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April 30, 1984

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

Charles Bechhoefer, Esq.  
Atomic Safety & Licensing  
Board Panel  
U.S. Nuclear Regulatory Com-  
mission  
Washington, D. C. 20555

Dr. Jerry Harbour  
Atomic Safety & Licensing  
Board Panel  
U.S. Nuclear Regulatory Com-  
mission  
Washington, D. C. 20555

Dr. Frederick P. Cowan  
6152 N. Verde Trail  
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Boca Raton, Florida 33433

Dear Administrative Judges:

Document discovery in the case captioned The Dow Chemical Co. vs. Consumers Power Co. No. 83-002232-CK-D, pending in the Michigan Circuit Court for Midland County has been underway for some months. Pursuant to a subpoena obtained by Dow, Bechtel Power Corp. has made many thousands of documents available to the parties to that litigation for inspection and copying. The copying process will not be complete until mid-May, at which time copies of the documents will be in the hands of Dow and CPCo.

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Document production by Bechtel in the litigation is subject to the terms of a protective order entered by Judge De Witt on April 6, 1984. A copy of that protective order is enclosed. Pursuant to the terms of the protective order, documents which Bechtel designates as confidential and any information contained in those documents cannot be disclosed except under procedures described in the order. Disclosure to, inter alia, the Nuclear Regulatory Commission is the subject of a specific provision of the protective order.

I have been shown certain documents produced by Bechtel in the Dow litigation. These documents are marked "Bechtel Confidential" in accordance with paragraph 7 of the protective order. Certain of the documents contain statements which may be inconsistent with "Applicant's Response to Motions of Intervenor Mary Sinclair and Barbara Stamiris with respect to the Dow Lawsuit" filed August 17, 1983 regarding Forecast 6 and Adjusted Forecast 6. I have been advised by counsel for Bechtel that should CPCo seek to disclose these documents to the Nuclear Regulatory Commission, Bechtel will seek further protection of the asserted confidential nature of these documents from either the Midland County Circuit Court or this licensing board.

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It is not clear to me whether disclosure of these documents is required by the Appeal Board decision in the McGuire case, Duke Power Co. (William B. McGuire Nuclear Station, Units 1 and 2) ALAB-143 6 AEC 623 (1973), given the procedural posture of the issue pending before the Licensing Board - the admission of a late-filed contention. In any event, I believe that a decision regarding the admissibility of the so-called "Dow" issues and Mrs. Sinclair's motion to hold the record open pending conclusion of the Dow litigation should be made by the Licensing Board without benefit of these documents. Simply stated, the elaborate provisions of the protective order preclude rapid access to the documents, particularly in light of Bechtel's position in this matter. Should the Licensing Board believe that review of these documents is a pre-requisite to its decision, please so inform me and I will begin the process under the protective order to disclose them.

Sincerely,



Michael I. Miller

MIM:es

enc.

cc Service List

STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF MIDLAND

THE DOW CHEMICAL COMPANY	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Case No. 83-002232-CK-D
	)	Honorable David Scott Dewitt
CONSUMERS POWER COMPANY,	)	
	)	
Defendant.	)	

PROTECTIVE ORDER AS TO DOCUMENTS  
PRODUCED BY BECHTEL

At a session of said Court, held in the  
City of Midland, County of Midland,  
State of Michigan, on October, 1984.

Present: Honorable David Scott Dewitt  
Midland County Circuit Judge

The parties hereto, and Bechtel Power Corporation and  
Bechtel Associates Professional Corporation ("Bechtel"), having  
stipulated to the entry of this order:

NOW, THEREFORE, IT IS ORDERED as follows:

1. Any document produced by Bechtel, or by any  
consultant or subcontractor to Bechtel, which is designated by  
Bechtel as "Bechtel Confidential", shall be used by the parties  
only for the purpose of this litigation and for no other pur-  
pose. The parties shall not make such documents or the infor-  
mation contained therein available to any person, except:

(a) attorneys and their supporting staff,  
engaged or employed by the parties in the prosecution or  
defense of the claims and counterclaims in this action;

(b) such employees of the parties as are  
involved in the prosecution or defense of the claims and counter-  
claims in this action;

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C. P. Co. Legal

*David K. [Signature]*

(c) such former employees of the parties as are involved in the prosecution or defense of the claims and counterclaims in this action;

(d) named testimonial experts of the parties as are involved in the prosecution or defense of the claims and counterclaims in this action;

(e) non-testimonial consultants of the parties as are involved in the prosecution or defense of the claims and counterclaims in this action;

(f) the United States Nuclear Regulatory Commission, the Michigan Public Service Commission or any other judicial, administrative or legislative body (each of which is hereinafter referred to as a "Governmental Entity"), or to a party to a proceeding before such Governmental Entity, where such disclosure is made pursuant to:

- (i) the compulsory process or order of such a Governmental Entity; or
- (ii) the obligation of a party to make such disclosure to such Governmental Entity or to a party to a proceeding before such a Governmental Entity.

All Bechtel documents that are produced to the parties for review shall be "Bechtel Confidential" documents covered by this Order until such time as copies thereof are delivered by Bechtel to one or more of the parties without a designation required by paragraph 7. Upon such delivery, only documents bearing the designation required by paragraph 7 shall continue to be "Bechtel Confidential" pursuant to the terms of this Order.

2. At least 21 days prior to the date of any proposed disclosure of a "Bechtel Confidential" document to any

former employee or named testimonial expert under subparagraphs 1(c) or (d), the party proposing to make such disclosure shall notify counsel for Bechtel of the identity of such person.

3. At least 21 days prior to the date of any proposed disclosure to any non-testimonial consultant under subparagraph 1(e), the party proposing to make such disclosure shall provide to counsel for Bechtel a master list of potential consultants that includes the consultant to whom such disclosure is proposed to be made. This master list shall include the name, address and area of expertise of not more than thirty (30) consultants and shall be treated as confidential by Bechtel and its counsel. Neither the list nor any information contained on the list shall be disclosed by counsel for Bechtel except to Bechtel employees for the limited purpose of complying with paragraph 4, except such names or information which came into the possession of Bechtel or Bechtel's counsel from sources other than the party supplying the list.

4. Prior to the expiration of the 21-day period referred to in paragraph 2 and 3, Bechtel may object to the disclosure of a "Bechtel Confidential" document or documents to any named former employee, testimonial expert or non-testimonial consultant by notifying the counsel for the party proposing disclosure of the identity of each former employee, expert or consultant to which an objection is made, the basis of the objection, and the documents or specific categories of documents to which such objection applies. Counsel for Bechtel and the party proposing disclosure shall attempt to resolve their objections by agreement. In the event counsel for Bechtel and the party proposing to make the disclosure are unable to agree as to whether disclosure may be made to the named former employee, testimonial expert or a non-testimonial consultant, counsel shall notify the Court for the purpose of arranging a conference in chambers to determine how the dispute should be

resolved. If Bechtel has objected to the disclosure of a document or documents to any named former employee, testimonial expert or non-testimonial consultant, no such disclosure shall be made pending resolution of Bechtel's objections under this procedure.

5. Before making any disclosure to any Governmental Entity under subparagraph 1(f), the party intending to make such disclosure shall give ten days' prior written notice to Bechtel of its intent to do so, together with a description of the documents to be disclosed, so as to allow Bechtel an opportunity to petition the Governmental Entity to whom, or pursuant to whose process, such disclosure is to be made, for such relief as it deems appropriate. Prior to expiration of the ten day period described above, the party shall not make the disclosure described in its notice to Bechtel. By stipulating to this order, Bechtel has not waived its right to assert before any Governmental Entity that the documents which it has designated as "Bechtel Confidential" shall be treated as such by such Governmental Entity or by any person who, pursuant to the process, procedures or disclosure requirements of such Governmental Entity, comes into possession of such documents or the information contained therein.

6. Nothing in paragraph 1 shall prevent the parties from using documents designated as "Bechtel Confidential", or the information contained therein, in any proceeding in this action such as, but not limited to:

- (a) depositions;
- (b) motions, briefs and pleadings;
- (c) argument before the Court;
- (d) trial or appeal.

7. Bechtel may designate particular documents as "Bechtel Confidential" only by stamping or otherwise affixing on each page of the document to be so designated the phrase



"Bechtel Confidential Pursuant to the Order of the Midland County Circuit Court." Bechtel shall designate documents as "Bechtel Confidential" prior to providing copies of them to Consumers or Dow. When so designated, the document may be used only for the purposes described in paragraphs 1 and 6. Any pleadings, briefs, deposition transcripts or other papers filed in this action by the parties, any court reporter, Bechtel or any other person which quote, refer to or attach a "Bechtel Confidential" document shall be filed with this Court in a sealed envelope with the following text on the outside:

"This envelope contains confidential material filed under seal subject to the provisions of a Protective Order entered by this Court. This envelope may not be opened except by the Judge to whom this case is assigned, unless otherwise ordered by this Court."

8. The Clerk of this Court shall maintain all pleadings filed pursuant to the provisions of paragraph 7 in such a manner as to preserve their confidentiality and to prevent disclosure except as permitted in this Order.

9. Bechtel may designate a document as "Bechtel Confidential" only if it contains:

(a) Trade Secrets. As used herein, a "Trade Secret" consists of any formula, pattern, device or compilation of information (including a business plan or forecast, a financial plan or forecast, a method, technique or process) that:

(i) is used in one's business and which gives the business an opportunity to obtain an advantage over competition who do not know or use it; and

(ii) has been the subject of efforts by Bechtel that are reasonable under the circumstances to maintain its secrecy; and

(iii) has not previously been publicly disclosed;  
or



(b) Competitively-sensitive commercial or financial information which, if disclosed, might prejudice the business of Bechtel or its clients; however, a document may not be designated "Bechtel Confidential" solely because it contains information adverse to the legal interest or position of either party in this litigation.

Either of the parties to this litigation may, by notice in writing to Bechtel, challenge such designation and, failing agreement between the party giving such notice and Bechtel as to the appropriateness of such designation, either party may present the matter to this Court for determination.

10. Nothing in this order shall prevent the parties to this litigation from disclosing any document designated as "Bechtel Confidential" or the information contained therein, free of the restrictions of this Order, if such document or information:

(a) is or becomes a matter of public record except by violation of this Order or a similar order in another case; or

(b) has come into the possession of either of the parties from sources other than Bechtel, except by violation of this Order or a similar order in another case.

11. (a) Each party to this action shall serve on Bechtel counsel a copy of each notice of deposition it files in the case. Within ten days of receipt of a notice, counsel for Bechtel shall notify the parties of any deponent who is not a Bechtel employee or consultant where Bechtel objects to the deponent's being shown "Bechtel Confidential" documents. For each deponent so identified by Bechtel, the parties shall notify Bechtel of each "Bechtel Confidential" document they plan to use in said individual's deposition five days before such deposition. Bechtel shall treat these lists as confidential and shall not disclose the lists or any information contained therein to any other party.

(b) At the commencement of a deposition of any Bechtel employee or consultant taken in this action, counsel for Bechtel may designate the entire deposition and deposition transcript as "confidential." When so designated, the testimony and transcript will be subject to the provisions of this Order as if they were "Bechtel Confidential", provided, however, that within fifteen (15) days after receipt of any volume of the transcript, counsel for Bechtel shall have the right to and shall designate all pages of that volume which it deems to be "Bechtel Confidential" and shall notify the parties and the reporter in writing of the pages so designated. Pages of a transcript designated as "Bechtel Confidential" will be subject to the provisions of this Order as if they were produced by Bechtel; all pages not so designated, other than testimony designated as confidential during the taking of the deposition, shall not thereafter be confidential.

(c) Any deposition involving examination or use of a "Bechtel Confidential" document is subject to the provisions of this Order and neither such testimony nor transcript, or applicable portions thereof, may be disclosed except in accordance with this Order. If filed, the entire transcript is to be filed by the reporter in accordance with the provisions of paragraph 15. However, in the event that a copy of the transcript is forwarded to Bechtel's counsel, counsel for Bechtel shall, within fifteen (15) days after receipt of the transcript, have the right to and shall designate all pages of that transcript which it deems to be "Bechtel Confidential" in accordance with and pursuant to the same terms and provisions of subparagraph (b) of this paragraph. Pages of a transcript designated as "Bechtel Confidential" will be subject to the provisions of this Order as if they were produced by Bechtel; all pages not so designated, other than testimony designated as confidential during the taking of the deposition, shall not thereafter be confidential.

12. Before making any Bechtel documents designated as "Bechtel Confidential" or the information contained therein available to any person, the party intending to do so shall obtain from that person a written acknowledgement in the form of Attachment A that he or she has been given a copy of this Order, has read it and agrees to be bound by all of its terms.

13. On the last day of each month, each party shall submit to the Court under seal a list containing names of each person to whom disclosure of "Bechtel Confidential" documents has been made under the provisions of subparagraph 1(c), 1(d) and 1(e) of this Order during that month. The list shall also set forth for each person listed the identification numbers of "Bechtel Confidential" documents disclosed to each such person. In the event of a breach of the secrecy provisions of this Protective Order, the Court, upon the motion of Bechtel, may open the sealed envelopes in which the lists are contained and may make its own determination as to the circumstances of the breach, may order the parties to make such a investigation, may permit disclosure of the lists to Bechtel to the extent necessary to permit Bechtel to make an investigation and may enter such other order as may be appropriate under the circumstances.

14. Within thirty (30) days after the final settlement or conclusion of this case, the attorneys for Consumers and Dow shall return to Bechtel all "Bechtel Confidential" documents and material in their possession or in the possession of any person to whom such documents or information is disclosed, including all copies thereof, except for copies of such "Bechtel Confidential" documents or material which were furnished to a governmental entity by a party pursuant to subparagraph 1(f) of this Order. The issue of disposition of notes, tapes, other papers, and any other medium containing, summarizing, excerpting, or otherwise embodying any such material or

its contents is reserved. The provisions of this Protective Order relating to the confidentiality to be accorded to "Bechtel Confidential" documents, material and the information contained therein shall continue to be binding upon the parties hereto, their counsel and any individual who has gained access to such information in accordance with the terms of this Order after the final settlement or conclusion of this case.

15. The reporter of any deposition in this action shall:

(a) be served with a copy of this Order;

(b) acknowledge on the record receipt of the Order; and

(c) undertake that the reporter and the reporter's employees or agents shall be bound by the terms of the Order, and will make no use or disclosure of confidential information designated in the deposition unless otherwise ordered by the Court or permitted by the express consent of Bechtel. Those portions of the original transcript of any deposition, and any deposition exhibits which are designated as containing confidential information, shall be sealed and delivered to the Clerk of the Court for filing and shall remain sealed until further order of the Court. The reporter shall mark the sealed envelope as set forth in paragraph 7. The reporter shall provide copies of the entire deposition transcript only to attorneys of record for the parties.

16. Violation of this Order may subject the Dow Chemical Company, Consumers Power Company, their respective counsel, and the persons subject to this Order to the contempt order of this Court and all sanctions permitted by the Michigan General Court Rules.

17. This Order may be modified upon written stipulation of the parties and Bechtel, and by order of this Court.

upon motion of either party or Bechtel, for good cause shown, provided reasonable notice of said motion is given to Bechtel.

18. Bechtel shall have the right to apply to the Court, upon reasonable notice to the parties, for an order further restricting the disclosure of confidential material.

19. This Order supercedes the Interim Protective Order dated November 9, 1983; however, nothing in this Order absolves any person of any violation of the Interim Protective Order committed between November 9, 1983 and this date.

*David Scott DeWitt*  
DAVID SCOTT DeWITT  
Midland County Circuit Judge

We hereby stipulate to  
the entry of this order:

LAW OFFICES OF  
HERBERT H. EDWARDS, P.C.

By:

*Herbert H. Edwards*  
Herbert H. Edwards  
(P-13112)

BARRIS, SOTT, DENN & DRIKER

By:

*Eugene Driker*  
Eugene Driker (P-12959)  
Attorneys for Consumers  
Power Company

KIRKLAND & ELLIS

By:

*Lawrence E. Strickling*  
Lawrence E. Strickling  
Attorneys for The Dow  
Chemical Company

CLARK, KLEIN & BEAUMONT

By:

*Laurence M. Scoville, Jr.*  
Laurence M. Scoville, Jr.  
(P-20168)  
Attorneys for Bechtel  
Power Corporation and  
Bechtel Associates  
Professional Corporation

State of \_\_\_\_\_ )  
County of \_\_\_\_\_ ) ss.

\_\_\_\_\_, being duly sworn, says:

I have read the Protective Order As to Documents Produced by Bechtel entered in the case of The Dow Chemical Company vs. Consumers Power Company, Midland County Court, Case No. 83-002232-CK-D. I agree to abide by that order and shall not reveal or otherwise communicate or use any confidential information disclosed to me except in accordance with the terms of that Order. I understand that breach of this agreement may subject me to sanctions for contempt of court and to monetary damages.

SUBSCRIBED and SWORN  
to before me this \_\_\_\_\_  
day of \_\_\_\_\_, 19\_\_.

\_\_\_\_\_  
Notary Public  
My commission expires \_\_\_\_\_

ATTACHMENT A