

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING APPEAL BOARD

IN THE MATTER OF)
)
CONSUMERS POWER COMPANY) DOCKET NO. 50-155
) (Spent Fuel Pool Modification)
(Big Rock Point Nuclear Power Plant)

LICENSEE'S REPLY TO MOTION
OF JOHN A. LEITHAUSER

On December 19, 1980, Mr. John A. Leithauser, a participant in the appeal pending in this proceeding, filed a motion to postpone the date scheduled for oral argument from January 9 to January 21, 1981. Consumers Power Company ("Licensee") submits this reply in opposition to Mr. Leithauser's request.

Mr. Leithauser has failed to show good cause that would warrant the grant of his motion. Mr. Leithauser states he needs an additional 12 days due to the "complexity of communication with other intervenors requisite to the scheduled hearing and the sluggish pace of the U.S. mail, the only means available to this intervenor." Mr. Leithauser lives in the same locale as Intervenors Christa-Maria, et al. and John O'Neill and it is evident that additional time is not needed to communicate with them. Mr. Leithauser, pursuant to the Appeal Board's Order of December 19, may also wish to communicate with Ms. Christa-Maria's Washington

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counsel and counsel for the Council on Environmental Quality ("CEQ"). However, Mr. Leithauser fails to explain why he is unable to use the telephone* as a means of communication thereby making any request for a postponement unnecessary. The absence of such an explanation warrants denial of his motion on that basis alone.

Mr. Leithauser suggests further that postponement is necessary to allow him three or four days to travel to Washington "if" he decides to participate in the oral argument. A postponement of the oral argument can hardly be justified when the person requesting the action has not yet decided whether or not to participate. Moreover, Mr. Leithauser fails to explain, assuming the need for three or four days of travel time, why he cannot depart for Washington on or about January 5, 1981, and arrive in time for argument on the 9th.

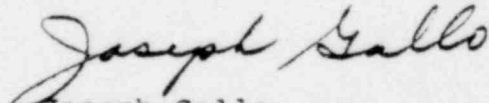
The grant of Mr. Leithauser's motion would add to the undue delay that already has occurred in this proceeding. The application for license amendment was filed in April 1979, and its review by the NRC Staff has not progressed

* The cost of telephone service between Michigan and Washington is modest, and Licensee assumes that counsel for Christa-Maria, et al. could act as a coordinator of views with CEQ so that only one call would be needed. Indeed if it were necessary for Mr. Leithauser to talk directly with CEQ, such a call undoubtedly could be initiated by CEQ without any expense to Mr. Leithauser.

significantly. The environmental issue on appeal has, of course, caused a deferral of the environmental appraisal. More importantly, the NRC Staff has not issued its safety evaluation report ("SER") concerning the application. The issuance of the SER was promised on February 15, 1980 and then November 1980. Although the pending appeal does not affect the issuance of the SER, the NRC Staff has not favored the Licensing Board or the remaining parties with their latest prognostication. Licensee is confident that counsel for the Staff will devote her best efforts to provide a status report, and perhaps also declare a new target date for SER issuance -- one that experience teaches likely will be ignored by NRC's Office of Nuclear Reactor Regulation. Although Mr. Leithauser is not at fault for the foregoing delays, the grant of his motion, which as shown above lacks good cause, would only add to the inaction that surrounds the agency's failure to process the pending application in a timely manner.

For the foregoing reasons, Mr. Leithauser's motion should be denied.

Respectfully submitted,


Joseph Gallo

One of the Attorneys for
Consumers Power Company

Dated: December 29, 1980

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING APPEAL BOARD

In the Matter of)
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CONSUMERS POWER COMPANY) Docket No. 50-155
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(Big Rock Point Nuclear Power Plant))

CERTIFICATE OF SERVICE

I hereby certify that copies of the following:
LICENSEE'S REPLY TO MOTION OF JOHN A. LEITHAUSER in the
above-captioned proceeding was served upon the following
persons by depositing copies thereof in the United States
mail, first class postage prepaid, this 29th day of
December, 1980.

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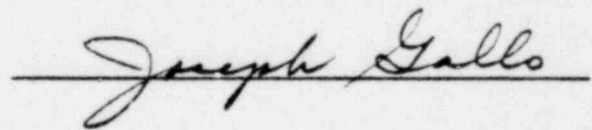
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A handwritten signature in cursive script, reading "Joseph Gallo", is written over a horizontal line.