

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) Nos. STN 50-522, 523
COMPANY, et al.)
)
(Skagit/Hanford Nuclear) January 19, 1983
Project, Units 1 and 2))
)
)

INTERVENORS' REPLY TO STAFF AND APPLICANT RESPONSE
TO INTERVENORS' MOTION TO CLARIFY AND AMEND
CERTAIN CONTENTIONS

On December 13, 1982, Intervenors National Wildlife Federation/
Oregon Environmental Council (NWF/OEC), the Columbia River Inter-
Tribal Fish Commission (CRITFC), and the Coalition for Safe Power
(CSP), jointly submitted their motion to clarify and amend certain
contentions in this proceeding. The Yakima Indian Nation (YIN)
concurred in that motion. The Staff and the Applicants have now
responded to that motion, and the Intervenors hereby reply to
those responses.

I. Applicants' Response

The Applicants do not oppose the Intervenors' motion.
Applicants do, however, spend a considerable amount of time arguing
against an effort to quantify the environmental costs of the Skagit/
Hanford Project (S/HNP). According to the Applicants, "NEPA does
not require that all environmental impacts be quantified."
Applicant Response at 7 Thus, the Applicants "recommend that
the parties and the Board abandon any esoteric attempt to place a

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value upon all potential environmental impacts of S/HNP."

Applicants Response at 8

The Intervenors do not dispute the Applicants' claim that NEPA does not, in all instances, require the quantification of environmental costs and benefits. Nevertheless, the Commission's regulations require that "[t]he cost/benefit analysis shall, to the fullest extent practicable, quantify the various factors considered." 10 C.F.R. § 51.20(b) If the S/HNP application finally comes to hearing, it will do so only after the Northwest Power Planning Council has developed and adopted a methodology for quantification of environmental costs and benefits of electrical generating facilities. See, Pacific Northwest Electric Power Planning and Conservation Act, § 4(e)(3)(c); 16 U.S.C. § 839b(e)(3)(c) Intervenors merely urge that once this methodology is in place, the Commission should properly use it, as representing the fullest extent to which quantification is "practicable," to quantify the various environmental factors related to construction and operation of S/HNP. Nothing in the Applicants extensive discussion of case law prohibits or discourages such an effort, which is, after all, required by the Commission's own regulations.

The Board should reject as premature the Applicants generalized objection to the quantification of environmental costs and benefits. Once the Power Planning Council has developed its quantification methodology, the appropriateness of utilizing that methodology in

the S/HNP proceeding can be determined by the Board.

II. Staff Response

The NRC Staff has also responded to Intervenors' Motion to Clarify and Amend Certain Contentions. The final position of the Staff, however, is somewhat difficult to discern. Despite a lengthy discussion justifying opposition to the Intervenors' motion, in the end, the Staff concludes that "[o]n balance, the intervenors should have an opportunity to have the Board consider whether [the YIN and CRITFC issues] should be admitted in this proceeding However, this does not mean that each of them should be admitted." Staff Response at 20 Intervenors will respond to the arguments they are able to distill from Staff's response.

A. The Staff's Position That Only Bases Previously Identified In Supplements To Intervene May Be Litigated In The Hearing Is Incorrect

The Staff spends considerable time in its response to the Intervenors' motion arguing that only the specific bases identified by Intervenors in supplements to their petitions to intervene may be litigated at the hearing stage.

Intervenors dispute the Staff position that Intervenors are prohibited from expanding, elaborating or adding to the bases for any accepted contention prior to the hearing. The bases included in the original submittal of a contention exist for the sole purpose of establishing that an intervenor has a legally sufficient reason for the proposition which is offered in the form of a contention.

See, Florida Power & Light, (Turkey Point Nuclear Project, Units 3 and 4), ALAB-660, 14 NRC 987, 988 (1981). If, in fact, the bases contained within the original framework of the contention were the sole specific issues Intervenor were allowed to advance, as the Staff suggests, Intervenor would be forced to show "good cause" [as provided for late filed contentions in 10 C.F.R. 2.714(b)] for the inclusion of any evidence (whether additional reasons, information, documents, or expert advice) not originally identified. If this were true, there would be no reason for the entire discovery process, because all bases, both information and documents, would have been previously identified. Instead, 10 C.F.R. 2.740(e) provides that all parties, including intervenors, must update responses to interrogatories from other parties, so that all parties remain on notice of the issues sought to be litigated.

A licensing board has the duty, not to judge if a claim is factually correct or provable, but to determine if the specific bases presented justify the more general allegation being made, namely the contention. See, Mississippi Power and Light, (Grand Gulf Nuclear Project, Units 1 and 2), ALAB-130, 6 AEC 423, 424 (1973). The obligation on the part of the intervenor to establish factual support for these bases (and thus to prove the allegation) arises in response to a motion for summary disposition or at the evidentiary hearing, Houston Power & Light, (Allens Creek Nuclear Generating Station, Unit 1), ALAB-590, 11 NRC 549-50 (1980), and not in the original framing of the contentions, nor as the Staff submits, at the time of the Board's initial judgment of the

contentions.

Moreover, even contentions themselves can be amended for good cause. 10 C.F.R. § 2.714(b) It is clear from Commission precedent that Intervenors should, absent exceptional circumstances, be permitted to amend their contentions to take into account material unearthed through either formal or informal discovery subsequent to the filing of original petitions to intervene. See, Indiana and Michigan Electric Co., (Donald C. Cook Nuclear Plant Units 1 and 2), CLI-72-25, 5 AEC 13.

Intervenors urge the Board not to issue any order or memorandum that would limit the Intervenors' right to support their existing contentions with additional relevant bases or to add or amend contentions for good cause.

F. Staff's Apparent Opposition to Clarification of
Contention 7 is Misplaced

Contention 7 (as numbered by the Board's November 2, 1982 Memorandum and Order) reads as follows:

The Applicants have failed to assess fully the environmental impacts of the project on Columbia River fish and wildlife resources.

As described more fully in the Intervenors' motion, this contention was proposed by three Intervenors, namely NWF/OEC, CRITFC, and YIN. NWF/OEC proposed one primary basis for this contention, that is, the impacts of hydro-peaking. CRITFC and YIN, however, listed substantial additional bases for this contention. The only purpose of the Intervenors' motion is to clarify that the tribal Intervenors will be permitted to litigate the bases they gave for their Contentions 5, now Contention 7.

The Staff's position is not precise. On the one hand, it claims that the Board "should make clear that . . . Contention 7 only allows the litigation of those bases for NWF/OEC Contention 4" Staff Response at 16 through 17. On the other hand, the Staff admits that certain of the CRITFC and YIN bases do properly fit under Contention 7 and should be incorporated therein. Staff Response at 20 through 21. The Staff seems merely to object to clarification of Contention 7 unless the tribal bases are ruled upon by the Board prior to their incorporation into Contention 7.

The Staff's error is in its assumption that the Board has not already ruled on the acceptability of YIN and CRITFC Contentions 5. That is, as Intervenors understand it, exactly what the Board did in its November 2, 1982 Memorandum and Order, as supplemented by the November 5, 1982, Memorandum and Order. The YIN and CRITFC contentions were accepted on the bases asserted (i.e., there was a showing of legally sufficient reason for the contentions) and those parties have commenced work on their positions on that basis. The Staff's request for a ruling on individual bases is irrelevant.

*/ If the Intervenors are in error and the Board does intend, upon suggestion of Staff, to rule upon the acceptability of individual bases or parts of CRITFC Contention 5 and YIN Contention 5, those Intervenors respectfully request that they be notified of the Board's intention and that the Board allow them an opportunity to reply to Staff Objections. See, Houston Lighting and Power Company, (Allens Creek Nuclear Generating Station, Unit 1), ALAB-565, 10 NRC 521, 524-525 (1979).

This being the case, there appears really to be little dispute over the Intervenor's motion. All parties agree that CRITFC and YIN should be permitted to litigate their Contentions 5 under the rubric of Contention 7. The Board has already ruled on the admissability of the tribal Contentions 5 and their bases. By granting Intervenor's motion, the Board will clarify which organization may present evidence and argument under each Board-accepted contention.

C. Staff's Apparent Opposition To Clarification And Amendment Of Contention 8 Is Misplaced

NRC Staff objects to incorporation of the NWF/OEC, YIN and CRITFC environmental concerns under the rubric of Contention 8, related to environmental costs and benefits. The purpose of the objection is not altogether clear. As the Applicants noted, "[i]n essence, the intervenors are arguing that these factual allegations give rise to three difference legal conclusions regarding (1) the adequacy of the assessment of environmental impacts, (2) the results of the cost/benefit balance for S/HNP, and (3) possible violation of Indian treaty rights." Applicant Response at 1. The Applicants reasonably determined not to object to the Intervenor's motion since it seeks merely to clarify confused legal questions, and not to expand the number of factual issues to be heard at the hearing.

Intervenor's motion to incorporate NWF/OEC's concern with environmental costs and benefits under Contention 8 follows a suggestion made by Judge Linenberger at the last pre-hearing con-

ference. The suggestion that the YIN and CRITFC bases with relation to environmental quality be incorporated under Contention 8 is, as the Applicants pointed out, simply a method to insure that the legal ramifications of factual presentation should be clearly delineated in the Board's Contentions. The NRC Staff objections make no practical sense in context of this hearing and seek artificially to limit the legal analysis of the parties and the Board in assessing the significance of factual presentations. Staff objections to the Intervenors' motion with respect to Contention 8 should be rejected.

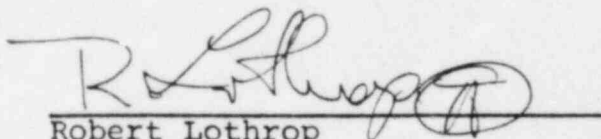
Conclusion

Intervenors respectfully request that their Motion to Clarify and Amend Certain Contentions be granted.

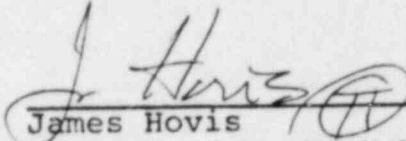
Respectfully submitted,



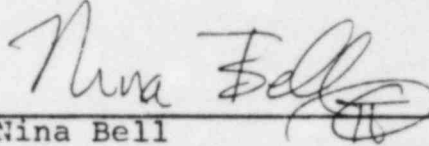
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DATED: January 19, 1983.

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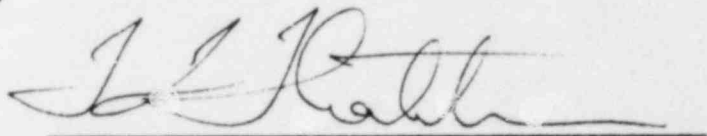
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CERTIFICATE OF SERVICE

I hereby certify that the National Wildlife Federation/Oregon Environmental Council's INTERVENORS' REPLY TO STAFF AND APPLICANT RESPONSE TO INTERVENORS' MOTION TO CLARIFY AND AMEND CERTAIN CONTENTIONS in the above-captioned proceeding has been served upon the persons shown on the attached list by depositing copies thereof in the United States mail on January , 1983 with proper postage affixed for first class mail.

DATED: January 19, 1983.



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