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September 13, 1982

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

Charles Bechhoefer, Esq.  
Administrative Judge  
Atomic Safety and Licensing Board  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Dear Chief Judge Bechhoefer:

Enclosed for your information is a copy of an order issued by the United States Court of Appeals for the District of Columbia Circuit on September 1, 1982 which stays the mandate in NRDC v. NRC (Vermont Yankee III) for a period of 30 days. We expect that petitions for certiorari will be filed in the Supreme Court during that period, which will result in a further stay of the mandate until the Supreme Court's disposition of the case.

Also enclosed are Memorandum Orders issued by the D.C. Circuit on August 16, 1982 in the Aeschliman docket. We will not comment on this Memorandum Order except to state that it requires no change to this Licensing Board's treatment of Intervenor Sinclair's contention 1 in the Prehearing Conference Order (Ruling Upon New Contentions and Memorializing Other Determinations Reached at Prehearing Conference), LBP-82-63, August 14, 1982, at pp. 11-12.

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We have not yet received petitioners' response to the Memorandum Order in Aeschliman.

Respectfully submitted,

*Philip P. Steptoe*

Philip P. Steptoe *PS*

PPS/kb  
Encs.

CC: Service List

# United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 74-1586

September Term, 19 81

Natural Resources Defense Council, Inc.  
and Consolidated National Intervenors,

Petitioners

v.

United States Nuclear Regulatory Commission  
and United States of America,

Respondents

Baltimore Gas and Electric Co., et al.,

Intervenors

AND CONSOLIDATED CASES

BEFORE: Bazelon, Senior Circuit Judge; George C. Edwards, Jr.\*, Chief Judge,  
United States Court of Appeals for the Sixth Circuit; and Wilkey, Cir-  
cuit Judge

## ORDER

Upon consideration of intervenors' (Baltimore Gas and Electric Company, et al.  
and Commonwealth Edison Company, et al.) and respondents' (NRC and USA) motions  
for stay of mandate, of petitioner's (NRDC) response in opposition thereto, and of  
respondents' and intervenors' replies to the foregoing, it is

ORDERED, by the Court, that the aforesaid motions for stay of mandate are  
granted and the Clerk is directed not to issue the mandate herein for a period of  
thirty (30) days from the date of this order.

Per Curiam

FOR THE COURT:

*George A. Fisher*

GEORGE A. FISHER  
Clerk

\*Sitting by designation pursuant to Title 28 U.S.C. § 291(a).

United States Court of Appeals  
for the District of Columbia Circuit

FILED SEP 1 1982

GEORGE A. FISHER  
CLERK

# United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 73-1776

September Term, 19 81

Nelson Aeschliman, et al.,  
Petitioners

v.

United States of America Nuclear Regulatory  
Commission, and United States of America,  
Respondents

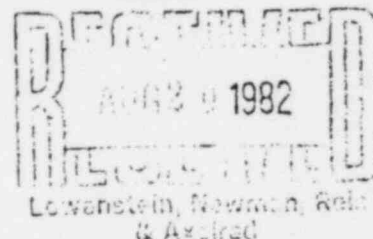
Consumers Power Co. a Michigan Corp.  
Intervenor

AND CONSOLIDATED CASE NO. 73-1867

United States Court of Appeals  
for the District of Columbia Circuit

FILED AUG 16 1982

GEORGE A. FISHER  
CLERK



BEFORE: Wilkey, Wald\*, and Ginsburg, Circuit Judges

## MEMORANDUM ORDER

In NRDC v. NRC, \_\_\_ F.2d \_\_\_ (D.C. Cir. 27 Apr. 1982), this court held that the figures in the Nuclear Regulatory Commission's original, interim, and final Table S-3 rule were the result of inadequate consideration of the potential environmental impacts of nuclear waste disposal and reprocessing, and could not be relied upon to provide the necessary environmental input into operating license proceedings for nuclear facilities. The Supreme Court anticipated the possibility of such a result when it remanded the matter to this court in Vermont Yankee Nuclear Power Corp. v. NRDC, 435 U.S. 519 (1978). In a footnote to the Court's opinion it suggested that

Should [the court on remand] hold the rule invalid, it appears in all probability that the Commission will proceed to promulgate a rule resulting from rulemaking proceedings currently in progress. . . . In all likelihood the Commission would then be required, under compulsion of the court's order, to examine [the licenses in issue] under that new rule.

435 U.S. at 535-36 n.10.

Although the "new rule" to which the Court referred was the final S-3 rule, which was vacated in NRDC v. NRC, *supra*, we note that the NRC is currently conducting a generic proceeding to reassess the "uncertainties" in the availability of safe nuclear waste disposal methods, with which this court was most concerned in NRDC v. NRC. The Commission has been urged by this court to arrive at its "waste confidence" determination by 30 June 1983. Potomac Alliance v. NRC, No. 80-1862 (D.C. Cir. 20 July 1982). The results of this proceeding will, in all probability, be utilized by the Commission to adjust its S-3 rule to conform to the requirements announced in NRDC v. NRC.

continued

# United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 73-1776 & 73-1867

September Term, 19<sup>81</sup>

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By our understanding, construction of the facility in issue in this cause is substantially completed. Because the alleged inadequacies in the environmental considerations made in connection with the Commission's grant of the construction permit in this case may be cured in the operating license proceedings now in progress, little would be gained by requiring the NRC to reevaluate its grant of the construction license. It is therefore

ORDERED that on or before September 8, 1982 petitioners hereto shall file a statement to show cause why this court should not issue an order dismissing the petition for review of the NRC order granting the construction permit in issue and permitting the Commission to comply with the mandate of NRDC v. NRC as part of the operating license proceeding now in progress for the subject facility.

Per Curiam

\*Circuit Judge Wald did not participate in this order.