

2/28/77

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of  
CONSUMERS POWER COMPANY  
(Midland Plant, Units 1 and 2)

Docket Nos. 50-329  
50-330



MOTION IN SUPPORT OF ADDITIONAL NRC  
STAFF TESTIMONY

Introduction

By Order of the Atomic Safety and Licensing Board (Board) dated October 21, 1976, the parties were to prefile direct testimony in this proceeding by November 5, 1976. All Staff testimony presented to date in the proceeding was filed on November 5, 1976 except "NRC Staff Testimony of Sidney E. Feld on Cost of Nuclear v. Coal Alternatives" which was filed on November 16, 1976. Hearings began in this proceeding in Midland, Michigan, on November 30, 1976 and ran for a week. Additional hearings were held the weeks of January 18, 1977, January 31, 1977, February 7, 1977 and February 14, 1977. The hearings recessed on February 16, 1977 at which time all of the Licensee's and NRC Staff's prefiled direct testimony had been admitted into evidence. Hearings are to resume the week of March 7, 1977 and the Board has ordered (Tr. 3857) on the record of the February 10, 1977 hearing session that additional testimony must be filed by February 28, 1977 and that a showing of good cause must be made for any testimony other than rebuttal testimony. The Staff is today filing supplemental testimony.

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in addition to its rebuttal testimony, and files this Motion to respond to the Board's February 10 Order.

Discussion

The Board's Order of February 10, 1977, required rebuttal testimony to be filed by February 28, 1977. That testimony would serve the purpose of rebutting the testimony of Dr. Richard Timm which is being sponsored by Intervenor's but would pre-date Dr. Timm's scheduled appearance as a witness.<sup>1/</sup>

Although the Board's Order does not require a showing of good cause as to rebuttal testimony to be filed by February 28, the Board has indicated that rebuttal testimony offered after Dr. Timm's appearance would require a showing of good cause. (Tr. 3961). The Staff objected (Tr. 3960-61) and again objects to any such limitations on rebuttal testimony. Rebuttal testimony serves to rebut the direct testimony of the other parties, and a fully reasoned judgment as to the need for such rebuttal cannot be made prior to cross-examination of the witnesses sponsoring the direct testimony. For any one of a number of reasons such as the evasiveness of the witness or a lack of knowledge on the part of the witness, cross-examination may be inadequate to provide a sound record. A party as a matter of right is permitted to file rebuttal testimony subject only to the Board's discretion to exclude such testimony as not relevant, material, or reliable, or as unduly repetitious. See 10 C.F.R. §2.743(c). Indeed 10 C.F.R. §2.743(a)

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<sup>1/</sup> Dr. Timm is not scheduled to testify in this proceeding before March 9, 1977.

expressly provides that

"General. Every party to a proceeding shall have the right to present such oral or documentary evidence and rebuttal evidence and conduct such cross-examination as may be required for full and true disclosure of the facts."

Due to the Board's time limitation on the filing of rebuttal testimony, the Staff hereby submits the following rebuttal testimony prior to the cross-examination of Dr. Timm:

1. NRC Staff Rebuttal Testimony of Walter J. Gundersen on the Subject of Loss of Load Probability and Reserve Margins.
2. NRC Staff Rebuttal Testimony of Sidney E. Feld on Forecast Methodology and Alternative Rate Designs.
3. NRC Staff Rebuttal Testimony of Arnold H. Meltz on the Financial Costs of Delay (Excluding Replacement Power).

However, the Staff objects to the limitations imposed by the Board upon the Staff's right to file further rebuttal testimony at the conclusion of the cross-examination of Dr. Timm.

Finally, the Staff notes that pursuant to the Board's Order of February 25, 1977, the contents of the prefiled rebuttal testimony may not be disclosed to Dr. Timm prior to the completion of his cross-examination unless and until the Board expressly permits such disclosures.<sup>2/</sup> The Staff urges the Board to continue this protective order for the reasons set forth by the Staff in the record of the February 16, 1977 hearing session (Tr. 4581-82).

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<sup>2/</sup> The Staff's rebuttal testimony is only being enclosed with the copies of this motion being sent to the individual Licensing Board members, and to the attorneys for the other parties (Messrs. Rosso and Renfrow, Cherry, and Hute).

If the Board removes its protective order, the Staff will be highly prejudiced because substantial parts of our line of cross-examination of Dr. Timm will be disclosed to him in advance by the contents of the rebuttal testimony.

Turning to the question of supplemental direct testimony, the Staff hereby submits the following:

1. NRC Staff Supplemental Testimony of Arnold H. Meltz on Applicant's Ability to Finance Construction of the Midland Plant.
2. NRC Staff's Supplemental Direct Testimony of Sidney Feld Updating Coal Cost Estimates.
3. NRC Staff's Supplemental Direct Testimony of Sidney Feld on the Alternative of Dow Generating its Own Steam and Electric Power
4. NRC Supplemental Direct Testimony of Jack Roberts - Nuclear Fuel Cost Analysis.<sup>3/</sup>
5. Testimony of Wlaler J. Gundersen.<sup>4/</sup>

The Board's Order conditioned acceptance of this testimony on a showing of good cause. The Staff has objected to this requirement. The Staff

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<sup>3/</sup> Mr. Robert's Professional Qualifications are enclosed.

<sup>4/</sup> Mr. Gunderson's Professional Qualifications are attached to his testimony.

argued (Tr. 4126) that this case has taken on the nature of a full evidentiary proceeding with unlimited discovery and unlimited cross-examination and in this context both the Licensee and the Staff should be permitted to file supplemental direct testimony. The Staff feels it is entitled to file such supplemental direct testimony under 10 C.F.R. §2.743(a) and that the only limitation on the Board's receipt of such supplemental direct testimony is that contained in 10 C.F.R. §2.743(c), which indicates that evidence must be relevant, material, reliable, and not unduly repetitious.

While the Staff objects to the Board's requirement that good cause be shown, the Staff feels that with regard to each piece of supplemental direct testimony there is good cause for its present filing.

With regard to "NRC Staff's Supplement Testimony of Arnold H. Meltz on Applicant's Ability to Finance Construction of the Midland Plant, the ability of the Licensee to finance construction was determined by this Board to be a relevant issue in this proceeding when it ruled upon Licensee's objections to interrogatories following Tr. 2240. There the Board ruled that the Licensee must respond to an interrogatory seeking information relating to Licensee's ability to finance construction at Midland. Furthermore, in cross-examination, Dr. F. S. Echols of the NRC Staff indicated that a financial assessment of the ability to construct the Midland facility had been made by the Staff (Tr. 3095) and that a Staff witness would be available to testify in this area (Tr. 3097). Based on this representation,

objections to further cross-examination of Dr. Echols in the area of financial ability were sustained (Tr. 3098). Finally, Mr. Meltz's testimony was not filed on November 5, 1976 as the relevance of the issue was not at that time judged by the Staff to warrant testimony. At that time the proceeding was viewed as limited to the factors which had been established by the Commission as relevant for a suspension proceeding. Since that time, the proceeding has taken on the character of a full evidentiary proceeding.

With regard to "NRC Staff's Supplemental Direct Testimony of Sidney Feld on Updating Coal Cost Estimates" and "NRC Supplemental Direct Testimony of Jack Roberts - Nuclear Fuel Cost Analysis", both pieces of testimony are prompted by new and recent developments. With regard to Dr. Feld's updating of coal costs, as his testimony indicates, there is information which indicates that the base price of coal which Dr. Feld used in his analysis of Midland versus a coal alternative and also in his analysis of the cost of replacement power has changed. These coal cost changes affect the substance of Dr. Feld's analysis and his testimony presents updated coal costs and explains the impact of such updated coal costs on his prior testimony. In addition, new nuclear fuel cycle cost data has been provided by the Licensee at the hearing. The original testimony of G. S. Keeley presented information relating to the Licensee's nuclear fuel costs for the Midland facility. At the hearing sessions conducted during the week of February 7, 1977, Mr. Keeley's testimony in the area of nuclear fuel

costs was revised. (Tr. 3340-3344). The original and revised testimony follows Tr. 3638. As is indicated in the testimony of Mr. Roberts, the fuel cost changes were substantial and the Staff felt compelled to review these fuel cost changes and its own nuclear fuel cost estimates to confirm the Staff's original analysis.

With regard to the "NRC Staff's Supplemental Direct Testimony of Sidney E. Feld on the Alternative of Dow Generating its Own Steam and Electric Power," this specific alternative has not been previously analyzed by the Staff. The Applicant has examined this alternative and found it to be less cost effective than a 1600 megawatt coal plant. (Tr. 3686-3689). In addition, the Board, specifically Dr. Leeds, expressed an interest in this alternative and questioned Dr. Feld about it during his testimony on February 16, 1977. (Tr. 4548-4550). In his testimony, Dr. Feld indicated that the Staff had examined this particular alternative in a preliminary fashion. The substance of Dr. Feld's supplemental testimony is to present in more definitive and final fashion, the results of his analysis. This particular piece of testimony could not have been filed on November 5, 1976, as at that time there was no indication to the Staff that indeed the Dow alternative might be economically attractive. The extensive discovery testimony and cross-examination that has developed since that time

indicates that the Dow alternative should be examined. At that point the Staff determined to pursue the issue and the results are Dr. Feld's supplemental testimony. With regard to the testimony of Mr. Walter J. Gundersen, the Staff notes that this testimony has been previously discussed on the record and distributed to the Board and the parties. (Tr. 4425-6; Tr. 4452-7).

Mr. Gundersen is a Federal Power Commission expert on Loss of Load Probability (LOLP) analyses and system interconnections within ECAR and elsewhere.

The Staff believes that this portion of Mr. Gundersen's testimony (described at Tr. 4456) can be considered as a necessary foundational component of Mr. Gundersen's rebuttal testimony (where it is extensively relied on), and therefore part of the rebuttal testimony itself. One reason why the Staff has decided to leave Mr. Gundersen's rebuttal testimony in two parts is to avoid confusion since the first part had already been disclosed without limitation prior to the imposition of the Board's protective order covering rebuttal testimony.

In addition, the Staff urges that at least the first portion of Mr. Gundersen's testimony be admitted even if Dr. Timm declines to testify. Mr. Gundersen's expertise, and through him the expertise of the FPC, is very important in providing a full record in the area of LOLP analyses of required reserve margins and interconnected power availability. These areas have been raised both directly and implicitly in the record of this proceeding to date. (See for example, Tr. 4405-4411; 4425-6; 4441-4452). Mr. Gundersen's independent analyses of these areas is clearly material and deserving

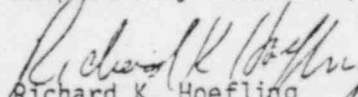


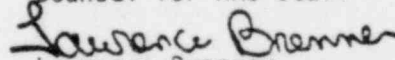
of great weight in light of his expertise. The Staff, as testified to by Dr. Feld (Tr. 4425; 4452), has been utilizing Mr. Gundersen's analyses. However, Mr. Gundersen was not identified as an expert available to the Staff until after the November 5, 1976 filing date for direct testimony, and therefore his analyses could not be included in our originally filed direct testimony. It is particularly significant that in some places, Mr. Gundersen disagrees with both portions of the Licensee's testimony and the theories and arguments advanced by the Intervenor. Mr. Gundersen's independent analyses will be a valuable addition to the record in the areas of his expertise.

Conclusion

The Staff submits that it has shown good cause for filing its supplemental direct testimony and urges the Board to allow all Staff testimony to be presented. The Staff reaffirms that in its view under the terms of 10 C.F.R. §2.743(a) it is entitled to present supplemental direct testimony as a matter of right. The Staff further reserves the right to file such rebuttal testimony upon conclusion of the cross-examination of Dr. Timm that under the terms of 10 C.F.R. §2.743(a) and normal trial practice, it is entitled to file.

Respectfully submitted,

  
Richard K. Hoefling  
Counsel for NRC Staff

  
Lawrence Brenner  
Counsel for NRC Staff

Dated at Bethesda, Maryland  
this 28th day of February, 1977

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CONSUMERS POWER COMPANY ) Docket Nos. 50-329  
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CERTIFICATE OF SERVICE

I hereby certify that copies of "MOTION IN SUPPORT OF ADDITIONAL NRC STAFF TESTIMONY," dated February 28, 1977, in the above captioned proceeding have been served on the following by deposit in the United States mail, first class or air mail, this 28th day of February, 1977:

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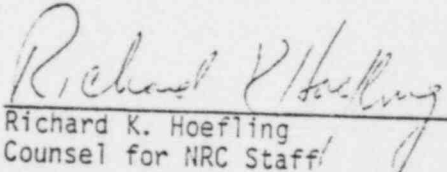
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