

NRC PUBLIC DOCUMENT ROOM

10/5/78

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

In the Matter of	)	Docket No. 50-409
	)	Amendment to
DAIRYLAND POWER COOPERATIVE	)	Provisional Operating
	)	License No. DPR-45
(La Crosse Boiling Water Reactor)	)	

APPLICANT'S ANSWER TO  
INTERVENOR'S MOTION FOR  
EXTENSION OF THE DISCOVERY PERIOD

Pursuant to 10 CFR § 2.730(c), Dairyland Power Cooperative (Dairyland), the applicant for a license amendment to Provisional Operating License DPR-45 in the above-captioned proceeding, hereby files its answer in opposition to Intervenor Coulee Region Energy Coalition's (CREC) September 29, 1978 Motion For a 30 Day Extension of the Discovery Period. In support of this answer, Dairyland states the following:

1. In its Prehearing Conference Orders dated September 5, 1978, the Licensing Board specified that all discovery requests in this proceeding shall be filed on or before October 1, 1978 and that discovery must be completed no later than November 1, 1978. <sup>1/</sup>

1/ CREC had earlier agreed in principle to this schedule during the course of the August 17, 1978 Prehearing Conference. (Tr. 138-140).

Nevertheless, CREC did not file its first set of interrogatories and request for production of documents against Dairyland until September 18, 1978. CREC subsequently filed three more sets of interrogatories and requests for documents against Dairyland on September 28, 1978.

2. Under 10 CFR § 2.711, the Licensing Board in this proceeding may grant a request for additional time that is made prior to the expiration of the period originally prescribed for a filing <sup>2/</sup> provided good cause is shown. <sup>3/</sup> CREC asserts that its motion for an extension of time should be granted because (a) the "information required by the intervenor for the proper formulation of questions for interrogatories" has not been forthcoming, (b) intervenor's "reliance on voluntary assistance" to prepare its case makes the present

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<sup>2/</sup> CREC's motion for a 30 day extension of the discovery period was postmarked September 30, 1978 -- the day before all discovery requests were required to be filed under the terms of the Board's order.

<sup>3/</sup> 10 CFR § 2.711(a). See e.g., Wisconsin Electric Power Co. (Point Beach 2), ALAB-78, 5 AEC 319, 323 (1972). Federal courts also have discretion to grant such requests under an analogous provision in the Federal Rules of Civil Procedure (FRCP 6(b)(1)). See Yonofsky v. Wernick, 362 F. Supp. 1005, 1014 (S.D.N.Y. 1973). However, such motions may only be granted for "good cause shown" and the burden is on the moving party to demonstrate the justification for such an extension. 4 Wright & Miller, Federal Practice and Procedure: Civil, § 1165 at 620.

deadline for completion of discovery burdensome and unreasonable, (c) intervenors are impeded from participation in the proceeding at this time because of their "agricultural orientation" and "involvement with the Fall harvest" and (d) a 30 day extension would not delay the commencement of Cycle 6 at LACBWR. As shown below, none of these "reasons" -- either considered separately or in combination with one another -- rise to the level of the "good cause shown" necessary to permit the grant of this motion.

3. The fact that intervenors had access to sufficient information related to the proposed expansion of the LACBWR spent fuel pool to enable them to submit four sets of detailed interrogatories and requests for documents would seem to belie their first assertion that information necessary for the proper formulation of interrogatories has not been forthcoming. Dairyland's original license amendment application dated April 20, 1978, its June 7, 1978 supplement to the application, as well as subsequent reports and correspondence with NRC, were all available to CREC and provide a wealth of detailed information related to the proposed SFP expansion in general and the four specific issues raised by CREC in its contentions. <sup>4/</sup>

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<sup>4/</sup> It should be noted that CREC elected to devote a significant portion of its first set of interrogatories to request information concerning alternatives to the proposed SFP expansion in spite of the fact that the Board specifically rejected the CREC contention which sought to raise such issues. See Applicant's Response to CREC's First Set of Interrogatories dated September 18, 1978 (Oct. 5, 1978).

4. As its second and third "reasons" for the extension, CREC asserts that it is time consuming and burdensome to prepare its case, particularly during the fall harvest. Dairyland considers it somewhat curious for intervenors to suddenly realize they have pressing agricultural commitments during the September-October time frame at this juncture in light of their silence on this issue during the course of the Prehearing Conference when the proposed discovery schedule was under discussion. CREC's representations notwithstanding, however, the key issue in this regard is what impact the proposed extension would have on the public interest. Such an extension could delay a decision in this proceeding in spite of the fact that there is clearly "a compelling interest in [arriving at] an early decision" in nuclear licensing proceedings in general,<sup>5/</sup> and this proceeding in particular.

As the Appeal Board observed in Potomac Electric Power Co. (Douglas Point 1 and 2), ALAB-277, 1 NRC 539, 552 (1975).

although entitled to recognition, the convenience of the litigants cannot be deemed dispositive on scheduling matters. The paramount consideration is where the broader public interest lies . . . we find there to be a decided public interest in . . . prompt airing and resolution.

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<sup>5/</sup> Allied-General Nuclear Services (Barnwell), ALAB-296, 2 NRC 671, 684-85 (1975).

Moreover, intervenors in NRC licensing proceedings must assume the responsibilities, such as compliance with scheduling deadlines, imposed upon them by virtue of their participation in such proceedings and have an obligation to "make the system work" by fulfilling these responsibilities.<sup>6/</sup> Granting an extension of time in a situation where, as here, an intervenor apparently failed to meet these responsibilities through its own inadvertence or overextension would "place a premium on lack of diligence" and should be avoided.<sup>7/</sup>

5. Finally, for all the reasons stated in its July 27, 1978 Motion to Proceed With the License Amendment Proceeding On A Priority Basis, and amplified during the course of the Prehearing Conference, Dairyland's ability to continue to discharge spent fuel from LACBWR must be maintained in order to assure the continued availability of LACBWR and to assure that Dairyland will be able to meet its own obligations to supply reliable and economic electric service to its customers. Dairyland believes that the expansion

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<sup>6/</sup> See e.g., Consumers Power Co. (Midland 1 and 2), ALAB-123, 6 AEC 331, 332 (1973); Northern States Power Co. (Prairie Island 1 and 2), ALAB-288, 2 NRC 390, 393 (1975); Northern Indiana Public Service Co. (Bailey 1), ALAB-224 8 AEC 244, 250 (1975); Northern States Power Co. (Tyrone 1), LBP-77-37, 5 NRC 1298 (1977).

<sup>7/</sup> See e.g., Creedon v. Taubman, 8 F.R.D. 268 (N.D. Ohio 1947) (request for extension of time to file responses to discovery request denied since it would prejudice other party and cause further delay). Cf. Mason v. BOAC, 20 F.R.D. 213 (S.D. N.Y. 1957); Gantner and Mattern Co. v. Switzer Bros., Inc., 11 F.R.D. 433 (N.D. Cal. 1951).

of the LACBWR SFP in accordance with the proposed license amendment must ultimately be achieved in order to maintain this ability to discharge spent fuel. Dairyland is therefore focusing its efforts on obtaining a timely decision by NRC on this amendment application. Any unnecessary delays in this proceeding offer the potential for disruption of scheduled maintenance and operating activities at LACBWR, as well as other generating facilities on the LACBWR system. CREC's last "reason" for granting the extension (i.e., that a 30 day extension now might not delay the commencement of Cycle 6) conveniently ignores the fact that the schedule in this proceeding may slip for other reasons, in which case an additional 30 day extension here, which is not justified on other grounds, could prove extremely prejudicial to Dairyland and its customers in the long run.

For all the foregoing reasons, Dairyland respectfully submits that CREC's Motion For a 30 Day Extension of the Discovery Period should be denied.

Respectfully submitted,

  
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Dated: October 5, 1978

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Dated: October 5, 1978