

Per. Files

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION



ATOMIC SAFETY AND LICENSING APPEAL BOARD

Alan S. Rosenthal, Chairman
Michael C. Farrar, Member
John B. Farmakides, Member

In the Matter of)
)
CONSUMERS POWER COMPANY)
)
(Midland Plant, Units 1 and 2))
)
)

Docket Nos. 50-329A
50-330A

ORDER

July 25, 1975

(ALAB - 282)

On July 18, 1975, the Licensing Board rendered its initial decision in this antitrust proceeding involving Units 1 and 2 of the Midland Plant. In view of the number and complexity of the issues presented in the proceeding and decided by the Board in its lengthy opinion, and the voluminous evidentiary record adduced below, it is patent that there must be an enlargement under 10 CFR 2.711(a) of the time periods prescribed by 10 CFR 2.762 for the various steps in the appellate process. The parties have now jointly submitted to us a proposed schedule for the

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filing of exceptions to the initial decision and the briefing of any appeal or appeals which may be taken. In the totality of circumstances, we deem the agreed-upon schedule to be entirely reasonable and, accordingly, it is hereby ratified. Its provisions are as follows:

1. September 8, 1975 - The filing of exceptions to the initial decision by any party deeming itself to be aggrieved by the result reached in that decision. See Toledo Edison Co. (Davis-Besse Nuclear Power Station), ALAB-157, 6 AEC 858 (1973).^{1/}

2. November 3, 1975 - The filing by the appellant(s) of the brief(s) in support of its (their) exceptions.

3. January 5, 1976 - The filing by the appellee(s) of the brief(s) in opposition to the exceptions filed by appellant(s).

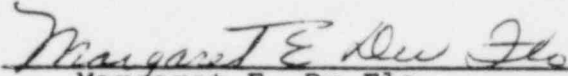
^{1/} It is often the case that a party will be entirely satisfied with the result but, at the same time, will not subscribe to some of the findings of fact or conclusions of law contained in the initial decision. In such circumstances, although normally precluded from taking an independent appeal, that party will be free to challenge any or all of those findings or conclusions in defending the result (should it be appealed by some other party which is seeking a different result). See Niagara Mohawk Power Corp. (Nine Mile Point Nuclear Station, Unit 2), ALAB-264, NRCI-75/4 347, 357 (April 8, 1975). In the event that the appellee(s) should pursue this course here, the appellant(s) will have an opportunity to respond to the challenge by way of the reply brief(s).

4. January 26, 1976 - The filing by the appellant(s) of a reply brief(s), which shall be confined to a response to arguments advanced in the brief(s) of the appellee(s).

It is the present contemplation of this Board that oral argument on any appeal(s) which may be taken will be calendared for sometime during the latter half of February, 1976. At least three weeks advance notice of the precise date of argument will be provided to the parties.

It is so ORDERED.

FOR THE ATOMIC SAFETY AND LICENSING
APPEAL BOARD


Margaret E. Du Flo
Secretary to the
Appeal Board

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document(s) upon each person designated on the official service list compiled by the Office of the Secretary of the Commission in this proceeding in accordance with the requirements of Section 2.712 of 10 CFR Part 2 - Rules of Practice, of the Nuclear Regulatory Commission's Rules and Regulations.

Dated at Washington, D.C. this

25th day of July 1975.

Chris H. Smith
Office of the Secretary of the Commission

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