

116178

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

COMMISSIONERS:

Victor Gilinsky
Richard T. Kennedy
Peter A. Bradford
John F. Ahearne



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

Docket No. 50-329
50-330

MEMORANDUM AND ORDER

On April 10, 1978, we issued an order requesting the parties to this above-captioned proceeding to state their views as to what issues, if any, remain for Commission consideration at a reopened Midland proceeding in light of the Supreme Court's decisions in Vermont Yankee Nuclear Power Co. v. Natural Resources Defense Council and Consumer Power Co. v. Aeschliman, 55 L.Ed.2d 460 (1978). The parties' submissions principally discussed the five matters identified by the Appeal Board:

1. Appraisal of the environmental impact of the nuclear fuel cycle.
2. Consideration of the possible effects of energy conservation in reducing or eliminating the need for a plant of this size.
3. Consideration of whether changed circumstances have affected the Dow Chemical Company's need for process steam which it is to receive from one of the units under an existing contract.

781115 ~~252~~ 252 G

Court of Appeals decision upsetting the waste management and reprocessing aspects of Table S-3.^{1/} Furthermore, this proceeding is not now affected by the Supreme Court's remand proceeding in the Court of Appeals.^{2/}

However, the environmental effects of radon are in issue here because the Commission has deleted the radon term from Table S-3.^{3/} In the statement accompanying this amendment the Commission stated that the record on environmental issues will be reopened to hear evidence on radon releases if proceedings are still pending before a Licensing or Appeal Board.^{4/} A proceeding was pending here when the Commission issued its statement. Thus, by the plain terms of the Commission's statement, the Licensing Board must consider the radon issue.^{5/} However, the generic nature of this issue leads us to conclude that the interests of the parties will best be served by structuring the Licensing Board's review of this issue in accordance with the procedure set out by the Appeal Board in ALAB-480.^{6/} The radon evidentiary record and decision in the

^{1/} 55 L.Ed.2d at 482.

^{2/} Id.

^{3/} 43 Fed. Reg. 15613 (1978).

^{4/} Id. at 15616.

^{5/} The policy considerations supporting the statement of April 14, 1978 are equally applicable to any pending proceeding. Consequently, we do not find that our conclusion in that statement should be qualified by the reason a proceeding is pending.

^{6/} Philadelphia Electric Company (Peach Bottom Atomic Power Station, Units 2 and 3), ALAB-480 (May 30, 1978).

2. No issue remains in the energy conservation matter because the Supreme Court reversed the Court of Appeals remand to the Commission.^{9/} Furthermore, the Appeal Board found that energy conservation will not decrease demand enough to render superfluous any substantial portion of Midland's capacity.^{10/}

3. No issue remains in the matter of Dow's need for process steam. The Supreme Court noted that the Commission, after consideration of changed circumstances, had properly refused to reopen the proceeding on this matter.^{11/} In addition, the Appeal Board found that Dow presently intends to live up to its contract.^{12/}

4. No issue remains for the Licensing Board in the matter of unresolved safety issues referred to in the ACRS letters and reports. The Supreme Court reversed the Court of Appeals' holding that the Licensing Board should have returned the ACRS report to the ACRS for further elaboration.^{13/} And since the decision in Aeschliman, the staff has prepared Supplement No. 2 to the Safety Evaluation Report in which it found that each item identified by the ACRS has been resolved to the satisfaction of the ACRS and the staff, or is capable of resolution prior

^{9/} 55 L.Ed. 2d at 486.

^{10/} 7 NRC at 166-67. A letter of October 18, 1978 from Consumers Power Company informing the Commission of its latest short-term forecast update was received after the Commission concluded its consideration of these matters. The parties remain free to file any appropriate motions before the Licensing Board.

^{11/} 55 L.Ed. 2d at 486 n. 22.

^{12/} 7 NRC at 167.

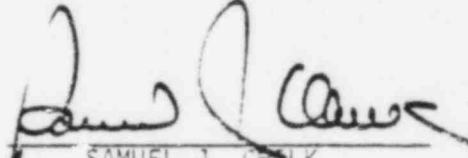
^{13/} 55 L.Ed. 2d at 487-88.

Other Matters

Intervenors also suggested that the Commission should consider Consumers' alleged continuing history of QA-QC violations and lack of financial qualifications to complete the Midland project. These items are clearly beyond the scope of the matters identified by the Appeal Board for consideration at a reopened proceeding. Furthermore, Intervenors present no new information on these items beyond the evidence already before the Appeal Board. Therefore, Intervenors have not sustained their burden of demonstrating the possibility of a significant safety-related issue warranting reopening a hearing.^{16/} Thus, the reopened proceeding should not be expanded to consider other matters not identified in the Order of April 10, 1978.

It is so ORDERED.

For the Commission.



SAMUEL J. CHALK
Secretary of the Commission

Dated at Washington, D.C.,
this 6th day of November, 1978.

^{16/} Vermont Yankee Nuclear Power Corporation (Vermont Yankee Nuclear Power Station), ALAB-167, 6 AEC 1151, 1152 (1973).