

Attachment 2

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Appeal Board

In the Matter of	:	
Public Service Electric	:	
and Gas Company	:	Docket No. 50-354 OL
(Hope Creek Generating	:	
Station)	:	

AFFIDAVIT OF JOSEPH H. RODRIGUEZ, ESQ.,
THE PUBLIC ADVOCATE OF THE STATE
OF NEW JERSEY

I, Joseph H. Rodriguez, of full age, being duly sworn,
upon my oath, depose and say that:

1. I serve as the Public Advocate and Commissioner of
the Department of the Public Advocate, State of New Jersey.
I was appointed to this position by Governor Thomas H. Kean,
then confirmed by the New Jersey Senate, and sworn into
office on February 11, 1982. Acting in my official capacity
as Public Advocate, I have authorized this office to intervene
in the above Hope Creek-Operating License proceeding now
pending before the Atomic Safety and Licensing Board.

2. The office of the Public Advocate is a cabinet-
level official of the State of New Jersey. Chapter 27 of

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the Laws of 1974 ("the Act"), New Jersey Statutes Annotated ("N.J.S.A.") 52:27E-1, et seq. established the Department of the Public Advocate as a "principal department [of the] Executive Branch of State Government." N.J.S.A. 52:27E-2.

3. The Act provides that the "administrator and chief executive officer of the department shall be a commissioner [equivalent to the federal cabinet title of "Secretary"], who shall be known as the Public Advocate." N.J.S.A. 52:27E-3. The same section also permits the Public Advocate to serve concurrently as the State Public Defender and chief executive officer of the office which provides "the constitutional guarantees of counsel in criminal cases for indigent defendants" throughout the state. Chapter 43, Laws of 1967, N.J.S.A. 2A:158-1, et seq. I serve as both the State Public Advocate and Public Defender of the State of New Jersey.

4. In my capacity as Public Advocate and Public Defender, I oversee a staff of 883, including 335 attorneys and investigators, housed in 29 offices in 21 counties, with an annual budget in fiscal year 1984 of \$29 million. As a

cabinet officer, I also serve on a great variety of high-level committees, commissions and task forces.¹

5. Various offices and units of the Public Advocate and the Public Defender are engaged in a wide range of federal and state court litigation and administrative proceedings.²

1. These include the following: The Governor's Task Force on the Homeless, The Governor's Nursing Home Task Force, The Cabinet Committee on Aging, The Governor's Task Force on Child Abuse and Neglect, The Governor's Affirmative Action Policy Committee, The Governor's Commission on Children's Services, The Commission on the Future of State Colleges, The Task Force on Municipal Court Improvement, The Supreme Court Committee on Civil Case Management, The Governor's Advisory Committee on Capital Expenditure for Health Care Facilities, The Peter Rodino Institute of Criminal Justice, The Administrative Conference of the United States, and The United States Conference of Chief Justices, inter alia.

2. These cases include such diverse areas as the right of low and moderate income state residents to affordable housing, So. Burlington Cty. NAACP v. Tp. of Mt. Laurel, 92 N.J. 158 (1983), 436 A.2d 390; the right of institutionalized psychiatric patients to due process prior to the involuntary administration of certain psychotropic medication, Rennie v. Klein, 462 F. Supp. 1131 (D.N.J. 1978), mod. 653 F.2d 836 (3rd Cir. 1981), remanded 102 S.Ct. 3506, on remand 720 F.2d 266 (3rd Cir. 1983); the need to balance housing and environmental factors in housing in coastal areas, In re Egg Harbor Associates, __ N.J. __ (1983), __ A.2d __; the "discharged pending placement" hospital patients to adequate due process placement hearings, In re S.L., 94 N.J. 128 (1983), the constitutionality of the State's condominium conversion law, protecting elderly apartment dwellers, Troy Ltd v. Renna, F.2d (3rd Cir. 1984). (footnote continued on next page)

6. The total annual caseload of the department measures in the tens of thousands. For example, in calendar year 1982 the Division of Rate Counsel participated in 790 public utility, insurance, hospital rate setting and similar consumer rate cases; the Division of Mental Health Advocacy adjudicated over 6,000 individual and class action cases involving the rights of mental patients; the Division of Advocacy for the Developmentally Disabled resolved over 900 cases governing the rights of the handicapped and mentally retarded; and the public defender offices disposed of over 45,000 adult and juvenile cases. When the 1983 data are complete, it is anticipated that these numbers will be substantially higher.

7. Although my name appears on countless pleadings in cases before scores of courts and administrative agencies,

(footnote no. 2 continued from previous page)

the constitutional rights of jail inmates and pretrial detainees against overcrowding and unhealthy conditions of confinement, in several cases; and the rights of severely ill patients to continued care and comfort, In re Claire Conroy, 190 N.J. Super. 453 (App. Div., 1983), 464 A.2d 303.

For a fuller discussion of the Public Advocate in scholarly journals, please see: Heffner, "Legislative Oversight: An Analysis of the Department of the Public Act" 1 Seton Hall Legislative Journal 75 (1976); "The Office of

(footnote continued to next page)

as required by statute, N.J.S.A. 52:27E-42,³ I usually delegate the specific fact analysis and case development to division directors and staff attorneys. These matters I generally entrust to subordinates, such as the Assistant Commissioner, depending upon their statutory duties and areas of expertise. All policy judgments (notably, the decision to litigate in a particular area), however, I retain and exercise in my "sole discretion" as the law provides. N.J.S.A. 52:27E-31.

8. In this proceeding, I have performed the statutory function under N.J.S.A. 52:27E-31 of determining that there

(footnote no. 2 continued from previous pages)

the Public Counsel; Institutionalizing Public Interest Representation in State Government" 64 Georgetown Law Journal 895 (1976); Penn, "Advocate from Within" Trial Magazine 22 (1976); Penn and Bisgaier, "New Jersey's Experiment in State-Funded Public Interest Advocacy" 29 Land Use Law & Zoning Digest 10 (1977); Perlin and Siggers, "The Role of the Lawyer in Mental Health Advocacy" 4 Bulletin of the American Academy of Psychiatry and the Law 204 (1976); Donato, "The Department of the Public Advocate-the Public Interest Representation and Administrative Oversight" 30 Rutgers Law Review 386 (1977); and Graybeal, "The Private Attorney General and the Public Advocate: Facilitating Public Interest Litigation" 34 Rutgers Law Review 350 (1982).

3. "Any action brought by the Public Advocate. . . shall be brought in the name of the person serving as the Public Advocate or in the name of an affected individual or group..."

is a significant public interest to be served by participation as a party in the Board's review of PSE&G's application to operate the Hope Creek Nuclear Generating Station. My judgment was predicated upon my understanding of the potential health, safety and environmental impacts of faulty and, in some respects even normal operation.

9. My staff presented these concerns to the Board as part of the amended petition to intervene. Thus, ten (10) contentions were submitted on November 7, 1983; four (4) were admitted into controversy at the Special Prehearing Conference of November 22, 1983. As to the matters contained in the Public Advocate's contentions, I have no personal knowledge or specialized technical information beyond the information presented to the Board in support of these contentions.

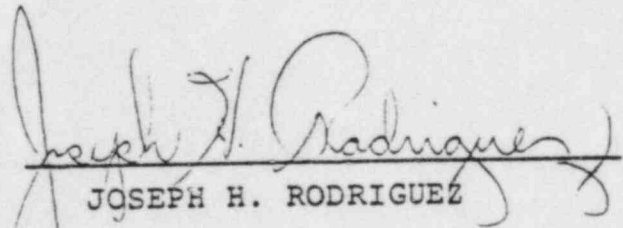
10. In preparing these contentions, my direct participation was limited to reviewing the proposed petition to intervene, and assuring myself that the attorneys had researched the matter thoroughly. I then approved the submission of the petition and contentions. Thus, as in the vast majority of the Public Advocate-Public Defender cases, my participation was limited to (1) determining after careful consideration -- and consonant with state law and regulation,

see N.J.A.C. 15A:1-1.1, et seq., that the public interest of New Jersey residents would benefit from the intervention, and (2) participating in meetings, consultations, and briefings with R. William Potter, Esq., the attorney who, along with Susan Remis, Esq. prepared the papers offered to the Board.

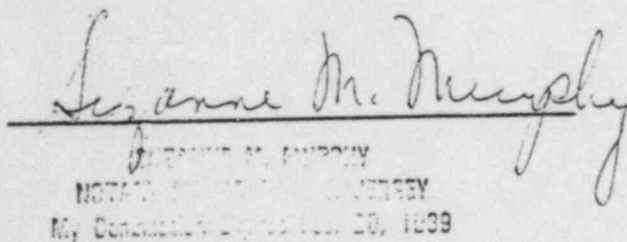
11. I sincerely believe that submitting to applicant's deposition will serve no useful purpose. Moreover, it will subject this office to annoyance, oppression, and undue costs, and disrupt the orderly administration of the cabinet-level department of which I am the "administrator and chief executive officer." N.J.S.A. 52:27E-4. It also comes at a most inopportune time as I am scheduled to present the department's budget for the next fiscal year in early April before the Legislature's Joint Appropriations Committee. (In preparation for this critical appearance I am devoting substantial blocks of time to meetings with my budget staff, the Treasury Department and the Office of Management and Budget.)

12. Also, I note that the deposition is scheduled for March 30 in Newark, (Essex County) New Jersey. The time and location are burdensome, distant and in conflict with my schedule. (I reside in Cherry Hill, (Camden County) New Jersey, which is 35 miles southwest of Trenton, (Mercer County), where my office is located, while Newark is another 55 miles northeast of Trenton. Therefore, the site conforms neither to my place of residency nor work.)

Dated: March 26, 1984


JOSEPH H. RODRIGUEZ

Sworn and Subscribed to before me
this 26th day of March, 1984.


SUZANNE M. MURPHY
NOTARY PUBLIC IN NEW JERSEY
My Commission Expires Feb 20, 1989

DOCKETE
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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Appeal Board

In the Matter of :
Public Service Electric :
and Gas Company :
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Station) : Docket No. 50-354 OL

I certify that on today's date, March 26, 1984, I caused to be sent copies of the Public Advocate of the State of New Jersey's Motion to Quash the Applicant's Subpoena by first class mail to those listed below and by personal service on those listed with an asterick. (I understand that personal service will not be effectuated until 9:00 A.M., Tuesday, March 27, 1984.)

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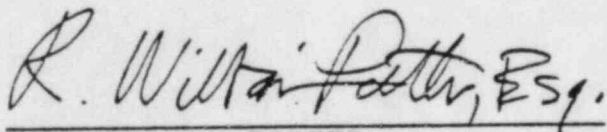
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