

UNITED STATES OF AMERICA
 NUCLEAR REGULATORY COMMISSION



5 Sept 80

In the Matter of)	
)	
DAIRYLAND POWER COOPERATIVE)	Docket No. 50-409
)	(Liquefaction)
(La Crosse Boiling Water)	(Show Cause)
Reactor))	

LICENSEE'S RESPONSE TO
 FREDERICK OLSEN'S MOTION TO
 DISQUALIFY THE LICENSING BOARD

Dairyland Power Cooperative (Dairyland or DPC), the holder of Provisional Operating License No. DPR-45 for the La Crosse Boiling Water Reactor (LACBWR) and the licensee in the above-captioned proceeding, hereby submits its response in opposition to the motion filed by Frederick M. Olsen, III, to disqualify the Atomic Safety and Licensing Board appointed by the Commission to rule on the requests for a hearing in this proceeding. In support of its position, Dairyland states as follows:

1. As noted in Dairyland's August 28, 1980 Response to Requests For Hearing, Frederick M. Olsen, III, is a member of the Coulee Region Energy Coalition (CREC) who has, acting on his own behalf, requested that a hearing be held in this proceeding. 1/

1/ Ms. Ann Morse, who is also a member of CREC and who is acting on behalf of CREC, has likewise requested that a hearing be held in this proceeding.

2. The sole ground advanced by Mr. Olsen in support of his motion to disqualify the Licensing Board is that this Board is somehow biased because of certain evidentiary rulings which the same Board made during hearings in an earlier proceeding involving an application by Dairyland to amend the LACBWR operating license to expand the capacity of the spent fuel pool.

3. It is well settled that the mere fact that a Licensing Board has issued a large number of unfavorable, or even erroneous, rulings with respect to a given party is not evidence of bias on the part of the Board. See e.g., Northern Indiana Public Service Co. (Bailly 1), ALAB-224, 8 AEC 244, 246 (1974). A claim of bias is even more attenuated in situations where, as here, only a few rulings are involved and they are clearly not erroneous.

There was no need for the Board to hold hearings at all in the spent fuel expansion proceeding once the Board summarily disposed of all of CREC's contentions. The fact that the Board nevertheless elected to hold hearings on the issue of the need for power from LACBWR during the period prior to a decision in the pending full term operating license (FTOL) proceeding and permitted CREC to participate as a full party in those hearings would suggest that, if anything, the Board was biased in favor of the intervenor in that proceeding. The evidentiary rulings which the Board later rendered in that proceeding and on which Mr. Olsen relies in support of his motion for disqualification were entirely proper and in keeping with the limited scope of the proceeding.

While Mr. Olsen may be displeased with these evidentiary rulings, this displeasure is actually rooted in Mr. Olsen's misperception of the purpose and scope of the spent fuel expansion proceeding. In any event, these rulings hardly constitute evidence of bias and provide insufficient grounds for disqualification.

4. Moreover, Mr. Olsen was not even a party to the spent fuel pool expansion proceeding. Rather, he merely made a limited appearance in that proceeding under 10 C.F.R. § 2.715. Nevertheless, in his motion for disqualification and supporting affidavit, Mr. Olsen attempts to make much of the fact that during one of his limited appearances he urged the Board to adduce additional evidence on the cost of reactor retrofits arising out of the TMI-2 incident. Once again, Mr. Olsen appears to have misperceived the actual significance of a limited appearance statement. "A limited appearance statement is not evidence" and need not be treated as such by a Licensing Board. Iowa Electric Light & Power (Duane Arnold), ALAB-108, 6 AEC 195, 196, n. 4 (1973). While a Licensing Board may elect to adduce additional evidence on an issue raised in a limited appearance statement, a Board is not obligated to do so -- particularly where, as here, consideration of the issue would go beyond the scope of the proceeding, would not be necessary to a decision in this proceeding, and would involve considerable speculation on the Board's part. In any event, the Board's decision not to elicit additional evidence on this point clearly does not constitute evidence of bias, nor provide grounds for disqualification.

For all the foregoing reasons, Dairyland respectfully submits that the Licensing Board should deny Mr. Olsen's Motion to Disqualify the Licensing Board in its entirety.

Respectfully submitted.

Kevin P. Gallen
for O. S. Hiestand
Attorney for
Dairyland Power Cooperative

OF COUNSEL

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Dated: September 5, 1980

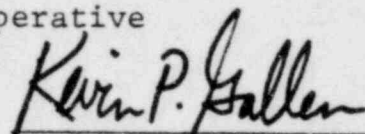
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Reactor))	(Show Cause)

NOTICE OF APPEARANCE

Notice is hereby given that the undersigned attorney herewith enters an appearance in the above-captioned matter. In accordance with 10 C.F.R. § 2.713, the following information is provided:

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Court of Appeals
Name of Party: Dairyland Power Cooperative



Kevin P. Gallen
Attorney for
Dairyland Power Cooperative

Dated: September 5, 1980

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NOTICE OF APPEARANCE

Notice is hereby given that the undersigned attorney herewith enters an appearance in the above-captioned matter. In accordance with 10 C.F.R. § 2.713, the following information is provided:

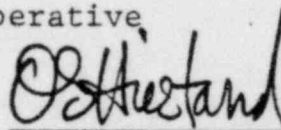
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Name of Party: Dairyland Power Cooperative



O. S. Hiestand
Attorney for
Dairyland Power Cooperative

Dated: September 5, 1980

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CERTIFICATE OF SERVICE

Service has on this day been effected by
personal delivery or first class mail on the following
persons:

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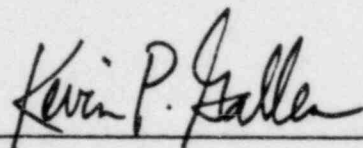
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Dated: September 5, 1980