

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

Before Administrative Judges:

Sheldon J. Wolfe, Chairman
Dr. Richard F. Cole
Gustave A. Linenberger, Jr.



SERVED DEC 17 1980

In the Matter of
PUERTO RICO ELECTRIC POWER AUTHORITY
(North Coast Nuclear Plant, Unit 1)

Docket No. 50-376 CP

December 16, 1980

ORDER

Under date of December 3, 1980, Intervenor's filed a Reply To Applicant's and NRC Staff's Contention That North Coast Nuclear Plant's Withdrawn Application Should Not Be Dismissed With Prejudice.

We note that Intervenor's argue that Applicant is guilty of "hidden, deceitful action" and of "false pretenses" in that it failed to "inform, suggest or in any way hint to the parties and to the Board that on August 5, 1976" it had initiated a reversal action in Court to return the expropriated land to its original owners. Apparently relying on the "clean hands doctrine", Intervenor's urge for the first time that Applicant's motion to withdraw its application should be granted but only with prejudice lest the door be left open "for further wrongful action". In past submissions, Intervenor's had solely argued that this reverse expropriation action evidenced that Applicant had abandoned any intention to construct the nuclear plant and thus that an order should be issued dismissing the application with prejudice should the Board determine, after an evidentiary hearing, that Applicant no longer intended to construct the plant.

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Apparently the Intervenor presented this explicit argument for the first time in their Reply of December 3, 1980 because the Applicant and the Staff in their respective Responses of October 3 and October 8, 1980 argued that a request for withdrawal of an application should be granted without prejudice unless it is shown that prejudice will result to the public interest, and that, in the instant case, Intervenor had not alleged any such prejudice to the public interest. Thus, this 16th day of December, 1980, it is

ORDERED

That since Applicant and Staff have not had an opportunity to address this new argument, they shall have until December 31, 1980, within which to file responsive replies.

FOR THE ATOMIC SAFETY AND
LICENSING BOARD

Sheldon J. Wolfe
Administrative Judge