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

(Indian Point Number 2)

Docket No. 50-247

Place - White Plains, New York

Date - Wednesday, 22 September 1976

Pages 1 - 71

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UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

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In the Matter of:

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.

(Indian Point Number 2)

- -x

Docket No. 50-247

Westchester Couty Courthouse
Courtroom 1200
111 Grove Street
White Plains, New York

Wednesday, 22 September 1976

Prehearing Conference was convened pursuant to notice in the above-entited matter at 10:00 a.m.

BEFORE:

SAMUAL JENSCH, Esq., Chairman, Atomic Safety and Licensing Board
R. BEECHER BRIGGS, Member

DR. FRANKLIN C. DAIBER, Member

APPEARANCES:

STEPHEN LEWIS, Esq., MICHAEL GRAINEY, Esq., and RICHARD BROWNE, Esq, on behalf of the Nuclear Regulatory Staff, Washington, D. C.

SARAH CHASIS, Esq., on behalf of the Hudson River Fishermens Association, National Resources Defense Council, 15 West 44th Street, New York, New York.

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APPEARANCES (Continued.)

WERNER KUHN, Esq., on behalf of the New York State Atomic Energy Council, New York State Department of Environmental Conservation, 80 Wolf Road, Albany, New York.

EDWARD J. SACK, Esq., Consolidated Edison, 4 Irving Place, New York, New York, LEONARD J. TROSTEN and EUGENE FIDELL, LeBeouf, Lam Leiby & MacRae, 1757 N. Street, N. W., Washington, D.C, on behalf of Consolidated Edison.

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P R O C E E D I N G S

CHAIRMAN JENSCH: Please come to order.

This proceeding is a Prehearing Conference in the Matter of Consolidated Edison Company of New York, Inc. in reference to its Indian Point 2 Station. These proceedings are reflected in Nuclear Regulatory Commission Docket Number 50-247 and OIL PDR-26.

This proceeding is related to a request filed by Consolidated Edison Company of New York, Inc., sometimes hereinafter referred to as the Applicant, for a determination of the preferred closed cycle cooling system.

Consolidated Edison Company of New York, Inc., also sometimes referred to as the Licensee, requests that the Commission approve the Licensee determination of the natural draft wet cooling tower system as the preferred alternative closed cycle cooling system for installation at Indian Point Number 2.

The Licensee filed a request for a hearing in the event that any parties in this proceeding requested a hearing on the proposed amendment which would be reflective of that determination.

The Intervenor, Hudson River Fishermens Association has requested a hearing. This Prehearing Conference was convened in accordance with an order issued on September 9, 1976 specifying this date by agreement of the parties, indicating

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1 their convenience for a special prehearing conference at this
2 time and place.
3 Public notice was given of this order convening
4 a prehearing conference which included distribution to the
5 several media in the area as well as publication in the
6 Federal Register which is the official register of public
7 notices by agencies of the Federal Government. The order
8 was given publication in Volume 41 of the Federal Register
9 at page 38830 and was published September 13, 1976.
10 At this time, may there be an appearance on behalf
11 of the parties present here on behalf of the Applicant?
12 MR. SACK: Con Edison is represented by Edward J.
13 Sack. The address is 4 Irving Place, New York, New York.
14 Appearing with me also is Leonard Trosten and
15 Eugene Fidell of the firm of LeBeouf, Lamb, Leiby & MacRae,
16 1757 N Street, N.W., Washington, D. C.
17 CHAIRMAN JENSCH: Thank you, sir.
18 Appearance on behalf of the Regulatory Staff?
19 MR. LEWIS: Mr. Chairman, my name is Stephen Lewis
20 representing the Staff of theNuclear Regulatory Commssion.
21 Co-counsel today are Mr. Michael Grainey and Mr. Richard
22 Browne.
23 CHAIRMAN JENSCH: I guess I haven't met him yet.
24 Thank you, sir.
25 Appearance on behalf of the Hudson River

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1 Fishermens Association?

2 MS. CHASIS: Sarah Chasis, and I am appearing on

3 behalf of the Hudson River Fishermens Association. My ad-

4 dress is the Natural Resources Defense Council, 15 West 44th

5 Street, New York, New York.

6 CHAIRMAN JENSCH: Do I say ma'am or Ms?

7 MS. CHASIS: Ms.

8 CHAIRMAN JENSCH: Is there any appearance on behalf

9 of any other party to the proceeding?

10 MR. KUHN: Yes.

11 Werner Kuhn. I am an associate counsel with the

12 New York State Department of Environmental Conservation. I

13 am appearing here today on behalf of the New York State and

14 the New State Atomic Energy Council.

15 I think it should be noted for the record that

16 New York State has been in the process of some regulatory

17 changes that will be moving the responsibilities for repre-

18 sentation of the State's interests in Nuclear Regulatory

19 Commission proceedings from the State Atomic Energy Council

20 which has been abolished, to the new State Energy Office.

21 However, the new State Energy Office has not yet

22 come into formal being and has not yet been staffed. And a

23 formal notice to that effect will be coming out in the very

24 near future.

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25 In the meantime, the Atomic Energy Council

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1 continues to represent the interests of the State.

2 CHAIRMAN JENSCH: Did you just say the Atomic

3 Energy Council of New York has been abolished?

4 MR. KUHN: It's responsibilities are being trans-

5 ferred to the new State Energy Office. This has not yet been

6 completed being set up.

7 CHAIRMAN JENSCH: All right.

8 Is there any other appearance on behalf of any

9 other party in this proceeding?

10 (No response.)

11 I hear no such request.

12 In the order convening the prehearing conference

13 the Board suggested that members of the public who desire to

14 present statements by way of limited appearance may desire to

15 attend to hear the presentation by counsel so that their

16 presentations by way of limited appearance can be made in

17 light of the presentations made here. Those statements will

18 be received at an evidentiary session if one is convened in

19 this proceeding.

20 In any event, all members of the public are wel-

21 come to attend.

22 The Board has received communications from the

23 parties in reference to the suggestion of the Board to indi-

24 cate the matters which are believed by the parties, either

25 collectively or individually, concerns for this prehearing

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1 conference.

2 The latest communication was received, fortunately,
3 yesterday, from the National Resources Defense Council. There
4 was a letter, I believe, which we received in sort of a public
5 document distribution dated September 13th from the Regulatory
6 Staff addressed to "Gentlepersons," who were listed in various
7 sections, saying that there was some thought about stipulation.

8 Has any stipulation been achieved by the parties,
9 or among the parties, for this proceeding?

10 MR. LEWIS: Mr. Chairman, since the illusion was
11 in my letter, perhaps I will address that point. There is a
12 stipulation that has been drawn up. It is not presently
13 signed by the parties. I believe that each of the parties
14 present today can speak for itself as to the state of their
15 agreement to the things stated therein; that, for example, in
16 the letter from Ms. Chasis, the provisions and stipulations
17 are in fact set forth in the letter.

18 So I believe that we do not have a formal stipula-
19 tion to present to you today. However, I believe that in the
20 comments of the various parties, a substantial degree of
21 agreement among them as to the issues in the proceeding will
22 be set forth. And perhaps by that means, we could subse-
23 quently follow up with a formal stipulation on the record.

24 CHAIRMAN JENSCH: Very well.

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25 I do not seem to have presently available the

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1 original request by the Applicant that when it filed its docu-
2 ment on or about August 1975 for a hearing, if the hearing
3 were requested -- I see a copy is being provided.
4 (Counsel handing document to Board.)
5 Thank you. We will return this copy. It is avail-
6 able for review by all parties. It doesn't appear to be
7 anything other than the copy that was originally submitted.
8 And there are no notes or any additions to it.
9 The reason I wanted to refer to it is to utilize
10 the specific language which was set forth by the Applicant
11 in its request; the statement being that the Licensee re-
12 quest a hearing with respect to its application for facility
13 license amendment which was filed December 2, 1974.
14 And Con Edison urges that the relief requesting
15 the application for amendment be granted and the request for
16 hearing is in a sense conditional to, either A) if some party
17 requests and hearing and Con Edison joins the request -- or
18 rather, would appear and participate in the hearing -- or,
19 if the Regulatory Staff concluded that some other form of
20 closed cycle cooling other than natural draft wet cooling
21 towers was preferable; Con Edison then requested a hearing.
22 And if, in that event, the document by Con Edison
23 states that Con Edison request a hearing also cover -- and
24 that also is in reference to the alternative that if the
25 Regulatory Staff concluded that something other than the natural

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1 draft wet cooling tower is prefereable, then Con Edison re-
2 quests that the amendment to approve because of the time
3 needed for the design include an extension of the date beyond
4 which operations with once-through cooling will not be per-
5 mitted.
6 I understand from the papers which have been
7 filed that the Staff does not disagree with the proposal by
8 the Licensee for a natural draft wet cooling tower and there-
9 fore, I take it, that paragraph which is on page two is not
10 applicable or pertinent to the proceeding.
11 It appears from what I have read from the documents
12 that all parties appear to be in agreement that a natural
13 draft wet cooling tower is the preferred closed cycle cooling
14 system; is that correct?
15 Regulatory Staff?
16 MR. LEWIS: Mr. Chairman, that is correct.
17 CHAIRMAN JENSCH: Hudson River Fishermens Asso-
18 ciation?
19 MS. CHASIS: That is correct.
20 CHAIRMAN JENSCH: State of New York?
21 MR. KUHN: That is correct.
22 CHAIRMAN JENSCH: I hand you back your document.
23 (Board handing document to counsel.)
24 Does that dispose of the proceeding as requested
25 by the Applicant?

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1 That's all they wanted was a determination that
2 all parties agreed to the preferred closed cycle cooling sys-
3 tem. And as I understand it, everybody has agreed.
4 Does anybody have a proposed form of order for
5 consideration by the Board at this time?
6 MR. SACK: Mr. Chairman.
7 CHAIRMAN JENSCH: Excuse me.
8 MR. SACK: There are a few other issues which have
9 arisen.
10 CHAIRMAN JENSCH: How?
11 MR. SACK: Because of the passage of time and
12 because of the Final Environmental Statement.
13 CHAIRMAN JENSCH: Have I seen any formal docu-
14 ment? Has Applicant submitted any formal document amending
15 its original request which was filed in 1975, that document
16 to which I just referred, that I just returned to Mr. Fidell?
17 Have you filed any formal document for anything additional?
18 MR. SACK: No, sir. We have not filed any formal
19 document. We have, in our letter to you dated September 14,
20 1976, we have outlined what we thought were proper issues for
21 this proceeding. And that can be considered an amendment of
22 the request, if you so deem that an amendment be required.
23 CHAIRMAN JENSCH: Well, I don't think there has
24 been any publication in that regard of the initial matters.
25 We do have the letter from the Applicant, but there hasn't been

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1 any formal document seeking anything, enlarging the original
2 request, as I understand it, from the Applicant, which was
3 filed in August of 1975.
4 MR. TROSTEN: Mr. Chairman, may I speak to your
5 point for just a moment.
6 I believe, sir, that it is customary with regard
7 to prehearing conferences that the issues be developed at the
8 prehearing conference prior to any formal filing of an amend-
9 ment.
10 CHAIRMAN JENSCH: I thought the issues were de-
11 veloped out of the formal pleadings which had been filed?
12 MR. TROSTEN: Well, let me put it this way --
13 CHAIRMAN JENSCH: Isn't that correct; yes or no?
14 MR. TROSTEN: No, sir; I really don't think it is
15 correct. I think that it certainly has been my experience,
16 Mr. Chairman: The pleadings that are filed formally at the
17 outset of a hearing are quite formalistic and that I have
18 not recalled a situation in my personal experience, sir, where
19 there has been a very formalized amendment of the pleadings.
20 CHAIRMAN JENSCH: How do we deal with intervenors
21 accept with formal pleadings? I recall the presentation by
22 many of the applicants: They insist that this is the applica-
23 tion and on formal filing by the intervenors and let's not
24 enlarge anything or get beyond the realm that is so envisioned
25 And we are going to hold a strict line. But sometimes it

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1 varies; is that the case?

2 MR. TROSTEN: Not necessarily.

3 CHAIRMAN JENSCH: Well, it is conviviality among

4 the attorneys for the parties; is that it?

5 MR. TROSTEN: It is true that the attorneys in this

6 case are convivial.

7 But the point is, we have been trying to develop

8 such a formal change in the stipuation. That is really what

9 has been going on, sir. If you had the stipuation -- had the

10 stipulation been signed, it would in effect have represented

11 a formal amendment, certainly from the Applicant's point of

12 view.

13 CHAIRMAN JENSCH: Do you want some time to look

14 at that matter now?

15 MR. TROSTEN: Mr. Sack and the others would cert-

16 ainly be prepared to address the matter. We are prepared,

17 Mr. Chairman, to sign the stipulation. It is really just a

18 matter of administrative convenience that the stipulation has

19 not been signed, which would amount to a formal amendment of

20 the pleadings.

21 CHAIRMAN JENSCH: I think if all parties do sign

22 a stipulation, it does provide a basis for further considera-

23 tion, but lacking the stipulation, I just wondered whether

24 the rule that the applicants have always urged at these pro-

25 ceedings that we are going to hold it tight to what the

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application is and we are not going to look to any water reactor when a pressurizer is being proposed; we are not going to look at any other cooling towers unless there is some adequate basis. And it gets a little flexible in here.

MR. TROSTEN: I think you are right, Mr. Chairman, that it is very important at all of these proceedings that we have a clear understanding of what the issues are and not deviate from them. And it was to that end that counsel for the Regulatory Staff originally instituted the process leading to the preparation of the stipulation so that we would be following the same pattern, indeed, sir, that you have identified.

CHAIRMAN JENSCH: You say it is administrative convenience that it hasn't been signed. You mean you haven't had the time to visit, or think about it or sign it physically? If you would like to take a minute -- my thought is that we are not going to stop for lunch if we don't have to and we will go right through -- But if we can take a few minutes to sign the document, we would be glad to do that --

MS. CHASIS: Mr. Jensch --

CHAIRMAN JENSCH: -- if that will expedite the proceedings.

MS. CHASIS: Mr. Jensch; speaking on behalf of the Hudson River Fishermens Association, for certain reasons, I am unable to sign off on the stipulation today. I have not

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had final authorization from my client. I anticipate that that authorization will be forthcoming so that while we may not be able to proceed with it today, I think it can be fairly stated that it will be forthcoming.

CHAIRMAN JENSCH: Do you have a draft of the document that we might be reviewing as we discuss -- all you parties -- discuss various parts of it?

MR. TROSTEN: Yes, sir.

CHAIRMAN JENSCH: Do you have enough copies for the members of the Board? I don't mean to interrupt your presentation, but I think it would be helpful.

MS. CHASIS: Yes, sir.

CHAIRMAN JENSCH: Do you have the document in front of you?

(Counsel distributing documents.)

(Pause.)

CHAIRMAN JENSCH: Mr. Lewis has handed us three copies of the document.

Is there an objection to our looking at it without these persons indicating precisely what we have received?

I don't hear any objection.

Excuse me; Mr. Sack?

MR. SACK: No objection to that.

I wanted to mention another point. Getting back to your first point, the issue I want to raise primarily is

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1 one of schedule. And this request for hearing says request
2 for hearing with respect to application of facility license
3 amendment filed on December 2nd. The schedule was an inherent
4 part of that application. There is set forth in that applica-
5 tion the -- both the terms of the license pursuant to which
6 was submitted and the schedule which would then follow as
7 prescribed in the license.
8 So the issue that we want to have resolved at this
9 hearing is the current status of that schedule. So I would
10 think that that issue would be within the scope of this re-
11 quest.
12 CHAIRMAN JENSCH: Well, speak, then, if you will,
13 to the schedule that you envision.
14 MR. SACK: The license as you know provides that
15 if all regulatory approvals are not received by December 1,
16 1975, the date for termination for operation of the once-
17 through cooling system shall be postponed accordingly.
18 Now we all know we did not receive all -- Con
19 Edison -- did not receive all regulatory approvals by Dec-
20 ember 1, 1975. So the question is: What is the postpone-
21 ment of the legal criteria which govern that postponement?
22 We originally addressed the letter to Mr. Ruissey
23 stating that the postponement was clear on the face of the
24 license. The Hudson River Fishermens Association contested
25 that interpretation and said that there was no automatic

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1 postponement and raised several other issues that said we were
2 not entitled to a postponement and then later questioned
3 whether the Village of Buchanan proceeding was grounds for
4 postponement.
5 So that is an issue in contention. And we think
6 it should be properly resolved by this Board.
7 Con Edison's views were set forth extensively in
8 the correspondence. There is a letter addressed to you, Mr.
9 Chairman, dated August 24, 1976, in which -- this was in
10 response to a telephone conference -- and Ms. Chasis asked
11 for an explanation of our reasons for the delay and we set
12 them forth at length.
13 So there, I think it is up to the other parties
14 to state in what respects they disagree with the position set
15 forth in that letter.
16 And then we would seek a determination of that
17 issue as part of this hearing.
18 CHAIRMAN JENSCH: Well, as I understand it, the
19 Hudson River Fishermens Association has raised the principal
20 position with respect to this matter.
21 Will you address that?
22 MS. CHASIS: Yes, I will.
23 First of all, I would like to say that it is our
24 position that the primary issue raised by the licensing
25 amendment of Consolidated Edison is the preferred type of

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1 system. And the Fishermen have urged and pressed the Staff of
2 the Nuclear Regulatory Commission to act on that amendment.
3 And the Fishermen have been deeply troubled by the failure of
4 the Staff to proceed on that license amendment expeditiously,
5 allowing for full exploration of the environmental issues.
6 And we have taken the position that that is the
7 only approval which is outstanding which could impede or
8 affect the May 1, 1979 date of the present license.
9 But there is no other approval which is required
10 to proceed with construction of the closed cycle cooling system
11 which is outstanding. The Village of Buchanan denial of the
12 zoning variance has been overturned in the state courts. And
13 while appeal to that matter is pending, we feel that it would
14 be entirely inappropriate to defer the date for installation
15 of the closed cycle system pending the outcome of that legal
16 proceeding, which could be many, many months.
17 So that our position is that once the NRC has
18 acted -- and we urge that that action be taken as quickly as
19 possible -- that nothing stands in the face of the Applicant's
20 proceeding with the construction of the preferred type of
21 system. So we urge that that issue of the preferred type of
22 system be decided and then the question of the effect in the
23 delay in the achievement of all the requisite approvals be
24 dealt with, but not in a fashion as to impede the decision on
25 the preferred type of system.

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CHAIRMAN JENSCH: Thank you.

Does the Staff care to speak to that?

MR. LEWIS: Yes, Mr. Chairman.

First of all, Mr. Chairman, I believe that the route by which the issue of scheduling gets into a proceeding is through the license provision, the operating license provision, which does set forth the May 1, 1979 date of determination of operation with once-through cooling.

Now, that date is, of course, stated to be conditional upon receipt of or receival of all governmental approvals required to proceed with construction by September 1, 1975.

The Staff, therefore, believes, and the other parties agree that the issue of whether or not all such governmental approvals had in fact been obtained by the licensee is an issue in this proceeding. And in fact, as you can see from the stipulation in front of you, that issue is specifically enumerated.

It is enumerated in two parts: the first part being whether or not all such governmental approvals have in face been obtained; and the second sub-part being if they have not, what is the effect upon the May 1, 79 date of such failure?

Mr. Chairman, I believe that with respect to proceeding expeditiously on the amended proceeding regarding

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1 the choice of the type tower, the Staff is certainly prepared
2 to propose today and try and reach as much agreement as we
3 can on a schedule for an evidentiary hearing on this matter.
4 At the same time we believe that there is a legal --
5 or at least quasi-legal issue which is the question of
6 what are the various required governmental approvals?
7 Is the issue of effect of failure is determined to
8 be the case to have received the approval to be an evidentiary
9 matter, that the parties are willing to stipulate will be an
10 evidentiary matter at the hearing -- but we are certainly
11 prepared to agree to a schedule that would provide for going
12 to hearing on that basis, and we believe the Board should
13 also establish a briefing schedule so that they have before
14 it the views of the parties on the other governmental
15 approvals question.
16 CHAIRMAN JENSCH: What is the schedule you believe
17 might be proposed?
18 MR. LEWIS: Unfortunately, I have not had the
19 opportunity to discuss this with the other parties.
20 CHAIRMAN JENSCH: What is your proposal?
21 MR. LEWIS: It is my proposal that an evidentiary
22 hearing on this amendment procedure would be feasible some-
23 time during the month of November of this year.
24 It would further be my suggestion that because of
25 the fact that the Staff anticipates the possibility of

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1 some fairly vigorous limited appearances in this proceeding
2 from non-parties, that an intemediary date, perhaps during
3 the month of October, be established for session in this
4 area to receive limited appearances.
5 Staff would benefit greatly from the establishment
6 of a transcript record reflecting the scope of the limited
7 appearance concerns, and it would enable us to determine
8 what expert witnesses we would require for the evidentiary
9 hearing.
10 So I would have a two-part suggestion, therefore:
11 that a session for the receipt of limited appearances be set
12 for sometime in October; and a schedule for the evidentiary
13 hearing in November.
14 And it would be my expectation -- which can be
15 nothing more than that at this time -- that the hearings in
16 this proceeding would not require more than one week.
17 CHAIRMAN JENSCH: Are you implying that by having
18 the prehearing or, rather, the early session for statements
19 by way of limited appearances be held here or in this region;
20 and that the evidentiary session would be held in Washington
21 or Bethesda?
22 MR. LEWIS: No. I was simply --
23 CHAIRMAN JENSCH: Would that be an agreeable
24 consideration for the parties? Or what is the view of the
25 parties about the location of the evidentiary hearing?

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MR. LEWIS: I am sorry.

Well, I think Staff would prefer to have it here because, in fact, our responses to limited appearances in any event, as well as any other matters that are of interest to people in this area would, of course, be presented at that time.

CHAIRMAN JENSCH: Well, we will defer on that for a while.

MR. KUHN: Do you wish to defer on that particular question of the location?

CHAIRMAN JENSCH: Either that, or your thoughts about the evidentiary hearing?

MR. KUHN: Certainly, I will address both.

With respect to location of this hearing, first of all, we feel strongly that they should be held, the evidentiary hearings as well as the hearings for limited appearances, if you establish two dates for hearings for those purposes, locate here so that people from the affected areas may attend and be informed and also participate to the extent that it is reasonable and possible to do so.

With respect to some of the other issues that Ms. Chasis and Mr. Lewis have been addressing, first of all, we do agree that the whole question of the delay of the date by which closed cycle cooling should be instituted should be considered as soon as possible. But we do agree with the

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1 basic idea that the choice of the particular closed cycle
2 cooling system is an independent question, and not tied in any
3 way to the question of the suitable delay.
4 But we are agreeable to having that particular
5 question of the delay considered by your Honors, if it is
6 determined that that is the appropriate way to go, at the
7 earliest suitable date. We would not want to see a choice
8 of the particular type of closed cycle cooling system be
9 delayed in any way. We have been urging and pressing and
10 addressing that this choice be made as rapidly as possible
11 and, based upon adequate investigation, and also adequate
12 evidentiary hearings.
13 And we believe that is the first order of business,
14 and with respect to the question of whether governmental
15 approvals have been received, and then what would be the
16 appropriate delay, if any, in the implementation of closed
17 cycle cooling -- that should come -- it may run on the same
18 track, but it obviously does not have to come at the same
19 time.
20 We also feel that there is a need for an evidentiary
21 hearing. We have some reservations concerning the adequacy
22 of the Final Environmental Statement. I may address that
23 later on in this proceeding, if you wish me to address it
24 today.
25 We do not in any way feel that that prevents us

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1 from entering into the stipualtion. We are in agreement that
2 the preferred type of closed cycle cooling should be the
3 natural draft cooling tower.
4 However, we are concerned that the Nuclear
5 Regulatory Commission, and yourselves, have an adequate
6 evidentiary basis and an adequate environmental impact
7 review upon which to make and reach your decisions. And for
8 that reason --
9 CHAIRMAN JENSCH: May I interrupt you?
10 The Board does feel that a stipulation alone would
11 not be sufficient for its resolution of the matter. We have
12 not received a great many reports which have been identified
13 from time to time in several of the communications which have
14 passed among the parties.
15 We have not seen the R&D work that has been done
16 since our last hearings, and other reports have been made about
17 what data they are getting from their program on the Hudson
18 River. We here on the Board will identify some of those
19 documents that we want to have as soon as the parties can send
20 them to us, as soon after this date as possible, because
21 I am sure all the parties recognize that the Atomic Safety
22 and Licensing Boards do not find their opinions motivated by
23 a stipulation alone; and don't sing "here" when it's presented.
24 So we will want a great many of these reports
25 that the parties have been considering, and which may have

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1 been some of the background for the Final Environmental
2 Statement.
3 Excuse me, I don't want to interrupt you, gentle-
4 men. Will you go ahead and speak generally where you find
5 some deficiencies in the Final Environmental Statement?
6 MR. KUHN: Well, your Honor, generally -- and I
7 am afraid I have to address it generally, because my technical
8 staff has been unable to be here today to support me in this
9 endeavor -- the Department of Environmental Conservation
10 on behalf of New York State did file sets of comments on the
11 Draft Environmental Statement.
12 To a considerable extent, the Final Environmental
13 Statement did not adequately respond to those comments, in
14 our estimation. We would utilize the evidentiary hearing,
15 hopefully, to explore the more important of those comments.
16 Some of them are obviously relatively negligible
17 and others are of more importance.
18 CHAIRMAN JENSCH: May I interrupt you a moment?
19 Would it be possible for you and your associates
20 to submit in some written form your comments, and where you
21 find the FES has not dealt with the original comments on the
22 Draft Environmental Report?
23 MR. KUHN: Yes, sir, your Honor.
24 CHAIRMAN JENSCH: So we will have a chance to
25 review it and not take up too much time, or, rather, need not

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1 take up too much time to have some summary of your position.

2 MR. KUHN: We would definitely undertake to do that.

3 In particular we have already discussed to some extent with

4 the NRC Staff our feelings concerning the FES.

5 One major area of concern relates to the scope

6 of the analysis, the extent to which the analysis does or does

7 not deal with the impacts, the overall impacts, including

8 the environmental impacts of the alternative systems at the

9 full design operating capacity of the facility, as opposed to

10 the present license capacity of the facility.

11 And we have had some further discussions concerning

12 that matter this morning; the Final Environmental Statement

13 was not entirely clear in our estimate, in our opinion,

14 concerning, for instance, the environmental area. It now

15 appears that all the environmental analysis was done based

16 upon this full operating capacity as opposed to the licensed

17 operating capacity.

18 And that, of course, is the design capacity for

19 the closed cycle cooling system as well. If that is the case,

20 that should lay to rest a considerable extent of our concerns;

21 although we believe that the full analysis, the full environ-

22 mental analysis, including economic aspects, should also be

23 done based upon this full operational capacity.

24 So this is our major area of concern, and we will

25 be glad to explore this in a letter to the Board and to the

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1 parties, to explain in more detail what our feelings are con-
2 cerning how the evidentiary hearings may supplement the
3 Final Environmental Statement.
4 CHAIRMAN JENSCH: Thank you.
5 Applicant?
6 MR. SACK: I would like to add a few comments:
7 First, I think I would like to join the other
8 parties in recommending that hearings be held in this area,
9 as you know, there is high feeling in the community concerning
10 these cooling towers.
11 Now, I think I should inform the Board that the
12 attorneys for the Village have taken the position that they
13 would waive some of their rights or somehow relinquish some of
14 their legal position in the State case if they participated
15 in an NRC proceeding. And that may explain the absence of
16 anyone from the Village here this morning.
17 And it may explain their absences at the hearing.
18 There is no way to know now whether they will actually
19 attend the hearing.
20 But, in any event, I would think if it would be
21 possible that we would all be criticized if it were not held
22 in the local area.
23 I would also like to comment on the suggestion
24 that these proceedings somehow be bifurcated into two stages.
25 It is absolutely impossible to separate the designation

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jrb10

of the preferred alternative from the schedule because once you designate the preferred alternative, what is ConEdison to do?

We are then placed in a complete dilemma. We have proceeding in good faith with the schedule up to the very critical point where we are actually going in the next stage to commit money in our behalf and in behalf of our suppliers.

CHAIRMAN JENSCH: Excuse me for interrupting.

I don't quite understand your statement, that is, if a separate or rather partial initial decision were issued accepting the proposal for a preferred closed cycle cooling system, would that prevent you from starting to dig right away, and getting the material and getting going?

And how long it takes you to get it done may be a subject of later determination. But you would not have any problem in knowing what you had to build, would you?

MR. SACK: That is correct, but we would not know whether we were required to proceeding, on what scheduled we were required to proceed.

CHAIRMAN JENSCH: As fast as you could, isn't that good enough as a schedule, without having the kind of date that hangs in the air that says, "well, we are going to get it done in three months or come in and extend it"? Have them pick up their picks and shovels and head over the hill, and you could be ready in a short time. Don't you keep that as a

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kind of a guide, to do everything as fast as you can?

MR. SACK: Until we have resolution of the Village of Buchanan issue, we think -- that is, that we do not have regulatory approval.

CHAIRMAN JENSCH: Tell me a little about that, if you would, please? I am sorry to interrupt you, but if you don't mind?

I thought somebody favored us with a copy of a decision that indicated the Village of Buchanan zoning was inferior in scope to the authority of the Public Service Commission and, therefore, you were allowed to proceed?

MR. SACK: Of the NRC. That was a decision of the lower court.

CHAIRMAN JENSCH: We have a recent -- if you talk about levels of courts, it seems to me there was a decision this summer, July 21, 1976, a Midland case, and a Vermont Yankee case, and I understand that some of the parties keep saying, we are thinking of appealing, but nobody's laying down and rolling over when they hear those words.

The Commission has stepped right in and said, we are going to implement those decisions right away; that is our basis for proceeding. Why can't we do that here?

MR. SACK: Because the Village of Buchanan is not taking the position that the Commission took in that case; they are taking a contrary position.

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1 And, if I may explain the history --

2 CHAIRMAN JENSCH: Isn't the law uniform? As I

3 looked at the cases when this came in one of our last hearings,

4 I do not know of a single case along the Hudson River

5 where a Town, aside from other municipalities, where Town

6 Zoning Ordinances have been held to be controlling over a

7 determination by the Public Service Commission that authorized

8 you to proceed in construction, how that may conflict with

9 some Town zoning.

10 Is there any case you can cite?

11 MR. SACK: Well, in New York State, the Public

12 Service Commission doesn't issue orders like that.

13 CHAIRMAN JENSCH: I thought their authorization had

14 the effect of superseding the Town zoning.

15 MR. SACK: No, under New York law we cannot, until

16 very recently we could not build a plant in an area which

17 did not conform to the local zoning rules for an industrial

18 location.

19 Now, there has recently been adopted a new

20 State siting law which does not apply to Indian Point, under

21 which a generating siting board which has representatives of

22 several State agencies, can overrule local authority; but

23 that is very new. It has not been applied yet.

24 But the general rule is that a plant has to be

25 located in an industrial zone.

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1 CHAIRMAN JENSCH: I thought ConEdison itself had
2 some cases against Tarrytown, or Yonkers, or some such, relying
3 on some orders of the Public Service Commission. Now, maybe
4 I am in error; but that was my recollection.
5 MR. SACK: That -- if they are not relying on
6 orders of the Public Service Commission, that is a doctrine
7 of New York State law, which the Court in Westchester here
8 did not pass upon; but it is a doctrine of New York law
9 that the local community cannot interfere with the construction
10 of an essential utility facility.
11 CHAIRMAN JENSCH: Yes.
12 MR. SACK: Now, the Village of Buchanan is arguing
13 that the cooling tower is not an essential utility facility
14 because ConEdison has not been ordered to construct the
15 cooling tower, and has not been ordered to construct a natural
16 draft cooling tower.
17 CHAIRMAN JENSCH: Well, maybe that is the first
18 order of business; to remove that problem, get out a partial
19 initial decision right away, if everyone is agreed here?
20 If the Board, upon review of the data which we have just
21 requested, agrees with the stipulation of the parties, will
22 the Applicant and Staff please submit a proposed form of
23 initial decision, and accomplish that objective within, let us
24 say, 10 days of today.
25 Let us set the date.

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1 MR. SACK: Well, Mr. Chairman --

2 CHAIRMAN JENSCH: Excuse me just a minute.

3 It is now September 22nd, how about October 1?

4 That seems to be a good date. September 30 is a date already

5 taken for some environmental report on basic management; I

6 don't want to conflict with that date.

7 So, how about Friday, October 1? Will the parties

8 submit a proposed partial initial decision in line with the

9 expected stipulation; and if the Board agrees -- so that we

10 may get out an initial decision on that right away, it will

11 help your considerations perhaps in the court; and that will

12 take care of the ordering clause. And we will bifurcate it

13 in some way.

14 MR. SACK: The amendment just say the natural

15 draft system is the preferred system. I don't think there

16 was any language there that requires us to proceed with

17 construction that meets that point.

18 But that's only one issue in a very extensive

19 proceeding.

20 If you will let me explain?

21 CHAIRMAN JENSCH: I think there has been a movement,

22 I think this recent policy statement, while it is related

23 to waste management and fuel reprocessing, it expresses a

24 view of the Commission as it has in the several instances in

25 other cases where you can get partial initial decisions out

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rb15

1 and Boards are encouraged to do that -- if it is only for LWAs
2 or any other way -- to try to conclude what you can as soon
3 as you can.
4 So I think the Board will be disposed -- although
5 we have not made any decision -- I think the Board would be
6 in a position to assist the parties in every way we can ,
7 and expedite the proceeding -- end quote, period.
8 MR. SACK: On the facts of our proceeding, I think
9 it would be grossly unjust to ConEdison to put it in a
10 position where it would have to jeopardize its resources of
11 itself and its customers on the prediction of how the eventual
12 decision on scheduling and the effect of the Buchanan
13 situation on the schedule is ultimately going to be decided.
14 If you decide separately that this is the preferred
15 system, we are in a dilemma: we do not know how to proceed.
16 CHAIRMAN JENSCH: Do it as soon as you can.
17 Don't you like that?
18 MR. SACK: We do not have the final settlement
19 of the dispute with the Village of Buchanan.
20 CHAIRMAN JENSCH: You don't have the final
21 settlement of waste management and the fuel reprocessing
22 case either; and yet the Commission has proceeded to implement
23 the court decision as it presently stands. And I think that
24 is an indication to Licensing Boards to accept that approach
25 as a procedure.

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1 You've got one court decision; are they going to
2 the United States Supreme Court as well as the Court of
3 Appeals? Are we going to wait to find out?
4 MR. SACK: Well, if you will permit me to explain?
5 CHAIRMAN JENSCH: Please tell us how you are
6 jeopardized by wanting to proceed -- you do want to proceed
7 as fast as you can, don't you?
8 MR. SACK: Once we have all regulatory approvals.
9 That's what the license says. That's what the Appeal Board
10 says in the prior case, when we have all the regulatory
11 approvals.
12 Now, the Village of Buchanan is not taking the
13 position that the Commission is taking in the waste management
14 case. In the waste management cases the Commission lost a
15 decision, and they are deciding that they will abide by the
16 lower court decision.
17 Now, the Village of Buchanan did not do that.
18 Now, what happened in this proceeding, as I
19 indicated in some of the correspondence, subsequent to filing
20 a cooling tower report December 74, there was an eruption
21 of opposition to this cooling tower far beyond anything we
22 had imagined was possible.
23 There are very strong feelings in the community,
24 and it spread throughout Westchester County. Now, we
25 wanted, we thought that our facts demonstrated a sufficient

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1 case to get a zoning variance. So we -- and that would have
2 eliminated the problem as quickly as possible.
3 We applied for the zoning variance. That was
4 denied on the grounds that we had not yet been ordered to
5 build the cooling tower, and our application was premature.
6 They really didn't pass on the merits.
7 So we appealed that to the Supreme Court of
8 Westchester County. Westchester County held, first of all,
9 that the effect of the license was to require construction
10 of a tower, construction of a closed cycle cooling system.
11 So I don't think we need any further assistance on that
12 aspect of this matter.
13 Then they went on to say, instead of remanding
14 to the Board to consider the merits of the Application, they
15 saw that federal preemption applied because of the decision
16 of the NRC, a federal agency, the local zoning board was
17 prohibited from interferring with the construction of a closed
18 cycle cooling system.
19 Now, once they made that decision, they converted
20 this proceeding into a very important constitutional case.
21 It is the first case that I am aware of that holds that the
22 NRC NEPA jurisdiction can't preempt local zoning rules -- and
23 this is an important constitutional point -- and the Village
24 of Buchanan appealed to the Appellate Division, which is an
25 intermediate court of appeal in this State.

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We urged, we filed a motion for them to bring on the appeal in the June term; that was denied. And it was put down to the September term. And it was argued in the Appellate Division just yesterday.

There is no way to predict how long it will take the Appellate Division to reach a decision; but until we see at least Appellate Division's decision on this case, we have no justification for proceeding with construction; if Appellate Division were to reverse, and send it back to the zoning board, the zoning board could prevent or enjoin the construction; and we certainly could not start on it.

CHAIRMAN JENSCH: These things, there is a term I think that has been quite popular, or was until July 21; what is "remote and speculative" to inquire about. So you can envision some horrors here that would have us just aghast, I am sure.

But we have to start where we are now. And when you talk about jeopardizing and all these things, we like to hear you say it, but we don't think it means very much; because right now you have an order of a court that you can proceed with the construction, and we will help to assist you in every way we can, and expedite the case.

Now, what happens tomorrow, at which time an order will issue, we will have to play it by ear; but let's not sit down and roll over because we think a cloud over the

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1 horizon is going to make it very difficult to see.

2 MR. SACK: Well, Mr. Chairman, I submit that

3 a case that has just been argued, that is pending before an

4 Appellate Court, a decision that can go either way, is not

5 a remote speculation.

6 Now, we are talking about demolishing a wooded

7 area, excavating the side of a hill; these are all major

8 undertakings that should not be undertaken while an authority

9 to do that work is still pending before the courts.

10 CHAIRMAN JENSCH: Supposing the decision comes

11 next April and says you can go ahead; it's lovely to have

12 waited that long, but I don't think it helps at all in this

13 situation; that if you can proceed now, -- and maybe you will

14 be right.

15 Are you arguing that your lower court decision

16 was right?

17 MR. SACK: Absolutely. We argued with diligence

18 at that proceeding that that decision should be upheld.

19 CHAIRMAN JENSCH: All right, we'll believe you.

20 (Laughter.)

21 Can't we proceed upon a basis of your representa-

22 tion that the lower court is right?

23 MR. SACK: I am pleased to have your concurrence,

24 but that was an argument I made, because, to make that

25 argument --

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1 CHAIRMAN JENSCH: You don't believe it?

2 MR. SACK: I believe the arguments are generally

3 correct, but if the lawyer makes the arguments that his

4 client instructs him, what he personally believes I don't

5 think is particularly important.

6 CHAIRMAN JENSCH: That may be, but what is your

7 view here? Don't you think you have a valid order to

8 proceed?

9 MR. SACK: I believe we do not have a final

10 order. It is on appeal.

11 CHAIRMAN JENSCH: I understand that.

12 Do you feel you have a valid order from a court

13 that you can proceed at this time? Or do you not?

14 MR. SACK: It is a valid order but it is not a

15 final order.

16 I do not have all regulatory approvals required

17 to proceed with the construction of a cooling tower.

18 Now, the fact that it may take until April or

19 longer to have a decision resolved is simply a fact of modern

20 life, that once you get into a litigation situation, which

21 we try to avoid by proceeding before the Village, but once

22 we get into this kind of situation, it is impossible to predict

23 how long litigation will take.

24 CHAIRMAN JENSCH: It's almost as bad as

25 regulatory delay, isn't it?

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(Laughter.)

MR. SACK: I won't comment on that.

But it is simply a fact of modern life that when you are faced with a determined opposition, litigation could take a long time, and we are faced with that kind of opposition in that case with the Village of Buchanan.

ND TAKE 2
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1 CHAIRMAN JENSCH: I thought that regulations, for
2 instance, of the Nuclear Regulatory Commission, as soon as an
3 initial decision is issued by a licensing board, a construc-
4 tion permit can be issued. There is a rush to the site that
5 makes the Gold Rush look like a backward walking.
6 (Laughter.)
7 And while the intervenors -- those people who
8 are sometimes called intervenors -- appeal to the court; it has
9 never held you up a bit or anybody else in the nuclear busi-
10 ness and they pay no more attention to whether it is a final
11 order subject to appeal, the case gets argued -- in fact, as
12 I understand it, there was a case argued in about May of 1975
13 and it was decided in July of '76, but as I understand it,
14 everything had been going on.
15 You don't think you can follow that for this,
16 though, because it is under appeal in this case?
17 MR. SACK: There is a completely different legal
18 situation where we are having the safety hearings concerned --
19 well, first of all, limited work authorization allows you to
20 proceed on that site. And all that is done is the work site
21 preparation which won't be lost --
22 CHAIRMAN JENSCH: Well, take the construction per-
23 mit. The utility, as I understand it, they rush to go ahead
24 and the appeals have gone on without any concern on the part
25 of the utility having a construction permit.

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MR. SACK: But the appeal is usually concerned with backfitting of one system or another. It doesn't affect the basic licensing of the site. But here we have a completely different situation where a major constitutional point -- and I think it is a case of first impression on the preemptive authoritiy under the National Environmental Policy Act, and it involves the Commission's jurisdiction and they did not see fit to participate in that proceeding. Just as the Village of Buchanan doesn't participate in this proceeding, the Commission is not participating in the Village proceedings. So the Fishermen did intervene in the State proceeding and are assisting us there.

But we are in a very serious battle and it is impossible to predict the outcome and it is far from speculative.

(Board conferring.)

MR. BRIGGS: Mr. Sack, Chairman Jensch and I were just discussing the schedule that you propose to use. And I think it will be important to look at that and see how great the jeopardy is. I wonder, do you start digging the day you get the approval from the Village of Buchanan, or do you start digging six months after that?

MR. SACK: Sir, let's see; the schedule is the next -- some of these early letters -- well, I have the schedule. It changes from time-to-time. Our schedule

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1 expert is here and he can correct me, but the -- after ob-
2 taining regulatory approvals, it is six months between the
3 date of final approval and actual construction in the ground;
4 it is the three months to incorporate the final -- incorporate
5 the agency recommendations and the final engineering. And
6 then one month to issue bids, one month to evaluate bids,
7 and one month to mobilize the contractor. This is for the
8 excavation.
9 At the same time, I believe, we are awarding the
10 bids for erection of the cooling tower.
11 Now these are not paper activities. When we try
12 to get bids from a contractor, that involves substantial time
13 and expenditure on his part. And frankly, some of the con-
14 tractors are disturbed that we have gotten so much informa-
15 tion from them without ever giving them a contract. So we
16 really can't proceed down even these six months when this
17 situation is indefinite.
18 And the one point I wanted to add to what I said
19 before is essentially we are interpreting a licensing pro-
20 vision which says that we should not proceed until we have all
21 regulatory approvals. And the question is: What is meant
22 in the License and the Appeal Board when they said "all re-
23 gulatory approvals."
24 MS. CHASIS: The Hudson River Fishermens Associa-
25 tion agrees wholeheartedly with Mr. Jensch's recommendation to

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1 issue a partial decision on the question of preferred type of
2 system. And we are very much of the opinion that the Village
3 of Buchanan denial of the zoning variance is not something
4 which may hold up the schedule.
5 We think that what would be appropriate -- we would
6 like to suggest to the Board that there be a briefing schedule
7 of the legal issue of whether or not Con Edison has received
8 all requisite approvals, and that issue should be dealt with
9 in the partial decision that the Board is contemplating is-
10 suing so that the type of system and the issue of whether
11 all outstanding approvals have been received are resolved.
12 Then there will be no impediment to the commencement of the
13 activities which have been described.
14 And I think there will be a period of time and
15 hopefully the Appellate Division will have come to a decision
16 within that period. But we see absolutely no reason for Con
17 Edison's deferring commencement of construction activities
18 pending the litigation.
19 CHAIRMAN JENSCH: Isn't there a rule that if a
20 decision can be upheld on any ground, it will be upheld; that
21 is, aside from the federal preemption that has been raised
22 by the lower court. There is another ground to sustain the
23 lower court's decision that will be utilized to sustain it.
24 So this phase of the federal preemption may not be too con-
25 trolling for determination of the finality of the situation?

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1 I just suggest that as a possibility that may arise.

2 Did you consider that in your brief?

3 MR. SACK: Yes, sir. In our brief we did mention

4 all of the arguments that we have raised below, including the

5 state doctrine of public utility necessity.

6 CHAIRMAN JENSCH: Necessity for what?

7 MR. SACK: Buchanan replied that the Court, the

8 Appellate Court, could not consider that argument because the

9 court below had not passed on it. And it was not that that

10 was in their brief. It was not discussed at the oral argu-

11 ment.

12 MR. TROSTEN: Mr. Chairman, may --

13 CHAIRMAN JENSCH: You seem to be quite frightened

14 by their argument rather than being assured by the decision

15 of the lower court. That's the problem I have with your

16 approach this matter.

17 MR. SACK: Well --

18 CHAIRMAN JENSCH: I always thought that lawyers

19 were encouraged with what the courts have done and not with

20 the arguments that have been going on about the --

21 MR. SACK: Well, when the court has two arguments

22 before it, I am not going to predict victory or predict which

23 way they will decide. A court can obviously decide either

24 for Con Edison or for the Village of Buchanan.

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25 CHAIRMAN JENSCH: There is no one else in the

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1 case; is there?

2 MR. SACK: Well, the Fishermen are intervenors

3 on our side, but the court can decide either way, and even

4 though I think I made the appropriate arguments, there is no

5 way to tell how it will come out.

6 MR. TROSTEN: Mr. Chairman, may I just address

7 the point of the partial initial decision in this proceeding.

8 Con Edison is certainly desirous to move this proceeding along

9 as fast as we possibly can.

10 CHAIRMAN JENSCH: And conclude construction as fast

11 as you can.

12 MR. TROSTEN: Anything that can lead us to the

13 point where we can have assurance adequate to begin construc-

14 tion, we are in favor of doing and in favor of proceeding.

15 CHAIRMAN JENSCH: I don't know if that is quite an

16 answer, but proceed.

17 MR. TROSTEN: We certainly feel that as early as

18 possible we would like to get into the evidentiary phase of

19 this hearing. As we see it, we have the following matters

20 that we need to cover:

21 There are the FES issues that Mr. Kuhn mentioned

22 this morning. There are some questions about monitoring con-

23 ditions which we could get into a little bit later today which

24 have to do with -- which could conceivably be common hearing

25 issues that we can discuss a little at a later point. We

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have the limited appearance which Mr. Lewis indicated this morning may well be extensive, at least the Staff at least anticipates on the basis --

CHAIRMAN JENSCH: We are not worrying about taking care of that. We will take care of the limited appearance time.

MR. TROSTEN: The only reason why I mention that, Mr. Chairman, is simply this:

I personally feel that it is going to divert the Board's attention to try to stop in midstream and issue a partial initial decision as opposed to just getting this hearing over with and issuing a final decision.

CHAIRMAN JENSCH: I think that is a reflection on the efficiency of any Atomic Safety and Licensing Board that they would be stopping in midstream. We can swim the works and we will be ready.

MR. TROSTEN: You know, Mr. Chairman, there is always this problem we face in other proceedings, and as Applicants, we always have the question: Should we ask the Board to stop and issue a partial decision and go on, or should we just ride through the entire matter.

Now there are several legal issues that need to be resolved. We submit that the briefing schedule should be set; the question of whether or not we have all regulatory approvals; what is the meaning of the license condition in

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1 this case has to be resolved.

2 An intimately related issue which is also identi-
3 fied in this stipulation is: What is the effect of failure to
4 receive all regulatory approvals upon the actual schedule?
5 And we submit, sir, that the thing to do is get as quickly as
6 we can with both the briefing and the evidentiary portion of
7 the hearing. We are not ruling out the possibility that
8 somewhere down the line somebody -- the Board may conclude
9 that expedition calls for a partial initial decision.

10 I frankly submit, sir, that I think we would be
11 better off we could just get through the entire matter and
12 get the Board's final decision on this matter. But I really
13 think at this point that; A) it is premature, and in all
14 likelihood, it is going to prove to take more time than other-
15 wise to have the partial initial decision issued on part of
16 these issues.

17 CHAIRMAN JENSCH: The Board would have to give
18 consideration to these matters, but will you just keep
19 October 1st in mind for the submittal of a proposed partial
20 initial decision authorizing construction preferred -- let
21 me get the words -- preferred alternative closed cycle
22 natural draft wet cooling tower -- so that everybody has
23 everything in there. And you will be able to take care of
24 your contractors if you are worried that they are getting less
25 from you than they are giving you and that sort of thing.

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1 So, the Board will have to decide that.

2 MR. TROSTEN: Yes, sir.

3 MR. LEWIS: Mr. Chairman, perhaps --

4 CHAIRMAN JENSCH: We can conceive of all kinds of

5 legal issues that will ream up the paper, but I don't recall any

6 serious question about this in hearings: Oh, yes; as soon as we

7 get the other regulatory approvals well, we will be ready to

8 go right ahead. And I think there was some enumeration of

9 some things in there. I have forgotten just what the list

10 is, but --

11 MR. SACK: Mr. Chairman --

12 CHAIRMAN JENSCH: -- as I understand it, it is a

13 uniform system of jurisprudence in the State of New York that

14 Con Edison has enjoyed the results of it, that they can go

15 ahead with the construction of these plants as they have done

16 up and down, as I understand it, the Hudson River.

17 And while you are now seemingly absolutely aghast

18 at the fact that somebody is appealing some order, I think

19 the record of high achievement in the past in these town

20 zoning matters should give you some encouragement to go right

21 on and deal with it as the Nuclear Regulatory Commission has

22 done in these recent waste management and fuel reprocessing

23 cases.

24 MR. SACK: Well, Mr. Chairman, you have a very

25 generous view of Con Edison's record of success. I assure

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1 you we have lost some. We have lost some of the cases as well
2 as we have won them. We lost -- and in just my research for
3 this case, we have lost some substation zoning cases where we
4 wanted to build them, where they held the state doctrine did
5 not apply. Power plants we have built that were all in
6 industrial zones, we had the support of local communities,
7 as we have had the support of the Village of Buchanan up un-
8 til this time.
9 So we have never constructed anything in opposi-
10 tion of local communities. And that includes the proposed
11 Cornwall plant where the local community is very much in
12 support of the project.
13 CHAIRMAN JENSCH: Just out of curiosity, what is
14 the status of Cornwall?
15 MR. SACK: I think Ms. Chasis is more familiar
16 with that than I am. I think it is about to start up again,
17 I think.
18 MS. CHASIS: Well --
19 CHAIRMAN JENCH: What, the controversy or the
20 construction?
21 MS. CHASIS: The controversy on the fishery ques-
22 tion is very much alive. There were hearings, as you prob-
23 ably know, in the fall of 1974. That was two years ago. And
24 in the midstream the company requested a deferral of those
25 hearings pending completion of their fishery studies. And

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1 the Commission granted that request. And the Court of Appeals
2 upheld the grant of the request but stayed construction of
3 the project pending completion of those hearings.
4 Now they were ordered to come in with a report on
5 August 15, 1976 on the status of the project, both on the
6 economic/financial grounds as well as on fishery issues. Con
7 Edison did so and the parties have responded to that sub-
8 mission. And the Commission, the Federal Power Commission,
9 will be determining in the coming months what kind of sche-
10 dule for the fishery hearings is appropriate and whether or
11 not to reopen the whole licensing proceeding as they have
12 been requested to do by Scenic Hudson, Preservation Conference
13 of the Hudson River Fishermens Association.
14 CHAIRMAN JENSCH: Thank you.
15 Have you finished, Mr. Sack?
16 MR. SACK: Yes, I think so.
17 CHAIRMAN JENSCH: Well, where are we now? Do we
18 have anything further to discuss? Or should the Board take a
19 recess and consider the suggested schedule that Mr. Lewis
20 proposed or do the parties desire to have a recess and see
21 if they can sign subject to authority being given to the
22 Hudson River Fishermens Association representative?
23 MS. CHASIS: I would to speak to the scheduling
24 of the evidentiary question. I think that it makes sense to
25 move as rapidly as possible and I am concerned about a date

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1 of November. I think many of these issues now have been re-
2 viewed by all the parties and we should be prepared to pro-
3 ceed more expeditiously than that. So that I would propose
4 that the evidentiary hearing be set for some time, 30 days,
5 for example, from today; that is, at the end of October.
6 And I think that we should all be able to meet
7 that kind of a schedule.
8 The other thing I would like to address is the
9 question of the date for cessation of once-through cooling.
10 We have no proposed schedule from the company and I think
11 that the Board should request Con Edison to submit a proposed
12 schedule for cessation of once-through cooling. And I think
13 then the Staff should undertake an evaluation to determine
14 whether that schedule represents the minimum feasible time
15 for cessation of once-through cooling and switch over to
16 closed cycle cooling.
17 And I think that the Staff has a very serious
18 obligation here to do that because it has been responsible
19 for the delay that has occurred in obtaining -- in Con
20 Edison's obtaining the NRC approval for the type of system.
21 So I request that the Board direct both Con Edison and the
22 NRC Staff to undertake those two tasks prior to any eviden-
23 tiary hearing that would be held.
24 CHAIRMAN JENSCH: As I say, the Board has not con-
25 sidered this and we will take a recess in order to give some

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1 thought to these matters.

2 But I think the Staff is to be complimented on the
3 extreme solicitation for the statement by way of limited
4 appearances. That is the first time I have ever heard of a
5 hearing in an evidentiary matter to be delayed so that the
6 Staff could take due consideration to the suggestions that
7 would be coming in by way of limited appearance. In fact, I
8 have had the impression in reviewing some of the records that
9 the Boards have allowed limited appearors to only have five
10 minutes and rush on because everything else was ready to
11 blow. And I do think that the Staff has been very courteous
12 and considerate of the limited appearance people.

13 But I likewise want to express my admiration for
14 the efficiency of the Regulatory Staff in being able to deal
15 with other statements in other cases by way of limited appear-
16 ance in being more readily able to respond quickly and fully
17 to the suggestions that are made. And therefore, I person-
18 ally am having a little difficulty wondering why 30 days is
19 a necessary time for the rapid response of instant replay of
20 some of the presentations that are made. And I have the
21 high regard for the Staff to believe that they can do a lot
22 better than 30 days to turn over statements that come in from
23 members of the public, because they have been able to do it
24 in other cases by letting people talk for five minutes and
25 sit.

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So unless there is something further, I think perhaps the Board should take a few minutes recess and see if we can -- is there anything else we can do on brief legal issues? I like that because it conjures up all subpoints and minor points and micro points and macro points. And we really have to begin to deal with really: Should the closed cycle preferred alternative natural draft wet cooling tower system be adopted? And I think the Board will want to consider a stipulation that is submitted as well as the data that we have indicated that -- perhaps in a general way to say that all R&D work that has been exchanged among the parties since the time of our last hearing will be submitted to the Board so we can review it in the meantime.

And if the Board decides that should be accepted as the Board may decide to issue the decision, partial initial decision, and then we will try to accommodate the suggestions for a schedule.

Unless there is something further, we will take a recess.

MR. SACK: One thing in connection with what Ms. Chasis said: We have submitted schedules from time-to-time and they have all been based on the schedule that was reached in the Appeal Board decision in Indian Point 2. And if we want to review that again --

CHAIRMAN JENSCH: What was date of cessation of

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once-through?

MR. SACK: The last one we submitted -- well, it depends upon the date you assume for receipt of all regulatory approvals. The last one we submitted assumed --

CHAIRMAN JENSCH: Supposing it is October. Let's see; if you submitted a proposed partial initial decision on October 1st, maybe October 10th would be considered as the time of determination of all regulatory approvals being received.

Now assuming that to be a start, can you count the date and give us a figure for date of cessation of termination of once-through cooling.

MR. SACK: We have to spread it out and calculate it and see how construction intervals go. If it is December 1st '76, which seems a reasonable date now, then it would obviously come to be May 1, 1980.

Now I am not sure whether it is a month-to-month delay because we have this winter lag problem which is described in the correspondence. But we would have to lay out the schedule and see what it would be.

CHAIRMAN JENSCH: Would you work on that in the recess while we are in --

MR. SACK: What date do you want us to use for receiving all regulatory approvals?

CHAIRMAN JENSCH: Well, let's see; Columbus Day is

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1 October 12th; let's use that as a date for determination that
2 might be made on all regulatory approvals.
3 MR. SACK: It is hard to work with the middle of
4 the week. Shall we say October 1st and calculate it?
5 CHAIRMAN JENSCH: Well, that is the magic date for
6 your briefs and you don't want to say we are not going to
7 consider the briefs.
8 MR. SACK: We will do it for October 12th.
9 CHAIRMAN JENSCH: All right.
10 MR. SACK: And Mr. Dambra is here and he can do
11 it very quickly.
12 CHAIRMAN JENSCH: You keep that speed in mind for
13 construction all the way. I think that will be very helpful,
14 too.
15 We find some difference in the clock on the wall
16 and what we have understood to be the Greenwich time.
17 MR. SACK: I wanted to say one other thing. In
18 discussing dates for the hearing, we are somewhat at a loss
19 as to what issues precisely are going to be raised. We don't
20 know what questions the Board has to ask and what specific
21 matters the parties have. We have set forth our views ex-
22 tensively in the correspondence and to some extent, how much
23 time we need for the hearing depends upon the extent of the
24 issues that are going to be required to be addressed.
25 CHAIRMAN JENSCH: Some of these things we will

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1 have to kind of expect a certain flexibility among the parties
2 and that they can deal with these questions when they arise
3 at the hearing. I would just say offhand that I infer that
4 the Hudson River Association would disagree with everything
5 that was written. From that disagreement, perhaps you can
6 surmise what the issues are. And we don't have to write them
7 out in words. You can just proceed from there as year 1,
8 that they disagree with what you have written.
9 Now does that help you kind of prepare what you
10 might come in with?
11 Let's use the clock there as our guide. It is a
12 little off, but at this time, let's recess to reconvene in
13 this room at 11:40, according to the clock on the wall.
14 (Recess.)
15
16 End #3
17
18
19
20
21
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24
25

TAKE 4
JRB:jrbl

CHAIRMAN JENSCH: Please come to order.

The Board has reviewed consideration of the several matters, some of the several matters, that have been presented here; and in an endeavor to expedite this case as rapidly as possible, with due consideration to the rights and concerns of all parties, we will now try to suggest a schedule to the parties that will permit us to accomplish those objectives.

We will hope that the parties will be able to submit to us on October 1 a proposed partial initial decision for the preferred alternative closed cycle cooling system for installation at Indian Point Station No. 2, and that being a natural draft wet cooling tower.

We would like to announce now that on October 6 at a public hearing to be held here in White Plains -- if we can get space, we hope -- an opportunity for all persons to submit statements by way of limited appearance respecting the matters that will be under consideration.

We have taken note of the statements by both Applicant and Regulatory Staff that there are persons who desire to present statements by way of limited appearance.

The subject of cooling towers was, of course, quite extensively considered in the earlier, previous hearings involving Indian Point No. 2; and we have had the impression that the public has followed the matter. I think, if I

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1 recall correctly, that there was some exception made during
2 the course of hearings, a statement by the Village of Buchanan,
3 if I recall. In any event, while it may seem like a
4 dupliation of opportunity to present statements by way of
5 limited appearance, the Board is desirous of according that
6 opportunity as indicated in the order convening the special
7 prehearing conference. And this public notice is given on
8 the transcript now; a later order will be issued.
9 But notice is now given out to the public that
10 we will, if space can be procured for a start of an evidentiary
11 session on October 6, 1976, which will be devoted to the
12 presentation of statements by way of limited appearance.
13 On October 7 we would proceed to a presentation
14 of evidence respecting all matters related to the Final
15 Environmental Statement, including those concerns indicated
16 by the State of New York as well as a presentation we would
17 like, the Board would like, from the parties in reference
18 to a further alternative that Mr. Briggs will describe.
19 MR. BRIGGS: I am not going to describe a further
20 alternative, but in Comment 21, New York State Department of
21 Environmental Conservation, I believe, suggested that if there
22 were not land enough at the site to install a cooling pond
23 with a power sprayment module, this might possibly be done in
24 the river; that is, that part of the river be set aside for
25 use as a cooling facility.

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It seems to me at one time there was a proposal to establish a fairly large area in the river through which water would be drawn to the inlet intakes to the plant, to screen out fish and eggs and larvae and that sort of thing. The Staff has in a matter of two or three sentences disposed of that suggestion.

And it seems to me that it might be worthwhile to tell more about why the suggestion is not practical, and what the considerations were that led to preferring other -- the cooling tower, for instance -- as opposed to this particular suggestion.

And I believe it was not only the Department of Environmental Conservation that asked that question, but I believe there were other comments on the Draft Environmental Statement that were similar to this one; and it just seemed to me that it deserves a bit more attention than it seems to have received in the FES.

CHAIRMAN JENSCH: And the Board would contemplate a further evidentiary session would be held at a later time later to be scheduled on the other matters in reference to due diligence and that sort of thing, that has been identified here somewhat this morning.

MR. LEWIS: Mr. Chairman, would it be in order now for the Staff to respond to the proposed schedule?

CHAIRMAN JENSCH: Yes.

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1 MR. LEWIS: Mr. Chairman, two items: in respect
2 to the proposed partial initial decision, it is the Staff's
3 view that the proposed partial initial decision should
4 follow, rather than precede, limited appearances and
5 evidentiary session.
6 CHAIRMAN JENSCH: You may well do that; you may
7 accept that as a premise.
8 MR. LEWIS: I am not clear, Mr. Chairman, you have
9 as of now called for the submission of proposed partial
10 initial decision?
11 CHAIRMAN JENSCH: Right.
12 MR. LEWIS: For the parties in advance of the
13 evidentiary session?
14 CHAIRMAN JENSCH: That is correct; but that does not
15 mean it is going to be issued.
16 MR. LEWIS: Correct, Mr. Chairman; however, it is
17 Staff's position that the proposed partial initial decision
18 should follow the receipt of the evidence which you have
19 tentatively set down for the 6th and 7th of October.
20 CHAIRMAN JENSCH: Yes, if there is any supplement
21 that seems to be desirable, we will set a date for that at
22 the close of the evidentiary session.
23 We realize we cannot control a partial initial
24 decision by way of limited appearances; they are not
25 evidentiary in character.

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MR. LEWIS: Mr. Chairman, the second problem is a practical one with the October 6 and 7 date, and that is my availability. I am going to be tied up in another hearing on that week in Wisconsin; and while I am not the only Staff Counsel involved in the proceeding, it does present some further problems to us.

And we are wondering if a later date during the month of October might not be more feasible, perhaps during the week of October 25?

CHAIRMAN JENSCH: Well, there is another proceeding that may be pending about that time; and it seems to be within the range of priority prescribed by the Commission -- I do not think we should prejudice that possible schedule by that.

I do want to pay tribute to your associate counsel here today; Mr. Michael Grainey seems to be able to move from proceeding-to-proceeding. He seems to have quite a background, I understand, with ConEdison up here this summer. I am sure he can pick up the fish problem and environmental concerns. I am sure you would recognize his equal ability with yourself?

MR. LEWIS: I certainly agree to that.

CHAIRMAN JENSCH: So I am glad he is here today to get the background of our considerations; and we will expect that he would carry on in your absence if Wisconsin has you snowbound.

jrb6

MR. LEWIS: And, Mr. Chairman, I believe that you are talking about a proposal from the parties as to the content of a partial initial decision, recognizing in those proposals that the evidentiary session may produce additional matters which might require supplementation of the parties' proposal; and then upon proceeding thereon with an initial partial decision on those matters?

CHAIRMAN JENSCH: The Board will decide that phase of it later.

MR. LEWIS: Fine.

With that understanding the Staff might wish to supplement its proposed partial initial decision, I have no very strong objections to that.

CHAIRMAN JENSCH: Good.

We will fix a date, however, for bringing all these legal issues that the parties would like to brief, and list all issues you can think of -- federal preemption, the authority of the court to issue orders, and anything else you can think of. I don't know that they will necessarily be received by the Board, but I think the parties should have the full freedome in an expedited case to brief everything they can think of, if they think it is something we should be thinking about; and whether we accept those suggestions, we will have to decide later.

What date do you find convenient? Perhaps

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1 Applicant should proceed first? There are quite a few problems,
2 as I recall your statement.
3 MR. SACK: Well, I think Applicant's position has
4 already been set forth in the correspondence.
5 CHAIRMAN JENSCH: State it again, please, and
6 save us time in digging out the papers.
7 When would you like to get a brief in, and is there
8 anything else you would like to bring up?
9 MR. SACK: I think the Fishermen have to submit
10 the brief first. We still don't know in what respects they
11 disagree.
12 CHAIRMAN JENSCH: I thought their letter the other
13 day implied that everything you've written, they disagree with.
14 They said about the only thing that --
15 MR. SACK: They seem to agree an NRC proceeding
16 is an essential prerequisite. They did not seem to disagree
17 with anything except the Village of Buchanan.
18 On the assumption that that is the only issue of
19 disagreement, suppose we say we submit a brief two weeks from
20 today -- simultaneous briefs for all parties two weeks from
21 today?
22 CHAIRMAN JENSCH: Let's t ake an initial brief
23 from Applicant a week from today -- or did you say two weeks?
24 MR. SACK: I said two weeks from today.
25 CHAIRMAN JENSCH: All right.

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1 October 5, the Applicant puts in his brief on
2 October 5; and how about Staff and Hudson River answering on
3 a single date?
4 MS. CHASIS: We would be prepared to respond in
5 a week of the submission of ConEd's brief.
6 MR. SACK: Mr. Chairman, I don't see why
7 simultaneous briefing is not appropriate for this. The argu-
8 ments have all been set forth extensively.
9 CHAIRMAN JENSCH: We'll have to get yours first.
10 Thank you. October 12 is the date on which Hudson River
11 Fishermen Association and Regulatory Staff and State of New
12 York will submit a brief.
13 MR. LEWIS: Let me speak for Staff on that:
14 I don't think we can make the date of October 12,
15 but let me preface my statement with the following: Mr.
16 Chairman, it would be the Staff's belief that the question
17 of scheduling -- let me rephrase that.
18 The question of whether or not other regulatory
19 approvals have been obtained by the licensee is a matter which
20 in the Staff's view goes solely to scheduling of the
21 construction of the cooling tower. We would see no reason
22 why a determination of those matters could not be handled
23 after a hearing on determination of the question of choice
24 of tower.
25 On that basis, Staff would propose a schedule

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1 that would allow us to come to the evidentiary hearing on
2 the partial initial decision and in fact review that record
3 and see whether or not we need to supplement our proposal
4 of October 1st. And then perhaps on October 29 we would be
5 able to brief the matter of the other regulatory approvals.
6 In that manner it would enable the Board to expedite the
7 decision on the more limited issues raised by the partial
8 initial decision, and then set down for a subsequent
9 consideration the matter of scheduling.
10 MS. CHASIS: Mr. Chairman, I would like to
11 respectfully disagree with what Mr. Lewis has said for the
12 simple reason I think the question of whether regulatory
13 approvals have been received is critical in terms of assuring
14 that commencement of construction begins; and it seems that
15 both the decision of type of system and the approvals goes
16 to that commencement of construction; whereas, the question
17 of determination of date is one that is not as pressing for
18 decision and could be deferred until after the evidentiary
19 hearing and decision on the type of system and regulatory
20 approval is issued.
21 So that I would recommend a hearing schedule
22 which -- two weeks for submission of ConEd's brief, and then
23 a week for submission by the other parties in the proceeding.
24 MR. KUHN: Your Honor, I would just like to also
25 give New York State's approval to the schedule, and although

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1 it does seem to be a rapid schedule, I think it is warranted
2 by force of the circumstance or the fact that the issues that
3 are to be addressed are really issues that have been before
4 the parties for some considerable period, and we have already
5 exchanged a considerable number of documents concerning these
6 issues.
7 And therefore, in sort of tying up the loose
8 ends and putting it in one package is what we are asking
9 for. And I think that in terms of the date proposed, and in
10 view of the need to get an expeditious resolution of A) the
11 type of closed cycle cooling and B) the very basic question
12 of whether regulatory approvals -- all regulatory approvals
13 -- have been obtained -- before we even look at the
14 scheduling question is necessary.
15 I would submit and the State would submit that that
16 is an appropriate schedule.
17 CHAIRMAN JENSCH: There is one correction I
18 want to make. As Mr. Briggs pointed out in our conference
19 he does not desire all of the data that has been exchanged
20 among the parties since the last hearing on the R&D program
21 and the fish. And if you could send a list of what has
22 been sent, and a description of what each contains, perhaps
23 he could make a selection; and Dr. Daiber could review the
24 matter.
25 MR. SACK: Does that include environmental

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1 studies or just the cooling tower studies?

2 MR. BRIGGS: Well, while I have the opportunity

3 here, there are several things that I would like to get, and

4 I must say that they are not all concerned with this

5 proceeding. I will just take the opportunity to ask for

6 the documents for another proceeding, also.

7 I have a copy of the December 1974 Environmental

8 Report that was prepared by ConEd for selection of a

9 closed cycle system. According to a letter that I received

10 some time after that, there was a Supplement 1 that was sent

11 to the Staff; and I do not have a copy of Supplement 1.

12 I would like to have a copy of Supplement 1.

13 I would also like to have -- and this may be

14 very difficult -- if it is, well, I don't think it should

15 be difficult, but if it is, maybe we can compromise a bit --

16 a list of reports by ConEd and its contractors and others

17 that have been used by ConEd. These reports are resulting

18 from the ecological studies since the issuance of the

19 December 1974 Environmental Report.

20 In other words, you have had studies going on for

21 sometime and the other utilities in the area have had studies

22 going on, and, presumably, there have been reports issued

23 as a result of those studies.

24 And I would just like to have a list of the

25 reports and the date that these reports were issued, and they

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1 should be reports that are relevant to the environmental
2 effects of Indian Point 1, 2 and 3, and I am not necessarily
3 concerned only with 1, 2 and 3; if there are reports from
4 other utilities you have been involved in, I would like to
5 just have a list of those reports. But only those since
6 December 1974.
7 Now, with regard to another proceeding, I have
8 not received a copy of the Applicant's Environmental Report
9 of June 1975 that deals with the request for an extension
10 of operation. And it would be helpful for me to get a copy
11 of that report.
12 CHAIRMAN JENSCH: Yes, I wonder if all members of
13 the Board might get a copy of that particular document,
14 please?
15 MR. SACK: There is a supplement to that, too.
16 MR. BRIGGS: Well, if there is a supplement, we'd
17 like to have copies of the supplements.
18 MR. SACK: Very good, sir.
19 There is just one other matter: Could I request
20 changing that October 5 date to October 6? I see that
21 October 4 is a holiday, religious holiday; and I would
22 appreciate having it on October 6.
23 CHAIRMAN JENSCH: All right, October 6 is fixed
24 as the date for Applicant's brief.
25 MR. LEWIS: Mr. Chairman, given the vagaries of

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1 the mail I believe that if the Applicant's brief were filed
2 on the 6th, the filing date of the 12th for the Staff -- we
3 might not even have it in hand.
4 CHAIRMAN JENSCH: If it's October 6, he'll
5 probably hand it to you right here.
6 MR. LEWIS: That's true.
7 (Laughter.)
8 CHAIRMAN JENSCH: Very well.
9 The 13th we will fix as the date for the Reg
10 Staff.
11 MR. LEWIS: 13th?
12 CHAIRMAN JENSCH: Yes.
13 MR. TROSTEN: Mr. Chairman?
14 CHAIRMAN JENSCH: Yes?
15 MR. TROSTEN: Since we are not going to have
16 simultaneous briefs, may we have a --
17 CHAIRMAN JENSCH: Reply brief? The 15th? All
18 right?
19 MR. TROSTEN: Could we have a little bit longer
20 than that, sir? It is going to be a little bit tight.
21 CHAIRMAN JENSCH: How loose do you want it?
22 MR. TROSTEN: Well, I would suggest if October 12th
23 is the time, that we take -- October 12 is a Tuesday, if we
24 could have the 19th, sir?
25 CHAIRMAN JENSCH: Very well, October 19 is the

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date for Applicant's reply brief.

Is this about as far as we can go at this pre-hearing conference?

MR. KUHN: Your Honor, I guess it is a little uncertain in my mind, and I would seek clarification concerning the subject matter of the briefs and the reply briefs. Are these limited to the question of whether all reg approvals have been received by ConEd, or will they also extend to this scheduling issue?

CHAIRMAN JENSCH: Well, the briefing that I understood was requested this morning are the issues we would take up at the evidentiary hearing; and so that could be as broad as Applicant feels his initial brief should be; and the answers can expand or modify upon that.

And if it includes scheduling and regulatory approvals, why, include them.

MR. KUHN: So it is a full-scope brief, but, obviously, since you have set hearings for October 6 and 7, which deal with presentation of evidence concerning the FES, that is one matter that would not be dealt with in those briefs.

CHAIRMAN JENSCH: Yes, that is correct.

MR. BRIGGS: There is another matter concerning the FES which probably does not bear very heavily on the selection of the appropriate closed cycle cooling system; but

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in the past I have asked the question: are there areas between Indian Point and the seashore where the salt deposition rate, natural salt deposition rate, is likely to be about the same as any salt deposition rate at Indian Point; and if there are such areas, what has been the effect of salt deposition there on hemlock and dogwood and other sensitive plants?

Now, I see occasionally mention of the effect of salt spray close to the ocean on such plants, but nobody seems to have looked really very carefully, I think, at whether one can correlate information on natural salt deposition situations with the situation that is expected at Indian Point.

And I would like for someone to address that subject in connection with the questions on the Final Environmental Statement.

In other words, can you take a natural situation where the salt deposition rates are those that one expects at Indian Point, and look there and see what has happened to hemlocks and dogwood to see whether they have been badly affected, or whether any exist in those areas.

CHAIRMAN JENSCH: In that connection, Mr. Briggs, would you like to have the gentleman come in with a calculation again, that he gave I think at our last session about salt deposition?

jrb16

MR. BRIGGS: No, I am satisfied the information on salt deposition rate; it is the effect of salt deposition rate on plants.

CHAIRMAN JENSCH: Is there any other matter we can take up at this session of the hearing?

(No response from the parties.)

VOICE FROM SPECTATOR SECTION: I am Mr. D'Alvia, I am representing the Village of Buchanan. I don't know if it is proper to note that the Village will be appearing in a limited capacity to make statements a the hearing. I don't know if it's all right to put that in the record or not.

CHAIRMAN JENSCH: It's all right, I am glad you did.

But any person who has not made his request at this time is not precluded from making a statement so that the public should know that they need not have been here in order to make the request.

Is there any other matter we can take up at this session?

(No response.)

If not, thank you; this prehearing conference is now precluded.

(Whereupon at 12:07 p.m., Wednesday, 22 September 1976, the hearing was adjourned.)

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