

Before the Atomic Safety and Licensing Board

Docket Nos. 50-596
50-597

452 036

Stuyvesant and Concerned Citizens for Safe Energy.⁽¹⁾

Town of Mexico

It is not clear from the Town of Mexico's petition whether it seeks to intervene or make a limited appearance or for that matter whether it supports or opposes the construction and operation of NYSEG Units 1 and 2. The Town of Mexico does not appear to have satisfied the minimum requirements for intervention. (See 10 CFR §2.714(a)(2).)

County of Columbia, Town of Stuyvesant
and Concerned Citizens for Safe Energy

Petitioners have served a Petition To Intervene accompanied by counsel's Affirmation In Support Of Petition To Intervene. Although the Commission's regulations respecting the requirement contained in 10 CFR §2.714(a) that an affidavit accompany petitions to intervene has been abolished (43 Fed. Reg. 17798), the Petitioners

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- (1) The New York State Energy Office's petition was dated March 5, 1979 and served on March 7. All of the following petitioners did not provide a certificate of service; Oswego County Farm Bureau's petition was not dated but was received on March 14, 1979; Town of Mexico's petition was dated February 20, 1979 and was not received by Applicant's counsel until March 12, 1979 from the Office of the Secretary of the Commission with docket date stamp of March 7, 1979; Mexico Academy and Central School's petition was dated February 26, 1979, postmarked March 12, 1979 and received on March 15, 1979; Safe Energy for New Haven's petition was dated March 10, 1979, postmarked March 12, 1979 and received March 14, 1979; Ecology Action's petition dated March 8, 1979, was not received by Applicant's counsel until March 16, 1979 from the Office of the Secretary of the Commission with docket date stamp of March 14, 1979; joint petition of Columbia County, Town of Stuyvesant and Concerned Citizens for Safe Energy was not dated but counsel's Notice of Appearance and counsel's Affirmation in Support of Petition to Intervene was dated March 12, 1979, and received on March 15, 1979.

have not elected to have their counsel affirm their Petition to Intervene. It is not, however, apparent that counsel for the Petitioner is necessarily competent to make all of the averments contained in his affirmation. Northern States Power Co. (Prarie Island Nuclear Generating Plant, Units 1 & 2), ALAB-107, 6 AEC 188, 190, reconsid. denied, ALAB-110, 6 AEC 247, affirmed CLI-73-12, 6 AEC 241 (1973).

With respect to the motions contained in its Petition To Intervene which Applicant opposes, it would seem that the relief requested is premature since a person does not become a party until he is granted that status by the NYSEG 1 & 2 Licensing Board which has been designated by the Chairman of the Atomic Safety and Licensing Board Panel. (44 Fed. Reg. 8392, 10 CFR §2.714(g), and §2.730(a)).

With respect to the Petitioners' assertion that they may be injured if the construction permits for NYSEG 1 and 2 are granted, it would appear that Petitioners constituency is located more than 100 miles from the New Haven site. Although residence within 30-40 miles⁽²⁾ of the reactor site is sufficient to satisfy the "zone of interest" test as set forth in the Pebble Springs case, Portland General Electric Co. (Pebble Springs Nuclear Plant, Units 1 & 2), CLI-76-27, 4 NRC 610 (1976), and residence

(2) Northern States Power Co. (Prarie Island Nuclear Generating Plant, Units 1 & 2), ALAB-107, 6 AEC 188, 190, reconsideration denied, ALAB-110, 6 AEC 247, affirmed, CLI-73-12, 6 AEC 241 (1973); Louisiana Power & Light Co. (Waterford Steam Electric Station Unit 3), ALAB-125, 6 AEC 371, 372 n. 6 (1973); Virginia Electric & Power Co. (North Anna Power Station, Unit 1 & 2), ALAB-146, 6 AEC 631, 633-34 (1973).

within 50 miles⁽³⁾ might also satisfy this test, Petitioners' remote location from the proposed NYSEG 1 and 2 facility should preclude a finding of standing.

The Petitioners further assert, in effect, that they may be injured by the denial of construction permits for NYSEG 1 and 2 in that the Licensing Board's determination of various issues in that proceeding could be binding upon the petitioner in another proceeding relating to the Stuyvesant site. The Indian Point case (Consolidated Edison Co. of N.Y., Inc. (Indian Point, Units 1, 2 & 3), ALAB-304, 3 NRC 1 (1976)), held that a potential intervenor having the same issue in another proceeding in which he is a party does not give standing to intervene in the other proceeding in order to protect the potential intervenor from the creation of an adverse factual or legal precedent. The fact that a potential intervenor in one proceeding may be confronted with the same or similar issues in a hypothetical proceeding respecting the same facilities but at another site would not appear to justify a departure from the holdings of the Indian Point case. In addition, with respect to paragraphs 5 and 15 of counsel's Affirmation In Support Of Petition To Intervene, Petitioners have not particularized a causal relationship between the asserted injury to their interest and

(3) Tennessee Valley Authority (Watts Bar Nuclear Plant, Units 1 & 2), ALAB-413, 5 NRC 1418, 1421 at n. 4 (1977).

the licensing action being sought in this proceeding as required by 10 CFR §2.714(a)(2).

Although the Petitioners do not appear to have standing as a matter of right, intervention could be allowed as a matter of discretion. Portland General Electric Co. (Pebble Springs Nuclear Plant Units 1 & 2), supra, at 614-17. In light of the premature motion of the Petitioners respecting financial assistance it does not appear likely that the Petitioners would make a valuable contribution towards developing a sound record. It should also be noted that there is available other means whereby the Petitioners' interest will be protected. The Petitioners apparently have already been admitted as parties to the proceeding before the New York State Board on Electric Generation Siting and the Environment for the NYSEG 1 & 2 facilities. (See Counsel's Affirmation In Support Of Petition To Intervene, paragraph 18.)⁽⁴⁾ In addition, it is not unlikely that the Petitioners' interest will be represented by the New York State Energy Office if its Petition For Leave To Participate is granted.

(4) The Applicant is not aware that party status has been granted the Petitioners.

Respectfully submitted,

NEW YORK STATE ELECTRIC
& GAS CORPORATION

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Dated: March 20, 1979

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)

NEW YORK STATE ELECTRIC & GAS)
CORPORATION and LONG ISLAND)
LIGHTING COMPANY)

(NYSEG Nuclear Power Station,)
Units 1 and 2))

Docket Nos. STN 50-596
STN 50-597

CERTIFICATE OF SERVICE

I certify that service of APPLICANT'S ANSWER TO PETITIONS
TO INTERVENE and NOTICE OF APPEARANCE dated March 20, 1979 was
made upon the following by first-class mail on March 20, 1979:

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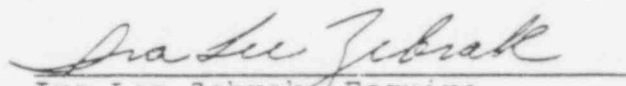
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