

10/27/78

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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

Docket No. 50-409 G
Amendment to
Provisional Operating
License No. DPR-45
(Spent Fuel Pool)

APPLICANT'S MOTION
TO COMPEL DISCOVERY

Pursuant to 10 CFR § 2.740(f), Dairyland Power Cooperative (Dairyland), the Applicant for an amendment to Provisional Operating License No. DPR-45 in the above-captioned proceeding, hereby moves the Licensing Board to issue an order compelling Intervenor, Coulee Region Energy Coalition (CREC), to respond to Dairyland's Interrogatories to CREC dated September 29, 1978. In support of this motion Dairyland states the following:

1. In its Interrogatories to CREC dated September 29, 1978, Dairyland requested that CREC provide specific and detailed information concerning the basis of each of the four CREC contentions admitted as matters in controversy in this proceeding pursuant to the Board's September 5, 1978 Prehearing Conference Orders. In accordance with the requirements of Section 2.740b of the NRC

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Rules of Practice, these interrogatories should have been answered in writing and under oath within 14 days therefrom. ^{1/}
To date, Dairyland has received no response from CREC with respect to these interrogatories. Even under the most liberal interpretation of the recently amended provision in the NRC regulations governing the computation of time, the CREC response is overdue. ^{2/}

1/ Under the discovery schedule established in the Board's September 5, 1978 Prehearing Conference Order, all discovery requests were to be filed by October 1, 1978 and discovery was to be completed by November 1, 1978. These dates were extended to October 20, 1978 and November 15, 1978, respectively, pursuant to the Board's October 16, 1978 Memorandum and Order. The cut-off date for completion of discovery in both these orders was the deadline for the submission of responses to certain types of discovery requests which might not otherwise be due until later under the NRC Rules of Practice (e.g., the production of documents pursuant to 10 CFR § 2.741(d)). These cut-off dates were clearly not intended to supersede the applicable due dates for responses to discovery requests which fell prior to the cut-off date (e.g., interrogatories pursuant to 10 CFR § 27.40b(b)).

2/ Since these interrogatories were mailed to CREC on September 29, 1978 under 10 CFR § 2.710, CREC was permitted an additional 5 days beyond the 14 stipulated in 10 CFR § 2.740b(b) (or until October 18, 1978) to serve its response to these interrogatories.

2. In Interrogatory Nos. 1 and 2, Dairyland requested CREC to provide the names, professional qualifications, and other background information concerning any consultants, reviewers, or experts "engaged or utilized" by Intervenor "to conduct any reviews, analyses, tests or studies related to the four CREC contentions." In Interrogatory Nos. 3 - 9, Dairyland requested CREC to provide detailed information concerning the basis for Contention 1 and CREC's concerns regarding the long term integrity of the LACBWR fuel cladding and spent fuel pool components, and the monitoring and handling of spent fuel assemblies. In Interrogatory Nos. 10 - 14, Dairyland requested CREC to provide detailed information concerning the basis for Contention 5 and CREC's concerns regarding the safety of the proposed rack design. In Interrogatory Nos. 15 and 16, Dairyland requested CREC to provide detailed information concerning the basis for Contentions 6 and 7, respectively, and CREC's concerns regarding the risks associated with a cask drop accident and the presence of failed fuel rods in the pool.

In summary, the information which Dairyland has requested from CREC could not be more directly related to the subject matter of this proceeding and CREC's contentions and the interrogatories could not have been more specific. It is by now well-settled that answers to

interrogatories, such as these, propounded during the course of NRC proceedings must be timely, complete, explicit, and responsive. ^{3/}

In any event, it is clear that these interrogatories are reasonably calculated to lead to the discovery of admissible evidence, and are, therefore, entirely proper under 10 CFR § 2.740(b)(1). Yet, CREC has not responded to them. ^{4/}

3. Dairyland has provided CREC with voluminous information regarding its position on the issues raised by the CREC contentions and has provided detailed answers to four separate sets of interrogatories from CREC in a timely manner in accordance with the requirements of the Rules of Practice. ^{5/} Dairyland has a corresponding right to know

^{3/} Discovery is to be conducted under the NRC Rules of Practice in virtually the same manner that it is conducted under the Federal Rules of Civil Procedure (Commonwealth Edison Co. (Zion 1 and 2), ALAB-196, 7 AEC 457, 461, 470 (1974); Northern States Power Co. (Monticello 1), ALAB-10, 6 AEC 43, 49 (1970)), and the Federal Rules require detailed answers to interrogatories. See 4A Moore's Federal Practice at ¶ 33.26 and cases cited therein.

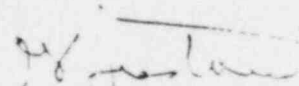
^{4/} Since CREC did not file objections to Dairyland's interrogatories within the period allotted under the Rules of Practice CREC is also presumed to have waived any such objections. See e.g., U.S. v. 58.16 Acres of Land, 66 F.R.D. 570, 572 (E.D. Al. 1975). Wisconsin Electric Power Co., et. al. (Point Beach 2), LBP-73-9, 6 AEC 152, 156 (1973).

^{5/} See Applicant's Response to CREC's First Set of Interrogatories (October 5, 1978); Applicant's Response to CREC's Second, Third, and Fourth Sets of Interrogatories (October 16, 1978).

exactly what CREC's position is on each of these issues as well as the bases for these position and the contentions themselves. The information which Dairyland has requested through these interrogatories is essential to the timely preparation of Dairyland's case.

For all the foregoing reasons, Dairyland respectfully requests that the Board issue an order compelling CREC to immediately provide complete and responsive answers to Dairyland's interrogatories dated September 29, 1978.

Respectfully submitted,



O. S. Hiestand
Attorney for
Dairyland Power Cooperative

OF COUNSEL

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Dated: October 27, 1978

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CERTIFICATE OF SERVICE

Service has on this day been effected by
personal delivery or first class mail on the following
persons:

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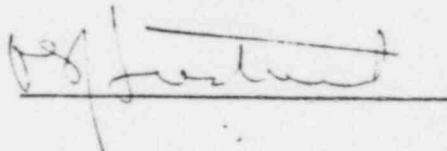
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A handwritten signature in dark ink, appearing to read "O. S. Hiestand", is written over a horizontal line. The signature is cursive and somewhat stylized.

O. S. Hiestand

October 27, 1978