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NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

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

Dear Members of the Board:

As the Board requested, we attach to this letter an update of Findings of Fact and Conclusions of Law filed by the NRC Staff on December 30, 1981 and on March 26, 1982.

Sincerely,

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Update of Findings of Fact and Conclusions of Law
Filed by the NRC Staff on December 30, 1981

Clarification Concerning Material False Statement

Paragraphs 61-70 addressed an alleged material false statement in the FSAR as an example of Consumers less than complete and candid dedication to providing information to the NRC. The Staff's position, as stated in paragraph 70, that this does not involve the failure to provide complete information to the NRC, is not changed. The Staff notes that joint exhibit 6, which was received in evidence on February 14, 1983 (Tr. 11344) is a stipulation between CPC and NRC in which CPC agrees not to contest that a material false statement was made in the FSAR and that this statement constituted an adequate basis for issuance of the December 6, 1979 "Order Modifying Construction Permits." The stipulation further states the agreement between CPC and NRC that the false statement was unintentional.

Communications

In paragraph 78 it is stated that Stamiris Contention 1(d) had not been addressed by the Staff or CPC in hearing sessions up to that time. Stamiris Contention 1(d) reads as follows:

Consumers Power Company statement and responses to NRC regarding soils settlement issues reflect a less than complete and candid dedication to providing information relevant to health and safety standards with respect to resolving the soils settlement problems, as seen in: . . . (d) the failure to provide adequate acceptance criteria for remedial actions in response to 10 C.F.R § 50.54(f) requests (as set forth in Part II of the Order of Modification); and this managerial attitude necessitates stricter than usual regulatory supervision (ALAB-106) to assure appropriate implementation of the remedial steps required by the Order Modifying Construction Permits, dated December 6, 1979.

The contention relates to a management attitude issue which existed more than 4½ years ago. The issuance of the December 6, 1979 Order made it clear that the Staff was not satisfied with the technical information that had been provided by CPC prior to December 6, 1979. The evidentiary hearings with respect to technical issues since that date have clarified that the Staff is now satisfied with the acceptance criteria for remedial actions that have been submitted by CPC (subject to the Staff's current investigation of the structural adequacy of the diesel generator building). See "NRC Staff Responsive Findings To Applicant's Proposed Findings of Fact and Conclusions of Law on Remedial Soils Issues" submitted November 15, 1983. The record does not establish that CPC failed to provide adequate acceptance for criteria for remedial actions prior to December 6, 1979 because of a managerial attitude which resulted in a less than complete and candid dedication to providing information to the NRC. Starting with paragraph 79, the Staff discussed a matter involving Consumers reluctance to provide requested information. A similar discussion begins with paragraph 91 where the subject was a statement by project manager Darl Hood at a November 1980 meeting in which Mr. Hood stated:

A big contributor to the inability to make meaningful in this matter is the quality of responses gotten. We have set some kind of record on the number of questions re-asked, which speaks poorly for CPC/NRR interface . . . the bottom line is there seems to be a lack of appreciation or support of Staff review necessities and a tendency to push ahead despite the lack of proper assurances.

Beginning at paragraph 101 there is a discussion of the failure of the Applicant to discuss the administration building settlement with NRC. With respect to the issue of Consumers' willingness to provide necessary

information to the NRC, more current evidence on this subject is found in the Staff discussion of "Communications," addressed in proposed findings submitted May 25, 1984.

Financial and Time Schedule Pressures

Beginning at paragraph 114, we address Stimiris Contention 2 which sets forth many examples to demonstrate that CPC financial and time schedule pressures have directly and adversely affected resolution of soils settlement issues. The Staff's findings with respect to this contention must be amended to note that there is some evidence to support a conclusion that cost and schedule pressures have caused misunderstandings between the Staff and CPC. In a discussion of the qualifications of CPC construction personnel, Dr. Landsman stated that there had been numerous misunderstandings between several individuals and the Staff. Tr. 16,539. In response, the Board asked whether there was any common thread running through these misunderstandings. Tr. 16,540. Dr. Landsman responded that there probably was. He testified that cost and schedule probably was the main thread through all these misunderstandings. Tr. 16,540. Dr. Landsman stated "it is always cost and scheduling comes first. Quality has taken a backseat all the time." Tr. 16,541.

Reasonable Assurance

In paragraph 258 there was reference to Mr. Keppler's testimony that there was reasonable assurance that quality assurance would be appropriately implemented in the future. This finding must be amended by the Staff's current position that it is not able to reach a reasonable assurance finding based on reliance on CPC alone. The Staff believes that

several actions are required in order to provide reasonable assurance that the Midland Plant can be completed consistent with regulatory requirements. Briefly stated those are: (1) an independent overview of safety-related work; (2) an independent design and construction verification review of completed work and (3) NRC oversight of the construction activities and implementation of CPC's QA program.

QA Organization and Qualifications of QA Supervisors

Beginning at paragraph 263, there is a discussion of CPC's QA organization by its then Director of Environmental Services and Quality Assurance, Benjamin W. Marguglio. Beginning at paragraph 298 there is a discussion of qualifications of QA staff. Beginning at paragraph 308 there is a discussion of the integrated IIPQAD organization. The Staff's findings at ¶ 313 indicated that the matter is still open. Those discussions should be updated by a reference to the Staff's discussion entitled QA Organization and Qualifications of QA Supervisors.

CPC Management Organization

Beginning at paragraph 321 there is a discussion of CPC management organization. This matter should be updated by reference to the Staff discussion addressing "New Management Organization" in our May 25, 1984 proposed findings.

Managerial Attitude

Beginning at paragraph 344 there is a discussion of managerial attitude. This should be updated in the following way: Mr. Keppler said he did not know the root cause of CPC's problems (Tr. 15,182 and 15,380), but he is no longer able to find reasonable assurance by relying on CPC alone. (See p. 5 Supplemental Testimony of James G. Keppler With Respect

to Quality Assurance fol. Tr. 15,114). The finding that this supports is that Consumers' managerial attitude is sufficiently adequate when combined with the various third party reviews on which the Staff and CPC concur to permit a finding that there is reasonable assurance that the Midland Plant can be completed consistent with regulatory requirements. (Id. p. 6).

Update of Findings of Fact and Conclusions of Law
Filed by the NRC Staff on March 26, 1982

SALP

The discussion of SALP which begins in ¶ 376, should be updated by reference to the Staff's discussion entitled "SALP-3 Report" in findings submitted on May 25, 1984.

MPQAD

The discussion of MPQAD which begins at ¶ 407 should be updated by reference to the Staff discussion entitled "QA Organization and Qualifications of QA Supervisors."