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NEW YORK STATE PUBLIC SERVICE DEPARTMENT
AND
NEW YORK STATE BOARD ON ELECTRIC GENERATION
SITING AND THE ENVIRONMENT

IN THE MATTER

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MAY 14 1979

Application of the NEW YORK STATE ELECTRIC & GAS CORPORATION and the LONG ISLAND LIGHTING COMPANY pursuant to Article VIII of the Public Service Law for a certificate of environmental compatibility and public need to construct two 1250-megawatt nuclear generating units in the Town of New Haven, Oswego County, or at an alternate site in the Town of Stuyvesant, Columbia County

MINUTES OF PREHEARING CONFERENCE

held at the Offices of the Commission, Agency Building #3, The Governor Nelson A. Rockefeller Empire State Plaza, Albany, New York, on Thursday, March 22, 1979, commencing at 10 o'clock a.m.

BEFORE:

THOMAS R. MATIAS,

Presiding Examiner
Public Service Commission

SIDNEY A. SCHWARTZ,

Associate Examiner
Department of Environmental
Conservation

records Facilities Branch (3)
015 Phil

2137 252

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2 APPEARANCES:

3 For the PUBLIC SERVICE COMMISSION STAFF:

4 ROBERT GREY, Staff Counsel
5 MICHAEL FLYNN, Staff Counsel
6 CRAIG INDYKE, Legal Assistant
7 Agency Building #3
8 The Governor Nelson A. Rockefeller
9 Empire State Plaza
10 Albany, New York 12223

11 For NEW YORK STATE ELECTRIC & GAS CORPORATION:

12 HUBER, MAGILL, LAWRENCE & FARRELL
13 99 Park Avenue
14 New York, New York 10016
15 By: RODERICK SCHUTT, ESQ.
16 NORMAN W. SPINDEL, ESQ.
17 COLES H. PHINIZY, ESQ., of Counsel

18 For LONG ISLAND LIGHTING COMPANY:

19 EDWARD J. WALSH, JR., ESQ., of Counsel
20 250 Old Country Road
21 Mineola, New York 11501

22 For DEPARTMENT OF ENVIRONMENTAL CONSERVATION:

23 DAVID A. ENGEL, Senior Attorney for
Energy
50 Wolf Road
Albany, New York 12233

For OFFICE OF PARKS & RECREATION:

PATRICK J. HIGGINS, Assistant Director,
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2137 253

1 APPEARANCES: (Cont'd.)

2 For DEPARTMENT OF AGRICULTURE & MARKETS:

3 RICHARD P. FEIRSTEIN, ESQ., of Counsel
4 New York State Office Campus
5 Building #8
Albany, New York

6 For RENSSELAER COUNTY HEALTH DEPARTMENT:

7 THOMAS E. BREWER, Director, Division of
8 Environmental Health
County Office Building
Troy, New York 12180

9 For TOWN OF KINDERHOOK:

10 THOMAS G. GRIFFEN, Town Attorney
11 542 Warren Street
Hudson, New York

12 For TOWN OF COEYMANS:

13 RALPH F. SCHIMMEL, P.E., Councilman
14 Russell Avenue
Ravena, New York 1214315 For COLUMBIA COUNTY, TOWN OF STUYVESANT and
16 CONCERNED CITIZENS FOR SAFE ENERGY, INC.:17 MILLER, MANNIX, LEMERY & KAFIN, P.C.
18 11 Chester Street
Glens Falls, New York 12801
By: ROBERT J. KAFIN, ESQ., of Counsel19 ANNE CURTIN, Representative, Concerned
20 Citizens for Safe Energy, Inc.
P. O. Box 88
21 Stuyvesant, New York22
23 2137 254

1 APPEARANCES: (Cont'd.)

2 For STATE ATTORNEY GENERAL'S OFFICE:

3 PAUL S. SHEMIN, Assistant Attorney General
4 JOHN F. SHEA, Assistant Attorney General
5 ED SAWCHUK, Environmental Engineer,
6 Environmental Protection Bureau
Two World Trade Center
New York, New York 10047

7 For CITIZENS TO PRESERVE THE HUDSON VALLEY and
8 GREENE COUNTY, ET AL:

9 LORETTA SIMON, Environmental Planner
Greene County Planning Department
10 Box 517
Cairo, New York 12413

11 For COUNTY OF SUFFOLK:

12 REILLY & LIKE
200 West Main Street
13 Babylon, New York 11702
14 By: RICHARD C. HAND, ESQ., Assistant to
Irving Like, Special Counsel for
15 County of Suffolk

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P R O C E E D I N G S

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2 JUDGE MATIAS: All right, can we come to
3 order, please?

4 I think you all know that we are meeting
5 here in the prehearing conference in Case 80008 and let
6 me just state the caption for you. This is the
7 application of the New York State Electric & Gas
8 Corporation and the Long Island Lighting Company pursuant
9 to Article VIII of the Public Service Law for a
10 certificate of environmental compatibility and public
11 need to construct two 1250-megawatt nuclear generating
12 units in the Town of New Haven, Oswego County, or at an
13 alternate site in the Town of Stuyvesant, Columbia
14 County.

15 We had a prehearing conference on
16 Tuesday in Oswego. This one today is for the convenience
17 of people living in Stuyvesant.

18 I am Thomas R. Matias. I am Administrative
19 Law Judge with the Department of Public Service. I will
20 be the Presiding Examiner in this proceeding.

21 To my left is Dr. Sidney Schwartz.
22 Dr. Schwartz is the Associate Examiner. He is from the
23 Department of Environmental Conservation.

2137 256

1 I will start out by taking appearances,
2 and I will take the statutory appearances first, and
3 then I will go to those of you who filed notices of
4 intention to appear.

5 For the statutory, the Applicants, New
6 York State Electric & Gas. Mr. Schutt?

7 MR. SCHUTT: Huber, Magill, Lawrence &
8 Farrell on behalf of New York State Electric & Gas
9 Corporation; Roderick Schutt, Norman W. Spindel and
10 Coles H. Phinizy, of Counsel.

11 MR. WALSH: The co-Applicant, Long Island
12 Lighting Company by Edward J. Walsh, Jr., 250 Old Country
13 Road, Mineola, New York 11501.

14 JUDGE MATIAS: You are Mr. Walsh?

15 MR. WALSH: Yes, I am.

16 JUDGE MATIAS: Thank you, Mr. Walsh.

17 For the Staff of the Public Service
18 Commission?

19 MR. GREY: Your Honor, I am Robert Grey,
20 Staff Counsel. With me this morning is Michael Flynn,
21 Staff Counsel, and Craig Indyke, Legal Assistant.

22 JUDGE MATIAS: Thank you, Mr. Grey.

23 The Department of Environmental

2137 257

1 Conservation?

2 MR. ENGEL: For the Department of
3 Environmental Conservation, my name is David A. Engel.

4 JUDGE MATIAS: Thank you, Mr. Engel.
5 The Department of Commerce?

6 All right, no response.

7 Department of Health? No response again.

8 Department of State? Again, no response.

9 Parks & Recreation?

10 (No response.)

11 JUDGE MATIAS: State Geologists?

12 (No response.)

13 JUDGE MATIAS: All right. Ag & Markets?

14 MR. FEIRSTEIN: Yes, Richard P. Feirstein,
15 of Counsel.

16 JUDGE MATIAS: The Hudson River Valley
17 Commission? Nobody here from that group?

18 (No response.)

19 JUDGE MATIAS: All right. Let me go into
20 the appearances for those of you who filed notices of
21 intention to appear.

22 Now, they were due on February 20,
23 although we have been taking them being filed quite a

2137 258

1 bit after that date.

2 The Rensselaer County Department of
3 Health?

4 MR. BREWER: Thomas E. Brewer.

5 JUDGE MATIAS: All right. Thank you,
6 Mr. Brewer.

7 Town of Kinderhook?

8 MR. GRIFFEN: Thomas G. Griffen, Town
9 Attorney.

10 JUDGE MATIAS: Thank you, Mr. Griffen.
11 Mr. Haber, H-a-b-e-r?

12 (No response.)

13 JUDGE MATIAS: I have him identified as
14 supervisor, and unfortunately I do not know the town.
15 It is in Castleton. Is that the Town of Castleton?

16 MS. CURTIN: Schodack, your Honor.

17 JUDGE MATIAS: The Town of Schodack? He
18 is not here?

19 MS. CURTIN: No, your Honor, he could not
20 be here this morning, but he asked me to state that that
21 was not an indication of less interest. He just could
22 not be here.

23 JUDGE MATIAS: Would you state your name,

2137 259

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please?

MS. CURTIN: I am Anne Curtin.

JUDGE MATIAS: Thank you, Miss Curtin.

All right. Town of Coeymans?

MR. SCHIMMEL: Ralph Schimmel, Councilman,
Town of Coeymans.

JUDGE MATIAS: Thank you, Mr. Schimmel.

The Columbia County Fruit Growers?

(No response.)

JUDGE MATIAS: Vivian Rosenberg? All
right, no response again.

Neil Ranch, Ithaca? That is R-a-u-c-h.

(No response.)

JUDGE MATIAS: Robert J. Kafin?

MR. KAFIN: Your Honor, I appear for
Columbia County, for the Town of Stuyvesant and for the
Concerned Citizens for Safe Energy, Inc. I do not appear
for myself and did not file --

JUDGE MATIAS: Are you Mr. Kafin?

MR. KAFIN: That is right.

JUDGE MATIAS: Do you appear also for
Mid-Hudson Nuclear Opponents, Inc.?

MR. KAFIN: No, I do not.

2137 260

1 JUDGE MATIAS: Because I have you down as
2 making an appearance for them.

3 MR. KAFIN: No.

4 JUDGE MATIAS: Are they represented today,
5 Mid-Hudson Nuclear Opponents, Inc.?

6 MR. KAFIN: I am not sure. It may be that
7 we will coordinate our presentation here, but today I am
8 not appearing for them.

9 JUDGE MATIAS: All right. Thank you,
10 Mr. Kafin.

11 Concerned Citizens for Safe Energy,
12 Miss Curtin?

13 MR. KAFIN: Your Honor, as I --

14 JUDGE MATIAS: Oh, I am sorry.

15 MR. KAFIN: I am going to appear for the
16 County, Town of Stuyvesant and the Concerned Citizens
17 for Safe Energy.

18 JUDGE MATIAS: I recognize now that you
19 represent Miss Curtin's interests, too. All right,
20 thank you.

21 The Columbia County Farm Bureau?

22 (No response.)

23 JUDGE MATIAS: The Attorney General?

2137 261

1 MR. SAWCHUK: I am an engineer with the
2 State Attorney General's Office. Paul Shemin should be
3 here. He is an Assistant Attorney General.

4 JUDGE MATIAS: I have a Mr. John F. Shea.

5 MR. SAWCHUK: He is also another attorney
6 working on the case. Paul Shemin and John Shea will be
7 working on this case.

8 JUDGE MATIAS: But neither are here today,
9 I gather?

10 MR. SAWCHUK: Paul Shemin is expected.

11 JUDGE MATIAS: All right.

12 Citizens to Preserve the Hudson Valley,
13 Incorporated?

14 MS. SIMON: Your Honor, I am appearing
15 for Citizens to Preserve the Hudson valley. I am just
16 stating that they wish to participate fully in the
17 hearings, but they were unable to have a representative
18 here today and asked me to tell you that.

19 JUDGE MATIAS: All right. Would you state
20 your name?

21 MS. SIMON: Yes. My name is Loretta
22 Simon. I am here on behalf of Greene County, et al.

23 JUDGE MATIAS: All right.

2137 262

1 MS. SIMON: Would you like me to state
2 further?

3 JUDGE MATIAS: Well, I gather you are
4 representing someone other than the Citizens to Preserve
5 the Hudson Valley.

6 MS. SIMON: Yes.

7 JUDGE MATIAS: Why don't you go ahead?

8 MS. SIMON: Thank you. I am here on
9 behalf of Greene County, et al. Greene County intends
10 to file a late petition for intervention.

11 JUDGE MATIAS: I was going to say, I had
12 not heard from you before in that capacity.

13 MS. SIMON: Yes, your Honor. We have not
14 participated to this point, but we intend to do so and
15 file a petition for late intervention.

16 JUDGE MATIAS: All right. Would you do
17 so then?

18 MS. SIMON: Yes.

19 JUDGE MATIAS: Are there any other
20 appearances?

21 MR. HAND: Yes, Richard C. Hand for the
22 County of Suffolk. I am associated with Irving Like,
23 who is Special Counsel for the County, and we have filed

2137 263

1 a notice of intent to appear.

2 JUDGE MATIAS: I had received a letter
3 from Mr. Like and I had received it just before I went
4 to New Haven, so I had not responded to that, but I
5 assume that you knew about the prehearing conferences,
6 and you talked about application for funds, and I assume
7 that you knew what was in that prehearing conference
8 notice with respect to making a presentation today.

9 MR. HAND: Yes, I requested a copy of that
10 from Staff Counsel. You do have our letter?

11 JUDGE MATIAS: I received your letter,
12 but you did not receive one from me because when I
13 received it, it was too late for me to respond. I was
14 on my way out the door, but I did receive it. All right,
15 thank you, sir.

16 MR. HIGGINS: Your Honor, I am Patrick
17 Higgins on behalf of the Office of Parks & Recreation.

18 JUDGE MATIAS: Oh, all right. I called
19 out Parks & Recreation.

20 MR. HIGGINS: Yes, we came in a couple
21 minutes late.

22 JUDGE MATIAS: All right, thank you.

23 Any other appearances?

2137 264

1 All right, I gather not.

2 Now, there are a number of things we wish
3 to take up today and the main item of business is the
4 question of funding. I think you all know that the
5 Applicants under the Article VIII, which would be the
6 effective article for this application -- Article VIII
7 calls for a \$25,000 fund to be used for municipal
8 parties only to help defray expenses incurred in the
9 prosecution of the case, and the notice of prehearing
10 conference that was served on all of you indicated that
11 we would expect a full presentation to be made today,
12 and the presentation that we will be looking for -- and
13 I will read them again -- will be, number one, the
14 identity of experts or consultants under consideration;
15 a brief curriculum vitae for each expert or consultant,
16 including the area of expertise relevant to this
17 proceeding; number three, the extent of participation
18 anticipated for each expert consultant during the course
19 of this proceeding; four, an indication of how the
20 participation of each expert or consultant will assist
21 the Siting Board in resolving the issues extant in this
22 proceeding; and, lastly, an estimate of the total cost
23 to be anticipated for each expert or consultant considered.

2137 265

1 Now, before I turn to the villages, towns
2 and counties that would be the beneficiaries of the
3 funding, I will say that in New Haven we had -- three
4 applications? -- we had four applications in New Haven,
5 and I believe that the demand for the funds now exceeds
6 \$100,000, so with what we will receive today, the demand
7 for the funds would go well, well in excess of the
8 \$25,000, so I will just take you as you would like to be
9 heard.

10 Who is representing villages, towns or
11 counties wishing to make an application for funds?
12 And, please, could you address the items that were set
13 forth in the notice of prehearing conference that I just
14 read?

15 Mr. Kafin?

16 MR. KAFIN: Your Honor, if I am not out of
17 turn, I would like to make such an application for
18 Columbia County and the Town of Stuyvesant. We have
19 prepared a written statement under Rule 70.25 that
20 contains the items.

21 JUDGE MATIAS: All right, fine.

22 MR.KAFIN: I do not know that it is
23 necessary to burden the record with an oral presentation,

2137 266

1 if you wish. However, I only have six copies because
2 in part it contains one voluminous exhibit, and if that
3 presents a problem, I will make an oral presentation.
4 Otherwise, I would like to hand up a copy of our
5 statement and I will distribute it to the Applicants and
6 to anybody else who wants one within reason.

7 JUDGE MATIAS: All right. We will need
8 two.

9 (Pause.)

10 JUDGE MATIAS: Mr. Kafin, you have given
11 us a document that is a very lengthy one, and it looks
12 like it has been prepared in some detail, which is fine.

13 Now, obviously, Dr. Schwartz and I have
14 not had an opportunity to read it.

15 Does this document set forth information
16 on all of the areas that were set forth in the notice of
17 prehearing conference?

18 MR. KAFIN: If it would be helpful, your
19 Honor, let me just orient you to the nature of the
20 submission.

21 JUDGE MATIAS: All right.

22 MR. KAFIN: The submission is an application
23 for the entire \$25,000 fund. It is supported by three

2137 267

1 exhibits. The first exhibit is a curriculum vitae of
2 the firm of consultants we propose to hire.

3 Exhibit B is an outline of the scope of
4 services which the consultants would render if we were
5 able to hire them. That scope of services is broken down
6 into modules, each with a price tag, so that we show that
7 work can be done even if the application is not granted
8 in whole, and the final exhibit is a proposed contract,
9 a form of contract, which these municipalities would be
10 prepared to enter into with the consultant and which the
11 consultant advises it would be prepared to enter into
12 should the application be submitted and should we be
13 able to proceed in making the presentation, so I think
14 that the submission covers each of the points in your
15 Honor's notice of prehearing conference.

16 JUDGE MATIAS: All right, fine. Thank you,
17 Mr. Kafin.

18 Do you have any questions?

19 DR. SCHWARTZ: Yes. Mr. Kafin, you might,
20 if you wish, tell us how this particular potential
21 contractor was selected. What was the basis for
22 selecting this particular contractor?

23 MR. KAFIN: The County has assigned its

2137 268

1 Planning Department, the County of Columbia has assigned
2 its Planning Department, to coordinate the participation
3 in this case, and the Director of the Planning
4 Department conducted a survey of firms that would be
5 available to do this kind of work, and I think that the
6 persuasive item here was that this firm recently did
7 similar work in Case 80006 for Greene County and for the
8 towns and village of Athens and Catskill.

9 The work that was prepared here is
10 similar to the work that was done for those municipalities
11 in an Article VIII case. In addition, that Article VIII
12 involved a site that was right across the river, in a
13 sense, from this, and it was felt that this consultant
14 in the course of the work in 80006 had gathered some
15 background in the region that would be useful here
16 without duplicating work that was done there.

17 DR. SCHWARTZ: I see. One of the questions
18 is does the County anticipate sharing any of the costs
19 for the experts?

20 MR. KAFIN: I am not sure what you mean,
21 Dr. Schwartz. However, we are in a posture where the
22 County is committed to provide funding for participation
23 of Counsel.

2137 269

1 The County has also donated some services
2 in kind in the nature of the facilities and personnel
3 of its Planning Department and it might very well be that
4 as we move along, we will find that through the Coastal
5 Zone Management Program or some other program, the
6 County will have funding available to assist in this
7 presentation and make it fuller and aid the record in
8 that regard.

9 JUDGE MATIAS: What Dr. Schwartz means is
10 that you have indicated that you are applying for the
11 entire \$25,000, Mr. Kafin, and in the event that you
12 receive something less than that, even zero, or if you
13 should receive \$25,000 and the fees were to exceed that,
14 is the County prepared to meet the balance of payments
15 that would be due to this consulting firm?

16 In other words, if an award is made, say,
17 of \$5000, would that in effect be wasted if the County
18 were not prepared to go forward and pick up the balance
19 of the obligation that would be incurred?

20 MR. KAFIN: The County is not prepared to
21 commit funds beyond that which is requested for the
22 services of this consultant, although we do not foreclose
23 the possibility that it may. Keeping that in mind, the

2137 270

1 submission that has been made is broken down into
2 modules, and you will see that the scope of services
3 is broken down in such a way that any one of the four
4 areas could proceed independent of the others, so that
5 when we see what kind of funding is available and from
6 what sources, we will be able to pick and choose from
7 among the services being offered, depending on our means
8 and the availability of funding, so that recognizing
9 that there would be competition for these funds, we do
10 not make an all-or-nothing submission, although we would
11 like it all.

12 JUDGE MATIAS: Is there a cost breakdown
13 for the four areas, Mr. Kafin?

14 MR. KAFIN: Pardon me?

15 JUDGE MATIAS: Is there a cost breakdown
16 for each of the four years?

17 MR. KAFIN: Yes, the submission contains
18 pricing for each of the modules.

19 JUDGE MATIAS: All right. Thank you,
20 Mr. Kafin. Obviously we will have to sit down and spend
21 some time with this off the record.

22 Who else is going to make an application
23 today?

2137 271

1 MR. GRIFFEN: Town Attorney, Town of
2 Kinderhook.

3 JUDGE MATIAS: Would you state your name
4 again for the reporter?

5 MR. GRIFFEN: Yes, Tom Griffen, Thomas G.
6 Griffen.

7 Your Honor, while the Town of Kinderhook
8 are not late intervenors, they are recent intervenors,
9 and we have had an opportunity to review the proposal
10 by Hart Associates that Mr. Kafin has presented
11 generally today.

12 What we have in mind presently is to lend
13 any funds to which we may be entitled -- or to contribute
14 any funds to which we may be entitled to the hiring of
15 Hart Associates to pursue the items that are mentioned
16 in that report.

17 The Town is also willing to contribute
18 some Counsel fees. I would say probably to -- and we
19 have not consulted Mr. Kafin except very briefly --
20 probably in the nature of a contribution toward Counsel
21 fees of Mr. Kafin to handle this case. Beyond that, I
22 do not think I can --

23 JUDGE MATIAS: Well, I gather, Mr. Griffen,

2137 272

1 what you are saying is that the Town of Kinderhook is
2 joining Columbia County in the request for \$25,000?

3 MR. GRIFFEN: That is true.

4 JUDGE MATIAS: This, I gather, is a joint
5 thing. I do not know whether Mr. Kafin sees it that way
6 or not.

7 MR. GRIFFEN: I do not think I have seen
8 it that way until now, but I believe at this point --

9 JUDGE MATIAS: Or in the alternative,
10 perhaps you are just supporting the town of Columbia
11 County in its request.

12 MR. GRIFFEN: Yes. In practical terms,
13 I hope that does not make much difference. What I am
14 saying is any funds to which we might be entitled, we
15 would contribute to a fund to hire Hart Associates, and
16 the Town is willing to also contribute some monies for
17 hiring Counsel.

18 JUDGE MATIAS: All right. Anyone else?

19 MR. HAND: Yes, Judge. For the County of
20 Suffolk, we, too, have prepared an application.

21 JUDGE MATIAS: Your name is what again,
22 sir?

23 MR. HAND: Richard Hand. This document is

2137 273

1 entitled "Application of the County of Suffolk for
2 Intervenor Municipal Funding Pursuant to PSC Section
3 142(6)". I have copies we can submit.

4 JUDGE MATIAS: We will need two,
5 Mr. Hand, if you could just try to be as equitable as
6 possible.

7 MR. HAND: Judge, I do not think I need
8 to comment on everything that is in this document, but
9 I would like to comment on why we are here.

10 As Judge Matias knows, we represented the
11 County --

12 MS. CURTIN: We cannot hear him.

13 MR. HAND: The County is an intervenor in
14 the Long Island proceedings on application by LILCO and
15 NYSEG to construct plants at Jamesport. Recently the
16 Siting Board remanded that case for further hearings on
17 the basis of a reduced forecast statewide and local and
18 also on the basis of the LILCO-NYSEG application to
19 construct plants Upstate.

20 In the remand order they required
21 consideration of issues of a nature which involved not
22 only the Jamesport plant but the plants Upstate as well.
23 I can refer you, Judge, to the order directing remand,

2137 274

1 and in that there are four issues which they set forth
2 which are to be considered at the remanded hearings which
3 begin April 7th, and preliminarily I would like to state
4 our position, and that is that although this application
5 was filed before the December 31 date, litigation of it,
6 presentation of evidence of testimony is going to take
7 place after December 31, and we think that the Board has
8 sufficient discretion to require a greater contribution
9 than \$25,000 from the Applicants.

10 First of all, you have two Applicants.
11 Secondly, you have issues that are related not only to
12 Upstate plants but Downstate plants, and we have cited
13 appropriate legal provisions which give the Board power
14 to acquire a greater fee than \$25,000.

15 We filed an Article 78 proceeding here in
16 Albany County seeking to compel the Siting Board to
17 provide the County with funding to litigate the remanded
18 hearings in Case 80003. That case will be heard tomorrow.

19 In that we argue that the order of remand
20 requires relitigation of virtually all the major issues
21 that were previously litigated in the Jamesport case,
22 and it requires new litigation of issues related to the
23 NYSEG application.

2137 275

1 Also, in the subsequent order of the Board
2 in Case 80003, they indicated that any testimony or
3 relevant evidence that is adduced up here is to be
4 incorporated in the record down in the Jamesport
5 proceedings. We feel that because there is overlap of
6 issues, direct overlap of issues, that testimony that is
7 developed in the Jamesport application can be incorporated
8 in this case, and I would like you to review our
9 application with that in mind.

10 You will see that a large portion of the
11 expert testimony which we expect to produce will also
12 aid the Board in its consideration of the issues up here,
13 including statewide forecasts, need, alternatives, oil
14 substitution, comparative economics.

15 I think that covers what I have to say.

16 JUDGE MATIAS: All right, thank you,
17 Mr. Hand.

18 DR. SCHWARTZ: Mr. Hand, have you
19 reviewed this application from Columbia County, the
20 Fred C. Hart Associates document? Have you seen it?

21 MR. HAND: No, Judge, I have not seen it.
22 This is the first I have heard of it.

23 DR. SCHWARTZ: Well, is there a copy

2137 276

1 available for Suffolk County? I would appreciate if you
2 would review this and see if it is not possible that
3 Suffolk County would support this application rather than
4 come in with a new application since the funds are at
5 present, pending the litigation of your appeal, limited
6 to \$25,000, so I would like you to review a copy of this
7 with the possibility of either supporting it or not
8 supporting it, but I think you should have it.

9 MR. HAND: Judge, I would like to make
10 clear that we want money from this case to litigate the
11 related issues down on Long Island. That case is to
12 start imminently. Right now we are without money.

13 There is an application made to the County
14 Legislature for money. We do not know what the outcome
15 will be. We also do not know what the outcome will be of
16 our Article 78 proceeding, and in view of the Board's
17 order directing remand, we believe that we have a very
18 strong equitable argument for some portion of the monies
19 for litigation of the issues in the Jamesport case.

20 DR. SCHWARTZ: Well, it would be
21 inappropriate for us to comment on the other pending
22 case, but I would like you to review this document with
23 the possibility of supporting it.

2137 277

1 MR. HAND: All right.

2 JUDGE MATIAS: I will say this, Mr. Hand:
3 I do not have the new Article VIII before me, but as I
4 recall, it states that its provisions apply to
5 applications filed on or after January 1, 1979 and I
6 think since this application was filed on November 22,
7 1978 then that disposes of the question of which
8 Article VIII is applicable.

9 MR. HAND: I do not think it does. I
10 would like to give you a feel for the practical impact
11 of that construction.

12 JUDGE MATIAS: Oh, I know all about that,
13 sir. I have followed 80003. I know exactly what you are
14 saying. I know what was in the order of remand. I know
15 what the Siting Board said. I know what they said about
16 incorporating this record and I recognize that you have
17 questions to raise there, but I think those questions
18 have to be raised with the Siting Board, not with us
19 altering the clear provisions of Article VIII.

20 MR. HAND: I was going to direct my
21 comments to the fact that the new Article VIII provides
22 money not only for municipal intervenors, but private
23 intervenors. By not treating the application in the way

2137 278

1 we suggest, private intervenors will have no money to
2 litigate the case.

3 I think the clear intent is to make funds
4 available to private intervenors because they clearly
5 do not have the wherewithal to litigate the complex
6 issues that are going to be involved in the case.

7 JUDGE MATIAS: But if the Legislature
8 intended, though, that the provisions apply to periods
9 before January 1, 1979 they would have so stated.

10 MR. HAND: Well, PSC 142(6) empowers the
11 Board to decide upon such terms and conditions as the
12 Board may deem appropriate. We argue that such terms
13 and conditions may include the requirement that LILCO
14 and NYSEG pay any fees necessary to establish the
15 intervenors' fund in the amount set by the Board.

16 I can also direct your attention to
17 PSC Section 140: "The Chairman shall provide such legal,
18 technologic, scientific, engineering and other services
19 as may be required in the proceedings under this article."

20 Under Section 18A of the Public Service
21 Law: "The Chairman may in turn charge each utility with
22 the cost of paying for such intervention."

23 I think there is sufficient discretion

2137 279

1 vested in the Board in the interest of fairness to make
2 such funds available so the parties litigating these
3 proceedings can be properly represented.

4 DR. SCHWARTZ: Well, that is the Board's
5 discretion.

6 Mr. Feirstein, do you have the new
7 statute?

8 MR. FEIRSTEIN: Yes, I do.

9 DR. SCHWARTZ: I would like to read it into
10 the record since the matter came up.

11 (Pause.)

12 JUDGE MATIAS: All right, Mr. Hand, I do
13 not know that any further argument on this point is
14 necessary. I have just leafed through this submission
15 that you have made and it is a 20-page document with an
16 Appendix A attached, and I gather as I leaf through it
17 that you have followed the categories set forth in the
18 notice of prehearing conference, the identity of the
19 experts and the curriculum vitae, et cetera, et cetera,
20 so we will find everything then within the 20 pages.

21 MR. HAND: Everything.

22 JUDGE MATIAS: All right. Dr. Schwartz
23 and I will study this also, and we will come to grips

2137 280

1 with the question you have raised about basic provisions
2 of Article VIII.

3 MR. HAND: I would urge you to make a
4 resolution as promptly as possible in view of the fact --

5 JUDGE MATIAS: We have to do that because
6 as we told people in New Haven, we are going to be moving
7 this case along quite quickly, and we are going to be
8 doing a lot of things very quickly, as will the parties,
9 so you will be hearing from us in a matter of days.

10 Mr. Walsh?

11 MR. WALSH: If it please, Judge Matias,
12 Dr. Schwartz, the day before yesterday the Attorneys for
13 the Town of Riverhead, Paul, Weiss, Garrison, contacted
14 my office and indicated to me that they would like me
15 to make a statement in connection with their participation
16 in this proceeding.

17 The gist of what was communicated to me
18 was that as a result of the remand order and the various
19 assertions that are made about the consolidation of the
20 two proceedings, that is, the Jamesport 80003 and this
21 case, 80008, that Riverhead believes they may have an
22 interest in this proceeding, and they were thinking of
23 participating, and in connection with that participation,

2137 281

1 they asked me to state that they also would like to make
2 an application for an award of funding in this proceeding.

3 They have not, as is obvious, submitted
4 anything, but they requested an opportunity to do so,
5 and I make that statement in their behalf. I do not
6 represent them.

7 JUDGE MATIAS: I cannot regard that as an
8 application. They should have been here or they should
9 have contacted me and given me the kind of presentation
10 we asked for because you --

11 MR. WALSH: Let me point out to you that
12 this argument about the consolidation of the two
13 proceedings or that this is an alternative to Jamesport
14 has just recently become an issue, and they were unaware
15 of that fact, and they now see that the County of
16 Suffolk believes that they should be participating here,
17 and they think being a municipality more intimately
18 concerned with the Jamesport project, that they should
19 also participate.

20 JUDGE MATIAS: Well, I hope the Long
21 Island parties understand also that the recommended
22 decision in 80003 is due in October, now, and we will
23 just barely be getting underway, so there will not be

2137 282

1 any evidenciary overlap between the two proceedings at
2 all.

3 MR. WALSH: Well, I will advise the Town
4 but they asked me to make the statement so that you
5 would be aware of the fact that they are interested in
6 this proceeding.

7 If the cases are treated as consolidated
8 cases, if this is considered as an alternat to the
9 Jamesport, then they believe they should participate
10 and believe they are entitled to funding.

11 DR. SCHWARTZ: Of course, Mr. Walsh, are
12 they looking for funding to pay for their legal
13 representatives or for expert consultant witnesses?

14 MR. WALSH: I believe it is for expert
15 consultants. I think they have been through that aspect
16 of the funding.

17 JUDGE MATIAS: But for experts in use in
18 the proceedings that will be heard under Judge Levy and
19 Dr. Schwartz down on Long Island?

20 MR. WALSH: Oh, I think it would be for
21 experts used here, which would be unlike the County's
22 suggestion. I do not know if the County made it clear
23 that they are going to participate here or participate in

2137 283

1 Long Island.

2 JUDGE MATIAS: Well, that representation
3 is not sufficiently definite for me to give it too much
4 serious --

5 MR. WALSH: Well, I will pass the
6 information along to them, and they will have to be
7 advised as to -- they will have to make their own
8 decision.

9 JUDGE MATIAS: All right. Thank you,
10 Mr. Walsh.

11 MR. HAND: Judge, if I did not make it
12 clear to Mr. Walsh, perhaps I will make it clear to you.
13 We want the money to participate down there.

14 JUDGE MATIAS: You made it clear.

15 MR. HAND: We will be guided by what
16 occurs down there as far as our participation up here.

17 JUDGE MATIAS: I understand.

18 MR. HAND: And I think there is overlap.
19 I think the testimony that is developed down there will
20 be of direct use and benefit to development of this
21 record.

22 JUDGE MATIAS: No, I understood exactly
23 what you are saying.

2137 284

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MR. HAND: Thank you.

JUDGE MATIAS: Are there any other applications for municipal funding?

MS. SIMON: Your Honor, in relation to Greene County's intention to submit a petition for late intervention, Greene County would also request you reserve decision on \$2,500 of the municipal fund which the County would like to apply for for an aesthetic study of visual impacts on the region from this proposed project.

The County will submit a request for money to go to Consultant Harvey K. Flad, who has already submitted testimony in Case 80006 on a regional level for both Greene County and the Columbia County Historical Society, for Catskill Center for Conservation, Friends of Olan, Friends of Clermont and other intervenors, and we see this money as simply extending information that has already been gathered in Case 80006.

We feel that it is an important issue that should be addressed, and we would like to submit as soon as possible to you the curriculum vitae and more specific information.

JUDGE MATIAS: Dr. Schwartz and I will

2137 285

1 probably begin deliberations this afternoon, and this
2 has got to be done quickly. I anticipate by the end of
3 the week, early next week, that we will pretty much have
4 this thing in hand, so if you can get something to us
5 this afternoon or tomorrow --

6 MS. SIMON: Tomorrow.

7 JUDGE MATIAS: It sounds like I am giving
8 you very, very short notice, but in actuality I am not
9 because this notice has been out for several weeks.

10 MS. SIMON: We realize that, your Honor,
11 but through developments in Case 80006 we have come to
12 realize the importance of the visual impacts on the
13 region and felt that we would like to see them addressed
14 and we will try very hard to meet your deadline.

15 JUDGE MATIAS: See, I have already sent
16 out a letter to all parties urging them to begin informal
17 discovery and we are trying to motivate all parties to
18 move into the substance of this proceeding as quickly as
19 they can.

20 As a matter of fact, it should be under
21 way right now, and so we are going to move very quickly
22 on this funding because we realize that for the parties
23 to prepare and to submit testimony and to be ready to go

2137 286

1 forward with cross-examination, they have to know what
2 funding will be available to them. They have to go out
3 and retain the experts and consultants. They have to
4 work with them, educate them on the background of the
5 proceeding, get into the detail.

6 There is a lot of work to be done, and it
7 has to begin immediately, so we are not going to be able
8 to say, "Well, we will wait a month or six weeks." We
9 cannot.

10 MS. SIMON: No, we do not see it as that,
11 your Honor. We can get it in quickly.

12 JUDGE MATIAS: If you can get something
13 to us just as quickly as you can -- I will say this: If
14 you can get it to us before a ruling is issued, we would
15 be happy to consider it.

16 MS. SIMON: Thank you, your Honor.

17 JUDGE MATIAS: But if you do not, we are
18 just going to have to move forward.

19 Are there any other requests for funds?

20 Yes?

21 MR. SHIMEL: Your Honor, from the Town of
22 Coeymans.

23 Today we are unprepared to comply with the

2137 287

1 request for the resume, but I would like to impress upon
2 the Court on February 16 we made notice to this
3 proceeding that we would be interested in being involved
4 in that process, and we must plead some amount of
5 ignorance. Since we received a letter in February, much
6 of the work that we put together has been on a part-time
7 basis, such as local office holders like myself, so we
8 are not even aware of what professional expertise or
9 consultants are available to us.

10 I would hope that by our failure today we
11 have not foreclosed our options.

12 JUDGE MATIAS: Well, you may have if we
13 rule on something and you do not have anything to us in
14 time to be considered.

15 Now, I realize you are on the other side
16 of the river, but I do not know whether the effort of
17 Columbia County, which appears to be a very professional
18 effort, whether that would be helpful to you or not.
19 Maybe you could join in supporting that effort.

20 I recognize, again, that you have not
21 read it, and I recognize the problems the towns and
22 villages have when they get into something involving the
23 use of experts, that it is something you're not familiar

2137 288

1 with, but as I just mentioned a few moments ago, we are
2 going to have to move forward on a decision in the next
3 several days, and if there is anything you have, if you
4 can provide us with the detail before we act, we would be
5 very happy to consider it.

6 MR. SHIMEL: What time frame would that
7 be, your Honor?

8 JUDGE MATIAS: I cannot say how long it is
9 going to take Dr. Schwartz and I to put something out,
10 make a decision before that and get something out, but
11 we are going to start immediately, and the process will
12 be ongoing, and if we receive something before, we will
13 be happy to consider it on the merits, but I urge you
14 again, if you want to be considered, you must come to us
15 almost this afternoon or tomorrow.

16 MR. SHIMEL: I see. As we indicated on
17 February 16, we are indeed concerned with the impact that
18 may be coming on our community, and we have indicated
19 \$3000 and that really was a guesstimate at that time
20 because we had total ignorance of the process.

21 JUDGE MATIAS: I understand. I understand.

22 MR. SHIMEL: I will meet with our Town
23 Counsel this evening or tomorrow and tell him of the

2137 289

1 dilemma we are facing, that some action must be
2 forthcoming.

3 JUDGE MATIAS: If you do not understand
4 the urgency that I am trying to impress, when the
5 Legislature enacted a new Article VIII, it was effective
6 the first of this year. Along with that, the Legislature
7 indicated its wishes that these Article VIII proceedings
8 be concluded within the period up to two years, and while
9 the new Article VIII is not binding on this particular
10 application, the time periods that are set forth by the
11 Legislature are something we feel we have to follow, and
12 there is a great deal of work to be done by the parties
13 who are participating, and you have to begin moving
14 immediately in order to have this case completed within
15 the time frame that the Legislature has set forth, so we
16 intend to do everything in our power to meet those time
17 constraints.

18 MR. SHIMEL: Well, I appreciate the
19 indulgence.

20 JUDGE MATIAS: All right. Are there any
21 other applications to be heard today? I gather not.

22 MR. KAFIN: Your Honor, before you leave
23 this subject of the funds for municipal parties, Counsel

2137 290

1 for Suffolk County raised the issue as to whether we are
2 under the old law or the new law and what the amount of
3 the municipal fund is.

4 There is another issue here which I would
5 like to bring to your attention. Even under the old law,
6 the statute called for an application for a facility,
7 provided a \$25,000 fund for each application. I do not
8 know why it was done the way it was done, but although
9 the caption of this case in this proceeding points out
10 that this is an application for two facilities, it was
11 only opened under one docket number.

12 The similar application that went into
13 the Federal Nuclear Regulatory Commission for the same
14 facilities drew two docket numbers, and it is our
15 position that what we are dealing with here are two
16 facilities, that whether they call it one application or
17 what, it is two applications, and that the fund ought to
18 be \$50,000 here and not \$25,000, even under the old
19 statute, and I was not going to raise that this morning
20 until Counsel for Suffolk County raised the question of
21 the amount of funding and until I saw how things came
22 out on the application, but I think since the matter of
23 the amount of the fund has been raised, I feel compelled

2137 291

1 to say that right from the caption of the case we are
2 dealing with two facilities; that under Article VIII,
3 whether it is the new or the old, there should be a
4 doubling of the fund available for municipal funding,
5 and I hope that your Honors in ruling upon the requests
6 will recognize that that is what we are dealing with,
7 and any attempts by the Applicants here -- I am not sure
8 they made such an attempt because the NRC understood it
9 to be two facilities and put two numbers on it, but any
10 attempt by the Applicants here to treat this as one when
11 it is really two we must strenuously resist, and if there
12 is not a fund for each, then we have to ask the
13 Applicants to identify which they are applying for and
14 which they are not and ask that the application for the
15 one that they are not be dismissed.

16 JUDGE MATIAS: Well, it could be argued
17 that the funding relates to the site, and there is a
18 primary site and an alternate site as required by the
19 statute, and it does not depend upon the number of
20 facilities but the number of sites, but I am not even
21 going to go into that with you, Mr. Kafin.

22 The application is filed. The Chairman
23 of the Public Service Commission docketed the proceeding.

2137 292

1 A \$25,000 fund was set up and this is what Dr. Schwartz
2 and I are dealing with, \$25,000.

3 If anyone feels that it should be other-
4 wise, again, I would suggest that it is the Siting
5 Board that would have to deal with it.

6 We have \$25,000. We do not have \$50,000,
7 and we cannot create \$50,000. If the Chairman or the
8 Siting Board wish to address that matter, you can raise
9 it with them.

10 MR. KAFIN: Your Honor, I would ask you to
11 certify that question to the Siting Board and establish
12 a briefing schedule for the parties to submit their
13 comments on that question.

14 JUDGE MATIAS: When we issue our ruling
15 with respect to this matter, if anyone feels that they
16 want to get into it further, then they can do it.

17 MR. KAFIN: That was my original
18 intention. I want to be sure, however, I did not let
19 time prejudice me when the amount of the funding issue
20 was raised, but I understand your ruling and that we have
21 preserved that point to take whatever action is
22 appropriate at the time that you rule on the applications
23 and we need not proceed now to the Siting Board on that

2137 293

1 question.

2 JUDGE MATIAS: No, I would not think so,
3 but you will be hearing from us very, very quickly, so
4 it is going to be just a matter of days and we will have
5 something out.

6 MR. KAFIN: Thank you, your Honor.

7 JUDGE MATIAS: But if you wish to pursue
8 that, just bear in mind we are going to go forward with
9 the proceeding, and we are going to be setting dates
10 for filing testimony, and if you delay the funding
11 process, then that is going to be a matter you will have
12 to deal with one way or another down the road.

13 All right. There were a number of other
14 matters that we wanted to get into in the prehearing
15 conference.

16 Mr. Walsh, in Oswego in the prehearing
17 conference on Tuesday, a motion for dismissal was filed,
18 and I know that you have probably not had an opportunity
19 to study this in detail, but have you had it long enough
20 to know how much time you will require to respond to us
21 in writing with respect to this motion? And other
22 Counsel, too; other Counsel may respond to the motion.

23 MR. WALSH: If your Honor please --

2137 294

1 JUDGE MATIAS: And I would hope that the
2 Staff, for example, does respond and other parties, too.
3 We had thought in terms of about two weeks, Mr. Walsh.

4 MR. WALSH: That is perfectly all right
5 with me.

6 DR. SCHWARTZ: Did you want to make some
7 other comments at this time?

8 MR. WALSH: No, no. No, I do not.

9 DR. SCHWARTZ: But you did get it
10 yesterday, I believe?

11 MR. WALSH: Yes, I got it yesterday, and
12 I have looked at it in the interim, and I think two weeks
13 is adequate time for me to reply.

14 JUDGE MATIAS: Other Counsel? Mr. Grey?

15 MR. GREY: Two weeks, your Honor, will be
16 sufficient for the Public Service Commission Staff. I
17 also want to note that Helen Daly, the authoress of that
18 motion, asked me to pass along some copies to anyone here
19 who has not had a chance to get one.

20 JUDGE MATIAS: All right. Then answers
21 to that motion will be mailed on Thursday, April 5. Is
22 that agreeable to all Counsel?

23 MR. WALSH: April 5.

2137 295

1 MR. SCHUTT: Your Honor, that date is
2 fine with me. Will we have a service list by that time?
3 We have a lot of parties here where the Applicants have
4 not received any notification of their intent to
5 participate, and we have virtually no addresses to go
6 with what is now a rather long list of appearances,
7 where we can mail this to.

8 JUDGE MATIAS: I do not know whether I
9 can get a list together in time to give it to you or not
10 because I will want to have the transcript available to
11 me.

12 MR. SCHUTT: We will endeavor to serve
13 all those people we have addresses for, and with some
14 of them we do have addresses, but I just do not have
15 addresses for all of them.

16 JUDGE MATIAS: Mr. Schutt, let me say this
17 to you and all Counsel: Why don't you use the list you
18 have and --

19 MR. SCHUTT: I just note that since
20 notices of intent are not required to be filed with the
21 Applicants under the rules, we just do not have them.

22 JUDGE MATIAS: That is right, that is
23 right. Why don't you use the list you have? In two weeks'

2137 296

1 time you will receive the transcript.

2 MR. SCHUTT: Right.

3 JUDGE MATIAS: All right. So take the
4 list from the transcript, and basically Dr. Schwartz and
5 I will be doing the same, building from that list, and
6 then at a later time, perhaps when we are ready to go to
7 the public statement hearings, then maybe we will be in
8 a position to cross check our lists and develop one so-
9 called official list.

10 MR. SCHUTT: With that understanding, yes,
11 we will serve the people that appear in the transcript.

12 JUDGE MATIAS: All right. Use the people
13 who have appeared at the prehearing conferences. This
14 is a procedural matter, anyway, and it is of concern
15 to them and probably of little interest to anyone else.

16 MR. SCHUTT: Yes, right.

17 JUDGE MATIAS: All right. In the order
18 of the prehearing conference, we spoke in terms of
19 consolidating some of the nonmunicipal parties. Is
20 there anything we can discuss in that connection today?
21 Are there any of you who can combine your interests or
22 is this premature at this point?

23 (No response.)

2137 297

1 JUDGE MATIAS: Mr. Kafin, I know that you
2 are working with some nonmunicipal parties. Is there
3 any possibility of combining that interest with any
4 others? I am not trying to give you more work or give
5 you more clients, but what I am trying to do is to
6 expedite the proceeding, and I will say to the concerned
7 citizens groups, the consumer groups, that if you pool
8 your resources and join your interests, you can make a
9 much more effective presentation when it comes to the
10 evidenciary phase of the proceeding than you could by
11 acting independently; and the vehicle of consolidation,
12 I think, is a good one from the standpoint of your own
13 interests, and it certainly makes it easier for us to
14 consider the record when we have fewer parties, but
15 parties making a more detailed and expert approach, as
16 it were.

17 MR. KAFIN: If your Honor please, the
18 County of Columbia and the Town of Stuyvesant and one of
19 the nonmunicipal intervenors, Concerned Citizens for
20 Safe Energy, have joined together and will be making a
21 combined presentation, and I will be representing them
22 in this proceeding.

23 It is our expectation that to the extent

2137 298

1 other municipalities within Columbia County seek to
2 participate, that we will work cooperatively with them.
3 We may not in every instance be represented through the
4 same face at this table, but we are going to try as hard
5 as possible where our interests coincide to make a
6 single presentation rather than separate ones.

7 On the nonmunicipal side, there are a
8 variety of nonmunicipal parties that have an interest.
9 I think that only the Mid-Hudson Nuclear Opponents to
10 this point has filed the necessary papers to become a
11 party.

12 We are also going to try to cooperate as
13 closely as possible with them where our interests
14 coincide with respect to the Columbia County site or
15 Hudson River Valley issues.

16 JUDGE MATIAS: They are not here today,
17 Mr. Kafin, but do you know whether they are going to
18 present evidence, the Mid-Hudson Nuclear Opponents?

19 MR. KAFIN: It is my understanding that
20 there are certain Hudson River Valley issues on which
21 they would like to be heard. There also is an
22 organization which has been involved in rate-making,
23 and they have some concern, as I think their notice of

1 intervention points out -- perhaps it does not point out,
2 but it points out in the Nuclear Regulatory Commission
3 side of this some interest in the cost issues, the need-
4 for-power issues.

5 They also have concern with the nuclear
6 technology as a source of the heat for these kinds of
7 facilities; but we are going to try as best as we can to
8 coordinate our presentation so we do not have duplication,
9 and that we can conserve the resources that these
10 organizations and municipalities have, which are meager
11 in comparison to what is really required to do a good
12 job in this proceeding, so we can proceed efficiently and
13 effectively.

14 JUDGE MATIAS: All right. Let me approach
15 it this way: Are there any nonmunicipal parties,
16 nonstatutory parties, the so-called concerned citizens
17 or consumer groups that are represented here today that
18 intend to call witnesses in the evidenciary phase of the
19 proceeding?

20 I see no hands being raised. All right,
21 then perhaps the question is entirely academic.

22 Yes, Ma'am?

23 MS. SIMON: Your Honor, I said that I had

2137 300

1 made a statement for Citizens to Preserve the Hudson
2 Valley. In other proceedings, CPHV has joined with other
3 private intervenors and though we have not discussed this
4 with our Executive Board, I presume that wherever
5 possible we would be doing this at this proceeding also.

6 JUDGE MATIAS: All right. Anyone else
7 on this question? I gather not.

8 Other matters that were designated in the
9 order and subject to discussion at today's session were
10 the promulgation of rules of discovery. Let me just say
11 that the Staff has distributed and distributed on Tuesday
12 in Oswego rules that it proposes, discovery rules that
13 it proposes, and I do not know whether you have had an
14 opportunity to read it.

15 Mr. Grey, has it been distributed this
16 morning to the parties here?

17 MR. GREY: Your Honor, I have extra
18 copies. They have been served on all parties, all
19 persons who have expressed an interest in the case.

20 Is there anyone who has not yet received
21 a copy?

22 (Pause.)

23 JUDGE MATIAS: Mr. Grey, did we discuss a

2137 301

1 date for responses when we were in Oswego?

2 MR. SPINDEL: Yes, April 10, your Honor.

3 MR. GREY: April 10, your Honor.

4 JUDGE MATIAS: Was that set as a definite
5 date?

6 MR. SPINDEL: I think so.

7 MR. GREY: I believe it was.

8 JUDGE MATIAS: All right. We discussed
9 dates in Oswego, and now I cannot recall all of them.
10 I should have better notes, perhaps.

11 All right. Those of you who are here
12 today are just now seeing these rules.

13 Mr. Kafin, did you have something you wish
14 to say?

15 MR. KAFIN: Yes, your Honor. I think the
16 comment I am about to make relates to all the necessary
17 procedural issues we are going to take up, and perhaps a
18 clarification from you will satisfy my problem.

 There is a separate proceeding for the
20 U.S. Nuclear Regulatory Commission which relates to these
21 facilities. It was my understanding that we would
22 proceed in a joint case with the Atomic Licensing &
23 Safety Board of the Nuclear Regulatory Commission. If

2137 302

1 that is still the plan for this proceeding, then I have
2 to say that I think we are probably wasting a lot of
3 time and effort in trying to establish some of these
4 procedural rules because the NRC, particularly the NRC
5 Staff, has their own peculiar way of doing things, and
6 as someone who participated in Case 80006, which was a
7 joint proceeding, I think we learned that the magnificent
8 effort made by the Examiners on the State's side of the
9 case early on all went to naught because when we got to
10 the joint proceeding, we had to have separate rules for
11 everything that was going on to accommodate the
12 eccentricities of the Federal agency here, so I think my
13 first inquiry is are we going to a joint proceeding?

14 If we are, then I think we ought to
15 discuss a little more fully whether it is appropriate
16 today or possible today to develop a timetable and rules
17 of discovery in the absence of the Licensing Board from
18 the Federal agency and the Staff of the Federal agency
19 that has a substantial obligation in preparing the
20 record.

21 JUDGE MATIAS: Well, I can say several
22 things. Number one, let me say that if we are on a joint
23 record, that does not mean the cases are joined. The

2137 303

1 cases are still separate. 80008 will be a separate
2 proceeding.

3 We are discussing right now with NRC
4 means of holding joint hearings. In other words, their
5 dockets and our case number would be heard on the same
6 record.

7 I will say this, that under Federal Rules,
8 many of you, if not most of you -- I will not say "most";
9 I will say "many" -- many of you could not become parties
10 in the NRC case. They have very stringent rules on who
11 may be parties.

12 We are, I think, a little more lenient
13 with respect to accepting various interests as parties to
14 the proceedings, so rules of discovery are something that
15 we can begin to discuss regardless of what is done with
16 the NRC because many of you will be participating with
17 Dr. Schwartz and myself on our side of the record, if
18 you want to put it that way, and not on theirs.

19 We have not yet signed an agreement with
20 NRC. There have been a number of discussions held by the
21 two staffs as well as Dr. Schwartz and myself of the
22 Atomic Safety & Licensing Board. We expect that we will
23 conclude an agreement and that there will be joint

2137 304

1 hearings in this case.

2 If there are to be joint hearings, we
3 expect that the two scaffs, that is, the PSC Staff and
4 the NRC Staff, will be making a submission to us. There
5 will be a Joint Protocol for procedures to be followed
6 in the case. When that is submitted, if it is submitted,
7 it will be distributed to all parties for comment.

8 Now, it will involve procedures other than
9 discovery. Discovery, I gather, will go forward on a
10 separate basis. If we do not conclude an agreement with
11 NRC, I believe that our Staff will still wish to file
12 with us a suggested procedure to be pursued in this case
13 and, again, you will all have an opportunity to comment
14 on that before it is adopted by Dr. Schwartz and myself.

15 Mr. Flynn, do you have anything to add to
16 that? I do not know whether I have covered everything or
17 not.

18 MR. FLYNN: As I said at the prehearing
19 conference in Oswego, the discovery rules were primarily
20 based on other rules of discovery adopted in other
21 Article VIII cases; however, they were written also with
22 the view of being consistent with the NRC rules of
23 practice.

2137 305

1 The NRC Staff has seen this draft. I
2 think it would be premature for me to comment now on
3 their view of them, but as Mr. Indyke's cover letter
4 indicates, there will be a number of modifications
5 necessary to the rules if they are to be adopted and
6 used in the joint hearing.

7 That cover letter also says that we
8 believe from our discussions with NRC that those
9 modifications will be minor, so if we have a joint
10 hearing, the staffs, not only of NRC and PSC, but also
11 DEC, will try to get together and propose what minor
12 amendments we think are necessary.

13 JUDGE MATIAS: All right. So you have
14 received the Staff proposed rules of discovery, and when
15 we were in Oswego this was distributed, and it was
16 agreed then -- and this date will be binding upon you --
17 that any comments anybody wishes to make on these rules
18 should be mailed to Dr. Schwartz and myself on or before
19 April 10, 1979.

20 In this connection I want to point out to
21 you that you received a letter dated March 1, those of
22 you who are parties, either statutory or those
23 nonstatutory who filed notices of intention received a

2137 306

1 letter dated March 1, from myself urging you to move very
2 quickly to the areas of informal discovery, and I gather
3 that none of you, with the exception of the Staff and
4 DEC, have utilized informal discovery procedures up to
5 this point.

6 Mr. Schutt, is my understanding correct?

7 MR. SCHUTT: Yes, that is correct.

8 JUDGE MATIAS: I urge you all to begin
9 thinking in terms of what it is you are going to require
10 from the Applicants in this case, and move into discovery
11 as quickly as you can and use the informal discovery
12 procedures to the fullest possible extent.

13 Now, Mr. Schutt, in Oswego you gave us
14 some new telephone numbers and new names. Maybe if you
15 would repeat what you said up there so that the parties
16 who were not in attendance at that prehearing conference
17 will know now what they have to do in order to obtain
18 information from you.

19 MR. SCHUTT: OK. On informal discovery,
20 written material should be sent to M. J. Ray, R-a-y, at
21 the Company's offices in Binghamton. That is Vestal
22 Parkway, Binghamton, New York.

23 Any telephone calls with respect to any

2137 307

1 informal discovery should be directed to the telephone
2 number area code (607) 729-2551, extention 467, and that
3 is the extension of a Mr. Thomas Hadwin.

4 Needless to say, myself and the young
5 lawyers working with me in this case are also available
6 at my address in New York City, and our telephone
7 number is on our correspondence.

8 We would also urge you to, indeed, start
9 your discovery and not await the adoption of the formal
10 rules. We are ready to respond now and will do so
11 without the adoption of formal rules of discovery.

12 MR. KAFIN: Your Honor, lest there be some
13 implication that we are sleeping on our rights, here, I
14 hasten to note that it is my understanding that the
15 application here cost \$50 million to prepare. It is at
16 least 12 feet of paper and I think it is an outrage for
17 anyone to expect a participant in this case at this time
18 to have read that document, and I think that my clients
19 are interested and think that the public policy is
20 served by an expeditious moving along of this proceeding;
21 but the Applicant took years to prepare its application,
22 and we are not going to get pushed into a situation where
23 in two weeks we have to understand the thing, and I think

2137 308

1 that while I appreciate the offer to have informal
2 discovery and your Honor's interest in having us pursue
3 it, I do not want the implication to be on the record
4 here that by not pursuing it we are sleeping on rights.

5 This is a complicated matter, and if it
6 was not, it would not take 12 feet of paper to present
7 it and \$50 million and two or three years to prepare the
8 application, and we cannot be expected in two weeks or
9 three weeks to do what it took the Applicant with its
10 superior resources several years to do.

11 JUDGE MATIAS: Mr. Kafin, are you familiar
12 with the time constraints set forth in the new
13 Article VIII? That is all I can say to you.

14 MR. KAFIN: I am familiar with the
15 provisions of Article VIII. I am also familiar with the
16 provision of Article VIII that permits a waiver for good
17 cause shown of those time limits.

18 JUDGE MATIAS: Well, that will have to be
19 done by the Siting Board.

20 MR. KAFIN: I think that the Legislature
21 was mindful of the complexity of these cases when it
22 provided that escape valve in the timetable.

23 JUDGE MATIAS: Well, that would have to

2137 309

1 be done by the Siting Board, Mr. Kafin.

2 We indicated also that we would discuss
3 anticipated dates and location of public statement
4 hearings. We have some tentative dates for you. We
5 have tentatively concluded that -- let me start out by
6 saying that as you know the statute sets forth a time
7 framework in which we have to begin hearings, and with
8 that requirement in mind, we have tentatively concluded
9 that we will meet beginning on May 22 in the City of
10 Oswego for a public statement hearing, and that in all
11 likelihood that will be held jointly with the NRC Staff
12 and Atomic Safety & Licensing Board.

13 We have also tentatively concluded that we
14 will meet over in Columbia County -- and we do not know
15 where as yet -- either on Tuesday, June 5, or Tuesday,
16 June 12, again for public statement hearings.

17 When those dates are final and a place
18 has been selected, notice will issue. Notice will be
19 published and you will all have ample notice of where
20 and when hearings will be held.

21 MR. GRIFFEN: Your Honor?

22 JUDGE MATIAS: Yes, sir.

23 MR. GRIFFEN: If I may, I know your

2137 310

1 constraints but I want to say it for the record: I want
2 to join in Mr. Kafin's concern. Since we became
3 intervenors in this case, we have not even had the
4 opportunity to have a Town Board meeting and, as you
5 know, that is how municipalities work, through
6 resolution.

7 JUDGE MATIAS: Anything on the hearing
8 dates? All right, I gather not now.

9 The Commission's rules, Section 70.20,
10 address the question of filing notices of intention by
11 parties to offer testimony on alternate sites. That has
12 to be filed with us, I believe, 60 days after the first
13 hearing and not more than 90 days after the first
14 hearing.

15 This was a subject for discussion in
16 Oswego, and after some brief discussion it was concluded
17 that those notices of intention should be filed with
18 Dr. Schwartz and myself on or before July 10, 1979.
19 This is simply a notice of intention to file testimony
20 on alternate sites, but since we will be going to the
21 public statement hearings in May and June, then under
22 the Commission's rules, the July 10 date appears to be
23 an appropriate one.

2137 311

1 Any request with respect to that
2 requirement?

3 (No response.)

4 JUDGE MATIAS: All right, I gather not.
5 Now, we also indicated that we would be discussing today
6 procedures to be employed as to the identification of
7 issues which will be the subject of evidenciary hearings.

8 Mr. Grey, I gather that this is something
9 that we cannot really approach yet. It will be a subject
10 that will be covered in the Protocol that is going to be
11 covered by the Staff; is that correct?

12 MR. GREY: That is correct, your Honor.
13 The schedule that we propose will contain procedures if
14 there is a joint hearing, will contain a discussion of
15 the procedures for carrying out issue identification.

16 JUDGE MATIAS: All right. And even if
17 there is not to be a joint hearing, you will still be
18 filing --

19 MR. GREY: A proposed schedule.

20 JUDGE MATIAS: -- a proposed schedule.

21 MR. GREY: And also proposed procedures.

22 JUDGE MATIAS: And all parties will have
23 an opportunity to respond to that after it is received.

2137 312

1 Is there anything else?

2 (Pause.)

3 There is not anything else that we wanted
4 to raise with you today. Is there anything you wanted to
5 raise with us that we have not already discussed?

6 MR. KAFIN: Yes, your Honor. I would like
7 to make a request to the Staff of the Public Service
8 Commission that as a municipal intervenor, we be provided
9 with a copy of the transcript of this proceeding without
10 cost to us.

11 MR. HAND: Your Honor, I make the same
12 request on behalf of the County.

13 MR. SHIMEL: Your Honor, the Town of
14 Coeymans makes a similar request.

15 MR. FLYNN: I better speak up soon.

16 Your Honor. 70.25 of the Commission's
17 Rules does speak to the issue of providing services,
18 such as reproduction and mailing, for municipalities.
19 If I could have a minute, I will attempt to find it.

20 JUDGE MATIAS: That is 70.25?

21 MR. FLYNN: Yes, sir, I am looking.

22 (Pause.)

23 MR. FLYNN: Your Honor, I think my

2137 313

1 reference was wrong. It is in Section 142(6)A. This
2 is the section that talks about the municipal fund.

3 That section states in part, "The
4 Commission shall provide transcripts, reproduce and
5 serve documents and publish required notices for
6 municipal parties."

7 We have a statutory obligation to do that
8 and we will get together with the parties who wish to
9 avail themselves of those services and try to work out
10 how we can best comply. We will note that there are
11 through Commission expense transcripts provided in public
12 libraries, but if that is shown not to be convenient, we
13 will do what we can.

14 JUDGE MATIAS: I do not know what has been
15 done in the past, Mr. Flynn, with respect to this. The
16 transcript will be put in the library in Hudson and a
17 library in Oswego, and that is at our expense, and over
18 and above that --

19 MR. FLYNN: Well, perhaps the best thing
20 to do, your Honor, is to talk with the parties who desire
21 things and see if we can work something out.

22 JUDGE MATIAS: All right. You can do that
23 off the record then.

2137 314

1 All right. Is there anything else to
2 take up this morning?

3 MR. SHEMIN: My name is Paul Shemin from
4 the Attorney General's Office. I just wanted to note
5 that we have put in the mail certain initial questions
6 to the Applicant regarding the nuclear waste and
7 decontamination and decommissioning aspects of this
8 proceeding, and I have copies of the questions that I
9 would like to make available to anyone who wants them.

10 JUDGE MATIAS: Do you have the address
11 that was given by Mr. Schutt?

12 MR. SHEMIN Yes, it was sent to Mr. Ray
13 and it is probably in the mail at this time, and they
14 probably have not received it, but just to help things
15 along, I have some extra copies for you.

16 JUDGE MATIAS: Good, I am glad to hear
17 that.

18 MR. GRIFFEN: May we have a copy of the
19 application, your Honor, Town of Kinderhook?

20 JUDGE MATIAS: The application? I hope
21 you do not think I have it in my pocket, sir.

22 MR. GRIFFEN: No, I understand. I do not
23 mean this morning. I mean, may we have a copy?

2137 315

1 JUDGE MATIAS: Would you talk to the Staff
2 afterwards? I do not know what is being done to make
3 that available. That application has been served on
4 many, many town supervisors and if you look in the
5 statute you will see who is required to be served with
6 copies of the application, and it could be that that
7 would be readily available to you through one of the
8 municipalities.

9 Is there anything else?

10 MR. FLYNN: I do not know if the Applicant
11 has a copy of the application here, but I think in the
12 first part of that application there is a service list,
13 so soon after the hearing we can determine through our
14 copies upstairs who got what.

15 JUDGE MATIAS: All right. Is there
16 anything else to be raised this morning?

17 MR. SCHUTT: Your Honor, I would just like
18 to very briefly repeat my concerns of yesterday that
19 when documents are served on or sent to the Examiner and
20 the Board and the Public Service Commission, the
21 Applicants are entitled to service, and I want to make
22 that point because in some proceedings there has been
23 some rather loose service on the part of some parties,

2137 316

1 and the Applicant has not been receiving notice of
2 things it should receive notice of, and then I would
3 again point out the problem of when the Public Service
4 Commission undertakes service for municipalities or
5 parties, I trust that that service will also be timely
6 so that we receive it in a timely manner.

7 JUDGE MATIAS: All right. I urge all
8 parties to be sure that when you serve documents, that
9 you serve them on all active parties in the proceeding,
10 and remember that when responses are being scheduled,
11 parties cannot respond to other parties until they
12 receive the documents obviously.

13 Anything else to take up?

14 (No response.)

15 JUDGE MATIAS: All right. Then we will
16 stand in recess until firm dates to be announced of the
17 public statement hearings, but look for one in May and
18 for one in June.

19 We will stand in recess.

20 (Whereupon, at 11:17 a.m., the hearing in
21 the above-entitled matter was adjourned to a date to be
22 set.)
23

2137 317