

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD

DOCKETED
USNRC

'83 FEB 23 12:02

Before Administrative Judges:

Herbert Grossman, Chairman
Glenn O. Bright
Dr. Jerry Harbour

SECRETARY
OF SERVICE
BRANCH

SERVED FEB 23 1983

In the Matter of

WASHINGTON PUBLIC POWER SUPPLY
SYSTEM, et al.

(WPPSS Nuclear Project No. 1)

ASLBP Docket No. 83-485-02 CPA

(NRC Docket No. 50-460-CPA)

February 22, 1983

MEMORANDUM AND ORDER
(Following First Prehearing Conference)

On January 26, 1983, at Richland, Washington, the Licensing Board held the first prehearing conference in this proceeding, which involves a proposed construction permit extension for the Washington Public Power Supply System's (Permittee's) Nuclear Project No. 1. The purpose of the prehearing conference, as stated in the November 30, 1982 and December 15, 1982 orders scheduling the conference, was to discuss standing of the parties, specific issues that might be considered at an evidentiary hearing and possible further scheduling in the proceeding.

On July 21, 1981, Permittee had filed an application for an extension of its construction permit completion date from January 1, 1982

until June 1, 1986. On March 18, 1982, the Coalition for Safe Power (CSP) filed a request for hearing and listed specific aspects of the proposed extension which it claimed would affect its interest. Attached to the request for hearing were affidavits of members of CSP authorizing CSP to represent their interests before the NRC on any matter pertaining to WPPSS Nuclear Units 1, 2 or 4, the Skagit/Hanford Nuclear Projects, Units 1 and 2, and construction or operation of any other nuclear power facility at the Hanford Nuclear Reservation.

On October 8, 1982, the Commission issued an order, CLI-82-29, 16 NRC _____, concerning CSP's request for hearing which provided Commission guidance on the scope of construction permit extension proceedings, and determined that only one contention raised by CSP would be litigable if properly particularized and supported. The Commission order referred the petition filed by CSP to a licensing board to determine whether the other hearing requirements of the Commission's regulations had been met and, if so, to conduct an appropriate proceeding. After being designated, this Board issued orders scheduling the prehearing conference and setting the due dates for filing of a supplemental petition by CSP and responses thereto by Staff and Permittee.

The parties timely filed the respective supplemental petition and responses thereto. On January 17, 1983, subsequent to the filing of CSP's supplemental petition, Permittee served on the Board and the

parties copies of a request to the Staff that its pending amendment request for an extension to June 1, 1986 for completion of construction be modified to allow completion by June 1, 1991. Permittee stated therein its understanding that the request would be treated as a modification of the pending amendment rather than as a new amendment request.

In its response to CSP's supplemental petition and at the prehearing conference, Permittee challenged CSP's standing to intervene. Although in its request for hearing CSP had relied upon interests of a number of its members who were ratepayers and eaters of food-stuffs grown in the area, and who recreated in close proximity to the facility, it supplied the affidavit of only one member who resided within the acceptable 50-mile radius of the plant. At the conference, CSP recognized that its standing would depend upon that one member, M. Terry Dana. Tr. 22-23.

Permittee opposed accepting the Dana affidavit because it was a form type of affidavit, in which the affiant fills in a few blanks, and because it contained only a general statement to the effect that the affiant authorized CSP to represent his interest on any matter pertaining to the nuclear units being constructed. Permittee argued that the affiant should be required to update his affidavit to assure the Board that he continues to reside within 50 miles of the plant, that

he foresaw the use of the affidavit in this petition for intervention, that he knows the contents of the petition, and that he wishes to lend his interest to specific aspects of the proceeding. Tr. 23-27. Permittee's counsel offered to depose the affiant on either of the afternoons of the prehearing conference. Tr. 26.

Staff believed that the affidavit was sufficient on its face. Tr. 34-35.

According to CSP, Mr. Dana has lived in Richland, Washington for about 12, 13 or 14 years, and continues to live there today. He has an understanding of the petition and a copy of it. Tr. 37-38. Mr. Dana had also been contacted by a local attorney or representative of Permittee who asked him to withdraw his affidavit, and he refused. Tr. 41. Counsel for CSP read to the Board a portion of the transcript from the Skagit/Hanford Nuclear Plant construction permit proceeding in which counsel for the utility had questioned Mr. Dana with regard to his authorization of the intervenor in that proceeding to represent him. Counsel had questioned Mr. Dana with regard to his familiarity with the 70 contentions filed on his behalf, whether he'd be willing to withdraw any of those contentions, and whether he realized the expense and difficulty those contentions caused. Counsel had requested leave to take Mr. Dana's deposition but, after the interview with him, had withdrawn that request. Tr. 39-40.

The Board finds that the Petitioner, CSP, has standing to intervene based upon Mr. Dana's authorization and that no further inquiry is necessary. Mr. Dana's affidavit authorized CSP to represent his interest before the Nuclear Regulatory Commission on any matter pertaining to this nuclear facility. As even Permittee's counsel recognized, had CSP been dedicated to the overall goal of opposing nuclear power, mere membership in the organization by someone residing near the facility would suffice to confer standing. Tr. 27-28. Cf. Houston Lighting and Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-535, 9 NRC 377, 396 (1979). Here, Mr. Dana's affidavit was even narrower, focusing on opposition to the particular facilities located on or near the Hanford Reservation. That the organization, itself, might also be dedicated to non-nuclear matters such as electric utility rates, as alleged by Permittee (Tr. 28) is of no import, since Mr. Dana did not authorize any representation of those matters.

Nor do we see any purpose in permitting further inquiry into the affidavit. The affidavit was valid when given. The petition, based upon that affidavit, was ripe for consideration at the time submitted and, in fact, has already been acted upon by the Commission in CLI-82-29, supra. We see no reason why the affiant must periodically reaffirm his interest in the proceeding once it has validly been established. Nor do we consider it necessary that the member on whom the organizational standing is based be required to be conversant with, and able to

defend, each and every contention raised by the organization in pursuing his interest. Litigation strategy and the technical details of the complex prosecution of a nuclear power intervention are best left to the resources of the organizational petitioner, and need not be mastered by the individual member. Cf. Allens Creek, ALAB-535, supra, at 395. It is sufficient in this case that Mr. Dana authorized the filing of a petition, has an understanding of the petition, and has refused to withdraw his affidavit. Tr. 38-41. Any further questioning of Mr. Dana would go beyond establishing the requisites for standing and, especially in the aftermath of his being questioned in the Skagit/Hanford proceeding in which he was put to defending contentions, would border on intimidation and harassment.

Beyond standing, we must also determine whether CSP has raised any contentions within the scope of this proceeding. If not, the petition must fail. Mississippi Power and Light Co. (Grand Gulf Nuclear Station, Units 1 and 2), ALAB-130, 6 AEC 423, 424 (1973). CSP's supplemental petition denied that Permittee had shown good cause for the delay in construction or that the requested extension was for a reasonable period of time. CSP alleged that poor management practices had resulted in delay and consequently did not constitute good cause for the delay. Petitioner also referred to the 2-5 year period of anticipated additional delay because of the company's decision to defer construction for that additional period. At the time that the supplemental petition had

been filed, however, the company had not yet applied for that additional extension.

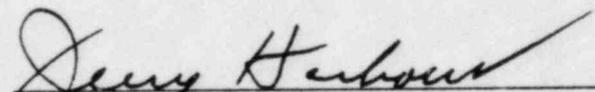
As fully discussed in the Memorandum and Order dismissing the petition with regard to the construction permit extension request in WPPSS 2, filed as a companion to this Order, the allegations of poor management practices resulting in construction delays are not sufficient to satisfy the Commission's requirements stated in CLI-82-29 that CSP must show some support for alleging that Permittee was "dilatory". We interpret "dilatory" in the Commission's order as meaning intentionally delaying or being indifferent to delay that might be caused by its actions. Although with regard to WPPSS 2 CSP could not support or particularize any allegation of Permittee's being dilatory, the situation with regard to WPPSS 1 appears different because of the 2-5 year period contemplated by the company for an additional extension. Whether or not the halt in construction, anticipating a 2-5 year delay, or the subsequent modification of application for extension to include the 2-5 year additional period, caused the company to be dilatory is a matter that might be explored in this proceeding.

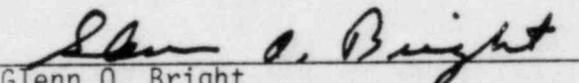
In view of Permittee's having served the request for modification of the amendment request to include the 2-5 year additional term by letter dated January 17, 1983, only a few days before the prehearing conference, the Board, without objection by Permittee and Staff,

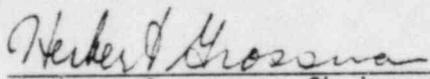
permitted Petitioner 15 days from the conclusion of the prehearing conference to modify its contentions in light of the recent application for modification. Permittee and Staff were given 12 days after completion of service (i.e., 17 days from the service date) to respond to the amended contentions. The Board confirms that scheduling. We will rule on the contentions when the filings are complete.

By order of the Board.

THE ATOMIC SAFETY AND LICENSING BOARD


Dr. Jerry Harbour
ADMINISTRATIVE JUDGE


Glenn O. Bright
ADMINISTRATIVE JUDGE


Herbert Grossman, Chairman
ADMINISTRATIVE JUDGE

Bethesda, Maryland,
February 22, 1983.