

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

BEFORE ADMINISTRATIVE JUDGES:

Helen F. Hoyt, Chairman
Dr. Emmeth A. Luebke
Dr. Jerry Harbour

In the Matter of)

PUBLIC SERVICE COMPANY OF)

NEW HAMPSHIRE, et al.)

(Seabrook Station, Units 1 and 2))

Docket Nos.

50-443-OL

50-444-OL

October 26, 1983

AFFIDAVIT OF JO ANN SHOTWELL

I, Jo Ann Shotwell, being duly sworn, hereby depose and say
as follows:

1. I am an Assistant Attorney General in the Department of
the Attorney General for the Commonwealth of Massachusetts and
a counsel of record for the Department in this proceeding. I
was present at and participated in the hearings before the ASLB
which were held on August 17-19, 23, and 31, 1983, as well as
the three prehearing conferences held on May 6-7, 1982,
July 15-16, 1982, and April 7-8, 1983.

2. On numerous occasions throughout the August hearings, many of which are specified in the Memorandum in Support of Attorney General Francis X. Bellotti's Motion for Disqualification being filed herewith, Judge Hoyt interrupted me and other counsel for intervenors and representatives of interested municipalities in a loud voice, interfering with our ability to make motions, objections, and supporting arguments and to make a record for appeal. On other occasions (during the prehearing conferences as well as the August hearings), many of which are again specified in the Memorandum accompanying this filing, Judge Hoyt addressed me and other intervenors' counsel and municipal representatives in a sarcastic, hostile, and even mocking tone. At no time did Judge Hoyt address counsel for the Applicants in such a fashion or interfere with their desire to make statements on the record. In fact, her tone and manner of address were notably solicitous of both the Applicants' counsel and NRC Staff counsel.

3. I was approached during the August hearings by a number of people observing the proceeding who questioned Judge Hoyt's impartiality. At a recess on the first day of the hearings, well before the incident involving Judge Hoyt's reading from the Department's confidential cross-examination plan occurred,

I was asked by one observer to the proceeding, in the company of others, whether I sensed hostility on Judge Hoyt's part toward me or toward the Department of the Attorney General. There were general expressions of agreement among the other persons present at that time that such hostility was being demonstrated. One individual questioned whether it was "futile" to participate in the proceeding. And another person, later in the same recess, asked whether Judge Hoyt wasn't on a "power trip." Following the hearing on August 23, two New Hampshire legislators observing the proceeding indicated to me that they were appalled at the manner in which Judge Hoyt had addressed the municipal representatives that day and felt that she had demonstrated profound disrespect for them.

4. During my cross-examination of Applicants' witnesses in the afternoon of August 17, Judge Hoyt began to read an upcoming question from the Department's pre-filed, confidential cross-examination plan. I rose quickly and emphatically stated my objection to that action in an effort to prevent any further prejudice to the Department. Judge Hoyt subsequently demanded that I apologize for my objection as a condition of continued participation in the proceeding. When I would not do so, Judge Hoyt in fact barred me from completing my cross-examination. I later explained that I could not apologize for the substance of

the objection and that I believed the objection to have been well-founded. Judge Hoyt then retreated from her earlier position and readmitted me to the proceeding after receiving my assurance that, in making the objection, I intended no personal offense to any member of the Board and that I regretted any offense which was taken. I note in this connection that the transcript does not accurately reflect Judge Hoyt's reading from the cross-examination plan. That portion of the August 17, 1983, transcript appearing at page 1063, lines 17-18, which reads "Judge Hoyt: I believe we're into adverse weather effect?" should read "Judge Hoyt: I believe we're into adverse weather affects...". The Department is moving that this correction be made to the transcript.

5. Because of Judge Hoyt's treatment of the municipal representatives in the proceeding, I was prompted at the August 19 hearing to assist two of those representatives in gaining access to the Board and the record with respect to their observation, previously made known to me, that counsel for the Applicants and the NRC Staff had signalled certain answers to their witnesses during cross-examination. I performed that access-gaining function, in part, because of my belief that Judge Hoyt would have prevented the municipal representatives from raising even such a serious matter had they attempted to

do so on their own. It should be noted that the Board members were not in a position readily to observe any signalling of witnesses by Applicants' or Staff counsel when they were facing witnesses and awaiting their responses. Intervenors' counsel were seated with their backs to Applicants' and Staff counsel such that it would have been highly unlikely for them to have seen any such signalling. The only participants in the proceeding who were seated directly opposite and facing the Applicants' and Staff counsel were the witnesses and the representatives of the interested municipalities.

6. During the hearing on August 23, 1983, I was prevented by Judge Hoyt's refusal to allow statements by intervenor counsel from entering into the record the Department's desire for a fuller hearing into the municipal representatives' allegations that counsel for the Applicants and the NRC Staff had signalled their witnesses. If allowed to speak at that time, I would have moved the Board to allow the complaining municipal representatives an opportunity to rebut the denials by Applicants' and Staff counsel of their allegations. It was my perception that Mr. Backus was attempting to make a similar request on behalf of his client and was also refused the opportunity to speak. During his exchange with Judge Hoyt on this occasion, as during the entire hearing, Mr. Backus did not

so much as raise his voice, but rather quietly and reservedly requested the opportunity to speak on behalf of his client. Following the August 23 hearing, I was presented by Ms. Pevear, a New Hampshire legislator and the representative in the proceeding of the Town of Hampton Falls, with the memorandum attached hereto as Exhibit A. I was informed by Ms. Pevear that it was the substance of this memorandum, and particularly the last paragraph thereof, which she was attempting to bring to the attention of the Board and to state for the record when Judge Hoyt would not allow her to address the matter of the alleged signalling of witnesses.

5. Prior to the commencement of the hearing on August 31, Judge Hoyt called all counsel to her chambers. In the absence of the representatives for the Towns of Rye and Hampton Falls who were present for the hearing, Judge Hoyt indicated that she had, on the preceding Monday (August 29), telephoned the Chairman of the Board of Selectmen for the Town of Rye and indicated to him that Mr. Guy Chichester could no longer serve as the representative of the Town in the proceeding. Judge Hoyt then indicated to all counsel present in chambers that she would not commence the hearing that day as long as Mr. Chichester was in the hearing room, or at least as long as he

was seated in the section reserved for town representatives, and that she did not want to have him physically removed from his seat. Judge Hoyt then asked if counsel would urge Mr. Chichester to leave. When no counsel offered to do so, Judge Hoyt indicated a willingness to reconvene the hearing to another room so as to exclude Mr. Chichester. I indicated my unwillingness to do so and further relayed that I had conversed by telephone the preceding day (Tuesday, August 30) with the Chairman of the Board of Selectmen for Rye and that, in light of the substance of our conversation, I did not believe that he could have understood that Mr. Chichester was being barred from the proceeding. Judge Hoyt responded that she had made that "perfectly clear." Shortly thereafter the in-chambers conference ended. Judge Hoyt did not come to the hearing room and commence the hearing until approximately one hour later, immediately after Mr. Chichester left the hearing room stating that he had a prior commitment elsewhere. The hearing began approximately 1-1/2 hours after the time at which it was scheduled to begin. Following the hearing, the Chairman of the Board of Selectmen of Rye indicated on the record that Judge Hoyt did not at any time during her telephone conversation with

him on Monday, August 29, state that she was barring Mr. Chichester from the proceeding. (See Exhibit B hereto.)


Signed under the pains and penalties of perjury this 26th day of October, 1983.


Jo Ann Shotwell

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

On this day Jo Ann Shotwell appeared before me and swore that she had read this affidavit and that the statements in it are true to the best of her knowledge and belief.


Notary Public

My commission expires on:

Dated: Dec 16, 1987



State of New Hampshire

HOUSE OF REPRESENTATIVES

CONCORD

9:00 P.M.

8/19/83

MEMO TO FILE (Seabrook):

The following are my observations of events at approx. 4:10 P.M., this date:

Miss Curran of NECNP was questioning the PSC panel of witnesses, with Mr. Dignan acting as attorney for PSC concerning emergency procedures at the Seabrook Plant. She asked her final questions concerning list of events and questioned "if there was a more specific list and no other procedures?".

Before Mr. McDonald answered, Mr. Dignan - who, in my line of vision was partially obscured by the Mass. Ass't. A.G., shook his head from side to side.

Mr. Dignan, then, proceeded to lean way over to his right and forward, so that he was completely in my line of vision, to Miss Shotwell's right, and vigorously shook his head from side to side.

The witness, Mr. McDonald, then answered no to the questions.

During this time, Mr. Gad, also of PSC, did not move his lips or open his mouth or give any indication he was carrying on a conversation with Mr. Dignan.

Roberta C. Pevear
Roberta C. Pevear



OFFICE OF SELECTMEN
RYE, NEW HAMPSHIRE

September 26, 1983

Honorable Judge Helen Hoyt
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Re: PSNH, et al Docket Nos. 50-443OL and 50-444OL

Dear Judge Hoyt:

We wish to have placed on the record in these proceedings our objection to your conduct at the August 31, 1983, hearing session relative to the continued participation by one of our Town's representatives, Mr. Guy Chichester.

We have conferred with individuals who were in attendance at that hearing, and we have reviewed newspaper accounts covering the events of the 31st. At no time, during your unusual call to our office the Monday before, did you advise that you had "dismissed" Mr. Chichester from further participation on behalf of the Town of Rye, nor was any such impression given by you or understood by us. We acknowledge that you suggested that we consider appointing a new representative, but the whole tenor of our conversation centered around your concern to avoid future confrontation. Our letter of response was intended to assure you that we would counsel our representative on courtroom demeanor expected in judicial as well as semi-judicial proceedings.

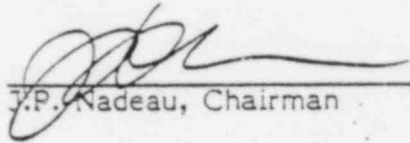
Had you even inferred that you had in fact "dismissed" Mr. Chichester from further representation and that it was necessary for us to obtain new representation, we most definitely would have advised you of our objection to same in writing. From our conversations with several residents and non-residents of Rye, who were in attendance during the sessions giving rise to this incident, we are hard pressed to find any conduct on the part of Mr. Chichester that would warrant such a severe sanction as dismissal.

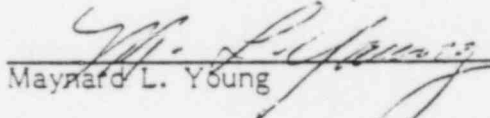
Honorable Judge Helen Hoyt
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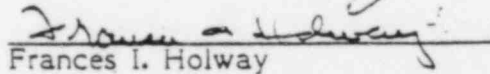
If our understanding of our pronouncements at the August 31 hearing concerning this issue is other than what you intended, then of course, you should disregard this letter. However, if it is your intention not to recognize Mr. Chichester at future hearings, we respectfully request that you place such an order and the reasons therefore in writing to us so we may note our exception and preserve our appellate rights.

Very truly yours,

BOARD OF SELECTMEN


J.P. Nadeau, Chairman


Maynard L. Young


Frances I. Holway

plh

cc: JoAnn Shorwell, Esquire, Assistant Attorney General, Environmental Protection
Bureau, Department of the Attorney General, One Ashburton Place, 19th
Floor, Boston, Massachusetts 02108

CERTIFICATE OF SERVICE

I, Margaret A. Zaleski, Esquire, counsel for Massachusetts Attorney General Francis X. Bellotti, hereby certify that on October 27, 1983, I made service of (1) Attorney General Bellotti's Motion for Disqualification and Recusal of Judge Helen F. Hoyt and Motion for Reconsideration of Judge Hoyt's Ruling on Motion for Summary Disposition and Motion for Rehearing, and (2) Attorney General Bellotti's Memorandum in Support of the Motions, with attachments, and (3) Affidavit of Jo Ann Shotwell, with attachments, by mailing copies thereof to the parties named below:

Helen Hoyt, Chairperson*
Atomic Safety and Licensing
Board Panel
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Representative Beverly Hollingworth
Coastal Chamber of Commerce
209 Winnacunnet Road
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Sun Valley Association
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*By Express Mail

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Drinkwater Road
Hampton Falls, NH 03844

Mrs. Sandra Gavutis
Designated Representative of
the Town of Kensington
R.F.D. 1
East Kingston, NH 03827

Patrick J. McKeon
Selectman's Office
10 Central Road
Rye, NH 03870

Richard Sullivan, Mayor
Town Hall
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Mr. Angie Machiros, Chairman
Newbury Board of Selectmen
Town of Newbury, MA 01950

Thomas G. Dignan, Jr., Esquire
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Ms. Olive L. Tash
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Edward F. Meany
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Calvin A. Canney
City Manager
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126 Daniel Street
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Jane Doughty
Field Director
Seacoast Anti-Pollution League
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Selectmen of North Hampton
Town of North Hampton
New Hampshire 03862

Senator Gordon J. Humphrey
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(Attn: Herb Boynton)

Anne Verge, Chairperson
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Mr. Daniel Giratd
Civil Defense Director
25 Washington Street
Salisbury, MA 01930

Senator Gordon J. Humphrey
U.S. Senate
Washington, DC 20510
(Attn: Tom Burack)

Signed under the pains and penalties of perjury, this 28th
day of October, 1983.

Margaret A. Zaleski
Margaret A. Zaleski
Assistant Attorney General
Public Protection Bureau
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