UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING APPEAL BOARD

In the Matter of	)	
	)	
PUGET SOUND POWER & LIGHT COMPANY, ET AL.	)	Docket Nos. STN 50-522 STN 50-523
	)	
Skagit/Hanford Nuclear Power Project, Units 1 and 2	)	

MEMORANDUM IN SUPPORT OF NOTICE OF APPEAL
OF INTERVENORS NATIONAL WILDLIFE FEDERATION
AND OREGON ENVIRONMENTAL COUNCIL

On July 6, 1982, the Atomic Safety and Licensing Board (the "Board") issued its Memorandum and Order accepting and rejecting contentions of the various intervenors in the above-captioned proceeding. It rejected Contention 5 of Intervenors National Wildlife Federation and Oregon Environmental Council ("NWF/OEC") related to the environmental impacts of long-term high level wastes produced by the Skagit/Hanford Project (S/HP) and seems to have rejected paragraph E as one of the bases of NWF/OEC Contention 3. (Contention 3, itself, was accepted.) From that decision, NWF/OEC have appealed.

I. The Board Erred In Rejecting Basis "E" for Contention 3

NWF/OEC's Contention 3 reads as follows:

> The Applicant has used an inaccurately low estimate of the environmental and financial cost of the project in the benefit/cost ratio.

NWF/OEC listed five separate bases for this contention, listed as paragraphs 3A-3E. Paragraph 3E asserted that the cost of financing S/HP will be substantially higher than the applicant

reports because the Project cannot and will not be acquired by the Bonneville Power Administration (BPA) pursuant to the Pacific Northwest Electric Power Planning and Conservation Act, P.L. 96-501. Without such BPA acquisition, financing will be much more costly.

The Board implicitly rejected NWF/OEC's paragraph 3E, and thereby implicitly denied NWF/OEC the right to present evidence and argument in support of that paragraph, when it announced in its Memorandum and Order that "Paragraphs A through D represent an acceptable basis for this contention." Memorandum and Order, July 6, 1982. Evidently the Board considered Paragraph E an unacceptable basis for the Contention.

The Board failed to explain the reasoning behind its decision. NWF/OEC can only assume that it accepted the arguments made by staff and applicant in objecting to Paragraph E. Those parties claimed that financing costs interest charges (affected by BPA acquisition) are irrelevant in the benefit/cost calculation because only true "societal costs" must be considered in that analysis. While BPA acquisition shifts part of the risk of the project to that agency (BPA does not actually pay the extra interest, however) and interest rates paid by applicants accordingly diminish, nevertheless total societal risk -- that reflected in interest actually paid and that unquantified interest assumed by BPA -- remains the same. In support of this position, applicant and staff cite the Commission's decision in Detroit Edison Co. (Enrico Fermi Atomic Power Plan, Unit 2) LBP-78-11, 7 NRC 381, 391 (1978).

Unfortunately, the cost calculations performed by applicants in their ASC/ER and by the staff in the DES do not appear to treat interest costs in such a sophisticated manner. See, e.g., ASC/ER at Table 8.2-2. (Estimated costs, including interest charges, of electrical energy generation.) If, in fact, the true "societal" risk of an investment is to be assessed for the benefit/cost calculation, then the ASC/ER and DES have even greater defects than NWF/OEC have raised. But that is beside the point here.

BPA assumption of the risks associated with a project through its acquisition raises different issues than those considered in Detroit Edison Co., supra. There, the intervenors argued that actual environmental costs were disproportionately borne by one group of citizens who received only a minor percentage of the benefits of the plant. (Their utility owned twenty percent of the output.) Here, the question is: will the actual dollar costs of a plant be higher or lower (depending on BPA action), and how do those costs measure up against the costs of alternatives to which the project must be compared? In comparing alternatives to the S/HP, surely the Commission cannot ignore the likelihood that some alternatives will be more easily financed and actually cost less, in dollars, than others. Dollars are, after all, a standard measure of "societal cost." NWF merely wishes, in presenting evidence to support Paragraph 3E, to make sure that such choices are clearly delineated. Since the assessment of these choices is a primary purpose of an Environmental Statement, the refusal to permit NWF/OEC to present relevant information is improper under the National Environmental Policy Act, 42 U.S.C. § 4332 et.seq.,

and can find no support in Commission precedent.

II. The Board Erred In Rejecting Contention 5

NWF/OEC Contention 5 reads as follows:

> The Commission should not issue any construction permit or facility license for Skagit/Hanford until it has assessed the environmental impacts of temporary waste storage at the project during the life of the license and has complied with the requirement of NRDC v. NRC, No. 74-1586 (D.C. Cir. April 27, 1982).

NWF/OEC Second Supplement to Petition to Intervene, May 21, 1982.

NWF/OEC's basis for its contentions were straight-forward. As to the first part of the contention, we pointed out that pending the outcome of the Commission's Nuclear Waste Confidence Proceeding, the Commission required that:

> the safety implications and environmental impacts of [high-level] radioactive waste-storage on-site for the duration of the license will continue to be subjects of adjudication in individual licensing proceedings.

44 Fed.Reg. 61372 (October 25, 1975). (emphasis added) In other words, because the Commission has no assurance of available off-site storage of high-level and transuranic wastes, it must assume that the wastes will be stored at the site for the term of the license. Environmental Statements should reflect that assumption.

Neither the staff's Draft Environmental Statement nor the applicant's Environmental Report discuss the environmental impacts of long-term storage of high-level wastes on-site. Indeed, as the staff noted in its response to NWF/OEC's Contentions, "it is true that 30-year spent fuel storage on-site has not been

considered because the Applicant has not requested 30-year storage in its application." NRC Staff Response to Amended Contentions of NWF/OEC, June 11, 1982. All that either the applicant or the staff have considered is "the impacts of spent fuel during normal operation and anticipated operational occurrences." Id.

The Board erred, therefore, when it rejected NWF/OEC Contention 5A on the basis that "on-site storage of spent fuel is part of application." Memorandum and Order, at 3. Thirty year storage is not part of the application. The Commission has announced that license duration on-site storage must be assessed, but that has not occurred here.

The staff's reliance on Florida Power and Light Company, (Turkey Point Nuclear Generating, Units Nos. 3 and 4) ALAB 660, 14 NRC 987 (1981) to oppose NWF/OEC's contention is misplaced. The Appeals Board in that case merely pointed out that a "NEPA environmental review for on-site storage [of waste] should cover the period of time over which it is foreseeable the wastes will remain on-site." 14 NRC supra 1011. In the Turkey Point case, the licensing Board concluded as a matter of fact, that the wastes there in issue would be disposed of off-site within six years. The environmental review, therefore, assessed the impacts of on-site storage for six years. With respect to the high level spent-fuel wastes generated by S/HP, the foreseeable length of on-site storage, by Commission policy, is assumed to be at least the duration of the license. That policy has been ignored in the S/HP proceeding thus far.

The Board also rejected the second part of NWF/OEC Contention 5, (or Contention 5B). That contention challenges the adequacy of the Draft Environmental Statement and the Applicant's Environmental Report on the basis of the invalidation of NRC's Table S-3 in NRDC v. NRC, No. 74-1585 (D.C. Cir. April 27, 1982). According to the Court, the Table S-3 Rule is inadequate under the National Environmental Policy Act, 42 U.S.C. § 4332 et. seq., because it fails to describe and assess the "uncertainties concerning the long-term isolation of high-level and transuranic wastes . . ." NRDC v. NRC, supra, slip op. at 11.

NWF/OEC are at a loss to understand the Board's rejection of this contention. The Draft Environmental Report issued by NRC staff for S/HP relies exclusively on Table S-3 to assess the fuel-cycle impact of the project. The invalidation of Table S-3 thus leaves the Environmental Statement's reliance upon it without legal basis. Either the Commission must satisfy the Court's objections to Table S-3 in another generic proceeding, or it must meet the Court's interpretation of the requirement of NEPA in the site-specific Environmental Statement for S/HP. Until it does so, the Environmental Statement will remain inadequate, and the licensing of S/HP cannot proceed. NWF/OEC's contention is valid and should be admitted into the proceeding.

CONCLUSION

For all the foregoing reasons, intervenors NWF/OEC ask that their Contentions 3E and 5 be accepted as litigatable issues in this proceeding.

Respectfully submitted,

/s/

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Dated this 21st day of July, 1982.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served true copies of Intervenors National Wildlife Federation/Oregon Environmental Council's Notice of Appeal and Memorandum in Support of Notice of Appeal, upon the following:

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by mailing, postage prepaid, this 21st day of July, 1982.

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