

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) STN 50-523
)
(Skagit/Hanford Nuclear)
Project, Units 1 & 2) Dated: June 2, 1982

APPLICANT'S RESPONSE TO AMENDED
CONTENTIONS OF NWF/OEC

I. Introduction

On May 21, 1982, the National Wildlife Federation/Oregon Environmental Council (NWF/OEC) served several documents which included a list of amended contentions and which purported to justify the untimely nature of the amendments under 10 C.F.R. § 2.714(a).^{1/} The Applicant hereby submits its response to the amended contentions pursuant to 10 C.F.R. § 2.714(c) and the Licensing Board's Order at the Special Prehearing Conference of May 5, 1982.^{2/}

^{1/} National Wildlife Federation and Oregon Environmental Council's Motion for Admission of Second Supplement to Petition to Intervene; Second Supplement to Petition to Intervene of National Wildlife Federation and Oregon Environmental Council; Reply of Intervenor National Wildlife Federation and Oregon Environmental Council to Applicants' Answer and Staff Response to Intervenor's Supplement to Intervention Petition and Memorandum in Support of Second Supplement.

^{2/} The Licensing Board directed that the Applicant and the NRC Staff submit responses to amended contentions by June 2, 1982. Tr. 73-74.

NWF/OEC originally submitted six contentions on April 20, 1982.^{3/} The Applicant responded to those contentions on May 4, 1982,^{4/} stating that Contentions 4, 5 and 6 and part of Contention 3 were objectionable.^{5/} In its list of amended contentions, NWF/OEC retained its original Contentions 1, 2, 3(A-D), and 4 without modification.^{6/} Original Contention 5 has been modified and has been renumbered as Contention 3.E. Original Contention 6 has been modified and is now numbered as Contention 5. The discussion below addresses these modifications.^{7/}

II. Amended Contentions

A. Contention 3.E^{8/}

In essence, Contention 3.E alleges that the Commission

^{3/} Supplement to Petition to Intervene of National Wildlife Federation and Oregon Environmental Council.

^{4/} Applicant's Answer to Supplemental Petitions to Intervene and Motion for Extension of Time, pp. 2-5.

^{5/} The NRC also expressed objections to Contentions 4, 5, and 6 at the Special Prehearing Conference of May 5, 1982. Tr. 55-61.

^{6/} It should be noted that the second paragraph of original Contention 3.D has been moved to the third paragraph of new Contention 3.E. In order to eliminate the potential for confusion regarding this paragraph, the Applicant recommends that this paragraph be separately numbered; e.g. Contention 3.F.

^{7/} NWF/OEC also responded to the Applicant's and NRC Staff's objections to Contentions 4, 3.B, and the second paragraph of 3.D (now the third paragraph of Contention 3.E). Since the rules do not provide for replies to responses absent Board authorization, suffice it to note that the Applicant maintains that its objections to these contentions are well-founded.

^{8/} The third paragraph of Contention 3.E has previously been discussed and is not further considered here.

must consider whether or not S/HNP can or will be acquired by the Bonneville Power Administration (BPA) under the Pacific Northwest Electric Power Planning and Conservation Act, Pub. L. 96-501, because such acquisition would reduce the interest charges on applicants' debt financing and thereby affect the actual cost of the project in the cost-benefit analysis prepared under the National Environmental Policy Act (NEPA).

Contention 3.E is essentially the same contention as original Contention 5, which alleged that the Applicant did not have sufficient financial qualifications to construct and operate S/HNP because BPA will be prohibited from acquiring the project under the regional act. In fact, with the exception of the first sentence, Contention 3.E and original Contention 5 are identical. Both the Applicant and the Staff objected to the admission of original Contention 5 on the ground that the Commission's rules preclude consideration of the financial qualifications of electric utilities. See 47 Fed. Reg. 13750 (March 31, 1982).

It is apparent that NWF/OEC has merely modified the label of this contention and has not changed its substance. The entire impact of Contention 3.E concerns financing of S/HNP. Consequently, this contention should be rejected.

NWF/OEC attempts to escape this conclusion by arguing that financing is relevant to the cost of the project as factored into the cost-benefit analysis. However, this argument

is disingenuous. Whether or not the project is financed by the Applicant, by BPA, or by any other third party, the societal cost of the project remains the same and only the burden of financing differs. Under NEPA, it is the cost and benefits to society as a whole, and not the cost and benefits to a particular class or group, which is the relevant concern in the cost-benefit balance. Detroit Edison Co. (Enrico Fermi Atomic Power Plant, Unit 2), LBP-78-11, 7 NRC 381, 391 (1978). Similarly, the Appeal Board has held that transfer payments which result in offsetting costs and benefits (such as that associated with shifting the burden of financing) have no place in the cost-benefit balance for a project. Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station), ALAB-179, 7 AEC 159, 177 (1974). Consequently, this contention should be rejected.

B. Contention 5

Contention 5 is divided into two parts. Part A essentially alleges that the ASC/ER and DEIS have not considered the environmental impacts of on-site storage of spent fuel during the operating life of S/HNP. Part B alleges that the Commission cannot license S/HNP until the Commission considers the uncertainties concerning long-term isolation of high-level and transuranic wastes in a generic proceeding or in this proceeding pursuant to NRDC v. NRC, No. 74-1586 (D.C. Cir., April 27, 1982).

The contention that the ASC/ER and DEIS have not considered the environmental impacts of on-site storage of spent fuel during the operating life of S/HNP is without basis. Those documents have considered the impacts of radioactive releases from spent fuel during normal operation and potential accidents. See ASC/ER, §§ 3.5, 5.2 and 7.1; DEIS §§ 4.1.5 and 4.2.12. Since the intervenor has not identified any deficiency in these considerations, Contention 5.A should be rejected.

To the extent that Contention 5.B is alleging that the uncertainties associated with long-term isolation of high-level and transuranic wastes should be considered in this proceeding, the Applicant suggests that it would be appropriate for the Board to defer a ruling on this contention. Initially, it should be noted that the mandate has not yet been issued in NRDC v. NRC, and the potential exists for further review of that decision by the courts. Moreover, it is reasonable to expect, given the prior history of the fuel cycle issue, that the Commission will soon promulgate guidance for licensing boards regarding consideration of fuel cycle issues in individual proceedings. See Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), CLI-76-17, 4 NRC 451 (1976). In light of this possibility, the Board should hold its ruling on this contention in abeyance pending guidance from the Commission. Furthermore, given the predilection of the Commission to consider fuel cycle issues in generic proceedings, it makes little sense for the Board to admit this contention and subject the parties to the expense of discovery, only to have the Commission remove fuel cycle issues from consideration in individual proceedings.

III. Factors Governing Late-Filed Contentions

In addition to the requirements for specificity and basis in 10 C.F.R. § 2.714(b), admission of late-filed contentions is also governed by a balancing of the five factors listed in 10 C.F.R. § 2.714(a). Those factors are:

- (i) Good cause, if any, for failure to file on time.
- (ii) The availability of other means whereby the petitioner's interest will be protected.
- (iii) The extent to which the petitioner's participation may reasonably be expected to assist in developing a sound record.
- (iv) The extent to which the petitioner's interest will be represented by existing parties.
- (v) The extent to which the petitioner's participation will broaden the issues or delay the proceeding.

NWF/OEC does not have good cause for failure to file Contentions 3.E and 5.A on time.^{9/} There is no reason why the intervenor could not have filed Contentions 3.E and 5.A in a timely fashion, and the intervenor has offered no excuse for the untimely filing of these contentions. Consequently, this factor weighs against admission of Contentions 3.E and 5.A.

^{9/} Applicant concedes that there is good cause for the late filing of Contention 5.B.

NWF/OEC may have other means to litigate one of the issues raised by these contentions. Assuming that the Commission institutes a rulemaking proceeding on the fuel cycle issues remanded by the Court of Appeals in NRDC v. NRC, the intervenor will be permitted to participate in that proceeding.

With respect to its ability to contribute to this proceeding, NWF/OEC has not indicated that it has any expertise on the costs of financing a nuclear plant or the environmental impacts from spent fuel storage. Consequently, this factor weighs against admission of the amended contentions.

Since no other party has raised a cognizable contention similar to the amended contentions, the interests of the intervenor will not be represented by other parties, except perhaps by the NRC Staff.

Finally, the intervenor is seeking to admit three issues into this proceeding which are not currently the subject of litigation. Consequently, the amended contentions will broaden the issues and interject delay into this proceeding as a result of the time required for hearing the issues. Therefore, the final factor weighs against admission of these contentions.

Balancing of these five factors indicates that the amended contentions should not be accepted. Of particular importance in this balancing is the fact that the Contentions 3.E and 5.A could have been, but were not, submitted in a timely fashion.

IV. Conclusion

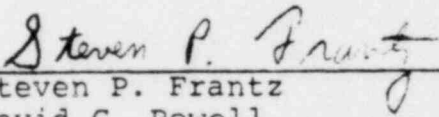
Contentions 3.E and 5.A are objectionable and accordingly should be denied admission into this proceeding. Furthermore, a balancing of the five factors governing late contentions weighs against admission of any of the amended contentions. In any event, with respect to Contention 5.B, the Board should defer a ruling pending guidance from the Commission regarding litigation of fuel cycle issues in individual proceedings.

Respectfully submitted,

Dated: June 2, 1982

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CERTIFICATE OF SERVICE

I hereby certify that copies of Applicant's Response to Amended Contentions of NWF/OEC dated June 2, 1982, have been served on the following individuals and entities by deposit in the United States mail, first class, postage prepaid on this 2nd day of June, 1982.

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