

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING APPEAL BOARD

Administrative Judges:

Alan S. Rosenthal, Chairman
Thomas S. Moore

DOCKETED
USNRC

'85 MAY 13 P3:31

In the Matter of)

CONSUMERS POWER COMPANY)

(Midland Plant, Units 1 & 2))

OFFICE OF SECRETARY
DOCKETING & SERVICE
Docket Nos. 50-329 OL&OM
50-330 OL&OM

MARY SINCLAIR'S RESPONSE TO THE
APPEAL BOARD ORDER OF APRIL 23, 1985

In their April 23, 1985, Order, the Appeal Board requested that intervenors' responses to the memoranda of the applicant, Nuclear Regulatory Commission (NRC) staff, and amicus curiae briefs to the Appeal Board April 15, 1985, Order be filed by May 10, 1985.

Intervener Mary Sinclair responds to the Board as follows:

1. The Bechtel Corporation is not and has not been a formal party to these actions, but it has used its capacity as architect-engineer at the Midland nuclear plant to make its own decisions as to how it would proceed with construction at the Midland nuclear plant without being bound by the rules of the Licensing body of the Atomic Energy Commission (AEC), now the NRC.

In this role, they were able to disregard the Dames and Moore consultants' report that Consumers Power Co. (CPCo) filed with the AEC as the strict criteria for the compaction of soil at the Midland nuclear plant site and to use their own judgment as to how they would proceed with soils and compaction. This was revealed in the Dow/CPCo trial now underway at the Midland County Courthouse (Martinez Testimony, Mar. 18, 1985). Although Dames and Moore study required the use of sand, lift thickness of 7 to 8 inches, and special compacting equipment to prepare this site for construction of a nuclear plant, Bechtel opted to use the random soil, mostly clay,

from their excavation of the cooling pond area. The Dow/CPCo trial (Don Horn Testimony beginning October 30, Midland County Courthouse) has brought out these facts under oath, as well as the fact that appropriate lift thickness criteria and proper compaction methods were not used. This is contrary to the criteria sent to the AEC (now NRC) as part of the construction license requirements. Even the original loose ground cover, called loose sands, were not removed, which was specifically recommended by the Dames and Moore consultants to CPCo. As a result of this fundamental decision and the unresisting compliance^{of CPCo}, the soils problems at Midland have been characterized as "unprecedented at any other facility" by an NRC staff inspector, E. Gallagher (TR 2463).

Bechtel now states to the Appeal Board that canceling the operating license would not only do CPCo serious economic harm in its efforts to sell this plant, but would jeopardize the licenseability and prospects of other projects where Bechtel has a substantial contractual interest. These are economic, self-serving interests, which are totally inimical to the chief obligation of the NRC, i.e., to protect the public health and safety. In fact, they should be the cue for this Appeal Board to alert the NRC staff, which has obligations at other Bechtel nuclear projects, to review very carefully the construction practices at these sites.*

The fact is that Bechtel's construction practices have made this nuclear plant unsafe and economically unviable.

2. The Midland City Council and the Midland County Board of Commissioners have relied primarily upon the public relation's staff assurances of CPCo as

*The Appeal Board should be apprised of the fact that after the CBS "60 Minutes" segment on Midland (Jan. 27, '85), I received numerous phone calls from workers and citizens at other nuclear plant sites. They told me about the serious construction deficiencies at other nuclear plants, some of them also being built by Bechtel. One specific example of this is the Alvin Vogtle plant in Georgia. A worker who had worked at the plant called and said that several foundations of safety-related buildings were cracked because they were backfilled too soon after concrete was poured. There is a leak in the Turbine building. The Auxiliary building has settled three inches and one containment building is tilted. There is a serious drug problem at the nuclear plant and many documents sent to the NRC have been altered by management personnel. This Appeal Board should relay this information to the appropriate sources in the NRC to follow up on these matters.

to the potential cost and completion date of the Midland nuclear plant; on the need for power for Michigan from Roger Fischer, now Chief of Staff of the Public Service Commission (PSC), but formerly head of the rate-making decision of CPCo, who conveniently moved through the swinging door to the PSC, well-acquainted with the applicant's interests; and for the licenseability of the plant on James Keppler, director of Region III staff, who in his testimony before the Michigan Legislature, disavowed what several of his own key inspectors stated under oath during the Midland soils hearings, i.e., that the shoddy workmanship was so pervasive at Midland that it constituted a grave threat to the health and safety of the people of the tri-county area (Testimony of Ron Cook and Ross Landsman, Nov., 1982).

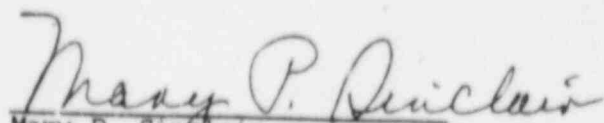
The record of what has actually gone on in construction in Midland is in the NRC licensing hearings record, but most significantly, in the sworn testimony now being developed in the record of the Dow/CPCo trial currently going on in the Midland County Courthouse.

Without basing their approach and information based on these data, which is established under oath, and by relying instead on public relation's ploys, the Midland City Council and the Midland County Commissioners and their law firms are violating their public trust and are playing games with taxpayers' money.

The Public Service Commissioners, themselves, have recently specifically stated that any rate relief granted to CPCo must not be used on the Midland nuclear plant. Major industries of Michigan, including Dow Chemical, General Motors, Chrysler, Ford Motor Co., and many other industries have stated they do not want to have the Midland plant completed because they could not afford the cost or the power. Many Michigan industries are planning their own power source if they are to survive economically. Since these are CPCo major market areas, any claim about future need for power from the Midland nuclear plant is a fiction.

The Appeal Board should not only cancel the operating license application, but also the construction permits, because there was no compliance with the basic requirements upon which those permits were given.

Respectfully submitted,


Mary P. Sinclair

cc: Attached Service List

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E. Gallagher

1 sites, to a much different degree, however.

2 Q But there have been, in fact, problems on other
3 nuclear sites with something as simple as soils, haven't
4 there?

5 A To a much lesser extent. The degree of the
6 problem is what's important here. The extent of what has
7 occurred at the Midland facility is unprecedented at any
8 other facility.

9 Q The point remains, however, that other people
10 have had some problems with something as simple as soils, or
11 haven't they?

12 A Yes, of course.

13 Q In fact, a recent bulletin has been issued
14 covering not only Midland but other plants as well, is that
15 right?

16 A I wrote the bulletin.

17 Q So the answer is that, yes, a recent bulletin
18 has been issued with regard to soils for not only this plant,
19 but others?

20 A Excuse me. It was a circular; Inspection and
21 Enforcement Circular.

22 Q To someone like me, they're the same. I'm
23 sorry.

24 A It has a different regulatory posture.

25 Q So your answer is, yes, in fact there has been

NRC gives examples to back criticism

Related story, page 3
By PAUL RAI
Daily News staff writer

In recently filed testimony, the U.S. Nuclear Regulatory Commission gave several examples to justify its harsh criticism of the Midland nuclear plant project.

For example, the NRC described two occurrences to back its claim that "slipshod workmanship" is tolerated at the nuclear plant.

Electrical cables, particularly in the control room, are at times allowed to dangle on the floor in walk areas despite the fact the ends of the partially installed cables are uncovered, senior NRC resident inspector Ronald Cook said in an attachment to the NRC's written testimony.

The testimony is to be used in an upcoming portion of the federal hearing on the plant's soil problems.

"This is also another indicator of slipshod workmanship which has been brought to the constructor's attention at various times, but was last noted during a recent inspection," Cook wrote.

In the second example, Cook said NRC inspectors found that some drop-in anchors used to attach components to concrete walls were improperly installed and "obviously did not adhere to the installation procedures."

He said Consumers protested that this was not a valid finding of non-conformance because plant quality control (QC) inspectors had not yet inspected the anchors.

"The NRC inspectors treat this as indicative that slipshod workmanship is tolerated in the hopes that QC will find the mistakes," Cook wrote.

TO SUPPORT its claim that Bechtel Power Corp., the plant's prime contractor, is uncooperative and seems to be running the project rather than Consumers, the NRC cited two more examples.

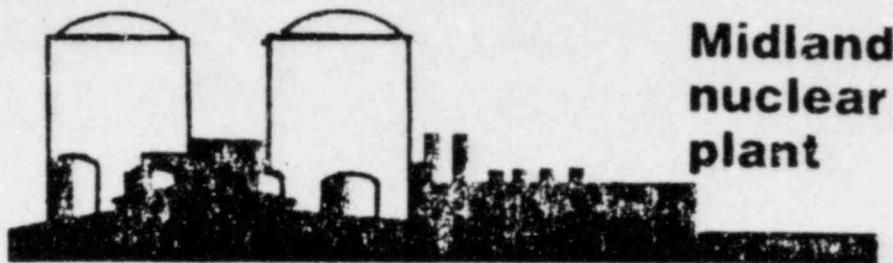
In one, Cook said, an NRC inspector asked Consumers and Bechtel to provide resumes of workers involved in work to correct soil and foundation problems. The inspector was told the records would not be provided because they were personal.

Cook noted there is an obligation to the NRC to supply a precise number of qualified persons for the soil work, and said the information ultimately was obtained by appealing to Consumers' upper management.

"However, this indicates an implied unwillingness of the constructor (Bechtel) to share information with the NRC and sometimes with the licensee (Consumers)," Cook wrote.

"Historically, one of the NRC questions has been, 'Who is running the job — Bechtel or Consumers?'" Cook said, adding that a second example "would allow one to believe it is Bechtel."

The example involved a form that the NRC insisted Consumers generate to coordinate the installation of instruments needed for the soil work. The form was written by Consumers and approved by



Midland
nuclear
plant

the NRC, but on two occasions Bechtel indicated it did not want to use the form, Cook said.

"The opinion of the staff is that if Consumers generates a form that will aid them in not incurring regulatory difficulty, and which has had NRC input, the licensee should demand that the contractor comply with these policies instead of the contractor dictating the regulatory environment under which they will work," Cook wrote.

AN EXAMPLE cited by the NRC of Consumers' "argumentative" nature was the utility's response to an NRC report called Systematic Assessment of Licensee Performance (SALP), which grades the regulatory performance of utilities building nuclear plants.

The latest SALP said Consumers was weak in several areas. The utility responded with a rebuttal document at least as long as the SALP report itself.

"The licensee's argumentative position is in the form of 'we really are not all that bad' when the records, findings and observations of the NRC inspectors support just the opposite position," Cook said.

ANOTHER PORTION of the testimony written by two other NRC officials said James W. Cook, the Consumers vice president in charge of the Midland project, is an "extremely capable and dynamic individual" but that these attributes may be causing confusion because Cook is too involved in details of plant operations.

Consumers has declined comment on the NRC testimony, and said it will respond with its own testimony during the soil hearing.

But at a news conference Tuesday, Cook responded to the testimony that addressed him personally.

"My policy is to be involved to the extent one person is able to be," Cook said. He said such personal involvement by upper management is essential to satisfactorily complete any nuclear project.

Cook also said there was "some confusion in the way that (NRC testimony) was written," and that Consumers will attempt to clarify the situation in its testimony, which has not yet been filed.

MDX/5/4/85

Busch admits error about n-plant

By PAT CASEY
Daily News writer

"I was wrong last March (1984) when I said the Midland nuclear plant should be completed," Rep. Michael Busch, R-Saginaw, said at an economics forum Friday.

Busch and four other panelists — U.S. Rep. Bill Schuette, R-Sanford; Saginaw Valley State College's Dr. James Mitchell; Rod Coleman of General Motors Foundry; and David Wierman, Saginaw News publisher — spoke to an audience of 40 for two hours on the topic of Mid-Michigan 1990 and Beyond.

Sponsor of the program was the Northeastern Michigan Estate Planning Council.

IN RESPONSE TO a question on Michigan's energy outlook, Busch said his pro-completion position had been based on faulty information from Consumers Power Co. which

indicated the plant could be completed on schedule and within budget.

"I don't want to say I was misled — maybe I didn't ask enough of the right questions," Busch said.

"But I only learned later that Bechtel, the contractor, estimated there was only a 10 percent chance of on-time, on-budget completion."

Busch also said that Michigan energy costs are not any higher than neighboring states and will soon be significantly lower when states like Indiana begin complying with consent orders to install expensive air pollution control equipment.

"Their energy costs will go up 30 to 40 percent in Indiana, because they put off cleaning up their emissions.

"Michigan put the scrubbers on way ahead of other states."

Wierman and Coleman emphasized the need for an attitude

change in the business community, recognizing that the Saginaw Valley is in a global battle for markets.

"I'm sensing that people know it's not going to be business as usual," Wierman said, "that we can't simply grab on to the coattails of the economic recovery."

He called for more creativity, risk-taking, and "a bias for action" from business, praising the bold, cooperative effort of city, county and state government in saving U.S. Graphite.

Calling Michigan the garden spot of the rustbelt, Coleman, a transplant from Washington, D.C., recommended greater emphasis on the agriculture industry, noting a lack of promotion of Saginaw Valley products.

"They serve clam chowder on the street corners in New Orleans, why not serve bean soup all over Fashion Square Mall?"

Schuette also stressed agriculture as a key area for economic growth in Mid-Michigan, pointing to the developing '85 Farm Bill as a potential pitfall.

"We have to help farm families get fairer prices," Schuette said. "But we can't hurt our international competitiveness."

Mitchell, of SVSC, commented that the recent fire at the college "came a couple of years prematurely," referring to the \$28.3 million construction program still in progress.

He noted that scholarly research on college campuses has more of a commercial flavor than previously encountered. He encouraged increased government funding for the creative minds on campus.

"You never know where the next little gem is coming from."