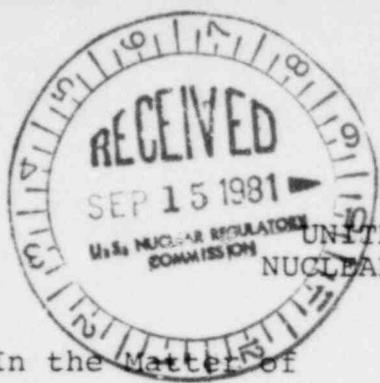


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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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

Docket Nos. 50-329 OM/OL
50-330 OM/OL

APPLICANT'S MOTION FOR PARTIAL DECISION
ON QUALITY ASSURANCE ISSUES OF THE
DECEMBER 6, 1979 ORDER AND CONTENTIONS
INVOLVING QUALITY ASSURANCE
AND MANAGERIAL ATTITUDE

The Applicant, Consumers Power Company, requests that the Licensing Board ("Board") issue a partial initial decision in this proceeding, resolving those matters for which evidentiary hearings were held in July and August, 1981. The partial decision involves: (1) all quality assurance aspects of the December 6, 1979 Order Modifying Construction Permits ("Order"); and (2) all managerial attitude issues raised by Ms. Stamiris in her contentions 1(a), 1(b), 2, and 3 and the "examples" outlined in her Answers to Interrogatories, filed April 20, 1981.

Such a decision is appropriate at this time. First, since the evidentiary record on these matters is complete, Board findings will retain their validity. Second, an early resolution of the issues will benefit the public by assuring that the remedial work, when authorized, can begin promptly and in accordance with the decision. Finally, since any findings will be subject to reconsideration

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should any supervening developments warrant, none of the parties will be prejudiced by such an initial resolution.

DISCUSSION

10 C.F.R. Part 2, Appendix A, I(c)(1) permits a Licensing Board to consider particular issues in separate hearings and render partial decisions on them:

The...licensing board may, consider...a particular issue or issues separately from, and prior to, other issues relating to the effect of the construction and/or operation of the facility upon the public health and safety, the common defense and security, and the environment or in regard to antitrust considerations....The board designated to conduct the hearing will issue an initial decision, if deemed appropriate, which will be dispositive of the issue(s) considered at the hearing, in the absence of an appeal or Commission or Appeal Board review pursuant to §§2.760 and 2.762, before the hearing on, and consideration of, the remaining issues in the proceeding.

Those factors to be evaluated in determining whether such a procedure is appropriate were outlined in Potomac Electric Power Company (Douglas Point Nuclear Generating Station, Units 1 and 2), ALAB-277, 1 NRC 539, 547 (1978):

(i) the degree of likelihood that any early findings on the issue(s) would retain their validity; (2) the advantage, if any, to the public interest and to the litigants in having an early, if not necessarily conclusive, resolution of the issue(s); and (3) the extent to which the hearing of the issue(s) at any early stage would, particularly if the issue(s) were later reopened because of supervening developments, occasion prejudice to one or more of the litigants.

In the present case, the hearings have been and will continue to be held on a topic by topic basis. See Trans. at 4394. The proceedings dealing with the topics

of quality assurance and the managerial attitude contentions have been completed. In light of the Douglas Point factors it is appropriate to issue a decision with respect to the topics already covered.

1. The initial findings on quality assurance and managerial attitude will retain their validity.

Any initial findings on the issues of quality assurance and managerial attitude will retain their validity. The record of these issues is complete. In addition, it is unlikely that any new information concerning these issues will be developed in the upcoming sessions.

Four weeks of testimony in July and August, 1981, were devoted to evidence relating to the quality assurance and managerial attitude issues and the substantive evidentiary presentations on these issues are complete. The testimony and documentation presented exhaustively addressed the past and present operation of the quality assurance program at Midland. Both Staff and Applicant witnesses testified concerning each specific example of managerial attitude raised by Barbara Stamiris in her contentions and her Answers to Interrogatories.

The remainder of the proceedings are technical in nature and will concentrate on the adequacy of the proposed solutions to settlement related problems. Future proceedings will involve the site-specific response spectra, the diesel generator building structure, the service water pump structure, the auxiliary building, underground piping, permanent dewatering and the borated water storage tank foundation ring. Trans.

at 4394.

The regulatory underpinnings of the issues to be considered in these future proceedings are unrelated to the standards pertaining to the quality assurance and management attitude questions considered in the past sessions. The quality assurance program and managerial attitude concerning its implementation must be measured against the standards in 10 C.F.R. Part 50, Appendix B criteria. The technical adequacy of solutions to the soils settlement problems are not governed by these regulatory standards.

The nature of the evidence to be presented in the upcoming sessions differs from that covered in the past hearings. The focus of the past hearings was on management, its response to recommendations received from consultants and its attitude in directing the construction of the Midland facility in accordance with NRC regulations. The focus of the upcoming sessions, on the other hand, will be on the technical efficacy of each proposed remedy itself, a subject separate and distinct from managerial attitude and quality assurance.*

* For this reason the partial decision is not proposed for Stamiris contention 1(d), an allegation that the Applicant did not provide adequate information concerning "acceptance criteria" for the remedial actions. The managerial attitude aspects of contention 1(d) were discussed in the July and August sessions. See, e.g., Trans. at 2676-89, (cross-examination of Darl Hood), and Trans. at 3212-19 (cross-examination of Dr. Ralph Peck). The Board ruled, however, that because of the complexity of the technical considerations in the "acceptance criteria" aspect of the contention, the evidentiary presentations on that aspect would be deferred to later proceedings. Trans. at 2657. No similar ruling was made on the other contentions.

Thus, for both legal and practical reasons, the findings made from the early segments will not be affected by later proceedings. Cf. Pennsylvania Power and Light Company and Allegheny Electric Cooperative, Inc. (Susquehanna Steam Electric Station Units 1 and 2), LBP-80-18, 11 NRC 906 (1980).

2. The public interest will be advanced by the issuance of a partial decision.

A partial decision resolving the quality assurance and managerial attitude issues would benefit the public. Indeed, it is the timing of the partial decision which is paramount. The benefit results regardless of the substance of the decision. If the Board issues findings in the applicant's favor, the applicant can confidently direct resources to maintaining and improving its quality assurance program and its implementation. If the decision outlines further requirements the applicant must meet, then resources can be immediately directed toward accomplishing them so that any authorized remedial work can begin promptly and in accordance with the Board's dictates.

The Board and the Staff have already acknowledged that in constructing the Midland plant there is a need to resolve some issues prior to the ultimate resolution of the December 6, 1979 Order. Thus the installation of a portion of the backup interceptor wells has been resolved and work is going forward. In all probability Applicant will request Staff concurrence on other remedial work prior to the

ultimate resolution of the Order. A partial initial decision on quality assurance and management attitude will expedite that process.

Douglas Point, dealing with the questions of environmental findings, noted that an early decision benefits the public by obviating "wasteful expenditures of both time and money...by alerting the applicant promptly" of the needs which must be met to ensure plant safety. Douglas Point, supra, at 546. Similarly here, a decision at a time early enough for the parties to effectively anticipate and ameliorate any concerns rather than retroactively take them into account makes "the resultant benefit to the public (not just the applicant)...manifest." Id.

3. A partial decision will not prejudice any party.

A partial decision would not result in any prejudice to any of the parties should a reopening of the hearing because of supervening developments be necessary.

Any findings made in advance of a final decision are always rendered subject to new and supplementary information. Douglas Point, supra, at 545 and 552.* As the case now stands, such a reopening would not place any additional burden on any of the litigants.

The parties have already expended resources on an

* For example, if it is deemed necessary, the Board may have further inquiries regarding the Staff's close out of the FSAR re-review item of noncompliance in the 80-32 Inspection Report. (Attachment 3 to Staff Testimony on Contention 3). Trans. at 4197.

evidentiary presentation pertaining to quality assurance and managerial attitude issues. Indeed, to reschedule or expand the future hearings to include any of these matters now would probably necessitate a preliminary showing by a party proposing reopening, that the matter is significant to plant safety and requires further evidentiary hearings. An identical burden is placed on a party seeking to reopen hearings after a partial decision has been rendered. See Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station) ALAB-138, 6 AEC 520 (1973). The burden placed on a party seeking to reopen a question is the same regardless of whether a decision issues at all. Thus, a partial decision now would not impose additional burden on any of the parties.

More importantly, as the Douglas Point decision noted, "the convenience of litigants cannot be deemed dispositive on scheduling matters. The paramount consideration is where the broader public interest lies." Douglas Point supra, at 552. In this case, as discussed supra, early resolution of the quality assurance and managerial attitude issues would best serve the public interest.

4. Proposed filing schedule

A filing timetable for proposed findings of facts and conclusions of law was developed at the January 28, 1981 Prehearing Conference. Trans. 760-771. In accordance with it, Applicant submits the following schedule for the filing of proposed findings of facts and conclusions of law for a

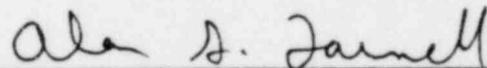
partial decision regarding managerial attitude and quality assurance issues:

- October 19, 1981: Applicant submits proposed findings of fact and conclusions of law.
- November 3, 1981: Intervenors submit proposed findings of fact and conclusions of law.
- November 13, 1981: Staff submits proposed findings of fact and conclusions of law.
- November 23, 1981: Applicant submits reply.

CONCLUSION

Applicant submits that an initial partial decision on quality assurance aspects of the Order and Stamiris contentions 1, 1(a), 1(b), 2, and 3 and the examples outlined in her Answers to Interrogatories will best serve the interest of the public and the parties in this case. The earlier the decision issues in these matters, the more effectively resources can be directed in assuring the facility is safely constructed. Since no further evidentiary hearings on these matters are scheduled, it is likely that the findings will retain their validity. Finally, no prejudice will result to any litigant in the decision issues now.

Respectfully submitted,



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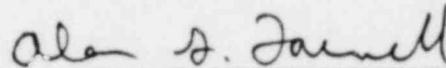
UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

In the Matter of)	
)	Docket Nos. 50-329-OM
CONSUMERS POWER COMPANY)	50-330-OM
)	50-329-OL
(Midland Plant, Units 1 and 2))	50-330-OL

CERTIFICATE OF SERVICE

I, Alan S. Farnell, hereby certify that a copy of Applicant's Motion for Partial Decision on Quality Assurance Issues of the December 6, 1979 Order and Contentions Involving Quality Assurance and Managerial Attitude was served upon all persons shown in the attached service list by deposit in the United States mail, first class, this 2nd day of September, 1981.



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