

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
DOCKETED
ATOMIC SAFETY AND LICENSING APPEALS BOARD

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OFFICE OF SECRETARY
DOCKETING & SERVICE

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

In the Matter of)

CONSUMERS POWER COMPANY)

(Midland Plant, Units 1 and 2))

Docket Nos. 50-329 OL
50-330 OL

Docket Nos. 50-329 OM
50-330 OM

GOVERNMENT ACCOUNTABILITY PROJECT'S
MOTION TO STAY DEPOSITIONS

The Government Accountability Project deponents Louis Clark, Thomas Devine, Billie Pirner Garde and Lucy Hallberg, pursuant to 10 C.F.R. § 2.788 and through undersigned counsel, hereby move for a stay of the effectiveness of the Atomic Safety and Licensing Board ("Licensing Board") Order of August 31, 1983, denying deponents Motion to Quash pending a decision of the Licensing Board of deponents' Motion for Reconsideration filed on September 30, 1983.

I. BACKGROUND.

Applicant Consumers Power Company has noticed the depositions of four GAP staff members. GAP filed a Motion to Quash, arguing inter alia, that the First Amendment to the United States Constitution protected them against having to disclose information given to GAP in confidence by confidential sources.

After oral argument, the Licensing Board granted a Motion to Quash filed by intervenors but denied GAP's Motion to Quash in a Memorandum and Order of August 31, 1983.

Subsequently, on September 30, 1983, GAP filed a Motion for Reconsideration supported by two affidavits of GAP staff members

which demonstrated actual harm to their witnesses through Consumers' breach of prior confidentiality pledges and evidence that the Licensing Board's Protective Order would be similarly breached.

Louis Clark is currently noticed to be deposed tomorrow, October 4, 1983.

The Licensing Board, in an Order of September 26, 1983, denied GAP's request for a stay of their decision.

Movants now request a stay of the Licensing Board's Order pending the Board's decision on their motion for reconsideration.

II. MOVANTS HAVE SATISFIED THE STANDARD FOR GRANT OF
STAY PENDING THE LICENSING BOARD'S DECISION ON
THEIR MOTION FOR RECONSIDERATION.

Pursuant to 10 C.F.R. 2.788, an Appeal Board must consider the following in determining whether to grant a stay:

(1) Whether the moving party has made a strong showing that it is likely to prevail on the merits;

(2) Whether the party will be irreparably injured unless a stay is granted;

(3) Whether the granting of a stay would harm other parties;
and

(4) Where the public interest lies.

In this case all four factors weigh to some degree in GAP's favor. First, GAP has made a strong showing in its motion for reconsideration that it will succeed in its motion for reconsideration. Essentially the Licensing Board originally found that GAP had not demonstrated that its information-gathering functions or its confidential witnesses would be harmed if the depositions of GAP staff were allowed subject to a protective order. In the two affidavits attached to GAP's motion for reconsideration, GAP demonstrates specific harm which has already occurred to its witnesses because

of Consumers' and Consumers' attorney's failure to maintain promises of confidentiality. In addition, GAP showed how Consumers' primary purpose, as shown in the depositions of GAP's public Zack witnesses, has been to inquire into GAP's operations and not to uncover the information disclosed to GAP by its witnesses.

Second, GAP movants will be irreparably harmed if they are forced to submit to depositions which they believe call for privileged information or risk a citation for contempt. Also, if as GAP strongly believes, the confidentiality of their witnesses is breached, the organization's ability to collect information on safety problems at nuclear plants will be irreparably crippled.

Third, the information being sought in the GAP depositions is relevant to contentions which will not be litigated until 1985 or 1986. Currently the NRC is conducting investigations into GAP witnesses' allegations and certainly no hearings on these issues will be scheduled until after these investigations are over. Consumers will not be harmed by the grant of a short stay.

Finally, this is clearly a case of first impression for the Licensing Board and for the Nuclear Regulatory Commission as a whole. It is to the benefit of all the parties, and indeed the adjudicatory process itself, that sensitive claims of privilege are settled on as complete a record as possible. Certainly it is to applicant's as well as GAP's benefit that if this issue is to be settled finally in the federal courts that the NRC have the opportunity to consider carefully all legal and factual arguments prior to fashioning its decision.

Moreover, it cannot be denied that both the adjudicatory branch of the Commission and the NRC staff wish to ensure the confidentiality of GAP witnesses. And, it cannot be denied that up to this point GAP's ability to gather important and relevant information about potential safety problems at Midland, Zimmer, and other nuclear power plants under construction have aided the Commission in its primary duty to protect the public health and safety. GAP's request for a stay pending the Licensing Board's decision on its motion for reconsideration is reasonable in light of the serious harm which it believes will befall both it as an organization and its witnesses if the stay is denied.

III. CONCLUSION.

For the foregoing reasons, GAP respectfully requests a stay from this Appeal Board pending a determination by the Licensing Board of its Motion for Reconsideration.

Respectfully submitted,

John Warr / WM

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DATED: October 3, 1983

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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Before the Atomic Safety and Licensing Appeal Board
DOCKETING & SERVICE
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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 Motion

For Stay

were

mailed, proper postage prepaid, this 3rd day of October, 1983, to:

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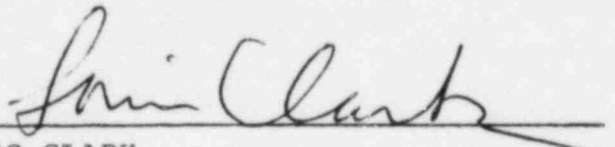
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*Delivered through the NRC internal mails.

** Hand delivered.