

NEW YORK STATE BOARD ON ELECTRIC
GENERATION SITING AND THE ENVIRONMENT

CASE 99-F-1625 - Application by KeySpan Energy for a Certificate of Environmental Compatibility and Public Need to Construct and Operate a 250 Megawatt, Cogeneration, Combustion Turbine Electric Generating Facility to be Developed at the Existing Ravenswood Generating Station in Long Island City, Borough of Queens.

PROCEDURAL RULING

(Issued March 12, 2001)

ROBERT R. GARLIN, Presiding Examiner, and
HELENE G. GOLDBERGER, Associate Examiner:

INTRODUCTION

Pursuant to a notice issued January 25, 2001, a prehearing conference was held at the Public Service Commission's New York City offices on March 1, 2001. The notice stated that the purpose of the conference was to identify issues that will be adjudicated at future evidentiary hearings, identify the agency and intervenor parties who plan to sponsor testimony at those hearings, establish a schedule, and discuss other matters as may be necessary. This ruling summarizes the discussions held, and the determinations reached, regarding those matters.

ISSUES

Issues pertaining to the air and water emission permits to be issued by the Department of Environmental Conservation (DEC), discussed at the DEC issues conference convened jointly with the March 1 prehearing conference, are addressed in a separate letter to the parties to the permit proceedings prepared by the associate examiner. At the

prehearing conference, the discussion of Public Service Law (PSL) Article X issues to be addressed in this proceeding was organized around an "Outline of Issues by Topic" distributed to the active parties on February 22. The outline identified nine topics: air quality; water resources; terrestrial biology; soils, geology, seismology, and agricultural lands; aesthetics, scenic, historic, and recreational values; public health and safety; wastes; local laws, land use, and community character; and public interest. The "public interest" topic includes potential impacts on utility systems and municipal facilities and services.

The parties participating in the prehearing conference¹ were advised that their identification of issues to be adjudicated was tentative, and that written statements of issues they intended to litigate were to be submitted later. Various agency and intervenor parties stated that they might litigate issues concerning air quality, visual impacts, public health and safety, hazardous wastes, local laws, land use, community character, and utility system impacts.

The agency and intervenor parties are directed to file their written statements of issues to be litigated by March 19, 2001. The applicant and other parties may submit comments on the statements by March 22, and an order identifying the issues to be addressed by the parties² will be issued on March 26. The

¹ Also participating in the prehearing conference was the New York Power Authority, whose pending motion for leave to intervene in this proceeding is addressed later in this ruling.

² PSL §165(2).

March 26 order will establish the scope of litigated issues, and additional issues may not be litigated unless good cause is shown for adding them.³

SCHEDULE

At the prehearing conference, the following schedule was established for this proceeding:

March 16, 2001	Written statements of issues to be litigated by agency and intervenor parties.
March 22	Comments on statements by applicant and other parties.
March 26	Ruling on issues by examiners.
April 12	Draft proposed certificate prepared by applicant.
May 1	Direct testimony and exhibits filed by agency and intervenor parties.
May 22	Rebuttal testimony and exhibits filed by all parties sponsoring rebuttal cases.
May 29	Trial briefs.
June 4 through June 15	Evidentiary hearings.
July 13	Initial briefs to examiners (tentative, depending on date hearings end).
July 27	Reply briefs to examiners (also tentative).

³ The parties have been advised that any settlement negotiations should be conducted in accordance with 16 NYCRR §3.9.

August 27	Recommended decision (target date based on two weeks of hearings).
September 14	Briefs on exceptions (tentative, depending on date of recommended decision).
October 1	Briefs opposing exceptions (also tentative).

As explained at the prehearing conference, the trial briefs to be submitted on May 29 should be affirmative statements describing how the filing parties' own evidentiary presentations are related to (i) the findings and determinations the Siting Board must reach under PSL §168(2), and (ii) as applicable, conditions that should be included in any certificate granted to the applicant. Parties sponsoring neither direct nor rebuttal presentations should not file trial briefs, and arguments that simply answer other parties' presentations (as distinguished from statements that briefly describe the basis for the filing parties' own presentations) should not be included in the trial briefs.

SERVICE OF EXHIBITS ON PARTIES

The Siting Board's regulations require that copies of exhibits must be served on the staffs of the five permanent Siting Board agencies, namely, the Department of Public Service, the Department of Environmental Conservation, the Department of Health, the New York State Energy Research and Development Authority, and the Commissioner of Economic Development.⁴ In order to expedite the orderly conduct and disposition of the hearings in this proceeding, an exhibit exchange list will be established.⁵ The initial exhibit exchange list will be attached to the issues ruling of March 26, 2001.

Parties included on the initial exhibit exchange list will be limited to the permanent agency staffs, the Office of Parks, Recreation, and Historic Preservation, the applicant, and the other parties who are to submit direct testimony and exhibits. In addition, two of the local libraries on which the application was served will be included on the initial exhibit exchange list. Recommendations for the two libraries, which may be submitted by any party, shall be served on the examiners by no later than March 22 (the date on which comments on issues statements are due).

DISCOVERY

At the prehearing conference, the parties were advised that discovery should be conducted pursuant to the Public Service Commission's regulations,⁶ which, among other things, encourage parties to exchange information informally and to use the formal procedures provided for in those regulations only as

⁴ 16 NYCRR §1000.10(a); PSL §160(4).

⁵ PSL §165(2); 16 NYCRR §1000.10(b).

⁶ 16 NYCRR Part 5.

necessary.⁷ No cut-off date for discovery requests will be established. However, the 10-day deadline that ordinarily applies to responses to formal interrogatories and document requests⁸ will be tolled during the days on which evidentiary hearings are in session, should interrogatories or document requests be served near the beginning of, or during, the hearings.⁹ In addition, the general provision of the Commission's regulations that discovery will be allowed in accordance with 16 NYCRR Part 5¹⁰ will be strictly enforced. Purported cross-examination at the evidentiary hearings seeking information that, in the opinion of the examiners, could have been obtained through discovery will not be permitted.¹¹

MOTIONS TO INTERVENE

At the prehearing conference, decisions were reserved on motions for leave to intervene in this proceeding filed by SEF Industries, Inc. (SEF),¹² Oak Point, LLC (Oak Point), and the New York Power Authority (NYPA). Representatives of SEF and Oak Point did not enter appearances at the prehearing conference. A representative of NYPA did enter an appearance, was permitted to

⁷ 16 NYCRR §§5.2(a) and 5.9(c).

⁸ 16 NYCRR §§5.3(c) and 5.4(b).

⁹ 16 NYCRR §5.9(d).

¹⁰ 16 NYCRR §4.5(e).

¹¹ 16 NYCRR §4.5(f).

¹² SEF's current motion is its second. An earlier motion was denied by a ruling issued December 12, 2000, because the motion did not support a finding that SEF's participation in this proceeding would contribute to the development of a complete record or would otherwise be fair on in the public interest. See 16 NYCRR §4.3(c)(1).

participate, and has tentatively identified an issue it might seek to have adjudicated.

As noted in its motion to intervene, NYPA currently operates a generation station near the site of the applicant's proposed project; has been authorized to install 11 combustion turbines in the New York City area; and transmits and sells electric power to, among others, various public corporations located within the New York City area, including the City itself. We conclude that NYPA has established a sufficient interest in the adjudication of an issue of concern in this proceeding, and its motion to intervene is granted.

INTERVENOR FUNDING REQUEST

The only request for intervenor funding¹³ was submitted jointly by the Coalition Helping to Organize a Kleaner Environment (CHOKE) and the Office of the President of the Borough of Queens (Queens). Pursuant to the Siting Board's regulations, the request was discussed at the March 1, 2001 prehearing conference,¹⁴ and a decision on the request must be issued by March 16.¹⁵ The request sought the entire amount of the funds in the intervenor account (\$250,000).

The written request, dated February 8, does not include "a detailed statement of the services to be provided by experts and consultants (and the basis for their fees)"¹⁶ and acknowledges that such a statement remains to be finalized and submitted. Accordingly, no determinations will be reached with respect to most of the itemized funding requests before the

¹³ PSL §164(6); 16 NYCRR §1000.9.

¹⁴ 16 NYCRR §1000.9(d).

¹⁵ 16 NYCRR §1000.9(e).

¹⁶ 16 NYCRR §1000.9(c)(6).

March 16 deadline, in order to give CHOKE and Queens an opportunity to supplement the requests.¹⁷ However, determinations with respect to two of the requests can be reached now.

The largest itemized request is for a disbursement of \$55,000 "to develop a plan to improve overall air quality in northwest Queens." According to the request, the plan would entail the development of "alternative scenarios" involving "different mixes of new plant construction, retirements and emission controls upon existing plants, and demand-side alternatives." The request suggests that the outcome would be the selection of "a scenario that achieves the desired air emissions goals at an acceptable cost, with technologies that are feasible within the time period of the analysis."

For purposes of this determination, we can assume that development of such a plan would be useful. This proceeding, however, is not the proper forum for development of such a plan, because, put simply, this is not a planning proceeding. To comply with PSL Article X, an applicant must demonstrate that a proposed facility "is reasonably consistent with the energy policies and long-range energy planning objectives and strategies contained in the most recent state energy plan," or that "the facility was selected pursuant to an approved procurement process."¹⁸ The Siting Board is required to reach similar findings.¹⁹ In other words, an Article X applicant may

¹⁷ The supplemental information should be received by the examiners by March 14, or, in the alternative, CHOKE and Queens may request that an additional date for the submission of fund requests be established pursuant to 16 NYCRR §1000.9(b).

¹⁸ PSL §164(1)(e).

¹⁹ PSL §168(2)(a). Findings that a proposed facility (i) is consistent with the most recent State Energy Plan, or (ii) was

regard the current State Energy Plan and approved procurement processes as established and valid, and the applicant is entitled to a facility-specific adjudication of its application in that context. A proposal to develop a different context for the evaluation of facility-specific applications might properly be proposed through the processes provided for in Article 6 of State Energy Law,²⁰ but no disbursement from the intervenor account established for this proceeding may be authorized by the examiners for that purpose.

CHOKE and Queens have also requested a disbursement of \$10,000 for an evaluation of "the extent to which claimed environmental benefits at existing facilities would be required without the proposed facility." The analysis would involve a "review of current and likely air regulatory policy developments."

The proposed evaluation would involve, at least in part, a legal analysis for which a disbursement from the intervenor account is not available.²¹ And the identification of "likely air regulatory policy developments" and their applicability to existing facilities are issues that fall well outside the scope of this proceeding. Accordingly, no disbursement from the intervenor account established in this proceeding will be authorized for such an evaluation.

MUNICIPAL PARTY TRANSCRIPTS

selected pursuant to an approved procurement process, are not necessarily mutually exclusive; both findings can be made with respect to a particular Article X application. New York State Energy Plan and Final Environmental Impact Statement (November 1998), p. 2-52.

²⁰ State Energy Law §6-106(6)-(8); see also 9 NYCRR Part 7851.

²¹ PSL §164(6)(a); 16 NYCRR §1000.9(a).

A municipal party to an Article X proceeding may have the Siting Board arrange for its receipt of hearing transcripts.²² At the prehearing conference, the two municipal parties in attendance were advised, should they choose to take advantage of that arrangement, to order transcripts directly from the reporting service, pay the reporting service for them, and contact the Secretary of the Siting Board regarding reimbursement.

At future transcribed proceedings, such as the evidentiary hearings, any municipal party desiring to have the Siting Board arrange for its receipt of hearing transcripts should contact counsel for the Department of Public Service Staff (DPS Staff) to combine its transcript request with the transcript order placed by on DPS Staff on behalf of the Department of Public Service. Each municipal party is entitled to one copy of the transcript for each hearing session, to be provided on the same basis as is ordered for the Department by DPS Staff.

(SIGNED)

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²² PSL §164(6)(a).