

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

NRC STAFF MOTION TO FILE SECOND ROUND DISCOVERY

The NRC Staff hereby moves that the Atomic Safety and Licensing Board grant the Staff permission to file second round discovery requests of Intervenor Coulee Region Energy Coalition (CREC) for the reasons stated below.

BACKGROUND

On November 30, 1979 by written Order, this Board established the discovery schedule for this proceeding as follows:

- A. First round discovery requests by January 15, 1980.
- B. Responses to these requests by February 29, 1980.
- C. Supplementary discovery requests within 20 days of receipt of responses to first round requests.
- D. Discovery on new information in the FES within 15 days of service of the FES.

On December 14, 1979, the Staff served CREC with first round discovery requests. No response was received. The Staff filed on March 13, 1980, a motion to compel discovery which was granted by Board Order of April 4, 1980. On April 25, the Intervenor filed a brief and only partial response. On April 21, the FES was served. Based on the discovery responses and

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Lack of response by the Intervenor, the Staff filed a motion for summary disposition of all contentions on June 6, 1980.

By Board orders of May 23 and June 10, 1980, a prehearing conference was scheduled for June 19, 1980 to discuss the method of response by the parties to previously filed Board questions as well as the plans of Applicant and Intervenor for responding to the summary disposition motion.

During the conference the Intervenor's representatives alleged facts and cited documents which they stated contradicted the Staff's affidavits filed in support of summary disposition. Upon inquiry by the Board as to why no supplemental response to discovery requests had been filed as required by 10 CFR §2.740(e)(1)-(3), the Intervenor replied that their search for evidence had only begun just prior to the conference (Tr. 1070). Subsequently, the Chairman suggested that the Intervenor file supplemental responses to Staff interrogatories by July 7, 1980 and stated that Staff could file an amendment to its summary disposition motion to address the new response. The Intervenor was granted extensions of time until July 16, and July 17, 1980. Ultimately, Intervenor requested the NRC Staff project manager for LACBWR to bring three packages containing the Intervenor submittals with him on his return flight from La Crosse where he had been engaged in Commission business.^{1/}

^{1/} The packages were delivered to Staff Counsel's office on July 18 by Mr. Shea. The package designated for Docketing and Service was delivered by the NRC internal mail service. Applicant's Counsel sent a messenger for the package addressed to them.

BASIS FOR REQUEST FOR ADDITIONAL DISCOVERY

After reviewing the Intervenor's lengthy Supplemental Response and the fifteen documents submitted in support of it, the Staff finds some parts of the response to be either incomplete or unclear. Since it will be impossible to adequately address the responses filed by Intervenor unless the meaning of the responses is clear, the Staff finds it necessary to ask second-round discovery questions. The Staff has effectively been deprived of the supplemental discovery intended by the Board's original discovery order by Intervenor's failure to provide adequate and timely responses to the Staff's initial discovery requests. This can be remedied by allowing the further, clarifying Staff interrogatories requested in this motion.

The Staff believes that such additional interrogatories can be served by August 12, 1980 and would suggest that the Intervenor response be filed by September 8 and that Staff and Applicant file summary disposition motions by September 30. This request for additional discovery should not result in substantial delay in the conduct of the proceeding.

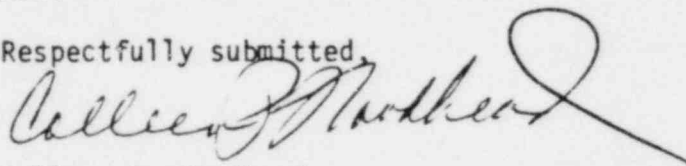
I have been authorized by Applicant's Counsel and Intervenor to state that they have no objection to this schedule.

CONCLUSION

For the reasons stated above, the Staff requests that it be granted permission to file second round interrogatories as originally proposed by the

Board Order of November 30, 1979, and that the schedule for submissions prepared above be adopted by the Board.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Colleen P. Woodhead". The signature is written in dark ink and is positioned above the typed name.

Colleen P. Woodhead
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 28th day of July, 1980

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF MOTION TO FILE SECOND ROUND DISCOVERY" in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class, or, as indicated by an asterisk, through deposit in the Nuclear Regulatory Commission's internal mail system, this 28th day of July, 1980:

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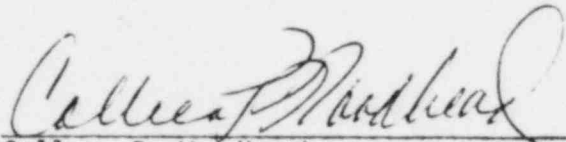
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