

RELATED CORRESPONDENCE

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of:)	
)	Docket Nos. 50-329
CONSUMERS POWER COMPANY,)	50-330
)	
(Midland Plant, Units 1 and 2))	<u>Operating License</u>

AMENDED OBJECTIONS TO INTERROGATORIES
TO CONSUMERS POWER COMPANY ON ZACK ISSUES
AND MOTION FOR PROTECTIVE ORDER

Applicant, Consumers Power Company, by its attorneys, has filed its "Objections to Interrogatories to Consumers Power Company on Zack Issues and Motion for Protective Order", dated December 10, 1982 (attached hereto as Attachment I). Applicant, by its attorneys, hereby renews those objections raised on December 10, 1982 and incorporates them by reference as though fully set forth herein, and pursuant to Rule 2.740b (b) raises the additional objections set forth below. In addition, Applicant renews its December 10, 1982 motion for a protective order relieving it from answering said Interrogatories to the extent, and for the reasons, set forth below and in Attachment I (incorporated herein by reference).

Additional Objections

21. Identify all companies from which Zack received any supplies or materials for which the status of approved vendor was required for nuclear projects. In each case, state the dates during which the vendor was so approved and the basis for the approval to provide the material in question.

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Applicant objects to this Interrogatory on the grounds that it is overly broad and requests information concerning the business operations of a third party, which information is best obtainable from that party. Furthermore, any such information in the possession of Applicant may not be complete.

25. Paragraph 13 of this contention describes an incident involving a purchase by Zack from U.S. Steel. Provide access to all documents related to this incident.

Applicant objects to this Interrogatory on the grounds that it is vague and impermissibly broad since the term "related to" is undefined, therefore, leaving Applicant to guess at its own peril as to the extent of the request.

36. Identify any instances in which Mr. Leonard was fired from any position that he has held during his career and state the reasons for that firing.

Applicant objects to this interrogatory on the grounds that the information requested is neither relevant nor material to this contention, and is not likely to lead to relevant or material facts. Furthermore, the disclosure of this information would be an impermissible invasion of Mr. Leonard's privacy.

Contention 8 (rewritten as Contention 16)

General Objections:

1. Applicant objects to Interrogatories 1 through 8, hereunder, to the extent that they are founded upon or refer to the "non-compliance report filed by Zack Co. of Chicago" concerning a possible discrepancy between a shop record and a QA record (dealing with welding). A search of Applicant's files indicates that no such "non-conformance report" was filed by Zack Co. Without further clarification from Ms. Sinclair, any answer by Applicant would be

based on speculation as to the document referenced by Ms. Sinclair, and any such answer by Applicant would be at its peril for guessing wrong.

2. Applicant objects to any Interrogatory requesting documents or information "related to" the incident or "report" referenced by Ms. Sinclair. This request is unduly vague and requires Applicant to speculate as to the meaning of "related", and therefore any answer by Applicant would be at its peril.

Specific Objections

4. Did the Applicant have any knowledge of this breakdown in welding QA before the non-compliance report was filed in August, 1982?

Applicant objects to this Interrogatory because the time frame imposed by reference to "the non-compliance report . . . filed in August, 1982" cannot be precisely determined for the reasons set forth in the General Objections No. 1, above. Therefore, any answer by Applicant would be partially based upon speculation and place Applicant at risk for guessing wrong.

5. If so, what action was taken by the Applicant?

Applicant objects to this Interrogatory for the same reasons set forth in Objection to Interrogatory No. 4, above.

6. If not, what action was taken by the Applicant after the report was filed?

Applicant objects to this Interrogatory for the same reasons set forth in Objection to Interrogatory No. 4, above.

8. Provide copies of all documents related to this incident.

Applicant objects to this Interrogatory for the reasons set forth in General Objections No. 1 and No. 2, above.

Contention 16 (rewritten as Contention 17)

General Objections

A. Applicant objects to Interrogatories No. 1 through 4, hereunder, to the extent that they are founded upon or refer to the "Zack Co. non-conformance report filed in August, 1982" concerning possible discrepancies in "Travelers". A search of Applicant's files indicates that no such "non-conformance report" was filed by Zack Co. Without further clarification from Ms. Sinclair, any answer by Applicant would be based upon speculation as to the document referenced by Ms. Sinclair, and any such answer by Applicant would be at its peril for guessing wrong.

B. Applicant objects to any Interrogatory requesting documents or information "related to" the incident or "report" referenced by Ms. Sinclair. This request is unduly vague and requires Applicant to speculate as to the meaning of "related", and therefore any answer by Applicant would be at its peril.

Specific Objections

1. What percentage of the welds in the Midland Plants' HVAC system would be affected by these 140 Travelers? Of those welds, which are now inaccessible?

Applicant objects to this Interrogatory for the reason set forth in General Objection No. A, above. Furthermore, this Interrogatory is oppressive and burdensome because it requires a "body count" of all welds in the HVAC system in order to calculate a percentage, and such "body count" cannot be made without incurring undue and substantial expense in terms of time and money.

2. Over what period of time were the 140 Travelers produced?

Applicant objects to this Interrogatory for the reason set forth in General Objection No. A, above.

3. Provide copies of all documents related to these incidents.

Applicant objects to this Interrogatory for the reasons set forth in General Objections No. A and B, above.

4. What actions have been taken as a result of this non-conformance report?

Applicant objects to this Interrogatory for the reason set forth in General Objection No. A, above.

CONCLUSION

For all the foregoing reasons and those reasons set forth in Attachment I, incorporated herein by reference, Applicant respectfully requests that it be relieved from answering Sinclair Interrogatories (Contention 6 rewritten as Contention 15) No. 1, 2, 3, 4, 6, 7, 8, 10, 11, 12, 13, 14, 15, 16, 17, 20, 21, 25, 26, 31, 33, 34, 36, and 39; (Contention 8 rewritten as Contention 16) No. 4, 5, 6, and 8; (Contention 16 rewritten as Contention 17) No. 1, 2, 3, and 4; all to the extent to which Applicant has made specific objections to such Interrogatories.

Dated: April 28, 1983

Respectfully submitted,



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

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

OBJECTIONS TO INTERROGATORIES TO
 CONSUMERS POWER COMPANY ON ZACK ISSUES
 AND MOTION FOR PROTECTIVE ORDER

Applicant, Consumers Power Company, by its attorneys and pursuant to Rule 2.740b(b) of the Commission's Rules of Practice, objects to the September 20, 1982 "Interrogatories to Consumers Power Company on Zack Issues" propounded by Intervenor Barbara Sinclair. Applicant's objections are both general (addressed to all of Sinclair's Interrogatories) and specific (addressed to individual Sinclair Interrogatories). In addition, pursuant to Rule 2.740(c) of the Commission's Rules of Practice, Applicant requests the issuance of a protective order relieving it from answering Sinclair's Interrogatories to the extent, and for the reasons, specified in the following General Objection and Specific Objections.

General Objection

Applicant objects to answering any of the Sinclair Interrogatories at this time. The subject matter of all of

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these Interrogatories concerns the so-called "Zack issues." These issues are currently the subject of an independent investigation being conducted by the Commission's Region III. At the outset of this investigation, the Staff requested that Applicant and, apparently, the Intervenor in this proceeding refrain from initiating or conducting any discovery on the "Zack issues" until the investigation was completed, in order that the investigation could proceed expeditiously and unhindered by the competing discovery efforts of the parties. Applicant and Intervenor Stamiris agreed to this request, while Intervenor Sinclair agreed only to a sixty (60) day extension of discovery. (See letter dated October 7, 1982 from William D. Paton to Judges Bechhoefer, Cowan and Harbour). As a result of this agreement, Applicant has refrained from undertaking discovery with respect to the "Zack issues." Applicant believes that, under the circumstances, it would be fundamentally unfair to permit one party (Sinclair) to engage in discovery from the other parties who have acceded to the Staff's request, and consequently requests that it be relieved from responding to the Sinclair Interrogatories at this time. Applicant will answer each Interrogatory which is otherwise unobjectionable promptly after the Region III investigation has been completed and when all parties are free to conduct discovery.

Notwithstanding this general objection, in an effort to obtain an early resolution of discovery disputes, Applicant sets forth below the specific objections it has to certain individual Sinclair Interrogatories.

Specific Objections

1. What is the Applicant's position with respect to Sinclair Contention 6? State all facts and opinions and identify and provide copies of all documents on which that position is based.

Applicant objects to the portion of Interrogatory 1 which requests it to "[s]tate all facts and opinions and identify and provide copies of all documents on which that position is based" since that portion of the Interrogatory would in effect require Applicant to file its direct testimony as part of and during the discovery phase of this proceeding, and before Applicant has had an opportunity to conduct its own discovery with respect to the allegations of Contention 6. Quite clearly such a request is an improper attempt by Intervenor to establish unilaterally a procedural schedule for this case.

2. Identify all individuals whom the Applicant expects to call as witnesses with respect to this contention and identify all documents on which the Applicant expects to rely at the hearing with respect to this contention.

Applicant objects to Interrogatory 2 on the grounds that this Interrogatory, too, would require Applicant to disclose all its witnesses prior to the time set by the Licensing Board for the submittal of direct testimony

and, more importantly, to identify unequivocally while discovery is proceeding (and at this stage before Applicant has been permitted to commence its own discovery) all the documents on which it may rely at the hearing. In effect, this Interrogatory impermissibly seeks to require Applicant to identify its trial exhibits before it has been permitted to engage in discovery.

3. Provide access for the purpose of examination and copying to all documents in the possession or control of the Applicant, its subcontractors (including the Zack Company), or its agents, related to the performance of the Zack Company with respect to the Midland facility.

Applicant objects to that portion of this Interrogatory which requests it to provide access to documents in the possession or control of "its subcontractors (including the Zack Company), or its agents, . . ." It is well established that a party need only provide access to documents within its possession or control. Access to documents in the possession or control of third parties must be obtained by means of a subpoena duly issued pursuant to the Commission's Rules of Practice.

4. Provide access for the purpose of examination and copying to all documents involving or reflecting correspondence of any sort between the Applicant or any of its agents or contractors and the Zack Company.

Applicant objects to that portion of this Interrogatory which requests it to provide access to "documents involving or reflecting correspondence of any sort between . . . any of [Applicant's] agents or contractors and the

Zack Company" to the extent that such documents are not within Applicant's possession or control. Furthermore, Applicant objects to being requested to provide access to such documents within its possession or control which involve or reflect correspondence between any of its "agents" and Zack, since "agents" is an undefined term and as such its use requires Applicant to guess at its own risk precisely what documents are being requested. Applicant also objects to producing all correspondence in its possession or control between it or its contractors and Zack, since much of that correspondence will not be relevant or material to Sinclair Contention 6, and therefore the request is improper.

6. What position does Mr. Calkins hold at the Zack Company? Please describe his duties, with specific reference to any responsibility he may have for assuring compliance with NRC regulations or requirements.

Applicant objects to that portion of this Interrogatory which requests it to state the position and describe the "duties" and "responsibilities" of an individual employed by a separate corporate entity. Obviously any such knowledge possessed by Applicant may be incomplete. Since Mr. Calkins may be subpoenaed for deposition and asked the same questions, requiring Applicant to respond is unduly burdensome and would result in unnecessary and duplicative discovery.

7. Identify and describe any efforts undertaken by Mr. Calkins to investigate QA problems at the Zack company related to the Midland facility. Did Mr. Calkins ever report such problems to the Applicant or any of its agents or to the NRC? If so, when and under what circumstances. What actions, if any, did the Applicant, its agents, or the NRC take with respect to any such reports?

Applicant objects to that portion of this Interrogatory which requests it to describe (A) investigative efforts which were undertaken by an individual who is not now and never has been employed by Applicant, (B) reports which may have been made by that individual to someone other than Applicant, and (C) responsive actions taken by other persons or entities. Obviously, any such knowledge possessed by Applicant may be incomplete. Since Mr. Calkins and those persons and entities to whom reports may have been made may be subpoenaed for deposition and asked the same questions, requiring Applicant to respond is unduly burdensome and would result in unnecessary and duplicative discovery.

8. Identify and describe all major QA reorganizations undertaken at Midland during the life of the project. Were any undertaken to correct improper QA documentation? If so, please identify them. If not, please state what actions have been taken during the life of the project to correct improper QA documentation.

Applicant objects to that portion of this Interrogatory which requests it to describe "all major QA reorganizations" at Midland. Since the Interrogatory does not attempt to define what is considered a "major" reorganization in this context, Applicant is required to guess at its own risk precisely what information is being sought. In fact,

it appears that the information requested is already within the knowledge of Sinclair, -since the basis for Sinclair Contention 6 is the Howard Affidavit, which itself refers to "major QA reorganizations" allegedly to correct "improper QA documentation." Applicant has not yet been permitted to depose Mr. Howard. Presumably, however, Sinclair does now know of the "major QA reorganizations" referred to in the Howard Affidavit, since this Affidavit is the basis for Sinclair Contention 6, and Applicant assumes the Contention was advanced in good faith. If Sinclair does not have such knowledge, the obvious source of information relating to the "major" reorganization is Mr. Howard, not Applicant, since it is Mr. Howard who made this allegation.

10. Describe the training required to qualify for the position held by Mr. Howard on November 18, 1981. Who was responsible for determining whether Mr. Howard had received the required training?

Applicant objects to this Interrogatory insofar as it requests Applicant to identify the training that Zack, or other third party, may have required for the position held by Mr. Howard, and the individual at Zack or other third party who was responsible for determining whether Howard had received the required training. Any such knowledge possessed by Applicant may be incomplete.

11. Please identify all instances in which and positions for which individuals were required, by the Applicant or any of its agents or contractors, to sign a form attesting that they had received the training required for their positions.

Applicant objects to the portion of this Interrogatory which requests it to identify "all instances" in which unspecified third parties "required" that a certain action be taken. Any such knowledge possessed by Applicant may be incomplete.

12. Was such a signed form required of Mr. Howard? If so, please provide a copy.

Applicant objects to this Interrogatory insofar as it requests information whether parties other than Applicant "required" Mr. Howard to sign such a form. Any such knowledge possessed by Applicant may be incomplete. Moreover, it appears that the information requested by this Interrogatory is already within the knowledge of Sinclair, since the Howard Affidavit, which is the basis for Sinclair Contention 6, alleges that Howard was required to sign such a form. Again, Applicant assumes that the Contention was advanced in good faith and that Sinclair has conducted at least a preliminary investigation into the factual basis for Contention 6. If Sinclair has not conducted such an investigation, the obvious source of the information requested is Mr. Howard, not Applicant.

13. Has the Applicant or any of its agents or contractors ever directed an individual to sign the form referred to in Question 11 when the individual had not received the training in question? What actions has the Applicant taken to assure that this would never occur?

Applicant objects to the portion of this Interrogatory which requests it to state whether "its agents

or contractors" directed any individual to take certain action. Any such knowledge possessed by Applicant may be incomplete. Moreover, "agents" is an undefined term and therefore Applicant is required to speculate at its own risk as to the specific information requested by this Interrogatory.

14. Please identify and provide copies of all reports meeting the description set out in Paragraph 5 of this Contention. Explain the reason for each QA deficiency discussed in each report and the actions taken by the Applicant throughout the life of the project to assure that the deficiencies would not occur or reoccur. In particular, identify each instance in which the "Authenticity of the signatures" on any document related to the Midland QA program is "questionable" for any reason, and explain the reason in each case.

Applicant objects to Interrogatory No. 14 on the grounds that it requests Applicant to identify, produce and comment on "reports" which are identified only by reference to an Affidavit filed by Mr. Howard (which is the basis for Sinclair Contention 6), in which Howard refers to "reports" which he "reviewed." Since Applicant has not yet had an opportunity to conduct any discovery on Sinclair Contention 6, Applicant is unaware which "reports" Mr. Howard "reviewed," and cannot therefore be expected to identify, produce or answer substantive questions on those "reports." Presumably, since the Howard Affidavit is part of the basis for Sinclair Contention 6 and Applicant assumes that Contention was advanced in good faith, Sinclair already knows what "reports" Howard referred to in his Affidavit.

If Sinclair will identify those "reports" for Applicant, Applicant will provide answers to relevant Interrogatories concerning the substance of those "reports."

15. Identify and provide access for examination and copying to all reports of the Applicant or any of its agents or contractors relating to improper modifications of documents.

Applicant objects to that portion of this Interrogatory which requests it to produce documents not within its possession or control. Moreover, Applicant further objects to that portion which requests it to identify certain "reports of . . . any of its agents," since "agents" is not a defined term and, as a result, the Interrogatory impermissibly requires Applicant to speculate as to the identity of the documents it is requested to identify.

16. Identify all instances in which any employee of the Applicant, its agents or contractors, has been disciplined in any way, including dismissal, for failure to implement Quality Assurance requirements correctly and thoroughly. Identify any instance in which any sort of disciplinary action was considered but rejected, including particularly any instances in which dismissal was rejected as a response to QA failures.

Applicant objects to that portion of this Interrogatory which requests it to identify "all instances" in which any employee of unspecified third parties may have been disciplined for certain reasons, and "any instance" in which those unspecified third parties "considered but rejected" such disciplinary action. Any such knowledge pressed by Applicant may be incomplete. Moreover,

Applicant objects to the scope of this Interrogatory insofar as it requests information not connected with work on or at the Midland Project. Finally, Applicant objects to the use of the undefined term "agents" in this Interrogatory.

17. Provide a copy of the letter of December 12, 1981, from Bechtel to Zack related to quality assurance deficiencies. Explain precisely what is meant by the term "paperwork problem" to refer to the deficiencies discussed. Did Bechtel consider the deficiencies to be in compliance with NRC regulations and requirements? Did the Applicant? State the precise probability that Zack ordered correct materials, as referred to in the Bechtel letter. What is the basis for this probability? What is the basis for Bechtel's opinion concerning the "vendors' intent."? Identify and provide any relevant documents.

Applicant objects to that portion of this Interrogatory which requests it to (A) "[e]xplain precisely" what a third party meant by a certain phrase in a letter written by that third party, (B) explain whether a third party considered certain unidentified "deficiencies" to be "in compliance" with unidentified NRC regulations and "requirements" and (C) identify the "basis" for a third party's opinion concerning the "intent" of an unidentified fourth party. Such inquiries can only be designed to elicit speculation, not properly discoverable facts, and are therefore improper. Further, Applicant objects to the request to identify and provide unspecified "relevant documents." Such a request obviously provides no guidance as to the specific documents requested and is therefore improper.

20. Identify all document audits performed by Zack for Applicants or Bechtel. In each case, identify the documents that Zack actually reviewed and those that it did not.

Applicant objects to that portion of this Interrogatory which requests it to identify all document audits performed by Zack for Bechtel, since such knowledge possessed by Applicant may be incomplete. Moreover, the scope of this Interrogatory is impermissibly broad since it apparently requests the identification of audits which may have been performed other than in connection with the Midland Project. Further, Applicant objects to the request that it "identify the documents Zack actually reviewed and those that it did not" since Applicant cannot possibly know the precise identity of all such documents.

26. Identify all purchases from Delta Screw Company by Zack Company. In each case, identify the date that the purchase was initiated.

Applicant objects to this Interrogatory to the extent that it requests information concerning purchases in connection with projects other than the Midland Project.

31. Describe all actions taken by Mr. Leonard with respect to information provided in confidence by Mr. Howard. Identify every individual who was informed of the substance of Mr. Howard's information. Identify every individual who was told that Mr. Howard provided or was aware of the information.

Applicant objects to those portions of this Interrogatory which request it to identify all individuals who may have been informed of or told certain information, since Applicant has no way of knowing who may have been

informed of or told such information by Mr. Howard or others.

33. Did Mr. Calkins, on or about April 16, 1982, tell Mr. Howard that Mr. Howard had betrayed him? If so, what was the basis for that statement? If not, did Mr. Calkins in any way discuss with Mr. Howard the information that Mr. Howard had provided to the Applicant or the fact that he had provided that information?

Applicant objects to this Interrogatory in that it requests information concerning statements which were allegedly made to Mr. Howard by an individual who is not now and never has been employed by Applicant. Applicant has not been permitted to initiate discovery on Sinclair Contention 6, and thus has been unable to depose either Mr. Calkins or Mr. Howard, who are the obvious sources of the information requested by this Interrogatory. Moreover, the basis for Sinclair Contention 6 is the Howard Affidavit, in which Howard alleges that such a conversation did occur. Since Applicant assumes that Sinclair Contention 6 is advanced in good faith, Applicant also assumes that Sinclair already has most of the information requested in this Interrogatory.

34. How did Zack, and particularly its president, become aware of the allegations made by Mr. Howard to Mr. Leonard? Please provide a copy of the Zack memorandum denying the substance of the allegations. Explain why Zack QA personnel were denied access to files without upper management permission. State precisely which upper management personnel had control of the files.

Applicant objects to the portion of this Interrogatory which requires it to speculate on how Zack, and

a certain individual employee of Zack, became aware of certain information.

37. In light of Mr. Howard's apparent dismissal for revealing a serious quality assurance problem related to the Midland facility, what assurance does any worker at the Midland facility have that he will not lose his job if he reports a serious QA problem?

Applicant objects to the rhetorical prologue to this Interrogatory and to the conclusions that Mr. Howard's dismissal was "for revealing a serious quality assurance problem related to the Midland facility," and that there is or has been such a "serious quality assurance problem."

38. Describe in detail the basis for the Zack Company president's conclusion that Mr. Howard was "incompetent." Provide copies of his entire personnel file and of all other documents of Zack Company or any other participant in the Midland project that relate in any way to Mr. Howard's performance.

Applicant objects to the portion of this Interrogatory which requests it to describe the basis for a conclusion reached by an individual who is not now and never has been employed by Applicant. Applicant further objects to the request to produce documents which are not within Applicant's possession or control, e.g., Howard's "entire personnel file" and "all other documents of Zack Company or any other participant."

39. Has the president of Zack at any time concluded that Zack's QA performance was "appalling" or otherwise deficient? Provide copies of all documents reflecting or related to those conclusions. In each instance, state the basis for the conclusion.

Applicant objects to the portion of this Interrogatory which requests it to state whether a certain individual who is not now and never has been employed by Applicant has ever reached a specific conclusion, and further to state the basis for that conclusion. Obviously, only the individual who is alleged to have reached the stated conclusion can respond adequately to this Interrogatory.

Conclusion

For all the foregoing reasons, Applicant respectfully requests that (A) it be relieved from answering any of the Sinclair September 20, 1982 Interrogatories until after the Region III investigation has been completed and all parties are free to conduct discovery, and (B) it be relieved from answering Sinclair Interrogatories 1, 2, 3, 4, 6, 7, 8, 10, 11, 12, 13, 14, 15, 16, 17, 20, 26, 31, 33, 34, 37, 38 and 39, to the extent to which Applicant has made specific objections to such Interrogatories.

Respectfully submitted,

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By: 

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Dated: December 10, 1982


UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

CERTIFICATE OF SERVICE

I, David M. Stahl, hereby certify that copies of Objections to Interrogatories to Consumers Power Company on Zack Issues and Motion for Protective Order in the above-captioned proceeding have been served upon all persons shown in the attached service list by deposit in the United States mail, first-class postage prepaid, this 10th day of December, 1982.


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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION


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BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

CERTIFICATE OF SERVICE

I, Vincent P. Provenzano, hereby certify that copies of Amended Objections to Interrogatories to Consumers Power Company on Zack Issues and Motion for Protective Order in the above captioned proceeding have been served upon all persons shown in the attached service list by deposit in the United States mail, first-class postage prepaid, this 28th day of April, 1983.



- Vincent P. Provenzano

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