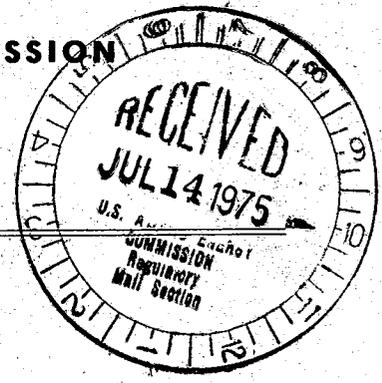
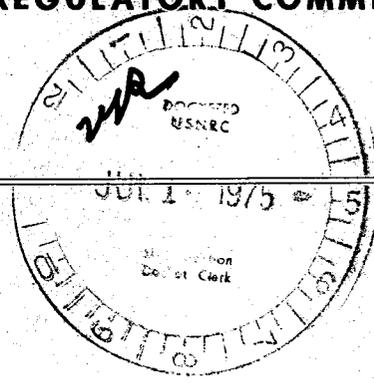


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NUCLEAR REGULATORY COMMISSION



IN THE MATTER OF:

**CONSOLIDATED EDISON COMPANY OF
NEW YORK, INC.**

Docket No. 50-286

(Indian Point Station, Unit 3)

ORAL ARGUMENT

Place - Bethesda, Maryland

Date - Wednesday, 9 July 1975

Pages 1 - 121

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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In the matter of: :
: Docket No. 50-286

CONSOLIDATED EDISON COMPANY OF :
NEW YORK, INC. : ORAL ARGUMENT

(Indian Point Station, Unit 3) :
:

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Appeal Board Hearing Room
Fifth Floor
East-West Towers
4350 East-West Highway
Bethesda, Maryland

Wednesday, 9 July 1975

Oral argument before the Atomic Safety and Licensing
Appeal Panel was convened, pursuant to notice, at 10:00 a.m.

BEFORE:

- JOHN B. FARMAKIDES, Chairman
- DR. JOHN H. BUCK, Member
- DR. LAWRENCE R. QUARLES

APPEARANCES:

HARRY H. VOIGT, EUGENE R. FIDELL and PATRICK K. O'HARE,
Esqs., LeBoeuf, Lamb, Leiby & MacRae, 1757 N Street,
N. W., Washington, D. C. 20036; on behalf of the
Applicant, Consolidated Edison Company of New York.

JOSEPH GALLO and FREDERIC GRAY, Esqs., Office of the
Executive Legal Director, Nuclear Regulatory
Commission, Washington, D. C. 20555; on behalf
of the Nuclear Regulatory staff.

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APPEARANCES: (continued)

EDWARD J. SACK, Esq., Consolidated Edison Company of New York, Inc., 4 Irving Place, New York, New York; on behalf of the Applicant.

SARAH CHASIS, Esq., Natural Resources Defence Council, 15 West 44 Street, New York, New York 10036; on behalf of the Hudson River Fishermen's Association and Save our Stripers.

JOHN J. CLEMENTE, Esq., 99 Washington Avenue, Albany, New York 12245; on behalf of the New York State Atomic Energy Council; and

THEODORE K. DE BOER, member of the Technical Staff of the New York State Atomic Energy Council.

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P R O C E E D I N G S

1
2 CHAIRMAN FARMAKIDES: Good morning, ladies and
3 gentlemen.

4 On June 12, 1975, the Licensing Board in this
5 proceeding issued a memorandum and order and a decision which
6 inter alia referred a stipulation entered into among the
7 parties to this board for its review, and authorized the
8 issuance to the Applicant of a full-term, full power operating
9 license subject to our favorable review of the stipulation
10 and subject to the determination by the Commission on a
11 pending seismic matter.

12 In our judgment, the seismic condition appeared
13 to be a condition precedent and if so considered, indicated
14 a disparity in the decision issued by the Licensing Board
15 on April 8 for fuel loading and low power testing and limited
16 operation to 91 percent of full power.

17 As we stated in the order of June 20, 1975, calling
18 for this session today, we could find no justification in
19 the record authorizing the plant to load, test and operate
20 without any conditions on the one hand at a steady-state
21 power up to 91 percent of its full power rating for an
22 indefinite term, and on the other hand placing a condition
23 relating to a seismic issue on operation at 100 percent of
24 full power.

25 We couldn't see the difference between operating

1 at 91 percent and 100 percent, especially since the
 2 Board considered the seismic conditions to be of
 3 major importance.

4 In our June 20 order, we also asked several
 5 questions which we felt would assist in focusing the
 6 attention of the parties, including one relating to a letter
 7 submitted by Hudson River Fishermen's Association, and
 8 Save our Stripers, which letter set forth their position
 9 as to the effect of the stipulation.

10 In essence, their position is that the issue
 11 of whether once-through or closed cycle cooling should be
 12 used for Indian Point 3 is no longer open to an opportunity
 13 for a public hearing, that it has been determined by the
 14 parties through the stipulation presented.

15 Finally, in our June 20 order, we called for
 16 an abbreviated briefing schedule and for this oral argument
 17 because loading and operation of Indian Point 3 appeared
 18 eminent pursuant to the Licensing Board's April 8
 19 authorization.

20 Following our order, the licensee, on June 23, 1975
 21 filed before the Licensing Board a motion for clarification of
 22 the memorandum and order of July 12, 1975. In that motion,
 23 the licensee inter alia contended that the seismic
 24 condition was intended by the Licensing Board to be a
 25 condition subsequent.

1 That position of the licensee was supported
2 by the other parties. In an order denying motion for
3 clarification, the Licensing Board denied Applicant's
4 motion and also stated it had intended both of the conditions
5 identified in its decision to be conditions precedent.

6 We should note on June 30, 1975, the Citizens'
7 Committee for Protection of the Environment filed two
8 motions. One was a motion for appointment of special
9 counsel and a second was a motion for leave to file a brief
10 amicus curae together with an appendant amicus brief.

11 We granted the motion for filing the brief, but
12 denied the motion for special counsel, as explained in the
13 memorandum and order dated July 7, 1975.

14 One final matter. On July 7, 1975, we received
15 a telegram from the New York State Atomic Energy Council
16 requesting extension of time to file exceptions and supportive
17 brief. While the motion was technically untimely, it has
18 been granted and all parties so advised by telephone on
19 July 8.

20 The exceptions filed by the licensee on July 7
21 are also technically untimely, but we will allow them to
22 be filed and we will receive it. We will issue a memorandum
23 and order within the next day or two on this.

24 We have pointed out essentially two issues before
25 us related directly to the stipulation. We will consider the

1 seismic-related issue first this morning. Then the
2 cooling system issue we will consider later.

3 In substance, the first issue is whether Indian
4 Point 3 should be permitted to operate up to 91 percent
5 of full power, pending a determination on the seismic
6 issue posed, and if not at 91 percent, then at what level.

7 On this issue, we will hear first from Mr. Voigt
8 for the licensee, Mr. Clemente for the New York Atomic
9 Energy Council, Ms. Chasis for the Hudson River Fishermen's
10 Association and Save our Stripers, and Mr. Gallo for the
11 NRC.

12 The second issue will focus on whether the
13 stipulation is intended to read as the Hudson River Fisher-
14 men's Association and Save our Stripers interpret it, that
15 it precludes consideration of any cooling system except one
16 that is the closed cycle, unless the issue is raised by the
17 licensee.

18 On that issue, Ms. Chasis will be first, Mr.
19 Gallo, Mr. Clemente, and Mr. Voigt last.

20 Off the record a minute.

21 (Discussion off the record.)

22 Let's go back on the record.

23 Let me ask for the parties to make their
24 appearances at this time.

25 From left to right, Mr. Gallo.

1 MR. GALLO: Good morning, Mr. Chairman and
2 members of the Board.

3 My name is Joseph Gallo, Counsel for the NRC
4 Staff. Address is Washington, D.C. 20555.

5 To my left is Mr. Gray, who is with me today
6 and is a member of the NRC legal staff.

7 I will be making oral argument today for the
8 Staff.

9 CHAIRMAN FARMAKIDES: Mr. Voigt?

10 MR. VOIGT: Mr. Chairman, my name is Harry H.
11 Voigt.

12 Appearing with me this morning on behalf of the
13 Applicant, Consolidated Edison Company of New York, Inc.,
14 are my associates, Mr. Eugene R. Fidell and Mr. Patrick K.
15 O'Hare.

16 Also appearing with me is Edward J. Sack of the
17 Consolidated Edison Company legal staff.

18 MS. CHASIS: Mr. Chairman and members of the
19 Board, my name is Sarah Chasis, appearing on behalf of the
20 Hudson River Fishermen's Association and Save our Stripers,
21 15 W. 44th Street, New York.

22 MR. CLEMENTE: Mr. Chairman, Mrs. Buck and Quarles,
23 good morning.

24 I am John Clemente, appearing on behalf of the New
25 York State Atomic Energy Council.

1 I have with me today Theodore K. DeBoer, a
2 member of our technical staff.

3 CHAIRMAN FARMAKIDES: Let me note another party.
4 the New York State Attorney General's Office is not
5 participating and has mailed no briefs.

6 Mr. Voigt, I guess you are first, sir, and I
7 think we have allotted 30 minutes. We will allow 30 minutes
8 to each party for each issue.

9 You may proceed, sir.

10 I assume you want to reserve some of your time.

11 MR. VOIGT: I think it is unnecessary for me
12 to reserve -- if I may use the plus 30 as a total, I won't
13 use anything like 30 minutes on the second issue.

14 Perhaps I can reserve part of that time.

15 CHAIRMAN FARMAKIDES: All right.

16 ORAL ARGUMENT OF HARRY VOIGT ON BEHALF OF
17 CONSOLIDATED EDISON COMPANY OF NEW YORK, INCORPORATED.

18 MR. VOIGT: Mr. Chairman and members of the Board,
19 I appear this morning for the Applicant, Consolidated Edison.

20 Prior to commencing my argument, I request
21 permission to distribute at this time to the members of this
22 Board copies of a report which was transmitted by the Company
23 to the Regulatory Staff on July 7, 1975.

24 That is a preliminary report from one of the
25 Applicant's seismic consultants, and because of its obvious

1 relationship to the issue that has been raised in this
2 proceeding, I thought it would be proper for this Board
3 to have copies of it.

4 CHAIRMAN FARMAKIDES: All right, sir.

5 Do the other parties have copies, Mr. Voigt?

6 MR. VOIGT: It has been distributed to all
7 parties as shown by the covering letter.

8 Gentlemen, the Indian Point 3 operating license
9 proceeding dates back to October 19, 1972, at which time
10 a notice of an opportunity for hearing was issued by the
11 Commission.

12 Following that notice, interventions were filed
13 and granted on behalf of the Hudson River Fishermen's
14 Association, Save our Stripers, State of New York by its
15 Atomic Energy Council, and subsequently on a later inter-
16 vention, the Attorney General of the State was separately
17 admitted as an Intervenor.

18 None of the admitted Intervenor's raised any health
19 or safety issue with respect to the plant. All of the
20 contentions were environmental. Basically they concerned the
21 effect on aquatic life in the Hudson River of operation of
22 the once-through cooling system and also compliance with
23 New York State's thermal standards.

24 Now, these contentions were basically very similar
25 to contentions that were advanced in the Indian Point 2

1 licensing proceeding.

2 Indian Point 3, of course, is essentially a
3 twin of Indian Point 2 and therefore it is reasonable to
4 expect that both radiological and environmental effects
5 of Indian Point 3 will be very similar to those projected
6 for Indian Point 2.

7 The Indian Point 2 case, of course, came before
8 a panel of the Appeal Board in 1974, and on April 4 in
9 ALAB-188, this Board rendered its decision. Subsequently
10 the Company moved for reconsideration and that motion was
11 denied.

12 The staff, having sought additional time in
13 which to decide whether to move for reconsideration
14 announced it had determined not to do so. So we had a
15 final decision concerning the conditions that were
16 appropriate for the licensing of a twin plant.

17 Clearly this required the parties in this case
18 to reassess their positions, to determine whether they wanted
19 to maintain that there was sufficient distinction between
20 Indian Point 2 and Indian Point 3, or sufficient new evidence
21 to justify trying to obtain a different licensing condition
22 for Indian Point 3.

23 Consolidated Edison and the staff, I believe,
24 each concluded independently that there was not enough new
25 data available or likely to become available promptly to

1 justify a complete retrial of the same environmental
2 issues for Indian Point 3 that had just been determined
3 for Indian Point 2.

4 As a result, the preliminary discussions were
5 held in the summer of 1974, and then a series of intensive
6 meetings involving all of the parties to this case began
7 in September of 1974 and continued through December.

8 Those meetings were in an effort to take the
9 decision in ALAB-188 and the condition that had been
10 developed for Indian Point 2 and to apply that same condition
11 to Indian Point 3.

12 Now, in doing that, obviously the parties had
13 to consider adjustments in order to correspond with the
14 construction and licensing schedule of Indian Point 3.
15 We had to recognize that there could not, as a practical
16 matter, be an overlap either in a postulated construction
17 schedule for a cooling tower at the two units or in the
18 scheduled outage that would be necessary in order to hook
19 up the cooling tower for the two units.

20 In addition to these factors, there were certain
21 refinements which were developed during the discussion.
22 For example, opportunities for hearing were clearly spelled
23 out in the stipulation whereas under the licensing condition
24 in ALAB-188, in some instances the opportunity is implied
25 rather than express.

1 Finally, there were certain pragmatic adjustments
2 that were made simply to accommodate the position of the
3 various parties and to secure agreement by all concerned.
4 This negotiation leading to the stipulation was a very
5 long and difficult process. Indeed, there were times when
6 some of us thought it might be quicker to go to the hearing
7 than continue with the negotiations.

8 But fortunately, we continued. We reached an
9 agreement in December 1974, leading to the signature of
10 the stipulation which is in the record, which you gentlemen
11 are familiar with, on January 13, 1975.

12 I think there are two points significant about
13 the stipulation. First of all, it is a conscious effort
14 and I believe a successful one to follow in all significant
15 respects the precedent of ALAB-188.

16 Second, the stipulation, as one would expect,
17 expressly withdraws all of the requests for a hearing by any
18 party. Thus, in our view this case was ready for determina-
19 tion in January 1975, because all of requests for hearing
20 had been withdrawn and all of the issues or matters in
21 controversy had been settled.

22 Therefore, the Licensing Board could have
23 accepted the stipulation, terminated the proceeding and
24 certified the stipulation to the Appeal Board at that time.

25 CHAIRMAN FARMAKIDES: Mr. Voigt, excuse me, sir.

1 I assume you are going to relate this to the
 2 seismic issue that we posed first. We are discussing the
 3 question of the seismic condition this morning, and the
 4 thought being the distinction between 91 and 100 percent
 5 because of the seismic condition, right?

6 MR. VOIGT: That is correct, sir.

7 As you know, the Licensing Board did not choose
 8 to terminate the proceeding, but it ordered a further
 9 session. The purpose of that session as announced was
 10 first to receive the statements of the parties in support
 11 of the stipulation; secondly, to answer the Licensing Board's
 12 questions concerning three matters: financial qualifications,
 13 site security plan and quality assurance.

14 Note there was no indication from the Licensing
 15 Board that it wished to hear any presentation concerning
 16 any seismic question. This was true even though there was
 17 then pending before the Commission a request for a hearing
 18 by an organization known as Citizens' Committee for Protection
 19 of the Environment, which while not an intervenor, clearly
 20 had directed its petition for a hearing at the Indian Point
 21 plant.

22 Now, this session was held on April 1 and continued
 23 on April 2 to answer the Licensing Board's inquiries. During
 24 the course of the April 1 hearing, the so-called seismic
 25 issue appeared for the first time in this proceeding.

1 Counsel for the State of New York indicated
2 that the State had questions concerning the Staff's
3 application of Appendix A to part 100 to the Indian Point
4 site.

5 During the April 1 hearing, Staff presented its
6 supplemental safety evaluation for the site, including
7 Appendix C, which was a detailed discussion of the seismic
8 analysis that the staff had made.

9 The Staff also produced a panel of expert
10 witnesses, the men who had been responsible for preparation
11 of that analysis and the state was permitted to cross-examine
12 them.

13 During that cross-examination, the State had
14 present at its counsel table Dr. Davis, the chief geologist
15 of the state and another geologist who was associated with
16 Dr. Davis.

17 On the following day, April 2, the state
18 announced that it was not prepared to proceed any further
19 with a presentation on the question that it had raised.
20 It was considering withdrawing the question from the
21 proceeding.

22 Dr. Davis and his associate who had been present
23 on the preceding day had returned to Albany and were there-
24 fore not available to be called to the witness stand.

25 The Licensing Board refused to order the state to

1 go ahead, either at that time or at some immediate
2 subsequent time.

3 So the hearings were concluded with nothing
4 in the record except the staff evaluation, and the staff
5 testimony in support of that evaluation. Nothing was
6 offered to controvert the staff evaluation. Subsequently,
7 the state applied formally in writing to withdraw its
8 question concerning the adequacy of the staff's report and
9 the Licensing Board permitted that to be done.

10 The state also withdrew any opposition to the
11 issuance of a full-term license.

12 DR. BUCK: Was there ever an official contention
13 put into the case by the state?

14 MR. VOIGT: No, sir. Nor in our view could there
15 be because the state had withdrawn as a party -- withdrawn
16 its request for a hearing. So you would really have
17 had to go back and start over in order to justify their
18 raising a contention at that point.

19 DR. BUCK: Thank you.

20 MR. VOIGT: Following this hearing in which the
21 Licensing Board was very much aware of the express position
22 of the state, on April 8 the Licensing Board issued its
23 order granting Applicant's motion for an interim operating
24 license to load fuel, test and operate at steady-state power
25 up to 91 percent.

1 Subsequently, the Licensing Board issued its
2 initial decision authorizing a full-term license. Subject
3 to approval of the stipulation by this Board and Commission
4 action on the outstanding requests for a hearing outside
5 the framework of this proceeding that had been filed by
6 the Citizens' Committee and by the state.

7 This Board then issued its order directing the
8 parties to address the questions set forth therein.

9 Now, it is our position in this case, gentlemen,
10 that there simply is no evidence in this record to justify

11 ~~the imposition of any type of seismic condition upon the~~
12 operation of this plant.

13 The plant has been fully and we think competently
14 evaluated by the staff. The staff evaluation is in the
15 record. There is nothing to contradict that evaluation.
16 Therefore, we initially interpreted the decision of the
17 Board below not as imposing any sort of condition precedent
18 for which there is no record justification, but simply
19 recognizing there were pending before the Commission other
20 requests which if granted could conceivably have a
21 subsequent effect upon the terms and conditions of the
22 company's operating license.

23 We asked the Licensing Board for clarification
24 on that point, and our motion was denied. So in our view,
25 the record is still somewhat obscure as to exactly what

1 the Licensing Board intended.

2 CHAIRMAN FARMAKIDES: Are you saying that in
3 light of the denial of your motion, sir?

4 MR. VOIGT: Yes, Mr. Chairman.

5 CHAIRMAN FARMAKIDES: Are you saying that also
6 in light of the discussion by the Licensing Board with respect
7 to the points raised?

8 MR. VOIGT: Well, that puts one in a curious
9 legal position, Mr. Chairman. If a motion is denied it cannot
10 be thought that any discussion accompanying the denial is
11 surplus.

12 If the Licensing Board wanted to clarify the
13 position, it should have granted the motion.

14 I am not saying disregard what Mr. Jensch said.

15 CHAIRMAN FARMAKIDES: We are pretty sure what the
16 Licensing Board said is that it intended to effect a condition
17 precedent.

18 MR. VOIGT: That is the last word from the
19 Licensing Board. I interpreted the letter from Mr. Jensch
20 a few days before that to go in the opposite direction.

21 CHAIRMAN FARMAKIDES: If you look at the initial
22 decision of June 12, could you reach a different conclusion?

23 MR. VOIGT: If you are referring to the ordering
24 paragraph, at best it is ambiguous and therefore I have to
25 go back and look at the text of the decision and the

1 discussion in the text seems to me to be convincing that
2 whatever the ambiguity, it wasn't intended as a condition
3 precedent.

4 CHAIRMAN FARMAKIDES: How would you read the
5 ordering paragraph in view of the denial of your motion to
6 clarify as expressed by the Licensing Board?

7 MR. VOIGT: If I take the language that was
8 included in the decision denying the motion, I have to read
9 it the other way, I think.

10 CHAIRMAN FARMAKIDES: We can put that to rest,
11 can't we?

12 MR. VOIGT: I think so.

13 CHAIRMAN FARMAKIDES: All right, sir.

14 MR. VOIGT: However, notwithstanding the language
15 in the motion, we say to this Board that there is no
16 justification for any such condition precedent because there
17 is no evidence to support it. There is not a particle
18 of test or documentation in this record that would limit the
19 operation of this plant as of right now.

20 If the Commission orders a further hearing on one
21 of these other petitions and goes ahead and has a kind of
22 generic proceeding pertaining to the Indian Point site and
23 not just this plant, and if one of the parties who has
24 requested a hearing comes in and proves up a case which the
25 Applicant and Staff are unable to rebut, then there may be

1 a record basis for going back and taking another look
2 at the plant.

3 CHAIRMAN FARMAKIDES: Interestingly, Mr. Voigt,
4 that reminds me, earlier this morning there was ambiguity
5 with respect to what you were saying in my mind.

6 All three plants, 1, 2, and 3, specifically 2 and
7 3, are at the same site, so we are talking about one site?

8 MR. VOIGT: Yes, sir.

9 Accordingly, in considering the questions posed
10 by this Board, we must make clear that we do not agree that
11 seismic condition is proper or appropriate in this case
12 at this time.

13 Assuming, however, the existence of such a
14 condition, then we say to you quite candidly that there is
15 no significant difference in the risk between operation
16 at 91 percent of full power and operation at full power.

17 In other words, there is no risk at either level,
18 but if there were it would be roughly the same.

19 LR. QUARLES: Mr. Voigt, assuming as you say, that
20 the condition is there, and further, you have stated and
21 all parties have stated that there is no difference between
22 the 91 and 100 percent in this particular aspect of the
23 thing, would you say there is a difference if it had been
24 10 percent and 100 percent?

25 MR. VOIGT: Very clearly there is a difference

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1 between operation at a low level of power for a short
2 time. The thing you are really concerned about is that as
3 a result of an earthquake, the plant will not be able to
4 shut down safely, and there may be an accidental release
5 of radiation to the environment.

6 When the plant first starts up, there is no
7 accumulated fission products. An accidental release at
8 that time would be an insignificant event. As we go through
9 time and power ascension, the accumulation of fission products
10 begins and at some point on that scale, there is a
11 sufficient build up that you can say that the magnitude
12 of a postulated accident approaches that of a postulated
13 accident during full power operation.

14 We do not believe there is sufficient evidence
15 in the record now for us to tell you where the spot on the
16 curve is. We did offer some discussion of this in the
17 affidavits that were filed in July of 1974 in support of the
18 motion for the testing license.

19 I would not represent to you that you could
20 resolve that question simply from those affidavits.

21 DR. QUARLES: You have no feeling then as far
22 as power or time. They are related. But suppose it were
23 10 percent indefinitely.

24 MR. VOIGT: I can't give you a direct answer to
25 your question, Dr. Quarles. I would think if we examined it

1 we would probably conclude you could go through the entire
2 testing cycle up to a level perhaps as high as 91 percent
3 before you had a sufficient accumulation. The problem would
4 arise when you started operating steady-state at a high
5 power level.

6 DR. QUARLES: Which is what the authorization
7 permits, up to 91 percent.

8 MR. VOIGT: That is correct.

9 DR. QUARLES: If it were just testing, your
10 feeling this would be all right, even assuming the seismic
11 condition is valid at 100 percent?

12 MR. VOIGT: That is correct.

13 CHAIRMAN FARMAKIDES: Are we clear now?

14 What time frame are you talking about when you
15 say "testing," Mr. Voigt? Has the plant now loaded?

16 MR. VOIGT: It has not loaded, Mr. Chairman.
17 During the -- the plant is finished as far as building is
18 concerned.

19 During one of the final inspections, some very
20 small cracks were discovered in the stainless steel clad
21 in the steam generator water boxes. The company wants to
22 make an authoritative determination as to whether the cracks
23 ought to be fixed before they load the fuel. The fuel
24 loading has been delayed.

25 The company's current estimate submitted to

1 regulatory operations within the last several days is
2 they will be ready to load fuel during the month of
3 August. Following that, of course, there is an extended
4 testing schedule.

5 That schedule is in the record primarily in
6 the papers that were filed in support of the motion for
7 the testing authorization. I don't recall all of the
8 details. My recollection is that it's something like 28 days
9 to complete the loading of the fuel. Something like 10
10 additional days for tests short of initial criticality, and
11 then something like another month for tests at either
12 zero or one percent criticality.

13 So you have about 2-1/2 months before you get
14 any significant fuel burn-off.

15 Then you go up in steps from there. The whole
16 schedule is in the record. I'm sorry I don't have the
17 exact number of days.

18 CHAIRMAN FARMAKIDES: We have that, sir, and
19 have been looking at it. Your best estimate is that that
20 schedule would not begin to run until some time in the
21 middle of August.

22 MR. VOIGT: That is correct, sir.

23 CHAIRMAN FARMAKIDES: I think your schedule
24 includes 154 days, something along that order, for your
25 final testing.

1 DR. BUCK: Roughly, that is my memory, too.

2 MR. VOIGT: That sounds reasonable.

3 CHAIRMAN FARMAKIDES: We are talking five months
4 from August?

5 MR. VOIGT: That is right.

6 You are talking about getting to commercial power
7 around December or possibly not even until the end of
8 calendar year 1975.

9 CHAIRMAN FARMAKIDES: Thank you.

10 MR. VOIGT: Gentlemen, I have completed my remarks.

11 If you have no further questions --

12 CHAIRMAN FARMAKIDES: Thank you, Mr. Voigt.

13 Mr. Clemente?

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1 ORAL ARGUMENT OF C.J. CLEMENTE, -ON BEHALF OF
2 NEW YORK ATOMIC ENERGY COMMISSION.

3 MR. CLEMENTE: Having heard the Applicant's
4 exceptions for the first time this morning, I'm not prepared
5 to respond to them.

6 CHAIRMAN FARMAKIDES: His exceptions?

7 MR. CLEMENTE: Yes, sir. The Applicant addressed
8 at some length the adequacy of the record in support of a
9 condition precedent. I would wish to confine my remarks
10 more narrowly to the questions the Board posed.

11 Essentially our responses are set out on page 3 and
12 4 of our filing. The Board seemed to be interested in
13 difference in risk associated with 91 and 100 percent of full
14 power. While we're unable to assess in any quantitative
15 fashion the difference in risk, we think the Applicant has
16 set out the proper parameter to look at and that is the
17 build up of the fission products.

18 While we were unable to assess the difference, we
19 think for all practical purposes it's small.

20 DR. QUARLES: Would you agree with Mr. Voigt's
21 entire statement of their being able to test up to 91 percent
22 for short periods of time totalling a full program of 154 days?

23 MR. CLEMENTE: With respect to seismic matters we
24 feel there is no overriding explicit geological or seismolo-
25 gical conditions that would compel aberration of any existing

1 authorization. I construe the limited operating authorization
2 previously authorized by the Board to be such an existing
3 operating authorization.

4 DR. QUARLES: Well, as I interpret the Board's
5 authorization it's a little different from what Mr. Voigt
6 was saying. Mr. Voigt said 91 percent in a certain time
7 limit. Mr. Voigt qualified his statement by saying it would
8 be limited to the testing period rather than continuously at
9 91 percent.

10 MR. CLEMENTE: I think Mr. Voigt assumed he would
11 have a full power license by then.

12 DR. QUARLES: What is having a full power license
13 by any time got to do with whether it's safe to operate at
14 some other power at which you do have a license?

15 MR. CLEMENTE: As you're aware, Dr. Quarles, the
16 State has raised certain questions about the seismology and
17 geology. We feel they were not adequately addressed in the
18 FSAR for Unit III and are such that more geological informa-
19 tion must be acquired before a final conclusion concerning
20 seismic risk at the site can be reached.

21 We don't feel, however, that the mere posing of
22 the questions in and of themselves justifies moving against
23 any operating authorization. We simply feel that the standard
24 which should be applied there is some affirmative showing.

25 CHAIRMAN FARMAKIDES: I don't understand that.

1 What do you mean by "the mere posing of the questions?" You
2 mean the questions we posed?

3 MR. CLEMENTE: No, Mr. Chairman. The questions
4 which the State has posed in its filing with the Commission
5 and to some extent implicitly imposed in the Licensing Board
6 hearing on April 1 through examination of Staff witnesses.

7 CHAIRMAN FARMAKIDES: Well, isn't that really the
8 crux of the matter which Mr. Voigt argues constitutes no
9 evidence?

10 MR. CLEMENTE: Yes, Mr. Chairman. That is
11 Mr. Voigt's argument. The record will not support a condition
12 precedent to the issuance of a full term license, -is his
13 argument.

14 CHAIRMAN FARMAKIDES: Is that your position?

15 MR. CLEMENTE: I defer taking any position on that
16 matter until we have determined what we will do about
17 excepting to the initial decision. I construe his condition
18 on whether there is or is not seismic condition present or the
19 record does or does not support it to be in the nature of an
20 exception and something not really posed by the Board in their
21 order which led to this oral argument.

22 I request the Board permit me to defer responding
23 until the Council made a determination about whether it wishes
24 to except to the decision and if it does not permit me to
25 respond to the Applicant's exceptions and brief after I have

1 seen it.

2 DR. BUCK: Let me understand your position here.
3 You apparently decided that these questions were important
4 enough to have a hearing. But you felt that it was better to
5 have a generic hearing for the entire site rather than to
6 go through the receipt of evidence and so on only for Indian
7 Point 3. Is this your reasoning?

8 You feel the questions are still important enough?

9 MR. CLEMENTE: Absolutely, Dr. Buck.

10 DR. BUCK: You feel they should have a hearing,
11 but I'm trying to understand your reasoning. You withdraw

12 the questions from Indian Point 3 but you requested a -- I
13 presume what we call a generic hearing before the Commission.
14 Is the reasoning behind that that you would rather have a
15 hearing covering the entire site rather than have a hearing
16 only on Indian Point 3?

17 MR. CLEMENTE: That is one of the reasons. We felt
18 it would be most appropriate to treat the issue we had
19 raised in a generic form.

20 Other reasons resulted simply from the manner in
21 which the issue was originally raised. We only received the
22 Staff analysis found in the FSAR, supplement for Indian Point
23 3, a relatively short period before the hearing on April 1.
24 That had been the first time that the Staff articulated the
25 underlying methodology at which it reached certain conclusions

1 that had been brought about over the course of a year, -and
2 if you read in our petition before the Commission, -you would
3 see the background that led up to that point. It was
4 basically only a couple of weeks before the hearing that we
5 were prepared to address the issue in any fashion.

6 If I may diverge, the Applicant mentioned we par-
7 ticipated in the proceeding initially -- had contended and
8 participated under 2.714 and our contentions were limited to
9 the environmental area. That is correct.

10 We deemed -- once our request for a hearing had
11 been withdrawn, we participated in the hearing that the
12 chairman called under the provisions of 2.715 C and we parti-
13 cipated as an interested state and were afforded by 254
14 of the Atomic Energy Act the right to examine witnesses and
15 raise questions in that hearing.

16 To get back to the question, we felt that
17 the most appropriate forum was the more generic forum and we
18 wished another few months to properly prepare a case, -
19 although we were prepared in some fashion to proceed at the
20 hearing if the Chairman so ordered.

21 I guess those are basically the considerations
22 which led us to try to place this in a form where determina-
23 tions reached would affect equally Indian Points 1, -2 and 3.
24 We were conscious of the fact of developing a record in Indian
25 Point 3.

1 DR. BUCK: However, I gather from your statements
2 that you don't feel the cross-examination of the Staff's
3 witness produced sufficient evidence to put a condition on
4 the license.

5 MR. CLEMENTE: Dr. Buck, I would request I be
6 permitted to defer response to that question pending -- that
7 is the Applicant's exception to this decision. I'm not
8 prepared to address it this morning. I heard it for the
9 first time some minutes ago. We have not determined what
10 we wish to do with the memorandum and order below as modified

11 by a recent three-page opinion by the chairman of the
12 Licensing Board below, which I only saw some 45 minutes ago
13 for the first time.

14 CHAIRMAN FARMAKIDES: Let's get back to the other
15 point I raised earlier, and that is, in your position, sir,
16 how do you treat the condition involving the seismic issue
17 that was in the ordering paragraph of the Licensing Board's
18 June 12 decision? Do you treat that as a condition precedent
19 or subsequent? Your brief, and I have read your brief --
20 I'm aware of it and I heard what you said a moment ago, and
21 I'm not clear.

22 I think in your brief you avoided answering the
23 question.

24 MR. CLEMENTE: That's correct, Mr. Chairman.

25 CHAIRMAN FARMAKIDES: Now, what are you saying?

1 MR. CLEMENTE: There again I have only had a brief
2 opportunity to scan Chairman Jensch's clarifying order to the
3 extent it clarifies the issue. My reading of the initial
4 order led me to believe frankly that the exposition in the
5 Applicant's position for clarification was correct.

6 I now understand that the chairman based on a brief
7 review of his recent order, he feels he has imposed a condi-
8 tion precedent to the issuance of a full term license.

9 CHAIRMAN FARMAKIDES: Would you agree with
10 Mr. Voigt we're now clear and the record should reflect the
11 fact there is a condition precedent?

12 MR. CLEMENTE: Based on a preliminary reading
13 of that most recent order of the chairman, I think that is my
14 opinion.

15 CHAIRMAN FARMAKIDES: I think you're in good
16 company, sir.

17 Is there anything else on this point, sir?

18 MR. CLEMENTE: If the Board has no further
19 question, no, Mr. Chairman.

20 CHAIRMAN FARMAKIDES: Thank you, Mr. Clemente.
21 Miss Chasis?

22 MS. CHASIS: As indicated in our addendum to the
23 Board, we take no position on the seismic issues and I will
24 restrict my argument to the second question posed by the
25 Board.

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1 We request that special counsel be appointed,
2 and I gathered from what you said earlier about your denial
3 of the citizens' motion for appointment of special counsel
4 that you have denied our request as well.

5 CHAIRMAN FARMAKIDES: Yes, ma'am. I'm sorry. I
6 thought you had been so notified by telephone. The order
7 has been sent to you and I'm sorry it hasn't reached you,
8 but this happened very quickly, as you know, the latter part
9 of last week. We moved as quickly as we could to answer.

10 In view of the fact you asked for special counsel,
11 and I gather you wish it on the reasons the CCPE did, are you
12 saying you have no position as to whether it's a condition
13 precedent or subsequent?

14 MS. CHASIS: We have restricted our involvement to
15 the environmental issues, issues of the impact of once-through
16 cooling on the aquatic biota of the Hudson River. In the
17 interest of the parties we represent we will not address the
18 seismic issues; upon reading the decision of the Licensing
19 Board and subsequent denial of the Applicant's motion that
20 that is in fact what the Licensing Board has done here. I
21 would not wish to address the seismic issues further.

22 CHAIRMAN FARMAKIDES: That is a condition precedent
23 as far as you're concerned.

24 MS. CHASIS: Yes.

25 CHAIRMAN FARMAKIDES: Mr. Gallo.

1 ORAL ARGUMENT OF JOSEPH GALLO, ON BEHALF OF
2 NUCLEAR REGULATORY COMMISSION.

3 MR. GALLO: Mr. Chairman and members of the Board,
4 Mr. Voigt has, I think, amply and very well outlined the back-
5 ground that led to the Licensing Board's issuance of its
6 initial decision and referral of the stipulation, and I won't
7 repeat that here other than to say I agree essentially with
8 his compilation of the facts and events as they occurred.

9 Let me say at the outset in answer -- or in anti-
10 cipation of one of the Board's questions, the Staff, after
11 reading the July 3 order of the Licensing Board concedes
12 that indeed the Board intended the seismic condition to be a
13 condition precedent. Making that concession, however, does
14 not alter in any way the answers that we furnished in our
15 June 30 brief to Appeal Board questions. We believe those
16 answers were the same.

17 The answers were premised and predicated on, and
18 we understood it was to be, a condition precedent.

19 It now brings us to the question, I think, of
20 whether or not the condition precedent as imposed by the
21 Licensing Board is a proper one. As Mr. Clemente indicates,
22 the Applicant has taken exception to that particular condition
23 of the initial decision.

24 I, too, haven't seen the exception. I would submit
25 that the ready way to resolve that particular question would

1 be through the normal briefing process and oral argument that
2 I'm sure would be held on that question along with any other
3 exceptions that may be filed.

4 However, I do have an opinion today as to whether
5 or not the condition precedent is appropriate and appro-
6 priately applied by the Licensing Board. I agree with
7 Mr. Voigt. The record does not support in any way or any
8 fashion a condition precedent with respect to the seismic
9 question. I think that the Staff's supplement to the
10 Safety Evaluation amply sets out the analysis with respect
11 to the geologic and seismic questions involved and that
12 that analysis is uncontradicted in any manner by any direct
13 testimony or cross-examination by the State of New York.

14 As such, there is no record support for a condition
15 precedent.

16 However, I have been thinking, why did the Board --
17 I think the Board realized and probably contemplated the
18 same thinking that Mr. Voigt and myself have articulated
19 here this morning. I really think the purpose of the condi-
20 tion was raised or levied by the Licensing Board out of
21 deference to the fact that the matter was pending before the
22 Commission. As a matter of discretion the Licensing Board
23 levied that condition.

24 I think an interesting question is what does the
25 condition meet? We have said it's a condition precedent.

1 How do you satisfy that, assuming it's a condition
2 precedent? The language of the Licensing Board says
3 the authorization to issue full power license is subject to
4 the determination by the commission respecting the pending
5 seismic contentions.

6 Now, I read that to mean that at some time in the
7 future, near future, I think, the Commission will make a
8 decision on the pending application and request for hearings
9 on the seismic questions. Once that decision is made, what-
10 ever it is, it will satisfy this condition.

11 CHAIRMAN FARMAKIDES: Mr. Gallo, aren't we also
12 saying that "Look, right now Indian Point 3 can operate up
13 to 91 percent of full power indefinitely. However, it may
14 not operate at 100 percent until after the seismic matters
15 have been resolved."

16 MR. GALLO: I don't think that is right at all,
17 Mr. Chairman.

18 CHAIRMAN FARMAKIDES: Why?

19 MR. GALLO: Because the director of the Nuclear
20 Reactor Regulation has been authorized to take action on a
21 partial power license, to issue that license up to 91 percent
22 of full power. Before he can exercise that action he must
23 make the findings required under 50.57 A, and there is the
24 control on that action. It's not carte blanche. It doesn't
25 flow by operation of law or operation of the initial decision

1 or any order issued to date by this Board that the licensee
2 or Applicant is entitled to a 91 percent partial power
3 license.

4 CHAIRMAN FARMAKIDES: What is the control?

5 MR. GALLO: The director of Nuclear Reactor
6 Regulation must make the findings in the affirmative. Cur-
7 rently he cannot.

8 CHAIRMAN FARMAKIDES: Because of the problem
9 Mr. Voigt mentioned?

10 MR. GALLO: That is one. Currently the compliance
11 with the final acceptance criteria under 10 CFR 50.46 has not
12 been resolved, so that a partial power license at 91 percent,
13 in the Staff's view, cannot issue until that matter is
14 resolved.

15 CHAIRMAN FARMAKIDES: Let's assume those two
16 matters are resolved, could then the 91 percent be issued?

17 MR. GALLO: We assume that all other matters are
18 outstanding.

19 CHAIRMAN FARMAKIDES: We assume the matters you
20 indicated have been resolved and he can reach favorable
21 findings under 50.57 A. Could not the permit be issues?

22 MR. GALLO: Only if he believes as I stated today
23 that the record is adequate to support that finding. I think
24 he could. The director of Nuclear Reactor Regulation is faced
25 with the same question as to whether in light of the fact

1 this matter is pending before the Commission, such action
2 should be taken. To my knowledge, a judgement on that
3 decision, on that question has not been arrived at yet
4 primarily because the point is not right for decision.

5 You heard Mr. Voigt say that sometime in August
6 was the fuel loading date. I would submit, Mr. Chairman,
7 that the whole inquiry and Dr. Quarles' question will be
8 rendered moot by the Commission action that will be taken
9 at any time now. No license can be issued due to the
10 fact that the fuel load date has slipped until August, and
11 we don't know what the impact is of the report furnished
12 to the Board today and to the parties two days ago.

13 CHAIRMAN FARMAKIDES: Are you saying that the
14 director of Nuclear Regulations would in fact consider
15 the seismic condition levied by the Licensing Board on full
16 operation, consider that as a binding condition on the limited
17 operation?

18 MR. GALLO: I'm saying that the director of Nuclear
19 Reactor Regulation would have to consider that point, and I
20 think he would conclude, based on the existing record, that
21 indeed the Staff's analysis on the seismic and geologic
22 questions is adequate, the record is adequate.

23 Should come to pass that the Commission has not
24 ruled, I think he would be in the same place I submit the
25 Licensing Board was in, which was, should he take action in

1 light of the fact that the matter is pending. That is the
2 matter to be considered. What I have characterized today is
3 a matter of deference.

4 CHAIRMAN FARMAKIDES: I see your position on that.

5 Apart from that the distinction between the 91
6 percent "permit" and the proposed full operation permit is
7 in the fact that the latter has a condition which the director,
8 of regulation may not ignore and the former does not?

9 MR. GALLO: That is true.

10 CHAIRMAN FARMAKIDES: What is the justification for
11 that?

12 MR. GALLO: Well, the authority of the director of
13 reactor regulation to act in a full power license situation has
14 been limited by the effect of the Licensing Board decision.
15 The Licensing Board's partial power license authorization is
16 not so encumbered. Therefore, that leaves to him the judge-
17 ment that this Board is now wrestling with. He may decide
18 indeed that that condition should apply, or should not
19 apply. He is not coming to grips with that situation yet,
20 because he hasn't had to.

21 CHAIRMAN FARMAKIDES: But your point, -sir, -is that
22 truly the condition precedent should not be a condition
23 precedent but a condition subsequent and therefore the
24 full power operating license should not be encumbered by a
25 condition precedent?

1 MR. GALLO: I really think, Mr. Chairman, that
2 gets to the nub of it. My argument is somewhat similar to
3 the Applicant's argument.

4 In answer to Dr. Quarle's question as to the
5 difference in 91 or 100 percent, assuming there is a risk, we
6 see no risk.

7 DR. QUARLES: You agree with Applicant's response
8 when I changed it that he could operate during the testing
9 period? Assuming that the seismic condition is valid, which
10 you don't agree with, at 100 percent it would still be all
11 right in your view to go through the entire testing program
12 without that condition?

13 MR. GALLO: Assuming that the condition precedent
14 is valid, we would agree that low power operation would
15 involve a slower accumulation of fission products and indeed
16 the testing cycle all the way up to 91 percent power would not
17 involve the accumulation of sufficient fission products to
18 produce off-site doses of any significance in the event an
19 unlikely postulated earthquake should occur.

20 There is one caveat to that. The schedule the
21 Applicant referred to for his testing schedule is a schedule
22 predicated on, I think, optimum performance. We all know
23 it's possible to ascend through power testing to reach a level
24 of 20 or 50 percent and incur some kind of problem. The plant
25 shuts down. They make repairs. They ascend back up. At a

1 certain point this fission product build up will reach
2 certain levels.

3 If the schedule outlined by the Applicant in its
4 papers that support the partial power motion is adhered to and
5 is satisfied, we think there is no problem.

6 CHAIRMAN FARMAKIDES: I'm not clear. I see this
7 as two problems. One is testing and the other is steady state
8 power. Under the April 8 authorization both had been
9 authorized; is that correct?

10 MR. GALLO: That is correct.

11 CHAIRMAN FARMAKIDES: Under low power testing
12 you're saying you see no problem -- assuming the condition
13 precedent -- of going to 91 percent for testing purposes?

14 MR. GALLO: Right. Testing in accordance with
15 the schedule outlined by the Applicant.

16 CHAIRMAN FARMAKIDES: How about going to 91 percent
17 for steady state power?

18 MR. GALLO: At some point the fission product
19 build up would be sufficient so you would have no difference
20 between 91 and 100 percent. I cannot tell you at what time
21 or point it would be reached. That would have to be developed
22 by the Staff and they have not made that analysis.

23 CHAIRMAN FARMAKIDES: Do you distinguish between
24 testing up to 91 percent and steady state power up to 91
25 percent?

1 MR. GALLO: Steady state power is unlimited with
2 time. Testing is limited in accordance with the schedule
3 outlined by the Applicant and in the papers filed in
4 support of the full power motion. Should the time be extended
5 then it may be a different matter.

6 CHAIRMAN FARMAKIDES: Talking to the latter point,
7 could you or the Staff estimate or calculate at what point
8 the risk would be perhaps unacceptable?

9 MR. GALLO: I'm sure we could do that. I can't
10 do it today. When that question was asked of Mr. Voight I
11 put the question to a member of our staff in the audience,
12 We have not made the evaluation and he could not off the
13 top of his head arrive at the point. I think rightfully so.
14 It's a matter of calculation and assessment. Having not made
15 that calculation or assessment, it would be unfair to call on
16 him to do so.

17 CHAIRMAN FARMAKIDES: Thank you, Mr. Gallo.

18 MR. GALLO: Thank you, Mr. Chairman.

19 CHAIRMAN FARMAKIDES: I think we have concluded
20 faster than we thought the first point. Let's recess until
21 20 after 11:00.

22 MR. VOIGT: Mr. Chairman, I assume if I have some
23 remarks in rebuttal on the first point you would like to
24 hear them now.

25 CHAIRMAN FARMAKIDES: Yes, sir. That's correct.

1 I think you have another ten minutes.

2 REBUTTAL ARGUMENT OF HARRY VOIGT, -ON BEHALF OF
3 THE APPLICANT.

4 MR. VOIGT: Mr. Chairman and members of the
5 Board, Mr. Clemente indicated he is not prepared this morning
6 to address the argument that we have raised about the record
7 evidence and Mr. Gallo has suggested that perhaps that issue
8 ought to be deferred. I want to remind the Board that this
9 argument is not something that came up for the first time
10 this morning. It was prominent in our brief of June 30 to

11 the Board, specifically at pages 9 and 11.

12 I would have thought the other parties might have
13 been prepared to address it this morning.

14 CHAIRMAN FARMAKIDES: That is correct, -but in fact
15 they are not.

16 MR. VOIGT: In any event, -I do suggest to you
17 gentlemen that you can't possibly make an intelligent decision
18 on the questions you have asked without going to the basic
19 question of whether there is any record support for a condi-
20 tion. Otherwise we're just dealing in hypotheticals and I
21 don't feel the Board ought to do that. So you have got a
22 problem.

23 CHAIRMAN FARMAKIDES: Ought to do what, -Mr. Voigt?
24 I'm not clear.

25 MR. VOIGT: Answer the question without reaching

1 the fundamental determination of whether there is any basis
2 for a condition. I would urge that you do not answer the
3 question saying, "We assume that there is a basis for
4 condition precedent; therefore we conclude --"

5 CHAIRMAN FARMAKIDES: Rest assured that is not the
6 case. We have gone through that one April transcript in
7 great detail, agonizing over various words used by different
8 people.

9 If you have other suggestions besides the April 1
10 transcript as to developing the point I would like to have it.
11 Except that one reference and the SER.

12 MR. VOIGT: That is right.

13 CHAIRMAN FARMAKIDES: We have gone through it in
14 detail.

15 MR. VOIGT: I'm not questioning that, Mr. Chairman,
16 but I understood the suggestion of two other parties here
17 to be "Hold off, don't decide the underlying issue of whether
18 there is record support for the condition." If you hold off
19 deciding that then you ought to hold off deciding the
20 questions you raised, because you can't separate the two.

21 DR. QUARLES: Your position is that there is
22 record support, the April 1 transcript has enough information?

23 MR. VOIGT: There is no evidence in the record to
24 support the imposition of a condition. The evidence supports
25 a license, but not a condition.

1 DR. QUARLES: I see your fine distinction there.
2 You have answered my question.

3 MR. VOIGT: I don't think it's a fine distinction.
4 I think it's pretty basic.

5 DR. QUARLES: What I was really getting at is
6 that you think the record is adequate for us to decide
7 there is no need for a seismic condition. I phrased my
8 question poorly. I'm not a lawyer.

9 MR. VOIGT: That's right, sir.

10 CHAIRMAN FARMAKIDES: That's not to say that
11 lawyers phrase their questions well.

12 Going back to the April 1 transcript, isn't it
13 clear that the Staff's calculations do not in fact include
14 an intensity 8 earthquake, which earthquake should have
15 been included under Appendix A?

16 MR. VOIGT: No, sir. Quite the contrary. There
17 is no evidence of record to suggest that an intensity 8 event
18 should have been included. The evidence is to the contrary.

19 CHAIRMAN FARMAKIDES: Why do you say that?

20 MR. VOIGT: Because the only intensity 8 event that
21 has been discussed or concern has been expressed about was a
22 1755 earthquake that took place off Cape Ann, Massachusetts.
23 The Staff has identified that earthquake as being in a
24 separate province. So there is no basis under Appendix A
25 for moving that earthquake to the site. That is the only

1 intensity 8 earthquake in this record. The record evidence
2 is that it's a 7. That is what the Staff considered and that
3 is what their evaluation discusses and shows.

4 CHAIRMAN FARMAKIDES: All right, sir.

5 Now, Mr. Gallo referred to the ambiguity which
6 persists. Even if the Board's decision is accepted, -conceded
7 to be a condition precedent, what action is necessary in order
8 to satisfy the condition?

9 MR. VOIGT: I agree with Mr. Gallo that the only
10 reasonable interpretation is that the only action that is
11 necessary to satisfy the condition is the Commission order,
12 whatever it may be, on the request for a hearing of the
13 Citizens' Committee, which has been pending since January, -and
14 on a request for a hearing by the State, which has been pending
15 since April.

16 CHAIRMAN FARMAKIDES: It would not be the comple-
17 tion of that proceeding, -but merely the order?

18 MR. VOIGT: That is correct, -sir.

19 CHAIRMAN FARMAKIDES: What is your basis for that?

20 MR. VOIGT: At that point the Commission has surely
21 asserted its jurisdiction over this question, and then it's
22 for the Commission and the Commission alone to say in its
23 order whether there shall be any further effect.

24 CHAIRMAN FARMAKIDES: In other words, you're
25 suggesting at that point in time the Commission itself would

1 determine whether it would be a condition precedent or
2 condition subsequent?

3 MR. VOIGT: The Commission would determine whether
4 there was any need for further stay in the issuance of the
5 license. But the Commission's action would satisfy the
6 Licensing Board's condition. Then it would be for the
7 Commission to determine whether any further delay in the
8 issuance of this license and operation of this plant was
9 necessary or appropriate.

10 Now, finally, I want the record to be clear in
11 response to some questions which I as a nontechnical person
12 attempted to answer. I offered the judgement that it would
13 be safe, assuming there is a problem here, to permit the
14 plant to go through the entire testing phase.

15 I don't want that to be read as a statement that
16 it's unsafe to go beyond that. Mr. Gallo made it quite clear
17 you would have to do the calculation and it may be the calcu-
18 lation would reveal it was safe to permit six months of
19 steady state operation or three months of steady state opera-
20 tion. We don't know.

21 It's clear there is some time, off somewhere less
22 than 40 years, where you would not be able to make that con-
23 clusion. We do not know here this morning exactly how short
24 the timeframe is.

25 Thank you, gentlemen.

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1 CHAIRMAN FARMAKIDES: Mr. Clemente, do you have
2 rebuttal?

3 REBUTTAL ARGUMENT OF C.J. CLEMENTE, ON BEHALF
4 OF NEW YORK ATOMIC ENERGY COMMISSION.

5 MR. CLEMENTE: We were preparing to file correc-
6 tions to the April 1 transcript which may make it easier
7 reading. There are errors of substance in the section which
8 we conducted examination on. We will do that soon.

9 CHAIRMAN FARMAKIDES: That is important. How soon?
10 Can you do it this week?

11 MR. CLEMENTE: Yes, Mr. Chairman. We will do that
12 by Friday.

13 CHAIRMAN FARMAKIDES: If they are matters of
14 substance it is quite important. I would like to have it
15 quickly.

16 Second?

17 MR. CLEMENTE: Secondly, the Staff indicated that
18 they did not wish to address on the merits the Applicant's
19 exception, but they took the position that the record did not
20 justify the imposition of any condition precedent at this
21 point in time. Without reaching that question, I would like
22 to make a few comments with respect to what we perceive to
23 be the record as a matter of law in this proceeding.

24 Whether it's confined to the blue volume there or
25 whether as a matter of law, this Board and the Commission

1 must consider everything that they have in their possession
2 to -- assuming no deprivation of due process, and I point out
3 in our motion to the Commission, which contained affidavits
4 appended to it, both the Applicant and the Staff have very
5 fully replied to that on the record.

6 The Commission has the comments of all parties,
7 everyone who has had opportunity to speak. This board is
8 aware of both sides of that story. This board has a preli-
9 minary report of one of the Applicant's consultants. This is
10 really a first piece in the puzzle, a first dividend, so the
11 ~~speaks, on the program which the State has requested, upon~~
12 which the Staff has determined it would be prudent to proceed
13 and upon which the Applicant has agreed to proceed, this
14 program, which consists of mapping and seismic monitoring
15 stations.

16 We submit that the record that this Board must
17 consider in reaching a decision as a matter of administrative
18 law extended beyond that book and neither the Board nor the
19 Commission can put blinders on once they have determined that
20 the parties have had opportunity to comment, to make fair
21 comment on the matters relevant to the issue before.

22 CHAIRMAN FARMAKIDES: Mr. Clemente, do I take
23 you to say whatever pleadings have been filed before the
24 Commission are properly of record in this proceeding?

25 MR. CLEMENTE: Yes, Mr. Chairman, as a matter of

1 administrative law this Board may not ignore relevant
2 information which would lend assistance in reaching decisions.

3 CHAIRMAN FARMAKIDES: What is your authority for
4 that? Do you have authority?

5 MR. CLEMENTE: I would be willing to supply the
6 Board with a brief on that point, Mr. Chairman.

7 CHAIRMAN FARMAKIDES: We would appreciate it.

8 MR. CLEMENTE: Within two weeks, if that is
9 acceptable.

10 CHAIRMAN FARMAKIDES: The other parties may file
11 briefs on that point if they care to do so.

12 MR. CLEMENTE: That is the sum and substance of my
13 rebuttal basically.

14 CHAIRMAN FARMAKIDES: Thank you, Mr. Clemente.

15 Mr. Gallo?

16 MR. GALLO: I'm not sure I'm entitled to rebuttal,
17 but the Chairman asked a question with respect to the Staff's
18 evidence.

19 REBUTTAL ARGUMENT OF JOSEPH GALLO, ON BEHALF
20 OF NUCLEAR REGULATOR COMMISSION.

21 MR. GALLO: The chairman's question, as I recall,
22 was, wasn't there an intensity 8 earthquake that the Staff
23 should have considered and didn't consider, and didn't that
24 come through -- that conclusion come through from a review
25 of the April 1 transcript.

1 Mr. Voigt answered the question as he understood
2 it. I would like to give the Staff's viewpoint.

3 First, I think that question indeed is before the
4 Commission in considering whether or not to grant the
5 request for a hearing. The Licensing Board refused to probe
6 into that question. I would suggest, respectfully suggest
7 that this Appeal Board do the same thing until the
8 Commission decides.

9 But that aside, getting down to the merits, the
10 Staff did consider that intensity 8 earthquake. We're talking
11 about the Cape Ann earthquake. The issue as raised by the
12 State of New York was whether or not the consideration should
13 be at the site boundary of the Indian Point site or at the
14 closest point to the site boundary within the seismic belt
15 called the Boston-Ottawa seismic belt.

16 That is the Staff's position, that under Appendix
17 A, properly the acceleration forces from the seismic earth-
18 quake should be considered at the point closest to the
19 Indian Point site on the Boston-Ottawa seismic belt. Consi-
20 deration was given. There is a quarrel among the experts --
21 if you look at Mr. Clemente's papers filed before the
22 Commission -- as to whether the consideration is appropriate.

23 If you look at the record in Indian Point 3 it's
24 overwhelmingly in support of the Staff's position.

25 CHAIRMAN FARMAKIDES: That's the key issue which

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1 was raised and is here. Is there evidence in the record
2 to support a condition precedent levied by the Licensing
3 Board. If the evidence is overwhelming one way or the other
4 it's up to the Licensing Board or this Board to rule on.
5 It suggests there is evidence on the other side.

6 Would that not, then, be controverting evidence?

7 MR. GALLO: The only evidence that could exist is
8 Mr. Clemente's cross-examination. There is none other than a
9 few questions. All the cross-examination was Mr. Clemente's
10 disagreement with the Staff's position. There is no affirma-
11 tive evidence or impeachment of the Staff's evidence at all.

12 CHAIRMAN FARMAKIDES: We're discussing whether
13 there is sufficient evidence to find a contrary position. Not
14 whether or not the evidence exists, but whether it's
15 sufficient.

16 MR. GALLO: That's a nuance one could cut
17 either way. Mr. Clemente's questions are not evidence. The
18 answers are. The answers in no way establish evidentiary
19 basis for the condition precedent.

20 CHAIRMAN FARMAKIDES: We have had sufficient time.
21 We have closed early. Let's reconvene at 11:35.

22 (Recess.)

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1 CHAIRMAN FARMAKIDES: Thank you.

2 On the second issue, Miss Chasis will go first.

3 ORAL ARGUMENT OF SARAH CHASIS ON BEHALF OF

4 SAVE OUR STRIPERS AND HUDSON RIVER FISHERMEN'S

5 ASSOCIATION.

6 MS. CHASIS: Thank you, Mr. Chairman, Dr. Quarles
7 and Dr. Buck. Initially I would like to reiterate some of the
8 statements made by Mr. Voigt in the beginning of his argument
9 regarding the parties entering into this stipulation.

10 We believe it reflected adequate consideration of
11 the public interest. In essence it follows the scheme set
12 out in the Indian Point 2 decision which resulted from a
13 fully litigated proceeding.

14 The issues presented and the contentions of the
15 parties in this were parallel to those raised in the Indian
16 Point 2 proceedings, and it could be expected that the issues
17 and the positions of the parties would be the same and the
18 result of the litigation of those issues would have resulted
19 in the same decision as the Indian Point 2 case.

20 By way of entering into stipulation, the parties
21 have, in fact, expedited licensing of this plant, and avoided
22 costly hearings in the process.

23 It has been our position throughout that we are
24 interested in protecting the aquatic biota of the Hudson River.
25 To adequately do that, a closed cycle cooling system is

1 required at Indian Point 3.

2 The stipulation reflects this position of the
3 Fishermen and SOS. It requires installation of closed cycle
4 cooling pursuant to a schedule agreed to by the parties.

5 It also takes account of the position of the
6 Applicant in that it provides adequate opportunity for
7 the Applicant to carry out its studies and come in
8 and apply for an amendment to the license if it deems that the
9 evidence demonstrates that such amendment is appropriate.

10 Now, to address in specific the question that was
11 raised by the Appeal Board, I think I would like to start by
12 indicating what HRFA and SOS, what our position is and that
13 position we believe is verified by a plain reading of the
14 stipulation.

15 I would quote from paragraph 2 of the stipulation,
16 which states that:

17 "Operation of Indian Point Unit No. 3, the
18 plant with a once-through cooling system, will be
19 permitted during an interim period, the termination
20 date for which will be September 5, 1980."

21 That is the way the parties conceived of the
22 conclusion of this stage of the proceeding, and no further
23 decision would be required of the commission absent
24 incorporation of the stipulation into the license terms.

25 In order to require cessation of once through

1 cooling at the Indian Point plant pursuant to the schedule
2 agreed to by the parties in the stipulation.

3 The Licensing Board, in its decision, in essence
4 adopted and accurately interpreted that requirement of the
5 stipulation. I quote from page 11 of the Licensing Board's
6 opinion.

7 "The Board emphasizes here that the stipulation
8 requires construction of a closed cycle cooling system
9 for unit No. 3, unless the Applicant or some other
10 party produce convincing evidence that the adverse
11 impacts of once through cooling is not serious, or
12 that the most acceptable alternative will have a more
13 seriously adverse impact."

14 Therefore, the board in essence imposed the require-
15 ment of closed cycle cooling on the Applicant.

16 DR. QUARLES: In this connection, may I ask a
17 question?

18 Immediately following what you read at the top of
19 page 12, the board decision says the procedure provides
20 action for individuals affected by the action to request a
21 public hearing.

22 ALAB 188 implicitly calls for opportunity for a
23 hearing before towers were put in on Indian Point 2.

24 You say the stipulation follows the Indian Point 2
25 decision. How are these reconciled?

1 MS. CHASIS: The only further decision of the
2 commission that the stipulation contemplates with respect to
3 the imposition of closed cycle cooling is the decision to
4 improve an alternate form of closed cycle cooling.

5 In connection with that, the Staff has indicated
6 it may have to prepare a Final Environmental Statement.
7 The only opportunity for further hearings with respect to
8 the basic cost benefit analysis as to once through versus
9 closed cycle is if the Applicant should make an application for
10 an amendment to the license and in that instance, the stipula-
11 tion specifically provides that any party may request a
12 hearing on that issue and that a hearing might ensue.

13 CHAIRMAN FARMAKIDES: How about if the Staff makes
14 the same request under paragraph 3?

15 MS. CHASIS: If the Staff proposes a modification
16 of the license, the same hearing procedures come into play
17 as if the Applicant or the Licensee, as it will be, make
18 an application for an amendment.

19 The stipulation does provide for opportunity for
20 further hearings should such an application be made or should
21 the Staff propose modification of the license.

22 CHAIRMAN FARMAKIDES: Let me be clear on that.

23 I think I understood you. I want to be clear in
24 my mind as to what you said.

25 You said there are two parties of those that signed

1 the stipulation that may, in fact, request a hearing on the
2 alternatives of once through cooling versus closed cycle
3 cooling.

4 MS. CHASIS: No, that is not correct.

5 What I have said is that the Applicant or
6 Licensee may apply for an amendment to the license at a time
7 when it has new and convincing evidence with respect to the
8 plant's impact on the aquatic biota.

9 The Staff may recommend modification of the
10 license terms and in either case, the hearing provisions of
11 the stipulation are triggered and any party to the proceeding
12 may request a hearing if either of those two eventualities
13 should occur.

14 CHAIRMAN FARMAKIDES: Let's talk about a hearing for
15 open cycle versus closed cycle.

16 I understood you to say that the Licensee may
17 request such a hearing, open cycle versus closed cycle.

18 MS. CHASIS: That is correct.

19 CHAIRMAN FARMAKIDES: May the Staff request the
20 same type of hearing, open cycle versus closed cycle?

21 MS. CHASIS: The way the stipulation reads, if the
22 Staff proposes or recommends a modification in the license,
23 then they, presumably, or any other party may request a hearing
24 so that the same would follow.

25 DR. BUCK: Does that include a hearing on closed

1 cycle versus open cycle:

2 MS. CHASIS: If the Staff proposed that an amend-
3 ment to the license be made, substituting operation of once
4 through for the requirement of operation with closed cycle as
5 it presently stands, yes, then the opportunity for hearing
6 would exist. So that the stipulation and HRFA and SOS under
7 standing of that stipulation does not preclude further hearing
8 on this.

9 This is the reason that HRFA and SOS entered
10 the stipulation. It is essential that this board, as the
11 Licensing Board understood it -- the parties have in essence,
12 resolved the issue for now as to whether or not closed
13 cycle or once through is permissible.

14 That balance has been decided in favor of closed
15 cycle. It will take an application by the Licensee or an
16 action by the Staff, recommendation for modification of the
17 license, to trigger any kind of further hearing or further
18 consideration of that basic question.

19 There is provision for further commission action
20 with respect to the kind of closed cycle system that will
21 be employed.

22 DR. BUCK: Let's go back to 188 for a moment.

23 If I recall ALAB 188 correctly, there was a
24 requirement there that the Applicant put in a new or complete
25 environmental study of the effects of closed cycle cooling if

1 applied to Indian Point 2 and this presumably was carried
2 over to Indian Point 3.

3 That report, as I recall, was to be after a year
4 of study and was to be due sometime in December of 1974.

5 Was that report put into the record of Indian
6 Point 3?

7 MS. CHASIS: I don't believe so.

8 DR. BUCK: Was it issued?

9 MS. CHASIS: It was issued and reference was made
10 to it at the hearings of April 1 and 2. I don't believe it
11 was incorporated into the record.

12 DR. BUCK: Did 188 not require that report and a
13 restudy of certain other items of environmental effects of
14 Indian Point 2 be recirculated to interested parties?

15 MS. CHASIS: That is right, and it was done in the
16 context of the Final Environmental Statement, which the Staff
17 issued on Indian Point 3 in February of 1975.

18 DR. BUCK: Was that recirculated?

19 MS. CHASIS: It was recirculated to all
20 interested parties, and was available well in advance of
21 the Licensing Board decision.

22 DR. BUCK: Did that include reference to the
23 Applicant report?

24 MS. CHASIS: It did.

25 DR. BUCK: Where?

1 MS. CHASIS: I can't remember. It basically was
2 in agreement and the Staff in their appearance in the April 1
3 hearing, were in agreement with the cost assessment.

4 I would like to add that that report which was
5 entitled Economic and Environmental Impacts of Alternative
6 Closed Cycle Systems of Indian Point 2, basically with
7 respect to the preferred alternative, namely the
8 natural draft towers concluded that the environmental effect
9 would be minimal and these were confirmed by the Staff's
10 opinion as recirculated in the Indian Point 3 FES.

11 That is that the Applicant's should --

12 DR. BUCK: It is not in the record of Indian
13 Point 3.

14 MS. CHASIS: That is correct.

15 The stipulation in this proceeding requires the
16 same kind of report be made with reference to Indian Point Unit
17 3. So that the same kind of requirements for submission of
18 environmental data exist.

19 DR. BUCK: There were no comments included in the
20 FES relative to the Applicant's report, is that correct?

21 MS. CHASIS: There were comments included.

22 DR. BUCK: By outsiders.

23 You say the FES was recirculated. Were there
24 comments on the recirculated statement?

25 MS. CHASIS: The major comments that were made by

1 outside parties were made at the April 1 and 2 hearings.

2 DR. BUCK: I am talking about outside parties.

3 MS. CHASIS: That is right.

4 Many made limited appearances at the hearings. I
5 am sure you are aware from your review of the transcript of
6 this proceeding, many people, Senator Gordon, Mayor of Buchanan
7 and others appeared. Their testimony related to the effects
8 of the alternate closed cycle systems.

9 This was a concern of theirs.

10 DR. BUCK: Were there no written comments put
11 into the record?

12 MS. CHASIS: I don't believe so.

13 DR. BUCK: What about letters from Mayor of Buchanan
14 for example?

15 MS. CHASIS: I am not familiar with every piece of
16 evidence that went in. But I do know they had opportunity and
17 did make statements on these issues.

18 DR. BUCK: Your statement is, even though we have a
19 revised FES here, that the local people are not allowed at the
20 present moment, to request a further hearing on this?

21 MS. CHASIS: The general rules of practice of the
22 commission, Dr. Buck, provide that any party, any person may
23 make application to the commission for issuance of an order
24 to show cause with respect to any matter under the license.

25 Should it occur that some kind of dramatic data,

1 or new data comes in on the impact of alternate systems, any
2 person, including people from the Village of Buchanan or
3 elsewhere, could make application to the Commission. At
4 that point a decision would be made as to whether or not
5 the hearing would be held.

6 It appears that most of the environmental
7 information is already in on the effects of closed cycle
8 systems. The Applicant's empirical data gathering is pretty
9 much -- the results of that are included in its report with
10 respect to Indian Point 2.

11 In fairness, it is not as though we don't know
12 where we stand with respect to the environmental effect of
13 closed cycle systems. This information has been provided and
14 opportunity for comment has been provided to any interested
15 party.

16 DR. BUCK: Why is the Applicant continuing its
17 research program under the order of the Commission?

18 MS. CHASIS: Its research program?

19 DR. BUCK: Its research program was ordered by
20 the Licensing Board and Commission, to go ahead with the
21 research program on the effects on the river and on the
22 effects of the closed cycle cooling.

23 MS. CHASIS: You will have to address that question
24 to the Applicant. They certainly are going ahead with their
25 research on the river. There may be additional kinds of

1 empirical studies.

2 My understanding, for instance, was the empirical
3 studies on the effects of saline drift on the vegetation
4 of the area had been completed. I think it is probably most
5 appropriate for you to direct that question you have to the
6 Applicant.

7 DR. BUCK: This is new data and there has been no
8 hearing on that data.

9 MS. CHASIS: There was opportunity for any
10 interested party to present its position with respect to
11 their data at the Indian Point-3 proceedings. But that was
12 in the nature of limited appearance.

13 DR. BUCK: Was there any opportunity for hearing
14 allowed to these people?

15 MS. CHASIS: There will be opportunity for hearing
16 if, in fact, a Final Environmental Statement is undertaken.

17 The hearing, as envisioned by the stipulation and
18 by the Staff in Mr. Gallo's letter to Mr. Jensch of April 29,
19 indicated that the analysis to be undertaken in the impact
20 statement, and any hearing that would ensue, will relate to
21 alternate forms of closed cycle cooling, and their effects;
22 not to the basic question of whether once through or closed
23 cycle should be the system.

24 DR. BUCK: Where do we get the final balancing under
25 NEPA?

1 MS. CHASIS: The final balancing has occurred pur-
2 suant to the agreement of the parties absent an application
3 by the Applicant, or some kind of proposed modification by
4 the Staff.

5 That is an essential element of the stipulation.
6 It is the reason, in fact, that HRFA and SOS were willing to
7 enter into the stipulation.

8 CHAIRMAN FARMAKIDES: There is one more option here
9 which you indicated a moment ago.

10 If the Town of Buchanan or other such group makes
11 a request for a show cause, they would thus be able to ask for
12 and get a hearing. In that situation, would you support that
13 request?

14 MS. CHASIS: I would have to see the basis of their
15 request. If they have new evidence and evidence which
16 demonstrates dramatic impact or impacts which would basically
17 shift that basic cost benefit analysis that is implicit in the
18 stipulation and the decision the stipulation makes, then that
19 is what I would have to look at and evaluate.

20 I think the Staff would have to, as well.

21 CHAIRMAN FARMAKIDES: The standard, as far as you
22 are concerned, is if this new evidence dramatically shifts?

23 MS. CHASIS: If that evidence should indicate that
24 there is reason to believe there has been a shift in the cost
25 and benefits with respect to once through and closed cycle

1 cooling.

2 CHAIRMAN FARMAKIDES: Then you would support the
3 request for show cause?

4 MS. CHASIS: I would not oppose that kind of
5 request, that is right.

6 DR. BUCK: That is all I have.

7 Go ahead.

8 MS. CHASIS: I think that pretty much concludes
9 it, unless there are further questions.

10 I want to reiterate that the parties do appear to
11 be in agreement with respect to this issue. That was one
12 of the essential considerations and elements of the stipula-
13 tion.

14 I believe that there is adequate protection of the
15 public interest by the provisions of the stipulation in that
16 the Applicant may come back after it has had further oppor-
17 tunity for gathering data on the effect of the plant on the
18 river and that the Staff, as I indicated earlier, may also
19 propose such modification, but in essence what we have at least
20 at this moment is a resolution of the basic issue of closed
21 cycle versus once through.

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1 DR. BUCK: I'm amazed to hear your statement that
2 there is adequate public protection because one party in the
3 case has the opportunity. I think it's the first time I have
4 heard an intervenor say that an applicant was a proper
5 guardian of the public interest.

6 How do you reconcile that?

7 MS. CHASIS: Needless to say, we do not feel -- the
8 position HRFA and SOS have taken is that the present data
9 fully supports the requirement of closed cycle cooling and
10 that the new data we have seen and had the opportunity to
11 analyze only further confirms that, so that we don't foresee
12 any reason to undercut this decision.

13 This is more or less the compromise that was
14 reached, namely in order to reach some kind of stipulation
15 and avoid lengthy hearings which we felt would result in some-
16 thing very much like the stipulation -- that was the applicant
17 could have the opportunity at a later point, based on its data
18 collection to come back and request further hearing. But the
19 data presently at hand led to the present resolution.

20 DR. BUCK: Let's assume, for example, that the appli-
21 cant gets up to the point where he has got data. He thinks
22 it's enough perhaps to change the decision, or to change the
23 at least proposed decision to once through cooling. But he
24 looks forward to a long litigation and he balances the cost
25 of the litigation to him and the frustrations he is going to

1 have in getting the plant operating and so on, and says, "To
2 heck with it, I will build the towers."

3 Is that sort of thing a possibility in overshadowing
4 perhaps a real public interest of the citizens immediately
5 around the plant?

6 MS. CHASIS: In fairness, the applicant has under-
7 taken this research program with earnestness and with every
8 intention of using that data. I have no question, but if
9 that data indicated anything to suggest that the plant impact
10 would not be significant, that so much has already been in-
11 vested in this research and effort that the applicant would
12 come in and apply for an amendment to the license. That has
13 to be weighed in the balance.

14 The other thing is that this data and the reports
15 based on the data are made available to all the parties. Even
16 if the applicant did not make such -- take such action an
17 interested person presumably would have access to those re-
18 ports and be able to follow the procedures set out in the
19 general rules of practice of the Commission, to come in and
20 apply for a show cause order. If the case were really there,
21 then the opportunity for hearing would be there. I think there
22 is adequate protection of the public interest.

23 CHAIRMAN FARMAKIDES: I'm not clear either,
24 Miss Chasis. How does the stipulation represent that part of
25 the public interest as represented by the position of the Town

1 of Buchanan.

2 MS. CHASIS: It allows them opportunity to really
3 comment upon and be involved in any Final Environmental State-
4 ment or public hearings held with respect to further Commis-
5 sion action on designation of the preferred alternate closed
6 cycle system.

7 CHAIRMAN FARMAKIDES: Those hearings can only be
8 held at the request of the applicant and Staff.

9 MS. CHASIS: No, I'm speaking really of further
10 hearings, not on the basic issue of once through versus closed
11 cycle, but on the choice between that the Commission has yet
12 to make alternate forms of closed cycle cooling.

13 CHAIRMAN FARMAKIDES: Now, I'm not clear. Are you
14 saying that the stipulation does not preclude that determina-
15 tion?

16 MS. CHASIS: The stipulation anticipates, does not
17 preclude a determination by the Commission between alternate
18 forms of closed cycle cooling.

19 DR. BUICK. You mean cooling towers or spray ponds?

20 MS. CHASIS: I'm talking about alternate closed cycle
21 systems.

22 CHAIRMAN FARMAKIDES: I was talking about once
23 through cooling versus closed cycle cooling. How does the
24 stipulation protect the public interest with respect to the
25 Town of Buchanan, for example, who opposes --

1 MS. CHASIS: The stipulation represents the public
2 interest in that it reflects the basic state of the data and
3 the state of knowledge about the relative effect of once
4 through versus closed cycle cooling. In that sense it has been
5 fully set out by the parties who participated.

6 There has always been full opportunity for the mayor
7 of Buchanan and any other interested party to participate in
8 the proceedings. He has been on the service list continuously.
9 He has never actively involved himself either in the Indian
10 Point 2 proceeding or this proceeding. It's a little bit as
11 though they are coming around at the last minute and objecting
12 to something that they had full opportunity to be involved in.

13 CHAIRMAN FARMAKIDES: Could it have been also because
14 he thought the option was still open to him, the option of
15 whether or not once through or closed cycle cooling would be
16 finally chosen was still an option and not a determined fact?

17 MS. CHASIS: If he did feel that, or had that under-
18 standing, it was in contravention of plain reading of the
19 stipulation which was signed in January.

20 CHAIRMAN FARMAKIDES: Was he given the copy of that
21 stipulation?

22 MS. CHASIS: Yes. All the parties and people on
23 the service list received copies of that. There was nothing
24 hidden about that. As I said, there was full opportunity all
25 along if he or any other party wanted to involved themselves.

1 DR. BUCK: To you know when he was given a copy of
2 the stipulation? Was that in January?

3 MS. CHASIS: I could check that.

4 CHAIRMAN FARMAKIDES: You're making the point that,
5 in fact, he could apply directly to the Staff and the Staff
6 itself could request the hearing that we're talking about, the
7 hearing with respect to once through cooling versus closed
8 cycle cooling?

9 MS. CHASIS: The stipulation reads that if the Staff
10 proposes a modification, then it has to circulate that recom-
11 mendation and then the hearing mechanism of the stipulation
12 is triggered, so that the Staff itself would have to make such
13 a proposal to trigger that.

14 CHAIRMAN FARMAKIDES: I'm sorry for interrupting.
15 There are 2 avenues of approach that the Town of Buchanan can
16 take. One is direct request for the Commission of show cause
17 and the second is a direct approach to the Regulatory Staff
18 with a package of data suggesting that its position should be
19 the cause of the Staff triggering the request for a hearing.

20 MS. CHASIS: I think that's probably true. He could
21 take that latter course. They could go to the Staff and con-
22 vince the Staff that they ought to propose such modification.
23 That is right.

24 I would like to be able to come back and the conclu-
25 sion of the other parties' statements --

1 DR. QUARLES: I have a question. You said earlier,
2 I believe, that the public interest was reflected in the
3 stipulation because it took account of current data. The
4 mayor of Buchanan made the statement which I think I can
5 almost quote: "People are more important than fish."

6 All the data that's reflected in the stipulation by
7 reading the record concerns really the fish. It does not con-
8 sider the people at all. People of Buchanan specifically.

9 MS. CHASIS: I don't think that's right. The Staff's
10 reevaluation pursuant to the Indian Point 2 decision included
11 not only reexamination of the impact on aquatic biota, but the
12 effect from salt drift, fogging, icing, noise from the cooling
13 towers of the closed system. That was considered by the
14 fishermen and Save-Our-Stripers in reaching their reasoned con-
15 clusion on this.

16 When we talk about data base from which the decision
17 was made, we're talking about consideration of the effects of
18 the towers or other alternate systems as well as the effect on
19 the river. That was taken -- in other words, that was taken
20 into consideration in the cost-benefit analysis that resulted
21 in the requirement of a closed cycle system.

22 DR. QUARLES: That requirement is really by stipula-
23 tion for that closed cycle system. The people of Buchanan
24 really never had opportunity to present their views on this.
25 The Senator and mayor made statements to this effect.

1 MS. CHASIS: What I think I indicated earlier was
2 they have had -- mayor of Buchanan has been fully advised.
3 He was advised of what occurred in Indian Point 2 and the con-
4 duct of proceedings and negotiations in Indian Point 3. It's
5 not as though suddenly this agreement among the parties has
6 been thrust upon him or any other interested party. There has
7 been a long history of proceedings and examination of this
8 issue. This is not a sudden thing.

9 As I indicated earlier, there will be opportunity
10 for them to address the relative effects of various kinds of
11 closed cycle systems pursuant to the terms of the stipulation.
12 In addition, they can come in and make application to the
13 Commission for a show cause order, or as Mr. Farmakides stated,
14 they can approach the Staff and present their case and I think
15 that really their interests are adequately represented and re-
16 flected. I think the stipulation for that reason should be
17 affirmed and included in the license terms, as the Licensing
18 Board, in fact, had.

19 Thank you.

20 Any further questions at this time?

21 CHAIRMAN FARMAKIDES: Thank you very much.

22 Mr. Gallo.

23 ORAL ARGUMENT OF JOSEPH GALLO, ON BEHALF OF THE
24 STAFF OF THE NUCLEAR REGULATORY COMMISSION

25 MR. GALLO: Mr. Chairman, Members of the Board, in

1 preparing this part of argument, I think I will attempt to
2 -- in presenting this part of argument, I will attempt to
3 answer the Board's questions on the hearing matters first and
4 then close with an overall statement with respect to the
5 Staff's position on the stipulation.

6 I think Mr. Voigt, again, in his opening presentation
7 this morning laid the foundation or the background of the
8 development of the stipulation. Let me turn immediately to the
9 question of hearing rights.

10 First of all, the stipulation is not intended to
11 modify or in any way be interpreted as derogating the Commission's
12 relationship concerning the rights of individuals to request
13 hearings. The stipulation was not intended to cut across the
14 rights of people under the normal procedures and rules of the
15 atomic energy regulations.

16 The stipulation provides the applicant or licensee
17 an opportunity to come in at some future date pursuant to a
18 schedule that the stipulation indicates, to make application
19 to try to demonstrate that indeed closed cycle cooling is not
20 required. If they make such a request, in connection with that
21 request, the other parties to the stipulation would be given an
22 opportunity for hearing as provided by the stipulation.

23 What about parties or individuals not a party to the
24 stipulation?

25 The Staff's view simply is that this matter would

1 involve an amendment to a license condition which if the amendment
2 involves significant public interest under the ground rules of
3 10 CFR 2.105, we would notice the opportunity of hearing in
4 connection with whether or not the licensee's application to
5 amend the license should be granted or denied, no matter what
6 the Staff's recommendation might be.

7 There would be opportunity for participation if the
8 applicant requests a modification of the license in closed cycle
9 versus open cycle. That is clearly there. The Village of
10 Buchanan could take advantage of that opportunity.

11 Dr. Buck asks what happens if the applicant never
12 does make a request. What about the Village of Buchanan, then?

13 As I stated on the record on April 1 up in Montrose,
14 New York, the Village of Buchanan can always avail itself in
15 any instance of its rights under 10 CFR 2.206 and request the
16 director to issue a show cause order with respect to the
17 closed and open cycle question.

18 In failing to do that, if it did not avail itself of
19 that remedy, I don't believe the Village of Buchanan could have
20 opportunity for hearing aside from that application, assuming
21 that the applicant or licensee does not make application under
22 the stipulation to change the cooling mechanism.

23 CHAIRMAN FARMAKIDES: What if the Staff does that,
24 Mr. Gallo?

25 MR. GALLO: I don't quite read the stipulation in

1 the same way as Mrs. Chasis. The Staff conclusion, present
2 conclusion is fixed, that what is called for is closed cycle
3 cooling. The Staff's Final Environmental Statement which was
4 issued in February of 1975 contains a detailed analysis in-
5 cluding a cost-benefit analysis of why closed cycle is called
6 for in lieu of open cycle.

7 CHAIRMAN FARMAKIDES: Mr. Gallo, what in the stipula-
8 tion precludes the Staff from making the request for a hearing
9 which Miss Chasis referred to?

10 MR. GALLO: I would answer that nothing -- there is
11 nothing in the stipulation that provides for it, however.

12 CHAIRMAN FARMAKIDES: Would you not have the neces-
13 sary authority under the rules of the Commission to do exactly
14 what Miss Chasis suggested?

15 MR. GALLO: I think we could.

16 CHAIRMAN FARMAKIDES: I agree with Miss Chasis. I
17 see no bar to it. I am curious as to your interpretation.
18 It's important. Is there anything in the stipulation that bars
19 it?

20 MR. GALLO: I'm looking at the other side. There is
21 nothing in the stipulation that provides for it, but no, there
22 is nothing that says we can't.

23 CHAIRMAN FARMAKIDES: If the town comes to you and
24 says, "We have this data." Would you request a hearing under
25 your rights in the stipulation to do so?

1 MR. GALLO: We would exercise rights under 2.206
2 rather than the stipulation. It's a mechanistic thing.

3 CHAIRMAN FARMAKIDES: In one case you would be a
4 party to the stipulation and in the other case it would be
5 under the rules.

6 MR. GALLO: In my mind, unless the stipulation
7 specifically provides for that eventuality, then it did not
8 contemplate or encompass that eventuality.

9 CHAIRMAN FARMAKIDES: Does the stipulation allow you
10 to continue if you think there should be modification?

11 MR. GALLO: If we think the once through cooling
12 involves harm to aquatic biota, we can take such action under
13 paragraph 2-B of the stipulation. What I thought the Board
14 was suggesting by the question was information submitted by
15 the Village of Buchanan or another party.

16 CHAIRMAN FARMAKIDES: I am just exploring this. You
17 agree with Miss Chasis insofar as we are talking about 2-B of
18 the stipulation?

19 MR. GALLO: Yes.

20 Let me address what some member -- Board will ask as
21 to isn't this unfair to the village. They have had the oppor-
22 tunity to participate through 2.714 intervention in this pro-
23 ceeding at the outset. It chose not to. It's well aware of
24 the Staff's position in the Draft Environmental Statement is-
25 sued in 1973 and the Final Environmental Statement issued in

1 February of '75 which included a copy of the stipulation as
2 well.

3 I believe that Mr. Voigt filed a copy of the stipu-
4 lation in December or January with the mayor of the Village
5 of Buchanan, at the same time, he served a copy on the Licens-
6 ing Board and the other parties to the proceeding.

7 The village has had ample opportunity to participate
8 to date. It chose not to.

9 Let's assume, Dr. Quarles, the stipulation had not
10 been signed or executed and the parties would have, commencing
11 April 1st, a full blown hearing on the question of open or closed
12 cycle. What would have been the Village of Buchanan's partici-
13 pation at that point?

14 Nothing different than 2.715 limited appearing par-
15 ticipation. They could have made request for later interven-
16 tion, but they could have done that regardless of the stipula-
17 tion.

18 DR. BUCK: The mayor of Buchanan wrote a letter to
19 the Staff in early February concerning the fact that -- I
20 think this was the letter Dr. Quarles quoted from a short while
21 ago -- concerning their objections to the tower situation and
22 so on. What answer was made by the Staff to the mayor at that
23 point?

24 MR. GALLO: As I recall, the thrust -- I think the
25 letters written by the mayor and others in the area were

1 really addressed to various congressmen and senators asking
2 for their assistance in avoiding the construction of the large
3 cooling towers at the site.

4 My recollection of our response was that based on
5 our evaluation in the Final Environmental Statement that we
6 indeed believed that closed cycle cooling was called for, -but
7 we made no decision with respect to whether or not 500 foot
8 cooling towers are called for or another cooling mechanism.
9 When a decision was made, an opportunity for hearing would be
10 provided.

11 Indeed, my letter to the Board in April indicated
12 that conclusion had been reached with respect to Indian Point
13 2.

14 DR. BUCK: You said his letters were written to
15 congressmen. The one on February 5, which for some reason or
16 other didn't get into the record -- it's in the docket, -but not
17 in the adjudicatory record -- it was a letter written to
18 Mr. Giambusso. He is the Director of the Division of Reactor
19 Licensing.

20 This letter was specific concerning the zoning laws
21 of Buchanan. I'm asking what comment was made and how was it
22 handled with the mayor of Buchanan by the Staff.

23 MR. GALLO: I'm certain that answer was made.

24 DR. BUCK: There is nothing on the record.

25 MR. GALLO: Well, the Village of Buchanan chose not

1 to make their inquiry on the record. They wrote to
2 Mr. Giambusso. They did not avail themselves of the mecha-
3 nisms provided under part 2 of the rules to participate on the
4 record. They wrote to Mr. Giambusso and I have to dig up the
5 answer, but I think what was said was with respect to the
6 zoning question, we recognize the village has the right to
7 deny or grant the zoning variance.

8 That's no more than any other permit or license re-
9 quired, that the applicant needs to get in connection with the
10 construction of his facility, including the cooling towers.
11 The stipulation recognizes that problem.

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1 MR. GALLO: In fairness, it is a good question.
2 We did not construe that letter as a request for
3 participation under 2.714. We construed it as inquiry
4 which we addressed in the return letter.

5 DR. BUCK: This was a letter sent February 5th,
6 which would be about the time, I presume, of the environmental
7 statement or perhaps when you got the stipulation out.

8 It was before -- when a notice of hearing finally
9 went out. I believe it was after.

10 Nevertheless, it seems to me this is a serious

11 matter that should have gotten in the record.

12 MR. GALLO: Well, I think the substance of the
13 objections did in fact get into the record when the various
14 gentlemen made the limited appearance statements on April
15 1. They chose not to intervene as a full party and present
16 their position.

17 I repeat, even if we had had a full-blown
18 evidentiary hearing up there, their participation would not
19 have altered it at all because they chose not to change the
20 nature of their participation. The staff did not ignore
21 their complaints. The FES includes an assessment of the
22 impact of cooling tower operation.

23 I submitted an agenda on that assessment based on
24 those limited appearance statements to the April 2 hearings.

25 DR. BUCK: The original FES, let me go back to

1 that for a moment. Did that include the report that
2 was issued by the Applicant in December?

3 MR. GALLO: The original FES?

4 DR. BUCK: The one marked February 1975.

5 MR. GALLO: This document did not include an
6 assessment of the Applicant's report filed in December
7 pursuant to the license condition for Indian Point 2. It
8 did not. The stipulation recognized that the same sort
9 of report would be furnished under the stipulation and
10 we took the same position in this FES that we took in Indian
11 Point 2, that the final selection of the closed-cycle
12 cooling mechanism would be left to later consideration and
13 in connection with that --

14 DR. BUCK: Final decision on what, now?

15 MR. GALLO: On the type of closed cycle cooling
16 mechanism, towers or ponds --

17 DR. BUCK: Are you saying that is what 188 asked
18 for?

19 MR. GALLO: The report you referred to is that.
20 It is the examination by the applicant of various closed-
21 cycle alternatives.

22 DR. BUCK: Does not the 188 ask for this to be
23 included in new cost-benefit analysis of the environmental
24 effect?

25 MR. GALLO: I read the 188 to contain two

1 differences in points. One is that the Applicant has to
2 submit a report selecting the right closed-cycle alternative.

3 In that analysis, what you cost benefit are the
4 various closed-cycle mechanisms.

5 Another decision in 188 gives the Applicant the
6 same right that the stipulation gives to let him make
7 a showing in Indian Point 2 that closed
8 cycle is not called for, but open cycle is called for --

9 DR. BUCK: Let's take the history including ALAB-
10 188 and 174.

11 I think there is a lot missing in your statement
12 of what the Appeal Board meant on 174 and 188.

13 MR. GALLO: I will have to defer to you on that,
14 Dr. Buck.

15 DR. BUCK: In 174, I believe it was Section 2
16 that discussed the validity of the staff's position on the
17 sufficiency of the environmental studies overall, on cooling
18 towers in particular.

19 We had other points later on in 188 about the
20 other situations.

21 In 174, we required the Applicant to submit a
22 further detailed report by December 1974 on the environmental
23 effects of the closed-cycle cooling. That would include
24 towers and so on, any closed-cycle cooling.

25 Now, that report was presented, as I understand it,

1 in December.

2 My first question is, was that Draft Environmental
3 Statement distributed for comment?

4 MR. GALLO: Before I answer -- let me answer the
5 last question.

6 DR. BUCK: Was it included in the Draft Environ-
7 mental Statement distributed by the Staff?

8 MR. GALLO: No. The Staff is intending to write
9 a Draft Environmental Statement and Final Environmental
10 Statement using that report as a basis.

11 DR. BUCK: The Environmental Statement of Indian
12 Point 3 is not up to date in that respect, then.

13 MR. GALLO: I see the two conditions as
14 differences, I believe. The stipulation and the environmental
15 report for the Indian Point 3 does the same thing as what
16 ALAB-174 does, provide for the future submission of the
17 report by the licensee on the same question.

18 The difference is what the report should indicate.

19 You believe that 174 required a reconsideration
20 of closed cycle versus open cycle; my position is that reports
21 contain a more limited discussion of which closed-cycle
22 mechanism was preferred.

23 DR. BUCK: In 174, I agree with you, it was on
24 the environmental effects of closed-cycle cooling of any
25 kind.

1 MR. GALLO: Right.

2 DR. BUCK: 188 took that further.

3 MR. GALLO: Yes.

4 DR. BUCK: There we emphasized that we were
5 allowing time for the Applicant, Staff and interested
6 government bodies -- I think that includes all government
7 bodies interested in the situation -- to analyze the data
8 with the objective of reaching a formal decision on the
9 permanent system for Indian Point 2.

10 If you read that in the context of 188 and what
11 we were questioning, that was so that that environmental
12 report on the effect of closed-cycle cooling could be added
13 to the environmental report on through-cycle cooling so
14 that a proper balancing could be done.

15 I must say that the previous report put in on
16 the thing had a few thousand pages on the effect of the
17 river and essentially zero on the effect on land.

18 Our point in 174, backed by 188, was to get a full
19 environmental report so a NEPA balancing could be made.

20 MR. GALLO: I can't quarrel with the Board's
21 intent of 174 or 188. The quick answer is the report
22 submitted by the applicant under the licensing
23 condition in Indian Point 2 in December of '74, limited
24 itself to a discussion of closed-cycle alternatives, period.

25 DR. BUCK: Let me go further.

1 Following the 188, you remember that the
2 staff hesitated about asking for reconsideration.

3 MR. GALLO: I remember.

4 DR. BUCK: They finally asked for 60-day
5 delay to consider this and they finally decided they won't
6 ask for reconsideration. They sent us a letter June 14
7 in which they stated, and I will quote again, "While it
8 disagreed with our position, it believed that the matters
9 of the case could best be explored and supported within the
10 framework of the upcoming proceeding of Indian Point 3
11 rather than a petition for reconsideration."

12 Now, you are telling me that the Indian Point 3
13 proceeding has gone through, it hasn't considered this
14 report and there is another report coming from Indian Point
15 2. Yet in its letter to us on June 14, the staff specifically
16 stated that the entire matter brought up by 174, 188, would
17 be considered in Indian Point 3.

18 Do you say that is the case?

19 MR. GALLO: Yes. Let me explain, since I believe
20 I wrote that letter.

21 When we reexamined -- and I was personally
22 involved -- the record supporting the Indian Point 2
23 proceeding, we determined that based on the existing record --
24 after all any petition for reconsideration would have to
25 be based on the existing record as it was presented before

1 the licensing board -- we determined because, one, of near
2 proximity of the Indian Point 3 hearing and because of the
3 state of the record -- there were many, many days of
4 hearings.

5 We were under time pressures that were in my
6 opinion excruciating. We thought it better to make a new
7 report in Indian Point 3 because the issues after all were
8 literally the same.

9 Maybe the Appeal Board was right. We ought to
10 take a fresh look and see if we came out the same place.
11 That was our position and the reasoning behind the letter
12 you referred to, Dr. Buck.

13 The fresh look was taken here and I think the
14 Licensing Board recognized in its initial decision that
15 indeed the Staff made a fine and good effort to take a
16 fresh look with respect to the issues raised by the Appeal
17 Board in 188.

18 We have altered our position somewhat with
19 respect to the substantive questions, some of them with
20 respect to the Final Environmental Statement.

21 DR. BUCK: It doesn't include the report we
22 requested, on the effect of closed-cycle cooling.

23 MR. GALLO: Are you asking me something different
24 from whether closed or open cycle is called for?

25 DR. BUCK: I am saying the report is incomplete

1 because it does not include the Applicant's report on
2 closed-cycle cooling that was issued in December of 1974.

3 MR. GALLO: I submit that is proper. What
4 you call incomplete is provided for under the framework
5 of the stipulation and the staff environmental statement.

6 After all, the report was submitted in December
7 of '74. The FES preparation for Indian 3 was going on all
8 of 1974. We couldn't hold up in good conscience the issuance
9 of the Final Environmental Statement pending receipt of
10 that December report.

11 We did the same thing. We recognized that the
12 limited question of what kind of cooling mechanism would
13 be reserved for another day.

14 DR. BUCK: That is not the point.

15 MR. GALLO: You are saying that you want
16 re-analysis of the cost-benefit analysis.

17 DR. BUCK: That is what we wanted in 188 and that
18 is what you promised in saying you would not ask for
19 reconsideration and you would do it in Indian Point 3.

20 MR. GALLO: I submit we have done it here.

21 DR. BUCK: Without the Applicant's report?

22 MR. GALLO: That whole document was based on the
23 Applicant's various reports.

24 DR. BUCK: But there wasn't time to put it in.

25 MR. GALLO: The report you are referring to had

1 no data on whether once-through or closed cycle was called
2 for. Even if we considered it, it won't have any use.

3 DR. BUCK: Mr. Gallo, in making a NEPA balance,
4 what do you include?

5 MR. GALLO: The environmental costs in both
6 operation and construction.

7 DR. BUCK: What environmental costs?

8 MR. GALLO: Costs to the aquatic biota in the
9 Hudson River, terrestrial impact, environmental costs to
10 people and all of those items.

11 DR. BUCK: The applicant's report we requested
12 in 174, backed up in 188, was specifically aimed at the
13 environmental impact on land and to people, correct?

14 MR. GALLO: No, the Applicant's report was
15 specifically aimed to its judgment as to which of the
16 closed-cycle alternatives it thought was the preferred system.
17 Included in that assessment was the various points.

18 DR. BUCK: It included the various costs?

19 MR. GALLO: Impact to terrestrial and people of
20 the various alternatives.

21 DR. BUCK: Those costs are not considered in
22 that report?

23 MR. GALLO: They are considered. Not in terms of
24 the Applicant's report, but the Staff made an independent
25 assessment of those costs and included them.

1 DR. BUCK: Prior to receiving the Applicant's
2 report.

3 MR. GALLO: That is correct.

4 DR. BUCK: That is the point I am getting at.
5 The Staff made its judgment on incomplete information. It
6 did not have the final applicant's data on the effect --
7 of the environmental effect on land of the towers or any
8 closed-cycle cooling.

9 MR. GALLO: The Staff's judgment on that question
10 is not final. I repeat, we recognize in the stipulation
11 and FES that such a report will be filed, and we will issue
12 a Draft Environmental Statement in connection to it and
13 offer opportunity for hearing in connection with that.

14 DR. BUCK: Where will you offer another statement?

15 MR. GALLO: It is noted by the Licensing Board
16 in footnote 10 on page 12 of their initial decision. They
17 say that the Staff has concluded it must prepare a Final
18 Environmental Statement in support of the action it would
19 take in permitting modification of the plant to incorporate
20 a closed-cycle system, and it refers in footnote 10 to my
21 letter of April 29, where I say with respect to Indian Point 2
22 that we have the December 1974 applicant report and we intend
23 to write a Draft Environmental Statement with respect to
24 that report and issue opportunity for hearing and defer in
25 the same letter any opinion as to whether the same ground

1 rules will apply with respect to Indian Point 3, until the
 2 Applicant has submitted an identical or modified report
 3 as required under the stipulation. I won't hazard to
 4 guess whether or not it would be the same or not. I am
 5 already hard pressed to see that a different result could result
 6 from what we did in Indian 2.

7 DR. BUCK: Indian Point 3 is complete at the
 8 moment?

9 MR. GALLO: The status is at the same place
 10 where it was when the ALAB-188 license condition was
 11 incorporated in Indian 2. If it was incomplete then, it is
 12 incomplete now.

13 CHAIRMAN FARMAKIDES: You said earlier that
 14 you felt the stipulation made up for the incompleteness.

15 MR. GALLO: It is the intent of all the parties
 16 that the stipulation condition be imposed as a licensing
 17 condition.

18 Assuming that happens -- and that was the premise
 19 from whence I am talking -- assuming that happens, then the
 20 license will provide the same kind of condition that the
 21 Indian 2 license now provides.

22 CHAIRMAN FARMAKIDES: I think I share Dr. Buck's
 23 problem here with respect to the point, how can a balance
 24 be effected with respect to once-through versus closed cycle
 25 unless you have costs and benefits of each of the two?

1 Once you have the costs and benefits of each
2 of the two alternatives, you can assess the balance. If
3 you don't have the costs and benefits of both of them, how
4 can you in fact come up with a balance?

5 MR. GALLO: That is a fair question.

6 The answer is that the cost and benefits that Dr.
7 Buck is talking about are in this document. The difference
8 is as Dr. Buck points out, the detailed viewpoint of the
9 Applicant is not represented in this document.

10 There is no basis for asserting that the costs
11 have not been balanced adequately or we have incomplete
12 cost-benefit balance as it exists on this record today.

13 CHAIRMAN FARMAKIDES: I understood you to say
14 with respect to that difference which Dr. Buck pointed out,
15 was that your point that the Staff will come out with an
16 additional supplement? But in the interim, your point is
17 -- as I understood you -- is that the stipulation is
18 sufficient, is that correct?

19 MR. GALLO: Would you repeat that?
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1 CHAIRMAN FARMAKIDES: The difference that
2 Dr. Buck pointed out, that you alluded to, has, in fact,
3 been met for the interim by the stipulation and in the long
4 term, by the additional report you will issue.

5 MR. GALLO: I would modify that to say the short
6 term has been met by the Staff's evaluation in the Final
7 Environmental Statement, not by the stipulation.

8 The cost benefiting is different. In the Final
9 Environmental Statement, what is being cost benefited is
10 whether you need closed or open cycle, and the impacts to
11 man and terrestrial impacts were weighed in closed versus
12 open cycle.

13 In the report filed in December in Indian Point
14 2, and which will be filed in Indian Point 3, the costs are
15 balanced as to whether or not we should have 300-foot cooling
16 towers or cooling ponds or another mechanism.

17 DR. BUCK: Are you saying under the February '75,
18 Indian Point 3 FES, no matter what type of closed cooling
19 you were to use, would the cost balance be in favor
20 of using once through cooling?

21 MR. GALLO: That is what I am saying.

22 DR. BUCK: No matter what type of closed cycle
23 cooling?

24 MR. GALLO: No matter what type..

25 DR. BUCK: You are saying if you go in and take

1 over the Village of Buchanan and about a 6000-acre area
2 there for a closed cycle pond, that is better than the effect
3 on the river?

4 MR. GALLO: I didn't say that.

5 DR. BUCK: That is what you said.

6 MR. GALLO: We don't need 6000 acres, or we
7 don't need the whole Village of Buchanan. That was not
8 cost benefited in the environmental statement.

9 DR. BUCK: There is a statement on the possibility
10 of a pond.

11 What you come out with, you said no matter what the
12 situation is, the effect on land by any cooling cycle is going
13 to be less than the effect on the river.

14 MR. GALLO: The reason I say that is because in the
15 consideration of closed cycle alternatives, it would seem to
16 me that the location of cooling ponds could not properly be
17 determined to occur in the Village of Buchanan per se.
18 They would have to be located someplace else because the cost
19 benefiting among the various closed cycle alternatives won't
20 cut into the direction of flooding the Village of Buchanan
21 per se.

22 DR. BUCK: Where would you flood it?

23 MR. GALLO: Wherever an appropriate place is
24 decided. They might have to pump the water. That decision
25 will be made in the future in compliance with the 188 license

1 condition in relation to Indian Point 2.

2 DR. BUCK: You are saying the overall has been
3 made -- the decision has been made that the environmental
4 effect is less by using once through cooling without knowing
5 what the once through cooling type is going to be, than if
6 you use -- closed cycle cooling without knowing what the closed
7 cycle cooling is going to be, you are saying no matter what
8 it is, you are saying that the effect is less than the
9 environmental effect on the river?

10 MR. GALLO: We can make that assessment because
11 various cooling alternatives were considered in this document,
12 and we don't need the Applicant's environmental report of December
13 to make that assessment.

14 We got it through our normal processes of the
15 handling of the environmental report submitted by the
16 Applicant in connection with Indian Point 3.

17 DR. BUCK: Are you in the habit of making that
18 sort of judgment when you know the Applicant is going to give you
19 new data?

20 MR. GALLO: Well, the answer to that is, if that is
21 in fact the case, the answer is no, we don't make judgments
22 that way.

23 We are required to proceed with Indian Point 3. I
24 think the Applicant has a right to an expeditious handling
25 of the licensing proceeding.

1 We found a proper way to handle the Indian Point
2 3 problem that you described Dr. Buck, in the same way it
3 was handled in the Indian Point 2, and endorsed by this
4 Appeal Board. I see nothing improper. We are at the same
5 place today as we were a year ago in Indian Point 2.

6 When the Applicant makes his showing, if he does,
7 that closed-cycle cooling is not required, then the revised
8 cost benefit considerations that you talk of, will be recon-
9 sidered and restudied and restated.

10 DR. BUCK: Then Indian Point 2 has not been
11 considered in Indian Point 3?

12 Your letter of June 14 is incorrect?

13 MR. GALLO: Our letter of June 14 to the Appeal
14 Board indicated we would consider the same issues on Indian
15 Point 3. It was based on different data than in Indian Point
16 2, because the Applicant research program is an ongoing pro-
17 gram. We had different data on which to base it.

18 That research program is still ongoing. If we are
19 going to consider the question of finality of closed cycle,
20 let's wait until the research program is done. We have spent
21 thousands of pages of record, and weeks of hearings in Indian
22 Point 2, and we decided we didn't know what the answer was
23 consequently, and the conditions provide opportunity for all
24 parties to reopen based on the same questions.

25 This stipulation provides for finality. That is in

1 the public interest.

2 CHAIRMAN FARMAKIDES: Mr. Gallo, that is our point,
3 sir. My point as one member of the Board is, how can you
4 reach a firm judgment and come up with a conclusion that a
5 closed cycle cooling system is the preferred alternative,
6 when in fact you don't have the information before you.

7 MR. GALLO: We do have the information before us.
8 I am nonplussed, that the Appeal Board sees the situation
9 different than in Indian Point 2.

10 The underlying environmental report submitted by
11 the Applicant is a matter of record.

12 What is not before this Board, or in the Indian
13 Point 3 record, is what is the Applicant's opinion with respect
14 to the preferred closed cycle system. That is a limited
15 inquiry.

16 CHAIRMAN FARMAKIDES: That is one thing; the other
17 thing is the additional data that the Applicant has
18 accumulated.

19 MR. GALLO: Nobody, not even the Applicant suggested
20 that that data -- that the data it has accumulated to date
21 is sufficient to make a judgment on it.

22 CHAIRMAN FARMAKIDES: But the stipulation has
23 already made a judgment on it.

24 The stipulation to me, suggests that the judgment
25 has been made. In fact, you people have agreed to closed

1 cycle cooling before the Applicant's data has been found.

2 MR. GALLO: I agree with that assessment.

3 The same thing was done in Indian Point 2.

4 The decision was made by the Licensing Board based on existing
5 data; the record was reviewed by the Appeal Board which
6 found that the license could be issued subject to certain
7 conditions.

8 That Appeal Board did not hold up the licensing of
9 Indian Point 2 until the Applicant research program was
10 complete in '78 or '81 or whenever. They acted in the mean-
11 time.

12 We followed the same framework here, the same safe-
13 guards and same opportunity for reopening the record as the
14 Appeal Board provides in ALAB 188.

15 DR. QUARLES: Isn't there one crucial difference
16 in that you have foreclosed the opportunity for any further
17 hearing by the people of Buchanan?

18 Indian Point 2, if I read it right -- and it was
19 our intent, that that opportunity is still open until you have
20 issued your final statement and given them the opportunity.

21 MR. GALLO: Under Indian Point 2, the village
22 has the opportunity in connection with the question of tall
23 cooling towers, small cooling towers, or cooling ponds as the
24 preferred closed cycle system -- they can petition the Staff
25 under 2.206 under the Rules which is the other avenue.

1 But they are the only ways they have of requesting
2 a hearing. They have the same consideration under this
3 stipulation.

4 CHAIRMAN FARMAKIDES: The Staff reached a judgment
5 that you would provide for, or recommend a closed cycle cooling
6 system. The question of what type of closed cycle cooling
7 system is up for review. But the question of whether or not
8 a closed cycle should be used versus a once through, has been
9 resolved unless the Applicant himself raises it under the
10 stipulation.

11 MR. GALLO: Or some other party under 2.206
12 requests that consideration.

13 CHAIRMAN FARMAKIDES: Miss Chasis goes further and
14 says not only may the Applicant raise it, but so may you raise
15 it.

16 You don't accept that interpretation of that
17 stipulation?

18 I find that extremely plausible and perhaps
19 tentative.

20 MR. GALLO: The answer to the question is that the
21 stipulation doesn't provide for it, so the stipulation didn't
22 contemplate that the Staff take the initiative to do such a
23 thing under the stipulation.

24 Under 2.206, the Staff, under its own initiative, can
25 take action so the mechanism does exist. It is not clear it

1 does. It says any person may file a request.

2 Certainly inherent in our regulatory powers, is the
3 right to initiate action and the right to initiate orders
4 to show cause providing hearing rights in connection therewith.

5 The fact we can act under one set of regulations and
6 not under the stipulation, to me is unimportant.

7 DR. QUARLES: Mr. Gallo, may I go back.

8 You said, as you read 188, the only opportunity for
9 hearing is in regard of which type of closed cycle.

10 On page 12 of this decision in Indian Point 2,
11 the procedure provides the opportunity for individuals affected
12 by the action to request a public hearing and oppose the action
13 at a time when more information is available on the advantages
14 of once through and closed cycle cooling systems. That is
15 what the Appeal Board intended.

16 MR. GALLO: In its footnote it cited my letter.

17 My letter referred to the Applicant's report of
18 1974, which is limited to a consideration of the various
19 closed cycle alternatives.

20 I want to also add, under 188, of course, the
21 Applicant has a right to make a showing that open cycle is
22 proper in lieu of closed cycle. In that connection, as I have
23 said for Indian Point 3, the Staff would provide opportunity
24 for hearing not only to the parties, but to other members of
25 the public, including the Village of Buchanan.

1 DR. BUCK: Mr. Gallo, on page 4 of your brief you have
2 a sentence and this is essentially the same point Dr. Quarles
3 is bringing up here; in which you state whereas the
4 Licensing Board's decision in its memorandum and order at
5 pages 11 and 12 is in connection with the selection of the pre-
6 ferred method of closed cycle cooling, for example cooling
7 ponds, spray ponds, natural draft, mechanical draft cooling
8 towers.

9 Where, on pages 11 and 12 of the Board's decision,
10 do you read that?

11 MR. GALLO: I will start with the bottom of page 11
12 where the Board says, and I am quoting:

13 "The Board notes further that individual and
14 communities not party to the proceeding and participated
15 only by way of limited appearances, are concerned
16 about the impact of cooling towers on the area in
17 the vicinity of the plant.

18 "Before a closed cycle system can be constructed,
19 the Applicant must prepare an environment report on the
20 operation of the system."

21 That is referring to, in my judgment, the stipula-
22 tion requirement.

23 In the case of unit 2, the Staff has concluded that
24 it must prepare a Final Environmental Statement in support of
25 the action it would take and permitting modification of the

1 plan to incorporate a closed cycle cooling system.

2 Footnote 12. That letter of mine makes it clear
3 what we are talking about was the Applicant's December 1974
4 report submitted pursuant to the licensing conditions in
5 Indian Point 2, and the scope of that review was what alterna-
6 tive of closed cycle system was the preferred one.

7 DR. BUCK: That is where we have disagreement, in
8 the reading of 174 and 188, which is not that.

9 CHAIRMAN FARMAKIDES: Mr. Gallo, thank you.

10 This is a convenient time to recess for lunch.

11 In view of the time, let's reconvene at 2:15.

12 Is that convenient?

13 2:30? Let's reconvene at 2:30.

14 (Whereupon, at 12:55 p.m., the hearing was recessed
15 to reconvene at 2:30 p.m., this same day.)
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AFTERNOON SESSION

2:30 p.m.

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3 CHAIRMAN FARMAKIDES: Mr. Clemente, I think you are
4 on, sir.

5 ORAL ARGUMENT OF C.J. CLEMENTE ON BEHALF OF
6 THE NEW YORK ATOMIC ENERGY COMMISSION.

7 MR. CLEMENTE: Mr. Chairman, members of the
8 Board: The question and answer session with Applicant and
9 Staff counsel has taken us, I think, beyond the narrow question
10 framed in the Board's order and responded to by all the
11 parties.

12 I would like to say that I, basically, concur with
13 the analysis presented by Staff counsel to the Board, and
14 indicate that for our part, we feel we have preserved the
15 option of reopening the question of open versus closed cycle
16 in the latter part of the first paragraph on page 3.

17 That specifically recognizes our right to petition
18 under 2.206 for a hearing, should we determine, after reviewing
19 the various environmental reports submitted by the Applicant,
20 that something other than a completely closed cycle system is
21 warranted.

22 CHAIRMAN FARMAKIDES: Could you cite your authority
23 again?

24 MR. CLEMENTE: That part of the stipulation on the
25 latter half of the paragraph on page 2, which says:

1 "Such interim operations subject to the
2 following conditions, none of which shall be
3 interpreted to limit or affect other conditions
4 as imposed by the Atomic Energy Commission or
5 other governmental body, including New York, in
6 accordance with applicable law."

7 We see that section as retaining our option
8 under the Commission Rule of Practice, to go forward and
9 request a hearing and get a litigation, the results of which
10 would supersede this document.

11 CHAIRMAN FARMAKIDES: You are talking about page
12 3, the first paragraph on page 3?

13 MR. CLEMENTE: Yes, Mr. Chairman.

14 In the pagination I have it is page 3 of the
15 stipulation appended to the Licensing Board's memorandum
16 and order.

17 CHAIRMAN FARMAKIDES: All right sir.

18 You feel that the option is open as to yourself,
19 as well as the Staff and Applicant, or to any other individual
20 for that matter?

21 That would include the HRFA and SOS?

22 MR. CLEMENTE: And the Mayor of Buchanan.

23

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1 CHAIRMAN FARMAKIDES: And the mayor under that same
2 paragraph?

3 MR. CLEMENTE: Yes, Mr. Chairman. I would perceive
4 that any modification to the situation which is established
5 by this stipulation obtained by the mayor after petitioning
6 the Commission for a hearing would in fact modify what had
7 been agreed to in this stipulation.

8 CHAIRMAN FARMAKIDES: Assuming the applicant does
9 not ask for a hearing, the Staff does not ask for a hearing,
10 how under that sentence could the mayor of Buchanan ask for a
11 hearing? "Interim operations subject to the following condi-
12 tions, none of which shall be interpreted to limit such other
13 conditions as are imposed by any other governmental body."

14 I'm extracting the phrases I think are important
15 here. What does that say to you that suggests the mayor of
16 Buchanan, not a party to this proceeding, may in any event
17 require or request that the once through system be compared
18 as a viable alternative to the closed cycle system?

19 MR. CLEMENTE: I read that section, Mr. Chairman, as
20 recognizing that any determination obtained by anyone under the
21 existing Commission rules of practice, specifically section
22 2.206 or 2.202, one or the other, would in fact modify the
23 terms of this stipulation.

24 CHAIRMAN FARMAKIDES: I see. You're going to say
25 what Mr. Gallo said earlier and that is, under 206, the mayor

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1 of Buchanan could come in.

2 MR. CLEMENTE: Yes, Mr. Chairman.

3 CHAIRMAN FARMAKIDES: Did you have anything else?

4 MR. CLEMENTE: Nothing else, sir.

5 CHAIRMAN FARMAKIDES: I have one question.

6 Earlier you mentioned that you felt this record be-
7 fore this Appeal Board is not limited to, for example, I think
8 you mentioned the transcript of 1 April 1974, with respect to
9 the seismic issue. Perhaps I read more than I should have
10 into what you had said and I suggest you might want to brief
11 it and you said you would and provide us with such a brief
12 shortly.

13 We advised the other parties they can do the same
14 thing. To put that in context, reflecting a little more of
15 what you have said, let me pose this: is it your position
16 that this Board could review the record in Seabrook with
17 respect to this proceeding and apply it to this proceeding?
18 Did you mean to say --

19 MR. CLEMENTE: No, Mr. Chairman, I did not mean that.
20 The one constraint I mentioned was that we would not in fact
21 violate any provision -- any due process constraint. In the
22 Seabrook proceeding, Consolidated Edison is not a participant
23 or party, nor have they had a chance to comment on the posi-
24 tions of the Staff or applicant in that proceeding.

25 CHAIRMAN FARMAKIDES: You mean that record that

1 relates to Indian Point 3 regardless of where it is as long as
2 it's in the Commission now.

3 MR. CLEMENTE: Yes, and as long as everyone has had
4 the opportunity to speak on the specific matter that has been
5 presented. I construe our petition to the Commission with
6 appended affidavit as that type of evidence. I would construe
7 the reports submitted to this Board -- I think this Board
8 should take the report for more than just the fact that it
9 exists. They would like to see if it substantially pertains
10 to any of the decisions they are required to make.

11 CHAIRMAN FARMAKIDES: Your position is limited to
12 Indian Point 3?

13 MR. CLEMENTE: Information upon which under the
14 Administrative Information Act either the Board gives the
15 parties notice it will take notice of, or that which everyone
16 has had a chance to address on its merits.

17 CHAIRMAN FARMAKIDES: All right, -sir. Thank you,
18 sir.

19 Mr. Voigt.

20 ORAL ARGUMENT OF HARRY VOIGT, ON BEHALF
21 OF THE APPLICANT.

22 MR. VOIGT: Mr. Chairman, Members of the Board, -I
23 stated to you in my introductory remarks this morning that the
24 negotiations leading to the stipulation which is before this
25 Board were commenced as a result of and guided by prior

1 decision of the Appeal Board in ALAB 188.

2 In looking back at that decision, at page 406 of the
3 RAI, I draw your attention to this statement: "For the reasons
4 given in the text, we conclude that May 1, 1979 is a reasonable
5 tentative date for us now to establish for the termination of
6 operation with once through cooling if the final decision is
7 that the tower must be constructed."

8 Now, with out entry into this stipulation and the
9 company's intention with respect to the stipulation is the
10 same as that quotation that I just read to you from ALAB 188,
11 the stipulation is a determination as of now that once through
12 cooling can only continue for the period of time permitted.

13 It's by no means the company's view a final deter-
14 mination that a cooling tower should be built. That is the
15 reason why the company has vigorously insisted in Indian Point
16 2 and Indian Point 3 that it should be given a reasonable
17 opportunity in which to complete its research program. It's
18 the research program in the view of the company that will pro-
19 vide the additional information that is necessary to make an
20 authoritative resolution of this problem.

21 CHAIRMAN FARMAKIDES: You're saying to me, sir, you
22 are buying time of roughly 5 years?

23 MR. VOIGT: That's correct.

24 CHAIRMAN FARMAKIDES: In exchange for what, sir?

25 MR. VOIGT: In exchange for a commitment to go ahead

1 with the towers if we cannot support our position at the end
2 of that time rather than relegating the whole basic question
3 and all of the problems that were before this Board in the
4 Indian Point 2 case.

5 Another factor, of course, is the saving of time
6 and money that would have been involved in going ahead and so
7 relegating all of those issues. It was the company's judgment,
8 as I stated this morning, that not enough had happened --
9 there wasn't enough new data following ALAB 188 to give the
10 company a very good chance of substantially changing the re-
11 sult.

12 But given the opportunity to accumulate more data
13 in the passage of more time and very importantly, actually
14 operating experience from Indian Point 2, we should be in a
15 much better position to make a predictive judgment 2 or 3 years
16 from now.

17 Now, that leads me back to the specific question
18 which the Board posed in its letter of July 3. Whether the
19 proposed stipulation precludes an opportunity for a hearing at
20 the behest of any existing party or any other person relative
21 to the cost-benefit balance of a once through cooling system
22 compared to a closed cycle cooling system.

23 Gentlemen, the answer to that question is yes, the
24 stipulation does preclude such a hearing at this time. As
25 Miss Chasis stated in her argument, the parties have resolved

1 the issue for now.

2 Now, the Board has expressed its concern that per-
3 haps there wasn't an adequate opportunity for a hearing before
4 the stipulation was adopted. It seems to me that the answer
5 to that lies in the Commission's whole regulatory process.

6 The opportunity for a hearing on this issue arose
7 in October of 1972, when public notice was given. Of course,
8 in the case of the Village of Buchanan, the notice was not
9 only public, but personal. At any time thereafter, through
10 and including the April 1 hearings, any other party could
11 have requested the right to intervene and present a different
12 point of view on the question of aquatic damage, the cost-
13 benefit, the possible harm that could arise from a cooling
14 tower.

15 Of course, a party who came in late in the game
16 would have had to bear the burden of justifying that basis.
17 We know as a practical matter that the Commission has been
18 fairly liberal in allowing intervention where there's good
19 cause.

20 In our view, there was ample opportunity for a hear-
21 ing on this question. But the opportunity has not passed.
22 The only people who sought a hearing are the parties and the
23 parties got together and hammered out an agreement which is
24 satisfactory and met the very sharply competing positions that
25 were presented.

1 Now, any other person could have requested to
2 become a party. Obviously, if they had done so, we would have
3 to include them in the negotiations and perhaps put in dif-
4 ferent accommodations in that situation. Perhaps we couldn't
5 have achieved a stipulation under those circumstances, but
6 there was ample opportunity for a hearing on this question
7 and nobody asked for it.

8 Now, as far as the future is concerned, there will,
9 as the other attorneys have pointed out, be various possible
10 opportunities for further hearings. Certainly the company's
11 present intention, unless the research program proves the
12 contrary, would be to apply for a modification of the license
13 condition. If that is done, then the issue will be reopened.

14 CHAIRMAN FARMAKIDES: Miss Chasis this morning indi-
15 cated that the Town of Buchanan had been served with the
16 stipulation. Who, in fact, affected that service?

17 MR. VOIGT: We checked our records at the time that
18 point was brought up, Mr. Chairman. It does not affirmatively
19 appear that a copy of the stipulation was transmitted to the
20 mayor at the time it was tendered to the Licensing Board.
21 However, shortly thereafter, the Licensing Board gave public
22 notice of the stipulation. I would assume that that notice
23 was sent to the mayor as well as published in the Federal
24 Register.

25 DR. BUCK: Do you happen to know the date, Mr. Voigt?

1 MR. VOIGT: We will check it. The hearing was set
2 for February 6. We will get the date. In addition, the stipu-
3 lation was a very prominent feature of the Final Environmental
4 Statement. That was given to the town.

5 So, I don't think -- quite apart from the fact that
6 everyone who has paid any attention to this proceeding has
7 known for years that cooling towers were the central issue.
8 I don't think there can be any contention that the town was
9 not on actual notice at a time where it still could have come
10 in, concededly (sic) late and concededly bearing a burden of
11 justification, but certainly early enough that it could have
12 obtained counsel, which it has subsequently done and inter-
13 vened.

14 DR. BUCK: You don't believe the February 5 letter
15 to the Commission was in essence a statement they were oppos-
16 ing this. It was written by the mayor of the town. Was this
17 not a statement to flag the opposition of the town that should
18 have been given further attention?

19 MR. VOIGT: Dr. Buck, it's difficult for me to re-
20 spond to this because I didn't get a copy of the letter. To
21 my knowledge --

22 DR. BUCK: This didn't get in the record. It was
23 found in the regulatory docket and not the case docket. This
24 is what's bothering me. If one looks at this from the point
25 of a town suddenly waking up that something is happening and

1 the letter coming in -- I have seen cases where a person is
2 given all kinds of opportunities to intervene or saying
3 whether they want to be a limited appearance -- but here is
4 nothing else on the record but a letter from the mayor to the
5 Director of Licensing.

6 This is the part that bothers me. The further
7 thinking that bothers me is the apparent problem you have with
8 the zoning situation. Is that just assumed that we can ride
9 roughshod over the zoning laws, or what happens in this case?

10 MR. VOIGT: In the case of Indian Point 2, the com-
11 pany's application for zoning variance has been officially
12 denied by the Village Board.

13 CHAIRMAN FARMAKILES: For a zoning variance to con-
14 struct what?

15 MR. VOIGT: Natural gas cooling tower.
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1 CHAIRMAN FARMAKIDES: That has been denied and
2 you would assume that would be denied with Indian Point 3?

3 MR. VOIGT: I do assume that, -but you can't make
4 that assumption based on what they said in their decision.
5 They said in effect this is premature. You don't have a final
6 order from a Nuclear Regulatory Commission that directs you
7 to build a cooling tower, -so why should we give you adjoining
8 variances?

9 CHAIRMAN FARMAKIDES: Let's assume you have a
10 decision and you go for the variance. That variance
11 would be issued by the Town of Buchanan. In that instance
12 the town would have the impact not only of a party, -but of an
13 adjudicator.

14 MR. VOIGT: That is essentially correct. That may
15 be one of the reasons, -very well, -they decided not to
16 intervene. They are not bound by anything the Commission
17 does. They have never made themselves a party to the
18 Commission proceeding. If they can make their refusal to
19 grant a variance stand up on judicial review, -it would appear
20 they are sort of in the driver's seat.

21 CHAIRMAN FARMAKIDES: How about EPA? Are they
22 getting involved with the cooling tower question?

23 MR. VOIGT: The company has applied for water
24 permits as of course it must, -discharge permits for both
25 units. EPA has issued permits. The permit for Indian Point 2

1 requires the cessation of once-through cooling in 1979 just
2 as ALAB 18 does. Permit for Indian Point 3, I believe, was
3 issued yesterday. I suspect the document will have a compa-
4 rable type of provision in it.

5 The company has requested an adjudicatory hearing
6 with respect to both of these.

7 CHAIRMAN FARMAKIDES: Before EPA?

8 MR. VOIGT: Yes.

9 CHAIRMAN FARMAKIDES: Would EPA's decision in that
10 regard be final? Would they have primary jurisdiction in that
11 question?

12 MR. VOIGT: That is a difficult inquiry,
13 Mr. Chairman. I think they would take the position they
14 did. Actually, one of the purposes of a request for an
15 adjudicatory hearing is to at least convince them to put us on
16 the same schedule and to harmonize to some extent the
17 conditions of their permit and the conditions imposed by this
18 Commission.

19 (The Board conferring.)

20 CHAIRMAN FARMAKIDES: Would you mind if we
21 a recess for five minutes?

22 (Recess.)

23 CHAIRMAN FARMAKIDES: Mr. Voigt, did you have any-
24 thing else?

25 MR. VOIGT: Just a couple of concluding points,

1 Mr. Chairman.

2 Mr. Gallo did say in his presentation on this
3 question that the stipulation provides for finality. Obviously
4 we disagree with that construction, unless it's limited to
5 the construction I described to you gentlemen a few minutes
6 ago. It's not final any more than ALAB 188 was final. It
7 does effectively postpone the ultimate resolution in a manner
8 all parties agree will enable us to make a more intelligent
9 decision at some future time.

10 Finally, I want to respond to Mr. Clemente's
11 assertion that the affidavits appended to his application
12 should be considered as evidence. I do not think that is
13 proper. The motion was not a substantive motion. It was a
14 procedural motion. We have responded to it as such. We made
15 no effort to controvert the statements in the affidavits,
16 nor, of course, have we ever had the opportunity to cross-
17 examine Dr. Davis concerning any of his remarks.

18 Those to me are simply a statement of position
19 by the State. They are not evidence in the sense that the
20 transcript of this hearing is evidence.

21 Thank you.

22 CHAIRMAN FARMAKIDES: Miss Chasis.

23 REBUTTAL ARGUMENT OF SARAH CHASIS, ON BEHALF
24 OF SAVE OUR STRIPERS AND HUDSON RIVER FISHERMEN'S
25 ASSOCIATION.

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1 MS. CHASIS: First I would like to say it's the
2 understanding of HRFA and SOS that the decision is final as
3 set out in the stipulation in this sense: that no further
4 action is required from the Commission, absent incorporation
5 of the terms of the stipulation into the license, unless
6 there is an application for an amendment to the license. In
7 other words, there is no further action required in order to
8 impose the closed cycle cooling requirement.

9 It's with this understanding we entered into the
10 stipulation and it's essential that that be made clear.
11 Otherwise it really runs contrary to the understanding of one
12 of the parties to that stipulation.

13 CHAIRMAN FARMAKIDES: Insofar as I understood you,
14 the point you made was application for amendment could be
15 effected not only by the Applicant or licensee, but also by
16 the Nuclear Regulatory Staff.

17 MS. CHASIS: My position on that derives from
18 paragraph 5 of the stipulation, which states in the event
19 that the Regulatory Staff proposes any modification of the
20 license condition set forth in paragraph 2 of the stipulation
21 pursuant to subparagraph (a) of said Commission or others, the
22 Regulatory Staff shall issue a report setting forth the
23 proposed change and the basis therefor.

24 It provides that following the service of that
25 recommendation the procedures which trigger the opportunity

1 for parties to request a hearing under paragraph 4(b) come
2 into effect.

3 So that is what I was referring to when I dis-
4 cussed the ability of the Regulatory Staff to trigger the
5 hearing requirement set out in the stipulation.

6 With respect to the Board's concerns evidenced
7 by the questions with respect to NEPA, I would like to say the
8 following: that my understanding of that Act and what it
9 requires mandates that an agency is to take into account prior
10 to making a decision the cost and benefits of the proposed
11 action, impact of alternatives to that action. I think it's
12 clear that the Staff and the Licensing Board in fact did that
13 in a full and complete manner.

14 I would like to make clear that the Licensing
15 Board in incorporating the stipulation in fact did have a
16 Staff evaluation of the data in the December 1974 report on
17 effects of alternate closed cycle systems before them. That
18 was submitted with a cover letter from Mr. Gallo to the
19 Licensing Board and served on all parties. It's entitled
20 "NRC Staff Response to Limited Appearance Statements
21 Regarding Environmental Impacts Associated with Closed Cycle
22 Cooling Systems."

23 LR. BUCK: That was a comment on the Applicant's
24 report.

25 MS. CHASIS: That's right.

1 In other words, it included Staff evaluation of
2 the -- it was really directed toward the comments made by
3 people who appeared at the April 1 and 2 hearings. Included
4 in that was --

5 DR. BUCK: I don't understand that to have anything
6 to do with -- excuse me a moment.

7 (Pause.)

8 I see you're correct as far as Indian Point 2 is
9 concerned. However, from what Mr. Gallo was saying this
10 morning, this does not apply to Indian Point 3 or any further
11 situation,

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1 MS. CHASIS: What I am saying is that the
2 Licensing Board in approving the stipulation and including
3 its term into the license for Indian Point 3, had before
4 it a staff evaluation of the data contained in the
5 December '74 reports submitted by Con Edison in the Indian
6 Point 2 proceeding.

7 That was submitted by way of a letter, cover
8 letter from Mr. Gallo to the members of the Licensing Board
9 on April 29, 1975.

10 MR. BUCK: That was the report attached to this
11 letter?

12 MS. CHASIS: That is right.

13 DR. BUCK: May I ask why was the report not
14 put in evidence? Was there a reason given for not putting
15 the report in evidence?

16 MS. CHASIS: It was submitted after the close of
17 the hearing. I presume it comprises part of the record that
18 the Licensing Board based its decision on.

19 DR. BUCK: Wasn't the report issued in December?

20 MS. CHASIS: Yes.

21 Why the Con Ed report was not put into evidence.
22 That is up to the applicant, and I think they should be asked
23 that question.

24 I would like to emphasize that a lot is made of
25 what are the effects of closed-cycle systems. There has

1 never been, and if the evidence exists, I am sure the
 2 Applicant would have submitted it, any serious demonstrable
 3 environmental impact from the wet natural draft cooling
 4 towers, the alternative preferable system.

5 There was complete and full addressing of those
 6 issues in both the Final Environmental Statement and then
 7 by the subsequent staff evaluation.

8 DR. BUCK: The Final Environmental Statement
 9 issued in February made no reference to the Applicant's
 10 report of December.

11 MS. CHASIS: But I think the issue is not what
 12 is technically what is in the Final Environmental Statement,
 13 but has the staff evaluated the data that exists?

14 DR. BUCK: And if I may say so, have they
 15 distributed it for comments?

16 MS. CHASIS: They have put it in the record now.

17 DR. BUCK: That is not distributing it for
 18 comment.

19 MS. CHASIS: The point is that the Licensing
 20 Board which in effect has to make the ultimate decision and,
 21 of course, it is reviewed by you, but the Licensing Board
 22 had before them extensive analyses by the staff in the Final
 23 Environmental Statement, further analyses in this report
 24 that I have just mentioned, and the positions as laid out
 25 in the limited appearances of the Mayor and other parties

1 with respect to the effect of alternate systems.

2 I think that satisfies the requirements of
3 NEPA fully and completely, and I therefore think there has
4 been adequate consideration by the Licensing Board in terms
5 of its incorporation of the stipulation.

6 ER. BUCK: We will await the Final Environmental
7 Statement on Indian Point 2 and see what happens.

8 MS. CHASIS: I wish to reiterate that it is the --
9 it is only acceptable to HRFA and SOS that the stipulation
10 be read to provide for installation of closed-cycle
11 cooling with no opportunity for a full reopening of cost-
12 benefit relative to once-through versus closed cycle absent
13 application by the licensee, absent some kind of proposal
14 for modification by the staff pursuant to the stipulation.

15 It is only on those terms that we are willing
16 to stick with the stipulation. If that is rejected, then
17 the stipulation must fall and we will have to go to full
18 hearing. That is the firm position of the Intervenors in
19 this proceeding.

20 CHAIRMAN FARMAKIDES: Thank you.

21 REBUTTAL ARGUMENT OF JOSEPH GALLO, ON BEHALF OF
22 NUCLEAR REGULATORY COMMISSION.

23 MR. GALLO: Just a couple of short remarks, Mr.
24 Chairman.

25 To get the last word on this question of finality,

1 if I can use an analog that was used here this morning, the
2 staff views the stipulation represents a final resolution
3 of the problem with respect to once-through or open --
4 once-through or closed-cycle cooling subject to a condition
5 subsequent being in the right of the Applicant to come in
6 within the schedule set forth to make a showing that once-
7 through cooling is indeed desirable and appropriate.

8 There is not disagreement among the parties.
9 It is just a semantic difference in character.

10 CHAIRMAN FARMAKIDES: There is a difference in
11 the sense that Ms. Chasis contends -- and I think perhaps
12 rightly so -- that the staff also has that opportunity.

13 MR. GALLO: All right.

14 Finally, on the question of the examination of
15 terrestrial impact and impact to the people, namely from
16 cooling tower operation, I would cite specifically Appendix
17 G to the Environmental Statement as an evaluation of those
18 impacts with respect to mechanical draft cooling towers and
19 also to the report attached to my letter of April 28 by
20 Mr. Dinger (?) which is an assessment of those same impacts.

21 I have to disagree with my sister, Ms. Chasis,
22 this report does not represent an evaluation of the
23 Applicant's December 1974 report. Obviously, we had the
24 report in mind. Mr. Dinger, who wrote the report, had the
25 Applicant's report by that time and was aware of what it said.

1 This represented an elaboration of the impact
2 as the staff independently evaluated in the impacts in the
3 Final Environmental Statement and Appendix G.

4 DR. BUCK: Mr. Gallo, would you do me a favor.
5 This February 5 letter from Mayor Buchanan, would you see
6 if you can find follow-up correspondence on that letter
7 and send it to the Board?

8 MR. GALLO: I would be pleased to do that.

9 CHAIRMAN FARMAKIDES: That ends the question,
10 as far as the Board is concerned.

11 We appreciate the presentation the parties have
12 made.

13 This concludes the oral argument today.

14 Thank you.

15 (Whereupon, at 3:12 p.m., the hearing was
16 adjourned.)
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