

05/17/79

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. STN 50-522
STN 50-523

NRC STAFF'S RESPONSE TO SCANP MOTION TO GOVERN
FUTURE PRESENTATIONS BY APPLICANT TO STAFF OF
EVIDENCE RELATING TO CONTENTIONS

On April 27, 1979, Intervenors SCANP filed a motion which requested a Board order that would set forth certain procedures to be followed whenever there was a meeting between the staff and applicants which related to a subject involving a contention raised by SCANP. Specifically, SCANP requested that the Board set forth procedures that would:

- 1) Allow SCANP to participate in the selection of the time and place of meetings.
- 2) Allow SCANP to have any data, report, or other document at the same time it is made available to the Staff in connection with such meeting.
- 3) Allow SCANP and its experts the right to be present and to participate in such meetings.

Staff opposes this motion for the reasons set forth below.

The Commission's regulations in 10 CFR §2.102 explicitly recognizes that an applicant may be required to supply additional information during review of an application by the NRC technical staff. As an aid in exchanging information, the Staff "may request any one party to the proceeding to confer with the Staff informally". 10 CFR §2.102(a). Meetings between

the NRC technical staff and the applicant's technical staff are commonly conducted in the course of the technical review of applications and serve an essential means for the exchange of technical information and views. The articulated policy as to all meetings conducted by the NRC technical staff as part of its review of an application is that those meetings will be open to attendance by all parties or petitioners for leave to intervene in the case as observers. Domestic License Applications, Open Meetings and Statement of NRC Staff Policy, 43 Fed Reg. 28058 (June 28, 1978) Emphasis added. Reasonable efforts will be made by the NRC Staff to inform the party or petitioner of forthcoming meetings conducted by the NRC technical staff so that appropriate arrangements for attendance can be made. Id.

Intervenors acknowledge that they receive notice of these meetings (Motion at 2) but complain that they are not consulted regarding their location or timing. Further, they assert that they do not have the means to fly to Maryland from the State of Washington in order to be present at such meetings and that such meetings should be governed by the same policy of holding licensing proceedings near the state. (Motion at 2-3).

Intervenors' complaints are without merit. The purpose of these meetings is to facilitate an exchange of such additional information between the technical staffs of the applicant and NRC and its consultants as required to conduct the Staff's review of the application. Accordingly, the timing and location of such meetings must first meet the convenience of

the active participants and not the convenience of the observers to the meeting. For this reason and contrary to the implication contained in Intervenor's motion, such meetings, particularly with regard to the geology and seismic review, have been held at the site, at the Staff's consultant offices in Menlo Park, California and at Denver, in addition to those meetings held at the Commission's offices in Bethesda, Maryland. Further, the Staff's practice of preparing a written summary of such meetings and forwarding the summary to interested persons unable to attend, serves the function of informing those persons unable to attend of what transpired at the meeting. Intervenor has made no allegation that they have not received such summaries or that the summaries are insufficient. For these reasons, Intervenor request that they be consulted before setting the time and place of any meetings between the Staff and Applicant must be denied.

Intervenor further allege that documents provided to the Staff are not being offered on a timely basis to the other parties. First, the Staff notes that applicant states in its response to the motion that it is their practice to make the information available, either by distributing the documents to all interested parties or by making the documents available for inspection and copying at a mutually convenient location. Applicant's answer to SCANP 'Motion to Govern Future Presentations By Applicant To Staff Of Evidence Relating To Contentions Advanced By Intervenor SCANP' dated May 8, 1979 at 4. While the Staff expects the applicants to abide by these statements, in the event documents are not made available on a timely basis, the discovery practice followed in this proceeding affords Intervenor a remedy.

Finally, Intervenor's assert that these meetings are ex parte contacts which are prohibited by Commission regulations and are inherently and fundamentally unfair (Motion at 2). The NRC Staff position is that these applicant-staff meetings do not represent ex parte communications which are prohibited by 10 CFR §2.780. Communications which are prohibited by these provisions only apply to communications to the "Commissioners, members of their immediate staffs, or other NRC officials and employees who advise the Commissioners in the exercise of their quasi-judicial functions ..." 10 CFR §2.780(a). The ex parte prohibitions are also applicable to members of the Atomic Safety and Licensing Appeal Board, members of their immediate staffs, and other NRC officials and employees who advise members of the Appeal Board in the exercise of their quasi-judicial function. 10 CFR §2.780(f). Thus, while it is clear that 10 CFR §2.780, in general, prohibits communications involving NRC personnel who exercise quasi-judicial functions with respect to applications before the Commission, it does not apply to NRC personnel who do not exercise quasi-judicial functions.

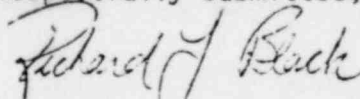
Quasi-judicial functions are not performed by NRC technical staff personnel who are reviewing applications. Therefore, 10 CFR §2.780 does not prohibit ex parte communications between these staff personnel and the applicant. Indeed, 10 CFR §2.102(a) recognizes the necessity for and provides for reviewing staff personnel to confer informally with "any one party to the proceeding" such as an applicant during the course of a review. See Northeast Nuclear Energy Co. (Montague Nuclear Power Station, Units 1 and 2), LBP-75-19, 1 NRC 436 (1975). Staff-applicant meetings

which may or may not involve contested issues are not prohibited as ex parte communications under the Commission's regulations. For this reason alone, the motion should be denied.

In addition, the motion must be denied on jurisdictional grounds. The Commission had delegated to the Licensing Boards power and duties with respect only to the hearing process (See 10 CFR §§2.104 and 2.718). The Staff's review function is largely completed outside the hearing process. In another proceeding, an intervening group requested that the Licensing Board issue an order that would direct similar procedures for the conduct of meetings between the Staff and Applicant. The Licensing Board denied the motion, stating: "The fact that the two areas of activity [the Staff review and the hearing process] may proceed, for a time, concurrently, does not extend to the Board any supervisory authority over that part of the process that has been entrusted to the Staff." Montague, supra.

For all of the above reasons, this motion should be denied.

Respectfully submitted,



Richard L. Black
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 17th day of May, 1979

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF'S RESPONSE TO SCANP MOTION TO GOVERN FUTURE PRESENTATIONS BY APPLICANT TO STAFF OF EVIDENCE RELATING TO CONTENTIONS" 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 17th day of May, 1979:

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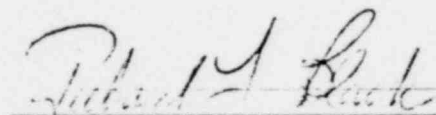
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