

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

DOCKETED  
USNRC

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges  
Charles Bechhoefer, Chairman  
Dr. Frederick P. Cowan  
Dr. Jerry Harbour

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OFFICE OF SECRETARY  
DOCKETING & SERVICE  
BRANCH

In the Matter of )

CONSUMERS POWER COMPANY )

(Midland Plant, Units 1 and 2) )

ASLBP Nos. 78-389-03 DL  
80-429-02 SP

Docket Nos. 50-329 OL  
50-330 OL

Docket Nos. 50-329 OM  
50-330 OM

INTERVENOR BARBARA STAMIRIS' MOTION TO COMPEL  
CONSUMER POWER COMPANY'S RESPONSES TO INTERVENOR'S  
INTERROGATORIES AND REQUEST FOR PRODUCTION

On October 11, 1983, intervenor Barbara Stamiris filed discovery requests of Consumers Power Company ("Consumers") concerning the supplemental Office of Investigations' Report and investigation on the alleged violation of the Board Order.

On or about October 20, 1983, Mrs. Stamiris was served with Consumers' Objections to her Interrogatories and Production Requests, but not with any documents or interrogatory responses. After speaking with Judge Bechhoefer on October 24, 1983, counsel for Consumers and Mrs. Stamiris negotiated to settle as many outstanding discovery disagreements as possible.

Mrs. Stamiris moves to compel answers only as to those interrogatories and document requests as to which the parties have been unable to agree.

Interrogatory No. 1

Consumers objected during negotiations to identification of documents responsive to intervenor's document request which are no longer in Consumers' possession because of the difficulty in obtaining information necessary for identification of these documents.

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Intervenor believes that this interrogatory could easily have been answered at the time Consumers made its search for documents responsive to intervenor's document request. In addition, intervenor believes this interrogatory could be easily answered from information and documents gathered during the internal Consumers' investigation of the violation of the Board Order. Therefore, intervenor believes this interrogatory is not burdensome and will lead to the discovery of relevant information.

Interrogatory No. 16

Defendant has objected to answering this interrogatory primarily on the ground that it is burdensome and overly broad. Intervenor believes the information sought is central to Mr. Ronk's credibility and an understanding of the method(s) by which Consumers obtained NRC approval for activities potentially covered by the Board's Order.

Mr. Ronk stated, according to his interview in the Supplemental OI Report that some of the activities listed in his May 11, 1982 memorandum had been submitted to the NRC for approval at a time prior to May 11, 1982. The clear implication of this statement is that Consumers was not, therefore, obligated to request approval for all activities listed in this memorandum. It is important to determine if Mr. Ronk's statement can be substantiated and whether or not Consumers had requested approval for any activities listed in the May 11, 1982 memorandum prior to the date of the memorandum. In addition, the information should be readily available to Consumers in the form of formal or informal submittals from Consumers to the NRC Staff.

Interrogatory Nos. 18 and 19

Defendant objects to answering these interrogatories primarily on the basis that the search required to obtain the information is overly burdensome. Intervenor believes information about the meetings and discussions internal to Consumers and Bechtel is relevant and central to several issues:

- (1) What procedures and guidelines did Consumers and Bechtel follow in

sumers compiled in its in-house investigation would not be available to Mrs. Stamiris in any other way. In addition, given that the focus of Consumers' investigation is precisely the focus of this Board, it is likely that most of the information will be critical to the Board violation issue.

Document Request No. 4

Applicant objects to producing responsive documents largely because it believes the search would be overly burdensome. Consumers Vice-President James Cook claims he believed the May 25, 1982 NRC Staff letter gave Consumers permission to excavate below the deep Q duct bank. Therefore, documents generated in connection with that alleged NRC approval are directly relevant to Consumers' claim that it had been given approval for the excavation. Intervenor believes that if this request were limited to those documents generated in connection with the NRC's alleged grant of approval in the NRC's May 25, 1982 letter Consumers could easily conduct a limited search for those documents.

Document Request No. 7

Applicant objects to this document request on the grounds that it improperly calls for legal conclusions of Consumers employees and that applicant's attorneys cannot determine which documents are responsive.

Intervenor believes documents which Consumers employees and management view as probative of the fact Consumers needed NRC approval for the excavation and the fireline relocation is relevant information and readily available from Consumers and Bechtel employees. Clearly these same employees every day make decisions as to which activities need NRC approval. Pursuant to the Board's Order, therefore, they are competent to identify and produce documents which mention, refer to, or indicate that Consumers needed NRC approval for the deep Q bank excavation and relocation of the fireline.

determining what activities were covered by the Board Order?

(2) What procedures and guidelines did Consumers and Bechtel use to determine which activities were excluded?

(3) Which persons in Consumers and Bechtel made the final decision(s) on the issue when a disagreement arose?

Further, as requested in Interrogatory No. 19, the activities which were finally determined by Consumers and Bechtel to be covered by the Board Order would be probative of Consumers' view of the Board Order and view of any agreement between Consumers and the NRC Staff to exclude any items from coverage of the Board Order.

Interrogatory No. 33 and Document Request 6

Intervenor clarified for applicant that Interrogatory No. 33 was directed generally to Consumers and not to any particular individual. Considering that clarification, applicant's counsel said he would object to producing information about Consumer's internal investigation into the violation of the Board Order on the grounds of attorney work product. Further, applicant said it would provide a list of all responsive documents in making its claim of privilege.

According to the Hickman v. Taylor, 329 U.S. 495 (1947), work-product doctrine applicant can claim only a qualified privilege. Therefore, if intervenor can demonstrate that the information cannot be obtained from any other source, she can overcome this qualified privilege. Intervenor cannot make this showing without obtaining a list of withheld documents. This Board must make a determination at such time as a list of responsive documents is available, as to whether or not the claim of privilege is overcome by intervenor's need for the information.

This Board obviously must have enough information regarding the withheld documents to make this determination. However, it is clear that intervenor does not have access to Consumers and Bechtel employees except through this one short period of formal discovery. Therefore, much of the information Con-

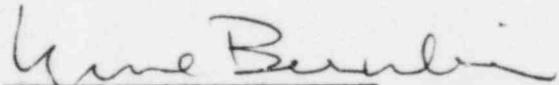
Document Request 15.

See Argument with respect to Interrogatory No. 19.

In addition, Mr. Brunner informed intervenor's counsel on Tuesday, October 25, 1983, that he would not provide documents produced in response to intervenor's document request in Washington for inspection and copying, but only in Midland, Michigan.

Therefore, intervenor requests this Licensing Board to order Consumers to make available for inspection and copying in Washington, D.C., all documents it produced in response to intervenor's document request.

Respectfully submitted,



LYNNE BERNABEI  
Government Accountability Project  
for the Institute for Policy Studies  
1901 Que Street, N.W.  
Washington, D.C. 20009  
(202) 234-9382

Counsel for Intervenor  
Barbara Stamiris

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Myron M. Cherry, P.C.  
Peter Flynn, P.C.  
Cherry & Flynn  
Three First National Plaza  
Suite 3700  
Chicago, Illinois 60602

\*Atomic Safety and Licensing Board  
U.S. Nuclear Regulatory Commission  
Washington, D. C. 20555

\*Atomic Safety and Licensing  
Appeal Panel  
U.S. Nuclear Regulatory Commission  
Washington, D. C. 20555

Steve J. Gadler, P.C.  
2120 Carter Avenue  
St. Paul, MN 55108

Frederick C. Williams, Esq.  
Isham, Lincoln & Beale  
1120 Connecticut Avenue, N.W.  
Washington, D.C. 20036

\*William D. Paton, Esquire  
Office of Executive Legal Director  
U.S. Nuclear Regulatory Commission  
Washington, D. C. 20555

Philip Steptoe  
Isham, Lincoln and Beale  
Counselors at Law  
One First National Plaza  
Forty-Second Floor  
Chicago, IL 60603

*Gene Beale*

\*Delivered through the NRC internal mails.