



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D. C. 20555

March 16, 1977



Honorable Marcus A. Rowden  
Chairman  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555

Subject: ADDITIONAL REQUEST FOR INFORMATION FROM THE MIDLAND AS&LB

Dear Mr. Rowden:

The Committee has received an additional request from the Atomic Safety and Licensing Board in the Midland case for further elaboration and "treatment" of matters mentioned in the Committee's Supplemental Report to you of November 18, 1976 and attachments thereto. That report, you may recall, was written in response to a previous request which followed directly from the decision in Aeschliman vs. NRC. A copy of the most recent AS&LB request, dated January 28, 1977, is attached.

Although the Committee is willing to provide reasonable and necessary clarification of its recommendations and opinions, we believe that the Board in this case has misinterpreted the Aeschliman decision and has embarked on a course which, if pursued, could involve the Committee in an unnecessary and potentially unending series of requests for clarification and elaboration of its reports, in connection with not only the Midland proceeding, but other proceedings as well. The Board's "three areas of comment" are addressed below:

I.

The Board notes two specific paragraphs of interest to the Midland proceeding in a set of ACRS meeting minutes (106th ACRS meeting held February 6-8, 1969) during which the Midland project was discussed, and the Board requests "further comment under the rules set forth in the Aeschliman case" regarding these two paragraphs "as well as any other 'matters of concern' (including any matters mentioned in furnished or unfurnished minutes)" and requests that these matters be treated fully by the Committee in accordance with the following excerpt from Aeschliman vs. NRC:

"At a minimum, the ACRS report should have provided a short explanation, understandable to a layman, of the additional matters of concern to the Committee, and a cross-reference to the previous reports in which those problems, and the measures proposed to solve them, were developed in more detail."

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In the opinion of the Committee, the Board has incorrectly concluded that all topics discussed during an ACRS review, and recorded in the meeting minutes, are "matters of concern" to the Committee in the context of the Aeschliman decision. "Items of concern" to the ACRS at the completion of its review are identified in the Committee's report and have been explained in the Committee's Supplemental Report of November 18, 1976, in language "understandable to the layman" as required by the Aeschliman decision. Many other items of interest are documented and discussed during the course of an ACRS review and are not identified as matters of concern in the ACRS report. Some of these items are considered satisfactory or are adequately resolved by amendment of the application or other means during the review process. Some represent points of general information, some represent matters that the Committee explores on a generic basis.

It should be noted that the Aeschliman decision did not address the content of ACRS meeting minutes or other information available to or considered by the Committee but was limited (see Attachment 2) to those matters identified in ACRS reports as items of concern. To require that the ACRS address in its report every item discussed or considered during the course of a review is impractical and unnecessary.

For example, the suitability of the Midland Plant for the proposed Midland site was discussed at length during six Subcommittee meetings held on January 22 and February 4, 1969, and March 24, April 24, June 10, and September 14, 1970, and at five full Committee meetings held on February 6, 1969, and April 9, May 8, June 11-13, and September 17-19, 1970; appropriate safety features were included in the design for this reactor at this site. The minutes of these meetings have been in the public domain since 1974.

## II.

This section of the Board's request deals with the substance of the Committee's Supplemental Report of November 18, 1976 and requests that the Committee further clarify one of its recommendations, specifically, that the Committee specify the "danger" that is of concern if instrumentation and control are not separated; further describe the type of separation required (e.g., physical or other); and specify a standard for conformance.

The Board further notes that this illustration is only an example of an area where a problem may exist and further elaboration of other matters may also be required.

The Committee appreciates the Board's desire and interest in understanding the issues identified by the Committee but does not agree with the method being used to develop this understanding. The Committee's Supplemental Report dated November 18, 1976 did provide a brief description of the items considered to have been problems by the Committee and specific cross references to other applicable cases, as required by the Court in *Aeschliman vs. NRC*.

The desire for additional clarification by the Board with respect to specific questions of this nature is best served by:

- \* Examination of the record related to the Midland review and the review of other cases specifically cross-referenced by the Committee.
- \* Discussion with the NRC Staff who participate in the Committee's review process, are thoroughly familiar with the problems and issues involved, and are participants in the hearings.

The example chosen by the Board is itself a case in point. The matter of separation of control and protection instrumentation relates to reducing the probability of failure due to a common cause and is dealt with generically by Section 7.3 of the NRC's Standard Review Plan, which provides guidance to Staff reviewers; the Committee provided a specific reference, in its November 18, 1976 Supplemental Report, to the Three Mile Island Nuclear Station, Unit 1, in response to the Court's order to provide a "cross-reference to the previous reports in which those problems and the measures proposed to solve them were developed in more detail." The July 11, 1973 Safety Evaluation of the then Directorate of Licensing in the matter of Three Mile Island, Unit 1, deals directly with this ACRS concern in Section 7.5, "Separation of Control and Protection Systems" and the Committee's August 14, 1973 report on operation of Three Mile Island, Unit 1, indicates that this matter was no longer of concern for the Three Mile Island case. In the Midland case, the Committee will review the adequacy of the final design as it exists at the time it reviews the Midland Plant for an operating license.

In general, we believe that examination of the implementation of the Committee's advice and of any resulting changes in the application are best left to the NRC Staff which plays a direct role in the hearing, and that any evidence relating to such matters should be sought from them. Indeed, the Court in *Aeschliman* itself notes, "This is not to say that an ACRS report must contain detailed factual findings of the kind necessary to aid judicial review. Under Commission rules, when ACRS conclusions are controverted, a factual record is compiled anew before the Licensing Board."

The NRC Staff (previously, the AEC Regulatory Staff) has routinely addressed itself to the comments and recommendations in ACRS reports for many years as part of the NRC hearing process. A typical example is to be found in Supplement No. 1 to the Directorate of Licensing's Safety Evaluation for Three Mile Island, Unit 1, dated October 15, 1973. Chapter 4 of that document is addressed entirely to the issues raised in the ACRS report of August 14, 1973.

### III.

This section of the Midland Board's most recent request points to perceived "ambiguities" resulting from an examination of several ACRS reports provided as references in the Committee's Supplemental Report of November 18, 1976. The Board notes that those references contain "ambiguities" similar to the ones cited by the Court in Aeschliman and points, by way of example, to the Committee's reference to "other problems" in its Hutchinson Island report of March 12, 1970. The Board asks that any of the "other problems" which apply to Midland be identified and described as the Court directed.

The Committee's Supplemental Report of November 18, 1976 was provided as ordered by the Court to identify those "other problems" which had been considered applicable to the Midland Plant at the time of the CP review and which were noted generically in the ACRS report of June 18, 1970. Any items not so identified in the Committee's November 18, 1976 report were not considered applicable to Midland during the CP review.

The Committee will be in a position to update this list and address the current status of specific items when it has completed its review for an Operating License for the Midland Plant. This review has not yet been scheduled.

In summary, the Committee believes that the response already provided in its Supplemental Report of November 18, 1976, fully meets the requirements of the Aeschliman Court since:

- (1) The Court requested elaboration only of those items referred to in the Committee's original report as "other problems" and no others.
- (2) The Committee's Supplemental Report of November 18, 1976, did provide a "short explanation understandable to a layman of the additional matters of concern to the Committee and a cross-reference to the previous reports in which those problems, and the measures proposed to solve them, were developed in more detail" as specifically directed by the Aeschliman decision.

Honorable Marcus A. Rowden

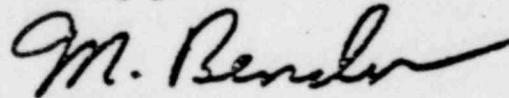
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- (3) The Committee's Supplemental Report of November 18, 1976, fully identified all additional matters of concern to the Committee during its CP review of the Midland Project.

The ACRS does not feel that any further clarification of its reports on Midland is necessary.

Sincerely yours,



M. Bender  
Chairman

Attachments:

1. F. J. Coufal, Chairman, AS&LB  
letter to M. Bender, ACRS,  
dated January 28, 1977.
2. Excerpt from the decision in  
Aeschliman vs. NRC.