



UNITED STATES  
ATOMIC ENERGY COMMISSION  
WASHINGTON, D.C. 20545

September 25, 1972

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In the Matter of Consumers Power Company  
Midland Plant, Units 1 and 2  
Docket Nos. (50-329) and 50-330

Gentlemen:

On August 15, 1972, the applicant in the captioned matter filed its proposed findings of fact and conclusions of law in the form of an initial decision. Upon reviewing their submission we have concluded that we can adequately communicate our own position to the Board by concurring, subject to certain exceptions and qualifications, in the applicant's proposed findings of fact and conclusions of law.

By way of qualification, we wish to point out that we have not attempted to point out each and every instance in which we cannot fully endorse the applicant's finding. In some instances we simply decided that our difference of opinion with the applicant was not significant enough to bring to the Board's attention. In other cases we have omitted mention of such items because we are confident that the Board will not interpret our silence as endorsement of the applicant's language. There are, for example, a few instances where in our judgment the applicant has unnecessarily taken what appears to be an ad hominem approach in dealing with those associated with the intervenors.

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Our specific exceptions to the applicant's proposed findings are as follows:

1. We would want to note in connection with proposed finding 36 that the staff has testified that the proposed crew size may not be acceptable. (Safety Evaluation "SE", p. 68) This is an item that we intend to take up with the applicant prior to our operating license - stage review.
2. To the extent that proposed finding 42 may be interpreted as suggesting that the staff approved the size of the low population zone exclusively on the basis of radiation dose, we would want to note our disagreement, since population considerations were also involved in this determination. (SE, p. 8).
3. In proposed finding 45, we would want to note that the data in applicant's exhibit 13, being incomplete with respect to employee populations, do not permit a definitive comparison of the Midland site with the Indian Point and Zion sites.
4. In proposed finding 47, we think it patently misleading to equate "probable maximum flood" with "largest flood conceivable".
5. In connection with proposed finding 50 (sic), at p. 38, we would want to note that we have testified that we will review the applicant's calculation of the probable maximum flood during construction of the plant to assure that the calculational techniques have been properly employed. (SE, p. 14)
6. In proposed finding 61, we think it would be more accurate to conclude that the Safety Guide No. 4 assumptions are "sufficiently conservative" than to conclude that they are "the most conservative credible". (Tr. 3703-04)
7. In proposed finding 86, we would propose that the sentence reading "The staff concurred in this conclusion" be changed to "The staff concurred in this conclusion but required that test data be supplied to confirm the suitability of the diesel generators as an on-site emergency power source prior to the operating license review". (SE, p. 43)

8. In connection with proposed finding 88, we would note that more detailed cable installation procedures and design criteria will be required. (SE, p. 45)
9. For proposed findings 128-130, we would propose the following substitute:

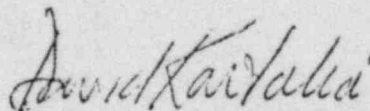
"The applicant is committed to a comprehensive, documented quality assurance program for which it will have final responsibility. The application contains a description of the program, including a discussion of how the applicable requirements of Appendix B of 10 CFR Part 50 will be satisfied. The Board has reviewed this information and concluded that if the program is implemented in accordance with the representations in the application, the requirements of Appendix B will in fact be satisfied. During the hearing, much additional information relating to the question of quality assurance was introduced into the record: for example, the record includes manuals implementing the quality assurance program; Division of Compliance (now Directorate of Regulatory Operations) reports, noting, inter alia, some deficiencies in the applicant's implementation of the program; and documentation relating to what the Saginaw Intervenor's allege was inadequate quality assurance during the construction of the applicant's Palisades Plant. The Board has considered this additional information, but only for the limited purpose of determining whether any evidence has been adduced which would be inconsistent with findings favorable to the applicant on the ultimate issues in the proceeding. The Board has found no such evidence in the record. The enforcement function of the Commission's regulatory program has been delegated to the Director of Regulation, not the Board, and the Board must assume that the Director of Regulation, through the Directorate of Regulatory Operations, will require adherence to the quality assurance program that is described in the application."

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10. In proposed finding 136, at p. 125, we would propose a new penultimate sentence as follows: "However, preparations that are made for the protection of the public in the low population zone should be suitable for expansion and mobilization of extra resources should a more serious accident occur." (Tr. 3334)
11. On page 167, we would propose inserting "significantly" between "not" and "affect" in the first line, and substituting "only a small" for "no measurable" in the fourth line from the bottom of the page. Similarly, we would propose substituting "only a small" for "no measurable" in paragraph g. on page 261. (FES, p. V-16)
12. We would propose striking the last sentence of proposed finding 219.
13. We would propose an additional finding of fact to read as follows:

"The applicant is committed to implement recommendations 7(a), (b), (c), (d), (e) and (g) set forth on pp. iii-iv of the staffs Final Environmental Statement. As a substitute for the action called for in recommendation 7(f), the applicant has agreed to treat phosphates so that the total discharge including laundry waste and start up waste, based on the actual average, will not exceed 35 pounds per day exclusive of the pond reconcentration of existing phosphate levels in the river. The staff finds this substitute action acceptable."
14. In our view, the proposed legal conclusions on page 267 serve no purpose and should not be made.

Respectfully,



David Kartalia  
Counsel for AEC Regulatory Staff

cc: See page 5

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