

Advance Copy
PDR

NUCLEAR REGULATORY COMMISSION

IN THE MATTER OF:

CONSUMERS POWER COMPANY

Docket Nos. 50-325 (A)
50-330 (A)

(Midland Units 1 and 2)

Place - Bethesda, Maryland

Date - Thursday, September 7, 1978

OFFICE OF THE SECRETARY
D.C.

SEP 12 PM 12

Pages 171-190

Telephone:
(202) 347-3700

ACE - FEDERAL REPORTERS, INC.

Official Reporters

444 North Capitol Street
Washington, D.C. 20001

NATIONWIDE COVERAGE - DAILY

8501170120 780907
PDR ADOCK 05000329
N PDR

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of: :
CONSUMERS POWER COMPANY : Docket Nos. 50-325(A)
 : 50-330(A)
(Midland Units 1 & 2) :

Fifth Floor Hearing Room
East-West Towers Building
4350 East-West Highway
Bethesda, Maryland

Thursday, September 7, 1978

Hearing in the above-entitled case was convened,
pursuant to notice, at 10 a.m.

BEFORE:

H. K. CLARK Esq., Chairman
MARSHALL MILLER, Esq., Member
DR. J. V. LEEDS, Member

APPEARANCES:

FREDERIC D. CHANANIA, Esq., Nuclear Regulatory
Commission, Washington, D. C., on behalf of the
Regulatory Staff

KEITH S. WATSON, Esq., Wald, Harkrader & Ross,
1320 Nineteenth Street, N.W., Washington, D. C.,
on behalf of the Applicant

MELVIN G. BERGER, Esq., Antitrust Division, Energy
Section, U. S. Department of Justice, Washington,
D. C., on behalf of the Department of Justice

1 APPEARANCES, Cont'd

2 DANIEL I. DAVIDSON, Esq., Spiegel & McDiarmid,
3 Watergate Office Building, 2600 Virginia Avenue, N.W.,
4 Washington, D. C. 20037, on behalf of Intervenor
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

P R O C E E D I N G S

CHAIRMAN CLARK: This is a meeting of counsel in the matter of Consumers Power Company, Midlands Plant, Units 1 and 2, Docket Number 50-325(A), and 50-330(A).

For the benefit of the reporter, we will introduce ourselves, as we have been doing at all of these meetings:

I am Hugh Clark, a lawyer, Chairman of the Board; and on my right is Marshall Miller, Esquire, a lawyer, and a member of the Board; and on my left is Dr. J. Venn Leeds, who is a member of the Board in his capacity as an engineer.

Will the representative of the Staff introduce himself?

MR. CHANANIA: Yes, your Honor.

My name is Frederic D. Chanania, and I represent the NRC Staff this morning.

MR. BERGER: Melvin G. Berger, Antitrust Division, Energy Section, Department of Justice.

CHAIRMAN CLARK: Applicant?

MR. WATSON: Good morning, your Honor.

Keith S. Watson, counsel for Consumers Power.

CHAIRMAN CLARK: Intervenors?

MR. DAVIDSON: Thank you.

My name is Daniel I. Davidson. I am counsel for the Intervenors.

CHAIRMAN CLARK: Thank you, Mr. Davidson.

1 Have the parties agreed among themselves as to
2 who shall start this report this morning?

3 MR. WATSON: I think because I was the last to
4 arrive, your Honor, I shall do so.

5 CHAIRMAN CLARK: Very well.

6 (Laughter.)

7 You may proceed, Mr. Watson.

8 MR. WATSON: Your Honor, since we last reported to
9 the Board, significant progress has been made and it is our
10 judgment that the prospects for settlement are as good or may
11 even be better than they were when we reported to you in July.

12 We had used, I believe, a football analogy the
13 last time that I reported to the Board, and I had commented
14 that I thought we were on the twenty-yard line and driving
15 for the goal line.

16 I would put us inside the "ten" at this point. But
17 I think a word is in order, because, at first blush, perhaps
18 ten yards in two months may not seem like a great deal of
19 progress.

20 Following our meetings in July, without getting into
21 the details or violating the confidences of the parties
22 involved, we were disappointed to see what we regarded as
23 some backsliding, or at least some lack of progress through the
24 month of July.

25 I think in our eagerness to seek an agreement in

1 principle we may have ignored some items, or at least brushed
2 by them so quickly, that when we came down to harder discus-
3 sions, we found we in fact did not have agreement. So that,
4 again, with reference to the analogy of football, we were moving
5 away from the goal line, and we may have backed to the thirty,
6 or thirty-five, seemingly our field goal range at the least.

7 However, significant progress was made during the
8 month of July so that I think by the end of July we were at
9 least where we were at the time we reported to the Board in
10 early July.

11 And during the month of August, significant progress
12 was made beyond that point.

13 Now, since we do have an agreement in principle,
14 the method of the parties and the style of the parties in
15 dealing with each other has changed somewhat: rather than
16 meeting in large negotiating groups, the specialists have been
17 getting together one-on-one seeking to work out the various
18 phases of the problem.

19 For example, the lawyers had a meeting with the
20 lawyers; the technicians had a meeting with the technicians,
21 and consultants.

22 By and large the attorneys during this period
23 -- and I refer now not only to Mr. Jablon and myself, but also
24 counsel for the Department of Justice and the NRC Staff --
25 were able to communicate primarily over the telephone. And

1 there were numerous telephone calls. And given the months that
2 we were dealing with, that is, July and August, often it was
3 with people who at the time were out of the office, I think with
4 respect to our discussions, our four-party discussions, that
5 we have made very substantial progress.

6 And I will defer to Mr. Chanania and Mr. Berger to
7 report on that in more detail.

8 With respect to what I will refer to as our "two-
9 party discussions" with Mr. Jablon and his clients, there were
10 meetings between technical personnel on August 3 and 4,
11 August 16 and 17, August 30 and 31; and there is another
12 meeting scheduled September 12 and 13; and another schedule
13 the 28th and 29th.

14 And between those two meetings on September 19 there
15 is a meeting scheduled of the entire team again, bringing
16 people from all of the disciplines involved back together.

17 At this point as I say we continue to make progress
18 in my judgment; it is still feasible to meet the times scheduled
19 that we set out some four-and-half months ago, which would
20 give us another 45 days or so to wrap things up.

21 We recognize that while we are on the -- if I may
22 overuse the football analogy -- while we are inside the ten,
23 we are also late in the fourth-quarter, and we must move things
24 along with dispatch.

25 MR. MILLER: When do you get to the two-minute drill?

1 (Laughter.)

2 MR. WATSON: I think we are very close to that,
3 your Honor; and I think the parties are prepared to pull out
4 all the stops -- I know Consumers Power is -- to get this
5 wrapped up.

6 We are now in one sense involved in a political
7 process as much as a legal one: these agreements in principle
8 when we get them, the hard agreements have to go to the
9 respective city councils and have to go before the
10 cooperative boards; they have to be approved by the REA
11 here in Washington.

12 And we are hoping that we can impress upon them
13 the need to move with all possible speed in this regard.

14 CHAIRMAN CLARK: Mr. Watson, I want to ask you
15 a question -- perhaps I should ask Mr. Davidson, but you might
16 be a little closer to it -- I intended to ask Mr. Jablon:

17 In the meeting on Wednesday, the 31st of May,
18 Mr. Jablon said if the parties were to reach an agreement in
19 principle early, while the parties for obvious reasons could not
20 make that public, they would report in writing to the Board.
21 That is on pages 140 and 141 of the transcript.

22 Now, what has happened is, I understand, that there
23 has been newspaper reports of your meetings, but you have
24 not communicated with the Board in writing.

25 How do you explain that?

1 MR. WATSON: That is explained, your Honor, by the
2 fact that Mr. Jablon's clients have not submitted in all cases
3 the agreements to their respective city councils or, at the least,
4 that the city councils have not acted on them as yet; and,
5 therefore, it is my -- I am speaking second-hand here -- but
6 I think Mr. Jablon felt he was unauthorized to advise the
7 Board that an agreement had been reached in principle until
8 he had clearance from his clients.

9 And the newspaper reports that were released were
10 reports on city council meetings that had the matter under
11 consideration, but had not yet acted. And I think the press
12 may have erred.

13 The agreement in principle that had been reached,
14 of course, had been reached among counsel and among the
15 representatives on the negotiating teams of the respective
16 parties; but not every system was represented on the teams.
17 So that they had to go back and obtain their city council's
18 approval. And in all cases, those have not been forthcoming.

19 DR. LEEDS: What was the basis of the one in
20 The Wall Street Journal?

21 MR. WATSON: Well, the basis for the one in
22 The Wall Street Journal was -- I think the source of it was a
23 release by the Company that it had agreed in principle to do
24 something, but the other systems had not as yet agreed that
25 that was acceptable to them.

1 DR. LEEDS: Why were we not served with that
2 release in full?

3 MR. WATSON: Your Honor, I can't speak to that.
4 I think in hindsight, perhaps, that should have been done.
5 We were forced, frankly, through SEC reasons to make a release
6 of that nature; and had we known that the Board wished to be
7 served with that type of notice, we would have certainly done
8 so.

9 And I will be pleased to supply it to the Board.

10 DR. LEEDS: Don't you think it would be better for
11 us to get it from you than read it in The Wall Street Journal?
12 Especially in an edition which may be filtered four or five
13 times?

14 It looks to me like everyone has copies of every-
15 thing going on except this Board, which has been very
16 desperately interested in these proceedings, and we have been
17 meeting regularly with you people to find out the progress.

18 I find it rather strange I get informed by picking
19 up a Wall Street Journal far better than I do through official
20 publications. I hate to be informed by The Wall Street
21 Journal.

22 MR. WATSON: Your Honor, I think that is a point
23 well-taken.

24 DR. LEEDS: I am not speaking just to you; I am
25 speaking to everybody.

1 MR. WATSON: To the extent we are responsible for
2 that oversight, we apologize.

3 And, as I say, we will supply the Board with that
4 release, and any future releases that touch thereon.

5 CHAIRMAN CLARK: Do you wish to address your remarks
6 to this point, Mr. Davidson?

7 MR. DAVIDSON: Your Honor, I agree with everything
8 Mr. Watson has said.

9 I must express a caveat, perhaps based on the fact
10 I am not as fully informed as he is as to the certainty or
11 probability of reaching a final agreement in 45 days. My
12 impression is by no means that clear.

13 We are moving ahead, we are doing everything, we
14 are devoting the time; and we are prepared to begin -- if we
15 have not begun -- a two-minute drill.

16 CHAIRMAN CLARK: I was particularly speaking at the
17 moment of the question of advising the Board the fact that
18 news releases go out, but the idea of letting the Board know
19 was ignored.

20 MR. DAVIDSON: We will certainly undertake to do
21 everything that we can to get you any releases or the like. I
22 do not think any of my clients have had news releases.

23 CHAIRMAN CLARK: I see. Thank you.

24 MR. MILLER: Is there anything the Board can do to
25 be helpful at this stage of the proceedings to any of the

1 parties or counsel?

2 MR. WATSON: Your Honor, I do believe without
3 unduly burdening the Board that these status meetings are helpful
4 and as you suggest, they can at times serve as a catalyst;
5 and I think public interest would be well-served by the Board
6 paying particular scrutiny to events in the next 30-to-45
7 days.

8 I think we are in a crucial period, frankly, in
9 some cases we are dealing with parties and bodies that we don't
10 have full control over.

11 Just to give one example, without telling tales out
12 of school, the settlement agreement that has been proposed in
13 principle does provide for sale of a portion of the Midlands
14 units to the clients of Mr. Davidson and Mr. Jablon. Any
15 agreement to that effect with the REA cooperatives must be
16 approved by the REA officials here in Washington, as their
17 banker, basically.

18 CHAIRMAN CLARK: Have you filed that with them?

19 MR. WATSON: We have had -- we have filed and been
20 to Washington to discuss matters with them.

21 DR. LEEDS: Is that a matter of public record?

22 MR. WATSON: No, these are informal, off the record
23 discussions with them. It is not a formal proceedings. There's
24 just been discussions that have been held with them about,
25 principally about, not -- the principal aspects of those

1 discussions have been whether certain provisions of ownership
2 would or would not be acceptable to the REA as banker; and
3 I guess the point I am making here is that we have been
4 concerned that some officials here in Washington at the REA
5 have not been as impressed with the need for dispatch and
6 speed as we would have hoped.

7 DR. LEEDS: Have you made any filings with the
8 SEC discussing these matters?

9 MR. WATSON: No, sir.

10 The release that I mentioned was done pursuant to
11 SEC regs in the sense that when information of significance
12 to shareholders comes to light, it must be released.

13 I am aware of no filings, official filings, with
14 any public body relating to this proceeding.

15 DR. LEEDS: No prospectuses containing information
16 about these issues?

17 MR. WATSON: No, I don't believe the company has,
18 your Honor. I could check on that for you. And to the extent
19 there have been, again, I would encompass that within my
20 commitment to supply the Board with the releases. If there
21 have been public filings in relation to this case I do believe
22 I would have been advised; and I have not been advised.

23 DR. LEEDS: Well, let me make sure what you say is
24 clear:

25 I don't necessarily mean filings for release in this

1 case, but prospectuses released to the public that essentially
2 contain information about the negotiations or agreements and
3 so forth, would be within what I would think are of interest.

4 MR. WATSON: Any written word by the company relating
5 to the matters that are at issue in this case, I think,
6 I have your views in mind, and will carry that out.

7 DR. LEEDS: That would include stock prospectuses,
8 bond prospectuses, 10-K reports -- I don't think Consumers
9 files a 10-K report, but something equivalent; any of these
10 things filed for the record we would like to have that
11 information.

12 MR. WATSON: Yes, sir.

13 I say, I do believe that had there been releases
14 to that effect or statements to that effect by the Company,
15 I would have been apprised. The most recent I can recall is
16 the Annual Report of the Company. There was a reference made
17 to the Appeal Board decision which occurred, of course, last
18 calendar year. To my knowledge, there has been no statement
19 since then.

20 I am going to check today to meet with the Company
21 in Jackson and I will as my first order of business see to it
22 that what I report is accurate; and to the extent it is not,
23 I will supply the Board with all of the appropriate information.

24 CHAIRMAN CLARK: Is not the filing with REA a
25 public document?

1 MR. WATSON: No, sir.

2 Perhaps I misspoke: there has been no formal
3 filing. There have been merely discussions with some of the
4 officials over there about whether they would find this or that
5 provision acceptable.

6 CHAIRMAN CLARK: I see.

7 Then there has been no official filing as yet?

8 MR. WATSON: No, sir.

9 Indeed, there has been nothing, really, to file;
10 until the cooperatives and the Company know what the REA
11 will find acceptable, they cannot -- we cannot -- sit down and
12 draft something to file with them.

13 DR. LEEDS: Are you saying, then, settlement of this
14 case is going to depend upon the REA approving? And if that
15 is the case, what kind of timeframe are you talking about?

16 MR. WATSON: I am hopeful, your Honor, we are
17 talking about the same timeframe that I just discussed, 30 to
18 45 days. Certainly, much of that depends upon Mr. Jablon's
19 clients, particularly the two cooperatives.

20 I am hopeful that they will be prepared to proceed
21 with indications from the REA that they are agreeable to the
22 provision in principle; and then we would be able to submit
23 the final package to the Board, perhaps with an agreement between
24 the parties that it is subject to final review by the REA.

25 But at this point, unfortunately, the co-ops are

1 not prepared to proceed too far down the line until they get
2 at least some reading from the REA as to whether they are in
3 the ball park.

4 CHAIRMAN CLARK: Thank you, Mr. Watson.

5 May we hear from the Staff?

6 MR. CHANANIA: Certainly, your Honor.

7 At this point I would first make some observations
8 about Mr. Watson's report:

9 I think that his portrayal has been accurate to the
10 extent we know of movement among the parties. Naturally, I
11 can only comment on the discussions which we have had among
12 counsel, since we are not a party to the other discussions;
13 and it is true, there have been numerous phone calls and a lot
14 of discussions back and forth, and questions by the Staff which
15 have been answered with dispatch by both Mr. Jablon and
16 Mr. Watson.

17 And at this point I am pleased to announce to you
18 that the latest draft settlement license conditions have been
19 found acceptable to the NRC Staff. There were a few typo-
20 graphical and grammatical changes which were indicated this
21 morning, which were just of a proofreading nature, nothing
22 substantively whatsoever; and so that, well, the draft I have
23 in my possession is not the nth degree of exactly what would
24 be submitted to the Board. And it has gone the route through
25 the various offices that need to look at it; and we do find it

1 acceptable as a settlement in this case.

2 And I will just add, in that regard, that I think
3 that all the parties involved have shown considerable spirit
4 for cooperation and fairly rapid movement, as far as we are
5 concerned, at least by way of comparing it to other cases
6 in trying to get these license conditions in an acceptable
7 form to us and among themselves; and we are just pleased to
8 be in the position where we are this morning, that we are able
9 to endorse the present set of license conditions which have
10 apparently been found agreeable among or between the Intervenor
11 and Company as well -- of course, subject to that final approval
12 by any city councils or whatever political bodies there are.

13 And unless you have questions, I don't really have
14 much more to report upon, since a lot of it has been -- a lot
15 of the discussions have been between the Intervenor and the
16 Company, itself.

17 DR. LEEDS: Have you had a chance to look at the
18 Dow contract?

19 MR. CHANANIA: Yes, I have; and I have found no
20 -- and people I have discussed that contract with have found
21 no -- particular problem that would bear upon settlement of this
22 case.

23 We feel that the license conditions are appropriate
24 as a settlement situation consistent with what was found by
25 the Appeal Board; the Dow contract does not impact upon that

1 in final analysis of the license conditions.

2 CHAIRMAN CLARK: Any more questions?

3 DR. LEEDS: No.

4 CHAIRMAN CLARK: Thank you very much.

5 Mr. Berger, comments?

6 MR. BERGER: Yes, I will be very brief:

7 The Department, or at least counsel for the
8 Department, has concluded that the draft license conditions
9 presently before the parties would be acceptable to the
10 Department; and I have forwarded to supervisory personnel in
11 the Antitrust Division these to obtain their approval which,
12 of course, would be needed.

13 At this time we do not have that approval, but we
14 hope to obtain it within the next few weeks.

15 CHAIRMAN CLARK: Do you have questions?

16 DR. LEEDS: Have you looked at the Dow contract?
17 The Justice Department has looked at it?

18 MR. BERGER: Yes, I have, and I agree with
19 Mr. Chanania.

20 DR. LEEDS: There is nothing there inconsistent
21 with the license conditions? Does that mean the license
22 conditions solve any problems that might arise because of that
23 contract?

24 MR. BERGER: Well, I don't find anything. I do
25 not believe there are any problems with the Dow contract as it

1 presently exists.

2 DR. LEEDS: "Not inconsistent" is sometimes a trick
3 phrase.

4 MR. BERGER: I am not trying to trick you.

5 DR. LEEDS: In other words, the Dow contract is
6 "consistent" with the licensing conditions?

7 MR. BERGER: Yes, there is nothing in the Dow
8 contract that bothers us.

9 CHAIRMAN CLARK: Any more questions?

10 DR. LEEDS: No.

11 MR. MILLER: No.

12 CHAIRMAN CLARK: Thank you very much, Mr. Berger.

13 Mr. Davidson, do you have any further comments?

14 MR. DAVIDSON: No, Mr. Chairman.

15 CHAIRMAN CLARK: Well, gentlemen, I would like to
16 congratulate you on the progress you have made to date. Your
17 report is very pleasing to me, and I am sure, the other members
18 of the Board.

19 We will now take a short recess to discuss with
20 the other members of the Board when we should next meet. We
21 will bear in mind your comment of about six weeks.

22 We will take a recess.

23 (Recess.)

24 CHAIRMAN CLARK: Be seated, gentlemen.

25 Taking your comments into consideration and looking

1 at our own schedules, the Board concludes that the 12th of
2 October would be a good date for the next report; that is five
3 weeks from today.

4 Is there anyone who has difficulties with that date?

5 MR. CHANANIA: On my calendar, Mr. Chairman,
6 which may mean nothing, the date is in blue, which in the
7 middle of the week seems to be something like a holiday; is
8 that Columbus Day?

9 CHAIRMAN CLARK: No, the 11th is Yom Kippur, I
10 believe.

11 DR. LEEDS: Columbus Day is the 9th.

12 MR. CHANANIA: Fine.

13 CHAIRMAN CLARK: Yom Kippur being the day before
14 I don't believe it would bother Mr. Jablon because he is in
15 town anyway and the 12th would not be a holiday for him; is
16 that correct.

17 MR. CHANANIA: Well, the way it is celebrated, he
18 may well be in Synagogue during the day of the 12th as well.

19 DR. LEEDS: I thought it was sunset on the 10th
20 to sunset on the 11th.

21 MR. CHANANIA: If that's the case, then, he should
22 be free on the 12th.

23 CHAIRMAN CLARK: Does anyone know definitely about
24 Yom Kippur?

25 DR. LEEDS: My calendar has the 11th marked out for

1 Yom Kippur.

2 MR. BERGER: My calendar agrees with that.

3 CHAIRMAN CLARK: We did try to take that into
4 consideration.

5 Well, then, let us set Thursday, the 12th of
6 October at 9:30 in the morning; is that agreeable to everyone?

7 MR. DAVIDSON: Yes, sir.

8 MR. CHANANIA: Yes, sir.

9 MR. BERGER: Yes, sir.

10 MR. WATSON: Yes, sir.

11 CHAIRMAN CLARK: I take it it is.

12 Does anyone have any further comments to make today?

13 (No response.)

14 CHAIRMAN CLARK: If not, we stand adjourned.

15 (Whereupon, at 10:40 a.m., the hearing was
16 adjourned, to reconvene at 9:30 a.m., October 12, 1978.)

17

18

19

20

21

22

23

24

25