

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING APPEAL BOARD

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In the Matter of)
)
WASHINGTON PUBLIC POWER SUPPLY SYSTEM,) Docket No. 50-397 CPA
et. al.)
)
(WPPSS Nuclear Project No. 2))

BRIEF IN SUPPORT OF APPEAL FROM MEMORANDUM AND
ORDER OF ATOMIC SAFETY AND LICENSING BOARD, DATED FEBRUARY 22, 1983

1. Petitioner assumed that if the Commission had intended in its Order, CLI-89-29, 16 NRC _____, October 8, 1982, that the word "dilatatory" would be applied only in the sense of "intentional" that the Commission would have used the word "intentional" rather than "dilatatory". This gave rise to Petitioner's position that its use of the word "dilatatory" encompassed a range of behaviors from "tending to cause delay" to "intending to cause delay". Transcript of Pre-hearing Conference in the Matter of WPPSS Nuclear Plants 1, & 2, Docket Nos. 50-397 CPA, 50-460 CPA and 50-460 OL at 50. Petitioner sought as well to define a middle ground most applicable the construction of WPPSS Nuclear Project No. 2:

MR. ROSOLIE: [T]he intent would not necessarily have to be of itself intentional. That they sat down and basically said, "Well, this is what we're going to do to delay the plant." It could be that their actions, the actions that they took or did not take -- resulted in a delay, resulted in a continuing delay.

TR at 50. And again:

MS. BELL: We do believe that WPPSS, regarding WPPSS 2, has repeatedly failed to improve its management procedures which would remedy their tendency towards proceeding in a dilatatory fashion. TR at 51.

MS. BELL: Our reading of what is intentional could be the cin (sic) of commission or the sin of ommission, and in this case what we're saying regarding WPPSS No. 2 is that there was not a sin of commission but a sin of ommission in that WPPSS knew that their management was causing delay and did nothing about it.

TR at 58. The Permittee summarized Petitioner's position:

MR. REYNOLDS: Perhaps I misunderstood what Ms. Bell said, but it seemed to me that she was saying that it was a lower threshold than intentional, that dilatory somehow means "indirectly causing without intent."

TR at 55.

2. The Licensing Board came to the same conclusion:

We understand the Commission to have used the term "dilatory" in a middle sense, as it is commonly used to describe litigation tactics, as intending to cause delay or being indifferent to the delay that might be caused. We interpret the instructions of the Commission as requiring CSP to particularize and support an allegation that Permittee either intended to delay, or took actions resulting in delay because it was indifferent to delay.

Memorandum and Order at 6.

3. The Licensing Board found improperly that Petitioner had not met the second test by failing to particularize and support its contention that the Permittee was indifferent to delays caused by its actions. Memorandum and Order at 6.

4. Petitioner's Supplement to Request for Hearing and Petition for Leave to Intervene dated January 10, 1983 establishes factual support for its allegation that WPPSS management was indifferent to the delays caused by its actions and inactions. It cites the Washington State Senate Energy and Utilities Committee "WPPSS Inquiry", a report to the Washington State Senate and the 47th Legislature, March 1, 1981:

"The Committee identified a number of areas of management failure, each of which significantly contributed to the cost and schedule problems on the projects...The cumulative impact of these deficiencies leads the Committee to conclude WPPSS mismanagement has been the most significant cause of cost overruns and schedule delays on the WPPSS projects." (emphasis added) WPPSS Inquiry supra. Executive Summary.

Specifically, the Committee concluded that evidence was lacking to show:

"that the officially adopted completion dates for the plants are used by WPPSS management to monitor or control the progress of work at the plant site." Supra p. 22

However, the report quotes a Mr. McElwee of WPPSS management:

"We have never claimed and we do not claim that low productivity is the fault of labor. Low productivity is generally our fault, management. Either the material is not available when and where it should be or the engineering is not available when and where it should be, or the equipment or we've gotten interferences or our planning is incomplete or what have you." Supra, p. 45-46.

"WPPSS does not have nor has it ever had, an effective change management system. The failure of WPPSS management to institute such a system is a direct and principle cause of project schedule delays." Supra, p. 38.

"Changes directed by the Nuclear Regulatory Commission were found to be significant but not necessarily controlling and never more important than the lack of timely engineering and procurement." (emphasis added) S-1 Report, p. 2-6.

The Committee also concluded that this matter had been brought to the attention of WPPSS management numerous times to no apparent avail. Supra, p. 39.

The Committee concluded that WPPSS management directly affected the procurement of materials:

"Integrated management [adopted by WPPSS at all sites by 1979] affected all aspects of project administration and construction. It slowed procurement and design, interfered with material and engineering support of construction, contributed to unnecessary rework, added to access and interfered with problems on the job site, and confused inspection."

5. These findings paint a picture of continuing delays for which WPPSS management was both responsible and aware. The Licensing Board concludes that Petitioner did particularize and support the allegation that the Permittee was responsible for the delays in construction. Memorandum and Order at 4. The manner in which Petitioner did so was to show that it was WPPSS management, not labor, NRC regulations and other externalities that caused the delays. Petitioner went on to show that while management was aware of scheduling delays that actions were never taken to remedy the problems. Since the primary

role of management is to ensure completion of a job in a timely manner failure to effect a change on the construction schedule of WPPSS No. 2 can only be attributed to indifference on the part of management.

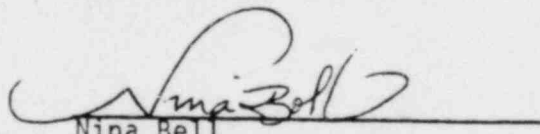
6. The Licensing Board states that Petitioner was required to "particularize and support an allegation that Permittee either intended to delay, or took actions resulting in delay because it was indifferent to delay." Petitioner has done the latter. As stated in paragraph 4 above, WPPSS management failed to act to:

- 1) institute an effective change management system;
- 2) utilize official completion dates to monitor and control progress of construction work;
- 3) improve productivity by ensuring that material, engineering and equipment were available; and
- 4) improve construction planning.

Furthermore, WPPSS management adopted "integrated management" at the site in 1978 which slowed construction. Petitioner thus showed that WPPSS management was indifferent to delay.

7. For the foregoing reasons the Licensing Board erred in concluding that the Petitioner failed to show dilatory conduct on the part of the Permittee and was thus not entitled to a hearing on the request for an extension to the construction permit for WPPSS Nuclear Project No. 2.

Respectfully submitted,


Nina Bell
Coalition for Safe Power

Dated this day the tenth
of March, 1983.

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WASHINGTON PUBLIC POWER SUPPLY SYSTEM)
(WPPSS Nuclear Project No. 2))

Docket No. 50-397 CPASH SERVICE

CERTIFICATE OF SERVICE

I hereby certify that copies of "NOTICE OF APPEAL FROM MEMORANDUM AND ORDER OF ATOMIC SAFETY AND LICENSING BOARD, DATED FEBRUARY 22, 1983" and "BRIEF IN SUPPORT OF APPEAL" in the above captioned proceeding have been served on the following by deposit in the U.S. Mail, first class postage prepaid on this 10th day of March, 1983.

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