

UNITED STATES OF AMERICA
ATOMIC ENERGY COMMISSION



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

APPLICANT'S MEMORANDUM IN OPPOSITION
TO MOTION OF MAPLETON INTERVENORS FOR
DISCOVERY RE IDAHO ECCS TESTS

On October 7, 1971, the Mapleton Intervenors served a motion for discovery from the Staff of documents concerning the Semi-Scale ECCS tests conducted at the National Reactor Testing Station in Idaho in November and December of 1970 and for permission to take oral depositions of "the personnel who conducted such tests and experiments." Applicant files this memorandum in opposition to said motion.

The instant motion is very similar to the motion served by Mr. Like on behalf of the intervenor in the Shoreham case on July 9, 1971, a copy of which is annexed hereto as Exhibit A. Insofar as is here relevant, that motion was denied by the Shoreham Board in a Memorandum and Order dated September 21, 1971, a copy of which is annexed hereto as Exhibit B.* We submit

*The Shoreham Board did order that intervenor be furnished with documents consulted by the Task Force which specially relate to boiling water reactors and copies of any additional documents on which the Applicant based its assertion of compliance with the Interim Criteria. The reactor here is not a BWR and, as stated at p. 3, infra, Applicant here has offered to make its additional ECCS submissions available to the Mapleton Intervenors.

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that the holding in Shoreham was correct and is pertinent here.

I. The Request For Documents

The motion asks (in paragraph 1) that the Staff be required to "produce copies of all documents and data which will be relied upon in its reevaluation of the emergency core cooling system of the proposed Midland plant, including, but not limited to, the documents and data relating to tests 845-850 and the results of the series of experiments conducted for the AEC at its National Reactor Testing Station in Idaho, in November and December of 1970".* Obviously, the motion, as phrased, is premature, for neither the Staff nor the Board can now know all of the documents and data which the Staff will rely on in an evaluation which has not yet been concluded.

However, it is extremely unlikely that, after the Staff's reevaluation of the Midland ECCS is completed, the Mapleton Intervenors will not have received copies of all documents relied on by the Staff. This judgment is based on the record to date. In response to the Saginaw Intervenors' motions last spring for the production of all documents related to the Idaho tests, the Staff made available to the Mapleton

*They also ask (Motion, p. 2) for "copies of the documents and data generated by such tests and experiments."

Intervenors all of the monthly reports of the Idaho Nuclear Corporation from November 1970 through April 1971 inclusive, as well as a document entitled "Semi-Scale Tests, 845 through 851", dated June 29, 1971 and prepared by the Idaho Nuclear Corporation. See Mr. Kartalia's letters to the Board of May 21 and June 10, 1971 and the July 15, 1971 Tr. at 3707-08.

Moreover, Applicant gave the Mapleton Intervenors a copy of its Supplement No. 1 to BAW Topical Report No. 10,015 at the hearing last summer* and, by letter to Irving Like, Esq., from John K. Restrict, Esq. dated October 6, 1971 offered to furnish the Mapleton Intervenors with copies of the proprietary topical reports on ECCS to be filed with the AEC by Babcock & Wilcox this month if they would agree to accept them under the terms of the protective order entered in this proceeding on June 14, 1971. By letter dated October 14, 1971, Mr. Like asked Mr. Kartalia for copies of additional technical reports in connection with his expert's preparation on the ECCS issue. If they are in fact relevant to that issue and not already available to the Mapleton Intervenors, we assume that the Staff will make them available.** Moreover, if the Staff issues a supplement to its Safety Evaluation dealing with ECCS, the Mapleton Intervenors will undoubtedly be furnished with a copy of that.

* Topical Report No. 10,015 would have also been made available to them if they had indicated a desire to see it.

** The last document requested, which allegedly relates to possible leakage of radioactivity into the process steam, is clearly outside the scope of the remaining portion of this hearing.

Thus, the Mapleton Intervenors have already gotten a lot of documentary information on the Idaho tests and ECCS developments following issuance of the Interim Criteria on June 19, 1971. Moreover, both Staff and Applicant have indicated a willingness to make any additional pertinent documents which may appear available. In view of this, Applicant does not see any need for an order compelling the production of documents on ECCS but this is really a matter which the Staff is in a better position to speak to, for only it can know whether all relevant AEC documents on this subject to date have been produced.

II. The Request For Depositions

The Mapleton Intervenors also move that they be granted the right to take the depositions of "the personnel who conducted" the Idaho ECCS tests. This part of the motion should definitely be denied.

Chairman Murphy, at the prehearing conference of December 1, 1970, stated (Tr. 440):

"Well, I think as of now I do tend to agree with the notion that depositions ought not to play the part in this hearing that they do in the ordinary judicial hearing. And I would think that it would take some showing in order to have a deposition in the sense in which we ordinarily use it."

He added (Tr. 441): "[A]t least as of now, it seems to me, that depositions are the least useful of the various discovery

devices in a proceeding of this sort." Consequently, discovery in this case has proceeded by production of documents and interrogatories.

The Chairman's views of last December are borne out by the events which have taken place since then. The aimless meandering of much of the cross-examination at the hearing this past summer is a good indication of how much more burdensome and time-consuming depositions could be, when there is no Board present to rule on objections and limit the examination. In proceedings of this sort, study and analysis of technical data and materials by experts is the most fruitful type of preparation for hearings.

10 CFR §2.740 requires that a party moving for the taking of a deposition must support his motion with a showing of good cause. The Mapleton Intervenors have failed to meet this burden.* They allege that their ECCS "investigation" (this word is not defined in their motion) will be conducted by Mr. Richard E. Webb, who is a Ph. D. candidate in nuclear engineering. They do not show why Mr. Webb cannot study all of the technical material made available to them in this case and available in the open literature and come up with a professional opinion as to the adequacy of the Midland ECCS

* The Shoreham Board found that Mr. Like's clients had not shown good cause for the taking of depositions there, either. See Exhibit B, infra.

system. If, after such a study, Mr. Webb still has some pertinent questions, there is no showing made in the motion papers as to why such questions can't be posed by written interrogatories.** There is certainly no showing as to why the cumbersome method of discovery by depositions is necessary. Consequently, this Board should follow the holding in Shoreham which denied the request for depositions in the absence of a showing of good cause.

CONCLUSION

For the foregoing reasons, the motion should be denied, insofar as it requests authorization for the taking of depositions. So far as Applicant can tell, there seems to be no need for an order requiring the production of documents by the Staff but we expect that the Staff will be able to provide the Board with more definitive information on that score.

Dated: October 20, 1971

Respectfully submitted,

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** Of course, §2.740 requires good cause to be shown for a motion to require answers to interrogatories, as well, and we do not now concede that there would be good cause for the granting of such a motion.

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CERTIFICATE OF SERVICE

I hereby certify that copies of "Applicant's Memorandum in Opposition to Motion of Mapleton Intervenors for Discovery Re Idaho ECCS Tests", dated October 20, 1971, in the above-captioned matter has been served on the following in person or by deposit in the United States mail, first class or air-mail, this 20th day of October, 1971.

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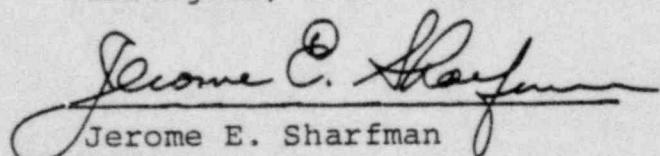
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