



April 9, 1981

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY & LICENSING BOARD

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

NRC STAFF'S MOTION TO COMPEL CONSOLIDATED PARTIES'
RESPONSE TO INTERROGATORIES

On February 25, 1981, the NRC Staff served interrogatories on the consolidated parties in this proceeding, the Coulee Region Energy Coalition and Frederick M. Olsen III, which were to be answered by March 27, 1981, under the Board's Prehearing Conference Memorandum of January 3, 1981. As of this date, the NRC Staff has received no answers to its interrogatories. Pursuant to 10 C.F.R. 2.740(f), the NRC Staff moves that the Board enter an order compelling the consolidated parties to answer the interrogatories.

There is no question that the NRC Staff's interrogatories were authorized to be filed, were filed in a timely fashion, and were served on the consolidated parties in the manner provided by the Commission's rules of practice. */ See 10 C.F.R. 2.712 & 2.740b;

*/ Moreover, Counsel spoke with Anne Morse of the Coulee Region Energy Coalition by telephone on February 25, 1981, and specifically mentioned that the NRC Staff's interrogatories had been served on that date.

Prehearing Conference Memorandum at 2. Moreover, the interrogatories concerned matters clearly within the scope of the remaining matters in controversy. Parties to NRC proceedings cannot ignore legitimate discovery requests. Interrogatories must be either answered or objected to in the time permitted by the Board's order. 10 C.F.R. 2.740b(b); Pennsylvania Power and Light Co. (Susquehanna Steam Electric Station, Units 1 & 2), ALAB-613, 12 NRC 317, 322 (1980). Failure to answer interrogatories constitutes a waiver of any objections thereto, and a party may be compelled by the Board to answer. 10 C.F.R. 2.740(f).

The consolidated parties' failure to answer is particularly disturbing in this show-cause proceeding in which the consolidated parties are the only proponents of an order requiring the licensee to install a site dewatering system. Since the NRC Staff and the licensee agree that no dewatering system is necessary for the La Crosse site, a hearing is being held in this proceeding only because the consolidated parties had shown sufficient standing to request a hearing. While the licensee may carry the ultimate burden of persuasion even in this enforcement proceeding, the consolidated parties do bear some burden of going forward on their contentions. See Consumers Power Co. (Midland Plant, Units 1 & 2) CLI-74-5, 7 AEC 19, 30-32 (1974), rev'd sub nom. Aeschliman vs. NRC, 547 F.2d 622, 628 (D.C. Cir. 1976), rev'd and remanded sub nom. Vermont Yankee Nuclear Power Corp. vs. NRC, 435 U.S. 519, 553-54 (1978).

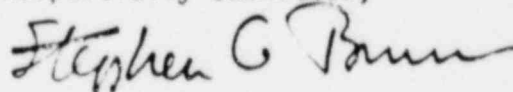
Because the consolidated parties have not been required to file contentions in this proceeding, the NRC Staff's only way of determining the specific matters in controversy has been through discovery. The NRC Staff's interrogatories seek information concerning the consolidated parties' position with respect to the appropriate seismic parameters for La Crosse and the evidence, if any, that constitutes the foundation for that position. Such interrogatories are clearly in order to narrow the issues for trial and to determine whether hearings are even necessary. Pennsylvania Power & Light Co., supra, 12 NRC at 340.

This marks the third time that the consolidated parties have failed to participate meaningfully in this proceeding. On previous occasions, they have neglected to answer motions for summary judgment and have failed to file proposed findings after the December 1980 hearings. While filings by the consolidated parties may not have been strictly required in those circumstances, these occasions certainly build a record that shows the consolidated parties have abdicated their responsibility to assume a significant participational role in this proceeding. Continued abdication of this responsibility is a basis for dismissal from a proceeding, and the NRC Staff will not hesitate to seek such relief here. See Gulf States Utilities Co. (River Bend Station, Units 1 & 2), ALAB-358, 4 NRC 558, 560 (1976).

While the Atomic Energy Act requires hearings when persons demonstrate that they may be adversely affected, neither the parties' interest nor the public interest is served by the conduct of unnecessary proceedings, particularly in enforcement cases. The Commission itself has said, "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." Public Service Co. of Indiana (Marble Hill Nuclear Generating Station, Units 1 & 2), CLI-80-10, 11 NRC 430, 441 (1980).

If this proceeding is to serve any useful purpose, the consolidated parties must meet their obligations as litigants. The NRC Staff's discovery requests were clearly in order and concerned relevant matters. Accordingly, the NRC Staff moves that the Board order the consolidated parties answer the interrogatories within a reasonable time, but no later than 28 days after the Board's order. The Board's order should also provide that failure to answer shall be considered grounds for dismissal from the proceeding.

Respectfully submitted,



Stephen G. Burns
Counsel to NRC Staff

Dated at Bethesda, Maryland
this 9th day of April, 1980

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CERTIFICATE OF SERVICE

I hereby certify that copies of the NRC STAFF'S MOTION TO COMPEL CONSOLIDATED PARTIES' RESPONSE TO INTERROGATORIES 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 9th day of April, 1981.

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