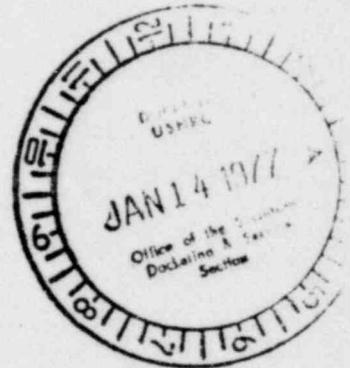


January 12, 1977

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board



In the Matter of )  
 )  
CONSUMERS POWER COMPANY )  
 )  
(Midland Plant, Units 1 and 2) )  
 )  
 )  
 )

Docket Nos. 50-329  
50-330

THIS DOCUMENT CONTAINS  
POOR QUALITY PAGES

LICENSEE, CONSUMERS POWER COMPANY'S, ANSWERS  
AND OBJECTIONS TO INTERROGATORIES FROM ALL  
INTERVENORS EXCEPT DOW CHEMICAL COMPANY,  
DATED DECEMBER 27, 1976

1-12-77

Consumers Power Company ("Licensee") submits the following Answers and Objections to Interrogatories from all Intervenors except Dow Chemical Company ("Intervenors"), dated December 27, 1976:

1. Testimony in this proceeding thus far has indicated a dispute between Consumers and Dow Chemical Company (Dow) relating to the construction of the Midland Nuclear Facility and sale and purchase of steam and electricity from said facility. All or a portion of the Dow-Consumers contracts have been identified or attached in written testimony of your witnesses in this proceeding, Messrs. Keeley and Howell. With respect to any dispute concerning such contracts between Consumers and Dow please state the following:

8007280 8/19 (a) Describe in detail the nature of the dispute

and the status of any negotiations to resolve said

dispute. If it is your position that no dispute exists, please state the basis therefor in light of the cross-examination testimony of Dow witness Temple, including but not limited to the disclosures made by Mr. Temple of meetings between Consumers and Dow and their representatives in September 1976 wherein suggestions of lawsuits were made, as well as correspondence between Youngdall and Temple during 1975 and 1976 which has already been produced by Consumers.

(b) Describe in detail your factual and legal position concerning said dispute including whether you believe Dow has an obligation to purchase steam or electricity at any time regardless of the date when the Midland Nuclear Facility first becomes operational.

(c) Set forth the legal theory or theories in connection with said dispute upon which Consumers would base any lawsuit against Dow in the event Dow announced a position that it would no longer consider itself obligated by any contracts for the purchase or sale of electricity from the Midland Nuclear Facility.

(d) To the best of your ability and whether based upon personal knowledge or not state what you believe to be the position of Dow in connected with the dispute.

Used within these interrogatories the word "dispute" shall have the broadest possible meaning and shall include differing positions, disagreements, different viewpoints, different objectives and different perspectives concerning all or any part of the subject matter.

On December 29, 1976 (mailed to Licensee's counsel on December 30, 1976), in order to correct a "typographical error," this interrogatory was amended as follows:

"In Interrogatory 1(c), page 7, in the second to the last line and after the words 'or sale of electricity', insert the words 'and steam'."

On January 3, 1977, in order to correct a "typographical error," all interrogatories were further amended as follows:

"In subparagraph (b) of the Identification section, in the beginning, after the words 'territorial or', please insert the following words:

'other organizational unit, shall require a statement of the name of such unit,'."

ANSWER-OBJECTION:

1(a). Insofar as Licensee is aware, Dow's position is "that at the present time circumstances have not changed sufficiently to call for a modification of Dow's commitment to nuclear produced steam to be supplied by Consumers Power in March of 1982" (Tr. 220, p. 2) and that Dow intends to purchase a minimum of 2,000,000 pounds per hour of 175 psig steam beginning when the nuclear plant is placed in commercial operation in March, 1982. (Dow responses to Staff's interrogatories, Nos. 1, 4) So long as Dow does not breach its contracts with Licensee, Licensee does not consider that there is any existing dispute with Dow.

Current negotiations with Dow re possible modifications to the contracts have been described in the direct testimony of Mr. Temple, which sets forth Dow's position on some of the principal issues which it has raised for discussion

(Tr. 220, pp. 6-8), and in the direct testimony of Mr. Howell, which sets forth Licensee's position on the principal matters which it has raised for discussion (p. 7 of Howell prepared testimony).

Any other items under discussion, the nature of the discussions between Dow and Licensee, the status of the negotiations and Dow's position, insofar as it is known to Licensee, are further fully set forth in the minutes of the following negotiating sessions, which have already been produced by both Licensee and Dow: January 9, 1976, February 24, 1976, May 19, 1976 and September 13, 1976. Licensee further specifically refers Intervenors to the following documents relating to the above: G. S. Keeley's meeting minutes of March 4, 1976 and attached Dow documents; Keeley meeting minutes of March 31, 1976 and attachments (except proprietary attachments); the agenda and attachments for the May 1976 meeting; Mr. Temple's June 30, 1976 letter to Mr. Youngdahl; and Mr. Temple's December 28, 1976 letter to Mr. Youngdahl.

In October 1974, Consumers Power advised Dow that it intended to slow down construction on the Midland Plant due to Consumers Power's inability to finance its overall construction program at that time.

There ensued the following exchange of correspondence (copies of which have been provided to Intervenors):

Temple to Youngdahl,	November 11, 1974
Youngdahl to Temple,	November 25, 1974
Temple to Youngdahl,	December 19, 1974
Youngdahl to Temple,	January 3, 1975

On January 13, 1975, at a meeting in Detroit, Mr. Temple told Mr. Howell that he, Temple, was not planning to answer Youngdahl's letter of January 3, 1975 or to write any more letters on the subject, and that Dow was planning to let the matter rest.

With regard to any "suggestions of lawsuits," on September 21 and 24, 1976, representatives of Licensee (Messrs. Falahee and Aymons) merely stated the obvious in meetings with representatives of Dow when they informed Dow that, in the event Dow breached its contracts with Licensee, Licensee would pursue its legal remedies.

Licensee has attempted to respond fully to this interrogatory for the period January 30, 1974 (the date of execution of the steam, electric and water contracts) to date. In view of the short period of time available for preparation of these responses, Licensee will continue to review its files to ascertain whether this response must be supplemented for events which occurred during the period of January 30, 1974 to date. The remainder of this interrogatory is objected to on the basis that in calling for "disputes" (as broadly as this term is defined) back to December 1, 1967, it calls for a great deal of ancient history, which is not relevant or material to any issue before this Board. It would be unduly burdensome to require Licensee to review all of its old files to search for every minor difference of opinion, "viewpoints" or "perspectives" between Dow and Licensee which may have existed prior to execution of the January 30, 1974 contracts.

Such an exercise would not be calculated to lead to evidence which would be relevant and material to the issues before this Board. Only Dow's current corporate position and the current negotiations between the parties are relevant and material.

(b) Insofar as this interrogatory is not responded to in (a) above, it is objected to for the reason set forth in (a) above and for the following reasons:

(1) It calls for interpretation of a document in evidence. The contracts between Dow and Licensee (which are submitted as Exhibits 7(a) - 7(c) in Licensee's direct case) are legal documents which speak for themselves. These documents have been provided to Intervenors and reference is made to them in response to this interrogatory.

(2) Licensee's legal position with regard to interpretation of its contracts with Dow is not an issue which is, or could be, before this Board (which has no jurisdiction to determine the validity of the contracts) and is therefore, totally beyond the scope of the issues which may be inquired into in this proceeding.

(3) Licensee's legal position with regard to any legal disputes or potential lawsuits with others is privileged under both the attorney-client and work product privilege.

(c) This interrogatory is objected to on the basis that Licensee's legal position with regard to any legal disputes or potential lawsuits with others is privileged under both the attorney-client and work product privilege.

(d) See (a) above.

2. State the date of commercial operation for the Midland Nuclear Facility which you currently project. If a different date is applicable to each unit then so state. Explain in detail the basis for your projection and set forth in detail whether you have taken into account in your projection a contested hearing at the operating stage level, economic conditions which could restrict your ability to raise funds for construction completion and regulatory changes requiring modifications in the design of the Midland Nuclear Facility. Where applicable give dates for each of the events or factors upon which you base your overall projection.

This interrogatory was amended by letter of January 3, 1977, as noted in interrogatory 1 above.

ANSWER-OBJECTION:

Currently projected date of commercial operation:

Unit 2	March 1, 1981
Unit 1	March 1, 1982

The basis for our projection is the Engineering, Procurement, Construction (EPC) Schedule which has been provided in the Environmental Report Supplement (ERS), Section 4.

The schedule for submittal of the Final Safety Analysis Report (FSAR) and ER has been provided to the NRC. The FSAR and ER are targeted for submittal on September 1, 1977. The schedule assumes a contested operating permit hearing lasting one year.

At the present time, we are not aware of any economic conditions restricting our ability to raise funds for completion of construction.

Licensee has taken into account "regulatory changes requiring modifications in the design of the Midland Nuclear Facility," and these are reflected in the current schedule.

3. State in detail how you intend to finance completion of construction for the Midland Nuclear Facility. Your answer is not complete by only making reference to general fund raising but also requires cash-flow projections and sources and application of funds analysis throughout the period of your currently projected date for commercial operation of the Midland Nuclear Facility.

This interrogatory was amended by letter of January 3, 1977, as noted in interrogatory 1 above.

ANSWER-OBJECTION:

This interrogatory is objected to on the basis that it is irrelevant and immaterial to the issues before this Board on remand. The issue of Licensee's financial responsibility was not remanded by the Court of Appeals and is not before this Board. Inquiries with regard to matters which are totally beyond the scope of these proceedings cannot lead to evidence which is relevant and material to the issues before this Board.

4. With respect to your existing contract with Dow concerning the purchase and sale of steam and electricity, state the date by which you are obligated to have the Midland Nuclear Facility in commercial operation capable of making available to Dow those amounts of steam and electricity contemplated by your existing contract with Dow. If it is your position that your existing contract calls for no particular date, please explain your answer in detail including your legal theories on interpretation of the contract making specific reference to applicable contractual provisions.

This interrogatory was amended by letter of January 3, 1977, as noted in interrogatory 1 above.

ANSWER-OBJECTION:

This interrogatory is objected to as calling for interpretation of a document. The contracts between Dow and Licensee (which are submitted as Exhibits 7(a) - 7(c) in Licensee's direct case) are legal documents which speak for themselves. These documents have been provided to Intervenor and reference is made to them in response to this interrogatory. Moreover, Licensee's legal position with regard to interpretation of its contracts with Dow (an issue which is not, and cannot be, before this Board, because the Board has no jurisdiction to determine the validity of the contracts) is both irrelevant and immaterial to any issue in this proceeding and, further, is privileged under both the attorney-client and work product privilege.

5. Do you have a contingency plan setting forth whether formal or informal and whether oral or written, any alternatives to the Midland Nuclear Facility in the event that

- (a) the construction permit is suspended;
- (b) the construction permit is permanently lifted and vacated;
- (c) Dow determines not to purchase steam or electricity from the Midland Nuclear Facility; and/or
- (d) it is impossible or improbable for you to have a Midland Nuclear Facility in commercial operation by your currently projected commercial operation date.

If it is your position that you do not have a contingency plan in the event of one or more of the above occurrences please state why not.

On December 29, 1976 (mailed to Licensee's counsel on December 30, 1976), in order to correct a "typographical error," this interrogatory was amended as follows:

"Interrogatory 5, at the end of the Interrogatory, add the following sentence: 'If you have such contingency plans, set them forth in detail.'"

This interrogatory was further amended by letter of January 3, 1977, as noted in interrogatory 1 above.

ANSWER-OBJECTION:

(a) No, Licensee does not have a "formal or informal contingency plan," as it understands the meaning of that term, which would implement a specific alternative, because there are too many variable factors which are continually changing. To

have, at this time, plans which would account for all of the possible variations would entail a massive and expensive undertaking, which would have to be continuously revised. In the event any of the postulated events does occur, Licensee will assess at that time the relevant factors and decide on a course of action.

(b) See (a) above.

(c) This interrogatory is objected to on the following bases:

(1) It is irrelevant and immaterial to the issues in this hearing, and inquires as to matters beyond the scope of this proceeding, which is limited to consideration of a proposal for major federal action to license a dual purpose facility.

an answer to a hypothetical case which is contrary

(2) It is irrelevant and immaterial in that it requires an answer to a hypothetical case which is contrary to facts now in evidence.

(d) See (a) above.

6. Have any of your representatives (including legal representatives) rendered any advice (whether formal or informal and whether written or oral) concerning a lawsuit against Dow in the event it determines not to purchase steam or electricity from the Midland Nuclear Facility. Explain your answer in detail and if such advice has been rendered set forth the advice with particularity including applicable legal theories.

This interrogatory was amended by letter of January 3, 1977, as noted in interrogatory 1 above.

ANSWER-OBJECTION:

This interrogatory is objected to as irrelevant and immaterial to any issue in this proceeding. Licensee's rights in any possible future litigation with Dow are matters which would be brought before another tribunal, and are not, and cannot be, issues before this Board (which has no jurisdiction to determine the validity of the contracts). Such matters are clearly, therefore, beyond the scope of what may be inquired into in this proceeding. Moreover, Licensee's legal positions or theories with regard to potential disputes or lawsuits with others are privileged under both the attorney-client and work product privilege.

This interrogatory is also objected to on the basis that in calling for "disputes" (as broadly as this term is defined) back to December 1, 1967 (the Dow-Licensee steam, electric and water contracts having been executed on January 30, 1974), it calls for a great deal of ancient history, which

is not relevant or material to any issue before this Board and would not lead to evidence which would be relevant and material to the issues before this Board.

7. Have you begun or do you at some point presently contemplate beginning negotiations with any person, other than Dow, regarding the sale or purchase of an ownership interest in any form, of all or part of the Midland Nuclear Facility. If your answer is "yes," state whether such investment would be permitted under your current agreements with Dow (giving reasons therefor) and how such potential investment is related, if at all, to your ability, from the financial standpoint, to complete construction of the Midland Nuclear Facility.

On December 29, 1976 (mailed to Licensee's counsel on December 30, 1976), in order to correct a "typographical error," this interrogatory was amended as follows:

"At the end of interrogatory 7, page 10, insert the following: 'Also set forth the persons and details which are the subject of such negotiations or contemplated negotiations.'"

This interrogatory was further amended by letter of January 3, 1977, as noted in interrogatory 1 above.

ANSWER-OBJECTION:

Yes, negotiations regarding the sale of an ownership interest of a part of the Midland Nuclear Facility have been held with Northern Michigan Electric Cooperative and Wolverine Electric Cooperative. The status of these negotiations is as follows: a working group at the staff level has prepared a proposal for consideration by management of the negotiating parties. This proposal basically provides for purchase by the cooperatives of 12.33% of the electric generating capacity of Midland Units 1 and 2 in exchange for payment to Licensee of 12.33% of the accumulated expenditures made to date assoc-

8. In the original proceedings concerning the construction license the total cost of the Midland Nuclear Facility was approximately \$600 million. Both Consumers and the Regulatory Staff took the position that the chief benefit (under a cost-benefit analysis pursuant to the National Environmental Policy Act) was the production of electricity to various users as well as the sale of steam and electricity to Dow. The projected cost for the nuclear facility is now at least \$1.67 billion and may be higher. Please state in light of the additional cost, each benefit which exists today, if any exists, not applicable and/or analyzed in connection with the earlier cost-benefit analysis in this proceeding and to the extent any such additional benefits exist, please quantify them and give your judgment in detail, as to whether such additional benefits justify the increased capital cost.

This interrogatory was amended by letter of January 3, 1977, as noted in interrogatory 1 above.

ANSWER-OBJECTION:

With regard to those portions of the cost-benefit analysis which were not specifically remanded by the Court of Appeals, all costs and benefits have been analyzed in the Final Environmental Statement issued on March 31, 1972. Licensee's views as to appropriate revisions in the cost-benefit analysis as a result of the remanded issues are set forth in the following documents which have been provided to all parties:

- (1) Consumers Power Company, Midland Plant Units 1 and 2, Docket No. 50-329 and

50-330, Environmental Report Supplement,  
October 26, 1976

- (2) ERS Amendment No. 1, November 19, 1976,  
including the pages which were transmitted  
on November 24, 1976.

This interrogatory is responded to by referring  
Intervenors to the above-cited documents (and particularly  
Section 11 thereof) which have already been provided to  
Intervenors.

Based on the information contained in the above-  
cited documents, the benefits to be obtained from construction  
and operation of the Midland Nuclear plant outweigh the costs.

9. Dow is currently under a consent order with the Michigan Air Pollution Control Authorities which prevents Dow from operating its existing generating facilities past 1980. In addition the United States Environmental Protection Agency has recently taken the position that it may not permit Dow to wait as long as 1980 to remedy air pollution problems in and around Michigan. In the event that the State and Federal Air Pollution regulatory authorities do not permit Dow to operate its present generating facilities after 1980 would you agree that it is no longer necessary from a cost-benefit standpoint, to build the Midland Nuclear Facility as currently designed and at its current location. Whether you agree or disagree, please explain your answer in detail.

On December 29, 1976 (mailed to Licensee's counsel on December 30, 1976), in order to correct a "typographical error," this interrogatory was amended as follows:

"Interrogatory 9, the sixth line, which is the second line on page 11, at the end of the line, insert the word 'Midland.'"

This interrogatory was further amended by letter of January 3, 1977, as noted in interrogatory 1 above.

ANSWER-OBJECTION:

Licensee objects to this interrogatory because it characterizes a document currently in evidence: the consent order between Dow and the Michigan Air Pollution Control Commission (Licensee's Exhibit 8a). The document speaks for itself. Furthermore, Licensee has no knowledge as to any "position" taken by the United States Environmental Protection

Agency with regard to Dow, other than that it has received a copy of a letter dated November 18, 1976 from James O. McDonald to Mr. Temple, together with an attached "Notice of Violation", copies of which documents have been provided by Dow to the Board and the parties, and which documents speaks for themselves. Again, Licensee objects to the characterization of documents in interrogatories as improper. Licensee also objects to the interrogatory as vague in that it is unclear whether the term "present generating facilities" refers to Dow's existing units as they are currently operated, or whether it includes Dow's existing units as they could be modified or operated to meet any future requirements of the Michigan Air Pollution Control Commission or United States Environmental Protection Agency.

Moreover, Licensee objects to the interrogatory as incapable of being responded to because it is far too broad and speculative in that it requires Licensee to speculate as to what actions Dow will take and as to all other conditions and circumstances which will be in existence at some future undetermined point in time. That Licensee is unable to so speculate is shown by the fact that Dow itself has indicated (Dow responses to Staff's interrogatories, Nos. 4 and 6), that changes in circumstances will require a reevaluation of all the circumstances existing at the time in deciding on how to proceed.

10. Is it possible for you to construct at the site of the proposed Midland Nuclear Facility a fossil fuel generating facility. If not, state why not. If your answer is "yes," then also provide the following information:

(a) a description of the type of fossil fuel generating facility which can be constructed,

(b) a statement of the total capital cost of such facility,

(c) an estimate of the time which it would take to construct or make commercially operable such a fossil fuel generating facility, and

(d) whether, if you began to use good faith efforts now, you could construct such a fossil fuel generating facility which would be commercially operable on or before the end of 1980.

As used within these interrogatories, the term "fossil fuel facility" means a facility which could take the place of the Midland Nuclear Facility to generate electricity and/or steam in accordance with your perception of your current needs.

Include within your answer to this interrogatory whether you agree that the total cost of such fossil fuel generating facility, plus assuming a complete loss of your current investment in the Midland Nuclear Facility, would be less than \$1.67 billion. If you disagree please explain your answer in detail and whether you agree or not set forth the figures upon which you have relied in your answer.

This interrogatory was amended by letter of January 3, 1977, as noted in interrogatory 1 above.

ANSWER-OBJECTION:

It may be possible for Consumers Power to construct a fossil-fueled generating facility at the Midland site, subject to obtaining the necessary local, state and federal permits and licenses to build the fossil-fueled plant; availability, transportation, handling and storage of fuel; adequacy of waste disposal; adequacy of planned cooling facilities; and other uncertainties.

- (a) A coal-fired facility is the only realistic alternative, due to unavailability and/or high cost of other fossil fuels.
- (b) Using the assumptions set forth in Chapter 9 of the Environmental Report Supplement total capital cost of constructing two fossil-fuel units would be \$1.310 billion for low sulfur coal and \$1.570 billion for high sulfur coal. Even with these assumptions, the earliest the units would be available for commercial operation is January 1, 1984. It should be noted that these assumptions are not entirely valid for the Midland site; e.g. the utilization of a deep water discharge and once through cooling would not be possible. As a result, these costs are probably understated for fossil-fuel units constructed at the Midland site.

(c) Using the assumptions set forth in Chapter 9 of the Environmental Report Supplement it would take a minimum of seven years to design and construct and make commercially operable fossil-fuel facilities.

(d) No.

We do not agree that the total cost of a fossil-fueled facility plus the loss of the current investment in the Midland facility would be less than \$1.67 billion. This is based on the following facts, assuming abandonment of the nuclear project on December 1, 1976 (figures in billions):

a. Capital cost of two 800 Mwe low-sulfur coal units	1.310
b. Plant expenditures to date	0.412
c. Salvage value of material on plant expenditure to date	(0.045)
d. Plant material and subcontracts committed but not paid	0.136
e. Cancellation cost of material and subcontracts committed but not paid	0.056
f. Salvage value of material committed but not yet paid	0.007
g. Nuclear fuel costs, less salvage value	0.108
h. Site restoration (conservatively estimated at zero)	0.000
i. Dow dual purpose cost reimbursement	<u>(0.052)</u>
Total	1.932

11. Set forth your understanding and definition of the term "energy conservation." After you have set forth your understanding and definition of the term "energy conservation," provide the following information:

(a) What steps or actions you have planned or are contemplating planning to initiate voluntary energy conservation throughout the period 1976-1986.

(b) What steps or actions you have planned or are contemplating planning to initiate mandatory energy conservation throughout the period 1976-1986.

(c) Set forth what steps you are planning or contemplating planning concerning the adoption of inverted rate structures which would contemplate consumers of electricity who use more electricity to pay more therefor rather than less.

(d) With respect to each of the alternatives described in (a), (b), & (c) above and in consideration of your plans or contemplated plans if any, set forth what you believe would be the savings in energy sales (in terms of megawatts electrical) that would result over the period of 1976-1986.

This interrogatory was amended by letter of January 3, 1977, as noted in interrogatory 1 above.

ANSWER-OBJECTION:

Definition of Energy Conservation:

Energy Conservation, from an electric energy viewpoint, encompasses the goal of using such energy as efficiently as

possible and minimizing the use of energy, both as to quantity (kwh) in total and demand (kw) during system peak load periods.

(a) The Company plans to continue those steps and actions currently under way concerning energy conservation; however, such plans are reviewed at least annually. See Section 1.1.0 of the Environmental Report Supplement, October 26, 1976, pp. 1.1-1 to 1.1-15.

(b) The Company does not have plans for mandatory energy conservation as it does not have the legal authority to mandate such actions except in a state of emergency.

For emergency load reductions the Company has an "Emergency Electrical Procedure" in its approved Rules and Regulations. See Exhibit C, Section 8 of the Environmental Report Supplement, October 26, 1976.

(c) The Michigan Public Service Commission ordered the Company to implement inverted rates for its residential customers. The effect of such rate structure is being analyzed but no conclusions have been reached. See pp. 1.1-9 to 10 of Environmental Report Supplement.

The Company is opposed to the inverted rate structure in that it does not follow costs, and does not anticipate proposing it for other rate groups.

(d) Effects of such actions in (a) above have been considered in the Company's long range forecast and are reflected in the Need for Power Section of the Environmental Report Supplement. The effects of many of the actions have been mentioned throughout Pages 1.1-1 to 1.1-15 of the Environmental Report Supplement.

12. With respect to the most recent communication, of which you are aware, issued by the Advisory Committee on Reactor Safeguards (and identifying such communication) regarding a listing of unresolved safety or other problems generic to the nuclear industry state:

(a) whether each unresolved problem or item is deemed by you or the ACRS to be applicable to the Midland Nuclear Facility, answering specifically for each problem or item;

(b) the manner and method of resolution of each such item identified in (a) above,

(c) the cost of resolution of each such item identified in (a) above, and

(d) the completion date by which each such item identified in (a) above will be resolved including whether such item will be resolved by the currently projected completion date for the Midland Nuclear Facility.

This interrogatory was amended by letter of January 3, 1977, as noted in interrogatory 1 above.

ANSWER-OBJECTION:

This interrogatory is objected to as irrelevant and immaterial to any issue in this proceeding in that it relates to matters totally beyond the scope of the proceeding. The remand of the Court of Appeals required a clarification of the generic reference in the June 18, 1970 ACRS letter relating to Midland. This has now been done by virtue of the ACRS's

letter of December 1, 1976 to this Board. The remand in no way relates to the April 16, 1976 ACRS generic letter (which, to the best of Licensee's knowledge is the most recent communication issued by the ACRS regarding a listing of unresolved safety or other problems generic to the nuclear industry). This interrogatory is not designed to lead to evidence which is relevant or material to the issues before this Board.

13. Please set forth each cost and benefit which you currently believe to be applicable in connection with the Midland Nuclear Facility. The term "cost-benefit analysis" in this interrogatory shall mean that process, as you understand it, required to be done pursuant to the National Environmental Policy Act. In connection with your answer quantify separately each cost and each benefit and state whether you are including within your answer the cost of fuel reprocessing, fuel storage, fuel availability and decommission of the Midland Nuclear Facility. If you do not include any of said items in the cost-benefit analysis, please state why not. Also include within your answer the percentage of the design electrical rating of the Midland Nuclear Facility (e.g., 90% of megawatt electrical rating) which you believe should be used in connection with the cost-benefit analysis, explaining your reasons therefor.

On December 29, 1976 (mailed to Licensee's counsel on December 30, 1976), in order to correct a "typographical error," this interrogatory was amended as follows:

"Interrogatory 13, line 9, page 14 top line, after the word 'decommission' add to the word the letter 'ing.'"

This interrogatory was further amended by letter of January 3, 1977, as noted in interrogatory 1 above.

ANSWER-OBJECTION:

With regard to those portions of the cost-benefit analysis which were not specifically remanded by the Court of Appeals, all costs and benefits have been analyzed in the Final Environmental Statement issued on March 31, 1972. Licensee's views as to appropriate revisions in the cost-benefit

analysis as a result of the remanded issues are set forth in the following documents which have been provided to all parties:

- (1) Consumers Power Company, Midland Plant Units 1 and 2, Docket No. 50-329 and 50-330, Environmental Report Supplement, October 26, 1976
- (2) ERS Amendment No. 1, November 19, 1976, including the pages which were transmitted on November 24, 1976.

This interrogatory is responded to by referring Intervenors to the above-cited documents (and particularly Section 11 thereof) which have already been provided to Intervenors. Decommissioning cost is included in the cost-benefit analysis (see Table 11-1).

In the Environmental Report Supplement of October 26, 1976, the percentage of the design electrical rating of the Midland Nuclear Facility used to compute the estimated net average annual generation (See p. 8.1-1) and the estimated cost of generating electricity (See p. 9.4-2) is 70%. The estimated net average annual generation and estimated cost of generating electricity are then reflected in Section 11 of the ERS "Summary of Cost-Benefit Analysis."

Insofar as this interrogatory inquires with regard to fuel cycle issues, it is also objectionable as irrelevant and immaterial to any issue before this Board in view of the Commission's action in withdrawing such issues from consideration by this Board (See NRC Memorandum and Order of November 5, 1976 in this proceeding). Again, interrogatories directed to issues totally beyond the scope of this proceeding are

improper and will not lead to evidence which is relevant or material to the issues before this Board.

14. Do you agree that there exists in relationship with Dow any "change of circumstances" from those which existed in 1973? If you do not agree, please explain your answer in detail. If you do agree, list each changed circumstance in sufficient detail so as to be understood without reference to any document other than your answer.

On December 29, 1976 (mailed to Licensee's counsel on December 30, 1976), in order to correct a "typographical error," this interrogatory was amended as follows:

"In the first line of Interrogatory 14 on page 14, insert the word 'your' between the words 'in' and 'relationship.'"

This interrogatory was further amended by letter of January 3, 1977, as noted in interrogatory 1 above.

ANSWER-OBJECTION:

Initially, we would point out that the steam, electric and water contracts between Licensee and Dow (Exhibits 7(a) - 7(c)) were signed after 1973: on January 30, 1974.

The Atomic Energy Commission, in its Order of April 11, 1974, defined the relevant "circumstances" with regard to Licensee's relationship with Dow. In ruling on the basis of these contracts (Exhibits 7(a) - 7(c)) that there were "no 'changed circumstances', ... warranting a re-opening of these proceedings," the Commission stated that:

"We think it sufficient to note that Dow has a contractual commitment to purchase large quantities of process steam from the completed facility, that substantial purchases of electricity are also contemplated and that

Dow's existing fossil-fueled facilities are to be maintained primarily on a standby basis."

Mr. Temple's testimony establishes that there has been no significant change in the circumstances which the Commission ruled were relevant and further states that Dow's existing facilities will be retired (rather than maintained on a standby basis) when a reliable source of process steam is available.

Insofar as this interrogatory can be interpreted as referring to "circumstances" other than those considered relevant by the Commission, it is objected to as irrelevant and immaterial and not designed to lead to evidence which is relevant or material to the issues in this proceeding.

15. If your existing steam-electric contract with Dow were terminated, would you still move forward to construct the Midland Nuclear Facility as currently designed? If "yes," please explain your answer in detail. If not, please set forth each change in the design or location of the Midland Nuclear Facility (including whether a non-nuclear facility would be such a change) which you would contemplate, stating to the extent applicable, capital costs, schedules and completion dates associated with each such change. As used within this interrogatory the word "terminated" means "at an end" without regard to reasons therefor, disputes, lawsuits or any other legal actions and requires you to make the assumption in connection with this answer, that you are no longer required to supply from the Midland Nuclear Facility or any other facility any steam or electricity to Dow referred to or contemplated in the steam-electric contract, as amended, between you and Dow.

This interrogatory was amended by letter of January 3, 1977, as noted in interrogatory 1 above.

ANSWER-OBJECTION:

This interrogatory is objected to as speculative, irrelevant and immaterial. It requires an answer to a hypothetical case contrary to facts now in evidence. Moreover, the hypothetical case which it assumes constitutes a proposal for a major federal action which is different from the proposal currently before this Board (the pending proposal

being the licensing of a dual purpose facility) and is, therefore, beyond the jurisdiction of this Board and the scope of this proceeding. Interrogatories directed to issues beyond the scope of these proceedings are improper in that they will not lead to evidence which is relevant and material to the issues before this Board.

*David J. Rosso*

David J. Rosso

Isham, Lincoln & Beale  
One First National Plaza  
Chicago, Illinois 60611

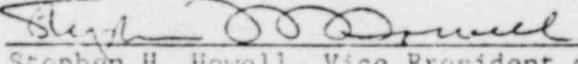
January 12, 1977

STATE OF MICHIGAN )  
                          ) SS.  
COUNTY OF JACKSON )

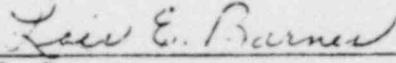
Stephen H. Howell, being first duly sworn, deposes and states:

that he is a vice president of Consumers Power Company, the Licensee herein;  
that the attached answers to interrogatories were prepared under his direction  
and supervision; and that the answers are true and correct to the best of his  
information and belief.

Dated this 10th day of January, 1977.

  
\_\_\_\_\_  
Stephen H. Howell, Vice President of  
Consumers Power Company

Subscribed and sworn to before me this 10th day of January, 1977.

  
\_\_\_\_\_  
Lois E. Barnes  
Notary Public, Jackson County, Michigan  
My Commission Expires May 24, 1980