

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

May 7, 1979



CASE 80008 - New Haven 1 and 2.

STAFF'S REPLY TO ECOLOGY ACTION'S APPEAL
ON DENIAL OF MOTION FOR DISMISSAL

Ecology Action of Oswego (Ecology Action, EA) has appealed the ALJ's denial of its motion for dismissal of the application in Case 80008. Ecology Action's appeal is based on the grounds that LILCO is not a serious co-applicant, thus making it impossible for parties to conduct discovery. EA states that LILCO's lack of interest in constructing the New Haven facilities is evidenced by statements made in pre-filed direct testimony filed by LILCO in Case 80003 (Jamesport), as well as statements made by NYSE&G in its reply to Ecology Action's motion indicating that ultimate ownership in a facility may change before the facility is put into operation. Petitioners also claim that the applicants have not complied with 16 NYCRR Sections 72.1 and 72.3, since those sections require knowledge of the identity of the applicants.

We agree that a firm commitment by the applicants to construct a proposed generating facility is essential to going forward with hearings. Thus, as Ecology Action points out, we must know the identity of the applicant(s) in order

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at a minimum to assess its ability to finance the proposed facility, to assess the likely impacts on ratepayers during the construction period and to assess their need for capacity. These considerations and others will be part of a balancing between installing the facility before there is a capacity demand for it and the cost impacts of early installation.

We believe, however, Ecology Action's argument that viable co-applicants do not exist is as yet unsupported by a record.* The statements referred to in LILCO's 80003 testimony are as yet unsworn and have not been cross-examined. The additional statements made by NYSE&G in its reply to Ecology Action are also insufficient to form a basis for dismissing the application.

Thus, at this time we recommend that the motion be denied without prejudice so that parties may make it later when a record supports it.

Respectfully submitted,


ROBERT GREY
Staff Counsel

* See Staff's response to Ecology Action's motion below (April 6, 1979)