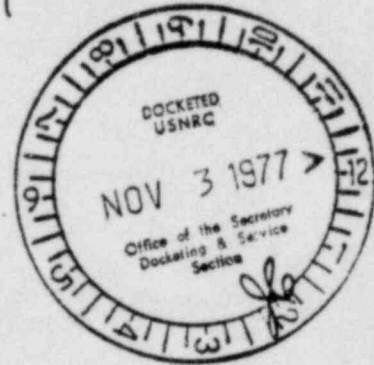


P 29. Files

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING APPEAL BOARD

Michael C. Farrar, Chairman
Richard S. Salzman
Dr. W. Reed Johnson



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

Docket Nos. 50-329
50-330

ORDER

November 2, 1977

On September 23, 1977, the Licensing Board declined to stay construction of Consumers Power Company's Midland nuclear power plant pending completion of remanded hearings ordered by the United States Court of Appeals for the District of Columbia Circuit and the Commission. The Board's decision is based on the record made before it in a lengthy hearing and its reasons appear in its September 23rd order.

Intervenors sought review of the September 23rd order in two ways. First they appealed, filing exceptions on October 1, 1977 followed by a brief in support of those exceptions on October 26th.^{1/} Second, on October 8th

^{1/} We denied intervenors' motion to waive briefs; their brief was filed within the period we thereafter allowed.

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intervenors moved for summary reversal of the Licensing Board's decision or, alternatively, for a stay of construction pending completion of the remanded hearing. The staff and Consumers Power Company have responded to the motion for summary reversal or stay;^{2/} briefs in response to intervenors' appeal are due shortly.

In the interim, the intervenors sought similar relief directly from the United States Court of Appeals for the District of Columbia Circuit. On October 27th that Court denied the request for a stay of construction, observing that the matter is still under consideration within this Commission, but the Court noted in its order (among other things) that it expected the administrative proceedings to be "carr[ie]d out * * * with all reasonable expedition."

In light of all the foregoing, we take the following action:

1. Consumers' October 27th motion for leave to reply to intervenors' response to Consumers' October 20th Motion to Strike is granted; the reply accompanying the motion is accepted;

2. Consumers' Motion to Strike is denied;

^{2/} Intervenor Dow Chemical Company did not file any response to the motion for summary reversal or stay.

3. Consumers' October 20, 1977 motion for leave to exceed the page limitations in responding to intervenors' motion for summary reversal or stay is granted; the response accompanying the motion is accepted;

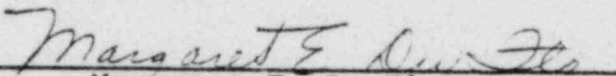
4. All briefs in opposition to intervenors' brief in support of its exceptions dated October 26, 1977 shall be in the hands of this Board and all counsel by Monday, November 14, 1977.^{3/} In addition to any matters which respondents wish to bring to our attention, those briefs should describe (with appropriate references to the record) the status of construction and expenditures for the Midland facility as of the end of each calendar quarter from the inception of construction to the present, as well as on September 3, 1976, the date the mandate in Aeschliman v. Consumers Power Company, 547 F.2d 622, was issued by the Court of Appeals. In addition, we wish to be furnished an affidavit (if such information does not already appear in the record) reflecting the projected status of construction and expenditures (assuming we were to permit construction to continue) during each of the calendar quarters between now and the end of 1978.

^{3/} In all the circumstances, it would be singularly inappropriate for the parties to file, or us to accept, any more papers other than these briefs.

5. Intervenors' motion for stay or for summary reversal and their appeal are consolidated for oral argument before us on Thursday, November 17, 1977. To minimize expense to intervenors as they requested, we will hear argument in the City of Chicago where both intervenors' and Consumers' counsel have their offices. The presence of counsel for Dow Chemical and the staff are of course also expected at that argument. The exact location, time, and order of presentation of argument will be announced by further order of this Board.

It is so ORDERED.

FOR THE ATOMIC SAFETY AND LICENSING
APPEAL BOARD


Margaret E. Du Flo
Secretary to the
Appeal Board

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)

CONSUMERS POWER COMPANY)

(Midland Plant, Unit Nos. 1 and 2))
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Docket No.(s) 50-329
50-330

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document(s) upon each person designated on the official service list compiled by the Office of the Secretary of the Commission in this proceeding in accordance with the requirements of Section 2.712 of 10 CFR Part 2 - Rules of Practice, of the Nuclear Regulatory Commission's Rules and Regulations.

Dated at Washington, D.C. this

3rd day of Nov 1977.

PA Downing
Office of the Secretary of the Commission

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)	
)	
CONSUMERS POWER COMPANY)	Docket No.(s) 50-329
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(Midland Plant, Units 1 and 2))	
)	

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