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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

In the Matter of)

CONSUMERS POWER COMPANY)

(Midland Plant, Units 1 and 2))

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

ANSWER TO PETITION FOR
LEAVE TO INTERVENE IN
OPERATING LICENSE HEARING

Consumers Power Company ("Consumers Power"), pursuant to 10 C.F.R. §2.714(c), answers the March 28, 1982 "Petition For Leave to Intervene in Operators [sic] License Hearing of Barbara Stamiris" ("Petition"). Since she is already a party with respect to the soil settlement issues, Consumers Power believes that in fact Ms. Stamiris is petitioning to expand her role in the Operating License ("OL") Proceeding. Consumers Power opposes Ms. Stamiris' Petition.

Background

On August 29, 1977, Consumers Power submitted an application for operating licenses for the Midland Nuclear Power Station, Units 1 and 2. On May 4, 1978, the Nuclear Regulatory Commission ("Commission") published a notice that Consumers Power's application had been docketed, and authorized

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the filing of petitions for leave to intervene by any person whose interest may be affected thereby (43 Fed. Reg. 19304).

Mary Sinclair, on behalf of the Saginaw Valley Nuclear Study Group, and the Attorney General of the State of Michigan, on behalf of the State of Michigan and its governmental agencies, filed petition for leave to intervene under §2.714. In its "Memorandum and Order" dated August 14, 1978, the Licensing Board designated to rule on petitions for leave to intervene: (1) denied Saginaw Valley Nuclear Study Group's Admission, while admitting Ms. Sinclair as a party in her own right; (2) denied the State of Michigan admission under §2.714, while admitting it under 2.715(c); and (3) held that both parties shall specify the subject matter on which they desire to participate on or before 15 days prior to the special Prehearing Conference.

By Order entered October 12, 1978, the Licensing Board scheduled a Special Prehearing Conference to be held on November 15, 1978. (43 Fed. Reg. 48089) This Special Prehearing Conference was subsequently delayed until December 14, 1978. (43 Fed. Reg. 54148) Prior to the Special Prehearing Conference, Wendell Marshall filed a petition for leave to intervene, along with nine contentions, and Ms. Sinclair submitted her proposed contentions.

On December 14, 1978, a Special Prehearing Conference was held in Midland, Michigan. Thereafter, on

February 23, 1979, the Licensing Board entered its "Special Prehearing Conference Order" in which it granted some of Ms. Sinclair's contentions, granted one of Mr. Marshall's contentions, and established a schedule for discovery. Certain contentions proposed by Ms. Sinclair were determined by the Board to be insufficiently specific and Ms. Sinclair was required to restate them prior to the Board making final determination of their admissibility. Initial discovery on environmental matters was scheduled for completion by June 1, 1979. Initial discovery on radiological health and safety issues was to be conducted by July 6, 1979. Supplemental discovery regarding these matters was to be completed within thirty days of service of, respectively, the Final Environmental Statement ("FES"); and the Safety Evaluation Report ("SER") Supplement.

On March 19, 1979 the Nuclear Regulatory Commission Staff ("Staff") notified all parties in this proceeding that the Draft Environmental Impact Statement, FES and SER would not be completed as early as originally anticipated. Furthermore, as a result of the Three Mile Island incident, the Staff reallocated its resources so as to defer most of the licensing review for the Midland Plant operating licenses application, which in turn led to the deferral of the issuance of the foregoing documents. On August 2, 1979, the Licensing Board entered its "Memorandum and Order" in which it declined to establish a specific schedule for further action in the operating license proceeding.

The Nuclear Regulatory Commission, through the offices of Nuclear Reactor Regulation and Inspection & Enforcement, issued an "Order Modifying Construction Permits" ("Order") for the Midland Plant, Units 1 and 2, on December 6, 1979. Consumers Power responded with a request for hearing in accordance with Part V of the Order. Notice of this hearing was published and petitions for leave to intervene were invited. (45 Fed. Reg. 18214, 35949)

On June 27, 1980, Barbara Stamiris filed a petition for intervention and on July 24, 1980, the Board ruled that she satisfied the "interest" and "aspects" of 10 C.F.R. §2.714(a)(2). Several versions of her contentions were submitted to the Board. In its Prehearing Conference Order Ruling on Contentions and on Consolidation of Proceedings (October 24, 1980), the Board modified her contentions and admitted them.

On May 27, 1980, Consumers Power filed a motion to consolidate the OM Proceeding with those issues relating to soil conditions and plant fill materials raised in the OL Proceeding. In the October 24, 1980 Prehearing Conference Order, the Board granted the motion and stated that "the two intervenors [Stamiris and Warren] in the OM Proceeding will be recognized as parties in the OL Proceeding to participate with respect to all matters relative to the soil settlement questions which are litigated in the OL Proceeding" (page 14).

At the April 27, 1981 prehearing conference in the OM/OL Proceeding, the issue of filing TMI-related contentions in the OL was raised. (Tr. 956-68) Ms. Stamiris was present during this discussion, and participated in it. (Tr. 967-68) As a result of that discussion, the Staff on May 14, 1981 filed a motion entitled "NRC Staff Motion To Clarify The Discussion of TMI-Related Contentions at the April 27, 1981 Prehearing Conference." Ms. Stamiris, although she received a copy of this motion, never responded. Consumers Power responded to the motion and stated that it agreed with the Staff's request for clarification and felt that any TMI-related contentions were then untimely. In its June 12, 1981 Memorandum and Order (concerning various pending motions), the Board ruled that "Any TMI-related contentions based on information currently available must be filed by July 31, 1981." It also stated that "The Board did not intend to suggest that TMI-related contentions could be accepted without regard to the Policy Statement [CLI-80-42, 12 NRC 654 (1980)]; and we hereby stress that, as contemplated by the Policy Statement, we will expect strict adherence to the Commission's requirements in this regard, including a showing of good cause and a balancing of the factors specified in 10 CFR §2.714(a)(1)." (page 7) Ms. Stamiris never filed any TMI-related contentions within the time period set forth in the order.

Discussion

Ms. Stamiris' Petition should be denied for the following reasons:

1. Ms. Stamiris has failed to file any contentions.

Since Ms. Stamiris is already a party to the OL Proceeding, she was required under 10 C.F.R. §2.714 to file contentions;* the normally bifurcated procedure of first being admitted and then filing contentions does not apply. Since she has not filed any contentions, her Petition is fatally defective.

2. The areas in which Ms. Stamiris appears to want to participate have been ruled by the Board to be untimely and are therefore banned by the law of the case.

As stated previously, Ms. Stamiris has not favored the Board with specific contentions, but rather makes the general statement that "Significant safety concerns have arisen since 1978 involving the design and construction of this plant, as well as generic issues which apply to Mid-land, which make it imperative for this Board to accept to intervene in 1982 if a full and meaningful hearing is to occur." It appears that Ms. Stamiris is seeking to raise TMI-related contentions.

As stated previously, the Board has given notice and opportunity to Ms. Stamiris to file such contentions. The Board's specific ruling was that "Any TMI-related contentions based on information currently available must be

*/ Pursuant to Section 2.714(f) and (g), Ms. Stamiris' participation has been limited to the soils issues.

filed by July 31, 1981." Since Ms. Stamiris did not file any such contentions by July 31, 1981, she is foreclosed from filing them now, unless she can show that they are based solely on information available after July 31, 1981. If there are such contentions, then they must satisfy the five factors set forth in 10 C.F.R. §2.714(a).

3. Any non-TMI-related contentions filed by Ms. Stamiris will not satisfy the 10 C.F.R. §2.714(b) requirements.

Although Ms. Stamiris is a party to the OL proceeding, her participation has been limited to soils issues. See 10 C.F.R. § 2.714(g). Any attempt by her to file new contentions is analogous to late intervention and therefore the requirements of 10 C.F.R. §2.714(a) are applicable. Each of the five factors set forth therein are analyzed individually below:

(i) Good cause, if any, for failure to file on time.

Candidly, Ms. Stamiris states in her Petition that "At the outset of my participation in the soil settlement hearing, it was not my intent to intervene in the OL Proceeding and that is why I did not petition." In other words, in early 1980--a year after the Special Prehearing Conference Order ruling on contentions issued--Ms. Stamiris recognized her opportunity to expand her participation beyond the soils issues and she made a conscious decision not to do so.

Petitioner's only excuse for failure to file on time* is that "only recently upon reading the NRC draft environmental Statement for Midland, did [she] become convinced that [she] must petition to intervene." Absent other circumstances, her tardy "conviction" hardly justifies expanding the scope of her participation in the OL proceeding. This is particularly true when there is no way of knowing what specific issues she seeks to address.

Past NRC decisions have refused to grant intervention notwithstanding: (1) that the potential intervenor was lulled by the intervention of another which later withdrew, Gulf States Utilities Co. (River Bend Station Units 1 & 2) ALAB-444, 6 NRC 760, 796-98 (1977), Duke Power Co. (Cherokee Nuclear Station Units 1, 2 & 3), ALAB-440, 6 NRC 642, 645 (1977); (2) that the potential intervenor only recently gained standing, Houston Lighting and Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-582, 11 NRC 239, 241 (1980), Carolina Power & Light Co. (Shearon Harris Nuclear Power Plant, Units 1-4), ALAB-526, 9 NRC 122 (1979); (3) that the potential intervenor failed to receive Federal Register Notice, New England Power Co. (NEP, Units 1 & 2), LBP-78-18, 7 NRC 932, 933-34 (1978); and (4) that the potential intervenor failed to read the Federal Register Notice, Houston Lighting & Power Co. (Allens Creek Nuclear Generating

*/ The Special Prehearing Conference Order ruling on OL contentions issued on February 23, 1979. Any contention filed thereafter is untimely.

Station, Unit 1), ALAB-574, 11 NRC 7 (1980). In light of these precedents, petitioner's excuse fades in significance. Moreover, the longer an intervenor has tarried after the deadline for filing petitions to intervene, the harder it becomes to satisfy the burden both with respect to showing good cause for a non-timely filing and the other factors. If the deadline is missed by years - as here - the burden becomes "enormously heavy." Puget Sound Power & Light Co. (Skagit Nuclear Power Project, Units 1 & 2) ALAB-559, 10 NRC 162, 172-73 (1979). Ms. Stamiris has utterly failed to meet this burden.

(ii). The availability of other means whereby the petitioner's interest will be protected.

There is no suggestion that Ms. Sinclair or Mr. Marshall, the other intervenors in the OL proceeding, will not be fully capable of protecting Ms. Stamiris' interests. The contentions they have set forth raise generic issues and safety concerns involving the design and construction of the plant, of the type Ms. Stamiris appears concerned about. Moreover, the NRC Staff has, as always, the statutory responsibility to protect the public interest.

As to any TMI-related interests Ms. Stamiris may have, they are, as stated earlier, barred by the law of the case.

(iii). The extent to which the petitioner's participation may reasonably be expected to assist in

developing a sound record.

Ms. Stamiris has no special expertise in the matter beyond that possessed by the other intervenors, that would help in any way to develop a sound record. Ms. Stamiris' issues of "significant safety concerns . . . involving the design and construction of this plant, as well as generic issues" deal with technical, as opposed to quality assurance concerns. Ms. Stamiris does not have any technical background, and when requested to state the basis for her Contention 4C--"CPCo's performed and proposed remedial actions are inadequate as presented"--she admitted that she "lack[ed] the technical qualifications to answer these questions or investigate the area of this contention with the necessary expertise." (Intervenor Answer to Applicant's Interrogatories, 4/20/81, Item 4A-4J)

Ms. Stamiris' assertion, "I have worked in the public intrest [sic] for a year and a half in the OM-OL Proceeding . . ." is certainly open to debate. Consumers Power disagrees with Ms. Stamiris' statement that her participation "has significantly contributed to the full and fair disclosure of issues in that hearing (OM/OL)." Consumers Power, for the reasons set forth in item (v), believes that Ms. Stamiris has broadened issues in the OM/OL Proceeding beyond those allowed by the Board and has not contributed to a sound record. It admits she has contributed to a "full" record.

(iv). The extent to which the petitioner's interest will be represented by existing parties.

Ms. Stamiris has given no reasons why Ms. Sinclair, Mr. Marshall, and the Staff cannot fully represent her interest.

(v). The extent to which the petitioner's participation will broaden the issues or delay the proceeding.

From reading Ms. Stamiris' petition, it is evident that any expanded participation will both broaden the issues and delay the proceeding. She will broaden the issues--if she is allowed to expand her participation--for the reason that the issues in her petition--"significant safety concerns" (unspecified), and "generic issues" (unspecified),--are so broad as to be meaningless. Likewise, Ms. Stamiris will, if allowed intervention, delay the proceeding. OL hearings will be commencing shortly and it is apparent, from her petition, that she has not yet begun any preparation to even identify issues,* let alone conduct additional prehearing procedures such as discovery and participate in a hearing. Finally, judging her capability for delay by the time frame within which she filed this petition--candidly waiting until the last moment--the potential for delay is apparent.

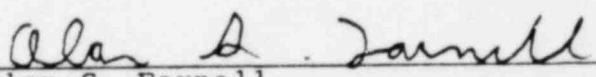
*/ During the April 2, 1982 conference call with the Board, Ms. Stamiris informed Chairman Bechhoeffer that she could not provide a date by which her contentions could be submitted.

Finally, her performance in the soils hearings has demonstrated her propensity to broaden issues far beyond admitted contentions.*

In conclusion, Ms. Stamiris' petition must be denied. Ms. Stamiris has failed to frame contentions. She has not asserted good cause for failure to file on time, has other means to protect her interest, has not given any indication that her participation will assist in developing a sound record, and her interests, whatever they may be, will be represented by existing parties. Moreover, if Ms. Stamiris is allowed intervention, she will undoubtedly broaden the issues and significantly delay the proceeding.

WHEREFORE, Consumers Power hereby requests that this Licensing Board deny Barbara Stamiris' petition to participate in this operating license proceeding beyond the boundary already set.

Respectfully submitted,


Alan S. Farnell
Attorney for Consumers Power Company

*/ For example, the removal of an earlier dewatering system, tr. 1336-1340 and the changing in her Proposed Finding of Facts of Stamiris Contention 2, Examples 11 and 12 and Contention 2C away from examples of time and schedule pressures.

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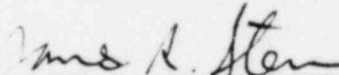
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CERTIFICATE OF SERVICE

I, James R. Stern, hereby certify that Consumer's Power's "Answer to Petition For Leave to Intervene in Operating License Hearing" has been served on those listed in the attached Service List by deposit in the United States mail, first class, postage prepaid, this 12th day of April, 1982.



James R. Stern

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