

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

ATOMIC SAFETY AND LICENSING BOARD

'82 OCT 20 11:45

Before Administrative Judges:

Peter B. Bloch, Chairman
Dr. Oscar H. Paris
Mr. Frederick J. Shon

OFFICE OF SECRETARY
OPERATING & SERVICE
BRANCH

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

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

October 19, 1982

MEMORANDUM AND ORDER
(Procedural Motions)

SERVED OCT 20 1982

Consumer Power Company's (applicant) Motion for Clarification, filed on October 12, 1982, is denied as not yet ripe for adjudication. Applicant requests us to clarify whether it must "guarantee" the transportation of all individuals who lack their own means of transportation. However, we see no reason for us to resolve its problem until applicant has made its good-faith effort to comply with our order. We will deal with applicant's argument, if there is still a dispute about it, in the context of applicant's specific efforts.

Applicant's October 1, 1982, motion to establish hearing dates also is denied. Intervenor can go to trial on all issues except those that have been delayed by applicant. The delayed issues (see footnote 5 of applicant's motion) are: the structural integrity of the concrete in the spent fuel pool (an issue on which applicant withdrew its proof on the eve of our previous hearing), the reliability of the makeup line to the fuel pool (that applicant has decided to enlarge to 1.5 inches diameter from 1.25 inches

diameter) and seismic issues (not completed at our last hearing because of unresolved staff concerns). We may also need a trial to test whether applicant can demonstrate its compliance with the emergency planning regulations.

Under the circumstances, we will not require intervenors to undertake the expense of transporting their Washington, D.C., counsel to Michigan an extra time, over their vehement opposition. While it may be true, as the Staff of the Nuclear Regulatory Commission has argued, that intervenors would incur this expense because they chose to use Washington, D.C., counsel, we do not think the use of Washington counsel requires intervenors to bear expenses caused by applicant's difficulties in presenting its case. Unless applicant is willing to save intervenors this expense, incurred because of applicant's difficulties of proof, the best available way to expedite this case is for applicant to expedite its own filings and to suggest an early date for a trial on all remaining issues.

We note, however, that Christa-Maria's arguments on this issue were overstated. Bifurcating the hearing would not deprive them of the right to counsel. Nor do we think that continuing our system of phased decisions on issues would be improper. Given the large number of issues in this case and the fact that applicant has already lost its capacity to offload a full core into its spent fuel pool, we intend to continue our practice of issuing multiple decisions in order to reduce the chance of unnecessarily affecting applicant's operations, to expedite compliance with our orders and to help the parties to phase their efforts in preparing appellate briefs. See "Statement of Policy on Conduct of Licensing Proceedings", CLI-81-8, 46 Fed. Reg. 28533 (May 27, 1981). It seems to us that whatever problems this may create for the appeal process may be cured by deferral decisions, such as that issued by the Appeal Board on October 4, 1982, whenever the deferral decision is consistent with the Commission's Statement of Policy concerning the expedition of hearings.

Nevertheless, under the circumstances expedition is not consistent with fairness and we have decided to deny applicant's motion.

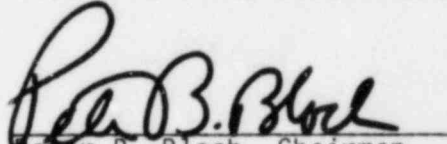
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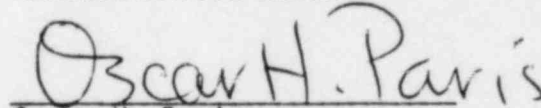
For all the foregoing reasons and based on consideration of the entire record in this matter, it is this 19th day of October, 1982,

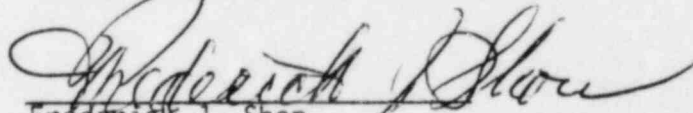
ORDERED

Two procedural motions filed by Consumers Power Company, a Motion to Establish Hearing Dates and a Motion for Clarification, are denied.

FOR THE
ATOMIC SAFETY AND LICENSING BOARD


Peter B. Bloch, Chairman
ADMINISTRATIVE JUDGE


Oscar H. Paris,
ADMINISTRATIVE JUDGE


Frederick J. Shon
ADMINISTRATIVE JUDGE

Bethesda, Maryland