



construction permits for the Midland facility is not appropriate for summary disposition and should be decided in formal proceedings in light of the facts and applicable law. In the Board's view, therefore, it is necessary to hold a hearing on the suspension. The Board considers that the guidelines set out in the Commission's General Statement of Policy on the Environmental Effects of the Uranium Fuel Cycle (GSP) issued August 13, 1976 (41 FR 34707) should be applicable to this suspension hearing.

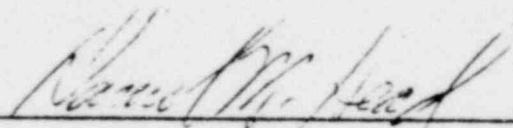
Further, a hearing in the form of oral argument might have satisfied the formal proceedings requirement if only the fuel cycle issues were involved or if there was more current information on the record regarding the status of the facility and the circumstances that are pertinent to suspension considerations (see GSP, p. 9). However, this proceeding does not at present have sufficient current facts on the record for the Board to make a reasoned determination on suspension. This view is reinforced by the position taken by the Staff in its Brief in response to the Board's Order of September 21, 1976 (Staff Brief, p. 5), and by the indication from the Applicant in its Brief that it intends to make a substantial evidentiary presentation regarding suspension. The Board, therefore, has determined that the suspension hearing should be evidentiary in nature.

Further, the Board has before it a situation where Consumers Power Company, although referred to for the sake of convenience as

the Applicant, is now in fact a licensee. As such, Consumers Power has been taking action for a substantial period (over 3 years) in reliance on the permits issued by the Commission. Under these circumstances, an appropriate hearing is warranted to give adequate consideration to the suspension issue. See Bell v. Burson, 402 U.S. 535, 29 L. Ed. 2nd 90, 91 S. Ct. 1486 (1971); Goldberg v. Kelly, 397 U.S. 254, 25 L. Ed. 2nd 287, 90 S. Ct. 1011 (1970); Goldsmith v. Board of Tax Appeals, 270 U.S. 117, 70 L. Ed. 2nd 494, 46 S. Ct. 215 (1926).

For the above reasons, the Board in its Notice and Order of October 4, 1976 denied the Intervenors' request to adjourn the hearing and to order an immediate suspension of the construction permits for Midland.

FOR THE ATOMIC SAFETY AND LICENSING BOARD



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Daniel M. Head, Chairman

Dated at Bethesda, Maryland,  
this 21st day of October, 1976.