

NUCLEAR REGULATORY COMMISSION - Docket No. 50-549

NEW YORK STATE DEPARTMENT OF
PUBLIC SERVICE

and

- Case No. 80006

NEW YORK STATE BOARD ON ELECTRIC
GENERATION SITING AND THE
ENVIRONMENT

POWER AUTHORITY OF THE STATE OF
NEW YORK
(Greene County Nuclear Power Plant)

PREHEARING CONFERENCE

Place: Albany, New York

Date: March 14, 1979

Pages: AM SESSION _____
PM SESSION J-21468 - J-21552

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1 UNITED STATES NUCLEAR REGULATORY COMMISSION

2 -----
3 IN THE MATTER

4 - of the -

5 POWER AUTHORITY OF THE STATE OF NEW YORK (Greene
6 County Nuclear Power Plant) - Docket No. 50-549
7 -----

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9 NEW YORK STATE DEPARTMENT OF PUBLIC SERVICE
10 AND
11 NEW YORK STATE BOARD ON ELECTRIC GENERATION
12 SITING AND THE ENVIRONMENT
13 -----

14 IN THE MATTER

15 - of the -

16 POWER AUTHORITY OF THE STATE OF NEW YORK - GREENE
17 COUNTY NUCLEAR GENERATING FACILITY

18 Application for the POWER AUTHORITY OF THE STATE
19 OF NEW YORK for a certificate of environmental
20 compatibility and public need to construct a
21 1200 MW nuclear generating facility at Cementon,
22 Greene County - Case No. 80006
23 -----

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 Wednesday,
March 14, 1979, commencing at 1 o'clock p.m.

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BEFORE:

ANDREW C. GOODHOPE, Chairman, Atomic Safety &
Licensing Board, U. S. Nuclear Regulatory
Commission

RICHARD F. COLE, Member, Atomic Safety &
Licensing Board, U. S. Nuclear Regulatory
Commission

GEORGE A. FERGUSON, Member, Atomic Safety &
Licensing Board, U. S. Nuclear Regulatory
Commission

EDWARD D. COHEN, Administrative Law Judge,
New York State Department of Public Service,
Presiding Examiner

DONALD F. CARSON, Associate Examiner, New
York State Department of Environmental
Conservation

APPEARANCES:

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P R O C E E D I N G S

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2 JUDGE COHEN: I call Docket 50-549
3 before an Atomic Safety & Licensing Board of the
4 Nuclear Regulatory Commission, and Case 80006 before
5 the New York State Board on Electrical Generating
6 Siting and the Environment.

7 Appearing at the bench for the ASLB are
8 Chairman Goodhope, Dr. Cole and Dr. Ferguson. Associate
9 Examiner Carson and myself, Presiding Examiner Cohen,
10 are here for the State.

11 Both dockets, as you all well recall,
12 involve the application of the Power Authority of the
13 State of New York for authority to construct a nuclear
14 generating plant in Greene County. We resume today
15 with this prehearing conference following a hiatus
16 which has extended since the end of July to consider
17 principally the matter of scheduling of witnesses with
18 respect to testimony of the three governmental staffs
19 and the intervenors answering the Applicant's
20 presentation.

21 During this period that we have not
22 been in hearing, testimony has been served by various
23 parties, and I assume you all have copies of that.

1
2 Before we turn to the substance of the
3 prehearing conference, I would like Counsel to
4 reacquaint us with their identities by noting their
5 appearances orally.

6 MS. SPIEGEL: For the Staff of the
7 Department of Public Service, I am Nancy Spiegel. With
8 me also is Michael Flynn.

9 MR. ENGEL: For the Department of
10 Environmental Conservation, my name is David Engel,
11 and with me today is Carl G. Dworkin.

12 MR. BUTZEL: For Greene County, Albert
13 Butzel of Butzel & Kass, and with me is Loretta Simon.

14 MR. STOVER: I am Robert Stover
15 appearing for Catskill Center for Conservation and
16 Development, Friends of Olana, Hudson River Conservation
17 Society and the Columbia County Historical Society.

18 MR. KAFIN: For Citizens to Preserve
19 the Hudson Valley, Columbia County Survival Committee,
20 Mid-Hudson Nuclear Opponents, Robert J. Kafin.

21 MR. WHITE: For Lehigh Portland Cement
22 Company, the firm of DeGraff, Foy, Conway, Molt-Harris
23 & Mealey, by Algird F. White, Jr., of Counsel.

MR. LEWIS: For the NRC Staff, Stephen

1 Lewis, accompanied by Guy Cunningham and Singh Bajwa.

2 MR. PRATT: For the Applicant, the
3 Power Authority of the State of New York, I am Charles
4 M. Pratt. With me today are Gerald C. Goldstein and
5 Edgar G. Byham. I also note for the record the
6 appearances of Lewis R. Bennett and Vito J. Cassan.

7 JUDGE COHEN: Are there any other
8 appearances?

9 (No response.)

10 JUDGE COHEN: As I indicated earlier,
11 we have received testimony and proposed exhibits from
12 various parties. I will note those that I have
13 received and if any of you are missing testimony from
14 these parties, you will take appropriate steps to
15 obtain it.

16 From the NRC we have received the much-
17 awaited Final Environmental Statement plus various
18 segments of additional testimony. We have not received
19 an identification of witnesses other than as to those
20 segments which NRC will be presenting nor, of course,
21 qualifications relating to those witnesses.

22 We have also received testimony and
23 proposed exhibits from Staff of the Public Service

1 Commission; staff of the Department of Environmental
2 Conservation; Greene County, et al; Citizens to Preserve
3 the Hudson Valley, et al; Columbia County Historical
4 Society, et al; the New York State Office of Parks &
5 Recreation and Mary Berner.

6 Extensions for service of testimony were
7 granted to the Cementon Civic Association until today.
8 Is any party here representing the Cementon Civic
9 Association?

10 I note that Mr. Nickolitch, who has
11 represented the group, is not here. The status of that
12 testimony, if any, will be determined when and if it is
13 presented.

14 Lehigh Portland Cement received an
15 extension until March 16th, that is, this Friday, and
16 we ask Mr. White to be prepared to indicate at this
17 conference the nature of the testimony to be presented
18 and to identify the witnesses who will be presenting
19 that testimony.

20 Mr. White, will you do that, please?

21 MR. WHITE: Yes, your Honor. Lehigh
22 intends to present testimony detailing the effects, as
23 it views it, of the proposed location of the Greene

1 County nuclear power plant at Cementon.

2 JUDGE COHEN: Excuse me. The effects
3 what? I missed a few words.

4 MR. WHITE: The effects on Lehigh
5 Portland Cement Company of the location of the proposed
6 Greene County nuclear power plant at Cementon.

7 It intends to produce four witnesses:
8 the Chairman of Lehigh Portland Cement Company and the
9 President of Heidelberger Zement AG, Peter Schuhmacher;
10 the President of Lehigh Portland Cement Company, William
11 Young; the Vice President, Secretary and General Counsel
12 of Lehigh Portland Cement Company, Edward Hyland; and
13 the Vice President for Manufacturing of Lehigh
14 Portland Cement Company, Ralf Bohman.

15 It is also our intention to file that
16 testimony on Friday, March 16th.

17 JUDGE COHEN: Thank you, Mr. White.

18 Would it be fair to say, if we are
19 using general categories of subject matter, that the
20 presentation you propose will deal with the socio-
21 economic impact of the proposed plant specifically as
22 it relates to Lehigh Portland?

23 MR. WHITE: That is correct, your Honor.

1 Earlier this morning, we had a brief
2 discussion, and I believe that it is accurate to say
3 that our testimony would fall into the land use-
4 socioeconomic category and relate only to Lehigh's
5 particular site at Cementon.

6 JUDGE COHEN: Thank you.

7 Before we turn to a consideration of the
8 particular order of witnesses that we might take up
9 when we resume on April 2nd -- incidentally, that
10 hearing on April 2nd will be at 1 p.m. There was a
11 notice distributed to that effect -- I will remind the
12 parties presenting evidence that they should have with
13 them sufficient copies of exhibits for the reporters'
14 purposes.

15 If I remember correctly, that is three
16 for the AS.B and one for the Commission, for the Board.
17 Those would be official copies of the exhibits. And,
18 of course, enough copies for distribution to parties,
19 if they have not previously received them.

20 In order to avoid the loss of time
21 relating to objections that may come in to testimony
22 which has been prefiled, we are requiring written
23 objections to that testimony to be served by March 26th.

1 There is one exception to that requirement. That is in
2 the event a party cannot determine whether he is
3 objecting on the basis of the qualifications of the
4 witness until he has conducted voir dire. If you
5 intend to conduct voir dire to determine whether you
6 will be objecting to the testimony, that should be
7 indicated in the filing by March 26th.

8 And I emphasize any objections to the
9 substance of the testimony should be in by that date
10 as well.

11 For the parties' guidance, we put you
12 on notice that both Boards, in their presiding over
13 these hearings, intend to view very strictly the issue
14 of friendly cross-examination. If you are cross-
15 examining a witness, it should be with respect to an
16 area of that witness' testimony with which you disagree.
17 Cross-examination to buttress, to reaffirm, to
18 emphasize points made by a witness will be viewed most
19 carefully.

20 Those are the preliminary matters that
21 we wished to raise before we turn to the witness
22 matter.

23 I have been informed that various

1 Counsel met this morning and may have a proposal for
2 us with respect to the order of cross-examination of
3 witnesses. Is there a spokesman for that group?

4 MR. LEWIS: Well, I will undertake to
5 recapitulate what was discussed this morning. There
6 was a meeting. Not all parties were present. Some
7 people I was unable to contact.

8 However, the general nature of the
9 discussion this morning was to determine what areas
10 of subject matter could be gone into at the outset of
11 the hearing and, for the NRC's part, the outstanding
12 discovery filed against it was an important factor in
13 determining what we would view as subject matters
14 which could be gone into at the outset of the hearing
15 starting the week of April 2nd.

16 The parties discussed what those
17 categories might be, and I think that what we can
18 report to you is that we have identified perhaps seven
19 areas that could be gone into early in the proceeding.
20 I think that the matter of the exact order among these
21 topics would be something that would have to be
22 discussed somewhat further among Counsel, but I will
23 identify what they are, in any event.

1 One topic is terrestrial impacts and
2 it was the feeling of the parties that the matter of
3 transmission line impacts insofar as they relate to
4 terrestrial matters could be treated on a back-to-back
5 basis with the terrestrial subject matter.

6 JUDGE COHEN: Do you mean that would be
7 a second topic, but which would contain overlapping
8 areas?

9 MR. LEWIS: Overlapping areas and
10 overlapping witnesses. At least from the NRC Staff's
11 point of view, it is overlapping witnesses.

12 Another area would be air quality and
13 there has been some discussion this morning as to
14 whether or not the topic of air quality would include
15 all of the various cooling tower impacts discussed in
16 the FES and elsewhere. That matter is still somewhat
17 up in the air, so I am identifying air quality this
18 morning. It was discussed as a possible early topic,
19 but I think that it is possible that there would have
20 to be some more discussion on that.

21 Noise impacts would be the next topic.

22 The Price-Anderson testimony filed by
23 the NRC Staff would be another topic.

1 The decommissioning testimony filed by
2 the NRC Staff would be still another topic.

3 Also, it was the feeling of the parties
4 that it would be possible to go into the subject matter
5 of alternative energy sources at an early point in the
6 proceeding, and also the subtopic of waste heat, as
7 to which there is, I believe, one specific contention.

8 JUDGE COHEN: Is NRC the only party
9 that has presented testimony on alternative energy
10 sources and waste heat?

11 MR. LEWIS: I am not certain whether
12 PSC's testimony goes into that at all. I think maybe
13 the NRC Staff is the principal party involved on that.

14 JUDGE COHEN: I don't recall seeing it
15 from any other; that is why I asked.

16 MR. LEWIS: Now, Mr. Chairman, there may
17 very well be other areas that could also fit into this
18 category. but I believe the parties all felt that at
19 this point we should approach this in a modest manner
20 and, you know, not attempt to scope out the entire
21 order of events for the proceeding, because we simply
22 can't tell at this very early stage how things will
23 proceed, with what speed and, from our point of view,

1 obviously, this gets very much wrapped up with the
2 question of discovery and the outstanding discovery
3 that there is.

4 Basically, I think that is what we can
5 report to you as the matter of topics. Perhaps the
6 other parties have something they would like to add to
7 that.

8 JUDGE COHEN: Miss Spiegel?

9 MS. SPIEGEL: I think Mr. Lewis has
10 accurately summarized the discussion that we had this
11 morning. I would just add that I think that it is
12 also the understanding of the parties, and I believe it
13 has been the understanding of the Boards as well, that
14 these items would be taken up on a subject matter
15 basis.

16 In other words, all of the testimony
17 that has been filed by various parties relating to
18 these topics, those witnesses would be heard seriatim.

19 JUDGE COHEN: I don't believe we issued
20 any formal determination to that effect, but we have
21 informally agreed among ourselves, and this can
22 constitute that formal determination, that we will try
23 to proceed on a subject matter basis.

1 It should be noted that we are
2 cognizant of the problem of pending objections to
3 interrogatories and delayed return dates for
4 interrogatories and the impact those delays conceivably
5 can have on proceeding with cross-examination. To the
6 extent that some material that might fit within the
7 proceeding by subject basis is not yet available, we do
8 not intend to let that hold up the hearing.

9 If one witness' interrogatories are not
10 in at the time of cross-examination of the group of
11 witnesses with whom he would appear, we will just have
12 to call that witness back later.

13 The procedure may not be as neat as some
14 of you would like, and it certainly is not as neat as
15 we would like; but if a witness is with a panel that is
16 ready to be heard and his interrogatories come in late,
17 that witness may in fact have to be called back to
18 respond to questions about this interrogatory responses.

19 We intend, as much as possible, to keep
20 these hearings proceeding promptly, without delays or
21 gaps in the process.

22 Do other Counsel have comments upon
23 Mr. Lewis' suggestion of topics that appear to be among

1 the group ready for the start of cross-examination?

2 MR. WHITE: I think one thing that was
3 clear at this morning's conference, to the extent that
4 anything was clear, was that where certain parties'
5 testimony which would be eventually the subject of a
6 panel -- for instance, Lehigh Portland Cement Company
7 -- impinged on other topics -- and Mr. Lewis this
8 afternoon has qualified the transmission line testimony
9 only to relate to terrestrial concerns -- it was
10 thought by the parties this morning that those
11 discrete areas of testimony would be taken in the panel
12 where the bulk of the testimony was most concerned.

13 For instance, Lehigh and its concerns
14 relate to the land use and socioeconomic impacts, and
15 to the extent that there was some testimony that related
16 to the transmission corridor or to the transportation
17 improvements, that panel would be taken all at once.
18 That is of particular concern to me, as Mr. Schuhmacher
19 is headquartered in Heidelberg, and as the titles of
20 the witnesses would indicate, they are the top people
21 in the Lehigh organization, and committing substantial
22 resources and we need some lead time to arrange their
23 schedules for the week or so that I would anticipate

1 that they would be here.

2 JUDGE COHEN: We certainly will make
3 every effort to meet that problem, Mr. White.

4 MR. WHITE: Thank you, your Honor.

5 JUDGE COHEN: Do other Counsel have any
6 comments?

7 MR. PRATT: Judge Cohen, I think the
8 Authority has several comments. The first is, as
9 Mr. Lewis indicated, the subject of air quality and
10 meteorology is a subject that is not quite clear what
11 is incorporated in that topic. There are issues in
12 this case concerning cooling tower plumes which some
13 people would consider to be an air quality and
14 meteorology discipline. There are other issues about
15 particular emissions which is also an air quality and
16 meteorology discipline.

17 The subjects dealing with the cooling
18 tower are, in our view, by no means ready for cross-
19 examination. Just to cite an obvious example, we have
20 served a notice to take deposition of one or more
21 people at the NRC -- I guess in this case one person
22 who is in charge of the analysis of the alternate
23 cooling system. There are, I think, a number of

1 interrogatories outstanding on that subject, and to the
2 extent that the subject of air quality and meteorology
3 covered cooling tower matters or alternative cooling
4 systems generally, I think that it may be premature to
5 take it at this time.

6 Second, we did not get until this
7 morning a number of documents that the NRC apparently
8 has sent out. We did not know, for example, that they
9 had objected to any of our interrogatories until this
10 morning, when they were nice enough at this conference
11 upstairs to hand us a copy of their objections. We
12 have not had, obviously, in the few minutes since we
13 got the objections a chance to review them in detail,
14 and I think that we plan to do that.

15 But I note that, for example, in the
16 Board's ruling granting their objection to our
17 interrogatory sets four through seven, my notes indicate
18 that we had sent some questions on transmission and some
19 terrestrial ecology questions in those sets.

20 (Continued on following page.)
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1 JUDGE COHEN: You were referring to an
2 extension of time to object or time to respond?

3 MR. PRATT: I'm sorry. An extension
4 of time to object. But that would, I assume, also
5 extend their time to answer them implicit, if they
6 decide not to object. But what I am trying to convey
7 is that even some of the subject material that are
8 the most ready, such as terrestrial ecology, may in
9 fact not be ready, because of the various interrogatories
10 that have not been answered.

11 Third, the NRC staff, either as a
12 strategy or because of pressure of answering the
13 interrogatories, has made it very difficult for us,
14 at least, to understand exactly what they intend to
15 do. As I have pointed out, they have not identified
16 the witnesses that they intend to put forward here,
17 and, in fact, although we have asked Mr. Lewis
18 repeatedly for an identification of those witnesses,
19 even as late as this morning, they either won't or
20 cannot identify which witnesses they will be bringing.

21 We don't know exactly the qualifications
22 of the people or how many people will be involved in the
23 panel, whether most of their witnesses will be one-man

1 panels or whether they plan to have multiple witnesses
2 on a particular subject, or even where in some cases
3 they intend to have experts or, in the other case,
4 merely the environmental project manager who can stand
5 up and say the FES has been issued.

6 So there are a lot of problems I think
7 with your statement that the hearings will go forward
8 even though a particular witness's interrogatories have
9 not been answered, because we just don't know who the
10 witnesses are, and I can imagine that is going to pose
11 substantial problems to the hearings as they progress.

12 JUDGE COHEN: Suppose we ask Mr. Lewis
13 as to the identity of his witnesses. I frankly consider
14 the failure to present the identification at the time
15 the FES was served to be a technical violation of our
16 requirement that you present your entire direct case.

17 What is the status of the identification
18 of witnesses, Mr. Lewis?

19 MR. LEWIS: Well, Mr. Chairman, I apologize,
20 first of all, for not having identified them at that
21 time. I might say that one thing that has happened
22 in this case is that the Staff relied much more heavily
23 on its final environmental statement as its testimony,

1 with the exception of only five additional pieces, than
2 it has in almost any other proceeding of which I am
3 aware. Of course, when the final environmental state-
4 ment itself is issued, it does not bear on it, any
5 identification of the authors of various sections, and
6 that is something I readily acknowledge I do owe to the
7 parties.

8 Let me say a few more matters on that.
9 We did send around, February 9th, when we filed the
10 final environmental statement, identification of the
11 contentions as we understood them and the areas under
12 which they fall, and a designation of the sections
13 of the final environmental statement which address each
14 of those areas of contention, and what I will do very
15 shortly is supply the names and the professional
16 qualifications of the people who have prepared those
17 various sections of the document.

18 JUDGE COHEN: What is very shortly, Mr.
19 Lewis?

20 MR. LEWIS: I believe I can do it by
21 the end of next week, when I make my next filing on the
22 discovery as well. I will try and combine it with my
23 March 23rd response to outstanding interrogatories 1,

4
1 2, and 3 and it would be difficult to do it any sooner
2 than that, unless the Board so directed.

3 DR. COLE: It makes it very difficult
4 to set schedules for subject matters, Mr. Lewis.

5 MR. LEWIS: Well, I recognize the problem
6 that is involved. If the Board feels that it is
7 necessary to have that information sooner than that,
8 then I will.

9 DR. COLE: Is it that the information
10 is not available right now or you don't know who
11 sponsored the different sections?

12 MR. LEWIS: Oh, yes, I do. I can
13 identify the people. I may not have all of the
14 professional qualifications in hand. I can identify
15 all of the individuals by this Friday. I may not be
16 able to include -- I may not physically have to
17 transmit to you at that time -- all of their statements
18 of professional qualifications; but I can identify
19 all of them.

20 JUDGE COHEN: Why don't you do that,
21 please, at that date?

22 MR. LEWIS: All right. Mr. Chairman,
23 one matter that I did want to discuss, which has been

1 referred to now by Mr. Pratt, and I did not know whether
2 or not the Board had received copies of the notice of
3 taking deposition filed by the Applicant against the
4 NRC staff.

5 The Applicant has filed a notice that
6 it wishes to take depositions against the Staff in
7 approximately half a dozen areas, and has stated that
8 it is its intention that these depositions would be a
9 follow-up to interrogatory responses received. As a
10 result of the extension of time granted to the Staff
11 to file responses to interrogatories filed against it,
12 the depositions are of necessity, I believe, going
13 to -- let me rephrase that. There will be no possibility
14 that the depositions could be taken before the time
15 this hearing is scheduled to start. This imposes for
16 the Staff several problems.

17 First of all, it has imposed, I think, a
18 problem for all of the parties, which is that we have
19 had to try to identify areas that can be gone into
20 early in the proceeding on the basis of those where
21 discovery will be completed, and the discovery is
22 very extensive and covers many, many areas, and it is
23 somewhat difficult, in fact, to identify areas.

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Nevertheless, we have come up with those where we believe that all responses will have been filed and where it appears that depositions are not to be undertaken.

Now, also it imposes a problem for the Staff in that it appears that the Staff would simultaneously have to be representing various of its witnesses at depositions and, at the same time, be in hearing on other matters. It is, from our point of view, is highly undesirable in terms of the availability of counsel and in terms of how we had envisioned the case proceedings. We had expected, and we assumed the Board intended, for discovery to be conducted on a pretrial basis and to be completed before the hearing began. We recognize that we have been forced by the magnitude of this discovery filed against us to seek extensions of time.

Now, at the present time, the Board has granted us until the 30th of March to file our responses to outstanding discovery and that, of course, would be literally but just barely, before the hearing begins. But the follow-up depositions would, of course, of necessity, I believe, extend into the time

1 when the hearing has started, and I simply wanted to
2 bring to the Board's attention the fact that this is
3 a matter of considerable concern to us.

4 I guess I will rest there for the moment.

5 JUDGE COHEN: MR. Pratt, as probably
6 the principal cross-examining party, representing the
7 principal cross-examining party, and recognizing that
8 some matters may not have been fully completed with
9 respect to the discovery process, what would you suggest
10 as the most useful subject order in which to proceed?

11 MR. PRATT: Well, in preparation for
12 today's session, we have proposed our own schedule.
13 We have possibly been a little overoptimistic and gone
14 through all of the topics, at least topics that we
15 thought were appropriate for consideration at this time.

16 The first one on our list was an issue
17 that I think both the NRC staff and the Authority
18 view not as an appropriate joint hearing issue, and I
19 therefore reserve all of our rights to it, the issue of
20 financial qualifications, which has been ruled to be
21 a joint issue. It is my understanding that the NRC
22 staff has some material on that issue in, I believe,
23 it is the safety evaluation report.

1 We have listed next the alternative --

2 JUDGE COHEN: Excuse me. You say they
3 have some material in the safety evaluation report.
4 Do they have it in anything that will be part of the
5 joint record?

6 MR. PRATT: I assume that if the Staff
7 is directed, they will put that into, or at least the
8 necessary part into, the joint record. Maybe there is
9 nothing. Maybe this issue will be resolved without
10 any testimony.

11 JUDGE COHEN: Unless it is in the FES.
12 Now, I don't see how they can add anything.

13 MR. PRATT: Well, we would be happy to
14 rest on the record as it is now, but I don't think the
15 State's staff has put any testimony in on the subject.
16 That is why I focused on the NRC staff.

17 JUDGE COHEN: I would like to avoid
18 talking about things which may not be in issue here.
19 Is part of financial qualifications part of your direct
20 case or your answering case?

21 MR. LEWIS: It is not. There are, Mr.
22 Chairman, certain contentions which appear under the
23 category of need for power which appear, from our point

1 of view, to stray into the area of financial qualifica-
2 tions. Now, under the NRC regulations, the area of
3 financial qualifications is related to safety matters,
4 and that is why that topic is dealt with in the safety
5 evaluation report. We did not intend to offer any
6 testimony on financial qualifications in this joint
7 proceeding.

8 JUDGE COHEN: If I may recall the series
9 of events that led to the issue in the joint hearings,
10 I believe there was a motion by some party requiring
11 PASNY to present material on the financial qualifica-
12 tions of itself. Is that correct so far?

13 MR. PRATT: That is my recollection. I
14 believe in March of 1977, the joint Boards issued
15 an order, a prehearing conference order, deciding the
16 subjects of the joint hearings.

17 JUDGE COHEN: I recall that there was
18 great argument as to whether the State Siting Board
19 had any jurisdiction over that issue, and our ruling
20 for the State was that it did, and, therefore, the motion
21 was granted.

22 We are now at a stage where no one is
23 representing any answering financial qualifications

1 and, therefore, the motion was granted.

2 We are now at a stage where no one is
3 presenting any answering financial qualification in
4 evidence, and there is no motion requiring anyone to
5 present it, and it appears to me that to constitute
6 a nonissue at this point for this phase of the case.

7 MR. PRATT: Do you mean it would become
8 an issue in the future?

9 My understanding is now is the time.

10 JUDGE COHEN: No. What I mean is you
11 have made your presentation; no one is presenting
12 evidence on this joint record to dispute it.

13 MR. PRATT: We are gratified that the
14 parties view the Power Authority's financial responsi-
15 bility as they apparently do.

16 JUDGE COHEN: They may feel they have
17 successfully challenged it through their cross-examination.

18 MR. PRATT: That is possible.

19 JUDGE COHEN: All right. So, Mr. Pratt,
20 you can proceed to what you consider your next favorite
21 area to bring on.

22 MR. PRATT: We had designated alternative
23 sources of power as the second issue. I might mention

1 the third one immediately with that, which was waste
2 heat, because waste heat had been considered in the
3 proceedings to date as a separate subject. We listed
4 weighting separately. From the meeting held this
5 morning between counsel, it is my understanding that
6 at least the NRC staff thinks that waste heat is
7 properly a part of alternative sources of power, so
8 I mention them together.

9 JUDGE COHEN: Will you confirm or deny
10 my recollection that no other party other than NRC
11 has presented testimony dealing with these two subjects?

12 Mr. Butzel?

13 MR. BUTZEL: Well, it depends what is
14 included, your Honor, but I know Mr. Kafin has
15 presented some testimony, I believe, that relates to
16 nuclear versus -- well, maybe I am wrong. You are
17 here, Bob. I shouldn't speak for you.

18 JUDGE COHEN: I believe you are, Mr.
19 Butzel, but perhaps Mr. Kafin can enlighten us.

20 MR. KAFIN: Our testimony relates to what
21 has been called the fuel substitution question, and I
22 don't know whether that falls in alternate sources of
23 power or down in some economic analysis category.

1 JUDGE COHEN: It appears to me to be
2 the latter.

3 MR. KAFIN: I wouldn't disagree.

4 JUDGE COHEN: You would not?

5 MR. KAFIN: I would not. I think it is
6 more an economic analysis than a cost benefit type of
7 review of different fuel sources or what have you.

8 JUDGE COHEN: Mr. Flynn?

9 MR. FLYNN: Your Honor, part of our
10 testimony concerning engineering economics deals with
11 a generic comparison between the cost of a coal plant
12 and a nuclear plant. I think that that fits in with
13 their overall testimony of cost, but it could be
14 interpreted as something to say about alternate sources
15 of power.

16 MR. PRATT: Your Honor, I think one of
17 the comments that I wanted to make earlier is
18 appropriate, particularly appropriate now. One of the
19 things that we have the most difficulty discussing
20 this morning is the allocation of issues to a particular
21 panel or a particular topic, and I don't know that the
22 parties are going to deeply disagree about how that
23 allocation should be made. I know on the sheet that we

1 passed around -- if the Board would like a copy of it,
2 we could distribute it now generally -- but I know that
3 the NRC staff's February 9th letter, in which they
4 group contentions under various topics, disagreed
5 slightly with the way in which the Authority had
6 presented those contentions in its own prefiled
7 testimony.

8 So I think that one of the things that
9 would be very appropriate would be some kind of resolu-
10 tion of which subjects, which issues or contentions,
11 are in a particular subject. I think there can be
12 honest confusion about whether a particular issue is a
13 need-for-power question or an alternate sources of
14 power. I use that as an example.

15 JUDGE COHEN: I have attempted, in the
16 last few days, to attempt to classify the testimony we
17 have received so far into various subject headings and
18 to assign witnesses to those subject headings. That,
19 of course, has been only a partial effort, because
20 NRC witnesses have not been identified.

21 Suppose I indicate the way it appeared
22 to me, and then we can use that as a framework and
23 perhaps see whether that is a logical kind of resolution

1 of the subject matters and the relevant witnesses.

2 Some of the subject matters I have used
3 do not match the finer specifications that have been
4 suggested here, such as a witness for Price-Anderson
5 issues and a witness for decommissioning issues. I
6 have lumped those within the broad category of
7 engineering economics classification. The classifications
8 I am using are to a great extent those from the Article
9 VIII regulations.

10 In any event, for the engineering
11 economics classification, I have all the NRC witnesses
12 for whom we have received separate testimony, the panel
13 of Gordon and Lutzy of the PSC, Becker for the PSC,
14 and Berner for Citizens to Preserve the Hudson Valley
15 et al.

16 The next subject, which I have called
17 air quality and meteorology, we have testimony from
18 NRC witness Rush and a PSC panel consisting of Messrs.
19 Putta and three others.

20 (continued on following page)

21

22

23

1 MR. DWORKIN: Excuse me, Judge Cohen.
2 This is a Joint PSC-DEC panel.

3 JUDGE COHEN: Yes. Two of the
4 individuals are in fact DEC employees. Thank you,
5 Mr. Dworkin.

6 Also in the air quality and meteorology
7 group, I have Greene County panel of Czapski and Stewart.
8 On the subject of solid waste there is a witness from
9 PSC, Lilley. On geology and seismology, DEC Witness
10 Davis. On terrestrial ecology, PSC Witness Jackson
11 and DEC Witness Henshaw.

12 On water quality, a panel consisting of
13 one PSC individual, Goodale, and Mr. Quinn of DEC.

14 That is a joint presentation again,
15 Mr. Dworkin?

16 MR. DWORKIN: That is correct.

17 JUDGE COHEN: Aquatic ecology, a DEC
18 panel of Radle and Elliot. On noise, a PSC witness,
19 Driscoll. For land use and socioeconomic impacts,
20 NRC Witness Peelle, PSC panel Cummings and Lilley,
21 DEC Witness Benas, Greene County Witness McCarthy
22 individually, a panel of Bielge, Finkle and Simon,
23 and another individual witness, Webster.

1
2 For aesthetic topics, a PSC panel of
3 Smolinsky and Bishop; a Columbia County Historical
4 Society, et al, panel of Flad, Gussow and Huntington,
5 with Mr. Flad also being sponsored by Citizens to
6 Preserve the Hudson -- no, I think that was Greene
7 County.

8 Is that correct?

9 MR. BUTZEL: Yes.

10 JUDGE COHEN: Mr. Flad, also sponsored
11 by Greene County.

12 Also in aesthetics, we have a panel
13 offered by the New York State Office of Parks &
14 Recreation, Witness Lehman, Vamos, Kuwik, Forsht,
15 Lutters and MacLean.

16 Finally, the submitted testimony of
17 Mary Berner includes material related to the
18 aesthetic issue.

19 MR. ENGLE: Your Honor, just a point of
20 clarification. DEC Witness Benas I think would be
21 appropriately considered an aesthetic witness. His
22 testimony does overlap in the land use, but primarily
23 his testimony is addressed to aesthetic issues.

JUDGE COHEN: I have that problem with

1 his testimony, Mr. Engle, and to give you a preview of
2 my own preliminary classifications, I assumed aesthetics
3 would follow land use, with Mr. Benas being the
4 bridging witness between the two groups.

5 But if you consider him more appropriately
6 to be aesthetics, that is fine with me.

7 The last one i have on aesthetics, as
8 I said, was a portion of the testimony of Mary
9 Berner.

10 On the transportation group, we had a
11 PSC panel of Lilley and Groves and Greene County
12 Witness McGrath.

13 Testimony on transmission facilities
14 submitted by PSC Witnesses deWaal Malefyt. Then there
15 is a segment of testimony submitted by DEC which
16 appears to warrant a heading radiological health and
17 safety. At least that term is used in the State
18 proceeding. And the DEC witness is Kelleher.

19 And finally there is a segment of
20 testimony dealing with a compliance filing for State
21 proceeding purposes, and that is submitted by PSC and
22 includes the joint testimony of Roberts, Eabry and
23 Gordon.

1 Now, prior to this meeting today, I
2 was thinking along these lines with the particular
3 witnesses relating to these particular headings. Some
4 of you have suggested a finer gradation than I have
5 here and again I refer you to the Price-Anderson and
6 the decommissioning material.

7 Mr. Pratt?

8 MR. PRATT: Well, I had that idea, that
9 at least decommissioning, maybe decommissioning and
10 Price-Anderson are distinct issues, but in looking at
11 our listing of topics, the major one that we have
12 that you have not mentioned is a topic called
13 alternative sites.

14 It had been our expectation that that
15 would be a separate topic or discipline, that the
16 people in the NRC who have pursued that subject are
17 probably different. We don't know who they are, of
18 course, but they are probably different than the
19 various subject witnesses.

20 JUDGE COHEN: Your remark is particularly
21 pertinent to the NRC portion of this Joint proceeding.
22 Insofar as the State proceeding is concerned, my own
23 review of the prefiled testimony indicates that no party

1 to the State proceeding has included any alternate
2 site testimony nor has identified matters proposed to
3 be presented in support of alternate sites, as required
4 by my notice of August 15, 1978.

5 MS. SPIEGEL: Your Honor, excuse me.
6 I assume, though, that we are not speaking of the
7 Athens nuclear alternative. That, of course, is
8 addressed by all of the Department of Public Service
9 testimony.

10 JUDGE COHEN: No, I am referring, of
11 course, only to the possibility of other alternates,
12 the subject that we have thrashed about through various
13 rulings and appeals and rehearing orders and so on
14 earlier in this proceeding.

15 It seems to me, therefore, that there
16 has been no full-fledged alternative, as that term is
17 used in one of the Commission's orders, presented for
18 consideration in Case 80006. I am not referring to the
19 PASNY alternative now, Mr. Pratt. And I view the
20 decision that must be made by the State's Siting Board
21 as to whether any plant should be certificated; that
22 is, plant or no plant, and if a determination is made
23 that a plant be certificated, then it must be at

1 Cementon or Athens.

2 Now, I don't know if that is responsive
3 to your comment about the alternate site witnesses of
4 NRC, but I thought that was an appropriate time to
5 indicate my view of the State record and what must be
6 decided in the State case.

7 MR. BUTZEL: Your Honor, can I be heard
8 on that? It is apparent that Greene County has not
9 filed any testimony dealing in detail with any of the
10 alternative sites that we set forth in our notice
11 pursuant to, I think it is, Section 70-20 of the
12 Commission's Rulings.

13 It is also, I can represent to you now,
14 beyond our ability to present such testimony in the
15 form to which I understood your Honor to have
16 reference just now, that is, in the form of or in the
17 detail that could justify a certification of some site
18 other than Cementon or Athens as is contemplated by that
19 particular section, 70-20.

20 There is in the FES, as Mr. Pratt has
21 adverted to and as you recognize, an identification of
22 a number of alternative sites which we believe to be
23 relevant to the State Siting Board proceeding, just as

1 it is relevant to the NRC proceeding on the basis of
2 the Joint record that will be compiled and which is
3 one of the factors that will have to be taken into
4 account.

5 Clearly, they do not rise to the same
6 level of detail, again, as may be contemplated by
7 Section 70-20.

8 There is also testimony, generic and
9 general in nature, in the cost submissions both as a
10 part of the FES and in testimony that has been submitted
11 by the PSC Staff that relates to the relative
12 advantages or disadvantages of locations, site
13 locations, other than Cementon or Athens, particularly
14 those on Lake Ontario, the so-called Lake Ontario site,
15 and we have submitted some follow-up interrogatories on
16 that testimony.

17 I am simply not going to be able -- we
18 don't have witnesses available -- to offer the detail.
19 I don't read the regulations exactly the way that you
20 may, but that is irrelevant at this poi...

21 I have contemplated, following the
22 completion of the discovery process, in seeking
23 subpoenas of witnesses from the Staff who have dealt

1 with some of the alternative sites in other proceedings
2 before this Commission, in Article VIII proceedings,
3 including Sterling, for example, in an effort to present
4 this kind of testimony.

5 I don't think even then it can come up
6 to the detail that you may have in mind; but that had
7 been my expectations.

8 JUDGE COHEN: You are apprising me of
9 your views.

10 MR. BUTZEL: Well, I am telling you that
11 to the degree that you intend to cut it off, I take
12 exception, if that is what you propose to do.

13 JUDGE COHEN: Thank you.

14 MR. KAFIN: If your Honor please, I also
15 don't want to be seen to be acquiescing in your
16 characterization of the respective burdens of the
17 parties with respect to alternate sites or of your
18 description of the limited nature of the decision which
19 is then presented to the Siting Board. I don't see
20 that we have the burden to design a nuclear power plant
21 on some site somewhere.

22 The process requires a consideration of
23 alternative sites and I think that that consideration

1 is required whether anybody to the proceeding puts in
2 anything on the record on that, and it may very well be
3 that the staffs here have not lived up to their burden
4 to create a complete record covering all relevant
5 factors if that material is missing from this record.

6 We have no intention of presenting any
7 testimony on alternate sites, but I don't want to be
8 seen, by not speaking up now, to be acquiescing in
9 your interpretation, at least in the State's side, as
10 to what the responsibility of the Siting Board and of
11 the agency staffs is.

12 MR. BUTSEL: I would just say that
13 Mr. Kafin has said it better than I have, much more
14 succinctly, too. I join in his comments.

15 JUDGE COHEN: Mr. Dworkin?

16 MR. DWORKIN: We believe, Judge Cohen,
17 that there is not a responsibility put upon the Siting
18 Board to choose only between the two sites for which
19 supposedly full cases have been presented as to their
20 environmental impact.

21 JUDGE COHEN: Before you go off on a
22 track that may not have been intended by my comment,
23 Mr. Dworkin, you understood that I said one of the

1 alternatives is no plant, one of the options that the
2 Board, we first and ultimately the Board, may elect is
3 no plant, no approval of PASNY's application?

4 Then I said if it were determined that
5 the plant should be built, the plant could only be
6 authorized at one of the two sites for which we have
7 received evidence or will have received evidence.

8 Are you disagreeing with that?

9 MR. DWORKIN: I am not disagreeing with
10 that, but perhaps you would confirm for me our
11 optimistic interpretation as to what you have in mind,
12 which is that in the event the Siting Board were to
13 find that there was some justification for certification
14 of a plant to be built by the Power Authority, that
15 even if it found that there might be some justification,
16 the Siting Board is still not required to site its
17 facility at either the Cementon or Athens site if, at
18 the same time, the Siting Board determined that the
19 environmental impacts at both sites were unacceptable?

20 In other words, it is our interpretation
21 of Article VIII that on balance the Siting Board is
22 allowed to make an environmentally unacceptable
23 determination for both sites that are in the case and,

1 in essence, direct the Power Authority that if it
2 still feels that it wants to construct a plant, that
3 it should go elsewhere and develop another site.

4 Certainly there are many available in
5 the State. The Power Pool owns many, has options on
6 others and has presented cases on quite a few.

7 JUDGE COHEN: I think the conclusion
8 that you say the Siting Board may reach is one that
9 is possible, at least under my interpretation of the
10 section. They can find that the environmental impact
11 is so horrendous compared to any benefit that the
12 plant would provide that under no circumstance can it
13 be approved at a particular site. I believe that is
14 what the statute means.

15 (Continued on following page.)
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1 MR. BUTZEL: Your Honor, I would just
2 like to extend that period.

3 JUDGE COHEN: Will this be productive,
4 Mr. Butzel? I would really like to get back to the
5 question of witnesses and subject areas.

6 MR. BUTZEL: I am not going to suggest
7 to you what you think is productive.

8 JUDGE COHEN: Thank you.

9 Mr. Pratt, do you wish to proceed with
10 some of the subjects and the order of preference that
11 you see in terms of having the most readiness for
12 cross-examination?

13 MR. PRATT: Yes.

14 JUDGE COHEN: We had alternative sources
15 of power and waste heat, and then I believe you had
16 raised some problems, if my memory is correct.

17 MR. PRATT: Let me just make a couple
18 of comments first. I don't want my silence on the
19 very interesting and learned discussion that has been
20 going on in front of us to be interpreted as acquiescence.
21 I feel that we can wait until another day to consider
22 that subject at length.

23 Second, I think, just to make clear my

1 point, I think that the topical framework that you
2 propose is a reasonable one from our point of view,
3 and I would just note that I think it ought to have
4 in it this finer distinction that we have referred to
5 or that you have referred to, the decommissioning and
6 Price-Anderson panels, and I very strongly urge that
7 there be the addition of an alternate site panel.

8 This is a very important matter in the NRC case, and
9 unless that is to be treated as a separate issue which
10 we terminate joint hearings on, we will very much wish
11 to have cross-examination of the witness or witnesses
12 at the NRC who have had something to do with alternate
13 site methodology, site selection methodology.

14 I think that your topical framework
15 is in very general terms parallel to ours.

16 We have started in terms of the proposed
17 sequence. We have started with alternative sources of
18 power. This discussion would include waste heat,
19 and then terrestrial ecology and then access improvements
20 and then noise, just to take the first few. Now, when
21 we made this, in fact, until this morning, we did not
22 understand that the NRC staff was objecting to certain
23 interrogatories which we now do understand, and I think

1 that the general comments that I would have to make
2 as to all of the scheduled discussion that we had been
3 having and will have today is that we would like to
4 have at least a few days opportunity to review the
5 materials that were gotten from the NRC staff today and
6 to respond to the Board, the joint board, in some kind
7 of written form, let's say by the end of Monday of
8 next week. It is possible, for example, that the NRC
9 staff's failure to answer a set of interrogatories
10 on terrestrial ecology, to take that as an example,
11 so damages the readiness of that panel that it might
12 not be the best panel to start with. We just haven't
13 had a chance to review what we got this morning.

14 But with that qualification, I would
15 say that the panels that I have identified are the ones
16 that we think probably are the most ready. I underline
17 the word "probable" because quite frankly, we haven't
18 had the chance to look at a lot of the materials.
19 We haven't had a chance to look at any of the material
20 that the NRC staff has given us today, and, of course,
21 we don't know yet who their witnesses are.

22 JUDGE COHEN: Let me be sure I have
23 your groups correct. The alternative sources of power

1 and waste heat, the subject of Price-Anderson,
2 decommissioning, alternative sites, terrestrial ecology,
3 access improvements and noise.

4 MR. PRATT: I think we may be talking
5 at cross subjects. I meant to add the subjects of
6 Price-Anderson, decommissioning and alternative sites
7 to your topical framework as topics to be considered
8 in the joint hearings. I don't think that those three
9 subjects are ready for consideration at this time.

10 JUDGE COHEN: All right. What I was
11 trying to get from you was the subjects that you con-
12 sidered most ready, putting aside for the moment the
13 fact that you now have learned that there are objections
14 to some of your interrogatories.

15 MR. PRATT: I have given you a few:
16 the alternative sources of power, terrestrial ecology,
17 access and noise, the subjects suggested by Mr. Lewis
18 earlier. I think we would join the addition of Price-
19 Anderson and decommissioning to my group. We have put
20 them lower in our priority list, but I don't think
21 there is any barrier, immovable barrier, to putting
22 them higher up. I think they are probably straight-
23 forward.

1 As I noted before, the air quality and
2 meteorology subjects suggested by Mr. Lewis is, I think,
3 a problem. I don't think it is really ready for
4 cross-examination.

5 I would make one other comment. Mr.
6 Lewis is going to give certain identification of
7 witnesses, it is my understanding, and it might be
8 helpful maybe if we could do it in two stages: first,
9 if he would do it as soon as possible, and I would ask
10 it be by week's end with regard to the subjects that
11 we have been discussing as early topics; and then,
12 second, if he could put it in the topical framework
13 that we have spoken about the last few minutes, if he
14 could say in which panels, which topics, the NRC staff
15 expects what witnesses, who they are and what sections
16 of the FES will be covered.

17 I think finally, at some point we are
18 going to want to make a decision, whether it is formal,
19 in the form of a board order, or just a competent
20 understanding of all the parties, which contentions
21 are in which topic. I have an idea how they go. I
22 think other people could quite reasonably have different
23 ideas. And again, I don't know that that is a matter

1 of enormous contentiousness, although it may be in terms
2 of recalling a witness; but it is something we ought
3 to make specific.

4 MR. LEWIS: Mr. Chairman, Judge Cohen,
5 there are perhaps two things I would like to say about
6 that. I think that what I did offer to do would hope-
7 fully meet the needs of Mr. Pratt, which is that I am
8 going to identify on the basis of my February 9th
9 letter, which identifies the FES sections, I will
10 identify who the witnesses are for that and they will
11 be arranged by panels according to responsibility to the
12 extent that more than one witness is involved on a
13 particular topic.

14 The second matter I would like to touch
15 on is the fact that it appears to me that under the
16 argument put forward by Mr. Pratt, we are heading
17 toward a situation where there is only a very narrow,
18 narrow choice of those matters that we can proceed on.
19 Now, PASNY did choose to file discovery in virtually
20 every area covered by the FES, as is their right, and
21 we have objected to numerous of their interrogatories.

22 It appears -- and I don't know how small
23 of these matters will be resolved -- but it appears

1 that under his concept of where we now stand, there
2 really are very few areas on which we can proceed.

3 I might suggest to you that without
4 reviewing our documents, I cannot represent whether
5 or not any of the objections we have filed pertain, for
6 example, to terrestrial ecology, but it may be that
7 if there are any, they are very limited, and it may be
8 that the Staff will take the position that we could
9 go forward with the terrestrial ecology area, even
10 though there may be some very limited as yet unresponded
11 to interrogatory.

12 Now, other matters will be free to
13 take the position they would on that, but I think that
14 our approach would be to look at exactly what is
15 remaining outstanding and try and make a determination
16 as to whether or not that would prohibit proceeding
17 in that area.

18 JUDGE COHEN: I had attempted to make
19 clear earlier, and maybe it is a dream -- I hope not --
20 that we would intend to proceed even with outstanding
21 interrogatories. The questions could be asked of the
22 witness. If because of some surprise or magnitude of
23 response or lack of preparation of the witness

1 to respond to on the stand to the particular interroga-
2 tory, he may have to be called back, and we will all
3 suffer with that. But I think it clear that we do
4 not intend to allow weeks to go by for parties to
5 advance their objections to interrogatories or for
6 other parties to respond to interrogatories.

7 We are going to go ahead.

8 MR. PRATT: Judge Cohen, could I note
9 at this point that one of the matters that we view as
10 an important discovery request is the production of
11 documents both by the State staffs and by the NRC staff.
12 I don't know if it appears in the written materials
13 that we have been provided today by the NRC staff, but
14 it is my understanding from conversations with Mr.
15 Lewis that he intends to invite us to come to Tennessee,
16 where the Oak Ridge National Laboratory is located,
17 and to peruse documents on that point at our convenience.

18 Well, we haven't been invited to do
19 that yet. I understand as to what his intention is.

20 MR. LEWIS: You have been invited in
21 the documents.

22 MR. PRATT: Well, again, I haven't read
23 what we got this morning at 11 or 11:30. But that is

1 a matter that is of the utmost seriousness to us. If
2 we haven't even had a chance to get the documentary
3 materials that we have asked for, I don't know that
4 we can very conveniently go forward with cross-
5 examination on the subject. Again, subject to reviewing
6 these materials, it may be that we can work it out so
7 that we will be ready by the 2nd. But I just note
8 that we would have to object to being asked to cross-
9 examine on a subject that we haven't had at least a
10 substantial portion of our discovery request responded
11 to.

12 CHAIRMAN GOODHOPE: Mr. Pratt, as I
13 understand it, you say that you just received the NRC
14 staff's objection to your interrogatories?

15 MR. PRATT: That's right.

16 CHAIRMAN GOODHOPE: I don't why this is.
17 This is dated 3/5. Why is he just getting it now?

18 MR. LEWIS: I don't know the answer.
19 The other parties indicated to me that they had received
20 them and the Board received them thereafter.

21 MR. PRATT: The mail in New York City
22 is very bad. Mr. Kafin's testimony just arrived Monday.
23 In fact, maybe it arrived only because I made a special

1 call to get it. His first mailing has not arrived yet.
2 So it may be that mails in New York City are slow.

3 CHAIRMAN GOODHOPE: Well, I have read
4 the objections. I really don't think they are going
5 to give you too much of a problem. Some of the things
6 they object to, they object to being required to make
7 a long study of something that is not in existence
8 at this time.

9 And that may be why you are inviting them
10 down to Oak Ridge to look at the source material. Is
11 that it?

12 MR. LEWIS: I am inviting them down to
13 Oak Ridge because between the 120 document requests
14 and the 563 interrogatories which have as subsidiaries
15 to them numerous document requests, there is quite a
16 volume of stuff asked for, and it is simply not
17 feasible for us to copy that or to make it available
18 elsewhere and so I am inviting the Power Authority
19 to inspect those documents at Oak Ridge, where they
20 reside.

21 CHAIRMAN GOODHOPE: Well, that may or
22 may not be reasonable. Well, I have been waiting for
23 your answer to these objections, as a matter of fact,

1 and now I find you have just received them.

2 MR. PRATT: The reason we haven't answered
3 them is because we didn't see them. I can understand
4 why the Board ruled on them, but it did rule before
5 we had seen them.

6 JUDGE COHEN: Not on the merits, Mr.
7 Pratt; we have not ruled on the merits of any objection.

8 CHAIRMAN GOODHOPE: No.

9 JUDGE COHEN: Mr. Pratt, I don't know
10 how much study is required. I have looked at the various
11 objections. How much time would you require -- and I
12 am talking about a brief time this very day -- to see
13 the general areas of the objections and to then come in
14 with some sort of preferred order from your point of
15 view for cross-examination, even though all topics have
16 not been fully answered? They may be between now and
17 April 2nd.

18 MS. SPIEGEL: I would simply point out
19 in this regard that the Board has granted us an
20 extension of time until next Monday to file our objec-
21 tions to the something over 300 interrogatories we have
22 received from PASNY. Now, we have already either
23 responded to or objected to interrogatories that were

1 contained in PASNY's first submission to us. There
2 were several others, and although I can't be specific
3 at this point, I can represent to you that there will
4 in fact be objections to a number of discovery requests
5 that we have received.

6 JUDGE COHEN: Mr. Pratt, do you have
7 my preceding question in mind?

8 MR. PRATT: I do. If I may have a moment,
9 your Honor?

10 Judge Cohen, after reviewing the matter
11 with my colleagues, it is our feeling that what we
12 could go today would, one, be time consuming and,
13 secondly, might not be that productive. My understanding
14 is that we have a single copy of the materials that
15 we got from the NRC staff this morning, and it will
16 require a bit of time to make two or three copies of
17 that and to read it.

18 MR. LEWIS: I gave you two copies, if
19 that will help.

20 MR. PRATT: Excuse me. Second, I am
21 informed, and just looking at our listing of the
22 questions that we have sent out, the topics of the
23 questions that we have sent the NRC staff, there are a

1 number of them that are not yet answered or objected
2 to. SO I think that whatever we can look at today
3 still leaves an uncovered area.

4 Obviously, with regard to the Department
5 of Public Service interrogatories, there would be
6 additional ones that we couldn't consider today, simply
7 because we don't know what their position is.

8 We have neither answers nor objections
9 from them.

10 If you would like, we could undertake to
11 look at the material that we have gotten today, but I
12 am candid to say I am not really sure how effective
13 it is going to be.

14 What I would propose again is that we
15 be given something more than an hour or so to look at
16 it and that we get back to the Boards in some written
17 or oral fashion.

18 JUDGE COHEN: I don't know that the
19 time remaining between today and April 2nd affords
20 us the luxury of relying upon the U. S. mail for any-
21 thing, as witness Mr. Kafin and your joint problem.

22 It is obvious to you, Mr. Pratt, is
23 it not, that what we are trying to establish is some

1 small group of topics essentially that will impact
2 least upon you in terms of inconvenience that we can
3 begin cross-examination on Monday, April 2nd? That is
4 clear, is it not?

5 MR. PRATT: That is right. I am looking
6 for those topics, too.

7 JUDGE COHEN: It wouldn't be easier
8 if we named them, would it?

9 MS. SPIEGEL: Your Honor, this might be
10 an apropos moment. I wanted to say something about
11 the scheduling of this case in general.

12 As I think most everyone is aware, the
13 State Siting Board has been given by the legislature
14 a statutory deadline for rendering a decision in this
15 case, namely, the early part of February, 1980. That
16 is less than a year from now.

17 I think it is clear, if it was not
18 already clear from the way this case has proceeded in
19 the past, I think further evidence has been given here
20 today, that this proceeding does not appear to be
21 speeding up at all. We have a serious problem, and
22 at this point I would ask that the Boards, considering
23 the statutory deadline that we are facing, set out some

1 kind of a tentative schedule allocating the time
2 remaining between now and February, 1980, so that we
3 and the Siting Board have a reasonable opportunity to
4 execute their mandate.

5 Now, obviously, a lot of this depends
6 on the length of cross-examination and what PASNY
7 anticipates with respect to cross-examination.

8 I would submit to your Honors that,
9 given the extraordinary magnitude of discovery which
10 at least in terms of this Agency is unprecedented,
11 should serve fairly well as a substitute for cross-
12 examination in many respects. I would hope that the
13 Boards would not permit nor would PASNY even attempt
14 to enlarge upon every interrogatory response during
15 cross-examination of Staff.

16 And in many respects, although I consider
17 the discovery request to be unduly burdensome and
18 unnecessary, if it can be used to save hearing time,
19 if it will cut down on the amount of cross-examination
20 that all of us will have to sit through, then we are
21 willing to undertake and we already have undertaken
22 to be as responsive as possible to the questions we
23 consider to be proper.

1 Everything that I have heard here today,
2 however, has not led me to be optimistic about this.
3 Well, I am not certain what I am asking everybody to
4 do at this point except to recognize the existence of
5 this deadline, to recognize that unlimited time is not
6 available and to recognize that to some extent, at
7 least, extensive discovery is designed and should be
8 used as a substitute for cross-examination and in
9 order to cut down cross-examination on those areas that
10 are truly in issue.

11 We have received many interrogatories
12 that, although they may not be technically objectionable
13 take one by one, in fact, relate to matters that are
14 not in controversy, and I would hope that PASNY does
15 not intend for cross-examination to go along the
16 same lines, and I would put PASNY and everyone else on
17 notice that I will object vociferously if that is
18 attempted, and I hope that the Boards would agree with
19 this philosophy.

20 JUDGE COHEN: I share your hope that the
21 discovery will shorten cross-examination, Miss Spiegel.
22 I also recognize that there is a certain amount of
23 self-interest, on PASNY's part in moving the proceeding

1 to conclusion. After all, PASNY is the applicant. So
2 I would not anticipate delay for delay's sake on
3 its part.

4 MR. PRATT: I didn't mean to interrupt
5 you, Judge Cohen, but I had thought --

6 JUDGE COHEN: One other thing, since
7 you have reminded me that you have interrupted me.
8 Actually, I have finished, but the last thought I
9 would state to you, Miss Spiegel, and other parties,
10 is that we are acutely aware of the time deadline, and
11 the Federal Board is also aware of the time deadline,
12 that our State statute has imposed.

13 If it isn't obvious from anything that
14 has occurred today from our part, I hasten to make
15 clear that everything we are doing and plan to do is
16 with the aim of meeting that deadline.

17 (continued on following page)

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MR. PRATT: Let me say -- and I don't want to respond at length to Miss Spiegel -- but we have had over 22,000 pages of cross-examination in this case, some of it very pertinent, some of it quite candidly, I think, has nothing to do with the issues in this case. We are going to conduct expeditious cross-examination. We are going to go as quickly as we can. I find it very objectionable to have even a suggestion that there is going to be some kind of arbitrary limit placed on the times for cross-examination by the Authority.

JUDGE COHEN: Any limits placed will not be arbitrary, Mr. Pratt, by definition.

MR. PRATT: We are going to pursue cross-examination vigorously and resist any attempts by the Department of Public Service Staff or anyone else to cut it short.

Now, on the subject that we were talking to a moment ago, I would again propose that we not attempt to review today in a hurried way these matters, but that we will undertake to review them both today and tomorrow and, by the end of tomorrow's business day, to communicate in a written form -- and what I had in

1 mind is the telecopier machine -- some kind of a
2 response concerning which of these panels are the most
3 apt to commence cross-examination on.

4 JUDGE COHEN: Mr. Pratt, that is a helpful
5 suggestion but we want to resolve this matter while
6 the parties are present. We have discussed this at
7 the bench, and we believe that a further conference
8 tomorrow morning at nine o'clock at this place will be
9 appropriate to receive your views as to what subjects
10 with which to proceed and the views of any other
11 parties who attend.

12 If you are not prepared to indicate
13 those to us or other parties are not, or even if they
14 are, we will determine what witnesses will be first
15 heard and announce it shortly after that conference
16 or during the conference.

17 Is there anything else the parties wish
18 to raise today? Mr. Lewis?

19 MR. LEWIS: Judge Cohen, I would like to
20 associate myself most strongly with the comments made
21 by Miss Spiegel and the comments that she made about
22 the usefulness of the intensive interrogatory process
23 as a possible substitute or at least a substitute of

1 the cross-examination, and I feel they are even more
2 apropos with respect to the depositions.

3 Now, here we have a second round of
4 discovery and I am not saying that the Staff has taken
5 a position that PASNY is not entitled to determine
6 what reasonable means of discovery it wishes to under-
7 take, but the depositions will of necessity, I believe,
8 intrude upon the beginning of the hearing time, and
9 they do constitute a second round of discovery, and
10 we would hope that to the extent that depositions are
11 allowed to be taken, that they would foreshorten the
12 cross-examination considerably and, if, on the other
13 hand it appears there is no such reasonable hope that
14 the depositions could serve that purpose, then that is
15 something perhaps the Board would want to weigh in
16 terms of whether or not the Staffs -- well, the Staff
17 of the NRC; I don't believe anyone else has been
18 served with deposition notices -- whether or not the
19 Staff of the NRC should be subjected to that second
20 round of discovery or not.

21 MR. PRATT: Mr. Lewis, do I understand
22 your comments to say that you are objecting to having
23 the depositions taken?

1 MR. LEWIS: No. I went to pains to
2 say I am not taking a position one way or the other.
3 I am simply saying that the usefulness of those seems
4 to me could be largely in the area of holding out a
5 real option of reducing cross-examination, and it is
6 simply a consideration that if they are not, if there
7 is no such possibility, the question arises in the
8 Staff's mind as to whether or not such a second round
9 of discovery serves any purpose.

10 JUDGE COHEN: Mr. Dworkin?

11 MR. DWORIN: Yes. Three matters,
12 Judge Cohen.

13 First of all, in your list of topics to
14 be considered, you did not, as I understood it,
15 explicitly list need-for-power contentions. I assume
16 that you are including need-for-power contentions under
17 the heading of engineering economics. Is that a fair
18 assumption on my part?

19 JUDGE COHEN: I don't know that I
20 thought about it specifically, because certainly need
21 for power, as you know, is not an issue in the State
22 case, and I don't know if any party other than NRC has
23 presented testimony on that.

1 I was listing only known witnesses.

2 MR. DWORKIN: I understand the known
3 witness part. I would point out that Chapter 8 of the
4 FES is specifically named "Need for Power Generating
5 Capacity" and since we in particular take strong
6 positions with the conclusions arrived at, we
7 anticipate cross-examination on the need-for-power
8 panel, whoever they may be.

9 I think this may be an appropriate time
10 to discuss several facets of the need-for-power issue
11 which perhaps are best raised and left for people to
12 meditate about in the coming weeks.

13 First, as I am sure that all of you are
14 aware, on April 1st of this year, the Power Authority
15 and the remaining members of the Power Pool will be
16 filing with the State Energy Office a new long-range
17 plan.

18 As you will recall, last year's long-
19 range plan was subject to cross-examination after its
20 filing. The Power Authority's Exhibits 137 and 138A
21 and B were based explicitly upon last year's long-range
22 plan.

23 At this point we have not seen the new

1 long-range plan to be filed. We don't know the
2 contents of it. However, I would point out that to the
3 extent that there are any differences between the
4 loads being projected and the new long-range plan as
5 contrasted to the old, there are two independent matters
6 which are raised.

7 The first matter which is raised is if
8 specifically there is a difference in load forecast
9 by the Power Authority of any significant dimension,
10 that that issue, I would think, would have to be
11 retried, because the record would obviously be obsolete.
12 And I am limiting it very specifically to a difference
13 in that load forecast.

14 The second issue which arises is a much
15 larger issue, and that Exhibits 137 and 138A and B,
16 relying as they do upon last year's forecast, any new
17 forecast if substantially different from what is
18 already in the record could result in very major
19 differences in the bottom line economics which the
20 Power Authority is relying on in the exhibits that I
21 have mentioned.

22 Consequently, we think that if there is
23 a substantial difference, then it is probably going to

1 be necessary for the Power Authority to reappear and
2 produce, as they have in many other instances,
3 particularly on capital costs, which come to mind,
4 produce new exhibits showing the new figures in order
5 to prevent the record from being obsolete.

6 On the economics point, I might note
7 that obviously, the State Siting Board is required to
8 make findings as to economics, so that would become an
9 important item.

10 In addition to that, the State Energy
11 Office is required to come out with the long-range
12 plan on December 1 of 1979, and on January 1 of 1980
13 the long-range plan, the forecast contained in the
14 long-range plan, becomes binding upon the State Siting
15 Board.

16 As a consequence of that, I think it is
17 very important that we keep in mind the possible
18 necessity of reopening at some even later time, and as
19 a consequence of this.

20 And as I said at first, I leave this
21 for people to think about. It may be appropriate to
22 leave need-for-power contentions and the economics which
23 derive from need-for power and load forecasts to the

1 very end of this proceeding, and if we are at the
2 stage where the State energy plan has come out, that
3 would form the basis for any litigation of the new
4 issues which have arisen.

5 If not, then it would be the filing that
6 has been made by the Power Authority and the remainder
7 of the Power Pool.

8 DR. COLE: Mr. Dworkin, you indicated
9 that it is the 149-b report that will not be out until
10 December 1979 and you expect that we are not going to
11 be finished this phase of the hearing by then?

12 MR. DWORKIN: Let me outline the changes
13 which have occurred in legislation in New York in the
14 past year. The Energy Office now has the long-range
15 plan function, which formerly was called 149-b and was
16 under the jurisdiction of the Public Service Commission.

17 DR. COLE: Whatever it is called.

18 MR. DWORKIN: What we cross-examined on
19 last year and was presented as the Power Authority's
20 case was the filing made by the Power Pool to the Public
21 Service Commission under Section 149-b. There was no
22 final decision, determination of any kind by the Public
23 Service Commission as to a forecast of future needs in

1 New York State which would be binding on the Article
2 VIII Boards.

3 The change in the law that has occurred
4 has placed long-range planning into the Energy Office.
5 The April 1st filing date remains the same, but now
6 the Energy Office is charged by statute with producing
7 a forecast, and that forecast becomes binding.

8 So there are two dates to keep in mind.
9 One is the April 1st date will be a new filing similar
10 to Exhibit 146 now in the record, which was last year's
11 filing, and will contain a new forecast by the Power
12 Pool.

13 The second date is December 1st, or, in
14 the alternate, January 1st of 1980, which will be the
15 forecast coming out of the Energy Office, the official
16 forecast of the State of New York.

17 What I am suggesting is that if there
18 remain issues in this case to be tried after
19 December 1st, then what we can use for a reexamination
20 of the need-for-power issues and load-forecasting issue
21 would be the master plan coming down from the Energy
22 Office.

23 On the other hand, if we conclude before

1
2 that time, we can reexamine the issues in light of the
3 various forecasts which have been placed into the
4 record either of the 149-b, because that is the latter
5 date, or the Power Pool for 1979.

6 In essence, what I am saying is that if
7 we continue to rely at this stage upon what was in the
8 record and placed in the record a year ago, it would
9 be conceivably obsolete if there are significant
10 changes which are occurring in this year's submission.
11 Is that sufficiently confusing?

12 DR. COLE: All right. I think I
13 understand you.

14 JUDGE COHEN: It will be clear in the
15 record.

16 MR. DWORKIN: If I may, I would like to
17 bring up the final aspect of that. As you are aware,
18 we have made motions in the past and the Department of
19 Public Service as well, to have incorporated in the
20 record of this proceeding the record of the 149-b
21 proceeding, which is still going on a year after its
22 inception.

23 A moment ago I mentioned that we would
want to reexamine the need-for-power issue if the

1 economics in light of presentations made partially in
2 the 149-b, and the reason for that is that our
3 presentation in the 149-b is dated the end of December
4 and is just now being litigated. As far as we are
5 concerned, it is relatively current. We may want to
6 update it to some degree, but I doubt it, and we are
7 willing to go forward on the basis of our presentation
8 in the 149-b.

9 On the other hand, the Power Pool, since
10 it is now coming in with a brand new submission,
11 presumably would want to go forward on the basis of
12 their latest estimates.

13 In that regard, since to date the motion
14 made by DEC and I believe by DPS as well, both have been
15 acted upon by a ruling saying that it was premature to
16 incorporate a record that had not closed as far as the
17 ASLB was concerned, but had not been acted upon by the
18 Siting Board, I would advise at this time that I will
19 be renewing my motion to incorporate the entire Phase II
20 record as soon as it is closed, and my most current
21 understanding is April 12th is the date that that
22 record will be closed.

23 At the present time, I have available to

1 you the documents which we have submitted into that
2 record, which I would offer just in the nature of an
3 advanced idea for the members of the Board as to the
4 fact that we have made a rather substantial
5 presentation, which is part of the reason we don't want
6 to have to repeat that presentation in this case, and
7 the reason we would like to have incorporation, and to
8 give you an idea of what is going to be coming in when
9 we do make that motion to incorporate.

10 I would note that we have heretofore
11 submitted our entire case in the 149-b to each of the
12 active parties in this case, to the best of my
13 knowledge. I have spare copies at this time for any
14 of the active parties in this case who have not yet
15 received that testimony and, at the same time, I have
16 copies for the Boards, and if they would accept them at
17 this time, I would be happy to pass them out as soon as
18 we go off the record.

19 (Continued on following page.)
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1 JUDGE COHEN: Mr. Pratt, there is really
2 no need to respond to Mr. Dworkin's general preview,
3 unless you feel you have to. You might do better in
4 having the time available for reviewing those objections;
5 but if you insist, go ahead.

6 MR. PRATT: I wanted, I think, to make
7 exactly that point. I understand practically everything
8 he said to be merely prefatory, and we would reserve
9 our rights to comment in detail on what he said until
10 he actually makes the motion.

11 I would suggest here that the motion
12 meant to incorporate would be best made in writing.
13 I think it is going to be a complicated one and it is
14 the type of one that should not be made orally in the
15 hearing room.

16 JUDGE COHEN: I would expect that, but
17 I would expect him to identify parties moving, exact
18 designation of pages, exhibit numbers or anything else.

19 MR. PRATT: I can't control what Mr.
20 Dworkin gives the Board, but it seems to me it is a
21 bit unusual of a procedure to give the Board written
22 materials in advance of their being offered as evidence.

23 I note in that connection that it is

1 my understanding that the case presented in 149-b
2 proceeding by the DEC has not been in any way cross-
3 examined, and so we would of course expect it, if it
4 is incorporated here, that it is going to be cross-
5 examined here, as well.

6 I do have two other comments concerning
7 tomorrow's task, or today's task that we are to report
8 on tomorrow.

9 Miss Spiegel has asked for additional
10 time to make objections. We resisted that, unhappily,
11 but we did resist it for exactly the reason we are now
12 seeing, that is, that the Authority's time to prepare
13 for these hearings is bit by bit being eroded, so that
14 we are going to be compelled to begin the cross-
15 examination with very little backup time or lead time,
16 if any at all.

17 But regardless, I would ask Miss Spiegel
18 if she could by the day's end indicate what interroga-
19 tories she objects to in the categories, or in the
20 topics that we have identified as the possible early
21 topics. If she can tell us in those areas only by
22 day's end where she is going to object, that would
23 help us.

1 JUDGE COHEN: Miss Spiegel, at the close
2 of today's session, it would be helpful in terms of
3 development of the record if you could cooperate with
4 Mr. Pratt per his request.

5 MS. SPIEGEL: I will, your Honor.

6 CHAIRMAN GOODHOPE: Are you talking about
7 the March 5, 1979 letter?

8 MR. PRATT: I think that is the date.
9 I don't have it right in front of me. That is one the
10 Board has ruled on already.

11 It is also my understanding that the NRC
12 staff has served all of the objections that they plan
13 to. I would just like to confirm that that is correct.

14 MR. LEWIS: Not quite. We did file
15 yesterday our objections to PASNY's interrogatory sets
16 5, 6 and 7, and I am expecting that we will file today
17 the objections to your second document request.

18 I have to call back the office to verify
19 that that has --

20 MR. PRATT: I note that this makes it,
21 one, difficult, and, in a true sense, impossible for us
22 to adequately review what the preparation of the case
23 is. But we will do the best we can.

1 JUDGE COHEN: Do it on the basis of what
2 you have, Mr. Pratt. That is all I can tell you.

3 Mr. Dworkin?

4 MR. DWORIKIN: I would like to hopefully
5 correct a possible misimpression. It is not true that
6 our testimony in 149 has not been offered for cross-
7 examination. I would like to point out, first of all,
8 there are three sets of testimony. Two of the three
9 by Harvey and Henshaw of DEC were cross-examined. The
10 Power Authority has a complete right to cross-examine.
11 They in fact did not bother showing up. However, I
12 don't believe that gives them any right whatever to
13 try to come in and recross-examine in the other pro-
14 ceeding.

15 With respect to the load forecast itself,
16 which was prepared by our consultants, the Power
17 Authority, along with the rest of the members of the
18 Power Pool have specifically waived their right to
19 cross-examine the forecast itself and the model used
20 to produce that forecast, and in lieu of cross-
21 examination, because they felt it was to their benefit
22 to do so, are instead submitting what is being called
23 a critique, and that will be part of the record.

1 The Power Authority's due process
2 rights have been completely fulfilled. There is no
3 question that the Power Authority has no right to
4 further cross-examination at any time.

5 Our feeling is that the Public Service
6 Commission in their original order incorporating the
7 149-b record which was later rescinded was correct
8 in the test that it provided and that test was any
9 party that can show that it was unable to participate
10 in the 149-b proceeding should be allowed to cross-
11 examine, and the right of cross-examination would be
12 limited to such parties.

13 And I believe we have already gone on
14 record in that regard that we certainly agree with that
15 test, and we would offer it up as part of our motion
16 to incorporate.

17 MR. PRATT: Judge, I don't want to
18 prolong this at all. Mr. Dworkin is making an argument,
19 and it is an argument based, in my view, on his
20 statements and errors. It is going to be our
21 contention, if he should ever move to incorporate
22 testimony from the 149-b proceeding, that there are
23 certain rights of cross-examination that have not been

1 waived, and I don't want there to be any mistake that
2 at least that is the position of the Power Authority
3 and I think the other members of the New York Power
4 Pool.

5 JUDGE COHEN: Fine. We look forward with
6 interest to the argument that we have been promised.

7 Mr. Dworkin, the panel members think
8 it inadvisable at this point to accept your gracious
9 offer of the testimony that was submitted, and we will
10 wait until some formal action is required. Thank you
11 very much.

12 Miss Spiegel?

13 MS. SPIEGEL: Your Honor, I have another
14 matter, a small matter, that I would like to raise at
15 this time.

16 MR. PRATT: Miss Spiegel, could I
17 interrupt you just for a second, before we leave the
18 subject that we have been on? I have been told that we
19 have asked certain questions of the Department of
20 Environmental Conservation staff on terrestrial ecology.
21 It would be helpful if they could tell us today whether
22 they intend to object to any of those questions.

23 JUDGE COHEN: Could you respond, Mr.

1 Dworkin? And if not, perhaps after the session, you
2 could check with your office and determine, if you
3 don't personally know.

4 MR. DWORKIN: It is my understanding that
5 we would not have any objections to any of the
6 interrogatories on terrestrial ecology. We are working
7 on them at this time and responses will be forwarded
8 very shortly.

9 JUDGE COHEN: Is that it, Mr. Pratt?

10 MR. PRATT: That is it.

11 MR. BUTZEL: You invited comments today
12 on scheduling, and since I will not be able to be here
13 tomorrow, not knowing that we would extend, I would
14 just like to express a few comments on behalf of Greene
15 County.

16 JUDGE COHEN: Go ahead.

17 MR. BUTZEL: I basically am prepared
18 to accept any schedule that the Boards direct. We
19 would like, if at all possible, to keep our witnesses
20 in a compact segment, and that really only arises in
21 one case, and that is the case of Mr. Webster and our
22 panel. We would hope that they could appear seriatum,
23 in terms of witnesses.

1 JUDGE COHEN: That seems like a reasonable
2 request at this point.

3 MR. BUTZEL: Otherwise, the transportation
4 and the socioeconomic pr son we will produce when those
5 subjects come along.

6 I would like to offer a couple of
7 general observations. I think it is fine to try to
8 deal with easy subjects first, but that also just
9 tends to put off the evil hour.

10 There are very, very substantial issues
11 in controversy here from the Power Authority's point of
12 view as well, obviously, as from the other parties:
13 visual impact, road impact, socioeconomic impact.
14 Those are all ones that are very important to us, and
15 I just urge the Board to try to schedule those relatively
16 early rather than putting them off until the end,
17 because in the end, the time will come to press in more
18 and more, and the obligation to perhaps cut off cross-
19 examination will become stronger and yet at that
20 particular point, the Power Authority would certainly
21 be in its right to say this is really at the very
22 center of the case and we must be given adequate time.

23 We will produce our witnesses at any

1 time. We are ready to go, you know, subject to reasonable
2 notice at any time. I hope that will be taken into
3 consideration.

4 JUDGE COHEN: Thank you, Mr. Butzel.
5 Is there anything else?

6 MS. SPIEGEL: Your Honor, this relates
7 back to something that we all dealt with during the
8 summer, namely, the topic of emergency procedures.
9 If your Honor will recall --

10 JUDGE COHEN: I recall the history. Get
11 to the point.

12 MS. SPIEGEL: In any event, the upshot
13 of where things were left was that although the Power
14 Authority will be directed to produce that testimony,
15 you granted them, in effect, a stay or a delay of
16 implementation of that ruling pending the outcome
17 of the suit that they had brought against the Siting
18 Board in the Southern District. That suit has now been
19 decided, and it has been decided adversely to PASNY,
20 and at this time, any possible reason PASNY might have
21 put forth in defense of its position has evaporated,
22 and I would just urge your Honor to reiterate the order
23 and to direct PASNY to submit that testimony forthwith,

1 again keeping in mind that the time element and the
2 sooner that testimony is filed, the sooner it can be
3 dealt with, also.

4 JUDGE COHEN: I will decline to order
5 PASNY to produce it forthwith. My recollection of my
6 ruling is that PASNY was granted until the time of its
7 rebuttal case to serve that material.

8 MS. SPIEGEL: Well, your Honor, as I read
9 your order, the determinative factor was the pendency
10 of the federal suit, and your ruling really stated --
11 I hope I am not misconstruing it -- in any event, no
12 later than the filing of rebuttal testimony. In other
13 words, I read it that even if the suit was then still
14 pending, PASNY would only be given until then to file.

15 JUDGE COHEN: I will review the ruling
16 over the evening, Miss Spiegel, and I will rule on
17 your present request in the morning.

18 MR. PRATT: Judge Cohen, I really must
19 take some issue now. Miss Spiegel made a very
20 emotional speech a few minutes ago about the need to
21 move this case along and meet the February, 1980 dead-
22 line. We are now getting ready to engage in some
23 cross-examination of some positions stated by the staffs

1 and by the intervenors. For her now to require us
2 to stop that preparation and stop our efforts along
3 the line of cross-examination and to start back and
4 prepare some testimony seems to me to be counter-
5 productive. I take issue with the idea that we have
6 to stop and go, stop and go. I take the position that
7 it is now our time to cross-examine. Miss Spiegel has
8 had her time. I strongly urge that we stick to the
9 schedule presented.

10 JUDGE COHEN: I am aware of these
11 considerations. I will consider them in line with the
12 ruling to be issued.

13 MR. FLYNN: I have one small matter to
14 lessen your burden, not to add to it. On March 5th,
15 I objected to certain interrogatories submitted by the
16 Power Authority and Greene County. After serving those
17 objections, Mr. Butzel, for Greene County, revised his
18 set of interrogatories. That revision was dated
19 March 5, 1979. He deleted numbers 15, 54 and 57.
20 Therefore, we will withdraw our objections to them
21 and there is no need for your Honors to rule on them.

22 JUDGE COHEN: 15, 54 and 57?

23 MR. FLYNN: Yes, sir.

1 JUDGE COHEN: You had some objection
2 to other interrogatories, did you not, with respect
3 to Greene County?

4 MR. FLYNN: Yes, sir.

5 CHAIRMAN GOODHOPE: That was DTS to
6 Greene County interrogatories, your objections to those?

7 MR. FLYNN: Yes, sir.

8 CHAIRMAN GOODHOPE: And those are all?

9 MR. FLYNN: Those three are. There are
10 still outstanding objections.

11 MR. PRATT: I don't think that Mr.
12 Butzel circulated his reformed questions, generally.

13 MR. BUTZEL: No, I did not. They are
14 deleted, those numbers. Just strike them out. That
15 is all I did.

16 While we are on that subject, your Honor.
17 may I ask all parties to please send copies of
18 interrogatory answers and further interrogatories to
19 Loretta Simon at the Greene County Planning Department,
20 P.O. Box 517, Cairo, 12143. Miss Simon is assisting
21 in the answering and preparing of our answers to
22 interrogatories and it expedites things if we can get
23 them directly to the Department.

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JUDGE COHEN: Anything else?

All right, we will adjourn until 9:00
a.m. in this room.

(Whereupon, hearing recessed to Thursday,
March 15, 1979, at 9:00 a.m.)