

NUCLEAR REGULATORY COMMISSION

ORIGINAL

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of:

CONSOLIDATED EDISON COMPANY OF NEW YORK (Indian Point Unit 2)	:	DOCKET NOS.:
	:	50-247 SP
POWER AUTHORITY OF THE STATE OF NEW YORK (Indian Point Unit 3)	:	
	:	50-296 SP

DATE: November 3, 1982 PAGES: 4652 - 4819

AT: White Plains, New York

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ALDERSON  REPORTING

400 Virginia Ave., S.W. Washington, D. C. 20024

Telephone: (202) 554-2345

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PDR ADOCK 05000247
T PDR

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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In the Matter of:		: Docket Nos.:
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CONSOLIDATED EDISON COMPANY OF NEW YORK		:
(Indian Point Unit 2)		: 50-247 SP
		:
POWER AUTHORITY OF THE STATE OF NEW YORK		:
(Indian Point Unit 3)		: 50-286 SP
		:
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Ceremonial Courtroom
Westchester County Courthouse
Grove Street
White Plains, N.Y. 10601

Wednesday, November 3, 1982

The prehearing conference in this special
investigative proceeding was convened, pursuant to
recess, at 9:30 a.m.

BEFORE:

- JAMES P. GLEASON, Chairman
Administrative Law Judge
- OSCAR H. PARIS
Administrative Law Judge
- FREDERICK J. SHON
Administrative Law Judge
- RUTH ANN MILLER, Legal Assistant to the Board

1 APPEARANCES:

2 On behalf of Licensee, Consolidated Edison Company
3 of New York:

4 BRENT L. BRANDENBURG, Esq.
5 Assistant General Counsel
6 THOMAS FAIRLEY, Esq.

7 STEVEN SOHINKI
8 Consolidated Edison Company of New York, Inc.
9 4 Irving Place
10 New York, N.Y. 10003

11 On behalf of Licensee, the Power Authority of the
12 State of New York:

13 CHARLES MORGAN, JR., Esq.
14 PAUL F. COLARULLI, Esq.
15 JOSEPH J. LEVIN, Esq.
16 Morgan Associates, Chartered
17 1899 L Street, N.W.
18 Washington, D.C. 20036

19 DAVID H. PIKUS, Esq.
20 RICHARD F. CZAJA, Esq.
21 Shea and Gould

22 On behalf of the Nuclear Regulatory
23 Commission Staff:

24 JANICE MOORE, Esq.
25 STUART TREBY, Esq.
HENRY J. MCGURREN, Esq.
Washington, D.C.

On behalf of the Federal Emergency Management
Agency:

STUART GLASS, Esq.
SPENCE PERRY, Esq.

On behalf of the Intervenors:

Council of the City of New York:

CRAIG KAPLAN, Esq.

25

1 APPEARANCES: (Continued)

2 On behalf of Intervenors:

3 County of Rockland:

4 ERIC THORSEN, Esq.
5 11 New Hempstead Road
6 New City, N.Y. 10003

6 New York Public Interest Research Group:

7 JOAN HOLT
8 MELVIN GOLDBERG, Esq.
9 Staff Attorney
10 9 Murray Street
11 New York, New York 10007

10 Greater New York Council on Energy:

11 DEAN CORREN, Esq.

12 Friends of the Earth, Inc., and
13 New York City Audobon Society:

14 RICHARD HARTZMAN, Esq.

15 Ninth Legislative District, Westchester County:

16 RICHARD BRODSKY, Esq.
17 White Plains, N.Y.

17 Parents Concerned About Indian Point:

18 PHYLLIS RODRIGUEZ
19 KATHY TOSCANI
20 P.O. Box 125
21 Croton-on-Hudson, N.Y. 10520

20 Rockland Citizens for Safe Energy:

21 JUDITH KESSLER
22 P.O. Box 74
23 New City, N.Y. 10956

24

25

1 APPEARANCES: (Continued)

2 On behalf of Intervenors:

3 Union of Concerned Scientists:

4 JEFFREY BLUM, Esq.
5 New York University of Law
6 40 Washington Square South, Room 423
7 New York, N.Y. 10011

8 Westchester Peoples' Action Coalition:

9 CONNIE HOGARTH

10 West Branch Conservation Association:

11 ZIPPORAH S. FLEISHER
12 443 Buena Vista Road
13 New City, N.Y. 10956

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

2 JUDGE GLEASON: If we could get started,
3 please.

4 Good morning. This is a prehearing conference
5 session in connection with the Indian Point power
6 reactors investigative proceeding directed to be held by
7 the U.S. Nuclear Regulatory Commission.

8 I am James P. Gleason, recently appointed to
9 fill a vacancy as chairman caused by the resignation of
10 Judge Louis Carter. The other people on the bench I
11 believe you are all familiar with -- Judge Frederick
12 Shon on my left, Judge Oscar Paris on my right, and to
13 my far left our legal assistant, Ruth Ann Miller.

14 At this point I would like to have the party
15 representatives make their appearances known for the
16 record, please. We will start in any order that you --
17 we will start with the Licensees and then the Staff and
18 then the parties.

19 MR. BRANDENBURG: Mr. Chairman, my name is
20 Brent L. Brandenburg. I am an attorney for Consolidated
21 Edison Company of New York, Inc., the licensee for the
22 Indian Point Unit Number 2 power plant.

23 To my left is my colleague Thomas Fairley.
24 Joining us shortly will be Mr. Steven Sohincski, also an
25 attorney for Con Edison.

1 JUDGE GLEASON: How do you spell his name?

2 MR. BRANDENBURG: S-o-h-i-n-k-i.

3 JUDGE GLEASON: Thank you.

4 MR. LEVIN: Mr. Chairman, my name is Joseph
5 Levin, representing the Power Authority for Morgan
6 Associates, chartered in Washington, and with me to my
7 left from Shea and Gould, New York, also representing
8 the Power Authority --

9 JUDGE GLEASON: Would you spell that?

10 MR. LEVIN: L-e-v-i-n.

11 JUDGE GLEASON: And the second name?

12 MR. LEVIN: That was the second name. It is
13 Joseph Levin. With me to my left from Shea and Gould in
14 New York is Mr. Richard Czaja and Mr. David Pikus.
15 Czaja is C-z-a-j-a and Pikus is P-i-k-u-s.

16 JUDGE GLEASON: Staff please?

17 MS. MOORE: Mr. Chairman, my name is Janice
18 Moore. I am an attorney representing the NRC Staff.
19 With me to my right, also representing the Staff is Mr.
20 Henry J. McGurran, and Assistant Chief Hearing Counsel
21 Stuart Treby.

22 Also present today are two attorneys
23 representing FEMA -- Mr. Spence Perry and Mr. Stuart
24 Glass.

25 JUDGE GLEASON: It is B-l-a-t-z?

1 MS. MOORE: Glass -- G-l-a-s-s.

2 JUDGE GLEASON: All right. May we have the
3 intervenors, please?

4 MS. HOLT: I am Joan Holt, representing the
5 New York Public Interest Research Group, and with me,
6 also representing NYPIRG, is Melvin Goldberg.

7 JUDGE GLEASON: All right.

8 MR. HARTZMAN: My name is Richard Hartzman. I
9 am an attorney representing Friends of the Earth and the
10 New York City Audubon Society.

11 JUDGE GLEASON: Could you spell that, please?

12 MR. HARTZMAN: That is H-a-r-t-z-m-a-n.

13 MR. BLUM: Jeffrey M. Blum -- B-l-u-m -- on
14 behalf of the Union of Concerned Scientists.

15 JUDGE GLEASON: Thank you, Mr. Blum.

16 MR. CORREN: Dean Corren -- C-o-r-r-e-n --
17 representing the Greater New York Council on Energy.

18 MS. FLEISHER: Zipporah S. Fleisher --
19 F-l-e-i-s-h-e-r -- representing the West Branch
20 Conservation Association, New City, New York, Rockland
21 County.

22 JUDGE GLEASON: Thank you, Ms. Fleisher.

23 MS. RODRIGUEZ: I am Phyllis Rodriguez --
24 R-o-d-r-i-g-u-e-z. I am a member of Parents Concerned
25 about Indian Point, and I expect to be joined by another

1 member, Kathy Toscani -- T-o-s-c-a-n-i.

2 JUDGE GLEASON: Are there representatives from
3 any other government parties -- government entities
4 involved in the case here -- other than those who have
5 introduced themselves?

6 All right. I have a few brief comments -- and
7 they are very brief -- to make at the outset.

8 As I indicated and as you know, I was recently
9 appointed after somewhat, I guess I can characterize it
10 as, regrettable and unfortunate circumstances, depending
11 on where you sit, that resulted in the resignation of
12 Administrative Judge Louis Carter. I should say for the
13 record that Mr. Carter is a person that all of the
14 members of the Atomic Safety and Licensing Board had a
15 very high and still have a very high regard for.

16 I intend to be guided in the dispatch of my
17 responsibilities, to the limit of my capabilities, of
18 course, by one standard, and that standard is the
19 equitable, speedy and economical determination of
20 providing the answers on the record to the questions
21 raised for this proceeding by the Nuclear Regulatory
22 Commission.

23 The history of this case has involved a
24 considerable period of time or lapse of time, if one
25 goes back to the original request of the USC party

1 intervenor, to have the operation of Units 2 and 3
2 suspended, which I believe was in September of 1979.
3 After the Director's February decision in 1980 and the
4 Commission's order in May of 1980, which stated and
5 which established this discretionary adjudication.

6 And after a task force report there was an
7 order, of course, in January of 1981 which established
8 the issues that we looked at and, of course, this Board
9 was established in September of 1981 with a reporting
10 date to answer the questions raised by the Commission in
11 September 1982.

12 This Board is convinced, I am sure, that all
13 parties in this proceeding have an unquestioned interest
14 in a speedy determination of the issues involved. I
15 think it should be said, after the quick reviewing that
16 I have made of the record, that good intentions are not
17 adequate and that this must be supported by a
18 determination and a spirit of cooperation that will
19 produce in the quickest time possible the answers to the
20 contentions that have been raised.

21 We know that there has been, over a
22 three-month period that has elapsed since the parties
23 have been together and the Board has had a proceeding,
24 and we currently, of course -- the Commission, I should
25 say, is waiting for this Board to recommend to it for

1 its decision, presumably, as to what the schedule will
2 be from this point forward.

3 MS. FLEISHER: Your Honor, excuse me. Could
4 you use the mike, please?

5 JUDGE GLEASON: You are not hearing me?

6 MS. FLEISHER: I see people in the back
7 cupping their ears.

8 JUDGE GLEASON: All right. Can you hear me in
9 the back? All right, I will try to speak a little
10 louder. Thank you for pointing that out.

11 On October 29 the Board forwarded a schedule
12 that we would like to have following in this prehearing
13 conference and I would like to take a few minutes to
14 explain how that schedule should be adhered to.

15 First, of course, we will consider the party
16 responses to the Board's order of reformulated
17 contentions and added Board questions. In that
18 connection, we would like to have beginning the
19 consideration of that item, responses from, first, the
20 USC, followed by Friends of the Earth.

21 I might say that it would be helpful, insofar
22 as reading the record is concerned, that after each
23 party has responded to the responses, if you will, for
24 then the Power Authority, Consolidated Edison and then
25 the Staff, if it should desire, to make such comment in

1 response to the comments received from the parties on
2 each contention.

3 After USC, we would like to hear from Friends
4 of the Earth, then from the Audubon Society, and then,
5 finally, from Parents' organization dealing with
6 Question 1, Contention 1.

7 On Contention 2, we would like to hear from
8 USC organization, followed by West Branch, WBCA, entity.

9 Question 3, we would like to hear from the
10 Power Authority, Consolidated Edison, and responses to
11 those comments should be by, in turn, USC, Parents,
12 Rockland Citizens organization, WBCA, WPAC, if they are
13 here, which I have not heard a representative here
14 today, Friends and then the Audubon Society, and then,
15 finally, the Staff -- in that order.

16 After we have considered or after receiving
17 your comments on Question 3, if there are any
18 representatives of government agencies that would like
19 to respond to this, we would like to hear from them at
20 that time.

21 We would follow the same order with respect to
22 Question 4 -- on Contention 4.

23 On Contention 5, Question 5, we would like to
24 hear from WBCA and responses to those comments, once
25 again, from the Power Authority, Consolidated Edison and

1 the Staff.

2 Finally, on Question 6, we would like to hear
3 from the Parents organization, followed, once again, by
4 Power Authority, Consolidated Edison and the Staff.

5 Subsequent to that discussion, we will then go
6 on to a consideration of the scheduled responses, and in
7 that order, I think we will just follow the order that
8 the responses came in and try to make as good a sense of
9 continuity as we can out of this and start with comments
10 from the Licensees, then the Staff, and then any party
11 and, finally, the representatives of government.

12 I should have mentioned this before. Prior to
13 discussing the schedule, we would like to have some
14 comments on the Licensees' motion to allow time in the
15 schedule for summary disposition procedures and, in that
16 connection, we would like to hear very briefly from the
17 Licensees and we would also like to hear from the Staff
18 on that issue and then, finally, from the parties, in
19 whichever order they care to proceed.

20 Now, are there any additions to the schedule
21 or any other matters you would like to have brought up
22 in a preliminary sense?

23 MR. LEVIN: Mr. Chairman, the Power Authority
24 has one matter. We would like to note for the record
25 the arrival of Paul Colarulli, also from Morgan

1 Associates, also representing the Power Authority.

2 JUDGE GLEASON: Thank you.

3 MR. BRODSKY: Your Honor, I would like note my
4 appearance, Richard Brodsky.

5 JUDGE GLEASON: Richard Brodsky.

6 MS. VETERE: I would like to note my
7 appearance -- Laura Vetere, on behalf of Westchester
8 County Associates.

9 JUDGE GLEASON: How do you spell your name?

10 MS. VETERE: V-as in Victor-e-t-e-r-e.

11 MS. FLEISHER: Your Honor, it is a procedural
12 matter.

13 JUDGE GLEASON: Excuse me just a minute.

14 MS. FLEISHER: I'm sorry.

15 JUDGE GLEASON: All right.

16 MS. FLEISHER: The Intervenors are dependent
17 on the local document room and it is a condition I would
18 like to discuss at some point because we find it very
19 difficult to depend upon it for our documents.

20 JUDGE GLEASON: All right. You can bring that
21 up as an item under miscellaneous after we finish the
22 other items.

23 MS. MOORE: Mr. Chairman, just briefly the
24 Staff wonders if you would be discussing at any time in
25 this prehearing conference your order of October 29

1 concerning your definition of "discussion".

2 JUDGE GLEASON: In the order that we sent out
3 on the 29th, we attempted to give the definition of that
4 word as we understand it, and we don't think we can add
5 to that, unless there is a very substantial case made by
6 somebody that they consider we are substantially in
7 error, if you will. We prefer not to discuss it.

8 MS. MOORE: The Staff would at some point like
9 to see some clarification of the practical application
10 of the aspects of that definition, if that would be
11 permissible.

12 JUDGE GLEASON: Well, let me just say, Miss
13 Moore, that we will consider it, but we are not sure
14 that we want to respond at this point.

15 MS. MOORE: Thank you.

16 MS. RODRIGUEZ: I would like to request that a
17 representative of the Alliance to Close Indian Point
18 from Northern Westchester, which is made up of about a
19 dozen local groups, be allowed to make a limited
20 appearance statement now, which won't take more than two
21 minutes.

22 The reason I am making this request is that it
23 deals with an issue that we feel is vital to the
24 hearings and could affect the scheduling of the hearings
25 and the discussion that we will be having later today.

1 JUDGE GLEASON: Well, let me say that this
2 conference, this prehearing conference, is an extremely
3 important event as far as moving the schedule forward.
4 Did you send a communication to the Board with respect
5 to this matter, with respect to the matter that you want
6 to discuss?

7 MS. RODRIGUEZ: Well, it regards Questions 3
8 and 4.

9 JUDGE GLEASON: Have you sent something to the
10 Board?

11 MS. RODRIGUEZ: I don't think we have, not
12 specifically, no.

13 JUDGE GLEASON: Then I would suggest that you
14 are going to have to wait till after we are through the
15 schedule today, or this prehearing conference. Then, if
16 we have time, we would be glad to give you an
17 opportunity to make an appearance.

18 MS. RODRIGUEZ: You mean until the entire two
19 days is over?

20 JUDGE GLEASON: Yes.

21 MS. RODRIGUEZ: Well, then, can I amend my
22 request to have it included when we discuss -- when we
23 begin discussion of Question 3, because that is what it
24 specifically relates to -- emergency planning in the
25 area.

1 JUDGE GLEASON: We are not at this point in
2 this prehearing conference telling you what your
3 comments can be in participation in this question, so if
4 you can get it at that time, it is fine with us.

5 MS. RODRIGUEZ: I am not sure I heard you.
6 Excuse me. You said we are not at this time -- I am
7 sorry.

8 JUDGE GLEASON: Would you tell me again what
9 organization you represent?

10 MS. RODRIGUEZ: I am with Parents Concerned
11 About Indian Point.

12 JUDGE GLEASON: You will have an opportunity
13 to speak on Questions 3 and, I think, 4, but at least
14 one of them, as I indicated my prior comments. Yes, I
15 think on both of them. You can make such comments at
16 that time that you would be able to make in your limited
17 appearance session, so I would just suggest that you
18 make your comments when your opportunity comes to speak
19 on those contentions.

20 MS. RODRIGUEZ: All right.

21 JUDGE GLEASON: Any other matters?

22 All right, we will proceed with consideration
23 of party responses to the Board's order of October 29,
24 and we would like to hear from representatives of the
25 Union for Concerned Scientists, please.

1 MR. BLUM: Thank you, Your Honor.

2 In general, the Union of Concerned Scientists
3 believes that the way the Board has set out the plan for
4 dealing with Contentions under Question 1 is an
5 efficient way of framing the issue. It reflects a
6 continuity with what has gone on in the hearing before,
7 and I think it was skillfully done, for the most part.
8 We have no principal objections to it. We may have some
9 reply to specific arguments of Licensees that are
10 brought up later on.

11 The one thing the Union of Concerned
12 Scientists is somewhat bothered about is the mailgram
13 clarification or discussion. I mention this just
14 briefly now because it does relate principally to
15 Question 1. We would join with the Staff in hoping that
16 this will be clarified soon, not because we feel there
17 is a substantive error in it, but because there are two
18 possible readings, both of which are plausible and are
19 actually somewhat opposite in meaning, and it would be
20 helpful to get the ambiguity clarified as soon as
21 possible.

22 It turns on the meaning of the three words
23 "argument," "reasoning," and "evidence."

24 JUDGE GLEASON: Any comments from the Power
25 Authority or the Licensees to those?

1 MR. LEVIN: I assume we are talking about 1.1
2 right now, Your Honor.

3 JUDGE GLEASON: Yes, we are.

4 MR. LEVIN: I think I heard Mr. Blum say that
5 he would have no response until he had heard something
6 from the Licensees. Well, the Power Authority really
7 has nothing further to add to its written response to
8 the Board's order of October 1 and, as a consequence, we
9 would expect that if Mr. Blum or any other Intervenor
10 involved in this Contention, has a point to make, that
11 he should make it now.

12 We may have a reply to a response that they
13 have to our position.

14 JUDGE GLEASON: Mr. Blum?

15 JUDGE PARIS: This is your chance, Mr. Blum,
16 to respond to the written reply on the Board's order.

17 MR. BLUM: Yes. The only thing I would say is
18 in general we do think the bases are adequate as set
19 forth, that they do have sufficient specificity to
20 establish that these are important things to be
21 litigated.

22 Also, we would note that the Board's basic
23 approach is correct and that the question remains.
24 Question 1 is there and requires a comprehensive answer,
25 regardless of what is done with the specific wording of

1 this or that Contention. So in general we just do not
2 think the Licensees' specific arguments are well-founded
3 for creating an efficient approach to the hearings.

4 MR. LEVIN: Under that circumstance, Mr.
5 Chairman, the Power Authority views Mr. Blum's statement
6 in effect saying that he disagrees with us.

7 JUDGE GLEASON: Yes.

8 MR. LEVIN: Well, we would simply reiterate
9 what we have already set out in writing.

10 JUDGE GLEASON: Mr. Brandenburg?

11 MR. BRANDENBURG: Mr. Chairman, on behalf of
12 Con Edison, we, too, are in general agreement of the
13 Board's treatment on Question 1 issues in our submission
14 of October 19 responding to the Board's order of October
15 1. We did try to point out some deficiencies as we saw
16 them in two of the bases -- that is, bases 1.

17 JUDGE GLEASON: Mr. Brandenburg, you do not
18 have to go over what you have already submitted. What I
19 really wanted you to do was to get -- if the party
20 responding has brought up any points, additional points,
21 that you have not covered, I wanted to give you a very
22 brief opportunity to respond to them, and at this point
23 I don't think he has.

24 MR. BRANDENBURG: Hearing none, we stand on
25 the position articulated in our brief.

1 JUDGE GLEASON: Staff?

2 MS. MOORE: We stand on our written position.
3 We have nothing to add.

4 JUDGE GLEASON: All right.

5 Friends of the Earth, please.

6 MR. HARTZMAN: Thank you, Your Honor. I will
7 speak both for Friends of the Earth and New York City
8 Audubon Society.

9 As with Union of Concerned Scientists, we feel
10 that the treatment of Contention 1.1, Commission
11 Question 1, and the additional Board questions, was a
12 very useful way of trying to proceed and get the kind of
13 information you need to address the Commission
14 question.

15 Just one point I would like to make in terms
16 of responding to the Licensees' submission on this. It
17 wasn't clear to me whether they were objecting in toto
18 to new Contention 1.1 challenging the adequacy of the
19 bases. While we also feel they are adequate, I would
20 point out that Basis 2 in itself is sufficient to
21 support the Board's new Contention 1.1.

22 JUDGE GLEASON: Thank you.

23 Mr. Levin?

24 MR. LEVIN: One moment, Your Honor, if I may.

25 MS. HOGARTH: Excuse me, Judge Gleason. I

1 would like to identify my presence here on behalf of
2 Westchester Peoples' Action Coalition. My name is
3 Connie Hogarth.

4 JUDGE GLEASON: Would you spell that?

5 MS. HOGARTH: H-o-g-a-r-t-h. I am the
6 Director of WESTPAC, Westchester Peoples' Action
7 Coalition.

8 JUDGE GLEASON: Thank you.

9 MS. KESSLER: Also, Your Honor, Judith
10 Kessler, representing Rockland Citizens for Safe
11 Energy.

12 JUDGE GLEASON: Would you spell your name,
13 please?

14 MS. KESSLER: Judith --

15 JUDGE GLEASON: No.

16 MS. KESSLER: Kessler -- K-e-s-s-l-e-r.

17 JUDGE GLEASON: Thank you.

18 (Pause.)

19 JUDGE GLEASON: Mr. Levin?

20 MR. LEVIN: Mr. Chairman, I think it would
21 bear repeating that regardless of the factual
22 underpinning that may be available as a basis, as set
23 out in the number 2, (a) through -- I guess it is just
24 (a) and (b) bases, we have not objected to them as bases.
25 We do, however, reiterate our fundamental

1 objection to the standard apparently set out in new
2 Contention 1.1, in particular the language used by the
3 Board: "unacceptably high risk," and "reasonably
4 probable accidents."

5 JUDGE GLEASON: Mr. Brandenburg?

6 MR. BRANDENBURG: Well, we too, on historical
7 grounds, suggested to the Board that the phraseology Mr.
8 Levin just referred to would be best deleted from those
9 contentions. This is not a substantial departure from
10 the position we took in our memorandum of October 19,
11 Mr. Chairman, and we stand on the comments made in that
12 memorandum to the Board.

13 JUDGE GLEASON: All right. Anything from the
14 Staff?

15 MS. MOORE: No, sir, the Staff has nothing.

16 JUDGE GLEASON: We would like to hear from the
17 Parents organization, please.

18 MS. RODRIGUEZ: May I have a moment, please?

19 JUDGE GLEASON: Yes, I should reiterate again,
20 as a matter of clarification that has already been made,
21 but what the Board is looking for in this part of the
22 prehearing conference is comments on the responses made
23 by the parties to the Board's order.

24 Take your moment, please.

25 (Pause.)

1 MS. RODRIGUEZ: I am sorry I was unprepared to
2 answer the question, but we have been dropped from this
3 question, which dealt with the negative effects of
4 radiation on children.

5 JUDGE GLEASON: No, that is in Question 5 or
6 Question 6. That is in Question 6.

7 MS. RODRIGUEZ: Well, that whole Question 6.2
8 was the entire contention that was eliminated, which I
9 believe we will be discussing later on in this
10 conference. However, 1.1, we are not a part of it any
11 more, and as far as we can tell we support the Board's
12 formulation of it.

13 JUDGE GLEASON: All right. That could be my
14 error. I had in my own quick survey, had had the
15 Parents organization as a part of that contention.

16 MR. BRANDENBURG: Mr. Chairman, I am looking
17 at page 39 of the Board's order of October 1, in which
18 I believe you list the leading contributing intervenors
19 for Contentions arising under Commission Question 1.

20 JUDGE GLEASON: What does that say? All
21 right, that was my mistake. I am sorry.

22 That concludes the comments that the Board
23 would like to receive on Question 1. We would now go to
24 Question 2.

25 MS. MOORE: Mr. Chairman, before we proceed to

1 Question 2 --

2 JUDGE GLEASON: That is right. The Staff --

3 MS. MOORE: Has a comment on it. The Staff
4 did have a comment on Board Question 1.1, and it would
5 request the Board to identify the documents that it
6 wishes addressed with regard to that question.

7 It would also request that the Board ask the
8 parties if they have documents which they wish
9 identified to aid the Board in determining which
10 documents should be addressed, to aid the parties in
11 determining which documents should be addressed in
12 direct testimony.

13 (Pause.)

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1 JUDGE GLEASON: As far as the Board's response
2 to your inquiry, it does not have, at the present time,
3 any additional documents that it would cite for the
4 Staff or the parties. It may have in the future, and
5 then, of course, that will be provided to the parties as
6 rapidly as it comes to the attention of the Board.

7 JUDGE SHON: Ms. Moore, among other things, we
8 were perhaps a little ambiguous in stating that we want
9 the studies addressed without identifying the studies,
10 because we felt there was a good possibility that
11 additional studies might exist that we did not know of.

12 We certainly would want, for example, the
13 Staff to address the Sandia report on the Indian Point
14 probabilistic safety study. We cited that at one point
15 in our order and it was specifically included in this
16 list.

17 We also felt there might be studies that would
18 come out very, very soon and indeed the Washington Post
19 has mentioned the existence of still another Sandia
20 report which covers many, many reactors besides Indian
21 Point, but does specifically mention Indian Point in
22 which the CRAC-II code is used to analyze consequences.
23 I don't know, since I have not seen the report, if it
24 also analyzes probabilities.

25 We wanted to allow some flexibility for the

1 parties to introduce any studies they might have had
2 made, whether or not those studies were known to the
3 Board. Do you see?

4 MS. MOORE: Yes, I understand that and I
5 understand your problem as well. What we were concerned
6 about was when it says in answering this Question
7 parties shall address at least the following documents,
8 and then it says any reviews or studies of the IPPSS, et
9 cetera.

10 We were concerned that we were going to be
11 required or could be in a position of having to address
12 documents that we didn't know existed in terms of if the
13 other parties to this proceeding are aware of studies
14 that have been done for them which we are unaware of.
15 It would be helpful to know that as soon as possible so
16 that we could in fact address them in our direct
17 testimony.

18 JUDGE SHON: I think that would be a matter
19 for discovery, but again we have been caught once before
20 by giving you that answer.

21 JUDGE GLEASON: It is a matter for discovery,
22 but, on the other hand, we would ask the other parties
23 if they have such reports to identify those at the
24 present time.

25 JUDGE SHON: I think the important thing is we

1 don't anyone, any party, to feel oh, well, you know,
2 that report addresses this situation directly, but the
3 Board didn't mention it in this order, so we don't have
4 to talk about that one. We are leaving it substantially
5 to your own good judgment as to whether a report bears
6 sufficiently on this case to be mentioned in it.

7 But we do want to remind you that that is the
8 sort of thing we would like to hear. We don't want to
9 limit someone to a specific list of reports because
10 there may be many, many such reports that are not known
11 to us and the Board does not have the mechanism of
12 discovery to get at them. We do feel that every party
13 should be completely open and frank and tell what
14 reports they have had done, what studies they have had
15 done of the probability and consequences of accidents at
16 Indian Point. We want to flush these out rather than to
17 set them down.

18 JUDGE GLEASON: I would then ask the parties
19 that if there are any such studies or reports that have
20 been made to identify those at the present time. I
21 think that is in response to Mrs. Moore's inquiry.

22 MR. LEVIN: Mr. Chairman, on behalf of the
23 Power Authority, most of the reports of which we have
24 any knowledge are those which have been developed by the
25 NRC Staff or under contract to the NRC, and if Ms. Moore

1 could perhaps identify those which relate to the Power
2 Authority's safety study which, of course, we undertook
3 in accommodation with Consolidated Edison, if she could
4 list any additional reports that bear on that safety
5 study, then we might be able to pick up one that she may
6 have missed.

7 But I think that would be the easiest way to
8 approach it.

9 JUDGE GLEASON: Mr. Brandenburg?

10 MR. BRANDENBURG: Mr. Chairman, the only
11 reports on the Indian Point probabilistic safety study
12 that -- comments on which would be called for by Board
13 Question 1.1, of which Con Edison is aware, are those
14 that have been the subject of Board notifications in
15 this proceeding to date.

16 With respect to the new Sandia study, not to
17 be confused with the evaluation of the core melt
18 frequency aspect of the Indian Point probablistic safety
19 study that was issued several weeks ago, but instead
20 with respect to what I understood to be Judge Shon's
21 reference to this new study that received press coverage
22 within the past day or two, we have not yet seen that,
23 but it is our understanding that that document does not
24 comment upon or review the IPPSS study itself.

25 So I might just flag that as possibly a

1 document in a separate category. But with respect to
2 documents that comment specifically upon the IPPSS
3 study, the only ones that we are aware of are those that
4 have been the subject of Board notifications.

5 MR. HARTZMAN: Your Honor, on this point I
6 think the Licensees and Staff are aware of our
7 interrogatory from last summer. We indicated that
8 Professor Isaac Levi will be testifying on behalf of
9 Friends of the Earth and New York City Audubon, and will
10 be offering testimony that consists, in part, of a
11 methodological critique of the Indian Point probabilistic
12 safety study.

13 He has not prepared any independent reports or
14 studies at this point. There is a rough draft of
15 testimony, of course. It will be submitted as his
16 testimony later on in the proceeding.

17 JUDGE GLEASON: I think Ms. Moore is just
18 referring to reports done and studies done, not
19 testimony.

20 Ms. Moore, did you want to make additional
21 comments?

22 MS. KESSLER: We can't hear you, Your Honor.

23 JUDGE GLEASON: I indicated that I believe Ms.
24 Moore was just referring not to testimony. She was
25 referring to reports or studies done, and that is what

1 the Court refers to when I asked Ms. Moore if she wants
2 to make any additional comments at this time.

3 MS. MOORE: The only addition comment that I
4 want to make right now is the reports that I am aware of
5 at this time are the two that have been subject of Board
6 notification, and if there are others, we will be
7 sending them to the Board as we discover them.

8 JUDGE GLEASON: All right. Thank you.

9 JUDGE SHON: Ms. Moore, would it be the
10 Staff's position because, as Mr. Brandenburg points out,
11 the Sandia report recently mentioned in the newspaper
12 and radio and TV coverage and that sort of thing,
13 because that report is not a comment on the Indian Point
14 probabilistic safety study its discussion or matters
15 from it would not be appropriate under Contention 1.1
16 here? Is that your position also?

17 MS. MOORE: Yes, sir, that would be our
18 position. We would, however, consider that report and
19 the contents of it in terms of the remainder of our
20 testimony to see if it is relevant to any other portions
21 of the testimony. And if it is, of course, we would
22 address it in that context, but it would not be covered
23 under Question 1.1.

24 JUDGE SHON: Thank you.

25 JUDGE GLEASON: If we could proceed, then.

1 Oh, I'm sorry. Mr. Brandenburg?

2 MR. BRANDENBURG: Thank you. I know the Board
3 wishes to proceed and I don't want to prolong this, Mr.
4 Chairman, but our view on this latest Sandia report to
5 which Judge Shon just referred is that that material
6 would be called forth by Commission Question 5, which is
7 the comparative risk, so it might be coming in through a
8 different door, if you will, Mr. Chairman.

9 JUDGE SHON: Thank you. That is a good point.

10 JUDGE GLEASON: Thank you, Mr. Brandenburg.

11 If we could proceed now with the consideration
12 of -- yes. Identify yourself again, please.

13 MS. KESSLER: Yes. Judith Kessler, Rockland
14 Citizens for Safe Energy.

15 Although we are not part of 1.1, in looking at
16 what was released in the Washington Post regarding that
17 study and in looking at 1.1, it would appear to me that
18 it directly relates to Question 1.1 and therefore should
19 be part of the record.

20 JUDGE GLEASON: All right. Thank you for your
21 comment.

22 If we could go to Contention 2, please, and
23 hear from the USC first.

24 MR. BLUM: Thank you.

25 I would like first to cite an additional three

1 sources of bases for the various Contentions under
2 Question 2, specifically those relating to filtered
3 vents, containment core containment devices, and
4 additional containment facility. I bring this up not
5 because I believe the bases that the Board has set forth
6 are inadequate, but because it might simply aid the
7 efficiency of the hearing to have everyone be aware of
8 these relatively new sources which do bear on these
9 questions.

10 The first is a current article by Doctors Jan
11 Beyea and Frank Von Hippel in the current issue of the
12 Bulletin of Atomic Scientists. That is the
13 August-September 1982 issue. The article is entitled
14 "Containment of a Reactor Meltdown," and it is on pages
15 52 through 59.

16 Secondly is a NUREG document, NUREG-CR-2155,
17 entitled "A Review of the Applicability of Core
18 Retention Concepts to Lightwater Reactor Containments."
19 That also goes by the number of Sandia 81-0416 and is
20 written principally by John L. Darby of Sandia National
21 Labs.

22 The third is, with which I am sure you are
23 somewhat more familiar, is the Zion-Indian Point study,
24 NUREG-CR-1410 and 1411, and NUREG-CR-1409 is a summary.
25 And specifically I would call attention to pages 1-67

1 and 1-68 of NUREG-CR-1410, which contains the
2 information that containment venting can result in a
3 significant reduction of pressure at crucial times.
4 There is also in that volume evidence that the cancer --
5 the magnitude of cancer effects could be reduced by one
6 or two orders of magnitude and the interdicted land area
7 also be reduced quite substantially.

8 Other than just putting forward these two
9 sources on the record, I would like to make one comment
10 about a kind of verbal argument that the Licensees make
11 which at first looks like it might be something, but
12 upon reflection starts to seem kind of trivial.

13 And that is the difference in the wording
14 between saying that a particular hardware improvement
15 may be significant and it is likely to be significant,
16 and the Licensees try to claim that the Board's wording
17 of the contentions fail to meet the test, because the
18 word "may" is used instead of "is likely".

19 I don't think, by my reading of what is down
20 here, that there is any substantive difference between
21 "may" and "is likely". I think probably what was going
22 on is the Board was simply making a point to word things
23 as neutrally as possible to avoid being in a posture of
24 looking like they were being conclusory about the
25 outcome of the question before, in fact, all the

1 testimony was heard.

2 So I do not think that there are any really
3 serious arguments by the Licensees in regards to these
4 questions.

5 JUDGE GLEASON: I don't want to get into the
6 middle of that argument, Mr. Blum. You are exactly
7 right insofar as the Board is concerned.

8 Let me ask one question with regard to these
9 bases. I gather, and the reason I have asked it is
10 because I have not finished my thorough review of the
11 record. I gather that the bases you have just referred
12 to are, in effect, new bases and were not a part of the
13 submission of the Contentions when they were previously
14 filed.

15 MR. BLUM: I am sure that is true for at least
16 two of them because they have come out since the time of
17 the original bases being set forth. I'm not positive
18 whether there could be some reference to the other, but
19 I thought I would bring it up anyway because I do know
20 it to be important.

21 JUDGE GLEASON: Thank you. May we hear from
22 the Power Authority, please?

23 MR. LEVIN: With respect to the new bases that
24 Mr. Blum has alluded to, Your Honor, obviously we can't
25 make any response to that without looking at it. So we

1 would request some time in order to review what Mr. Blum
2 has referenced and make a response. I do not know
3 whether we will have an opportunity to do that before
4 this prehearing conference adjourns. It depends on how
5 long we take, I suppose.

6 JUDGE GLEASON: Let me ask. Is this material
7 available to you, Mr. Blum?

8 MR. BLUM: I don't have it physically. The
9 people in Washington do. Perhaps the Staff might have
10 copies.

11 MS. MOORE: The Staff does not have copies of
12 that material with it.

13 JUDGE GLEASON: If we could find some method
14 by which you might decide how long it would take you to
15 make a response, it would be helpful to the Board --
16 before we are through with the conference. I am not
17 asking for it now, but I am asking you to please talk to
18 Mr. Blum and find out.

19 MR. LEVIN: Speaking on behalf of the Power
20 Authority, we would prefer to make our response in
21 writing, if that would be permissible, without
22 commenting at this point on how long it would take, not
23 having seen the material.

24 JUDGE GLEASON: All right. Mr. Brandenburg?
25 Are you finished, Mr. Levin?

1 MR. LEVIN: No, sir.

2 JUDGE GLEASON: All right.

3 MR. LEVIN: One further comment, although it
4 appears to be an uphill battle at this point.

5 Disregarding for the moment Mr. Blum's characterizations
6 of the triviality of the position of the Power Authority
7 with respect to the application of the two-pronged test
8 and also his characterization as to how serious we are
9 about it, let me address the seriousness

10 We are very serious about it. Mr. Blum
11 misstates the Power Authority's position with respect to
12 the two-pronged test. He, if I heard him correctly,
13 said our position is that the language to be employed is
14 the language which is likely to be significant. That is
15 not our position. Our position is that the appropriate
16 language to be employed is that which is set out in the
17 Commission's September '81 order.

18 We made an effort to interpret that in a
19 reasonable way. We believe that the Board's position on
20 that was too weak and in effect was no standard at all.
21 It is apparent that had the Commission wished a normal
22 basis, a typical basis used in NRC proceedings to be
23 employed, it would not have set up the two-pronged test.

24 We do know this. We know that whatever basis
25 is required prior to admission of Question 2 Contention,

1 it is something more than the typical basis that one
2 would expect to allow a contention to become part of
3 this proceeding. I don't need to add any further to
4 it. We have set it out and I would urge the Board to
5 review the Power Authority's position on that and to
6 note particularly that we have not asked that there be
7 any conclusive determination made about prongs A and B.

8 We have only said that there should be
9 persuasive evidence suggesting that a significant risk
10 exists and that the post-measuring question would cause
11 a significant reduction in risk. That is something
12 greater than the general factual underpinning one would
13 expect for a contention, but it is less than conclusive
14 proof, and we think that is important. We think that is
15 what the Commission intended, and we would ask that the
16 Board reevaluate the contentions in light of a
17 two-pronged test such as that which we suggest.

18 JUDGE GLEASON: Mr. Brandenburg?

19 MR. BRANDENBURG: Mr. Chairman, we took some
20 pains in our October 19 memorandum to the Board to
21 discuss our interpretation of the two-pronged test, and
22 I needn't repeat those here and do not propose that we
23 do so. We believe there is a substantial difference
24 between "likely" and "could", and stand on our
25 discussion in the memorandum on that point.

1 Mr. Blum has commented on the distinction. He
2 has not commented upon two other significant bases or
3 significant grounds upon which we feel that the
4 two-pronged test has not been satisfied with respect to
5 the Question 2 contentions -- the first being each of
6 the contentions must pose a specific safety measure.

7 As we pointed out in our memorandum, we feel
8 that wholly apart from the likely-versus-could threshold
9 for the two-pronged test that a number of these
10 contentions fail because of their lack of suggestion of
11 anything specific here in the way of safety measures for
12 these plants.

13 Furthermore, we discussed and recommend to the
14 Board that they find -- that they require some showing
15 that the reduction in risk offered by the various
16 proposals set forth in the contentions arising under
17 Commission Question 2 must be significant, that the
18 increment to risk reduction -- whatever the base case
19 risk will be -- that risk offered and held forth by the
20 various proposed contentions must be a significant one.

21 And we find that promise is lacking from the
22 materials that have been cited thus far in support of
23 these various proposals.

24 JUDGE GLEASON: All right. The Board would
25 like to take, at this point, about a five-minute recess.

1 However, before we do, when we get back it will be the
2 Staff's turn to respond with any response it wants to
3 make. The Board would like to have the Staff's response
4 as to whether its reformulation of this Contention
5 meets, in its opinion, the two-fold test of the
6 Commission.

7 We are now in recess.

8 (A brief recess was taken.)

9 JUDGE GLEASON: Could we convene again, please?

10 MR. KAPLAN: Judge, I apologize for being
11 late. I mentioned to Miss Miller my name is Craig
12 Kaplan -- C-r-a-i-g, K-a-p-l-a-n. I represent the
13 Interested State of New York City Council Members.

14 For the record, I am present with my research
15 associated, Dr. Nancy Emerson.

16 JUDGE GLEASON: Mr. Brandenburg, I meant to
17 ask before we recessed. I may have missed it if you
18 said it. If you didn't, did you not have any comment
19 with respect to the new bases raised by Mr. Blum in
20 connection with this Contention?

21 MR. BRANDENBURG: Well, there are three of
22 them, as I understood it, Mr. Chairman, and I tried to
23 take notes on them. I am a little mystified as to why
24 the UCS could not have referenced those in their October
25 19 response so that we could have reviewed them and been

1 prepared to address them here this morning with the
2 Board.

3 But having just heard about them here today,
4 if the Board is disposed to entertain those we would
5 like an opportunity to reply in writing. We would
6 commit to do so in a very few days after we have been
7 supplied them by UCS or after we are able to obtain them
8 independently, whichever should first occur.

9 JUDGE GLEASON: All right. Thank you, Mr.
10 Brandenburg.

11 Ms. Moore?

12 MS. MOORE: Mr. Chairman, with regard to your
13 last question, we believe the Board has addressed the
14 two-pronged test in order reformulating these
15 contentions. The Staff has reviewed the Licensees'
16 arguments and does not find them persuasive. We think
17 the Board has attempted to comply with the Commission's
18 guidance in reformulating the contentions and we do not
19 object to having them in.

20 However, we would like to make it clear that
21 we are only talking about the initial contentions at
22 this point, and the position here does not reflect our
23 position as to the merits on the contentions as, for
24 example, to the significance, if any, to the reduction
25 in risk that any of these additional safety measures

1 would result in.

2 JUDGE GLEASON: Thank you, Ms. Moore. Did you
3 have any other comments that you wanted to make?

4 MS. MOORE: No, sir.

5 JUDGE GLEASON: Could we hear from the West
6 Branch Conservation Association, please?

7 MS. FLEISHER: Thank you, Your Honor. Can you
8 hear me all right?

9 JUDGE GLEASON: Yes, very well.

10 MS. FLEISHER: Before we go past Mr.
11 Brandenburg's comments about the Commission's order of
12 September 21, 1981, I would like to just read that
13 sentence and I believe it should stand as it is. It
14 says: "According to the Licensing Board, admission of
15 the Contention seems likely to be important to resolving
16 whether (a) there exists a significant risk to public
17 health and safety, notwithstanding" -- wait, wait. I
18 haven't got the right quote. I am sorry.

19 Well, yes it is. It is a difference where
20 they say whether significant risk exists or whether or
21 not it is a significant risk, and they ask us or ask you
22 to determine if there exists a significant risk to
23 public health and safety. It is on page four, and it is
24 above subsection (2), and I don't think that we would
25 accept Mr. Brandenburg's reinterpretation of the

1 Commission's order.

2 On the subjects of our contentions under
3 Questions 2.2, we had A, B, C, and D. I believe you
4 received from us an objection, timely filed by October
5 15. We called it a reply in which we gave our reasons
6 for wanting to continue, especially with 2(d). Before I
7 take your time, may I ask you if you have considered
8 those and what your reaction might be, or would you care
9 for me to go forward?

10 JUDGE GLEASON: We would care for you to go
11 forward.

12 MS. FLEISHER: I gather 2(a) is still a
13 contention for West Branch about brackish waters. Is
14 that right?

15 JUDGE GLEASON: That is right.

16 MS. FLEISHER: And 2.2(b)?

17 JUDGE GLEASON: That is correct.

18 MS. FLEISHER: You seem to have incorporated
19 into 2.2.1 and taken it from us, and some of the
20 conditions under which you have done that we disagree
21 with, as follows.

22 On page 24 of the order of October 1, 1982,
23 you state on line 2 or really starting on the page
24 before and then on line 1 that the Office of Inspection
25 and Enforcement of the Nuclear Regulatory Commission.

1 That Office thoroughly investigated the events cited and
2 is uniquely qualified to investigate and act on such
3 events in the future.

4 We would argue that that is not a true
5 statement, that the history has shown that most of the
6 inspection that we are talking about has been post facto
7 and that what we are interested in is a two-pronged test
8 which would be additional safety measures which we
9 suggested in our statement, namely that a real program
10 of analytic inspection go forward to look for
11 possibilities of accidents before they occur and not
12 wait just to patch them.

13 There has been a lot of patching in the
14 plant. There has been a lot of expense involved in
15 patching and there is every reason to believe that
16 patching will continue because of the brackish water,
17 because of the corrosion.

18 And, let's see, I think as far as the steam
19 generator tubes are concerned, while we may not be the
20 greatest experts on them, we would have a program for
21 watching out for the future, and that should be
22 considered somewhere under 2.2 and I don't believe in
23 any place that you be so considered it.

24 If you need some examples, I can tell you, for
25 instance, we have noted that the coils in the piping

1 have been replaced because of corrosion. The steam
2 condensers have used river water --

3 JUDGE GLEASON: I believe that was in your
4 response, wasn't it, Mrs. Fleisher?

5 MS. FLEISHER: Yes.

6 JUDGE GLEASON: You don't have to go over that
7 again. Have you concluded your comments with respect to
8 that omission or deletion, if you will?

9 MS. FLEISHER: We feel very strongly that the
10 NRC inspection has been woefully lacking. We don't see
11 how this Board could rest on it, in view of the history
12 of the plant and in view of the history of many plants,
13 and that it is a safety measure to assume a new program,
14 and we would be happy to offer it.

15 Plainly put, if the Board isn't interested in
16 that, we don't want to force ourselves in any way on the
17 Board. We would indeed note, though, it would seem to
18 me a vital safety measure.

19 And on 2.2(d) I think we rest on the statement
20 that we made in our reply, that part of it could be
21 covered in 5.1. But then again you asked to take away
22 5.1, so we would be out of both of them and we felt that
23 we didn't have enough time because we met the October 15
24 deadline and because we didn't understand some of the
25 order which had to do with what discussion was, what

1 testimony was, and what we would be allowed to bring
2 forth or allowed to inquire.

3 And, therefore, if possible we would have to
4 address 2.2(d) again and having received your telegram
5 last Saturday, and we are not prepared, therefore, to
6 argue 2.2(d) without the background first. I should
7 say, I am sorry, without the clarifications first.

8 That is all I have right now, Your Honor.
9 When I get to 5.1 I will probably come back on.

10 JUDGE GLEASON: I guess I am not understanding
11 your comments with respect to 2.2(d) deletion in the
12 Board's order and did you indicate that further comments
13 with respect to that deletion would have to be withheld
14 by you until after the Board, in response to something
15 or other, and what does that something or other have to
16 do with that Contention?

17 MS. FLEISHER: Your Honor, at the time that we
18 wrote it we had no clarification as to what some of
19 these questions were, discussion of what it meant and so
20 forth. You have since sent us a telegram in which you
21 have stated what probably will be a clarification to
22 us. We feel that 2.2(d) is still a contention, that we
23 have backed it up sufficiently, that if we knew whether
24 or not we would be an intervenor on that subject,
25 whether or not we would be able to cross examine on that

1 subject, we would be willing to forego the subject,
2 hoping that others would take it up, as you have
3 suggested, in 2.2.1.

4 But if we lose our status as lead intevenor
5 because of your taking it on as 2.2.1, we then need to
6 clarify what is our status under 2.2.1. Would we be
7 permitted to cross examine? Would we be permitted to
8 submit testimony?

9 JUDGE GLEASON: Well, I have to say at the
10 moment I am a little confused, but perhaps it will be
11 clarified a little later. Do you have any further
12 comments to make?

13 MS. FLEISHER: Just a minute, please. I have
14 a suggestion here from one of my colleagues.

15 (Pause.)

16 MS. FLEISHER: Your Honor, Mr. Hartzman thinks
17 he can clarify my statement. Just a minute, please, and
18 I will give him the mike.

19 JUDGE GLEASON: All right. Thank you.

20 MR. HARTZMAN: I believe what Ms. Fleisher is
21 trying to explain is, if Contention 2.2(d) is deleted
22 from the contentions, WESPAK is an intervenor -- excuse
23 me, West Branch is an intervenor under that contention
24 and she would like to know what her status would be with
25 regard to Board Question 2.2.1, her having been deleted

1 under 2.2(d).

2 JUDGE GLEASON: All right. Thank you.

3 Could we hear from UCS, please?

4 MR. BRANDENBURG: Mr. Chairman, a point of
5 information. On page 39 I understand now we are
6 discussing Contention 2.2 and its various subparts. On
7 page 39 of the Board's October 1 order it lists
8 UCS-NYPIRG as a contributing intervenor to Contentions
9 2.2. I would just like to point out to the Board that
10 that is an error, that the only intervenor on
11 Contentions 2.2 referred to in the Board's earlier order
12 of April 23, 1982, is the West Branch Conservation
13 Association, so UCS-NYPIRG --

14 JUDGE GLEASON: They are not a contributing
15 intervenor?

16 MR. BRANDENBURG: They are not a contributing
17 intervenor on Contention 2.2, pursuant to the provisions
18 of the Board's April 23 order, Mr. Chairman.

19 JUDGE GLEASON: All right. Thank you.

20 Mr. Levin?

21 MR. LEVIN: Your Honor, the Power Authority
22 has nothing to add to what it has already set out in its
23 memorandum. We didn't hear anything new from Ms.
24 Fleisher.

25 JUDGE GLEASON: All right. Mr. Brandenburg?

1 MR. BRANDENBURG: We, too, Mr. Chairman, have
2 reviewed carefully Mrs. Fleisher's submissions. We do
3 not believe any new matter has been offered in support
4 of Contention 2.2(d) and respectfully request that the
5 Board stand by its disposition of that contention in its
6 October 1 order.

7 JUDGE GLEASON: All right. Is there any
8 comment from the Staff?

9 MS. MOORE: Yes, Mr. Chairman. We also agree
10 with the Board's order rejecting Contention 2.2(d). We
11 don't believe the WBCA's submission has added anything.
12 We don't believe it has raised any specific safety
13 measure which can be litigated. They have not
14 identified a specific inspection program, and they have
15 not identified in what way the NRC's present Inspection
16 and Enforcement program is not uniquely qualified to
17 handle these matters.

18 I would also like to raise a point with regard
19 to Ms. Fleisher's question about 2.2.1 and 2.2(d). We
20 do not believe that those two questions are related and
21 so, therefore, if 2.2(d) is rejected, there would be no
22 testimony filed on that subject under Board Question
23 2.2.1.

24
25

1 JUDGE GLEASON: All right. Thank you.

2 Ms. Fleisher.

3 MS. FLEISHER: Your Honor, there are lots of
4 lawyers in the room, and sometimes I think they fail to
5 understand what are engineering problems and what are
6 law problems. And my failing is not being an attorney,
7 and some of their failings are not being an engineer.

8 We received, for instance, a whole thing from
9 one of the licensees about what did we mean by brackish
10 water. I mean that's just to an engineer the silliest
11 question. Obviously, the obvious of brackish is
12 ordinary water. And I think we are getting into the
13 same sort of thing right now.

14 What we are litigating and what is necessary
15 to keep that plant going in safety may not appear to
16 some of the attorneys to be of that much importance. To
17 those of us who understand that there are inspectors of
18 the plant right now, and that they have permitted
19 certain things to get by them, and to those of us who
20 know that the present program is insufficient, we feel
21 there has to be some place in this case for making our
22 recommendations. We have made them in generalizations,
23 and we are prepared to back them up with specificity.

24 The reason I said we did not have the time,
25 and I explained in my filing of October 15th, I was most

1 timely. I did not know we were going to have an
2 extension. And I think if anything we did not go into
3 specificity on what our recommendations would mean
4 because we did not understand where our role would be
5 because we didn't think the order was sufficiently clear
6 on the subjects of which I just said before: what is
7 discussion, what is an intervenor, and what happens to
8 the lead intervenors.

9 If you would like to give us some time, we
10 would be happy to make more detailed suggestions. If
11 you won't give us more time, we plead now to reinstate
12 2.2(d), and if we fail at the time to come forward with
13 the proper material, then you can just throw us out.

14 JUDGE GLEASON: All right, Ms. Fleisher.

15 And let me go over our standard responding
16 here because of your comment that you're going to be
17 excised, if you will, from that contention. But we
18 don't want to let responses to responses to responses
19 occur, but we will consider your comments.

20 That finishes the consideration of Contention
21 2. We will now go to consideration of Contention 3.
22 And we would ask the Power Authority to proceed.

23 MR. LEVIN: Your Honor, if I might suggest to
24 the Board, perhaps the most expeditious way to proceed
25 since Contention 3 and 4 involved in a very fundamental

1 way FEMA and the NRC staff, perhaps it would be better
2 to hear from them first as to the status of the analysis
3 under the 120-day clock and whatever other matters they
4 have.

5 And I have seen Mr. Perry and Mr. Glass from
6 FEMA here in the courtroom today. And I would, however,
7 note for the record that Jonathan Feinberg of the State
8 of New York, that his letter of recent date, which I'm
9 sure the Board has, I think is very instructive as to
10 the kinds of problems involved with some of the
11 suggestions that have been forth by the intervenors with
12 respect to the treatment of Questions 3 and 4 --
13 contentions.

14 JUDGE GLEASON: Mr. Levin, I think that is a
15 helpful suggestion, assuming the staff agrees.

16 Excuse me just a minute. It does bring to
17 mind something I wanted to mention at the outset of this
18 prehearing conference. I would like to get -- the Board
19 would like to get into the record at some point in this
20 prehearing conference what the current operating status
21 is of Unit 2 and Unit 3, and what the future operating
22 status -- and when I talk about future I'm talking about
23 the next year -- status of those units will be.

24 We had understood that -- well, there are
25 different understandings that have been coming to us,

1 nothing officially; and I would like to get whatever
2 status that is. I had understood, for example, there
3 was to be some down time with respect to one of the
4 units, and the other unit was to be back on line.

5 I would like to get that in the record,
6 because I do think that has some consideration with
7 regard to this overall question under consideration of
8 contentions. So sometime before this prehearing
9 conference is over we would like to have that.

10 Mrs. Moore, would you like to proceed in this
11 fashion? What are your comments?

12 MS. MOORE: That is fine.

13 With regard to Questions 3 and 4, intervenors
14 and interested states have argued that testimony should
15 continue at the recommenced hearings on questions 3 and
16 4. The staff believes that Questions 3 and 4 should be
17 deferred. There are several reasons for this, and that
18 is that even after the 120-day clock expires, the
19 situation will not be settled or clear enough to go back
20 to hearing within the next week and provide meaningful
21 emergency planning testimony.

22 FEMA -- and if the Board wishes, Mr. Perry and
23 Mr. Glass can answer any questions about the process
24 that FEMA is still undertaking. However, what I would
25 like to say first is that FEMA believes there should be

1 another exercise before a final determination can be
2 made on the state of emergency preparedness, and a date
3 for this exercise is still under consideration.
4 Therefore, FEMA would not be in a position to give the
5 Board its final views when the hearing recommences. And
6 exactly what will happen in terms of the Commission
7 process after the 120-day clock has not been decided
8 since the clock has not expired.

9 Also, testimony of all parties should be
10 considering the activities which have taken place around
11 this 120-day clock, and that testimony could not be
12 prepared by FEMA, and it is doubtful that most parties
13 could prepare within a week to go back to hearing in
14 December. And all of those activities should be
15 presented to the Board in a final phase of testimony so
16 that we don't have to come back again for the third time
17 and put on emergency planning witnesses.

18 For all these reasons we think that emergency
19 planning, the consideration of Questions 3 and 4, should
20 be deferred until all the other issues have been
21 completed.

22 JUDGE GLEASON: If the situation that will be
23 before the Board and the parties were to be such that
24 the exercises to be held, I gather, sometime in February
25 and March -- and I think we would like to hear from the

1 FEMA witnesses on that this morning -- and the
2 evaluation of those exercises to be coming shortly
3 thereafter, but in a time period I'm not certain of --
4 if the Board had completed or the hearing had completed
5 its considerations of the other questions, then what is
6 the staff's view with respect to proceeding with
7 Questions 3 and 4 if the other -- the exercise and
8 evaluation have not been finished by that date?

9 Do you understand the question?

10 MS. MOORE: Yes. The staff believes that to
11 proceed with Questions 3 and 4, even if we've finished
12 everything else and the exercise has not taken place,
13 would not be meaningful. We believe the exercise and
14 the FEMA process should now be completed before
15 testimony is taken on those two questions.

16 JUDGE GLEASON: All right. Thank you, Ms.
17 Moore.

18 Could we hear from the FEMA witnesses,
19 please? And would you identify yourselves for the
20 record?

21 MR. GLASS: Yes. My name is Stewart Glass.
22 I'm the regional counsel for FEMA in Region II.

23 As you are all aware, there are two processes
24 going on: this hearing and also the interim findings
25 that have taken place in conjunction with the 120-day

1 clock.

2 FEMA provides what we call a 350 process
3 review which is under 44 CFR 350. It is under the
4 Federal Emergency Management Agency's regulations. And
5 that is the review that we have to undertake to review
6 the adequacy of plans and the adequacy of preparedness
7 around the power plants.

8 We expect to produce for the Commission, for
9 the NRC at their request an update of the remedial
10 actions or an analysis of the remedial actions to
11 correct deficiencies that were originally outlined in
12 our interim findings report. This update will be
13 provided sometime at the end of the 120-day clock.

14 JUDGE GLEASON: Could you get a little bit
15 more pointed than the phrase "sometime?" Could you be
16 specific?

17 MR. GLASS: We are waiting for a request from
18 NRC. It would be up to the NRC to request from us. I
19 assume they would probably request it two weeks before
20 the 120-day clock, but that is a supposition on my part.

21 We will be prepared at the 120-day process,
22 somewhere at the end, to provide that to NRC at the
23 NRC's request.

24 JUDGE GLEASON: So FEMA would be prepared at
25 the end of the 120-day period to give a report to the

1 NRC of the adequacy of the emergency plans, is that
2 correct?

3 MR. GLASS: , , date on the adequacy of the
4 emergency plans. It would be an update of the interim
5 findings.

6 JUDGE GLEASON: All right. Proceed.

7 MR. GLASS: We then have a question as to the
8 adequacy of overall preparedness in the area. It is
9 FEMA's feeling that overall preparedness cannot be
10 evaluated until verification can be completed, and
11 verification involves an exercise, and it also involves
12 certain other activities that would not take place
13 necessarily on the day of exercise. There are many
14 things that have to be verified that are outlined in the
15 report, that are outlined in the plan that will take
16 place prior to the exercise, and there are certain areas
17 that will be verified after the date of exercise.

18 We right now have people attending and
19 reviewing training courses that are being given. That
20 is part of verification. The plan calls for training.
21 We are verifying that the training is taking place.

22 JUDGE GLEASON: And does this evaluation that
23 you are referring to that comes as a result of the
24 exercise in the context of where we are relate to the
25 deficiencies that have been cited, or does it relate to

1 the overall state of preparedness as a part of the
2 annual exercise?

3 MR. GLASS: That exercise is geared to two
4 things: one, it is geared to check over all
5 preparedness, but in particular, whenever we have a
6 secondary exercise or an exercise that is following
7 prior identified deficiencies, it gears in. The
8 exercise scenario is based upon and focuses upon
9 previously identified deficiencies.

10 JUDGE GLEASON: Thank you. Thank you, Mr.
11 Glass.

12 MR. GLASS: As far as the exercise date, it
13 should be noted we have a tentative date of March 8.

14 MR. BLUM: Your Honor?

15 JUDGE GLEASON: Could I follow that up with --
16 do you have a prognostication, if you will, of when the
17 evaluation would be completed after the exercise?

18 MR. GLASS: The normal post-exercise
19 assessment is completed 30 days thereafter. I would
20 assume that depending on what takes place at the
21 exercise and what verification would take place prior to
22 the exercise, it would be 30 to 90 days after the
23 exercise that we would have material available as to the
24 deficiencies.

25 JUDGE GLEASON: All right. Thank you, Mr.

1 Glass.

2 Do you have a question that you want to ask of
3 the FEMA witness, or do you want to make some general
4 comments?

5 MR. BLUM: One general comment and one
6 question about the order in which we are proceeding in
7 today's -- can I go ahead and do both?

8 JUDGE GLEASON: Well, your query about
9 procedure intrigues me.

10 MR. BLUM: The query about procedure is have
11 we now moved over to the second area of the agenda that
12 we are now discussing, the issue of schedule?

13 JUDGE GLEASON: No. I realize that this
14 question is really a mixture of both dealing with
15 contentions and dealing with schedule, but I prefer to
16 deal with it at this point just simply because we are
17 going through the Contentions 1 through 6 seriatim.
18 Obviously, decisions made and comments made will bear
19 upon schedule, but we'll discuss that aspect of it in
20 addition later. So we are really dealing with the
21 contentions and what we do with it, even though what we
22 do with it does partake of some scheduling matters.

23 Mr. Levin, would you now like to, having heard
24 from FEMA witnesses, make any comments?

25 MR. LEVIN: Your Honor, no. It appears to us

1 that based upon what the representations of NRC staff
2 and FEMA -- which I must say is not surprising to us; we
3 expected that that would be the case -- it does not seem
4 that we could achieve anything positive out of a
5 precipitous rush into emergency planning questions at
6 this stage of the proceeding.

7 JUDGE GLEASON: And it is your view, I take it
8 then, that consideration of Contentions 3 and 4 should
9 await the evaluation by FEMA of the exercise drill.

10 MR. LEVIN: Yes, Your Honor.

11 JUDGE GLEASON: Mr. Brandenburg.

12 MR. BRANDENBURG: That is our position as
13 well, Mr. Chairman. The intervenors in their response
14 to the Board's October 1 order I think somewhat
15 simplistically, in light of Mr. Glass' comments, assumed
16 that we could return to emergency planning shortly after
17 the expiration of the 120-day clock. And I think Mr.
18 Glass' remarks have pointed out that that just is not a
19 realistic assumption.

20 I might just secondly point out quite briefly
21 that there are a number of other reasons for considering
22 risk issues in advance of emergency planning issues that
23 are wholly independent of the remedial action procedure,
24 the exercise procedure and so forth, at least with
25 respect to a significant portion of the emergency

1 planning inquiry in this proceeding, and I'm referring
2 now to Question 4, Mr. Chairman.

3 In its July 27th order the Commission asked
4 that the Board's addressing of Question 4 contentions
5 for further improvements in emergency planning be
6 addressed only in the context of the risk caused by
7 Indian Point. And I'm looking now at page 15 and the
8 top of page 16 of the Commission's July 27th order.
9 Obviously, that could not occur until we complete the
10 risk portion of the case. So since a good deal of the
11 emergency planning issues could not be addressed in any
12 event until we get some handle on the risk questions, I
13 think that reason is an independent one that supports
14 the Board's continual deferral of the Question 3 and 4
15 issues until the completion of the risk phase.

16 JUDGE GLEASON: All right. I would like to
17 ask, and I should have done it at the time, the staff
18 and the licensees, whether they would prefer, and if so
19 for what reason, those parts of Contention 3 and those
20 parts of Contention 4, if there are any that are not
21 involved, if there are any, in the deficiencies which
22 are currently being reviewed and which will be the
23 subject of the exercise drill be FEMA from proceeding
24 prior to the conclusion and completion of that drill.

25 The staff first.

1 Ms. Moore, is the question clear?

2 MS. MOORE: Yes.

3 JUDGE GLEASON: Thank you.

4 MS. MOORE: We would prefer to see all of
5 Question 3 and all of Question 4 handled at the end of
6 the exercise. Since this has -- the emergency planning
7 review process has been such a long and complex process,
8 we would like to give all of the witnesses an
9 opportunity to relook at their testimony if necessary in
10 light of the activities which have taken place over the
11 past number of months, and determine, especially for the
12 FEMA witnesses, based on all the work that they have
13 done since they last testified, whether any of that
14 testimony needs to be supplemented or corrected.
15 Therefore, we would prefer to wait until the process is
16 complete to go ahead on any portion.

17 JUDGE GLEASON: All right. I think the FEMA
18 representative wants to say something. Go ahead and
19 identify yourself.

20 MR. PERRY: Your Honor, I'm Spence Perry,
21 associate general counsel of the Federal Emergency
22 Management Agency.

23 I guess FEMA's concern is twofold. Number
24 one, we want to make a thorough, coordinated and
25 coherent presentation on these issues when the time

1 comes. And secondly, we have problems with staff
2 resources, and if we can do something once as opposed to
3 a number of times, it is helpful.

4 I should point out that many of the items
5 listed in the two contentions have already been
6 addressed by FEMA in earlier testimony filed with this
7 Commission upon which we were crossed in June. And we
8 had an agreement with Judge Carter to the effect that
9 when we came back to continue the hearing, we would
10 testify on what became the FEMA interim finding and what
11 led to it, but we would not have cross examination on
12 matters covered in the prefiled testimony.

13 We have, in effect, already had one emergency
14 preparedness issues hearing in this case, and I would
15 desperately like to see if we can avoid bifurcating this
16 issue area again, in effect. When we do come back we'd
17 like to come back with the total package and the
18 complete picture, and this will not be available for all
19 intents and purposes until we do have the exercise
20 results in the early spring.

21 JUDGE GLEASON: Thank you, Mr. Perry.

22 Ms. Moore, I gather that the comments that you
23 just made with respect to considering these contentions
24 all at one time also refers to the governmental
25 representatives' testimony?

1 MS. MOORE: Yes, sir, it does.

2 JUDGE GLEASON: All right. Thank you.

3 I also presume -- one more question, Mrs.
4 Moore, which was handed to me by someone here, that
5 should be asked -- I presume that also --

6 (Pause.)

7 Well, what is your current position -- I guess
8 I should ask it that way -- as to whether the
9 contentions under 3 and 4 should be reformulated, or
10 should that wait until after the exercise drill?

11 MS. MOORE: We previously took the position
12 that that portion of this proceeding need not be
13 deferred, that we could reformulate the contentions that
14 already exist; and we still stand by that position.

15 JUDGE GLEASON: You still stand by that
16 position?

17 MS. MOORE: Yes. We could do it any time.

18 JUDGE GLEASON: I see. Thank you.

19 The Board is somewhat puzzled as to how it
20 could do that, Mrs. Moore.

21 Could we hear from the Power Authority, please?

22 MR. LEVIN: Your Honor, we don't see how
23 there's any advantage to the Board or any other parties
24 to try to piecemeal it. The emergency planning question
25 presents enormous logistical problems, both to FEMA and

1 to the staff, and I'm sure you know for the Power
2 Authority as well.

3 I would also reiterate to the Board the Power
4 Authority's position, which is of longstanding, that in
5 order to properly evaluate the emergency planning aspect
6 of this case, it is preferable to address the question
7 of probabilities, which in fact will occur as the Board
8 has now established the schedule.

9 JUDGE GLEASON: Mr. Levin, you have to be a
10 little tolerant of a new member of this Board. But
11 would you explain to me what probabilities are in the
12 context of Contention 3 and 4?

13 MR. LEVIN: Your Honor, it is not clear
14 without an examination of the probabilities as to
15 exactly what the nature of the emergency is. Until one
16 knows that, one cannot determine the importance of
17 various plans to the emergency planning process. And
18 the size of the EPZ is also important with respect to
19 emergency planning.

20 JUDGE PARIS: Mr. Levin, as I recall -- and
21 would you tell me whether this is correct or not -- you
22 are referring to your argument earlier in the proceeding
23 that we should cover contentions dealing with risk
24 analyses before we cover contentions dealing with
25 emergency planning, is that correct?

1 MR. LEVIN: Judge Paris, that is correct.

2 JUDGE PARIS: So the probability you're
3 talking about is the probability associated with risk
4 analysis and not probabilities specifically related to
5 emergency planning.

6 MR. LEVIN: That is correct.

7 JUDGE PARIS: Okay.

8 JUDGE GLEASON: All right. And I gather, just
9 to summarize, Mr. Levin, that you concur with the
10 staff's position or that part of its position that a
11 consideration of these contentions ought to wait the
12 evaluation by the FEMA drill exercise.

13 MR. LEVIN: Yes, Your Honor.

14 JUDGE GLEASON: You did not concur, I gather,
15 that the contentions ought to be reformulated until that
16 time either. Or I should say you did not agree with the
17 stance that we could go ahead with reformulation of the
18 contentions at the present time.

19 MR. LEVIN: Other than as an abstract
20 exercise, I do not, Your Honor.

21 JUDGE GLEASON: Mr. Brandenburg.

22 MR. BRANDENBURG: Mr. Chairman, ConEdison
23 concurs with our understanding of the position of FEMA
24 and the NRC staff that we should await the completion of
25 the exercise process in the spring of '83 before we

1 return to emergency planning questions in this
2 proceeding.

3 We do not agree that it would be fruitful to
4 try and review and reconstitute the emergency planning
5 contentions at this time. If we do so at a later stage,
6 we will have the benefits of exactly what the risk
7 implications of various emergency planning contentions
8 are. Therefore, this Board will be able to reformulate
9 the emergency planning contentions under the standard
10 that the Commission has suggested; that is, namely that
11 each contention be -- have a likelihood of being
12 important to answer in the Commission's question. We
13 don't believe that that aspect of the contention
14 reformulation process with respect to emergency planning
15 can go forward at this time.

16 JUDGE GLEASON: All right. Thank you, Mr.
17 Brandenburg.

18 If we could now turn to the other parties in
19 the proceeding. Well, we'll start with USC.

20 MR. BLUM: Thank you, Your Honor.

21 The Union of Concerned Scientists, also known
22 as UCS --

23 JUDGE GLEASON: I have already had that
24 pointed out four times, and I keep going through it, but
25 it still comes out USC.

1 MR. BLUM: Since we will be discussing the
2 specific issue of scheduling, I'll reserve most of the
3 specific arguments I would make for that time.

4 But at this time since we have opened the
5 issue in a general way, I want to sound one very
6 important note of caution which I think it is something
7 we are already aware of, but it deserves to be
8 emphasized.

9 A great deal of community attention and
10 concern has already been focused on emergency planning
11 in these hearings. There's a great volume of testimony,
12 great involvement by the local county governments, great
13 concern all around with the current status of it. And
14 there are also a number of suspicions that there are
15 some forces in these hearings that would really like to
16 bury the issue of emergency planning by kind of putting
17 it off into the future through a kind of infinite
18 regress that things are always changing; therefore, they
19 can never be looked at now; therefore, we'll look at
20 them in the future. But the future's never here because
21 it's always now.

22 I would say to the extent this hearing process
23 gives any indication that it is buying into that kind of
24 logic and trying to kind of slip emergency planning
25 under the rug in a rather careless and conclusory way

1 there is a real risk of the credibility of the hearing
2 process being damaged in the surrounding communities.

3 I think this risk is most acute specifically
4 on the issue of emergency planning scheduling.
5 Therefore, I would propose the following kind of general
6 guidance: that the issue of what happens with specific
7 testimony, both that which has already been submitted
8 and that which remains to be submitted, has to be
9 considered in a very careful and functional way. We
10 cannot speak in general conclusions about emergency
11 planning as such, but we have to look at the specific
12 testimony available, at what is the most efficient time
13 in which to hear it, both in terms of resolving the
14 particular questions before the Board and also in terms
15 of particular hardships that could be imposed on
16 parties. And later on we will hear about the particular
17 situation of county officials which is very relevant to
18 this.

19 Also, any delay of emergency planning
20 testimony should be of limited duration, should be
21 accompanied by clear reassurance that the testimony will
22 be heard at some fixed point, that this is not a kind of
23 an open-ended delay intended to bury the testimony.

24 I mentioned the difference between county
25 witnesses and intervenor witnesses. One big difference

1 there has to do with the fact that the county witnesses
2 are in no way dependent on contentions for their
3 testimony and that they could easily be heard before
4 there's any reformulation of contentions simply because
5 those contentions are not relevant to what they are able
6 to say, only that the actual wording of Questions 3 and
7 4 are relevant.

8 It is important for federal agencies to be
9 sensitive to the role and position of local
10 governments. Sometimes when one does have a national
11 focus in one's work it is easy to overlook this -- not
12 intentionally but just in a somewhat careless way. And
13 I would caution that we have to avoid anything that
14 could be construed as an affront to the dignity of the
15 county governments or a disregard of their really very
16 imperative concerns.

17 The final point has to do with a reformulation
18 of contentions. I think the staff's position is
19 correct, that they could be reformulated at the end of
20 the 120 days. Very many of the issues are things that
21 are simply in addition to FEMA's specific review, and
22 the relevance of issues really does not depend on the
23 exact content of everything FEMA concludes. Remember,
24 when we reformulate contentions we are not deciding how
25 the issue comes out; we are simply deciding whether it

1 is relevant. And I believe the end of the 120-day clock
2 period is amply sufficient for doing that, since by now
3 everyone knows it is really the scope of Questions 3 and
4 4 which are governing the examination of emergency
5 planning rather than the contentions.

6 If the Board were to buy into some sort of
7 logic that we can reformulate contentions until
8 everything else has happened, and therefore we can't
9 hear any testimony on emergency planning other than the
10 county's testimony until everything else has happened;
11 therefore, emergency planning testimony which was
12 submitted timely and in good faith a number of months
13 ago, to say that cannot be heard for many, many months
14 or possibly even years, I think that would be construed
15 as a very careless and conclusory way of handling the
16 issue that might engender some accusations of trying to
17 sweep emergency planning under the rug.

18 So I would just say we should proceed
19 cautiously. We should look at the specific testimony
20 and at what makes sense in a specific case.

21 JUDGE GLEASON: Thank you, Mr. Blum.

22 Could we hear from the Parents' representative
23 or whoever wants --

24 MS. RODRIGUEZ: Before I speak on behalf of
25 Parents Concerned About Indian Point on Questions 3 and

1 4, I would like to read a statement that I requested to
2 be heard before by Barbara Hickernell, a resident within
3 the ten-mile EPZ, and it is as follows.

4 "I am Barbara Hickernell from the Alliance To
5 Close Indian Point which is composed of 16 grassroots
6 groups in Westchester, Rockland, and Putnam Counties
7 near Indian Point. We are extremely concerned about the
8 adequacy of emergency planning and preparedness in case
9 of an accident at Indian Point.

10 "The Alliance has sent me today to appeal to
11 the Atomic Safety and Licensing Board to hear officials
12 from Rockland County, Westchester County and the New
13 York City Council testify on the issue of emergency
14 planning as soon as possible, certainly no later than
15 early December at the end of the 120-day clock.

16 "These local governments are responsible for
17 the health and safety of the people affected by Indian
18 Point. They will be called on to implement any
19 emergency plans. They are required to expend time and
20 money to prepare for a radiological emergency, a threat
21 posed to us, the constituency, by the continued
22 operation of Indian Point.

23 "The issue of emergency planning is crucial to
24 the safety of local residents, visitors and workers. No
25 picture of emergency planning is complete without the

1 testimony of the officials charged with carrying out
2 emergency response plans. We insist that effective
3 evacuation plans must be in place before other technical
4 and theoretical issues are heard in this proceeding.
5 Thank you."

6 And I will in a little while give a copy of
7 the statement to all the parties concerned.

8 JUDGE GLEASON: Does that conclude your
9 comments?

10 MS. RODRIGUEZ: No, it doesn't. No.

11 Of course, Parents feels very adamantly that
12 Questions 3 and 4 should be dealt with at the beginning
13 of the hearing procedure. Questions 3 and 4 deal with
14 emergency planning, with the safety of people who live
15 near the plant. We speak mainly for people within the
16 10-mile radius because that is where we live. But our
17 concerns are further than that.

18 The risk and probability questions are very
19 important, but I don't think we would be here if they
20 were zero or less. I think everybody knows there is
21 some risk; there is some probability of an accident.
22 Because of that the NRC has required workable evacuation
23 plans. At this moment they do not exist.

24 The plants are a reality that are in
25 operation. Even when they are down, off line, they

1 exist, and they are on the minds of people in the area
2 on a daily basis, and it affects everyone's lives -- not
3 just their daily operations and lots of unknown
4 questions about radiation, et cetera, but the
5 possibility of an accident is always there, and people
6 wonder what they would do, how it would affect their
7 families themselves.

8 We don't feel that confident that giving FEMA
9 lots and lots of time and letting plants operate while
10 they conduct exercises and go over safety standards that
11 have been found deficient -- we don't feel confident
12 that this is going to reassure us that things can be
13 different, because there are too many constants involved.

14 The FEMA guidelines -- well, excuse me. Let
15 me begin again.

16 Currently, FEMA is working on 15 standards,
17 planning standards with the utilities and local
18 officials to bring them up to standard. Five out of the
19 15 are grossly deficient and are being revised, while 10
20 standards are also deficient but are not really being
21 addressed.

22 The word "exercise" -- it is now, I
23 understand, scheduled for March 8th tentatively -- is a
24 very upsetting term to me, because I think it is an
25 exercise in futility. We had an exercise March 3rd of

1 last year. It was mostly on paper. It was very, very
2 selective. It was disastrous. There were some of us
3 who with the permission of the Board on March 3rd acted
4 as advisers -- or excuse me -- observers during the
5 drill; and what we saw was the opposite of reassuring.

6 We spoke to emergency workers, we spoke to
7 road workers, to police people, to school officials,
8 what not; and we found that the assumptions being made
9 about human behavior, and more importantly, the behavior
10 of human beings who were responsible for the lives and
11 safety of others, has not been taken into account; that
12 many, many people, many, many people's first response,
13 including ambulance drivers, teachers, et cetera,
14 doctors, are that they want to get their families and
15 themselves to safety; that there are no guarantees that
16 these people are going to stick around to watch out for
17 our children and our elderly parents, et cetera.

18 And there's also no reason for them to do it.
19 They have no incentive. Morally there's no incentive
20 because their family has a strong calling on them. And
21 secondly, if there should be a grave accident, why
22 should they work to rescue people in a contaminated
23 area? When the dust settles, the radioactive dust
24 settles, they may not have jobs or homes to come back
25 to. There are just too many unanswered, frightening

1 questions.

2 Another reason that I feel that these
3 exercises, which probably would compare to deep-knee
4 bends, are futile is because there are too many basic
5 conditions, too many constants that have not changed and
6 will not change regardless of how many times sentences
7 are shuffled around on paper. For example, the roads
8 are inadequate. The roads cannot accommodate the
9 numbers of people who depend on them for exit.

10 Example: this morning I came down from Croton
11 to White Plains by car, and it was past peak rush hour.
12 It was between 8:30 and 9:00 and traffic was backed upon
13 9 through Ossining and Briarcliff because there are
14 traffic lights there. On days when somebody is in the
15 slow lane and is stuck, I mean it's just --

16 Weather conditions have really not been
17 seriously considered such as icy roads, when like last
18 winter there was a stretch of about three days, I
19 believe in January, when traffic was backed up from the
20 exit to White Plains from the Spring extension all the
21 way up to Ossining and Croton.

22 Another thing as far as constants, we have now
23 with the new Sandia report the finding is that a
24 ten-mile radius is probably not wide enough for an
25 emergency planning zone. Seventeen and a half miles is

1 the figure that they're setting forth. Most, if not
2 all, of our reception centers and congregate care
3 centers where our children are to be taken from school
4 are within 17 miles of the plant.

5 We feel that while the plants are licensed
6 that the issue of emergency planning is of the utmost
7 importance and that the people responsible for
8 implementing it should be heard. And we define that
9 type of person as a resident who has to get him or
10 herself out and family out and workers, community people
11 who are responsible for others -- police officials,
12 health people, school officials, mayors, et cetera.

13 And we urge you to hear this issue first. And
14 as I said in the beginning, the risk is not zero or we
15 wouldn't be here.

16 Thank you.

17 JUDGE GLEASON: All right. Thank you.

18 I would like to suggest -- and this is not a
19 criticism to the speaker -- that we're not concerned at
20 this time as to whether we should not be, as far as the
21 Board is concerned, because this was one of the
22 questions that was directed by the Commission, as to
23 whether emergency planning issues will be ventilated in
24 this hearing. They will be. The question we are
25 concerned with now is the timing of considering these

1 contentions.

2 We'd like now to hear from the representative
3 of the West Branch Conservation Association.

4 MS. FLEISHER: Your Honor, during the little
5 period before we telephoned to Mr. Eric Thorsen -- he's
6 the county attorney for the county of Rockland, and his
7 absence here this morning is typical of what the problem
8 is -- on why he would like to proceed with Questions 3
9 and 4.

10 The county set aside a certain amount of time
11 that it could afford to participate in this case. And
12 as you know, for many reasons it has now been delayed.
13 And Mr. Thorsen has other duties, and he is on his way
14 over here; and I hope he will get here in time to speak
15 on this subject.

16 But I do know that what I am saying is that he
17 would very much like to have his witnesses come on right
18 away. I believe he's written to you asking you that.

19 And we believe that much of what Mrs.
20 Rodriguez has said is so, and I would like to add to
21 that that we do not believe that much of what Mr. Glass
22 has said is so, and that Rockland County is really at
23 war with FEMA and with the plans that FEMA has for the
24 improvement. Promises and verbs in the future tense are
25 all that we have gotten.

1 I must say we've attended some of the meetings
2 where we say oh, we have supplied dosimeters, and 150
3 dosimeters has been supplied, but no one dares ask how
4 many because 150 is not 3,000 to 4,000 which is what is
5 needed. So that dosimeters is now written off as having
6 been accomplished.

7 And that kind of charade -- and I use the word
8 with great care because I don't know what else to call
9 it -- is not going to go over with the people, as Mr.
10 Blum so carefully and well presented to you. And I
11 really feel that what Mr. Glass said has no bearing on
12 our feelings and on the vitality and importance of
13 addressing 3 and 4. And I feel that when Mr. Thorsen
14 gets here he will corroborate that.

15 Mrs. Kessler is here from Rockland County
16 also, and I hope you'll let her say a few words.

17 Thank you.

18 JUDGE GLEASON: Thank you, Ms. Fleisher.

19 I'd like to hear from the representative of
20 the Westchester People's Action Coalition.

21 MS. HOGARTH: We feel similarly that the
22 question of emergency planning must be addressed as soon
23 as possible; that we cannot live with this constant
24 pressure, this constant question of whether every day
25 will be the last. And the importance of dealing with

1 this promptly is of the utmost importance.

2 I think the question of the Sandia study is
3 one which is primary in making the decision about
4 questions of emergency planning. The fact that that
5 area beyond the ten miles, the 17 or 17 1/2 miles, may
6 be a critical question will determine the whole course
7 of changes in emergency planning. And it would seem
8 that that study would need to be carefully evaluated
9 before we proceed any further.

10 I would wish for the People's Action Coalition
11 that that study be taken up promptly, and that the
12 question of whether or not 17 1/2 miles needs to be part
13 of the primary area of concern for evacuation be put
14 very much on the front burner.

15 JUDGE GLEASON: Thank you, ma'am.

16 I'd like to hear now from the representative
17 of Friends of the Earth and the Audobon Society.

18 MR. HARTZMAN: Thank you, Your Honor. We also
19 feel very strongly that the testimony in Questions 3 and
20 4 should proceed as soon as possible. We have heard a
21 lot from the government parties about the dynamic
22 process that goes into emergency planning. Much of this
23 was discussed last summer at the hearings. Now we are
24 hearing that we may not get a coherent package until
25 after next March.

1 Over two years have gone by since this dynamic
2 process began. It seems more like a limpid process, not
3 a dynamic process. In the meantime, the interested
4 states, the counties and the intervenors are deeply
5 concerned about emergency planning and believe that
6 much, if not all, of their testimony is relevant and can
7 be addressed regardless of the coherent package that
8 FEMA presents at this hearing.

9 And to just let it slide, let it ride, let
10 testimony, much of which doesn't go to specific concerns
11 that will be dealt with in the FEMA report and the
12 exercise, to let that slide just does not seem
13 appropriate considering the circumstances at Indian
14 Point.

15 Now, we also are concerned that the hearing
16 itself proceed as speedily as possible. We know there
17 are difficulties, and there are concerns that certain
18 steps be taken so that the evidence and the record is
19 completed as thoroughly as possible.

20 We feel that that can go ahead very soon, that
21 much of the interested parties and the intervenors can
22 proceed with much other testimony without waiting for
23 FEMA.

24 I would also like just one other point on
25 that. And I don't want to get a lot into scheduling.

1 But just from the proposed schedules of both the
2 intervenors and the licensees, if we were to proceed on
3 Questions 1, 2 and 5, it seems like at the earliest
4 there would be testimony on those issues, maybe
5 beginning in February. And it would seem a terrible
6 waste of time not to proceed with evidence that has
7 already been submitted prior to that and let three more
8 months go by.

9 MR. GOLDBERG: Your Honor, my name is Mel
10 Goldberg. I'm the attorney for the New York Public
11 Interest Research Group.

12 JUDGE GLEASON: I was just about to call on --
13 do you represent a governmental agency?

14 MR. GOLDBERG: No. I represent the New York
15 Public Interest Group, another intervenor.

16 JUDGE GLEASON: I'm sorry.

17 MR. GOLDBERG: It is tempting, I think, to
18 follow the advice of FEMA in this case and PASNY and
19 ConEd and the NRC, because what they are saying is
20 basically that we can produce a more efficient and
21 economical and indeed equitable way of dealing with this
22 hearing, and specifically number 3 and 4.

23 I'm not sure, however, that on the facts that
24 that is correct, because in fact what they are saying is
25 that we've got a moving target here. They have a moving

1 target with regard to Questions 3 and 4, and that we
2 should wait until that target slows down a little and in
3 fact perhaps comes to a complete stop, and we have
4 established for time immemorial what in fact emergency
5 planning looks like at this location.

6 But, in fact, we have moving targets on 1, 2,
7 5 and 6 as well. We have moving targets with regard to
8 the economics. We have moving targets with regard to
9 the risk. As a matter of fact, as Hearing Examiner Shon
10 indicated earlier today, he was quite interested in
11 seeing what the Sandia report was all about, and indeed,
12 the newspaper articles -- in the newspaper articles
13 there is a second Sandia report which apparently is
14 going to be coming out as well.

15 We don't know at this point -- perhaps the NRC
16 does -- when that second Sandia report is going to come
17 out. Are we then going to have to go back and establish
18 on Questions 1, 2 or 5 what that impact is going to have
19 with regard to those questions?

20 It is not at all factually clear which
21 particular question is moving the most and is moving the
22 most rapidly. So, therefore, it is very hard to tell at
23 this time, it appears to me, whether it is better,
24 whether we have more certainty whether the target,
25 namely 3 and 4, with regard to emergency planning is in

1 fact moving more slowly and is more able to be focused
2 upon than Questions 1, 2, 5 and 6; because as far as I
3 can tell, those are moving very rapidly right now, and
4 we may well want to wait until later until more evidence
5 is in on the Sandia 1 and Sandia 2 report, until more
6 evidence is in on the economics.

7 So as a factual matter I have serious
8 questions as to whether an economical and efficient way
9 of dealing with this hearing is to deal with 3 and 4
10 later as opposed to sooner.

11 Secondly, PASNY has indicated that the risk
12 analysis should be first, because after all, if there's
13 no great risk involved here, then real emergency
14 planning isn't that important after all. At least that
15 is how I would paraphrase their statement this morning.

16 But, in fact, the question doesn't rely solely
17 on how important is emergency planning, although we
18 contend it is very important, but whether are the
19 regulations, which are federal law, are they being met
20 or are they not. And it is our contention, as we have
21 contended many times before in this hearing as well as
22 in federal court, that since April 1st, 1981, which will
23 be two years from when they would like us now to get to
24 the emergency planning issue, for two years there is no
25 compliance. That in itself leads to many serious

1 questions as to whether or not emergency planning is
2 taken seriously; and therefore, we think that that
3 should be brought up as soon as possible.

4 Third, with regard to Mr. Blum's suggestion as
5 to the functionality, and this relates to my comments at
6 the beginning, we agree there are many questions here
7 which shouldn't just generically be dealt with with
8 regards to 3 and 4, yes, or 1, 2 and 5 first, but rather
9 you have to look very specifically at which types of the
10 testimony within 3 and 4 are liable to change over the
11 next three months or a year and which types are not.

12 I would submit that the road system in this
13 two-county area is not likely to change substantially in
14 the next year or for that matter ten years given the
15 state of the economy. Therefore, information with
16 regard to the roads, information with regards to other
17 functional qualities within the emergency planning
18 report should be looked at.

19 I think Mr. Blum is absolutely correct. We
20 need to look very carefully, point by point at which are
21 likely to change within the next year, which are not
22 likely to change within the next year. If we are merely
23 putting off till March or April of '83 things which we
24 could deal with efficiently and economically now and
25 December, then I think that we really have not met the

1 standards which you set out, Mr. Hearing Examiner, at
2 the beginning of this morning, the standards of
3 equitable, economic, speedy, which I think are
4 absolutely proper.

5 The fourth point is that we do have some
6 county officials from Westchester County which we are
7 not sure are going to be around after January. We had
8 an election yesterday, as we are all aware. And there
9 are people that have worked on these plans for the last
10 9 or 10 years who we are just not sure whether they're
11 going to be available in the next six months, in March
12 and beyond.

13 When you talk about equitable, when you talk
14 about speedy and economic, I think that is an extremely
15 relevant factor, as well as the fact that Mr. Blum and
16 other people have made that these people are very
17 concerned, Rockland County is very concerned that they
18 get their people on there now in order to be able to
19 deal with other issues within the counties.

20 And finally, I would just like to say that
21 you, I believe at the beginning of this question, you
22 indicated you wanted to know what was the status of
23 Units 2 and 3 for I guess the next year. And I agree
24 that is an entirely relevant question.

25 If in fact Units 2 and 3 are planning to be

1 put on line before we get to the emergency planning
2 testimony, then I think the public has the right to know
3 in a public forum what in fact are the status of
4 emergency planning at this point in time.

5 We have a television series going on right now
6 in New York City which people can get up here in
7 Westchester and Rockland Counties on Channel 7 all this
8 week which is raising some very disturbing questions in
9 many people's minds. If Units 2 and 3 are coming on
10 before March or April of this year, I think that people
11 are going to be very, very concerned. And I think in
12 this hearing there's a responsibility on the part of the
13 hearing to make sure that those questions are addressed
14 responsibly.

15 If, on the other hand, the utilities are going
16 to tell us that no, Unit 3 has so many problems it won't
17 be on for at least another year, and Unit 2, in
18 addition, while we are scheduling to start up in
19 December, our schedules have been wrong before, and in
20 fact, we may not go on for another year, then perhaps
21 they're right. There wouldn't be as much of a need to
22 get to emergency planning sooner, because after all
23 we're not going to start up the plants for another year;
24 but I would leave it to them.

25 When do they plan to start up? What is the

1 schedule going to look like? If they are going to have
2 an analysis of emergency planning three and four months
3 after the startup, there's going to be a lot of people
4 in these counties at least, and I would suspect in New
5 York City as well, after the Sandia report who are going
6 to be very, very concerned.

7 Thank you.

8 JUDGE GLEASON: I should have asked you each
9 to address our questions, because I really wanted to get
10 your responses in; because I have asked the
11 representatives and the staff and the licensees that
12 question at the beginning, and I forgot. And you
13 probably have addressed it in some degree in your
14 responses, but just so I make sure that it's in there I
15 would like for you to say yes or no; I'm going to try to
16 summarize your positions in a single position.

17 It is obvious, of course, that there are some
18 -- and we don't have to argue the point now as to what
19 is and what is not -- there are some contentions in 3
20 and 4 involved in the deficiency operation, but it's
21 also obvious that there are some that are not.

22 So I would assume that your position with
23 respect to scheduling and considering these matters is
24 essentially this: that, first, in any event simply
25 because the governmental representatives' testimony with

1 respect to these questions does not depend on the
2 contentions but is related to the Commission's
3 questions, that they should be allowed to proceed as
4 rapidly as possible, and there's no reason to defer
5 that. I think you all generally would agree with that,
6 and, of course, we will hear from whoever is here from
7 the government in just a minute. I'm not going to try
8 to summarize your position.

9 Secondly, that with respect to those
10 contentions involved in 3 and 4 which are not involved
11 in the deficiency process, that there is no reason not
12 to schedule testimony with respect to those as rapidly
13 as possible.

14 And then finally, the last, the final category
15 with respect to those parts of the contentions that are
16 involved in the FEMA deficiency process, that that does
17 not have to wait until after the drill. That should
18 await the findings after the 120-day period, and then
19 they should be reformulated, and then as rapidly as
20 possible hearings held in that category.

21 Does that generally summarize all of your
22 positions? Would you all respond yes, or does anybody
23 have a no to that position?

24 All right. The record will reflect that
25 nobody has a no to that position.

1 Are you a representative of an organization
2 that has already spoken?

3 MS. KESSLER: Not to this question.

4 JUDGE GLEASON: Please identify yourself again.

5 MS. KESSLER: I'm Judith Kessler, Rockland
6 Citizens for Safe Energy, intervenors. I'm glad some of
7 my points were just brought up. I don't have many.

8 JUDGE GLEASON: I'm sorry. I should have
9 called on you before.

10 MS. KESSLER: I got in late, and I think
11 that's perhaps why I was left out of the roll there.

12 Because New York State's Disaster Preparedness
13 Commission and FEMA are assuring the NRC and others that
14 issues involving emergency planning are being resolved
15 does not mean that it is so, and a letter to that effect
16 is on its way to the five NRC Commissioners from
17 Chairman Grant of the Rockland County legislature.

18 Rockland County is in the process of
19 formulating its own emergency plan, but it will be a
20 plan which is realistic, not just one which looks good
21 on paper. There are, as you know, certain defects which
22 render prompt evacuation impossible for Rockland
23 County. If the plants are operating, then the final
24 rule as promulgated in the Federal Register in August of
25 1980 should not be ignored. And I would just read one

1 brief paragraph.

2 "After April 1, 1981" -- a year and a half ago
3 -- "an operating plant may be required to shut down if
4 it is determined that there are deficiencies such that a
5 favorable NRC finding cannot be made or is no longer
6 warranted and the deficiencies are not corrected within
7 four months of that determination."

8 That's two and a half -- well, it's a year and
9 a half ago that that was completed, and here we are now.

10 My second point is that certain contentions
11 under Questions 3 and 4 do not rely upon completion of
12 the second 120-day clock, the point which you just
13 raised. And it is our opinion that procrastination on
14 these issues is no answer at all.

15 Regarding the drill, such a drill was was
16 performed last March 3rd is no test of an evacuation
17 plan and its ability to evacuate an area, as I think we
18 all are aware. And I repeat, if the plans recommend
19 operation, these plans must be addressed immediately.
20 There's no need to put certain questions off.

21 Thank you.

22 JUDGE GLEASON: Thank you, ma'am.

23 The Court would like to hear now from any
24 representatives of the government represented in the
25 case with respect to these questions or the

1 consideration of Contentions 3 and 4.

2 MS. VETERE: Yes. I'd like to be heard.
3 Laura Vetere representing the Westchester County
4 Executive.

5 On behalf of Westchester County I respectfully
6 request that this Board allow Westchester County to
7 begin presentation of our testimony immediately upon the
8 expiration of the 120-day clock, and our reasons are the
9 following.

10 Our testimony is already prefiled, and
11 substantial delay will be avoided by taking our
12 testimony now. The licensees have proposed that
13 evidentiary hearings proceed with the hearing of
14 testimony on Questions 1, 2, 5, 6 and 7, and that
15 evidentiary hearings should begin on February 14th.

16 This delay is unacceptable to Westchester as
17 our testimony is ready and waiting to be heard, and we
18 could begin presenting our evidence as soon as December
19 14th.

20 While Westchester agrees it would not be
21 efficient to conduct evidentiary hearings during the
22 120-day clock, we see no reason why our testimony should
23 not be heard soon after the 120-day clock has run. It
24 is now about 90 days into the clock, and with 30 days to
25 go I can safely say that our testimony remains

1 substantially unchanged.

2 Efforts to correct deficiencies in your
3 opinion have thus far been at the state level and with
4 the state plan, and little has changed at the county and
5 local level. In fact, our testimony should be revised
6 only to the extent that about 200 police officers have
7 been trained out of 3,000, and that we are in the
8 process of purchasing 94,000 worth of equipment out of a
9 budget of \$1.8 million, and that we have received 300
10 dosimeters out of the 6,000 that are needed.

11 Plans and training emergency personnel may be
12 in place; yet the county remains for the most part
13 unprepared. The county has been willing to cooperate in
14 plans to correct deficiencies, but thus far we have been
15 involved only in a very limited way.

16 It is important for this Board to realize that
17 deficiencies noted in FEMA's interim report were,
18 according to Westchester County, by no means not all of
19 the deficiencies that we have the plan, nor are the
20 deficiencies in the order of importance that we would
21 have given them. Therefore, efforts to correct only the
22 significant deficiencies noted by FEMA, which is a fair
23 representation of the corrective actions that have been
24 taken thus far, has for the most part neglected the
25 problems that we have in Westchester County.

1 It is for this reason that our testimony
2 remains substantially unchanged and that we would expect
3 that this situation would not change during the next 30
4 days. We would be willing to file supplemental
5 testimony to reflect the changes that take place, and we
6 could be able to file this testimony within one week
7 after the clock has expired. At the end of the clock we
8 would know what has been done and what needs to be done
9 with respect to our preparedness.

10 Unlike the state position, we feel an
11 assessment of emergency planning at the county level
12 could be made immediately. The need for a drill is not
13 necessary for determination. We know what are
14 capabilities are, and we could be able to report them to
15 you.

16 One other point needs to be made. With all of
17 the tallies in, Alfred Del Bello, the Westchester County
18 executive, has been elected Lieutenant Governor of the
19 state. The county executive and the county officials
20 have worked on these plans for over three years. They
21 are familiar with them. They know their assets. They
22 know their problems. And an expected change in
23 administrative officials will probably create a new
24 administration unfamiliar with emergency planning roles
25 and our preparedness in the county. Therefore, the

1 county executive respectfully requests that he be
2 allowed to present his testimony and the testimony of
3 his county officials before leaving his position as
4 Westchester County executive. In this way testimony
5 will be heard from those officials who are familiar with
6 the plan and will obviate the need to develop testimony
7 from incoming officials, and therefore will save the
8 county both time and money.

9 Finally, our testimony was not in response or
10 directed at any particular contentions, but it was
11 directed at the questions themselves. We submit that
12 the reformulation of contentions will not affect our
13 testimony.

14 In conclusion, I urge this Board to end the
15 delay and to hear the testimony of Westchester County
16 which is ready and waiting to be heard; that the
17 consequence of not hearing our testimony first is that
18 the expertise of this county executive and his
19 administrative staff will never become a part of this
20 record.

21 Thank you.

22 JUDGE GLEASON: Ms. Vetere, just so that we
23 fully consider what is on the other side of that coin,
24 and although you have responded to it in some degree in
25 the sense of the current county executive not being

1 available, could you give a comment, please, as to what
2 is the real difficulty outside of that as to delaying
3 the testimony until it is all heard or if it should be
4 considered to be all heard at one time as recommended by
5 the staff and licensees?

6 What are the problems outside of this election
7 changeover, which of course is a way of life in American
8 society, that are encountered by a delay?

9 MS. VETERE: It would involve a substantial
10 revision of testimony. We also feel that emergency
11 planning and preparedness should be determined now at
12 the end of the 120-day clock, and that we had a drill on
13 March 3rd, and that we see no reason to wait for another
14 drill to determine our preparedness.

15 JUDGE GLEASON: Well, let me ask, I don't
16 really know at the present time because I haven't
17 reviewed it as to who your witnesses are intended to be
18 with respect to those questions. Outside of the county
19 executive are those witnesses going to be gone?

20 MS. VETERE: It is possible. They are
21 appointed officials.

22 JUDGE GLEASON: They are all appointed
23 officials?

24 MS. VETERE: Yes.

25 JUDGE GLEASON: I guess in a world of politics

1 you can't deal with that. All right.

2 Are there other representatives of government
3 parties, government representatives here who would care
4 to speak to this issue?

5 MR. THORSEN: Thank you. My name is Eric
6 Thorsen. I'm with the Rockland County Attorney's Office
7 representing the Rockland County legislature.

8 Rather than reiterate all of the points made
9 by Westchester County's representative, Rockland County
10 does join in all of her points. We have the additional
11 situation where the bulk of Rockland County's witnesses
12 have now testified. The last two weeks of testimony
13 which preceded the suspension of the hearings were
14 filled with Rockland County's witnesses.

15 We have, I would make a rough estimate of
16 three day's worth of testimony remaining. We do not
17 have the personnel shifts that Westchester is concerned
18 with. However, merely in terms of rational ordering of
19 witnesses, of presenting a cohesive, coherent ordering
20 of testimony, Rockland County would like to continue
21 with the presentation of its case before we turn on to
22 these other questions. Again, I believe that we could
23 work well into the timeframe that we are dealing with.

24 Also, Rockland County would like to have the
25 case of the other interested -- I'm sorry -- whatever

1 presentations will be made by the other municipalities
2 presented at the same time, because all of our interests
3 are fairly mutual; all of our concerns are fairly
4 mutual. And once again, just in terms of rational
5 ordering, in terms of understandability, I believe it
6 would be in the best interests of all parties to proceed
7 with the testimony from the interested states.

8 JUDGE GLEASON: I gather, Mr. Thorsen, that
9 unlike the Westchester County political situation you do
10 not anticipate the possibility of your appointed
11 officials leaving for somewhere else.

12 MR. THORSEN: Certainly not within the next
13 few months.

14 JUDGE GLEASON: Well, I presume that even
15 Westchester is sitting still for the next few months. I
16 meant thereafter.

17 MR. THORSEN: There were no changes of
18 personnel in the county.

19 JUDGE GLEASON: Any other representatives of
20 governmental parties?

21 MR. KAPLAN: Yes. If I might be heard on
22 behalf of the New York City Council members.

23 Coming at the end of a long list I have very
24 little else or very little to add to what has been
25 said. And certainly the Board has before it my papers

1 of October 13th which specifically raised this
2 question. We would like to point out some very specific
3 differences, however.

4 Most of New York City does lie outside of the
5 EPZ. In fact, all of it lies outside of the EPZ at this
6 point, although the EPZ is a dynamic notion apparently.
7 In any case, most of the review that FEMA is currently
8 undertaking of planning within the county area is not
9 addressing itself in its endeavor to the New York City
10 situation in terms of emergency planning. We are
11 prepared to go forward within days of your order on this
12 matter and need not wait even for the conclusion of the
13 120-day clock.

14 The Board may wish to proceed differently in
15 that fashion, but, in fact, given its interest in
16 expedition and speed, we could in fact begin our
17 testimony certainly within this month, and thereby would
18 allow the Board then to move at the conclusion of the
19 120-day clock to additional testimony on emergency
20 planning and in fact conclude the planning question
21 before it goes to the other questions posed by the
22 Commission.

23 I would point out then that in Commission
24 guidance the Commission did not mandate this Board to
25 take on 5 and 6 prior to emergency planning, but just to

1 deal with the question of 120-day clock.

2 I am not going to presume to lecture anyone on
3 the civics questions of legitimacy of government and
4 confidence and trust that the citizens must have for
5 this Board and its other governmental entities. I think
6 those are apparent. We all read the newspapers, and I
7 think that the Board is conscious of those issues.

8 It seems to me, Judge Gleason, that you
9 yourself pointed to a solution when you asked Mrs. Moore
10 about the division of the question. And I for one found
11 the response by the staff and in fact by licensees
12 unsatisfactory. I don't know whether you did. Which is
13 the interest that we would be served by dividing the
14 question, by taking fairly discrete pieces of testimony
15 on emergency planning now and then let the Board
16 determine in a more practical sense what would come
17 thereafter I suggest is a way to go here.

18 It would allow the interest of the community
19 to be met and testimony to be heard on emergency
20 planning in the context of all the newspaper operations
21 and would not in any way, shape or form inhibit the
22 Board from getting at a factual matter. It would also
23 afford the Board flexibility in the future and would
24 also take into account the ability to do some work,
25 motion work, interrogatories, some work on the remaining

1 questions.

2 I don't believe I have anything to add other
3 than to say that on behalf of the City Council members
4 we are prepared to go forward expeditiously and would
5 appreciate the opportunity given the fact that we, along
6 with many other parties, filed this testimony months ago.

7 Thank you.

8 JUDGE GLEASON: Mr. Kaplan, have any political
9 earthquakes affected your client?

10 MR. KAPLAN: Well, since we used the word
11 dynamic here, in New York City we are a dynamic city,
12 and you didn't know what was going to happen right now.
13 We didn't expect to have a mayor, and we still do. Some
14 people like that; some people don't. But nonetheless,
15 no, I don't think that -- although there has been change
16 -- and procedurally I would ask all parties to agree --
17 some of the members that I represent as of today in
18 fact, in fact the whole City Council has been in office
19 illegally for the past year -- probably are no longer
20 members of the New York City Council.

21 I will attempt in the next week to get you a
22 list of who the actual parties all are, although I don't
23 think that functionally affects the standing of the New
24 York City Council members. We still represent more than
25 a majority of the City Council.

1 JUDGE GLEASON: Well, as long as you have more
2 than a majority.

3 I might just say that this word "dynamic
4 process" is permeating this procedure, and I hope that
5 it says something about us all.

6 I think that concludes -- this had better be
7 very good because you really had a lot of time to speak
8 before.

9 MS. RODRIGUEZ: It's excellent.

10 JUDGE GLEASON: All right. We'll put it to
11 the test.

12 MS. RODRIGUEZ: What has occurred to me in
13 listening to everybody's responses and enjoying it
14 pretty much, because I think it is something that
15 warrants this kind of serious discussion, it occurs to
16 me that if the Indian Point plants had applied for a
17 building permit or for an operating license, the NRC's
18 requirement would be for a workable evacuation plan.
19 And I believe according to their rules that if there
20 weren't one, they would not be able to go on line until
21 such a plan was proven effective or workable. So that
22 keeps running through my mind with regard to the
23 situation we are in now.

24 We have plans without approved approved
25 evacuation plans that FEMA is evaluating once again as

1 it did last year trying to fix gross deficiencies. I'm
2 not rambling. What I am leading to is a plea from
3 another angle to consider this issue first and foremost
4 even, as Mr. Kaplan said, even before the 120-day clock
5 runs out, because --

6 I missed a very important point. Give me one
7 second.

8 (Pause.)

9 When a child is doing poorly in school, most
10 parents don't wait for the report card to come home in
11 June to find out that there's a failure. I think that
12 parents and teachers want to help kids immediately.

13 And this is what I wanted to say; that in
14 presenting our case and our witnesses I think we can
15 help the NRC and FEMA and you decide what the status of
16 these plans are.

17 JUDGE GLEASON: All right. Thank you.

18 That concludes the discussion with respect to
19 both Contentions 3 and 4.

20 MR. LEVIN: Mr. Chairman, at least on behalf
21 of the Power Authority would like the opportunity to
22 reply to a couple of points.

23 JUDGE GLEASON: Brief replies? I mean is this
24 something new that has come?

25 MR. LEVIN: Yes, sir.

1 JUDGE GLEASON: All right.

2 MR. LEVIN: New in the sense that I just want
3 to make sure that everyone is clear, for example, that
4 the Commission has directed that questions, contentions
5 on Questions 1, 2, 5, 6 and 7 be considered first. So
6 just in terms of when things come up, I refer the
7 Commission to page 4 of the order of September 17,
8 1982. So in terms of the order of things, I think the
9 Commission has decided that point and directed that they
10 be considered in a certain way.

11 Secondly, unless the intervenors and the
12 interested states and counties see fit to waive their
13 option, if there is such an option, to return after the
14 emergency exercise and once again testify, I envision a
15 situation, if you were to adopt the reasoning of the
16 intervenors, where we would have some testimony at some
17 point, perhaps in December -- it's not entirely clear,
18 or in January -- bits of testimony then, and once again
19 after the emergency exercise on March 8th, these same
20 people who are involved, incidentally, in the planning
21 process itself and the attempt to alleviate the
22 deficiencies, who are going to want to return once again
23 and testify once again on what they have learned as a
24 result of the exercise. So the practicality of that, it
25 seems to me to be approaching zero.

1 The question of idleness which I heard one of
2 the intervenors reference, let me assure you we are not
3 idle. There's an enormous amount of work to be done by
4 all of the parties both in conjunction with each other
5 in terms of discovery and in terms of preparation for
6 Questions 1, 2, 5 and 6. They are not -- as the
7 Commission itself has pointed out, that is the heart and
8 soul of this investigatory, adjudicatory proceeding.
9 And we are not sitting around watching winter come on.
10 During the months of December and January there's a lot
11 to be done.

12 JUDGE GLEASON: Thank you, Mr. Levin.

13 MR. KAPLAN: Judge Gleason, if the Board could
14 indulge me.

15 JUDGE GLEASON: Are you going to indulge in
16 rebuttal?

17 MR. KAPLAN: I don't want to get involved in
18 that. I just want to point out that I'm sure the Board
19 would read page 4 and see that it is written in a
20 permissive and not a mandatory terminology. The Board
21 doesn't say much. It says "may" and "can." There is a
22 distinction between those words. Certainly the
23 Commission does.

24 I would simply point that out, and I certainly
25 find it surprising that the well-financed Power

1 Authority and ConEd are pleading that they have too much
2 to do to get ready, but those of us who have been
3 described as a high school football team by your
4 predecessor are prepared to go forward.

5 MR. LEVIN: Do you concur in that?

6 JUDGE GLEASON: I can assure you that this
7 Board is very familiar with what the Commission has
8 issued.

9 It has been suggested that we recess for
10 lunch. If we could get back here at 1:30 or
11 thereabouts, it would be helpful.

12 (Whereupon, at 12:20 p.m., the prehearing
13 conference was recessed for lunch, to be reconvened at
14 1:30 p.m., the same day.)

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AFTERNOON SESSION

(1:40 p.m.)

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JUDGE GLEASON: Can we get started, please?

We would proceed now to consideration of
Contention 5. Mr. Brandenburg?

MR. BRANDENBURG: Before we do, just one brief
comment, if I may, Mr. Chairman. I am mindful of your
desire not to have a response to the response to the
response, but it seemed to me the discussion we had
immediately before the lunch break with regard to the
timing of emergency planning contentions did raise some
new issues that had not been made earlier in the written
submissions of the parties and I would like to respond
very briefly, if I could, on behalf of Con Edison to
some of this new matter that was raised.

JUDGE GLEASON: Excuse me. Just so I am
certain, you are now responding to Mr. Blum's --

MR. BRANDENBURG: The remarks by Mr. Blum, by
the representative of WESTPAC, by the representative
from Westchester County, Rockland County and so forth.

JUDGE GLEASON: All right.

MR. BRANDENBURG: Regarding the sequencing of
emergency planning testimony and the principal premise,
as I understand it, is since this testimony addresses
Commission Questions 3 and 4 rather than the individual

1 contentions thereunder that somehow it can be heard now
2 and doesn't have to wait reformulation, according to the
3 120-day clock and so forth.

4 I just find that to be a false premise.
5 Question 3 -- Commission Question 3 -- asks what is the
6 current status and degree of conformance with guidelines
7 and so forth. Question 4 in principal part asks about
8 improvements beyond current NRC guidelines for emergency
9 planning and, as I mentioned earlier this morning, the
10 Commission has directed that further improvements be
11 addressed by this Board in light of the risk question.

12 I simply don't understand how all of us can
13 address the current status of conformance with NRC
14 guidelines based upon testimony that was filed this past
15 June. Much of it was prepared in April and May. It was
16 filed on June 7 pursuant to this Board's earlier order.

17 Now that testimony basically says what various
18 government officials in surrounding counties would do if
19 there had been an accident as of that date -- that is,
20 June 1982. Now that story will be vastly different in
21 March of 1983 than it was in June of 1982 for the very
22 reasons that Mr. Glass and Mr. Perry so eloquently
23 mentioned this morning.

24 So I just cannot understand how the June 1982
25 testimony will have the currency for this Board when

1 this Board gets around to making its recommendations to
2 the Commission at the end of this case. Indeed, Con
3 Edison is unaware of any aspect of emergency planning
4 which could be heard now and which would still have the
5 same currency at that time, that is, the time which the
6 Board makes its recommendations to the Commission.

7 Now the representative from Westchester County
8 here this morning stated, as I understood her remarks to
9 be, that we should hear the testimony from Westchester
10 County officials now because the top officials who are
11 responsible for emergency planning will be leaving
12 government service at the end of the year.

13 Well, I cannot imagine a more compelling
14 reason to defer that aspect of our inquiry into
15 emergency planning, because if these people are going to
16 be leaving office, then that testimony will simply have
17 no currency within a month or so after it is given.

18 There was a last remark made about risk being
19 a moving target similar to emergency planning. Well, I
20 just simply don't believe that is the case, Mr.
21 Chairman. The Indian Point probabilistic safety study
22 is the only study that I am aware of that examines the
23 risk of Indian Point. We are ready to address that now
24 in these hearings and we propose in our timetable for an
25 agenda in which that can be done. It is not something

1 that is going to be in a state of flux, unlike the
2 emergency planning questions.

3 MR. KAPLAN: If I might, Mr. Chairman, are we
4 finished?

5 JUDGE GLEASON: I really don't want to get
6 this drawn out.

7 MR. KAPLAN: Let me ask this: Since Mr.
8 Brandenburg did not respond to anything that he wasn't
9 capable of responding to this morning, if the Board
10 wishes to strike or wishes to pay no attention to what
11 he just said, I will refrain from making any comment.

12 On the other hand, if the Board wishes and
13 will consider what Mr. Brandenburg had to say, I feel
14 constrained to just mention to the Board that Mr.
15 Brandenburg mentioned nothing about New York City's role
16 and is obviously aware that FEMA speaks not one iota,
17 nor does the 120-day clock, since I am sure as a good
18 lawyer he isn't going to mention it if it did, to the
19 situation in New York City.

20 So, therefore, our position still stands and
21 it has not been responded to, though Mr. Brandenburg
22 graciously had the opportunity before the Board to do
23 so.

24 JUDGE GLEASON: Yes, go ahead.

25 MR. PERRY: Your Honor, this morning when Mr.

1 Glass and I gave you the brief description of the FEMA
2 process, where we were and where we were going, part of
3 our intent was to try and explain to the Board when FEMA
4 could most usefully fulfill the role it has in these
5 proceedings, namely we have been assigned by various
6 authorities to serve as your -- as the Board's experts
7 and as the Commission's experts, if you will, on the
8 evaluation of offsite preparedness.

9 We were trying to explain where we could best
10 make our evaluation available to you. I want to assure
11 you in light of some things that were said earlier that
12 some commitments that were made and some dates we agreed
13 to we keep. There is, to my knowledge, in the year and
14 a half FEMA has been participating in these cases, been
15 no delay of any significant nature due to any kind of
16 slippage on FEMA's evaluation process once we are
17 committed to filing dates and participation dates.

18 The dates we give you are solid dates. Our
19 process does move in train. There is a logic to it and
20 I can assure you that at the time and moment I described
21 this morning we would be available and ready to forward
22 expeditiously. It is not a question of continuing delay
23 or avoidance.

24 JUDGE GLEASON: For final comment.

25 MR. BLUM: Your Honor, I would simply like to

1 read into the record our request that Mr. Sholly be
2 added to the service list. I would like to add Stephen
3 C. Sholly -- spelled S-h-o-l-l-y -- address, Union of
4 Concerned Scientists, 1346 Connecticut Avenue,
5 Northwest, Suite 1101 -- that's 1-1-0-1 -- Washington,
6 D. C. 20036.

7 Thank you.

8 JUDGE GLEASON: Thank you.

9 We will now proceed to consideration of
10 Contention 5, Question 5. I would ask for some response
11 at this time of Mrs. Fleisher.

12 MS. FLEISHER: Thank you, Your Honor.

13 I would like to note since the previous
14 speaker, Mr. Brandenburg, referred to what Questions 3
15 and 4 meant and so forth, the first question in Question
16 5 said: "Based on the foregoing, how do the risks
17 posed", and so forth. Therefore, it would seem
18 perfectly logical to take up Questions 1, 2, 3 and 4
19 before Question 5.

20 JUDGE GLEASON: Excuse me, Mrs. Fleisher. I
21 would just like to say I recognize the comfort with
22 which other members are enjoying the comforts of this
23 room, but if any members of the Board would like to, go
24 ahead.

25 MS. RODRIGUEZ: Excuse me. It is hard to hear

1 you on this side of the room. I don't know whether it
2 is the mike system.

3 JUDGE GLEASON: I'll refrain from comment. Go
4 ahead. Can you hear all right?

5 MS. RODRIGUEZ: Yes, now.

6 MS. FLEISHER: In order to illustrate how
7 Indian Point would compare to many other nuclear power
8 plants, brackish water could be one of the issues which
9 we would have taken up before we got to 5.1, but which
10 we would use as a condition and reason for joining in
11 5.1. I believe there is only one other plant or perhaps
12 two that allows brackish water into the containment, let
13 alone use it as water around the condensers.

14 And I think it is understood that if you have
15 leaks and the brackish water gets into the wrong side of
16 the process and that general practice would not normally
17 condone using brackish water so close to the nuclear
18 operation.

19 And, in addition, we note the general practice
20 doesn't necessarily apply to nuclear plants. There are
21 many things you can go with another plant that you
22 cannot do with a nuclear plant. If trouble arises, you
23 can turn off the valves or start up the fire emergency
24 equipment or shut the windows or walk away or
25 something. But in order to bring a nuclear plant under

1 control, it is much more complicated than that.

2 That makes it unique. I realize it doesn't
3 make this one plant any more unique than others, but it
4 does come into the question of 5.1.

5 If, as the Board suggests, that the Staff and
6 Licensees will take up the issue of the safety of
7 permitting the brackish water in the containment, or
8 other things that might come under it, we would be
9 willing to forego it. That is, if we can be assured
10 that there would be a sophisticated search for the
11 defects, a part of which we discussed earlier, the
12 caliber of such a search would be, we think, part of 5.1
13 as our contention.

14 And if the Board would prefer that the Staff
15 and the Licensees go into that subject, that suits us
16 fine, as long as they do the job the way we think it
17 should be done.

18 JUDGE GLEASON: Could we hear from the Power
19 Authority, please?

20 MR. LEVIN: Other than to assure Ms. Fleisher
21 that we will do the job the way she thinks it should be
22 done, I don't think we have anything to add.

23 MS. FLEISHER: I think we could make up a
24 laundry list together.

25 (Laughter.)

1 MR. KAPLAN: I hear that Mr. Levin is better
2 ironing than doing laundry.

3 MR. LEVIN: I'll ignore that because I don't
4 know what it means.

5 JUDGE GLEASON: Mr. Brandenburg?

6 MR. BRANDENBURG: It seems to us, Mr.
7 Chairman, that the Board carefully considered Contention
8 5.1 in its October 1 order and it did give West Branch
9 an opportunity to provide a list of specific design
10 features for plant conditions which make the plant
11 riskier.

12 I have reviewed the materials that were submitted
13 in response to the Board's October 1 order and in our
14 judgment there is no basis for the Board to change its
15 disposition of this contention at this time.

16 JUDGE GLEASON: Is there any comment from the
17 Staff?

18 MS. MOORE: Mr. Chairman, we support the
19 Board's ruling on Contention 5.1, I do not believe that
20 WBCA's comments have added anything that would cause us
21 to change our position.

22 MS. FLEISHER: Your Honor, in our submission
23 for October 15, we listed several things. Mr.
24 Brandenburg doesn't address his reply to them at all.
25 I'm sorry. The date of our submission is October 13 --

1 West Branch Conservation Association's reply to
2 memorandum and order of October 1.

3 If you wish, I could read you some --

4 JUDGE GLEASON: No, I have it.

5 MS. FLEISHER: It is page two, sir, the fourth
6 line.

7 JUDGE GLEASON: Which line?

8 MS. FLEISHER: I can't hear you.

9 JUDGE GLEASON: Which line?

10 MS. FLEISHER: Line four, page two. It starts
11 with "A sophisticated tracing of circuits."

12 JUDGE GLEASON: That answers Question 2. We
13 are now on Question 5.

14 MS. FLEISHER: Yes, I understand, but they are
15 related. We are talking about the risk and the safety
16 and we need to know that these items are going to be
17 taken care of before we even talk about safety.

18 You see where we say on page three we are not
19 addressing the question put to us about Contention 5.1
20 due to time constraints and are awaiting decision on
21 above request regarding the status of Contention
22 2.2(d)? We find them quite related.

23 In other words, when we criticized the design
24 and condition of the stations, they also listed them
25 under 2.2 and later we talked about them under 5.1 in

1 our original contentions of December 2. I believe both
2 emergency electrical systems were inside the containment
3 building at Indian Point Number 2 at one time. We don't
4 know if that still exists.

5 JUDGE GLEASON: Well, Ms. Fleisher, at least
6 the Board understands. Whether it agrees or not, we
7 will just have to wait and see how it is resolved. We
8 just wanted to be clear what your comments really were.

9 MS. FLEISHER: Have I done that, sir?

10 JUDGE GLEASON: Yes, you have.

11 MS. FLEISHER: Thank you.

12 JUDGE GLEASON: That concludes consideration
13 of Contention 5. We will now move to Contention 6, and
14 we would ask the representatives from Parents
15 organization to proceed with this.

16 MS. RODRIGUEZ: Parents objects to the
17 elimination of Contention 6.2. We realize that we live
18 in a radioactive world and that we are constantly
19 exposed to sources of radiation, but it is also true
20 that operating nuclear power plants routinely emit
21 radiation in addition to what is sometimes called
22 background levels.

23 This is a serious environmental cost,
24 especially since the offensive radiation are cumulative
25 in the human body. Children are more susceptible than

1 adults to these events and foetuses in utero even more
2 so. Radiation has generic as well as carcinogenic
3 effects. A comparison of the costs and benefits of
4 operating Indian Points 2 and 3 compared to the
5 environmental costs and benefits of shutting it down
6 must include an examination of radiation releases at the
7 two plants.

8 The fact that a reduction in the release of
9 radiation into the environment would be a consequence of
10 the shutdown of any nuclear power plant is not
11 persuasive argument for excluding the issue from these
12 proceedings. The shutdown of any plant would likewise
13 entail some economic consequences, but we are concerne
14 with the specific effects of Indian Point and its
15 shutdown -- site-specific radiological effects as well
16 as site-specific economic effects.

17 In conjunction with appealing to this Board to
18 reinstate Contention 6.2, we move this Board for an
19 order directed to the Licensees to respond to the
20 interrogatories we served on them on June 21, 1982. The
21 response from the Licensees included a brief statement
22 that our interrogatories "seek to elicit information
23 relative to events which by their nature can take place
24 only during continuing operations."

25 We submit that this is a specious, indeed

1 insulting, reply. In order to compare the environmental
2 benefits of shutting the plants, we must know the
3 environmental costs associated with continued
4 operations. To make the analogy again with economic
5 effects, such a reply would not be acceptable to a
6 question concerning the economic costs of continued
7 operation.

8 On the same side, the same lines, we would
9 like to request permission to ask the NRC Staff for any
10 documents they may have pertaining to radioactive
11 emissions at Indian Point and how they compared with
12 those of other plants.

13 Thank you.

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1 JUDGE GLEASON: Can we hear from the Power
2 Authority, please?

3 MR. LEVIN: One moment.

4 (Pause.)

5 MR. LEVIN: Your Honor, it seems to the Power
6 Authority that discovery questions at this moment aren't
7 really appropriate, unless the Board wishes to get into
8 them. We would really have nothing in response to the
9 Intervenor.

10 JUDGE GLEASON: Mr. Brandenburg?

11 MR. BRANDENBURG: Regarding the substance of
12 Contention 6.2, Mr. Chairman, we believe that the Board
13 is correct in its October 1 order in characterizing the
14 health effects of radiation issued during normal plant
15 operations, as distinguished from accident conditions as
16 a fundamental generic question, the answer to which will
17 be the same for Indian Point as other plants.

18 Accordingly, the Board properly concluded that
19 inclusion of Contention 6.2 does not seem likely to be
20 important in answering Commission Question 6.

21 JUDGE GLEASON: Does the Staff have any
22 response or comments in this area?

23 MS. MOORE: Yes, Mr. Chairman. First, we do
24 not know -- we support the Board's ruling and we do not
25 believe that the arguments just presented should change

1 the Board's position with regard to Contention 6.2 and
2 we would object to any oral discovery requests
3 concerning Question 6 as improper at this time and it
4 should have been filed in the normal course of
5 discovery.

6 In addition, if the Board does seek to
7 entertain that request, we think it is burdensome and
8 portions of it are irrelevant to Question 6.

9 JUDGE GLEASON: I think the Board would have
10 to respond, if I understood you correctly, that making a
11 motion for discovery in this hearing is inappropriate at
12 the present time. The Board does deny the request.

13 That concludes the part of the schedule that
14 deals with the question of responses to the Board's
15 October 1 order.

16 And we should now proceed to a discussion and
17 consideration of the Licensees' motion to allow time in
18 the schedule for summary disposition procedure, and I
19 think the best method of proceeding would be to have the
20 Licensees, either jointly or singly, summarize their
21 position and we will, I think, first ask for the Staff's
22 response to this and then we will go to the parties.

23 MS. RODRIGUEZ: I am sorry, sir. We are
24 having trouble hearing you here.

25 JUDGE GLEASON: All right. We are now about

1 to discuss the question of Licensees' motion to add
2 summary disposition proceedings to the schedule. I have
3 asked the Licensees to summarize their position. I
4 would ask the Staff to give a comment of this views with
5 respect to this motion, and then we will get the other
6 parties to respond as they may desire to respond.

7 MS. RODRIGUEZ: Thank you, Mr. Chairman.

8 MR. LEVIN: Mr. Chairman, while a motion for
9 summary disposition and responses to such motions does
10 inject an additional element into the process of this
11 hearing, it is certainly not an unknown process in legal
12 proceedings.

13 Of course, the policy underlying that is that
14 summary dispositions of allegations or, in this case,
15 contentions can save time for everyone in the long run.
16 It may well be that after a period of discovery in this
17 case that we will be able to ascertain that there are
18 matters subject to summary disposition -- matters that
19 the Board might have originally considered either to
20 have what would appear to the Board to be a sound
21 factual underpinning bases, or that at first blush may
22 have appeared to the Board to have passed the
23 two-pronged test and may turn out following discovery
24 not to have met those criteria.

25 And the Licensees believe, or the Power

1 Authority believes, it would be advisable to dispose of
2 such contentions if that is possible in advance of
3 pursuing them by way of formal written testimony and
4 subsequent cross examination.

5 I would point out that that was also a point
6 advanced by Messrs. Hasselstine in what I believe was
7 his separate view, page five, in the July 27 order, and
8 he discussed the use of summary disposition, although he
9 did not specifically go into -- well, he essentially
10 said the same thing I just said, but he discussed it in
11 terms of more sharply focusing the decisions.

12 JUDGE GLEASON: Mr. Levin, there is one
13 portion of that which I am not familiar with, unless it
14 is considered in that context as a motion to the Board
15 based on some other material which has arisen which is,
16 of course, a matter of the Board's discretion, and that
17 is, of course, the item calling for responses, replies
18 to responses to motions for summary disposition.

19 And I am simply not familiar with that. Yes.

20 MR. BRANDENBURG: I do not have my copy of 10
21 CFR before me at the moment, Mr. Chairman, but there is
22 an explicit reference -- we will have it for you
23 momentarily -- in the 10 CFR rules that apply to
24 requirements for responses for summary disposition in so
25 much as those require new facts. We will have those for

1 you in a moment.

2 JUDGE GLEASON: Did you have any additional
3 comments, Mr. Brandenburg, to Mr. Levin's comments?

4 MR. BRANDENBURG: Well, there were three
5 reasons raised in Licensees' proposed hearing schedule,
6 Mr. Chairman, as to why we recommend summary disposition
7 procedure to this Board, and Mr. Levin touched upon two
8 of them. First of all, normal rules of practice of the
9 NRC provide for summary disposition and the Commission
10 has instructed us that with respect to contention
11 practice we are to be following the normal rules of
12 practice.

13 Second, as Mr. Levin mentioned, Commissioner
14 Asselstine did explicitly recommend this procedure to
15 this proceeding. And the third one is going back to
16 contention practice.

17 In this particular proceeding we are not only
18 addressing contentions which have basically been stated
19 with reasonable specificity, but this Board has been
20 asked to do something a little different and beyond
21 that, and that is to screen out other contentions which,
22 although complying with the normal rules of practice in
23 licensing proceedings, nonetheless in the Board's view
24 do not seem likely to be important to answering the
25 Commission's questions.

1 We believe that is a further and independent
2 reason why a summary disposition procedure is a
3 particularly promising one and it has a potential for
4 being particularly valuable in this proceeding.

5 JUDGE GLEASON: All right. I have found the
6 other citation. Yes, I found it.

7 All right. Could we hear from the Staff or
8 Miss Moore?

9 MS. MOORE: Yes, sir. We believe -- Staff
10 believes that summary disposition of contentions or the
11 request for summary disposition should be permitted.
12 The only change we would make to the Licensees' proposed
13 summary disposition schedule is that we would prefer
14 that the schedule be in accordance with 10 CFR 2.749,
15 specifically with regard to responses to motions for
16 summary disposition, which, according to that
17 regulation, are to be filed 20 days after service of
18 such motions.

19 However, if the Board wishes to expedite the
20 summary disposition proceeding, one way that could be
21 done is to require the participants in the summary
22 disposition process to file their papers by Express
23 Mail, in which case the five extra days usually allowed
24 for service would be reduced by two in accordance with
25 10 CFR 2.710.

1 JUDGE GLEASON: All right. Could we hear from
2 USC?

3 MR. BLUM: Thank you, Your Honor -- UCS.

4 I don't know. I don't want to come out and
5 say that I think the real purpose of this is to waste
6 time and exhaust the intervenors with unnecessary
7 paperwork, since I am not really competent to
8 psychoanalytically probe what the real purpose is, but
9 it seems to me that is the foreseeable effect of it.

10 I don't see how it would contribute at all to
11 making a more efficient hearing, for the following
12 reasons. First of all, the Commission's questions are
13 still there. None of those seven questions are going to
14 be disposed of in any kind of summary way, and if
15 something remains important to be resolved as part of
16 one of those seven questions, it is still going to be
17 there, even if we go through a little hoopla and
18 demonstrate that the intervenors have not adequately
19 raised the issue that the Commission has in effect
20 raised.

21 With regard to specific issues, it seems that
22 there are two possibilities. Either way, we don't
23 really gain anything by this whole extra round of
24 paperwork and in effect preliminary findings of fact.
25 If it is an area where intervenors do have pertinent

1 testimony that substantially supports the contention,
2 then in order to properly deal with this we really do
3 have to consider that testimony and consider it
4 seriously and do all of the things that we would be
5 later on doing with the findings of fact, although we
6 now have to do it twice instead of once, which is an
7 unnecessary burden on all the parties and the Board.

8 On the other hand, if the intervenors don't
9 really have anything for it, then we can go through the
10 preliminary motions of some sort of special inquiry to
11 establish that intervenors don't have substantial
12 support for this issue. But then after we resolve that
13 we would just be back where we would have been anyway
14 when all of the evidence was in.

15 The Board looks at the evidence and sees that
16 the intervenors didn't have anything on it and,
17 therefore, intervenors don't carry the day on that
18 issue. It seems like we get around to that anyway.

19 Also, the fact that intervenors didn't have
20 supporting testimony for something, that wouldn't really
21 eliminate the issue from the proceeding because there
22 would still be the possibility that Staff would have
23 support for it.

24 So given the nature of the proceeding, that
25 the important questions are really basically mapped out

1 by a force over and above the intervenors, going through
2 a whole extra round of preliminary litigation on summary
3 disposition motions seems to really gain nothing other
4 than to just basically eat up valuable time which is
5 really quite important for two things.

6 One is discovery where we really do need
7 substantial discovery, on Questions 1, 2 and 5,
8 certainly, and also for testimony, where there is this
9 backlog of highly pertinent testimony and we are all
10 worried how are we going to get all this stuff in, and
11 to sort of just dismiss a couple of months for what I
12 think is ultimately a frivolous round of summary
13 disposition motions would be very uneconomical in terms
14 of the hearing.

15 Finally, with regard to this last mention of
16 Express Mail, this creates a different kind of burden.
17 This one certainly impacts disproportionately on
18 intervenors who have less resources than the other
19 parties, but just to make this additional round of
20 mailings very expensive in addition to time-consuming
21 would just seem to me to be another unnecessary and
22 unfair obstacle.

23 JUDGE GLEASON: Thank you, Mr. Blum.

24 Go ahead.

25 MR. HARTZMAN: I just also feel it would

1 create unnecessary paperwork, rearguing contentions
2 which have already been reargued -- argued and reargued
3 several times around. I think we should get on with the
4 show, see what evidence there is in the record, whether
5 we can support our contentions or not with testimony,
6 and that will be the basis for findings.

7 Why waste more time or paper, give the Post
8 Office more money for Express Mail -- and that Express
9 Mail doesn't always get there the next day -- and see
10 what the case is?

11 MR. GOLDBERG: Very briefly, if this were a
12 normal case I think the Licensees may in fact be
13 correct. The fact of the matter is it is not a normal
14 case. This is not a case where the contentions are the
15 end-all and be-all of this hearing and the Board itself
16 has recognized this back in June, I believe the 17th,
17 prehearing conference.

18 There was some discussion which related to
19 summary disposition and at that time I believe the Board
20 quite appropriately, through questioning, indicated that
21 wouldn't this in fact, if a particular party failed on a
22 contention, wouldn't it fall back to the Board to
23 investigate these questions anyway since we have
24 questions from the Commission, that it is investigatory
25 in nature.

1 Because it is investigatory in nature, as
2 people have previously said, this 45 days to 60-day time
3 frame to us seems like it is totally inappropriate and a
4 waste of everybody's time and a very expensive process
5 to boot.

6 JUDGE GLEASON: I understood you to say this
7 had been discussed by the Board?

8 MR. GOLDBERG: I believe back in the June 17
9 prehearing conference. There was mention made of
10 summary disposition. I don't have the page cite. I'll
11 try to get that for you before the end of the day.

12 JUDGE GLEASON: I would like to have that.
13 Any others? Yes, ma'am.

14 MS. RODRIGUEZ: From the standpoint of a
15 non-engineer and a non-lawyer, as I understand it,
16 summary disposition sounds like a procedure that would
17 take more time and delay the beginning of the hearings
18 even further, and as a resident within the EPZ I am very
19 anxious to see the hearings begin and the safety issues
20 discussed as soon as possible.

21 JUDGE GLEASON: Anyone else?

22 Mr. Levin, what do you say of the central
23 argument of the intervenors that this is a different
24 type of a proceeding. Spend a little bit on the
25 comments that have been said, that this is investigative

1 adjudication, if you will, that the questions even over
2 our contentions that are in the process of being
3 formulated which will become the points of issues
4 between the parties. They are there and must still
5 basically relate to the questions which the Commission
6 has directed the Board to get answers on as to how in
7 that type of legal environment, if you will, motions for
8 summary disposition are heard.

9 MR. LEVIN: The first thing I would say, Mr.
10 Chairman, is although this is a unique proceeding, it is
11 not unique in terms of the process that the Commission
12 has prescribed for its conduct, and we are directed to
13 deal with this as any other trial type adjudicatory
14 proceeding, as to process, and we are simply reflecting
15 in our request for time to deal with summary disposition
16 issue, we are merely reflecting what the rules provide.

17 I am sure they are grounded in part on what
18 the Federal Rules provide. The Federal Rules provide --
19 the Federal Rules which establish summary disposition of
20 pleadings are rules not established for delay. They are
21 established for the purpose of attempting to expedite
22 the hearing. It's like the fellow in the ad on TV. You
23 can pay me now or pay me later.

24 And if we end up with contentions -- and I'm
25 not talking about the Commission questions now -- if we

1 end up with contentions which could have been disposed
2 of summarily, we are going to spend a heck of a lot more
3 time on that down the road than we are dealing with
4 paperwork, which seems to have a bad name at the present
5 time.

6 For illustration, let me talk a moment about
7 the Question 2 contentions. The Question 2 contentions
8 deal with or are supposed to deal with specific safety
9 issues. Without going back and looking at each one, I
10 suspect most, if not all, of those contentions as
11 presently formulated, even if the Board alters them
12 some, are contentions which are well tuned toward
13 summary disposition unless during discovery some much
14 greater basis for admitting the contention in is
15 established.

16 Of course, the two-pronged test that was
17 established by the Commission, although the Board may in
18 all good conscience believe that it has been met with
19 respect to a particular contention, when discovery is
20 completed, we may determine that it is not there and I
21 suspect we could do that right now with some of the
22 contentions.

23 So despite the fact that Mr. Blum thinks that
24 everything we say is calculated to delay, we would like
25 the opportunity to save the Board time and save the

1 parties time down the road.

2 MR. GOLDBERG: If I may, I found the
3 citation. It is page 1,087 of the hearing record. It
4 is June 17, 1982. It is Judge Carter speaking. The
5 context was that Mrs. Fleisher's contentions with regard
6 to one particular point were in question, and there was
7 a lengthy discussion between various parties.

8 And then Judge Carter said: "I think the
9 problem is this, if I may. In effect, you are moving
10 for summary disposition of the contention, whereas, as I
11 am sure you realize, the Board in making the
12 investigation cannot merely close its eyes to a
13 contention. We would not be carrying, as I see it,
14 carrying out our function, merely because Ms. Fleisher
15 did a poor pleading job or hadn't marshalled her
16 evidence together.

17 "I, for one, propose to find out the answer to
18 it, whether Zipporah Fleisher says it proves it or
19 doesn't, because I am going to find out the answer
20 because I see that as the job that the Commission is
21 giving me and the other judges -- to find out the state
22 of the evacuation plan and road system. So we are not
23 going to exclude it as an issue, even if Mrs. Fleisher
24 may have failed in proving her contention in her
25 petition."

1 And then he goes on to say, "If I am wrong, he
2 could have gone to the contention", and so on. He could
3 have gone to the Commission and so on.

4 Well, we all know what the end of the story
5 is.

6 (Laughter.)

7 MR. GOLDBERG The point being, in spite of the
8 end of the story, that even in a situation where the
9 contention itself may not have been adequately argued to
10 get it in, and here that is not what we are talking
11 about. They are saying even after we had got the
12 contention in, now they want to go back and have another
13 kick out the cat and see if they can get it out in a
14 further way before we get the testimony on it.

15 But even in a situation where she may not have
16 put on enough to get the contention in, the Board still
17 has an obligation to make sure that a full record is
18 presented to the Commission, and I would submit that
19 that means summary disposition, in this case at least,
20 is not an appropriate vehicle and it is a waste of 30,
21 45, or 60 days.

22 JUDGE GLEASON: I appreciate very much your
23 pointing out that citation. I do recall reading it now
24 and raising that question.

25 I want to get back to it, but in the meantime

1 my colleague has a question.

2 JUDGE SHON: Mr. Levin, this is particularly
3 directed to you. I really have two questions. There
4 are two separate views of the matter of summary
5 disposition. It seems to me and it seemed to me in the
6 past that summary disposition, at least in part, is
7 directed toward saving hearing time.

8 It is directed at saving hearing time, perhaps
9 even at the expense of overall calendar time. That is,
10 one gets an extra 40 or 45 days before opening of the
11 hearing in order to save the expense of transporting
12 witnesses, the expense of having people actually there.
13 The expense is incurred by the actual hearing process
14 itself.

15 We are in a situation where calendar time is a
16 good bit more important to us than hearing days, I
17 think. Might we well dispense with summary disposition
18 in hopes of finishing up earlier on? Does it really
19 take longer to finish off by taking a few days of
20 hearing time? Do you see what I mean?

21 MR. LEVIN: Yes, sir. You said you had two
22 questions.

23 JUDGE SHON: I'll ask you the second one after
24 you answer, after you reply.

25 MR. LEVIN: Of course, I am not psychic. None

1 of us are. We cannot predict in advance exactly how
2 long something is going to take but if one were to look
3 at -- you could just pick about any of the Question 2
4 contentions. I could see where full exploration of
5 those, which will certainly occur at the hearing itself,
6 is going to chew up a lot of hearing time and calendar
7 time, and if what we are aiming toward is the quickest
8 termination point of the proceeding, I think that the
9 motion for summary disposition will do that and will
10 allow us to dispose of matters which may not prove to be
11 as persuasive as the Board thought them for purposes of
12 admitting a contention.

13 JUDGE SHON: In other words, you feel that we
14 will actually save calendar time with the delay?

15 MR. LEVIN: Absolutely, yes.

16 JUDGE SHON: The second is this, and it is
17 quite a different matter, faced as we are often in these
18 cases with a situation in which the vast array of
19 technical talent and the vast array of technical
20 expertise and testimony is on one side of an issue,
21 where often the opposite side of an issue proposes to
22 base a good deal of its case on cross examination, when
23 we entertain motions and act on motions for summary
24 disposition do we not deprive the Board and, ultimately,
25 the Commission of anything that might have been brought

1 out on cross?

2 Do you see what I mean?

3 MR. LEVIN: Let me respond to that this way,
4 because your point is grounded on the question of
5 disproportionate ability of the parties to present
6 technical evidence, first of all I should say that if
7 the evidence that is presented, even though the
8 Licensees -- you know, the Licensees have a vested
9 interest in what is going on -- is sound evidence, then
10 I would hope that the Board would appreciate that and
11 would find it to be credible. Of course, the Board
12 could always find it not to be credible.

13 Secondly, we are in a proceeding where we have
14 the NRC Staff, which although a party, is not aligned,
15 except in the minds of some, is not aligned with the
16 Licensees and one could expect that their position and
17 their view of whether something should be summarily
18 dispensed with would carry a good deal of weight with
19 the Board and it would not be grounded at all with any
20 vested interest they may have in the position that
21 either the Power Authority or Con Edison might take.

22 So I guess I am not persuaded that any --
23 whatever disproportionate -- first of all, I am not
24 persuaded that the Union of Concerned Scientists, for
25 example, which is set up, if you read their charter, and

1 composed of people who have expertise in various areas
2 that are at issue here, I am not persuaded that they
3 could not do a good job of fighting their own battle on
4 that point, as well as NYPIRG, but particularly UCS.

5 But I think there will be sufficient evidence
6 available so that the Board can make that determination
7 and make a determination about whether the evidence is
8 credible, and whether further examination of any point
9 by way of cross examination and live testimony or some
10 other method the Board might devise would be useful.

11 JUDGE SHON: And you don't believe there would
12 be or could likely be important information missed
13 simply by not having cross examination?

14 MR. LEVIN: Well, I guess I can't sit here and
15 say information won't be missed, but I can't
16 characterize it as important or not. I wouldn't think
17 so. I think people are doing a competent job. There
18 are lawyers, there are counties here who have an
19 interest, if not identical, similar to that of the
20 intervenors. The New York State Attorney General is
21 participating in this proceeding and has indeed brought
22 an expert in, Dr. Beyea, whose testimony consumed quite
23 a bit of time here.

24 And the resources are there to develop that
25 kind of a case by way of affidavit for summary

1 disposition, for example. And certainly as far as the
2 intervenors are concerned, I should think the affidavits
3 would prove less costly to them than bringing all of
4 these people in at some other moment.

5 MR. KAPLAN: If I could be heard on this
6 matter, I am a bit surprised and maybe confused. The
7 analogy that Mr. Levin draws to the use of motions for
8 summary disposition or motions for summary judgment
9 under the Federal Rules are the procedures that usually
10 go on in a court of law in a traditional adversarial
11 atmosphere and I suggest to you they are somewhat
12 different and not applicable in this sort of situation,
13 given the mandate of this Commission.

14 Testimony is rarely prefiled the way it is
15 here in a Federal proceeding, a Federal court
16 proceeding, and the burdens are somewhat different -- I
17 would say very different -- in most of the proceedings
18 under the Federal Rules than they are here. I suggest
19 there are other mechanisms, given the Licensees' concern
20 of time and expedition, which I think we all share that
21 would help resolve it.

22 There are motions to strike testimony based on
23 it being submitted, motion for summary judgment under
24 the Federal Rules, and according to the schedule it
25 would have to be before the submission of testimony on

1 many of the contentions. To take Mr. Levin's suggestion
2 really means this case gets tried twice, once on paper
3 almost in its totality and once in the flesh.

4 I suggest that the Board's application on
5 offers of proof on questions and its receptivity on
6 motions to strike testimony on grounds of relevance is
7 limited. The way testimony is offered would speak
8 directly to the need of time without forcing into this
9 proceeding this double process. I think the analogy
10 with the judicial Federal proceedings is just erroneous.

11 More important, the point I wish to emphasize
12 here is the salient difference between this proceeding
13 and the normal ASLB proceeding in terms of the mandate
14 given to this Board. And just to reiterate, even if all
15 the intervenors and all of the interested states were to
16 fail to come forward with testimony to meet the
17 Licensees' standard of what would qualify to dispose of
18 a summary judgment motion, this Board will still be left
19 with its mandate nevertheless, and would have to go
20 forward and call its own witnesses or should call its
21 own witnesses.

22 On behalf of the members of the City Council,
23 we would oppose the introduction of a summary judgment
24 process into the proceedings.

25 JUDGE GLEASON: Mr. Levin, since a motion for

1 summary disposition, a motion for summary judgment, is
2 directed to reach the issues and the question of whether
3 there is a genuine issue of material fact, it does seem
4 to me that there should be some response -- well, let me
5 put it a different way.

6 What is your response to the question that my
7 predecessor raised, which, if I could summarize it, is:
8 Is there a responsibility on the part of the Board with
9 respect to answering the Commission's questions of a
10 side of the case that any of the parties to the case may
11 produce with respect to any contentions?

12 MR. LEVIN: I suppose, and, of course, we are
13 not talking about directing motions of summary
14 disposition to questions formulated by the Commission
15 itself.

16 JUDGE GLEASON: I understand.

17 MR. LEVIN: Your description of the purpose
18 and the way in which the motion for summary judgment is
19 employed is absolutely correct. Certainly if there were
20 no material issue of fact and the Board were persuaded
21 of that, there would be no point in pursuing such a
22 contention.

23 I don't know that I am addressing your
24 question, but we simply wouldn't proceed. There would
25 be no question. If the Board is satisfied there is no

1 material issue of fact and is satisfied that it would be
2 ready for summary disposition, it doesn't say which way
3 you dispose of it, but it is certainly ready for summary
4 disposition.

5 JUDGE GLEASON: Well, certainly the Board has
6 the continuing authority, if you will, to ask questions
7 at any time during the proceeding, which is, as you say,
8 a little different than raising something, and certainly
9 one can make the case that in addressing the
10 Commission's questions that the Board has the
11 responsibility to pursue such interrogations and,
12 therefore, I come back again to what you view as the
13 response to the question raised by Judge Carter that
14 irrespective of the case -- and I am interpreting
15 that -- irrespective of the case that may be put on in
16 the pleading stage dealing with those contentions, the
17 Board will have a continuing responsibility to find
18 answers, if it can, to questions raised by the
19 Commission.

20 MR. LEVIN: I attempted to answer the question
21 by saying that it does not seem to me that the Board
22 would pursue a question where all material facts were
23 known, that the Board can simply rule on the contention
24 at that point. I guess that is one approach to it.

25 Another thought, of course, is that the Board

1 might make a determination after having been directed by
2 the parties to certain discovery matters, responses to
3 discovery, that the contentions simply do not meet the
4 standards established by the Commission and that
5 although at first blush something which appeared to be
6 important is not now.

7 Of course, the Board could do that later,
8 obviously, but later, as a practical matter, means that
9 the Board would be doing it after testimony had been
10 developed and filed and presumably, in fact, unless
11 there was some special place in the schedule to deal
12 with this differently, after the witnesses who filed the
13 testimony had presented themselves and been subjected to
14 cross examination and redirect examination by the other
15 parties.

16 So then we would not gain what a motion for
17 summary disposition is supposed to permit -- a savings
18 of time, energy, cost.

19 JUDGE GLEASON: There is a consideration, in
20 fact, and I just mention this parenthetically, with
21 respect to one of the inquiries raised by Judge Shon,
22 and that is that motion -- handling motions for summary
23 disposition does take time and the question often in
24 Board proceedings, at least in my own experience, as to
25 whether they actually save or take more time often

1 depends on whether the Board, as I have done in several
2 cases, have issued a decision with respect to -- or the
3 Board has issued its decision with respect to it, with
4 postponing, if you will, its writing and the rationale
5 for its decision until sometime later because it just
6 doesn't have time in handling the case at the same
7 time.

8 So it seems to be that kind of issue as to
9 whether it really saves time or not.

10 Mr. Brandenburg?

11 MR. BRANDENBURG: It seems to me, Mr.
12 Chairman, in considering the summary disposition
13 procedure it is quite useful to distinguish between
14 Commission Questions on the one hand and the contentions
15 that have been raised on the other, and I think I agree
16 with what I understood to be general agreement
17 throughout the room that the summary disposition
18 procedure is perhaps inappropriate when we are talking
19 about Commission Questions 1, 2 and 5.

20 Those will be addressed by all the parties in
21 any event. What we are really talking about here is
22 whether the summary disposition procedure would be
23 useful in addressing the contentions, as distinguished
24 from the Commission questions themselves. I think in
25 that regard I have to find myself agreeing with Mr.

1 Kaplan, that this case is a little different from other
2 cases that we are talking about, about the Commission
3 questions, which is the investigatory mission, if you
4 will.

5 But instead, specifically focusing upon the
6 contentions that have been raised, and that is the fact
7 that the Commission has asked the Board to not only
8 clean out contentions that don't normally comport with
9 contention practice, but also to steam out contentions,
10 not Commission questions, but contentions that do not
11 seem likely to be important to answering Commission
12 questions.

13 I think this increases rather than diminishes
14 the value of the summary disposition procedure. I think
15 it will be a calendar time saver, to respond
16 specifically to what Judge Shon said in an earlier
17 question. It will give this Board an opportunity to
18 possibly avoid day after day of inquiry into this widget
19 or some other contention that will ultimately prove to
20 be a fruitless task.

21 It will not, in my opinion, diminish in any
22 way the vigor or thoroughness with which we will all
23 address the Commission question and the thoroughness of
24 our pursuit on those topics, I think, will continue and
25 indeed be enhanced by the summary disposition

1 procedure.

2 JUDGE PARIS: Mr. Brandenburg, did not the
3 Commission instruct us to gather evidence from which we
4 construct answers to its questions by way of
5 contentions? They really didn't tell us to take
6 evidence directed directly at the questions, did they?

7 MR. BRANDENBURG: Well, we find in a number of
8 instances, for example Commission Question 5 and indeed
9 going back to the September 18, 1981 order, the
10 Commission stated as its principal objective comparing
11 the risk of Indian Point with other plants because of
12 the population factor.

13 We find a situation where we have no
14 contentions really addressing that question and then we
15 had a Board question that was framed by the Board that
16 specifically focused on that, so it appears that it is
17 inevitable that a good deal of our inquiry is going to
18 be outside the format of contention practice, Judge
19 Paris. That is just unavoidable in what has happened.

20 We are all committed to a thorough addressing
21 of Commission Questions 1, 2 and 5. As I say, many of
22 us will do that without regard to the pendency of the
23 questions.

24 JUDGE PARIS: Would you look for us to handle
25 all questions where we did 5?

1 MR. GOLDBERG: I would like to respond to Mr.
2 Brandenburg. It strikes me that if in fact they are
3 saying now they aren't going to use summary disposition
4 on the Board Questions but, rather, only on the
5 contentions, my question for the Board would be would
6 your Board questions be any different if some of the
7 contentions were struck out?

8 It strikes me if you were saying that some of
9 these contentions or all of the contentions are relevant
10 to the answering of the questions, which apparently the
11 Board has now said, that if some of those questions are
12 struck out because of our inability to produce
13 sufficient amount of evidence to meet whatever
14 two-pronged test PASNY or Con Ed comes up with, having
15 showed these are important questions, I would assume you
16 would have to go back and reformulate your Board
17 questions, which would then put us right back to square
18 one once again.

19 It seems that indeed Mr. Brandenburg is
20 stating it quite correctly. He wants a second kick at
21 the cat because he feels this is a situation where
22 contentions have to meet an even higher standard than a
23 normal case. Well, you have had your kick at the cat,
24 it seems to me. The Board has spoken, it seems to me,
25 with regards to whether or not we meet the two-pronged

1 test, and to the extent that that may be in error in the
2 future and the Board may feel that that is right, we did
3 not provide or there is not at this point enough
4 evidence provided to meet that two-pronged test, then I
5 would assume that since that is identified as an
6 important question to meet the two-pronged test it
7 certainly would be important enough for the Board to
8 modify the question on that issue, and we would then
9 have to develop the testimony anyway.

10 And, again, that seems like a waste of time.

11 JUDGE SHON: I think, sir, you made a bit of a
12 leap of logic at one point. You spoke about these
13 contentions being struck out. Summary disposition is
14 not necessarily a process for striking out, eliminating
15 or disregarding. It is a process for finding that they
16 have been resolved issues, that no genuine issue of fact
17 exists, and we would not grant summary disposition
18 unless we thought all of the particular facts about this
19 contention had been resolved.

20 We are not dropping or ignoring it. We are
21 saying that it has been met and that we have met the
22 enemy and that they are ours, you know. We have met
23 this thing and it is solved.

24 MR. GOLDBERG: Well, I understand. I guess I
25 did make a jump of logic because I saw as a practical

1 matter that is the way it would be used rather than
2 saying yes, all the material facts are in and there is
3 no more facts to be gathered. Therefore, we don't need
4 testimony.

5 Rather, as a practical matter it would be used
6 by either PASNY or Con Ed to actually strike contentions
7 so that it could not be considered at all. If in fact
8 we can agree on the facts of a particular point on a
9 contention, there is always the opportunity to enter
10 into stipulation as to the facts, and that would
11 eliminate all sorts of testimony time and we would be
12 perfectly willing to sit down and work on any contention
13 or on any Board questions with regard to coming up with
14 such stipulations.

15 JUDGE GLEASON: Miss Moore, did you have
16 anything else you wanted to add to this already lengthy
17 discussion?

18 MS. MOORE: One moment, please?

19 (Pause.)

20 MS. MOORE: Mr. Chairman, Staff would agree --
21 and I will make this brief -- would agree that where a
22 contention is so related to a Commission question that
23 it might not be an appropriate candidate for summary
24 disposition and that the question would still remain, I
25 really don't know what Mr. Goldberg is referring to when

1 he talks about Board questions and having to reformulate
2 Board questions if contentions are stricken.

3 I don't think there are any Board questions
4 that might apply to. However, with regard specifically
5 to Commission Question 2, it may be there are
6 contentions under Commission Question 2 which need not
7 be discussed at a hearing -- specific safety measures --
8 if through summary disposition it can be shown by one
9 party or another that there are no genuine issues of
10 material facts with regard to the practical feasibility
11 of such a measure or its risk reduction contention, and
12 those are the kinds of contentions that one could
13 eliminate from consideration at a hearing.

14 The facts would still remain via the
15 affidavits and the Board's decision and the Board's
16 reasoning. The facts would all be there and the
17 contentions would not be ignored, it seems to me.

18 The position of some of these intervenors,
19 these contentions could not and should not be ignored.
20 The question is whether or not we need to spend hearing
21 time on them, if in fact there is clear evidence or
22 clear expert analysis that shows that these particular
23 safety measures are really not in fact what we thought
24 they were.

25 MR. GOLDBERG: It is interesting Mrs. Moore

1 brings up Question 2 because that is precisely the point
2 where I, for one, would want to utilize the opportunity
3 to have cross examination and because it is a very
4 complicated technical subject, and even with the
5 resources of the Union of Concerned Scientists it seems
6 to me the cross examination is going to be a very
7 important part of Question 2.

8 And I would agree with Judge Shon that summary
9 disposition would make it very, very difficult to put on
10 a full record on those questions.

11 JUDGE GLEASON: Well, without casting any
12 shadows on the time, I would say that I find your
13 comments extremely helpful. We will just have to see
14 where we are going.

15 I think that concludes the discussion with
16 respect to this issue, and we now should proceed --
17 well, we now should take a break. Let's take a
18 ten-minute break.

19 (A brief recess was taken.)

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1 JUDGE GLEASON: Can we proceed, please?

2 We will now proceed to some discussion of the
3 word "discussion," and I think it would be helpful if we
4 can get some comments from the parties as to what their
5 concerns are and their apprehensions are in this
6 connection. And so I will start with Mrs. Moore.

7 MS. MOORE: Yes, Mr. Chairman. What the staff
8 wished clarification of was the statement "reasoning or
9 evidence" in the Commission's order CLI 82-25, September
10 17, 1982. The Commission stated, "The Commission
11 intended that each party or group of parties
12 consolidated by the Board be required to include in any
13 direct testimony and related contentions that it may
14 choose to file on accident consequences a discussion of
15 the probability of the accidents leading to the alleged
16 consequences."

17 Our concern was the meaning of the statement
18 "reasoning or evidence." We see when reading the
19 Commission's order we understood it to mean that any
20 discussion of probability was to be in the form of
21 direct testimony or evidence, and we are concerned. We
22 would like a clarification of the meaning of the term
23 "reasoning" as meant by the Board in its October 29th
24 order.

25 JUDGE GLEASON: All right. Any other of the

1 parties have some concerns in this area?

2 Mr. Blum.

3 MR. BLUM: Yes. It's pretty much the same
4 concern. What I would like to do is focus the question
5 a little more by taking a guess at what the Board meant
6 by "reasoning or evidence." And you can tell me if my
7 guess is correct.

8 You do not mean by the use of the word
9 "reasoning" as opposed to "evidence" that it is outside
10 of the testimony. You see both reasoning and evidence
11 as being qualified by the word "therein," that it is
12 part of the testimony.

13 JUDGE GLEASON: That is correct.

14 MR. BLUM: But what you mean is the witness
15 can give both his own reasoning and he can cite prior
16 evidence in the form of supporting staff studies, for
17 example, as part of the testimony that this witness has
18 incorporated; and that that is the meaning of the term
19 "reasoning or evidence."

20 JUDGE GLEASON: That is correct.

21 MR. BLUM: Thank you.

22 JUDGE GLEASON: Is that helpful to you, Mrs.
23 Moore?

24 MS. MOORE: Yes.

25 JUDGE GLEASON: Does anybody else have any

1 comments in this area?

2 We will then go to -- we have two items
3 remaining. The big item, of course, is the schedule.
4 Then there was an area with respect to consolidation,
5 although I'm not sure that it's something that has to be
6 discussed at this conference, and I'm not sure that it
7 should be either. But it doesn't have to because of
8 time.

9 Three -- four parties, I guess, have put in --
10 well, more than four parties, because UCS has put in
11 their comments on scheduling on behalf of, I gather,
12 most of the intervenors. And the licensees have
13 proposed a schedule. And then there are some limited
14 recommendations from the staff on schedule. I guess
15 that's a fair way to characterize it.

16 And I guess really the best way to proceed --
17 there is no good way to proceed -- is to ask any of the
18 parties that were not involved in any of the submissions
19 whether they have any comments to make with respect to
20 scheduling before we proceed.

21 I am hearing none, so if you'll just bear with
22 me.

23 (Board conferring.)

24 JUDGE GLEASON: The reason for the delay is
25 that we have just proceeded a little faster than I had

1 anticipated that we would. But anyway, we have
2 regrouped.

3 We have looked over the recommended schedules,
4 and I think it is obvious to anyone and it's apparent
5 that in certain areas they follow kind of some of the
6 recommendations, and in other areas they are rather
7 badly separated.

8 I am always in favor as a Board Chairman of
9 having parties do as much work in a proceeding as it is
10 humanly possible to get parties to do.

11 (Laughter.)

12 And, therefore, what I intend to do is to use
13 my prerogative, I guess, as a chairman and appoint a
14 committee and on that committee I would have -- I will
15 appoint representatives, of course, from both of the
16 licensees; I would have a representative from UCS; and
17 then I would have a representative, and here my choice
18 is really -- I'm not sure it's a Hobson's choice, but
19 it's a choice because I looked at the number of
20 contentions, and really there are three organizations
21 that have an equal number of contentions in, but I
22 picked WBCA as representing the fourth member of a
23 four-man committee.

24 And it would be the responsibility of members
25 of that committee to consult with all of the other

1 parties who are not represented on the committee and to
2 come up with an agreed upon schedule.

3 (Laughter.)

4 As you will note, I waited for your reaction.

5 MR. PIKUS: Are you going to give us a date
6 for the agreed upon schedule?

7 JUDGE GLEASON: I will give you a time.

8 As you know, the Commission is waiting and has
9 been waiting for two or three weeks, I guess, for the
10 Board to come back to it with respect to the date at
11 which it believes it can finish this proceeding and make
12 its recommendations to the Commission. And obviously we
13 did not and could not respond and would not respond to
14 the Commission until we had explored this subject with
15 the parties.

16 We would intend to take at this point a 15 or
17 20-minute recess, but not longer than that, not to have
18 you come up with a schedule but to have -- the Board
19 realizes that there are things that the Board has to
20 decide with respect to your abilities to come together
21 with a schedule. Obviously, the questions that you've
22 raised with respect to Questions 3 and 4 are very much
23 involved, and obviously the questions that have been
24 raised on the motion for summary disposition are
25 involved.

1 To the extent that it's capable of providing
2 guidance to you of decisions, if you will, within the
3 next 15 minutes, we intend to do that before we throw
4 this to the committee. We would then expect this
5 committee to work the rest of the day, what is left of
6 it, and possibly some time in the morning, and to come
7 back -- hopefully we can decide this when we come back
8 here. You can decide on the time period. We can come
9 back at 10:30 or 11:00 in the morning, and we would like
10 to get your recommendations at that point.

11 We see no purpose to be served by just
12 throwing it to the committee and then having you send
13 something to us in Washington. We would like to have
14 that discussed at the present time because time is going
15 on, and we must proceed with dispatch as much as we can
16 in this proceeding.

17 So unless there is something that should be
18 said further at this point -- do I hear anything? Yes.

19 MS. VETERE: Your Honor, the interested states
20 would request representation on this committee.

21 JUDGE GLEASON: Well, I really don't think
22 that is appropriate, and I will tell you why. I think
23 that the interested states are in many respects -- they
24 can come and go with respect to schedule. They can be
25 here or they can't be. They can either comment on an

1 issue or not comment on an issue. I know from my own
2 service on local government they are an important part
3 of a proceeding when they are a part.

4 I would anticipate that the representatives of
5 this committee would be in consultation with you and get
6 your views with respect to that schedule.

7 MS. FLEISHER: Your Honor, I hadn't planned to
8 bring that up until tomorrow. Tomorrow at 1:00 the
9 State of New York, FEMA, the licensees, and the NRC have
10 another one of their task force meetings. We urged them
11 not to have it on the 3rd or the 4th because of the fact
12 that these hearings were scheduled, but I believe some
13 of them wanted it so they wouldn't have to travel
14 twice. And they may have enough forces, but some of us
15 don't to attend both. And I had planned to ask you
16 tomorrow that lunchtime start at 1:00 when that meeting
17 starts so that we could attend that 1:00 meeting and
18 then come back here at 2:30 or 3:00, something like that.

19 It looks to me like that is another conflict,
20 and I would like to know how far you feel we were in the
21 proceedings other than the scheduling.

22 JUDGE GLEASON: I think that is all we have
23 left is the scheduling.

24 MS. FLEISHER: In other words, if we came back
25 at --

1 JUDGE GLEASON: That is all we have.

2 MS. FLEISHER: In other words, if we came in
3 at 10:30 or 11:00 we'd be done?

4 JUDGE GLEASON: As far as I know.

5 JUDGE PARIS: If you can make that committee
6 work hard, you can keep them in shape.

7 MS. FLEISHER: I was up all night last night,
8 sir.

9 JUDGE GLEASON: Ms. Vetere, I've taken another
10 prerogative of the Chair, and I've changed my mind about
11 representing you on the committee, if you can agree with
12 the others who are here, with the representatives of
13 government. My problem is --

14 MR. KAPLAN: If you have no objection --

15 JUDGE GLEASON: If you will represent all
16 local governments and all state governments on the
17 committee, I'll appoint you.

18 MS. VETERE: All right.

19 JUDGE GLEASON: All right.

20 MS. HOLT: Is it conceivable that that could
21 be done today and that you could try to resolve this
22 issue today and not have to drive up from New York City
23 tomorrow morning?

24 JUDGE GLEASON: I would doubt it very much,
25 but anything is possible.

1 MS. HOLT: Could we make a stab at it perhaps?

2 JUDGE GLEASON: Well, you can think about it
3 while we're in recess, how's that?

4 Thank you, all. We'll be back in 15 to 20
5 minutes.

6 (Recess.)

7 JUDGE GLEASON: If we could proceed, please.

8 I would like the Reporter to note that we have
9 been out 21 minutes. This is in response to someone
10 asking me whether we could finish the schedule tonight.

11 MR. HARTZMAN: Your Honor, can she use the
12 microphone?

13 JUDGE GLEASON: I thought it was on. All
14 right.

15 In the carrying out of the committee's
16 responsibility to hopefully produce an agreement on the
17 schedule for the Board's consideration it is obvious, of
18 course, the committee is faced with some difficult
19 choices to make, and we have considered in the brief
20 time we have been together as a Board or outside as a
21 Board considering this not only the question of the
22 disposition and the resolution of Contentions 3 and 4,
23 but also the issue of in what order the contentions
24 would be best heard.

25 We are mindful, of course, of the Commission's

1 recommendations, and we are also mindful of where the
2 Board and the parties stand with respect to what they
3 still have to do on the completion of any discovery, if
4 there is to be additional discovery questions. And this
5 is something you will have to take a look at.

6 It appears to us that because there is an
7 evaluation, particularly -- and some additional
8 complications in connection with the evaluation of
9 possibly additional material -- and it appears to us in
10 connection with Contention 1 and it appears to us that
11 Contention 2 is in a more advanced stage, that we would
12 suggest to the committee that the order of hearing be
13 reversed with respect to those two contentions so that
14 you would start with Contention 2 and then go to
15 Contention 1. And then you would go -- and there is a
16 caveat here that I will address in a minute -- where you
17 would consider going to Contention 5 and 6. And then
18 winding up the hearing phase of it with respect to
19 Contention 3 and 4.

20 Having said that, the Board has decided that
21 there is not a necessity, although we can see some
22 rationale, for delaying out. There is not an absolute
23 necessity for delaying the reformulation of the
24 contentions dealing with 3 and 4 until after the
25 evaluation -- the evaluation of FEMA of the exercise and

1 drill which is to occur in February or March.

2 We would propose that you put in your schedule
3 whatever events are necessary with respect to
4 reformulating the contentions on 3 and 4 after FEMA
5 reports on the adequacy of the emergency plan to the
6 Commission, which presumably will occur shortly after
7 December the 3rd.

8 If the preliminary matters with respect to
9 those contentions are completed prior to the time that
10 the Board would be -- that the Board would have before
11 it the evidentiary hearing on Contentions 5 and 6, we
12 believe there is a lot of logic to at least proceeding
13 with 3 and 4 ahead of Contention 5, because there are
14 some contingency provisions in Contention 5 dealing with
15 what has gone forth. So, therefore, we recommend to the
16 committee that that be programmed in. If that were the
17 case, then, of course, we would have to take a look at a
18 period subsequent to FEMA's evaluation of the exercise
19 as to whether any additional testimony was required.
20 And of course in that sequence we would wind up with
21 Question 6 as the last question for the evidentiary
22 hearing.

23 The other issue that gets involved obviously
24 in the schedule involves the motion for summary
25 judgment. The Board does not believe it should decide

1 that motion at the present time and does not believe
2 that the committee should allow a time period in its
3 schedule for such motions if they are filed. In other
4 words, we will decide on the basis of the pleadings'
5 prefiled testimony, if such a motion is filed, as to
6 whether it should be approved or not -- or granted or
7 not, excuse me.

8 So we are really not deciding that issue, and
9 we don't think it ought to be put in the schedule.
10 Obviously, if such motions are filed, there is some time
11 period involved, and we will probably make some -- or
12 depending on where we are -- and I'm sure we'll be in a
13 very accelerated phase of the schedule at that time --
14 we will probably take advantage of the opportunity to
15 decide that issue, and then write our justification for
16 it at a subsequent period, so in effect it will not take
17 a length of time.

18 Now, having said all that I hope, number one,
19 that you will understand it because I would hate to have
20 to go through it again, but in any event, let me throw
21 it open for any discussion you would care to have on it
22 at this particular time.

23 JUDGE PARIS: Could the parties who are
24 sending a representative to the committee indicate who
25 that representative will be?

1 MR. LEVIN: For the Power Authority, Mr.
2 Chairman, the representative will be Mr. Paul Colarulli.

3 MR. BRANDENBURG: Mr. Chairman, I'll be the
4 representative.

5 JUDGE GLEASON: All right, Mr. Brandenburg.
6 Mr. Blum.

7 MR. BLUM: For the Union of Concerned
8 Scientists I will be the representative, Jeffrey Blum.

9 MS. FLEISHER: For West Branch Conservation
10 Association, Zipporah S. Fleisher.

11 JUDGE GLEASON: And we know who the
12 governmental representative will be, don't we?

13 Yes, Mr. Blum.

14 MR. BLUM: Thank you, Your Honor.

15 There's one rather important matter that
16 wasn't addressed directly in the Board's rulings, and
17 I'd like to clarify it for a minute so the Board will
18 have complete information before making a final ruling
19 on this.

20 It concerns the matter of the witnesses of
21 interested states. One of the things -- well, since we
22 are accelerating things I'll just try to get down to
23 brass tacks as quickly as possible.

24 It is known, as Ms. Vetere pointed out, that
25 the Westchester County executive who has been

1 supervising the emergency planning efforts and the
2 testimony prepared under his auspices will be, I guess
3 sometime in January, will be leaving to become
4 Lieutenant Governor at which point the effective control
5 of the Westchester County executive may shift to other
6 political forces based on the opposing political party
7 having a majority in the county legislature.

8 Now, one effect of delaying the Westchester
9 official's testimony past Mr. Del Bello's departure will
10 be to open up a kind of vast political football game of
11 those who have substantial political clout trying to
12 make deals with the new incoming administration to
13 suppress testimony that has already been prepared and
14 filed. I don't know exactly --

15 MR. LEVIN: I don't know what's gone on with
16 the intervenors before, Your Honor.

17 MR. BLUM: I don't know exactly who's going to
18 do what. I assume everyone will act in good faith. But
19 we will be opening up a certain kind of donnybrook.

20 MR. SCHINKI: It's called democracy.

21 MR. BLUM: Well, no, this would be an
22 appointive process.

23 But anyway, there is a substantial risk of
24 testimony which is already being filed sort of squelched
25 in backroom meetings.

1 (Laughter.)

2 I really want the Board to know.

3 JUDGE GLEASON: Let's conduct this in a little
4 more seriousness.

5 MR. BLUM: This would certainly not be the
6 Board's intention, and it is certainly not the
7 Commission's intention either. It would be sort of an
8 unfortunate coincidence of scheduling decisions being
9 made remote from careful consideration of the facts.

10 But I do suspect that if this kind of process
11 were to go on -- and I can't say with great accuracy
12 whether it will -- it will wind up I think unfairly
13 impugning the integrity of the hearing process, because
14 there will be this prefiled testimony that's right
15 there, not on the record yet, but it's already been
16 filed, and the press knows about it and we know about it
17 and everyone knows about it. And some of it may kind of
18 mysteriously disappear.

19 And that kind of transition, as you might put
20 it, is not optimum for judicial process. So I do want
21 the Board to know that there may be kinds of serious,
22 unforeseen externalities involved with not allowing the
23 county witnesses to go forward in the time that they
24 have available between now and January 20th.

25 JUDGE GLEASON: Well, Mr. Blum, all I can say

1 is that argument has already been made, and it's
2 something as a member of the committee that you can talk
3 to the committee about.

4 Yes, Ms. Fleisher.

5 MS. FLEISHER: Less abstract than Mr. Blum, I
6 think we've already had some of the problem in
7 Rockland. We have a new transportation adviser, and
8 without any of these additional political problems which
9 he described, simply that our transportation adviser
10 resigned, and we had to get a new person, and he had to
11 learn the whole plan and the whole bit all over again.
12 So that I think we risk, without any question of whether
13 it is democracy or not, having newcomers, having people
14 who don't know the plan talk about the plan.

15 I would like to suggest that the oldcomers be
16 allowed to testify, and then if anything should arise
17 that the new people feel has been testifying to is
18 somehow or other incorrect, that they be at least
19 allowed to offer their suggestions as to modifications.
20 Because it really isn't fair to the people of
21 Westchester County. You have millions. You have half
22 the population around Indian Point who would then be
23 confronted, you might say, with an estimation here in
24 these important safety hearings being made by people who
25 were supplanted or who just of necessity were new. You

1 know, it might be a lot of these people want to go with
2 Del Bello to Albany, and just through the mechanics of
3 it you have a bunch of new people, and it would delay
4 things.

5 I think we certainly ought to hear the
6 experienced people first, and then if we have any
7 problems or if Westchester feels that they haven't been
8 properly represented by those who testified, let them
9 then make their appeal to change or reformulate
10 testimony, and we would then have the Board consider
11 whether or not that is suitable, whether or not their
12 future testimony as proposed did indeed make a
13 difference. And it would be, Your Honor, more orderly,
14 I think.

15 JUDGE GLEASON: I thank you, Ms. Fleisher.

16 All I can say is that the Board has made its
17 recommendations to the committee, and it is up to the
18 committee now to hopefully produce a schedule with some
19 agreement behind it.

20 It is now 15 minutes after 4:00. Somebody
21 raised the question before as to whether they thought
22 the committee could consult with everybody and come up
23 with a recommendation by 5:00. I would suggest that
24 that would not be possible.

25 I would suggest that the committee members

1 stay here and the other parties, too, so that they can
2 discuss together how you want to proceed. I also would
3 suggest that we come back in session at 10:30 tomorrow
4 morning to allow you to have time over in the morning if
5 you have to continue this, to come back with that
6 recommendation. Then we will see you at that time.

7 So without any further discussion, we will
8 adjourn the meeting until tomorrow at 10:30, and we wish
9 you well.

10 Thank you.

11 (Whereupon, at 4:16 p.m., the prehearing
12 conference was recessed, to be reconvened at 10:30 a.m.,
13 the following day, November 4, 1982.)

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NUCLEAR REGULATORY COMMISSION

This is to certify that the attached proceedings before the
BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

in the matter of: Consolidated Edison Company of New York (Indian Point Unit 2)
Power Authority of the State of New York (Indian Point Unit 3)

Date of Proceeding: November 3, 1982

Docket Number: 50-247 SP & 50-286SP

Place of Proceeding: White Plains, New York

were held as herein appears, and that this is the original transcript
thereof for the file of the Commission.

ALFRED H. WARD

Official Reporter (Typed)



Official Reporter (Signature)