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UNITED STATES OF AMERICA

before the

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NUCLEAR REGULATORY COMMISSION

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In the Matter of)

PUBLIC SERVICE COMPANY OF)
NEW HAMPSHIRE, et al.)

(Seabrook Station, Units 1 and 2)

Docket Nos. 50-443 OL
50-444 OL

APPLICANTS' ANSWER OPPOSING THE
PETITION OF NEW ENGLAND COALITION
ON NUCLEAR POLLUTION FOR REVIEW
OF ALAB-751 AND ALAB-757

This is a petition for Commission review of two decisions of the Appeal Board, (ALAB-751 and ALAB-757) filed pursuant to 10 CFR § 2.876(b) by the intervenor New England Coalition on Nuclear Pollution (NECNP). The first of these decisions (ALAB-751) affirmed the decision of Licensing Board Chairperson, Administrative Judge Helen F. Hoyt, denying NECNP's motion for her recusal. The second (ALAB-757) denied a motion for reconsideration of the first.

In ALAB-751 the Appeal Board, as it had on two previous occasions in considering recusal efforts directed at

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Judge Hoyt by other intervenors,^{1/} found as a matter of fact that, even accepting all allegations with respect thereto as true, there was no showing of pervasive bias on the part of Judge Hoyt so as to require her disqualification from the Licensing Board in this matter. In addition, as it had on two prior occasions, the Appeal Board ruled that none of the conduct complained of was extra-judicial. Finally, and independently of the foregoing, the Appeal Board held NECNP's motion for recusal to have been untimely filed.

In ALAB-757 the Appeal Board again discussed and reaffirmed both the factual findings as to the lack of disqualifying bias and the ruling that the motion was untimely.

The Claims on Appeal

Stripped to its essentials, the petition urges three grounds for reversal of the actions of the Appeal Board. First, it is argued the Commission should reconsider its decision in Houston Lighting and Power Co. (South Texas Project, Units 1 and 2), CLI-82-4, 15 NRC 1363 (1982), as to

^{1/} Public Service Company of New Hampshire (Seabrook Station, Units 1 and 2), ALAB-749, 18 NRC ____ (Nov. 28, 1983); Public Service Company of New Hampshire (Seabrook Station, Units 1 and 2), ALAB-748, 18 NRC ____ (Nov. 16, 1983).

the legal standard applicable to disqualification motions. Second, it is urged that the factual findings of the Appeal Board as to the lack of pervasive bias are erroneous. And, third, it is urged that the ruling as to timeliness was in error.

The Petition Should Be Denied

It is respectfully suggested that this Commission's consideration of this petition should begin and end with the timeliness issue. The hearings giving rise to the charges ended on August 31, 1983; a motion to recuse Judge Hoyt was filed by another intervenor on October 7, 1983; a second intervenor filed another such motion on October 28, 1983. NECNP responded in support of neither motion. NECNP then filed its motion on November 23, 1983 almost three months after the occurrence of the last allegedly bias conduct; about two months after the first intervenor disqualification motion and nearly one month after the second. To permit such tactics to allow intervenors in concert a total of three bites at the recusal (including appellate) apple is to invite chaos, not to mention the fact that the mere pendency of such motions inherently delays and creates uncertainty in any ongoing proceeding. By any analysis this motion was untimely.

Prescinding from the foregoing, neither of the other grounds asserted makes a case for Commission review. One is an assertion of an error of fact as to an issue where the

Appeal Board reached a result identical to that reached by the Administrative Law Judge. The regulations provide for denial of review in such circumstances. 10 CFR § 2.786(b)(4)(ii). The other is a request for review of a question of law and policy which is not novel and as to which the Commission has spoken very recently. CLI-82-9, supra.

CONCLUSION

The petition should be denied.

Respectfully submitted,



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Dated: January 17, 1984

CERTIFICATE OF SERVICE

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I, Thomas G. Dignan, Jr., one of the attorneys for the Applicants herein, hereby certify that on January 27, 1970, AIO:28 I made service of the within document by mailing copies thereof, postage prepaid, to:

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