



DOCKET NUMBER  
PROD. & UTIL. EAC 50-329,330

UNITED STATES OF AMERICA  
ATOMIC ENERGY COMMISSION

ATOMIC SAFETY AND LICENSING APPEAL BOARD:

Algie A. Wells, Chairman  
Dr. John H. Buck  
Dr. Lawrence R. Quarles

IN THE MATTER OF  
CONSUMERS POWER COMPANY  
(Midland Plant, Units 1 and 2)

DOCKET NOS. 50-329  
50-330

MEMORANDUM AND ORDER

On September 2, 1971, the Mapleton Intervenors <sup>1/</sup> filed a notice of appeal from the August 26, 1971, Order of the Atomic Safety and Licensing Board in this proceeding, denying the motion to dismiss application which had been filed by those intervenors. On September 13 and 16, 1971, the applicant and the AEC Regulatory Staff, respectively, filed responses to that notice of appeal, both pointing out that the appeal was interlocutory and urging that it be dismissed on that basis.

<sup>1/</sup> Mapleton Intervenors: Nelson Aeschilman, John L. Wentworth, Milda M. Wentworth, John Liddell, Loretta Liddell, and Wendell H. Marshall.

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By way of background, the Mapleton Intervenors, on August 9, 1971, filed with the presiding Atomic Safety and Licensing Board a motion to dismiss the construction permit application. The grounds therefor were that the applicant had "unlawfully caused the procurement, partial manufacture, production and fabrication of the reactor pressure vessel ... without first having obtained a construction permit." The intervenors asserted that these activities constituted a violation of the Atomic Energy Act, and that since a license could be revoked for such a violation, it could also be denied on that basis. The intervenors also claimed that the illegal fabrication of the reactor pressure vessel not only put undue pressure upon the Licensing Board to grant a permit, but in fact "disabled" the Board from rendering decisions upon the fabrication process itself. The motion was supported by the Saginaw intervenors<sup>2/</sup> and opposed by the regulatory staff and the applicant. In denying the motion, the Board pointed out that advance procurement of the pressure vessel did not violate the Atomic Energy Act or AEC regulations, and that the argument that such advance procurement would add pressure on the Board to permit construction was simply a new formulation of the argument which had been rejected by the U. S. Supreme Court in PRDC v. International Union, 367 U.S. 396 (1961), and by countless Board decisions since that time.

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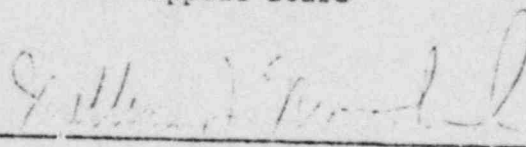
<sup>2/</sup> Saginaw Intervenors: Saginaw Valley Nuclear Study Group, Citizens Committee for the Environmental Protection of Michigan, Sierra Club, United Auto Workers of America, Trout Unlimited, West Michigan Environmental Action Council, Inc., and University of Michigan Environmental Law Society.

The Appeal Board has reviewed the filings of the parties on this matter. Since no initial decision has been issued by the Licensing Board in this proceeding, we find that this appeal is interlocutory, within the meaning of 10 CFR Section 2.730(f). Under that section, no interlocutory appeal may be taken to the Commission or to the Appeal Board, which has been designated to act for the Commission in this proceeding. Accordingly, the appeal of Mapleton Intervenors is hereby denied as an interlocutory appeal.

The Commission's rules in 10 CFR Part 2 afford intervenors adequate opportunity in this proceeding for a determination whether the reactor pressure vessel meets Commission requirements for the protection of the public health and safety. This denial is without prejudice to intervenors' later raising, in accordance with the Commission's Rules of Practice, the questions which they seek to have considered.

It is so ORDERED.

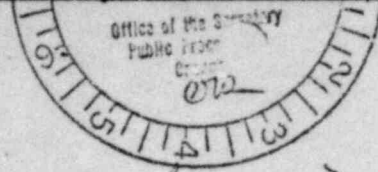
By the Atomic Safety and Licensing  
Appeal Board



William L. Woodard  
Assistant Executive Secretary

Dated: 12-7-71





10-13-71

Mr. Arthur W. Murphy, Chairman  
FEC Hearing Board  
Midland, Mich.

Dear Sir:

Another year has gone by since I last wrote to you - urging the speedy approval of the permit for Consumers Power Co to construct and operate a Nuclear Power Plant in Midland Mich.

In my last letter I pointed out the fact that the intervenors were a very small minority and represented by attorneys who make a living by causing delays -

We in Midland can not tolerate further delays - already we have seen plant operations transferred to other locations because of the high cost of power in Midland - We have also seen the cost estimates of building the plant nearly double while waiting for your decision.

Yesterday over 10,000 people stood up and spoke out for Nuclear Power now - These are people who recognize the need today - who see their jobs jeopardized and their homes threatened because of lack of employment - Midland cannot

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wait indefinitely for your decision.

We need the Nuclear Power plant and we ask for your favorable action now & so that our homelife will not be interrupted by unemployment, low power supply and continued pollution of air caused by the use of expensive, dirty fossil fuels -

I have had the opportunity to visit nuclear Power plants in the south, north, east and west and found them all to operate in a clean, safe and sound fashion - Please let us have the same here in Medford.

Sincerely yours,  
J. H. Byers

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UNITED STATES OF AMERICA  
ATOMIC ENERGY COMMISSION

In the Matter of )

CONSUMERS POWER COMPANY )  
(Midland Plant, Units 1 and 2) )

Docket Nos. 50-329  
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CERTIFICATE OF SERVICE

10-18-71

I hereby certify that copies of (1) MEMORANDUM AND ORDER issued by Appeal Board dated October 18, 1971; (2) Letter from J. H. Byers to Mr. Murphy dated October 13, 1971, in the captioned matter have been served on the following by deposit in the United States mail, first class or air mail, this 18th day of October 1971:

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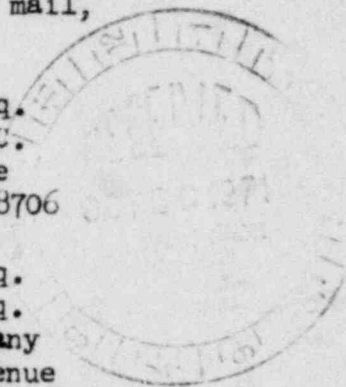
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cc: Mr. Murphy  
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