

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION



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

LICENSEE'S RESPONSE TO  
REQUESTS FOR HEARING

Dairyland Power Cooperative (Dairyland or DPC), the holder of Provisional Operating License No. DPR-45 for the La Crosse Boiling Water Reactor (LACBWR) and the licensee in the above-captioned proceeding, hereby submits its response in opposition to the requests for a hearing submitted by the Coulee Region Energy Coalition (CREC) and Frederick M. Olsen, III. It is Dairyland's position that the concerns of the NRC Staff regarding the potential for liquefaction at the LACBWR site which originally prompted the Director of Nuclear Reactor Regulation to issue the Order to Show Cause on February 25, 1980 have been resolved. Dairyland has already "shown cause" to the satisfaction of the NRC Staff as to why Dairyland should not be required to either (1) submit a detailed design proposal for a site dewatering system, or (2) make such a system operational by February 25, 1981,

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as originally contemplated in the Order to Show Cause. As a result, the NRC Staff has acknowledged that the so-called liquefaction problem does not exist and has, in effect, withdrawn the Order to Show Cause.

Inasmuch as hearings are not required as a matter of law under the Marble Hill standard and no useful purpose would be served by conducting hearings at this juncture, Dairyland submits that the requests for a hearing submitted by CREC and Mr. Olsen should be denied in their entirety. In support of its position, Dairyland states as follows:

I. BACKGROUND

1. In June 1978 the NRC Staff initiated a review of the geology and seismology of the LACBWR site in connection with the Systematic Evaluation Program (SEP). As part of this review, the NRC Staff contracted with the U.S. Army Corps of Engineers Waterways Experiment Station (WES) to perform an analysis of the potential for liquefaction of the soils at the LACBWR site under conditions of seismic stress. The WES Report entitled Liquefaction Analysis for La Cross (sic) Nuclear Power Station was completed in December 1978 and concluded that the soils could strain under an earthquake producing a peak ground level acceleration of .12g and perhaps liquefy under an earthquake producing a peak ground level acceleration of 0.2g or greater.

2. As described in some detail in the Order to Show Cause issued by the Director of the Office of Nuclear Reactor

Regulation dated February 25, 1980, some questions existed concerning the adequacy of the soils data utilized in the WES Report and, after a series of technical meetings, Dairyland agreed to undertake a detailed soils properties investigation program, including the taking of additional test borings and soils samples in the "free field" at the LACBWR site (i.e., not directly beneath the plant structures), in an attempt to ascertain the actual extent of the liquefaction potential at the site. This program was approved by the NRC Staff on April 30, 1979 and got underway shortly thereafter.

3. In the meantime, on May 21, 1979, Ms. Anne Morse submitted a motion to the Director of Nuclear Reactor Regulation under 10 C.F.R. § 2.206 requesting, inter alia, that operations at LACBWR be suspended "until such time as said reanalysis [of the liquefaction potential undertaken in response to the WES Report] is completed." It is important to note that Ms. Morse relied upon nothing more than the original WES Report in making this request and requested nothing more than that operations be suspended until such time as the NRC Staff completed its review of the liquefaction potential.

4. Dames & Moore completed this soils properties investigation program and Dairyland submitted the results in September 1979. As described in the Order to Show Cause, during the course of its initial review of these reports, the NRC Staff adjusted downward the density values for the free field soils samples which Dames & Moore had calculated and concluded that a liquefaction problem could

still exist with respect to the soils under the plant structures. This prompted the Director of Nuclear Reactor Regulation to issue the Order to Show Cause on February 25, 1980. At this point in time the Director also acted on Ms. Morse's petition and denied her request to shut down LACBWR, finding that

The Staff has determined that Ms. Morse has not presented any new information or reasons which would provide a basis for suspending operation of the La Crosse facility at this time. However, as discussed in this decision, the NRC Staff does support Ms. Morse's concern about the liquefaction issue involving LACBWR and has issued to the licensee an 'Order to Show Cause,' dated February 25, 1980, regarding this matter. Dairyland Power Cooperative (LACBWR), DD-80-9 (Feb. 25, 1980) (emphasis added).

The Director specifically denied the petition "to the extent that [the] petition requests suspension . . . while the liquefaction issue is being resolved." Id. at 10 (emphasis added).

5. Under the terms of the Order to Show Cause, Dairyland was ordered to show cause to the satisfaction of the NRC Staff why Dairyland should not (1) submit a detailed design proposal for a site dewatering system, and (2) make such a system operational by no later than February 25, 1981. The Order also provided that Dairyland or any other person whose interest may be affected by the Order could request a hearing, but that the only issues which could be considered at such a hearing would be the two issues identified above.

6. In its March 25, 1980 Answer to Order to Show Cause, Dairyland submitted a "Response to NRC Concerns on Liquefaction Potential At LACBWR" prepared for Dairyland by Dames & Moore in consultation with Dr. H. Bolton Seed in which Dairyland demonstrated that the soil strength curves utilized in the earlier Dames & Moore reports (showing that even the "free field" soils at the LACBWR site would not liquefy under the design seismic conditions) were conservative, and that it is inappropriate for the NRC Staff to adjust the Dames & Moore results and conclude that a liquefaction problem existed with respect to the soils under the plant structures. The key point in the Dairyland Answer was the fact that the critical plant structures at the LACBWR site were supported by piles and that Dames & Moore had not taken "credit" for this factor in its original analysis. The Dames & Moore Response indicated that the soils under these structures were expected to be much more dense than the soils in the free field and therefore much less susceptible to liquefaction. Dairyland believed that its Answer "showed cause" why it should not be required to develop and implement a dewatering system, and did not request a hearing unless, of course, after reviewing the DPC submission, the NRC Staff concluded otherwise.

7. Requests for a hearing on the liquefaction issue were also filed by Ms. Morse (on behalf of CREC) and Mr. Olsen. However, neither Dairyland nor its attorneys were served with copies of these requests by either Ms. Morse, Mr. Olsen, or the NRC. Ms. Morse's filing stated that CREC's interest in the matter was "obvious" since, in her view, the Order to Show Cause

was issued in response to the motion under 10 C.F.R. § 2.206, which she had filed earlier on behalf of CREC. Mr. Olsen's filing contained no statement of interest and attempted to raise a number of extraneous issues which go well beyond the scope of the Order to Show Cause (e.g., the cost of NRC rule changes, the economics of LACBWR operation, the rights of taxpayers to information on LACBWR, and the condition of the public document room in La Crosse).

8. Meanwhile the NRC Staff reviewed the Dairyland Answer, conceded that there was a basis for the judgments expressed in the Dames & Moore Response, and requested additional information from Dairyland in order to enable the NRC Staff to complete its review and determine whether DPC had actually shown cause to the satisfaction of the Staff as to why the steps outlined in the Order need not be undertaken. See Letter dated April 25, 1980 from D. L. Ziemann, Chief Operating Reactors Branch # 2, Division of Operating Reactors, NRC to F. Linder, General Manager, DPC.

9. In response to the Staff's request for additional information, Dairyland had Dames & Moore take four additional test borings directly beneath several of the plant structures on the LACBWR site. The results of these borings, as summarized in the Dames & Moore Report dated July 25, 1980, clearly indicate that the density of the soils beneath the plant structures is much greater than the density of the soils in the free field.



The results provide adequate assurance that the soils under the reactor containment building and turbine building will not liquefy in the event the design seismic conditions occur (i.e., SSE of magnitude 5.5 generating a peak ground acceleration of .12g).

10. The NRC Staff was in the process of reviewing these results when the Commission issued its July 29, 1980 Order designating the Licensing Board to rule on the prior requests for a hearing. The NRC Staff has since concluded that "mitigative measures [i.e., dewatering] to increase the margin of safety against liquefaction" for the critical plant structures are no longer needed. Moreover, the WES personnel who prepared the original liquefaction report which triggered the Order to Show Cause have concurred in this conclusion. As a result, the NRC Staff has, in effect, withdrawn the Order to Show Cause.

11. On August 5, 1980, the Licensing Board designated by the Commission to rule on the requests for a hearing and determine whether a hearing was required, issued a Memorandum and Order inviting the Licensee and the NRC Staff to file responses to these petitions.

## II. HEARINGS ARE NOT REQUIRED IN THIS INSTANCE

The Commission has recently made it abundantly clear that hearings should only be held sparingly in enforcement proceedings and that, when held, hearings in such proceedings must be narrowly confined. See e.g., Public Service Co. of Indiana (Marble Hill 1 and 2), CLI-80-10, 11 NRC \_\_\_\_\_ (March 13, 1980);

Wisconsin Electric Power Co. (Point Beach 1), CLI-80-\_\_\_, \_\_\_ NRC \_\_\_, (May 12, 1980). In its July 29, 1980 Order in this proceeding, the Commission gave the Licensing Board explicit instructions to consider and rule on the requests for a hearing, and "if the Board determines that a hearing is required, the Board is instructed to conduct an adjudicatory hearing solely on contentions within the scope of the issues identified in the February 25, 1980 Order." (emphasis added). Thus, to the extent that Mr. Olsen's request for a hearing attempts to raise contentions which are beyond the scope of the two issues identified in the Order to Show Cause, his request clearly must be denied.

In reviewing these requests, it must also be remembered that the NRC Staff has the authority to modify or rescind an order to show cause. See e.g., Consumers Power Co. (Midland 1 and 2), CLI-73-38, 6 AEC 1082 (1973). The Director of Nuclear Reactor Regulation also clearly has the authority to "issue an order and take any otherwise proper administrative action with respect to a licensee who is a party to a pending proceeding." 10 C.F.R. § 2.717(b). Moreover, in an enforcement context, "the Staff and licensee may enter into a stipulation for the settlement of the proceeding" at any time after the issuance of an order designating the time and place of hearing, subject to the approval of the licensing board. 10 C.F.R. § 2.203. In the present situation, no determination has been made that a hearing is even required, let alone any order issued setting the time and place for a hearing. As noted previously, Dairyland has shown cause to the satisfaction



of the NRC Staff why dewatering is not required, Dairyland and the Staff have effectively entered into a stipulation settling this proceeding, and the Staff has also effectively withdrawn the Order to Show Cause.

In the Midland show cause proceeding involving quality assurance of cadwelding operations, hearings were held in spite of the fact that the NRC Staff had withdrawn its earlier show cause order. However, in Midland, the Commission had actually granted the requests for a hearing prior to the withdrawal of the show cause order. Consumers Power Co. (Midland 1 and 2), CLI-74-3, 7 AEC 7 (1974). Had the licensee shown cause to the satisfaction of the NRC Staff that the cadwelding problem had been resolved and the Staff withdrawn the Order prior to the time when the Commission acted on the requests for a hearing, these requests would, in all likelihood, never have been granted. Cf. Consumers Power Co. (Midland 1 and 2), ALAB-283, 2 NRC 11, 19 (1975).

Unlike the situation which existed in Midland, in this case the licensee has shown cause and the Staff has effectively withdrawn the order to show cause prior to the granting of any hearing requests.

As the Commission recently observed in the Marble Hill decision cited earlier:

We believe that public health and safety is best served by concentrating inspection and enforcement resources on actual field inspections and related scientific and engineering work, as opposed to the conduct of legal proceedings.

It would appear that the Commission has refrained from acting on the hearing requests over the past several months in order to provide the Staff with the opportunity to resolve this matter in accordance with the policy articulated in Marble Hill. The Staff has resolved the liquefaction issue in this manner and it would be counterproductive, as well as contrary to the Marble Hill policy, to now conduct legal proceedings with respect to a matter which has already been resolved to the satisfaction of the NRC Staff -- the arm of the Commission specifically tasked with the lead role in enforcement actions and the very entity that issued the Order to Show Cause in the first place.

The Commission has specifically directed this Board to rule on the pending requests for a hearing. However, the two issues identified in the Order to Show Cause have been rendered moot, and as a result, in keeping with the policy set forth in Marble Hill and subsequent Commission decisions in enforcement actions, these requests need not, and should not, be granted as a matter of law.

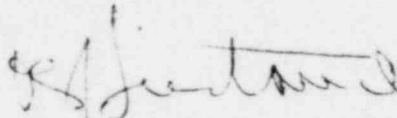
These requests also have little to commend them from a practical standpoint. The requests are both admittedly based solely upon the earlier concerns about liquefaction expressed by the NRC Staff and WES. Neither Ms. Morse nor Mr. Olsen have indicated that they have anything of substance to contribute on the liquefaction issue other than to attempt to ride the coattails of the Staff and WES. However, these coattails no longer exist. The earlier concerns of the Staff and WES have been resolved and they have concluded that dewatering is no longer required. Holding hearings

at this juncture to indulge Mr. Morse and Mr. Olsen would be a hollow exercise and would be a waste of time, money, and resources for all parties.

III. CONCLUSION

For all the foregoing reasons, Dairyland respectfully submits that the pending hearing requests should be denied and this proceeding terminated forthwith.

Respectfully submitted,



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Dated: August 28, 1980

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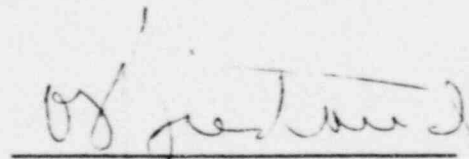
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