UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
	)	
New York State Electric & Gas Corp	)	Docket Nos. STN 50-596
and Long Island Lighting Co.	)	STN 50-597
	)	
(New Haven 1 and 2)	)	

STATE OF NEW YORK
DEPARTMENT OF PUBLIC SERVICE BOARD ON
ELECTRIC GENERATION SITING AND THE ENVIRONMENT

In the Matter of the Application of	)	
the	)	
	)	
New York State Electric & Gas Corp.	)	Case 80008
and Long Island Lighting Co.	)	
	)	
(New Haven 1 and 2)	)	

MEMORANDUM ON STANDING OF
COUNTY OF COLUMBIA, TOWN OF STUYVESANT,
CONCERNED CITIZENS FOR SAFE ENERGY AND
MID-HUDSON NUCLEAR OPPONENTS

This memorandum of law is filed on behalf of the County of Columbia and the Town of Stuyvesant (collectively the "municipal intervenors) and Concerned Citizens for Safe Energy,

Inc. and Mid-Hudson Nuclear Opponents, Inc. (collectively the "association intervenors").

The municipal intervenors seek to participate in the proceedings before the Atomic Safety and Licensing Board ("ASLB") under 10 CFR § 2.715(c). The association intervenors seek to participate in the proceedings before the ASLB under 10 CFR §2.714.

The Applicant argues that neither the municipal nor the association intervenors have legal standing to participate in the proceeding. The NRC Staff argues that such intervenors have no legal standing but that they should be permitted to participate in the proceeding, as a matter of the ASLB's discretion, with such participation "limited to the alternate siting issue."

Both the Applicant and the NRC Staff rely exclusively upon an alleged geographic proximity test of standing (derived, as best as we can determine, from NRC cases denying standing to parties ocated more than 50 miles from a proposed nuclear

facility site who seek to raise radiological health and safety issues under the Atomic Energy Act). The municipal intervenors are located more than 50 miles from the site for which a construction license is sought in this proceeding. The members of the association intervenors generally reside more than 50 miles from such site.

However, the prime alternate site (Stuyvesant) for the nuclear power plant which is the subject of this proceeding is located within the geographic territory of the municipal intervenors and within 50 miles of the residences of most of the members of the association intervenors.

Furthermore, the association intervenors have as their primary purposes the representation of their members in administrative and judicial proceedings related to electric power planning in New York State. Both association intervenors have participated in other cases before the administrative agencies dealing with power plant siting, generation mix, tranmission line routing, conservation of energy, electric demand projections, electric power rates and related issues. The association intervenors thus have an organizational interest in such issues and a representational function presenting the points of view of the specialized segment of the community (their members and other constituents) which is the primary beneficiaries of such activities.

It is our position that the municipal and association intervenors all have the requisite interest to participate in this

proceeding based upon the geographic proximity test because one of the fundamental issues to be litigated is the superiority or not of the primary alternate site which is well within the traditional radiological health and safety radius. In addition, it is our position that the association intervenors have a completely independent interest by virtue of their specialized involvement in New York State electric energy issues.

AN APPEAL TO COMMON SENSE

The ASLB will be taking testimony on the environmental issues in this proceeding, arising largely under the National Environmental Policy Act of 1969 ("NEPA"), in a joint hearing with the New York State Board on Electric Generation Siting and the Environment.

As a practical matter, this entire standing exercise is without meaning. The municipal and association intervenors all are full parties in the State side of this joint proceeding. As full parties, they will have an unencumbered right to cross-examine the witnesses of the other parties and an unencumbered right to present evidence on all of the issues which will be the subject of the joint hearing.

Whether the ASLB grants these parties full standing, partial standing, or no standing, they will be there and participating. Therefore, as a strictly common sense, practical,

intelligent, constructive, productive, and efficient matter, the petitions to intervene in the Federal side of this proceeding should be granted.

We are aware of no NRC precedent which limits the power of the ASLB to be sensible.

THE SPECIAL RULE FOR MUNICIPAL INTERVENORS

The municipal intervenors are allowed under the NRC rules to participate whether they qualify for party status or not because 10 CFR §2.715(c) provides:

> "The presiding officer will afford representatives of an interested State, county, municipality, and/or agencies thereof, a reasonable opportunity to participate and to introduce evidence, interrogate witnesses, and advise the Commission..."

This rule does not require aggrievement or adverse effect for municipal participation, only interest.

Under 10 CFR §51.24(c)(4) municipalities and counties identified as potential alternate sites are ipso facto "interested".

It also should be noted that the scope of an interested county's or municipality's participation and the matters on which it may be heard are limited only by its "desires" and are not handcuffed even by the NRC's peculiar "contention" procedure (10 CFR 2.715[c]).

Therefore, the municipal intervenors should be permitted

to participate fully in this proceeding without any further procedural folderol.

THE INTERVENORS' INTEREST IN THE ALTERNATE SITE GIVES THEM STANDING

In any event, both the municipal and [illegible]ation intervenors are persons "whose interest may be affected" within the meaning of 10 CFR §2.714 because of the location of the prime alternate site at Stuyvesant.

There are no reported NRC cases denying or granting partyship on standing grounds to persons in close proximity to a prime alternate site in an ASLB construction permit proceeding under 10 CFR Part 51. As with many obvious and equitable principles of law, cases on point are hard to find because parties are usually not so obtuse as to litigate them. Therefore, the NRC staff's penchant in this proceeding for distracting and tangential issues makes this a case of first impression.

First, NEPA itself requires both NRC study, development and description of alternatives to a proposal (42 USC §4332[2][E]) and an NRC detailed statement about them(42 USC §4332[2][C][iii]).

Second, the NRC rules require applicants for construction licenses to identify alternatives (10 CFR §51.20[a][3]) and the NRC staff to discuss alternatives in environmental impact statements (10 CFR §§51.23 and 51.26).

Third, specific notices must be given to local environmental organizations and governments where identified alternative sites are located (10 CFR §51.24).

Fourth, the issue of alternative sites is required to be the subject of an evidentiary presentation at the adjudicatory hearings on a construction permit application (10 CFR §§1.52[b]).

Fifth, alternatives must be expressly considered in decision-making on construction permit applications (10 CFR §51.52[c][3]).

Sixth, the April 30, 1979 notice of joint hearing in this case notes that this hearing will be on an application which

> "includes provision for an alternate site in the Town of Stuyvesant, County of Columbia, State of New York."

Seventh, under NRC precedents the identification of an "obviously superior" alternative site will tip the cost-benefit balance against the site for which the construction permit application was originally made. Florida Power & Light Company (St. Lucie Nucler Power Plant, Unit 2), ALAB-435, 6 NRC 541(1977).

Finally, it should be noted that while one of the purposes of NEPA is to improve Federal decisionmaking, NEPA is primarily an environmental full disclosure law and creates a public right to be fully informed about the potential environmental consequences of Federal decisions.

Therefore, the zone of interests protected by NEPA, one of the two statutes governing this proceeding, includes the interest of the affected public to have a full and adequate exploration of all issues related to alternate sites. As one of the leading commentators on NEPA has pointed out

> "Congress enacted a 'new and unusual statute' in NEPA. The Act creates an important new public right to be informed of the possible environmental consequences of federal activities, to have alterna-

> tives considred, and to have the interests of future generations taken into account. By extension through administrative guidelines, NEPA also grants rights to the public to participate in the 102 process. Here we suggest that these new rights have expanded the category of injurable interests." Anderson, NEPA in the Courts, 36(1973)

Obviously, all to the injury and detriment of the municipal and association intervenors, this proceeding may result in the identification of the Stuyvesant site as a highly desirable site for a nuclear power plant or other large scale industrial development. The outcome of this proceeding might vastly increase the probabilities that a power plant will be proposed for or sited at Stuyvesant. If this occurs, real estate values in the vicinity of Stuyvesant might decline, community cohesion might collapse, personal anxieties might increase, disinvestment in the community might occur and a variety of other undesirable results, typically found in neighborhoods where large scale developments are rumored or threatened to occur, may occur.

In addition, this proceeding could result in the creation of a bank of environmental, site, community and social information about the Stuyvesant and other Hudson River communities which could be used to the disadvantage of the municipal and association intervenors, not only in this proceeding, but also in the press, in legislative and administrative decisionmaking and in economic relationships.

Indeed, it is so obvious that, on geography alone, the municipal and association intervenors are within the zone of

interests protected by NEPA in a proceeding such as this one, and stand to be affected and injured by its pendency and outcome, that, if we were in a genuine court of law, we would most certainly be entitled to costs and other sanctions against the parties who raised this frivolous issue.

Even if it were not so obvious, and even if the stake in the outcome of the municipal and association intervenors were a mere trifle, it is nevertheless the law, as articulated by the Supreme Court of the United States (quoting Professor Davis with approval) that such trifle were enough:

> "The basic idea that comes out in numerous cases is that an identifiable trifle is enough for standing to fight out a question of principal;..." U.S. vs. SCRAP, 412 U.S. 669, footnote 14 (1973)

The SCRAP case sought to correct the same erroneous interpretation of Sierra Club vs. Morton 405 U.S. 727 (1972) pressed here by both applicant and the NRC Staff.

For the reasons stated, both the municipal and the association intervenors have legal standing within the meaning of 10 CFR §2.714 to be admitted as a party as of right in this proceeding.

THE ASSOCIATION INTERVENORS HAVE ANOTHER BASIS FOR STANDING

The applicant and the NRC Staff seem to believe that the only test of standing in an NRC construction licensing proceeding is the test of geographic proximity. In other words, it is

argued that unless a prospective intervenor can show that it represents persons within a 50 mile radius of the preferred site of a nuclear power plant, it has no standing to participate in the construction licensing proceedings.

This narrow and antiquated view seems to be based upon an interpretation of the "zone of interest" test in which "zone" has only its geographic meaning as referring to square inches on the earth's surface only. However, as the Supreme Court of the United States has pointed out on numerous occasions, economic, environmental and societal interests, completely detached from geographical considerations, are well within the zone of interest protected by many Federal statutes. See U.S. vs. SCRAP, supra.

Applicant and the NRC Staff seek to apply the same myopic geographic analysis to the "injury in fact" test of standing. Recent United States Supreme Court cases demonstrate that "injury in fact, does not mean only the risk of a black eye or bruise, or the loss of a dollar, or the trampling of real estate owned or used by a party. Thus, alledged injuries to a party's "organizational interest" have represented sufficient injury in fact. Andrus vs. Sierra Club _____ U.S. _____ (1979). Similarly, an association has standing to assert rights that are "central to [its] purpose" where it "serves a specialized segment of the ... community which is the primary beneficiary of its activities, including the prosecution of... litigation.". Hunt vs. Washington Apple Advertising Commission, 432 U.S. 333(1977).

Entirely apart from geography and alternative sites, the association intervenors, on their own behalf and on behalf of their

members, have an interest in and a special concern for intelligent electric power planning in New York State, and the determination of the issues in this proceeding may specifically injure that interest. It is the alleged injury to that interest and not merely the interest itself which gives rise to the association intervenors' standing thus placing this case in the U.S. vs. SCRAP, supra rather than the Sierra Club vs. Morton, supra category.

In Sierra Club vs. Morton, supra the alleged injury was to the resource (Mineral King) rather than to the Sierra Club or its members. In U.S. vs. SCRAP, supra a "far less direct and perceptible" alleged injury to a resource was found sufficient to support standing where the allegation of such injury was also linked to an alleged injury to the interest of the petitioning party in such resource. This was true even where the petitioning party alleged an injury which

> "...allegedly has an adverse environmental impact on all of the natural resources of the country. ... But we have already made it clear that standing is not to be denied simply because many people suffer the same injury. ... To deny standing to persons who are in fact injured simply because many others are also injured, would mean that the most injurious and widespread Government actions could be questioned by nobody we cannot accept that conclusion" U.S. vs. SCRAP, 412 U. S. at _____.

It is instructive to note that, in support of the above principle, the Supreme Court cited cases giving standing to consumers of a product to challenge governmental regulation of the products purchased by the consuming public. See also the recent case

of Gladstone, Realtors vs. Bellwood, _____ U.S. _____, 60 C.Ed. 2d 66 (1979).

In the instant case, the association intervenors represent a specialized segment of the public which has shown a deep, continuing and responsible concern for electric power planning in New York State based upon the premises that, without intelligent planning, the constituency they represent might be unable to obtain a reliable supply of electric power at a reasonable cost, both economic and environmental, and in a way which will not disrupt their quality of life.

The petitions to intervene and the contentions presented by the association intervenors directly allege both their interests in the subject matter and the injuries which may occur to them and their members as a result of this proceeding. Unquestionably both the Atomic Energy Act and NEPA seek to protect the interests of the association intervenors in sound electric power planning.

Therefore, entirely apart from geographic considerations, the association intervenors have standing to participate as intervening parties under 10 CFR §2.714.

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Respectfully submitted,

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