

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION



COMMISSIONERS:

Marcus A. Rowden, Chairman  
Victor Gilinsky  
Richard T. Kennedy

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

Docket Nos. 50-329  
50-330

ORDER 3-18-77

On March 4, 1977, Consumers Power Company filed a motion with the Commission requesting that the Commission stay the orders it issued in this proceeding on August 16, 1976 (CLI-76-11, NRCI-76/8, 65); September 14, 1976 (CLI-76-14, NRCI-76/9, 163, September 14, 1976 (unreported); and November 5, 1976 (CLI-76-19, NRCI-76/11, 474). These opinions ordered the reconvening of a licensing board to hear certain issues remanded to the Commission by the United States Court of Appeals for the District of Columbia Circuit in Nelson Aeschliman et al v. NRC, Nos. 73-1776, 73-1867 (September 21, 1976). Consumers Power's motion is grounded on the fact that the United States Supreme Court granted certiorari in the above-named case on February 22, 1977.

On March 15, 1977, the Intervenors (other than Dow Chemical Company) filed a motion with the Commission requesting that the Commission immediately suspend construction of the Midland facility. The Intervenors' motion is based on an allegation that further hearings on a number of issues are required and that these hearings should be "unfettered and uncompromised by the continuation of construction."

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Although the Commission would normally rule on these motions, the Commission is delegating its authority to act in these instances to the Atomic Safety and Licensing Appeal Board, pursuant to 10 CFR § 2.785. This action is being taken because Chairman Rowden has in the past disqualified himself from participating in this proceeding because of his prior service as Associate General Counsel of the Atomic Energy Commission during the pendency of this proceeding. Absent a showing of necessity not present here, the Chairman does not believe that he should participate on the merits of these motions. His withdrawal leaves the Commission without a quorum to rule on the merits of the motions. See 42 U.S.C. § 5841(a). The Chairman is participating for the limited purpose of delegating these matters to the Appeal Board because his presence is required to establish the necessary quorum of three. Otherwise, no action could be taken on the motions.

The Chairman of the Appeal Board, pursuant to 10 CFR § 2.787(a), shall designate three members of the Board to act on these motions.

It is so ORDERED.

By the Commission

  
SAMUEL J. CHILK  
Secretary of the Commission

Dated at Washington, D. C.  
this 18th day of March, 1977