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UNITED STATES OF AMERICA OFFICE OF SECRETARY  
NUCLEAR REGULATORY COMMISSION DOCKETING & SERVICE  
BRANCH

ATOMIC SAFETY AND LICENSING BOARD

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Before Administrative Judges

John F. Wolf, Chairman  
Frank F. Hooper  
Gustave A. Linenberger, Jr.

In the Matter of	)	Docket Nos. 50-522
	)	50-523
PUGET SOUND POWER AND LIGHT COMPANY, ET AL.)	)	
(Skagit/Hanford Nuclear Power Project,	)	
Units 1 and 2)	)	September 3, 1982

MEMORANDUM AND ORDER  
 IN RESPONSE TO PETITIONS TO INTERVENE BY  
 COLUMBIA RIVER INTER-TRIBAL FISH COMMISSION  
 AND YAKIMA INDIAN NATION

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On February 5, 1982, the U.S. Nuclear Regulatory Commission (NRC) published in the Federal Register a notice of opportunity for a hearing on the amended application for a construction permit for the Skagit/Hanford Nuclear Project. (47 Fed. Reg. 5554 (1982)) The notice permitted the filing of petitions to intervene in the proceeding, and established March 8, 1982 as the deadline for filing such petitions. (Id., at 5555)

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Both the Columbia River Inter-Tribal Fish Commission (CRITFC) and the Yakima Indian Nation filed untimely Petitions to Intervene.<sup>1/</sup> The Applicants filed separate responses, opposing the petitions of CRITFC and the Yakima Indian Tribe.<sup>2/</sup> Applicants alleged that neither Petitioner showed good cause for untimely filing under 10 CFR § 2.714. Staff filed a response which favored the granting of both petitions.<sup>3/</sup>

There are two questions before us:

1. Whether CRITFC has standing to intervene in this proceeding.
2. Whether the Yakima Indian Nation has satisfied the standards for late intervention set forth in 10 CFR § 2.714.

#### I. CRITFC STANDING TO INTERVENE

Whether the interest alleged is sufficient to grant the petition for intervention as a matter of right is governed by judicial concepts of standing. (Portland General Electric Company

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<sup>1/</sup> CRITFC filed a Petition to Intervene dated May 5, 1982. The Yakima Indian Nation filed a Petition to Intervene dated May 10, 1982.

<sup>2/</sup> Applicants' Response in Opposition to Untimely Petition to Intervene by Columbia River Inter-Tribal Fish Commission, May 19, 1982; Applicants' Response In Opposition to Untimely Petition to Intervene by Yakima Indian Nation, May 25, 1982.

<sup>3/</sup> NRC Staff Response to Untimely Petitions to Intervene filed by the Columbia River Inter-Tribal Fish Commission and the Yakima Indian Nation, May 25, 1982.

(Pebble Springs Nuclear Plant, Units 1 and 2), CLI-76-27, 4 NRC 610, 613-14 (1976)) Two tests must be satisfied to acquire standing. First, petitioner must allege "injury in fact": that some injury has occurred or will probably result from the action involved. (Id., at 613) Second, petitioner must allege an interest "arguably within the zone of interest" protected by the statute. (Ibid.); Warth v. Selden, 422 U.S. 490 (1975); Sierra Club v. Morton, 405 U.S. 727 (1972); Consumers Power Company (Palisades Nuclear Plant) LBP-79-20, 10 NRC 108, 113 (1979))

The allegation of a "special interest" is insufficient to establish standing without a showing of particular harm. (Sierra Club v. Morton, 405 U.S. at 739, 740) An organization does not have independent standing to intervene in a licensing proceeding merely because it asserts an interest in the litigation. (Allied General Nuclear Services (Barnwell Fuel Receiving and Storage Station), ALAB-328, 3 NRC 420, 422 (1976))

In its original Petition to Intervene, dated May 10, 1982, CRITFC alleged that it consists of the fish and wildlife committees of four Columbia River tribal governments: Confederated Tribes of the Warm Springs Indian Reservation; Confederated Tribes and Bands of the Yakima Indian Nation; Nez Perce Tribe of Idaho; and the Confederated Tribes of the Umatilla Indian Reservation. (Petition to Intervene at 1) On July 2, 1982, the Licensing Board issued a Memorandum and Order in Response to Petition to Intervene (1) by Columbia River Inter-Tribal Fish Commission; (2) by Confederated

Tribes and Bands of the Yakima Indian Nation. This Order cited several technical deficiencies in the Petition to Intervene filed by CRITFC. Among the difficulties noted was the lack of cited authority of CRITFC to represent the four tribal governments, one of which - the Confederated Tribes and Bands of the Yakima Indian Nation - had filed a separate Petition to Intervene.

On July 16, 1982, CRITFC filed a response to the Licensing Board's Order.<sup>4/</sup> The response contained an attachment entitled "Clarification That the Columbia River Inter-Tribal Fish Commission Does Not Represent the Columbia River Treaty Tribes." The document explained that CRITFC does not represent the four Indian tribes. (Response at Attachment 1) It is, rather, an independent body which "assists the four Fish and Wildlife Committees in their coordinated programs and actions to protect, promote, and enhance the fish, wildlife and water resources secured by treaties with the United States." (Ibid.) Based on this response, Applicants allege that CRITFC lacks standing to intervene in this proceeding.<sup>5/</sup>

Absent express authorization, an organization may represent only its own members in a licensing proceeding. (Long Island Lighting Company (Shoreham Nuclear Power Station, Unit 1),

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<sup>4/</sup> Response of the Columbia River Inter-Tribal Fish Commission to July 2, 1982 Memorandum and Order of the Atomic Safety and Licensing Board, July 16, 1982.

<sup>5/</sup> 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, pp. 3-6.

LBP-77-11, 5 NRC 481, 483 (1977)) Thus, CRITFC may not derive its standing to intervene from the interest of the Columbia River treaty tribes. It must, in itself and through its own membership, fulfill the requirements for standing set forth above: i.e., injury in fact and an interest "arguably within the zone of interest" protected by the statute. (Pebble Springs at 613, supra) Since CRITFC has not fulfilled these criteria, it has not established that it has standing as an organization to intervene in this proceeding. It acknowledges that it does not represent the Columbia River Treaty Tribes, and does not assert that it is authorized to represent the treaty rights of the tribes. This Board concludes that CRITFC simply has an academic interest in protecting the tribal treaty rights. Accordingly, CRITFC has not shown sufficient justification to demonstrate standing to intervene in this proceeding.

## II. LATE-FILED PETITION TO INTERVENE BY YAKIMA INDIAN NATION

The Yakima Indian Nation filed a Petition to Intervene in this proceeding on May 10, 1982, two months after the deadline of March 8, 1982, set forth in 47 Fed. Reg. 5554 (1982). Applicants and Staff responded to the Petition on May 25, 1982. Applicants opposed the granting of the Petition; Staff favored it.

An untimely petition to intervene may be granted if it is found that a balancing of the five factors set forth in 10 CFR 2.714(a)(1) favors intervention.

As applied here, the various factors of 10 CFR 2.714(d) on their face do not appear to justify admissibility. However, this consideration must be weighed against the Petitioner's strong interest in the proceeding under 10 CFR 2.714(d). This interest would have been sufficient to grant standing had the petition been timely filed. Applicants, who oppose the granting of the petition, specifically state that they have no objection to the standing of the Yakima Indians to intervene in this proceeding. (Applicants' Response at 3) It is also permissible to consider the fact that the Petition was filed only two months late, and will not substantially delay the start of the proceeding. The Appeal Board has said, regarding a petition to intervene filed six months after the deadline had elapsed, that some weight may be attached to the fact that lateness, though not justified, is not extreme. (Duke Power Company, ALAB-528, 9 NRC 146, 150 (1979))

The Yakima Indian Nation has a strong interest in this proceeding. The lateness of the Petition to Intervene is not egregious, and will not cause substantial delay to the present parties. These considerations outweigh the fact that the balance of five factors required under 10 CFR 2.714(a)(1) tips slightly against the Petitioner.

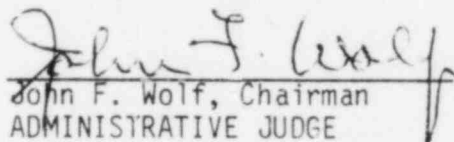
Although the Yakima Indian Nation has identified its interest in this proceeding, it has not put forth any admissible contentions. 10 CFR 2.714(b) requires a petitioner for intervention to file a supplement containing at least one acceptable contention. (Zimmer, 11 NRC at 571)

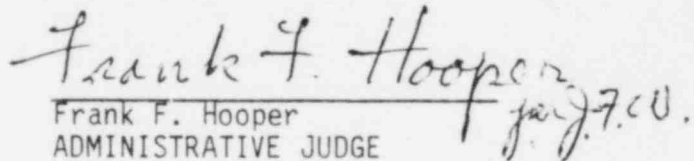
Accordingly, for the reasons set forth above, it is

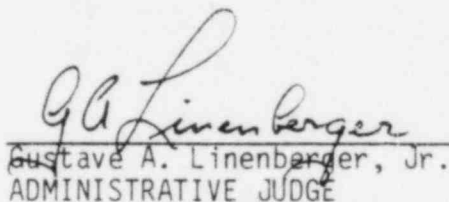
ORDERED

1. That the Petition to Intervene by CRITFC is denied; and
2. That the Petition to Intervene by the Yakima Indian Nation is granted subject to the requirement that at least one acceptable contention be filed on or before October 1, 1982.

THE ATOMIC SAFETY AND  
LICENSING BOARD

  
John F. Wolf, Chairman  
ADMINISTRATIVE JUDGE

  
Frank F. Hooper  
ADMINISTRATIVE JUDGE

  
Gustave A. Linenberger, Jr.  
ADMINISTRATIVE JUDGE

Dated at Bethesda, Maryland  
this 3rd day of September 1982