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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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In the Matter of)	
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PUGET SOUND POWER & LIGHT)	Docket Nos. STN 50-522
COMPANY)	STN 50-523
)	
(Skagit/Hanford Nuclear)	
Project, Units 1 & 2))	Date: June 11, 1982

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

APPLICANT'S ANSWER TO REVISED
CONTENTIONS OF COALITION FOR SAFE POWER

I. Introduction

On April 20, 1982, the Coalition for Safe Power (CFSP) served an amended petition to intervene in this construction permit proceeding for Skagit/Hanford Nuclear Project (S/HNP).^{1/} The amended petition included a list of seventy proposed contentions which CFSP desired to litigate. On May 4, 1982, the Applicant served its answer to the proposed contentions, indicating its objection to each of the proposed contentions.^{2/} At the Special Prehearing Conference held on May 5, 1982, the NRC Staff also objected to the admission of all of the

^{1/} "Supplement to Amended Petition for Leave to Intervene by Coalition for Safe Power."
^{2/} "Applicant's Answer to Supplemental Petitions to Intervene and Motion for Extension of Time," pp. 5-51.

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proposed contentions.^{3/} In response to these objections, the Licensing Board granted CFSP until May 26, 1982, to submit its response to the Applicant's and NRC Staff's objections.^{4/}

On May 25, 1982, CFSP served a document entitled "Revised Contentions of Coalition for Safe Power." This document indicated that CFSP was "dropping" several of its proposed contentions and was "withdrawing" others pending issuance of the safety evaluation report for S/HNP. Additionally, it presented a list of thirty-five "revised contentions" which "replace" one or more of the remaining proposed contentions. Pursuant to 10 CFR § 2.714(c) and the Board's orders, the Applicant hereby submits its answer to the revised contentions.

In most instances, the revised contentions simply consolidate and rephrase the proposed contentions, without specifying additional issues or bases. A few of the revised contentions do include new bases or new issues not encompassed in the proposed contentions. The first part of this answer discusses the revised contentions and offers objections thereto under 10 CFR § 2.714(b). The second part discusses the factors under 10 CFR § 2.714(a) governing the submission of late-filed contentions with respect to those revised contentions which include new bases or new issues.

^{3/} Tr. 66-72.

^{4/} Tr. 72-74. In orders dated May 25 and 28, 1982, the Board authorized the NRC Staff and the Applicant to file objections to any new or amended contentions by June 11, 1982.

II. Discussion of the Revised Contentions

Under 10 CFR § 2.714, it is incumbent upon the proponent of a contention to provide specificity and a basis for each contention.^{5/} CFSP cannot merely allege that the Applicant's consideration of certain subjects has been insufficient, but is required to state why the consideration is insufficient and provide a basis for that statement. Moreover, the fact that the Applicant has not considered some item is not in and of itself an acceptable basis for a contention. Under the National Environmental Policy Act (NEPA) and the Commission's regulations, there is no requirement that an applicant consider every conceivable impact or alternative and discuss each in infinite detail. Instead, NEPA is subject to a "rule of reason"; remote and speculative possibilities need not be considered at all; and the amount of consideration to be afforded to each impact or alternative is dependent upon its significance. Natural Resources Defense Council, Inc. v. Morton, 458 F.2d 827, 834, 837-38 (D.C. Cir. 1972); Florida Power & Light Co. (Turkey Point Nuclear Generating, Unit Nos. 3 and 4), ALAB-660, 14 NRC 987, 1004 (1981); Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), ALAB-422, 6 NRC 33, 100 (1977).

Similarly, under the Atomic Energy Act, an applicant is not required to consider events which do not present an

^{5/} Applicant has previously discussed the general requirements for an acceptable contention. See "Applicant's Answer to Supplemental Petitions to Intervene and Motion for Extension of Time" (May 4, 1982), pp. 5-6. That discussion is incorporated herein.

unacceptable risk to the public health and safety. See Florida Power & Light Co. (St. Lucie Nuclear Power Plant, Unit 2), CLI-81-12, 13 NRC 838 (1981). Consequently, a contention that the applicant has not given consideration to an impact, alternative, or event is not admissible unless a petitioner provides a basis for concluding that such a consideration is warranted under NEPA or the Atomic Energy Act.

Revised Contention 1 (Replaces Proposed Contentions 1 and 2)

The Applicant has no objection under 10 CFR § 2.714(b) to the admission of this contention as limited to and refined by the basis supplied by CFSP.^{6/}

Revised Contention 2 (Replaces Proposed Contentions 4 and 56)

Petitioner contends that any decision on the need for the S/HNP must await the regional forecast to be issued by the Northwest Power Planning Council in April 1983.

Since the Applicant has itself suggested that the hearing on need for power be held following issuance of the regional forecast in April 1983, it is difficult to see how this contention can be an issue in controversy. Under these circumstances the contention should not be admitted.

^{6/} Applicant does object to the admission of this contention under 10 CFR § 2.714(a). See Part III, infra.

Revised Contention 3 (Replaces Proposed
Contention 5)

Petitioner contends that no weight should be given to Applicant's projected load forecast as outlined in ASC/ER Section 1.1 and Table 1.1.

The only stated bases for this contention are the allegations that the Applicant has not provided data to substantiate its forecasts, that each utility comprising the Applicant has used a different model to calculate power demands, and that Applicant's previous need for power forecasts proved to be in error.

The contention is patently defective. While it is clear from the allegations that CFSP is unhappy with the load forecast, the allegations simply do not constitute the required factual basis for a contention. Merely stating that data is insufficient and does not meet the basis requirement. The observation that different utilities use different models to forecast loads does not meet the basis requirements, for CFSP has not alleged any facts to show that any model is in error. Finally, to the extent that CFSP is criticizing previous forecasts which are no longer applicable, this contention is irrelevant to this proceeding. See Consumers Power Co. (Palisades Nuclear Plant), LBP-79-20, 10 NRC 108, 123 (1979). See also Wisconsin Electric Power Co. (Point Beach Nuclear Plant, Units 1 and 2), LBP-81-55, 14 NRC 1017, 1025-26 (1981).

Since this contention does not raise an issue of fact regarding the accuracy of the Applicant's forecasts, it presents nothing to litigate. Consequently, Revised Contention 3 does not constitute an admissible contention.

Revised Contention 4 (Replaces Proposed
Contentions 6, 7, 8, 9 and 10)

Applicant has misapplied the National Environmental Policy Act (NEPA), 42 USC 4321 by rejecting the following alternatives which are available, environmentally preferable and more economical than the proposed Skagit/Hanford Nuclear Project: wind power, biomass, solar, conservation, co-generation, low-head hydro, ocean temperature differences and alcohol fuels. Further, Applicant has followed a very narrow view of this Act by considering each alternative seperately [sic]. Applicant must also be required to consider combinations of various appropriate technologies as alternatives to the proposed project.

CFSP has provided no basis for the allegation that use of alcohol and ocean temperature differentials is available, environmentally preferable, or more economical than S/HNP. Consequently, this part of Revised Contention 4 should be rejected. The Applicant has no objection under 10 CFR § 2.714(b) to the remainder of this contention as limited to and refined by the basis supplied by CFSP.^{7/}

Revised Contention 5 (Replaces Proposed
Contention 12)

Petitioner contends that Applicant conducted the alternative site analysis required by 10 CFR 51.20(a) (3) improperly in concluding that Hanford was the best site.

This contention totally lacks a basis. CFSP has not identified any site as an alternative to the proposed site for S/HNP, let alone allege that any other site is obviously superior. CFSP has suggested that an unidentified site west of the

^{7/} Applicant does object to the admission of this contention under 10 CFR § 2.714(a). See Part III, infra.

Cascade Mountains would be preferable due to an alleged "high toll in reserves and reliability created by placing the generating capacity distant from the load." However, these alleged costs are economic in nature and thus are not an acceptable basis for consideration of an alternative. See Consumers Power Co. (Midland Plant, Units 1 and 2), ALAB-458, 7 NRC 155, 162-63 (1978). Finally, CFSP alleges that the Applicant has placed too great weight upon socio-economical and cultural considerations. However, it has not provided a basis for that allegation and has not specified a more appropriate weight. Furthermore, it has not even alleged that a change in the assigned weight would affect the ultimate conclusion that Hanford is the preferred site.

The move to the Hanford site is the end result of a NEPA siting process which began eight years ago by the Commission and more than twelve years ago by the Applicant; it is not the beginning of that process. CFSP has alleged no facts to put the selection of the Hanford site into controversy. Consequently, this contention should be rejected.

Revised Contention 6 (Replaces Proposed Contention 17)

Petitioner contends that Applicant has failed to provide an assessment of the threat to national security posed by a major accident at the S/HNP which would decrease the government's ability to maintain adequate security on the Hanford Reservation and to continue defense-related activities.

10 CFR 2.104(b)(1)(iv) and 10 CFR 50.40(c) provide that a project must not be inimicable to the common defense and security.

The only stated basis for this contention is that an accident at S/HNP would create "chaos" which might affect operation and security at the N-Reactor and the Purex facility.

CFSP has not specified how any "chaos" which allegedly would ensue upon the occurrence of an accident at S/HNP would affect the security of the N-Reactor or the Purex facility, nor has it specified how any such effect would be inimical to the common defense or security of the United States. In short, Revised Contention 6 has no basis other than unmitigated speculation. Consequently, this contention should be rejected.

Moreover, even if it were assumed that this contention did possess the requisite specificity and basis, it would not be admissible. The Commission's regulations in 10 CFR Parts 20, 50, 70, 73 and 100 specify criteria for protecting the common defense and security and the health and safety of the public. Florida Power & Light Co. (Turkey Point Nuclear Generating, Units Nos. 3 and 4), 4 AEC 9, 12 (1967), aff'd sub nom., Siegel v. AEC, 400 F.2d 778 (D.C. Cir. 1968). In particular, the common defense and security refers to

not allowing the new industrial needs for nuclear materials to preempt the requirements of the military; or keeping such materials in private hands secure against loss or diversion; and of

denying such materials and classified information to persons whose loyalties were not to the United States.

Siegel, supra, 400 F.2d at 784. CFSP has not alleged that S/HNP will not comply with any of the regulations regarding the common defense and security of the United States, nor has it claimed that S/HNP would affect the common defense and security as defined in Siegel. Therefore, this contention is not admissible.

Revised Contention 7 (Replaces Proposed Contention 18)

Petitioner contends that Applicant has not considered the effect of government actions on the Hanford Reservation in times of war on the S/HNP, as required by 10 CFR 100.10 and 100.10(d).

In essence, this contention is alleging that the proposed site for S/HNP is not suitable under 10 CFR Part 100 because the site "would be one of the main target areas" and "would change dramatically" in the event of a war.

10 CFR § 50.13 states that protective measures against sabotage and armed attacks need not be considered. Under NEPA's "rule of reason," there is no requirement to consider the environmental impacts of such acts. Long Island Lighting Co. (Shoreham Nuclear Power Station), ALAB-156, 6 AEC 831, 851 (1973). CFSP cannot escape the import of these provisions by referring to 10 CFR Part 100, since it is clearly the policy of the Commission to prohibit any consideration of the impacts of war. Consequently, whether this contention is interpreted as being related to environmental or to health

and safety issues (including site suitability), the contention should be rejected as requesting consideration of a subject not required by law.

Revised Contention 8 (Replaces Proposed Contention 13)

Applicant's architect/engineer, Bechtel Corporation is not technically qualified to engage in the proposed activities and lacks the willingness and desire to carry out a quality assurance program as required by Commission regulations.

The only stated bases for this contention are the allegations that Bechtel was responsible for numerous safety violations during the design, construction, and repair of the Trojan control building and that Bechtel was the architect/engineer for Humboldt Nuclear Plant and Dresden Unit 1, both of which are presently shut down.

With respect to the Humboldt and Dresden units, CFSP has not identified any defect or deficiency attributable to Bechtel. Moreover, even if CFSP's allegation regarding the Trojan control building is assumed arguendo to be true, it does not form a sufficient basis for questioning Bechtel's technical competence; the existence of errors in one of numerous Bechtel projects does not reasonably imply that Bechtel lacks technical competence. Consequently, this contention should be rejected.

Revised Contention 9 (Replaces Proposed
Contentions 19 and 21)

Petitioner contends that Applicant does not possess the technical ability to construct the proposed project. Neither does the Applicant have the willingness and the desire to adhere to NRC regulations. Thus, the Board has no basis to conclude that the Applicant meets the provisions of 10 CFR 2.104(b)(1)(ii) and that the project will be constructed in a safe manner.

CFSP has offered two bases for this contention. First, it states that the Applicant has not previously constructed a project of this size. Second, it alleges that the president of Puget Sound Power and Light has stated that it would not build S/HNP unless the NRC relaxes its regulations.

There is no requirement, either as a matter of fact or law, that a company have experience in constructing a large project in order to possess sufficient technical competence to construct a nuclear plant. Obviously, a company without prior experience can employ personnel who are both experienced and technically qualified. In fact, a previous licensing board has held that an applicant need not have experience in constructing a nuclear power plant in order to possess the requisite technical competence. Northern Indiana Public Service Co. (Bailly Generating Station, Nuclear-1), LBP-74-19, 7 AEC 557, 567-68 (1974), aff'd ALAB-224, 8 AEC 244 (1974), rev'd sub nom. Porter County Chapter v. AEC, 515 F.2d 513 (7th Cir. 1975), rev'd sub nom. Northern Indiana Public Service Co. v. Porter County Chapter, 423 U.S. 12 (1975). Since CFSP has not identified any specific defect in the

technical competence of the personnel, management, and organization of the Applicant, this contention lacks a sufficient basis and should be rejected.

CFSP fares no better with respect to the alleged statements by Puget Power's president. Even if it is assumed arguendo that CFSP has accurately related Applicant's position regarding the strictness of NRC regulations, it cannot reasonably be inferred from this position that Applicant has no intention of complying with the regulations. Consequently, this contention should be rejected.

Revised Contention 10 (Replaces Proposed
Contentions 14 and 19)

Petitioner contends that the work force and contractors relied upon by the Applicant for the construction of the project (ASC/ER Section 8.3.7) are not capable of, and do not desire to, constructing the project's units in conformance with NRC regulations.

The premise of this contention is that the particular workers, supervisors, quality assurance inspectors, and contractors, who allegedly were responsible for "numerous safety violations at WPPSS Nuclear Projects 1, 2 and 4," will also be eventually employed to work on S/HNP. Furthermore, this contention is premised upon the assumption that the Applicant will permit or fail to prevent these same persons from committing further violations at S/HNP. These premises are based upon nothing more than sheer speculation, and CFSP has offered no basis for any of them. Consequently, this contention should be rejected.

Revised Contention 11 (Replaces Proposed
Contentions 22 and 23)

Petitioner contends that Oregon state law prohibits co-applicants Portland General Electric and Pacific Power and Light from participating in this project and thus any facts pertaining to these two utilities should be dismissed.

As a basis for this contention, CFSP has stated:

In November 1980, Oregon voters passed into law Ballot Measure #7. This measure prohibits Oregon-based utilities from participating in nuclear projects outside the state of Oregon. Neither utility has attempted to contest this law.

Initially, it should be noted that CFSP has misinterpreted the ballot initiative to which it refers. That initiative does not prohibit Oregon-based utilities from participating in nuclear projects outside of the state of Oregon. Opinion No. 8047 of the Attorney General of the State of Oregon (July 15, 1981), copy attached hereto. In any case, the NRC is not authorized to enforce state law, and CFSP has proceeded before the wrong forum with this contention.

Revised Contention 12 (Replaces Proposed
Contentions 24 and 25)

Petitioner contends that Applicant has not correctly weighed the socio-economic and other benefits required by 10 CFR 51.20(b) and thus has overstated the benefits of the proposed project.

The implied basis for this contention is that the Applicant has weighed the socio-economic impact of the electrical shortages too heavily, since the Applicant's customers allegedly prefer electrical shortages and conservation to operation of nuclear power plants. Such a contention contains a non sequitur; impacts resulting from electrical shortages are not logically related

to preferences of customers regarding the form of electrical generation. Consequently, this proposed contention should be rejected for lack of an adequate basis.

Revised Contention 13 (Replaces Proposed Contentions 28 through 35)

Petitioner contends that NRC Staff has not completed its review of the proposed project and that the current Safety Evaluation Report is inadequate and thus there exists no basis for the Board to make a determination on the application.

It is not unusual at this stage of a proceeding that the NRC Staff has not completed its review and issued its final supplement to the safety evaluation report. Presumably, the NRC Staff will complete its review of S/HNP and issue a final supplement. In fact, the Commission's rules explicitly require that the safety evaluation report be submitted into evidence. 10 CFR § 2.743(g). In short, this contention presents nothing to litigate, and consequently it should be rejected.

Revised Contention 14 (Replaces Proposed Contention 36)

Petitioner contends that the Applicant has underestimated the environmental cost of the S/HNP in such a way as to change the cost-benefit balance required by NEPA and 10 CFR 51.20 in favor of the project.

CFSP has provided three bases for this contention.

First, CFSP states that the ASC/ER does not discuss "innumerable studies done since the 1950's" on the existence of radiation in the Columbia River and various animals, from which CFSP concludes that the Applicant has underestimated

the effect of past, present, and future operation of nuclear facilities at Hanford. However, ASC/ER Section 2.8 acknowledges that some radioactivity has been found in both the Columbia River and in biota on the Hanford Reservation. CFSP has not identified any defect, deficiency, or error in the conclusions which appear in this section of the ASC/ER. Furthermore, there is no requirement under the Commission's regulations or NEPA that an applicant discuss "innumerable studies" in its environmental report; as long as a "hard look" has been given to a subject, the requirements of NEPA have been satisfied. NRDC v. Morton, supra. Consequently, this allegation does not suffice for admission of this contention.

Second, CFSP alleges that the Applicant has underestimated the cumulative doses (and resultant effects) from operation of S/HNP and WPPSS 1, 2, and 4. CFSP has provided no basis for the allegation that the Applicant has underestimated cumulative doses and resultant effects, except to refer to Revised Contention 30. As the Applicant discusses infra CFSP has not provided an adequate basis for Revised Contention 30. Consequently, reference to Revised Contention 30 does not suffice for admission of Revised Contention 14.

Finally, CFSP alleges that the Applicant has underestimated the environmental impacts of S/HNP by failing to account for the effects of a major accident on terrestrial and aquatic biota. However, the Applicant did analyze the primary consequences of a major accident, and it found the risk to humans

from such an accident to be small. See ASC/ER Section 7.4. CFSP has provided no basis for requiring further consideration of the effects of major accidents, and it would be inconsistent with NEPA's "rule of reason" to perform further analyses when the primary impacts have been evaluated and found to be small. Therefore, this contention should be rejected.

Revised Contention 15 (Replaces Proposed
Contentions 37 through 40)

Applicant contends that Applicant incorrectly concludes that "none of the areas to be disturbed by the proposed project have significant value" thus understating the environmental cost in the analysis required by 10 CFR 51.20(b).

CFSP's contention that the Applicant has underestimated the environmental impact of construction of S/HNP is based upon CFSP's "belief" that construction will irreversibly injure biota through destruction of habitat. The Applicant respectfully submits that the mere existence of a "belief" by CFSP is not a sufficient basis for a contention.

CFSP further alleges that the Applicant "has not shown that" the means presently exist to confine construction to one acre or that confining construction to one acre will not have a significant negative impact. However, CFSP has offered absolutely no grounds for questioning the conclusions of the Applicant in this regard. Consequently, CFSP has not provided an adequate basis for this contention.

Revised Contention 16 (Replaces Proposed
Contentions 38 and 39)

Petitioner contends that Applicant has failed to show that there are adequate measures to ensure that damage to the environment and living organisms is minimized during construction, a position Applicant uses to meet the requirements of NEPA and 10 CFR 51.20(a).

The only stated basis for this contention is the allegation that the Applicant has not presented a "concrete plan" governing efforts by contractors and subcontractors to minimize damage to habitats and biota during construction of S/HNP. The allegation that the Applicant does not have a plan for controlling construction impacts upon habitats and biota is without basis. See ASC/ER, § 4.5. CFSP has not identified any defect or deficiency in this plan. Consequently, this contention should be rejected.

Revised Contention 17 (Replaces Proposed
Contentions 37, 41, 43 and 44)

Petitioner contends that Applicant has failed to provide evidence that construction and operation of the Skagit/Hanford Project will not irreparably harm rare, threatened and endangered species of vegetation namely *Rorippa calycina* var. *columbiae*, *Astragalus sclerocarpus* and *Cryptantha leucophaea* as required for a finding of the environmental cost under NEPA and 10 CFR 51.20(b).

This contention is based upon the allegations that the applicant has not adequately identified the location of these species and has not provided any indication of its ability to detect any irreparable harm to them. This contention is without basis. Section 2.2.1.7.1 of the ASC/ER discusses the

location of these species and Section 6.1.4.3.2 of the ASC/ER discusses the construction monitoring program for important species and areas of special concern, such as the Old Hanford Townsite. CFSP has not identified any defect or deficiency in this discussion. Moreover, CFSP has not provided any basis for concluding that any irreparable harm can be expected to occur to such species and has not provided any basis for augmenting the Applicant's proposed construction monitoring program. Consequently, this contention should be rejected.^{8/}

Revised Contention 18 (Replaces Proposed
Contentions 41, 43 and 44)

Petitioner contends that Applicant has not provided evidence to show that the construction and operation [sic] of the Skagit/Hanford Project will not cause irreparable [sic] harm to avifauna of the area directly and by the destruction of habitat as required by 10 CFR 50.20(b).

This contention is based upon the allegation that the Applicant has not identified with specificity where all species of birds are located, that the Applicant has not provided a plan to minimize and detect negative impacts on avifauna, and that destruction of habitat and operation of transmission lines is known to cause harm to species such as the bald eagle and peregrine falcon. However, the Applicant has discussed the locations of the birds expected in the Hanford

^{8/} Additionally, it should be noted that none of the species listed by CFSP is officially listed as threatened or endangered.

area, ASC/ER, §§ 2.2.1.3.1 and 2.2.1.7.2; it has discussed its plans to minimize construction impacts and to detect such impacts, ASC/ER §§ 4.1, 4.2, and 6.1.4.3.2; and it has described the expected impacts from construction of S/HNP and operation of the transmission lines, ASC/ER §§ 4.1, 4.2, and 5.5. CFSP has not identified any defects or deficiencies in any of these discussions, it has not provided any basis for concluding that the impacts will be other than as described by the Applicant, and it has not provided any basis for requiring the Applicant to take any further action on this matter. Consequently, this contention should be rejected.

Revised Contention 19 (Replaces Proposed
Contentions 37, 38, 41, 43 and 44)

Petitioner contends that Applicant has not provided evidence to show that the construction and operation of the Skagit/Hanford Project will not irreperably [sic] harm the aquatic life of the Columbia River, most notably the anadromous salmon, and thus have underestimated the environmental cost of the plants as required by NEPA and 10 CFR 50.21(b).

This contention is based upon the allegation that the Applicant has not adequately quantified the location and swimming habitats of aquatic species, that the Applicant's plans for minimizing impacts upon aquatic life is not provided in detail, and that the Applicant has not quantified the impact upon aquatic life. However, the Applicant has described the location and swimming habitats of aquatic life, ASC/ER, § 2.2.2; it has described its plans for minimizing impacts on aquatic life, ASC/ER, § 4.1.2 and Response to Question N210.10; and it has described the expected impacts

upon aquatic life, ASC/ER, §§ 4.1.2, 5.1.2, 5.1.3 and 5.3. CFSP has not identified any specific defect or deficiency in those descriptions, it has not provided any basis for requiring any further discussion, and it has not provided any basis for concluding that the impacts on aquatic life will be other than as described by the Applicant. Consequently, this contention should be rejected.

Revised Contention 20 (Replaces Proposed
Contentions 37, 38, 41 and 44)

Petitioner contends that Applicant has failed to show that construction and operation of the proposed project will not do irreparable [sic] harm to the giant Columbia River limpet and the great Columbia River spire snail pursuant to the requirements of 10 CFR 51.20(b).

This contention is without basis. The Applicant did discuss the impacts of construction and operation of S/HNP upon the riverbed of the Columbia River and upon benthic organisms in general. This discussion demonstrated that both the area of impact and the amount of the impact would be small. See ASC/ER §§ 4.1.2, 5.1.2.2, 5.1.3.2.3, 5.2.3 and 5.3.1.2. CFSP has not identified any defects or deficiencies in this discussion, and it has not provided any basis for concluding that the impacts upon the giant Columbia River limpet or the great Columbia River spire snail will be anything but small. Consequently, this contention should be rejected.

Revised Contention 21 (Replaces Proposed Contention 42)

Petitioner contends that Applicant has failed to consider the cumulative effect of additional intake and discharge structures or the cumulative thermal and radiological effects of other facilities, presently non-operational, on the Columbia River and its biota.

This contention is completely without basis. The Applicant has considered the cumulative radiological effect of S/HNP and other nuclear facilities. See ASC/ER, Appendix G.IV. Similarly, the Applicant has demonstrated that the thermal impact of S/HNP upon ambient river temperatures will be insignificant, see ASC/ER, § 5.1, thereby obviating any need to consider cumulative effects. Consequently, this contention should be rejected.

Revised Contention 22 (Replaces Proposed Contention 45)

Petitioner contends that Applicant has underestimated the environmental effects of decommissioning such that the cost-benefit balance required by 10 CFR 51.20(b) is improperly weighed.

The only stated basis for this contention is the allegation that the Applicant has not considered the site-specific impacts of decommissioning of S/HNP. However, Section 5.8 of the ASC/ER does provide an assessment of the environmental impacts expected as a result of decommissioning of S/HNP. As this section indicates, this assessment was based upon NUREG-0586, which is a draft generic environmental impact statement prepared by the NRC on decommissioning of nuclear facilities.^{9/}

^{9/} NUREG-0586, Draft Generic Environmental Impact Statement on decommissioning of nuclear facilities (January 1981).

Both Section 5.8 of the ASC/ER and Section 3.0 of NUREG-0586 indicate that decommissioning of a nuclear power plant usually does not involve any unique site-specific impacts. CFSP has provided no basis for any allegation that decommissioning of S/HNP would involve any significant site-specific impact not accounted for in the ASC/ER and NUREG-0586. Consequently, this contention should be rejected.

Revised Contention 23 (Replaces Proposed
Contentions 46 and 48)

Petitioner contends that the Applicant has failed to conduct an assessment of the potential impact of surrounding nuclear and chemical facilities on the S/HNP and its ability to continue operation in the case of an event at these facilities and the consequences of loss of operability as required by 10 CFR 100.10.

CFSP has provided absolutely no basis for the contention that S/HNP is incompatible with other nuclear facilities or chemical uses near the plant. Section 2.2 of the Preliminary Safety Analysis Report (PSAR) for S/HNP analyzes industrial, transportation, and military installation and operations (including nuclear facilities and operations) in the vicinity of the proposed site for S/HNP, and the design of S/HNP accounts for the potential effects from those facilities and operations. CFSP has not identified any deficiency in this analysis or in the design of S/HNP.

In particular, CFSP refers to the possibility of a 1,160 lb. TNT equivalent explosion at the Fast Flux Test Facility (FFTF). However, the PSAR explicitly considers

explosions at the FFTF and it concludes that S/HNP could withstand any impacts from this facility. Moreover, the PSAR also considers a 132,000 lb. TNT equivalent explosion, more than 100 times greater than that postulated by CFSP, and it found that the design of S/HNP was adequate. CFSP has not identified any defect or deficiency in this analysis, and consequently this contention should be rejected.

Revised Contention 24 (Replaces Proposed Contention 47)

Petitioner contends that the Applicant has failed to conduct an assessment of the potential impact of the S/HNP on nuclear facilities and activities located on the Hanford Reservation and the ability of these operations to continue in the event of a major accident at the S/HNP as required by 10 CFR 51.20 and 10 CFR 100.10.

CFSP refers to a 1957 report, WASH-740,^{10/} as its only basis for the contention that an accident at S/HNP would affect the operation of other nuclear facilities at Hanford. However, WASH-740 is a generic study and does not discuss S/HNP or any other nuclear facility at Hanford. It provides no basis for concluding that such facilities could not withstand an accident at S/HNP and continue to operate.

Moreover, Applicant has analyzed the primary effects of a major accident at S/HNP, and it found the risks to humans from such an accident to be small. See ASC/ER § 7.4. CFSP has provided no basis for requiring further consideration of

^{10/} WASH-740, Theoretical Possibilities and Consequences of Major Accidents in Large Nuclear Power Plants (March 1957).

the effects of major accidents, and it would be inconsistent with NEPA's "rule of reason" to perform further analyses when the primary impacts have been evaluated and found to be small.^{11/} Therefore, this contention should be rejected.

Revised Contention 25 (Replaces Proposed Contentions 49 through 51)

Petitioner contends that the present geology and seismic studies presented by Applicant in Section 2 of the PSAR are inadequate and do not meet the requirements of 10 CFR 100 Appendix A. Applicant has not changed the seismic design of the project to reflect the local geology and seismology and thus the S/HNP is not properly designed to withstand the potential seismic events of the site.

The only stated bases for this contention are the allegations that the Applicant has not considered all lineaments within a five mile radius, that the Applicant has not adequately addressed the Cold Creek syncline, and that the Applicant has not determined whether several structures and geophysical anomalies within Pasco Basin may be faults. CFSP has cited several questions from the NRC Staff to the Applicant as references for these allegations.

The geology of this area is analyzed in Section 2.5 and Appendices 2L through 2S of the PSAR for S/HNP, which incorporates a three volume analysis in Amendment 18 of the Final Safety Analysis for WPPSS Nuclear Project No. 2. This analysis includes consideration of lineaments, faults, and the Cold Creek syncline. In particular, Amendment 24 to the PSAR (April 2, 1982),

^{11/} Although this contention refers to 10 CFR § 100.10, that section does not require an applicant to consider the impacts upon other facilities as a result of an accident at the proposed plant.

specifically responded to the NRC Staff questions referenced by CFSP. CFSP has not identified any specific geological structures which the Applicant has not considered. Instead, CFSP has merely alleged that the Applicant's consideration has not been adequate, without identifying any particular defects in the Applicant's analysis, conclusions, or responses to the NRC questions, and it has not provided a basis for a contention that the design of S/HNP is inadequate to withstand seismic events. Consequently, this contention should be rejected for lack of specificity and basis.

Additionally, CFSP has contended that the Applicant has not altered the seismic design of the plant following the change of site from Skagit to Skagit/Hanford. However, such a contention does not indicate that the seismic design of S/HNP is inadequate in any respect. As long as the design of S/HNP is sufficient to withstand seismic events at its presently proposed site, it is irrelevant that S/HNP was originally designed to withstand seismic events at Skagit. Consequently, this contention should also be rejected.

Revised Contention 26 (Replaces Proposed
Contentions 49 through 51)

Petitioner contends that electrical equipment, other than that supplied by General Electric, will not be qualified to IEEE 344-1975 and Regulatory Guide 1.100, and thus the plant will not conform to current standards of safety and regulations.

This contention alleges that the Applicant has not satisfied a criterion in Regulatory Guide 1.100 and Standard Review

Plan Section 3.10. neither the regulatory guides nor the standard review plans are regulations, and the Applicant is not required to comply with either. Porter County Chapter v. AEC, 533 F.2d 1011, 1016 (7th Cir. 1976), cert. denied 429 U.S. 945 (1976); Gulf States Utilities Co. (River Bend Station, Units 1 and 2), ALAB-444, 6 NRC 760, 772-73 (1977). Since CFSP has not alleged that the Applicant's design is incompatible with the Commission's regulations, this contention should be rejected.

Revised Contention 27 (Replaces Proposed Contention 52)

Petitioner contends that Applicant has not considered the takeover and completion of the terminated nuclear projects 4 and 5 of the Washington Public Power Supply System as an environmentally, economically preferable alternative to the proposed project as required under NEPA and 10 CFR 51.20(a).

The contention that the Applicant has not considered the alternatives of WPPSS units 4 and 5 is without basis. See Amendment 5 to ACS/ER, Response to NRC Question N230.01. Consequently, this contention should be rejected.

Revised Contention 28 (Replaces Proposed Contention 54)

Petitioner contends that Applicant has failed to meet the requirements of 10 CFR 50 Appendix E (II) in not supplying the necessary information.

CFSP has provided several allegations in support of this contention, none of which are sufficient as a basis for this contention.

First, CFSP has alleged that the Applicant has not provided the information required by Appendix E.II.B. This

allegation is without basis. See Appendix A to Appendix 13A of the PSAR, provided by Amendment 24 to the PSAR (April 2, 1982).

Second, CFSP has alleged that the Applicant's description of procedures for carrying out an evacuation is inadequate under Appendix E.II.C. However, the Applicant has described its off-site protective measures. See Section 7.4.2.1 of Appendix 13A to the PSAR. CFSP has not explained why this discussion is allegedly "inadequate," nor has it identified any information which should have been, but was not, included in this section. Consequently, this allegation is insufficient as a contention.

Third, CFSP has alleged that the Applicant has failed to provide the features of the onsite emergency first-aid facility, as required by Appendix E.II.D. This allegation is without basis. See Section 7.5.1 of Appendix 13A of the PSAR, as provided in Amendment 24 to the PSAR (April 2, 1982). CFSP has not identified any deficiency in the description of these features, nor has it alleged that any additional features should be, but have not been, included in this facility. Consequently, this allegation does not form a sufficient basis for this contention.

Fourth, CFSP has alleged that the Applicant has failed to discuss the pro-nuclear attitudes of local residents as a "major impediment" to evacuation, as purportedly required by Appendix E.II.G. Initially, it should be noted that the

Applicant has discussed major impediments to evacuation. See Sections 7.3 and 7.4 and Appendix B to Appendix 13A to the PSAR. The contention that the Applicant additionally is required to consider the alleged pro-nuclear attitudes of local residents as an impediment to evacuation is absurd; CFSP has provided absolutely no basis for the allegation that any such attitudes would act as an impediment (let alone a "major impediment") to evacuation. Consequently, this allegation is insufficient as a contention.

Finally, CFSP has alleged that the Applicant has not satisfied Appendix E.II.H by failing to perform a preliminary analysis of the need for "facilities, systems, and methods for identifying the degree of seriousness and potential scope of radiological consequences of emergency situations." This allegation is baseless. See Sections 5.2 and 7.4 of Appendix 13A of the PSAR. CFSP has not identified any defect or deficiency in this discussion, and consequently this contention should be rejected.

One additional comment is in order with respect to Revised Contention 28. In general, it appears that CFSP is dissatisfied with the level of detail of the discussion of emergency planning in the PSAR. However, a PSAR is only required to describe "generally" the emergency plans and "contain sufficient information to ensure the compatibility of proposed emergency plans" with the site area and the plant design. 10 CFR Part 50 Appendix E.I and E.II. To the extent

that CFSP is contending that the PSAR should include final plans and details regarding emergency planning for S/HNP, its content is a challenge to the Commission's regulations and should be rejected. See 10 CFR § 2.758(a).

Contention 29 (Replaces Proposed Contention 57)

Petitioner contends that the cost-benefit analysis performed by the Applicant is wholly falsified. This cost-benefit analysis does not represent an analysis "conducted fully and in good faith" (See Calvert Cliff Coordinating Committee v. U.S.A.E.C., D.C. Cir., 1971 at p 11). In doing so Applicant has wrongfully concluded that the proposed project benefits outweigh the cost, and that the proposed project is cheaper than [sic] other alternatives such as coal.

This contention has numerous subparts, each of which will be discussed separately.

- (a) Applicant has failed to account for the cost of design changes due to the TMI requirements and other required safety changes. Komonoff supra at Chapter 6.

In performing cost-benefit analyses and in considering alternative energy sources, only the total capital costs, and not individual component costs, of a proposed plant are material. The Applicant has presented an estimate of the total capital costs of S/HNP in Section 8.2.1 of the ASC/ER. CFSP has not alleged that these costs are inaccurate or low. Consequently, this contention should be rejected as being immaterial to any consideration required under NEPA.

Moreover, this contention should be rejected for lack of specificity. CFSP has not identified the "other required

safety changes" to which it is referring, nor has it identified any design changes due to the TMI requirements which the Applicant has failed to account for. To the extent that CFSP is alleging that the Applicant has not allowed for the cost impact of unforeseeable future contingencies and rule changes, this allegation is without basis. See Table 8.2-1 of the ASC/ER.

- (b) Applicant overestimates the reliability of the proposed project. One way Applicant has done this overestimation is by assigning a capacity factor of 70 percent to the project when it should have a capacity factor of no more than [sic] 60 percent. Komonoff supra p 246-7.

The Applicant has no objection under 10 CFR § 2.714 to the admission of this contention.^{12/}

- (c) Further Applicant has failed to account for the unreliability, due to its location. Applicant will be required to acquire [sic] more reserve capacity to make up the deficit [sic] thus increasing the cost of the project.

CFSP has provided no basis for the allegation that the location of S/HNP will affect its "reliability" in any respect. Consequently, this contention should be rejected.

- (d) Applicant underestimates the effects of low-level radiation emissions [sic] on the health of the population [sic] near the project and facilities related to the fuel cycle. (See Revised Contention 30)

Since the only basis for this contention is Revised Contention 30, this contention should be rejected as a separate contention.

^{12/} Applicant does object to the admission of this contention under 10 CFR § 2.714(a). See Part III, infra.

- (e) Applicant fails to include the chemical and radiation hazards of the zirconium cladding production in Albany, Zirconium Hazards & Nuclear Profits (A Report on Teledyn Wah Chang, Albany, Pacific Northwest Research Center, 1979) details the chemical discharges (eg. 6,000 lbs. ammonia, 1-2 tons sulfur oxide and 1 ton MIBK, each day) and nuclear wastes (eg. 2,000lbs/day Radium-226.).

CFSP has not explained why the Applicant should have accounted for hazards associated with an alleged facility located in a town approximately 200 miles from the proposed S/HNP site. This contention should be rejected for lack of specificity and basis.

- (f) Applicant has underestimated dewatering, erosion control and soil stabilization [sic] techniques and the cost of the methods thereof due to underestimation of the anticipated excavation level. (See NRC Staff Question 241.1)

In Amendment 24 to the PSAR (April 2, 1982), the Applicant responded to NRC Staff Question 241.1 and conditionally agreed to remove medium-dense to dense Missoula sands underlying Category I foundations to the very dense sands which occur at approximately Elevation 495. CFSP has provided absolutely no bases for the allegation that this removal would materially affect the Applicant's analysis of dewatering, erosion control, and soil stabilization techniques. Consequently, this contention should be rejected.

- (g) Applicant also has grossly underestimated the cost of nuclear waste disposal and storage. Effective 1/15/82 the cost of low-level waste burial at the U.S. Ecology dump went up 625 percent partially to cover the expenses for increased surveillance and a site closure fund. This example will not only affect the projections

of Applicant's cost for low-level waste disposal but also illustrates how unpredictable and expensive the costs can be. Applicants projections do not take these into account. Komonoff supra p 264-5

This contention charges that the Applicant has grossly underestimated the costs of nuclear waste disposal. This claim is predicated upon an allegation that one disposal facility has recently increased its disposal fees. CFSP has provided absolutely no basis for the contention that the Applicant has not accounted for long-term price increases over the life of S/HNP. Consequently, this contention should be rejected for lack of specificity.

- (h) Applicant misrepresents reprocessing as current and viable technology and therefore cannot adequately assess the cost of using the technology.

This contention is completely without basis; the Applicant has taken no credit for reprocessing. See ASC/ER, Table 8.2-2. Consequently, this contention should be rejected.

- (i) Applicant fails to adequately assess the cost of decommissioning a reactor as large as the S/HNP units. Applicant fails to consider the potential cost of decommissioning the project in case of an accident. Applicant provides no basis for the assumption in ASC/ER, section 5.8 that "at present time decommission can be performed safely and at reasonable cost." Komonoff supra p 272-3

The Applicant did consider the cost of decommissioning S/HNP, see ASC/ER Section 5.8, and CFSP has not identified any defect or deficiency in that discussion. Furthermore, with respect to the contention that the Applicant has "provide[d] no basis" for the statement that decommissioning can be performed safely and at a reasonable cost, it should be noted that the

Applicant explicitly cited NUREG-0586 as a reference for its analysis of decommissioning. Finally, the Applicant did analyze the primary consequences of a major accident, and it found the risk to humans from such an accident to be small. See ASC/ER Section 7.4. CFSP has provided no basis for requiring further consideration of the effects of major accidents, and it would be inconsistent with NEPA's "rule of reason" to perform further analyses when the primary impacts have been evaluated and found to be small. Therefore, the contention that the Applicant should consider the costs of decommissioning following an accident should be rejected.

- (j) Applicant, in stating that seven years will be sufficient to construct each unit (ASC/ER), ignores present construction times for nuclear power plants. Applicant should use a time frame of 8.9 years. (This is an average based on NUREG 0030 Vol. 5 Nos 1,2,3, pp 1-008 to 1-015. See Komonoff p. 246-7.)

CFSP's contention that the Applicant has "ignored" present construction times for nuclear plants is completely without foundation. The only stated basis for this contention is a reference to NUREG-0030, from which CFSP has apparently calculated an average construction duration of 8.9 years. However, the allegation that the average construction duration is 8.9 years does not call into question Applicant's estimate of approximately seven years. In fact, NUREG-0030 itself lists numerous plants which have been and are predicted to be constructed in seven years or less. Since there is no basis for an allegation that S/HNP cannot be constructed in seven years, this contention should be rejected.

- (k) Applicant has also misstated the fixed charge rate for nuclear to be 13.88% and coal 14.58%. Komanoff [sic] shows these to be higher for nuclear (ppl70-2) Applicant has also failed to consider higher interest rates that it would have to pay for building a nuclear power plant. See Komanoff [sic] pg. 271. And lastly, Applicant has underestimated the capital cost escalation for the project compared to a coal project. See Komanoff [sic], Section 10.2.

This contention lacks specificity. Although CFSP has alleged that the Applicant has underestimated various costs, it has not identified the costs which it contends are more appropriate. Consequently, this contention should be rejected.

Revised Contention 30 (Replaces Proposed Contentions 58, 59 and 62)

Petitioner contends that Applicant underestimates the somatic and genetic effects of radiation released from the proposed project during normal and abnormal operating conditions thus entirely underestimating the cost of the plant in the cost-benefit analysis required by 10 CFR 50.21(b).

This contention is based upon several allegations.

First, CFSP contends that the Applicant has not provided a complete description of the meteorological and other site characteristics. This contention lacks specificity and basis. The Applicant has described the site characteristics, including meteorological conditions. See ASC/ER, Section 2.0 and PSAR, Section 2.0. CFSP has not identified any defect or deficiency in this description.

Similarly, CFSP contends that the Applicant has not accurately portrayed the amounts of radiation and the existing radiological burdens upon residents in the area potentially affected by S/HNP.

However, ASC/ER Section 2.8 does describe the background radiological characteristics of the area of the proposed site, including background dose levels. CFSP has not identified any specific defects or deficiencies in this description. Consequently, this contention should be rejected for lack of specificity and basis.

CFSP also alleges that the Applicant has not accurately portrayed existing "health burdens" upon residents in the area of the Columbia River and in the Hanford area. However, CFSP has not specified the "health burdens" to which it is referring. Moreover, CFSP has provided no basis for contending that any health burdens upon the residents would be different from those upon the population of this country as a whole. Consequently, this contention should be rejected for lack of specificity and basis.

Fourth, CFSP alleges that the Applicant has inaccurately portrayed the health effects of releases of radiation from S/HNP under normal and accidental conditions because the Applicant has not included projections of children in utero in its population projections. However, the Applicant conservatively calculated population doses by using population estimates for the year 2010. See ASC/ER, § 5.2.4.4. Moreover, the fact that a certain subgroup of society might be more radiologically sensitive than average does not render invalid a calculation of total societal impact which is based upon average radiological sensitivities. Consequently, CFSP has not provided an adequate basis for requiring a specific consideration of in utero children, and this contention should be rejected.

CFSP also alleged that the Applicant's models underestimate doses and resultant health effects by failing to incorporate the findings of "The Heidelberg Studies." However, CFSP did not identify the particular findings to which it was referring, nor did CFSP explain how such findings would affect the Applicant's models. This contention suffers from a lack of specificity and should be rejected.

Finally, CFSP has contended that the Applicant has not accurately portrayed the radiation dose to workers at S/HNP, including doses resulting from decommissioning of S/HNP. The Applicant has discussed radiation exposure to workers during the life of S/HNP and during its decommissioning. See PSAR Section 12.1.6 and ASC/ER Section 5.8. CFSP has not identified an error in these discussions. Consequently, this contention is without basis and should be rejected.

Revised Contention 31 (Replaces Proposed Contention 60)

Petitioner contends that the radiation monitoring system is inadequate and thus will understate the dose to the public received from routine and abnormal releases of low-level radiation from the proposed project. Applicant should be required to use the "Spiderwort Strategy" which would provide significantly improved information.

The Applicant has no objection under 10 CFR § 2.714(b) of this contention as limited to and refined by the basis supplied by CFSP.^{13/}

^{13/} Applicant does object to the admission of this contention under 10 CFR § 2.714(a). See Part III, infra.

Revised Contention 32 (Replaces Proposed
Contentions 63 and 64)

Petitioner contends that Applicant underestimates the doses and effects caused by the release of radiation in the event of an accident at the S/HNP and thus wrongly concludes the benefits of the facility outweigh the costs under 10 CFR 51.20(b).

CFSP provides several allegations in support of this contention.

First, it alleges that the Applicant has not considered various early illnesses as a result of an accident at S/HNP. However, the Applicant has analyzed the primary consequences of a major accident, and it found the risk to humans from such an accident to be small. See ASC/ER § 7.4. CFSP has provided no basis for requiring further considerations of the effects of major accidents, and it would be inconsistent with NEPA's "rule of reason" to perform further analyses when the primary impacts have been evaluated and found to be small. Therefore, this contention should be rejected.

Second, "Petitioner challenges the findings of Applicant's ASC/ER § 7.4 which find the so-called primary effects of an accident would be negligible." This contention is totally lacking in specificity. CFSP has not identified the specific findings in § 7.4 (which consists of 25 pages, 8 tables, and 9 figures) with which it disagrees, nor has it specified alternative values which it believes are correct. Consequently, this contention should be rejected.

Third, CFSP alleges that the Applicant has underestimated "doses and effects by using as a receptor the standard man, the

least susceptible form of human life." CFSP has provided no basis for its contention that the Applicant's projected population doses from accidents are in error because it used a standard man as a receptor. Moreover, CFSP has not specified what type receptor should have been used in the population dose calculation. Finally, CFSP has not specified how use of a different receptor would have affected the projected doses. Consequently, this contention should be rejected for lack of specificity and basis.

Finally, CFSP alleges that the Applicant has failed to consider accidental releases of liquid effluent on surface and groundwater supplies. However, the Applicant specifically considered accidental releases of liquid effluent and their potential for affecting groundwater and surface water supplies. ASC/ER § 7.4.8. CFSP has not provided any basis for questioning the conclusions in this section, and consequently this contention should be rejected.

Revised Contention 33 (Replaces Proposed Contention 65)

Petitioner contends that Applicant has not met the requirements of 10 CFR 50.34(f)(1)(i), NUREG 0718 Rev. 1 Action Item II.B.8(1) requirements and has no intention of meeting these requirements.

NUREG-0718 ^{14/} itself states that it is not a regulation, and that compliance with it is not a requirement. NUREG-0718, p. iii.

^{14/} NUREG-0718, "Licensing Requirements for Pending Applications for Construction Permits and Manufacturing Requirements" Rev. 2 (January 1982).

See also Porter County Chapter v. EC, 533 F.2d 1011, 1016 (7th Cir.), cert. den. 429 U.S. 945 (1976). Consequently, failure to satisfy the provisions of NUREG-0718 is not equivalent to a failure to abide by a regulation, and non-compliance with NUREG-0718 is not, in and of itself, a sufficient ground for alleging that an applicant will not take adequate measures to protect the health and safety of the public. Since CFSP has not alleged that any specific structure, system, or component of S/HNP is defective, inadequate, or violative of the Commission's rules, Revised Contention 33 should be rejected for lack of specificity and basis.^{15/}

Revised Contention 34 (Replaces Proposed Contentions 16, 67 and 68)

Petitioner contends that Applicant underestimates the probability and effects of an accident at the S/HNP thus falsely [sic] concluding that the benefits outweigh the costs in the analysis required by NEPA and 10 CFR 51.20(b).

As a basis for this contention, CFSP stated:

Applicant underestimates the probability of an accident by relying upon the Reactor Safety Study (RSS) which, according to the testimony of Richard Hubbard, supra, incorrectly assess: 1) the contribution of BWR accident sequences to the probability of a major radiation release, 2) the ability of the Emergency Core Cooling System to

^{15/} It should be noted that the Commission recently amended 10 CFR § 50.34 with respect to requirements upon construction permit applicants. See 47 Fed. Reg. 2286 (January 28, 1982). The amendment requires applicants to provide certain information, including information which is related to the action plan items in NUREG-0718, such as item II.B.8(1). 10 CFR § 50.34(f)(1)(i). Nothing in Contention 65 alleges that the Applicant has not complied with this amendment.

perform its intended functions; 3) the effect of aging on reactor safety; 4) the effects of sabotage; 5) the impact of unresolved safety issues on overall risk; and 6) relies excessively on "single failure" events when it is know [sic] that multiple failures exist. Applicant underestimates the effects of an accident further by overemphasizing the effectiveness of evacuation, using outdated bio-effect models and understating the effect of common-cause failures such as sabotage, fire, earthquake etc. which according to the Lewis Report, NUREG/CR-0400 are important inadequacies of the RSS. Until the Applicant demonstrates that these inadequacies have been resolved in their "rebaselining" of the RSS these [sic] is reason to conclude that the risks of an accident are significantly underestimated by the Applicant.

This contention is totally lacking in specificity. CFSP alleges that the Applicant has incorrectly assessed various factors, but it does not specify why or how the assessment of those factors is incorrect, nor does it identify the degree to which those assessments are incorrect. Moreover, even if it is assumed arguendo that all of CFSP's allegations are accurate, CFSP has not provided any basis for concluding that a different analysis would affect the ultimate conclusion of the Applicant regarding the significance of accident risks. Consequently, this contention should be rejected.

Revised Contention 35 (Replaces Proposed Contention 70)

Petitioner contends that Applicant underestimates the potential and significant costs of an accident in § 7.4 of the ASC/ER as required by 10 C.F.R. 51.20.

This contention is based upon the allegations that an accident at S/HNP would contaminate the Columbia River and that an accident would entail significant economic costs.

The Applicant has considered the potential for contamination of the Columbia River as a result of an accidental release of radioactivity to the groundwater beneath S/HNP. The Applicant concluded that such a release would not contribute to the risks posed by an accident at S/HNP. ASC/ER § 7.4.8. The Applicant additionally considered various economic costs of an accident. See ASC/ER § 7.4.6.2. CFSP has not identified any error in this consideration.

Moreover, the Applicant did analyze the primary consequences of a major accident, and it found the risk to humans from such an accident to be small. See ASC/ER § 7.4. CFSP has provided no basis for requiring further consideration of the effects of major accidents, and it would be inconsistent with NEPA's "rule of reason" to perform further analysis when the primary impacts have been evaluated and found to be small. Therefore, the contention regarding the economic costs of a major accident should be rejected.

III. Discussion of the Factors Governing Untimely Contentions

Most of the revised contentions simply consist of a rearrangement of the proposed contentions. The Applicant will not object to the untimely nature of these revisions.

However, several of the revised contentions raised issues which were not mentioned in the proposed contentions.^{16/} Other, revised contentions rely upon bases which were not identified in the proposed contentions.^{17/} Admission of these late-filed issues

^{16/} Revised Contention 11.

^{17/} Revised Contentions 1, 4, 29[b], 29[k], 30, 31 and 34.

and bases is governed by the standards in 10 CFR § 2.714(a).

Under 10 CFR § 2.714(a), untimely contentions may be entertained upon a determination that the contentions should be admitted upon a balancing of the following five factors:

- (i) Good cause, if any, for failure to file on time.
- (ii) The availability of other means whereby the petitioner's interest will be protected.
- (iii) The extent to which the petitioner's participation may reasonably be expected to assist in developing a sound record.
- (iv) The extent to which the petitioner's interest will be represented by existing parties.
- (v) The extent to which the petitioner's participation will broaden the issues or delay the proceeding.

A late petitioner must address each of these five factors and affirmatively demonstrate that, on balance, they favor permitting the tardy submission. See Duke Power Co. (Perkins Nuclear Station, Units 1, 2 and 3), ALAB-615, 12 NRC 350, 352 (1980), and cases cited therein. CFSP has not addressed any of these factors, and therefore has not satisfied its burden. Consequently, the revised contentions may be rejected for this reason alone.

Furthermore, it is apparent that a balancing of the five factors weighs against admission of the revised contentions. Good cause does not exist for the late-filed contentions, since each could have been submitted within the time frame specified by the Commission's rules. Moreover, with respect to Revised Contentions 1 and 4, both the NRDC and the NWF/OEC have raised similar contentions. There is no reason to expect that these parties will

not adequately represent the interests of CFSP regarding these contentions, and in fact CFSP may be able to assist these parties, thereby providing a means whereby CFSP may be able to protect its own interests. With respect to the other revised contentions, no party has raised similar issues, and therefore admission of them would broaden the scope of this proceeding and inevitably interject delay. Finally, CFSP has not demonstrated any expertise in any of the areas which are the subject of the revised contentions; consequently, its participation in these areas could not be expected to contribute to this proceeding.

In short, the five factors do not favor admission of the revised contentions. Of particular importance is the fact that the revised contentions could have been, but were not, submitted in a timely fashion. Respect for the Commission's rules compels rejection of these revised contentions.

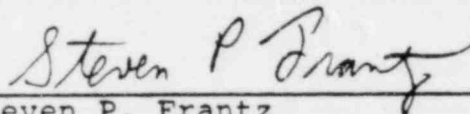
IV. Conclusion

In large, CFSP's revised contentions consist simply of allegations that the Applicant's consideration of various matters has not been adequate. In most cases, CFSP has not identified any specific defect or inaccuracy in the Applicant's consideration. Similarly, CFSP has not provided bases in support of its allegations that the Applicant's analysis has been faulty. In short, CFSP's revised contentions do not provide adequate notice of any particular issues to be litigated, but merely indicate a general and unfocused displeasure with the Applicant's discussion in the ASC/ER and PSAR. Such contentions do not comply with the Commission's rules and should not be admitted into this proceeding.

Finally, as CFSP itself has emphasized^{18/} it is no stranger to NRC proceedings. To use CFSP's own words, it has "familiarity with the process and issues" in NRC proceedings.^{19/} Consequently, there is no reasonable excuse for CFSP's failure to raise contentions which have the requisite specificity and basis. This failure is all the more egregious given the fact that CFSP was aware of the Applicant's and Staff's objection, and yet still neglected to cure the defects inherent in the originally proposed contentions. Moreover, those few revised contentions which are not objectionable under 10 CFR § 2.714(b) are founded upon an untimely basis for which CFSP has not offered any excuse under 10 CFR § 2.714(a). Therefore, all of the contentions proffered by CFSP should be rejected, and CFSP should not be permitted to participate as a party to this proceeding for failure to comply with the requirements of 10 CFR § 2.714(b) to submit at least one admissible contention.

Respectfully submitted,

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^{18/} "Request for Hearings and Amended Petition for Leave to Intervene" (March 6, 1982), pp. 2, 5-6.

^{19/} Id., p. 5.



DEPARTMENT OF JUSTICE

100 State Office Building
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July 15, 1981

No. 8047

This opinion is issued in response to questions submitted by John J. Lobdell, Public Utility Commissioner.

QUESTION PRESENTED

Under Oregon Laws 1981, ch 1, relating to nuclear plant licensing, enacted in November, 1980 as Ballot Measure 7, may the Public Utility Commissioner authorize the issuance of securities by a public utility for any of the following purposes:

- (1) To finance construction at the Trojan nuclear power plant under its existing site certificate?
- (2) To finance construction of a new nuclear plant in Oregon?
- (3) To finance construction of a nuclear power plant outside the State of Oregon?

ANSWER GIVEN

- (1) Yes.
- (2) No, unless the Energy Facility Siting Council has first found that an adequate waste disposal facility exists to serve the new plant.
- (3) Yes.

DISCUSSION

Oregon Laws 1981, ch 1 was enacted by initiative on November 4, 1980. It appeared on the ballot and will be referred to hereinafter as Measure 7. The measure conditions the establishment of nuclear plants on the existence of adequate waste disposal facilities.

Nuclear-fueled thermal power plants may be constructed in Oregon only after a site certificate has been issued by the Energy Facility Siting Council. ORS 469.320. The principal thrust of Measure 7 is found in sec 3, which prohibits the siting council from issuing a site certificate until it finds that:

". . . an adequate repository for the disposal of the high-level radioactive waste produced by the plant has been licensed to operate by the appropriate agency of the Federal Government. . . ."

If the council makes such a finding, the proposed site certificate must be submitted to the voters for approval and only after a favorable vote may the siting council issue the certificate. Measure 7, secs 4 and 5.

Measure 7 further provides:

"Section 6. The Public Utility Commissioner shall not authorize the issuance of stocks, bonds or other evidences of indebtedness to finance any nuclear-fueled thermal power plant pursuant to ORS 757.400 to 757.450 until the Energy Facility Siting Council has made the finding required under section 3 of this 1980 Act.

"Section 7. The provisions of section 3 of this 1980 Act do not apply to any nuclear-fueled thermal power plant for which a site certificate was granted before November 15, 1980."

To interpret the measure, it must be read in its entirety. State v. Powell, 212 Or 684, 321 P2d 333 (1958).

The "grandfather clause" in sec 7 relates to the Trojan plant, and gives rise to the first part of the question presented. The section does not specifically make an exception to the provisions of sec 6, prohibiting the Public Utility Commissioner from authorizing nuclear plant financing until the finding required by section 3 has been made.

It is quite possible that major work could be undertaken at the Trojan plant under its existing certificate, which would nevertheless require financing subject to authorization by the Public Utility Commissioner. See 38 Op Atty Gen 555 (1977), concluding that a new certificate was not necessary for expansion of the Trojan spent fuel pool.

Assuming that the work is permissible under the existing certificate, however, may the Commissioner approve financing for such work, if no finding pursuant to sec 3 has been made? We conclude that he may.

Our primary reason is that in such a case there will be no application for a site certificate, and no occasion for the EFSC to find that an adequate repository exists for disposal of "high-level radioactive waste produced by the plant" for which a site certificate is sought. The clear intention of sec 7 is to permit Trojan to operate under its existing certificate, and there is no indication of any intent to limit anything the operators of the plant are entitled to do under that certificate.

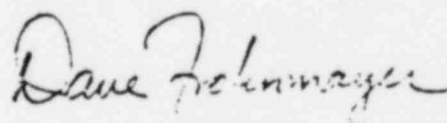
The second part of the question is easily answered. That is exactly the case that Measure 7 was principally intended to govern. No site certificate may be issued for a new nuclear plant in Oregon until the EFSC has made the finding required by sec 3 (and until the voters have approved under secs 4 and 5). The Public Utility Commissioner cannot authorize financing until that finding has been made.

This leads us to the third part of the question. As noted above, sec 3 of the Act prohibits the siting council from issuing a site certificate unless it finds an adequate waste disposal facility exists, "for waste produced by the plant" for which a certificate is sought. (Emphasis added.) The siting council's licensing jurisdiction, through site certificates, extends only to plants proposed to be built in Oregon. ORS 469.310. Since the finding required by sec 3 is to be made in connection with an application for a site certificate, the finding relates only to waste from facilities to be built in Oregon. In other words, the siting council's required finding applies only to facilities over which it has jurisdiction.

Therefore, we conclude that the Section 6 restriction on the Public Utility Commissioner's authority to approve securities issued by a public utility, because it depends upon the same waste disposal finding, also relates only to financing of facilities for which a site certificate is necessary. That is, those which are to be located within the State of Oregon. The PUC authority depends upon an EFSC "finding required under

section 3 of this 1980 Act," to be made in connection with an Oregon site certificate application. That finding relates to an adequate depository for the particular plant for which a site certificate is sought.

There is no ambiguity in the measure which would entitle us to consider extrinsic evidence of voter intent. However, our conclusion that Measure 7 was meant to relate only to facilities within Oregon is reinforced by the official representations to the voters in the November, 1981 Oregon Voter's Pamphlet at pp 28-30. The arguments in favor of the measure expressly state in six separate places that the measure applies to nuclear plants to be built "in Oregon." This expression is consistent with the argument opposing Measure No. 7 on p 32 of the pamphlet, which states that passage of the measure would cause new power plants to be built in Washington.¹



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DF:JS:jo

¹This opinion only construes the language of Measure 7. It does not address the validity of the enactment or matters of overlapping jurisdiction between the Energy Facility Siting Council and the federal Nuclear Regulatory Commission. We should point out that a California statute designed to restrict nuclear plant construction until establishment of permanent waste disposal facilities has been ruled invalid in two cases. Pacific Gas & Electric Co. v. California Energy Commission, ___ F Supp ___ (ED Cal April 23, 1980) and Pacific Legal Foundation v. California Energy Commission, 472 F Supp 191 (SD Cal 1979). These consolidated cases are now before the United States Court

of Appeals for the Ninth Circuit. They were argued in October, 1980. A decision is pending.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)
)
PUGET SOUND POWER & LIGHT) Docket Nos. STN 50-522
COMPANY) STN 50-523
)
(Skagit/Hanford Nuclear)
Project, Units 1 & 2))

CERTIFICATE OF SERVICE

I hereby certify that copies of Applicant's Answer to Revised Contentions of Coalition for Safe Power dated June 11, 1982, have been served on the following individuals and entities by deposit in the United States mail, first class, postage prepaid on this 11th day of June 1982.

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