U.S. NUCLEAR REGULATORY COMMISSION

In the Matter of
CPCo. Midland Plants
Units 1 & 2

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

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

6/24/81

INTERVENOR OBJECTION TO NRC/CPCo. QUALITY ASSURANCE STIPULATION

I object to the proposed QA Stipulation between the NRC and CP because my rights as a party to this proceeding, and the rights of the public at large are adversely affected by an agreement which would not allow full and fair consideration of the issues upon which this hearing was originally based.

The QA Stipulation, and the exclusory manner in which it was negotiated, have violated both the letter and the spirit of the Code of Federal Regulations governing this proceeding. The regulation on Stipulations, 10 C.F.R. 2.753, states "the parties may stipulate ... any relevant fact or the contents or authenticity of any document. Such a stipulation may be recieved in evidence. The parties may also stipulate as to the procedure to be followed in the proceeding. Such stipulations may, on motion of all parties, be recognized by the presiding officer to govern the conduct of the proceeding."

The clear intent of this paragraph is to protect the rights of all parties by precluding a stipulation between two parties

if a third party, affected by that stipulation, objects. Furthermore, stipulations are limited by 2.753 to matters concerning "any relevant fact or the contents or authenticity of any document" or to proceedural matters.

This stipulation would go far beyond these limitations toward resolving the ultimate question at issue in this proceeding: whether reasonable assurance exists that QA " will be appropriately implemented with respect to future soils construction activities, including remedial actions." (part 3 of stipulation)

Such conclusory statements are contrary to " the rule that a Licensing Board may not delegate its obligation to decide significant issues to the NRC staff", for, if such decisions can not be delegated to the Staff, it must follow that neither should the Staff take upon itself the decision of such significant issues.(1)

The NRC/Consumer Power Co. agreement not to litigate the 5 years of QA breakdown which led to this hearing, because of one recent satisfactory QA inspection is an inequitable exchange at best.

The issues and arguments raised by the NRC and Consumers (as in the QA Summary Disposition Motion and Answer), concerning how a nuclear plant came to be built on unsuitable soil foundations without an adequate QA program, are certainly issues and arguments

(1) NRC Practice and Procedure Digest, Supplement 1 to Digest 2, Feb. 1980; p. 12;Public Service Co. of Indiana, Marble Hill 1 & 2, ALAB -461, 7 NRC 313, 318 (1978).

which deserve to be heard by the public who must live with that plant.

Although I have been repeatedly assured that my rights would " not (be) prejudiced by an agreement between the Applicant and Staff; and that notwitnstanding any agreement between those parties, (my) contentions would be addressed at the evidentiary hearing." (p. 6, June 12 Memorandum and Order of the Board); I remain unconvinced.

The litigation of my QA and Managerial attitude contentions will be merely an academic excercise in light of the agreements made between the NRC and Applicant on that subject. Furthermore the adoption of the QA Stipulation would shift the focus of the hearing from the events leading up to the Dec. 6 order, on which my contentions are based, to the recent QA improvements and commitments by the Applicant, on the appamnt belief that past performance is immaterial in making "reasonable assurance" judgements. By this shift of focus, I am further disadvantaged because of my lack of access to recent documents from the NRC and the Applicant in 1980-81 as discussed in my 12/22/80, 4/23/81, and 6/3/81 requests.

Even if these arguments concerning the effect of the QA Stipulation on my contentions are rejected, as they have been in previous conference calls, there can be no question that this is also a stipulation "as to the proceedure to be followed in the proceeding". And even the narrowest interpretation of Rule 2.753, prohibits such stipulations from occuring, except "on motion of all parties."

As I stated earlier, I object not only to the stipulation itself, but also to the manner in which it was negotiated over the past several months. Although the Applicant has been invited to attend every meeting between myself and NRC counsel, as I was told is proper, I have been repeatedly excluded from meetings between the Staff and Applicant, and refused access to"confidential" memos on the QA Stipulation, despite my specific requests to the contrary. (See Attachment A)

As is evident from the chronology of events, the QA Stipulation is closely tied to the Staffs Motion for Summary Disposition on QA Prior to Dec. 6, 1979. The stated purpose of the Applicant in discussing the QA Stipulation on 5-27-81 was to keep the Board from "invest(ing) substantial time and effort in considering and ruling upon the Motion for Summary Disposition with regard to quality assurance." (6/9/81 CP Response to 5/29/81 Notice

Yet by agreeing not to contest the QA breakdown prior to Dec.6, 1979, the Applicant now contradicts all the arguments and legal citations he has presented "which prohibit such judgements on an ultimate issue at this stage in the proceeding." (p.18 CP Answer to Staff Summary Disposition Motion) and protest "dispos(ing) of those issues without a hearing".

The QA Stipulation goes one step further than the QA Summary Disposition Motion for it seeks to dispose of the QA issue, not by offering an uncontrovertable factual record, but by offering a subjective judgement of "reasonable assurance" for the future, for which no factual evidence can be produced precisely because it has not yet happened.

To gain insight as to the overall effectiveness of such a regulatory approach, consider this chain of events: 1) A hearing is called on specific QA deficiencies and their effect on plant construction, 2) Those deficiencies are "identified and attended to" by the licensee, 3) on the basis of the corrective actions forced by the NRC, and the percieved QA improvements just prior to the hearing; reasonable assurance is given that QA will be appropriately implemented in the future.

That chain of events leaves only one remaining question: whether the reasonable assurance, so given, turns out to be correct. Ironically, the chain of events just described took place in 1974, and we now know that the QA reasonable assurance judgement was wrong in LBP 74-71, as it was before that in ALAB 147*. In light of the uncontested QA breakdown which occurred from 1974-1979, as set forth in the Dec.6, 1979 order on soil settlement issues, it is obvious that the perceived QA improvements of late 1974 were inadequate.

Despite this antecedent, the NRC is willing to repeat the very same regulatory approach concerning soil settlement issues in 1981. Only one significant difference exists between the events in the 1974 proceeding and the events in this proceeding, and that is in the timing of the "reasonable assurance" judgement. Whereas that judgement took place, in 1974, as a part of the hearing process, it is being offered, in 1981, as a part of a stipulation prior to the hearing; a stipulation made in the name of expedience.

* as stated by the Appeal Board of ALAB 106 in their memo to M. Muntzing, p. 4, 11/26/74.

I have presented my arguments to the proposed QA Stipulation, although I share the doubts of Judge Bechhoefer (as expressed in granting me this opportunity on 5/27/81) that it could make a difference. In fact, even if the Board were to formally deny the proposed QA Stipulation now, it would be of little consequence. For, nothing can undo the "reasonable assurance" already given, or informal agreements between two parties, and their effects on the hearing about to take place.

Respectfully Submitted,

Barbara Stamiris

cc: ASLB members
Wm. Paton, NRC
M. Miller, CPCo.
Secretary, NRC
Attorney Gen. F. Kelley

Attachment A

Chronology of Intervenor Opposition to NRC/CPCo. QA Stipulation

March Telephone Conversations

Mid-March: Mr.Paton mentions a possible QA Stipulation and its possible effect on averting submission of the Staff Summary Disposition motion. I object, citing Rule 2.753.

I receive NRC, CPCo. approval to call Judge Bechhoefer to discuss his interpretation of Rule 2.753. He indicated that I could object to a stipulation but he would rule on that objection to decide whether the stipulation could go forward without my consent.

Approx March 26 — Conversation with Mr. Paton, Mr.Gilray to explore Gilrays current assessment of CP QA. Mr.Gilray would not state that, as of that day, QA was adequate. Neither would Mr. Keppler give such a statement, as of that day, but planned to spend a week onsite before commiting himself (as related to me by Mr. Paton.) Lacking these statements of current QA adequacy as a basis for the QA Stipulation, it appeared that it would be necessary for the Staff to submit its Motion for Summary Disposition on QA.

April 13 — Meeting, Bethesda, CP-NRC Counsel, to discuss QA Stipulation. I was permitted, but unable to attend.

Conference call from that meeting sought extension of time in which to submit Staff Motion for Summary Disposition. I objected because the Motion was ready, and its ultimate submission was dependent on the possible QA Stipulation once again. The two week extension was denied because of Judge Bechhoefers schedule conflicts.

May 5 — Conversation with Mr.Paton. I am informed of an extension of time sought by Applicant (and granted) in which to submit their answer to the Summary Disposition Motion. I also learn of the "confidential" memo from CP to NRC on the QA Stipulation.

May 8 — I initiate a conference call to object to my exclusion from the call granting CPs extension of time to submit their Summary Disposition Answer. I also object to the

extension itself because I believed it to be related to the possible QA Stipulation once again.
I request permission to see the "confidential" memo, or at least for Judge Bechhoefer to see it to assess the validity of my suspicions. All objections and requests are denied.

May 15 Meeting Bethesda, CP-NRC Counsel to discuss QA Stipulation of which I am uninformed. I read of it in the Bay City Times.

May 18 NRC Inspection Team arrives Midland.

May 19 Conversation with Mr.Paton. I request permission to attend Inspection Exit Meeting. May 20- request denied. Offer is made to arrange personal meeting with Mr.Keppler instead. I accept.

May 21 Meeting with Mr.Keppler. We discuss how he makes a reasonable assurance judgement, avoiding specifics of the just completed inspection and his pending QA assessment.

May 26 Ellen Brown calls to inform me of conference call planned to discuss other possible stipulations and their effect on hearing schedules.

May 27 Conference call initiated by Mr. Miller. He discusses Mr. Kepplers "reasonable assurance" and the meeting with Mr. Keppler, NRC,and CP Counsel scheduled for the 28th to finalize the QA Stipulation. Since Mr. Paton had denied my right to attend that meeting, I sought a ruling from Judge Bechhoefer. My request was denied.

I attempted unsuccessfully to reach Mr. Keppler to express my dismay at being excluded from the 28th meeting in the hopes that that decision might be reversed.

May 28 Mr. Keppler returns my call. Having received my letter on the subject, and my message of dismay (related via Mr. Paton who happened to intercept my morning call), Mr. Keppler informed me that he had not yet given his"reasonable assurance" to Consumers and would not attend the meeting on the QA Stipulation.

May 29 I submit Notice of Violation of 2.780 (Ex Parte Communication) concerning Mr. Millers premature statement of Kepplers "reasonable assurance".

June 5 NRC/ CPCo. QA Stipulation is submitted