

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION



BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of
DAIRYLAND POWER COOPERATIVE
(La Crosse Boiling Water Reactor)

10/16/78

)
)
) Docket No. 50-409
(SFP License Amendment)

MEMORANDUM AND ORDER

In our Prehearing Conference Orders dated September 5, 1978, we established a schedule in this spent fuel pool proceeding in which all discovery requests were to be filed on or before October 1, 1978, discovery was to be completed no later than November 1, and motions for summary disposition, if any, were to be filed no later than November 15.

By motion dated September 29, 1978, the Intervenor (CREC) requested a 30-day extension of the discovery schedule. Its assigned reasons were (1) that it had received no further information for "the proper formulation of questions for interrogatories," (2) that its reliance on voluntary assistance, advice and research, as well as recruitment of voluntary expert testimony, produced problems which made the November 1 deadline "burdensome and unreasonable," (3) that the Intervenor

had been impeded because of its "agricultural orientation" and its "involvement with the Fall harvest," and (4) that because of an extension in the current fuel cycle of the reactor, a 30-day extension would not delay the commencement of the following fuel cycle.

The Applicant opposes the requested extension. It claims that CREC has already filed 4 sets of interrogatories and requests for documents, that this fact indicates that the Intervenor had access to sufficient information to enable those discovery requests to be submitted, that intervenors have a general obligation to fulfill responsibilities imposed upon them by scheduling deadlines, and that the Applicant's ability to continue to discharge spent fuel from the reactor must be maintained to assure the continued availability of the reactor and to assure that the Applicant will be able to meet its obligation to supply electric service to its customers. It adds that the assertion that a 30-day extension might not delay the commencement of the next fuel cycle "conveniently ignores the fact that the schedule in this proceeding may slip for other reasons."

The NRC Staff opposes an extension of time to file further discovery requests. But with respect to providing

answers to already filed discovery requests, the Staff suggests that CREC be directed to provide answers now to those questions which do not require additional time and to identify those for which answers require additional research. It suggests that two weeks be granted for those purposes.

In reviewing these claims, the Board takes note of the willingness expressed by the Applicant at the prehearing conference for discovery to continue for a period of 60 days after a contention was admitted into the proceeding. Because contentions were not admitted formally prior to our Order of September 5, it would appear that Applicant itself would not oppose an extension at least until October 5 for the filing of discovery requests. Moreover, discovery requests will be in order for a limited period after the Staff has filed its Safety Evaluation Report and its Environmental Impact Appraisal, at least with respect to new information included in those documents. Further, it does not appear that any party would be prejudiced by a limited extension of time. Although the reasons for an extension assigned by CREC might not warrant that result in a situation where other parties would be adversely affected, they have sufficient validity to support limited relief in a situation where, as here, no such adverse

effect has been demonstrated. That being so, the Board has determined that good cause exists for the imposition of the following new discovery schedule:

1. All discovery requests and demands shall be filed on or before Friday, October 20, 1978.
2. Discovery must be completed no later than November 15, 1978.
3. Motions for summary disposition under 10 CFR §2.749, if any, must be filed no later than Monday, November 27, 1978.
4. Discovery requests reflecting new information appearing in the Safety Evaluation Report or the Environmental Impact Appraisal shall be filed within 10 days after issuance of each of the documents. The Board will establish a schedule for the filing of written testimony in the evidentiary hearing as soon as practicable after the filing of those documents.

The parties have been advised by telephone of the substance of this ruling.

IT IS SO ORDERED.

THE ATOMIC SAFETY AND
LICENSING BOARD

Charles Bechhoefer

Charles Bechhoefer, Chairman

Dated at Bethesda, Maryland,
this 16th day of October, 1978.