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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)

WASHINGTON PUBLIC POWER SUPPLY)
SYSTEM)

(WPPSS Nuclear Projects No. 1 and No. 4))

) Docket Nos. 50-460
) 50-513
)
)

MEMORANDUM AND ORDER

On December 22, 1975, this Atomic Safety and Licensing Board (Board) rendered an Initial Decision authorizing the issuance of a construction permit to the Washington Public Power Supply System (Applicant) for WPPSS Nuclear Project No. 1 (WNP-1). LBP-75-72, 2 NRCI 922 (1975). The Initial Decision had been preceded by a Partial Initial Decision issued on July 30, 1975. LBP-75-41, 2 NRCI 131 (1975).^{1/}

During the course of the radiological health and safety phase of the hearings on WPPSS Nuclear Projects No. 1 and No. 4, the Applicant requested that the Board defer its decision on Nuclear Project No. 4 (WNP-4) pending resolution of certain

^{1/} The July 30 decision dealt with environmental and site suitability matters and paved the way for the issuance of limited work authorizations under 10 CFR §50.10(e). The December 22 decision addressed the remaining radiological health and safety matters.

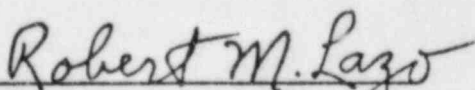
financial matters. Thus, while the Partial Initial Decision on environmental and site suitability matters covered both WNP-1 and WNP-4, our subsequent Initial Decision authorized a construction permit for WNP-1 only. With regard to WNP-4, the Board noted that it would receive additional evidence from the parties with a view toward supplementing the Initial Decision at a suitable time with appropriate findings relating to the Applicant's financial qualifications to design and construct WNP-4.

By letter dated July 9, 1976, Applicant advised the Board that Applicant is now in a position to demonstrate that it possesses, or has reasonable assurance of obtaining, the funds necessary to cover estimated construction costs and related fuel cycle costs for WNP-4. Applicant suggests that since there are no issues in controversy between Applicant and the NRC Staff, the only parties to this proceeding, it is appropriate that the matter be considered on affidavits without the necessity of reconvening the evidentiary hearing. In its response filed on July 27, 1976, the NRC Staff supports the request that the record be supplemented by affidavits and set forth a proposed schedule for completing the proceeding which has been agreed to by Applicant.

In order to determine whether the request of the parties can be accommodated, it is suggested that Applicant and Staff both submit pertinent evidence on the financial qualifications issue for WNP-4 in the form of affidavits. It is noted that each has agreed that such affidavits can be prepared and filed by August 6, 1976. Thereafter, the Board will be in a position to determine whether it believes it necessary to schedule a hearing in this matter and whether any Board questions could be handled by Board interrogatories with responses submitted also by affidavit.

It is so ORDERED.

FOR THE ATOMIC SAFETY AND LICENSING BOARD


Robert M. Lazo, Chairman

Issued at Bethesda, Maryland
this 29th day of July, 1976.

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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. 1)

Docket No. 50-460-CPA

(ASLBP No. 82-480-01 CPA)

March 25, 1983

MEMORANDUM AND ORDER
(Admitting Intervenor and Contention)

MEMORANDUM

On February 22, 1983, this Board issued a Memorandum and Order following the First Prehearing Conference in which it determined that Petitioner, the Coalition for Safe Power (CSP), had standing to intervene. We did not rule on CSP's two contentions, advanced in CSP's Supplement to Request for Hearing dated January 10, 1983, because the Board had allowed CSP time to amend its contentions to take into account the additional 2-5 year period of extension of construction permit

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recently requested by Permittee, the Washington Public Power Supply System (WPPSS). CSP served and filed an Amendment to Contention No. 2 on February 11, 1983. Staff responded on February 23, 1983 indicating that it does not oppose the admission of Amended Contention No. 2. WPPSS responded on February 28, 1983 by opposing the amended contention.

The Board admits Amended Contention No. 2. It denies Contention No. 1 because, to the extent that it is admissible, it is duplicated by Amended Contention No. 2.

Contention No. 1

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 CFR 50.55(b).

On October 8, 1982, the Commission issued an Order in this proceeding, CLI-82-29, 16 NRC _____, concerning CSP's request for hearing which provided Commission guidance on the scope of construction permit extension proceedings. Of critical importance was the Commission statement (slip op. at 16) that, "[t]o the extent that CSP is seeking to show that WPPSS was both responsible for the delays and the delays were dilatory and thus without 'good cause' [a] contention, if properly particularized and supported, would be litigable."

The wording of this contention was tailored to meet the Commission statement. However, under that statement the contention must be properly particularized and supported. In considering this identical contention with regard to WPPSS 2, this same Board denied that contention¹ on the ground that WPPSS was "dilatory." We had understood the Commission to have used the term "dilatory" in the sense of intending to cause delay or being indifferent to the delay that might be caused. We found that CSP had particularized and supported only matters relating to alleged mismanagement that resulted in delays, but not any matter that would indicate an intention to cause delay or an indifference to delay that caused delay.

At the prehearing conference covering both WPPSS 1 and 2, CSP conceded (Tr. 58-9) that its position with regard to the WPPSS management's being dilatory was the same with regard to WPPSS 1 as it was with regard to WPPSS 2, with one important exception. That exception relates to the

¹ Washington Public Power Supply System (WPPSS Nuclear Project No. 2), Docket No. 50-397-CPA, Memorandum and Order (Dismissing Petition and Denying Hearing), February 22, 1983. While technically these are two separate proceedings, Commission Order CLI-82-29, supra, considered both petitions for hearing filed by CSP, and this Board was established under the same orders governing both facilities. 47 Fed. Reg. 46922, Oct. 21, 1982; and Order Reconstituting Board, 47 Fed. Reg. 49764, Nov. 2, 1982.

current decision of WPPSS management to cease construction for a 2-5 year period, which CSP contends is an intentional delay and, presumably, without good cause.

Consistent with that reasoning with regard to WPPSS 2,² we would deny Contention No. 1 except to the extent that it relates to the WPPSS management's being responsible for the delays as a result of the contemplated 2-5 year period of cessation of construction activities. However, in view of the fact that Amended Contention No. 2 includes this allegation and we admit Contention No. 2 in toto, we deny Contention No. 1.

Amended Contention No. 2

Petitioner contends that the Permittee's decision in April 1982 to "defer" construction for two to five years, and subsequent cessation of construction at WNP-1, was dilatory. Such action was without "good cause" as required by 10 CFR 50.55(b). Moreover, the modified request for extension of completion date to 1991 does not constitute a "reasonable period of time" provided for in 10 CFR 50.55(b).

² CSP has appealed the order dismissing the petition in Washington Public Power Supply System (WPPSS Nuclear Project No. 2), Docket No. 50-397-CPA. This Board, of course, will follow any Appeal Board or Commission guidance offered in deciding that appeal which affects the issues before the Board in this proceeding.

From the fact of WPPSS' having requested an extension of the construction completion date for an additional 2-5 years during which it will cease construction activity, it appears that a prima facie showing, even beyond mere particularization and support, has been made for compliance with the Commission tests of showing management being responsible for, and dilatory in, the delays in construction. Consequently, this contention is clearly admissible. It appears that the hearing will devolve upon the questions of whether Permittee has demonstrated "good cause" for the delay and whether the requested extension of completion date is for a reasonable period of time.

ORDER

For all the foregoing reasons and based upon a consideration of the entire record in this matter, it is, this 25th day of March, 1983,

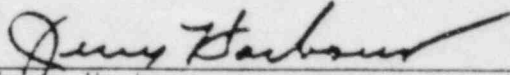
ORDERED

1. That Petitioner, the Coalition for Safe Power, is admitted as an Intervenor in this proceeding;
2. That Contention No. 1 is denied and Amended Contention No. 2 is admitted;

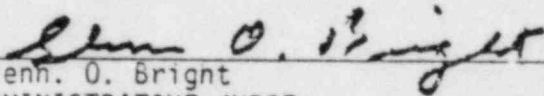
3. That discovery is to commence immediately;
4. That, by June 1, 1983, each of the parties is to submit a status report to the Board indicating the further discovery needed; the estimated time for completion of discovery; all unresolved procedural matters; whether there is a necessity for a further, intermediate prehearing conference; and recommended dates for filing motions for summary disposition (if any), holding a final prehearing conference, the filing of prefiled direct testimony, and the commencement of the hearing;
5. That this Order shall control the subsequent course of this proceeding unless modified by further order of the Board; and
6. That, pursuant to 10 CFR § 2.714a(a) and (c), the parties other than Petitioner have 10 days from date of service (see 10 CFR § 2.710) to appeal this Order (and, to the extent relevant to the admission of Petitioner, the Memorandum and Order of February 22, 1983) to the Atomic Safety and Licensing Appeal Board.

By order of the Board.

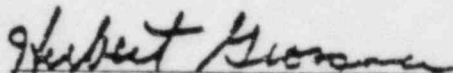
THE ATOMIC SAFETY AND LICENSING BOARD



Jerry Harbour
ADMINISTRATIVE JUDGE



Glenn O. Bright
ADMINISTRATIVE JUDGE



Herbert Grossman, Chairman
ADMINISTRATIVE JUDGE

Bethesda, Maryland,

March 25, 1983.

File: MK's old files.
financial files.
(see Jim for filing)