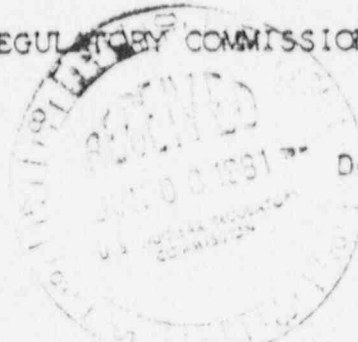


U.S. NUCLEAR REGULATORY COMMISSION

In the matter of
C.P.Co. Midland Plant
Units 1 and 2



Docket Nos. 50-329
50-330
OM & OL

BEFORE THE ATOMIC SAFETY & LICENSING BOARD

5/20/81

INTERVENOR RESPONSE TO 5/8/81 MEMORANDUM & ORDER OF THE BOARD,
AND APPLICANT'S 5/6/81 RESPONSE AND MOTIONS FOR PROTECTIVE ORDER

On 5/6/81, Consumers responded to my 4/28/81 Summary of Requests with a "response" which offered their version of my intent and position, and of the background surrounding my discovery, and contained a motion for protective order.

I continue to find it surprising that negative remarks or implications of a personal nature, and complaints about unrelated burdens are propounded by the Applicant, rather than maintaining a discussion of the issues in dispute only.

Even Applicant's specific and relevant objections as set forth in the Appendices, represent arguments supporting their motion for a protective order to which I had no opportunity to respond before the May 8th Order. But the greatest part of the first 21 pages of Applicant's May 6 pleading, represents an unfair statement of my intent and position by the Applicant.

Rather than respond to each allegation by the Applicant, I will comment only on those relating directly to issues ruled upon in the May 8th Memorandum & Order of the Board.

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THIS DOCUMENT CONTAINS
POOR QUALITY PAGES

RESPONSE TO MEMORANDUM & ORDER

2.

I.

On p.3 of the Memorandum and Order, is the statement that the follow up questions to 2 and 3 are "precluded by an agreement between the Applicant and Ms. Stamiris." Page 15 of Applicants May 6 document states, "The written terms of the agreement contain no mention of further follow up questions, and the clear intent of the agreement, which itself evolved out of follow up * questions, was to dispose of the matter completely. By asking additional questions on these matters, Ms. Stamiris has violated this agreement."

It is clear from these statements that the Applicant considers my further follow up questions a violation of his unspoken and unwritten intent. This is very different than a violation of an agreement made and understood by both parties. I did not and would not violate our agreement.

I am not here seeking any sort of action on these clarifying questions denied by the board, but raise the issue of the agreement only to defend my integrity in this matter.

II.

The slight delay in my 3/23/81 motion to compel answers to 5b-5e resulted because the C.P. lawyers I attempted to contact to discuss a possible agreement, were out of town, as explained in my 2/11/81 Request for Extension of Time to File Motion to Compel Discovery From Applicant. This is to clarify the discussion of such on p. 4 of the Memorandum & Order.

* these did not evolve from follow up questions, but from examples (1/26/81) which refined and narrowed the scope of the 12/4/80 q.

III.

Regarding my 1/14/81 Follow Up Requests as discussed on p.4 of the Memorandum & Order, the following statements are made.

" These questions were filed on 4/27/81, approximately 23 days after service of the Applicants 4/30/81 response. The Applicant considers them untimely. We agree."

At the end of March and the beginning of April I was working full time on my Answer to Applicants Seismic Motion, and the Summary Disposition deadline was fast approaching. Since I had not yet received Applicants response to my 1/14/81 Request, I feared that I would not be able to reply as promptly as I would like should Applicants answer arrive at this time. For this reason, I offered " to submit any further and final discovery requests within 3 weeks of receiving their (Consumer's) response if related questions were necessary" in my letter of 3/27/81. (I met that commitment, allowing that it made more sense to serve the document at the 4/27 Prehearing Conference than mail it on the 25th.)

Despite these efforts to be as prompt as possible, and despite the fact that the Applicants response came approximately 76 days after the submittal, my requests are considered untimely.

I do not here seek further action regarding these denied requests, except for #5, a request for file documents, which in part the Board (p.4 Memorandum & Order) interprets as a motion to compel. (p.6 of this document)

IV.

On p.5 of the Memorandum & Order, is the statement " We presume Ms. Stamiris should already have received the communication to the ASLE regarding temporary dewatering". I believe that this communication was sent prior to my admission as an Intervenor, thus I did not and have not received such a document.

V.

There was no direct mention made in the Memorandum & Order of my 3/27/81 discovery request or its ensuing responses (listed but not included at the top of p. 6 of my 4/28/81 Summary). As these questions were not titled or considered "follow up" requests even by myself, and as I now understand permissible "second round" discovery, I am sure they are denied . The one exception might be the last request (#10) of that series, which arose directly from my study of the Administration Building documents provided 3/2/81. It is: "10. The March 8, 1978 I.O.M. from Afifi to Castlebury (copies to 1320, 3410) notes a conflict or confusion regarding borings. Please explain this exchange and provide the three referenced I.O.M.s." I respectfully seek a direct ruling on this question at this time.

RESPONSE TO APPLICANTS CONCLUSIONS ON PAGE 21 OF MAY 6 SUBMITTAL *

Applicant concludes that my discovery requests are beyond the parameters of discovery as set by the Board at the January Prehearing Conference, although the arguments he presents (p.9-11) would have precluded his own 60 discovery questions submitted to me Feb. 9th, had they been so applied. Further my understanding of "second round" discovery permitted me was not limited to clarifying questions only as stated by the Applicant (p.9). My lack of access to a transcript placed me at a disadvantage in reviewing statements on this subject.

Secondly Applicant argues that my outstanding requests are "unduly burdensome in light of the large amount of discovery already provided to Ms. Stamiris". Although the quality of my discovery questions has been lacking at times, it has always been conducted in good faith. The Applicant's practice of restating my position, objections, or intentions implies otherwise.

Although I have not attempted to defend the negative implications propounded by the Applicant, I have felt compelled to correct erroneous statements. I have thus added such comments to past discovery pleadings, adding to the quantity as well as to the "confusing mixture" of discovery of which the Applicant complains.

* On p.1, my intention was to disregard the Applicants arguments beyond those related to the Memorandum & Order, as the Order has already been made, but I will now briefly respond to his conclusions.

The remainder of what may be an unusually large quantity of discovery, and follow up questions is also due in part to the quality of Applicants answers. Whatever the reason for the quantity though , that past burden is irrelevant if the discovery was proper.

Thirdly, the Applicant argues that my requests are "untimely in that they would seriously interfere with C.P.s preparation for the Hearing". Knowing that his own responses have been less timely than my own, Applicant fails to set forth any specifics, but raises another burden unrelated to the discovery issues in question, namely that of the Hearing itself.

On the basis of these arguments, Applicant sought denial of all my outstanding discovery requests, which I merely consolidated into a single document (without arguments or explanations*) on 4/28/81.

RESPONSE TO APPLICANT'S MOTION FOR PROTECTIVE ORDER ON FUTURE DISCOVERY

In response to Applicants Motion for Protective Order with respect to future discovery, on which ruling has been deferred, I submit that the Applicant be compelled to respond to my #5 document request of the 1/14/81 Follow Up series p.3 of the 4/28/81 Summary, according to 10 CFR 2.740(e).

* excepting a few paragraphs on the Administration Building settlement issue in the letter accompanying the document.

1. BACKGROUND

In my first discovery request (12/4/80), I sought documents* concerning "discussions of all options ever considered (whether formal or informal, tentative or complete) for correction of Administration Building settlement" (document request #5).

On 1/19/81, Consumers responded, "There are no documents meeting the description contained in this request." On 1/26/81, I accepted Consumers answer that no such documents existed and asked why. I also asked questions 5b-a concerning the decision to remove and replace the faulty fill under the Administration Building.

On 2/27/81 Applicant objected to question 5(b) "on the ground that it is irrelevant to this case." That same objection was repeated in response to questions 5(c)- 5(e). In response to the document request, Applicant answered, "While Applicant objects to producing documents concerning the chosen option, all such documents fall within the scope of Item 5 (of the 1/14/81 Request). The documents are now producible at the Midland Service Center."

Most recently, discovery on the Administration Building is objected to "because it is untimely and not within the scope of further discovery authorized at the Jan. Prehearing Conference."
(2.14 May 6 Response)

* documents were defined as reports, studies, notes, worksheets, meeting reports, summaries, correspondence, telecons, or other communications

The documents produced on March 2, 1981 thus concern both document requests (12/4/80 and 1/14/81) on the Administration building.

II. Arguments Against Protective Order For the Following Discovery

Just as I had accepted Applicant's first response that no documents meeting the 12/4/80 description existed, I also at first considered the documents produced as satisfactory for the following reasons.

On 3/10/81 I attempted to contact Mr. Brunner and Mr. Farnell to discuss questions 5, 2, and 3 of their 2/27/81 (and 3/2/81 documents) reply to my 1/26/81 request. On 3/17/81, Mr. Brunner returned my call^{*}. I asked Mr. Brunner if there were any more documents to come regarding the Administration Building. He replied that I had been given Bechtels "whole file" on the Administration Building. He also suggested that because I had it all I should be able to find answers to 5b-5e within those documents. I replied that I would re-study them with this intent before submitting a motion to compel (this portion of the exchange is referenced in my 3/23/81 motion to compel). I accepted Mr. Brunner's statement about the Administration Building documents.

It was not until much later (mid April) that I realized that the stamped SB numbers could be ordered, representing file

* the 3/10/81 call attempt is referenced in my 3/11/81 Request for Extension of Time to File Motion to Compel

numbers. In so doing, I realized there were pages missing from the middle of this series. Knowing that it would be difficult to base my document request on an oral statement, unrecorded to the best of my knowledge, I attempted to obtain an answer by other means (4/23 or 4/28 request 5 in 1/14/81 follow up series).

My request was not timely, for the aforementioned reasons, but the production of information which could be crucial to my contention 3c or 1, and is otherwise inaccessible, should outweigh any considerations of timeliness. Although I cannot be sure that the documents I request are crucial, "When a party has relevant evidence within his control, which he fails to produce, it may be inferred that such evidence is unfavorable to him."1/

All of my discovery on the Administration Building problem has been "reasonably calculated to lead to the discovery of admissible evidence"(2.740b,1) in relation to my contentions, as I attempted to develop the relationship between the Administration Building problem and the Diesel Generator Building problem.

For these reasons and because of the incorrect statement made by Mr. Brunner on 3/17/81, I request that the Applicant be compelled to supplement his original document response of 3/2/81 according to 10CFR 2.740(e) as set forth in the first paragraph of question 5 (of 1/14/81 follow up) on p.3 of my 4/28/81 Summary.

1/ Public Service Co. of New Hampshire, et al. (Seabrook Station, Units 1 & 2) ALAB 471, 7 NRC477,498 (1978)

Realizing the difficulty of requesting "and any beyond SB13956 in this series on soils", I will ask instead if there are any documents (including memos) related or referring to SB19695-19701, a Rough Draft of Administration Building report, or if there are any other boring logs or other types of soil reports within 50p. before SB 00545 or 50p. after SB 005537

Further I request that the Applicant be compelled to answer these new requests, which constitute an attempt to refine the questions in the second portion of question 5 of 4/28/81 p.3.

a) Does Consumer Power have documents beyond those of Bechtel which concern the Administration Building settlement problem as addressed in the 3/2/81 document production? If yes, please provide.

b) Are there documents relating to plant area fill soils which stemmed from studies or events relating to the Administration building settlement problem which took place in 1977-78 which have not been presented to the NRC in 55e, 54f reports or requests? If yes please provide.

Respectfully Submitted,

Karoline Stenovic

Copies sent: A.S.L.B. members
W. Paton, NRC
J. Brunner, CP Co.
Secretary, NRC