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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:
Charles Bechhoefer, Chairman
Dr. Frederick P. Cowan
Dr. Jerry Harbour

SERVED MAY 10 1982

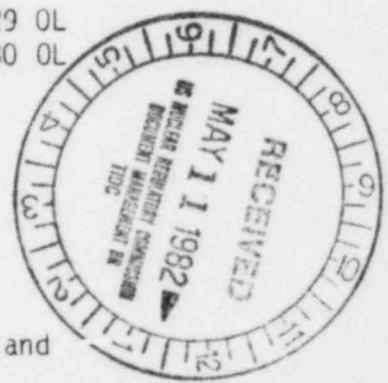
In the Matter of)
)
CONSUMERS POWER COMPANY)
)
(Midland Plant, Units 1 and 2))

Docket Nos. 50-329 OM
50-330 OM

Docket Nos. 50-329 OL
50-330 OL

May 7, 1982

MEMORANDUM AND ORDER
(Telephone Conference Call of May 5, 1982)



Our Memorandum and Order (Cancelling Evidentiary Hearings and Conference of Counsel or Representatives), dated April 28, 1982, granted the Applicant's request for a telephone conference call on May 5, 1982, to discuss discovery schedules with respect to the Staff's SER, which was then scheduled to be issued on May 6. The call took place on the date scheduled with the following persons participating: members of the Board (Judges Bechhoefer, Cowan, Harbour), Messrs. Michael I. Miller and James E. Brunner (for the Applicant), Ms. Mary Sinclair (pro se), Ms. Barbara Stamiris (pro se), Mr. Wendell H. Marshall (pro se), and Messrs. William D. Paton, Michael N. Wilcove, Darl Hood and Joseph Kane (for the NRC Staff).

A. At the outset, we were advised that the SER would be issued and go to the printer this week but that it would probably not be mailed to parties

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until around May 14 or possibly May 17. If mailed on that schedule, it likely would reach the parties by May 21, 1982.

In our Special Prehearing Conference Order in the OL proceeding, dated February 23, 1979, we accepted certain contentions for discovery purposes only and permitted the sponsors (Ms. Sinclair or Mr. Marshall) to submit rewritten contentions following discovery. In addition, that Order specified discovery periods after issuance of various Staff documents, such as the SER, the SER Supplements, the DES (which was issued in February, 1982), and the FES. Not covered by that Order is the petition for intervention of Ms. Barbara Stamiris, an intervenor in the OM proceeding who did not seek intervention in the OL proceeding until March 18, 1982 and, as of this date, has not submitted any OL contentions (except for those OM contentions which, by virtue of the consolidation of the OM and OL proceedings, become part of the OL proceeding). In discussing dates for further discovery and for the submission of new contentions, we attempted to focus the discussion in order to accommodate the interests of each of the various participants.

We adopted the following schedule which, to the extent that intervenors wish to submit new or rewritten contentions, is intended to encourage the submission of such contentions as soon as possible.

1. The last date for submission of new or rewritten contentions by all parties (including Ms. Stamiris) will be June 21, 1982. [Note: this date assumes service of the SER by no later than May 17, 1982; if served later, the last date for new or rewritten contentions will be modified to the same extent.]

2. Discovery on admitted contentions (or contentions admitted for purposes of discovery) is currently authorized.
3. Submission of discovery requests may continue until June 21, 1982 or (for contentions submitted between now and June 11, 1982) until 21 days after acceptance of each contention or (for contentions submitted between June 11-21, 1982) until 15 days after acceptance of each contention. (Discovery is not available, of course, on any contention unless and until it is accepted by the Board, at least for discovery purposes.)
4. Responses to discovery shall be provided in the time periods prescribed in the Rules of Practice, unless otherwise agreed by the parties involved. If an objection to a discovery request is filed, the party seeking discovery must, if it wishes such discovery, utilize the procedures for motions to compel discovery, as set forth in 10 C.F.R. § 2.740(f).
5. To the extent that an intervenor wishes to submit restated contentions following discovery, such restated contentions shall be submitted within 10 days after completion of each phase of discovery, as appropriate. (These restated contentions would be further revisions of contentions submitted no later than June 21.) Responses of other parties may be filed within 5 days of service of the restated contentions but may be omitted if contentions are mutually agreed upon prior to submittal. (The Board should be so advised.)

6. With respect to the effect on admitted contentions of Staff documents to be issued after the SER (i.e., SER Supplements, FES), as provided in our February 23, 1979 Order, supplemental discovery based on material therein which is different from corresponding information in the earlier Staff document, or not contained in the earlier document, may be initiated within fourteen days of service of the particular Staff document. Responses are to be furnished as provided in ¶ 4, above. [To the extent that time periods for discovery authorized by ¶¶ 2-4, above, extend beyond the periods authorized herein, the later date governs.]
7. The February 23, 1979 Order made provision for additional discovery with respect to certain new information in newly issued Staff documents, and later submission and consideration of new contentions based thereon (Order, pp. 29-30). Those rulings remain in effect. We note, however, that they may be somewhat inconsistent with the schedules which we are here adopting, since they anticipate discovery on certain defined subjects prior to the submission of any contention based thereon. Upon issuance of the new Staff documents (FES, SER Supplements), we will be prepared to entertain proposed modifications to the February 23, 1979 Order to the extent appropriate. (Whether it be before or after the submission

and/or acceptance of new contentions, some discovery on new information in the newly issued documents will be permitted.)

B. The Applicant requested clarification of two points in the Board's April 30, 1982 Memorandum and Order:

1. Bounds for the term "around" in sections VI(1)(a), (b) and (c), as in "under and around safety-related structures and systems". Consumers proposed to use the bounds for Q-listed soil fill delineated on a drawing identified as "Specification C-45".
2. Meaning and extent of application of the term "explicit" in section VI(1), as in ". . . require that the permit holder obtain explicit prior approval from the NRC Staff . . .". The Applicant wanted to know if prior written approval was required and the extent of associated activities or subactivities that would be permitted following Staff approval of an activity.

With respect to the first clarification, the Board agreed that, on an interim basis, the bounds of Q-listed fill shown on Specification C-45 will be acceptable for defining the areas around safety-related structures and systems within which the restrictions and requirements of the April 30, 1982 Memorandum and Order shall apply, pending review of and concurrence in that document by the Staff. Consumers committed to furnish copies of the "Specification C-45" document to the Staff and Ms. Stamiris, and we request it furnish copies to the Board and other intervenors who ask for it. We also request the Staff to advise us at its convenience of the result of its review of Specification C-45.

On the second clarification, the Board agreed that its intent was that verbal approval before proceeding with soils-related activities is acceptable for activities which are routine and/or relatively small in scope. Further, the Staff should document such verbal approvals with

follow-up memorandum records of telephone or other conversations. On the question of the extent of activities covered by an approval, the Board cautioned the Applicant to clarify the extent and scope of activities for which it is requesting Staff approval, so that both the Staff and Applicant understand what the extent of approval is to be.

The Board noted that its term "NRC Staff" purposely made no distinction between the Offices of Nuclear Reactor Regulation (NRR) and Inspection and Enforcement (IE). Approvals to proceed with soils related activities can be given by either office staff, as appropriate to the activity and to the policies and practices of the respective offices. We urge the Staff to give attention to coordination of approvals between the NRR and IE staffs.

C. On April 29, 1982, Wendell H. Marshall filed a mailgram-request that Col. Steve Gadler, a professional engineer and a consultant of the "Mapleton Intervenors", be permitted to participate in future telephone conference calls. The Board explained to Mr. Marshall that the Mapleton Intervenors were not a party and hence could not be represented by anyone; and that, under NRC rules, Mr. Marshall could only participate pro se or be represented by an attorney. 10 C.F.R. § 2.713(b). Therefore, Mr. Marshall's request would have to be denied. Mr. Marshall thereupon narrowed his request, advising the Board that he only wished Col. Gadler to participate in circumstances in which Mr. Marshall either was in the hospital or otherwise too ill to participate. At the Staff's suggestion the Board agreed to consider particular requests for Col. Gadler to participate

on an ad hoc basis, taking into account all circumstances including the status of Mr. Marshall's health and the matters to be discussed.

D. The Board and all parties agreed that the conference call scheduled for May 14, 1982 is no longer necessary. We cancelled that call. We agreed that we would hold another call when the Staff is better able to estimate the time it will take for it to complete its review and prepare testimony for the remainder of the hearings on soils matters. The Staff advised that Mr. Keppler has set a target date of June 15, 1982 by which to decide whether to modify his earlier testimony on Consumers' QA program, that the target for completion of the Staff's soils review remains June 30, 1982, but that both dates could be affected by the timeliness and completeness of information yet to be provided to the Staff by the Applicant.

For the reasons stated, it is, this 7th day of May, 1982

ORDERED

1. That the schedules for discovery and new contentions set forth in Part A of this Memorandum and Order are hereby adopted;
2. That the Licensing Board's Memorandum and Order of April 30, 1982, is clarified as provided in Part B;
3. That Mr. Marshall's request for participation by Col. Steve Gadler is disposed of as provided in Part C; and

4. That the telephone conference call scheduled for May 14, 1982 is hereby cancelled.

FOR THE ATOMIC SAFETY AND
LICENSING BOARD


Charles Bechhoefer, Chairman
ADMINISTRATIVE JUDGE

Judge Ralph S. Decker was consulted with respect to the matters discussed in Part B of this Memorandum and Order and subscribes to the clarifications of the April 30, 1982 Memorandum and Order set forth therein.