



02/12/81

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)

PORTLAND GENERAL ELECTRIC)
COMPANY, et al.)

(Pebble Springs Nuclear Plant,)
Units 1 and 2))

Docket Nos. 50-514
50-515

NRC STAFF'S RESPONSE TO A PORTION OF INTERVENORS' "MOTION FOR
SUSPENSION OF FURTHER HEARINGS AND FINDINGS" ETC. AND,
AS TO AN ADDITIONAL PORTION, REQUEST FOR LEAVE TO DEFER RESPONSE

I. INTRODUCTION

On February 15, 1980, Applicant announced it had concluded that the proposed Pebble Springs facility cannot be completed in time to meet its late 1980's energy requirements and that it was evaluating other energy options. Applicant stated that it now planned on Pebble Springs for meeting its energy demands for the 1990's. The Applicant also requested the Atomic Safety and Licensing Board (Board) to proceed on what it termed "site suitability issues" and to issue a partial initial decision on those matters. ^{1/} The health and safety review for the proposed facility by the

^{1/} The NRC Staff has supported this request on the basis of the Appeal Board's decision in Potomac Electric Power Company (Douglas Point Nuclear Generating Station, Units 1 and 2), ALAB-277, 1 NRC 539 (1975). We stress, however, as did the Appeal Board in Douglas Point:

*** that any findings which might be made on a record developed well in advance of final decision must be regarded as subject to reconsideration should supervening developments or newly available evidence so warrant.
[citation omitted]

Douglas Point, supra, 1 NRC at 545.

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NRC Staff remains incomplete. Likewise, there are several environmental and site suitability issues, principally "need for power," where the record remains open in this proceeding.

Pursuant to Board Orders dated October 1 and 23, 1980, Applicant on October 22, 1980, filed "Proposed Findings of Fact and Conclusions of Law in the Form of a Partial Initial Decision as to some Environmental and Site Suitability Matters." The Staff, as also provided in the above-referenced Board Orders, has on December 2, 1980, filed its "Proposed Findings of Fact and Conclusions of Law in the Form of a Limited Partial Initial Decision on Environmental and Site Suitability Matters." Joint Intervenors' (Forelaws on Board and Lloyd K. Marbet) proposed findings are presently due to be filed on February 13, 1981.

Intervenors on January 23, 1981, have moved the Board for "[a] suspension of all further hearings and [the filing by Intervenors of] proposed findings of fact and conclusions of law in [this proceeding]" (Motion, p. 1).^{2/} As a basis for its motion, Intervenors point to two recent developments in the State of Oregon. The first development is the recent enactment of a ballot measure which appears to preclude, at this time, issuance of a site certification by the State of Oregon for the proposed Pebble Springs site (Motion, p. 2). The second development is the adoption by the State of "new need for power standards" which preclude "nuclear facilities up to 1995" (Motion, p. 2). Because of these developments Intervenors argue that it would be "* * * a drain

^{2/} Intervenors' motion is dated January 22, 1981. However, the envelope containing Staff counsel's copy of the motion is postmarked January 23, 1981.

upon the resources of all parties * * *" to continue these proceedings * * * until it can be demonstrated to the Board's satisfaction that the Applicants are able to license and construct [the proposed Pebble Springs facility] at their proposed site." (Motion, p. 3). Intervenors' motion was apparently triggered by Staff's letter of December 31, 1980,^{3/} "that [it] is now prepared to move ahead with completion of the environmental and site suitability portions of the record in this proceeding."^{4/}

Applicants on February 6, 1981, filed an Answer in opposition to Intervenors' motion which Staff received on February 11, 1981.

As discussed below, the Staff (1) requests that its response to Intervenors' request for a suspension of all further hearings be deferred until after it has (a) had an opportunity to more fully review Applicants' response to that aspect of the motion and (b) assessed the Staff resource allocations necessary to proceed further, and (2) opposes Intervenors' motion as regards the filing by them of proposed findings of fact and conclusions of law, presently due to be filed, on site suitability matters where the record is closed.

II. DISCUSSION

A - As noted by Intervenors in their motion, there have been several recent developments in the State of Oregon which may impact Applicants'

^{3/} See NRC Staff's Fourth Status Report.

^{4/} For the reasons noted and discussed throughout the Staff's proposed findings dated December 2, 1980, the record of necessity cannot be closed in the near future on certain aspects of the environmental site suitability portion of this proceeding.

ability to obtain the necessary State site certification. In the absence of necessary state approvals, Applicant could not, of course, construct the proposed facility.^{5/} Intervenors correctly point out that Applicants, as to the ballot measure, have not yet informed either the Staff or this Board "of this significant event or offer[ed] any subsequent explanation of how it affects the ultimate status of these proposed facilities." (Motion, p. 2). While, as noted above, the Staff has supported Applicants' request to consider further evidentiary proceedings for the purpose of closing additional portions of the environmental and site suitability portions of the record in this proceeding, the Staff is also of the view that it could more meaningfully advise the Board concerning its views as to the merits of Intervenors' motion regarding suspension of further hearings after an opportunity to (a) consider more fully Applicants' recently received answer to Intervenors' motion^{6/} and (b) to assess the Staff resource allocations needed to proceed further. For these reasons the Staff requests a period of two days within which to further respond to the instant motion.

B - The Staff opposes Intervenors' request for a suspension of the time within which Intervenors, if they so choose, must file proposed findings of fact and conclusions of law on those matters of the environmental-site suitability portion of this proceeding where the record is closed. Our opposition is predicated upon several factors.

^{5/} See in this regard the Appeal Board's recent Memorandum and Order in Long Island Lighting Company, et al. (Jamesport Nuclear Power Station, Units 1 and 2), ALAB-628, Slip Opinion, (January 15, 1981).

^{6/} Although we do not urge the point, it could fairly be said that Intervenors' motion is premature since the Board has not yet set any future hearing schedules in this proceeding.

Intervenors, as well as the other parties, agreed in advance to the schedule ultimately set forth by the Board for the filing of the proposed findings. As noted above, Applicants and Staff have already filed their findings. Intervenors have had more than an ample period of time (over three months) within which to prepare the necessary findings on those portions of this proceeding where the record is closed. That record was not overly extensive or complicated. Staff does not believe that completion of findings would constitute an unreasonable burden on Intervenors or an unreasonable drain upon their admittedly limited resources. More importantly, Applicants, pursuant to Douglas Point, supra, should be in a position to receive from this Board a partial initial decision as to those closed portions of the record.

III. CONCLUSION

The Staff requests that its response to that portion of Intervenors' motion which seeks a suspension of all further hearings be deferred for a twenty-day period pending an opportunity (a) for the Staff to consider more fully Applicants' Answer to Intervenors' motion and (b) to assess the Staff resource allocations needed to proceed further.^{7/} The Staff opposes

^{7/} Staff's subsequent response will also discuss the applicability, if any, of the Commission's decision in Wisconsin Electric Power Company, et al. (Koshkonong Nuclear Plant, Units 1 and 2), CLI-74-45, 8 AEC 928 (1974) regarding the Commission's practice of pursuing its administrative procedures while other state and local proceedings are under way. See also in this regard Southern California Edison Co. (San Onofre Nuclear Generating Station), ALAB-171, 7 AEC 37, 39 (1974).

Intervenors' motion as regards the filing by them of proposed findings as to those portions of the environmental and site suitability portions of this proceeding where the record is closed.

Respectfully submitted,

Bernard M. Bordenick

Bernard M. Bordenick
Counsel for NRC Staff

Dated at Bethesda, Maryland,
this 12th day of February, 1981.

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF'S RESPONSE TO A PORTION OF INTERVENORS' 'MOTION FOR SUSPENSION OF FURTHER HEARINGS AND FINDINGS" ETC. AND, AS TO AN ADDITIONAL PORTION, REQUEST FOR LEAVE TO DEFER RESPONSE" 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, by deposit in the Nuclear Regulatory Commission internal mail system, this 12th day of February, 1981:

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