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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

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In the Matter of)	ASLBP Nos.	78-389-03 OL
)		80-492-02-SP
CONSUMERS POWER COMPANY)	Docket Nos.	50-329 OL
)		50-330 OL
(Midland Plant, Units 1 and 2))	Docket Nos.	50-329 OM
)		50-330 OM

INTERVENOR STAMIRIS' REQUEST
FOR EVIDENTIARY HEARINGS ON MATTER
RAISED IN THE CPCo-DOW TRIAL,
AND REFERRAL OF CERTAIN MATTERS
TO THE OFFICE OF INVESTIGATIONS

On December 6, 1984, Consumers Power Company ("Applicant") notified the Atomic Safety and Licensing Board ("Board") that the certain erroneous information concerning borings at the D.F.O Tanks had been submitted previously in the OM/OL proceeding. The new, allegedly correct information had been disclosed (or discovered) during the course of the trial between Dow Chemical Company ("Dow") and the Applicant during the litigation of the "Dow issues." This information has immediate bearing on the basis of the Board's information regarding the liquification problems on the Midland nuclear power plant site.

Intervenor Stamiris requests that prior to the issuance of any decision, or partial decision which depends wholly or in part on the information provided to the Nuclear Regulatory Commission ("NRC") or the Board by the Applicant, contractors, or expert witnesses, that a full evidentiary hearing be held on the facts surrounding the disclosure of the soils boring

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data and all related tests by Applicant to the NRC. (This request does not apply to any issue about which the Board has reached decisions independent of any reliance on the Applicant's data.)

This request results from the current unusual posture of this OM proceeding and Intervenor's concerns that without such a hearing, the record developed over the past three years will be devoid of the most crucial information yet developed on the key issues of management character, quality assurance, and the adequacy of the remedial soils efforts.

Applicant has maintained both publicly and through regulatory correspondence that there is a presumption that the Midland plant will someday be "brought out of mothballs" and put into service. Such an effort will be largely governed by any conclusions or decisions made by this Board on these issues.

For this reason, Intervenor Stamiris has diligently sought to reopen the record on the Dow issues and pursue information relevant to the Stamiris contentions. (See Intervenor's Motion to Litigate Issues Raised by Dow Suit and to Open Discovery on the Dow issues, August 8, 1983, and Second Supplemental Memorandum in Support of Intervenor Barbara Stamiris' Motion to Litigate Dow Issues, October 5, 1983.)

As anticipated, the Dow litigation has produced (and can be expected to continue to produce) information relevant to Intervenor's contentions.

One such example is the testimony of Donald Horn concerning a November 7, 1978 meeting about the soils settlement problems. According to Horn's testimony, the Applicant and Bechtel International Corporation ("Bechtel") decided in November, 1978 that only part of the information they had about the Midland soils problems would be disclosed to the NRC. (See Exhibit 1) This supports Stamiris' contention and affects Stamiris' contention 4.

Another example of relevant new information from the Dow trial is testimony of Horn which indicates that Applicant had a greater awareness of the extent of the soils settlement problems in 1977 following the Administration Building grade beam settlement, than was revealed in the OM/OL proceeding. This supports Stamiris' contention 1 and 3 and affects Stamiris' contention 4.

According to Horn's November 9, 1984 testimony in the Dow trial, certain Administration Building proctor tests were re-run by U.S. Testing in order to determine the correct percent compaction. The results of these second tests shown in figure 8, 9, and 10 of an Administration Building report were cited by the Dow attorney:

Q: And every one of the original calculation compaction figures are higher than the retested results; isn't that right?"

A: Mr. Horn answered, "based on this, yes."

Nov. 9, 1984, transcript Dow/CPC trial,
p. 2472 citing P. 90517284 of Dow's
Exhibit PXCPC 1197.

The two examples cited above are only illustrative of the types of information which bear on the issues now before the Board.^{1/}

Intervenor believes a thorough review of the information being developed in the Dow litigation must be accomplished by this Board contemporaneously with any decision it issues.

In order to accomplish this in the most expeditious way possible, Intervenor suggests the following:

1. Refer to the Office of Investigations (OI) the questions raised by Mr. Horn's testimony (and other matters) which infer that Applicant or its contractors acted improperly in its decision not to tell the NRC certain information about the extent of the soils deficiencies, and regarding the submittal of erroneous information to this Board during the proceedings.

2. Provide Intervenor the opportunity to supplement this Motion by a memorandum detailing significant information in the transcript of the Dow-CPCo trial within a reasonable time after completion of the trial.

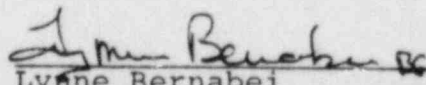
^{1/} The trial transcript will be publicly available at the completion of the trial, however, due to the complexity of the litigation and the need for the District Court to have daily access to its copy, it has been impossible for Intervenor Stamiris to have access to the transcript for a thorough review. Therefore, the information available to Intervenor comes from the press accounts and sporadic personal observation of the trial. (The Board could, of course, request a copy of the transcript be made available to the parties or placed in the Public Documents Room, which would facilitate the review process.)

3. Defer ruling on this Motion until after the issuance of the OI investigation and receipt of the supplemental memorandum from Intervenor in support of this Motion, and any responses by the parties.

Intervenor Stamiris is mindful of the resources which an evidentiary hearing would consume. If Applicant would withdraw its request for either the operating license or the hearing on the Order for Modification there would, of course, be no need for such a hearing. However, numerous foreseeable circumstances could develop in which the Applicant, or some other applicant, would seek to bring the Midland nuclear power plant into operation. Intervenor is mindful that she cannot now sit idly by as the truth so diligently sought by this Board and these parties is finally revealed in the context of a civil litigation. For these reasons, the proposals contained in this request seem reasonable, fair and prudent.

Respectfully submitted,

Dated: December 24, 1984


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Saginaw Daily News, November 14, 1984

Utility: 'N-plant woes not our fault'

BY KEITH NAUGHTON
News Staff Writer *Sag. News.*
11-14-84

MIDLAND — Consumers Power Co. today once again pointed a finger of blame for Midland Nuclear Plant construction problems at its main contractor on the project.

During the trial of the \$500 million lawsuit between the utility and Dow Chemical Co. over the plant, Donald E. Horn, the utility's former chief of quality assurance for the foundation of the now-defunct plant, testified that Bechtel Power Corp. was responsible for establishing and implementing design specifications for the project.

He also said that Bechtel botched the job, causing structures at the site to sink.

It was Bechtel's responsibility to oversee soil compaction for the plant's foundation, Horn said. In some cases, Bechtel improperly compacted the ground itself, he said.

In the late 1970s, safety-related buildings sank into soft fill soil, and Consumers had to embark on a \$390 million project to rebuild plant foundations.

Tuesday, Horn told Judge David Scott DeWitt, hearing the case in Midland County Circuit Court, he trusted Bechtel when he OK'd building of diesel-fuel tanks on ground not stable enough to support them.

The concrete base cracked. Bechtel built the tanks without sufficient test proof that the ground would support them, Horn testified.

Before Bechtel built the tanks in 1977, it misrepresented that the soil was re-tested and met guidelines for safety-related structures, Horn's daily logs indicated.

Horn testified under cross-examination by Consumers attorney Sharon Woods.

The utility's attorneys watched for two weeks as Dow lawyers grilled Horn about the numerous problems with the Midland plant's foundations.

"We wanted to clear up the record of what Horn reviewed," Woods said. "He based his decision on documents and information provided by Bechtel."

After earlier testimony, Consumers spokesman Paul Knopick blamed Bechtel for the plant's construction problems and threatened a lawsuit.

"We have never ruled out a lawsuit against Bechtel," he said.

Before Dow attorney James Goold completed his seven-day examination of Horn Tuesday, he had the soils expert verify authenticity of documents that indicate Consumers and Bechtel used questionable methods of reporting to federal regulators.

The utility and Bechtel decided in advance of a 1978 meeting with the Nuclear Regulatory Commission that only part of the soils problems would be disclosed to the regulatory agency. Horn's log of the meeting showed.

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NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

In the Matter of:)	Docket Nos. 50-329-OL
)	50-330-OL
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 Intervenor Stamiris'
Request for Evidentiary Hearings on Matter Raised In the CPCo-Dow
Trial, and Referral of Certain Matters to OI were
mailed, proper postage prepaid, this 24 day of December, 1983, to:

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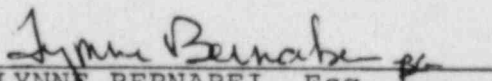
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