UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING APPEAL BOARD

Before Thomas S. Moore, Chairman
Dr. W. Reed Johnson
Gary J. Edles

In the Matter of	)	
	)	
NUCLEAR FUEL SERVICES, INC.	)	
	)	
and	)	Docket No. 50-201 OLA
	)	
NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY (Western New York Nuclear Service Center)	)	

Pursuant to 10 C.F.R. § 2.715(d), I hereby respectfully request the Appeal Board for Docket No. 50-201 OLA to reconsider and rescind its decision to grant the DOE motion for "amicus curiae" status on Change 32. According to my dictionary, "amicum curiae" is a "person invited to advise a court on a matter of law in a case to which he is not a party." DOE is a party to this case. This inappropriate DOE status deprives me of the symmetric opportunities of the adversary system.

Although registering an objection to the DOE motion, it might be noted that it does serve to clarify the situation for Change 32 in two important respects. First, it supports my contention that the jurisdictional argument used to deny my hearing on Change 31 does not apply to my request on Change 32. If DOE thought that the West Valley

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Demonstrational Project Act jurisdiction extended to Change 32, then it would have requested the same status on both Changes.

Second, the DOE motion states that "DOE's interest in this matter is based on its responsibilities under the West Valley Demonstration Project Act." This supports my contention that DOE's role under WVDPA (and, more generally, the consequences of implementing Change 32) are germane to a hearing on Change 32. DOE cites Section 2(c) of the Act but this is an ex post facto argument. Until Change 32 is implemented, the WVDPA cannot fully apply and the request for "amicus curiae" status on Change 32 has acknowledged this. In my view, by approving the motion the Appeals Board has tacitly accepted both of my main contentions.

Turning now to the objections to granting the motion of DOE on the grounds that DOE is a party to the case. First, when DOE invokes its responsibilities under WVDPA to establish its "interest", it tacitly acknowledges that it is a party to the case and its interests are directly involved. The motion says "Dr. Bross' appeal represents an attempt to use NRC procedures...so as to interfere with DOE's project activities". For consider what would happen if the hearing resulted in some form of negation of Change 32. DOE and the WVDPA would be in a legal limbo. The DOE contrator would be in a similar status with respect to liability for work already underway. These consequences would be so direct and so serious to DOE that it could not be other than a party to the case.

There is a second, independent reason why DOE cannot be other than a party to the case and this is the theme of the requested hearing: DOE is unfit to have have sole responsibility for protecting the health and safety of Western New Yorkers.

Perhaps this point can be made most simply by considering a hypothetical case in criminal court which would be analogous. In such a case, my role would be that of prosecutor and the DOE role that of defendant. Thus the criminal charges might be (1) DOE had conspired to suppress the scientific findings on the health hazards of low-level ionizing radiation and (2) DOE thereby has recklessly endangered the public health and safety. The symmetric opportunities of the adversary system would give both sides a fair hearing in criminal court. Giving a defendant "amicus curiae" status would be anomalous.

The criminal court analogy is not as far-fetched as it might seem. My case that DOE is unfit for public health responsibilities involves the DOE conspiracy to suppress the research of Dr. Thomas Mancuso on the health hazards of nuclear workers at the Hanford reprocessing plant. To substantiate this DOE conspiracy charge I might use the testimony of Dr. George Hutchison at a recent NRC hearing (Docket No. 50-382) and the Congressional Record (Serial No. 95-179). From this record, it would be logical to have testimony by Dr. Sidney Marks and this would require DOE to be a party to the hearing, not "amicus curiae". Dr. Marks (while a DOE employee) wrote the memo used to cut off the Mancuso contract and some months later (now as an employee of Battelle West, a DOE contractor) he received a contract for a health study at Hanford. The DOE suppression of the scientific findings on health hazards to reprocessing workers at Hanford, findings directly relevant to the clean-up at West Valley, shows an attitude that would clearly endanger the public health and safety of Western New Yorkers. DOE is

much too deeply involved in the requested hearing on Change 32 to be granted the status of "amicus curiae".

Accordingly, I respectfully request the Appeals Board on Docket No. 50-201 OLA to rescind its action on the DOE motion and to require DOE to become a party to the matter if it wishes to file any brief.

Respectfully submitted,

Irwin D.J. Bross, Ph.D.
Director of Biostatistics

Dated: June 3, 1982

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing has been served as of this date by first class mail, postage prepaid, to the following:

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