

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

IN THE MATTER OF)	Docket Nos. 50-329 OM
CONSUMERS POWER COMPANY)	50-330 OM
(Midland Plant,)	50-329 OL
Units 1 and 2))	50-330 OL

Affidavit of BRIAN R. GILOMEN

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

I, BRIAN R. GILOMEN, being first duly sworn, on oath state that the following is true and correct to the best of my own personal knowledge and belief:

1. I am an attorney, licensed to practice in the State of Illinois, and am associated with the law firm of Isham, Lincoln & Beale, counsel to Consumers Power Company ("Applicant") in the above-captioned dockets;

2. I have been provided by Applicant with ten documents identified as drafts of Attachment 1 to Applicant's Response to the Notice of Violation EA83-3, dated March 10, 1983 ("the Response"), and more fully described below:

- (A) one twelve page draft, cover page no. mi0283-0357a100-27, that had been reviewed by Bruce Peck, an employee of Applicant;

- (B) one seven page draft, cover page no. mi0283-0357a100-27, that had been reviewed by John Rutgers, an employee of Bechtel;
- (C) one twelve page draft, cover page no. mi0283-0357a100-27, that had been reviewed by John Rutgers;
- (D) one twelve page draft, cover page no. mi0283-0357a100-44, that had been reviewed by John Rutgers;
- (E) one twelve page draft, cover page no. mi0283-0357a100-44, that had been reviewed by James Brunner, in-house counsel to Applicant;
- (F) one twelve page draft, cover page no. mi0283-0357a100, that had been reviewed by James Brunner;
- (G) one eleven page draft, cover page no. mi0283-0355a100-165, that had been reviewed by James Brunner;
- (H) one thirteen page draft, cover page no. mi0283-0357a100, that had been reviewed by John Rutgers;
- (I) one twelve page draft, cover page no. mi0283-0355a100, that had been reviewed by John Rutgers;
- (J) one eleven page draft, cover page no. mi0283-0355a100-165, that had been reviewed by John Rutgers;

3. At Applicant's request I have reviewed each of the drafts set forth above, and have compared each such draft to Attachment 1 to the Response to determine whether any such draft contains "material facts" additional to those in Attachment 1 to the Response;

4. For purposes of my review of the subject drafts, I have utilized the definition of "materiality" incorporated in the Atomic Safety and Licensing Appeal Board's decision in Consumers Power Company (Midland Plant, Units 1 and 2), ALAB-691 (Remand Proceeding, September 9, 1982), citing the NRC's opinion in Virginia Electric and Power Co. (North Anna Power Station, Units 1 and 2), CLI-76-22, 4 NRC 480 (1976), aff'd sub nom. Virginia Electric and Power Co. v. Nuclear Regulatory Commission, 571 F.2d 1289 (4th Cir. 1978):

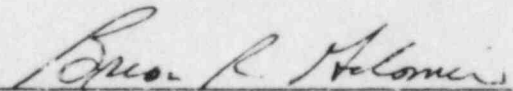
[T]he Commission found that materiality depends on whether the information is capable of influencing the decision-maker -- not on whether the decision-maker would, in fact, have relied on it. Id. at 487, 491. Recognizing the often fine line between material and nonmaterial information, the Commission emphasized that such 'single determinations . . . require careful, common-sense judgments of the context in which information appears and the stage of the licensing process involved.' Id. at 491. See also id. at 487-488.

ALAB-691 at 19-20. Further, in accordance with this Board's Memorandum and Order, I have conducted my review so as to apply the above-defined concept of "materiality" to factual material contained in the drafts (see Order, p. 3).

5. In my opinion the ten drafts identified in paragraph three of this affidavit contain no material facts additional to those in Attachment 1 to the Response.

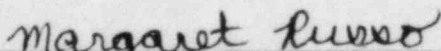
6. I have also been provided with six pages of handwritten comments, prepared by John Rutgers, in connection with the draft identified as item (H). These six pages do not constitute a draft of Attachment 1 to the Response, and in accordance with the language of the Board's Memorandum and Order, are not a subject of this affidavit. Further, Applicant claims that these materials constitute work product in accordance with Upjohn Co. v. United States, 449 U.S. 383 (1981).

Respectfully submitted,



Brian R. Gilomen
One of the Attorneys for
Consumers Power Company

SUBSCRIBED and SWORN to
before me this 21st day
of April, 1983.


NOTARY PUBLIC

My Commission Expires April 6, 1985