

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

Michael M. Gibson, Chairman
Dr. Gary S. Arnold
Dr. Randall J. Charbeneau

In the Matter of

NUCLEAR INNOVATION NORTH AMERICA
LLC

(South Texas Project Units 3 and 4)

Docket Nos. 52-12-COL and 52-13-COL

ASLBP No. 09-885-08-COL-BD01

July 18, 2013

NOTICE OF DISCLOSURE

The administrative judges of the Atomic Safety and Licensing Board Panel (ASLBP) of the U.S. Nuclear Regulatory Commission are subject to legal and ethical standards more stringent than those applicable to other NRC employees. "The standard applicable in the federal courts, and applied by the NRC as well, is that a judge shall disqualify himself in any proceeding in which 'his impartiality may reasonably be questioned.'"¹ This is an objective standard. The fact that a judge is actually impartial is not sufficient. The law requires that there is no reasonable basis upon which a judge's "impartiality might reasonably be questioned." Even if a

¹ Long Island Lighting Company (Shoreham Nuclear Power Station, Unit 1), CLI-84-20, 20 NRC 1061,1078 n. 46 (1984) (citing 28 U.S.C. § 455(a)). See also Hydro Resources, Inc. (2929 Coors Road, Suite 101, Albuquerque, NM 87120), CLI-98-9, 47 NRC 326, 331 (1998); Houston Lighting and Power Company (South Texas Project, Units 1 and 2), CLI-82-9, 15 NRC 1363, 1366 (1982); MODEL CODE OF JUDICIAL CONDUCT R. 2.11 (2007); 28 U.S.C. § 455(a).

judge believes that there is no such basis for disqualification, he or she should disclose any information that “might reasonably be considered relevant” to this issue.²

In accordance with these principles, the following information is placed into the record of this proceeding:

In August 2012, events associated with collapse of a salt dome cavern in Bayou Corne, Louisiana led to the declaration of a state of emergency by Assumption Parish and the State of Louisiana. In March 2013, the Governor of Louisiana established a Blue Ribbon Commission on Bayou Corne and Grand Bayou Safety (BRC) to provide science-based recommendations for public safety. The State of Louisiana retained Chicago Bridge & Iron Company (CB&I) to provide technical expertise and to serve as the financial administrator of the BRC. At the suggestion of CB&I, Judge Randall J. Charbeneau was selected to serve on the BRC.³ CB&I does not direct, review or comment on Judge Charbeneau’s work on the BRC, and CB&I does not approve or disapprove of the recommendations of the BRC. Reimbursement of Judge Charbeneau’s expenses and fees as a member of the BRC are invoiced through CB&I, but payment is made by and paid through the Louisiana Department of Natural Resources. In addition, Judge Charbeneau has never been retained by CB&I, nor has he ever been retained by an attorney who represented CB&I in a litigation matter.

Applicant Nuclear Innovation North America (NINA) has applied to the NRC for two combined operating licenses (COL) under 10 C.F.R. Part 52 that would authorize NINA to construct and operate two new reactors at the South Texas Project located in Matagorda County, Texas. Section 1.2 of Part 1 of NINA’s COL application acknowledges that NINA has

² “A judge should disclose on the record information that the judge believes the parties or their lawyers might reasonably consider relevant to a possible motion for disqualification, even if the judge believes there is no basis for disqualification.” MODEL CODE OF JUDICIAL CONDUCT R. 2.11 cmt. 5 (2007).

³ See Louisiana Department of Natural Resources, Members Announced for Blue Ribbon Commission on Bayou Corne Safety, <http://dnr.louisiana.gov/index.cfm?md=newsroom&tmp=detail&aid=1005> (Mar. 22, 2013).

entered into certain agreements with Stone & Webster, Inc. (S&W) whereby S&W has the right to acquire an ownership interest in NINA from NRG Energy.⁴ S&W is a wholly owned subsidiary of The Shaw Group, Inc., which has recently been acquired by CB&I.⁵ Thus CB&I now owns the right to acquire an ownership interest in NINA from NRG Energy.

Judge Charbeneau has considered this situation and, in accordance with normal ASLBP procedures, discussed these facts with the Board Chairman and the Chief Administrative Judge and Chief Counsel of the ASLBP. He is confident that, as an actual matter, he can be impartial in this proceeding. Further, he does not believe that the foregoing facts constitute a basis upon which his "impartiality might reasonably be questioned." Nevertheless, the Board will listen with an open mind to any party, potential party,⁶ or interested State or local governmental body or affected Federally-recognized Indian Tribe that may believe otherwise.⁷

If any party or potential party to this proceeding, or any interested State or local governmental body or affected Federally-recognized Indian Tribe, believes that the foregoing facts may warrant recusal of Judge Charbeneau, then they should file a motion herein to that effect within ten days of the date of this notice.⁸ Answers to any such motion should be filed

⁴ See South Texas Project Units 3 & 4 [COL] Application, General and Financial Information, Rev. 7 (Feb. 1, 2012), at 1.0-6 (ADAMS Accession No. ML12048A913).

⁵ See Molly Ryan, "CB&I closes \$3B Shaw Group acquisition," HOUSTON BUSINESS JOURNAL (Feb. 13, 2013), <http://www.bizjournals.com/houston/news/2013/02/13/cbi-closes-3b-shaw-group-acquisition.html>.

⁶ "'Potential Party' means any person who has requested, or who may intend to request, a hearing or petition to intervene in a hearing." 10 C.F.R. § 2.4.

⁷ NRC regulations provide that the Board "will afford an interested State, local governmental body (county, municipality or other subdivision), and affected, Federally-recognized Indian Tribe, which has not been admitted as a party under § 2.309, a reasonable opportunity to participate in a hearing." 10 C.F.R. § 2.315(c).

⁸ See 10 C.F.R. §§ 2.323 and 2.313(b).

within seven days thereafter. Judge Charbeneau will consider and promptly rule on any such motion.⁹

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD

/RA/

Michael M. Gibson, Chairman
ADMINISTRATIVE JUDGE

Rockville, Maryland
July 18, 2013

⁹ Pursuant to NRC regulations, a motion for recusal or disqualification is decided in the first instance, by the judge in question. If, however, he or she denies the motion, then it is automatically referred to the Commission for review and ultimate decision. See 10 C.F.R. § 2.313(b).

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)
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NUCLEAR INNOVATION NORTH AMERICA LLC) Docket Nos. 52-012-COL and 52-013-COL
)
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(South Texas Project, Units 3 and 4))
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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **NOTICE OF DISCLOSURE** have been served upon the following persons by the Electronic Information Exchange.

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Docket Nos. 52-012-COL and 52-013-COL
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[Original signed by Brian Newell]
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Dated at Rockville, Maryland
this 18th day of July, 2013