

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

ATOMIC SAFETY AND LICENSING BOARD

'82 DEC -7 P2:44

Before Administrative Judges:

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

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

SERVED DEC 7 1982

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

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

December 7, 1982

MEMORANDUM AND ORDER
(Motion for a Stay)

On November 24, 1982, applicant filed an apparently untimely motion for us to stay the effectiveness of our order of October 29, 1982. Christa-Maria, et al. (Christa Maria) and John O'Neill oppose the stay. Staff has indicated by telephone that it supports the stay but will not file a motion indicating its reasons.

We have decided to deny the motion for a stay but to grant an extension of time within which to comply with our order. Thus, Consumers Power Company (applicant) is granted its relief, but for somewhat different reasons than those for which it was requested.

We might consider this application untimely if it were strictly an application for a stay or a motion for reconsideration. Both motions have ten day deadlines, imposed so that the prevailing party will not be "at risk" for an unlimited period of time concerning the finality of the decision in its favor. 10 CFR §§2.788(a) and 2.771. Were this motion not strictly a motion concerning the time within which to comply with our order, we would find the policy of "repose" to be applicable and would have to consider whether there were good cause for late filing.

However, this motion deals only with a matter of time. Hence, we consider it to be governed by §2.711, "Extension and Reduction of Time Limits." As such, there is no express requirement of when the motion for an extension need be filed--although the general practice is that it be filed expeditiously, generally prior to the expiration of the time deadline.

We do not consider applicant's delay in filing as having imposed unduly on intervenors, both of whom have had an adequate opportunity to state grounds for their opposition. However, we believe that applicants have shown good cause for a delay in the deadline for their compliance with our order. That good cause consists primarily of the expense required to do studies that, at minimum, would be required to conform to our order (Tr. 2093). In addition, we grant the extension because our order was issued despite directions from the Appeal Board that further seriatim decisions should cease. Although we believe we were correct in issuing our decision on the neutron multiplication factor as we did, on reflection we consider the deadline on compliance incongruent with the Appeal Board's October 4, 1982 order discouraging further seriatim decisions. Now that the Appeal Board will review our order (by Order of December 3, 1982) we think it would be unfair to require applicant to undertake substantial expense before the Appeal Board determines the correctness of our order. Hence, we defer the commencement of the 60 day period for complying with our order until after the Appeal Board acts on applicant's Appeal of November 16, 1982.

We consider this decision to be similar to our earlier Order of October 21, 1982, in which we granted applicant's motion for an extension of time for complying with our order on emergency planning requirements. The purpose of this proceeding is to make a fair and expeditious decision on an amendment application. Nothing in our decision on the neutron multiplication factor affects the safety of the existing spent fuel pool, whose safety would in any event exceed our jurisdiction. Hence, the deadline imposed in our order was for the purpose of expedition, subject to a subsequent showing concerning the need for a time extension. The deadline is for management

purposes, to encourage promptness, and has no direct bearing on public safety.

In reaching this decision, we do not address the question of whether there is a likelihood of success on appeal. Were we to address that stay criterion, we would be hard pressed to make the requisite finding.

We also do not accept applicant's unproven implication that the only way it may comply with our decision is by doing expensive calculations. The record appears to indicate that the criterion concerning the neutron multiplication factor could be met by borating the spent fuel racks or by reducing the permissible fuel enrichment. Tr. 1849, 1988. Were these steps taken, it may be (for all the record shows) that the expense of the calculations would be reduced. However, we note that these alternative changes also would be expensive and provide good cause for an extension of the deadline for complying with our decision, pending determination of the appeal.

O R D E R

For all the foregoing reasons and based on consideration of the entire record in this matter, it is this 7th day of December, 1982,

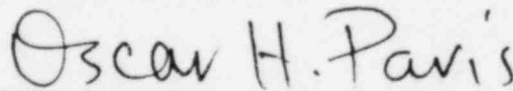
ORDERED

Consumers Power Company may comply with our order of October 29, 1982 (Concerning Neutron Multiplication Factor) within 60 days of issuance of an Appeal Board decision on Consumer Power's exceptions to the order.

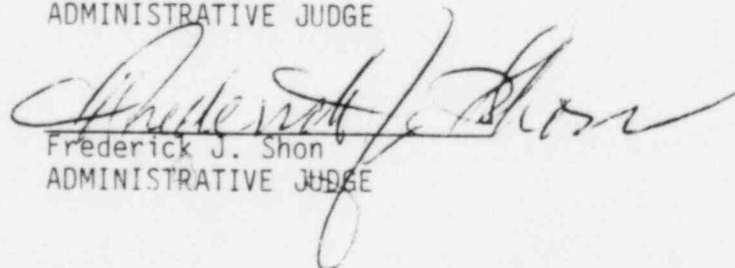
FOR THE
ATOMIC SAFETY AND LICENSING BOARD



Peter B. Bloch, Chairman
ADMINISTRATIVE JUDGE



Oscar H. Paris,
ADMINISTRATIVE JUDGE



Frederick J. Shon
ADMINISTRATIVE JUDGE

Bethesda, Maryland