

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. 50-329-0M  
(Midland Plant, Units 1 and 2) ) 50-330-0M

In the Matter of )  
CONSUMERS POWER COMPANY ) Docket Nos. 50-329-0L  
(Midland Plant, Units 1 and 2) ) 50-330-0L

NRC STAFF RESPONSE TO AMENDED  
PETITION OF SHARON K. WARREN

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 26, 1980 Sharon K. Warren 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 Sharon K. Warren, on August 14, 1980, 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 responses 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 the application and issuance of amendments to their 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. Sharon Warren, 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 Warren 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 Board's rulings on contentions.

Pursuant to the July 20, 1980 Order of the Board Petitioner Warren filed four contentions. They can be summarized as follows. Contention one deals with the adequacy of pre-load techniques to correct soil settlement problems. Contention two deals with seepage of water from the cooling pond as it affects plant integrity. Contention three deals with the adequacy of dewatering procedures. Contention four deals with the effect of pre-loading as the diesel generating building's integrity. These contentions are the subject of this response.

The Staff recommends that contentions one and three be accepted as written and that Petitioner be allowed to amend contentions two and four.

#### DISCUSSION

To be admissible 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 those 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's contention one alleges that the composition of the fill soil is such that pre-loading procedures cannot compact the soil to assure a permanent correction to the soil settlement problems. The Staff believes this contention acceptable.

Contention two alleges that seepage from the cooling pond threatens the integrity of the plant. This contention appears to fall within the scope of this proceeding. However, as presently written it does not contain sufficient specificity. While alleging that cooling pond seepage into surrounding soil poses a threat to the reliability of the construction integrity of the plant, the contention fails to specify how such seepage poses a threat to the plant. Petitioner should be permitted to amend her contention, if she can, to allege the manner in which the seepage poses a threat to reliability of construction integrity.

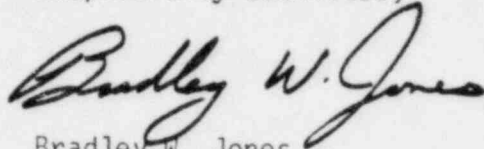
Contention three alleges that dewatering procedures proposed by Consumers Power Company are inadequate in the event of certain described circumstances. The Staff believes this contention is acceptable as written.

In her fourth contention, Petitioner alleges that the pre-loading procedures undertaken by Consumers Power have violated the structural integrity of the diesel generator building and its plumbing and electrical components. The Staff believes this contention relates to the issue of the unresolved safety issue concerning the adequacy of the remedial action and believes the contention would be acceptable if appropriately particularized.

CONCLUSION

The Staff recommends that contentions one and three be accepted as written and that Petitioners be allowed to amend contentions two and four.

Respectfully submitted,

A handwritten signature in cursive script that reads "Bradley W. Jones". The signature is written in black ink and is positioned above the typed name and title.

Bradley W. Jones  
Counsel for NRC Staff

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

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NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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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

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF RESPONSE TO AMENDED PETITION OF SHARON K. WARREN" 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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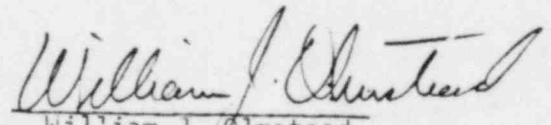
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