

9/30/82

DOCKETED
USNRC

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

'82 OCT -4 A10:52

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

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

APPLICANT'S RESPONSE TO INTERVENOR
SINCLAIR'S REVISED CONTENTIONS (SET II)

On September 20, 1982 Intervenor Mrs. Sinclair filed a second set of revised contentions. These contentions (except for Contention 6) had originally been conditionally accepted by the Licensing Board in its Special Prehearing Conference Order dated February 23, 1979, subject to the obligation to restate them with more specificity following discovery. Contention 6, which made general assertions about the inadequacy of Applicant's quality assurance program was rejected, but the Board allowed Intervenor to carry out discovery related to the issue and stated that it would "entertain a suitably specific contention on the matter upon the conclusion of discovery". Id. at 4. For the reasons stated below, Applicant objects to portions of Contention 6, Contention 34(a), Contentions 37 and 43 and a portion of Contention 57.

Contention 6

Applicant objects to the last clause in the first

DS03

paragraph of Contention 6, which states that "an unknown number of serious construction violations now remain in the facility in areas where they can neither be examined nor corrected." There is no basis anywhere in the contention for this assertion; it is sheer speculation and conclusory argument. Moreover, admitting this part of the contention would place an impossible evidentiary burden on Applicant, since it requires proving a negative.

Applicant also objects to the last two lines on page 1 of Mrs. Sinclair's pleading, which go beyond alleging that deception "has repeatedly been a part of the pattern of the Applicant's actions throughout the construction of Midland." This accusation, in addition to being scurrilous, does not meet the Commission's requirements of specificity and basis. Applicant has no objection to litigating whether the specific incident described in Dr. Landsman's August 24, 1982 memorandum constitutes a violation of this Board's April 30, 1982 Order and a deception.

Applicant objects to subpart b of proposed contention 6 in that it completely ignores the Applicant's resolution of the ITT General altered radiograph problem. As indicated in the affidavit of Chip Wood enclosed with Consumers Power's July 26, 1982 Response to Mrs. Sinclair's July 12, 1982 document request, Consumers Power has reviewed all ITT radiography and, as a result, questioned the film associated with four welds; all four of these welds were re-radiographed and found

to be acceptable. In light of this information, there is insufficient basis for the assertions in the contention that "As a result of the alterations, the quality of the welds is unknown. It is doubtful that all of the affected welds can be identified and corrected since some may no longer be accessible for inspection." If Mrs. Sinclair wishes to litigate the adequacy of Applicant's resolution of the problem, she, of course, is free to do so, but she must provide some basis providing reasonable notice to Applicant why its resolution is inadequate. She is not free, in proposing her contention, simply to ignore Applicant's resolution. Applicant also objects to the last sentence in subpart b which argues, without providing any basis, that there are "serious questions about the existence of deficiencies in all vendor-supplied items." (emphasis added)

Applicant objects to subpart d.4 of Contention 6. The August 24, 1982 NCR referred to (attached) shows quite clearly that the radiograph mottlings were caused by x-ray diffraction and are non-relevant. Again, Mrs. Sinclair has simply ignored Applicant's resolution rather than providing any basis indicating why such resolution is unsatisfactory.

Contention 34

Applicant objects to Contention 34(a) which repeats word for word Mrs. Sinclair's original 1978 contention. Despite answers to her interrogatories by both Applicant and the NRC Staff (July 12, 1982, Interrogatory 13, Contention 34; NRC remainder of response to Sinclair interrogatories pages 3-5),

Mrs. Sinclair has not been able to offer any reason why there has been "inadequate examination" of the use of snubbers as component supports at Midland, or why there has been "inadequate consideration" of actual and potential snubber malfunctions. Such broad conclusory statements fail to meet the NRC's requirements of specificity and bans. We also note that the NRC does not characterize snubber operability assurance as a Unresolved Safety Issue. See NUREG 0510 at p. 19:

The types of snubber problems that have been experienced do not represent a "major reduction in the degree of protection of the public health and safety" because the faults experienced only represent degraded conditions rather than conditions that prevented operation of the affected snubbers. In addition, as a result of the faulty snubber experience, augmented inservice surveillance and operability tests were required at operating facilities. These current requirements provide assurance that faulty snubbers will be detected should they occur and corrective actions (i.e., repair or replacement) will be implemented. Implementation of these requirements has markedly increased the availability of snubbers. Based on the above considerations, this task does not involve an "Unresolved Safety Issue."

Applicant objects to subpart (b) because it is outside of the scope of original Contention 34. Mrs. Sinclair's original contention 34 only addressed the issue of snubbers. Inspection Reports 50-329/82-07 and 50-330/82-07 do not concern snubbers at all.

Contention 37

Applicant objects to this contention on the grounds that it is not related to the original contention accepted by the Licensing Board in 1979, and therefore the contention is not timely. Intervenor Sinclair has replaced a contention which deal with pipng design with a contention which relates to ECCS performance. The two issues do not even involve the same engineering disciplines.

Attached to this response are the original Sinclair contention conditionally accepted by the Licensing Board in 1979, the relevant portions of NUREG 0410 and the NRC Staff's Black Fox testimony. As can be seen most clearly from the Staff's Task Action Plan for Task A-18, the issue raised by Intervenor in 1978 related to the proper mechanical design of piping and the need to protect equipment in the vicinity of high energy pipes from pipe whip and steam impingement.

In contrast, the new contention refers to a discussion of B&W analyses of ECCS performance during small break LOCA's. See SSER Rev. 1, pp 6-1 to 6-2. This has nothing to do with the mechanical design of pipes or with protection of equipment against pipe break effects. Indeed, the need for such ECCS analyses is derived from NUREG 0737 (TMI Lessons Learned) rather than from Task A-18 in NUREG 0410.

Considered as a new contention, Contention 37 is not timely. Contentions based on new information in the

SSER were to have been submitted within 14 days of service of the SSER, under the Board's Memorandum and Order dated May 7, 1982. The SSER was served on July 13, 1982.

Intervenor Sinclair has not attempted to justify this late-filed contention in accordance with the four factors listed in 10 CFR §2.714. Therefore the contention should be dismissed.

Contention 43

This contention should be dismissed for lack of specificity and basis, and lack of nexus to this proceeding. The contention contains no allegations specific to Midland or Consumers Power Company. The contention does not name any specific individuals whose civil liberties may be violated, or state specifically how such violations may occur. It is absurd, for example, for this Licensing Board to inquire in this proceeding whether Georgia Power engaged in unlawful spying in Atlanta, or whether the operation of the Clinch River Breeder Reactor will result in infringement of civil liberties.

This contention might also be interpreted to be an impermissible challenge to the Commission regulations, specifically 10 CFR Part 73, if Mrs. Sinclair's point is that the mere existence of security programs at nuclear power plants in compliance with Part 73 violates the Constitution. But even if the contention is not interpreted as a challenge to the regulations, it is not reasonable to litigate such

general issues in individual licensing proceedings. As the Appeal Board observed in Duke Power Company (William B. McGuire Nuclear Station, Units 1 and 2), ALAB 128, GAEC 399, 405 (1973);

If facts pertaining to the licensing of a particular power plant are at issue, an adjudicatory proceeding is the right forum. But if someone wants to advance generalizations regarding his particular views of what applicable policies ought to be, a role other than a party to a trial-type hearing should be chosen.

Finally, we note that the constitutional issue Mrs. Sinclair seeks to raise is different than the issue referred to in contention 43 as submitted by Mrs. Sinclair on October 31, 1978 and conditionally accepted in 1979. Mrs. Sinclair's original contention related to plant design features for protection against sabotage, not civil rights. Accordingly this is a new, untimely contention which Intervenor has failed to justify under 10 CFR §2.714. This provides additional ground for dismissal.

Contention 57

Applicant has no objection to the introductory sentence.

Applicant objects only to the words "accident or" in the last line of the first paragraph of this contention. The contention deals only with fire protection and provides no basis for litigating the performance of electrical cable in other unidentified accident scenarios, such as LOCAs or earthquakes.

Applicant objects to that portion of the second paragraph which alleges that use of 6-stranded 16-guage wire "could result in a weaker signal than necessary through the wires, and ... could disrupt service". This has nothing to do with fire protection, which was the subject of the contention conditionally admitted in 1979.

Applicant also objects to the second paragraph insofar as it may be interpreted as raising issues which may be in the affidavit (which is currently being withheld from Applicant by the NRC), other than the improper use of 6-stranded wire. So interpreted, the contention would lack specificity and basis with respect to any such other issues. In addition, acceptance of a contention based on information withheld from Applicant would violate Applicant's right to due process of law.

Applicant does not object to that portion of the second paragraph which alleges that improper use of 6-stranded wire could pose a fire hazard.

Respectfully submitted,

Philip P. Steptoe by AEW
Philip P. Steptoe
One of the Attorneys for
Consumers Power Company

Isham, Lincoln & Beale
3 First National Plaza
Chicago, Illinois 60602
(312) 558 7500

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

CERTIFICATE OF SERVICE

I, Philip P. Steptoe, one of the attorneys for Consumers Power Company, hereby certify that a copy of "Applicant's Response to Intervenor Sinclair's Revised Contentions (Set II)" was served upon all persons shown in the attached service list by deposit in the United States mail, first class, this 30th day of September, 1982.

Philip P. Steptoe by AZG
Philip P. Steptoe

SUBSCRIBED AND SWORN before
me this 30th day of September,
1982.

Cleann S. Swanson
Notary Public

My Commission Expires January 14, 1983

SERVICE LIST

Frank J. Kelley, Esq.
Attorney General of the
State of Michigan

Carole Steinberg, Esq.
Assistant Attorney General
Environmental Protection Div.
720 Law Building
Lansing, Michigan 48913

Myron M. Cherry, Esq.
Cherry & Flynn
Suite 3700
Three First National Plaza
Chicago, Illinois 60602

Mr. Wendell H. Marshall
4625 S. Saginaw Road
Midland, Michigan 48640

Charles Bechhoefer, Esq.
Atomic Safety & Licensing
Board Panel
U.S. Nuclear Regulatory Comm.
Washington, D. C. 20555

Dr. Frederick P. Cowan
6152 N. Verde Trail
Apt. B-125
Boca Raton, Florida 33433

Mr. D. F. Judd
Babcock & Wilcox
P. O. Box 1260
Lynchburg, Virginia 24505

James E. Brunner, Esq.
Consumers Power Company
212 West Michigan Avenue
Jackson, Michigan 49201

Steve Gadler, Esq.
2120 Carter Avenue
St. Paul, Minnesota 55108

Atomic Safety & Licensing
Appeal Panel
U.S. Nuclear Regulatory Comm.
Washington, D. C. 20555

Mr. C. R. Stephens
Chief, Docketing & Services
U.S. Nuclear Regulatory Comm.
Office of the Secretary
Washington, D. C. 20555

Ms. Mary Sinclair
5711 Summerset Street
Midland, Michigan 48640

William D. Paton, Esq.
Counsel for the NRC Staff
U.S. Nuclear Regulatory Comm.
Washington, D. C. 20555

Atomic Safety & Licensing
Board Panel
U.S. Nuclear Regulatory Comm.
Washington, D. C. 20555

Ms. Barbara Stamiris
5795 North River Road
Route 3
Freeland, Michigan 48623

Dr. Jerry Harbour
Atomic Safety & Licensing
Board Panel
U.S. Nuclear Regulatory Comm.
Washington, D. C. 20555

Lee L. Bishop, Esq.
Harmon & Weiss
1725 "I" Street N.W. #506
Washington, D. C. 20006



Consumers Power Company
QA27-0

NONCONFORMANCE REPORT

PROJECTS, ENGINEERING AND CONSTRUCTION - QUALITY ASSURANCE DEPARTMENT

6. PROJECT NAME: Midland 1 & 2		7. NONCONFORMING PART NO: IT-60 and 2T-60		8. NONCONFORMING PART NAME: Borated Water Storage Tanks		1. NCR SERIAL NO: M-01-9-1-031	
9. SERIAL NUMBER: N/A		10. ORG. COMMITTING NO: Graver Energy Systems		11. AREA/LOC. OF NO: N/A		2. DATE: 4/21/81 8/26/82 CLOSED	
12. "AS IS" NONCONFORMING CONDITION VERS. "AS REQUIRED" CONDITION WITH REFS: ASME, Section V Article T.233.2, states: All radiographs shall be free from mechanical, chemical, or other blemishes to the extent that they cannot mask or be confused with the image of any discontinuities in the area of interest. A) Contrary to the above, the radiographs submitted by Graver Energy Systems displayed mottlings in the vertical weld seams of the borated water storage tanks. These radiographs include but are not limited to the following: IT-60 Ring #1 vert #1, Radiographs Nos., 1-2 (R-2), 2-3 (R-2), 3-4, 4-5 (R-1), 5-6, 6-7, 7-8, and 8-9. (continued on page 3).						3. DATE OF REV: 4/28/81	
13. QA RECOMMENDATION FOR PART CA: A. Review Radiographs on the vertical weld seams on tanks IT-60 and 2T-60 to identify all areas that contain this condition. (continued on page 3) DESIGN/PROJECT ENG. DISPOSITION REQUIRED <input type="checkbox"/> NOT REQUIRED <input checked="" type="checkbox"/>						5. DISTRIBUTION ACTION COPY: LEDavis INFO COPY: MJuister REMcCue REWhitaker RDJohnson ALAB (2) BHPeck JLwood WRBird JARugers JWCook DATaggart TGGeeke(2) - KWanding MADietrich SKT/GAG- JFFirrit - MPQAB GSKeeley -Routing- JWhillywhite RAWells BWMarguglio TKSbrama- JMiendin- ESmith nian DBMiller JAMooney JEBrunner MLCurland	
14. HOLD TAGS APPLIED: YES <input type="checkbox"/> NO <input checked="" type="checkbox"/> NUMBER, LOCATION & TYPE OF HOLD TAGS APPLIED:							
15. IS PROCESS CA REQUIRED: YES <input type="checkbox"/> NO <input checked="" type="checkbox"/> IF NO, ENTER JUSTIFICATION BELOW: ACK 4-19-81							
16. DOES NC AFFECT Q-LIST ITEM: YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>				17. IS NC REPORTABLE PER 90.55(e): YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>			
18. IS NC REPORTABLE PER PART 21: YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>				19. IF YES, DATE & TIME OF REPORT TO NRC: N/A			
20. IF YES, WHO MADE REPORT TO NRC: N/A				21. IF YES, NAME OF NRC OFFICIAL TO WHOM REPORTED: N/A			
22. NCR ORIGINATED BY: JRDecker <i>John Decker</i>		23. WRITTEN REPLY REQUIRED BY: May 12, 1981 TO ESTABLISH CA COMPLETION DATE		24. SUPERVISOR'S SIGNATURE/DATE: <i>ARKentone</i> 4-29-81			
25. PART CA DISPOSITION, JUSTIFICATION & COMPLETION DATE: See Disposition on Page 3. * CPCo retained responsibility for part corrective action. Identification and evaluation of views exhibiting mottling, and evaluation of RE-RT, were incorporated into vendor RT film review effort, contracted by CPCo to NDTE/HSB.							
26. DESIGN/PROJECT SIG. AUTH. DISP.: N/A		27. PMD SIG. AUTH. DISP.: N/A		28. PROCUREMENT SIG. CONC. DISP.: N/A		29. SIG. OF ORG. RESP. FOR C/A: <i>RJDavid</i>	
30. FAB/CONST. SIG. AUTH. IMP. DISP.: N/A		31. SIG. OF TEST GROUP ACKNOW. CONDITION: N/A		32. FOR MAJOR MOD - PLT. SUPT. SIG. AUTH. DISP.: N/A		33. QA AUTH. SIG. TO IMPLEMENT DISP.: <i>RJDavid</i>	
34. METHOD OF PART CA VERIFICATION: See Disposition on Page 3							
35. SIG. OF ORG. RESP. FOR PART C/A SIGNIFYING COMPLETION: <i>RJDavid</i>		36. SIG. VERIFYING PART C/A & HOLD TAG REMOVAL/DATE: <i>RJDavid</i> 8-26-82		37. NCR CLOSED BY/DATE: (PART & PROCESS CA COMPLETE) <i>RJDavid</i> 8-26-82			

DOCKE USNR
ING 8
BRAN



Consumers
Power
Company

NONCONFORMANCE REPORT

PROCESS CORRECTIVE ACTION

PROJECTS, ENGINEERING AND CONSTRUCTION -
QUALITY ASSURANCE DEPARTMENT
M-01-9-1-031
NCR SERIAL NUMBER:

PAGE 2 OF 2

38. QA ASSESSMENT OF ROOT CAUSE(S):

N/A

39. ACTUAL ROOT CAUSE(S), IF DIFFERENT FROM ABOVE (TO BE COMPLETED BY ORG. RESPONSIBLE FOR PROCESS CA):

N/A

40. PROCESS CA REQUIRED FROM:

DESIGN FABRICATION CONSTRUCTION PROCUREMENT INSPECTION

OTHER No

41. QA RECOMMENDATION FOR PROCESS CA:

N/A

42. PROCESS CA TO BE TAKEN BY ORG(S) CHECKED IN BLOCK #1 & DATE OF COMPLETION:

N/A

43. No. of PROCESS CA VERIFICATION:

N/A

44. SIG. OF ORG. RESPONSIBLE FOR PROCESS CA SIGNIFYING COMPLETION:

N/A

45. PROCESS CA COMPLETION VERIFIED BY/DATE:

N/A

NCR NO: M-01-9-1-031

File No. 16.3.4 & 16.3.6

12. Continued from page one.
 - A) IT-60 Ring #1 Vert #2, Radiograph Nos. 1-2 (R-2), 2-3 (R-2), 3-4, 4-5 (R-1), 5-6 (R-2), 6-7, and 7-8 (R-2).
 - B) The above discrepancy was previously documented on QCFM-7612, deviation from subcontract documents dated 3-30-80.
 - C) This NCR is issued to track the resolution of this problem.

13. Continued from page one.
 - B) Re-radiograph all the areas that contain this condition using and alternative source of radiation in order to produce acceptable radiographs.

25. Continued from page 1.
 1. CPCo contracted NDT Engineering to review all Q-listed vendor radiographs, including RT for BWST 1T-60, 2T-60. From viewing exhibiting X-ray diffraction (termed mottling on NCR), 10 worst cases were identified for further evaluation.
 2. The 10 worst case views were re-radiographed utilizing an ASME code-acceptable procedure and IR-192 source. The linear disposed diffraction patterns were non-existent in the IR-192 radiographs, proving that the diffraction patterns in the remaining vendor radiographs are non-relevant.

Conclusion: The cause of the linear indications has been proven to be X-ray diffraction. The proof radiographs and closed copy of this NCR will be incorporated into vendor film set for Tank 1T-60.