

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

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

INTERVENOR BARBARA STAMIRIS' MOTION TO CONTINUE  
THE HEARINGS DUE TO NRC STAFF'S FAILURE TO PRODUCE  
RELEVANT DOCUMENTS IN DISCOVERY A REASONABLE  
TIME PRIOR TO HEARING

Intervenor Barbara Stamiris, pursuant to 10 C.F.R. §2.730, requests this Atomic Safety and Licensing Board ("Licensing Board") to continue the hearings now scheduled to begin on April 26, 1983 for one week, to May 3, 1983, due to the Nuclear Regulatory Commission ("NRC") Staff's failure to provide documents in discovery a reasonable time prior to the hearings.

In an April 5, 1983 telephone conference call, this Board approved formal discovery between Ms. Stamiris and the NRC Staff. Ms. Stamiris provided the NRC with a copy of narrowed document requests on Thursday, April 7, 1983. Subsequently, on April 14, 1983 Ms. Stamiris' counsel and NRC Staff negotiated for over five hours in an attempt to settle outstanding disputes about discovery. All but a few discovery disputes were settled. As will be set out below, the NRC Staff informed Ms. Stamiris' counsel that realistically it could not provide the bulk of the documents requested

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until Thursday, April 21, or Friday, April 22.

Moreover, the NRC Staff admitted during this negotiation session that it had not checked with most of Region III to determine if Region III had responsive documents, and during the negotiation called Mr. Keppler and Mr. Davis for the first time to check to see whether they had responsive documents.

Due to the NRC Staff's failure to produce the majority of documents requested and needed by Ms. Stamiris to prepare for the hearings, Ms. Stamiris requests of this Board a continuance of one week in the start of the hearings.

#### I. BACKGROUND

Ms. Stamiris requested further discovery on the quality assurance issues during the February 16, 1983 week of the hearings. She pointed out to the NRC Staff and to this Licensing Board that no formal discovery had been allowed since 1981, and there was a definite need for discovery prior to the next set of hearings given the change in circumstances during that time.

The NRC Staff offered to engage in informal discovery and set up a meeting to be held between Ms. Stamiris and Region III staff on March 23, 1983. This meeting was to be among, inter alia, Ms. Stamiris, Mr. Landsman, Mr. Gardner, Mr. Cook, Mr. Burgess, and Mr. Shafer. Prior to this meeting Ms. Stamiris had several conference calls with NRC Staff in which she asked them numerous questions. Although some of her questions were answered during these conference calls, she never received any documents from the NRC Staff.

On or about March 18, 1983 Michigan Wilcove called Ms. Stamiris to inform her that the NRC Staff would not engage in any further informal discovery and that the Region III staff had decided that it would not participate in the March 23, 1983 meeting.

Subsequently, she received a telephone call from Nathene Wright who did not appear to have learned of the Staff's decision to stop all further discovery. Ms. Stamiris informed Ms. Wright of Mr. Wilcove's statements and she heard nothing further from Staff until shortly before the hearings scheduled for March 28, 1983. Mr. Payton called Ms. Stamiris shortly before the hearings and expressed his surprise that all discovery had ceased. Ms. Stamiris later held one additional conversation with Mr. Shafer.

During the week of March 28, 1983, Ms. Stamiris offered to give a list of 13 requests to the NRC Staff. Of these 13 requests, six had been previously read to the Staff over the telephone, and all others had been read to Mr. Payton the week of March 8, 1983. Mr. Payton at that time had jotted down notes of Ms. Stamiris' requests and told her he would see what he could do for her.

The NRC Staff assured Ms. Stamiris that week that they would attempt to obtain the documents she requested. She was still negotiating with the Staff on April 1, 1983, the last day of that week of hearings, to obtain documents related to the diesel generator building inspection and the Spessard memo. Because she was still hopeful of obtaining documents through her informal oral and written requests she did not at that time request formal discovery from the Board.

Ms. Stamiris spoke to the Staff on April 4, 1983, but again

the Staff was unable to inform her about any progress made on her requests or any date by which the documents could be produced. Similarly, the morning of April 5, 1983, counsel for Ms. Stamiris consulted for over an hour with Mr. Paton and Mr. Wilcove, but was unable to obtain any assurances about the production of responsive documents.

Upon Ms. Stamiris' request, on April 5, 1983, this Board permitted formal discovery and set timetables to be followed by NRC Staff and Ms. Stamiris in resolving discovery requests.

Although the area of dispute between the NRC Staff and Ms. Stamiris has narrowed considerably after lengthy negotiations on April 14, 1983, the NRC Staff informed Ms. Stamiris that the bulk of the documents would not be available until Thursday, April 21, or Friday, April 22, 1983, several days prior to the commencement of the hearings.

It appears that the NRC Staff intends to call its witnesses first. Given this scheduling of witnesses, Ms. Stamiris believes that she is unable to prepare adequately for these witnesses since she will receive the bulk of NRC documents two to three days prior to their testimony. For this reason, she respectfully requests a continuance of one week in the hearings in order to prepare for cross-examination of the Staff's witnesses.

Although she has attempted to expedite discovery in every possible manner, the NRC Staff has been unable to produce documents within a reasonable time frame. In addition, it now appears that at least two issues cannot be inquired into at this set of hearings because the NRC investigation of the Spessard Memorandum issues and the Landsman investigation have not been completed.

Given the inability of the NRC Staff and Region III to comply with the reasonable and narrowed discovery requests of Ms. Stamiris within a reasonable time prior to the hearings, this Licensing Board, to preserve Ms. Stamiris' due process rights, must grant a continuance of at least one week.

Applicant, in its letter of April 8, 1983, estimated that this set of hearings could continue for at least four weeks. Therefore, rescheduling one week of the two weeks of hearings set to commence on April 26, 1983, will delay in no way these proceedings.

## II. THE NRC STAFF MISCHARACTERIZED MS. STAMIRIS' REQUESTS

The NRC Staff has mischaracterized Ms. Stamiris' requests. Ms. Stamiris indicated in her handwritten list that she did not need or want documents already on the public record, served on parties in this proceeding. Ms. Stamiris' counsel indicated to NRC counsel on at least two occasions prior to April 14, 1983 that Ms. Stamiris did not want or need documents already on the public record. Yet NRC Staff insists on protesting in its response, NRC Staff Response at 4, that Ms. Stamiris had not clarified her request as to public documents until April 14, 1983. This is patently untrue. In fact, Mr. Wilcove admitted on April 14, 1983 that Ms. Stamiris' counsel had told him at least once that she was not requesting documents on the public record.

Second, the NRC Staff suggests that Ms. Stamiris should have made a formal discovery request much earlier than she did. However, Ms. Stamiris was following the procedures recommended and encouraged by the NRC Staff for informal discovery. On at least one occasion, as early as March 8, 1983, she read Mr. Paton a list

of discovery requests. He appeared to write down at least some of those requests. Subsequently she attempted to give Ms. Wright her list of 13 requests, which Ms. Wright originally refused. Only on April 1, 1983, did the NRC Staff agree to accept Ms. Stamiris' handwritten copy of requests.

All of the 13 items on that list had either been read to and written down by Mr. Paton, or read to other NRC Staff during informal telephone conference calls. Therefore, it is somewhat surprising that the NRC Staff at this late date claims Ms. Stamiris had not informed them of her requests until her filing of a formal discovery request on April 7, 1983.

Moreover, the NRC Staff objects to the broad definition of Nuclear Regulatory Commission included in Ms. Stamiris' discovery request. Regardless of the broad definition of NRC, the NRC Staff has failed to search even the most obvious place for responsive documents -- Region III.

Finally, it appears that the NRC Staff cannot affirm its previous answers to Ms. Stamiris' document requests that no documents exist regarding the NRC Staff's differing opinions on the enforcement action to be taken in response to the NRC Inspection and Enforcement Report Nos. 50-329/82-22 and 50-330/82-22. It has neither agreed to provide responsive documents nor to affirm its previous response in relation to the two document requests listed in formal Document Request No. 8.

Clearly this Licensing Board should order the NRC Staff either to produce responsive documents or to affirm their prior answer that no such documents exist.

### III. SPECIFIC AREAS OF DISAGREEMENT

The NRC Staff did not address in its submission of April 15, 1983, the remaining areas of dispute between Ms. Stamiris and the NRC Staff. Although the remaining areas of dispute are few, they are sufficiently important that Ms. Stamiris requests a ruling from this Board.

#### A. Scope of Search for Documents

The NRC Staff agreed during negotiations to search for documents in the following NRC offices:

- (1) Office of Special Cases;
- (2) Office of Investigations;
- (3) Office of Inspection and Enforcement;
- (4) Office of Nuclear Reactor Regulation: those technical persons dealing with geotechnical issues; Mr. Adamson, Mr. Novak, Mr. Eisenhut; and Mr. Hood;
- (5) Midland resident inspectors; and
- (6) Office of Regional Administrator Keppler and Mr. Davis.

Ms. Stamiris requested that in addition the following offices and/or persons be requested to search for and produce responsive documents:

- (1) All Region III personnel who worked on or had any responsibility for Midland;
- (2) All current Commissioners; and
- (3) All NRR personnel who communicated with Region III regarding implementation of the quality assurance (QA) program for the soils remedial work.

The NRC Staff admitted at the beginning of the negotiation

session on April 14, 1983, that they had not polled Mr. Keppler or Mr. Davis to ask if they had responsive documents. During the negotiations, Mr. Keppler and Mr. Davis were apparently requested to produce responsive documents. The Staff refused to canvass other Region III managers or other Region III personnel who worked on relevant issues at Midland. It appears from its April 15, 1983 submission that the NRC Staff does not intend to request documents from Mr. Keppler and Mr. Davis as previously promised. See NRC Staff Response at 5.

This scope of search is obviously inadequate given that the Office of Special Cases was established only in June or July 1982, and therefore a great deal of relevant and crucial information would be located in other files in Region III. The NRC Staff cannot defend its effort as a good faith one when it had not yet canvassed any Region III management -- even Region III management scheduled to testify in the upcoming hearings -- at the time negotiations began on April 14.

B. Production of Documents Two or Three Days Prior to the Hearings, Scheduled to Begin on April 26, 1983, Does Not Satisfy the NRC Staff's Responsibility to Provide Ms. Stamiris with Relevant, Responsive Documents.

The NRC Staff indicated to Ms. Stamiris on April 14, 1983 that realistically it did not expect to produce the bulk of documents obtained from the Office of Special Cases and other sections of Region III prior to Thursday or Friday of this week. Ms. Stamiris believes, given that the NRC Staff witnesses are scheduled to testify first, she does not now have an adequate

period of time in which to review these documents and prepare for cross-examination. She does not believe the NRC Staff's eleventh-hour production of documents satisfies their responsibility to produce documents a reasonable period prior to the hearings.

C. Ms. Stamiris Would Define the "Independent Audits" Included in Document Request No. 5 in a Different Manner Than Did the NRC Staff in Its Submission of April 15, 1983.

Ms. Stamiris, while agreeing with all other NRC Staff representations concerning agreement between them, would define those independent audits included within the scope of Document Request No. 5 in a different manner.

She would define those independent audits covered by the request in the following way:

- (1) the TERA vertical slice audit;
- (2) the Stone & Webster overview of QA implementation of soils work;
- (3) the original plans for a "horizontal view," which has been recently replaced by the construction implementation overview.

D. Ms. Stamiris Has Requested Information on Ongoing Inspections and Enforcements Which the NRC Staff Is Currently Attempting to Satisfy.

Ms. Stamiris specifically requested, in her counsel's oral request to Mr. Wilcove, confirmed in an April 18, 1983 letter, the following:

- (1) Documents related to ongoing inspections which involve any issue of willful or deliberate violations of any NRC regulation, any law, or any Atomic Safety and Licensing Board ("ASLB") order;

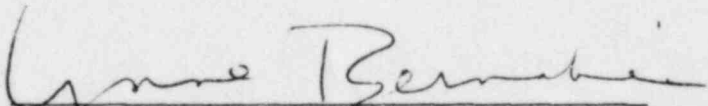
(2) Documents related to ongoing investigations which involve any issue of willful or deliberate wrongdoing or willful or deliberate violation of any NRC regulation, any law or any ASLB order; and

(3) Documents related to the CCP, including NRC meeting notes and correspondence between Consumers Power Company ("CPC") and the NRC relating to implementation of the CCP other than what appears on the public record; documents relating to the retraining of QA and QC personnel; and documents relating to CPC's ability, character or competence to oversee and manage the CCP.

#### IV. CONCLUSION

For the foregoing reasons, Ms. Stamiris requests that this Licensing Board continue these hearings for one week to May 3, 1983. She further requests the Board to order the NRC Staff to produce all documents responsive to her request obtainable from all applicable Region III offices and Commission offices at least one week prior to the beginning of the hearings.

Respectfully submitted,



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DATED: April 18, 1983.

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NUCLEAR REGULATORY COMMISSION

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CONSUMERS POWER COMPANY	)	50-329-OM
	)	50-330-OM
(Midland Plant, Units 1 and 2)	)	
	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Intervenor Barbara Stamiris' Motion to Continue Hearings Due to NRC Staff's Failure to Produce Relevant Documents in Discovery a Reasonable Time Prior to Hearings were mailed, proper postage prepaid, this 18th day of April, 1983, to:

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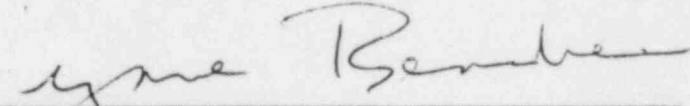
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\*Delivered through the NRC internal mails.

\*\* Delivered by hand April 18, 1983.