

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

6/5/81

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
CONSUMERS POWER COMPANY)	Docket No. 50-155
(Big Rock Point Plant))	(Spent Fuel Pool Modification)

NRC STAFF RESPONSE TO INTERVENORS'
REQUEST FOR A CONTINUANCE

I. INTRODUCTION

The Staff of the Nuclear Regulatory Commission (Staff) hereby opposes the May 18, 1981 request filed by Intervenors Christa-Maria, et al., for a nine-week continuance of the hearing schedule previously agreed upon in the above-captioned proceeding.

II. BACKGROUND

In its Order Following Special Prehearing Conference dated January 17, 1980, the Licensing Board approved a ten-step hearing schedule agreed upon by all parties. According to that schedule, once the Staff's safety and environmental documents were issued various time limits for additional discovery, the filing of additional contentions, motions for summary disposition, and the filing of testimony would begin to run.

The Staff issued the pertinent documents on May 15, 1981. On May 18, 1981, counsel for Intervenors Christa-Maria, et al., filed a

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motion with the Board requesting a nine-week delay in the hearing schedule. Under the terms of Intervenors' request, the time limits imposed by the schedule would be computed from July 22, 1981. The grounds for his request are that counsel will be out of the country from May 25 until July 21, and thus would be unable to meet certain of the deadlines for additional discovery and new contentions.^{1/} The Staff opposes Intervenors' request for this continuance.

III. DISCUSSION

Intervenors Have Failed to Establish the Requisite Good Cause for a Nine-Week Delay of this Proceeding.

It has long been the policy of the Commission that Licensing Boards should conduct hearings as expeditiously as possible consistent with the development of an adequate decisional record. 10 C.F.R. Part 2, Appendix A, Section V. The Commission's regulations provide its presiding officers with all the powers necessary to fulfill their duty to "...conduct a fair and impartial hearing according to law, to take appropriate action to avoid delay, and to maintain order." 10 C.F.R. § 2.718. The Commission's regulations also provide a good cause requirement for the extension or shortening of time limits either

^{1/} The Staff has received a later document which is undated, setting forth as an additional ground for the requested continuance Intervenors receipt of lengthy answers to interrogatories previously directed toward Licensee.

required by the regulations or established during the hearing process. See 10 C.F.R. § 2.711(a).

As far as scheduling matters are concerned, the Appeal Board has previously held that although the convenience of litigants is entitled to recognition for scheduling purposes that convenience should not be the dispositive factor in the scheduling of proceedings. Potomac Electric Power Company (Douglas Point Nuclear Generating Station, Units 1 and 2), ALAB-277, 1 NRC 539, 552 (1975). The paramount consideration is where the broader public interest lies. Id. According to the Appeal Board, that broader public interest is served by a prompt decision on the matters in controversy regardless of whether that decision is favorable or unfavorable. Allied-General Nuclear Services, et al. (Barnwell Nuclear Fuel Plant Separations Facility), ALAB-296, 2 NRC 671, 684-85 (1975).

The Commission has recently reaffirmed its policy that the hearing process must be conducted expeditiously. In its Statement of Policy on Conduct of Licensing Proceedings dated May 20, 1981 (attached), the Commission has provided both general and specific guidance to its adjudicatory boards on how adjudicatory proceedings can be conducted efficiently. The Commission in its Statement of Policy has specifically discussed the possible personal commitments of litigants:

"While a board should endeavor to conduct the proceeding in a manner that takes account of the special circumstances faced by any participant, the fact that a party may have personal or other obligations or possess fewer resources than others to devote to the proceeding does not relieve that party of its hearing obligations."

Statement of Policy at 3. The Commission has also specifically advised its adjudicatory boards to "...satisfy themselves that the 10 C.F.R. 2.711 'good cause' standard for adjusting times fixed by the Board or prescribed by Part 2 has actually been met before granting an extension of time." Statement of Policy at 4.^{2/}

While the Staff recognizes that Intervenors may be inconvenienced by the absence of their counsel from the country, the application of the Commission's policy militates against the lengthy delay requested by Intervenors. In addition, Intervenors' counsel has stated that it would be Intervenors who would review the Staff's safety and environmental documents. Additional Grounds for Granting Continuance Requested by Intervenors received May 29, 1981. If this is so then it is Intervenors rather than their counsel who would be in the best position both to conduct additional discovery and formulate new contentions in accordance with the schedule previously approved by the Licensing Board. Therefore, the absence of Intervenors' counsel does not provide the requisite good cause to justify a nine-week delay of the entire hearing schedule.

^{2/} Although in this statement of policy the Commission expresses particular concern about pending operating license proceedings, the Staff does not view the guidance in the policy statement as limited to that specific type of licensing proceeding.

IV. CONCLUSION

For the reasons set forth above the requested continuance should be denied.

Respectfully submitted,



Janice E. Moore
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 5th day of June, 1981.