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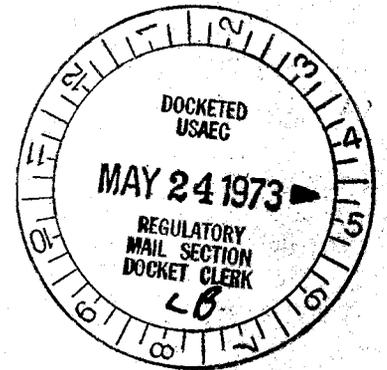
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IN THE MATTER OF:

CONSOLIDATED EDISON COMPANY
OF NEW YORK, INCORPORATED

(Indian Point Station, Unit No. 3)

REGULATORY DOCKET FILE COPY



Place - New York, New York

Date - Monday, 21 May 1973

Pages 1 - 71



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UNITED STATES OF AMERICA
ATOMIC ENERGY COMMISSION

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 4 In the matter of: :
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 5 CONSOLIDATED EDISON COMPANY OF : Docket No. 50-286
 NEW YORK, INC. :
 :
 6 (Indian Point Station, Unit No. 3) :
 :
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Regency Room
Springvale Inn
500 Albany Post Road
New York, New York

Monday, 21 May 1973

The above-entitled matter came on for pre-hearing, pursuant to notice, at 2:00 p.m.

BEFORE:

Samuel W. Jensch, Esq., Chairman,
Atomic Safety and Licensing Board

Dr. John C. Geyer, Member.

Mr. R. B. Briggs, Member.

APPEARANCES:

HARRY H. VOIGT and EUGENE R. FIDELL, *LeBoeuf*, Lamb,
Leiby & MacRae, 1821 Jefferson Place, N.W.,
Washington, D.C., and EDWARD J. SACK and JOYCE
P. DAVIS, Consolidated Edison Company of New
York, Inc., 4 Irving Place, New York, New York,
on behalf of the Applicant.

STUART A. TREBY and MYRON KARMAN, Office of the
General Counsel, United States Atomic Energy
Commission, Washington, D.C., on behalf of the
AEC Regulatory Staff.

Dd 1 APPEARANCES - Continued:

2 ANGUS MACBETH, Natural Resources Defense Council,
3 15 West 44th Street, New York, New York, and
4 NICHOLAS A. ROBINSON, Marshall, Bratter, Greene,
5 Allison & Tucker, 430 Park Avenue, New York,
6 New York, on behalf of the Intervenors, Hudson
7 River Fishermen's Association and Save Our Stripers.

8 J. BRUCE MacDONALD, Atomic Energy Council, Department
9 of Commerce, State of New York, 99 Washington
10 Avenue, Albany, New York, on behalf of the
11 Intervenor, Atomic Energy Council.

12 JAMES P. CORCORAN, Assistant Attorney General of
13 the State of New York, 80 ~~Centre~~ Street, New
14 York, New York, on behalf of the Petitioner
15 to Intervene, the Attorney General of the State
16 of New York.
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P R O C E E D I N G S

CHAIRMAN JENSCH: Please come to order.

This proceeding is a special prehearing conference of the matter of Consolidated Edison Company of New York, Inc. in reference to Indian Point Nuclear Generating Unit Number 3 as reflected by Docket number 50-286 of the Atomic Energy Commission.

This prehearing conference is convened following the Notice of Consideration of Issuance of Facility License and Notice of Opportunity for Hearing in this proceeding which was issued by the Atomic Energy Commission on October 19, 1972, and that document -- those two notices were given general public distribution which included publication in the Federal Register on October 25, 1972, as reflected by Volume 37 of the Federal Register, Page 22,816.

The Notice of Hearing, Notice of Opportunity for Hearing indicated that opportunity would be given for participation by the public in this proceeding and procedures by which they could participate in the proceeding were generally outlined in the Notice of Opportunity for Hearing.

The Commission's notice also made reference to the particular rules of practice by which participation may be had in this proceeding, and include the references to the participation by way of limited appearance which permits a statement to be made by the public at the hearing, at the commencement

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1 of the evidentiary hearing and also the procedure providing
2 for intervention by which a person who has an interest in
3 the proceeding may set forth in a verified petition his
4 interest in the proceeding, the nature of the Petitioner's
5 right under the Act to be a party to the proceeding, the
6 nature and extent of the Petitioner's property, financial or
7 other interest in the proceeding, and the possible effect of
8 any order which may be entered in the proceeding which may
9 affect the Petitioner's interest.

10 Following the issuance of those notices on October
11 19, 1972, an Atomic Safety and Licensing Board was established
12 for this proceeding; and that Notice of the Establishment of
13 the Board for this proceeding was given on February 9, 1973,
14 and given general public distribution.

15 In addition, on that same date, an Atomic Safety
16 and Licensing Board was established to rule on the petitions
17 or requests for leave to intervene in the proceeding; and
18 following the establishment of the so-called Intervention
19 Atomic Safety and Licensing Board, the Intervention Board
20 issued an order determining the parties qualified to partici-
21 pate in this proceeding.

22 That Board established the right to intervene
23 by the Hudson River Fishermen's Association; the State of New
24 York; and Save ^{Our} ~~our~~ Stripers qualified to be party Petitioners
25 in this proceeding.

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1 The Intervention Board denied the petitions to
2 ^{Cortlandt} intervene by the ~~Cortlandt~~ Conservation Association, Inc. and
3 ^{Hays Weik} Mary ~~Hayes Weick~~. Provision was made as to those latter two
4 to supplement their previously filed petitions within a period
5 of 20 days from the order which was entered on February 28, 1973.

6 The Cortland Conservation Association, Inc. did
7 file an amended petition, but the Intervention Board concluded
8 that it was insufficient within the scope of the requirements,
9 the Rules of Practice of the Atomic Energy Commission, and
10 ^{Cortlandt} the motion for reconsideration by the ~~Cortlandt~~ Conservation
11 Association was denied.

12 Before proceeding further, a statement of appearances
13 may be entered in the proceeding.

14 Is there an appearance on behalf of the Applicant,
15 the Consolidated Edison Company of New York, Inc.?

16 MR. VOIGT: Mr. Chairman, Members of the Board,
17 my name is Harry H. Voigt and I have with me, from the law
18 ^{LeBoeuf} firm of ~~LeBoeuf~~, Lamb, Leiby and MacRae, Eugene R. Fidell.

19 In addition, there are appearing on behalf of the
20 Applicant, Edward J. Sack and Joyce P. Davis, both of whom are
21 attorneys on the legal staff of the Applicant.

22 CHAIRMAN JENSCH: Now, will you give the address
23 of the attorneys?

24 MR. VOIGT: My address is 1821 Jefferson Place, N.W.,
25 Washington, D.C.; and Mr. Fidell's address is the same as mine.

1 Mr. Sack and Ms. Davis are located at Consolidated
2 Edison Company of New York, Inc., at 14 -- 4 Irving Place,
3 New York, New York.

4 CHAIRMAN JENSCH: Thank you.

5 Is there an appearance on behalf of the Regulatory
6 Staff of the Atomic Energy Commission?

7 MR. TREBY: Yes, Mr. Chairman.

8 My name is Stuart A. Treby, and I appear as
9 counsel for the Regulatory Staff of the Atomic Energy Commission.
10 Also appearing with me is Myron Karman.

11 The address of the Atomic Energy Commission is:
12 U.S. Atomic Energy Commission, Washington, D.C., 20545.

13 CHAIRMAN JENSCH: Thank you.

14 Is there an appearance on behalf of the Hudson River
15 Fishermen's Association?

16 MR. MACBETH: Mr. Chairman, my name is Angus
17 Macbeth and I appear both for the Hudson River Fishermen's
18 Association and Save ^{Our} ~~our~~ Stripers.

19 Appearing with me is co-counsel, Nicholas A.
20 Robinson of Marshall, Bratter, Greene, Allison and Tucker.
21 Mr. Robinson's address is 430 Park Avenue, New York, New York,
22 10022; my address is Natural Resources Defense Council,
23 15 West 44th Street, New York, New York, 10036.

24 CHAIRMAN JENSCH: Thank you.

25 VOICE: Could the participants be directed to use

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1 the PA system? I think it would be helpful to the people
2 here.

3 CHAIRMAN JENSCH: Very well.

4 Everybody having heard the request, please use
5 the public address system.

6 If that doesn't work, anybody who can't hear, just
7 tell us. We will step up the decibel level a bit.

8 Is the State of New York represented here?

9 MR. MAC DONALD: Mr. Chairman, J. Bruce MacDonald,
10 counsel to the New York State Atomic Energy Council. My
11 address is the New York State Department of Commerce,
12 99 Washington Avenue, Albany, New York.

13 MR. CORCORAN: Mr. Chairman, my name is James P.
14 Corcoran, Assistant Attorney General of the State of New York.

15 The Attorney General has petitioned for leave to
16 intervene in this proceeding as a party. Such permission has
17 not yet been ruled on.

18 CHAIRMAN JENSCH: What is the status -- you gave
19 your address, Mr. MacDonald, did you not?

20 MR. MAC DONALD: Yes, I did, Mr. Chairman.

21 CHAIRMAN JENSCH: Thank you.

22 What is the status of the petition to intervene
23 by the Attorney General of the State of New York? Have there
24 been answers filed to that?

MR. CORCORAN: Yes, Mr. Chairman. I believe both

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1 the Applicant and the Atomic Energy Commission Staff have
2 filed answers, although we have not yet received the Staff's
3 answer; and we are preparing a reply to the answer of the
4 Applicant.

5 CHAIRMAN JENSCH: Well, what is the -- I don't seem
6 to have the answer by the Applicant to the Petition of the
7 State of New York -- I mean, the Attorney General of the
8 State of New York.

9 What does the substance of the Applicant's position
10 state?

11 MR. VOIGT: I would think, Mr. Chairman, that the
12 first point --

13 CHAIRMAN JENSCH: Perhaps my statement earlier was
14 not very clear about using the public address system. Maybe
15 I should speak a little louder through the public address
16 system again.

17 Are you able to use the public address system
18 some way by taking it from the holder and holding it in your
19 hand and having it as near to your mouth as is convenient to
20 your expression?

21 Are you able to do that?

22 MR. VOIGT: I will try, sir.

23 CHAIRMAN JENSCH: Very well, proceed.

24 MR. VOIGT: As I was saying, I believe the first
25 point that this Board should be very keenly aware of is that

1 the ruling on this matter must come from the other Board, which
2 is headed by Mrs. Bowers; but I would be happy to review the
3 points that we have made in our response addressed Mrs. Bowers
4 and her colleagues.

5 CHAIRMAN JENSCH: Yes, if you would, so we could have
6 some idea.

7 MR. VOIGT: Very well, sir.

8 The first point is that the petition is in essence
9 redundant. The State of New York has already been admitted
10 as a party to this proceeding; and it is difficult for us to
11 ~~conceive~~ ^{CONCEIVE} how the same party can be admitted twice. We,
12 therefore, oppose the intervention or purported intervention
13 of the Attorney General on behalf of the State.

14 In addition, we have pointed out that the
15 petition filed by the Attorney General is approximately five
16 months out of time, and there has been no showing of any
17 good cause for such a long delay in failing to respond to the
18 original notice in this proceeding.

19 We think that is particularly true here where
20 the Attorney General was a party ~~at~~ ^{to} Indian Point 2. Certainly
21 was advised of the procedures of the Atomic Energy Commission;
22 and in general was familiar with the facts so that contrary to
23 the situation you sometimes have where a later Intervenor
24 pleads ignorance, here that plea surely is not supportable.

25 Finally, we note that the Attorney General's

8 mm 1 petition is defective under the Rules in several other respects.
2 It was not signed. It was not made under oath as required
3 by the Rules. It was not served upon the Applicant. It was
4 served out of time, upon an attorney, who does not represent
5 the Applicant in this proceeding.

6 So we think there are sufficient procedural flaws
7 in the petition to justify the Board headed by Mrs. Bowers, in
8 rejecting it.

9 CHAIRMAN JENSCH: Well, outside of those niceties,
10 what prejudice has the Applicant sustained by reason of a
11 late filing?

12 Could you give us some indication in that regard?

13 MR. VOIGT: Well, Mr. Chairman, the injection of an
14 additional set of lawyers in a proceeding inevitably creates
15 prejudice.

16 CHAIRMAN JENSCH: I don't know that anybody would
17 accept that premise; but proceed.

18 MR. VOIGT: Well, sir, that is my premise.

19 CHAIRMAN JENSCH: That too many lawyers --

20 MR. VOIGT: No, sir, that the Applicant ought not
21 to be required to deal with a multiplicity of cross-examination,
22 a multiplicity of pleadings, a multiplicity of proposed
23 findings and conclusions. The State of New York is in the
24 proceeding already. They are represented.

25 Let them be represented as they have already

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1 indicated; and let them file one set of pleadings and one set
2 of briefs and have one round of cross-examination instead of
3 two.

4 Now that is -- there is a serious potential for
5 delay. There is a serious potential for a burden upon the
6 Applicant and its attorneys which, in our view, is completely
7 unnecessary and unjustified, sir.

8 CHAIRMAN JENSCH: Anything further?

9 MR. VOIGT: Well, I think that summarizes our
10 position as we presented it in our written response, sir.

11 CHAIRMAN JENSCH: ~~Very~~ ^{very} well.

12 Does the Attorney General care to speak to the
13 matter?

14 MR. CORCORAN: Yes, Mr. Chairman.

15 In the Indian Point 2 proceeding, both the Atomic
16 Energy Council and the State Attorney General's office were
17 permitted to intervene as parties, representing the State
18 of New York.

19 I do not believe that the Applicant was prejudiced
20 in that proceeding; and I see no reason why it would be
21 prejudiced in the Indian Point 3 proceeding.

22 As you know, the Attorney General has brought
23 suit against the Applicant, an injunction suit, which is now
24 being prepared for trial.

25 CHAIRMAN JENSCH: How long has that been going on?

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1 I think every time I have heard of that proceeding,
2 we are still preparing?

3 MR. CORCORAN: It has been going on for a consider-
4 able period of time. We have some witnesses and some evidence
5 which we would like to submit to the Atomic Energy Commission
6 when the Indian Point 3 proceedings start; and I think that
7 the Attorney General's staff is best able to examine these
8 witnesses and to present their evidence; and I think for
9 that reason, the Attorney General should be allowed to
10 participate as a party in this proceeding.

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11 CHAIRMAN JENSCH: Have you enumerated the
12 witnesses and the scope of the evidence that they would be
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13 intending to present, and why can't the present organization,
14 the Atomic Energy Council, present those witnesses?

15 Are they unavailable to that group?

16 MR. CORCORAN: Well, Mr. Chairman, the witnesses
17 are ones that we are going to use in our proceeding against
18 Con Edison in the State court. The Atomic Energy Council is
19 not a party to that action and I think it would impose
20 burdens on the Council to have to prepare our witnesses and
21 examine our witnesses. I think we are best able to do that.

22 The Atomic Energy Council acts as a coordinating
23 body among various state agencies who wish to present
24 evidence to this body; and I think in that capacity they
25 function very well; but I think the Attorney General has

1 his own evidence and his own testimony to submit and should
2 be allowed to do so.

3 I think in the Indian Point 2 proceeding, both
4 the Atomic Energy Council and the Attorney General's Office
5 did participate, and no prejudice resulted to the Applicant as
6 a result of that.

7 CHAIRMAN JENSCH: Staff care to speak to this matter?

8 MR. TREBY: Yes, Mr. Chairman.

9 The Staff did submit an answer to the Attorney
10 General's petition for leave to intervene on May 7 of this
11 year; and briefly we indicated that since the Board designated
12 to review petitions for leave to intervene had admitted the
13 State of New York, we would have no objection to the Attorney
14 General appearing in this proceeding, that we were confident
15 such intervention would not result in duplication or repetitive
16 evidence.

17 We were hopeful that at this prehearing the Attorney
18 General's representative could advise the Board and the parties
19 as to the details of his representations and we thought that
20 there might be a possibility of consolidation of New York
21 State's intervention under 10 CFR ~~27.15a~~ 2.715a

22 CHAIRMAN JENSCH: Well, I think that is sufficient
23 for the purpose of this record to advise this Board as to
24 the status of the matter.

25 We will await further consideration by the

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1 Intervention Board.

2 This prehearing conference will not receive any
3 evidence in the proceeding; nor will it receive any statements
4 by way of limited appearance. Both such matters will be
5 considered for receipt at the time of the commencement of the
6 evidentiary hearing which will be later scheduled, and for
7 which public notice will be given and given general public
8 distribution which will include publication in the Federal
9 Register.

10 The endeavor of this special prehearing conference
11 is to ascertain if there is a basis for arriving at some
12 stipulation and developing mechanics and methods by which the
13 evidence may be presented and what are the areas of concern
14 of the parties to the proceeding, and whether discovery proced-
15 ures should be undertaken and the likelihood of the submittal
16 of interrogatories to or among the parties to the
17 proceeding.

18 The Board will expect the lawyers in this proceeding
19 to do more, I think, than has been undertaken in many of the
20 licensing proceedings before the Atomic Energy Commission
21 in order to resolve matters insofar as possible that may
22 exist between or among the parties.

23 I think that the experience of the Applicant in the
24 Indian Point proceeding, Indian Point Number 2, has developed
25 a basis for interchange of data with the other parties and

1 perhaps those procedures will be helpful in this proceeding.

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2 The Board will convene as many prehearing
3 conferences as necessary to consider with the attorneys for
4 the parties, various matters and methods by which evidence
5 can be eventually presented in the proceeding and to
6 expedite procedures by which that can be accomplished.

7 We do not, however, desire to convene prehearing
8 conferences for the sake of developing some numerical result
9 in that regard; but rather to serve some purpose of assisting
10 the parties, if possible, in the development of interrogatories
11 or discovery procedures, if relevant matters are sought to
12 be considered at such prehearing conferences.

13 The same parties here are represented by --
14 rather, some of the parties here are represented by some of the
15 same attorneys who were in the Indian Point 2 proceeding.
16 This is the same Board that conducted the hearings in the Indian
17 Point 2 proceeding; and I am sure it is a feeling of the Board
18 that the attorneys who were in the Indian Point 2 proceeding
19 did undertake a very substantial effort to resolve matters
20 between and among themselves; and it was a very substantial
21 contribution to the expedition of the presentation of evidence
22 and to bring the proceeding to an early conclusion, what
23 might have otherwise been a more protracted undertaking.

24 I am sure the attorneys in this proceeding who did
25 serve at the Indian Point 2 proceeding will seek to apply the

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1 same procedures; and I am sure the same result, which expedited
2 that proceeding in a very substantial way, will occur.

3 With those preliminaries, would some of the parties
4 like to speak to some of the problems as they envision them
5 at the present stage of this proceeding, so that we may have
6 some idea of the scope of the interrogatories, and the
7 ~~discoveries~~ ^{discovery} that the parties will seek to develop for the
8 procurement of data in the proceeding?

9 By the way, may we ask the Regulatory Staff, what
10 is the status of the Staff's Safety Evaluation and the Final
11 Environmental Statement for this proceeding?

12 MR. TREBY: Mr. Chairman, we have some anticipated
13 dates for those documents.

14 CHAIRMAN JENSCH: The pattern seems to be the same,
15 so far.

16 (Laughter.)

17 MR. TREBY: Well --

18 CHAIRMAN JENSCH: I think the word was estimated.

19 (Laughter.)

20 MR. TREBY: It is our hope we would issue the
21 draft Environmental Statement June 29, 1973, that the -- and
22 therefore the end of the other federal agencies and comment
23 period would be August 13, 1973.

24 We would hope to receive the Applicant's
25 responses to the comments August 27, 1973; and we have an

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1 anticipated date for issuing the Final Environmental Statement
2 of October 12, 1973.

3 With regard to the Safety Evaluation, it is the
4 Staff's hope that it would be issued July 16, 1973.

5 A possible date to go to the ACRS would be
6 September 7, 1973; and the supplement to the Safety Evaluation
7 to be issued October 12, 1973.

8 CHAIRMAN JENSCH: Thank you.

9 Let me -- we have reviewed many of the papers
10 on the public file in this proceeding. Let me inquire of
11 the Hudson River Fishermen's Association, what is the intended
12 scope of the participation by the Hudson River Fishermen's
13 Association and Save ^{Our}~~our~~ Stripers in this proceeding?

14 MR. MACBETH: Mr. Chairman, I think that in this
15 proceeding we will be faced with much the same issues as were
16 before the Board in the Indian Point 2 proceeding.

17 The issues may change slightly. There obviously is
18 an added impact on the fishery from Indian Point 3 that must
19 be looked at in addition to Indian Point 2.

20 We would also like to conduct discovery on the
21 issue of power need in this proceeding. Clearly a number
22 of other plants have been constructed which serve the
23 Applicant's service area; and we want to develop data on that.

24 Those, I think, are the two major areas in which
25 the Fishermen and Safe ^{Our}~~our~~ Stripers feel that this proceeding

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1 would be different from that of Indian Point 2. There is
2 the added impact of Indian Point 3, which are basically of
3 the same kind as Indian Point 2; and the change in the power
4 situation.

5 I should say that it is the hope of the Fishermen
6 and SOS -- I will ask Mr. Robinson to speak to this later --
7 to incorporate as much as possible of the Indian Point 2
8 record into the Indian Point 3 proceeding. It is the feeling
9 of Intervenors there would be little point of putting before
10 a Board that has listened to the evidence on Indian Point 2,
11 the same evidence again on Indian Point 3.

12 It is our hope that much of that record on the
13 environmental matters, perhaps all of it, be incorporated in
14 this record; and then the areas in which any of the parties
15 feel there are distinctions between Indian Point 3 and
16 Indian Point 2 would be the subject matter of an evidentiary
17 presentation.

18 Of course, until we have seen the Final Environmental
19 Statement from the Staff, it is difficult to know. There may
20 be other areas in which there will be a controversy between
21 the Staff and the other appearances; and the Applicant of
22 course is adding supplements from time to time to its
23 Environmental Report.

24 I -- reserving all my rights in case anything comes
25 up in those documents, I think that is a brief outline of what

1 the Intervenors would like to see happen in the Indian Point
2 3 proceeding. Our position basically is, it is the same
3 plant at the same site. It comes on top of Indian Point 2
4 and all the other plants up and down the river which the
5 board has reviewed. We see little point in rehashing the
6 entire matter again for the Board and bringing in the same
7 witnesses or different witnesses to say much the same thing.

8 CHAIRMAN JENSCH: There is a matter of public
9 record that is not a matter of evidence.

10 Since we are not considering matters of evidence
11 in its final form for consideration, at least, let me call
12 attention to the fact that a letter was sent -- and
13 presumably served upon all parties -- in the Indian Point 2
14 proceeding that the Village of Buchanan has some restriction
15 on cooling towers.

16 Now we didn't, somehow, get that impression in the
17 course of the Indian Point 2 proceedings, I don't believe.
18 Maybe it is only pertinent for the Indian Point 3 proceeding;
19 but since the matter has an interrelationship of public records
20 it seems to me that the Applicant is proposing to build a kind
21 of cooling tower that the Village of Buchanan expressly says
22 they cannot.

23 I wonder whether it is the egg or chicken situation,
24 a matter of who stops first on that situation; and whether
25 there are some alternative methods likely to be considered in

mm18 1 this proceeding is really the basis of my inquiry here.

2 MR. MACBETH: Mr. Chairman, I have seen in passing
3 and I believe the papers the Applicant served on me Thursday --
4 a reference to the -- to a letter from the Mayor of Buchanan.
5 I have not seen that letter. I have asked the Applicant's
6 attorney in Washington that morning to send me a copy of ~~that~~ ^{this}.

7 They assured me if they had a copy, they would.

8 I can't say anything very pointed on the letter
9 without having seen that. Obviously, if the position of the
10 Village of Buchanan is that under presently existing ordinances,
11 a cooling tower such as proposed could not be built, there
12 would have to be further consideration of other alternative
13 closed cycle systems.

14 I take it from the passing references I have seen,
15 the objection is to the height of the towers. As the
16 Board ~~now~~ ^{KNOWS}, there are other closed cycle systems which are
17 not as high as the tower proposed by the Applicant at Indian
18 Point 2. It might well be necessary to produce further evidence
19 on those alternatives.

20 I just can't say much without seeing that letter.
21 I am also in something of a ~~quandary~~ ^{quandary} as to what the standing of
22 that letter is in the Indian Point 2 proceedings.

23 CHAIRMAN JENSCH: I think the question is, what the
24 Applicant has relied on in part and his argument in the
25 Indian Point 2 proposed findings and conclusions, it escaped

1 me that that letter had been a part of the record
2 of the Indian Point 2 proceeding.

3 MR. KARMAN: We have not recieved it, Mr. Chairman.

4 CHAIRMAN JENSCH: Well, I am referring to the Appli-
5 cant reciting the contents of it in its argument submitted in
6 the course of its proposed findings and conclusions.

7 Maybe it intends to make that letter a part of
8 the record. If it is, we may have to -- if that is the wish
9 of the Applicant, we may have to give some consideration
10 to perhaps whether there should be further proceedings in
11 reference to that.

12 I don't know. The applicant as I say, surprisingly
13 mentioned it in his argument.

14 MR. MACBETH: As the Board knows, I think the last
15 phase of Indian Point 2 was that the hearing was concluded,
16 but not that the record was closed.

17 It may be odd that an argument to reopen the
18 record comes from the Applicant, but if this letter does have
19 material that goes to the whole possibility of building a
20 natural draft closed cycle system, I would think that if it
21 is to become evidence, that some further kind of examination
22 would haveto be made of it.

23 Until I see the letter, it is hard for me to make
24 out what is going on.

25 Was it clear from the Applicant's statement as to

1 who it received this letter from?

2 I take it neither the Board nor the Staff nor the
3 Intervenors had received it.

4 CHAIRMAN JENSCH: I received a copy, but I think
5 Friday afternoon, the same time I got the Applicant's ^{argument} ~~argument~~
6 with its proposed findings and conclusions.

7 I take it the Applicant must have known the
8 letter was coming out, because they typed their argument before
9 we received it -- received the letter.

10 I don't know whether there was any interrelationship
11 between the Village of Buchanan and the Applicant to have the
12 letter sent or not; or whether this is a matter called to the
13 attention of somebody, oh, yes, we better do that. I really
14 don't know.

15 It would be helpful if the Applicant would tell us
16 a little bit about it now, even though it may be pertinent
17 at the moment only in reference to Indian Point 2. It may be
18 a factor.

19 Are you urging, Hudson River Fishermen's Association,
20 that there be closed cycle cooling for Indian Point 3?

21 MR. MACBETH: Yes, Mr. Chairman.

22 The Hudson River Fishermen's Association and
23 ^{Dir} Save ~~our~~ Stripers will ask the Board to impose a closed cycle
24 cooling system at Indian Point 3.

25 CHAIRMAN JENSCH: Did Mr. Robinson have something

1 further in regard to the position of Save ^{Our} ~~our~~ Stripers?

2 MR. ROBINSON: Mr. Chairman, I would go into other
3 matters related to the preparation of the hearing.

4 You may wish to wind up the matter of the letter
5 before doing that.

6 CHAIRMAN JENSCH: No. Go right ahead.

7 MR. ROBINSON: We have discussed preliminarily with
8 the State of New York and the Regulatory Staff, certain
9 matters in preparation.

10 The first was the stipulation that the environmental
11 record, that part of the record in 2 which deals with the
12 environmental issues, could be stipulated to and incorporated
13 in the record for 3; so that the Board and the parties could
14 make reference to it as if it were before 3 originally again
15 for the first time.

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1 It is my understanding that pending a working out
2 of the actual page numbers -- and we have only just this last
3 week received the transcripts from two, the final transcripts --
4 that we might be able to provide you at a later date, hope-
5 fully rather shortly, with a set of agreed pages to incorporate
6 by reference.

7 The second matter discussed was the propounding of
8 interrogatories by the Hudson River Fishermen's Association
9 and SOS of the Applicant and that we would propose to propound
10 interrogatories in June with replies being submitted a month
11 or at some convenient period thereafter.

12 The third matter which we have discussed was as
13 soon as the draft environmental impact and the final
14 environmental impact statements are prepared, having the
15 parties advise the Board of exactly which issues the parties
16 believe are different from the issues in two.

17 Rather than have to go over the entire set of
18 environmental issues as to three, we would deal with those
19 new or different issues in terms of the presentation of new
20 evidence and thereby build a record, hopefully, in as
21 economical and yet directly functional way as possible.

22 Finally, as to the preparations for the hearings,
23 we would request that as a matter of informal discovery we
24 have the final research materials, the final statements of
25 research which the applicant is preparing or has prepared, as

1 they became finalized, sent to us as a matter of due course so
2 that we need not constantly go back as new scientific evidence
3 is prepared by the Applicant for use and seek it out again
4 every time; and perhaps this can be arranged also informally
5 between the parties.

6 There are two other matters which the Applicant
7 would -- SOS and the Hudson River Fishermen's Association
8 would like to bring to your attention.

9 Second is that these are public organizations
10 whose members are not necessarily affluent, spending all
11 their money on these things. They would, therefore, be very
12 hard-pressed to sustain the cost of receiving the transcript
13 of this; and the Intervenors wonder whether the same arrange-
14 ment could be made on Indian Point 3 as was made in 2, whereby
15 we are giving use of the public proceedings office copy of
16 the transcripts to facilitate our work before the Board.

17 Finally, the -- I have received in fact only this
18 morning a motion which the Applicant apparently has filed
19 asking to consolidate SOS and the Hudson River Fishermen's
20 Association.

21 I would have been better prepared to discuss it
22 at this time had I been advised by the Applicant that they
23 were making the motion.

24 It is our feeling that we have done everything we
25 can to present these two parties and their different

1 constituencies in as consolidated a fashion as possible, with
2 single appearances by counsel and single filings of papers
3 after the first petition, and we fully intend to proceed on
4 that basis.

5 If the Applicant has any reason why we should spend
6 time in filing answers to that motion and proceeding further
7 we would be pleased to hear them. Otherwise, we believe it is
8 a matter which this Board might take care of today or which
9 need not trouble the Board in either case.

10 These are the further prehearing considerations
11 that the SOS and the Hudson River Fishermen's Association
12 would raise.

13 Thank you.

14 (Board conferring.)

15 CHAIRMAN JENSCH: Very well.

16 Does the Atomic Energy counsel care to speak as to
17 its position in this matter? What are the problems it
18 envisions as to the preparation of its evidence and the kind
19 of discovery it believes it needs and that sort of thing?

20 ~~MR. MACDONALD~~ MR. ~~MACDONALD~~ **MACDONALD**: We are concerned that Indian
21 Point Number 3, being operated in conjunction with other
22 existing plants at the same location, whether it will have a
23 significant adverse effect on the Hudson River fisheries and
24 likewise there was some probable cause to believe that under
25 some operating conditions Indian Point Nuclear Generating

1 Unit Number 3, when operated in conjunction with other exist-
2 ing plants at the same location may not be in compliance
3 with the New York State criteria governing thermal discharges.

4 In these areas we will want some discovery
5 proceedings. These are our two contentions in Indian Point
6 Number 3.

7 CHAIRMAN JENSCH: Very well.

8 Now, as to the Attorney General of the State of
9 New York, the request was made by the Applicant to extend the
10 time for an answer to the petition to intervene. It is my
11 understanding of the procedures that following the action by
12 the Intervention Board on the petitions formally filed within
13 the time provided by the notice of opportunity for hearing
14 issued by the Commission and that after the issuance of a
15 notice of a prehearing conference or any other notice
16 affecting the proceedings that the Atomic Safety and Licensing
17 Board should act upon the petitions to intervene in the
18 proceeding, and it was for that reason that the letter from
19 this Board dated May 11 was addressed to the Applicant with
20 copies to all parties granting the request for an extension
21 of time to file the answer to intervene.

22 Clarification of those procedures will be had in
23 a few days.

24 It is my understanding that in this transitional
25 period, in a sense, between the procedures for an

1 Intervention Board and the utilization of a Hearing Atomic
2 Safety and Licensing Board, that some practical adjustments
3 are being made, one of which was that once the Hearing Board
4 has entered upon the issuance of notices of any kind that the
5 Hearing Board then undertakes the determination of petitions
6 to intervene which are filed beyond the time prescribed by the
7 notice of opportunity of hearing issued by the Atomic Energy
8 Commission.

9 So we will not make a determination at this time
10 but ascertain further clarification of the procedures in that
11 respect.

12 Therefore, we will not at this time request any
13 further statement on behalf of the Attorney General of the
14 State of New York, but if a ruling is given by either the
15 Intervention Board or this Hearing Board we will ask the
16 Attorney General to submit a statement of position in the
17 matter in the same manner as the other parties have made a
18 statement here this afternoon.

19 With those statements then completed, we will
20 request the Applicant to deal with these several matters which
21 have been enumerated by the parties to the proceeding; but
22 before doing that I wonder if we could get one other date from
23 the Applicant, this is from the Applicant.

24 What is the expected completion date of
25 construction of the Indian Point Number 3 plant?

1 MR. VOIGT: I would like Mr. Sack to respond to
2 that, sir.

3 CHAIRMAN JENSCH: Very well.

4 MR. SACK: Our present schedule, which assumes
5 that there is no significant problem, arises between now and
6 initial criticality; and if that occurs, is the plant should
7 be ready for initial criticality April 1, 1974.

8 CHAIRMAN JENSCH: That was about the date that
9 Indian Point 2 was going to be ready. Is there some
10 coincidence or is that a design arrangement that it comes
11 in in April, or is Indian Point 2 in operation yet?

12 MR. SACK: Well, at one point criticality was
13 scheduled for April 1973, but that is no longer the case.

14 CHAIRMAN JENSCH: I see.

15 MR. SACK: With Indian Point 2.

16 Excuse me. That was -- that plant would be ready
17 for core loading April 1, 1974.

18 CHAIRMAN JENSCH: Very well.

19 Well, we will now ask the Applicant to address
20 himself to these several matters, particularly the
21 suggestion, I think, from the Hudson River Fishermen's
22 Association, as to the endeavors and also the Save ^{Our} ~~our~~ Strippers
23 counsel.

24 What opportunities do you see for stipulation
25 respecting evidence from one proceeding to another?

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1 MR. VOIGT: Mr. Chairman, since you have enjoined
2 me to use the microphone, may I, in exchange, ask that I be
3 permitted to remain seated?

4 CHAIRMAN JENSCH: Sure. It is somewhat
5 inconvenient to hold them. I understand that.

6 MR. VOIGT: Let me first of all, Mr. Chairman,
7 address myself to the subject of the letter from the Mayor
8 of Buchanan.

9 CHAIRMAN JENSCH: You knew that it was going to be
10 sent?

11 MR. VOIGT: No, sir. We did not know that it was
12 going to be sent. We learned of it because the Mayor sent
13 to the company a copy of the letter.

14 CHAIRMAN JENSCH: That was the first word you had
15 about any restriction by the Village of Buchanan on the
16 height of cooling towers; is that correct?

17 MR. VOIGT: Excuse me a minute.

18 (Parties conferring.)

19 CHAIRMAN JENSCH: Please proceed.

20 MR. VOIGT: Yes, Mr. Chairman. Thank you for your
21 indulgence.

22 I would like to point out since the letter, at
23 least up until today, was related to Indian Point 2, I
24 did not really come here prepared to talk about it.

25 CHAIRMAN JENSCH: Well, we don't want to hold you

1 to any disadvantage. If this is the first information you
2 had about this apparent restriction that is suddenly thrust
3 upon you -- although I inferred from the letter that
4 Buchanan indicated they had curbed the height of some other
5 unrelated plant, tower; and I thought it might have been
6 within the scope of your investigatory work.

7 Excuse me if it is not.

8 MR. VOIGT: It may become so.

9 CHAIRMAN JENSCH: Yes, we hope so.

10 MR. VOIGT: But I do want the record to be clear,
11 and I did not state it with exact precision a moment ago. ~~The~~
12 Mayor notified the company of this restriction and we then
13 said if this is a matter of concern to you perhaps you should
14 let the Board know about it.

15 It was at that point that the Mayor addressed a
16 letter to the Board.

17 I am not -- we then asked, also, for a copy of the
18 letter to the Board.

19 CHAIRMAN JENSCH: This is rather amazing. There
20 hasn't been any indication, I take it, that the company knew
21 there was such a restriction by the Village of Buchanan until
22 the Mayor called the company; is that correct?

23 MR. VOIGT: I believe that is correct, sir.

24 CHAIRMAN JENSCH: And yet, as I understood that
25 letter, the Village of Buchanan, they had curbed the height

1 of some facility for another plant other than Consolidated
2 Edison.

3 I thought it might have been within common
4 knowledge of those who were working in the Buchanan area.
5 If they did not, you know, publicize their activity under
6 their zoning arrangement, of course, you wouldn't know.
7 I could understand that.

8 Well, proceed, if you will, please, on the other
9 matters.

10 MR. VOIGT: Thank you, sir.

11 A second matter that troubles me considerably is
12 Mr. Macbeth's statement here this afternoon that he wanted to
13 obtain information from the Applicant concerning the need for
14 the Indian Point 3 Plant.

15 Now, Mr. Macbeth and Mr. Robinson filed petitions
16 to intervene in this proceeding in which they identified their
17 interest and set forth the matters that they desired to place
18 in controversy. There was no mention of contesting the need
19 for the plant.

20 I respectfully submit, sir, that that has not been
21 made an issue in this proceeding and that Mr. Macbeth cannot
22 make it an issue at this late stage, having failed to identify
23 it as part of his initial petition to be permitted to
24 participate.

25 Now, we will be very happy to work with the

1 Intervenor in terms of discovery on the issues that they
2 did raise involving thermal ecology and the effect upon the
3 fishery and so forth. They have been admitted here. Their
4 standing has been ^{RECOGNIZED} ~~recognizes~~ as to those matters.

5 We have an obligation to cooperate with them and
6 we intend to do that, sir; but I must say that we will resist
7 any demand for discovery on something which is not an issue
8 in this case, namely the need for the plant.

9 Now, let me then pursue a little further what
10 can be done and what should be done in these areas.

11 I must say that normally it would have been my
12 practice to meet with Mr. Robinson and Mr. Macbeth prior to
13 this prehearing conference; but unfortunately I was busy with
14 another Atomic Energy Commission matter over the past several
15 weeks and I haven't had the opportunity to actually sit down
16 with them.

17 I have made a date to meet with Mr. Robinson
18 tomorrow morning at his office in New York; and I hope that we
19 will be able to ^{make} ~~again~~ -- a fruitful effort to narrow the
20 issues and determine exactly what is required in the way of
21 discovery.

22 One of our efforts -- and we all agree on this --
23 there is no dispute about it -- is to develop a stipulation
24 which will incorporate into this record that information which
25 we all agree is pertinent from the Indian Point 2 case; and

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1 Mr. Sack and others at Con Ed are working on our behalf, on
2 our part, to specify the particular portions of the transcript
3 and the particular exhibits that we feel should be in the
4 Indian Point 3 record; and Mr. Robinson, I am sure, will do
5 the same thing.

6 I can't give you a deadline at the moment, sir,
7 but I believe we will in fact be able to reach an agreement
8 on that; and I think that in turn should save the Board a
9 great deal of work, at least in terms of hearing time.

10 We will try to avoid completely repeating in this
11 record anything that has been covered in the Indian Point 2
12 record and to have in this record only new information or
13 supplemental information that either was not available for
14 Indian Point 2 or for some reason or another wasn't really
15 brought out properly at that time.

16 Now, I might just note in that regard, sir, that
17 what is ultimately stipulated to, at least in my view, may be
18 influenced to some extent by the decision that you gentlemen
19 are going to render ^{ON} ~~at~~ Indian Point 2.

20 It may be that final resolution of some of these
21 matters will not be possible until that decision has come out.

22 I don't mean to imply by that that I am going to
23 sit idle until that happens. I intend to work with
24 Mr. Robinson and go as far as we can right now.

25 As far as discovery itself is concerned, as I said

1 a moment ago, we would be happy to make information available
2 to Mr. Macbeth and Mr. Robinson as soon as they ask for it;
3 no need, at least at the present time, I think, for any kind
4 of formal order by the Board or a series of deadlines, because
5 I believe we are working in an area and spirit of cooperation
6 here.

7 As far as the Applicant's discovery, I do not
8 believe that we can put forward meaningful discovery requests
9 until at the earliest after we have seen the Staff's draft
10 environmental statement because the information that we want
11 to get, to prepare our case, is going to depend a lot on
12 what the Staff says in their analysis.

13 We will certainly pursue that with Mr. Treby and
14 Mr. Karman very quickly after their statement becomes public.

15 Again I would anticipate no difficulty. I would
16 not anticipate that the Board would have to become involved
17 actively in supervising the process.

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1 CHAIRMAN JENSCH: Well, we can only say that
2 certainly the pattern that the attorneys developed in Indian
3 Point 2 is a good model for exchange of data in this
4 proceeding.

5 The Board believes that the attorneys saved a lot
6 of hearing time, and a lot of time of the Board by their
7 mutual efforts to procure and provide the data and it certainly
8 was very helpful to the Board.

9 MR. VOIGT: I would only hope we can improve upon
10 that.

11 CHAIRMAN JENSCH: You get a high mark to endeavor,
12 I assure you.

13 MR. VOIGT: Now the next point Mr. Robinson men-
14 tioned was a specification by the parties of what they
15 perceived to be differences for different issues in this
16 proceeding from the issues in Indian Point 2; and if I
17 understood him correctly, he was proposing to do that after
18 the Final Impact Statement came out. I think that's a
19 sensible procedure and that's another matter that I intend
20 to discuss with them a little more in terms of details.

21 The next matter that Mr. Robinson raised was
22 access to the future studies of Consolidated Edison as they
23 may pertain to the environmental issues in this case. Again
24 I'll work out the details with him, but I think I can say
25 generally that I think it would be our purpose to make those

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1 studies available to the Intervenors just as fast as we can
2 so that there would be no delay in preparation by the
3 parties.

4 (The Board conferring.)

5 CHAIRMAN JENSCH: Will you proceed?

6 MR. VOIGT: The next point Mr. Robinson referred
7 to was the access to the public proceedings transcript.

8 That's really up to the Staff and the Board. The
9 Applicant certainly won't object to it.

10 The next matter Mr. Robinson raised was our motion
11 for consolidation; and I am not quite sure I understood
12 his position. He seemed to me to be saying that he wasn't
13 really opposed to being consolidated. If that's the case,
14 obviously the Board can rule on it this afternoon, and that's
15 the end of the matter. If I am mistaken -- if he is opposed --
16 then I think he should file his answer in writing and we'll
17 take it from there.

18 Now a final matter that I would like to bring to
19 the Board's attention is to establish at least tentatively
20 when the hearing is going to be in this case.

21 There is a theoretical possibility, if all of the
22 dates given by Staff counsel were rigorously adhered to,
23 that we could be addressing a hearing in this proceeding as
24 early as November of 1973. I believe that previous
25 experience demonstrates the desirability of anticipating

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1 a few slippages here and there, Mr. Chairman.

2 In addition, Applicant is conducting a series of
3 environmental studies; and we anticipate that by February of
4 1974, the 1973 study data will have been collected, analyzed,
5 and processed so that by about February 15, 1974, we would
6 be prepared to file in the form of testimony the results of
7 the 1973 analyses.

8 Shortly prior to that time, we could and would have
9 whatever other direct testimony is to be presented by the
10 Applicant; and so looking at the desirability of taking a
11 time for the hearing that is realistic rather than optimistic,
12 and looking at the desirability of incorporating the 1973
13 data into the record, we propose that the Board consider as
14 a target for the commencement of the hearing February 4, 1974,
15 with the expectation that the hearing would continue subject
16 only to possibly brief adjournments for the convenience of
17 witnesses or counsel, and be concluded in March of 1974.

18 Now I don't know whether the Board wants to actually
19 establish a firm date at this time; but I did think that it
20 was proper to raise at least the concept and give you gentle-
21 men a chance to respond to it.

22 I would like to point out that I have discussed
23 this informally with the other counsel and I have heard no
24 objection and seemingly general agreement that this is a
25 realistic target date.

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1 I invite the Board, not necessarily to issue a
2 formal order, but to let the parties know either on this
3 record or subsequently whether they would be in agreement
4 with that as a projected schedule.

5 CHAIRMAN JENSCH: Well, I think such a projection
6 that far in advance, at least warrants the -- let me say the
7 kind of response that is to this effect: that the Board is
8 anxious to proceed to expedite the hearing; the Board will
9 give consideration to every suggestion of the parties; the
10 Board will look at the public record, the filing of data,
11 as a basis for its decision; the Board will endeavor to move
12 the case along as rapidly as possible.

13 Now having said that, I think sometimes these
14 dates, without any criticism of the Regulatory Staff -- we
15 welcome their projected dates, estimated times of submittal
16 of certain documentary matters with great interest -- but
17 sometimes factors over which they have no control sort of
18 change the projections that are originally given; and
19 depending upon a lot of those factors will depend, I think,
20 the decision by the Board.

21 As I say, if the parties are agreeable to a
22 certain date, a certain time that now seems realistic, I
23 am sure the Board will keep that matter in mind and endeavor
24 to schedule accordingly. As I say, the Board will expect
25 the lawyers to do a great deal on the exchange of data and

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1 the development of stipulations; and the kind of agenda that
2 they would believe that the hearings should consider. And
3 with those accomplishments, the Board is always trying to
4 accommodate the schedules that have been so developed.

5 I wonder -- have you concluded, Applicant?

6 MR. VOIGT: Yes, sir.

7 CHAIRMAN JENSCH: Would the Hudson River Fishermen's
8 Association speak to this power need situation?

9 MR. MACBETH: Yes, Mr. Chairman.

10 On page 11 of the Petition to Intervene from
11 the Hudson River Fishermen's Association, the Fishermen
12 stated that -- in part of the contention there -- that the
13 cumulative damages and risks to the fishery from the operation
14 of the plants on the Hudson are too great to delay construc-
15 tion of the closed cycle system or to allow operation of the
16 plant until such a system is in operation.

17 It was within that context I was talking about power
18 need. I was referring -- I should have been more explicit --
19 to the period before a closed cycle cooling system could be
20 in operation.

21 As we know, it would take the Applicant some time
22 to build such a system. It was that period I was referring
23 to, rather than long term operation of the plant.

24 The Fishermen have not proposed that the plant
25 simply be abandoned. We are addressing ourselves to any

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1 interim period. That's what I meant. I apologize for not
2 being clearer on that point.

3 I am not talking about the period after 1983 or '84,
4 whenever the Applicant feels that it could get the closed
5 cycle system operating.

6 CHAIRMAN JENSCH: Well, it is your suggestion then
7 that the Applicant put in the closed cycle cooling system
8 right away, they can generate all the electricity they feel
9 they can sell?

10 MR. MACBETH: That would be the Fishermen's
11 position and that of SOS, yes, Mr. Chairman.

12 CHAIRMAN JENSCH: As I say, I think one of the
13 concerns the Commission has had in these proceedings,
14 especially when it comes to the operating license stage,
15 is that they look -- I don't know what the cost of this
16 plant is, but if they look at a plant costing a couple of
17 hundred million dollars, they wonder if it isn't a little
18 late to sit down and say shouldn't they have done it?

19 MR. MACBETH: I would point out, of course, that
20 the Commission under the case of New Hampshire versus the
21 Atomic Energy Commission explicitly refused; and the courts
22 upheld that refusal, to look at the impact on this river or
23 other rivers, in that case the Connecticut, at earlier stages
24 of the granting of the construction permit.

So it would have been frivolous for the Fishermen

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1 to come to the construction permit proceeding and ask at
2 that time to have the Commission look on the effect of the
3 fishery. The Commission would not have done so. This
4 really is the opportunity for the Fishermen to come forward.
5 The Fishermen are not contending that the plant be torn down
6 nor that it be transported over the hills, some other water
7 body, but rather what should be done in the period before
8 closed cycle, closed cycle cooling system can be installed
9 and operating.

10 That depends on, obviously, on what comes out of
11 the discovery in terms of what the power needs of the city
12 of New York are and what the supply situation is.

13 I think the point here is that the situation is
14 different from Indian Point 2. Indian Point 2 itself would
15 be operating in some fashion in this period. There are
16 other plants that the Applicant owns or has part of. It
17 may be that the power crunch will not be as bad as it has been
18 made out to be in the past. That is a matter for discovery.
19 It is not a -- either a position on which the Fishermen are
20 absolutely adamant. It is a contention in the intervention
21 papers.

22 That's one reason we want discovery on the issue,
23 to see exactly what the situation is.

24 CHAIRMAN JENSCH: It is related to the time
25 within which, if the -- if there were to be cooling towers, the

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1 work should be initiated, is that correct?

2 MR. MACBETH: Precisely.

3 CHAIRMAN JENSCH: Thank you.

4 Another matter that the Board would like to
5 consider, through the parties, and as to which no answer is
6 sought at this time, but perhaps should be considered in the
7 course of preparation for hearing, the Atomic Energy
8 Commission is anxious that the public participate in these
9 proceedings in some form. It doesn't necessarily mean it
10 may be by intervention or may it be by presentation of
11 statements by way of limited appearance, but rather to permit
12 attendance by the public at a hearing of this kind so they
13 may be informed concerning the progress of the matter and
14 the different problems that are considered in the course of
15 a proceeding.

16 The Commission has, however, established in, I
17 believe, all of the nuclear power cases a public depository
18 for the filing of the formal record in every proceeding
19 together with the transcript of the hearings.

20 You of the parties know that the Commission
21 provides that a transcript shall be prepared for the
22 evidentiary hearing as well as the prehearing conferences;
23 and those transcripts are available to the public.

24 I think the experience that many members of the
25 public have found that the public depository is probably as

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1 useful, if not more useful, to the public to be informed,
2 because they may be apprised of these matters at their own
3 convenience of time by going to the public depository and
4 reading the documents any time convenient to the reader.

5 In the Indian Point 2 proceeding, I believe the
6 use of the transcript was arranged so that the Intervenors
7 who represented others than the Applicant or the Regulatory
8 Staff could have primary access to the transcript because
9 they were engaged in the preparation of evidence and the
10 cross-examination of Applicant and Staff witnesses; but the
11 arrangement contemplated that if any member of the public
12 desired to use a transcript at any time, that the transcript
13 would be returned to the public depository for immediate
14 access by those members of the public who sought to read the
15 transcripts.

16 The Board has not considered that yet in this
17 proceeding; but may I say this: Unless there is a different
18 arrangement directed by this Atomic Safety and Licensing
19 Board, the same provision will be made so that the Intervenors,
20 Hudson River Fishermen's Association and Save our Stripers,
21 and the Atomic Energy Council of the State of New York would
22 have an arrangement for primary access to the transcript;
23 but any member of the public who desired to read the
24 transcript, they would leave their name at the so-called
25 Registrar of the Public Depository, indicating such an

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1 interest.

2 It will be the obligation of the user, the primary
3 user of the transcript, to return the transcript or other-
4 wise communicate with the requesting party so that the
5 Commission's intention that the public be informed will be
6 fulfilled.

7 In connection with that, it has been our
8 observation in the Indian Point 2 proceeding that after the
9 initial few days of evidentiary hearing, and after the state-
10 ments of public participation by limited appearance have
11 been presented, that apparently the public prefers to be
12 informed of the proceedings through the public record which
13 is filed at the public depository; and the Board is willing
14 to recognize that preference and the parties may desire to
15 give consideration to the scheduling of many of these hearings
16 in Washington because the Staff situation is such that by
17 public statement, I believe the Commission has indicated
18 that the Staff work load is such that their witnesses do
19 lose a great deal of time if they are too long away from
20 their general office.

21 By having a hearing near the Bethesda office --
22 but I assure you not in the Bethesda office -- the witnesses
23 of the Staff can be more efficiently utilized. When the
24 hearing is over, they can go back and work at night. That
25 is very helpful to the expediting of the other cases which

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1 is of substantial concern.

2 So those factors, not only for the convenience
3 of the Staff witnesses, and perhaps other witnesses, but a
4 minor matter that can't be overlooked, is a substantial
5 saving in government funds if any of the evidentiary hearings
6 can be held in a place to accommodate the Staff witnesses.

7 That's a matter we would urge the parties to keep
8 under consideration as we head toward a date for an evidentiary
9 hearing..

10 Mr. Robinson?

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1 MR. ROBINSON: Mr. Chairman, certainly the two
2 Intervenor would be more than happy to comply with the
3 primary access and immediate turnover of these transcripts
4 to any other person who wishes to have them.

5 Nor have we objections to facilitating the work
6 of the Staff by holding hearings in Washington. I should
7 point out that as I understand the arrangement worked
8 in No. 2, it is useful to have the transcripts in New York
9 where members of the public can have access to them more
10 easily through us, rather than traveling to Washington
11 where the Public Proceedings Office is, of course, located
12 and where they would be otherwise during these proceedings.

13 If the hearings are not to be in the neighbor-
14 hood of the plant, and in the close driving proximity
15 of many of the citizens who are interested in the proceedings,
16 this is a convenient and I think quite reasonable approach to
17 the accommodating of the need for public information and
18 saving government money.

19 CHAIRMAN JENSCH: I would like to add if I may
20 interrupt, if you don't mind, I think the Board would be
21 agreeable to scheduling special hearings to accommodate
22 the witnesses of any party to ^{the} proceedings.

23 If either Save ^{Our} ~~our~~ Strippers or the Hudson
24 River Fishermen's Association had certain witnesses who could
25 not conveniently go to Bethesda, Maryland, the Board would

1 convene here as we are now assembled at this location, in
2 order to accommodate any special requirements of any of
3 the witnesses. This is sort of a flexible schedule that we
4 are suggesting for consideration by the parties.

5 While you are speaking, Mr. Robinson, I wonder
6 if you would address yourself to the Applicant's suggestion
7 about consolidation.

8 What differences are there between Save-^{Our}~~our~~-Stripers
9 and the Hudson River Fishermen's Association? If the
10 interests are substantially identical, is it perhaps
11 your thought that on some occasions you would alternate
12 your presence with Mr. Macbeth's so that you two, in a
13 sense -- you two individuals would represent separate
14 organizations?

15 MR. ROBINSON: Yes. We intend to have only one
16 counsel making one point; and quite likely for a great
17 deal of No. 3, I will end up doing some of that.

18 We don't intend to have two people, for two
19 organizations, make two statements of the same substance.
20 The issues of the two organizations are the same. They are
21 the same entirely right now as they were in the Petitions,
22 again the Petitions of November 22, on page 11, for Save-
23 our-Stripers, the same representations as to power needs
24 and the same claims as to the cumulative effect of Indian
25 Point 1, 2, and 3 on the aquatic life of the Hudson

1 River estuary were made.

2 We certainly have no objection to going ahead
3 and having a consolidation. As I said before, we have
4 tried to present the issues in as economical and single
5 a way as possible. The two organizations do represent
6 quite differing constituencies.

7 The Save-our-Stripers being Long Island fishermen
8 who have come to the conclusion that their livelihood
9 in some instances and their recreation and principal hobby
10 in others would be endangered if, as they contend, cooling
11 towers were not required for Indian Point 3 to save the
12 striped bass fishery area.

13 The Hudson River Fishermen's Association you
14 are acquainted with from the Indian Point 2 proceeding.
15 They principally live in and around the area where we are
16 now holding this meeting.

17 I cannot -- there was certainly a difference
18 as to their standing; but once the decision had been made
19 to permit the intervention, these differences receded; and
20 rather than require a formal order of consolidation, we
21 are prepared to put on the record we shall go ahead on
22 that basis.

23 If you order that, we will not oppose it.

24 CHAIRMAN JENSCH: I don't know there is any
25 great accomplishment by an order of consolidation. I think

4
1 we have had three organizations represented in Indian
2 Point 2 by attorneys who sort of alternated, Mr. Roisman
3 representing the Environmental Defense Fund and the
4 Citizens' Committee for the Protection of the Environment;
5 Mr. Macbeth representing the Hudson River Fishermen's
6 Association; and they sort of alternated.

7 A statement from one or the other was represented
8 to be binding on the other. I don't think there was any
9 duplication of effort or ^{repetitious} ~~repetitious~~ cross examination of
10 the witnesses.

11 Did you have anything further, Mr. Robinson?

12 MR. ROBINSON: Not at this time.

13 CHAIRMAN JENSCH: Very well.

14 Staff counsel?

15 MR. TREBY: Yes, Mr. Chairman.

16 Just so the record is clear, when you were making
17 your remarks about the transcript and its availability to
18 the members of the public, we -- were you referring to the
19 local Public Document Room or the Document Room located in
20 Washington?

21 CHAIRMAN JENSCH: The local Document Room.

22 Did you have something further?

23 MR. TREBY: No, except perhaps we also should
24 make it clear on the record with regard to the hearing
25 date that we share the Board's concern that this proceeding

1 be expedited.

2 CHAIRMAN JENSCH: Well, everybody can stand to
3 make such an expression, if you would like.

4 (Laughter)

5 MR. TREBY: My only point is we didn't want to
6 be held to any particular date.

7 CHAIRMAN JENSCH: I think everybody will make
8 that statement, too.

9 (Laughter)

10 There is one procedure, I think, that the Comm-
11 ission has instituted for the restructuring of the procedures
12 as of July 28, 1972; and that is at the end of a prehearing
13 conference, especially a special prehearing conference,
14 the Board is expected to enter an order as to what was
15 accomplished at the special prehearing conference.

16 That seems to be the source of some difficulty,
17 not perhaps in the recording of it. Sometimes we get over-
18 judicialized about some of these procedures. An order has
19 been entered in some proceedings whereupon a motion is made
20 to correct the order. Then they have to consider the original
21 order and the motion, both ways.

22 Therefore, the Board here suggests that the
23 attorneys to the -- for the parties in this proceeding
24 submit a stipulation setting forth the kind of order that
25 the Board is directed to issue, following the prehearing

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1 conference.

2 If the parties stipulate in that regard, I
3 think it's a fair inference the Board will probably accept
4 that.

5 It would probably eliminate a lot of motions to
6 correct, and motions not to correct, and motions to
7 reconsider for whatever motions ^{were} ~~was~~ made correcting the
8 order.

9 (Laughter)

10 Any other matters we can consider?

11 We might take a recess and see if the Board
12 has further matters we would like to present for the
13 parties.

14 (The Board conferring.)

15 CHAIRMAN JENSCH: The Board would only note
16 this: A great many of the expressions from the Board
17 as to its concerns in this proceeding will depend upon
18 the submittal of the Staff documents.

19 As is evident to all members of the public and
20 the parties in these proceedings, the Staff's Safety
21 Evaluation and the Draft Environmental Statement are
22 very substantial items in a proceeding of this kind; and
23 while there hasn't been a great deal of mention made of
24 ~~radiological~~ ^{radiological} safety matters, that's not to indicate that
25 absence -- that absence is not to indicate that the

7
1 Board may have some inquiries about certain radiological
2 safety matters, as to the matter of construction and quality
3 control and quality assurance; and the other factors
4 dealing with the construction itself, and the components
5 which will be in the facility.

6 Perhaps there will be some rulings and orders
7 of the Atomic Energy Commission that may play a part in some
8 of the concerns the Board may have about the plant and its
9 components.

10 Those matters will be largely concerns of develop-
11 ment as to which the Board cannot make any indication at
12 the present time. We don't want the parties to feel that's
13 going to be a subject that won't be within the range of
14 inquiry by the Board.

15 MR. VOIGT: Mr. Chairman, as I understand the
16 decision of the Appeal Board in the Palisades case, the
17 Board is strictly enjoined to limit its consideration to
18 the matters in controversy; and, therefore, we would
19 look initially at the Petitions to Intervene and the
20 contentions of the Intervenors to determine what matters are
21 before the Board for inquiry and for decision; and I would
22 hope that the Board --

23

24

25

1 CHAIRMAN JENSCH: Won't ask too many questions?

2 (Laughter.)

3 MR. VOIGT: No, sir.

4 CHAIRMAN JENSCH: I think the difference that you
5 are mentioning is not within the Palisades Ruling nor the
6 Regulations of the Commission.

7 The Board may have some concerns about these
8 matters as to which it will not make decisions.

9 The Regulations of the Commission and the Palisades
10 ^{Ruling}~~Ruling~~ was that the Board will not make decisions on some
11 matters that are not in controversy; but there may well be
12 concerns that the Board may desire to direct to the attention
13 of the Commission and the Appeal Board. Those will be developed
14 in this proceeding.

15 MR. VOIGT: Sir, I would respectfully submit that
16 the concerns of the Board are not for consideration under
17 the Rules and under the Palisades decision.

18 CHAIRMAN JENSCH: I think there is a wide difference
19 there. You may preserve your record in that regard.

20 MR. VOIGT: I shall do so.

21 Now, sir, I also don't want there to be any
22 misunderstanding about the Applicant's position on this question
23 of the need for power. That contention doesn't say a word
24 about whether there is a need for power or not a need for
25 power.

1 Mr. Macbeth's position in his petition was that
2 regardless of the need for power the -- the environmental
3 consequences of operating without the installation of closed
4 cycle cooling are so adverse that such operation cannot be
5 permitted.

6 Now, we have gone into this proceeding and we have
7 accepted in large measure his intervention. You may
8 recall, sir, that the Applicant actually did not oppose the
9 intervention of these two parties; and we took our position
10 based upon a fair reading of their contention and their
11 statement of position.

12 Now Mr. Macbeth is changing this position very
13 radically.

14 CHAIRMAN JENSCH: He says not.

15 MR. VOIGT: Well, sir, I say he is inevitably
16 because he is trying to make a new argument.

17 All of a sudden, now, six months after he files
18 his petition he wants to say to the Board, "Well,
19 don't worry about holding up the plant because the Applicant
20 doesn't need it anyhow."

21 That is nowhere contained in his contention as
22 originally stated. This is a new position he wishes to
23 advocate before the Board.

24 I say to you, sir, it should be barred.

25 CHAIRMAN JENSCH: Let me ask you this: If the Staff

mm3 1 Final Environmental Statement and the final position of the
2 Staff in this Indian Point Number 3 proceeding is the same as
3 expressed in the Indian Point 2 proceeding, that is the
4 recommendation that a closed cycle system be installed,
5 will the Applicant seek to delay the imposition of that
6 recommendation until further studies are completed by the
7 Applicant?

8 MR. VOIGT: Yes, sir.

9 CHAIRMAN JENSCH: And then would it be your view
10 that a reason for delaying that would be that you have a need
11 for the power, so that the plant should go ahead without a
12 closed cycle cooling system?

13 MR. VOIGT: No, sir.

14 The argument about whether or not you delay the
15 installation of the towers until the studies have been
16 completed, is an economic argument. It is an argument which
17 says that the rate payers should not be saddled with the vast
18 expense of adding cooling towers until the evidence is in, to
19 permit us to make an intelligent determination of whether
20 that expense is truly necessary.

21 That argument, in my view, has ^{NO} ~~not~~ relationship
22 to the basic need for the plant, which until this afternoon,
23 sir, had not been questioned.

24 CHAIRMAN JENSCH: I don't think it is a question of
the need of the plant. It is the time for the operation of it,

1 and the level of operation.

2 I think, as I understand it, the Hudson River
3 Fishermen's Association, they are saying that if you are
4 arguing that you need the plant and cannot wait to withhold
5 the operation of the plant until all the studies are completed
6 on the thermal effects in the Hudson River, then they would
7 say you are urging that your power needs compel the operation
8 without the construction of cooling towers, which would then
9 raise into issue what are the power needs.

10 MR. VOIGT: Mr. Chairman, I think there is no
11 dispute, even by the Fishermen, that a minimum period of some
12 four or five years would be required in order to install
13 those towers. That contention clearly was the subject of
14 controversy at Indian Point 2. I assume it may be the
15 subject of controversy again.

16 There is no way that those people could have
17 advocated holding up the plant for the installation of closed
18 cycle cooling which is the position that they took in their
19 intervention without accepting the proposition that the plant
20 just wasn't going to be operated for whatever period of time
21 it would take from the completion of other construction, which
22 Mr. Sack has now told you is targeted for next spring, to the
23 further completion of the cooling tower construction in 1978,
24 perhaps.

25 Now, under those circumstances, there is no

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1 argument about whether the plant is needed or isn't needed.

2 Mr. Macbeth said up until today that he didn't
3 care whether it was needed or not, that the environmental
4 consequences were so severe that it ought to be held up
5 anyhow. That was his position and we understood that
6 position; and we have been preparing to go to trial on that
7 position.

8 Now he wants to raise a completely different kind
9 of argument which says, well, maybe the environmental cost
10 isn't quite as great as we alleged; but then maybe the need
11 for the plant isn't quite as great as you alleged either.
12 Therefore, we want to introduce evidence on the latter
13 subject to make up for our failure to carry ^{our}~~out~~ burden of
14 proof on the original subject.

15 That is bringing in a whole new aspect into the
16 proceeding, which was not the subject of fair notice ^{in the}~~and its~~
17 contentions. There is not a word in there about questioning the
18 need for power from this plant.

19 CHAIRMAN JENSCH: Let me ask you: You said it
20 wasn't part of fair notice. Are you alleging some prejudice
21 in the preparation of data on your part, because you didn't
22 have fair notice about this?

23 If you feel that there has been some prejudice,
24 what is it?

MR. VOIGT: As I pointed out to you a few minutes

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1 in an earlier context, the injection of additional issues just
2 as the injection of additional counsel in this proceeding, and
3 indeed in any proceeding, automatically prejudices the Applicant.

4 CHAIRMAN JENSCH: How.

5 MR. VOIGT: It makes the hearings last longer;
6 it makes the findings and conclusions take longer.

7 CHAIRMAN JENSCH: I don't think you can trace that,
8 the hearing taking longer. I think sometimes if the plant
9 isn't ready, it sometimes takes a little longer, too.

10 I don't know that you can say that if one more
11 attorney shows, that the house of cards falls.

12 I think --

end #5A
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1 MR. VOIGT: Mr. Chairman, the whole purpose
2 of the revised rules of practice as issued in August of
3 1972 --

4 CHAIRMAN JENSCH: July.

5 MR. VOIGT: Effective in August, then, sir.
6 Thank you.

7 CHAIRMAN JENSCH: Go ahead.

8 (Laughter)

9 MR. VOIGT: Is to limit the scope of
10 hearings and to expedite their completion; and I respectfully
11 submit that the Applicant is entitled to a limited hearing
12 and an expedited hearing, whether or not the plant is
13 proceeding on a similar schedule.

14 I really must object to the use by the Board,
15 the Staff, or anybody else of a possible delay in construc-
16 tion as a pretext for permitting untimely intervention
17 or the belated raising of new issues.

18 CHAIRMAN JENSCH: I don't think anybody has done
19 that in this proceeding.

20 MR. VOIGT: I hope they won't, sir.

21 CHAIRMAN JENSCH: You can be sure that you
22 will get an expedited hearing and that all matters that
23 are of substantial concern are developed in this proceeding.

24 I don't know your analysis of the Commission's
25 rules is correct in that the Commission is trying to limit

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1 anybody. They are trying to find specifics that can
2 be brought to the attention of the hearing; and when those
3 contentions are specific, and matters relevant thereto are
4 developed on the record, the hearing will proceed. The
5 Commission is not trying to restrict any hearing.

6 The Commission is endeavoring to make specific
7 the contentions of the parties so that all persons will be
8 informed of the kind of evidence intended to be deduced.

9 I am sure the Atomic Energy Commission would
10 resent your thought that they are trying to limit hearings
11 of this kind. Now the Commission's rules have provided a
12 mechanism for more specificity; and this Board will
13 adhere to those regulations precisely and completely; but
14 you must bear in mind that the Commission is not trying to
15 restrict anybody from presenting a valid contention in this
16 proceeding.

17 MR. VOIGT: But, sir, if they fail to present
18 their contention at the time and in the manner required
19 by the rules, then the rules quite clearly limit, if you
20 will, consideration, because everything is keyed to the
21 intervention; and you are required to spell out and tell the
22 Applicant and the Board and the Staff when you first enter
23 the proceeding what your area of interest is and what your
24 standing is to invoke that area of interest.

25 CHAIRMAN JENSCH: You are correct.

ad 3
1 MR. VOIGT: That is --

2 CHAIRMAN JENSCH: The rules always provide for
3 amendments thereto with good cause shown. If there has to
4 be a clarification, rather than an amendment of what has
5 been filed, that those are matters likewise to be
6 considered.

7 Since this was the initial and special prehearing
8 conference, it may be well that we give some consideration
9 to that matter right now. If you are taken by surprise,
10 before anything has been undertaken, we should endeavor
11 to remove that surprise that you have.

12 I don't understand you have indicated any
13 prejudice in the matter by your reference to just the
14 rules in the proceeding.

15 Have you completed?

16 MR. VOIGT: I would welcome a ruling by the
17 Board directing Mr. Macbeth to file an amended contention
18 and show good cause why it should be received at this late
19 date. I would respond formally to that.

20 I object vigorously to his effort to bootleg
21 a whole new subject matter in here by an informal statement
22 on the record.

23 CHAIRMAN JENSCH: There will be no bootlegging
24 going on. ^{That is} ~~on~~ something that was ruled out some time ago.

(Laughter)

clarification

1 I think if it comes to a question of ~~clarification~~,
2 however, it may not be necessary to have a formal
3 amendment.

4 As I understand the position, he's answering
5 to what you are likely to assert that you can't put in the
6 cooling towers at the completed facility until some later
7 time.

8 I presume a corollary would be that the whole
9 plant should not be authorized until the completed
10 facility includes the closed-cycle cooling system.

11 MR. MACBETH: Mr. Chairman, I won't even
12 attempt to bootstrap this argument in. I think it is
13 clearly there in the contentions that were presented in the
14 Petition to Intervene.

15 If the Board would like me to write out a
16 clarification of it, I will. This takes us back to one of
17 the topics we dealt with in Indian Point No. 2 last
18 November which is the problem of never getting from the
19 Applicant a clear statement of its position on the basis
20 of which it will seek the license.

21 If Mr. Voigt is really willing to say that the
22 need for power is not an issue here, and to stipulate there
23 is no issue, that the Board should not consider for a
24 moment whether or not the power is needed, that it's only
25 an economic issue, then I think we can enter into that

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1 stipulation and simply remove this issue from the con-
2 sideration of the Board all together.

3 But I must say I did assume that one of the
4 arguments the Applicant would make was that the ^{plant} ~~plant~~ would
5 be needed to provide power to the consumers in New York City
6 and Westchester County.

7 If that isn't so, then I certainly don't mind
8 the Applicant stepping forward and saying so. Having
9 gone through two and a half years of hearing the Applicant
10 tell us at repeated intervals that the power is necessary
11 to supply the City and Westchester County on the basis of
12 having it tomorrow, this comes -- I must say -- as somewhat
13 of a surprise to me.

14 I think that -- I think that this matter is
15 sufficiently covered in the Petition to Intervene.
16 If the Board would like me to go back and find more
17 references to it in the Petition, I will. If the Board
18 would like a clarification of that -- and yet some more
19 paper -- I would be happy to provide it.

20 I think it's covered there. I do not think I
21 am introducing a new issue into the proceeding. I really
22 think if Mr. Voigt reads it again, perhaps he can come to
23 that conclusion as well.

24 MR. VOIGT: Mr. Chairman, what Mr. Macbeth has
25 just said illustrates my point very nicely. It is indeed

ad 6 1 so that for two and a half years the critical need for
2 the facilities ^{at} ~~of~~ Indian Point have been repeatedly
3 asserted; it is certainly clear from our filing for
4 Indian Point 3 that the Applicant asserted the need for
5 the plant.

6 The difficulty is that Mr. Macbeth's Petition
7 does not controvert any of those assertions by the Applicant;
8 and, therefore, the Applicant was prepared -- and I
9 believe is still entitled to -- stand upon its pleadings
10 in that regard, sir, and not be put to the expense,
11 difficulty, and delay of going to hearing on an issue
12 which was not controverted by the Intervenor in his
13 Petition.

14 MR. MACBETH: What document is it, Mr. Voigt,
15 that you are referring to that we should have controverted?

16 I have always had some trouble in pinning
17 down in these proceedings exactly what the Applicant's
18 position is, as the Board well knows.

19 What document is the -- is Mr. Voigt referring
20 to?

21 MR. VOIGT: The Application, Mr. Chairman, to
22 our License, as supplemented and amplified -- if you will --
23 by the Applicant's Environmental Report.

24 MR. MACBETH: Well, at least with that -- that
25 I must say is pleading in specific detail, a few volumes

aa 7 1 of reports and appendices are presented as a statement of
2 allegations.

3 I still maintain that even if that is the
4 document to which we are referring for controversion,
5 it's sufficiently taken care of under the Commission's
6 rules on page 11. I will repeat my offer to provide
7 clarification, if the Board feels that's necessary.

8 (The Board conferring.)

9 CHAIRMAN JENSCH: Is there any other matter --
10 would you care to speak to that matter?

11 MR. TREBY: Yes, Mr. Chairman.

12 All I wish to say is that page 11 does appear
13 to be a little ambiguous as to a contention such as need
14 for power, and perhaps it might be wise for the Intervenors
15 to submit something in writing, clarifying just what they
16 mean by that phrase.

17 CHAIRMAN JENSCH: Very well.

18 Anything further at this time?

19 (No Response)

20 The Board will take a recess for 15 minutes
21 or a reasonable amount and give reasonable assurance that
22 we will be back here at four o'clock.

23 At this time, let's recess until four p.m.,
24 in this same room.

25 (Recess.)

dd 8 1 CHAIRMAN JENSCH: Please come to order.

2 During the session we had a few minutes
3 ago, before the recess, a gentleman came up with a state-
4 ment, with a note, asking to -- anybody can read it if
5 they so desire -- asking to make a limited appearance
6 statement at this time.

7 He apparently has supplemented this note, saying
8 that the attorneys told him this was not the time for the
9 limited appearances.

10 We did announce earlier that at this special
11 prehearing conference, no evidence would be received nor any
12 statement by way of limited appearance.

13 The opportunity for both will be at the
14 evidentiary hearing at a later time.

15 The Board has utilized this recess to give
16 consideration to several of the matters that we discussed
17 here. The Board believes that it's a fair approximation
18 that we should think of February 4 for the commencement of
19 the hearing, if all dates fall into line as presently
20 projected.

21 Even if they do not, if it is not too substantial
22 a difference, we will try to think of February 4 as a date
23 for the commencement. We would hope to set aside time
24 enough sufficient so that we could have continuous sessions
25 without any lengthy interruptions or recesses.

ad 9 1 MR. MACBETH: Can I say one thing in that regard?

2 One thing Mr. Voigt had mentioned to me before the hearing
3 today was that the studies would be available on the fifteenth
4 of February. If the studies are lengthy, obviously the
5 Intervenor will need a chance to study them. February 4
6 sounds good to me on every other ground, if the schedule is
7 kept; but obviously the Intervenor will want some time
8 to look at the results of the studies, if the Applicant
9 intends to rely on them.

10 MR. VOIGT: I think that's understood, Mr.
11 Chairman.

12 CHAIRMAN JENSCH: Very well.

13 The Board has reviewed the Petition to Intervene
14 by the Save-~~our~~^{Our}-Stripers; and it's our belief that it is
15 substantially similar to that filed by the Hudson
16 River Fishermen's Association; and the recommendation by
17 the Save-~~our~~^{Our}-Stripers is for the installation of a closed-
18 cycle cooling system.

19 Presumably the closed-cycle cooling system would
20 be a part of the plant, which is sought to be operated.
21 It just appears to the Board that it is implicit in that
22 contention, and the lengthy response of the Applicant for
23 a delay in the construction of cooling towers, that power
24 needs will be asserted as a basis for delay in the cons-
25 truction of the cooling towers, will be a part of the plant.

10

1 Otherwise the plant and the cooling towers
2 would be denied anyhow.

3 Therefore, without amendment or clarification,
4 the Board believes that it's implicit in the contention
5 as raised in this proceeding that power needs will be a part
6 of the considerations for this hearing.

7 The Board will endeavor to communicate with
8 the parties in some way respecting the Petition by the
9 Attorney General of the State of New York. The reason
10 that the answer was given to the request for an extension
11 of time was based upon informal advices from the Intervention
12 Atomic Safety and Licensing Board, that once the Hearing
13 Atomic Safety and Licensing Board had issued any notice for
14 initiation of procedures in the proceeding, that thereafter
15 all matters relating to intervention would be dealt with
16 by the Hearing Atomic Safety and Licensing Board.

17 That will be confirmed; and if confirmed, an
18 order will be entered with reference to the Attorney General
19 of the State of New York.

20 Any other matters we can consider? Any
21 suggestion that we should set a time for a further
22 prehearing conference? Or shall that be subject to
23 negotiation among the parties and recommendations from
24 such discussions as they may have?

25 MR. VOIGT: Mr. Chairman, I would suggest that

ad 11 1 that be left to the parties in the first instance, with the
2 further thought that the Board is always at liberty, by
3 conference telephone call or otherwise, to inquire concerning
4 the status of the matter.

5 It may well be that along about October of 1973
6 it will be useful to have another meeting; but I think it's
7 a little difficult to anticipate right now the timing of
8 such a second prehearing conference.

9 CHAIRMAN JENSCH: Yes, I think that after
10 the Final Environmental Statement and the original
11 Staff Safety Evaluation Report, any supplement thereto,
12 after those have been issued, it might be profitable to have
13 a prehearing conference.

14 Anything further?

15 (No Response)

16 If not, this special prehearing conference is now
17 concluded.

18 (Whereupon, at 4:05 p.m., the prehearing
19 conference was adjourned, subject to the call of the
20 Chairman.)

END

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