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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

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USNRC

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

ASLBP Nos. 78-389-03 OL
80-429-02 SP

Docket Nos. 50-329 OL
50-330 OL

Docket Nos. 50-329 OM
50-330 OM

May 25, 1984

MEMORANDUM AND ORDER
(Denying Motion To Require Caseload Forecast
Panel to Evaluate Construction Completion Date)

On April 19, 1984, Ms. Mary Sinclair, an intervenor in the OL proceeding, filed a motion asking us to require the NRC Caseload Forecast Panel "to meet within 30 days to evaluate the new construction completion date of CPCo [Applicant] and to determine if CPCo completion date is realistic and if not, to make public what their own completion date estimate is." In responses dated May 4 and 9, 1984, the Applicant and Staff, respectively, oppose the motion. No other party has responded.

We agree with the Applicant and Staff that we have no authority to grant the relief requested and, in any event, that no valid basis has

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been presented to justify such relief. Hence, we are denying Ms. Sinclair's motion.

It is well established that Licensing Boards have no authority to direct the NRC Staff in the performance of its nonadjudicatory administrative functions. Carolina Power & Light Co. (Shearon Harris Nuclear Power Plant, Units 1, 2, 3, 4), CLI-80-12, 11 NRC 514 (1980); Florida Power & Light Co. (Turkey Point Nuclear Generating Station, Units 3 and 4), 4 AEC 9, 15 (Atomic Energy Commission, 1967); Offshore Power Systems (Floating Nuclear Power Plants), ALAB-489, 8 NRC 194 (1978); New England Power Co. (NEP, Units 1 and 2), LBP-78-9, 7 NRC 271, 278-80 (1978). We agree with the Staff that the preparation of forecasts by the Caseload Forecast Panel is one of those functions. And although we could perhaps consider the need for a new Caseload Forecast Panel forecast and refer our ruling to the Appeal Board if we found both the existence of such a need and an unwillingness of the Staff to provide a forecast (see Offshore Power Systems, ALAB-489, supra, 8 NRC at 207),¹ we do not find such relief to be warranted here.

Scheduling per se is not an issue in either the OM or OL proceeding. Nor, standing alone, would it properly be an issue. It has

¹ In this respect, we reject any implication in the Applicant's response that we lack "jurisdiction" to consider the relief requested by Ms. Sinclair. We clearly could consider it in the context of the procedural steps outlined in ALAB-489.

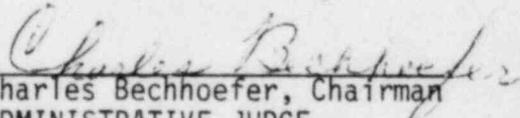
neither safety nor environmental significance.² Furthermore, as the Applicant points out, the reasons provided by Ms. Sinclair, consisting of a listing of a number of construction problems which have developed at the facility, do not support the action requested of us. No showing has been made that the listed problems would necessarily impose delay beyond that estimated by the Applicant or, if they had that result, what the significance would be. (The safety significance, if any, of at least some of the "problems" referenced by Ms. Sinclair may be explored by us in other contexts.)

For the reasons stated, it is, this 25th day of May, 1984,

ORDERED

That Ms. Sinclair's April 19, 1984 Motion is denied.

FOR THE ATOMIC SAFETY AND
LICENSING BOARD


Charles Bechhoefer, Chairman
ADMINISTRATIVE JUDGE

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We distinguish between scheduling per se and the truthfulness of the Applicant's past representations to NRC concerning scheduling, which is the subject of OM Contention 6.