

# Forelaws on Board

## \*THE FOUR LAWS OF ECOLOGY

Our conscience teaches us it is right,  
our reason teaches us it is useful,  
that men should live according to  
the Golden Rule.

W. Winwood Krade

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Boring, Oregon 97009  
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1. Everything is connected to everything else.  
2. Everything must go somewhere.  
3. Nature knows best.  
4. There is no such thing as a free lunch.

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### 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) )

9/8/81  
Docket Nos. 50-51  
50-515

#### FORELAWS ON BOARD'S:

I. RESPONSE IN OPPOSITION TO NRC STAFF  
MOTION FOR SUMMARY DISPOSITION OF INTERVENOR'S  
CONTENTION AS-5 (FIRST PART).

II. MOTION FOR SUSPENSION OF FURTHER  
HEARINGS

DATED: September 8, 1981

#### I. A. ARGUMENT IN OPPOSITION

On August 18, 1981, the NRC staff filed a "Motion for Summary Disposition of Intervenor's Contention AS-5 (first part)" in which they move that "the Board should find, without the necessity of holding an evidentiary hearing, that the CEQ regulations relied on by intervenors are not applicable to this proceeding" and ask the Board "to summarily dispose of the first part of Contention AS-5" as well as "dismiss said portion of that Contention from this proceeding."

Forelaws on Board opposes this motion based upon the following response to the NRC staff's "Statement of Material Facts as to which there is no genuine issue to be heard":

1) The staff asserts in the first four (1-4) statements of material facts and number 3 that "the date of completion of the

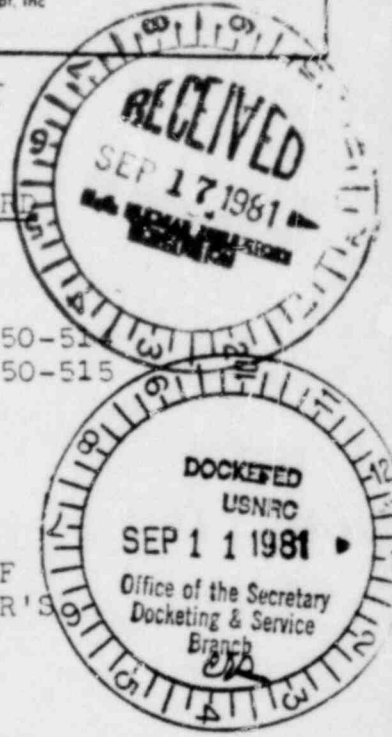
A REVERENCE FOR ALL LIFE • THE GOLDEN RULE • THE FOUR LAWS OF ECOLOGY

GUIDELINES OF CREATIVE ENVIRONMENTALISM

FORELAWS ON BOARD

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Draft FES-SUPP by the staff were prior to the effective date of 40 C.F.R. 1500 et seq." The staff makes the case that the issuance of the NRC staff's Final Environmental Statement was April 1975. As we have shown in Forelaws On Board's "Argument for the Admission of Contentions AS-5 and AS-6", pages 1-2, dated June 1, 1981, this material fact is irrelevant due to the straightforward position of the Council on Environmental Quality that supplements exist by themselves. (46 FR 18029, March 23, 1981, Question 12a)

In material fact number three the staff attempts to circumvent the irrelevancy of the FES date of issuance by claiming that "the Draft of Supplement No. 1 to the Final Environmental Statement... was completed by the staff on June 15, 1979." They reference this date by referring to an answer to interrogatory four contained in "Answers of the NRC staff to 'Forelaws On Board's Interrogatories \*\*\* Dated July 8, 1981'" which states in relevant part:

"The ANL (Argonne National Laboratory) analysis was finished on June 15, 1979, when a draft copy was sent to the NRC staff."

The staff is attempting to represent that because a contractor finished its analysis by June 15, 1979, this somehow negates the actual date the "Draft Supplement No. 1 to the FES on the Pebble Springs Nuclear Plants Units 1 and 2" was issued (November, 1979) which unfortunately for the staff was after the date of the CEQ regulations of July 30, 1979. Regardless of who performed the work the staff's final responsibility lies in the document they endorse and this Board would fall victim to subterfuge if it allowed the deviousness of this argument to prevail. The staff was fully aware of the CEQ regulations by November and consciously chose to proceed with the issuance of their Draft Supplement No. 1 for public review. Material facts 1- are thus unsupportable.

2) The staff's remaining argument is found in number 5 and 6 of Statement of Material Facts. Forelaws On Board failed to find a number 7. Here the staff reiterates its position of April 8 in the "Stipulation Regarding Contentions and Scheduling" (page 4) that "the NRC has not yet promulgated regulations implementing the regulations of the CEQ cited and relied on by

intervenor in contention AS-5" and that "the Commission has made it clear that, until regulations implementing the CEQ regulations... are promulgated, 10 C.F.R. Part 51 regulations remain in effect. This argument is in direct conflict with 40 C.F.R. 1507.3(a) which states in relevant part:

Not later than eight months after publication of these regulations as finally adopted in the Federal Register, or five months after the establishment of an agency, whichever shall come later, each agency shall as necessary adopt procedures to supplement these regulations...The procedures shall be adopted for public review and after review by the Council for conformity with the Act and these regulations. The Council shall complete its review within 30 days. Once in effect they shall be filed with the Council and made readily available to the public...

On March 3, 1980, the Nuclear Regulatory Commission published in the Federal Register "Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions and Related Conforming Amendments" with a public comment period which expired May 2, 1980. Since this time the NRC has taken no action which is in direct conflict with CEQ regulations. Forelaws On Board believes the resolution of this portion of the staff's motion can only be resolved by the Commission itself and thus requests that if the Atomic Safety and Licensing Board grants the staff's motion for summary disposition based upon material facts numbers 5 and 6, they certify this question directly to the Commission for its final judgement. Forelaws On Board does not believe the NRC can exempt itself from compliance with Council on Environmental Quality regulations (40 C.F.R. 1500) by merely pursuing a course of inaction.

B. STATEMENT OF MATERIAL FACTS AS TO WHICH THERE IS GENUINE

ISSUE TO BE HEARD

The staff in "Summary Disposition Procedures" states that a party opposing a motion for summary disposition "must set forth specific facts showing that there is a genuine issue of fact" and "mere allegations or denials" will not suffice". In this regard the staff claims "that the Joint Intervenors to date have only made mere allegations, having failed during discovery to identify any witnesses they can or will present on contention AS-5." The staff asserts a test for "mere allegations" based on the intervenors presenting their case with the use of opposing testimony. In responses to Interrogatories 1 and 5 of "Forelaws On Board's Response to NRC Staff Interrogatories" 06/30/81 dated July 28, 1981, we

stated:

Forelaws On Board has not at this time made any determination as to whether there will be a need to rely on anyone, except the NRC staff, to substantiate our assertions of inadequacy as to the staff's revised alternative sites analysis. (emphasis added)

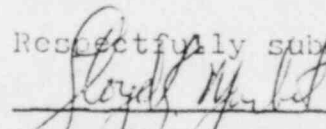
If the staff really believed that this was substantial grounds for motion for summary disposition it would have moved for all contentions to be dismissed by the Board. In addition the staff has failed to outline for the Board our responses to staff interrogatories numbers 34-38 which specifically address the facts showing that there is a genuine issue to be tried.

Finally, the Board will note that Forelaws On Board, in response to the staff's "Statement of Material Facts As To Which There Is No Genuine Issue To Be Heard" has established genuine issues to be heard and is thus incorporated by reference herein.

## II. MOTION FOR SUSPENSION OF FURTHER HEARINGS

Attached to this motion is an article which appeared in the Statesman-Journal, Salem, Oregon, on Wednesday, September 2, 1981. In it an interview with Robert Short, board chairman of Portland General Electric, concludes that "to get Pebble Springs built it will have to be moved to another state, largely because of regulatory delays in Oregon." With the Chairman of the Board of Portland General Electric making such representations, Forelaws On Board must once again move for the suspension of any future hearings in this proceeding until it can be determined what position Portland General Electric takes in the need for further processing for a license to construct at the Pebble Springs Site. This very much affects any further review of site alternatives. As we have stated in our January 22, 1981 motion for suspension of these hearings, "the continuation of these proceedings is a drain upon the resources of all parties as well as that of the taxpayers of this country." Nothing has changed the futility of these licensing proceedings moving forward in face of the continuing inability, now recognized by Portland General Electric, to license the Pebble Springs plants in Oregon. Thus we pray that this motion be granted in the interests of serving the truth.

Respectfully submitted,

  
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Lloyd K. Harbet  
Forelaws On Board

# PGE chairman announces a rate cut

~~Rate cut announced~~  
By MARTIN ROSENBERG  
Of the Statesman-Journal

PORTLAND — If utility chief Robert Short was in a partying mood Tuesday, it was hard to tell from looking at him.

Short, board chairman of Portland General Electric Co., announced his company's "milestone" rate decrease in a quiet voice and showing little emotion.



ROBERT SHORT

One could almost think he was announcing one more in a string of mammoth rate increases and was ready at any moment to duck for cover.

Chairman Short, in all likelihood, had other things on his mind.

With the cost of borrowing money higher than a utility pole, PGE must find \$250 million to \$300 million a year for the next five years, largely to build a coal-fired plant in Montana and pay for PGE's 10-percent share of the cost-overrun-plagued Washington Public Power Supply System's project 3 nuclear plant. Hard times have caused Short to tighten corporate operations. PGE's \$160 million 1981 operating budget — rent, salaries etc. — was cut 18.75 percent, or \$30 million, by Short's assistants.

Such pruning has contributed to improving the company's fiscal position to the point that 30 percent of the capital needed for expansion this year will be generated internally.

One year ago, all capital funds came from outside sources.

While Short's staff of lawyers earlier this summer was locked in detailed contract talks with the Bonneville Power Administration staff, Short was off to Bahrain in the Middle East.

His mission was to find new sources of cheap money. Short said the irony of representing a power company trying to borrow OPEC dollars that to a large extent came out of Americans' pockets did not escape him.

Short succeeded in getting a consortium to agree to lend PGE at some unspecified future date \$25 million for two years at rates that under certain international financial conditions drop below the prime lending rate in this country.

"The sums of money available to investors out of OPEC are so large they're incomprehensible," he said.

Short said the arrangement is just the opening of a door that he might have reason to pass through again, seeking larger sums.

PGE has completed a decade of building that is unparalleled by any other companies in this country, given the limited base of financial reserves PGE was able to tap, Short said.

Only four years ago, an Oregon governor blasted the utility as "mis-managed," saying PGE had overextended itself by building too many costly generating facilities.

Much of the growth pains have passed, with the Trojan nuclear power plant in operation for several years and the Boardman coal-fire plant completed on budget last summer.

More of a question mark is the Pebble Springs nuclear plant, which Short said will be needed to meet

PGE customers' needs by 1992 or 1993.

The company anticipates having more than enough power until 1988 or 1989.

Short said he is now convinced that to get Pebble Springs built it will have to be moved to another state, largely because of regulatory delays in Oregon.

PGE so far has spent \$130 million on the plant, and if it ever is built will receive about 40 percent of its output.

Currently, PGE is keeping its expenses for Pebble Springs to a minimum, he said.

PGE stockholders know that good news is becoming less of a rarity in their annual and quarterly reports.

The company was authorized to earn 14.39 on its equity for the year ending May 31, 1980 but it earned only 6.02 percent — "among the poorest earnings anywhere," said one observer.

In comparison, PGE was authorized to earn 14.95 percent on equity the year ending May 31, 1981 and it reached 12.19 percent.

Earnings per share stood at \$2.10 the year ending May 31, 1981, up from \$1.07 the preceding year.

Short said it would be "imprudent" to sell more common stock than the absolute minimum needed to keep the company going, largely because a share of common stock is now at just 65 percent of its book value. PGE sold 3 million shares last year but has no plans to sell any this year, he said.

Issuing more stock when existing share are below book value would dilute the value of stock now held, he said.

The company has embarked on a novel program to raise money

through a common stock investment plan offered to its customers. A 5-percent discount on the stock is available on reinvested dividends.

An estimated 1,200 customers have opened accounts with the utility. Short said he would be "utterly delighted" if the program, announced June 11, were to produce 10 percent of his company's equity requirement. (About one-third of PGE's capitalization needs are provided by stockholders.)

One PGE official said that the company's improved fortunes in part are the result of a changed attitude in the office of the public utility com-

missioner, who now is allowing the utility to keep pace with costs by providing "timely relief."

Where does the company now stand?

PGE is more healthy than it was a year ago, but not as robust as it a decade ago, Short said.

Future rate increases?

Probably not until next July, Short said.

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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, ET AL. ) 50-515  
 )  
(Pebble Springs Nuclear Plant, )  
Units 1 and 2) )

CERTIFICATE OF  
SERVICE

I hereby certify that copies of "Forelaws On Board's: I. Response in Opposition to NRC Staff Motion for Summary Disposition of Intervenor's Contention AS-5 (first part) II. Motion for Suspension of Further Hearings" dated September 8, 1981 in the above captioned proceeding have been served on the following by deposit in the United States mail, first class, this 8th day of September, 1981.

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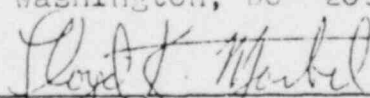
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