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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING APPEAL BOARD

|                                |   |                    |
|--------------------------------|---|--------------------|
| In the Matter of               | ) |                    |
| PUGET SOUND POWER & LIGHT      | ) | Docket Nos. 50-522 |
| COMPANY, et al.                | ) | 50-523             |
|                                | ) |                    |
| (Skagit Nuclear Power Project, | ) | June 29, 1978      |
| <u>Units 1 and 2)</u>          | ) |                    |

APPLICANTS' BRIEF IN OPPOSITION TO  
INDIAN TRIBES' APPEAL OF  
LICENSING BOARD ORDER DENYING INTERVENTION

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## INTRODUCTION

Three Indian Tribes (the Upper Skagit Indian Tribe, the Sauk-Suiattle Indian Tribe, and the Swinomish Tribal Community) have appealed from an order of the Licensing Board denying their untimely petition to intervene.<sup>1</sup>

The Tribes' petition came before the Licensing Board (for the second time) upon remand from the Appeal Board. ALAB-523. As directed by the Appeal Board, the Licensing Board considered and balanced the factors set forth in 10 CFR 2.714. Based on this -- and exercising the discretion vested in it by the Commission -- the Licensing Board decided not to entertain the untimely petition. The Tribes contend that the Licensing Board abused its discretion and was arbitrary and capricious. In Applicants' view, the Licensing Board's order is supported by the facts and represents a sound exercise of discretion.

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<sup>1</sup>The principal pleadings filed herein relating to the petition to intervene are listed in Appendix A hereto and will be cited using the abbreviations presented in Appendix A.

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## BACKGROUND

The relevant background of this proceeding and the county and state proceedings relating to the Skagit Project was presented in Applicants' brief to the Appeal Board in the previous appeal relating to the Tribes' Petition to Intervene. Applicants' Brief on Applicants' Appeal, pp. 2-8; See also, Noel Affidavit. Because this background is important in judging whether the Tribes have shown good cause for their failure to seek timely intervention, the most significant facts are summarized here.

Puget Sound Power & Light Company (Puget) publicly announced the Skagit Project on January 17, 1973. Noel Affidavit, p. 2 and Attachment 1. Over the next 14 months, public attention in Skagit County was focused on the Project. Many public meetings were held and a vigorously contested zoning proceeding was conducted. More than 7,000 county residents signed petitions concerning the Project (6,000 in favor and 1,000 against). The Project and the zoning hearings were the subject of frequent and detailed coverage by the news media of the county. Introductory testimony of Warren J. Ferguson, July 1, 1975, pp. 2-5, follows Tr. 609; Noel Affidavit.

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In the county zoning proceeding, the Swinomish Tribal Community, one of the petitioning Tribes, supported the Project. Counsel for the Tribes state that they have been unable to locate any evidence of this support. Tribes' Brief on Appeal, pp. 12-13. We have attached a copy of a letter dated February 11, 1974 to the Skagit County Commissioners from the Swinomish Tribal Community, signed by Tandy Wilbur, Sr., then manager of the Community. This letter supporting the Project was quoted in part in a Skagit Valley Herald article of February 27, 1974, a copy of which we submitted as Attachment 12 to the Noel Affidavit. The county zoning proceeding was concluded in March 1974 with the signing of a comprehensive rezone agreement in which the county imposed conditions on the use of the proposed site, including several to protect the Skagit River fishery. Environmental Report, Exh. 4, App. K, §§ 6.1, 6.2, 6.3 and 6.8.

The extensive interest of the public in the Skagit Project continued during the state proceedings, which began in March 1974. The issues aired in these proceedings included the potential impact of the Project on the Skagit River fishery. Exhs. 57, 84. These proceedings, which were also hotly contested, were widely reported by the news media. Noel Affidavit, Attachments 35-43. The state proceedings resulted in the issuance, in January 1977, of the NPDES permit and site certification for the Project. Exh. 83.

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In the instant proceeding, the Commission published its notice of hearing on December 20, 1974, and fixed January 20, 1975 as the deadline for filing petitions to intervene. 39 Fed. Reg. 44065. SCANP filed a timely petition and was admitted. Board Order of February 10, 1975. No other petitions to intervene were filed.

On February 19, 1975, the final date for limited appearance requests, one of the petitioning Tribes, the Swinomish Tribal Community, advised the Commission by mailgram as follows:

Since the proposed nuclear power plant could have an important effect on the time [sic] economic resources of the Swinomish Tribal Communities, namely fishing, the Tribal Community does wish to testify at the hearing in its own behalf.

Applicants' Answer, pp. 11-12, and Appendix A thereto. Notwithstanding this timely expression of concern, the Tribes waited more than three years to file their untimely petition to intervene on June 13, 1978.

Initially, the Licensing Board granted intervention to the Tribes by its decision and order dated November 24, 1978. Applicants appealed that decision. By its memorandum and order of January 12, 1979 and its decision of January 29, 1979, the Appeal Board vacated the Licensing Board's grant of intervention and remanded the question for further consideration for

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the reason that the Licensing Board had "paid too little attention to the controlling criteria set forth in the Commission's regulations".<sup>2</sup> Memorandum and Order, pp. 1-2. The Appeal Board directed the Licensing Board, on remand, to:

reconsider the intervention petition, this time determining, first, whether the Indian tribes had a good excuse for their late filing and, second, how the other factors relevant to late intervention petitions weigh in the balance. In this regard -- as we have stressed before and as remains true under the revised regulations, -- the better the excuse for the belatedness, the less that needs be shown on the other four factors to justify intervention. We will leave this analysis to the Licensing Board in the first instance, intimating no opinion on it ourselves because its two technical members enjoy a working knowledge of the intricacies of this proceeding.  
[footnotes omitted]

Memorandum and Order, pp. 2-3.

On remand, the Licensing Board denied the Tribes' Petition to Intervene. In reaching that decision, the Licensing Board weighed the factors applicable both to untimely petitions to intervene (10 CFR 2.714(a)(1)) and to all petitions to intervene (10 CFR 2.714(d)). Order Denying Intervention, pp. 2-4, 18.

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<sup>2</sup>The Tribes petitioned the Commission to review the Appeal Board's decision. On March 8, 1979, the Commission deferred consideration of the petition "pending completion of action of the remanded issue by the Licensing Board and any subsequent review of it by the Appeal Board". Commission Order, p. 1.

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STANDARD OF REVIEW

In Nuclear Fuel Services, Inc. (West Valley Reprocessing Plant), CLI-75-4, 1 NRC 273, 275 (1975), the Commission explained that:

. . . [T]he purpose of Section 2.714(a) is to establish appropriate tests for disposition of untimely petitions in which the reasons for the tardiness as well as the four listed factors should be considered, thus giving the Licensing Boards broad discretion in the circumstances of individual cases.

As a result, the Appeal Board has repeatedly indicated that its review of a ruling on an untimely petition to intervene is limited to determining whether the Licensing Board abused the broad discretion conferred on it by Section 2.714(a). Florida Power & Light Company (St. Lucie Nuclear Power Plant, Unit No. 2), ALAB-420, 6 NRC 8, 13 (1977); Virginia Electric and Power Company (North Anna Power Station, Units 1 and 2), ALAB-342, 4 NRC 98, 107 (1976); Public Service Company of Indiana, Inc. (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB-339, 4 NRC 20, 24 (1976).

The Tribes previously summarized the rule governing review of the denial of an untimely intervention: "the Licensing Board has broad discretion and will only be reversed upon a showing that discretion has been abused." Tribes' Reply Brief

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on Applicants' Appeal, p. 6. Applicants agree that this states the applicable standard of review. This standard places a considerable burden on the Tribes, which, in Applicants' view, the Tribes have not satisfied.

#### ARGUMENT

The Licensing Board reached its decision after considering the five factors set forth in Section 2.714(a) and the three factors in Section 2.714(d). As it correctly explained, the latter must be considered with respect to all petitions to intervene. The tribes have not taken exception to the Licensing Board's assessment of the Section 2.714(d) criteria. Their appeal instead concerns the five factors of Section 2.714(a) (1) which are:

1. Good cause, if any, for failure to file on time.
2. The availability of other means whereby the petitioner's interests will be protected.
3. The extent to which the petitioner's participation may reasonably be expected to assist in developing a sound record.
4. The extent to which the petitioner's interest will be represented by existing parties.
5. The extent to which the petitioner's participation will broaden the issues or delay the proceeding.

The Licensing Board's evaluation of each of these factors is separately addressed below.

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Factor One: The Licensing Board properly determined that the Tribes failed to show good cause for their extremely tardy filing.

Although the Tribes offered many excuses for their belated filing, the Licensing Board found none to be persuasive. These excuses, which were separated into four categories by both the Licensing Board and the Tribes, are addressed below.

a. Nonrecognition of fishing rights and status. The Licensing Board correctly reasoned that the Tribes needed neither federal adjudication of their treaty rights nor "federal recognition" to seek intervention. Obviously, members of the Tribes have long resided in the Skagit Valley and fished the Skagit River system. Tribes' Initial Brief, pp. 2, 3; United States v. Washington, 384 F. Supp. 312 at 376, 379 (W.D. Wa. 1974); affirmed, 520 F.2d 676 (9th Cir. 1975), cert. denied, 423 U.S. 1086 (1976), enforced, 573 F.2d 1123 (1978), cert. granted, \_\_\_\_\_ U.S. \_\_\_\_\_ (October 16, 1978). The Tribes' interest in the Skagit River fishery hardly sprang into life upon issuance of the federal court's decision. Hence, even in the absence of a treaty, or any adjudication of treaty rights, the Tribes possessed more than sufficient interest through their members to support intervention.

The Tribes have long been entities fully capable of acting on their own behalf. The Swinomish Tribal Community received

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its charter from the federal government in 1936. Applicants' Answer, p. 10, n.5. As previously noted, they publicly supported the Project in February 1974, during the county rezoning proceeding. A year later, they requested a limited appearance in this proceeding. As for the Upper Skagit and Sauk-Suiattle Tribes, petitioners state that they were only "recently recognized" by the Department of Interior, implying that prior to such recognition they were totally unrecognized by the federal government and incapable of asserting their rights. Tribes' Brief on Appeal, p. 2. As we have pointed out, this is not true. Applicants' Answer, pp. 9-10. For example, as early as 1960 the Indian Claims Commission determined that the Upper Skagit Tribe (including the Sauk-Suiattle Indians) is the successor in interest to the rights of an identifiable group of American Indians whose antecedents were parties to the Treaty of Point Elliott.<sup>3</sup> In 1968, the Upper Skagits (including the Sauk-Suiattle) obtained a judgment for \$385,471 against the United States, payment of which was authorized by Congress in 1971.<sup>4</sup> More specifically significant here, these two tribes have been litigating their interests in the Skagit River fishery since the early 1970's, with the Sauk-Suiattle Tribe

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<sup>3</sup>The Upper Skagit Tribe of Indians v. United States, Docket No. 92, 8 Ind. Cls. Comm. 475, 476-77, 491 (1960); See also, 384 F. Supp. at 379.

<sup>4</sup>Final Judgment, Docket No. 92, 19 Ind. Cls. Comm. 496 (1968); P.L. 92-30, 85 Stat. 83 (June 23, 1971); See also, 384 F. Supp. at 400 and 20 Ind. Cls. Comm. 381, 385 (1969).

having intervened in United States v. Washington in December 1970 and the Upper Skagit Tribe in April 1971.

Despite their clear capability to have timely petitioned for intervention, had they so chosen, the Tribes argue that they had only "paper rights" prior to the decision in United States v. Washington. Tribes' Appeal Brief, p. 2. That decision was issued in February 1974, 11 months before the period for filing timely petitions to intervene in this proceeding. Faced with that fact, the Tribes retreat to the tenuous position that intervention would have been unreasonable or futile prior to affirmance of the District Court's decision. Id., pp. 2-3. However, that decision was affirmed in June-July 1975. 520 F.2d 676 (9th Cir.) The Tribes do not explain why they waited three more years to seek intervention.

The Tribes erroneously describe the affirmation of treaty fishing rights as operating "to change their status with respect to the federal government." Tribes' Appeal Brief, p. 3. However, the United States v. Washington litigation sheds no light on the relationship between the Tribes and the federal government. In fact, treaty Indians and the United States jointly brought that case against the State of Washington. The Tribes' representation that the United States v. Washington decisions defined the federal trust responsibility to protect the treaty resource is inaccurate and misleading.

b. Preoccupation with other matters. Ample justification exists for the Licensing Board's finding that preoccupation with the United States v. Washington litigation was not a valid excuse. The tribes admittedly have been aware of the plans for the Skagit Project since it was proposed. Tribes' Reply Brief, p. 15. From the outset, Skagit Valley newspapers have extensively publicized the proposal and developments in administrative proceedings involving the Project. Noel Affidavit. The Tribes' awareness is illustrated by the February 19, 1975 mailgram to the NRC in which the Swinomish Tribal Community expressed the concern that the Project "could have an important effect on the time [sic] economic resources of the Swinomish Tribal Communities, namely fishing". Applicants' Answer, Appendix A.

Despite their awareness of the proposal and their concern about its possible effects on the fishery, the Tribes did not seek to intervene until more than three years later. Now they claim that they had to direct their limited resources to the "needs of the moment", which was the United States v. Washington litigation. Tribes' Initial Brief, p. 6. That litigation began in September 1970, long before the Skagit Project was announced. Today, it remains far from completion with trial on many of the plaintiff Indians' claims yet to be held. 384 F. Supp. at 327, 328. The Tribes' limited resources have

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been and will continue to be subject to competing demands. That is obvious. However, their decision to concentrate on other matters cannot constitute good cause for an untimely petition to intervene. To hold otherwise would allow timing of intervention to be dictated by the petitioner. See Duke Power Company (Cherokee Nuclear Station, Units 1, 2 and 3), ALAB-440, 6 NRC 642, 644 (1977).

c. Unawareness of impact. The Tribes' next excuse for their untimeliness is that they had difficulty in getting sufficient information regarding the Project and that certain details have only recently become available. Tribes' Initial Brief, pp. 7-8. The Licensing Board resolved the first claim by pointing out the public availability of Applicants' plans, the extensive publicity of the Project and the particular awareness by the Swinomish Tribal Community of the Project. Order Denying Intervention, p. 6. The Tribes counter that the news coverage was favorable. However, the newspapers also aired many of the challenges to the proposal that were being raised in the administrative hearings. See, e.g., Noel Affidavit, Attachments 3, 8, 11, 16, 18, 28 and 34-43.

The Tribes' position prior to the January 20, 1975 deadline was no different than that of any other potential intervenor. They had access to the Environmental Report and to the comparable documents in the then pending state proceedings. They

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could easily and timely have come forward to voice their concerns and frame at least one valid contention. Intervenor SCANP did so, raising questions about the value of the Skagit River fishery (Contention J-3), possible genetic and somatic injuries (Contention J-9), and social and economic cost, including induced industrial growth (Contention J-10). SCANP Contentions, follows Tr. 67. These questions, now asserted by the Tribes, could have been raised by them prior to the January 20, 1975 deadline for timely intervention. Certainly and in any event, they could have been raised long prior to the Tribes' belated petition of June 13, 1978.

The Tribes also challenge the Licensing Board's conclusion that "the ordinary development of facts and positions in this complex case -- such as new geological information and the Ranney Collector proposal -- does not afford a basis, in this Board's opinion, for extending the time to petition for leave to intervene." Tribes' Appeal Brief on p. 9. In making this challenge, the Tribes refer to a mistaken characterization of this proceeding by the previously constituted Licensing Board. Order Granting Intervention, pp. 21-22. At the pages cited, and sprinkled throughout that earlier decision, it was stated or implied that Applicants have made numerous changes in the design of the Project relating to matters of concern to the Tribes, such as the intake and release of water and the barge

delivery of the reactor pressure vessels. Id., pp. 6, 10, 11-n.5, 16, 21-22, 24-25, 27, 28. The record is to the contrary. There has been no change relating to the release of water from the Project. As to the water intake (Ranney Collector) system, although minor changes have been made, their sole purpose and effect has been to minimize the visual and noise effects of the system, as suggested by the Secretary of Agriculture in his Wild and Scenic Rivers Act determination of April 11, 1978. Tr. 10,641-57. These changes have now been approved by the Secretary of Agriculture. Bergland letter of May 2, 1979. As to the barge delivery of the pressure vessels, there has been no change, but only a more detailed elaboration. Applicants' Answer, pp. 42-43. To be sure, Applicants have filed a considerable volume of additional information concerning geology and seismology, much of it at the request of the Licensing Board or the Staff. However, this information does not relate to the concerns of the Tribes and thus, as the Licensing Board correctly concluded, it affords no excuse for their untimely petition.

d. Reliance on the Government. The Licensing Board rejected the Tribes' final excuse that their untimely petition to intervene was justified by their misplaced reliance on the federal government to protect their interest. The Licensing

Board first observed that the NRC time limits for moving to intervene apply to Indians and non-Indians alike. Order Denying Intervention, p. 8. The Tribes apparently agree with this because they agree that Section 2.714 controls. Tribes' Reply Brief on Applicants' Appeal, p. 21.

As to reliance on the federal government, the Tribes erroneously claim that the Licensing Board failed to discuss this matter. The Appeal Board previously suggested that the Licensing Board "should examine more closely than before any specific trust responsibilities owed the tribes." ALAB-523 at note 16. The Licensing Board's response was to assume a trust relationship between the Tribes and the federal government arising out of the treaty of Point Elliott and then to consider the relation of any federal trust obligation to the Petition to Intervene. Its conclusion was that while the federal government would be obligated to protect the Tribes' treaty interests, such treaty interests do not extend to untimely intervention. The Licensing Board did examine the specific trust responsibilities which might be owed the Tribes, yet found no trust obligation having any bearing on the untimeliness question.

The Licensing Board's analysis, while generous to the Tribes, is sound and reasonable. The Tribes' areas of concern are threefold: (1) fisheries, (2) genetic impacts, and (3) socio-economic impacts. The latter two arise outside of any

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trust relationship alleged by the Tribes. Hence, trust responsibility considerations offer no excuse for the untimely raising of genetic and socio-economic impacts.

The only source cited by the Tribes for a trust obligation that might be applicable here is the Treaty of Point Elliott, 12 Stat. 927. Tribes' Reply Brief, p. 28; Tribes' Response to Board's Request, p. 1. This treaty reserved to the signatory tribes a right of access to fish in certain locations in common with others. The Skagit Project has no impact on this treaty fishing right, as the Staff has previously determined. See Applicants' Brief on Appeal, pp. 23-25.

The Tribes' failure lies in being unable to establish any nexus between the Treaty of Point Elliott and their Petition to Intervene. What specific trust responsibility is the NRC, upon reading the treaty of Point Elliott, supposed to identify and execute? Was the NRC or any other federal agency obligated as a trustee for the Tribes to seek intervention for them, individually notify them of the time limits for intervention, or adopt any other special procedure? Was the NRC obligated to prepare a special environmental impact statement adopting the Tribes' present point of view? The Tribes have offered no support for such hypothetical duties. Nor is such support to be found. The Tribes' reliance argument was correctly seen by the Licensing Board as offering no excuse for the untimeliness of their petition to intervene.

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Summary of Factor One. The Tribes' excuses fall short of establishing good cause for their belated filing. Where a petitioner cannot tender any good excuse for its tardiness, its showing on the other four factors in Section 2.714(a) must be particularly strong. Duke Power Company (Ferkins Nuclear Station, Units 1, 2 and 3), ALAB-431, 6 NRC 460, 462 (1977). Here, the extent of the procrastination -- more than 3 years and 4 months -- is especially damaging to the Tribes' position, and imposes an even greater burden on them with respect to the other four factors.

Factor Two: The Licensing Board correctly determined that other means are available for protecting the Tribes' interest.

On the Tribes' concern about the potential impact of the Project on their treaty fishing right, the Licensing Board stated that "The Indians' fishing right under the Treaty of Point Elliott is a legally enforceable right in a court of law independent of the Indians' participation in this proceeding." Order Denying Intervention, p. 11. The Tribes' recognize that they may have access to a federal court. Tribes' Appeal Brief, p. 14. As Applicants have previously observed, a court action to establish and restrain interference with any treaty fishing right to which the Tribes are entitled is the most direct

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course of action available to them. If relief were justified, it could be specifically fashioned and enforced in a court action. Applicants' Response to Board Request, p. 6.

On the Tribes' concern about possible genetic impacts, the Licensing Board noted that the Tribes have available the option of seeking rulemaking by the Commission. Order Denying Intervention, p. 11. The Tribes protest this conclusion, claiming that they seek only a site and population specific evaluation without challenging any radiation protection standards or numerical guides for design objectives. Tribes' Appeal Brief, pp. 16-18.

Despite the Tribes' reassurance, what they seek amounts to a challenge to the NRC regulations. The NRC has determined the radiation exposure limits necessary for protection of the public. These limits are set forth in Part 20, Section 50.34a, and Part 50, Appendix I of the NRC regulations. What the Tribes in effect are asserting is that these limits are not sufficient to protect Indian receptors from radiological releases. Tribes' Appeal Brief, p. 17. This is an attack on NRC rules and regulations, which would be impermissible here due to 10 CFR 2.758(a). If the Tribes can, upon completion of

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their future studies, develop any hard data to support their assertions, they can request the NRC to change its regulations.<sup>5</sup> Thus, alternative means are available to the Tribes for protecting their interest.

The Licensing Board noted that the Tribes have bypassed other opportunities to assert their interest. Order Denying Intervention, pp. 9-11. These opportunities include the well publicized County zoning proceeding and the State site certification and NPDES proceedings. The Tribes try to excuse their nonparticipation before the State by pointing to the Indians' disputes with the State over shares in the fisheries and control over fisheries management. These disputes, however, were irrelevant to the State proceedings on the Skagit Project. As was observed by the Licensing Board, the NPDES proceeding in particular dealt with the potential effect of the plant on the Skagit River fishery. Id., p. 10. Hence, the Tribes and the State would have shared a common interest during the NPDES proceeding, had the Tribes participated there.

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<sup>5</sup>To the degree that the Tribes seek to challenge Applicants' calculations to demonstrate compliance with Appendix I of 10 CFR Part 50, they have presented no information showing any defect in Applicants' calculations. Hence, the Tribes' participation would not contribute to the record on compliance with Appendix I.

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The Tribes' bypassing of other opportunities to assert their interests calls into question the credibility of their excuses here. From the time when the Skagit Project was announced, more than 5 years of contested administrative proceedings blazed on without any word from the Tribes, other than one letter and one mailgram. This history places on the Tribes an exceptionally heavy burden of showing good cause for their untimely attempt to intervene. The Licensing Board's recognition of this history was most appropriate.

Factor Three: As correctly determined by the Licensing Board, the Tribes failed to demonstrate that their participation would be likely to assist in developing a sound record.

Under Section 2.714(a)(1) the Tribes have the burden of demonstrating that their participation would reasonably be expected to assist in developing a sound record. The Licensing Board was not persuaded by the Tribes' arguments. Order Denying Intervention, p. 15. The record amply supports the Licensing Board's conclusion.

The Tribes have consistently been unable to come forward with specific information that would improve the already extensive record in this proceeding. Their attorneys have offered "vigorous advocacy" and future studies. Tribes' Initial Brief,

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pp. 16-17, 21; Tribes' Appeal Brief, p. 21-22. Vigorous advocacy has not, to date, been lacking in this proceeding. See Applicants' Answer, pp. 27-28. The potential contribution of future studies cannot possibly be determined until the results of those studies are available and have been evaluated.

The Tribes have also tendered a designation of witnesses, yet have not specified the information relevant to the Skagit Project that such witnesses would present. Tribes' Response to Board Request, p. 3. In their appeal brief, the Tribes repeat this deficiency by describing only the general credentials of their witnesses. Tribes' Appeal Brief, pp. 20-21. However, the potential contribution by a witness cannot exceed the evidence to be presented. The existence of relevant and significant evidence has yet to be shown by the Tribes.

Finally, the Tribes complain that the Licensing Board had no basis for finding that the Tribes had "limited resources and lack of expertise." Tribes' Appeal Brief, pp. 21-22. The Tribes have overlooked their prior representation to the Licensing Board that they had "limited resources." Tribes' Initial Brief, p. 6; Tribes' Reply Brief, p. 35. The Tribes' expertise is largely unestablished due to the absence of a description of the particular evidence to be presented by the witnesses.

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Factor Four: The Licensing Board properly considered the extent to which the Tribes' interests would be represented by existing parties.

The record abundantly supports the Licensing Board's finding that existing Intervenor SCANP and the Tribes share a community of interest on the potential aquatic and socio-economic impacts of the Project. As noted by the Licensing Board, SCANP has contentions on these subjects and has pursued these questions here. Order Denying Intervention, p. 15. SCANP's representation of these common interests is demonstrated by its introduction of evidence and cross-examination on potential aquatic and socio-economic impacts. See Applicants' Answer, pp. 30-32. With respect to any previously unavailable information in the Tribes' possession (none has been identified as yet), the Tribes could furnish the information to SCANP and be represented in that manner. See, Virginia Electric and Power Company (North Anna Station, Units 1 and 2), ALAB-289, 2 NRC 395, 399 (1975).

While the Tribes' interests have and will be represented, to a very large extent, by SCANP, the Licensing Board further recognized that such representation would not extend to the Tribes' concern about genetic impacts. However, the Tribes have yet to present any information on the genetic risk issue. Also, as previously indicated, the Tribes are impermissably challenging the NRC's radiation exposure limits. Therefore,

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the Tribes' interests would go unrepresented to only a minor degree if they were not a party to this proceeding. The Licensing Board justifiably held against the Tribes on the fourth factor under Section 2.714(a), based on the material available to it.

Factor Five: The Licensing Board justifiably found that the Tribes' participation would broaden the issues and delay the proceeding.

The Licensing Board found that the Tribes' participation would place a "substantial extra burden" on the proceeding. Order Denying Intervention, p. 18. Apparently overlooking this finding on the degree of delay, the Tribes mistakenly argue that the Licensing Board failed to speak of the "extent to which intervention would delay the proceeding." Tribes' Appeal Brief p. 24. Obviously, the delay would be substantial.

The Licensing Board's finding is well supported by the record. First, the Tribes admit that their participation would broaden the issues. Tribes' Initial Brief, p. 17. Second, the Tribes indicate that they are not ready to begin preparation of their evidence. Tribes' Appeal Brief, p. 24. Third, the Tribes repeatedly mention studies that are being planned or pursued. See, e.g., Tribes' Initial Brief, pp. 16, 21; Tribes' Appeal Brief, p. 21. Presumably, they would ask the Licensing Board to delay hearings or schedule later hearings to consider

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the results of these unfinished studies. Fourth, the Tribes have designated 15 witnesses whom they would like to call to testify on at least 9 topics. Tribes' Witnesses. If only a fraction of these witnesses were allowed to appear, the delay of the proceeding would be substantial. Consequently, the fifth factor weighs heavily against the Tribes.

#### CONCLUSION

On each of the five factors under Section 2.714(a) (1) the Licensing Board decided against the Tribes' position. The Licensing Board had substantial basis in the record for each of those determinations. When summed, these determinations weigh strongly against granting the Petition to Intervene. Furthermore, the Tribes have not established that the Licensing Board abused the broad discretion granted to it for the application

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of Section 2.714. Therefore, the Licensing Board's Order Denying Intervention should be affirmed.

DATED: June 29, 1979.

Respectfully submitted,

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SKAGIT NUCLEAR POWER PROJECT  
Docket Nos. 50-522 and 50-523

Principal Pleadings Re Indian Petition to Intervene

| <u>No.</u> | <u>Date</u> | <u>Abbreviated Citation</u> | <u>Complete Title or Description</u>   |
|------------|-------------|-----------------------------|--|
| 1          | 6-13-78     | Petition to Intervene       | Petition to Intervene  |
| 2          | 6-13-78     | Tribes' Initial Brief       | Brief in Support of Petition to Intervene of Upper Skagit Tribe, Sauk-Suiattle Tribe and Swinomish Tribal Community  |
| 3          | 7-21-78     | SCANP's Answer              | Intervenor SCANP's Response to Upper Skagit Indian Tribe, The Sauk-Suiattle Indian Tribe and The Swinomish Tribal Communities' Petition to Intervene             |
| 4          | 7-28-78     | FOB/CFSP's Answer           | FOB/CFSP Brief in Support of Petition to Intervene of Upper Skagit Tribe, Sauk-Suiattle Tribe and Swinomish Tribal Community                                     |
| 5          | 7-28-78     | Applicants' Answer          | Applicants' Answer to Indian Petition to Intervene   |
| 6          | 7-26-78     | Noel Affidavit              | Affidavit of Donald L. Noel In Support of Applicants' Answer to Indian Petition to Intervene   |
| 7          | 8-4-78      | Staff's Answer              | NRC Staff's Answer to Petition to Intervene Filed on Behalf of the Upper Skagit Indian Tribe, the Souk-Suiattle Indian Tribe, and the Swinomish Tribal Community |

| <u>No.</u> | <u>Date</u> | <u>Abbreviated Citation</u>               | <u>Complete Title or Description</u>  |
|------------|-------------|---|---|
| 8          | 9-5-78      | Tribes' Reply Brief                       | Petitioner Tribes' Reply Brief to Answers of NRC Staff and Applicant  |
| 9          | 9-26-78     | Board's Request                           | Licensing Board's Letter Requesting Further Submissions from Parties re Petition to Intervene   |
| 10         | 10-27-78    | Tribes' Response to Board Request         | Petitioner Tribes' Response to the Board's Request of September 26, 1978  |
| 11         | 10-27-78    | Tribes' Witnesses                         | Petitioner Tribes' Preliminary Designation of Witnesses   |
| 12         | 11-17-78    | Applicants' Response to Board Request     | Applicants' Response to the Board's Request of September 26, 1978   |
| 13         | 11-21-78    | Staff's Response to Board Request         | NRC Staff Response to Board Request and Petitioner Tribes' Responses  |
| 14         | 11-22-78    | SCANP's Response to Board Request         | Intervenor SCANP's Response to the Board's Request of September 26, 1978  |
| 15         | 11-24-78    | Order Granting Intervention               | Decision and Order Granting Intervention  |
| 16         | 12-2-78     | Addendum                                  | Addendum to Decision and Order Granting Intervention  |
| 17         | 12-11-78    | Applicants' Brief on Applicants' Appeal   | Applicants' Brief in Support of Applicants' Appeal of Licensing Board Decision and Order Granting Intervention to Three Indian Tribes   |
| 18         | 12-26-78    | Tribes' Reply Brief on Applicants' Appeal | Intervenor Tribes' Brief in Opposition to Applicants' Appeal and In Support of Licensing Board Decision and Order Granting Intervention |

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

|                                    |   |             |
|------------------------------------|---|-------------|
| In the Matter of                   | ) |             |
|                                    | ) |             |
| PUGET SOUND POWER & LIGHT COMPANY, | ) | DOCKET NOS. |
| et al.                             | ) |             |
|                                    | ) | 50-522      |
| (Skagit Nuclear Power Project,     | ) | 50-523      |
| Units 1 and 2)                     | ) |             |
|                                    | ) |             |

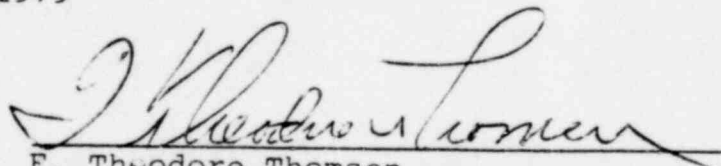
CERTIFICATE OF SERVICE

I hereby certify that the following:

APPLICANTS' BRIEF IN OPPOSITION TO  
INDIAN TRIBES' APPEAL OF  
LICENSING BOARD ORDER DENYING INTERVENTION

in the above-captioned proceeding have been served upon the persons shown on the attached list by depositing copies thereof in the United States mail on June 29, 1979 with proper postage affixed for first class mail.

DATED: June 29, 1979



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851 338

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851-339

| <u>No.</u> | <u>Date</u> | <u>Abbreviated<br/>Citation</u>                    | <u>Complete<br/>Title or Description</u>   |
|------------|-------------|--|--|
| 19         | 12-26-78    | Staff's Reply<br>Brief on<br>Applicants'<br>Appeal | NRC Staff Response to<br>Applicants' Brief in Support<br>of Appeal   |
| 20         | 1-4-79      | SCANP's Reply<br>Brief on<br>Applicants'<br>Appeal | Intervenor SCANP's Response to<br>Applicants' Brief in Support of<br>Appeal  |
| 21         | 1-12-79     | Memorandum<br>and Order                            | Memorandum and Order   |
| 22         | 1-29-79     | ALAB-523   | Appeal Board Decision<br>(ALAB-523) on Indian Petition   |
| 23         | 2-20-79     | Tribes'<br>Petition for<br>Review                  | Petition for Review of<br>Intervenor Tribes  |
| 24         | 3-5-79      | Staff's Answer<br>to Petition<br>for Review        | NRC Staff Answer to<br>Petition for Review   |
| 25         | 3-7-79      | Applicants'<br>Answer to<br>Petition for<br>Review | Applicants' Answer in<br>Opposition to Petition<br>for Review of Indian<br>Tribes.   |
| 26         | 3-8-79      | Commission Order                                   | Commission Order re petition<br>for review of ALAB-523   |
| 27         | 6-1-79      | Order Denying<br>Intervention                      | Board Order Not to Entertain<br>Nontimely Petition to<br>Intervene   |
| 28         | 6-14-79     | Tribes' Appeal<br>Brief                            | Brief of Swinomish Tribal<br>Community, Upper Skagit Indian<br>Tribe and Sauk-Suiattle Indian<br>Tribe in Support of Appeal. |

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## *Swinomish Tribal Community*

A FEDERAL CORPORATION CHARTERED UNDER THE ACT OF JUNE 18, 1934  
MOORAGE & MARINA FACILITIES ✦ SWINOMISH FISHERIES  
LACONNER, WASHINGTON 98257

February 11, 1974

Skagit County Commissioners  
Court House  
Mount Vernon, Wa.

Skagit County Planning Commission  
120 Kincaid  
Mount Vernon, Washington 98273

Gentlemen:

We take this means of submitting to you our position on the issue of rezoning for the purpose of allowing Puget Sound Power and Light Company to proceed with the construction of a thermo nuclear plant to generate electrical energy, near Sedro Woolley.

We firmly support the effort because we see this as an advancement in economic development and would enhance opportunities in commercial and industrial development.

The increasing shortage of power and energy will continue to hinder economic growth in our area, unless some clear cut concerted effort is made to improve the stagnant status of our economic development.

We place our confidence in the modern technological science that has proven to be successful in every respect up to this point and time, we do not share the fear some people have advanced (without proof) in opposition to this venture.

We therefore urge the Planning Commission and the County Commissioners to take affirmative action on this issue to permit the project as proposed by Puget Sound Power and Light to continue without delay.

Sincerely,

*Tandy Wilbur Sr.*  
Tandy Wilbur Sr.

TWsr:hk

cc: ✓ Puget Sound Power and Light, Mr. Al West, 825 Murdock, Sedro-Woolley, Wa.  
Mr. Bill Bannister,  
Bannister, Bruhn & Luvera, 618 South Second St., Mt. Vernon.

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