

March 8, 1983

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. 50-460 OL  
(WPPSS Nuclear Project No. 1) }

NRC STAFF RESPONSE TO APPLICANT MOTION  
FOR LEAVE TO SUPPLEMENT MEMORANDUM

I. INTRODUCTION

On February 7, 1983, the Washington Public Power Supply System (Applicant) filed its "Memorandum in Opposition to Issuance of a Protective Order." In a motion dated February 17, 1983, Applicant seeks leave to supplement that memorandum to include the affidavit of an Applicant employee to respond to statements made by the Coalition for Safe Power (CFSP) in its February 7 memorandum on the need for a protective order. For the reasons set forth below, the Staff does not oppose the Applicant's motion.

II. DISCUSSION

In its February 7 submittal, filed simultaneously with those by the Staff and Applicant, CFSP alleged that Terry Dana, the CFSP member who authorized the filing of the WPPSS construction permit extension petitions, had been urged to withdraw his support for the petitions and that Dana's employment had been "directly threatened by his association" with CFSP. See Coalition for Safe Power Position on Protective Order -

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February 7, 1983, at 5-6.<sup>1/</sup> The Applicant seeks to supplement its protective order memorandum by submitting the affidavit of Gerald Sorensen, the WPPSS employee who contacted Terry Dana. The Staff does not object to the submission of the affidavit.

Under NRC caselaw, a proponent of a motion has the burden of proving that its motion should be granted. Consolidated Edison Co. of New York, Inc. (Indian Point Station, Units 1, 2 & 3), CLI-77-2, 5 NRC 13, 14 (1977). The basis for the Applicant's motion -- the Applicant's desire to present for the record its version of the details as to Applicant's contact with Mr. Dana so that the Board may determine for itself whether Mr. Dana has been harassed -- is not unreasonable and arguably justifies Applicant's motion.<sup>2/</sup> Had the Applicant not provided an affidavit explaining Applicant's view of the contact made with Mr. Dana, the Board could infer that "harassment" had occurred. See Public Service Co. of New Hampshire, (Seabrook Station, Units 1 & 2), ALAB-471, 7 NRC 477, 498, reviewed on other matters, CLI-78-14, 7 NRC 952 (1978) (when a party has relevant evidence within his control which he fails to produce, that failure gives rise to an inference that the evidence is unfavorable to him).

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<sup>1/</sup> Similar claims of "harassment" were raised during the January 26 and 27 special prehearing conference held earlier this year. See Tr. 90 (Dana was asked to "back down" after the construction permit extension petitions were filed); Tr. 95-96 and Tr. 40-41 (Dana was contacted by WPPSS lawyers or management); Tr. 91, 100 (two unidentified CFSP members feared employment reprisals).

<sup>2/</sup> The Applicant, however, has not explained why the Sorensen affidavit was not included with its February 7 memorandum. As noted in footnote 1 supra, CFSP claimed at the prehearing conference that Dana had been contacted by WPPSS. CFSP had also alleged, although it did not identify Dana, that two of its members feared employment reprisals. Because the affidavit is being offered only 10 days after the February 7 memorandum, the Staff does not believe the unexplained delay is fatal to the pending motion.

The Applicant also asks that the Board take official notice, pursuant to 10 CFR § 2.743(i), of pages of the Skagit/Hanford proceeding transcripts. CFSP had read portions of the same transcript during the prehearing conference and had relied upon portions of that transcript for its claim of harassment. See Tr. 39-40. Section 2.743(i) provides, in pertinent part, that "the presiding officer may take official notice of any fact of which a court of the United States may take judicial notice." It has been held that a Licensing Board may take official notice of portions of the record in another NRC adjudicatory proceeding. See Duke Power Co. (Catawba Nuclear Station, Units 1 and 2), LBP-74-5, 7 AEC 82, 92 (1974). Particularly in this instance, where CFSP has read portions of the Skagit/Hanford transcript into the record of this proceeding and relies, in part, on the Skagit/Hanford transcript as a basis for its claim that its members fear harassment, it would, in the Staff's view, be appropriate to take notice of portions of the Skagit/Hanford transcript wherein the context of contacts with CFSP's members is explained and the Licensing Board's determination on the propriety of such contacts is set forth. See Skagit/Hanford Tr. 38-39. Thus, the Staff does not object to Applicant's request that the Licensing Board take official notice of identified portions of the transcript from the Skagit/Hanford proceeding.

III. CONCLUSION

For the reasons stated above, the Staff does not object to the Applicant's motion.

Respectfully submitted,

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Mitzi A. Young  
Counsel for NRC Staff

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Mary E. Wagner  
Counsel for NRC Staff

Dated at Bethesda, Maryland  
this 8th day of March, 1983

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF RESPONSE TO APPLICANT MOTION FOR LEAVE TO SUPPLEMENT MEMORANDUM" in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class, or, as indicated by an asterisk, by deposit in the Nuclear Regulatory Commission's internal mail system this 8th day of March 1983:

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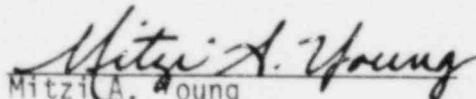
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