UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:
Charles Bechhoefer, Chairman
Dr. Frederick P. Cowan
Dr. Jerry Harbour

In the Matter of	Docket Nos. 50-329 OM 50-330 OM
CONSUMERS POWER COMPANY	Docket Nos. 50-329 OL 50-330 OL
(Midland Plant, Units 1 and 2)	
	October 20, 1982

MEMORANDUM AND ORDER
(Ruling Upon Certain Contentions Sponsored
by Wendell H. Marshall)

By letter dated September 10, 1982 (but not postmarked until September 16, 1982), Wendell H. Marshall, an intervenor in the operating-license proceeding, has submitted eight new proposed contentions, assertedly derived from information appearing in the Staff's Safety Evaluation Report (SER). For reasons set forth below, we are rejecting all of these contentions.[1/] We are also dismissing one of Mr. Marshall's

1/ Mr. Marshall's letter to the Licensing Board submitting these contentions does not reflect whether he served other parties. In response to our inquiry during a telephone conference call on October 6, 1982 (prompted by our failure to receive timely responses to the letter), the Applicant and Staff each indicated they had not received the letter, although Mr. Marshall stated that he had mailed it to them. We advised parties that they need not respond to the letter, that we were rejecting the contentions for reasons other than improper service, and that we would explain that ruling in a forthcoming Memorandum and Order. See our Memorandum dated October 8, 1982. This Memorandum and Order constitutes the issuance to which we referred. Because of the problems with proper service, we are attaching a copy of Mr. Marshall's letter to this issuance.

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contentions submitted earlier in this proceeding, as to which he has failed to take advantage of the opportunity which we afforded him to submit a rewritten version.

1. The primary reason why we are rejecting Mr. Marshall's new proposed contentions is that they are late-filed, without any justification in accordance with the factors set forth in 10 CFR § 2.714(a)(1). The SER was issued on May 11, 1982 and served on all parties. Contentions based on new information in the SER were required to be filed no later than June 21, 1982. See Memorandum and Order (Telephone Conference Call of May 5, 1982), dated May 7, 1982.[2/] Ms. Sinclair and Ms. Stamiris, other intervenors, each submited contentions based on the SER within that deadline. Although Mr. Marshall did forward comments on the SER during this time frame to various organizational segments of NRC (see, e.g., his letter dated June 11, 1982 addressed to the "Nuclear Regulatory Commission"), he failed to submit any contentions.

We later provided extensions of time to July 9, 1982, to supplement or expand the earlier filings. Memorandum and Order dated June 28, 1982. Ms. Sinclair and Ms. Stamiris each did so within that schedule. As before, Mr. Marshall forwarded additional comments on the SER but neither submitted any contentions nor indicated any intent to do so (see his letter to NRC dated July 8, 1982).

On August 12-13, 1982, we conducted a prehearing conference at which we heard argument on all of the newly submitted contentions. At that conference, we permitted Ms. Sinclair and Ms. Stamiris to submit rewritten

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2/ Our Order dated June 3, 1982, directed to another of Mr. Marshall's filings, reminded him of the schedule for filing SER-based contentions (see n.1 of that Order).

or in some cases expanded versions of their contentions. Mr. Marshall participated in the discussions at the conference but, insofar as we can recollect, at no time during the conference did he suggest that he wished to file new contentions based on the SER. In our Prehearing Conference Order dated August 14, 1982, LBP-82-63, we ruled on all of the newly submitted contentions before us (including those based on information in the SER). We provided a limited period for discovery on those contentions, commencing August 16, 1982.

The first indication we had that Mr. Marshall might wish to submit contentions based on the SER was his letter of August 23, 1982 to Staff counsel, a copy of which was served on us. Mr. Marshall indicated that he "intend[ed]" to seek permission to file his SER questions as contentions and to seek a 45-day extension of time to do so. We discussed that letter in a telephone conference call on September 1, 1982, and advised Mr. Marshall that his request for a 45-day extension of time was being denied. We also advised Mr. Marshall that, although we could consider late-filed contentions by balancing the five factors in 10 CFR § 2.714(a)(1), we would be unlikely to admit any further contentions based solely on information in the SER. See Memorandum and Order (Telephone Conference Call of September 1, 1982), dated September 2, 1982, at pp. 2-3.

Following that call, Mr. Marshall sent us a mailgram dated September 1, advising that his new contentions were being "processed". Not until he filed the document which is before us (which, we reiterate, was postmarked September 16), did Mr. Marshall submit his new contentions. Notwithstanding the advice we provided in the September 1, 1982 conference

call, Mr. Marshall's filing fails to address any of the "lateness" factors of 10 CFR § 2.714(a)(1).

Not only are Mr. Marshall's contentions late-filed, without adequate justification, but many of them do not meet the requisite standards for contentions. For example, proposed contentions 1 and 7 are too ambiguous to determine exactly what issues are sought to be raised. Contentions 7 and 8, to the extent they attempt to bring into issue certain activities of Dow Chemical Co., raise matters outside the scope of this proceeding. Contention 8, to the extent it asserts a failure of the SER to discuss nonradioactive chemical discharges, ignores the fact that such discharges are discussed in the Draft Environmental Statement (DES) and Final Environmental Statement (FES) (§ 4.2.6 of each document). Contentions 1 (to the extent we can comprehend it), 2, 3 and 4 assert that the NRC has improperly approved various exemptions or variances from certain regulatory requirements. They refer to sections of the SER which reflect that exemptions or variances have been granted, but they provide no basis for concluding that the grant of such exemptions or variances was improper, or that the alternative methods of complying with safety requirements discussed in the SER are inadequate, or that safety has in any way been compromised. These contentions therefore lack the underlying basis requisite for admitting a contention.

Furthermore, proposed contention 5, which raises questions concerning the cost of decommissioning, overlaps contention 1.b of Ms. Stamiris. (In addition, it faults the SER for not dealing with decommissioning, whereas that subject is dealt with in the DES and FES. See §§ 5.11 and 6.4.2.1 of those documents.) To some extent, the subject matter

of contention 3 (reactor vessel welds) is encompassed by contention 1.c of Ms. Stamiris (wnich we have accepted) and revised contention 32 of Ms. Sinclair (upon which we have not yet ruled). And contention 6, to the extent it challenges the adequacy of the emergency plan, overlaps Ms. Sinclair's original contention 27, which we have accepted. To the extent that contention 6 attempts to raise site suitability issues which were reviewed at the construction-permit stage, it must be rejected for the same reasons we have rejected earlier attempts to raise such issues. See, e.g., Special Prehearing Conference Order, dated February 23, 1979, at p. 8.

In sum, Mr. Marshall has not established good cause for the late filing of any of the proposed contentions. Contentions 1, 2, 3, 4, 7 and 8 additionally do not satisfy the applicable criteria for contentions. To the extent that contentions 5 and 6 may qualify, Mr. Marshall's interest in those contentions will be adequately represented by Ms. Stamiris and Ms. Sinclair, respectively. Perhaps most significant, Mr. Marshall has not demonstrated how our acceptance of any of his contentions would operate to improve the record on the issues in question. Finally, acceptance of any new contentions at this relatively advanced stage of the proceeding would (except to the extent they duplicate contentions already admitted) perforce broaden the issues and would likely cause some delay. We thus balance the factors in 10 CFR § 2.714(a)(1) strongly against admitting any of Mr. Marshall's new contentions.

2. In our Special Prehearing Conference Order dated February 23, 1979, we permitted Mr. Marshall to rewrite his contention 5, relating to the icing and fogging potential from the Midland cooling system. He was required to do so within 21 days following service of the FES.

The FES was issued on July 30, 1982 but apparently was not received by some parties until August 10 or 11. On that schedule, Mr. Marshall would have been required to file his rewritten contention 5 by September 1, 1982. During the August 13, 1982 prehearing conference, Mr. Marshall was reminded of his obligation (Tr. 8242, 8245-47). Thereafter, in a telephone conference call on September 1, 1982, we granted extensions until September 13, 1982 within which to file contentions based on new information in the FES. Memorandum and Order (Telephone Conference Call of September 1, 1982), dated September 2, 1982, at pp. 1-2. Mr. Marshall has not filed any rewritten contention relating to fogging and icing--none of his new contentions dealt with in part 1 of this Memorandum and Order do so. For that reason, we consider Mr. Marshall to have abandoned his contention 5 and hence we dismiss it. (We note that the subject matter of this contention is to some extent covered by Ms. Sinclair's new contention 5.)

For the reasons stated, it is, this 20th day of October, 1982

ORDERED

1. That Mr. Marshall's proposed new contentions based on the SER are rejected.

2. That Mr. Marshall's contention 5 is dismissed.

FOR THE ATOMIC SAFETY AND
LICENSING BOARD

Charles Bechhoefer, Chairman
ADMINISTRATIVE JUDGE

Attachment

September 10, 1982

TO: Atomic Safety & Licensing Board
Administrative Judges
Charles Bechhoefer
Dr. Frederick P. Cowan
Dr. Jerry Harbour
Nuclear Regulatory Commission
Washington, D.C. 20555

Docket No. 50-329
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Contention 1

The Mapleton Intervenors have gone over the SER and as a result of our study we have come to the conclusion that the SER and the Nuclear Regulatory Staff are not following NRC regulations, as an example, 3.9.6 ASME code requires testing in accordance with section 11 of ASME code as required by the 10 CFR 50.55 (g). This is a serious safety item affecting the public health and the variance granted by NRC to Consumers Power Company is a violation of NRC regulations, especially in view of the accidents at ?Bessy Davis? and TMI. We contend that this should be withdrawn by the NRC staff.

Contention 2

5.3.1.2 of the SER paragraph 3, page 4 of appendix G, requires testing personnel to be qualified and shall be able to perform tests according to written procedures. The NRC in this instance have given an exemption or variance which will negate this requirement, and in the opinion of the Mapleton Intervenors lessens the integrity of the testing procedures and will impact on the public health and safety.

Contention 3

5.3.1.3 Exceptions granted to Consumers Power Company by the Nuclear Regulatory Staff to paragraph II.B and paragraph 11 c.1 we conclude that the Consumers Power Company surveillance program is not in compliance with appendix H/10 CRF/50. It is our contention that these exemptions should be withdrawn. The granting of exemptions or variances will result in environmental impacts which will affect the public health and safety. The rules and regulations must be enforced on behalf of the public health, even if it imposes more work on the applicant, Consumers Power Company.

Contention 4

Paragraph 3 C.2 of SER appendix G, the failures of the applicant to prepare metallurgical test samples from excess production forging material because of variances apparently granted to Consumers Power Company by the Nuclear Regulatory Staff. This is a contradiction to the public health and safety.

Contention 5

On the cost of decommissioning and decontaminating the Midland Nuclear Plant.
Nowhere in the SER is there any discussion on the cost of decommissioning and decontaminating the Midland Nuclear Plant at the end of its term of operation. Neither does SER say anything about the cost of disposal of the neutron activated products. The neutron activated materials in the reactor vessel itself, contains carbon 14 with a half life of 5,730 years. It contains Nubiom 59 half life of 80,000 years and Nubiom 63 with a half life of 100 years. Because of the public health and safety, certainly it is necessary for the NRC and Consumers Power to address the problem and the costs of the neutron activated materials that will be generated in the reactor and the reactor internals.

Contention 6

The population zone of the Midland Nuclear Plant is a serious contention since within 0-1 mile of the plant 2,297 people live and 20,759 live within 2 miles of the plant and 107,168 live within 0-10 miles of the plant. From 10 CFR 100 we learn that the boundary of the population center must be determined upon consideration of the population and the public health and safety. It is our contention that the NRC staff has violated 10 CFR 100 by allowing the plant to be sited within Midland and not giving proper consideration to the population zone. The staff further states in the SER that most of the people within the local population zone are Dow Chemical Company employees.

Contention 7

The Nuclear Regulatory Commission has given permission to the Dow Chemical Company to burn radioactive waste, which is discharged into the air environment. It is our contention that the Nuclear Regulatory Commission have not considered the total discharge of radioactive material into the air environment and upon the people of Midland when considering the amount of radioactivity to be discharged from the Nuclear Plant and that amount which is presently being discharged by Dow Chemical. Certainly the total radioactive discharges must be considered because these discharges effect the public health and safety.

It is our contention that the summary of outstanding items have not been properly taken care of, as an example, the mining operations that are taking place now, so that the buildings can be shored up, the repair of cracked cement structures and the liquification potential of underground soils. There are 17 items which are unresolved safety issues in the SER. These must be resolved before any license issues.

Contention 8

Net loading to the Tittabawassee River by the Dow Chemical affluents exceeds 600 tons of conventional toxic pollutants, 109,050 tons per year. Consumers Power Company, although not mentioned in the SER desires to dump ammonia into the Tittabawassee River. This ammonia would be in addition to the present discharge of the Dow Chemical Company, Dow Corning and the city of Midland. Michigan DNR calculation indicates its capacity to the river for ammonia is far below present discharges and Dow and the city of Midland exceed that amount. We contend that the NRC is responsible and must limit the amount of toxic affluents that is dumped into the Tittabawassee River, by the Nuclear plant, because already the state board of health has recommended that fish from the Saginaw River not be eaten because it contains 2-4-5-T and pentachlorophenol. Both of these are typically contaminated with 2-3-7-8-TCDD. Public concern with toxic chemical pollutions in Saginaw Bay area waters includes concern about Dow's total discharge, and now Consumers' discharge is to be added. Nowhere in the SER is anything set to control the discharge of carcinogens and nothing to insure attainment of water quality standards in the Tittabawassee River, and in fact, fails to require adequate monitoring, because it is important for the public health and safety to control the discharge of known carcinogens, mutagens and teratogens from all point sources is a regulatory process and NRC cannot close their eyes to this problem because it just will not go away. We have stated before that Dow net loadings exceed 600,000 lbs. of conventional and toxic pollutants per day, how much more will be added if Consumers Power is granted an operating license. The Tittabawassee River flows into the Saginaw River which flows finally into Lake Huron which is the source of the drinking water for the city of Midland. So, it appears that the citizens will get double dosage from the chemicals and from the radioactive materials. We contend that the Nuclear Regulatory Commission should take action immediately to stop this.

We contend that nowhere in the SER has the synergetic effects been given proper consideration. No one at NRC can predict the effects of chemicals discharged to air environment in combination with radioactive wastes discharged by Dow and to be discharged by Consumers Power Company.

Wendell H. Marshall

Mapleton Intervenors
Wendell H. Marshall, President
Midland, Michigan 48640

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