

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 ANSWER TO SCANP'S MOTION TO DISMISS APPLICATION

INTRODUCTION

On May 8, 1980, Intervenor SCANP filed a Motion to Dismiss Application (Motion) in this proceeding. This Motion basically alleges that the application for a construction permit should be dismissed with prejudice because it is not being pursued diligently toward its resolution. In support of this Motion, SCANP points to the Licensing Board's Order dated March 6, 1980, which required the Applicants and the NRC Staff to make status reports to the Board on or before April 15, 1980 regarding their progress in resolving the USGS/NRC Staff requests for additional information forwarded to the Applicants by letter of January 8, 1980. SCANP alleges that the status reports submitted pursuant to this Order indicate that no steps whatsoever are being taken by the Applicants to pursue their application and that no details regarding any present or future actions with respect to the application were provided (Motion, p.2). Thus, SCANP concludes that the application should be dismissed with prejudice because the pendency of the application inflicts "massive irreparable injury" to Skagit County and the members of SCANP and there is no just cause to allow this injury to continue (Motion, pp. 2-3).

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BACKGROUND

In order to place this Motion in perspective, a brief background of this proceeding may be helpful. On September 18, 1974, the Applicants^{1/} filed an application for a permit to build two 1335 MWe boiling water reactors at a site in Skagit County, Washington, approximately 6 miles east-northeast of the town of Sedro Woolley, Washington and 64 miles north of Seattle. The application was docketed on September 30, 1974 and subsequently a notice of "Hearing on Application for Construction Permits" was published in the Federal Register.^{2/} Pursuant to that notice, Intervenor SCANP filed a timely petition to intervene and was subsequently admitted as a party to this proceeding. In addition, the Washington State Thermal Power Plant Site Evaluation Counsel (TPPSEC), now called the Washington State Energy Facility Site Evaluation Council (EFSEC), an agency of the State of Washington, was admitted as an interested state. As a result of the amended notice (supra, fn.1), two additional parties, the State of Oregon and Forelaws on Board/Coalition for Safe Power were granted intervenor status. Finally, Skagit County was admitted as an "interested county" by Board Order dated June 20, 1979.

Evidentiary hearings with respect to this application began in July 1975 and continued intermittently through August 1979. Further hearings were scheduled

^{1/} The Applicants and the percentage of ownership in the Skagit facility have changed since the original application was filed and docketed. See "Ownership Agreement" dated January 23, 1977 and "Amended Notice of Hearing on Application for Construction Permits", dated March 1, 1977 (41 Fed. Reg. 8835). These changes, however, are not relevant with respect to this Motion.

^{2/} 39 Fed. Reg. 44065 (December 20, 1975).

for October - November 1979 for the remaining issues -- of which geology/seismology was the principal outstanding issue. In October 1979, the U.S. Geological Survey (USGS) indicated to the NRC Staff and the Applicants that the continuing USGS review of seismic profiles, additional field mapping, and further aeromagnetic interpretations had led to serious concerns relating to the capability of a family of northwest trending high angle faults in the vicinity of the proposed site. These concerns were determined by the NRC Staff to undermine the previous conclusions with respect to the geology and seismology of the Skagit site and, accordingly, further investigative work by the Applicants was thought needed. In light of these developments and by general agreement of the parties, the Board cancelled the scheduled hearings indefinitely. In order to understand the new developments on geology-seismology issues, the Board held a prehearing conference on January 22, 1980. At this conference, the USGS and NRC Staff explained the new developments and the requests for additional information which were submitted to the Applicants on January 8, 1980. In turn, the Applicants at the conference gave assurance that they were determined to go forward with the processing of their application but needed further time to evaluate the requests for additional information and determine the best way to proceed.

As a result of the conference and the Board's Order dated March 6, 1980, the Applicants submitted a letter on April 14, 1980 that indicated (1) they had sought clarification from the Staff of the requests for additional information by letter dated February 15, 1980; (2) that it was too soon to make any reasonable estimate when hearings might be rescheduled; (3) they are considering the possibility of amending their application to change the

proposed site of the Skagit Project to a site on the Hanford Reservation; and (4) they will provide more specific information on these matters by May 30, 1980.

DISCUSSION

The NRC Staff submits that SCANP's Motion To Dismiss the Application must be denied because (1) dismissal of an application upon motion by a party other than an applicant is not the proper procedure for the ultimate disposition of a construction permit application, and (2) there has been no demonstration, in any event, that the Applicants have failed to diligently pursue their application.

The question of whether an application can be dismissed upon motion of a party other than an applicant has been addressed in several NRC proceedings. The lack of a procedure for such dismissal of an application was noted by the Licensing Board in Boston Edison Company (Pilgrim Nuclear Station, Unit 2), LBP-75-15, 1 NRC 419, 420 (1975), where the Board stated "... it is clear that in the face of Section 189 of the Atomic Energy Act, as amended, and the Commission's pertinent regulations affecting mandatory hearings on applications for construction of nuclear power plants, there is no procedure (short of withdrawal by the applicant) for the disposition of such an application without a hearing...".^{3/}

^{3/} The Staff's review of the Commission's Rules of Practice set forth in 10 CFR Part 2 indicates that the regulations do not explicitly provide a procedure for the dismissal of an application for a construction permit upon motion by a party other than an applicant. We would particularly note that 10 CFR § 2.107(a) states that "The Commission may permit an applicant to withdraw an application...". Likewise 10 CFR § 2.108(c) provides that upon a motion by the Staff pursuant to § 2.730, the licensing board will rule whether an application should be denied.

In Detroit Edison Company (Greenwood Energy Center, Units 2 and 3), LBP-75-56, 2 NRC 565 (1975), like here, a motion was filed by an intervenor party requesting that the application for a construction permit be denied with prejudice. The licensing board in that proceeding denied the motion noting that the relief sought was in conflict with the express provisions of 10 CFR § 2.749(d) barring summary disposition on "the ultimate issue as to whether the permit shall be issued" (2 NRC at 569). Dismissal of the application by summary disposition was also sought by intervenors in Public Service Company of New Hampshire, et al. (Seabrook Station, Units 1 and 2), LBP-74-36, 7 AEC 877, 879, where the Board denied the motion citing the language of 10 CFR § 2.749(d).

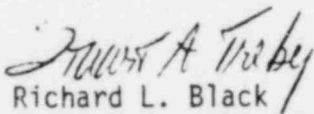
To the extent that this Motion argues that the application should be dismissed because it is not being diligently pursued to resolution, it should also be denied. SCANP has not alleged any facts or information which would indicate that the Applicants are not pursuing their application in a diligent manner. To the contrary, the record indicates the extended effort undertaken by the Applicants in responding to the numerous complex and sometimes novel issues which have arisen in the course of this proceeding. SCANP's only basis for its claim that the application is not being pursued is that the Applicants' status report of April 14, 1980 (see pp. 3 and 4, supra) demonstrates no progress has been made in pursuit of the application. At this time, the major remaining issue to be

resolved relates to outstanding geology and seismology questions. In light of the resources and substantial effort required to appropriately respond to the USGS and NRC Staff requests on geology and seismology issues, the Staff believes that the Applicants' requests for clarification are reasonable and cannot be construed as an indication that they are not pursuing their application in a good faith and diligent manner.^{4/}

CONCLUSION

Based on the foregoing, the NRC Staff submits that this Motion should be denied.

Respectfully submitted,

for 
Richard L. Black
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 28th day of May, 1980

^{4/} We would also note that there is no requirement in any Commission regulation or underlying statute that requires an applicant to proceed with the processing of its application in accordance with any set time scale. The lack of a requirement in any Commission regulation or underlying statute that applicants proceed with the processing of their application in accordance with any set time period was noted by the Greenwood, supra, licensing board where a similar motion was filed when an applicant decided to postpone work on a project and extend the time schedule for commercial operation. 2 NRC 565, 567.

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF'S ANSWER TO SCANP'S MOTION TO DISMISS APPLICATION" 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 28th day of May, 1980:

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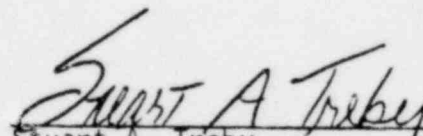
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