

AUG 9 1979

Docket No. 50-398A

MEMORANDUM FOR: D. Lynch, LPM  
FROM: Argil Toalston, AIG  
SUBJECT: WASHINGTON NUCLEAR 2 (HANFORD) OL REVIEW

Section 105c(2) of the Atomic Energy Act of 1954, as amended, provides for an antitrust review of an application for an operating license if the Commission determines that significant changes in the licensee's activities or proposed activities have occurred after the previous review conducted in connection with the application for a construction permit. After examining the events that have transpired since the construction permit antitrust review, we conclude that no significant changes have occurred that would now warrant an operating license antitrust review. The Office of the Executive Legal Director concurs with this conclusion.

On August 10, 1971, the Washington Public Power Supply System (WPPSS), filed an application for a construction permit and facility license to construct a 1100 MWe boiling water reactor nuclear unit on the U.S. Department of Energy's Hanford Reservation on the Columbia River near the City of Richland in southeastern Washington. Notice of receipt of the application was published in the Federal Register on September 22, 1971.

On January 24, 1972, the Attorney General advised the NRC's predecessor, the Atomic Energy Commission, that "It does not appear that the issuance of the proposed license for Hanford No. 2 will create or maintain a situation inconsistent with the antitrust laws and we see no need for an antitrust hearing." In support of this conclusion, the Attorney General noted that:

There has been and continues to be substantial cooperation and coordination in bulk power supply among the various utilities, large and small, in the Pacific Northwest. Hanford No. 2 is one of several generating units resulting from a program in which all utilities in the same area have been invited to participate. Pursuant to this program both public and private utilities have planned and coordinated the addition of new generating capacity in

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the area. The vast majority of small, publicly-owned utilities in the Pacific Northwest will participate in Hanford No. 2 and thereby obtain access to low cost power.

The Attorney General's advice letter was published in the Federal Register on February 2, 1972. No petitions for leave to intervene or requests for hearing on antitrust aspects of the application were subsequently received.

The Attorney General has also reviewed the antitrust information submitted by WPPSS as part of its applications to construct and operate four other nuclear plants -- namely, WPS-1, WPS-3, WPS-4, and WPS-5. Separate advice letters for each plant were tendered on April 19, 1974, January 29, 1975, February 13, 1975, and July 12, 1976, respectively. Ownership in each of the plants has varied somewhat, but for each application the Attorney General found a high degree of coordination among the various utilities in the region. The Attorney General noted only one problem in any of these applications, which concerned allegations that the City of Tacoma, Washington refused to wheel power from Bonneville to the Pierce County Cooperative Power Association (PCCPA). This problem has since been resolved by Tacoma's agreement to wheel such power to PCCPA, which it has been doing since July 1, 1974. In any event, this problem was and is not directly relevant to WPPSS's Hanford 2 application since Tacoma is not a participant in Hanford 2.

On March 19, 1973, the Atomic Energy Commission issued Construction Permit No. CPPR-93 to WPPSS authorizing construction of Hanford 2. Subsequently, WPPSS submitted antitrust information on July 14, 1977 in accordance with NRC Regulatory Guide 9.3 relating to NRC's operating license antitrust review.<sup>1/</sup> WPPSS tendered its application for an operating license for Hanford 2 on March 24, 1978. Notice of the NRC's acceptance of the OL application was published in the Federal Register on July 11, 1978.

Based on information submitted by WPPSS in response to information requested in Regulatory Guide 9.3, there have been no major changes in WPPSS's activities occurring since the construction permit was issued.

<sup>1/</sup> WPPSS itself has submitted answers to all questions posed in Regulatory Guide 9.3. However, at the request of the NRC staff, answers to questions 1.c(2), 1.c(3), 1.c., 1.f., 1.g. and 1.h were submitted only for those participants in Hanford 2 that have facilities to transmit bulk power to wholesale customers. There are three such participants: Consumers Power, Inc. (a cooperative); Public Utility District #1 of Grays Harbor County; and Public Utility District #1 of Okanogan County. WPPSS refers to these three entities as "transmission participants."

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In response to question 1.a. of R.G. 9.3, WPPSS has submitted the 1977 "West Group Forecast of Power Loads and Resources" published by the Pacific Northwest Utilities Conference Committee on February 15, 1977. To supplement this forecast, WPPSS also submitted testimony of Robert B. Gallup which had been previously submitted in the construction permit proceeding for WNP-3 and WNP-5. This testimony was updated by three affidavits, of which the most relevant to the operating license antitrust review is that dated March 18, 1977. In that affidavit, Mr. Gallup indicates that the 1977 load forecasts show a net decrease from the 1976 forecasts for loads in 1984-85 and 1985-86 of 2.8% and 3.0%, respectively. This decrease in projected demand is more than compensated for by delays in construction of new generating capacity. The combined effect of these forecasts is to increase the projected deficit of resources required to meet loads in the earlier years of the planning horizon (i.e., 1983-5). Because this net deficit excludes reserves and assumes adverse stream flow conditions, the reserve situation does not appear critical. In any event, staff does not foresee any adverse antitrust implications that would result from the slower load growth and corresponding delay in generator additions.

With regard to question 1.b. of R.G. 9.3 there have been minor changes in the membership of the power and coordinating groups in which WPPSS participates. However, because membership in such organizations is open and voluntary to the extent that all utilities desiring to participate may do so, any such changes are not viewed as presenting potential antitrust problems. WPPSS has indicated that Public Utility District #1 of Okanogan County became a member of WPPSS in 1976, which raised the membership of WPPSS to 22. However, PUD #1 of Okanogan County was already a participant in Hanford 2 by virtue of its being a statutory preference customer of the Bonneville Power Administration. Its participation in Hanford 2 has thus been in no way affected by its joining WPPSS.

There have been no changes of the type queried by staff in question 1.c through 1.f of R.G. 9.3. pertaining to changes in transmission, ownership in Hanford 2, rate schedules, customers, service area, or mergers or acquisitions other than noted below.

With respect to question 1.g., WPPSS and the "transmission participants" in Hanford 2 are also participating in varying amounts in WNP #1, WNP #3, WNP #4, and WNP #5. Consumers Power, Inc. is also purchasing 10% of the Boardman coal plant being constructed by Portland General Electric Company. In addition to participation in the nuclear units, PUD #1 of Okanogan County is also participating in the Wells Dam hydroelectric plant with such participation increasing from 0.6% now to 8% by 1988.

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With respect to question 1.h. of R.G. 9.3, neither WPPSS nor the "transmission participants" in Hanford 2 have received "requests or indications of interest by other electric wholesale or retail distributors... for any type of electric service or cooperative venture or study" relevant to NRC's antitrust review.

Question 2 of R.G. 9.3 does not pertain to WPPSS and thus no response was given.

The NRC staff also asked Applicant why certain statutory preference customers of the Bonneville Power Administration did not participate in Hanford 2. WPPSS responded that all entities who were such customers at the time subscriptions to Hanford 2 were being offered, were offered part ownership in Hanford 2. For various reasons, 16 eligible utilities chose not to participate initially and a seventeenth (the City of Tacoma) chose subsequently to withdraw from participation. Following the initial subscription to ownership in Hanford 2, four more utilities have become statutory preference customers of Bonneville, thus boosting the total of non-participants to 21. WPPSS has indicated to the NRC staff that a majority of these 21 non-participants have been offered "assignment agreements"<sup>2/</sup> for power from those current Hanford 2 participants whose power requirements have decreased. Because offering secondary participation in Hanford 2 to some utilities and not others could be an indication of possible inconsistencies with the antitrust laws, NRC staff asked counsel for WPPSS how such assignment agreements were made and why some current non-participants but not others were offered subsequent participation. WPPSS, through its counsel, replied that such subsequent offers were made informally by individual members of WPPSS who are participants in Hanford 2 and who had what they judged to be excess capacity to neighboring entities. Depending on the energy needs of certain Hanford 2 participants and their geographical proximity to Hanford 2 non-participants, some non-participants would have been offered subsequent participation while others would not have been. There appear to be no adverse antitrust implications in this situation.

The staff has also examined the docket files of the Federal Energy Regulatory Commission to determine whether any complaints relative to anti-competitive activity had been lodged against WPPSS or the participating statutory preference customers of Bonneville since the construction

<sup>2/</sup> WPPSS has indicated that these "assignment agreements" are, in effect, direct transfers of ownership in Hanford 2 from current participants. Hanford 2 has a unique ownership arrangement whereby each participant assigns to the Bonneville Power Administration its share of the electrical output from Hanford 2. In consideration of these assignments, Bonneville will credit the amounts paid by the Hanford 2 participants for power and services purchased under contracts with Bonneville.

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permit antitrust review. The staff found no such complaints relevant to its antitrust review.

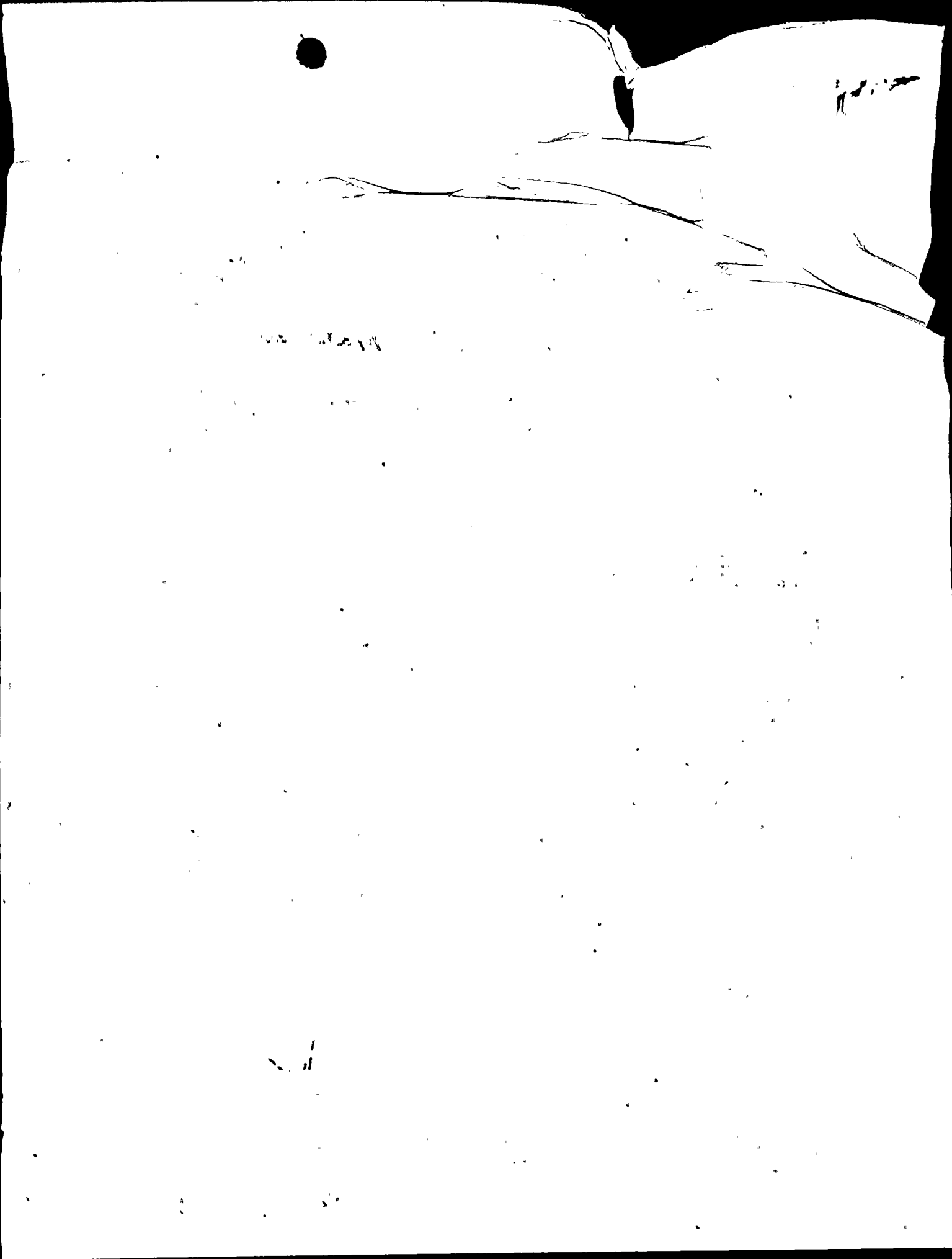
In sum, the staff concludes that changes in the applicants' activities occurring since the construction permit antitrust review do not represent "significant changes" that would now warrant another antitrust review at the operating license stage.

/s/ A. L. Toalston

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The Board agrees. The two individual Petitioners, Susan M. Garrett and Helen Vozenilek are too remote<sup>8/</sup> (180 air miles and 220 river miles) to be affected by the proceeding. All other members of HCP, a Portland, Oregon-based organization were identified as living more than 50 miles from the plant and therefore do not have an interest which may be affected. There is no allegation of recreation in the vicinity of the site. The original petition (#1) must fail because the "interest" [which] may be affected by the proceeding, "within the meaning of Section 189a. of the Atomic Energy Act, 42 U.S.C. 2239(a)" has not been demonstrated.

Given that Petition #1 fails for lack of demonstrable "interest", a unique question arises as to whether the "interest" defect can be cured by acquiring a new member, residing in the vicinity of the plant, more than two months after the deadline for filing of petitions. The Board concludes that while the "interest" requirement may be "particularized" for timely petitioners it cannot be cured

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<sup>8/</sup> At the prehearing conference, it was clarified that Helen Vozenilek has withdrawn except to remain a member of HCP.

by an organization who acquires a new member considerably after the fact who has not established good cause for the out-of-time filing.<sup>9/</sup>

The second petition contained additional members' names including Mr. Greg Darby. Only two, Mr. Roll and Mrs. Long, claimed an interest within 50 miles of the site. Mr. Roll lives several hundred miles from the site at Oceanside, Oregon, but he owns improved farmland 10 to 15 miles from the site. He has tenants living in the two residences and farming the land. Mrs. Long resides with her family approximately 12 miles from the site. It was established at the prehearing that neither Mrs. Long nor Mr. Roll were members of HCP on the filing date of August 28, 1978, but joined HCP in early November when they prepared their affidavits. We consider them late Petitioners who must meet the criteria of 2.714 for out-of-time filing as

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9/ By "particularized" the Board had in mind two points relative to interest. The #1 Petition alleged "recreational benefits" but did not state if this was meant to allege use within the vicinity of the plant. If this had been the fact, clarification would have been meaningful. The petition also said members resided in the vicinity of the plant. If this had been the fact, particularization would have been meaningful.

well as establishing interest. We interpret 2.714(a)(3) to permit amending a petition relative to interest as limited to those individuals who made a timely filing and are merely particularizing how their interest may be affected. We do not believe it is an open invitation for an organization whose membership is far removed from the facility and who claimed to have membership in the vicinity of the site to later try to recruit individuals in the vicinity as members and gain a retroactive recognition of interest. We do not have to consider the question of the out-of-time filing of Mr. Darby or other HCP members (except Roll and Long) since their location from the plant is too remote to establish a possibility of harm from normal or accidental releases from the plant. Mr. Darby lives in Portland. We realize that there is a possibility that people residing in Portland may consume produce, meat products, or fish which originate within 50 miles of the site but to allow intervention on this vague basis would make a farce of 2.714 and the rationale in decisions pertaining to petitions to intervene.

Mr. Darby and Ms. Garrett, while protesting that Petitioners Roll and Long were not out-of-time Petitioners, attempted to fulfill the requirements for late filing set forth in 2.714(a)(1)(i-v) on behalf of the Petitioners as

members of HCP. In relevant part, Section 2.714(a) provides:

Nontimely filings will not be entertained absent a determination by the Commission, the presiding officer or the atomic safety and licensing board designated to rule on the petition and/or request, that the petition and/or request should be granted based upon a balancing of the following factors in addition to those set out in paragraph (d) of this section:

- (i) Good cause, if any, for failure to file on time.
- (ii) The availability of other means whereby the petitioner's interest will be protected.
- (iii) The extent to which the petitioner's participation may reasonably be expected to assist in developing a sound record.
- (iv) The extent to which the petitioner's interest will be represented by existing parties.
- (v) The extent to which the petitioner's participation will broaden the issues or delay the proceeding.

(1) It was stated that Mrs. Long and Mr. Roll were not previously aware of the proceeding. As a lawyer, Mr. Roll should have been aware of the Federal Register notice. It is understandable that Mr. Roll would not see the local press releases (issued July 26, 1978) but Mrs. Long resides in the local area. The Petitioners apparently did not make an effort to keep informed. We do not believe "good cause" has been established. (2) Since Petitioners' interest is to prevent or delay the operation of WPPSS-2, it may be

correct that that interest will not be protected by others. The State of Washington, after public hearings, approved WPPSS-2 and pleads for the need of its power. The NRC Staff supports operation of the plant. (3) The Petitioners have not been convincing that they can assist in developing a sound record. A review of the contentions shows that Petitioners allege that the application does not adequately meet the law or the regulations but there is actually nothing specific to show a familiarization with the plant or the documents relating to the facility. None of the contentions met the specificity requirements of 2.714. The only proposed contention that was reasonably site-specific was an unsupported allegation that WPPSS-2 was located directly over a major fault line. (Tr. 85-89). It will be the responsibility of the NRC Staff to investigate this allegation. In our opinion, developing a sound record calls for more than a sincere desire to put on a direct case or to try to have effective cross-examination. (4) Petitioners have stated that their interest will not be represented by the NRC Staff. In our judgment, even if this

is correct, it does not warrant on its own admitting a late intervenor. (5) There is no doubt that the proceeding would be delayed by a hearing. The resources of both Staff and Applicant would be expended on the hearing rather than continuing the facility review without the interruption of a hearing.

It is our determination that neither Mr. Roll or other HCP members (except Mrs. Long) whose names were added to the #2 Petition have established a proximity to the site which would establish interest. Mr. Roll's interest is based primarily on speculative financial loss and does not have merit. An occasional trip (unspecified) by Mr. Roll to his farm is insufficient to determine his health and safety would be endangered. Mrs. Long's location in the vicinity of the plant site establishes that her interest could be affected but the Board has determined she has failed to meet any of the criteria in 10 CFR 2.714 which warrants accepting a late petition.

On the basis of the pleadings and results of the prehearing conference, the Board finds that Petitioners' intervention as a matter of right must be denied.



INTERVENTION AS A MATTER OF DISCRETION

The Board has considered the criteria established by the Commission for determining whether, in those cases where timely petitioners fail to meet standards for intervention as a matter of right, discretionary intervention should be granted.<sup>10/</sup> Considering those factors weighing in favor of allowing intervention, it may be said that the extent to which Petitioners' participation may reasonably be expected to assist in the development of a sound record is minimal owing to a lack of resources. As regards the nature and extent of Petitioners' property, financial, or other interest in the proceeding, these also may be described as non-existent or minimal. The HCP is a non-profit activists' coalition of individuals and member groups concerned with the issues of nuclear energy and nuclear weaponry. The effect of a Board Order denying Petitioners' intervention will be that no public hearing will be held. The Board feels that in this case the

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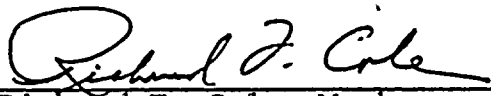
<sup>10/</sup> Pebble Springs, supra, at 616.


interests of the public including Petitioners' interest will be adequately protected by the Staff.

Accordingly, the Board can see no justification for granting intervention as a matter of discretion for timely Petitioners in this proceeding.

IT IS SO ORDERED.

FOR THE ATOMIC SAFETY  
AND LICENSING BOARD

  
Richard F. Cole, Member

  
Ernest E. Hill, Member

  
Elizabeth S. Bowers, Chairman

Dated at Bethesda, Maryland  
This 6th day of March 1979.

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

In the Matter of )

WASHINGTON PUBLIC POWER SUPPLY )  
SYSTEM )

Docket No.(s) 50-397 OL

(WPPSS Nuclear Project No. 2) )  
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CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document(s) upon each person designated on the official service list compiled by the Office of the Secretary of the Commission in this proceeding in accordance with the requirements of Section 2.712 of 10 CFR Part 2 - Rules of Practice, of the Nuclear Regulatory Commission's Rules and Regulations.

Dated at Washington, D.C. this

8th day of March 1979.

Leah T. Buring  
Office of the Secretary of the Commission

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

In the Matter of )

WASHINGTON PUBLIC POWER SUPPLY )  
SYSTEM )

(WPPS Nuclear Project No. 2) )  
)

Docket No.(s) 50-397 OL

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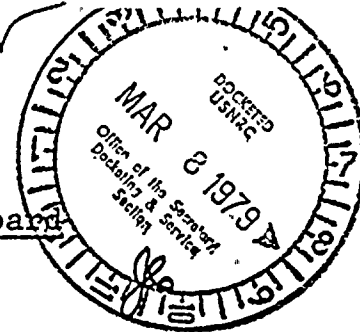
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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board



In the Matter of  
WASHINGTON PUBLIC POWER SUPPLY  
SYSTEM  
(WPPSS Nuclear Project No. 2)

Docket No. 50-397 OL

ORDER SUBSEQUENT TO THE PREHEARING  
CONFERENCE ON JANUARY 25, 1979

On July 26, 1978, the Commission published in the Federal Register notice of "Receipt of Application for Facility Operating License; Notice of Consideration of Issuance of Facility Operating License; and Notice of Opportunity for Hearing" for WPPSS Nuclear Project No. 2. 43 FR 32 338. The notice provided that any person whose interest may be affected by this proceeding may file a petition for leave to intervene on or before August 28, 1978. The facility is a boiling water nuclear reactor located on the Hanford Reservation in Benton County, Washington. The application requested authorization to operate at a core power level of 3,323 megawatts thermal with an electrical output of 1,100 megawatts electric.

THE PETITIONERS

On August 28, 1978, a timely joint petition to intervene was filed by two individual Petitioners, Susan M. Garrett and Helen Vozenilek, on their own behalf and on

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behalf of a group called the Hanford Conversion Project (HCP).<sup>1/</sup> The individuals, who live in Portland, Oregon, based their "interest" on the allegation that (1) they are indirect ratepayers, (2) they live downstream from WPPSS-2 and an accidental release of radioactivity could be transported to them via wind currents, river flow, and the food chain with harmful effects, (3) the "job return" on a nuclear plant is less than in other alternate energy investments, (4) Price-Anderson, and (5) they enjoy recreational benefits of the Columbia River which will be denied if an accident contaminates the river. The petition listed twelve members of HCP giving their home addresses. The petition also stated many members live in the vicinity of the facility.

The NRC Staff responded on September 18, 1978, by pointing out that the two individuals live more than 150 air miles and 200 river miles from the site. The Staff concluded that the individuals failed to particularize a possible injury to themselves that realistically might

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<sup>1/</sup> The State of Washington by letter of August 18, 1978, stated if a "hearing is held" it would like the opportunity to make a limited appearance under 10 CFR 2.715(a).

result from plant operation citing Duquesne Light Company (Beaver Valley Unit 1), ALAB-109, 6 AEC 243, 244 (1973); Tennessee Valley Authority (Watts Bar Units 1 and 2), ALAB-413, 5 NRC 1418 (1977). The Staff also stated that the location of the members of HCP closest to the facility was more than fifty miles from WPPSS-2.

On September 22, 1978, the Applicant opposed the petition of the individuals on the bases that (1) they live approximately 180 air miles and 220 river miles downstream from the site and that their location is too remote to be affected by either normal operations or a credible accident, and (2) the economic interest as a ratepayer does not confer standing as a matter of right.<sup>2/</sup> The Applicant also

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<sup>2/</sup> The economic interest of a ratepayer is not sufficient to allow standing to intervene as a matter of right since concern about rates is not within the scope of interests sought to be protected by the Atomic Energy Act. Kansas Gas & Electric Co., et al. (Wolf Creek Generating Station, Unit 1), ALAB-424, 6 NRC 122, 128 (1977); Tennessee Valley Authority (Watts Bar Nuclear Plant, Units 1 & 2), ALAB-413, 5 NRC 1418, 1420-21 (1977); Detroit Edison Co. (Greenwood Energy Center, Units 2 & 3), ALAB-376, 5 NRC 426 (1977); Public Service Co. of Oklahoma, et al. (Black Fox Nuclear Power Station, Units 1 & 2), LBP-77-17, 5 NRC 657 (1977). Nor is such interest within the zone of interests protected by the National Environmental Policy Act. Portland General Electric Company (Pebble Springs Nuclear Plant, Units 1 & 2), ALAB-333, 3 NRC 804 (1976).

stated that the location of the membership of HCP was beyond the geographic zone which might be affected by the operation of WPPSS-2 since the closest member is approximately 65 air miles from the facility.<sup>3/</sup>

On October 11, 1978, the Board issued an Order which recited the allegations of the Petitioners and the responses of the Applicant and Staff. The Order stated that there would be a prehearing conference on November 15. The Order also stated "if Petitioners wish to file an amended petition to correct the deficiencies which have been correctly identified by the Applicant and the Staff, it must be filed by November 1, 1978, with service on Applicant and Staff as well as the Board and the Office of the Secretary." (Due

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3/ Louisiana Power & Light Co. (Waterford Steam Electric Station, Unit 3), ALAB-125, 6 AEC 371, 372, n. 6 (1973). Portland General Electric Co. (Trojan Nuclear Plant), ALAB-496, 8 NRC 308, (September 12, 1978) (40 miles); River Bend, supra, 7 AEC 222 (1974) (25 miles); Virginia Electric and Power Co. (North Anna Power Station, Units 1 and 2), ALAB-146, 6 AEC 631 (1973) (16 miles); Northern States Power Co. (Prairie Island Nuclear Generating Plant, Units 1 and 2), ALAB-107, 6 AEC 188 (1973) (40 miles); Waterford, supra, 6 AEC 371 (1973) (20 miles); Pacific Gas and Electric Co. (Humboldt Bay Power Plant, Unit 3), ASLB Order (May 15, 1978) (20 miles).



to errors in service of the Board's Order, the prehearing was rescheduled for November 21 with the amended petition, if any, due November 10. For unavoidable reasons, the prehearing was rescheduled first to January 11 and finally held on January 25, 1979).

An amended petition (referred to as #2) was filed on November 10, 1978, by Ms. Garrett and Creg Darby (also of Portland). An affidavit was subsequently filed authorizing him to represent HCP in place of Helen Vozenilek.<sup>4/</sup>

Mr. Darby petitioned both as an individual and as co-chairman of HCP. There was no mention of his out-of-time filing but he did state that he has a Bachelor of Arts degree; has taken courses in math and physics; he has studied safety and economic issues of nuclear power and that he is an independent student of philosophy, with a special interest in the philosophy of science.

The petition stated that Ms. Garrett is a law graduate of Northeastern University and that she was active in the Trojan proceeding. The #2 petition stressed that Petitioners

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<sup>4/</sup> Undated Notice of Withdrawal of Appearance of Helen Vozenilek attached to Petition No. 3 but it stated Creg Darby would represent her personal interests.

consumed products from the Columbia River and products raised within 50 miles of the WPPSS-2 site. It also stated Petitioners were potential parents. Attached to the #2 petition were affidavits from several members of HCP who reside more than 50 miles from the facility. Two other affidavits were flagged for special attention. Mr. H. C. Roll lives in Oceanside, Oregon, more than 200 air miles from WPPSS-2, but owns land 10 to 15 miles from the site. He rents the land and two residences to tenants. He alleges that the rental value of his land could be adversely affected and that an accidental release from the plant could damage the land and his tenants. He states he is a member of HCP. The affidavit is dated November 8, 1978. The second affidavit specifically mentioned was from Mrs. Ruth C. Long who stated that she resides with her family about 12 miles from the plant and its operation could affect home, garden, children, and husband. She states she is a member of HCP. The affidavit is dated November 6, 1978.

The Staff responded on December 14, 1978, by reiterating that the individual Petitioners' distance from the plant is too remote and their consumption of food products is no more than a generalized grievance. The Staff concluded their interest is insufficient. The Staff stated that the "interest" of HCP rests on the membership of Ruth C. Long and would be established if she was a member on August 28, 1978, when the original petition had to be and was filed. The Staff mentions that a separate letter from Mr. Roll establishes that he was not a member at that time.<sup>5/</sup> (At the prehearing conference, the representative of HCP [Garrett] indicated that Long and Roll became members of HCP at the time they signed the affidavits. Tr. 31, 32).

On December 15, 1978, the Applicant stated that the Petitioners did not identify the location of the "recreational use" of the Columbia River so it cannot be assumed to be near

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<sup>5/</sup> Letter dated November 7, 1978, from H. C. Roll to Doreen L. Nepom applying for HCP membership. (Attached to Petition No. 2).

the site and to recognize the consumption of food products which may have been produced near the site as conferring standing would have the effect of establishing "standing" in a California proceeding for an individual on the east coast who ate California oranges.

In addition, Applicant pointed out that Mr. Darby did not comply with the requirements of 10 CFR 2.714 for the filing of late petitions and his petition should be denied on lack of interest and out-of-time.

The Applicant stated that HCP's standing rests on the "interest" of five of its members (Roll, Snow, Beadle, Faller, and Long). It rejected Snow, Faller, and Beadle since they live more than 50 miles from the plant. It rejected Mr. Roll since he was not a member of HCP on August 28, 1978, and that his allegation of possible financial loss to his rental property does not give him standing nor can he establish "interest" on behalf of his tenants. The Applicant rejected Mrs. Long on the assumption that she became a member of HCP after August 28, 1978, and failed to comply with the provisions of 10 CFR 2.714 in that no justification for non-timely filing was made.

On January 10, 1979, Petitioners filed another petition (#3) but it did not refer to "interest" or good cause for late filing of Mr. Darby except to mention Petitioners did not believe the NRC Staff would represent their interests and there were no other Petitioners. The #3 petition superseded #2 in part but not totally.

The Applicant, NRC Staff, Petitioners Garrett and Darby, and the State of Washington were present at the prehearing conference on January 25, 1979.

At the prehearing conference, Petitioners repeated their claim of individual interest based on living downstream on the Columbia River (Tr. 9). Both Applicant and Staff opposed the petition and stressed the fact that Petitioners must have a "real stake" in the proceeding to be granted intervention in an operating license proceeding and in this matter Petitioners' distance from the site is too remote for their interests to be affected. (Tr. 11, 12, and 15). The State of Washington<sup>6/</sup> recited the history of its proceedings relative to WPPSS-2 and stated its position that there was a need for the power from the facility. (Tr. 17-22).

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<sup>6/</sup> The State also, by letter of September 27, 1978, urged the Board to deny the petitions.

Regarding HCP, the Petitioners stated they read the Board Order of October 11, 1978, as permitting total amendment of the petition and that therefore the affidavits of Mr. Roll and Mrs. Long were timely (Tr. 8). Petitioners argued that the Board should not be bound by the distance rule of 50 miles since there are several possible sources of radiation release at the Hanford Nuclear Reservation. Both Applicant and Staff protested that Mr. Roll and Mrs. Long were not members of HCP when the original petition had to be and was filed and they have not made the showing for late filing required by 2.714 in addition to Mr. Roll's lack of interest. Applicant and Staff argued that the cut-off filing date for the petition was to ascertain "interest" and that the permission granted by 2.714 to file supplements was limited to the contentions. (Tr. 32-40).

Petitioners argued that while they did not concede there was a late filing, they addressed the criteria for late filing in 2.714.(Tr. 42-47). The Applicant challenged the Petitioners' position on each of the five factors (Tr. 50-53) and the Staff responded adversely to Petitioners' allegations point-by-point stating that the Staff's position on these points would also apply to discretionary intervention. (Tr. 53-56).

If Mrs. Long or any other affiant from HCP was in attendance at the prehearing conference, their presence was not made known to the parties or the Board.

INTERVENTION AS A MATTER OF RIGHT

Applicant and Staff both argued that the purpose of the original filings of petitions with cut-off date of August 28, 1978, was to identify any persons whose interest may be affected by the proceeding. They both contend that the purpose of subsequent amendments to original filings as provided for under §2.714(a)(3) and (b) is the setting forth of contentions and not for the purpose of adding new members to satisfy the "interest" requirement. Applicant and Staff contend that, absent a non-timely filing demonstration<sup>7/</sup> the showing of "interest" must be made on the basis of the membership as described in the August 28, 1978, original filing (Petition #1). Applicant and Staff strongly contend that on the basis of the August 28, 1978, filing (Petition #1) intervention as a matter of right must be denied because the necessary "interest" was not demonstrated.

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7/ 10 CFR §2.714(a)(1)



OFFICE OF THE  
SECRETARY

50-397A  
UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D.C. 20555

September 27, 1979

Director  
Office of the Federal Register  
National Archives and Records Service  
Washington, D. C. 20403

Dear Sir:

Enclosed for publication in the Federal Register are an original  
and two certified copies of a document entitled:

WASHINGTON PUBLIC POWER SUPPLY SYSTEM

Docket No. 50-397A

NOTICE OF FINDING OF NO SIGNIFICANT ANTITRUST CHANGES AND TIME FOR  
FILING OF REQUESTS FOR REEVALUATION

Please publish on Wednesday, October 3, 1979.

This material is to be charged to requisition number E-146.

Sincerely,

Samuel J. Chilk  
Secretary of the Commission

Enclosures:  
Original and 2 certified copies

bcc: Records Facility Branch  
Office of Public Affairs  
Executive Legal Director  
Office of Congressional Affairs  
Office of the General Counsel  
SECY - C&R Branch



NUCLEAR REGULATORY COMMISSIONDOCKET NO. 50-397AWASHINGTON PUBLIC POWER SUPPLY SYSTEMNOTICE OF FINDING OF NO SIGNIFICANT ANTITRUST CHANGESAND TIME FOR FILING OF REQUESTS FOR REEVALUATION

The Director of Nuclear Reactor Regulation has made an initial finding in accordance with Section 105c(2) of the Atomic Energy Act of 1954, as amended, that no significant (antitrust) changes in the licensee's activities or proposed activities have occurred subsequent to the previous review of the Washington Public Power Supply System by the Attorney General and the Commission. The finding is as follows:

"Section 105c(2) of the Atomic Energy Act of 1954, as amended, provides for an antitrust review of an application for an operating license if the Commission determines that significant changes in the licensee's activities or proposed activities have occurred after the previous review conducted in connection with the application for a construction permit. After examining the events that have transpired since the construction permit antitrust review, we conclude that no significant changes have occurred that would now warrant an operating license antitrust review. The Office of the Executive Legal Director concurs with this conclusion.

"On August 10, 1971, the Washington Public Power Supply System (WPPSS), filed an application for a construction permit and facility license to construct a 1100 MWe boiling water reactor nuclear unit on the U.S. Department of Energy's Hanford Reservation on the Columbia River near the City of Richland in southeastern Washington. Notice of receipt of the application was published in the Federal Register on September 22, 1971.

"On January 24, 1972, the Attorney General advised the NRC's predecessor, the Atomic Energy Commission, that 'It does not appear that the issuance of the proposed license for Hanford No. 2 will create or maintain a situation inconsistent with the antitrust laws and we see no need for an antitrust hearing.' In support of this conclusion, the Attorney General noted that:

'There has been and continues to be substantial cooperation and coordination in bulk power supply among the various utilities, large and small, in the Pacific Northwest. Hanford No. 2 is one of several generating units resulting from a program in which all utilities in the same area have been invited to participate. Pursuant to this program both public and private utilities have planned and coordinated the addition of new generating capacity in the area.

'The vast majority of small, publicly-owned utilities in the Pacific Northwest will participate in Hanford No. 2 and thereby obtain access to low cost power.'

"The Attorney General's advice letter was published in the Federal Register on February 2, 1972. No petitions for leave to intervene or requests for hearing on antitrust aspects of the application were subsequently received.

"The Attorney General has also reviewed the antitrust information submitted by WPPSS as part of its applications to construct and operate four other nuclear plants -- namely, WPS-1, WPS-3, WPS-4, and WPS-5. Separate advice letters for each plant were tendered on April 19, 1974, January 29, 1975, February 13, 1975, and July 12, 1976, respectively. Ownership in each of the plants has varied somewhat, but for each application the Attorney General found a high degree of coordination among the various utilities in the region. The Attorney General noted only one problem in any of these applications, which concerned allegations that the City of Tacoma, Washington refused to wheel power from Bonneville to the Pierce County Cooperative Power Association (PCCPA). This problem has since been resolved by Tacoma's agreement to wheel such power to PCCPA, which it has been doing since July 1, 1974. In any event, this problem was and is not directly relevant to WPPSS's Hanford 2 application since Tacoma is not a participant in Hanford 2.



"On March 19, 1973, the Atomic Energy Commission issued Construction Permit No. CPPR-93 to WPPSS authorizing construction of Hanford 2. Subsequently, WPPSS submitted antitrust information on July 14, 1977 in accordance with NRC Regulatory Guide 9.3 relating to NRC's operating license antitrust review.<sup>1/</sup> WPPSS tendered its application for an operating license for Hanford 2 on March 24, 1978. Notice of the NRC's acceptance of the OL application was published in the Federal Register on July 11, 1978.

"Based on information submitted by WPPSS in response to information requested in Regulatory Guide 9.3, there have been no major changes in WPPSS's activities occurring since the construction permit was issued.

"In response to question 1.a. of R.G. 9.3, WPPSS has submitted the 1977 'West Group Forecast of Power Loads and Resources' published by the Pacific Northwest Utilities Conference Committee on February 15, 1977. To supplement this forecast, WPPSS also submitted testimony of Robert B. Gallup which had been previously submitted in the construction permit proceeding for WNP-3 and WNP-5. This testimony was updated by three affidavits, of which the most relevant to the operating license antitrust review is that dated March 18, 1977. In that affidavit, Mr. Gallup indicates that the 1977 load forecasts show a net decrease from the 1976 forecasts for loads in 1984-85 of 2.8% and 3.0%, respectively. This decrease in projected demand is more than compensated for by delays in construction of new generating capacity. The combined effect of these forecasts is to increase the projected deficit of resources required to meet loads in the earlier years of the planning horizon (i.e., 1983-5). Because this net deficit excludes reserves and assumes adverse stream flow conditions, the reserve situation does not appear critical. In any event, staff does not foresee any adverse antitrust implications that would result from the slower load growth and corresponding delay in generator additions.

<sup>1/</sup> WPPSS itself has submitted answers to all questions posed in Regulatory Guide 9.3. However, at the request of the NRC staff, answers to questions 1.c(2), 1.c(3), 1.e., 1.f., 1.g. and 1.h were submitted only for those participants in Hanford 2 that have facilities to transmit bulk power to wholesale customers. There are three such participants: Consumers Power, Inc. (a cooperative); Public Utility District #1 of Grays Harbor County; and Public Utility District #1 of Okanogan County. WPPSS refers to these three entities as "transmission participants."

"With regard to question 1.b, of R.G. 9.3 there have been minor changes in the membership of the power and coordinating groups in which WPPSS participates. However, because membership in such organizations is open and voluntary to the extent that all utilities desiring to participate may do so, any such changes are not viewed as presenting potential antitrust problems. WPPSS has indicated that Public Utility District #1 of Okanogan County became a member of WPPSS in 1976, which raised the membership of WPPSS to 22. However, PUD #1 of Okanogan County was already a participant in Hanford 2 by virtue of its being a statutory preference customer of the Bonneville Power Administration. Its participation in Hanford 2 has thus been in no way affected by its joining WPPSS.

"There have been no changes of the type queried by staff in question 1.c through 1.f of R.G. 9.3 pertaining to changes in transmission, ownership in Hanford 2, rate schedules, customers, service area, or mergers or acquisitions other than noted below.

"With respect to question 1.g., WPPSS and the 'transmission participants' in Hanford 2 are also participating in varying amounts in WNP #1, WNP #3 WNP #4, and WNP #5. Consumers Power, Inc. is also purchasing 10% of the Boardman coal plant being constructed by Portland General Electric Company. In addition to participation in the nuclear units, PUD #1 of Okanogan County is also participating in the Wells Dam hydroelectric plant with such participation increasing from 0.6% now to 8% by 1988.

"With respect to question 1.h. of R.G. 9.3, neither WPPSS nor the 'transmission participants' in Hanford 2 have received 'requests or indications of interest by other electric wholesale or retail distributors... for any type of electric service or cooperative venture or study' relevant to NRC's antitrust review.

"Question 2 of R.G. 9.3 does not pertain to WPPSS and thus no response was given.

"The NRC staff also asked Applicant why certain statutory preference customers of the Bonneville Power Administration did not participate in Hanford 2. WPPSS responded that all entities who were such customers at the time subscriptions to Hanford 2 were being offered, were offered part ownership in Hanford 2. For various reasons, 16 eligible utilities chose not to participate initially and a seventeenth (the City of Tacoma) chose subsequently to withdraw from participation. Following the initial subscription



to ownership in Hanford 2, four more utilities have become statutory preference customers of Bonneville, thus boosting the total of non-participants to 21. WPPSS has indicated to the NRC staff that a majority of these 21 non-participants have been offered 'assignment agreements'<sup>2/</sup> for power from those current Hanford 2 participants whose power requirements have decreased. Because offering secondary participation in Hanford 2 to some utilities and not others could be an indication of possible inconsistencies with the antitrust laws, NRC staff asked counsel for WPPSS how such assignment agreements were made and why some current non-participants but not others were offered subsequent participation. WPPSS, through its counsel, replied that such subsequent offers were made informally by individual members of WPPSS who are participants in Hanford 2 and who had what they judged to be excess capacity to neighboring entities. Depending on the energy needs of certain Hanford 2 participants and their geographical proximity to Hanford 2 non-participants, some non-participants would have been offered subsequent participation while others would not have been. There appear to be no adverse antitrust implications in this situation.

"The staff has also examined the docket files of the Federal Energy Regulatory Commission to determine whether any complaints relative to anti-competitive activity had been lodged against WPPSS or the participating statutory preference customers of Bonneville since the construction permit antitrust review. The staff found no such complaints relevant to its antitrust review.


"In sum, the staff concludes that changes in the applicants' activities occurring since the construction permit antitrust review do not represent 'significant changes' that would now warrant another antitrust review at the operating license stage."

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<sup>2/</sup> WPPSS has indicated that these "assignment agreements" are, in effect, direct transfers of ownership in Hanford 2 from current participants. Hanford 2 has a unique ownership arrangement whereby each participant assigns to the Bonneville Power Administration its share of the electrical output from Hanford 2. In consideration of these assignments, Bonneville will credit the amounts paid by the Hanford 2 participants for power and service purchased under contracts with Bonneville.

Any person whose interest may be affected pursuant to this initial determination may file with full particulars a request for reevaluation with the Director of Nuclear Reactor Regulation, U. S. Nuclear Regulatory Commission, Washington DC 20555 by ~~(60 days)~~. DEC 3 1979

FOR THE NUCLEAR REGULATORY COMMISSION

  
Jerome Saltzman, Chief  
Antitrust and Indemnity Group  
Office of Nuclear Reactor Regulation