



UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING APPEAL BOARD

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

INTERVENOR SCANP'S MOTION FOR RESCHEDULING OF
EVIDENTIARY HEARINGS

Intervenor SCANP respectfully requests the Board to rescind its Order of October 1, 1979, scheduling hearings to resume on October 25, 1979, and thereafter, and to reschedule evidentiary hearings at a future time which meets the convenience of the parties and allows for a full and orderly presentation of the evidence. SCANP requests also that the Board rescind Paragraph 5 of its Order of October 1, 1979, because the questions posed are unduly restrictive, and indeed, do not comply with applicable NRC regulations governing the scope of inquiry into geology and seismology matters.

The Board's Order scheduling hearings to resume on October 25, 1979, is contrary to 10 C.F.R. §2.703(b), denies due process to Intervenor SCANP, and is totally unworkable

in that it presents unresolvable conflicts with other obligations of the parties and affords insufficient time for preparation of the extensive evidentiary presentations required by the complexity of the issues to be addressed.

10 C.F.R. §2.703(b) provides:

The time and place of hearing will be fixed with due regard for the convenience of the parties or their representatives, the nature of the proceeding, and the public interest.

The schedule fixed by the Board provides "due regard" for none of these concerns, and is especially prejudicial to Intervenor SCANP.

First, there has been no regard for the convenience of the parties. SCANP was neither advised nor consulted about the proposed hearing date prior to the Board's Order. The Order, received on October 5, 1979, affords SCANP but three weeks to prepare its presentation for the most complex issues to be considered by the Board in this proceeding. The inconvenience to SCANP is especially great, because SCANP is afforded only a few weeks to review and respond to the voluminous presentations of Applicant and Staff, much of which has been received only recently. Indeed, the Staff's prefiled testimony was not distributed until after the Board's Order fixing the schedule was sent, and Applicant has submitted yet more data (offshore seismic surveys) recently (September 14, 1979) which has not been made available to SCANP because of its alleged proprietary nature. SCANP has expressed to the

Board in great detail its concerns that all hearings schedules incorporate an orderly prehearing procedure and afford SCANP an adequate time to respond to the lengthy submittals of Applicant and Staff, who have had a considerably greater amount of time to conduct their reviews and prepare their presentations. See, e.g., Tr. 11867-908. We request again that these legitimate concerns be addressed, and the hearings be rescheduled to afford SCANP an opportunity commensurate with that afforded Applicant and Staff to review the data and prepare presentations.

SCANP objects also to the schedule of hearings for Saturdays. Saturdays are not a usual day of business, and the availability of expert witnesses, as well as attorneys and their parties, is at best uncertain. Counsel for SCANP do not maintain staff nor business hours on Saturdays. This scheduling is especially prejudicial to SCANP, because SCANP's limited resources do not afford SCANP the luxury enjoyed by Applicant and Staff of having counsel who are able to devote their full time exclusively to this proceeding. The scheduling of evidentiary sessions five days a week for several weeks on end is burdensome enough to an intervenor of limited resources such as SCANP. Adding extraordinary Saturday sessions to such a schedule is an extraordinary step beyond what is contemplated by the Commission's Rules of Practice, and again reflects the absence of due regard for the convenience of SCANP and other parties in the scheduling for this hearing. The Board Chairman so recognized, characterizing as "undesirable" routine Saturday sessions. Tr. 11952-53.

Second, due regard for the nature of the proceeding requires postponement of the hearings. These proceedings involve complex and technical issues, and require detailed and time consuming review and preparation, which cannot be performed adequately within the short time afforded by the Board's Order. This is especially so where a significant amount of prefiled testimony from Applicant and Staff has not been received or has been received only recently, and must now be transmitted for the first time to expert witnesses in various locations across the country. This necessary process consumes additional time, detracting from the time allowed for preparation, and renders even more difficult the already impossible task of reviewing hundreds and even thousands of pages of complex technical material in only three weeks, and in coordinating that review into a meaningful presentation. The complex nature of this proceeding and the large number of important issues to be considered requires a schedule which incorporates more time for preparation of evidentiary presentations.

Finally, the public interest also requires that the hearings be rescheduled. The overwhelming factor of importance in gauging the public interest is, of course, whether the schedule assures a presentation which is sufficiently detailed and understandable to form the basis for an informed decision which assures the public safety. As we

have demonstrated above, the schedule fixed by the Board does not meet the public interest because it does not afford Intervenor SCANP the opportunity to make a complete and adequate presentation. But this public interest factor also weighs heavily with respect to the presentations of Applicant and Staff, which cannot be completed adequately by the time the hearings are convened. As Staff noted in its letter transmitting its prefiled testimony, Applicant submitted further data to the U.S.G.S. on September 13, 1979, the same date on which the U.S.G.S. submitted its supplemental report. Until this new data is evaluated by Staff and submitted to all the parties for their further review and evaluation (which will be time-consuming because Applicant asserts that the data is proprietary), the geology and seismology issues will not be ripe for presentation. Similarly, Staff at this time is unable to list which witnesses from the U.S. G.S. will be available at the hearings. Without such a list, SCANP is unable to prepare its case. Any hearing which includes the geology and seismology issues without evaluation of the new data submitted by Applicant would be premature at this time. It is clearly not in the public interest to allow yet another incomplete and partial presentation of geology and seismology to go forward in this case. Several such partial presentations have been offered in the past, and have led only to further delays. The geology and seismology issues clearly should be held in abeyance until

such time as a full presentation on these issues can go forward, so that the issues may be resolved completely by the Board.

Nor is the possibility that the Applicant's zoning may expire at the end of the year if construction is not begun a factor which tilts the public interest in the least degree. The sole interest of this Board is in making an informed and reasoned decision based upon an adequate and complete record. If Applicant's zoning does expire, Skagit County has appropriate mechanisms to determine whether the public interest requires an extension or a renewal of that zoning. We anticipate that Staff will concur in SCANP's judgment that the expiration of the rezone contract is irrelevant to this proceeding, and forms no basis for unduly accelerating the hearing schedule.

The Board's Order violates not only its own regulations, but also denies SCANP due process of law. With respect to the rights of an intervenor in an administrative proceeding, due process is generally interpreted to mean that the intervenor is afforded an adequate opportunity to participate meaningfully in the administrative process. Yet the Board's Order was entered without regard for the rights and convenience of SCANP, and affords SCANP a wholly inadequate time to prepare its evidence and participate meaningfully in contributing to the record on the issues to be considered at

the forthcoming hearing. This denial of due process is especially severe in view of the important contributions to the record which SCANP previously has made with respect to geology and seismology.

The serious lack of due process afforded by the Board's schedule is compounded even further by the requirement that SCANP prefile its testimony by October 18, 1979, less than two weeks after SCANP received the Staff's prefiled testimony, and without access to either Applicant's most recent data (offshore seismic surveys) or the Staff and USGS review of that data. It is impossible to review the Staff's testimony, which is voluminous, and prepare SCANP's case for prefiling in such a short time frame. This problem, of course, is intensified by the need to devote full attention and efforts to preparation of proposed findings, until October 12. SCANP requests the Board to rescind this order, and to substitute a more realistic schedule for prefiling.

In addition to the impossibly short time which SCANP is afforded to respond to the recently received submittals from Applicant and Staff, SCANP is prejudiced further in this regard by its inability to obtain discovery with respect to these issues. SCANP requested discovery from Applicant on September 14, 1979, regarding "proprietary" data from the three volume Bechtel report received only shortly before the discovery request was served. Applicant's objection based on

its contention that SCANP's discovery was untimely because the request was not made two months before the "proprietary" data was made available is patently frivolous, and further denies SCANP the opportunity to prepare its case and participate meaningfully in the administrative process. The June 1, 1979 discovery deadline was limited explicitly to matters to be taken up at the July 17, 1979 session. Tr. 11945-46; Order of June 29, 1979, at 5. Any suggestion that the parties or the Board contemplated that geology and seismology issues would be considered at the July 17 session, or that the June 1 discovery deadline applied to such issues (where prefiled testimony was not even due until June 1) is completely contrary to the record, and the understanding between the parties and the board. See, e.g., Tr. 11868-69 (Staff "hopefully" will issue SER supplement on geology and seismology in September); id. at 11871 (Staff and U.S.G.S. Geology review will continue through summer); id. at 11887-91 (Applicants describing testimony to be prefiled for geology); id. at 11907-08 (SCANP states specifically that Dr. Cheney cannot review data, complete report, and be prepared to testify at July 17 session); id. at 11908 (Board Chairman agrees with SCANP that commitment cannot yet be made; reiterates September as best time for geology hearings; Staff concurs); id. at 11930-31 (Board Chairman again agrees that SCANP cannot commit to July 17 session, and again reiterates that Staff is "hopefully targeting a September time frame"); Letter from

Richard Black to Valentine Deale, dated Aug. 15, 1979 (all issues to be taken up in August except geology and seismology, issues on which Staff is not prepared to offer testimony until October, 1979); Board Order dated June 29, 1979, at 4 (Board again reiterates that Staff is "hopefully targeting a September time frame " for geology); Board's Miscellaneous Order Dated September 13, 1979, at ¶7 (Board again indicates uncertainty as to when geology can be heard). It would be difficult to imagine clearer indications that geology and seismology were not among the issues to be considered at the July 17 session and were not covered by the June 1 discovery deadline. That Applicant did not submit much of the material which forms the basis of SCANP's discovery until on or after June 1 demonstrates further that application of this deadline would serve to eliminate SCANP's right to discovery completely, a result clearly not agreed to by the parties, see Tr. 11372-73; id. at 11883-84, nor intended by the Board. That Applicant claims that the prompt and timely discovery submitted by SCANP interferes with Applicant's preparation of its case only emphasizes the unworkability of the entire schedule. SCANP is not responsible for this schedule, and has objected to its burdensome nature in the past. SCANP's basic right and opportunity to prepare an adequate case should not and cannot be made to suffer.

It has not been usual practice in this proceeding to convene hearings on less than thirty days notice; indeed,

the parties have almost always been allowed a much greater time period for preparation, which incorporates at least thirty days' review of prefiled testimony prior to the hearing. After five years of proceedings, there is no legitimate purpose to be served by denying the parties adequate time to prepare. To the contrary, the unseemly haste with which the applicant seems determined to proceed will prevent completion of an adequate record, after many years of hard work by the parties and Board to assure a complete record which forms the basis for an informed and rational decision which serves the public interest.

SCANP served discovery requests upon Staff on October 5, 1979, the same date on which SCANP received the pre-filed testimony of Staff. Even if Staff immediately responds to our discovery requests, it is by no means certain that the responses will come early enough to afford SCANP the opportunity to make use of the information learned in time for the scheduled hearing. Yet it is obvious that the request was made as soon as possible, coming on the same date that the Staff's prefiled testimony was received, and SCANP certainly cannot be held responsible and subjected to great prejudice because of the unreasonable schedule. This situation is especially unacceptable to SCANP in view of SCANP's insistence that all schedules afford adequate opportunity to conduct meaningful discovery, a right especially important to an intervenor whose limited funds do not allow it to

conduct research and evaluation on the scope available to Applicant and Staff. See Tr. 11883-84.

In short, because the schedule imposed by the Board denies SCANP its major source of information needed to prepare its case, i.e., discovery, and because the time period afforded SCANP to prepare its case is impossibly short in any event, the commencement of evidentiary hearings on October 25, 1979, in effect denies completely to SCANP the opportunity to participate meaningfully in the administrative process, and therefore denies due process of law.

The Board's schedule presents also several unsolvable conflicts in scheduling which must be addressed. On October 8, 1979, counsel for SCANP received an Order from the Washington Supreme Court fixing the due date for SCANP's reply brief in the state certification case on November 4, 1979. Although SCANP is willing to request an extension of time within which to prepare the reply brief, it is by no means certain that an extension will be granted. In fact, counsel for SCANP has made two requests for extension in which to prepare a reply brief which were denied this year by the State Supreme Court, including one case in which opposing counsel raised no objections to the requested extension. Several requirements imposed by this Board also conflict with the hearing schedule. The proposed findings of fact which are due on October 12 have required

extensive effort and a great amount of time by SCANP's counsel which necessarily detracts from the amount of time which can be devoted to preparation for the forthcoming hearing. Further proposed findings are due from SCANP on October 26, 1979, and it appears impossible that SCANP can prepare its case and these proposed findings simultaneously. Again, what the Board requires of Intervenor is unreasonably burdensome and impossible, and, if the schedule is maintained, will serve to deny to SCANP the opportunity to present all of its concerns and participate meaningfully in this proceeding.

Substantively, the Board's Order also must be rescinded. In Paragraph 5A, the Board asks "What is the worst-case seismic event having reasonable probability of occurrence affecting the proposed plant during its lifetime?" The "reasonable probability" standard applied by the Board is clearly contrary to 10 C.F.R. Part 100, Appendix A. This appendix provides that more conservative determinations may be required for sites located in areas having complex geology or high seismicity. The Skagit Site is clearly such an area, and it cannot be contended seriously that the "reasonable probability" standard incorporates the required conservatism. Similarly, the appendix requires investigation in sufficient scope and detail to provide "reasonable assurance" that the geologic, seismic and engineering characteristics of a site are sufficiently well understood to permit

an adequate evaluation of the proposed site, and to provide sufficient information to support the determinations required by the regulations. The "reasonable probability" standard does not comport with this requirement.

The regulations require that "the earthquake which could cause the maximum vibratory ground motion at the site should be designated the Safe Shutdown Earthquake." 10 C.F.R. Part 100, App. A, §V(a) (emphasis supplied). The specific procedures given for determining the design basis for the SSE indicate that it may be necessary to assume an earthquake larger than that of the maximum earthquake historically recorded, and require generally that the procedures be applied in a conservative manner. The "reasonable probability" standard suggested by the Board clearly implies an investigation of lesser scope than that required by the regulations, which clearly envision investigation which with some certainty identifies the greatest earthquake possible. Even then, the regulations recognize situations in which the data is not sufficiently certain, and require assumptions even more conservative than the largest possible earthquake.

SCANP therefore insists that the Board apply the criteria and standards provided in the regulations to its inquiry into geology and seismology, and rescind that portion of its order which suggests that the Board will guide its inquiry, and the scope of the testimony allowed to be introduced, with regard to questions which are clearly more

restrictive than the regulations and the Atomic Energy Act provide.

Accordingly, SCANP requests the Board to rescind its Order of October 1, 1979, and to reschedule evidentiary hearings only after consultation with SCANP, and after due regard for the convenience of SCANP and other parties, including Skagit County and FOB/CFSP, the complex nature of these proceedings, and the public interest in obtaining a complete record. SCANP further requests that the Board rescind paragraph 5 of its order, and instead guide its inquiry with regard to geology and seismology in accordance with the regulations provided in 10 C.F.R. Part 100, App. A.

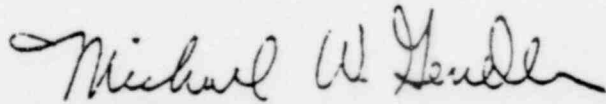
SCANP does not request an inordinately long or open-ended delay; rather, SCANP asks only that it be afforded a reasonable fraction of the time given Applicant and Staff to prepare their testimony. With the cooperation of the parties, in fact, only a minimum of rescheduling is necessary to address SCANP's concerns. SCANP requests only an uninterrupted 30 day period in which to prepare for this final evidentiary session, free from the burden of preparing proposed findings of fact. If Staff and Applicant can provide prompt responses to SCANP's discovery requests, if Applicant can provide SCANP's seismology expert with a copy of the recently submitted "proprietary" data at once, and if the Staff and USGS reviews of the "proprietary" data are quickly provided, the cases of Applicant and Staff will

be complete and SCANP can proceed to prepare its presentation promptly. If these steps are all taken by October 25, when SCANP's second set of findings are due, then SCANP can prepare its case for presentation 30 days thereafter, by November 25. If the Board desires to reschedule the submission dates for the second set of findings, and the steps outlined in this paragraph are completed by October 15, SCANP fully anticipates that it can be ready to proceed within 30 days, by November 15.

Finally, SCANP requests that the Board grant this motion promptly, or, in the alternative, that the motion be certified to the Commission pursuant to 10 C.F.R. §2.718(i) so that SCANP may obtain timely and meaningful relief.

DATED this 9th day of October, 1979.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that copies of:

INTERVENOR SCANP'S MOTION FOR RESCHEDULING OF EVIDENTIARY
HEARINGS

dated October 9, 1979, have been served on the following
by depositing the same in the United States mail, postage
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