

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)

PUGET SOUND POWER & LIGHT)
COMPANY, et al.)(Skagit/Hanford Nuclear)
Project))Docket Nos. STN 50-522
STN 50-523

DATE: October 14, 1982

APPLICANTS' RESPONSE TO SUPPLEMENT
TO PETITION TO INTERVENE OF CONFEDERATED
TRIBES AND BANDS OF THE YAKIMA INDIAN NATION

On September 30, 1982, the Yakima Indian Nation (YIN) filed a "Supplement to Petition to Intervene of Confederated Tribes and Bands of the Yakima Indian Nation," which contains a list of contentions that YIN desires to litigate in this proceeding. The Applicants hereby submit the following response to these proposed contentions.

Contentions 1, 2, and 3 (various NRDC and NWF/OEC contentions)

The substance of these contentions has previously been accepted by the Board,*/ and the Applicants have no objection to their admission.

Contention 4 (NWF/OEC Contention 3, Part E)

The Board has only accepted parts A through D of NWF/OEC Contention 3 and has implicitly rejected Part E.**/ A similar disposition is appropriate here.

Contention 5 (NWF/OEC Contention 4)

Over the objections of the Applicants and NRC Staff, the Board

*/ Memorandum and Order (July 6, 1982), pp. 1-2.

**/ Id., p. 2

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has ruled that this contention is litigable, but has deferred acceptance.

Following a background discussion of the treaty rights claimed by YIN, fourteen subsidiary contentions (5A through 5N) relating to alleged deficiencies in the ASC/ER and the DEIS are presented.

Contention 5A

This contention alleges that the Applicants and NRC Staff have not considered all of the contaminants in the Columbia River and the impact which these contaminants will have after concentration in S/HNP.

Both the Applicants and the NRC Staff considered the contaminants of importance in the Columbia River.**/ Although trace amounts of other contaminants may exist in the Columbia River, YIN has offered absolutely no basis for concluding that the amounts of such contaminants are sufficiently high to pose any threat to aquatic life following concentration by S/HNP, and therefore has provided no basis for requiring consideration of these other contaminants. Consequently, this contention should be rejected.

Contention 5B

This contention alleges that the Applicants' model of the project discharge plume did not consider the effects of variations in river velocity and turbulence.

Initially, it should be noted that the Applicants have accounted for the river velocity, and changes in the velocity,

*/ Id., p. 3.

**/ Application for Site Certification/Environmental Report (ASC/ER) for S/HNP, Table 5.3-1; Draft Environmental Statement (DES) for S/HNP, Table 4-7.

in their model. See ASC/ER, pp. 5.1-4 to 8, Table 5.1-1.

YIN's claim to the contrary is without basis.

Moreover, to the extent that YIN is arguing that dispersal of the discharge plume would be greater than that calculated by the Applicants, YIN has provided no basis for contending that such an effect would be detrimental. In fact, greater dispersal would decrease the concentrations and incremental temperatures of the plume, thereby reducing any effects which the plume might have upon fish encountering the plume.^{*/} Consequently, this contention should be rejected.

Contention 5C

This contention alleges that the Applicants and the NRC Staff have not adequately examined the effect that heated discharge water from S/HNP will have upon the critical stages of steelhead and salmonid fisheries.

This contention is totally without basis. Not only have the Applicants and the NRC Staff examined the effect that heated discharge water might have upon steelhead and salmonid fisheries, they have also analyzed the potential effect which such discharge might have upon steelhead and salmonid migration, spawning, and rearing.^{**/} YIN has not identified any

^{*/} YIN argues that increased dispersal would increase the number of fish which would encounter the plume. However, the Applicants have demonstrated that even the concentrated discharge plume calculated by Applicants will not have a significant effect upon fish encountering the plume, ASC/ER, Sections 5.1.3.2.4 and 5.3.1.2.

^{**/} ASC/ER Section 5.1.3.2.4.1; DES, p. 4-59 to 4-63.

defect or deficiency in these evaluations; consequently this contention should be rejected.

Contention 5D

This contention criticizes the ASC/ER and DES for the qualitative discussion of migration patterns of salmon and steelhead, and it suggests that studies should be performed to provide precise estimates of the number and locations of these migrating fish.

There is no requirement under the National Environmental Policy Act (NEPA) or the Commission's regulations that additional studies be initiated to provide the information requested by YIN. Both the DES (p. 4-63) and the ASC/ER (pp. 2.2-24 and 5.1-16) reference studies which have previously been performed which indicate that migrating salmonids prefer shoreline areas and are not expected to frequent the proposed discharge location. YIN has provided no basis for questioning this conclusion, and the Applicants and NRC Staff have taken the requisite "hard look" at the issue under NEPA's "rule of reason". See NRDC v. Morton, 458 F.2d 827, 834, 837-38 (D.C. Cir. 1972). Consequently, this contention should be rejected.

Contention 5E

This contention alleges that the Applicants and NRC Staff have not considered pre-existing stresses on fish from dams and other projects.

This contention is without basis. The ASC/ER and the DES have sections devoted to this very subject. See ASC/ER,

Section 2.2.2.8; DES, pp. 4-53 to 4-55. YIN has not identified any error in these sections. Consequently, this contention should be rejected.

Contentions 5F and 5G

These contentions state that neither the Applicants nor the NRC Staff have addressed in detail the potential toxic effects, including synergistic effects, to salmon and steelhead from the discharge of metals and chlorine from S/HNP.

Both of these contentions are essentially identical to proposed Contentions H and I submitted by the Columbia River Inter-Tribal Fish Commission on July 16, 1982.^{*/} Following submission of these proposed contentions, the Applicants amended the ASC/ER to include detailed discussions of the potential for toxic effects, including synergistic effects, from discharge of metal and chlorine from S/HNP.^{**/} Consequently, the basis for these contentions no longer exists, and they should be rejected.

Contention 5H

This contention alleges that Indian treaty rights to fish have not been specifically considered. This contention is without basis. See ASC/ER, Section 8.4. Moreover, there is no requirement under NEPA that this subject be considered independently of any potential impacts from S/HNP. To the

^{*/} Columbia River Inter-Tribal Fish Commission's Second Supplement to Petition to Intervene (July 16, 1982), pp. 15-21.

^{**/} Amendment 6 to the ASC/ER for S/HNP (August 20, 1982), Section 5.3.1.2.

extent that YIN is alleging that S/HNP will impact fish, and consequently allegedly affect treaty fishing rights, this contention is encompassed by other contentions, and it should be rejected as a separate contention.

This contention also alleges that efforts are underway to rebuild the fall chinook population and that the ASC/ER and the DES do not "reflect the impact that the S/HNP may have on efforts to rebuild the depressed fall chinook population of the Hanford Reach." YIN has provided no basis for alleging that S/HNP will interfere with any efforts to rebuild the fall chinook population. To the extent that this contention is alleging that S/HNP will affect fall chinook which are introduced into the Columbia River as a result of a rebuilding effort, this contention is encompassed by other contentions, and it should be rejected as a separate contention.

Contention 5I

This contention alleges that data has not been presented regarding the constituents of the river bottom to allow for an adequate evaluation of the effects of construction of the intake and discharge structures.

The contentions that data has not been presented on the constituents of the river bottom is without basis. See ASC/ER, Section 2.4.1.1.2, Tables 2.4-7, 2.4-8, and 2.4-9. Moreover, based in part upon evaluations of similar construction for WNP-2 which is only a few miles downstream of S/HNP, the Applicants and NRC Staff have concluded that releases of

this material during construction would have minimal impact. ASC/ER, p. 4.1-10, DES, p. 4-36. YIN has provided no basis for contesting this conclusion or for alleging that construction will result in the release of toxic amounts of contaminants. Consequently, this contention should be rejected.

Contention 5J

This contention alleges that water withdrawals by S/HNP from the Columbia River "could preclude maintenance of recommended minimum flows for the Hanford Reach."

The minimum regulated flow at Priest Rapids Dam (located immediately upstream of the Hanford Reach) is 36,000 cfs. The maximum design water intake for S/HNP is 93.6 cfs, which is only 0.26 percent of the minimum regulated flow and only 0.08 percent of the median river flow. ASC/ER, pp. 3.3-1 and 5.1-3. No measurable difference in water elevations or river velocities and no adverse impact upon anadromous fish will occur as a result of water consumption by S/HNP. ASC/ER, p. E-120. YIN has not alleged that any of these figures or conclusions are incorrect. Consequently, this contention should be rejected.

Contention 5K

This contention argues that it is not possible to evaluate the impacts of construction of the intake and discharge structure absent details regarding the Applicants' construction impact control program. This contention is specious. The impacts of construction of the intake and discharge structures

are discussed in the DES (p. 4-36) and the ASC/ER (Section 4.1.2.2); Inclusion of additional mitigative measures in a construction impact control program would only serve to reduce the impact described in the ASC/ER and DES. Thus, both the DES and ASC/ER present a conservative analysis, and this contention should be rejected.

This contention also argues that it is not possible to select a specific location of the intake and discharge structure unless the "exact migration routes" of fish are known. As is discussed in the response to Contention 5D, preferences of migrating salmon are known and, under NEPA's "rule of reason", there is no requirement that additional investigations be performed to determine the "exact migration routes." Moreover, YIN has provided no basis for concluding that knowledge of migration routes is necessary to evaluate the impact of construction upon fish nor has it provided any basis for concluding the construction will adversely impact fish. Consequently, this contention should be rejected.

Contention 5L

This contention alleges that siltation caused by construction of the intake and discharge systems for S/HNP may have some detrimental effects upon fish, including spawning.

Although YIN is contending that there may be some detrimental effects upon fish, it is not apparently contesting the conclusion that any impacts from construction of the intake and discharge systems would be minor and temporary in nature. ASC/ER (Section 4.1.2.2); DES (pp. 4-56 and 4-57); Applicants' Response

to CFSP's First Set of Interrogatories (Responses to Interrogatories 33, 59, 60, and 61). Moreover, YIN has provided absolutely no basis for concluding that siltation would affect spawning, given the fact that the nearest known spawning areas are more than seven miles downstream. Id. Consequently, this contention lacks a basis and does not present an issue in controversy and therefore should be rejected.

Contention 5M

This contention contains three different allegations.

First, YIN alleges that construction of S/HNP will disturb vegetation and wildlife within the plant site. Neither the Applicants nor the NRC Staff have contested this point. See ASC/ER (pp. 4.1-11 to 4.1-13) and DES (pp. 4-67 to 4-68). YIN has not alleged, and has not provided a basis for an allegation, that this disturbance or loss will be significant in terms of its impact upon the vegetation and wildlife of the area. Since this contention does not present an issue in controversy, it should be rejected.

Second, YIN alleges that the Applicants have not adequately addressed the existing radiological burden in the area around S/HNP. However, ASC/ER Section 2.8 does describe the background radiological characteristics of the area of the proposed site, and YIN has not identified any specific defects or deficiencies in this description. Consequently, this contention should be rejected for lack of specificity and basis.

Finally, YIN alleges that construction and operation of S/HNP will deprive its people of access to the site for the exercise of treaty-secured rights. Without expressing an opinion on the merits of YIN's treaty claim, the Applicants will simply note that the Atomic Energy Act does not confer upon the NRC any authority or jurisdiction to adjudicate treaties or to deny issuance of a construction permit on such a ground. Consequently, this contention should be rejected.

Contention 5N

This contention states that systematic archaeological exploration of the area to be disturbed by construction of S/HNP should be undertaken by trained persons. The Applicant has proposed to conduct a systematic archaeological exploration by trained persons of the area to be disturbed by construction of S/HNP. See ASC/ER Sections 2.6.1.1 and 2.6.1.2. This contention does not present an issue in controversy and should be rejected.

Contention 6

This contention contains several subparts.

First, YIN alleges that the Applicants have not adequately addressed the existing radiological burden in the area around S/HNP. However, ASC/ER Section 2.8 does describe the background radiological characteristics of the area of the proposed site, and YIN has not identified any specific defects or deficiencies in this description. Consequently, this contention should be rejected for lack of specificity and basis.

Second, YIN alleges that the Applicants have not discussed the effect which liquid radioactive discharges from S/HNP may have upon persons such as the Yakimas who consume natural foods. This contention is without basis. The Applicant used standards and models developed by the NRC to estimate maximum individual doses and population doses; these models account for consumption of fish and other natural foods which might be affected by liquid radioactive discharges from S/HNP. See ASC/ER Section 5.2 and Appendix G. YIN has presented absolutely no basis for alleging that the estimates of the Applicants are low. Furthermore, there is no requirement under NEPA's "rule of reason" or under the Commission's regulations that the Applicants perform dose calculations for certain subgroups such as the YIN.

Third, YIN has submitted a contention on health effects which is essentially identical to Contention 30 of CFSP. Since the Licensing Board has already accepted CFSP Contention 30,^{*/} the Applicants will not object to this contention by YIN.

Finally, YIN alleges that the Applicants have not considered the cumulative radiological impacts of S/HNP and other nuclear facilities in the area. However, the Applicants have estimated the cumulative impact of S/HNP and WNP 1/4 and WNP 2. See ASC/ER Table 5-2.8 and Table G-12. YIN has not identified any defect of deficiency in these estimates. Moreover, given

^{*/} Memorandum and Order (July 6, 1982), p. 7.

the extremely low cumulative doses which were calculated, YIN has presented no basis under NEPA's "rule of reason" for requiring further consideration of this subject.

Contention 7

This contention essentially is identical to NWF/OEC Contention 5. Since the Licensing Board has previously rejected NWF/OEC Contention 5,^{*/} a similar disposition is warranted with respect to YIN Contention 7.

Contention 8

This contention alleges that the Applicants must provide the YIN with access to the Hanford Reservation and the S/HNP Site. The Applicants will have no control over access to the Hanford Reservation as a whole, and thus this part of the contention is irrelevant to this proceeding. With respect to alleged treaty rights of access to the S/HNP Site, the Atomic Energy Act does not confer upon the NRC any authority or jurisdiction to adjudicate treaties or to deny issuance of a construction permit on such a ground. See response to Contention 5M. Consequently, this contention should be rejected.

Contention 9

This contention contains two subparts.

First, YIN contends that "[o]bjectively reasonably present fear and apprehension" from emission of radioactivity during normal operation will affect the Yakimas' enjoyment of their

^{*/} Id., p. 5.

land. The Commission has determined that psychological stress and fear are not cognizable under the Atomic Energy Act or NEPA. Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 1), CLI-80-39, 12 NRC 607 (1980) and CLI-81-20, 14 NRC 593 (1981). This decision was later reversed with respect to the restart of TMI-1, People Against Nuclear Energy v. NRC, No. 81-1131 (D.C. Cir. May 14, 1982), cert. pending No. 81-2399. However, the Commission has interpreted PANE as applying only to situations involving accidents comparable to that at TMI-2, and it has stated that a contention regarding fear and psychological stress is inadmissible unless it satisfies three criteria: (1) impacts involve post-traumatic anxieties, (2) impacts are accompanied by physical effects, and (3) the post-traumatic anxieties are caused by fears of recurring catastrophe. 47 Fed. Reg. 31762 (July 22, 1982). Since YIN has not satisfied these criteria, this contention is inadmissible.

Second, YIN contends that an accident at S/HNP could result in uncompensated economic losses, thereby violating the purpose of the treaty with the YIN. To the extent that YIN is alleging that economic losses may result from an accident at S/HNP, the Applicants have estimated the potential economic costs of an accident (ASC/ER Section 7.4.6.2), and YIN has not contested the amount of that estimate nor provided any basis for contesting those estimates. To the extent that YIN is alleging that such economic losses would violate treaties, the NRC has no authority or jurisdiction under the Atomic Energy

Act to adjudicate treaties or to deny issuance of a construction permit on such grounds. Consequently, this contention should be rejected. See response to Contention 5M.

Contention 10

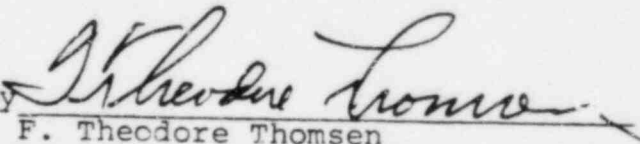
This contention presents legal arguments regarding the governmental status of YIN, an alleged NRC fiduciary responsibility toward YIN, and a claimed right on the part of YIN to raise matters beyond its contentions. Since this contention presents no factual issue for litigation with respect to issuance of construction permits for S/HNP, it should be rejected.

DATED: October 14, 1982

Respectfully submitted,

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
)	
PUGET SOUND POWER & LIGHT COMPANY,)	DOCKET NOS.
et al.)	
)	
(Skagit/Hanford Nuclear Project,)	STN 50-522
Units 1 and 2))	STN 50-523
)	

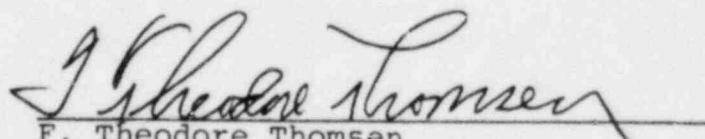
CERTIFICATE OF SERVICE

I hereby certify that the following:

APPLICANTS' RESPONSE TO SUPPLEMENT
TO PETITION TO INTERVENE OF CONFEDERATED
TRIBES AND BANDS OF THE YAKIMA INDIAN NATION

in the above-captioned proceeding have been served upon the persons
shown on the attached list by depositing copies thereof in the
United States mail on October 14, 1982 with proper
postage affixed for first class mail.

DATED: October 14, 1982


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