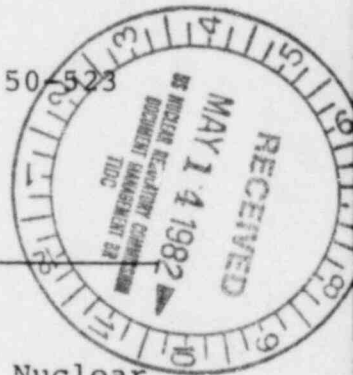


DOCKETED
1/13/82

'82 MAY 13 P1:42

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of Puget Sound)	
)	
Power and Light, et al.)	
)	Docket Nos.
Amended Application for Construction))	STN 50-522, 50-523
Permits and Facility Licenses,)	
)	
SKAGIT/HANFORD NUCLEAR PROJECT)	



PETITION TO INTERVENE

Pursuant to the Atomic Energy Act and the Nuclear Regulatory Commission's Rules of Practice and Procedure, 10 C.F.R. Sec. 2.714, the Confederated Tribes and Bands of the Yakima Indian Nation, hereinafter referred to as the "Yakima Indian Nation", petitions to intervene in the above captioned proceedings. In support of this petition, petitions would show the following:

I. NAME AND ADDRESS OF THE PERSON REPRESENTING PETITIONS TO WHOM COMMUNICATIONS CONCERNING THIS PROJECT SHOULD BE ADDRESSED:

James B. Hovis
c/o Hovis, Cockrill & Roy
316 North Third Street
P. O. Box 487
Yakima, Washington 98907

II. NATURE OF PETITIONER'S INTEREST

Petitioner, Yakima Indian Nation, is an Indian nation established by treaty with the United States from among some fourteen bands and tribes of peoples indigenous to the region

8205170197

DS03
1/1

in which permission is sought to construct the captioned project. These people of the now Yakima Nation had from time immemorial ranged in a gathering culture over 20,000,000 acres extending from the Canadian border on the north to Mount Shasta on the south, from the Bitterroot Mountains on the east, to the Puget Sound on the west. These people exercised absolute dominion over 10,000,000 acres which particularly included not only the contemplated construction site but also the lands, waters and natural resources of the south-central portion of now Washington State. By the Treaty With the Yakimas, 12 Stat. 951, on March 8, 1859, by the ratification of said treaty executed on June 9, 1855, by the United States Senate, the Yakima Nation did cede to the United States of America large areas of these lands over which they pursued their gathering culture reserving within this 10,000,000 acres, including the entire Hanford Reservation, fishing, hunting and other gathering rights. Implicit in these treaty reservations is the acknowledgement that the habitat and ecological systems necessary to maintain an actual fishery, together with hunting and other gathering rights shall not be limited or destroyed.

Further, the Yakima Indian Nation reserved for its exclusive use and benefit the Yakima Indian Reservation, being some 1,365,000 acres, the southeast border being within 13 miles of the Hanford Reservation. This reserved homeland is home for the majority of the members of the Yakima Indian Nation, a membership that approaches 7,000 members. The Yakima Indian Nation was guaranteed by treaty the sovereign power to be governed by its own government and by its own laws, and in addition exercises certain governmental responsibility for more than 25,000 non-members who reside within the exterior boundaries of the Yakima Indian Reservation. The Yakima Indian Nation owes a duty as a responsible government to be concerned with the life, safety and health of not only its members but with all residents of the Yakima Indian Reservation.

In addition to the more physical relations with the land, the Yakima Indian Nation and its members through its practiced culture and religion has a spiritual relationship with the interdependence of the land, water and all living and growing things within their native area. Many areas are sacred and all thing under the Creator's law must be protected under the fundamental beliefs of the Yakima Nation.

The Yakima Indian Nation has in furtherance of its responsibility to its members, residents of its reservation and to the resources within its area, made expenditures to present before appropriate forums its concern for maintaining natural resources within the Columbia River Basin and Eastern Washington. The Yakima Indian Nation does maintain within its government a Division of Natural Resources with persons trained within applicable disciplines that can be of assistance to this Commission in the making of appropriate decisions under the captioned application.

It has become clear to the Yakima Indian Nation that the construction of the proposed projects will not only interfere with the land-based reserved gathering rights of the members of the Yakima Indian Nation but will affect the waters of the Columbia River and the habitat of important runs of anadromous and native fish. The Yakima Indian Nation and its members have a treaty-secured interest in these foods. Likewise, these reserved rights to gather also implicitly incorporate the right to have these foods protected from environmental degradation. See: United States v. Washington (Phase II), 506 F.Supp. 187 (W.D. Wash. 1980). United States v. Adair, 478 F.Supp. 337 (D. Ore. 1979).

III. EFFECT OF COMMISSION ACTION

Construction and operation of the Skagit/Hanford Project will increase the levels of radiological, chemical and thermal pollution of the air and water in the project area and down-river areas of the Columbia Basin and animals and foods

therein, and may adversely affect the fisheries resources of the Columbia River. Operation of the plant will increase the shipment of radioactive materials through the Pacific Northwest region, thus increasing the risks to the environmental necessities and amenities, including fish, wildlife and natural foods, used and enjoyed by members of the Yakima Indian Nation. Operation of the project will expand the volume of radioactive waste requiring storage in this nation, at a time when no satisfactory long-term storage arrangements have yet been made, threatening the long-term health of the environment and petitioners' members' use thereof. Operation of the Skagit/Hanford Plant to serve the base-load of the Pacific Northwest region will further encourage use of the Columbia River hydropower system for peaking purposes, to the detriment of the fish and wildlife resources of the Columbia River Basin which are extensively used and enjoyed by petitioners' members. Operation of the project will also increase the risk of catastrophic nuclear accident which would cause environmental damage, particularly to the Columbia River system, and result in significant dangers to the health of petitioners' members. Finally, investment of billions of dollars in the construction and operation of the Skagit/Hanford plant will limit the funds available in the region for more environmentally acceptable and cost-effective energy alternatives, such as conservation, will unnecessarily and significantly increase the electrical rates of those of petitioners' members living within the service districts of the sponsoring utilities, and could significantly increase the rates of members of the Yakima Indian Nation and residents of its reservation, if the sponsoring utilities sold the output of the project to the Bonneville Power Administration.

IV. SPECIFIC ASPECTS OF PROCEEDING AS TO WHICH PETITIONERS SEEK TO INTERVENE

Intervenors seek through their intervention to present evidence and legal arguments and conduct examination of applicant's experts to demonstrate the following:

(1) that the applicants have relied on an inflated calculation of the demand for electrical power in justifying pursuit of their license and have inaccurately calculated the impacts of delay or denial of the construction permits;

(2) that the applicant's benefit-cost analysis is fundamentally flawed by, among other things, use of misleadingly low estimates of the financial and environmental costs of the project and by use of an inflated assumption of the project's power availability and reliability benefits for the region which, in fact, possesses significant, less-costly alternatives for providing the same or greater benefits;

(3) that there are cost-effective, environmentally preferable alternatives capable of meeting the energy demand which the project is designed to serve even under the applicant's project cost assumptions and that the availability of alternatives is even greater if more accurate project cost figures are used;

(4) that acquisition of the project by the Bonneville Power Administration pursuant to the Pacific Northwest Electric Power Planning and Conservation Act, P.L. 96-501, is highly unlikely, and that inability of BPA to purchase the project is a central consideration in the decision to proceed or halt the project;

(5) that applicant has failed adequately to identify, discuss and evaluate the significance of the environmental impacts of construction and operation of the plant, including, but not limited to, impacts on the fish, wildlife and natural resources of the Columbia River, dangers of catastrophic accidents, either in fuel and waste transportation or in plant operation, and the impact on the economic and environmental viability of the project from the continuing problem of devising satisfactory long-term storage arrangements for

nuclear waste material; that if those impacts are fully assessed the project appears even less desirable when compared to available alternatives; and that construction and operation of the proposed facilities and the storage of waste generated at those facilities and the transportation of nuclear fuel and waste products may violate the treaty-reserved rights of some or all Columbia River tribes, to-wit, the right to fish at all usual and accustomed fishing sites in common with citizens of the United States, the exclusive right to fish in rivers bordering and running through the respective reservations, the right to water of sufficient quality and quantity to maintain the fish that are the substance of the expressly reserved fishing right, and the right to hunt, gather roots and berries, and pasture their horses and cattle upon the lands ceded by the respective tribes to the United States;

(6) that the commission may not legally issue a permit or license for the proposed project until adequate long-term nuclear waste storage facilities and procedures are established, or, at a minimum, until the conclusion of the Commission's on-going Waste Disposal Confidence proceedings; without establishment of those facilities, or, at least, without a favorable conclusion of the Waste Disposal Confidence proceedings, the Commission cannot find that it can reasonably be assured that the activities authorized by the license can be conducted without endangering the health and safety of the public, 10 C.F.R. Sec. 50-35(a)(4), nor can it fully assess the environmental impacts of those activities pursuant to NEPA;

(7) That the environmental impact statement accompanying the captioned proposal must include a narrative discussion of the uncertainties associated with the disposal of nuclear wastes and the economic, social and health effects which may occur from nuclear waste disposal and that this requirement has not been met as regards petitioner and its members. Natural Resources Defense Council v. Nuclear Regulatory Commission, No. 74-1586 (USCA-DC, April 27, 1982.)

(8) the requirement to assure the Yakima Indian Nation and its people perpetual free access at all times to all of the ceded lands, for the purpose of practicing their religion, fishing, hunting, gathering roots and berries, and pasturing horses and cattle, without interference by virtue of the construction or operation of the nuclear project;

(9) the requirement to design and construct the nuclear project so as to eliminate any potential need to evacuate or recommend the evacuation of any of the Yakima Indian people from either the Yakima Reservation or the ceded lands. This extends to permanent, long-term, and short-term temporary evacuations. All are unthinkable to the Yakima Indian Nation;

(10) the requirement to design and construct the nuclear project so as to assure that neither routine operation of the project nor accidents or other occurrences will in any way threaten the health and safety of the Yakima Indian people or diminish the value, availability, accessibility or usability of the Yakima Reservation, the ceded lands, or the fish, roots, berries and pasturing rights as to which the Yakima Indian Nation has retained interests;

(11) the requirement to design and construct the nuclear project so as to assure that the handling or disposal of nuclear or other wastes will in no way threaten the health and safety of the Yakima Indian people or diminish the value, availability, accessibility or usability of the Yakima Reservation, the ceded lands, or the fish, roots, berries and pasturing rights as to which the Yakima Indian Nation has retained interests;

(12) the requirement to assure that no aspect of the design, construction or operation of the nuclear project would in any way adversely affect or infringe upon the rights of the Yakima Indian Nation under the 1855 Treaty, including the protection of their unique value system; or any other laws, written or unwritten;

(13) all matters related to the potential contamination of the Yakima Reservation or the ceded lands or potential damage to the water, fish, roots, berries, agricultural or pasturing lands in which the Yakima Indian Nation has retained rights.

V. CAUSE FOR ACCEPTANCE OF THIS PETITION

(1) Good Cause for Failure to File on Time

The Yakima Indian Nation must function through its system of government with all the resulting necessary delay. During the times the filing of this petition had to be necessarily considered to meet the time constrictures set by this Commission, the Yakima Tribal Council, which is the governing body that must authorize the filing of this petition on behalf of the Yakima Indian Nation, was undergoing elections by meetings held by the entire membership to determine its leadership for the ensuing two years and reorganization of committees. As soon as possible after reorganization, the question of whether to file this petition was brought before the Tribal Council for debate and vote. After the debate and vote directing said action its attorney has, within time limitations, prepared this petition for approval by the responsible Tribal leader and filed same with this Commission. The filing of this petition would not have been necessary if the United States had properly exercised its trust responsibility to protect the treaty-reserved and guaranteed rights of the Yakima Indian Nation.

(2) The Availability of Other Means for Protecting the Petitioner's Interests

While judicial actions brought to protect the reserved treaty rights of the Yakima Indian Nation could be considered, this is the last available administrative forum in which petitioner can protect its rights. See: In the Matter of Puget Sound Power & Light Company, 8 NRC 587, 589 (1978).

(3) Petitioner's Interest Cannot be Represented by Other Parties

Only the Yakima Indian Nation has treaty-reserved rights in the land areas involved in the contemplated construction area in the State of Washington. While other Indian tribes have similar interests in common fishing areas, no such common interests are involved in the other Yakima Indian Nation's reserved rights.

The membership of the Yakima Indian Nation is extensive and calls for the Yakima Indian Nation's specific representation in these areas.

The State of Washington by its tentative determination on the draft NPDES permit has evidenced a position contrary to the interests of the petitioner. Furthermore, in its position as a litigant against the Columbia River treaty tribes in another forum, the State of Washington cannot be relied upon to protect the petitioner's interests. See: e.g., Confederated Tribes and Bands of the Yakima Indian Nation v. Malcom Baldrige, Case No. C-80342-T (W.D. Wash.) wherein the State of Washington has joined as a party defendant in opposition to the tribal plaintiffs asserting their treaty reserved fishing rights.

(4) Petitioner Will Not Delay Proceeding

Petitioner presents issues of fact similar to existing parties to this proceeding who contest issues regarding adverse effects that the proposed project would have on fish and wildlife of the Columbia River Basin. Petitioner does intend to contest issues regarding the environmental effects of the proposed Skagit/Hanford Project discharges into the Hanford reach of the Columbia River. While the Commission anticipates full and active participation in these proceedings, the petitioner does intend to conduct its case in an expeditious and businesslike manner. In addition, the petitioner notes that the applicant has requested the Nuclear Regulatory Commission and the Energy Facility Site Evaluation Council to postpone evidentiary hearings on environmental matters until the Spring of 1983. 1/ In light of this request any minor

1/ Letter from Theodore Thomsen, attorney for applicants, to Judge John F. Wolf, dated April 26, 1982

delay which may result from granting petitioner leave to intervene should not be significant.

(5) Petitioner's Intervention Will Not Prejudice the Rights of Existing Parties

The petitioner presents its petition to intervene at a time prior to evidentiary hearings and well in advance of a final determination. This consideration should enter into the determination of the Commission. See generally, Duke Power Co., 6 NRC 460 (1977). Also, it is apparent that were the United States to assert this petition solely on behalf of the Indian tribes no laches would effectively be asserted to bar the petition. The Indians have the same rights in this respect as do the government. In the Matter of Puget Sound Power and Light Company, 8 NRC 587, 597 f.n. 9 (Nov. 24, 1978) citing United States v. Beehe, 127 U.S. 338 (1888), for the principle that the United States is not bound by any laches of their officers, however gross, in a suit brought by them as a sovereign government to enforce a public right or to assert an interest is established past all controversy or doubt.

(6) Petitioner's Intervention Will Assist in Developing a Sound Record

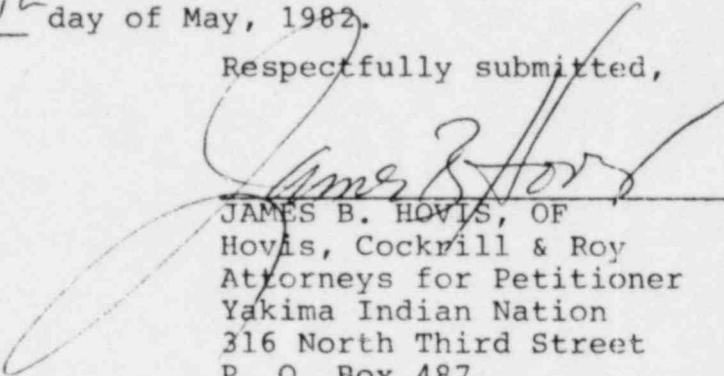
Petitioner has in its employment biological, statistical and legal capabilities which it can and will devote to this proceeding as the need arises.

VI. CONCLUSION

For all the foregoing reasons, petitioner Yakima Indian Nation respectfully submits that it be granted leave to intervene in this proceeding, with the right to have notice of and appear at all pre-hearing conferences and hearings that are held, and that they may introduce evidence and submit argument in support of their interests as outlined in this petition.

DATED this 10th day of May, 1982.

Respectfully submitted,



JAMES B. HOVIS, OF
Hovis, Cockrill & Roy
Attorneys for Petitioner
Yakima Indian Nation
316 North Third Street
P. O. Box 487
Yakima, Washington 98907
(509) 575-1500

STATE OF WASHINGTON)

) ss.

County of Yakima)

JOHNSON MENINICK, being first sworn, deposes and says:

1. I am the Chairman of the Yakima Tribal Council.
2. I am authorized to submit the attached Petition for Leave to Intervene of the Yakima Indian Nation.
3. I have read the attached Petition and I know its contents. To the best of my knowledge and belief, all of the statements in the Petition are true and correct.

JOHNSON MENINICK

SUBSCRIBED AND SWORN to before me this 10th day of May,

Notary Public in and for the State
of Washington, residing at Yakima.

My Commission Expires: Oct 28, 1982

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of Puget Sound)
Power and Light, et al.)
Amended Application for) Docket Nos.
Construction Permits and) STN 50-522, 50-523
Facility Licenses,)
SKAGIT/HANFORD NUCLEAR PROJECT)

AFFIDAVIT OF SERVICE BY MAIL

STATE OF WASHINGTON)
County of Yakima)ss.

The undersigned, being first duly sworn on oath, deposes and says: Affiant is a citizen of the United States of America and of the State of Washington, living and residing in Yakima County in said state, of legal age, not a party to the above-entitled action, and competent to be a witness herein. On the 10th day of May, 1982, affiant deposited in the United States mail a properly stamped and addressed envelope directed to:

Attention: Docketing and Service Branch
Secretary of the Commission
U. S. Nuclear Regulatory Commission (original and
Washington, D. C. 20555 two copies)

Executive Legal Director
U. S. Nuclear Regulatory Commission
Washington, D. C. 20555 (one copy)

Mr. F. Theodore Thomsen
Perkins, Coie, Stone, Olsen & Williams
1900 Washington Building
1325 Fourth Avenue
Seattle, WA 98101 (one copy)

said envelope containing copies, as indicated above, of this affidavit and PETITION TO INTERVENE submitted by the Confederated Tribes and Bands of the Yakima Indian Nation.

SUBSCRIBED AND SWORN TO before me this 10th day of May, 1982.

Lillian J. Schulberg
Notary Public in and for the State
of Washington, residing at Yakima.