

DOCKETED  
USNRC

\*82 SEP 15 A10:47

Docket Nos 50-330 OFFICE OF SECRETARY  
50-330 DEBATING & SERVICE  
BRANCH

### Operating License

### Operating License

September 9, 1982

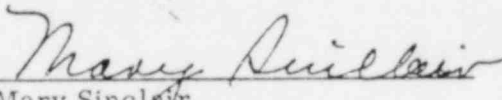
The Court further stated in its Memorandum Order that these inadequacies in environmental considerations "may be cured" in the operating license of this case.

1. The environmental documents submitted by Consumers Power Co. and staff have failed to analyze the absolute and incremental effects on the environment (including the cost-benefit and risk-benefit considerations) of the entire fuel cycle, as well as the serious problem of the storage of nuclear wastes on site. In NRDS vs. NRC, Docket Nos. 74-1586, et al., (April 27, 1982),

DSO3

the U.S. Court of Appeals in Washington, D.C. struck down the S.3 Table which had been relied on for this purpose. Because of this Court decision and the Memorandum Order of the Court on August 16, 1982, the NRC cannot comply with requirements of the National Environmental Policy Act on the basis of their existing Draft and Final Environmental Impact Statements.

Respectfully submitted,

  
Mary Sinclair

cc: Charles Bechhoefer, Esq.  
Mr. Ralph S. Decker  
Dr. Frederick P. Cowan  
Jerry Harbour, Esq.  
Secretary, U.S. Nuclear Regulatory Commission  
Michael I. Miller, Esq.  
William Paton, Esq.  
Mr. Wendell Marshall  
Ms. Barbara Stamiris  
James E. Brunner  
Lee Bishop

United States Court of Appeals  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

DOCKETED  
USNRC

82 SEP 15 A10:48

No. 73-1776

September Term, 1982  
OFFICE OF SECRETARY  
DOCKETING & SERVICE  
BRANCH

Nelson Aeschliman, et al.,  
Petitioners

v.

United States Court of Appeals  
for the District of Columbia Circuit

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

FILED AUG 16 1982

Consumers Power Co. a Michigan Corp.  
Intervenor

GEORGE A. FISHER  
CLERK

AND CONSOLIDATED CASE NO. 73-1867

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>

Page 2

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.