STATE OF NEW YORK
DEPARTMENT OF PUBLIC SERVICE

BOARD ON ELECTRIC GENERATING
SITE AND THE ENVIRONMENT

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In the Matter of the Application of :

POWER AUTHORITY OF THE STATE OF NEW YORK :

Case 80006

:

(Greene County Nuclear Generating Facility) :

- x

JOINDER OF GREENE COUNTY ET AL. IN APPEAL FROM RULING OF PRESIDING EXAMINER RELATIVE TO TERMINATION OF PROCEEDING

Greene County, the Town and Village of Catskill, and the Town and Village of Athens (collectively, "Greene County") hereby join in and support the appeal of the Department of Public Service Staff from the Ruling of Presiding Examiner Cohen issued May 14, 1979. By that ruling, Judge Cohen denied a motion by Staff, joined in by Greene County and others, to dismiss the application in this case and terminate the proceeding.

This appeal is of special concern to Greene County. The County has consistently and vigorously opposed PASNY's plans to build a nuclear plant in its midst and has spent well over $100,000 of its own funds in an effort to defeat the proposal. Now it appears that those efforts will bear fruit. However, as long as there remains any prospect that the Cementon or Athens' sites will be used for a nuclear plant, it is virtually impossible for the county to plan its own future. Aside from direct economic threats (as, for example, in discouraging the renewal plans of the Lehigh Cement Company), the spectre of Three Mile Island has made practically any prospective nuclear site undesirable for other uses. The County and its citizens ought not to be subject to this uncertainty. If PASNY or any successor intends to proceed with the nuclear proposal, it should be required to do so now. Otherwise, the application in Case 80006 should be dismissed.

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This is not an interlocutory appeal, but one that seeks an end to the case. As such, it may well be that the full Siting Board must act on the question. If the Commission deems this necessary, the County respectfully asks that the appeal be referred to the Board. Whatever the forum, however, the County asks for a decision now.

In support of this respect, the County incorporates the points made in Staff's appeal papers, and adds the following additional observations.

1. It is ridiculous for Judge Cohen to state that the time limits imposed by the amendments to Article VIII were "designed principally to protect an applicant against unreasonable delay ..." Unfortunately, this attitude that the applicant is entitled to whatever delays it wants has characterized a great many of Judge Cohen's rulings in this case. The Legislature, however, did not amend Article VIII to include a proviso that the time limits do not apply to applicants, nor can that reasonably be read into the statutes. The limitations were designed to provide the public -- and not only the utilities -- with a regulatory process that would ensure prompt decisions and not leave matters hanging and uncertain for lengthy periods. Judge Cohen's ruling runs directly counter to the statutory mandate. It must be reversed under any reasonable reading of the law.

2. It is also ridiculous for Judge Cohen to suggest that PASNY could properly amend its application in Case 80006 to substitute a coal plant at Athens for the nuclear unit it had asked to be certified at Cementon or, alternatively, at Athens. PASNY's application in Case 80006 does not include any proposal or request to build a coal plant -- and it has long claimed that a coal plant was neither contemplated nor authorized by its trustees. If the trustees now change their tune, PASNY can file a new application, subject to the amended provisions of Article VIII. There is no basis, however, in law or in fact, for contending that a coal plant can be proposed by PASNY within this docket.

It is noteworthy that with a new filing, PASNY will have to prove need, whereas its trustees' determination was previously conclusive under the statute. It is also noteworthy that with a new filing, PASNY would have to make $200,000 available for municipal and intervenor studies, whereas if it could hew to Case 80006, it would presumably argue that it had no further obligation of contribution. Both of these points are conveniently downplayed by Judge Cohen. Yet they were obviously at the heart of the Legislature's

thinking when it amended Article VIII, since it concluded that PASNY's own determination of need should no longer be determinative and, further, that added funds for municipalities and intervenors were to the public benefit. Judge Cohen's suggestion that PASNY could now amend to propose a coal plant would, if accepted, completely undermine the Legislative directives that have been given. This is beyond the authority of a hearing officer or anyone else to do.

3. Finally, we cannot help but observe that Judge Cohen's ruling is as insensitive to the concerns of the intervenors as it is attentive to the interests of PASNY. This has not been the most pleasant of proceedings, due in part to the arrogance with which PASNY approached the case. The Authority's attitude that its decision to build a nuclear plant was beyond question; its consistent refusal to present an analysis of a coal alternative; the litigation that it brought to challenge any consideration of nuclear risks; its denial of any substance to the concerns of Lehigh Cement; its insensitivity to the visual impacts of its cooling tower and plant structures -- these and other aspects of PASNY's conduct have created a sense of overreaching that cannot be gainsaid. Against this background, Judge Cohen's deferential approach to the Authority is particularly discomfitting. The County, for one, has had to live too long in the shadow of PASNY's plans. It is time that the Authority be held to the same standards as others. It is time, in short, that this docket be brought to an end because PASNY has failed to make its case and was wrong in its proposal.

This application in Case 80006 should be dismissed now.

Dated: June 5, 1979

Respectfully submitted,

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cc: Active Parties