

PUBLIC HEARINGS

before
New Jersey, Legislature.

ASSEMBLY, ENERGY AND NATURAL RESOURCES *Committee.*

and

ASSEMBLY AGRICULTURE AND ENVIRONMENT COMMITTEES

on

SENATE, NO. 1179
(Energy Facility Siting).

Held:

July 18, 1978
Hartley-Dodge Memorial Building
Madison, New Jersey

July 28, 1978
Assembly Chamber
State House
Trenton, New Jersey

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VOLUME II
July 18, 1978

MEMBERS OF COMMITTEES PRESENT:

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| <u>Assembly Energy & Natural Resources</u> | <u>Assembly Agriculture & Environment</u> |
| Assemblywoman Rosemarie Totaro, Vice-Chairman | Assemblyman Thomas F. Cowan, Sr. Assemblyman James J. Barry, Jr. |
| Assemblyman Donald T. DiFrancesco | |
| Assemblyman Emil Olszowy | |

ALSO:

Norman Miller, Research Associate
Legislative Services Agency
Aide, Assembly Agriculture and Environment Committee

* * * * *

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PASSAIC RIVER COALITION

AN URBAN WATERSHED ASSOCIATION

246 MADISONVILLE ROAD, BASKING RIDGE, N. J. 07920 • PHONE (201) 766-7550

Re: S. 1179, An Act concerning the siting of energy facilities, etc. before the Environment and Natural Resources Committee, Madison, N.J., July 18, 1978.

Presented by: Betty A. Little, Trustee

The Passaic River Coalition is an urban watershed association concerned with the total environment of the Passaic River Basin, 935 square miles of northern New Jersey, with a population of approximately 3½ million people.

S. 1179 raises serious questions with regard to the various roles of government at a number of levels and the rights of private citizens. Checks and balances within government are an essential part of the democratic process. It should be the role of the Energy Department to research, formulate, design, and plan; the Department of Environmental Protection should review and regulate the environmental aspect. It is essential that the right of review and regulation for the N.J. DEP be extended in this bill from state owned properties such as open space and parks to all areas of the State. Under the National Environmental Policy Act, every citizen is assured his right and his responsibility to maintain a high quality environment. If every department of State government carried out its own environmental review as well as its own planning, chaos would prevail; we would lose the ability to evaluate the planning, and the expertise which a department devoted exclusively to environmental protection can provide.

The DEP's authority to review and regulate is already established with regard to other resources, such as water by Federal statutes and rules and regulations with re-review by the U.S. Environmental Protection Agency at the Federal level. It has been the practice of the Federal agency to pass on responsibilities with regard to review of environmental matters to the DEP as the responsible state agency.

County government has provided our citizenry with a regional concept of planning and review which is critical in a constantly expanding State. The development of a county energy master plan should be encouraged; however, their power to review should not be taken away, since the legislation presently being suggested on one hand recommends the development of a program by the County and then on t



other hand states that it has nothing more to say about regulatory actions within its jurisdictional boundaries.

Within a democratic form of government, the greatest powers should be in the hands of the people, and this pertains also to the municipal level, where on-site knowledge of the socio-economic and environmental factors are best known to the smallest detail. Even the Courts in New Jersey revert back to the municipal level, for the Mt. Laurel Decision directs low income housing in local areas, and the question we hear most frequently in all water resource planning is "Do you relate to the Mt. Laurel decision?" Thus, the siting of facilities should also conform to local zoning ordinances, and rules and regulations, especially those which relate strongly to the health and well-being of the public.

The Legislature should weigh the consequences of the lack of checks and balances in this bill as presently written with the history of siting energy facilities throughout the Nation. Because of a projected need, some government officials and agencies in other States have tried to circumvent Federal legislation, or submit poorly researched environmental assessments or impact statements; thus reverting to the Courts as suits are instituted by such organizations as the Natural Resources Defense Council or the Sierra Club. And in all of these cases, the Courts found substance in the cases presented by the advocate --- the environmental institutions. Thus, New Jersey should focus not on how to get around a legitimate planning effort to meet a need which could reach serious proportions, but to use a more systemic method whereby such planning would take on a broader scope. The fact that this bill dwells on siting of energy facilities emphasizes a type of energy production which would depend on nuclear power as opposed to a management program which would supplement current supplies with solar energy and other systems now being refined.

We are further concerned with the methods being suggested to obtain energy conservation in established residential and commercial establishments. From the days of the Nation's founding, the right to invade a person's home has been a guarded right, which we as representatives of citizens in New Jersey do not surrender without due process.



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We firmly support a strong program of energy conservation and will work with the Department of Energy in such a pursuit, but we do not condone the method of search as written in S. 1179.

Inasmuch as the organizing of a new department in the State of New Jersey is a monumental task, we do not want to leave this hearing without indicating our support of the Governor in establishing this new component in our State government. However, it should be remembered that government is a constantly changing, dynamic part of our society. It must continuously be refined and updated to meet the demands of the public.

New Jersey's energy policies must include not only our State's needs, but also respond to the pressures from other parts of the Nation and the foreign market as well. It calls for an in-depth evaluation of current and future needs and a technology which is ever evolving. A bill, such as S. 1179, contains too great a mixture of policies and procedures. It should be broken down so that those portions which are acceptable to the public might be implemented and that those which are not may be refined.

We would be pleased to meet and work with this Committee in order to pursue this final recommendation. Thank you.



TESTIMONY OF MRS. WARREN ZAPP
REPRESENTING

MAYOR THOMAS F.X. SMITH

CITY OF JERSEY CITY

ON THE

ENERGY FACILITIES ACT

S 1179

JULY 18, 1978

BEFORE

ASSEMBLY COMMITTEE ON ENERGY



Mr. Chairman, Ladies and Gentlemen my name is Audrey Zapp I appear today on behalf of Mayor Thomas F.X. Smith, of Jersey City, N.J. Mayor Smith is very concerned with this legislation and we are hopeful that the Assembly Committee will consider our testimony as it begins the process of reviewing one of the most important and complex pieces of legislation in the energy field in years. The Assembly is to be commended for holding this public hearing as an orderly review of this legislation.

The Mayor agrees with many of the aims of the bill to conserve the energy resources of the state of New Jersey. Traditionally, energy resources have been exploited on an ad hoc, individualized basis. No detailed thought has been given to shortages and optimum delivery rates until recently, through citizen outcry.

Energy resources today are obviously not treated as the body of a public trust. The trusts, I am referring to should include air, water, and public lands. They should also include the entire body of resources and interests worthy of protection. We unearth and consume energy as if they were the sole property of this generation and there were no tomorrow. Governmental agencies are not always sufficiently impressed with enforceable duties to protect and conserve energy resources. No one-aside from energy companies themselves- has the proper information to establish needed national and state energy policies, let alone the clear duties to protect the future's claims to these precious, non renewable resources.

In order to successfully protect these energy resources the D.O.E. duties should include:

1. Assess the overall energy supply status and compile independent data on the reserves and useful life of various energy resources.
2. Coordinate a strong effort to promote and, if necessary mandate energy conservation . Waste should be prohibited.
3. Reduce the adverse environmental impacts of energy exploration, extraction, transmission and usage.
4. Encourage public participation , local controls . This must be encouraged at early decision making process. No project should be hastily advanced without the input and full participation of local municipal officials and involved citizen input. This is the principle



of the public trust of our states energy resources. No plan should omit these concepts.

The most glaring , unjustifiable example of the bill 1179 's over-emphasis on hastening decisions , in its one stop concept, is its failure to involve the local governments in its early decision making process. Section 29 of the bill is a good example of exactly how far the bill goes in order to by-pass local controls. In very clear language it states that: any property or interest therein purchased or leased by any energy industry shall be used and operated for energy facilities such as refineries, gas processing plants, petroleum or gas storage tank farms, nuclear plants and other energy facilities WITHOUT REGARD TO ANY LOCAL ZONING RULE, REGULATION, LAW OR ORDINANCE AND SUCH USE SHALL NOT BE REQUIRED TO BE SUBMITTED TO OR APPROVED BY ANY COUNTY OR MUNICIPAL GOVERNING BODY, ZONING OR PLANNING BOARD OR AGENCY."

The city of Jersey City finds this authority and power given to the D.O.E., by this bill, to be unprecedented in legislative history. The bill, as it stands completely annihilates the role of local government and citizen participation on a local level is destroyed. The rights of a municipality to determine the use of their land is absolute. The citizens of that municipality look for guidance to their local officials as to what will be put in their back yard. They are concerned of any threat to their safety and the destruction to public and private rights. It is beyond the power of legislatures to destroy or abridge these rights or to authorize their impairment.

We, in Jersey City, have the most magnificent waterfront in the world. We have in our front yard the Gateway to America. The Great Lady of the Harbor the Statue of Liberty and Ellis Island, the greatest orphanage the world has ever seen. Even New York does not have our harbor view. We view the harbor from the Battery to Sandy Hook. This is the Jersey City waterfront and we call it the window on the world and we have no intention to turn over its borders to any land use not compatible with our shoreline and the states first urban park Liberty State Park, located along our waterfront.

We, in Jersey City, have one of the most advanced zoning codes. We accomplished this over a period of four years, at which time public



hearings were held, 14 to be exact to solicit public input. The zoning code of Jersey City reflects the wishes of the people. The bill, as it stands would completely ignore our efforts. It would make this four year effort an exercise in futility. These energy facilities would be forced down the throats of the people whether they liked it or not. Clearly this would be democracy in reverse. Democracy is time consuming but it should be given every chance to work. No one agency should be given the power to ignore the wishes of the people and their elected officials.

Local government should continue to exercise the first line of regulations. Storage tanks or tank farms for oil, petroleum and petrochemicals would be totally outside the scope of local jurisdiction under this bill. Section 29 and 13 provides for complete termination of local regulation for all energy facilities as defined under this bill.

Tank farm impacts are overwhelmingly experienced at the local level. Their presence will automatically down grade the entire area. They are a poor land use and this has a tendency to spread like wildfire to adjacent lands and will completely perpetuate the slow, death of any plans to up grade an urban waterfront. We, in Jersey City have had to fight off two superports and a refinery along our precious waterfront within a four year period.

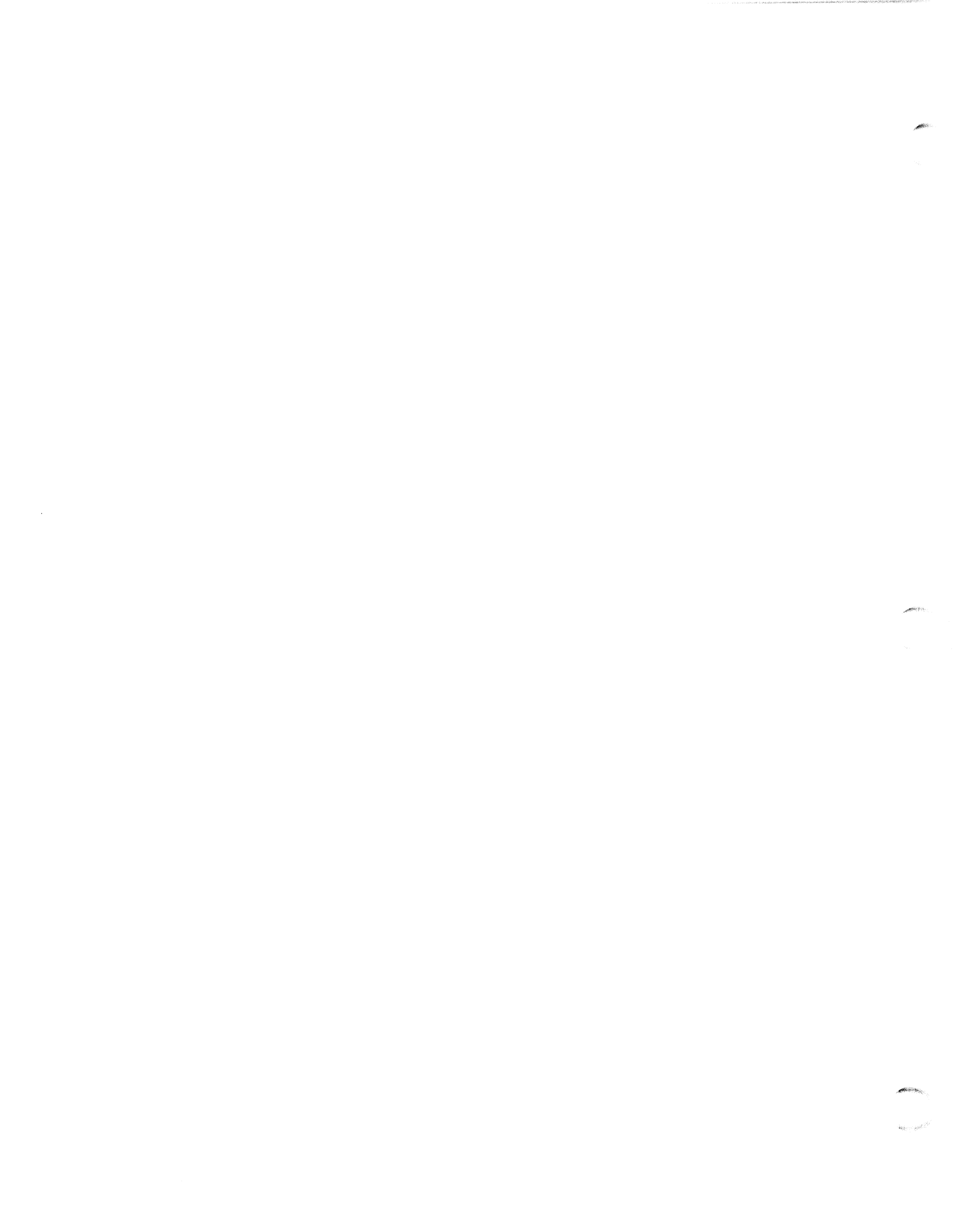
Jersey City recommends: Local Police Power Control be maintained, including zoning, over all oil, petroleum and chemical tank farms and related facilities. The bill must state this clearly .

Jersey City also recommends that in order to determine the suitability of siting other energy facilities such as nuclear or coal power plants, local residents and municipal governments must be given public hearings, acting directly through the public advocate which would give them a standing to participate on all relevant issues.

We also recommend that all energy facilities must be mandated to undergo the complete certificate process of D.E.P.

The Department of Environmental Protection must not be by-passed neither should the Natural Resource Council 's role of protecting the 3 mile riparian lands, held in public trust, be usurped. These lands are held in the public trust for the citizens of the state and their use must be examined carefully by the capable Resource Council and their competent staff.

We strongly feel the bill, in its present form, is a bad bill. The bill should be scrapped and the legislators should go back to the drawing board and draw up legislation that will protect the rights of the people and their local municipal officials inalienable rights to determine their own destiny and to determine what facilities shall be placed in their back yards. This is our land and the legislature cannot legislate our rights away.



SEA alliance

Safe Energy Alternatives

324 Bloomfield Avenue, Montclair, N.J. 07042 (201) 744-3263

TESTIMONY

By: Isabelle Sayen
167 Edgerstoune Rd.
Princeton, N.J. 08540

For The Safe Energy Alternatives Alliance

On The

Energy Facilities Siting Bill S1179

July 18, 1979

In Madison, New Jersey

Before

Assembly Committee on Energy and Natural Resources

Assembly Committee on Agriculture and Environment

SEA alliance

Safe Energy Alternatives

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The Safe Energy Alternatives Alliance respectfully requests that Senate Bill 1179 be denied. The Department of Energy enabling bill, S3179, adopted May 9, 1977 grants the Commissioner of Energy sufficient latitude to investigate need, to plan and to implement energy decisions throughout the State. It even grants emergency powers.

Where Senate Bill 3179 is moderate and well-balanced, S1179 can be characterized as absolutist and unreasonable. The extension of the Department of Energy's power of eminent domain, pre-emption of riparian rights and municipal ordinances, the lack of any role for the Public Advocate's office, and limiting public participation to a proforma role, as proposed in S1179, constitutes a blatant infringement of individual rights, home rule and the normal democratic process. S1179, constitutes an unconscionable quest for total control over all other state instrumentalities, especially the Department of Environmental Protection. On the other hand Senate Bill 3179 states the appropriate relationships of state and municipal governments in the following passage (Section 13c, lines 84-87).

"The provisions of this section shall not be regarded as to be in derogation of any powers now existing and shall be regarded as supplemental and in addition to powers conferred by other laws, including municipal zoning authority."

This passage was stricken from 1179 and replaced with more authoritarian measures.

Clearly the language and import of 1179 is extremist and dictatorial. For example section 29, lines 1-8 asserts:

"Any property or interest therein purchased or leased by any energy industry or by any other person pursuant to section 25 of this amendatory and supplementary act shall be used and operated for the purposes for which it was purchased or leased without regard to any local zoning rule, regulation, law or ordinance, and such use shall not be required to be submitted to or approved by any county or municipal

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governing body, zoning or planning board or agency." [Emphasis mine]

In some instances S1179 violates the very basis for which the Department of Energy was created. In Section 29 of S3179 it states: "The object and design of this act being the protection of the public health and safety and welfare by means of the coordination of state planning, regulation, and authority in energy related matters." Some forms of energy planned or widely used in New Jersey are neither healthy nor safe — they are carcinogenic and highly volatile. The disastrous effects of an oil spill are not good for our welfare, our economy or our environment. As for coordination, we would have to substitute the word "unsurpation" in S1179.

There is an energy problem in New Jersey and all over the world. We are living in a finite world and we are using up our non-renewable resources of energy. We have experienced shortages. These shortages are the warning signals to change our energy course to the renewable, benign and resilient forms of energy. This is the crux of the energy situation. We don't need the Energy Facilities. Siting Bill 1179 to launch an innovative and responsive plan of alternate energy solutions, because alternate energy solutions are matched in scale and geographic distribution to end use needs and are therefore decentralized. These technologies are available today. The barriers are institutional. S1179 does not address these barriers, instead it perpetuates the problem of energy resource depletion.

The energy crisis is not here yet and we are not willing to relinquish our civil liberties and local control for the authoritarian control of energy facility siting expediency when it is totally unnecessary. S1179 is an over-reaction to a challenge that requires education, coordination with state instrumentalities, and a willingness to try a whole new direction in energy sources and technology, not further development of obsolete fossil and nuclear fuels with all their attendant horrors to our health, safety and welfare.

The SEA Alliance contends that Senate Bill 3179 is more than generous in its

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allocation of necessary power to the Department of Energy. Any further attempt to acquire more power on the part of the executive branch oversteps the bounds of democracy and executive accountability.

We do feel, however, that the 15 member advisory board to the Division of Energy Planning and Conservation in S3179 should be expanded to include a larger proportion of consumer representation to off-set the dominant vested interests of the energy related industries and utilities. Balanced participation by the public is essential by broader inclusion in an advisory capacity and through more time for public and adjudicatory hearings.

But the main point we wish to stress is that a proper democratic balance between the executive branch of government, state instrumentalities and municipal government must be maintained as established in Senate Bill 3179. We are not willing to grant permanent emergency powers to any department of government or its commissioner, who is an appointed official and not accountable to the people.

STATEMENT OF JAMES F. BURKE, CHAIRMAN,
NEW JERSEY COMMON CAUSE ENERGY COMMITTEE
ON SENATE BILL 1179

BEFORE A PUBLIC HEARING IN

MADISON, N.J.

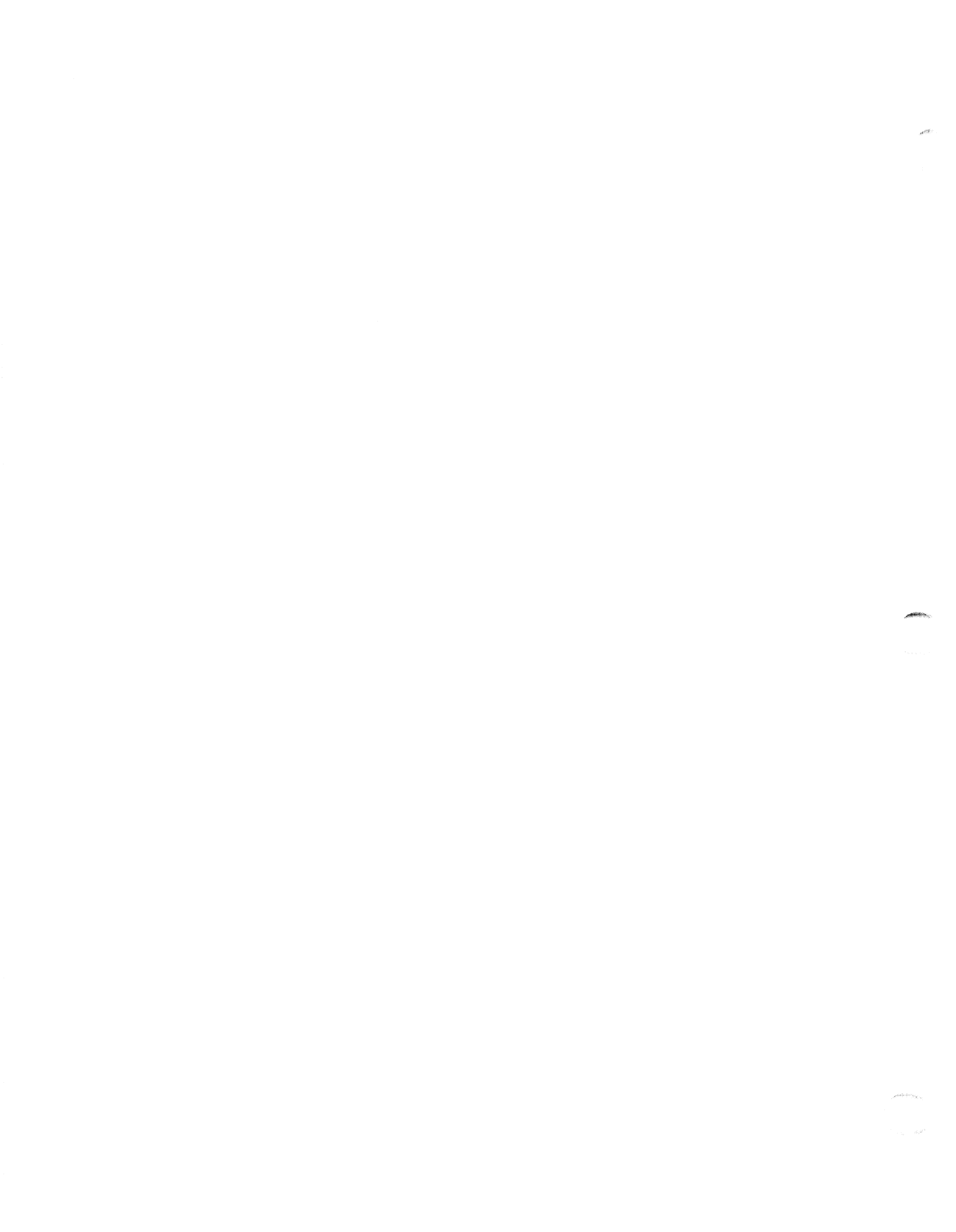
July 18, 1978

My name is Jim Burke, and I am chairman of the Energy Committee of New Jersey Common Cause. Common Cause is a national citizens' lobby with about 250,000 members nationwide, approximately 11,000 of whom live in New Jersey. Our organization has worked hard for four years for the establishment of a strong, independent Department of Energy and a coherent, long-range energy plan. We are pleased that you have invited us to contribute our ideas and suggestions.

In recent testimony given June 28, 1978, Common Cause commended the Department of Energy for the manner in which they developed the Energy Master Plan. Their efforts indicated to us that the Department of Energy is concerned with Common Cause goals of open, responsive government that permits public access to information and public participation in decisions. We would like to commend S-1179 for the same reasons, but we cannot because it represents a radical departure from a policy of public participation in government decisions. In addition, we have serious questions about the sections of S-1179 which deal with the Advisory Council on Energy Planning and Conservation and the powers of eminent domain. Therefore, in our role as the watchdog for the public interest, we feel that we must make suggestions for your consideration in the following areas:

Advisory Council on Energy Planning and Conservation

- In previous testimony before this committee, I stated that Common Cause favored the elimination of the Advisory Council provided by S-3179 because in our view it was an unnecessary "energy industry lobbyist council" where the public interest was not



represented. The committee responded by expanding the council membership from ten to fifteen to accommodate additional non-industry representatives. At this time, we would like to restate our position that this council is unnecessary and should be eliminated. However, if the committee feels that the Advisory Council is essential to the proper functioning of the Division of Conservation and Planning, we ask that you consider the following suggestions:

1) Non-industry members should submit financial disclosures to help assure that a conflict of interest will not arise.

2) The ambiguous wording of S-1179 which states that the members of the council will be "selected with a view toward providing a balance among various interests, perspectives and backgrounds" is definitely less acceptable than the original, specific wording of S-3179.

3) The number of members representing the energy-consuming public is inadequate and should be increased.

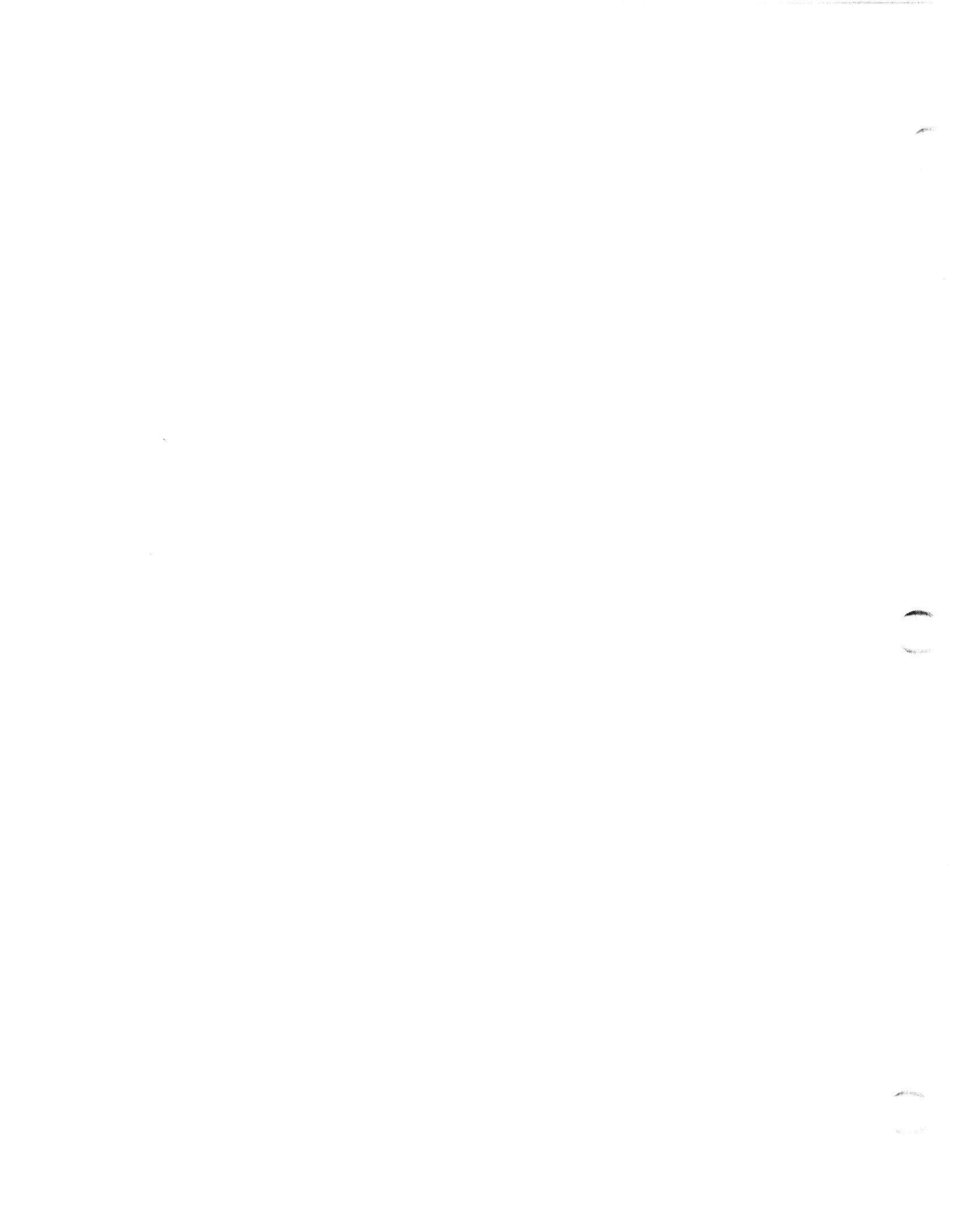
Energy Facility Decisions

At the center of the controversy surrounding S-1179 are the important questions of home rule and public participation in governmental decisions. The bill makes an attempt to include county participation in energy facility siting by stating that any county in the state may develop a ten-year county energy facilities plan, hold public hearings and submit the approved plan to the Department of Energy. On the surface, this provision would appear to guarantee public participation, but closer scrutiny reveals the following problems which Common Cause asks you to consider:

1) Currently the counties of New Jersey are severely limited in resources and funding, and cannot hope to meet the deadlines imposed by S-1179. Faced with this reality, many counties may decide not to develop a ten-year energy facility plan, thereby eliminating public participation in siting decisions.

2) Considerable amounts of time, effort and money might be wasted in the development of plans by counties which might never be considered for energy facility siting.

S-1179 gives the commissioner of the Department of Energy the power to override



county and municipal objections to the location of the energy facilities, provided that it is "in conformity with the state's estimated energy needs."

Common Cause certainly recognizes that the responsibility for the location of energy facilities should be in the Department of Energy, but feels strongly that the public should provide input into such decisions. S-1179, which provides for the overriding of local decisions by the commissioner and appeals through an Energy Facility Review Board composed of three appointees of the Governor, minimizes the effect of public participation.

To improve this situation, Common Cause suggests that the adjudicatory hearings proposed in the testimony of the Public Advocate should be required in the decisions about the siting of energy facilities in our state. Such hearings, with an impartial hearing officer and sworn testimony, would assure "due process" in controversial energy facility siting decisions.

Power of Eminent Domain

Common Cause agrees with the League of Women Voters in their feeling that it is unwise for the Department of Energy to acquire public lands by eminent domain on behalf of the energy industry. We would agree that a leasing system similar to the one utilized by the federal government for timber and mineral rights would be advantageous to the state.

In conclusion, Common Cause recognizes that the goal of S-1179 is to streamline energy planning and development and to overcome regulatory delay. However, we feel that the need for public scrutiny of energy facilities which can have a significant impact on a community also deserves consideration. We would remind you that an informed public that has access to the decision process is essential to the success of New Jersey's energy plans and policies.

We believe that these public hearings are an important step in soliciting the ideas of all those concerned with the energy future of New Jersey. We hope that this open policy continues, and we thank you for inviting us to contribute.

