

1/23/81

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

In the Matter of	)	Docket Nos. 50-329-OL
CONSUMERS POWER COMPANY	)	50-330-OL
(Midland Plant, Units 1 and 2)	)	50-329-OM
	)	50-330-OM

MOTION TO COMPEL THE DEPOSITION OF HAROLD THORNBURG

Pursuant to 10 C.F.R. § 2.740(f) Consumers Power Company ("Consumers Power"), by its attorneys, moves for an order compelling the deposition of Harold Thornburg and an order directing the Nuclear Regulatory Commission to pay to Consumers Power the reasonable attorneys' fees and costs incurred in presenting this motion and in deposing Mr. Thornburg. The grounds in support of this motion are:

1. On December 29, 1980, in a conference call initiated by Mr. William Olmstead for the NRC Staff, Mr. Olmstead stated that in accordance with "informal agreed discovery" that he was seeking the Board to direct all parties to adhere to, the Staff would follow the Board's admonition that, "Where it appears that the witnesses selected by the Staff do not have the requisite knowledge but that other named employees or consultants do, the Board urge(s) the Staff to honor requests by the applicant to depose such

persons." (Board ASLB Memorandum Concerning Telephone Conference Call, dated December 31, 1980 at page 5).

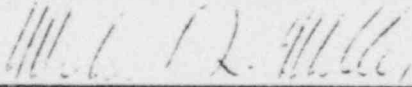
2. The basis for the December 6, 1979 order which led to this evidentiary hearing is obviously of key importance in this proceeding. If there was no basis for issuing the order in the first place, the Staff's arguments that it should be sustained now are seriously undercut. During the course of the deposition of Staff witness Robert E. Shewmaker, on January 19, 1981, Mr. Shewmaker testified regarding a meeting attended by the NRC Project Manager for Midland, Mr. Hood and the head of Region III Inspection and Enforcement, Mr. Keppler on November 28, 1979. At that meeting, as reflected in Mr. Shewmaker's contemporaneous notes, Mr. Hood stated that "the proposed fixes [at Midland] are such that if they are implemented properly they should be adequate" (Shewmaker dep. ex. 13 attached hereto) and Mr. Keppler stated that there had been no "breakdown" of quality assurance at Midland (Shewmaker dep. p. 108). Mr. Shewmaker did not recall any attendee at the meeting urging the issuance of an order. Two days later, however, on November 30, 1979, drafts of the order which was issued on December 6, 1979 were already being circulated (See Shewmaker deposition exhibit 28, attached hereto). Shewmaker deposition exhibit 17, attached hereto, was identified by Mr. Shewmaker as a log of Mr. Thornburg's meetings with other NRC employees concerning Midland soils settlement issues (Shewmaker dep.

p. 139). That log shows that Mr. Thornburg met with the two persons issuing the December 6, 1979 order, Mr. Stello and Mr. Case, on November 28 and November 29, 1980. Mr. Shewmaker had no knowledge of the substance of these conversations (Shewmaker dep. p. 140). It is therefore apparent that Mr. Thornburg possesses key information regarding the apparent change in position by the NRC Staff with respect to the issuance of the December 6, 1979 order and the basis for that order.

3. At the conclusion of Mr. Shewmaker's deposition, staff counsel was requested to make Mr. Thornburg available for deposition. On January 21, 1981, staff counsel informed counsel for Consumers Power Company that Mr. Thornburg would not be made available for deposition.

4. The foregoing conduct by counsel for the NRC Staff demonstrates apparent defiance of the Board's direction in the telephone conference call on December 29, 1980. Thus, the Staff should be ordered to produce Mr. Thornburg for his deposition and should be ordered to pay Consumers Power the costs and fees incurred in bringing this motion, the attendance fees for the court reporter for Mr. Thornburg, and the other costs and fees that will be incurred in taking his deposition.

Respectfully submitted,

  
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11/28/79

Almstead, Murray, Lieberman, Brackett, Lewinter, Spaul, Hood,  
Thornburg, Norclius, Fiorelli, Krop, Keppeler, Kinch

1. Question of whether what is being done now as fixes on the current problems are adequate; Hood indicated that the acceptability would probably not be known until the fix is complete

Hood - the proposed fixes are such that if they are implemented properly they should be adequate; NRR's problem is the QA on the fixes; question of how close they are to the bottom line of acceptance criteria

2. Thornburg - the question to be resolved is whether the QA program is functioning now.
3. Almstead - reminder that IE will be on the stand on QA and whether the licensee is technically competent to go to operational QA program

4. Keppeler - QA breakdown - a major item not caught in the QA system; one that comes up by an occurrence, NRC finding, allegation etc.

Kleinman Ex 13

Ferrari, Zimmerman & Millard are all in the same class.

What about NCR's - total in last year increasing or decreasing  
Kappeler's question about RIII's definition of Act breaker?

2/



- Is the QA program effective?
- Do we need any enforcement action?
- Do we need any further action by the licensee?

RIII Draft of CP sent in Oct '79

Bailey case:

Finding against change in principle arch. & engg. criteria