

GOVERNMENT ACCOUNTABILITY PROJECT

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October 5, 1982

Mr. James Keppler
Regional Director - Region III
U. S. Nuclear Regulatory Commission
799 Roosevelt Road
Glen Ellyr, Illinois 60137

Dear Mr. Keppler:

It is with some urgency that I again pose the questions that I raised on behalf of Michigan residents in a September 6, 1982 letter to you regarding the Midland Nuclear Power Plant project. Although the NRC's lack of responsiveness to Midland's problems has been publicly attributed to an increased workload and staff shortages, your ability to make serious decisions regarding technical and legal questions does not appear to be affected by either lack of staff or an expansion of the problems.

The likelihood that the Midland plant construction will proceed according to the utility's mandated timetable was reaffirmed in recent weeks. Regardless of the latest rhetoric emanating from Consumers Power and your staff, the facts speak the strongest. They indicate that very little has changed.

- The Special Section of your office, formed in June, has been working less than two months, yet already Mr. Landsman of that staff has requested the national Office of Investigations (OI) to investigate Consumers Power Company for violating the Board's order and making false statements to the NRC.

- GAP's affidavits, though the subject of intense public interest, remain largely uninvestigated with only one of the witnesses interviewed by the NRC. That interview only happened after the witness himself made a personal trip to check on the status of the investigation into his allegations.

- The very status of the investigation remains a mystery. As recently as last week two members of your staff had opposite answers to queries from Detroit and Midland press; Mr. Robert Warnick apparently believed an investigation was underway, while Mr. Bert Davis cited lack of staff as the reason no investigative effort had begun!

- The Zack investigation, although serious enough to require an independent audit at the LaSalle, Illinois plant, remains largely in the hands of Consumers Power Company -- the one utility that could have and should have

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notified the NRC of Zack's quality assurance breakdown in August 1981. (The conflict of interest that the NRC has permitted in allowing the licensee to sit on a situation that is both the subject of intense litigation and also carries the potential for criminal prosecution under the Atomic Energy Reorganization Act is inexcusable.)

In addition, significant decisions must be made regarding the soils settlement issue and your proposed testimony revision to the Atomic Safety and Licensing Board (ASLB). Your decisions will have irreversible consequences for the health and safety of the residents of Michigan -- concerns that outweigh the financial consequences to Consumers Power Company.

As recently as two weeks ago you received from Consumers Power vague details of "promised" improvements and another round of reassuring if you allow the work to begin anew. GAP's Citizens Clinic has offered its independent analysis, but your office has failed to solicit any public input about your decision.

On behalf of those citizens of Michigan whose interests we represent, we offer the following comments on the question of structural integrity,

Can a foundation be reconstructed after-the-fact by a utility whose commitment to its own agenda has significantly endangered its company and stockholders, the plant, and the residents of Central Michigan?

As you know, this problem -- the sinking of the plant as a result of poorly compacted soil -- was addressed by a December 6, 1979 NRC order that modified construction permits for the Midland nuclear plant based upon the following soils issues: (1) a QA breakdown, (2) the lack of technical acceptance criteria for soils remedial work, (3) a material false statement in the FSAR.

This order sought suspension of soils-related work "until the related safety issues are resolved." (Part III, p. 4, 12/6/79 Order.)

These safety issues and related contentions of intervenors were to be resolved by the Atomic Safety and Licensing Board hearing the case. Yet, the soil-related and QA issues of the December 6, 1979 order remain unresolved.

The original problems, compounded by the soils remedial work -- allegedly proceeding under Consumer's own risk -- grow in absurdity and detail. Yet, as a result of the wording of the December 6, 1979 order, the soils-work suspension sought by the NRC is invalid until the hearing issues are resolved. Therefore, the soils remedial work has continued.

In your own July 30, 1980 discussions with Thomas Gibbon, you expressed concern that the ongoing soils work will make resolution of the settlement problem much more difficult. You wanted the work stopped until the problem was solved. The Board shared this concern about the adequacies of and potential safety impact of ongoing construction activities. (Board Memorandum of 4/30/80, p. 10.) They opened the soils hearing by asking the NRC "whether any halt in

planned or ongoing construction activities would be appropriate pending resolution of the soils settlement questions" (Tr. 754-755).

The NRC answered the Board by completely recasting the Board's public-safety concerns into a utility timetable question. The staff answered that "there are two near-term construction activities important to CPC scheduling needs" (7/7/81 Hood testimony, Tr. 1094) of going forward. The NRC never even considered the Board's question of whether any soils-related work needed to be halted for the sake of safety.

Soils remedial work has been similarly permitted since 1978 despite the doubtful performance of Consumers Power Company, as evidenced by (1) false statements, (2) withholding of significant information, (3) defiance of NRC agreements, (4) repeated quality assurance failures and Appendix B violations, and (5) tendency to push ahead without proper assurances to the NRC.

At the time of the 1982 SALP meeting you raised significant questions about Consumer's capability to properly implement soils remedial work. This apparently led to your announcement that you had reconsidered your earlier "reasonable assurance" testimony before the ASLB pertaining to the Midland site's adequacy.

You pledged to conduct these SALP and follow-up QA meetings publicly. We regarded this as a positive step toward assuring the public of a straightforward and open resolution of the difficult QA/safety questions. You stated an intent to "take it to the Board" and "let them decide whether QA was still defensible."

But by July 1982, when Midland's problems were even more serious, Mr. Paton announced an even more liberal approach to resolving the QA dilemma. This new NRC plan consisted of top-level NRC suggestions to top-level CPC executives for QA improvements and QA solutions! These NRC suggestions and CPC commitments are based on expectations for future QA adequacy, ignoring the history of Consumer's poor quality, and their continued inability to conform to NRC guidelines and Board orders.

You have apparently discarded your 'open meeting policy' before it even began, and have vacated your intent to take the question of QA adequacy to the Board for its resolution. These 'high level meetings' from which the public and intervenors were excluded apparently were necessary to discuss the terms of the latest QA agreement with Consumers Power Company officials. It appears that the parties to the OM-OL proceeding and the public will be asked to accept meaningless hearings after the fact on the critical question of QA adequacy. The soils remedial work in question will have already gone forward.

Although we concur with your decision to require an independent third-party review of the soils remedial work, the necessity of this step clearly confirms the NRC's profound lack of confidence that Consumer's QA is able or willing to properly perform the difficult soils remedial task at hand.

The QA "program" at Midland has been updated, refined and improved ad infinitum over the years only to return time and time again to a reevaluation. As pointed out by the Board, in one of the earliest Midland cases (ALAB 106, RAI-73-3 II, p. 184), a QA "program" is only as good as the people implementing it. "Unless

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there is a willingness -- indeed desire -- on the part of the responsible officials to carry out the QA program to the letter, no program is likely to be successful."

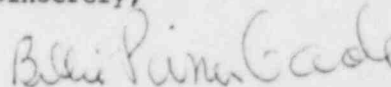
Your new plan to evaluate QA adequacy based upon NRC QA suggestions and CPC QA commitments, as outlined in the September 17, 1982 Cook letter, turns away from the key question of QA implementation.

Indeed, regardless of Consumers Power Company's latest promises and assurances, very little has changed. Th- residents of Central Michigan expect and deserve the right to be protected from potential nuclear accidents. You have the responsibility to protect their interests from a company whose financial viability depends on the timely completion of the Midland plant.

In considering your testimony revision, we urge you to examine critically the history of Consumers Power Company's nuclear adventures at Palisades and Midland. We believe any reasonable evaluation will convince you to officially inform the Atomic Safety and Licensing Board of the problems you have in maintaining your reasonable assurance that "all is well" on the Midland site.

Further, we notify you of our intent to present in the near future an evaluation of the independent audit proposed by Consumers Power Company.

Sincerely,



BILLIE PIRNER GARDE
Director, Citizens Clinic for
Accountable Government

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