



March 4, 1981

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)

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Docket Nos. 50-514  
50-515

NRC STAFF'S FURTHER RESPONSE TO A PORTION OF  
INTERVENORS' "MOTION FOR SUSPENSION OF  
FURTHER HEARINGS AND FINDINGS," ETC.

I. INTRODUCTION

Intervenors on January 23, 1981, moved the Atomic Safety and Licensing Board (Board) for (1) "[a] suspension of all further hearings" and (2) "[the filing by Intervenors of] proposed findings of fact and conclusions of law in [this proceeding]" (Motion, p. 1). As a basis for its motion, Intervenors pointed to two recent developments in the State of Oregon. The first development is the recent enactment of a ballot measure which they assert precludes, 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, according to Intervenors, preclude "nuclear facilities up to 1995" (Motion, p. 2). Because of these developments Intervenors argue that it would be "\* \* \* a drain upon the resources of all parties \* \* \*" to continue these proceedings "\* \* \*" until it can be demonstrated to the Board's satisfaction that the Applicants

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are able to license and construct [the proposed Pebble Springs facility] at their proposed site." (Motion, p. 3).

Applicants on February 6, 1981, filed an Answer in opposition to Intervenors' motion which Staff received on February 11, 1981. Although Applicant indicates that (1) "Part 2 of Intervenor's motion correctly notes that, according to the provisions of the 1980 [Oregon] Act, before a nuclear plant can be licensed for construction and operation in Oregon 'the Energy Facility Siting Council must find that an adequate repository for the disposal of the high-level radioactive wastes produced by the plant has been licensed to operate by the appropriate agency of the Federal Government'" and that (2) "Intervenor's motion also [correctly] notes that Section 7 [sic] of the 1980 [Oregon] Act additionally requires that 'a site certificate for a nuclear-fueled thermal power plant shall not be issued until the voters of this state have approved the issuance of the certificate at an election held pursuant to Section 4 of [the] 1980 Act.'"

In a filing dated February 12, 1981, which sets forth the background circumstances leading to Intervenors' motion, the Staff (1) opposed 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, and (2) requested 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.

The Board in an Order dated February 17, 1981, granted the Staff's above noted request and suspended the time for Intervenors' filing of proposed findings of fact. However, on February 13, 1981, Intervenors filed proposed findings of fact and conclusions of law.<sup>1/</sup>

## II. DISCUSSION

A - That portion of Intervenors' motion which sought a suspension of the requirement for filing proposed findings is now moot since they have voluntarily made the filing in question.

B - As noted by Intervenors in their motion, there have been several recent developments in the State of Oregon which may impact Applicants' ability to obtain the necessary State site certification. In the absence of the necessary state approval, Applicant cannot construct the proposed facility.<sup>2/</sup>

As noted above, the Staff has previously supported Applicants'

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<sup>1/</sup> The Board had, of course, not yet received Intervenors' findings at the time it issued the February 17 Order. In a letter to the Board dated February 27, 1981, Intervenors stated that the intent of their motion was that:

"\* \* \* the whole process of findings of fact and conclusions of law be suspended, encompassing [their] submittal of proposed findings of fact as well as any final decision on [the] part of the Board.

<sup>2/</sup> 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).

request to move ahead with the closing of additional and limited portions of the environmental and site suitability aspects of the record in this proceeding. Upon review of both Intervenor's motion and Applicants' response thereto filed on February 6, 1981, which discuss the two recent State developments set out in Intervenor's motion, the Staff's view remains unchanged and it continues to support Applicants' request to move ahead with the closing of limited portions of the record. Assuming, arguendo, that Intervenor is correct in asserting that Applicants cannot now obtain the requisite approvals from the State of Oregon, we still believe that under Wisconsin Electric Power Company, et al. (Koshkonong Nuclear Plant, Units 1 and 2), CLI-74-45, 8 AEC 928 (1974), Applicant may engage in administrative proceedings in this forum while other state and local developments are pending. See also in this regard Southern California Edison Co. (San Onofre Nuclear Generating Station), ALAB-171, 7 AEC 37, 39 (1974). Intervenor has pointed to nothing in the recent State developments which preclude Applicants from closing additional limited portions of the record involving site suitability matters.

While it is certainly arguable whether or when Pebble Springs will be constructed under the circumstances which now obtain in the State of Oregon,<sup>3/</sup> the Commission precedents of Douglas Point and Koshkonong, supra,

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<sup>3/</sup> In this regard the Staff is also aware of press reports which indicate that Applicants have a move under consideration of the proposed facility to the "Hanford" site in the State of Washington.

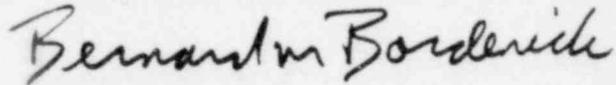
support Applicants' request to close the record in limited areas pertaining to site suitability. Further, the Staff believes that such limited hearings will not necessarily constitute an unreasonable drain on the resources of any party. Accordingly, Intervenors' motion seeking a suspension of further limited hearings should be denied.

The Staff has undertaken discussions with the other parties and is hopeful that a stipulation can be submitted to the Board concerning (1) Intervenors' proposed contentions as to the Staff's alternative site analysis and (2) a discovery and hearing schedule. Provided the Board denies Intervenors' pending motion, the Staff believes such a stipulation can be filed in the near future.

III. CONCLUSION

Intervenors' motion for suspension of further [limited] hearings and issuance of partial initial decisions by the Board should be denied.

Respectfully submitted,



Bernard M. Bordenick  
Counsel for NRC Staff

Dated at Bethesda, Maryland,  
this 4th day of March, 1981.

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NUCLEAR REGULATORY COMMISSION

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PORTLAND GENERAL ELECTRIC )  
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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF'S FURTHER RESPONSE TO A PORTION OF INTERVENORS' 'MOTION FOR SUSPENSION OF FURTHER HEARINGS AND FINDINGS,' ETC." 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 4th day of March, 1981:

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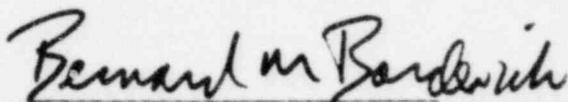
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