STATE OF NEW YORK DEPARTMENT OF PUBLIC SERVICE

THE GOVERNOR NELSON A. ROCKEFELLER
EMPIRE STATE PLAZA ALBANY 12223

PUBLIC SERVICE COMMISSION

CHARLES A. ZIELINSKI
Chairman

EDWARD P. LARKIN
CARMEL CARRINGTON MARR
HAROLD A. JERRY, JR.
ANNE F. MEAD
KAREN S. BURSTEIN
RICHARD S. BOWER

PETER H. SCHIFF
General Counsel

SAMUEL R. MADISON
Secretary

50-547

May 2, 1979

Hon. Edward Cohen, Presiding Examiner
Public Service Commission
Empire State Plaza
Albany, NY 12223

Re: CASE 80006 - PASNY - Greene County

Dear Examiner Cohen:

Staff of the Department of Public Service moved on April 5, 1979 to dismiss the Greene County Article VIII application. The Power Authority of the State of New York filed papers on April 16th opposing our motion and presenting a cross-motion to hold this proceeding in abeyance for six months. This letter responds to PASNY's cross-motion.

PASNY proposes to report on the status of the application by October 16, 1979 because it believes our dismissal motion is (1) premature and (2) may cause the loss of environmental data gathered for the Greene County proceeding. The second claim is easily refuted: the Article VIII Rules of Procedure provide that an applicant may use data gathered by another person as long as the data are reliable and would otherwise comply with applicable regulations.* So if PASNY found a substitute applicant or if this application were dismissed and PASNY refiled, the Greene County data would not be "lost."

* 16 NYCRR 71.10: "Use of Available Data. The Applicant may utilize reliable available information gathered by another person if such information would otherwise comply with the requirements of this Subchapter."

257

25

7907 030203

PASNY's first argument, that it is premature to decide our motion, runs counter to the statutory time limit for deciding pending Article VIII cases. This point was made in the April 18, 1979 response by Citizens to Preserve the Hudson, et al. Case 80006 must be decided by February 4, 1980, or less than four months after PASNY proposes to merely report on the status of the case.* In passing the new Article VIII statute, the Legislature intended to expeditiously conclude cases filed under the old law. PASNY's proposal of a six month hiatus guarantees that the statutory deadline will not be met. While the Siting Board may waive the deadline to build a record on specific issues, it may not suspend the proceeding for the reasons PASNY has asserted. PASNY's cross-motion, therefore, must be denied.

PASNY claims at page 3 that its cross-motion is consistent with precedent in another Article VIII case. But the situations are not comparable. In its Arthur Kill proceeding (Case 80004), PASNY was allowed time to search for another site for use by the same mode of generation (i.e., coal), but its existing prime and alternate sites remained in the proceeding. Or, to use the euphemism now in vogue, PASNY did not propose to "sell the assets" of the Arthur Kill plant and terminate its involvement. On the other hand, PASNY has abandoned the Cementon and Athens sites for the only mode of generation its application proposes. With no plans to build a nuclear station at either Cementon or Athens, there is nothing left to consider in the Greene County proceeding.

If there is any precedent to guide the present situation, it is Cases 80001 and 80005. Rochester Gas & Electric first filed an application to build a coal plant at Sterling or Ginna (Case 80001). When it decided to change the mode of generation from coal to nuclear, RG&E did not revise or amend its original application, but filed an entirely new application (Case 80005). It is true that Case 80001 was not dismissed when Case 80005 was pursued. RG&E, however, never tried to "sell the assets" of its coal facility, but rather used the coal plant as an alternate to its nuclear application.

---

* PSL § 149-a(3)(ii) as added by L. 1978, c.708: "[A]ny board decision with respect to an application filed pursuant to the provisions of article eight as added by said chapter three hundred eighty-five [i.e., the 'old' Article VIII] shall be reached within eighteen months of the effective date of this act, provided however that the board may waive the deadline in order to give consideration to specific issues necessary to develop an adequate record."

PASNY hints at page 2 that it may revise the Greene County application to include a coal plant at Athens. At the outset, it should be remembered that PASNY's failure during the early stages of this proceeding to present a fully developed coal alternate was a decision made at its own risk (see correspondence between Chairman Kahn and Chairman FitzPatrick, dated Oct. 22, 1976 and Nov. 16, 1976). Since the present application seeks only a nuclear plant and since PASNY's Trustees have resolved formally to construct only a nuclear facility in Greene County (see response to DPS Interrogatory 72-28), a coal plant at Athens would not be a technical revision to the existing application -- it would be a complete change of plans. As in PG&E's cases, a change in the very substance of the plans calls for a new application, since the environmental impacts of a coal plant are significantly different than those of a nuclear facility. In addition to the obvious differences in air impact, a coal plant would require the transportation, storage, and disposal of large amounts of coal and, probably, lime or limestone for a desulfurization system. Noise, solid waste, liquid waste, and terrestrial ecology impacts would change greatly. A higher stack for the coal plant would alter -- and make worse -- the aesthetics impact now predicted for the nuclear facility. The necessity to develop a Section 402 discharge permit for Athens and to apply to the U.S. Army Corps of Engineers for a dredge and fill permit (thus triggering a federal NEPA review) illustrate both the differences between the present and a so-called "revised" Greene County application and the impossibility of reaching a decision on a "revised" application within the statutory deadline.

Another problem with a "revised" application for a coal plant at Athens would be the lack of an alternate site.* Cementon is too small in size to accommodate 1200 megawatts of coal capacity, and particulate standards are now being violated in the immediate vicinity. To incorporate by reference one of the sites in the Arthur Kill proceeding is not proper, we believe, unless the opportunity for hearings is afforded all parties. The emergence of another applicant-proposed alternate site would illustrate the charade of calling a coal application for athens merely a "revision" to the nuclear application at Cementon. And, again, adequate consideration could not be given to a new alternate site within the statutory time limit.

---

* 16 NYCRR 70.20(c): "The failure of an applicant to submit a complete case with respect to at least two locations suitable for the proposed facility may provide a ground for dismissing its application as not permitting a reasonable basis upon which the board may determine that the proposed facility represents the minimum adverse environmental impact within the meaning of section 146 of the Public Service Law, unless the applicant clearly demonstrates that its proposed site is the only reasonable location for the facility or any alternate facility."

A "revised" application would simply be an attempt by PASNY to preserve its need exemption (cf § 146(2)(f) of the "old" Article VIII to the same section of the Laws of 1978, chapter 708).*

Nor should the Greene County proceeding be held in abeyance on the ground that PASNY needs time to find a substitute applicant. An applicant willing to continue -- and to conclude in a timely manner -- a proceeding to certify a nuclear facility at Cementon is not likely to be found. This is particularly true for two reasons: the environmental impacts predicted for Cementon and the determination by PASNY's Trustees that the plant is uneconomic.

PASNY's cross-motion cannot be granted because of the statutory deadline for deciding this case. A "revised" application or a substitute applicant are fictions which should not be tolerated. With the vote by PASNY's Trustees not to continue its pursuit of a nuclear facility at Cementon or Athens, the time came to end the Greene County proceeding. DPS staff urges that its motion for dismissal of Case 80006 be granted.

Very truly yours,

Michael Flynn

MICHAEL FLYNN
Staff Counsel

cc: Hon. Donald Carson, Associate Examiner
All parties

* § 146(2)(f) of the "old" Article VIII: "[T]hat the facility will serve the public interest, convenience, and necessity, provided, however, that a determination of necessity for a facility made by the power authority of the state of New York pursuant to section ten hundred five of the public authorities law shall be conclusive on the board." § 146(2)(f) as added by L. 1978, c.708: "[T]hat the facility will serve the public interest, convenience and necessity, provided, however, that a determination of necessity for a facility made by the power authority of the state of New York pursuant to section ten hundred five of the public authorities law for which an application for a certificate has been filed prior to July first, nineteen hundred seventy-eight shall be conclusive on the board" (emphasis added).