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July 11, 1979

Honorable Thomas R. Matias  
 Presiding Examiner  
 New York State Public  
 Service Commission  
 Empire State Plaza  
 Albany, New York 12223

Re: Case 80008 - June 29, 1979  
 Letter from League of Women  
 Voters and Ecology Action  
 of Tompkins County



Dear Judge Matias:

This letter is written on behalf of New York State Electric & Gas Corporation (the Applicant) in response to Mrs. Dooley Kiefer's letter to you of June 29, 1979.

Applicant opposes the request of the League of Women Voters and Ecology Action of Tompkins County (LWV-EA) that a transcript be placed in the Tompkins County Library. The rules and regulations of the Public Service Commission, 16 NYCRR Part 70, require Applicant to publish notice in and serve documents on those municipalities wherein the proposed facility would be located. In addition, the regulations governing Article VIII proceedings grant intervention to any person residing within a five mile radius of the proposed sites without requiring that such person indicate the interest he seeks to protect [16 NYCRR 70.6(b)]. Clearly, the intent of the regulations is to ensure that persons in proximity of the proposed facility locations be informed of the nature of the on-going proceeding and be given an opportunity to participate if they so desire.

The regulations treat municipalities and persons outside the five mile limit differently however. These municipalities and persons are not served with an application

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when it is filed with the Public Service Commission, nor are they granted party status absent a showing of potential harm and an interest in the proceeding [16 NYCRR 70.6(c)]. The treatment of these municipalities and persons strikes the proper balance between giving access to those who have a legitimate and useful purpose in participating in the proceeding, and denying party status to those who have nothing to add to the proceeding.

At this point in time, Applicant is unable to determine what interest LWV-EA represent and what their input in Case 80008 will be. Applicant is not in receipt of the intervention petition required by 16 NYCRR 70.6(c)(2) of those outside of the five mile radius from the proposed plant sites. Absent a declaration of the interest which these groups represent, Applicant submits that these entities are not entitled to have local access to the transcript of the proceeding.\* A representation that they are resident in NYSEG's service territory gives these groups no special status. In light of this, Applicant submits that the expense of furnishing a transcript to the Tompkins County Public Library is burdensome and unjustified. Moreover, the precedential impact of such an action may lead to requests that transcripts be furnished in other locations which are not designated in the governing statutory or regulatory provisions.

The Applicant is also troubled by the tone of Mrs. Kiefer's letter. The impression which Mrs. Kiefer seems to wish to impart is that LWV-EA are not being kept informed and that her lack of information is the result of the action of others. While Applicant is serving these groups and wishes not to comment on the practice of others, Applicant would like to point out that the LWV-EA has been less than diligent in their participation. As mentioned above, Applicant is unaware of the submission of a petition to intervene. Nor did these groups appear at the special pre-hearing conference of May 23, 1979.

Finally, Applicant takes issue with the contention of the LWV-EA that early issue identification is prejudicial to lay intervenors. Mrs. Kiefer and many of the other intervenors in Case 80008 are veterans of other Article VIII and environmental proceedings. These parties are not uneducated novices who are unable to understand and deal with the procedural and substantive issues at hand. If the proceeding is to proceed in a reasonably expeditious manner, there must be

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\* Even if an intervention petition is received, these groups would not be entitled, as of right, to have a transcript placed in the Tompkins County Library [Public Service Law §142(2)(a)(v)].

identification of issues on the part of all parties. The procedure proposed will not limit the development of an adequate and useful record, it's purpose is to facilitate the generation of just such a record.

Sincerely yours,

*Norman W Spindel*

Norman W. Spindel

NWS:ar

cc: Dr. Schwartz  
All parties