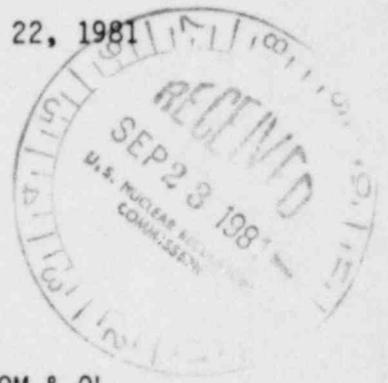


September 22, 1981

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION



BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

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

NRC STAFF'S RESPONSE IN SUPPORT OF APPLICANT'S  
MOTION FOR PARTIAL DECISION ON QUALITY ASSURANCE ISSUES

I. INTRODUCTION

On September 2, 1981, the Applicant, Consumers Power Company, filed a motion requesting the Board to issue a partial decision in the captioned proceeding resolving certain matters on which evidentiary hearings were held in July and August 1981. The partial decision which the Applicant seeks resolve: (1) all quality assurance aspects of the December 6, 1979 Order Modifying Construction Permits; 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. Applicant also proposed a schedule for filing proposed findings of fact and conclusions of law on the above matters.

For the reasons discussed below, the Staff supports the Applicant's motion.

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## II. DISCUSSION

In support of its motion, Applicant points out that the Commission's Rules of Practice give Licensing Boards the discretion to render partial initial decisions on issues considered in separate hearings and that the rendering of such a decision at this time would meet the Appendix A criteria.<sup>1/</sup> Applicant, in support of its motion relies upon the Appeal Board decision in Potomac Electric Power Company (Douglas Point Nuclear Generating Station, Units 1 and 2), ALAB-277, 1 NRC 539, 547 (1975), in which the Appeal Board identified the factors which it thought appropriate to weigh in considering when separate hearings should be held on specific issues:

(1) 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 an early stage would, particularly if the issue(s) were later reopened because of supervening developments, occasion prejudice to one or more of the litigants. At 547.

Applicant asserts that consideration of the Douglas Point factors favors the granting of its motion. First, according to Applicant, the findings made on the quality assurance/management attitude issues on which the decision is sought would retain their validity, as the upcoming hearings concern issues which are unrelated to those considered in the

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<sup>1/</sup> 10 C.F.R. Part 2, Appendix A, I(c)(1)

hearings held in July and August 1981.<sup>2/</sup> Second, applicant identifies the quality assurance/management attitude issues as issues whose resolution prior to the ultimate resolution of the December 6, 1979 Order is in the public interest.<sup>3/</sup> Finally, Applicant sees no prejudice to any party arising from a partial decision as the burden placed on a party seeking to reopen after a partial decision has been rendered is identical to that which would be necessary in order to schedule further hearings on quality assurance/management attitude where a decision is pending.<sup>4/</sup>

While the Douglas Point decision addresses the appropriateness of going forward with separate hearings in the context of a construction permit proceeding, a situation dissimilar to the instant proceeding, the Staff believes that the factors identified above provide appropriate guidance in considering the Applicant's position.

1. Likelihood that findings made would retain their validity. As observed by the Applicant, the proceeding with respect to the topics on which a partial decision is sought is essentially completed.<sup>5/</sup> The totality of evidence addressing the contentions on these matters which the parties wish to present has in fact been presented. Furthermore,

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<sup>2/</sup> Applicant's Motion, 3-5.

<sup>3/</sup> Id., 5-6.

<sup>4/</sup> Id., 6-7.

<sup>5/</sup> See discussion on page 6 regarding matter to be addressed at the hearing to start on October 13, 1981.

as this case has been structured, these issues are separate from the the remaining contentions. Accordingly, the validity proposed findings and issuance of a partial decision at this time will not likely be affected by consideration of the remaining issues and subsequent decision thereon by the Board.

2. Advantage to the litigants and public interest in an early resolution

Although partial decisions are not typically rendered in enforcement-type proceedings such as this, the Staff believes that the interest of both the litigants and public would be served by prompt resolution of these matters. The Applicant, on its behalf, has adequately stated the benefit to it of issuance of a partial decision on these matters by expediting the improvements of deficiencies in its quality assurance program.

Similarly, as a consequence of its regulatory obligations, the Staff will be benefitted by enabling it to assure appropriate and timely implementation of the program through its inspection activities.

With respect to Intervenor Staminis, it would also appear that a decision on these matters at the earliest possible time would be advantageous; the issues on which a partial decision is sought are a keystone in assuring remedial actions undertaken at a later time are properly carried out. Consequently, matters identified by the Board in its partial decision as requiring further improvements by the

Applicant could be more effectively addressed before remedial actions are accomplished.

The public interest in this instance, is best served, in our opinion, by a prompt resolution of these issues and the prompt cure of any deficiencies noted in the Applicant's program, if any, to assure that the health and safety of the public is protected.

3. Prejudice to the litigants. Each of the parties was afforded a full opportunity to present evidence and otherwise participate on these issues before the Licensing Board and each will have available the full spectrum of appellate procedures should any part be dissatisfied with the Board's decision, as well as the opportunity to seek to reopen the record under appropriate circumstances. Thus, it appears that no prejudice will result to any party.

Finally, the Staff notes that the Statement of Considerations accompanying the 1973 amendment of Section I(c) of Appendix A of 10 C.F.R. Part 2 states that the Commission expected that the amendment, expanding Section I(c) to make specific provision for separate hearings on issues appropriate for separate consideration, would further the public interest in sound decisions arrived at in a timely fashion by permitting the resolution of crucial or potentially dispositive issues in licensing proceedings at the earliest practicable juncture. 38 Fed. Reg. 3398 (February 6, 1973).

III. PROPOSED SCHEDULE

The filing schedule proposed by Applicant at page 7 of its motion seems reasonable to Staff; accordingly, Staff has no objection to its adoption by the Board.

The Staff is aware of one issue on which the evidentiary record was left open. At Tr. 3929-31 and 4196-7 the Board expressed an interest in the Staff's position with respect to Applicant's rereview of its FSAR as discussed in inspection report 80-32. The Staff will be prepared to present its position on that matter at the evidentiary hearing now scheduled for October 13-16. This will allow time for all parties to address the adequacy of the Applicant's rereview of its FSAR in proposed findings submitted pursuant to the schedule suggested by Applicant in its Motion.

IV. CONCLUSION

For the reasons discussed above, Staff supports Applicant's motion for a partial decision.

Respectfully submitted,

*Ann P. Hodgdon by*  
Ann P. Hodgdon  
Counsel for NRC Staff *W D Victor*

Dated at Bethesda, Maryland,  
this 22nd day of September, 1981.



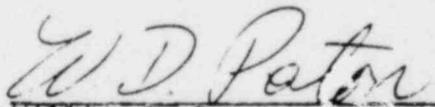


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