



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D. C. 20555



April 8, 1981

Elizabeth S. Bowers, Esq.  
Atomic Safety and Licensing Board  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555

Dr. William E. Martin  
Senior Ecologist  
Battelle Memorial Institute  
Columbus, OH 43201

Dr. Walter H. Jordan  
881 West Outer Drive  
Oak Ridge, TN 37830

In the Matter of  
Portland General Electric Company, et al.  
(Pebble Springs Nuclear Plant, Units 1 and 2)  
Docket Nos. 50-514, 50-515

Dear Members of the Board:

Enclosed for consideration of the Licensing Board is a "Stipulation Regarding Contentions and Scheduling" which has been agreed to by Applicants, the NRC Staff and Intervenors Lloyd K. Marbet and Forelaws on Board. While the enclosed Stipulation has not yet been executed by the above-named parties, they have authorized Staff counsel to file it with the understanding that an additional copy will be circulated for signature and, ultimately, filed with the Board. Additionally, counsel for the State of Oregon has authorized me to state that he takes no position with regard to the proposed Stipulation.

Sincerely,

*Bernard M. Bordenick*

Bernard M. Bordenick  
Counsel for NRC Staff

Enclosure  
As Stated

cc: See Page 2

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cc w/encl: Alan S. Rosenthal, Esq., Chairman  
Dr. Lawrence R. Quarles  
Richard S. Salzman, Esq.  
James W. Durham, Esq.  
Warren Hastings, Esq.  
Frank W. Ostrander, Jr., Esq.  
Mr. Donald W. Godard  
Mr. Lloyd K. Marbet  
Ms. Bernice Ireland  
J. Carl Freedman  
Frank Josselson, Esq.  
William L. Hallmark, Esq.  
R. Elaine Hallmark, Esq.  
Kathleen H. Shea, Esq.  
Atomic Safety and Licensing Board Panel  
Atomic Safety and Licensing Appeal Board  
Docketing and Service Section

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
	)	
PORTLAND GENERAL ELECTRIC	)	Docket Nos. 50-514
COMPANY, <u>ET AL.</u>	)	50-515
	)	
(Pebble Springs Nuclear Plant,	)	
Units 1 and 2)	)	

STIPULATION REGARDING CONTENTIONS AND SCHEDULING

I.

Applicants, NRC Staff (Staff) and Intervenors Lloyd K. Marbet and Forelaws on Board (Intervenors) enter into the following stipulation:

A - The following contentions should be admitted as issues in this proceeding regarding the Staff's revised alternative sites analysis (contained in Final Supplement No. 1 to the Final Environmental Statement, NUREG-75/025, Supplement No. 1) (FES-SUP.):

1. Contention AS-1. The Staff has used an arbitrary and inconsistent comparison process for environmental impact within the four site comparison categories: terrestrial, aquatic, geologic/hydrologic, and socio-economic resources. For terrestrial, geologic/hydrologic and socio-economic resources the Staff proposed a rating system based upon specific environmental criteria which were given a "+," "0," or "-" rating as related to their degree of environmental impact within the specific criterion. For aquatic resources the Staff arbitrarily chose to evaluate "the potential sites being considered within each candidate

area on a comparative basis rather than absolute terms" and without consideration of site specific plant designs (FES-SUPP., 2.4.2.2.2 Criteria and Methods). This arbitrary and inconsistent bias has affected the overall outcome of the final site alternative analysis.

2. Contention AS-2. Throughout the Staff's site alternative analysis the Boardman site has been used as a site alternative even in light of the open admission on the bottom of page 2-10 and the top of 2-11 of the FES-SUPP., which states:

However, the U.S. Atomic Energy Commission determined that the presence of the Navy's Weapons System Training Facility adjacent to the Boardman site constituted a serious problem because the proposed nuclear facility was not designed to withstand the impact of an aircraft crash and assurance was not available that the Navy would move its Weapons Training Facility on this basis, and also considering the Oregon Nuclear and Thermal Energy Council's opposition to a nuclear plant (even if "hardened") at the site, the applicant decided to file an application for the Pebble Springs site for its two-unit nuclear power plant." (emphasis added).

The Staff further identifies this problem with other such statements on pages 2-7 and 2-40 of the FES-SUPP. The "Thermal Power Plant Site Certification Agreement for the Boardman Site between the State of Oregon and Portland General Electric Company," dated February 27, 1975, on page 7 states:

No construction shall commence on any nuclear plant until the Council has been presented with satisfactory evidence of an irrevocable decision by the U.S. Navy to terminate its use of the Boardman Weapons System Training Facility on or before a date certain.

Yet the Staff has proceeded to use the Boardman site for comparison with other site alternatives which have unfairly weighted the outcome of

their analysis in the comparative rating under aquatic resources on Table 2.4 (against the Hanford site) and thus is carried over in the final analysis.

3. Contention AS-3. The Staff, both in its analysis of the impacts of effluent discharges in Table 2.4, of the FES-SUPP. in which it considers no discharges from the Boardman Reservoir, and Table 2.13 of the FES-SUPP. in which it considers no discharges from the Pebble Springs Reservoir, fails to consider dewatering of these reservoirs due to accidents, other than Class 9 Accidents,<sup>1/</sup> or final decommissioning of the proposed facilities. Thus under aquatic resources the Staff's analysis is unfairly weighted to the advantage of the Pebble Springs site. Also, under neither aquatic nor terrestrial resources does the Staff consider the impact upon bird populations and terrestrial wildlife of effluent discharges into the water contained in the reservoirs on the Boardman and Pebble Springs sites.

4. Contention AS-4. The Staff's final treatment of Aquatic Resources is outlined on page 2-40 of the FES-SUPP. wherein they state:

The Hanford site, while judged to be superior to the Pebble Springs site in terms of terrestrial resources and socio-economic resources, was judged inferior with respect to aquatic resources. The Staff is concerned that the impacts to aquatic resources, as summarized in Section 2.5.2, could be significant because of the presence of three other nuclear power plants on this same stretch of the Columbia River. This concern would be especially important for plant effluents discharged to the

<sup>1/</sup> In the event Intervenor's proposed contentions regarding Class 9 Accidents set forth below is admitted by the Board, the word "accidents" used in this contention would also include Class 9 Accidents.

river. After adjusting the environmental rankings to account for this factor, the Staff finds the Hanford site on balance to be equal to Pebble Springs from the standpoint of overall environmental concerns.

This unaccounted for and inexplicit adjustment of the environmental rating for aquatic resources serves to prevent a fair treatment of the Hanford site as the obviously superior alternative to Pebble Springs plants within the pre-established parameters set forth by the Staff in the consideration of the four site comparison categories.

B - Intervenors have also advanced the following contentions:

1. Proposed Contention AS-5. The Staff's treatment of the alternative sites analysis fails to meet the intent of the new Council on Environmental Quality regulations (40 C.F.R. 1500) in which roughly equal treatment should be given to each major candidate site so that a thorough comparison of the environmental consequences at alternative sites can be presented. The site comparison analysis fails to go into enough detail so that the differences in environmental consequences can be clearly understood.

Applicant opposes admission of this contention and will submit argumentation to the Board supporting its opposition by April 15, 1981. Intervenor will set forth its argumentation as to why the contention should be admitted by May 4, 1981. Staff does not oppose admission of the contention but notes that the Commission has not yet promulgated regulations implementing the regulations of the Council on Environmental Quality cited by Intervenors and has made clear that until such action is taken its existing 10 C.F.R. Part 51 regulations remain in effect. See Notice of Proposed Rulemaking - Revision of 10 C.F.R. Part 51 and related conforming

amendments, 45 F.R. 13739 at 13740, March 3, 1980, where the Commission noted that "until a final rule is adopted, the Commission's present regulations will remain in effect." In Staff's view, however, the foregoing goes to the merits of Intervenor's proposed contention but does not affect the admissibility of the contention.

2. Proposed Contention AS-6. Supplement No. 1 to the final environmental statement does not address site specific consequences at the proposed site and its alternatives of reactor accidents up to and including Class 9 accidents. This comparison should be made another criterion for choosing between the proposed site and all other site alternatives in arriving at an "obviously superior" site.

Applicant and Staff oppose admission of the above contention on the ground that neither Commission regulations or precedents require the Staff (or this Board) to consider the specific consequences at alternative sites of reactor accidents up to and including Class 9 accidents. As to accidents up to and including Class 8 accidents at the proposed reactor site, the Staff has already addressed such accidents. (See FES, NUREG 75/025, pp. 7-1 to 7-5). Additionally, Class 9 accidents need not be considered at the proposed site since on June 13, 1980, the Commission caused to be published in the Federal Register a Statement of Interim Policy on Nuclear Power Plant Accident Considerations under the National Environmental Policy Act of 1969. 45 Fed. Reg. 40101. The Commission, in its "Class 9" Policy Statement, withdrew the proposed Annex to Appendix D to 10 C.F.R. Part 50, suspended the rulemaking proceeding that began with the publication of the proposed Annex on December 1, 1971, and directed that the Staff:

\* \* \* initiate treatments of accident considerations in accordance with [guidance in the Policy Statement] in its on-going NEPA review, i.e., for any proceeding at a licensing stage where a Final Environmental Impact Statement has not been issued. (Emphasis Added) (45 Fed. Reg. 40101, at 40103).

The Commission also went on to state that:

\* \* \* this change in policy is not to be construed as any lack of confidence in conclusions regarding the environmental risks of accidents expressed in any previously issued Statements, nor, absent a showing of similar special circumstances, as a basis for opening, reopening, or expanding any previous or ongoing proceeding.<sup>5/</sup>

<sup>5/</sup> Commissioners Gilinsky and Bradford disagree with the inclusion of the preceding two sentences. They feel that they are absolutely inconsistent with an even-handed reappraisal of the former, erroneous position on Class 9 accidents.

The FES considering the Pebble Springs construction permit application was issued in April 1975. Thus, Pebble Springs is not in the class of cases which are required to consider "Class 9 accidents.

Intervenors will file with the Board their argumentation as to why the contention should be admitted by May 4, 1981.

C - The parties submit the following discovery and hearing schedules to the Board for its consideration.

1. All Discovery Requests Filed - 20 days after issuance by the Board of a Final Order ruling on matters related to this Stipulation including proposed Contentions AS-5 and AS-6.
2. Responses Filed to Discovery Requests (20 days thereafter).
3. All Motions for Summary Disposition filed (20 days thereafter).
4. Responses to Summary Disposition Motions (20 days thereafter).
5. Board Ruling on Summary Disposition Motions (20 days thereafter).



6. Prehearing Conference (10 days thereafter).
7. All Testimony Filed (20 days thereafter).
8. Commence Hearings (15 days thereafter).

II.

The parties to this stipulation request that the Board accept the agreements set out in Part I above.

Respectfully submitted,

PORTLAND GENERAL ELECTRIC COMPANY,  
ET AL.

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Warren Hastings

NRC STAFF

*Bernard M. Bordenick* 4/7/81  
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Bernard M. Bordenick

LLOYD K. MARBET AND FORELAWS  
ON BOARD

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Lloyd K. Marbet