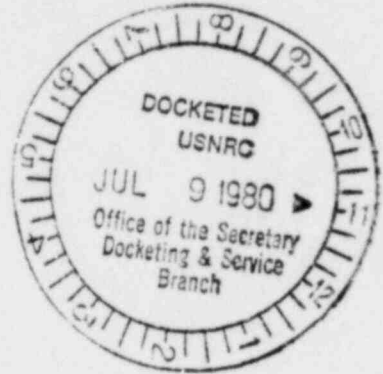


UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

Charles Bechhoefer, Chairman
Dr. George C. Anderson
Ralph S. Decker



In the Matter of)
)
DAIRYLAND POWER COOPERATIVE) Docket No. 50-409
) (FTOL Proceeding)
(La Crosse Boiling Water Reactor))

SECOND PREHEARING CONFERENCE ORDER*

(July 8, 1980)

On June 19, 1980, the Licensing Board conducted a prehearing conference at La Crosse, Wisconsin. The conference was announced by our orders of May 21 and 23, 1980. (The latter order was published in the Federal Register at 45 Fed. Reg. 37312 (June 2, 1980).) Appearing at the conference were representatives of Dairyland Power Cooperative (Applicant), the Coulee Region Energy Coalition (CREC) (an intervenor), and the NRC Staff. Following is an outline of the matters discussed.

1. The Board advised the parties of the approval by the Commission of a new policy of procedural assistance to intervenors, under which the NRC would ease some of the burdens of serving documents heretofore imposed on intervenors and would also provide transcripts of proceedings to them without charge (Tr. 1006-08, 1011-12, 1143). We

*/ This is the second prehearing conference order issued in this full-term operating license proceeding. The first order, dated September 5, 1978, dealt with actions and rulings taken at the special prehearing conference of August 17, 1978 (which involved both this proceeding and the spent fuel pool expansion proceeding).

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noted that, although approved, the policy would not become effective until it was published in the Federal Register. As of the date of the conference, such publication had not occurred; nor has it as of this date. Nonetheless, the Board asked the Staff to send a photocopy of the transcript of the conference to CREC; and by letter dated June 25, 1980, the Staff did so.

Because of the delay in publication, the service assistance which we advised CREC would be available upon its filing of further responses to interrogatories (see item 4, infra) is not yet in effect. For that reason, the Board Chairman on July 3, 1980 telephoned Ms. Anne Morse, one of CREC's representatives, and advised her that CREC should serve its responses to interrogatories upon the parties and Board members. Reflecting a telephone inquiry of the Docketing and Service Branch, Office of the Secretary, the Board Chairman further advised Ms. Morse that it would be sufficient if CREC served an original and two copies on the Secretary (rather than an original and 20 copies as called for by the rules).

2. In response to a request by CREC, the Board asked the Applicant to add CREC to the mailing list for general responses to inquiries from the Staff (in addition to the mailing list for this particular proceeding) (Tr. 1008-11). Also in response to a CREC request, the Board asked the Staff to attempt to make certain that the La Crosse Public Document Room includes the same documents pertaining to this proceeding as are in the Washington Public Document Room (Tr. 1080-84).

3. The Board heard oral argument on the effect (if any) on this proceeding of the Commission's new policy on consideration of the likelihood and effects of serious (formerly "Class 9") accidents (Tr. 1013-1038). That policy became effective on June 13, 1980. See 45 Fed. Reg. 40101 (June 13, 1980). (Our Memorandum of June 10, 1980 transmitted a copy to the parties.) All parties seemed to concede, if not agree, that special circumstances would have to be shown in order for the effects of serious accidents (those formerly considered as "Class 9" accidents) to be factored into this proceeding (Tr. 1014, 1018-21, 1023-25). They differed in their view of what constituted a special circumstance. CREC advanced the following as special circumstances which in its opinion provide the bases for considering the consequences of a severe accident in this proceeding:

- (a) the liquefaction problem, as raised by the Staff in its show-cause order of February 25, 1980 (CREC indicated that so long as the order remained outstanding and the problem remained unresolved, the risk of a serious accident at LACBWR was greater than would normally be anticipated (Tr. 1019-20, 1034-37));
- (b) the absence of a full-term operating license for this facility (Tr. 1020); and
- (c) LACBWR is an older reactor assertedly of unique design (Tr. 1017, 1021).

The Applicant and Staff took the position that none of these matters constituted a special circumstance within the meaning of the new policy statement. The Board deferred any decision as to whether to consider the consequences of serious accidents in this proceeding (Tr. 1031). In particular, we noted that the show-cause order concerning the liquefaction question was presently before the Commission, and that our determination of whether that issue gave rise to a "special circumstance" would depend on the Commission's action in this matter (Tr. 1020, 1031, 1033).

4. The Board inquired as to the type of factual presentation which CREC wished to present on each of its contentions, both in response to the Staff's motion for summary disposition and at an evidentiary hearing, if one were to be held. This inquiry was motivated by the rather meagre answers which CREC had provided to certain interrogatories propounded by the Staff (which formed the basis in part for the Staff's summary disposition motion) and by CREC's failure in the earlier spent fuel pool expansion proceeding to respond to the motions for summary disposition which had been there filed.

CREC indicated that there were factual matters in a number of areas as to which it had differing views from those reflected in the affidavits accompanying the Staff's motion. It indicated that it had acquired this information subsequent to the filing of its discovery responses (Tr. 1070). The Applicant noted, and the

Board stressed, that a party has an obligation to update its discovery responses when it acquires new information (Tr. 1069). After some discussion, it was agreed that CREC would supplement its discovery response and that, thereafter, the Staff would revise its motion for summary disposition to the extent appropriate and the Applicant would file any such motion which it then deemed warranted. CREC agreed to file its supplementary response by the end of the first week in July--i.e., by July 7, 1980. The Applicant and Staff agreed to file any summary disposition motions or modifications within 2 weeks of service of CREC's response. (CREC would then have 20 days from service of any such motions to furnish its response in opposition to such motions. 10 CFR §2.749(a).)

After ascertaining the preferences of all the parties, we indicated that we would likely convene another prehearing conference in September, 1980 to consider the foregoing filings (and to establish the timing and scope of any hearing which might be held).

5. The Board pointed out to the Staff several segments of the FES which we found to be of questionable acceptability (in addition to the matters raised in our questions of May 21, 1980). We invited all parties to respond to our inquiries on these matters. We also noted that, based on our preliminary review of the FES and of the

Staff's affidavits in support of its motion for summary disposition, factual issues remained unresolved with respect to Contentions 19 and 22. We also indicated that we would not dismiss Contention 19 on legal grounds, as alternatively sought by the Staff. The Board will consider these matters anew, or will outline our views in greater detail, in our ruling on any further motions which may be filed by the Applicant or Staff (as provided in item 4 of this order).

FOR THE ATOMIC SAFETY AND
LICENSING BOARD

Charles Bechhoefer
Charles Bechhoefer, Chairman

Dated at Bethesda, Maryland
this 8th day of July 1980.