

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING APPEAL BOARD

Alan S. Rosenthal, Chairman
Richard S. Salzman



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

Docket Nos. 50-329A
50-330A

MEMORANDUM AND ORDER

August 26, 1980

(ALAB-610)

On August 4, 1980, the Licensing Board entered an order^{1/} in which it approved the settlement reached by the applicant and the intervenors of the issues remanded by us to that Board in ALAB-452, 6 NRC 892, 1098-1100 (1977). Because the settlement had the endorsement of both the Department of Justice and the NRC staff, understandably no exceptions have been taken to the August 4 order.

1. "Absent extraordinary circumstances", we do not "scrutinize the resolution of the purely economic issues posed in an antitrust proceeding unless one of the litigants is sufficiently dissatisfied with that resolution to bring it before us".

^{1/} LBP-80-21, 12 NRC ____.

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Louisiana Power and Light Co. (Waterford Steam Generating Station, Unit No. 3), ALAB-208, 1 NRC 45, 48 fn. 6 (1975). No such extraordinary circumstances appear here. Accordingly, the August 4 order will not be reviewed sua sponte by this Board.

2. We wish to commend both the parties and the Board below for thus bringing this protracted litigation to an end without the necessity of still further time-consuming and expensive evidentiary hearings on the question of appropriate relief. It is obviously far preferable for parties to reach a settlement of such questions through arms-length negotiations than it is to compel the adjudicatory tribunal to devise a remedy of its own -- which might prove to be wholly satisfactory to none of the litigants. In this instance, these considerations were quite apparently recognized by all concerned: (1) by the applicant and the intervenors in promptly embarking upon good-faith settlement negotiations in the wake of ALAB-452 and in spending the time and effort necessary to bring them to a successful conclusion; (2) by the Department of Justice and the NRC staff in the discharge of their weighty responsibility of reviewing the proposed settlement carefully to insure that it was consistent with the public interest; and (3) by the Licensing Board itself in encouraging the parties' endeavors and

then fulfilling its role as the ultimate arbiter of the acceptability of the settlement. Parties to other antitrust proceedings before this agency might profitably seek to follow this example.

It is so ORDERED.

FOR THE APPEAL BOARD


C. Jean Bishop
Secretary to the
Appeal Board