November 10, 1982

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

APPLICANT'S MOTION FOR RECONSIDERATION OF OCTOBER 29, 1982 MEMORANDUM AND ORDER

Consumers Power Company ("Applicant"), by its attorneys Isham, Lincoln & Beale, hereby files its Motion for Reconsideration of the Board's October 29, 1982 Memorandum and Order on the New Contention of B. Stamiris. For the reasons set forth below, Applicant respectfully requests the Board to reconsider its October 29, 1982 Memorandum and Order, and to dismiss subparts (a)-(d) of Ms. Stamiris' proposed contention.

The core of Ms. Stamiris' proposed contention is a claim that the economic factors in the NEPA cost/benefit analysis in the Midland FES have been miscalculated. The conclusion which Ms. Stamiris would have the Board draw from this claim is nowhere stated. But, in the context of an operating license proceeding, the only possible conclusion which could be found is that a proper calculation will demonstrate that operation of the Midland plant is not justified under NEPA.

Such a contention, however, is precisely the sort of unnecessary litigation of NEPA issues that the Commission

intended to foreclose at operating license hearings in its new amendments to 10 CFR Part 51 (47 Fed. Reg. 12940). Prior to the promulgation of these new rules, it was firmly established that the Commission was not required to duplicate, at the operating license stage, the full NEPA analysis which had already been performed at the construction permit stage. Calvert Cliffs' Coordinating Committee v. AEC, 449 F.2d 1109, 1128 (D.C. Cir. 1971). In recognition of this rule and in an attempt to preclude futile and duplicative NEPA litigation during operating license hearings, the Commission promulgated amendments to 10 CFR Part 51. In part, these amendments provide that:

> Presiding officers shall not admit contentions proffered by any party concerning need for power or alternative energy sources for the proposed plant in operating license hearings.

10 CFR §51.53(c) (47 Fed. Reg. 12943). Although the amendments specifically address only need for power and alternative energy sources, the Supplementary Information accompanying the proposed (46 Fed. Reg. 39440) and final rules (47 Fed. Reg. 12940) makes it clear that the economic considerations which Ms. Stamiris now attempts to raise are also foreclosed by the new rules. As the Supplementary Information bluntly states, "if [an environmentally superior alternative to the plant] does not exist, then economic considerations are not relevant." (46 Fed. Reg. at 39441).

The rationale for the foreclosure of litigation over environmental factors in the NEPA analysis lies in the economic and environmental realities which exist at the

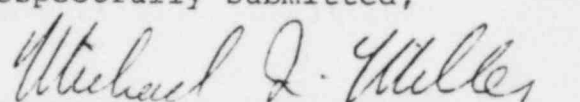
operating license stage for any plant. The NEPA mandate has been fulfilled by the earlier finding of the licensing board in issuing the construction permit that power was needed and that the proposed plant is the environmentally superior alternative for supplying it. (46 Fed. Reg. at 39441). The favorable NEPA balance which was established at the construction permit stage weighs even more heavily in the applicant's favor at the operating license stage. Major environmental and capital costs have already been incurred in the construction of the plant (46 Fed. Reg. at 39441). The costs of operation of completed nuclear plants are below the costs of other available sources. (46 Fed. Reg. 39441). As a general rule, no significant new information has been provided to challenge the finding at the construction permit stage that the nuclear plant is the environmentally superior alternative for production of new energy. In fact, there "has never been a finding in a Commission operating license proceeding that a viable environmentally superior alternative to the operation of the nuclear facility exists." (46 Fed. Reg. 39441). In short, absent significant new developments demonstrating the enviromental inferiority of the plant, there is no basis for challenging the construction permit finding that the NEPA balance weighs in favor of the operation of the facility.

The futility of an OL challenge to the NEPA balance applies not only to litigation over alternatives to the plant, but also to litigation over the economic components

of the NEPA balance. For the thrust of NEPA is to ensure that the action chosen is the environmentally preferable means of achieving an end. Indeed, the Calvert Cliffs case itself explicitly recognizes that any analysis of the economic effects of a proposed federal action is but one factor in the overall "balancing process" mandated by NEPA. 449 F.2d at p. 1113. If no environmentally preferable alternative (including no additional generation of power) to operation of the plant can be identified at the OL stage, then the economic considerations in the plant's operation are irrelevant to the NEPA analysis. (46 Fed. Reg. 39441). These considerations cannct affect the basic judgment that the plant is environmentally acceptable under NEPA.

Nothing offered in Ms. Stamiris' new contention challenges the environmental acceptability of the Midland plant under NEPA, or even suggests that "an alternative exists that is clearly and substantially environmentally superior." (47 Fed. Reg. at 12941). Absent such a showing, the economic considerations which Ms. Stamiris attempts to raise are irrelevant to the acceptability of the plant under NEPA. Accordingly, sections (a)-(d) of Ms. Stamiris' proposed contention, which raise such considerations, should be dismissed.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I, Anne E. West, one of the attorneys for Consumers Power Company, hereby certify that a copy of "Applicant's Motion For Reconsideration Of October 29, 1982 Memorandum and Order" was served upon all persons shown on the attached service list by deposit in the United States Mail, first class, this 10th day of November, 1982.

Anne E. West

SUBSCRIBED AND SWORN before me this 10th day of November 1982.

Laura Y. Tas
NOTARY PUBLIC

My Commission Expires September 10, 1986

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