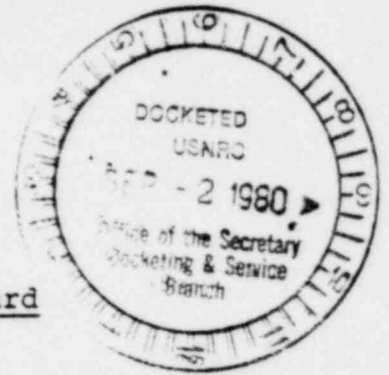


UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board



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

ANSWER OF CONSUMERS POWER COMPANY TO
SHARON K. WARREN'S SUPPLEMENT TO THE
PETITION TO INTERVENE AND BARBARA STAMIRIS'
AMENDED PETITION TO INTERVENE, DATED AUGUST 14, 1980

Pursuant to 10 C.F.R. §2.714 and the Board's "Memorandum and Order Ruling Upon Standing to Intervene (July 24, 1980)", Consumers Power Company ("Consumers Power") submits its response to Sharon K. Warren's Supplement to the Petition to Intervene ("Warren Contentions") and to Barbara Stamiris' Amended Petition to Intervene ("Stamiris Contentions"), dated August 14, 1980. For the reasons more fully set forth below, Consumers Power submits that Warren Contentions 1 and 3 set forth issues which appear to meet the minimum requirements of specificity and basis required pursuant to 10 C.F.R. §2.714. Warren Contention 2 fails to set forth an issue with the requisite specificity and basis and is partially not within the scope of the issues the Commission has designated the Board to decide. Warren

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Contention 4 appears to raise an issue appropriate for adjudication, but more specificity is required. Stamiris Contention 1 is not within the scope of the issues the Commission has designated the Board to decide, and is deficient in basis and specificity. Stamiris Contention 2 is not within the scope of the issues the Commission has designated the Board to decide and is therefor inappropriate for adjudication. If Contention 2(A) is accepted, Consumers Power suggests an alternative phrasing. Stamiris Contention 3 is not within the scope of the issues the Commission has designated the Board to decide. Stamiris Contention 4 appears to raise an appropriate issue if it is interpreted to refer to Appendix A to the Commission's Order ("Order"), dated December 6, 1979. Stamiris Contention 5 is inappropriate for adjudication in that it does not meet the adequate specificity and basis requirement of 10 C.F.R. §2.714. Stamiris Contention 6 cannot be responded to fully at this time because of pendency of discussions between the NRC Staff ("Staff"), its consultants and Consumers Power. If the Staff adheres to its current position that it requires the additional borings previously requested, Consumers Power believes Stamiris Contention 6 states an issue appropriate for adjudication.

I. Legal Standards to be Used in Evaluating the Sufficiency of Petitioners' Contentions

The Commission's Rules of Practice provide that a petitioner shall file "a list of the contentions which

petitioner seeks to have litigated in the matter, and the bases for each contention set forth with reasonable specificity." 10 C.F.R. §2.714(b). It is well established that Licensing Boards are empowered to hear only those matters which the Commission has designated them to decide in the applicable notice of hearing. Public Service Co. of Indiana, Inc. (Marble Hill Nuclear Generating Station, Units 1 and 2) ALAB-316, 3 NRC 167, 170 (1976); See 10 C.F.R. §2.104(a); 2.717(a). Therefore, contentions in this proceeding must fall within the scope of the issues designated for consideration in the Federal Register Notice of Hearing (45 FR 18214; March 20, 1980).^{1/}

In regard to specificity the Commission has stated, "definition of the matters in controversy is widely recognized as the keystone to the efficient progress of a contested proceeding." 37 Fed. Reg. 15128. In setting issues of interest or concern to it, an intervenor "'must be specific as to the focus of the desired hearing' . . . [a]nd contentions . . . serve the purpose of defining the concrete issues which are appropriate for adjudication in the proceeding. Northern States Power Co. (Prairie Island Nuclear Generating Plant, Units 1 and 2), ALAB-106, 6 AEC 188, 191, affirmed CLI-7312, 6 AEC 241 (1973), affirmed sub nom., BPI

1/ The issues designated therein are:

1. Whether the facts set forth in Part II of the Directors' Order of December 6, 1979, are correct.
2. Whether the Order should be sustained.
3. Whether consolidation of the OM proceeding with other NRC proceedings, which involve substantially identical issues would adversely affect the expeditious resolution of issues 1 and 2.

v. Atomic Energy Commission, [502 F.2d 424, 425 (D.C. Cir. 1974)]." Gulf States Utilities Company (River Bend Station, Units 1 and 2), ALAB-444, 6 NRC 760, 768-69 (1977). The fundamental purpose for requiring that the issues be set forth with adequate specificity and particularity is to provide the Applicant and the Staff with a fair opportunity to know precisely what the issues are, exactly what proof, evidence or testimony is required to meet the issue and exactly what support Intervenors intend to adduce for their allegations. River Bend, supra at p. 771.

II. Discussion

A. Warren Contentions

Contention 1. This contention appears to meet the minimum requirements of specificity and basis and therefore raises an appropriate issue.

Contention 2. This contention fails to set forth an issue with the requisite specificity and basis. No technical basis is set forth as to why "seepage of water into the surrounding soil poses a threat." The term "threat" and "construction integrity" are not specific enough to give Consumers Power knowledge of what is in issue. Also, the term "this plant and its safety system" can be construed to relate to structures and systems not encompassed by the Order, and to that extent, it is not within the scope of the issues the Commission designated the Board to decide.

Contention 3. This contention appears to meet the minimum requirements of specificity and basis and therefore raises an appropriate issue.

Contention 4. This contention appears to raise an appropriate issue but more specificity is needed, specifically what is meant by the term "structural integrity" and which "plumbing and electrical components."

In regard to Ms. Warren's statement "I reserve the right to amend these contentions at any future date" Consumers Power notes that she cannot create rights by claiming to reserve them. Amendments are governed by 10 C.F.R. §2.714 and any attempts to amend must comply with that provision.

B. Stamiris Contentions

Contention 1. This contention relates to 10 C.F.R. 100 "Reactor site criteria" which is not within the scope of the issues the Commission has designated the Board to decide. In addition, it is deficient in basis and specificity.

Contention 2. This contention, as framed, does not present any issue which may be litigated in this proceeding. There are three subparagraphs to contention 2. Subparagraph (a) appears to relate to the alleged material false statement regarding fill material which is described at page 2 of the Order and Appendix B to the Order. To the extent that Contention 2 seeks to litigate whether the alleged material false

statement as phrased in the Order was in fact made, Consumers Power has no objection to that matter as an issue in this proceeding, as limited by the Order and Consumers Power's responses to the Order.

The remaining portions of Contention 2 should not be admitted as issues in this proceeding. Contention 2(b) refers to "geologic classification and seismic characteristics of the region." The general geology and seismology of the Midland site is an issue far beyond the scope of this hearing. Similarly, Contention 2(c) which asserts that Consumers Power has revealed "an overall pattern of reluctance in compliance with question and testing procedures" is not an issue in itself appropriate for adjudication in this proceeding. As set forth more fully in response to Stamiris Contention 6, the Staff and Consumers Power presently have disagreement regarding the necessity for additional soil borings at the site. In the event that Consumers Power and the Staff resolve their differences on this issue, the question of whether Consumers Power was "reluctant" to provide this information in the past is immaterial. In the event that such differences are not resolved, the scientific and technical necessity for the data requested by the Staff is an issue which should be resolved by this Board. However, the issue of whether Consumers Power is "reluctant" to provide this data is also immaterial to resolution of this issue. There is a difference of expert opinion

between the Staff and Consumers Power regarding the necessity for this data which must be resolved.

Finally, for all the reasons stated above, there is simply no basis for the overall conclusion asserted in Contention 2 that "CPCo can't be trusted to divulge and attend to important safety issues."

Contention 3. This contention is inappropriate for adjudication. "Financial and time schedule interests" and their alleged relationship to safety issues are not within the scope of the issues the Commission has designated the Board to decide.

Contention 4. This contention appears to be appropriate for adjudication if it is interpreted to refer to Appendix A to the Order, as those items are the only instance of "breakdowns of quality assurance" which are within the scope of the issues the Commission has designated the Board to decide. Consumers Power has no objection to that matter as an issue in this proceeding, as limited by the Order and Consumers Power's response to that Order. If the contention is not interpreted to refer to Appendix A to the Order, then it is lacking in specificity.

Contention 5. This contention is inappropriate for adjudication. It does not come close to approaching the minimum degree of specificity required by 10 C.F.R. §2.714. It is merely a conclusionary statement with no specificity at all. Indeed, Ms. Stamiris has apparently recognized this and has stated in a letter dated August 15, 1980 that "[I

would like to expand on my fifth contention and make it more specific...I plan to request such an amendment within a week". As this response is being written, Consumers Power received an amended Stamiris contention 5. Consumers Power will respond to this after it has had a chance to study the motion.

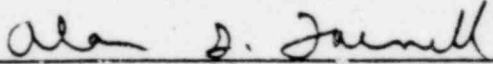
Contention 6. This contention asserts that certain data requested by the Staff is necessary so that the Staff can properly perform its evaluation of the soils issues involved in this proceeding. The data referred to are certain additional soil borings requested by the Staff and its consultant, the U. S. Corps of Engineers. Consumers Power has taken the position that these borings are unnecessary in that they will not provide any further assurances regarding the soils issues than the information already supplied. The Staff has disagreed with Consumers Power's position regarding the borings. Consequently, Consumers Power appealed to the NRC Division Director of Engineering the Staff's position on the borings.

As this response is written, the outcome of the appeal is unknown. If the Staff and Consumers Power resolve their differences regarding the necessity for this data, Contention 6 no longer will be an accurate characterization of the facts and should be dismissed. If the necessity for this additional information is not resolved, Consumers Power believes that Contention 6 states an issue appropriate for adjudication.

CONCLUSION

For the foregoing reasons Consumers Power opposes Warren Contention 2, and opposes Stamiris Contentions 1, 2, 3 and 5. Consumers Power requests that the Board adopt the suggested rephrasing for Stamiris Contention 4 and hold in abeyance Stamiris Contention 6 until after Consumers Power's appeal of the Staff decision requesting further borings is ruled on.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I, Alan S. Farnell, hereby certify that a copy of Answer of Consumers Power Company To Sharon K. Warren's Supplement To The Petition To Intervene And Barbara Stamiris' Amended Petition To Intervene was served upon all persons shown in the attached service list by deposit in the United States mail, first class, this 30th day of August, 1980.

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