

May 4, 1984

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

84 MAY -9 A10:23

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

OFFICE OF SECRETARY

APPLICANT'S RESPONSE TO MS. SINCLAIR'S
MOTION TO REQUEST THE CASELOAD
FORECAST PANEL TO EVALUATE THE
NEW CONSTRUCTION COMPLETION
SCHEDULE

By Motion dated April 19, 1984, Ms. Sinclair seeks an order from this Licensing Board requiring the NRC Case-load Forecast Panel to meet for the purpose of evaluating Consumers Power Company's recent estimated construction completion date and possibly requiring the panel to announce its own estimate of the completion date. Applicant opposes this Motion for the reason that this Licensing Board does not have jurisdiction to order the relief sought by Ms. Sinclair and for the further reason that the issues raised by Ms. Sinclair do not support the action requested. ^{*/}

Atomic Safety and Licensing Boards have only those

^{*/} Applicant makes no response to the specific factual issues raised in Ms. Sinclair's motion. By not addressing these issues, Applicant does not purport to accept Ms. Sinclair's characterizations of those facts.

8405090160 840504
PDR ADOCK 05000329
PDR

DS03

powers which the Nuclear Regulatory Commission has conferred upon them. New England Power Co. (NEP, Units 1 and 2), LBP-78-9, 7 NRC 271 (1978); 42 U.S.C.A. §2241 (1973). Sections 2.718 and 2.757 of Title 10 of the Code of Federal Regulations enumerate the powers and duties which have been delegated to Licensing Boards. These regulations do not authorize Licensing Boards to direct the NRC Staff in the performance of their duties. Hence, this Licensing Board is without jurisdiction to grant Ms. Sinclair the relief requested.

In Carolina Power & Light Co. (Shearon Harris Nuclear Power Plant, Units 1, 2, 3, and 4), CLI-80-12, 11 NRC 514 (1980), the Commission found that the Appeal Board had exceeded its authority when it directed the Staff to conduct a preliminary assessment of management qualifications. By directing the Staff "in performance of their administrative functions," the Appeal Board acted beyond the authority delegated to the Boards by the Commission. Id. at 516-17.

A Licensing Board employed similar reasoning in reaching a decision on an intervenor's motion requesting the Board to direct the Staff to suspend its review of the utility's application, as well as the preparation of a draft environmental impact statement and other studies. New England Power Co. (NEP, Units 1 and 2), LBP-78-9, 7 NRC 271

(1978). The Licensing Board's response to this request was as follows:

Since this request involves jurisdictional questions, it will be dealt with first as a threshold issue. We hold that the Board does not have the power to direct the Staff in the performance of its independent responsibilities, nor would it be appropriate to exercise such supervisory functions if we had the power to do so.

Id. at 279. See also, Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 1), LBP-82-56, 16 NRC 281, 353 (1982) (Licensing Board lacked authority to direct the Staff to investigate allegations of a material false statement.)

The Caseload Forecast Panel is not the subject of statutory or specific regulatory requirements. The panel exists for the purpose of fulfilling a Staff administrative function, that is, primarily to assist in the planning of Staff activities and the allocation of Staff resources. The Licensing Board does not have the authority to direct such Staff activities and, therefore, has no jurisdiction to afford Ms. Sinclair the relief requested.

Even if this Licensing Board had the authority to direct the Caseload Forecast Panel to meet and to make public their estimate, such an action would not be warranted in the situation presented here. First of all, the reasons set forth in Ms. Sinclair's motion do not support the actions requested of this Board. Indeed, many of the specific issues raised are not relevant to any perceived need for a

Staff completion date estimate.

Secondly, this Board has already considered the question of the relevance to the Board's inquiry of estimates made by Caseload Forecast Panel members and has determined that it would not force Staff members to make premature completion date estimates public.^{**/} Tr. 16734-16738. Moreover, Mr. Paton, counsel for the NRC Staff, has committed to the Board that the Staff will provide the Caseload Forecast Panel report whenever it is completed. Tr. 16763-16764.

Finally, it does not appear to be necessary for the Board to order the relief requested in order for Ms. Sinclair's concerns about the most recent completion date estimate to be considered by the Staff. We understand that a public meeting between representatives of Consumers Power Company and the NRC Staff is scheduled for May 4, 1984 for the purpose of discussing the estimated completion date announced by the Applicant.

^{**/} Applicant acknowledges that past estimates of the Midland Caseload Forecast Panel may be relevant to one of the proposed Dow issues presently under consideration by the Board.

Accordingly, the Applicant urges the Board to deny the request for relief contained in Ms. Sinclair's motion.

Respectfully submitted,

Rebecca J. Lawer

One of the Attorneys For
CONSUMERS POWER COMPANY

ISHAM, LINCOLN & BEALE
Three First National Plaza
Suite 5200
Chicago, Illinois 60602
(312) 558-7500

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

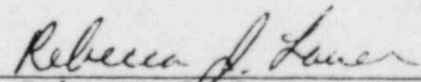
BEFORE THE ATOMIC SAFETY AND LICENSING BOARD MAY -9 A10:23

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

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

CERTIFICATE OF SERVICE

I, Rebecca J. Lauer, one of the attorneys for Consumers Power Company, hereby certify that copies of Applicant's Response To Ms. Sinclair's Motion To Request The Caseload Forecast Panel To Evaluate The New Construction Completion Schedule were served upon all persons shown on the attached service list by deposit in the United States mail, first-class, postage prepaid, this 4th day of May, 1984.


Rebecca J. Lauer

ISHAM, LINCOLN & BEALE
Three First National Plaza
Suite 5200
Chicago, Illinois 60602
(312) 558-7500

DATED: May 4, 1984

SERVICE LIST

Frank J. Kelley, Esq.
Attorney General of the
State of Michigan
Carole Steinberg, Esq.
Assistant Attorney General
Environmental Protection
Division
720 Law Building
Lansing, Michigan 48913

Cherry & Flynn
Three First National Plaza
Suite 3700
Chicago, Illinois 60602

Mr. Wendell H. Marshall
4625 South Saginaw Road
Midland, Michigan 48640

Mr. Steve Gadler
2120 Carter Avenue
St. Paul, Minnesota 55108

Ms. Mary Sinclair
5711 Somerset Street
Midland, Michigan 48640

James E. Brunner, Esq.
Consumers Power Company
212 West Michigan Avenue
Jackson, Michigan 49201

Mr. D. F. Judd
Babcock & Wilcox
P.O. Box 1260
Lynchburg, Virginia 24505

Ms. Barbara Stamiris
5795 North River Road
Route #3
Freeland, Michigan 48623

Samuel A. Haubold, Esq.
Kirkland & Ellis
200 East Randolph Drive
Suite 6000
Chicago, Illinois 60601

P. Robert Brown, Jr., Esq.
Clark, Klein & Beaumont
1600 First Federal Bldg.
1001 Woodward Avenue
Detroit, Michigan 48226

John DeMeester, Esq.
Dow Chemical Building
Michigan Division
Midland, Michigan 48640

Charles Bechhoefer, Esq.
Atomic Safety & Licensing
Board Panel
U.S. Nuclear Regulatory Comm.
Washington, DC 20555

Dr. Frederick P. Cowan
6152 North Verde Trail
Apt. #B-125
Boca Raton, Florida 33433

Atomic Safety & Licensing
Appeal Board
U.S. Nuclear Regulatory Comm.
Washington, DC 20555

Mr. Scott W. Stucky
Chief, Docketing & Services
U.S. Nuclear Regulatory Comm.
Office of the Secretary
Washington, DC 20555

William D. Paton, Esq.
Counsel for the NRC Staff
U.S. Nuclear Regulatory Comm.
Washington, DC 20555

Atomic Safety & Licensing
Board Panel
U.S. Nuclear Regulatory Comm.
Washington, DC 20555

Mr. Jerry Harbour
Atomic Safety & Licensing
Board Panel
U.S. Nuclear Regulatory Comm.
Washington, DC 20555

Ms. Lynne Bernabei
Mr. Thomas Devine
Mr. Louis Clark
Government Accountability
Project of the Institute
for Policy Studies
1901 "Q" Street, N.W.
Washington, DC 20009

Frederick C. Williams, Esq.
Isham, Lincoln & Beale
1120 Connecticut Ave., N.W.
Suite 840
Washington, DC 20036