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UNITED STATES OF AMERICA

ATOMIC ENERGY COMMISSION

In the matter of CONSOLIDATED EDISON COMPANY OF NEW YORK, INC. (Indian Point Nuclear Generating Unit No. 2)	Docket No. 50-247

Henry Hudson High School
Auditorium
Albany Post Road
Montrose, New York

Tuesday, 1 December, 1970

Pre-hearing conference in the above-entitled matter was convened, pursuant to notice, at 9:40 a.m.

BEFORE:

SAMUEL W. JENSCH, Esq., Chairman of the Board

DR. JOHN C. GEYER, Member.

MR. R. B. BRIGGS, Member.

DR. WALTER H. JORDON, Alternate Member.

APPEARANCES:

ARVIN E. UPTON, Esq., LEONARD M. RROSTEN, Esq., LEX K. LARSON, Esq., GERARD A. MAHER, Esq., EDWARD J. SACK, Esq., on behalf of the Applicant.

JOSEPH B. KNOTTS, JR., Esq., MYRON KARMAN, Esq., on behalf of the AEC Regulatory Staff.

GEORGE C. ARCARO, Esq., representing CLEAN,
J. BRUCE MAC DONALD, Esq., representing
New York State Atomic Energy Council.

PAUL S. SHEMIN, Esq., representing New York State
Attorney General, on behald of New York State.

EDWIN BERLIN, Esq., representing Environmental
Defense Fund, Inc., Citizens Committee
for the Protection of the Environment.

MARY HAYS WEIK, appearing as a concerned citizen.

- - -

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

2 CHAIRMAN JENSCH: Please come to order.

3 This proceeding is a hearing in the matter of the
4 application of Consolidated Edison Company for an operating
5 license to operate a posted nuclear power facility to be known
6 as Indian Point Unit Number 2.

7 This pre-hearing conference is convened in accordance
8 with a notice of hearing on an operating license, which was
9 issued by the United States Atomic Commission on November 13,
10 1970, and which was published in the Federal Register on
11 November 17, 1970, as reflected by Volume 35 of the Federal
12 Registration, page 17679.

13 The notice of hearing issued by the Atomic Energy
14 Commission also provided for an evidentiary hearing scheduled
15 to convene on December 17, 1970, in the New York State
16 Armory, 944 Washington Street, Peekskill, New York, to
17 consider the application filed under Section 104(b) of the
18 Act by Consolidated Edison Company of New York, Inc.

19 The applicant therefore for an operating license
20 which would authorize the operation of a pressurized water
21 nuclear power reactor at steady-state power levels up to a
22 maximum of 2758 megawatts thermal at the applicant's Indian
23 Point plant in the Town of Buchanan in Westchester County,
24 approximately 24 miles north of New York City.

25 The applicant on October sixth, 1970, requested

that this public hearing should be held, and the Atomic Energy Commission has determined that the request for a hearing should be granted.

Prior to that hearing a pre-conference hearing was scheduled and is accordingly convening pursuant to the notice here, in the Hendrik Hudson High School Auditorium, Albany, Post Road, Montrose, New York. The pre-hearing conference will be conducted in accordance with the Rules of Practice of the Atomic Energy Commission, and is intended to be informal throughout its entirety.

There will be no evidence presented at the hearing nor will any evidence be received.

In accordance with the Rules of Practice of the Atomic Energy Commission, the pre-hearing conference is scheduled to endeavor to simplify the issues that are involved in the proceeding, identification of the parties as well as the witnesses to the proceeding, to consider the manner in which the evidence will be presented. Some of it may be presented in written form so that by service in that written form, prior to the convention of the evidentiary proceeding, the parties may give consideration to it and be prepared to proceed, to cross-examine of the matters so presented in written form.

The Atomic Energy Commission desires that at both the pre-hearing conference and at the evidentiary hearing that a reference be made as to the manner in which parties may

1 participate in the proceeding.

2 There are two methods prescribed by the Atomic
3 Energy Commission rules, one of which is called a limited
4 participation, in that a person who desires to express his
5 concern respecting the application and the contentions made in
6 reference thereto may make an oral or written statement of the
7 position of concern by any member of the public.

8 Such a participant does not involve or become a
9 party to the proceeding, nor need any such statement be
10 presented in written form, nor be made under oath, nor is
11 there any cross-examination of such a person presenting a
12 statement by way of a limited participation.

13 There is a second method by which members of the
14 public may participate in the proceeding, and that is by
15 formal intervention, which is in accordance with the rules,
16 2.714 of the Rules of Practice. That procedure permits a
17 party to file a written petition for intervention under oath,
18 setting forth his interest, as to how it may be affected by
19 the outcome of the proceeding and to set forth his contention
20 to the applicant, and the issues which may be prescribed by
21 the Commission for consideration in this hearing.

22 The notice of hearing prescribed that the petition
23 to intervene should be filed on or before November 27, 1970,
24 but the rules of the Commission also permit persons, if they
25 show good cause for a late filing, to present a petition for

consideration to this Atomic Safety Licensing Board for consideration.

A person who participates through intervention, does become a party to the proceeding, may present evidence under oath and as all the rights of the applicant and the regular parties to participate fully in the conduct of the hearing. He may examine and cross-examine witnesses, and is entitled to present witnesses.

The notice of hearing issued by the Atomic Energy Commission provided that this pre-hearing conference will be conducted by an Atomic Safety and Licensing Board whose names were listed in the notice of hearing. This Safety Licensing Board consists of Mr. R. B. Briggs of Oak Ridge, Tennessee, who is on my left, and D. J. Geyer of Johns Hopkins University, Baltimore, Maryland, on my right.

To the extreme right is Dr. Walter H. Jordan, also of Oak Ridge, Tennessee, who has been designated as a technically qualified alternate.

J. D. Bond, of Deerwood, Maryland, has been designated as an alternate qualified in the conduct of administrative proceedings.

My name is Sam Jensch. I have been designated as Chairman by the Commission of this Atomic Energy Licensing Board.

The issues which will be considered at the

1 evidentiary hearing which will convene on December 17, 1970
2 are as follows:
3 Where the construction of the facility has been
4 substantially completed, in conformity with the construction
5 permit and the application as amended, the provisions of the
6 Act, and the Rules and Regulations of the Commission;
7 Whether the facility will operate in conformity
8 with the application as amended, the provisions of the Act,
9 and the Rules and Regulations of the Commission.
10 Third, whether there is reasonable assurance that
11 the activities authorized by the operating license can be
12 conducted without endangering the health and safety of the
13 public, and that such activities will be conducted in
14 compliance with the regulations of the Commission;
15 Fourthly, whether the applicant is technically and
16 financially qualified to engage in the activities authorized
17 by the operating license in accordance with the regulations
18 of the Commission;
19 Fifthly, whether the applicable provisions of 10
20 Block CFR Part 140, "Financial protection requirements and
21 indemnity agreements," of the Commission's regulations have
22 been satisfied; and
23 Sixthly, whether the issuance of the license will
24 be inimicable to the common defense and security or to the
25 health and safety of the public.

There have been some requests for permission to make statements by way of limited appearance. Those statements will be considered at the time of the evidentiary hearing on December 17, 1970. Those statements by way of limited appearance will be received at this pre-hearing conference.

There have also been received two petitions to intervene in this proceeding, one from the Environmental Defense Fund, Inc. and second by the Citizens Committee for the Protection of the Environment.

The notice of hearing as indicated, was issued on November 13, 1970, and the pre-hearing conference scheduled for today, December 1, and the designation that petitions to intervene were to have been filed by November 27, did not permit adequate time for the parties to express their views respecting the petitions to intervene to which I have made reference, namely the Environmental Defense Fund, and the Citizens Committee for the Protection of the Environment.

The Board gave consideration to that time schedule and gave consideration to the scope of the allegation and the petitions to intervene, and concluded that an order tentatively permitting intervention will be issued, permitting tentative intervention by the Environmental Defense Fund, Inc. and by the Citizens Committee for the Protection of the Environment, which order is subject to the change or modification and reversal, if need be.

After the issuance of that order, tentatively permitting the intervention to that extent, the answers were received by Consolidated Edison Company respecting those two petitions, namely Environmental Defense Fund, Inc., and Citizens Committee for the Protection of the Environment, in which the applicant -- when I have used the word, "Applicant," it is used interchangeably with Consolidated Edison Company -- did it not oppose the Citizens Committee as a party to the proceeding.

The applicant also filed an answer to the petition to intervention, which was filed by the Environmental Defense Fund, Inc., and as to that petition to intervention the applicant alleged that Environmental Defense is questionable under present law.

The allegation is made also that the petition to intervene by the Environmental Defense Fund, Inc. fails to show how it is interested or specifically affected in any way by the granting of the requested license to the applicant.

Consideration will be given to that and the other allegations of the applicant in its answer to the petition to intervene, filed by the Environmental Defense Fund, Inc.

Yesterday, on November 30, 1970, when the Board received some letters, one of which is from the Hudson River Fisherman's Association in which it states that it petitions for leave to intervene.

It is not shown whether that letter was mailed to other parties.

The letter was dated November 24, 1970, and consideration will be given to that matter in the course of today's proceedings.

In addition, there was a letter received from William C. Hip, Supervisor of the Town of Cortlandt, Westchester County, Croton-on-the-Hudson, stating he is filing a petition to intervene in this proceeding.

We have not had any other communication from Mr. Hip other than the letter.

The results are received on November 30, a document which was dated November 25, 1970, petitioning the State of New York for intervention and alleges that the name and address of the petitioner is the State of New York, 87th Street, New York, New York, on behalf of all citizens and residents of the State of New York, and consideration will be given that petition in the course of today's proceedings.

There was also received a letter from Mary Hays Weik, dated November 21, 1970, received on November 25, 1970, stating, "I wish to file a petition in intervention," and we have not had any other communication from Mary Hays Weik, other than the letter.

A telegram was sent to the Environmental Defense Fund, Inc. at its address, also to the Citizens Committee for

the Protection of the Environment on November 27, reflecting the Order Tentative Permitting Intervention as heretofore indicated.

We have also received on November 27, a telegram addressed to the Secretary of the United States Atomic Energy Commission from J. Bruce MacDonald, stating in the telegram a petition for relief in intervention in the hearing, and so forth. There has been no other communication from J. Bruce MacDonald or the New York State Atomic Energy Council since that telegram.

I believe with those introductory remarks, we have given the rules and the scope of the procedure.

At this time let's have a statement of appearance on behalf of the parties.

Is there an appearance on behalf of the Consolidated Edison Company in New York at this time?

MR. UPTON: Mr. Chairman, I am appearing on behalf of Consolidated Edison Company of New York, Inc.

My name is Arvin E. Upton. With me are my associates, Leonard M. Prosten, Gerard A. Maher, Lex K. Larson, and Edward J. Sack, of the Law Department of Consolidated Edison Company.

The addresses of all those I have referred to have been given to the Reporter and there has been a formal entry of appearance for all of the counsel I have named.

1 CHAIRMAN JENSCH: For the record, will you give us
2 your addresses again?
3 MR. UPTON: The address of Messrs. Prosten,
4 Larson and myself is 1821 Jefferson Place, Northwest,
5 Washington, D. C. 20036.
6 The address of Mr. Maher is 1 Chase Manhattan
7 Plaza, New York, New York and I don't have the Zip number.
8 The address of Mr. Sack is 4 Irving Place, New York,
9 New York, 10003.
10 CHAIRMAN JENSCH: Thank you, sir.
11 The appearance on behalf of the regulatory staff,
12 Atomic Energy Commission?
13 MR. KARMAN: Mr. Chairman, my name is David Karman,
14 I am counsel for the Regulatory Staff. On my left is Mr.
15 Joseph B. Knotts, Jr., also of our staff. Our office is 7920
16 Norfolk Avenue, Bethesda, Maryland.
17 CHAIRMAN JENSCH: Thank you, sir.
18 Is there an appearance here on behalf of the
19 Environmental Defense Fund, Inc. and the Citizens Committee
20 for the Protection of the Environment?
21 MR. BERLIN: I am counsel for the Citizens
22 Committee for the Protection of the Environment and the
23 Environmental Defense Fund, Inc.
24 My name is Edward Berlin, of the firm of
25 Berlin Roisman and Kessler, 1910 N Street, Northwest,

1 Washington, D. C. 20036.

2 CHAIRMAN JENSCH: Thank you, sir.

3 As of this time does the staff decide to submit its
4 views on the intervention on behalf of the Environmental
5 Defense Fund, Inc. and the Citizens Committee for the
6 Protection of the Environment?

7 MR. KARMAN: With respect to the petition for
8 intervention on behalf of the Environmental Defense Fund, Inc.,
9 our position is that we feel that the petitioner should make
10 more clear and definite how its particular interest -- by that
11 I mean the organization itself -- is affected or will be
12 affected by this application and that these specific
13 contentions should be stated within the confines of the issues
14 as defined by the Atomic Energy Commission in its notice of
15 hearing and under Section 2.714 of the Rules of Practice.

16 With respect to the Citizens Committee for the
17 Protection of the Environment, thereto we feel that the
18 applicant or petitioner has indicated some issues which we
19 deem to be relevant to this hearing, but we feel it would be
20 necessary and desirable to have on the record a list of
21 some of the officers or directors of this organization and
22 possibly some authorization on behalf of the organization,
23 authorizing an intervention in this particular hearing.

24 We don't object to their intervening, Mr. Chairman.

25 CHAIRMAN JENSCH: Does Counsel for these

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1 petitioning parties desire to speak to those matters and also
2 to the matters alleged by the applicant to your petition to
3 intervention?
4 For instance, do any of the members of your
5 organization live near this site or is this entirely an
6 overall type of presentation?
7 MR. BERLIN: Mr. Chairman, approximately half of
8 the 2000 members do live in the vicinity. With respect to the
9 suggestion by staff counsel that a submission be made
10 disclosing both the officers and directors an authorization
11 for a leave to intervene, we certainly will comply with that
12 request, but hope that our intervention could be permitted,
13 subject to the submission of that information as requested.
14 It is understood that the applicant does not
15 oppose to any extent the intervention of the Citizens Committee
16 for the Protection of the Environment.
17 With respect to the Environmental Defense Fund, Inc.
18 it is both a national environmental organization and a
19 membership organization. At the present time its membership
20 includes approximately 10,000 people located throughout the
21 United States, but in view of the fact that the Environmental
22 Defense Fund, Inc. is in the State of New York, a significant
23 portion of that membership is comprised of residents of the
24 City of New York and the surrounding metropolitan area.
25 We think this in and of itself substantially

1 justifies intervening.

2 Beyond that, the Environmental Defense Fund, Inc.
3 is raising the issue of whether or not the applicant's
4 submission is in compliance with the Atomic Energy Commission
5 -- notwithstanding the scope of this Board's entry into the
6 Act itself. It is certainly clear that the one issue is
7 whether or not the applicant has complied with it.

8 The Environmental Defense Fund, Inc. is raising
9 this as an issue, and I think it is certainly an appropriate
10 issue for consideration by this Board.

11 CHAIRMAN JENSCH: Does the applicant desire to
12 speak to those matters?

13 MR. UPTON: Insofar as the Citizens Committee is
14 concerned, Mr. Chairman, would you believe that we have no
15 basis to object to the admission of the Citizens Committee
16 for the Protection of the Environment as intervenors.

17 We think some points in the intervening petitions
18 are too general and some of them entirely too specific.

19 As far as the Environmental Defense Fund, Inc. is
20 concerned, we did not in the final analysis oppose to the
21 administering party and I would like to explain that a little,
22 if I may.

23 I had occasion, a couple of years ago, in
24 connection with the case that I was arguing before the Court
25 of Appeals in the District of Columbia, to look into the law

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1 standing, in considerable detail, and I must say I found it
2 confusing.
3 There are a number of cases which I can state where
4 it states a specific economic hardship must be alleged before
5 a party can be permitted to intervene.
6 There are other cases which indicate that the
7 general public interest or the assertion of the general public
8 interest in its petitions.
9 Under those circumstances, and since I did not feel
10 I wanted to delay this proceeding to any extent by arguing a
11 purely technical question, the outcome of which I was not
12 certain, we did not object to it intervening by the
13 Environmental Defense Fund, Inc.
14 Once it is a party, whether or not there is anything
15 for it to do as a participator in the proceedings, depends
16 upon certain rulings which I assume will be made by the Board
17 regarding that jurisdiction.
18 That is all I have to say.
19 CHAIRMAN JENSCH: Did I understand the view of the
20 staff to object to the participation and to request there be
21 furnished specifications of delineation of interest?
22 MR. KARMAN: There was a request for specific
23 delineation of intervention.
24 CHAIRMAN JENSCH: You made no objection to other of
25 the two groups to intervene; is that correct?

MR. KARMAN: That's correct.

CHAIRMAN JENSCH: Let us proceed to the other matters from parties who have sought participation.

Let us take the Hudson River Fishermen's Association.

It says here by petition to intervene.

Mainly the letter does not comply with the rules of practice of the Commission.

I wonder if there is someone here as speaking on behalf of the Hudson River Fishermen's Assocation?

(No response.)

CHAIRMAN JENSCH: The Board hears no response.

The Board will have to inform the Hudson River Fishermen's Association that the letter does not comply with the rules of practice of the Commission, either as to its verification or as to its statement of interest as to how it may be affected and what its contentions are in this proceeding.

That is about as far as we can give consideration to the Hudson River Fishermen's Association letter, lacking any representation orally or in letter form from that organization.

Is William C. Hip here or some representative on his behalf?

(No response.)

CHAIRMAN JENSCH: The Board hears no response. The

1 communication to William C. Hip will be that the letter does
2 not comply with the rules of practice of the Commission nor
3 does it constitute a petition to intervene within the scope of
4 the rules of practice of the Atomic Energy Commission.
5 Is there someone here speaking on behalf of the
6 petitioner, the State of New York, for intervention in this
7 proceeding?
8 MR. SHEMIN: Yes, my name is Paul Shemin, the
9 address as stated on the petition, 87th Street, New York, New
10 York, 10013. I appear on behalf of the Attorney General of
11 the State of New York on behalf of New York State.
12 CHAIRMAN JENSCH: Do the parties desire to speak to
13 this petition to intervene?
14 Has the applicant received a copy?
15 Does the applicant desire to speak to this
16 petition?
17 MR. UPTON: We have no objection to the petition
18 of the State of New York.
19 We noticed that the petition to intervene doesn't
20 really take a position, but New York State is permitted to
21 intervene under Section 274 of the Atomic Energy Act.
22 CHAIRMAN JENSCH: I didn't understand that that
23 petition was filed pursuant to that provision, but I
24 understood it was filed under the general rule of permitting
25 intervention.

MR. UPTON: Excuse me, sir, I believe you will find it does state pursuant to 274. I am talking about the petition of the Attorney General of the State of New York, first page, second line.

CHAIRMAN JENSCH: I didn't find any rule mentioned in the petition.

There is a rule that permits a state to participate as a party without asserting any position.

MR. KARMAN: Mr. Chairman, might I suggest that Section 2.715c may be the section that you alluded to.

CHAIRMAN JENSCH: That is correct, but there is no statement in this petition referring to any particular rule and there is a provision under the rules permitting a party to participate as a party in the proceeding, and in some proceedings we have had a particular representation by a state that it desired to participate as a regulatory party without any limitations, if there be any, under Section .2.715(c).

End Tape 1

Incidentally, if I may digress for a moment, it is requested that there be no smoking in the room. At this time we do want to acknowledge the courtesy of the Hendrik Hudson High School administration group for allowing the Atomic Energy Commission to conduct this hearing in the auditorium.

We did have a hearing in this auditorium some years back, and the Atomic Energy Commission did welcome the opportunity to speak with the students.

And does the staff have any objection to the participation of the State of New York in the proceedings?

MR. KARMAN: We have no objection, Mr. Chairman.

The only possible objection we would like to raise is whether or not this petition is being submitted as a 2.714 or 2.75(c) under our rules?

CHAIRMAN JENSCH: We will construe it as 2.714.

Is there any objection by the Citizens Committee for the protection of the environment and the Environmental Defense Fund, Inc., to the intervention of the State of New York?

MR. BERLIN: No objection.

CHAIRMAN JENSCH: Very well. The State of New York is permitted to intervene and will become a party.

We also have letter communications from -- a telegram communication from J. Bruce MacDonald, counsel for the New York State Atomic Energy Council.

jb2 1 Is he here?

2 MR. MAC DONALD: I am here, J. Bruce MacDonald,

3 representing the New York State Atomic Energy Council, 112

4 State Street, Albany, New York 12207.

5 I would also like at this time to enter the appearance

6 of Joseph Sinto, who at this time is engaged in the Long Island

7 Lighting proceeding at Sherman, New York.

8 In addition to the telegram that we have sent to the

9 Commission, we have also filed a mail on November 27th, a

10 formal petition citing both the rules of the Commission and

11 Sections 274 of the Atomic Energy Act which co-parallels, as

12 we understand it, the 2.71(c).

13 CHAIRMAN JENSCH: Do you have a copy of that petition?

14 MR. MAC DONALD: I do, sir.

15 CHAIRMAN JENSCH: Could we have a copy so we may

16 review it?

17 MR. MAC DONALD: Yes. (Handing document.)

18 CHAIRMAN JENSCH: We are receiving a copy of the

19 petition for leave to intervene by J. Bruce MacDonald.

20 Have the other parties, the Applicant and the staff,

21 received copies of this petition to leave, to intervene?

22 MR. KARMAN: Yes, Mr. Chairman.

23 CHAIRMAN JENSCH: Mr. Upton?

24 MR. UPTON: I now have a copy, Mr. Chairman.

25 CHAIRMAN JENSCH: You now have a copy, but you have

jb3 1 not received one prior to this time?

2 MR. UPTON: We were notified over the telephone of

3 the position. I have now received a copy of the document.

4 CHAIRMAN JENSCH: Will you take a few minutes to

5 peruse it and let us have your comments?

6 MR. UPTON: Mr. Chairman, I have read the petition.

7 I have no objection to the admission of the Council, and I

8 might add that I am pleased to note that the State of New York

9 is not only interested but doubly interested in the outcome.

10 CHAIRMAN JENSCH: I didn't quite get you.

11 MR. UPTON: I am pleased to know that the State of

12 New York is not only interested, but doubly interested in the

13 outcome of this proceeding.

14 CHAIRMAN JENSCH: I was going to get to that point

15 later, as to who speaks for the State of New York, the Attorney

16 General or the Atomic Energy Council. We will have comment

17 to that later on.

18 If the staff has any objection?

19 MR. KARMAN: The staff has no objection.

20 CHAIRMAN JENSCH: How about the Environmental

21 Defense Fund?

22 MR. BERLIN: No objection.

23 CHAIRMAN JENSCH: How about the State of New York?

24 MR. SHEMIN: No objection.

25 CHAIRMAN JENSCH: There being no objection, the

jb4 1 petition for leave to intervene by the State of New York --
2 that is, the first one, Paul Shemin, speaking on behalf of
3 Attorney General Lefkowitz, as I understand it?
4 MR. SHEMIN: Yes.
5 CHAIRMAN JENSCH: This petition for leave to inter-
6 vene by the State of New York perhaps should be limited to
7 leave to intervene by the Atomic Energy Council of the State
8 of New York.
9 There being no objection, the Atomic Energy Council
10 of the State of New York will be a party to the proceeding.
11 There is a statement here from Mary Hays Weik.
12 Is Mary Hays Weik here?
13 MRS. WEIK: I am here.
14 CHAIRMAN JENSCH: Mrs. Weik, you have participated
15 in two other proceedings in which I am familiar, and I believe
16 on each occasion prior to this the question was asked whether
17 you are going to enter a petition setting forth the interest
18 you have in the proceeding, the contention you would make and
19 the manner in which you would intervene.
20 I believe the two previous times the parties have --
21 if not specifically, but impliedly -- waived your letter of
22 intervention.
23 With such a broad experience that you have had in
24 the two previous cases, inquiry is made as to whether you are
25 going to file a petition to intervene in this proceeding?

jb5 1 Your letter states you are going to file on, and
2 I wonder if you have?
3 MRS. WEIK: Perhaps it is your way of looking at
4 the grammar.
5 I was being polite in saying I wish to file.
6 I believe it says here that this preliminary hearing
7 is to be as informal as possible.
8 CHAIRMAN JENSCH: Among the parties.
9 MRS. WEIK: That's correct, among the parties.
10 Well, the point is that the contention, my reasons
11 for taking part are all given in the letter. I don't see any-
12 where in here where it says it has to be a separate piece of
13 paper.
14 If you look in the letter, I put it briefly because
15 I thought maybe you would be sort of tired getting all of these
16 statements. It merely has the address of the Commission at
17 the beginning.
18 CHAIRMAN JENSCH: The rule under which intervention
19 is, is Section 2.714 which says any person whose interest may
20 be affected by a proceeding or who desires to participate
21 shall file a written petition under oath or affirmation for
22 leave to intervene.
23 MRS. WEIK: Which paragraph is that?
24 CHAIRMAN JENSCH: The first six lines.I have been
25 reading, and I don't see any formal petition to intervene,

jb6 1 under oath.

2 MRS. WEIK: Or affirmation, it says.

3 CHAIRMAN JENSCH: No later than the time specified

4 by the Notice of Hearing.

5 The petition shall set forth the interest of the

6 party in the proceeding, how the interest may be affected, and

7 the contentions of the petitioner in reasonably specific detail.

8 That phrase "reasonably specific detail" has been

9 given a variety of interpretations, and I think those more

10 experienced in these proceedings are expected to be a little

11 more specific than those who have not had that experience.

12 To you, Mrs. Weik, with two proceedings of experience, I am sure

13 we will have to ask you to set forth in reasonably specific

14 detail your contentions, because the parties do have the

15 difficulty, and I think it was expressed at one of the last

16 proceedings, they didn't know just where or what your contentions

17 were specifically so that they could give consideration to them

18 and plan to offer testimony --

19 MRS. WEIK: As I recall, they seemed to understand

20 them pretty well.

21 CHAIRMAN JENSCH: Let me ask the parties:

22 Would you have any objection to Mrs. Weik appearing

23 here and preparing a formal petition to intervene along

24 the lines of a letter, but setting forth the contention she

25 makes in reference to the radiological safety?

jb7

Is there any objection on behalf of the Applicant?

MR. UPTON: No objection, Mr. Chairman.

CHAIRMAN JENSCH: Is there any objection on behalf of the staff?

MR. KARMAN: Mr. Chairman, we have no objection to the letter of the petition as submitted.

However, we would ask that the participation or intervention by Mrs. Weik be limited to her participation on the issues which have been prescribed for consideration by the Commission.

Now, one additional fact. Mr. Chairman, I am not quite certain in my own mind whether or not this is a petition to intervene on behalf of this committee to end radiological hazards or on behalf of Mrs. Weik personally.

CHAIRMAN JENSCH: I think that is one thing that would be clarified if a formal petition was filed.

Is there any objection by the State of New York if a formal petition was filed before the evidentiary hearing by Mrs. Weik?

MR. SHEMIN: The State of New York has no objection, Mr. Chairman.

CHAIRMAN JENSCH: Is there any objection by the Citizens Committee for the Protection of the Environment and the Environmental Defense Fund, Inc.?

MR. BERLIN: No objection, Mr. Chairman.

jb8 1 CHAIRMAN JENSCH: And is there any objection by
2 you, Mr. MacDonald, for the New York State Atomic Energy
3 Council?
4 MR. MAC DONALD: No objection.
5 CHAIRMAN JENSCH: Mrs. Weik, I am sure we may indulge
6 the courtesy of the staff counsel to whom we turn when any
7 member of the public wants or is anxious to learn the rules
8 and needs some assistance, and I will ask you to confer with
9 the staff, and will the staff assist Mrs. Weik?
10 MR. KARMAN: We will be glad to assist her, Mr.
11 Chairman.
12 MRS. WEIK: Mr. Chairman, I would like to understand,
13 just enlarging the statement makes it more legal?
14 CHAIRMAN JENSCH: If you will confer with the staff.
15 Is there any objection to Mrs. Weik tentatively
16 participating in this pre-hearing?
17 MR. UPTON: No objection.
18 CHAIRMAN JENSCH: The staff?
19 MR. KARMAN: No objection.
20 CHAIRMAN JENSCH: Mr. MacDonald?
21 MR. MAC DONALD: No objection.
22 CHAIRMAN JENSCH: Mr. Shemin?
23 MR. SHEMIN: No objection.
24 CHAIRMAN JENSCH: Does that dispose of all persons
25 seeking to participate by way of intervention?

jb9

MR. ARCARO: Mr. Chairman, my name is George Arcaro, attorney for CLEAN, the Citizens League for Education About the Nuclear Energy, which filed an informal petition to be intervenors in this proceeding.

Apparently the Atomic Energy Commission did receive the letter, and we admit it is informal.

At this time we would like to petition permission for the late filing of our petition to intervene and participate in this proceeding.

CHAIRMAN JENSCH: Can you indicate generally at the outset what are your contentions in reference to this application and the issues which have been described by the Commission for consideration?

MR. ARCARO: The Citizens League for Nuclear Energy for New Rochelle, New York --

CHAIRMAN JENSCH: New Rochelle is on the Sound, isn't it?

MR. ARCARO: Yes. Twenty miles from Indian Point. On the basis of the Brookhaven Report, in the event of a malfunction of the plant, injuries, damages, and physical injuries can be sustained 45 miles from the plant.

Our objection, which we have in writing here --

CHAIRMAN JENSCH: Can we take a look at those, please?

Have you given a copy to the Applicant and to the

jb10: staff?

MR. ARCARO: Yes, I have.

CHAIRMAN JENSCH: We will receive this. It is not being received for the record, but just to be reviewed by us for the informal purposes of this proceeding.

Without taking time to read it, will you go ahead orally and indicate generally what is your organization, who are they, where do they live and what do you contend in reference to this proceeding that will be material for consideration?

MR. ARCARO: Our paper delineates our position here with respect to the radio-active poisonous wastes being emitted by such a plant.

Our contention is that the problem of these wastes has not been solved, and until such time as that occurs these plants should not be further licensed.

We cannot afford to license plants piecemeal and somebody discover one day that we engulfed the country in deadly radioactive wastes and garbage.

Dr. Chadwick of the United States Public Health Service --

CHAIRMAN JENSCH: I don't want to get into matters of evidence; I want to get into the contention of your organization.

Your organization objects to radiological gaseous effluent; is that correct?

jb11 1 MR. ARCARO: Yes, and the malfunctions of the plant.
2 All of the thirteen prior experimental plants have suffered
3 serious mishaps and malfunctions.
4 Indian Point No. 1, which preceded this plant, has
5 been operating without success since its inception.
6 CHAIRMAN JENSCH: This is a matter of evidence. I
7 am trying to summarize it.
8 I imagine that the matters of evidence will be
9 contested. They may disagree with you.
10 By the way, have you read the Safety Analysis
11 reports submitted by the Applicant in this proceeding?
12 MR. ARCARO: No, I have not.
13 CHAIRMAN JENSCH: Perhaps reference will be made
14 to that.
15 Is there not a copy of the final Safety Analysis
16 report filed by the Applicant available for review at this
17 office?
18 MR. KARMAN: Yes, Mr. Chairman, there is a copy for
19 review at this high school in the library.
20 MR. UPTON: Mr. Chairman, the Applicant has made
21 available at the Buchannan Service Center, and has so notified
22 the public through ads in the newspapers that there would be
23 a copy of the updated application at the Buchannan Service,
24 a copy of the environmental reports filed by the Government
25 and the State, and further, an environmental report filed with

jb12 1 the Atomic Energy Commission, and further stating that there
2 would be a person on duty there during regular working hours.
3 I mention this to Mr. Arcaro before the proceeding
4 began this morning, and he is certainly welcome to go there.
5 CHAIRMAN JENSCH: I think that information is
6 particularly helpful.
7 I think it has been the experience in many of these
8 cases that the person seeking to participate in a proceeding
9 by way of intervention or in any other way, even in way of
10 making a limited participation statement, if he has not read
11 the documentary material, and as a consequence many allegations
12 and contentions are made that may not ordinarily be made had
13 they read the documentary material.
14 For instance, you stated there was no prototype.
15 I can't say that I can give you a particular reference.
16 We did receive the final Safety Analysis report, I think,
17 on November 23, 1970, so I have not had a chance to do too much
18 reading of it and I don't believe other members of the Board
19 have, and we may not be able to express at this pre-hearing
20 conference all of the matters for consideration that ordinarily
21 we do do.
22 But my recollection is that the final Safety Analysis
23 report does make a reference to the fact that other nuclear
24 reactor facilities of a lesser size have in effect served as
25 prototypes in the step-by-step increase to the size presently

jb13 under consideration here. Thus, the allegation -- if that be the position of the organization which you represent, the Citizens League for Education About Nuclear Energy, Inc., is directly in conflict, and maybe we would have to resolve it, but I think it is directly in conflict with the allegation by the Applicant, and I would urge you to give very careful consideration as to the final Safety Analysis report and all of the parties who are participating in the proceeding.

I think we can safely exclude the Applicant from that and the staff. I think the staff will, if I understand their safety evaluation, and they have been working on this for many years.

All of the parties are urged to read this final Safety Analysis report before any consideration is given to participating in the proceeding.

MR. ARCARO: It was only a week ago the final analysis was prepared. You can understand I don't have it.

CHAIRMAN JENSCH: It was prepared long before that. It was just received by the Atomic Safety and Licensing Board.

It should be stated that this Atomic Safety and Licensing Board has nothing to do with an application for an operating license until designated by the Atomic Energy Commission on December 1st, 1970.

No one here, other than myself, is regularly employed by the Atomic Energy Commission.

jb14

The Atomic Energy Commission has set up this Board as an independent group. We are approaching this matter for the first time since we were appointed by the Atomic Energy Commission for the operative license on November 13th. The only point I have is this: You don't have a proper petition.

Is there any objection to this organization filing late a formal petition to intervene, so that consideration can be given if a formal petition within the scope of the matters set forth in the Commission's rules of practice is submitted?

MR. UPTON: No objection, Mr.Chairman.

CHAIRMAN JENSCH: The staff?

MR. KARMAN: Mr. Chairman, though we have no objection, I wonder if we can have some indication as to when this will be filed?

CHAIRMAN JENSCH: I think this is a very valid inquiry. I think we said it to Mrs. Weik on or before the evidentiary hearing on the December 17th date.

MR. ARCARO: I can do it within a week.

CHAIRMAN JENSCH: Today is December 1st. We will fix the date of December 8th on which you can submit your petition.

The Applicant has already stated it has no objection to the filing of the petition. It will give consideration to the matter after the petition has been filed.

jb15 1 Mrs. Weik, how soon do you think you can have --

2 MRS. WEIK: As soon as you want one.

3 CHAIRMAN JENSCH: Is December 8th all right?

4 MRS. WEIK: Yes.

5 MR. UPTON: Mr. Chairman, you plan to communicate

6 with some of the other people who sought to intervene, and I

7 would hope in your communication to them you would indicate

8 such a date to them.

9 CHAIRMAN JENSCH: I can't indicate it because they

10 didn't answer.

11 Do you suggest I provide a time in which they can

12 file a formal petition? Do you suggest that be done?

13 MR. UPTON: Yes, sir. It seems to me --

14 CHAIRMAN JENSCH: You would have on this no objection

15 to their doing it?

16 MR. UPTON: No, sir.

17 CHAIRMAN JENSCH: All right.

18 MR. KARMAN: Mr. Chairman, there was handed to me

19 this morning a letter dated November 26th, 1970, postmarked

20 November 28th, 1970, Peekskill, New York, addressed to the

21 Atomic Energy Commission.

22 I would like to attend the December 17th public

23 hearing regarding the second nuclear plant in Buchanan, New

24 York. I am filing a petition for leave to intervene in the

25 proceeding.

jb16 1 "Sincerely, Lee Ronald Fritz."

2 The name looks like Fritz. Address, 1448 Riverview

3 Avenue, Peekskill, New York.

4 CHAIRMAN JENSCH: Does that same generosity by the

5 Applicant extend to the suggestion that that party will be

6 informed for permission to be given for late filing?

7 MR. UPTON: What is the postmark dateon that letter?

8 CHAIRMAN JENSCH: November 28th, although it was

9 dated properly November 26th.

10 MR. UPTON: Obviously it does not satisfy the require-

11 ment for time.

12 I think the broad position for the Applicant to

13 take is that we want participation in these proceedings and

14 we reserve the right to contest the interest affected, the

15 nature of its contention when the petition is filed in a

16 proper matter, but I am not going to object to the filing of

End 2 17 a petition on the ground of time, the late date of time.

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CHAIRMAN JENSCH: The rights of the parties are reserved to make such contest to the petitions as they desire.

MRS. WEIK: In the rules of practice it says a person admitted to intervention possesses equal rights with the applicant, right?

CHAIRMAN JENSCH: Yes.

MRS. WEIK: So I wonder why the applicant's statements have not been submitted to the intervenors for their approval.

CHAIRMAN JENSCH: What statements are you referring to?

MRS. WEIK: The documents they introduced.

After all, since the citizens are the people --

CHAIRMAN JENSCH: Wait a minute. There have been no formal documents introduced.

MRS. WEIK: I don't see the applicant's statement submitted to the intervenor for his approval. Equal rights are equal rights.

CHAIRMAN JENSCH: Not only are they equal rights, but women's liberation has more than equal rights.

MRS. WEIK: I would like to ask that no particular joke be made by the presence of a woman in this proceeding.

CHAIRMAN JENSCH: None at all. I endeavored to find out if you had any objection or any of the parties have any objection to permission being granted for late filing of

ip 2

1 petitions to intervene, and I heard no objection.

2 MRS. WEIK: I meant the applicant. That isn't

3 submitted to us in any way.

4 CHAIRMAN JENSCH: What is that?

5 MRS. WEIK: The documents, the statements.

6 The applicant has certainly a prior and prejudice

7 position.

8 I don't see why the applicant is given -- it is up

9 to him whether he shall approve the presence of the intervenor?

10 CHAIRMAN JENSCH: As a party, any party can express

11 an objection to participation.

12 The application is a party, the staff is a party,

13 the State of New York is a party, the Citizens Committee for

14 the Protection of the Environment is a party, the Environmental

15 Defense Fund, Inc., is a party; they are all parties.

16 MRS. WEIK: I was not asked if any party should take

17 a part in this.

18 CHAIRMAN JENSCH: My inquiry when I said is there

19 any objection from the other parties was meant to embrace you

20 as well as the State of New York, the Committee for Protection

21 of the Environment, and the Environmental Defense Fund.

22 MRS. WEIK: But not the applicant's statement.

23 CHAIRMAN JENSCH: Perhaps you would like to

24 consider that with the staff.

25 MRS. WEIK: I would like to consider it with the

ip 3

CHAIRMAN JENSCH: Is there any person here that intends to participate in the proceeding by way of limited participation?

The Board hears no response.

If anybody here intends to participate with limited contention --

MR. BERLIN: Mr. Chairman, do I understand that both the Citizens Committee for the Protection of the Environment and the Environmental Defense Fund, Inc., have been given full party status?

CHAIRMAN JENSCH: Yes, but as I understand your prior statement to the suggestion from staff counsel, you will --

MR. BERLIN: That was limited, as I recall, Mr. Chairman, in listing the officers and directors a la the Citizens Committee for the Protection of the Environment.

CHAIRMAN JENSCH: The Commission has, as a matter of custom in our last staff council, maintained a copy of the transcript of each day's session for the same public review as is provided for the final safety analysis report submitted by the applicant.

MR. KARMAN: A copy of the transcript will be in the public documents office.

CHAIRMAN JENSCH: Very well, you will have access to the documents at a place for public review. Acknowledgement

ip 4

is made now of the document being placed on the table here, a proposed agenda for prehearing conference on application for operating license.

MR. UPTON: Mr. Chairman, I do have some discussion for changes in the agenda, and it also involves stating an agenda for the December 17th evidentiary hearing and also for a post-hearing proceeding on the 18th of December.

CHAIRMAN JENSCH: Are you assuming that the hearing will be concluded by December 18th?

MR. UPTON: No, sir. Please understand, Mr. Chairman, I am not trying to push this plan on anyone, but Mr. Larson will distribute copies of it to the Board so you can at least follow the program I have.

CHAIRMAN JENSCH: We are receiving from Mr. Larson your proposed agenda for the pre-hearing conference.

Would you like to make a statement, Counsel for the Applicant?

I don't think there is any necessity of having any formal outline for the pre-hearing. At any time any party here who has a suggestion to make to any matter, please stand up so we will move along without specific call.

MR. UPTON: I would rather stand up to do this because --

CHAIRMAN JENSCH: I wish you would, too. We can hear you better.

ip 5

1 MR. UPTON: I think better on my feet.

2 It is certainly evident from the number of
3 interventions and attempted interventions that have already
4 been filed in this proceeding that we may be faced with a
5 complex and somewhat protracted proceeding.

6 It would be easy for me as applicant's counsel to
7 look at the situation in a Pollyanna attitude and say there
8 has been a hearing ordered on the 17th of December and we are
9 going to talk about the need for power that Consolidated
10 Edison has and we are going to push the intervenors to have
11 their cross-examination on the 18th of December, and we will
12 take a week and wind up the proceeding.

13 It seems to me if the applicant really feels the
14 need for the power in the northeast and feels it is something
15 important as a background, not on the foreground of this
16 proceeding, if the applicant really feels it is important,
17 it is up to the applicant to take a responsible position, a
18 positive position as to how this hearing can be facilitated
19 by trying to set limited objectives which can be realized
20 within certain periods of that time, and from there on moving
21 into other limited objectives which can be realized in certain
22 periods of time.

23 So what you can see from these papers,
24 Mr. Chairman, is an attempt on my part to set forth such a
25 limited program for the 17th and 18th.

ip 6

I considered the possibility of asking the Board to have another pre-hearing conference on the 16th.

CHAIRMAN JENSCH: Don't let me discourage that.

I think any time any parties feel the need of a pre-hearing conference type of thing, without the necessity of having assembled a great many witnesses, it would be worthwhile to do it. So I encourage any party to do that, please.

MR. UPTON: One problem I have, Mr. Chairman, is that I am not sure whether the facility will be available.

CHAIRMAN JENSCH: We will find one.

If somebody makes a suggestion, something can be worthwhile, and the Board deems it advisable, we will find a facility.

MR. UPTON: Also, Mr. Chairman, I want to suggest that under the present rules of pre-hearing conferences and hearing conferences do not themselves have to be held in the area, although the hearings do.

It seems to me at some time during the course of the proceeding the Board might find it convenient, as was done in one post-hearing conference, if I remember, as I appeared before the Chairman, to have a hearing conference in Washington rather than in the area, in view of the difficulty of finding facilities, but that is a second thought.

It seems to me that it would be unreasonable of me to expect that the intervenors -- and now I refer primarily to

ip 7

1 the Citizens Committee for the Protection of the Environment,
2 which clearly has raised questions in the issues raised by
3 the Atomic Energy Commission, would not be ready to cross-
4 examine our witnesses on the 17th and 18th, because they need
5 to study the material.

6 What I would like to see is that we have a hearing
7 on the 17th, so that members of the public notified as to the
8 hearing on that date could appear, and possibly we could put
9 on our testimony in this case and not try to go further on that
10 day and not expect to go further on that day.

11 In the meantime, I would hope that counsel for
12 the various intervenors would act with the same responsibility
13 toward what we feel is a seriousness of the power situation
14 in New York, that we are trying to act toward them in giving
15 them a reasonable time to prepare this case, and at the
16 conference on the 18th, that we will be able to really go into
17 some detail about the nature of any discovery proceedings that
18 we wish to bring and to any further specification of
19 contentions they wish to make at that point, and also perhaps
20 on the 18th we would try then to see whether or not we could
21 set up some further hearing, not try to do something like that
22 today on a long-term basis, which is highly impractical.

23 In the meantime, I hope that I have the Board's
24 permission to talk with counsel for the authorities on a most
25 informal basis. Anything that we can supply to them which they

ip 8

1 feel they need and which I don't feel is unreasonable, we will
2 certainly supply.
3 We will, of course, furnish copies to the Board
4 of anything we supply on this informal basis, and I suppose
5 some sort of stipulation or order will have to be entered into
6 the record at some point that these documents have been
7 supplied.
8 We are ready to start that process right away.
9 For example, one of the contentions made by the
10 Citizens Committee for the Protection of the Environment is
11 a reference to the 131 form.
12 I would like this Committee to tell us as soon as
13 it can when it is prepared to move forward on that particular
14 issue, what more does it need from us by way of discovery,
15 and discovery is a very broad and loose word and includes a
16 number of things under that umbrella -- interrogatories,
17 depositions -- how soon can they move forward?
18 I would expect at the time of the conference on the
19 18th to be able to get some definite information at least on
20 some of the issues involved and to set some sort of schedule.
21 Now, furthermore, I would hope that to some extent
22 the proceedings can be conducted in the form of depositions
23 and interrogatories rather than holding actual hearing
24 sessions.
25 CHAIRMAN JENSCH: There is a better procedure than

ip 2 9

that, and I think the applicants generally have shown in the last six or eight months, since many of these cases have taken a different approach, which I think lends to greater expediency in the proceedings, the applicants have shown a willingness to voluntarily supply anything without the necessity of going through the interrogatory and the deposition type of thing.

I do think the parties can do more among themselves than a formal proceeding can accomplish, by way of selecting the kind of evidence they want, knowing the evidence that will be made and requests made for certain kinds of evidence.

I think in the last six months members of the Board have necessarily weighed the guidelines to the scope of the evidence that will be relevant and material in these proceedings.

I think we are pretty well along with the guidelines and I think that the parties should do more than consider what evidence should come in. Parties represented by responsible lawyers should be able to analyze the issues and the scope of the contentions and also envision the type of evidence that will be needed to support those contentions.

I think the applicants in many of these licensing cases have been very abundant in their presentation to intervenors. I think it is incumbent upon the intervenors to know what is the final safety analysis report and what their

ip 10

1 contentions are.

2 Many of these -- the State of New York is not new
3 to this type of proceeding, and we would expect the State of
4 New York to have a specific contention in this type of
5 proceeding. We would expect them to come up with specific
6 contentions that can be resolved among the parties and,
7 likewise, for those resolutions of matters, and not to assemble
8 a group at a formal hearing and bring in a bunch of witnesses
9 who have taken time to interrupt their schedules -- I think
10 it is wrong that some witnesses have flooded into cases,
11 hearings, when there is no reasonable likelihood of their
12 being called.

13 If the attorneys had conferred among themselves,
14 a schedule could have been made for their presentation.

15 I think the parties here know the scope of the
16 examination, the intent, and they should inform the attorney
17 relating to those witnesses to see if a schedule could be
18 worked out with the convenience of the witnesses and the
19 parties.

20 There is a recent case going on in Michigan where
21 the applicant has three or four representatives of management
22 there. There is one technical man for the contractor, there
23 is one technical man for the steam supply system, and that is
24 all.

25 When they start talking about getting other

ip 11

1 witnesses, they arrange a schedule for other witnesses. They
2 don't have them sitting around in a room.
3 I think it is preposterous in a lot of these cases
4 the parties have brought all of the witnesses and then complain
5 because the Board wants them there, and the Board has made no
6 request at all.
7 MR. UPTON: Mr. Chairman, we want to supply, as
8 quickly as possible and as fully as possible, information
9 which is requested by the intervenors.
10 I think you do have a problem of which is first,
11 the cart or the horse. In other words, until the intervenors
12 specify what their contentions are, if they simply ask for a
13 broad, sweeping discovery, "Please provide all of the documents
14 having to do with the case," I think we are going to have
15 some objections to that and we will take that up with the
16 Board.
17 At the same time, I think the very purpose of the
18 proceedings is to enable the intervenor to make a proper
19 presentation of the case.
20 We are not going to have a dog-in-the-manger
21 attitude about trying to stand on our rights.
22 CHAIRMAN JENSCH: Just to respond specifically, at
23 least in one respect, the Board will meet on December 17th.
24 We feel that the notice of hearing by the Commission requires
25 the Board to start the case when the Commission sits. After

ip 12

that we will arrange pre-hearing conferences as the parties would advise us it is convenient to do so.

I think that the public filings by the parties before this proceeding, i.e., the applicant and the staff, have provided a basis for inquiries really of the intervenors, tentative and complete intervenors in this proceeding, to speak, perhaps, a little more specifically about their contentions and their request for data, if any.

I think a great deal of delay has occurred in some proceedings because of intervenors for one reason or the other have not been fully informed.

I think to be fully informed would be accomplished to a large degree by reading the publicly filed documents in reference to the proceeding.

Now, as Mr. Arcaro has pointed out, he perhaps did not know there was a public availability of documents here in the Hendrik Hudson High School.

I see now that that has been made known we would expect Mr. Arcaro to fully inform himself about these matters, because many times inquiry has been made by intervenors respecting matters quite fully set forth in these documents, maybe not as clearly as they would like, but they are entitled to have elucidation.

If you want to find out that Consolidated Edison give its address, that is pretty easy. There are many other

ip 13

1 matters that are quite clearly set forth.

2 Do you object, for instance, to the proposed limit

3 on radioactive relief, for instance.

4 I think the final safety analysis report indicates

5 how they propose to operate. What is the objection as to that

6 proposal for relief, and do you have evidence, the intervening

7 parties here, evidence to introduce to the admission by the

8 applicants or the staff.

9 Arrangements will be made for the time for the

10 presentation of your evidence, if you can have that evidence

11 written out so the parties may study it. These matters of

12 technical complexity can move along a lot faster if the other

13 parties know what is being asserted and how it is being

14 asserted, and the substance of the assertion, so they can go

15 right into cross-examination and not take time with, "Is the

16 intervenor going to call John Jones?" or, "Are you going to

17 testify about X, Y, and Z."

18 Put it on the paper that you are going to testify

19 about X, Y, and Z.

20 MR. ARCARO: Mr. Chairman, I think this issue of

21 time and due notice to all parties is very important in this

22 matter.

23 If you can compare the proceedings here to a civil

24 proceedings where you have three weeks from time of service of

25 a summons to answer, and three weeks more to answer and three

ip 14

1 weeks more time for discovery and inspection long before the
2 trial, maybe six months, then you can see how time can be
3 saved.
4 What happened here is quite contrary.
5 On November 13th you decided to hold a pre-hearing
6 today. I don't know how anybody could have prepared when they
7 heard a meeting was going to be held on December 1st.
8 I think the entire proceeding is unduly hurried
9 in view of what is involved. Considerable more time should be
10 taken to frame the issues.
11 I agree considerable time is lost just finding out
12 what the issues are, and this will serve all parties best, if
13 there is a little more time given to --
14 CHAIRMAN JENSCH: May I interrupt you.
15 You can be assured that you will have all of the
16 time that appears to be reasonable to make your presentation
17 and cross-examination.
18 One of the things that is happened in many of these
19 cases is that the intervenors have been confronted with exactly
20 to which you just referred. They had to take quite a few
21 sessions of hearings, meet a week, recess a couple of weeks,
22 meet a week, to try to find out exactly where the intervenors
23 were placing their contentions.
24 We are hopeful here that by as many pre-hearing
25 conferences as possible that these issues can be resolved

ip 15

without having witnesses present, after which we will do it.

The thought that on December 17th there is going to be a full presentation of evidence, I would like to urge you to dismiss that from your minds.

This Board has, in view of the interventions in this proceeding and the broad scope of the matters involved here, has not envisioned any complete presentation of this case in December or, I might say, even in January, and sessions will be set up so that the parties can attend, cross-examine the applicants and the staff and to present your own witnesses.

The only thing we are trying to do here now is to try to find out specifically what your contentions are, where you feel that you want to cross-examine the applicant or the staff witnesses, if you could not indicate it so that they will know to bring the witnesses that you want to cross-examine about the subjects you are concerned about. That takes the burden on you. It takes the burden on your to know what the final safety analysis is, so you can ask for the right witnesses.

The staff doesn't have here, as I observed, the usual six or seven staff witnesses, because there is no necessity for their being here. But if the intervenors just say where it is they have specific interest, what it is they want to cross-examine, the witnesses will be brought here or this Board will recess until they are available to come.

ip 16

The parties will have full opportunity, more so, I might add, than any civil proceeding affords the parties.

As you become familiar with the administrative proceeding of the Atomic Energy Commission, you will notice that the primary objective of the Atomic Energy Commission in holding these hearings, is to permit the public to be fully informed and participate and ask questions and make assertions. They want them to be informed about it based upon what there is available to tell them.

We have just found out that intervenors come in and want to participate but they don't know anything about the documents. We hope you will.

Mrs. Weik?

MRS. WEIK: I would like to ask that you list the parties who have information. I would like to know why the final safety report is rot sent automatically to the people who are intervenors.

CHAIRMAN JENSCH: I am sure if your formal petition is filed and there is no objection to it and you become a party, you will then become entitled to everything. Until you become a party no one knows to whom they should send documents.

As far as the staff's safety evaluation, you are a member of the public and are entitled to the documents, and if you write them you will get that.

MRS. WEIK: I would like to know if they are freely

ip 17

available. I live in New York and it is quite a job to come out here. Although I am affected by this plant, the transportation here is difficult.

I would not come out to the power house to read a copy of the safety regulations. In prior hearings, even when copies have been supposedly on display, even at the Atomic Energy Commission offices, they are not available because somebody has taken the copy.

I had a terrible time getting the transcript.

CHAIRMAN JENSCH: Where?

MRS. WEIK: In New York.

CHAIRMAN JENSCH: When?

MRS. WEIK: It was supposed to be at the Board of Health Library; it was not there.

CHAIRMAN JENSCH: From what case?

MRS. WEIK: The Columbia University case.

CHAIRMAN JENSCH: Can you recall the date on which you made your request?

MRS. WEIK: I made my request several times. Nobody could get it.

CHAIRMAN JENSCH: I am sure if you informed -- make a specific note as to the times you make specific requests for documents, and if you could not get them, if you will write that to the Atomic Energy Commission in Washington, D. C., I am sure they endeavor in every way they can to make that

ip 18

available to you.

If somebody else sits there looking at a transcript, they can't provide copies for everyone else that comes in.

MRS. WEIK: Somebody had borrowed it; it was not in the library.

For instance, if I were approved for intervention and filed this formal document which will say in detail what I have already said in the letter, I won't get the document until this has been gone through.

CHAIRMAN JENSCH: What has been gone through?

MRS. WEIK: All of this matter of filing of the separate --

CHAIRMAN JENSCH: If you filed your petition to intervene on December 8, 1970, and if the parties have a chance to answer that and the Board is able to give consideration to it, and if the Board determines on or before December 17th you can become a full party, you will get every document. You can write to the other parties, and they will give you every document that they have heretofore served. YOu will be supplied with every document in this proceeding.

MRS. WEIK: Everything but the time to study it.

CHAIRMAN JENSCH: If you need further time, you will get it, you will get a recess on December 17th.

MRS. WEIK: But what will I do on December 17th?

CHAIRMAN JENSCH: You can come and participate to

ip 19 1 the extent you can. On December 17th, at least we are going
2 to get the applicant's evidence presented. That will make the
3 formal record at least to start out. Then we will do what we
4 can with the staff, and I inferred from Mr. Arcaro he wouldn't
5 feel he would want to go ahead, and that his understanding is
6 he will intend to take a recess.
7 So you can be sure we won't get started until
8 Christmas, and if that isn't enough time, it will be after the
9 end of the year.
End Tape 3
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It will be after the end of the year.

There is no thought in this proceeding that any of the parties will not have reasonable time to prepare their presentation.

Mrs. Weik and I are giving our time, everyone else is paid for it. Not everyone is paid, but you should give time to the citizens taking the time to come here.

CHAIRMAN JENSCH: We will try to have all of our conferences in this region someplace, where we can find space.

I am hopeful, if we can't have space like this, that we can find it somewhere else. We were over at the Springvale Inn today and --

MRS. WEIK: Where does all this two and a half billion dollars go? We have to give our time, and you have --

CHAIRMAN JENSCH: All we can do is consider the issues in this proceeding.

MRS. WEIK: As a member of the public I would like a copy of the safety regulations, and get it right away.

CHAIRMAN JENSCH: The Staff will undertake that.

MR. KARMAN: After the first recess, Mrs. Weik, we will give you a copy.

CHAIRMAN JENSCH: Speaking of recesses, the Board does not intend to have any recesses today, other than a ten-minute recess. So we hope you all ate well.

If December 17th is taken up with a presentation

of the Applicant's evidence, and based upon previous experience I would assume that it would be the Final Safety Analysis as well, and an identification of the witnesses who will be available to support the various sections of the Final Safety Analysis, then we would defer cross-examination in the Applicant's case, we would ask the Staff what its case is. From previous experience, they would say their case is reflected in the Staff Safety Evaluation, plus the supplements thereto.

We would defer cross-examination in that case. And then we would consider a time when the parties will be ready to proceed with cross-examination of the Applicant's case and the Staff's case, and try to fix a time for that after the parties have had a reasonable opportunity to prepare.

Is there any suggestion by the Intervenors in that regard?

MR. BERLIN: Mr. Chairman, yesterday the Environmental Defense Fund did file a motion, and I did have service of these copies to the parties of record prior to this morning.

The nature of that motion is to suggest that the hearing should be postponed, and that is pointed out by the Chairman's suggestions already this morning, but also in order to give appropriate scope to the hearings when they commence, that a new Notice of Hearing should be published in the

1 Federal Register, outlining what we believe to be the environ-
2 mental issues which in our view must be considered as part of
3 this hearing.
4 I would anticipate that the Applicant and other
5 parties will wish to respond to that motion, and I wonder if
6 it would be appropriate to suggest that that be the first
7 order of business on the 17th.
8 Should the Board view our motion favorably, I
9 assume that could alter the future progression of today's
10 events.
11 CHAIRMAN JENSCH: I have not seen the motion to
12 which you refer.
13 We would desire written responses from the parties
14 to the motion, and the Board will endeavor to assemble or
15 give consideration to the matter between now and December
16 17.
17 My suggestion, however, is that that type of
18 matter, if it is within the scope which you have orally
19 outlined here, is one that we may well take up on December 17,
20 and if there does seem to be a necessity for some adjustment
21 in time schedule, we will give consideration to that matter
22 at that time.
23 Ordinarily, unless a recess is taken in a proceed-
24 ing for an inordinate amount of time, the Boards have always
25 felt -- within the scope of the usual rule -- that the parties

are to be informed of the progress of the case, are obligated to attend or read the transcript, to know the trend and the scheduling of the future sessions of the hearing. However, anything more than a month may as well be just a notice in the Federal Register.

As to the contents of that notice, I suggest that we have an oral -- I do feel, however, that if I have read your petition to intervene correctly, that we could go forward with the Applicant's case and Staff's case on December 17, and defer all cross-examination in reference thereto to a time suitable and convenient and reasonable to the parties.

MR. BERLIN: I am sure that can be worked out, Mr. Chairman.

Let me make it clear that neither the Citizens Committee nor the Environmental Defense Fund has any intention whatsoever of delaying this proceeding any more than is absolutely necessary for the presentation of its full case, and we certainly appreciate the hospitality and intentions expressed by the Counsel for the Applicant.

Let me say, as far as the Environmental Defense Fund goes, we anticipate that one of the legal issues that this Board will wish to resolve early in the proceedings goes to the legal scope of this proceeding as it relates to the Environmental Policy Act, as it relates to non-radiological

1 issues.

2 We are presently involved in the Michigan proceed-
3 ing to which you referred, Mr. Chairman, and a briefing
4 schedule has been established in that case with respect to
5 those issues, and we are obliged to file a brief on the scope
6 of the issues as they relate to environmental matters and
7 on the question of the Board's authorities -- these are the
8 Atomic Energy Commission's guidelines -- by, I believe it is
9 January 7.

10 We would, with your permission, indicate our
11 intention also to file what will amount to an identical brief
12 on the same issues in this proceeding, and my intention at
13 this point is merely to let you know, and the parties know,
14 that we intend to address that question as soon as possible.

15 CHAIRMAN JENSCH: You refer to the Midland Consumers
16 Power case?

17 MR. BERLIN: Yes. With respect to the issues by
18 the Citizens Committee for the Protection of the Environment,
19 we think that expedition can be expected there to a greater
20 extent on the environmental issues.

21 We would contemplate that by the eighteenth we would
22 be able to restrict the discovery schedule, and to outline
23 the issues in fairly considerable detail, subject, of course,
24 to the caveat that discovery itself may well turn up
25 additional issues.

1 In terms of a discovery schedule, we would antici-
2 pate by the end of this month, or certainly by the beginning
3 of January, we will be able to not only make our request for
4 the production of documents, but prepare and submit our
5 interrogatories.
6 CHAIRMAN JENSCH: Very well.
7 Is the State of New York prepared to indicate how
8 it would propose to proceed in this case?
9 Is there any data absent that you are seeking in
10 this proceeding?
11 MR. SHEMIN: None at present.
12 CHAIRMAN JENSCH: Now, the Atomic Energy Council?
13 MR. MAC DONALD: None at present.
14 CHAIRMAN JENSCH: Mrs. Weik? Mrs. Weik, do you
15 contemplate making a request for any particular data, in
16 addition to that which has been supplied?
17 MRS. WEIK: No, I will get the data from the
18 different parties. A great deal of it is what I asked for
19 before, and this gentleman said he would supply it.
20 CHAIRMAN JENSCH: Very well. If I may use the
21 anagram, CLEAN does not plan any specific requests?
22 MR. ARCARO: We would like to get the Final Safety
23 Analysis Report that you promised Mrs. Weik.
24 MR. KARMAN: I promised the Staff Safety Evaluation.
25 CHAIRMAN JENSCH: The Staff files a document which

is called a Safety Evaluation, which is an analysis.

MRS. WEIK: I would like the one by the Applicant.

MR. KARMAN: Are you still interested in getting a copy of our Staff Safety Evaluation?

MRS. WEIK: I suppose I will get it eventually, but I would like the Safety Committee report.

CHAIRMAN JENSCH: Are you talking about the Advisory Committee Report on Safety?

MRS. WEIK: That is correct.

CHAIRMAN JENSCH: That is included, as I recall, in the Staff's Final Safety Analysis Report.

MR. ARCARO: Has the Applicant filed a safety analysis report?

MR. UPTON: We have. It is available at the Service Center, and --

MR. ARCARO: But not at this meeting?

CHAIRMAN JENSCH: It is this big (indicating.)

MR. ARCARO: I find it odd it is not present at this meeting, but is elsewhere.

CHAIRMAN JENSCH: It is available, in a sense, here in the public library. I think that your reaction is guided by the fact this is an administrative proceeding, and does not lend itself to a few sheets of paper that you will get in a civil proceeding. They can bring this in right now.

Let's take a ten-minute recess and bring the books

1 down here, and let Mr. Arcaro see them.

2 This is not something you pick up on a news stand.

3 It is a pretty sizeable presentation.

4 MR. UPTON: May I say something else?

5 CHAIRMAN JENSCH: Yes.

6 MR. UPTON: Mr. Arcaro, if you are admitted as a

7 party, we will serve a copy of our papers on you, and the

8 same thing is true of Mrs. Weik, who I believe is under the

9 assumption that you are already a party to the proceeding.

10 MRS. WEIK: I would like to have an objective

11 analysis.

12 CHAIRMAN JENSCH: I think we have some difficulty

13 in this case, perhaps in semantics.

14 I think if you specify specifically what it is you

15 are seeking when you become a party, I think we will move

16 along.

17 I think you talk sometimes about bias from the

18 Applicant's point of view. If the Applicant is going to

19 present his case, I think you are going to have to expect he

20 is going to present the case that looks good to him, and I

21 think he may justifiably feel biased in favor of his case.

22 MRS. WEIK: I don't blame him for it. It seems to

23 me, since I help pay for the printing of the Government's

24 petition, and since I help pay for it I should have a copy of

25 it.

CHAIRMAN JENSCH: At this time, let's recess and reconvene, according to this clock, at ten minutes after twelve.

(Recess.)

CHAIRMAN JENSCH: Please come to order.

I see on the platform here a set of the FSAR, Mr. Arcaro. Have you had a chance to at least note its appearance and the extent of it?

MR. ARCARO: Yes.

CHAIRMAN JENSCH: Do you get some idea why they don't carry these around like a pocket handkerchief, or in their briefcase, for ready reference?

MR. ARCARO: Yes.

CHAIRMAN JENSCH: If you would like to take some time and look at that today -- would you like to have a recess for an hour to do that?

MR. ARCARO: I believe I am a fast reader, but not that fast.

CHAIRMAN JENSCH: I did not expect you to read it all, but you will get some idea of the scope, or maybe you can do it at the end of today.

MR. ARCARO: Mr. Chairman, I have a summary, supplied to me by Mr. Upton's staff, which I would like to first peruse before I go through that.

CHAIRMAN JENSCH: The Board has received a motion

1 from the Environmental Defense Fund, Inc., for an order
2 adjourning the proceeding until the Applicant has done certain
3 things alleged by the National Environmental Act. This is
4 the motion to which we perhaps noted in passing earlier before
5 the recess, and to which we will request the parties to
6 submit a formal written answer.
7 I understand from Counsel for the Environmental
8 Defense Fund, Inc., that he has filed copies with the
9 Secretary of the Commission as well.
10 Is that correct?
11 MR. BERLIN: That's correct.
12 CHAIRMAN JENSCH: Yes, there is a service
13 attached. I don't see the name of the Secretary of the
14 Atomic Energy Commission. I understand that you did so file
15 20 copies?
16 MR. BERLIN: Yes.
17 CHAIRMAN JENSCH: Are we any further along about
18 questions of evidence sought to be desired or issues that
19 could be asserted, or do we have to wait for the normal
20 petitions from these other organizations seeking participation?
21 Is it correct that the Applicant will, on
22 December 17, be prepared to tender the FSAR for formal
23 inclusion within the record, and identification of the
24 witnesses who will be called, if necessary, to support that
25 document?

1 MR. UPTON: That is correct, and also other
2 testimony --
3 MRS. WEIK: As to the information requested that
4 could arise, couldn't it be from cross-examination of
5 witnesses? I mean there would be questions of the witnesses
6 on the stand.
7 CHAIRMAN JENSCH: It may well be, but if you can,
8 prior to that time, indicate any data that you feel are
9 relatively material to the case -- the idea is to try to
10 find out before we go into the hearing process exactly what
11 the parties need by way of data, and what their contentions
12 are.
13 If, in the course of the proceeding, somebody has
14 a reasonable request for material, I am sure we can work out
15 some consideration of it at that time.
16 MRS. WEIK: You can hardly well know in advance
17 what the occasion --you know.
18 CHAIRMAN JENSCH: It may well be.
19 Do the Intervenors have any other suggestions they
20 would like to make?
21 Do you see any matters you would like to secure
22 by way of discovery, making a formal request of any of the
23 parties here, so there has been exchange among all of the
24 parties?
25 Will the State of New York, for instance, bring

in any evidence? Do you plan on bringing in any evidence? Do you envision doing it?

MR. ARCARO: In the absence of a presentation by the Applicant, we cannot foresee it.

CHAIRMAN JENSCH: You are correct, but this set of books here is the case -- the Final Safety Analysis Report is the case for the Applicant.

As I recall the Applicant's presentation in other cases, it is this document the Applicant just referred to. As so, you will know what the Applicant's case is, if you read these Final Safety Analysis Reports.

Of course, you not having done that, it is difficult to -- I expect you will do that. We are going to expect a little greater performance by the lawyer representative, and the experienced intervenors than we ordinarily would. After an Applicant has been before the public three or four times, there gets to be a little expertise developed on the part of the Applicant and the intervenors, too. And we expect them to respond in accordance with that responsibility.

MRS. WEIK: Could I ask what you mean by performance?

CHAIRMAN JENSCH: I mean specifying the issues and any data you will introduce, and the contentions you will make.

For example, Mrs. Weik, in Indian Point Number 3, as I recall it, you had prepared a study, as I recall it, but

1 the parties were not familiar with it, you were not willing
2 to take the stand to support it, you had no witness to take
3 the stand to support it; but we asked if you would be sworn
4 to support it, and my recollection is you did not desire to
5 do that.

6 MRS. WEIK: I am awfully sorry, and I don't like
7 to contradict you, but it was merely said afterwards it was
8 unsworn testimony. What is more, it was given to the
9 Applicant to approve before it was put in the record, which
10 to me, legal or not, seemed a very peculiar thing.

11 CHAIRMAN JENSCH: I think the only thing I have,
12 without resolving what your recollection is, and what my
13 recollection is, I think if any of the parties have studies
14 of that kind coming, if you could make it known to the other
15 parties so they could agree with you, perhaps, or perhaps
16 bring in evidence in reference to it, so that we are not taking
17 time to investigate matters that one of the other parties
18 knows are going to be adduced by evidence anyway.

19 The idea is to follow the Rules of Civil Procedure,
20 in having everything ready for the hearing when we get ready
21 to convene.

22 MRS. WEIK: I realize that. If you want to answer
23 a thing, you want to have the thing there to look at before
24 you answer. But it seems to me in the whole proceeding, this
25 is what I mean by the lack of equal rights. For instance,

1 the foundation can be laid, excavation for the plant, before
2 there is any consideration of it. This seems to me not quite --
3 CHAIRMAN JENSCH: At least we don't have that issue
4 here today. This plant is now built.
5 If at any time you feel you are not getting equal
6 rights, Mrs. Weik, I ask you to stand up and assert it.
7 We want you to have equal rights with any party in this
8 proceeding.
9 MRS. WEIK: I will.
10 CHAIRMAN JENSCH: I don't want you to say you would
11 like to have equal rights. You are going to have equal rights.
12 But we want you to have equal responsibility.
13 MRS. WEIK: I am sure you must wish it, because it
14 is your integrity that is involved, and naturally you want
15 to see it right.
16 CHAIRMAN JENSCH: We have to follow the rules about
17 doing it through a witness on the stand, putting in evidence.
18 MRS. WEIK: And the rules were set by Part II --
19 the Rules?
20 CHAIRMAN JENSCH: But the system of jurisprudence
21 goes back to King John, even to Plato. I think there should
22 be more of an interchange than in the previous proceedings on
23 Indian Point, so we don't come in and expect -- the old days
24 of the surprise of the jury trials don't especially apply here.
25 MRS. WEIK: What would Broxman say to that?

1 CHAIRMAN JENSCH: I will let you know when I take
2 a look at him again.
3 How about the Environmental Defense Fund? Do you
4 wish to have a witness to support the contentions you have
5 asserted?
6 MR. BERLIN: Yes, your Honor, the Citizens Committee
7 plans on presenting a series of witnesses and contemplates
8 being able to disclose a list of the series of witnesses by
9 the 18th.
10 CHAIRMAN JENSCH: All right. It is not necessary
11 by the 18th. You have their evidence in some written form,
12 but if you can do that I think we should invoke that rule of
13 the Commission that permits and urges and encourages people to
14 submit their proposed evidence in some written form, so the
15 parties will be prepared to cross-examine as soon as the
16 prepared evidence has been identified from the stand.
17 MR. BERLIN: We assume that will be the procedure
18 for this proceeding; is that correct?
19 CHAIRMAN JENSCH: It will be the procedure. I
20 might say that, in some instances, some intervenors kind of
21 relaxed the rule in some previous cases. I hope we will not
22 have to do that in this proceeding.
23 And so, to the State of New York, Atomic Energy
24 Council, and to CLEAN, and to --
25 MRS. WEIK: UNCLEAN.

(Laughter.)

CHAIRMAN JENSCH: The Committee for Radiological Hazards doesn't spell that in an anagram to me.

MRS. WEIK: I am not a committee.

MR. ARCARO: Mr. Chairman, you took sometimes testimony from witnesses who were unsworn.

CHAIRMAN JENSCH: It was not testimony then. Testimony in evidence means sworn evidence, nothing else. We have a procedure at the Atomic Energy Commission for limited participation. Those persons can be somebody sitting in a room up in the balcony who would like to state something about this case, and we try to do this before we get into matters of evidence. They stand up and give their name and make a statement about their concern or their support for the case, or any other matter relative to the issues.

That is not evidence, it is a procedure that came out of the Civil Aeronautics type of proceeding, when they wanted mute proceedings, and they bring in the Chamber of Commerce and everybody else. We have the same type of thing, to encourage the public to speak in these proceedings. But it is for this purpose that many times the public will have a concern about, say, radioactive release, and the parties could then give consideration to evidence that related to that matter.

While it is not an objection from a limited

1 participant, it may raise matters that are worthy of evidence.

2 So, while on the transcript they have lots of

3 statements from parties, they are only limited participation

4 statements, unless they are sworn.

5 The only evidence this Board will consider will be

6 sworn evidence.

7 MR. ARCARO: You mean that other statements that

8 are unsworn --

9 CHAIRMAN JENSCH: Those statements are for the

10 purpose of the parties in the proceedings, as to whether they

11 want to introduce evidence with respect thereto.

12 MR. ARCARO: Apparently there are some things you

13 don't want to listen to.

14 CHAIRMAN JENSCH: You can be sure this Board will

15 not listen to any ex-parte communication, and the second

16 thing is that we will not receive any communication, either,

17 written from any party unless all parties are given a copy

18 thereof.

19 MR. ARCARO: Will you accept testimony that Con

20 Edison is a convicted polluter in the City of New York and

21 has been convicted of pollution on a number of occasions?

22 CHAIRMAN JENSCH: I don't know the situation to

23 which you refer. You can't make a blanket consideration of

24 something that is not related to radioactive releases.

25 The issues that we prescribed is the scope of

evidence outlined by the Commission in its Notice of Hearing, and the issue for the up-rating license is, is this facility constructed, is it ready for operation, and will it be operated within the scope of the Atomic Energy Act.

MR. ARCARO: One of your points of inquiry was, is the Applicant a responsible party; financially, I assume, and morally.

In the City of New York they have received over the past two years something like 200 summonses for polluting the air.

Wouldn't you consider that would be evidence admissible in this kind of case? I am not presenting the evidence now.

end #4

CHAIRMAN JENSCH: I think matters of evidence, the admissibility of evidence is considered when the offer is made, if there is objection thereto, if there is not objection thereto.

MR. ARCARO: One of the points of the meeting today was determining the issues you would listen to.

CHAIRMAN JENSCH: Right; radiological safety.

You tender the evidence and we will take a look at it at that time.

MR. BERLIN: Mr. Chairman, one point of clarification.

I hope you did not intend -- you were asked whether you would receive evidence on thermal pollution, and responded in the negative.

I would like to point out this is one of the legal questions that will be briefed and presented to the Board by the Environmental Defense Fund, Inc.

CHAIRMAN JENSCH: Anytime anybody makes a presentation which warrants a reversal or change, it will be done.

I must say this Board will adhere to the ruling made by the Atomic Energy Commission. It will be guided by its rules and recommendations.

MR. BERLIN: And precisely in view of our recognition of that fact, Your Honor, we had indicated previously on our memorandum, in addition to addressing the legal question itself, we will address the question of the Board's authority vis-a-vis

jb2 1 the Atomic Energy Rules and Regulations.

2 CHAIRMAN JENSCH: We will be happy to receive your

3 brief.

4 I think I must say that I think all parties should

5 be mindful of the determinations made by the Atomic Energy

6 Commission.

7 Is there any other matter that we can consider at

8 this point?

9 It may be that if you can frame your presentation,

10 your legal presentations separately, rulings may be made

11 separately, which will expedite the kind of hearing we will

12 have and as well indicate the scope of the evidence that we

13 will receive.

14 MR. KARMAN: Mr. Chairman, at the hearing itself,

15 and I believe you alluded to it, the direct testimony will

16 primarily be the safety evaluation and any supplements thereto,

17 and we will have a group of technical staff individuals here

18 to produce and submit that testimony.

19 In our safety evaluation, Mr. Chairman, there is

20 a section which contains financial testimony. Unless there

21 is an objection, we would earnestly request that the individual

22 who prepared that testimony not necessarily be here to testify

23 at the hearing itself.

24 CHAIRMAN JENSCH: What does the witness assert by

25 way of conclusion?

jb3

Your safety evaluation will be a public document?

MR. KARMAN: Yes. The witness concludes that the Applicant is financially qualified to operate this plant safely.

MR. ARCARO: Did you say technically qualified to operate this plant?

MR. KARMAN: His testimony is in the safety evaluation.

MR. ARCARO: I don't understand your statement. Is he going to testify that Consolidated Edison is a stable financial responsible party?

MR. KARMAN: That's right, only financially responsible.

CHAIRMAN JENSCH: I think the witness is Charles Lovejoy.

MR. KARMAN: That's right, sir; Mr. Lovejoy.

MRS. WEIK: I would like to ask you a question that doesn't bear on that.

CHAIRMAN JENSCH: Very well, proceed. Let us leave it this way: Each person who becomes a party to this proceeding will receive a copy of the staff's safety evaluation and the supplement thereto as well as the summary of the Applicant, prepared by the Applicant.

If any party desires to have Witness Lovejoy present to testify to the extent of his direct evidence, if

jb4 1 they make a request to the Board we will arrange for his presence
2 at the hearing.
3 If we do not hear from anyone of the parties within
4 three days prior to December 17th, i.e., on December 14th, we
5 will assume no party makes a specific request.
6 It may be that later they would like to make a
7 request. Otherwise, unless there is a specific request, staff
8 counsel and the Board concludes, in accordance with the request,
9 Witness Lovejoy need not be present at the December 17th
10 hearing.
11 Now, did you have a question?
12 MRS. WEIK: I wanted to ask -- I would not like to
13 be ruled out. I was so much stunned by your statement of
14 surprise testimony. I never tried to put anything over on
15 anybody in the way -- excuse me, just a moment.
16 I would like to discuss this just for a moment.
17 The testimony that was prepared last time was not
18 presented -- I think the matter that started me on the research
19 and on the investigation came up after the issues had been
20 stated. Now, this is --since this is a quasi-legal affair, I
21 would assume that something you come upon in a matter of time
22 that does not mean it is ruled out. I don't want to surprise
23 anybody. I was in Europe in the fall, and I boasted to everyone
24 about our remarkable hearings and how lucky we were to have
25 public hearings that were ethically conducted in this country,

jb5 1 and I couldn't see how they could stand not having any kind
2 of public participation, and I always try to keep things well
3 balanced. But I don't like it to have this on my record, the
4 matter of surprise testimony. I don't pull that kind of stuff.
5 CHAIRMAN JENSCH: No, Mrs. Weik. There was no
6 thought or reference to any presentation by any party.
7 MRS. WEIK: I had heard it before.
8 CHAIRMAN JENSCH: The Board never so regarded.
9 Please dismiss it from your mind.
10 MRS. WEIK: Then why did you smile?
11 CHAIRMAN JENSCH: Well, I try to smile when I talk
12 about the procedures. I was addressing my remarks to Mr.
13 Arcaro with the thought I would urge him to prepare evidence
14 in advance because we don't in the administrative hearing have
15 the element of surprise as often happens in civil jury trials,
16 and I thought Mr. Arcaro had referred to civil proceedings.
17 And in the light of his remarks I thought he would understand
18 that the administrative hearing is perhaps a little different
19 than the civil jury trial.
20 MRS. WEIK: I think there are attorneys of honor
21 also --
22 CHAIRMAN JENSCH: I regard every person in this room
23 as a person of honor, attorneys or otherwise.
24 MRS. WEIK: I regard Abraham Lincoln as a man of
25 honor, and he often brought in elements of surprise, but he

jb6 1 didn't do it as an element of surprise; it just came up.

2 CHAIRMAN JENSCH: You may be assured that we have
3 the highest regard for your participation.

4 MRS. WEIK: I don't care, really.

5 CHAIRMAN JENSCH: It may be sometimes during the
6 course of the proceeding something will come up as to which
7 you desire to make a study of, and of course you are entitled
8 to bring in your own evidence.

9 MRS. WEIK: Let me point out that in submitting
10 every detail to the Applicant two weeks beforehand, that is
11 a convenient practice for the Applicant, because in the mean-
12 time --

13 CHAIRMAN JENSCH: It is not done only with the
14 Applicant, let me assure you.

15 MRS. WEIK: I know, but it is a handy thing because
16 this allows two weeks to prepare the answer to it. I just
17 think that if you were to have this reputation of not conducting
18 this for the corporation but for the citizens themselves, that
19 the only way you can get the objective is to have the discussion
20 worked out the way it logically works out.

21 CHAIRMAN JENSCH: This hearing is not before any one
22 party in the proceeding; this is for the benefit of the public.
23 The only reason we are here is because the Atomic Energy
24 Commission has directed that the public hearing be held, and
25 this Board intends to conduct the hearing for the benefit of

jb7

the public and no one else.

MRS. WEIK: You know as well as I do that they won't go on if it is not done that way.

MR. KARMAN: Mr. Chairman, the testimony of Mr. Lovejoy, what he would have testified to is contained in Section 1680.

CHAIRMAN JENSCH: Let me say to the students in the balcony here that if we reconvene this hearing and if you decide to make a statement by way of limited appearance, we would invite you to attend.

We are sorry the accommodations for this auditorium are taken for December 17th, but your schedule of the school was such that it couldn't be done, so we will be meeting at the Armory at ten o'clock on Thursday, December 17th, and we invite you or your friends to come to participate.

If you have any concern, stand up and tell us your name and we will want to hear from you.

Is there any other matter that we can --

MR. BERLIN: I apologize, but I am terribly confused on the date. Is it on the 17th or 18th that the Applicant will put in the FSAR with the supporting witnesses?

MR. UPTON: The 17th. It was by understanding that the 17th would be a Thursday, so that the Applicant put in his testimony and so the opportunity can be given for the length of his appearance, opening statement and -- that was

jb8 1 my impression.

2 MR. BERLIN: And the 18th then would be concerned

3 with a further pre-hearing conference?

4 MR. UPTON: Then that is my suggestion to the Board.

5 CHAIRMAN JENSCH: Is there any objection to the

6 Applicant's suggestion in that regard? Staff?

7 MR. KARMAN: No.

8 CHAIRMAN JENSCH: Any other parties?

9 Hearing no objection, I think we may well start

10 on December 17th. If we finish with the presentation -- it

11 may be that we can get the direct evidence of the Applicant

12 and the staff in the morning, and then we will that afternoon

13 go right into the general discussion of the kind we are having

14 here, and by that time the parties will perhaps be a little

15 better informed with respect to the public documentary material.

16 So we may well start this on the 17th and continue on the 18th,

17 if necessary.

18 So we would hope that all parties are represented

19 on December 17th, even though we are thinking of using the 18th

20 for kind of a further interim conference about procedures and

21 evidentiary matters to be adduced, though we would not receive

22 any evidence.

23 Mrs. Weik?

24 MRS. WEIK: May I ask that following newspaper

25 practice, that we use no names like FSAR, because the public

jb9 1 does not know what they are.

2 CHAIRMAN JENSCH: I think that is a good suggestion,

3 Mrs. Weik.

4 The FSAR refers to the Final Safety Analysis Report

5 prepared by the Applicant.

6 I think if we do that then maybe once or twice, then

7 the letters may be sufficient.

8 I think that will expedite the proceeding.

9 MRS. WEIK: Just once.

10 CHAIRMAN JENSCH: We will identify it frequently,

11 if necessary. I think it is necessary the parties will be

12 fully informed about what we are talking.

13 Is there any other suggestion of the parties as

14 to what we may do here today or are we ready then to terminate

15 this pre-hearing conference and plan to convene the evidentiary

16 hearing on December 17th for the purposes of the direct

17 evidence of the staff and advocate and then recess the evidentiary

18 hearing to a date later to be determined, and then on December

19 17th we will immediately go into an interim pre-hearing

20 conference, or whatever you may call it, with the thought of

21 discussing procedural matters only?

22 MR. KARMAN: Mr. Chairman, does the Board not have

23 any questions --

24 CHAIRMAN JENSCH: We have not seen the final Safety

25 Analysis Report for such a period of time that will permit us

jb10

to fully present our concern. We would prefer, in any event, that the parties go forward, including the intervenors, with all their cross-examination, after which or maybe because of which there will be particular questions that the Board will want to direct to the parties.

MR. ARCARO: Mr. Chairman, I would like to ask the two intervenors of New York, the State being represented by Attorney General Lefkowitz on the occasion of a massive fish kill in the Hudson River -- are they going to present evidence on the hearing date as to what is being done about that problem?

CHAIRMAN JENSCH: That is hardly within the province of this, and they wouldn't accept that.

MR. ARCARO: I don't know. I am asking.

CHAIRMAN JENSCH: We haven't entertained that thought.

MR. ARCARO: You are aware that the Attorney General got an order stopping the operation of that plant?

MR. UPTON: That is nottrue that Attorney General Lefkowitz got an order shutting down the operations of that plant.

MR. ARCARO: That was a release in the newspapers, that the Attorney General got an order closing down the plant because of a massive fish kill.

I am going to ask will this Board then listen to the testimony as to the massive fish kill?

jb11 1 CHAIRMAN JENSCH: I think matters of evidence to
2 be adduced will have to be considered when the precise form
3 is presented.
4 This hearing is primarily concerned with radiological
5 safety, liquid and gaseous effluence, and the operation of
6 the plant that will pertain to those things.
7 Now, the Atomic Energy Commission does not have the
8 jurisdiction that many intervenors wish it had. But perhaps
9 as a result of that, we have had special separate legislation
10 in Congress on the national environmental policy Act, for
11 instance, to deal with matters to which the Commission has
12 no jurisdiction.
13 We cannot exceed the jurisdiction that the Congress
14 has granted to the Atomic Energy Commission.
15 This Board acts within the scope of the Atomic
16 Energy Act and the rules and regulations of the Commission.
17 There is one thing I would like to suggest, however,
18 to the parties here. I don't know if presentations will be
19 made by way of limited participation statements. The Commission,
20 as you know, invites people to make statements of concern,
21 if they have one.
22 We have found in many cases that sometimes statements
23 are made by way of limited participation and they never hear
24 what the answer is to their concern.
25 Now, even though those statements are not evidence

jb12 1 statements, that is, sworn testimony on the stand and cross-
2 examined, the Commission does want people to express a concern.
3 What we are suggesting, we of the Board are suggesting
4 is that parties, if they have an answer that will be helpful
5 to that person voicing that concern, that that party have a
6 witness ready to stand up and give us an answer, even though
7 it is not evidentiary in form, but it will explain to the
8 people who have taken the time to come, interrupt their
9 schedule to express their concern.
10 For instance, there is agreat deal of concern in
11 many of these cases, as indicated by members of the public,
12 as to the limits of radiation exposure.
13 They are afraid that the releases are large. In
14 many instances the answers have been in the form of evidence
15 a week later, and the lady who expressed her concern unfor-
16 tunately could not come back or didn't know when the answer
17 would be given, but the answers have been that all nature has
18 a certain amount of radioactivity in it. We get radiation
19 from the sun every day, and medical X-rays are at a level
20 so much higher than that proposed to be released by nuclear
21 power facilities, that the concern about radiation from a
22 plant may be in a consideration wholly different than envisioned
23 by a person expressing a concern.
24 I think the medical profession has given definite
25 consideration to the doses of radiation given when you take an

jb13 X-ray. Supposing you break your ankle and they want to see whether it has been set properly. They will have put an X-ray on it to get a picture of it. They are shielding other parts of your leg now. They might have flashed radiation from your knee down, which was wholly unnecessary, and the body is exposed to radiation much higher, as I understand, as proposed in the FSAR, as from a nuclear plant.

The allegations are the release will not be significantly different than what is actually around us all the time.

If there is a concern about radiation exposure, certainly that is a matter for consideration, at least in medical X-rays which people accept every day when they get a tooth X-ray or arm X-rayed or chest X-ray.

I think there has been a feeling by some that there has been greater exposure to the body in a medical X-ray than is necessary.

I don't know what the significance is. I think contentions have been made in that regard. I think if we could have a witness or some person to get up and give an answer to some person who expresses that there is serious concern, I think there that would be helpful to the public and I think that is what the Commission desires, to have the public fully informed.

MRS. WEIK: It seems to me that it might be mentioned that it is easier to answer a type of question like that, an

jb14 1 answer would be level and occurred when the machine is in a
2 normal state, and the fact that the recording of radiation is
3 done by the company is in itself a rather peculiar thing, but
4 even at that --

5 CHAIRMAN JENSCH: Of course New York has oneeof the
6 best radiation monitoring programs, I understand, of any State
7 in the Union.

8 MRS. WEIK: It has, if it published all of the facts,
9 it has.

10 If you will look at the records, there are maybe
11 twenty pages and one or two figures to a page. The rest are
12 dashes and stars.

13 This is hardly fair to a public that wants to know
14 the type of radiation that occurs when they have trouble with
15 fuel loading accidents.

16 This is not given out to the public. I would like,
17 in the matter of these fish -- sometimes we don't have a
18 complete description of the fish. The fish might have dark
19 or light hair, but the public doesn't know about it.

20 CHAIRMAN JENSCH: I think anything that you have
21 of that kind that you think should be developed on the record,
22 if you become a party --

23 MRS. WEIK: The record of the abnormal emissions
24 are not given. They only give just what it designs, the figure
25 the way the plant is designed, which is usually very excellently

jb15 1 designed, and therefore, low emissions. If you look at the
2 amount of time in the matter Indian Point 1 has been out of
3 commission, you would have factual evidence to give as to the
4 abnormal emissions.
5 CHAIRMAN JENSCH: If you become a party you can
6 pursue that.
7 MR. KARMAN: Mr. Chairman, customarily the pre-hearings,
8 at these pre-hearing conferences the staff will give to the
9 Board the list of individuals that it contemplates having
10 attend as our expert witnesses at the hearing itself.
11 If the Board desires we would be glad to furnish it.
12 CHAIRMAN JENSCH: Let's do that.
13 MR. KARMAN: From the Atomic Energy Division of
14 Reactor Licensing we expect to have Mr. Daniel Mueller and
15 Mr. Carl Kniel.
16 Mr. Norman Moseley and Mr. Glenn Madsen from our
17 office of compliance will be here.
18 These gentlemen will definitely be here, Mr.
19 Chairman, and I don't want to restrict myself. If there are
20 others whom we deem to be necessary parties, we will have them
21 here at that time and we will present at that time the profes-
22 sional qualifications of all of our witnesses.
23 In addition, Mr. Chairman, we have customarily
24 prepared a statement by the Division of Reactor Licensing
25 which points out some significant safety standards. I have

jb16 1 that statement here. It will be similar to the one which we
2 will present to the hearing.
3 If you would care to, we could present it at that
4 time rather than now.
5 CHAIRMAN JENSCH: Let's take the time now, if it
6 is not too long.
7 I think it may well be a basis for some discussion
8 perhaps by the intervenors.
9 MR. KARMAN: Do you care to have this read into
10 the record?
11 CHAIRMAN JENSCH: You have copies you could give
12 the parties?
13 MR. KARMAN: No, I dont, Mr. Chairman.
14 CHAIRMAN JENSCH: How many pages is it?
15 MR. KARMAN: Five pages.
16 CHAIRMAN JENSCH: Would this be suitable, that you
17 prepare copies and mail them to all of the intervenors?
18 MR. KARMAN: That will be fine, Mr. Chairman.
19 MR. UPTON: Mr. Chairman, can I say something?
20 CHAIRMAN JENSCH: Yes.
21 MR. UPTON: First of all, we expect to start by
22 providing all statements that are oral to be made by Mr. Hartley
23 G. Woodbury, Jr., executive vice-president of Consolidated
24 Edison, and that oral statement will be supplemented by Mr.
25 William J. Cahill, vice-president of Consolidated Edison.

jb17

1 The oral statement will cover the specific matters
2 contemplated in the agency regulations, and Mr. Woodbury will
3 also discuss the various measures taken by our company to comply
4 with other environmental requirements of other agencies.
5 This statement is not offered as testimony, you
6 understand, Mr. Chairman. It is not made as testimony; it is
7 in the nature of a counsel's opening statement, I suppose.
8 Now, Mr. Woodbury will offer for the record an
9 environmental impact memorandum to supplement his statement,
10 copies of which will be made available to the parties and to
11 members of the public who should wish to see it during the
12 course of the hearing.
13 That environmental impact memorandum will set forth
14 in more detail some of the matters which Mr. Woodbury covers
15 in this statement of his.
16 Finally, Mr. Cahill will then give a description
17 of the plant with the use of a model or sketch.
18 We haven't decided yet, but as I am sure the Board
19 realizes, when you start trying to describe to the public a
20 highly technical instrumentality like the plant, then you do
21 it on the witness stand where you have to be sure that things
22 you are talking about are probably identified in the record,
23 sometimes the thought gets in. So Mr. Cahill is going to give
24 an informal description of the reactive facility so that members
25 of the public who are there can get sort of a layman's

jb18 impression of what the plant is and how it works.

Following those statements we expected to submit the application as amended, as our principal testimony, to be sponsored by the following witnesses:

Mrs. Cahill, Grub, Prestels and Dembeck of Consolidated Edison; and Messrss. Moore, McAdoo and Wiesemann of Westinghouse Electric Corporation.

In addition to that testimony, as I mentioned earlier, we will present testimony on the substantial completion of the plant and about the compliance with nuclear insurance requirements that will be committed by Messrs. Husband, Grub, and Dembeck of Consolidated Edison and by Mrs. John Stiefel, president of Wesco, a wholly-owned subsidiary of Con Edison.

And that, Mr. Chairman, will complete our case.

CHAIRMAN JENSCH: Will any of this evidence be prepared in written form and served prior to the hearing?

MR. UPTON: The application, as amended, will constitute our principal testimony, and when I say application, I also include the summary of application, because we actually the summary of application with part of one of our recent proceedings, because we wanted to get it into the public document room as soon as possible, we will serve the application as amended on all of the parties as our principal testimony, and we could do that by the end of this week.

No, apparently I am making a rash commitment, Mr.

jb19

Chairman. There seems to be a printing job to be done. It will be a week before the hearing.

A week from Wednesday we will serve the application as amended on the parties, and we will serve the other testimony as I mentioned earlier on the parties, no later than the 10th.

We will also provide for the parties, before the hearing, a copy of the environmental impact memorandum, which I mentioned earlier would be a supplement to Mr. Woodbury's testimony.

MR. KARMAN: Mr. Chairman, may I interrupt?

CHAIRMAN JENSCH: Yes.

MR. KARMAN: We will at the hearing furnish as evidence the staff's safety evaluation which was prepared by the Division of Reactor Licensing and we will also offer as an exhibit the Atomic Energy Commission detailed environmental statement and a proposed form of operating license, and Joint Exhibit A, which is a substantive correspondence between the Applicant and the Atomic Energy Commission staff related to this hearing.

The reason I mention this at this time is that we may be unable to furnish all of the parties with these documents as quickly as possible.

CHAIRMAN JENSCH: Very well.

Is there any other matter that we can consider at this pre-hearing conference by way of endeavor to expedite

jb20 1 the presentation and consideration of all of the evidence?

2 Mr. Briggs has a problem he would like to submit

3 to the Applicant.

4 MR. BRIGGS: Mr. Upton, can you give me some idea

5 of what the status of the plant will be on December 16th?

6 Will water be circulating through the reactor or will tests

7 on the containment or anything like that be in progress?

8 MR. UPTON: Excuse me just a moment.

9 MR. BRIGGS: Yes.

10 MR. UPTON: Mr. John Stiefel will respond to that.

11 MR. STIEFEL: On the 16th we will not be running

12 the air adjuster on the container nor will water be running

13 through the reactor.

14 We will be in final preparation for either hot

15 operation of the plant or the air test.

16 MR. BRIGGS: But the reactor vessel or piping will

17 not contain hot water?

18 MR. STIEFEL: No, sir.

19 MR. BRIGGS: I find it desirable to visit this site

20 before the hearing.

21 This happens to be my first hearing for an operating

22 license so I find it particularly desirable to have a very

23 thorough tour of the plant and would hope arrangements could

24 be made to do that on the morning of December 16th, beginning

25 at possibly 9:30.

jb21

MR. UPTON: That can be done.

MR. BRIGGS: When I say a thorough tour, I mean a good climbing tour in places where you might not take ordinary visitors, and I think it may also be desirable for other people to participate in such a visit.

I know in the past when we have made such visits where it has been necessary for the Applicant to show members of the Board around, it has been permitted that representatives of the intervenors and, of course, the staff, be present also.

CHAIRMAN JENSCH: I am sure it is within Mr. Briggs' statement that we will not undertake any viewing of the plant without participation of all parties.

MR. BRIGGS: If they wish to do so.

And I guess this is something you could arrange with the intervenors and with the staff, if they care to participate. I want to make it quite clear that it is apt to be quite a physical exercise and it is possibly apt to take several hours so people who participate ought to be aware of that.

MR. UPTON: I could say to all of the intervenors and future intervenors that if they would like to accompany you on this tour, they are welcome to do so.

MR. BRIGGS: And that is scheduled to begin at 9:30 in the morning of December 16th.

MR. UPTON: We will be in touch with you, Mr. Briggs, and other members of the Board.

jb22 1 CHAIRMAN JENSCH: I wonder if it will be convenient
2 if some of the other members of the Board didn't get there at
3 9:30 in the morning, if we came at 2:00 o'clock in the afternoon
4 we could see a portion of it.
5 We had a member or two of the Board indicate a
6 desire to look at some of the so-called out-buildings that you
7 have around your plant and examine some of the facilities in
8 those buildings.
9 MR. STIEFEL: Onbehalf of Consolidated Edison and
10 Wesco we will do the long tour at 9:30 and a short tour at two.
11 CHAIRMAN JENSCH: I am sure the long tour will still
12 be on.
13 MR. UPTON: I hope Mr. Briggs won't be offended if
14 I have one of the more junior counsel come along.
15 MR. BRIGGS: It is not necessary for counsel to come
16 along, if you have a strong-legged engineer at the plant.
17 MR. UPTON: That is the only kind of engineers we
18 have.
19 MR. ARCARO: One question please: Is Indian Point
20 No. 2 to be licensed as an operating plant or commercial plant?
21 CHAIRMAN JENSCH: The application was filed by
22 Consolidated Edison under Section 104(d) of the Atomic Energy
23 Act, and the Section 104(d) provides that the Commission is
24 authorized to issue license as follows:
25 The Commission is authorized to issue licenses to

jb23 1 persons applying therefore for utilization as a facility
2 involved in the conduct and development of research and develop-
3 ment activities.
4 In issuing licenses under this sub-section the
5 Commission shall impose the minimum amount of regulations in
6 terms of license as will permit the Commission to fulfill its
7 obligation under this Act and will be compatible with the
8 regulations in terms of the license which would apply in the
9 event a commercial license resulted to be issued pursuant to
10 Section 103.
11 MR. ARCARO: Then it is an experimental plant?
12 CHAIRMAN JENSCH: The Commission is authorized to
13 issue a license to persons applying therefore for the conduct
14 of research and development leading to the demonstration.
15 I don't know whether there is a conduct of research
16 facility leading to the demonstration or whether it is a
17 development facility.
18 Mr. ARCARO: The last sentence seems to say leading
19 to a commercial license.
20 CHAIRMAN JENSCH: No, it says leading to the
21 demonstration or practical value of such facility for commercial
22 purposes.
23 The staff will send you a copy of the Act.
24 MR. ARCARO: Have you answered the question, sir?
25 CHAIRMAN JENSCH: Yes, I have answered the question

1 by reading the statute.

2 MR. ARCARO: Is it an experimental or --

3 CHAIRMAN JENSCH: The word "experimental" does not

4 exist under the Act.

5 MR. ARCARO: Then it is a commercial operation

6 station.

7 CHAIRMAN JENSCH: I don't know where the word

8 "experimental" developed.

9 Can you find it in Section 104(b?)

10 MRS. WEIK: It is not listed officially as a demon-

11 stration plant, is it?

12 CHAIRMAN JENSCH: You have to ask the Applicant

13 how it is listed in the papers.

14 MRS. WEIK: I was not trying to get you into the

15 position where you had to define or anything. I know that people

16 at the Pique Plant have listed it as a demonstration plant.

17 CHAIRMAN JENSCH: The one out in Ohio?

18 MRS. WEIK: It is not functioning any more.

19 CHAIRMAN JENSCH: I think they decided the research

20 and development work had been completed.

21 MRS. WEIK: Yes, it had been completed, yes.

22 CHAIRMAN JENSCH: Is there any other matter we can

23 consider?

24 We will meet in the New York State Armory at Peekskill

25 on December 17th, and if you have any concerns you are invited

to stand up and express your concerns at this hearing.

MR. ARCARO: Mr. Chairman, Section 103 speaks of a commercial license.

CHAIRMAN JENSCH: Yes.

MR. ARCARO: Section 104 speaks of medical therapy, research and development licenses.

CHAIRMAN JENSCH: Yes.

MR. ARCARO: So that's -- which would you say this was being licensed under?

CHAIRMAN JENSCH: The application for license was filed under Section 104(b) and if any is granted it will be under Section 104(b).

MR. ARCARO: Which I take is research and development?

CHAIRMAN JENSCH: Is there any person here would like to express anything as to how we may resolve the issues and expedite the presentation of evidence and not have a lot of witnesses sitting around at the hearing who won't likely be called at the time other witnesses are testifying?

If not, this pre-hearing conference is now concluded.

(Whereupon, at 1:00 p.m., the pre-hearing conference was recessed.)

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