

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING APPEAL BOARD

In the Matter of)
)
PUGET SOUND POWER & LIGHT COMPANY,)
ET AL.)
Skagit Nuclear Power Project,)
Units 1 and 2)

Docket Nos. STN 50-522
STN 50-523



NRC STAFF'S ANSWER TO PETITIONER TRIBES'
SUPPLEMENTAL MEMORANDUM IN RESPONSE TO ORDER OF JULY 9, 1979

INTRODUCTION

By a Memorandum and Order dated July 9, 1979 (ALAB-552), the Appeal Board allowed the petitioning Indian Tribes an opportunity to address particular deficiencies noted by the Appeal Board with respect to the Tribes' attempt to establish substantial "good cause" for a late-filed petition. Particularly, the Appeal Board invited the Indians to establish

"... whether because of inadequate investigation on the part of the federal agency or for some other reason, they were furnished erroneous information on matters of basic fact and that it was reliance upon that information which prompted their inaction prior to June 1978." [ALAB-552, Slip. Op. at pp. 16-17.]

The Appeal Board also instructed the Indians that

"... in the instance of an asserted reliance on an erroneous statement of material fact, the memorandum should specify (1) where that statement appeared; and (2) when, and through what source, the tribes first learned that the statement was likely or possibly in error. If the claim is that there was a failure on the part of a federal agency to disclose to the tribes a germane fact which either was or should have been known to that agency, the memorandum should similarly specify (1) the nature of that fact; and (2) when, and through what source, the fact first came to the tribes' attention." [ALAB-552, Slip. Op. at p. 19, n.20.]

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On July 30, 1979, the Indian Tribes filed their supplemental memorandum in response to the Appeal Board's Order. The memorandum attempts to establish that the NRC Staff, through information set forth in the Skagit Final Environmental Statement (FES), gave misleading and possibly erroneous statements which were relied upon to the detriment of the Indian Tribes. They allege that these statements were made with respect to the three main areas of concern -- namely, (1) genetic and somatic effects, (2) socio-economic impacts, and (3) Skagit River fisheries impact. The NRC Staff submits that the assertions set forth in the Petitioner Tribes' Supplemental Memorandum fail to establish that any erroneous information was furnished to the Indians nor do they establish that the Indians relied on information provided in the Staff's FES to their detriment.

A. Genetic and Somatic Effects

The Indian Tribes contend that genetic and somatic risks to the receptor Indian population from "normal" and "accidental" releases have not been explored and that the risks are real and significant. The Indians then identify several statements in the FES to the effect that the radiological effects from normal and abnormal plant operation are expected to be exceedingly small and will be an extremely minor contributor to the radiation dose that persons living in the area normally receive from background radiation (Memorandum, p.5). The Indians claim that these statements are judgmental and unsupported because there has been no evaluation of the genetic and somatic susceptibility of Indian receptors.

The NRC Staff does not dispute the fact that the genetic and somatic impacts to Indian receptors have not been evaluated in the course of this application. We are also of the opinion that these impacts should be evaluated to apprise

the Indians of the potential risks. In fact, the NRC Staff has this evaluation underway and has committed to complete it and make public its analysis and conclusions. However, these facts do not establish that the statements made in the FES were either misleading or erroneous. We think it is clear in the FES that radiological effects were evaluated and computed by the Staff based on offsite population data without regard to specific receptors in that population. FES §5.4.2.1 states:

"In general, radiation doses calculated by the Staff are intended to apply to an average adult. Specific persons will receive higher or lower doses, depending on their age, living habits, food preferences, or recreational activities."

Thus, the above statement should have put the Indians on notice that specific receptors in the population, e.g. Indians, were not specifically assessed in the Staff's evaluation of radiological effects and therefore, it would be difficult for the Indians to establish that they acted to their detriment when they relied on any statement in the FES concerning this issue.

Finally, we should correct a statement made in the memorandum regarding the FES analysis that "the environmental risks due to postulated radiological accidents are exceedingly small" (FES §7.1) is "infected" by its reliance on WASH-1400. (Memorandum, pp.5-6). The Staff's analysis of the environmental risks due to postulated radiological accidents as presented in the Skagit FES did not depend in any way on the results developed in WASH-1400. In fact, WASH-1400 was only available in draft form at the time the Skagit FES was published and the FES makes it clear that the results of the study were not assessed by the Staff or the public. See FES §7.1. Accordingly, it is incorrect for the Indians to assert that the Staff conclusions regarding the environmental risks of postulated accidents is based, in part, on WASH-1400.

B. Socio-Economic Impacts

With respect to the socio-economic impacts issue, the Indians again assert that the FES did not evaluate the socio-economic impacts to Indian resources and populations. However, a reading of the FES reflects that the Staff did evaluate the socio-economic impacts to the surrounding communities, both with respect to construction activities (Section 4.5) and operational impacts (Section 5.6). These evaluations assessed impacts to the population in general surrounding the proposed Skagit site but did not consider the impacts to a unique segment of that population, e.g. the Indians. The Indians have not indicated how these evaluations are false nor have they established how the Staff's assessment of socio-economic impacts was misleading with respect to them. In addition, they have not established how any statement made by the NRC Staff was relied on to the detriment of the Indians.

C. Skagit River Fisheries Impact

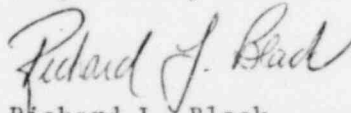
The Indians contend that the FES and the FES Supplement were misleading and left the impression that there would be no fisheries impact (Memorandum, p.8). However, this is not the case. Both the FES (Section 5.5.3.2) and the FES Supplement (Section 4.3.4) assessed the impacts to the Skagit fisheries and concluded that the potential for any substantial impact to aquatic biota was small. The Indians appear to challenge these conclusions by asserting that the underlying evaluations by the Staff were inadequate. However, the question on appeal is not whether the Staff's evaluation was inadequate (a conclusion the Staff would vigorously oppose), but rather whether statements made in the FES were false and relied upon by the Indians to their detriment. In their memorandum, the Indians have not specified any "fact" asserted by the Staff in its FES which they believe to be false. Therefore, we again believe that the Indians have failed to establish that they were furnished "erroneous information on matters

of basic fact and that it was reliance upon that information which prompted their own inaction prior to June 1978" (ALAB-552, Slip. Op. at pp. 16-17).

CONCLUSION

As the Staff has previously indicated,^{1/} the Indians' intervention presents a very close question that must be given careful and deliberate consideration. That consideration now has focused on one factor -- whether good cause exists for the late filing of the Indians' Petition. To determine whether good cause exists, the Appeal Board has invited the Indians to substantiate their claims that they were furnished erroneous information on matters of basic fact and that they relied on that information sufficiently to cause them not to intervene until June 1978 to protect their interests. We submit that the Indians were not furnished erroneous information. We think it is clear what facts were relied on by the NRC Staff to support the statements in the FES with regard to the three matters discussed above. We also believe it is sufficiently clear in the FES what was not analyzed by the Staff in the preparation of that document. Since the Staff is of the opinion that the Indians were not furnished erroneous or misleading information, the Indians cannot establish that they relied on these statements in the Staff's FLS to their detriment.

Respectfully submitted,



Richard L. Black
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 13th day of August, 1979

^{1/} NRC Staff Response to Indians' Brief In Support of Appeal, dated June 29, 1979. The Staff's position as to admission of Petitioner Tribes remains the same as in its response of June 29, 1979.

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(Skagit Nuclear Power Project,)
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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF'S ANSWER TO PETITIONER TRIBES' SUPPLEMENTAL MEMORANDUM IN RESPONSE TO ORDER OF JULY 9, 1979" in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class, or, as indicated by an asterisk, through deposit in the Nuclear Regulatory Commission's internal mail system, this 13th day of August, 1979:

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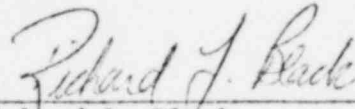
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