

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:
Charles Bechhoefer, Chairman
Dr. Frederick P. Cowan
Ralph S. Decker



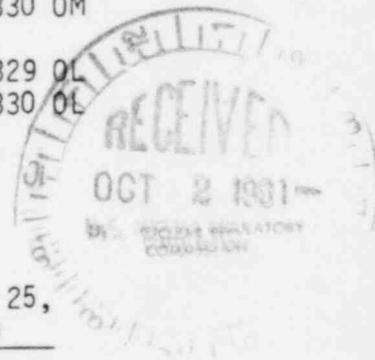
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In the Matter of)
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CONSUMERS POWER COMPANY)
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(Midland Plant, Units 1 and 2))
_____)

Docket Nos. 50-329 OM
50-330 OM

Docket Nos. 50-329 OL
50-330 OL

October 2, 1981



MEMORANDUM

(Concerning Telephone Conference Call of September 25, 1981 and Applicant's Motion for Partial Decision)

On September 25, 1981, the NRC Staff initiated a telephone conference call to discuss the hearings scheduled for the week of November 2-6, 1981. Earlier that week, Staff counsel had contacted the Board Chairman by telephone and indicated that the Staff might have a problem meeting the November 2-6 hearing dates with respect to the corrective actions proposed for the diesel generator building, and that a telephone conference call to discuss these matters might be useful. The Board Chairman indicated that several of the Board members might also wish the hearings scheduled for the week of November 2-6 to be rescheduled, that the Board members also wished to discuss with the parties several matters bearing upon the Applicant's motion dated September 2, 1981 for a partial decision on certain issues, and that a telephone conference call would be useful for these purposes as well.

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Staff counsel agreed to set up such a conference call for Friday, September 25, 1981, at 10:30 a.m. edt.

Such a call took place at the time scheduled. Participating were all three Board members, Mr. Michael Miller for the Applicant, Mr. William Paton and Ms. Ann P. Hodgdon for the NRC Staff, and Ms. Barbara Stamiris, pro se. (Ms. Stamiris agreed to inform Mr. Wendell H. Marshall, representative of the Mapleton Intervenors, of the substance of the matters discussed during the call.)

A. The Applicant's September 2, 1981 motion for a partial decision sought an early ruling on those matters for which evidentiary hearings were held in July and August, 1981--specifically, (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 on April 20, 1981. The Applicant asserted that the evidentiary record on those matters is complete; that an early resolution of the issues will benefit the public by assuring that remedial work, when authorized, can begin promptly and in accordance with the decision; and, finally, since any findings will be subject to reconsideration should any supervening developments warrant, none of the parties will be prejudiced by such an initial resolution.

In seeking a separate ruling on the QA and managerial attitude issues, the Applicant stressed the differences between those issues and the issues still to be heard (the technical efficacy of proposed remedial actions), both in terms of the nature of the evidence on, and the disparate regulatory

underpinning for, those differing issues. The Applicant offered a schedule for the filing of proposed findings and conclusions on the issues for which it is seeking an early ruling, extending from October 19, 1981 through November 23, 1981.

By teletype dated September 5, 1981, Wendell Marshall opposed the motion for several jurisdictional reasons. On September 15, 1981, Barbara Stamiris filed a response which also opposed the motion, on the ground that the record on five discrete matters assertedly encompassed by the requested early decision is in fact still open. On September 22, 1981, the NRC Staff filed a response in support of the Applicant's motion. In that response the Staff recognized one item as to which the evidentiary record is still open, and it offered to present testimony on that matter at the evidentiary hearings scheduled for October 13-16, 1981.

During the telephone conference call, the Board discussed with the parties each of the "open" items mentioned by Ms. Stamiris. The Board also expressed the view that, for pro se intervenors to prepare useful proposed findings, they must be given sufficient time when they have no simultaneous adjudicatory obligations to prepare such findings. (Unlike the Applicant, and NRC Staff, they do not have the resources, at least in this proceeding, to call in additional counsel or other personnel to assist them in such endeavors.) The Board also rejected the jurisdictional arguments advanced by Mr. Marshall (concerning authority of NRC vis-a-vis the Environmental Protection Agency to conduct this proceeding) as having already been the subject of a Board determination (see Tr. 1035-36). Subject to the rulings

below on "open" items and scheduling, the Board then granted the Applicant's motion.

The "open" items mentioned by Ms. Stamiris are as follows:

1. The "M.A.C. [Management Analysis Company] audit report". The Board had previously admitted this report (Staff Exhibit 4) into evidence subject to further questions by the parties or Board (Tr. 3723-24, 3731-32). During the conference call the Board raised a question as to the Applicant's response (if any) to certain M.A.C. recommendations, and the Staff's evaluation of such response. The recommendations appear on pp. 3 (§ 2.0), 5 (second paragraph of § 2.0) and 9 (first line; last 3 lines of third paragraph) of the report's "Introduction and Executive Summary". Ms. Stamiris commented that her questions would parallel those outlined by the Board. Testimony on this subject will be presented at the October 13-16 hearing session.

2. The "block 8" matter. This open item is included in the FSAR re-review with respect to which the Staff offered to present testimony at the October 13-16 hearing session. The Board will hear testimony on this matter during that session.

3. The material false statement. Testimony has already been received on the "management attitude" aspects of the statement, but the parties have not yet addressed the merits of the allegation in the Modification Order concerning the statement. The Board agreed with the Applicant and Staff that it was feasible to divide the material false statement matter in this way and that it would not be necessary to reach a decision on the merits of the material false statement allegation in the Modification Order prior to

ruling on the "management attitude" aspects of the statement. As in the case of certain other subjects discussed below, should significant "management attitude" matters arise from the later consideration of the material false statement allegation, those matters could be considered through supplemental proposed findings.

4. Contention 1(d) (acceptance criteria for remedial actions). This contention has not been proposed for the early decision but rather is to be considered in conjunction with the testimony on remedial actions. To some extent, the managerial attitude with respect to remedial actions has been considered, but to the extent that the later consideration of acceptance criteria reveals additional significant managerial attitude information, such information could be considered through supplemental findings.

5. Possible QA or managerial attitude issues which may arise in relation to technical issues. The Board had already indicated that such issues could be considered (Tr. 7007-08) and we reiterated that significant new information of this sort could be made the subject of supplemental findings. In that connection, given the hearing schedules heretofore approved by the Board, it is likely that testimony on the "managerial attitude" matters discussed in paragraphs numbered 3, 4, and 5 of this Memorandum, should it materialize, will be presented prior to the issuance of any partial decision, so that the Board will know prior to any such decision whether any of the earlier submitted proposed findings are to be supplemented.

During the conference call, the Board stressed the importance of proposed findings and their reference to particular portions of the

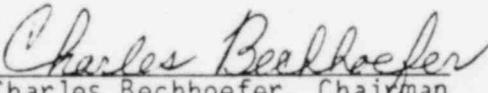
evidentiary record on which a party chooses to rely. Because of this importance, and because evidence to be considered in the partial decision will be presented during the October 13-16 hearing sessions, the Board modified and enlarged the period for submission of proposed findings suggested by the Applicant (which had been based on time periods previously approved by the Board). The revised schedule is as follows:

- October 23, 1981: Applicant submits proposed findings and conclusions.
- November 16, 1981: Intervenors submit proposed findings and conclusions (to be delivered to parties and Board at evidentiary hearing that day).
- November 25, 1981: Staff submits proposed findings and conclusions.
- December 7, 1981: Applicant submits reply.

B. During the conference call, the Staff indicated that it had resolved the scheduling problems which initially caused it to recommend having such a call. The Staff stated that it could be ready to present its testimony on the remedial actions for the diesel generator building during the week of November 2-6, 1981. Nonetheless, to permit the intervenors to have adequate time free from other adjudicatory responsibilities to prepare their proposed findings, to afford the Applicant adequate time to respond to the Staff's recently enunciated position on the adequacy of the Applicant's

proposed remedial actions for the diesel generator building, and to accommodate certain Board obligations, the Board cancelled the hearing previously scheduled for November 2-6, 1981. In lieu thereof, the Board extended the hearing previously scheduled for the week of November 16-20 by scheduling the hearing to begin on Monday, November 16 at 9:00 a.m. and adding hearing days on Saturday, November 21 and Monday and Tuesday, November 23 and 24 (November 23 from 9:00 a.m. to 3:30 p.m. only). The hearing will be held in the same place as previous sessions--the Midland County Courthouse Auditorium, 301 W. Main, Midland, Michigan 48640.

FOR THE ATOMIC SAFETY AND
LICENSING BOARD


Charles Bechhoefer, Chairman
ADMINISTRATIVE JUDGE

Dated at Bethesda, Maryland
this 2nd day of October 1981.