

UNITED STATES OF AMERICA  
ATOMIC ENERGY COMMISSION

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of Wisconsin  
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Madison, Wisconsin 53702

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State of Wisconsin  
Madison, Wisconsin 53701

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Madison, Wisconsin 53706

Environmental Protection Agency  
Environmental Evaluation Branch  
Building 2, Room 1000  
Washington, D. C. 20242

*Patricia M Kreutzer*  
Office of the Secretary of the Commission

cc: Mr. Farmakides  
Mr. Gallo  
ASLBP  
V. Wilson  
Reg. Files

UNITED STATES OF AMERICA  
ATOMIC ENERGY COMMISSION

COMMISSIONERS:

James R. Schlesinger, Chairman  
James T. Ramey  
Clarence E. Larson  
William O. Doub  
Dixy Lee Ray

IN THE MATTER OF )  
)

WISCONSIN PUBLIC SERVICE CORPORATION )  
WISCONSIN POWER AND LIGHT COMPANY )  
AND )  
MADISON GAS AND ELECTRIC COMPANY )  
(Kewaunee Nuclear Power Plant) )

DOCKET NO. 50-305

MEMORANDUM AND ORDER

On June 22, 1972, the Commission published in the Federal Register (37 F.R. 12337), a notice of consideration of issuance of a facility operating **license** to the Wisconsin Public Service Corporation, Wisconsin Power and Light Company, and Madison Gas and Electric Company (applicants) for the Kewaunee Nuclear Power Plant, a 1,650 MWT pressurized water reactor, located on the applicants' site in Kewaunee County, Wisconsin. The notice provided that, within 30 days from the date of publication, any person whose interest might be affected by the issuance of the license could file a petition for leave to intervene in accordance with the requirements of our "Rules of Practice", 10 CFR Part 2.

By a joint petition dated July 24, 1972, Businessmen for the Public Interest (BPI), and Protect Our Wisconsin Environmental

Resources (POWER) requested that they be permitted to intervene as parties in this proceeding.

In its answer to this joint petition, the Regulatory Staff recommended that the petition should be granted, subject to certain clarifications of petitioners' stated interests in the proceeding and of specific contentions. Applicants' answer urged that petitioners initially be required to submit verifications by the individuals named in the intervention petition stating that they have in fact authorized BPI and POWER to represent their interests in this proceeding. To support this request, applicants cited an instance In The Matter Of Wisconsin Electric Power Company, Docket No. 50-266 (Point Beach proceeding), in which an individual there named by the Sierra Club in its intervention request specifically requested that his name be withdrawn. (Sierra Club is not a petitioner in this proceeding.) In addition, applicants further suggested that an affidavit be required setting forth with particularity the basis for each contention in the joint petition. The Regulatory Staff opposed this request, arguing that appropriate prehearing procedures would serve as a more useful and expeditious means of dealing properly with petitioners' contentions.

Upon consideration of the filings, we conclude that a hearing on applicants' request for an operating license should be held, and that petitioners BPI and POWER should be admitted as intervenors,

Accordingly, we have designated an Atomic Safety and Licensing Board to preside over this proceeding as of this date. Among other immediate responsibilities, we leave it to the Board to take whatever steps may be appropriate to narrow petitioners' contentions and specify the issues to be decided in the hearing.

In issuing this Order, we wish to remind the Board and the parties that significant amendments to the Commission's Rules of Practice became effective on August 28, 1972, and that these amendments should be applied to this proceeding as appropriate when the context so indicates. Inter alia, these new regulations place increased emphasis on prehearing conferences as a tool in structuring and expediting hearings. We urge the parties to cooperate with the Board in making maximum use of the amended procedures to assure an effective, orderly and efficient hearing process.<sup>1/</sup>

In considering the pleadings to date, we have noted several references to the matter of Comey, et al. v. AEC, et al. (SD Ill., Civ. Action No. 72C 1744), involving BPI's and Mr. Comey's request for documents pursuant to the Freedom of Information Act. In this connection, we note our longstanding practice of permitting amendments to petitions to intervene for good cause shown. Unless special

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<sup>1/</sup> In reference to applicants' suggestion that the supporting affidavit requirement in 10 CFR § 2.714 should be applied to this proceeding, we agree with the staff that prehearing conferences would serve as a more useful and expeditious means to deal properly with petitioners' contentions.

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considerations dictate otherwise in specific circumstances, new information appearing in previously unavailable documents would generally constitute good cause for amendment, assuming of course that the request to amend is expeditiously presented and is otherwise proper. Such determinations rest in the sound discretion of the Licensing Board.

A hearing notice implementing our determination is appended to this Memorandum and Order as Attachment "A". It is so ORDERED.

By the Commission

A handwritten signature in dark ink, appearing to read "Paul C. Bender", is written over a horizontal line.

Paul C. Bender  
Secretary of the Commission

Dated: September 29, 1972

ATTACHMENT "A"

UNITED STATES OF AMERICA  
ATOMIC ENERGY COMMISSION

IN THE MATTER OF

WISCONSIN PUBLIC SERVICE CORPORATION

WISCONSIN POWER AND LIGHT COMPANY

AND

MADISON GAS AND ELECTRIC COMPANY

(Kewaunee Nuclear Power Plant)

DOCKET NO. 50-305

NOTICE OF HEARING ON A FACILITY OPERATING LICENSE

Pursuant to the Atomic Energy Act of 1954, as amended (the Act), and the regulations in Title 10, Code of Federal Regulations, Part 50, "Licensing of Production and Utilization Facilities," and Part 2, "Rules of Practice," notice is hereby given that a hearing will be held at a time and place to be set in the future by an Atomic Safety and Licensing Board, to begin in or in the vicinity of Kewaunee County, Wisconsin, to consider the application filed under § 104 b. of the Act by the Wisconsin Public Service Corporation, Wisconsin Power and Light Company, and Madison Gas and Electric Company (applicants) for a facility operating license which would authorize the operation of the pressurized water reactor (the facility), identified as Kewaunee Nuclear Power Plant, at a steady-state power level up to a maximum of 1,650 megawatts (thermal), at the applicants' site in Kewaunee County, Wisconsin.

The hearing will be conducted by an Atomic Safety and Licensing Board

(Board) designated by the Atomic Energy Commission (Commission), consisting of John B. Farmakides, Esq., (Chairman), Mr. Frederick J. Shon, and Dr. William E. Martin. Dr. Ernest O. Salo has been designated as a technically qualified alternate, and Hugh K. Clark, Esq., has been designated as an alternate qualified in the conduct of administrative proceedings.

Construction of the facility was authorized by Provisional Construction Permit No. CPPR-50, issued by the Commission on August 6, 1968, following a public hearing.

A notice of consideration of issuance of an operating license for the facility was published on June 22, 1972 (37 F.R. 12337). The notice provided that, within 30 days from the date of publication, any person whose interest may be affected by the issuance of a license could file a petition for leave to intervene in accordance with the requirements of 10 CFR Part 2, "Rules of Practice". A joint petition for leave to intervene was thereafter filed by Businessmen for the Public Interest and Protect Our Wisconsin Environmental Resources. Answers to these petitions were filed by the applicants and by the Atomic Energy Commission's Regulatory Staff.

As set forth in a Memorandum and Order on this matter dated September 29, 1972, the Commission has determined that a public hearing will be held and that petitioners Businessmen for the Public Interest and Protect



Our Wisconsin Environmental Resources should be admitted as parties to the proceeding. The Commission further directed the Licensing Board to take whatever action it considered necessary to enable it to narrow the petitioners' contentions and specify the issues to be considered during the hearing.

A special prehearing conference will be held by the Board, at a date and place to be set by it, to consider pertinent matters in accordance with the Commission's "Rules of Practice", 10 CFR Part 2. The date and place of any further prehearing conferences, and of the hearing itself, will be set by the Board at or after the special prehearing conference. Notices as to the dates and places of the special prehearing conference and the hearing will be published in the Federal Register.

Depending on the resolution of the issues specified by the Licensing Board, authorization for issuance of the license may be granted or denied, or the license may be authorized as appropriately conditioned. An operating license would be issued only after appropriate findings are made by the Director of Regulation on the matters set forth below which are not embraced by the Board's decision (and upon compliance with the applicable provisions of Appendix D to 10 CFR Part 50, dealt with hereinafter):

1. Whether construction of the facility has been substantially completed in conformity with the construction permit and the application, as amended, the provision of the Act, and the rules and regulations of the Commission.
2. Whether the facility will operate in conformity with the application, as amended, the provisions of the Act, and the rules and regulations of the Commission.
3. Whether there is reasonable assurance (i) that the activities authorized by the operating license can be conducted without endangering the health and safety of the public, and (ii) that such activities will be conducted in compliance with the regulations of the Commission.
4. Whether the applicant is technically and financially qualified to engage in the activities authorized by the operating license in accordance with the regulations of the Commission.
5. Whether the applicable provisions of 10 CFR Part 140, "Financial Protection Requirements and Indemnity Agreements," of the Commission's regulations have been satisfied.
6. Whether the issuance of the license will be inimical to the common defense and security or to the health and safety of the public.

The Commission has issued regulations for the implementation in its

licensing proceedings of the National Environmental Policy Act of 1969 (NEPA). Appendix D to 10 CFR Part 50. The instant proceeding is covered by Section C of said Appendix D, which sets forth procedures applicable to review of environmental considerations for production and utilization facilities for which construction permits were issued prior to January 1, 1970.

The application for the facility operating license and other documents pertinent to the matters under consideration, including the transcripts of the prehearing conference and of the hearing, have or will be placed in the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C., where they will be available for inspection by members of the public. Copies of those documents will also be made available at the Kewaunee Public Library, 314 Milwaukee Street, Kewaunee, Wisconsin, for inspection by members of the public. Copies of the applicants' supplemental environmental report dated November 8, 1971; the Commission's draft detailed statement of environmental considerations pursuant to 10 CFR Part 50; the report of the Advisory Committee on Reactor Safeguards on the application for a facility operating license for the Kewaunee facility; the Commission's final detailed statement of environmental considerations pursuant to 10 CFR Part 50, Appendix D; the safety evaluation prepared by the Division of Reactor Licensing; and the proposed facility operating license, when available

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and to the extent of supply, may be obtained by request to the Director of the Division of Reactor Licensing, U.S. Atomic Energy Commission, Washington, D.C., 20545.

Any person who wishes to make an oral or written statement in this proceeding setting forth his position on the issues specified, but who has not filed either a petition for leave to intervene or a request for a hearing as noted above, may request permission to make a limited appearance pursuant to the provisions of 10 CFR § 2.715 of the Commission's "Rules of Practice." Limited appearances will be permitted at the time of the hearing in the discretion of the Board, within such limits and on such conditions as may be fixed by the Board. Persons desiring to make a limited appearance are requested to inform the Secretary of the Commission, United States Atomic Energy Commission, Washington, D.C., 20545, not later than thirty (30) days from the date of publication of this notice in the Federal Register. A person permitted to make a limited appearance does not become a party, but may state his position and raise questions which he would like to have answered to the extent that the questions are within the scope of the hearing as specified in the issues set out above. A member of the public does not have the right to participate unless he has been granted the right to intervene as a party or the right of limited appearance.

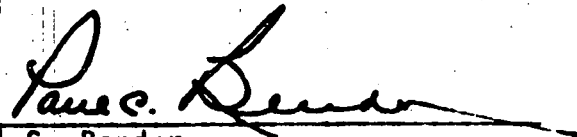
An answer to this notice, pursuant to the provisions of 10 CFR § 2.705 of the Commission's "Rules of Practice," must be filed by the parties to the

proceeding (other than the Regulatory Staff) not later than twenty (20) days from the date of publication of this notice in the Federal Register. Papers required to be filed in this proceeding may be filed by mail or telegram addressed to the Secretary of the Commission, United States Atomic Energy Commission, Washington, D.C., 20545, ATTENTION: Chief, Public Proceedings Branch, or may be filed by delivery to the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C.

Pending further order of the Board, parties are required to file, pursuant to the provisions of 10 CFR § 2.708 of the Commission's "Rules of Practice," an original and twenty copies of each such paper with the Commission.

With respect to this proceeding, the Commission has delegated to the Atomic Safety and Licensing Appeal Board the authority and the review function which would otherwise be exercised and performed by the Commission. The Commission has established the Appeal Board pursuant to 10 CFR § 2.785 of the Commission's "Rules of Practice," and has made the delegation pursuant to subparagraph (a)(1) of this section. The membership of the Appeal Board for this proceeding will be designated by the Commission in a subsequent notice to be published in the Federal Register.

UNITED STATES ATOMIC ENERGY COMMISSION



Paul C. Bender  
Secretary of the Commission

Dated at Germantown, Maryland

this 29th day of Sept. , 1972.