

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before The Atomic Safety and Licensing Board

In the Matter of	)	Docket No. 50-305
	)	Amendment to License
WISCONSIN PUBLIC SERVICE CORPORATION	)	No. DPR-43
Wisconsin Power and Light Company	)	(Increase Spent Fuel
Madison Gas and Electric Company	)	Storage Capacity)
)	
(Kewaunee Nuclear Power Plant))	

JOINT MOTION

Pursuant to published notice by the Commission, Lakeshore Citizens for Safe Energy and Safe Haven, Ltd. ("Intervenors") filed a petition for leave to intervene in the above-captioned proceeding on the application of Wisconsin Public Service Corporation ("WPSC") for amendment of License No. DPR-43 to permit expansion of the spent fuel pool capacity at the Kewaunee Nuclear Plant. Intervenors were admitted as parties by Order of the Licensing Board dated July 17, 1978. No other petitions for leave to intervene were filed. The sole parties to the proceeding are WPSC, Intervenors, and the NRC Regulatory Staff. The State of Wisconsin, through the Wisconsin Department of Justice, was granted leave to participate as an interested State pursuant to 10 C.F.R. Section 2.715(c).

WPSC, Intervenors, and the NRC Regulatory Staff have entered into a settlement Agreement, attached hereto, and Intervenors have agreed to withdraw as parties to this proceeding. Accordingly, pursuant to said Agreement among the parties, and in accordance with the provisions of Section 2.759 of the Commission's Rules of Practice:

1. Intervenors hereby request the Licensing Board for leave to withdraw as parties to this proceeding; and
2. Intervenors, WPSC, the NRC Staff, and the State of Wisconsin hereby move the Licensing Board to enter an order approving the withdrawal of Intervenors as parties to this proceeding; and
3. Intervenors, WPSC, the NRC Staff, and the State of Wisconsin move the Licensing Board, upon the entry of such an order approving Intervenors' withdrawal from this proceeding, to enter an order dismissing this proceeding.

A Proposed Form of Order is attached hereto.

Respectfully submitted,

Jan 29th, 1979

LAKESHORE CITIZENS FOR SAFE ENERGY

By William Cordaro
William Cordaro, Agent of Record

Jan. 30, 1979, 1979

SAFE HAVEN, LTD.

By Jean B. Johnson

January 15, 1979

WISCONSIN PUBLIC SERVICE CORPORATION

By Steven E. Keane
Steven E. Keane, Attorney for
Wisconsin Public Service Corporation

February 5, 1979

NUCLEAR REGULATORY COMMISSION STAFF

By William J. Oxmstead
William J. Oxmstead, Counsel
for NRC Staff

February 2, 1979

STATE OF WISCONSIN

By Patrick W. Walsh
Patrick W. Walsh, Assistant Attorney
General, State of Wisconsin

dup

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
WISCONSIN PUBLIC SERVICE CORPORATION	)	Docket No. 50-305
WISCONSIN POWER AND LIGHT COMPANY	)	Amendment to License
AND	)	No. DPR-43
MADISON GAS AND ELECTRIC COMPANY	)	(Increase Spent Fuel
(Kewaunee Nuclear Power Plant)	)	Storage Capacity)

AGREEMENT BETWEEN NRC STAFF
LAKESHORE CITIZENS AND SAFE HAVEN, LTD.

Pursuant to 10 CFR §2.759 of the Commission's Rules of Practice, the NRC Staff, Lakeshore Citizens for Safe Energy (Lakeshore) and Safe Haven, Ltd. (Safe Haven), have entered into this agreement in order to secure a fair and reasonable settlement of the above-captioned proceeding between Wisconsin Public Service Corporation, the NRC Staff, Lakeshore, and Safe Haven. The NRC Staff, Lakeshore and Safe Haven agree as follows:

1. The NRC Staff will on receipt, reproduce and mail a copy of the Licensee Event Reports (LERs), and the Licensee's monthly Operating Reports which concern the Kewaunee facility. These documents will be mailed to:

Joan Estes
3314 Gass Lake Road
Manitowoc, Wisconsin 54220

2. During the term of this agreement, the NRC will inspect the spent fuel pool at least once every twelve months. Copies of NRC inspection reports, excluding proprietary information, will be sent to Joan Estes as indicated in paragraph 1.

3. Lakeshore and Safe Haven will enter whatever agreements with the other parties to this proceeding which may be necessary to settle the issues in controversy and shall take all reasonable steps to secure termination of said proceeding, including the filing of, or joinder in, appropriate motions before the Atomic Safety and Licensing Board to secure termination.

4. This agreement shall remain in effect until Lakeshore or Safe Haven informs the NRC it no longer wishes to receive the information referenced in paragraph 1, above or notifies the NRC that they have disbanded or otherwise ceased to exist.

_____, 1979 LAKESHORE CITIZENS FOR SAFE ENERGY

By _____
William Cordaro, Agent of Record

_____, 1979 SAFE HAVEN, LTD.

By _____

February 1, 1979 NUCLEAR REGULATORY COMMISSION STAFF

By *William J. Gimstead*
William J. Gimstead
Counsel for NRC Staff

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before The Atomic Safety and Licensing Board

In the Matter of	)	Docket No. 50-305
	)	Amendment to License
WISCONSIN PUBLIC SERVICE CORPORATION	)	No. DPR-43
Wisconsin Power and Light Company	)	(Increase Spent Fuel
Madison Gas and Electric Company	)	Storage Capacity)
)	
(Kewaunee Nuclear Power Plant))	

PROPOSED FORM OF ORDER

In a joint motion dated _____, 1979,

Wisconsin Public Service Corporation ("WPSC"), Citizens for Safe Energy and Safe Haven, Ltd. ("Intervenors"), the NRC Staff, and the State of Wisconsin moved this Board for an order approving the withdrawal of Intervenors from this proceeding in accordance with a settlement agreement entered into among Intervenors, WPSC, and the NRC Regulatory Staff dated _____, 1979. All parties and participants, including Intervenors, having moved for the Board's acceptance of Intervenors' withdrawal, the Board accordingly accepts the withdrawal of Intervenors as parties to this proceeding.

In the same motion, all three parties and the State of Wisconsin moved the Board for an order dismissing this proceeding. The withdrawal of the only intervenors

removes both the need and the occasion for further evidentiary hearings in this proceeding. There are no longer any matters which the parties wish to resolve in this proceeding and, consequently, there is no issue to be heard by the Board. In addition, the Board is satisfied that the issues raised by the two Board questions posed in the Order dated October 11, 1978 have been adequately addressed in the submissions of WPSC and the NRC Staff.

Dismissal of this proceeding is consistent with the Commission's requirements which do not contemplate a hearing on an application for an operating license, or an amendment thereto, in the absence of any matters in controversy, 10 C.F.R. Sections 2.104, 2.105, 50.58(b), and 50.91, and is consistent with the general powers of the presiding officer in 10 C.F.R. Section 2.718. Moreover, dismissal of a proceeding pursuant to agreement of the parties is consistent with the general policy of administrative law favoring harmonious settlement of contested issues, and with the provisions of 10 C.F.R. Section 2.759 which specifically encourages the fair and reasonable settlement of outstanding issues in NRC licensing proceedings. The joint motion to dismiss the proceeding will, therefore, be granted, and the proceeding before this Board will be terminated.

Accordingly, IT IS ORDERED, that the proceeding before this Board, noticed in the Board's "Notice of Hearing on Amendments to Facility Operating Licenses, and of Special Pre-Hearing Conference," dated December 17, 1977, 42 Fed. Reg. 65335 (December 30, 1977), be, and it hereby is, dismissed.

ATOMIC SAFETY AND LICENSING BOARD
