

*Our conscience teaches us it is right,
our reason teaches us it is useful,
that men should live according to
the Golden Rule*
W. Winwood Reade

Forelaws on Board



FORELAWS ON BOARD
19142 S. Bakers Ferry Rd.
Boring, Oregon 97009
Ph. 637-3549

***THE FOUR LAWS OF ECOLOGY**
1. Everything is connected to everything else.
2. Everything must go somewhere.
3. Nature knows best.
4. There is no such thing as a free lunch.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE NUCLEAR REGULATORY COMMISSION



In the Matter of)
)
Puget Sound Power & Light)
Company, et al.)
)
(Skagit Nuclear Power)
Project, Units 1 and 2))
_____)

DOCKET NOS. 50-522
50-523

PETITION FOR REVIEW OF
INTERVENORS FOB/CFSP

INTRODUCTION

Intervenors Forelaws On Board and the Coalition for Safe Power (hereinafter FOB), pursuant to 10 CFR 2.786(b), do hereby petition the Commission for review of ALAB-556, dated July 30, 1979.

DECISION OF WHICH REVIEW IS SOUGHT

On July 17, 1979, a three-week evidentiary session in the above-captioned dockets began. On July 17, FOB served its "Motion to Require Disqualification of Board Chairman", dated July 16, 1979, upon the parties in these proceedings.

The following day, July 18, the parties commented orally on the record regarding their positions on the motion. After hearing comments, the Board denied the motion, referring the matter to the Appeal Board.

On July 30, 1979, the Appeal Board issued ALAB-556, deny-

A REVERENCE FOR ALL LIFE

— THE GOLDEN RULE —

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GUIDELINES OF CREATIVE ENVIRONMENTALISM
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ing the motion. ALAB-556 is the subject of this Petition for Review.

RECORD BEFORE THE APPEAL BOARD

The issues of fact and law raised before the Appeal Board which are sought to be reviewed are contained in the following: FOB/CFSP "Motion to Require Disqualification of Board Chairman", including supporting affidavit of Eric Stachon, dated July 16, 1979; comment by the parties on the record (Tr. 12,112-12,114; Tr. 12,150-12,161); and the "Referral of Appeal to Atomic Safety and Licensing Appeal Board", issued by the Licensing Board on July 18, 1979.

STATEMENT OF ERROR

The grounds for disqualification set forth in FOB's motion and affidavit can be briefly summarized: that Valentine Deale, Chairman of the Licensing Board for the Skagit dockets, prejudiced the rights of three Native American Tribes who had petitioned to intervene in these proceedings by not ruling expeditiously on the petition while, at the same time, attempting to continue the hearings "with all deliberate speed."

The Appeal Board decision is in error for three basic reasons: the assumption that FOB was trying to show a personal bias against the Tribes on the part of the Board Chairman; lack of awareness by the Appeal Board of FOB's standing to tender a motion for disqualification; and, the Board's finding that the motion was untimely.

The most significant inaccuracy in ALAB-556 is the determination by the Appeal Board that, because of a failure to establish prejudice regarding facts relevant to the Board's reexamination of the Tribes' petition to intervene, what FOB was really trying to show was "that the Board Chairman had manifested personal bias against the Tribes..." (ALAB-556 at p. 6.).

The basis for FOB's motion is not one of personal bias on the part of the Board Chairman, nor does FOB wish its motion to be characterized as such.

The thrust of FOB's motion is that the Board Chairman prejudiced the Tribes' procedural rights by not rendering a decision regarding the Tribes' petition with deliberate speed. By moving forward with evidentiary sessions on subjects which petitioners have shown an interest in while delaying a decision on petitioners' standing, Chairman Deale has seriously hampered petitioners' ability to address their concerns.

10CFR 2.718 states, "A presiding officer has the duty to conduct a fair and impartial hearing according to law, to take appropriate action to avoid delay, ..." (emphasis added). FOB contends that the Tribes had a right to a fair and impartial decision on their petition, one that avoided delay.

FOB has already shown, in the affidavit of Eric Stachon, that the Chairman inexcusably delayed ruling on the Tribes' petition. The Appeal Board concurs, stating, "One may readily agree that the Board below both might ^{and} should have acted on the remand with considerably greater dispatch. (Order at p. 7) (emphasis added).

Yet while the Appeal Board agrees that the Licensing Board should have acted more expeditiously on the petition, the Appeal Board totally eliminates this importance:

"But these considerations are of no present moment. Standing alone, the failure of an adjudicatory tribunal to decide questions before it with suitable promptness scarcely allows an inference that the tribunal (or a member thereof) harbors a personal prejudice against one litigant or another. Nor are there any attendant circumstances which would permit that inference to be drawn in the case of the Tribes here." Order at p. 9.

While FOB would not necessarily agree with those statements, we would only point out that, in prejudicing petitioners' rights, it was not necessary for the Chairman to express a personal bias.

It is still FOB's position that Chairman Deale's violation of the Tribes' rights constitutes sufficient grounds for his removal.

The Appeal Board further erred by assuming that FOB had

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to prove invasion of our own rights in order to move to disqualify the Licensing Board Chairman. They then go on to say that FOB fails to explain a basis for complaining on the Tribes' behalf. Acknowledging that the Tribes are represented by "competent counsel," the Appeal Board finds that, "Had [tribes] counsel believed that, in connection with the reconsideration of the Tribes' petition, the Board Chairman had conducted himself in a manner warranting his disqualification, it is reasonable to suppose that they would have said so." Order at p. 5.

Yet, 10CFR 2.704(c) states:

"If a party deems the presiding officer or a designate-member of an atomic safety and licensing board to be disqualified, he may move that the presiding officer or the board member disqualify himself. The motion shall be supported by affidavits setting forth the alleged grounds for disqualification."

We would point out that: a) at no time during the Board reexamination were the Tribes a formal party, and b) there is nothing in the appropriate regulation which requires a showing of "invasion of their own rights" before a party can move for disqualification.

We would also point out that Applicants' counsel found no legal precedent for FOB not having standing to file this motion and added, "...I am not urging the Board at all to act, based on that rationale." Tr. 12,151. NRC staff counsel felt strongly that FOB lacked standing, however, he could not cite any case law supporting his position. Tr. 12,153-54.

We would also mention that petitioners' "competent counsel" was not totally silent on this issue. As pointed out in the Stachon affidavit, counsel for the Tribes was very concerned with the Chairman's delay"

"The Tribes are fearful that the Board's previous delay, and any further delay, will prejudice their position on appeal." Motion to Expedite Issuance of Written Decision Denying Intervention, filed May 15, 1979 (See Stachon affidavit, p. 3)

Suffice it to say that there is nothing in the Commission's regulations or in case law preventing FOB from having standing

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to file this motion. Indeed, FOB finds it's absurd to imply that a party should remain silent if and when it feels that a violation of justice has occurred, simply because that violation does not directly affect that party.

Finally, the Appeal Board erred in finding the FOB motion to be untimely. They cite three cases to support their position: Consumers Power Co. (Midland Plant, Units 1 & 2), ALAB-101, 6 AEC 60, 63 (1973), citing Gilligan, Will & Co. V SEC, 267F2d 461,468 (2nd Cir. 1959); Commonwealth Edison Co. (Zion Station, Units 1 & 2), ALAB-226, 8 AEC 381,384 (1974); Northern Indiana Public Service Co. (Bailly Generating Station, Nuclear-1), ALAB-224, 8 AEC 244,247 (1974).

The cases cited by the Appeal Board have absolutely no connection to the present case. All three cases involve motions to disqualify Board members after initial decisions authorizing construction permits were granted. Obviously, that is not the case here.

The motion was filed as expeditiously as FOB's time and resources allowed. The Appeal Board shows concern that the Board and its Chairman "were deprived of an opportunity to consider the motion prior to the hearing." Order at p. 4. Yet neither the Board nor any of the parties found the motion untimely.

FOB has problems with the Appeal Board alleging prejudice by characterizing the motion as untimely and commenting on the "unexplained delay" in filing the motion. The Appeal Board completely dismisses the prejudice of the Chairman's untimely ruling. Any characterization by the Appeal Board that FOB's motion is untimely can only support the grounds for disqualification set out in the Stachon affidavit.

WHY THE COMMISSION SHOULD EXERCISE REVIEW

The importance of the questions arising in this case cannot be overlooked. FOB believes that this is the first disqualification case before the Commission involving denial of procedural rights by a licensing board chairman.

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FOB is disturbed at the precedent that may be set should such action be warranted. The ability of a petitioner in Commission proceeding to address her/his interests and concerns should not be tampered with at the whim of a licensing board chairman.

Commission policy encourages public participation. Yet in this case, effective participation by the petitioners has been inexcusably hampered by the Chairman's actions.

Commission policy and integrity would best be served by the removal of Valentine Deale from the Licensing Board in these proceedings.

Dated: August 17, 1979

Respectfully submitted,

Eric Staenon

Eric Staenon
Forelaws On Board
Coalition for Safe Power

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Valentine B. Deale, Chairman
Atomic Safety and Licensing Board
1001 Connecticut Avenue, N.W.
Washington, D.C. 20016

Dr. Frank F. Hooper, Member
Atomic Safety and Licensing Board
School of Natural Resources
University of Michigan
Ann Arbor, MI 48109

Gustave A. Linenberger, Member
Atomic Safety and Licensing Board
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

Dr. John H. Buck, Member
Atomic Safety and Licensing
Appeal Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Michael C. Farrar, Member
Atomic Safety and Licensing
Appeal Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Docketing and Service Section
Office of the Secretary
U.S. Nuclear Regulatory Commission
Washington, D. C. 20555
(original and ~~2~~4 copies)

Richard L. Black, Esq.
Counsel for NRC Staff
U.S. Nuclear Regulatory Commission
Office of the Executive Legal
Director
Washington, D.C. 20555

Roger M. Leed, Esq.
1411 Fourth Ave. Bldg. #610
Seattle, WA 98101

F. Theodore Thomsen
Perkins, Coie, Stone, Olsen &
Williams
1900 Washington Building
Seattle, WA 98101

Nicholas D. Lewis, Chairman
Energy Facility Site Evaluation
Council
820 East Fifth Avenue
Olympia, WA 98504

Robert C. Schofield, Director
Skagit County Planning Department
120 West Kincaid Street
Mount Vernon, WA 98273

Russell W. Busch, Esq.
Attorney for Upper Skagit Indian
Tribe and Sauk-Suiattle Indian
Tribe

Evergreen Legal Services
520 Smith Tower
Seattle, WA 98104

Robert Lowenstein, Esq.
Lowenstein, Newman, Reis & Axelrad
1025 Connecticut Avenue, N.W.
Washington, D. C. 20036

Thomas Moser
Deputy Prosecuting Attorney
Skagit County Courthouse
Mt. Vernon, Washington 98273 iny

Canadian Consulate General
Peter A. van Brakel
Vice-Consul
412 Plaza 600
6th and Stewart Street
Seattle, WA 98101

Donald S. Means
Box 277
La Conner, WA 98257

POOR ORIGINAL

Thomas F. Carr, Esq.
Assistant Attorney General
Temple of Justice
Olympia, WA 98504

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