

PUBLIC HEARING

before

ASSEMBLY ENERGY AND NATURAL RESOURCES  
and  
ASSEMBLY AGRICULTURE AND ENVIRONMENT COMMITTEES

on

SENATE, NO. 1179  
(Energy Facility Siting)

Held:

June 21, 1978

Assembly Majority Conference Room

State House

Trenton, New Jersey

MEMBERS OF COMMITTEES PRESENT:

Assembly Energy & Natural Resources

Assembly Agriculture & Environment

Assemblyman John H. Froude,  
Chairman

Assemblyman H. Donald Stewart,  
Chairman

Assemblywomen Rosemarie Totaro

Assemblywoman Barbara W. McConnell

Assemblyman Robert P. Hollenbeck

Assemblyman Thomas F. Cowan, Sr.

Assemblyman George J. Otlowski

Assemblyman James J. Barry, Jr.

Assemblyman Donald T. DiFrancesco

Assemblyman C. Louis Bassano

Assemblyman Emil Olszowy

ALSO:

Senator Frank J. Dodd (Sponsor of Senate 1179)

- - -

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Aide, Assembly Energy and Natural Resources Committee

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\* \* \*



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[OFFICIAL COPY REPRINT]

SENATE, No. 1179

STATE OF NEW JERSEY

INTRODUCED MAY 18, 1978

By Senators DODD, MERLINO, DWYER, PARKER, LASKIN  
HIRKALA and FELDMAN

Referred to Committee on Energy and Environment

AN ACT concerning the siting of energy facilities in this State, amending and supplementing the "Department of Energy Act," P. L. 1977, c. 146, amending R. S. 12:3-12 and R. S. 12:3-26, \*repealing section 20 of P. L. 1977, c. 146,\* and making an appropriation.

1 BE IT ENACTED by the Senate and General Assembly of the State  
2 of New Jersey:

1 1. Section 2 of P. L. 1977, c. 146 (C. 52:27F-2) is amended to  
2 read as follows:

3 2. a. The Legislature hereby finds and determines that a secure,  
4 stable, and adequate supply of energy at reasonable prices is vital  
5 to the State's economy and to the public health, safety, and welfare:  
6 that this State is threatened by the prospect of both near- and  
7 long-term energy shortages; that the existing dispersion of re-  
8 sponsibilities with respect to energy and energy-related matters  
9 among various State departments, divisions, agencies, and com-  
10 missions inhibits comprehensive and effective planning for our  
11 future energy needs; and that the State government does not now  
12 possess either sufficient information or adequate authority to  
13 provide for and insure the wise and efficient production, \***[distribu-**  
14 **tion]**\* \*transmission\*, use, and conservation of energy.

15 The Legislature further finds and determines that only an agency  
16 with comprehensive powers can collect, collate, and analyze the  
17 information necessary to determine the amount of energy that is  
18 or may be available; develop mechanisms to insure a fair and  
19 equitable distribution of existing supplies; conduct the long-term  
20 planning and management needed to eliminate or alleviate the  
21 potential adverse effects of a supply of energy insufficient to meet  
22 legitimate needs or from practices of production, distribution, and  
23 consumption detrimental to the quality of life or the environment;  
24 contribute to the proper siting of energy facilities necessary to

**EXPLANATION**—Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

25 serve the public interest; coordinate New Jersey's energy policies  
26 and actions with Federal energy policies; and secure for New  
27 Jersey the maximum amount of **[Federal]** *public and private*  
28 *funding available for energy related research, **[development]***  
29 *development, and demonstration projects.*

30 *b. The Legislature further finds and determines that economic*  
31 *development and environmental quality, particularly with respect*  
32 *to the problem of providing secure and stable supplies of energy in*  
33 *all forms for our citizens, businesses and industries, can both be*  
34 *realized upon our recognition of the following requirements:*

35 *(1) That energy facilities adequate to this State's need for a*  
36 *reliable supply of energy be planned, constructed and placed in*  
37 *operation on a timely basis, and by means and measures consonant*  
38 *with the preservation of environmental values and wise compre-*  
39 *hensive use of the State's air, land, water and energy resources;*

40 *(2) The certain energy facilities may be most appropriately*  
41 *located in energy parks and that such parks and any such facilities*  
42 *not located therein may both derive certain benefits and contribute*  
43 *to the public health, safety and general welfare if they are sur-*  
44 *rounded by buffer areas of dedicated open space or other nonresi-*  
45 *dential and low density land uses wherever feasible;*

46 *(3) That in order to avoid unnecessary delays in the construc-*  
47 *tion and operation of needed facilities, and to provide for full and*  
48 *timely analysis of environmental consequences at the earliest*  
49 *possible opportunity, major energy industries be required to*  
50 *engage in adequate long-range planning with public availability of*  
51 *such plans for review and comment;*

52 *(4) That the siting of energy facilities be treated as a significant*  
53 *aspect of land use planning by this State, in which all environ-*  
54 *mental, economic, social and technical issues with respect to such*  
55 *proposed facilities can be resolved in an integrated fashion;*

56 *(5) That such site selection, as well as the planning, construction*  
57 *and placing in operation of necessary energy facilities, and the full*  
58 *environmental review of all such facilities be expedited through the*  
59 *Department of Energy;*

60 *(6) That cooperation with other states and, whenever practicable*  
61 *and feasible, with the Federal Government in the resolution of*  
62 *issues connected with the siting of energy facilities be encouraged;*  
63 *and,*

64 *(7) That a comprehensive, permanent, well-designed program*  
65 *of study and research into the environmental, social, economic and*  
66 *technical aspects of energy facility development be developed and*  
67 *implemented by the Department of Energy.*

1 2. Section 3 of P. L. 1977, c. 146 (C. 52:27F-3) is amended to  
2 read as follows:

3 3. As used in this act:

4 a. "Commissioner" means the Commissioner of the Department  
5 of Energy;

6 b. "Department" means the Department of Energy established  
7 by this act;

8 c. "Distributor" means and includes each person, wherever  
9 resident or located, who imports into this State fuels for use,  
10 distribution, storage, or sale in this State after the same shall  
11 reach this State; and also each person who produces, refines,  
12 manufactures, blends, or compounds fuels and sells, uses, stores,  
13 or distributes the same within this State. In no case, however,  
14 shall a retail dealer be construed to be a distributor;

15 d. "Energy" means all power derived from, or generated by,  
16 any natural or man-made agent, including, but not limited to,  
17 petroleum products, gases, solar radiation, atomic fission or fusion,  
18 mineral formations, thermal gradients, wind, or water[.];

19 e. ["Energy facility" means any plant or operation which  
20 produces, converts, distributes or stores energy or converts one  
21 form of energy to another; in no case, however, shall an operation  
22 conducted by a person acting only as a retail dealer be construed  
23 as an energy facility.]

24 *"Energy facility" means any and all plants, buildings, structures,*  
25 *or operations of any kind which are directly associated with the*  
26 *production, conversion, processing, transmission or storage of*  
27 *energy in any form, including but not limited to, electric generating*  
28 *facilities \*[(either fossil-fueled or nuclear)]\*, refineries, gas*  
29 *processing plants, transmission pipelines, electric transmission*  
30 *lines (138,000 volts and greater), and petroleum or gas storage tank*  
31 *farms\*[, and facilities for the distribution of petroleum prod-*  
32 *ucts]\* with a combined above-ground or buried storage capacity*  
33 *of 400,000 gallons or more\*; in no case, however, shall an operation*  
33A *\*associated with the production, conversion, processing or storage*  
33B *of energy in any form located on the site of, and intended exclu-*  
33C *sively for use in, any commercial, industrial, or residential facility*  
33D *or an operation\* conducted by a person acting only as a retail*  
33E *dealer be construed as an energy facility\*. Any plant, building,*  
33F *structure, or operation of any kind which is a part of an application*  
33G *for a permit or license or is a conditional requirement to such*  
33H *permit or license is an "energy facility" as defined herein\*;*

- 34 f. "Energy information" means any statistic, datum, fact, or  
35 item of knowledge and all combinations thereof relating to energy;
- 36 g. "Energy information system" means the composite of energy  
37 information collected by the office;
- 38 h. "Energy industry" means any person, company, corporation,  
39 business, institution, establishment or other organization of any  
40 nature engaged in the exploration, extraction, transportation, trans-  
41 mission, refining, processing, generation, distribution, sale or  
42 storage of energy;
- 43 i. "Fuel" means coal, petroleum products, gases or other com-  
44 bustibles and nuclear fuel, including enriched uranium, U235 and  
45 U238, and plutonium, U239;
- 46 j. "Gases" means natural gas, methane, liquefied natural gas,  
47 synthetic natural gas, coal gas and other **\*[manufactured]\* \*fuel\***  
47A gases;
- 48 k. "Person" means natural persons, partnerships, firms, asso-  
49 ciations, joint stock companies, syndicates and corporations, and  
50 any receiver, trustee, conservator or other officer appointed pur-  
51 suant to law or by any court, State or Federal; "person" also  
52 means the State of New Jersey, counties, municipalities, authori-  
53 ties, other political subdivisions, and all departments and agencies  
54 within the aforementioned governmental entities;
- 55 l. "Petroleum products" means and includes motor gasoline,  
56 middle distillate oils, residual fuel oils, aviation fuel, propane,  
57 butane, natural gasoline, naphtha, gas oils, lubricating oils and any  
58 other similar or dissimilar liquid hydrocarbons;
- 59 m. "Public building" means any building, structure, facility  
60 or complex used by the general public, including, but not limited  
61 to, theaters, concert halls, auditoriums, museums, schools, libraries,  
62 recreation facilities, public transportation terminals and stations,  
63 factories, office buildings, business establishments, passenger  
64 vehicle service stations, shopping centers, hotels or motels and  
65 public eating places, owned by any State, county or municipal  
66 government agency or instrumentality or any private individual,  
67 partnership, association or corporation;
- 68 n. "Purchase" means and includes, in addition to its ordinary  
69 meaning, any acquisition of ownership or possession, including,  
70 but not limited to, condemnation by eminent domain proceedings;
- 71 o. "Retail dealer" means any person who engages in the busi-  
72 ness of selling fuels from a fixed location such as a service station,  
73 filling station, store, or garage directly to the ultimate users of  
74 said fuel;

75 p. "Sale" means and includes, in addition to its ordinary mean-  
 76 ing, any exchange, gift, theft, or other disposition. In such case  
 77 where fuels are exchanged, given, stolen, or otherwise disposed of,  
 78 they shall be deemed to have been sold;

79 q. "Supplier of fuel" means any refiner, importer, marketer,  
 80 jobber, distributor, terminal operator, firm, corporation, whole-  
 81 saler, broker, cooperative or other person who supplies, sells,  
 82 consigns, transfers, or otherwise furnishes fuel. In no case, how-  
 83 ever, shall a retail dealer be construed to be a supplier of fuel;

84 r. "Trade secret" means the whole or any portion or phase  
 85 of any scientific, technical or otherwise proprietary information,  
 86 design, process, procedure, formula or improvement which is used  
 87 in one's business and is secret and of value; and a trade secret  
 88 shall be presumed to be secret when the owner takes measures to  
 89 prevent it from becoming available to persons other than those  
 90 selected by the owner to have access thereto for limited purposes;

91 s. "Wholesale dealer" means any person who engages in the  
 92 business of selling fuels to other persons who resell the said fuel.  
 93 In no case shall a retail dealer be considered as a wholesale dealer;

94 t. "*Buffer zone*" means an area or areas of land surrounding or  
 95 contiguous with an energy park or an energy facility which, in the  
 96 discretion of the department, is dedicated to open space or low  
 97 density, nonresidential land uses;

98 u. "*Commencement of construction*" means any clearing of the  
 99 land, excavation, or other substantial action that would affect the  
 100 natural environment of the site or route but does not include  
 101 changes desirable for the temporary use of the land for public  
 102 recreational uses, necessary borings to determine foundation con-  
 103 ditions, or other preconstruction monitoring to establish back-  
 104 ground information related to the suitability of the site or to the  
 105 protection of environmental values;

106 v. "*Energy park*" means an area or areas of land designated by  
 107 the department, pursuant to the provisions of this amendatory and  
 108 supplementary act, as suitable for the location of energy facilities  
 109 and energy related facilities.

1 3. Section 8 of P. L. 1977, c. 146 (C. 52:27f-8) is amended to  
 2 read as follows:

3 8. a. The commissioner shall make an annual report to the  
 4 Legislature and the Governor of the department's operations and  
 5 render such other reports as they shall from time to time request  
 6 or as may be required by law. These reports shall include, but not  
 7 be limited to, an analysis of existing problems and guidelines re-  
 8 lating to future energy use and availability.

9 b. Within 6 months of the effective date of this act, the com-  
10 missioner, after consultation with the Director of the Division of  
11 Energy Planning and Conservation, the Board of Public Utilities,  
12 the Attorney General, and the commissioners of appropriate execu-  
13 tive departments, including but not necessarily limited to the De-  
14 partments of Environmental Protection and Transportation, shall  
15 prepare and submit a report to the Legislature and the Governor  
16 identifying (1) those functions and duties currently exercised by  
17 other departments, divisions, agencies, [commissioins] commis-  
18 sions, councils, boards, or bureaus of State Government relating to  
19 energy that might be appropriately transferred to the department;  
20 and (2) those functions and duties transferred to the department  
21 pursuant to the provisions of this act that might be appropriately  
22 transferred to other departments. Such transfers may be effec-  
23 tuated by executive order, *pursuant to the "Executive Reorganiza-*  
24 *tion Act of 1969," P. L. 1969, c. 203 (C. 52:14C-1 et seq.),* or law,  
25 as the case may be.

1 4. Section 9 of P. L. 1977, c. 146 (C. 52:27F-9) is amended to  
2 read as follows:

3 9. The commissioner shall, on behalf of the department through  
4 the Division of Energy Planning and Conservation:

5 a. Manage the department as the central repository within the  
6 State Government for the collection of energy information;

7 b. Collect and analyze data relating to present and future  
8 demands and resources for all forms of energy;

9 c. Have authority to require all persons, firms, corporations or  
10 other entities engaged in the production, processing, distribution,  
11 transmission or storage of energy in any form to submit reports  
12 setting forth such *energy* information as shall be required to carry  
13 out the provisions of this act;

14 d. Have authority to require any person to submit information  
15 necessary for determining the impact of any construction or  
16 development project on the energy and fuel resources of this State;

17 e. Charge other State Government departments and agencies  
18 involved in energy-related activities, including the Board of Public  
19 Utilities, with specific information gathering goals and require  
20 that said goals be fulfilled;

21 f. Establish an energy information system which will provide  
22 all data necessary to insure a fair and equitable distribution of  
23 available energy, to permit a more efficient and effective use of  
24 available energy, and to provide the basis for long-term planning  
25 related to energy needs;

26 g. Design, implement, and enforce a program for the conservation  
27 of energy in commercial, industrial, and residential facilities, which  
28 program shall provide for the evaluation of energy systems as they  
29 relate to lighting, heating, refrigeration, air-conditioning, building  
30 design and operation, and appliance manufacturing and operation;  
31 and may include, but shall not be limited to, the requiring of [an  
32 annual] *periodic* inspection and adjustment, if necessary, of [oil-  
33 fired] heating systems in residential, commercial and industrial  
34 buildings so as to bring such systems into conformity with efficiency  
35 standards therefor prescribed by the department; the setting of  
36 lighting efficiency standards for public buildings; the establishment  
37 of mandatory thermostat settings and the use of seven-day, day-  
38 night thermostats in public buildings; the development of standards  
39 for efficient boiler operation; and, the preparation of a plan to  
40 insure the phased retrofitting of existing gas furnaces with electric  
41 ignition systems and to require that new gas ranges and dryers be  
42 equipped with electric ignition systems, and new gas furnaces with  
43 electric ignition systems and automatic vent-dampers *properly in-*  
44 *stalled and approved*;

45 h. Conduct and supervise a State-wide program of education  
46 including the preparation and distribution of information \*[rebat-  
47 ing]\* *\*relating\** to energy conservation;

48 i. Monitor prices charged for energy within the State, evaluate  
49 policies governing the establishment of rates and prices for energy,  
50 and make recommendations for necessary changes in such policies  
51 to other concerned Federal and State agencies, including the Board  
52 of Public Utilities, and to the Legislature;

53 j. Have authority to conduct and supervise research projects  
54 and programs for the purpose of increasing the efficiency of energy  
55 use, developing new sources of energy, evaluating energy conserva-  
56 tion measures, and meeting other goals consistent with the intent  
57 of this act;

58 k. Have authority to distribute and expend funds made available  
59 for the purpose of research projects and programs;

60 l. Have authority to enter into interstate compacts in order to  
61 carry out energy research and planning with other states or the  
62 Federal Government where appropriate;

63 m. Have authority to apply for, accept, and expend grants-in-aid  
64 and assistance from private and public sources for energy pro-  
65 grams; notwithstanding any other law to the contrary, the com-  
66 missioner is designated as the State official to apply for, receive,  
67 and expend Federal and other funding made available to the State  
68 for the purposes of this act;

69 n. Require the annual submission of energy utilization reports  
70 and conservation plans by State Government departments and  
71 agencies, including the Board of Public Utilities, evaluate said  
72 plans and the progress of the departments and agencies in meeting  
73 these plans, and order changes in the plans or improvement in  
74 meeting the goals of the plans;

75 o. Carry out all duties given him under other sections of this act  
76 or any other acts;

77 p. Have authority to conduct hearings and investigations in  
78 order to carry out the purposes of this act and to issue subpoenas in  
79 furtherance of such power. Said power to conduct investigations  
80 shall include, but not be limited to, the authority to enter without  
81 delay and at reasonable times the premises of any energy industry  
82 in order to obtain or verify any information necessary for carrying  
83 out the purposes of this act;

84 q. Have authority to adopt, amend or repeal, pursuant to the  
85 "Administrative Procedure Act" P. L. 1968, c. 410 (C. 52:14B-1  
86 et seq.) such rules and regulations necessary and proper to carry  
87 out the purposes of this act;

88 r. Administer such Federal energy regulations as are applicable  
89 to the states, including, but not limited to, the mandatory petroleum  
90 allocation regulations and State energy conservation plans[.];

91 s. Have authority to sue and be sued;

92 t. Have authority to acquire by purchase, grant, contract or  
93 eminent domain title to real property for the purpose of demon-  
94 strating facilities which improve the efficiency of energy use, con-  
95 serve energy or generate energy in new and efficient ways;

96 u. Have authority to construct and operate, on an experimental  
97 or demonstration basis, facilities which improve the efficiency of  
98 energy use, conserve energy or generate power in new and efficient  
99 ways;

100 v. Have authority to contract with any other public agency or  
101 corporation incorporated under the laws of this or any other state  
102 for the performance of any function under this act;

103 w. Determine the effect of energy and fuel shortages upon con-  
104 sumers, and formulate proposals designed to encourage the lowest  
105 possible cost of energy and fuels consumed in the State consistent  
106 with the conservation and efficient use of energy;

107 x. Keep complete and accurate minutes of all hearings held  
108 before the commissioner or any member of the Division of Energy  
109 Planning and Conservation pursuant to the provisions of this act.  
110 All such minutes shall be retained in a permanent record and shall  
111 be available for public inspection at all times during the office hours  
112 of the department.

1 5. Section 10 of P. L. 1977, c. 146 (C. 52:27F-10) is amended to  
2 read as follows:

3 10. There is created in the Division of Energy Planning and  
4 Conservation an Advisory Council on Energy Planning and \***con-**  
5 **servation**\* \**Conservation*\* which shall consist of 15 members  
6 representing **[**the following: the natural gas industry, the bottle  
7 gas industry, the home heating oil and coal industry, terminal oper-  
8 ators, oil refiners, gasoline retailers, electrical utilities, nuclear fuel  
9 suppliers, environmental organizations, the solar energy industry,  
10 manufacturing industrial consumers, commercial consumers, resi-  
11 dential consumers, the transportation industry and the academic  
12 community**]** *energy consumers, suppliers and retailers, environ-*  
13 *mental organizations, and other persons associated with the produc-*  
14 *tion, distribution, sale or use of energy in this State selected with a*  
15 *view toward providing a balance among various interests, perspec-*  
16 *tives and backgrounds; provided, however, that all members serving*  
17 *on the council as of the effective date of this amendatory and sup-*  
18 *plementary act shall continue to serve until the expiration of the*  
19 *terms for which they were appointed. Members shall be appointed*  
20 *by the Governor, with the advice and consent of the Senate, and*  
21 *as practicably as possible represent the several geographical areas*  
22 *of the State.*

23 The council shall elect a chairman, vice chairman and secretary  
24 from its membership. Of the members first appointed, five shall  
25 serve for terms of 2 years, five for terms of 3 years and five for  
26 terms of 4 years. Thereafter all appointments shall be made for  
27 terms of 4 years. Members shall serve after the expiration of their  
28 terms until their respective successors are appointed and shall  
29 qualify, and any vacancy occurring in the membership of the council  
30 by expiration of term or otherwise, shall be filled in the same  
31 manner as the original appointment for the unexpired term only.

32 Members of the council shall serve without compensation but  
33 shall be reimbursed for expenses actually incurred in attending  
34 meetings of the council and in performance of their duties as  
35 members thereof. The council shall meet at least four times each  
36 year, at the call of its chairman, and at such other times, at the call  
37 of the commissioner, as he deems necessary.

1 6. Section 12 of P. L. 1977, c. 146 (C. 52:27F-12) is amended to  
2 read as follows:

3 12. a. The department, through the Division of Energy Planning  
4 and Conservation, within 1 year of the effective date of this  
5 act, shall prepare or cause to be prepared, and, after public hear-  
6 ings as hereinafter provided, adopt a master plan **[**for a period of

7 10 years] on the production, distribution, consumption and con-  
8 servation of energy in this State. Such plan shall be revised and  
9 updated at least once every 3 years.

10 *The purposes of such plan shall be to: (1) provide an evaluation*  
11 *of the projected demands for energy in New Jersey during the*  
12 *ensuing 10-year period, with a discussion of the factors responsible*  
13 *for any growth or diminution in demand so projected, as well as*  
14 *the proper role of the State, energy industries and the public in*  
15 *responding to these factors; (2) provide a 10-year plan for the*  
16 *production, transmission, consumption, and conservation of energy*  
17 *in New Jersey consistent with the national interest; (3) serve as*  
18 *a basis for the energy facility planning and siting determinations*  
19 *of the department, as hereinafter provided; and (4) serve as a*  
20 *basis, as provided in section 13. b. of the act of which this act is*  
21 *amendatory and supplementary, for the actions, decisions, deter-*  
22 *minations, and rulings of the department and other State depart-*  
23 *ments, divisions, commissions, authorities, councils, agencies,*  
24 *boards, or other instrumentalities with regard to energy.*

25 The plan shall include long-term objectives but shall provide for  
26 the interim implementation of measures consistent with said objec-  
27 tives. The department may from time to time and after public  
28 hearings amend the master plan. In preparing the master plan or  
29 any portion thereof or amendment thereto the department shall  
30 give due consideration to the energy needs and supplies in the  
31 several geographic areas of the State, and shall consult and co-  
32 operate with any Federal or State agency having an interest in  
33 the production, [distribution,] transmission, consumption or con-  
34 servation of energy.

35 b. Upon preparation of such master plan, and each revision  
36 thereof, the department shall cause copies thereof to be printed,  
37 shall transmit sufficient copies thereof to the Governor and the  
38 Legislature, for the use of the members thereof, and shall advertise,  
39 in such newspapers as the commissioner determines appropriate to  
40 reach the greatest possible number of citizens of New Jersey, the  
41 existence and availability of such draft plan from the offices of the  
42 department for the use of such citizens as may request same. In  
43 addition, the department shall:

44 (1) Fix dates for the commencement of a series of public hear-  
45 ings, at least one of which shall be held in each geographical area  
46 delineated in the master plan. Each such public hearing shall con-  
47 cern the overall content of the plan and those aspects thereof that  
48 have relevance to the specific geographical area in which each such  
49 public hearing is being held;

50 (2) At least 60 days prior to each public hearing held pursuant  
51 to this section, notify each energy industry and each State depart-  
52 ment, commission, authority, council, agency, or board charged  
53 with the regulation, supervision or control of any business, in-  
54 dustry or utility engaged in the production, processing, distribu-  
55 tion, transmission, or storage of energy in any form of the time  
56 and place for the hearing and shall publish such notice in a news-  
57 paper of general circulation in the region where the hearing is to  
58 be held, and in such newspapers of general circulation in the State  
59 as the commissioner determines appropriate to reach the greatest  
60 possible number of citizens of New Jersey.

61 c. Upon the completion of the requirements of subsection b. of  
62 this section, the department shall consider the testimony presented  
63 at all such public hearings and adopt the energy master plan,  
64 together with any additions, deletions, or revisions it shall deem  
65 appropriate.

66 d. Upon the adoption of the energy master plan, and upon each  
67 revision thereof, the department shall cause copies thereof to be  
68 printed and shall transmit sufficient copies thereof to the Governor  
69 and the Legislature, for the use of the members thereof, and to  
70 each State department, commission, authority, council, agency, or  
71 board charged with the regulation, supervision or control of any  
72 business, industry or utility engaged in the production, processing,  
73 distribution, transmission, or storage of energy in any form. In  
74 addition, the department shall advertise in the manner provided in  
75 subsection b. of this section the existence and availability of the  
76 energy master plan from the offices of the department for the use  
77 of such citizens of New Jersey as may request same; provided,  
78 however, that the department may charge a fee for such copies of  
79 the energy master plan sufficient to cover the costs of printing and  
80 distributing same.

1 7. Section 13 of P. L. 1977, c. 146 (C. 52:27F-13) is amended to  
2 read as follows:

3 13. a. The Division of Energy Planning and Conservation is em-  
4 powered and directed to intervene in any proceedings before, and  
5 appeals from, any State department, division, commission, au-  
6 thority, council, agency or board (hereinafter referred to as "State  
7 instrumentalities") including the Board of Public Utilities charged  
8 with the regulation, supervision, *location* or control of any business,  
9 industry or utility engaged in the production, processing, [distri-  
10 bution,] transmission or storage of energy in any form, *or of any*  
11 *energy facility, or with the granting of any permit or license for*

12 *any energy facility* when, in the discretion of the commissioner,  
13 such intervention is necessary to insure the proper consideration  
14 by such State instrumentalities of the State energy master plan,  
15 *and State Energy Facilities Plan*, or any part or aspect thereof,  
16 adopted by the department pursuant to [section 12 of] this act,  
17 *any energy facility siting determination of the department*, or any  
18 rule or regulation promulgated by the department pursuant to the  
19 provisions of this act. To facilitate the intervention provisions of  
20 this section, each such State instrumentality shall consider the de-  
21 partment a party of interest in any proceedings before such instru-  
22 mentality with respect to energy and shall give the same notice to  
23 the department as is given to every other party of interest in such  
24 proceedings of any meeting, public hearing or other proceeding of  
25 such instrumentality in implementing its regulatory, supervisory,  
26 *locational, permit or license granting* or control powers, responsi-  
27 bilities and duties with respect to such businesses, industries or  
28 utilities, *or such energy facilities*.

29 b. It being the intention of the Legislature that the actions,  
30 decisions, determinations and rulings of the State Government with  
31 respect to energy shall to the maximum extent practicable and  
32 feasible conform with the *State* energy master plan \***[and State]**\*  
33 *\*and State\* Energy Facilities Plan* adopted by the department pur-  
34 suant to [section 12 of] this act, the department shall prepare,  
35 periodically revise and distribute to each State instrumentality  
36 charged with the regulation, supervision, *location* or control of any  
37 business, industry or utility engaged in the production, processing,  
38 **[distribution,]** transmission or storage of energy in any form, *or*  
39 *of any energy facility, or with the granting of any permit or license*  
40 *for any energy facility*, such guidelines as the department deter-  
41 mines to be relevant to assist each such instrumentality in conform-  
42 ing with said energy master plan *and State Energy Facilities Plan*  
43 in implementing its regulatory, supervisory, *locational, permit or*  
44 *license granting* or control powers, responsibilities and duties with  
45 respect to such businesses, industries or utilities, *or such energy*  
46 *facilities*.

47 **[c.** With respect to the siting of any energy facility in any part  
48 of New Jersey, the department shall, the provisions of any law  
49 to the contrary notwithstanding, have jurisdiction coextensive with  
50 that of any other State instrumentality, and to that end, no State  
51 instrumentality with the power to grant or deny any permit for the  
52 construction or location of any energy facility shall exercise its  
53 powers without referring to the Division of Energy Planning and

54 Conservation, for its review and comments, a copy of such appli-  
55 cation and all papers, documents and materials appurtenant thereto  
56 filed by the applicant with such State instrumentality. Prior to  
57 making a final decision with respect to any such application, the  
58 State instrumentality with power of approval over such application  
59 shall solicit the views of the department thereupon. Such views  
60 shall be communicated to the State instrumentality with the power  
61 of approval over such application in the form of a report describing  
62 the findings of the department with respect to such application.  
63 Such report shall be prepared by the Director of the Division of  
64 Energy Planning and Conservation and shall be signed by said  
65 director and by the commissioner. In the event that such report  
66 is not prepared and transmitted to the State instrumentality with  
67 power of approval over such application within 90 days after the  
68 department's receipt of such application, such State instrumen-  
69 tality shall act upon such application pursuant to the law providing  
70 its power of approval thereof. In the event that the views of the  
71 department, as contained in its report, with respect to any such  
72 application differ from the views of the State instrumentality with  
73 the power of approval over such application, there shall be estab-  
74 lished an Energy Facility Review Board which shall consist of the  
75 Director of the Division of Energy Planning and Conservation, the  
76 director or chief executive officer of the State instrumentality with  
77 the power of approval over such application, and a designee of the  
78 Governor. The decision of the Energy Facility Review Board cre-  
79 ated with respect to a specific energy facility application shall be  
80 binding with respect to such facility and shall be implemented forth-  
81 with by the State instrumentality with the power of approval over  
82 such application.

83 In implementing its responsibilities pursuant to this subsection,  
84 the department shall have the power to adopt, by regulation, a fee  
85 schedule for reviewing applications for the construction or location  
86 of energy facilities; provided, however, that fees shall be charged  
87 to applicants for permits to construct or locate energy facilities  
88 only in those instances where the nature and extent of the proposed  
89 energy facility are such as to necessitate the employment of con-  
90 sultants or other expert personnel from without the department  
91 before the department can make its determination with respect to  
92 any such application, and that such fees shall in any event be the  
93 minimum amount necessary to permit the department to fulfill its  
94 responsibilities under this section.

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

1 8. Section 15 of P. L. 1977, c. 146 (C. 52:27F-15) is amended to  
2 read as follows:

3 15. a. Upon a finding by the commissioner that there exists or  
4 impends an energy supply shortage of a dimension which endan-  
5 gers the public health, safety, or welfare in all or any part of the  
6 State, the Governor is authorized to proclaim by executive order  
7 a state of energy emergency for a period of up to 6 months. The  
8 Governor may limit the applicability of any such state of emergency  
9 to specific kinds of energy forms or to specific areas of the State  
10 in which such a shortage exists or impends.

11 b. During the duration of a state of energy emergency the com-  
12 missioner to the extent not in conflict with applicable Federal  
13 law or regulation but notwithstanding any State or local law or  
14 contractual agreement, shall be empowered to:

15 (1) Order any person to reduce by a specified amount the use  
16 of any energy form; to make use of an alternate energy form,  
17 where possible; or to cease the use of any energy form;

18 (2) Order any person engaged in the distribution of any energy  
19 form to reduce or increase by a specified amount or to cease the  
20 distribution of such energy form; to distribute a specified amount  
21 and type of energy form to certain users as specified by the com-  
22 missioner, or to share supplies of any energy form with other  
23 distributors thereof;

24 (3) Establish priorities for the distribution of any energy form;

25 (4) Regulate and control the distribution and sale of any energy  
26 form by:

27 (a) Establishing such limitations, priorities, or rationing  
28 procedures as shall be necessary to insure a fair and equitable  
29 distribution of available supplies;

30 (b) Establishing minimum and maximum quantities to be  
31 sold to any purchaser;

32 (c) Fixing the days and hours of access to retail dealers;

33 (d) Compelling sales to members of the general public dur-  
34 ing times when a retail dealer is open for the sale of an energy  
35 form;

36 (e) Establishing methods for modifying the public by flags,  
37 symbols, or other appropriate means whether such retail  
38 dealers are open and selling the subject energy form;

39 (5) Direct the heads of those departments and agencies within  
40 State Government that were ordered to develop contingency plans  
41 pursuant to section 14 of this act to implement said plans;

42 (6) Adopt and promulgate such rules and regulations as are  
43 necessary and proper to carry out the purposes of this section.

44 c. During the existence of a state of energy emergency, the Gov-  
45 ernor may order the suspension of any laws, rules, regulations, or  
46 orders of any department or agency in State Government or within  
47 any political subdivision which deal with or affect energy and  
48 which impede his ability to alleviate or terminate a state of energy  
49 emergency.

50 d. Any aggrieved person, upon application to the \*~~commissi-~~  
51 ~~oner~~\* \*commissioner\* shall be granted a review of whether the  
52 continuance of any order issued by the commissioner pursuant to  
53 this section is unreasonable in light of then prevailing conditions of  
53A emergency.

54 e. During a state of energy emergency the commissioner may  
55 require any other department or other agency within State Gov-  
56 ernment to provide such information, assistance, resources, and  
57 personnel as shall be necessary to discharge his functions and  
58 responsibilities under this act, rules and regulations adopted here-  
59 under, or applicable Federal law and regulations.

60 f. The powers granted to the Governor and the commissioner  
61 under this section shall be in addition to and not in limitation of  
62 any emergency powers now or hereafter vested in the Governor, the  
63 commissioner, or any other State Government department or  
64 agency pursuant to any other laws, including but not limited to any  
65 power vested in the Board of Public Utilities to require utility  
66 companies to allocate available supplies of energy; provided, how-  
67 ever, that upon declaring a state of energy emergency, the Gover-  
68 nor may supersede any other such emergency powers; *provided*  
69 *further, however, that it is the intention of the Legislature that*  
70 *the powers granted to the Governor and the commissioner under*  
71 *this section shall be exercised with due regard to the civil and prop-*  
72 *erty rights of the citizens of this State; and, to this end, that such*  
73 *powers shall be only those determined to be absolutely essential to*  
74 *the preservation of public health, safety, or welfare, and shall be*  
75 *exercised with the minimum amount of disruption or interference*  
76 *with such civil and property rights.*

77 g. The state of energy emergency declared by the Governor pur-  
78 suant to this section shall remain in effect until the Governor  
79 declares by a subsequent executive order that the state of energy

80 emergency has terminated or for a period of 6 months from its  
81 declaration, whichever comes sooner.

1 9. Section 16 of P. L. 1977, c. 146 (C. 52:27F-16) is amended to  
2 read as follows:

3 16. a. The \*~~commisisoner~~\* \*commissioner\* shall adopt rules  
4 and regulations requiring the periodic reporting by energy indus-  
5 tries of energy information which shall include but not be limited to  
5A the following:

6 (1) Electrical generating capacity in the State; long-range plans  
7 for additions to said capacity; efficiency of electrical generation;  
8 price and cost factors in electrical generation; types and quantities  
9 of fuels used; projections of future demand, consumption of elec-  
10 tricity by sectors; times, duration, and levels of peak demand;

11 (2) Petroleum refining capacity; amount and type of fuel pro-  
12 duced; amount and type of fuel sold; interstate transfers of fuel;  
13 price and cost factors in refining, production, and sale; long-term  
14 plans for alterations or additions to refining capacity; location,  
15 amount, and type of fuel storage;

16 (3) Storage capacity for gases; amount and end uses of gases  
17 sold; price and cost factors in the sale and use of gases; and

18 (4) Such other information as the commissioner may determine  
19 necessary for carrying out the purposes of this act.

20 b. The commissioner shall at least annually publish a report  
21 analyzing all energy information collected.

22 c. The commissioner shall have the discretion to obtain energy  
23 information from an affiliate of any energy industry or from an  
24 association or organization of industries of which any such energy  
25 industry is a member. Whenever energy information supplied by  
26 an energy industry is so obtained by the commissioner, the energy  
27 industry to which such information pertains shall be promptly  
28 notified of the energy information so obtained and shall be given  
29 an opportunity to correct or amplify such information.

30 d. Trade secrets collected under this section shall be exempt  
31 from the requirements of P. L. 1963, c. 73 (C. 47:1A-1 et seq.).  
32 The commissioner shall promulgate rules and regulations for the  
33 conduct of administrative hearings on the issue of whether certain  
34 energy information should not be disclosed to the public.

35 e. *It is the intention of the Legislature that the information*  
36 *gathering powers granted to the commissioner under this section*  
37 *shall be exercised in the most efficient manner with the minimum*  
38 *disruption or cost to any person; and, to this end, that the com-*  
39 *missioner shall require only such information as he determines*  
40 *to be necessary in carrying out his duties and responsibilities under*

41 *this act; that the commissioner is hereby authorized to exempt any*  
 42 *construction or development activity, or any energy industry, or*  
 43 *kind or class of energy industries, below a specified size or capacity,*  
 44 *or both, from the information reporting requirements of this sec-*  
 45 *tion and, that the commissioner shall make the maximum use, con-*  
 46 *sistent with his duties and responsibilities under this act, of*  
 47 *information provided by trade associations or organizations of*  
 48 *persons engaged in construction or development activities, and of*  
 49 *energy industries, particularly, but not necessarily exclusively,*  
 50 *with respect to retail dealers.*

1 10. Section 19 of P. L. 1977, c. 146 (C. 52:27F-19) is amended  
 2 to read as follows:

3 19. *a.* Upon a violation of this act or of any rules, regulations,  
 4 or orders promulgated hereunder, the commissioner, the county  
 5 prosecutor of the county in which the violation occurs if he has  
 6 the approval of the commissioner, or any aggrieved person shall be  
 7 entitled to institute a civil action in a court of competent juris-  
 8 diction for injunctive relief to restrain such violation and for such  
 9 other relief as the court shall deem proper. The court may proceed  
 10 in a summary manner. [Neither the institution of such action,  
 11 nor any of the proceedings therein shall relieve any party to such  
 12 proceedings from other fines or penalties prescribed for such a  
 13 violation by this act or by any rule, regulation or order adopted  
 14 hereunder.]

15 *b.* *Except as otherwise specifically provided, any person who*  
 16 *violates the provisions of this act or any rule, regulation or order*  
 17 *promulgated pursuant to this act shall be liable to a penalty of*  
 18 *not more than \$3,000.00 for each offense, to be collected in a civil*  
 19 *action by a summary proceeding under the Penalty Enforcement*  
 20 *Law (N. J. S. 2A:58-1 et seq.) or in any case before a court of*  
 21 *competent jurisdiction wherein injunctive relief has been requested.*  
 22 *The Superior Court, County Court and county district court shall*  
 23 *have jurisdiction to enforce said Penalty Enforcement Law. If*  
 24 *the violation is of a continuing nature, each day during which it*  
 25 *continues shall constitute an additional, separate and distinct*  
 26 *offense.*

27 *The department is hereby authorized and empowered to com-*  
 28 *promise and settle any claim for a penalty under this section in*  
 29 *such amount in the discretion of the department as may appear*  
 30 *appropriate and equitable under all of the circumstances.*

1 11. Section 22 of P. L. 1977, c. 146 (C. 52:27F-22) is amended  
 2 to read as follows:

3 22. a. [Any person purchasing or attempting to purchase energy  
4 in violation of section 15 of this act or any rules, regulations, or  
5 orders promulgated thereunder, shall be subject to a penalty of  
6 not more than \$25.00 for the first offense, not more than \$100.00  
7 for the second offense, and not more than \$200.00 for the third  
8 offense or subsequent offenses.

9 b. Any retail dealer who violates section 15 of this act or any  
10 rules, regulations, or orders promulgated thereunder, shall be  
11 subject to a penalty of not more than \$25.00 for the first offense,  
12 not more than \$200.00 for the second offense, and not more than  
13 \$400.00 for the third offense or subsequent offenses.

14 c. Any distributor or any other supplier of energy who violates  
15 any of the provisions of section 15 of this act or of any rules,  
16 regulations, or orders promulgated thereunder, shall be subject to  
17 a penalty of not more than \$1,000.00 for the first offense, not more  
18 than \$5,000.00 for the second offense, and not more than \$10,000.00  
19 for the third offense or subsequent offenses.] *Any person who  
20 violates any provision of section 15 of the act of which this act  
21 is amendatory and supplementary, or any rule, regulation or order  
22 promulgated pursuant thereto, shall be liable to a penalty of not  
23 more than \$5,000.00 for each offense, to be collected in a civil action  
24 by a summary proceeding under the Penalty Enforcement Law  
25 (N. J. S. 2A:58-1 et seq.) or in any case before a court of competent  
26 jurisdiction wherein injunctive relief has been requested. The  
27 Superior Court, County Court and county district court shall have  
28 jurisdiction to enforce said Penalty Enforcement Law. If the  
29 violation is of a continuing nature, each day during which it con-  
30 tinues shall constitute an additional, separate and distinct offense.*

31 *The department is hereby authorized and empowered to com-  
32 promise and settle any claim for a penalty under this section in  
33 such amount in the discretion of the department as may appear  
34 appropriate and equitable under all of the circumstances.*

35 [d.] b. In addition to any other penalties provided under this  
36 or any other act, the commissioner may recommend to the appro-  
37 priate agency the suspension or revocation of the license of any  
38 retail dealer, gasoline jobber, wholesale dealer, distributor, or  
39 supplier of fuel, who has violated this act or any rules, regulations,  
40 or orders promulgated hereunder.

41 [e. All penalties imposed pursuant to this section shall be  
42 collected in a civil action by a summary proceeding under the  
43 Penalty Enforcement Law (N. J. S. 2A:58-1 et seq.). If the viola-  
44 tion is of a continuing nature, each day during which it continues  
45 shall constitute an additional and separate offense.]

1 12. Section 24 of P. L. 1977, c. 146 (C. 52:27F-24 is amended  
2 to read as follows:

3 24. All the functions, powers and duties heretofore exercised  
4 by the Department of Community Affairs and the Commissioner  
5 thereof relating to the adoption, amendment and repeal of the  
6 energy subcode of the State Uniform Construction Code pursuant  
7 to P. L. 1975, c. 217 (C. 52:27D-119 et seq.) are hereby transferred  
8 to, and vested in the Department of Energy and the Commissioner  
9 of the Department of Energy; provided, however, that nothing in  
10 this section shall be construed so as to interfere with the enforce-  
11 ment of such energy subcode by the Commissioner of the Depart-  
12 ment of Community Affairs pursuant to the aforesaid P. L. 1975,  
13 c. 217; provided further, however, that this section shall not take  
14 effect until 90 days after the [effectice] *effective* date of this act,  
15 and any energy subcode adopted by the Department of Community  
16 Affairs within said 90 days shall continue in force and effect until  
17 amended or repealed by the department as herein provided.

1 13. (New section) The provisions of any law to the contrary  
2 notwithstanding, the department shall have the coordinative and  
3 lead role, jurisdiction and authority with respect to the siting of  
4 any energy facility in any part of New Jersey, except as may be  
5 otherwise hereinafter provided by the provisions of this amenda-  
6 tory and supplementary act, and to that end, no county or munici-  
7 pality or any agency or instrumentality thereof may require any  
8 approval, consent, permit, certificate or other condition for the  
9 construction or location of any energy facility for which a certificate  
10 of site and facility is required pursuant to the provisions of this  
11 amendatory and supplementary act.

1 14. (New section) The department may conduct either directly  
2 or by way of contract, grant, or other arrangement, a study and  
3 research program with respect to the social, economic and technical  
4 aspects of energy facility development. Any such program shall  
5 be coordinated with, and shall supplement research conducted or  
6 assisted by, Federal, State and local governmental agencies,  
7 universities, and energy industries. The research program shall be  
8 undertaken to provide:

9 a. General biological and ecological baseline studies of this  
10 State's air, water and land resources;

11 b. Development and appropriate operation of means and meth-  
12 odologies to monitor existing and hereafter established energy  
13 facilities and their effect upon the environment;

14 c. Studies evaluating potential sites for energy parks and energy  
15 facilities for economic ramifications\*;\*'

- 16 d. Studies of the potential for constructive use of the waste  
17 energy to be released at proposed energy facility sites;
- 18 e. Analysis of the socioeconomic impact of energy facilities on  
19 the land uses and transportation infrastructure of this State;
- 20 f. Studies of programs to induce the public to conserve all forms  
21 of energy and of possible measures to be taken or adjustments to  
22 be made to conserve energy;
- 23 g. Studies of the possible utilization of energy facility sites for  
24 other uses benefiting the people of this State;
- 25 h. Projections of future energy demands and alternative sources  
26 of supply for the people of this State;
- 27 i. Any other studies which the department deems necessary in  
28 order to effectuate the purposes of this amendatory and supple-  
29 mentary act.
- 1 15. (New section) Every energy industry in this State, except  
2 as may be otherwise determined by the department as hereinafter  
3 provided, shall, within 6 months of the effective date of this  
4 amendatory and supplementary act, submit to the department a  
5 3-year Industrial Energy Facilities Plan. Such plans shall be  
6 revised and updated annually. Such plans and each annual revision  
7 thereof shall be prepared and submitted pursuant to guidelines  
8 which the department shall adopt and promulgate no later than  
9 60 days after the effective date of this amendatory and supple-  
10 mentary act, and shall contain at least the following information:
- 11 a. The location, site, capacity and type of all existing energy  
12 facilities owned or operated in this State by the energy industry  
13 submitting such information;
- 14 b. Any change in the size, capacity or status of such facilities  
15 during the previous 3 years;
- 16 c. The general location, size, capacity and type of energy facili-  
17 ties to be constructed or to be withdrawn from operation in this  
18 State over the life of the plan, to the maximum extent that such  
19 information can be practicably and feasibly provided in any sub-  
20 mission required hereunder;
- 21 d. A description of any potential adverse effects which might  
22 be related to the construction of such proposed facilities, to the  
23 maximum extent that such information can be practicably and  
24 feasibly provided in any submission required hereunder;
- 25 e. A description, with respect to electric energy industries, of  
26 efforts to coordinate future plans with those of other electric  
27 entities so as to provide a coordinated regional plan for meeting the  
28 electric power needs of the State, pursuant to section 202(a) of the

29 Federal Power Act (16 U.S.C. 824a (a)) or any other relevant  
30 Federal law;

31 f. Projections of demand for energy in New Jersey over the  
32 life of the plan, or longer if such information can be practicably  
33 and feasibly provided in any submission required hereunder, and  
34 explanation of the basis for such projections; and,

35 g. A description of the manner and extent to which the proposed  
36 facilities would meet such projected demand.

37 The department shall request that prominent energy industries  
38 located in proximity to this State prepare and submit similar plans.

39 Any such plan prepared and submitted pursuant to this section  
40 shall be deemed to be public information and shall be made available  
41 by the department to any State agency, county or municipality,  
42 or instrumentality thereof, as well as to any energy industry, upon  
43 the receipt by the department of a request for such plan; provided,  
44 however, that trade secrets collected under this section shall be  
45 exempt from the requirements of P. L. 1963, c. 73 (C. 47:1A-1  
46 et seq.). The department shall promulgate rules and regulations  
47 for the conduct of administrative hearings on the issue of whether  
48 certain information collected under this section should not be dis-  
49 closed to the public\*; *provided, however, that any cost data infor-*  
50 *mation supplied pursuant to this section shall remain confidential*  
50A *and shall not be disclosed\**. Such hearings shall be open to the pub-  
50B lic; provided, however, that an in camera hearing may be conducted  
51 if the department determines that the disclosure of information at  
52 the hearing would reveal trade secrets.

1 16. (New section) Any county in this State may, within 6 months  
2 of the effective date of this amendatory and supplementary act,  
3 submit to the department a 10-year County Energy Facilities Plan.  
4 Such plans shall be revised and updated periodically. Such plans  
5 and each periodic revision thereof shall be prepared and submitted  
6 pursuant to guidelines which the department shall adopt and  
7 promulgate no later than 60 days after the effective date of this  
8 amendatory and supplementary act, and shall contain at least the  
9 following information and such other information as the depart-  
10 ment may, by regulation, require:

11 a. The location, site, capacity and type of all existing energy  
12 facilities operated and maintained in the county;

13 b. Any changes in the size, capacity or status of such facilities  
14 during the past 3 years;

15 c. The designation of areas, regions or sites in the county  
16 determined to be suitable for the location of various types of

17 energy facilities, and those determined to be conditionally suitable  
18 or unsuitable for such purposes; and,

19 d. A description of any potential economic, environmental, social,  
20 or other consequences which might result from the construction of  
21 energy facilities on sites identified pursuant to subsection c. hereof.

1 17. (New section) a. Upon the development and formulation of its  
2 county energy facilities plan, and each revision thereof, the gov-  
3 erning body of each respective county shall thereupon cause a  
4 hearing or hearings to be held at an appointed time and place  
5 for the purpose of hearing persons interested in, or who would  
6 be affected by, the adoption of the plan, or revision thereof,  
7 for the relevant county, and who are in favor of or are opposed  
8 to such adoption. Following such hearing the governing body of  
9 each respective county shall consider the testimony presented  
10 thereat and adopt its county energy facilities plan, together with  
11 any additions, deletions or revisions it may deem appropriate.

12 b. Upon the adoption of its county energy facilities plan, and  
13 each revision thereof, the governing body of each respective county  
14 shall forthwith submit such plan, or revision thereof, and a copy  
15 of the transcript of every public hearing held thereon, and a com-  
16 plete record of the dates and results of all consultation with  
17 governmental agencies at the State and county level with respect  
18 to the preparation and contents of such plan, to the department.

1 18. (New section) a. In addition to the functions required and  
2 the time frame provided pursuant to the "Coastal Area Facility  
3 Review Act," P. L. 1973, c. 185 (C. 13:19-1 et seq.), the Department  
4 of Environmental Protection shall, within 90 days after the effective  
5 date of this amendatory and supplementary act, and at such periodic  
6 intervals thereafter as may be mutually agreed upon, provide the  
7 Department of Energy and those counties located in whole or in  
8 part within that certain area defined as the "coastal area" pur-  
9 suant to section 4 of the aforesaid P. L. 1973, c. 185 (C. 13:19-4),  
10 with an identification of those specific areas within the affected  
11 portions of such counties which it deems to be suitable, as well  
12 as those which it deems to be conditionally suitable and those which  
13 it deems to be unsuitable, as locations for specific types of energy  
14 facilities.

15 b. Each county subject to the provisions of subsection a. of  
16 this section shall incorporate without change in its county energy  
17 facilities plan the identifications provided by the Department of  
18 Environmental Protection pursuant to the said subsection a.; pro-  
19 vided, however, that if the Department of Environmental Protection

20 fails to provide such identifications to any such county within 90  
21 days after the effective date of this amendatory and supplementary  
22 act, or at such other times thereafter as have been mutually agreed  
23 upon, as the case may be, any such county shall be exempt from the  
24 provisions of this subsection and may develop, formulate and adopt  
25 a county energy facilities plan pursuant to sections 16 and 17 of  
26 this amendatory and supplementary act.

27 c. The Department of Environmental Protection shall also,  
28 within 120 days after the effective date of this amendatory and  
29 supplementary act and at such periodic intervals thereafter as  
30 may be mutually agreed upon, recommend guidelines to the depart-  
31 ment to be used in determining the suitability of sites for the loca-  
32 tion of energy facilities in other areas of this State. Such guide-  
33 lines may contain recommendations concerning the suitability,  
34 conditional suitability, or unsuitability of specific areas of this  
35 State as locations for such facilities, as well as any environmental  
36 factors which should be taken into account by the department in  
37 making such determinations.

38 d. The Department of Labor and Industry and the Board of  
39 Public Utilities shall, within 6 months of the effective date of  
40 this amendatory and supplementary act and at such periodic  
41 intervals thereafter as may be mutually agreed upon, provide  
42 the department with estimates of the need for energy facilities  
43 in this State. Within the same period of time and at such periodic  
44 intervals thereafter as it may agree upon with the department, *\*the*  
45 *Department of Labor and Industry and\** the Department of Com-  
46 munity Affairs shall provide projections of population growth and  
47 land use patterns for the various areas of the State for the use of  
48 the department in determining the need for such facilities.

1 19. (New section) The department shall prepare and publish,  
2 within 1 year of the effective date of this amendatory and supple-  
3 mentary act, a State Energy Facilities Plan. Such plan shall be  
4 for a period of 10 years and shall be revised and updated annually,  
5 and shall include the following:

6 a. An inventory of the location, size, capacity and type of all  
7 existing energy facilities in this State;

8 b. A comprehensive summary of the industrial energy facility  
9 plans submitted by each energy industry pursuant to section 15  
10 of this amendatory and supplementary act;

11 c. A comprehensive summary of the county energy facilities  
12 plans submitted by each county pursuant to sections 16 and 17 of  
13 this amendatory and supplementary act;

14 d. An estimate of the amount of land required for the location  
15 of all types of energy facilities, energy parks and buffer zones to  
16 meet the State's estimated energy needs during the 10-year plan-  
17 ning period, as projected in the department's energy master plan  
18 prepared pursuant to section 12 of the act of which this act is  
19 amendatory and supplementary (C. 52:27F-12);

20 e. A description of any potential economic, environmental, social  
21 or other consequences which might result from the location and  
22 construction of such facilities, energy parks and buffer zones  
23 identified pursuant to "[subsection]" subsections d. and f.  
23A hereof;

24 f. A site plan portraying the location of all existing energy  
25 facilities as well as additional sites sufficient for energy parks and  
26 individual energy facility sites to meet the State's estimated energy  
27 needs as projected in the department's energy master plan, includ-  
28 ing any buffer zones which the department deems necessary for  
29 such additional sites. In portraying such additional sites for  
30 energy parks and individual facilities, the department may, where  
31 it deems appropriate, identify those specific energy facilities most  
32 suitable for location in any specific energy park or on any specific  
33 individual site. *The department shall consider the provisions of all*  
33A *relevant county and municipal master plans in the preparation of*  
33B *such site plan.*

34 (1) The site plan shall include all locations deemed suitable for  
35 the siting of specific energy facilities identified by the Department  
36 of Environmental Protection, if any, pursuant to section 18 of this  
37 amendatory and supplementary act, as well as any other locations  
38 within the coastal area which the department may deem necessary  
39 and appropriate to effectuate the purposes of this amendatory and  
40 supplementary act; provided, however, that no location deemed  
41 unsuitable by the Department of Environmental Protection pursu-  
42 ant to the aforesaid section 18 shall be included in the site plan,  
43 nor shall any location deemed conditionally suitable be included  
44 in the site plan without specifically noting therein the conditions  
45 established by the Department of Environmental Protection to  
46 render such location suitable;

47 (2) The site plan may include, but shall not be limited to, any  
48 locations deemed suitable for the siting of energy facilities  
49 identified by the several county energy facilities plans adopted  
50 pursuant to sections 16 and 17 of this amendatory and supple-  
51 mentary act;

52 g. Any other items which the department deems advisable.

1 20. (New section) Upon the completion and publication of the  
2 State Energy Facilities Plan, and upon each revision thereof, the  
3 department shall:

4 a. Fix the date for a public hearing concerning the overall content  
5 of the plan, particularly with respect to the department's estimates  
6 of the energy facilities necessary to meet the State's estimated  
7 energy needs in the 10-year planning period; provided, however,  
8 that in no event shall any such public hearing be held later than  
9 30 days after the completion and publication of the plan, or any  
10 revision thereof, as the case may be; and,

11 b. Fix a number of dates for the commencement of a series of  
12 public hearings concerning the designation of specific sites for  
13 energy parks or individual energy facilities as contained in the  
14 plan. Each such hearing shall be held at a suitable location in the  
15 vicinity of each site so designated no later than 60 days after the  
16 completion and publication of the plan, or any revision thereof,  
17 as the case may be. Such hearings may be held concurrently and  
18 may be conducted by hearing officers specifically appointed therefor  
19 by the department, or by such officers or employees of the depart-  
20 ment as the commissioner may designate.

1 21. (New section) At least 20 days prior to each such public  
2 hearing conducted concerning the designation of specific sites, the  
3 department shall notify each concerned energy industry, munici-  
4 pality, county, domestic nonprofit organization and person of the  
5 time and place for the hearing, and shall publish such notice in at  
6 least two newspapers of general circulation in the State or region  
7 where the hearing is to be held.

8 For the purposes of such notification, a domestic nonprofit orga-  
9 nization means and includes any organization formed in whole or  
10 part to promote conservation or natural beauty, to protect the  
11 environment, personal health or other biological values, to preserve  
12 historical sites, to promote consumer interest, to represent com-  
13 mercial, industrial and agricultural groups, or to promote the  
14 orderly development of the areas in which the site is located.

15 As used herein, "concerned" means:

16 a. With respect to an energy industry, an industry likely to  
17 own or operate any energy facility identified in the State Energy  
18 Facilities Plan as suitable for location in the specific energy park  
19 or on the specific individual site concerning which the public  
20 hearing is being held. In the event no such identification was  
21 contained in the plan, every energy industry which shall, in writing,

22 have requested such notification upon, or prior to, the publication  
23 of the State Energy Facilities Plan shall be notified of such public  
24 hearing;

25 b. With respect to municipalities and counties, the county and  
26 every municipality therein within which is located the specific site  
27 concerning which the public hearing is being held; and

28 c. With respect to domestic nonprofit organizations and persons,  
29 each such domestic nonprofit organization and person who shall,  
30 in writing, have requested such notification upon, or prior to the  
31 publication of the State Energy Facilities Plan.

32 Any such person, group, corporation or governmental entity  
33 may testify at the hearing either in writing or orally; provided,  
33A however, that the department may promulgate rules designed to  
34 exclude redundant or irrelevant testimony. The department shall  
35 prepare a record, which shall be made available to the public, of  
36 all testimony presented at the hearing.

1 22. (New section) Within 30 days after the conclusion of each  
2 such public hearing convened concerning the designation of  
3 specific sites, the department shall publish an evaluation of the site  
4 and shall issue one of the following findings on the site:

5 a. Preliminary approval as a site, subject to review at the time  
6 of application for a certificate of site and facility;

7 b. Preliminary conditional approval as a site, subject to review  
8 at the time of application for a certificate of site and facility with  
9 respect to changed conditions, and with respect to conditions  
10 placed on the nature or extent of the facilities;

11 c. Suspension pending further study because the construction of  
12 any energy facility on the site might unduly impair important  
13 environmental values. Such suspension may extend for no more  
14 than 1 year. At the end of such period the site may be resubmitted  
15 but may not be placed in this category again; or,

15 d. Disapproval as a site because the construction of any energy  
16 facility on the site would unduly impair important environmental  
17 values. The site may not be resubmitted for approval as a site  
18 unless there is clear evidence of changed conditions.

1 23. (New section) Upon the completion of the requirements of  
2 sections 20, 21 and 22 of this amendatory and supplementary act,  
3 but no later than 120 days after the completion and publication of  
4 the plan, or any revision thereof, as the case may be, the depart-  
5 ment shall consider the testimony presented at all such hearings  
6 and adopt the State Energy Facilities Plan, together with any  
7 additions, deletions or revisions it may deem appropriate.

1 24. (New section) a. In addition to the powers conferred by this  
2 amendatory and supplementary act the department is hereby em-  
3 powered to acquire in the name of the State by purchase or other-  
4 wise, on such terms and conditions and in such manner as it may  
5 deem proper, or, except with respect to the State, by the exercise  
6 of the power of eminent domain as hereinafter provided, and to  
7 convey as hereinafter provided to energy industries any land and  
8 other property, including land under water, meadowlands, and  
9 riparian rights, which it may determine is reasonably necessary for  
10 an energy facility, energy park, or site for any energy facility, or  
11 for the relocation or reconstruction of any highway by the depart-  
12 ment and any and all rights, title and interest in such land and  
13 other property, including public lands, reservations, highways or  
14 parkways, owned by or in which the State or any county, municipi-  
15 pality, or other political subdivision of the State has any right,  
16 title or interest, or parts thereof or rights therein and any fee  
17 simple absolute or any lesser interest in private property, and any  
18 fee simple absolute in, easements upon, or the benefit or restric-  
19 tions upon, abutting property for the purposes of providing buffer  
20 zones for any energy facility, energy park or site for any energy  
21 facility; provided, however, that acquisition of lands actively  
22 devoted to agriculture shall be avoided wherever possible and in  
23 lieu thereof, whenever feasible, development rights, conservation  
24 easements, and other interests less than a fee simple shall be  
25 acquired for the aforesaid buffer zone purposes.

26 b. Notwithstanding its land acquisition and conveyance powers  
27 provided in subsection a., the department shall not implement such  
28 powers with respect to any land or interest in land unless an agree-  
29 ment has been entered into between the department and any energy  
30 industry whereby compensation for the land or any interest therein  
31 acquired by the department will be provided by such energy in-  
32 dustry, **\*[and]\*** unless such energy industry shall have sought to  
33 obtain such land or any such interest therein from the owner thereof  
34 in good faith bargaining\*, *and unless such energy industry shall*  
34A *have obtained a certificate of site and facility, as hereinafter pro-*  
34B *vided, for the energy facility to be constructed on such land\**. The  
35 department shall determine that such bargaining has been in good  
36 faith for the purposes of this section if the compensation offered to  
37 the owner by the energy industry is at least equal to fair market  
38 value, as determined by an appraisal performed by a recognized  
39 appraiser approved by the department and paid for by the energy  
39A industry.

40 c. Upon the exercise of the power of eminent domain by the de-  
41 partment the compensation to be paid thereunder shall be ascer-  
42 tained in the manner provided in the "Eminent Domain Act of  
43 1971," P. L. 1971, c. 361 (C. 20:3-1 et seq.).

44 d. Subject to the availability of funds specifically appropriated  
45 or otherwise made available therefor, the department may accept  
46 as compensation for any land or interest therein acquired or to be  
47 acquired by the department as herein provided, a grant of the fee  
48 simple absolute or any lesser interest in any other property owned  
49 by any energy industry in behalf of which the land acquisition and  
50 conveyance powers of the department have been or are to be exer-  
51 cised. In determining whether or not to accept any such grant the  
52 department shall ascertain the value thereof vis-a-vis the land or  
53 any interest therein acquired or to be acquired by the department,  
54 and shall be authorized and empowered to enter into any agreement  
55 it deems appropriate with any energy industry whereby the com-  
56 pensation to be provided by any such industry, whether by payment  
57 of money, or by a grant as herein provided, or any combination  
58 thereof as the case may be, will equal in value the land or any  
59 interest therein acquired or to be acquired by the department. In  
60 exercising its authority hereunder the department may consult  
61 with all relevant State, Federal, county and municipal depart-  
62 ments, agencies and instrumentalities to ascertain whether or not  
63 any thereof may wish to acquire the fee simple absolute or any  
64 lesser interest in any property which is the subject of a grant as  
65 herein provided for the purposes of any such department, agency  
66 or instrumentality; and the department is authorized and em-  
67 powered to enter into any agreement it deems appropriate with any  
68 such department, agency or instrumentality to effectuate the pur-  
69 poses of this section.

70 *\*c. No State department may make a fee simple divestiture of*  
71 *any portion of any State forests, State parks, or State wildlife*  
72 *management areas for the purpose of providing a site for the con-*  
73 *struction of an energy facility.\**

1 25. (New section) No energy industry, except as may be otherwise  
2 determined by the department as hereinafter provided, nor any  
3 other person, shall commence construction of any energy facility  
4 on or after the effective date of this amendatory and supplementary  
5 act unless such industry or person shall have obtained from the  
6 department a certificate of site and facility with respect to such  
7 facility as hereinafter provided. A certificate of site and facility  
8 shall be issued only upon:

9 a. The department's determination that the energy facility for  
10 which such certificate is being sought is in all respects in conformity  
11 with all relevant provisions of the State Energy Facilities Plan;  
12 or, if proposed on or within a site not previously designated in the  
13 State Energy Facilities Plan the department shall review such  
14 application and shall consider all relevant factors bearing on  
15 whether the objectives of this amendatory and supplementary act  
16 would best be served by the issuance of the certificate;

17 b. (1) The acquisition or option to purchase or lease by such  
18 industry or person *\*[of]\* or the agreement of the department to*  
18A *acquire, pursuant to section 24 of this amendatory and supple-*  
18B *mentary act,\** those lands which are necessary to constitute either  
19 the facility's share of space within the energy park in which  
20 it is proposed to construct the facility, or the individual site on  
21 which it is proposed to construct the facility, as the case may be;  
22 and,

23 (2) The acquisition by such industry or person of those lands,  
24 where specifically required by the department, necessary to con-  
25 stitute the buffer zone to such energy park or individual site, in  
26 such amounts as are determined by the department.

27 Any acquisition required hereunder may be by purchase of the  
28 fee simple absolute interest in such lands, or any lesser interest in  
29 such lands as may be approved by the department, including a  
30 lease of such lands or of any interest in such lands; and such  
31 purchase or lease may be from any person holding title to such  
32 lands or such interests therein, or from the department, if such  
32A lands or interests therein have been acquired by the depart-  
33 ment, according to terms and in a manner prescribed by the  
34 department. The ownership by any energy industry or other person  
35 of an option to purchase the fee simple absolute or any lesser  
36 interest in such lands shall, subject to the approval of the depart-  
37 ment, be deemed to constitute acquisition for the purposes of this  
38 section;

39 c. The payment to the department by such industry or person of  
40 the appropriate fee, pursuant to the department's fee schedule, for  
41 processing and reviewing the application for a certificate of site  
42 and facility; and,

43 d. The approval by each department, division, agency, commis-  
44 sion, council, board, bureau or instrumentality (hereinafter  
45 referred to as "State instrumentalities") provided by law with the  
46 power to grant or deny any approval, consent, permit, certificate or  
47 other condition for the construction or location of any energy  
48 facility in any part of this State, as hereinafter provided;

49 except that, in the event that any such approval, consent, permit,  
50 certificate or other condition for the construction or location of any  
51 energy facility in any part of this State is denied by any such  
52 State instrumentality, or is granted on such terms that, in the  
53 judgment of the commissioner, will make it impracticable to  
54 construct such facility, the commissioner shall have the sole and  
55 exclusive right, within 20 days of \*~~such denial or conditional~~  
56 approval]\* *the completion of the department's review of such*  
57 *application pursuant to section 33 of this amendatory and supple-*  
58 *mentary act\**, to approve such application, approve such application  
59 with conditions, or waive such impracticable terms, if, in his  
60 discretion, he determines that such approval, conditional approval  
61 or waiver is necessary and appropriate to effectuate the purposes  
62 hereof\*; *provided, however, that no such approval, conditional*  
63 *approval or waiver shall be granted by the commissioner which the*  
64 *State instrumentality denying such approval or requiring such*  
65 *terms certifies would result in the violation of any requirement or*  
66 *standard specifically mandated by Federal statute or regulation\**.  
67 In the event that the commissioner determines to exercise such  
68 right, he shall notify the relevant State instrumentality which shall  
69 forthwith grant any such approval, consent, permit, certificate or  
70 other condition on such terms as may be required by the  
71 commissioner.

1 26. (New section) a. Immediately upon the receipt of any appli-  
2 cation for a certificate of site and facility, or as soon thereafter as  
3 practicable, the department shall acknowledge such receipt, in  
4 writing, and shall transmit a copy of such application and all  
5 accompanying materials to the chief executive officers of appro-  
6 priate executive departments, including but not necessarily limited  
7 to the Departments of Environmental Protection, Labor and  
8 Industry and Transportation, provided by law or containing any  
9 State instrumentality within said department with the power to  
10 grant or deny any approval, consent, permit, certificate or other  
11 condition for the construction or location of any energy facility in  
12 any part of this State, and, where appropriate, to the President of  
13 the Board of Public Utilities, for the purposes of reviewing such  
14 application and making a determination thereon\*; *provided,*  
14A *however, that any such review by the Board of Public Utilities*  
14B *shall be limited to the relevant financial aspects of facilities pro-*  
14C *posed by public utilities\**.

15 b. Within 30 days after the receipt of any application for a  
16 certificate of site and facility, the department shall report, in  
17 writing, to the applicant as to the completeness of such application

18 and all accompanying materials, based upon the department's prior  
19 consultation with the chief executive officers of the appropriate  
20 executive departments and the President of the Board of Public  
21 Utilities reviewing such application. Such report shall identify any  
22 deficiency in such application or in such accompanying materials  
23 with respect to completeness, and shall indicate whether such  
24 deficiencies are, in the department's judgment, minor, in which  
25 case they may be rectified, without penalty, by the applicant's  
26 submission, within a specific period of time determined by the  
27 department, of any additional information or material requested  
28 by the department; or, major, in which case a new application shall  
29 be required and the deficient application shall be returned to the  
30 applicant with the application fee paid thereby, less any amount  
31 determined by the department to be appropriate to cover the costs  
32 of the department's preliminary review.

1 27. (New section) Upon the receipt of any application submitted  
2 by the Department of Energy pursuant to section 26 of this  
3 amendatory and supplementary act, the chief executive officers of  
4 the appropriate executive departments and the President of the  
5 Board of Public Utilities shall:

6 a. Transmit forthwith a copy of such application and all accom-  
7 panying materials to each State instrumentality within such  
8 department or to the commissioners of the Board of Public Utilities  
9 provided by law with the power to grant or deny any approval,  
10 consent, permit, certificate or other condition for the construction  
11 or location of any energy facility in any part of this State, for the  
12 purposes of reviewing such application and providing said chief  
13 executive officer and President of the Board of Public Utilities with  
14 its findings thereon.

15 b. Direct any such State instrumentality to complete such review  
16 and report such findings as may be made as soon as possible there-  
17 after, but no later than **\*[90]\* \*180\*** days after the receipt of any  
18 such complete application *\*; provided, however, that if any such*  
18A *State instrumentality is unable to meet such deadline, the appro-*  
18B *priate chief executive officer or the President of the Board of Public*  
18C *Utilities, as the case may be, and the commissioner may, by agree-*  
18D *ment, provide for an extension of such review period for up to 180*  
18E *additional days, provided that notice of the need for such extension*  
18F *be transmitted to the commissioner at least 15 days prior to the*  
18G *expiration of the initial 180 day review period\*.*

19 c. Collect and transmit the findings of each State instrumentality  
20 with respect to any such complete application, including its review

21 thereof and determination thereon, in writing, signed by the chief  
22 executive officer or the President of the Board of Public Utilities, to  
23 the Department of Energy immediately upon the completion of any  
24 such review, but no later than ~~\*[100]\*~~ \*10\* days after ~~\*[the receipt~~  
25 of any such complete application submitted by the Department of  
26 Energy]\* *the completion of the review required pursuant to sub-*  
27 *section b. of this section*. *For the purposes of facilitating the*  
28 *review of applications pursuant to this section, the chief executive*  
29 *officers of the appropriate executive departments are hereby autho-*  
30 *rized to direct such State instrumentalities within each such depart-*  
31 *ment to consolidate the review of, and hearing process for, any such*  
32 *applications.*\*

1 28. (New section) In the event that the findings and determina-  
2 tions transmitted by any chief executive officer, or the President of  
3 the Board of Public Utilities, pursuant to subsection c. of section 27  
4 of this amendatory and supplementary act, are overridden by the  
5 ~~\*[commisisoner]\*~~ \*commissioner\*, pursuant to subsection d. of  
6 section 25 hereof, with respect to any required approval, consent,  
7 permit, certificate or other condition, the chief executive officer, or  
8 the President of the Board of Public Utilities may, no later than 10  
9 days after receiving notice of such override, request of the Govern-  
10 nor the convening of an Energy Facility Review Board, which shall  
11 consist of the Commissioner of Energy, such chief executive officer  
12 or the President of the Board of Public Utilities, and a designee of  
13 the Governor. The Governor shall convene such board no later than  
14 10 days after the request therefor. The decision of the Energy  
15 Facility Review Board created with respect to any such required  
16 approval, consent, permit, certificate or other condition shall be  
17 made within 20 days of the convening of such board, shall be bind-  
18 ing with respect to such requirement and shall be implemented  
19 forthwith. In the event such decision is not made within said 20-day  
20 period, the position of the Commissioner of Energy shall be deemed  
21 to be sustained and his determination with respect thereto shall be  
22 implemented forthwith.

1 29. (New section) Any property or interest therein purchased  
2 or leased by any energy industry or by any other person pursuant  
3 to section ~~\*24 or section\*~~ 25 of this amendatory and supplementary  
4 act shall be used and operated for the purposes for which it was  
5 purchased or leased without regard to any local zoning rule, regula-  
6 tion, law or ordinance, and such use shall not be required to be  
7 submitted to or approved by any county or municipal governing  
8 body, zoning or planning board or agency.

1 30. (New section) Upon the acquisition of a certificate of site and  
2 facility, the energy facility with respect to which such certificate  
3 was acquired shall be constructed, operated and maintained in  
4 accordance with the terms and conditions of the certificate. Certifi-  
5 cates for facilities already under construction on the effective date  
6 of this amendatory and supplementary act shall not be required  
7 upon a showing that each approval, consent, permit, certificate or  
8 other condition required by law upon the commencement of con-  
9 struction had been obtained. Operation of any energy facility on  
10 which construction had commenced on or before the effective date  
11 hereof may commence. No certificate of site and facility is required  
12 for energy facilities already under construction or in operation on  
13 said effective date hereof, but such certificates are required for  
14 sizable additions thereto as defined by the department\*; *provided,*  
15 *however, that no such certificate shall be required with respect to*  
16 *existing energy facilities for the production, conversion, processing,*  
17 *transmission, or storage of petroleum products, for any modifica-*  
18 *tion or expansion thereof to increase capacity by 10% or less on*  
19 *existing sites; provided further, however, that only one such*  
20 *increase in capacity shall be undertaken in any 10-year period*  
21 *without the need for a certificate of site and facility\*.*

1 31. (New section) All applications by any energy industry or  
2 any other person for a certificate of site and facility shall, insofar  
3 as may be practicable and feasible, be filed with the department not  
4 less than 2 years prior to the planned date of commencement of  
5 construction and such plans may be subject to reasonable modifica-  
6 tion during the period of review.

1 32. (New section) a. Each application for a certificate of site  
2 and facility shall be accompanied by proof of service of a copy of  
3 such application on the governing body of each county and munici-  
4 pality and the head of each county and municipal agency charged  
5 with the duty of protecting the environment or of planning land  
6 use in the area in which any portion of such facility is to be located.  
7 The copy of such application shall be accompanied by a notice  
8 specifying the date on or about which the application is to be filed.

9 Each application shall also be accompanied by proof that public  
10 notice thereof was given to persons residing in the municipalities  
11 entitled to receive such notice by the publication of a summary of  
12 the application, and the date on or about which it is to be filed, in  
13 such newspapers as will serve substantially to inform such persons  
14 of the application.

15 b. Within **\*[20]\* \*180\*** days after the receipt of such notice the  
 16 governing body of any county or municipality, or the head of any  
 17 county or municipal agency charged with the duty of protecting the  
 18 environment or of planning land use in the area in which any portion  
 19 of any such energy facility is to be located, may, by ordinance, in the  
 20 case of a municipality, by ordinance or resolution, as the case may  
 21 be, in the case of a county, or by resolution in all other cases, file a  
 22 written objection with the department with respect to any such  
 23 application. *\*The department shall consider and evaluate all such*  
 23A *written objections.\** The filing of an objection as herein provided  
 24 with respect to any application for the construction of any energy  
 25 facility shall in no way alter or interfere with the powers and duties  
 26 of the commissioner or the department pursuant to sections 25  
 27 through 29 of this amendatory and supplementary act; except that  
 28 any such application may be finally approved, and a certificate of  
 29 site and facility for any energy facility which is the subject of  
 30 such application may be granted, by the commissioner only upon  
 31 his determination, certified in writing to the objecting county,  
 32 municipality or agency, that the location of such facility for which  
 33 such certificate is being sought is in all respects in conformity with  
 34 the State's estimated energy needs and is necessary and appro-  
 35 priate to effectuate the purposes of this amendatory and supple-  
 36 mentary act. *\*Any such determination shall contain the findings of*  
 37 *the commissioner with regard to such written objections.\**

1 33. (New section) **\*[Upon the completion of the requirements of**  
 2 **sections 25, 26 and 27 of this amendatory and supplementary act,**  
 3 **the]** *\*The\** department shall:

4 a. With respect to any application for a certificate of site and  
 5 facility for a specific energy facility to be located on or within a  
 6 site previously designated in the State Energy Facilities Plan,  
 7 complete its review thereof, make its determination thereon, and  
 8 report, in writing, such determination to the applicant, all within  
 9 **\*[90]\* \*210\*** days after the receipt of any such application; or,

10 b. With respect to any application for a certificate of site and  
 11 facility for a specific energy facility to be located on or within a  
 12 site not previously designated in the State Energy Facilities Plan,  
 13 the department shall review such application and shall consider all  
 14 relevant factors bearing on whether the objectives of this amenda-  
 15 tory and supplementary act would best be served by the issuance of  
 16 the certificate; and, within 1 year after the receipt of any such  
 17 application, complete its review thereof, make its determination  
 18 thereon, and report, in writing, such determination to the applicant.

19     \*33.1 (New section)\* Upon the completion of the requirements of  
 20     \***[this section]**\* *sections 25 through 33 of this amendatory and*  
 21     *supplementary act\**, the department is hereby authorized to issue  
 22     certificates of site and facility for energy facilities upon the depart-  
 23     ment's determination that the use of the site will be reasonably  
 24     necessary to meet estimated energy needs, or otherwise to deny such  
 25     certificates if the applicant fails to conform with the intentions of  
 26     this amendatory and supplementary act\*; *provided, however, that*  
 27     *no certificate of site and facility shall be issued for any facility*  
 28     *proposed to be constructed on State forests, State parks, State*  
 29     *wildlife management areas, or public trust lands unless the Com-*  
 30     *missioner of Environmental Protection finds and determines that*  
 31     *such proposed construction will result in no long-term adverse*  
 32     *impact on water quality and no long-term adverse impact on the*  
 33     *environment\**. In the issuance of such certificate the department  
 34     may impose such reasonable terms and conditions as it deems  
 35     necessary. Such certificates, when issued, shall be final.

1     34. (New section) The department may, if it determines that  
 2     the public health, safety and welfare will be protected, and that  
 3     the intent of this amendatory and supplementary act will not be  
 4     unduly prejudiced thereby, exempt energy *industries and energy\**  
 5     facilities of a certain type or nature, or energy facilities below a  
 6     specified size or capacity, or any combination thereof, from the  
 7     industrial energy facility plan provisions of section 15 of this  
 8     amendatory and supplementary act, from the energy park and  
 9     buffer zone provisions of sections 19 and 25 hereof, *\*or\** from the  
 10     certificate of site and facility provisions of section 25 hereof **[**, or  
 11     from any such provisions**]**\*. Upon any such determination, but  
 12     in no event later than 90 days after the effective date of this  
 13     amendatory and supplementary act, the department shall  
 13a     prepare, adopt and promulgate its official criteria and stan-  
 14     dards for the aforesaid exemptions from the aforesaid provisions  
 15     of this amendatory and supplementary act. The department may  
 16     revise its official criteria and standards for any of the aforesaid  
 17     exemptions at any time, and any such revisions shall be applicable  
 18     to all energy industries and energy facilities subject thereto upon  
 19     the fulfillment of the relevant requirements of this section with  
 20     respect to such exemptions.

21     Any energy industry may at any time apply to the department,  
 22     on its own behalf or on behalf of an energy facility owned, operated  
 23     or proposed by such industry, for any exemption authorized by  
 24     this section. The department shall review all such applications  
 25     and may include any exemptions requested therein in its official  
 26     criteria and standards for such exemptions, or in any revision  
 27     thereof, upon finding that the public health, safety and welfare

28 will be protected, and that the intent of this amendatory and  
29 supplementary act will not be unduly prejudiced thereby. Within  
30 60 days after its receipt of any such application the department  
31 shall inform the applicant of: a. its rejection of the application  
32 and its reasons therefor; or, b. its approval of the application and  
33 the approximate date when the applied for exemptions will be  
34 included in the department's official criteria and standards therefor,  
35 or in any revision thereof.

1 35. (New section) The department may negotiate agreements or  
2 compacts with neighboring states for cooperative effort and mutual  
3 assistance in approving sites and in certifying energy facilities, for  
4 the enforcement of the respective laws of each state, and for the  
5 establishment of whatever authorities or agencies, joint or other-  
6 wise, they may deem desirable for the agreements or compact. Any  
7 such agreement or compact shall be submitted by the department to  
8 the Legislature for its consideration and approval, and by the  
9 State to the Congress for such Federal approval as may be required.

1 36. (New section) All departments and agencies of the State are  
2 hereby authorized and directed to cooperate with the Department of  
3 Energy so as to foster and fully effectuate the purposes of this  
4 amendatory and supplementary act, and to make available to the  
5 department personnel, information and technical assistance upon  
6 request.

1 37. (New section) a. The department, pursuant to the provisions  
2 of the "Administrative Procedure Act," P. L. 1968, c. 410  
3 (C. 52:14B-1 et seq.), shall adopt a fee schedule as a rule or regula-  
4 tion which will cover the costs of processing and reviewing applica-  
5 tions for certificates of site and facility submitted by energy  
6 industries and other persons, as hereinbefore provided, for energy  
7 facilities of various types, sizes, and capacities.

8 b. Such fee schedules shall be a composite of all fee schedules  
9 of all State instrumentalities reviewing such application. Upon  
10 receipt, the department shall dispense such fees to such instru-  
11 mentalities.

1 38. (New section) a. Whoever knowingly and willfully without  
2 first obtaining a certificate of site and facility pursuant to the  
3 provisions of this amendatory and supplementary act, unless  
4 otherwise specifically exempted from any such provisions as  
5 hereinbefore provided, commences to construct or operate an  
6 energy facility subject to the provisions of this amendatory and  
7 supplementary act, shall be fined not more than \$10,000.00 for each  
8 violation, or imprisoned for not more than 1 year, or both. Each day  
9 of a continuing violation shall constitute a separate offense.

10 b. In addition to any penalty provided in subsection a., whenever  
 11 the department determines that a person is violating or is about to  
 12 violate any of the provisions of this section, the department shall  
 13 refer the matter to the Attorney General, who may bring a civil  
 14 action on behalf of the State in any court of competent jurisdiction  
 15 for injunctive or other appropriate relief against the violation and  
 16 to enforce this amendatory and supplementary act or a certificate  
 17 issued hereunder, and upon a proper showing a permanent or pre-  
 18 liminary injunction or temporary restraining order shall be  
 19 granted without bond.

1 39. (New section) It is the intent of the Legislature that, except  
 2 as otherwise specifically provided in this amendatory and supple-  
 3 mentary act, in the event of any conflict or inconsistency in the  
 4 provisions of this amendatory and supplementary act and any other  
 5 acts pertaining to matters herein established or provided for or in  
 6 any rules and regulations adopted under this amendatory and  
 7 supplementary act or said other acts, to the extent of such conflict  
 8 or inconsistency, the provisions of this amendatory and supple-  
 9 mentary act and the rules and regulations adopted hereunder shall  
 10 be enforced and the provisions of such other acts and rules and  
 11 regulations adopted thereunder shall be of no force and effect.

1 40. There is hereby appropriated to the department from the  
 2 General State Fund the sum of \$250,000.00 or so much thereof as  
 3 may be necessary, to defray the costs of its studies and plans pur-  
 4 suant to this amendatory and supplementary act. Such appropria-  
 5 tion shall be repaid to the General State Fund as soon as practicable  
 6 out of the proceeds of any Federal revenues provided to the State  
 7 as a result of activities concerning energy exploration or exploita-  
 8 tion, subject to any terms or conditions on the disposition of such  
 9 revenues, that may be imposed by the Federal Government.

1 41. R. S. 12:3-12 is amended to read as follows:  
 2 12:3-12. The **[board]** *council* with the concurrence of the  
 3 Governor and Attorney General, in all cases of application for  
 4 grants or leases of land now, or at the time of the application, or  
 5 at the time of the lease or grant, under tidewater; and in all cases of  
 6 application for grants or leases of lands which are not now, or shall  
 7 not at the time of the application, or at the time of the lease or grant  
 8 be under tidewater, and in all cases of applications for leases or  
 9 grants for all or any of such lands may, notwithstanding the first  
 10 proviso in section 12:3-5 of this Title, or any other clause or matter  
 11 contained in sections 12:3-2 to 12:3-9 of this Title, grant or lease,  
 12 or lease first with a covenant to grant, and grant afterwards, for

13 such principal sum that the interest thereof at seven per cent will  
 14 produce the rental, such lands, or any part thereof lying between  
 15 what was, at any time heretofore, the original high-water line and  
 16 the [exterior lines established or to be established] *seaward terri-*  
 17 *torial jurisdiction of the State*, and grant or lease in all cases in  
 18 which, in their discretion, they shall think such grant or lease should  
 19 be made, such rights, privileges and franchises as they are autho-  
 20 rized to grant in cases coming directly within said section 12:3-5 of  
 21 this Title, and enter into the same covenants in the name of the  
 22 State, in all cases of grants or leases where they deem such  
 23 covenants proper, as are authorized in grants or leases under said  
 24 section 12:3-5 and insert such other covenants, clauses and con-  
 25 ditions in said grants or leases as they shall think proper to  
 26 require from the grantee or lessee, or ought to be made by the  
 27 State; provided, that nothing herein contained shall authorize  
 28 grants or leases in front of a riparian owner to any other than such  
 29 riparian owner, except upon the proceedings and conditions pro-  
 30 vided in sections 12:3-2 to 12:3-9 of this Title; and provided also,  
 31 that the applications for grants or leases, and the certificates of  
 32 said [commissioners] *council*, Governor and Attorney General,  
 33 may in the cases hereby provided for, vary from the provisions of  
 34 said sections 12:3-2 to 12:3-9 in such manner as to conform to this  
 35 section, and any party who has already asked for or accepted a  
 36 lease or conveyance may apply for and have the benefits of this sec-  
 37 tion, notwithstanding such former application or former acceptance  
 38 of a lease or conveyance.

1 42. R. S. 12:3-26 is amended to read as follows:

2 12:3-26. It shall be unlawful for any person or corporation to  
 3 lay any pipe or pipes on any of the lands of the State lying under  
 4 tidal waters without the consent or \*[permisison]\* *\*permission\**  
 5 of the Governor and the [board] *council* first had and obtained in  
 6 writing[; provided, that nothing in this section contained shall be  
 7 construed to apply to lands under the waters of the Atlantic  
 8 ocean].

1 \*43. Section 20 of P. L. 1977, c. 146 (C. 52:27F-20) is repealed.\*

1 \*[43.]\* \*44.\* This act shall take effect immediately.

SENATE ENERGY AND ENVIRONMENT COMMITTEE

STATEMENT TO

**SENATE, No. 1179**

with Senate committee amendments

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**STATE OF NEW JERSEY**

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DATED: JUNE 1, 1978

The principal purposes of this bill are to:

- 1.) Regulate and control on a Statewide basis the siting of Energy Facilities in New Jersey;
- 2.) Provide "one stop shopping" for energy industries proposing to construct in New Jersey plants, buildings, structures or operations of any kind which are directly associated with the production, conversion, processing, transmission or storage of energy in any form; and,
- 3.) Insure the preservation of New Jersey's fragile environment and the maintenance of the highest possible quality of life for the 7.4 million citizens of this State.

These purposes are proposed to be effectuated by:

- 1.) Specifically granting to the Department of Energy (created pursuant to P. L. 1977, c. 146; C. 52:27F-1 et seq.) the "coordinative and lead role, jurisdiction and authority with respect to the siting of any energy facility in any part of New Jersey," with the exception of the "coastal zone," defined in the "Coastal Area Facility Review Act," P. L. 1973, c. 185 (C. 13:19-1 et seq.), where the designation of energy facility sites may be made by the Department of Environmental Protection;
- 2.) Requiring all energy industries proposing to construct energy facilities in New Jersey to submit a single comprehensive application to the Department of Energy; directing the Department to transmit relevant portions of such applications to each State instrumentality which presently exercises permit or license granting or approval powers with respect to any aspect of a proposed energy facility; and permitting those instrumentalities to make their independent determinations with respect to such permits or licenses. In the event of conflict between the Department of Energy and any such State instrumentality with respect to any specific permit or license required for the construction of an energy facility, the views of the Department of Energy would prevail. However, the chief executive officer of the department within which is located any State instrumentality overridden by the Department

of Energy would have the right to request the Governor to convene a Review Board, in which the Commissioner of Energy and the Chief Executive Officer requesting such a Board would meet with a designee of the Governor to resolve the dispute; and,

3.) Establishing mechanisms to insure that all energy facility siting decisions are made by the State on the basis of detailed, up-to-date information concerning New Jersey's energy needs, and the most effective and efficient means to meet those needs. These mechanisms include:

a. Industrial Energy Facilities Plans — required of every business engaged in the exploration, extraction, transportation, transmission, refining, processing, generation, distribution, sale or storage of energy in any form. Such plans will describe the energy facility needs of the submitting industry and its proposals for meeting those needs;

b. County Energy Facilities Plans — permitted to be prepared by each of the State's 21 counties. Such plans will describe the energy facility activity in such counties over the preceding 3 years, and will contain recommendations by such counties of areas therein which are suitable, conditionally suitable, and unsuitable for energy facility construction;

c. Coastal Zone designation to be made by the Department of Environmental Protection. Such designations will specifically identify those areas in the "coastal zone" which are suitable, conditionally suitable, and unsuitable for energy facility construction. The Department of Environmental Protection is also authorized to issue guidelines to the Department of Energy with respect to those environmental criteria which should be applied in the selection of sites for energy facility construction; and,

d. The State Energy Facilities Plan — a composite of all the aforesaid plans, and (with the State Energy Master Plan, which the Department of Energy is already authorized and directed to prepare pursuant to the "Department of Energy Act," P. L. 1977, c. 146) the basis upon which all decisions with respect to energy facility siting will be made by the Department of Energy.

In essence, the 44 sections of this amendatory and supplementary bill provide balanced procedures for siting energy facilities determined to be necessary to meet the needs of the citizens, businesses and industries of New Jersey. This bill is based upon the premise that energy facility siting decisions affect economic prosperity and environmental quality throughout New Jersey and, therefore, that such decisions should be made by State officials charged with Statewide responsibilities. That such a premise does not at all preclude local government and public participation in the decision making process is clearly demonstrated by the significant role given in this bill to counties, municipali-

ties and individual citizens and citizen groups. This role involves not only public hearings, but the authorization to counties to submit energy facilities plans which must be considered by the Department of Energy, and the specific requirement that any energy facility siting decision opposed by a county or municipality can be approved by the Commissioner of Energy "only upon his determination, certified in writing to the objecting county, municipality or agency, that the location of such facility . . . is in all respects in conformity with the State's estimated energy needs and is necessary and appropriate to effectuate the purposes of this amendatory and supplementary act." The ultimate responsibility remains with the State; it is, however, a responsibility that cannot be exercised without regard to, and consideration of, the views of local governmental units within the State.

#### SENATE COMMITTEE AMENDMENTS

The Senate committee amendments make the following additions:

1. The time period, for a State instrumentality empowered to grant or deny any approval, consent, permit, certificate or other condition for the construction or location of an energy facility to exercise that power, was extended from 90 days to 180 days and an additional period of up to 180 days was authorized pursuant to an agreement between the Commissioner of Energy and the chief executive officer of the concerned department or the President of the Board of Public Utilities.

2. The Commissioner of Energy's power to override another State instrumentality was removed for those cases where that State instrumentality certifies that such an override "would result in the violation of any requirement or standard specifically mandated by Federal statute or regulation."

3. Certificates of site and facility are no longer required for any modification or expansion of energy facilities for the production, conversion, processing, transmission or storage of petroleum products, which increase capacity by 10% or less on existing sites; provided, however, that only one such increase in capacity may be made in any 10-year period without the need for such a certificate.

4. The Department of Energy is required to consider the provisions of all relevant county and municipal master plans in the preparation of the State Energy Facilities Plan and to consider and evaluate all comments by any county or municipality on an application for a certificate of site and facility.

5. No State department is allowed to make a fee simple divestiture of any portion of any State Forest, State Park or State Wildlife Management Area for the provision of a site for the construction of an energy facility.

6. For the purposes of facilitating the review of applications for certificate of site and facility, the chief executive officers of the appropriate executive departments are authorized to direct such State instrumentalities within each such department to consolidate the review of, and hearing process for, any such application.

7. The definition of energy facilities was altered to eliminate facilities for the distribution of petroleum products and to eliminate tank farms with less than 400,000 gallons of capacity.

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SENATE REVENUE, FINANCE AND APPROPRIATIONS  
COMMITTEE

STATEMENT TO  
SENATE, No. 1179

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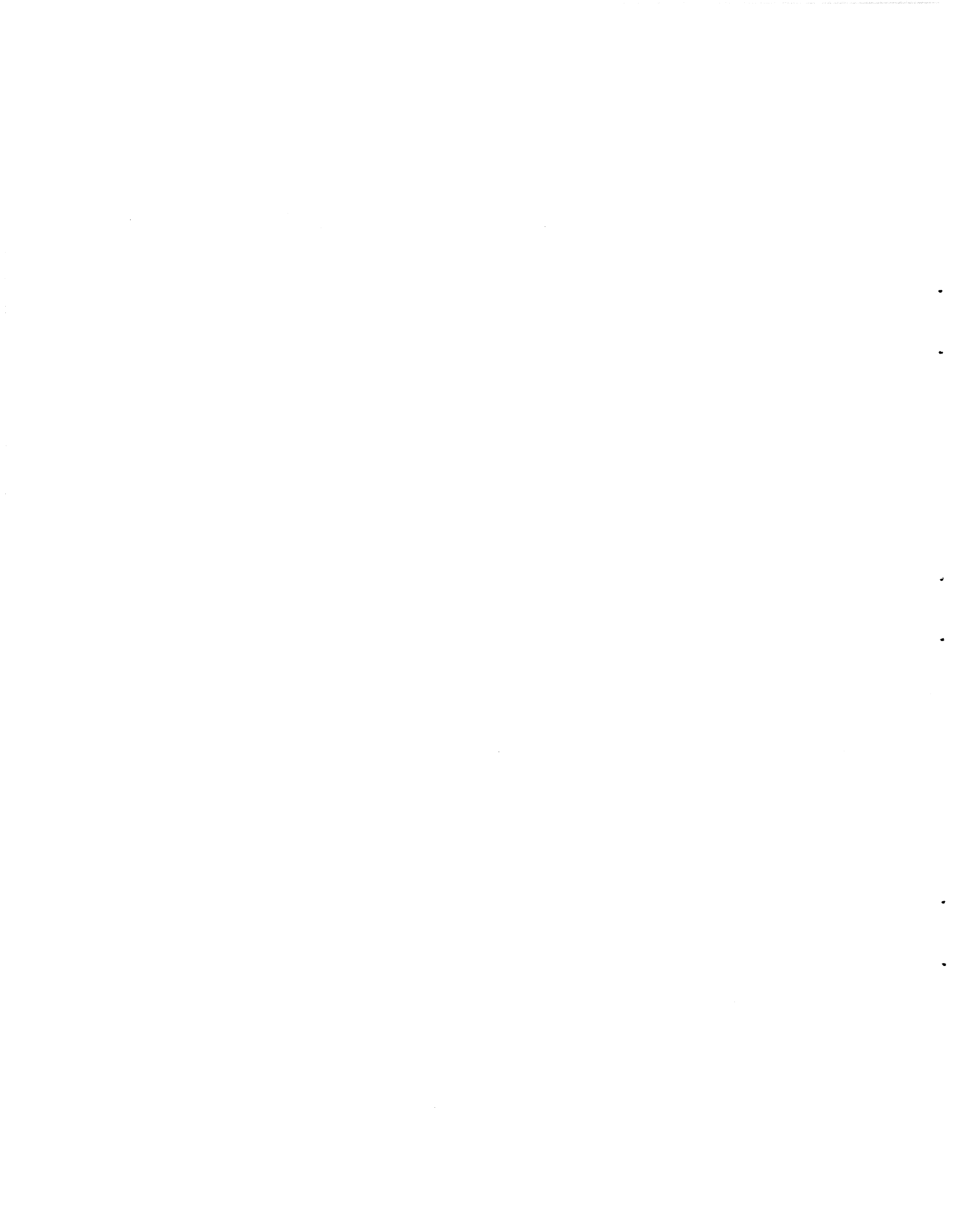
STATE OF NEW JERSEY

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DATED: JUNE 1, 1978

The Senate Revenue, Finance and Appropriations Committee concurs in the Senate Energy and Environment Committee Statement to this bill.

The appropriation of \$250,000.00 to the Department of Energy is found to be reasonable and necessary to meet the costs of its studies and planning activities under the bill.



ASSEMBLYMAN JOHN H. FROUDE (Chairman): I would like to call this hearing to order and say, good morning, to all of you.

I am Assemblyman John Froude from Middlesex County. I am Chairman of the Energy and Natural Resources Committee, the reference committee for Senate Bill 1179. Because of the importance of this bill and because of the fact that this bill has ramifications not only to energy, but to our environment, in the Assembly, we formed a Joint Committee for the purpose of conducting public hearings. Co-chairing the public hearing with me is Assemblyman Stewart, Chairman of the Agriculture and Environment Committee.

We have before us S 1179, 38 pages of specifics. What we would appreciate is direct reference to those specifics. Needless to say, we have heard comments about the need for public hearing. This hearing is testimony that that cry has been heard. As a matter of fact, it is anticipated that we will have public hearings, not just a public hearing. We recognize the significance of this bill. How much we can get to today is somewhat dependent upon your testimony. We would appreciate any printed material that you have with you being provided to the Committee for purposes of accurate transcription. We would also ask you not to be redundant, but, by the same token, to indicate support of previous testimony. We would ask you not to remind us of the importance of the bill and the need to have public hearings. We recognize and understand that.

The list that has been passed around the room of confirmed witnesses - and we have asked staff to come back with a definition of what a "confirmed witness" is; we have different points of view on that - was drawn up, I am told, quite by chance, with the exception of some public representatives who are at the top of the list. I think we are going to follow the list, because it has been drawn up in that fashion, in the order in which it is presented. Fair warning and also as a way of alleviating any of your fears, we intend to hear everyone who wants to be heard. We also intend not to go much beyond quarter to four or four o'clock. Don't get panicky - we will hear everyone. But we are not going to necessarily try to squeeze it all in today until eight o'clock tonight.

With those ground rules, offered for your convenience as well as for ours, we would like to begin by calling upon Senator Dodd, the sponsor of this bill, for opening comments, to put this hearing into proper focus.

The Senator, I understand, will join us on the Committee after he has made his comments.

S E N A T O R F R A N K J. D O D D: Chairman Stewart and Chairman Froude, the Energy Siting Bill is one of the major pieces of legislation. I am going to be very brief in my comments because I would like to partake in the questions and answers that the Committee will be asking for the rest of the morning.

Just to state what the purpose of the bill is, New Jersey is an energy intensive state - a manufacturing state primarily. Without the proper energy, our economy cannot hope to survive.

There are many reasons why businesses leave the State, don't locate in the State or expand. High on that list is the uncertainty of energy supplies to businesses. The reason is the haphazard way in which we have placed our energy facilities in the State. It has, by and large, been left up to local option. When a major energy industry wants to put in a plant, a refinery or whatever, whatever comes under the title of energy facility siting, it is done on a

one-to-one basis with local governments, and I will say it is done with a due amount of care because of the local interest, but it is very provincial. Rarely, if ever, does it reflect the statewide needs. Simultaneously, it more often than not does not take into consideration the environmental problems that go along with siting energy facilities.

You could not have built the Parkway in this State if the Garden State Parkway Authority had had to deal with each town individually - and the same applies to the New Jersey Turnpike and other projects.

When we look at municipalities, counties and the State, the State interests represent truly the seven and one-half million people, as opposed to the individual towns and their individual needs. The purpose of State government is to oversee. The Energy Facility Siting Act deals directly with that.

We have built in provisions for the master plans of every county in the State, a ten-year master plan with municipal input, and organizational input. I dare say that no facility would be built or allowed unless the objecting municipality had very frivolous arguments. The bill is not to be taken lightly in that respect.

I have submitted a formal statement in this matter.

(Senator Dodd's written statement can be found beginning on page 1X.)

You know people use home rule. When they are for something, they can use home rule to work for them - or it can be used against them. We are not trying to take away home rule; but with regard to energy, just look at what is happening off our Atlantic coast right now on a statewide basis as opposed to having a company come in and dangle a carrot in front of a municipality's nose with a ratable. One may be good; the other may be bad. This is not the way to make these decisions. That is, basically, the bill. I won't go into any more details. You have the statement and, of course, you have the bill.

If there are any questions from the Committee at this time, I would be more than happy to answer them.

ASSEMBLYMAN STEWART: Senator, I think you are aware of my concern with the provisions of the bill.

SENATOR DODD: Yes.

ASSEMBLYMAN STEWART: But for the record and for the rest of the Committee, I would like first to state my concerns again; and, secondly, maybe through some questions and answers we can discuss your reaction to those concerns.

My concerns as I expressed to you before at a public hearing I think the Senate had last year --- And, by the way, I agree with a statement I have seen of yours that this bill is not being ramrodded or rushed through the Legislature. I was not surprised how fast it went through the Senate. I, for one, know a lot of time was spent prior to the vote in the Senate Committee. I also know a lot of time was spent on it last year. So it is not moving quite as fast as some of its critics say it is. Certainly, it is going to have a lot of discussion here in this House.

My main concern, if I look at it parochially, is with my particular legislative district. I am concerned about nuclear facilities, for instance. Your bill mentions quite specifically energy parks and discusses how the new Department of Energy would be able to set up nuclear energy parks in sections of the State. I am concerned that each section of the State and each municipality should have to do its fair share of producing energy in the future. I am further

concerned the way this bill is worded, with some of the other developments that have gone on in the State, that we are going to have very few areas in the State that are going to be suitable for future nuclear expansion. I am very concerned that the area in which I reside and which I represent is going to be that area unless some drastic changes are made in your legislation.

We in the southern end of the State feel that we have done our fair share as far as nuclear energy is concerned. When you talk about four nuclear facilities before 1981 or 1982, I would not want to see that particular section of the State become the nuclear park for the northeastern section of the United States - and I don't think you would either; at least I hope you wouldn't. I am also bothered by the fact the way this bill is written that Mr. Jacobson or his successor could make that section of the State or the Oyster Creek section of the State, the Lacey Township section of the State, a massive nuclear park. I have some ideas on how we can prevent that from happening. I would want to know whether the Senate in its deliberations has considered trying to prevent that from happening. Do you have any suggestions as to how we can handle that problem?

SENATOR DODD: There has been talk of an amendment, limiting it to one nuclear facility per town. I don't pretend to know all there is to know about nuclear energy. But I think common sense would dictate that you don't cluster nuclear facilities.

ASSEMBLYMAN OLSZOWY: May I interrupt? Did you say per town?

SENATOR DODD: Per town.

ASSEMBLYMAN OLSZOWY: And you are going to have them in a cluster? Assume we had one in the area here, in Trenton.

SENATOR DODD: No. I mean cluster the facilities.

ASSEMBLYMAN OLSZOWY: Will you explain that, Senator - a nuclear facility per town?

SENATOR DODD: I don't think it would make too much sense to have four or five nuclear facilities within the boundaries of one municipality.

ASSEMBLYWOMAN TOTARO: I think his reaction and mine are that "per town" is too close. You are clustered if you take Essex County in its density or even the northern part of the State. The towns are so tiny that you would actually be clustering them even though they are within the borders of the town.

SENATOR DODD: I think these arguments ---

ASSEMBLYWOMAN TOTARO: It is not restrictive enough as far as I am concerned.

SENATOR DODD: I don't think we are really going to have that as a problem. I don't see that realistically.

ASSEMBLYMAN OLSZOWY: I raised the question because I think any nuclear facility that we might have could service an area within a periphery of 30 or 35 miles.

SENATOR DODD: That is exactly my point.

ASSEMBLYMAN OLSZOWY: Having a nuclear facility per town doesn't make any sense to me.

ASSEMBLYMAN FROUDE: May I interrupt the proceedings for a moment. Can you people in the back hear what is going on up here? I wish everyone would speak loudly. One of the purposes of having this hearing is so that you too can hear what we are listening to; otherwise, frankly, I see no particular reason to

have governmental officials talk here today. We could bring them in and have them talk to us at our convenience and at their convenience.

What I would like to do is stick to the question of Assemblyman Stewart which I think is a general question, and hold off on some of these specifics which I think are not related to our purpose this morning.

ASSEMBLYMAN STEWART: Senator, your brief answer indicates that you don't disagree with what I am trying to say.

SENATOR DODD: No, I don't.

ASSEMBLYMAN STEWART: All I am trying to say is, the way the bill is written, somebody else could disagree with what you are trying to say and with what I am trying to say and we would have a problem. To settle the problem right now so we can go on to other questions, do you have any problem with our trying to work up some terminology that would protect a municipality that already has nuclear facilities from having additional nuclear facilities mandated upon it?

SENATOR DODD: I don't have any problem with that, per se. But, again, when we draft legislation, we bring it up to a point and then we let the department that will administer the legislation promulgate the actual rules and regulations. I would hope - and I know with Commissioner Jacobson and the present Department of Energy that common sense would prevail in a situation like this.

ASSEMBLYMAN FROUDE: Are you satisfied that you raised the issue?

ASSEMBLYMAN STEWART: I am satisfied that I raised the issue and I just want to make sure that the rest of the Committee --- I will just take a few more minutes. I don't want to take everybody's time on this particular subject. But I think it is important that we get this point straight right in the beginning that, as far as nuclear facilities are concerned in the State, I don't think we are going to find anybody standing in line in the future to have them in their municipalities. That's very obvious to me, especially with some of the other legislation that is going around in the Senate right now with regard to changing the gross receipts tax and taking the financial rewards away for having a nuclear facility. So I would hope that the committees would keep in mind that we are not going to have anybody breaking down the doors of the Department of Energy to have nuclear facilities in their municipalities. We are going to have a problem in the future. The department is going to have to look at where those facilities are now and, in my opinion, they are going to look at those areas and that is where they are going to continue to be developed. I think we have to be very careful not to force any section of the State to accept that whole burden.

I don't think I would be doing my district justice and I don't think the rest of the Committee would be doing the State of New Jersey any justice if we allow legislation to go on the books that would leave that door open. I think we have to say to all the towns of the State of New Jersey, "You have to do your fair share." By the same token, I don't think we should say to any one or two municipalities in the State, "We want you to do the whole job." I think we have to tie this bill down somehow to make sure that doesn't happen. Hopefully, we can discuss that issue with Mr. Jacobson and whoever else is going to be discussing this. Anyone who has taken the time to read this bill knows that they talk about setting up energy parks. If that isn't an energy park, I don't know what the heck is. I am talking about a municipality that already has four nuclear

plants.

ASSEMBLYMAN FROUDE: Don, if I may interrupt you a moment. The issue you raised is an issue that Senator Dodd has already spoken about; and, that is, the issue of local control - local input. The Senator has made reference to the interest of seven and one-half million people in the State of New Jersey and you are making reference to the interest of a segment of that population. I think the issue is clearly placed before the Committee and it is an issue that we are going to want to discuss repeatedly between now and the time this bill is acted upon.

ASSEMBLYMAN OLSZOWY: I think in a technical sense, along with Mr. Stewart's thinking and Senator Dodd's thinking, if the facilities - and I am not saying I am for or against it, but I am just throwing this out as a thought --- if we need, say, three nuclear plants to service the entire State of New Jersey, or four, why can't we include in this bill that the State of New Jersey shall not have more than x number of nuclear facilities? That would take care of everybody's problem.

SENATOR DODD: If I could interject on that point, this bill would deal more effectively with Assemblyman Stewart's concern than the present system. Right now, a facility could go in there and again dangle that financial carrot in front of their noses, even with the change in the tax setup, and have six or eight in one municipality for financial reasons. This, at least, would give some statewide input and statewide thinking, saying, "No, we don't want that many in one cluster or in one area." That's the way it is now. So if that is your concern, this bill can only help, not hurt.

ASSEMBLYMAN FROUDE: I think the best interests of the Committee would be served today by spending our time listening to what the public has to say about the bill. Take your notes and, as I stated before some of you got here, we are going to have repeated sessions that will start on time. We are going to be able to get our questions answered not only today, but in the future.

ASSEMBLYMAN HOLLENBECK: I have a couple of questions on the bill. Primarily, the bill is doing a lot of amendment to Chapter 146. Why are we changing in the bill the terminologies that we worked very hard on in this Committee? We worked very hard deciding how the Advisory Council on Energy Planning and Conservation should be composed - its membership. Now you are changing that with less than a year of operation. Why are you changing that?

SENATOR DODD: Could I refer that question to our draftsman, Mark Reifer?

ASSEMBLYMAN FROUDE: Isn't that really the kind of question we can get to later?

ASSEMBLYMAN HOLLENBECK: Well, there are a couple of specifics I would like to go into. The present Chapter 146 has siting within it, right? We are basically taking out all of the siting provisions that exist now in 146 and going into another system. One of the parts of it, of course, is the makeup of that board. Then we go into Chapter 146 with the question of the Energy Facility Review Board, which is being removed.

SENATOR DODD: Senate 1179 is far more comprehensive. This is actually part 2 of the Energy Department. We created the Energy Department last year, recognizing its need in New Jersey, especially with off-shore drilling and what not. This is far more comprehensive. The one-stop shopping provision is new where instead of having to get 25 or perhaps 30 different permits for

a siting, with no orchestration, no one to oversee whether one is good or one is bad, it is now set up in the Energy Department.

ASSEMBLYMAN HOLLENBECK: But the Energy Facility Review Board which is in the existing law always had co-extensive jurisdiction on the sitings. I think even within your plan, there is still some input from other departments on it.

SENATOR DODD: Yes.

ASSEMBLYMAN HOLLENBECK: We are eliminating the whole object of the Energy Facility Review Board.

SENATOR DODD: It is just a better mouse trap.

ASSEMBLYMAN HOLLENBECK: This is after less than a year of operation. Primarily this is on specifics, rather than the philosophy.

ASSEMBLYMAN FROUDE: Thank you, Senator, for helping us. Please join us at the committee table.

Is Commissioner Jacobson present at this time? (Not present.)

Is Robert Janiszewski here? (Not present.)

Arthur Penn, Assistant Commissioner, Department of Public Advocate.

A R T H U R P E N N: Mr. Chairman and members of the Committee, good morning. I am Arthur Penn, Assistant Commissioner, Department of the Public Advocate. With me is William Potter of the Public Advocate's Office.

I am appearing today on behalf of Commissioner Stanley Van Ness. We have submitted a prepared statement. In the interest of time, I am not going to read that statement. I would like to go over the main points we have made.

In general, the Public Advocate supports what we perceive to be the underlying goal of S 1179, which is establishing a framework for State planning on the future course of energy development and siting in New Jersey. However, we have serious reservations about the procedures set forth in the bill. We see three basic problems with S 1179.

First, we are concerned that the bill ignores the importance of public participation and local controls in the final decision-making process. Indeed, there is no provision for a fact-finding hearing before the decision-maker. We see no need for haste or corner-cutting in approving nuclear plants and other major energy projects that have a tremendous impact on the State.

Secondly, the bill exempts from State review all energy facilities for which there has been preliminary on-site preparation.

Finally, S 1179 surrenders the Legislature's jurisdiction over off-shore facilities, including the controversial floating nuclear plants proposed for the ocean waters near Atlantic City. Thus it will become possible for the first time to gain approval of floating nuclear plants without legislative approval.

We believe S 1179 should not be reported out of committee until these and other problems have been resolved. I would like to elaborate briefly on the problems I just mentioned.

The most glaring omission in the bill is the failure to provide for full-scale public hearings on energy facilities at any point in the review process. These plenary, adjudicatory or due process hearings provide the safeguards and truth-determining processes of the court room, notably the requirements of an impartial hearing officer, sworn testimony and the right of cross examination. In our research of emergency siting laws in other states, we have found that where a state elects to decide upon the siting and necessity

for major nuclear energy facilities, it relies upon adjudicatory hearings as the essential vehicle for determining the facts necessary for wise decision-making. These states include, for example, New York, Connecticut, Massachusetts, Florida, Minnesota, California, Oregon and Washington.

Adjudicatory hearings are the sole means by which the citizens, businesses, non-profit organizations, municipalities, and, by implication, the Public Advocate, are able to confront the potentially self-serving claims of energy companies and the assumptions of government bureaucrats. Without these safeguards, an energy commissioner could arbitrarily authorize construction of an oil tank farm on the Jersey City waterfront or in the pine barrens of Ocean County and neither the local government nor the Legislature could do anything to stop it. In short, public participation through adjudicatory hearings is not just a grudging concession to lawyers and citizen activists, it is the mechanism for wise decision-making and public accountability.

S 1179, however, neither expressly nor implicitly provides for these public hearings. We believe adjudicatory hearings should be expressly required as part of the review of every application for a certificate of site and facility. All interested parties should be permitted to intervene in these hearings. Moreover, the Public Advocate should be authorized to appear and represent the public.

A further problem with the procedures in the bill is that there is a complete termination of local regulation for all energy facilities. While unquestionably there are certain facilities in which the interest of all citizens is so great that the principles of local control should yield to the greater good, there is no distinction in this legislation between facilities of overriding State interest versus facilities for which local government should continue to exercise the first line of regulation. Storage tanks or tank farms for oil and petroleum would be totally outside the scope of local jurisdiction under this bill. This is a serious error for several reasons: First, there is no compelling State interest in the siting of tank farms which is strong enough to veto local opposition. Tank farms generally are not constructed to supply needed energy to New Jersey, but rather to supply storage for refining and transshipment of the fuels elsewhere.

Second, tank farms do not require unique or rare siting characteristics. Essentially, they can be located anywhere, unlike electric generating stations which require special siting characteristics. Thus, local disapproval in one town would not preclude their establishment elsewhere.

Finally, the impacts of tank farms are overwhelmingly experienced at the local level. Their presence will automatically convert a rural or residential area into heavy industrial use. This will affect property values, business investments, and the community's overall quality of life.

In short, we take strong objection to the total preemption of local control.

The bill should be amended to place control over certain energy facilities where it rightfully belongs with local government. We, therefore, propose the following amendments:

First, determine the suitability of siting of those energy facilities which affect the entire State, such as nuclear or coal power plants, in public adjudicatory hearings at which local residents and municipal governments, acting

directly or through the Public Advocate would have standing to participate on all relevant issues.

Second, maintain local police power control, including zoning over all oil, petroleum and chemical tank farms and related facilities.

The bill is also deficient in its effort to exempt all energy facilities from the certificate process where there has been some prior lawful site preparation "or other substantial action." By grandfathering uncompleted projects, the bill effectively delegates to the energy companies sole discretion to determine whether and, if so, when to complete projects in light of changing circumstances. We, therefore, recommend that S 1179 be amended to permit ongoing reviews of uncompleted projects.

Finally, S 1179 makes it possible to license the floating nuclear plants without legislative authorization. Two such plants have been proposed. These are the highly controversial Atlantic Generating Station units proposed by Public Service Electric and Gas for a site approximately 3 miles at sea and 12 miles north of Atlantic City. Four years ago, the citizens of Atlantic County voted overwhelmingly in a nonbinding referendum against these floating plants. The bill would authorize the Natural Resources Council to sell or lease to Public Service Electric and Gas the huge acreage of submerged lands necessary for construction of the breakwater, the largest ocean structure ever made. The Public Advocate prefers to see the Legislature retain authority to sell or lease submerged lands.

We suggest, therefore, that the Council's jurisdiction over submerged lands be limited to leasing corridors for pipelines from offshore oil following adjudicatory hearings and subject to clear safeguards. Nuclear installations, as well as other forms of new technology, such as deepwater oil ports for servicing giant super tankers, should not be added to the Council's jurisdiction. These facilities are of such massive dimension and potential impact that the Legislature should not delegate away these responsibilities.

In conclusion, we strongly believe to release the bill without the changes we suggested would be contrary to the public interest. Our department is prepared to assist this Committee in any way in the drafting and review of amendments to the bill. Thank you, and I would be pleased to answer any questions.

(Written statement submitted by Mr. Penn can be found beginning on page 7X.)

ASSEMBLYMAN FROUDE: Thank you, Mr. Penn. I was wondering what help you can offer us this morning in terms of helping us identify or define or segregate those facilities that have overriding State interest or impact, as opposed to those that you feel can rightfully be maintained under the jurisdiction of local control?

MR. PENN: Well, first of all, your nuclear or fossil-fuel electric generating stations, I believe would be of major State importance and subject to State control, particularly because the siting of these plants is very difficult and it would probably be contrary to the interest of the citizens of the State to give local government the authority to veto the siting of this type of facility. On the other hand, the tank farms are a different matter. In fact, the energy stored may not even be going anywhere in New Jersey. This type of facility should be subject to local control. If the municipality wants it, fine; if the municipality does not want it, then local governments should be given the discretion to veto the placement of these types of facilities.

ASSEMBLYMAN FROUDE: You have given me a couple of examples. But I am not sure I have a guideline to operate in other cases. You made reference to the fact that offshore nuclear facilities were not deemed acceptable by people in the neighboring counties. Are you satisfied that these adjudicatory hearings that you are making reference to are all that these people need, or are you suggesting that those people have a veto power over those facilities? It would seem to me those are the kinds of facilities that could be identified as having the greatest State impact, for example.

MR. PENN: Clearly those facilities have an overriding State impact. What I am suggesting is that, in the case of floating nuclear plants, the Legislature retain the authority it now has to veto those final projects. Right now, even if Public Service Electric and Gas gets all the permits it needs from the federal government and from the State government, it cannot start operation unless the Legislature agrees to sell or lease the submerged lands. So, in effect, the people of the State speaking through their elected representatives could decide to kill those floating nuclear plants. It is a legislative determination and that's where it should be.

ASSEMBLYMAN FROUDE: I am hoping to have some input on how the Legislature reasonably goes about deciding whether they shall or shall not be. You have raised the issue of its being a political decision that is being made. I would like to think that there is more to it than that.

MR. PENN: Well, I think to a certain extent the Legislature would make that kind of decision the same way as it decides other bills. It weighs the public response. It weighs the public necessity. And it balances all factors. Then the legislators vote according to their will. That is the way this should go - no different than any other determination that the Legislature ever makes.

ASSEMBLYMAN FROUDE: Okay, Mr. Penn. Thank you.

ASSEMBLYMAN STEWART: One of the reasons, I assume, for Senator Dodd's bill is the one-stop shopping bit, the approach to try and speed up the process for energy facilities. This committee, as a joint committee, has been looking into the offshore drilling proposals and we have been involved with representatives of other states and we have been involved with the industry. If one message came across, it was, first of all, that New Jersey has a horrible image as being a state that is trying to discourage all sorts of development. Number two, the red tape drives everybody nuts. It sounds like your proposal would just add to the image we already have. I can see the oil industries who are thinking about onshore support facilities in New Jersey saying, "Egad, if I have to go through this type hearing and I am going to have a Public Advocate chasing me all over the State of New Jersey and every Tom, Dick and Harry is going to want a hearing, forget New Jersey. I'm going to Rhode Island or I'm going to Delaware." Do you have an opinion on that?

MR. PENN: The Public Advocate is not advocating more red tape in the process. We agree that there should be one agency at the State level in control of these major siting decisions. What we are saying is that when that decision is made by that decision-maker, it should be made only after a full hearing. Now there is a difference between having an adjudicatory hearing and all this red tape with permits from 15 different agencies. An adjudicatory hearing may lead to some delay, but it is a necessary component in the decision-making process

for many reasons: one, that you want a wise decision and you cannot arrive at a right decision unless you have had a full hearing with the right of cross examination. Secondly, I think the citizens of this State are entitled to participate in any meaningful hearing before the State decides to make a major decision which will affect the quality of their lives.

ASSEMBLYMAN STEWART: My second concern is that the hearings you are talking about would do nothing to solve the problem that I addressed in my opening questions to Senator Dodd. It appears to me the most logical place, if we use my example - and even your hearings might show that - to expand and have a nuclear park would be where facilities already are in existence, in remote, rural areas of the State of New Jersey. The remote, rural areas of the State of New Jersey would have no support whatsoever in the hearing that you are talking about setting up. All the facts would probably point to - yes, that's a good spot.

MR. PENN: I think you may be wrong on that score.

ASSEMBLYMAN STEWART: I hope so.

MR. PENN: What the municipalities and the people in South Jersey do when they participate in these hearings in order to avoid the siting of another nuclear facility in their area is to demonstrate that there is no need for this nuclear facility. Ultimately, the answer to your concern is, don't build nuclear facilities. In order to establish that point, you have to put it on a record. You can't do that without an adjudicatory hearing. If you had an opportunity to participate in a hearing, you could hopefully demonstrate that there is no need for the facility and there are alternatives to the facility. Therefore, the adjudicatory process would at least be one way to reach the concern that you express, sir.

ASSEMBLYMAN STEWART: Thank you.

ASSEMBLYMAN FROUDE: Does anybody on this Committee, in addition to myself, need some clarification of adjudicatory hearings - how they are different from other types of hearings? No one else needs that?

ASSEMBLYMAN OLSZOWY: I need it.

ASSEMBLYMAN FROUDE: I am interested in that. I don't know whether anyone else is or not.

MR. PENN: Let me give you an example. The hearing today is a public hearing. It is not an adjudicatory hearing. The witnesses before you are not subject to cross examination. They are not presenting evidence. An adjudicatory hearing subjects the witnesses to full cross examination. The rules of evidence are generally in effect. Evidence is produced by both sides and is weighed in an impartial manner by a hearing officer, who then makes recommendations concerning the facts of the case and the law.

I guess the bottom line is, the only way to arrive at the truth, if that can ever be arrived at, is through a process similar to what we do in a court room.

ASSEMBLYMAN FROUDE: How would that procedure fit in with the powers that the commissioner is being granted in this bill? Assuming that we added this to the procedures, is the commissioner under your scheme tied to that hearing officer's decision in any way?

MR. PENN: What the commissioner would do if there were adjudicatory hearings would be to make a final decision just as he does now, but that final decision would have to be based on the record before him. If any members of the

public should disagree with that decision, the decision could be challenged in court and the citizens affected would have the benefit of a full record. Thus, if the citizens from South Jersey tried to demonstrate that there was no need for a particular nuclear facility and the commissioner ruled that there was such a need, those citizens could go into court and, hopefully, attain an order from the court reversing the commissioner if, in fact, the record demonstrates that there was no need for the facility.

ASSEMBLYMAN FROUDE: Let me ask one more question in the same vein. Under these procedures that are outlined in 1179, could those citizens go into court to argue against the commissioner's decision?

MR. PENN: I imagine they could go into court, but they would stand virtually no chance of success because there is no record before the court. The commissioner makes these decisions in his discretion without the benefit of cross examination of any of the proponents of the facility. It would be extremely difficult for any citizen group to prevail absent the full administrative record below.

ASSEMBLYMAN FROUDE: Okay. Are there any further questions?

ASSEMBLYMAN DI FRANCESCO: First let me ask, have you previously testified or submitted your statement on this bill prior to today?

MR. PENN: No, today was the first time. We did not submit it at the Senate level.

ASSEMBLYMAN DI FRANCESCO: You did not provide any input with respect to this at all to the Senate Committee.

MR. PENN: I don't believe there were any hearings at the Senate level.

ASSEMBLYMAN DI FRANCESCO: I would assume there were committee meetings on this.

MR. PENN: I don't know what went on before the Senate. But this is the first time we have submitted this statement, yes.

ASSEMBLYMAN DI FRANCESCO: On the first page of your statement you indicate that you support the underlying goal of S 1179, establishing a framework for State planning and decision-making on the future course of energy development. On page 6 of your statement, you make recommendations with respect to possible amendments. I want to be clear about what you are saying. Do you want the local authorities to have veto powers over facilities in their municipalities or counties?

MR. PENN: Over certain facilities, yes.

ASSEMBLYMAN DI FRANCESCO: Which facilities - the ones outlined?

MR. PENN: The facilities I mentioned, those facilities which do not have a statewide impact, which by our terms would include all facilities which are not electric generating stations.

ASSEMBLYMAN DI FRANCESCO: Is it essential to have these facilities that you want veto power over in establishing a nuclear facility? You want them to have veto power over certain facilities, but not necessarily all facilities.

MR. PENN: That is correct.

ASSEMBLYMAN DI FRANCESCO: Are those certain facilities essential to a nuclear facility site?

MR. PENN: The facilities which we would encourage local control over?

ASSEMBLYMAN DI FRANCESCO: Yes.

MR. PENN: No, they would have no relation to nuclear plants or to coal power plants.

ASSEMBLYMAN DI FRANCESCO: Okay.

ASSEMBLYMAN FROUDE: I think that does it for now, Mr. Penn. But if we are interested in calling you back, I assume you would be willing to come back and discuss this further with us.

MR. PENN: Of course.

ASSEMBLYMAN FROUDE: Thank you.

I see Commissioner Jacobson has come in. I would ask him to step forward at this time and offer comments.

COMMISSIONER JOEL JACOBSON: Ladies and gentlemen of the Committee, I am delighted for this opportunity to present testimony on S 1179 and I would like to address myself to one issue that has generated much concern, the question of home rule.

Can I state two things parenthetically before I concern myself with the details of 1179: First, as a matter of personal philosophy, I will yield to no one - no one - in my determination to preserve the principles of democracy and to concern myself with the environmental quality of our State. I want to repeat that for the third time. I will yield to no one in my concern for these two objectives.

I think it is important for us to determine, in considering this bill, just what we are talking about. I would like to take about thirty seconds to tell you in my judgment what the problem is. In October of 1976, I was in Japan with the Governor and the value of the dollar at that time was 270 yen. Yesterday morning, the value of the dollar against the Japanese yen fell to 212, a considerable deterioration in the value of the dollar. And in one very important aspect we are talking about that because the value of the dollar is deteriorating because of our balance of payments' deficit, which is caused by our heavy dependence on foreign oil. Can I cite just two statistics to indicate this? The deficit in 1977 was \$27.5 billion. The rate of the deficit for 1978 is 25 percent above last year's deficit. The reason we have a deficit is that our imported oil bill in the year 1972 was \$5 billion and last year it was \$45 billion, of which, incidentally, \$9 billion is attributed to increased importation and \$36 billion attributed to the quadrupled OPEC price of oil.

It is an imperative national need that we relieve our dependence upon foreign oil. The State of New Jersey has an important contribution to make because we all hope that the Baltimore Canyon will produce significant resources of natural gas and oil. Despite the fact that CONOCO has struck a dry hole, the estimates from the United States Geological Survey and the Department of Interior are that there are substantial resources out there.

Ladies and gentlemen, I submit to you, if there are substantial resources in the Baltimore Canyon, this State has a major obligation to take every possible step to bring those resources ashore.

I would like to cite for you what I consider to be the most ridiculous situation that may confront this State and what we are really talking about here. Let us suppose that the oil companies strike in this instance natural gas and that we must bring this natural gas ashore. This obviously requires a pipeline to

be located on New Jersey shores and, somewhere within a 5- or 10-mile limit, a gas processing plant. Everybody in the country knows we have to do that. Everybody in the State knows we have to do that. Say it is determined by near unanimous judgment that site X is the most environmentally acceptable site in the State to bring these resources ashore. Everybody agrees except the mayor and town council of the municipality where we determine it to be. I am asking you: Can we permit, in the light of the imperative national need, a municipality to veto the siting of a facility meeting these most environmentally acceptable conditions? I think what we are talking about here is the ability of the State to make that decision and, to put it in popular parlance, "to bite that bullet."

Having said that, let me indicate to you that I don't believe that this bill gives anyone the right to ride roughshod over local concerns. To the contrary, in my judgment, the bill very clearly spells out the imperative obligation of the Commissioner to determine to the greatest extent possible the impact of any energy facility on the local community and all of the ancillary problems it must answer.

I would like to emphasize also that this is not a new trail you are blazing. There is preemption of local rights in several areas already in the federal government. The Board of Public Utilities already has powers of eminent domain. This is merely a logical extension of the State's authority so that you can develop a coherent energy policy in the light of our imperative national needs.

Having said that, I find that I must become somewhat subjective because of the imputations that I have heard here and read elsewhere. Nobody is a latter-day Ghengis Khan lusting for power. To the contrary, we are trying to determine a means by which the State can make the important decisions that it must make. In conformance with that, let me tell you what I think the obligation of the Commissioner of Energy will be under this statute. There are requirements for notice. There are requirements for a public hearing. There are requirements for written decisions which can be subject to the determination of the community and the State.

The statute provides these ample safeguards, in my judgment; and, as a matter of fact, we have determined in our original siting paper the administrative means by which we intend to implement this statute. I would like to tell you about that. We intend fully to make the determination first as to the need for a facility. This State has never done that. The determination for the need of a facility has been made by the industry, which may or may not be the right answer; and they may or may not have the integrity to make that decision. I am impugning nobody's motives. In my judgment, it is the obligation of the State to determine the need for facilities. You may have a situation that I have seen in one eastern state where the capacity to generate electricity is a reserve margin of close to 80 percent. That means that the citizens of that state are paying heavily for a capacity much larger than is required. On the other hand, last summer - to be specific July 17, 1977 - one of the major utilities in this State was 2 percent away from having its demand reach its capacity. You can't permit that to happen.

So I make the basic point that there must be a determination by the State as to need. There are three ways we intend to do that, and no agency now has the authority to do so. We want that authority because the State requires it. First, we want to determine whether the present supply will meet the

future demand, taking into account such items as the massive efforts we are making toward conservation. A second determination will be whether a better technological alternative exists; and, thirdly, whether a better location exists. These determinations will be made by the department.

After these determinations have been made - the industry is to present us with its plans, the counties are to present us with their plans, and the Department of Environmental Protection determines which areas are environmentally acceptable - somebody has to make the decision as to where the facility goes. We are determined to do so, taking into full consideration the local impact.

Here are some of the things we would talk about at hearings: We would insist that the local officials be present to evaluate on the basis of their information the impact of this facility on the local economy, the ability of the community to absorb the facility, and any ripple effects that may be triggered by it. We would take into consideration the local land-use policy - such items as the housing which would be necessary, the community services, and the ancillary industries that would be starting as a result of it. We would take into consideration problems of public safety, community attitudes, the social structure, and the ability to provide labor and services. All of these details will be subjects at the public hearing upon which the judgment of the department will be based.

We are required by the statute as a matter of policy to eliminate areas which are clearly inappropriate for energy facilities. We are required to identify candidate areas which are appropriate. We are required to identify sites within the candidate area which are appropriate, and we are also required to evaluate alternate sites.

Finally, ladies and gentlemen, I would like to identify some of the criteria by which we plan to make judgments, because they are not nebulous decisions, but they are to be made on the basis of facts and practical considerations. Let me set forth some of these criteria.

Number one, we hope to encourage the location of onshore support bases to provide employment for our citizens and to bolster our State's economy. Number two, all energy facilities, except for gas pipelines, will be discouraged from the Pine Barrens and the barrier islands. We are determined to protect the Pine Barrens from any unnecessary development. Where major new energy facilities are situated, bumper zones will be utilized. Where support or service bases are to be lodged, we would require that they be located in existing waterfront urban areas. Where gas processing plants are to be located, they should be clustered and located five to ten miles inland. Where gas processing can be done offshore, we would urge as much of that processing as possible be done offshore. We will prevent the transport of facilities from tankers which have a high-risk incidence and demand that pipelines be used which have a low-risk incidence. We would make sure that the pipelines are located in areas where they are free from the risk of ships' anchors puncturing them. Where we are to locate pipelines, we would insist upon their using existing right-of-ways, such as a railroad or a highway. We would try to avoid the use of virgin land.

All of these things are determinations that can be made by the department and will be made by the department. It is my judgment that the State of New Jersey cannot contribute to the resolution of a national problem unless the State

delegates to one agency the authority to make these decisions and, inasmuch as you have already created the Department of Energy, it seems to me that you should give us something to do.

ASSEMBLYMAN FROUDE: Thank you, Mr. Jacobson. I am certain that before this Committee is finished with this bill we are going to investigate very carefully the procedures outlined in the bill so that we can be assured that these determinations can be made properly. We are sooner or later going to have to get down to the nitty-gritty, so to speak, of this bill and get away from the philosophy and to the precise points. I don't think that is going to be our purpose this morning, however.

I would ask all of the members of the committees to submit to our staff any questions that have been generated as a result of your individual studies of this bill. I, frankly, have divided mine into philosophical or general considerations and then specific references to the bill, section by section.

I say this at this time only to allay any concerns that members of the committees may have that they are missing an opportunity to question the Commissioner on some specifics. I would submit that this might not be the time to do that when there are so many people out there who want to make comments.

With those prefacing comments, please feel free to raise any questions that you want at this time to the Commissioner.

ASSEMBLYMAN STEWART: Can we feel assured, when we get to the meat of the bill, we can have the Commissioner come back and address us at that time? Is that what you are trying to say?

ASSEMBLYMAN FROUDE: Yes.

ASSEMBLYMAN STEWART: Fine.

ASSEMBLYMAN FROUDE: Thank you.

George Barbour, President of the Board of Public Utilities.

G E O R G E B A R B O U R: Good morning, ladies and gentlemen. There is a little bit of nostalgia in Commissioner Hynes' and my being here today. We appreciate being with you.

I would like to take this opportunity to express both my and Commissioner Hynes' appreciation for this opportunity to appear before the Committee. As you are all aware, Senate Bill 1179 is a significant step in the State's plan to facilitate energy planning, development and management. For that reason, both Commissioner Hynes and I support the general concepts embodied in this proposed legislation. However, I would like to take a few, brief moments to outline for you several suggested modifications to this bill which we believe are essential in order to preserve the duties and obligations imposed upon the Board pursuant to Title 48 of the Revised Statutes of our State. In addition, we believe that these suggested amendments will better serve to protect the public interest, as well as preserve those proper regulatory procedures that are essential in reaching determinations of such significant magnitude.

Let me preface these suggested amendments by stating that they are

offered with the knowledge and approval of the Governor and the Administration.

The first amendment that I would suggest involves the requirement imposed upon the Commissioner of Energy pursuant to Section 26 of the bill to transmit copies of any application for a certificate of site and facility to other appropriate State instrumentalities for their review and recommendations. The bill as originally drafted stated that "where appropriate" a copy of such application should be sent to the President of the Board of Public Utilities for the review and recommendations of the full Board. The Senate subsequently amended that section to limit the purview of the Board's review to only financial considerations.

In order for the Board to carry out its statutory obligations, as well as protect the public interest, it is imperative that the Board's role in this review process not be limited in any way from its current authorities. In this regard, I have caused to be drafted an amendment to Section 26, copies of which I have for your consideration --- In fact, you have copies of those as well as the other two sections and the statement that is being made. In that regard, I have caused to be drafted an amendment to Section 26, copies of which I have for your consideration, that would require the Commissioner of Energy to transmit to the Board a copy of any application for a certificate of site and facility filed by a public utility as defined by N.J.S.A. 48:2-13. The review process would then proceed as provided in the bill as for any other State agency without any limitation as to the Board's areas of consideration.

The second modification I would suggest is a series of minor amendments to Sections 25 and 28. The purpose of these amendments is to insure that whenever the Commissioner of Energy and any other State agency, pursuant to Section 27c, disagree as to the disposition of a particular application, then and in that event, the principal head of the other State instrumentality may invoke the convening of the Energy Facility Review Board, pursuant to Section 28 of the bill.

As the bill is currently drafted, it is our understanding that the convening of the Energy Facility Review Board can only occur pursuant to subsection d of Section 25, when the State instrumentality reviewing the application recommends to the Commissioner of Energy a denial of the request and the Commissioner overrides that denial. I believe that, at least with respect to public utilities, if the Board after public hearings in a quasi-judicial forum with an opportunity for all parties to be heard determines that the public interest can best be served by the approval of an application for an energy facility or site and the Commissioner of Energy unilaterally overrides that decision, then the Energy Facility Review Board should be convened to resolve that dispute. The record developed before the Board would be available for the use and benefit of the Review Board. The bill as currently proposed would not provide this safeguard, and I respectfully suggest it for your consideration.

To effectuate this modification I have prepared and can distribute to you several short amendments to Sections 25 and 28 which would make available the opportunity to convene the Energy Facility Review Board whenever a dispute arises on a particular application between the Commissioner of Energy and any other State instrumentality reviewing the application.

That concludes my statement. But we are charged under the statute to give safe, adequate and reliable service. Whether or not an energy facility should be built is a very important element of that obligation. If we are to be

effective in representing the consuming public and also in regulating the utilities that are under our jurisdiction, we believe we must have a voice in the determination of the need for a new facility by the utility that we regulate. We feel that the bill should be amended as we have indicated so that in every case where there is a dispute between the Commissioner of Energy and the Board of Public Utilities, the final decision is then made by the Facility Review Board, of which the Commissioner of Energy is a member, the President of the Board would be a member, and a third person. We believe that that is the proper way to arrive at a decision in the event of a dispute.

I would also call to the Committee's attention that under Title 48, every hearing that the Board has in connection with this kind of a situation is required to be a full adjudicatory hearing, with cross examination and evidence that is permissible under the rules of court. A determination has to be made as to the facts after a full fact-finding and the decision must be based on those facts. There can be participation by the Public Advocate, by the public, by the petitioner, and any party having an interest is safeguarded and guaranteed by our procedures that are already embodied in the statute and in our rules.

I would be happy to answer any questions that you may have. I, myself, as well as our staff will be at your disposal to work out any of these matters that you may want to discuss with us.

(Proposed amendments submitted by Mr. Barbour can be found beginning on page 17X.)

ASSEMBLYMAN FROUDE: Thank you, George.

Mr. President, I have a little difficulty with the bill in these terms. It seems to me there is a distinction that can be made and should be made between determining the reasonableness of a utility's plan to expand and the State's involvement in that planning process. It seems to me that the adjudicatory hearing that you are making reference to and the Public Advocate has made reference to is more in line with determining the reasonableness of someone else's plan as opposed to the State developing a bureaucracy - to use too common a word, I guess - to go into the planning.

I raise that to give you an opportunity for you to respond if you will. Do you see any of that in this bill, an attempt on the part of the State to get involved in the planning activities rather than the review and the determination of the reasonableness of the plans of others?

COMM'R BARBOUR: I don't think there is an undue intrusion. I believe that the government ought to have a role in that planning and ought to have a role in setting the policy for the development of our energy needs. I believe that private industry should first develop what they feel is going to be adequate to take care of that. But I believe that that plan, once it has been developed, needs to come to the State for review to determine whether it fits in with the energy policy and plans of the State.

I think in making that review at the State level and in coming to decisions, it is very important that it be an adjudicatory type public hearing so that you have the full and complete input of all segments of the State that have an interest, including the public, and that they are represented in that endeavor by the Public Advocate who is competent and quite able to see that the public has input in these decisions.

I might also point out that we do have in the Board of Public Utilities now a docket inquiring generally into the question of construction practices on the part of the public utilities of this State. That docket was initiated during Commissioner Jacobson's tenure as President of the Board of Public Utilities. We hope to have a decision on that before too long. But we have investigated every aspect of the construction practices in the past of the utilities and what they are planning and proposing for the future, to see if they have been laid out and constructed and operated in a manner that best serves the interest of the consumers in this State. Of course, we believe that that review will also be in the best interest of the utilities that we regulate.

It is like taking a look at it from the outside. Sometimes when you are doing the planning of your own company in an area so big and large as this which affects every segment of the State's operation to the public, you may get lost in the forest. At times, somebody on the outside can do a much more effective job in steering you back on the course if you are off target.

ASSEMBLYMAN OLSZOWY: You raised an interesting point here, Mr. President. Basically we are talking about an energy bill where people claim we are going to give Mr. Jacobson local powers. Yet you are making a statement here that the private sector first must construct - but before they construct, they must investigate, they must inquire whether within the feasibility study they can construct a plant or facility in a certain location. I think they are going to do that before they even talk to the Energy Department. I think the Energy Department then will come in to assist these people if there is a problem on the local level. Is that right?

COMM'R BARBOUR: I would think that is correct. Yes, they would have to lay out a plan which they feel is needed by their company and document that with sufficient data in order to show its viability and what it will do. Then, as you say, the Department of Energy would receive that application.

ASSEMBLYMAN OLSZOWY: I assume I am correct in saying that 90 percent of the planning must be completed even before the Energy Department could possibly get into the picture.

COMM'R BARBOUR: Well, I wouldn't want to agree on percentages, but certainly a lot of planning and design would have to be accomplished, yes.

ASSEMBLYMAN DI FRANCESCO: Mr. President, in your statement you indicate that the bill was drafted originally to provide for your review or for the Board's review and that the Senate amended that section to restrict this to financial considerations only.

COMM'R BARBOUR: Yes.

ASSEMBLYMAN DI FRANCESCO: Why?

COMM'R BARBOUR: Because the Board traditionally has determined the need for an energy facility in connection with the utilities that we regulate. I think that that has worked well. I think that it is needed for us to continue that. But in connection with consideration of what the rates ought to be, of what the revenue requirements ought to be ---

ASSEMBLYMAN DI FRANCESCO: That's financial.

COMM'R BARBOUR: It is financial, but also the question of what kind of an energy facility you build is tied directly into that because the cost of it is put in the rate base and you earn a rate of return on that which affects your

revenue requirements. The kind of facility you build also affects your expenses, which, in turn, directly affects your rates. The financing of the kind of facility your company builds, given its needs, is an important factor; and if it isn't the right facility, you may not get the support of the financial community or you may have to pay through the nose to get that support and pay interest rates 2 or 3 points higher than you should. Or, if you are selling stock, you may be selling stock which has a value of \$25 and you may get only \$17 a share back on it. All of those things are very important in connection with rates and in connection with the financial needs. But they are also important with respect to the actual need of the utility to supply the service that it is charged to supply to the citizens of this State.

For all of those reasons, it is important that we have at least a co-equal voice in determining the need. We do not feel that it is necessary for us to be involved in so far as the site or where it is to be built. But as to the need, whether the utility applying for it needs it, whether it can support it, that we feel ---

ASSEMBLYMAN DI FRANCESCO: That is financial, isn't it?

COMM'R BARBOUR: (Continuing) --- is an integral ingredient of our operation in setting rates. Rates are financial too.

ASSEMBLYMAN DI FRANCESCO: I just remember the last sentence of the Commissioner's statement, wherein he indicated, "well, you created us - let us do something." That is my concern. Are we going to have each and every department interjecting their thoughts about why they should maintain some kind of control over this type of facility or this type of construction, or what have you?

You spoke about "traditionally," but then we didn't have a Department of Energy. ---

COMM'R BARBOUR: That is correct.

ASSEMBLYMAN DI FRANCESCO: (Continuing) --- prior to last year. Therefore, I can't really agree with "traditionally."

COMM'R BARBOUR: Let me point out that in the bill as it is drafted, other departments, such as Environmental Protection, Labor and Industry, and any other department which has a subdivision that has any kind of an approval or involvement role in an energy facility, are involved in the decisions that are to be made. When DOE gets an application for an energy facility that involves its area of operation, it is referred to that department for the holding of hearings, reviewing and making determinations on it. We are asking only the same kind of consideration for the facilities that are owned by utilities which we regulate. We want no other involvement or we ask for no other involvement.

ASSEMBLYMAN FROUDE: Senator Dodd.

SENATOR DODD: Through you, Mr. Chairman - Mr. President, could you cite the last time, if ever, that a utility's plans were altered based on the PUC's input?

COMM'R BARBOUR: 1969, I believe.

SENATOR DODD: What facility was that?

COMM'R HYNES: In 1969 on gas turbines, we told a utility company in South Jersey, the name of which escapes me, that they had to build gas turbines to provide for future energy. Also in 1974, I believe the Board turned down a Jersey Central Power and Light rate application because their rates were too high. It was a financing to build and we felt it was not at that point in the interest of the

consumer to accept those rates. So, indirectly, we were making a determination of need.

SENATOR DODD: That was based on financial input then.

COMM'R HYNES: They needed the rate increase to build the facility; and by refusing the rate increase, we directly judged the need at that point.

SENATOR DODD: The PUC would still have the financial input. What I am trying to say, Mr. Chairman, is: How many people can you have dispatching trains?

COMM'R HYNES: I'll just take a moment. Since 1911, the Board has been entrusted with two major responsibilities: financial and the other half is safe and adequate service, which is need. We have had a lot of expertise since 1911. Now we are simply saying that it seems to be foolish to at once cut half of the prerogatives of the Board of Public Utilities after over half a century of experience. We have all the economists, the accountants and the attorneys, and we have a three-member Board, because of the importance the State has placed on the decisions that we make on need, as well as financing. All we are simply asking is that we modify that particular section to guarantee our input. However, even with our input, it is not final. We do cede to the Commissioner of Energy - and I think the bill of Senator Dodd is a fine one - the final voice. But I think it would be foolish to void all the experience we have built up as a Board. Then if we disagree, with the other modification that we have, we proceed to an Energy Review Board, a three-member Board, for decision.

I will reiterate what the President said. All we are asking is a guaranteed input as to the need, and not simply just the financing, because that can be interpreted simply as bookkeepers. We do not wish to be bookkeepers. We wish to have the input that we have traditionally had. I think that is in the best interest of the State. In no way, do we wish to be a stumbling block to this bill. I think it is an important bill. But at the same time, I think we have to be here to protect the statutory responsibility the Legislature gave us since 1911.

ASSEMBLYMAN FROUDE: I recognize the delicacy of the situation.

In your review of the bill, do you see a duplication of effort? Do you see the potential for duplication of effort in connection with your work and the work that the Department of Energy is possibly going to do as a result of this bill? For example, on page 7 - this is among the powers now of the Commissioner - "Monitor prices charged for energy within the State, evaluate policies governing the establishment of rates and prices for energy, and make recommendations for necessary changes in such policies to other concerned Federal and State agencies, including the Board of Public Utilities, and to the legislature."

COMM'R BARBOUR: I don't see any duplication there because we have established - and I think it is the only way to go - a pre-exchange of information and not have duplicity by which we can accept information which they monitor or collect or assemble. Likewise, they would have the free use of any such data that we assemble and collect. I don't perceive us each collecting the same data. We would collect different data for different purposes and each have free access to the other's data. Hopefully, it would be on the same computer.

ASSEMBLYMAN FROUDE: With the present personnel, I have absolutely no concern about the ability for you people to work together - and to do so for the best interest of the public. But I am not so certain that that is provided for in this

bill. At some future date, I am not at all convinced that what we might possibly see is the Department of Energy going off in one study, making one set of determinations, and you people going off in the other. That is really the issue that I am addressing and the issue that I would like to have put to rest in my mind at some point along the line.

COMM'r BARBER: I would suggest that given the constraints fiscally that you have in State government, it would be highly unlikely that duplicate surveys would be engaged in. There is not enough to go around now in either department. We are very happy always to use the fruits of anybody else's labor. The utilities that we regulate would also object to having duplicate efforts made like that. It would be wasteful and unproductive. There would be no value in that.

ASSEMBLYMAN FROUDE: One final comment by me in this connection - and again my views are subject to change as I come to grips with this bill and learn to understand it better - right now, I see the county being asked to go out and make surveys. I see the utilities being asked to make surveys. I see an overlapping of those areas. I see the Department of Energy making surveys. I assume someplace or other you are going to be making surveys. I see a hell of a lot of paperwork flying back and forth because, if I were the county planning director, I would sure make some contacts with those utilities. It appears that way on the surface. I am not sure that that is reasonable, but it is the issue that I am addressing in terms of duplication.

MR. BARBOUR: I would just close with one comment and that is that I do not see that by the BPU having the role that we are advocating with these amendments that it would in any way delay the processing of any application or that it would not proceed forth just as expeditiously. The only thing is that you would have the advantage of having the review made by the Board with its experience in this area and with its staff that are daily involved with the utilities that we regulate on filings that they have before us. It is also such an integral part of our operation and our consideration that we must examine into need; because only when you are satisfied that there is a need to have that facility there, can you then set up the rates which will help to pay for that. And when you set those rates up, naturally the people are going to pay more. Therefore, you have to have a very careful need review before you can come to your final decision on the rates.

ASSEMBLYMAN FROUDE: Thank you, President Barbour and Commissioner Hynes. I appreciate your being here and I have a suspicion we will be calling upon you again.

COMM'R BARBOUR: Any time.

ASSEMBLYMAN FROUDE: Is Mayor Patrick Fiorelli of Vineland here?

(Not present.)

Is the Mayor of Lower Alloways Creek Township present - Mayor Donelson?

S A M U E L E. D O N E L S O N: Thank you, sir.

My name is Samuel E. Donelson, Mayor of the Township of Lower Alloways Creek, Salem, New Jersey. I am appearing here today to make known in behalf of the Township of Lower Alloways Creek its opposition to the possible enactment of Senate Bill 1179.

On April 5, 1977, there was a similar type hearing held in Atlantic City, New Jersey, on a proposed Senate Bill 1407 - it subsequently did not get out of hearings - at which time, I appeared there on behalf of the Township of Lower Alloways

Creek stating our objections to that proposed legislation. The objection at that time, and still remains the same to date, is that a centralized control over the siting of energy facilities might cause certain lesser populated townships, such as Lower Alloways Creek, to become "overloaded" with energy facilities. There are already four nuclear generating units in Lower Alloways Creek Township, one of which is operating and three others are in the process of being constructed.

At that time, our Assemblyman, H. Donald Stewart, appeared on behalf of Lower Alloways Creek Township and the entire Salem County, stating that he too felt that Lower Alloways Creek was providing far more than its share of electric generating facilities in the State of New Jersey and that some type of prohibition against "overloading" of any municipality with electrical generating facilities should be set forth. In short, this particular Senate Bill 1179 should definitely have an amendment to it, excluding the Township of Lower Alloways Creek from any future siting of energy facilities of any kind within its township.

While it appears in Section 17, page 22, of the Bill that counties, completely excluding municipalities, shall submit an energy facilities plan, by the same token under Section 13 will have no authority whatsoever to either give their consent or non-consent for the siting of such facilities.

In order to make clear its intent to totally exclude local government or county government from participating in this important area of development with great impact on local people, the Bill states that no county or municipality or any agency or instrumentality thereof may require any approval, consent, permit, certificate or other condition for the construction or location of any energy facility for which a certificate of site and facility is required pursuant to the provisions of this amendatory and supplementary act.

Although it appears that there is an attempt to consolidate the sole responsibility for siting of such energy facilities, this delegation of land use regulation by the Bill is in contravention of the spirit, if not the letter, of the New Jersey Constitution Article 4, Section 6, paragraph 2, which authorizes the Legislature to enact general laws under which municipalities may adopt zoning ordinances and regulate land use. It is also contrary to the provisions of the New Municipal Land Use Law so recently adopted by the Legislature which provides for municipal approval and regulation of public utility construction subject to appeal to the Board of Public Utility Commissioners. It is regulated also by New Jersey Statute.

In summation, the Township of Lower Alloways Creek for any and all of the above reasons opposes Senate Bill 1179 and urges its defeat.

I have attached here a copy of a resolution recently adopted by our Township Committee. (See page 20X for resolution.)

ASSEMBLYMAN FROUDE: Does any member of the Committee have a question?

ASSEMBLYMAN OLSZOWY: Mayor, since you travelled all the way here, I will ask a question. Basically, you are specifically interested in the regulating of nuclear facilities?

MAYOR DONELSON: Especially in our township. I think you gentlemen - and perhaps I am making an assumption in thinking this - can appreciate our situation in Lower Alloways Creek. We feel, in essence, that we are doing our part concerning energy facilities with four monstrous nuclear power plants in our backyard. This is why we ask your consideration in writing in some particular amendment to Senate Bill 1179 which would, in fact, give us an exclusion. I think I can go on record

today and say we are unique in light of that particular fact. I think it is a fair thing to ask of this particular Committee.

ASSEMBLYMAN FROUDE: Mr. Mayor, I certainly can understand your concern and the biases that you would naturally have as you come before us. Do you see in this bill any possibility of your community receiving the consideration that you are asking for as an exception to the bill? In other words, do you see in this bill provisions that would lead to a decision in keeping with the decision that your community has already made?

MAYOR DONELSON: I am trying to really understand your question.

ASSEMBLYMAN FROUDE: What I am saying is, if I were in your spot, I would just want to be excepted too. But that not being the case, if your argument is so strong to be excepted, wouldn't your argument be falling on understanding ears with the procedure? Have you looked at the procedure? Can you point to specifics that ---

MAYOR DONELSON: Also I might allude to the fact there have been comments directed at Lower Alloways Creek Township in the past that our township might end up being, quote - unquote, "a nuclear park." I think we are a nuclear park now but with an open field, so to speak, that would give the allowance for additional siting of, in particular, nuclear facilities. There is room for expansion. But that is our feeling about it.

Just one other thing, Commissioner Jacobson alluded to the fact that he doesn't want to be a Ghengis Khan type person and set up his own monarchy. But I think it is a mistake for the State to lose sight of the fact that local municipalities and also county government should have a say in such enormous things as siting and in the decision-making process. In my opinion, it behooves you gentlemen as a Committee to grasp that thing and take it under consideration.

ASSEMBLYMAN STEWART: Mayor, I don't know whether you were here when the Public Advocate's Office gave its presentation. But they recommended adjudicatory hearings. I know from past experience that your township is probably the champion when it comes to attending hearings. You have attended NRC hearings and many hearings of that type. First of all, were you here when the Public Advocate's Office gave its presentation?

MAYOR DONELSON: I came in at the end of his statement.

ASSEMBLYMAN STEWART: It was suggested that the problems that you feel you have and that I feel you have might be solved by those types of hearings where the facts would be laid out. Maybe you could enlighten the rest of the Committee as to your experience so far with hearings of that nature on a federal level and on the State level. What success have you ever had or have you had any success at any of these hearings to which you have gone as an adverse party?

MAYOR DONELSON: Of course, as you all well know, with Don and me, there is a standing joke concerning money. I am sure all of you are aware most recently we attended a Senate hearing on Senate Bill 859 concerning money. But, specifically, concerning NRC type meetings, the overall impact to date of a local municipality is so minute that I wonder if we can be effective. But I will say there is a definite effect. When I say it is minute, it might be minute in nature, but there is a definite effect that a municipality such as ours with a population of 1600 people has in NRC hearings, or whatever. In other words, it has to some degree clout. But what I am suggesting is that that clout never be taken away from a municipality by saying to them, "Look, you cannot be a part of the decision-making

process concerning siting. If this is what you are alluding to, Don, ---

ASSEMBLYMAN STEWART: No. My question is: Have you ever had any luck at those hearings? My feeling is that you go to those hearings and you yell and you scream, and they all tell you what great points you raise, but you lose.

MAYOR DONELSON: Exactly. That's what it amounts to in the final analysis.

ASSEMBLYMAN STEWART: From what I have seen, you have gotten your chance to talk, but you lose.

MAYOR DONELSON: You made your noise.

ASSEMBLYMAN STEWART: But you lose every time. If that is what is going to happen with the Public Advocate's suggestion, it is not worth a hill of beans. All it is going to do is turn the State into a circus of hearings.

MAYOR DONELSON: You are exactly right.

ASSEMBLYMAN FROUDE: Succinctly, what I was wondering was: Can you do with anything less than an ultimate veto power? Have you read this bill?

MAYOR DONELSON: I have read it. As my resolution points out, I haven't had a real lot of time to digest it.

ASSEMBLYMAN FROUDE: That was not meant to be a sarcastic remark. What we are really looking for in this issue of local control is some kind of a combination. The poles in this argument will obviously be local veto power and overriding local concern. What we are going to have to do is find a mechanism or a procedure whereby at the local level you people have every opportunity to have all of the impact you can possibly have and yet not be able to stand in the way of the progress of the rest of the State if that is deemed absolutely necessary. That is really the issue.

ASSEMBLYMAN DI FRANCESCO: Mayor, in your last sentence you urge the defeat of this bill. But really as you have just stated, from what I heard, you have not had any success without any kind of bill. So maybe you need this bill with the proper amendments, re-emphasizing what Assemblyman Froude just said. You are not totally opposed to this bill.

MAYOR DONELSON: Unless it is amended, I am.

ASSEMBLYMAN DI FRANCESCO: Well, without the bill, you are in the same spot, aren't you, from what I just heard?

MAYOR DONELSON: Basically, yes. But now you are specifically setting it forth that we would definitely be in that spot.

ASSEMBLYMAN DI FRANCESCO: I don't think the bill expressly says that you are going to be in that spot. Maybe we are going to be in that spot.

MAYOR DONELSON: I don't know.

ASSEMBLYMAN STEWART: Can I jump in on that point? My question, Don, was aimed at NRC-type hearings on storage of spent fuel, not on siting. I am not talking about the siting of a facility; I am talking about the expansion of the storage facility.

ASSEMBLYMAN DI FRANCESCO: Well, do they have any control over the siting?

ASSEMBLYMAN STEWART: They certainly have zoning authority. If they don't have any industrial land in their municipality, who is going to issue the building permits and who is going to give the variances and all those things that allows a utility in any section of the State to build? You can't build a nuclear plant in a residential neighborhood.

ASSEMBLYMAN DI FRANCESCO: They have four.

ASSEMBLYMAN STEWART: But they had an industrial area.

ASSEMBLYMAN DI FRANCESCO: They permitted them.

ASSEMBLYMAN STEWART: They permitted the first ones, right. They didn't fight the first ones.

MAYOR DONELSON: There is one big facet in this thing where it talks about permits. Virtually, right now, we do have the prerogative of issuing a construction permit. In effect, the bill is saying that prerogative is going to be taken away. That is one facet of it. I do not in any way, shape or form believe that should ever be done to a local municipality. Municipalities should be able to have some type of veto power.

I tell you gentlemen that is why I am in opposition to it. You are taking away that power from the local municipality. I think they know far more what the local impact will be than someone sitting in a hearing at Trenton all the time. It is just that simple. I would by the same token ask: Who has been to Lower Alloways Creek to see what the local impact is, other than Don, himself? We know - we are living with it. Don't take at least that one portion of a right away. It is fine to expedite. I can agree that things need to be expedited for the sake of getting the job done. But you, as well as I, know that in other facets, not only in dealing with this particular bill but in many other cases, when things are centralized, it has taken some time to accomplish what was desired to be accomplished, even at the State level.

ASSEMBLYMAN FROUDE: Okay, Mayor. Thank you.

MAYOR DONELSON: That you very much. I appreciate it.

ASSEMBLYMAN FROUDE: Is Jan Marilles, the Senior Planner, or Christopher J. Warren, the Acting Director, Salem County Planning Board, present?

MR. CATANIA: I think they indicated they would not be here until this afternoon.

ASSEMBLYMAN FROUDE: Leonard Ruppert, New Jersey Petroleum Council.

L E O N A R D H. R U P P E R T: Members of the Committee, my name is Leonard Ruppert. I am Executive Director of the New Jersey Petroleum Council, which is a division of the American Petroleum Institute, and a New Jersey-based trade association located here in Trenton. My own testimony today on proposed amendments to the Department of Energy Act contained in S 1179 will be followed by a statement by the Chairman of our Legislative Committee, and there will be other testimony, I understand, by other member companies.

I heard the original charge by Chairman Froude; so I will try not to be duplicative. But S 1179 from our point of view is a major piece of legislation. We think it will have a serious impact on New Jersey's future. We know you hear that said about a lot of bills, but few things are more important to the State's general welfare than a sufficient and continuing energy supply, which this legislation would directly affect.

Because legislative timetables in the Senate were such that formal public hearings were not possible, we are pleased to have this hearing today to express our viewpoint.

We believe the original intention behind the introduction of this legislation was well intentioned and good. Some parts of the bill can have a positive and helpful effect on efforts to improve our State's energy situation and employment opportunities. However, on its path to today's forum, we believe this legislation became a sweeping omnibus measure which attempts to accomplish perhaps

too many separate goals in the same package. Our own remarks are directed to those purposes of the bill which would hope to ensure that the necessary facilities to meet the State's energy demands can be sited in a timely manner.

You will recall that with the onset of offshore exploration for oil and gas, which came against a background of nagging unemployment, the State administration publicly took the posture that New Jersey should work to expedite this development. The consensus of State officials and the Governor's Job Conference panel was that New Jersey should do all possible to attract any job-producing facilities which could result from the exploration effort to come and expand here in New Jersey. You, yourselves, as members of the Energy and Natural Resources Committee, took a very positive step in that direction with your March 2nd resolution extending a warm invitation to the petroleum industry to locate in New Jersey and supporting efforts to aid in that location.

Since a key element in achieving that goal would be the simplification of siting procedures and permit requirements, this bill might appear to be in line with that philosophy. But I am unfortunately compelled to say that if a goal of this legislation is to expedite energy development - to speed it up by cutting out needless red tape - it will not, unless amended, accomplish this purpose. In fact, we see reflected in this bill as it stands today the somewhat ambiguous concept that to ease and simplify one set of regulations requires a new set of even tighter regulations, more complex than those it would simplify.

A core issue for us and other segments of the energy industry which cannot be classified as regulated public utilities is that the bill is permeated throughout by the concept of utility regulation. Free enterprise petroleum companies and State-regulated utilities definitely are not the same, but much of this bill lumps them together.

Public utilities function within specific areas of a state in which they legally operate as monopolies. Their rate base is approved by the state to cover their investments and their operating costs, while returning them a reasonable profit.

Petroleum companies, by contrast, must operate not only on a state basis but also on a regional and even national basis. They are not few in number; they are many in number. Their territories of operation may completely overlap one another as they function in an open marketplace. Prices, locations and other business decisions must be based upon competitive factors. Yet the bill now makes no clear distinction between monopoly utilities and the free enterprise competitive segments of the industry. We have been repeatedly assured that we should not have these concerns because the bill contains waiver provisions, which it does. We submit, however, it would be far clearer for all concerned if there were definite distinctions and exemptions in the language of the bill itself, rather than reliance on administrative decisions.

We point out and emphasize this fact because it underlies a number of points to be offered later by my colleagues.

Before closing, let me suggest to the committees that a unique opportunity exists to learn how the department which would administer this Act - the Energy Department - might plan to begin that task. Commissioner Jacobson mentioned it earlier. I refer to the proposed State Energy Master Plan with its appendix document on siting which is now the subject of public hearings. The department's authority to implement that plan, if it is promulgated, appears to be based in part on passage

of this legislation, since it is questionable if the authority exists under the terms of the present law. For this reason, it may be instructive to read those proposals in connection with your consideration of S 1179. The two should be viewed together.

Permit me also, before closing, to generalize a bit further. If part of the thinking in considering this bill is to attract to the State new and job-producing energy facilities and to retain existing facilities, we cannot recommend an approach that the best way to reach this goal is to tell managers and owners of these facilities that the State, not they, will decide if they are needed and can grow - that the State, not they, can better estimate future demand for their products - that the State may demand the reporting of information and require forecasts that are frankly beyond the ability of private industry to generate - and that the State will determine by bureaucratic means if their competitors are permitted access to what they consider confidential business information.

Having made these statements which appear negative, let me hasten to repeat that we do see points in this bill which are desirable and worthy of passage. We feel that many of the most serious defects as we see them can be remedied by further amendments. We are pleased to hear that you will consider such amendments. The next speaker, Mr. Sitarski, Chairman of our Petroleum Council Legislative Committee, will be more specific in this regard.

Also, before Al begins, I would like to make clear one general point if I may. It is a bit delicate. But part of our difficulty here is making clear we are not criticizing specific personalities, such as the present staff of the Department of Energy. We have interfaced with that staff on several occasions and have been satisfied with their reaction to our requests and, hopefully, they have been the same. What we are talking about here is a law. Laws tend to be immortal vis-a-vis people who tend to be more mortal. We are thinking of the long range on this and the commissioners who may hold that position through the years.

If I may, Mr. Chairman, I would like to have Mr. Sitarski speak. Then perhaps both of us together can answer any questions, or whichever way you would like to handle it.

ASSEMBLYMAN FROUDE: You are going to, point by point, discuss the bill, Mr. Sitarski?

A L F R E D S I T A R S K I: Yes.

Mr. Chairman, maybe I could start by thanking this Joint Committee for holding this public hearing because I think certainly from our standpoint this is the most important single bill that we are faced with in this legislative session.

I think we might as well be honest with the Committee because we have assumed in view of the dispatch with which the bill went through the Senate that this is an administration bill. Our approach here this morning, frankly, is to try to salvage from this bill something that the petroleum industry can live with. However, I might add, as Len Ruppert has pointed out, one of the inherent problems with the legislation - it is a very complex bill - is that the bill attempts to address itself to energy facility siting for two types of energy industries: the regulated industry and the petroleum industry. I guess if we had our choice - and obviously we do not - it would be far more desirable to pull the petroleum industry aside, and if the administration, as it says it is, is concerned about the opportunities, economic and otherwise, with the imminence of offshore development,

then handle us as a separate piece.

We have written that one off, based on what has happened in the Senate, and what we have attempted to do in capsule is give this committee, both committees, a working point sheet of what we think are the most important problems and opportunities associated with the bill.

ASSEMBLYMAN FROUDE: May I just tell you not to hesitate to provide these committees with any documentation you have, because your thoughts about the bill could possibly be predicated on some false assumptions or, at least, as these committees interpret them. That is not a criticism. It is just that we want that information about regulated versus non-regulated.

MR. SITARSKI: I think in the Upper House consideration was given to some amendments. But I think it simply did not go far enough. I believe that the petroleum industry will be faced with some real problems with this legislation in its present form.

Now S 1179 is not all bad. There are three good features in the bill. Of course, some of the prior witnesses may not agree with us on these points. But I think, as I have indicated here on the handout, the three strong points in the bill certainly from the standpoint of petroleum energy development are:

1. The legislation grants the Department of Energy override powers over municipal and county restrictions on energy facility siting.
2. The legislation grants the Department of Energy powers of eminent domain over land required for siting of energy facilities.
3. The measure amends riparian law as related to seaward territorial jurisdiction of the State.

I think everybody would understand why our industry recognized these as desirable features in the bill.

However, on the negative side of the legislation are the following concerns:

1. The volume and the nature of data required by the State Industrial Facilities Plan. Here with exploration and production hopefully to take place, some of the proprietary and confidential aspects of that business create some problems in terms of the legislative requirements.
2. The data required and the administrative time granted to the State to process a request for a certificate of site facility are pretty long. We add it up to 210 days. That may or may not be the right figure, but I think it is in the ballpark.
3. This is an extremely important point for New Jersey; and, that is, the failure of the legislation to fully exempt existing petroleum facilities from certificate of facility requirements for modifications and expansions. I emphasize here "existing facilities." This is not to imply or suggest that we want to do our own thing our own way. You know we have adequate controls over everything we do in terms of local building requirements, DEP requirements, EPA requirements, you name it. But why in the name of heaven should we be burdened with another bureaucratic process to modernize, rebuild, and expand our facilities that are currently in place if we can do it and meet all of the environmental and local requirements?

Now there was an amendment that came through in the Senate. However, it limited this kind of activity to a 10 percent expansion in any one ten-year period. That does very little for us. It is virtually useless.

4. And I think this item might generate some excitement in the audience. The bill fails to exclude from its provisions the private petroleum sector when such an industry on its own initiative obtains an environmentally acceptable site. Here again, what we are saying is that if this can be done in an environmentally acceptable manner with local approval and State approval, why not let a company do its own thing?

There are several general comments, and I will try to be brief. The administrative provisions of this legislation are closely aligned with the "State Energy Facilities Plan" and the "State Energy Master Plan." Both of these documents are currently in the formulative stage. As a matter of fact, Commissioner Jacobson will continue to hold public hearings really to the end of this month. Our industry will comment at those public hearings before the close of record. By their very nature these documents are primarily concerned with State needs and not regional or national needs. While the requirements and plans of regulated energy industries - for example, utilities are more closely aligned with State needs - this is not the case with the petroleum industry where regional and national needs must be developed. I think Commissioner Jacobson in his opening comments suggested that point. Consequently, one of the concerns we have is that essential petroleum energy certificates of site and facility, while they could be approved, they could also be denied as not being "in conformity" with State plans. We respectfully suggest to both committees here this morning that you look at all three documents together: Senator Dodd's bill, the State Energy Master Plan, and the State Energy Facilities Plan.

Actually, I think that while the contents of the two DOE plans may have moved ahead before enactment of Senator Dodd's bill - and I think Senator Dodd's bill would clearly give the DOE the powers to set forth some of the requirements they have in their plan - I think some of us question whether, in fact, Chapter 146 does give the DOE the statutory authority to set forth some of the guidelines that are in these policy documents. For example, under the State Energy Facilities Plan, we would be required to submit to the DOE three alternate sites of a proposed facility. If anyone has any idea what it costs in terms of engineering studies, and preparation and analysis of sites, they will say, "Is this a reasonable request?" I just mention that as one consideration.

As a secondary point, while the legislation does not mandate the location of energy facilities in energy parks surrounded by buffer areas of dedicated open space, it is important to note that sometimes such legislative suggestions end up later in regulatory requirements. While energy parks and buffer zones may be suitable for utilities, such applications for petroleum facilities may not be suitable. "Clustering" of petroleum facilities from an environmental and safety point of view could present some disadvantages. So we ask that consideration should be given to amend the bill to provide for buffer zones and energy parks only where reasonable, practical and economically feasible.

There is one other minor point - and perhaps we are out of order in even suggesting this, but I think the committee in view of your interest ought to consider the fact that Senate 1179 we think may well jeopardize the DEP's Coastal Zone Management Plan, with possible subsequent loss of federal funds. The reason for this is that S 1179 transfers powers from the DEP to the Department of Energy which results in major changes and revisions in the handling of New Jersey CZM Plan.

Now that CZM Plan - at least the draft environmental impact statement of the first coastal segment is now before no one in the Department of Commerce - and this is something I think the Committee might want to explore.

To go on, the standard to guide the Department's approval of an application of site and facility, which states, "That the use of the site will be reasonably necessary to meet estimated energy needs," is too narrow and runs counter to the national interest. The energy needs at issue appear only to be those of the State of New Jersey. I mention the references here. Such a standard or policy could conceivably run counter to such federal laws as the Natural Gas Act of 1938 as amended, if, for example, a natural gas company had been issued a certificate of public conveyance and necessity by the F.E.R.C. to construct or improve pipeline facilities in New Jersey, and the Coastal Zone Management Act is another federal statute where you may find conflicts with S 1179.

On page 3 of my statement - and I will not take the time now because I think we will have time later - I would like to just comment on a few of the amendments to which we have addressed ourselves.

On the top of page 3, the item there with the asterisk - Page 32, Section 30 - line 13-14 - is the amendment which would permit established petroleum facilities on established sites to continue modernization and rebuilding and expansion, meeting all the requirements of the environmental codes, but to be exempt from the DOE certificate of facility requirements.

The other amendments on that page deal with exemptions of exploratory type data from Section 15 of the bill, itself.

If you would move on to page 4, in the middle of that page you will an amendment suggested on pages 24 to 26, Sections 20 to 22. Here we have perhaps one of those rare moments when we agree with the Office of Public Advocate on an issue. What we are suggesting here concerning public hearings on site evaluations for energy facilities is that this section should allow interested persons a type of cross examination or an opportunity to submit rebuttal evidence. Otherwise, hearings could be forums only for public discretion without meaningful regard for development of probative and credible basis for departmental action. The Department should be required to submit its evidentiary basis at such hearings. Departmental determination should be based on substantial evidence on the record as a whole.

I won't go into the other amendments. But at the bottom of page 4, we are suggesting that standards should be spelled out, perhaps in the legislation, on the specific requirements for the submission of an application for a certificate.

I guess there is one last point - and I won't go into it here. There is one section of the bill that originally required a two-year pre-filing of an application. This is totally unreasonable because we can build a major facility in a period of two years. That was amended to say "where reasonable or practical." We would still ask that this section be changed simply to say that we will file for an application when we are ready to file for an application.

I won't take the time now, Mr. Chairman, to go over the details. But I think you have here pretty much a working document to at least indicate the areas of major concern.

(Mr. Sitarski's written statement can be found beginning on page 21X.)

ASSEMBLYMAN FROUDE: Mr. Sitarski, I would like you to know when this

Committee gets down to its considerations, after listening to the public for as long as that takes, we are going to go line by line and section by section through this. We will do that in a public forum. We would appreciate not being hit at that point with additional information, which is my way of saying, you keep going over this thing and you keep providing us with your calls for amendment and what not, so that we can have those prior to that last session, if you will. That would be novel, not from your group, but it would be novel if it ever happened that way. But let's try it at any rate.

I assure you you will have an opportunity to sit with us as we go point by point through this. We are not negating the importance of any of these sections you have pointed out today.

MR. SITARSKI: Thank you.

ASSEMBLYMAN FROUDE: Does any member of the Committee have any questions?  
(No questions.)

Thank you, gentlemen.

I am going to call one more confirmed witness this morning and then break for lunch. We are going to hear from Jerrold Jacobs, Atlantic City Electric.

J E R R O L D L. J A C O B S: Mr. Chairman and members of the Committee, I would like to thank you for the opportunity to speak. My name is Jerrold Jacobs. I am Vice President of the Atlantic City Electric Company. For those of you who come from North Jersey - and I notice most of you do - we serve the southern third of the State of New Jersey with electric power - approximately a million people.

Atlantic Electric's position is essentially favorable to these amendments, particularly to the inclusion of a State Energy Facilities Plan. The problems electric utilities have had in locating new projects, particularly power plants, doesn't have to be described in any great detail to the Committee. We all know that no one wants a power plant located near his or her home. Yet these facilities have to be built and we feel that this legislation goes a long way towards meeting those needs. The improvements accomplished while still protecting the public interest in these amendments, I think do a great deal to satisfy those opponents who say that this infringes on home rule.

We admit, however, that we do have one serious reservation, not so much with the amendments, but how these amendments may affect the energy picture in Southern New Jersey. As you are probably aware, the demand for electricity has remained stagnant the last several years in the urban areas of the State of New Jersey. This is not the case in our service area of Southern New Jersey. Given our modest load growth, we must plan now for facilities that need to be in operation ten years from today. Interposing the Energy Facilities Plan into our planning process might unintentionally add significant delay to the process. If electrical energy in Southern New Jersey is insufficient a decade from today, the loser, of course, will be your constituents; and it will be ironic if the delay turns out to be caused by rules and regulations that were meant to accomplish just the opposite.

We also feel that, intentionally or not, these amendments and the original Act tend to diminish the responsibility and authority of the Board of Public Utilities. I have to candidly admit this is the first time that I have found

myself in complete agreement with President Barbour and Commissioner Hynes. But we would like to point out that determining the reasonableness of construction programs and the review of load forecasts has been the prerogative of the BPU in the past. The BPU is now put in a somewhat odd position, since they still must approve the financing to build the power plants and authorize the rates to grant a fair return, but without their prior functions. We have suggested in hearings on the original Department of Energy Act that these functions remain with the BPU, and that it have the lead jurisdiction with respect to utility facilities.

Section 15 of the proposed amendments calls for energy companies to submit a three-year Industrial Facilities Plan. This appears to be inconsistent with the requirements for counties and also with the 10-year Master Energy Plan. Since in most cases it takes a minimum of eight to ten years from inception to completion of a facility, we strongly recommend that the Industrial Facilities Plan be for a minimum of 10 years or even, ideally, 15 years. In addition, Section 15 indicates that the Industrial Facilities Plan will be prepared and submitted in accordance with guidelines set forth by the Department of Energy. We would like to recommend that these guidelines, before adoption, be the subject of public hearings. It is only reasonable that those who must provide the energy have a chance for input in establishing such important guidelines. Further, almost every other part of the Act provides for similar public hearings.

Atlantic Electric views favorably the attempt of these amendments to bypass some of the more parochial views that have tended in the past to hinder facility siting. The concept of considering the greater benefit to the entire State as a basic criterion in energy facility siting is certainly an improvement.

We note that in these amendments no avenue has been provided for an energy company, such as my own, to appeal the Energy Facility Siting Plan if a company feels the plan does not provide what the company believes are needed facilities.

It is our judgment that this bill - and, incidentally, the Energy Master Plan as presently proposed - gives the Department of Energy the authority to make the investment decisions for energy companies. The companies themselves are left to raise the capital and assume the risks. Although I have heard it stated that this is not the legislation's intent, perhaps some way can be found of clearly stating this in the bill.

In closing, I would like to say that we favor the attempt by this bill to streamline the process of energy facility siting. We think that with a competent and tireless staff at the Department of Energy the anticipated results can be accomplished. However, we must point out that without the proper administration these amendments could accomplish just the exact opposite of their intent. They could allow the creation of a large and redundant bureaucracy and could cause our State's energy companies to have to bolster their manpower in order to deal with it.

Thank you very much.

ASSEMBLYMAN STEWART: One very quick question - I don't think any of us disagree that there are parochial areas of the State who want their own safe havens, the "last guy in" theory: "I'm in the town now and I don't want anybody else in. I don't want any more development or any more industry. I don't want anything." I think we all agree we have to do something about that. But don't you think in doing it we take the risk of overdoing it and of creating municipalities,

such as I have pointed out earlier, who are going to take the entire burden of any additional growth? Do you have any suggestion as to how we can maybe find a balance between those who say, "stop everything" and those who say, "don't give us everything"?

MR. JACOBS: I am afraid I can't give you a definitive answer because I don't know where that middle ground is. But I feel that municipalities, just as we as regulated utilities, have tended to give up some of our prerogatives of management in making decisions because of our unique position in dealing in a commodity so vital to everyone --- I really feel that the municipalities have to give a little bit too and view things on a more widespread area, statewide or nationally. In a lot of situations, this has not been the case.

ASSEMBLYMAN STEWART: In this bill, we are giving a lot more than a little bit. We are giving away the baby and the bath water.

MR. JACOBS: But, presumably, you are giving it to a department that will have all of the expertise available to it to determine what is in the best interest of the greater number of people and with essentially the veto power of other State agencies through a review process. I really don't feel that the municipalities are giving away that much.

ASSEMBLYMAN FROUDE: Are you satisfied that your ability to plan for your service area is not being harmed by the enactment of this piece of legislation?

MR. JACOBS: The only area that I could see where there would be a problem, and I alluded to it in what I said, would be if we found ourselves in the position where we felt more facilities were needed than had been determined by the Department of Energy. I don't know what our recourse would be in that particular case. It would seem to be a very unlikely situation to be in, but that is the one place I could think of where it could happen.

ASSEMBLYMAN FROUDE: The point I think I would like to make to you is that this Committee is going to have to finally decide yea or nay on this issue. I, personally, would be comforted if I knew that you had identified those areas of concern specifically. Otherwise, I am in about as much dark after the testimony as I was before. What you are saying to me in essence is, "We kind of think that the procedures will render the decision that we want; and if that is the case, we are going to be satisfied. If that is not the case, we are not going to be satisfied." What else is new? - sure.

MR. JACOBS: I think essentially we do feel comfortable with the procedures that have been put into this bill, as regulated utilities. The only areas where we are not comfortable, as the members of the BPU pointed out this morning, there seems to be a rather odd distinction between the two groups, the BPU and the Department of Energy. We can conceive of the two not having the same position and the utility caught in the middle of this by-play. Also the other specific shortcoming that we see is that the industry involved should have some recourse within the provisions of the amendments if it does not feel that it has been treated properly. Just as another State agency can appeal to this Review Board that is constituted in the bill, we feel the energy company should have the same right if it feels that either the facilities are greater than needed, in the case of a utility, or less than are required, because all of these facilities, as you know, cost many millions of dollars. We don't take moving on them very lightly.

ASSEMBLYMAN FROUDE: On the scale of ten to zero, where would you place the

adjudicatory hearing in the interest of your utility?

MR. JACOBS: If you mean the adjudicatory hearing as envisioned by the Public Advocate ---

ASSEMBLYMAN FROUDE: Right.

MR. JACOBS: (Continuing) --- I would put it at about a half.

ASSEMBLYMAN FROUDE: We are only laughing because Don Stewart had that pegged. We are going to take him to the racetrack.

Thank you very much. We appreciate your comments.

Our clock reads twenty of one. We are going to start promptly after lunch at ten after one - guaranteed.

(Recess for Lunch)

AFTERNOON SESSION:

ASSEMBLYMAN FROUDE: I am going to call this afternoon's session to order. I couldn't help but overhear a comment - and it might have even been designed that way - to the effect that the public is waiting a long time for involvement. I would simply like to say that we are aware of that, and that is offered as comfort. We are not going to close this hearing today without hearing public comment, and maybe if we had our druthers, we would have the public comment first, at this point. But there will be plenty of opportunity for public comment not only today, but in the future. I would also urge the public to be as specific as possible in their comments.

Is the Mayor of Vineland here? May we hear from you, Mayor Fiorilli?

PATRICK FIORILLI: Gentlemen, I appear here actually in three capacities today. I appear as the Mayor of Vineland; I am appearing as a member of the Board of Directors of the New Jersey Conference of Mayors; and I am appearing as the Chairman of the Organization of South Jersey Elected Officials.

Let me begin by saying, when you talk of energy you are talking about the City of Vineland. We are the only municipality in the State that owns and operates its own electric generating plant, so we are more concerned with energy than most. We are also concerned with a program to conserve energy, and let me give you a little background on that. We are concerned so much so that this coming Saturday I will be testifying before the Department of Energy in New York. The City of Vineland is proposing a solar energy heating unit which will heat our City Hall building, a neighboring school, and the Police Municipal Building. We are also submitting a proposal for co-generation which will take exhaust steam from our electric utilities and heat a school building completely eliminating that system. So, we are concerned.

We are also concerned with the fact that legislation is gradually chipping away at home rule. We have been down that road. I listened to people testifying this morning as to what could happen in theory were this legislation passed as it is. I am going to give you two instances that happened in fact, and not in theory, by allowing a State agency to determine what should be done on a local level. I take you back to February of 1977, during the oil embargo, the energy crisis. The City of Vineland electric utility had a three-day supply of oil. We were mandated by DEP at the time to burn 1% sulphur oil. We were sitting on a 30-day supply of 1 1/2% sulphur coal, while the State House was telling everyone to conserve oil because of the situation, and we, who were allowed to burn that 1% sulphur coal, would have saved 1,518,000 gallons of oil in thirty days. The State bureaucracy in its infinite wisdom decided that 1 1/2% sulphur coal would pollute too much, and they therefore declared that we burn 3% sulphur oil. Now, I don't know where the wisdom was in allowing us to burn oil that polluted twice as much as what we might have burned. This was decreed by the State, by the very people who today are in the Energy Administration or the Energy Commission. Not only did they add a pollutant in the type of oil beyond what our precipitators could handle, but they created a problem that lasted five months. The viscosity of the 3% sulphur oil as compared to the 1% created stratas in our storage tanks, and for five months we increased our flow of sulphur dioxide up the stack more than we ever did. We were cited by the Environmental Protection Agency in New York, and we explained the situation, and they were amazed that the State would ever do such a thing. In fact, Governor Byrne himself said it was sheer stupidity to do it. This is what can happen when you get away from the local problem.

We, and the other electric utilities in this State, have staffs of engineers. We face the problems every day. We operate, for example, a 100 megawatt generating plant in the downtown area of the City of Vineland with no problems. Under this bill, if we were to expand that plant - and we do have a need for expansion - it would be possible for the Energy Commissioner to determine that we must build a remote plant. We couldn't build it in the downtown area. That would mean the hiring of an additional staff, duplicating the staff of engineers that we currently have and increasing the cost of production.

We are currently entering into negotiations to buy power beginning in 1982 from the Pennsylvania Power and Light Company's Atomic Plant on the Susquehanna River. This again would be controlled by the Energy Commission if this legislation was passed. We have the expertise. We have conducted the studies. We have hired experts to tell us of our needs in 1982 through 1990. We know what is there. I don't think the Energy Commission will know. I don't think that they are going to spend the kind of money that we spent and get the thorough study.

I also question some of the other things that are in the bill, and basically again it comes back to the home rule amendment. Do the people of a municipality have a right to determine what shall or shall not be in their municipality? How long will it be before the City of Vineland - which has an unemployment rate 1 1/2 times the national average - will seek an industry only to be told by the State bureaucracy that it cannot locate in Vineland? It is a question of whether we are conserving energy truly, or whether we are conserving empty stomachs. We can't afford both.

I have seen these things happen. We have gone through the stumbling of bureaucracies, so to speak, and that doesn't mean that all bureaucracy is bad, because I am not trying to entertain that thought, but there has to be consideration and input by the people who are involved. When this energy bill was put together by the Department of Energy, never once did they come to the City of Vineland who is in the business of generating energy and say, "What are your problems? Do you have anything that is unique that should be included?" There was no consideration given to that. And it should have been. I think they should have consulted with all power companies. Last Wednesday, I was in a room upstairs listening to Mr. Jacobson testify, and he stated that he doesn't want any new oil refineries built in the State of New Jersey. With our unemployment rate, and with the possibility of oil being found off Atlantic City, we look forward to something like that, and yet his intention is that the oil will be piped possibly by pipeline across the State of New Jersey to Pennsylvania, be refined in Pennsylvania where the prevailing westerlies will bring us their pollution. I would point out one factor to you that has to be considered, the State of New Jersey does not exist as an island.

If you took a map on a parallel, the City of Baltimore is merely 12 miles south of the City of Vineland. One-third of all the pollution that we pick up on our pollution meter comes from the City of Baltimore. That is a fact that we have to live with, and that is a fact that no State agency seems to recognize. We have over-complied with every agency. We have gone beyond what they wanted in the way of pollution controls. We are concerned. We are concerned with the generation of energy and we are certainly concerned with industry coming into our area. We need it. We have a problem. We don't want to become the future Camden or Newark, or in a sense, Trenton, in the State of New Jersey. We have monuments through

stupidity in growth. We know what we need. We know what should be there and we know what is bad for us, and I can assure you we will look after that. To deny our local planning agencies the right to determine what shall be there, to deny the elected officials placed in office by the people of the area to decide what should be there, I think, is wrong. If we do something wrong, you and I both, the electorate takes a hand. It may not be our year for election, but they certainly will go against someone that we support, and in some way show their dislike. When a bureaucratic agency does it, there is no way for the public to reflect. There is no recourse.

I would ask, gentlemen, that this bill be carefully considered. I, at the present time in reading it, would oppose the entire bill, to be perfectly honest with you, because it hasn't taken into consideration unique situations in the State of New Jersey. I would go one step further, if this bill is ever under consideration for passage, I would petition the General Assembly of the State of New Jersey to put on the November ballot the question of home rule and let the voters decide whether they are determined to be governed by a local administration that they put in and take out of office, or whether they are determined to be ruled by a State bureaucracy which no one seems to have any control over. That is my testimony, sir.

ASSEMBLYMAN FROUDE: Mayor, I assume you have read the bill.

MAYOR FIORILLI: Yes, I have.

ASSEMBLYMAN FROUDE: Would you be satisfied with anything less than an ultimate veto power at the local level?

MAYOR FIORILLI: The procedure involved in the hearings and the applications is also a subject that concerns me. We have been through this. We have gone through years of applications to do something, and I think the procedure would have to be a lot more clear-cut than it is in this bill. I am afraid that this would be a piece of legislation that is passed with the general heading, and then the bureaucratic administration would lay out the guidelines, in effect bypassing the General Assembly and the Senate. I think what is going to be done should be more clear-cut. There must be a time limit on their approval for everything so that we don't delay.

ASSEMBLYMAN FROUDE: Do I interpret that as a yes answer, you could be satisfied with something less than a veto power if it was written in a manner that---

MAYOR FIORILLI: No, I would be satisfied with nothing less than veto power, but I think those changes must be in there also.

ASSEMBLYMAN FROUDE: That is what I asked. Well, if you had the veto power, what significance would any changes make?

MAYOR FIORILLI: The length of time it takes to apply and get things done.

ASSEMBLYMAN FROUDE: What difference would it make to the State of New Jersey if we had a procedure whereby we made a determination within thirty days or ten days if in fact you sat down there in Vineland and said "no," and your no was the answer?

MAYOR FIORILLI: You are referring to no, we don't want it. How about if it is yes, we do want it and the State says no.

ASSEMBLYMAN FROUDE: Do you see any possibility of a determination that affects Vineland that is a greater concern to the general population of New Jersey than to the citizens of Vineland? Do you recognize that idea of an overriding State interest?

MAYOR FIORILLI: Yes. Supposing, for example, the City of Vineland were to go out and attract a high energy consumer as an industry to employ a thousand people which would bring our unemployment rate down to normal, which would relieve the State of paying unemployment compensation for a long period of time, and suppose the Energy Commissioner comes along and - as I read the bill he will have this authority - decides that plant shouldn't be in Vineland but it should be in Toms River. I think we should have a right to determine what can or cannot be in our community. That would affect the overall welfare of the people of this State because of the loans that you are getting from the Federal Government to pay unemployment compensation. There is a tremendous figure in the red that we have today which we can't afford to add to.

Also, I would say that the business of oil refineries - and the statement that Mr. Jacobson made last week - is very pertinent to the State of New Jersey. Why shouldn't we have that industry if we are going through the trouble of having oil drilled off our shores? I think we have a right to that employment. The northern end of New Jersey is not as bad as the southern end. We have at times had the highest unemployment rate in this State, with no problem, and one of the highest in the nation. I don't think we can afford to continue that reputation.

ASSEMBLYMAN STEWART: Mayor, is Vineland in the CAFRA zone?

MAYOR FIORILLI: Yes.

ASSEMBLYMAN STEWART: So you have some of these problems right now with somebody telling you what you shall and shall not do.

MAYOR FIORILLI: Yes, we do.

ASSEMBLYMAN STEWART: In fact, some of the very people who were here this morning - and I think they have left - who proposed the CAFRA legislation as a savior of the southern part of New Jersey against the cries of many who said it was an infringement upon home rule were here today telling us how this will infringe on our home rule. It is ironic how time changes.

MAYOR FIORILLI: I can see where that would happen.

ASSEMBLYMAN STEWART: I want to point out something that we were discussing earlier, the case where a nuclear facility could or could not be built in the State of New Jersey. Under the CAFRA regulations, if my information is accurate, we have had instances where municipalities have said, "We do not want this nuclear facility in our area," and under the CAFRA law the powers to be have said, "We approve it." And the local municipality has had nothing to say about it, so we already are into that problem. This bill probably compounds it and extends it to other areas of the State, but we are already having that problem right now. I really find it ironic that some of these same people are out there on the other side of the fence today crying home rule. Some of those same people are the ones who got us into this mess in the first place.

MAYOR FIORILLI: I can see your point there. Let me point out also in this bill that there seems to be an awful lot of infringement or it leans toward the infringement of the Energy Commission to infringe on the Public Utilities Commission. Now, as a municipally owned utility we do not come under PUC. There is no way that we come under them. If we have a rate increase as passed by ordinance, we notify them within thirty days. They have no approval. It doesn't matter because we have the cheapest electric rates in the State. But I can see the Energy

Commission crossing that line, and beginning to determine what we can and cannot do with our own utility.

ASSEMBLYMAN FROUDE: Vineland remains, but it used to be South River and Vineland. That is my home town. You might have the cheapest electrical rates in the State and you might not.

MR. FIORILLI: I think we do.

ASSEMBLYMAN FROUDE: I know my town doesn't.

MR. FIORILLI: I can only suggest that you move to Vineland.

ASSEMBLYMAN FROUDE: Thank you, Mayor. Is there a Mr. Herman Hanssler, President of the League of Municipalities present?

H E R M A N     W.     H A N S S L E R: Mr. Chairman, members of the Committee, my name is Herman W. Hanssler. I am a Council Member in Lawrence Township, Mercer County, and I am President of the New Jersey State League of Municipalities. I am appearing today in my capacity as President of the League, an organization which represents 562 of the 567 municipalities in New Jersey. I am here to register the strong opposition of the New Jersey State League of Municipalities to Senate 1179 as amended which in its present form emasculates home rule authority concerning the location and regulation of energy related uses of land in New Jersey. This bill was introduced on May 18th and released from the Senate Energy and Environment Committee before final copies had been printed. It was then rushed to the Senate floor without a public hearing, thereby denying affected persons the opportunity to state their positions on the bill which has a profound impact on the quality of life in New Jersey.

We totally disagree with the characterization of the bill contained in the statement accompanying it, which claims that the bill does not preclude either local government or public participation in the decision making process. The Public Advocate aptly described the measure when he stated, and I am quoting from a newspaper article, "If the bill becomes law, for the first time the term energy czar would be a correct title for the Energy Commissioner, for his powers are not only comprehensive as described in the bill but virtually 'autonomous.'"

Section Four of the bill grants the Commissioner the authority to enter into interstate compacts. Does this mean that he could set in motion the construction of a nuclear power plant in New Jersey to serve other states notwithstanding local objections? This same section also requires the Commissioner to encourage the lowest possible cost of energy and fuels consumed in this State consistent with the conservation and efficient use of energy. Is this cost effectiveness to be accomplished without regard to environmental damage and expense to local communities?

Section Thirteen of the bill very clearly states that "Pursuant to the purposes of this bill no county or municipality or any agency or instrumentality thereof may require any approval, consent, permit, certificate or other condition for the construction or location of an energy facility for which a certificate of site and facility is required pursuant to the provisions of this act." This provision obviously is pre-emptive in nature, the comments in the statement to the bill notwithstanding.

In Section Twenty-nine, the bill goes on to further provide that "Any property or interest therein purchased or leased by any energy industry or by any other person pursuant to this 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 governing body, zoning or planning board or agency."

The Department of Energy is authorized to prepare a State Energy Facilities Plan and in Section 19 is authorized to prepare a "site plan portraying the location of all existing energy facilities as well as additional energy facility sites to meet the state's estimated needs..... including any buffer zones which the Department deems necessary."

I submit that the State Energy Facilities Plan is a very comprehensive document which has the potential for intrusion into any and all areas of the State. While the provisions dealing with its adoption do provide for a hearing procedure at the time the overall plan is adopted, and while the Department of Energy must consider the provisions of all relevant county and municipal master plans in the preparation of its site plan, there is absolutely no opportunity for administrative appeal on the part of municipalities and counties in cases of disagreement with portions of the plan.

While there is provision in Section 16 for the preparation of county energy plans and the requirement for public hearings, it appears from my reading of the language that the county plan must conform to the overall state plan. And, again, as far as the county plan is concerned, there is no opportunity for administrative appeal by municipalities.

Once adopted, the State Energy Facilities Plan is a paper document. It merely identifies acceptable potential sites for various kinds of energy related activities. The major impact of the bill comes to bear at that point in time when any one of the industries and activities covered by this legislation desires to locate a facility in some municipality in this State. In total disregard to any and all local jurisdiction, the applicant will seek a permit directly from the State Commissioner of Energy.

Section 32 of the bill merely requires that such application to the Commissioner for a site certificate must include proof of notification to the affected municipality and county and to citizens in said municipality. The involved county or municipality is given twenty days in which to file written objections, a time period which is grossly inadequate. Upon receipt of any objections by the county or municipality, the Commissioner of Energy is merely required to acknowledge such objections, respond to them, and certify in writing what the location of the facility in question is, in all respects, in conformity with the State's estimated energy needs and is necessary and appropriate to effectuate the purposes of this act.

It is our belief that this is a pro forma token procedure which provides no real opportunity for meaningful participation by the municipality or the county or the citizens involved concerning the specific location of any particular facility in question. In view of these provisions, it is my position, and that of the League, that the bill constitutes a blatant attack on the traditional rights of the municipality to zone and regulate the use of land and therefore is categorically opposed.

While the League agrees with the creation of the State Office of Energy, and with the creation of a State Energy Master Plan, there are various considerations which are a part of any decision making process involving the specific location of an energy facility. Appropriateness and need, for example,

are major policy determinations. While the proposed location of a particular facility might be theoretically consistent with the State's overall plan, is that particular location being sought the best or most appropriate location available or merely as good a location as any of a dozen others?

Do the proposed plans reflect the most efficient type of operation involving the least impact on the community, or does it merely meet acceptable standards of efficiency and minimum impact on the community? At what point do the legitimate concerns of the State regarding energy production end and the individual profit-making concerns of the individual energy producer, processor, or transmitter begin? A particular application for a location and construction permit will very understandably be determined in a large part by the economic and profit related considerations in the industry involved. And this is a bona fide consideration. But it may well be that a request for approval for a particular site in a particular host municipality, as proposed to any of a dozen other equally accepted locations will be based on the company's economic considerations. With no disrespect implied for either the industry or the State, there is something patently and moral when these kinds of decisions are made by the industry and the Department of Energy with the municipality whose destiny is at stake being excluded as a partner with any standing.

These are just a few of the very important policy decisions and priority determinations which inevitably will accompany the granting of any site location application. It is totally incomprehensible, given the complexity and diversity of these considerations, that the framers of this legislation would suggest placing authority for making these decisions relating to individual applications in the hands of the Commissioner of Energy without providing any real structured procedure for public hearings, presentation of testimony, and most importantly, administrative appeal on the part of the municipality, county, and member of the public. Is our energy crisis so severe that all the other factors that are so meaningful to our daily existence are to be sacrificed?

I have high regard for Commissioner Joel Jacobson, and these comments are in no way intended as a reflection on his integrity or dedication to the public interest, but in the years ahead, this most important and powerful office will be held by other individuals unknown to us at this time. We in the League view with considerable alarm the prospect of putting these powers in the hands of a single individual without any opportunity for the kinds of participation that I have indicated. As a matter of fact, this proposal can considerably weaken the rate regulatory authority of even the Public Advocate who presently can challenge the plans of a utility to build a new facility. Such vast and sweeping authority in the hands of one man as proposed for the energy czar is far too great.

The New Jersey State League of Municipalities, therefore, must continue its opposition unless Senate Bill 1179 is further amended to provide for:

1. At least 90 days' notice to municipalities and counties of any specific site location application.
2. Mandatory scheduling of a public hearing by the Commissioner to be conducted within the boundary of the affected municipality, for the purposes of obtaining testimony relating to the appropriateness and need for each particular use - its environmental, economic, social

and physical impact on the region.

3. A provision that there be created as a permanent body an Energy Facility Review Board comprised of the Commissioner of Energy, the Commissioner of Environmental Protection, the Commissioner of Community Affairs, two municipal representatives, two county representatives, and two representatives of the public. In the event of formal objections to any application registered by any municipality, county, or member of the public, such application shall be granted only after review and approval by the review board. In no case shall contested applications be approved by the Commissioner of Energy acting in his own right.

Unless Senate 1179 is further amended as recommended, the New Jersey State League of Municipalities must stand in total opposition to its provisions. Thank you.

ASSEMBLYMAN FROUDE: Are there any questions?

ASSEMBLYMAN HOLLENBECK: I notice in your testimony something different than was brought forth by some other mayors and other speakers. In your last provision, what we are talking about is not an absolute veto over the placement of an energy facility in a specific town. In other words, the town itself has no absolute veto right over that particular facility. That is what you are saying the League is proposing now, that they change the energy facility review board membership to a membership as described within your suggestions, and if that group agrees upon it, then it can go in there regardless of local opposition.

MR. HANSSLER: That is correct, sir.

ASSEMBLYMAN HOLLENBECK: So we are not then talking about the towns having absolute veto power. We are talking more about protecting the communities and the home rule concept in the facilities. In order to have that, we must, at least in your opinion, come up with a better membership of the energy facility review board.

MR. HANSSLER: Right. And to provide for a hearing procedure and an appeals procedure.

ASSEMBLYMAN FROUDE: To the decisions of that review board?

MR. HANSSLER: Yes, right.

ASSEMBLYWOMAN TOTARO: That would be the appeal mechanism.

MR. HANSSLER: That would be the decision making body, yes.

ASSEMBLYMAN FROUDE: Maybe I am the only one confused.

ASSEMBLYWOMAN TOTARO: He said that that was the appeal mechanism.

ASSEMBLYMAN FROUDE: What is the final step in your considerations? This appeal board, right?

MR. HANSSLER: That would be the final administrative step. Prior to that, I say, let us not have an energy czar dictate where that facility is going to belong. That should be a decision by the review board.

ASSEMBLYMAN STEWART: These nine people you were talking about earlier.

MR. HANSSLER: Yes.

ASSEMBLYMAN STEWART: They should be the review board, and then there should be a separate appeal group other than those nine people.

MR. HANSSLER: Exactly.

ASSEMBLYWOMAN TOTARO: To clarify that, the appeal board would not be the same as the energy facility review board? You want another group? If the Commissioner makes a determination and a municipality objects, it then should go to the review board for appeal, or do you want to set up another entity?

MR. HANSSLER: I have my personal views on this, and I want to speak as the League President, so if you don't mind, I will consult with a member of our staff.

I am advised that the Commissioner will exercise his rights as a rule, but if there are any objections, the objections will then go to the review board. Of course, if there are no objections by the municipality, then there would be no problem. So, to expedite the process, we would see nothing wrong with having the Commissioner exercise his right to select the sites. If there are any objections, and after, of course, the whole thing has been properly heard, and everybody in the affected area has had an opportunity to give input, if there are any objections, then it should be appealed before the review board which I have proposed.

ASSEMBLYMAN FROUDE: Would you want to state your personal thinking at this time?

MR. HANSSLER: I would defer to the League's position. I do want to make the point, though, that this energy commissioner really in every sense of the word will be an energy czar. And when you are dealing with the future of this State and the lies and the economic values of this State, we have to be very careful in taking that big step.

ASSEMBLYMAN FROUDE: I will play the czar's advocate, for a moment, at least. You are saying that you need 90 days' notice to municipalities. And a review process, apparently, is going to take place there. All of this follows an effort on the part of municipalities and counties to identify sites that are appropriate to the energy needs. So, as I read the bill, you have municipalities in search for sites; you have counties in search for sites; you have the state in search for sites, and after all that, I can't - well, I can conceive-- But hopefully, the sites chosen will be among those. Now, why do you need 90 days to react to that?

MR. HANSSLER: Well, I tried to point out earlier that that site plan, the energy facilities plan, is a paper document, because anybody can come in after that document has been completed and still make application and get approval directly from the Commissioner for a particular site, and there must be some protection built into that aspect. That particular site that might be requested might not appear on the plan.

ASSEMBLYWOMAN MC CONNELL: How do you envision these objections being initiated, through the municipalities, through the municipal officials or can there be citizen's complaints? Have you considered that possibility? What constitutes a proper municipal objection?

MR. HANSSLER: Well, I think any person that has an objection should be considered.

ASSEMBLYWOMAN MC CONNELL: Any person.

MR. HANSSLER: Absolutely.

ASSEMBLYWOMAN MC CONNELL: Any person can object to the entire energy

plan of the State of New Jersey? And they can go through the hearing process? There will be a public hearing for one person in a municipality? You wouldn't care to consider what a proper objection from a municipality might be?

MR. HANSSLER: I say that if--- Your question is well taken. You have to formulate a position on the part of a governmental unit, that is, the government body, whether it is a township committee, township council or a county board of freeholders. They then would register a formal objection based on a complaint that they receive, okay.

ASSEMBLYWOMAN MC CONNELL: Okay, I didn't know whether you were implying that a citizen's group ban together an objection to a particular site.

MR. HANSSLER: The citizens have economic interests and that is something that you should really consider.

ASSEMBLYWOMAN TOTARO: Mr. Chairman, may I ask a question? On point number one that you have listed, at least 90 days' notice, that is not for a recommended site? Is that one that has been designated without formally having been approved ahead of time as one of the designated sites?

MR. HANSSLER: No, I think that notice should go out to all sites, whether they appear on the plan or not, whether they have been designated or not. Because you have many interests that are affected, and not everyone thinks alike. A municipality may be against a particular site within its confines. The county and the surrounding municipalities may be in favor of it. So, it gets down to the plan somehow. I think that the 90 days' notice--When it comes down to the line where a determination is going to be made whether or not this energy facility is going to be located in this jurisdiction, at that time there should be 90 days' notice of that intention.

ASSEMBLYMAN FROUDE: We have gotten the message. Any other questions?

ASSEMBLYMAN OTLOWSKI: From your study of this, and from the ongoing studies, say, in Alaska or California, did they have similar coronation procedures as provided here?

MR. HANSSLER: I don't know anything about the Alaskan procedures.

ASSEMBLYMAN OTLOWSKI: I was just wondering whether you had the opportunity to make that determination.

MR. HANSSLER: Jack Trafford, the Assistant Director of the League, would like to address that.

MR. TRAFFORD: We have not conducted any original research on our own. I don't want to speak for the Public Advocate's office, but in informal discussions with them I was given to understand that their research has indicated that there is a much stronger pattern of hearing procedures in other states than there is as proposed in this bill. I can't speak for them, but that's my understanding.

ASSEMBLYMAN OTLOWSKI: Than there is in this proposed legislation---

MR. TRAFFORD: The opportunity for a hearing.

ASSEMBLYMAN OTLOWSKI: I am talking about the general approach, the general legislation.

MR. TRAFFORD: That I don't know.

ASSEMBLYMAN OTLOWSKI: You don't think so?

MR. TRAFFORD: I don't have that information.

ASSEMBLYMAN OTLOWSKI: I am not talking about the hearing, I am talking about the general approach, the general legislation that is being proposed here.

MR. TRAFFORD: I have no information on that.

ASSEMBLYMAN FROUDE: Can the League offer us any insight as to criteria for determining what kinds of facilities have statewide impact as opposed to those facilities that don't?

MR. TRAFFORD: I think those are decisions that are a little bit beyond the purview of the League. Those are state policy decisions. I think your point is well taken, though.

ASSEMBLYMAN FROUDE: I am not attacking the League, nor am I going to lay any claim for the State having some expertise. What I am after is what criteria should be used to determine those facilities with statewide impact versus those that are not.

MR. TRAFFORD: That point appeared to be well taken, but beyond that, we have no privy to the kinds of information that would permit us to say with any authority how an offshore oil facility should be handled in terms of the national energy needs, New Jersey energy needs. This is a bigger issue that we would have to defer to other authorities.

ASSEMBLYMAN FROUDE: Suppose the utility that services your area decides that it must have tremendous expansion of generating power and they identify your community as the place to go.

MR. TRAFFORD: Well, at that point---

ASSEMBLYMAN FROUDE: And that facility has a larger area than your municipality. Doesn't that have statewide impact?

MR. TRAFFORD: At that point municipality "A" is directly involved because the company has made application to locate in municipality "A" and the municipality then wants the opportunity to express its concern over that specific location by going through the whole hearing procedure, and through the determination of the Commissioner and maybe ultimately this appeal board, which would balance the concerns raised by the municipality, if any, with what they in their expertise feel is the proper decision. May I---

ASSEMBLYMAN FROUDE: Respectfully, what I am hearing is, you are going to reserve the right until you see what it is, right?

MR. TRAFFORD: No, we just want the opportunity to register whatever potential concerns might be raised by the municipality, given the particular facility.

ASSEMBLYMAN FROUDE: That is not what I am asking.

MR. HANSSLER: If you don't mind, I think I know what you are after. There are different kinds of impacts that the utility would have. One would be environmental, which would be rather local, generally speaking, except if you have a nuclear facility which would cover quite an area other than the local municipality. You have the economic impact, both local and statewide impact. You want us to come up with some kind of criteria which would indicate, well, this particular utility has such a statewide impact that the locality shouldn't be given as much consideration as they are seeking. I don't know of any criteria that has been established of that nature, and I think it would be very difficult to establish criteria like that, because it would depend on the type of energy facility that you would be giving consideration to.

ASSEMBLYWOMAN MC CONNELL: With regard to the League's recommendation for

90 days' notice, are you familiar with page 33, section 31, where it says, "All applications by any energy industry or any other person for a certificate of site and facility shall, insofar as may be practicable and feasible, be filed with the department not less than 2 years prior to the planned date of commencement of construction and such plans may be subject to reasonable modification during the period of review." And the next section says that proof of service must be filed with a municipality, so we are talking about an estimated two years' notice in this bill. Why do you need 90 additional days?

MR. TRAFFORD: We are referring to the 20-day reference.

MR. CATANIA: That has been changed to 120 days.

ASSEMBLYWOMAN MC CONNELL: This is in reference to recommendation one, your 90 days' notice, you were not referring to the application to the department and the proof of service on the municipality.

MR. TRAFFORD: No, no, we are referring to the time period that the municipality has to respond, once it has been served, but if that has been changed, that addresses our concern.

ASSEMBLYMAN FROUDE: Has that been changed?

MR. CATANIA: Yes, that has been changed to 120 days.

ASSEMBLYMAN FROUDE: You are not talking about precisely the same thing.

ASSEMBLYMAN OLSZOWY: Assuming your question one step further, suppose that the energy site has to be expanded, not for itself, but for the need of the community, and this plan goes through. Now, the power supply company says none of these sites are acceptable to us, and yet they must expand; what do we do then? Who is going to force them? Is this a dictatorship? That's one of the questions I would like to pose to this committee for consideration.

ASSEMBLYMAN FROUDE: Are we satisfied that we have had that clarified?

ASSEMBLYWOMAN MC CONNELL: The time for application to the department and proof of service on the municipality has been changed so that the municipality is getting notice of a proposed site two years prior to construction. In addition, you have 180 days for the municipality to act thereafter receiving it.

ASSEMBLYMAN FROUDE: But then in addition to that, sooner or later an application comes in and they are saying they want an additional 90 days.

ASSEMBLYWOMAN MC CONNELL: That was the question that I am trying to get an answer to. The bill now contains 180 days in addition to the two-year period, instead of 20 days. Now you do not want an additional 90 days added to the 180?

MR. TRAFFORD: We were of the understanding that the 20-day period was still in the final version of the bill.

ASSEMBLYMAN FROUDE: No, that has been changed, so please make sure you get a copy of that official copy reprint and keep us posted of your minute-by-minute reactions to it. We thank you very much for your testimony today.

MR. HANSSLER: Thank you, we will do that, Assemblyman.

ASSEMBLYMAN FROUDE: Our next speaker is Jerome E. Dawkins on behalf of the Mobil Oil Corporation.

J E R O M E E. D A W K I N S: Thank you, Mr. Chairman. We do appreciate the opportunity to participate in this public hearing and make known our views on behalf of the Mobil Oil Corporation.

This bill has been widely touted as being for the benefit of the energy

industries of this State. This bill has also been widely touted as a bill which would encourage economic activity generally and, in particular, the energy industries and related industries to locate support facilities in New Jersey relative to outer continental shelf activities, thereby stimulating the economy and reducing unemployment. This bill was to be a signal and an indication to the energy industry, to all business, that New Jersey was hospitable to economic growth.

These intentions - surely not the only ones, but some of the most important ones - behind S-1179 were not just implicit, they were expressed by many governmental officials. These were and are good intentions, as have been the intentions of the Legislature in moving S-1179 through its procedures. On examination, however, we have determined that there are provisions in this bill, inadvertent perhaps, that are severely discouraging to the energy industry and may very well prevent any onshore support facility development. The over-all regulatory pattern, again, probably unintended, conveys a message more of a state which wants to be first in making it difficult for industry to develop rather than first in encouraging industry.

We think we would be less than candid not to tell this Committee that if this bill passes in its present form, we believe that industries other than the energy industry will get the message as well - and the message is, don't come to New Jersey. We don't think you intend this message, and we believe that the situation can be remedied by several significant amendments to the bill.

First of all, we are concerned about the enormous power given to the Commissioner by this bill. Our concern is not with Mr. Jacobson, but with the concept of any one person having what amounts to a life and death power over all, industry without the restraining influence, as a practical matter, of any other group or entity of government. This concern was apparently shared by the Legislature, for last year, when it adopted the Department of Energy Act. It provided that no rule or regulation become effective until it was presented to both houses sitting on the same day, and gave to the Legislature 60 days to veto such rule or regulation. There were clearly two purposes behind this legislative oversight provision. One was the enormous concern of the Legislature that rules and regulations, which, if unreasonable, can severely damage economic development, and the Legislature should have the opportunity to veto them; and the other concern was undoubtedly to impose some restraint on the enormous powers vested in the Commissioner. In order to check the awesome powers accorded the Commissioner under this bill, we propose that the Advisory Council, a group carefully constructed in the original Act, be given the power not only to review rules and regulations adopted pursuant to the supplemental act, and the proposed State Energy Master Plan and Energy Facilities Siting Plan, but also be given the additional power to effectively veto implementation of such. In the event the advisory council concurs with any proposed plans, rules or regulations, the legislative oversight of the current act would apply. If, however, the Advisory Council does not concur as to any part or portion of such plan, rule, or regulation or any other administrative action of the Commissioner, such position, rule, or regulation or action should not take effect until and unless the Legislature specifically approves the Commissioner's proposal.

The Advisory Council contains representatives from many manufacturing interests, as well as consumer interests, environmental interests, academic interests, and others. Amending this bill to place review and veto authority in the Advisory

Council would, we believe, properly place some responsibility on a cross-sectional group of 15 people, and eliminate total power in only one individual.

In effect, gentlemen, what we are proposing is an upgrading in the oversight provision in response to the additional powers to be vested in the Commissioner in this Supplemental Act. One must only look to the proposed Master Plan, a clear indication of how the Commissioner intends to implement the siting authority to be vested in him under this bill, to see the importance of strengthening the Advisory Council and legislative oversight.

For example, the critical element proposed by the Commissioner to be reviewed by the DOE in approving the siting of a new energy facility is whether there is a need for that facility to meet a New Jersey demand for that facility's product. This statement shows a total lack of understanding of the logistics of New Jersey's petroleum supply. This once again points out the need to distinguish between the petroleum industries from the public utilities in any comprehensive energy plan in New Jersey. A sizeable portion of the products produced in New Jersey's refineries are shipped out of state. Conversely, most of the petroleum products consumed in New Jersey are imported into the state via out of state pipelines, that is, two-thirds of New Jersey's gasoline comes from out of state. There is no oil or gas produced in New Jersey.

In another portion of the proposed Master Plan, the Commissioner makes this misleading statement:

"New Jersey has far too long assumed more than its share of responsibility for these . . . facilities - that is, refineries. New Jersey already contributes 38% of East Coast refinery capacity while containing only 2% of the East Coast land area."

On the basis of this statement, the Commissioner would prohibit or severely restrict both the construction of new refineries or expansion of existing ones in New Jersey. In reality, the total production for the "power of decision" as to whether an existing plant can expand perhaps to meet New Jersey's needs or perhaps to meet regional or national needs. The equities on the side of the existing plant seem to us to be overwhelming.

Many of the plans made in the past were based on the premise that future expansion would be allowed under the then existing rules of the game: We never dreamed, nor did anyone have the right to expect us to imagine, that New Jersey would effectively deprive us of our ability to expand existing plants, in which we have invested hundreds of millions of dollars.

When I say that this bill, or at least some of its provisions, sent out a signal, a signal that industry is not welcome in New Jersey, none could be more impressive than this provision. What industry would, or should, consider coming into this State if it can expect that kind of treatment after it has made an enormous investment, relying upon some minimal sense of fairness on the part of the State. Mobil employs about 4,000 people in New Jersey, with a payroll of nearly \$100 million. We pay state taxes which total nearly \$6 million. As an important member of the industry in the State, we are deeply disturbed with legislation which, as a starting point, would limit our further growth.

The third point we would like to make is that the existing Senate bill provides inadequate protection for confidential information submitted to the DOE. As we previously stated, this is due to the improper lumping together, without

distinction, of industries competing with one another along with regulated public utilities that are not competing. The bill should provide for adequate safeguards against disclosure of confidential information and trade secrets except in summaries structured without reference to a particular company or its location. Also, there should be a penalty association with violation by any DOE employee having access to such information. While the data may seem to those who have not been in the business to be innocuous, the fact is that it is the very heart of the information upon which the industry business decisions are made.

Finally, I would like to re-emphasize to this Committee the need to recognize two very important facts, which bear heavily on any effort by a State to identify and isolate energy demands and supply for its citizens apart from the rest of the country.

First, a State cannot lump together state public utilities, federally regulated common carriers, that is, pipelines, and the private highly competitive petroleum industry into a general pot and label it the "energy industry." Each of these, and other, individual industries must be approached differently, both as to the extent and the manner of regulation. For example, utilities are monopolies with an assigned intrastate market and guaranteed profits so it makes sense to provide for close state overview. In contrast, private companies operate in a competitive environment, so detailed information regarding production capacities marketing plans and technology is proprietary. Also, to survive and efficiently employ capital, a private company must retain the flexibility to quickly respond to competitive conditions. Running our operations in accordance with some preconceived master energy plan is incompatible with the dynamics of our industry.

Secondly, with respect to the international logistics of the petroleum industry, a state master plan is simply not an appropriate vehicle for assessing or regulating actions which are largely determined by supply and demand considerations external to the State of New Jersey. The master plan and forecasting output of the DOE is not likely to be a very accurate guide for planning State energy requirements. Estimating future energy requirements is an uncertain science at best. There are too many variables - Gross National Product, prices, conservation and political developments - which make forecasting highly speculative. Consequently, a detailed long-range master plan and facility siting plan are not likely to be very reliable guides despite the best efforts of everyone involved.

I have today submitted, for your consideration, an attachment setting forth specific amendments to accomplish these basic changes in the bill, which I have discussed in this statement. Also, this attachment contains several other minor amendments which, in our opinion, would improve S-1179. This bill is an extremely significant piece of legislation, and, although well intended, fails, in its present form, to accomplish previously expressed goals for New Jersey. We urge that you give due consideration to our suggested amendments, which we believe would substantially improve the bill. However, what is needed most are amendments which would accord separate treatment to the public utilities as versus the petroleum industry. This can be accomplished given more time. We urge that you not act in haste on this legislation. Thank you, gentlemen.

ASSEMBLYMAN FROUDE: We appreciate your comments, and we will take those specific proposals for amendment up at future meetings. I find it

far more effective when you just talk about some of the basic issues. What do you envision as one-stop shopping for your industry, for example? I thought that was really the beginning point here.

MR. DAWKINS: One-stop shopping is good, Mr. Chairman.

ASSEMBLYMAN FROUDE: What is it that is so good?

MR. DAWKINS: We do favor one-stop shopping. I think it is a good concept.

MR. MILLER: How would you define one-stop shopping?

MR. DAWKINS: I would define one-stop shopping as one agency to go to rather than a multitude of agencies.

MR. MILLER: One agency making all the decisions, or one agency getting all the permits? Just exactly which do you mean? There are two things that we could be talking about. One is merely a simplification of the application procedure for water permits, air pollution permits, construction permits, and things like that, and then there is one-stop shopping in the sense that only one person or agency is responsible for the ultimate decision. Now, which of these two or both or neither are you talking about when you are speaking about one-stop shopping?

MR. DAWKINS: Well, one-stop shopping, as I envision it here, is one agency which is responsible for issuing the permit and coordinating with other agencies relative to the improvements.

MR. MILLER: So it is only the application procedure rather than the decision-making power which is singular, so to speak.

MR. DAWKINS: Relative to the concept of one-stop shopping, yes.

MR. MILLER: Your testimony seems to indicate that you want a lot of people making the decision but only one person shopping for the permits.

MR. DAWKINS: No. Really, what I am saying is that I would like the Advisory Council to have some legislative oversight. As it is presently structured, the Advisory Council is just a showpiece. It is totally ineffective. It does essentially nothing. We think this is a good group. It is a broad spectrum from the whole public, and we think they should have a great deal more power and input into the decisions of the Department of Energy. We think this would take total power and control out of one individual.

MR. CATANIA: Mr. Dawkins, I would like to pursue, a little bit, your concern about the kind of signal this bill sends out to the oil industry about how New Jersey feels about attracting support bases, particularly with respect to your concern about refinery expansion. Is it true that under current local zoning provisions a municipality can prevent you from expansion on an existing site?

MR. DAWKINS: I am really not prepared to answer that. I think if you have all the necessary permits, and meet the zoning laws, I don't see any prohibition from expanding on a present site.

MR. CATANIA: What I am asking is, do you have to go to them and get their approval before you can expand a refinery?

MR. DAWKINS: A local municipality?

MR. CATANIA: Yes.

MR. DAWKINS: Probably for whatever permits are needed, yes.

MR. CATANIA: Is it also true under this bill that if they were to refuse to give you those permits, the Department of Energy could direct that you be allowed to undergo that expansion?

MR. DAWKINS: I believe that is probably correct, but what we are looking at here is such an excessively burdensome requirement for expansion, and you almost have to look not just to the bill, but you have to look at what is emanated from this bill, and that is a facility siting in the master plan. And it is so excessively burdensome that it becomes almost impossible to expand an existing facility.

MR. CATANIA: You are concerned about the tie in to the estimate of the State's energy needs as a basis for the decision making by the Department of Energy.

MR. DAWKINS: Yes, sir.

ASSEMBLYMAN HOLLENBECK: That is not for minor expansion. That is for major expansion of the facility, in excess of 10% expansion of the facility.

MR. DAWKINS: That is true, but of course---

ASSEMBLYMAN HOLLENBECK: Of course, anything under that is not applicable.

MR. DAWKINS: That is true, but---

ASSEMBLYMAN HOLLENBECK: Unless you were denied it by a local option, then if the Commissioner overruled local option it would be a great help to you.

MR. DAWKINS: No, no, we don't view this as being a great help to us. We feel that under the current existing laws we were much better off than we would be under this. In other words, merely to expand our existing facilities quite often all that is necessary is to change a particular type of unit. You don't necessarily need to acquire more land and broaden yourself in scope. You are just modernizing or updating and increasing capacity.

ASSEMBLYMAN HOLLENBECK: Now, we are talking about expansion. That is not expansion with reference to the capacity, is it? We are talking size.

MR. DAWKINS: Any modernization which would expand your capacity greater than 10% would necessitate going through the facility siting permit procedure.

MR. CATANIA: This gives the State the authority to help you do it, even if the municipality doesn't want you to do it, which ought to be a help to you rather than a harm.

MR. DAWKINS: Well, let me just say this: We don't view these sort of requirements as envisioned in the facility siting as being help. We view them as being a burden and a hindrance. I think you have to look at the proposed plan which starts out with the basic premise that there is no need for any future energy facilities in this state, and that a company must overcome this presumption in order to get a permit.

ASSEMBLYMAN HOLLENBECK: Where is that?

MR. DAWKINS: This is in the master plan.

ASSEMBLYMAN HOLLENBECK: What is being talked about here is whether we are saying that the expansion - and I have been hearing this from the oil industry also in previous meetings - within fence could increase their capacity to meet the needs, so that is where I think a basic statement comes into effect. We don't have to build a new refinery down in Atlantic City to take care of oil. They are saying there is enough capacity within the state. They are talking about within fence. Wasn't that what they were saying in the context of that statement?

MR. DAWKINS: I think that is probably true, yes.

ASSEMBLYMAN HOLLENBECK: That is what was meant. So, you know, unfortunately, the industry might take this as a wrong statement. I personally see it the other way, but people read something out of context and get a completely wrong impression.

MR. DAWKINS: The thing about that is, it is really not taken out of context,

because all of this program, and all of these presumptions, and all of these requirements for facility siting apply to an expansion greater than 10%. And all we would have to be doing is modernizing our plan, increasing our capacity, and we would have to go through the facility siting, and we would have to overcome the presumption that it is not needed.

ASSEMBLYMAN STEWART: What do you have to do now, under the present set-up?

MR. DAWKINS: We have to obtain the necessary environmental permits, and we have to obtain a local building permit.

ASSEMBLYMAN STEWART: The one facility I am familiar with is not in the CAFRA zone, so you don't have any CAFRA regulations.

MR. DAWKINS: That is correct.

ASSEMBLYMAN STEWART: You are saying that the present existing environmental regulations which are probably the only ones that affect you if you want to expand are a lot easier hurdles to clear than this would be?

MR. DAWKINS: Absolutely, absolutely.

ASSEMBLYMAN STEWART: Is the crux of the problem the definition of what is an expansion? Later on, if we tried to define what expansion really means to you as compared to what it means to us, could we have a meeting of the minds, possibly, or is that not the problem?

MR. DAWKINS: Well, I think we probably could, but I guess my basic problem is that any expansion of an existing facility should not be covered and should not be required to obtain a facility siting permit. This is a structure which was built there, and it was based upon plans, and it should be grandfathered in, based upon the general knowledge that this was a facility that could be expanded in place, and all of a sudden we find ourselves up against a hindrance.

ASSEMBLYMAN STEWART: Do you think that should apply to things other than the petro-chemical or oil industry? Suppose we are talking about the expansion of a nuclear facility, should they be able to expand without going through this also? Or, is that somebody else's problem?

MR. DAWKINS: I really would hate to comment on that, Assemblyman Stewart.

ASSEMBLYMAN FROUDE: I wonder whether part of the concern of this industry isn't with the master plan provisions. I have been wondering in the back of my mind. The purpose of such a plan is to provide a ten-year plan for the production, transmission, consumption and conservation of energy in New Jersey consistent with national industry. If you look at the definition of terms, the question raised in my mind is, what is the State of New Jersey doing getting into the business of the private sector. I don't see any reasonable purpose for New Jersey deciding that Mobil can have a 10% growth, and Exxon can have a 30% growth in a ten-year plan. And I see that inherent in this design.

MR. DAWKINS: We would agree with you. This is a problem---

ASSEMBLYMAN FROUDE: Why didn't you say that.

MR. DAWKINS: I think this is what comes from being lumped in with the public utilities, because a public utility is a monopoly and it has a guaranteed rate of return, and there is no competition, so this is probably proper, but it is not proper in a private, highly competitive industry.

ASSEMBLYMAN FROUDE: So, then, we ought to tool, then, with that definition of energy in the front part of the bill, Bob. You were the one who was looking for a handle on it, right.

MR. CATANIA: What you are telling us then, Mr. Dawkins, is that in terms of expansion existing at least in refineries, you would rather take your chances going through local zoning approval rather than having the State making an estimate of whether or not the facility and the expansion was needed, and the new procedure.

MR. DAWKINS: Yes, sir, as it is presently structured, where the presumption is that it is not needed, I would much rather take my chances with existing laws and permits.

MR. CATANIA: All right, can I take that one step further. Would you also be willing to take your chances with local zoning in terms of a pipeline servicing that refinery? Would you like in that instance a state involvement that could supersede local zoning?

MR. DAWKINS: Let me just say this: I haven't said that everything about this bill is bad. I think there are some good points to the bill. The one-stop permitting and the condemnation for the facilities needed for the State and for a national purpose are good concepts, and the bill does have very many good things about it, but it also has some bad things, and one of the things that you have mentioned is one of the good things.

MR. CATANIA: When I figure that out, I will decide whether or not I agree with you.

ASSEMBLYMAN FROUDE: I think the message is coming through. We are lumping refining and transmission all together, and we are getting at least the word that that should be considered.

ASSEMBLYMAN HOLLENBECK: However, when everybody thinks about the refinery, you think of only the refinery, and we know that there is probably also some pipeline involved, and that is going to cross many, many municipal border lines, and I don't think you want to sit there and leave that to local option. I think you might be in for some problems. So, there are some areas in this bill where state involvement is very important, and I would think you would also agree.

MR. DAWKINS: Yes, we also agree.

ASSEMBLYMAN HOLLENBECK: So in reviewing the bill, you better look at some of the things that industry is also looking at, which are also some of the good things in this bill that are very valuable things to the industry.

ASSEMBLYMAN FROUDE: Mr. Dawkins, upon reflection on your part and your associates, please feel free to drop us a line and indicate any additions you want to have us take into consideration.

MR. DAWKINS: Very good, Mr. Chairman. We would certainly appreciate the opportunity. Thank you.

ASSEMBLYMAN FROUDE: Thank you. Bill Saller, Public Service Electric and Gas. (No response.) Mr. Daryl Caputo, Conservation Foundation. (No response.) Ed Lloyd, Public Interest Research Group.

E D L L O Y D: Good afternoon, my name is Ed Lloyd, and I am the staff attorney for the New Jersey Public Interest Research Group, and a member of the Advisory Council in the Department of Energy. I would like to thank both Committees for the opportunity to be here today to present our comments on the energy siting bill.

ASSEMBLYMAN FROUDE: Would you clarify that? You are not wearing two hats right now, are you?

MR.LLOYD: I am staff attorney for the New Jersey Public Interest Research Group, and I am also a member of the Advisory Committee on Energy Conservation which was created by this act last year. I am representing environmentalists on that Committee. My hat is as staff attorney of the New Jersey Public Interest Research Group, and my membership on the Committee is for identification purposes only.

PIRG has four major criticisms of this legislation. They are as follows: First, the Department of Energy already has the authority under existing law to develop and to implement a state energy facilities plan, so this bill is not needed to accomplish that goal.

Second, the standards in this bill upon which the Department is to base a decision to issue a certificate of site and facility are nebulous at best, and for all practical purposes non-existent.

Third, the bill provides for the issuance of a certificate of site facility in some instances without a hearing at all and in other instances within inadequate hearing proceedings.

Fourth, the bill preempts local zoning across the board for all types of facilities absent any showing of a need to do so.

Unless these serious deficiencies are corrected, we cannot support the bill. I would like to address each of these issues separately, if I may. The heart of the energy bill that we are reviewing today is the requirement that the department prepare and publish a state energy facilities plan. It is PIRG's position that the Department in effect already has the ability through the preparation of its energy master plan to accomplish this goal. The Department under Section 12w of the Department of Energy Act enacted last year is empowered to "adopt a master plan on the production, distribution, consumption and conservation of energy in this state." Under Section 13a of this Act, the Division of Conservation and Energy Planning is empowered and directed to intervene before state agencies, including the Board of Public Utilities, to insure proper consideration of the state energy master plan.

Under Section 13b of the Energy Act, all decisions of State Government with respect to energy shall to the maximum extent practicable and feasible conform with that energy master plan. And the Department is further directed to prepare guidelines for other state instrumentalities to aid them in conforming with the master plan.

And, finally, under Section 13c of the act passed last year, the Department is empowered to exercise co-extensive siting authority over all energy facilities with other state agencies.

It seems apparent that this combined authority to adopt an energy master plan requires conformity by other state agencies and to exercise co-extensive siting responsibility more than encompasses the power to plan for facility siting in this state without the enacting of this bill.

The second point I would like to make on the bill is that the criteria for siting a facility are nebulous at best. The bill calls for a protection of environmental values and for a finding that the facility will reasonably be necessary to meet the energy needs of this state, and allows the Commissioner to deny such a certificate if the energy industry fails to show that the facility would conform to the intentions of the act. I want to reiterate something that has

been said by other witnesses this morning. I have no great concern with the current personnel in the Department of Energy in administrating these criteria and we certainly have faith in Commissioner Jacobson when he says that he will protect environmental values and local controls. The concern, however, is that we are enacting law here that does not build in those kinds of protections for the time when Joel Jacobson is not Commissioner. I would also point with approval to the siting plan that the Department has issued, and we testified on that last week basically supporting it, and would recommend to the Legislature that they adopt the three findings which the Commissioner says he will use in approaching energy facility decisions, that is, one, first to determine whether in fact there is a demand for the energy that the facility will produce and whether that facility is needed to produce that energy; secondly, whether the appropriate technology is being considered in that facility to meet that need; and, third, whether the location for that facility is proper. We believe that those three findings should be required of the Commissioner before he is able to issue a certificate for a sited facility.

The third point I want to make is about the hearing procedures. It is of great concern to us that there are instances envisioned in the bill where a facility could be granted a site permit without a hearing at all. That case would occur if the facility is not in the State Facilities Plan, but an application is given to the Department for a facility. Provision is made in Sections 25 and 33 for a certificate to be issued to that facility without a hearing at all. We think that is a severe deficiency in the bill and should be corrected. We would also agree with the Public Advocate comments on the need for adjudicatory and fact-finding proceedings for facility site permits.

Finally, we are concerned with the preemption of local zoning, and I would like to make a few comments on the differentiation between cases where local zoning might necessarily be preempted and where it might not. First, I would like to address the situation that Commissioner Jacobson brought up this morning. In the case of a gas pipeline coming in off the coast, the Federal Government currently now could preempt the State to site that gas pipeline in any municipality in this State. So, we do not feel that this bill is necessary to site a gas pipeline. There is already Federal preemption in that area. If an oil pipeline were to be brought in, the Federal Government has no current authority to preempt the State and we believe there may be reason to preempt local authorities. If the Legislature so desired, we believe the local authority should have the first say, but give the State an override with certain given criteria where it is deemed necessary.

We would also concur with the Public Advocate that there are large energy facilities, primarily electric generation facilities, which have statewide impact, and should, again, give the State Department the authority to overrule, but not necessarily without local input. That is, an override provision, but not absolute control by the State.

I just want to clarify one more point on CAFRA. CAFRA does not currently take away the zoning authority of local municipalities. Under CAFRA the State may deny a permit that a local authority would approve, but it may not force a facility upon a local authority which does not approve of that facility.

Finally, one minor point, there is a provision in the bill for an override. The Department of Energy may override a decision of another State Agency, at which time

that state agency may appeal to the review board. We would recommend that not only may that state agency appeal to the review board, but that the applicant or any intervenor in that case may also ask for an appeal before the review board. That concludes my remarks. I would be happy to answer any questions.

ASSEMBLYMAN FROUDE: I would, first of all, ask you, have you submitted a copy of that statement?

MR. LLOYD: I have not. I will be glad to.

ASSEMBLYMAN FROUDE: I would like clarification of your statement that you want an override provision but with no absolute control. I can't wrestle with that very well.

MR. LLOYD: Okay, let me clarify the point. What I mean is that ultimate control in certain instances for certain facilities would be left in DOE, but the initial review would be left to the municipality. Say, for instance, the DOE felt it was in the interest of the State and the Nation that a given facility or perhaps a pipeline be located in a given municipality. They could override the municipality. So, final say would be with the Department of Energy.

ASSEMBLYMAN STEWART: I would just like to say that if you really believe that the DEP cannot site under CAFRA over the objections of the Lower Alloway Creek, or any other municipality, I suggest that you look at the Hope Creek versus the Lower Alloway Creek issue. There you will find that the opposite is true. There are cases where the CAFRA regulations have superseded the role of the local municipality, and that is a classic example of it there.

MR. LLOYD: Well, I am thoroughly familiar with Hope Creek because we intervened, and in fact appealed to the Appellate Division in the Hope Creek case. My recollection of that is that at least on the State level, the township was not present at the hearing, or in opposition to the permit, I know they have been to the NRC on a number of issues, and I think it is much more difficult dealing with the NRC than it is dealing with the State under CAFRA.

ASSEMBLYMAN OLSZOWY: You stated in your remarks that the Federal Government preempts us as far as running a pipeline into the State of New Jersey.

MR. LLOYD: Yes, has pipeline.

ASSEMBLYMAN OLSZOWY: Right across the State?

MR. LLOYD: Yes.

ASSEMBLYMAN OLSZOWY: Over municipalities?

MR. LLOYD: Yes.

MR. CATANIA: Can and does.

ASSEMBLYMAN FROUDE: Can you help us with the idea of setting up criteria for those energy industries that have statewide impact versus those that do not?

MR. LLOYD: Right now? The pipelines, I think, present the most obvious case. I think the electric generating facilities are also in that category. There may be others. Those are the ones that come most clearly to mind. I think I agree with the Public Advocate, the tank fronts probably don't.

ASSEMBLYMAN FROUDE: How about a gas filtration plant associated with offshore development?

MR. LLOYD: I am not prepared right now to say so. I don't know. I would be willing to explore that with the Committee. I am not sure---

ASSEMBLYMAN FROUDE: We are citing examples, not listing criteria. I don't know why that is a difficult idea, but it has become difficult apparently, or it is difficult and nobody seems to be answering it.

MR. LLOYD: The gas plant?

ASSEMBLYMAN FROUDE: No, the criteria you need to distinguish the different energy facilities. Those that have statewide impact versus those that don't. We can cite a few examples that are obviously in one ballpark or the other, but how we do that, apparently, is not being addressed.

MR. LLOYD: It is a difficult question.

ASSEMBLYMAN STEWART: I am going to ask you the same question I have asked others in the industry. Do you find some flaw in the theory of siting for the common good of the State, when it becomes obvious that the siting is all occurring in one place? Do you find some flaw in that philosophy when the real possibility exists that the siting is going to be in only one or two out of our 562 municipalities, or do you think that is still in the best interest of the State of New Jersey?

MR. LLOYD: I think that arguments can be made that that is in the best interest of the State, and I think that this Legislature and the State should be careful in its planning to make sure that input is preserved from those communities that are likely to absorb the impact of those facilities.

I don't think an absolute veto power for every facility is a recommended course of action. On the other hand, I think on some facilities the local should have a veto power.

ASSEMBLYMAN FROUDE: I would like to ask one more question, and then if anybody else has any, feel free. How do you accept this concept of regulated versus non-regulated in the context of this bill? Do you view all energy industries the same way or are you willing to accept the distinction regulated and non-regulated?

MR. LLOYD: I think there is clearly a distinction. I think I would lean toward including all the industries. I think there are problems that need to be addressed with respect to the regional and national scope of some of the industries. I think it is also important to recognize, though, if facilities are going to be built in this State, the people of this State are going to absorb the impacts of those facilities, both economic and environmental, and the State should have some say in the location and siting of those facilities.

ASSEMBLYMAN FROUDE: Should the State have any say in how much of an extension of facilities a particular industry needs? Why should we as a State determine that one of these corporations, Exxon, Mobil, Shell, or whatnot, is overstepping the bounds of reasonableness by applying for a 50% increase in refining facilities.

MR. LLOYD: I am not sure that the test should be what percentage of what facility is being expanded, but perhaps the environmental and economic impact of that facility on this State, and I think the State has a real interest in those impacts.

ASSEMBLYMAN FROUDE: All right, I will grant you that. Now, we are talking about the master plan, and you have heard the arguments, rather than take my Committee's time on that, that is an issue, I think, that we are going to have to wrestle with. I think some of us are interested in it, anyway.

MR. LLOYD: Let me wrestle with it as well, and then I will get back to you.

ASSEMBLYMAN STEWART: I have one last question for you and for the several other environmental groups that are going to be coming up to testify, and maybe they can address themselves to this question too, when they come up, and that question is, what feelings do you have about the usurping of the CAFRA regulations by this particular bill? We have a case here where not only are we taking over local zoning, but also usurping some of the powers of the State itself to regulate land use in the CAFRA zone; do you have an opinion on that?

MR. LLOYD: We have met with the Committee staff on this bill previously and addressed that question specifically. On the whole, we are satisfied with the structure as it has been worked out, except, as I mentioned, that override provision. In the instance where the Commissioner of the Department of Energy would override a CAFRA decision of the DEP, we believe that not only should the Commissioner of DEP have the authority to ask for that review board, but also intervenors in that case, or the applicant, as the case may be. Given that change, I believe that the relationship between DOE and DEP is acceptable in the bill.

ASSEMBLYMAN FROUDE: Thank you very much. Is the representative from Common Cause in the room?

SHARON POPKIN: My name is Sharon Popkin, and I represent New Jersey Common Cause. My remarks today will be directed at procedures rather than the substance of S-1179. Although Common Cause is vitally interested in this bill, we do not have a position on it, because we have not had enough time to develop one. I would like to commend you for holding this hearing today and for your intent as stated by Chairman Froude to hold additional hearings.

We are here today to ask for more time. It is virtually impossible to over-estimate the importance of S-1179. The fact that it passed the Senate without a word of debate is incomprehensible. We feel there should be full-scale, statewide discussions of the far reaching implications of this bill.

It is all very well to say that everyone should understand it because it has been around awhile. In fact, legislative action began only a month ago, when S-1179 was introduced on May 18th. Those who came to the Committee meeting four days later were given 47 pages of amendments. The amended bill was not even available when the Senate voted. In fact, it was not available until last Friday.

S-1179 may or may not be a good bill, but as witnessed here today, it certainly is political dynamite. We would like to see hearings scheduled throughout the State and final action delayed until the Legislature returns in the Fall.

Thank you.

ASSEMBLYMAN FROUDE: Thank you very much. Any questions? If not, we will have Thomas Head.

THOMAS HEAD: Good afternoon, gentlemen, I live in Princeton Junction. Although I am associated with several citizen groups that are concerned with the energy problem, the views which I will express today have not been cleared with any of them, so I am only representing myself.

As I understand Senate Bill 1179, it will make the Commissioner of the DOE reportable to a three-man commission, all of whom will be appointed. The Commissioner of the DOE will have the power to license all proposed energy related facilities in the State and to determine their sites and types. Once chosen, the site can be taken by condemnation proceedings. It renders the DOE's

decisions immuned from legal challenge, including all local governments, interested citizen groups, the New Jersey Public Advocate, and the New Jersey Department of Environmental Protection - except those challenges which can be mounted within 30 days after the announcement of the decision by the DOE. It permits the DOE to schedule public hearings on any issue anywhere and any time it chooses.

I don't believe the term "energy-related facilities" is defined in the bill, so to be sure we all know what they are, I would like to define them as follows: They are oil pipelines, oil refineries, oil tank farms, natural gas pipelines, liquid natural gas storage tanks resembling the one that blew up in 1972 in Staten Island, nuclear power stations, which includes the reactor, the steam generator, storage for low level radioactive waste, and storage for the intensely radioactive spent fuel rods. It includes generating plants using coal, oil or natural gas, and it includes all electric transmission lines.

At the present time, construction of any of those facilities except possibly oil, gas, and coal generating plants arouse some degree of public opposition and sometimes demonstrations. Also, at the present time eminent domain acquisition applies only to electric transmission lines. Therefore, it would appear that the purpose of Senate Bill 1179 is to create a way to legally ignore public opposition when it stands in the way of corporation profits, and to prevent property owners from sharing any of the profit.

There are several reasons why this bill is very undesirable: The working history of three-man commissions does not inspire faith in this new one; hence, I think we can expect energy decisions to be made by the Commissioner of the DOE.

The bill does not establish a procedure for determining what sites and what kinds of energy related facilities are appropriate or even needed. The implications being that the Commissioner may devise his own criteria which in turn means the state's needs would change with each new commissioner.

Too much decision making power is being given to an appointed bureaucrat who will in effect be accountable to the Governor, and the decisions they are being empowered to make are choices for the people that should be made by the people, each on their own merits, in a state referendum as they come up.

There are no provisions for measuring the Commissioner's performance or of judging whether his actions benefit New Jersey's residents, or New Jersey's privately owned corporations.

Extending eminent domain acquisition to energy related facilities is frightening and threatening to contemplate. To condemn private property for a highway or transmission line, both of which will be used forever, is a quite different concept from condemning private property and turning it over to a privately owned corporation that will use it exclusively for profit making purposes for, at most, a few decades. Presumably, under this bill, the DOE could condemn private property on which the State wished to build offices for the Department of Energy, or perhaps even a new Governor's mansion. What I am trying to say is, if eminent domain is extended to energy related facilities, to what other areas will the Legislature extend it next week or next year?

Newspaper accounts quoted the present Commissioner as having said that Senate Bill 1179 "has been spurred by the current exploration for oil off the New Jersey coast." If true, I believe that the General Assembly should consider

the fact that the needs for oil facilities are quite different from the needs for nuclear power stations, and both have little to do with other types of facilities. Since the powers this bill grants apply across-the-board to all types of facilities, the bill should be replaced by one that treats each issue separately.

The summary section of the printed version of Senate Bill 1179 incorrectly states that the bill provides for the Commissioner to make decisions only in close communication with local political figures, conjuring up the image of Mr. Khrushchev's famous troika, when, in fact, the body of the bill states exactly the opposite.

An approach that would be more in the interests of New Jersey's residents and less in the interest of the privately-owned corporations favored by Senate Bill 1179 would include at least the following:

The election of all State officials involved in the decision making process, regardless of the ultimate bureaucratic organization, for a term not to exceed four years, running concurrently with the Governor's term.

The election of all state officials involved in approving utility company rate increases preferably for two year terms.

Local governing bodies must retain the right to veto construction of any energy facility proposed in their district.

Siting and types of energy facilities must be made in conjunction with the Public Advocate and the Department of Environmental Protection, as well as local governing bodies.

The DOE must be required to announce public hearings on an issue at least 90 days before they take place and the public hearings on one issue must not be scheduled on the same day or in a different city from the hearings on other issues, which would prevent an interested person from getting to both of them on the same day.

After agreeing that no energy related facility will be located in the Pine Barrens, oil issues should be separated from nuclear issues.

Under oil and gas, I would like to think that the following things could be appropriate:

Any oil brought to shore in New Jersey should be refined in existing refineries in Elizabeth.

No oil brought to shore in New Jersey should be transported through the State to another state, and no pipelines will be constructed for that purpose. Of course, that has been preempted. I did not know at the time that the Federal Government could do it whether they wanted it or not.

The private property needed for facilities to handle offshore oil and gas should be rented from the owners for the period of facility usage - after which the facility operator would remove the facility and return the property to the owners or their legal heirs.

And, as far as nuclear power stations are concerned, I would think that construction of nuclear power stations should be halted until permanent waste storage facilities have been opened by the Federal Government. Operators of nuclear power stations should be held responsible for personal and property damage resulting from an accident occurring while low or high level radioactive material is being transported to or from the station. Operators of the nuclear power station should be required to publicize operating mishaps, so that the public will become

more informed about the real nature. State and local police must be trained to handle transportation accidents involving radioactive materials. The decision to locate nuclear power stations should be determined at the polls by the residents within a 75 mile radius of the proposed site, even when it involves more than one state. The Commissioner of the DOE should not be involved with that decision at all. Taxes paid by the operators of a nuclear plant should be distributed to the residents whose ballot established its construction. The decision to expand nuclear waste facilities should be subject to a state referendum also.

That is all I have to say.

ASSEMBLYMAN FROUDE: Are you making that prepared statement available to our staff?

MR. HEAD: I have several copies, yes. I also have newspaper reports which I have quoted, if you would like those.

ASSEMBLYMAN FROUDE: Thank you very much. Are there any questions?

ASSEMBLYMAN OLSZOWY: I think there may be one correction I would like to make in your statement about all oil coming into New Jersey being refined in Elizabeth. Your statement should be corrected to include all facilities.

MR. HEAD: That is true, but it was my understanding when I wrote that that the only facilities that existed were in Elizabeth. I phrased it that way so as to exclude the possibility of allowing any new ones on the coast.

ASSEMBLYMAN OLSZOWY: We have just as many in south Jersey as we have up here.

MR. HEAD: All right, then, in that case, my statement is incorrect. I did not know that. I am very sorry.

ASSEMBLYMAN FROUDE: The point is that you don't want any more of them.

MR. HEAD: Right. The point is, according to the Commissioner of the DOE, the intention is to reduce dependence upon foreign oil. Well, if that is the case, I should think that that would not take place unless the foreign oil which is processed in Elizabeth is eliminated, to make way for this which is coming off the coast. I am quoting him. I didn't make that up.

ASSEMBLYMAN FROUDE: Well, now, sir, we have heard that at least one citizen in the State of New Jersey is opposed to it because it plays into the hands of private enterprise, and we have heard private enterprise say that the thing that is wrong with the bill is that it is working against our best interest. So, someone is not telling us how it is.

MR. HEAD: Well, the presidents of PSE&G and Jersey Central say that the PUC is very much opposed to them, and yet I have never seen an instance in which that took place. I read the reports in the newspapers, and anything they want they get, so I can't say that they are ever opposed by the PUC, and that is principally the reason why I would like these people elected.

ASSEMBLYMAN FROUDE: I asked that question to hear your comment, not to be smart. Thank you, Mr. Head.

Elinor Coleman, Utility Users for Reasonable Rates.

E L I N O R C O L E M A N: Thank you. I would like to speak, but also someone would like to speak for the utility users. Would that be okay?

ASSEMBLYMAN FROUDE: Yes, sure.

MS. COLEMAN: My previous experience at these public hearings is no

different from my experience today, since the public is always heard last. In order to keep from repeating a number of things that have already been said, I just jotted a few notes down as the hearing progressed. I would, however, like the opportunity of submitting something in writing after this is all over, and also, if there are to be other hearings, I would appreciate knowing about it, and I don't know whether you would prefer hearing my ideas before the hearing, or at the hearing, or what, so if some statement could be made to the news media so that we would be aware of these future hearings, it would be very helpful.

ASSEMBLYMAN FROUDE: All public hearings are advertised according to law. All Committee meetings are advertised and are open to the public, so that any complaints on the part of the public with regard to not knowing what is going to fall on ears that are somewhat hard to hear. And I say that respectfully.

MS. COLEMAN: I know. But in all cases, the information is not carried by all newspapers. I think that is their discretion as to how much of this information is carried. We have found in many cases that it is difficult at times.

ASSEMBLYMAN FROUDE: To answer your question, you feel perfectly free, please, to send us any of your comments in writing beforehand, and come to the next session and add as much input as you can possibly make.

MS. COLEMAN: Thank you very much. When we discuss energy siting facilities, we are talking about a subject that is indeed broad in scope, with nuclear facilities, naturally, having the largest impact both environmentally and economically. This bill would make local and county planning meaningless with the power then going to the hands of officials that are not elected. Broad powers in the scope of this bill are not really very clearly defined.

Many aspects of the nuclear industry itself are questionable, and even the NRC is having problems deciding many issues. Who would be the experts on the State level familiar enough with all of these problems to be able to single-handedly site one?

Any changes to be made in the present system should certainly not be in favor of a more centralized system. Hearings for the State Energy Plan have not even been completed. I know this bill does not only pertain to nuclear facilities, but I cannot understand why siting for nuclear facilities is even necessary in New Jersey.

Before getting into siting any more of these nuclear facilities, I feel that it is more appropriate to deal with the existing problems we have not seemed to face up to. I site waste problems, the de-commissioning problem. We have not even solved our Civil Defense problem or evacuation procedure, as we might refer to it, and also there is always the big problem of the cost, and who eventually will pay for all of these things? I don't feel we need a part two, as Senator Dodd has suggested. We need to review what has already been done up to this date before extending any more authority.

We in Salem County are convinced, floating nuclear power plants will most likely never appear off the coast of Atlantic City, but we are not so sure that we might not find them out in the Delaware River some day, close to us. When we talk about siting more facilities, we have not taken into consideration conservation measures now being attempted; nor are we stressing meaningful conservation measures, such as enacting the same kind of legislation we did for air conditioners, and applying it to all appliances. Why can't we have appliances that are manufactured

to be energy efficient?

One-stop shopping has not always proven to be the best way to shop. Believe me, I know. Even when we talk about demonstrating need for a facility, we should think about whether we mean New Jersey's needs or the needs of the grid, or the national needs, or whatever the needs happen to be. I think this should be more clearly defined. I don't feel buffer zones are clearly understood, even now in terms of what may or may not be located, especially near a nuclear facility.

When we refer to a review board in this bill, I think the public has no assurance that the third person on the review board would necessarily represent the wishes of the rate payer or the public.

Another point I would like to make is that when we refer to private industry, for the most part we are talking about regulated monopolies which must be operated in the public interest, and these utility companies have been referred to in that way today.

I feel the public needs to have a more dominant role in the planning of its own future. I do not favor amending this bill. I recommend that it be abandoned. Thank you. Do you have any questions?

ASSEMBLYMAN FROUDE: Out of respect for your waiting and coming, if you don't recommend anything but the abandoning of this bill, then you are recommending the maintenance of the status quo.

MS. COLEMAN: I really don't see how this bill can help us in any way. I think we need to thoroughly review what has been done, and I cited many problems, especially with the nuclear industry. How can we site more with all of these problems right now? This bill does not exclude nuclear siting, does it?

ASSEMBLYMAN FROUDE: No, indeed, it would include it.

MS. COLEMAN: Could we make it exclude nuclear siting? I can't see the need for more demand here in New Jersey.

ASSEMBLYMAN FROUDE: You can't? If that need was identified for you, how would you proceed? Do you come here with a primary bias against, one, nuclear energy, and, two, nuclear energy in your backyard? Is that basically what you are saying?

MS. COLEMAN: We have four in our backyard, with the potential of maybe seeing a couple more floating power plants off into the river. I object to nuclear power entirely since I have found out things that I did not know before. And I think before we get on with any more siting, we should certainly consider the solution of some of the existing problems.

ASSEMBLYMAN STEWART: By the way, Ms. Coleman, this same Committee will be the Committee that is discussing one of the problems you brought up, and that is the storage of spent fuel, and I am sure that probably will tie into what we are discussing here today to some extent.

ASSEMBLYMAN FROUDE: It sounds like we ought to hold at least one of those hearings down in that area.

MS. COLEMAN: Thank you.

A L B E R T G A N T: My name is Albert Gant. I reside at 15 West Drive, Pennsville, New Jersey. I am a member of the Executive Order of the UURR. I am here today because Mike Di Donardo was unable to attend. He is the President. The Utility Users for a Reasonable Rate oppose Senate Bill 1179. Our initial

discussions on this bill lead us to believe the powers in this bill would be detrimental to the interest of the general public. In this bill the authority for decisions important to the future of all of us would be in the hands of the people not even elected to office. I am here to observe and report back to the UURR. Short notice has not given us opportunity for proper review. After this meeting, we would like the privilege of submitting additional information.

I am sure that after we report back to them, they will submit something to you in writing. You will have to excuse me. I have a bad eye. I had Bell's palsy, and it is watery, and I kind of got off the track a little bit, so you will have to excuse me.

ASSEMBLYMAN FROUDE: No problem at all. Make sure before you leave you get a copy of S-1179, the official copy reprint, so that your organization can have the latest one. The record will be kept open. There will be additional public hearings.

MR. GANT: Okay, thank you. Is there any set date?

ASSEMBLYMAN FROUDE: We are going to discuss that among ourselves eventually, but I give you my assurance that you are not going to read in the paper that we are going to wrap this up in a week or so. We are going to undoubtedly have another public hearing. There will be time for all of these people to report.

MR. GANT: If they review this bill and send in a reply within a month, will that be adequate?

ASSEMBLYMAN FROUDE: All right, make sure we get it by the end of the month.

MR. GANT: All right, thank you kindly.

ASSEMBLYMAN FROUDE: Thank you. I appreciate your waiting. Ms. Vivian Li, Environmentalist, City of Newark.

MS. LI: Mr. Havrisko seemed to be waiting longer than I have, and I will wait for him to testify first.

ASSEMBLYMAN FROUDE: Mike Havrisko. I am sorry. I put a check mark next to your name on the list. I thought I had already called you. Is Mr. Caputo here? (No response.) Bill Saller is now here. We will get to you eventually.

M I C H A E L H A V R I S K O: Thank you. My name is Michael Havrisko. I am the legislative agent for the League for Conservation Legislation. S-1179 states that energy facilities be constructed and placed in operation on a timely basis. I question whether this has not been the policy to date. The League has strong reservations as to whether the preservation of environmental values and wise comprehensive use of the State's air, land, and water resources will be adequately considered by the Department of Energy.

The Department of Energy does not have the capability to do a full environmental review of energy facilities. Their function should be strictly limited to an energy evaluation, not an environmental one. The bill's definition of energy facility is too broad. The Department of Energy is given power to control any and all energy related facilities. The definition for energy industry is also too broad. The possibility exists that the Department of Energy will be given too much power. As an example, the Department of Energy could control trucking firms which distribute fuel. Should the DOE be given the authority to site trucking firm locations without consultation from the local instrumentalities?

I don't believe so. In Section 13a, page 11, the Division of Energy Planning and Conservation is empowered and directed to intervene in any proceedings by other state instrumentalities, when, in the discretion of the Commissioner, such intervention is necessary to insure proper consideration of the State Energy Master Plan, and the State Energy Facility Plan. Why, if such concern is based on compliance with the State Energy Facility Plan, does Section 25a, page 29, allow the Department of Energy to consider sites not in this plan?

On page 19, Section 13, the DOE is given sole authority with respect to the siting of any energy facility in any part of New Jersey. The DOE should not be given this power. Especially disturbing is the wording which states that no county, municipality or any agency or instrumentality thereof may require any approval, consent, and I emphasize consent, permit, certificate, or other condition for the construction or location of any energy facility. The above section is contradictory to 19f, page 24, which states that the Department shall consider the provisions of all relevant county and municipal master plans in the preparation of such site plan.

New section 18c, page 23, states the Department of Environmental Protection should recommend guidelines to the Department of Energy. The League feels that the Department of Energy should be required to abide by such recommendations. In Section 24, page 27, the DOE will be acting as a real estate broker for private industry. The question is, how will this policy effect green acre lands?

In Section 29, page 32, energy industries will be allowed to operate without regard to any local zoning rule, regulation, law or ordinance. Are not industries and businesses throughout the State required to operate in compliance with local rules and regulations? Why should energy industries be given carte blanche operation rights?

I also have a few other comments that came up from sitting through the hearing today. I am a bit concerned that there are no representatives from the Department of Environmental Protection here today. I haven't seen anyone---

ASSEMBLYMAN FROUDE: They are here.

MR. HAVRISKO: I was just wondering why the Department has not made comments thus far on the bill. I was also wondering if this Committee would not be interested in comments from the Department of Environmental Protection.

ASSEMBLYMAN FROUDE: And the Department of Labor and Industry and the Department of Community Affairs. We will get them.

MR. HAVRISKO: My other concern was with the Energy Facility Review Board. My concern is with the third person. The third person appointment needs some definite clarification. The question is, will this be a political appointment by the Governor, or is it going to be based on technical evaluation and whether this person will indeed be capable of making some kind of evaluation.

The third is on the CAFRA regulations. I believe that the timetables for that area of the State seem to be unrealistic at this point, especially asking them to map specific sites where energy facilities can be located, and especially since this hasn't been done with their newest segment, the bay and ocean shore segment for any such mapping, and it doesn't exist today. They haven't been able to do it since the CAFRA program has been in existence. And now this legislation is asking for that within 90 days. Thank you.

ASSEMBLYMAN FROUDE: Are there any questions of Mike?

ASSEMBLYMAN HOLLENBECK: You went through your statement very, very fast. However, there was an area that you did not comment upon, and I wish that you would. Will you give us further comment on Section 24? I don't expect it now, but you can give it to us in the future.

ASSEMBLYMAN STEWART: Also, some of the things you commented on have been taken out of the bill. You are not reading from the OCR.

MR. HAVRISKO: Yes, I have it.

ASSEMBLYMAN STEWART: According to our best judgement you are reading them wrong.

MR. HAVRISKO: I think that is the whole problem with the bill, and I say this respectfully, it is so contradictory and ambiguous in places that ---

ASSEMBLYMAN STEWART: You gave us the example of trucking firms. What do you hang your hat on in the bill with regard to that?

MR. HAVRISKO: Well, just in the definition, you are speaking of distribution ---  
Page 4, transportation, transmission, and---

The definition of the energy industry is, distribution, sale or storage of energy.

MR. CATANIA: That is not transportation. Transmission in that sense, I think, means a pipeline or something like that.

MR. HAVRISKO: That is my point. There are a lot of "I thinks" here, and I think it should be more clearly defined, especially when you are preempting local zoning ordinances that a trucking firm is not part of that control of DOE and located in someone's backyard.

ASSEMBLYMAN FROUDE: I think your point is well taken. We ought to take a good look at that area in terms of retail and wholesale, as a matter of fact.

MR. HAVRISKO: I believe Section 24 did address it, and that is on page 27, if that is the new section of 24.

ASSEMBLYMAN FROUDE: Michael, when we get to the point of really looking at those sections line by line, you will be with us, right?

MR. HAVRISKO: Sure.

ASSEMBLYMAN FROUDE: That is not by way of being smart. You are there at those public meetings anyway, and make sure you are there at those future ones when we get to those line items. We appreciate your help. Thank you for your statement, Mike.

Ms. Li.

V I V I E N L I: Good afternoon, my name is Vivien Li, and I am here testifying on behalf of the City of Newark. I am sorry the Mayor could not be here today. He is out of town. I want to thank you for this opportunity to testify. I am going to summarize the prepared statement, since you have been here for a long time. I would like this statement to be reproduced as a part of the transcript.

(The following is the written statement submitted by Vivien Li.)

Under the proposed legislation S-1179, the responsibility for siting of all energy facilities would be consolidated within the Department of Energy. The

justification and scope of such responsibility is quite clearly delineated under Section 2: "That such site selection, as well as the planning, construction, and placing in operation of necessary energy facilities, and the full environmental review of all such facilities be expedited through the Department of Energy."

Within the recently proposed Energy Master Plan developed by the Department of Energy, there is a strong orientation towards location of energy facilities in urban areas. Citing the proximity to demand centers, the economy in transportation, and the greater energy efficiency, the master plan favors the siting of energy facilities and offshore support facilities in densely populated areas. The sole exception to this policy is in the siting of nuclear power plants, which are favored in rural areas.

Given the broad scope of the proposed legislation and the general thrust of the State Energy Master Plan, the City of Newark wishes to go on record in opposition to the proposed legislation.

It is our belief that the potential economic and environmental implications of the legislation have not been adequately reviewed at this time, and that until such analysis is completed, no action be taken by this Committee.

As proposed, the legislation would usurp local zoning and planning responsibilities, with responsibility resting with the Department of Energy. The City is concerned that, given the priority of the urban siting, state and national energy facility needs may conflict with urban redevelopment projects.

The City's Meadowlands is currently viewed by many as prime industrial development land; at the same time, the State would probably view the Meadowlands as ideal for energy facilities, due to its proximity to the waterfront and transportation network and the availability of open space buffer zones. A similar conflict has already occurred with regards to the state's siting of a secondary waste-water facility; in the process, the City has lost prime redevelopment parcels and labor-intensive industries.

Specifically, the City is opposed to the following sections of the legislation: Section 2, page 3 - the definition for energy facility is too broad. As proposed, facilities involved in the "production, conversion, processing, transmission, and storage of energy in any form" would be affected.

It is our belief that the scope of this legislation should be restricted only to major energy facilities, including electric generating facilities, nuclear power plants, and liquefied natural gas terminals.

It is unclear why processing, storage, and transmission facilities should be included in the scope of this legislation. The siting of facilities such as tank farms, refineries, or transmission line by the Department of Energy would not, in any way, assure the state of a steady supply of energy. To the contrary, the reality is that a good portion of the energy currently processed and stored in the State of New Jersey is shipped to many other parts of the country.

Similarly, the broad interpretation with regards to the production of energy would mean that solid waste facilities, such as resource recovery plants, would also fall within the purview of this legislation. As the City stated in its testimony earlier this week on the State Energy Master Plan, existing legislation provides for the Department of Environmental Protection to be the lead agency in coordinating the state's resource recovery activities.

Chapter 326 of the State's Public Laws of 1975 states that: "The

legislature, therefore, declares that it is the policy of this State to establish a meaningful and responsible role for the State in the solution of solid waste problems by granting the Department of Environmental Protection and Solid Waste Advisory Council the power, not only to regulate and supervise all solid waste collection and disposal facilities and operations and to register all persons engaged in the collection or disposal of solid waste in this State, but also to develop through a statewide solid waste management plan, objectives, criteria and procedures to assure the orderly preparation and evaluation of the solid waste management plans developed by every solid waste management district . . . to utilize the funds received by the department from registration fees and such other funds as may be from time to time appropriated to it to support and undertake experimental projects and programs of research and development to determine the most efficient, sanitary and economical ways of collecting disposing, limiting and utilizing solid waste . . . .

It is not clear whether the Legislature actually intends to amend Chapter 326, Solid Waste Management and Resource Recovery Act, as the existing legislation is not specifically mentioned within the proposed bill. In its present form, however, the legislation, if adopted, would greatly change the existing solid waste legislation, transferring the responsibilities from the Department of Environmental Protection to the Department of Energy. Accordingly, we would ask greater clarification of the Committee's intent with regard to Chapter 326.

Section 13, Page 19 - the City of Newark is adamantly opposed to this entire provision. If implemented, this section would usurp all local responsibility for the review and siting of energy facilities.

Local municipalities could not exercise zoning responsibilities, construction or environmental requirements. It is our belief that such powers would give the Department of Energy great latitude, and would, at the same time, result in little local input or control.

As indicated above, the proposed legislation would have particularly serious economic implications for the City of Newark. Those lands which would probably be favored by the Department of Energy, such as areas located along the waterfront or adjacent to transportation systems, have also been deemed prime redevelopment areas. Given the broad definition of energy facilities, moreover, the possible siting conflicts between the state and city could be quite extensive.

Related to this, too, is the authority given to the Department of Energy with regards to environmental review. Under the Clean Air Act Amendments of 1977, no facility emitting 100 tons of controlled hydrocarbons can be sited in an urbanized area of 200,000 or more unless various conditions and "emission trade-offs" are met. The fundamental question thus becomes whether the City of Newark should use up the assimilative capacity of the atmosphere for an energy facility or for a more labor-intensive form of development.

As an example, suppose it was determined that given existing air quality levels in Newark, only two additional facilities emitting 100 tons of hydrocarbons could be permitted.

The concern thus becomes whether the two facilities should be energy facilities (as defined in the legislation) or whether two labor-intensive industries should be located here instead. The City questions whether the Department of Energy can objectively weigh these economic concerns in the best interest of any municipalities.

Section 21, Page 25 - a twenty-day notification period is provided prior to the public hearings on specific site designations. It is our belief that this is an inadequate notification period and would not provide interested parties sufficient time to review and prepare testimony. We would ask for a minimum 90-day notification period.

Section 24, Page 27 - this section would permit the Department of Energy to acquire lands by purchase or eminent domain and to convey such lands to energy industries. The City is opposed to the conveyance of such power to the Department of Energy, for the powers conveyed here go beyond those of any other state agency. It is unprecedented that lands acquired by eminent domain would then be passed on to private concerns such as energy industries.

As indicated above, such powers would jeopardize redevelopment projects within Newark, and could, moreover, discourage away prospective developers from expanding or relocating within the City. Given the strong orientation towards location of energy facilities within urban areas, the proposed authority given here would adversely affect redevelopment plans for the City. The broad definition given to energy facilities compounds our concern.

In light of the concerns outlined above, the City of Newark would ask that this bill be re-written prior to any action by this Committee. We would strongly urge that this bill not be allowed to move onto the floor at this time. Thank you. You have indicated that you intend to hold more public hearings, and you are going to give more thought to this, and we thank you for that.

ASSEMBLYMAN FROUDE: Thank you for your comments. Can you address that issue of eminent domain as you see it relating to our utilities, our regulated industries, as well as the private sector? That was contained in your last comment, and I am interested in that.

MS. LI: I was referring specifically to the section on page 26. Our interpretation of that is that the State, with the exception of any State land, would be able to exercise the power of eminent domain, and then to convey such lands acquired either through purchase or eminent domain to energy industries --- It states, any lands or other properties including land under water, meadowlands or riparian lands. Our interpretation of that would be that it would go beyond the powers even given to the Department of Environmental Protection or the Department of Transportation. They currently can acquire land through eminent domain. Our understanding, however, is they do not convey that land to a private industry. So, it is very clear that the power of eminent domain, of course, is prevalent in several state departments at present. However, the ability to then convey that land to a private industry, such as an energy industry, I think, goes beyond any power that is given to any other state agency currently. We have strong reservations about that.

ASSEMBLYMAN FROUDE: My question is, that would also include conveying that land to our public utilities?

MS. LI: I think at this time we have that reservation, yes.

ASSEMBLYMAN FROUDE: Are there any questions? If not, we thank you very much.

ASSEMBLYMAN FROUDE: I am led to believe that the last couple people on my printed list have indicated to Linda Stansfield a willingness to let her go next.

L I N D A S T A N S F I E L D: I feel very confident in speaking to you. You must have been very omniscient to have picked the longest day of the year for this hearing.

I am Linday Stansfield, the Energy Director of the League of Women Voters of New Jersey. I represent 90 local Leagues throughout the State with a membership of over 8,000 men and women.

For the past year, League members throughout the United States in 1,000 local Leagues participated in a study of energy. As a result of these studies, the energy position of the national League was published in May 1978. I shall quote from that position where relevant. We, in New Jersey, did an independent computation of the New Jersey Leagues' responses; and the results concur exactly with those of the national membership.

Certain aspects of this legislation cause us to worry that traditional processes by which this State has made decisions are being reversed. Change by itself may be beneficial rather than harmful. But with change as enormous in its implications as the legislation which we are considering today, the elected representatives of the people should proceed without undue haste. The League is, therefore, pleased that this Assembly has ordered the public hearing today. We compliment you. And we urge you to give due consideration and contemplation to all of the testimony given today.

Two statements from the national Position on Energy may be helpful to this Committee in establishing proper procedures:

The first is that the processes used to develop and implement national energy strategies should give a voice to all levels of government.

The second is that public understanding and cooperation are essential to the success of any national energy strategy. Citizen participation in decision-making must be assured at every governmental level.

The early portions of S 1179 dealing with Industrial, County and State Energy Facilities plans, and the Coastal Zone designations by DEP seem to move forward in a fashion to which the populace has become accustomed. But in Sections 24 and 25 the whole thrust of this bill becomes an attempt to abrogate home rule.

Tradition, such as home rule, has its strong and weak points, as we have many times discussed. For the purposes of today's discussion, let me stress first the strength of tradition. Tradition usually has the support of legal precedent. Any procedure which is designed to completely upset traditional methods usually carries with it the warning to the elected representatives to proceed with caution. Are the deliberations of this body accommodating the need for all levels of government to evaluate the impacts of these new procedures?

It is important to realize that the people speak to us in many ways. It has been reported here today that one mayor can stop the building of a gas pipeline. That is just one voice. But if many planning boards refuse to permit the building of an energy facility, the message takes on a broader and more significant meaning. The message becomes, "We do not want more energy at any price. There is a limit to what we will accept in order to have more energy." In a procedure which mutes or blocks out the voices of local government by making their appeal cumbersome

and/or expensive, the State will be turning a deaf ear to its constituents. The League fears that you will not meet the criteria of our consensus which said: Public understanding and cooperation are essential to the success of an energy strategy.

Our constitution was written to carefully prepare a system of checks and balances. No group is more aware than the League of Women Voters of the severity and the probable duration of the energy problem. Still, we consider this problem a long-term one, and not an emergency. Provision has been made in the bill for emergency situations. What is disturbing about S 1179 is that the power vested in the Commissioner of the Department of Energy is so strong that the mechanisms included in the bill for appeal are inadequate. They do not provide sufficient strength or weight to constitute a proper check and balance. There is no recourse to decisions of the Commissioner for the general public besides court action. It is the duty of the Legislature to see that the consent of the people to be governed cannot be abused by any person occupying the position of Commissioner of the Department of Energy.

Local and county governments could be given greater participation and appeal power through any number of mechanisms. We note in the Department of Energy's Master Plan Element on Determination of the Need for Energy Facilities that the New York State Siting process has one valuable local tool on page 30:

"Funding of the siting process is through an application fee. Part of the fee is used to compensate local governments for obtaining expert advice for participation in the hearing, thus emphasizing the importance of input from local authorities."

This is one method you might try.

Also, the Governor's designee on the appeal board could be mandated to be a person from the district involved who had no conflict of interest in the matter. We also would like to see a larger appeal board with more members.

We believe that the DOE performs a vital function in its plan to develop an energy data base and an independent forecasting capability. New Jersey did receive an inordinate dislocation during the 1973 gasoline shortage which we understand might have been avoided had we had proper data to provide the federal government. We are concerned, however, that energy "need," once established, will override all other considerations.

Our consensus was overwhelmingly in opposition to any relaxation of environmental standards or compliance timetables that protect the environment.

We suggest that the term "need" for an energy facility be incorporated as one of the primary criteria for siting and not "the" primary criteria.

The authority of the department to acquire public lands by its eminent domain power and then to sell these lands to the energy industry is unwise. We would prefer to see a system in which public lands, or perhaps even all lands, are leased to the energy industry with a rental fee which keeps the lands from being a burden on the taxpayer. There is good precedent for this. The federal government has long had a policy of leasing lands, especially when mineral or timber rights are involved. The Outer Continental Shelf lands are leased. Leasing has the advantage of giving the State some leverage with which to negotiate on some aspects of energy use, primarily in the nuclear fission area, where federal power currently preempts the State.

For your information, the League opposes increased reliance on nuclear fission. We desire that its present proportionate share in the energy mix be

the maximum use of this source which is acceptable.

The Advisory Council on Energy Planning and Conservation, as legally mandated in the legislation creating the department, provides the Commissioner with access to the energy producing sector of our State. We suggest that the consuming sector is not represented in adequate numbers to provide a balanced picture. The Legislature should create additional council members, or an additional council, in order to obtain a stronger public interest focus. It is important for the Commissioner and the Department to receive more direct input from the public and the consumer.

In the interest of more effective and more responsive government, the League recommends:

1. Sections 24 through 39 and 41 through 42 be removed from the bill for consideration at a later time.

2. Sections 1 through 23 be approved to allow all planning strategies necessary for siting determinations to progress in normal sequence; and to provide emergency powers should such emergency occur; and to permit the collection of an evaluation of data to determine energy needs. Mr. Lloyd in his statement said the DOE already has the power to plan. That would have to be determined by your Committee, whether they can plan.

3. All public trust lands required for energy facility siting be subject to leasing rather than outright sale.

4. The Advisory Council be expanded, or augmented by a second Council, to better represent the public interest.

5. Section 24 through 39 and 41 and 42 be rewritten to allow for a system of more equally weighted checks and balances and more opportunity for local input.

Thank you.

ASSEMBLYMAN FROUDE: Any questions? (No questions.)

We appreciate your comments very much. I take note of the fact that you are recommending that we break the bill down into two parts, one to be enacted sooner than the other.

Bill Saller, please.

W I L L I A M S A L L E R: Mr. Chairman, Assemblymen and Assemblywoman, I am Bill Saller, General Manager of Governmental Affairs of Public Service, and I would like to thank the Committee for the opportunity to comment on the proposed bill, S 1179, and the Senate Committee Amendments thereto.

In general, an energy company should agree with the concept of "one-stop siting" for the construction of major energy facilities in the State. My comments are directed chiefly to the amendments adopted by the Senate Energy Committee and approved on the floor of the Senate.

On page 31, Section 27, line 17, as amended, increases the time for a State instrumentality to review an application for a certificate of site and facility from 90 days to 180 days and permits an extension of this time for an additional 180 days upon agreement between the appropriate State instrumentality's chief executive officer and the Commissioner of the DOE. This permits a State instrumentality's chief executive officer and the Commissioner of the DOE to allow up to a year to review an application whether or not the site is designated in the State Energy Facilities Plan.

We feel that for sites that are already designated in the State Energy

Facilities Plan, the time should be limited to 90 days and to one year for those sites that are not designated in the Energy Facilities Plan. It would be beneficial to all concerned parties to have a decision-making process which is responsive and timely.

The amendment to Section 30, line 18 on page 33, provides that no certificate is required for the expansion of petroleum facilities of 10 percent or less of the existing capacity. It would also be reasonable to include a similar exemption for the construction of electric generating facilities of less than 200 MW where such construction is by or on behalf of the existing public utilities under the jurisdiction of the BPU.

The amendment to Section 32, line 15 on page 34, increases the time from 20 to 180 days for a county or municipal governing body to indicate an objection to an application for an energy facility and site certification. This is not in keeping with the original intent of the proposed legislation. It is important that objections be raised early in the review process and, therefore, the 20 day period or certainly some time limit well below the DOE determination date of 210 days after receipt of an application appears appropriate to assure prompt action as proposed in Section 33, line 9 on page 34. The 180-day period allows only 30 days for a determination on the application.

It is also suggested that Section 33 regarding certificates of site and facility on State forests, parks, wildlife management areas, and public trust lands should be reviewed and revised. The new amendment specifies that the Commissioner of the Department of Environmental Protection has the sole authority to approve or deny a certificate of site and facility on these lands after determining whether "long-term adverse" impact on the environment will result.

It is not only difficult to define the meaning of "long-term adverse" when related to impact, but this term is broad enough to possibly encompass or forbid many activities. This could include the construction of above or underground transmission lines or pipelines that are necessary to go from one part of the State to another. We suggest that the final phrases of this amendment be modified as follows:

On page 35, line 26, to be included in the Senate Committee's Amendment, already adopted, as follows:

"provided, however, that no certificate of site and facility shall be issued for any facility proposed to be constructed on State forests, State parks, State wildlife management areas, or public trust lands unless the Commissioner of Environmental Protection finds and determines that such proposed construction will result in no long-term tangible adverse impact on water quality and no long-term tangible adverse impact on the environment."

[such proposed construction will result in no long-term adverse impact on water quality and no long-term adverse impact on the environment]

Similar wording to this is used frequently in environmental regulations or decisions and, therefore, there is a history of existing interpretations. If further protection is required, an additional sentence could be inserted at the conclusion of these amendments which might read: "and that the environmental impact of such proposed construction is outweighed by the benefits resulting from the construction."

Thank you for your time.

ASSEMBLYMAN FROUDE: Are there any comments or questions?

ASSEMBLYMAN STEWART: How many nuclear facilities do we have in the State now and on the drawing board, with approval?

MR. SALLER: Public Service has Salem Number 1 in service. Salem Number 2 will be in service next spring sometime. Hope Creek 1 and 2 are presently under construction.

ASSEMBLYMAN STEWART: How many others are there in the State in addition to those four?

MR. SALLER: Jersey Central has Oyster Creek and Forked River. Oyster Creek is in service. Forked River is under construction. The Atlantic Generating Station is planned for beyond the in-service dates of Hope Creek 1 and 2.

ASSEMBLYMAN STEWART: So we are talking about six.

MR. SALLER: Atlantic Generating Station could be 1, 2, 3 and 4 units. This would take you into the 1990's, depending on load growth.

ASSEMBLYMAN STEWART: Is the projection for the year 2000 that these seven, or however many we arrived at there, will be a sufficient number of nuclear facilities to handle our problems?

MR. SALLER: Historically, our rate of growth has been for decades six to seven percent a year - a year compounded. We have been doubling just about every ten years. Since the OPEC oil price increase, the embargo a few years ago, the turn down of the economy, and the results of conservation, our predicted rate of growth now for the next few years or so - the next decade - is of the order of 3 percent. With a 3 percent growth, we will still need Salem 1 and 2, Hope Creek 1 and 2, and the Atlantic Generating Station sometime in the late '80's or early '90's.

ASSEMBLYMAN STEWART: Can I conclude from what you are saying that we may only need by the year 2000 one more nuclear facility other than the six we already know about?

MR. SALLER: Are you counting Salem and Hope Creek as existing ---

ASSEMBLYMAN STEWART: Yes, I am.

MR. SALLER: (Continuing) --- and all the units at Atlantic as one additional?

ASSEMBLYMAN STEWART: What are you speaking about when you speak about all the units of Atlantic?

ASSEMBLYMAN FROUDE: Let's go back to ground level zero, if you don't mind. Tell us right now what we have in operation?

MR. SALLER: Public Service has Salem 1 in operation.

ASSEMBLYMAN FROUDE: Salem 1 in operation. Jersey Central?

MR. SALLER: Jersey Central has Oyster Creek in operation.

ASSEMBLYMAN FROUDE: Oyster Creek is in operation. Those are the two that are in operation now in the State. That's all we have in operation.

MR. SALLER: Right.

ASSEMBLYMAN FROUDE: What do we have in stages of construction right now?

MR. SALLER: Salem Number 2 is going to be in service next spring. So it is about 90 percent or better completed.

ASSEMBLYMAN FROUDE: Are there any others under construction?

MR. SALLER: Hope Creek 1 and 2 are under construction.

ASSEMBLYMAN FROUDE: Hope Creek 1 and 2 are under construction.

MR. SALLER: And Jersey Central, I believe, has Forked River under construction.

ASSEMBLYMAN FROUDE: In addition to those, are there any more on the drawing board? First of all, are there any more approved?

MR. SALLER: Those are the ones that have received approval.

ASSEMBLYMAN FROUDE: So there are none approved that are not under construction or in operation?

MR. SALLER: Right.

ASSEMBLYMAN FROUDE: Are there any more on the drawing boards as of right now?

MR. SALLER: On the drawing board? Yes, Atlantic.

ASSEMBLYMAN FROUDE: Just Atlantic - what?

MR. SALLER: Atlantic Generating Station.

ASSEMBLYMAN FROUDE: Atlantic Generating Stations. Are they offshore?

MR. SALLER: Yes.

ASSEMBLYMAN FROUDE: And how many of those?

MR. SALLER: Four ultimately. It would depend again on load growth.

ASSEMBLYMAN STEWART: So we have four that have not received any approval whatsoever of any kind.

MR. SALLER: Yes.

ASSEMBLYMAN STEWART: Somebody has to be looking toward the future obviously. Are those four projected to handle the needs of the State of New Jersey's load growth up to 1999?

MR. SALLER: Yes. Unfortunately, I don't have the charts with me. We have charts showing 3 percent, 4 percent and 5 percent load growths. With a 3 percent load growth, those units or other units will be required sometime in the future.

ASSEMBLYMAN STEWART: We will need four more units one way or the other by 1999.

MR. SALLER: Yes.

ASSEMBLYMAN STEWART: If they don't go offshore, they have to go someplace else obviously in New Jersey.

MR. SALLER: Yes.

ASSEMBLYWOMAN TOTARO: Can I have an explanation of how you structure growth pattern? We have had a population decrease and an industrial decrease in the State. On what basis was your determination of 3 percent, etc., derived?

MR. SALLER: Load grows in a number of way. Individual consumption grows. People buy more electrical equipment. They buy freezers. Air conditioning has been one of the big items because our peak has been for ten or fifteen years or more a summer peak. Air conditioning is the biggest reason. Likewise, there is residential growth and industrial and commercial growth. There are new stores and new residential areas. There are apartments being constructed. Sewage plants are being constructed. The Meadowlands was built. Johnson and Johnson is building a big new headquarters in New Brunswick. There are new developments in South Jersey. Atlantic City is building up. All this requires electricity. And looking towards the future, even though we had a 6 or 7 percent load growth historically, a 3 percent load growth is one of the lowest in the country.

ASSEMBLYWOMAN TOTARO: Is it a case of displacing some of the energy

that was perhaps used in one area to another? We have had a decline in population and a decline in industrial growth in this State. What we are actually doing is moving it from one section to another section. You keep saying there is an increase in housing and building stores, etc. There has been a decline in other areas. I can't understand your reasoning. Are there any actual statistics?

MR. SALLER: Our loads are higher. It is going to be interesting to see what our summer peak is this summer. We will probably have a new all-time system peak this summer, higher than any previous year.

ASSEMBLYMAN FROUDE: I am not so sure you are faced with a decline - perhaps a decline in growth rate - but I am not so sure that you are faced with a total decline in terms of industrial or ---

ASSEMBLYWOMAN TOTARO: You have x number of people. There is a formula that x number of people consume energy.

MR. SALLER: It is not constant. Over a ten-year period, with the last couple of years excepted, there was a constant increase in energy consumption per residential customer.

ASSEMBLYWOMAN TOTARO: But actually haven't we not experienced an increase? Haven't we levelled off? Nationwide, we have actually had a decrease in energy consumption if you base it on petroleum usage.

MR. SALLER: The energy forecasts for the future years are still ---

ASSEMBLYWOMAN TOTARO: Based on what year's projection though? I mean, if it is current, it is different than if we were going back to 1970.

MR. SALLER: There was a dip in energy consumption after the 1973 oil embargo. In the years '74, '75, and '76, there was a dip. Starting in '77 and this year, we have recouped and, looking ahead, we feel that our 3 percent estimated forecast may even be on the low side.

ASSEMBLYWOMAN TOTARO: Are there some types of charts that you could supply to us? I would appreciate that.

MR. SALLER: When we examine load forecasts, we look into industrial, commercial, residential development, and new construction of which we are aware. Large sewage plants require a tremendous amount of power. Businesses are moving over here from New York into New Jersey to replace other businesses that have moved out. I am sure when you ride around, you see apartment projects, schools being built ---

ASSEMBLYWOMAN TOTARO: I also see an urban area that has been vacated. I also see in our northern part of the State industries that are vacant too. That is why I mention displacing it.

MR. SALLER: Our growth is going to be less in future years, but there is still going to be growth. Even 3 percent or 4 percent growth a year, which is half of what it used to be ---

ASSEMBLYWOMAN TOTARO: What I am concerned about is, if we are surviving now without a strong conservation program and we have two plants in operation, four under construction and one more in the planning stage, it would seem as though a future conservation program for the State of New Jersey would not really have any effect on the amount of energy that is necessary. You know, you are anticipating much more need in the future than we need presently. That would eliminate the potential of alternate sources and also of any conservation measures that we would have done in the State.

MR. SALLER: We have definitely taken energy conservation into consideration

in looking at our forecasts for the future. In fact, that is perhaps one of the major reasons why our future load growth is half of what it was historically.

ASSEMBLYMAN FROUDE: Rosemarie, I would like to pursue this further at another time. I think there are factors in here with which we have to come to grips. I am not so sure that all of these plants are added on to a system that is going to be maintained forever. It seems to me, there might be some replacement. There are a number of factors that have to be considered. You are both tending to oversimplify it, as I see it.

MR. SALLER: We would be happy to provide you with the additional information that is required. Also, just as we are part owners of plants in Pennsylvania, these plants are partially owned by other utilities too, even though we may be the major project sponsor.

ASSEMBLYMAN FROUDE: Thank you.

It is five minutes after four. If I gave everyone five minutes who is left on the list, we would still be here much too late. I am going to end this public hearing, hopefully, on a positive note. At least, we are going to have one of the citizen spokesmen be the last one. I guarantee that anyone who is on this list who has not had an opportunity to comment will be the first commentators at the next public hearing which will be announced in a few days.

MEMBER OF AUDIENCE: Could I just make a comment? Some of the citizens' action bodies that are represented here today do have to take time off from work and have to lose money. I think some of the oil and utility industry representatives get paid for being here. So when the lists are compiled at another time, I would like you to take that into consideration.

ASSEMBLYMAN FROUDE: Yes.

Is there anyone sitting here with a written statement? If so, we would welcome placing them in the record at this time. You can back those up with further comments. For those of you who have long faces because of the procedure, it would seem to me that the intricacies of the bill are becoming increasingly obvious. And, if you don't get an opportunity to speak today, it is not a total loss. Everyone will have an opportunity for input.

Is there a Kathleen DiNello present? Then who is this lady? Do you want to step forward?

MEMBER OF AUDIENCE: I will give my turn to Daniel Rita.

ASSEMBLYMAN FROUDE: Fine. Daniel Rita of 30 Tinker Drive, and whom are you representing?

D A N I E L R I T A: I am representing myself, and I am a member of the SEA Alliance. I, frankly, can't claim to speak on behalf of the SEA Alliance since they have not cleared what I have to say.

The SEA Alliance - the logo means Safe Energy Alternatives and it is a statewide organization dedicated to the promotion of safe energy sources for New Jersey and to the elimination of dangerous energy sources, such as nuclear energy and liquefied natural gas.

Within the summary of this bill, we find the statement, "That such a premise does not at all preclude local government and public participation in the decision-making process is clearly demonstrated by the significant role given in this bill to counties, municipalities and individual citizens and citizen groups."

It is painfully obvious that this contention simply does not hold up

under closer scrutiny. The Commissioner of the Department of Energy, and thereby the Governor of the State, is granted far-reaching authority by this bill. The Commissioner will not only be able to develop a ten-year Master Plan for energy needs in New Jersey, but he will also have the authority to enforce it. The Commissioner will be able to collect and distribute information; conduct studies; purchase land for the State by right of eminent domain; give grants; make contracts with in- and out-of-state firms; monitor prices charged for energy within the State; evaluate policies governing the establishment of rates and prices for energy; design, implement and enforce a program of conservation; conduct hearings; bargain across the table with State instrumentalities in three-person boards; and construct and operate facilities for experimental purposes. These are some of the significant powers granted; there are more.

This one individual will have almost absolute authority over municipal governments and State instrumentalities such as the Board of Public Utilities and the Department of Environmental Protection, with the exclusion of the authority granted to the Department of Environmental Protection in the "coastal zone." In sum, the Department of Energy as signified by one person will have the "coordinative and lead role, jurisdiction and authority with respect to the siting of any energy facilities in any part of New Jersey."

As an environmentalist, I am well aware of both the potential good and the potential abuses of authority that can arise as the result of the passage of this bill. We of South Jersey have been crying for State and federal intervention in the Pine Barrens for the protection of this precious and unique resource. We realize that "home rule" is often used as a foil by local and non-local land speculators and real estate agents who have no vested interest in the land other than selling it to the highest bidder. Under these local abuses, we applaud and welcome outside control of our land use. Yet, on the other hand, we have witnessed a victory for the environmentalists in Bordentwon regarding the siting of a Dow chemical storage facility along the Delaware River. Through a local referendum, the people of this region soundly chose not to have highly toxic chemicals stored in their own backyards. Although the referendum was non-binding, it will now be very difficult for local officials to strike any bargains with Dow.

So here we have the crux of the problem as I see it. It may sound paradoxical to say that I would like to see both strong municipal and statewide responsibility for land use and energy siting, but this is exactly what I mean. In a more direct way, I am saying that I want the authority over our precious land and our lives to be put in the hands of the most honest and thoughtful people. Both local and state governments have been granted a trust by average citizens like myself. We not only entrust our officials with the power to spend our tax money wisely, we also provide them with a more sacred responsibility; that is, to care about us as individuals and what happens to our lives. On the most fundamental human level, we are all in this State together.

But how does this relate to the dilemma at hand. If I have to come down on one side of the fence or the other, I must side with those people who wish to keep power decentralized in New Jersey. Municipal authorities must have the power to make decisions about the siting of energy facilities if those facilities have the potential for jeopardizing the health and safety of the local people. I am referring to liquefied natural gas storage facilities and

terminals, highly toxic chemical facilities, and nuclear power facilities. I am also referring to proposed transportation routes for these substances. Municipal authorities must have the power to determine appropriate transportation routes through their districts.

In energy matters which do not involve the safety and health of the citizens, I am willing to grant the Department of Energy some authority.

One area which needs more amending is the way in which grants would be given for research and development. It is very dangerous when one individual has the power to allocate money for research grants. The danger lies in the fact that these grants may be given on the basis of personal preference and not objective analysis. The Commissioner of Energy and the Governor may have friends who could benefit by such grants. Also the Commissioner will be setting the tone for a pattern of growth in New Jersey which may or may not be in the best interest of the citizens of New Jersey. There must be more shared power and responsibility in the implementation of this duty in order to stave off possible abuses.

Another serious deficiency with this bill lies in the concept of a three-person committee to resolve disputes between the Department of Energy and other State instrumentalities. Matters become even more complicated when we realize that all three members of the Committee may be appointees of the Governor. This type of closed-door, inbred decision-making must and surely will lead to great abuses of power.

Another area which must be amended is the structure and function of the Advisory Council on Energy Planning consisting of 15 members, all of whom are appointed by the Governor. Their capacity is only advisory and they shall meet four times a year. With its total lack of clout, one wonders why the Advisory Council should exist at all. They might as well save their gas in the interest of conservation. What is necessary is a Citizens' Advisory Council, appointed by the citizens, which has the authority to act through the Public Advocate's Office to oversee the Department of Energy decisions. It should have the power to file suit if necessary. It would also be necessary to extend the time limit for which the Department of Energy can be challenged in the courts from 30 to 90 days.

In summary, Senate Bill 1179 should include the following modifications:

1. In matters of storage, transportation and use of hazardous material - liquefied natural gas, nuclear, toxic chemicals - municipalities should be granted veto power over Department of Energy decisions through public referendum.

2. A strong Citizens' Advisory Board shall be established whose members are appointed by the people. Names of the nominees should be submitted to the Public Advocate's Office for a review of their qualifications. This group shall have the power to review all Department of Energy decisions and file suit if it finds the Department of Energy misusing its limited power.

3. The authorities who formulate the Master Plan shall not be entrusted with the responsibility of overseeing the Plan. The Master Plan shall be formulated by the Commissioner of the Department of Energy in conjunction with the Office of the Public Advocate, the Department of Environmental Protection and a representative from each legislative district. The Commissioner of the Department of Energy shall be entrusted with the implementation and enforcement of the Energy Master Plan.

4. The Department of Energy shall have no right to authority already granted to the Board of Public Utilities. The Board of Public Utilities shall henceforth be elected positions.

5. The Public Advocate's Office shall have equal footing with the Department of Energy in the allocation of grants and funds for energy research and development programs.

6. Any dispute between the Department of Energy and other State instrumentalities shall be resolved not by a three-member board, but by an expanded board consisting of the Governor, or an appointee of the Governor, the Commissioner of the Department of Energy, a representative of the particular instrumentality involved in the dispute, a representative of the Public Advocate's Office, and two representatives from the affected municipality.

7. Conduct more public hearings on this particular bill before the final vote in the Assembly, which you have already said that you would do, because I was afraid since it passed so quickly through the Senate, so overwhelmingly, like a rip-tide going through the Senate, that people in this State would get railroaded by the passage of a bill that has consequences so far reaching that it is frightening to contemplate. If the bill went through as it stands right now, I would be very concerned and I am glad to hear that there are going to be more opportunities for citizens around the State to give their input. I hope, as you said, that the hearings will not just be confined to Trenton but that you will hold them in other parts of the State, especially in South Jersey where many of the proposed nuclear power plants are going and will be sited.

ASSEMBLYMAN FROUDE: Before you get up and leave, I want to say you have given us some things to think about, and some concerns possibly. You say you want a Citizens Advisory Council appointed by the citizens. Would you mind giving me a procedure whereby that can happen?

MR. RITA: It is very difficult. There are many citizens' groups, such as Utility Users for Reasonable Rates, SEA Alliance ---

ASSEMBLYMAN FROUDE: I know about these organizations. But what mechanism are you suggesting that ---

MR. RITA: They submit names to the Public Advocate's Office. The Public Advocate decides who is qualified and who is not qualified.

ASSEMBLYMAN FROUDE: The Public Advocate is an appointee; the Governor holds an elected position. Doesn't that fly in the face of some of your other testimony. That title "Public Advocate", for people with the kinds of thinking you represent, has a sound that is very pleasant to your ears. But it flies in the teeth of the testimony you presented to us, and we are the ones who are going to have to make a decision on that. It would seem to me that the Public Advocate would be far more insulated than the Governor who has to answer to the public and who is an elected official of the public. So when you come in with that recommendation, you give us the responsibility, apparently, of coming up with a mechanism. I think we have a mechanism in this republican form of government.

ASSEMBLYMAN OLSZOWY: I am glad you said "republican."

ASSEMBLYMAN FROUDE: One other question I would like to ask you: Are you suggesting to those of us who are interested in the Pine Barrens that the future of those Pine Barrens would best be served by placing them in the hands of the people who live down in that area and who govern that area?

Is that what you are saying?

MR. RITA: What I am saying is that I believe that it was good that the State intervened in that. It wasn't a matter of public health and safety. My criteria for local referendums would rest upon the people who would be in the affected areas - their health and safety. These people would have to have a say. If the Department of Energy decided to put a nuclear power plant in my backyard ---

ASSEMBLYMAN FROUDE: Wait a minute. That is not what I am talking about at all. I am talking about a concept that you presented here. I am saying that if I have an interest in the preservation of the Pine Barrens, are you sitting there telling me that my interest in the preservation of those Pine Barrens is best served at the local level? Is that your comment? Is that your testimony?

MR. RITA: No. In the case of the Pine Barrens, they were best served at the State level.

ASSEMBLYMAN OLSZOWY: If I can comment on that question, I do not see in the foreseeable future where a nuclear plant would be put in my immediate area; at least, that is my opinion. That means I should not be sitting on this Committee because it will not affect my area. Is that what you are trying to say also?

MR. RITA: I believe that what I am trying to say is that those people who would have types of energy facilities or chemical facilities or nuclear facilities which may be sited in their area have to be given veto power over the State if the State decides they want to put them there. The State is taking a moral stance. It is taking that burden on its shoulders. If it says, "We are going to put a nuclear power plant here. We are going to put a liquefied natural storage tank or a spent-fuel storage facility here of nuclear material," the magnitude of a decision like that has much greater consequence, I think, on people in local areas.

ASSEMBLYMAN OLSZOWY: That is the utopian type of government you are looking for; and it is not going to happen, because nobody wants a new airport, and nobody wants a nuclear plant. So where do we go?

MR. RITA: Well, we go with coal generation and solar and a lot of other types of energy generation and conservation which could ultimately make dangerous energy sources impossible.

ASSEMBLYMAN OLSZOWY: You are talking about energy now. What you are talking about with regard to veto power in local government means that we should not have State government; we should have 22 governors in the little local region to do what we want in that region.

ASSEMBLYMAN FROUDE: I think the reason we are throwing these hard balls at you in the form of our questions is that you are leaving us in a dilemma, you are going to go off dissatisfied, and that disturbs us, because you are setting up this paradoxical situation where you say, with regard to the Pine Barrens, its future is best served by the State. That is because you and I both know that if we are interested in preserving the Pine Barrens, the people down there who have a vested interest in using that land might not agree with us. Really what you are saying to us is: If this level agrees with my view of the world, then I am going to go with them; if it doesn't, then I am going to go with the other side. We can't service you. We just can't satisfy you. You are going to be dissatisfied

forever.

MR. RITA: My criterion was the health and safety issue. That was it.

ASSEMBLYMAN FROUDE: There is no health and safety issue involved in the Pine Barrens.

MR. RITA: That is what I am saying. That is why the State could do it. But I am saying, when the health and safety issue is involved, the municipalities have to have the veto power. The State can't exercise that. The people have to decide, "Okay, we are willing to accept ---"

ASSEMBLYMAN FROUDE: I missed that. All right.

MR. RITA: That's the linchpin of the whole thing.

ASSEMBLYWOMAN TOTARO: Today you heard about local input at this hearing. I know that you advocate "veto power," but would you accept the proposals that were presented today for both a hearing and an Appeal Board? That would give the local people the right to present their case. If they are not satisfied with the outcome of the hearing, then they could go to an Appeal Board. There were two mechanisms that were suggested today. You would satisfy them because they would have an opportunity to present whatever hazard or unsafe conditions that might exist.

MR. RITA: I would say that I have to hang tight for veto power because I saw what happened all year down in Burlington County at those Dow hearings, in which the group HOPE has been involved. It is just that citizens really got interested and active. And they finally got to the point where they could even reach the point of having a local referendum. I would say groups like that have to be commended because it takes a tremendous amount of work. You have to give the people faith that when a dangerous situation is present, they can do something about it. I am not opposed to giving the State jurisdiction in a lot of energy questions. I am just saying that in the crucial matters involving health and safety, you have to let the people in that area make the decisions because they are going to be living right next to it.

ASSEMBLYMAN FROUDE: Doug Forrester.

MR. DOUGLAS FORRESTER: I'm interested in the criteria that you are talking about. It seems the very heart of this bill raises issues of local concern versus a larger jurisdiction. But in the criteria that you are giving us, you are saying that in issues of health and safety, you want the local jurisdiction to have the overriding say. It seems to be precisely the reason, the fact that local jurisdictions often have had an overriding say in matters of health and safety, that we have a bill proposed like this.

Who is going to want to have a dangerous facility in their backyard? How is it that a local say is going to help with the dilemma of State versus local?

MR. RITA: I just think people have to educate themselves at all levels. If someone realizes they are going to put a Dow plant with nine toxic chemicals being stored in their backyard, they have the responsibility of educating themselves in trying to do something about it. Otherwise, I think, if the State sets up the criteria for what is safe and not safe, those criteria may not be what people who would have that plant next to them would agree to. There has to be that open door to people who would live near it to decide whether they feel that safe or not.

ASSEMBLYMAN FROUDE: Before we conclude this, there is a distinction here. I am in total agreement with what you are saying in reference to a private enterprise

such as the one to which I think you are making reference. On the other hand, we are talking about other kinds of facilities. We are talking about facilities that have an underlying state impact or interest, whatever that phraseology is - in other words, the generation of electricity or the transmission of oil, etc. That is in another ball park entirely. Your right to say "no" might deny me my right to have a facility that is absolutely essential. Do you agree with the distinction?

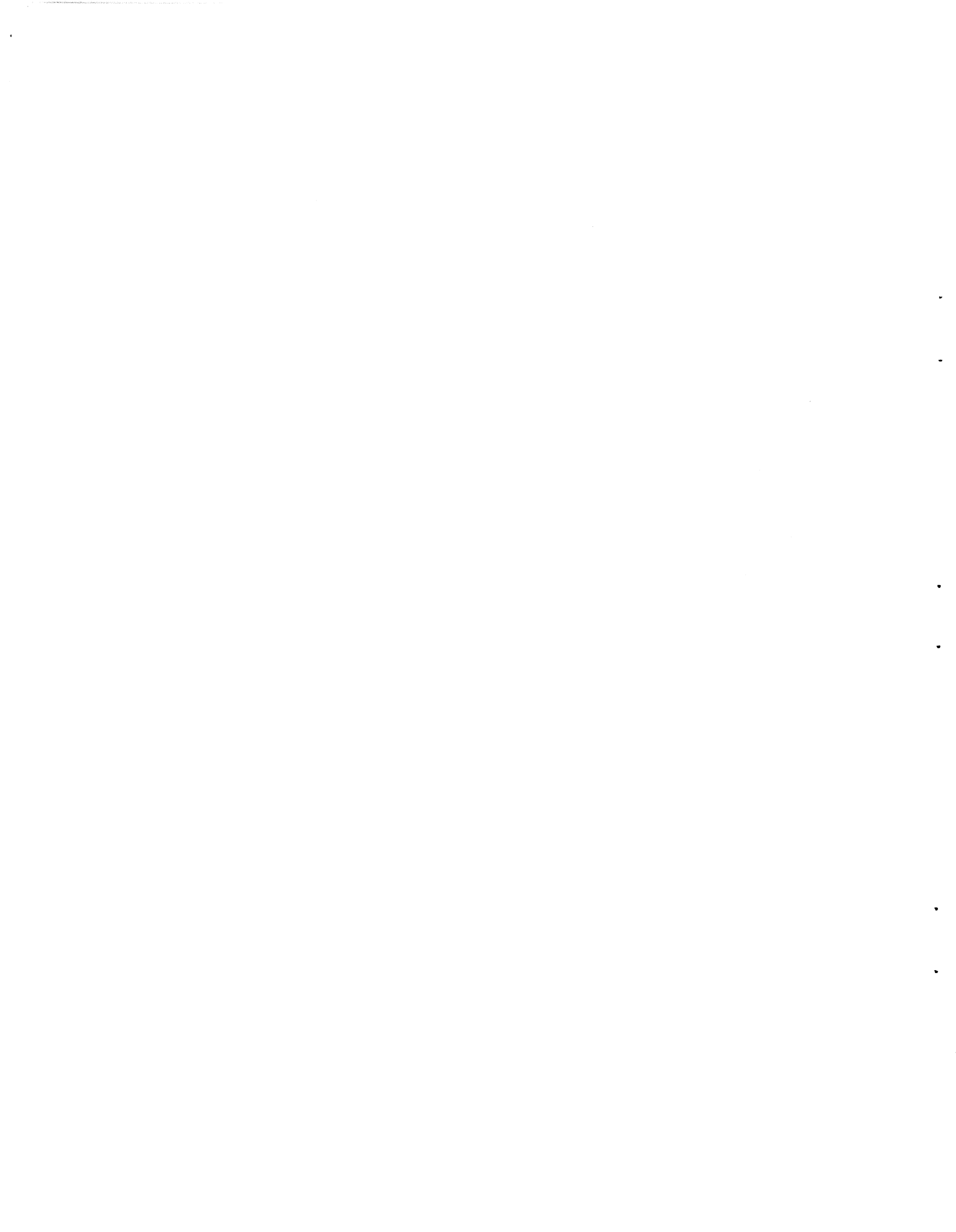
MR. RITA: I understand, and I think that is why the Energy Master Plan is so crucial because there are more ways to skin a cat than one way. There are more ways to generate electricity than just nuclear power plants. That is what we are saying in our organization. And there are more ways to produce energy that are imaginable if we use our imaginations. If we use the fundamental criterion of health and safety for everybody, I think it will automatically lead the way to the way we think about energy generation and savings of energy. I think no one would have the right to deny this if we could look at it that way.

ASSEMBLYMAN FROUDE: Dan, I think sincerely that you have given us a good point on which to end our hearing today - the charge that we have to make certain that the public has as much involvement in these decisions as possible.

MR. RITA: Thank you very much.

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(Hearing Concluded)



STATEMENT

BY

SENATOR PAT DODD  
(D-DISTRICT 26: Essex)

BEFORE THE

ENERGY AND NATURAL RESOURCES, AND  
AGRICULTURE AND ENVIRONMENT COMMITTEES

OF THE GENERAL ASSEMBLY

ON

SENATE BILL NUMBER 1179, amending and supplementing  
the "DEPARTMENT OF ENERGY ACT," P.L. 1977, c.146 (C.52:27F-1 et seq.)

Mr. Chairmen Froude and Stewart, and members of the Energy and Natural Resources and Agriculture and Environment Committees, I am grateful for this opportunity to appear before you with respect to S-1179, an act concerning the siting of energy facilities in New Jersey and amending and supplementing the "Department of Energy Act," P.L. 1977, c. 146.

As you know, from the "Statement" appended to S-1179 upon its introduction in the Senate on May 18, the principal purposes of this bill are to:

- 1.) Regulate and control on a Statewide basis the siting of Energy facilities in New Jersey;
- 2.) Provide "one stop shopping" for energy industries proposing to construct in New Jersey plants, buildings, structures or operations of any kind which are directly associated with the production, conversion, processing, transmission or storage of energy in any form; and,
- 3.) Insure the preservation of New Jersey's fragile environment and the maintenance of the highest possible quality of life for the 7.4 million citizens of this State.

The subject of S-1179 is, of course, ENERGY FACILITY SITING, and its 44 sections provide detailed provisions for the effectuation of its energy facility siting purposes. It is with pride that I say this measure represents the concerted effort of environmental organizations, oil companies, electric and gas public utilities,

petrochemical industries, legislative staff, Governor Byrne and his Counsel's Office, and officials of the departments of Environmental Protection and Energy. While not every one of those groups or persons may agree with each and every provision and requirement of this legislation, I believe that all who participated in its preparation recognize the need for the balanced procedures provided in this bill for the siting of energy facilities determined to be necessary to meet the needs of the citizens, businesses and industries of New Jersey.

I am well aware of the thoroughness of your review of this legislation, and of the excellent staff resources at your disposal in the persons of Norman Miller and Michael Catania. I will, not, therefore, take your valuable time this morning with a detailed explanation of the specific provisions of this bill---although I would, of course, be pleased to respond to any questions you might have with respect to those provisions. I would, rather, like to speak, briefly, to one TOTALLY FALSE CHARGE which has been raised against S-1179, and then to one GENUINE ISSUE this legislation does indeed raise.

The TOTALLY FALSE CHARGE is that S-1179 is somehow being RUSHED and RAMRODDED through the Legislature either by Governor Byrne, or by me, or by both of us together in some sort of UNHOLY ALLIANCE.

Quite apart from the fact that such a charge is a gross insult to the Senate and to yourselves, to say nothing of Governor Byrne and myself, it bears absolutely no even vague relationship to the TRUTH. In fact, if there IS a charge to be made about the movement of S-1179 through the Legislature, that charge would be that we have probably waited too long to deal with legislation that was first proposed, albeit in a different form, in 1973, and has been talked about and considered by legislative committees and at open public hearings at least since that time.

In short, S-1179 derives from former Assemblyman KEAN'S 1973 and 1974 legislation concerning ELECTRIC POWER PLANT SITING, and from my own 1976 Legislation, S-1407, entitled the "State Energy Facility Agency Act." On November 8, 1974, a public hearing was held on Mr. Kean's A-608; in May, 1976, my ENERGY POLICY WHITE PAPER UPDATE containing the draft of the "State Energy Facility Agency Act," S-1407, was presented to the Legislature, and more than 500 additional copies were distributed to individual citizens, business and environmental groups; and on April 5, 1977, a public hearing was held on this legislation in Atlantic City.

My introduction of S-1179 on May 18, represented the final result of all the public and legislative consideration of the ENERGY FACILITY SITING issue in New Jersey since 1973; and when that bill emerged from the Senate Energy and Environment Committee with further amendments on June 1, there may well have been people who did not LIKE all its provisions, but there could not be ANY who could legitimately claim to have been surprised at the nature and direction of those provisions.

I am not at all suggesting that this legislation is perfect even now; and even less would I suggest that you should not review it as carefully as I know you will, and make those changes you deem necessary to protect the public interest in this vital area. I am, however, very much suggesting that ANYONE who asserts that this bill is being RUSHED through the Legislature without scrutiny or through review has either been ASLEEP for the last 5 years, or is being INTELLECTUALLY DISHONEST!

The ONE GENUINE ISSUE that S-1179 DOES raise....as its predecessors since 1973 have raised....is, of course, HOME RULE, and it is of that I beg your indulgence to speak briefly.

To set the record straight and, hopefully, to provide some perspective in the face of certain alarmist misinterpretations, misjudgments and misconstructions that have recently appeared in the media, the following points must be made with respect to S-1179 and HOME RULE in New Jersey.

Home Rule today with respect to energy facility siting is the power to say "NO." If a municipality actually wants to APPROVE an energy facility, numerous permits and licenses must be obtained from several State and federal agencies. But there aren't any State laws today that can overrule a municipal "NO" with respect to energy facility siting decisions. My legislation would provide such a law. But the power my bill grants to the Department of Energy could only be exercised if a municipality failed to substantiate its "NO" with strong, convincing social, economic or environmental facts advanced against any energy facility under consideration.

My legislation places the primary responsibility for energy facility siting decisions with the State Department of Energy. But section 19 of S-1179 requires the department to consider all relevant county and municipal plans in making such decisions; and section 32 grants every county, every municipality, and every county or municipal agency the right to object in writing to any specific energy siting decision of the Department of Energy. This section (32) further requires the Commissioner of Energy to "consider and evaluate" all such objections, and to write his specific findings with regard thereto. In this manner we have realistically insured that energy facility siting decisions will consider local conditions and circumstances to the maximum degree consonant with the overriding responsibility of the State Government to provide secure, safe and stable supplies of all forms of energy to the citizens, businesses and industries of New Jersey. And, in recognition of the regional impact of major energy facility construction, S-1179 provides a role for county participation in the siting process which is made as strong with respect to energy as it is now with respect to solid waste, (pursuant to the "Solid Waste Management Act," P.L. 1970, c. 39, as amended by P.L. 1975, c. 326; C. 13:1E-1 et seq.).

S-1179 combines extensive public notice, public hearing and county and municipal review requirements with respect to energy facility construction, with the requirement that the Commissioner

of Energy may approve the construction of an energy facility objected to by a county or municipality only upon his determination, certified in writing to the objecting county, municipality or agency, that the facility is in all respects in conformity with the State's estimated energy needs and is necessary and appropriate to achieve those needs. I respectfully submit that these provisions represent not only a meaningful role for local government in energy facility siting decisions, but also a realistic role for Home Rule in the last decades of the 20th century. I further submit that the powerful role given to counties in this legislation not only recognizes the re-gional impact of major energy facility siting decisions, but further strengthens realistic "Home Rule" by placing responsibility at a level of government which has recently begun to come into its own as a major policy shaper in New Jersey.

Now that the American people and, particularly, the people of New Jersey, have had 5 years to recognize the essential relationship between energy sufficiency and economic prosperity -- and even longer to recognize the equally essential relationship between energy efficiency and environmental quality -- it is absurd to suggest that those people will be content to leave exclusively to individual local governments those basic energy facility siting decisions that affect the lives and livelihoods of all the citizens of this State.

S-1179 is a bill that reflects reality in New Jersey today. It makes the State Government primarily responsible for decisions that affect every New Jersey citizen, and it makes that State Government seriously consider the views of county and municipal governments in making those decisions.

S-1179 is, of course, an ENERGY FACILITY SITING bill, and I believe there are a dozen good, sound and practical economic, energy and environmental reasons for enacting it into law. I am not at all suggesting that S-1179 should be enacted on the basis of the powers it provides to local governments with respect to energy facility siting decisions. I am, however, very strongly suggesting that the charges which have been leveled against this bill on the grounds that it destroys Home Rule are false and without foundation.

S-1179 recognizes and provides a meaningful and realistic role for Home Rule with respect to energy facility siting in New Jersey. In addition to the economic, energy and environmental advantages it promises, S-1179 provides Home Rule REALITIES that, hopefully, will prove sufficient to earn the support of the overwhelming majority of the citizens of New Jersey.

With that, Chairmen Froude and Stewart, I thank you once again, for this opportunity to appear before you, and I shall certainly try to answer any questions you may have concerning this important piece of legislation.

TESTIMONY OF THE DEPARTMENT OF THE PUBLIC ADVOCATE  
ON THE  
ENERGY FACILITIES SITING ACT, S-1179  
(JUNE 21, 1978)  
BEFORE  
THE ASSEMBLY COMMITTEE ON ENERGY AND NATURAL RESOURCES  
AND  
THE COMMITTEE ON AGRICULTURE AND ENVIRONMENT  
PRESENTED BY  
ARTHUR PENN, ASSISTANT COMMISSIONER

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MR. CHAIRMAN, LADIES AND GENTLEMEN, GOOD MORNING. MY NAME IS ARTHUR PENN. I AM THE ASSISTANT COMMISSIONER OF THE DEPARTMENT OF THE PUBLIC ADVOCATE. I APPEAR TODAY ON BEHALF OF COMMISSIONER VAN NESS, THE PUBLIC ADVOCATE. COMMISSIONER VAN NESS IS VERY CONCERNED WITH THIS LEGISLATION, AND WE ARE HOPEFUL THAT THE JOINT COMMITTEES WILL CONSIDER OUR TESTIMONY AS IT BEGINS THE PROCESS OF REVIEWING ONE OF THE MOST IMPORTANT AND COMPLEX PIECES OF LEGISLATION IN THE ENERGY AND NATURAL RESOURCES FIELD TO APPEAR IN MANY YEARS. THIS BILL, SOME 38 PAGES IN LENGTH, CONTAINING 41 SEPARATE SECTIONS, COULD BE EVEN MORE INSTRUMENTAL IN SHAPING THE STATE'S FUTURE THAN THE ORIGINAL DOE ACT OF A YEAR AGO. THE ASSEMBLY, THEREFORE, IS TO BE COMMENDED FOR HOLDING THIS PUBLIC HEARING AS PART OF AN ORDERLY REVIEW OF THIS HIGHLY AMBITIOUS LEGISLATION.

IN GENERAL, THE PUBLIC ADVOCATE SUPPORTS WHAT WE PERCEIVE TO BE THE UNDERLYING GOAL OF S-1179: ESTABLISHING A FRAMEWORK FOR STATE PLANNING AND DECISION-MAKING ON THE FUTURE COURSE OF ENERGY DEVELOPMENT AND SITING IN NEW JERSEY. THE BILL WOULD ACHIEVE THIS PRINCIPALLY BY USE OF A DUAL SYSTEM OF ADOPTING A STATE ENERGY FACILITIES PLAN AND BY REQUIRING ENERGY INDUSTRIES TO APPLY FOR AND RECEIVE CERTIFICATES OF "SITE AND FACILITY" BEFORE THEY MAY BEGIN CONSTRUCTION. THESE REFORMS ARE LONG OVERDUE. THE PUBLIC ADVOCATE HAS SUPPORTED THESE PRINCIPLES IN THE PAST--IN TESTIMONY BEFORE THE PUBLIC UTILITIES COMMISSION AND THE DEPARTMENT OF ENERGY ("DOE")-- AND WE CONTINUE TO SUPPORT THEM TODAY.

HOWEVER, THE PUBLIC ADVOCATE HAS SERIOUS RESERVATIONS ABOUT THE PROCEDURES AND PROCESSES SET FORTH IN S-1179. IN ADDITION, WE ARE CONCERNED THAT THE BILL RESTS UPON CERTAIN ASSUMPTIONS REGARDING THE NEED TO "EXPEDITE" DECISIONS WHICH, TAKEN TOGETHER, HAVE THE EFFECT

OF IGNORING THE IMPORTANCE OF PUBLIC PARTICIPATION, LOCAL CONTROLS, AND THE ROLE OF DEVELOPING A SOUND RECORD FOR JUDICIOUS DECISION-MAKING. WE SEE NO NEED FOR HASTE OR CORNER-CUTTING IN APPROVING NUCLEAR PLANTS AND OTHER MAJOR ENERGY PROJECTS THAT HAVE A TREMENDOUS IMPACT ON THE STATE. FURTHERMORE, THE BILL EXEMPTS FROM DOE REVIEWS ALL ENERGY FACILITIES FOR WHICH THERE HAS BEEN PRELIMINARY ON-SITE PREPARATION, EVEN THOUGH ONE OF THE BIGGEST ENERGY PROBLEMS FACING THE STATE IS THE PROSPECT OF MASSIVE OVERCONSTRUCTION BY ELECTRIC UTILITIES OF NUCLEAR POWER PLANTS WHICH MAY BE DANGEROUS AND NO LONGER NEEDED. FINALLY, S-1179 SURRENDERS THE LEGISLATURE'S JURISDICTION OVER OFFSHORE FACILITIES, INCLUDING THE CONTROVERSIAL FLOATING NUCLEAR PLANTS PROPOSED FOR THE OCEAN WATERS NEAR ATLANTIC CITY. THUS, IT WILL BECOME POSSIBLE FOR THE FIRST TIME TO GAIN APPROVAL OF FLOATING NUCLEAR PLANTS ALONG THE NEW JERSEY COAST WITHOUT LEGISLATIVE APPROVAL. WE BELIEVE S-1179 SHOULD NOT BE VOTED OUT OF COMMITTEE AND ACTED UPON BY THE GENERAL ASSEMBLY UNTIL THESE AND OTHER PROBLEMS HAVE BEEN RESOLVED.

1. S-1179 OVEREMPHASIZES THE POSSIBLE HARM FROM "REGULATORY DELAY" AND IGNORES THE DANGERS OF EXPEDITING DECISIONS WITH LONG TERM, IRREVERSIBLE CONSEQUENCES. (SEE SEC. 1 OF THE ACT, AMENDING SECTION 2 OF THE DOE ACT, N.J.S.A. 52:27F-2). THIS OVER-EMPHASIS IS APPARENT THROUGHOUT THE ACT. STRICT TIME LIMITS ARE SET FOR PROCEDURES, WHICH IMPOSE DEADLINES WHICH CLEARLY CANNOT BE MET (SEE, E.G., SEC. 16 WHICH REQUIRES COUNTIES TO PREPARE AND ADOPT 10-YEAR ENERGY FACILITIES PLANS WITHIN 60 DAYS). IRONICALLY, THE STATE HAS PREVIOUSLY CALLED FOR DELAY BEFORE FEDERAL AGENCIES IN ORDER TO ASSESS THE IMPACTS OF FLOATING NUCLEAR PLANTS AND OCS DRILLING.

HOWEVER, THE MOST GLARING AND IN OUR OPINION, UNJUSTIFIABLE EXAMPLE OF THE BILL'S OVER-EMPHASIS ON HASTENING DECISIONS IS ITS FAILURE TO PROVIDE FOR FULL-SCALE PUBLIC HEARINGS ON ENERGY FACILITIES AT ANY POINT IN THE REVIEW PROCESS. THIS OMISSION UNDERMINES THE PURPOSES OF THE BILL: TO PROVIDE FOR CAREFUL SCRUTINY OF ENERGY FACILITY SITING, COGNIZANT OF LOCAL AND PUBLIC CONCERNS. THIS POINT IS CRITICAL TO AN UNDERSTANDING OF THE BILL. THE BILL LACKS THE KIND OF HEARING WHICH IS VITAL TO INFORMED DECISION-MAKING AND BONA FIDE PUBLIC PARTICIPATION. THESE PLENARY, ADJUDICATORY OR DUE PROCESS HEARINGS PROVIDE THE SAFEGUARDS AND TRUTH-DETERMINING PROCESSES OF THE COURT ROOM--NOTABLY THE REQUIREMENTS OF AN IMPARTIAL HEARING OFFICER, SWORN TESTIMONY, AND THE RIGHT OF CROSS EXAMINATION. IN OUR RESEARCH OF ENERGY SITING LAWS IN OTHER STATES WE HAVE FOUND THAT WHERE A STATE ELECTS TO DECIDE UPON THE SITING AND NECESSITY FOR MAJOR NEW ENERGY FACILITIES, IT RELIES UPON ADJUDICATORY HEARINGS AS THE ESSENTIAL VEHICLE FOR DETERMINING THE FACTS NECESSARY FOR WISE DECISION-MAKING. (THESE STATES INCLUDE, FOR EXAMPLE, NEW YORK, CONN., MASS., FLORIDA, MINN., CALIF., OREGON AND WASH.)

THE IMPORTANCE OF ADJUDICATORY HEARINGS TO BONA FIDE OPPORTUNITIES FOR PUBLIC PARTICIPATION IS LITTLE UNDERSTOOD AND SELDOM APPRECIATED. SUCH HEARINGS, HOWEVER, ARE ABSOLUTE NECESSITIES. THEY ARE THE SOLE MEANS BY WHICH CITIZENS, BUSINESSES, NON PROFIT ORGANIZATIONS, MUNICIPALITIES AND, BY IMPLICATION, THE PUBLIC ADVOCATE, ARE ABLE TO CONFRONT THE POTENTIALLY SELF-SERVING CLAIMS OF ENERGY COMPANIES AND

THE ASSUMPTIONS OF GOVERNMENT BUREAUCRATS. WITHOUT THESE SAFEGUARDS AN ENERGY COMMISSIONER COULD ARBITRARILY AUTHORIZE CONSTRUCTION OF AN OIL TANK FARM ON THE JERSEY CITY WATERFRONT OR IN THE PINE BARRENS OF OCEAN COUNTY AND NEITHER THE LOCAL GOVERNMENT NOR THE LEGISLATURE COULD DO ANYTHING TO STOP IT. ADDITIONALLY, WHEN THE PROPONENT OF A NEW FACILITY--FROM OIL TANKS TO NUCLEAR POWER PLANTS--KNOWS THAT HIS VIEWS WILL BE SUBJECTED TO CROSS EXAMINATION BY REPRESENTATIVES OF THE AFFECTED PUBLIC, HE IS LIKELY TO GIVE MORE CAREFUL CONSIDERATION TO HIS PROPOSAL. IN SHORT, PUBLIC PARTICIPATION THROUGH ADJUDICATORY HEARINGS IS NOT JUST A GRUDGING CONCESSION TO LAWYERS AND CITIZEN ACTIVISTS; IT IS THE MECHANISM FOR WISE DECISION-MAKING AND PUBLIC ACCOUNTABILITY.

S-1179, HOWEVER, NEITHER EXPRESSLY NOR IMPLICITLY PROVIDES FOR THESE PUBLIC HEARINGS. WE BELIEVE THEY SHOULD BE EXPRESSLY REQUIRED AS PART OF THE REVIEW OF EVERY APPLICATION FOR A CERTIFICATE OF SITE AND FACILITY REQUIRED BY SEC. 25 OF THE BILL. WHERE THE APPLICANT IS A REGULATED UTILITY, THE PUBLIC ADVOCATE, THROUGH THE DIVISION OF RATE COUNSEL, SHOULD BE AUTHORIZED TO APPEAR AND REPRESENT THE PUBLIC INTEREST AS IT DOES NOW IN UTILITY RATE CASES. SINCE A UTILITY'S INVESTMENT IN NEW FACILITIES DETERMINES THE RATES THAT CONSUMERS WILL PAY, IT WOULD MAKE LITTLE SENSE TO PROVIDE FOR RATE COUNSEL REPRESENTATION DURING RATE CASES (AS DONE NOW BY STATUTE) BUT NOT WHEN THE UTILITY APPLIES FOR APPROVAL OF THE PROPOSED FACILITY. IN CASES OF NONUTILITY ENERGY FACILITIES--SUCH AS OIL TANK FARMS AND LNG STORAGE FACILITIES--THE DIVISION OF PUBLIC INTEREST ADVOCACY OF THE PUBLIC ADVOCATE WOULD HAVE THE DISCRETION TO INTERVENE ON BEHALF OF THE

PUBLIC INTEREST. WE HAVE PREVIOUSLY REPRESENTED SEVERAL MUNICIPALITIES AND CIVIC ORGANIZATIONS IN SUCH CASES BEFORE FEDERAL REGULATORY AGENCIES. (A FULL LISTING OF THESE INTERVENTIONS IS AVAILABLE IN OUR 1977 ANNUAL REPORT TO THE LEGISLATURE.)

2. A FURTHER PROBLEM WITH THE PROCEDURE FOR DOE JURISDICTION TO ISSUE CERTIFICATION IS ITS RELATION TO LOCAL AND COUNTY GOVERNMENT. THE BILL, SECTIONS 13 AND 29, PROVIDES FOR A COMPLETE TERMINATION OF LOCAL REGULATION FOR ALL ENERGY FACILITIES UNDER THE ACT'S DEFINITION. WHILE UNQUESTIONABLY THERE ARE CERTAIN FACILITIES-- NOT JUST IN THE ENERGY FIELD--IN WHICH THE INTEREST OF ALL CITIZENS IS SO GREAT THAT THE PRINCIPLES OF LOCAL CONTROL SHOULD YIELD TO THE GREATER GOOD, THERE IS NO DISTINCTION IN THIS LEGISLATION BETWEEN FACILITIES OF OVERRIDING STATE INTEREST VERSUS FACILITIES FOR WHICH LOCAL GOVERNMENTS SHOULD CONTINUE TO EXERCISE THE FIRST LINE OF REGULATION. AS NOTED EARLIER, STORAGE TANKS OR TANK FARMS FOR OIL, PETROLEUM, AND PETRO-CHEMICALS WOULD BE TOTALLY OUTSIDE THE SCOPE OF LOCAL JURISDICTION UNDER THIS BILL. THIS IS A SERIOUS ERROR. FIRST, THERE IS NO COMPELLING STATE INTEREST IN THE SITING OF TANK FARMS SUFFICIENT TO VETO LOCAL OPPOSITION. TANK FARMS GENERALLY ARE NOT CONSTRUCTED TO SUPPLY NEEDED ENERGY TO NEW JERSEY BUT RATHER TO SUPPLY STORAGE FOR REFINING AND TRANSSHIPMENT OF THE FUELS ELSEWHERE. THE STATE HAS NO MORE OF A CLAIM TO LIQUID FUELS HELD IN EXISTING TANKS IN NEW JERSEY AND OWNED BY MAJOR OIL COMPANIES THAN IF THE TANKS WERE LOCATED IN SOME OTHER STATE. IN SHORT, PROVIDING FOR MORE STORAGE CAPACITY WILL DO LITTLE TO SATISFY THE STATE'S ENERGY SUPPLY NEEDS.

SECOND, TANK FARMS DO NOT REQUIRE UNIQUE OR RARE SITING CHARACTERISTICS. ESSENTIALLY, THEY CAN BE LOCATED ANYWHERE--UNLIKE ELECTRIC GENERATING STATIONS WHICH REQUIRE SPECIAL SITING CHARACTERISTICS, SUCH AS ACCESS TO VAST QUANTITIES OF COOLING WATER. THUS, LOCAL DISAPPROVAL IN ONE TOWN WOULD NOT PRECLUDE THEIR ESTABLISHMENT, SINCE OTHER SITES WOULD BE AVAILABLE ELSEWHERE, INCLUDING OTHER STATES. (N.J., WITH LESS THAN 2% OF THE LAND AREA ON THE EAST COAST, ALREADY CONTAINS 38% OF THE PETROLEUM STORAGE CAPACITY AND 30% OF THE REFINING CAPACITY.)

FINALLY, THE IMPACTS OF TANK FARMS ARE OVERWHELMINGLY EXPERIENCED AT THE LOCAL LEVEL. THEIR PRESENCE WILL AUTOMATICALLY CONVERT A RURAL OR RESIDENTIAL AREA INTO HEAVY INDUSTRIAL USE. THIS WILL AFFECT PROPERTY VALUES, BUSINESS INVESTMENTS, AND THE COMMUNITY'S OVERALL QUALITY OF LIFE. (TO THE EXTENT THAT THERE IS A GREATER THAN LOCAL INTEREST IN THE SITING OF TANK FARMS THE STATE SHOULD BE PERMITTED TO FORBID THEIR CONSTRUCTION WHEN THE IMPACTS ARE SHOWN TO BE NEGATIVE. THIS CAN BE DONE THROUGH THE EXISTING PERMIT REVIEW PROCESS ADMINISTERED BY THE DEP.)

THE PUBLIC ADVOCATE PROPOSES, THEREFORE, THE FOLLOWING AMENDMENTS:

- (a) DETERMINE THE SUITABILITY OF SITING OF THOSE ENERGY FACILITIES WHICH AFFECT THE ENTIRE STATE--SUCH AS NUCLEAR OR COAL POWER PLANTS--IN PUBLIC ADJUDICATORY HEARINGS, AT WHICH LOCAL RESIDENTS AND MUNICIPAL GOVERNMENTS, ACTING DIRECTLY OR THROUGH THE PUBLIC ADVOCATE, WOULD HAVE STANDING TO PARTICIPATE ON ALL RELEVANT ISSUES.
- (b) MAINTAIN LOCAL POLICE POWER CONTROL, INCLUDING ZONING, OVER ALL OIL, PETROLEUM AND CHEMICAL TANK FARMS AND

RELATED FACILITIES.

4. S-1179 IS ALSO DEFICIENT IN ITS EFFORT TO EXEMPT ALL ENERGY FACILITIES FROM THE CERTIFICATE PROCESS WHERE THERE HAS BEEN SOME PRIOR LAWFUL SITE PREPARATION "OR OTHER SUBSTANTIAL ACTION." INDEED, IT IS THE OPINION OF THE PUBLIC ADVOCATE--BASED UPON OUR ACTIVE PARTICIPATION IN SEVERAL RATE CASES AND IN GENERIC HEARINGS BEFORE THE PUC--THAT ONE OF THE MAIN TASKS OF THE STATE SHOULD BE TO EXAMINE THE CURRENT, ON-GOING CONSTRUCTION PROGRAMS OF ENERGY INDUSTRIES. THIS CAN BEST BE ACCOMPLISHED BY GRANTING THE DOE AUTHORITY TO ORDER COMPANIES TO APPEAR IN HEARINGS AND JUSTIFY CONTINUATION OF UNFINISHED PROJECTS IF THE ASSUMPTIONS WHICH JUSTIFIED THEIR CONSTRUCTION HAVE SUBSTANTIALLY CHANGED. FOR EXAMPLE, JERSEY CENTRAL POWER AND LIGHT CO. ("JCP&L") INTENDS TO BUILD A 1150 MW NUCLEAR REACTOR, FORKED RIVER, AT A SITE IN OCEAN COUNTY PURSUANT TO A FEDERAL AEC PERMIT WHICH IS NOW ALMOST 5 YEARS OLD. YET JCP&L HAS DONE LITTLE TO CARRY THE PROJECT TO COMPLETION, DUE IN LARGE MEASURE TO FINANCING DIFFICULTIES. MEANWHILE, PUBLIC SERVICE ELECTRIC & GAS CO. ("PSE&G") CONTINUES WORK ON THREE MORE 1000 MW REACTORS--SALEM 2 PLUS HOPE CREEK 1 AND 2--EVEN THOUGH THE NEED FOR THIS GIGANTIC INCREASE IN NEW CAPACITY GROWS MORE DOUBTFUL EVERY YEAR. ACCORDINGLY, THE PUBLIC ADVOCATE RECOMMENDS THAT S-1179 BE AMENDED TO PERMIT ONGOING REVIEWS OF INCOMPLETE PROJECTS WHERE THERE ARE GENUINE QUESTIONS ON THE NEED FOR CONTINUING AS ORIGINALLY PLANNED. THIS RECOMMENDATION REFLECTS THE BASIC RATIONALE FOR THE DOE AND FOR S-1179: TO PROVIDE FOR COMPREHENSIVE STATE REVIEW OF THE NECESSITY FOR AND SITING OF MAJOR ENERGY FACILITIES. BY GRANDFATHERING SUCH INCHOATE PROJECTS

AS FORKED RIVER, THE BILL EFFECTIVELY DELEGATES TO THE ENERGY COMPANIES SOLE DISCRETION TO DETERMINE WHETHER AND, IF SO, WHEN TO COMPLETE PROJECTS IN LIGHT OF CHANGING CIRCUMSTANCES.

5. FINALLY, S-1179 MAKES IT POSSIBLE TO LICENSE THE FLOATING NUCLEAR PLANTS WITHOUT LEGISLATIVE AUTHORIZATION. THESE ARE THE HIGHLY CONTROVERSIAL ATLANTIC GENERATING STATION ("AGS") UNITS 1 AND 2, PROPOSED BY PSE&G FOR A SITE 2.8 MILES AT SEA AND 12.4 MILES NORTH OF ATLANTIC CITY. FOUR YEARS AGO THE CITIZENS OF ATLANTIC COUNTY VOTED OVERWHELMINGLY IN A NONBINDING REFERENDUM AGAINST THE FNP'S. TODAY THE FEDERAL LICENSING REVIEW OF AGS 1 & 2 HAS BEEN INDEFINITELY SUSPENDED, IN PART BECAUSE PSE&G HAS POSTPONED ORDERING THEM UNTIL 1988 and 1990 RESPECTIVELY. THE BILL WOULD AUTHORIZE THE NATURAL RESOURCES COUNCIL TO SELL OR LEASE TO PSE&G THE HUGE ACREAGE OF SUBMERGED LANDS NECESSARY FOR CONSTRUCTION OF THE BREAKWATER--THE LARGEST OCEAN STRUCTURE EVER MADE. ITS IMPACTS ON SUCH MATTERS AS THE LITTORAL DRIFT OF SAND TO AND FROM BEACHES REMAINS THE SUBJECT OF SPECULATION.

THE PUBLIC ADVOCATE PREFERS TO SEE THE LEGISLATURE RETAIN AUTHORITY FOR REVIEW OF THE AGS UNITS. WE SUGGEST, THEREFORE, THAT THE COUNCIL'S JURISDICTION OVER SUBMERGED LANDS BE LIMITED TO LEASING CORRIDORS FOR PIPELINES FROM OFFSHORE OIL FOLLOWING ADJUDICATORY HEARINGS AND SUBJECT TO CLEAR SAFEGUARDS. NUCLEAR INSTALLATIONS, AS WELL AS OTHER FORMS OF NEW TECHNOLOGY, SUCH AS DEEPWATER OIL PORTS FOR SERVICING GIANT SUPER TANKERS, SHOULD NOT BE ADDED TO THE COUNCIL'S JURISDICTION. THESE FACILITIES ARE OF SUCH MASSIVE DIMENSION AND POTENTIAL IMPACT THAT THE LEGISLATURE SHOULD NOT DELEGATE AWAY THESE RESPONSIBILITIES.

IN CONCLUSION, WE STRONGLY URGE THE COMMITTEES TO CONSIDER THESE COMMENTS. WE BELIEVE THAT TO RELEASE THE BILL IN ITS PRESENT FORM WITHOUT THESE AMENDMENTS WOULD UNDERMINE ITS VALID PURPOSES. THE DEPARTMENT OF THE PUBLIC ADVOCATE IS PREPARED TO ASSIST IN THE DRAFTING AND REVIEW OF AMENDMENTS TO S-1179.

PROPOSED AMENDMENT TO S. 1179

SUBMITTED BY GEORGE BARBOUR, PRESIDENT, PUC

25. (New Section) d. The approval by each department, division, agency, commission, council, board, bureau or instrumentality (hereinafter referred to as "State instrumentalities") provided by law with the power to grant or deny any approval, consent, permit, certificate or other condition for the construction or location of any energy facility in any part of this State, as hereinafter provided; except that, in the event that any such approval, consent, permit, certificate or other condition for the construction or location of any energy facility in any part of this State is denied by any such State instrumentality, or is granted on such terms that, in the judgment of the commissioner, will make it impracticable to construct such facility, the commissioner shall have the sole and exclusive right, within 20 days of such denial or conditional approval the completion of the department's review of such application pursuant to section 33 of this amendatory and supplementary act, to approve such application, approve such application with conditions, or waive such impracticable terms, if, in his discretion, he determines that such approval, conditional approval or waiver is necessary and appropriate to effectuate the purposes hereof . ; provided, however, that no such approval, conditional approval or waiver shall be granted by the commissioner which the State instrumentality denying such approval or requiring such terms certifies would result in the violation of any requirement or standard specifically mandated by Federal statute or regulation. In the event that the commissioner determines to exercise such right, he shall notify the relevant State instrumentality which shall forthwith grant any such approval, consent, permit, certificate or other condition on such terms as may be required by the commissioner unless the relevant State instrumentality invokes the review procedures set forth in section 28 hereof.

26. (New Section) a. Immediately upon the receipt of any application for a certificate of site and facility, or as soon thereafter as practicable, the department shall acknowledge such receipt, in writing, and shall transmit a copy of such application and all accompanying materials to the chief executive officers of appropriate executive departments, including but not necessarily limited to the departments of Environmental Protection, Labor and Industry and Transportation, provided by law or containing any State instrumentality within said department with the power to grant or deny any approval, consent, permit, certificate or other condition for the construction or location of any energy facility in any part of this State /and, where appropriate/ or when such application is filed by a public utility as defined in N.J.S.A. 48:2-13 subject to the jurisdiction of the Board of Public Utilities to the President of the Board of Public Utilities, for the purposes of reviewing such application and making a determination thereon /; provided, however, that any such review by the Board of Public Utilities shall be limited to the relevant financial aspects of facilities proposed by public utilities/.

28. (New Section) In the event that the findings and determinations whether to approve or deny any application as transmitted by any chief executive officer, or the President of the Board of Public Utilities, pursuant to subsection c. of Section 27 of this amendatory and supplementary act, are overridden by the commissioner, pursuant to subsection d. of section 25 hereof with respect to any required approval, consent, permit, certificate or other condition, the chief executive officer, or the President of the Board of Public Utilities may, no later than 10 days after receiving notice of such override, request of the Governor the convening of an Energy Facility Review Board, which shall consist of the Commissioner of Energy, such chief executive officer or the President of the Board of Public Utilities, and a designee of the Governor. The Governor shall convene such board no later than 10 days after the request therefor. The decision of the Energy Facility Review Board created with respect to any such required approval, consent, permit, certificate or other condition shall be made within 20 days of the convening of such board, shall be binding with respect to such requirement and shall be implemented forthwith. In the event such decision is not made within said 20 day period, the position of the Commissioner of Energy shall be deemed to be sustained and his determination with respect thereto shall be implemented forthwith.

SUBMITTED BY MAYOR SAMUEL E. DONELSON

RESOLUTION OPPOSING SENATE BILL #1179

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WHEREAS a public hearing on Senate Bill #1179 will be held on June 21, 1978, three business days from today; and

WHEREAS copies of the amended Senate Bill #1179 have not been available for mailing to the public through Legislative Services until today so that the Township of Lower Alloways Creek has not yet received a copy despite advance request; and

WHEREAS the announced purpose of the Bill is to regulate the siting of energy facilities without complying with local planning and zoning regulations and despite the actions and desires of local government to protect the community most directly affected by the siting;

NOW, THEREFORE, BE IT RESOLVED that Lower Alloways Creek Township opposes Senate Bill #1179 and urges its rejection.

BE IT FURTHER RESOLVED that the State of New Jersey, if it wishes to assume control over local land use, should begin observing basic principles for legislating local land use, such as making copies of its proposed laws available to the public at least seven days in advance of its hearings.

Dated 6/16/78

Samuel E. Donelson  
SAMUEL E. DONELSON, MAYOR

ATTEST:

Michael H. Facemyer  
MICHAEL H. FACEMYER, CLERK

I certify the foregoing to be a true copy of a resolution adopted by the Township Committee of Lower Alloways Creek Township at a meeting held on June 16, 1978.

20X

Michael H. Facemyer

SUBMITTED BY MR. ALFRED SITARSKI

Comments on N.J. Senate Bill 1179 by the N.J. Petroleum Council to the N.J. Assembly Committee on Energy and Natural Resources and the Committee on Agriculture and Environment on June 21, 1978, in Trenton, New Jersey

- I. First a comment about the good features in the bill:
1. The legislation grants DOE override powers over municipal and county restrictions on energy facility siting.
  2. The legislation grants DOE powers of eminent domain over land required for siting of energy facilities.
  3. The measure amends riparian law as related to seaward territorial jurisdiction of the State.

On the negative side of the legislation are the following concerns:

1. The volume and nature of data required by the State Industrial Facilities Plan.
2. The data required and the administrative time granted the State to process a request for a certificate of site and facility (210 days).
3. Failure to fully exempt existing petroleum facilities from certificate of facility requirements for modifications and expansions.
4. The bill fails to exclude from its provisions the private petroleum sector when such an industry on its own initiative obtains an environmentally acceptable site.

Several general comments -- The administrative provisions of this legislation are closely aligned with the "State Energy Facilities Plan" and the "State Energy Master Plan." Both of these documents are currently in the formulative stage. By their very nature they are primarily concerned with State needs -- not regional or national needs. While the requirements and plans of regulated energy industries i.e., utilities are more closely aligned with State needs, this is not the case with the petroleum industry where regional and national

needs must be developed. Consequently, essential petroleum energy certificates of site and facility could conceivably be denied as not being "in conformity" with State plans. We respectfully suggest that this joint Committee review all these documents together: (1) Senator Dodd's bill, (2) The State Energy Master Plan and, (3) The State Energy Facilities Plan.

While the legislation does not mandate the location of energy facilities in energy parks surrounded by buffer areas of dedicated open space, it is important to note that sometimes such legislative suggestions end up later in regulatory requirements. While energy parks and buffer zones may be suitable for utilities, such applications for petroleum facilities may not be suitable. "Clustering" of Petroleum facilities from an environmental and safety point of view could present some disadvantages. Consideration should be given to amend the bill to provide for buffer zones and energy parks only where reasonable, practical and economically feasible.

Finally, this committee should also be aware of the fact that enactment of S-1179 may jeopardize the DEP's CZM plan with possible subsequent loss of the Federal funds. We base this statement on the fact that S-1179 transfers powers from DEP to DOE which will result in major changes and revisions in the handling of New Jersey's CZM program.

The standard to guide the Department's approval of an application of site and facility -- "That the use of the site will be reasonably necessary to meet estimated energy needs" -- is too narrow and runs counter to the National interest. The energy needs at issue appear only to be those of the State of New Jersey. See para. 2b page 2 of Legislative findings; Section 12 pages 9-10 of the State Master Plan; Section 19F page 24 State Energy Facilities Plan. Such a standard or policy could run counter to such Federal Laws as the Natural Gas Act of 1938 as amended (where a natural gas company has been issued a certificate of public conveyance and necessity by the F.E.R.C. to construct or improve pipeline facilities in New Jersey) and the Coastal Zone Management Act wherein energy facilities, such as pipelines have been approved in the Coastal Zone but impact on or extend beyond the Coastal Zone i.e., a pipeline, a gas plant. The standard or policy should be clearly broadened to accommodate national interests.

II. The following specific comments and amendments are suggested:

\* Page 32 - Sec. 30 - Line 13-14

After "hereof" omit "but such certificates are required for sizable additions thereto as defined by the department" insert "or, with respect to existing energy facilities for the production, conversion, processing, transmission, or storage of petroleum products, for any modification, modernization, or expansion thereof to increase capacity on existing sites."

Page 20 - Sec. 15 - Line 1

After "except" add "... energy facilities connected primarily with the exploration for and production of oil and gas and other minerals from the Outer Continental Shelf off the coast of New Jersey and such other energy industry...."

Page 20 - Sec. 15 - Line 5-6

Delete "Such plans shall be revised and updated annually." Add the following -- "Such plans shall be updated annually by any significant changes which have occurred since submittal of the previous plan."

Page 20 - Sec. 15-b - Line 14-15

After previous delete "... 3 years." Replace with "... year."

Page 21 - Sec. 15-g - Line 44

After the word "secrets" and "... or information on location, when the plan submitted, requested that such information not be disclosed."

\* Page 34 - Sec. 34 - Line 35

Add a new paragraph: "Energy facilities connected primarily with the exploration for and production of oil and gas and other minerals from the Outer Continental Shelf off the coast

of New Jersey are exempt from the provisions of section 15 of this amendatory and supplementary act."

\* Page 32 - Sec. 31 - Line 4

Delete "2 years" and substitute "... one year." A better provision would be deletion of the entire section 31.

Section 16 - This section duplicates in major part certain key provisions of Section 15. County plans should be prepared after the submissions by energy companies under Section 15 and in effect should take such submissions into account.

\* Pages 24-26 - Sections 20-22 - Re Public hearings concerning site evaluations for energy facilities. This section should allow interested persons a type of cross-examination or an opportunity to submit rebuttal evidence. Otherwise, hearings could be forums only for public discretion without meaningful regard for development of probative and credible basis for departmental action. The Department should be required to submit its evidentiary basis at such hearings. Departmental determination should be based on substantial evidence on the record as a whole.

\* Page 27 - Section 24-B - Requiring particular recipient of Departmental grant of real estate to pay "compensation" therefor, should be changed to make the compensation "reasonable" or not in excess of the Department's acquisition costs and related to expenses incurred in acquiring and conveying said real estate.

\* Pages 29-30 - Section 26 - No standards are established or provided for on an application of certificate of site and facility under this section. This is significant since the Department upon receipt of an application for such certificate is to submit copies of same to various affected state governmental units for comment, and if the application or the accompanying material has any deficiency which is considered "major" by the DOE, the application is returned with the

filing fee less costs incurred to the particular energy company. The Company is then obliged to file and serve a new application and go through the cumbersome service and public notification procedures of Section 32 page 32. The standards for such application should be specified either in the statute or in duly promulgated regulations to be issued so an applicant will know precisely what is expected and required.

Page 35 - Section 38 - Comment - Since New Jersey cannot impede the flow of interstate commerce or frustrate the workings of supplemental Federal law i.e., the Natural Gas Act, the penalty provisions of this section are somewhat unrealistic.

Page 16 - Line 30 - Sec. 16-d

It must be insured that information such as exploratory well data including location, depth and results must be treated as "Trade Secrets" for competitive reasons within our industry.

Page 21 - Line 40 - Sec. 15-g

Making a petroleum company's submitted plan available as public information will present serious problems to an exploration effort in giving advance notice of a company's intentions. The applied interpretation of "Trade Secrets" must include pre-lease activity, leasing and exploration test activity.

Page 34 - Line 4 - Sec. 34

Limited activities in New Jersey of a company's exploration department should be exempt under the provisions of this section.

\* Page 26 - Line 15-18 - Sec. 22-d

"unduly impair" should be amended out of this section. As written, interpretation of this section could result in dis-

approval of energy facilities such as pipelines, which could result in temporary damage during construction but no permanent damage. The following language could be added -- "In making a determination with respect to impairment of important environmental values the Department shall consider and balance the public's need to be served by such energy facility against the degree and duration of the impairment of the environment and the number of people who would be adversely affected by such impairment."

\* Page 33 - Line 33-35 - Sec. 32-b

After "the" in line 34 delete State and add "estimated energy needs of the State, the Region and the Nation..."

Page 17 - Line 47 - Sec. 16-e

Revise to read "information provided by other units of government, by trade associations, etc..."

Page 32 - Lines 11-14 - Sec. 30

Revise this section to allow for a transitional period after enactment of the bill and until the administrative process begins.

6/19/78

NY Times

Jun 16, 1978

## State Energy Chief Says Trenton Must Control Site of Oil Pipelines

Special to The New York Times

ABSECON, June 15—New Jersey's Commissioner of Energy, Joel R. Jacobson, said today that the development of a coherent energy policy would be "absolutely impossible" unless the state was empowered to overrule municipal opposition to pipelines needed in the event of an offshore oil discovery.

Mr. Jacobson told the 63d annual meeting of the New Jersey Utilities Association at the Sea View Country Club here that the authority for siting energy-related facilities is "the most serious challenge to the determination of the Byrne administration to cooperate in the safe exploration of the Baltimore Canyon."

The Commissioner, who must produce a state master plan for energy by July 11, said it would recommend that a state agency, preferably his department, be given authority to rule on pipeline sites with full consideration of any municipality's objections.

He also said the statute under which his department was functioning was "a monstrosity—nebulous, ambiguous and contradictory," leading to disagreements with the State Board of Public Utility Commissioners "over form, not substance." But he promised to work with the P.U.C. to "resolve the problems of operating under a faulty statute."

Mr. Jacobson said the state could deny local approval of a facility site project, but could not overrule local disapproval.

"If we were to determine a place for the pipeline to cross the coast, and it is environmentally acceptable and everybody in the state were to agree, the mayor of the municipality could simply say no," he said. "Some state agency

must be ready to bite that bullet and we are determined it should be the Department of Energy. The state must have authority in this instance if the public interest is to be served."

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# N.J. Energy Dept. gains in bid for land-use powers

By Mark Jaffe

The Record Trenton Bureau

TRENTON — The state Department of Energy came a step closer yesterday to gaining almost absolute power to decide where new energy facilities are placed in New Jersey.

Under legislation that unanimously passed the state Senate yesterday, the department could overrule energy site decisions by all other state agencies and municipalities, as well as condemn private property needed for new facilities.

In addition, the department would be able to issue all the necessary permits on energy utility needed for construction.

Energy facilities include pipelines, fossil fuel electricity plants, tank farms, nuclear power plants, and transmission lines.

The bill now goes to the Assembly.

"We must develop a coherent energy policy," said Energy Commissioner Joel Jacobson. "We have no desire to ride roughshod over local communities . . . but we can't permit a local veto to hinder the needs of the state."

Jacobson said that the best way to develop this "coherent policy" is to centralize the responsibility for deciding where new energy facilities are placed.

The legislation gives the Department of Energy the task of estimating the future energy needs of the state and determining what new facilities will be necessary to meet those needs.

Then, in cooperation with the state Department of Environmental Protection and land use planners at the Department of Community Affairs, the Energy Department would designate suitable places for energy facilities.

Counties would be encouraged to develop their own energy facility plans. Jacobson said these would be taken into

consideration when designating sites but that the final word would rest with his department.

If a site were selected for a tank farm or any other energy facility and the owner of the land refused to sell, the department could condemn the land and turn it over to a utility company.

Any land taken by condemnation or under a Department of Energy construction permit would be exempt from local zoning codes.

If another state agency issued a permit for an energy facility with restrictions that the department considered "impracticable," the commissioner would have the power, under the legislation, to waive those requirements.

Any disagreements between the Energy Department and other state agencies would be resolved by an energy facility review board, composed of the energy commissioner, the head of the other state agency in the dispute and the governor or his designee.

The vote of the board could overrule the Energy Department's position, but if no decision were reached, then the department's position would stand.

Counties and municipalities could file formal objections with the energy commissioner, but if the facility were considered necessary to meet the state's needs, the DOE could grant whatever permits were necessary.

Every utility and company engaged in energy exploration would be required to submit a plan to the department every three years outlining facility needs and proposals for meeting them.

"The entire process," Jacobson said, "is one of balancing the environmental needs of the state with the needs for energy and economic growth."

He said the legislation had been spurred by the current exploration for oil off the New Jersey coast.

A ZAPP  
242 STEVENS AVE  
JERSEY CITY NJ 07305

western union Mailgram



JUN 22 1978

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▶ ASSEMBLYMAN DONALD STEWART  
CHAIRMAN  
ASSEMBLY AGRICULTURE COMMITTEE  
STATE HOUSE  
TRENTON NJ 08625

UNFORTUNATELY WE ARE UNABLE TO ATTEND YOUR JOINT COMMITTEE HEARING ON  
S.1179 SCHEDULED FOR WEDNESDAY, JUNE 21.

HOWEVER, WE WISH TO EXPRESS OUR STRONGEST OPPOSITIONS TO PROVISIONS OF  
THE BILL WHICH WOULD GRANT THE COMMISSIONER OF ENERGY DANGEROUS  
UNILATERAL POWER TO OVERRIDE LOCAL ORDINANCES AND OTHER STATE AGENCIES  
IN SITING ENERGY FACILITIES.

WE URGE MOST STRENUOUSLY THAT THE BILL NOT BE REPORTED OUT OF COMMITTEE  
IN ITS PRESENT FORM. RESPECTFULLY

MRS AUDREY ZAPP  
EXECUTIVE SECRETARY  
CITIZENS COMMITTEE OF HUDSON COUNTY

2314 EST

MGMCOMP MGM



**common  
cause** NEW  
JERSEY

28 WEST STATE STREET, RM. 910, TRENTON, NEW JERSEY 08608



609-396-1150

STATEMENT BY NEW JERSEY COMMON CAUSE  
BEFORE A JOINT HEARING OF  
THE ASSEMBLY AGRICULTURE AND ENVIRONMENT COMMITTEE  
AND THE ASSEMBLY ENERGY AND NATURAL RESOURCES COMMITTEE ON  
S1179

Wednesday, June 21, 1978

My name is Sharen Popkin, and I represent New Jersey Common Cause.

My remarks today will be directed at procedures, rather than the substance of S1179. Although Common Cause is vitally interested in this bill, we do not have a position on it because we have not had enough time to develop one.

I would like to commend you for holding this hearing today, and I would like to publicly thank Speaker Jackman for his response to our letter asking for public hearings. We received a call from him an hour or two after the letter was delivered, in the middle of a legislative day. That is responsiveness beyond the call of duty.

And yet, we are here today to ask for more time. It is virtually impossible to overestimate the importance of S1179. The fact that it passed the Senate without a word of debate is incomprehensible. There should be a full-scale, state-wide discussion of the far-reaching implications of this bill.

It is all very well to say that "everyone should understand it" because it has been around awhile. In fact, legislative action began only a month ago, when S1179 was introduced on May 18. Those who came to the committee meeting four days later were given a mammoth 47 pages of amendments. Why these amendments were not included in the original bill is anyone's guess.

The emphasis has been on the need to get the bill through as soon as possible. Were public hearings needed? Let the Assembly do it. The amended bill was not available when the Senate voted; in fact, it wasn't available until last Friday.

(more)

I'm afraid that we who live in the pressure-cooker atmosphere of a legislative session sometimes lose contact with reality. There are millions of people, outside of this State House, who will be affected by the provisions of this bill. They don't have lobbyists looking out for their interests. In our own case, our lobbyist must refer energy bills to an Issues Committee, which makes recommendations to our Steering Committee. All of this takes time. We are not energy experts, but we are most concerned about procedures which will educate the public and seek its opinions, as well as grind out legislation.

S1179 may or may not be a good bill, but it is certainly political dynamite. We would like to see hearings scheduled throughout the state, and final passage delayed until the Legislature returns in the fall.



New Jersey Association of Counties

June 19, 1978

To Whom It May Concern:

THE FOLLOWING is a letter transmitted to this Association by two members of the Ocean County Freeholder Board for deposit with two committees as follows:

To The Chairmen and General Assembly Committee on Energy and Environment and Agriculture:

AS MEMBERS of the Ocean County Board of Chosen Freeholders we wish to protest passage by the New Jersey Legislature of the Dodd Bill S-1179, which will make the new Department of Energy the sole authority on all matters affecting new energy facilities.

OCEAN COUNTY is already the location of 2 nuclear energy facilities in the Lacey Township area.

THE SITINGS of any and all energy facilities is a matter of prime concern to all County and local municipal governments. We feel that the State alone should not be the sole arbiter in matters of such crucial concern to the interests and welfare of our citizens. We request that this communication be entered into the record of your public hearing for June 21, 1978.

Thank you,

/signed/

Leonard T. Connors, Jr.
Freeholder

LTC:L

/signed/

Hazel S. Gluck
Freeholder Director

President

LEANNA BROWN, Morris
Courtthouse
Morristown, N.J. 07960

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Mercer

JACK LAMPING, Executive Director

JONATHAN M. BLOCK, Research Director

IRMA D. ZANE, Administrative Secretary

HARVEY I. STERN, Counsel
Mercer

JUN 23 1978

**New  
Jersey  
Conservation  
Foundation**

300 Mendham Road  
Morristown NJ 07960  
201-539-7540

June 21, 1978

The Honorable John H. Froude, Chairman  
Assembly Committee on Energy and Natural Resources  
State House  
Trenton, New Jersey 08608

Re: S-1179

Dear Assemblyman Froude:

The New Jersey Conservation Foundation, a private, nonprofit organization concerned with open space preservation and proper land use, conditionally supports the passage of S-1179.

Our recent energy problems, coupled with future demand for energy facility sites as offshore drilling for oil and gas continues, require that the State assume positive authority over the siting of such facilities. It is not sufficient for the State to have authority to deny construction of energy facilities in areas found to be unsuitable; it is essential for the State to have positive authority allowing location of facilities in areas determined to be suitable. S-1179 provides that authority.

However, the granting of this authority to the Department of Energy carries with it perhaps too heavy a concentration of responsibility in one state agency. Our government operates on a system of checks and balances to avoid investing any one agency with such an abundance of power.

Sections of S-1179 which provide for public hearings, establish an Energy Facility Review Board and allow for filing of objections by local governments could be further strengthened: by requiring applicants for "certificates of site and facility" to submit environmental, economic and social impact statements as part of the application; and by requiring the Department of Energy to make specific written findings that the proposed activity would be in the best public interest. These findings should receive wide public distribution so that the rationale underlying the Department's decision is clearly explained.

The Department should also be required to make similar specific written findings for public distribution regarding exemptions of certain facilities from its jurisdiction. Public hearings should be held on both applications for "certificates of site and facility" and exemptions.

We should like to point out the following:

1. Section 30 requires energy facilities to be constructed, operated and maintained in accordance with the terms and conditions of the site and facility certificate. All too often, permit enforcement and monitoring by the State has been inadequate.

It might be desirable for communities within which the approved facility is located to monitor it and to report to the Department any permit violations.

2. Our support of S-1179 is dependent upon the Assembly's acceptance of the amendments approved by the Senate:

Prevention of the Department's overriding of federal requirements; Requiring the Department to apply to the Natural Resource Council in order to obtain public trust lands for energy facility sites;

Requiring approval from the Department of Environmental Protection prior to issuance of certificates for facilities to be constructed on publicly owned property;

Prevention of the State's divesting itself of public land for the purpose of providing a site for an energy facility.

With the above conditions and suggestions, we support S-1179. Thank you for this opportunity to express our thoughts.

Sincerely,

  
David F. Moore  
Executive Director

DFM:js



REPLY TO:  
**Legislative Office**  
32 LAFAYETTE STREET  
TRENTON, N.J. 08608  
609 393-7474

## The League for Conservation Legislation

Box 605, Teaneck, N. J. 07666

COMMENTS DELIVERED BY MICHAEL HAVRISKO ON JUNE 21, 1978, BEFORE A JOINT COMMITTEE HEARING ON S-1179.

Good afternoon, thank you for giving me this opportunity. My name is Michael Havrisko, I am the Legislative Agent for the League For Conservation Legislation.

S-1179 states that energy facilities be constructed and placed in operation on a timely basis, I question whether this has not been the policy to date. The League has strong reservations as to whether the preservation of environmental values and wise comprehensive use of the State's air, land, and water resources could be adequately considered by the DOE. The DOE does not have the capability to do a full environmental review of energy facilities. Their function should be strictly limited to an energy evaluation, not an environmental one.

The bill's definition of energy facility is too broad. The DOE is given power to control any and all energy related facilities. The definition for energy industry is also too broad. The possibility exists that the DOE will be given too much power. As an example, the DOE could be given the authority to control trucking firms which distribute fuel. Should they be given the authority to site trucking firm locations without consulting local instrumentalities? I don't think so.

In section 13a, page 11, the Division of Energy Planning and Conservation is empowered and directed to intervene in any proceedings by other State instrumentalities, when in the discretion of the commissioner, such intervention is necessary to insure proper consideration of the State Energy Master Plan, and the State Energy Facility Plan. Why, if such concern is placed on compliance with the State energy facility plan, does section 25a, page 29, allow the DOE to consider sites not in this plan?

On page 19, new section 13, the DOE is given sole authority with respect to the siting of any energy facility in any part of N.J. The DOE should not be given this power. Especially disturbing is the wording which states that, no county, municipality, or any agency or instrumentality thereof may require any approval, consent, permit, certificate or other condition for the construction or location of any energy facility. The above section is contradictory to 19f, page 24 which states that the Department shall consider the provisions of all relevant county and municipal master plans in the preparation of such site plan.

New section 18c, page 23 states that the DEP should recommend guidelines to the DOE. The League feels that the DOE should be required to abide by such recommendations.

In section 24, page 27 the DOE will be acting as a real estate broker for private industry. The DOE should not be allowed to acquire lands for private industry. Furthermore, how will this policy effect Green Acre lands?

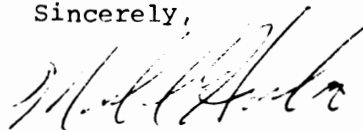
In section 29, page 32 energy industries will be allowed to operate without regard to any local zoning rule, regulation, law or ordinance. Are not industries and businesses throughout the State required to operate in compliance with local rules and regulations? Why should energy industries be given carte blanche operation rights?

The League is very concerned with the structure of the Energy Facility Review Board. Clarification is needed as to whether the third person will be a political one or a technical one. Specific guidelines should be established for such appointments.

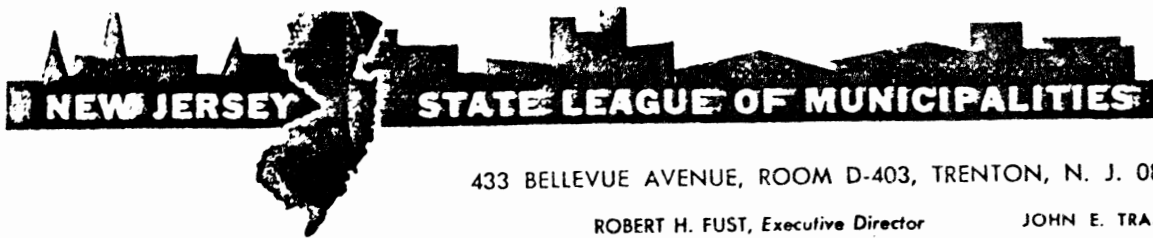
With respect to the CAFRA regulations, the timetables seem to be unrealistic. The decisions made in the CAFRA area should also be binding to the DOE. It is somewhat disturbing why the DEP has not made an appearance at the hearing, response from them might be helpful.

In closing I would like to offer my assistance in continuing to review S-1179, I would also like to thank both committees for their interest in the bill, and especially the staff for being so helpful.

Sincerely,



Michael Havrisko



433 BELLEVUE AVENUE, ROOM D-403, TRENTON, N. J. 08618 :: (609) 695-3481

ROBERT H. FUST, Executive Director

JOHN E. TRAFFORD, Asst. Executive Director

June 9, 1978

JUN 14 1978

Hon. John H. Brode  
Chairman, Assembly Committee on Energy and  
Natural Resources  
104 David Street  
South River, NJ 08852

Senate 1179, as amended

Dear John:

The New Jersey State League of Municipalities is unalterably opposed to Senate 1179, as amended.

The bill would completely remove from municipal zoning control and regulation, all facilities involved in production, conversion, processing, transmission or storage of energy and places authority for the approval of such sites in the State Commissioner of Energy.

This bill constitutes a blatant assault on home rule authority by exempting such energy activities from municipal control. While it provides for notification to municipal governing bodies and planning boards of pending site applications and provides an opportunity for stating of objections, the procedure is preforma and localities have no power to disapprove any site application.

While the League recognizes the importance of sound energy planning and coordination, this bill grants totally unnecessary authority to the state and will be strongly opposed by all municipalities.

We feel that the various public representatives and private organizations should be given an opportunity to voice their views on Senate 1179, and it is urged, therefore, that a public hearing be held on this bill before it progresses any further.

Very truly yours,

Robert H. Fust  
Executive Director

37X

RHF:tg

cc: Assemblymen Totaro, Fortunato, Hollenbeck, Otlowski, DeFrancesco  
Olszowy Staff-Norman Miller



SALEM COUNTY PLANNING BOARD  
Courthouse, Salem, New Jersey 08079

609-935-4477

THOMAS C. CROSSLAND, JR., Chairman

Salem County Comments on S1147

Being Considered Before Assembly Energy and Natural Resources Committee

Christopher J. Warren, Acting Director  
Salem County Planning Staff

On Behalf of Salem County Planning Board  
and Board of Chosen Freeholders

Gentlemen, I would like to thank you for the opportunity to speak before the committee on this important piece of legislation. When the officials and residents of Salem County first heard about the bill, they were quite concerned about the absence of public hearings. We believe that the involvement of the public, especially those that will be most affected by the bill, is an essential element of the democratic process and we appreciate the opportunity to present our views.

My purpose in addressing you today is to specifically communicate the concerns of the Salem County Planning Board and the Board of Chosen Freeholders on the provisions of the proposed energy facility siting legislation. This legislation would delegate unprecedented and unreasonable authority to a single State department and would to a considerable extent usurp existing powers of local government and other State agencies for the expressed purpose of permitting the development of needed energy facilities for New Jersey. This bill represents the first time that the State has devised a method of imposing a land use upon a local area without their just consideration, without carefully planning, and without sufficient review by other agencies designed to protect other State interests such as the Department of Environmental Protection.

As you are aware, Salem County, and in particular Artificial Island, will be the eventual location of four nuclear power plants by the Mid-1980's. This site will be the largest concentration of nuclear energy generating stations anywhere in this country at that time. Although there are divergent opinions about whether nuclear power poses a threat to the safety and welfare of the citizens of the County, our concern today is to address the method in which energy facility siting has occurred and should occur in this State. All four generating stations now located or being built in Salem County were originally proposed for another area of the State but were moved because of public opposition. The energy facility siting occurred in Salem County only after local government review and, in the case of the Hope Creek plants, after the issuance of a CAFRA permit. However, the County is very concerned about a new siting procedure which might permit further nuclear facilities to locate within the County without reasonable controls. Therefore, this County urges the State to develop effective siting policies and procedures which would eliminate the incremental energy decision-making that has occurred in this State in the absence of a comprehensive energy policy but only with sufficient local and County government involvement. As stated in a recent county energy facility study done for the Department of Environmental Protection by the Salem County Planning Staff, Counties and Municipalities have an obligation to meet statewide energy needs but only after the State has met its obligation to plan for the effective siting of major energy facilities.

#### Concerns on Proposed Legislation

1. The principal concern of this County and all local governments in New Jersey is the usurpation of traditional local government powers such as zoning and development review. The complete elimination of any effective local regulation of energy facilities leaves citizens near environmentally undesirable or hazardous facilities entirely at the mercy of the State and with no method of affecting the siting of these facilities

or mitigating the impacts, risks, and hazards associated with such facilities. Although local zoning or review powers have rarely been a serious constraint to public utilities, this bill would eliminate any local controls on all types of energy facilities including tank farms, oil refineries, and gas processing plants. Historically, New Jersey has retained strong "Home rule" powers and allowed local governments to determine their own destinies except when parochial concerns are unwarranted because of their effect on regional and statewide interests. Therefore, a procedure should be established to preserve local authority and involvement except when it can be clearly determined that the County or municipality is unwilling to consider statewide interests is particularly inequitable to the energy industry.

2. Another concern of this County is the level of authority being granted to the Department of Energy within State government. The siting of major energy facilities requires a delicate balancing of the significant environmental impacts with the economic benefits. This legislation would completely disrupt this balance. The Division of Energy Planning would be empowered to intervene and override permit decision-making. The Department of Environmental Protection would have a role in the general delineation of suitable sites but could be bypassed on important specific energy facility proposals. The only alternative would be for this department to appeal to the Energy Facility Review Board. The legislation seems to be centered on a bureaucratic struggle for authority on siting decisions rather than a commitment to the citizens of New Jersey to develop an effective and equitable siting procedure. It does not appear that environmental issues will be as ambitiously pursued because of the altered position of the Department of Environmental Protection.

3. A related concern is the fact that the Department of Energy will be delegated unchecked powers over facility siting issues without any effective plan upon which to rely. The proposed Department of Energy Master Plan does not confront the difficult issues required for energy facility siting. This bill grants considerable authority without viable energy policies upon which to base decisions. Although the energy master plan was supposed to provide such a framework, the draft version falls far short of resolving any important technical issues. Therefore, the energy facility siting bill is providing the authority to plan for and implement an energy facility plan without the effective involvement of local government or other State departments. For example, there is a constant reference to energy parks and the bill infers that the clustering of certain energy facilities is feasible and desirable. It would be the Department of Energy's decision to determine the viability of these clusters despite the fact that this same department has been unwilling to take any stand on this issue in its recent energy master plan submission.

The bill essentially would create a department that could be an advocate for certain types of energy facilities and would have the authority to implement the siting of those facilities. We believe that the experience at the federal level of government with the Atomic Energy Commission should be noted. In that case, an agency with research and development powers also was delegated a regulatory function of the nuclear industry. It should be the intent of State and Federal levels to separate the regulatory function and advocacy roles of energy facility development.

4. The bill refers to the development of County energy facility plans as well as the formulation of an energy element by the Department of Environmental Protection which would be included in coastal county submissions. These County energy facility plans would however, have

essentially no weight in the decision-making process except to be summarized in the energy facilities plan. In the words of the bill "the (energy facility) site plan may include, but shall not be limited to, any locations deemed suitable" by the specific county energy facility plan. Obviously, the County energy facility plan as the only local policy document would be considered but would have little if any important impact upon facility decisions.

5. In the actual issuance of a site permit which appears to be a new level of bureaucracy for the coastal area, local and county governments and citizens may file an objection but would only receive a written reply that the facility is in compliance with the State's energy needs. It is absurd to believe that this action constitutes significant local involvement as the bill's summary claims.

6. In addition, this County is unalterably opposed to the concept of energy parks for nuclear generating facilities unless a strong case can be made that a pattern is the only method of meeting the electrical generating needs of this State. We object to the references to the authorization of a State agency to acquire land for energy parks in the absence of such a technical basis.

#### Energy Facility Siting

There is no doubt that New Jersey needs a defined energy policy upon which to base decisions and an efficient and equitable energy facility siting procedure that will permit the siting of those facilities necessary for economic growth and prosperity. Improvements should be made in the existing procedures to streamline the bureaucratic red tape and to develop an overall energy direction for the State, New Jersey needs a commitment to the understanding of energy issues and the

formulation of effective siting policies rather than a bureaucratic struggle over facility siting authority.

The Salem County Planning Staff has developed a brief outline of a more appropriate siting policy than is proposed in this legislation. First of all, the Department of Energy should be encouraged to foster research within the Department and in private research firms on energy siting issues. This research would establish the parameters of the pattern and nature of major energy facilities needed to locate in New Jersey. Intensive research into certain energy facility questions has never been done on a State level before, but is clearly needed if this very densely populated state is to accommodate its energy facility needs safely and with minimal impact. In addition, county planning agencies would be required to develop energy facility plans within specific guidelines established by the Department of Energy. These plans would be submitted to the Department of Energy for certification and approval as energy policies for that area of the State. The certification would be based upon the County facility plan's ability to rationalize State-wide energy interests with regional land use and environmental concerns. The County Energy Facility Plans for coastal counties would also be sent to the Office of Coastal Zone Management of the Department of Environmental Protection for their determination on the compatibility of the plan with the Coastal Zone Program. Problems which cannot be resolved between the County and either State agency would be appealed to the Energy Facility Review Board for a determination.

The siting of specific energy facilities would only be permitted where they are determined suitable or conditionally suitable by the approved County plans. The Department of Environmental Protection would

retain all permitting authority but would be required to review all necessary permits in a one step process for energy facilities combining wetlands, CAFRA, and other required permits. Local government would retain zoning and regulatory powers over energy facilities except in certain circumstances. For example certain types of energy facilities would be determined by the Department of Energy to have siting priority over other land uses because of the effects that the denial of such energy facility development would have upon the State's or region's ability to meet its energy need projections. Local zoning should be overridden when the County energy facility plan had determined the site to be suitable for such a facility and where it can be argued by the Department of Energy that the site is the only or one of the only suitable sites in the State for such a facility because of a unique combination of environmental and resource factors. The Department could appeal to the Energy Facility Review Board for authorization to override local zoning or regulations only in such unusual circumstances when it can be clearly established that State needs completely outweigh local parochial concerns.

The acquisition power of the Department would only be reasonable for the high priority energy facilities that complete this siting process. In these circumstances, the planning of a site for an imperative energy facility should not be hindered by an unwillingness to sell the property privately.

This siting method would be a more proper balance of environmental, energy, and economic development objectives and authority as well as a more appropriate relationship between local, County, and State governmental levels.

In conclusion, Salem County wholeheartedly opposes the present

provisions of this act and urges its revision to permit a better working relationship between State and local governments in our efforts to eliminate our energy problems.

# AMERICAN LITTORAL SOCIETY JUN 28 1978

SANDY HOOK • HIGHLANDS, NEW JERSEY 07732 • 201-291-0055

June 27, 1978

Assemblyman John Froude, Chairman  
Assembly Committee  
Energy and Natural Resources  
State House  
Trenton, New Jersey 08625

Dear Assemblyman Froude:

I attended the hearing on the Dodd Bill last week but was called back to the office in late morning and didn't make a statement. I do plan to attend the next hearing, but I have put down comments below, in case that one also has a crowded agenda.

We support a Department of Energy with powers to measure need for new energy sources, to encourage conservation, and to become involved in questions of energy facility siting. We think the Dodd Bill should be modified somewhat, primarily so that DOE does not have sole authority over all energy facility siting. The Bill needs work on the following sections:

Section 13 c. page 12-13: This section overrides the authority of the Natural Resource Council in dealing with riparian grants, leases, and permits, by providing that an Energy Facility Review Board, made up of a member of DOE, and a member of the agency with granting powers (DEP), and a designate of the Governor can override (without appeal) the decision of a granting agency. This means, in effect, that the Governor can made energy siting decisions. This needs to be changed so that (1) one person is not given this power, and (2) the public is involved in the appeal procedure.

Section 13, page 19: This section provides that the DOE "has authority with respect to the siting of any energy facility in any part of New Jersey..." (emphasis added). We believe that energy facilities can be split up into those of at least state-wide significance, which would be beholden to other authorities, local zoning for one example. The following is a suggested list of energy facilities that would be of state-wide significance:

oil pipelines  
gas pipelines  
oil refineries  
gas processing plants  
LNG facilities

deepwater ports  
nuclear power plants  
large coal or high sulfur  
oil fueled generating plants

I realize this question of "home rule" versus enough authority for DOE to fulfill its mandate is difficult; I suggest that a weighing of the impact of the facilities themselves may be a good way to make decisions.

Section 18 page 22 gives the DEP 90 days to specify areas where energy facilities can go, cannot go, and might go. It might be possible for DEP to do this for some

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smaller facilities but such things as pipelines and refineries take much longer to study.

Section 29, page 32: Here again, some but not all facilities might need this "homerule override."

Section 12:3-12 is a 38-line sentence that defies understanding. It appears to deal with powers of the Natural Resource Council on riparian questions, but no one can keep the thought on track through so many clauses and phrases. If the public is to understand and support energy legislation, it needs to be able to read it. This section must be worded in understandable English.

I think that the Dodd Bill can be amended so that it gives DOE the authority it needs, along the lines I have suggested. If you have questions, please let me know.

Sincerely,



D.W. Bennett  
Executive Director

CC: Commissioner Joel Jacobson  
Commissioner Daniel O'Hern

JUL 3 1978



June 23, 1978

Hon. John H. Froude, Chairman  
Assembly Committee on Energy & Natural Resources  
State House  
Trenton, N.J. 08608

Dear Assemblyman Froude:

The Association of New Jersey Environmental Commissions, a non-profit membership organization servicing the over 2500 municipal environmental commissioners in this state wishes to make the following comments in regard to Senate Bill 1179.

We agree with the concept that statewide planning for critical public service facilities is necessary. However, the bill does not provide for the necessary public input, local control or environmental review to assure the people that the actions of the state government will indeed reflect the public interest as perceived by the people of the state of New Jersey.

The bill while paying lip service to county and local Master Plans does not provide any process for local municipality officials to appeal decisions of the Department of Energy nor any standard against which changes in local land use patterns be judged. The public, who are convinced that this is indeed " a local control state ", are accustomed to making their wishes known through their local elected and appointed officials. There is no real opportunity for such input in either the development of the State Energy Facilities Plan or the certificate of sites process.

Specifically, we suggest the following changes:

Section 10: That representatives of local government be included on the Advisory Council on Energy Planning

Section 12: Local municipal governments should be included in the notification and the distribution of final documents process.

Section 14: The research and monitoring program involving the "general biological and ecological baseline studies of the state's air, water and land resources should not be lodged in the Department of Energy but delegated by statute to the Department of Environmental Protection to avoid needless duplication of talents and to assure the much needed inter-departmental input.

Section 16: There should be a mandatory requirement for municipal participation in the development of the County Energy Facilities plans during the actual drafting.

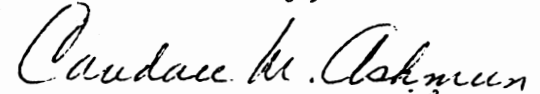
Section 18: All proposed facilities sites should be reviewed by DEP during the development of the Energy Facilities Plan in order that they may be classified in terms of the possible constraint inherent in the use of the land in question, i.e. need for a variety of permits under statutes like the Water Pollution Control Act, Non-Attainment of Air

Quality standards which will affect future land use in the area, Wetlands Act permits etc. This process would make it possible to place before the public sites which are, suitable and conditionally suitable, which are realistically usable and prevent delays when Environmental Impact Statements are being prepared.

Section 32: Where objections to certificates of site and facility relate to non-conformance with local or county master plans which in turn are based (according to statute) on resource information there should be an opportunity for further review and an appeal to a higher authority. Perhaps findings of fact from the Commissioners of NJDEP and NJDOE should be filed and public hearings held so that the resulting material could be put before the governor for resolution. Local municipalities and their environmental advisors have spent a great deal of time and money conforming to the requirements of the Municipal Land Use Act and it seems inappropriate to have a single state agency able to override that effort in such an arbitrary fashion.

Thank you for the opportunity to comment. If there are questions or clarification the committee would like to hear, please feel free to call on me at your convenience.

Yours sincerely,



Candace M. Ashmun  
Executive Director

CMA:jb

