

DOCKETED
USNRC

'82 OCT 19 AM 11:02

OFFICE OF SECRETARY
DOCKETING & SERVICE

U.S. NUCLEAR REGULATORY COMMISSION

In the matter of
CPCo. Midland Plant
Units 1 and 2

Docket Nos.
50-239 CL
50-330 OL

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD
STAMIRIS RESPONSE TO APPLICANT AND STAFF RESPONSES
TO NEW STAMIRIS CONTENTION BASED ON FES

10/15/82

According to the Board's 10-5-82 Order, Intervenor Stamiris submits the following response to the 9-23-82 Applicant response and the 9-28-82 Staff response to the 8-24-82 Stamiris contention which states:

I contend that the new cost production, cost savings analysis of the FES, represented by revised table 2.1 (p. A-32) and the revised cost/benefit analysis (p. 6-4) and revised economic statements derived therefrom do not accurately and fully represent the cost/benefit balance of the Midland plant to the public, and should therefore not be accepted as presented.

In opposing the contention overall, the Applicant claims that with one minor exception, "the Staffs assessment of costs in table 6.1 of the FES did not change from assessments made in the DES." Yet in comparing DES table 6.1 to FES table 6.1, 7 of the 8 components referenced in the Benefits portion of the analysis increased, while the production cost totals remained the same (and if averaged out over 1984-88 like the benefits are, actually decrease between the DES and the FES).

BASIS I: UNREPRESENTATIVE AND INCONSISTANT
METHODOLOGY IN PRODUCTION COST ESTIMATES

Although the Staff was not using an averaging approach in computing production costs in either the DES or the FES, such an approach should be used to be consis-

8210210370 821015
PDR ADCK 05000329
G PDR

DSUB

tant with their averaging approach to computing reduced generating costs. Average production costs over 1984-88 would be 24.4 m/kwh in the DFS while the average production costs over 1984-88 in the FES would be 23.8 m/kwh. However the NRC uses neither of these production cost averages, but uses the 1984 data alone to present the more favorable (to the plant operation) production cost of 21 m/kwh in both the DES and FES.

The NRC did not object to Basis I. In response to the Applicants objection, I have corrected the errors in my 8-24-82 production cost review concerning the "abandonment" of an DES averaging approach, and the arithmetic error. The basis for Basis I remains the same--that use of 1984 data alone for production costs in FES table 6.1 represents an inconsistency between the averaging methodology for benefits, and the less representative single year data for costs. The selective use of data in this manner to present the most favorable forecast to plant operation is inappropriate, and outweighs the applicants argument of untimeliness since the same methodology was used in the DES.

BASIS II: LACK OF SUPPORTING DATA

The NRC does not explain the basis for their changes in the table 6.1 cost/benefit analysis between the DES and FES except to note that "unreferenced economic values are derived from the Applicants' comment letter of 4-2-82 Appendix A (FES)." The Applicants' FES comments institute significant changes, and conflicting results in the cost/benefit analysis without supporting data.

These Applicant comments and resultant changes have apparently been accepted at face value without assessment or analysis by the NRC. Yet the NRC objects to this basis for my contention--saying that I must supply the basis for proving the inaccuracy of the Staff's assessment. I cannot assess the basis for the Staff's change in analysis when they have not provided any basis or assessment themselves.

The Applicant similarly objects that I have not provided adequate basis and specificity for Basis II of my contention. The very issue that I am contending here is that there is not sufficient basis or specificity provided in the Applicants FES comments, which the NRC has accepted, to justify the cost benefit changes instituted between the DES and FES.

The increased benefits and decreased costs (over 1984-88) between the DES and FES analyses are based on several applicant comments. Comment #22 (p. A-31, FES) notes a change from 1,400,000 lb. to 1,800,000 lb. in Dow's low pressure steam reservation. This steam reservation change is a basis for FES increases in replacement energy costs, and resultant increases in "reduced generating costs" in table 6.1, cited in comment #16 (A-31, FES). This change in Dow's steam reservation is also a basis for an increased lifetime capacity factor of 66% (from 60% in DES) as cited in comment #19 (A-31 FES), and the resultant table 6.1 increase in electrical energy to 8 billion kw/year (from 7 billion, kw/year, DES).

Why would an increase in Dow's steam reservation increase the costs of replacement power (#16) and increase the capacity factor for electrical production (#19)? If a larger proportion of the reactor's thermal heat is used to produce steam for Dow, the electrical capacity factor should be correspondingly reduced, not increased.

A second Applicant comment upon which changes are based between the DES and FES cost/benefit analysis is the reference to the "December 14, 1981 load forecast revision." The extent and direction (upward or downward) of this revision are not provided, nor is an explanation of its effect on the replacement energy costs of sub-tables 2.1 between the DES and FES.

Both the Staff and the Applicant are correct that I did not contend that the Staff has made an incorrect assessment of replacement energy costs, I contend that they made no assessment of changes in replacement energy costs between the DES and FES analysis. No one can assess unexplained changes to determine if those changes are correct or incorrect. I contend that supporting data and explanations must

be provided to justify the changes and inconsistencies in the cost/benefit analysis, beyond a mere submittal by the Applicant and acceptance by the NRC of new figures.

BASIS III: SAVINGS AS AN ACTUAL BENEFIT IS INVALID

The Staff does not object to Basis III, the Applicant contends that I have "mischaracterized the meaning of the cost (savings) figures involved" in calling the cost savings a hypothetical savings of not operating the plant. This is not a mischaracterization, for the FES \$279 million/year "reduced generating costs" which represents the difference between plant operating costs and "would be" replacement energy costs, is indeed a hypothetical savings. It counts extra dollars which would have been spent if the plant did not operate, as though they were actual dollars gained by plant operation.

To repeat the 8-24-82 "check book" analogy in a more precise response to Consumer's objection, the inclusion of cost savings as an actual benefit of plant operation is like buying a \$100 wool coat (nuclear production costs) instead of a \$1000 fur coat (replacement energy costs) and then adding the \$900 difference "saved" into your check book as a deposit.

Furthermore the Applicant asserts that replacement energy costs are properly taken into account at the OL stage "if construction of a substitute facility could reasonably be expected as a consequence of abandonment." By making the assumption that a replacement facility would be necessary, the applicant is using need-for-power arguments like those which underly the whole cost savings philosophy, expressed as "reduced generating costs" in the cost/benefit analysis. A double standard is used to allow the Applicant to take credit for replacement energy costs in a cost/benefit analysis while intervenors are denied the consideration of the same replacement energy or need for power issues.

For these reasons, and because the cost savings figures do not represent real benefits of plant operation, they should be excluded from the cost/benefit analysis.

The serious misrepresentation of information to the public in cost savings or "reduced generating costs of the FES cost benefit analysis far outweighs Consumer's untimeliness objection, that these cost savings were also included in the DES and thus could have been addressed sooner. In addition, these invalid cost savings figures are judged to be a large benefit by the NRC in the overall analysis.

BASIS IV: COST SAVINGS INCREASE IS NOT JUSTIFIED

If cost savings figures are allowed to remain in the cost/benefit analysis as "reduced generating costs" then the increased savings assessment from the DES to the FES must be questioned. The Staff does not object to the Basis IV contention that these cost savings increases are not justified as long as it deals only with the assessment of replacement energy costs, not need-for-power arguments.

The increase from the DES cost savings of \$200 million/year to the FES \$279 million/year is based on Consumer's overreliance on purchased power. A 70% reliance on purchased power is maintained (sub-tables 2.1 DES, FES) despite a rise in purchased power costs from \$50 million/kwh, DES to \$71 million/kwh, FES, which accounts for the rise in DES to FES cost savings figures. The Applicant offers no objection regarding this argument.

The lack of basis or explanation of increased replacement energy costs has been addressed in Basis II, as Staff and Applicant objections note.

BASIS V: COST CONSIDERATIONS ALLOWED ONE PARTY CANNOT BE DENIED ANOTHER PARTY

Both the Staff and the Applicant object to this Basis as a restatement of my contention 1a, which the Board denied in their 8-14-82 Order. Yet neither the Staff nor the Applicant addresses the key statement which justifies addressing construction cost issues in this new context. It is that Consumer's is allowed to take account of "recently revised plant and production cost data based on the latest

cost forecasts" (emphasis added, A-28, #3, FES) to upwardly revise the FES benefits from those set forth in the DES.

For example, the revision of construction costs from \$3.1 billion to \$3.9 billion is accepted as a basis for the DES to FES increase in the tax base benefit for table 6.1 (comment #92, A-46, FES). This "local property tax" benefit is one of the two impacts in the cost benefit judged "large" by the NRC.

Although Consumer's is allowed to take credit for the very latest construction cost forecasts to increase the benefits of plant operation in the cost/benefit analysis, intervenors are held to original construction cost estimates which are over \$3 billion too low (or are completely denied such cost consideration) in the arguments presented by the NRC and Consumer's.

Niether the staff nor the Applicant respond to my new arguments for considering construction costs which are based on the flexibility in the wording of the recent commission rulemaking (47 Fed. Reg. 12940-42) which notes that increased financial costs since the c.p. review should generally not be considered at the OL stage since such factors would be unlikely to tip the cost/benefit balance. Midland's 13 fold construction cost increase* since the c.p. stage, and the Michigan Public Service Commission policies which include construction costs as a part of the operating ratebase to the public once the plant operates (8-24-82 attachment) certainly qualify this plant as the exception to the rule foreseen by the wording of the recent construction-cost-rulemaking.

Furthermore, the arguments regarding "the manner in which construction costs were in fact accounted for in the environmental cost/benefit analysis at the OL stage" and the likelihood of my "misconstruing" the effects of factoring in the cost benefit analysis raised by the applicant at the prehearing conference and noted in the Boards 8-14-82 order are themselves erroneous.

*The \$265 million c.p. estimate comes from a S. Howell 3/80 statement, CPCs 1977 FES \$554 million estimate does not affect the validity of these arguments though.

The Staff and Applicant position that construction costs are not taken into account in the cost benefit analysis is untrue, as seen in the "large" tax increase benefit, and the acknowledged revisions in "plant and production cost data, based on latest cost forecasts" (A-23, #3, FES).

The significance of these construction cost issues, the existence of a double-standard for various hearing parties, and the exceptional circumstances (in terms of cost increases and MPSC policies) which Midland represents, make inclusion of construction cost issues in the cost benefit analysis a difficult but necessary affirmation for this licensing board in this OL proceeding.

BASIS VI: NEPA REQUIREMENTS

At the prehearing conference Mr. Bishop argued that the Staff's cost benefit analysis failed to examine the "whole project" according to NEPA requirements. This argument does not contest the validity of the NRC's two step licensing process as the NRC asserts in objecting to this basis, it simply refers to the NEPA requirement that whenever the agency conducts a cost/benefit analysis, it must address the net costs and benefits involved (40 CFR, Sec. 1502 p. 23; NRDC v. Morton, 458-F 2nd 827, 833 (DC cir. 1972)). Furthermore the NRC has an obligation if the costs involved have changed, to support or redo the cost/benefit balance in question (40 CFR, Sec. 1502.9 (c) (1); NRDC v. Callaway, 524 F 79, 91-92, 2nd cir.).

The Staff also argues that "sunk construction costs affect neither the costs nor benefits of (plant) operation," and therefore cannot be considered at this OL stage, yet they have considered the "revised plant and production cost data based on latest cost forecasts" valid in revising the cost benefit analysis of the FES.

The two step licensing process of the NRC is based upon the principle that construction of the facility is conducted at the financial risk of the applicant (PRDC v. International Union of Elec. Radio and Machine Workers, 367 US 896 1961),

(Porter County Chapter I.W.L. v. NRC, 606 F2d 1363, 1369-7, (DC Cir. 1979)). There is no ultimate guarantee of an operators license on the basis of "sunk costs"

This often repeated assertion of the NRC and Consumer's in allowing and justifying the progression of construction and remedial work at Midland prior to resolution of safety issues is dependent on the ability or willingness of the NRC to base final licensing judgements on safety alone. Yet NRC witnesses have testified that sunk costs are considered in evaluating the adequacy of remedial fixes (tr. 4463-4, OM-OL) at this OL stage, costs are considered in granting exemptions from design requirements in the SER at the OL stage (SER 5.3.1.4, p. 5-21) and construction costs are considered in the OL cost/benefit analysis as discussed in Basis V.

These cost considerations by the NRC at the OL stage have the effect of negating any construction risk to the applicant. For when the NRC states that construction costs are not relevant for inclusion in the cost benefit analysis despite their selective application of construction cost considerations, a plant could cost 50 billion and it would not matter, even if these cost were to become a part of the operating ratebase as is the case in Michigan.

A valid assessment if all the costs and benefits is required of the NRC according to NEPA and in order to present a fair assessment to the public for whom the cost/benefit analysis is performed. The Applicants objection that my basis VI is deficient and lacking specificity--is itself vague and unspecific and , thus impossible to respond to.

ADDENDUM: DEWATERING COSTS

Although the DES did omit consideration of dewatering operating expenses, like FES cost benefit analysis, the omission cannot be justified on the basis of an untimely contention alone. I submit that an assessment of permanent dewatering expenses should be considered along with the operation and maintenance costs if these costs are to be valid for Midland.

CONCLUSION

In accepting the Staffs argument that a contention "may be accepted only to the extent that its bases are adequate," I assert that this contention must be accepted on the adequacy of its many bases. In fact, the gross misrepresentation of the overall costs and benefits to the public which this cost/benefit analysis represents ^{FES} demands redress in the form of OL contentions and ASLB consideration.

Respectfully Submitted,

Barbara Stamiris

Barbara Stamiris
5795 North River Road
Freeland, MI 48623

cc. ASLB members
W. Paton, NRC
M. Miller, CPC
Secretary, NRC