

*Final draft 6-29-83
✓ = I prepared.*

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

NRC STAFF RESPONSE TO COALITION FOR SAFE
POWER FIRST SET OF INTERROGATORIES TO NRC STAFF

I. INTRODUCTION

The NRC Staff hereby responds to Intervenor Coalition for Safe Power's (CFSP) interrogatories to the NRC Staff dated June 9, 1983. The Staff notes that it is under no obligation to respond since CFSP has not complied with 10 CFR § 2.720(h)(2)(ii). That section of the regulations requires that interrogatories to the Staff be filed with the presiding officer, who may require answers from the Staff after finding that answers are necessary to a proper decision in the proceeding and that answers are not obtainable from any other source. In the interest of expediting this proceeding, however, the Staff voluntarily provides this response. The Staff reserves its right to require that future discovery requests to it be submitted in compliance with 10 CFR § 2.720(h)(2)(ii).

The Staff's answers and objections to CFSP's interrogatories follow. Professional qualifications and affidavits of the Staff personnel responsible for the answers given are attached. The Staff moves for a protective order pursuant to 10 CFR §§ 2.740(c)(1),(4) with respect to

those interrogatories to which objections are provided. The grounds for the protective order sought are stated in each objection.

II. OBJECTIONS TO INTERROGATORIES AND
REQUESTS FOR PROTECTIVE ORDER

The Staff objects to the following interrogatories and requests a protective order, pursuant to 10 CFR §§ 2.740(c)(1),(4), directing that responses to these interrogatories need not be filed.

INTERROGATORY 24:

What do you believe would be a (maximum) reasonable period of time for extension of the construction completion date for WNP-1?

RESPONSE:

The Staff objects to Interrogatory 24 as it calls for speculation and is not relevant to the contention in this proceeding that the "request for extension of completion date to 1991 does not constitute a 'reasonable period of time' provided for in 10 CFR 50.55(b)." Staff has already stated that the requested amendment to the construction completion date is reasonable; to speculate as to how much time beyond the requested date would also be reasonable is not relevant to the proceeding.

INTERROGATORY 37:

What constitutes "good business sense" in decisions on nuclear plant deferral (sic)?

RESPONSE:

The Staff objects to Interrogatory 37 as it does not understand from where the quoted words "good business sense" are taken and

accordingly does not know in what context the words are being used. The Staff further objects on grounds of relevance since the language is not part of 10 CFR § 50.55 and therefore not the standard upon which the Staff's determination of good cause was based.

INTERROGATORY 38:

What constitutes "BPA support"?

RESPONSE:

The Staff objects to Interrogatory 38 as it does not understand from where the quoted words "BPA support" are taken and accordingly does not know in what context the words are being used.

INTERROGATORY 39:

How is "BPA support" recognized in the Initial Decision (LBP-75-72, 2 NRC 922) on the Construction Permit for WNP-1?

RESPONSE:

The Staff objects to Interrogatory 39 as it does not understand from where the quoted words "BPA support" are taken and accordingly does not know in what context the words are being used.

INTERROGATORY 44:

Was the construction of WNP-3 (Satsop) halted because of no need for its power?

- (a) If so, how does this affect the five-year deferral of WNP-1?
- (b) If not, what were the reasons and how will they affect the deferral of WNP-1?

RESPONSE:

The Staff objects to Interrogatory 44 as irrelevant to any issue in this proceeding since it inquires into a matter involving a plant not

the subject of this proceeding. In any event, it is beyond the Staff's knowledge as to why the construction of WNP-3 (Satsop) was halted.

INTERROGATORY 45:

Is the ultimate cost of power from WNP-1 a factor in the need for the plant? Should it be a factor in the business decisions affecting continued construction?

RESPONSE:

The Staff objects to Interrogatory 45 as irrelevant to any issue in this proceeding, since need for power is not an issue in this proceeding.

INTERROGATORY 46:

What is the Staff's position on the relationship between time and the deterioration of partially constructed facilities and equipment? Provide the basis for this position.

RESPONSE:

The Staff objects to Interrogatory 46 as irrelevant to any issue in this proceeding. This interrogatory raises a safety issue and is thus beyond the scope of this construction permit extension proceeding.

INTERROGATORY 48:

What levels of staffing is necessary at WNP-1 to maintain the construction site and equipment without deterioration?

RESPONSE:

The Staff objects to Interrogatory 48 as irrelevant to any issue in this proceeding. This interrogatory raises a safety issue and is thus beyond the scope of this construction permit extension proceeding.

III. RESPONSES TO INTERROGATORIES TO WHICH THE STAFF HAS NO OBJECTION

INTERROGATORY 1:

State the full name, address, occupation and employer of each person answering the interrogatories and designate the interrogatory or the part thereof he or she answered.

RESPONSE:

The answers to this interrogatory are set forth in the Professional Qualifications and Affirmations of Preparation attached to this pleading.

INTERROGATORY 2:

Identify each and every person you are considering calling as a witness in the event a hearing is held in this proceeding and with respect to each of these witnesses:

- a. State the substance of the facts and opinions to which the witness is expected to testify;
- b. Give a summary of the grounds for each opinion; and
- c. Describe the witnesses' educational and professional background.

RESPONSE:

At present, Staff contemplates calling as witnesses Messrs. Mohan Thadani, Nick Fields, and Jim Petersen. The Professional Qualifications for these individuals are attached to this pleading. At present, it is contemplated that the witnesses will testify in substance about the subject matters to which they responded in this pleading.

INTERROGATORY 3:

What is the complete basis for your position that Licensee's decision in April, 1982 to 'defer' construction for two to five years, and subsequent cessation of construction at WNP-1 was not "dilatatory."

RESPONSE:

As stated in the Staff's safety evaluation accompanying the order extending the permit completion date, the requested extension is for good cause shown and for a reasonable period of time.

INTERROGATORY 4:

Please explain fully what you mean by the word "defer."

RESPONSE:

By "defer", in the sense used in this proceeding, the Staff means postpone. See Webster's Dictionary.

INTERROGATORY 5:

Please explain fully what you mean by the word "dilatory."

RESPONSE:

By "dilatory", in the sense used in this proceeding, the Staff means the "intentional delay of construction without a valid purpose." Washington Public Power Supply System (WPPSS Nuclear Project No. 2), ALAB-722, slip op. at 9 (April 11, 1983).

INTERROGATORY 6:

What is the basis for your response to interrogatories 4 and 5?

RESPONSE:

The basis is set forth in Staff's responses to Interrogatory ^{IES} Nos. 4 and 5.

INTERROGATORY 7:

Why do you contend that Licensee has established good cause for an extension of the WNP-1 construction permit? Explain your answer fully.

RESPONSE:

The Staff's safety evaluation supporting the extension of the latest construction completion date, issued June 16, 1983, concluded that the reasons provided by Permittee constituted "good cause" for the extension of the permit to June 1991.

INTERROGATORY 8:

What are the reasons Licensee offered to NRC in support of a showing of "good cause" as required by 10 C.F.R. 50.55(b)?

RESPONSE:

The six reasons offered by the Permittee are listed in the June 16, 1983, safety evaluation supporting the order extending the construction permit.

INTERROGATORY 9:

Is it your position that the reasons offered by Licensee to support a showing of good cause are in fact the only reasons why Licensee had requested an extension of its construction permit?

RESPONSE:

The only reasons offered by the Permittee are the six listed in the Staff safety evaluation supporting the extension order. The Staff is not aware of any reasons other than those six reasons.

↑ for Licensee's request

INTERROGATORY 10:

If your response to Interrogatory 9 is no, state all other reasons.

RESPONSE:

See answer to Interrogatory No. 9.

INTERROGATORY 11:

What is the basis for your response to interrogatories 9 and 10?

RESPONSE:

Permittee's submittals dated July 21, 1981, January 11 and March 9, 1983 contained a total of six reasons offered to support a showing of good cause, and those were the reasons considered by the Staff in determining whether to extend the WNP-1 construction permit.

INTERROGATORY 12:

Please explain fully what you mean by a "reasonable period of time."

RESPONSE:

A reasonable period of time is a time commensurate with the delay due to a "good cause".

INTERROGATORY 13:

What factors do you contend should be considered when determining if a requested construction permit extension is for a "reasonable period of time."

RESPONSE:

The factors that should be considered are those factors supplied by the permittee as a basis for the requested extension ~~submittals.~~

INTERROGATORY 14:

What do you contend would constitute a "reasonable period of time" in the case of WNP-1?

RESPONSE:

The Staff has concluded that extension of the construction completion date to June 1991 is a "reasonable period of time" for the completion of WNP-1.

INTERROGATORY 15:

(a) Is it your position that BPA support is necessary to the financing of WNP-1?

(b) if your answer to Interrogatory No. 15(a) is in the affirmative, identify and give full details with respect to all information upon which you base that statement.

RESPONSE:

Yes. BPA is involved contractually with WPPSS and the utilities participating in WNP-1 as a power transmitting and coordinating agent to

such an extent that its support is necessary to the financing of WNP-1. BPA is an integral party to (1) the WNP-1 Net Billing Agreements with the Participants (the publicly and cooperatively owned utilities); and (2) the WNP-1 Exchange Agreements with the Companies (the investor-owned utilities). Under these contracts the utilities will assign the WNP-1 capability to BPA which in turn will transmit the power and exercise a billing function, among other things.

INTERROGATORY 16:

Is it your position that the financial support or lack of financial support by BPA for WNP-1 would have an effect on the financing costs of WNP-1?

RESPONSE:

Because of the integral nature of BPA's involvement in the WNP-1 project, noted above, BPA's support is probably essential to WPPSS's ability to obtain financing at all for WNP-1. BPA's involvement may *a/s/o* affect the cost of financing.

INTERROGATORY 17:

Is it your position that the opinion of BPA as to when WNP-1 should go into commercial operation would have an effect on the financial costs of WNP-1?

RESPONSE:

Financing costs are affected by BPA's involvement, including its recommendation as to when the plant should go into operation, as well as the period construction takes place and duration of construction.

INTERROGATORY 18:

(a) Is it your belief that BPA has the authority to disapprove any further financing of WNP-1 construction?

(b) If your answer to Interrogatory No. 18(a) is in the affirmative, explain fully the factual basis for that statement.

RESPONSE:

Yes, indirectly. Although BPA does not to our knowledge have actual veto authority over WPPSS financing, BPA's significant role in the project gives it an advisory and concurrence function in decisions affecting the project such as financing.

INTERROGATORY 19:

Is it your position that the growth rate of electric power requirements has a business relationship as to when WNP-1 should go into commercial operation?

RESPONSE:

The Staff is unable to answer Interrogatory 19 as it does not understand what CFSP means by the term "business relationship." If CFSP will define the term "business relationship" as used in this Interrogatory, the Staff will attempt to answer the Interrogatory.

INTERROGATORY 20:

(a) Is it your position that the January 11, 1983 letter to H. Denton, Director, NRR, NRC from G.D. Bouchy, WPPSS, supports Permittee's assertion that a deferred need for power constitutes "good cause" for deferring construction? (b) If your answer to Interrogatory No. 20(a) is in the affirmative, set forth and explain fully the factual basis or legal authority for your position.

RESPONSE:

(a) In the case of WNP-1, the WPPSS letter dated January 11, 1983, from G. D. Bouchy to H. Denton, Director, NRR, with enclosure, supports the Permittee's claim of "good cause" for the extension based upon the BPA recommendation to defer construction.

(b) The Staff safety evaluation in support of the Order extending the construction completion dates for WNP-1 contains the basis for the Staff conclusion.

INTERROGATORY 21:

(a) Is it your position that a lack of need for power can, as a matter of law, constitute "good cause" under 10 CFR 50.55(b)?

(b) if your answer to Interrogatory No. 21(a) is in the affirmative, set forth and explain fully the factual basis or legal authority for this position.

RESPONSE:

(a) Need for power ^{per se} does not constitute "good cause" under 10 CFR § 50.55(b). Whether need for power constitutes good cause in any given permit extension request must be determined on a case-by-case basis.

INTERROGATORY 22:

(a) Does the lack of need for power in the Northwest justify deferring construction of WNP-1?

(b) Explain fully your answer to Interrogatory No. 22(a).

RESPONSE:

The lack of current need for the capacity allows the Permittee a measure of flexibility in his construction schedule that would not exist if the need were more urgent.

INTERROGATORY 23:

Explain the factual basis and/or legal authority which supports the (sic) position that six to nine years is a 'reasonable period of time' under 10 CFR 50.55(b).

RESPONSE:

The "reasonable period of time" is not quantified under 10 CFR 50.55(b). The reasonableness of the extension of construction completion

period is judged by the Staff on case-by-case basis. In the case of WNP-1, the factual basis for the conclusion that six to nine years is a reasonable period of time is set forth in the Staff safety evaluation dated June 16, 1983. ✓

INTERROGATORY 25:

(a) Identify any and all "requirements of any regulations" promulgated since the date of docketing of the WNP-1 operating license application from which WNP-1 would otherwise be grandfathered by virtue of its date of docketing.

(b) Explain fully how each of the requirements identified in response to Interrogatory No. 25(a) will delay completion of the plant beyond the requested completion date of 1991. Give full details as to the extend to (sic) delay attributable to each such requirement.

RESPONSE:

(a) [Mohan] Many NRC regulations are imposed on facilities based on their date of OL docketing. (E.g.).

(b) The delay attributable to present and future requirements is speculative.

INTERROGATORY 26:

Explain the difference, if any, between deferral, mothball and preservation.

RESPONSE:

The term "deferral" means postponed, mothballed means protected against the elements and the environmental conditions, and preservation means protecting against any peril or alteration.

INTERROGATORY 27:

To what events is the restart of construction on WNP-1 tied. Explain fully your answer.

RESPONSE:

The events to which restart of construction of WNP-1 is tied are outside the knowledge of the NRC Staff. The decision to resume construction of WNP-1 will be made by the Permittee.

INTERROGATORY 28:

What would be the effect of default on WNP-4 and 5 on the restart and completion of WNP 1? Provide all probability analyses, scenarios and time predictions.

RESPONSE:

The effect of default on WNP-4 and 5 on the restart and completion of WNP-1 is speculative and outside the knowledge of the NRC Staff.

INTERROGATORY 29:

What is the effect of deferral of construction on WNP-3 on the restart and completion of WNP-1? Give the basis for your response.

RESPONSE:

The effect of deferral of construction on WNP-3 on the restart and completion of WNP-1 is speculative and outside the knowledge of the NRC Staff.

INTERROGATORY 30:

What is the effect of bond ratings on WPPSS ability to finance WNP-1. Explain fully and provide the basis for your response.

RESPONSE:

Bond ratings have a direct effect on the interest rates that are paid on the bonds, or the cost of financing. A high bond rating indicates a perceived sense of security and low risk generally leading

to a lower interest rate than for a lower rated bond of a similar type of security. Bond ratings and financing costs affect WPPSS' ability to finance WNP-1 to the extent that the System is able and willing to pay a given level of financing costs.

INTERROGATORY 31:

If a bond rating service refused to rate WPPSS bonds would WPPSS be able to finance the construction of WNP-1? Explain your answer. ✓

RESPONSE:

It is unlikely that WPPSS could raise the sums needed to finance WNP-1 if the bond rating services refused to rate WPPSS bonds for an extended period. Of particular significance would be the reason for the lack of rating. In addition, a temporary rating suspension would not necessarily jeopardize the ability to finance over a long term.

INTERROGATORY 32:

Is it your position that the Atomic Safety and Licensing Board Initial Decision (LBP-75-72, 2 NRC 922) for the Construction Permit found that the Bonneville Power Administration had the power to approve or disapprove the issuance of bonds by WPPSS. If yes give the reasons in detail for approval and/or disapproval. ✓

RESPONSE:

Yes, indirectly. As in our response to Interrogatory No. 18, above, although BPA does not to our knowledge have actual veto authority over WPPSS financing, BPA's significant role in the project gives it an advisory and concurrence function in decisions affecting the project such as financing. In its Initial Decision (LBP-75-72) the Licensing Board gave significant weight to BPA's role in financial arrangements for WNP-1. 2 NRC 922, 924-27. It stated, among other things, that

"The third level of security is the obligation of the United States Government (through the Bonneville Power Administration) ultimately to pay the debt securities issued by WPPSS for WNP-1." 2 NRC at 927.

This statement was in the context of the Licensing Board's explanation that the first level of the bond's security is eventual revenues from operation of WNP-1 and that the second level of security is the contractual obligation of the utilities to pay WNP-1 construction and operation costs.

INTERROGATORY 33:

Is it your position the ASLB Initial Decision (LBP-75-72, 2 NRC 922) found that BPA could control the construction of WNP-1? If yes, in what manner? Explain in detail the basis for your answer. ✓

RESPONSE:

Rather than using the word "control," it is probably more accurate to state that BPA has significant "influence" over the construction of WNP-1. The basis for this is given in our response to Interrogatory No. 32, above. In addition, our responses to Interrogatory Nos. 15, 16, 17 and 18, above, discuss the nature of BPA's role.

INTERROGATORY 34:

Is it your position that the original finding by the ASLB in its Initial Decision (LBP-75-72, 2 NRC 922) on WPPSS financing ability remains valid? Explain the basis for your answer in detail. ✓

RESPONSE:

We have not re-evaluated WPPSS' financial qualifications for this proceeding. On March 31, 1982 (47 Fed. Reg. 13750) the NRC eliminated the review and litigation of electric utilities' financial qualifications to construct or operate nuclear power plants.

INTERROGATORY 35:

Is it your position that the original finding by the ASLB in its Initial Decision (LBP-75-72, 2 NRC 922) on the need for WNP-1 remains valid? Explain the basis for your answer in detail.

RESPONSE:

The Licensing Board found that all requirements of NEPA had been satisfied based on the Staff FES.

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INTERROGATORY 36:

Is it your position that the only reason the ASLB found WPPSS financially qualified is because of BPA financial backing?

- (a) If yes, explain the basis in detail.
- (b) If no, cite all the reasons you believe the finding of financial qualification.

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RESPONSE:

No. The Licensing Board relied on a number of factors to establish WPPSS financial qualifications. These were enumerated by the Board in paragraphs 1 through 9 of the Decision. 2 NRC at 924-27. BPA's participation was held to be one of a number of significant financial strengths for the project.

INTERROGATORY 40:

Is cost of financing an issue in this proceeding? If so, why?

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RESPONSE:

The cost of financing is an issue in this proceeding only to the extent that WPPSS and BPA considered the cost of financing vis-a-vis various construction schedules and financing alternatives relative to the WNP units.

INTERROGATORY 41:

Is need for power an issue in this proceeding? If so, what are the issues which should be litigated with regard to need for power?

RESPONSE:

No. Need for power is not an issue for litigation in this proceeding. At issue is whether BPA's recommendation that the plant be deferred for 2 to 5 years is an act which is beyond the control of the Permittee and constitutes good cause for the extension. Need for power has some significance in this proceeding only because it has been raised as among the reasons for the BPA recommendation to defer construction. The Permittee offers the BPA recommendation as one of the factors constituting "good cause" to extend the plant completion date.

INTERROGATORY 42:

What is the legal basis for your answer to Interrogatory 41?

RESPONSE:

The legal basis for the Staff's answer is set forth at 10 CFR 50.55(b).

INTERROGATORY 43:

What, besides the Applicant's representation on the need for WNP-1, does the Staff rely upon for its position on the need for the plant?

RESPONSE:

In NRC proceedings, need for power is established prior to the grant of constructi
permit.

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INTERROGATORY 47:

What is the difference between BPA withholding approval for financing and BPA disapproving of financing?

RESPONSE:

Since the staff views BPA review authority over WPPSS financing as being indirect, it is difficult to differentiate between BPA "withholding approval for financing" and BPA "disapproving financing."

INTERROGATORY 49:

Is it your position that the only obstacle to financing of the WNP-1 was/is the BPA recommendation?

RESPONSE:

No.

INTERROGATORY 50:

Do you agree that the passage of Washington Initiative 395 affected the ability of WPPSS to issue bonds? Explain your answer fully giving the basis and identify all documents relied upon.

RESPONSE:

The Staff does not have sufficient knowledge to answer this interrogatory.

Respectfully submitted,

Mary E. Wagner
Counsel for NRC Staff

Mitzi A. Young
Counsel for NRC Staff

Dated at Bethesda, Maryland
this day of , 1983

AFFIRMATION OF PREPARATION

I, Mohan Thadani, being duly sworn, state that I was responsible for preparing the foregoing response to Interrogatories Nos. _____. That response is true and correct to the best of my knowledge.

Mohan Thadani

Subscribed and sworn to before me
this _____ day of June, 1983

Notary Public

My Commission expires: _____

AFFIRMATION OF PREPARATION

I, Jim C. Petersen, being duly sworn, state that I was responsible for preparing the foregoing response to Interrogatories Nos. _____. That response is true and correct to the best of my knowledge.

Jim C. Petersen

Subscribed and sworn to before me
this _____ day of June, 1983

Notary Public

My Commission expires: _____

AFFIRMATION OF PREPARATION

I, Nick Fields, being duly sworn, state that I was responsible for preparing the foregoing response to Interrogatories Nos. _____. That response is true and correct to the best of my knowledge.

Nick Fields

Subscribed and sworn to before me
this _____ day of June, 1983

Notary Public

My Commission expires: _____

AFFIRMATION OF PREPARATION

I, Jim C. Petersen, being duly sworn, state that I was responsible for preparing the foregoing response to Interrogatories Nos. * 15. That response is true and correct to the best of my knowledge.

Jim C. Petersen

Subscribed and sworn to before me
this _____ day of June, 1983

Notary Public

My Commission expires: _____

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9-2-83

Jerry -

Neither Don N. nor I have
any of the requested documents.

J. P.

P.S. I suggested to Anne Pappas that
she contact Mary Wagner, ELD attorney
is involved in WNP-1.

Delmar
is well
is well

DS