

DISTRIBUTION:

OGC Files Beth/Gtwn
Reg Central Files ✓
OGC Formal Files (2)
EBloch
O'Leary
AGiambusso
Docket Files (50-305)

JGallo
HKShapar
TFengelhardt
RDeYoung
Gertter 5280
RRRenfrow

50-305

MAY 30 1973

PDR
LPDR
Robert J. Vollen, Esq.
Businessmen for the Public Interest
Suite 1001
109 North Dearborn Street
Chicago, Illinois 60602

Dear Mr. Vollen:

This is in response to your letter of January 29, 1973 to me in which you requested that the Commission vacate its Order of December 27, 1972, which extended the latest completion date set forth in the construction permit for the Kewaunee Nuclear Power Plant from December 31, 1972 to August 31, 1973.

Based on a review of the request for an extension of the completion dates, it was found that good cause existed for granting the request and that the granting of the request involved no significant hazards consideration. Notice of this action was published in the Federal Register on January 9, 1973 (38 F.R. 1141). The above procedures comply with the requirements of sections 185 and 189 of the Atomic Energy Act of 1954, as amended, and the recent decision of the U. S. Court of Appeals for the District of Columbia captioned Brooks, et al. v. The Atomic Energy Commission and United States of America.

We have received your request and for the reasons noted above determined that the extensions of the construction completion date for the Kewaunee Nuclear Power Plant were properly accomplished and there is no basis for us to vacate the Order of December 27, 1972.

Sincerely,

15/

Richard C. DeYoung
Acting Deputy Director for
Reactor Projects
Directorate of Licensing

Copy sent PDR

OFFICE ▶	4	No. 72-2177, March 8, 1973.	OGC	L	
SURNAME ▶			JGallo jdr	RDeYoung	LB
DATE ▶			5/29/73	5/30/73	

FROM
Businessmen for the Public Interest
Robert J. Vollen
Chicago, Ill.

CONTROL NUMBER
5280

FILE LOCATION
ACTION COMPLETION DEADLINE
2/20/73

TO
R. C. DeFeung

ACTION PROCESSING DATES
Acknowledged _____
Interim Report 1/20/73
Final 2/21/73

PREPARE FOR SIGNATURE OF:

Chairman

Director of Regulation

DESCRIPTION **ltr** Original Copy Other
Req. Order dtd 12/27/72 providing for extension of completion date for Keweenaw from 12/31/72 to Aug. 31, 1973 be vacated and set aside on the grounds that it is illegal and void

REMARKS

REFERRED TO	DATE	IS NOTIFICATION TO THE JCAE RECOMMENDED?
Shapar 1/action	2/6/73	_____

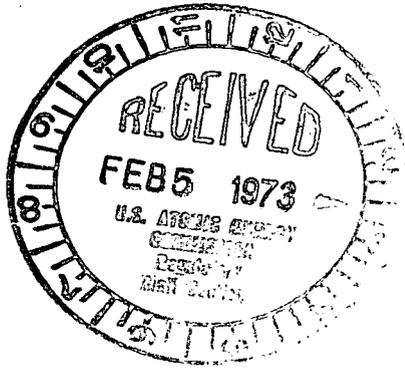
Cys: **Black**
O'Leary
Ginsburg
Becket Files (50-305)
PR
Local PR

DO NOT DETACH THIS COPY

DIRECTOR OF REGULATION
COMMUNICATIONS CONTROL

Form HQ-32 (6-70)
USA EC

BUSINESSMEN FOR THE PUBLIC INTEREST
109 NORTH DEARBORN STREET
SUITE 1001
CHICAGO, ILLINOIS 60602
(312) 641-5570



January 29, 1973

ALEXANDER POLIKOFF
Executive Director
MARSHALL PATNER
General Counsel
DAVID DINSMORE COMEY
Director of
Environmental Research
THOMAS R. MEITES
Associate Counsel

Mr. R. C. DeYoung
Acting Deputy Director for
Reactor Projects
Directorate of Licensing
United States Atomic Energy Commission
Washington, D.C. 20545

Re: In the Matter of Wisconsin Public Service
Corporation, et al (Kewaunee Nuclear Power
Plant) Docket No. 50-305; CPPR-50

Dear Sir:

On December 27, 1972, you issued an Order, for the Atomic Energy Commission, published in the Federal Register on January 9, 1973, providing that the latest completion date for CPPR-50 is extended from December 31, 1972 to August 31, 1973. In our view that Order is invalid and we hereby request that it be vacated and set aside. We further request that the procedures employed by the Commission in entering that Order not be followed in the future and that we receive written confirmation from the Commission that its own rules, the provisions of the Atomic Energy Act and of the Administrative Procedure Act, as well as the provisions of the Constitution of the United States, will be followed in the future.

On June 22, 1972 there was published in the Federal Register a Notice of Consideration of Issuance of Facility Operating License for the above-captioned plant unit. That Notice described that a petition to intervene may be filed (1) with respect to whether the provisional construction permit should be continued, modified, terminated or approximately conditioned considering the matters covered in Appendix D to 10 C.F.R. Part 50; and (2) with respect to the issuance of an operating license. On July 24, 1972, we filed a Petition to Intervene in the proceeding and on September 29, 1972 the Atomic Energy Commission issued its Memorandum and Order granting that Petition to Intervene.

DE 5280

888

Mr. R. C. DeYoung
Page 2
January 29, 1973

We thereby became a party to the proceeding.

Thereafter, the Order extending the latest completion date for CPPR-50 was issued without any notice, without the opportunity to object or to present evidence and without the required findings. The Order is illegal and void, therefore, and must be vacated.

Although the September 29, 1972 Memorandum and Order of the Commission, and the notice published in the Federal Register on October 6, 1972, implementing it are somewhat unclear as to whether the Commission was ordering that a hearing be held only on the application for an operating license, or whether, in addition that a hearing be held on the continuation, modification, termination or conditioning of the construction permit as well, in either event the procedures (or lack of procedures) employed by the Commission in issuing the December 27, 1972 Order were improper. If the September 29, 1972 order was a decision that a hearing be held on the construction permit as well as on the operating license than clearly it was improper for the Applicant to request and for the Commission to enter an order, in a purely ex parte manner, regarding the subject matter of a forthcoming public hearing. Notice to parties is required by the Commission's own regulations and, of course, by the most basic concepts of due process of law. Moreover, since the Commission designated an Atomic Safety and Licensing Board to preside over the matter and granted jurisdiction to it, the Commission had not retained the authority unilaterally to issue the December 27, 1972 Order. Neither the procedures of §2.730(g), 10 C.F.R., nor the procedures of §2.786(a), 10 C.F.R., were followed.

If, on the other hand, the September 29, 1972 Order of the Commission determined only that a hearing would be held only on the operating license and did not make a determination as to whether a hearing would be held on the construction permit, nevertheless the procedures employed in issuing the December 27, 1972 Order were improper. Section 189 of the Atomic Energy Act of 1954, as amended, provides that the Commission may, in the absence of a request for a hearing, issue an amendment to a construction permit. In the instant case, however, there was not an absence of a request for a hearing. Quite the contrary, there was an explicit request for a hearing. Moreover, §189 permits

Mr. R. C. DeYoung
Page 3
January 29, 1973

the amendment to a construction permit without a hearing only after the Commission has given 30 days notice and publication in the Federal Register of its intent to issue the amendment. This was not done. Finally, if there has been no request for a hearing, §189 permits the Commission to dispense with notice and publication upon a determination that the amendment "involves no significant hazards consideration." While the December 27, 1972 Order recites that the action "involves no significant hazards consideration," that bald statement is not sufficient and, indeed flies in the face of the reasons given in the Order for the Applicant having requested the extension. No such determination properly could be made, at least in the absence of an investigation by the AEC into the facts and statement as to why that determination is appropriate. In sum, there appears to be no justification for the secret, ex parte procedures by which the December 27, 1972 Order was issued.

For reasons separate from the lack of notice and opportunity for hearing, the December 27, 1972 Order clearly is illegal. Section 185 of the Atomic Energy Act of 1954, as amended, provides that if construction is not completed by the completion date in the permit, the permit expires and all rights thereunder are forfeited, unless the Commission extends the completion date "upon good cause shown". The Commission's regulations themselves thus indicate that a finding of "good cause" must be based upon more than the Applicant's simple request. Section 50.91 (10 C.F.R. Part 50) provides that in determining whether an amendment will be issued, the Commission will be guided by the considerations which govern the issuance of initial licenses or constructions permits, to the extent applicable and appropriate. In §50.55(b) the Commission has stated some of the things it will recognize in determining whether to find good cause for extending the completion date on a construction permit. We do not believe that the reasons for the extension cited in the December 27, 1972 Order, nor those cited in the November 6, 1972 letter from Wisconsin Public Service Corporation to the Directorate of Licensing, come within the things set forth in §50.55(b). While we understand that the listing of things in that section is not exclusive,

Mr. R. C. DeYoung
Page 4
January 29, 1973

the items set forth by Wisconsin Public Service Corporation should not, and cannot, be accepted as good cause without some investigation and specific findings by the Commission. Indeed, on their face, the matters set forth by the company raise substantial safety questions which should have been thoroughly investigated. It is not enough simply to recite there there has been good cause shown, there must in fact have been good cause shown.

Finally, and perhaps most dramatically from the standpoint of the illegality of the December 27, 1972 Order, is the apparently complete ignoring by the Commission of the requirements of the National Environmental Policy Act of 1969, and the provisions of Appendix D of 10 C.F.R., Part 50. Apparently no consideration whatsoever was given to the environmental impact of the requested order, notwithstanding the Commission's explicit statement that the proceeding would be governed by Section C of Appendix D.

We request, therefore, that the December 27, 1972 Order be vacated on the ground that it is illegal and void.

Very truly yours,



Robert J. Vollen
General Counsel

RJV:kw

cc: Joseph Gallo, Esquire
R. Rex Renfrow, III, Esquire
Gerald Charnoff, Esquire

