UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
PUGET SOUND POWER & LIGHT	)	Docket Nos. STN 50-522
COMPANY, et al.	)	STN 50-523
	)	
(Skagit Nuclear Power Project,	)	May 19, 1982
Units 1 and 2)	)	

APPLICANTS' RESPONSE TO LICENSING BOARD QUESTION

During the special prehearing conference of May 5, 1982, the Licensing Board invited the parties to address the question of whether licensing activities should proceed considering that the need-for-power issue can best be determined in the spring of 1983. Tr. 29-30. Applicants hereby submit their response to that question.

This response is in four parts. First, the background of this proceeding leading to the Board's question will be reviewed. Second, Applicants will show that their proposal to continue licensing activities and to schedule the environmental hearings for the spring of 1983 is simply a proposal to change from an expedited schedule to a normal schedule. Third, Applicants will demonstrate that there is no justification for

suspension of licensing activities, as requested by the intervenors. Fourth, Applicants will comment on the tentative schedule proposed by the NRC Staff.[1]

I. Background.

In December 1981, Applicants submitted amendments to their application for construction permits for the Skagit Nuclear Power Project. These amendments changed the site of the project from Skagit County, Washington, to the Hanford Reservation in Benton County, Washington, and changed the name of the project to the Skagit/Hanford Nuclear Project (S/HNP). In January 1982, Applicants, the NRC Staff, and the Washington State Energy Facility Site Evaluation Council (EFSEC) agreed to a tentative schedule that called for the joint EFSEC/NRC environmental hearings to begin in June 1982, issuance of the FES in July 1982, issuance of the final supplement to the SER in August 1982, and safety hearings in October 1982. It may be observed that this proposed schedule provided for presentation of Applicants' environmental case prior to publication of the FES, as permitted by 10 CFR § 51.52(a).

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[1]Letter dated May 12, 1982 from Richard L. Black to the Board.

On April 26, 1982, Applicants informed the Board that due to uncertainties concerning the need-for-power issue and in view of the Regional Power Planning Council's scheduled issuance of a regional conservation and electric power plan in April 1983, it would be premature to conduct evidentiary hearings on the need-for-power issue this summer.[2] It was suggested that the hearings on environmental issues be postponed until the spring of 1983, and that other licensing activities proceed on a normal schedule.

Applicants maintain that their position, as expressed in the April 26 letter, is the appropriate response to the uncertainties regarding need-for-power at this time and that, as a matter of law and Commission policy, there is no reason to postpone all activities in this proceeding until the spring of 1983, as requested by the intervenors.

II. Scheduling the environmental hearings for the spring of 1983, with the continuance of other licensing activities until then, would merely be to change from an expedited schedule to a normal schedule.

Applicants' proposal to continue licensing activities and to schedule the environmental hearings for the spring of 1983 is not a dramatic turn of events. It would merely change what

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[2]Letter dated April 26, 1982, from F. Theodore Thomsen to Judge John F. Wolf and Nicholas D. Lewis.

has been an expedited proceeding into a proceeding with a relatively normal schedule--a schedule in line with the Commission's policy.

The Commission has recommended that licensing boards should issue initial decisions in construction permit proceedings approximately 300 days after the publication of the final SER supplement and the FES.[3] In the case of S/HNP, this 300 day period would correspond to a June 1983 initial decision, assuming that the NRC Staff publishes the final SER supplement and the FES in August of this year. Consequently, if an initial decision were issued in due course following the close of the proposed spring 1983 environmental hearings, the duration of the S/HNP construction permit proceeding would only slightly exceed that recommended by the Commission.

Applicants are not proposing that the licensing of S/HNP be delayed or deferred, but only that this proceeding continue at a relatively normal (as opposed to expedited) pace. Such a pace will allow the Board to issue a timely initial decision while enabling the parties to address recent and upcoming studies when presenting their cases on need-for-power.

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[3]Letter dated June 29, 1981, from William J. Dircks to Paul B. Cotter, Jr.

III. There is no reason to suspend all licensing activities, as requested by the intervenors.

As shown above, continuation of licensing activities now and holding the environmental hearings in the spring of 1983 would result in a construction permit proceeding of relatively normal duration consistent with the Commission's policy. There is no reason to suspend all licensing activities or to proceed in any manner inconsistent with a normal schedule.

It has long been the policy of the Commission to allow licensing activities to continue, even though litigation of certain issues has been postponed. The leading case in this regard is Potomac Electric Power Co. (Douglas Point Nuclear Generating Station, Units 1 and 2), ALAB-277, 1 NRC 539 (1975). In that case, the applicant for a construction permit decided to postpone construction and operation of a plant for several years, but nevertheless requested that the Licensing Board proceed with evidentiary hearings on all issues except need-for-power and financial qualifications. The Licensing Board denied the request and the Appeal Board reversed, stating that nothing in the Atomic Energy Act, the National Environmental Policy Act, or the Commission's regulations require that hearings on every issue cease until such time as the applicant is prepared to litigate all issues. 1 NRC at 544-47. See also Public Service Co. of New Hampshire (Seabrook

Station, Units 1 and 2), CLI-77-6, 5 NRC 407, 410-11 (1977); Allied-General Nuclear Services (Barnwell Nuclear Fuel Plant Separations Facility), ALAB-296, 2 NRC 671, 680-82 (1975).

Douglas Point is instructive here because it considers and rejects several arguments similar to those raised by the intervenors in the instant proceeding. For example, the intervenors argue that the Commission might modify its regulations in the interim before the environmental hearings, and that consequently "it doesn't make sense to go ahead with the safety questions." Tr. 26. However, the Appeal Board has noted that:

> Once the safety analyses have been completed and issued, considerable detailed data becomes available to both the parties and the board upon the basis of which informed conclusions respecting the reactor's conformity with existing regulations can appropriately be drawn. Quite true, the analyses may be later modified; additional information may come to the fore; or (as the Licensing Board here emphasized) the governing standards may undergo some alteration. Should this occur, we reiterate, the result might well be that one or more of the safety findings made in reliance upon the record of the early hearing would require reevaluation and perhaps revision. But our experience teaches that there is a very low risk of a massive discrediting of safety findings (particularly those related to the characteristics of the site) by reason of developments materializing in the relatively short span of two to three years.

1 NRC at 546 (footnotes omitted).

The intervenors also assert that licensing activities should be deferred to relieve them of the expense of litigating other issues in the event that the need-for-power determination

is adverse to Applicants. Tr. 13-15. However, the Commission has stated that "[i]ntervention in our proceedings, based on affirmations of bona fide interest, carries[s] with it an obligation to bear often substantial costs to the extent of the intervenor's capabilities." Consumers Power Co. (Midland Plant, Units 1 and 2), CLI-74-26, 8 AEC 1, 2 (1974). The fact that a party may have limited finances does not excuse the party's failure to comply with its obligations under the Commission's rules of practice. Pennsylvania Power and Light Co. (Susquehanna Steam Electric Station, Units 1 and 2), ALAB-613, 12 NRC 317, 338-39 (1980). In short, the intervenors must bear the expense of choosing to intervene in this proceeding, and that expense is not a valid justification for suspension of licensing activities.

The intervenors also argue that licensing activities should be suspended because the Regional Council's plan, together with other studies, will allegedly demonstrate that S/HNP will not be needed. Tr. 11-14, 16-18. However, this argument goes to the merits of the need-for-power issue, which have yet to be litigated. Consequently, it does not form a proper basis for a decision on whether or not all licensing activities should be deferred. Moreover, to the extent that the intervenors are arguing that the mere possibility of a negative finding on need-for-power is sufficient grounds for deferral, it may be

noted that such possibilities are inherent in every contention in every proceeding; clearly intervenors' contentions on need-for-power do not warrant deferral of all other activities.

The intervenors further contend that deferral of licensing activities would relieve the NRC of the expense of continued litigation. Tr. 16-19. However, the Commission's regulations require applicants to defray the costs incurred by the NRC in processing applications. 10 CFR Part 170. Moreover, whether or not the Board decides to defer all licensing activities as requested by the intervenors, the NRC Staff would still be free to complete its independent administrative review and publish the FES and final SER supplement. See Carolina Power and Light Co. (Shearon Harris Nuclear Power Plant, Units 1, 2, 3, and 4), CLI-80-12, 11 NRC 514, 516 (1980); Offshore Power Systems (Floating Nuclear Power Plants), ALAB-489, 8 NRC 194, 206-7 (1978), aff'd on other grounds CLI-79-9, 10 NRC 257 (1979); New England Power Co. (NEP, Units 1 and 2), LBP-78-9, 7 NRC 271, 278-80 (1978); Northeast Nuclear Energy Co. (Montague Nuclear Power Station, Units 1 and 2), LBP-75-19, 1 NRC 436, 437 (1975).

Finally, the intervenors allege that "the application is not complete, according to 10 CFR 50.34" and therefore consideration of it should be deferred. Tr. 9-10. Apparently,

this claim is based on two points, that Applicants have recently amended their application and that the application does not consider recent and future studies on need-for-power. With respect to the first point, it should be noted that amendment of an application during a proceeding is a normal occurrence and does not indicate that the application is "not complete" under the Commission's rules. In any case, it is the obligation of the NRC Staff and not the Licensing Board to determine whether an application is sufficiently complete for docketing. Northern Indiana Public Service Co. (Bailly Generating Station, Nuclear-1), LBP-80-22, 12 NRC 191, 224 (1980); Philadelphia Electric Co. (Fulton Generating Station, Units 1 and 2), LBP-79-23, 10 NRC 220, 223-24 (1979); New England Power Co. (NEP, Units 1 and 2), LBP-78-9, 7 NRC 271, 280 (1978). Since the NRC Staff has docketed the application for S/HNP, the application may be considered on its merits in proceedings before the Licensing Board.

With respect to the second point, it is difficult to perceive why future forecasts regarding need-for-power should serve as a basis for deferring activities on unrelated issues. In the nearly eight years during which this application has been pending, many new studies on a variety of topics have become available. To suspend licensing each time a new study

of some type is published or anticipated would frustrate the licensing process. Administrative regularity dictates that licensing activities continue.

IV. This proceeding should continue on a step-by-step basis, as proposed by the NRC Staff, while preserving the option of scheduling the safety hearing earlier than proposed by the Staff, if practicable.

Reference is made to the views of the NRC Staff on the scheduling of this proceeding, as set forth in Mr. Black's letter of May 12, 1982 to the Board. Applicants agree that this proceeding should continue on a step-by-step basis, as outlined by Mr. Black. We differ only with his estimate of the time that may be required for the prehearing activities, particularly those relating to the safety issues, and hence with his estimate of when those issues may be ready for hearing.

We urge that nothing be done now that would foreclose the possibility of scheduling the hearing on safety issues as soon as those issues can reasonably be readied for hearing. Depending upon the number and complexity of the safety contentions that are ultimately admitted (and survive motions for summary disposition) and upon when the final supplement to the SER becomes available, it seems entirely possible to Applicants that the safety issues could be ripe for hearing

later this year. It was for this reason that our letter of April 26 spoke of postponing the hearing on only the environmental issues.

In any event, we urge the Board not to establish any fixed schedule now that would preclude scheduling the hearing on safety matters as soon as those matters are ripe for hearing, with a view toward completing the safety portion of this proceeding in advance of the hearing on environmental matters, should this prove to be practicable. The fact that the various uncertainties noted in our letter of April 26 make it advisable to postpone the hearing on need-for-power and the other environmental issues until next spring should not rule out the possibility of completing the safety aspects of this proceeding prior to that time.

V. Conclusion.

Applicants have requested that this proceeding continue on a normal schedule, with the environmental hearings to be held next spring. The intervenors have offered no valid reason for proceeding otherwise. The NRC Staff has expressed agreement with Applicants' request, and has proposed that the proceeding continue on a step-by-step basis. Applicants agree with this, and urge, however, that nothing be done that would preclude

holding the safety hearings as soon as the safety issues (if any) can reasonably be readied for hearing.

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Respectfully submitted,

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