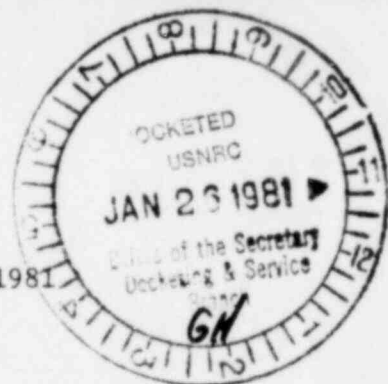


EXECUTIVE OFFICE OF THE PRESIDENT  
COUNCIL ON ENVIRONMENTAL QUALITY  
722 JACKSON PLACE, N. W.  
WASHINGTON, D. C. 20006



January 19, 1981

Thomas Moore, Chairman  
Dr. John Buck, Member  
Christine Kohl, Member  
Atomic Safety and Licensing  
Appeal Board  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

DOCKET NUMBER  
50-155

Re: In the Matter of Consumers Power Company (Big Rock Point  
Plant) Docket No. 50-155 (Spent Fuel Pool Modification)

Mr. Chairman and Members of the Board:

We have received the transcript of the oral argument held on January 9, 1981, in the above-referenced Docket and wish to address one error in the transcript and one issue raised at oral argument, both of which are related to the Council's role in this proceeding and in the implementation of NEPA.

The transcript incorrectly identifies the Council on Environmental Quality as an "intervener" in this case. In fact, the Council did accept the Appeal Board's thoughtful invitation to participate in this proceeding, but as an amicus curiae. Moreover, the Council has not participated as an amicus curiae in the traditional sense. The Council has a statutory mandate "to review and appraise various programs and activities of the Federal Government in the light of the policy set forth in [the National Environmental Policy Act] . . . , and to make recommendations to the President with respect thereto." 42 U.S.C. §4344(3). Section 102(2)(B) of the Act requires all agencies to develop procedures in consultation with the Council to ensure consideration of the environmental impacts of federal decisions. In 1977, the President ordered the Council to "issue regulations to Federal agencies for the implementation of the procedural provisions" of NEPA, and he further ordered all agencies to comply with those regulations (Executive Order No. 11991, 3 CFR 124 (1977)). Pursuant to the Council's regulations, which became effective on July 30, 1979, all agencies are required, as necessary, to "adopt procedures to supplement" the regulations, but "only after an opportunity for public review and after review by the Council for conformity with the Act and [the] regulations." 40 CFR §1507.3 (1980). The United States Supreme Court has characterized the Council's regulations as "mandatory regulations applicable to all federal agencies." Andrus v. Sierra Club, 442 U.S. 347, 353; 99 S.Ct. 2335 2341 (1979). The President can lawfully impose such binding procedural requirements on independent regulatory agencies, as well as executive branch agencies. See discussion and citations in Environmental Law Institute, NRC's Analysts of Nuclear Accidents: Is It Adequate? 43-44 (1980).

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Even prior to the issuance of those regulations the Supreme Court had held that "CEQ's interpretation of NEPA is entitled to substantial deference." Andrus v. Sierra Club, supra, at 353, citing Warm Springs Dam Task Force v. Gribble, 417 U.S. 1301, 1309-10 (1974) (Douglas, Circuit Justice). On numerous occasions the Council has advised the NRC and other agencies of its regulations without any intervention as a party of amicus in agency proceedings. So, here, as in the past, the Council appears not as a typical amicus, but rather as the unit of government charged with the regulation of NEPA's implementation by Federal agencies.

At oral argument I mentioned that the Council has written (both directly and indirectly) to the Commission three times in the last year on the need to review potential impacts of nuclear accidents in connection with reactor licensing. Copies of those letters are enclosed for the Board's information. Of particular relevance is the letter, dated August 12, 1980 wherein the Council determined that the Commission's extension of an expired construction permit required a new environmental impact statement on the proposed reactor. There too, the licensee sought to eliminate all environmental inquiry on the theory that the extension of the permit involved no new decision by the Commission regarding reactor construction. However, that argument flew in the face of the fact that, without the permit extension, the licensee would forfeit all rights to construct the reactor pursuant to the Atomic Energy Act, 42 U.S.C. §2235.

On another issue, at oral argument on January 9, 1981, I referred the Board to several cases in support of the principle that the environmental review of an agency's proposed action must address the full scope of potential effects, both direct and indirect, that would flow from the action (Transcript, pp. 64-65). Pursuant to the Board's request for citations to those cases, I submit the following:

Henry v. FPC, 513 F.2d 395, 406 (D.C. Cir. 1975) (FPC approval of tap and valve facility which is essential to coal gasification project requires consideration of environmental impacts of the entire project, not merely tap and valve facility.)

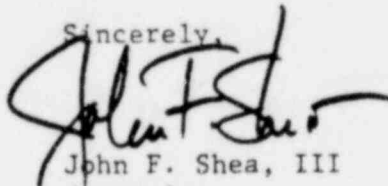
Port of Astoria v. Hodel, 595 F.2d 467, 477 (9th Cir. 1979) (Bonneville Power Administration's agreement to supply power, which enables company to build aluminum reduction plant planned in 1966, requires preparation of an EIS on the plant as well as transmission lines.)

Sierra Club v. Hodel, 544 F.2d 1036, 1044 (9th Cir. 1976) (1970 contract amending 1967 contract for supply of power requires preparation of EIS on magnesium plant as well as transmission lines essential to operation of that plant.)

Alumet v. Andrus, 607 F.2d, 911, 913 (10th Cir. 1979) (Bureau of Land Management viewed rights-of-way, which were necessary to mining operations on leased federal lands, to be part of the total project.)

Lastly, I would request that the corrections indicated on Attachment A to this letter be made to the transcript of January 9, 1981.

Sincerely,



John F. Shea, III  
Counsel

Attachment

cc: Service List

ATTACHMENT A

| <u>Page</u> | <u>Line</u> | <u>Correction</u>                               |
|-------------|-------------|---|
| 2           | 21          | Change "Intervenor" to " <u>Amicus Curiae</u> " |
| 3           | 7           | " " " " "                                       |
| 61          | 25          | Change "and" to "in"                            |
| 64          | 15          | Change "is" to "as"                             |
| 67          | 4           | Change "by" to "to"                             |
| 70          | 8, 12       | Change "administerial" to "ministerial"         |
| 71          | 24          | Change "is" to "adds"                           |
| 78          | 9, 10       | Change "nonoperating of" to "not operating a"   |
| 79          | 2           | Change "reviewed" to "reviews"                  |
| 83          | 2           | Change "It" to "I"                              |
| 84          | 16          | Change "approvements" to "approvals"            |
| 86          | 16          | Change "and direct" to "indirect"               |