

RELATED CORRESPONDENCE

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

JUL 27 1983

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Before the Atomic Safety and Licensing Board

In the Matter of:

CONSUMERS POWER COMPANY

(Midland Plant, Units 1 and 2)

ASLBP Nos. 78-389-03 OL
80-429-02 SP

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

INTERVENORS MARY SINCLAIR AND BARBARA STAMIRIS'
MOTION TO QUASH SUBPOENAS

Pursuant to 10 C.R.F. 2.720(f) and through undersigned counsel, intervenor¹ Barbara Stamiris and Mary Sinclair hereby move to quash subpoenas issued to employees and representatives of the Government Accountability Project ("GAP") insofar as the subpoenas request documents concerning communications between themselves, the intervenors, and GAP.

I BACKGROUND.

On August 8, 1982, applicant Consumers Power Company ("Consumers") requested this Atomic Safety and Licensing Board ("Licensing Board") to issue subpoenas to GAP representatives. Attached to the proposed subpoena was a request for three sets of documents. The third and final category of documents requested is the following:

All communications between Barbara Stamiris or Mary Sinclair on the one hand and GAP, representatives of GAP, Billie P. Garde, Lewis (sic) Clark, Lucy Hallberg or Thomas Devine on the other.

¹
Ms. Sinclair, for the purposes of this motion and oral argument on GAP's motion, has authorized undersigned counsel to represent her. If this Board requires, Ms. Bernabei will enter a notice of appearance on behalf of Ms. Sinclair.

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Applicant chose not to pursue these subpoenas in August, 1982, even though it claimed the testimony and documents it sought were relevant to quality assurance and quality control questions to be the subject of the OM hearings, then scheduled for October, 1982. Board Memorandum at 1 (July 9, 1982). However, in April, 1983, near the end of the OM hearings, in which most of the testimony on quality control and quality assurance issues was presented, Consumers decided to serve the subpoenas and pursue depositions of GAP representatives.

Intervenors Barbara Stamiris and Mary Sinclair did not receive a corrected copy of the list of documents requested under the subpoena duces tecum until July 20, 1983. Other lists of requested documents did not demand documents concerning communications between themselves and GAP.²

GAP is a project of the Institute for Policy Studies. It is a non-profit group and public interest law firm which advocates accountable and open government. Among GAP's principal functions is providing legal advice to community groups and private citizens who seek its advice in order to broaden the public's ability to monitor government. Louis Clark and Thomas Devine are attorneys employed by GAP. Billie Garde is the Director of the Citizens' Clinic. She works in the role of a paralegal and investigator to aid GAP in providing legal services to those groups and individuals who seek its legal advice. She works at all times under the direct supervision and direction of a GAP attorney. Lucy Hallberg is a GAP representative in

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Applicant does not seek documents directly from Ms. Sinclair and Mrs. Stamiris. However it is obvious that given Ms. Sinclair and Mrs. Stamiris' protected relationship with GAP applicant does seek disclosure of information harmful to their attorney-client relationship with GAP. Therefore, both intervenors have standing to move to quash these subpoenas, and in fact as GAP's clients, are the only ones able to assert the attorney-client privilege. Norris Manufacturing Co. v. R.E. Darling Co., 29 F.R.D. 1 (D. Md. 1961); Dart Industries, Inc. Liquid Nitrogen Processing Corp., 50 F.R.D. 296, 291 (D. Del. 1970).

Midland, Michigan who serves in much the same capacity as Ms. Garde in aiding GAP to provide legal services. She works at all times, as Ms. Garde, under the direct supervision and direction of a GAP attorney.

Ms. Sinclair and Mrs. Stamiris, since March, 1982, have consulted GAP for legal advice. Since April, 1983, GAP has served as counsel to Mrs. Stamiris in the OM hearings.³

II INTERVENORS ASSERT THE ATTORNEY-CLIENT PRIVILEGE SHIELDS FROM DISCLOSURE DOCUMENTS OR TESTIMONY CONCERNING THEIR COMMUNICATIONS WITH GAP.

The attorney-client privilege protects all communications, written or oral, in which or through which a client seeks legal advice of any kind from an attorney or his subordinate in confidence, except if the privilege is waived. United States v. United Shoe Machinery Corp., 89 F. Supp. 357, 358 (D. Mass. 1950); Wonneman v. Stratford Securities Co., 23 F.R.D. 281, 285 (S.D.N.Y. 1959). The fact that the attorney is not formally retained or is not paid is irrelevant as long as the communications are made in confidence for the purpose of obtaining legal advice. Hankobusic v. General American Transportation Corp., 31 F.R.D. 264 (D. Pa. 1962).

The privilege protects both communications to the attorney from the client and communications from the attorney to the client if disclosure of the information could reveal confidences of the client. Natta v. Zletz, 418 F.2d 633 (7th Cir. 1969); Detroit Screwmatic Co. v. United States, 49 F.R.D. 77 (S.D.N.Y. 1970); Stix Products, Inc. v. United Merchants & Manufacturing, Inc., 47 F.R.D. 334 (S.D.N.Y. 1969); In re Prudence-Bonds Corp., 76 F.Supp.

³ Undersigned counsel, who is a GAP attorney but whom Consumers has up to this point not yet subpoenaed, is the sole GAP attorney representing Mrs. Stamiris in the OM hearings.

643 (S.D.N.Y. 1948); United States v. Aluminium Co. of America, 193 F.Supp 251 (S.D.N.Y. 1960); American Optical Corp v. Medtronic, Inc., 56 F.R.D. 426 (D.Mass. 1972).

In addition, communications to and from persons who are not attorneys but working under the direct supervision and control of attorneys to facilitate the attorney's rendition of legal services are similarly protected by the privilege. Federal Trade Commission v. TRW, Inc., 628 F.2d 207, 212 (D.C. Cir. 1980) Bailey v. Meisner Brau, Inc., 57 F.R.D 11 (D. Ill. 1972); United States v. Kovel, 296, F.2d 918 (2nd Cir. 1961).⁴

Communications to and from accountants, U.S. v. Cote, 456 F.2d 142, 144 (8th Cir. 1972); U.S. v. Judson, 322 F.2d 460, 462-63 (9th Cir. 1963); United States v. Jacobs, 322 F. Supp. 1299 (D.Cal. 1971); Attorney General of United States v. Covington & Burling, 430 F.Supp. 1117, 1121 (D.D.C. 1977); Bailey v. Meister Brau, Inc., *supra*; private investigators, United States v. McPartlin, 595 F.2d 1321 (7th Cir. 1979), *cert. denied*, 444 U.S. 833 (1980); People v. Knippenberg, 66 Ill. 2d 276, 6 Ill. Dec. 46, 362 N.E. 2d 681 (1976); Chapel v. Maryland Penitentiary Warden, 398 F.Supp. 1151 (D.Md. 1975); State v. Tapia, 113 N.J. Super. 322, 273 A.2d 769 (1971); and law clerks, Cold Metal Process Co. v. Aluminum Co of America, 7 F.R.D. 684 (D.Mass. 1947); Indianapolis v. Scott, 72 Ind. 196 (1880); Sibley v. Waffle, 16 N.Y. 180 (1857); have been held protected by the attorney client privilege.⁵

⁴
Courts have held that the Sixth Amendment's guarantee of right to effective counsel also protects the confidentiality of communications to and from experts or associates hired by counsel to aid him in preparation of a case. State v. Mingo, 77 N.J. 576, 392 A.2d 590 (1978).

⁵
See also, San Francisco v. Superior Court of San Francisco, 37 Cal. 2d 227, 231 P.2d 26 (1951) and Hilary v. Minneapolis Street Railway Co., 104 Minn. 432, 116 N.W. 933 (1908), concerning extension of protection of the attorney-client privilege to law clerks by state statutes.

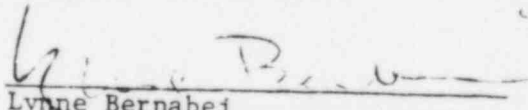
The only requirement is that the client consults with the third person and the attorney in confidence for the purpose of obtaining legal services.

In this case intervenors Mary Sinclair and Barbara Stamiris consulted GAP for legal advice since the time GAP became involved in the Midland project in the Spring of 1982. Their conversations with Louis Clark and Thomas Devine are obviously shielded by the privilege since Mr. Clark and Mr. Devine are attorneys. Similarly, their communications with Billie Garde and Lucy Hallberg are shielded from disclosure since both Ms. Garde and Ms. Hallberg acted in the capacity of investigator or paralegals to aid GAP attorneys in providing legal services. Thereby all communications, written or oral, between the intervenors and GAP personnel are absolutely protected by the attorney-client privilege.

III CONCLUSION.

For the foregoing reasons, intervenors Mary Sinclair and Barbara Stamiris request this Licensing Board to quash applicant's subpoenas insofar as they seek testimony or documents regarding privileged communications between themselves and GAP.

Respectfully submitted,


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DATED: July 26, 1983

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

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CONSUMERS POWER COMPANY)	50-330-OL
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)	

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing INTERVENORS

MARY SINCLAIR AND BARBARA STAMIRIS' MOTION TO QUASH SUBPOENAS

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mailed, proper postage prepaid, this 26th day of July, 1983, to:

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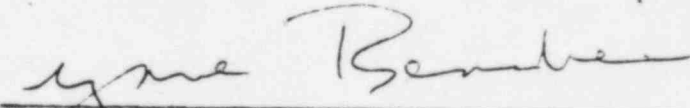
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*Delivered through the NRC internal mails.

** Delivered by hand April 18, 1983.