

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

ATOMIC SAFETY AND LICENSING BOARD

'82 AGO 19 P2:32

Before Administrative Judges:

Charles Bechhoefer, Chairman

Dr. Frederick P. Cowan

Dr. Jerry Harbour

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

SERVED AUG 19 1982

In the Matter of

CONSUMERS POWER COMPANY

(Midland Plant, Units 1 and 2)

Docket Nos. 50-329 OM
50-330 OM

Docket Nos. 50-329 OL
50-330 OL

August 19, 1982

SUPPLEMENT TO PREHEARING CONFERENCE ORDER

In our Prehearing Conference Order dated August 14, 1982 (LBP-82-63), we pointed out that we were rejecting contention 4 of Ms. Mary Sinclair and contention 5 of Ms. Barbara Stamiris but that we would explain those determinations in a supplement to that Order (see pp. 17 and 33). This issuance is the referenced supplement. Pages 17 and 17(a) (dealing with Sinclair contention 4) and pages 33 and 33(a) (dealing with Stamiris contention 5) are to be substituted for pages 17 and 33, respectively, of the August 14, 1982 Order. These revised pages will be included in LBP-82-63 as it appears in printed form in the NRC Issuances.

FOR THE ATOMIC SAFETY AND
LICENSING BOARD

Charles Bechhoefer Chairman
Charles Bechhoefer
ADMINISTRATIVE JUDGE

Bethesda, Maryland

DS02

4. Sinclair contention 4

This contention asserts that public safety is threatened by the absence, in the SER, of any limitation on the type of maintenance that can be performed during plant operation. The Intervenor claims that the contention is founded upon the NRC response to Interrogatory 15 (dated July 28, 1982) and, therefore, that it meets the "new information" criterion for showing good cause for admitting a late contention. Contention 4, here, is essentially identical to part of revised contention 36 submitted August 12, 1982, which also cites as its basis the Staff's response to Interrogatory 15.

Both the Staff and Applicant object to the contention on grounds of timeliness and lack of basis. They point out that the real source of the information underlying this contention is IE Information Notice 80-20, published May 8, 1980; that its title, Loss of Decay Heat Removal Capability at Davis Besse Unit 1 While in a Refueling Mode, shows on its face that that plant was shut down while maintenance activity was being performed; and hence that the Information Notice does not pertain to maintenance activities while operating, the subject of the contention. Furthermore, they point out that limitation on activities during plant operation is covered by yet-to-be-developed Technical Specifications, which will become part of an Operating License. The Technical Specifications listed on page 16-1 of the SER are those that the Staff has thus far determined to be required for this particular facility.

We agree with the Staff and Applicant that Sinclair contention 4 lacks basis, inasmuch as the information relied upon bears no relationship to the subject of the contention. We need not rule, however, on whether the contention should have been submitted as early as 1980 (the date of the Information Notice) and, accordingly, whether "good cause" for late filing has been demonstrated. In our opinion, it is unreasonable to expect an intervenor to examine incidents at various reactors and file contentions based on them at a time when it is not known how or whether the lessons of that incident are incorporated into the reactor under consideration. Nonetheless, the other factors balance strongly against admission of this contention. Most important, the substance of this contention is encompassed in a portion of another restated contention of the same intervenor, which has been admitted to this proceeding for discovery purposes by our Special Prehearing Conference Order, dated February 23, 1979. This provides the availability of another means whereby Ms. Sinclair's interest in this matter will be considered, and it need not be considered twice. Dual consideration of the same topic would clearly lead to unwarranted delay. Moreover, no additional contribution to a sound record could be expected if we were to admit this contention.

For all of these reasons, we reject Sinclair contention 4.

4. Stamiris contention 5

In this contention Ms. Stamiris seeks to relate the effects of soils placement deficiencies upon the diesel generator building (DGB) to asserted reduction of diesel emergency generator reliability, and thereby to claim that "offsite/onsite blackout power failure accident", or station blackout, should be designated a design basis accident. She further alleges that the AFW system and a (steam) turbine driven pump used to supply emergency water from the non-catactory 1 condensate tanks, as described in the SER (pp. C-16-17), would not be adequate during station blackout caused by an earthquake. (Loss of all AC power for a limited time is also the subject of Sinclair contention 56 which was admitted for discovery purposes but dropped during this conference because of the presence of Stamiris contention 5. Tr. 8470-71. The Staff, however, would not object on grounds of timeliness if Ms. Sinclair wishes to restate and resubmit her contention. Tr. 8491.)

Discussion by all parties and the Board during the prehearing conference showed that two quite separate issues are embedded in this contention -- i.e., adequacy of the diesel generator building to withstand the safe shutdown earthquake (SSE), and station blackout. The effect of soils placement deficiencies and the adequacy of remedial actions to insure that the diesel generator building can withstand the SSE, and all other design basis events, have been and will be the subject of extensive consideration during the OM portion of this consolidated proceeding. The Applicant and

Staff each claim that the two issues are impermissibly coupled. We agree. The coupling of alleged building failure with station blackout presumes the negative outcome of the not-yet-completed OM proceeding (an outcome which, on its own, would prevent issuance of an operating license, if not corrected). If the DGB cannot satisfy applicable seismic standards, the plant will not be permitted to operate.

Station blackout is a generic issue which is not at this time a design basis event. Tr. 8496. The Intervenor has not affirmatively shown any deficiency in the resolution of this issue as presented in the SER. Neither has she adequately shown the nexus required between this generic issue and this specific plant. Gulf States Utilities Co. (River Bend Station, Units 1 and 2), ALAB-444, 6 NRC 760, 771-73 (1977). The alleged nexus, failure of the diesel generator building during an earthquake, would require occurrence of an earthquake larger than the design basis SSE and hence cannot serve as a basis for a litigable issue. See 10 C.F.R. Part 100, Appendix A, Section V(a).

Therefore, we reject this contention on the grounds that the issue of seismic safety of the diesel generator building is already the subject of litigation in this proceeding, and for failure to establish any basis for considering the Staff's treatment in the SER of the station blackout issue at this particular site to be inadequate.