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October 16, 1979



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

Dear Dr. Hendrie:

In letters to the Commission (dated August 31 and September 19, 1979) from John W. Ellis, President, Puget Sound Power & Light Company, Puget urged that the Nuclear Regulatory Commission authorize the NRC Staff to proceed with the presentation of evidence on TMI-2 related issues. We are gratified that the Commission has decided to do so, as reflected in transcripts of recent Commission meetings which we have been following very closely. Puget very much appreciates the opportunity to proceed with hearings on its Skagit application, hearings which we hope will soon be completed.

The purpose of this letter on behalf of Puget Sound Power & Light Company is to address the proposals made by the Office of the General Counsel in draft policy statements recently considered by the Commission, particularly the draft discussed by the Commission at its meeting on October 11, 1979. Although the draft statement is designed to implement "the objective of increased Commission supervision of licensing actions," we believe that it will not accomplish its stated objectives "while (1) requiring the least disruption of existing procedures; (2) avoiding undue delay and duplication . . . ; and (3) allowing the Commission maximum flexibility"

We disagree with those conclusions of the draft policy statement for reasons succinctly summarized as follows.

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(1) The draft statement would provide identical procedures for review of limited work authorizations, construction permits and operating licenses without recognition that differences among such licensing actions warrant different procedural treatment and different criteria for their review.

It takes little discussion to recognize that the criteria for approving issuance of an LWA-2 or a construction permit, both of which involve major construction, are very different from those which should be applied to an LWA-1 or, indeed, those which should be applied to an operating license for which major investments in time and money for construction will already have been made. Moreover, it may be enough at the construction permit stage for the Commission to find that the design, training and procedures to be developed by the utility will at some later time comply with Commission requirements whereas, at the operating license stage, the Commission must necessarily find that the plant is in compliance with applicable requirements.

Of special interest to Puget is the fact that the draft statement fails to recognize the unique characteristics of an LWA-1 and the inherent differences between such an authorization and the other licensing actions under consideration.

The holder of an LWA-1 is authorized primarily to do site preparation work, not including construction of foundations for the facility. Puget urges that the proposed policy should not inhibit site preparation work under an LWA-1, especially if the utility is prepared (as is Puget) to restore the original contours of the site should a final order denying a construction permit ultimately be issued. Accordingly, we believe that LWA-1's should be exempted from the review procedures if applicants are prepared to give the Commission such an assurance.

In proposing application of the draft review procedures to LWA-1's, the draft policy statement overlooks the reasons why the Commission has adopted and observed LWA-1 procedures; namely, reduction in the time required to bring on line nuclear power plants which may ultimately be found to satisfy all regulatory requirements. Application of the procedures

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proposed in the draft policy statement would result not only in unnecessary delay in making needed energy available, but also in significant increased costs. In the case of Skagit, Puget expects the additional costs for replacement power, escalation of construction costs, and carrying charges, for several weeks of delay would more than justify the financial risk involved in site preparation and possible site restoration.

(2) The proposed policy statement contains no criteria for the guidance of licensing boards in making recommended decisions nor criteria for guidance of the Appeal Board.

The criteria should identify the post-TMI subjects of concern to the Commission for each type of licensing action under consideration (i.e., LWA-1, LWA-2, construction permit, operating license) and they should contain some general statement as to the required compatibility of the proposed license to the particular post-TMI subjects of relevance.

(3) The policy statement should either provide clear policy guidance for the Appeal Board or it should require review and disposition of each case by the Commission. The draft statement appears to do neither.

(4) The draft statement proposes to apply §2.788 procedures to the Appeal Board and Commission reviews contemplated in the statement. We believe this proposal misconceives the purpose and effect of §2.788.

The review which is the subject of the policy statement is designed to provide an opportunity for the Commission with the aid of the Appeal Board to decide whether to allow a licensing board decision to become effective in light of various post-TMI considerations. In effect, the Commission announcement is itself a stay for that purpose.

Section 2.788, on the other hand, is an adjunct to the appeal process. It is meant to apply where an appeal is taken from an already effective decision and the grounds for a stay under §2.788 relate to such appellate review. For the same reasons that the review contemplated by the draft policy statement is not considered an appellate review, we believe §2.788 should not be a part of the proposed procedure.

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The relative cumbersomeness and tendency to delay inherent in the §2.788 procedures are not disadvantageous when applied--as it was meant to be--to a previously effective licensing board decision. But no reason has been advanced to apply the procedures and criterion of §2.788 to the preliminary review contemplated by the draft statement of decisions whose effectiveness has been stayed by Commission action.

If the Commission allows licensing board decisions to become effective after review for compatibility with post-TMI requirements, the stay procedure under §2.788 would still be available as an adjunct to the normal appellate review.

(5) No explanation is given in the policy statement of reasons why the Office of the General Counsel proposes to make the policy statement effective without opportunity for public participation. Especially in light of the likelihood that the report of the Kemeny Commission is expected to be available before the end of October, 1979, (The Washington Post, October 13, 1979, page A8), it does not appear to us that adequate justification is set forth in the draft policy statement for the omission of public procedures, including opportunity for public comment on the draft statement.

For the foregoing reasons, we urge that:

A. The proposed policy and suspension of the "immediate effectiveness rule" (10 CFR 2.764) should not be applied to site preparation work under an LWA-1 if the utility provides assurance that the original condition of the site will be substantially restored if a final order is issued denying a construction permit;

B. Opportunity be allowed for a brief period for public comment on a proposed policy statement before it is adopted by the Commission;

C. For the time being, the policy statement dated October 4, 1979 (44 F.R. 58559) should be continued in effect.

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If it would be helpful to the Commission, Puget would be pleased to appear before the Commission to present its views orally.

Respectfully submitted,

LOWENSTEIN, NEWMAN, REIS,
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Skagit Service List

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION



In the Matter of)
)
PUGET SOUND POWER & LIGHT COMPANY,)
et al.)
)
(Skagit Nuclear Power Project,)
Units 1 and 2)
_____)

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CERTIFICATE OF SERVICE

I hereby certify that the following:

LETTER TO JOSEPH M. HENDRIE
DATED OCTOBER 16, 1979

in the above-captioned proceeding has been served upon the
persons shown on the attached list by depositing copies thereof
in the United States mail on October 16, 1979 with proper
postage affixed for first class mail.

DATED: October 16, 1979

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