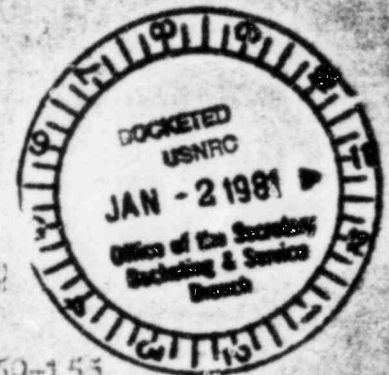


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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION



BEFORE THE ATOMIC SAFETY AND LICENSING APPEAL BOARD

In the Matter of
CONSUMERS POWER COMPANY
(Big Rock Point Nuclear Plant)

Docket No. 50-155
(Spent Fuel Pool Modification)

INTERVENOR JOHN O'NEILL II'S
VARIOUS RESPONSES,
CORRECTIONS,
AND SUNDRY MOTIONS.

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RECEIVED DISTRIBUTION SERVICES UNIT

This filing contains three parts, combined for economy's sake. Part I is a response to the Appeal Board's Order of December 12, 1980. Part II is a response allowed by the Board order of September 11, 1980. Part III contains a table of citations omitted from my brief of Dec. 4, 1980, and minor corrections to that brief.

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PART I

According to the order of December 12, 1980, "(t)he Secretary of this Board is to be notified by telephone no later than noon on January 7, 1981, of the names of the counsel who intend to participate in the argument."

God willing, I shall attend the Friday, January 9, 1981 oral argument hearing at 10:00 a.m. in the East West Towers, in compliance with the Board order. I am an intervenor, and shall act as my own counsel.

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I move that the Board accept this early written notice of appearance in lieu of a costly telephone call. Please notify me by mail or phone if this is unacceptable. My telephone number is 616 334-4944.

I would like to comment on another aspect of the Board order.

"Similarly, intervenors, Christa-Maria, Mills and Bier -- who are represented by the same attorney and who filed a single brief -- pro se intervenor, John O'Neill II, and amicus curiae, Council on Environmental Quality, offer essentially the same reasons in support of the ruling below. No other intervenor briefs have been received."

I call attention to:

MOTION TO INCLUDE JOHN LEITHAUSER IN TEN DAY FILING EXTENSION CONCERNING REVIEW ON THE MEMORANDUM AND ORDER OF NEPA REVIEW AND THE NEED FOR POWER ISSUE DECIDED BY THE LICENSING BOARD,

filed on the 20th of November 20, 1980 by John Leithauser, and his brief filed on time, December 4, 1980, entitled:

BRIEF OF JOHN LEITHAUSER IN SUPPORT OF LICENSING BOARD FINDING etc.

John Leithauser was specifically invited by the Atomic Safety and Licensing Board to participate in briefing the NEPA question, now being considered by this Board, and he has done so. Confer "Board Order Following Special Pre-Hearing Conference", Jan. 17, 1980, p. 34.

I address this question to the Board: Is John Leithauser admitted to this proceeding? If he is not, then why not?

If John Leithauser has not been admitted to this appeal proceeding, I MOVE that the Appeal Board admit him to this proceeding, consider his arguments fully, and invite him to the Oral Hearing. Furthermore, because four parties have filed in support of the Board Order, I move that speaking time granted Mr. Leithauser not be subtracted from the other three affirming parties. I would not

3.

object if Consumers Power and NRC Staff were jointly granted an equal increase in speaking time, if Mr. Leithauser is able to participate January 9.

Dated December 20, 1980

PART II

"Reply briefs may be filed on or before December 10, 1980."
Memorandum and Order, September 12, 1980.

In the original Appeal Board Order, reply briefs were restricted to no parties, and hence are open to all who choose to reply. The December 10th date was moved back to December 22, 1980 when "Order for a Ten Day Extension of Time to File Briefs" proposed by Christa-Maria was granted. Furthermore, "Motion for Extension of Time for Intervenor John O'Neill II to File Answering Brief, dated November 20 and granted November 25, contains the following wording: "I move that the schedule proposed by Christa-Maria et al on the 13 of November, 1980, be adopted for all parties."

Accordingly, as is my right, my REPLY BRIEF follows:

REPLY BRIEF

This is the purpose of the Reply Brief:

A. Many arguments posed by Christa-Maria, James Mills, and JoAnne Bier, John Leithauser, The Council on Environmental Quality, and myself are very similar. Most of these are legal arguments. But this brief will strengthen and underline my unique arguments of issues of law, points of fact, and matters of common sense and fairness. Several points that may cause confusion, and omissions shall be corrected.

B. Materials that support my arguments are supplied.

C. Several very brief comments upon the position of Consumers Power and NRC Staff pepper the body of this Reply Brief.

First, I might well comment upon an argument made by John Leithauser. He quoted the agency charged with interpreting and guarding the NEPA statute, the Council on Environmental Quality as stating in their guidelines, 5-iii-b: "'In considering what constitutes major action significantly affecting the environment, agencies should bear in mind that the effect of many federal decisions about a project or complex of projects can be individually limited but cumulatively considerable.' The C.E.Q. has stated further in Sec. II of its guidelines that Sec. 102 (2)(c), 'should be applied to further major federal actions having a significant effect on the environment even though they arise from projects or programs initiated prior to enactment of the Act on January 1, 1970. Where it is not practical to reassess the basic course of actions, it is still important that further incremental major actions be shaped so as to minimize adverse environmental consequences not fully evaluated at the outset of the program or programs,'"

Brief of John Leithauser in Support of Licensing Board etc., Dec. 4, 1980.

When considered alone, a federal action may seem to matter little, as Consumers Power and NRC Staff argue. But when such an action is examined in conjunction with many other individually innocuous changes, the overall environmental disruption may be very great. NEPA prudently guards against such phenomena.

Considered in three different lights, the change in the spent fuel pool proposed could contribute to serious environmental disruption. The first of these is the hotly disputed fact that if the spent fuel pool expansion is artificially considered alone, the individually limited

change may appear to be minor, but the dogging effect of continued plant functioning creates an effect that is cumulatively considerable. NEPA then, here forbids the illogical and artificial distinction between the Spent Fuel Pool expansion and continued plant operation.

In the second case, this Spent Fuel Pool expansion must be considered along with past and proposed federal actions such as: the increase in amount of plutonium allowed to be burned, (see attached NRC letter to Sen. Fritz Mondale); the post-Three Mile Island NRC-mandated plant modifications that include a Technical Support Center, Containment Hydrogen Monitor, Reactor Coolant High Point Vent, and the three-foot-thick concrete silo to provide post-accident shielding of gamma-rays, and other like modifications, (see attached extract from the summary of the Big Rock Risk Assessment Project Meeting of March 20, 1980); the many technical specifications issued on such safety-related matters as reactor instrumentation and actions that affect public safety and the environment, for example the permission granted Consumers to continuously vent the containment building; and the many other federal changes at Big Rock since 1962.

Some of these matters have been reviewed with the environment in mind; even so, NEPA recognizes the synergistic effects of many modifications, and thus at this threshold the law requires the preparation of a full and complete Environmental Impact Statement. NEPA applies to the instant proposed action for the above reasons alone.

Finally, the change is part of an all inclusive Federal Policy on reprocessing and high-level waste disposal. Considered as a part of this cumulative policy and action, this Spent Fuel Pool Expansion request is clearly a Major Federal Action that must be reviewed under NEPA.

I make the above argument, not because I believe the Spent fuel pool expansion, when considered alone is a minor action, but to

the case that NEPA here applies. If the Appeal Board were to follow the thinking of Consumers Power Company and the NRC Staff and consider continued power generation as separate and distinct from the action sought, the above argument then demonstrates that NEPA clearly applies, since in the eyes of the law, the proposed action is, none the less, a major federal action.

MY UNIQUE ARGUMENTS

That proposed is a major Federal action has been firmly established by all affirming parties, remember that I have advanced several unique reasons why this is so.

First, the pool is to be used in a way totally unforeseen when designed: the large amount of fuel, the use of compacted racks, the extreme length of storage anticipated, and the presence of more plutonium in the fuel mixture, all make the expansion alone a major Federal action.

Secondly, the Spent Fuel Pool Expansion is part of a major Federal policy on fuel reprocessing. See above.

Thirdly, the matter of Due Process was one important reason why NEPA should here apply, that was advanced by myself alone.

The Atomic Safety and Licensing Board is fully empowered to decide the question before it. Be certain that Consumers Power will forward all conceivable advantages to the expansion. See Table 1-5, attached. But those who advocate alternatives, including the alternative of doing nothing would, by NRC Staff and Consumers Power Company, be allowed to advance no substantive arguments. This is decidedly not Equal Protection Under the Law.

Now, how can the Atomic Safety and Licensing Board fairly decide this question if it is not allowed to fully examine the costs and benefits of amendment denial? They will be told

only one side of the issue. As a matter of fairness and of law then, a NEPA Environmental Impact Statement is required to protect our Due Process rights.

There are strong, uncontested issues of fact that argue strongly against the Spent Fuel Pool Expansion, adding weight to the need for a NEPA review. Rather than repeat the litany of Big Rock's high costs, low power output and technical problems, I might simply remind the Appeal Board the seriousness of these uncontested facts: a NEPA review decidedly would not be frivolous.

I might add to the above evidence that Consumers Power is not interested in encouraging energy conservation. Consumers places three types of newspaper advertisements: legally required public notices, ads designed to discourage transmission line vandalism, and advertisements that explain how economical electricity is. See ad photocopy, enclosed. Note that the attached ad encourages use of electricity to heat water, which can be done more efficiently by wood heat co-generation, solar heat, or even conventional gas heaters. Electricity for a clothes drier is mentioned as being a very good buy, when our family's solar drier is absolutely efficient, a device that Board members might be more familiar with when called by its traditional name, a clothes line! The attached ad is part of a campaign conducted in newspapers, on the radio and I believe, TV. One radio ad, with which I am familiar, cheerfully explains how long you can run a vacuum cleaner on one dollar's worth of electricity! Such a campaign not only encourages the use of electricity in inefficient ways, but obviously encourages people to use more electricity rather than to conserve.

Yet, even in the face of such imprudent encouragement, total electricity demand upon Consumers has grown much less than predicted,

by a factor of only 2 to 3 percent. Were utility customers to save only 1% of power generated by Consumers Power Company, Big Rock would be totally unneeded. None of these arguments have been challenged.

Risk-Assessment

Now, the outside observer might be puzzled by the awkward posture taken by Consumers Power, when in the one case the company fights tooth and nail to prevent an Environmental Impact Statement, including a cost/benefit analysis of the Spent Fuel Pool Expansion that would include examination of continued plant operation, and in another instance it strongly encourages the NRC to conduct a very similar risk-assessment of certain NRC-mandated plant modifications, admitting in its request that an unfavorable risk-benefit finding could prompt plant shutdown, see New York Times article, Sunday, March 2, 1980, "Michigan Utility Battling Nuclear Agency on Safety," enclosed in my March 10, 1980 brief to the Atomic Safety and Licensing Board on the NEPA question.

The impartial observer might well ask, "Why does the company not take a consistent position?"

At the risk of being cynical, it would seem that the answer to this question is only that in the Spent Fuel Pool Expansion it is to Consumers' advantage to oppose a NEPA review, while its interests are best served by encouraging a risk-assessment that might deter costly plant modifications. This is simply unacceptable.

If the utility moves to test the safety and risks to plant personnel and the public of modifications, it should not be allowed to oppose such an analysis of the Spent Fuel Pool Expansion.

As a matter of fact, Consumers has for twenty years been assuring all employees and the public that Big Rock is safe and functions well. It is odd that the utility is unwilling to conclusively test the claims of safety. While it may have the right to appeal

here the Licensing Board's NEPA review, it is odd that Consumers has offered no reasons why it can legitimately oppose a NEPA review of the proposed action. In fact, in the absence of a NEPA examination, a large portion of the reassurances of safety must be viewed as wishfull thinking not open to scientific review. Fairness, public safety, worker rights and basic truthfulness strongly demand that the NEPA review proceed.

I repeat, the utility cannot be allowed to manipulate the NRC into performing a risk-assessment when this furthers its own narrow self-interest, and on the other hand, block a parallel NEPA Environmental Impact Statement when this does not serve the utility's purposes. If, when without the mandate of law, such a risk-assessment is performed, and a NEPA required review is denied, equal application of the laws becomes a joke. The Appeal Board can prevent this, consistency requires it, and I so urge it.

Finally, I might note that so far, neither Consumers nor Staff have even touched upon the above argument; my assertions remain unchallenged.

Minor Clarifications

On page 15 of my Brief dated December 4, 1980, I mentioned that in the Dairyland case the Co-op presented certain contractual clauses concerning quality and safety that it alleged performed the function of an Environmental Impact Statement. That interpretation was denied by the Dairyland Board.

In arguing that the Atomic Safety and Licensing Board should decide the question of Section 102 (2)(e) of NEPA, I mentioned that it might wish to hear issues of fact locally. Note, this does not diminish the fact that determination of both sections c and e should be founded solely on matters of law. Similarly, in asserting

that there are strong issues of fact urging a NEPA review, I do not deny that this is fundamentally a question of law. I only bring up these facts for two reasons: there is a dispute on the use of resources that cannot be ignored, and a NEPA review would not be a silly exercise, since meaty issues of fact await it.

To sum up, NEPA requires a preparation of an Environmental Impact Statement however the action is viewed. This IS a major Federal action! Furthermore, a NEPA review is essential to equally protect all under the laws. Such a review would find important issues of fact. Finally, Consumers Power Company led the way in requesting a risk assessment in another instant and cannot here oppose a NEPA Environmental Impact Study and still legitimately exercise concern for worker rights and public safety.

Again, I MOVE that the Appeal Board affirm the decision of the Licensing Board to order a full Environmental Impact Statement to be prepared for the Big Rock Spent Fuel Pool Expansion.

PART III

Enclosed is a Table of Citations for my Brief dated Dec. 4, 1980. It simply was impossible to prepare it at the time of filing.

When my wife Linda and I typed the masters for the first two pages of the Dec. 4th brief, our technique was yet imperfect. I offer then, pages 1 and 2 in standard Xerox form to any on the service list who were troubled by the quality of those pages. Please write or call, and I shall supply these.

Corrections to the Dec. 4th Brief:

Page 11- 10CFR § 5115 (a)(10) should read 10 CFR § 51.5 (a)(10)

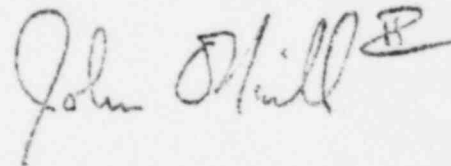
Pages 6 and 8- Tamm citation is from Minnesota v. Nuclear
Regulatory Commission, 602 F.2d 419 (D.C. Cir. 1979).

Page 12- Federal Regulations cited as 13751-52 is
§ 51.20 (a)(2) 45, Fed. Reg. at 13751-52.

Please allow me to apologize for the above goofs, and for any
mystifying, subconscious lapses in spelling. Thank You.

In closing then, I must express my love for the land. Indeed,
it is unfortunate that the oral arguments could not take place locally,
for then all could experience the astounding beauty of Northern Michigan
and the Great Lakes. The snow in the pine woods behind our house
presents a holy, humbling presence. It is to protect this fragile
land and its people that I have filed this Reply. Thank you.

Respectfully Submitted,



Dated December 22, 1980

John O'Neill II
Intervenor
Route 2, Box 44
Maple City, Michigan 48564
1-616-334-3944

HOT WATER FOR A SONG.



ABOUT 13 CENTS, IN FACT.

If you've got an electric water heater, a good, 5-minute shower costs you about 13 cents.

And that's about 15 gallons of water.

Enough to give a body something to sing about—at least when you consider what inflation's doing to other current costs.

No, we're not saying electricity is cheap. But the fact of the matter is that electricity uses up less of the average family's spendable income now than it did 20 years ago,

cooking meals, running small appliances, and warming the water for countless baths and showers. Electricity—especially when you use it wisely—is still a very good buy.

Baking a turkey for 5 hours in an electric oven today costs about 72 cents. Doing a load of clothes in an electric dryer runs you about 18 cents.

Yes, the cost of energy as a whole has increased in recent years. But there are still forms of energy that,

in relation to all the other costs of living, serve us well and at reasonable expense.

At Consumers Power, we wanted you to know that electricity is one of them. And that we're trying to keep it that way.



ELECTRICITY. It's still a good buy.



TABLE 5-1

SUMMARY OF COST-BENEFIT OF ALTERNATIVES TO INCREASED SPENT FUEL POOL STORAGE

<u>Alternative</u>	<u>Cost Per Metric Ton Heavy Metal</u>	<u>Benefit</u>
Increase Storage Capacity	\$780 ⁽¹⁾	Continued Energy Generation
Storage at a Reprocessing Facility	\$7000 to \$12,000 per year ^{(2) (4)}	Continued Energy Generation ⁽³⁾
Storage at an Independent Spent Fuel Storage Facility	\$7000 to \$12000 per year ^{(2) (4)}	Continued Energy Generation ⁽³⁾
Storage at a DOE facility	\$232000 ^{(1) (4)} (approx \$14,000 per year)	Continued Energy Generation ⁽³⁾
Storage at other Nuclear Plant Sites	Greater than increasing storage capacity at Big Rock Point Plant	Continued Energy Generation ⁽³⁾
Reactor Shutdown	\$12 million total ⁽¹⁾ (equivalent to \$525,000 per assembly or \$68,250 per Mtu based on 22 assemblies per fueling)	none

(1) in 1978 dollars

(2) in 1976 dollars

(3) These alternatives are not currently available nor could they be available before 1981

(4) Does not include cost of shipment to storage facility

From CONSUMERS POWER COMPANY
BIG ROCK POINT PLANT
SPENT FUEL RACK ADDITION
ENVIRONMENTAL IMPACT EVALUATION
April 1979

Plutonium Use at Big Rock Point and Midland

1. Is this a decision the company is allowed to make?

Reply: No. Consumers Power Company did not and cannot use plutonium without review and approval of the NRC. In fact, each licensee or applicant for a license change relating to the reactor core is required to submit details of the reactor core design or design modifications to NRC for review. The review process and approval or disapproval actions are governed by the Code of Federal Regulations, Title 10, Chapter I, Parts 2 and 50.

2. How can they do this without a public hearing?

Reply: They cannot. The Midland case is still in the licensing review stage. An opportunity for public participation is afforded by the independent Atomic Safety and Licensing Board (ASLB). Both the radiological health and safety matters and the environmental matters will be discussed at a location near the proposed site. The use of increased amounts of plutonium at Big Rock Point are subject to completion of a public hearing as discussed in Reply No. 4 below.

3. How can the NRC allow it?

Reply: Our replies No. 1, 2 and 4 should also answer this query.

4. Isn't it a violation of NEPA?

Reply: No. In 1969, Congress passed the National Environmental Policy Act (NEPA). Our regulations implementing NEPA require preparation of draft detailed environmental statements of the impact of our licensing actions; their review by appropriate Federal, state and local agencies; and preparation and submittal to the President's Council on Environmental Quality of Final Environmental Statements. The review process by the Commission's staff includes an evaluation of the potential environmental impact of proposed plants and includes a comparison of the benefits derived against the possible risks to the environment.

The Big Rock Point case involves a request to increase the amount of mixed oxide (plutonium) fuel from amounts of less than 50 kilograms to 150 kilograms. Consumers Power Company has operated safely with test assemblies of plutonium in Big Rock Point since 1969 with AEC approval. In 1972, Consumers requested approval for the increase in the amount of plutonium. The increase was approved by the AEC, but has not been implemented in the reactor because of an ASLB hearing on the subject. The hearing was temporarily suspended by order of the NRC Commissioners for certain generic^{1/} considerations relating to wide scale use of plutonium. In August, 1975 the Commissioners ordered that NEPA's requirements for Big Rock Point can be met through a discrete environmental review. Therefore, increased use of plutonium at Big Rock Point will only be allowed when a positive decision results from the present hearing process. A necessary premise for any positive decision would be full compliance with all NEPA requirements, as noted above.

^{1/}WASH-1327 August 1974 Draft Generic Environmental Statement
Mixed Oxide Fuel (GESMO).

Sent attached to an NRC letter to Sen. Walter Mondale, Jan. 28, '76.

COST OF DEFERRED ITEMS

PROPOSAL DEFERRAL	COST (THOUSANDS OF DOLLARS)
POST-INCIDENT SHIELDING	40,000
TECHNICAL SUPPORT CENTER	4,000
POST-INCIDENT SAMPLING	525
ALTERNATE SHUTDOWN PANEL	250
CONTAINMENT HYDROGEN MONITOR	50
RECIRCULATING PUMP TRIP	1,000
OTHER ATWS MODIFICATIONS/ANALYSES	UNKNOWN
METEOROLOGY TOWER	300
RELOCATE OFF-SITE EMERGENCY RESPONSE CENTER	UNKNOWN

COST OF NON-DEFERRED ITEMS

MODIFICATION	COST (THOUSANDS OF DOLLARS)
REACTOR COOLANT HIGH POINT VENT	36
ADDITIONAL INSTRUMENTATION	300
FIRE PROTECTION	840
ENHANCEMENT OF POST ACCIDENT OPERABILITY	1,300
SEISMIC ANALYSIS (SEP)	1,400
HIGH ENERGY LINE BREAK (SEP)	500

From: SUMMARY OF MEETING ON MARCH 20, 1980, TO DISCUSS PROPOSED BIG ROCK POINT PLANT RISK ASSESSMENT, sent under cover of letter of Richard D. Silver, Operating Reactors Branch, Division of Licensing, Oct 16, 1980, pp 4&5.

OBJECTIVES OF THE EVALUATION

IDENTIFY THOSE ASPECTS OF BIG ROCK POINT THAT
CONTRIBUTE MOST SIGNIFICANTLY TO OVERALL PLANT RISK

IF NECESSARY, PROPOSE PLANT MODIFICATIONS THAT WILL
REDUCE THE IMPACT OF THE SIGNIFICANT CONTRIBUTORS TO
OVERALL PLANT RISK TO AN ACCEPTABLE LEVEL

DETERMINE THE COST OF THE REQUIRED MODIFICATIONS

DECIDE IF THE PRICE FOR CONTINUED OPERATION OF
BIG ROCK IS JUSTIFIED

SUMMARY OF MEETING ON MARCH 20, 1980, TO DISCUSS PROPOSED BIG ROCK
PLANT RISK ASSESSMENT, sent under cover letter of Richard
D. Silver, Operating Reactors Branch, Division of Licensing, Oct.
16, 1980, p. 6, here reproduced in full for economy's sake.

TABLE OF CITATIONS
for

INTERVENOR JOHN O'NEILL II'S BRIEF IN SUPPORT OF
MEMORANDUM AND ORDER ON NEPA REVIEW

CASES

Calvert Cliffs Coordinating Committee v.
U.S. Atomic Energy Commission,
449 F.2d 1109 (D.C. Cir. 1971) 17, 28

Minnesota v. NRC, 602 F.2d 412
(D.C. Cir. 1979) 6, 8, 12

Silva v. Lynn, 482 F.2d 1282
(1st Cir. 1973) 17

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Dairyland Power Cooperative, (LaCross
Boiling Water Reactor) LBP-80-2,
11 NRC 461 (1980),
affirmed October 29, 1980, ALAB-617 . . 9, 14, 15, 17, 19, 20, 27, 28

Northern States Power Co., (Prairie Island
Nuclear Generating Plant, Units 1 and 2)
ALAB-455, 7NRC 31 (1978) 14-17, 19, 28

Portland General Electric Co., (Trojan
Nuclear Plant) ALAB-531, 9 NRC 263
(1979) 14, 19

REGULATIONS AND NOTICES

44 Fed. Reg. 43126 3, 9, 10

10 CFR Part 2, Appendix A, part VIII (B) . 12

10 CFR § 51.5(a)(10) 11, 12

10 CFR § 2.718(e) 11

10 CFR § 2.721(d) 11

10 CFR § 51.5(b) 12

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42 USC § 4332 16