

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD⁸⁴ APR -6 P3:32

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

COALITION FOR SAFE POWER RESPONSE OPPOSING APPLICANT'S
MOTION FOR RECONSIDERATION OF MEMORANDUM AND ORDER
GRANTING PETITIONER INTERVENOR STATUS AND/OR FOR
REFERRAL OR CERTIFICATION OF THE QUESTION OF WHETHER
A LIMITATION SHOULD BE PLACED ON THE SCOPE OF PETITIONER'S
PARTICIPATION IN THIS PROCEEDING, DATED MARCH 20, 1984.

I. INTRODUCTION

On December 6, 1983, the Licensing Board issued an Order requiring the Petitioner Coalition For Safe Power to make a further showing pursuant to Appeal Board's decision of November 15, 1983 in this case. After considering the pleadings filed by the NRC Staff, Washington Public Power Supply System (Applicant), and Petitioner, the Licensing Board issued its March 2, 1984 Memorandum and Order holding that the Petitioner had demonstrated its ability to assist in developing a sound record and reinstating its previous Order admitting the Petitioner as an intervenor to this proceeding. Applicant, on March 20, 1984, filed a motion with the Licensing Board requesting that the Board reconsider its March 2, 1984 Memorandum and Order and place a limitation on the scope of the Petitioner's participation in this operating license proceeding and/or refer its denial

or certify the question of whether such a limitation should be placed on the scope of Petitioner's participation in this proceeding to the Appeal Board.

Petitioner hereby responds to Applicant's motion, opposing such motion and requesting that the Licensing Board deny it full.

II. ARGUMENT

The Petitioner believes the Licensing Board should look closely at what the Applicant is attempting to do with its motion. We would submit that the Applicant is attempting to change the Commission's rules and policy. Applicant's intention is clear when it states:

* * * the NRC should limit any intervention so granted to those issues as to which the Petitioner has demonstrated an ability to contribute, even when an untimely petitioner seeks intervention as a matter of right.* * *

Applicant's March 20, 1984 Motion at 9. The Applicant is, in essence, requesting that this Licensing Board set NRC policy. If it wishes to change NRC policy it should be required to do so through the proper rulemaking procedures of the agency and not this licensing proceeding.

The Applicant is also attempting to get this Licensing Board to change its September 27, 1983 Memorandum and Order. the Petitioner would submit that the time has past for such an attempt by the Applicant. Even if the time had not past, the Applicant's attempt to apply the five factor test to the

admissibility of those contentions accepted by the Licensing Board is without basis.

Petitioner opposes the Applicant's motion because it is prejudicial. We have followed all the rules of the Commission as contained in 10 CFR Part 2 and the Orders of this Board as stated. At no time was the Petitioner put on notice that its participation in this proceeding was to be limited to issues on which it provided names of expert witnesses, the specific contention they would testify on, and a summary of their testimony; in fact quite the contrary. The Petitioner filed its contentions as directed by the Licensing Board in its April 21, 1983 Order. Applicant at no time that the Petitioner is aware objected to those contentions on the basis that they were late filed and needed to meet the five factor test.

The Appeal's Board stated:

* * * the Coalition should both (1) identify specifically at least one witness it intends to present; and (2) provide sufficient detail respecting that witness' 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 to the proceeding in the Board's September 27 memorandum and order. (emphasis added)

ALAB-747, 18 NRC __, Nov. 15, 1983, slip at 26. This Licensing Board, on December 6, 1983, issued an Order stating that the Petitioner had 30 days to file its further showing "as called for in the Appeal Board decision." The Petitioner once again complied with the Licensing Board

ruling as it has done throughout this case. Now the Applicant wishes to impose an additional condition, after the fact, and penalize the Petitioner for not meeting that condition. Clearly to now say that the Petitioner is limited in the issues it can litigate, when it was never so noticed, is prejudicial.

Applicant claims that not to limit intervention in this case is illogical and cites two Appeal Board decisions to support its argument. Applicant Motion at 8. In one of these cases, as Applicant points out, the Appeal Board agreed that the ability to contribute to a sound record did not weigh in favor of intervention. Id. at 7. It would follow from Applicant's logic that in that case the petitioner should have been allowed to intervene but to raise no issues. This again is proof that the Applicant has confused the issues and has misunderstood the process. The purpose of the five factor test is to decide whether or not a party has standing and a hearing is to be held and not the issues which will be litigated. If the latter were true the Appeal Board would have denied the above referenced petition.

Applicant urges the Licensing Board to examine the overall results in this case and states that there are unique facts. Applicant's Motion at 9. While the Petitioner agrees that there are unique facts in this case, it does not believe that the Licensing Board need examine

the overall results it has reached. Applicant's representation that:

No basis exists to treat an untimely petitioner in the same manner as one which has sought intervention promptly * * *

is contrary to the facts of this case. *Id.* The Petitioner submits that is the Licensing Board has treated the intervention request in accordance with the Commission's rules and regulations and has afforded no special privileges to the Petitioner. The Appeal's Board addressed this issue when it stated:

Nor is it fair commentary to suggest that, "simply because" the Coalition was only four months late, the Licensing Board "minimized" its burden on the other four factors and "sent a clear message to anyone contemplating intervention before the NRC that the failure to file a timely intervention petition carries with it virtually on penalty." As is clear from its April 21 memorandum and order read as a whole, the Board did neither.

ALAB-747, supra at 9 fn 17. Applicant goes on to state:

Perforce, the potential for abuse and the likelihood that the hearing process could be invoked for issues as to which those seeking a hearing cannot meaningfully contribute is materially increased.

Supra at 11. The Applicant was criticized for such extravagancies by the Appeal Board and we would urge this Licensing Board to also disregard such unfounded statements. Id.

Finally, the Applicant cites numerous cases which are entirely different from this case. Applicant's Motion at 10. Earlier, however, it argued that this Licensing Board

should ignore cases that were different. See Applicant's Motion at 7. Obviously the Applicant would like to have it both ways. Applicant argues that if the Licensing Board does not modify its March 2, 1984, Memorandum and Order that there will no longer be any need for an untimely petitioner for intervention to establish "linkage". Applicant's Motion at 10. An untimely petition need not establish "linkage" but must be subject to the five factor test provided for by the Commission's regulations so Applicant's argument is without foundation.

Regarding the issue of referral or certification to the Appeal Board, once again Applicant's request should be denied. As pointed out by the Appeal Board it will look at whether or not a Licensing Board:

* * * has effectively abandoned or fundamentally altered either the requirements of 10 CFR 2.714 or Commission precedent.

Cleveland Electric Illuminating Co.(Perry Nuclear Plant, Units 1 and 2), ALAB-706, 16 NRC 1754, 1758. This Licensing Board has done neither as pointed out in ALAB-747.

Further, Applicant has not proven that it is threatened with immediate and serious irreparable impact and has not shown that the issue will effect the structure of the proceeding in a pervasive manner, and there is little or no likelihood that it will be subject to appellate review.

The Applicant only states it "will be required to incur expenses * * *." Applicant' Motion at 18. Applicant has

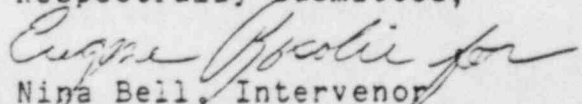
failed to say what the effects would be: is it going to file bankruptcy, be unable to finance construction of the plant? the Petitioner submits that these "expenses" will not have a serious and irreparable impact. When the Applicant decided to engage in the construction of this nuclear project it had to assume that such expenses were a strong possibility.

The Applicant also argues that to allow the March 2, 1984, Memorandum and Order to stand will have a pervasive effect on this proceeding. Applicant's Motion at 20. Under the Commission's rules the Applicant does have recourse in 10 CFR 2.749, "Authority of presiding officer to dispose of certain issues on the pleadings," to prevent unnecessary litigation. Lastly, the Applicant expresses a concern that the issue will escape review because it is unable to appeal the Licensing Board March 2, 1984 Order at this time. As stated previously, Applicant can use the Commission's rulemaking process if it wishes to change NRC policy in the drastic fashion it proposes.

III. CONCLUSION.

In light of the above, Petitioner requests that the Licensing Board deny Applicant's Motion dated March 20, 1984 in total.

Respectfully submitted,


Nina Bell, Intervenor
Coalition For Safe Power

April 4, 1984

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CERTIFICATE OF SERVICE

I hereby certify that copies of "COALITION FOR SAFE POWER RESPONSE OPPOSING APPLICANT'S MOTION FOR RECONSIDERATION OF MEMORANDUM AND ORDER GRANTING PETITIONER INTERVENOR STATUS AND/OR FOR REFERRAL OR CERTIFICATION OF THE QUESTION OF WHETHER A LIMITATION SHOULD BE PLACED ON THE SCOPE OF PETITIONER'S PARTICIPATION IN THIS PROCEEDING, DATED MARCH 20, 1984," 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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