



Over the objection of both the applicant and the NRC staff, the Licensing Board concluded that it had the jurisdiction to determine in this spent fuel pool proceeding whether there was a present need for the power generated by the La Crosse facility. Accordingly, the Board held an evidentiary hearing with respect to the need-for-power question.

On January 10, 1980, the Licensing Board rendered its initial decision, in which it authorized the issuance of the license amendment subject to certain conditions. LBP-80-2, 11 NRC 44. In the course of the decision, the Board (1) summarily resolved (in the applicant's favor) each of the safety and environmental contentions advanced by the Coalition; (2) determined that there was no need for a hearing on certain safety questions which the Board had raised sua sponte; (3) detailed the foundation for its conclusion that it possessed jurisdiction to consider the need-for-power question; and (4) on the basis of its analysis of the evidentiary record, found that La Crosse-generated power would be needed at least until the end of 1982.<sup>2/</sup>

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<sup>2/</sup> The Board noted that the question of the need for that power after 1982 would be explored in the concurrent full-term operating license proceeding (see fn. 1, supra). 11 NRC at 77-78.

At the end of the decision, and in accordance with a previous oral commitment to do so, the Licensing Board referred its ruling on the jurisdictional question to us under 10 CFR 2.730(f). In addition, in the wake of the decision, the staff filed an exception directed specifically to one of the underpinnings of the Board's determination that it was empowered to consider the need-for-power issue. The Board's findings on the merits of that issue, however, have not been challenged by any of the parties. Nor have exceptions been filed to any other portion of the initial decision.

1. Our preliminary examination of the initial decision gave rise to substantial doubt whether the need existed to review the Licensing Board's jurisdictional ruling. To begin with, that ruling appeared to be quite academic insofar as this proceeding was concerned. The Board had gone ahead and held the hearing on the present need for La Crosse-generated power. It had then found the power to be needed. That ultimate finding had been seemingly accepted by all of the parties; at least none of them had seen fit to except to it.

Beyond that, as the Licensing Board had made clear, the jurisdictional ruling had rested upon the peculiar circumstances of the case; more particularly, the fact that La Crosse had not

previously received a full environmental review either in connection with its receipt of a provisional operating license (in July 1967, well before the enactment of the National Environmental Policy Act) or otherwise. See 11 NRC at 65, 67 et seq. This being so, we were uncertain as to the extent to which the ruling might have prospective precedential importance.

Before we had the opportunity to come to any definite conclusion in that regard, our attention was brought to the fact that a related question had been raised in another spent fuel pool capacity expansion proceeding, similarly involving a reactor which had been licensed for operation many years ago and thus had not undergone a NEPA review. In the Matter of Consumers Power Co. (Big Rock Point Nuclear Plant), Docket No. 50-155. Accordingly, we decided to withhold action on the referral and exception here to await the Licensing Board's ruling in Big Rock Point.

That ruling was handed down on September 12, 1980. LBP-80-25, 12 NRC \_\_\_\_\_. Although perceiving there to be certain factual distinctions between the case before it and this one, the Big Rock Point Board reached a parallel, although broader, result: it held that the staff must prepare an environmental impact statement "covering the environmental impacts of an

expanded spent fuel pool and the additional term of operation of the facility that such expansion would permit". 12 NRC at \_\_\_ (slip opinion, pp. 18-19). In this regard, the Board admitted to the proceeding an intervenor's contention which sought to put in issue, inter alia, the need for the power to be generated by the Big Rock Point facility. Id. at \_\_\_ (slip opinion, pp. 1, 19).

In common with the La Crosse Licensing Board, the Big Rock Point Board referred its ruling to us. Id. at \_\_\_ (slip opinion, p. 19). Because, unlike the situation in La Crosse, the Big Rock Point ruling had an immediate and significant practical effect, we promptly accepted the referral and established a briefing schedule which extends into early December. September 12, 1980 order (unpublished).

2. Pending the outcome of our consideration of the referred ruling in Big Rock Point, it appears prudent to continue to withhold action on the referral and exception at hand in the present case. But no good reason exists also to leave for later announcement the fruits of this Board's already completed review sua sponte of the resolution below of the other matters addressed in the January 10, 1980 initial decision.

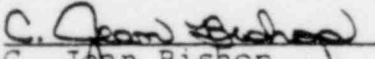
We are persuaded on that review that the Licensing Board's summary disposition of the Coalition's contentions was not infected by any error requiring corrective measures on our part. Further, we are satisfied with the Board's analysis and treatment of the answers provided by the applicant and the staff to the questions which it had raised on its own initiative. Finally, assuming (without deciding) that the need-for-power inquiry was within the Board's authority, the ultimate finding on that issue is sufficiently supported by the record and therefore should not be disturbed.

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For the foregoing reasons, the result reached in the January 10, 1980 initial decision, LBP-80-2, supra, is affirmed. This Board will nonetheless retain jurisdiction over the referred ruling, and the staff's exception related thereto, pending our further order.

It is so ORDERED.

FOR THE APPEAL BOARD

  
C. Jean Bishop  
Secretary to the  
Appeal Board