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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION  
ATOMIC SAFETY AND LICENSING BOARD

DOCKETED  
USNRC

'84 MAY 25 P3:03

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

OFFICE OF SECRETARY  
DOCKETING & SERVICE  
BRANCH

SERVED MAY 29 1984

In the Matter of  
CONSUMERS POWER COMPANY  
(Midland Plant, Units 1 and 2)

ASLBP Nos. 78-389-03 OL  
80-429-02 SP

Docket Nos. 50-329 OL  
50-330 OL

Docket Nos. 50-329 OM  
50-330 OM

May 25, 1984

MEMORANDUM AND ORDER  
(Admitting TDI Diesel-Generators Contention)

On March 4, 1984, Ms. Barbara Stamiris, an intervenor in this proceeding, filed a motion to add a new contention questioning the adequacy of the diesel generators (manufactured by Transamerica Delavel, Inc. (TDI)) to be used in this facility.<sup>1</sup> On March 15, 1984, she supplemented this motion with an addendum justifying the "late filing" of the contention, under the factors set forth in 10 CFR § 2.714(a). In

<sup>1</sup> The contention states:

Because of the problems identified with TDI emergency diesel generators, the model DSRV 12 diesel generator engines from TDI can not be relied upon to perform their requisite safety function at the Midland plant.

Several bases are supplied for this contention.

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filings dated March 30, 1984 and April 4, 1984, the Applicant and NRC Staff offered no objection to our admission of the contention. The Applicant suggested that it be incorporated as part of an existing OL contention on "station blackout" (Sinclair Contention 11) and also that it be clarified in certain respects. The Staff would rather have us either rule on the proffered contention or defer ruling and give the parties time to see if they can stipulate to an acceptable contention.

Given the lack of any objection to the contention, we are accepting it at this time. We will leave to the parties to agree on the exact wording of the contention (subject to our acceptance) and whether or not it should be added to Sinclair Contention 11, as suggested by the Applicant. We perceive considerable merit in that suggestion.

We note that we agree with the Staff that the Board notifications relied on by Ms. Stamiris (BN 84-020 and 84-021, dated February 13, 1984, and BN 84-024, dated February 15, 1984) provide adequate bases for the contention. We also agree in general with the discussion of the 10 CFR § 2.714(a) lateness factors provided by the Staff. (The Applicant did not discuss these factors.) We are giving no credit to Ms. Stamiris' expressed "hope" to produce a witness on the TDI issue. See Washington Public Power Supply System (WPPSS Nuclear Project No. 3), ALAB-747, 18 NRC 1167, 1181 (1983). But, based on her prior participation in this proceeding, we believe that Ms. Stamiris is likely to assist in developing a sound record on this matter.

We wish to stress that, as the Applicant points out, this contention is not to be used as a medium for litigating or relitigating

the matter of differential settlement between the diesel generator building structure and the diesel generator pedestals. Those questions are already being considered in the consolidated OM proceeding and there is no need to litigate them separately with respect to the new contention. To the same effect, see our Prehearing Conference Order dated August 14, 1982, LBP-82-63, 16 NRC 571, 591 (1982), and also LBP-82-118, 16 NRC 2034, 2043 (1982). The Applicant's suggested limitation of this portion of Ms. Stamiris' contention to "whether the mechanical connections to the TDI EDG's are adequate to withstand postulated differential settlement between the DGB structure and diesel generator pedestals" appears both constructive and reasonable; but, as stated above, we will leave it to the parties to agree upon the exact wording of the contention.

Ms. Stamiris has requested discovery on the new contention. Absent objection, we grant that request. Discovery will commence subsequent to agreement by the parties as to the exact wording of the contention. Given the ongoing inquiries into various aspects of TDI diesel generators and the likely extended period of time before this contention can be ready for litigation, we will establish no termination date for discovery on the TDI contention at this time. We urge the parties to commence their discovery efforts early, since (depending on the progress of other aspects of this proceeding) we may in the future impose a termination date for discovery on fairly short notice. We note that certain (although not all) aspects of the TDI diesel-generators problem may be resolved generically. At this time, we are not imposing

any limits on either the contention or on discovery by virtue of these potentially generic considerations. See Duke Power Co. (Catawba Nuclear Station, Units 1 and 2), ALAB-768, 19 NRC \_\_\_\_ (April 17, 1984).

We request that we be notified when agreement has been reached as to the exact wording of the TDI contention. If it becomes part of Sinclair Contention 11, Ms. Stamiris will become a co-sponsor of that contention. If the parties agree to litigate it as a separate contention, it will be denominated as Stamiris OL Contention 4.

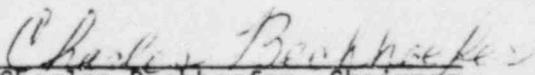
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For the reasons stated, it is, this 25th day of May, 1984

ORDERED

1. That Ms. Stamiris' motion to admit a new OL contention on the Midland TDI diesel generators is granted;
2. That discovery is authorized as provided herein.

FOR THE ATOMIC SAFETY AND  
LICENSING BOARD

  
Charles Bechhoefer, Chairman  
ADMINISTRATIVE JUDGE