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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

OFFICE OF SECRETARY
DOCKETING & SERVICE
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BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)
) Docket No. 50-155-OLA
CONSUMERS POWER COMPANY) (Spent Fuel Pool
) Modification)
(Big Rock Point Nuclear Power Plant))

MOTION TO ESTABLISH HEARING DATES

Consumers Power Company ("Licensee"), by its attorneys, hereby moves the Atomic Safety and Licensing Board ("Licensing Board"), pursuant to 10 C.F.R. §§ 2.730 and 2.718, to enter an order establishing the first of two additional sets of evidentiary hearings in this proceeding. Licensee requests that the Licensing Board order the first set of hearings to be held during the week of November 15 through November 19, 1982 in order to litigate the following contentions, which have been admitted in this case, namely:

1. Christa-Maria Contention 2 and O'Neill Contention II.A; (South Wall Contention);
2. O'Neill Contention II.D, (B-52 Contention);
3. O'Neill Contention II.E-4, (Contention dealing with adequacy of the Big Rock Point Plant containment to shield gamma radiation in the event of a substantial release of radiation from the spent fuel pool);
4. Christa-Maria Contentions 9(1), 9(6), 9(8) and 9(9), (Remaining Emergency Planning Subcontentions).

In support of the motion, Licensee states:

1. On June 12, 1982, the Atomic Safety and Licensing Board ("Licensing Board") concluded the first series of hearings held in this case. At that time it was generally assumed that one additional set of hearings would be held to litigate open issues like the challenge to the structural integrity of the concrete spent fuel pool.^{1/} However, due to scheduling constraints caused by conflicting schedules of two members of the Licensing Board, time precluded the presentation of evidence on several other contentions scheduled to be litigated at the June 1982 hearings. These contentions include the South Wall contention, the B-52 contention, the remaining issues involving the Big Rock Point emergency plan and finally the contention challenging the adequacy of the Big Rock Point containment to shield gamma radiation in the event of a substantial release of radiation from the spent fuel pool.

2. Testimony has been written on all these issues and it was filed with the Licensing Board and the parties in preparation for the June 1982 hearing dates.^{2/} This testimony

1/ Licensee withdrew its testimony on this contention (Christa-Maria Contention 8 and O'Neill Contention II.E-2, Genuine Issue of Fact (5)) on June 7, 1982, the first day of the evidentiary hearings.

2/ Licensee filed with the Licensing Board the testimony of Mr. Charles E. Axtell and Mr. Roger W. Sinderman concerning the genuine issues of fact remaining under Christa-Maria Contention 2 and O'Neill Contention IIA, the testimony of Captain William P. Hickey, Jr. and Mr. Anthony E. Tome concerning the genuine issues of fact

remains unchanged today^{3/} and the work needed to be done in order to litigate the issues has been substantially completed by all parties. All that remains is for the Licensing Board to establish a hearing date on these issues. Licensee contends, therefore, that the interests of all parties would best be served by an early resolution of the issues in a separate set of hearings to be held in November, on the dates requested.^{4/}

3. Licensee believes the need to pursue a split hearing process is justified by the added degree of administrative efficiency that such an approach would lend to the spent fuel

Footnote 2 continued

remaining under O'Neill Contention II.D and the testimony of Mr. Axtell and Mr. Sinderman concerning the genuine issues of fact remaining under Christa-Maria Subcontentions 9(1), 9(6) 9(8) and 9(9) on May 10, 1982. Additional testimony of Colonel Gary P. Betourne on O'Neill Contention II.D was filed with the Licensing Board on May 21, 1982. Revised testimony of Mr. Sinderman concerning O'Neill Contention III.E-4 was filed with the Licensing Board on April 26, 1982. Intervenors Christa-Maria et al. and the NRC Staff have also pre-filed their testimony with the Licensing Board on these contentions.

3/ The testimony of Mr. Axtell concerning the genuine issues of fact remaining under Christa-Maria Subcontentions 9(6) and 9(8) was originally filed with the Licensing Board as part of Mr. Axtell's larger testimony responding to Christa-Maria's Subcontentions 9(2), 9(4), 9(5), 9(6), 9(7) and 9(8). Licensee intends to separate out Mr. Axtell's testimony on Subcontentions 9(6) and 9(8) as soon as possible in order to refile this unchanged testimony with the Licensing Board.

4/ Licensee supports holding the November hearings in Washington, D.C. if such action would facilitate Mr. Semmel's representation of Intervenors Christa-Maria et al.

pool modification proceeding. By eliminating the "left-over" contentions from June 1982 in a first set of November hearings, the likelihood of completing all further litigation on the remaining open issues in the case during a further set of hearings, which Licensee estimates could be held in early 1983, would be assured.^{5/} The split hearing process would also enable the Licensing Board to continue its practice of issuing a series of partial initial decisions on contentions when completed, as part of its effort to efficiently expedite the consideration of the case. Given the large number of unresolved contentions that remain in this case, and the time needed to litigate, obtain and possibly appeal the Licensing Board decisions on these contentions, Licensee believes that an orderly administration of justice can best be served by resolving individual contentions as soon as possible after the testimony and supporting documentation on them has been filed.

4. The Commission itself has recognized the need for Licensing Boards to avoid or reduce licensing delays whenever measures are available that do not compromise the Commission's fundamental commitment to a fair and thorough hearing process.

^{5/} Issues to be litigated in early 1983 include the concrete issue referred to in footnote 1, the reliability of the makeup line (see Licensee's September 17, 1982 Motion to Defer Consideration of Genuine Issue of Fact (1) under Christa-Maria Contention 8 and O'Neill Contention III.E.2), and the seismic issues related to the gantry crane under O'Neill Contention II-C. (See Licensee's letter of September 29 inclosing Mr. Bordine's September 16 letter to Mr. Cutchfield fo the NRC Staff).

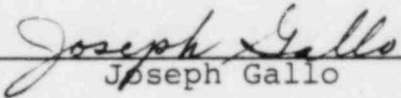
See "Statement of Policy on Conduct of Licensing Proceedings", CLI-81-8, 46 Fed. Reg. 28533 (May 27, 1982). This policy statement demonstrates a reemphasis of the Commission's belief that Licensing Boards should use all available procedural devices to bring about a balanced and efficient completion of all phases of the hearing process. Id. Accordingly, the Commission has encouraged individual adjudicatory boards to expedite their hearings by using those management methods contained in Part 2 of the Commission's Rules and Regulations which ensure that each licensing proceeding moves along at a steady pace, consistent with the demands of fairness. Id. In keeping with this stated Commission policy, Licensee believes that the use of a split hearing process, a method within the Licensing Board's authority under Section 2.718 of the Commission's Rules, is both a fair and efficient means by which the Licensing Board can move this case along to an expeditious conclusion.

5. Finally, Licensee also believes that its request for resolution of the above stated contentions during November hearings, with the remaining open contentions being tried in early 1983, will facilitate the conclusion of the spent fuel pool proceeding prior to the next refueling outage and NRC required inspection of the Big Rock Point reactor vessel scheduled for May 1983. Holding hearings in November on all contentions that are ripe for adjudication will help to prevent a repeat of the scheduling problems encountered by the

Licensing Board and the parties at the June 1982 hearings. This in turn will provide adequate time in early 1983 to complete the presentation of all further issues raised in this proceeding.

For good cause shown, Licensee's motion to establish hearing dates during the week of November 15 through November 19, 1982 should be granted.

Respectfully submitted,



Joseph Gallo

One of the Attorneys for
CONSUMERS POWER COMPANY

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Dated: October 1, 1982

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NUCLEAR REGULATORY COMMISSION

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CERTIFICATE OF SERVICE

I hereby certify that copies of CONSUMERS POWER COMPANY'S MOTION TO ESTABLISH HEARING DATES were served on Judges Bloch, Paris and Shon and on Messrs. Bachmann, Goddard and Semmel by hand delivery and on all other persons listed below by deposit in the United States mail, first-class postage prepaid, this 1st day of October, 1982.

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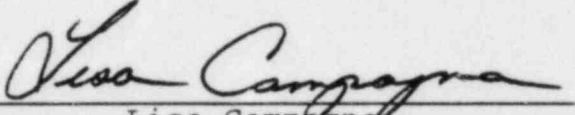
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