

6/20/79

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety And Licensing Board

In the Matter of)	
)	
CONSUMERS POWER COMPANY)	Docket Nos. 50-329
)	50-330
(Midland Plant, Units 1 and 2))	
)	

MOTION OF CONSUMERS POWER COMPANY
TO ESTABLISH SCHEDULE

1. On February 23, 1979, this Atomic Safety and Licensing Board ("Licensing Board") issued a Special Prehearing Conference Order in the above-captioned proceeding which, among other things, established a schedule for the conduct of the operating license proceeding for the Midland Plant based on certain assumed dates for issuance of Nuclear Regulatory Commission (the "NRC" or the "Commission") Staff documents. At that time, the scheduled issuance dates for the NRC Staff documents were as follows:

- DES - February 9, 1979
- SER - May 1, 1979
- FES - June 27, 1979
- SER Supp - August 1, 1979

The Order provided that "A determination by the Board as to whether or not environmental and health and safety matters will be heard at separate hearings will abide further progress in issuance of the Staff documents."

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2. As a result of the Three Mile Island accident, the NRC Staff has reallocated its resources so as to defer most licensing review of the Midland Plant application, which in turn will defer issuance of the foregoing documents to dates that have not yet been established. Deferral of the review process was also based on an NRC Staff estimate that construction of Unit 2 of the Midland Plant (i.e., the first unit to come on line) would not be completed until November, 1981. The NRC Staff advised the Licensing Board of this estimate by letter dated May 21, 1979. That estimate was made without consultation with Consumers Power Company ("Consumers Power" or "Applicant") and was not based on any new information or data supplied by Applicant. Applicant does not agree with the NRC Staff estimate. However, as Consumers Power is advising the Licensing Board and the parties by letter of today's date, Applicant has revised its project schedule so as to delay its Unit 2 target fuel load date from November 1980, to June 1981. The Unit 1 target fuel load date remains November, 1981.

3. The NRC Staff has advised Consumers Power that, notwithstanding the announced licensing review deferral of the Midland Plant, the DES is expected to be issued in September or October, 1979. Also, NRC Staff work on the diesel generator building settlement issue is proceeding and the NRC Staff should be able to make a safety analysis of

that issue in the same approximate time frame now contemplated for issuance of the DES.

4. Accordingly, Applicant believes that separate hearings should be held on environmental and radiological health and safety matters, a possibility which the Licensing Board recognized in its Order. A proposed schedule for environmental issues and the diesel generator building settlement issue is attached. The schedule also proposes that a prehearing conference be held on October 23, 1979, to establish a schedule for the remaining issues to be tried.

5. It is clearly within a Licensing Board's power to regulate the course of a hearing and to consider a particular issue or issues separately from, and prior to, other issues. Atomac Electric Power Company (Douglas Point Nuclear Generating Station, Units 1 and 2), ALAB-277, 1 NRC 539 (1975); 10 C.F.R. §2.718(e); 10 C.F.R. Part 2, Appendix A, par. I(c). As the Atomic Safety and Licensing Appeal Board stated in Douglas Point, the principal factors to be considered by the Licensing Board in deciding whether hearings on specific issues are appropriate are: (1) the degree of likelihood that any early findings on the issue(s) would retain their validity; (2) the advantage, if any, to the public interest and to the litigants in having an early, if not necessarily conclusive, resolution of the issue(s); and (3) the extent to which the hearing of the issue(s) at an

early stage would, particularly if the issue(s) were later reopened because of supervening developments, occasion prejudice to one or more of the litigants. 1 NRC at 547.

6. Early resolution of environmental issues and the diesel generator building settlement issue would enhance the possibility that licensing review and hearings will be completed by the time Unit 2 is ready for fuel loading. If those portions of the licensing process are not completed and fuel loading is delayed, a significant increase in interest charges and other costs to Consumers Power and its ratepayers would result. In addition, the delay would adversely affect The Dow Chemical Company which has an urgent need for the process steam to be supplied from the Midland Plant cogeneration facility. Finally, resolution of these issues at an early stage would better enable Applicant to make any modifications to the nuclear plant required as a result of the Licensing Board's findings.

7. For the reasons set forth above, Applicant requests that the Licensing Board adopt the attached schedule for further proceedings in this matter, and modify the February 23, 1979 Special Prehearing Conference Order accordingly.

Respectfully submitted,

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June 20, 1979

APPLICANT'S PROPOSED SCHEDULE

2/23/79	Special Prehearing Conference Order. Discovery begins.
9/03/79	Issuance of partial SER on diesel generator building settlement.
9/03/79	Issuance of DES.
10/23/79	Prehearing conference.
12/03/79	Discovery related to Environmental and diesel generator building settlement issues ends.
12/14/79	Restatement of contentions due.
12/24/79	Responses to restatement of contentions, if necessary, due.
2/01/80	Issuance of FES.
2/18/80	Supplemental environmental discovery request due.
3/07/80	Supplemental environmental discovery, if requested, ends.
3/17/80	Restatement of contentions due.
3/27/80	Responses to restatement of contentions, if necessary, due.
4/07/80	Deadline for filing motions for summary disposition.
5/02/80	Answers to motions for summary disposition due.
5/09/80	Prehearing conference.
5/30/80	Deadline for filing written testimony.
6/17/80	Hearings begin.

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CERTIFICATE OF SERVICE

I hereby certify that copies of the attached
"MOTION OF CONSUMERS POWER COMPANY TO ESTABLISH SCHEDULE"
in the above-captioned proceeding have been served upon the
following parties by United States Mail, first-class postage
prepaid, this 20th day of June, 1979:

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June 20, 1979