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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
NRC

BEFORE THE ATOMIC SAFETY AND LICENSING APPEALS BOARD 194 SAEB-46 DP3:31

In the Matter of)
WASHINGTON PUBLIC POWER SUPPLY SYSTEM)
et. al.) Docket No. 50-508 OL
(WPPSS Nuclear Project No. 3))

COALITION FOR SAFE POWER RESPONSE TO APPEAL
TAKEN BY APPLICANT FROM LICENSING BOARD ORDER
OF MARCH 2, 1984 GRANTING INTERVENTION ON REMAND
FROM THE ATOMIC SAFETY AND LICENSING APPEALS BOARD

The Applicant, Washington Public Power Supply System, by filing dated March 20, 1984, has once again appealed the grant of intervention to the sole Petitioner in this case, the Coalition for Safe Power. In so doing, it asserts that the Licensing Board, which reinstated the Coalition by Order dated March 2, 1984 abused its discretion in finding that the Petitioner had satisfied the requirements of Mississippi Power and Light Company (Grand Gulf Nuclear Station, Units 1 and 2) ALAB-704, 16 NRC 1725 (1982) and the Atomic Safety and Licensing Appeals Board Order of November 13, 1983 (ALAB-747) which had remanded the original grant of intervention to the Licensing Board for further findings.

The Appeals Board established in ALAB-747 that the Coalition had not adequately showed an ability to contribute to the record as required by factor iii of 10 CFR 2.714(a)(1). It ruled, in essence, that the Coalition had provided information that was too vague. It also discussed the showing required for reliance on a petitioner's prior participation in an NRC proceeding, a point not subsequently pursued by the Petitioner in this case and therefore moot.

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Accordingly, the Appeals Board vacated the original Licensing Board order and remanded the issue of whether the Coalition would contribute to the development of a sound record. It stated that its purpose was to avoid a hearing unless there "is cause to believe that the petitioner not only proposes to raise at least one substantial safety or environmental issue but, as well is equipped to make a worthwhile contribution on it." ALAB-747 at 25. It stated further that "in any event, any further appeal to use must rest on a clear demonstration of an unmistakable abuse of discretion on the Licensing Board's part." ALAB-747 at 25. In order to discharge its obligation, the Coalition was instructed to 1) identify at least one witness and 2) provide sufficient detail regarding the proposed testimony "to permit the Board to reach a reasoned conclusion on the likely worth of that testimony on one or more of the contentions admitted..."

In response the Coalition asserted in its "Further Supplement to Petition for Leave to Intervene" dated January 10, 1984 that, at the time of filing, it had identified specifically two prospective witnesses: Mr. Stuart Sandler and Dr. Jack Smith. The Licensing Board found Dr. Smith's expertise and summarized testimony sufficient to satisfy the requirements of Grand Gulf, supra. The Coalition stated, and the Licensing Board accepted, statements regarding Dr. Smith's education, experience and proposed testimony. The Applicant challenges this finding, asserting an abuse of discretion.

This appeal is not properly before the Appeals Board which itself stated, in ALAB-747, quoting from Long Island Lighting Company (Shoreham Nuclear Power Station, Unit 1) ALAB-743, ____ NRC

____, September 30, 1983 (slip op. at 14) that "neither this Board nor the Commission has been readily disposed to substitute its judgment for that of the Licensing Board insofar as the outcome of the balancing of the Section 2.714(a) factors is concerned." The Board went on to specifically prohibit any appeal which did not demonstrate an "unmistakable abuse of discretion." There is nothing in the Licensing Board order which constitutes such an abuse.

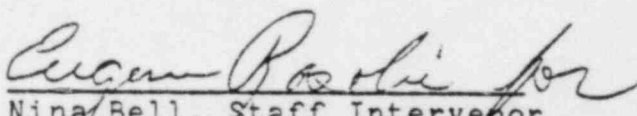
The alleged abuse concerns the Licensing Board's treatment of the Coalition's assertions of Dr. Smith's expertise and proposed testimony. The Coalition summarized Dr. Smith's expertise by stating that he possesses graduate degrees from Harvard University and has broad experience in the analysis of discharges into waterways and the control and effects of chemical pollutants. It explained that Dr. Smith's initial review of the Applicant's submittals caused him to believe that: the tolerance levels used in the Applicant's Environmental Report were, with one exception, lethal limits, operation of the plant will increase the phosphorous concentrations in the Chehalis River and result in the excessive growth of blue green algae, the Applicant had ignored the effects of toxic sulfide which will be contained in the dechlorinization of cooling water blowdown, and that EPA Water Quality Criteria will be exceeded for concentrations of heavy metals. Dr. Smith's review was extensive and detailed enough (encompassing the Applicant's application and the available staff analyses) to allow him to draw the conclusions as stated in the Coalition's filing. (The Coalition sought to point out that his review is still preliminary and therefore his testimony could not be restricted to what was

represented in the Further Supplement due to the fact that construction of the facility has ceased, there is an attendant delay in the projected date for evidentiary hearings and therefore pre-filed testimony and the fact that discovery has not yet been taken.) The conclusions and reasoning of Dr. Smith presented provide a sufficient basis for the Licensing Board to have concluded that he would make a significant contribution to the record on Contention 17. The Licensing Board explained that it relied upon these findings to ensure that there would be technical merit to the testimony of the Coalition's prospective witness.

In summary, the Coalition provided information detailed enough for the Licensing Board to determine that Dr. Smith's education, experience and his review of the material were sufficient to make a finding that the Coalition did intend to offer direct testimony on an admitted contention, by a witness qualified to contribute substantially to the record on a technical issue.

Respectfully submitted,

Dated this day, the 4th
day of April, 1984.


Nina Bell, Staff Intervenor

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) Docket No. 50-508 OL
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) DOCKETING & SERVICE
) BRANCH
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CERTIFICATE OF SERVICE

I hereby certify that copies of "COALITION FOR SAFE POWER RESPONSE TO APPEAL TAKEN BY APPLICANT FROM LICENSING BOARD ORDER OF MARCH 2, 1984 GRANTING INTERVENTION ON REMAND FROM THE ATOMIC SAFETY AND LICENSING APPEALS BOARD," in the above-captioned matter have been served on the following by deposit in the U.S. Mail, first class, postage prepaid on this 4th day of April, 1984:

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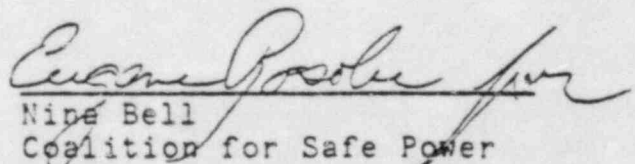
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