

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

CONSUMERS POWER COMPANY'S MOTION TO COMPEL
A RESPONSE OR, IN THE ALTERNATIVE, TO
DEEM MATTERS OF FACT ADMITTED

On August 30, 1982, Consumers Power Company ("Applicant"), pursuant to 10 C.F.R. §2.742, filed a "Request for Admission of the Truth of Relevant Matters of Fact from Intervenor Mary Sinclair." On September 14, 1982, Ms. Sinclair filed a "Response" to that Request in which she did not deny the requested admissions nor did she state reasons why she could not admit or deny them. Ms. Sinclair did raise relevance objections to the requested admissions.

Section 2.742(b) of 10 C.F.R. contemplates that objections to requested admissions will be determined. There is apparently no specific provision in the regulations for presenting a motion to have such objections determined. Therefore, Applicant presents this motion, by analogy, pursuant to 10 C.F.R. §2.740(f). Applicant hereby moves for entry of an order requiring Ms. Sinclair to file a sworn

statement within 10 days admitting or denying the requested admissions or stating why she cannot truthfully admit or deny them, subject to the condition that the requested admissions shall be deemed admitted if she does not so respond within the 10 days. In the alternative, Applicant hereby moves for entry of an order deeming the matters of fact in the Request admitted.

Ms. Sinclair's "Response" to the Request for Admission is evasive. She avoids making admissions about the thermal performance analysis referred to in her contention by attempting to raise a different issue, that being analyses relating to fog and ice generation. In addition, she refuses to acknowledge the truthfulness of unambiguous statements in the FES indicating that conclusions concerning fog and ice generation were made using primarily Dresden studies and giving consideration to the Currier and Hicks models. (FES at pages 5-6, 5-7, 9-18, 9-19, 9-35, 9-36).

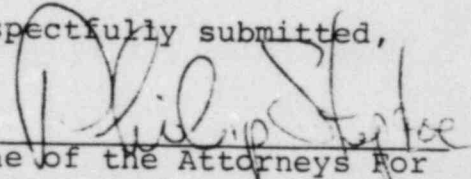
Ms. Sinclair's evasiveness is most clearly illustrated by her attempts throughout the "Response" to redefine Contention 5. Contention 5 is not a generalized allegation concerning the broad issues of thermal performance and fog and ice generation. The allegations set forth in Contention 5 more specifically assert (1) that the DES analyses of thermal discharge and of fog and ice generation are based on a study of cooling pond performance in a cli-

matic region different from the Midwest and (2) that the Staff should have used Dresden data in the DES analyses both of thermal discharge and of fogging and icing. The requested admissions directly address these allegations by attempting to establish what sources served as the Staff's bases for each of these analyses. Accordingly, the requested admissions are clearly relevant to Ms. Sinclair's Contention 5 as it was admitted by this Board.

Under 10 C.F.R. §2.740(f), evasive responses are to be treated as a failure to respond. Under 10 C.F.R. §2.742(b), a failure to respond to a request for admissions should result in a determination that the requested admissions are deemed made.

Therefore, Applicant requests that the Licensing Board enter an order requiring Ms. Sinclair to properly respond to the Request for Admission within 10 days or the matters of fact will be deemed admitted. In the alternative, Applicant requests that this Licensing Board enter an order deeming the matters of fact admitted effective the date of the order.

Respectfully submitted,


One of the Attorneys for
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DATED: September 28, 1982 -3-

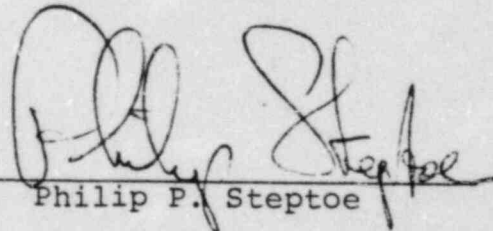
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CERTIFICATE OF SERVICE

I, Philip P. Steptoe, hereby certify that copies of Consumers Power Company's Motion To Compel A Response Or, In The Alternative, To Deem Matters Of Fact Admitted in the above-captioned proceeding have been served upon all persons shown in the attached service list by deposit in the United States mail, first-class postage prepaid, this 28th day of September, 1982.


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