

9/29/82

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 & OL
(Midland Plant, Units 1 and 2))	50-330 OM & OL

NRC STAFF RESPONSE TO
MARY SINCLAIR'S RESUBMITTED S-3 CONTENTION

I. INTRODUCTION

On August 12, 1982, Intervenor Mary Sinclair filed a contention alleging that due to the recent decision by the U.S. Court of Appeals for the District of Columbia Circuit in National Resource Defense Council, Inc. et al v. United States Nuclear Regulatory Commission et al. (D.C. Cir. Docket Nos. 74-1586, 77-1448, 79-2110, 79-2131) (1982), (Vermont Yankee III), the Staff cannot meet its obligations under the National Environmental Policy Act. (Contention 1). Since the mandate had not yet been issued, and the Commission will likely issue a policy statement instructing how Vermont Yankee III should be factored into licensing proceedings, the Board deferred ruling on the Contention in its Prehearing Conference Order, LBP 82-63, 16 NRC ____ (1982) (Slip Opinion at 11-12). On September 9, 1982, Ms. Sinclair resubmitted the contention on the grounds that the Court of Appeals Memorandum Order in Aeschilman v. United States of America Nuclear Regulatory Commission (D.C. Cir. Docket No.

DESIGNATED ORIGINAL

Certified By

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73-1776) (1982) required the consideration of fuel cycle and waste confidence in this operating licensing proceeding.

II. DISCUSSION

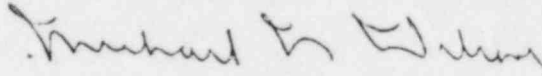
The Staff opposes acceptance of Ms. Sinclair's Contention 1 at this time. The Aeschilman Memorandum and Order merely held that Vermont Yankee III does not require the NRC to reevaluate the granting of the construction permit for Midland because any deficiencies in the environmental considerations with respect to the granting of that construction permit "may be cured" in the operating licensing proceedings. The Memorandum and Order does not affect the reasons why Ms. Sinclair's Contention 1 was deferred; (a) the mandate has not issued^{1/} and (b) the pending Commission policy statement with respect to the effect of Vermont Yankee III on licensing proceedings. Until such time, it is inappropriate for the Board to accept Ms. Sinclair's Contention 1.

^{1/} On September 1, 1982, the Court of Appeals stayed the mandate. Since the NRC, Baltimore Gas & Electric Co., et al. and Commonwealth Edison Co., et al. have filed petitions for certiorari with the Supreme Court, the mandate will be stayed pending final disposition by the Supreme Court. Federal Rule of Appellate Procedure 41(b).

III. CONCLUSION

For the foregoing reasons the Staff opposes acceptance of this contention at this time.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Michael N. Wilcove".

Michael N. Wilcove
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 29th day of September 1982

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF RESPONSE TO MARY SINCLAIR'S RESUBMITTED S-3 CONTENTION" 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 September 1982:

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