

42777
UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board



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

Docket Nos. 50-329
50-330

ANSWER OF CONSUMERS POWER COMPANY
TO VARIOUS MOTIONS FILED BY INTERVENORS
WITH A LETTER DATED JULY 11, 1977

1. Under letter dated July 11, 1977, Intervenors filed the following documents with this Atomic Safety and Licensing Board ("Board"):

(1) "Attachment to Letter" which purports to "comment, in extremely brief compass, on the Proposed Findings of Fact and Conclusions of Law ('Findings') submitted by the Commission Staff" (p. 1 of Attachment to Letter);

(2) A Motion to Strike the Staff Report submitted in June, 1977 on the alleged inconsistencies between the testimony in this proceeding and the material submitted by Consumers Power Company ("Licensee") to the Michigan Public Service Commission ("MPSC");

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(3) A Response to the Staff Report submitted in June, 1977 on the alleged inconsistencies between the testimony in this proceeding and the material submitted by Licensee to the MPSC; and

(4) Proposed transcript corrections to the testimony and cross-examination of Dr. Richard Timm.

2. Licensee, with two exceptions, has no objections to the proposed transcript corrections to the testimony of Dr. Timm. The two exceptions are line 15 of Transcript page 5270 and line 6 of Transcript page 6093. Licensee cannot relate these changes to the cites given and therefore objects to the proposed changes.

3. The "Attachment to Letter of July 11, 1977" is nothing more than a responsive pleading to the Staff's Findings. Neither this Board's Order of May 13, 1977 nor 10 C.F.R. 2.754, which governs the procedure of the filing of Findings, allow such a response. Since Intervenors have given no reason for the filing, other than their disagreement with the Staff's position, the Board should reject the filing.

4. The Motion to Strike and the Response to the Staff's Report on the alleged inconsistencies between the testimony in this proceeding and the material submitted by Licensee to the MPSC should also be rejected. The Staff Report was filed on June 2, 1977. Intervenors' filings were mailed on July 11, 1977, 39 days thereafter. None of the NRC

rules nor any of this Board's orders permit such a late filing, and since no reason has been given for the filings, other than Intervenors' disagreement with the Report, the Board should reject these filings.

Furthermore, a review of the testimony in this proceeding establishes that Intervenors are merely attempting to find some support, at this late date, however marginal, for their own allegations in this area. For example, at pages 3-7, of their Response, Intervenors set forth four objections to the Staff's conclusions on "Purchase 10". None of the objections are well founded. The first objection is that Computer Run C4-043 was not used in a sensitivity study to determine the appropriate level for the use of Purchase 10 as an input to the cost production runs. However, the Affidavit of David A. Lapinski at pages 5 and 6 clearly establishes that sensitivity studies were run and based on their results, Purchase 10 was entered at the appropriate level, i.e., 70%. The second objection is that the "iterative run" technique is both unnecessary and pointless. This objection is now made despite the testimony of Intervenors' witness at Transcript 5866-68 that such runs were required to determine the appropriate level for the use of Purchase 10. The third objection is that the Staff only presented a tabulation for one year in one delay case to support its conclusions. Intervenors, however, ignore the Affidavit of David A. Lapinski which establishes at page 5 that the Staff's conclusions are supported for each delay case in

each year analyzed. The fourth objection criticises the Staff's discussion of only one of the "elements" that Intervenors state must be factored into the analysis and asserts that Purchase 10 costs are higher than the costs of Licensee's coal fired units. Once again, Intervenors have ignored the Affidavit of David A. Lapinski, at pages 5 and 6, which shows that when all the appropriate factors are considered, the total amount of backing off of base-load generating units directly attributable to Purchase 10 has an insignificant (0.5%) effect on the purchase power costs shown in Licensee Exhibit 14.

Intervenors' second major criticism relates to the differences in plant capacity factors. However, a review of the Affidavit of Ronald Calcaterra establishes that these objections are as groundless as those relating to Purchase 10. Thus, even if this Board should elect to permit the late filing of these documents, it is clear that the Motion to Strike should be denied and the Response disregarded since there is no substance to the allegations contained therein.

Respectfully submitted,

David J. Rosso by CAB
David J. Rosso

R. Rex Renfrog III by CAB
R. Rex Renfrog III

Martha E. Gibbs by CAB
Martha E. Gibbs

Cary A. Bartelman
Cary A. Bartelman

Dated: July, 27, 1977

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RELATED CORRESPONDENCE



UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION



Before the Atomic Safety and Licensing Board

In the Matter Of)
)
CONSUMERS POWER COMPANY)
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(Midland Plant, Units 1 and 2))
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CERTIFICATE OF SERVICE

I hereby certify that copies of the enclosed
"Answer of Consumers Power Company to Various Motions Filed
By Intervenors with a Letter Dated July 11, 1977", dated July 27,
1977 in the above-captioned proceeding, have been served on
the following by hand delivery this 27th day of July:

Frederic J. Coufal, Esquire
Chairman
Atomic Safety and Licensing
Board Panel
U.S. Nuclear Regulatory Comm.
Washington, D.C. 20555

Dr. J. Venn Leeds, Jr., Esq.
Atomic Safety and Licensing
Board Panel
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Washington, D.C. 20555

Dr. Emmeth A. Luebke
Atomic Safety and Licensing
Board Panel
U.S. Nuclear Regulatory Comm.
Washington, D.C. 20555

The following have been served by deposit in the United States
mail, first-class, postage prepaid, this 27th day of July,
1977:

Atomic Safety and Licensing
Board Panel
U.S. Nuclear Regulatory Comm.
Washington, D.C. 20555

Atomic Safety and Licensing
Appeal Board
U.S. Nuclear Regulatory Comm.
Washington, D.C. 20555

Mr. C. R. Stephens
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July 27, 1977