

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

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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

INTERVENOR BARBARA STAMIRIS' MOTION TO CONTINUE HEARING

Intervenor Barbara Stamiris moves to continue the beginning date of the hearings now scheduled to begin on October 31, 1983, to three days after such date as the Nuclear Regulatory Commission ("NRC") Staff and Consumers Power Company ("Consumers") have answered intervenor's discovery requests on the Supplemental Office of Investigations Report.

I. BACKGROUND

On October 11, 1983, Mrs. Stamiris filed discovery requests directed to the NRC Staff and Consumers. In accordance with this Atomic Safety and Licensing Board's ("Licensing Board") leave, Mrs. Stamiris requested that all discovery requests be answered in full by October 21, 1983.

As of this date, Mrs. Stamiris has not received any discovery responses from the NRC Staff and has been informed by Consumers that she cannot expect to receive any documents prior to the start of the hearing. It is unclear whether she will receive Consumers' answers to interrogatories prior to the start of the hearing.

II. INTERVENOR BARBARA STAMIRIS CANNOT PREPARE FOR THE HEARINGS NOW SCHEDULED TO BEGIN ON OCTOBER 31, 1983 UNTIL RECEIPT OF THE DISCOVERY RESPONSES.

In order to expedite discovery intervenor's counsel telephoned Consumers'

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Washington counsel Fred Williams on October 11, 1983, in order to offer to hand-deliver a copy of the discovery requests if Consumers wished. Mr. Williams was not in the office, according to his secretary because of illness. Intervenor's counsel then returned Consumers' attorney Philip Steptoe's call in Chicago. Mr. Steptoe, however, had already left his office for the day. When intervenor's counsel spoke to Mr. Steptoe on the morning of October 12, 1983, she specifically asked him if he wished a copy of the discovery requests to be hand-delivered to Isham, Lincoln & Beale's Washington office. Mr. Steptoe indicated that Mr. Williams was still ill that day and that hand-delivery was not necessary. Therefore, Consumers' representation in its Objections to Interrogatories and Document Production Requests of Barbara Stamiris, at 3 n.l, is incorrect in implying that intervenor made no efforts to get the requests in applicant's hands earlier than October 14, 1983.

On October 20, 1983, intervenor received a copy, through the mail, of Consumers' Objections to Interrogatories and Document Production Requests of Barbara Stamiris. She did not receive any documents or responses to interrogatories; nor was she informed of the date by which she would receive these documents or responses. On October 21, 1983, intervenor's counsel telephoned Judge Bechhoefer to ask, given the short time remaining before the hearing, how she might handle discovery disagreements between Mrs. Stamiris and Consumers. Judge Bechhoefer suggested that the parties attempt to settle as many outstanding disagreements as possible through negotiation.

After initiation of a telephone call to a Consumers' attorney on October 21, 1983, intervenor's counsel and Consumers' counsel negotiated on October 24, 1983, to settle outstanding discovery disputes.

On October 25, 1983, intervenor filed a motion to compel Consumers to answer a small number of interrogatories and document requests.

On October 25, 1983, intervenor's counsel was also informed by Jim Brunner, Consumer's counsel, that Consumers would not produce any responsive documents in Washington, but only in Midland, Michigan. Intervenor's counsel protested that she would not be able to review the documents prior to the start of the scheduled hearing

if they were made available only in Midland.

Mr. Brunner also informed intervenor's counsel that he would file answers to interrogatories on October 26, 1983, but would not attempt to deliver the answers to the interrogatories in an expedited manner since he had heard that the NRC staff did not intend to answer intervenor's discovery requests. In addition, Mr. Brunner said he heard a rumor that Region III and the NRC Staff had refused to answer most of Mrs. Stamiris' discovery requests.

On October 24, 1983, intervenor's counsel spoke to Nathene Wright to ask about the date by which the NRC Staff would respond to intervenor's discovery requests. Ms. Wright informed her that the NRC Staff intended to file a request by early afternoon on October 25, 1983. Ms. Wright also said she would telephone intervenor's counsel when the responses were ready so that intervenor's counsel could pick them up.

Intervenor's counsel telephoned Ms. Wright twice on October 25, 1983, and asked that Ms. Wright return the phone calls. Ms. Wright returned neither phone call.

On October 26, 1983, in speaking to NRC Attorney William Paton, intervenor's counsel asked about the status of the NRC Staff's discovery responses. Mr. Paton said he would refer the question to Ms. Wright. Ms. Wright called intervenor's counsel to tell her that the response was not ready but that she would call to inform her when the NRC Staff responses were ready.

In addition, Ms. Wright would not detail the interrogatories or document requests to which the Staff had objected. She said that the NRC Staff responses "would speak for themselves." She would also not confirm or deny Mr. Brunner's statement that Region III had refused to answer numerous questions.

As a result of the failure of Consumers and the NRC Staff to answer her timely discovery requests, Mrs. Stamiris is left in the untenable position of having absolutely no discovery prior to the start of the hearings, now scheduled for October 31, 1983. In addition, Consumers has refused to provide documents in the only location where intervenor's counsel could be expected to have access to them - Washington, D.C.

Moreover, Mr. Williams was in Jackson, Michigan, and participated in the negotiations between intervenor and Consumers about their discovery disputes. Therefore, Mr. Williams was in the position to bring to Washington all those documents which Consumers had determined were responsive to Mrs. Stamiris requests when he himself returned to Washington from Jackson.

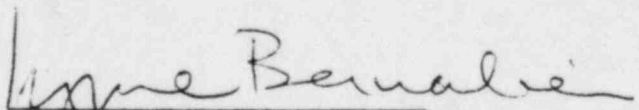
Therefore, it appears that Consumers is deliberately withholding from intervenor those documents which it has agreed to produce until the first day of the hearing, October 31, 1983, As of the time of the writing of this motion, the NRC Staff has not notified intervenor of the time by which it expects to respond to Mrs. Stamiris' discovery requests or of the objections it will make to Mrs. Stamiris' discovery requests.

### III. CONCLUSION

In light of the foregoing, Mrs. Stamiris believes that if the hearings commence on October 31, 1983, she will be denied her due process rights to a fair and equitable discovery process and her right to prepare for the hearings on the alleged violation of the Board Order.

Therefore, she respectfully requests a continuance of the hearing until three days after such date as she receives responses to her discovery requests filed on October 11, 1983.

Respectfully submitted,



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DATED: October 26, 1983



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NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing INTERVENOR

BARBARA STAMIRIS' MOTION TO CONTINUE HEARING

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

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