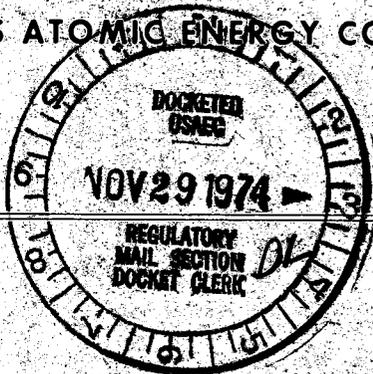


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UNITED STATES ATOMIC ENERGY COMMISSION



IN THE MATTER OF:  
CONSOLIDATED EDISON COMPANY  
OF NEW YORK, INC.

(Indian Point Unit 3)

Docket No. 50-286

Place - Croton-on-Hudson, New York  
Date - Tuesday, 26 November 1974  
Pages 136 - 196

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UNITED STATES OF AMERICA

ATOMIC ENERGY COMMISSION

3 -----  
4 In the matter of: :  
5 CONSOLIDATED EDISON COMPANY :  
6 OF NEW YORK, INC. :  
7 (Indian Point Unit 3) :  
8 -----

Docket No. 50-286

9 Conference Room,  
10 Springvale Inn,  
Croton-on-Hudson, New York.

11 Tuesday, November 26, 1974.

12 The prehearing conference in the above-entitled  
13 matter was convened, pursuant to notice, at 9:30 a.m.

14 BEFORE:

15 SAMUEL W. JENSCH, Esq., Chairman,  
Atomic Safety and Licensing Board.

16 R. BEECHER BRIGGS, Member.

17 DR. FRANKLIN DAIBER, Member.

18 APPEARANCES:

19 (As heretofore noted.)  
20  
21  
22  
23  
24  
25

P R O C E E D I N G S

CHAIRMAN JENSCH: Please come to order.

This proceeding is a prehearing conference in the matter of Consolidated Edison Company of New York, Inc. in reference to its application to operate a nuclear power facility designated as Indian Point Nuclear Generating Unit No. 3, which application is reflected in Docket No. 50-286 of the Atomic Energy Commission.

This prehearing conference is convened in accordance with an order of the Atomic Safety and Licensing Board which was issued on November 6th, 1974, setting this time and place for this prehearing conference.

General public distribution was given to this order convening a prehearing conference by the news media and by the Division of Public Information of the Atomic Energy Commission and in addition, was published in the Federal Register as reflected by Volume 39 of the Federal Register at page 757. It was published on November 11th, 1974.

In setting this prehearing conference, the Atomic Safety and Licensing Board indicated that it desired to have further information from the parties other than that which had been reflected by their letter communications in reference to the progress of this case toward its readiness for the evidentiary hearing which has been provided for by a previous order of the Atomic Energy Commission.

eb2

1           There have been, and there is reflected in the  
2 public record of this proceeding, several letters which have  
3 been interchanged among the parties as well as made available  
4 to the public for their review in reference to not only the  
5 preparation of evidentiary matters but also the possibility  
6 that there may be a stipulation for a partial or complete dis-  
7 position of many of the contested matters in this case, and  
8 for all of these several matters, the Atomic Safety and  
9 Licensing Board desired to have an open prehearing conference  
10 where the several matters may be considered and discussed.

11           For appearances, on behalf of Consolidated Edison  
12 Company I note the presence of LeBoeuf, Lamb, <sup>MacRae</sup> and Leiby through  
13 its partner, Mr. Harry Voigt, and Mr. Irving Sack of Consoli-  
14 dated. Is that correct?

15           MR. SACK: That's Edward Sack.

16           CHAIRMAN JENSCH: Edward Sack of Consolidated  
17 Edison Company.

18           MR. VOIGT: Mr. Chairman, I also have with me this  
19 morning, Mr. Chairman, my associate, Mr. Maurice White.

20           CHAIRMAN JENSCH: Mr. White, very well. We note  
21 your appearance in this proceeding.

22           On behalf of the Regulatory Staff I notice Messrs.  
23 Gallo and Gray of the Regulatory Staff.

24           The Hudson River Fishermen Association, by Mr. Angus  
25 MacBeth.

eb3

1 Are there any other appearances?

2 MR. MAC BETH: Mr. Nicholas Robinson is with me this  
3 morning, Mr. Chairman.

4 CHAIRMAN JENSCH: We welcome your appearance, sir.

5 MR. CLEMENTE: Mr. John Clemente on behalf of the  
6 New York Energy Council.

7 CHAIRMAN JENSCH: We welcome your appearance.

8 With those preliminaries and the previous corres-  
9 pondence in this matter, primarily from the attorney for the  
10 Applicant, will the Applicant give us a report if he will,  
11 please, in reference to the several matters to which we have  
12 adverted?

13 MR. VOIGT: Mr. Chairman and members of the Board,  
14 as I advised the Chairman of the Board in my last letter to  
15 him, we held a further meeting of counsel for the various  
16 parties last Thursday in New York City to give further con-  
17 sideration to the possibility of a stipulation that would  
18 dispose of all of the matters in controversy in this pro-  
19 ceeding.

20 At that time we did reach agreement on the language  
21 of the stipulation with the express understanding that the  
22 lawyers had to go back to the parties that they represented  
23 for final approval of the agreed-upon language.

24 Since that time it has come to my attention that  
25 at least two parties have expressed certain reservations.

eb4 1 concerning one specific portion of the stipulation and as I  
2 presently see it, we are going to have to engage in a limited  
3 amount of further negotiations, either to establish that we  
4 are going to stick with the language that we have already  
5 agreed upon or to establish some minor modifications which  
6 will enable the parties who have expressed concern to authorize  
7 their counsel to execute the stipulation.

8 A great deal of work has gone into this. I think  
9 there has been a great deal of good will on behalf of all of  
10 the parties. I think the Board will recognize that it is a  
11 very difficult endeavor to reach a complete agreement where we  
12 have, as we do in this case, six parties whose interests  
13 differ in various ways and on various aspects of the case.

14 I may say that I remain optimistic. I think that  
15 too much good work has been done here for me to anticipate  
16 that we will not be able to resolve these small remaining  
17 difficulties that have come to my attention.

18 I would respectfully urge that the parties be given  
19 some additional time by the Board in an effort to reach a  
20 final agreement, something that we can all execute and some-  
21 thing that we can then present to the Board for its considera-  
22 tion and approval.

23 CHAIRMAN JENSCH: Where is the State of New York  
24 through its Attorney General?

25 MR. CLEMENTE: Mr. Chairman, I am authorized to

eb5

1 appear on behalf of Mr. Corcoran this morning.

2 CHAIRMAN JENSCH: For the State of New York?

3 MR. CLEMENTE: For the State of New York and the  
4 Atomic Energy Council.

5 With the limited disagreement on one minor point,  
6 I am also authorized to say that with respect to the rest of  
7 the stipulation, the Attorney General has no objection.

8 CHAIRMAN JENSCH: Are you able to speak with some  
9 precision as to what are you doing and what have you agreed  
10 upon and where are the minor differences, or is that matter  
11 not to be discussed? What is the situation?

12 MR. VOIGT: I would say first, Mr. Chairman, that  
13 in accordance with the usual rules of law, we would regard  
14 the stipulation negotiations as privileged. Obviously, if we  
15 are ultimately unsuccessful in arriving at an agreement, then  
16 all of our discussions would be without prejudice and we would  
17 not seek to introduce nor would we countenance an attempt by  
18 any other party to introduce any details concerning those  
19 negotiations.

20 Now, having said that, I think it is proper for me  
21 to state that the general effort here first of all has been  
22 to settle everything with respect to all of the matters in  
23 controversy, all of the issues that have been raised by the  
24 various parties including the Regulatory Staff concerning the  
25 environmental phase of the application.

eb6  
1 The Board will recall that there were no permitted  
2 interventions and there were no authorized contentions on any-  
3 thing other than environmental matters.

4 So the strong effort here is to eliminate all of the  
5 matters in controversy within the meaning of the Commission's  
6 rules and precedents, and to eliminate all of the outstanding  
7 requests for a public hearing.

8 CHAIRMAN JENSCH: As we have indicated before, the  
9 Board has some concern and--

10 MR. VOIGT: I am prepared to address those later  
11 on this morning, Mr. Chairman, but I want to proceed from the  
12 foundation if I may, that the matters in controversy are about  
13 to be resolved in toto and therefore, we are in essence going  
14 to be talking about an uncontested proceeding of some type or  
15 another.

16 CHAIRMAN JENSCH: Well, a stipulation doesn't  
17 really amount to withdrawal of participation. A stipulation  
18 is in a sense an agreement that the terms of the stipulation  
19 will be applied to the proceeding, and as to that, I think  
20 the Board will need an opportunity to review the stipulation  
21 to see whether the factual situation is such as would support  
22 the acceptance of the stipulation.

23 In other words, a stipulated agreement among the  
24 parties is not compelling to a Board, and I think that that  
25 is one of the factors that we have had in mind in our anxiety

eb7

1 to learn of the progress in this matter because there may be  
2 public interest matters and environmental concerns beyond the  
3 scope of the stipulation.

4 Now whether they have or have not been expressed  
5 in the stipulation we of course do not know, but we do not  
6 feel that the stipulation is going to be an ironclad restric-  
7 tion upon the Board.

8 Now when is the expected time for loading of the  
9 fuel at this plant? Could you indicate that?

10 MR. VOIGT: Mr. Chairman, we have present here this  
11 morning Dr. Silverstein from Con Edison who is prepared to  
12 make a rather complete report.

13 CHAIRMAN JENSCH: Just give us the figure, if you  
14 will. We'll be glad to have that later but can you just pick  
15 a number from one to ten and --

16 MR. SACK: The present schedule indicates that fuel  
17 loading will be toward the end of March, somewhere between  
18 March 15th and April 1st.

19 CHAIRMAN JENSCH: 1975?

20 MR. SACK: 1975; right.

21 CHAIRMAN JENSCH: The reason I ask is solely for  
22 the purpose that if the parties are unable to reach a stipula-  
23 tion on all aspects or even in partial, we do not want to be  
24 under any schedule of reports that we hurry, hurry, hurry  
25 to complete the matter because lo and behold, they are ready.

eb8

1 That is one of the reasons, if you are not going to  
2 reach a stipulation, that the Board wants to go ahead with the  
3 hearing and move the case along.

4 We have delayed the proceeding in this matter be-  
5 cause it is to the interest of the Commission and to the  
6 public and to the parties to see if a stipulation can be  
7 achieved, and I think the Commission rules encourage that.  
8 But at the same time, the Board has the obligation to assure  
9 that too much time is not taken in that endeavor and that the  
10 full hearing process is available without any suggestions that  
11 there is delay in the hearing, which seems to be a common  
12 theme on certain occasions.

13 Will the Staff give us a review of the situation  
14 as they see it?

15 MR. GALLO: Mr. Chairman, I think that Mr. Voigt  
16 has properly characterized the nature of the stipulation and  
17 the nature of the status of the situation that now exists.

18 As he indicated, we did meet last Thursday. We did  
19 have an agreement in principle. It was subject to further  
20 review by our principals. There have been some late develop-  
21 ments of some yet remaining disagreements that need to be  
22 worked out. We have had discussions on them as late as this  
23 morning.

24 We have not had an opportunity to get together to  
25 try to resolve them. I am sure we will. I think some of the

eb9

1 parties are not fully apprised of the exact nature of the dis-  
2 agreement with respect to some particular sections of concern,  
3 but I am optimistic that, based on Mr. Voigt's optimism, that  
4 we will hopefully be able to get together.

5 I think this has been a long, arduous exercise. It  
6 started in May. We have had at least seven or eight days,  
7 including the two-day session down in Oak Ridge, so I think  
8 as a result of that we could maybe come to fruition without  
9 any difficulties.

10 I share the Board's concern with respect to the  
11 posture of the case. I might say that if the stipulation  
12 falls through, the Staff will have to lead the way to ask for  
13 additional discovery time because we find, like the nuclear  
14 industry itself, being a dynamic and ever-changing technology,  
15 that life on the Hudson River fits in the same category;  
16 there is always new and more information. And while the Staff  
17 has had an opportunity to review this new information from a  
18 case preparation standpoint, we would need to take depositions  
19 with respect to Applicant's witnesses to find out what their  
20 last posture is with respect to the many issues in this case.

21 I am hopeful that we won't have to get into any of  
22 that because the stipulation will obviate that concern.

23 On the other point of the Board, I think I'm not re-  
24 miss by saying it is the express understanding of the parties  
25 that any stipulation we agree to of course will be subject to

eb10 1 the approval of the Board, and we specifically would so pro-  
2 vide. So there will be no attempt to try to press the Board  
3 into early agreement or approval of such a stipulation.

4 That's about all I can say with respect to where we  
5 stand at the moment.

6 Perhaps if, at some later time in the proceeding  
7 today, if we went off the record, counsel could get together  
8 and we might be able to give you some more concrete informa-  
9 tion as to when we will get together, and how far apart we  
10 actually are on some of these points.

11 CHAIRMAN JENSCH: Let me ask this:

12 While I appreciate the proceedings are separate,  
13 in a sense, we are talking about the Hudson River in some  
14 detail. To what extent is there a <sup>carry over</sup> ~~carryover~~ of the problem  
15 that the Appeal Board envisioned with respect to the Hudson  
16 River applicable to this proceeding and the considerations  
17 that the Board should reflect in some sort of a presentation,  
18 with or without a stipulation?

19 MR. GALLO: Well, Mr. Chairman, as we see the theory  
20 of the case absent the stipulation, we may well be forced to  
21 re-litigate all the issues that were litigated in Indian Point  
22 2. The Staff feels very strongly with respect to its position  
23 and we certainly want another opportunity to put forward our  
24 point of view.

25 We expressly told the Appeal Board that we were

eb11 1 not filing a petition for reconsideration with respect to  
2 their decision in the Indian 2 proceedings because we felt  
3 the better place to make our point of view known was in the  
4 Indian 3 proceeding, and it was a better, a more efficient  
5 way to go at the matter.

6 So absent the stipulation I see, from our point of  
7 view, a re-litigation, in essence, using updated information  
8 hopefully so that we can get a better delineation of the  
9 issue.

10 CHAIRMAN JENSCH: What I had in mind was even  
11 granted the stipulation, do you have any impression from the  
12 Appeal Board decision that it expects to see some further  
13 exposition of the Hudson River situation in a public record?

14 MR. GALLO: I'm afraid to answer your question. It  
15 is pressing me to disclose the nature of the stipulation  
16 which is something I don't want to do.

17 Let me say this, that the stipulation -- in nego-  
18 tiating the stipulation we are attempting to meet those very  
19 concerns. We are attempting to lay out a regime whereby the  
20 public interest in toto is represented. And we would also  
21 anticipate the vagaries of the Appeal Board. We may want to  
22 have the Appeal Board as well review the stipulation on a kind  
23 of a quick basis, to have them review it so that we know we  
24 are on the right track and we don't get down to the end of  
25 the trail after an initial decision has issued in this

eb12 1 proceeding and suddenly we find that the Appeal Board didn't  
2 like some element of the stipulation.

3 We would recommend that approach as well.

4 CHAIRMAN JENSCH: It may be that the Commission  
5 itself will take jurisdiction of the matter and it won't be  
6 beyond the review of the Commission's own considerations.

7 I had understood from I think the presentation  
8 that the Staff made before the Appeal Board that it had con-  
9 sidered requesting the Commission itself to review the Indian  
10 Point 2 situation because, as I reviewed the presentation by  
11 the Staff, there were quite some sharp differences between the  
12 Staff and the Appeal Board.

13 In fact, I think the Appeal Board decision itself  
14 was very expansive in its determinations and the processes  
15 of data development and consideration utilized by the Staff  
16 may have reflected some policy matters that the Commission  
17 would like to have reviewed.

18 And since the Staff did not ask the Commission to  
19 review the Appeal Board decision I think, as Staff counsel  
20 has indicated, it raises a question of whether this proceeding  
21 and its public record should contain more than just a stipu-  
22 lation, so that, as you say, six or eight months from now,  
23 the Appeal Board may not look with approval upon some phase  
24 of the stipulation, and the rocks will be in the gears for  
25 sure.

1 MR. VOIGT: Mr. Chairman, I think that your concern  
2 can very readily be met if I am in a position to present a  
3 stipulation to this Board within the next few weeks. And if  
4 the Board itself finds nothing questionable about the stipu-  
5 lation, I would move that it be certified to the Appeal Board  
6 so we can get an answer immediately.

7 MR. GALLO: Yes, Mr. Chairman, the Staff would  
8 support that point of view.

9 Let me represent on behalf of the Staff that I  
10 think that this stipulation really represents the proper way  
11 to handle the fish issue in this case, if we can only get  
12 agreement on its terms.

13 Quite candidly, Mr. Chairman, you referred to the  
14 Staff requesting the Commission to review the Indian 2 deci-  
15 sion. As you know, the rules don't provide for any party to  
16 request that the Commission review a decision of the Appeal  
17 Board. Sui sponti, they can if they choose, but there is no  
18 mechanism for any party to a proceeding to file an appeal to  
19 the Commission.

20 CHAIRMAN JENSCH: I think that the rules are in  
21 accordance with your statement. I think that there have been  
22 other procedures sometimes utilized in situations of that kind  
23 whereby a matter can come to the attention of the Commission,  
24 if it is nothing more than a letter indicating significant

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1 issues are present, and still leave it for a sui sponti review  
2 by the Commission.

3 I think it may be by that time we will have a  
4 nuclear regulatory commission which, as a regulatory agency,  
5 may not have the vast number of tremendous problems that the  
6 Atomic Energy Commission, as originally provided by the Congress  
7 under the Atomic Energy Act of 1954 and its amendments, as  
8 have burdened the Atomic Energy Commission to perform.

9 But as a nuclear regulatory commission, hopefully  
10 after February 9th, I believe, 1975, as the outside date, it  
11 may be that the nuclear regulatory commission may be more  
12 active or have greater opportunity to review or to maybe ini-  
13 tially consider initial decisions from the Atomic Safety and  
14 Licensing Boards without the participation of an Appeal Board.

15 Of course it is a matter of structure and arrange-  
16 ment that will have to await a determination by the nuclear  
17 regulatory commission. But I think as a regulatory matter,  
18 there may be several avenues of consideration available after  
19 the initiation of activity by a new nuclear regulatory com-  
20 mission.

21 Before proceeding, I should indicate to you that  
22 this Atomic Safety and Licensing Board is favored with a new  
23 member due to the withdrawal from this Board of Dr. John  
24 Geyer. We have Dr. Franklin Daiber, professor of marine  
25 biology at the University of Delaware, who has been a marine

eb15

1 biologist for many, many years, and is familiar with water and  
2 its wildlife. So we, as an Atomic Safety and Licensing Board,  
3 are prepared to go forward when the parties indicate they are  
4 ready to proceed, or if the Board itself, in reviewing the  
5 stipulation, indicates that data should be presented in support  
6 of the stipulation because, as we view it, a stipulation does  
7 not amount to a withdrawal from the proceeding to render a  
8 proceeding an uncontested proceeding.

9           Excuse me for interrupting, Mr. Gallo. Did you have  
10 something further?

11           MR. GALLO: I was just going to add, Mr. Chairman,  
12 that with respect to the Staff's position on Indian Point 2,  
13 one mechanism for getting the Commission's attention of course is  
14 file a petition for reconsideration of an Appeal Board deci-  
15 sion, and we have seriously considered this but in our judg-  
16 ment, the main reason we did not file such a petition is that  
17 the practical effect of that decision was to really postpone  
18 a decision on the cooling mechanism, the appropriate cooling  
19 mechanism for Indian Point 2 until a later date.

20           And as I mentioned earlier, the underlying data base  
21 was constantly changing and while we had some nice legal argu-  
22 ments to make, the practical benefit to our client, the Regu-  
23 latory Staff, was really not there.

24           The same river is present in this proceeding and  
25 the same site, so the same issues are here, so really this is

eb16

1 the better place to litigate the issue. That was the under-  
2 lying rationale of the Staff in not filing the petition for  
3 reconsideration in that case.

4 CHAIRMAN JENSCH: Mr. Briggs has raised a question.  
5 Can you tell us when you expect the Final Environmental State-  
6 ment for Indian Point 3 will be available?

7 MR. GALLO: I would like to have Mr. Gray address  
8 that, Mr. Chairman.

9 CHAIRMAN JENSCH: Will you please?

10 MR. GRAY: Yes.

11 Mr. Chairman, having read the past two prehearing  
12 conference transcripts, I'm not really--

13 CHAIRMAN JENSCH: "Optimistic" seems to be a term  
14 that is quite popular here this morning.

15 (Laughter.)

16 MR. GRAY: I can give dates but these dates float  
17 so often and there have been so many dates--

18 CHAIRMAN JENSCH: That fits the river.

19 (Laughter.)

20 MR. GRAY: So having made this disclaimer, we  
21 would hope that it would be out around the first of the year.  
22 I can't really be more specific than that in that the Lab,  
23 the Oak Ridge National Lab is continuing to work on the docu-  
24 ment and the AEC Staff management is continuing to work on  
25 the document.

pick

eb17

1 Therefore, it is very difficult at this time to ~~put~~  
2 an exact date and I would rather leave a date of that sort  
3 than pick a date and have to advise the Board later that it is  
4 slipping.

5 CHAIRMAN JENSCH: We won't hold any penalty against  
6 you if you miss a date or two. It's been done in the past I  
7 might say, even in these proceedings.

8 Does the Hudson River Fishermen's Association care  
9 to speak to this matter?

10 MR. MACBETH: Only to say, Mr. Chairman, that when  
11 we left the meeting last Tuesday we thought we did have an  
12 agreement. I have not had a chance to speak to Mr. Voigt  
13 about the problems that have arisen since then, so that it is  
14 hard for me to tell whether or not they are major or minor. I  
15 certainly hope they are minor.

16 And in that case I think it would be likely that a  
17 stipulation could be reached.

18 I would, of course, underline again what Mr. Gallo  
19 said, that the stipulation would be presented to the Board and  
20 obviously we'd request the approval of the Board and the Appeal  
21 Board. So it's not a situation of trying to lock the Board  
22 into something without any opportunity to look at what we are  
23 producing.

24 But on the other hand, I do think it is valuable  
25 for us to get to the end of the production before we put it

eb18

1 before the Board.

2 CHAIRMAN JENSCH: What is your feeling about any  
3 ~~carryover~~ <sup>carry over</sup> from the Indian Point 2 Appeal Board decision to  
4 this proceeding in reference to the fish problem?

5 MR. MACBETH: Well, obviously the same issues are  
6 presented and essentially the same parties are contesting the  
7 matter. I would not have characterized the Indian Point 2  
8 decision the way Mr. Gallo did. It seems to me that as it is  
9 written, it is a decision that says that cooling towers will  
10 be required at the plant by May 1, or once-through cooling  
11 will cease by May 1, 1979; that if in the meantime the company  
12 finds data which it believes would lead to a different result,  
13 it may present that to the Commission.

14 So that the company does have the opportunity to  
15 come back, if there is new evidence.

16 I think that the company would legally have that  
17 right in any case, to ask for an amendment to the license if  
18 it found new evidence, and I would think that the Commission,  
19 if there were new evidence, would properly look at it.

20 So I think that that's the correct reading of the  
21 Indian Point 2 decision, a date by which once-through cooling  
22 must cease, and an opportunity for the company to show new  
23 evidence.

24 Now again this comes close to going into what would  
25 be in the stipulation, but it would seem to me that something

eb19 1 along the same lines might well be appropriate in this case.  
2 We do face the same situation.

3 I think it is fair to say that the parties are all  
4 looking at Indian Point 3 in the context of what has happened  
5 in the Indian Point 2 case, and that is one reason that it is  
6 possible to try to work out a stipulation in detail, simply  
7 because we have been over the ground thoroughly once before.

8 CHAIRMAN JENSCH: The reason I asked, my recollec-  
9 tion is that the Appeal Board said something about taking a  
10 fresh look at some of these aspects. I hope that that aspect  
11 of it is under consideration by the parties. I'm not quite  
12 sure that I understand what the Appeal Board had in mind with-  
13 out some statement of criteria for a fresh look.

14 I take it they wanted the matter entirely re-  
15 evaluated. I would assume that the Appeal Board would feel  
16 that the disposition made in Indian Point 3 would be controlling  
17 on Indian Point 2, but I'm not certain of that.

18 And sometimes the parties to a proceeding and even  
19 the initial decision may reflect the close-to-action -- if I  
20 may use the term -- consideration of the data presented in the  
21 hearing, and sometimes the close-to-action aspect may not be  
22 fully reflected in the initial decision and lead to some  
23 different considerations.

1 I don't know that certification of a decision  
2 is the method for consideration. If the Licensing Board  
3 concludes in an initial decision, then the review process  
4 can take its course, which hopefully the Appeal Board would  
5 have opportunity to review in due course of time.

6 I think certifications are sometimes intended for  
7 interim, or during the course of proceedings so that the pro-  
8 ceeding itself can go forward thereafter based upon that  
9 decision from a certification. The initial decision by a  
10 Licensing Board would, in a sense, terminate the activity  
11 by the Licensing Board and have the matter entirely available  
12 for review by the Appeal Board.

13 And it was for that reason that it has been a  
14 concern of ours that a stipulation should somehow be sup-  
15 portable by a record. Now the manner in which that can be  
16 done I think the parties can consider during the course of  
17 time, and we need not try to resolve that aspect at the moment.

18 I think, as Mr. Gallo has indicated, the concern  
19 we all have is what happens in the hereafter in the review  
20 process. So I think that's a concern we should all entertain  
21 in this proceeding.

22 Do you have something further?

23 MR. VOIGT: Well, Mr. Chairman, there's more than  
24 one concern involved here. Certainly one concern would be  
25 the extent, if any, of any legal requirement for supporting

wb2

1 data for a stipulation which disposes of the matters in  
2 controversy.

3 CHAIRMAN JENSCH: We believe there is.

4 MR. VOIGT: I infer from your remarks that you may  
5 believe that, sir. But certainly the best way to get a  
6 clarification on that point is to certify the stipulation.

7 CHAIRMAN JENSCH: Well I don't think some of these  
8 processes of legal procedure are so unknown or untried that we  
9 we have to run up someplace every time and say "Can we close  
10 the window now?" I think we go ahead with general understanding  
11 of procedures. I think it certainly is illustrated in the  
12 present posture of antitrust proceedings outside of this  
13 regulatory realm here, stipulated dispositions of proceedings  
14 are to be supported on the public record. And I think that  
15 reflects a general legal theory applicable to stipulations  
16 generally.

17 In other words, there's a great public interest  
18 in the disposition of a proceeding, especially one such as  
19 this where there have been so many highly controversial  
20 matters.

21 Now we do want to know something about Con  
22 Edison's finances, for one thing. We want to know what the  
23 State of New York is planning to do about Indian Point-3.  
24 We'd hope the public wouldn't feel that Con Edison was so  
25 readily agreeing to these matters about Indian Point 3

wb3

1 because they're going to turn it over to the State of New York  
2 that they hoped that the same situation in Indian Point 3  
3 would not be controlling on Indian Point 2.

4 I think there's an interrelationship between  
5 Indian Point 2 and 3. And I think the Appeal Board language  
6 gives us a great deal of concern respecting the analysis of  
7 data from the Hudson River.

8 I'm not sure that, when you say that the close-to-  
9 action considerations that the Licensing Board intended to  
10 reflect in its initial decision was adequately reflected in  
11 the initial decision. And I think that perhaps some of the  
12 analyses of data are open to several interpretations. And  
13 we would not want to have a thought that Indian Point 3 is  
14 so separate that Indian Point 2 doesn't have some relation-  
15 ship to it, so that if Con Edison is endeavoring to sell  
16 Indian Point 3 that Con Edison would feel that nothing had  
17 really been resolved for Indian Point 2.

18 Excuse me for interrupting.

19 Will you proceed?

20 MR. VOIGT: I merely wanted to observe,  
21 Mr. Chairman, that I am not aware of any precedent which sug-  
22 gests that an evidentiary record has to be compiled in support  
23 of a stipulated settlement.

24 CHAIRMAN JENSCH: It certainly does in the anti-  
25 trust field today.

wb4

1 MR. VOIGT: Mr. Chairman, with respect, the  
2 regulations of the Justice Department require an opportunity  
3 for public comment upon a proposed consent decree; they do  
4 not require an evidentiary hearing.

5 CHAIRMAN JENSCH: Whichever way it's expressed,  
6 the idea is that there should be some record presented in  
7 reference to a stipulation. And under our procedures it  
8 would be done through an evidentiary hearing.

9 MR. VOIGT: Well then I'm going to ask that that  
10 issue be certified if and when it becomes appropriate,  
11 Mr. Chairman. Because the whole purpose of this stipulation  
12 will not be served if we have to spend a long time going  
13 through a hearing.

14 CHAIRMAN JENSCH: You will not have to spend a  
15 long time. You can submit documentary evidence to support  
16 phases of the stipulation that we feel should be presented.  
17 It will not take any time. There will be no delay in the  
18 fuel loading at all.

19 But, at the same time, as we've indicated, we  
20 don't want the stipulation to be such an ironclad that it  
21 becomes somewhat distinct from Indian Point 2, as to which we  
22 feel that there are many open questions left on the record.  
23 And as Staff Counsel has indicated, they expected, and I think  
24 the Appeal Board expected, that Indian Point 3 proceeding  
25 would be a means by which the entire matter could be further

wb5

1 reviewed. And I think that that indication provides some  
2 interrelationship between the two proceedings.

3 MR. VOIGT: Mr. Chairman, I respectfully submit  
4 that if you're concerned about what the Appeal Board meant,  
5 the best way to find out is to ask them by certifying the  
6 matter back to them.

7 CHAIRMAN JENSCH: Well I don't think we have any  
8 trouble understanding the Appeal Board decision. I think  
9 the concern we have is that perhaps our close-to-action  
10 considerations in the Indian Point 2 proceeding were  
11 not adequately reflected in our initial decision.

12 Did you have something further?

13 MR. VOIGT: Well I think it is probably a mistake  
14 to spend a great deal of time talking about the stipulation  
15 until we have it available for the Board.

16 CHAIRMAN JENSCH: Do you suggest that we take a  
17 couple-of-hour recess now, and perhaps come back and see if  
18 you can at least explain, or discuss the extent of differences  
19 even if we don't resolve the differences this morning?

20 MR. VOIGT: No, sir.

21 In my opinion the Board has in its correspondence  
22 suggested that notwithstanding a resolution of the matters  
23 in controversy there may be other matters on which the Board  
24 desires further information.

25 I would suggest that the Board at this time

wb6  
1 proceed upon the assumption we will have a stipulation, and  
2 go forward and attempt this morning either to dispose of, or  
3 further to define, what other concerns, if any, will remain,  
4 assuming that the stipulation is presented as I have described  
5 it.

6 CHAIRMAN JENSCH: Well, we don't know what will  
7 remain until we see what you have achieved, what there is  
8 left after you have totalled it.

9 You tell us how you have totalled it and we will  
10 tell you what remains.

11 MR. VOIGT: Mr. Chairman, I've already indicated  
12 to you that the effort, the intent is to dispose of all of  
13 the matters in controversy.

14 Now the Board has indicated in one way or another  
15 that it is concerned with some matters which are not in  
16 controversy. And what I'm suggesting is that you assume with  
17 the parties that there will be no matters in controversy, and  
18 that we proceed to a discussion this morning of the matters  
19 which are not matters in controversy.

20 CHAIRMAN JENSCH: Tell us about the financing  
21 situation with Con Edison, will you please?

22 MR. VOIGT: Yes, sir.

23 May I be seated, please?

24 CHAIRMAN JENSCH: Yes, surely.

25 MR. VOIGT: First of all let me say that the

wb7

1 Staff is conducting an investigation of this matter. There  
2 has been correspondence, which is part of the public record,  
3 on this subject. And we have also had meetings with the Staff  
4 in order to give them more up-to-date information.

5 I can report some of that information to you  
6 gentlemen this morning.

7 We have at the present time earnings figures,  
8 public earnings figures for the company as of September 30,  
9 1974.

10 For the nine months ended September 30, 1974,  
11 the earnings were \$2.18 per common share. The earnings for  
12 the comparable period in 1973 were \$2.16 per common share.

13 For the twelve months ended September 30, 1974  
14 the earnings were \$2.39 per common share. For the comparable  
15 period in 1973 the earnings were \$2.47 per common share.

16 Thus you can see that the earnings of the company  
17 have returned to approximately the level that they were at a  
18 year ago. This is in contrast to a distinct downturn in  
19 earnings during the first portion of 1974.

20 CHAIRMAN JENSCH: What return is that on your  
21 equity, or on your total cost of investment? Can you give us  
22 that figure?

23 MR. VOIGT: I don't have that figure readily  
24 available, sir.

25 CHAIRMAN JENSCH: Well, I was wondering: if your

wb8

1 earnings are about the same, are you still wanting to sell?  
2 I notice the Times this morning said the Astoria plant was  
3 about to be sold. Is that correct?

4 MR. VOIGT: I have a complete report on several  
5 of these items, Mr. Chairman.

6 CHAIRMAN JENSCH: Proceed.

7 MR. VOIGT: On November 12, 1974 the New York  
8 Public Service Commission authorized a permanent electric rate  
9 increase of nearly \$339 million on an annual basis. This  
10 completes the series of rate increases that the company had  
11 requested. That is to say, the company has now received rate  
12 increases for steam, gas and electric.

13 Now with respect to the sale of Astoria-6, the  
14 Power Authority has issued a preliminary prospectus for the  
15 sale of bonds which will support the purchase of Astoria-6  
16 by the Power Authority. The public hearing required under  
17 the New York State statute was held on November 22nd -- that's  
18 last Friday -- and it was concluded.

19 The sale contract between Consolidated Edison  
20 and PASNY is very close to completion. And it is hoped that  
21 the transaction itself will be closed by December 15th.

22 Now Consolidated Edison expects to receive, as a  
23 result of this sale, something on the order of .215 to 230  
24 million dollars cash.

25 In the meantime, pending the sale, Consolidated

1 Edison has arranged an expanded line of bank credit.  
2 That credit goes up to a top of \$425 million. The maximum  
3 amount of permitted borrowing is based on a complicated  
4 formula which is described in the revolving credit agreement.  
5 The current maximum is \$365 million. As of November 1st the  
6 amount outstanding, under the revolving credit agreement, was  
7 \$265 million. Therefore the company presently has available  
8 to it an additional \$100 million of credit available to it.

9 Now with respect to Indian Point 3, the payment  
10 that was required to be made to Westinghouse in November was  
11 completed. The estimated balance due to complete the plant  
12 is approximately \$112 million.

13 So you can see that the company is looking at  
14 \$112 million coming up, coming due, if you will, in 1975,  
15 versus an unused present line of credit of \$100 million,  
16 versus cash receipt from PASNY of something in excess of  
17 \$200 million, and versus the rate increase which will increase  
18 the company's earnings.

19 All of this indicates to me a considerable improve-  
20 ment in the general financial situation, and a clear ability,  
21 based on present circumstances, of the company to make the  
22 payments necessary for completion of Indian Point 3.

23 CHAIRMAN JENSCH: There is another matter that  
24 the Board has reviewed and referred to in one of our letters.  
25 One of the prominent officials of Consolidated Edison Company

wb10

1 stated something to this effect, that this would be the last  
2 turnkey project that the Consolidated Edison Company would  
3 ever have, because there seemed to be a tendency on the part  
4 of builders to utilize lower cost, or possibly lower quality  
5 components. And to that extent the Board has a concern about  
6 safety.

7 While the economics of safety are, in a sense,  
8 not of concern to the Board, because the Board has followed,  
9 and as the Atomic Energy Commission itself has established,  
10 that the economics to establish safety are secondary to the  
11 primary importance of achieving safety. But this plant is  
12 somewhat offschedule, as I recall it, in its completion of  
13 construction. And in view of the combination of circumstances  
14 the Board has concern about safety in the sense that lower  
15 quality components may have been utilized.

16 Now the responsibility of the builder I think is  
17 something that is still in the stage of development. In some  
18 proceedings builders or contractors are referred to as  
19 "agents." And, of course, an agent does not have any immunity  
20 from responsibility by being an agent. There's no difference  
21 in agency responsibility from the situation of any agent  
22 utilizing the license power of a principal. And the agent  
23 here, the builder, utilized the construction license which has  
24 been issued. And it raises concern as to whether a builder-  
25 contractor has agency responsibility in this type of situation

1 which requires some review to determine responsibility in  
2 several aspects.

3 But we are concerned with some analysis of these  
4 public statements that have been presented, which the Board  
5 feels it cannot ignore any more than if someone stood outside  
6 the hearing room and made public statements that reflected  
7 upon safety from the common knowledge of public review;  
8 which may lead again to what we originally indicated, that we  
9 do want some review of the quality assurance and quality  
10 construction of Indian Point 3.

11 MR. VOIGT: Mr. Chairman, I, of course, was  
12 concerned by the reference that you made in your letter. But  
13 you did not identify the name of the official, or tell me  
14 when this statement was made. And so far I have not been able  
15 to discover it.

16 CHAIRMAN JENSCH: You haven't?

17 MR. VOIGT: Can you give us some citations,  
18 Mr. Chairman, as to exactly what you're referring to?

19 CHAIRMAN JENSCH: Yes, I will, but not at this  
20 moment. But I will write it to you. I will go back and get  
21 the exact document to which I make reference. I certainly  
22 will be glad to give it to you. And if you will make a review  
23 of the matter from the time I give it to you, or perhaps--

24 Did you talk to any of the officials of the  
25 company, to ask them whether they made any such statement?

wb12 1

MR. VOIGT: Well I did not go around and interview all the company officials, sir. But--

2

3

CHAIRMAN JENSCH: Whom did you interview on that matter?

4

5

MR. VOIGT: The company has copies, its public information department, of speeches and papers that have been made. And I have not been able to locate a reference of the type that you refer to.

6

7

CHAIRMAN JENSCH: Whom did you interview?

8

9

MR. VOIGT: I didn't interview anyone, Mr. Chairman; I went through the records.

10

11

CHAIRMAN JENSCH: I see. I thought you had said you had talked to some of the company officials. I may have misunderstood you.

12

13

But, in any event, it may be some help to you in the meantime to ask two or three of your company officials. And I'll get the reference to that.

14

15

MR. VOIGT: Mr. Chairman, don't you even know the name of the person?

16

17

CHAIRMAN JENSCH: I certain do. Mr. Louis Roddis, who is President of the company. And his statement is reflected in Nucleonics Weekly, in my recollection. I'll be glad to get it for you.

18

19

MR. VOIGT: Well, Mr. Chairman, in the first place, Mr. Roddis is no longer connected with the company.

20

21

22

23

24

25

wb13 1 CHAIRMAN JENSCH: Well he was at the time. And  
2 we'll have to take it from his association at that time.

3 MR. VOIGT: I'm not questioning that. But I just  
4 wish to point out that it is not quite as easy as you may think  
5 for me to go and talk to Mr. Roddis, because he doesn't work  
6 for the company any more.

7 CHAIRMAN JENSCH: Well, does that prevent your  
8 talking to him?

9 MR. VOIGT: I don't know.

10 CHAIRMAN JENSCH: He might be more willing to talk  
11 to you now that he is no longer with the company. Have you  
12 tried that?

13 MR. VOIGT: Well, Mr. Chairman, until this morn-  
14 ing it was not clear as to who you had reference to.

15 CHAIRMAN JENSCH: You knew I referred to  
16 Mr. Roddis, though, in some respect, though, did you not?

17 MR. VOIGT: I suspected it, sir. But I read  
18 Mr. Roddis' speeches and I was unable to find any remark such  
19 as that.

20 CHAIRMAN JENSCH: I don't think it came in a  
21 speech. I think it was in an after-speech, a sort of a post-  
22 mortem speech, or some such. A postscript, let me say.

23 MR. VOIGT: You mean this is something that was  
24 attributed to Mr. Roddis in the press?

25 CHAIRMAN JENSCH: Yes.

wbl4 1

MR. VOIGT: Well he may never even have said it,  
2 then.

3

4

5

CHAIRMAN JENSCH: Well I don't think the press  
is to be treated quite that lightly. I think the press  
endeavors to be accurate in its representations.

6

7

8

I will give you the reference, and if you have  
the chance to-- Where is Mr. Roddis now? Is he in New York  
City, perhaps?

9

10

MR. VOIGT: I don't know where Mr. Roddis is,  
Mr. Chairman.

11

12

CHAIRMAN JENSCH: He's an unknown quantity  
entirely in your thinking; is that your thought?

13

14

MR. VOIGT: I did not say that, Mr. Chairman.

15

16

CHAIRMAN JENSCH: If we want to cross him we will  
try to send you the information we have as to his location.  
You might pursue it some way, if you can, in the meantime.

17

18

Is there any other matter that you think we  
might pursue at this time?

19

20

(Pause)

21

22

Mr. Briggs raises the question of the geologic  
fault problem. I think it has been indicated, I think in  
reference to these three plants.

23

Have you some information on that?

24

MR. VOIGT: Yes, sir.

25

This matter was initially raised, Mr. Chairman,

wb15

1 by the State of New York through its New York Geological Survey.  
2 And their concern was brought to the attention of the Staff  
3 and the Company.

4 There has been a series of meetings involving  
5 those parties, and there were also some field trips in which  
6 the United States Geological Survey and the New York State  
7 Geological Survey people went with the Staff and company  
8 representatives and went out in the field and actually looked  
9 into facts.

10 Now the facts as I understand them are that there  
11 is no physical evidence of any movement by the Ramapo fault,  
12 which is the structure as to which the concern had been  
13 expressed, on the east side of the Hudson since the Paleozoic  
14 era and on the west side of the Hudson since the Triassic  
15 era.

16 CHAIRMAN JENSCH: Would you put a number on that?  
17 How long ago was the Triassic?

18 MR. VOIGT: The Triassic, sir, was 200 million  
19 years ago. The Paleozoic was 500 million years ago.

20 CHAIRMAN JENSCH: That's beyond the scope of, I  
21 think, the active fault as defined by the Commission rules.

22 MR. VOIGT: It is well beyond the scope of  
23 active fault as defined by the Commission rules. And it's  
24 my understanding that the parties are presently in agreement  
25 that there is no evidence that the Ramapo fault is an active

wbl6 1 fault.

2 Now, then, in order to further eliminate the  
3 concern that has been expressed, the State has indicated an  
4 interest in the creation of a somewhat more elaborate monitor-  
5 ing system. I may say that the company has agreed to this,  
6 and the Staff has endorsed this proposal.

7 The program that has been agreed to calls for the  
8 installation of twelve micro-earthquake detectors; that is to  
9 say, instruments that are capable of recording slight move-  
10 ments in the earth, the sort of thing that a person who was  
11 standing right there would not even notice, but that might  
12 be taken as an indication of some type of geologic activity  
13 in the vicinity.

14 As I said, there will be twelve of these in a  
15 network, and we presently anticipate that seven or eight of  
16 them will actually be operating by January 1975.

17 The purpose of this further study is to determine  
18 whether there are any of these miniscule tremors reported in  
19 the area, and, if so, to review the available data and deter-  
20 mine whether any of the tremors are attributable to the  
21 Ramapo fault.

22 Now I may say that the presence of tremors would  
23 not, at least in the view of the company and, I believe, also  
24 the Staff, necessarily prove anything. But the absence of  
25 tremors might well be completely dispositive.

wbl7

1 CHAIRMAN JENSCH: It seems to me we had some  
2 evidence in one of these proceedings -- I forget whether it  
3 was Indian Point 2 construction permit -- where the Applicant  
4 put on a witness who expressed the situation somewhat along  
5 this line: that there may be some, I don't know whether it  
6 even reached the stage of a tremor, but whatever it is it's  
7 like a creaking stair. The event has occurred 500 million  
8 years ago or some such, and all you're having now is just the  
9 after-effect. It is still the creaking stair coming back into  
10 position without harm. Maybe that is still the accurate  
11 analysis of it. But I will leave it to some presentation  
12 to the record in that regard.

13 MR. VOIGT: Well, Mr. Chairman, I would respect-  
14 fully suggest there's no necessity for a record presentation  
15 on this subject. The party who expressed the concern original-  
16 ly has agreed that the evidence indicates that it's not a  
17 capable fault. The party who expressed the concern originally,  
18 and the Applicant and the Staff, have agreed upon a program  
19 of further research. I understand the Staff will very shortly  
20 have a supplemental safety analysis report which will  
21 document all of this information.

22 Under those circumstances I would submit that  
23 there are no extraordinary circumstances here, no reason for  
24 a special investigation or further hearing by this Board.

25 CHAIRMAN JENSCH: Well the Board will give

wbl8

1 consideration to your statement and decide later.

2 MR. GALLO: Mr. Chairman, I would like to elaborate  
3 on what Mr. Voigt has indicated.

4 We received a petition under Section 2.206 of our  
5 Rules of Practice, to issue an order to show cause in connec-  
6 tion with the alleged faulting activity involving the Ramapo  
7 fault. This petition was, in the main, predicated on informa-  
8 tion developed by various persons in the New York State  
9 governmental agencies. And so their involvement in the whole  
10 review process was very helpful.

11 The report that Mr. Voigt has referred to has not  
12 been issued. It's about to be issued.

13 The issues were three: The one that Mr. Voigt  
14 refers to, on whether or not the Ramapo Fault is indeed an  
15 active fault, I think he has adequately explained. The other  
16 two allegations made in the petition for issuance of a show  
17 cause order were that the intensity earthquake for the region  
18 was underestimated by the Staff. The Staff had initially  
19 determined that an intensity 7 on the Mercalli scale was the  
20 proper intensity earthquake that was to be designated for the  
21 region around Indian Point 2. And given what the party felt  
22 was an understated intensity earthquake, it then felt that  
23 the acceleration forces emanating from such an earthquake,  
24 no matter where it occurs in the area, were also underestimated  
25 for purposes of plant construction.

wb19 1 Now the plants, Indian-2 and -3, are designed to  
2 withstand .15 g's. The Staff report that is about to be  
3 issued addresses all three issues, and we find that indeed  
4 the proper intensity earthquake is an intensity 7, and that  
5 indeed the proper acceleration forces should be .15 g.

6 That report will be available shortly.

7 Mr. Voigt might have superior information than  
8 I do, but I do not know whether or not our reports specifically  
9 will satisfy the petitioner who asked for an order to show  
10 cause. We have been in contact with him, Mr. Roisman, from  
11 time to time, and he reviewed the information. But to my  
12 knowledge he has never indicated to anybody on the Staff whether  
13 he was satisfied or dissatisfied with the progress that has  
14 been made so far.

15 MR. VOIGT: Well, Mr. Chairman, I certainly  
16 didn't mean to indicate that Mr. Roisman was satisfied,  
17 because I don't know that he is. I did want to indicate that  
18 the party who raised the concern, and the party upon  
19 whose information Mr. Roisman relied, namely, the State of  
20 New York, seem to be satisfied with the outcome of the  
21 investigation and the proposal for further monitoring and  
22 research.

23 CHAIRMAN JENSCH: Well, as we have indicated, we  
24 feel that some matters -- and the Board will want to take a  
25 review of, and we will indicate our decision in that regard

1 later. Sometimes a party is persuaded to withdraw, or be  
2 in agreement to a certain position upon the basis that it might  
3 not be satisfactory to a Board. And for that reason it  
4 does not necessarily resolve the matter if the party has  
5 decided to change his position, or some such.

6 MR. CLEMENTE: Mr. Chairman, may I address this?

7 This issue was originally brought to the attention  
8 of the Commission through the New York State Energy Council.  
9 The Department of Education, which houses the New York State  
10 Geological Survey, brought this matter to the Council, and we  
11 used the extra-proceeding procedures to bring it to the  
12 attention of the Commission and the company.

13 We also made the report of the Geological Survey  
14 public. Mr. Roisman used this report as the foundation for  
15 his request for an order to show cause.

16 We have been in extensive contact with the Staff  
17 and the company. We've had two rather long meetings in  
18 Washington with the Staff. I think both Mr. Voigt and Mr.  
19 Gallo characterized our position as follows:

20 They indicated that we indeed agree that it was  
21 inactive, or an incapable fault. I would modify that  
22 characterization slightly and say that we do not conclude,  
23 with the same certainty as the Staff and the Applicant, that  
24 it is an incapable fault. However, we are satisfied with  
25 the action that has been taken.

wb21

1 This is an extremely technical area. I've sat  
2 through two meetings with some 10-odd seismologists and  
3 geologists. I don't want to misstate their positions. The  
4 words "inactive" and "incapable" have often precise technical  
5 meanings to these people.

6 In summary, we are satisfied that the action has  
7 been taken, and we see no reason to raise this issue at a  
8 proceeding. However, if this Board feels they would like to  
9 explore the issue, we would be willing to produce Dr. Davis,  
10 the head of the Geological Survey, and explain our position  
11 to the Board. We see no need to do that from our point of  
12 view. We would be willing to cooperate with the Board if the  
13 Board wished to inquire into it.

14 CHAIRMAN JENSCH: Thank you.

15 MR. CLEMENTE: As I mentioned, the record of our  
16 meetings are a matter of public record in the Document Room.  
17 There are minutes of meetings, and the Staff will issue a  
18 rather lengthy report of which we have seen a draft. And  
19 these matters will be addressed in writing -- have been  
20 addressed in writing, and are on the public record. But if  
21 you wish to inquire further, we would be available. We don't  
22 see any need to, however.

23 CHAIRMAN JENSCH: Very well. We appreciate your  
24 position.

25 Mr. Briggs has a comment.

wb22

1 MR. BRIGGS: I believe the suggestion was made  
2 that if the micro-earthquake network shows no activity that  
3 this will be dispositive of the question.

4 Is there any reason to believe that the network  
5 will show no activity?

6 MR. VOIGT: Well let me be a little more precise,  
7 Mr. Briggs, because I think your question is a very valid one.

8 Presumably there is some form of micro-activity  
9 practically everywhere.

10 MR. BRIGGS: Yes, that's right.

11 MR. VOIGT: The purpose of the monitoring system  
12 is to establish a focus, if indeed there is any focus, on  
13 any micro-activity that is detected. If the focus of the  
14 micro-activity is the Ramapo Fault, then you can debate the  
15 significance of that data. But if the monitoring data  
16 demonstrates that the micro-activity isn't coming from the  
17 Ramapo Fault, then it is my understanding that that would be  
18 treated as rather conclusive by the scientists.

19 MR. BRIGGS: So the statement is that you're  
20 trying to show whether there is or is not activity associated  
21 with the Ramapo Fault, not whether you detect or don't detect  
22 micro-activity in the area.

23 MR. VOIGT: That is correct. And I think you have  
24 clarified the point.

25 CHAIRMAN JENSCH: Is there any other matter we can

wb23

1 take up, then?

2 How soon may we expect the report on your efforts  
3 so we will either go or no-go on the full hearing?

4 MR. VOIGT: Well, Mr. Chairman, I think all we  
5 can reasonably do this morning is to establish some kind of a  
6 date by which the parties must report back to the Board.

7 Before doing that, I am prepared to give you more  
8 detailed information on the status of the plant, if you desire  
9 it. I'm also prepared to give you some background informa-  
10 tion on the status of the quality assurance program, which  
11 might enable you to avoid going into some matters in that  
12 area. But that's up to the Board.

13 CHAIRMAN JENSCH: We are interested in the quality  
14 assurance situation. I don't know whether it would be  
15 better done by documentary submission, to be submitted later.

16 It might perhaps save time, though, if you didn't  
17 stop to prepare some documents, if you could give us what you  
18 do have now on quality assurance.

19 MR. VOIGT: Very good, sir.

20 CHAIRMAN JENSCH: Would you proceed, please.

21 MR. VOIGT: I have Mr. Gordon Beer from  
22 Consolidated Edison here, and he's prepared to give the Board  
23 a general report on that subject.

24 Mr. Beer, will you tell the Board what your  
25 position is with the company, and your responsibilities?

wb24 1 MR. GALLO: Excuse me, Mr. Chairman. I'd like a  
2 clarification of this procedure.

3 What purpose is served by this information that's  
4 being elicited on the record here?

5 CHAIRMAN JENSCH: Of course the man has not been  
6 sworn, and if he has a statement maybe Mr. Voigt could read  
7 it. I'm not sure that there is any great purpose served. My  
8 thought was if there were some documentary presentation we  
9 could compare it with maybe some of the ROE reports that have  
10 heretofore been submitted.

11 I think a great number of presentations about  
12 quality assurance have lacked many specifics. For instance,  
13 they take a pledge to comply with all standards, codes,  
14 criteria; management is aware of the problem and they're  
15 going to follow it carefully. And Mr. Newman I think indi-  
16 cated, in Indian Point-2, that no one is going to follow it  
17 any better anywhere.

18 But we would like to take a look at the old score  
19 board and see how it comes out in the end.

20 I think, Mr. Gallo, you raise a question.  
21 Wouldn't it be better if you sent in some documents? --unless  
22 you can give us a summary statement. You're still working on  
23 quality assurance and you hope there will be improvement: I  
24 think that was the way we had it from Indian Point-2. Has  
25 there been any change in that?

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MR. GALLO: Mr. Chairman, I withdraw any objection if there is a clear understanding in the record that this is just generally information and has no evidentiary foundation.

CHAIRMAN JENSCH: Absolutely.

We would expect there to be a proper evidentiary presentation to be made on the financial situation and everything else here. We're using up a little time as long as we're here.

Will you proceed, sir?

[Redacted]

1 MR. VOIGHT: Mr. Chairman, may we clear this up  
2 before Mr. Beer goes ahead?

3 The Commission has said that this Board is not re-  
4 quired nor expected to look for new issues, and it has said  
5 that the power to do so should be exercised sparingly and  
6 utilized only in extraordinary circumstances where a Board  
7 concludes that a serious safety or environmental issue remains.

8 CHAIRMAN JENSCH: And we so conclude.

9 MR. VOIGHT: Well, sir, I respectfully submit that  
10 your conclusion is premature. I have come here this morning  
11 with detailed information to satisfy you that there is no  
12 special concern, that there are no extraordinary circumstances.

13 Now do you tell me that you've made up your mind  
14 before you even got here?

15 CHAIRMAN JENSCH: We have reviewed the record of  
16 Indian Point 1 and 2 and 3 so far. You've had a fire down  
17 there claimed sabotage--

18 MR. VOIGHT: Not at Indian Point 3, sir.

19 CHAIRMAN JENSCH: No, on Indian Point 2. It is all  
20 part of the continuing-- There has been no change of players  
21 or numbers. It is still Consolidated Edison who is the  
22 Applicant. You have the president of the company making a  
23 statement that there may be low-cost items utilized under a  
24 turnkey project. There have been ROE reports by the Regula-  
25 tory Staff in reference to matters at the Indian Point

eb2

1 facilities.

2           There is such an interrelated-- There is no de-  
3 departmentalization of these facilities. They're still building,  
4 taking workers as well as they can from the areas where they  
5 procured them, and the problems they have with workers who  
6 come to the plant.

7           We have a question as to how they qualify their  
8 welders and that sort of thing. So in view of the past his-  
9 tory of the construction at these three facilities, it gives  
10 us a concern about the safety matters, especially topped off  
11 by the president of the company who says, "We'll never do  
12 this again as a turnkey project."

13           And I think it's an adequate basis for a serious  
14 concern as to safety. We are not going to reargue the certi-  
15 fication situation. That we sent up last spring and the  
16 Commission has indicated that a Board should, when it had  
17 serious concerns, proceed, and we intend to do that.

18           Will you go ahead, sir?

19           MR. VOIGT: Excuse me, Mr. Chairman.

20           CHAIRMAN JENSCH: I would rather hear Mr. Beer.  
21 Will you submit something further to us? We would like to  
22 move on. You have this man on quality assurance. We would  
23 like to hear him.

24           MR. VOIGT: Mr. Chairman, if the Board has already  
25 made up its mind that it is going to hold a hearing on quality

eb3  
1 assurance, then there is no purpose in Mr. Beer's statement.  
2 I withdraw my offer.

3 CHAIRMAN JENSCH: We would like to hear it despite  
4 your withdrawal. Do you refuse?

5 MR. VOIGT: I'm sorry, I refuse, sir. Yes, sir.

6 CHAIRMAN JENSCH: Very well.,

7 MR. VOIGT: If you have made up your mind in ad-  
8 vance, then there is no reason for me to present information  
9 to you.

10 CHAIRMAN JENSCH: Well, we would like to get some  
11 information to guide us as to the extent to which we will make  
12 some inquiry. It may be we will limit ourself if you have  
13 something concrete to present.

14 And if you want to assist your cause, it seems to  
15 me that you will supply information as to what is the status  
16 of your quality assurance.

17 MR. VOIGT: That puts the matter very differently,  
18 sir. I'd be glad to do that.

19 CHAIRMAN JENSCH: Well, no matter how it is sliced,  
20 I think we can work it out.

21 Will you proceed, Mr. Beer? Will you tell us your  
22 full name and your position?

23 MR. BEER: My name is Gordon Albert Beer. I'm  
24 director of quality assurance for Consolidated Edison.

25 I have no real prepared statement, Mr. Chairman.

1 I am here to give you the background and the status of the  
2 quality assurance program, and I hope that it will prove help-  
3 ful.

4 There are really two phases to the quality assurance  
5 program as applied to Indian Point 3. The two phases are  
6 integrated together. One is on construction and the other  
7 one is for the operation of the plant. I'll talk about the  
8 construction quality assurance program first, and I will men-  
9 tion a few things that stress~~e~~s this program even above and  
10 beyond that of Indian Point No. 2.

11 In 1969, the program as submitted in the FSAR was  
12 reviewed by the AEC against the 18 criteria as they were then  
13 known, and it was found to be in substantial accord with the  
14 18 criteria. The 18 criteria were subsequently developed into  
15 what is now Appendix B to 10 CFR 50 of the Code of Federal  
16 Regulations.

17 Even with that and with the statement in the Safety  
18 Evaluation Report to that effect, in 1972 certain things took  
19 place, particularly reviews by the AEC that caused us to go  
20 into a very deliberate and even more thorough review of our  
21 construction quality assurance program.

22 At that time we created a task force to review  
23 just what we were doing against the then issued Appendix B  
24 to 10 CFR 50. As a result of that task force there were some  
25 50 items that were negotiated with Webco. There are considerable

eb5

1 funds involved on the contract to impose these specific items,  
2 as I mentioned in excess of 50.

3 This was a direct response to Appendix B of 10 CFR  
4 50, and the significant improvement of the quality assurance  
5 program, a more formalization of the program.

6 It is now my opinion, with considerable input, that  
7 we have a very thorough and effective QA program covering  
8 the construction of Indian Point 3. One of the reasons I  
9 feel I can say that is a detailed and continuing audit of  
10 that program by people from the central quality assurance  
11 and reliability group, and the reports they come back with and  
12 the corrective action they come back with.

13 Another reason for believing that it is effective  
14 is the relationships we now have with the AEC regional in-  
15 spectors, their visits, coming out and reviewing this program,  
16 and the degree to which they indicate compliance.

17 I would like to talk now a little bit about the  
18 operational program and perhaps explain that it is the quality  
19 assurance program that covers the operating phase of the  
20 plant that takes place as we accept systems or as we accept  
21 the entire plant, and controls our activities during that  
22 operating phase.

23 The description of this quality assurance program  
24 is given in Appendix B to the FSAR. It has been supplemented  
25 by Supplements 10 and 15. It has been reviewed by the AEC

1 and the Directorate of Licensing has accepted it as again  
2 being an acceptable quality assurance program for its intent.

3 I am sure you are aware of the policy by Regional  
4 Operations to review quality assurance programs 90 days prior  
5 to core loading. On the 4th of September we submitted not  
6 only the top document ~~indicating~~ indicating this quality  
7 assurance program but also approximately 85 procedures, ad-  
8 ministrative procedures that implemented this program that  
9 show the exact details of how the program is implemented.

10 The Regional Office reviewed this. On the 25th of  
11 September they met with us, gave us their comments. The  
12 letter is out with the comments summarized. And just last  
13 week they came out with a review of our implementation.

14 In our particular case the review of the implemen-  
15 tation was very exhaustive because they were able to see how  
16 we were doing the same activities on Indian Point 2 that we  
17 promised to do on Indian Point 3. I mention this because at  
18 other plants there might be just one unit, and they are re-  
19 viewing promises only.

20 To summarize the result of our review last week  
21 they indicated to me unofficially that they saw --

22 MR. GALLO: Mr. Chairman, I am going to object to  
23 that, before he says what they indicated unofficially.

24 MR. VOIGT: What is the basis of your objection?

25 CHAIRMAN JENSCH: I think we're getting beyond the

eb7

1 statement of what the program is about. I think we would like  
2 to have it cast in the form of an evidentiary presentation,  
3 which I think is improper at this point.

4 We thank you, Mr. Beer, for your statement.

5 One of the things I might add, in prehearing confer-  
6 ences earlier in this proceeding in reference to Indian Point  
7 3, the Board indicated that it was concerned about quality  
8 assurance and intended to review the matter, partly as a con-  
9 tinuing matter from Indian Point 2, so it was no surprise to  
10 you that we had made a determination that we would like to  
11 go into the matter, the extent to which we did not indicate  
12 and have not yet indicated.

13 But these matters are matters that are no surprise  
14 to you, to say that you've already made up your mind. We've  
15 made up our mind and indicated that we wanted to have some  
16 inquiry on quality assurance in this proceeding.

17 One of the things that I think is left out of so  
18 many of the quality assurance presentations -- and I think  
19 Mr. Beer emphasized the continuing nature of it here -- is that  
20 you have had three facilities so you have the same organiza-  
21 tional structure doing the work. And I wondered really whether  
22 there is adequate communication between the designers of the  
23 structure and the supervisors perhaps of the quality assurance  
24 structure and the actual workers.

25 For instance, welding has been a source of problems

eb8

1 in many other facilities. It seems to me, as a layman in the  
2 matter, there must be some way of conveying the importance of  
3 the kind of weld to a knowledgeable person who does welding.

4 In Indian Point 2 we inquired as to what kind of  
5 instruction was given to welders and workers in general, and  
6 I think the record will indicate that there were instructional  
7 lectures given. We inquired what is the response, what did  
8 they learn? Now you could have an instructional lecture to  
9 a worker or a welder in 40-syllable words and you have complied  
10 with your structure that you had information given. You  
11 might have been talking to the wall if the persons to whom  
12 you addressed your remarks didn't understand what you were  
13 saying, and the way you know that they understood what you  
14 were saying is to have a test or a response of some kind.

15 It seems to me we spend an awful lot of time, not  
16 in this proceeding or in Indian Point 2 but in many of these  
17 cases, talking about how good it looks on paper, and yet the  
18 Inspection Division of the Regulatory Staff has pointed out  
19 many times that either improper weld material was used or  
20 there was not adequate filling of the weld with the weld  
21 material or there wasn't a test made after the weld was done  
22 in the manner required by the specifications.

23 And so when it gets into the actual work level,  
24 there seems to be a complete gap, and that's the kind of  
25 thing that to me is important in a review of quality assurance

eb9  
1 Now we have not had a chance to consider how far we  
2 do want to inquire about these things, but these are some of  
3 the problems that I see.

4 I think the Regulatory Staff cannot be expected to  
5 see that the plant is built 100 percent--- The Commission does  
6 not have the personnel to do the job that the Applicant should  
7 do themselves. And how well they are doing the job is somewhat  
8 raised in question when the inspectors come back from many  
9 of these plants -- I have not read in detail IP-3 returns,  
10 but they find that there are very obvious variances from  
11 specifications.

12 I know Mr. Newman I think carried the ball to a  
13 large extent, and also Mr. Cahill on quality assurance, and  
14 I'm sure they are anxious to see that quality assurance is  
15 carried out to the nth degree. Now how it is to be done I  
16 think is a question that, somewhere else in the organiza-  
17 tion, has to be performed.

18 And I would like to know how the fellows who  
19 actually do the work are guided in the work that they have to  
20 do. I say I don't think there is any question that-- These  
21 quality assurance programs come in; they are all across the  
22 country. The plans, the presentations look grand on paper,  
23 but yet the Atomic Energy Commission inspection people are  
24 finding that there are obvious gaps somewhere, and why it is  
25 I think we ought to find out.

1 MR. VOIGT: Well, Mr. Chairman, we have two problems  
2 here it seems to me.

3 First of all, of course the Commission has said  
4 that the Board's power of inquiry should only be exercised  
5 in extraordinary circumstances. Now I think that requires  
6 the Board to tell the parties precisely what the extraordinary  
7 circumstances are.

8 CHAIRMAN JENSCH: We'll tell you. We'll tell you  
9 that.

10 MR. VOIGT: Secondly, obviously -- or at least I  
11 think it is obvious -- the scope of the hearing, if there is  
12 going to be any hearing, is defined by the extraordinary  
13 circumstances, so if there is a special concern on the part of  
14 the Board about a specific point and the Board say there are  
15 extraordinary circumstances with respect to that point, we need  
16 to know about it so we can address it.

17 CHAIRMAN JENSCH: We will so inform you.

18 If there's one thing I think that has pervaded all of  
19 the Appeal Board decisions since the time that the Appeal  
20 Board was set up, it has been quality assurance. In every  
21 case, starting from-- let's take the Consumers Midland Plant,  
22 down through all of the decisions, the McGuire Plant of Duke  
23 Power, down through all these cases, if there has been one  
24 subject that has occupied a great deal of consideration by  
25 the Appeal Board it has been on quality assurance.

1                   And so in defining what is a special circumstance,  
2 from the guidance that the Appeal Board has given to all  
3 Licensing Boards, it is that the quality assurance is of very  
4 primary importance.

5                   MR. VOIGT: Well, Mr. Chairman, the Appeal Board is  
6 subject to higher authority; that is to say, the Atomic Energy  
7 Commission.

8                   Now the Atomic Energy Commission in this very case,  
9 Indian Point 3, has addressed the problem that you have  
10 identified. And let me read you from their opinion. The  
11 Commission said -- quote:

12                   "The Licensing Board has mistakenly  
13 assumed that it is under a mandate from the Appeal  
14 Board to explore and resolve specific issues in  
15 operating license proceedings which have not been  
16 raised by the parties. We affirm the Appeal Board's  
17 findings that none of its decisions requires such  
18 an undertaking."

19                   That, sir, was in the specific context of quality  
20 assurance because that's what you were worried about and  
21 that's what the Applicant was worried about. And the Commis-  
22 sion has said very clearly that you are not under any general  
23 requirement of inquiry in this area. It is only if there are  
24 extraordinary circumstances that justify a specific inquiry.

25                   CHAIRMAN JENSCH: There is no requirement and there

eb12

1 is no prohibition.

2 MR. VOIGT: I agree with that, sir.

3 CHAIRMAN JENSCH: Very well.

4 MR. VOIGT: I don't wish the impression to stand  
5 that the Board has some kind of general mandate to go into  
6 quality assurance.

7 CHAIRMAN JENSCH: No, but it is merely to indicate  
8 that as a primary importance, it is quality assurance. Now  
9 we can dismiss it if we didn't have the president of a com-  
10 pany saying that "By George, we'll never do this again; we've  
11 got low quality or low cost items in there and--"

12 MR. VOIGT: Excuse me, Mr. Chairman. I must object  
13 to your reiteration of this attribution in some journal that  
14 I haven't even seen.

15 CHAIRMAN JENSCH: That does not necessarily limit  
16 its use because you haven't seen it. It quite generally  
17 extant in the industry I'm sure.

18 MR. VOIGT: Mr. Chairman, unless this remark was  
19 made in a recorded proceeding at which there was a transcript  
20 or a tape recording-- There have just been dozens of examples  
21 of misattribution and misquotation by the press of government  
22 officials, high and low, and of corporate officials, and I  
23 don't think you have-- I don't think it's proper to accept  
24 something as being gospel because it was quoted in some  
25 publication.

eb13

1 CHAIRMAN JENSCH: No, please don't understand there  
2 is any gospel about this proceeding because we're seeking  
3 to develop our record in all respects. But certainly the  
4 public press carried the statement and it has never been re-  
5 futed in ~~the public~~ <sup>the public</sup> press as I have seen it.

6 MR. GALLO: Mr. Chairman, I think in this instance  
7 Mr. Voigt in his zeal to advocate his position has overstepped  
8 the bounds a little bit. I think if the Board has indicated  
9 that the statement was made, the proper procedure is-- That's  
10 enough to put the Board on notice for the purposes of inquiry.

11 The proper procedure is to call Mr. Roddis as a  
12 witness and find out if he did make the statement. If he did,  
13 what did he say? What did he mean? What did he intend?  
14 That's the way to resolve this problem. Any further discussion  
15 on this point serves no useful purpose.

16 CHAIRMAN JENSCH: I agree.

17 Will you endeavor to procure Mr. Roddis for the  
18 hearing?

19 MR. VOIGT: Well, I think Mr. Gallo is one step  
20 ahead of the game.

21 CHAIRMAN JENSCH: Will you answer my question, now  
22 that you've made your statement?

23 MR. VOIGT: I want to find out what the facts are,  
24 Mr. Chairman.

25 CHAIRMAN JENSCH: Will you endeavor to call

1 Mr. Roddis for the hearing?

2 MR. VOIGT: If in my judgment as an attorney  
3 Mr. Roddis' presence is necessary to resolve this controversy,  
4 I certainly shall. If not, I assume that the Board will indi-  
5 cate their desire and he will appear as the Board's witness.

6 I do not consider it my duty, sir, to present  
7 witnesses unless I am willing to sponsor them.

8 CHAIRMAN JENSCH: Well, will you find out if he is  
9 available for the Board?

10 MR. VOIGT: I will certainly find out his where-  
11 abouts and I will attempt to get to the bottom of this matter,  
12 but I respectfully ask that the Chairman refrain from re-  
13 iterating this statement which has not yet been explored.

14 CHAIRMAN JENSCH: You asked for it a few moments  
15 ago, "Will you please identify the source for it?" And I  
16 told you. Now you keep saying, "Don't mention it again."  
17 I won't. Just get Mr. Roddis here and we'll take care of it.

18 Are there any other matters we could take up at  
19 this hearing?

20 Mr. Gray?

21 MR. GRAY: Yes. Mr. Chairman, regarding quality  
22 assurance, it is my understanding from the Chairman's state-  
23 ment this morning that the Board will, at a later date,  
24 identify specifically its concerns regarding this.

25 CHAIRMAN JENSCH: Correct.

eb15

1 MR. GRAY: On behalf of the Staff, specifically  
2 the Regional Inspectors who, as you well know, have a very  
3 hectic schedule of inspections, we would request that the  
4 Board identify this matter early enough so that we can pre-  
5 pare a documentary report that would satisfy the Board's  
6 concerns.

7 And I'm thinking specifically of the type of  
8 matter that the Chairman wrote to Staff counsel on Beaver  
9 Valley Unit 1.

10 I might also add that the inspectors regarding  
11 Indian Point 3 are the same inspectors that are involved with  
12 Beaver Valley Unit 1, and we would want to consider any con-  
13 flicts in time.

14 CHAIRMAN JENSCH: You want to try them both at the  
15 same time; is that your thought?

16 No, not that. We will try to inform you in adequate  
17 time.

18 Did you have something, State of New York?

19 MR. CLEMENTE: Mr. Chairman, I just wanted to go  
20 back to the stipulation and state for the record that both the  
21 Attorney General and the New York State Atomic Energy Council  
22 are committed to the basic framework of the stipulation.

23 We also join other counsel in the feeling that the  
24 matters that have arisen are not of a major nature and we are  
25 optimistic that we can find a settlement.

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1           Secondly, I don't want my silence with respect to  
2 this matter of quality assurance to indicate anything other  
3 than the fact that the State, with recently acquired expertise  
4 in the past 10 or 12 months, has been looking into the matter  
5 but we have been unable to obtain certain documents through  
6 certain technical channels, and we would reserve the right to  
7 participate under the interests of the State if the Board  
8 decided to go ahead.

9           We have not completed our review. If this particu-  
10 lar unit in the Indian Point plant is at all typical of the  
11 other two units this quality assurance group has reviewed,  
12 we may have something to say on the matter.

13           CHAIRMAN JENSCH: Very well.

14           If there is nothing further, we hope we will get a  
15 report from the parties on a possible stipulation within three  
16 weeks from today.

17           Do you think that can be reported within that time?

18           MR. VOIGT: I think so, Mr. Chairman. We have all  
19 worked so hard on this already, I cannot foresee that it is  
20 going to take that much longer to wrap it up.

21           CHAIRMAN JENSCH: I'm glad we've provided an occa-  
22 sion for you folks to get together here today, and without  
23 interrupting you any further, at this time we will terminate  
24 this prehearing conference.

25

Thank you for participating.

(Whereupon, at 11:10 a.m., the prehearing  
conference was concluded.)

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