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August 25, 1980

Joseph M. Hendrie, Commissioner  
Nuclear Regulatory Commission  
1717 H Street  
Washington, DC 20555

Re: Participation of Commissioner Hendrie in  
SAPL 202.6 Petition

Dear Commissioner Hendrie:

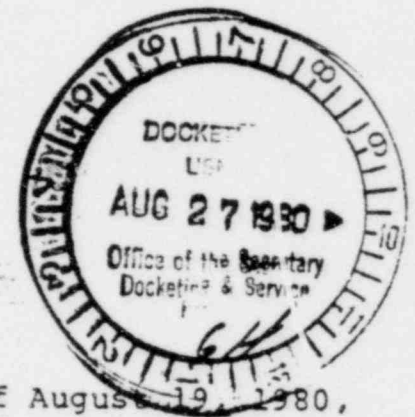
This Office has just received your memorandum of August 19, 1980, in which you conclude, based upon a memorandum from the Assistant General Counsel, that "it is consistent with my responsibilities as a Commissioner to participate in decision making on this important matter of Commission business".

On behalf of the petitioning party, the Seacoast Anti-Pollution League, I respectfully disagree with your decision to participate. I believe that your participation is clearly prohibited by section 5(d) of the Administrative Procedure Act.

While conceding that the 202.6 Petition filed by SAPL is not the same proceeding as the construction permit, from which you were disqualified, it seems clear to us that it is a "factually related case".

The issue of evacuation of the area around the Seabrook site, beyond the low population zone, was addressed before the ASLB. The Staff fully participated in this issue in the construction permit proceedings. It is my understanding that you were involved in Staff review of this application and that this has led you to consistently disqualify yourself from any adjudicatory function in regard to the Seabrook proceeding.

The evacuation of Seabrook does involve the same facts involved in Staff review of the application, it involves an issue presented to the ASLB, although the ASLB subsequently decided there was no jurisdiction to consider the issue, and the parties pursuing this issue are the same as they were in the construction permit proceedings.



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Joseph M. Hendrie, Commissioner  
Re: SAPL 202.6 Petition  
August 25, 1980  
Page 2

In light of the foregoing, we respectfully submit that the 202.6 proceeding does involve a common nucleus of operative facts, and is clearly "factually related" to the proceeding in which you have agreed you are disqualified.

Very truly yours,

Robert A. Backus

RAB/led  
CC Service List Attached

August 25, 1980

I, Robert A. Backus, certify that I have mailed, postage prepaid, first class or airmail of the within to:

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