

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Jim Petersen
DRAFT

In the Matter of)
)
WASHINGTON PUBLIC POWER) Docket No. 50-513
SUPPLY SYSTEM)
)
(Nuclear Project No. 4))
)

JOINT PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW
OF APPLICANT AND NRC REGULATORY STAFF IN THE FORM OF A
SUPPLEMENTAL INITIAL DECISION

Washington Public Power Supply System ("Applicant")
and the NRC Regulatory Staff, in accordance with 10 CFR
§2.754, hereby submit the attached Proposed Findings of
Fact and Conclusions of Law in the Form of a Supplemental
Initial Decision.

Respectfully submitted,
CONNER & KNOTTS

NRC Regulatory Staff

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August 20, 1976

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SUPPLY SYSTEM)
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SUPPLEMENTAL INITIAL DECISION
(FINANCIAL QUALIFICATIONS,
NEED FOR POWER UPDATE)

I. BACKGROUND

Evidentiary hearings on radiological health and safety issues were conducted in this matter on November 11-13, 1975, at which time the Washington Public Power Supply System ("WPPSS" or "Applicant") requested that this Atomic Safety and Licensing Board ("Board") defer consideration of the Applicant's financial qualifications to construct WPPSS Nuclear Project No. 4 ("WNP-4"). The basis for the Applicant's request was that execution of the Participants' Agreements for WNP-4 had been delayed pending completion of secondary environmental impact statements pursuant to Washington State law.

Thereafter, the Board issued its Initial Decision[/] authorizing the issuance of a construction permit for WPPSS

[/] LBP-75-72, NRCI-75/12 922, 928 (December 22, 1975). The general background of this proceeding is set forth in detail in the Partial Initial Decision (NEPA and Site Suitability Issues) issued by this Board on July 30, 1975 (LBP-75-41, NRCI-75/7 131 (July 30, 1975)), and in the referenced Initial Decision issued on December 22, 1975.

Nuclear Project No. 1 ("WNP-1"). With the exception of the issue of financial qualifications for WNP-4, the findings of fact and conclusions of law contained in the Initial Decision related to both WNP-1 and WNP-4. Thus, when the Initial Decision was issued, the sole matter requiring resolution before issuance of a construction permit for WNP-4 could be authorized was the financial qualifications issue. In the interim, however, time has elapsed so that it has seemed prudent to look again at the need for power question. Moreover, a part of the Board's reliance on Table S-3 of 10 CFR Part 51 in the Partial Initial Decision (NRCI-75/7 at p. 140) is no longer authorized as a basis for construction permit issuance, viz., that part relating to the environmental impacts of spent fuel reprocessing and radioactive waste disposal associated with WNP-4. Thus, even though we make a favorable conclusion of law on the financial qualifications issue for WNP-4 in the instant Supplemental Initial Decision, we cannot at this time authorize the issuance of a construction permit for WNP-4 pending supplementation of the record in regard to spent fuel reprocessing and waste disposal on which

See discussion regarding the Commission's August 13, 1976 Statement of Policy in Part III, infra.

the Partial Initial Decision was based, or pending some other yet-to-be-determined resolution of the matter.

The Board noted in its Initial Decision that it would receive additional evidence from the Applicant and the NRC Regulatory Staff ("Staff") with a view towards supplementing the Initial Decision at a suitable time with appropriate findings relating to the Applicant's financial qualifications to construct WNP-4. By letter dated July 9, 1976, the Applicant informed the Board that contracts for 100% of the output of WNP-4 had been executed by the project participants. The Applicant stated that it believed that it was in a position to demonstrate that it possesses or has reasonable assurance of obtaining the funds necessary to cover estimated construction costs and related fuel cycle costs for WNP-4.

The Applicant suggested and the Staff concurred that the appropriate manner for the Board to entertain the financial qualifications issue was by the submission of pertinent evidence by the parties in the form of affidavits to supplement the record (without hearing). The rationale

As noted, a construction permit for WNP-1 was issued on December 23, 1975. The Atomic Safety and Licensing Appeal Board affirmed the Partial Initial Decision and Initial Decision of this Board. ALAB-309, NRCI-76/1 (January 23, 1976). That decision has become the final action of the agency, and the time for judicial review has expired. Thus, this Board retains no jurisdiction with respect to WNP-1. See 10 CFR §2.760.

for the suggestions by the parties that the financial qualifications issue be determined on affidavits was that there were no issues in controversy between the Applicant and the Staff (the only parties to this proceeding). In order to determine whether the affidavit approach was acceptable, the Board in its "Memorandum and Order," dated July 29, 1976 requested that the parties submit pertinent evidence on the financial qualifications issue for WNP-4 in the form of affidavits. The Board noted that it would then be in a position to determine whether a hearing would be required.

Upon review of the affidavits submitted by the parties, the Board concurred with the affidavit approach, particularly since the Board explored the proposed financial arrangements for WNP-4 (which have now been realized as proposed) at some length at the health and safety hearings in November of 1975 (Tr. 796-800, 820-45, 849-52). Accordingly, we concluded that a hearing was unnecessary.

II. FINDINGS OF FACT

A. Financial Qualifications

1. As we found in our Initial Decision, [/] WPPSS is a municipal corporation and joint operating agency of the State

[/] NRCI-75/12 922, 924 (December 22, 1975).

of Washington. Its membership consists of 18 operating public utility districts, and the cities of Richland, Seattle, and Tacoma. WPPSS is empowered to construct and operate facilities for the generation and transmission of electric power and energy. However, WPPSS does not engage in the sale or distribution of electric power or energy at retail. Accordingly, WPPSS does not have rates and is not subject to the jurisdiction of any regulatory agency for control over rates. Rather, WPPSS is reimbursed for the cost of each project, including debt service, by the Participants, i.e., the purchasers of the capability of a project. (Applicant's Exhibit 42; Staff Exhibit 8c, \$20.)

2. The entire electrical capability of WNP-4 has been purchased by 88 public and cooperative utilities ("Participants") consisting of 21 municipalities, 24 districts, and 43 electric cooperatives located principally in Washington, Oregon, Idaho and Montana. All Participants are statutory preference customers of the Bonneville Power Administration ("BPA"). Participants' Agreements have been executed between the Applicant and the Participants. Under these Agreements, the Applicant receives a promise by each Participant that it will pay a portion of the costs of acquiring, constructing and operating WNP-4. The aggregate of the Participants' obligations is so defined as to equal

the total costs of WNP-4, including the amount required annually to pay the interest and a portion of the principal on the bonds outstanding, plus each Participant's share of the annual operating costs. (Applicant's Exhibits 42 and 46; Staff Exhibit 12.)

3. The Applicant's sources of construction funds for WNP-4 consisted of advances or guarantees from purchasers of the output of the project as an interim measure to cover initial expenditures. Short-term revenue notes and bonds in the amounts of \$17.5 million and \$100 million, respectively, were issued for WNP-4 and WPPSS' share (90%) of WPPSS Nuclear Project No. 5 ("WNP-5"). The short-term revenue notes in the amount of \$17.5 million have been retired. For permanent financing, the Applicant has issued and will issue in the future long-term debt securities. The bonds of WPPSS are negotiable instruments and legal securities for deposit of public monies, and are legal investments for trustees and other fiduciaries and for savings and loan associations, banks and insurance companies. (Applicant's Exhibit 42; Staff Exhibit 12.)

4. WNP-4 and WPPSS' share (90%) of WNP-5 will be financed through the issuance of revenue bonds in the same manner as that for WPPSS Nuclear Projects No. 1, No. 2, and No. 3. WNP-4 and the WPPSS' share of WNP-5 will be financed

as one system. Under that approach, the Applicant's Board of Directors adopted a resolution describing the project plan and system which sets forth the estimated cost just prior to the issuance of securities. Such a resolution has already been adopted for WNP-4 (and WNP-5) for the plan and system, and revenue bonds in the amount of \$100 million, bearing an effective interest rate of 7.04% and an issue date of July 15, 1975 have been sold. The note and bond resolutions adopted by the Board of Directors serve as the indentures to the buyers of the securities. The first level of security or source of funds for repayment of debt securities is the revenue from the operation of WNP-4 (and WNP-5). The second level of security is the existing contractual commitment between the Applicant and the 88 Participants to purchase the electrical capability of WNP-4 and WPPSS' share of WNP-5. As noted, the aggregate of the 88 Participants' obligations equals the total cost of acquiring, constructing and operating the facility, including the amount required to pay the interest and a portion of the principal on outstanding bonds. The Participants are obligated to make payments whether or not the facilities are complete, operable or operating and notwithstanding interruption or curtailment of the output. (Applicant's Exhibits 42, 45 and 46; Staff Exhibit 12.)

5. We found in our Initial Decision issued on December 22, 1975 that the Applicant has a record of successful financing of generation projects, including the Packwood Lake Hydroelectric Project, and the Hanford Generating Project. NRCI-75/12 at p. 927. We now affirm those findings, and find in addition that the Applicant has successfully issued revenue notes and bonds for approximately \$655 million for WPPSS Nuclear Project No. 2. The Applicant also has successfully issued revenue notes and bonds for approximately \$458 million for WPPSS Nuclear Project No. 1 and for approximately \$281 million for WPPSS Nuclear Project No. 3. (Applicant's Exhibits 42 and 45.)

6. The current estimate of the total cost of WNP-4 including plant cost and first core fuel cost is \$1.095 billion. This compares with the Applicant's earlier estimate of \$1.009 billion. This cost estimate increase is not unusual for a project of this type and size and is relatively insignificant. (Applicant's Exhibits 42 and 45; Staff Exhibits 8c and 12.)

7. Based upon the evidence of record as discussed herein and in our Initial Decision (NRCI-75/12 at pp. 924-927), the Board finds that the Applicant possesses or has reasonable assurance of obtaining the funds necessary to cover estimated construction costs for WNP-4 and related fuel cycle costs.

B. Need for Power Update

8. In our Partial Initial Decision on environmental and site suitability issues[/], the Board made certain findings of fact relating to the need for power issue. In conclusion, the Board found "upon consideration of the entire record, that there will be a need for the base load energy which can be provided from WNP-1 and WNP-4 in the time frame in which those plants are anticipated to operate".[/] Nevertheless, in view of the delays encountered in the issuance of the construction permit for WNP-4 due to the Applicant's request that consideration of the Applicant's financial qualifications to construct WNP-4 be deferred, the parties deemed it appropriate to update the record on the need for power issue. The Board agrees that, in these circumstances, it was appropriate to update the record

[/] NRCI-75/7 131 (July 30, 1975).

[/] Id. at p. 142. We note that our finding on the need for power issue was based "upon consideration of the entire record". Thus, our findings on that issue were based, in part, upon the evidence of record relating to the impact of energy conservation and substitution on the need for WNP-1 and WNP-4 (Gallup Testimony, following Tr. 164; Applicant's Exhibits 3 and 4; Staff Exhibit 1, §8.2). Upon review of the evidence of record and our findings relating to the need for power issue, the Board concludes that all alternatives to the proposed action, including the conservation of energy alternative, received explicit consideration. See Aeschliman v. Nuclear Regulatory Commission, No. 73-1776 (D.C.Cir., July 21, 1976).

on the need for power issue. See, e.g., Matter of Potomac Electric Power Company (Douglas Point Nuclear Generating Station, Units 1 and 2), ALAB-277, NRCI-75/6 539 (June 18, 1975); Matter of Duke Power Company (William B. McGuire Nuclear Station, Units 1 and 2) ALAB-143, RAI-73-9 623 (September 6, 1973).

9. Subsequent to both the evidentiary hearings on environmental and site suitability issues on May 13-15, 1975, and on radiological health and safety issues on November 11-13, 1975, the Pacific Northwest Utilities Conference Committee issued the 1976 West Group Forecast, ("1976 Forecast"), an annual 11-year forecast of loads and resources for the Pacific Northwest Region (Applicant's Exhibit 44). We confirm our finding in the Partial Initial Decision that the demand characteristics of the Region are viewed as the demand characteristics of the Applicant since it is the function of the Applicant to serve the power requirements of public bodies in the Pacific Northwest. NRCI-75/7 at p. 141.

10. The 1976 Forecast indicates that there has been a decrease in energy loads forecasted for the period 1976-1987 which has been more than offset by a decrease in energy resources estimated to be available in that same period. The decrease in estimated resources is due to slippages in schedules of certain

/ The 1976 Forecast was issued on March 1, 1976. The 1975 West Group Forecast ("1975 Forecast") was received into evidence as Applicant's Exhibit 4. See NRCI-75/7 at p. 141.

nuclear and coal-fired facilities which were credited as resources in a given year in the 1975 Forecast. The slippages in schedule were due to several factors including regulatory delays, financing difficulties, load reduction, and construction delays. The changes in energy loads estimates and resources have resulted in a shift from surpluses to deficits for each year during 1983-1986, the period during which the 1976 Forecast takes initial credit for energy from WNP-4. (Applicant's Exhibits 43 and 44; Staff Exhibit 11.)

11. Upon consideration of the entire record, including the updated information submitted by the parties, the Board concludes that its finding as to the need for WNP-4 in the time frame projected is more than confirmed. Indeed, the need for WNP-4 is even more urgent relative to the forecasts contained in the 1975 Forecast and to the other evidence of record when the Board rendered its previous findings on the need for power issue. Thus, the Board finds that there will be a need for the base load energy which can be produced from WNP-4 in the time frame in which that plant is anticipated to operate.

III. RETENTION OF LIMITED JURISDICTION

On July 21, 1976, the United States Court of Appeals for the District of Columbia Circuit issued its decision in Natural Resources Defense Council v. Nuclear Regulatory Commission, No. 74-1385 (D.C. Cir., July 21, 1976) ("NRDC v. NRC"),

in which the Court invalidated the portion of Table S-3 of 10 CFR Part 51 which accounts for the environmental impacts of spent fuel reprocessing and radioactive waste disposal. The crux of the Court's decision is its conclusion that the Commission did not develop a record in RM-50-3 (the rulemaking proceeding which resulted in publication of Table S-3) adequately dealing with opposing views and adequately discussing certain matters raised by the Court and by intervenors relating to the technologies and environmental aspects of reprocessing and waste disposal.

The Board relied on Table S-3 in its Partial Initial Decision to assess the environmental impacts for the uranium fuel cycle for WNP-4, including those impacts associated with spent fuel reprocessing and radioactive waste disposal. NRCI-75/7 at p. 140. To the extent that Table S-3 relates to aspects of the fuel cycle other than reprocessing and waste disposal, our reliance on Table S-3 in our Partial Initial Decision remains undisturbed. However, it appears that reliance on Table S-3 to assess the environmental impacts of reprocessing and waste disposal for WNP-4 will not suffice (see below as to the Commission's August 13, 1976 Statement of Policy). Accordingly, having retained environmental jurisdiction (see NRCI-75/7 at p. 150), this Board cannot authorize the issuance of a construction permit for WNP-4 until the record on which the Partial Initial Decision was based has been supplemented

or the matter is otherwise resolved. We note that the matter raised by NRDC v. NRC and the guidelines laid down in the related policy statement are the sole reasons for additional delays in the issuance of a construction permit for WNP-4.

On August 13, 1976, the Commission issued a "General Statement Of Policy" in Docket RM-50-3 to indicate how the Commission intends to conduct its licensing activities pending resolution of the legal questions raised by NRDC v. NRC. The Commission stated that its Staff has been directed to produce by approximately September 30, 1976, a revised environmental survey on the probable environmental impacts attributable to the reprocessing and waste disposal stages of the uranium fuel cycle in the context of the licensing of a power reactor. The Commission also stated that it will reopen the rulemaking proceeding on the Environmental Effects of the Uranium Fuel Cycle, Docket RM-50-3, for the limited purposes of supplementing the record on reprocessing and waste disposal issues and determining what changes (if any) are required in Table S-3.

With respect to licensing activities during the pendency of the reopened rulemaking proceeding, the Commission stated that an interim rule might be developed as a substitute for Table S-3 if the revised environmental survey provides adequate justification. The interim rule "might be promulgated as early as December, 1976, providing a basis for licensing at that time." The Commission directed that the Staff and the

Licensing Board "continue to process applications and hold hearings up to the point, but not including, licensing." Accordingly, this Board believes that the issuance of this Supplemental Initial Decision is appropriate and necessary to the orderly process of this proceeding.

As we noted in our Partial Initial Decision, this proceeding is uncontested. NRCI-75/7 at p. 149. In its policy statement, the Commission stated that licensing delays due to the reopened rulemaking proceeding can be kept to a minimum in uncontested proceedings. The Commission stated that licensing should be deferred in uncontested proceedings until the Staff issues the revised environmental survey documenting the contribution to the environmental costs of licensing a reactor which is attributable to reprocessing and waste disposal. The Commission stated that "[t]hese values may then be used for reaching a NEPA cost/benefit assessment prerequisite to licensing." Thus, the Board is of the view that the suspension of licensing activities in uncontested proceedings such as this one may be lifted upon the issuance of the Staff's environmental survey. Upon completion of that survey and upon appropriate action, such as the parties placing the survey and other pertinent evidence (if any) before the Board, we will determine whether or not a hearing is necessary. Thereafter, the Board will issue a timely decision on the matter. Whether or not a hearing is held, the Board will treat the WNP-4 matter on an

expedited basis, recognizing that a decision on issuance of a construction permit for WNP-4 has already been substantially delayed and in view of the demonstrated need for WNP-4 in the time frame anticipated.

In view of the foregoing circumstances, we cannot at this time authorize the issuance of a construction permit for WNP-4. However, we retain limited jurisdiction on this issue for the purposes stated herein.

IV. CONCLUSION OF LAW

1. The Board has reviewed the entire record of this proceeding relating to the Applicant's financial qualifications to construct WNP-4 and the need for WNP-4, including the proposed findings of fact and conclusions of law submitted by the parties. All of the proposed findings and conclusions submitted which are not incorporated directly or inferentially in this Supplemental Initial Decision are herewith rejected as being unnecessary to the rendering of this Supplemental Initial Decision.

2. In the Partial Initial Decision issued on July 30, 1975, the Board made findings of fact and determinations and reached conclusions of law for WNP-4 regarding environmental, site suitability, and certain safety matters. Thereafter, in its Memorandum and Order issued on September 30, 1975, the Board made additional determinations regarding certain additional safety items. Finally, in the Initial Decision issued

on December 22, 1975, the Board made findings of fact and determinations and reached conclusions of law for WNP-4 regarding all health and safety issues (except the matter of the Applicant's financial qualifications to construct WNP-4).[/] The Board has considered and confirms these earlier findings, determinations, and conclusions for WNP-4. This consideration and a review of the record, including that portion of the record created since the issuance of the Initial Decision, have led the Board to the foregoing discussions and findings of fact and to conclusions of law, as follows:

- A. The Applicant is financially qualified to design and construct the proposed WNP-4 facility.
- B. The FES, as modified on the record in this proceeding, and herein, meets the requirements of Sections 102(2)(C) and (D) of NEPA and 10 CFR Part 51, subject to resolution of the Table S-3 matter.
- C. The environmental review conducted by the Staff pursuant to NEPA has been adequate, subject to resolution of the Table S-3 matter.
- D. The Board must retain jurisdiction over NEPA issues in this proceeding to the extent that its findings

[/] See NRCI-75/12 at p. 943, n. 28. As noted in note 3, supra, this Board's jurisdiction with respect to WNP-1 has terminated.

of the brief on the appellant (twenty days in the case of the Staff), any other party may file a brief in support of, or in opposition to, the exceptions.

BY ORDER OF THE ATOMIC SAFETY
AND LICENSING BOARD

Donald P. deSylva, Member

Marvin M. Mann, Member

Robert M. Lazo, Chairman

Dated at Bethesda, Maryland

this _____ day of _____, 1976.

with respect to Table S-3 may require modification. See discussion in Part III, supra.

Accordingly, we do not herein strike the final balance among the factors contained in the record, and do not decide at this time whether or not the appropriate action to be taken is the issuance of a construction permit for WNP-4.

V. ORDER

It is ORDERED, in accordance with Sections 2.760, 2.762, 2.785, and 2.786 of the Commission's Rules of Practice, 10 CFR Part 2, that this Decision shall constitute the final decision of the Commission thirty (30) days after its issuance, subject to the review thereof under the above cited rules. Pursuant to 10 CFR 2.762, exceptions[/] to the Supplemental Initial Decision must be filed within seven (7) days after service of this Decision and a brief in support of the exceptions must be filed within fifteen (15) days thereafter (twenty days in the case of the Staff. Within fifteen (15) days of the filing and service

[/] In view of the policy statement discussed in Part III, supra, guiding licensing boards to process applications to the point of (but not including) licensing, this supplemental decision should be treated as more than an interlocutory resolution of certain issues. Review should proceed of all issues which can be reviewed.