NEW YORK STATE BOARD
ON ELECTRIC GENERATION SITING
AND THE ENVIRONMENT

regarding an application for a certificate
of environmental compatibility and public need

In the Matter of	)	
LONG ISLAND LIGHTING COMPANY and	)	
NEW YORK STATE ELECTRIC & GAS	)	Case 80003
CORPORATION	)	

PETITION FOR REHEARING

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Dated: October 8, 1980

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Preliminary Statement

This petition is filed by Long Island Lighting Company (LILCO) and New York State Electric & Gas Corporation (NYSEG) (together the "Applicants"), pursuant to §§ 22 and 148 of the Public Service Law and § 70.23 of the regulations implementing Article VIII of that law.

For reasons stated below, the Applicants request the New York State Board on Electric Generation Siting and the Environment in Case 80003 to reconsider three aspects of its September 8, 1980 "Opinion and Order Granting Certificate of Environmental Compatibility and Public Need" for a coal-fired power plant at Jamesport (hereinafter cited as "SB Order"). The three aspects needing reconsideration involve:

First, the setting of unrealistic deadlines for the Applicants to make certain submissions to the Siting Board;

Second, a lack of coordination between (a) further Siting Board review and (b) initial EPA review of certain matters relevant to both Article VIII and the Clean Air Act; and

Third, the adoption of unduly complex post-certification procedures.

In short, it is important that the filing deadlines be extended, the Siting Board and EPA reviews be coordinated, and the post-certification procedures be simplified.

I.

NEED FOR REALISTIC FILING DEADLINES

A. Six Initial Filing Requirements

The SB Order sets six initial filing deadlines. Most of them are strikingly short, given the amount of data gathering, analysis, decision-making and document preparation that the SB Order wants completed by their expiration. Specifics follow:

	Filing Deadlines[1]	Material to be Filed	Cite to SB Order
1.	Dec. 8, 1980	Applicants' "written acceptance and agreement to abide by the terms and conditions upon which this certificate of environmental compatibility and public need is issued"	Page 74 (item 3.h)
2.	Dec. 8, 1980	Applicants' "schedule for the performance and submittal of all studies, programs and research required by this Opinion and Order"	Page 74 (item 3.g)
3.	Mar. 9, 1981	Applicants' so-called "FGD package," that is: "detailed information demonstrating how they will meet requirements that they employ the best available control technology for sulfur dioxide, NO_x and other particulates," focusing on "a detailed descrip-	Pages 59-60, 71, 73 (item 3.d)

1/ The Siting Board called for filings to be made "within" a certain number of days or months after "the issuance of this Opinion and Order." Thus, the deadlines below are calculated from the September 8, 1980 "issuance" date of the SB Order.

		tion of the FGD scrubber system that will be employed, the type of coal proposed to be used as a fuel (including a comparative coal cost evaluation under different available scrubber/fuel type alternatives), a detailed description of the proposed coal delivery system [including an economic and environmental comparison of offshore and onshore systems], and a description of the methods, facilities, and locations for the disposal of the resultant solid waste"[2/]	
4.	Mar. 9, 1981	Applicants' "initial compliance filing," including (a) an elaborately detailed construction management program; (b) a "construction schedule, with internal milestone dates for plant components which require more than one year of construction time;" (c) "[t]he Applicants' latest available detailed estimate of construction costs, with an explanation and justification of any differences from the last estimate presented by the Applicants on the record;" and (d) "[a] statement of the licensing packages the Applicants intend to file, a description of each package and its specific objectives, the approximate date each package will be submitted, and the approximate date of the	Pages 69 (item B) & App. B at 1-3

2/ Much of the information in this FGD package is relevant to a Jamesport coal station's compliance with the Clean Air Act Amendments of 1977, more specifically, to the station's compliance with the Act's provisions on PSD (prevention of significant deterioration). New York State presently lacks authority to issue PSD permits. Thus, any such permit for Jamesport would have to come from EPA under its own PSD regulations. See 40 CFR §§ 52.21, 52.1689. Accordingly, most of the Siting Board's FGD package would have to be repeated in a PSD submission. Furthermore, under EPA's regulations, an additional year of air quality data, beyond that already collected for Jamesport, would probably have to be gathered before a PSD application could be filed. Until these data were in hand, all details of Jamesport's air pollution control measures probably could not be finalized. As with the Siting Board's FGD package, a PSD application to EPA might also occasion hearings.

		construction activity which is the subject matter of that licensing package."	
5.	Mar. 9, 1981 or "as soon as possible" thereafter	Applicants' "subsequent licensing packages"	Pages 73 (item 3.a) & App. A at 2 (item A)
6.	"[A]s soon as practicable, in no event later than" Mar. 8, 1982	Applicants' "application for and proposed form of a discharge permit for the certified coal facility"	Pages 70, 74 (item 3.f)

B. Prerequisites to Compliance

The six filing requirements sketched above, especially the "detailed information" demanded for the FGD package, much of which concerns matters that must also be covered during the federal PSD process, involve a great amount of data gathering, analysis, decision-making and document preparation. It follows that there exist several prerequisites to compliance with the SB Order's deadlines:

> First, there must be reasonable assurance that a Jamesport coal project can go forward uninterrupted by the necessity to divert substantial resources to the forced conversion of existing LILCO power plants from oil to coal;
>
> Second, even assuming uninterrupted availability of the resources needed for a Jamesport coal station, there must be sufficient time to actually gather the data, conduct the analyses, make all the necessary decisions and prepare documents laying the Applicants' findings and conclusions out for Siting Board review; and
>
> Third, to avoid inefficiency and inconsistency, the Siting Board review must be coordinated with the federal PSD review.

None of these prerequisites can be met on the schedule adopted by the SB Order.

1. Potential Diversion of Resources to Coal Conversions

With respect to the potential for diverting resources to federally-mandated coal conversions, three of LILCO's existing oil-fired plants are presently subject to preliminary federal conversion orders. These include four 375 MW units at LILCO's Northport plant; two 175 MW units at its E. F. Barrett plant; and two 175 MW units at its Port Jefferson facility.3/ If LILCO were ordered to convert all of these units to coal, the total cost could exceed $3 billion. The lion's share of this potential cost is attributable to the conversion of Northport, which the Company estimates could be as high as $2.6 billion. Even absent the financial problems which LILCO presently faces, construction of its share of a new coal plant at Jamesport coupled in the same time frame with a federally-ordered conversion of Northport would create extremely difficult financial circumstances for the Company. Until there is reasonable assurance that LILCO will not be forced to convert Northport, the Company is reluctant to commit significant resources to a new coal project.4/ The coal conversion situation on Long Island

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3/ The four Northport and two Barrett units have been issued Proposed Prohibition Orders by the Department of Energy's Economic Regulatory Administration under the Powerplant and Industrial Fuel Use Act of 1978. The two Port Jefferson units are subject to a non-final prohibition order under the Energy Supply and Environmental Coordination Act of 1974.

4/ As the Siting Board made clear, means must be developed in southeastern New York State to generate electricity using fuels other than foreign oil. Conversion of existing LILCO

(continued on next page)

should become clearer by the end of 1981. However, even if the conversion of Northport is federally-compelled, NYSEG's need for additional capacity in the late 1980's may necessitate that the Jamesport project go forward on some mutually agreeable financial basis.

2. Unrealistic Deadlines

As to schedule, even if the Applicants immediately committed significant resources to a Jamesport coal project by the retention of an architect engineer, the purchase of equipment and the employment of necessary consultants, it is utterly unrealistic to suppose that "detailed information" could be available by March 9, 1981 for Siting Board review and approval on the range of matters described in filings three and four on pages 2-4 above. At least another year's work would be required.

3. Necessity for Federal PSD Review

Similarly, federal PSD review of a Jamesport coal project could not conceivably begin by March 9, 1981. Pre-application PSD monitoring requirements, among other factors, ensure that the Applicants could not assemble a Jamesport

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4/ (footnote continued from previous page)
power plants from oil to coal, like building a new coal unit at Jamesport, would help provide the necessary means. So also would building the proposed Jamesport nuclear units for which the Applicants now have federal construction permits. While the political and regulatory obstacles to new nuclear projects in New York State do seem impenetrable at present, the Applicants reiterate their conclusion that nuclear generation at Jamesport would be (1) more economic than any other alternative, including new coal generation, and (2) more compatible with the environment. In the Applicants' judgment, the weight of the evidence in Case 80003 overwhelmingly supports both of these conclusions. But if the only choice now realistically available is between continued reliance on foreign oil or the return of coal to Long Island, then the latter clearly is the more desirable alternative.

PSD application until well over a year has passed. The PSD review will track much the same ground as the reviews contemplated by the Siting Board for the FGD package and initial compliance filings. Both the PSD and FGD package/initial compliance filing reviews may involve hearings. Accordingly, it makes good sense to conduct both reviews in tandem to the maximum extent feasible. To push one along well before the other simply invites redundant, inconsistent administrative proceedings.

C. Extension of Filing Deadlines

Under the foregoing circumstances, the Applicants urge that the Siting Board reconsider the deadlines set in its September 8, 1980 Opinion and Order. These deadlines are too short to take adequately into account coal conversion uncertainties, the amount of time actually required to do the work called for by the SB Order, and the need to coordinate the Article VIII and PSD reviews of a Jamesport coal station. Accordingly, the Applicants request that each of the six deadlines identified on page 2-4 above be extended by one year. While a one year's extension of each deadline may prove to be inadequate, such additional time is the minimum necessary to take into account the various prerequisites for compliance described above.

II.

NEED FOR COORDINATED SITING BOARD/EPA REVIEWS

As indicated already,[5] the matters covered in the SB

5/ See pages 2-3 and 6-7 and note 2 above.

Order's "FGD package" have much in common with matters that must be considered during EPA's PSD review of a Jamesport coal station, pursuant to the Clean Air Act. Also as indicated, the EPA review cannot possibly begin by the time that the SB Order contemplates submission of the "FGD package" and the possible beginning of "evidentiary hearings" on it.

If the Siting Board's "FGD package" review is not meshed with EPA's PSD review, the stage will be set for redundant administrative proceedings, hearings included, with a resulting waste of time, money and expertise. The stage will also be set for confusing, even inconsistent, interplay between the two agencies. In light of Case 80003's tortured history, it is crucial that duplicative, potentially contradictory proceedings be avoided in the future. Accordingly, the Siting Board should make every reasonable effort to coordinate its review with EPA's, seeking:

1. To have a single filing by the Applicants deal with matters common to both Article VIII and the Clean Air Act;

2. To have that filing submitted simultaneously to the Siting Board and EPA;

3. To coordinate subsequent state and federal staff review of common issues; and

4. To ensure that, if any additional hearings are required to deal with these issues, then only a single set of hearings will be held to satisfy both state and federal needs.

The Applicants request that the Siting Board take all necessary steps to ensure an efficient, informed coordination of its

"FGD package" review with EPA's PSD review.[6]/

III.

NEED FOR SIMPLIFIED
POST-CERTIFICATION PROCEDURES

Complex post-certification procedures are created by the SB Order and defined largely in its Appendices. The intricacy of these procedures generates so great a risk of post-certification paralysis that they must be reconsidered. As the Applicants in this case and in the Sterling Article VIII case have urged for several years, there is no statutory basis for such complex procedures. Neither Article VIII in its initial or amended texts, nor the voluminous regulations adopted to implement it, mention "initial compliance filings" or "subsequent licensing packages," much less post-certification "evidentiary hearings" on any such filings. It is not credible that, had the legislators intended such a post-certification process, they would have wholly failed to mention it. Nor would reasonable people, when adopting regulations as detailed as those in 16 NYCRR 70 et seq., have failed to mention something as demanding as the procedures created by the SB Order if the statute being implemented called for them.

Past experience suggests, however, that the Siting

6/ Unlike the situation under the Clean Air Act, the Siting Board not EPA implements the Clean Water Act in cases such as Jamesport. Interestingly, the SB Order provides the Applicants until March 1982 to make their Clean Water Act showing for a Jamesport coal plant. For unknown reasons, the SB Order calls for the submission of the "FGD package" one year earlier. But as noted, the "FGD package" and the Applicants' Clean Air Act showing for Jamesport have much in common. And as compared to the Water Act filing, the Air Act demonstration has much further to go before it can be produced in meaningful detail.

Board will vigorously resist any reading of Article VIII that narrows the Board's authority. Thus, putting to one side whether or not the Siting Board may lawfully adopt the procedures in question, it remains the case that the Board is not legally compelled to adopt them. Read most generously in favor of post-certification procedures, Article VIII simply gives the Board discretion to shape "such terms, conditions, limitations or modifications of the construction or operation of the facility as the board may deem appropriate." PSL § 146(2); see id. § 141(1). Accordingly, even if the Board declines to reconsider its post-certification procedures on the ground that they go beyond the bounds set by Article VIII, the Board should nonetheless rethink the way in which it has exercised its discretion to shape such procedures.

The post-certification process created by the SB Order could, in fact, paralyze progress toward a Jamesport coal station. The process involves the following sequence of events:

1. 30 days advance notice by Applicants of their intent to make a post-certification filing;

2. 45 days thereafter for any interested person to request a copy of the documents in question;

3. Actual filing of the documents no sooner than 30 days after the notice of intent to file and no later than 120 days before any activity covered by the filing is to begin;

4. 30 days after the filing for any interested person to serve written comments on the filing; since some people may have received the filing (generally voluminous) only 15 days before this deadline occurs, extensions of time to comment are foreseeable;

5. Presumably the same period of time (up to 30 days after the filing) for any interested person to request evidentiary hearings on the issues raised by it;

6. An unspecified period thereafter for the Siting Board or PSC to decide whether to hold hearings or to act on the papers alone;

7. "[A]s soon as practicable after the comment period and, if possible, not later than sixty (60) days after the documents are filed" for them to be "approved, modified, conditioned or disapproved" by the Siting Board or PSC;7/ if hearings are granted, it is not likely that a Siting Board or PSC decision would prove to be "possible" within 60 days; Article VIII hearings on Long Island move at a glacial pace, requiring time for discovery, written testimony by the Applicants, its oral examination, written testimony by others, its oral examination, written rebuttal, its oral examination and briefs, with frequent pauses along the way;

8. And then, requests for reconsideration, judicial review and stays of Siting Board or PSC rulings on whether to hold hearings and on the merits of the Applicants' filings.

This sequence of events could be repeated over and over, with each filing. It very likely would be repeated over and over on Long Island if a Jamesport coal plant were to be opposed by even marginally competent lawyers. The effect of the drill would be to halt progress on the project and to further gut Article VIII as a viable means of making decisions about anything.

It is crucial that the Siting Board prune its post-certificate procedures until they do, in fact, credibly permit a review of the Applicants' post-certification filings that is reasonably prompt and, of even greater

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7/ SB Order, App. A at 5 (emphasis added).

importance, that is conducted pursuant to a fixed, predictable schedule.[8]/ To that end, and at a minimum, the potential for evidentiary hearings must be removed. The remaining procedures for notice of filings, supply of documents to interested people and opportunity for written comments would still provide ample means for public involvement in the Siting Board or PSC review. While disruptive itself, such involvement could arguably co-exist with the scheduling demands of a major construction project, so long as the involvement itself took place on a fixed, predictable schedule. An open-ended potential for repeated hearings could not. It is questionable, indeed, whether prudent people could embark on such a project so long as that potential remained.

In summary, it is obvious that the Siting Board and the PSC are determined to have complex post-certification procedures in Article VIII cases. It is apparent that the Siting Board and the PSC will insist on procedures sufficiently detailed to ensure constant agency involvement with certified facilities. While recognizing these facts of life, the Applicants urge recognition of another reality as well: that the post-certification procedures can become so complex that they paralyze projects. They have reached that level of intricacy in the SB Order. Thus, Applicants request, at

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8/ Both the PSC Staff and NYSEG have struggled in their respective efforts to make the Somerset Station's post-certification process work. It is crucial that "lessons learned" at Somerset be taken into account in shaping workable post-certification procedures for Jamesport.

a minimum, that the procedures be simplified by removal of the potential for evidentiary hearings.

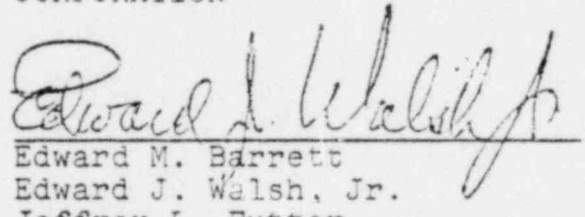
IV.

CONCLUSION

For the reasons set out above, the Applicants ask that the Siting Board (1) extend each of the deadlines in its September 8, 1980 Opinion and Order by one year; (2) take all necessary steps to coordinate further proceedings in Case 80003 with the review that EPA must perform under the Clean Air Act; and (3) simplify the Case 80003 post-certification procedures, eliminating at a minimum the potential for evidentiary hearings. Reconsideration and relief on all three scores is vital to a viable certificate.

Respectfully submitted,

LONG ISLAND LIGHTING COMPANY
and
NEW YORK STATE ELECTRIC & GAS CORPORATION



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Dated: October 8, 1980

CERTIFICATE OF SERVICE

I hereby certify that copies of APPLICANTS' PETITION FOR REHEARING were served on the following persons by first-class mail, postage prepaid, on October 8, 1980 and that twenty-five (25) copies of said Petition were delivered to the Commission's offices in New York City on that date.

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