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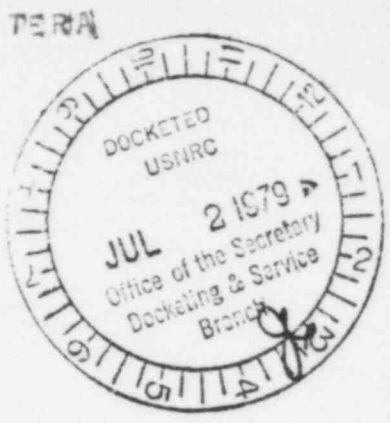

STATE OF NEW YORK
DEPARTMENT OF AGRICULTURE AND MARKETS
J. ROGER BARBER COMMISSIONER
ALBANY, NEW YORK 12235

RELATED CORRESPONDENCE

LEGAL BUREAU
THOMAS G. CONWAY, *Counsel*

June 26, 1979

Hon. Thomas R. Matias
Presiding Examiner
Department of Public Service
Empire State Plaza
Albany, NY 12223

Dr. Sidney Schwartz
Associate Examiner
Department of Environmental
Conservation
50 Wolf Road
Albany, NY 12233

Seymour Wenner, Chairman
Atomic Safety and Licensing
Board
U. S. Nuclear Regulatory
Commission
Washington, D.C. 20555

Dr. Oscar H. Paris, Member
Atomic Safety and Licensing
Board
U. S. Nuclear Regulatory
Commission
Washington, D.C. 20555

Dr. Walter H. Jordan, Member
Atomic Safety and Licensing
Board
Oak Ridge, Tennessee 37830

Re: NYS Siting Board CASE 80,008 and NRC Dockets 50-596 and 50-597, NYSE&G and LILCO Response to applicant's Comments on Proposed Protocol and Rules of Discovery

Gentlemen:

Several of the applicant's comments on the proposed protocol for joint hearings as set forth in its letter dated June 11, 1979 are counterproductive to the goal of obtaining fair, yet expeditious, hearings, and thus should not be adopted.

On page 8 of its letter, the applicant suggests "that the task of submitting lists of contested issues by these governmental entities would be facilitated if consolidation of governmental parties were to occur." To implement this suggestion, its attachment I, part IV.F would amend the Procedures For The Joint Hearings by stating "However, these [governmental bodies or agencies]...are strongly encouraged to consolidate wherever possible.

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Apparently, this applicant misunderstands the intent of §145 of the Public Service Law, which does not authorize the presiding examiner or Board to consolidate such parties. The concept of consolidation implies a unity on ultimate positions taken. Each of the State agencies has a mandate to insure that certain interests are fully considered in these proceedings. It is also obvious that this applicant is ignorant of the intense cooperation that has taken place between such entities in other Article VIII cases and which is, in fact, taking place in this case already.

A memorandum of understanding signed by the Chairman of PSC and the Commissioner of Environmental Conservation was designed to encourage full cooperation between the technical staffs in Article VIII cases. In addition, it has been my personal experience that even when such parties have differed on the issues, the exchange of information and cooperation of staffs have continued. This Department has already received much help from a number of state and federal entities in this case, and we have every reason to expect that these healthy working relationships will continue.

If the governmental parties determine that a joint panel or some other cooperative device is in their interest, they are, under the present framework, permitted to cooperate in any such way they see fit. This applicant's suggested amendment implies that such cooperation does not take place and thus a waste of time and resources results; this Department strongly resists any such implication. The suggested language change is both unwise and clearly unnecessary.

NYSE&G's suggested changes which will lead to the further integration of the NRC and Article VIII proceedings do not square with this Department's understanding of why a "joint protocol" was proposed in the first place. It was drafted with the intention of saving time and money by permitting the two hearing bodies to hear the witness at one time and place. Although Article VIII is flexible, it was not intended that New York's laws, rules, and regulations would be abandoned merely to lose its identity within the context of an NRC proceeding. Since Article VIII is, in fact, a separate proceeding, the joint protocol should only bend New York's rules to the extent necessary to achieve the goal of hearing one set of evidence at one time. We are satisfied that the protocol, as proposed, will achieve that goal.

The applicant's suggestion that governmental entities "other than DPS and DEC be required to submit statements of issues by August 1, 1979," should be rejected. The contract that was entered into between DPS, DEC, and NRC clearly provides in paragraph 15 that other governmental agencies "may be utilized" in the preparation of the DES. Past history in New York has shown that cooperation among the various experts at the agencies is quite common. Clearly, these parties should not be required to submit their statement of issues prior to the issuance of the DES.

Finally, we see no merit to NYSE&G's suggestion that governmental entities other than DEC and DPS be required to file lists of contested issues. All parties will be limited to issues in contention in the NRC proceeding. Functionally, the proceeding would gain nothing from this suggested change.

The best way to insure an orderly, non-repetitious proceeding is to insist upon proper discipline during those proceedings. It is the counsel's and the examiners' duty to insist, during the hearings, that clearly repetitious, immaterial or irrelevant cross-examination be cut short. The construction of artificial procedural devices to achieve the economy desired is inconsistent with the need to insure that the full and fair participation by all parties takes place.

Very truly yours,

Richard P. Feirstein

RICHARD P. FEIRSTEIN

RPF:nlb