

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

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Before Administrative Judges:

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

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In the Matter of

WASHINGTON PUBLIC POWER SUPPLY
SYSTEM, et al.

(WPPSS Nuclear Project No. 2)

ASLBP Docket No. 83-480-01 CPA

(NRC Docket No. 50-397-CPA)

February 22, 1983

MEMORANDUM AND ORDER
(Dismissing Petition and Denying Hearing)

MEMORANDUM

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) Nuclear Project No. 2. 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 of the proceeding. On reviewing the filings by the parties and the matters discussed at the prehearing conference, we deny the petition to intervene on the ground

that Petitioner, the Coalition for Safe Power (CSP), has failed to set forth a contention within the scope of the proceeding.

On September 4, 1981, Permittee had filed an application for an extension of its construction permit completion date from December 1, 1981 until February 1, 1984. On February 2, 1982, the NRC published an order finding that the proposed extension of completion date involved no significant hazards consideration, good cause had been shown for the delays, and the requested extension was for a reasonable period. The order extended the completion date as requested. 47 FR 4780 (February 2, 1982).

On February 22, 1982, CSP filed a request for a 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 interest before the NRC on any matter pertaining to WPPSS 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 hearing 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 the supplemental petition by CSP and responses thereto by Staff and Permittee. The parties timely filed the respective supplemental petition and responses thereto.

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 are 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. 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 client fills in a few blanks, and because it contained only a general statement to the effect that the affiant authorizes CSP to represent his interest on any matter

pertaining to the nuclear units being constructed. Tr. 23-27. Staff believed that the affidavit was sufficient on its face. Tr. 34-35.

The Board finds that the Petitioner, CSP, has standing to intervene based upon Mr. Dana's authorization. A full discussion of this finding is contained in the Memorandum and Order (Following First Prehearing Conference) involving WPPSS 1, issued as a companion to this Order.

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).

In determining whether the contentions are admissible, we are bound by the Commission's directions to us in CLI-82-29. Of critical importance is the Commission statement (slip. op. at 16) that, "To the extent CSP is seeking to show that WPPSS was both responsible for the delays and the delays were dilatory and thus without 'good cause' this contention, if properly particularized and supported, would be litigable."

Without question CSP meets the first Commission test of particularizing and supporting an allegation that Permittee was responsible for the delays in construction. CSP cites reports of investigations of

Permittee that conclude that Permittee's mismanagement was primarily responsible for the delays.

It is on the second Commission test, regarding support for a showing of Permittee's being "dilatory" that the major difference lies. Permittee argues that "dilatory" means "intentionally delayed" and that CSP must support an allegation that Permittee intentionally caused delay. CSP acknowledges that Permittee did not intentionally cause a delay in constructing either Units 1 or 2, except after it decided to delay Unit 1 for from 2-5 additional years. However CSP relies upon the dictionary definition of dilatory as not only intending to delay but also tending to delay. The full definition of dilatory in Black's Law Dictionary, revised fourth edition at 544, is: "tending or intended to cause delay or to gain time or to put off a decision."

Staff agrees with Permittee that CSP has failed to meet the second Commission requirement, supporting the allegation that the delays were dilatory, but does not tell us why. NRC Staff Response to Supplemental Petition at 11.

We cannot accept either Permittee's or CSP's definition of dilatory. While the Commission may have intended to equate "dilatory" with intentional delay, we could not justify such a narrow interpretation, given the dictionary meaning. However, neither could we interpret

dilatory in its broadest sense as "tending" to cause delay, without rendering the Commission's directions meaningless. If the Commission had intended to use dilatory in its broadest sense, it would not have established a 2-part test, because if Permittee were responsible for the delays, its actions would a fortiori be dilatory in its broadest sense since one's acts cannot have caused delay without having tended to cause delay.

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.

We find that CSP has failed to meet the Commission's second test with regard to Permittee's acts being dilatory as far as WPPSS 2 is concerned. Although CSP does appear to allege an indifference on the part of Permittee to delays that might have been caused by its actions (see Tr. 58), it has particularized and supported only matters relating to alleged mismanagement that resulted in delays. See CSP's Supplement to Petition, pp. 2-6; Tr. 50-60.

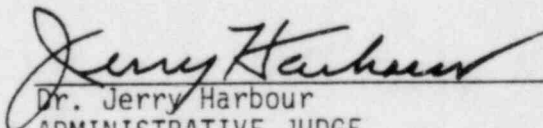
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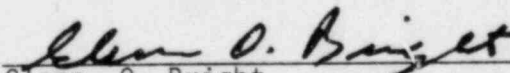
For all the foregoing reasons, which indicate that CSP has failed to particularize or support a contention within the scope of a construction permit extension proceeding as delineated by CLI-82-29, and there being no other petitioner to intervene, it is, this 22nd day of February, 1983

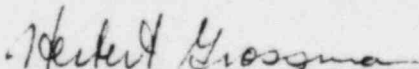
ORDERED:

- (1) That CSP's request for hearing is denied and the proceeding dismissed, and
- (2) That, pursuant to 10 CFR § 2.714a(a), CSP has 10 days from date of service (see 10 CFR § 2.710) to appeal this Order to the Atomic Safety and Licensing Appeal Board.

THE ATOMIC SAFETY AND LICENSING BOARD


Dr. Jerry Harbour
ADMINISTRATIVE JUDGE


Glenn O. Bright
ADMINISTRATIVE JUDGE


Herbert Grossman, Chairman
ADMINISTRATIVE JUDGE