

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

Title: Indian Point Nuclear Generating  
Units 1 and 2

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

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

Location: (teleconference)

Date: Monday, September 24, 2012

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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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In the Matter of: : Docket Nos.

ENTERGY NUCLEAR : 50-247-LR

OPERATIONS, INC. : 50-286-LR

(Indian Point Nuclear : ASLBP No.

Generating Units 2 and 3) : 07-858-03-LR-BD01

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Monday, September 24 2012

Teleconference

BEFORE:

LAWRENCE G. McDADE, Chair

RICHARD E. WARDWELL, Administrative Judge

MICHAEL F. KENNEDY, Administrative Judge

1 APPEARANCES:

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On Behalf of the Town of Cortlandt  
  
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## P R O C E E D I N G S

(11:09:43 a.m.)

1 CHAIR McDADE: This is Lawrence McDade.

2 We are here in the matter of Entergy Nuclear  
3 Operations, Inc., Nuclear Point for Indian Point  
4 Nuclear Generating Units 2 and 3, a proceeding  
5 relating to the relicensing. It is ASLBP number 07-  
6 858-03.  
7

8 What I wanted to do first of all is have  
9 the parties identify themselves for the record. New  
10 York State?  
11

12 MS. DEAN: Yes, Your Honor. It's Janice  
13 Dean and Lisa Burianek from Albany.

14 CHAIR McDADE: From Riverkeeper?

15 MS. BRANCATO: Good morning, Your Honor.  
16 This is Deborah Brancato. I'm here with Philip  
17 Musegaas from Riverkeeper.

18 CHAIR McDADE: And from Clearwater?

19 MS. GREENE: This is Manna Jo Greene, and  
20 also on the call are Richard Webster and Karla  
21 Raimundi from Clearwater.

22 CHAIR McDADE: Thank you. For Entergy?

23 MR. BESSETTE: This is Paul Bessette.  
24 With me is Kathryn Sutton and Bill Glew.

25 CHAIR McDADE: For the NRC Staff?

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1 MR. TURK: Good morning, Your Honors.  
2 Sherwin Turk. With me are Brian Harris, Anita Ghosh,  
3 Beth Mizuno, Joseph Lindell, David Roth, and Michael  
4 Wentzel.

5 CHAIR McDADE: From the State of  
6 Connecticut?

7 MR. SNOOK: This is Robert Snook.

8 CHAIR McDADE: From the Village of  
9 Cortlandt?

10 MS. TREANOR: From the Town of Cortlandt,  
11 this is Victoria Treanor. With me on the line is  
12 Adam Stolorow.

13 CHAIR McDADE: Okay. Thank you. Is there  
14 anyone yet on the line from Buchanan? Apparently  
15 not. From Westchester County? Apparently not. And  
16 from New York City? Apparently not.

17 What I want to do is go through some  
18 administrative matters to make sure as we get ready  
19 for the hearing we're all basically singing off the  
20 same sheet of music, and that there are no  
21 administrative matters that need to be addressed  
22 that have not been.

23 First of all, we understand there are  
24 several motions in limine pending. We will rule on  
25 those motions in limine either at or before the



1 hearing. With regard to one of the motions, Ms.  
2 Dean, I had a question.

3 You sent a letter dated August 6<sup>th</sup>. In  
4 that it talked about filing revisions to Contention  
5 New York State 5, following resolution of the NRC  
6 Staff's motion in limine. And at that time the State  
7 will file a revised exhibit list addressing these  
8 changes to New York 8, and changes if any to New  
9 York 5. What's the status of that?

10 MS. DEAN: Well, we are waiting for the  
11 Board to resolve those. We have no changes other  
12 than those which might be necessitated by an adverse  
13 finding on the motions in limine, Your Honor.

14 CHAIR McDADE: Okay. What we are going to  
15 do is ask the parties to comment on the exhibit  
16 list. What we are going to do and anticipate doing  
17 is admitting all of the exhibits at the beginning of  
18 the hearing on day one, noting any exceptions and  
19 noting those exceptions on the record, and then  
20 binding the exhibit list into the transcript.

21 To that end we would ask that no later  
22 than close of business on Monday any of the parties  
23 who desire file clerical objections. We're not  
24 talking about substantive objections here, but just  
25 any errors that you believe might be misleading, to

1 give you some examples. For example, Riverkeeper 8.  
2 It is listed on the exhibit list, but when you look  
3 at the exhibit itself it's listed -- the stamp on  
4 the top is Riverkeeper 1. Now, likewise, Riverkeeper  
5 76 is stamped, or actually is 74 and is stamped as  
6 76. Riverkeeper 90 is incorrectly described. It  
7 talks about being data from the second quarter as  
8 opposed to the third quarter.

9           New York has a description in New York  
10 411. It references on the exhibit list that it's Dr.  
11 Shepherd who is the relevant witness when actually  
12 it's Dr. Pakhani. And I'm probably mispronouncing  
13 his name. But, anyway, those are the kinds of  
14 things, and those are just some examples.

15           Again, what we intend to do, I don't  
16 think there's any confusion. When you look at the  
17 list and you look at the exhibits what is there is  
18 relatively clear. But what we intend to do is just  
19 simply admit the exhibits off the list at the  
20 beginning of the hearing. So, if any of the parties  
21 or interested government entities has an objection  
22 to that or to the descriptions of the exhibit in the  
23 exhibit list not matching the exhibit you have until  
24 close of business Monday to revise that.

25           Likewise, with regard to pending motions

1 that are out there. For example, we have not  
2 resolved the issue with regard to New York 12. New  
3 York 12 has three attachments to it. New York should  
4 mark those attachments as exhibits and put them at  
5 the end of the revised exhibit list. Likewise,  
6 Clearwater 60 is still an issue to be resolved,  
7 whether that is going to be excluded or not.

8 So, we should have exhibit lists with  
9 all of the possible exhibits on them. And then at  
10 the beginning of the hearing on the 15<sup>th</sup> if there  
11 are exhibits that we are going to exclude we will  
12 note them on the record with the transcript. Any  
13 questions with regard to that?

14 MR. TURK: Your Honor, Sherwin Turk. You  
15 said that by the close of business Monday we're to  
16 file any clerical objections. Was that Monday,  
17 October 15<sup>th</sup>?

18 CHAIR McDADE: No, that's a week from  
19 today.

20 Okay. The next thing I wanted to mention  
21 to the parties and to all of the participants is  
22 seating is going to be limited. We were able to  
23 secure the largest place available, but it certainly  
24 is smaller than we would have hoped. So, let me  
25 explain some of the realities given the venue that

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1 we're going to be in.

2 As it's currently situated, and the room  
3 is not going to begin being set up until Sunday, the  
4 14<sup>th</sup>, so we all are going to have to maintain a  
5 degree of flexibility in this as the schematics  
6 actually work out on the ground.

7 We anticipate for all of the parties  
8 that there will be an 8-foot table at counsel table,  
9 and for each of the Government entities a 6-foot  
10 table. We hope but we are not certain given the  
11 space available that you would be able to pull up  
12 other chairs behind the tables so that more than  
13 three or four counsel would be able to be right in  
14 the well at the counsel table, but that's something  
15 we are going to have to adjust to as we get there.  
16 But again, given the space, given the number of  
17 participants in this particular proceeding, as it is  
18 currently situated we anticipate that the parties  
19 will each have an 8-foot table and the Government  
20 entities who are not parties will have a 6-foot  
21 table.

22 On each of these tables there will be a  
23 monitor so that as the exhibits are shown you will  
24 be able to follow on that monitor. There will also  
25 be two microphones on each one of the counsel table.

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1           As far as other electricity, we are  
2 hopeful that we would be able to have power strips  
3 at least on every other table, but if you are going  
4 to bring your laptops with you, understand that we  
5 can't guarantee that power is going to be available,  
6 so you should make sure that those laptops are fully  
7 charged before you go in at the beginning of the  
8 morning.

9           We also anticipate having a couple of  
10 large screens so that as exhibits are shown, made  
11 reference to, they will come up on the monitor on  
12 your desk. They will also be shown to any of the  
13 individuals who are in the room out in the seating.

14           Now, we asked for lists of people who  
15 would be attending, and we anticipated that there  
16 were going to be basically two groups, one that  
17 would have preferred entry and the other that would  
18 be sort of in the general population with people who  
19 had a professional interest in the proceeding having  
20 priority over people who were not actively involved  
21 in the proceeding. Some of the lists seem somewhat  
22 unwieldy, and given the limited size of the facility  
23 simply can't be accommodated.

24           Obviously, any of the counsel who are  
25 currently on the service list and were on the list

1 that you provided last week will be in the priority  
2 area. Not all of them, perhaps, for some of you will  
3 be able to be sitting directly at counsel table. We  
4 are going to set aside a certain number of seats,  
5 and at this point anticipate probably about 10 which  
6 would include seating for any counsel on the service  
7 list who we can't fit at the counsel table,  
8 witnesses who are not testifying on that particular  
9 contention, and then any other individuals that you  
10 would want to have present who don't fit in either  
11 of those first two categories, counsel on the  
12 service list, witnesses not testifying on that  
13 particular contention.

14 We would ask that you give us a list by  
15 close of business Monday in an order of preference  
16 so that we will be able in the event that those  
17 seats are not taken, we'll be able to move other  
18 people into them. And depending on the number of  
19 people you have, whether or not we will be able to  
20 expand the number of reserved seats beyond 10.

21 With regard to the interested Government  
22 entities, we do not anticipate at this point having  
23 seating specifically available for you. If there are  
24 witnesses that you would intend or want to call you  
25 need to inform us of that immediately, and by

1 immediately certainly no later than close of  
2 business next Monday.

3 What we would anticipate doing for the  
4 interested Government entities is setting aside a  
5 limited number of seating for elected  
6 representatives and their staffs. And we will  
7 provide a phone number, a contact person with the  
8 Legislative Affairs person at the Nuclear  
9 Regulatory Commission so that if there are elected  
10 representatives and their staffs who wish to take  
11 advantage of that set aside seating, they should  
12 inform us through the Congressional Legislative  
13 Liaison as soon as possible.

14 Next, with regard to --

15 MR. BESSETTE: Judge McDade, this is Paul  
16 Bessette. Do you mind if I ask a quick few  
17 clarifying questions?

18 CHAIR McDADE: Sure.

19 MR. BESSETTE: With regard to the list of  
20 priority, the 10 extra seats, I'm assuming that's 10  
21 extra seats per party. Is that correct?

22 CHAIR McDADE: What we would anticipate  
23 is that the parties to the litigation, Entergy and  
24 the NRC Staff, New York, Riverkeeper, and  
25 Clearwater. And we are not going to control that at

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1 all. It's basically up to you to designate who you  
2 want. As I said, I mean, on that you may have  
3 counsel on the service list, or counsel who have not  
4 -- aren't going to fit up at the counsel table. As I  
5 said, we're going to make whatever accommodations we  
6 can within the constraints of the size of the  
7 facility and the Fire Marshal, so people have access  
8 and egress. But it would basically be, as I said,  
9 witnesses not testifying on that particular  
10 contention, and then anybody else that you would  
11 designate.

12 MR. BESSETTE: And would it be  
13 appropriate for us to, for instance, include a  
14 separate list for each contention, because we will  
15 have people rotating in and out depending on the  
16 topic of the day.

17 CHAIR McDADE: Yes.

18 MR. BESSETTE: All right. Thank you, Your  
19 Honor.

20 MS. DEAN: Judge McDade, this is Janice  
21 Dean just following up on something you just said.  
22 The State Service List is not necessarily indicative  
23 of the parties who will be appearing at the hearing.  
24 We do have -- I can think of one attorney on the  
25 service list who will not likely appear at the

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1 hearing and probably two attorneys not currently on  
2 the service list who may appear. Would you like us  
3 to conform our service list with the list that we'll  
4 be sending you by close of business on Monday with  
5 new Notices of Appearance, et cetera?

6 CHAIR McDADE: The answer to that is yes  
7 with one caveat. Remember, seating is going to be  
8 very limited. When you look at an 8-foot table  
9 there's, I think, room for three people comfortably  
10 depending on how much elbow room people need. They  
11 may be able to put more in there. But on the 8-foot  
12 tables you know you can get three people, on the 6-  
13 foot tables you know you can get two. We may be able  
14 to get more people there, and also people behind not  
15 directly at the table. But, again, that's going to  
16 depend on the spacing of these tables when we  
17 actually get there on the ground.

18 So, as far as New York is concerned, New  
19 York can specify who it wishes to be represented by,  
20 but recognize that there is a numerical limit on  
21 this, so if a number of new counsel are going to be  
22 coming in at the last minute, they may not be able  
23 to be accommodated.

24 MS. DEAN: Right. Just to clarify, we  
25 like Entergy will have attorneys rotating in and out

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1 day by day on different contentions, so we won't be  
2 necessarily adding, rather more a rotation. And do  
3 you know, will there be seats behind counsel's table  
4 for audience members?

5 CHAIR McDADE: We are going to have at  
6 this point --

7 (Telephone rings.)

8 CHAIR McDADE: There will be significant  
9 seating for audience members, individuals who are  
10 not parties or participants in this particular  
11 litigation. What we would ask you to do and advise  
12 your supporters is to tell them that seating is  
13 going to be limited. And based on prior experience,  
14 it generally seems that the first day is the day  
15 when it is most likely to be crowded. By the fifth  
16 or sixth day it seems unlikely that it will be  
17 crowded. So, we anticipate that individuals who are  
18 on your list who are participants in the litigation,  
19 we will give access on the first day to them at  
20 11:00 to get in and get set up, but on other days  
21 where we're going to be starting at 9:00, give them  
22 access at 8:00. But the public would be given access  
23 at 12:30 on the first day, and 8:30 on subsequent  
24 days. But there will be seating, we are trying to  
25 get as many seats into the room, and it's sort of a

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1 balancing act. The more room we give counsel, the  
2 less room we give to witness -- to spectators. But  
3 we are trying to accommodate both. And, again, by  
4 having some seating set aside for individuals  
5 affiliated with the parties, we're also going to  
6 have set aside for press, we're also going to have  
7 set aside for elected representatives and their  
8 staffs.

9 We are hopeful that that will leave in  
10 excess of 100 seats for the public. We will try to  
11 get as many as we can, but we would appreciate if,  
12 number one, to those of you to tell your supporters  
13 that the seating is limited so that we don't have a  
14 significant number of disappointed people.

15 Also -- and, again, if they wish to  
16 participate or wish to observe that probably after  
17 the first day there will be more room available as  
18 there will be fewer people who are seeking to secure  
19 the limited number of seats that are available.

20 We would also appreciate it if you would  
21 inform your advisors, and this will go in a press  
22 release as we get closer to the proceeding that as  
23 far as your supporters go, that they are not going  
24 to be able to bring signs or placards into the  
25 facility. And, also, that they will have to go

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1 through security so that they should not, if at all  
2 possible, carry bags into the facility because it  
3 will delay their getting in because it will be  
4 necessary for bags to be checked by the security  
5 which will be provided by the local police  
6 department there.

7 MR. TURK: Your Honor, Sherwin Turk.  
8 Clarification, please?

9 CHAIR McDADE: Mr. Turk.

10 MR. TURK: You asked for this list again  
11 by COB Monday. I take it that would be October 1<sup>st</sup>,  
12 the same date that we make the other filing?

13 CHAIR McDADE: Correct.

14 MR. TURK: Okay. And also, I had  
15 misunderstood. I think what you're asking us is for  
16 the names of 10 people who would want to be at the  
17 counsel table.

18 CHAIR McDADE: No.

19 MR. TURK: Or are you asking about other  
20 members of the staff or other parties who would sit  
21 in the audience close by in case they are needed?

22 CHAIR McDADE: We are trying to get --  
23 accommodate as many people who are participants in  
24 this proceeding as possible. As I indicated, that  
25 for the NRC staff you will have a counsel table that

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1 will be 8-feet long. We anticipate that you will be  
2 able to get at least three chairs up at that counsel  
3 table. If at all possible and we could get more  
4 chairs in given how this actually works out on the  
5 ground when we get the room set up, we will try to  
6 accommodate that.

7 To the degree that there are counsel of  
8 record who can't fit at the counsel table, they can  
9 sit in this reserved seating where each of the  
10 parties, including the NRC Staff, will have a  
11 limited number of reserved seats. At this point we  
12 for planning purposes figure 10. If things work out  
13 on the ground differently than we anticipate, that  
14 number could be changed. But after counsel on the  
15 service list, you can then choose who else, each one  
16 of the participants can choose who else they're  
17 going to make available those seats to. It can be  
18 witnesses not testifying on that particular  
19 contention. It can be other individuals associated  
20 with your organization, whether it be a project  
21 manager, whether it be a management official,  
22 whether it be another attorney. What we're telling  
23 you is the space is limited. We're setting aside  
24 those additional seats, and you all will have to  
25 decide your own priorities as to who is going to

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1 fill those.

2 And we would ask for a list with order  
3 of preference. And, again, as was noted by New York  
4 and Entergy, that can be a dynamic list as certain  
5 people may be interested or important to be present  
6 for certain contentions but not others. So, what we  
7 are looking for is a list in order of preference  
8 from you all. And, again, we understand that can  
9 change, but what we just want to make sure is that  
10 when we get close to this after those set aside  
11 seats, anybody else is going to be out with the  
12 general public and vying for the same number of  
13 limited seats that are available for the general  
14 public. Again, probably by the fourth day of the  
15 proceeding, you will be able to very comfortable out  
16 in the spectator area, but we anticipate on perhaps  
17 the first day or two the spectator area might be  
18 full, and the importance of those set aside seats  
19 will be more significant.

20 MR. WEBSTER: Judge McDade, Richard  
21 Webster here. I have a couple of questions. One is,  
22 so for the -- I understand these 10 seats are for  
23 the non-testifying witnesses. Do the testifying  
24 witnesses sit at counsel table or will they have a  
25 separate area?

1 CHAIR McDADE: They will be sitting in a  
2 witness area.

3 MR. WEBSTER: Okay. And, secondly, will  
4 WiFi be available in the room?

5 CHAIR McDADE: The answer is I don't  
6 know. That is something we would suggest that you  
7 contact the hotel on specifically with regard to the  
8 availability of internet access or parking, that you  
9 need to check with the hotel. Their number is  
10 (914)631-5700, again (914) 631-5700.

11 What is going to be available at the  
12 counsel table, as I said, feel free to bring your  
13 laptops in and if you have the exhibits loaded on  
14 those you will be able to call them up. We will have  
15 on counsel table, and that includes the table for  
16 each of the interested Government entities, as well,  
17 in addition to two microphones, we will have a  
18 monitor so that if one of the judges or one of the  
19 counsel makes reference to an exhibit, our IT person  
20 will pull up that exhibit. If we want to ask Mr.  
21 Pekan about New York 411, we will reference that and  
22 our IT person will call up Exhibit New York 411.  
23 That will be on the monitor on counsel table. It  
24 will also be on the screens available to the public.  
25 If you wish to have access through your laptop, as I

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1 said, we are hopeful that we will have power strips  
2 available for everybody to plug in, but we can't  
3 guarantee that at this point, so we urge everybody  
4 to have their laptop fully charged before you come  
5 in.

6 MS. DEAN: Judge McDade, this is Janice  
7 Dean. That might answer my question. I did have a  
8 question, if everyone -- if anyone was looking at  
9 using Live Note or a similar transcript streaming  
10 program it sounds like that may not be possible here  
11 given the power uncertainties.

12 CHAIR McDADE: The answer is, Ms. Dean, I  
13 wouldn't count on it. We are going to have -- we  
14 will be bringing with us power strips so that they  
15 will be available at counsel table, but the -- you  
16 know, I guess given the fact that this involves a  
17 power plant, the availability of how much  
18 electricity actually can come into the room is  
19 something that at this point in time we don't know,  
20 so I wouldn't count on it.

21 Now, you raised the issue, Ms. Dean, of  
22 transcripts. We are going to get transcripts but not  
23 on a daily copy. We are just ordering a seven-day  
24 turnaround on the transcripts. And that those  
25 transcripts would then be entered in the record and

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1 would be available on -- through the NRC. But if  
2 anybody wishes to get a quicker turnaround on the  
3 transcript you need to make the arrangements  
4 directly with the court reporter. That was sort of a  
5 convoluted answer to a direct question, but did it  
6 answer the direct question, Ms. Dean?

7 MS. DEAN: It did, indeed. Thank you so  
8 much.

9 CHAIR McDADE: Okay. And I think I  
10 mentioned with regard to the security that although  
11 the room will be locked and there will be security,  
12 because we're concerned with the audio visual  
13 equipment that we're going to be bringing up, any  
14 documents or equipment that you all have you can  
15 feel free to leave it in the locked hearing room  
16 overnight, but it is your responsibility. We can't  
17 be responsible for it. If you want to take it out,  
18 that's fine. And we will give you, as I said, a  
19 reasonable period of time. You should be able to get  
20 in there by 8:00 on all of the mornings with the  
21 exception of the first morning which would be 11:00  
22 in order to set up. So, on the first morning you'd  
23 have two hours before the 1:00 hearing, and the  
24 other is 8:00 for the regular hearings.

25 We should also note that over the

1 weekend you will not be able to leave your equipment  
2 in the room. We do not have the room over the  
3 weekend. The hotel will be making other use of that  
4 room on Saturday, so you need to plan on taking  
5 whatever you bring with you out of the hearing room  
6 at the conclusion of the hearing when we break for  
7 the weekend.

8           Most days we anticipate we will break  
9 about 6:00 p.m., although there's not anything magic  
10 associated with that particular time. If we are  
11 getting close to the end of an issue and we can  
12 resolve it and allow the witnesses to go, we might  
13 run a bit longer. If we finish up on a particular  
14 issue a little bit before 6:00, we're not going to  
15 drag in people just for a few minutes of testimony.  
16 So, that's sort of a guideline.

17           With regard to lunch, we will be  
18 breaking and you can anticipate, obviously, the  
19 first day we're not going to break for lunch given  
20 the fact that we're not starting until 1:00, but on  
21 the other days we will be taking at least an hour  
22 for lunch. Once we get up there and have a better  
23 feel for what the surrounding area is and the  
24 availability of food for people to come in and go  
25 out, that may be adjusted, but you could at least

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1 anticipate that we would be breaking for at least an  
2 hour for lunch.

3 Again, with regard to the internet  
4 access and parking, that's something that you really  
5 need to take up with the hotel, and I had previously  
6 given you their phone number.

7 At this point in time as we go through  
8 it, for New York, Ms. Dean, do you have any other  
9 questions?

10 MS. DEAN: I do have a few, Your Honor,  
11 if you don't mind. The State has obviously not  
12 participated in one of these before. Could you tell  
13 me, and I recognize some other parties may know  
14 this, when the witnesses are testifying, or when  
15 you're questioning the witnesses will you take  
16 questions in order by party or will all the  
17 witnesses for all the parties appear at the same  
18 time with questions kind of piecemeal among all of  
19 them?

20 CHAIR McDADE: Yes. We will not  
21 necessarily be going in order of just simply, for  
22 example, on a New York Contention all of New York's  
23 witnesses up front. It may well be that there will  
24 be something that a New York witness says that  
25 clarifies in our mind what their position is that we

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1 would then want to turn to either staff or an  
2 Entergy witness and have that commented on while it  
3 is still fresh in everybody's minds, rather than  
4 going through all of New York. And on each one of  
5 these contentions, at least as we see it, there are  
6 many issues involved in each one of the contentions.  
7 And probably we're going to go through and satisfy  
8 ourselves with regard to certain issues, and it may  
9 require us to go from, for example, a New York  
10 witness, to an Entergy witness, to a staff witness,  
11 and then back to a New York witness. So, that we  
12 anticipate that all of the witnesses on a particular  
13 contention will be sworn at the same time, and that  
14 they will be in the witness, I wouldn't use the term  
15 "witness box," but at the witness tables, and we  
16 will then be asking the questions of them.

17 The witness tables, just like counsel  
18 tables, will also have monitors so that they will be  
19 able to see the exhibits that we are referring to,  
20 and microphones so that we, you, and the audience  
21 will be able to hear them.

22 MS. DEAN: Okay, thank you. And two  
23 questions regarding exhibits. If there are  
24 documents, as there have been a number of moving  
25 parts here, if there are exhibits which are --

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1 documents which are exchanged between now and  
2 October, will the Board allow parties to introduce  
3 those. And, likewise, will the Board entertain new  
4 exhibits at the hearing itself?

5 CHAIR McDADE: The answer to the first is  
6 I don't know. It will depend on the nature of the  
7 argument that you make for the relevance and why we  
8 should consider the document. As far as exhibits  
9 that come up during the course of the hearing, if  
10 based on the questions that are asked you believe  
11 you, New York, or any of the other participants  
12 believe that there is a document that would clarify  
13 matters after the Board has completed its  
14 questioning of a witness, we would give an  
15 opportunity for you to proffer any additional  
16 exhibits that you would have.

17 Obviously, those can't be premarked the  
18 way all of the exhibits to date have been premarked,  
19 because at this point you simply don't know what is  
20 going to be brought up by the testimony and what is  
21 going to become relevant. But, yes, there will be a  
22 procedure for receiving and admitting additional  
23 exhibits if we believe they're relevant.

24 MS. DEAN: Okay, thank you. And in terms  
25 of the Board's questioning of the witnesses, will

1 the Board wish for the witnesses to have their  
2 testimony and reply testimony in front of them?

3 CHAIR McDADE: That's entirely up to  
4 them. If they want to bring it, it might be helpful  
5 for them. If they have particular things they want  
6 to put notes on it, that's totally up to them. If we  
7 have a specific question from our standpoint about a  
8 witness' testimony, it will be possible for us to,  
9 for example, call up New York Exhibit 6, the  
10 testimony of, go specifically to a particular page  
11 in that, and ask the witness about it. But if the  
12 witness would feel more comfortable bringing their  
13 own testimony with them or any notes that's going to  
14 be fine. These individuals are testifying as expert  
15 witnesses, and we are going to allow them ready  
16 access to whatever documentation they feel would be  
17 helpful to them in answering our questions in a  
18 somewhat dynamic environment.

19 MS. DEAN: Okay, thank you. And three  
20 quick questions, and then I'm all set. In terms of  
21 logistics, the State is preparing exhibits in hard  
22 copy per the order from the Board, and we just  
23 wanted to clarify that the Board is looking only for  
24 the exhibits for the October contentions at this  
25 point?

1 CHAIR McDADE: Yes.

2 MS. DEAN: Okay. And --

3 CHAIR McDADE: Well, the October, the 10  
4 Contentions listed on the order.

5 MS. DEAN: Right, i.e., not the December  
6 ones. So, not 26 and 38 at this point.

7 CHAIR McDADE: Right, not 26 and 38.

8 MS. DEAN: Okay.

9 CHAIR McDADE: But as I said, it may well  
10 be, as we get to it some of these contentions are  
11 listed as the initial 10 may not wind up being heard  
12 in October, and may flop into December. But what  
13 we're talking about is those first 10 contentions.

14 MS. DEAN: Right. Okay.

15 MR. BESSETTE: Your Honor, this is Paul  
16 Bessette. I didn't understand that last colloquy  
17 with regard to hard copies, et cetera.

18 MS. DEAN: We have prepared, and I  
19 believe the Board's scheduling order calls for us to  
20 prepare or bring hard copies of all the exhibits. Am  
21 I correct about that?

22 MR. BESSETTE: There is an order that  
23 requires the parties to have a set of paper copies  
24 of their exhibits available in case there's a  
25 problem with the electronics.

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1 MS. DEAN: Okay, right. And that was --  
2 so, I was just clarifying, Paul, that we were only  
3 looking for these 10 contentions, and not all of  
4 them.

5 MR. BESSETTE: Right.

6 MS. DEAN: And that's mainly just -- so  
7 we didn't end up there and find ourselves short of  
8 something that somebody decided to refer to. So, it  
9 sounds like we only have to have the documents  
10 available for these contentions and not our full  
11 list. Does that make sense?

12 CHAIR McDADE: Well, I don't know whether  
13 it makes sense or not, but that's what the Board  
14 intended.

15 MS. DEAN: Okay.

16 MR. TURK: Your Honor, I think the  
17 confusion is that Ms. Dean referred to Contentions  
18 38 and 26. Those are not scheduled whether for  
19 December or any time. There are no hearing dates  
20 scheduled for those yet.

21 MS. DEAN: That was my mistake, Sherwin.

22 CHAIR McDADE: They're not on Track One.

23 MS. DEAN: Right, sorry. I meant the  
24 December contentions, whichever would be heard then.

25 CHAIR McDADE: All we're talking about

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1 right now are those 10 contentions that are listed.  
2 And, again, we do not anticipate receiving the paper  
3 copies of the exhibits. Those are intended only as a  
4 backup heaven forbid that something goes wrong  
5 electronically, which we do not anticipate. We think  
6 we've got enough redundancy built into this, but in  
7 the event that something does go wrong, we don't  
8 want to have the whole process grind to a stop.

9 MS. DEAN: Yes, thank you. That was my  
10 thought, as well. And then regarding the Board's  
11 recent decision on cross-examination, will there be  
12 a few moments for the State to consult with its  
13 experts at the conclusion of the Board's  
14 questioning?

15 CHAIR McDADE: I'm sure by the time the  
16 Board finishes it's questioning we're all going to  
17 need a break.

18 MS. DEAN: Okay. And then my final  
19 question, and I appreciate your time, are we looking  
20 at a bifurcated or trifurcated post hearing briefing  
21 schedule matching up with the hearing, or looking at  
22 one unified date later in 2013?

23 CHAIR McDADE: We have not decided that,  
24 and I think to a very large degree it's going to  
25 look at the schedule. We understand the difficulty

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1 of trying to do several things at once, and whether  
2 it makes sense to have the submission of proposed  
3 Findings of Fact and Conclusions of Law based on  
4 contentions that have been heard is sort of a  
5 function of how things are running at the time.

6 I would anticipate that that's what we  
7 would do, is to have Findings of Fact and  
8 Conclusions of Law on those first 10 contentions  
9 come in rather than waiting until the end. As we  
10 schedule the hearing on the other contentions, if it  
11 is clear that the Board is doing to be busy reading  
12 testimony and studying those other contentions,  
13 we're not going to be forcing people, and you are  
14 preparing for those other hearing dates, we don't  
15 want you to submit -- to go through Herculean  
16 efforts to submit Findings of Fact and Conclusions  
17 of Law if the Board isn't going to be able to  
18 address them and sit down and study them.

19 At the same time, we don't want to be  
20 left with a period where we're sort of looking for  
21 things to do with regard to it. We've heard the  
22 contentions, we've reviewed the transcripts, we're  
23 waiting for your Findings of Fact and Conclusions of  
24 Law with a hearing date for the other contentions  
25 far down the road.

1                   So, let just say, I would anticipate  
2                   that we probably will require the Findings of Fact  
3                   and Conclusions of Law on Contentions 1 through --  
4                   well, the first 10 contentions before we go to  
5                   hearing on the others, but that's going to be a  
6                   function of when we are able to schedule the  
7                   remainder of the hearings.

8                   MS. DEAN: Okay, thank you. That  
9                   concludes the State's questions. I appreciate your  
10                  time. Thank you.

11                  CHAIR McDADE: From Riverkeeper, any  
12                  other questions?

13                  MS. BRANCATO: Yes, Your Honor, this is  
14                  Deborah Brancato. We understand from your September  
15                  14<sup>th</sup> order on administrative matters that the Board  
16                  has requested a short presentation from Entergy's  
17                  witness, Dr. Horowitz, in relation to Contention RK-  
18                  TP-2 related to flow accelerated corrosion. We  
19                  wanted to respectfully inquire whether the Board  
20                  would be amenable to providing Riverkeeper's expert  
21                  witness, Dr. Hopenfeld, with a similar amount of  
22                  time to give a very brief presentation in order to  
23                  provide his perspective on CHECWORKS and how it's  
24                  used at Indian Point. We do believe that such an  
25                  opportunity would meaningfully add to the record for

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1 RK-TP-2, so we wanted to inquire about that.

2 CHAIR McDADE: Okay. I think that was  
3 anticipated in order, that the other parties would  
4 have the opportunity to briefly comment on that  
5 description. And the only way that you would comment  
6 to put it on the record would be through a witness,  
7 so the amount of time is going to be a function of  
8 we don't want to just sort of start with square one,  
9 and the idea is not to just simply repeat the  
10 prefiled testimony. But the Board thought that it  
11 would be helpful to get on the record a very brief  
12 overview of how that system was designed, how it's  
13 supposed to work. And you would, of course, be given  
14 a brief opportunity to have your expert explain and  
15 highlight for the Board before we begin our  
16 questions a different perspective.

17 MS. BRANCATO: Okay. And that kind of  
18 leads to a second set of questions I had. We were  
19 curious about how you envision our ability to  
20 respond, so just for additional sake of clarity,  
21 would you not be anticipating allowing the parties  
22 to respond in writing, or it would be an oral  
23 response only?

24 CHAIR McDADE: We would anticipate an  
25 oral response that he will be there, your witness

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1 will be there. I think your witnesses have an  
2 opportunity to hear at whether it be Vermont Yankee  
3 or elsewhere, a description of the system, and we  
4 would anticipate immediately after the initial  
5 presentation that he would then be given a  
6 reasonable period of time again to give any  
7 different perspective he has about the design or  
8 operation of the system.

9 And, again, this doesn't replace his  
10 testimony, and we will be asking him questions, just  
11 as we will be asking Entergy's witness questions  
12 during -- that's the whole raison d'etre for the  
13 hearing.

14 MS. BRANCATO: Right. And I also wanted  
15 to inquire, to the extent there are any presentation  
16 materials similar to what the Board referred to in  
17 its September 14<sup>th</sup> order from the Vermont Yankee  
18 proceedings, are those materials that could be  
19 provided before the commencement of the hearing on  
20 the 15<sup>th</sup>?

21 CHAIR McDADE: Well if, for example,  
22 Entergy is going to make reference to documents,  
23 those documents should be marked as an exhibit and  
24 furnished to the parties as well as the Board. And,  
25 likewise, if Dr. Hopenfeld has specific, a specific

1 document that he would want to make reference to  
2 during the course of explaining his perspective,  
3 Riverkeeper should mark that as an exhibit and  
4 furnish that to the other parties and the Board.

5 MS. BRANCATO: Okay. Thank you, Your  
6 Honor. Those are all the questions that Riverkeeper  
7 had. Thank you, appreciate your time.

8 CHAIR McDADE: For Clearwater?

9 MR. WEBSTER: Yes, Your Honor, Richard  
10 Webster here. Our main question relates to a  
11 Spanish-speaking witness, Dolores Delgado, and  
12 whether -- what's the best logistical way of getting  
13 her testimony and questioning done given that she  
14 has a relatively poor command of English. And,  
15 therefore, we would prefer that she is questioned in  
16 Spanish.

17 CHAIR McDADE: Yes. I believe that --  
18 well, I don't know that she'll be questioned in  
19 Spanish given the fluency of the members of the  
20 Board, but as we indicated, I think when that issue  
21 was originally raised, the Board will arrange for a  
22 certified court interpreter so that just as in any  
23 other court proceeding, we will be asking any  
24 questions in English, the translator will translate  
25 those into Spanish for your witness, and then repeat

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1 back the answers in English for the Board and for  
2 the record.

3 MR. WEBSTER: Thank you very much.

4 CHAIR McDADE: That's a responsibility of  
5 the Board to provide a translator, and we've only  
6 been advised of the one witness. And we also  
7 anticipate that that contention, given the schedule,  
8 is going to come on toward the end of the  
9 proceeding, so we're not going to have the  
10 translator there every day, but will arrange to have  
11 a translator there when we do reach that contention.

12 MR. WEBSTER: Okay. And that actually  
13 brings me to my second question, which is I think  
14 there was a procedure for -- we're going to have two  
15 contentions on deck at each time. So, I'm assuming  
16 the Board will -- will the parties just appraise  
17 themselves of what progress we're making each day?

18 CHAIR McDADE: I think it's going to be  
19 very difficult to give you a very clear guide right  
20 now as to what contention we're going to be hearing  
21 on any particular day. I think the first day is a  
22 half day, the second day is a full day. We are  
23 hopeful of getting through those first two  
24 contentions on that Monday and Tuesday. After that,  
25 it's just really a function of how long the

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1 questioning takes. It may well be that after a few  
2 questions everything becomes clear in the mind of  
3 the Board, and we will be able to move very quickly,  
4 or it may take us a while to make sure that we fully  
5 understand the positions of the parties and the  
6 issues. But, as I said, at this point we would  
7 anticipate on that first Monday afternoon and  
8 Tuesday, we're hopeful of getting through the first  
9 two contentions. And what we would do at the end of  
10 each hearing day is advise the parties where we  
11 think we are, where we're hopeful of getting to the  
12 following day, so that you could make sure that you  
13 have the appropriate witnesses available. It won't  
14 be necessary for, for example, a witness that isn't  
15 going to be heard until the following Monday to be  
16 there for every day of the hearing unless they  
17 wanted to be. So, hopefully, we can give people an  
18 appropriate level of advance warning, and again  
19 would anticipate at the end of each session before  
20 we break for the evening to sort of discuss where we  
21 are, how much ground we've covered, and what we  
22 anticipate covering the following day, or days.

23 MR. WEBSTER: All right. Thank you,  
24 Judge.

25 MR. TURK: Your Honor, this is Sherwin



1 Turk. May I follow-up on that question for a moment?  
2 As the Board knows, the Staff has 18 witnesses  
3 scheduled for Track One contentions. That's -- we  
4 also have six different attorneys, each of whom was  
5 assigned to one, two, or three contentions. Together  
6 we have something like 26 or 27 people who will be  
7 sitting waiting for their turn to be called. It  
8 imposes a great burden on each of these individuals,  
9 and is costly to the government, as well, for each  
10 of those people to have to be sitting around waiting  
11 for their turn, not knowing even if they'll be  
12 called that week, rather than the following the  
13 week, or not until a week in December. So, I was  
14 really hoping that it might be possible now for the  
15 Board to say okay, in week one we will cover, or we  
16 hope to cover, for instance, these four contentions.  
17 And one contention may be a shoulder contention  
18 where we may not reach it that week, we may not  
19 start it until the following week, but that's what  
20 we plan for the first week. That would help  
21 tremendously with everyone's schedule, and with the  
22 cost, which as you can imagine for 27 people, each  
23 of them being paid for an entire day's work and  
24 being paid to travel and stay at a hotel for an  
25 indefinite period of time is very onerous. So, I

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1 would hope that the Board might be able to look at  
2 the schedule and give us a little clearer indication  
3 per week of which contentions are likely to be heard  
4 that week.

5 CHAIR McDADE: Unfortunately, Mr. Turk,  
6 we're not. I think the detail that I just gave is  
7 about all the detail we can give at this particular  
8 point in time. Starting off on Monday and Tuesday,  
9 we're hopeful to get through the first two  
10 contentions. It may well be once we start asking  
11 questions that the answers are very clarifying in  
12 nature, and we will be able to go through our  
13 questioning of the witnesses very rapidly. It may  
14 well be as we get into those questions that things  
15 become in the short term less clear, so it isn't  
16 really possible at this point to -- you know,  
17 clairvoyance is not one of the attributes that we  
18 possess.

19 I anticipate, as I said, on Monday and  
20 Tuesday we will be getting hopefully through those  
21 first two contentions on the list. We had made  
22 representation to New York that Dr. Shepherd, who is  
23 testifying on the third and fourth contentions would  
24 not be needed until Wednesday. I think you can  
25 reasonably anticipate, and Clearwater can reasonably

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1 anticipate that the Environmental Justice contention  
2 is not going to be heard the first week because it's  
3 the last contention on the list.

4 But at this point in time, what we are  
5 hopeful of doing is moving ahead with all deliberate  
6 speed and at the end of each day addressing where we  
7 are, how far we've proceeded, and what we don't want  
8 to do, given the fact that everybody is out of town,  
9 that we have the hearing facility for a limited  
10 window, is to have a contention that we hear on  
11 Wednesday morning, have everything clarified for the  
12 Board, and we wind up finishing up with that  
13 contention at 11:00 in the morning, and not have the  
14 witnesses for the next contention available until  
15 the following day. But I think we will have a better  
16 idea, I think that the staff can reasonably  
17 anticipate that their Environmental Justice  
18 contention is not going to be heard the first week.  
19 But what we are going to do is to take one after the  
20 other seriatim starting at 9:00 in the morning,  
21 taking a reasonable lunch break, reasonable breaks  
22 during the day, and ending on or about 6:00 each  
23 night. The last thing we're going to do before we  
24 break is to discuss where we are, and the  
25 scheduling.

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1           So, as I said, if you have witnesses or  
2 attorneys who are going to handle Environmental  
3 Justice, if they choose to show up on the 15<sup>th</sup> or  
4 the 16<sup>th</sup>, that's certainly -- you can choose for  
5 that to be the case, but you can reasonably  
6 anticipate that they're not going to be called.  
7 Other than that, I don't think I can give any  
8 further guidance. Anything further, Mr. Turk?

9           MR. TURK: Yes, Your Honor. This is going  
10 to a different issue, but it ties into the  
11 discussion we just had. Your Honor, the Board's  
12 order of last Friday declaring that New York will  
13 have the right to cross-examine, frankly, caught us  
14 by surprise. And it leads to considerable confusion  
15 on my part as to what to expect in the upcoming  
16 hearing. And if I may address that for a moment?

17           I had the personal experience of being  
18 involved in several proceedings prior to the  
19 adoption of the current Subpart L in which extensive  
20 cross-examination was conducted by Interveners, and  
21 in particular the Attorneys General of states who  
22 participated in those hearings. For instance, I was  
23 involved in the hearings on the Seabrook Operating  
24 License Application, in which the Commonwealth of  
25 Massachusetts participated. I was involved in the

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1 Shoreham briefly, in which the State of New York and  
2 Suffolk County were involved. I was involved  
3 extensively in the Private Fuel Storage proceeding  
4 in which the State of Utah was involved as an  
5 Intervener. Cross-examination went weeks, in fact it  
6 went months.

7 The Board's order inviting New York  
8 State to conduct cross-examination leaves me totally  
9 confused as to what to expect for this proceeding. I  
10 understand that --

11 CHAIR McDADE: Mr. Turk, let me cut it  
12 off at this point. It won't go weeks, it won't go  
13 months. This is somewhat different. It is a Subpart  
14 L proceeding. The Board is going to be the generator  
15 of questions. It's not that the parties are going to  
16 put on the case and the other parties are going to  
17 cross-examine. The Board's going to be asking  
18 questions.

19 I could say that I am hopeful that the  
20 Board will be so thorough in asking its questions  
21 that none of the parties will feel any need or  
22 desire to ask any additional questions because  
23 everything will have been covered. On the off chance  
24 that counsel for New York, or Riverkeeper, or  
25 Clearwater, or Entergy, or the NRC Staff, or anyone

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1 else feels that the Board has missed something given  
2 the highly technical nature of the contentions, they  
3 will be given a reasonable opportunity to  
4 interrogate the witnesses with the understanding  
5 that repetitive cross-examination, repetitive  
6 examination will not be allowed.

7 MR. TURK: Is it possible for the Board  
8 to say that there will be some time limit imposed on  
9 each party who may wish to conduct cross-  
10 examination, such as 30 minutes, or 60 minutes per  
11 contention, so that we know going in what the limits  
12 are?

13 CHAIR McDADE: No. It is going to be a  
14 function if -- and at this point the only party that  
15 submitted a request to do examination is New York,  
16 nobody else has. Entergy hasn't, the NRC Staff  
17 hasn't, Clearwater hasn't, Riverkeeper hasn't. At  
18 this point, the only one who has made the request  
19 and filed the motion is New York.

20 And as far as the length of time that it  
21 takes, if New York begins and all the questions they  
22 have have already been asked and answered by the  
23 Board, and it's just simply a regurgitation of what  
24 has already been asked, the examination will last  
25 only a matter of moments.

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1           On the other hand, if New York is able  
2           to identify areas that the Board missed and we find  
3           the questions that they ask and the answers that  
4           they are receiving expand our knowledge and  
5           understanding, are not repetitive, then we will  
6           allow it to continue. And we're not going to limit  
7           it to a specific five minute, ten minute, twenty  
8           minute. Based on my experience in litigation, when  
9           judges tend to do that, the witnesses sometimes tend  
10          to go into Dean Smith's old four corners defense,  
11          and people don't get very responsive answers.

12                 As I said, if the questions that are  
13          being asked by counsel for New York are repetitive,  
14          we are going to cut it off. If they are not relevant  
15          to the issues as we understand them, we are going to  
16          cut it off. On the other hand, if the Board feels  
17          that we are learning something, then we will go  
18          ahead and allow, again, a reasonable interrogation  
19          of the witness. But that is not an open-ended, that  
20          isn't ask anything you want if you're curious. And,  
21          I guess, the only other description is wondering how  
22          it is going to work, is you'll see how it works  
23          starting on the 15<sup>th</sup>.

24                         MR. TURK: Your Honor, I would note that  
25          none of the parties have asked for cross-examination

1 for the purpose of developing the record, as the  
2 Board's order indicates. New York asked for it  
3 simply as a statutory right in its view.

4 MS. DEAN: Your Honor, this is Janice  
5 Dean from the State. I was --

6 CHAIR McDADE: Ms. Dean, I don't need to  
7 hear from you on this. I think the Board's order was  
8 clear. If, Ms. Dean, you have a different  
9 understanding of what is being allowed of New York  
10 other than what I just described, if you could state  
11 that briefly.

12 MS. DEAN: No, the State's understanding  
13 is just as Your Honor just described.

14 CHAIR McDADE: Thank you.

15 MR. TURK: Your Honor, one other point on  
16 this. What -- in normal circumstances when cross-  
17 examination is permitted, the party whose witness  
18 was examined has the right to conduct redirect  
19 examination. Will you afford that right to people if  
20 we deem it necessary at the time?

21 CHAIR McDADE: If you -- if the party  
22 making the request makes a sufficiently compelling  
23 request. I mean, it's impossible for me to say right  
24 now, Mr. Turk, because as I said, it may well be  
25 that New York's cross-examination either is so

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1 limited because they're satisfied the Board covered  
2 everything, that there's no need or benefit to be  
3 derived from anything further. On the other hand, in  
4 the event New York brings something forward in their  
5 examination of a witness that in order for the Board  
6 to be satisfied that it fully understands the issue,  
7 it doesn't make sense for us if you have a witness  
8 available who can explain it, as opposed to it  
9 lasting months before we get further pleadings down  
10 the road.

11 Now, anticipate that that opportunity  
12 may be available, but at this point in time -- and,  
13 again, if that were made available it would have the  
14 same caveat as the cross-examination. It wouldn't be  
15 okay, let's start over again with the direct  
16 testimony. It would be answering specific things  
17 that were brought out by the parties.

18 Now, we have not yet decided, and  
19 something that the Board -- well, let me -- probably  
20 I should discuss this with the other Board members.  
21 And we will give you further guidance on this later,  
22 but in my mind, I had anticipated giving parties a  
23 reasonable opportunity after the Board had completed  
24 its questioning, if there were certain matters that  
25 you believe were confused to make a case for

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1 eliciting additional testimony. But it wouldn't be  
2 open-ended, it would be for a particular point. We  
3 would like to address X based on what the Board has  
4 asked, and the question is whether it would make  
5 more sense to do it that way or to have a written  
6 submission after the hearing when you had a chance  
7 to look at it. We will get that -- cross that bridge  
8 when we get there.

9 Does Entergy have anything further?

10 MR. BESSETTE: Yes, Your Honor, just a  
11 couple of things. With regard, you said no other  
12 party requested opportunity for cross-examination,  
13 and I -- the motion New York filed, and I don't want  
14 to reargue any part of it, was not under Subpart L,  
15 and we had no consultation for any motion under  
16 Subpart L, so we had no notice that there was a  
17 motion for cross-examination being filed any party  
18 under the Board's guidance.

19 In addition, in our answer to New York's  
20 motion we requested reciprocal rights for cross-  
21 examination should the Board be granted, so I'm a  
22 bit confused on the Board's statement that no other  
23 party has requested it.

24 CHAIR McDADE: No other party requested  
25 cross-examination. We viewed the motion filed by New

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1 York, plus the questions that were submitted in  
2 camera by New York as constituting a valid cross-  
3 examination plan.

4 As I indicated, what I envision and will  
5 discuss this further with my colleagues, is that  
6 after the Board has had the opportunity to ask  
7 questions, and we've satisfied ourselves that we  
8 have plowed the ground that we believe needed to --

9 (Cough.)

10 CHAIR McDADE: -- that you would then  
11 have an opportunity to request without having to  
12 file a written motion either to supplement the  
13 record then and there through oral testimony or  
14 supplement the record thereafter in writing.

15 MR. BESSETTE: But, Your Honor, that does  
16 not -- and I'm sorry to be a bit confused, but are  
17 you saying we do not have the same equal rights as  
18 New York State on cross-examination?

19 CHAIR McDADE: What I'm saying is New  
20 York filed a motion that we granted. And what I  
21 anticipate is that after the Board has finished its  
22 questions of a witness, before everybody moves on to  
23 the next, we would ask, in this case Entergy has an  
24 interest in every one of the contentions, as does  
25 the NRC Staff, whether or not they had a desire to

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1 supplement the record. And then we could discuss the  
2 areas that you would like to supplement the record  
3 in, and whether or not that could be done most  
4 efficiently by having a witness answer some  
5 questions that you would put to him, or for you to  
6 do that in writing after you've had a chance to  
7 fully read the transcript. Again, with the idea  
8 being that if questions were allowed they would not  
9 be repetitive, and wouldn't be just going over the  
10 same ground as the Board. But, in any event, that's  
11 something we will give you -- exactly how we're  
12 going to handle that, the Board will discuss among  
13 ourselves and advise you. But I think that gives you  
14 some guidance of what to be prepared for.

15 MR. BESSETTE: And we appreciate that,  
16 Your Honor, and I don't mean to be cagey, but we are  
17 continuing to review with the client our -- the  
18 Board's order and with regard to our legal rights  
19 with regard to the proceedings as outlined for the  
20 Board, which we candidly believe is somewhat  
21 inequitable. But we'll move on to other issues.

22 With regard to the flow accelerated  
23 corrosion presentation, we have to alert the Board  
24 that Dr. Horowitz over the last year has been  
25 suffering a medical condition wherein he tires

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1 easily and has difficulty speaking for long periods  
2 of time. So, we're going to be asking our other flow  
3 accelerated corrosion expert, Rob Aleksick, to be  
4 assisting Dr. Horowitz in that presentation just to  
5 accommodate his medical needs. And we're assuming  
6 that would not be a problem with the Board?

7 CHAIR McDADE: I do not anticipate it.  
8 Again, I don't anticipate that Dr. Horowitz'  
9 presentation is going to be all that long. But if  
10 during the course of the questioning of Dr. Horowitz  
11 he needs a break or someone needs to fill in for  
12 him, certainly, we will accommodate to the degree  
13 practicable his physical and medical condition.

14 You know, we do want to hear from Dr.  
15 Horowitz because he has a sort of pivotal role in  
16 this, so to the degree -- I don't know whether the  
17 other substitute witness would be able to answer the  
18 kinds of questions that we would have for Dr.  
19 Horowitz but we will just have to deal with that at  
20 the time. If he needs a break but we feel we need  
21 the answers from him, we will allow him to take a  
22 break and perhaps can move on to another witness  
23 while he takes a break.

24 MR. BESSETTE: And we appreciate that,  
25 Your Honor. We just wanted to alert you so that we

1 didn't have to raise any issues in front of a large  
2 audience.

3 CHAIR McDADE: Let me ask before we go  
4 on, I anticipate that this status conference will  
5 only last another few minutes. If it's going to last  
6 a whole lot longer, then we might want to consider  
7 taking a break for a few minutes. But we've gone  
8 through with most of the parties here, Entergy, Mr.  
9 Besette, do you have a whole lot more or are you  
10 almost done? And, again, if you have a whole lot  
11 more that's fine. I don't want to cut you off, but I  
12 just want to know whether or not we should take a  
13 break, or just continue on and get this done.

14 MR. BESSETTE: Your Honor, I only have a  
15 few other points. I can't speak for the other  
16 parties. I'll just march through.

17 With regard to Your Honor's notion, I  
18 mean statement with regard to entering new exhibits  
19 on the record, we have a list of probably 10  
20 exhibits or documents that were issued since our  
21 testimony. Would it be easier for the Board if we  
22 submitted those in advance?

23 CHAIR McDADE: Yes.

24 MR. BESSETTE: Okay, we'll do so, and  
25 we'll just submit them to the Board as proposed

1 exhibits.

2 Also, is this hearing going to be  
3 webcast?

4 CHAIR McDADE: No.

5 MR. BESSETTE: Okay. And I know this is  
6 somewhat water under the bridge, but with regard to  
7 Riverkeeper's, I mean Clearwater's Spanish-speaking  
8 witness --

9 CHAIR McDADE: By the way, just as an  
10 aside, I mean, that's something that we have looked  
11 into, and as it turned out both because of cost  
12 issues and others, it's not going to be practicable.  
13 And at this point we've been told --

14 (Audio difficulty.)

15 MR. BESSETTE: Thank you, Your Honor.  
16 And, again, with regard to Riverkeeper's Spanish-  
17 speaking witness, we just kind of want to again  
18 provide our objection that we believe the entire  
19 testimony relates to Emergency Planning Adequacy.  
20 And to the extent we could simplify this hearing, we  
21 again offer that for the Board's consideration.

22 MR. WEBSTER: Your Honor, Mr. Bessette  
23 has made that motion, it's been denied, so I really  
24 think it's inappropriate for him to make it twice.

25 CHAIR McDADE: And just as an aside, I

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1 mean, as we go through the various witnesses, there  
2 are some that we will have more questions for than  
3 others, there are some people who have been listed  
4 as witnesses that we aren't going to have any  
5 questions of, or very few questions. But what we  
6 have said is that for a witness to testify who does  
7 need an interpreter, it will be the burden on the  
8 Board to make sure that a qualified certified  
9 interpreter is available to answer. And, again, the  
10 witnesses aren't giving a free form expose. They're  
11 answering specific questions from the Board, so that  
12 any particular witness' testimony may be very brief.

13 Anything further, Mr. Bessette?

14 MR. BESSETTE: Yes, Your Honor. Just  
15 going back to cross-examination, would the Board --  
16 is the Board saying any other party who requests  
17 that would have to file its own motion?

18 CHAIR McDADE: I'm suggesting that it  
19 would be done orally, that you wouldn't have to go  
20 through the burden of filing something that we would  
21 then have to read, that we would just simply do it  
22 on the record there orally.

23 MR. BESSETTE: Thank you, Your Honor. We  
24 have no further questions or comments.

25 MS. TREATOR: Your Honor, this is



1 Victoria Treanor from the Town or Cortlandt. I just  
2 had two very quick questions.

3 CHAIR McDADE: Yes?

4 MS. TREANOR: First being, would the  
5 Board be able to provide the contact information of  
6 the court reporter who will be recording the  
7 proceedings so we can get in touch with them with  
8 regard to daily transcripts?

9 Second question which is somewhat  
10 related is the Town may not be able to attend on all  
11 days of the proceeding, and I was wondering if the  
12 Board would consider emailing a summary of -- it's  
13 oral summary which it provides at the end of the  
14 evening to the participants so that we may have some  
15 sort of notice of what's on deck for the next day.

16 CHAIR McDADE: I don't think that would  
17 be a problem, that we would be able to send a brief  
18 email to any of the participants who aren't present  
19 of who we anticipate calling as witnesses, what  
20 contentions we're going to cover.

21 With regard to the court reporter, you  
22 should already have that information from the  
23 transcripts that have been furnished to you earlier.  
24 It's Neal Gross and Company is the court reporter,  
25 and their contact information is on the transcripts.

1 They're also on the NRC website.

2 MS. TREANOR: Thank you very much, Your  
3 Honor.

4 CHAIR McDADE: Okay. Anything further?

5 MR. TURK: Yes, Your Honor, for the  
6 Staff. Coming back to the cross-examination order  
7 from the Board.

8 CHAIR McDADE: Okay. Before we get  
9 started on this, Mr. Turk, how long do you  
10 anticipate, whether or not we should take like a 5-  
11 minute break in place before we get started with  
12 this? If you have just one question that's going to  
13 take 30 seconds --

14 MR. TURK: I have three -- my speaking  
15 time will be about a minute and a half.

16 CHAIR McDADE: Let's go, let's get it  
17 done.

18 MR. TURK: Okay. The Board has previously  
19 asked the parties whether we want daily copies or  
20 not, indicated that the copies would be made  
21 available on an eight to ten day basis. If we're  
22 going to have cross-examination, we may need to look  
23 at a daily transcript. Is it possible that a daily  
24 copy will be available?

25 CHAIR McDADE: From the Board's

1 standpoint, we did not believe the additional  
2 expense to get a daily copy was warranted. That  
3 said, if anybody else wants a daily copy and the  
4 expense associated with it, that's not the Board's  
5 concern. We're ordering and paying for the seven-day  
6 turnaround, but that does not preclude anybody else,  
7 and I know the Staff as far as your arrangements of  
8 how you go about ordering transcripts, if the Staff  
9 feels that they want -- believes that it's in the  
10 Government's interest to spend the money for daily  
11 transcript, the Staff can initiate that. Likewise,  
12 any of the other parties. We're just saying from the  
13 standpoint of what the Board has initiated, and what  
14 we thought was prudent for what was needed and  
15 financially, that's what we arranged.

16 MR. TURK: Second, Your Honor, on the  
17 question of redirect and, indeed, rebuttal, oral  
18 testimony usually produces statements that aren't as  
19 crisp or as clear as we would have liked to have  
20 presented them. It happens from time to time that we  
21 need to make corrections. It also happens that  
22 another witness may say something on the stand that  
23 we may feel a need to rebut that information. Will  
24 you make an opportunity available to parties to do  
25 that?

1 CHAIR McDADE: We would make the  
2 opportunity available for you to request that  
3 opportunity. And depending on the nature of the case  
4 that you make for it -- again, what it's not going  
5 to be is just an opportunity to regurgitate what's  
6 already come in, but if you make a case for  
7 clarifying we will certainly entertain that.  
8 Anything else, Mr. Turk?

9 MR. TURK: No, Your Honor.

10 CHAIR McDADE: Anything from any of the  
11 other participants?

12 MS. DEAN: No, Your Honor, thank you.

13 CHAIR McDADE: Okay. That being the case,  
14 this status conference is closed. We will hear from  
15 you all in writing by a week from today, and we will  
16 see you all two weeks from today. Thank you.

17 (Whereupon, the proceedings went off the  
18 record at 12:23:15 p.m.)

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