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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)
)
WASHINGTON PUBLIC POWER) Docket No. 50-460-CPA
SUPPLY SYSTEM)
)
(WPPSS Nuclear Project No. 1))

APPLICANT'S RESPONSE IN OPPOSITION TO
PROPOSED AMENDED CONTENTION NO. 2

I. INTRODUCTION

During the Prehearing Conference in the captioned matter, the Board permitted the Coalition for Safe Power ("petitioner") to amend its proposed second contention in light of a request by the Washington Public Power Supply System ("Applicant") to the NRC that its pending construction permit amendment be modified to request an extension of the earliest and latest completion dates for WNP-1 to June 1, 1988 and June 1, 1991, respectively.¹ Applicant hereby responds to petitioner's amended contention filed on February 11, 1983. For the reasons stated below, Applicant submits that petitioner has failed to set forth with adequate basis and specificity a proposed contention

¹ Transcript of January 26, 1983 Prehearing Conference, Washington Public Power Supply System Nuclear Projects Nos. 1 and 2, Docket Nos. 50-397-CPA, 50-460-CPA, and 50-460-OL ("Tr.") at 69.

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which may be properly litigated before this Board.²
Therefore, the proposed contention should be dismissed.

II. ARGUMENT

In order for proposed amended contention no. 2 to fall within the scope of this construction permit extension proceeding, it must address whether the Applicant was responsible for the delay necessitating the extension and whether such delay was dilatory.³ Thus, the basis for the proposed revised contention must particularize with adequate specificity the reasons for petitioner's belief that the cause of the additional two to five year construction delay at WNP-1 was both within the control of the Applicant and that the delays were dilatory.⁴ Because petitioner has failed to do so, its proposed revised contention no. 2 should be dismissed.

² The standards this Board should apply to evaluate whether petitioner has satisfied the basis and specificity test of 10 C.F.R. §2.714(b) are set forth in detail in Applicant's Answer in Opposition to Supplement to Request for Hearing and Petition for Leave to Intervene ("Applicant's Answer"), filed on January 24, 1983, at 16-19. In addition, although this response only addresses proposed revised contention no. 2, Applicant does not intend to waive its objections to proposed contention no. 1, as set forth in Applicant's Answer at 20-25.

³ Washington Public Power Supply System, (WPPSS Nuclear Project Nos. 1 and 2), CLI-82-29, 16 NRC ___, slip op. at 16 (October 8, 1982); Washington Public Power Supply System (WPPSS Nuclear Project No. 2) ("WNP-2"), ASLBP No. 83-480-01 CPA (slip op., February 22, 1983) at 4-6.

⁴ See Applicant's Answer at 20-22.

First, petitioner asserts that when Applicant notified NRC of its modified construction permit extension request, such action "was taken with the full intention of delaying completion of the plant and thus was 'dilatory'" ⁵ Petitioner apparently concludes from this assertion that as a result of such "dilatory" conduct, the pending construction permit extension request should be denied.

This assertion does not constitute a basis for the proposed contention. As the Board made clear in WNP-2, supra, the Commission instructed that petitioner must particularize and support an allegation that Applicant "either intended to delay, or took actions resulting in delay because it was indifferent to delay." ⁶ As discussed below, petitioner has failed to do so.

It is beyond dispute that the modification of the construction permit extension request for WNP-1 is to allow the Applicant to defer construction of that facility for a number of years. However, petitioner's assertion that such deferral is "intended" and therefore "dilatory" begs the question of whether good cause was shown for requested extension. Under petitioner's reasoning, as soon as any licensee announced prospectively a scheduled

⁵ Coalition for Safe Power Amended Contention No. 2 - February 11, 1983 ("amended contention no. 2") at 1.

⁶ WNP-2, supra, ASLBP No. 83-480-01 CPA, slip op. at 6.

deferral which required a CP extension, such deferral would become intended and thus "dilatory." Clearly a construction permit extension request, whether sought prospectively (i.e., in response to projected reasons for delay), or "after the fact" (i.e., for reasons which have already occurred and have already resulted in delay) may be granted under 10 C.F.R. §50.55(b), provided good cause is shown. Therefore, the mere fact that Applicant's construction permit extension request was designed to permit the future deferral of construction at WNP-1 provides no basis in support of the proposed contention that Applicant was dilatory.

Second, petitioner claims that the deferral of WNP-1 was without "good cause." Petitioner specifically asserts that (1) it is neither clear in fact nor law that the recommendation of the Bonneville Power Administration to defer construction of WNP-1 for from two to five years constitutes good cause and (2) Applicant has failed to show that need for power considerations are in fact sufficiently compelling to provide good cause for extending the WNP-1 construction permit.⁷ Neither of these allegations provides any basis for the proposed revised contention.

Applicant recognizes that the Board normally may presume that the facts alleged by a petitioner are correct at this stage of the proceeding. However, Applicant

⁷ Amended contention no. 2 at 1-3.

submits that the Board is not compelled to blink at patent misstatements of fact even at the pleading stage. Clearly 10 C.F.R. §2.718 alone provides the necessary authority and discretion to avoid the useless exercise of admitting a proposed contention easily known to be founded on erroneous facts.⁸ Such is particularly the case here where, in Washington Public Power Supply System (WPPSS Nuclear Projects No. 1 and 4),⁹ a sister Licensing Board actually rendered findings of fact which show that petitioner's assertions regarding an alleged lack of good cause are founded on an erroneous understanding of the facts in this case. Accordingly, such assertions do not provide any basis for proposed amended contention.

Clearly the Bonneville Power Administration ("BPA") is not part of Applicant's management and does not control Applicant's financial activities. However, BPA is intimately involved with all aspects of the financing of WNP-1 and plays a particularly important role in the sale of tax exempt long-term debt securities used to finance the construction of WNP-1. Because petitioner fails to recognize this fact, its description of BPA's "limited" role in the financing of WNP-1 is incorrect on its face and, therefore, provides no basis for its proposed contention.

⁸ See Duke Power Company (Catawba Nuclear Station, Units 1 and 2), ASLBP No. 81-463-01 OL, 16 NRC ____ (slip op. at 20, Dec. 1, 1982).

⁹ LBP-75-72, 2 NRC 922, 927 (1975) ("WNP-1").

Applicant is financing the construction of WNP-1 through the issuance of tax exempt long-term debt securities. It is or will be reimbursed for the cost of the project by each of the 104 publicly and cooperatively owned utilities ("Participants"), all of which are statutory preference customers of BPA, and by each of five investor-owned utilities ("Companies"). Each of the Participants has executed "Net Billing Agreements" with the Applicant and BPA providing that the Participant's portion of the capability of WNP-1 will be sold to the Participant, which in turn will assign the capability to BPA. As customers of BPA, the Participants currently purchase electricity from BPA which is generated at other facilities in the Northwest. BPA gives credit to Participants for payments of costs made to the Supply System, and that credit is used to offset payments by the Participants to BPA for energy actually received from BPA. Thus, Participants are billed only for the net amount owed for the energy. This contractual arrangement assures that Participants have funds to bear their costs of WNP-1 regardless of the status of project operation.

In addition, each of the Companies has executed an "Exchange Agreement" with the Applicant and BPA providing that the Company's portion of the WNP-1 capability will be sold to the Company, which will in turn assign its

capability to BPA. As payment, BPA has agreed to furnish each Company a specified amount of electricity for a given period of time.

There are three levels of underlying security for repayment of the debt securities issued to finance project construction. The first is the revenues to be derived from the operation of WNP-1 itself. The second level of security is the Net Billing Agreements and Exchange Agreements executed by the Participants and Companies, respectively, pursuant to which Participants and Companies are obliged to pay their individual portions of the project costs regardless of whether the project is completed, operated, or curtailed. "The third level of security is the obligation of the United States Government (through the Bonneville Power Administration) ultimately to pay the debt securities issued by WPPSS for WNP-1."¹⁰

Petitioner's characterization of the role BPA plays in financing the construction of WNP-1 overlooks this third (and potentially most significant) level of security for the instruments used to finance WNP-1. At bottom, BPA provides essential governmental backing for bonds issued by Applicant to finance the construction of WNP-1.

¹⁰ WNP-1, supra, LBP-75-72, 2 NRC at 927. Because the WNP-1 decision includes a detailed explanation of the arrangements used to finance WNP-1 upon which much of the discussion in this Response is based, the Board may take official notice of the explanation pursuant to 10 C.F.R. §2.743(i).

Moreover, contrary to petitioner's allegation, the Licensing Board which authorized issuance of the construction permit for WNP-1 specifically considered the role of BPA when making the findings upon which it based its authorization to issue the WNP-1 construction permit.¹¹

Petitioner apparently does not dispute directly any of these facts. Rather, it simply ignores them and asserts without any support that Applicant has not demonstrated good cause for the requested modification to the pending construction permit extension request. In view of the financing arrangement for WNP-1 discussed above, this assertion blinks at reality. Obviously, the BPA recommendation concerning construction deferral at WNP-1 significantly affects the ability of the Applicant to raise the capital needed for the continued construction of WNP-1. Because this factor is solely beyond the control of the Applicant, such inability to generate financing is an event constituting "good cause" within the meaning of 10 C.F.R. §50.55(b).¹²

¹¹ Id.

¹² Georgia Power Co. (Vogtle Nuclear Plant, Units 1 and 2), LBP-77-2, 5 NRC 261, 273-75 (1977), aff'd, ALAB-375, 5 NRC 423 (1977) (suspension of construction due to inability to "raise money, even at extremely high interest rates" constituted good cause for construction permit extension).

In addition, petitioner asserts that Applicant cannot rely on "need for power" considerations as good cause for its construction permit extension request. Again, petitioner has failed to establish any basis for its proposed revised contention.

First, BPA concluded at least on a preliminary basis that the Northwest "now faces possible surpluses of generating capacity in the 1980's."¹³ Based on this "need for power" study, Applicant decided to defer construction of WNP-1.¹⁴ Petitioner has provided no independent basis for reaching any contrary conclusion given current financial considerations or for finding that other load forecasts showing a more immediate need for WNP-1 are necessarily more accurate than those of BPA. Indeed, petitioner admits that it disagrees with those forecasts.¹⁵ Clearly,

¹³ "Analysis of Resource Alternatives," Bonneville Power Administration, U.S. Department of Energy, April 19, 1982 at 3.

¹⁴ April 30, 1982 letter from G.D. Bouche, Deputy Director, Safety and Security, Washington Public Power Supply System to Harold R. Denton, Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission ("April 30, 1982 letter") at 2. Applicant does not prepare its own need for power projections, but rather relies upon those prepared by BPA and the Pacific Northwest Utilities Conference Committee. See Washington Public Power Supply System (WPPSS Nuclear Projects Nos. 1 and 4), LBP-75-41, 2 NRC 131, 140-41 (1975).

¹⁵ Amended contention no. 2 at 3.

petitioner must do more than reference other load forecasts which it then disavows to establish a basis for its proposed contention.

Second, petitioner mischaracterizes Applicant's April 30, 1982 letter to the NRC cited in its pleading at 2. Applicant did not simply claim that the need for power from WNP-1 exists, as petitioner asserts. Rather, Applicant stated that while there is a clear need for power generated from WNP-1, there is a question concerning the time at which such need will arise.¹⁶ Therefore, petitioner has provided absolutely no basis for concluding that Applicant's assessment of the need for power considerations fails to provide good cause for the requested construction permit extension.

Lastly, petitioner asserts that the additional construction permit extension request is not "for a reasonable period of time." It apparently believes that such extension is unreasonable as a matter of law and that, given the past rate of construction activity at WNP-1, further "unreasonable" extensions will be needed.¹⁷

¹⁶ April 30, 1982 letter.

¹⁷ Amended contention no. 2 at 3-4.

This argument is without any basis and is speculative in the extreme. Absolutely nothing is provided to support petitioner's bald assertion that an extension of the latest completion date of WNP-1 until 1988-1991 would result in a construction permit extension the duration of which "[could not] have been contemplated as a 'reasonable period of time' by the writers of 10 C.F.R. 50.55(b)."¹⁸ To the contrary, it is evident on the face of the regulation that what constitutes a "reasonable period of time" is a function of the acts beyond the control of the permit holder necessitating the construction permit extension.

Petitioner has also provided no basis for its extrapolations concerning future rates of construction. While it selectively references a study prepared by the Washington State Senate Energy and Utilities Committee (January 12, 1981 and March 1, 1981) for the proposition that such delays are likely to continue, the report itself is based on data several years old and fails to account for recent management improvements. Moreover, the primary objective of that study was to identify what was believed to be was the cause of cost overruns and schedule delays "and to recommend what action should be taken by the

¹⁸ Id. at 3.

Legislature to help reduce such problems."¹⁹ For petitioner to reference that document in support of its assertion that past conduct is inevitably a barometer of future conduct, completely overlooks the goal of the report and flatly ignores management improvements instituted by Applicant.

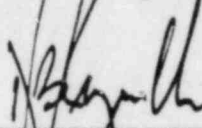
Nor does a reference to commitments made by Applicant to satisfy certain possible new requirements provide any basis for its assertion that the proposed construction permit extension request. Petitioner has set forth no basis for identifying the nature of these requirements, why they will delay construction, and the extent to which such delays are likely. At bottom, petitioner has offered nothing but sheer speculation in support of its assertion that the construction permit extension sought by Applicant for WNP-1 is for an unreasonable period of time.

In conclusion, petitioner has failed to particularize the basis for its proposed contention no. 2. No basis is given to support its assertion that Applicant was dilatory or that the Applicant has failed to establish good cause for the requested construction permit extension. Nor has petitioner provided any reason to conclude that the

¹⁹ Causes of Cost Overruns and Schedule Delays on the Five WPPSS Nuclear Power Plants, Washington State Senate Energy & Utilities Committee, January 12, 1981 at Executive Summary (emphasis added).

requested extension is for an unreasonable period of time. Therefore, because the proposed amended contention lacks specificity and basis, it should be rejected.

Respectfully submitted,



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February 23, 1983

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing "Applicant's Response in Opposition to Proposed Amended Contention No. 2" in the captioned matter were served upon the following persons by deposit in the United States mail, first class, postage prepaid this 28th day of February, 1983:

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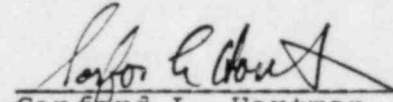
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