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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

DOCKETED  
USNRC

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## BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF SECRETARY  
DOCKETING & SERVICE  
BRANCH

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

Applicant's Reply to NRC Staff  
Further Supplemental Findings of Fact and  
Conclusions of Law Concerning Quality Assurance

Introduction

Consumers Power Company ("Applicant") finds the recitation of facts in the NRC Staff's Further Supplemental Proposed Findings to be generally accurate. In addition, as noted by the Staff, there is agreement by Applicant and Staff as to the appropriate ultimate action to be taken by this Board. Applicant's Reply, therefore, consists primarily of cross-references to its proposed findings filed on January 27, 1984, and minor additions and corrections. These are provided mainly for the Licensing Board's convenience in assessing a voluminous record, rather than because of any significant disagreements with the NRC Staff. Consumers Power continues to endorse the conclusions contained in its proposed findings filed on January 27, 1984.

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RESPONSES TO NRC STAFF'S FURTHER SUPPLEMENTAL  
PROPOSED FINDINGS ON QUALITY ASSURANCE

Paragraphs 1-5. No response.

Paragraph 6. The October 29, 1982 prefiled testimony of the Midland Section follows Tr. 11344.

Paragraphs 7-9. No response.

Paragraph 10. Staff's conclusion that, from early 1982 through late summer 1983, implementation of QA was not effective is an overstatement. In the area of soils work, the record reflects that there were implementation problems in the first part of 1982. However, as described in paragraphs 399-401 of Consumers Power's proposed findings, since the reforms instituted in the summer and fall of 1982 and since the start of the underpinning work in December 1982, implementation in the soils area has improved and has been shown to be effective. With regard to balance of plant activities, most of this work was suspended from December 1982 through late summer 1983. Moreover, the problems revealed in the DGE inspection were in large part associated with work which was completed prior to 1982.

Paragraphs 11-44. No response.

Paragraph 45. To clarify, Dr. Landsman testified that he obtained the static calculations for an auxiliary building beam right away, but he had difficulty obtaining additional calculations on the beam.<sup>1</sup>

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<sup>1</sup> Landsman, Tr. 14397.

Paragraph 46. No response.

Paragraph 47. With regard to the instance where Dr. Landsman requested the resumes of geotechnical engineers, Mr. Rutgers explained that the resumes were maintained in Ann Arbor and that Dr. Landsman was first given the abbreviated resume information because personal information is not routinely provided to third parties. After Dr. Landsman requested more information, more detailed resumes were sent to him four days later.<sup>2</sup>

Paragraphs 48-51. No response.

Paragraph 52. Bechtel does not require the presence of a supervisor when information is provided to the NRC. However, if a Bechtel employee cannot fully respond to an NPC inspector's questions or does not have complete information, that employee knows that he should ask his supervisor to participate in the discussion.<sup>3</sup>

Paragraphs 53-56. No response.

Paragraph 57. Since that meeting, the Staff has seen improvement in the area of communications and the providing of information. Currently, the Staff finds no reluctance on the part of Consumers Power personnel to discuss matters with NPC inspectors.<sup>4</sup>

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<sup>2</sup> Rutgers, April 11, 1983 prepared testimony on quality assurance at pp. 20-21 following Tr. 18035; Rutgers, Tr. 18147-18150.

<sup>3</sup> Rutgers, Tr. 18090.

<sup>4</sup> Shafer and Gardner, Tr. 16522.

Paragraph 58. This memorandum is dated November 10, 1982.

Paragraph 59. Consumers Power instructed Bechtel to be more cooperative with the NRC.<sup>5</sup>

Paragraphs 60-63. No response.

Paragraphs 64-66. Applicant continues to support the conclusions presented in paragraphs 519-520 of Consumers Power's proposed findings.

Paragraphs 67-72. Applicant addresses this matter in paragraphs 414-416 of Consumers Power's proposed findings.

Paragraphs 73-84. Consumers Power's responses to the SALP II and SALP III reports are also addressed in paragraphs 539-547 of Consumers Power's proposed findings.

Paragraph 85. The number of characteristics should read 9401 rather than 940.<sup>6</sup>

Paragraphs 86-87. The hanger reinspection program provides for the reinspection of all installed pipe supports.<sup>7</sup>

Paragraphs 88-90. No response.

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<sup>5</sup> R. Cook, Tr. 16252-16253.

<sup>6</sup> R. Cook, Gardner, Landsman and Shafer, October 29, 1982 prepared testimony with respect to quality assurance at Attachment 1, following Tr. 11344.

<sup>7</sup> Rutgers, prepared testimony on quality assurance at pp. 7-8, following Tr. 18035. See generally Consumers Power Company's Proposed Second Supplemental Findings at paragraphs 725-727.

Paragraphs 91-93. The FIVP proof load test is also discussed in paragraphs 408-410 of Consumers Power's proposed findings.

Paragraphs 94-98. No response.

Paragraph 99. This issue is also addressed in paragraphs 561-589 of Consumers Power's proposed findings.

Paragraphs 100-101. No response.

Paragraph 102. Mr. Mooney's prefiled testimony follows Tr. 19983, not Tr. 19873.

Paragraphs 103-133. No response.

Paragraphs 134-141. Applicant continues to support the conclusions suggested in paragraphs 585-589 of Consumers Power's proposed findings.

Paragraphs 142-144. No response.

Paragraphs 145-161. Mr. Budzik telephoned Mr. Hood to inform the Staff of his mistake as soon as he obtained the accurate information.<sup>8</sup> Mr. Hood did not remember the telephone call from Mr. Budzik.<sup>9</sup> However, it is undisputed that Mr. Meisenheimer called Mr. Kane on March 12, 1982 to inform him of the potential for liquefaction north of the Service Water Pump Structure.<sup>10</sup>

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<sup>8</sup> Budzik, Tr. 12193, 12302; see generally Consumers Power Company's Proposed Second Supplemental Findings of Fact at paragraphs 518, 704-708.

<sup>9</sup> Hood, Tr. 12320.

<sup>10</sup> Hood, prepared testimony regarding Loose Sands beneath Service Water Piping, p. 4 and Attachment 1, following Tr. 12144.



Paragraphs 162-167. No response.

Paragraph 168. This matter is also discussed in paragraphs 700-703 of Consumers Power's proposed findings.

Paragraph 169. No response.

Paragraph 170. The NRC Staff ultimately agreed with Consumers Power's technical position in both instances.<sup>11</sup>

Paragraphs 171-177. Applicant addresses this issue in paragraphs 709-714 of Consumers Power's proposed findings.

Paragraphs 178-184. Applicant addresses this issue in paragraphs 715-718 of Consumers Power's proposed findings.

Paragraphs 185. During the first part of 1982, the actual underpinning work was not yet started. Discussions between Consumers Power and the Staff were ongoing as to the applicability of Q requirements to the underpinning work. A number of the difficulties encountered in the soils work during this period pointed to the need for improved procedures, including the Excavation Permit Procedure.

Paragraph 186. No response.

Paragraph 187. The Excavation Permit System is described in paragraphs 365-367 of Consumers Power's proposed findings.

Paragraph 188. As stated in paragraphs 655 and 667 of Consumers Power's proposed findings, Applicant contends that the April 30, 1982 Order was not violated.

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<sup>11</sup> See Consumers Power Company's Proposed Second Supplemental Findings of Fact at paragraphs 709-718.

Paragraph 189. The Work Authorization procedure is described in Consumers Power's proposed findings at paragraphs 368-369.

Paragraphs 190-196. These changes are discussed generally in paragraphs 370-373 of Consumers Power's proposed findings.

Paragraphs 197-199. These events are also described in paragraphs 377-379 of Consumers Power's proposed findings.

Paragraphs 200-202. All QC personnel certified to soils work inspection plans have already completed training and certification under the upgraded program.<sup>12</sup>

Paragraphs 203. This same issue is addressed in paragraph 455 of Consumers Power's proposed findings.

Paragraphs 204-206. No response.

Paragraphs 207-210. No response.

Paragraph 211. This incident is also addressed in paragraph 412 of Consumers Power's proposed findings.

Paragraph 212. For further information, see paragraphs 413-416 of Consumers Power's proposed findings.

Paragraph 213. Applicant addresses this issue in paragraphs 417 of Consumers Power's proposed findings.

Paragraphs 214-215. This matter is discussed in paragraphs 403-405 of Consumers Power's proposed findings.

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<sup>12</sup> Wells, prepared testimony on quality assurance at pp. 4-5, following Tr. 18027. See generally Consumers Power Company's Proposed Second Supplemental Findings of Fact at paragraphs 389-390.

Paragraphs 216-217. No response.

Paragraph 218. Further details are presented in Consumers Power's proposed findings.<sup>13</sup>

Paragraphs 219-227. The S&W review of underpinning work described further in paragraphs 380-388 of Consumers Power's proposed findings.

Paragraphs 228-229. The QIP is addressed in Consumers Power's proposed findings at paragraph 391.

Paragraph 230. No response.

Paragraph 231. The Work Authorization Procedure has improved the process of obtaining work package approval from the Staff<sup>14</sup> and has thereby improved communications and implementation of the April 30 Order. Improvements in QA implementation for soils work are, at least in part, attributable to the creation of the MPQAD soils section and the integration of QC into MPQAD.

Paragraphs 232-262. No response.

Paragraph 263. Applicant's assessment of its performance in the remedial soils work area since September 1982 is summarized in paragraph 401 of Consumers Power's proposed findings.

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<sup>13</sup> FPA settlement data -- paragraph 420; SWPS cracks -- paragraphs 722; cracks in containment building -- paragraphs 720-721; FIVP cracks -- paragraph 411; pier load test -- paragraph 418.

<sup>14</sup> Landsman, Tr. 14617, 14685.



Paragraphs 264-274. No response.

Paragraph 275. The conclusion proposed is not material to any finding this Board is required to make.

Paragraph 276. No response.

Paragraphs 277-292. These incidents are discussed in paragraphs 682-699 of Consumers Power's proposed findings.

Paragraphs 293-295. The three procedures are referenced in paragraph 367 of Consumers Power's proposed findings.

Paragraph 296. No response.

Paragraphs 297-300. These paragraphs duplicate paragraphs 293-296.

Paragraph 301. Further details on this incident are provided in paragraphs 406-407 of Consumers Power's proposed findings. The citation to Mr. Mooney's testimony should refer to Tr. 20357, not 20375.

Paragraph 302. Mr. Bird's testimony concerning the effect a geotechnical engineer's presence would have had related to only two of the five NCP's, those being 7A and 7B.<sup>15</sup>

Paragraphs 303-305. No response.

Paragraph 306. The last citation in this paragraph should reference Tr. 20326.

Paragraphs 307-310. No response.

Paragraphs 311-313. Consumers Power has not and does not ignore the significance of these drilling incidents.

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<sup>15</sup> See Tr. 11426-11428.

Management has responded to these problems by developing programs and procedures which establish stricter controls over the implementation of soils work.

Paragraphs 314-316. No response.

Paragraphs 317-318. Actions with regard to the pipe supports are described in paragraphs 725-726 of Consumers Power's proposed findings.

Paragraph 319. The reinspection of cables is addressed in paragraphs 723-724 of Consumers Power's proposed findings.

Paragraphs 320-322. Applicant addresses this change in paragraph 451 of Consumers Power's proposed findings.

Paragraphs 323-329. No response.

Paragraphs 330-339. The proposed findings filed by the NRC Staff skip the numbers 330-339 in the numbering of paragraphs.

Paragraphs 340-342. Further details on these matters are provided in paragraphs 455-459 of Consumers Power's proposed findings.

Paragraphs 343-344. This issue is considered in paragraph 454 of Consumers Power's proposed findings.

Paragraph 345. While the purpose of the inspection was to evaluate relatively recent work, most of the Bechtel construction work inspected was done in 1979 and 1980.<sup>16</sup>

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<sup>16</sup> Rutgers, Tr. 18119; Putgers and J. Cook, Tr. 18648-18649.

Paragraphs 346-347. No response.

Paragraphs 348-353. The IPIN issue is addressed in paragraphs 429-437 of Consumers Power's proposed findings.

Paragraphs 354-357. The record violation is addressed in paragraphs 438-448 of Consumers Power's proposed findings.

Paragraphs 358-362. No response.

Paragraph 363. The citation should refer to page 3 of Staff Exhibit 18.

Paragraphs 364-370. No response.

Paragraphs 371-373. The efforts of Applicant and Bechtel to resolve material storage problems are described in paragraph 728 of Consumers Power's proposed findings.

Paragraph 374. This matter is addressed in paragraph 729 of Consumers Power's proposed findings.

Paragraphs 375-379. No response.

Paragraphs 380-419. The CCP and the IDCVP are further described in paragraphs 473-505 of Consumers Power's proposed findings.

Paragraph 420. In footnote 57, two minor corrections should be made. The TEPA observation on the FCGC interlock relays concerned AC backed power, not DC backed power. In addition, the cite to Stamiris Exhibit 10 should be Stamiris Exhibit 101.

Paragraph 421. Applicant refers to features of the Phase 4 trend program in paragraph 460 of Consumers Power's proposed findings.

Paragraph 422. No response.

Paragraph 423. The first transcript cite should be Tr. 18668, not Tr. 18688. In addition, the titles of Mr. Leonard and Mr. Frederick reversed. The quality control branch is headed by Mr. Frederick with Mr. Christy as his assistant. The plant assurance division is run by Mr. Leonard.

Paragraphs 424-432. The qualifications of Messrs. Wells and Meisenheimer are specifically addressed in paragraphs 374-376 and 453 of Consumers Power's proposed findings.

Paragraphs 433-443. No response.

Paragraph 444. The second citation should be to Tr. 20931, not 20831.

Paragraphs 445-538. No response.

Paragraphs 539-543. Applicant's discussion of Dr. Landsman's comments concerning design deficiencies in certain Midland structures is found at paragraphs 730 and 731 of Consumers Power's Proposed Findings.

Paragraphs 544-554. No response.

Paragraph 555. The "id." references in the text of this proposed finding do not support the statements made. Appropriate citations would be either to Mr. Mooney's joint prepared direct testimony with Mr. Wheeler,<sup>17</sup> or to Mr. Mooney's on Mr. Wheeler's oral testimony.<sup>18</sup>

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<sup>17</sup> Staff Exhibit No. 27, Attachment 12.

<sup>18</sup> See Mooney, Tr. 22369-22374; Wheeler, Tr. 22341-22343.

Paragraphs 556-559. No response.

Paragraph 560. The gap under the duct bank is discussed by Mr. Mooney at Tr. 22351-22352; however, no specific gap depth is referenced.

Paragraphs 561-563. No response.

Paragraph 564. The citation supporting Mr. Hood's confirmation of Mr. Kane's understanding of the May 20 meeting should be Tr. 21566 rather than Tr. 21556.

Paragraph 565. With respect to this proposed finding, to stress the key misunderstanding, Applicant suggests that the second sentence be augmented as follows:

However, Mr. Mooney testified that none of the licensee's personnel understood that the NRC Staff's concern at the May 20 meeting regarding licensee's proposal for permanent backfill of the excavation also related to the actual excavation below the deep "Q" duct bank.

The additional material is underscored.<sup>19</sup>

Paragraph 566. The reference to Landsman, Tr. 21610, does not support the first sentence in this proposed finding.

Paragraphs 567-568. No response.

Paragraph 569. Mr. Sevo's notes do not reflect a "prohibition" against excavation. Rather, they can be read to reflect lack of approval for the excavation. In addition, it is not clear that Mr. Sevo even attended the meeting.<sup>20</sup>

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<sup>19</sup> See Staff Exhibit No. 27, Attachment 12 at p. 8.

<sup>20</sup> See Staff Exhibit No. 27, Attachment 17.



Paragraph 570. According to Mr. Palmer -- who prepared the minutes -- and Mr. Schaub, the minutes were intended to reflect the need to stop the excavation long enough to enable Dr. Landsman to observe the utility protection pit.<sup>21</sup>

Paragraph 571. It is true that Dr. Landsman documented his May 28 statement in an inspection report. Unfortunately, the report was not finalized until August 9, 1982,<sup>22</sup> after the excavation had been completed.

Paragraph 572. Mr. Horn's statement was made to Mr. Weil on July 13, 1983, after a review of the minutes of a meeting that Mr. Horn did not attend.<sup>23</sup>

Paragraph 573. While the discussions at the May 20 meeting were not "limited" to either the type of backfill to be used or the method of placing the backfill, the transcript indicates that such discussions predominated and/or were the focus of the meeting.<sup>24</sup>

The last sentence of this proposed finding should be clarified to indicate that Mr. Kane did not make a statement at the May 20 meeting that, in his opinion, would lead a person to

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<sup>21</sup> See Consumers Power Company's Proposed Second Supplemental Findings at paragraphs 615-616.

<sup>22</sup> Staff Exhibit No. 26, Attachment 11.

<sup>23</sup> Staff Exhibit No. 27 at p. 7.

<sup>24</sup> See, e.g., Hood, Tr. 21846; Kane, Tr. 21763.

believe that Mr. Kane approved the use of concrete at Applicant's commercial risk.<sup>25</sup>

Paragraphs 574-575. No response.

Paragraph 576. The information set forth in this proposed finding would be probative to the issue of whether the staff granted approval to excavate below the duct bank. The transcript, however, does not indicate that Applicant knew that the Staff could not grant approvals under such informal circumstances. Thus, this proposed finding is not probative to the issue of whether Applicant had a reasonably valid basis for believing that the excavation was approved.

Paragraph 577. The reference to "to date" in this proposed finding should be equated with early November, 1983.

Paragraph 578. Applicant submits that the procedure described in this proposed finding was subsequently modified by the Wheeler/Landsman agreement. Dr. Landsman had told Mr. Wheeler that he did not want to review in advance excavation permits except for major excavations such as the service water pump structure underpinning.<sup>26</sup>

With respect to the issue of where approval would come from, it is uncontested that Applicant was aware that Region

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25     See Kane, Tr. 21852.

26     Landsman, Tr. 21934; Staff Exhibit No. 26, Attachment 10 at p. 4.

III had this responsibility.<sup>27</sup> Unfortunately, Dr. Landsman believed that NPP was responsible for approving work for purposes of compliance with the Board's April 30 Order.<sup>28</sup>

Paragraph 579. Mr. Fischer's notes may very well corroborate the testimony of Dr. Landsman, Mr. Kane and Mr. Hood regarding the procedure for obtaining NRC Staff approvals as that procedure was structured on May 20. Indeed, the record reflects that, between April 30 and June 11, Mr. Wheeler complied with the articulated procedure by seeking Dr. Landsman's specific approval for every excavation request or permit at the Midland site.<sup>29</sup> However, Applicant submits that the procedure that was discussed at the May 20 meeting was subsequently modified by the June 11 Wheeler/Landsman agreement.<sup>30</sup>

Paragraph 580. Applicant does not deny that it was told at the May 20 meeting not to excavate below the deep Q duct bank without prior NRC Staff approval. Nor does it deny that it was required to provide additional information to the NRC Staff. Applicant submits, however, that it did not absorb or understand the Staff's May 20 admonition not to dig.<sup>31</sup>

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27 See Staff Exhibit No. 26, Attachment 10.

28 Landsman, Tr. 21557-21558, 21910; see also Staff Exhibit No. 26, Attachment 11, p. 3, paragraph 3.

29 Landsman, Tr. 21919-21921.

30 See Consumer's Power Company's Proposed Second Supplemental Findings at paragraphs 627-633, and citations therein.

31 Staff Exhibit No. 27, Attachment 12 at pp. 8-9.

Further, Applicant believed that the Staff's concerns and requests for additional information related to the method of permanent backfill to be used in the excavation rather than the excavation itself.<sup>32</sup> Because Applicant has not to this day backfilled the excavation,<sup>33</sup> it did not find it necessary to provide information relating to the backfill proposals during the summer of 1982.

Paragraph 581. Applicant disagrees with the conclusions expressed in this proposed finding.

Paragraphs 582-583. No response.

Paragraph 584. No response, except to note that the final transcript citation attributed to Mr. Hood should be extended to include Tr. 22312.

Paragraph 585. The design sketches attached to Applicant's January 6 letter relating to the duct bank contain neither details nor dimensions. Applicant's witnesses, therefore, have described the sketches as "conceptual drawings,"<sup>34</sup> rather than a concrete proposal.

The Staff's reference at the end of this proposed finding to Mooney, Tr. 22239-22272, is incorrect.

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32 Staff Exhibit No. 27, Attachment 12 at pp. 8-9.

33 Kane, Tr. 21847.

34 Staff Exhibit No. 26, Attachment 14, Figures 6 and 7; see Wheeler, Tr. 22341; Mooney, Tr. 22351.

Paragraph 586. Applicant disagrees with Staff's preliminary conclusion that Mr. Mooney's testimony is not corroborated by the evidence.

Paragraphs 587-588. No response.

Paragraph 589. The last sentence to the Staff's May 25 letter may in fact have been intended as a warning, but such intent was not clear to Applicant. At the time, Applicant understood the May 25 letter to confirm that installation and activation of the freezewall -- of which the utility protection proposals were a part -- had been approved prior to April 30, 1982. In accordance with this understanding, the modifications made to the conceptual drawings attached to the January 6 letter were considered to be field variations upon an already approved conceptual design for utility protection.<sup>35</sup>

Paragraph 590. This proposed finding highlights the miscommunication between Applicant and the Staff. Applicant did not understand that the May 25 letter did not approve the excavation.<sup>36</sup> Further, Applicant would not have known that Mr. Kane's input to the letter occurred prior to May 20. Given that the letter was dated after the May 20 meeting, it was reasonable for Applicant to assume that the letter reflected discussions had at the May 20 meeting.

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<sup>35</sup> Mooney, Tr. 22360-22362.

<sup>36</sup> See response to proposed finding 589, supra and citations therein.



Paragraph 591. Applicant disagrees with the conclusions expressed in this proposed finding.<sup>37</sup>

Paragraph 592. Applicant submits that, at the time, it understood the May 25 letter to authorize the deep Q excavation.<sup>38</sup>

Paragraph 593. The Staff seems to imply that Applicant ignored Dr. Landsman's voiced concerns and intentionally continued to excavate to the clay till. These implications are not supported by the record. Mr. Wheeler testified that he had no knowledge that anyone from his staff was informed of Dr. Landsman's concerns on July 28th.<sup>39</sup> And, when Mr. Wheeler's staff first became aware of Dr. Landsman's concerns on July 29th, the excavation work was promptly halted, except for clean-up work and work necessary to secure the excavation.<sup>40</sup> Dr. Landsman's opinion as to why Applicant excavated to the clay till was speculation.<sup>41</sup>

Paragraph 594. No response.

Paragraph 595. The phrase "technical adequacy" is Dr. Landsman's term.<sup>42</sup>

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37 See Consumer's Power Company's Proposed Second Supplemental Findings at paragraphs 617-622, and citations therein.

38 Id., paragraphs 617-622, and citations therein.

39 Wheeler, Tr. 22084-22085.

40 Wheeler, Tr. 22091-22092, 22096-22097.

41 See Staff Exhibit No. 26, Attachment 2 at p. 2.

42 Staff Exhibit No. 26, Attachment 2 at p. 2.

Paragraph 596. The record indicates that portions of Staff Exhibit No. 26, Attachment 15, do not accurately reflect the actual statements of Mr. Schaub to Investigator Weil.<sup>43</sup>

Paragraph 597. Applicant believed that the Staff's concerns and requests for information related to the method of permanent backfill to be used in the excavation rather than the excavation itself.<sup>44</sup> Thus, Applicant did not understand that it was necessary to provide information about the excavation phase of the project before proceeding.

Paragraph 598. The proposed findings filed by the NRC Staff skip the number 598 in the numbering of paragraphs.

Paragraph 599. Applicant disagrees with the conclusion expressed in this proposed finding. Further, Applicant has never asserted that the Kane statement formed "the" basis for Applicant's belief that it had received approval to perform the excavation. Rather, given all the factors discussed in Consumer's Power Company's Proposed Second Supplemental Findings of Fact and Conclusions of Law,<sup>45</sup> Applicant submits that it had a reasonably valid basis for believing that the excavation was approved.

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43     See Schaub, Tr. 22496-22506, 22513.

44     Staff Exhibit No. 27. Attachment 12 at pp. 8-9.

45     See, e.g., paragraphs 643-657.

Paragraph 600. Applicant submits that the Staff's failure to change the designation "confirmatory" in the soils audit draft contributed to the misunderstanding leading Applicant to believe that the excavation was approved.

Paragraph 601. The record does not establish that Dr. Landsman made any statements to Applicant on August 4, 1982, with respect to the fire line relocation. Dr. Landsman testified that he "assumed" he had informed Applicant on the 4th of his concerns.<sup>46</sup> However, his August 24 memorandum to Mr. Shafer makes no reference to having told Applicant to stop the work.<sup>47</sup> Similarly, the September 22 Inspection Report makes no reference to Dr. Landsman's having instructed Applicant to stop the fire line work on August 4, even though the report covers the August 4-5 inspection. The report refers only to the August 9 stop work request relating to all remedial soils work.<sup>48</sup> The memorandum and the Inspection Report corroborate Mr. Wheeler's testimony that he was unaware of the NRC Staff having expressed any concerns on August 4, 5 or 6, and that Applicant first became aware of such concerns on August 9.<sup>49</sup>

The Staff incorrectly states that the relocation excavation work was not stopped until August 9 or 10. As Mr.

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46 Landsman, Tr. 22220.

47 Staff Exhibit No. 26, Attachment 2 at p. 2.

48 Staff Exhibit No. 26, Attachment 17; id., p. 7.

49 Wheeler, Tr. 22397.

Wheeler repeatedly testified, the excavation was completed on August 5.<sup>50</sup> Work Permit 6 does not indicate that work actually continued to the 10th; rather, it establishes that approval to do any work related to the Permit was withdrawn on the 10th.<sup>51</sup> Similarly, the referenced Inspection Report does not suggest that ongoing work was stopped on the 9th; rather, it establishes that a Stop Work Order relating to all remedial soils work was requested by the NRC Staff and issued by Applicant on the 9th.<sup>52</sup>

Paragraphs 602-603. No response.

Paragraph 604. Applicant disagrees with the conclusion expressed in this proposed finding. Mr. Wheeler's testimony is no less credible than Dr. Landsman's with respect to existence of and terms of the Wheeler/Landsman agreement. Mr. Wheeler gave a full and complete account of the agreement and produced a handwritten note made contemporaneously with the discussion. Conversely, Dr. Landsman had great difficulty even recalling whether the agreement had been reached, and he vacillated several times as to the terms of the agreement.<sup>53</sup>

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50 Wheeler, Tr. 22397-22398.

51 Staff Exhibit No. 26, Attachment 7 at p. 2.

52 Staff Exhibit No. 26, Attachment 17 at p. 7.

53 Wheeler, Tr. 22005-22006; Staff Exhibit No. 26, Attachment 10 at pp. 1-2; Landsman, Tr. 21557, 21561-21562; Landsman and Weil, Tr. 21901-21911; Landsman, Tr. 21934.

Paragraph 605. Dr. Landsman's documentation of the May 20 "hold point" was not issued until after August 9 -- after the excavations were complete.<sup>54</sup> Applicant submits that such a delay indicates that Dr. Landsman may not have attached great significance to the hold point. The August 9 Inspection Report benefits from hindsight, and does not defeat Applicant's reasonable conclusion that whatever approval procedure was discussed at the May 20 meeting was modified by the June 11 Wheeler/Landsman agreement.<sup>55</sup>

As noted supra, Applicant believed that the Staff's concerns and requests for information related to the method of permanent backfill to be used in the excavation rather than the excavation itself.<sup>56</sup>

Paragraph 606. Applicant has fully discussed the Soils Progress Schedule Status Reports in its Proposed Second Supplemental Findings of Fact and Conclusions of Law.<sup>57</sup> Moreover, Mr. Wheeler was not on the distribution list for these reports.<sup>58</sup>

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54 See Staff Exhibit No. 26, Attachment 11.

55 See response to proposed finding 579, supra, and citations therein.

56 Staff Exhibit No. 27, Attachment 12 at pp. 8-9.

57 See paragraph 635, note 1706.

58 See, e.g., Staff Exhibit No. 27, Attachment 20.



Paragraph 607. Mr. Schaub did not "approve" the deep Q excavation; rather, Mr. Schaub confirmed NRC Staff approval of the work.<sup>59</sup>

Shortly after his June 11 meeting with Dr. Landsman, Mr. Wheeler advised his staff -- including Messrs. Murray and Sibbald -- of the agreement.<sup>60</sup> With respect to the deep Q excavation, Mr. Sibbald signed the work permit and Mr. Murray signed the excavation permits after being informed of the Wheeler/Landsman agreement.<sup>61</sup> Mr. Murray also signed the work permit for the fire line excavation, and recalls contacting Mr. Schaub and deciding that the work was "minor" under the terms of the agreement.<sup>62</sup> Thus, the record supports Applicant's reliance on the Wheeler/Landsman agreement for approval of these excavations.

Paragraphs 608-609. Applicant disagrees with the conclusions expressed in these proposed findings.

Paragraph 610. No response.

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<sup>59</sup> Stamiris Exhibit No. 123; Wheeler, Tr. 21986-21988; Schaub, Tr. 22521-22523. Furthermore, Stamiris Exhibit No. 123 is not dispositive of the Schaub confirmation, for it represents the uncertain recollections of Mr. Sibbald at a time just prior to the August 11 enforcement conference. Wheeler, Tr. 21990.

<sup>60</sup> Wheeler, Tr. 22484-22485; Staff Exhibit 26, Attachment 10.

<sup>61</sup> See Consumers Power Company's Proposed Second Supplemental Findings at paragraphs 634-635.

<sup>62</sup> Staff Exhibit No. 26, Attachment 12 at p. 2.

Paragraph 611. Applicant agrees with the NRC Staff's conclusion that it did not intentionally violate the Board's April 30 Order. In addition, Applicant submits that there was in fact no violation of the Board's April 30, 1982 Order; Consumers Power had a reasonable basis for believing that the deep Q and the fire line excavation had been approved.

CONCLUSIONS OF LAW

Applicant continues to support the Conclusions of Law and the Order proposed in Consumers Power's January 27, 1984 filing.

## Appendix

### RESPONSE TO NRC STAFF UPDATE

On May 25, 1984 the NRC Staff filed an update of its findings of fact and conclusions of law filed on December 30, 1981 and on March 26, 1982. At page 3, in connection with Stamiris Contention 2, the NRC Staff refers to Dr. Landsman's opinion that cost and schedule pressures have caused misunderstandings between the Staff and Consumers Power. Applicant's own discussion of the additional evidence in relation to Stamiris Contention 2 is found at paragraphs 521 through 529 of its Second Supplemental Findings dated January 27, 1984. As indicated there, the NRC Staff has not reached a consensus as to the cause of QA implementation problems at Midland. Mr. Keppler testified that he personally found no basis for concluding that Consumers Power has put cost and schedule ahead of quality.<sup>63</sup>

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<sup>63</sup> Keppler, Tr. 15122, 15380.