

February 3, 1983



SECY-83-50

## ADJUDICATORY ISSUE

For: ~~The Commissioners~~  
(NEGATIVE CONSENT)  
From: Sheldon L. Trubatch  
Acting Assistant General Counsel

Subject: REPORT ON ALAB-712  
(PUGET SOUND POWER AND LIGHT  
COMPANY, ET AL.) 50-522,523 A

Facility: Skagit/Hanford Nuclear Power Project,  
Units 1 and 2

Petitions  
For Review: None expected

Review  
Time Expires: March 13, 1983

Purpose: To inform the Commission of a minor  
Appeal Board decision [that, in the  
General Counsel's opinion. EX 5

Discussion: In ALAB-712, the Appeal Board summarily  
dismissed as unauthorized under the  
Commission's Rules of Practice  
intervenor Confederated Tribes and Bands  
of Yakima Indian Nation's appeal of the  
rejection of some parts of its  
contentions. Because other of  
intervenor's contentions were accepted  
as litigable, the Licensing Board's  
rejection of some contentions did not  
deny intervenor party status and, thus,  
did not create the necessary predicate  
for interlocutory review. See Puget  
Sound Power and Light Company, Et Al.  
(Skagit/Hanford Nuclear Power Project,

CONTACT:  
X-3224

Information in this record was deleted  
in accordance with the Freedom of Information  
Act, exemptions 5  
FOIA: 92-436

9404010072 930608  
PDR FOIA  
GILINSK92-436 PDR

u/9

Units 1 and 2) ALAB-683, 16 NRC  
(July 27, 1982).

EX.5

EX.5

*Sheldon L. Trubatch*  
Sheldon L. Trubatch  
Acting Assistant General  
Counsel

Attachment: ALAB-712

SECY NOTE: In the absence of instructions to the contrary, SECY will notify OGC on Friday, February 18, 1983 that the Commission, by negative consent, assents to the action proposed in this paper.

DISTRIBUTION:  
Commissioners  
OGC  
OPE  
OIA  
SECY

Release

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING APPEAL BOARD

Administrative Judges:

Stephen F. Eilperin, Chairman  
Christine N. Kohl  
Dr. Reginald L. Gotchy

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

Docket Nos. 50-522  
50-523

James B. Hovis, Yakima, Washington, for intervenor  
Confederated Tribes and Bands of the Yakima Indian  
Nation.

MEMORANDUM AND ORDER

February 1, 1983

(ALAB-712)

The Confederated Tribes and Bands of the Yakima Indian Nation, an intervenor in this construction permit proceeding, seeks to appeal the Licensing Board's rejection of part or all of four of its contentions; other of its contentions were accepted as litigable. See Memorandum and Order Restating Admitted Contentions (Jan. 18, 1983) (unpublished). As we did just six months ago with regard to another intervenor's similar appeal in this very proceeding, we summarily dismiss the appeal on the ground that it is unauthorized by the Commission's Rules of Practice. See ALAB-683, 16 NRC \_\_\_ (July 27, 1982). We repeat again what

we said there and on numerous other occasions:

Those Rules do not permit a person to take an interlocutory appeal from an order entered on his intervention petition unless that order has the effect of denying the petition in its entirety. 10 CFR 2.714a; Gulf States Utilities Company (River Bend Station, Units 1 and 2), ALAB-329, 3 NRC 607, 610 (1976), and cases there cited.

Texas Utilities Generating Co. (Comanche Peak Steam Electric Station, Units 1 and 2), ALAB-599, 12 NRC 1, 2 (1980), quoting from Houston Lighting and Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-585, 11 NRC 469, 470, and ALAB-586, 11 NRC 472, 473 (1980). \*/

The appeal is dismissed.

It is so ORDERED.

FOR THE APPEAL BOARD

C. Jean Shoemaker  
C. Jean Shoemaker  
Secretary to the  
Appeal Board

---

\*/ As noted in ALAB-599, 12 NRC at 2 n.1, an intervenor in the Yakima Indian Nation's position must await the rendition of the Licensing Board's initial decision. If dissatisfied with that decision, it may then appeal under 10 CFR § 2.762(a). One of the matters that can be raised on such an appeal is whether the Licensing Board erred in rejecting or rewording one or more of the appellant's contentions.

Release

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING APPEAL BOARD

Administrative Judges:

Stephen F. Eilperin, Chairman  
Christine N. Kohl  
Dr. Reginald L. Gotchy

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

James B. Hovis, Yakima, Washington, for intervenor  
Confederated Tribes and Bands of the Yakima Indian  
Nation.

MEMORANDUM AND ORDER

February 1, 1983

(ALAB-712)

The Confederated Tribes and Bands of the Yakima Indian Nation, an intervenor in this construction permit proceeding, seeks to appeal the Licensing Board's rejection of part or all of four of its contentions; other of its contentions were accepted as litigable. See Memorandum and Order Restating Admitted Contentions (Jan. 18, 1983) (unpublished). As we did just six months ago with regard to another intervenor's similar appeal in this very proceeding, we summarily dismiss the appeal on the ground that it is unauthorized by the Commission's Rules of Practice. See ALAB-683, 16 NRC \_\_\_ (July 27, 1982). We repeat again what

we said there and on numerous other occasions:

Those Rules do not permit a person to take an interlocutory appeal from an order entered on his intervention petition unless that order has the effect of denying the petition in its entirety. 10 CFR 2.714a; Gulf States Utilities Company (River Bend Station, Units 1 and 2), ALAB-329, 3 NRC 607, 610 (1976), and cases there cited.

Texas Utilities Generating Co. (Comanche Peak Steam Electric Station, Units 1 and 2), ALAB-599, 12 NRC 1, 2 (1980), quoting from Houston Lighting and Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-585, 11 NRC 469, 470, and ALAB-586, 11 NRC 472, 473 (1980). \*/

The appeal is dismissed.

It is so ORDERED.

FOR THE APPEAL BOARD

C. Jean Shoemaker  
C. Jean Shoemaker  
Secretary to the  
Appeal Board

---

\*/ As noted in ALAB-599, 12 NRC at 2 n.1, an intervenor in the Yakima Indian Nation's position must await the rendition of the Licensing Board's initial decision. If dissatisfied with that decision, it may then appeal under 10 CFR § 2.762(a). One of the matters that can be raised on such an appeal is whether the Licensing Board erred in rejecting or rewording one or more of the appellant's contentions.