

7/22/83

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

NRC STAFF RESPONSE TO INTERVENOR BARBARA STAMIRIS'
"MOTION TO REOPEN OM RECORD ON STAMIRIS CONTENTION 4"

I. INTRODUCTION

At the hearing session held on June 27, 1983, Intervenor Barbara Stamiris read into the record her "Motion to Reopen OM Record on Stamiris Contention 4."^{1/} For the following reasons, the Staff opposes Ms. Stamiris' motion.

II. BACKGROUND

In using the term "OM record," Ms. Stamiris is, of course, referring to litigation of the issues arising out of the Order Modifying Construction Permits, dated December 6, 1979. The evidentiary presentations followed two tracks; (1) the technical adequacy of the remedial measures to correct deficiencies caused by improperly placed plant fill, and (2) quality assurance.^{2/} The issues which Ms. Stamiris

1/ Tr. 17,988 - 17,992.

2/ Another subject, whether there was an adequate basis for issuing the Order, was addressed through stipulations. Ms. Stamiris' motion, however, is unrelated to that subject.

DESIGNATED ORJ .NAL

Certified By *Mrs. [Signature]*

raises in her motion have to do with the first track, the technical adequacy of the remedial fixes. Hearings on that subject are over.^{3/} The hearings addressed all portions of Stamiris Contention 4 including those portions referenced in Ms. Stamiris' Motion.

III. DISCUSSION

A. Extent To Which Ms. Stamiris' Motion Raises Issues Within The Scope Of The OM Proceeding

As the Staff reads Ms. Stamiris' Motion, we find the following five issues:

Issue 1: Need for the OM record to contain a general discussion of the cracks in the containment building discovered by the Staff in January, 1983 and documented in Inspection Report 83-01. (Stamiris Exhibit 50) (Tr. 17,991)

Issue 2: Fact that the OM record contains no evidence on the competence of the glacial till. (Tr. 17,991)

Issue 3: More specifically, the cracks in the containment call into question the competence of the glacial till, and cast doubt on the acceptability of underpinning structures down to the till. (Tr. 17,990, 17,992)

Issue 4: Possibility that dewatering is causing uneven settlement of the till. (Tr. 17,990-17,992)

Issue 5: Need to explore comments made during telephone calls held on January 11 and 12, 1983. The participants were CPC, Bechtel, the Staff and the Staff's consultants. The purpose of

3/ The Staff must still advise the Board and parties if it finds acceptable two affidavits which CPC submitted. One is by Dr. Ralph Peck and deals with the effect of the dewatering on settlement of the Diesel Generator Building. The other is by Dr. Thiru Thiruvengadam and has to do with seismic analysis of underground piping. CPC will also provide an affidavit on the long-term suitability of ethafoam. However, no further evidentiary sessions are planned on these issues.

the call was to discuss settlement records for benchmarks associated with the underpinning of the two Electrical Penetration Areas. In the course of the call CPC speculated that a possible cause of a larger amount of settlement occurring at the north end of the auxiliary building was due to dewatering. 4/ (Tr. 17,990)

For the proposed issues to be considered in the OM proceeding, a nexus must be established between them and the question of whether the proposed remedial fixes are adequate. A review of the proposed issues suggest that only three fall within the scope of the OM proceeding. A general discussion of cracks in the containment building (Issue 1) is too broad. The cracks may or may not be related to things that affect the remedial fixes (e.g., adequacy of the till to support underpinned structures, effect of dewatering). Similarly, any discussion of the adequacy of the till (Issue 2) must be related to the remedial steps to be taken. However, Issues 3, 4, and 5, fall within the purview of the OM proceeding. That being so, the next question is whether Ms. Stamiris meets the standards for reopening the OM record.

B. Standard For Re-opening The Record

In Metropolitan Edison Company (Three Mile Island Nuclear Station, Unit No. 2), ALAB-486, 8 NRC 9, 21 (1978) the Appeal Board stated that ". . . the proponent of a motion to reopen bears a heavy burden. The motion normally must be timely presented and addressed to a significant issue." See also Pacific Gas and Electric Company (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-598, 11 NRC 876, 879 (1980), Kansas Gas

4/ Darl Hood, Project Manager, docketed a memorandum of those conference calls. That memorandum has been received into evidence as Sinclair Exhibit 5.

and Electric Company (Wolf Creek Generating Station, Unit 1), ALAB-462, 7 NRC 320, 338 (1978). In looking at the timeliness of Ms. Stamiris' motion, the Board must assess whether the issues which Ms. Stamiris raises could have been raised earlier, such as while litigation of the technical adequacy of the remedial fixes was going on. See, Vermont Yankee Nuclear Power Corporation (Vermont Yankee Nuclear Power Station), ALAB-138, 6 AEC 520, 523 (1973). As for significance, the Appeal Board has emphasized that a record need be reopened only if the matter sought to be raised is "of major significance to plant safety." Vermont Yankee Nuclear Power Corporation (Vermont Yankee Nuclear Power Station), ALAB-124, 6 AEC 358, 365 (1973). Furthermore, the party moving to reopen the record must submit more than "bare allegations" or new contentions. Significant new evidence must be offered. Pacific Gas and Electric Company (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-81-5, 13 NRC 361, 363 (1981).

C. Application Of Standards For Reopening Record To Ms. Stamiris' Motion

1. Timeliness

Many of the concerns which Ms. Stamiris raises in her motion are not timely. She claims that the OM record contains no evidence on "whether the integrity of the glacial fill is an adequate foundation for the safety-related structures as being affected by soils remedial measures or other soils conditions causing degradation in its essential foundation properties." That is wrong. As discussed below, both the Staff and the Applicant have presented evidence on the adequacy of the till.

In its prefilled testimony both on the auxiliary building and on the service water pump structure, the Applicant discussed the competency of the glacial till to hold the underpinning wall.^{5/} Both sets of prefilled testimony specifically discuss the effect of dewatering on the glacial till.^{6/}

The Staff has also presented evidence on the competency of the till and effects the dewatering system might have on it. The second supplement to the Staff's Safety Evaluation Report (SSER No. 2)^{7/} describes the competency of the till.^{8/} The supplement also documents Staff concurrence of the technical adequacy of underpinning down to the till.^{9/}

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- 5/ Testimony of Edmund M. Burke, W. Gene Corley, James P. Gould, Theodore F. Johnson and Mete Sozen on Behalf of the Applicant Regarding Remedial Meaures For the Midland Plant Auxiliary Building and Feedwater Isolation Valve Pits, pp. 48-57, (following Tr. 5509) ("CPC Testimony on Auxiliary Building"); Testimony of Alan Boos, Edmund M. Burke, James P. Gould and Palanichamy Shunmugavel concerning Midland Plant Service Water Pump Structure, pp. 29-39 (following Tr. 9490) ("CPC Testimony on SWPS").
 - 6/ CPC Testimony on Auxiliary Building at 55-56; CPC Testimony on SWPS at 38-39.
 - 7/ Staff Exhibit 14.
 - 8/ §§ 2.5.4.1-2.5.4.3.
 - 9/ § 2.5.4.4.1. As for the auxiliary building, the Staff also submitted prefilled testimony in which we indicated our approval of underpinning down to the till. Testimony of Darl Hood, Joseph Kane and Hari Singh concerning the Remedial Underpinning of the Auxiliary Building Area, pp. 12, 19-21. (following Tr. 5839).

Also discussed in SSER No. 2 is anticipated vertical movement of safety related structures which the remedial fixes affect.^{10/}

As for Ms. Stamiris' Contentions 4C and 4D, referred to in her motion, the Staff addressed them in separate testimony.^{11/} Ms. Stamiris, in fact, questioned the Staff on the extent to which dewatering would cause the containment building to settle.^{12/}

Ms. Stamiris' concerns about the adequacy of the till to support the underpinned structures and her questions on how much dewatering will affect the till have been litigated in this proceeding. Ms. Stamiris had ample opportunity to cross-examine witnesses on those issues. In fact, Ms. Stamiris raises only two subjects that were not already litigated; (1) the speculation during the January conference calls that a larger amount of settlement at the northern end of the auxiliary building was due to dewatering and (2) the discovery of the cracks in the containment building. Accordingly, the question to decide is whether those two subjects are so significant as to warrant reopening the record.^{13/}

^{10/} § 2.5.4.5.2. The discussion of the containment building explicitly states that dewatering will cause some settlement and that the estimated settlements are conservative and acceptable.

^{11/} Tr. 9687-9739, 9812-9847, 12065-12143.

^{12/} Tr. 9818-9821.

^{13/} Ms. Stamiris makes a general assertion that the cracks in the containment building may be soils related or caused by soils remedial measures. Tr. 17,989. She also states that she wishes the Board to consider "the dynamic responses regarding dewatering effects, differential soil settlement and seismic effects for . . . the containment building." *Id.* Ms. Stamiris may be referring to something other than (1) whether the containment cracks call into question the adequacy of the till to support the underpinned structures and (2) whether dewatering is causing excessive settlement of the till. If so, the motion is too vague. Ms. Stamiris cannot call upon the Staff and CPC to speculate on what she may be concerned about.

2. Significance

The attached affidavit of Joseph Kane shows that neither the January conference calls nor the cracks in the containment building warrant a reopening of the record. Turning first to the conference calls, Ms. Stamiris has taken a statement out of context. As both Mr. Kane discusses and the minutes of the call indicate on their face, settlement of the till due to dewatering was just a "possible explanation" given by CPC.^{14/} The Staff felt that the relatively small settlement values and the trends of the data were caused by temperature changes.^{15/}

The discovery of the cracks in the containment buildings also fail to warrant a re-opening of the record. As Mr. Kane explains, it was predicted that there would be settlement of the till under the containment. It was also anticipated that dewatering would cause additional settlement. In fact, the settlement measured at the containments has been less than what was predicted.^{16/} Furthermore, Mr. Kane has also expressed his opinion, based on his knowledge of the rigidity of the containment structures and the small recorded differential settlement, that it was not differential settlement that

14/ Sinclair Exhibit 5, p. 3 of enclosure, Affidavit of Joseph Kane, p. 2.

15/ Sinclair Exhibit 5, p. 4 of enclosure. See also Affidavit of Joseph Kane, pp. 2-3.

16/ Affidavit of Joseph Kane, pp. 3, 5. As can be seen in Applicant's response to Ms. Stamiris' motion, CPC gives 0.8 inch as predicted settlement of the containment due to dewatering. Since the actual measured settlement is less than the lower prediction of 0.6 inch, the differences in predicted settlement do not affect consideration of Ms. Stamiris' motion.

caused the cracks.^{17/} Admittedly, as Mr. Frank Rinaldi explains in his attached affidavit, the Staff has not yet evaluated the cause of the cracks, but will do so. Nonetheless, from Mr. Kane's affidavit, it is reasonable to conclude that settlement of the till did not cause the cracks in the containment building. That being so, the cracks do not call into question either the integrity of the till or the effect of dewatering on it. Hence, there is no nexus between the cracks and the issues to be considered in the OM proceeding.

3. Need For Ms. Stamiris To Offer Evidence In Support Of Her Motion

Ms. Stamiris' motion is also deficient because she does not meet the Diablo Canyon requirement that evidence, rather than allegations, be offered.^{18/} Nowhere in the motion does Ms. Stamiris offer any evidence that the cracks were caused by till settlement. She apparently is only speculating that to be the case. As for the January conference calls, Ms. Stamiris admits that it was only speculation that the dewatering system was responsible for uneven settlement at the northern end of auxiliary building. She offers no evidence herself to support that theory. Rather, the evidence points to the contrary. The fact that Ms. Stamiris' motion offers no more than allegations is sufficient reason by itself for denying the motion.

^{17/} Id. at 3, 6.

^{18/} See p. 4 supra.

CONCLUSION

For the foregoing reasons the Staff opposes Ms. Stamiris' Motion and urges that it be denied.

Respectfully submitted,



Michael N. Wilcove
Counsel for NRC Staff

Dated in Bethesda, Maryland
this 22nd day of July 1983

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF RESPONSE TO INTERVENOR BARBARA STAMIRIS' 'MOTION TO REOPEN OM RECORD ON STAMIRIS CONTENTION 4'" 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 22nd day of July 1983:

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