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

At a session of the New York State Board on Electric Generation Siting and the Environment for the Greene County Generating Station held in the City of Albany on September 25, 1979.

BOARD MEMBERS PRESENT:

Charles A. Zielinski, Chairman,
Public Service Commission

James L. Larocca, Commissioner,
State Energy Office

Dr. William E. Seymour, Alternate
for William D. Hassett, Commissioner,
Department of Commerce

Gerald H. Liepshutz, Esq., Ad Hoc Member

CASE 80006 - POWER AUTHORITY OF THE STATE OF NEW YORK -
Greene County Nuclear Generating Facility

Application of the Power Authority of the State of New York for a Certificate of Environmental Compatibility and Public Need to Construct a 1,200 MW Nuclear Generating Facility at Cementon. Greene County.

ORDER DECIDING MOTION TO DISMISS

(Issued October 1, 1979)

BACKGROUND

On April 5, 1979, the Power Authority of the State of New York (PASNY) announced that its trustees had voted to dispose of the Cementon project's assets rather than

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proceed with a nuclear plant application.[1] Staff of the Public Service Department ("Staff") therefore asked Presiding Examiner Edward D. Cohen to dismiss the proceeding. Staff's motion was opposed by the Power Authority; and supported by Greene County, Citizens to Preserve the Hudson Valley, and the Cementon Civic Association, in memoranda filed on behalf of themselves and others.

SUMMARY

The Examiner found staff's motion "premature" because the application might be withdrawn or amended by the Power Authority, or resubmitted by another applicant, in the course of this proceeding. Rejecting staff's argument that a new proceeding would be the best response to any of those circumstances, he ruled that the proceeding should remain open; and he adopted the Power Authority's suggestion that it report on the status of its application by October 16, 1979. Staff has appealed. The Power Authority opposes the appeal on procedural grounds, and on the substantive grounds cited by the Judge. Greene County, the Towns of Cementon and Athens, and the Catskill Teacher's Association support the appeal.[2] We have decided that the application should be dismissed unless PASNY can demonstrate, on or before October 16, that continuation of the proceeding would serve the public interest.

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1 Athens was proposed as an alternate site, but only the Cementon site is the subject of a pending application before the Nuclear Regulatory Commission. Public Service Department staff therefore assumes that the Power Authority contemplates no nuclear plant proposal at Athens; and neither the Presiding Examiner, nor any party to this appeal, has questioned the staff's assumption.

2 Ruling issued May 14; Department of Public Service Staff Appeal, filed May 25; Response of Power Authority, filed June 6; Joinder of Greene County, et al., filed June 7; Catskill Teacher's Association Support of Appeal, filed May 31, 1979.

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DISCUSSION

The Power Authority says the appeal should be dismissed because our Rules of Procedure limit interlocutory appeals to "extraordinary circumstance[s] where prompt decision is necessary to prevent detriment to the public interest."[1/] It argues basically that continuation of this proceeding would not adversely affect the public interest, because the only practical consequence would be that the application would remain in the same dormant status as at present.

Since the basis for the appeal before us is a motion to terminate the proceeding, we do not believe that it should be considered as a routine interlocutory matter. As a matter of proper public administration, the Board must be able to terminate a proceeding as soon as its continuation becomes unnecessary. Indeed, we believe we can reach such a decision on our own initiative even if no appeal is presented to us. Moreover, the Power Authority's claim that no detriment to the public interest is involved here is disputed by the other parties' claims that pendency of an application may adversely affect local planning, land values, and economic growth. We cannot, in these circumstances, accept the Power Authority's bald assertion that continuation of the proceeding would have no adverse affect.

The arguments advanced to date by PASNY for continuing the case are vague and unpersuasive. Viewing these arguments and the fact that PASNY has publicly stated that it does not intend to pursue the application before this Board, we conclude the case should be dismissed unless the Power Authority demonstrates affirmatively and in detail how continuation of the application would serve the public interest.

1/Rule 70.8(a).

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We will adopt the date set by the Presiding Examiner for the submittal by PASNY of a status report--October 16--as the deadline for carrying out our decision. We will allow PASNY until then to present to us a detailed statement of facts and arguments why continuation of the case would be in the public interest. A mere repetition of the arguments previously presented or PASNY's failure to respond by October 16 will result in dismissal of this application on that date.

The Board on Electric Generation Siting and the Environment for Case 80006 orders:

1. The application of the Power Authority of the State of New York for a certificate of environmental compatibility and public need to construct a 1200 MW nuclear generating facility at Cementon, Greene County, will be dismissed on October 16, 1979 unless the Power Authority files with us on or before that date a detailed statement of facts and arguments other than those previously submitted by PASNY to this Board, why continuation of this proceeding would be in the public interest.

2. This proceeding is continued.

By The New York State Board
On Electric Generation Siting
And The Environment - Case
80006,

(SIGNED) SAMUEL R. MADISON
Secretary to the Board

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DEPARTMENT OF PUBLIC SERVICE
BOARD ON ELECTRIC GENERATION SITING
AND THE ENVIRONMENT
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U.S. Nuclear Regulatory
Commission
Docketing and Regulatory Section
ATTN: Chase Stephens
1717 H Street, NW
Washington, DC 20555

IMPORTANT

ORDER OF THE
PUBLIC SERVICE COMMISSION

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