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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

AEC REGULATORY STAFF'S RESPONSE TO  
"MOTION OF CONSUMERS POWER COMPANY  
TO IMPOSE THE BURDEN OF PROOF ON  
THE PROPONENT OF AN ORDER SUSPENDING,  
REVOKING OR OTHERWISE MODIFYING  
CONSTRUCTION PERMIT NOS. 81 and 82"

Under date of June 10, 1974, Consumers Power Company ("licensee")  
has asked the Board to place the "burden of proof" upon the pro-  
ponent of the show cause order involved in this proceeding.

Section 2.732 of the Commission's Rules of Practice (10 CFR §2.732)  
provides as follows:

"Unless otherwise ordered by the presiding officer,  
the applicant or the proponent of an order has the  
burden of proof."

In view of this provision, the Staff believes it clear that the  
"burden of proof", used in the sense of the ultimate risk of non-  
persuasion, is properly that of any proponent of the show cause

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The Staff anticipates that the Gunderson supplemental summary will be filed on April 13, 1977. The testimony will be filed as a supplement to avoid the need to call Mr. Gunderson as a witness if neither the Board nor the intervenors have any questions of him.

Sincerely,

Richard K. Hoefling  
 Counsel for NRC Staff

cc  
 Kristen M. Cherry, Esq.  
 Jack L. Fitch, Esq.  
 Honorable Carl T. Schneider  
 Hon. Mary Elia Icar  
 Russell F. Rabe  
 R. E. Fitch, Esq.  
 Mr. Steve Gaudier  
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 Board Panel  
 Atomic Safety and Licensing  
 Appeal Panel  
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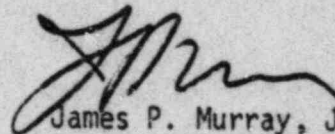
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OFFICE	FILED					
SUBMITTED	Hoefling: pdh					
DATE	4/8/77					

order and not that of the licensee. In this connection it should be noted that the Regulatory Staff is not the proponent of this show cause order, as has been brought out on more than one occasion (see, e.g., prehearing transcript, page 49). In all events, because of the clear of 10 CFR §2.732, the Staff supports the licensee's request.

Respectfully submitted,



James P. Murray, Jr.  
Counsel for AEC Regulatory Staff

Dated at Bethesda, Maryland,  
this 18th day of June, 1974.

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ATOMIC ENERGY COMMISSION

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Construction Permit  
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CERTIFICATE OF SERVICE

I hereby certify that copies of "AEC Regulatory Staff's Response to Motion of Consumers Power Co. to Impose the Burden of Proof on the Proponent of an Order Suspending, Revoking or Otherwise Modifying Construction Permit Nos. 81 and 82" dated June 18, 1974, in the captioned matter, have been served on the following by hand delivery or by deposit in the United States mail, first class or air mail, this 18th day of June, 1974:

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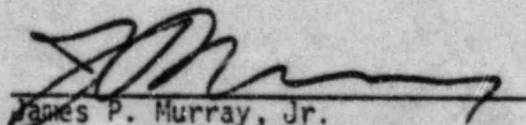
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