

September 27, 1978

UNITED STATES
NUCLEAR REGULATORY COMMISSION

SECY-A-78-73

ADJUDICATORY ITEM
COMMISSIONER ACTION

For: The Commissioners

From: James L. Kelley
Acting General Counsel

Subject: Review of ALAB-494, Nuclear Engineering Company, Inc. (Sheffield, Illinois, Low-Level Radioactive Waste Disposal Site) denying motion to disqualify Licensing Board member.

Petitions for Review: None.

Review Time Expires: October 5, 1978

Purpose: To inform the Commissioners of an Appeal Board decision which, in the General Counsel's opinion, does not require review.

Discussion: ALAB-494 affirms the Licensing Board's order denying intervenor's motion which requested disqualification of a member of the Licensing Board for Nuclear Engineering Company's (NECO) license renewal proceeding. Both boards carefully considered and rejected the contention that a Licensing Board member's affiliation with a national professional society creates an appearance of impropriety requiring his disqualification when a local chapter of that society is a party to the proceeding. This decision does not appear to warrant Commission review.

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Intervenor State of Illinois moved to disqualify Dr. Remick from further participation on the Licensing Board for this proceeding. The sole basis asserted is that his membership in the American Nuclear Society (ANS) creates an appearance of impropriety because the Chicago Section of the ANS is a party to this proceeding and intends to offer evidence relevant to questions of national waste policy. This intention by the Chicago Section was raised by the State in recognition of the facts that Dr. Remick is neither a member of the Chicago Section nor a resident of Illinois.¹ All other parties - applicant NECCO, NRC Staff, and intervenor Chicago Section - opposed Illinois' motion.

The Licensing Board unanimously denied the motion finding no good reason to disqualify Dr. Remick. In addition, the Board stated that it would not entertain any presentation by the Chicago Section of evidence relevant to questions of national policy. Thus, the Licensing Board explicitly rejected the only stated circumstance which Illinois claimed would create the appearance of impropriety.

Because the Licensing Board declined to disqualify Dr. Remick, Illinois' motion was referred to the Appeal Board as required by 10 CFR 2.704(c). Illinois was offered an opportunity to supplement its original motion, but filed no

¹ Dr. Remick is a part-time technical member of the Atomic Safety and Licensing Board Panel. He is principally employed as a faculty member of the Pennsylvania State University in State College, and is a resident of Pennsylvania. Currently, he serves as an elected member of the Executive Committee of the Reactor Operation Division of the ANS.

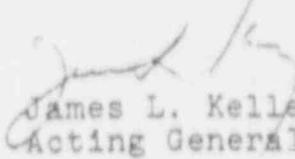
additional memorandum. The Appeal Board reviewed the motion in accordance with the disqualification bases it has previously summarized as follows:

[A]n administrative trier of fact is subject to disqualification if he has a direct, personal, substantial pecuniary interest in a result; if he has a "personal bias" against a participant; if he has served in a prosecutive or investigative role with regard to the same facts as in issue; if he has prejudged factual--as distinguished from legal or policy--issues; or if he has engaged in conduct which gives the appearance of personal bias or prejudgment of factual issues.

[Consumers Power Co. (Midland Plant, Units 1 and 2), ALAB-101, 6 AEC 60, 65 (1973).]

The Appeal Board found that none of the disqualification bases is even arguably present here. It described as unreasonable any conclusion that Dr. Remick's membership in the ANS - a large professional organization of national scope - would cause him to be partial to the Chicago Section's litigation posture in this proceeding which involves a waste burial site in which he has no special interest. This decision is consistent with judicial opinions and Department of Justice authority cited in the Appeal Board's opinion. Nothing in the record of this proceeding indicates that the decision is erroneous or otherwise requires Commission review.

Recommendation: No Commission review.


James L. Kelley
Acting General Counsel

Commissioners' comments should be provided directly to the Office of the Secretary by c.o.b. Wednesday, October 4, 1978

Commission Staff Office comments, if any, should be submitted to the Commissioners NLT October 2, 1978, with an information copy to the Office of the Secretary. If the paper is of such a nature that it requires additional time for analytical review and comment, the Commissioners and the Secretariat should be apprised of when comments may be expected.

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