

2-27-78



UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of
NORTHERN STATES POWER COMPANY
(Monticello Nuclear Generating
Plant, Unit 1)

Docket No. 50-263
Amendment to License No. DPR-22
(Increase Spent Fuel Storage
Capacity)

ORDER DISMISSING PROCEEDING

On September 19, 1977, the Commission published a "Notice of Consideration of Proposed Modification to Facility Spent Fuel Storage Pool" with respect to Northern States Power Company's (licensee's) Monticello Nuclear Generating Plant (the facility) (42 Fed. Reg. 46963). The proposed amendment to Provisional Operating License No. DPR-22 would authorize modification of the spent fuel storage pool to increase its capacity. That notice provided that any person whose interest might be affected by this proceeding could file a petition for leave to intervene in accordance with the Commission's Rules of Practice in 10 CFR Part 2.

On October 17, 1977, the Minnesota Pollution Control Agency (MPCA), an agency of the State of Minnesota, filed a timely request that the Commission hold a public hearing to consider Licensee's

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request for a license amendment to allow modification to the facility's spent fuel storage pool and petitioned for leave to intervene as a party in such a proceeding. Neither the Licensee nor the NRC Staff objected to petitioner's request for a hearing. MPCA was admitted as a party to the proceeding pursuant to the provisions of 10 CFR §2.714 by the Atomic Safety and Licensing Board designated to rule on petitions for leave to intervene (Petition Board) by Memorandum and Order issued December 13, 1977. The Memorandum and Order was implemented by the Petition Board's Notice of Hearing on Amendment of Facility Operating License, also dated December 13, 1977 (42 Fed. Reg. 63827, December 20, 1977), which Notice designated this Atomic Safety and Licensing Board (Board) to conduct the proceeding. No other petitions for leave to intervene having been filed, the parties to the proceeding are Licensee, MPCA and the NRC Staff.

In a joint motion dated January 6, 1978, Licensee, MPCA and the NRC Staff moved this Board for an Order approving the withdrawal of MPCA as a party to this proceeding in accordance with the Agreement entered into between Licensee and MPCA. In the same motion, Licensee and the NRC Staff moved the Board for an order dismissing the proceeding.

Pursuant to notice, a prehearing conference was held on January 31, 1978, at which time the Board heard oral argument by

by counsel for all parties regarding MPCA's request to withdraw its intervention in this proceeding.

Joint movants assert that termination of the hearing is in keeping with both Part 2 and Part 50 of the Commission's Rules of Practice, which contemplate a hearing on Licensee's application for an amendment of its Provisional Operating License only in the event of an intervention, and that the withdrawal of MPCA as an intervenor would remove both the need and occasion for a hearing as there would no longer be any matters in controversy among the parties.

MPCA's request for leave to withdraw its Petition for Leave to Intervene dated October 17, 1977, is pursuant to the Agreement which has been duly executed by Licensee and MPCA and filed as an appendix to the pending motion. While we do not expressly pass upon the terms of the Agreement, we observe that it appears to meet MPCA's basic concerns as set forth in its Petition for Leave to Intervene. We note further, that aside from the general policy of Administrative Law favoring harmonious settlement of contested issues, the provisions of 10 CFR §2.759 of the Commission's Rules of Practice specifically encourage the fair and reasonable settlement of outstanding issues in licensing proceedings. Accordingly, in the light of the docketed Agreement, the Board hereby grants the request by MPCA for leave to withdraw its Petition for Leave to Intervene dated October 17, 1977.

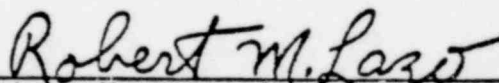
Therefore, the Board accepts the withdrawal of MPCA as a party to this proceeding.

In view of the withdrawal of MPCA as a party, there are no longer any matters in controversy among the parties in this proceeding, and, consequently, there is no issue to be heard by the Board. Dismissal of this proceeding is consistent with the Commission's regulations 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 CFR §§2.104, 2.105, 50.58(b), and 50.91 and with the general powers of the presiding officer in section 2.718. The proceeding before this Board will, therefore, be terminated and the joint motion to dismiss the proceeding will be granted.

Accordingly, IT IS ORDERED, that the proceeding before this Board, noticed in the Commission's "Notice of Hearing on Amendment of Facility Operating License" dated December 13, 1977, be, and it hereby is, dismissed.

Dr. Walter H. Jordan and Dr. Richard F. Cole, members of this Board, join in this Order.

FOR THE ATOMIC SAFETY AND
LICENSING BOARD


Robert M. Lazo, Chairman

Dated at Bethesda, Maryland,
this 27th day of February, 1978.

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