

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

8/29/80

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

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

NRC STAFF RESPONSE TO AMENDED
PETITION OF BARBARA STAMIRIS

On December 6, 1979, an order was issued modifying the construction permits in this proceeding. Pursuant to that Order Consumers Power Company requested a hearing. On June 27, 1980 Barbara Stamiris filed a petition to intervene in this proceeding. On July 24, 1980 the Licensing Board in this proceeding issued a Memorandum and Order Ruling upon Standing to Intervene. Pursuant to that Order, the petitioner Barbara Stamiris filed a supplement to her petition containing certain contentions. Also pursuant to the July 24, 1980 Order, the Nuclear Regulatory Commission Staff (Staff) was granted up to and including August 29, 1980 to file its response to contentions.

INTRODUCTION

On March 20, 1980, the Commission published a Notice of Hearing, 45 Fed. Reg. 18214, on certain issues relative to an Order Modifying Construction Permits by the Acting Director of Nuclear Reactor Regulation and the Director

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of Inspection and Enforcement, dated December 6, 1979, which would prohibit Consumers Power Company from performing certain soil-related activities pending submission of an amendment to their application and issuance of amendments to the construction permits. Consumers Power Company requested a hearing on that Order.

Subsequently, on May 28, 1980, the Atomic Safety and Licensing Board, designated to preside over any hearing in the soil-related proceeding, published in the Federal Register an amended Notice of Hearing announcing that persons whose interests might be affected by the proceeding could file petitions for leave to intervene on or before June 27, 1980. 45 Fed. Reg. 35949. Barbara Stamiris who resides within 25 miles of the Midland plant, filed a petition to intervene. By Memorandum and Order dated July 24, 1980, the Board found that Petitioner Stamiris had standing to intervene and provided for the later filing of contentions within the scope of the proceeding.

Also pending before the Board is a Motion for Pretrial Consolidation, dated May 27, 1980, by Consumers Power Company which requests, among other things, that this proceeding on soil-related activities be consolidated with the Midland operating license proceeding to the extent that the operating license proceeding also includes soil-related issues. Consideration of this motion may effect the Boards rulings on contentions.

Pursuant to the July 24, 1980 Order of the Board Petitioner Stamiris filed six contentions. Contention one deals with the potential for soil subsidence at the site. Contention two sets forth several allegations in support of petitioners claim that Consumers can not be trusted to divulge and attend to safety issues. Contention three deals with the claim that Consumers places their own financial and time interests above their concern for safety issues. Contention four deals with Consumer's quality assurance program. Contention five addresses the adequacy of the proposed remedial action. Contention six concerns the need for additional information requested by the Staff to complete its safety assessment.

The Staff recommends that contention four be accepted as written. The Staff also recommends that petitioner be permitted to amend contentions one, two and three, that contentions one and six be particularized and that contention five should not be accepted unless amended.

DISCUSSION

To be admissible as a contention in a Commission Licensing proceeding, a contention must fall within the scope of issues set forth in the Federal Register Notice of Hearing (Notice of Hearing) in that proceeding and comply with the requirements of 10 C.F.R. § 2.714(b) and applicable Commission case law. See, e.g., Northern States Power Co. (Prairie Island, Units Nos. 1 and 2), ALAB-197, 6 AEC 188, 194 (1973); aff'd BPI v. Atomic Energy Commission, 502 F.2d 424, 429 (D. C. Cir. 1974); Duquesne Light Co. (Beaver Valley, Unit No. 1), ALAB-109, 6 AEC 242, 245 (1973); Philadelphia Electric Co. (Peach Bottom Atomic Power Station, Units 2 and 3), ALAB-216, 8 AEC 1230-21 (1974).

10 C.F.R. § 2.714(b) requires that contentions which intervenors seek to have litigated be filed along with the bases for these contentions set forth with reasonable specificity. A contention must be rejected where:

- (a) it constitutes an attack on applicable statutory requirements;
- (b) it challenges the basic structure of the Commission's regulatory process or is an attack on the regulations;
- (c) it is nothing more than a generalization regarding the intervenor's views of what applicable policies ought to be;
- (d) it seeks to raise an issue which is not proper for adjudication in the proceeding or does not apply to the facility in question; or
- (e) it seeks to raise an issue which is not concrete or litigable.

Philadelphia Electric Co. (Peach Bottom Atomic Power Station, Units 2 and 3), ALAB-216, 8 AEC 13, 20-21 (1974).

The purpose of the bases requirement of 10 C.F.R. § 2.714 is to assure that the contention in question does not suffer from any of the infirmities listed above, to establish sufficient foundation for the contention to warrant further inquiry of the subject matter in the proceeding, and to put the other

parties sufficiently on notice "so that they will know at least generally what they will have to defend against or oppose." Peach Bottom, supra at 20. From the standpoint of bases, it is unnecessary for the petition "to detail the evidence which will be offered in support of each contention." Mississippi Power & Light Co. (Grand Gulf Nuclear Station, Units 1 and 2), ALAB-130, 6 AEC 423, 426 (1973). Furthermore, in examining the contentions and bases therefore, a licensing board is not to reach the merits of the contentions. Duke Power Company (Amendment to Materials License SNM-1773 - Transportation of Spent Fuel from Oconee Nuclear Station for Storage at McGuire Nuclear Station), ALAB-528, 9 NRC 146, 151 (1979); Peach Bottom, supra at 20; Grand Gulf, supra at 426. Nonetheless, it is incumbent upon the intervenors to set forth contentions which are sufficiently detailed and specific to demonstrate that the issues raised are admissible and that further inquiry is warranted, and to put the other parties on notice as to what they will have to defend against or oppose.

On May 20, 1980, an amended Notice of Hearing was published in 45 Fed. Reg. 18214 which set forth what would be the scope of the hearing on the December 6, 1979 Order. It stated that the issues to be considered would be: (1) whether the facts set forth in Part II of the Order were correct; and (2) whether the Order should be sustained. Petitioner's contentions must fall within the scope of the hearing as defined in the May 20, 1980 amended Notice of Hearing.

Petitioner contends that the soil conditions at the site, their potential for subsidence identified in the 1970 SER, and their inability to support plant structures without the use of fill soils and compaction procedures represent inadequate attention to health and safety requirements (10 C.F.R. Part 100). At page 4 of the Staff's "Order Modifying Construction Permits" dated December 6, 1979, the Staff provided three bases warranting suspension of certain construction activities. Two of those bases were: (1) quality assurance deficiencies involving soil activities and (2) the unresolved safety issue concerning the adequacy of the remedial action to correct the deficiencies in soil construction. It is not clear whether petitioners first contention relates to either of these bases. The Staff believes Petitioner should be allowed to amend her contention, if she can, to relate to either of the above stated bases. If such amendment is allowed, the contention should also be particularized.

In her second contention petitioner sets forth several allegations which she alleges show that Consumers can not be trusted to divulge and attend to important safety issues. The issue of trust is not within the scope of the limited issues in this proceeding. One of the circumstances set forth by petitioner in support of her allegation that Consumers can not be trusted is that they made a false statement in the FSAR regarding fill soils under the diesel generator building, citing Table 2.5-14. It appears to the Staff that petitioner should be permitted to amend that portion of her second contention to allege that Consumers made a material false statement in the FSAR and that therefore the Order should be sustained. Assuming, as alleged by Petitioner, that Consumers has been evasive in answering questions concerning geologic classification and seismic characteristics,

Petitioner should be permitted to amend her contention to relate those circumstances to the unresolved safety issue concerning the adequacy of the remedial action to correct the deficiencies in soil construction. With respect to Petitioner's contention that there is an overall pattern of reluctance in responding to N.R.C. questions (referencing an August 4, 1980 letter) petitioner should be permitted to amend this contention by relating it to the portion of Part II of the December 6 "Order Modifying Construction Permits" which discusses Licensee's failure to provide information necessary for the Staff to evaluate the technical adequacy and proper implementation of the remedial action proposed by Licensee.

Petitioner alleges that Consumers is placing their own financial and time schedule interests above their concern for safety issues involved with the soil settlement. She sets forth four allegations to demonstrate her claim. The contention as presently written is outside the limited scope of the issues in this proceeding. Petitioner should be permitted to amend her contention to relate her allegation that Consumer's continued work on the diesel generator building while unresolved safety issues existed, to the unresolved safety issues concerning the adequacy of the remedial action to correct the deficiencies in the soil construction.

Petitioner alleges that Consumers has not implemented its quality assurance program in compliance with Commission regulations (10 C.F.R. Part 50 Appendix B) throughout the construction process as was reasonably "assured" to occur in the

conclusions of the 1973 show cause hearings on past quality assurance deficiencies. Petitioner particularizes the contention by setting forth three examples where design and construction specifications were not followed. The Staff believes this contention to be acceptable as written.

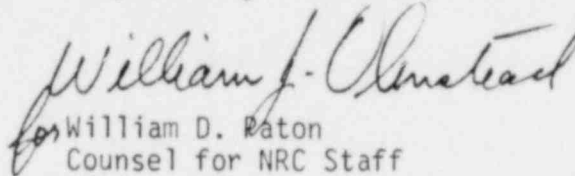
Petitioner alleges that the performed and proposed remedial action of Consumers regarding the differential soil settlement under safety related structures (set forth in Consumers application for amendments 72, 74, 76 and 77) fall far short of meeting health and safety requirements. The contention appears to be within the scope of the proceeding but it lacks specificity and should not be accepted by the Board unless it is appropriately amended.

Petitioner alleges that the additional information and testing requested of Consumers by the NRC and its consultant the Army Corp of Engineers (referencing a letter dated August 4, 1980 from the Staff to Consumers) is essential for Staff to perform its evaluation of health and safety interest and must therefore be responded to fully. The Staff believes that the contention is sufficiently related to the unresolved safety issue concerning the adequacy of the remedial action to correct the deficiencies in soil construction to be acceptable but that since the letter of August 4, 1980 is not presently before this Board the amendment should be particularized to indicate the nature of the additional information and testing requested by the Staff in that letter.

CONCLUSION

For the reasons stated herein, the Staff recommends that contention four be accepted as written. The Staff also recommends that petitioner be permitted to amend contentions one, two and three, that contentions one and six be particularized and that contention five should not be accepted unless amended.

Respectfully submitted,


for William D. Paton
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 29th day of August, 1980.

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF RESPONSE TO AMENDED PETITION OF BARBARA STAMIRIS" in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class, or as indicated by an asterisk, through deposit in the Nuclear Regulatory Commission's internal mail system, this 29th day of August, 1980:

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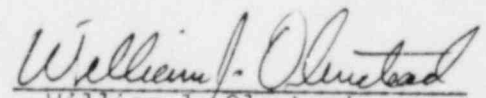
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