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

In the Matter of	)	
CONSUMERS POWER COMPANY	)	Docket Nos. 50-329-OL 50-330-OL
(Midland Plants, Units 1 and 2)	)	

APPLICANT'S RESPONSE TO
MS. SINCLAIR'S NEW CONTENTIONS

Applicant, Consumers Power Company, hereby responds to the set of New Contentions submitted by Intervenor Mary P. Sinclair on June 18, 1982. Ms. Sinclair's new contentions are not timely, and none of them meets the requirements for admissible contentions under the Commission's Rules of Practice for the reasons stated in part II of this Response.

I. STATEMENT OF FACTS

On August 31, 1977, Applicant filed an application for an operating license for Units 1 and 2 of its Midland facility. The NRC accepted the application for full review on April 17, 1978. Notice of the docketing of the application and notice of the opportunity to intervene were published in the Federal Register on May 4, 1978 (43 Fed. Reg. 19304). Mary Sinclair filed a petition to intervene on June 5, 1978. She was admitted as a party to the OL proceeding on August 14, 1978. On October 31, 1978, she filed

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fifty-six contentions which she sought to have litigated in the OL proceeding. In its Special Prehearing Conference Order of February 27, 1979, this Licensing Board accepted three of Ms. Sinclair's contentions for litigation, accepted twenty-four for discovery purposes and rejected the remaning twenty-nine.

The incident at Three Mile Island occurred in March, 1979. On June 12, 1981, acting in response to arguments by the NRC Staff and the Applicant that TMI-related information was available to intervenors at that time, that intervenors should not await issuance of the SER to file TMI-related contentions, and that even at that date it might be too late to demonstrate good cause for late filing, the Board set July 31, 1981 as the deadline for submission of TMI-related contentions in the combined OM/OL proceedings. In doing so, the Board stressed that contentions filed by the deadline would still be required to meet the 10 CFR §2.714(a)(1) criteria governing acceptance of late-filed contentions.

Intervenor Sinclair filed no additional contentions by July 31, 1981.

The Midland SER was issued in May, 1982. The Midland DES was issued in February, 1982. On May 7, 1982, the Board set a schedule for the submission of contentions based on new information contained in these documents. On

June 18, 1982, Intervenor Sinclair submitted twelve new contentions. Her submission was unaccompanied by any explanation for the late filing of the contentions. On June 25, 1982, the Board directed all intervenors who had filed late contentions to provide good cause for the late filing, as required by 10 CFR §2.714(a). Ms. Sinclair complied with the Board order under protest, filing "Ms. Sinclair's Response to Board's Request for Reasons For Late Filing of New Contentions". ("Intervenor's Response"). The sole justification for late filing asserted in Intervenor's Response was "new and significant information developed since the original contentions were filed on October 28, 1978". (Intervenor's Response at p. 1). The other §2.714(a) factors governing acceptance of late-filed contentions were not addressed by Ms. Sinclair at all.

II. MEMORANDUM IN SUPPORT OF APPLICANT'S RESPONSE

Ms. Sinclair's new contentions should be stricken for one or more of the following reasons:

(1) Ms. Sinclair has failed to demonstrate good cause for their late filing, as required by 10 CFR §2.714(a) (New contentions 3, 4, 5, 6, 7, 8, 9, 11, 12);

(2) They lack the basis and specificity required by 10 CFR §2.714(b) (New contentions 3, 5, 6, 8, 9, 10, 11, 12);

(3) They already have been or are being fully litigated in this proceeding (New contentions 4 and 7); and

(4) They raise issues which are currently being resolved in another forum (New contentions 1 and 2).

This Memorandum first discusses the lack of good cause for the late filing of the contentions as a whole then proceeds to a discussion of the individual flaws of each contention

(A) Unjustifiable Late Filing

Intervenor Sinclair manifestly fails to carry the burden placed upon her by 10 CFR §2.714(a) of justifying the late filing of her new contentions.

Ms. Sinclair's new contentions may be admitted into this proceeding only if the Licensing Board finds that a balancing of the five factors listed in 10 CFR §2.714(a) weighs in favor of admissibility. These factors are:

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

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

(3) The extent to which the petitioner's participation may reasonably be expected to assist in developing a sound record.

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

(5) The extent to which the petitioner's partici-- pation will broaden the issues or delay the proceeding.

An analysis of these factors demonstrates that the balance weighs heavily against Ms. Sinclair in this case, and mandates that proposed contentions 3, 4, 5, 6, 7, 8, 9, 11 and 12 be denied admission.

(1) Good Cause

Ms Sinclair rests her entire argument for the admission of her new contentions on the assertion that her new contentions are based on information made available since the filing of her original contentions in 1978. However, for purposes of determining good cause for a late-filed contention, the important date is when the information upon which the contention is based first became available. The documents Ms. Sinclair has referred to make it clear that her contentions are not based on new information.

Ms. Sinclair admits that the information relating to at least one of her new contentions was available before she filed her original contentions on October 31, 1978. New contention 7 explicitly states that it is based on information reported at a meeting on September, 1978.

Similarly, new contention 8 states that it is derived from an accident that occurred at another nuclear plant on September 16, 1978. This accident was widely reported in 1979 in I.E. Circular 79-02 and I. E. Bulletin

Bulletin 79-27. Thus new contention 8 is clearly based on very old information.

Other of Intervenor Sinclair's new contentions are based on information which Ms. Sinclair admits was available to her a year ago. New contentions 11 and 12 are based on testimony given in the combined OM:OL proceedings in July, 1981. (Intervenor Response, p.2). Contention 4 is based on testimony given on those proceedings in August, 1981. Ms. Sinclair has not even attempted to justify or explain why she waited a full year before filing new contentions based on this information. No such excuse is inferrable from the contentions themselves. Ms. Sinclair has failed utterly to show any good cause for filing these contentions one year after the information on which they are based became available.

Good cause for the late filing of Ms. Sinclair's new TMI-related contentions (Nos. 3, 5, 6 and 9) is also lacking. The Three Mile Island incident occurred in March, 1979, and was followed by a stream of reports providing information on the causes of the accident and making recommendations for changes in the industry. On June 12, 1981, well over two years after the accident, this Licensing Board held that all TMI-related contentions to be submitted in the OM:OL proceedings must be filed by July 31, 1981, and stressed that contentions filed by that date would still have to meet

the late-filed contentions requirements of 10 CFR §2.714. Ms. Sinclair's new TMI-related contentions overrun this deadline by nearly one year, but provide no explanation of why they could not have been filed by July 1981, or before. All of the information on which they are based was available well before July 31, 1981.

New contention 5 is explicitly based on the Rogovin report, published in early 1980. Ms. Sinclair alleges that the practice identified in new contention 6 "has been identified as a problem since the TMI-2 accident". (Intervenor Response, p. 1). Since we are not certain what "problem" new contention 6 is referring to, we are also hard put to ascertain when it was first "identified as a problem." Fortunately, under 10 CFR §2.714(a) it is Ms. Sinclair's obligation to show her new contentions are based on new information; it is not Applicant's burden to show they are not. New contention 9 relates to the mechanical problem which initiated the accident at TMI, a stuck-open power operated relief valve. The crucial role played in the accident by the malfunction of this valve was identified soon after the accident was over. See, e.g., NUREG 0578, "TMI-2 Lessons Learned Task Force Status Report and Short Term Recommendations," Items 2.1.1, 2.1.2, 2.1.3a (July 1979). New contention 3 is based on several other factors which contributed to the seriousness of the TMI accident. The identification of these factors is not new information; although the contention

references only an April, 1982 article in Science magazine, the role of these factors in the accident have been identified since 1979. (See NUREG 0578; Rogovin report, pp. 19-21, 91, 102-108, 122-128).

Ms. Sinclair has delayed filing TMI-related contentions for over three years after the accident and for nearly one year after the deadline set by this Licensing Board, despite the fact the the relevant information was available long before June, 1982. Such delay is simply inexcusable. Untimely TMI-related contentions have been denied admission in other cases for inexcusable delay, although they were filed in July, 1980, Cincinnati Gas and Electric Co. (William H. Zimmer Nuclear Station, LBP-80-24, 12 NRC 231, 237 (1980), and March, 1981, South Carolina Electric and Gas Co. (Virgil C. Summer Nuclear Station, Unit 1), ALAB-642, 13 NRC 881, 884, 887 (1981). Ms. Sinclair's contentions 3, 5, and 9, filed in June 1982, offer no plausible excuse for delay, and such lack of good cause must weigh heavily against their admission in this proceeding.

Ms. Sinclair has failed utterly to show "good cause" for her delay in filing new contentions 3, 4, 5, 6, 7, 8, 9, 11 and 12. They are all based on information available before the applicable deadlines. This absence of good cause is not conclusive with respect to the inadmissibility of these late-filed contentions. It does, however, make Ms. Sinclair's burden of justifying late filing "considerably greater". Nuclear Fuel Services, (West Valley

Reprocessing Plant), CLI-75-4, 1 NRC 273, 275 (1975); Cincinnati Gas & Electric Co., (William H. Zimmer Nuclear Station), LBP-80-24, 12 NRC 231, 237 (1980). An analysis of the four remaining factors shows that Ms. Sinclair cannot make the "particularly strong" showing needed on these factors to gain admission of her contentions, see Gulf States Utility Co., (River Bend Station, Units 1 and 2), ALAB-444, 6 NRC 760, 796 (1977), and mandates that these new contentions be denied admission.

(2) Developing a Sound Record

The requirement that an intervenor's participation be reasonably expected to assist in developing a sound record, 10 CFR §2.714(a)(1)(iii), is "one of the most important factors" in determining admissibility of late-filed contentions. Zimmer, supra, 12 NRC at 237. Ms. Sinclair has failed to make any showing whatsoever that her participation would assist in developing a sound record on her proposed contentions; accordingly, this factor must be balanced against admissibility.

Ms. Sinclair's previous involvement in this proceeding does not suffice as proof of her ability to contribute to the development of the record. Rather, to prevail on this issue, an intervenor "must show how his participation would assist in developing a sound record on the particular issues in question." Zimmer, supra, 12 NRC at 237. (emphasis added). To make such a showing, Ms. Sinclair must demonstrate

expertise or specialized knowledge in the areas covered by her proposed contentions. See Consumers Power Co. (Big Rock Nuclear Power Plant), LBP-80-4, 11 NRC 117, 122 (1980); Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 2), ALAB-384, 5 NRC 612, 618 (1977). Intervenor has demonstrated no such expertise. Indeed, the vague references to problems at TMI in new contention 3, the confusion of fogging and icing reports with Michigan DNR water permit requirements in new contention 7, and the proposal for interlocks in new contention 9 suggest that she may not even understand some of her proposed new contentions.

Absent a specific showing of an ability to assist on the development of a sound record, this factor must also weigh against the admissibility of Ms. Sinclair's late-filed contentions.

(3) Broadening the Issues

10 CFR §2.714(a)(1)(5) requires the balance to be weighed against an intervenor if his participation will broaden the issues or delay the proceeding. It is clear that the admission of Ms. Sinclair's new contentions would significantly broaden the issues to be litigated in the OL hearings. None of the new contentions covers the same subject area as any of the contentions previously accepted for discovery or litigation in the OL proceeding. This factor must be weighed against the admissibility of the new contentions. Since this is an example of very late filing of

contentions, the extent to which participation by the intervenor will broaden the issues becomes very important; because admission will broaden the proccedings and cause unwarranted delay, this factor must be weighed as heavily against Ms. Sinclair as the lack of good cause. See South Carolina Electric and Gas Co., (Virgil C. Summer Nuclear Station, Unit 1), ALAB-642, 13 NRC 881 (1981).

(4) Protection and Representation of Intervenor's Interests

10 CFR §2.714(a)(1)(4) requires that the balance be tipped toward admissibility of late-filed contentions if the intervenor's interests will not be represented by existing parties. It is possible that, if Ms. Sinclair's proposed contentions are not admitted, her interests in the subjects covered by those contentions will not be represented in the OL proceeding.

For some of Ms. Sinclair's proposed contentions, it is clear that other means exist for the protection of Ms. Sinclair's interests. For example, Ms. Sinclair's interest, embodied in new contention 5, in studying all nuclear plant systems in light of Class 9 accidents is clearly a subject more appropriate for rulemaking than for litigation in these proceedings. Many of her other contentions relate to Unresolved Safety Issues which must be, and have been, explicitly addressed by the Staff in Appendix C of the SER. The reasonableness of the Staff's treatment of these issues

will be reviewed by the Licensing Board, although these issues may not receive the detailed review which they would if they were admitted as contentions and litigated by a technically well-versed intervenor. See Virginia Electric and Power Company (North Anna Nuclear Power Station, Units 1 and 2), ALAB-491, 8 NRC 245, 248-249n.7 (1978).

Some of the remaining interests embodied in Ms. Sinclair's contentions could perhaps only be addressed by her within the context of the OL proceedings. This does not, however, mandate admission of these contentions. It does not even weigh significantly in their favor. For as the Appeal Board explained, where such contentions are very late, "these factors [protection and representation of intervenor's interests] are given relatively lesser weight than the other factors." Summer, supra, 13 NRC at 895. They are entitled to particularly little weight in a situation like the one at hand where the intervenor "(1) is inexcusably late; (2) seeks to expand materially the scope of the proceeding; and (3) offers, at best, a marginal showing with respect to its ability to make a truly significant, substantive contribution." Summer, supra, 13 NRC at 895.

(5) Conclusion

An analysis of the factors governing admissibility of late-filed contentions clearly requires that the balance

be struck against the admission of proposed contentions 3, 4, 5, 6, 7, 8, 9, 11 and 12. Ms. Sinclair has not shown any good cause for her failure to file these contentions by the applicable deadlines. Ms. Sinclair's participation cannot reasonably be expected to assist in developing a sound record on these new contentions. Admission of these contentions will significantly broaden the issues to be litigated in this proceeding. These factors weigh heavily against admission of these contentions, and far outweigh whatever benefit may accrue to Ms Sinclair from admission.

10 CFR §2.714 (a) requires that Ms. Sinclair late-filed contentions be denied admission.

B. Individual Contentions

(1) New Contention 1

New contention 1 states:

> The Environmental submission by Consumers and staff have failed to analyze the absolute and incremental effects on the environment (including the cost-benefit and risk benefit considerations) of the entire fuel cycle, as well as the serious problem of the storage of nuclear wastes on site. The U.S. District Court of Appeals of Washington, D.C. struck down the S.3 Table on April 27, 1982, which had been relied on for this purpose. Because of this Court decision, Consumers Power Co. and the NRC cannot comply with requirements of the National Environmental Policy Act in their Final Environmental Impact Statement.

New contention 1 is based on the recent decision by the District of Columbia Circuit Court of Appeals in Natural Resource Defense Council, Inc. et al. v. United

States Nuclear Regulatory Commission et al., D.C. Circuit Docket Nos. 74-1586, 77-1448, 79-2110 and 79-2131 (Slip Opinion, April 27, 1982) ("Vermont Yankee III"). Petitions for certiorari will be filed with the United States Supreme Court by the NRC and by members of the nuclear industry; a petition staying the effectiveness of the decision has been filed by the NRC. Pending a final decision in the courts, Table S-3 remains valid and binding on this Licensing Board. Therefore, the issues raised by Vermont Yankee III and by this new contention are not appropriate subjects for contentions. See 10 CFR §2.758. Applicant expects that the NRC will presently issue instructions confirming that the Vermont Yankee III issues are not appropriate subjects for contentions at this time.

(2) New Contention 2

New Contention 2 states:

> The NRC and Consumers Power Co. have not weighed the psychic stress and resulting costs to public health of operating these reactors so close to major industry and population centers as required by the decision of the U.S. District Court of Appeals for the District of Columbia on May 14, 1982. As the ACRS letter of June 8, 1982, pointed out, the Midland site is one of the most densely populated sites at distances close to the nuclear reactors. Since the plant has had so many major quality control problems during its construction, the level of concern is sufficiently high already to have convinced several government bodies and civic groups in the area to adopt resolutions opposed to the plant. These groups include: Ingersoll Township, Midland County; UAW Local 362; Bridgeport Ecological Society; Saginaw City; Bay City Education Association; UAW Cap Council, Bay City; Citizens for Animal Welfare Education, Inc., Bay City.

No Final Environmental Impact Statement can be completed without this evaluation to comply with NEPA requirements.

New contention 2 is based on the recent decision of the District of Columbia Circuit Court of Appeals in People Against Nuclear Energy v. United States Nuclear Regulatory Commission, et al., Docket No. 81-1131 (Slip Opinion, May 14, 1982)("PANE"). In PANE, the D.C. Circuit held that psychological distress is cognizable under NEPA when it takes the form of "post-traumatic anxieties, accompanied by physical effects and caused by fears of recurring catastrophe." (Slip Op. at 16-17).

In response to PANE, on July 15, 1982 the NRC issued a Statement of Policy on "Consideration of Psychological Stress Issues." The NRC's Statement directed that contentions on psychological stress would be admissible only if three elements were present: (1) the distress took the form of "post-traumatic anxieties"; (2) the psychological impacts must be accompanied by physcial effects; and (3) the "post-traumatic anxieties" must have been caused by fears of recurring catastrophe". Psychological stress contentions which do not satisfy these criteria are inadmissible.

New contention 2 satisfies none of the criteria established by the NRC Statement of Policy. Accordingly, it must be dismissed.

(3) New Contention 3

New Contention 3 states:

> Studies since the TMI-2 accident show that many kinds of reactions within a B & W reactor were not understood by anyone in the nuclear industry or NRC staff. One such condition is severe core damage as a major accident condition. The complex operations failures involving inadequate instrumentation and several operating errors or deficiencies that initiated that severe accident is another. Studies are in the earliest stages on these kinds of issues. (Science, April 9, 1982). This lack of knowledge on the part of the people on whom the public must rely for safety makes it impossible for the NRC to fulfill its primary obligation under the Atomic Energy Act of 1954 to protect public health and safety at this site.

New contention 3 would be inadequate even if timely, for a number of reasons.

New contention 3 lacks any nexus to the present OL proceedings. The primary thrust of the contention seems to be the claim that the NRC cannot fulfill its statutory duties because it does not understand "many kinds of reactions within a B & W reactor". However contentions which question the ability of the Staff to carry out properly the regulatory responsibilities which have been assigned to it are not appropriate for resolution in a licensing proceeding. Commonwealth Edison Co. (Byron Nuclear Power Station, Units 1 and 2), LBP-80-30, 12 NRC 683, 690 (1980). The contention makes no allegations about the Midland facility or about Applicant itself. Lacking any relevance to the proceedings at hand, this contention must be stricken.

To the extent new contention 3 raises the issue of the safety implications of core damage resulting from a loss of coolant accident, consideration of the contention by this

Licensing Board is precluded by rulemaking proceedings presently being conducted by the NRC. On October 2, 1980, the NRC published a notice of rulemaking addressing the issue of the "Consideration of Degraded or Melted Cores in Safety Regulation" (45 Fed. Reg. 65474). It is well-established that licensing boards should not accept in individual proceedings contentions which are the subject of general rulemaking by the Commission. Sacramento Municipal Utility District (Rancho Seco Nuclear Generating Station), ALAB-665, 14 NRC 799, 816 (1981).

The remainder of the contention lacks sufficient specificity to enable Applicant to frame a response. The legal standard by which the specificity of a proposed contention must be judged is derived from the Commission's Rules of Practice, which provide that a petitioner shall file "a list of the contentions which petitioner seeks to have litigated in the matter, and the bases for each contention set forth with reasonable specificity," 10 CFR §2.714(b). As the Commission has acknowledged, "definition of the matters in controversy is widely recognized as the keystone to the efficient progress of a contested proceeding." (37 Fe. Reg. 15128) (July 28, 1972). Therefore, it is imperative that, in setting forth issues of interest or concern to it, the petitioner:

> 'must be specific as to the focus of the desired hearing' . . . [a]nd contentions . . . serve the purpose of defining the 'concrete issues which are appropriate for adjudication in the proceeding.' Northern States Power Co. (Prairie Island Nuclear Generating Plant, Units 1 and 2), ALAB-106, 6 AEC 188, 191, affirmed, CLI-73-12, 6 AEC 241 (1973), affirmed subnom. BPI v. AEC [502 F.2d 424 (D.C.Cir. 1974)]. Gulf States Utilities Company (River Bend Station, Units 1 and 2), ALAB-444, 6 NRC 760, 768-69 (1977).

The requirement that proposed contentions have bases set forth with reasonable specificity is not a mere legal formality. Rather, it serves the important function of providing the Licensee and the Commission Staff with a fair opportunity to know precisely what the issues are and exactly what support Petitioners intend to adduce for their allegations. River Bend, supra, 6 NRC at 771. As another Licensing Board has recently explained:

> 'Bases' does not mean evidentiary proof, which is produced at the hearing. But it does contemplate a clear articulation of the theory of the contention, sufficient that the Applicant can make an intelligent response. Commonwealth Edison Company (Quad Cities Station, Units 1 and 2), Order of October 27, 1981 at 6. (emphasis added)

New contention 3 clearly does not meet this standard. There is no clear articulation of the theory or the facts on which the contention is based; it is impossible to tell from the contention itself who Ms. Sinclair is criticizing and what she is criticizing them for.

Since the contention does not refer to the Midland plant or to Applicant at all, it gives no notice of the issues on which Applicant may bear the burden of proof at a hearing. Moreoever, Ms. Sinclair provides no factual explana-

tion or support for her assertions that the NRC Staff and the nuclear industry do not understand "many kinds of reaction within a B & W reactor" and the NRC is incapable of performing its statutory function. The only authority she cites, F.R. Mynatt, "Nuclear Reactor Safety Research Since Three Mile Island", Science, Co. 216, p. 131 (April 9, 1982), does not support her assertions. The article does not contend that no one in the industry or on the NRC Staff understands the series of events which led to partial meltdown of the TMI Unit 2 core, nor it does not assert that the NRC is incapable of performing its statutory function, and the author specifically concludes that "I do not believe that the existence of these issues [degraded core accidents and man-machine interactions] means that the present generation of reactors both operating and under construction, offers undue risk." Science, Vol. 216, p. 135. Nor has Ms. Sinclair supplied any factual basis for the implication in her contention that core damage and complex operations failures are peculiar to B & W reactors. The Science article she cites makes no such claim. New contention 3 must be dismissed for failure to articulate its assertions and the bases for them with any reasonable specificity.

(4) New Contention 4

New Contention 4 states:

> Chief geotechnical engineer, Joseph Kane, testified on August 12, 1982, that even in 1978 when the Diesel Generator Building (DGB) began excessive settling when it was only 20% complete that "When you are considering it from the standpoint of safety alone, it is my opinion that removal and replacement (of the DGB) is a better solution." (p. 4209-10) Darl Hood, project manager, also stated that from a standpoint of safety, removing and replacing the DGB was also the best option from the point of safety (p. 4464) Dr. Charles Anderson, P.E., consultant for the intervenors, came to the same conclusion on May 21, 1982 in his statement to the ACRS. This can only lead to the conclusion that unless the DGB is removed, and the soil recompacted and the building replaced, that the NRC cannot give assurance of protecting public health and safety as it is mandated to do under the Atomic Energy Act of 1954 which specifically says that "public health and safety" -- not cost or schedules -- must be the primary consideration in licensing.

New contention 4 should be stricken because it essentially duplicates contentions which were fully litigated in the soils portion of the combined OM:OL proceedings in this case. Stamiris contention 2A, examples 5 and 9, and contention 2D in the soils hearing contended that removal and replacement of the diesel generator building was a preferable remedial method from a safety perspective and that Applicant had chosen a preload because of financial and scheduling pressures. Many days of testimony have already been devoted to the "management attitude" aspect of these contentions, as is reflected in the findings of fact filed by Applicant, Intervenor Stamiris and the NRC Staff. The Licensing Board noted in its April 30, 1982 Memorandum and Order that it would issue a partial initial decision that would resolve the "management attitude" issues raised in

these contentions. The technical adequacy of Applicant's remedial measures for the Diesel Generator Building will be addressed in hearings this fall. Admission of new contention 4 is wholly redundant and therefore should be dismissed.

(5) New Contention 5

New contention 5 states:

> Since TMI-2 reactor came within one hour of a total melt-down (Rogovin Report), Dr. Stephen Hanauer has said all systems must be studied in light of a Class 9 accident, -a process that the NRC has ruled out in the past. Unless this is done at Midland, the proper safeguards will not be in place to protect the public as is required by the Atomic Energy Act of 1954.

New contention 5 must be dismissed because Intervenor has not stated the bases of the contention with reasonable specificity, and because it attempts to raise issues involved in the "degraded core" rulemaking being conducted by the NRC.

Intervenor provides no basis whatsoever to support her assertion that "the proper safeguards will not be in place" unless all systems at Midland are "studied in light of a Class 9 accident." Moreover, a demand that all systems must be studied "in light of a Class 9 accident" is itself too broad and vague to form the basis of an admissible contention, because of the inherently undefined nature of a Class 9 accident. As the Licensing Board in Pennsylvania Power and Light Co. (Susquehanna Steam Electric Station, Units 1 and 2), LBP-79-29, 10 NRC 586, 588 (1979) explained:

> Accidents in Class 9 cannot be defined in terms of any particular sequence of events or occurrences or type of failure. Rather they embrace the totality of "more severe" accidents -- of many different sorts -- which do not fall within the other classes. They represent "an indefinable number of conceivable types of accidents which are more severe than the design basis accidents of Class 8."

Pennsylvania Power and Light Company and Allegheny Electric Cooperative, Inc. (Susquehanna Steam Electric Station, Units 1 and 2) LBP-79-29, 10 NRC 586, 588 (1979), quoting Long Island Lighting Company (Shoreham Nuclear Power Station), ALAB-156, 6 AEC 831, 834-35 (1973).

To the extent new contention 5 raises the issue of the safety implications of core damage resulting from a loss of coolant accident, consideration of the contention by this Licensing Board is precluded by rulemaking proceedings presently being conducted by the NRC. On October 2, 1980, the NRC published a notice of rulemaking addressing the issue of the "Consideration of Degraded or Melted Cores in Safety Regulation" (45 Fed. Reg. 65474). It is well-established that licensing boards should not accept in individual proceedings contentions which are the subject of general rulemaking by the Commission. Sacramento Municipal Utility District (Rancho Seco Nuclear Generating Station), ALAB-665, 14 NRC 799, 816 (1981).

(6) New Contention 6

New contention 6 states:

> Present practice allows maintenance work to go on while that plant is in operation. This can disrupt and disable critical safety systems. Unless assurance is given that such maintenance practices will not take place at the Midland site, the NRC and the Applicant cannot give assurance of protecting the public health and safety as they are mandated to do under the Atomic Energy Act of 1954.

Ms. Sinclair fails to frame her charges in new contention 6 with any specificity and fails to state any bases whatsoever for those charges. Ms. Sinclair does not specify whose "present practice" allows maintenance work to continue during plant operation, nor does she explain to what type of "maintenance work" she is referring. She gives no support for her claim that maintenance work "can disrupt and disable critical safety systems." Nor does she specify what safety systems could be affected or why and how they could be disabled. Most importantly, Ms. Sinclair does not specify exactly what types of maintenance work at Midland would disrupt safety systems, what safety systems could be affected and how, and what reason there is to believe that any maintenance work at Midland would deleteriously affect safety systems at Midland. New contention 6 must be dismissed for failing to meet the requirements of 10 CFR §2.714(b).

(7) New Contention 7

New contention 7 states:

> The monthly cooling pond performance data for both one and two units at Midland on p. 4-7 and 4-8 of the DEIS are based on data prepared for Consumers Power Co. by Bechtel in August, 1973. These data are based on a cooling pond in Arizona which is not applicable in the Midwest, according

> to James Carson, meteorologist at Argonne National Laboratory, who reported this at a Midland meeting in September, 1978. He reported that data that is applicable to Midland should be based on that of the Dresden, Illinois cooling pond where the water is running 90° hotter than the ambient temperature. Consumers Power Co. cannot meet its water permit requirements with these data. By using the incorrect data, the NRC and Consumers Power Co. have deceived the Michigan Department of Natural Resources about the effects of the cooling pond. It is another example of deception of the public and the agencies which have a responsibility to protect the public and their environment, and therefore, the Applicant cannot be trusted to operate the Midland nuclear plants safely, as mandated by the Atomic Energy Act of 1954.

New contention 7 should be stricken because it fails to state the bases of its claims of deception with reasonable specificity. Also, this contention is somewhat confused and requires some explanation.

First, at the construction permit stage the NRC and Consumers Power did use data from a western cooling pond to predict fogging and icing at Midland.[1/] The use of this western fogging and icing data was disclosed, and indeed challenged by Mrs. Sinclair's expert, Dr. Epstein, during the construction permit hearings. (Tr. 8317-8322,

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1/ Contrary to Ms. Sinclair's contention, the cooling pond was in New Mexico, not Arizona, at a coal-fired generating unit owned by Arizona Public Service. Another mistake in the proposed contention is the assertion that the data at pp. 4-7 and 4-8 of the DES is based on this western cooling pond fogging and icing data. It is not. Moreover, the 1973 Bechtel study referenced in the DES at pp. 4-7 and 4-8 is not a fogging and icing report. It is a report on the thermal performance of the Midland pond, i.e. it predicts temperatures in the water, not the effect of the water on the air above and around the pond. However, Bechtel did prepare fogging and icing studies in 1973 and 1973 which were based on the western cooling pond data. See above text.

June 14, 1972). Therefore, there is no basis for Ms. Sinclair's assertion that the public was deceived.

There also is no basis for Ms. Sinclair's assertion that the Michigan Department of Natural Resources was deceived by the same western fogging and icing data. While such data is contained in the Environmental Report, which is available to DNR, Consumers Power is unaware that the western fogging and icing data was ever provided to DNR for any purpose. The western fogging and icing studies would have no relevance to the question raised by the contention of whether Consumers Power can meet DNR water permit requirements.

New contention 7 must be dismissed.

(8) New Contention 8

New contention 8 states:

> The Midland SER (NUREG-0793) does not describe sufficiently how the interactions between the two units have been stabilized to prevent an accident in one unit from affecting the other as has happened at the Arkansas Units 1 and 2, on September 16, 1978, and therefore, assurance of public safety cannot be made.

To the extent that new contention 8 alleges that Applicant has not designed the Midland facility to withstand the specific transient at Arkansas Units 1 and 2, the contention lacks basis as well as being untimely. The Arkansas event was described in the NRC's Inspection and Enforcement Circular 79-02, early in 1979, and later in 1979 Inspection and Enforcement Bulletin 79-27 identified the safety concerns

arising from the event and required all applicants to address such concerns for their facilities. Consumers Power's FSAR, in the volume entitled, "Responses to Post-TMI-2 Issues and Events" at page III-10b indicates that due to design differences between Arkansas Nuclear Plant and Midland two of the four identified safety concerns are not applicable to Midland. The other two concerns are also addressed and the basis for resolution is given. Certainly the Staff cannot be faulted for not including in the SER a discussion of an inapplicable transient.

To the extent the proposed contention seeks to question, in general, "how the interactions between the two units have been stabilized" it is too vague to be acceptable under the Commission's Rules of Practice.

(9) New Contention 9

New contention 9 states:

> B & W plants have the same type of pressure relief valve that jammed open at TMI-2 and at several other B & W reactors. Unless a system of interlocks is installed to prevent the switches that keep the reactors operating from working unless all key valves are in their proper positions, no assurance of protecting public health and safety can be given.

New contention 9 states no intelligible basis for the claim that a system of interlocks is needed at Midland to prevent the occurrence of a TMI-type accident. Ms. Sinclair fails to explain how such a system could have prevented the accident at TMI or would prevent one at Midland.

Ms. Sinclair's interlocks proposal is apparently premised on the belief that Unit 2 of TMI was still operating when the power operated relief valve (PORV) stuck open, initiating a series of events that led to partial melt-down of the core. Such, however, was not the case. The reactor had already been scrammed when the PORV malfunctioned. See Three Mile Island, A Report to the Commissioners and to the Public (Rogovin Report), Vol. 1 at pp. 14-15.

Thus Ms. Sinclair's contention that the B & W reactors at Midland cannot be operated safely without such a system of interlocks is unintelligible. The contention must be dismissed.

(10) New Contention 10

New contention 10 states:

> The Midland SER (NUREG-0793, C-10), states that the faulty circumferential weld on Unit 1 can only meet the 50lb. EOL requirement for 15.1 effective full power years. This is equivalent to 18.9 calendar years if an 80% utilization factor is applied. These data totally contradict the cost-benefit analysis made in the draft DEIS since this time period for the operation of Unit 1 is only half the lifetime that has been assumed for the cost-benefit analysis. Furthermore, Unit 1 is the unit primarily intended to supply process steam to Dow. Therefore, the Applicant cannot meet the positive cost-benefit analysis required by NEPA or their contractual arragements with Dow.

New contention 10 must be dismissed for failure to state any reasonable basis for the assertion it contains.

The only support given for the contention that Applicant cannot meet its NEPA cost-benefit analysis or its contract and arrangements with Dow is the analysis by the NRC Staff on page C-10 of the Midland SER. Page C-10 of the SER, however, does not state that "Unit 1 can only meet the 50lb. [sic] EOL requirement for 15.1 effective full power years," as Intervenor claims. Rather, it states "the 50-ft-lb criterion will be met for at least 15.1 effective full power years." (emphasis added). The SER then goes on to explain that Applicant is taking steps to ensure that Unit 1 can be operated safely at full power for the 40-year life of the plant. (SER, p. C-10).

Moreover, this contention mischaracterizes the cost-benefit analysis documented in the DES. That analysis never assumed a plant life of 40 years or twice 18.9 years in arriving at a favorable environmental determination. The intervenor, in fact, does not point to a specific portion of the DES including such an assumption.

New contention 10 must be dismissed for lack of any basis.

(11) New Contention 11

New Contention 11 states:

> The studies done by geologists in connection with the hazardous waste dump that was approved last year for Midland revealed that there was a large cavern containing some chemical wastes under the nuclear plant site; the size, shape and exact location was not determined. Neither the Applicant or the Staff have provided any data on whether the

> cavern is under the cooling pond, the reactors or other safety-related buildings, or if and how it can affect the operation of the nuclear plants, the cooling pond, or the dewatering system; therefore, no assurance of protecting the public health and safety on this matter can be given pursuant to 10 CFR §50.57(a)(2) and 10 CFR §50.57(a)(3)(1).

New contention 11 must be dismissed for lack of basis.

Ms. Sinclair does not explain or support her claim that "neither the Applicant or the Staff have provided any data" on the location and effect of the cavern on the Midland plant. In fact, amendment 10 to the PSAR dated April 28, 1970 describes the cavities produced by Dow Chemical's salt solution mining in the vicinity of the Midland Plant. Moreover, the claim is contradicted by the very authority on which Intervenor bases her contention (See Intervenor Response, p. 2), the July 10, 1981 testimony of Mr. Jeffrey Kimball. Mr. Kimball testified that Applicant has estimated the size, shape and location of the cavern, and has reported this information in the FSAR (Tr. 1570-72, 1596-98, 1588). The cavern is estimated to be located within one-half mile of the site, to be 700 feet in diameter, 25 feet thick and 4100 to 4300 feet below the surface. (Tr. 1570-72). Applicant hired two consultants to assess whether the cavern could have any effect on the plant; after analyzing the cavern, these consultants concluded it could have no effect on the plant. (Tr. 1571, 1596-98). The consultants' reports are referenced in section 2.5.1.2.5.4.1 of the FSAR. Applicant is now monitoring the subsidence of the plant, and will continue to do so for the life of the plant. The

results of the monitoring are being transmitted to the NRC Staff. So far, the results have indicated no subsidence. (Tr. 1570-71, 1588, 1597).

New contention 11 must be dismissed for failure to state any reasonable basis for the assertions it contains.

(12) New Contention 12

New contention 12 states:

> Numerous brinewells have been injected under pressure with chemical wastes in this area. This can induce ground movement as has happened in the Denver, Colorado area. No evaluation of the effects of the pressure injected wells has been provided by the Applicant or NRC Staff; therefore, no assurance of public safety can be pursuant to 10 CFR §50.57(a)(2) and 10 CFR §50.57(3)(1).

New contention 12 must be stricken for lack of basis and specificity.

Initially, it must be noted that the contention gives a misleading impression of the nature of the brine-wells in the Midland area. The wells are not being utilized as dumps for hazardous chemical wastes, as the contention implies. Rather, as the authority cited by Intervenor (Intervenor Response, p.2) explains, they are utilized in a method of salt mining used by Dow, known as reduction and reinjection mining. This process extracts saltwater from below-ground formations containing saltwater, removes the bromine from the water and reinjects the remaining water back into the formation under pressure. (Kimball, Tr. 1562, July 10, 1981).

Ms. Sinclair asserts that "no evaluation of the effects of these pressure injected wells has been provided by the Applicant or NRC Staff", but does not designate to whom these evaluations should be provided in order to protect public safety. The authority Ms. Sinclair cites as the basis for her contention states that Applicant has been providing and will continue to provide information on the effects of the Dow mining to the NRC Staff. (Tr. 1561-62, 1570, 1573, 1578-79). Intervenor does not explain why this provision of information to the NRC Staff is inadequate.

Ms. Sinclair also provides no basis or explanation for her assertion that the Dow salt mining "can induce ground movement [at Midland] as has happened in Denver, Colorado." The only authority she relies on in making this claim explicitly contradicts it. Mr. Kimball explained at the July, 1981 hearings that certain geological characteristics were critical prerequisites to a threat of ground movement from reduction and reinjection mining. The Denver area has those characteristics; Midland does not (Tr. 1578-79, 1568, 1573). Speaking of the potential for ground movement caused by Dow mining in the Midland area, Mr. Kimball concluded, "I don't think that would be a problem." (Tr. 1579).

Applicant is unable to determine what point new contention 12 is seeking to establish by its claim that

Applicant and the NRC Staff have not provided evaluations of the effects of Dow mining. Moreover, the only basis cited by Intervenors to support or explain the claims in this contention actually contradicts those claims. New contention 12 must be dismissed.

Respectfully submitted,

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