

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

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| 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
CONTENTIONS OF MARY P. SINCLAIR

Introduction

On November 13, 1978, this Board issued a Memorandum and Order requiring the parties to this proceeding to set forth their respective positions concerning the supplemental contentions recently filed by Mary P. Sinclair and Wendell H. Marshall. The NRC Staff has reviewed Ms. Sinclair's contentions and is hereby setting forth its view with regard to them.

Ms. Sinclair originally filed some contentions in this proceeding in conjunction with her June 5, 1978 "Petition for Leave to Intervene". Since the Commission's revised rule 10 CFR 2.714 does not require intervening parties to file contentions until 15 days prior to the first prehearing conference, Ms. Sinclair supplemented her original contentions with an additional filing on October 31, 1978. Her original contentions appear to be substantially included in her supplemental filing. Consequently, the NRC Staff has chosen to respond to the supplemental filing and all references will be to that filing unless otherwise indicated.

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The NRC Staff objects to Ms. Sinclair's contentions 1-4 because they are vague, overly broad and constitute a generalized attack on the methods used by the NRC Staff to insure compliance with Commission regulations.^{1/} Nothing in these contentions relates to specific instances of noncompliance with Commission directives nor is it obvious what the relevance of this contention is to the ultimate issues which must be decided by this Board in this licensing proceeding.

The NRC Staff objects to Ms. Sinclair's contention five because it concerns a matter not appropriate for consideration by this Board in the operating license proceeding. This issue concerns matters which arose during the course of litigation associated with the construction permit proceeding. As such these matters were considered and disposed of by the Boards presiding during those hearings. The specific issue concerning whether there was an attempt to prevent disclosure of facts during the remand hearings was recently addressed by the Commission and has been remanded to the licensing board designated in that matter. (See Commission's Memorandum and Order of November 6, 1978.)

Ms. Sinclair's Contention 6 is objectionable in its present form. Consumers' QA/QC performance has been the subject of extensive litigation in Commission proceedings in this docket. [See Consumers Power Company (Midland Units 1 & 2), LBP-74-71, 8 AEC 584 (1974).] Absent any showing by Ms. Sinclair that substantially new or different circumstances have arisen which require reexamination of those issues, further inquiry

^{1/} No contention 3 appears in Ms. Sinclair's filing.

should not be permitted. [Alabama Power Company (Joseph M. Farley Nuclear Plant, Units 1 & 2), CLI-74-12, 7 AEC 203 (1974).]

Contention 7 has been mooted by the Commission's November 6, 1978 Memorandum and Order directing the remand Licensing Board to consider the question concerning whether there was an attempt to prevent disclosure of facts during the remand proceeding. The remainder of Ms. Sinclair's contention 7 is objectionable for the reasons cited in response to contention 6.

Contention 8 is objectionable because it constitutes legal argument and is not a factual contention requiring litigation. To the extent that Ms. Sinclair is able to demonstrate in her contentions that a matter is appropriate for consideration in an operating license proceeding, the contention can be admitted. Absent such a demonstration, legal argument can not be used to support litigation.

Contention 9 is an attempt by Ms. Sinclair to relitigate issues previously resolved by this agency. [See Consumers Power Company, (Midland Units 1 & 2), ALAB468, 7 NRC 465 (1978).] No demonstration is attempted which would show that the conclusions previously reached on the Dow-Consumers relationship are no longer valid in light of the renegotiated contract. No argument is made that the contract as renegotiated is inconsistent with the facts as known to the Licensing Board and the parties at the remanded proceeding. No effort is made to argue how the

contract would change the decision of the Licensing Board. Consequently, contention 9 should be rejected.

Contentions 10 and 11 are objectionable for the same reasons as Contention 9 since they rest on the same premise.

Ms. Sinclair's contention 12 is a generalized attack on the Rasmussen Report based in essence on the criticisms of that report contained in the "Lewis Report", NUREG/CR-0400 and further argument based on the Liquid Pathway Study, NUREG-0440. No attempt is made to show the relevance these generic documents have to specific issues in this proceeding. Further no attempt has been made to demonstrate why the initial decision on construction permits on this docket, which predated the Rasmussen Report, the Liquid Pathway Study, and the Lewis Committee, was based in whole or in part on any of the material cited. Absent a showing of relevance, Contention 12 should be rejected.

Ms. Sinclair's contention 13 is objectionable on its face since it cites for its basis the 1977 record compiled during the remand proceedings on which a final decision has been rendered. This issue cannot be re-litigated. [Farley, supra.]

Contentions 14 and 15 are repetitive and thus objectionable. (See contentions 6, 7, 9, & 11.) Contention 16 is similarly objectionable since it raises need for power issues resolved on this docket in the construction permit proceeding.

In Contention 17, Ms. Sinclair is essentially making legal argument based on the need contentions which she seeks to litigate. This contention is not factually based or specific. Consequently the NRC Staff objects to its admission in this proceeding. Contentions 18 & 19 are continuations of similar argument and are equally objectionable. To the extent that need for power is an issue in this proceeding, the issue must be framed as noted in the discussion on Contention 16.

In Contention 20, Ms. Sinclair raises three discreet matters: the possible use of plutonium, thorium or other fissionable isotopes; long-term contracts for fuel waste disposal; and the inadequacy of spent fuel storage facilities. Since there is currently no plan to use plutonium, thorium or other fissionable isotopes, this portion of the contention is objectionable. To the extent Ms. Sinclair is arguing that the Applicant is required to have a contract for ultimate waste disposal, her second matter is barred from litigation in this proceeding. [See Northern States Power Co. (Prairie Island Units 1 & 2), ALAB455, 7 NRC 41 (1978). The NRC Staff believes the remaining matter lacks sufficient specificity to determine its admissibility. The remainder of the contention concerns fuel cycle impacts as covered by Table S-3. The argument that the rule lacks support and was invalidly promulgated is, of course, an impermissible attack on the rule. The other arguments raised in this connection are the subject of the Commission's November 6, 1978 Memorandum and Order, and should not be considered as a part of this operating license proceeding. Contention 21 is an elaboration on Contention 20 and should be rejected as repetitive.

The NRC Staff has no objection to Contention 22.

Contention 23 argues that Consumers' Environmental Report is inadequate because, inter alia, the Staff has had to direct numerous questions to Consumers to obtain information not contained in the report. Ms. Sinclair, however, points to no requirement for environmental reports which states what must be included in them. Further, no argument is made that such reports cannot be supplemented. This contention is objectionable and does not raise an issue cognizable in this proceeding.

Contention 24 deals with the recent questions raised concerning the back-fill used under the generator building which has resulted in severe settlement. Since this matter is the subject of ongoing Staff concern and review, no objection is made to Ms. Sinclair's contention. It is noted, however, that the question is not one of site suitability, rather, it relates to the type of material used by the Applicant under the building in question.

The NRC Staff has no objection to Ms. Sinclair's Contention 25.

Contention 26 is not appropriate to this proceeding at this time. As a result of the antitrust decision in this docket, Consumers has been required to give access to its facility. [See ALAB-452, 6 NRC 892 (1977).] What new coowners may ultimately apply as coapplicants is a matter of speculation at this time. Certainly, Ms. Sinclair can not be heard to argue that sales mandated by this Commission are illegal. Thus this contention is objectionable.

Since Ms. Sinclair's Contentions 27-34 deal with matters identified in NUREG-0410 these matters are appropriate for consideration in this proceeding. The NRC Staff does not, however, admit to the factual or legal accuracy of the matters represented. While not objecting to Contention 35, the NRC Staff notes that it may be the same contention as Contention 32. If so, it should be consolidated or clarified. No objection to the admission of Contentions 33-38 is made at this time.

In Contention 39, Ms. Sinclair argues on the basis of testimony in the Black Fox Proceeding that Appendix J of 10 CFR Part 50 is difficult to apply. From this it is concluded that safety issues covered by Appendix J are open and unresolved. This contention, aside from being based on testimony in another proceeding not relevant here is vague and not related to the specific review of Consumers' application which will be conducted in this proceeding. The NRC Staff urges the rejection of this contention.

While Ms. Sinclair's Contention 40 addresses qualification programs which are covered in NUREG-0410, the contention does not address specific equipment at the Midland facility. It thus fails to present a meaningful issue for litigation in this proceeding. Contention 41 similarly lacks specific system identification and should not be admitted unless revised.

The NRC Staff has no objection to Contentions 42-44.

Ms. Sinclair's Contention 45 is objectionable since it lacks specificity and is apparently based on testimony in another proceeding involving a facility of different design and type. In addition it is repetitive of other contentions in so far as it raises QA/QC issues.

Contention 46 addresses issues applicable to Offshore Power Systems which have little applicability to the Midland facility. Otherwise, it is over-generalized and vague. The NRC Staff objects to this contention.

The NRC Staff has no objection to Contentions 47 and 48. At page 32 of Ms. Sinclair's contentions, the numbering repeats contentions 44-48 although the subject matter of these contentions is different. For convenience of response the NRC Staff will refer to these contentions as 44a-48a.

Contention 44a as written can be construed as an impermissible attack upon the Commission's rules and thus be objectionable. Ms. Sinclair's remedy is to seek rulemaking in accordance with the procedures set forth in 10 CFR Part 2.

Contention 45a lacks sufficient detail and specificity to be admitted in its present form. The NRC Staff is unable to determine what Ms. Sinclair feels is wrong with fuel element geometry.

The NRC Staff has no objection to Contention 46a.

Contention 47a seems to relate to financial qualifications of Consumers Power Company to decommission the reactor. The NRC Staff objects to this contention for the same reasons set forth on the earlier contentions involving financial qualifications.

Contention 48a involving turbine missiles states that they "can not be ruled out." No further elaboration explaining how this affects Midland is provided. The NRC Staff objects to this contention on grounds of specificity.

Contentions 49 and 50 also lack sufficient specificity to enable the NRC Staff to evaluate their significance for Midland. These items are undergoing Staff review for Midland so no further objection is interposed at this time.

Ms. Sinclair's Contention 51 raises an issue which has been undergoing NRC Staff review. Specific cable routing procedures at Midland have recently been implemented. Consequently, the generic matters raised by Ms. Sinclair are no longer applicable to Midland. Thus, the NRC Staff does not believe that this is a litigable contention in its present form.

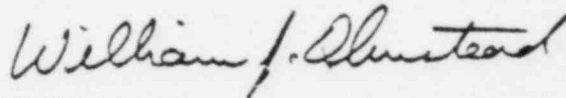
Contentions 52-54 amount to argument and raise no litigable issues of fact. Therefore, the NRC Staff objects to these contentions.

Contention 55 is barred by the Farley rationale, supra. The synergistic effects of chemical/radiation hazards was a contention considered in the construction permit phase of this proceeding.

CONCLUSION

For the foregoing reasons, the NRC Staff objects to Ms. Sinclair's contentions numbered 1-21, 23, 26, 35, 39-41, 45, 46, 44a, 45a, and 47a-54. No objection is tendered for contentions numbered 22, 24, 27-34, 42-44, 47, 48 and 46a. A qualified objection is made to contention 16.

Respectfully Submitted,



William J. Olmstead
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 28th day of November 1978

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
(Midland Plant, Units 1 and 2)) 50-330
(Operating License Proceeding)

NOTICE OF APPEARANCE

Notice is hereby given that the undersigned attorney herewith enters an appearance in the captioned matter. In accordance with §2.713(a), 10 CFR Part 2, the following information is provided.

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Dated at Bethesda, Maryland
this 28th day of November, 1978.

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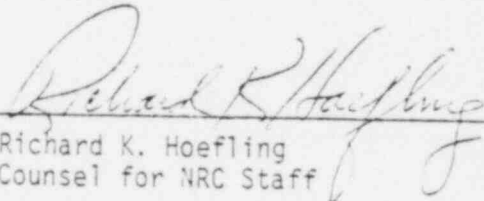
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NOTICE OF APPEARANCE

Notice is hereby given that the undersigned attorney herewith enters an appearance in the captioned matter. In accordance with §2.714(a), 10 CFR Part 2, the following information is provided:

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