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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

In the Matter of)	
PUGET SOUND POWER & LIGHT)	Docket Nos. 50-522
COMPANY, et al.)	50-523
)	
(Skagit Nuclear Power Project,)	August 31, 1979
<u>Units 1 and 2)</u>)	

APPLICANTS' ANSWER TO PETITION
FOR REVIEW OF ALAB-556

INTRODUCTION

On July 17, 1979, at the beginning of a scheduled evidentiary session in the above captioned proceeding and pursuant to 10 C.F.R. § 2.704(c), intervenors Forelaws On Board and Coalition for Safe Power ("FOB/CFSP") filed a motion seeking to require the disqualification of Licensing Board Chairman Valentine B. Deale. The following day the Licensing Board, again pursuant to section 2.704(c) of the Commission's regulations, referred the motion to the Appeal Board with the notation that it "did not grant the motion, and its Chairman did not remove himself." See, Puget Sound Power & Light Company (Skagit Nuclear Power Project, Units 1 and 2), ALAB-556, slip

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op. at pp. 1-2 (July 30, 1979) [hereinafter cited as "ALAB-556"].

On July 30, 1979, the Appeal Board issued ALAB-556, denying the motion. Thereafter, on August 17, 1979, FOB/CFSP, pursuant to 10 C.F.R. § 2.786(b), petitioned this Commission for review of the Appeal Board's decision.

This answer is in reply to FOB/CFSP's petition. For the reasons presented below the petition should be denied and ALAB-556 should be left undisturbed.

ARGUMENT

NRC regulations provide, in pertinent part, that review of an Appeal Board decision at the request of a party may only be had in accordance with the provisions of 10 C.F.R. § 2.786. See 10 C.F.R. § 2.786(b)(9). The FOB/CFSP petition, itself, specifies that it was filed "pursuant to CFR 2.786(b)."

By its own terms, however, section 2.786(b) applies only to certain decisions or actions taken "by an Atomic Safety and Licensing Appeal Board under § 2.785" (emphasis added). As noted above, Appeal Board consideration of FOB/CFSP's original motion for disqualification of Chairman Deale, and the resulting issuance of ALAB-556, were all pursuant to the specific

provisions and procedures of 10 C.F.R. § 2.704(c).¹ Section 2.785 was in no way involved. Accordingly, the Commission is without jurisdictional basis to consider the petition and it must be dismissed.

Alternatively, even if section 2.786(b) were deemed applicable, review would be appropriate only insofar as "an important question of fact, law or policy" were involved. 10 C.F.R. § 2.786(b). ALAB-556, however, presents no such question.

No facts are in dispute. Commission law with respect to the disqualification of Licensing Board members is well-settled. See, e.g., Duquesne Light Co. (Beaver Valley Power Station, Units 1 and 2), ALAB-172, 7 AEC 42 (1974); Consumers Power Co. (Midland Plant, Units 1 and 2), ALAB-101, 6 AEC 60 (1973). That law was properly applied here; the Appeal Board carefully considered the FOB/CFSP motion and issued its decision in terms of all of the legal grounds for dismissal arguably raised.

¹Section 2.704(c), itself, provides for review of a denial of a motion for disqualification at the Licensing Board level by only either "the Commission or Atomic Safety and Licensing Appeal Board" (emphasis added).

With respect to policy, nothing significant remains to be decided. As to standing, the Appeal Board held that

Although the tribes are not now parties to the licensing proceeding, they obviously had the right to seek to disqualify a Licensing Board member from participation in any aspect of the proceeding which related directly to them.

ALAB-556, fn. 8. Thus, the question of whether a party may seek disqualification on behalf of another is unimportant. Further, to the extent the petition is based on an alleged "denial of procedural rights" and the "ability of a petitioner . . . to address interests and concerns" (Petition for Review of Intervenor's FOB/CFSP, pp. 5-6), there is no need for Commission attention. The matter of Indian tribe participation has not yet been decided. See Puget Sound Power & Light Company (Skagit Nuclear Power Project, Units 1 and 2), ALAB-552, slip op. at pp. 18-20 (July 9, 1979); Commission Order, August 8, 1979. If intervention is not allowed, then, of course, no "procedural rights" will have been affected. If, on the other hand, the tribes are permitted to intervene, the Commission's rules provide a basis for establishing the proper degree of participation for a tardy intervenor. See, 10 C.F.R. §§ 2.714(a), (b) and (e). Thus, whether or not the Indian tribes are granted intervention, there need be no prejudicing

of procedural rights in terms of improperly restricting participation.

CONCLUSION

Each of the reasons discussed above -- standing alone -- constitutes adequate grounds for denying the petition. It should be dismissed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that the following:

APPLICANTS' ANSWER TO PETITION
FOR REVIEW OF ALAB-556

in the above-captioned proceeding have been served upon the persons shown on the attached list by depositing copies thereof in the United States mail on August 31, 1979 with proper postage affixed for first class mail.

DATED: August 31, 1979

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1077 317