

7/23/77

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

Docket Nos. 50-329
50-330



USNRC STAFF ANSWER TO INTERVENORS' LETTER
MOTION OF JULY 11, 1977

Introduction

By a letter dated July 11, 1977 to the Members of the Atomic Safety and Licensing Board (Board), Counsel for Intervenors Other Than Dow (Intervenors) sought the Board's permission to file a pleading uncalled for by the Commission's Rules of Practice. Accompanying the July 11 letter is an "Attachment to Letter of July 11, 1977" (Attachment) which ostensibly corrects asserted errors contained in the "Nuclear Regulatory Commission Staff's Findings of Fact and Conclusions of Law" (Staff's Proposed Findings) filed in this proceeding on July 1, 1977.

Discussion

The Staff construes Intervenors' July 11 letter as a motion to the Board seeking leave to file a reply to the Staff's Proposed Findings. The Rules of Practice do not provide for such a reply by Intervenors. See 10 C.F.R. §2.754(b)(3). Additionally, this Board has specifically indicated that

8007810 613
G

the normal provisions of 10 C.F.R. §2.754 would apply to the proposed findings and conclusions which were to be filed by the parties on the suspension question. (Tr. 6165).

Intervenors have not shown why this Board should deviate from the provisions of the rule. The Administrative Procedure Act entitles a party to an agency adjudication to submit proposed findings and conclusions. See 5 U.S.C. §557(c). The Commission's Rules of Practice specifically incorporate this provision in 10 C.F.R. §2.754. All parties to the agency adjudication are entitled to submit proposed findings and conclusions. In addition, the party with the burden of proof, in this case Consumers Power Company (Licensee), is entitled to a reply. Provision for other responses is absent from the rule and for sound reason. At some point in the hearing process, argument must come to an end and the decision-maker must decide. It is the Board which will make the final determination on the suspension issue. The Board now has before it the proposed findings and conclusions of all the parties to this proceeding and also the reply of the Licensee which is specifically provided for under the rule. The Board must now sift these documents and determine which findings are properly supported in the record and which conclusions of law are appropriate. Intervenors offer no reason to support their further filing beyond the fact that they vigorously disagree with some of the Staff's proposed findings and conclusions.

Such disagreement is scarcely an exceptional circumstance. If indeed Staff's findings are inaccurate as Intervenors claim, the Board has before it the record which will enable it to judge the Staff's findings and Intervenors' findings. Likewise, should Staff's conclusions of law be ill-founded, the Board again has before it the briefs of all parties. Intervenors do not suggest that they offer the Board any new information or arguments. In fact, the proposed filing simply repeats the previous arguments in shriller and more exaggerated rhetoric.

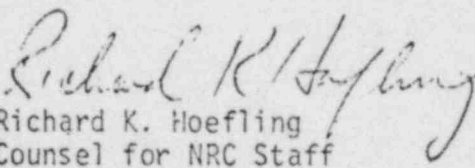
This proceeding must be expedited, and the Appeal Board has so instructed this Board. See Consumers Power Company (Midland Plant, Units 1 and 2), ALAB-395, NRCI-77/___ (April 29, 1977). (Slip. Op., p. 27). A stream of extraneous pleadings can only impede timely resolution of the significant questions before this Board. This Board must rule on the suspension question and must rule expeditiously. Should the Board rule contrary to the views of Intervenors, they have a remedy available. An appeal from the Board's decision can be taken pursuant to 10 C.F.R. §2.762 and argument can be presented to the Appeal Board on factual issues and legal questions which they dispute. For the above reasons, the Staff strongly objects to Intervenors' motion and urges that it be denied.

Furthermore, the Staff must take note of the July 11, 1977 letter which constitutes Intervenors' motion. In his letter, Intervenors' Counsel continues his tactic of scattering about reckless and unsupported allegations in abuse of his opponents. The Board should consider that letter when it rules upon the Staff's pending motion for censure of Intervenors' Counsel.

Conclusion

The Staff objects to Intervenors' motion seeking permission from this Board to file a reply to Staff's Proposed Findings and urges that it be denied.

Respectfully submitted,


Richard K. Hoefling
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 25th day of July, 1977