UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE NUCLEAR REGULATORY COMMISSION

In the Matter of	)	
	)	
ROCHESTER GAS AND ELECTRIC CORPORATION	)	Docket No. STN 50-485
(Sterling Power Project Nuclear Unit No. 1)	)	

APPLICANT'S ANSWER TO INTERVENORS' PETITION FOR REVIEW

In its Petition for Review dated November 6, 1978, Intervenors seek reversal of three determinations made by the Atomic Safety and Licensing Appeal Board in ALAB-502: (1) that the Ginna alternative site is not obviously superior to the Sterling site; (2) that the selection of the Sterling site need not be reevaluated as a result of the deferred in-service date; and (3) that Intervenors' remaining "exceptions", were without merit. Applicant respectfully submits that Intervenors' Petition for Review does not raise important matters of fact, law or policy as required by 10 C.F.R. Section 2.786 and should be denied.

I.

The Appeal Board Applied the Proper Standard for Considering Alternate Sites

The Appeal Board's finding that the Ginna site is not "obviously superior" to Sterling does not involve the

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creation or definition of a standard or policy but merely the application of an already established standard to a particular factual situation. More than one year ago the Nuclear Regulatory Commission enunciated the "obviously superior" standard for evaluating alternate sites:

> "[W]e think it appropriate that a licensing board refuse to take the proposed 'major. Federal action', i.e., deny the requested license, not when some alternative site appears marginally 'better' but only when the alternative site is obviously superior."

Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), 5 NRC 503, 530 (1977). Further in that case, the Commission stated: "But when the data to be compared necessarily present a wide margin of uncertainty, one side must appear to be substantially 'better'." Id. at 528. The Seabrook standard has been expressly upheld by the Court of Appeals for the First Circuit. New England Coalition on Nuclear Pollution v. NRC, ____ F.2d ____ (1st Cir., Aug. 22, 1978).

Intervenors, without any citation and without any basis in fact, claim that the Appeal Board misinterpreted the Seabrook standard by defining "obviously superior" as "greatly superior". Petition at 2. But the Appeal Board neither said nor did anything of the sort. What the Appeal Board did say was: "All that we must decide is whether Ginna is 'obviously' -- in other words, clearly and substantially -- superior to Sterling." ALAB-502 at 23. Applying that standard, the Appeal Board concluded that "on the basis of the record, Ginna is [not] sufficiently better than Sterling to be adjudged

'obviously superior'." ALAB-502 at 18; see also id. at 23-24. Moreover, the Appeal Board explicitly acknowledged the Sterling-Ginna comparison as being a good illustration of the uncertainties inherent in site evaluations and comparisons. Id. at 23. These determinations are clearly a correct application of the "obviously superior" test set forth in Seabrook.

Intervenors claim that the Appeal Board failed to provide adequate support for its findings on Ginna, and particularly for the application of the Pilgrim decision to Sterling. Boston Edison Co. (Pilgrim Nuclear Generating Station, Unit 2), ALAB-479, 7 NRC 774 (1978). Petition at 3. This is nonsense. The Appeal Board, with record references, devoted large portions of its decision to a careful evaluation of the relative environmental, economic and other aspects of the Ginna and Sterling sites. ALAB-502 at 10-12, 18-23. At no time did the Appeal Board intimate that the advantages of using an already developed site were "purely practical" as suggested by the Intervenors. Petition at 3.

Intervenors argue that the Appeal Board improperly substituted its own observations for those of witnesses, citing the Appeal Board's "firm impression that [the Sterling site] is populated essentially with second or third growth trees". But that statement is not inconsistent with the statement of any witness or with any finding of the Licensing Board. ALAB-502 at 19-20; see also Applicant's Proposed Findings of Fact and Conclusions of Law in the Form of a Proposed Initial

Decision, Dec. 30, 1976 at 87; Testimony of Michael J. Hess on Intervenors' Contention 12D, July 20, 1976 (follows Tr. 935); Environmental Report, Construction Permit Stage, Vol. 2, Table 4.1 - 2 (Applicant's Exh. 2, Tr. 222). Intervenors cite no record reference for their claim that the Appeal Board ignored sworn testimony.

II.

The Appeal Board Correctly Denied Intervenors' Remaining Points

Intervenors' remaining exceptions pertain either to matters of fact already decided and rejected by both the Appeal Board and the Atomic Safety and Licensing Board or to matters which otherwise do not meet the requirements of Section 2.786. Intervenors have failed to present any facts or circumstances tending to show that the decision of the Licensing Board (or now the decision of the Appeal Board) was in error.

Specifically, with regard to the deferred in-service date for the Sterling plant, Intervenors have argued that the mere passage of time requires the reexamination of alternative energy options for the NEPA cost-benefit analysis. But they have failed to present any new facts indicating that a particular alternative energy option should be reexamined. See Applicant's Response to Intervenors' Supplement to March 22, 1978 Motion to Remand, Aug. 18, 1978 at 3-5.

With regard to the cost and availability of uranium, the Appeal Board received the excerpts referred to by Inter-

venors in the evidentiary record, and the respective uranium procurement philosophies of Rochester Gas and Electric Corporation and Niagara Mohawk Power Corporation were fully explained. Appeal Board Order, May 5, 1978 at 2; Applicant's Statement on Radon Releases and on the Introduction of Documents, Apr. 28, 1978 at 4-7; Applicant's Answer to Intervenors' Motion to Reopen the Record to Accept Evidence on Cost and Availability of Fuel, May 10, 1978.

As to Intervenors' undocumented assertions regarding Table S-3, the Intervenors were given treatment equal to the Staff -- that is, they had the opportunity to present evidence and were permitted to cross-examine a Staff witness at a hearing session held exclusively for that purpose, and were precluded only from challenging the Commission's regulations. See Applicant's Reply to Intervenors' Supplemental Proposed Findings of Fact and Conclusions of Law, Aug. 18, 1977 at 1-3 and Applicant's Brief in Response to Intervenors' Brief on Exceptions, Oct. 26, 1977 at 34-40; Initial Decision, Aug. 26, 1977 at 156-60.

III.

Conclusion

For the foregoing reasons, Intervenors have not satisfied the requirements of 10 C.F.R. Section 2.786, and

their Petition for Review should be denied.

Respectfully submitted,

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November 21, 1978

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CERTIFICATE OF SERVICE

I hereby certify that I have served the document entitled "Applicant's Answer to Intervenors' Petition for Review" dated November 21, 1978, by mailing first-class and postage prepaid copies thereof to each of the following persons this twenty-first day of November, 1978.

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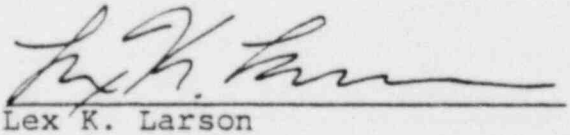

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