

November 22, 1983

Note to: ✓ Jim Petersen
Tom Kenyon

From: Mary Wagner

MW
X 28659

SUBJECT: WNP-1 (CPA) - APPLICANT'S MOTION FOR SUMMARY DISPOSITION

Attached is a copy of Applicant's Motion for Summary Disposition. I am reviewing it to see whether the Staff should file a response to it (we have the right to do so, and it would be due on December 12). Please let me know if there are any points to which you think the Staff should be responding. Thank you.

8409270299 840824
PDR FOIA
COHEN84-603 PDR

N.B.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY
AND LICENSING BOARD

In the Matter of)
)
WASHINGTON PUBLIC POWER) Docket No. 50-460-CPA
SUPPLY SYSTEM)
)
(WPPSS Nuclear Project No. 1))

I
Wagner / Young
Gray
FF
Reply due Dec. 9, 1983

LICENSEE'S MOTION FOR
SUMMARY DISPOSITION

I. INTRODUCTION

In accordance with 10 C.F.R. § 2.749 and the July 11, 1983, Order of the Licensing Board in the captioned proceeding,¹ the Washington Public Power Supply System ("Licensee" or "Supply System") hereby submits its Motion for Summary Disposition. For the reasons set forth below, Licensee maintains that there is no genuine issue as to any material facts; that Licensee is entitled as a matter of law to a decision in its favor on all matters involved in the proceeding; that the Licensing Board should issue an Order holding that the Staff properly issued the construction permit amendment sought by the Licensee; and that this proceeding should be dismissed.

¹ Washington Public Power Supply System (WPPSS Nuclear Project No. 1), Docket No. 50-460 CPA, July 11, 1983, Order (Establishing Further Schedule).

~~831116 #166~~

II. FACTUAL BACKGROUND

On July 21, 1981, Licensee filed an application with NRC for an extension of its construction permit for WNP-1 from January 1, 1982 to June 1, 1986. In support of its request, Licensee stated that construction at WNP-1 was delayed because of

1. Changes in the scope of the project, including increases in the amount of material and engineering required as a result of regulatory actions, in particular those subsequent to the Three Mile Island accident;
2. Construction delays and lower than estimated productivity resulting in delays in installation of material and equipment and delays in completion of systems necessitating rescheduling of preoperational testing;
3. Strikes by portions of the construction work force;
4. Changes in plant design; and
5. Delays in delivery of equipment and materials.

Subsequently, intervenor filed a petition seeking a hearing on the requested construction permit extension. The Commission itself considered the petition to provide guidance as to the scope of construction permit amendment proceedings. The Commission ruled that of the several contentions intervenor sought to raise, only one was potentially litigable if properly particularized and

supported.² That contention was whether "delays in construction have been under the full control of the WPPSS management."³ The Commission then referred the proceeding to the Atomic Safety and Licensing Board to determine whether intervenor satisfied the balance of the requirements governing standing and to preside over a hearing in the event one was held.

On January 11, 1983, the Licensee submitted a modification of its earlier construction permit amendment request to specify June 1, 1988, as the earliest construction completion date and June 1, 1991, as the latest construction completion date. The reason given in support of this extension request was a recommendation by the Bonneville Power Administration ("BPA") that the Licensee delay construction of WNP-1 for a period of two to five years. As a result of these events, the Licensing Board permitted intervenor to submit an amended supplemental petition to intervene, in which it revised its proposed contentions.⁴

2 Washington Public Power Supply System (WPPSS Nuclear Project Nos. 1 and 2), CLI-82-29, 16 NRC 1221, 1231 (1982).

3 Id.

4 Washington Public Power Supply System (WPPSS Nuclear Project No. 1), Docket No. 50-460 CPA, Memorandum and Order (Following First Prehearing Conference), February 22, 1983, slip op. at 7-8.

In its March 25, 1983, Memorandum and Order, the Licensing Board admitted intervenor to this proceeding. It further ruled that the single contention to be litigated was, as follows:

Petitioner contends that the [Licensee's] decision in April, 1982, to "defer" construction for two to five years, and subsequent cessation of construction was dilatory. Such action was taken without "good cause" as required by 10 C.F.R. 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 C.F.R. 50.55(b).⁵

As the Licensing Board viewed this contention, it raised the questions of whether the Licensee demonstrated good cause for the delay and whether the requested extension completion date was for a reasonable period of time.⁶ Discovery then commenced and continued until October 31, 1983.

During the discovery period, the Staff issued an Order granting the requested construction permit amendment,⁷ as the Commission observed it was free to do

5 Washington Public Power Supply System (WPPSS Nuclear Project No. 1), Docket No. 50-460, CPA, Memorandum and Order (Admitting Intervenor and Contention), March 25, 1983, slip op. at 4-5.

6 Id. at 4.

7 48 Fed. Reg. 28768 (1983).

following normal Staff review.⁸ A copy of that Order and the accompanying Safety Evaluation was provided to the Board and all parties to this proceeding by the Staff on June 17, 1983, and by the Licensee on June 21, 1983.

III. LEGAL STANDARDS GOVERNING
SUMMARY DISPOSITION

Pursuant to 10 C.F.R. §2.749(d), upon an appropriate motion for summary disposition, "[t]he presiding officer shall render the decision sought" where it is shown "that there is no genuine issue as to any material fact and that the moving party is entitled to a decision as a matter of law." To provide more definitive guidance in rendering such judgments, the Commission has stated that Section 2.749 "has been revised to track more closely the Federal Rules of Civil Procedure."⁹ Cases decided under the Federal Rules may thus provide guidance to licensing boards applying Section 2.749.¹⁰

⁸ WNP-1 and WNP-2, CLI-82-29, supra, 16 NRC at 1231.

⁹ 37 Fed. Reg. 15135 (1972). See also Wisconsin Electric Power Co. (Point Beach Nuclear Plant, Unit 1), ALAB-696, 16 NRC 1245, 1258 (1982); Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Units 1 & 2), ALAB-443, 6 NRC 741, 753-54 (1977); Alabama Power Co. (Joseph M. Farley Nuclear Plant, Units 1 & 2), ALAB-182, 7 AEC 210, 217 (1974); Dairyland Power Cooperative (La Crosse Boiling Water Reactor), LBP-32-58, 16 NRC 512, 519 (1982).

¹⁰ Perry, ALAB-443, supra, 6 NRC at 754; La Crosse, LBP-82-58, supra, 16 NRC at 519.

In accordance with the Federal Rules, to defeat a motion for summary disposition an opposing party must present facts in the proper form; conclusions of law will not suffice.¹¹ The facts of the opposing party must be material,¹² and must be of a substantial nature,¹³ not fanciful, or merely suspicious.¹⁴ One cannot avoid summary disposition "on the mere hope that at trial he will be able to discredit movant's evidence; he must . . . be able to point out to the court something indicating the existence of a triable issue of material fact."¹⁵ As the Supreme Court explained, one cannot go to trial "on the basis of the allegations in [the] complaints, coupled with the hope that something can be developed at trial in the way of evidence to support those allegations."¹⁶ One

- 11 United States v. Various Slot Machines on Guam, 658 F.2d 697 (9th Cir. 1981); Citizens Environmental Council v. Volpe, 484 F.2d 870, 873 (10th Cir. 1973), cert. denied, 416 U.S. 936 (1974).
- 12 British Airways Board v. Boeing Co., 585 F.2d 946, 951-52 (9th Cir. 1978); Mutual Fund Investors Inc. v. Putnam Mgmt. Co., 553 F.2d 620, 624 (9th Cir. 1977) (a material fact is one that may affect the outcome of the litigation).
- 13 Southern Distributing Co. v. Southdown, Inc., 574 F.2d 824, 826 (5th Cir. 1978).
- 14 Robin Construction Co. v. United States, 345 F.2d 610, 614 (3d Cir. 1965).
- 15 6 Moore's Federal Practice ¶56.15[4] at p. 56-525 (1982) (emphasis added).
- 16 First National Bank v. Cities Service Co., 391 U.S. 253, 290 (1968).

court, in granting the defendant's motion for summary judgment under the Federal Rules, said:

All that plaintiff has in this case is the hope that on cross-examination . . . the defendants . . . will contradict their respective affidavits. This is purely speculative, and to permit trial on such basis would nullify the purpose of Rule 56, which provides summary judgment as a means of putting an end to useless and expensive litigation and permitting expeditious disposal of cases in which there is no genuine issue to any material facts.¹⁷

"The Commission and the Appeal Board have encouraged the use of summary disposition to resolve contentions where an intervenor has failed to establish that a genuine issue exists."¹⁸ Thus, fundamental precepts of the administrative process mandate that at this stage of litigation the intervenor be required to respond to this motion by presenting material and disputed facts in affidavit form that support its position. When doing so, intervenor should not be permitted to submit, for example, an affidavit prepared by one of its officers or members

17 Orvis v. Brikman, 95 F. Supp. 605, (D.D.C.), aff'd, 196 F.2d 762 (D.C. Cir. 1952); see also Curl v. Int'l Business Machines Corp., 517 F.2d 212, 214 (5th Cir. 1975).

18 La Crosse, LBP-82-58, supra, 16 NRC at 519, citing Northern States Power Co. (Prairie Island Nuclear Generating Plant, Units 1 & 2), CLI-73-12, 6 AEC 241, 242 (1973), aff'd sub nom. BPI v. AEC, 502 F.2d 424 (D.C. Cir. 1974); Houston Lighting & Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-590, 11 NRC 542, 550-51 (1980); Mississippi Power & Light Co. (Grand Gulf Nuclear Station, Units 1 & 2), ALAB-130, 6 AEC 423, 424-25 (1973).

reciting facts about which it has no first-hand knowledge or which are based on "common knowledge." Rather, intervenor should be required to support its position with affidavits prepared by qualified individuals familiar with the issues in this proceeding. If intervenor fails to do so, the Board should rule favorably on Applicant's motion. To permit otherwise would be to countenance unnecessary litigation and unwarranted delay. In this regard, see 10 C.F.R. §2.749(b), which states:

When a motion for summary decision is made and supported as provided in this section, a party opposing the motion may not rest upon the mere allegations or denials of his answer; his answer by affidavits or as otherwise provided in this section must set forth specific facts showing that there is a genuine issue of fact. If no such answer is filed, the decision sought, if appropriate, shall be rendered.

Further, the Appeal Board has emphasized that admission of a contention does not "carry with it any implication that . . . the contention [is] meritorious."¹⁹ Thus, even though a contention might be admitted to a proceeding it does not perforce follow that the contention must be taken up at an evidentiary hearing.²⁰ In this regard the Commission's summary disposition procedures set

¹⁹ Allens Creek, ALAB-590, supra, 11 NRC at 549 (1980).

²⁰ See Washington Public Power Supply System (WPPSS Nuclear Project No. 2), ALAB-722, 17 NRC 546, 551 at n. 5 (1982); Houston Lighting & Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-629, 13 NRC 75, 76 (1981).

forth in 10 C.F.R. §2.749 "provide in reality as well as theory, an efficacious means of avoiding unnecessary and possibly time-consuming hearings on demonstrably insubstantial issues."²¹

IV. SUMMARY DISPOSITION SHOULD BE GRANTED IN THIS PROCEEDING

A. Introduction

As discussed above, the single contention raised by intervenor encompasses the two questions of whether Licensee satisfied the good cause requirement of Section 50.55(b) and whether the requested construction permit extension date was for a reasonable period of time. Each of these issues is discussed below.

B. Good Cause

Scope of the Good Cause Inquiry. Section 185 of the Atomic Energy Act provides that for "good cause" the Commission may extend the latest completion date of a construction permit. This authority is implemented in 10 C.F.R. § 50.55(b) which provides that a construction permit holder seeking to extend the latest completion date of its construction permit must make a showing of good cause before the Commission will extend such date. ~~The critical element in making this showing is whether there were acts beyond the control of the construction permit~~

²¹ Allens Creek, ALAB-590, supra, 11 NRC at 550.

holder, such as fires, floods, strikes or sabotage, which resulted in the need for a construction permit extension.²²

In WNP-1 and WNP-2 the Commission held that the inquiry into whether good cause exists within the context of intervenor's contention as originally proposed should focus on whether the Licensee was responsible for the construction delays in question and whether those delays were dilatory.²³ Intervenor expressly adopted this formulation of the issues in its original contention.²⁴

In WNP-2,²⁵ the Appeal Board further explored the dimensions of the inquiry suggested by the Commission. The Appeal Board specifically focused on the term "dilatory," concluding that dilatory conduct in the sense used by the Commission means "the intentional delay of construction without a valid business purpose."²⁶ It added that "for example, an intentional slowing of construction because of a temporary lack of financial

relationship w/ BPA is in the context of a valid business purpose.

²² See 10 C.F.R. § 50.55(b).

²³ WNP-1 and WNP-2, CLI-82-29, supra, 16 NRC at 1231.

²⁴ Coalition for Safe Power Supplement to Request for Hearing and Petition for Leave to Intervene, January 10, 1983, at 1.

²⁵ WNP-2, ALAB-722, supra.

²⁶ Id. at 552.

resources or a slower growth rate of electric power than had been originally projected would constitute delay for a valid business purpose."²⁷

This aspect of WNP-2 is consistent with earlier decisions by NRC holding that a construction permit holder seeking a construction permit extension satisfies the good cause requirement of Section 50.55(b) upon a showing that the delay in construction was undertaken for valid business purposes, such as inability to finance construction. For example, in Georgia Power Co. (Vogtle Nuclear Power Plant, Units 1 and 2),²⁸ the Licensing Board found that good cause was established to warrant an extension of the latest completion dates for construction when the permit holder demonstrated that it was unable to raise money to finance construction. Moreover, in a number of other cases, the NRC has granted extensions of the latest construction completion dates when permit holders have sought them for valid business purposes, viz., economic conditions or financial considerations

²⁷ Id. at n. 6.

²⁸ LBP-77-2, 5 NRC 261, 273-75, aff'd, ALAB-375, 5 NRC 423 (1977).

precluding the financing of construction.²⁹ Accordingly, the critical factual question regarding good cause in this proceeding is whether the Licensee in fact deferred construction of WNP-1 for a valid business purpose.

Licensee Showing of Good Cause. The Licensee cited as support for its requested construction permit extension the recommendation by BPA that construction of WNP-1 be delayed for a period of from two to five years.³⁰ This recommendation clearly established good cause within the meaning of Section 50.55(b). As a result of the BPA recommendation, Licensee had no practical means available to it to finance the continued construction of WNP-1. Thus, Licensee had a valid business purpose for deferring the construction of WNP-1. The detailed factual basis for this position follows.

²⁹ See, e.g., Union Electric Co. (Callaway Plant, Unit No. 1), Order Extending Construction Completion Date, 46 Fed. Reg. 62999 (1981); Louisiana Power & Light Co. (Waterford Steam Electric Station, Unit No. 3); Order Extending Construction Completion Date, 46 Fed. Reg. 56264 (1981); Public Service Electric & Gas (Hope Creek Generating Station, Units 1 and 2), Order Extending Construction Completion Date, 46 Fed. Reg. 46032 (1981); Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2), Order Extending Construction Completion Date, 46 Fed. Reg. 29804 (1981).

³⁰ January 11, 1983 letter to Mr. Harold R. Denton, Director, Office of Nuclear Reactor Regulation, U. S. Nuclear Regulatory Commission, from G. D. Bouchey, Manager, Nuclear Safety and Regulatory Programs, Washington Public Power Supply System. A copy of this letter is attached as Attachment Q to the affidavit of Alexander Squire Regarding the Construction Deferral at WNP-1 ("Squire Affidavit") filed in support of this Motion.

The Licensee is a municipal corporation and joint operating agency of the State of Washington,³¹ organized under the laws of the State of Washington.³² It is authorized to acquire, construct and operate works, plants and facilities for the generation and/or transmission of electric power and energy. It has under construction three nuclear projects, WNP-1, WNP-2, and WNP-3. The financing of WNP-1 has been solely through the sale of bonds. Each project is financed separately and the Licensee is obliged under the terms of the separate Bond Resolution relating to each project³³ to use bond proceeds solely to pay costs or obligations of the project for which the bonds were issued.³⁴

The Licensee is reimbursed for the cost of each of its projects, including debt service, by the participants in that project. With respect to WNP-1, there are 104 participants, all of which are statutory preference customers of BPA. Each of these participants entered into

³¹ Squire Affidavit at 2.

³² RCW Ch. 43.52

³³ For WNP-1, that resolution is Supply System Board of Directors Resolution No. 769, a copy of which is attached as Attachment B to the Squire Affidavit.

³⁴ Squire Affidavit at 2. See RCW 54.24.030 authorizing creation of a special fund in connection with the sale of revenue bonds and RCW 54.24.050(i) authorizing a covenant to restrict the use and disposition of bond proceeds.

a Net Billing Agreement with the Licensee and BPA³⁵ providing for the sale by the Licensee to each participant of a portion of the capability of WNP-1.³⁶ The Net Billing Agreement further provides that each participant will assign its portion of the WNP-1 capability to BPA, which then will credit the wholesale power bills of these customer-participants in an amount sufficient to cover the cost they pay to the Licensee for their share of the annual costs, including debt service, of WNP-1.³⁷ As a result of this agreement, 100% of the capability of WNP-1 has been assigned to BPA.³⁸

In connection with the assignment to BPA of the capability of WNP-1, BPA and the Licensee entered into a Project Agreement in 1973.³⁹ Under Section 4 of the Project Agreement, the Licensee agreed to construct the facility. BPA is accorded substantial construction

35 Squire Affidavit at 2-3.

36 Section 5(a) of the Net Billing Agreement. A copy of one executed Net Billing Agreement for WNP-1 is attached as Attachment C to the Squire Affidavit. Because all Net Billing Agreements for WNP-1 are identical (Squire Affidavit at 2), the Net Billing Agreement attached is by way of example only.

37 Section 5(b) of the Net Billing Agreement.

38 Squire Affidavit at 3.

39 Id. A copy of the WNP-1 Project Agreement is attached as Attachment D to the Squire Affidavit. In addition, the April 25, 1980, Memorandum of Understanding executed between BPA and the Licensee further clarifying their respective roles is attached as Attachment E to the Squire Affidavit.

oversight responsibility and contract approval authority
in that Project Agreement.⁴⁰ In addition, while under
Section 5 of the Project Agreement the Licensee has an
obligation to use its best efforts to issue and sell bonds
to finance the construction costs of the project, the
issuance of all bonds is subject to approval by BPA.⁴¹

Thus, because the construction of WNP-1 is financed
entirely through the sale of bonds, BPA controls the pace
of construction as a result of its authority to withhold
approval for such bond sales.⁴²

N.B.

This authority and control of BPA reflects the fact
that it allows its rate revenues to be used as the
ultimate security for the repayment of bonds sold to
finance WNP-1. As the Licensing Board in the WNP-1
construction permit proceeding found, the first level of
security to assure bond repayment is the revenues to be
derived from the operation of WNP-1. The second level of
security is the Net Billing Agreements executed by the
participants, pursuant to which the participants are
required to pay their respective portions of the costs of
acquiring, constructing and operating WNP-1, regardless of

40 See Section 6 of the WNP-1 Project Agreement.

41 Section 5(b) of the Project Agreement states in this regard
that "notwithstanding any other provisions of this agreement,
the Bond Resolution shall be subject to the approval of the
[BPA] Administrator."

42 Squire Affidavit at 3-4.

whether the project is completed, operated or curtailed. The final level of security is the obligation of BPA to pay out of its rate revenues the debt securities issued for WNP-1.⁴³

In April, 1982, BPA published a draft power load forecast, which was presented to the Executive Board of the Licensee at a special meeting held on April 5, 1982. During that meeting the BPA Administrator, Mr. Peter Johnson, stated that the forecast showed that WNP-1, WNP-2 and WNP-3 were needed in the region, although short-term surpluses of electricity could occur prior to 1990. The Administrator stated that he was not prepared to speculate as to the influence of the report on future construction schedules.⁴⁴

On April 19, 1982, at a special meeting of the Executive Board of the Licensee, Mr. Johnson read from a letter in which he recommended that

1. The construction of WNP-2 and WNP-3 proceed at full pace;
2. The construction completion schedule of WNP-1 be delayed for a period of up to five years; and

⁴³ Washington Public Power Supply System (WPPSS Nuclear Projects No. 1 and No. 4), LBP-75-72, 2 NRC 922, 925 (1975).

⁴⁴ Squire Affidavit at 4; Minutes of the Washington Public Power Supply System Special Executive Board Meeting, April 5, 1982, at 4-6. A copy of these minutes is attached as Attachment F to the Squire Affidavit.

3. The Supply System instruct its staff to prepare a budget and financing plan consistent with these recommendations.⁴⁵

This recommendation was made in response to an April 6, 1982, request from the Supply System Executive Board seeking advice as to what construction and financing schedules for WNP-1, WNP-2, and WNP-3 BPA would approve for fiscal year 1983.⁴⁶

Several members of the Executive Board expressed reluctance during the meeting to accept Mr. Johnson's recommendation regarding WNP-1 and inquired as to other options. The Executive Board also agreed to seek an independent review of the assumptions and methodology used by BPA in making its recommendation regarding WNP-1.⁴⁷

On April 23, 1982, Mr. Johnson replied by letter to the question of whether he would consider alternatives to his recommendations, as follows:

- 45 April 19, 1982 letter from Peter T. Johnson, Administrator, Bonneville Power Administration to Mr. Stanton H. Cain, Chairman, Executive Board, Washington Public Power Supply System. A copy of this letter is attached as Attachment G to the Squire Affidavit.
- 46 Squire Affidavit at 5.
- 47 Squire Affidavit at 4-5; Minutes of the Washington Public Power Supply System Executive Board, April 19, 1982, at 2-8. A copy of these minutes is attached as Attachment H to the Squire Affidavit.

I sincerely believe that the program outlined in my recommendation . . . is the only prudent course of action at this time. I could not in good conscience approve a budget presentation or a financing plan inconsistent with this program. I again urge you and the other members of the Board to embrace this plan and to instruct the Staff to proceed accordingly.⁴⁸

Both the Board of Directors and the Executive Board of the Licensee then commenced a series of meetings to consider the future construction schedule of WNP-1. On April 23, the Executive Board convened and was advised of the April 23 BPA letter as well as other aspects of the recommendation to defer WNP-1. Following a discussion of these matters, it voted to instruct the acting managing director of the Licensee to prepare alternatives to the BPA recommendation.⁴⁹ In addition, the Board of Directors met that day to decide the course of future financing for WNP-1.⁵⁰

- 48 April 23, 1982, letter from Peter T. Johnson, Administrator, Bonneville Power Administration, to Mr. John J. Welch, Chairman, Finance Committee, Washington Public Power Supply System at 1. A copy of this letter is attached as Attachment I to the Squire Affidavit.
- 49 Squire Affidavit at 5-6; Minutes of Washington Public Power Supply System Special Executive Board Meeting, April 23, 1983, ("April 23 Executive Board Minutes") at 2-14. A copy of these minutes is attached as Attachment O to the Squire Affidavit.
- 50 Minutes of Washington Public Power Supply System Regular Board of Directors' Meeting, April 23, 1983 ("April 23 Board of Directors Minutes") at 9. A copy of these minutes is attached as Attachment N to the Squire Affidavit.

Four days later these meetings resumed. The Board of Directors was briefed on the matter of WNP-1 by the Chairman of the Finance Committee of the Executive Board.⁵¹ Both the Board of Directors and the Executive Board then heard public comment on various alternatives to the BPA recommendation which had been developed by the Supply System Staff in accordance with the earlier instructions of the Executive Board.⁵² Such alternatives all involved a temporary reduction in cash flow by slowing down construction for WNP-1 and WNP-3 without affecting target schedules; the sale of certain nuclear fuel assets to increase available capital; and a further increase of capital by an increase in the size of the proposed bond sale then anticipated for May, 1982.⁵³

On April 29, the Board of Directors and Executive Board reconvened. Both were advised in detail of the alternatives developed by the Staff of the Licensee.⁵⁴ Following discussion of these alternatives, Mr. Johnson read from his April 29 letter to the Licensee. Mr. Johnson stated that he could not approve moving forward on

⁵¹ April 23 Board of Directors Minutes at 9.

⁵² Id. at 10; April 23 Executive Board Minutes at 19-20.

⁵³ The alternatives to the BPA recommendation prepared by the Licensee are attached as Attachment J to the Squire Affidavit.



⁵⁴ April 23 Board of Directors Minutes at 11-12; April 23 Executive Board Minutes at 21.

the basis of any alternatives presented or financing plan or bond resolution which was inconsistent with the original recommendation. He further urged again that the Board embrace the BPA recommendation.⁵⁵ Following additional discussion, the Executive Board adopted Executive Board Resolution No. 71, "A Resolution Directing a Financing and Construction Program for Projects 1, 2 and 3 and an Extended Construction Delay for Project 1."⁵⁶ The Board of Directors concurred with this resolution.⁵⁷ Following these events, the Licensee sought the construction permit extension challenged here.⁵⁸

The foregoing sequence of events demonstrates that the delay in construction of WNP-1 was for a valid business purpose, and thus establishes good cause for extending WNP-1 until 1991. Licensee has established that

- The financing of construction for WNP-1 is through the sale of bonds;



-  ²
55 April 29, 1987, letter from Peter T. Johnson, Administrator, Bonneville Power Administration, to Mr. Stanton H. Cain, President, Board of Directors, Washington Public Power Supply System. A copy of this letter is enclosed as Attachment K to the Squire Affidavit.
-  ²
56 April 23, 1987, Executive Board Minutes at 25-30; Squire Affidavit at 6. A copy of Executive Board Resolution No. 71 is attached as Attachment L to the Squire Affidavit.
- 57 Squire Affidavit at 8; Board of Directors Resolution No. 1221, "A Resolution Directing a Financing and Construction Program for Projects 1, 2 and 3 and an Extended Construction Delay for Project 1;" April 23, 1983, Board of Directors Minutes at 16-18. A copy of Board of Directors Resolution No. 1221 is attached as Attachment M to the Squire Affidavit.
- 58 Squire Affidavit at 8.

NR

- BPA has the authority to disapprove a bond resolution needed to proceed with the sale of bonds;
- BPA recommended that WNP-1 be deferred for two to five years;
- Licensee developed alternatives to the BPA recommendation;
- BPA advised Licensee that none of these alternatives was acceptable; that the BPA recommendation was the only prudent course of future conduct; and that it would not approve any financing plan inconsistent with its recommendation;
- As a result, Licensee decided to defer the construction of WNP-1 recognizing that BPA would not permit the sale of bonds needed to continue construction of the facility.



In short, Licensee deferred construction of WNP-1 because of its temporary inability to sell bonds and thereby to finance the continued construction of WNP-1. This action, taken for valid business reasons, clearly provides good cause for an extension of the WNP-1 construction permit until 1991.

In spite of these facts, intervenor asserts that a showing of good cause has not been made. As can best be determined, intervenor first claims that the reason offered by Licensee to support a showing of good cause, viz., the BPA recommendation to defer construction, is not in fact the reason why Licensee deferred construction of

WNP-1 and requested an extension of its construction permit. Some of the reasons offered by intervenor to explain why WNP-1 was deferred are as follows:

WPPSS had a choice to either defer WNP-1 or WNP-3. Even though construction on WNP-1 was ahead of WNP-3 and the construction permit on WNP-3 does not expire until 1986 WNP-1 was chosen because (1) private utilities were involved in WNP-3 and would not agree to deferral of that plant and (2) WNP-3 is located in Western Washington where there is strong anti-nuclear sentiment making the restart of WNP-3 more difficult. Furthermore, there is no need for the power from WNP-1 or WNP-3 now or at any time in the future nor will there ever be adequate financing for the projects.⁵⁹

This claim is meritless. First of all, it totally ignores the relationship between the Licensee and BPA. Intervenor simply misses the point when it asserts, given that BPA may have considered these implications of deferral of WNP-1, that the Licensee failed to disclose the true and correct reasons for deciding to defer WNP-1. Regardless of the basis for the BPA recommendation that WNP-1 be deferred, once that recommendation was made and reaffirmed, and BPA indicated that it would not approve the sale of bonds to continue the construction of WNP-1,

⁵⁹ Coalition for Safe Power Responses to Applicant's First Set of Interrogatories, May 23, 1983, ("Intervenor Response to Licensee's First Set of Interrogatories") at Interrogatory 17.

the deferral of construction was inevitable.⁶⁰ As a result, Licensee based its decision to defer WNP-1 and its showing of good cause on the BPA recommendation. Neither was premised on the underlying basis of the recommendations concerning WNP-1 developed by BPA, as intervenor seems to believe.⁶¹

60 This is not to say that there are no means by which intervenor may participate in need for power determinations in the Pacific Northwest. In accordance with 16 U.S.C. 839e, BPA is required to hold public hearings on rates which BPA proposes to establish. During this hearing, any person may submit written and oral materials and may even be provided a reasonable opportunity for cross-examination. In addition, the Pacific Northwest Electric Power Planning and Conservation Act (16 U.S.C. § 839-839h) requires the development of a comprehensive regional conservation and electric power plan, which is to guide BPA in carrying out its duties. The plan, developed by the Pacific Northwest Electric Power and Conservation Council, cannot be adopted or amended without public comment (16 U.S.C. § 839b(d)(i)). Therefore, numerous public proceedings are available for intervenor to challenge need for power determinations.

61 This factual situation does not differ materially from where an investor owned utility is not given adequate rate relief to allow it to continue financing the construction of a power reactor or from where a brokerage house declines to market securities a utility seeks to issue to finance construction of a facility. In these cases, just as in the case at bar, access to financing would be denied for reasons beyond the control of the construction permit holder, and as a result the "good cause" showing of Section 50.55(b) would be made. WNP-2, ALAB-722, supra, 17 NRC at 552. Moreover, just as in those situations NRC would not inquire into the underlying rationale of the rate commission or brokerage house, so here the Licensing Board may not inquire into the underlying rationale of the BPA recommendation concerning WNP-1. This is particularly true in this proceeding where the Commission has already ruled that need for power and other environmental issues are outside the scope of construction permit amendment proceedings. WNP-1 and WNP-2, CLI-82-29, supra, 16 NRC at 1229.

Intervenor also argues that WNP-1 was deferred because there will never be any need for the power to be generated by WNP-1, and because the power generated by WNP-1 would be uneconomical.⁶² Again, intervenor misfocuses on an issue which is not relevant to why Licensee deferred WNP-1 and to whether Licensee established good cause for extending its construction permit. Licensee is authorized to acquire, construct and operate works, plants and facilities for the generation and/or transmission of electric power and energy.⁶³ Other entities in the Pacific Northwest, viz., BPA, and the Pacific Northwest Electric Power and Conservation Council, are charged by federal law with the task of predicting future load growth and energy demand.⁶⁴ In this case, BPA reached its own conclusion as to what future electrical demand would be and recommended that the Licensee modify its construction plans accordingly. Because BPA support is essential to financing the construction of WNP-1,⁶⁵ the Licensee had to defer WNP-1 for valid business purposes. Thus, whether Licensee established good cause is not a

62 Intervenor Response to Licensee's First Set of Interrogatories at Interrogatory 17; Intervenor Response to Licensee's Second Set of Interrogatories, August 26, 1983, at Interrogatory 4.

63 See notes 31-34, supra, and accompanying text.

64 Squire Affidavit at 2; See note 60, supra.

65 See notes 39-43, supra, and accompanying text.

question of whether power generated from WNP-1 will be needed. Rather, it is whether, given the recommendation by BPA that power from WNP-1 was not needed immediately, Licensee could finance continued construction of WNP-1. Therefore, even if intervenor could support its numerous and conflicting claims regarding need for power,⁶⁶ doing so would not change the fact that Licensee was unable to arrange financing for the construction of WNP-1 given the BPA recommendation.

This fundamental misunderstanding is also present in other allegations intervenor made in support of its contention that Licensee did not disclose the true and correct reasons why it was seeking an extension of the WNP-1 construction permit. For example, intervenor asserts that WNP-1 was deferred because the construction of WNP-1 has been mismanaged.⁶⁷ In addition, intervenor expressed its belief that Licensee deferred WNP-1 in part because of Initiative 394, which provided for certain

66 For example, in its "Coalition for Safe Power Amended Contention No. 2, February 11, 1983," at 2-3, intervenor suggested that the Licensee could not rely on need for power considerations in support of its construction permit extension request because certain load projections showed that WNP-1 would be needed prior to the dates of completion. However, in its response to Interrogatory 17 of Licensee's First Set of Interrogatories, intervenor stated in contradiction that "there is no need for the power from WNP-1 now or at any time in the future. . . ."

67 Intervenor's Response to Licensee's Second Set of Interrogatories, August 26, 1983, at Interrogatory 4.

voter approvals before Licensee could issue bonds to finance the construction of WNP-1.⁶⁸ Aside from the totally baseless nature of these assertions, such claims do not change the fact that BPA recommended a construction deferral of WNP-1; that as a result of its recommendation Licensee deferred construction of WNP-1; and that consequently, an extension of the construction permit for WNP-1 was necessary.

In addition to asserting that Licensee has failed to disclose the true and correct reasons why it decided to defer WNP-1, intervenor also claims that Licensee could have in fact continued the construction of WNP-1 through other sources of financing. These sources of financing, according to intervenor, were BPA (which intervenor claims was continuing to fund WNP-3) and project participants (which intervenor asserts were bound to finance construction in any event under the Net Billing Agreements.)⁶⁹

This claim is patently incorrect. BPA itself recommended that WNP-1 be deferred, even after the Licensee presented various alternatives to that

68 Intervenor's Updated Responses to Licensee's First Set of Interrogatories, June 22, 1983, at Interrogatory 17.

69 Intervenor's Response to Applicant's Second Set of Interrogatories at Interrogatory 13.

recommendation.⁷⁰ In addition, upon concluding that the continued construction of both WNP-1 and WNP-3 was not prudent, BPA specifically weighed the relative merits of deferring WNP-3 as opposed to WNP-1 and concluded that on balance WNP-1 should be deferred.⁷¹ Therefore, it is unrealistic to assert, as does intervenor, that BPA would have been willing to finance the continued construction of WNP-1.

Moreover, intervenor misreads the Net Billing Agreements when it asserts that the obligation of participants in WNP-1 to finance construction encompasses financing plant completion independent of BPA. The Net Billing Agreements provide that each participant shall make payments to Licensee under the applicable Net Billing Agreement, and that each participant shall receive a credit from BPA against energy costs incurred in the purchase of energy from BPA. Thus, BPA is an integral party to the Net Billing Agreements and cannot be circumvented by other parties to those Agreements through some other funding arrangement.

Additionally, the Net Billing Agreements provide only that the payments by participants shall not be conditioned upon the performance or non-performance by the Licensee,

⁷⁰ See note 55, supra, and accompanying text.

⁷¹ Analysis of Resource Alternatives at 7. A copy of this document is attached to Attachment P of the Squire Affidavit.

BPA or any other participant.⁷² The agreements do not provide that the participants must finance the completion of WNP-1. Thus, the "hell or high water" clause upon which intervenor relies provides only that the outstanding bonds used to finance construction will be repaid despite any eventuality.

One final observation is appropriate. Intervenor may be suggesting that because Licensee did not in its showing of good cause identify every single factor contributing to the construction delay at WNP-1, the Licensee was somehow deficient in failing to disclose the true and correct reasons why WNP-1 was deferred and for this reason Licensee did not satisfy the good cause requirement. If intervenor is in fact taking this position, it is unjustifiable. Section 50.55(b) does not require Licensee to complete any specific form of application for a construction permit extension. Nor does it require the Licensee to perform any particular analysis or detailed evaluation of the reasons supporting the requested extension.⁷³ All that it requires is for the Licensee to show that acts beyond its control necessitated the

72 Section 7(b) of the Net Billing Agreement.

73 Washington Public Power Supply System (WNP Nos. 4 and 5), DD-82-6, 15 NRC 1761, 1764-65 (1982). Licensee notes that intervenor initiated this show cause proceeding and, therefore, should be familiar with the Director's Decision issued therein.

construction permit extension sought. As described in detail above, Licensee met this obligation and the NRC Staff so found in issuing the construction permit amendment.⁷⁴

Moreover, as a factual matter, the BPA recommendation was the only reason that Licensee deferred the construction of WNP-1. While BPA may have had numerous reasons for making its recommendation, once that recommendation was made, Licensee had no real choice but to seek the instant construction permit extension. Regardless of the extent to which intervenor would like to question the wisdom or the underlying basis of the BPA recommendation, the fact remains that such recommendation was made. This is not the proper forum in which to ventilate BPA's reasons for its recommendation. The issue here is whether Licensee, when faced with that recommendation, had a valid business reason (the inability to finance the project) to follow it. In view of the foregoing, the conclusion is inescapable that Licensee had a valid business reason for deferring construction.

In conclusion, Licensee submits that for the reasons set forth above, Licensee satisfied the good cause showing required by Section 50.55(b). Further, there can be no

74 Safety Evaluation for Extension of the Latest Construction Completion Date for Washington Public Power Supply System's Nuclear Project No. 1, Docket No. 50-460, June 16, 1983, at 2.

material facts in dispute as to whether such a showing was made. The Licensing Board should so find, and issue an Order dismissing that element of intervenor's contention which seeks to challenge the good cause showing made by Licensee.

C. Reasonableness of Construction Permit Extension

Scope of the Reasonableness Inquiry. The second element of intervenor's contention addresses whether the proposed construction permit is for a reasonable period of time. Section 185 of the Act provides that "unless the construction . . . of the facility is completed by the completion date, the construction permit shall expire, and all rights thereunder be forfeited, unless upon good cause shown, the Commission extends the completion date." To implement this authority, the Commission promulgated 10 C.F.R. § 50.55(b), which states that "upon good cause shown the Commission will extend the completion date [of a construction permit] for a reasonable period of time [emphasis added]." Accordingly, the scope of the reasonableness inquiry is defined by both Section 185 of the Act and 10 C.F.R. § 50.55(b)

Section 185 does not on its face reveal why the earliest and latest construction dates are to be included in every power reactor construction permit. However, the legislative history of that provision indicates that the

underlying purpose for such requirement was to assure the proper allocation by the federal government of special nuclear material between the civilian nuclear power program and the defense program when the expectation was that the government would own all special nuclear material, regardless of where used.⁷⁵ By knowing from outstanding construction permits when power reactors would be completed, the federal government would be able to assure that the fuel needed for such facilities would be available.

There is no indication in the legislative history of Section 185 that the inclusion of such dates in a construction permit was intended to place any time limits on the construction of power reactors and, therefore, on the duration of construction permit extensions, as intervenor suggests.⁷⁶ If anything, Congress was sensitive to the fact that the civilian electric utility industry would be making considerable investments in power reactors. Implicit in this sensitivity is the recognition that the electric utility industry would want its investment to yield results (electrical energy) within the

⁷⁵ WNP-2, ALAB-722, supra, 17 NRC at 553 n. 9.

⁷⁶ Coalition for Safe Power Amended Contention No. 2, Feb. 11, 1983, at 3.

shortest period of time.⁷⁷ As a result, no incentive from Congress in the form of construction completion deadlines was needed to assure prompt construction of power reactors.

Nor does the reference in 10 C.F.R. § 50.55(b) to a reasonable period of time establish such limits. There is no meaningful "legislative history" accompanying this rule, which was promulgated in 1956, and certainly no basis to conclude that the Commission intended when it promulgated Section 50.55(b) to impose deadlines by which power reactors were to be constructed. The only possible inference which can be drawn from the Statement of Considerations accompanying the rule is merely that Section 50.55(b) was intended to implement authority granted NRC (then the Atomic Energy Commission) in Section 185 of the Act.⁷⁸

Consequently, Licensee submits that in accordance with past NRC practice, the inquiry into the reasonableness of a construction permit extension should focus on whether the extension sought is for a reasonable period of time given the reasons offered by a licensee in support of its showing of good cause. It should not, as

⁷⁷ See Power Reactor Development Co. v. International Union of Electrical Radio and Machine Workers, AFL-CIO, 367 U.S. 396, 412 (1961).

⁷⁸ 21 Fed. Reg. 335 (1956).

intervenor suggests, focus on whether the total period of time authorized to construct a power reactor given the construction permit extension is reasonable. For example, if a licensee relies upon a one-year labor dispute to establish that its construction permit should be extended, the reasonableness of the extension should be measured against the length of the dispute. Similarly, if design changes required by NRC slow construction by six months thereby triggering a need to extend the construction permit, the reasonableness of the extension should be evaluated in terms of the time needed to complete the design changes.

This approach was taken by the Licensing Board in Vogtle. There the Licensing Board concurred with the evaluation by the Staff when it examined whether the length of the delay experienced by the Licensee, "and thus whether the amount of time requested by the Licensee [was] reasonable under the circumstances."⁷⁹

Moreover, the past practice of the NRC Staff in implementing 10 C.F.R. § 50.55(b) has been to evaluate the reasonableness of the requested construction permit extension in terms of whether it is commensurate with the delays resulting from the good cause cited by the licensee in support of its extension request. For example, on

⁷⁹ Vogtle, LBP-77-2, supra, 5 NRC at 274.

December 21, 1981, the Staff issued an Order extending the latest construction completion date for the Calloway Plant, Unit No. 1 for a number of reasons, including lack of financing. In its evaluation of the construction permit extension request, the Staff specifically assessed the duration of the request in terms of whether its reasonableness was commensurate with the factors cited by the licensee there in support of its showing of good cause.⁸⁰ A similar inquiry was undertaken in response to a construction permit extension request sought for Waterford 3, which was also triggered in part by difficulties in financing.⁸¹

At bottom, the scope of the inquiry into the reasonableness of the construction permit extension is a narrow one. It involves an assessment of whether the length of the construction permit extension sought by the licensee is commensurate with the factors relied upon in establishing good cause for the requested construction

⁸⁰ Evaluation of Request for Extension of Construction Permit No. CPPR-139 for the Calloway Plant, Unit 1, Docket No. STN 50-483, Dec. 21, 1981 at 2.

⁸¹ Evaluation of Request for Extension of Construction Permit No. CPPR-103 for the Waterford Steam Electric Station, Unit No. 3, Docket No. 50-382, Nov. 9, 1981 at 2. Because this evaluation and the evaluation in Calloway, supra, n. 80 constitute official NRC records, the Licensing Board may afford them the same weight as an affidavit even though they are not formally part of the record in this proceeding. See Wisconsin Electric Power Co. (Point Beach Nuclear Plant, Unit 2), ALAB 90, 6 AEC 11, 15 n. 4 (1973).

permit extension. It does not involve an assessment of whether the total period of time needed to complete construction, including the construction permit extension, is unreasonable.⁸²

Licensee Showing as to Reasonableness. The showing made by Licensee as to the reasonableness of the requested construction permit in this proceeding is clear. As discussed above, Licensee relied upon the BPA recommendation that WNP-1 be deferred for from two to five years for its showing of good cause. The length of the construction permit extension requested was from two to five years. Therefore, because the length of the

⁸² Although the Appeal Board in WNP-2, ALAB-722, supra, 17 NRC at 553, stated that the ultimate good cause determination encompasses a judgment as to why the plant should be built and is not to rest solely upon a judgment as to the Licensee's fault for delay, it does not follow that the Licensing Board must consider the total period of time authorized to construct WNP-1 when assessing the reasonableness of the construction permit, as intervenor apparently argues. Intervenor's Updated Responses to NRC Staff's First Set of Interrogatories at Interrogatory 11(b). First of all, the Appeal Board suggested that such "ultimate" determination need be made only after a properly framed contention is proven which establishes that a construction delay was "dilatatory" (i.e., intentional and without a valid business purpose). WNP-2, ALAB-722, supra, 17 NRC at 553. As set forth above, this is not the case here. Moreover, even in the event that such an inquiry were to be undertaken, it should encompass only the consideration of whether the harm occasioned by not granting the construction permit extension outweighs the policy considerations reflected in that aspect of Section 185 requiring a construction permit to include the earliest and latest construction completion dates. In view of previous Commission and Appeal Board decisions, such inquiry clearly should not encompass the litigation of health, safety and environmental issues. See, e.g., WNP-1 and WNP-2, CLI-82-29, supra, 16 NRC at 1228-29.

extension is commensurate with the factor relied upon by Licensee in establishing good cause, the construction permit extension is for a reasonable period of time.

Intervenor nevertheless raises several arguments in support of its claim to the contrary. First, it makes a number of assertions to the effect that extending the WNP-1 construction permit until 1991 is unreasonable because it will stretch out the total period of construction over too great a time. For example, intervenor asserts the following:

What we mean by a "reasonable period of time" is that the extension beyond the original date falls within a period of one to two years⁸³

* * * * *

Six to nine years cannot have been contemplated as a reasonable period of time by the writers of 10 C.F.R. 50.55(b).⁸⁴

The short answer to these claims is that neither Section 185 of the Act nor 10 C.F.R. § 50.55(b) imposes any specific deadline by which time construction must be completed. Nor do these provisions establish any arbitrary limitation ("a period of 1 to 2 years"⁸⁵) on the

83 Intervenor's Responses to Licensee's First Set of Interrogatories at Interrogatory 20.

84 Coalition for Safe Power Amended Contention No. 2 -- Feb. 11, 1983, at 3.

85 See note 83 and accompanying text.

maximum permissible extension of a construction permit. It is, therefore, not surprising that when asked to disclose its basis for this assertion intervenor was unable to do so.⁸⁶

Intervenor next asserts that the power from WNP-1 will never be needed; that WNP-1 should in fact be cancelled; and that for this reason the duration of the construction permit extension for WNP-1 is unreasonable.⁸⁷ Such claim is a transparent attempt on the part of intervenor to litigate need for power and other related environmental issues within the framework of this construction permit extension proceeding. However, the Commission has already ruled in this proceeding that need for power and other health, safety or environmental issues should not be considered in construction permit proceedings.⁸⁸ Intervenor should not be permitted to circumvent this ruling by attempting to frame a need for power issue in terms of whether a construction permit extension is of a reasonable duration.

86 Intervenor's Responses to NRC Staff's First Set of Interrogatories, May 24, 1983, at Interrogatory 16.

87 See, e.g., Intervenor's Updated Response to NRC Staff's First Set of Interrogatories, July 13, 1983, at Interrogatory 12.

88 WNP-1 and 2, CLI-82-29, supra, 16 NRC at 1229.

Moreover, the function of Licensee is to construct and operate WNP-1, while BPA is charged with marketing the power from that facility.⁸⁹ In addition, BPA, and, more recently, the Pacific Northwest Electric Power and Conservation Council are responsible for developing future demand projections.⁹⁰ Licensee has no control over the content of future demand predictions, including those developed by BPA. Therefore, litigating the validity of such demand predictions would not even be logically related to the question of whether Licensee established good cause for its construction permit extension.

Further, the need for power projections intervenor wishes to challenge were developed by another federal agency (BPA) acting within the scope of its authority and expertise. Therefore as a matter of comity between federal government agencies, NRC should not become embroiled in a dispute which would as a practical matter require BPA to defend the validity of its demand predictions to NRC, particularly in this construction permit amendment proceeding as to which the Commission and Appeal Board have ruled that environmental (e.g., need for

89 Squire Affidavit at 2. WNP-1 is a federal base system resource (16 U.S.C. § 839a (10)(B)) and as such is part of the federal system of electrical generating and transmission facilities under the jurisdiction of BPA (16 U.S.C. §§ 838-838k).

90 16 U.S.C. § 839b; Squire Affidavit at 2; See note 60, supra.

power) issues are not cognizable.⁹¹ Moreover, as indicated earlier, there are a number of other means available to intervenor to litigate the need for power generated from WNP-1.⁹²

Intervenor next asserts that for a number of reasons Licensee has failed to show that WNP-1 will in fact be completed by 1991 and that absent such showing the construction permit extension request is not for a reasonable period of time. It claims that such a showing is needed because

there is a safety and environmental significance to the provision of the [Atomic Energy Act] which requires there to be a beginning and ending date for construction. Numerous extensions if granted, would challenge the validity of the construction permit and the cost-benefit analyses under the National Environmental Protection [sic] Act. There is a safety significance to building the plant in a timely manner thereby avoiding material degradation, etc.⁹³

This claim by intervenor is incorrect. First, it reflects the fundamental misunderstanding of intervenor as to the scope of the inquiry into the reasonableness of a construction permit extension. For the reasons set forth above, that inquiry concerns whether the extension sought

91 See, e.g., WNP-1 and WNP-2, CLI-82-29 supra, 16 NRC at 1229.

92 See note 60, supra.

93 Coalition for Safe Power Responses to Licensee's Second Set of Interrogatories, August 26, 1983, at Interrogatory 20.

is commensurate with the reasons cited by Licensee in support of its showing of good cause. It does not encompass an examination into whether the time needed to complete construction has passed some undefined outer limit.

Second, if intervenor's formulation of the issue were correct and it was appropriate to evaluate the construction permit extension in terms of cost-benefit and material degradation, construction permit extension proceedings would necessarily encompass the periodic relitigation of broad health, safety and environmental issues. Indeed, findings on such issues would be essential in ruling on the construction permit extension request. However, in WNP-1 and WNP-2, the Commission specifically ruled that health, safety and environmental issues are outside the scope of construction permit extension proceedings.⁹⁴ It follows, therefore, that intervenor may not now raise such issues under the guise of challenging the reasonableness of the requested construction permit extension.

Third, intervenor's assertion that Licensee must in its showing of reasonableness predict when in fact the construction of WNP-1 will be completed is totally without foundation. Neither Section 185 nor Section 50.55(b)

⁹⁴ WNP-1 and WNP-2, CLI-82-29, supra, 16 NRC at 1228-29.

imposes such a requirement. To the contrary, by expressly providing for construction permit extensions upon a showing of good cause, those provisions reflect that it may be impossible to predict when in fact a plant will be completed.

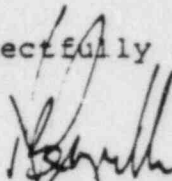
The final claim intervenor raises is that because of past management and financial difficulties, it is unlikely that WNP-1 can be completed by 1991 and for this reason the duration of the construction permit extension is unreasonable.⁹⁵ Again, intervenor misconceives the scope of the reasonableness inquiry. As established above, that inquiry should focus on whether the length of the construction permit extension sought was commensurate with the factors causing the delay. Such is the case here, and intervenor's claims regarding management and financing do not alter this fact. Accordingly, because there are no material facts in dispute as to the reasonableness of the construction permit request sought here, this aspect of intervenor's contention should be rejected.

95 See Coalition for Safe Power Responses to Applicant's First Set of Interrogatories, May 23, 1983, at Interrogatory 22 and Intervenor's Second Updated Responses to Applicant's First Set of Interrogatories, July 13, 1983, at Interrogatory 11.

IV. CONCLUSION

For the foregoing reasons, there are no material facts in dispute. Therefore, the Board should grant this Motion for Summary Disposition and dismiss the proceedings.

Respectfully submitted,



Nicholas S. Reynolds
Sanford L. Hartman
DEBEVOISE & LIBERMAN
1200 Seventeenth St., N. W.
Washington, D. C. 20036

Counsel for Licensee

November 14, 1983

2

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC ENERGY
AND LICENSING BOARD

In the Matter of)
)
WASHINGTON PUBLIC POWER) Docket No. 50-460-CPA
SUPPLY SYSTEM)
)
(WPPSS Nuclear Project No. 1))

AFFIDAVIT OF ALEXANDER SQUIRE
REGARDING THE CONSTRUCTION
DEFERRAL AT WNP-1

I, Alexander Squire, being first duly sworn, do depose and state as follows: I am Deputy Managing Director of the Washington Public Power Supply System ("Licensee" or "Supply System"). As such, I am familiar with the circumstances surrounding the decision by the Licensee to defer construction of WNP-1 and to request an extension of the WNP-1 construction permit as a result of this deferral. A statement of my educational and professional qualifications is attached as Attachment A to this affidavit. This affidavit addresses the causes of the construction deferral at WNP-1 which resulted in the Licensee seeking an extension until 1991 of the WNP-1 construction permit.

~~83-1-16-169~~

I. The Relationship Between
the Licensee, Project
Participants and the Bonneville
Power Administration

The Licensee is a municipal corporation and joint operating agency, organized under the laws of the State of Washington (RCW Ch. 43.52). It is authorized to acquire, construct and operate works, plants and facilities for the generation and/or transmission of electric power and energy. It does not develop electric demand forecasts. That function is performed by a number of other entities in the Pacific Northwest, including the Bonneville Power Administration and the Pacific Northwest Electric Power and Conservation Council.

The Supply System now has under construction three nuclear projects, WNP-1, WNP-2 and WNP-3. The financing of WNP-1 has been solely through the sale of bonds. Each project is financed separately and the Licensee is obliged under the terms of the separate Bond Resolutions relating to each project to use bond proceeds solely to pay costs or obligations of the project for which the bonds were issued. A copy of the Bond Resolution for WNP-1, Supply System Board of Directors Resolution No. 769, is attached as Attachment B to this affidavit.

The Licensee is reimbursed for the cost of each of its projects, including debt service, by the participants in that project. With respect to WNP-1, there are 104

participants all of which are statutory preference customers of the Bonneville Power Administration. Each of these participants entered into an identical Net Billing Agreement with the Licensee and BPA providing for the sale by the Licensee to each participant of its portion of the capability of WNP-1. The Net Billing Agreement further provides that the participant will assign its portion of the WNP-1 capability to BPA, which will then credit the wholesale power bills of this customer-participant in an amount sufficient to cover the amount it pays to the Licensee for its share of the annual costs (including debt service) of WNP-1. As a result of this agreement, BPA was assigned 100% of the capability of WNP-1. By way of example, a copy of one of the Net Billing Agreements for WNP-1 is attached as Attachment C to this affidavit.

In connection with the assignment to BPA of the capability of WNP-1, BPA and the Licensee entered into a Project Agreement in 1973, a copy of which is attached as Attachment D to this affidavit. Under Section 4 of the Project Agreement the Licensee agreed to construct WNP-1. However, the project agreement grants BPA substantial construction oversight responsibility and contract approval authority. Under Section 5(a) of the Project Agreement the Licensee has an obligation to use its best efforts to issue and sell bonds to finance the

construction costs of the project. However, Section 5(b) provides that all bond sales are subject to approval by BPA. The respective roles of BPA and Licensee are further clarified in the April 25, 1980, Memorandum of Understanding, a copy of which is attached as Attachment E to this affidavit. Because the construction of WNP-1 is financed entirely through the sale of bonds, BPA controls the pace of construction at WNP-1 by virtue of its authority to withhold approval for such bond sales.

II. Events Leading Up to the
Decision by Licensee to
Seek an Extension of the
Construction Permit for WNP-1

In April, 1982, BPA published a draft power load forecast, which was presented to the Supply System Executive Board at a special meeting held on April 5, 1982. A copy of the minutes for this meeting is attached as Attachment F to this affidavit. During the meeting the BPA Administrator, Mr. Peter Johnson, stated that the draft power load forecast showed that WNP-1, WNP-2 and WNP-3 were needed in the region, although short-term surpluses of electricity could occur prior to 1990. Mr. Johnson stated that he was not prepared to speculate as to the influence of the report on the future construction schedules of WNP-1, WNP-2 or WNP-3.

During an April 19, 1982, special meeting of the Executive Board, Mr. Johnson recommended that the WNP-1 construction completion date be delayed for a period of up to five years. The recommendation was made formally in his April 19, 1982, letter to the Chairman of the Executive Board, a copy of which is attached as Attachment G to this affidavit. The BPA recommendation was made in response to an April 6, 1982, request from the Finance Committee of the Executive Board seeking advice as to what construction and financing schedules for WNP-1, WNP-2 and WNP-3, BPA would approve for Fiscal Year 1983.

Several members of the Executive Board expressed reluctance during the meeting to accept Mr. Johnson's recommendation and inquired into the feasibility of deferring construction on a project other than WNP-1. The Executive Board also agreed to seek an independent review of the assumptions and methodology used by BPA in making its recommendations regarding WNP-1. In addition, one member of the Executive Board specifically asked Mr. Johnson if the Licensee could present alternatives to him concerning the delay of WNP-1. A copy of the minutes for the April 19, 1982, Executive Board meeting is attached as Attachment H to this affidavit.

On April 23, 1982, Mr. Johnson replied by letter to the question of whether he would consider alternatives to his recommendations. In his reply, directed to the Chairman of the Finance Committee of the Executive Board, he stated as follows:

I sincerely believe that the program outlined in my recommendation . . . is the only prudent course of action at this time. I could not, in good conscience, approve a budget presentation or a financing plan inconsistent with this program. I again urge you and the other members of the Board to embrace this plan and to instruct the staff to proceed accordingly.

A copy of this letter is attached as Attachment I to this affidavit.

Both the Supply System Board of Directors and the Executive Board then commenced a series of meetings on April 23 to consider the future construction schedule of WNP-1. During these meetings, the Executive Board voted to instruct the Managing Director of the Supply System to prepare alternatives to the BPA recommendation. He and his staff did so and presented them to BPA. A copy of this "Presentation of Alternatives," dated April 26, 1982, is attached as Attachment J to this affidavit.

On April 29, 1982, the Board of Directors and the Executive Board resumed their meetings. During these meetings, Mr. Johnson read his letter to the President of

the Board of Directors dated April 29, 1982. In it, Mr. Johnson stated that he "could not in good conscience approve moving forward on the basis of any alternatives presented or financing plan or bond resolution which was inconsistent with the original recommendation." He further urged again that the Board accept the BPA recommendation and instruct the Supply System Staff to take the necessary steps for its implementation. A copy of Mr. Johnson's April 29, 1982, letter is attached as Attachment K to this affidavit.

Following additional discussion, the Executive Board adopted Executive Board Resolution No. 71, "A Resolution Directing a Financing and Construction Program for Projects 1, 2 and 3 and an Extended Construction Delay for Project 1." The Resolution directed the Managing Director to implement an extended construction delay of WNP-1 consistent with the recommendations of BPA. The Board of Directors in Resolution No. 1221 concurred with the action of the Executive Board. Copies of the Executive Board Resolution No. 71 and the Board of Directors Resolution No. 1221 are attached as Attachments L and M respectively to this affidavit. In addition, copies of the minutes for the April 23 meetings of the Board of Directors and Executive Board are enclosed as Attachments N and O to this affidavit.

On April 30, 1982, Licensee advised the NRC by letter of its decision to accept the BPA recommendation to defer WNP-1. It noted in this regard that the Board voted to adopt the BPA recommendation because BPA support is essential to the financing of WNP-1, 2 and 3. A copy of this letter is attached as Attachment P to this affidavit. In January, 1983, Licensee also requested that its pending construction permit extension request be modified to include 1991 as the latest construction completion date for WNP-1. It cited in support of its request the BPA recommendation that WNP-1 be deferred for from two to five years. A copy of the January request is attached as Attachment Q to this affidavit.

Alexander Squire
Alexander Squire

State of Washington)
County of Benton)

Subscribed and sworn to before me this 11th day of
November, 1983.

Shirley A. Reese
Notary Public
Residing at Kennewick.

WASHINGTON PUBLIC POWER SUPPLY SYSTEM

ALEXANDER SQUIRE
Deputy Managing Director

Responsible for assisting the Managing Director in managing the overall Construction and Operational Programs. Assumes the responsibilities of the Managing Director in his absence.

LENGTH OF SERVICE WITH SUPPLY SYSTEM: 3 Years, 4 Months

EDUCATION:

Massachusetts Institute of Technology; B.S., Electro-Chemical Engineering, 1939
Columbia University Executive Management Program, 1958

EXPERIENCE:

07/80 to Present	WASHINGTON PUBLIC POWER SUPPLY SYSTEM, Richland, WA Deputy Managing Director
11/72 to 02/79	WESTINGHOUSE ELECTRIC CORPORATION, Richland, WA President, Westinghouse Hanford - Responsible for the Hanford Engineering Development Laboratory and Fast Flux Test Facility.
11/45 to 10/71	WESTINGHOUSE ELECTRIC CORPORATION, Pittsburgh, PA
11/69 to 10/71	Director, Purchases & Traffic - Overall corporate direction of purchasing, traffic, corporate aircraft, trucking, and other activities for entire corporation.
05/62 to 10/69	General Manager, Plant Apparatus Division - Development and procurement of engineered components for nuclear navy. Establishment and management of spare parts program for all naval nuclear plants.
07/50 to 05/62	Project Manager, various navy nuclear plants, Bettis Atomic Power Laboratory - development, design, procurement of equipment, systems design, plant testing and crew training.
11/45 to 06/50	Section Manager, Materials Engineering Department - development of special alloys, processes and equipment for high technology applications.
02/42 to 10/45	U.S. ARMY, Watertown Arsenal Materials development for special war-time applications.
02/41 to 01/42	SULLIVAN MACHINERY CO., Michigan City, Indiana Special product development.
06/39 to 01/41	HANDY AND HARMAN, Bridgeport, CT Research metallurgist.

AWARDS:

War Department Meritorious Civilian Service - 1946
Westinghouse Order of Merit - 1958
Election to National Academy of Engineering - 1979