

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY
AND LICENSING BOARD



In the Matter of)
)
WASHINGTON PUBLIC POWER)
SUPPLY SYSTEM) Docket No. 50-460-CP
)
(WPPSS Nuclear Project No. 1))

LICENSEE'S RESPONSE TO COALITION
FOR SAFE POWER MOTION TO COMPEL

I. Introduction

On April 14, 1983 intervenor served the Washington Public Power Supply System ("Licensee") with its first set of interrogatories. Licensee responded to those interrogatories on May 3, 1983, in which it objected to interrogatories 6, 7, 8, 9, and, in part, interrogatory 10.

On May 16, 1983 intervenor filed a motion to compel Licensee to respond to interrogatories 6, 7, 8 and 9. Pursuant to Section 2.730(c) of the NRC Rules of Practice, Licensee hereby responds to that motion.

II. Response to Motion

Licensee submits that intervenor has fundamentally misunderstood the objections raised to its interrogatories. Clearly, these interrogatories seek information which simply has no bearing on the issues before this Board. Indeed, interrogatories 6, 7, 8 and 9 constitute

essentially limitless requests for documents involving all aspects of the construction deferral at WNP-1. As such, they are impermissibly broad.

Licensee submits that two elements of NRC practice and procedure warrant this conclusion. First, in Illinois Power Company (Clinton Power Station, Unit 1)¹ the Licensing Board stated, as follows:

Where a contention is made up of a general allegation which, standing alone, would not be admissible under 10 CFR §2.714(b), plus one or more alleged bases for the contention set forth with reasonable specificity, the scope of the matters in controversy raised by such contention are limited by the specific alleged basis or bases set forth in the contention.

This rule is clearly applicable here because, when read in isolation from its supporting basis, petitioner's proposed contention amounts to conclusory assertions with no factual grounding.²

¹ LBP-81-61, 14 NRC 735, 737 (1981).

² Petitioner's single contention is that the Licensee's "decision in April 1982 to defer construction for two to five years, and subsequent cessation of construction at WNP-1 was dilatory. Such action was without good cause as required by 10 CFR 50.55(b). Moreover, the modified request for extension of completion date to 1991 does not constitute a reasonable period of time provided for in 10 CFR 50.55(b)." Washington Public Power Supply System (WPPSS Nuclear Project No. 1), ASLBP No. 82-480-01 CPA, Memorandum and Order (Admitting Intervenor and Contention), March 25, 1983 ("March 25 Memorandum and Order") slip op. at 4.

Second, as set forth in 10 C.F.R. Section 2.740(b)(1), discovery is limited to matters "relevant to the subject matter involved in the proceeding," i.e., contentions admitted by the presiding officer in the proceeding.³ Accordingly, in this proceeding the scope of discovery is limited to matters which are relevant to the single admitted contention. That contention, in turn, is defined by the specific alleged basis or bases set forth by petitioner in its support. As a result, discovery requests must be relevant to the bases set forth by petitioner in support of its contention.

When viewed in light of this basic and well-established precedent, the failure of intervenor's interrogatories 6, 7, 8 and 9 to satisfy the NRC Rules of Practice is self-evident. As reflected in the Board's March 25, 1983 Memorandum and Order, the issues in this proceeding are whether the Licensee intended to delay construction of WNP-1; whether that delay was for good cause; and whether the requested extension of completion date is for a reasonable period of time.⁴ Subsumed in these issues are

³ See Allied General Nuclear Services (Barnwell Fuel Receiving and Storage Station), LBP-77-13, 5 NRC 489, 492 (1977).

⁴ March 25 Memorandum and Order slip op. at 5. Licensee notes that intervenor characterized the issues in this proceeding as "the deferral of WNP-1; was such deferral dilatory; and is the requested extension for a reasonable period of time." Coalition for Safe Power Motion to Compell [sic] Responses to First Set of Interrogatories to Applicant ("motion to
(footnote continued)

a number of allegations made by intervenor which constituted the basis for its contention. These allegations are as follows:

1. Licensee intended to delay construction at WNP-1;
2. Licensee did not establish "good cause" for the construction permit extension because it offered only a "vague, conclusory [sic] and unsubstantiated statement that BPA support is essential to the WPPSS projects;"⁵
3. Six to nine years could not have been contemplated as a "reasonable period of time" within the meaning of 10 C.F.R. Section 50.55(b); and
4. The present completion dates will not be adequate.⁶

The interrogatories to which Licensee objects are not confined to the issues set forth above, which have been raised by intervenor in the contention admitted in this proceeding. Rather, they go well beyond those issues. The hypothetical example provided by intervenor in its motion to compel illustrates this deficiency. Intervenor stated, as follows:

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compel"), May 18, 1983 at 2. This simply is inconsistent with the issues identified by the Board set forth above and should not, therefore, serve to delineate the scope of this proceeding or of discovery.

⁵ Coalition for Safe Power Amended Contention No. 2 - February 11, 1983 at 2.

⁶ Id. at 2-4.

[Licensee] also expresses the concern that it would have to supply documents concerning ramp-down actions which have been proposed or taken to prevent possible site or facility degradation during the deferral. While it may be true that such documents "bear on health and safety" they are also relevant to the issues in this proceeding. Issues do not have to be mutually exclusive: a hypothetical example would be if a letter had been written stating that because of questions about the geology of the site, [Licensee] was considering the deferral of WNP-1. The document requested could shed some light on whether or not [Licensee's] actions were dilatory and the extension dates reasonable. For instance, [Licensee] could have been planning a deferral of construction prior to BPA's suggestion to do so. The only way intervenor could discover that fact would be to have an opportunity to view those documents.⁷

In this proceeding no allegation has been made that questions regarding the geology at the WNP-1 site was the real reason why WNP-1 was deferred. Nor has any allegation been made more generally that such deferral was needed for undisclosed health and safety reasons. However, that is precisely what intervenor now suggests in its hypothetical example. As such, this speculation may not provide justification for intervenor to examine without any restraints whatsoever every aspect of the WNP-1

⁷ Motion to compel at 3.

construction deferral, especially given the limited scope of this proceeding and the still narrower scope of intervenors' single contention.

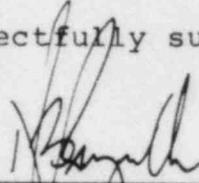
That intervenor misunderstands the nature of Licensee's objections to its interrogatories is also illustrated by its assertion that documents concerning employment levels and contractual obligations have a direct bearing on the completion date for WNP-1 and thus are relevant to this proceeding.⁸ First, documents involving fuel enrichment contacts (for example) have no logical nexus to the issues raised by intervenor in this proceeding, yet they fall within the scope of these objectionable interrogatories. Similarly, materials involving past employment levels at WNP-1 have no bearing on future construction activities at WNP-1 and when plant construction can be completed. Again, however, this information falls within the objectionable interrogatories.⁹

8 Id. at 4.

9 In Washington Public Power Supply System (WPPSS Nuclear Project No. 2), ALAB-722, ___ NRC ___ (1983) ("WNP-2") the Appeal Board emphasized the narrow scope of inquiry in a construction permit extension proceeding. It held that "dilatatory conduct in the sense used by the Commission [in CLI-82-29] means the intentional delay of construction without a valid purpose." It added that the "ultimate 'good cause' determination called for by Section 185 of the Atomic Energy Act is whether good cause exists to extend the construction completion date. The statutory focus is not so much (or at least not exclusively) on an applicant's past conduct, but rather on the future." WNP-2, supra, ALAB-722, slip op. at 9 and 13. The Commission declined to review ALAB-722, so it now
(footnote continued)

In short, intervenor simply fails to recognize in its motion to compel the fact that its interrogatories are not in fact limited to the scope of the issues raised in this proceeding but rather seek all documents concerning all aspects of the WNP-1 construction deferral. Accordingly, Licensee urges that the Board deny intervenor's motion to compel.

Respectfully submitted,



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constitutes final agency action. May 25, 1983 Memorandum from Samuel J. Chilk, Secretary of the Commission to Board and Parties in the WPPSS Project 2 Proceeding. Clearly a broad inquiry into the WNP-1 construction deferral ignores this teaching of WNP-2, supra.

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing "Licensee's Response to Coalition for Safe Power Motion to Compel" in the captioned matter were served upon the following persons by express mail, postage prepaid, by hand delivery (*), or by deposit in the United States mail, first class, postage prepaid (**) this 1st day of June, 1983:

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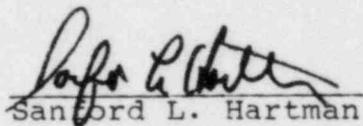
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