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USNRC

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

OFFICE OF SECRETARY  
DOCKETING & SERVICE  
BRANCH

Charles Bechhoefer, Chairman  
Dr. Richard F. Foster  
Frederick J. Shon

SERVED OCT 16 1996

In the Matter of

Docket No. 50-508-OL

WASHINGTON PUBLIC POWER  
SUPPLY SYSTEM

ASLBP No. 83-486-01-OL

WPPSS NUCLEAR PROJECT NO. 3

October 16, 1996

MEMORANDUM AND ORDER  
(Withdrawal of Application)

1. Background. This proceeding concerns the application for a reactor operating license for WPPSS Nuclear Project No. 3 filed by Washington Public Power Supply System ("Applicant"). On August 16, 1996, the Applicant filed a Motion for Withdrawal of Application, requesting the issuance of an order authorizing the withdrawal of the Operating License (OL) application and terminating the proceeding. Attached to this motion was a request to the NRC Staff, dated August 8, 1996, to terminate the underlying construction permit (CP).<sup>1</sup>

<sup>1</sup>Earlier, on July 12, 1983, the Applicant notified the Atomic Safety and Licensing Board that construction of the WNP-3 project would be deferred indefinitely. In a letter dated May 17, 1994 (updated February 15, 1995), it subsequently advised that the Applicant's Board of Directors voted to formally terminate the project. The Applicant's  
(continued...)

On September 5, 1996, the NRC Staff filed a response indicating that it had no objection to our granting the motion. None of the other parties responded--indeed, counsel for the Licensing Board Panel inquired by telephone of the one remaining intervenor and was apprised that the intervenor did not intend to respond to the Applicant's motion or to participate in the termination activities. The State of Washington, participating as an Interested State, also was advised about this license termination, but it did not respond.

2. Site Development Proposal. The Applicant states that it plans to transfer ownership of the entire site (which includes the previously terminated WNP-5 project) to a new interlocal agency, known as the Satsop Adaptive Redevelopment Program ("SRP"), authorized by a recent change in Washington state law. It states that the WNP-3 project will not be completed as a nuclear power plant but that SRP will adapt and use the structures for economic development purposes. The SRP also will have authority for site restoration. As a result, the Applicant asserts that there is no basis or need for us to impose conditions on the

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<sup>1</sup>(...continued)  
Board also voted at that time (1) to maintain the construction permit (CP) in effect, (2) to continue the deferred status of the OL application, and (3) to preserve the project in accordance with the NRC's "Policy Statement on Deferred Plants" (52 Fed. Reg. 38,077 (1987)).

withdrawal of the OL application or the termination of this proceeding, citing Duke Power Company (Perkins Nuclear Station, Units 1, 2, 3), LBP-82-81, 16 NRC 1128 (1982).

For its part, the Staff indicates that, prior to terminating the CP, it plans to meet with the Applicant and interested state and local agencies and to conduct a staff site inspection. It will prepare an Environmental Assessment (EA) on the CP termination based on the meetings and any documentation it may require of the Applicant pursuant to 10 C.F.R. § 51.41. It pledges to "assure compliance with all appropriate safety and environmental requirements" in the context of the CP termination request.

3. Board Analysis. The Applicant's solution for treatment of the site--in effect, a delegation of authority to a local agency--would be sufficient only for the type of condition dealt with in the cited Duke Power Co. case, where the only issues involved were whether the withdrawal should be with or without prejudice, or reimbursement of litigation expenses to the intervening groups. In this case, we cannot delegate to a local group the responsibilities under the National Environmental Policy Act (NEPA) imposed upon this agency. Moreover, termination of an operating license application gives rise to a need, pursuant to 10 C.F.R. § 51.21, for an environmental assessment (EA) to consider the impacts of the termination. Consumers Power Co.

(Midland Plant, Units 1 and 2), LBP-86-33, 24 NRC 474 (1986); id., LBP-86-39, 24 NRC 834 (1986).

An additional consideration here is that the CP termination, although technically a different action than the OL termination before us, would appear to have impacts that would encompass the OL termination impacts. Thus, one EA would appear to suffice for both actions, and the action proposed by the Staff to prepare an EA on the CP termination appears reasonable. The EA must be prepared by NRC, not a local agency, although in preparing an EA the Staff may take into account site uses proposed by a local agency.

Normally, both parties and the Licensing Board would have an opportunity to review the Staff's EA. 10 C.F.R. § 51.104(b). We could, therefore, withhold any determination on the Applicant's withdrawal request until the Staff's EA is submitted to us for approval. Midland, LBP-86-39, supra. The parties, however, have expressed no interest in reviewing the termination impacts--indeed, the sole remaining intervenor expressly declined to do so, and the State, although advised of the opportunity for comment, has not expressed any interest. Further, the Staff is charged with preparing an adequate EA on the CP termination, and from the steps it described it is taking (NRC Response, p. 2, n.1), we see no likely default in NEPA responsibilities by NRC. That being so, we decline to defer

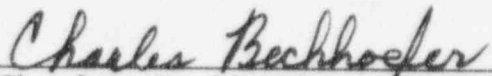
our action on the OL termination request before us pending our review of the EA.


4. Order. Accordingly, it is, this 16th day of October, 1996,


ORDERED:

1. The Applicant's motion for withdrawal of its OL application is hereby granted;
2. This proceeding is terminated.
3. Pursuant to 10 C.F.R. § 2.764, this Order is effective immediately but is subject to review by the Commission under 10 C.F.R. § 2.786.

The Atomic Safety and  
Licensing Board

  
Charles Bechhoefer, Chairman  
ADMINISTRATIVE JUDGE

  
Dr. Richard F. Foster  
ADMINISTRATIVE JUDGE

  
Frederick J. Shon  
ADMINISTRATIVE JUDGE

Rockville, Maryland  
October 16, 1996

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

In the Matter of

WASHINGTON PUBLIC POWER SUPPLY  
SYSTEM  
(WPPSS Nuclear Project No. 3)

Docket No.(s) 50-508-OL

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB M&O (LBP-96-21) TERMINATING have been served upon the following persons by U.S. mail, first class, except as otherwise noted and in accordance with the requirements of 10 CFR Sec. 2.712.

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U.S. Nuclear Regulatory Commission  
Washington, DC 20555

Administrative Judge  
Frederick J. Shon  
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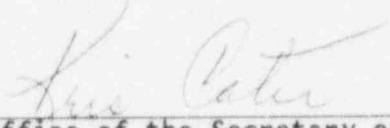
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Docket No.(s)50-508-0L  
LB M&O (LBP-96-21) TERMINATING

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Dated at Rockville, Md. this  
16 day of October 1996

  
Office of the Secretary of the Commission