

NRC PUBLIC DOCUMENT ROOM

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION



In the Matter of :
OFFSHORE POWER SYSTEMS : Docket No. STN 50-437
(Manufacturing License for :
Floating Nuclear Power Plants) :

RESPONSE OF APPLICANT TO MEMORANDA OF
CHAIRMAN JOSEPH M. HENDRIE AND COMMISSIONER
VICTOR GILINSKY TO COUNSEL FOR THE PARTIES

On October 27, 1978, Chairman Joseph M. Hendrie and Commissioner Victor Gilinsky filed separate, parallel documents entitled "MEMORANDUM TO COUNSEL FOR THE PARTIES" in which they each disclosed certain previous involvement with the Offshore Power Systems application in the above docket. Each Commissioner concluded that he will be able to consider the issues presented by review of ALAB-500 in an impartial manner unaffected by his limited prior involvement, and each proposes to participate in the pending review proceeding.

Although neither Memorandum specifically invited comments other than objection to such participation, Offshore Power Systems, Applicant in this proceeding, believes it is appropriate to state that it has no objection to either Commissioner participating in the review of the important issues raised by ALAB-489 and ALAB-500.

Under applicable standards, a member of an administrative agency is not disqualified from participating in an adjudication solely on the ground that he has had some prior involvement with the factual aspects of the case which he must ultimately decide unless there is a showing of actual bias resulting from that prior involvement. See Hortonville Joint School District No. 1 v. Hortonville Education Ass'n, 426 U.S. 482, 493 (1976); Withrow v. Larkin, 421 U.S. 35, 55 (1975); Wilson v. Lincoln Redevelopment Corp., 488 F.2d 339, 342-43 (8th Cir. 1973). Cf. National Labor Relations Board v. Donnelly Garment Co., 330 U.S. 219, 236-37 (1947). Federal officers with adjudicatory responsibilities are "assumed to be men of conscience and intellectual discipline, capable of judging a particular controversy fairly on the basis of its own circumstances" even though they may have underlying philosophies in approaching a specific case. United States v. Morgan, 313 U.S. 409, 421 (1941). Thus, disqualification should not occur where, as here, the administrator is willing to consider a matter with an open mind and to exercise good faith objectivity in reaching a decision in compliance with the responsibility imposed upon that official by law. Carolina Environmental Study Group v. United States, 510 F.2d 796, 801 (D.C. Cir. 1975); Environmental Defense Fund v. Corps of Engineers, U.S. Army, 470 F.2d 289 (8th Cir. 1972), cert. denied, 412 U.S. 931 (1973);

Skelly Oil Co. v. Federal Power Commission, 375 F.2d 6, 17-18 (10th Cir. 1967), aff'd in part, rev'd in part on other grounds, 390 U.S. 747 (1968); Movement Against Destruction v. Trainor, 400 F. Supp. 533, 547 (D. Md. 1975).

While the facts concerning the previous involvement of Chairman Hendrie and Commissioner Gilinsky are different, the minimal degree of involvement appears to be similar in both cases. In neither situation does the prior involvement indicate to Applicant that the Commissioners should be disqualified.

Respectfully submitted,

Barton Zloway

Thomas M. Daugherty / JPK

John R. Keurick
Counsel for Applicant
Offshore Power Systems

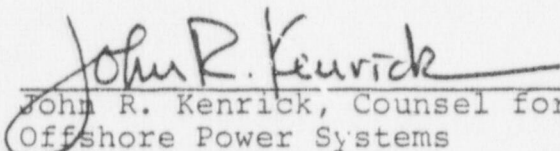
Dated: November 2, 1978

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of :
 :
OFFSHORE POWER SYSTEMS : Docket No. STN 50-437
 :
(Manufacturing License for :
Floating Nuclear Power Plants) :

CERTIFICATE OF SERVICE

I hereby certify that copies of the "Response of Applicant to Memoranda of Chairman Joseph M. Hendrie and Commissioner Victor Gilinsky to Counsel for the Parties" were served upon the persons listed on Attachment 1 to this Certificate of Service by deposit in the United States mail, postage prepaid, this 2nd day of November, 1978.



John R. Kenrick, Counsel for
Offshore Power Systems

ATTACHMENT 1

OPS SERVICE LIST

Joseph M. Hendrie, Chairman
U. S. Nuclear Regulatory Commission
Washington, D. C. 20555

Victor Gilinsky, Commissioner
U. S. Nuclear Regulatory Commission
Washington, D. C. 20555

Richard T. Kennedy, Commissioner
U. S. Nuclear Regulatory Commission
Washington, D. C. 20555

Peter A. Bradford, Commissioner
U. S. Nuclear Regulatory Commission
Washington, D. C. 20555

John F. Ahearne, Commissioner
U. S. Nuclear Regulatory Commission
Washington, D. C. 20555

Richard S. Salzman, Chairman
Atomic Safety and Licensing Appeal
Board
U. S. Nuclear Regulatory Commission
Washington, D. C. 20555

Dr. John J. Buck, Member
Atomic Safety and Licensing Appeal
Board
U. S. Nuclear Regulatory Commission
Washington, D. C. 20555

Michael C. Farrar, Member
Atomic Safety and Licensing Appeal
Board
U. S. Nuclear Regulatory Commission
Washington, D. C. 20555

Secretary
Atomic Safety and Licensing Appeal
Board
U. S. Nuclear Regulatory Commission
Washington, D. C. 20555

Sheldon J. Wolfe, Esq., Chairman
Atomic Safety and Licensing Board
U. S. Nuclear Regulatory Commission
Washington, D. C. 20555

Dr. David R. Schnik, Member
Atomic Safety and Licensing Board
Department of Oceanography
Texas A & M University
College Station, Texas 77840

Mr. Lester Kornblith, Jr., Member
Atomic Safety and Licensing Board
U. S. Nuclear Regulatory Commission
Washington, D. C. 20555

Dr. David L. Hetrick, Alternate Member
Atomic Safety and Licensing Board
Professor of Nuclear Engineering
The University of Arizona
Tucson, Arizona 85721

Alan S. Rosenthal, Esq., Chairman
Atomic Safety and Licensing Appeal
Board Panel
U. S. Nuclear Regulatory Commission
Washington, D. C. 20555

Alternate Chairman
Atomic Safety and Licensing Appeal
Board Panel
U. S. Nuclear Regulatory Commission
Washington, D. C. 20555

Chief Hearing Counsel
Office of the Executive Legal Director
U. S. Nuclear Regulatory Commission
Washington, D. C. 20555

Director (2)
Division of Nuclear Reactor Regulation
U. S. Nuclear Regulatory Commission
Washington, D. C. 20555

Docketing and Service Section (21)
Office of the Secretary
U. S. Nuclear Regulatory Commission
Washington, D. C. 20555

Martin G. Malsch, Esq.
Office of the Executive Legal Director
U. S. Nuclear Regulatory Commission
Washington, D. C. 20555

Stephen M. Sohinki, Esq.
Marc R. Staenberg, Esq.
Office of the Executive Legal Director
U. S. Nuclear Regulatory Commission
Washington, D. C. 20555

Barton Z. Cowan, Esq.
John R. Kenrick, Esq.
Eckert, Seamans, Cherin & Mellott
600 Grant Street
Forty-Second Floor
Pittsburgh, Pennsylvania 15219

Thomas M. Daugherty, Esq.
Offshore Power Systems
8000 Arlington Expressway
P. O. Box 8000
Jacksonville, Florida 32211

Carl Valore, Jr., Esq.
Valore, McAllister, DeBrier, Aron
& Westmoreland
Mainland Professional Plaza
535 Tilton Road
P. O. Box 152
Northfield, New Jersey 08225

Richard M. Hluchan, Esq.
State of New Jersey
Department of Law and Public Safety
36 West State Street
Trenton, New Jersey 08625

Anthony Z. Roisman, Esq.
Natural Resources Defense Council, Inc.
917 Fifteenth Street, N.W.
Washington, D. C. 20005

R. William Potter, Esq.
Assistant Deputy Public Advocate
State of New Jersey
P. O. Box 141
Trenton, New Jersey 08601

Mr. Kenneth B. Walton
Brigantine Tutoring
309 Twenty-First Street, South
Brigantine, New Jersey 08203

Mr. George B. Ward
Nuclear Power Plant Committee
City Hall
Brigantine, New Jersey 08203

Mr. Harold P. Abrams, President
Atlantic County Citizens Council on
Environment
9100 Amherst Avenue
Margate, New Jersey 08402

Dr. Willard W. Rosenberg, Chairman
Energy Committee
Atlantic County Citizens Council on
Environment
8 North Rumson Avenue
Margate, New Jersey 08402

Mr. John H. Williamson
Energy Committee
Atlantic County Citizens Council on
Environment
211 Forest Drive
Linwood, New Jersey 08221