

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of )  
 )  
WASHINGTON PUBLIC POWER SUPPLY SYSTEM, ) Docket No. 50-508 OL  
et. al. ) (47 Fed Reg 40736 (1982))  
 )  
(WPPSS Nuclear Plant No. 3) )

REQUEST FOR HEARING AND PETITION FOR LEAVE TO INTERVENE

Introduction

By application dated August 20, 1982, the Washington Public Power Supply System, acting for itself and as agent for co-owners, applied for an Operating License for a pressurized water nuclear reactor, designated as the WPPSS Nuclear Project No. 3 (WNP-3). The reactor, located three miles from Satsop, Washington, is designed for an electrical output of approximately 1300 megawatts.

On September 15, 1982, a notice of Receipt of Application for Facility Operating License; Availability of Applicant's Environmental Report; Consideration of Issuance of Operating License; and Notice of Opportunity for Hearing was published in the Federal Register in the above-captioned matter. This notice set October 15, 1982 as the deadline for petitions for leave to intervene and requests for hearings. Pursuant to 10 CFR 2.714, the Coalition for Safe Power hereby submits its request for hearing and petition for leave to intervene. Such petition is late-filed.

Description of Petitioner

The Coalition is a non-profit citizens' organization, founded in 1969 to work against nuclear power. Its work includes research and education. The Coalition, through its officers and attorneys, has represented its members before the Commission, as well as state agencies, on questions of nuclear power safety and licensing. The

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Coalition has been granted full party status in five proceedings before the Commission including the original application for construction permit for the Skagit Nuclear Project, Units 1 and 2, the application for a construction permit for the Pebble Springs Nuclear Plants, Units 1 and 2, the construction permit for the Skagit/Hanford Nuclear Project, Units 1 and 2, and two license amendments for the Trojan Nuclear Power Plant.

#### Interest and Standing of Petitioner

The interests of the Coalition are, in large part, predicated on the interests of its members. The Coalition has members residing throughout Oregon and Washington and at least one who resides within the fifty-mile radius of the WNP-3 plant site (Jim Duree, Attorney at Law, Star Route Box 582, Aberdeen, Washington, approximately 25 miles from the site). This member both formally authorized the filing of this petition and did so implicitly by the mere fact of his membership in the Coalition. See Houston Lighting and Power Company (Allens Creek Nuclear Generating Station, Unit 1) ALAB-535, 9 NRC 377 (1979). Members of the Coalition live, work, recreate and travel in the environs of WNP-3 and eat foodstuffs grown and produced in the vicinity potentially impacted upon by operation of the project.

#### How Petitioners Interests May Be Affected

The above-stated interests of Petitioner and its members may be affected by the proposed operation and on-site storage of spent nuclear fuel at WNP-3. The operation of a nuclear power plant at the site may endanger the health and safety of Petitioner's members due to several factors, the first of which is the routine and accidental releases of ionizing radiation from the plant which will contaminate the air, food and water upon which members rely. The safety and wellbeing of members may be adversely affected by the possibility of a nuclear

accident which may damage or destroy their livelihood, homes, property and happiness. Recreation may be jeopardized by the project's impact upon the water and aquatic life of the Chehalis River and the surrounding environment. A nuclear accident at the project may affect the economy of the region. Insurance would not adequately cover losses sustained by members of the Coalition in case of an accident. The proposed operation of WNP-3 will place an excessive burden on Petitioner's members who are electrical ratepayers. An Order granting an operating license in this case may subject Petitioner's members to undue risks to health, life and property interests.

Specific Aspects of the Subject Matter

The Coalition, if granted leave to intervene in this proceeding, will file contentions on the following aspects:

There exists no reasonable assurance that:

- 1) Construction will have been in accordance with the rules and regulations of the Commission;
- 2) The project will be completed within the guidelines of the Construction Permit;
- 3) The project will be completed;
- 4) The Applicant possesses the technical ability to operate the project in accord with the rules and regulations of the Commission;
- 5) That the geology of the site has been properly assessed and taken into consideration in the engineering of the project;
- 6) Operation of the project will not endanger the public health and safety;
- 7) Operation of the project will not be inimicable to the common defense and security of the people;

- 8) Emergency response plans for the project are sufficient;
- 9) Production, on-site storage and disposal of nuclear wastes from the project will not endanger the public health and safety;
- 10) Somatic, teratogenic and genetic impacts of radiation released from the project will not endanger the public health and safety;
- 11) The Architect/Engineer has the technical ability to complete construction of the project in a safe manner;
- 12) The Applicant and Architect/Engineer possess the ability to conform to NRC-approved QA/QC procedures for construction and operation of the project;
- 13) Applicant has the ability to comply with safety requirements of TMI;
- 14) Operation of the project will be in accordance with NRC rules and regulations;
- 15) The design of the decay heat removal system is adequate for accident and normal transient conditions;
- 16) Safety-related mechanical and electrical equipment will be environmentally qualified;
- 17) That operation of the project will not irreparably harm the aquatic life of the Chehalis River;
- 18) Failures of the nuclear safety grade system will not create a situation beyond the ability of safety systems and will not disable safety systems;
- 19) The systems interaction evaluation is adequate;
- 20) The nuclear steam supplier will have supplied a system which will operate in accord with NRC rules and regulations; and
- 21) Volcanic activity of the Mt. St. Helens volcano will not jeopardize safe operation of the project.

Good Cause and the Four-Factor Test

Pursuant to 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d) Petitioner submits the following showing of good cause for late-filing and a balancing of the factors required for a late-filed petition.

Good Cause

A combination of reasons exist for Petitioner having failed to meet the filing deadline of October 15, 1982, four months ago. Petitioner is aware of the general rule regarding the sufficiency of a notice placed in the Federal Register. It was, however, the overlooking of this notice which led to the non-timeliness of this petition. Petitioner generally reviews the Federal Register notices at the Multnomah County Library, where they are often received and shelved weeks after printing, thus never providing adequate notice.

At the time of the notice for the instant case, Petitioner was otherwise occupied having just filed the petition for leave to intervene in the operating license proceeding for WNP-1 and was in the process of filing contentions.

Importantly, Petitioner did not place total reliance on the Federal Register notice. First, Petitioner expected that given the proximity of the project to Portland and the importance of the project to the entire Northwest region, that the Portland newspaper would have printed a notice of opportunity for hearing.

Petitioner reads the paper daily: no notice was found. Secondly, Mr. Duree, a member of the Coalition and well known opponent of WNP-3, had informed the Coalition during the first week of August, 1982 that he received notices of importance that related to WNP-3 from the NRC due to his prior involvement in the construction permit phase.

Mr. Duree informed Petitioner that he was in a position, therefore, to notify the organization of the proper time to file a petition

in this case. Mr. Duree never received any information regarding the docketing of the application and the opportunity for a hearing.

Following discovery of the error, Petitioner then waited approximately another two months to file this petition because news reports had indicated that the WNP-3 project was going to be terminated due to financial problems. Expecting imminent cancellation of the project, Petitioner waited to file because certain arguments on standing, contentions etc. would have been different. (Many observers still anticipate a slowdown or halt to construction in the first half of 1983.)

Petitioner submits that the delay of four months is not overly substantial and therefore should not weigh against standing to intervene. The facility is only 65% constructed and will not be completed, if construction continues to be funded, for at least another four years. A public hearing would not delay the licensing the plant for operation and thus weighs in Petitioner's favor. See Houston Lighting and Power Co. (South Texas, Units 1 and 2) ALAB-509, 9 NRC 644 (1979) at 649. Finally, while the petition was late, the conduct of an Operating License proceeding would be in the public interest, allowing the resolution of open safety items, conformance of construction to NRC rules and regulations and to ensure the technical ability of Applicant to operate the plant. Given the large numbers of allegations regarding both the management and construction of WNP-3, Applicant should welcome this public forum.

#### First Factor

The availability of other means for Petitioner to protect its interests is non-existent. There is no state regulation at the operating license stage. The Operating License is the last available forum before the NRC prior to plant operation. Commenting on the

SER and DEIS or entering a limited appearance statement are insufficient to protect the significant specified interests that have been and will be identified. Furthermore, the Appeal Board has held that participational rights including entitlement to present evidence and conduct cross-examination are not served by the limited appearance statement. Duke Power Co. (Amendment to Materials License SNM-1773, McGuire Nuclear Plant) ALAB-528, 9 NRC 146 (1979). The NRC Staff does not adequately represent the interests asserted by Petitioner. In many instances, contentions which would be filed by Petitioner in this proceeding would address issues where Staff and Petitioner's positions, for example, would differ on the regulatory application of the results of the same tests.

#### Second Factor

The Appeals Board in Florida Power and Light St. Lucie Nuclear Power Plant, Unit No. 2) ALAB-420, 6 NRC 8, 23 (1977) upheld a Licensing Board decision that this factor, the extent to which petitioner's participation would assist in developing the record, was not applicable in a case such as the present, because it appears to contemplate intervention into an ongoing proceeding.

If, however, this Board desire to rule on this factor, it should judge in favor of Petitioner's ability to participate in a manner which would lead to a sound record. The Coalition has previously participated in several NRC proceedings: presenting witnesses in the Trojan Spent Fuel Pool License Amendment case and conducting extensive cross examination in the Trojan Control Building License Amendment which led to additional technical specifications to be imposed by the Staff. The Coalition has, at present, a former WPPSS quality assurance worker who has agreed to participate in this proceeding. The Coalition is also in the process of working with other intervenors

in the region to identify other expert witnesses in the areas of radiation, health physics, geology, seismology, hydrology, engineering, fisheries and nuclear safety.

#### Third Factor

The Appeals Board upheld a licensing board decision that this factor, the ability of other parties to represent petitioner's interests, was not applicable in a case such as the present, because it appears to contemplate intervention into an ongoing proceeding. St. Lucie, supra at 23. The Coalition's interest cannot be represented by any other parties with the exception of the NRC Staff, because there are no other parties. As stated above, the NRC Staff position is not considered to meet Petitioner's interests, hence the filing of this petition. Furthermore, participational rights are not served by the ability to present a limited appearance statement. See McGuire Amendment to Materials License SNM-1773, supra at 150.

#### Fourth Factor

The Appeals Board affirmed a licensing board determination that if there would be no proceeding without the participation of the petitioner, as in the instant case, the first element of the fourth factor, the degree to which tardiness of the petition would delay the proceedings, is moot. St. Lucie, supra at 23. However, should the Board wish to examine this factor, it must include only the delay which can be attributed to the tardiness of the petition. Long Island Lighting Co. (Jamesport Nuclear Power Station, Units 1 and 2) ALAB-292, \_\_\_ NRC 631, referring to Nuclear Fuel Services, Inc. (West Valley Reprocessing Plant), CLI-75-4, NRCI-75/4R 273 (1975) at 276. In this instance the delay was a matter of four months which in comparison to the extensive period required to complete plant construction is insignificant. When tardiness is not in the extreme and the conduct

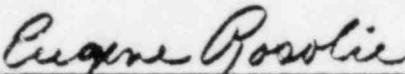
of full hearings will not delay the licensing of the plant for operation, this factor may not weigh against the petitioner. See McGuire Amendment to Materials License SNM-1773, supra at 150. See also South Texas, supra at 649. This petition has been submitted well in advance of a final determination which will be made on this application.

Conclusion

The Coalition for Safe Power, having shown herein that it has the requisite interest to establish standing and having shown that a balancing of the factors required by 10 CFR 2.714 for late-filing weigh in favor of granting this petition for leave to intervene, prays for an Order granting this request for hearing and petition for leave to intervene.

Respectfully submitted,

Dated this day, the 18th  
of February, 1983.

  
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Eugene Rosolie, Director  
Coalition for Safe Power  
410 Governor Building  
408 S.W. 2nd  
Portland, Oregon 97204  
503-295-0490

AFFIDAVIT

STATE OF OREGON            )  
                                  ) ss.  
County of Multnomah    )

I, Eugene Rosolie, being first duly sworn, do depose and say as follows:

1. That I am the Director of the Coalition for Safe Power and its duly authorized representative; and

2. That the foregoing petition was prepared under my supervision and direction and that, to the best of my knowledge and belief, it and the facts contained therein are true and correct.

Signed;

Eugene Rosolie  
Eugene Rosolie, Director  
Coalition for Safe Power

SUBSCRIBED AND SWORN to before me this 18<sup>th</sup> day of

February, 1983.

Cathleen Hudson  
Notary Public for Oregon  
My Commission Expires: 7/26/85

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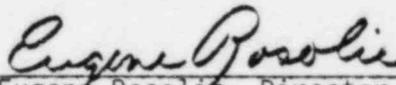
CERTIFICATE OF SERVICE

I Hereby certify that copies of "REQUEST FOR HEARING AND PETITION FOR LEAVE TO INTERVENE" filed by the Coalition for Safe Power in the above captioned matter have been served on the following parties by deposit in the United States Mail, postage prepaid, and first class, on the ~~18th~~ 22nd of February, 1983.

Secretary of the Commission  
U.S. Nuclear Regulatory Commission  
Washington D.C. 20555

Executive Legal Director  
U.S. Nuclear Regulatory Commission  
Washington D.C. 20555

Nicholas Reynolds  
Deveboise, Liberman et al  
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\_\_\_\_\_  
Eugene Rosolie, Director  
Coalition for Safe Power