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UNITED STATES OF AMERICA
ATOMIC ENERGY COMMISSION

50-529/530

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
CONSUMERS POWER COMPANY)	Construction Permit
(Midland Plant, Units 1)	Nos. 81 and 82
and 2))	

AEC REGULATORY STAFF'S PROPOSED
FINDINGS OF FACT AND CONCLUSIONS OF LAW
IN THE FORM OF A PROPOSED INITIAL DECISION

The AEC Regulatory Staff ("Staff") requests pursuant to 10 CFR 2.754 of the Commission's "Rules of Practice" that the following proposed findings of fact and conclusions of law in the form of a proposed initial decision be adopted by the Atomic Safety and Licensing Board in this proceeding.

I. Preliminary Statement

1. Consumers Power Company, 212 West Michigan Avenue, Jackson, Michigan ("Licensee"), is the holder of Construction Permit Nos. 81 and 82, which authorize the construction of nuclear power reactor Units 1 and 2 at the Midland Plant near Midland, Michigan.
2. On December 3, 1973 the Director of Regulation issued an Order to Show Cause to the Licensee, ordering it to show cause why all activities under Construction Permits Nos. 81 and 82 should not

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be suspended pending a showing by the Licensee that it is in compliance with the Commission's regulations pertaining to quality assurance, and that there is reasonable assurance that such compliance will continue throughout the construction process. The Order to Show Cause was made immediately effective with respect to cadwelding activities at the Midland Plant site.

3. On December 17, 1973 the Director of Regulation issued a Modification of Order to Show Cause which had the sole effect of lifting the suspension of cadwelding activities imposed by the December 3, 1973 Order to Show Cause.
4. On December 24, 1973 the Licensee filed its Answer to Order to Show Cause. In the cover letter transmitting the answer the Licensee requested a hearing if the answer was determined not to have shown cause why the construction permits should not be suspended.
5. Also under date of December 24, 1973, Saginaw Valley Nuclear Study Group, Midland Michigan, Citizens Committee for Environmental Protection of Michigan, Midland, Michigan, Sierra Club, San Francisco, California (and its Michigan affiliates), United Auto Workers of America, Detroit, Michigan, and West Michigan Environmental Action Council, Lansing, Michigan (all hereinafter referred to collectively as "Saginaw-Sierra") requested a hearing on the issues set forth in the Order to Show Cause. It was

Saginaw-Sierra's position that the construction permits should at least be suspended, if not revoked in their entirety.

6. By a Memorandum and Order docketed January 21, 1974 the Commission, inter alia, granted Saginaw-Sierra's request for a hearing, granted a request filed by Dow Chemical Company under date of December 21, 1973 for intervenor status in the proceeding, and directed this Board to conduct the hearing at a time and place to be established by the Board.
7. In a Notice of Hearing on Order to Show Cause dated January 21, 1974 and published in the Federal Register for January 23, 1974 (39 F.R. 2619) the Commission stated that the issues to be decided by the Hearing Board are:

"(1) whether the licensee is implementing its quality assurance program in compliance with Commission regulations, and (2) whether there is reasonable assurance that such implementation will continue throughout the construction process."

8. This Board held a prehearing conference in Chicago, Illinois on Thursday, March 28, 1974, pursuant to its Notice and Order for Prehearing Conference of March 4, 1974, and a further prehearing conference on May 30, 1974 in Chicago, Illinois pursuant to its Notice and Order for Prehearing Conference of May 14, 1974.

During the first prehearing conference the Board granted the Petition to Intervene which had previously been filed in behalf of Bechtel Power Corporation and Bechtel Associates Professional Corporation (hereinafter collectively referred to as "Bechtel") on February 11, 1974 (Tr. 20). Also, during the first prehearing conference the Regulatory Staff announced that in its view the Licensee had shown cause why construction of the Midland Plant should not be suspended (Tr. 33) and that the Staff was no longer the proponent of the Order to Show Cause (Tr. 49).

9. Although given ample opportunity to do so, no party to the proceeding sought to further specify or subdivide the two ultimate issues set forth in the Commission's Notice of Hearing. No party sought to set forth in what specific respects it believed that the Licensee was not implementing its quality assurance program in compliance with Commission regulations, or in what specific respects it believed that there did not exist reasonable assurance of satisfactory implementation throughout the construction process.
10. On June 17, 1974 the Board issued a Notice and Order for Commencement of Evidentiary Hearing calling for the commencement of the hearing on Tuesday, July 16, 1974 in Midland, Michigan.

11. The hearing commenced on schedule and continued into the afternoon of July 18, 1974. The Licensee, the Staff and Bechtel entered appearances at the hearing and presented testimonial and documentary evidence on the issues specified for hearing. Saginaw-Sierra and the Dow Chemical Company did not appear at the evidentiary hearing. ^{*/} One limited appearance was made by Robert Parker on behalf of the Midland Nuclear Power Committee (Tr. 259). Mr. Parker supported continuance of construction of the Midland Plant.

II. Findings of Fact

ISSUE 1: WHETHER THE LICENSEE IS IMPLEMENTING ITS QUALITY ASSURANCE PROGRAM IN COMPLIANCE WITH COMMISSION REGULATIONS

- 1-1 All parties present at the evidentiary hearing (i.e., the Staff, the Licensee and Bechtel) presented testimony in support of the view that the Licensee is implementing its quality assurance program in compliance with Commission regulations. Thus, on behalf of the Regulatory Staff Mr. Walter Vetter, the supervisory inspector for the Midland project, testified that in his view the Licensee:

^{*/} Saginaw-Sierra had made its appearance contingent on favorable action by the Commission on a petition it had filed for expert witness and attorney fees. That petition was denied by the Commission's Memorandum and Order of July 10, 1974, for the reasons set forth therein.

"... has demonstrated, and continues to demonstrate, that he is in compliance ... with the Commission's regulations pertaining to quality assurance ..."

(Tr. 202).

1-2 Mr. Vetter's view and the bases for it is elaborated upon by some 25 pages of prepared testimony (Tr. 178-202) and 66 pages of examination by the Board and other parties (Tr. 203-257; 264-274). In summary, Mr. Vetter briefly described the general nature of the Regulatory Operations construction inspection program as it relates to the Midland facility (Tr. 184-188). He then described in some detail the circumstances surrounding the key inspections of November 6-8, 1973, November 20-21, 1973, December 6-7, 1973, and January 10-11, 1974 (Tr. 188-197). Mr. Vetter also discussed in this context the various corrective actions deemed necessary to achieve compliance with AEC's requirements and the responses of the Licensee to the needed corrective actions (Tr. 197-201). Mr. Vetter concluded on the basis of his review of the available inspection information that the Licensee is currently implementing its Q/A program in full compliance with the Commission's requirements (Tr. 202).

1-3 Mr. Vetter's testimony was supplemented and supported by that of Mr. Rohrbacher, a Reactor Inspector in the Reactor Construction Branch, Directorate of Regulatory Operations, Region III, and the principal inspector for the Midland facility since late 1972 (Tr. 287 et seq.).

Mr. Rohrbacher's testimony provided brief historical perspective on the Licensee's quality assurance activities at Midland (Tr. 288-289) and a more detailed discussion of the inspection findings and the Licensee's response since November 5, 1973 (Tr. 289-292). Mr. Rohrbacher, as a member of the inspection team immediately concerned with Q/A performance at Midland, concludes that current implementation of the Q/A program is adequate (Tr. 292). Finally, Mr. Rohrbacher presents in some detail the Licensee's commitments for maintaining proper Q/A program implementation throughout the construction process. (Tr. 292-297).

- 1-4 Mr. Williams, a Reactor Inspector in the Reactor Construction Branch, Directorate of Regulatory Operations, Region III with a broad background in quality assurance work and a participant in four inspections at the Midland facility construction site, presented testimony supporting the conclusions of Mr. Vetter (Tr. 312 et seq.).

Mr. Williams, as a colleague of Mr. Rohrbacher, provided supplemental detailed descriptions of the cadwelding problems at the Midland plant site and their eventual resolution (Tr. 317-323). In addition, Mr. Williams, as a co-author of the December 6-7, 1973 and the January 10-11, 1974 inspection

reports (Exhs. CP-15 and CP-16) also provided additional details concerning the basis for the conclusions reached in those reports (Tr. 323-327).

- 1-5 Based upon the testimony of the witnesses presented by the Regulatory Staff, as well as the testimony of the Licensee's and Bechtel's witnesses and in light of the complete absence of any evidence in the record tending to show that the Licensee is not now implementing its quality assurance program in full compliance with the Commission's requirements - the Board finds that the Licensee is implementing its quality assurance program in full compliance with the Commission's regulations.

ISSUE NO. 2: WHETHER THERE IS REASONABLE ASSURANCE THAT IMPLEMENTATION OF THE MIDLAND QUALITY ASSURANCE PROGRAM IN CONFORMITY WITH COMMISSION REQUIREMENTS WILL CONTINUE THROUGHOUT THE CONSTRUCTION PROCESS

- 2-1 All parties present at the evidentiary hearing presented testimony supporting the view that there is reasonable assurance that the Licensee will continue to implement its quality assurance programs for the Midland plant in accordance with Commission requirements. The senior Staff witness supporting this view was Mr. Keppler, Director of Region III, Directorate of Regulatory Operations, who said:

"It is our belief that if they carry out this program, continue to meet their commitments, that we have confidence that the Q/A program will be met the remainder of the construction period.

"I want to go on record as saying that it is my position that if the company fails to live up to its obligations that we're not afraid to step in and stop construction just like we did this time." (Tr. 386)

Mr. Keppler's testimony (Tr. 352-427), viewed in its entirety, paints a picture of "... serious reservation regarding the company's performance in the past ..." (Tr. 385), on the one hand, and, on the other hand, his views "... that we have seen a very discernable change over the last several months with this company ..." (Id.) and that the events of the recent past have had the effect of "... getting the problem turned around." (Tr. 392).

2-2 The Board was concerned about the company's attitude toward AEC regulations. It felt attitude was relevant on the issue of reasonable assurance that Q/A program implementation would be maintained throughout construction. In response to a question concerning company responsiveness to Commission regulations, Mr.

Keppler stated his opinion that it previously was "one of the less responsive licensees" in the region in terms of commitments and attitude (Tr. 389-390). However, the witness testified that Commission investigations and meetings with company officials caused reorganization at the site and at the home office which focused more management in Q/A programs. Mr. Keppler stated that as a result "We have seen a very discernable change in attitude ..." (Tr. 389).

- 2-3 The testimony of Mr. Vetter on this issue also established that there is reasonable assurance that proper Q/A program implementation will be maintained throughout the remainder of the construction process (Tr. 201).

Mr. Vetter's testimony traced the proposed actions of the Licensee to maintain proper Q/A implementation. He described what is necessary to establish "reasonable assurance" of continued future compliance (Id.) and then concluded, on the basis of described actions and commitments of the Licensee, that there exists reasonable assurance that the Licensee will maintain compliance with Q/A requirements throughout the construction process (Id.).

- 2-4 Based upon the testimony of the witnesses presented by the Staff as well as the testimony of the Licensee's and Bechtel's witnesses,

the Board concludes that although there have been compliance and attitudinal problems in the past, there now exists adequate assurance that implementation of the Midland Q/A program will continue to be conducted in conformity with Commission requirements throughout the remainder of the construction process. In this connection we take particular note of Mr. Keppler's statement that "... if the company fails to live up to its obligations that we're not afraid to step in and stop construction...." (Tr. 386).

III. Conclusions of Law

Based upon the foregoing findings of fact which are supported by reliable, probative, and substantial evidence as required by the Administrative Procedure Act and the Commission's Rules of Practice, and upon consideration of the entire evidentiary record in this proceeding, the Board concludes as follows with respect to the issues set forth for resolution by the Commission's Notice of January 21, 1974 (39 F.R. 2619):

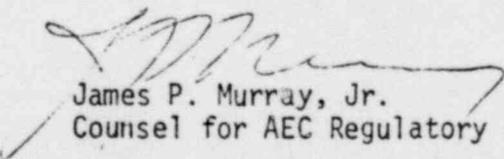
1. the Licensee is implementing its quality assurance program in compliance with Commission regulations, and
2. there is reasonable assurance that such implementation will continue throughout the construction process.

IV. ORDER

WHEREFORE, IT IS ORDERED, in accordance with the Atomic Energy Act of 1954, as amended, and the Commission's rules and regulations, that this proceeding is terminated.

IT IS FURTHER ORDERED, in accordance with Sections 2.760, 2.762, 2.764, 2.785, and 2.786 of the Commission's Rules of Practice, that this Initial Decision shall be effective immediately and shall constitute the final action of the Commission forty-five (45) days after the date of issuance hereof, subject to any review pursuant to the Rules of Practice and the Commission's Notice of January 21, 1974. Exceptions to this Initial Decision and supporting briefs may be filed by any party within seven (7) days after the service of this Initial Decision. Within fifteen (15) days thereafter (20 days in the case of the Regulatory Staff) any party filing such exceptions shall file a brief in support of such exceptions. Within fifteen (15) days after service of the brief of appellant (20 days in the case of the Regulatory Staff) any other party may file a brief in support of, or in opposition to, the exception.

Respectfully submitted,


James P. Murray, Jr.
Counsel for AEC Regulatory Staff

Dated at Bethesda, Maryland
this 8th day of August, 1974.

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ATOMIC ENERGY COMMISSION

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CERTIFICATE OF SERVICE

I hereby certify that copies of "AEC Regulatory Staff's Proposed Findings of Fact and Conclusions of Law in the Form of a Proposed Initial Decision", dated August 8, 1974 in the captioned matter have been served on the following by hand delivery or by deposit in the United States mail, first class or air mail, this 8th day of August, 1974:

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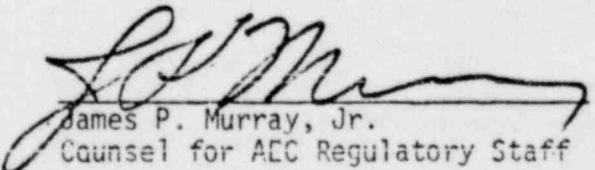
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