

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING APPEAL BOARD

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Administrative Judges:

Christine N. Kohl, Chairman
Dr. W. Reed Johnson
Gary J. Edles

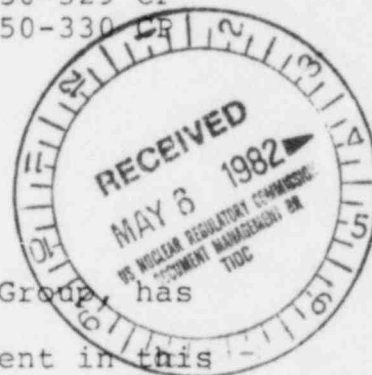
SERVED MAY 6 1982

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

Docket Nos. 50-329 CP
50-330 CP

ORDER

May 5, 1982



Intervenor, Saginaw Valley Nuclear Study Group, has moved to "terminate" (i.e., cancel) oral argument in this case, now scheduled for May 13, 1982, at 2:00 p.m. It asserts that "the time and expense which counsel and the Appeal Board will incur in having oral argument . . . is not warranted" because the briefs and record discuss the "relatively simple" legal issue involved, and any questions to counsel "could be answered more efficiently by letter." Consumers Power Company and the NRC staff do not request argument but indicate their willingness to participate. Intervenor Dow Chemical Company supports Saginaw Valley's motion unless we deny Dow's pending motion for reconsideration, by which it seeks to file a brief in reply to Consumers' brief on the merits; in the event of such denial,

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Dow believes oral argument is necessary to ensure that its position is understood by this Board.

We recently addressed the parties' responsibilities concerning oral argument of appeals in Wisconsin Electric Power Co. (Point Beach Nuclear Plant, Units 1 and 2), ALAB-666, 15 NRC __ (February 12, 1982).^{1/} Noting that oral argument is within our discretion (see 10 CFR 2.763), we emphasized that arguments are scheduled because one or more members of a board have questions for the parties, that "[a]ll parties are expected to be present or and represented at oral argument unless specifically excused." Id. at __ (slip opinion at 4). In seeking a waiver of argument, a party must explain "with particularity" the basis for such a request and support it with affidavits, as appropriate. Id. at __ (slip opinion at 3).

Saginaw Valley's motion fails to meet these requirements. It offers no specifics whatsoever in support of its assertion that the time and expense incurred for oral

^{1/} Before filing the motion at hand, counsel for Saginaw Valley asked the Secretary to the Appeal Board about the proper procedures for seeking cancellation of an oral argument. Because the Point Beach decision has not yet been published in the NRC reports, the Secretary mailed a copy of it to counsel in response to his request.

argument would not be warranted.^{2/} Obviously, we disagree that argument is "unnecessary" and that questioning the parties by letter would provide a feasible and effective way of addressing our concerns. Accordingly, we deny Saginaw Valley's motion to cancel oral argument.

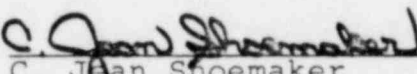
Despite our disposition of its motion, we offer one further accommodation to Saginaw Valley. The Appeal Board for Commonwealth Edison Co. (Byron Nuclear Power Station, Units 1 and 2), Docket Nos. 50-454 OL and 50-455 OL, has scheduled an oral argument in Bethesda, Maryland, for May 26 at 2:00 p.m. Counsel for Saginaw Valley is counsel for the intervenor in the Byron appeal as well. We therefore tentatively reschedule oral argument in Midland for the same day, May 26, at 10:00 a.m. in Bethesda. We recognize, however, that this proposed change may inconvenience the other parties in this case. Consequently, we ask all counsel to notify the Secretary to the Appeal Board by

^{2/} As we stated in Point Beach, supra, "[a] bare declaration of inadequate financial resources . . . is clearly deficient." 15 NRC at ___ (slip opinion at 4). In this case, although intervenor's counsel have previously indicated that they are donating their services on a pro bono basis (see Saginaw's Opposition to Request to File Amicus Brief (April 6, 1982) at 4 n.2), Saginaw Valley does not even assert that it has inadequate finances. Mindful of the generally limited resources of many of the intervenors that participate in NRC proceedings, however, we scheduled argument in this case for the afternoon of May 13, so as to obviate overnight expenses for Saginaw Valley's counsel.

telephone (301/492-7662) no later than Monday, May 10, as to whether they will be able to attend the argument as rescheduled for May 26. If there are any objections, the Midland argument will remain set for May 13 at 2:00 p.m.^{3/}

It is so ORDERED.

FOR THE APPEAL BOARD


C. Jean Shoemaker
Secretary to the
Appeal Board

^{3/} We hope that the May 26 date will be acceptable to all counsel so that further attention to this matter will be unnecessary. In any event, we will notify all counsel by May 11 as to the final argument date selected.