

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION



Before the Atomic Safety and Licensing Board

In the Matter of )

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

(New Haven Nuclear Power Station, )  
Units 1 and 2) )

Docket Nos. 50-596  
50-597

APPLICANT'S ANSWER TO PETITIONS  
FOR LEAVE TO INTERVENE OF THE  
TOWN OF GARDINER AND THE ULSTER COUNTY  
ENVIRONMENTAL MANAGEMENT COUNCIL

On February 9, 1979 the Nuclear Regulatory Commission published in the Federal Register (44 Fed. Reg. 8392) a notice of Hearing of Application for Construction Permits regarding the application filed by the New York State Electric & Gas Corporation (NYSEG) and the Long Island Lighting Company (LILCO) for construction permits for two pressurized water nuclear reactors designated as NYSEG 1 and 2 (since changed to New Haven 1 & 2) to be located in the Town of New Haven, Oswego County, New York. The notice provided, inter alia, that any person whose interest may be affected by the proceeding could file a petition to intervene by March 12, 1979. Counsel for New York State Electric & Gas Corporation (NYSEG)

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received NRC Staff Counsel's letter dated April 19, 1979 which enclosed a copy of the Petition For Leave To Intervene of the Ulster County Environmental Management Council dated March 15, 1979 and the Petition For Leave to Intervene of the Town of Gardiner dated March 13, 1979.<sup>(1)</sup>

These nontimely petitions do not appear to establish grounds necessary for intervening in this proceeding in that the Petitioners fail to satisfy the regulatory requirements regarding a showing of standing. Although residence within 30-40 miles<sup>(2)</sup> 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 within 50 miles<sup>(3)</sup> might also satisfy this test, the Petitioners' remote location in

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(1) NYSEG is also in receipt of the Town of Gardiner's letter dated April 12, 1979 which was received on April 26, 1979 from the Office of the Secretary of the Commission with docket date stamp of April 23, 1979.

(2) Northern States Power Co. (Prairie 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, Units 1 & 2), ALAB-146, 6 AEC 631, 633-34 (1973).

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

Ulster County, more than 100 miles from the proposed New Haven 1 & 2 facility, and the failure to particularize an injury that the Petitioners would sustain from the construction and/or operation of New Haven Units 1 & 2 as required by 10 CFR §2.714(a)(2), should preclude a finding of standing.

The notice appearing in the Federal Register on February 9, 1979, required that petitions to intervene be filed by March 12, 1979. The petitions of the Town of Gardiner and the Ulster County Environmental Management Council were filed after that date.<sup>(4)</sup> Other than the Petitioners' allegation that they weren't aware that alternate sites were being considered in Ulster County as good cause for failure to file on time, they have failed to address the factors contained in 10 CFR §2.714(a)(1). With respect to the granting of discretionary intervention, in view of the Petitioners' silence on the factors contained in 10 CFR §2.714(a), (d) and the Pebble Springs case (Portland General Electric Co. (Pebble Springs Nuclear Power

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(4) NYSEG was served with the petitions of the Town of Gardiner and the Ulster County Environmental Management Council on April 19, 1979 by letter of NRC Staff Counsel to the Board.

Plant Units 1 & 2), supra, at 614-17), the Petitioners have not justified, on the face of its pleading, the granting of party status as a matter of discretion.

Respectfully submitted,

NEW YORK STATE ELECTRIC  
& GAS CORPORATION

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Dated: May 4, 1979

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CERTIFICATE OF SERVICE

I certify that service of APPLICANT'S ANSWER TO PETITIONS  
FOR LEAVE TO INTERVENE OF THE TOWN OF GARDINER AND THE ULSTER  
COUNTY ENVIRONMENTAL MANAGEMENT COUNCIL was made upon the following  
by first-class mail on May 4, 1979:

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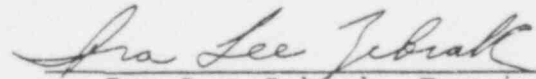
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