Applicant 1/24/83

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

APPLICANT'S ANSWER IN OPPOSITION TO SUPPLEMENT TO REQUEST FOR HEARING AND PETITION FOR LEAVE TO INTERVENE

This matter involves a request for a hearing on an amendment to Construction Permit No. CPPR-93 issued by the Nuclear Regulatory Commission ("NRC") on January 27, 1982. The Washington Public Power Supply System ("Applicant") is the holder of that construction permit, which authorizes the construction of Applicant's Nuclear Project No. 2 ("WNP-2").

I. BACKGROUND

On October 8, 1982, the Commission issued Washington Public Power Supply System (WPPSS Nuclear Project Nos. 1 and 2), CLI-82-29, __ NRC __ (1982), in which it rejected all but one of the original contentions proposed by the Coalition for Safe Power ("petitioner") in its request for hearing dated February 23, 1982. As to the sole remaining contention, the Commission held that "[t]o the extent the

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Coalition for Safe Power ("petitioner") is seeking to show that WPPSS was both responsible for the delays [in the construction of WNP-2] and that the delays were dilatory and thus without 'good cause' this contention, if properly particularized and supportable, would be litigable." Slip op. at 16. It accordingly referred petitioner's hearing request to the Atomic Safety and Licensing Board Panel, the Chairman of which designated the Board now hearing the case. The Board was empowered to determine whether petitioner satisfies the other hearing requirements of 10 C.F.R. §2.714, to determine whether the contention is "properly particularized and supportable" and therefore litigable, and, if so, to conduct an appropriate proceeding under 10 C.F.R. Part 2, Subpart G and 10 C.F.R. Part 50. Id. at 16-17.

With the proceeding so postured, Applicant will first address whether the petitioner has demonstrated the requisite "interest" in the proceeding and how that "interest" may be affected by the proceeding. Applicant will then address whether petitioner has properly supported and particularized the contention approved preliminarily by the Commission. In short, Applicant submits that petitioner lacks standing to intervene in this proceeding and has failed to set forth any proposed contention which is

litigable in this proceeding. Therefore, petitioner's request for a hearing should be denied and this proceeding dismissed.

II. PETITIONER HAS FAILED TO DEMONSTRATE A CLEAR LEGAL INTEREST IN THIS PROCEEDING[1]

A. Petitioner Has Failed To Establish A Clear Legal Interest In This Proceeding

The Commission's decision in Portland General Electric Co. (Pebble Springs Nuclear Plant, Units 1 and 2), CLI-76-27, 4 NRC 610 (1976), and subsequent decisions of the Atomic Safety and Licensing Appeal Board[2] clearly establish that a petitioner for intervention of right must assert an "interest which may be affected" by the proceeding. Applying contemporaneous judicial concepts of standing,[3] the Commission in Pebble Springs interpreted this

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1 This argument is borrowed largely from "Permittee's Answer In Opposition to Request for Hearing on Construction Permit Amendment," filed with the Commission on March 10, 1982. It is restated here at length for the convenience of the Board.

2 E.g., Detroit Edison Co. (Enrico Fermi Atomic Power Plant, Unit No. 2), ALAB-470, 7 NRC 473, 475-76 (1978) (petitioner lacked standing because economic concerns are beyond "zone of interests" of Atomic Energy Act or National Environmental Policy Act); Tennessee Valley Authority (Watts Bar Nuclear Plant, Units 1 and 2), ALAB-413, 5 NRC 1418, 1420-23 (1977) (same); Public Service of Oklahoma (Black Fox Station, Units 1 and 2), ALAB-397, 5 NRC 1143, 1147 (1977) (same).

3 E.g., Warth v. Seldin, 422 U.S. 490 (1975); Sierra Club v. Morton, 405 U.S. 727 (1972); Association of Data Processing Service Organizations, Inc. v. Camp, 397 U.S. 150 (1970).

"interest" requirement as mandating the allegation of facts which support findings of both (1) some injury in fact which has occurred or will probably result from the act involved, and (2) an interest "arguably within the zone of interests" to be protected or regulated by the statute sought to be invoked.[4]

In addition, an organization wishing to intervene in an operating license proceeding as the representative of its members must establish that at least one of its members has standing on his own right.[5] The specific members must be identified,[6] how their interests may be affected must be shown,[7] and the members' authorization to the

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4 Pebble Springs, supra, CLI-76-27, 4 NRC at 613-14.

5 Edlow International Company (Agent for the Government of India on Application to Export Special Nuclear Material), CLI-76-6, 3 NRC 563, 574-78 (1976) (organization asserting interests of members to establish standing failed to show how interests were such to afford members standing); see also Simon v. Eastern Kentucky Welfare Rights Organization, 426 U.S. 26, 40 (1976), and Warth v. Seldin, supra, 422 U.S. at 511.

6 Detroit Edison Company (Enrico Fermi Atomic Power Plant, Unit 2), LBP-79-1, 9 NRC 73, 77 (1979) (organization demonstrating standing on the basis of its members' interests "must identify specifically the name and address of at least one affected member who wishes to be represented by the organization").

7 Edlow International Company, supra, CLI-76-6, 3 NRC at 574-78; Allied General Nuclear Services, et al. (Barnwell Fuel Receiving and Storage Station), LBP-76-12, 3 NRC 277, 281-87 (1976) (where organization claimed to be protecting members' civil rights and property, "interests" cited to establish standing were

(footnote continued)

organization to intervene must be established.[8] Following this mandate, the cases are clear that the individual member from whom organizational standing is derived must, in some manner (e.g., affidavit), state his concerns and interest in detail sufficient to establish individual standing.[9] Thus, the question of petitioner's standing must be resolved on the demonstration of interest by the individuals whom the petitioner asserts are its members.[10]

(footnote continued from previous page)
speculative and thus petition to intervene was denied).

8 Houston Lighting & Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-535, 9 NRC 377, 395-97 (1979) ("[w]here an organization's standing hinges upon its being the representative of a member" who has standing in his own right, authorization of member permitting organization to represent his interests is required unless authorization may be presumed from membership).

9 Virginia Electric & Power Co. (North Anna Nuclear Power Station, Units 1 and 2), ALAB-536, 9 NRC 402, 404 (1979) (standing not established when petitioner organization failed to particularize how the interests of a member might be adversely affected by outcome of proceeding); Maine Yankee Atomic Power Co. (Maine Yankee Atomic Power Station), LBP-82-4, 15 NRC 199, 205 (1982) ("when an organization claims that its standing is based on the interests of its members, the organization must identify specific individual members, whose interest might be affected . . ., describe how the interests of each of those members might be affected and show that each of those members has authorized the organization to act on his behalf").

10 Sierra Club v. Morton, supra, 405 U.S. at 740 ("a party seeking review must allege facts showing that he is himself . . . affected . . . .").

Viewed against this legal framework, it is not clear on the basis of the pleading filed by petitioner that appropriate "injury in fact" has been alleged or that petitioner falls within the "zone of interests" of the Atomic Energy Act or the National Environmental Policy Act. Petitioner attempts to base its "interests" on the fact that (1) its members are ratepayers who are subject to payment for WNP-2 through the Bonneville Power Administration ("BPA"); (2) they are located "within close proximity to the Columbia River;" (3) they live, work, travel and recreate in close proximity to the WNP-2 site; and (4) they eat foodstuffs grown and produced in the area potentially impacted by operation of WNP-2. Beyond these vague assertions, petitioner's alleged "interest" in this proceeding is based exclusively on two people. Petitioner alleges that the first resides in Yakima, Washington, approximately 65 miles from the WNP-2 site, and the second resides in the vicinity of Richland, Washington, approximately 20 miles from tne WNP-2 site (Affidavits of William E. Rupel and M. Terry Dana, attached to petitioner's Request For A Hearing).

The law is clear that economic personal interest as a ratepayer does not confirm standing to intervene as a matter of right. The Commission itself ruled on this point in Pebble Springs, supra, concluding that the

omic interest of a ratepayer does not come within the "zone of interests" protected by the Atomic Energy Act. 4 NRC at 614.

The Appeal Board further clarified this point in Fermi, supra, when it concluded that "neither the Atomic Energy Act nor the National Environmental Policy Act embraces within its 'zone of interests' economic concerns even remotely akin to those which [the intervenor] would press as a member and ratepayer of a cooperative that purchases power from a proposed Fermi co-owner." 7 NRC at 475.[11] The law on this point is so well established that little purpose would be served by additional discussion of the legion of cases.[12] Suffice it to say that any attempt by petitioner to establish its "interest" by virtue of the fact that its members are ratepayers of BPA (or any other entity) must fail.

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11 Petitioner's members are not ratepayers of the Applicant, but of the Bonneville Power Administration (directly or indirectly). Accordingly, petitioner is even further removed from the Applicant than the intervenors were in Fermi. However, this is a factual distinction with little (if any) legal significance. The law is clear that even a direct customer of an applicant is not, based upon that fact alone, vested with the requisite interest to intervene. Pebble Springs, supra.

12 E.g., Houston Lighting and Power Co. (Allens Creek Nuclear Generating Station), ALAB-582, 11 NRC 239, 243, n. 8 (1980); Watts Bar, ALAB-413, supra, 5 NRC 1420-23 (1977); Black Fox, ALAB-397, supra, 5 NRC 143 (1977).

Further, vague assertions that petitioner's members live near the Columbia River (a river 1,270 miles long), live and recreate near the WNP-2 site, or eat foodstuffs grown in areas near the WNP-2 site are too remote and lacking in specificity to provide legal interest necessary to support a request for hearing. Recreational activities in an area may provide the requisite interest only if the area is in close proximity to a plant site and the recreational activities are stated with specificity and are substantial in nature. Mississippi Power and Light Co. (Grand Gulf Nuclear Station, Units 1 and 2), ALAB-130, 6 AEC 423, 425 (1973); Black Fox Station, Units 1 and 2, ALAB-397, supra, 5 NRC at 1150. Evaluating the request for hearing against this guidance, it is clear that petitioner has failed to allege specific facts which demonstrate substantial recreational use of the area around the site. Vague and general assertions relating to living and recreating in the vicinity of the WNP-2 site are precisely the types of claims which both the Appeal Board and the Commission have recognized are insufficient to establish standing.

Petitioner's other general assertion that its members consume food grown or produced in areas that would be impacted by plant operations is too speculative and lacking in specificity to establish legal interest to support the

request for hearing. To confer standing on a petitioner residing outside the relevant geographical zone based on an assertion that some food consumed by the petitioner (or its members) may have been grown near the site would emasculate judicial concepts of standing as well as the interest requirements of the Atomic Energy Act and the Commission's Rules of Practice. The logical extension of such a proposition would be that an individual living in Washington, D.C. who consumed California oranges could be awarded standing in a proceeding relating to a nuclear facility in California. Certainly Congress did not intend and has not sanctioned such an interpretation of the Atomic Energy Act, and the Commission and the courts certainly have not judicially construed that Act in such a manner.

The sole remaining bases upon which the petitioner could even arguably establish "interest" is the claimed membership in it of two identified individuals. However, based upon its pleading, petitioner has not necessarily established the requisite interest to support its request for hearing based upon the places of residence of these individuals. One of them (William E. Rupel) resides in Yakima, Washington (approximately 65 miles west of the WNP-2 site). This is clearly outside the geographical zone which might be affected by routine or accidental

releases of fission products from WNP-2,[13] and beyond the distance recognized by the NRC in the past to be sufficiently close to vest an interest (if otherwise well plead) in the proceeding.[14] In short, the petitioner is not vested on the basis of residential location of its member Rupel. As to this member and other members of petitioner who reside at such distances from the WNP-2 site, "prima facie, there would appear to be no reasonable chance of [their] being at all adversely affected by either normal operations or a credible accident." River Bend, supra, ALAB-183, 7 AEC at 226.

The other purported member of petitioner (M. Terry Dana) allegedly resides in Richland, Washington (described by petitioner as 20 miles from the WNP-2 site). The affidavit of that individual is a "form-letter" type of affidavit containing four blanks to be filled in by the affiant (i.e., the affiant's name, street and city address, and county of residence). The affidavit does not otherwise express any purported "interest" in this proceeding.

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13 Louisiana Power & Light Co. (Waterford Steam Electric Station, Unit 3), ALAB-125, 6 AEC 371, 37 (1973).

14 E.g., Portland General Electric Co. (Trojan Nuclear Plant), ALAB-496, 8 AEC 308, 309 (1978) (40 miles); River Bend, supra, ALAB-183, 7 AEC at 222 (25 miles); Virginia Electric and Power Co. (North Anna Power Station, Units 1 and 2), ALAB-146, 6 AEC 631, 632-34 (1973) (16 miles); Northern States Power Co. (Prairie Island Nuclear Generating Plant, Units 1 and 2), ALAB-107, 6 AEC 188, 190 (1973) (30-40 miles).

The affidavit merely includes a "boilerplate" statement that the affiant authorizes this petitioner "to represent my interests before the Nuclear Regulatory Commission on any matter pertaining to nuclear units 1, 2 or 4 of the Washington Public Power Supply System . . . ." Affidavit of M. Terry Dana. In view of the "boilerplate" nature of this affidavit, it is not at all clear that the affiant foresaw and authorized the use of the affidavit as the sole valid support for this request for hearing, or that the affiant read or even knows of the request for hearing. In any event, it is clear that the affiant has not stated the specific aspect of the matter as to which he/she requests a hearing. Accordingly, petitioner has failed to establish its interest in this proceeding such that it should be granted intervenor status.

B. Petitioner Has Failed to Demonstrate How Its Interest May be Affected

1. Permissible Scope of CP Amendment Proceeding.

In order to set the proper framework for an evaluation of how a possible interest may be affected by a construction permit amendment proceeding, it is appropriate to discuss the permissible scope of such a proceeding. This is fundamental, because if an interest is not affected by a matter within the scope of this proceeding, then petitioner lacks standing.

In CLI-82-29 the Commission discussed in considerable detail the permissible scope of a construction permit amendment proceeding. First, the Commission reaffirmed the results of two Appeal Board decisions, Indiana & Michigan Electric Co. (Donald C. Cook Nuclear Plant, Units 1 and 2), ALAB-129, 6 AEC 414 (1973), and Northern Indiana Public Service Co. (Bailly Generating Station, Unit 1), ALAB-619, 12 NRC 558 (1980). In both cases the Appeal Board noted that the purpose "of a construction permit extension proceeding is not to engage in an unbridled inquiry into the safety and environmental aspects of reactor construction and operation, . . . an observation in which [the Commission] wholeheartedly concur[red]." CLI-82-29, supra, slip op. at 10.

The Commission then reviewed Section 185 of the Atomic Energy Act and its legislative history. Section 185 requires that a construction permit issued for a nuclear power reactor shall state the earliest and latest dates for the completion of the facility. Section 185 also provides that unless construction is completed by the latest construction date, the construction permit shall expire unless the Commission extends the completion date "upon good cause shown." The Commission discerned

> no intent on the part of Congress to require the periodic relitigation of health, safety, or environmental questions in agency adjudications between the time a construction permit is

> granted and the time the facility is authorized to operate. Rather, interested persons have been legislatively afforded a particular opportunity to raise such issues in the context of a proceeding in which the agency determines whether an operating license will be granted. 42 U.S.C. §2239(a). Consistency with the congressionally mandated two-step licensing process suggests a construction of section 185 that limits the scope of litigable issues with regard to the extension of a construction permit. [Id. at 11.]

Thus, the Commission concluded that health, safety and environmental issues are not within the scope of and should not be considered during a hearing on a construction permit amendment extending the latest construction completion date. Id. at 13.

2. How Interests May Be Affected

It is clear that Section 189 "does not confer the automatic right of intervention on anyone." BPI v. Atomic Energy Commission, 502 F.2d 424, 428 (D.C. Cir. 1974). The Commission Rules of Practice set forth the requirements to be met by any person seeking to participate in a hearing. 10 C.F.R. §2.714(a). The Rules require that the petitioner seeking intervenor status set forth (1) the interest of the petitioner in the proceeding; (2) how that interest may be affected by the results of the proceeding; and (3) the specific aspect of the subject matter of the proceeding as to which petitioner wishes to intervene. 10 C.F.R. §2.714(a)(2). The discussion in Part II.A., supra,

addresses the question of petitioner's apparent lack of interest. We now address the question of how that interest may be affected.

The outcome of the construction permit amendment proceeding can only be that construction of WNP-2 may continue for a maximum of 26 months beyond the prior completion date (from December 1, 1981 to February 1, 1984).[15] It does not change the design or the projected cost or commercial operation date. The amendment does not relate to any broader issues of health, safety or environment, and the Commission has held that such issues are outside of the scope of the proceeding. CLI-82-29, supra, slip op. at 13.

In order to demonstrate standing, petitioner must demonstrate how its purported interest may be affected by the extension of the construction permit completion date. However, it must not be permitted to do so by merely alleging that one of its members lives in the vicinity of the plant. While that showing may demonstrate an "interest" in the proceeding, it does not per se demonstrate how that "interest" may be affected by the results of the proceeding. Much more should be required, particularly in a case where, as here, no hearing is necessary unless this

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[15] In all likelihood, construction will continue for approximately 18 months. As noted, completion of construction and fuel loading for WNP-2 are scheduled for September 1983.

threshold is satisfied. See Cincinnati Gas & Electric Co. (William H. Zimmer Nuclear Power Station), ALAB-305, 3 NRC 8, 12 (1976). Accordingly, because petitioner has failed to demonstrate its interest in this proceeding and how such interest will be effected by this proceeding, its request to intervene should be denied.

III. PROPOSED CONTENTION

Pursuant to the December 15, 1982 Order of the Board, petitioner has submitted the following proposed contention which it seeks to have litigated:

> Petitioner contends that delays in the construction of WNP-1 and 2 have been under the full control of the WPPSS management. The Applicant was responsible for the delays and the delays were dilatory and thus Applicant has not shown the "good cause" as required by 10 C.F.R. 50.55(b).

In responding to this proposed contention Applicant will first discuss the relevant legal principles which should be used by the Board in assessing whether the proposed contention should be admitted. Applicant will then apply these principles to the proposed contention.

A. General Legal Principles - Basis & Specificity

The Commission's Rules of Practice require that:

> . . . the petitioner shall file . . . a list of the contentions which petitioner seeks to have litigated in the matter, and the bases for each contention set forth with reasonable specificity. [Section 2.714(b)].

The Statement of Considerations for Section 2.714(b) indicates the importance which the Commission attaches to the basis and specificity requirements, and states that "a proposed contention must be set forth with particularity and with the appropriate factual basis." 43 Fed. Reg. 17798 (April 26, 1978). It is clear that the Commission intends the requirement to establish a threshold test which a contention must meet before it can be admitted as an issue in controversy in a proceeding.

The Appeal Board has explicitly recognized the importance of the basis and specificity requirements, as follows:

> A purpose of the basis-for-contention requirement in Section 2.714 is to help assure at the pleading stage that the hearing process is not improperly invoked. For example, a licensing proceeding before this agency is plainly not the proper forum for an attack on applicable statutory requirements or for challenges to the basic structure of the Commission's regulatory process.
>
> Another purpose is to help assure that other parties are sufficiently put on notice so they will know at least generally what they will have to defend against or oppose. Still another purpose is to assure that the proposed issues are proper for adjudication in the particular proceeding. In the final analysis, there must ultimately be strict observance of the requirements governing intervention, in order that the adjudicatory process is invoked only by those persons . . . who seek resolution of concrete issues. [Philadelphia Electric

Company, et al. (Peach Bottom Atomic Power Station, Units 2 and 3), ALAB-216, 8 AEC 13, 20-21 (1974) (citations omitted).]

In short, what is required of petitioner is that, first, it identify each allegation against which Applicant must defend. However, in NRC proceedings mere "notice pleading" is insufficient, and the Commission's requirements clearly extend beyond the simple "notice pleading" allowed in the Federal courts. Kansas Gas & Electric Co., et al. (Wolf Creek Generating Station, Unit No. 1), ALAB-279, 1 NRC 559, 575 n. 32 (1975). This is a point of particular importance because in NRC licensing proceedings an applicant bears the burden of proof on any contention admitted (10 C.F.R. §2.732), and thus is entitled to clear and specific notice of the issues on which it is expected to bear that burden. Second, the basis of the contentions must be set forth with sufficient specificity so that the Board can determine that they have adequate foundation "to warrant further exploration" and that they state issues "proper for adjudication in the particular proceeding." Peach Bottom, ALAB-216, supra, 8 AEC at 21.

The Licensing Board must require that petitioner file meaningful contentions that properly state the matters it wishes to place in controversy and to otherwise meet the requirements of the Rules of Practice. Petitioner has participated and is now participating in a number of other

NRC licensing hearings and is therefore familiar with the Rules of Practice governing such proceedings.[16] Therefore, deficiencies in its pleadings should not be excused on the basis that they were prepared by a "layman." Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit No. 2), ALAB-474, 7 NRC 746, 748 (1978); Detroit Edison Co. (Enrico Fermi Atomic Plant, Unit 2), ALAB-469, 7 NRC 470 (1978); Wolf Creek, ALAB-279, supra, 1 NRC at 576-77; Public Service Electric and Gas Company (Salem Nuclear Generating Station, Units 1 and 2), ALAB-136, 6 AEC 487, 489 (1973).

Perhaps most importantly, from the standpoint of the public interest, the admission of contentions that fail to meet the specificity and basis requirements of Section 2.714(b) will frustrate compliance with the Commission's directive of May 20, 1981 set out in its "Statement of Policy and Conduct of Licensing Proceedings" (CLI-81-8, 13 NRC 452) to Licensing Boards to expedite hearings to the maximum extent feasible, consistent with fairness and sound procedures. Further, undue leniency in the specificity and basis requirements runs counter to the reason underlying the Commission's amendment of its intervention

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16 See ¶2 of Request for Hearing filed by petitioner on February 22, 1982.

rules, i.e., the allowance of additional time for petitioners to "frame and support adequate contentions." 43 Fed. Reg. 17798 (1978).

Equally important, however, is that the admission of contentions with insufficient specificity and basis could result in the hearing process being invoked when it is not truly necessary. Zimmer, ALAB-305, supra, 3 NRC at 12; Peach Bottom, ALAB-216, supra, 8 AEC at 20-21. Were it not for this petitioner, no hearing would be held in this matter. Therefore, it is essential for the Board to satisfy itself that petitioner has satisfied both the basis and specificity requirement of Section 2.714.

B. Proposed Contention

Applicant submits that petitioner's proposed contention lacks specificity and basis and, therefore, should be rejected. The Commission instructed in CLI-82-29, as follows:

> To the extent [petitioner] is seeking to show that WPPSS was both responsible for the delays and that the delays were dilatory and thus without "good cause" this contention, if properly particularized and supported, would be litigable. [Slip op. at 16.]

In view of this instruction delineating the scope of this hearing and the fact that petitioner obviously has attempted to place its petition within that scope, the Board should, from the outset, ascertain precisely what

issues may and may not be litigated under the Commission Order. If petitioner is attempting to raise issues outside the permissible scope, or has failed to meet the basis and specificity requirement with respect to those issues which may be litigated, then its proposed contention must be rejected and the proceeding dismissed.

The Commission has indicated that in order for petitioner's contention to be litigable, it must meet a two-pronged test. First, it must involve the responsibility of the Supply System in causing the delay. Second, it must also involve delays that were dilatory. This first issue is relatively straightforward, and could encompass such questions, for example, as whether the Supply System was responsible for regulatory changes or delays in the delivery of supplies that caused construction delay.

The second issue (whether the delay in construction was "dilatory") involves whether the Applicant "intended to cause delay or to gain time or to put off a decision." BLACK'S LAW DICTIONARY, 544 (4th ed. 1968) (definition of "dilatory"). Thus, it is not enough for petitioner to allege that the Applicant was responsible for the delays leading to the construction permit extension request, although petitioner must certainly make such an allegation

and provide a basis for it. Under the Commission Order, the petitioner must also provide a basis for arguing that the delays were "dilatory", i.e., intentional.

As the Commission explained, the "dilatory" test serves an important and salutory purpose. In CLI-82-29 the Commission recognized that proposed contentions involving construction delays caused by voluntary or required design changes necessary to comply with NRC Regulations are not litigable issues in assessing whether a licensee has established "good cause" for its construction permit extension request. The Commission reasoned, as follows:

> If a permit holder were to construct portions of a facility in violation of NRC regulations, when those violations are detected and corrections ordered or voluntarily undertaken, there is likely to be some delay in the construction caused by the revisions. Nonetheless, such delay, as with delay caused by design changes, must give "good cause" for an extension. To consider it otherwise could discourage permit holders from disclosing and correcting improper construction for fear that corrections would cause delays that would result in a refusal to extend a construction permit, a result obviously inconsistent with the Commission's efforts to ensure the protection of the public health and safety. [CLI-82-29, supra, slip op. at 16.]

At bottom, by requiring a showing that an applicant for a construction permit was "dilatory," as opposed to just "responsible" for construction delays, the Commission has avoided a situation where alleged noncompliance with NRC requirements and resulting construction delays would not be a sufficient basis for arguing that the Applicant failed to establish "good cause" for a construction permit extension. Therefore, under CLI-82-29 it is clear that petitioner must allege and provide a basis for arguing both that the Applicant was responsible for the construction delays at WNP-2 and that such delays were caused intentionally.

Petitioner apparently recognizes its burden, for proposed contention one tracks the language of the Commission Order. Specifically, in addition to alleging that delays in the construction of WNP-2 have been under the full control of the Supply System management, the proposed contention asserts that "Applicant was responsible for the delays and the delays were dilatory." Supplemental petition at 1 (emphasis added). However, the petition is fatally flawed because it attempts to have litigated the responsibility of Applicant for delays occasioned by corrective action needed to comply with NRC requirements. Litigation of this type of issue would run counter to public policy, and the Commission quite clearly barred

such issues from CP amendment cases. CLI-82-29, supra, slip op. at 16. Further, the petition is fatally flawed in any event because petitioner has failed to provide the required basis and specificity in accordance with Section 2.714(b).

First, petitioner quotes extensively from H. Rep. No. 1452, 96th Cong., 2d Sess. (1980). That Report involves generally the performance of the power reactor industry in the United States. It contains a chapter discussing certain alleged quality assurance problems that the NRC Staff was investigating in connection with construction of the sacrificial shield wall and some welding deficiencies at WNP-2. It focuses specifically on the need to meet all applicable NRC requirements.

Clearly the House Report provides no basis for petitioner's proposed contention, for the Report is totally silent as to whether construction delays were caused by the Applicant intentionally. In fact, the NRC took enforcement action against the Supply System as a result of this matter, and required substantial rework on major structures at WNP-2. (Letter from V. Stello to Supply System, June 17, 1980). Nowhere in that enforcement document or elsewhere has the NRC Staff (or anyone else) demonstrated or even alleged that the Supply System intentionally caused the delay. Thus, the House Report

provides no basis for the contention, particularly in view of the Commission's clear instruction that delays due to compliance with NRC requirements are not subject to litigation in this case.

Petitioner also cites a report relating to cost overruns and schedule delays for the Supply System's nuclear plants prepared by the Washington State Senate Energy and Utilities Committee (January 12, 1981 and March 1, 1981), as a basis for its proposed contention. Again, however, this Report does not provide any basis for the proposed contention. That Report was prepared by a state senate committee concerned primarily with issues of cost and delay, without regard for whether and to what extent increased cost and delay resulted from design changes and corrective actions needed to meet NRC requirements. Again, there is no suggestion in this document that the Supply System was dilatory by intending to cause the delay. The document therefore provides no basis for the contention. Accordingly, petitioner has failed to fulfill the requirement set forth in CLI-82-29 to establish a basis for the contention that Applicant was responsible for the construction delays at WNP-2 and that such delays were dilatory. The proposed contention, therefore, must be rejected.

IV. CONCLUSION

In light of the foregoing, Applicant submits that the petitioner has failed to establish an interest in this proceeding, show how such interest will be affected by the proceeding, and establish a contention with sufficient basis and specificity. Accordingly, petitioner's request for a hearing should be denied and the proceeding dismissed.

Respectfully submitted,

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January 24, 1983

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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(WPPSS Nuclear Project No. 2)	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing "Applicant's Answer in Opposition to Supplement to Request for Hearing and Petition for Leave to Intervene" in the above-captioned matter were served upon the following persons by hand delivery (*) or deposit in the United States mail, first class, postage prepaid this forenoon of the 24th day of January, 1983:

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