

299 Filed



UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

In the Matter of )  
CONSUMERS POWER COMPANY )  
(Midland Plant, Un'ts 1 and 2) )

Docket Nos. 50-329  
50-330

ORDER

Rebuttal Evidence

9/23/77

On May 13, 1977, during the course of the presentation of oral testimony, the Board ordered that rebuttal evidence would come in by affidavit only (Tr. 6159 et seq.). Pursuant to that order, the Licensee, Staff, and Intervenors have all offered affidavits. We will consider each party's rebuttal offer in this section of this Order.

A. Licensee

Affidavits offered by Consumers and the exhibit numbers we have assigned to each of them are as follows:

<u>Affidavit</u>	<u>Exhibit Number</u>
Ronald Calcaterra	Licensee R-1
David A. Lipinski	Licensee R-2
Richard F. Brzezinski	Licensee R-3
Robert J. Ringlee	Licensee R-4
Gordon L. Heins	Licensee R-5

8007180 667

G

H 1

GD

<u>Affidavit</u>	<u>Exhibit Number</u>
Stephen H. Howell	Licensee R-6
James H. Clymer	Licensee R-7
Blake O. Fisher	Licensee R-8
Gilbert S. Keeley	Licensee R-9

The Staff does not oppose the receipt of any of the affidavits, though it points out that Mr. Brzezinski's (Licensee R-2) allegations are not proper rebuttal because they do not respond to Intervenors' direct case and that the affidavits of Mr. Clymer and Mr. Fisher (Licensee R-7 and R-8) were submitted at the Board's request for certain information and that the affidavits are not proper rebuttal. Intervenors object to all or portions of all the affidavits except those of Mr. Calcaterra and Mr. Keeley (Licensee R-1 and R-9) as not proper rebuttal.

Licensee's R-1 and R-9 are received, there being no objection thereto. Licensee's R-2 is received, the only objection thereto being to a footnoted reference. Licensee's R-3 and R-6 are rejected as not proper rebuttal evidence. Licensee's R-4 is received except that part of page 11 following the word "capability" in the last line thereof, and all of page 11a; the part excluded is not proper rebuttal.

Licensee's R-7 and R-8 are excluded. The latter two items are not rebuttal; they were offered by Licensee in response to an earlier request of the Board to explain the cost effect of delay in construction on Licensee's ratepayers and investors. They expand on earlier testimony. We agree with Intervenors that it would not be fair to receive these at the late stage at which they were offered.

B. Staff

The NRC Staff has offered three affidavits which are listed hereafter with the exhibit numbers we have assigned.

<u>Affidavit</u>	<u>Exhibit Number</u>
NRC Staff Rebuttal Testimony of Walter J. Gunderson on the Subject of Loss of Load Probability and Reserve Margins	Staff R-1
NRC Staff Rebuttal Testimony of Sidney E. Feld on Forecast Methodology and Alternate Rate Designs	Staff R-2
NRC Staff Rebuttal Testimony of Arnold H. Meltz on the Financial Cost of Delay (Excluding Replacement Power)	Staff R-3

Staff R-1, R-2 and R-3 are received, there being no objection thereto.

C. Intervenors

Intervenors have offered the following affidavit:

<u>Affidavit</u>	<u>Exhibit Number</u>
Affidavit of Richard J. Timm in Response to Rebuttal Testimony Filed by Consumers Power Company and the Nuclear Regulatory Commission Staff	Intervenors R-1

Intervenors R-1 is received except for paragraphs 31 through 36, which are in response to Licensee R-3 which has not been admitted.

Licensee objects to the receipt of two parts of the affidavit. The first part is paragraph 36 which we have excluded; the second is paragraph 37 which is said to contain a legal conclusion regarding the foreclosure of alternatives. The objection relative to paragraph 37 is denied.

Motion for the Assessment of Costs

Licensee has moved for the assessment of costs against counsel for Intervenors. The basis for this motion is alleged to be a failure to advise the parties that a witness for the Intervenors would not appear at a hearing scheduled

for March 21, 1977, until the time the hearing was scheduled to start. Licensee indicates in its motion that the delay thus caused resulted in excess costs incurred by the Licensee (as itemized in the motion) of \$4,615.15. We deny the motion because we have been cited to no authority and are aware of none supporting the view that Licensing Boards have the power to assess costs.

Motion of Licensee's for  
Admission of Interrogatory Answers

On June 1, 1977, Licensee moved the Board to receive certain responses by Dow to Interrogatories served on them by various parties. Intervenors have not objected to the Dow responses being received; the Staff objects on best evidence grounds because much of the matter contained in the interrogatories has been covered by Dow witnesses. The interrogatory answers are received. The answers may contain information on which oral testimony was not received. It appears to the Board to be more efficient to receive the answers than to require the parties to go through them line-by-line and compare them to the transcript of the oral testimony.

Motions to Strike Parts of the  
Direct Testimony of Dr. Richard J. Timm

The objection is made that portions of the Timm testimony on direct includes legal conclusions and opinions on the financial capabilities of Licensee for which Dr. Timm has demonstrated no expertise. Some legal conclusions are stated as a background for Dr. Timm's testimony and there are legal conclusions that are stated simply as such. There are also references made to Consumers' financial capability to see the project through, though the references are mostly in the form of assumptions which are used as background for some point that the witness seeks to make. The Board overrules the motion to strike. It is more efficient to let the testimony stand as a cohesive whole rather than to delete parts of it. We also feel that the Board and any reviewing authorities will be able to determine from the face of the testimony the parts thereof that will support a finding of fact.

Motions for Extensions of Time

There are a variety of motions filed by various parties for short extensions of time due to the inability of the moving party to accomplish a particular filing within the

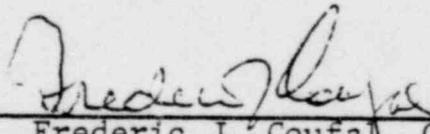
time given in the Regulations or ordered by the Board. None of these motions seem to state an unreasonable position and they are all sustained.

General

It shall be the obligation of each of the parties who have moved for the admission of exhibits which are referred to in this Order to see that the proper number thereof are provided for the official record as the rules require.

IT IS SO ORDERED.

THE ATOMIC SAFETY AND LICENSING BOARD

  
\_\_\_\_\_  
Frederic J. Coufaj, Chairman

Dated at Bethesda, Maryland,  
this 23rd day of September, 1977.