

January 3, 1983

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)
)
PUGET SOUND POWER & LIGHT)
COMPANY, ET AL.)
)
(Skagit/Hanford Nuclear Power)
Project, Units 1 and 2))

Docket Nos. STN 50-522
STN 50-523

NRC STAFF RESPONSE TO INTERVENORS'
MOTION TO CLARIFY AND AMEND CERTAIN CONTENTIONS

The NRC Staff supports that part of the "Intervenors' Motion to Clarify and Amend Certain Contentions" (Motion to Clarify) dated December 13, 1982, which seeks to clarify Contentions 7 and 8, as well as Contention 2, although not in the manner sought by the Intervenor. The Staff further opposes that part of the motion which seeks to amend Contentions 7 and 8 without considering whether the matters sought to be added by amendment may properly be made part of a contention absent compliance with 10 C.F.R. § 2.714(b). The bases for the Staff's position are:

- The Intervenor's premise to the motion - that the Board accepted those matters in the Yakima Indian Nation (YIN) Contention 5 or the Columbia River Inter-Tribal Fish Commission (CRITFC) Contention 5 for litigation beyond the matters originally set out as part of Wildlife Federation/Oregon Environmental Council (NWF/OEC) Contention 4 - is in error.
- The record is not clear whether original NWF/OEC Contentions 3 and 4 were admitted or deferred admission.
- The Board has not ruled that the 20 or more bases set out in YIN Contention 5 and CRITFC Contention 5 provide a proper basis for

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the litigation of NWF/OEC Contentions 3 and 4, over those matters set out by NWF/OEC as a basis for its contentions.

PROCEDURAL HISTORY OF RELEVANT CONTENTIONS

The history relevant to Intervenors' Motion to Clarify and the subject Board Contentions 7 and 8 is set out below.

Board Contention 7:

Board Contention 7 had its genesis in NWF/OEC Contention 4 and the basis set out in the NWF/OEC April 20, 1982, "Supplement to Petition to Intervene." Contention 4 there read:

4. The Applicants Have Failed To Assess Fully the Environmental Impacts of Their Proposal and, In Particular, the Impacts of the Project On Columbia River Fish and Wildlife Resources.

The entire thrust of the basis of this contention was that the environmental statement for the Skagit/Hanford nuclear facility had to analyze the changes the facility would cause in Bonneville Power Authority's (BPA's) use of its base-load hydro-electric facilities on the Columbia River and the environmental affects of such changes. This sole basis of the contention (i.e. the need to consider BPA's "hydro-peaking" activities) was emphasized in the NWF/OEC Memorandum filed in support of Contention 4.^{1/} The Staff and the Applicants joined issue with NWF/OEC on the basis of the need to analyze the possible affects of the subject

^{1/} See Reply of Intervenor NWF/OEC to Applicants' Answer and Staff Response to Intervenors' Supplement to Intervention Petition and Memorandum in Support of Second Supplement, May 21, 1982 at 2-7.

facility on the use of BPA's Columbia River hydro-electric resources in the Skagit/Hanford FES.^{2/}

On July 6, 1982, this Board set out and stated in regard to NWF/OEC Contention 4:

4. "The Applicants have failed to assess fully the environmental impacts of the project on Columbia River Fish and Wildlife Resources."
[Accepted]

The Board finds that this contention represents a potentially litigable issue cognizable in this proceeding.^{1/} However, information to be made available later^{1/} may well alter much of the specific information needed to properly litigate the environmental impact and cost considerations. For this reason, we defer acceptance of Contention 4 at this time, but recognize the right of Intervenors NWF and OEC to resubmit their contention at a later time without prejudice.

^{1/} The joint NRC-EFSEC Final Environmental Report is currently estimated to issue in December, 1982; the Northwest Regional Council is scheduled to publish their regional resources analysis in April, 1983.

Thus, the Board stated that this contention (as reworded by the Board) was "potentially litigable" but deferred admitting it into controversy in the proceeding pending further information.^{3/}

On July 16, 1982, the "Columbia River Inter-Tribal Fish Commission's (CRITFC) Motion for Admission of Second Supplement to Petition to

^{2/} See Applicants' Answer to Supplemental Petition to Intervene and Motion for Extension of Time, May 4, 1982, at 3-5; NRC Staff Response to Amended Contentions of NWF/OEC, June 11, 1982, at 4-7.

^{3/} Cf. Duke Power Co. (Catawba Nuclear Station, Units 1 & 2), ALAB-687, 16 NRC _____ (August 19, 1982), Commission review granted, Order, December 23, 1982.

Intervene" was filed. In Contention 5 therein CRITFC copied NWF/OEC Contention 4 and incorporated by reference the basis set out by NWF/OEC for that contention. In addition, CRITFC set out seventeen (5A thru Q) other matters which CRITFC also wished to litigate over and above the sole matter NWF/OEC wished to litigate in regard to the environmental affects of the project on the Columbia River.^{4/} The NRC Staff and the Applicant addressed, in detail, each of these seventeen additional parts or bases of the contention which CRITFC specified.^{5/} Both the Applicant and the Staff parsed each additional matter CRITFC wished to have included in the contention and agreed to the admission of some of these matters and asked that others not be admitted for litigation as a matter of law.^{6/} In this regard, it was pointed out that some parts could not be relitigated in this proceeding upon the issuance of EPA NPDES permit (see Carolina Power and Light Co. (H. B. Robinson, Unit No. 2), ALAB-569, 10 NRC 557, 561-562 (1979)) and that other parts could not be admitted as they had no specificity or basis. (See e.g. Duke Power Co. (Catawba Nuclear Station,

4/ At 2-28.

5/ See NRC Response to CRITFC Motion for Admission of Second Supplement to Petition to Intervene, August 5, 1982, at 10-17; Applicant's Response in Opposition to CRITFC's Motion for Admission of Second Supplement to Petition to Intervene, June 30, 1982, at 10-12, 16-18.

6/ See NRC Staff Response to Columbia River Inter-Tribal Fish Commission's Motion for Admission of Second Supplement to Petition, August 5, 1982, at 6-8, 10-17; Applicants' Response in Opposition to Columbia River Inter-Tribal Fish Commission's Motion for Admission of Second Supplement to Petition to Intervene, July 30, 1982, at 10-12, 16-28.

Units 1 & 2), ALAB-687, 16 NRC ____ (August 19, 1982, slip op. at 7-11),
Commission review granted Order, December 23, 1982.^{7/}

Like CRITFC's filing, the September 30, 1982 "Supplement to Petition
to Intervene of YIN" contained a Contention 5, which read:

5. The Environmental Impacts of the Proposed
Skagit/Hanford Nuclear Project on Columbia River
Fish and Wildlife Resources Have Not Been Fully
assessed. Furthermore, Environmental Impacts Must
Not Infringe Indian Treaty Rights.

Like CRITFC, YIN incorporated by reference the contention and
bases set forth in NWF/OEC Contention 4.^{8/} Similarly like CRITFC, YIN
listed over sixteen other grounds as bases for the contention than had
NWF/OEC, which had premised its contention solely on the need of the
facility's EIS to consider purported changes in BPA's use of its Columbia
River hydro-electric facilities and their environmental affects of those
changes.^{9/} As in their replys to the contentions of CRITFC, the NRC
Staff and the Applicants dealt in detail with each of the many other
contentions YIN raised concerning the environmental affects of the

^{7/} The Commission specifically declined to review the Appeal Board's
determination that timely non-specific contentions may not be
admitted conditionally by an Atomic Safety and Licensing Board
[at 2].

^{8/} At 2.

^{9/} At 16-46.

Skagit/Hanford project on Columbia River Fish and Wildlife Resources.^{10/}
As in its response to CRITFC, the NRC staff pointed out that many of the matters YIN sought to raise as contentions would be foreclosed by the issuance of EPA NPDS permits and that many of the other matters YIN sought to put in contention lacked bases or specificity.^{11/}

The Board by Memorandum and Order of October 29, 1982, ruled on the first sentence in YIN Contention 5 stating:

6. The Board finds that the first sentence of YIN's Contention 5^{3/} represents a potentially litigable issue in this proceeding. As noted in the Board's order of July 6, 1982, at page 3 in connection with NWF/OEC's Contention 4, information to be made available later^{4/} may well alter much of the specific information needed to properly litigate the environmental impact and cost considerations. For this reasons the Board defers acceptance of the first sentence of YIN's Contention 5. The right of YIN and NWF/OEC to resubmit their contentions at a later time is recognized.

^{3/} The first sentence of YIN's Contention 5 reads as follows:

"The environmental impacts of the proposed Skagit/Hanford Nuclear Project on the Columbia River Fish and Wildlife resources have not been fully assessed."

^{4/} The joint NRC-EFSEC Final Environmental Report is currently estimated to issue December 1982; the Northwest Regional Council is scheduled to publish their regional resources analysis in April 1983.

^{10/} See Applicants' Response to Supplement to Petition to Intervene of YIN, October 14, 1982, at 1-10; NRC Staff Response to Contentions of YIN, October 20, 1982, at 4-15.

^{11/} Id.

The Board by Memorandum and Order of November 2, 1982, listed admitted contentions to include the matter previously deferred in NWF/OEC 4, which was to be considered in the future along with the first sentence of YIN Contention 5.^{12/}

However, three days later, on November 5, 1982, the Board in taking action on the identical first sentence in CRITFC Contention 5, indicated that the acceptance of the contentions had been deferred, stating as it had originally in regard to the first sentence of YIN Contention 5:

5. CRITFC's Contention 5 is deemed by the Board to comprise two separable contentions deriving from the two sentences making up the proposed contention, and it is so treated here. The first sentence of CRITFC 5 is identical to the first sentence of the fifth contention submitted by the Yakima Indian Nation (YIN). In the Board's Order of October 29, 1982 (pp. 3-4), we deferred acceptance of YIN 5-1 for the reason there stated. Accordingly, we afford the same treatment to the first sentence of CRITFC 5.

Thus, it is not clear to the NRC staff whether NWF/OEC Contention 4 and the first sentence of YIN Contention 5 and the first sentence of CRITFC Contention 5 have been admitted for litigation. It is further unclear to the NRC staff whether the sole basis upon which such a contention may be litigated is only the failure of the NRC EIS to consider BPA's methods of operation of hydro-electric facilities on the Columbia River, and which if any of the many YIN and CRITFC subparts to this contention can be litigated in this proceeding.

^{12/} At ¶ 7 at 5.

Contention 8

As the Intervenors recognize in their Motion to Clarify, Board Contention 8 had its genesis in the "Revised Contentions of Coalition for Safe Power - May 24, 1982". Coalition for Safe Power (CSP) Revised Contention 14, read:

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.

This contention was totally and in whole predicated on radiation affects of the Skagit/Hanford facility. The first three paragraphs referred to low-level radiation, and the last paragraph talks of "major accidents." Consistent with NRC practice, the Applicant and the NRC Staff discussed the contentions in terms of whether they were specific enough to put the parties on notice of the issues to be litigated in regard to radiation.^{13/} The Board by Memorandum and Order of July 6, 1982, at 5, accepted CSP Contention 14 and slightly reworded it to state:

14. The Petitioner contends that the Applicants have underestimated the environmental cost of the S/HNP to such an extent as to inappropriately alter the cost benefit balance required by NEPA and 10 CFR 51.20 in favor on constructing the project.
[Accepted]

The basis of the contention was that the radiological affects of the project would change the environmental balance in the EIS, and that is the basis on which it may be litigated.

^{13/} NRC Staff Response to Revised Contentions of Coalition for Safe Power, June 11, 1982, at 13-15; Applicant's Answer to Revised Contentions of Coalition for Safe Power, June 11, 1982, at 14-16.

Intervenors' Motion to Clarify also points to NWF/OEC Contention 3 as a predicate for an expansion of Board Contention 8, to include environmental, as well as financial costs.^{14/} NWF/OEC proposed this contention on April 20, 1982, to state:

3. The Applicant Has Used an Inaccurately Low Estimate of the Environmental and Financial Cost of the Project in Its Benefit/Cost Ratio.^{15/}

Each of the specific bases for NWF/OEC Contention 3 were related to the economics of the facility. They were:

- A. The plants projected capacity factor.
- B. Possible decommissioning costs.
- C. The cost of financing.
- D. A comparison to other costs of plants on Applicants' systems.
- E. The likelihood of BPA acquiring the facility.

NWF/OEC then referred to its succeeding Contention 4 and stated environmental costs to be caused by BPA's operation of its Columbia River hydroelectric facilities also weighed against operation of the Skagit/Hanford plant. The NRC staff and the Applicants addressed this contention in

^{14/} Intervenors' Motion to Clarify and Amend Certain Contentions, at 4-7.

^{15/} Supplement to Petition to Intervene of NWF and OEC, April 20, 1982, at 2-3.

terms of the specific economic bases set out therein.^{16/} By Order and Memorandum, of July 6, 1982, at 2, the Board recognized the proposed Contention dealt with the financial viability of the Skagit/Hanford project and stated:

3. The Board accepts Contention 3 rewritten as follows:

The Applicant has used an inaccurately low estimate of the financial cost of the Project in its Cost/Benefit Ratio. (Paragraphs A through D represent an acceptable basis for this contention.)

Thus, the contention was limited to the financial issues raised in NWF/OEC paragraphs A through D.

The Board reiterated its reading of and limitations upon NWF/OEC Contention 3 in acting on YIN Contention 2. YIN in Contention 2 in its September 29, 1982, Supplement to Intervene of YIN sought to incorporate the contention as originally set out by NWF/OEC without recognizing the prior Board action in its July 6, 1982 Order. However, the Board in acting on YIN Contention 2, did so limit it:

3. The Board accepts YIN's Contention 2, excluding the phrase "environmental and".^{4/} It is hereby consolidated with National Wildlife Federation and Oregon Environmental Council (NWF/OEC) Contention 3 as accepted and rewritten by the Board. NWF/OEC Contention 3, as rewritten, will now constitute the rewording of these consolidated contentions. NWF/OEC is hereby designated as the lead party on this contention. (10 CFR 2.715a)

^{4/} In our Order of July 6, 1982, wherein we reworded and admitted Contention 3 of NWF/OEC,

^{16/} See, NRC Staff Response to Amended Contention of NWF/OEC, June 11, 1982, at 3-4; see Applicant's Response to Amended Contentions of NWF/OEC, June 2, 1982, at 1-4.

we excluded environmental costs because these had not been addressed by NWF/OEC in their discussion of bases. Since YIN incorporates those bases by reference, environmental costs are also excluded from the YIN contention.^{17/}

In the list of accepted contentions in the Board Memorandum and Order of November 2, 1982, this contention was listed as Board Contention 2, as follows:

2. The Applicants have used an inaccurately low estimate of the financial cost of the Project in its Cost/Benefit Ratio, (NWF) OED 3 consolidated with YIN 2; Lead Party-NWF/OEC).

The history with respect to CRITFC Contention 3 is similar to the action taken on YIN Contention 2. CRITFC Contention 3 in the July 16, 1982, "Columbia River Inter-Tribal Fish Commission's Second Supplement to Petition to Intervene," sought to incorporate this contention as originally set out by NWF/OEC without recognizing the Board's July 16, 1982, Order limiting the Contention. In acting on this CRITFC Contention, the Board stated:

3. CRITFC Contention 3, excluding the phrase "environmental and," is identical with Accepted Contention 2. CRITFC's Contention 3 is therefore consolidated with Accepted Contention 2 as to which National Wildlife Federation and Oregon Environmental Council (NWF/OEC) is the lead party. (See October 29, 1982 Memorandum and Order, p. 2, regarding our rejection of the phrase "environmental and").^{18/}

Thus, the history of this proceeding shows that both Board contentions do not include general environmental cost/benefit matters. Board Contention 8, stemming from CSP Contention 14, only involves the

^{17/} See Memorandum and Order Re: Supplement to Petition to Intervene of Confederated Tribes and Bands of Yakima Indian Nation, October 29, 1982, at 2.

^{18/} See Memorandum and Order Re: Second Supplement to Intervene of CRITFC, November 5, 1982, at 2.

environmental costs of radiation. Board Contention 2, stemming from NWF/OEC Contention 3, as limited by three past Board Orders, only allows for litigation of limited aspects of the financial cost of the project.

Intervenors' Motion to Clarify asserts that current status of matters which may be litigated under Board Contentions 2, 7 and 8 as listed in the Board's Memoranda and Orders of November 2 and 5, 1981, are unclear. The NRC Staff agrees that it would aid in the furthering of this proceeding if these matters were clarified. However, the Intervenor argues that these Contentions be clarified to indicate that all matters set out in the 16 different subparts of YIN Contention 5, and the 17 different subparts of CRITFC Contention 5 have been admitted for litigation in this proceeding. The NRC Staff disagrees and as is later detailed the scope of admitted contentions can only be those bases which were originally passed on by the Board. The NRC Staff does however believe that the Board might examine the many subparts of the YIN Contention 5 and CRITFC Contention 5 to see which parts of those proposed contentions are within the jurisdiction of the Board and have the requisite specificity and basis to be admitted as contentions.

DISCUSSION

- I. CLARIFICATION OF BOARD CONTENTIONS 2, 7 AND 8 IS NEEDED TO DETAIL THAT MATTERS BEYOND THE BASES ON WHICH THOSE CONTENTIONS WERE ADMITTED MAY NOT BE LITIGATED.

General Principles:

Contentions in NRC proceedings must set forth the basis upon which they are founded with reasonable specificity so that the issues in the proceeding are sharply delineated and other parties will know with reasonable specificity at the time the contentions are accepted what matters will be litigated at any necessary hearings. 10 C.F.R. § 2.714(b); Duke Power Co. (Catawba Nuclear Station, Units 1, 2 & 3),

ALAB-687, slip op. at 7-11; Duquesne Light Co. (Beaver Valley, Unit No. 1), ALAB-109, 6 AEC 243, 245 (1973); Northern States Power Co. (Prairie Island, Unit Nos. 1 and 2), ALAB-107, 6 AEC 188, 194 (1973), aff'd., BPI v. AEC, 502 F.2d 424, 429 (D.C. Cir. 1974). As stated in Duke Power Co., ALAB-687, slip op. at 9, 10 C.F.R. § 2.714(b) "contains the clear message that, in order to be admitted, the contention must meet the 'requirements of this [Section]'; i.e., it must set forth its bases 'with reasonable specificity.'"

In addition, no contention can be accepted where:

- (a) it constitutes an attack on applicable statutory requirements;
- (b) it challenges the basic structure of the Commission's regulatory process or is an attack on the regulations;
- (c) it is nothing more than a generalization regarding the intervenor's views of what applicable policies ought to be;
- (d) it seeks to raise an issue which is not proper for adjudication in the proceeding or does not apply to the facility in question; or
- (e) it seeks to raise an issue which is not concrete or litigable.

Philadelphia Electric Co. (Peach Bottom Atomic Power Station, Units 2 & 3), ALAB-216, 8 AEC 13, 20-21 (1974).

Further, no contention may be admitted where it is beyond the jurisdiction of a Licensing Board or where another agency is charged by law with making the determination a party seeks to have the Commission make. 10 C.F.R. § 2.758; 10 C.F.R. Part 2, Appendix A, § III(a)(1); Public Service Co. of New Hampshire, CLI-71-1, 7 NRC 1, 23-24 (1978), aff'd., New England Coalition on Nuclear Pollution v. NRC, 582 F.2d 87, 98 (1st Cir. 1978); Virginia Electric Power Co. (North Anna Nuclear Power Station, Units 1 & 2), ALAB-568, 10 NRC 554, 561 (1979).

As contentions must be within the jurisdiction of the Board and have the specificity and basis to put parties on notice of what is to be

litigated, it is only upon such basis that the contention may be litigated and only evidence relevant to such basis may be admitted. See 10 C.F.R. § 2.744(c). As stated in § III(a)(1) of Appendix A to 10 C.F.R. Part 2:

. . . the granting of a petition for leave to intervene does not serve to enlarge the issues, or become the basis for receipt of evidence, with respect to matters beyond the jurisdiction of the Commission.

No contention could be admitted to an NRC proceeding unless:

- 1) It sets forth its basis with sufficient specificity to show the parties what issues they must meet.
- 2) It sets forth specific issues which are relevant and necessary for a determination in the proceeding.
- 3) It sets forth issues which are within the jurisdiction of both the Board and of the Commission.

Contention 7

Pursuant to the November 2, 1982 Memorandum and Order of this Board, Board Contention 7 reads:

7. The Applicants have failed to assess fully the environmental impacts of the project on Columbia River Fish and Wildlife Resources. (NWF/OEC 4)

It is limited to the basis set forth by NWF/OEC upon submittal of the contention on April 20, 1982, which dealt with whether the EIS for Skagit/Hanford needs to consider the environmental affects of possible changes in the operation of BPA base-load facilities on the Columbia River which might be caused by the Skagit/Hanford facility. It is not and cannot be a vehicle for all other ways in which the proposed facility might affect the Columbia River and its fish and wildlife resources. To so interpret the contention would be contrary to the requirements of

10 C.F.R. § 2.714(b) that "the basis for each contention [be] set forth with reasonable specificity." Without the contention being limited the issues are not concrete, and the other parties have no idea of what particular issues they are to litigate, and the contention would be improper. Philadelphia Electric Co., supra; Duke Power Co., supra.

Although CRITFC or YIN may argue that the Board's past actions may have incorporated each of the 16 or 17 bases set out by each in their listing of matter they wished litigated under their Contentions 5, the Staff does not believe the Board intended that result. As the Staff and the Applicants previously detailed, many of the contentions which YIN and CRITFC put forward to litigate would be beyond the jurisdiction of the Commission in view of the finality of Environmental Protection Agency National Pollution Discharge Elimination System (NPDES) determinations. See Public Service Co. of New Hampshire, CLI-71-1, 7 NRC at 23-24; Public Service Co. of New Hampshire, supra, CLI-78-17, 8 NRC 179, 180 (1978); Virginia Electric Co., 10 NRC at 561. This Board may not consider matter without the jurisdiction of the NRC.

Further, as pointed out in prior pleadings of the NRC staff and the Applicants, many of the matters which YIN and CRITFC infer are now included for litigation under that contention cannot be so consistent with law. In many cases the Intervenors have failed to indicate any nexus between the literature they cite and the parameters at which the plant will operate. See, Louisiana Power & Light Co. (Waterford Station Unit 3), CLI-73-7 6 AEC 48, 49 (1973). For example merely citing a study that boiling water would be lethal to fish does not provide a basis for a contention unless it is also shown that there is a basis upon which

to allege that the plant will discharge boiling water.^{19/} Similarly, just talking of harm to terrestrial ecology or about harm to the Yakima River fishery does not provide the necessary specificity for an issue to be litigated in NRC proceedings without setting out the mechanisms whereby the subject facility will cause such harm.^{20/} Philadelphia Electric Co., 8 AEC at 20-21, Duke Power Co., slip op. at 7-11.

The NRC Staff and the Applicants discussed in detail each of the matters YIN and CRITFC wished to litigate under each part of their respective Contention 5.^{21/} These arguments demonstrate why many of the issues set out in YIN Contention 5A through P and CRITFC Contentions 5A through Q are not proper contentions for NRC proceeding.

In the present posture of the case Board Contention 7 can only be litigated on the bases set out in NWF/OEC Contention 4, and not on the many very different bases set out in YIN Contention 5 and CRITFC Contention 5. No basis exists for designating a lead party on various aspects of this contention, as it is only NWF/OEC basis for its Contention 4 which has been accepted for litigation herein.

For these reasons, the Board should make clear that Board Contention 7 only allows the litigation of those bases for NWF/OEC

^{19/} See e.g.: YIN Contention 5C.

^{20/} See e.g.: YIN Contention 5M, CRITFC Contention 5P.

^{21/} See NRC Staff Response to CRITFC Motion for Admission of Second Supplements to Petition to Intervene, August 5, 1982, at 10-17; NRC Staff Response to Contentions of YIN as Set Forth In Its Supplement to Petition to Intervene, October 20, 1982, at 4-6; Applicants' Response in Opposition to CRITFC's Motion for Admission of Second Supplement to Petition to Intervene, July 30, 1982, at 10-12, 16-28; Applicants' Response to Supplement to Petition to Intervene of YIN October 14, 1982, at 1-10.

Contention 4 set out in the Second Supplement to Intervene of NWF/OEC of May 21, 1982, at 5-7, as admitted by the Board by Order of July 6, 1982.

Contention 8

Board Contention 8 as admitted by Memorandum and Order of November 2, 1982, now reads:

8. The Petitioner contends that the Applicants have underestimated the environmental cost of the S/HNP to such an extent as to inappropriately alter the cost benefit balance required by NEPA and 10 CFR 51.20 in favor of constructing the project. (CSP 14)

As indicated therein it is derived from Coalition for Safe Power (CSP) Revised Contention 14. That Revised CSP contention was only premised on the radiological affects of the plant and the affect of radiation on the cost/benefit balance. See pp. 8-9, supra. No other matters can be litigated under this contention. It could not be interpreted to include any other environmental matters without specific indication of what those environmental matters might be, the factual basis for raising such matters and how they could have relevance to the construction permits sought. 10 C.F.R. § 2.714(b); 10 C.F.R. Part 2, Appendix A, ¶ III(a)(1), Duke Power Co., supra.; Philadelphia Electric Co., supra.

Further, Board Contention 2 reads:

2. The Applicants have used an inaccurately low estimate of the financial cost of the Project in its Cost/Benefit Ratio. (NWF/OEC 3 consolidated with YIN 2; Lead Party - NWF/OEC)

By Board Order of July 6, 1982, this contention was limited to only the financial cost of the project as set forth in subparagraphs A through D of NWF/OEC Contention 3, on which the contention was based. These are:

- A. The plants projected capacity factor.
- B. Possible decommissioning costs.

C. Cost of financing.

D. A cost comparison to other plants on Applicants' systems.

Thereafter, on July 16, 1982 and September 30, 1982, CRITFC and YIN each stated that it "incorporates by reference the contentions and bases filed by the National Wildlife Federation and the Oregon Environmental Council in this matter." No further detail or bases was given.^{22/} As recognized by the Board in ruling on these YIN and CRITFC Contentions, they, as in NWF/OEC Contention 3, may only encompass the financial matters set forth in the NWF/OEC bases for its Contention 3.^{23/}

Nor could the references in the original NWF/OEC Contention 3 to environmental impact allow the Intervenors to now read into Board Contention 2 or 8 the generalized concerns they now say they should be permitted to litigate under this Contention. As recognized at p. 6 of the Motion to Clarify, the environmental concerns referenced in the original contention were only those to be caused by purported greater use of Columbia River hydro-electric facilities for peaking purposes as elucidated in NWF/OEC Contention 4.^{24/} As we have detailed (at 2-3, 14) this is the matter for litigation under Board Contention 7. Neither NWF/OEC, YIN or CRITFC even sought to raise the issues of the general environmental cost/benefit balance in any of the original contentions they now point to.

^{22/} See CRITFC's Second Supplement to Petition to Intervene, July 16, 1982, at 2; Supplement to the Petition to Intervene of YIN, September 30, 1982, at 1-2.

^{23/} See Memoranda and Orders, October 29, 1982, at 2; November 5, 1982 at 2.

^{24/} See Second Supplement to Intervene of NWF/OEC, May 21, 1982, at 5.

In these premises, the Board should make clear that:

- Board Contention 2 only allows litigation of those financial bases specified in the Board Order of July 6, 1982.
- Board Contention 8 only allows litigation of those radiation related environmental bases specified in CPS Revised Contention 14 of May 24, 1982, as admitted by Board Order of July 6, 1982.

II. NO GOOD CAUSE EXISTS TO AMEND BOARD CONTENTIONS 7 AND 8 TO INCORPORATE OVER TWENTY ADDITIONAL BASES AS URGED BY THE INTERVENORS.

As we have indicated the basis of Board Contention 7 (NWF/OEC 4) limits litigation thereunder to the environmental effects of hydro-peaking. See pp. 14-16, supra. Similarly, the basis of Board Contention 8 (CSP 14) limits litigation thereunder to whether the radiation to be caused by the Skagit/Hanford facility changes the NEPA cost/benefit balance. See pp. 17-19, supra. The Intervenor has also urged that Board Contentions 7 and 8 be amended so that any environmental concern of any intervenor be litigable thereunder in addition to the specific "hydro-peaking" and radiological concerns which supplied the basis upon which these Contentions were admitted. The NRC Staff opposes such amendments as the contentions would not then have the requisite specificity to be part of an NRC proceeding. Any consideration of a matter for admission as a contention must determine whether the matter has a specific enough basis to allow it to be litigated and whether the matter is within the jurisdiction of the Commission.

The adding of matters to be litigated to a proceeding after a pre-hearing conference is governed by 10 C.F.R. § 2.714(b). This section generally directs one to balance the factors in 10 C.F.R. § 2.714(a)(1) to see if such amendment should be allowed. These factors are:

- (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.

These factors are not directly relevant here where CRITFC and YIN submitted their contentions within the times formerly set by the Board. However, analogizing to the first factor, these Intervenor's have shown good cause in that they timely submitted their contentions before the prehearing conference. The second factor would seem to mitigate against their intervention as many of the factors they seek to raise here could be or are being litigated in the EPA NPDES permit proceeding, or in the contemporaneous Washington State siting proceeding. The third factor cannot be ascertained at this time as the type and quality of the evidence these Intervenor's will address is unknown. The fourth factor weighs in their favor as it does not appear that at least some of the issues YIN and CRITFC wish to raise would otherwise be considered in this proceeding. The fifth factor would be considered to weigh against these Intervenor's as admission of the many issues they seek to raise would undoubtedly broaden the issues and delay the proceeding.

In view of the fact that YIN and CRITFC sought to raise these issues at an appropriate time and they would not otherwise be litigated in this proceeding, we believe that on balance the Intervenor's should have an opportunity to have the Board consider whether these issues should be

admitted in this proceeding. Cf. Detroit Edison Co. (Enrico Fermi Atomic Plant, Unit 2), ALAB-707, 16 NRC ____ (December 21, 1982).

However, this does not mean that each of them should be admitted. As recognized in Duke Power Co., at 9, contentions whether timely or late may not be admitted if they lack specificity or have no basis. Ruling on contentions lacking basis or specificity cannot be deferred pending publication of Staff documents. Further, they may not be admitted if they seek to litigate matters beyond the jurisdiction of the Board or the Commission. See 10 C.F.R. Part 2, Appendix A, § III(a)(1).

Many of the 17 subparts of CRITFC Contention 5 and the 16 subparts of YIN Contention 5 which the Intervenors seek to have Board Contentions 7 and 8 amended to include fall within those prohibitions. As indicated, we have dealt extensively with each of the Contentions and parsed them to advise the Board of which ones may and which ones may not be admitted for litigation.^{25/}

We have shown that the status of the Hanford reservation is not appropriate for consideration in this proceeding.^{26/} We have detailed that water quality matters which will be determined in the Environmental Protection Agency National Pollution Discharge Elimination System permit proceeding or in state proceedings may not also be litigated in this proceeding.^{27/} See Public Service Co. of New Hampshire,

^{26/} NRC Response to YIN, at 5, 17-18.

^{27/} See NRC Response to YIN, at 6, 12; NRC Response to CRITFC, at 11.

^{25/} See NRC Staff Responses to CRITFC for Admission of Second Supplement to Petition to Intervene, August 8, 1982, at 10-17; NRC Response to Contentions of YIN, October 10, 1982, at 4-16. See also Applicant's Response in Opposition to CRITFC's Motion for Admission of Second Supplement to Petition to Intervene, July 30, 1982, at 10-12, 16-28; Applicant's Response to Supplement to Petition to Intervene of YIN, October 14, 1982, at 1-10.

CLI-71-17, 8 NRC at 180; Virginia Electric Power Co., 10 NRC at 561. Many of the 16 parts of the YIN Contention 5 and the 17 parts of the CRITFC Contention 5 are so lacking in specificity or basis as to be inadmissible for litigation.^{28/} Pursuant to Duke Power Co., supra, those contentions and their bases must be ruled upon now.

In sum, the Staff objects to an amendment of Board Contentions 7 and 8 to include any part of YIN Contention 5 or CRITFC Contention 5, which does not present specific matters with requisite bases that may be litigated in NRC proceedings.

CONCLUSION

For the above stated reasons the Staff opposes the clarification of the contentions or amendment of the contentions in the manner sought by the Intervenors. However, the Staff does believe, consistent with Duke Power Co., ALAB-687, the contentions should be clarified and amended to indicate which parts of YIN Contention 5 and CRITFC Contention 5 are within the jurisdiction of the Board and the Commission and, which parts have a requisite specific basis alleged to be admitted for litigation in this proceeding.

Respectfully submitted,



Edwin J. Reis
Assistant Chief Hearing Counsel

Dated at Bethesda, Maryland
this 3rd day of January, 1983

^{28/} See NRC Staff Response to CRITFC, at 12-13, 15; NRC Staff Response to YIN, at 8, 10-16.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

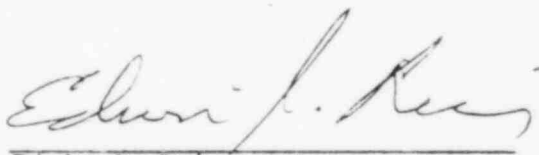
BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

NOTICE OF APPEARANCE

Notice is hereby given that the undersigned attorney herewith enters an appearance in the captioned matter. In accordance with § 2.713, 10 C.F.R. Part 2, the following information is provided:

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Edwin J. Reis
Assistant Chief Hearing Counsel

Dated at Bethesda, Maryland
this 3rd day of January, 1983

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF RESPONSE TO INTERVENORS' MOTION TO CLARIFY AND AMEND CERTAIN CONTENTIONS" and "NOTICE OF APPEARANCE" of Edwin J. Reis in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class, or, as indicated by an asterisk, through deposit in the Nuclear Regulatory Commission's internal mail system, this 3rd day of January, 1983:

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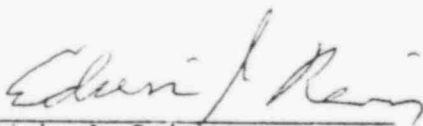
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