

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING APPEAL BOARD

Administrative Judges:

Alan S. Rosenthal, Chairman
Dr. John H. Buck



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

SERVED JUL 27 1981

Mr. Gonzalo Fernos, Santurce, Puerto Rico, pro se
and on behalf of the intervenor Citizens for the
Conservation of Natural Resources, Inc.

MEMORANDUM AND ORDER

July 24, 1981

Intervenors Gonzalo Fernos, et al, have moved for recon-
sideration of ALAB-648, 14 NRC ___ (July 2, 1981). Additionally,
they seek a further extension of the time for the filing of the
brief in support of their pending appeal from the Licensing Board's
February 18, 1981 order. ^{1/}

1. The motion for reconsideration is directed to the
denial in ALAB-648 of the intervenors' motion to supplement the
record with eight affidavits which had been executed by landowners

^{1/} As matters now stand, that brief is due on or before
July 31, 1981. See our unpublished June 11, 1981 order.

DS02
50/1

in the vicinity of the North Coast site. That denial rested essentially on our determination that, by the affidavits, the intervenors were endeavoring impermissibly to raise an issue on the appeal which had not been presented to the Licensing Board. In this connection, we observed that in no filing below had the intervenors "assert[ed] possible injury to the landowners as a consequence of the threat of a future expropriation for a nuclear power facility". 14 NRC at ___ (slip opinion, p. 6).

The intervenors insist that that observation was erroneous. We are referred to certain statements made by them in December 3, 1980 and March 3, 1981 submissions to the Licensing Board.^{2/} Contrary to intervenors' view, however, we find nothing in these statements which might have suggested to the Licensing Board that the intervenors were endeavoring to raise an issue respecting possible injury to landowners in the event of a future expropriation attempt by the applicant. Indeed, the statements are devoid of any reference to neighboring landowners and, most assuredly, did not bring to the attention of the Board below any of the factual averments contained in the affidavits which the intervenors now seek to include in the record.^{3/}

^{2/} The March 3 submission was a petition for reconsideration of the Board's February 18 order.

^{3/} As pointed out in ALAB-648, "[n]one of the statements in [the] affidavits relates to developments either recently occurring or discoverable only after the Licensing Board entered its February 18 order". 14 NRC at ___ (slip opinion, p. 7).

In these circumstances, reconsideration of ALAB-648 must be, and is hereby, denied.

2. The request for a further extension of briefing time rests principally upon the claim that, as of July 21, 1981, the law library of the University of Puerto Rico had not as yet received the microfiche collection of prior AEC/NRC adjudicatory decisions and indices which had been sent to it by NRC staff counsel on June 26, 1981. See ALAB-648, 14 NRC at ____, fn. 5. We are now advised that those materials reached that library earlier this week and that its librarian has so notified Mr. Fernos.^{4/} Because of the apparent delay in transit, we will extend the intervenors' briefing time for an additional 17 days; i.e., until August 17, 1981. Any request for a still further extension will not be received with favor and will put the intervenors at risk of a dismissal of their appeal for want of diligent prosecution.

^{4/} Intervenors note that the materials sent by the staff to the University of Puerto Rico law library did not include adjudicatory decisions rendered after January 1981. This was because, as of June 26, decisions handed down on or after February 1 had not as yet been published. In any event, as pointed out in ALAB-648, 14 NRC at ____, fn. 5, the staff was under no legal obligation to transmit microfiche copies of any decisions to the library for the specific use of the intervenors. In this circumstance, intervenors have no legitimate cause for complaint. They may rest assured, however, that this Board will take into account any recent decision which might support their appellate position, whether cited in their brief or not.

It is so ORDERED.

FOR THE APPEAL BOARD

Barbara A. Tompkins
Barbara A. Tompkins
Secretary to the
Appeal Board