



UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY  
AND LICENSING BOARD

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

LICENSEE'S RESPONSE TO  
INTERVENOR'S MOTION TO COMPEL

I. INTRODUCTION

On June 9, 1983 intervenor served the Washington Public Power Supply System ("Licensee") with its second set of interrogatories. Licensee responded to those interrogatories on June 8, 1983, in which it objected to a number of them.

On July 13, 1983, intervenor filed a motion to compel Licensee to respond to interrogatories 25, 27, 28, 31, 32, 35, 38 and 42. Intervenor also moved that the Licensee be ordered to respond more fully to interrogatories 26 and 50. Pursuant to Section 2.730(c) of the NRC Rules of Practice, Licensee hereby responds to that motion.

II. INTERROGATORIES 31, 32, 35 and 38

The captioned interrogatories all request information with respect to certain aspects of the Initial Decision in Washington Public Power Supply System (WPPSS Nuclear Projects No. 1 and No. 4), LBP-75-72, 2 NRC 922 (1975) ("LBP-75-72"), in which the Licensing Board authorized the NRC Staff to issue the construction permit for WNP-1. Specifically, these interrogatories seek Licensee's opinions as to a number of findings by the Licensing Board in that proceeding concerning the relationship of the Bonneville Power Administration (BPA) with the Licensee. Licensee objected to the interrogatories on the grounds that they seek information which is irrelevant and outside of the scope of permissible discovery.

Licensee hereby reaffirms this objection. Findings made in LBP-75-72 do not directly or indirectly bear on the issues in the instant case, viz., whether Licensee established good cause for the requested construction permit extension and whether that extension was for a reasonable period of time. Nonetheless, without waiving its objections to these interrogatories, Licensee submits the following responses to them.

INTERROGATORY 31: Is it your position that the Atomic Safety and Licensing Board Initial Decision (LBP-75-72, 2 NRC 922 for the Construction Permit found that

the Bonneville Power Administration had the power to approve or disapprove the issuance of bonds by WPPSS. If yes, give the reasons in detail for approval and/or disapproval.

Response: The Licensing Board made no specific findings on this question.

INTERROGATORY 32: Is it your position that the ASLB Initial Decision (LBP-75-72, 2 NRC 922) found that BPA could control the construction of WNP-1. If yes, in what manner. Explain in detail the basis of your answer.

Response: The Licensing Board made no specific findings on this question.

INTERROGATORY 35: Is it your position that the only reason the ASLB Initial Decision (LBP-75-72, 2 NRC 922) found WPPSS financially qualified is because of BPA financial backing.

(a) If yes, explain the basis in detail.

(b) If not, cite all the reasons you believe the finding of financial qualification [sic].

Response: (a) No. (b) See ¶¶ 1-9 of LBP-75-72 at 2 NRC 924-27.

INTERROGATORY 38: How is "BPA support" recognized in the Initial Decision (LBP-75-72, 2 NRC 922) on the construction permit for WNP-1.

Response: "BPA support" is recognized in ¶¶ 1-9 of LBP-75-72, 2 NRC 924-27.

Licensee believes that these responses satisfy interrogatories 31, 32, 35 and 38. Accordingly, there is no need for the Board to rule on intervenor's motion with respect to these interrogatories.

### III. INTERROGATORY 25

The captioned interrogatory seeks an explanation of the difference, if any, between deferral, mothball and preservation. Intervenor seeks this explanation on the ground that it is needed to "discover the meaning of terms used by the parties and their agents in the news media and public documents." July 13, 1983 motion to compel at 1-2.

In fact, this interrogatory seeks information which addresses only health and safety aspects of the construction deferral at WNP-1. For example, in the Safety Evaluation issued by the Staff for extending the WNP-1 construction permit, "mothballing" is used exclusively within the context of a discussion of the public health and safety aspects of the construction permit extension. See Safety Evaluation for Extension of the Latest Construction Completion Date for Washington Public Power Supply System's Nuclear Project No. 1 at 2-3, a copy of which was transmitted by the Licensee and Staff on June 21 and June 17, 1983, respectively. Health and safety

matters raised by the deferral of WNP-1 are outside the scope of this proceeding. Washington Public Power Supply System (WPPSS Nuclear Projects No. 1 and 2), CLI-82-29, 17 NRC \_\_\_, October 8, 1982 slip op. ("CLI-82-29") at 13-14. Accordingly, interrogatory 25 seeks information which is not relevant to the subject matter of this proceeding and which is not reasonably calculated to lead to the discovery of admissible evidence. 10 C.F.R. Section 2.740(b). Accordingly, intervenor's motion as to interrogatory 25 should be denied.

#### IV. INTERROGATORIES 27, 28 and 42

Interrogatories 27, 28 and 42 seek information regarding Licensee's other nuclear projects. Specifically, interrogatory 27 seeks information as to the effect of default on WNP-4 and 5 on the restart and completion of WNP-1. Interrogatory 28 concerns the effect of deferral of construction on WNP-3 on the restart and completion of WNP-1. Interrogatory 42 seeks to discover the reason why construction at WNP-3 was halted and how that action will affect the deferral at WNP-1.

Intervenor claims that this information is needed because a "judgment must still be made as to whether continued construction should nonetheless be allowed." Motion to compel at 2, citing Washington Public Power Supply System (WPPSS Nuclear Project No. 2) ALAB-722,

\_\_NRC \_\_, April 1, 1983 slip op. ("ALAB-722") at 14. Intervenor also cites a document prepared by the Bonneville Power Administration entitled "Analysis of Alternatives Related to WNP-3" dated May 26, 1983 ("BPA Study on WNP-3") in support of its motion.

Neither of these bases justifies granting intervenor's motion to compel. First, its reliance on ALAB-722 is at best disingenuous. The Appeal Board stated in ALAB-722 that "[t]he import of the Commission's opinion is that a construction permit extension proceeding should not have a much greater scope than is statutorily mandated." ALAB-722 at 12 (footnote omitted). It further stated that

[U]nless the applicant was responsible for the delays and acted in a dilatory manner (i.e., intentionally and without a valid purpose), a contested construction permit is not to be undertaken at all. Moreover, even if a properly framed contention leads to such a proceeding and is proven true, the statute and implementing regulations do not erect an absolute bar to extending the permit. A judgment must still be made as to whether continued construction should nonetheless be allowed. [Id. at 13-14.]

In short, both CLI-82-29 and ALAB-722 emphasize repeatedly that the scope of this proceeding is a narrow one.



Intervenor nevertheless suggests in its motion that interrogatories 27, 28 and 42, which address other Supply System projects, are proper because of the judgment to be made as to the continued construction of WNP-1. If intervenor were correct, it would conceivably be possible to inquire into virtually every tangential question regarding whether continued construction of a facility should be allowed. Moreover, it would require the Board to conclude that on the one hand the Commission and Appeal Board established a narrow area of inquiry as to the good cause issue, but then on the other intended for the ultimate judgment as to continued construction to encompass such unlimited inquiries into a construction permit holder's activities on other projects. Accordingly, ALAB-722 does not establish any basis for concluding that interrogatories 27, 28 and 42 seek material which is discoverable or reasonably likely to lead to the discovery of admissible evidence.

Nor does the BPA study help intervenor's position. Intervenor neglects to provide the Board with a critical observation made in that study:

Construction on WNP-1 has been reduced to a minimum site preservation state, with an expected on-line date of 1991. There is no need to change the construction status of WNP-1 at this time, nor is any new course set for WNP-1 in this document. . . . BPA Study on WNP-3 at 23 (emphasis added).

In short, while that study may mention WNP-1 (as well as all other Supply System projects), it provides no basis for the Board to conclude that discovery as to the status of WNP-3, 4 and 5 is within the scope of permissible discovery as established in Section 2.740(b). Accordingly the Board should deny intervenor's motion to compel with respect to interrogatories 27, 28 and 42.

V. INTERROGATORIES 26 and 50

Intervenor seeks an order to require Licensee to respond more fully to interrogatories 26 and 50. This motion should be denied.

Interrogatory 26. Interrogatory 26 states "To what events is the restart of construction on WNP-1 tied. Explain fully your answer." Licensee responded as follows:

The restart of construction on WNP-1 is tied to those factors upon which the extension of the WNP-1 construction permit until 1991 was based.

Intervenor now asserts that this response is inadequate because Licensee should show "how each factor identified affects the restart of WNP-1 and how the decision will be made for each." Motion to Compel at 2.

In its motion, intervenor is attempting to rewrite its interrogatory and to convince the Board that the Licensee should be compelled to respond to that reformulated interrogatory. If intervenor intended to discover



"how each factor identified affects the restart of WNP-1" and "how the decision will be made for each," intervenor should have asked those questions. This is especially the case because other interrogatories it propounded demonstrate intervenor has the ability to frame specific follow-up questions. Accordingly, because interrogatory 26 sought only an explanation as to what events the restart of construction on WNP-1 is tied, and because that explanation was provided, intervenor's motion to interrogatory 26 should be denied.

Interrogatory 50. Intervenor sought in interrogatory 50 Licensee's opinion as to whether Washington Initiative 394 affected its ability to issue bonds. Licensee indicated that it did, but noted that in any event the legislation was declared unconstitutional.

In its motion to compel, intervenor characterizes Initiative 394 as involving on-going questions as to its constitutionality and having serious implications, according to the BPA Study on WNP-3. Based on these observations, intervenor claims that Licensee should be compelled to provide a more complete answer. See Motion to Compel at 3.

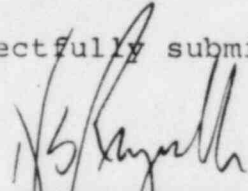
Intervenor's observations are incorrect and provide no basis in support of its motion. As Licensee indicated in its response to interrogatory 50, the law is now

settled that Initiative 394 as applied to WNP-1, 2 and 3 is unconstitutional. This fact is specifically noted in the BPA Study on WNP-3 (which intervenor cited in support of its motion), as follows: "[on] May 23, 1983, the Supreme Court refused to rehear the case [involving Initiative 394], thereby removing this impediment to net-billing financing." BPA Study on WNP-3 at 2 (emphasis added). Accordingly, intervenor's motion with respect to interrogatory 50 is based on a fundamental misunderstanding of fact, notwithstanding Licensee's efforts to bring these facts to its attention. Accordingly, intervenor's motion with respect to interrogatory 50 should be denied.

VI. CONCLUSION

For the reasons set forth above, intervenor's motion should be denied.

Respectfully submitted,



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July 28, 1983

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing  
"Licensee's Response to Intervenor's Motion to Compel" in  
the captioned matter were served upon the following  
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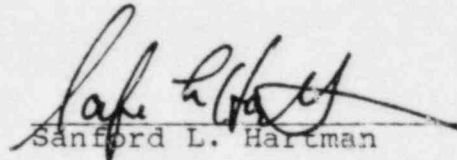
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