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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING APPEAL BOARD

In the Matter of)	
)	
PUGET SOUND POWER & LIGHT)	DOCKET NOS. STN 50-522
COMPANY, et al.,)	50-523
)	
(Skagit Nuclear Power Project,)	July 30, 1979
Units 1 and 2))	

PETITIONER TRIBES' SUPPLEMENTAL MEMORANDUM
IN RESPONSE TO ORDER OF JULY 9, 1979

SUMMARY

These Tribes petitioned to intervene in June of 1978, saying that they were federally recognized governments whose members had perhaps the most to lose, should these proceedings be shown to be deficient in evaluating environmental impacts on them. Staff and applicants opposed intervention. The Tribes filed a reply brief in September, 1978, and a response to a request from the Licensing Board chairman in October. In late November Staff gave guarded support to intervention on genetic issues. (They have since supported intervention on the issue of genetic and somatic impacts.) On November 24, 1978, the Licensing Board granted intervention.

Applicants appealed that decision and in January of 1979 this Board reversed and remanded on one issue. The Tribes asked the Commission for review at that point, but consideration of their request was deferred pending the outcome on

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remand, and any subsequent proceedings before this Board. During the interim on remand, the Tribes participated in the issue-defining process, filing a list of issues and filing contentions. Not until April 24, 1979, did the new chairman of the Licensing Board reverse the Board's earlier decision and deny intervention. Yet, no appealable order was issued until the beginning of June.

The Tribes appealed in timely fashion on June 14. This Board filed its decision on that appeal on July 9, just prior to the most recent session of evidentiary hearings. In the July 9 Memorandum and Order, at 16, this Board holds

What the tribes must additionally establish is that, whether because of inadequate investigation on the part of the federal agency or for some other reason, they were furnished erroneous information on matters of basic fact and that it was reliance upon that information which prompted their inaction prior to June, 1978.

The Tribes must take exception to the application, by this Board, of what appear to be increasingly more difficult tests. This Board appears to be taking the reasons given for lateness, which clearly have the cumulative effect of excusing tardiness, piecemeal. The Tribes also feel constrained to point out that had the initial grant of intervention been sustained, they would have been able to participate, without undue burden on the other parties, in the creation of a sound record on many of the issues which are among their contentions.

It is ironic that the tribal governments had sought a voice in these proceedings for over a year, making extreme

efforts to overcome their lateness and articulate their concerns, while Skagit County, which asked for status as a party more than four years out of time, has just been casually allowed in. While the Tribes support intervention by the County government, they cannot help but note the inequity involved. They are local governments seeking to protect their property and the welfare of their members, interests which are the subject of federal trust duties. They were first granted, and then denied, intervention as governments. Their exclusion, and the imposition of increasingly difficult standards for intervention, on its face seems discriminatory.

This brief is in response to the July 9 Memorandum and Order. It is done to insure any required exhaustion of administrative remedies (although it begins to appear that it is the remedies which will exhaust the Petitioners). The July 9 Memorandum notwithstanding, the additional answers sought by this Board are already in the rather extensive pleadings filed by the tribal governments, and in the record. Some of the more glaring examples are highlighted below.

By filing this Memorandum the Tribes do not in any way acquiesce in the propriety, reasoning and conclusions of the July 9 Memorandum and Order. Nor do they concede any weakness in previous submittals to this Board or to the Licensing Board.

RESPONSE

GENETIC AND SOMATIC EFFECTS

"Because of inadequate investigation..."

The Tribes contend that genetic and somatic risks to the receptor Indian population from "normal" and "accidental" releases have not been explored, that the risks are real and significant. They have cited, among other things, risks of mild mutations, the fact that they may constitute a genotype which is more susceptible to health effects from low-level ionizing radiation (and whatever other releases occur), and their unique health profiles (extreme infant morbidity and mortality being noteworthy).

Staff has supported intervention on these genetic and somatic effects. There is no evidence of any investigation by Applicants or by Staff sufficient to define and evaluate risks of mild mutations, somatic effects, etc. Indian receptors were simply ignored, although many of them use the area and resources near the plant more extensively than other receptors.

"They were furnished erroneous information on matters of basic fact..."

An Indian tribe with limited resources which is involved in extensive litigation to obtain the use of its treaty rights should be excused for relying on disclosures in environmental

impact statements that are misleading and, it turns out, possibly erroneous. Some examples:

Final Environmental Statement (FES) at 5-15:

Effluents from plant operation will then be an extremely minor contributor to the radiation dose that persons living in the area normally receive from background radiation.

FES at 7-2:

It is concluded from the results of the realistic analysis that the environmental risks due to postulated radiological accidents are exceedingly small and need not be considered further.

FES at 10-2:

The staff does not believe that any adverse radiological effects will occur since the radioactive effluents from the plant will be less than proposed Appendix I design objectives.

Without an evaluation of the genetic and somatic susceptibility of Indian receptors, "extremely minor contributor" is judgmental and unsupported. This error is disclosed only by rather sophisticated analysis, and is something the Tribes only became aware of in the spring of 1978. It is compounded by the discovery, after receiving the Environmental Report and the Preliminary Safety Analysis Report in the winter of 1978-9, that Indians who fish near the plant site in relatively large numbers do not appear to have been included in the Low Population Zone "transient populations," although non-Indian sport fishermen are mentioned.

The statement at 7-2 is "infected" by its reliance on

WASH-1400 discussions of probabilities, and therefore erroneous. "Exceedingly small" is based, at least in part, on the RSS. With respect to Indians, it seems that it was premature and unfounded, as was the reassuring statement at 10-2 that no adverse radiological effects would occur.

"That it was reliance upon that information which prompted their own action..."

This has been thoroughly briefed. The Tribes relied on Staff disclosures in deciding whether to commit limited resources to these proceedings. During the period when intervention would have been timely the Tribes did not have the attorneys or other experts necessary to engage in other than a frivolous intervention which, it appeared from the environmental statements, was not necessary. As the Tribes have already explained, they became increasingly concerned about risks to their newly-won treaty fishery. Their impression that the proceedings were well advanced and that environmental impacts had been exhaustively explored rapidly changed to a realization that the assessment of environmental impacts had been superficial and sporadic, and that it had completely ignored the Indian people near the plant site.

SOCIO-ECONOMIC IMPACTS

"Because of inadequate investigation..."

The Tribes contended that risks in this category, with

respect to Indian communities, had not been explored. Not being parties, they find it difficult to provide the sort of proof this Board requests as to why the impacts were not explored, but the fact that they were not is sufficiently clear.

Staff supplemental testimony concerning alternative sites, filed prior to the ongoing July hearings but apparently generated after the Indian petition to intervene, finds other sites preferable with respect to community impacts largely because of socio-economic impacts on the Indian communities. Still, Staff witness Winters, in cross-examination on July 26, stated that his cost benefit analysis did not include possible economic impacts unique to Indians relying on the treaty fisheries in the area.

"They were furnished erroneous information on matters of basic fact..."

The FES leaves the impression that socio-economic impacts hardly deserve more than passing mention: risks to or reduction of Indian resources and populations are not even mentioned in the paragraph on community impacts at 5-23, nor are relevant socio-economic impacts mentioned at all at 10-1, during the discussion of unavoidable effects.

The FES at 4-13 provides a summary with respect to socio-economic impacts during construction:

The staff concluded that the applicant has properly identified the potential social and economic impacts of plant construction, that these impacts will be small, and that the applicant has taken adequate measures in collaboration with the local government authorities to mitigate them.

This statement is clearly erroneous with respect to the Tribes, as there was no identification of impacts upon them or their members, nor were any mitigation measures indicated.

"That it was reliance upon that information which prompted their own action..."

Again, this was already briefed. The Tribes relied on the Environmental Statement in not intervening sooner. These Indian Tribes do not habitually make themselves expert in socio-economic impacts. As they have already explained, it was only after they began to be concerned about the risks to the fishery resource that they became aware of possible impacts in other areas.

FISHERIES IMPACTS

There does not seem to be any need to repeat arguments already found in the earlier tribal briefs, especially the Initial Brief and the Reply Brief. The Tribes contend that the FES and its supplement were misleading and left the impression that there would be no fisheries impacts. They also contend that the letter from Mr. Heckman, attached to

their Reply Brief, misled them. To document again, as petitioners, all the points where fisheries risks were glossed over would be unduly burdensome.

The Tribes have been seeking the right to express their concerns as parties, with opportunities for cross-examination, discovery, offering testimony, etc. This Board simply disagrees with the Tribes on the question of whether there will be substantive fisheries impacts. For instance, Mr. Heckman's letter and Staff's optimism concerning fisheries impacts are misleading only if erroneous. The Tribes, who have more at stake and considerable fisheries expertise available, feel there may be error and that risks are not adequately dealt with. This Appeal Board, which is much more remote from the proceedings and the risks, does not agree.

But the assessment of some factors imposing a risk on the fisheries is not complete even now. During hearings this July, testimony concerning Ranney collector failures associated with insufficient hydrologic data and with hydraulic forces during flooding has been the subject of recent testimony suggesting that Ranney collector specific yield has been computed with more optimism than precision and that stream bank failure during flooding may result in serious damage to Ranney collectors. If, for whatever reason, the Ranney collectors do not work after plant construction, a surface diversion with severe fishery impacts may become a necessity in preference to decommissioning the plants.

As the Tribes contended from the beginning, PRV transportation testimony had not been taken. It still seems somewhat inadequate and the Tribes would, were they afforded an opportunity, provide engineering testimony based on actual field measurements.

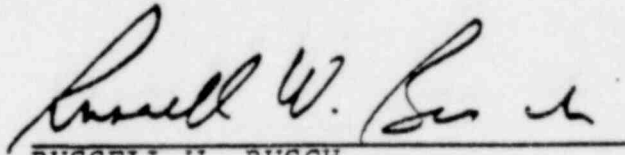
CONCLUSION

In their initial brief and in their reply brief the Tribes set out a number of factors which had the cumulative effect of excusing late intervention. One element in their decision not to intervene was reliance on environmental statements, and upon the complacency of the Department of Interior. That this reliance, which was largely induced by NRC Staff disclosures, continued for a period of time is unfortunate but not unreasonable. Intervenors are not required to act as surrogate lead agencies, "second-guessing" environmental statements.

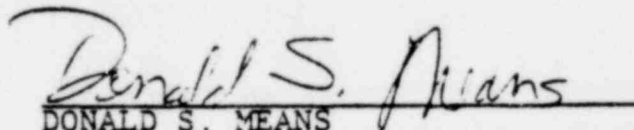
Within a reasonable time after obtaining access to their treaty fishery, the Tribes realized that this reliance was misplaced and that for all the 10,000-odd pages of transcript, the shelves of environmental reports and safety analyses, the environmental statements, etc., there had been only a cursory evaluation of fisheries impacts and no evaluation of what are now seen as serious impacts upon the Indian communities.

DATED this 20th day of July, 1979.

Respectfully submitted,



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