UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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

AMENDED MOTION

The Motion to Disqualify the ASLB consisting of Charles Bechhoefer, George Anderson, and Ralph Decker, of 19 August 1980 shall be amended to reflect the following:

I.

WHEREAS, that during the Atomic Safety and Liscensing Board hearings of October, 1979, concerning the expansion of spent fuel storage capacity at the La Crosse Boiling Water Reactor, owned by Dairyland Power Cooperative and located at Genoa, Wisconsin, in the County of Vernon, the Atomic Safety and Liscensing Board consisting of Charles Bechhoefer, George Anderson, and Ralph Decker, did fail to take into their collection of evidence the largest monetary item of evidence, excluding de-commissiong and waste storage, namely, Three Mile Island-Unit II accident related costs,

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II., III., IV., and V. remain as submitted in the original Motion to Disqualify of 19 August 1980.

Frederick M. Olsen III

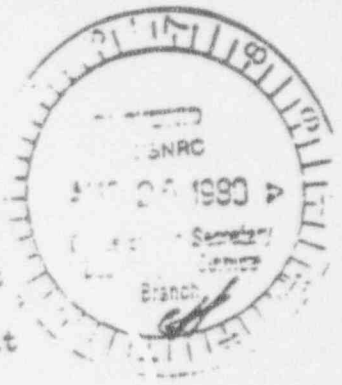
FREDERICK MILTON OLSEN III, moving party

Subscribed and sworn to
before me this 20 day
of August 1980

V. M. L.

SUPPLEMENTAL AFFADAVIT

OF FREDERICK MILTON OLSEN III.



The Three Mile Island-Unit II accident related retrofit costs were the largest monetary considerations brought up at the Atomic Safety and Liscensing Board hearings of October, 1979, at La Crosse, EXCLUDING DE-COMMISSIONING AND WASTE STORAGE. The back end of the nuclear fuel cycle will always involve the largest costs in the utilization of atomic energy for so-called "peaceful purposes."

Frederick Milton Olsen III

FREDERICK MILTON OLSEN III, affiant

Subscribed and sworn to before me
this 12 day of August, 1980.

James F. Morris

Notary Public

My commission is permanent.

The board, in flagrant dereliction of their duty to gather evidence, refused to even ascertain a range into which these TMI-2 costs might fall. The board attempted to dodge their responsibilities by saying that, "It (NUREG-0578) is just a reccomendation." (reference: ASLB hearing transcript, 5 Oct 79, in the matter of DPC's LACBWR, page 754) I specifically pointed out the rule-making history of these proposed requirements. (reference: ASLB hearing transcript 5 Oct 79, pages 409-410) These requirements became binding at a date before the board's final decision, as can be seen in letters from Harold R. Denton, Director, Office of Nuclear Reactor Regulation, U.S.N.R.C., as referenced in an Order To Show Cause, issued to DPC on 2 January 1980, by the aforementioned Mr. Denton. In the public record, on January 10, 1980, Mr. Richard Shimshak, LACBWR plant manager, referred to the cost estimates of "NRC officials" that ranged from fifteen (15) to twenty-five (25) million dollars for TMI-2 retrofits. (reference: La Crosse Tribune, 10 Jan 80, page 2) I would like to point out that 10 January 1980 was also the date that the board's final decision became publicly known. Therefore, logically, the board could have gathered knowledge, and was in fact privy to such knowledge as could have been used to arrive at an acceptable estimate for TMI-2 retrofit costs at LACBWR. The board

did not take these costs into account in their deliberations as evidenced by the decision that they handed down, for surely, had they taken the TMI-2 retrofit costs into account, their decision would have been different. On 5 October 1979, during the afternoon session of ASLB hearings in La Crosse, the board refused to allow questioning and discussion of an alternative design concept proposal to enlarging the spent fuel storage capacity at LACBWR. (reference: ASLB hearing transcript, 5 Oct 79, in the matter of DPC's LACBWR, page 746) Had the board allowed further discussion and questioning, reasons that conversion of the LACBWR reactor vessel to a spent fuel storage vessel would be safer and more economical for area residents would have been presented and supported. If the board truly held the safety, health, and welfare of the American public foremost in their minds, would they not have heard testimony, discussion, and questioning to gather information about this alternative to spent fuel storage capacity increase at LACBWR? I say yes. However, the board chose not to, plainly indicating that the public interest was not uppermost in their minds. After actions such as I have delineated in this affidavit, I can no longer believe that the Atomic Safety and Licensing Board consisting of Charles Bechhoefer, George Anderson, and Ralph Decker is capable of considering evidence and rendering decisions which are in the public interest.

UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

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