might make more sense

1 is to have one deadline geared to the due date for  
2 direct testimony, depending upon which schedule we're  
3 under, that is whether it's--whether new or amended  
4 contentions are filed or not filed, we would probably  
5 gear, you know, 30 days before direct testimony or 45  
6 days before the direct testimony is due.

7 We haven't quite worked that out yet, but  
8 we try to have a deadline like that rather than two  
9 separate deadlines. I mean if Entergy files a motion  
10 for summary disposition after 30 days, 30 days after  
11 the safety evaluation comes out, but simultaneously  
12 new or amended contentions are filed could effectively  
13 make the summary disposition motion moot, so we  
14 thought rather than having more motions filed than we  
15 really need, it might make sense to defer the  
16 deadline.

17 So were there any thoughts on that? Let  
18 me have Entergy first on that.

19 MR. BESSETTE: Your Honor, that sounds  
20 reasonable to us, thank you.

21 CHAIR SPRITZER: Staff?

22 MS. GHOSH: That sounds reasonable to us  
23 as well.

24 CHAIR SPRITZER: And Intervenor?

25 MR. LODGE: Your Honor, that's a good

1 suggestion. Thank you.

2 CHAIR SPRITZER: All right. If you look  
3 at--this is on page 2 of your joint proposal,  
4 paragraph number 6, imposition came up in the Fermi 2  
5 case which Mr. Lodge may remember. It's a little  
6 confusing because I think what's intended here is to  
7 say that--the first sentence says that if the staff is  
8 going to identify the documents, it's required to  
9 identify--I think what's intended in the second  
10 sentence is to say that the parties shall not  
11 otherwise be required to identify or produce docketed  
12 correspondence or other documents identified by the  
13 staff.

14 If it's broader than that, then it would  
15 seem to be an inconsistency with paragraph 7, which  
16 does require identification of some documents that may  
17 or may not have been identified by the staff, namely  
18 ones that a party may rely on at the hearing. If we  
19 made that modification, would that be a problem that  
20 it's changing the paragraph--second sentence in  
21 paragraph 6 to say that the parties will not otherwise  
22 be required to identify or produce docketed  
23 correspondence or other documents identified by the  
24 staff?

25 MR. BESSETTE: Your Honor, this is Paul

1 Bessette from Entergy. We would concur with that  
2 change to the extent any documents are identified on  
3 ADAMS or not otherwise identified by the staff or on  
4 ADAMS, we had always intended to identify those with  
5 the appropriate accession number.

6 CHAIR SPRITZER: Right. It just seemed--I  
7 assumed that was probably intended, but it seemed to  
8 be a potential inconsistency there. Does anyone else  
9 have any comment on that particular issue?

10 MR. LODGE: It's fine with Intervenors.

11 MS. GHOSH: It's fine with the NRC staff  
12 as well.

13 CHAIR SPRITZER: All right. Okay, that  
14 comes pretty much to the end of my list I think. Do  
15 any of my fellow judges have any--

16 ADMIN. JUDGE ARNOLD: This is Judge  
17 Arnold. I--there's the staff technical person on the  
18 line; is that so?

19 MS. GHOSH: Yes.

20 ADMIN. JUDGE ARNOLD: Would you be able to  
21 answer a question such as the safety evaluation, is  
22 this going to be a 500-page document, a 50-page  
23 document, about how big is it going to be?

24 MS. GHOSH: Can you give me one moment,  
25 Your Honor?

1 ADMIN. JUDGE ARNOLD: Okay.

2 MS. GHOSH: Your Honor, the SE will  
3 probably be no longer than 30 pages.

4 ADMIN. JUDGE ARNOLD: Thank you very much.

5 CHAIR SPRITZER: Well let me just ask  
6 then. Based on the joint proposal, I take it  
7 everyone's agreed though that we should wait--we  
8 shouldn't--the schedule should not--should wait until  
9 the safety evaluation is completed. Anybody feel  
10 differently? All right, hearing no takers, I assume  
11 that everyone's agreed on that point.

12 And if the schedule, particularly if we  
13 follow the schedule that assumes that there will be  
14 new or amended contentions, we could get well into  
15 2016 before we actually have the hearing. From  
16 Entergy's point of view, is that going to be a  
17 problem? It's my understanding that it looks like you  
18 need a decision certainly before December of 2016.

19 MR. BESSETTE: A decision on the hearing,  
20 Your Honor?

21 CHAIR SPRITZER: Well, a ruling,  
22 conclusion of the evidentiary hearing and the Board's  
23 initial decision. And I suppose also time to appeal  
24 to the--or whoever happens to be the losing party to  
25 appeal to the Commission. And that's based on the



1 fact as I understand it there's at least one of the  
2 materials that will be approaching this limit,  
3 fracture toughness limit by December of 2016, but  
4 maybe I'm misinterpreting something.

5 MR. BESSETTE: No Your Honor, I believe  
6 that's generally consistent with our understanding.  
7 We just, you know, we looked at this carefully. With  
8 regard to Your Honor's first point, we are not aware  
9 of even the ability to go to hearing without the SER,  
10 the staff's SER, because we really do need the  
11 staff's--we believe we need the staff's position on  
12 this. We would--perhaps we were hoping for the SER a  
13 bit earlier candidly, which would move this up a bit  
14 earlier.

15 CHAIR SPRITZER: Okay. That would be  
16 good, that would help everybody I think.

17 MR. BESSETTE: Yes.

18 CHAIR SPRITZER: I mean, the other  
19 possibility of course is to shorten some of the other  
20 deadlines; we mentioned one possibility already in  
21 terms of the having two--a two-step process for  
22 submitting testimony rather than a three-step process.

23  
24 Maybe the best thing to do is simply go  
25 ahead and issue the scheduling order based on what we

1 have now, and if it seems like you're pushing up  
2 against a deadline, and keeping in mind that I would  
3 assume both sides want to preserve the option of an  
4 appeal to the Commission, come back to us with some  
5 alternative proposal if it looks like you're running  
6 into a potential problem.

7 MR. BESSETTE: Yes, Your Honor, that's  
8 entirely reasonable, and we would need to confer with  
9 the client on that.

10 CHAIR SPRITZER: Okay. Just to let you  
11 know, we would certainly be open to--we understand  
12 that the issue around getting your decision within the  
13 time period that you need one.

14 MR. BESSETTE: Thank you, Your Honor.

15 CHAIR SPRITZER: Okay. Judge Hirons, did  
16 you want to make--

17 ADMIN. JUDGE HIRONS: I just want to  
18 confirm with the staff that the date for the SER is  
19 the end of November, is that correct?

20 MS. GHOSH: That's our current best  
21 estimate.

22 ADMIN. JUDGE HIRONS: Thank you.

23 CHAIR SPRITZER: Is it realistic that it  
24 might be earlier than that?

25 MS. GHOSH: Possibly.

1 CHAIR SPRITZER: Okay. All right, I think  
2 the judges, I've asked all my questions; my  
3 colleagues, I assume, have asked theirs. Are there any  
4 other procedural issues any of the parties want to  
5 bring up?

6 MR. BESSETTE: None from Entergy, Your  
7 Honor.

8 MS. GHOSH: Nothing from the Staff.

9 CHAIR SPRITZER: And Intervenors?

10 MR. LODGE: Nothing from the Intervenors.

11 MR. KAMPE: If I could just quickly, Your  
12 Honor. Maybe it's a bit premature, but the holding of  
13 the actual evidentiary hearing itself, I would hope  
14 that that would take place in West Michigan given the  
15 broad public interest. It would be difficult for  
16 folks to travel to Rockville for example.

17 CHAIR SPRITZER: Right. I mean, that's  
18 our normal policy as you know from the Fermi 3 case,  
19 we did the hearing there in Michigan, so unless  
20 there's some compelling reason to do it here, that  
21 would be the normal Commission policy to hold the  
22 hearing in the vicinity of the plant.

23 MR. KAMPS: I appreciate it.

24 CHAIR SPRITZER: Does anybody--for the  
25 staff or Entergy, do you have any reason to think that

1 we should do it in Washington in Rockville, Maryland?

2 MR. BESSETTE: This is Entergy, no Your  
3 Honor, particularly because it's not in winter either,  
4 so.

5 CHAIR SPRITZER: Okay. Well, I think it  
6 was winter in Fermi 3, or close, it felt like winter.  
7 To the staff, any thoughts on that?

8 MS. GHOSH: No, we wouldn't have any  
9 objection to having the hearing in Michigan.

10 CHAIR SPRITZER: Okay. All right, I think  
11 that's concludes our business. To the court reporter,  
12 do you need the parties to stay on the line?

13 MR. JACKSON: No, I don't think so.

14 CHAIR SPRITZER: All right. All right,  
15 that concludes our scheduling conference then. Thank  
16 you for your participation. As I said, we hope to get  
17 an order out on the mandatory disclosures by tomorrow.  
18 So the schedule probably Monday or Tuesday of next  
19 week.

20 MR. BESSETTE: Thank you, Your Honor.

21 CHAIR SPRITZER: Very well, thank you.

22 (Whereupon, the above-entitled matter was  
23 concluded at 2:22 p.m.)  
24  
25