

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

DOCKETED
USNRC

'82 SEP -3 P2:55

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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

September 2, 1982

MEMORANDUM AND ORDER
(Telephone Conference Call of September 1, 1982)

On September 1, 1982, the Licensing Board initiated a telephone conference call to discuss two motions for extension of time, as well as the NRC Staff's most recent communication concerning the issuance date of its SER Supplement on soils matters (SSER-2). Participating were the Board members (Messrs. Bechhoefer, Cowan and Harbour); Mr. Michael Miller, for the Applicant; Mr. Lee Bishop, for Ms. Mary Sinclair; Ms. Barbara Stamiris, pro se; Mr. Wendell H. Marshall, pro se; and Mr. Michael Wilcove, for the NRC Staff.

1. By letter dated August 23, 1982, Ms. Sinclair requested an "extension" until September 13, 1982, to file contentions based on "new" information in the FES, which had been received by most parties on August 10 or 11. Ms. Stamiris also sought the opportunity to file new contentions (or supplement her contention which she filed on August 24,

1982) until the same date. The Applicant offered no objection^{1/} but stressed that it wished to have a firm date established for filing such contentions. The Staff also offered no objection.

The Board recognized that there were certain ambiguities in the existing schedule for filing such contentions (which derived from our Special Prehearing Conference Order dated February 23, 1979 and was incorporated by reference in our Memorandum and Order dated May 7, 1982). We granted Ms. Sinclair's motion and provided that any party could file contentions based on new information in the FES by September 13, 1982. Responses are to be filed within 10 days of the date of service of new contentions; we advised the Applicant that the date of service would be assumed to be September 13 for all contentions (including that of Ms. Stamiris) filed up to and including September 13.

We emphasized that the contentions in question must be based on new information in the FES; information set forth in the DES and merely reiterated in the FES would not qualify. See Duke Power Co. (Catawba Nuclear Station, Units 1 and 2), ALAB-687, 16 NRC ____ (August 19, 1982) (slip op. p. 16).

2. By letter to the NRC Staff counsel, dated August 23, 1982, Mr. Wendell H. Marshall stated that he earlier had requested that the Staff answer certain questions concerning the SER, and that, absent any answers,

^{1/} After the conference call, we received an earlier response from the Applicant, dated August 30, 1982, opposing Ms. Sinclair's request. We assume that the position of the Applicant expressed in the conference call represents its most recent view.

he intended to request permission to file all of his questions as contentions. He requested an additional 45 days within which to file new contentions based on the SER. (A copy of Mr. Marshall's letter was sent to us.)

Although Mr. Marshall's request for additional time was not formally addressed to us, we are the only body which could currently grant such a request. We advised Mr. Marshall that we had long ago established a schedule for contentions based on the SER, that Ms. Sinclair and Ms. Stamiris had filed such contentions, and that we had considered them at the recent prehearing conference and ruled on them. For that reason, any new contentions based on the SER would be untimely. We informed Mr. Marshall that his request for an additional 45 days to file such contentions was being denied. We added that, although we could consider late-filed contentions by balancing the five factors in 10 CFR § 2.714(a)(1), we would be unlikely to admit any further contentions based solely on information in the SER.

3. By letter dated August 25, 1982, the NRC Staff advised that the SSER-2 would not be completed by the previously scheduled date of August 27, 1982. We inquired of the Staff as to the extent of the delay and whether it would impact the hearings on soils remedial measures which we had scheduled for October 5-8 and 19-22, 1982. (Those hearings contemplated that the SSER-2 would be served on August 27, and that testimony based thereon would be filed by September 24, 1982.)

The Staff stated that its delay in issuing the SSER-2 was motivated by its concerns over QA implementation, and that it would not

"feel comfortable" about issuing the SSER-2 without receiving responses to certain questions it had posed (orally) to the Applicant.

The Board inquired as to the relevance of QA implementation to the technical validity of the proposed remedial activities. The Applicant added that some of those activities--i.e., those related to the diesel generator building--had already been undertaken. The Staff responded that it did not want to be in the position of approving certain remedial activities without being satisfied that those activities would be implemented properly. (Presumably, although it did not say so, the Staff had in mind the adequacy of such matters as monitoring activities and crack mapping with respect to the diesel generator building.) The Staff was unable to provide a firm target date for issuance of the SSER-2.

At the request of the Applicant (to which no party objected), the Board agreed to have another conference call on this matter on Friday morning, September 10, 1982, in which to determine whether any of the previously established October hearing dates could be utilized.

The Board ruled that, when the SSER-2 is finally issued, new contentions based thereon must be filed within 15 days of service. In turning down Ms. Stamiris' request for 30 days, we noted that most (if not all) of the subjects to be dealt with in the SSER-2 are already issues in the OM proceeding and that new contentions would probably not be necessary to litigate such matters. We also noted that a draft of the SSER-2 was sent to the Board and parties on July 19, 1982, in effect providing additional time within which to formulate contentions.

4. The Board informed the parties that Judge Decker could be removed from the mailing lists for this proceeding and that his future participation would be limited to matters as to which hearings had already been completed.

For the above-stated reasons, it is, this 2nd day of September, 1982

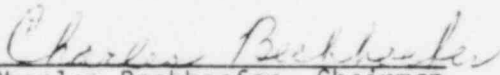
ORDERED

1. Ms. Sinclair's motion for an extension until September 13, 1982 of the date within which to file contentions based on new information in the FES is hereby granted. All parties may file such contentions on that schedule. Responses to new contentions must be filed within 10 days of the date of service of the new contentions (with all contentions filed on or before September 13 presumed to have been served on that date).

2. Mr. Marshall's request for an additional 45 days within which to file contentions based on information in the SER is hereby denied.

3. New contentions, if any, based on the SSER-2 must be filed within 15 days of service of that document.

FOR THE ATOMIC SAFETY AND
LICENSING BOARD


Charles Bechhoefer, Chairman
ADMINISTRATIVE JUDGE