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UNITED STATES OF AMERICA
before the
NUCLEAR REGULATORY COMMISSION

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

In the Matter of)
)
)

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

Docket Nos. 50-443
50-444

(Seabrook Station, Units 1 and 2)
)

APPLICANTS' ANSWER OPPOSING ATTORNEY GENERAL
FRANCIS X. BELLOTTI'S PETITION FOR REVIEW
BY THE U.S. NUCLEAR REGULATORY COMMISSION OF ALAB-749

Introduction

This is a petition for Commission review, filed pursuant to 10 CFR § 2.786(b) by the intervenor Francis X. Bellotti, Attorney General of Massachusetts (Mass. AG) of a decision of the Appeal Board, Public Service Company of New Hampshire (Seabrook Units 1 and 2), ALAB-749, 18 NRC ____ (Nov. 28, 1983), affirming the decision of Licensing Board Chairperson, Administrative Judge Helen F. Hoyt, denying Mass. AG's motion for her recusal on the grounds of alleged bias against Mass. AG and other intervenors.

In ALAB-749, the Appeal Board found as a fact that "no basis for disqualification has been established under the

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general rule announced by the Commission in its South Texas opinion". ALAB-749, Slip Op. at 7-8. This same factual finding has been made by a unanimous Appeal Board since the issuance of ALAB-749 in disposing of another essentially identical-in-basis recusal motion filed by another intervenor in this case. Public Service Company of New Hampshire (Seabrook Station, Units 1 and 2), ALAB-751, 18 NRC ___, Slip Op. at 3 (Dec. 6, 1983).

In addition, the Appeal Board, held that Mass. AG did not adequately justify his late filing of his motion. ALAB-749, Slip Op at 4-7.

The Claims on Appeal

Stripped to its essentials, the Petition makes three assertions of error with respect to ALAB-749. First, it is argued that the Appeal Board erred in its findings of fact. Petition at 3. Second, the Appeal Board is said to have erred in not analyzing in print each of the specific incidents relied upon by Mass. AG in alleging bias. Petition at 4-5. Third, it is stated that the rule adopted by this Commission in CLI-82-9, supra, is erroneous. Petition at 5-6. Petition at 10.

The Petition Should be Denied

None of the above described assertions makes a case for Commission review. The first is an assertion of an error of fact as to an issue where the Appeal Board reached the same result as Judge Hoyt. Thus, review should be denied under

the provisions of 10 CFR § 2.786(b)(4)(ii). The second is an argument that the Appeal Board should be given more basis than it did for its findings. The basis was clear; the Appeal Board accepted as true all the allegations and held them not to rise to a showing of pervasive bias because six amounted to assertions of legal error and one amounted to intemperate remarks directed, not at parties, but to their counsel or representatives. The Appeal Board correctly ruled that this is not evidence of bias, pervasive or otherwise. The third is a request for a review of a question of law and policy which is not novel and to which the Commission has spoken very recently. CLI-82-9, supra.

CONCLUSION

The petition should be denied.

Respectfully submitted,




Thomas G. Dignan, Jr.
R. K. Gad III
Ropes & Gray
225 Franklin Street
Boston, MA 02110
(617) 423-6100

Dated: December 27, 1983

CERTIFICATE OF SERVICE

I, Thomas G. Dignan, Jr., one of the attorneys for the Applicants herein, hereby certify that on December 27, 1983, I made service of the within document by mailing copies thereof, postage prepaid, to:

Nunzio J. Palladino,
Chairman
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

Victor Gilinsky,
Commissioner
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

John F. Ahearne,
Commissioner
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

Thomas M. Roberts,
Commissioner
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

James, K. Asselstine,
Commissioner
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

Alan S. Rosenthal, Chairman
Atomic Safety and Licensing
Appeal Board
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

Gary J. Edles, Esquire
Atomic Safety and Licensing
Appeal Board
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

Howard A. Wilber, Esquire
Atomic Safety and Licensing
Appeal Board
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

Helen Hoyt, Chairperson
Atomic Safety and Licensing
Board Panel
U.S. Nuclear Regulatory
Commission
Washington, DC 20555

Diana P. Randall
70 Collins Street
Seabrook, NH 03874

Dr. Emmeth A. Luebke
Atomic Safety and Licensing
Board Panel
U.S. Nuclear Regulatory
Commission
Washington, DC 20555

William S. Jordan, III, Esquire
Harmon & Weiss
1725 I Street, N.W.
Suite 506
Washington, DC 20006

Dr. Jerry Harbour
Atomic Safety and Licensing
Board Panel
U.S. Nuclear Regulatory
Commission
Washington, DC 20555

Atomic Safety and Licensing
Board Panel
U.S. Nuclear Regulatory
Commission
Washington, DC 20555

Atomic Safety and Licensing
Appeal Board Panel
U.S. Nuclear Regulatory
Commission
Washington, DC 20555

Philip Ahrens, Esquire
Assistant Attorney General
Department of the Attorney
General
Augusta, ME 04333

Charles Cross, Esquire
Shaines, Madrigan & McEachern
25 Maplewood Avenue
P. O. Box 366
Portsmouth, NH 03842

Ms. Roberta C. Pevear
Assistant Attorney General
the Town of Hampton Falls
Drinkwater Road
Hampton Falls, NH 03844

Mrs. Sandra Gavutis
Assistant Attorney General
the Town of Kensington
RFD 1
East Kingston, NH 03827

Senator Gordon J. Humphrey
U.S. Senate
Washington, D.C. 20510
(Attn: Tom Burack)

Senator Gordon J. Humphrey
1 Pillsbury Street
Concord, NH 03301
(Attn: Herb Boynton)

G. Dana Bisbee, Esquire
Assistant Attorney General
Office of the Attorney General
208 State House Annex
Concord, NH 03301

Roy P. Lessy, Jr., Esquire
Office of the Executive Legal
Director
U.S. Nuclear Regulatory
Commission
Washington, DC 20555

Robert A. Backus, Esquire
116 Lowell Street
P.O. Box 516
Manchester, NH 03105

Anne Verge, Chairperson
Board of Selectmen
Town Hall
South Hampton, NH

JoAnn Shotwell, Esquire
Assistant Attorney General
Department of the Attorney General
One Ashburton Place, 19th Floor
Boston, Massachusetts 02108

Mr. Patrick J. McKeon
Selectmen's Office
10 Central Road
Rye, NH 03870

Mr. Calvin A. Canney
City Manager
City Hall
126 Daniel Street
Portsmouth, NH 03801

Mr. Angie Machiros
Chairman of the
Board of Selectmen
Town of Newbury
Newbury, MA 01950

Mr. Richard E. Sullivan
Mayor
City Hall
Newburyport, MA 01950

Mr. Donald E. Chick
Town Manager
Town of Exeter
10 Front Street
Exeter, NH 03833

Town Manager's Office
Town Hall
Friend Street
Amesbury, MA 01913

Brian P. Cassidy, Esquire
Regional Counsel
Federal Emergency Management
Agency - Region I
442 POCH
Boston, MA 02109

Brentwood Board of Selectmen
RFD Dalton Road
Brentwood, NH 03833

Gary W. Holmes, Esquire
Holmes & Ells
47 Winnacunnet Road
Hampton, NH 03841



Thomas G. Dignan, Jr.