

UNITED STATES OF AMERICA  
ATOMIC ENERGY COMMISSION

BEFORE THE  
ATOMIC SAFETY AND LICENSING BOARD

In the Matter of

CONSUMERS POWER COMPANY

(Midland Plant, Units 1 and 2)

---

Construction Permit  
Nos. 81 and 82  
(Show Cause)

RESPONSE OF BECHTEL POWER CORPORATION AND  
BECHTEL ASSOCIATES PROFESSIONAL CORPORATION TO SAGINAW-  
SIERRA'S MOTION FOR DISCOVERY IN AID OF ORAL ARGUMENT

Bechtel Power Corporation and Bechtel Associates Professional Corporation ("Bechtel") hereby responds to Saginaw-Sierra's Motion for Discovery in Aid of Oral Argument.

1. Bechtel objects to the discovery requests of Saginaw-Sierra. Bechtel believes, however, that the contracts which are the subject of Consumers Power Company's Complaint against Bechtel and other defendants were attached to the Complaint and, therefore, are available as matters of public record.

2. Bechtel reaffirms its contention that matters relating to the construction of the Palisades Plant are irrelevant to the issues of Quality Assurance Program implementation at Midland, and incorporates by reference its arguments heretofore presented on the issue of relevancy.<sup>1</sup> Suffice it to say

---

<sup>1</sup> "Objections of Bechtel Power Corporation and Bechtel Associates Professional Corporation to First Set of Interrogatories Directed to Bechtel Corporation," filed on April 29, 1974; "Bechtel's Reply to Saginaw's Extra-Record Correspondence to the Atomic Safety and Licensing Board," filed on May 6, 1974; "Response of Bechtel Power Corporation and Bechtel Associates Professional Corporation to Saginaw-Sierra's Petition to Reopen the Record and/or Reconsideration of Initial Decision," filed on October 10, 1974.

8007160 934

G

that not only are the substantive issues (construction methods and techniques vs. Quality Assurance Program implementation) not capable of being meaningfully compared but the design, procurement and construction of the Palisades and Midland Plants have no common denominator. The Palisades Plant was, for the most part, designed and constructed according to the regulations, codes, standards, criteria and techniques in existence and available between 1965 and 1970. The Midland Plant, on the other hand, will be designed and constructed according to the regulations, codes, standards, criteria and techniques in existence and available subsequent to 1970. Furthermore, as this Board noted in its Initial Decision, both Bechtel and Consumers have been updating and improving their respective organizations, procedures and programs over the years.<sup>2</sup> Thus, meaningful comparison of the Midland Plant today with the Midland Plant of 1970 would be difficult enough but it is virtually impossible to compare the Midland Plant today with the Palisades Plant.

3. The issues before this Board in this proceeding have been:

- (1) Whether the licensee is implementing its quality assurance program in compliance with Commission regulations; and
- (2) Whether there is a reasonable assurance that such implementation will continue throughout the construction process.<sup>3</sup>

---

<sup>2</sup> Initial Decision, September 25, 1974, pages 25-58.

<sup>3</sup> Memorandum and Order, December 20, 1973, RAI-73-12 at 1083.

After an extensive hearing on these issues, this Board determined the facts to be such as requiring that the above issues be answered in the affirmative as a matter of law.<sup>4</sup> Saginaw-Sierra has petitioned for a review of that decision. Accordingly, the issues at this time are not the comparison of the Midland and Palisades contracts or the merits of Consumers' lawsuit but are solely whether the mere filing of a lawsuit to recover damages for allegedly unsatisfactory design, procurement and/or construction of the Palisades Plant is relevant to whether or not the Midland Plant's Quality Assurance Program has been properly implemented and will continue to be implemented in the future and whether the Complaint is of such importance to those issues that this Board must begin the Midland Show Cause hearing anew in order to litigate the issues in the federal court lawsuit and determine their effect on Quality Assurance Program implementation at Midland.

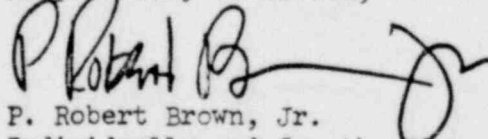
4. Bechtel objects to Saginaw-Sierra's suggestion that the filing of the lawsuit by Consumers is "prima facie" evidence of "inconsistent positions" with respect to Bechtel's qualifications. Furthermore, Bechtel states that the filing of the lawsuit has no relevance whatsoever to any issues properly before this Board under the Order to Show Cause and that the existence of the lawsuit is irrelevant and immaterial to the only question at issue here, namely the question of whether or not Consumers and Bechtel have been properly implementing the Quality Assurance requirements and whether they will continue to do so in the future.

<sup>4</sup> Initial Decision, September 25, 1974, pages 37, 58, 59.

5. Saginaw-Sierra's statement that without the requested discovery it will be "unable adequately to present oral argument" is a bootstrap attempt to get at the merits by bypassing the purpose for the oral argument.<sup>5</sup> Saginaw-Sierra is seeking to reopen this hearing because some supposedly new, allegedly relevant information was not considered by this Licensing Board. The burden of proof clearly resides on the proponent of that motion, Saginaw-Sierra.<sup>6</sup> The Complaint is couched in only the most general of terms. It may take months of discovery and the examination of many thousands of documents to determine the precise allegations contained therein. But before the merits of the Complaint can be considered, Saginaw-Sierra must first bear the burden of proving not only that the filing of the Complaint concerning construction methods and techniques at Palisades is somehow relevant and material to Quality Assurance Program implementation at Midland but also that the Complaint is of such significance that it warrants reopening the Show Cause hearing for the examination of allegations which are properly before a federal court. Thus, the discovery which Saginaw-Sierra seeks for the purpose of oral argument is irrelevant and immaterial since it goes to the merits of the Complaint.

WHEREFORE, BECHTEL prays that this Licensing Board deny Saginaw-Sierra's "Motion for Discovery in Aid of Oral Argument."

Respectfully submitted,



P. Robert Brown, Jr.  
Individually and for the firm  
Clark, Klein, Winter, Parsons & Prewitt  
1600 First Federal Building, Detroit, Mi. 48226  
Attorneys for Bechtel Power Corporation and  
Bechtel Associates Professional Corporation

November 1, 1974.

<sup>5</sup> Additionally, the statement is unsupported and unsworn to and, therefore, does not comply with the requirements of 10 CFR §2.730(b).

<sup>6</sup> 10 CFR §2.732

UNITED STATES OF AMERICA

ATOMIC ENERGY COMMISSION

In the Matter of )  
 )  
CONSUMERS POWER COMPANY ) Construction Permit  
 ) Nos. 81 and 82  
 )  
(Midland Plant, Units 1 and 2) )

CERTIFICATE OF SERVICE

I hereby certify that copies of the attached "Response of Bechtel Power Corporation and Bechtel Associates Professional Corporation to Saginaw-Sierra's Motion for Discovery in Aid of Oral Argument" dated November 1, 1974 in the above captioned matter have been served on the following in person or by deposit in the United States mail, first-class, or airmail, this 1st day of November, 1974.

Secretary (20)  
U.S. Atomic Energy Commission  
Attn: Chief, Public Proceedings  
Branch  
Washington, DC 20545

John G. Gleeson, Esq.  
Legal Department  
The Dow Chemical Company  
2030 Dow Center  
Midland, MI 48640

James P. Murray, Jr.  
Chief Rulemaking and  
Enforcement Counsel  
U.S. Atomic Energy Commission  
Washington, DC 20545

Michael I. Miller, Esq.  
R. Rex Renfrow III, Esq.  
Isham, Lincoln & Beale  
One First National Plaza -- 42nd Floor  
Chicago, IL 60670

Michael Glaser, Esq.  
1150 17th Street, NW  
Washington, DC 20036

Lester Kornblith, Jr.  
U.S. Atomic Energy Commission  
Washington, DC 20545

Dr. Emmeth A. Luebke  
U.S. Atomic Energy Commission  
Washington, DC 20545

Myron M. Cherry, Esq.  
One IBM Plaza  
Suite 4501  
Chicago, IL 60611

Mr. Richard S. Salzman  
U.S. Atomic Energy Commission  
Washington, DC 20545

Mr. Michael C. Farrar  
U.S. Atomic Energy Commission  
Washington, DC 20545

Dr. Lawrence R. Quarles  
U.S. Atomic Energy Commission  
Washington, DC 20545

Mr. William J. Olmstead  
Office of the General Counsel Regulations  
U.S. Atomic Energy Commission  
Washington, D. C. 20545