

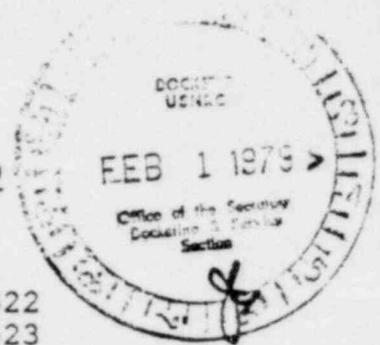
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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)
)
PUGET SOUND POWER & LIGHT)
COMPANY, et al.,)
)
(Skagit Nuclear Power Project)
Units 1 and 2))
_____)

Docket Nos. 50-522
50-523



STATE OF OREGON'S MEMORANDUM
REGARDING THE BOARD'S "NEED FOR POWER" QUESTION

I. INTRODUCTION

The State of Oregon (hereinafter "Oregon") is participating as an "interested state" in the Commission's construction permit proceedings regarding the proposed Pebble Springs and Skagit nuclear plants. Because substantial portions of both projects will be owned by two Oregon-based utilities, Oregon is particularly interested in the "need for power" issue. With respect to that issue, at a prehearing conference held by the Skagit ASLB on January 16, 1979, the Board invited memoranda on the significance of RCW Sec. 80.50.01 to the Board's decision-making responsibilities. RCW Sec. 80.50.01 provides, in pertinent part, as follows:

"The legislature finds that the present and predicted growth in energy demands in the State of Washington requires the development of a procedure for the selection and utilization of sites for energy facilities. . .

"* * *

"It is the policy of the State of Washington to recognize the pressing need for increased energy facilities. . .

"* * *

"It is the intent to seek courses of action that will balance the increasing demands for energy facility location and operation in conjunction with the broad interests of the public. Such action will be based on these premises:

"* * *

"(3) To provide abundant energy at reasonable cost."

II. CONCLUSION

Under the National Environmental Policy Act, 42 USC 4321-4361 (hereinafter "NEPA"), the staff must thoroughly and independently investigate, as part of the cost-benefit balancing process, the "need for power" question. The Board in turn must then determine the sufficiency of the staff's analysis. Neither the staff nor the Board may reduce the rigor, or the degree of independence, of their investigations by relying in toto upon a state legislature's declaration of energy demand.

III. DISCUSSION

The issue of "need for power" is the cornerstone of the cost-benefit analysis required under NEPA. As the Appeal Board has stated:

"'Need for power' is a shorthand expression for the 'benefit' side of the cost-benefit balance which NEPA mandates for a proceeding considering the licensing of a nuclear power plant. As we have previously pointed out:

"'A nuclear plant's principal "benefit" is of course the electric power it generates. Hence, absent some "need for power", justification for building a facility is problematical.' Duke Power

Co. (Catawba Nuclear Station, Units 1 and 2), ALAB-355, 4 NRC 397,405 (October 29, 1976)." (Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), ALAB-422, 6 NRC 33,90 (July 26, 1977).

The "need for power" issue is a threshold question; without an affirmative finding thereon, the staff and the Board need not and indeed cannot proceed to further analysis. Thus, the Appeal Board has noted, in upholding issuance of a construction permit,

". . . [the licensing board] properly inquired first into whether there existed a real demand for the power to be produced by the Clinton facility. Then, having satisfied itself that there was such a need, it went on to attempt to ascertain the most beneficent means of satisfying that need."

(In the Matter of Illinois Power Company (Clinton Power Station, Units 1 and 2), ALAB-340 (July 29, 1976)). 4 NRC 27.

The Appeal Board has described the Commission's NEPA role thusly:

"At the outset, inquiry must be made into whether there exists a genuine need for the electricity to be produced. This inquiry involves not only an analysis of existing generating capacity and of projections of expected growth, but also consideration of the possibility that measures to curtail consumption will be initiated. . .

"On the basis of this information, a preliminary decision can be made as to the extent to which some form of generating facility appears to be justified. . . ."
In the Matter of Vermont Yankee Nuclear Power Corporation (Vermont Yankee Nuclear Power Station), ALAB-179, 7 AEC 159, 175-76 (February 28, 1974).

The Applicants have the burden of showing that their demand projections are "reasonable and that additional or replacement generating capacity is needed to meet that demand." (Energy Research and Development Administration (Clinch River Breeder Reactor Plant), CLI-76-13, NRCI-76/8, 67, 76-77 (1976)). Also see Seabrook, ALAB-422, 6 NRC 33, 90, n. 57. Also see 10 CFR 2.732. However, the licensing board must ultimately find that a proposed facility is needed. (See In the Matter of Duke Power Company (Catawba Nuclear Stations, Units 1 and 2), Partial Decision, ALAB-355, (October 29, 1976), 4 NRC 397,413, where the Appeal Board stated ". . . whether a facility is needed is a question which NEPA requires the agency to answer.")

In making its need for power decision, however, the Board is entitled, in certain circumstances, to give appropriate weight to a state decision on the same subject. In the Commission's Shearon Harris proceeding, the Board relied in part upon forecasts prepared by the North Carolina Utilities Commission to find that four nuclear units would be needed. On appeal, intervenors contended that the forecasts accepted by the Board were unreliable. The Appeal Board had the following to say regarding ASLB reliance on the NCUC forecast:

"Irrespective of the extent to which its market segment forecasts comported with those of the applicant or the staff, we think that the NCUC total demand forecast is entitled to be given great weight. As earlier noted, . . . that body is charged by law with the responsibility of providing up-to-date analyses of,

inter alia, the 'probable future growth of the use of electricity'. . . The record reflects that in January 1977, prior to the issuance of its report the following month, the NCUC conducted a public hearing on the matter of projected load growth. . . .

"* * *

"The intervenors have pointed to nothing in either the 1977 or 1978 NCUC reports which might lead us to believe that that expert body committed some fundamental error in carrying out its analyses. Indeed, they declined even to cross-examine the witness. . . who had participated in the preparation of the NCUC study. . .

"* * *

"We do not wish to be understood as suggesting that in all circumstances the electricity demand forecasts of a state public utilities commission must be presumed to be reliable and thus perforce to provide an acceptable foundation for need-for-power determinations. Despite that such commissions might be expected to possess considerable familiarity with the primary factors bearing upon present and future demand, they are no more entitled to be treated as infallible than are other governmental agencies. It therefore must always be open to a party to one of our proceedings to establish that, for one reason or another, the analysis underlying the utility commission's predictions of future demand is in error. By the same token, a licensing board must be free to disregard utility commission predictions which it is convinced rest upon a fatally flawed foundation.

"But where a utilities commission forecast is neither shown nor appears on its face to be seriously defective, no abdication of NRC responsibilities results from according conclusive effect to that forecast. Put another way, although the National Environmental Policy Act mandates that this Commission satisfy itself that the power to be generated by the nuclear facility under consideration will be needed, we do not read that statute as foreclosing the placement of heavy reliance upon the judgment of local regulatory bodies which are charged with the duty of insuring that the utilities

within their jurisdiction fulfill the legal obligation to meet customer demands. This is so at least where, as here, the utilities commission not merely has spread on the record a detailed development of the reasons for its conclusions but, as well, has made available for examination by the parties to our proceeding one of the principal participants in the load forecast undertaking."

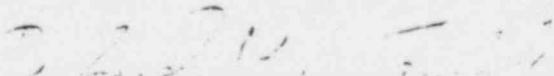
In the Matter of Carolina Power & Light Co. (Shearon Harris Nuclear Power Plant, Units 1, 2, 3 & 4), ALAB-90, ___ NRC ___ (1978).

The Shearon Harris opinion is essentially consistent with basic NEPA law on the need of the deciding federal agency to conduct an independent analysis which can include evaluation of pertinent material prepared by others. See, e.g., Sierra Club v. Lynn (CA Tex 1974), 502 F2d 43, reh den, 504 F2d 760, cert den, 421 US 994, 95 S Ct 2001, reh den 423 US 884, 96 S Ct 158, and see 42 USC 4332(2)(D), added to NEPA by PL 94-83, 89 Stat 424 (1975).

In light of the issue before it, much of the Appeal Board's discussion quoted above must be considered dictum. Moreover, its statement that conclusive reliance can be placed on a state regulatory commission's forecast is probably incorrect. Furthermore, the opinion concerns reliance upon a detailed state forecast which was laid on the record and scrutinized by the parties, rather than a legislative policy declaration. Nevertheless, the Shearon Harris opinion is instructive to this Board. Consistent with that opinion, the Board can give some, but certainly not conclusive, weight to 80.50.01 in making its NEPA decision. The forecasted rate of growth in electricity demand in Washington is a contested matter. More-

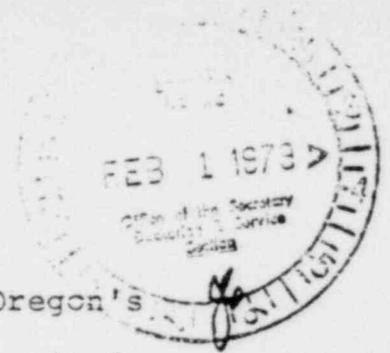
over, the facts and analyses underlying RCW Sec. 80.50.01 were not placed upon the record. Therefore, the Board would abdicate its duty under NEPA if it treated RCW Sec. 80.50.01 as conclusive of the issue of whether the Washington utilities who will own a portion of Skagit need the output thereof. Finally, of course, RCW Sec. 80.50.01 has absolutely no bearing on whether the Oregon utilities participating in Skagit need their portion of its output.

Respectfully submitted,



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CERTIFICATE OF SERVICE



I hereby certify that true copies of "State of Oregon's Memorandum Regarding the Board's 'Need for Power' Question" were served on the following parties of record by deposit in the United States mail, postage prepaid, on the 30th day of January, 1979:

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