

21 July, 1981

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING APPEAL BOARD (ASLAB)

In the Matter of  
PUERTO RICO ELECTRIC  
POWER AUTHORITY (PREPA)  
Applicant

GONZALO FERNOS, PRO SE, ETAL.  
Intervenors

DOCKET NO. 50 - 376

Proposed North Coast  
Nuclear Plant (Unit 1)  
Islote Ward, Arecibo, Puerto Rico

\* \* \* \* \*

PETITION FOR RECONSIDERATION AND REQUEST  
FOR AN EXTENSION OF TIME TO FILE BRIEF

TO THE HONORABLE APPEAL BOARD :

● COMES NOW the undersigned Intervenors, Pro Se, and in representation of Members of Citizens For The Conservation Of Natural Resources, Inc. (CCNR), collectively referred to as Intervenors, and respectfully states, alleges and prays :

● 1.- That on July 16, 1981, the day after the undersigned Intervenor returned from Canada, he received from the U.S. Post Office all his correspondence withheld during his absence. The voluminous mailing includes 5 writs\* from the NRC instrumentalities and the Applicant. The 5 writs are listed as follows :

- (A) - Memorandum from Mr. Chase R. Stephens, Chief, Docketing and Service Branch, Office of the Secretary of the Commission, dated May 26, including amendment of 10 CFR Part 2, Appendix of Rule of Practice, effective May 28.
- (B) - ASLAB Order of June 18, 1981 o Docket 50-376 (the instant case).
- (C) - NRC Staff Response of June 26, 1981 to Intervenors' Motion of June 13, 1981.
- (D) - Applicant's Response to Intervenors' Motion of June 13, dated June 29, 1981.
- (E) - Letter from Henry J. McGurran, Esq., Counsel for NRC Staff to the Appeal Board, dated June 30, 1981.
- (F) - Appeal Board's Memorandum and Order of July 2, 1981.

\* ( See footnote on page 2.)

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• 2.- That with regard to item ( F ) above, the ASLAB erroneously denied Intervenor's Motion of June 13, 1981 aimed to supplement the record, based, inter alia, on that "neither in the December [ 3 ], 1980 submission nor [ in the March 3, 1981 ] filing below did the intervenors additionally assert possible injury to the landowners as a consequence of the threat of a future expropriation for a nuclear power facility." The ASLAB in ruling so overlooked that a possible injury to landowners is inferred in our submission of December 3, 1980, to the ASLB, to wit :

" Intervenor's believe that due process and the cause of justice would best be served if the Licensing Board institute a limited discovery proceeding and/or evidentiary hearings aimed only to prove Intervenor's contention that a dismissal of the application without prejudice will either injure the public interest..."  
( Page 8 of Intervenor's pleading of December 3, 1980 ).

Further, in our submission of March 3, 1981, to the Licensing Board, precisely because of our inferring of the type of injury caused and to be caused to landowners, on page 3 we objected Applicant's claim that it can exercise the power of eminent domain the way it suggests. We said it in these words :

" Applicant also alleges that the motions to desist were of no consequence because it could always institute another reversal action by exercising its power of eminent domain instituted in 22 LPRA § 196(h), 204. Both sections of the Law, however, are devoid of any mention of such irrational way of exercising the power of eminent domain as Applicant alleges it can do : expropriate-desist-expropriate-desist-expropriate, ad infinitum."

Therefore, the ASLAB erred in concluding that Intervenor's attack of the decision below was based on "fresh grounds", by injecting a new issue on the appellate level when the record clearly shows that those issues were raised below, yet the ASLB foreclosed any opportunity to Intervenor to prove injury to landowners.

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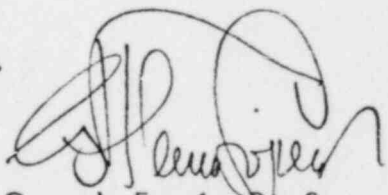
\* In the absence of the undersigned, Dr. Tomas Morales-Cardona, who is vacationing at Provenza, France, would have taken action with regard to the 5 writs, but he would not be back until August. ( The above footnote applies to asterisk on page 1, paragraph 1. )

● 3.- Finally, on footnote 5, page 9 of ASLAB Memorandum and Order of July 2, 1981\*, the Appeal Board is taking for granted that a complete microfiche collection of NRC issuances and its corresponding indices have been furnished to the Law Library of the University of Puerto Rico. NRC Staff Counsel, Henry J. McGurren, Esq., in his letter of June 30, 1981 to the ASLAB states that such a mailing was done on June 26, 1981. Notwithstanding that such a belatedly mailing adversely affects Intervenor's opportunity to make the necessary research, now it seems that those materials were sent by rowboat in view of the fact that Miss Altagracia Miranda, the UPR Law School Librarian affirms as of this day that nothing of that sort has been received. ( Miss Altagracia Miranda's correct telephone is ( 809 ) 764-0000, ext. 2555 ). Further, it is to be noted that the publications of NRC issuances after January, 1981 have been omitted, thus, Intervenor's are particularly interested in having access to those omitted decisions.

● WHEREFORE, intervenors respectfully pray the Appeal Board : ( 1 ) - To accept as part of Intervenor's evidence the eight ( 8 ) affidavits included in our submission of June 13, 1981, so that it be regarded as part of the appellate proceeding ; ( 2 ) - To grant Intervenor's a 30 day extension of time to file our brief and that such period be counted from the date in which NRC issuances up to June, 1981 are made available to the UPR Law Library, which in any event such an additional time will not be due before August 31, 1981 :

In San Juan, Puerto Rico, this 21st day of July, 1981.



  
Gonzalo Fernós, Pro Se, and  
representing Members of CCNR.  
503 Barbé Street  
Santurce, Puerto Rico 00912  
Tel. (809) 727-0087 / 727-2287

\* This Memorandum and Order was served on July 6, 1981. That is, nine (9) days before the undersigned Intervenor returned to Puerto Rico which occurred on July 15, 1981 and this is a fact which the ASLAB acknowledges in its Memorandum and Order of June 11, 1981.