

BEFORE THE STATE OF WASHINGTON  
THERMAL POWER PLANT SITE EVALUATION COUNCIL

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| In the matter of Application )<br>No. 74-1 of )<br>)            |  | APPLICATION 74-1<br>(Skagit)  |
| PUGET SOUND POWER & LIGHT )<br>COMPANY )<br>)                   |  | ORDER GRANTING, IN PART,<br>INTERVENOR'S MOTION, AND<br>GRANTING APPLICANT'S MOTION<br>TO REOPEN EVIDENTIARY<br>HEARING |
| a Corporation of the State )<br>of Washington. )<br>. . . . . ) |  |   |

On December, 1, 1975, and January 8, 1976, pursuant to due and proper notice to all interested parties and to direction of the Council made at its open meeting of November 24, 1975, argument was heard in Olympia, Washington, before Legal Examiner C. Robert Wallis, concerning intervenor's motion of November 1, 1975, to reopen the evidentiary hearing concerning this application.

The appearances were made as follows:

APPLICANT: PUGET SOUND POWER & LIGHT COMPANY  
By F. Theodore Thomsen  
and James R. Lisbakken  
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INTERVENORS: SKAGITONIANS CONCERNED ABOUT NUCLEAR PLANTS  
RONALD CARSTENS and HELEN DAY  
By Roger M. Leed  
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COUNSEL FOR THE  
ENVIRONMENT: By Malachy Murphy  
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and Wayne Williams  
Assistant Attorney General  
Temple of Justice  
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MEMORANDUM

By motion and affidavit filed on November 1, 1975, intervenors SCANP, Carstens and Day moved that the Council reopen the evidentiary hearing In re Application 74-1 to receive additional evidence on the following subjects:

1. Geology and seismology;
2. Alternative sites and fuel sources;
3. Volcanism;
4. Population density;
5. Wild and Scenic Rivers Act; and
6. Cost-benefit analysis.

Stated basis for the motion was that additional evidence on these matters, relevant and material to the decision of the Council regarding this application, existed which was either unavailable or nonexistent at the time of the Council's hearing.

Applicant Puget Sound Power and Light Company on November 15, 1975, timely caused to be filed with the Council its reply and affidavit in opposition to intervenor's motion to reopen evidentiary hearing representing and arguing in part as follows: That the motion should be deemed a request to reopen the record to receive into evidence certain materials as additional exhibits; that the materials, constituting exhibits, should be considered and determined item by item; that some of the material was known and available to intervenors at the time of the site certification hearing; that most of the proposed information is merely cumulative or corroborative and, as such, should not properly be admitted following closure of the record; and that the Council should consider the factors of timeliness, relevancy and materiality, in acting upon intervenor's motion.

The Council at its regular open meeting of November 24, 1975, assigned the matter of intervenor's motion to the examiner for determination by the procedure of issuance of an examiner's proposed order and the receipt of exceptions and replies thereto.

Pursuant to said Council directive and pursuant to notice to the parties, argument was heard on Monday, December 1, 1975, in Olympia, Washington, before Legal Examiner C. Robert Wallis.

An order herein was prepared for issuance on December 17, 1975. Prior to that date, the examiner learned that hearings of the Nuclear Regulatory Commission, Docket Nos. 50-522 and 50-523, which had been scheduled to reconvene January 13, 1976, were being cancelled and indefinitely postponed. In order

to assess the effects of this postponement upon the instant motion, which to some extent involves material expected to be introduced in the reconvened NRC proceeding, the examiner withheld the proposed order from issuance until the parties could be heard at oral argument held before the examiner on January 8, 1976.

An Examiner's Proposed Order was issued herein on January 23, 1976; exceptions thereto were timely filed by applicant.

By motion dated February 6, 1976, applicant proposed reopening as to the topics of project ownership, scheduled dates for project completion, and the effect of said topics on the question of need for power, and suggested that its motion be considered by the Council in conjunction with its deliberations on the Examiner's Proposed Order herein.

At its regular meeting of February 23, 1976, the Council undertook deliberation of the Examiner's Proposed Order, the applicant's exceptions thereto, and the applicant's motion to reopen dated February 6, 1976.

In summary, the Council concludes as follows:

First, in light of the statutory, regulatory and public policy factors governing the significant decision which the Council is called upon by means of the application to make, and considering the necessity that administrative procedures reach an ultimate conclusion and that they not be unduly prolonged, the Council believes that it is appropriate that some of the asserted evidence be offered for admission to the record so that the Council might consider it in reaching a decision.

Second, the Council adopts a procedure which it believes will expedite the process of receiving evidence whereby (a) authenticity and probative value of the proposed exhibits may be determined; (b) the parties will have the opportunity to present rebuttal evidence to the extent they deem warranted; (c) provisions may be made for evidence not in existence at the present time, but which may be in existence at the time the record herein is opened; and (d) the need for separate and extended proceedings concerning each offered item, each potential rebuttal item and each item not yet extant, will be avoided.

#### APPLICABLE LEGAL RULES

No citation has been made by counsel during the course of these proceedings to any statute, case or administrative rule pertinent to the question at hand. Counsel generally took the view that the question of reopening should be addressed to the sound discretion of the Council. The Council has discovered no statute, case or rule directly pertinent. It is appropriate, however, to look for guidance to rules which are applied in analogous situations in the course of judicial proceedings.

The Washington rule appears to be that trial courts may exercise their sound discretion in responding to motions to reopen proceedings following the close of the record. In fact, the trial court's decision will not be overturned absent a showing of manifest abuse of that discretion. Sweeny v. Sweeny, 52 Wn.2d 337, 324 P.2d 1096 (1958); In re Hopper's Estate, 53 Wn.2d 262, 332 P.2d 1077 (1959).

Other cases offer guidelines as to the manner in which discretion should be exercised. For example, it has been held no abuse of discretion to refuse a motion to reopen where the material offered is in part cumulative and in part material which was of public record at the time of the trial. Tsubota v. Gunkel, 58 Wn.2d 586, 364 P.2d 549 (1961). The State Supreme Court has found an abuse of discretion in a refusal to reopen the record as to a matter central to determination of the cause, applicability of the pertinent statute of limitations, where counsel showed no lack of diligence in securing the proffered evidence prior to the time the record was closed. Rochester v. Tulp, 54 Wn.2d 71, 337 P.2d 1062 (1959).

Similarly, the court indicated that delay to the proceedings constitutes a factor which the trial court should consider, in Glass v. Carnation Co., 60 Wn.2d 341, 373 P.2d 775 (1962).

The Council believes that the following summary of the law accurately states the rules which properly should be applied in Washington to motions to reopen trials and which, by analogy, should be applied to motions to reopen administrative hearings of the nature of the instant proceeding:

Although it has been held that when parties have been afforded an adequate opportunity to present their respective sides of the case, ordinarily they will be compelled to abide by the determination to rest, whether or not a case shall be reopened for the introduction of evidence after both parties have rested their case in chief, or after the close of the evidence, is within the discretion of the trial court. The discretion, however, should be reasonably exercised so as not to prejudice the rights of the parties. The court may permit the case to be reopened to admit evidence which, through inadvertence or mistake, was not introduced at the proper time, and ordinarily it should do so; but it is generally wholly within the discretion of the court whether it will do so. It cannot be considered an abuse of discretion to reopen the case for further evidence where the adverse party suffers no injustice, or where the court permits him the same latitude in introducing further evidence, where it is necessary to reopen to supply evidence material to the case and necessary for its proper disposition or where the evidence is newly discovered.

There is no abuse of discretion in refusing to reopen a case. . . for the admission of merely cumulative evidence, immaterial evidence, evidence to refute other evidence immaterial to any issue, . . . evidence contradicting previous testimony of the same party offering it, evidence not admissible under the pleadings, or evidence the existence and materiality of which were known to the party offering it before the close of the case, and which was deliberately and without justification, withheld, and which it does not appear that he could not have produced before the close of the case.

. . . Reopening the case to permit one side to introduce new matter, and denying the other side the right to introduce evidence to meet such new matter, is an abuse of discretion.

88 CJS Trial, § 106, pages 221-223 (Footnotes omitted).

The Council will utilize the rules and guidelines set out above in considering the motions to reopen the proceedings.

#### PROCEDURAL QUESTIONS

##### (a) Reopening Subject Areas

It is appropriate to consider the motions not in terms of the particular items of evidence cited in the motions and affidavits in support thereof, but in terms of the subject areas to which those particular items are addressed.

The question of whether or not a subject area should be reopened differs from the question of whether particular items of evidence should be received into the record. The determination of whether to reopen the hearing as to a subject area can be made only after an examination of asserted evidence, taken in its best light, which is to be offered. The relevancy, materiality, prejudice, and cumulative nature of the asserted evidence and the timeliness and possible prejudice of its presentation are factors which the Council should consider in its threshold decision of whether an area should be reopened.

Once a subject area is reopened, each particular item of evidence which is then offered must be examined upon its own merits, both in terms of the factors set out just above and in terms of questions ordinarily addressed in determining whether any offered evidence is admissible or inadmissible. As to each of the offered items, it may be that rebuttal evidence is desired by the opposing party. A party deprived of the opportunity to present evidence in rebuttal would be improperly prejudiced thereby. Further, as presented by the situation before us, evidence not presently in existence may be sufficiently understood and described so that the determination may be made concerning the question of reopening the hearing,

and yet not so sufficiently determined or described that a proper ruling may be made concerning its admissibility.

Consequently, the Council does not undertake in the course of the present motion and order to determine the admissibility of specific items of evidence, but to address merely the question of whether or not the hearing should be reopened. As to any area which may be reopened, it is appropriate that the question of admissibility or inadmissibility of the evidence be determined by the examiner, as has been done during the course of the evidentiary proceeding in this matter, following customary rules of evidence and the guidelines set out above.

(b) Extent of Reopening Hearing

None of the parties have requested that the Council reopen the hearing in plenary session for the taking of testimony and receipt of evidence. The parties have offered to present witnesses in reopened hearing sessions in the event that the Council so desires. All of the evidence described by intervenor is presently in written form or will be in written form at the time it may be offered in evidence. Consequently, the Council rules that in any subject area where sufficient cause is shown upon the factors outlined above that the hearing be reopened, it be reopened solely for the purpose of presenting and offering exhibits to be incorporated into the hearing record. It is not contemplated by the parties that any oral evidence be presented to the Council, and the Council proposes that no such testimony be permitted.

While this provision is not meant to preclude cross-examination which the parties believe necessary concerning the documents, in light of the Council's desire that its function in this process be accomplished at the earliest possible time the parties are requested to consider carefully any request for cross-examination and, if such a request is made, to limit cross-examination to the greatest extent possible consistent with production of a full and complete record. Following receipt of evidence, the Council may, in its discretion, order the production of witnesses supporting evidence received, for the purpose of cross-examination.

Finally, the Council believes that as to any areas not herein proposed to be reopened, the parties should be allowed to submit stipulations to the record if they so desire.

(c) Matters Not Specifically Described in Intervenor's Motion

At the time of oral argument on intervenor's motion, December 1, 1975, several specific items of evidence and one subject area not contemplated in intervenor's motion were described, presented, or asserted to substantiate the motion. It is noted that for the most part this material either was not in existence

at the time the motion was made, or was not in the intervenor's hands at that time, and it further appears that intervenor showed no lack of diligence to secure such information. In view of the circumstances, the Council believes that the material asserted or described should be considered.

(d) Applicant's Motion

Applicant moved on February 6, 1976, that the record herein be reopened for the purpose of receiving documentary evidence concerning project ownership, scheduled dates for project completion, and the effect of said evidence on need for power. Applicant also requested that its motion be considered by the Council in conjunction with the Examiner's Proposed Order herein and that Council action on the motion be reflected in the Council's Order. No responses to said motion were received within the time allotted for replies, and the Council believes it appropriate to consider applicant's motion in conjunction with that of intervenors.

(e) Factors Common to All Areas

The Council believes that the following factors are common to a decision regarding the motions in each of the subject areas, First is prejudice to the applicant caused by any potential delay which reopening the proceedings in the manner proposed by the examiner might result. Mention was made in the record of the proceedings and argument on the instant motion as well as previously during the contested case hearing of proceedings which are presently underway before the Nuclear Regulatory Commission. Irrespective of the Council's decision on site certification, the applicant may not proceed with plant construction until a favorable decision has been reached by the Nuclear Regulatory Commission. Reopened hearings before the NRC were scheduled to commence on January 13, 1976. As noted above, the hearing has been continued indefinitely. The parties expect that it may be reset to a date no earlier than March, 1976. It is to be expected that the NRC decision will not issue immediately upon conclusion of the proceedings; the parties estimate that approximately two months will elapse between conclusion of the hearing and issuance of the order. The Council believes that the applicant will not be unduly prejudiced in terms of potential delay, by a reopening of the TPPSEC proceedings. In addition, it is noted that under this order, the parties will have the opportunity to rebut any evidence which is found to be admissible to the instant record and will not be thereby prejudiced.

Second, the Council has seriously considered and weighed the necessity that it conclude its hearing and reach a decision in this matter. The extent to which reopening would burden the record, prolong the proceedings, and negate the need that this administrative proceeding come to a swift and orderly conclusion is recognized by the Council and given great weight.

Third, the Council has carefully considered the magnitude of the decision which it must make in this instance. On the one hand, applicant is proposing a facility which represents to it and its co-owners an investment of over \$1-1/2 billion, not accounting for inflation which may be experienced prior to plant completion. On the other hand, construction of the plant may have a substantial effect upon the environment of the people of the State of Washington -- both in terms of the fact of its construction and in terms of the electricity which may be generated therein, and the availability of that electricity for the conduct of commerce and for the maintenance of the way of life of state residents.

In sum, the Council does not lightly undertake its responsibility to exercise its judgment on site certification and plant construction and it believes that it should have the benefit of relevant and substantially material evidence which is not duplicative or cumulative, not unduly burdensome to the record or delaying of the proceedings, and which the parties, through the exercise of due diligence, could not reasonably have presented during the course of the contested case evidentiary hearing herein.

(f) Specific Subject Areas for which Reopening is Sought

With the above factors in mind, the Council will discuss and rule upon each of the subject areas as to which it has been proposed that the hearing be reopened.

SPECIFIC SUBJECT AREAS

(1) Geology and Seismology; Volcanism

The Council takes the view that information concerning geology, seismology and volcanism as it relates to operations at the plant site do not have exclusive relevance to radioactive safety and nuclear emissions, without prejudice to any later determinations on its part that it possesses and may exercise jurisdiction over such questions. Rather, the Council recognizes that applicant seeks to build and operate a substantial facility at the plant site. Sums approaching or perhaps exceeding \$2 billion may ultimately be spent on construction of the plant if it is authorized. The Council believes that it has an obligation to the people of the State of Washington to examine the proposed site with utmost care and to determine whether, if the site is authorized, seismic or volcanic events might cause interruption of the generation of electrical power, disruption of service to consumers, substantial repair or maintenance expenses which may be borne by users of electricity, or other effects adverse to the health, safety or welfare of the people of the state. The question which the Council faces concerning seismicity and volcanism goes far beyond whether the plant can shut down safely or withstand events without radiological releases.

Some of the material asserted by intervenors in support of their motion consists of substantial duplication of evidence already within the TPPSEC evidentiary hearing record. On the other hand, the Council believes that information has been shown to exist in this subject area which clearly consists of new evidence, not available at the time of the TPPSEC hearing, which will add substantially to the understanding of the Council of the hazards involved to operations at the proposed plant site, and will assist the Council in evaluating those hazards.

Illustrating the nature of asserted evidence which leads the Council to believe that the hearing should be reopened concerning this subject area, but not constituting a list of the items which the Council believes may be admissible upon reopening, there are the following:

(a) A detailed, albeit preliminary, report on the December 15, 1974, earthquake which occurred near Hamilton, Washington, and related aftershocks. This report, prepared by Dr. Stewart W. Smith of the University of Washington Geophysics Department, appears to add significant data concerning the earthquake swarm, and the possible mechanism or mechanisms which caused the earthquakes.

(b) Geothermal and possible volcanic activity at Mount Baker was discussed during the course of the TPPSEC certification hearing. Evidence has been asserted which appears on its face to constitute a substantial addition to the TPPSEC record concerning both the likelihood and the possible effects of an eruption at Mount Baker upon activities at the plant site. These include United States Department of the Interior Geological Survey information including an assessment of potential hazards from future eruptions of Mount Baker, Washington; a statement concerning the possible extent and amount of volcanic ash that could be distributed from a major volcanic eruption in the Cascades; and an article describing and evaluating increased heat emission from Mount Baker, Washington.

(c) In addition, it appears that the Nuclear Regulatory Commission will receive testimony and evidence concerning geologic, seismologic and volcanic hazards at a reopened session. Based upon the discussions, representations and arguments of the parties at the December 1 session before the examiner, the Council believes that it is likely that testimony and evidence presented at the NRC hearing may be of a nature which would be admissible in the TPPSEC proceeding and which would add substantially to the record herein.

The Council wishes to stress that the information described above does not constitute the sole evidence which might be admissible were the hearing reopened; neither would all the material discussed above necessarily be admissible in the event that the hearing were to be reopened.

The Council does believe, however, that the intervenors have made a persuasive showing that material which may be admissible, is or will be in existence which could add substantially to the TPPSEC hearing record and assist the Council in reaching a fully-advised decision, and that in light of the policy considerations governing the operations of the Council, intervenors should be presented the opportunity to offer that information for addition to the record.

NRC staff testimony is in the process of preparation; the parties expressed belief that it would be available in February or early March. The Council contemplates that the parties herein should have the opportunity to offer the prepared testimony into this record or, as they desire, to stipulate as to its contents or conclusions, provided this can be done without unduly delaying the conclusion of this proceeding.

Certain proprietary data was discussed at the December 1 hearing on intervenor's motion. This data, belonging to oil companies, has been represented by the parties to be meaningless to persons not sufficiently expert in dealing with such data to evaluate it. After review of evidence admitted upon reopening herein, the Council may, in its discretion, request its consultant to conduct an independent review of said data.

## (2) Alternative Sites and Fuel Sources

(a) Alternative sites. Basis for intervenor's suggestion to reopen concerning alternative sites concerns in part a recently-issued study prepared by Woodward-Clyde for Washington Public Power Supply System. The parties were unable to provide copies of the document in question although applicant provided a highly detailed description thereof.

The Council has examined a document entitled "Interim Report Siting Study, June 1975, Woodward-Clyde Consultants -- Western Region". It is believed that this is the document asserted, mentioned and discussed by the parties. The document contains the following preface:

This interim report is submitted for information purposes only and is not intended for use in developing conclusions or recommendations about the location or suitability of any particular thermal power plant site.

The Council notes that, because of the technique utilized in preparation of the report, it is difficult to verify specific

reasons for which any particular site or area may be excluded and because of the nature of the maps, on small-scale reproductions, it is difficult to determine whether any particular site is within or without potentially excluded areas.

The study appears to identify some areas within Washington, Oregon and Idaho which may not be excluded on the basis of the criteria which the designers of the report have established. The Council believes that it may ascertain, from the record in the hearing as it presently exists, that there are indeed areas within the state which may, subject to specific review, be suitable sites for thermal electrical generating facilities.

The Council further notes that the report appears to exclude as an area for further study that area along the Skagit River within which the plant site is located. This exclusion appears to be based solely on a reference category "culturally important areas," within which one criterion is distance exceeding 3-1/2 miles from any proposed "wild and scenic river". The Council believes that the record herein is clear that a federal agency is presently considering classification of the Skagit River as a wild and scenic river.

The Council believes that because it is impossible to ascertain from the study itself the precise criteria rather than the broad criteria categories upon which suitability or nonsuitability is determined, because the report itself cautions that it should not be utilized as reference concerning a particular site, and because there is substantial information presently in the record concerning alternative sites, this document provides no sufficient basis, under the criteria described above, for a reopening of the record on this subject.

Also in conjunction with alternative sites, it appears that the Nuclear Regulatory Commission may be seeking or its staff preparing additional information concerning the alternative specific site at Cherry Point, Washington. The TPPSEC record reveals that some specific information appears in the record concerning this alternative. Intervenor has not specified the extent to which the discussion therein may be insufficient, nor the extent to which the testimony to be developed for the Nuclear Regulatory Commission hearing may be essential to a proper evaluation of alternatives. The examiner believes, considering the state of the existing record, the desire of the Council to have a complete record, and the policy factors described above, that intervenor's motion to reopen on the subject of alternative sites should be denied, with the understanding that stipulations are not thereby precluded.

(b) Alternative fuels. The question of alternative fuel sources for power generation appears to be one area upon which the Nuclear Regulatory Commission has requested further evidence at its reopened hearing. One specific alternative which the NRC appears to have envisioned, and upon which further testimony is contemplated, is the availability of coal from British Columbia fields. The Council notes that testimony of a brief

but comprehensive nature exists in the record at pages 169-170 of Volume XVI, June 24, 1975, session, concerning the viability of coal from British Columbia fields as a potential fuel source for a Washington power plant. Intervenor has not specified the extent to which this discussion is insufficient, nor the extent to which the additional asserted evidence will be essential to a proper evaluation of alternative fuels. As to this topic area, the motion should be denied.

(3) Population Density

(a) Northern State Hospital. The parties indicated at the December 1 hearing that Northern State Hospital may be utilized in a commercial fashion which will lead to increased population density in the environs of the proposed site. At the December 1, 1975, hearing in this matter, the intervenor proposed a stipulation.

Applicant indicated by and through its attorney that it believed stipulation was possible concerning this item, although not necessarily in the language proposed. The Council believes that no sufficient showing has been made upon the record herein that the hearing should be reopened for further evidence concerning the utilization of Northern State Hospital. The parties may, however, submit a stipulation for inclusion in the record.

(b) Evacuation. As a basis for proposing reopening of the hearing concerning evacuation routes and feasibility, intervenor cites testimony presented to the Nuclear Regulatory Commission by D. Patrick Smiley concerning potential difficulties involved in the evacuation of site environs. The Council believes that the asserted evidence, under the tests described above, does not show sufficient basis for ordering that the hearing be reopened as to this topic area.

(4) Wild and Scenic Rivers Act

Intervenors call the Council's attention the fact that proceedings are underway before the United States Forest Service by means of which the Forest Service may or may not designate the Skagit River to be a wild and scenic river, and that the Wild and Scenic Rivers Act appears to bar the construction of water resources projects adversely affecting the scenic and recreational values of rivers so designated or those designated as study rivers, and thus having the potential of such designation.

The Council believes that this topic, while of interest to the Council, is without relevance to its decision regarding site certification. Congress has invested the Forest Service with the responsibility to act and regulate under the Wild and Scenic Rivers Act. It is not within the legal province of the Council to determine whether, under provisions of the Wild and Scenic Rivers

Act, the site should or should not be utilized. The agencies appear to have separate and independent jurisdiction.

On that basis, the Council proposes that the hearing record remain closed concerning the application of the Wild and Scenic Rivers Act to the proposed plant site. Intervenor has presented no evidence that the mere existence of independent procedures before the Forest Service -- as opposed to existence of a final determination by that agency -- prevents the Council from reaching its own determination on the basis of criteria within its province, upon whether the proposed site is suitable for the proposed use.

The Council further notes that the record herein contains evidence concerning the aesthetic merits of the plant in its proposed location, evidence concerning effect of the plant on recreational and commercial utilization of the Skagit River in the event the plant is constructed, and evidence concerning potential application of the Wild and Scenic Rivers Act, to use of the proposed plant site. A stipulation of the parties is not precluded.

#### (5) Cost-benefit Analysis

Additional evidence will be offered at the reopened Nuclear Regulatory Commission hearing concerning cost-benefit analysis of plant construction. Specific reference has been made to evaluating the increased cost which will be occasioned if the applicant is required to build the plant to withstand an earthquake of greater magnitude than that presently used as the design earthquake.

The Council believes that this information will be valuable and perhaps essential to a true evaluation of the cost of the plant in light of the benefits which it will provide to the people of the State of Washington. It appears that, evaluating this subject area in light of the factors described above, and the utility of the evidence in relation to the Council's responsibility to the people of the State of Washington, that the hearing in this matter should be reopened for the purpose of receiving such admissible evidence as may be offered concerning cost-benefit analysis.

#### (6) Military Aircraft Activity

Intervenor urges reopening of the proceeding to receive in evidence a letter dated August 25, 1975, and bearing a notation indicating it was received by intervenor's counsel on August 28, 1975, from one R. E. Fraser, Deputy and Chief of Staff, Department of the Navy, Commander Medium Attack Tactical Electronic Warfare Wing, U. S. Pacific Fleet Naval Air Station, Whidby Island, Oak Harbor, Washington.

The Council notes that this asserted evidence was not mentioned in intervenor's motion to reopen hearing, although it was apparently in intervenor's possession at the time the motion was made. The letter describes "eight established routes [which] pass within ten miles of Sedro Woolley" of which "three approved low-level routes are flown between 500 and 1,500 feet above the ground; five high-altitude routes are normally flown above 10,000 feet". No evidence is asserted showing flights over the plant site. The Council believes that the motion to reopen on this subject area should be denied, both on the basis that the oral motion on December 1, 1975, was not timely made, and on the basis that no showing has been made that the offered evidence has substantial relevance or materiality to this proceeding except insofar as it may tend, as contended by intervenor, to rebut representations contained in applicant's application.

(7) Effects of Recent Skagit River Flooding

At oral argument on January 8, 1976, the parties noted that winter weather had caused flooding of the Ranney Well area and sliding on Bacus Hill. Robert Schofield, of the Skagit County Planning Department represented that the county had data available concerning these phenomena, and that it could be presented to the Council; the parties agreed that this would be appropriate. This topic area should be reopened to allow the offering of such evidence as may exist. The Council requests that Skagit County submit to the parties herein such data and reports concerning relevant sliding and flooding as it possesses or desires to prepare at the earliest possible date, with copies to the examiner and the Council's executive secretary. The parties may then, as they deem appropriate, offer the data in evidence.

(8) Topics of Applicant's Motion

Applicant moved that the hearing be reopened for the receipt of documentary evidence concerning changes in project ownership, changes in scheduled project completion dates, and the effect of these changes on need for power. The asserted evidence appears relevant and material and not unduly burdensome to the record, and represents facts not in existence at the time of the initial hearing herein. It is necessary and appropriate that applicant be afforded the opportunity to present such facts into evidence.

Having reviewed the entire record and the file herein, including intervenor's motion, applicant's motion, response, affidavits of the parties, arguments and documents submitted to the examiner, the Council makes and enters the following findings of fact and conclusions of law.

## FINDINGS OF FACT

1. By motion and affidavit filed November 1, 1975, intervenors Skagitonians Concerned About Nuclear Plants, Ronald Carstens and Helen Day moved that the Council reopen its evidentiary hearing In re Application 74-1 to receive additional evidence on the subjects of geology and seismology; alternative site and fuel sources; volcanism; population density; Wild and Scenic Rivers Act; and cost-benefit analysis.

2. Puget Sound Power & Light Company, applicant, on November 15, 1975, timely caused to be filed with the Council its reply and affidavit in opposition to intervenor's motion.

3. The Thermal Power Plant Site Evaluation Council of the State of Washington at its open meeting of November 24, 1975, considered the motion and reply herein described and assigned said matter to the examiner for determination by the procedure of issuance of an examiner's proposed order to which the parties might take exception. Pursuant to said directive, and pursuant to notice to the parties, argument was heard on Monday, December 1, 1975, and on Thursday, January 8, 1976, in Olympia, Washington, before Legal Examiner C. Robert Wallis. On January 23, 1976, the examiner issued his proposed order herein, granting intervenor's motion in part. Exceptions thereto were filed January 30, 1976, by applicant.

4. On February 6, 1976, applicant filed a motion to reopen the record herein to allow parties to offer for admission documentary evidence concerning Project ownership, scheduled dates for project completion and the effect of these factors on need for power. No replies to said motion were timely filed.

5. In support of the motions, the following documents were presented as described to the examiner and the Council.

(a) Preliminary report entitled "Skagit Valley Earthquake Sequence 1974-75" by Stewart W. Smith, Geophysics Program, University of Washington; cover letter attached thereto addressed from Douglas S. Little to Roger M. Leed and dated November 10, 1975.

(b) Letter dated November 7, 1975, from J. E. Mecca, manager, Nuclear Licensing and Safety, Puget Sound Power and Light Company, to director of Nuclear Regulatory Commission. This letter served as a cover letter for seismic reflection and refraction data which the sender of the letter averred to be proprietary data belonging to certain named oil companies; Puget Sound Power and Light Company requested that the data be withheld in whole from public disclosure pursuant to 10 CFR 2.790 and 10 CFR 9.5(a).

- (c) Academic thesis entitled "The Devil's Mountain Fault Zone, Northwestern Washington", by Timothy Peter Lovseth, dated 1975.
- (d) Draft copy of statement by D. R. Mullineaux, Engineering Geology Branch, United States Geological Survey, concerning "possible extent and amount of volcanic ash that could be distributed from a major volcanic eruption in the Cascades." A cover letter therewith is addressed to William P. Gammill, Site Analysis Branch, U. S. Nuclear Regulatory Commission from Fred N. Houser, Deputy Chief, Office of Environmental Geology, Geological Survey. The letter is dated March 14, 1975.
- (e) Preliminary report of the United States Department of the Interior, Geological Survey, dated 1975, entitled "Origin and Age of Post Glacial Deposits and Assessment of Potential Hazards from Future Eruptions of Mount Baker, Washington" by Jack H. Hyde and Dwight R. Crandell.
- (f) Article entitled "Increased Heat Emission from Mount Baker, Washington" by Stephen D. Malone and David Frank, represented to have appeared in the October, 1975, issue of EOS. The title page bears page No. 679.
- (g) Portions of a transcript represented to be that of a Nuclear Regulatory Commission hearing in its Cause No. 50-522-3 on July 28, 1975, consisting of the testimony of Robert S. Crosson, commencing at page No. 2,432 and concluding at page No. 2,534.
- (h) Portions of a transcript represented to be that of the NRC, as above noted, taken on July 22, 1975, and consisting of pages 1,412 through 1,516 and containing the testimony of Dwight R. Crandell, Geologist of the U. S. Geological Survey, since 1967 in charge of the Volcanic Hazards Project of the Geological Survey.
- (i) Portions of a transcript represented to be that of the Nuclear Regulatory Commission as above described, having been taken on July 23, 1975, and showing testimony of John Ivey appearing at pages 1,333 through 1,341.
- (j) Composite aerial photograph showing substantial portions of Western Washington and Vancouver Island and bearing the legend "ERTS Imagery, Western Washington, 1:1,000,000, Band 6." It bears the handwritten legend

"Ex 32" and appears to be the Exhibit No. 32 described in the transcript before the NRC as identified in subparagraph (i) next above.

(k) Description of testimony expected to be received concerning geology, seismology and volcanism at the Nuclear Regulatory Commission's reopened proceeding previously scheduled to commence on January 13, 1976.

(l) Description of allegedly more definitive information concerning Mount Baker activity analyzing atmospheric aerosols; the report may or may not be completed and/or available prior to conclusion of the TPPSEC proceedings.

(m) Proposed "Stipulation Regarding Northern State Hospital" presented by intervenor.

(n) Portions of a transcript represented to be that of the Nuclear Regulatory Commission as above described consisting of testimony, taken on a date not specified, of D. Patrick Smiley, and consisting of pages 4,182 through and including 4,238.

(o) Proposed "Stipulation re: Woodward-Clyde Siting Study" presented by intervenor.

(p) Proposed "Stipulation regarding the Wild and Scenic Rivers Act" presented by intervenor.

(q) Description of testimony to be received at the reopened NRC hearing commencing January 13, 1976, concerning cost-benefit analysis.

(r) Letter dated August 25, 1975, from R. E. Fraser, Deputy and Chief of Staff, Department of the Navy, Commander Medium Attack Tactical Electronic Warfare Wing U. S. Pacific Fleet to Roger M. Leed; bears notation "Received Aug 28 1975 Schroeter, Jackson, Goldmark, Bender".

(s) Publication of Western Interstate Nuclear Board dated October, 1975, entitled "Uranium Power and Nuclear Fuel Requirements in the Western United States" (excerpt).

(t) Description of data concerning winter flooding of Ranney Well site and sliding on Bacus Hill.

(u) Representations in letter dated January 28, 1976, to the Council from counsel for applicant

and in motion dated February 6, 1976, concerning ownership and completion schedule changes and effects thereof on need for power.

6. On the basis of the information presented, relevant evidence of substantial materiality, neither cumulative nor redundant, may be offered for admission to the record concerning the following topics as those topics have been defined herein:

- (a) Geology, seismology and volcanism;
- (b) Cost-benefit analysis;
- (c) Skagit River flooding and slides at Bacus Hill;
- (d) Project ownership;
- (e) Scheduled dates for project completion; and
- (f) The effect of (d) and (e) on the "need for power" question.

7. No relevant, substantially material evidence being neither cumulative nor redundant is shown to exist or to be in contemplation and available for offering into evidence concerning the following topics:

- (a) Alternative sites;
- (b) Alternative fuel sources;
- (c) Population density;
- (d) Evacuation of site area;
- (e) Wild and Scenic Rivers Act; and
- (f) Military flight patterns.

8. Taking into account the nature of the proceedings herein, the present status of those proceedings, the nature of the facility which applicant seeks authority to construct, the possible effects of such construction upon the people of the State of Washington in terms of potential environmental effects and in terms of providing a substantial and stable supply of electricity to the people of the State of Washington; possible prejudice to the rights of the parties hereto; diligence of the parties offering the asserted evidence; and the potential of such evidence to unduly burden the record herein, the evidence described in Finding of Fact No. 6, above, if shown to be admissible, and if admitted to the record herein, will materially assist the Council in reaching its decision concerning site suitability as required by law, and will not unduly burden the record.

9. If necessary, the proprietary data described in subparagraph 5(b) of the Findings of Fact herein probably can be made available for examination by Mathematical Sciences Northwest, Inc., the Council's independent consultant, to evaluate the same for the Council; provided that each person permitted to examine said data shall first sign a protective agreement adequate to protect the proprietary nature of such data.

10. The parties herein do not request leave to present oral evidence of a substantive nature to the Council.

11. The parties herein may desire to enter stipulations as to facts concerning areas described in Finding of Fact No. 7, above, and should be allowed leave to do so.

12. By motion filed August 29, 1975, applicant proposes corrections to the transcript in the certification proceeding. The Council will not make findings of fact regarding site certification until the said motion concerning corrections to the transcript has been disposed of.

13. Applicant may not lawfully commence construction of the proposed plant until receiving Limited Work Authorization (LWA) from the Nuclear Regulatory Commission. Such authorization cannot lawfully be granted until completion of hearings in NRC Docket Nos. 50-522 and 50-523, which hearings have been indefinitely postponed. A decision in that matter is not expected immediately upon conclusion of the hearings, but may be issued as long as two months thereafter. LWA issuance may be further delayed pending determination by the Secretary of Agriculture of the U. S. Government concerning effect of the Wild and Scenic Rivers Act upon site development plans.

14. Pending disposition of intervenor's motion to reopen, the examiner and the Council may proceed with making findings of fact and conclusions of law regarding other topic areas. Reopening the record herein as to limited subject areas upon a showing of good cause therefor will not substantially or unduly impede the Council's progress toward making a recommendation to the Governor concerning site certification.

15. At the time of reopened hearing, NRC staff testimony, and Skagit County data may not be in form for offering into evidence. Provision should be made at the reopened hearing to allow the offer of such material into evidence, provided this can be done without unduly delaying the conclusion of this proceeding.

From the above findings of fact, the Council makes and enters the following conclusions of law.

## CONCLUSIONS OF LAW

1. The Washington State Thermal Power Plant Site Evaluation Council has jurisdiction over the subject matter of the instant motions and the parties thereto.

2. The hearing regarding the application of Puget Sound Power & Light Company for authority to utilize a site near Lyman, Washington, for construction of a thermal-nuclear generating facility should be reopened for the sole purpose of receiving offers to the record herein of documentary evidence in the form of exhibits, arguments concerning the admissibility of said documents; and providing an opportunity for rebuttal submissions of documentary evidence and the receipt of arguments concerning its admissibility, on the following topic areas:

- (a) Geology, seismology and volcanism;
- (b) Cost-benefit analysis;
- (c) Skagit River flooding and slides at Bacus Hill;
- (d) Project ownership;
- (e) Scheduled dates for project completion; and
- (f) The effect of (d) and (e) on the "need for power" question.

3. The hearing should not be reopened for the purpose of receiving oral testimony of a substantive nature on any topic area.

4. The examiner may, in his discretion, allow cross-examination concerning documents received in evidence, on timely request of counsel.

5. The Council may, in its discretion, order the hearing reopened to allow Council cross-examination concerning documents received in evidence.

6. The hearing should not be reopened for receipt of evidence except in the topic areas identified in Conclusion of Law No. 2, above; stipulations of the parties concerning any topic area may be received.

7. The examiner should be directed to set a time and place for hearing on the admissibility of documentary evidence on the topic areas specified in Conclusion of Law No. 2, above, no fewer than 10 and no later than 20 business days following issuance of this Order, and at said hearing to rule as to admissibility of offered exhibits.

From the above findings of fact and conclusions of law, the Council makes and enters the following order.

O R D E R

WHEREFORE, IT IS HEREBY ORDERED That intervenor's motion to reopen evidentiary hearing concerning Application No. 74-1 (Skagit) shall be, and the same is hereby, granted, in part, and further that applicant's motion re Addition of Documentary Evidence to Record shall be, and the same is hereby granted, as follows:

- (a) Said reopening shall be confined to affording the parties the opportunity to offer for admission, and to argue the admissibility, of documentary evidence.
- (b) Reopening shall be confined to the following subject areas:
  - (1) Geology, seismology and volcanism;
  - (2) Cost-benefit analysis;
  - (3) Skagit River flooding and slides at Bacus Hill;
  - (4) Project ownership;
  - (5) Scheduled dates for project completion; and
  - (6) The effect of (4) and (5) on the "need for power" question.
- (c) The parties will be afforded the opportunity to submit rebuttal to evidence thus admitted, such rebuttal in the form of documentary evidence.
- (d) Cross-examination may be allowed in the discretion of the examiner upon timely request of a party.
- (e) The Council may, in its discretion, order the hearing reopened to allow Council cross-examination concerning documents received in evidence.
- (f) Stipulation of the parties concerning any topic area may be entered in the record at the reopened hearing session.

IT IS FURTHER ORDERED That the Council's examiner assigned to this application schedule a reopened hearing session in this matter no sooner than 10 and no later than 20 business days following issuance of the order herein, and at said hearing issue rulings concerning the admissibility of any offered evidence. The reopened hearing session shall be limited in scope to the matters specified in this order. Provision may there be made concerning asserted evidence not then in existence, provided this can be done without unduly delaying the conclusion of this proceeding.

IT IS FURTHER ORDERED That if the Council so requests, applicant shall exert its best efforts to make the proprietary data described in Finding of Fact No. 5(b) herein available for examination by Mathematical Sciences Northwest, Inc., the Council's independent consultant, to evaluate the same for the Council; provided that each person permitted to examine said data shall first sign a protective agreement adequate to protect the proprietary nature of such data.

AND IT IS FURTHER ORDERED That except as noted above, intervenor's motion to reopen evidentiary hearing shall, and the same is hereby, denied.

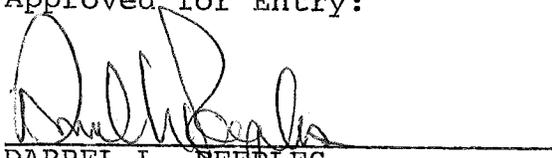
DATED this 3rd day of March, 1976.

WASHINGTON STATE THERMAL POWER PLANT  
SITE EVALUATION COUNCIL

By

  
THOMAS C. STACER  
Acting Chairman

Approved for Entry:

  
DARREL L. PEPPLES  
Assistant Attorney General

Order Granting, In part, Intervenor's motion, granting Applicant's Motion to Reopen Evidentiary Hearing referred to Application 74-1 (Skagit) dated 3/3/76 signed by Thomas C. Stager was mailed to attached list of subjects on 3/3/76

*Self Camera*  
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