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LBP-88-15UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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## ATOMIC SAFETY AND LICENSING BOARD PANEL

Before Administrative Judges  
Charles Bechhoefer, Chairman  
Dr. George C. Anderson  
Frederick J. ShonOFFICE OF THE  
DOCKETING CLERK  
BRANCH

SERVED MAY 16 1988

In the Matter of

DAIRYLAND POWER COOPERATIVE

(LaCrosse Boiling Water Reactor)

Docket No. 50-409-OL  
(FTOL Proceeding)

ASLBP No. 78-368-05-OL

May 13, 1988

MEMORANDUM AND ORDER  
(Motion to Terminate Proceeding)

On February 19, 1988, Dairyland Power Cooperative (Applicant or DPC) filed a motion to terminate this proceeding. On March 10, 1988, the NRC Staff filed an answer in support of this motion. The Intervenor, Coulee Region Energy Coalition (CREC), has not responded.<sup>1</sup>

<sup>1</sup> The Applicant initially served its motion on CREC at an incorrect address. The Staff served its response to the correct address (insofar as is reflected by the Board's records). Upon telephone request from the Board Chairman, the Applicant agreed to re-serve the Intervenor at the correct address. More than 30 days has elapsed from the date of that telephone request. After several attempts, the Chairman of this Board contacted the Intervenor's representative by telephone on May 12, 1988, to ascertain CREC's interest (if any) in the termination motion. CREC's representative advised that he had received the motion but had not responded because of the lack of time and resources for further litigation. He mentioned two potential issues which he believed should be litigated. See n. 7, infra.

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For the reasons set forth, we are granting the Applicant's motion, subject to a condition. If any party objects to this condition, it may file a petition for reconsideration within 10 days of the date of service of this Memorandum and Order.

1. This proceeding involves DPC's application to convert its provisional operating license for the LaCrosse Boiling Water Reactor (LACBWR) to a full-term operating license. Although DPC's provisional license (No. DPR-45) expired in February 1975 under its own terms, it has remained in effect during the pendency of this proceeding by virtue of 10 C.F.R. § 2.109 and DPC's timely application for a full-term license. In 1982, this Board issued a Partial Initial Decision on environmental contentions and other questions. LBP-82-58, 16 NRC 512 (1982), aff'd, sua sponte, ALAB-733, 18 NRC 9 (1983). The safety questions raised by the application (except for those encompassed by a show-cause order or by an expansion of the facility's spent-fuel-pool storage capacity, on which we issued other decisions<sup>2</sup>) had been deferred pending the Staff's preparation of a Safety Evaluation Report.

On April 29, 1987, prior to the Staff's completion of that report, DPC advised the Commission of its intent to permanently shut down and decommission LACBWR. DPC advises us that LACBWR was shut down on April

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<sup>2</sup> LBP-80-2, 11 NRC 44 (1980), aff'd, sua sponte, ALAB-617, 12 NRC 430 (1980), in part vacated as moot, ALAB-638, 13 NRC 374 (1981); LBP-81-7, 13 NRC 257 (1981), LBP-83-23, 17 NRC 655 (1983), both aff'd, sua sponte, ALAB-733, supra.

30, 1987, and that final defueling of the reactor was completed by June 11, 1987. In response to an amendment request by DPC dated May 22, 1987, the NRC Staff on August 4, 1987, issued Amendment No. 56 to the LACBWR provisional operating license, deleting the authority to operate the reactor and converting the license to a "possession-only" license.<sup>3</sup>

We are further advised that on December 21, 1987, DPC submitted its proposed decommissioning plan to the NRC<sup>4</sup> and that, on February 10, 1988, DPC amended the application which is currently before us to delete the request to convert the license to a full-term operating license and to amend the license to authorize DPC to continue to maintain LACBWR in a possession-only status during the safe storage and decontamination periods specified in the decommissioning plan. (Neither the plan nor the amended application referenced in this paragraph has been provided to this Board.)

1. DPC's motion has not been opposed by any party. Accordingly, on procedural grounds, we could grant it. 10 C.F.R. § 2.707. However, that action, without more, would leave DPC without a currently effective

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<sup>3</sup> 52 Fed. Reg. 32215 (August 26, 1987). The Staff made the "no significant hazards" finding of 10 C.F.R. § 50.91 in conjunction with its approval of the license amendment. The proposed finding was noticed in the Federal Register (52 Fed. Reg. 24542, 24546 (July 1, 1987)) and no one objected to, or provided comments on, that finding. The Staff provided us a copy of Amendment 56 on August 6, 1987.

<sup>4</sup> A Notice of Opportunity for Hearing on the plan was published on April 8, 1988 (53 Fed. Reg. 11718).

license. Its provisional license, which was modified by Amendment 56, has expired by its own terms and only remains in effect through the pendency of this proceeding. Amendment 56 changed the authority granted by the license but did not modify its expiration date or its status as a provisional license. To permit a continuation of licensed storage of spent fuel in the reactor storage pool, as apparently intended by DPC, we would have to authorize a full-term operating license with operating authority limited as under Amendment 56.<sup>5</sup>

2. In considering a full-term license, our authority with respect to safety issues is limited to resolving those matters put into controversy by a party, unless we should determine that a serious safety matter exists. 10 C.F.R. § 2.760a. We have examined the remaining proposed safety contentions previously submitted by CREC (Nos. 3, 10, 13-17, and 25-27). CREC has not attempted to pursue any of these contentions in the context of the proposed onsite storage of spent fuel to be carried out by DPC under the "possession only" license. Moreover,

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<sup>5</sup> We express no opinion with respect to whether the application for decommissioning authority would constitute an "application for a renewal or for a new license for the activity" authorized by the provisional license, sufficient to keep the provisional license in effect pursuant to 10 C.F.R. § 2.109. That question becomes moot as a result of the order we are now issuing. In particular, however, we note that the decommissioning activities would continue beyond the period for which a full-term license could have been issued, and that permission for decommissioning was not sought prior to the technical expiration date of Provisional License DPR-45. Both of these considerations raise doubt as to whether 10 C.F.R. § 2.109 could be used to extend the provisional license pending consideration by NRC of a decommissioning plan.

we are unable to determine whether, or to what extent, CREC intends these generally worded contentions to be applicable to activities under the "possession only" license. Given CREC's lack of further interest in pursuing these contentions, and perceiving no "serious safety matter" as contemplated by 10 C.F.R. § 2.760a, we are dismissing these contentions.<sup>6</sup> Beyond that, no other safety matters regarding the proposed termination or the proposed full-term "possession only" license have been raised by a party, nor are we aware of any safety matters which would warrant our attention at this time.<sup>7</sup>

3. With regard to environmental matters, our jurisdiction is similarly defined. 10 C.F.R. § 2.760a. In LBP-82-58, supra, we ruled on the environmental questions at issue in this proceeding. Although no environmental issues bearing on termination or a full-term "possession only" license have been raised by a party, one matter has come to our

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<sup>6</sup> In dismissing these contentions, we express no opinion on their litigability in conjunction with the "possession only" license, or on their merits (except to the extent we are determining that they do not warrant consideration pursuant to 10 C.F.R. § 2.760a).

<sup>7</sup> During the May 12, 1988 telephone communication between the Board Chairman and CREC's representative (see n. 1, supra), the representative mentioned two issues which he believed warranted consideration. The first involved leakage in the spent fuel pool and alleged unsuccessful attempts by the Applicant to repair such leaks. We expect that the Staff will investigate such leakage to ascertain any safety implications. The other issue concerned potential storage of spent fuel from other reactors in the LACBWR pool--a situation which could not occur without a further license amendment and Notice of Opportunity for Hearing. Cf. LBP-80-2, supra, 11 NRC at 53-55.

attention which may need resolution: the potential requirement that the Staff prepare an environmental review document for the proposed termination and/or proposed full-term "possession only" license.

The environmental review documents are of two types: an environmental impact statement (EIS) for actions set forth in 10 C.F.R. § 51.20, and an environmental assessment (EA) for actions set forth in 10 C.F.R. § 51.21. EAs must be prepared for all actions other than those for which an EIS is required or which are categorically excluded by 10 C.F.R. § 51.22.

The decommissioning of LACBWR will require the preparation of an EIS. 10 C.F.R. § 51.20(b)(5). DPC's proposed decommissioning plan, although submitted to NRC, is not currently before us for review. The action giving rise to the request for termination is DPC's withdrawal of its application for a full-term operating license and the conversion of its provisional operating license to a full-term "possession only" license. The Federal Register notice accompanying Amendment 56 reflects that the Staff prepared a safety evaluation report, but not an environmental review document in connection with that amendment. 52 Fed. Reg. 32215. The license amendment itself, however, recites that the provisions of 10 C.F.R. Part 51 have been satisfied. We presume (although we have not been formally advised) that the Staff regarded the amendment as an "amendment . . . which changes a requirement with respect to installation or use of a facility component . . ." within the meaning of 10 C.F.R. § 51.22(c)(9) and hence subject to a categorical exclusion.

Upon granting the Applicant's motion, DPC's application for a full term operating license will have been "finally determined" and DPC's provisional license will expire. 10 C.F.R. § 2.109. DPC's "new" possession-only license, the major purpose of which is to authorize DPC to possess spent fuel, would normally require the preparation by the Staff of at least an EA. Under the terms of 10 C.F.R. § 51.23, however, the Commission has made a generic determination that the storage of spent fuel "for at least 30 years beyond the expiration of reactor operating licenses" will result in no significant environmental impact and, accordingly, no environmental review need be taken of the storage of spent fuel in reactor storage pools after the cessation of reactor operation.

The authorized exemption from environmental review of the storage of spent fuel in reactor storage pools following the termination of reactor operation does not appear to be indefinite or to extend for an unlimited period of time. Given the finding in 10 C.F.R. § 51.23, we believe it is limited to onsite storage of no more than 30 years. We assume that DPC's decommissioning plan will be acted upon by NRC in less than 30 years. (The Notice of Opportunity for Hearing has already been published.) As indicated earlier, such action by NRC will require preparation of an EIS. Nonetheless, to comply with the requirements of the National Environmental Policy Act, as implemented through NRC's regulations in 10 C.F.R. Part 51, we believe that (pending final approval of decommissioning) a technical limit to the period of onsite spent fuel storage should be imposed on the "possession only" license.



That limit, from the standpoint of the environmental review, could be as long as 30 years but is subject to the termination date of the full-term license heretofore sought by DPC.

Our approval of DPC's motion (which amounts to the withdrawal of the license application which is before us) may be "on such terms" as we may prescribe. 10 C.F.R. § 2.107(a). We will grant DPC's motion, as long as the "possession only" license which remains is converted to a full-term license and limited to a period ending either with the approval by NRC of a decommissioning plan and grant of decommissioning authority for LACBWR or the term of the full-term license previously sought by DPC, whichever comes earlier. The full-term license previously sought by DPC extends until March 29, 2003--i.e., 40 years from the date of issuance of the construction authorization, and less than 30 years from the date of this Memorandum and Order. 10 C.F.R. § 50.51; 43 Fed. Reg. 15021 (April 10, 1978); LBP-82-58, supra, 16 NRC at 515. Because none of the parties has addressed this termination condition, we will permit parties, if they wish to eliminate or modify the license condition we are imposing, to file a petition for reconsideration within 10 days of service of this Order (cf. 10 C.F.R. § 2.771).

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For the reasons stated, it is, this 13th day of May, 1988



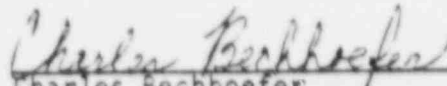
## ORDERED

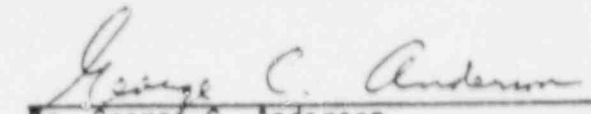
1. CREC's remaining safety contentions in this proceeding (Nos. 3, 10, 13-17, and 25-27) are dismissed.
2. DPC's motion to terminate this proceeding is granted, and DPC is granted permission to withdraw its application for full-term operating authority, subject to the condition set forth below.
3. This termination is conditioned upon the grant by the Director, Office of Nuclear Reactor Regulation, which grant is hereby authorized, of an amendment to Provisional Operating License DPR-45, as amended, to convert the license for LACBWR to a full-term operating license containing terms and conditions similar to those governing license DPR-45, in particular those provided under Amendment 56 which limit the license to a "possession only" license. DPC's "possession only" license for LACBWR is to expire on March 29, 2003 or upon final approval by NRC of a decommissioning plan and grant of decommissioning authority for LACBWR, whichever comes earlier.
4. A petition for reconsideration of the above termination condition may be filed within 10 days of service of this Memorandum and Order.
5. In accordance with 10 C.F.R. §§ 2.760, 2.762, 2.764, 2.785 and 2.786, this Memorandum and Order becomes effective upon expiration of the period within which petitions for reconsideration may be filed. If a petition is filed, the effectiveness of this Memorandum and Order is suspended pending resolution of the petition for reconsideration. This Memorandum and Order will constitute the final decision of the Nuclear

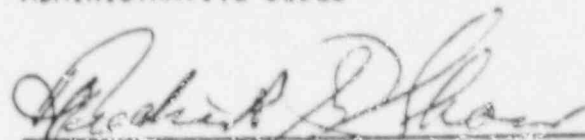
Regulatory Commission thirty (30) days following its effective date, subject to any review pursuant to the above-cited Rules of Practice.

6. Any party may take an appeal from this Memorandum and Order by filing a Notice of Appeal within ten (10) days after the effective date specified above. Each appellant must file a brief supporting its position on appeal within thirty (30) days after filing its Notice of Appeal (forty (40) days if the Staff is the appellant). Within thirty (30) days after the period has expired for the filing and service of the briefs of all appellants (forty (40) days in the case of the Staff), a party who is not an appellant may file a brief in support of, or in opposition to, any such appeal(s). See 10 C.F.R. § 2.762.

THE ATOMIC SAFETY AND  
LICENSING BOARD

  
Charles Bechhoefer  
ADMINISTRATIVE JUDGE

  
Dr. George C. Anderson  
ADMINISTRATIVE JUDGE

  
Frederick J. Shon  
ADMINISTRATIVE JUDGE

Dated at Bethesda, Maryland  
this 13th day of May, 1988.