

June 22, 1984
DOCKETED
NRC

'84 JUN 25 P12:21

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

Applicant's Reply to Intervenor
Barbara Stamiris' Second Supplemental
Proposed Findings of Fact and Conclusions of Law
on Quality Assurance and Management Attitude Issues

INTRODUCTION

On page 22 of Intervenor Barbara Stamiris' Second Supplemental Proposed Findings of Fact and Conclusions of Law on Quality Assurance and Management Attitude Issues ("Intervenor's Second Supplemental Findings") Intervenor concedes that:

It is hard to imagine a stricter system of controls and checks than that currently existing for the soils work at Midland.

It is this system of controls and checks, arising in part out of this Licensing Board's April 30, 1982 Order, and in part from NRC Staff requirements and Consumers Power Company initiatives, which provides reasonable assurance that the soils

DS03

work at Midland is being done and will continue to be done properly.¹

Intervenor's Second Supplemental Findings do not suggest any specific improvements to the current arrangements under which soils work is going forward at Midland. Indeed, Intervenor merely recommends that the December 6, 1979 Order Modifying Construction Permits be sustained, without indicating under what circumstances, if any, soils work at Midland could be allowed to resume.² However, the gist of Intervenor's Proposed Findings is that Consumers Power Company's character and competence are such that it can not be trusted to carry out the remedial soils work, no matter how closely regulated.³

¹ See Keppler, October 29, 1982 prepared testimony with respect to quality assurance at p. 6, following Tr. 15111; Keppler, March 25, 1983 prepared testimony with respect to quality assurance at pp. 5-6, following Tr. 15114; Consumers Power Company's Proposed Second Supplemental Findings of Fact and Conclusions of Law for Partial Initial Decision on Quality Assurance Issues at paragraphs 424, 399-423; NRC Staff Further Supplemental Findings of Fact and Conclusions of Law Concerning Quality Assurance at paragraphs 231-234, 612e.

² Intervenor's Second Supplemental Findings at pp. 1-2, 132, call for the "submission of an amendment to the application for a construction permit seeking approval of remedial actions" and the "issuance of an amendment authorizing soils remedial actions", without specifying what such application or construction permit amendment should contain.

³ Intervenor does not limit her attacks to Applicant's character: she accuses Mr. James Keppler of the NPC of lying under oath. See Intervenor's Second Supplemental Findings at paragraphs 33, 39 n.7, 58.

The record in this proceeding does not support Intervenor's conclusions. As shown below, Intervenor's Second Supplemental Findings are frequently inaccurate or misleading, and consistently ignore evidence which contradicts her own theme. A fair reading of the whole record shows that Applicant has never deliberately failed to comply with NRC requirements or intentionally misled the NRC in any way.⁴ There is extensive evidence that Consumers Power is willing to take every reasonable measure to overcome the QA implementation problems at the site. The third party reviews and extensive NRC Staff involvement in, and control over, ongoing soils work provide reasonable assurance that such work can be completed in accordance with regulatory requirements. Accordingly, the Licensing Board's April 30, 1982 Order should be left in place.

LEGAL STANDARDS APPLICABLE TO QA/MANAGEMENT ATTITUDE ISSUES

In their proposed findings, Consumers Power Company and the NRC Staff have both recommended that this Licensing

⁴ On May 7, 1984 this Licensing Board determined that there is a basis to litigate in this proceeding certain issues arising out of the Dow lawsuit which may be relevant to Applicant's management attitude and character. Any Partial Initial Decision the Licensing Board makes at this time will be expressly subject to change in light of the outcome of that litigation. Applicant has not yet had any opportunity to explain or defend its position on the Dow issues, and therefore Intervenor's suggestion that the Licensing Board prejudge the result of the Dow litigation should be rejected. Intervenor's Second Supplemental Findings at pp. 26, 67, 70-71.

Board continue in effect its April 30, 1982 Order, pursuant to which Applicant is allowed to proceed with soils work at Midland subject to strict supervision by independent reviewers and by the NPC Staff. In her discussion of legal standards, Intervenor suggests several theories why such an arrangement may not be appropriate.

Intervenor Stamiris argues that the Licensing Board may not delegate to the NRC Staff the decision concerning the conditions under which soils work can proceed.⁵ Specifically, Ms. Stamiris objects to Applicant's suggestion that the NRC Staff be given discretion in administering the current Work Authorization Procedure. (Applicant's Proposed Second Supplemental Findings at paragraph 353). But the non-delegation case upon which she relies was a final decision in an operating license case. In contrast, in this proceeding all that is being contemplated is a Partial Initial Decision resolving issues raised by the NRC Staff's December 9, 1979 Order Modifying Construction Permits. If soils work is allowed to go forward, some degree of ongoing NRC Staff supervision is inevitable, and the Staff should be given sufficient flexibility to do its job efficiently. This does not mean that the Licensing Board would impermissibly delegate the ultimate decision on implementation of quality assurance to the Staff. The Licensing Board would

⁵ Intervenor Stamiris' Second Supplemental Proposed Findings at p. 13.

retain jurisdiction to rule on any questions concerning the Staff's and Applicant's compliance with its Partial Initial Decision, and of course the Licensing Board can withhold operating licenses if the soils work is not carried out properly.⁶

Intervenor Stamiris also suggests that the Licensing Board cannot take into account the efforts of the NRC Staff as well as those of Applicant in assessing whether there will be effective implementation of quality assurance in connection with the soils work at Midland. While Consumers Power agrees that the major burden of ensuring quality at Midland must be on Applicant, the substantial effort which the NRC Staff, Region III, has devoted and is devoting to this project is an objective fact: it cannot be ignored by the Licensing Board. Nor is it the Licensing Board's province to determine whether the Staff's inspection and enforcement resources are overcommitted to Midland and might be better spent in some other fashion. See, e.g. Carolina Power & Light Company (Shearon Harris Nuclear Power Plant, Units 1-4), CLI-80-12, 11 NRC 514, 516 (1980). The Licensing Board's responsibility is to decide, given all the measures and safeguards put in place at Midland by both Applicant and the NRC Staff, whether soils work can continue with reasonable assurance that it will be done properly.

⁶ See Consumers Power Company (Midland Plant, Units 1 and 2) ALAB-684, 16 NRC 162, 166 and 166 n. 2 (1982).

Since the submission of Consumers Power Company's Second Supplemental Findings on January 27, 1984, the Appeal Board has decided two cases of exceptional importance: Pacific Gas & Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2) ALAB-763, ___ NRC ___ (March 20, 1984); Metropolitan Edison Company (Three Mile Island Nuclear Generating Station, Unit 1), ALAB-772, ___ NRC ___ (May 24, 1984). These two decisions clarify the standards to be applied by this Licensing Board in considering the quality assurance and management attitude issues in this proceeding.

In Diablo Canyon, ALAB-763, supra, the Appeal Board confronted a situation in which there had been a failure of the Applicant's design quality assurance program to comply with 10 CFR Part 50, Appendix F. As a result, there was substantial uncertainty whether any particular structure system or component was designed in accordance with stated criteria and commitments. In this context, the Appeal Board focused on the adequacy of applicant's verification efforts "to substitute for, or supplement, the applicant's design quality assurance program in order to demonstrate that the Diablo Canyon plant is correctly designed." ALAB-763, (slip opinion at pp. 6-8). The Appeal Board concluded that the scope and execution of the applicant's verification programs were sufficient to establish that Diablo Canyon Unit 1 design adequately meets its licensing criteria. The result in Diablo Canyon, ALAB-763, effectively

rebutts Intervenor Stamiris' suggestion that the "ultimate question" in Midland must be whether the Licensing Board has any legitimate doubt as to the overall integrity of the construction of the facility caused by a breakdown in QA procedures.⁷ Even where confidence has been eroded due to failures in quality assurance, the NRC will consider an applicant's verification programs and other remedial efforts in determining whether there is reasonable assurance that the facility will not endanger the public health and safety.⁸

In ALAE-763 the Appeal Board recognized that the root causes of the failures in Diablo Canyon's design quality assurance program had to be identified and analyzed as part of applicant's verification efforts. The Governor of California (an intervenor) and the NRC Staff suggested that a root cause of the design deficiencies not identified by the applicant was PC&E management's lack of commitment to quality assurance, or its lack of awareness of the significance of the revised seismic design requirements. The Appeal Board observed:

7 Intervenor's Second Supplemental Findings at p. 11.

8 See also Commonwealth Edison Company (Eylon Nuclear Power Station, Units 1 and 2), ALAE-77C, NRC _____ (May 7, 1984) (slip op. at pp. 22-28, but see n. 62); Houston Lighting & Power Co. (South Texas Project, Units 1 and 2), LEP-84-13, NRC _____ (March 14, 1984); Texas Utilities Generating Co. (Comanche Peak Steam Electric Station, Units 1 and 2), LBP-83-81, 18 NRC 1410, 1452-1456 (1983). We note that Intervenor Stamiris' characterization of the Licensing Board's opinion in Byron, LEP-84-2, is inaccurate. (Intervenor's Second Supplemental Findings at p. 12).

Whether it was lack of commitment or lack of awareness, PG&E's management cannot escape responsibility for a quality assurance program that initially allowed for design errors of the type and number identified at Diablo Canyon by the verification program. The evidence indicates, however, that by the late 1970s significant improvements were being made in the applicant's quality assurance program. Since that time, the applicant has instigated many more changes in its quality assurance program and carried out an extensive and unparalleled design verification program. The painful lessons PG&E's management has learned from the huge expenditure of resources required to verify the adequacy of the Diablo Canyon design have produced a present approach to quality assurance that is much improved and currently satisfactory. As it must accept responsibility for past failings, PG&E management must also be credited for the significant improvements in its quality assurance program. For this reason, the failure of the applicant's verification program to include in its list of causative factors the past failings of PG&E management toward quality assurance is not fatal and does not alter our conclusion that the root causes have been sufficiently identified.

Diablo Canyon, ALAP-763, supra, (slip op. at pp. 88-89, footnotes omitted).

In Metropolitan Edison Company (Three Mile Island Nuclear Generating Station, Unit 1), ALAB-772, ___ NRC ___ (May 24, 1984) the Appeal Board addressed the ability of the licensee's management to operate TMI-1 in a competent, responsible and safe manner. While upholding many of the Licensing Board's findings, the Appeal Board found it necessary to remand the proceeding for further record development on several is-

sues, including a reassessment of the adequacy of licensee's training program and exploration of allegations of improper leak rate testing practices. In describing the "nebulous concept of 'management competence'" before it in Three Mile Island, the Appeal Board noted that what began as an inquiry into primarily licensee's technical capability and resources had evolved into a search for answers to questions concerning the integrity of the licensee's management.⁹ Admitting that it lacked precise standards against which to measure licensee's conduct, the Appeal Board nevertheless emphasized that abdication of responsibility or abdication of knowledge by a licensee or applicant is unacceptable, that a licensee or applicant must be committed to strict adherence to rules and regulations, and that NRC depends on licensees for accurate and timely information about their facilities.¹⁰

The Appeal Board in Three Mile Island stated that "Evaluation of character always involves consideration of

⁹ The Licensing Board in Houston Lighting & Power Co. (South Texas Project, Units 1 and 2), LEP-84-11, NRC (March 14, 1984) recognized a dichotomy between "character" and "competence," rather than treating management integrity as one aspect of competence as the Appeal Board did in Three Mile Island, ALAB-772. Possibly the analytical distinction made in LEP-84-11 was unimportant for purposes of ALAB-772.

¹⁰ ALAB-772 (slip op. at pp. 10-14). The Licensing Board's decision in Houston Lighting & Power Co. (South Texas Project, Units 1 and 2), LEP-84-11, NRC (March 14, 1984) contain a discussion of "character" and "competence," which is generally consistent with, but somewhat more thorough than, the Appeal Board's discussion in ALAB-772.

largely subjective factors. In the corporate context, with the interplay of individual and collective actors, that undertaking proves even harder to tackle."¹¹ However, in assessing the guilt or innocence of individuals involved in allegations of cheating during operators' license examinations, the Appeal Board held that direct observation of witness demeanor should be given special weight, but not conclusive weight when more objective evidence is available.¹² The Appeal Board also stated that where a fully developed record is inadequate to support a finding of wrongdoing by an individual, "Clouds of suspicion, though thick, are not enough."¹³ Finally, ALAB-772 demonstrates the Appeal Board's conviction that in such inquiries (unlike situations involving competing expert opinions on technical subjects), once NRC adjudicatory boards are apprised of the facts, the opinions of others are irrelevant. The adjudicatory boards are able and obliged to form their own conclusions.¹⁴

11 ALAB-772, (slip op. at pp. 12-13).

12 ALAB-772, (slip op. at pp. 34-35).

13 ALAB-772, (slip op. at p. 49).

14 See, ALAB-772, (slip op. at p. 119) (opinions of Udall Committee irrelevant). See also ALAB-772, slip opinion at pp. 129-133 (reliance on conclusory NRC Staff investigative report inappropriate); ALAB-772, (slip op. at pp. 125-126) ("The independence of the adjudicatory boards is essential to preserve the integrity of the hearing process.")

Applying the standards of Diablo Canyon and Three Mile Island, to this case, it is clear that the single overriding consideration in assessing Consumers Power Company's management attitude is the Company's repeated, extraordinary efforts to do whatever is necessary to ensure successful completion of the Midland Plant. Beginning with the creation of MPQAD and the formation of the Midland Project Organization in 1980, continuing with the assumption of QC responsibility for soils and balance of plant areas, and culminating with the CCP, Consumers Power has made a total commitment of Company resources and management attention to that goal. There have been missteps along the way, but the system now in place, including strict oversight by NRC and independent reviewers, provides reasonable assurance that soils work is being done properly and can continue. of Consumers Power Company's repeated, extraordinary efforts to achieve quality in construction at Midland is the most objective, most reliable evidence of Consumers Power Company's positive management attitude toward its regulatory responsibilities.

RESPONSES TO INTERVENOR'S SECOND
SUPPLEMENTAL FINDINGS ON QUALITY ASSURANCE

Paragraph 1. The SALP 2 Report was for the period of July 1, 1980 to June 30, 1981. Contrary to the assertion in this proposed finding, Dr. Landsman testified that seven of the nine inspection reports issued in 1982 cited items of noncompliance in the soils area; the other two cited concerns.¹⁵ Moreover, Mr. Shafer's testimony concerned inspection reports issued during the SALP 2 period, not during 1982.¹⁶

Paragraph 2. This finding should be clarified by noting that the time period in question was the SALP 2 period.

Paragraph 3. No response.

Paragraph 4. Intervenor fails to give record support for the opinion she attributes to Mr. R. Cook.

Paragraph 5. Consumers Power acknowledged that its first response to the SALP 2 Report was argumentative.¹⁷ With regard to the specific comments which appear on Stamiris Exhibit No. 57, Mr. Shafer cautioned that these comments were intended only for Staff use as a working document and were never intended to be conveyed to the Applicant.¹⁸ Mr. R. Cook did make the criticisms outlined in this finding, but

15 Landsman, Tr. 14757-14760.

16 Shafer, Tr. 14764.

17 J. Cook, Tr. 18389-18390.

18 See Shafer, Tr. 14786, 14792, 14796, 14800-14801.

he also noted that these comments were intended only as notes and were never used and that removal of the license and a purge of management were no longer justified in light of Consumers Power's reconsideration of its response. Furthermore, Mr. R. Cook stated that the attitude realignment to which he referred in his notes is occurring.¹⁹

Paragraph 6. The transcript pages cited do not support this finding.

Paragraphs 7-10. No response.

Paragraph 11. While Mr. Keppler did indicate the need for a plan, he told Consumers Power that it should take the initiative in developing a program.²⁰

Paragraph 12. Consumers Power did not bring a draft letter to the September 2, 1982 meeting with the NRC Staff. At that meeting, Consumers Power presented recommendations to the NRC Staff in the form of a handout with single line proposals. As a result of the meeting, Consumers Power was then asked to document the program proposed.²¹

The September 7, 1982 draft letter attached to Stamiris Exhibit No. 64 was presented at a working level meeting with Messrs. Novak, Hood, and Shafer on September 8, 1982. This draft letter on soils was clearly not intended as a formal

19 See R. Cook, Tr. 16240-16249.

20 Keppler, Tr. 15190.

21 Mooney, Tr. 17058-17061.

submission to the Staff since the purpose of the meeting was simply to discuss the preliminary draft.²²

Consumers Power's formal submissions in response to Mr. Keppler's September 2, 1982 request took the form of two letters submitted to Messrs. Keppler and Denton on September 17, 1982.²³ One of these letters (Serial No. 18845) concerned QA implementation in the soils area;²⁴ the other concerned QA implementation in the balance of plant work (Serial No. 18850).²⁵

Paragraph 13. The memorandum from Mr. Warnick to Mr. Keppler details changes which the Office of Special Cases believed should be made to the September 17 proposals. However, as Mr. Warnick noted, the Staff members believed that by working with representatives from Consumers Power their comments and recommendations could be resolved.²⁶ According to Mr. Keppler, the NRC Staff was reasonably satisfied with the September 17, 1982 letter relating to soils (Serial No.

22 Stamiris Exhibit No. 64; Keppler, Tr. 15204-15205. Appendix P to Consumers Power Company's Proposed Second Supplemental Findings should be amended to reflect that Stamiris Exhibit No. 64 was admitted into evidence at Tr. 14976.

23 Keppler, Tr. 15201-15203, 15207; Mooney, Tr. 17058-17059.

24 Keppler, October 29, 1982 prepared testimony with respect to quality assurance, Attachment F, following Tr. 15111.

25 Keppler, October 29, 1982 prepared testimony with respect to quality assurance, Attachment E, following Tr. 15111.

26 Stamiris Exhibit No. 65.

18845'.²⁷ A draft letter to Consumers Power indicates that the Staff had reviewed the commitments in both letters and found the concepts proposed to be acceptable.²⁸ NPR disagreed with this opinion,²⁹ but did not convey these concerns directly to Mr. Keppler.³⁰

Paragraph 14. The letter which Consumers Power submitted on October 5, 1982 provided details regarding the independent review program to which Consumers Power committed in the September 17, 1982 letter on balance of plant QA (Serial No. 18850). The October 5, 1982 letter did not address the commitments made in the soils area.³¹ Intervenor's finding is also inaccurate insofar as the criticisms raised by NRE in Stamiris Exhibit No. 72 related to the two September 17, 1982 letters, not the October 5, 1982 submittal. Moreover, the statement that "Consumers was forced once again to revise the letter" is unsupported. Finally, Mr. Keppler's statements concerning the Staff not being satisfied was limited to the information provided concerning the balance of plant QA implementation.³²

27 Keppler, Tr. 15257.

28 Stamiris Exhibit No. 71.

29 Stamiris Exhibit No. 72.

30 Keppler, Tr. 15249-15250.

31 Stamiris Exhibit No. 74 at p. 2.

32 Keppler, Tr. 15256.

Paragraph 15. The earlier draft stated Mr. Keppler's belief that work could continue "without leading to inadequate quality." He then noted that, if the DGE results led to a change in his position, he would do or recommend whatever was necessary to provide reasonable assurance.³³ Mr. Keppler acknowledged in oral testimony that this statement indicates his conclusions on reasonable assurance might be different depending upon the DGE findings.³⁴

Paragraph 16. The citation to Stamiris Exhibit No. 90 is incorrect. In addition, Mr. Keppler's testimony was that the third party independent reviews were intended to address the NPC Staff's concerns more than the concerns of the ACRS, but that he believed the independent reviews set out in the CCP would satisfy the ACPS recommendations.³⁵

Paragraph 17. The exit meeting held on November 10, 1982 was not attended by Consumers Power representatives. Mr. Shafer testified that the meeting involved only NRC Staff members.³⁶

Paragraph 18. Intervenor cites only sketchy meeting notes, Stamiris Exhibit No. 66, to support her statements con-

33 Stamiris Exhibit No. 73.

34 Keppler, Tr. 15268.

35 Keppler, Tr. 15342, 15345.

36 Shafer, Tr. 15066-15068.

cerning the Staff's position at this meeting with regard to suspending construction. The oral testimony of numerous witnesses who were present at the meeting and who explained the meaning of the notes and the events of the meeting should not be ignored. At the meeting, the NRC Staff informed Consumers Power that they wanted work stopped,³⁷ but they did not tell Consumers Power that they had definitely decided to recommend issuance of a stop work order.³⁸ The Staff appeared to be willing to let Consumers Power develop its own recommendations to address the problems found in the DCB Inspection.³⁹

The transcript citations supplied by Intervenor do not support her statements that the NRC Staff told Consumers Power to develop such a plan within one week. To the contrary, Consumers Power outlined a plan at the meeting which it was already developing to address the DCB findings.⁴⁰

Paragraph 19. On December 2, 1982 Consumers Power stopped balance of plant safety related work at the site except for those types of work listed in this finding and post-sys-

37 Shafer and Gardner, Tr. 15079-15080.

38 B. Peck, Tr. 18929A; J. Cook, Tr. 18746-18748. See also Stamiris Exhibit No. 66 at p. 2 ("Warnick says they are not fixed in their position today.")

39 J. Cook, Tr. 18746-18748; B. Peck, Tr. 18929-A.

40 B. Peck, Tr. 18929-F-18929-C. See also Shafer, Tr. 15074-15083.

tem-turnover work under the direction of Consumers Power and hanger and cable reinspections.⁴¹

Paragraph 20. Stamiris Exhibit No. 81 is a December 3, 1982 letter from Consumers Power, but it does not concern the independent design review and is not a revision to the Consumers Power submittal of October 5, 1982. Intervenor apparently intended to reference the December 3, 1982 letter described in Stamiris Exhibit No. 74 at p. 2. This letter (Serial No. 19750) is described as having made modifications and additional commitments relative to the independent review.

Paragraph 21. The Staff decided they would request Consumers Power to consolidate its various proposals.⁴² With regard to the scope of the independent design review proposed in Consumers Power's December 3, 1982 letter (Serial No. 19750), the NRC Division of Engineering was to have the technical responsibility for choosing which of the three systems proposed by Consumers Power would be the second system included in the review.⁴³

The last sentence of the proposed finding must be disregarded. Stamiris Exhibit No. 79 is not part of this eviden-

41 J. Cook, April 11, 1983 prepared testimony on quality assurance at pp. 5, 16 and Attachment 1 -- CCP Plan Document Section 9.0 at p. 20, following Tr. 18025.

42 Keppler, Tr. 15278, 15284; Stamiris Exhibit No. 74 at p. 3.

43 Stamiris Exhibit No. 74 at p. 3.

tiary record and was used only to attempt to refresh the recollection of a witness.⁴⁴

Paragraph 22. Intervenor provides no support for this finding. The January 17, 1983 letter describing the Construction Completion Program was intended to document the plan that had been presented orally to the Staff when Consumers Power stopped work in early December 1982 and to consolidate it with previous proposals for third party reviews.⁴⁵

Paragraph 23. Intervenor's characterization of the way in which the improvements of the Construction Completion Program and the soils overview were developed must be rejected. The evidence is not sufficient to support the inference that the NRC Staff was responsible for each and every improvement; nor does it support the finding that the Staff "had to exert great pressure over an extended time" with regard to the selection of third party reviewers. Moreover, for those improvements which were stimulated by the Staff, the record does not support the conclusion that Consumers Power adopted them only after being threatened with severe enforcement action. To the contrary, the testimony indicates that improvements stimulated by the Staff were generally conveyed in the

44 See Tr. 16006-16023.

45 Keppler, Tr. 15279; J. Cook, April 11, 1983 prepared testimony on quality assurance, Attachment 1 at p. 1, following Tr. 18025; Keppler, March 25, 1983 prepared testimony with respect to quality assurance, Attachment 5, following Tr. 15114.

form of a suggestion or recommendation and adopted by Consumers Power in response to Staff concerns.

Specifically, the Staff never "issued an ultimatum" to Consumers Power that they "would shut down construction if the utility did not itself do it."⁴⁶ In addition, the third party reviews proposed by Consumers Power in the September 17, 1982 letters were broader in scope than what had been suggested by the Staff.⁴⁷ Mr. Keppler also testified that, since the DGE Inspection and the stop work by Consumers Power in December of 1982, he believes that Consumers Power has regained the initiative on the Midland Project.⁴⁸ Finally, no applicant, including Consumers Power, should be discouraged from meeting with members of the NRC Staff for the purpose of reviewing drafts of reform plans and resolving NRC Staff concerns.

Paragraph 24. No response.

Paragraph 25. Mr. Keppler further explained that he considered the third party overviews to be an appropriate alternative to augmented inspection by the NRC.⁴⁹

Paragraphs 26-27. No response.

⁴⁶ See Reply to paragraph 18 supra and footnote 38 accompanying.

⁴⁷ Keppler, October 29, 1982 prepared testimony with respect to quality assurance, Attachments F & F, following Tr. 15111; Keppler Tr. 15269-15272.

⁴⁸ Keppler, Tr. 15657-15658.

⁴⁹ Keppler, Tr. 15327.

Paragraph 28. Mr. J. Cook did confirm that the finding that the AFW system may not be functional during station blackout conditions was of safety significance. He further indicated that, after a detailed review, he might decide that other of the TERA findings are of significance.⁵⁰

Intervenor's proposed conclusions that Consumers Power should be faulted for taking the time and making the effort to more fully investigate the TERA findings in an effort to confirm their accuracy and significance is contrary to reason.⁵¹ Moreover, the fact that TEPA has uncovered concerns which Consumers Power, Bechtel, and the Staff had not found is evidence of TERA's effectiveness.

Paragraphs 29-31. No response.

Paragraph 32. The CIO is applicable for only non-soils construction activities.⁵²

Paragraph 33. Intervenor's proposed finding is unsupported by the record in this proceeding. Intervenor attempts to rely upon a document which this Board declined to admit into evidence. The Board has ruled that Stamiris Exhibit No. 68 will not be given any independent weight.⁵³ Moreover, Mr.

50 J. Cook, Tr. 18359-18364.

51 See J. Cook and Rutgers, Tr. 18361-18365.

52 J. Cook, April 11, 1983 prepared testimony on quality assurance at pp. 24-25, following Tr. 18025.

53 Stamiris Exhibit No. 68; Tr. 15720, 15732.

Kepler's testimony which is cited is based upon the document, not upon Mr. Kepler's personal knowledge.

The proposed attack upon the credibility of Mr. Kepler with regard to his testimony concerning the approval of S & W is unwarranted. No evidence has been presented which would justify a finding that Mr. Kepler lied to this Board.

Paragraph 34. The scope of the QVP and the reinspection of closed inspection records are described in paragraph 184 of Consumers Power's Proposed Findings.

Paragraph 35. The proposed conclusion that Consumers Power management did not understand the seriousness of the QA problems at Midland does not follow from the evidence presented. Consumers Power's proposal of a sampling approach cannot be presumed to be deficient. The NRC has approved of sampling programs for other plants as an acceptable means of verification.⁵⁴

Paragraph 36. No evidence is presented which would justify rejecting the conclusions reached by Mr. Kepler and the Staff regarding this technical matter. Moreover, it should be noted that there has already been a program for 100% reinspection of rebar in concrete which is one of the major inaccessible items.⁵⁵ In those cases where documentation is

⁵⁴ See e.g. Pacific Gas & Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-763, Slip opinion at 29-44 (March 20, 1984).

⁵⁵ Gardner, Tr. 16753; R. Cook, Tr. 16755-16756.

being used to assess the completed work, that documentation will have to be shown to be credible and adequate.⁵⁶ Finally, Mr. Keppler estimated that a large percentage of the plant would be accessible for reinspection.⁵⁷

Paragraph 37. This finding ignores the fact that evidence of improvements in the attitude and competence of Consumers Power has been presented. Much of the work which was evaluated in the DCB Inspection was performed prior to 1982.⁵⁸ Since that time, there has been the recertification of QC inspectors and the development of the CCP.⁵⁹ Past failures alone cannot be determinative of the ability and willingness of Consumers Power to safely construct the plant under these new programs. The Board must consider the entire record in reaching its conclusions regarding reasonable assurance.⁶⁰ As the record shows, the CCP is effectively designed to identify and remedy construction deficiencies and variances which may presently exist between the design and as-built conditions of the plant.

56 Keppler, Tr. 15387.

57 Keppler, Tr. 15385.

58 Rutgers, Tr. 18117-18119.

59 J. Cook, April 11, 1983 prepared testimony on quality assurance at pp. 4-8, following Tr. 18025; Wells prepared testimony on quality assurance at pp. 4-5, following Tr. 18027.

60 See Houston Lighting & Power Co. (South Texas Project, Units 1 and 2), LEP-84-13, Slip opinion at pp. 22-24 (March 14, 1984).

Paragraph 38. Intervenor has no record support for this statement. The number of QC personnel performing the QVP will probably be about 300. The number of S & W people performing the CIO, which includes an overview of the QVP, will depend on the recommendations of the S & W project leader.⁶¹

Paragraph 39. Intervenor's speculation in footnote 7 to this proposed finding that the NRC Staff misrepresented the approval process that was undertaken with regard to S & W is wholly without evidentiary support. As described in paragraphs 383 and 384 of Consumers Power's Proposed Findings, the NRC Staff made a careful review of the independence and competence of S & W which accords with the Palladino criteria. Intervenor again improperly proposes that the Board rely upon a document (Stamiris Exhibit No. 68) which is not part of the evidentiary record.⁶²

Paragraph 40. The document cited in support of this finding indicates only that the NRC Staff identified a concern with the scope of the S & W overview.

Paragraph 41. Paragraph 423 of Consumers Power's Proposed Findings does not suggest that any findings regarding the substance of S & W's conclusions be made. The conclusion that S & W appears to be performing its job as it should and that

61 J. Cook, Tr. 18554-18555, 18716-18717, 18723.

62 Stamiris Exhibit No. 68; Tr. 15732. See also Reply to paragraph 33 supra.

the third party review for soils appears thus far to be effective is further supported by more recent S & W reports, including those cited by Intervenor.

Paragraph 42. Intervenor's statement that these reforms were "mandated" by the NRC Staff is unsupported by the record. Additionally, Mr. Mooney's prepared testimony addresses reforms in the soils area which are distinct from the CCP.

Paragraph 43. Mr. Mooney joined the Midland Project Office as Executive Manager in August, 1981.⁶³ However, the soils project organization and the assignment of single-point accountability to Mr. Mooney for soils work did not occur until the September 17, 1982 proposal letter (Serial No. 18845) to the NRC Staff.⁶⁴

Mr. R. Cook and Dr. Landsman were critical of Mr. Mooney because of past misunderstandings which had occurred between Mr. Mooney and certain NRC Staff members. However, Dr. Landsman also testified that communications between Mr. Mooney and the Staff have greatly improved.⁶⁵ Other Staff members also commented upon the integrity and improved communications shown by Mr. Mooney.⁶⁶ In light of these improvements and

⁶³ Mooney, prepared testimony on remedial soils work at p. 2, following Tr. 17017.

⁶⁴ Id. at pp. 4-5, 15-16.

⁶⁵ Landsman, Tr. 20881-20882.

⁶⁶ Kane, Tr. 21875-21876; Hood, Tr. 20777-20779.

Mr. Mooney's own testimony as to his efforts in this area,⁶⁷ a finding that Mr. Mooney does not contribute to dedicated management or good management attitude is not justified.

Paragraph 44. Soils QC and HVAC QC had previously been made a part of MPQAD.⁶⁸ At the time balance of plant QC was incorporated under MPQAD, Mr. Wells determined that some Bechtel QC supervisors needed to remain in their positions so that the most qualified personnel were utilized.⁶⁹ The Staff found Mr. Wells' approach to be acceptable.⁷⁰

Paragraph 45. Contrary to the conclusion proposed in this paragraph, Dr. Landsman testified that soils QC is doing a satisfactory job on the underpinning work which began in December, 1982.⁷¹

Paragraph 46. No response.

Paragraph 47. Mr. Wells explained that there had been a misunderstanding as to this matter. The issue was discussed at a September 1982 meeting prior to Mr. Wells' involvement as the Executive Manager of MPQAD.⁷²

67 See Mooney, Tr. 17050.

68 Consumers Power Exhibit No. 48, Appendix 1 at p. 1.

69 R. Cook and Shafer, Tr. 16298-16299.

70 Keppler, Tr. 15616.

71 Landsman, Tr. 16904-16905, 16920, 20682-20683.

72 Wells, Tr. 18173-18176.

Paragraph 48. Mr. Gardner was not as critical as Intervenor suggests. He also testified that Consumers Power took steps to correct these problems.⁷³

Paragraph 49. The Staff did not force Consumers Power to suspend recertification. They credited Consumers Power for acknowledging the problem, suspending the training program and taking steps to improve it.⁷⁴

Paragraph 50. This is not an accurate interpretation of Mr. Gardner's testimony at Tr. 14488. Mr. Gardner stated that the use of IPINs was a "significant" problem which was a management problem rather than a training problem.

Paragraph 51. Mr. Gilray testified that he was satisfied with Applicant's commitment with respect to certification and documentation of the education and experience of QC inspectors.⁷⁵ The NRC Staff had not at the time of hearings performed inspections indicating a problem now exists with respect to the education and experience of QC inspectors at Midland.⁷⁶

Paragraph 52. The reason for the schedule changes in performance demonstrations is explained in Stamiris Exhibit No.

73 Gardner, Tr. 14481-14483.

74 R. Cook, Gardner, Landsman, and Shafer, March 25, 1983 prepared testimony with respect to quality assurance at pp. 2-3, following Tr. 14374; see also Wells, Tr. 18195-18197.

75 Gilray, Tr. 16934-16935.

76 Landsman, Tr. 16961; but see Tr. 16940-16941.

82. Trainees perform construction inspections only if they have already been certified to the applicable PQCI.⁷⁷ Mr. R. Cook did not testify that Consumers Power was placing construction schedule ahead of QA responsibilities by handling the performance demonstrations in this manner. His testimony was that construction activities were the reason for rescheduling QA performance demonstrations.⁷⁸ Stamiris Exhibit 82 also gives the reasons for the schedule changes and evidences an intention to minimize performance demonstration changes and to keep the Staff informed of the changes.

Paragraph 53. As the record citations indicate, other procedures have been established for the certification of subcontractor QC personnel and Bechtel QC personnel outside the soils area. The certification procedure was ongoing at the time of testimony.⁷⁹

Paragraph 54. All PQCIs are being reviewed and revised as necessary under the CCP. The purpose of this review is to put them into a consistent format and to have the specifications clearly set out.⁸⁰ Dr. Landsman testified that the PQCI review, being undertaken by QA engineering, was adequate.⁸¹

77 R. Cook and Shafer, Tr. 16634.

78 R. Cook, Tr. 16641-16643.

79 R. Cook and Shafer, Tr. 16658.

80 Wells, Tr. 18658.

81 Landsman, Tr. 16873; see also Gardner, Tr. 16794-16795.

Paragraph 55. Dr. Landsman and Mr. Gardner testified that they have found no significant problems with any other portion of the retraining and recertification program.⁸²

Moreover, all QC personnel in the soils area have successfully been certified under the upgraded certification program.⁸³

Paragraph 56. Intervenor provides no support for these conclusions. Furthermore, these conclusions are not supported by the record as a whole.

Paragraph 57.

(a) The pages cited by Intervenor do not indicate that Mr. Mooney testified that this incident was not a serious matter. We also note that Intervenor would have the Board conclude that every violation of procedure is a serious safety concern. Such a conclusion would be unreasonable and unrealistic. As explained in paragraphs 403-405 of Consumers Power's proposed findings, the Applicant identified this problem and promptly resolved it.⁸⁴

(b) A drift did not collapse during the underpinning work, although Mr. R. Cook (not Dr. Landsman) initially indicated that had happened. Dr. Landsman subsequently clarified

⁸² R. Cook, Gardner, Landsman and Shafer, March 25, 1983 prepared testimony with respect to quality assurance at p. 3, following Tr. 14374.

⁸³ Wells, prepared testimony on quality assurance at pp. 4-5, following Tr. 18027.

⁸⁴ Mooney, Tr. 17337-17338.

that a perched pocket of water had been encountered during digging, and as a result some loose sand washed into a pier excavation. Dr. Landsman and Mr. F. Cook agreed that the emergency grouting measures taken by Applicant were technically and procedurally correct.⁸⁵

Dr. Landsman testified that he receives daily telephone calls from the site which keep him informed. He did not testify that he insisted on daily telephone calls but simply that he be called about important matters.⁸⁶ The testimony of Mr. Mooney indicates that Consumers Power has also taken the initiative in attempting to improve communications with the Staff.⁸⁷

(c) The details of the events surrounding the jacking of the FIVP are described more fully in paragraphs 408-412 of Consumers Power's proposed findings.

(d) While Dr. Landsman stated his opinion that poor management was a cause for this incident, he continued in his testimony to state that he did not know whether the worker in this instance had adequate or inadequate instruction and supervision.⁸⁸ Dr. Landsman also acknowledged that no time limit has been established within which Consumers Power must inform

85 Landsman and R. Cook, Tr. 16704, 16800-16801.

86 Landsman, Tr. 16704-16706.

87 Mooney, Tr. 17044-17049.

88 Landsman, Tr. 14733.

either the NRC Staff or Dr. Landsman of nonconformances in the soils area.⁸⁹ Even so, Mr. Wheeler of Consumers Power advised the Board and the parties of this incident during hearings held on February 14, 1983, the same day the nonconformance report was being written.⁹⁰ With regard to the cause of the incident, Mr. Wheeler testified forthrightly that this drilling had been done carelessly.⁹¹

Intervenor seeks to have the Board adopt "the NRC's description of the incident, Stamiris Exh. 54". Stamiris Exhibit No. 54 is not a Staff document; it is the nonconformance report related to this incident which was prepared by Bechtel and it explains quite clearly that the duct bank was hit in approximately fourteen locations.⁹² This description of the incident in no way calls into question the credibility of Mr. Wheeler. His testimony and the Bechtel nonconformance report are not in conflict.

(e) Events surrounding the Pier 11 West load test are described more fully in paragraphs 413-419 of Consumers Power's proposed findings. One point to be noted here is that Consumers Power did identify the anti-friction system as the prob-

89 Landsman, Tr. 14729.

90 Wheeler, Tr. 11410, 18831-18832.

91 Wheeler, Tr. 11411.

92 See Wheeler, Tr. 18831-18837.

able cause of the problem with getting the full load down to the bottom of the pier.⁹³

(f) At the time when the EPA wings were found to be rising, no underpinning work was being done. The readings were being taken for the purpose of obtaining base line data which could be used for comparison purposes after the underpinning work began.⁹⁴

(g) Further details of this nonconformance and the corrective action taken by Consumers Power are described in paragraphs 700-703 of Consumers Power's proposed findings.

(h) The FIVP was originally installed non-Q and later the NRC Staff wanted the FIVP to be inspected.⁹⁵ Consumers Power performed the inspection and the second load test. The Staff agreed that Consumers Power could proceed with the excavation of the soils near the structure prior to performing the proof load test.⁹⁶

⁹³ See Mooney, Tr. 17162. Because of the conservative way in which Consumers Power Company proposed to resolve the problem, the NRC Staff did not need to reach a conclusion as to the most likely cause of the problem.

⁹⁴ Mooney, Tr. 17345-17346. See generally, Consumers Power Company's Proposed Second Supplemental Findings at paragraph 420.

⁹⁵ See Wheeler, Tr. 18873-18875.

⁹⁶ See Wheeler, Tr. 18873-18890; Consumers Power Company's Proposed Second Supplemental Findings of Fact at paragraphs 715-718.

(i) Dr. Landsman testified that he was not certain when or how the Applicant notified him of the SWPS cracks; he did not testify that he was not properly informed of the matter.⁹⁷ Consumers Power followed its procedures when it became aware of this potential problem and had CTL evaluate the cracks. CTL determined that there was no increase in cracking or crack width and this report was provided to Dr. Landsman.⁹⁸

Paragraph 58. Dr. Landsman further testified that, with the current controls that are in place, he has reasonable assurance that the Midland plant can be completed in accordance with regulatory requirements.⁹⁹ Dr. Landsman has also testified that, in his opinion, Consumers Power's performance of the underpinning work has been adequate so as to warrant continuation of the work.¹⁰⁰ Given the fact that neither Dr. Landsman nor anyone else from the NRC Staff was of the opinion that greater controls are needed in order for remedial soils

97 Landsman, Tr. 14662.

98 Mooney, Tr. 17154-17156. See generally Consumers Power Company's Proposed Second Supplemental Findings at paragraph 722.

99 Landsman, Tr. 16491.

100 R. Cook, Gardner, Landsman and Shafer, March 25, 1983 prepared testimony with respect to quality assurance at p. 5, following Tr. 14374; Landsman, Tr. 20682-20683. See also, Consumers Power Company's Proposed Second Supplemental Findings at paragraphs 399-401.

work to continue, and given the fact that Consumers Power has shown the commitment necessary to do whatever is necessary to meet regulatory requirements, the conclusion which must be reached is that reasonable assurance exists that the soils work can be completed in a manner consistent with regulatory requirements.

Paragraph 59. For a discussion of the Applicant's response to the SALP 3 Report, see paragraph 547 of Consumers Power's proposed findings.

Paragraphs 60-61. No response.

Paragraph 62. Dr. Landsman and Mr. Gardner both indicated that the important aspect was not the amount of the civil penalty, but was the stop work instituted by Consumers Power.¹⁰¹

Paragraph 63. The NRC Staff members of the Midland section team who were present at the November 10, 1982 meeting informally agreed that all safety-related construction should be stopped as a result of the DCP Inspection findings.¹⁰² However, Region III management, including Mr. Warnick, Mr. Keppler, and the enforcement board, never had to reach a final decision on the question since Consumers Power shut down most safety-related work at the site weeks before the Midland sec-

101 Landsman and Gardner, Tr. 15089-15090.

102 Shafer, Tr. 15068-15069.

tion team issued its report.¹⁰³ This testimony is corroborated by notes of the November 23, 1982 exit meeting which state that "Warnick says they are not fixed in their position today."¹⁰⁴ This evidence, coupled with the fact that Mr. Warnick was awaiting the team's draft report before taking any specific action, demonstrates that there was never any official Staff position that a stop work was required as a result of the DCB Inspection findings.¹⁰⁵

Paragraph 64. A statement by Dr. Landsman as to his opinion should not be construed as Staff testimony. Both Mr. J. Cook and Mr. Rutgers testified that the DCB Inspection had revealed a breakdown in quality assurance.¹⁰⁶ Moreover, the stop work and the development of the CCP are tangible evidence of Consumers Power's recognition of the seriousness of the problems.

The issue of the termination of the use of IPINs is discussed more fully in paragraphs 430-433 of Consumers Power's proposed findings. The NRC Staff communicated its first concerns about IPINs to Consumers Power during exit meetings for

103 Shafer, Tr. 15072-15074.

104 Stamiris Exhibit No. 66 at p. 2.

105 See Shafer, Tr. 15072-15074.

106 J. Cook, Tr. 18501, 18412-18413; Rutgers, Tr. 18129-18130.

the DCF Inspection.¹⁰⁷ These concerns were promptly addressed by discontinuing the return option¹⁰⁸ and by terminating the use of IPINs in the soils work.¹⁰⁹ In January of 1983, the Staff identified further concerns with IPINs,¹¹⁰ and Consumers Power then terminated their use for all non-soils related work on January 25, 1983.¹¹¹

Paragraph 65. There is no basis for the proposed conclusion that Consumers Power admitted violations listed in the DGP Report "presumably because of the harsh enforcement action it faced." The proposed conclusion is also illogical since the response to the DGP Report¹¹² was submitted after the Notice of Violation and Proposed Imposition of Civil Penalties¹¹³ was issued.

107 Wells, Tr. 18182, Wells prepared testimony on quality assurance at pp. 9-10, following Tr. 18027.

108 Consumers Power Exhibit No. 36; Wells, Tr. 18192-18194.

109 Consumers Power Exhibit No. 52; Wells, prepared testimony on quality assurance at pp. 12-13, following Tr. 18027; see also Meisenheimer, Tr. 19636-19640.

110 Wells, prepared testimony on quality assurance at pp. 9-10, following Tr. 18027; J. Cook, Tr. 18273.

111 Consumers Power Exhibit No. 38; Wells, prepared testimony on quality assurance at pp. 12-13, following Tr. 18027; Wells, Tr. 18190-18191.

112 B. Peck, prepared testimony, Attachment I, following Tr. 18921; Consumers Power Exhibits Nos. 49, 51.

113 Keppler, March 25, 1983 prepared testimony with respect to quality assurance, Attachment 3, following Tr. 15114.

Consumers Power admitted fully all the violations listed in the DGB Report except for two which were admitted in part.¹¹⁴ With regard to the information supplied to the vendor for the muffler saddle supports and plates, Consumers Power was unable to respond to this violation until a careful review of the documentation was completed.¹¹⁵ The efforts undertaken by both Consumers Power and the NRC Staff to determine the validity and the cause of this deficiency and the corrective action proposed are detailed in paragraphs 442-446 of Consumers Power's proposed findings. Consumers Power acknowledged ultimate responsibility to the NRC for the deficiencies which were identified.¹¹⁶

Paragraph 66. Applicant's response to this issue is found in paragraph 447 of Consumers Power's proposed findings.

Paragraph 67. This finding misconstrues the testimony of NRC Staff witnesses. Messrs. R. Cook, Shafer, and Gardner were questioned concerning a notation in meeting notes from November 23, 1982 which stated that "Good turnaround on (Consumers Power's) efforts to cooperate. Good attitude lately. Since (Consumers Power) started communicating with NRC better,

114 B. Peck, prepared testimony, Attachment I, following Tr. 18921; Consumers Power Exhibits Nos. 49, 51.

115 B. Peck, Tr. 19560-19561.

116 B. Peck, Tr. 19479-19480, 19483, 19559.

things have been good."¹¹⁷ Mr. R. Cook testified that he appreciated Consumers Power's attitude and that he remembered these comments from the meeting. He later stated that the Applicant's attitude was perhaps not as good as the Staff had perceived it to be at the time of the meeting.¹¹⁸ Mr. Shafer also thought that the attitude was not as good as they first perceived, but he further testified that Consumers Power's management personnel, specifically Mr. D. Miller and Mr. Wells, had made considerable efforts in communicating with and responding to the NRC.¹¹⁹ Mr. Gardner agreed with the statement from the meeting notes concerning Consumers Power's attitude.¹²⁰ The conclusion to be drawn from this evidence is that the Staff members believe that Consumers Power's management attitude has improved overall, even though incidents have occurred which cause them to believe that the improvement is not as great as they once perceived it. Notice should also be taken of Mr. Harrison's testimony that Consumers Power has demonstrated a more positive attitude subsequent to the DGE Inspection time period.¹²¹

117 Stamiris Exhibit No. 66 at p. 2; R. Cook, Shafer and Gardner, Tr. 16252-16254.

118 R. Cook, Tr. 16254; see also R. Cook, Tr. 16248-16249.

119 Shafer, Tr. 16253-16254.

120 Gardner, Tr. 16254.

121 Harrison, Tr. 20646, 20692-20693, 20775.

The incident concerning the promise to do a 100% reinspection was explained by Mr. Wells as having been the result of a misunderstanding.¹²²

While the Board is to consider all the evidence of record, both objective and subjective, the Board should place greater weight upon objective evidence in reaching its own independent conclusion regarding management attitude. The objective evidence indicates an improved and satisfactory management attitude.¹²³

Paragraph 68-69. The record does not support the conclusions proposed in these paragraphs.¹²⁴

Paragraph 70. Intervenor has the burden of going forward with evidence to support her contentions. Applicant has the ultimate burden of proof.¹²⁵

Paragraph 71. No response.

Paragraph 72. In his prepared testimony, Mr. Rutgers stated that resume information for geotechnical employees was requested by Dr. Landsman at a site entrance meeting. Resume information was obtained from Ann Arbor and provided to Dr.

122 Wells, Tr. 18173-18176.

123 See Consumers Power Company's Proposed Second Supplemental Findings at paragraphs 548-551.

124 Id. at paragraphs 669-670.

125 Metropolitan Edison Company (Three Mile Island Nuclear Generating Station, Unit 1). ALAB-772, ___ NRC ___, slip opinion at p. 89 (May 24, 1984).

Landsman at the exist meeting three days later. In response to Dr. Landsman's further request, more detailed resumes were telecopied to him four days later.¹²⁶

With regard to the general question of Consumers Power's willingness to provide information to the NRC, various witnesses testified concerning the efforts which have been and are being undertaken to ensure satisfactory communications with the Staff.¹²⁷

Paragraph 73. The citations to the record do not evidence any direction from Consumers Power's supervisory personnel to its employees that they should refrain from talking to the NRC. To the contrary, direction has been given to both Bechtel and Consumers Power employees for the purpose of enhancing communications with the NRC.¹²⁸

Paragraph 74. With regard to point (b) of this proposed finding, Intervenor appears to misunderstand the substance of Mr. R. Cook's testimony. The instance involving a year to obtain documents, to which Intervenor refers, has pre-

¹²⁶ Rutgers, April 11, 1983 prepared testimony on quality assurance at pp. 20-21, following Tr. 18035.

¹²⁷ See Consumers Power Company's Proposed Second Supplemental Findings at paragraphs 509-513.

¹²⁸ Rutgers, April 11, 1983 prepared testimony on quality assurance at pp. 21-23 and Attachments A & B, following Tr. 10835; Shafer, Tr. 14709-14717; Stamiris Exhibit No. 53.

viously been explained.¹²⁹ Mr. R. Cook's more recent point was that there have been comparable instances in the last few months where it has taken weeks to obtain documents.¹³⁰

Paragraph 75. The three instances referenced in this proposed finding do not support the conclusion suggested for the reasons stated below.

(a) Mr. R. Cook's statement was more qualified than Intervenor's proposed finding suggests. Mr. R. Cook was hesitant to use the word misleading to describe the analysis that was done. His testimony was that, if the percentage figures were accepted on face value, they would tend to be misleading.¹³¹ However, from his demonstrated knowledge of the methodology used, it is clear that the NPC had complete information on the statistics involved in reaching those percentages. In fact, the NRC Staff had all the underlying data, and Staff members were able to interpret the information for themselves.¹³²

(b) The change which Mr. Wells initiated was for the purpose of clarification.¹³³ The NPC concluded that there

¹²⁹ See Consumers Power Company's Proposed Findings of Fact, dated October 28, 1981, at paragraphs 95-102.

¹³⁰ F. Cook, Tr. 14589-14592.

¹³¹ F. Cook, Tr. 14574-14575.

¹³² See generally F. Cook, Tr. 14389-14390.

¹³³ Shafer, Tr. 16255-16256.

was no intent on the part of MPQAD management to deceive the NRC. The original trend graph and its revisions were part of the record and were made available at the request of the NRC.¹³⁴

(c) The criticisms of Dr. Landsman referenced in this paragraph related to a problem with the interface between two different PQCI's. It was not a problem encountered "during the load test."¹³⁵ Mr. Wheeler explained that he did not tell Dr. Landsman of the potential problem at the meeting because he did not have adequate information. The problem was resolved at the site that very day, thereby eliminating the need to pursue the matter further.¹³⁶

(d) Consumers Power provided the NRC with information on all of these incidents. His criticism of the first two concerned how promptly he was informed. With regard to the results of the U.S. Testing audit, Dr. Landsman, as well as Mr. R. Cook and Mr. Gardner, testified that Consumers Power inform-

134 Staff Exhibit No. 18 -- Inspection Summary at p. 3; Shafer, Tr. 15961; Wells, Tr. 18184.

135 The problem was discovered on April 20, 1983, the date of the Glen Ellyn meeting. Wheeler, Tr. 18786-18787. The load test was begun on April 25, 1983. Mooney, Tr. 17356.

136 Wheeler, Tr. 18786-18787; see also Consumers Power Company's Proposed Second Supplemental Findings at paragraphs 414-415.

ed them of this matter promptly and adequately.¹³⁷ Further note should be taken that Dr. Landsman did not insist upon daily telephone calls, but did request calls whenever important activities were happening.¹³⁸

Paragraph 76. Given the fact that Mr. Howell testified that he did not know if this information had been provided to the NRC, it cannot accurately be said that he "defended Consumers' failure" to provide the information.¹³⁹ Mr. Howell explained his view of what types of cost and schedule information Consumers Power should provide to the Staff. Information in the form of input or recommendations from lower level employees or study teams concerning cost and schedule need not be routinely submitted to the Staff. However, once management makes a judgment on behalf of Consumers Power as to what the schedule estimate should be, then, in Mr. Howell's opinion, this Company position should be communicated to the Staff. To the best of Mr. Howell's knowledge and belief, Consumers Power has always informed the Staff in such cases.¹⁴⁰

137 Landsman, R. Cook and Gardner, Tr. 16791-16792. Applicant notes that a correction to Consumers Power's Proposed Second Supplemental Findings at footnote 1444 (p. 346) is required. Applicant incorrectly described Dr. Landsman's statements concerning communication of the U.S. Testing audit results to the NRC and desires at this time to delete the references to this matter which are found in footnote 1444.

138 R. Cook and Landsman, Tr. 16704-16706.

139 Howell, Tr. 21040-21046.

140 Howell, Tr. 21046-21048.

Paragraph 77. Intervenor incorrectly recounts the testimony of Mr. Howell. Mr. Howell did not testify that problems between Mr. J. Cook and the NRC Staff were part of the reason for his reinvolvement. His testimony was that problems between Consumers Power and the NRC formed part of the basis for his reinvolvement in the Midland project and that he assumed his position, in part, in order to create better relations with the NRC.¹⁴¹ Mr. Howell did express the opinion that he believed Mr. J. Cook's arrangement of the meeting with Mr. Dircks contributed to Consumers Power's relationship problem with the NRC.¹⁴²

Mr. J. Cook testified that, while arranging the meeting with Mr. Dircks, he had attempted to contact Mr. Keppler but was unable to do so.¹⁴³ Subsequent to the meeting, upon learning that Mr. Keppler was displeased, Mr. J. Cook set up an additional meeting with NRC, Region III, to discuss any NRC concerns.¹⁴⁴ In addition, it should be noted that the initial meeting was not only with Mr. Dircks but also with other NRC management personnel, including Mr. Purple of NRR and Mr. Cunningham of OELD.¹⁴⁵ Intervenor Stamiris' implication that

141 Howell, Tr. 21011-21022.

142 Howell, Tr. 21006-21011.

143 J. Cook, Tr. 21008.

144 J. Cook, Tr. 21059.

145 Id.

the sole purpose of the meeting was to discuss matters concerning Region III is unfounded.

The reference to Consumers Power appealing Region III's position as to Regulatory Guide 1.29 is inaccurate. Consumers Power and Region III had a technical disagreement involving Regulatory Guide 1.29. Region III, not Consumers Power, asked NRR to make a ruling on this matter.¹⁴⁶

Paragraph 78. The weight of the evidence indicates that Mr. Boos did not mislead the NRC Staff concerning the status of completion of the instrumentation for the underpinning work. With regard to the other two instances cited in this proposed finding, the evidence of record is insufficient to support the conclusion that Consumers Power "misled the NRC staff by communicating inaccurate and false information." These two instances were mentioned by Dr. Landsman as examples where, in his opinion, misleading information was supplied to the NRC.

The testimony cited by Intervenor does not support the statement that Mr. Hood authorized the soils borings "only because of such assurances." Dr. Landsman did not indicate what information formed the basis for Mr. Hood's authorization.

The application of QA requirements to the rip-rap and the perimeter dike is addressed in Consumers Power's proposed findings at paragraph 447.

¹⁴⁶ Stamiris Exhibit No. 49; Landsman, Tr. 14553.

Paragraph 79. The evidence of record supports the conclusion that Mr. Boos did not make any misleading comments, either intentional or unintentional.¹⁴⁷

Intervenor's suggestion that the NRC policy of not drawing conclusions in these reports may have inhibited Mr. Weil from doing a complete and thorough investigation is speculation at best. The record does not reflect any such factors which may have prevented or discouraged Mr. Weil from fulfilling his job responsibilities.

Paragraph 80. This proposed finding misconstrues the testimony of Mr. Hood. Mr. Hood did not comment on Consumers Power's management; his testimony was that he reacted adversely to Bechtel personnel doing most of the presentation.¹⁴⁸

Paragraph 81. No response.

Paragraph 82. While the working level Staff conveyed to Consumers Power that their position was not negotiable, there is no indication that they had told Consumers Power that NRC management had reviewed and approved this position. Both Mr. Mooney and Mr. Boos believed that the Applicant had available avenues of appeal to higher level Staff personnel.¹⁴⁹ In fact, soon after the March 10, 1982 meeting, Mr. J. Cook

147 See generally Consumers Power Company's Proposed Second Supplemental Findings at paragraphs 561-589.

148 Hood, Tr. 17781-17782.

149 See Boos and Mooney, Tr. 20005-20008, 20041-20042.

contacted Mr. Keppler for the purpose of discussing the matter before a final decision was reached and later meetings were held in which the matter was discussed.¹⁵⁰

After the March 10, 1982 meeting, Consumers Power and Bechtel personnel were uncertain how the Staff's position was to be applied to specific work activities.¹⁵¹ To clarify the situation, a draft table was prepared reflecting Consumers Power's and Bechtel's understanding and a call was placed to Region III on March 12, 1982 to discuss the matter.¹⁵²

Paragraph 83. Neither Mr. R. Cook or Dr. Landsman could recall the precise words Mr. Boos had used at the March 10 meeting.¹⁵³

Mr. Budzik's statement was that he thought that on March 10, 1982 that the underpinning instrumentation system was less than 50% complete.

Paragraph 84. No response.

Paragraph 85. Mr. Mooney and Mr. Boos both clearly testified that the rationale for proposing that the installa-

150 Staff Exhibit No. 22 at p. 26.

151 Mooney, Tr. 20008; see also Mooney and Wheeler, prepared testimony concerning the alleged violations of the April 30 ASLB Order and the March 1982 cable-pulling incident at pp. 10-12, following Tr. 19983.

152 Boos and Mooney, Tr. 20008-20012. Intervenor provides no support for her proposed conclusion that the March 12 phone call was "carefully orchestrated" for the purpose of obtaining "special exemptions."

153 Landsman and R. Cook, Tr. 17427-17429.

tion of the instrumentation be non-Q was that it did not need to be Q because the quality could be verified by a checkout of the system.¹⁵⁴

Paragraph 86. As indicated in the reply to paragraph 82 above and in paragraphs 572-573 of Consumers Power's proposed findings, the conference call was for the purpose of confirming with the NRC Staff the understanding of Consumers Power and Bechtel of how the Staff position would apply to specific work activities.

Paragraph 87. The final sentence of this proposed finding is superfluous commentary.

Paragraph 88. Mr. Boos' explanation that he considers 25-33% completion to be "essentially well underway" is credible.¹⁵⁵

Paragraph 89. Mr. Boos' statements of March 12, 1982 do not indicate that instrumentation installation was "near completion." With regard to the knowledge of Messrs. Fisher and Schaub on March 12, 1982, summaries of their statements are contained in the investigation report. Therefore, it is unnecessary to rely upon others' speculation as to why they knew or should have known.¹⁵⁶

154 Mooney and Boos, Tr. 20011-20012.

155 Boos, Tr. 20128.

156 See Staff Exhibit No. 22 at pp. 21-23.

Paragraph 90. This proposed finding incorrectly attributes testimony to Dr. Landsman in the second paragraph which he did not make.

Paragraph 91. A more complete rendition of the available testimony on the number of cables installed as of March 17, 1982 is provided in paragraph 577 of Consumers Power's proposed findings. Mr. Schaeffer's knowledge of the installation of the instrumentation is also described in paragraph 575 of those findings.

Paragraph 92. Intervenor has no support for the assertion that there has been a series of actions which have undermined the NRC inspectors' enforcement efforts at the site.

Paragraph 93. Mr. Keppler acknowledged having discussions with Mr. J. Cook about this matter, although he denied reaching an agreement with Mr. J. Cook.¹⁵⁷

Paragraph 94. Mr. J. Cook's telephone calls with Mr. Keppler reflect the fact that Consumers Power and Bechtel representatives left the March 10, 1982 meeting believing that the working level Staff opinion expressed at that meeting could yet be appealed to NRC management.¹⁵⁸ As such, Mr. J. Cook's actions do not indicate a bad management attitude. Moreover, it appears that Messrs. Keppler and Norelius were receptive to

157 Staff Exhibit No. 22 at pp. 26-27.

158 See Reply to paragraph 82 supra.

discussing the matter with Mr. J. Cook, an indication that they found his actions to be proper.¹⁵⁹

Mr. J. Cook's understanding of Mr. Keppler's position did not differ from that expressed by Mr. Keppler.¹⁶⁰ The conclusion to be drawn from the evidence is that Mr. Marguglio was incorrect in stating what he believed was the outcome of the discussions between Messrs. J. Cook and Keppler. Intervenor agrees that his mistake is not a material false statement. To the contrary, there is no evidence to indicate that the error was anything more than a misunderstanding or miscommunication. As such, it cannot be considered indicative of poor management attitude.

Paragraph 95. When this statement was made, the evidence available to Mr. Keppler and the Staff did indicate that the cable pulling commenced on March 11, 1982. However, subsequently, evidence was revealed which establishes that the cable pulling was begun at least by February 27, 1982¹⁶¹ and that the cable for the eight electrical instrument locations originally needed to start Phase 2 work were pulled by March 12, 1982.¹⁶²

159 See Staff Exhibit No. 22 at pp. 26-27.

160 Id.

161 Black, prepared testimony at p. 11 and Exhibit 3, following Tr. 19778; Black, Tr. 19905-19907.

162 Black, prepared testimony at pp. 12-14, following Tr. 19778.

Paragraph 96. For a more detailed discussion of the opinions of Messrs. R. Cook and Weil and Dr. Landsman, see paragraph 579 of Consumers Power's proposed findings.

Paragraph 97. The facts of record indicate that Mr. Boos made accurate statements with no intent to mislead the NRC Staff.¹⁶³

Paragraph 98. The opinion expressed is that of Dr. Landsman and Mr. R. Cook. Intervenor has no basis for attributing the opinion to the NRC Staff.

Paragraph 99. Consumers Power offers one argument grounded in fact for its conclusion that "Mr. Boos did not make either a material false statement or even a misleading statement in either the meeting or the conference call."¹⁶⁴ The facts demonstrate that Mr. Boos' statements were accurate and hence could not be false or misleading.

Mr. Mooney testified that the instrumentation installation had not been defined as either Phase 1 or Phase 2 work.¹⁶⁵ As explained above, the rationale during the March 12 call for proposing to the Staff that this work be non-Q was that it did not need to be Q, not that it was already

¹⁶³ See Consumers Power Company's Proposed Second Supplemental Findings at paragraphs 577-588.

¹⁶⁴ Id. at paragraph 588.

¹⁶⁵ Mooney and Wheeler, prepared testimony concerning the alleged violations of the April 30 ASLE Order and the March 1982 cable pulling incident at p. 12, following Tr. 19983.

completed or nearly completed.¹⁶⁶ The interview summaries cited do not contradict this view.

Mr. Swanberg's statements concerning 159 cables are taken out of context. As of March 17, 1982, preliminary design drawings in Ann Arbor, but not the matrix drawing used by the field engineers to govern installation, showed that 159 cables would be needed to complete the instrumentation system.¹⁶⁷ As of March 10, 1982, the construction drawings used by the field personnel still reflected the fact that 30 cables would be required.¹⁶⁸

There is uncontradicted evidence that the conduit installation and cable pulling for the eight electrical instrument locations was completed at least by March 10, 1982.¹⁶⁹ There has been no evidence presented which calls into question the credibility of either Mr. Black or Ms. Glass.¹⁷⁰

¹⁶⁶ See Reply to paragraph 85 supra. See also Reply to paragraphs 82 and 86 supra.

¹⁶⁷ Staff Exhibit No. 22 at pp. 10-11; Glass, Tr. 19911-19913.

¹⁶⁸ Black, prepared testimony at pp. 13-14, following Tr. 19778; Black and Glass, Tr. 19911-19913. Applicant acknowledges it had committed to a greater number of instruments and cables during a March 8, 1982 phone call with NRR. Hood, Tr. 17751-17755.

¹⁶⁹ Black and Glass, Tr. 19901-19903.

¹⁷⁰ The citation to Ms. Glass' testimony is incorrect.

Paragraph 100. Intervenor's proposed conclusion is not supported by the record.¹⁷¹

Paragraph 101. None of the nonconforming conditions that were found impaired the integrity of the system.¹⁷²

Paragraph 102. Applicant has presented extensive evidence supporting its conclusion that the it did not violate the Board's April 30, 1982 Order by excavating beneath the deep Q duct bank or by relocating the fire line.¹⁷³

The conclusions drawn in the last paragraph of page 2 of the cover letter to the second investigation report, Staff Exhibit No. 28, were not subject to cross examination. The Board admitted these conclusions for the sole purpose of showing that OI had taken a position -- not for the truth of the matters stated in the paragraph.¹⁷⁴

While it is true that Mr. Weil testified that the first investigation was concluded because of, inter alia, a lack of resources,¹⁷⁵ Mr. Weil also testified that he, with the concurrence of OI management, closed the first investiga-

171 See Consumers Power Company's Proposed Second Supplemental Findings at paragraph 588.

172 Stamiris Exhibit No. 117 at p. 8.

173 See generally Applicant's Proposed Second Supplemental Findings of Fact and Conclusions of Law, paragraphs 590-668, and citations therein.

174 Tr. 21671-21674.

175 Weil, Tr. 22302.

tion because sufficient facts and information had been developed.¹⁷⁶ Furthermore, Mr. Weil interviewed Mr. Donnell during the course of the first investigation, and Mr. Weil never testified that the second investigation was necessary because he had failed to follow-up on Donnell.¹⁷⁷

Paragraph 103. This paragraph inaccurately states that Dr. Landsman first discovered on May 20, 1982, that Applicant proposed further excavation below the deep Q duct bank. Actually, the referenced citations establish that Dr. Landsman was aware of Applicant's proposal prior to May 20, 1982, but that he first observed the further excavation on the 20th.¹⁷⁸

Paragraph 104. The proposed findings filed by Intervenor skip paragraph 104 in the numbering of paragraphs.

Paragraph 105. Contrary to Intervenor Stamiris' citation, Tr. 21610 makes no reference to any communication between Dr. Landsman and Messrs. Mooney and Schaub.

Paragraph 106. Applicant submits that, for the many reasons set forth in its Proposed Second Supplemental Findings of Fact and Conclusions of Law, its misunderstanding about the need for approval for further excavation beneath the deep Q

176 Weil, Tr. 22303, 22305-22307.

177 Weil, Tr. 21379-21380.

178 Landsman, Tr. 21549.

duct bank was justified.¹⁷⁹ With respect to the issue of the source for such approval, it is uncontested that Applicant was aware that Region III had this responsibility.¹⁸⁰ Unfortunately, Dr. Landsman believed that NRR was responsible for approving work for purposes of compliance with the Board's April 30 Order.¹⁸¹

Paragraph 107. Mr. Hood testified at Tr. 21726-21727 that he left the May 20 meeting with an understanding that the Staff had granted no approvals. He did not testify that, because of the informal nature of the meeting, no approvals could have been granted.¹⁸²

Dr. Landsman's testimony at Tr. 21653 is much more generalized than is implied by Stamiris proposed finding 107.

Paragraph 108. No response.

Paragraph 109. Applicant disagrees with Ms. Stamiris' speculative and unsupported interpretation of Mr. Sevo's notes as set forth in note 10.

Paragraph 110. Staff Exhibit No. 26, Attachment 9 at p. 4, is merely a list of attendees for the NRC entrance meet-

179 See Applicant's Proposed Second Supplemental Findings of Fact and Conclusions of Law, paragraphs 595-657, and citations therein.

180 See Staff Exhibit No. 26, Attachment 10.

181 Landsman, Tr. 21557-21558, 21910; See also Staff Exhibit No. 26, Attachment 11 at p. 3, paragraph 3.

182 Hood, Tr. 21726-21727.

ing of May 19 and the exit meeting of May 21. It does not support the assertion made in this proposed finding.

Paragraph 111. While the testimony of Messrs. Palmer, Schaub and Murray may not be consistent with the Minutes issued on June 4, this does not render their testimony not credible. Rather, as is set forth in Applicant's Proposed Second Supplemental Findings of Fact and Conclusions of Law, it suggests genuine confusion and misunderstanding.¹⁸³

Paragraph 112. Ms. Stamiris' citations establish that the subject inspection report was not written until July.¹⁸⁴

Paragraph 113. Mr. Horn's statement was made to Mr. Weil on July 13, 1983, after a review of the minutes of a meeting that Mr. Horn did not attend. Mr. Horn did not "confirm" anything; rather, he stated that based on his review of the minutes, it "appeared" that a commitment was made at the May 21 exit meeting. Mr. Horn also stated that the Staff could possibly approve soils remedial work activities -- such as the excavation beneath the deep Q duct bank -- without his knowledge.¹⁸⁵

¹⁸³ See Applicant's Proposed Second Supplemental Findings of Fact and Conclusions of Law, paragraphs 606-616, 648, and citations therein.

¹⁸⁴ At Tr. 21581, Dr. Landsman testifies that the report was probably written in June. However, at Tr. 21768, Dr. Landsman testifies that he wrote the report in July, and that he "never said June."

¹⁸⁵ Staff Exhibit No. 27 at p. 7.

Paragraph 114. Dr. Landsman's opinion as to why Applicant promptly stopped work on the deep Q duct bank excavation is speculative and uncorroborated. More likely, the work was simply stopped in deference to Dr. Landsman's request.¹⁸⁶

Paragraph 115. Ms. Stamiris is incorrect when she states that Applicant continued to excavate an additional amount one shift on July 29. No excavation took place on July 29 -- only clean-up work and work necessary to secure the excavation.¹⁸⁷ And, if any excavation took place during the second shift on July 28, it was limited to approximately 0.5 feet (from elevation 585.5 to elevation 585), which was prudent and necessary to secure the excavation.¹⁸⁸

Whether Dr. Landsman was correct in his speculation that Applicant "wished to complete the excavation prior to stopping work" is in no way supported by the record citations offered by Ms. Stamiris in this proposed finding. Furthermore, as is stated above in Applicant's reply to Stamiris proposed finding 114, this speculation is uncorroborated.

Paragraph 116. [First such numbered paragraph, p. 95]. Staff Exhibit No. 26, Attachment 2 states that Applicant had indicated that Messrs. Hood and Kane had provided "[a]p-

186 See Wheeler, Tr. 22087-22088.

187 Wheeler, Tr. 22091-22092, 22097.

188 See Wheeler, Tr. 22090-22091, 22097.

proval concerning the technical adequacy" of the deep Q duct bank excavation. It does not state that Applicant told Dr. Landsman "that it had obtained permission" to make the excavation.¹⁸⁹

Transcript pages 21837-21840 do not provide support for the statement that Mr. Hood and Mr. Kane "deny that they gave Consumers any such permission to excavate beneath the deep Q duct bank."

Neither Staff Exhibit No. 26, Attachment 15 nor Tr. 21851 contain any reference to Mr. Kane disputing Mr. Schaub's statement regarding "commercial risk." A proper citation would be to Kane, Tr. 21853, where Mr. Kane testifies that the statement attributed to Mr. Schaub by Mr. Weil is "incorrect."

Paragraph 116. [Second such numbered paragraph, p. 96]. The record does not establish that Dr. Landsman made any statements to Applicant on August 4, 1982, with respect to the fire line relocation. Dr. Landsman testified that he "assumed" he had informed Applicant on the 4th of his concerns.¹⁹⁰ However, his August 24 memorandum to Mr. Shafer makes no reference to having told Applicant to stop the work.¹⁹¹ Similar-

¹⁸⁹ Compare Staff Exhibit No. 26, Attachment 2 at p. 2 with Stamiris Second Supplemental Proposed Findings, paragraph 116 at p. 95.

¹⁹⁰ Landsman, Tr. 22220.

¹⁹¹ Staff Exhibit No. 26, Attachment 2 at p. 2.

ly, the September 22 Inspection Report makes no reference to Dr. Landsman's having instructed Applicant to stop the fire line work on August 4, even though the report covers the August 4-5 inspection. The report refers only to the August 9 stop work request relating to all remedial soils work.¹⁹²

The memorandum and the Inspection Report corroborate Mr. Wheeler's testimony that he was unaware of the NRC Staff having expressed any concerns on August 4, 5 or 6, and that Applicant first became aware of such concerns on August 9.¹⁹³

Ms. Stamiris is simply wrong when she states that the relocation excavation work continued through August 10. As Mr. Wheeler repeatedly testified, the excavation was completed on August 5.¹⁹⁴ Work Permit 6 does not indicate that work actually continued to the 10th; rather, it establishes that approval to do any work related to the Permit was withdrawn on the 10th.¹⁹⁵ Similarly, the referenced Inspection Report does not suggest that ongoing work was stopped on the 9th; rather, it establishes that a Stop Work Order relating to all remedial soils work was requested by the NRC Staff and issued by Applicant on the 9th.¹⁹⁶

192 Staff Exhibit No. 26, Attachment 17; id. at p. 7.

193 Wheeler, Tr. 22397.

194 Wheeler, Tr. 22397-22398.

195 Staff Exhibit No. 26, Attachment 7 at p. 2.

196 Staff Exhibit No. 26, Attachment 17 at p. 7.

Paragraph 117. The Horn minutes are incorrectly identified as dated June 6, 1982. The correct date is June 4.¹⁹⁷

Mr. J. Cook did not become aware of the Horn minutes or the Fisher notes until just prior to the August 11 enforcement conference.¹⁹⁸ Similarly, Mr. Mooney did not become aware of the contents of the Horn minutes or the Fisher notes until just prior to the enforcement conference.¹⁹⁹

Complete information on the matter, including the Horn minutes and the Fisher notes, was provided to the NRC during the OI investigation and during the evidentiary hearings before this Licensing Board. The inference that Applicant was hiding something is unfounded.

Paragraph 118. The Inspection Report appended to Staff Exhibit No. 26, Attachment 17 recites that Applicant based its position on "prior understandings of the NRC requirements pertaining to the ASLB Order," in addition to prior approvals granted by the NRC Staff.²⁰⁰

As this proposed finding on behalf of Ms. Stamiris makes clear, Applicant, at the August 11 meeting, offered the May 25 letter as justification for the deep Q excavation.²⁰¹

197 Staff Exhibit No. 27, Attachment 6.

198 Staff Exhibit No. 27, Attachment 10 at p. 2.

199 See Staff Exhibit No. 27, Attachment 11 at p. 2.

200 Staff Exhibit No. 26, Attachment 17 at p. 6.

201 Hood, Tr. 22259-22260, 22262-22263.

In addition, Dr. Landsman agreed that Applicant had mentioned that it thought it had Dr. Landsman's blessing "based on small work done in the past which Ross said he did not want to be bothered with."²⁰² This recollection by Dr. Landsman, coupled with the Inspection Report reference to "prior understandings", noted supra,²⁰³ suggests that Applicant did raise the substance of the Wheeler/Landsman agreement during the course of the August 11 meeting. Thus, Ms. Stamiris' inference that Applicant developed these theories after-the-fact, in an effort to justify the deep Q excavation, is unfounded. Furthermore, the inference is contradicted by the sworn testimony of Applicant's witnesses.²⁰⁴

Paragraph 119. Mr. Donnell did not agree with either Dr. Landsman's or Mr. R. Cook's recollection of the alleged conversation, and suggested that both gentlemen had confused the deep Q excavation incident with a drilling incident involving the same duct bank.²⁰⁵ Furthermore, he has flatly denied that he was terminated because he brought the deep Q excavation to Applicant's attention.²⁰⁶

202 Landsman, Tr. 22257.

203 See note 181, supra.

204 See, e.g., Wheeler, Tr. 22067-22068, 21974-21975; Mooney, Tr. 22360-22362; Staff Exhibit No. 26, Attachment 10 at pp. 1-2; Staff Exhibit No. 27, Attachment 12.

205 Donnell, deposition testimony at pp. 33-36, 83-85, following Tr. 22537.

206 Staff Exhibit No. 31 at pp. 90-91; Donnell, Tr. 22605.

Paragraph 120. Ms. Stamiris -- with much qualification -- asserts that Mr. Donnell "appeared to" and "essentially" corroborated Dr. Landsman's and Mr. R. Cook's recollection of the alleged conversation. These assertions are made without benefit of citation and constitute an unwarranted inference from the facts of record. Applicant submits that the record is clear: Mr. Donnell did not corroborate the recollections of either Dr. Landsman or Mr. R. Cook.²⁰⁷

Paragraph 121. Applicant disagrees with the Staff opinions expressed in the first paragraph to this proposed finding.²⁰⁸

Mr. Wheeler has testified that Stamiris Exhibit Nos. 123, which was prepared shortly before the August 11 enforcement conference, represents Mr. Sibbald's uncertain recollections at the time the document was prepared.²⁰⁹

Applicant agrees with the last paragraph to this proposed finding. In addition, Applicant submits that it did notify the NRC Staff about its plans for utility protection.²¹⁰

²⁰⁷ Donnell, deposition testimony at pp. 27-28, 33-36, 37-39, 83-84; Donnell, Tr. 22613-22614.

²⁰⁸ See generally Applicant's Proposed Second Supplemental Findings of Fact and Conclusions of Law, paragraphs 590-657, and citations therein.

²⁰⁹ Wheeler, Tr. 21990.

²¹⁰ See Staff Exhibit No. 26, Attachments 8, 10, 14; Applicant's Proposed Second Supplemental Findings of Fact and Conclusions of Law, paragraphs 606-607, and citations therein.

Paragraph 122. Applicant disagrees with the conclusion set forth in this proposed finding, and submits that the Company did not -- deliberately or otherwise -- violate the Board's April 30 Order.²¹¹ Applicant further responds to the subparagraphs of this proposed finding as follows:

(a) As discussed in its Proposed Second Supplemental Findings of Fact and Conclusions of Law, the May 25 letter and the June 11 Wheeler/Landsman agreement provided a reasonably valid basis for Applicant's belief that the deep Q excavation had been approved.²¹²

(b) See response to Stamiris proposed finding 122, subparagraph (a), supra.

(c) Dr. Landsman's speculation is not dispositive of Applicant's attitude as of August 2, 1982. Stamiris Exhibit No. 129 indicates only that Mr. Schaub did not feel it was necessary to contact the Staff in this one instance, because the Staff had already given approval to drill the service water wells, and utility probing was part of the drilling process.²¹³

211 Applicant's Proposed Second Supplemental Findings of Fact and Conclusions of Law, paragraphs 643-657, 667-668, and citations therein.

212 Applicant's Proposed Second Supplemental Findings of Fact and Conclusions of Law, paragraphs 617-639, and citations therein.

213 Stamiris Exhibit No. 129.

(d) Ms. Stamiris' citation to Stamiris Exhibit No. 113 is incorrect; the cite should probably be to Stamiris Exhibit No. 133. Furthermore, Applicant cannot find a reference to a July 20 approval of the deep Q excavation within Stamiris Exhibit No. 133.

The balance of this subparagraph is specious. Applicant had explained the substance of the deep Q excavation to the Staff on May 20, prior to the May 25 letter.²¹⁴ A July 20 approval of the May 20 proposal would have been a mere formality or a result of very minor design modifications.²¹⁵

(e) Once again, Ms. Stamiris has not provided any record support for this unfounded assertion.²¹⁶

(f) The justifications offered by Applicant are in no way contradictory. Rather, they are independent justifications, the cumulative effect of which provide a reasonably valid basis for Applicant's belief that the deep Q excavation was approved. Furthermore, Applicant submits that these justifications were in substance raised with the NRC Staff during the August 11 enforcement conference.²¹⁷

²¹⁴ Staff Exhibit No. 27, Attachment 12 at pp. 7-8; Kane, Tr. 21564.

²¹⁵ Compare Kane, Tr. 21564 and Staff Exhibit No. 27, Attachment 12 at pp. 7-9 with Stamiris Exhibit No. 133.

²¹⁶ See Applicant's response to Stamiris proposed finding 117, supra.

²¹⁷ See Applicant's response to Stamiris proposed finding 118, supra.

(g) Both the facts stated and the inferences drawn therefrom in this proposed finding are in error.²¹⁸

(h) Ms. Stamiris' reference to Tr. 22527 as support for Mr. Schaub's responsibilities relating to the placement of the asterisks is incorrect; the reference should probably be to Schaub, Tr. 22530. Similarly, the reference to Staff Exhibit No. 32 at p. 2 should probably be changed to Staff Exhibit No. 32 at pp. 15-16 (as originally numbered).

Ms. Stamiris' reference to the June 20, 1982 schedule is incorrect. The reference should be to the June 30, 1982 schedule.²¹⁹ Moreover, neither Staff Exhibit No. 27, Attachment 20, nor Schaub, Tr. 22527-22529, support the assertions made in the first half of the third paragraph to Stamiris proposed finding 122(h). With respect to the second half of the third paragraph to Stamiris proposed finding 122(h), the transcript reference should probably be changed to Schaub, Tr. 22529-22530.

More complete citations to support the fourth paragraph of Stamiris proposed finding 122(h) would be Schaub, Tr. 22530-22531 and Staff Exhibit No. 32 at pp. 15-16 (as originally numbered). In any event, the record is clear that neither

²¹⁸ See Applicant's response to Stamiris proposed findings 114, 115 and 116 [second such numbered paragraph, p. 96], supra.

²¹⁹ See Staff Exhibit No. 27, Attachment 20.

the Applicant nor the Staff used the schedules in question for tracking NRC approvals for work items.²²⁰

With respect to the last paragraph to Stamiris proposed finding 122(h), it appears from the transcript that Mr. Schaub was confused by the question posed. He never denied being one of the persons responsible for determining whether NRC approvals had been granted. He did deny, however, responsibility for actually approving work.²²¹

Paragraph 123. Applicant disagrees with the conclusion expressed in this proposed finding.²²²

Paragraph 124. Applicant disagrees with the conclusions expressed in this multi-paragraph proposed finding. Applicant has previously set forth in detail its justifications for believing that the May 25, 1982 letter from Mr. Eisenhut to Mr. Cook confirmed that the installation and activation of the freezwall -- of which the utility protection proposals were a part -- had been approved prior to April 30, 1982.²²³

Paragraph 125. Ms. Stamiris is mistaken when she asserts that Applicant has suggested that the late July, 1982

220 Landsman and Hood, Tr. 22265; see Staff Exhibit No. 27, Attachments 23, 27 and 30.

221 Schaub, Tr. 22521-22523.

222 See Applicant's Proposed Second Supplemental Findings of Fact and Conclusions of Law, paragraphs 643-657, and citations therein.

223 See Applicant's Proposed Second Supplemental Findings of Fact and Conclusions of Law, paragraphs 617-622, and citations therein.

design audit meeting provided "prior" NRC approval of the deep Q excavation. Applicant's position is that the design audit fostered the misunderstanding between the Company and the Staff relating to the approval status of the excavation. This position is fully articulated in Applicant's Second Supplemental Proposed Findings of Fact and Conclusions of Law.²²⁴

Paragraph 126. Ms. Stamiris' assertion that Applicant's "explanation that such an agreement existed between Dr. Landsman and Mr. Wheeler" is "not credible" flies in the face of the facts of record. Mr. Wheeler gave a full and complete account of the agreement, and produced a handwritten note made contemporaneously with the discussion. Conversely, Mr. Landsman had trouble recalling whether such an agreement had been reached. He eventually conceded that he had told Mr. Wheeler that he did not wish to review in advance excavation permits except for major excavations such as the service water underpinning. However, Dr. Landsman did not share his understanding with Mr. Wheeler that the agreement applied only to work previously approved by NRR.²²⁵ Given the testimony of record, Applicant submits that Mr. Wheeler's testimony is, in fact, credible.

224 See Applicant's Proposed Second Supplemental Findings of Fact and Conclusions of Law, paragraphs 623-624, and citations therein.

225 See Applicant's Proposed Second Supplemental Findings of Fact and Conclusions of Law, paragraphs 626-632, and citations therein.

Paragraph 127. Ms. Stamiris' assertions are unwarranted. By its very terms, the Wheeler/Landsman agreement would have exempted the deep Q excavation from "prior" NRC approval. Dr. Landsman indicated that he no longer wished to review excavation permits for minor excavations before the work started. Rather, Dr. Landsman desired to review all completed permits for minor excavations after-the-fact, during his regular site visits.²²⁶ In addition, Mr. Schaub did not "approve" the deep Q excavation. The record is clear that Stamiris Exhibit No. 123 is an indication that Mr. Schaub confirmed NRC approval for the work.²²⁷

Shortly after his June 11 meeting with Dr. Landsman, Mr. Wheeler advised his staff -- including Messrs. Murray and Sibbald -- of the agreement.²²⁸ Mr. Sibbald signed the work permit and Mr. Murray signed the excavation permit after being informed of the Wheeler/Landsman agreement.²²⁹

²²⁶ Landsman, Tr. 21934; Staff Exhibit No. 26, Attachment 10 at pp. 1-2.

²²⁷ Stamiris Exhibit No. 123; Wheeler, Tr. 21986-21988; Schaub, Tr. 22521-22523. In any event, Stamiris Exhibit No. 123 is not dispositive of the Schaub confirmation, for it represents the uncertain recollections of Mr. Sibbald just prior to the August 11 enforcement conference. Wheeler, Tr. 21990.

²²⁸ Wheeler, Tr. 22484; Staff Exhibit No. 26, Attachment 10.

²²⁹ See Applicant's Proposed Second Supplemental Findings of Fact and Conclusions of Law, paragraphs 634-635.

Ms. Stamiris' assertions with respect to the fire line excavation are also unwarranted. Again, Mr. Wheeler advised both Mr. Murray and Mr. Sibbald of the June 11 agreement shortly after the agreement was reached.²³⁰ Mr. Murray, who signed the work permit, recalls contacting Mr. Schaub and deciding that the work was "minor" under the terms of the agreement.²³¹

Once again, Ms. Stamiris confuses "approval and release" of the fire line excavation with "confirmation of NRC approval" for the excavation.²³² Thus, her attempt to discredit Mr. Schaub's testimony that Mr. Wheeler "released" the excavation based on the Wheeler/Landsman agreement is specious.

Paragraph 128. This proposed finding is nothing more than an unrestrained attack on the credibility of Mr. Schaub based on mischaracterizations of the record. Mr. Schaub did not provide a written, signed statement to the OI investigators because he had been interviewed at length, had totally cooperated with the investigators and had answered all the questions fully, openly and honestly. In addition, Mr. Schaub was a busy man who felt a written statement was redundant given the

²³⁰ Wheeler, Tr. 22484; Staff Exhibit No. 26, Attachment 10.

²³¹ Staff Exhibit No. 26, Attachment 12 at p. 2. That Mr. Schaub does not recall this discussion does not harm the credibility of either witness.

²³² See note 227, supra.

exhaustive interview.²³³ It was necessary to clarify portions of Staff Exhibit No. 26, Attachment 15, and Staff Exhibit No. 27, Attachments 15 and 27, because the exhibits consist of transcripts of Investigator Weil's handwritten notes, which apparently do not reflect the verbatim statements of Mr. Schaub.²³⁴ Finally, Stamiris Exhibit No. 129 (inaccurately cited by Ms. Stamiris as Exhibit No. 192) indicates only that Mr. Schaub did not feel it necessary to contact the staff in this one instance because staff had previously approved the drilling of the service water wells, and utility probing was part of the drilling process.²³⁵

Without benefit of record citation, Ms. Stamiris asserts that Applicant failed to voluntarily produce Mr. Schaub as a witness, and infers devious motives. This is just one more example of Intervenor's penchant for fabricating issues which cannot be supported by the record. The record demonstrates no reluctance on the part of Applicant to make Mr. Schaub available: Counsel for Applicant immediately agreed to produce Mr. Schaub when the parties expressed an interest in

233 Schaub, Tr. 22512, 22515; Applicant's responses to Stamiris Interrogatories of October 11, 1983 (dated October 27, 1983), Response 23.

234 Weil, Tr. 22390-22392; see Schaub, Tr. 22496-22506, 22513-22516, 22517-22522 [pointing out errors].

235 See Stamiris Exhibit No. 129.

his testimony.²³⁶ It is Applicant's perfect right to present its affirmative case as it sees fit; Intervenor's attempt to infer dark motives from Applicant's chosen presentation is an act of desperation.

Paragraph 129. Applicant disagrees with the conclusions expressed in this proposed finding. Applicant's justifications for characterizing the deep Q excavation as minor are set forth at paragraphs 638-639 of Applicant's Proposed Second Supplemental Findings of Fact and Conclusions of Law. Similarly, Applicant's justifications for characterizing the fire line excavation as minor are set forth at paragraphs 662-663 of the Proposed Second Supplemental Findings.

Paragraph 130. For the reasons fully discussed above, Applicant disagrees with the conclusions set forth in this proposed finding.

Paragraph 131. For the reasons fully discussed above, Applicant disagrees with the conclusions set forth in this proposed finding.

Paragraph 132. For the reasons fully discussed above, Applicant submits that its defense of its position is justified, and that such defense does not reflect poorly on Applicant's current management.

236 See Tr. 21946-21948, 22060.

Paragraph 133. For the reasons fully discussed above, Applicant disagrees with the conclusion set forth in this proposed finding.

Paragraph 134. No response.

Paragraph 135. Intervenor's conclusions are unsupported by the evidence of record. She offers no support for any of the statements made in this finding.

Paragraph 136. Intervenor casts Mr. Gardner's testimony in more negative terms than he used in his testimony. For example, Mr. Gardner testified that questions were not "readily" addressed, not that they were not addressed at all.²³⁷

Paragraph 137. Intervenor misstates Mr. R. Cook's testimony. He did not state that sessions were changed because of schedule pressures or that changes in scheduling caused problems with training.²³⁸ In addition, Mr. R. Cook and the other Staff inspectors credited Consumers Power with taking actions to resolve the problem of the pace of the training.²³⁹

Paragraph 138. This matter is addressed in the reply to paragraphs 54-55 supra.

237 Gardner, Tr. 14482. See generally reply to paragraph 48 supra.

238 R. Cook, Tr. 16632-16634. See also reply to paragraph 52 supra.

239 R. Cook, Landsman, Gardner and Shafer, March 25, 1983 prepared testimony with respect to quality assurance at pp. 2-3, following Tr. 14373; Gardner, Tr. 16257; R. Cook, Tr. 16797.

Paragraph 139. While Dr. Landsman testified as to his opinion on this matter, the weight of the evidence does not support a finding that cost and scheduling pressures have adversely affected Consumers Power's commitment to quality.²⁴⁰

Paragraph 140. This issue is discussed generally in paragraphs 521-529 of Consumers Power's proposed findings.

Paragraph 141. Mr. R. Cook did not testify that work presently being done is "shoddy". His testimony was that he still believes that work in the past had been done in such a manner.²⁴¹ In addition, on the transcript pages cited, Mr. R. Cook does not attribute the quality of workmanship to cost concerns.²⁴²

Paragraph 142. No response.

Paragraph 143. Intervenor's extrapolation of an NRC Staff assessment primarily from statements of Dr. Landsman's opinion is improper. Mr. Keppler's testimony concerning the cause of problems on the Midland project was more than his own personal assessment. His testimony clearly reflects that he

²⁴⁰ See Consumers Power Company's Proposed Second Supplemental Findings at paragraphs 521-529.

²⁴¹ See generally Consumers Power Company's Proposed Second Supplemental Findings at paragraph 528, n. 1469. Applicant notes that the Quality Verification Program will address concerns about the quality of past construction.

²⁴² R. Cook, Tr. 14390-14405, 14440-14450.

was referring to an overall assessment or consensus of the Region III Staff.²⁴³

Paragraph 144. Based on all the evidence, Intervenor has not prevailed on her second contention.

Paragraph 145. No response.

Paragraph 146. Consumers Power acknowledges that certain Staff members criticized particular individuals. There was no Staff position that any individual on the project should be replaced.²⁴⁴

Paragraphs 147-148. Mr. Wells' qualifications are addressed in Consumers Power's proposed findings at paragraphs 453-454 and n. 1250. The first citation attributed to Dr. Landsman in paragraph 147 and the citation to Shafer, Tr. at 16255 are both incorrect.

Paragraph 149. Dr. Landsman specifically testified that he regards Mr. Meisenheimer as technically qualified. Moreover, Dr. Landsman did not testify that he "had a problem with the fact that Mr. Meisenheimer was not a soils engineer." Dr. Landsman simply stated that he would not label Mr. Meisenheimer a soils engineer.²⁴⁵

243 See Keppler, Tr. 15380.

244 See Consumers Power Company's Proposed Second Supplemental Findings at paragraphs 376 and 515-516.

245 Landsman, Tr. 16471-16473. Mr. Meisenheimer's qualifications are addressed in Consumers Power's proposed findings at paragraphs 374-376.

Paragraph 150. There is no evidence to indicate that Mr. Meisenheimer misrepresented his qualifications in either his oral testimony or in his resume.

Paragraph 151. Mr. Meisenheimer forthrightly testified that, while all construction is basically similar, the documentation required in nuclear construction is more rigorous. He demonstrated a clear understanding of the rigor and discipline required by nuclear QC in emphasizing the controlled documentation required for it.²⁴⁶

Mr. Meisenheimer's education and experience appears more than adequate to qualify him as a geotechnical engineer.²⁴⁷

Paragraph 152. The fact that Mr. Meisenheimer concludes that there was not a QA or QC failure reflected by certain incidents does not by itself reflect poorly on Mr. Meisenheimer's understanding of QA/QC. To the contrary, it may indeed reflect favorably upon his understanding. Intervenor provides no evidence that Mr. Meisenheimer was incorrect in any of these assessments.

With regard to the particular incident addressed in this finding, Intervenor again misstates the witness' testimony. Mr. Meisenheimer did not testify that the incident was

246 See Meisenheimer, Tr. 19672-19674; 19683.

247 Meisenheimer, Tr. 19597-19633.

not a QA/QC concern or that there were no QC implications. His reasonable and uncontradicted testimony was that, at the time this well was drilled, QC did not have responsibility for verifying the correctness of the location of the drilling, but only to verify that the rig was at the stake approved by field engineering.²⁴⁸ QC properly verified the rig location; field engineering was to blame for the incorrect location of the stake.²⁴⁹

Paragraph 153. The qualifications of MPQAD supervisory personnel are discussed in paragraphs 374-376 of Consumers Power's proposed findings.

Paragraph 154. Staff concerns regarding MPQAD personnel qualifications would be raised by Mr. Keppler. He has never received a Staff recommendation that the NRC seek the removal of any MPQAD personnel.²⁵⁰

Paragraphs 155-156. Once again, Intervenor attempts to rely exclusively upon the personal opinion of Dr. Landsman.

Paragraph 157. No response.

Paragraph 158. Dr. Landsman did not testify that there have been "constant and continuing misunderstandings" between Mr. Mooney and the Staff. In fact, Dr. Landsman

248 Meisenheimer, Tr. 20332-20333.

249 Meisenheimer and Mooney, Tr. 20332.

250 Keppler, Tr. 15587-15588.

pointed out that communications between Mr. Mooney and the Staff have improved greatly.²⁵¹

Paragraph 159. First of all, it should be noted that Mr. Boos did not make misstatements on March 10 and March 12, 1982.²⁵² Secondly, the fact that Mr. Mooney disagreed on technical matters with the Staff or offered explanations as to why certain actions were taken does not support a conclusion that his testimony is not credible. Rather, such information contributes to full development of the record.

Paragraph 160. No response.

Paragraph 161. Intervenor inaccurately described the testimony of Mr. Mooney. Concerning the trend graph in the soils area, Mr. Mooney stated that Stamiris Exhibit No. 91 indicates that construction did not think there was an adverse trend because the facts surrounding each IPIN recorded on the graph were different. Mr. Mooney personally was of the opinion that he needed more information to determine the validity of construction's position.²⁵³

With regard to the S&W report, Mr. Mooney testified that he has not been able to discover any generic causes for

251 Landsman, Tr. 20881-20882.

252 See Consumers Power Company's Proposed Second Supplemental Findings of Fact at paragraph 588.

253 Mooney, Tr. 17130-17133.

the soils problems, but that he has been able to identify specific causes for specific problems.²⁵⁴

Finally, Mr. Mooney did not view the NCRs as being no problem, but he did state that the number of NCRs was within reason for a project the size of Midland.²⁵⁵

Nothing in this testimony by Mr. Mooney indicates that he has an attitude toward QA and quality construction work which is disturbing.

Paragraph 162. Mr. Mooney did not testify that the review of soils by S&W was "imposed" by the NRC. He thought the third-party review was appropriate even though he had not considered it prior to Mr. Keppler's suggestion.²⁵⁶

Paragraph 163. No response.

Paragraph 164. Mr. Mooney's testimony was that Consumers Power was very close to the point of overemphasizing quality on the Midland project.²⁵⁷ His explanation accompanying this statement demonstrates a good understanding of quality construction practice and its relation to QA principles.

Paragraph 165. No response.

254 Mooney, Tr. 17362-17363.

255 Mooney, Tr. 17333.

256 Mooney, Tr. 17391-17393.

257 Mooney, Tr. 17325.

Paragraph 166. This reporting relationship provides Mr. J. Cook with more access, on a full-time basis, to senior management.²⁵⁸

Paragraph 167. More accurately, Mr. Howell stated that he would be attempting to improve the relationship between Consumers Power and the NRC.²⁵⁹

Paragraph 168. Intervenor completely misconstrues Mr. Howell's testimony concerning the decision to go forward with the DGB. His testimony was that he was not specifically involved in making that decision.²⁶⁰

Mr. Howell explained more fully what he meant by his statement concerning the Intervenors. Putting aside the soils problems which arose in 1978, Mr. Howell explained that, if there had not been the intervention and delays in the early 1970s, then he believes that the plant could have been operating in the middle 1970s.²⁶¹ Mr. Howell also stated that he was not aware of construction ever being halted on the project due to intervention.²⁶²

The conclusions which Intervenor proposes in this finding are unsupported.

258 J. Cook, Tr. 20925.

259 Howell, Tr. 20943, 20965-20975.

260 Howell, Tr. 2812, 20970.

261 Howell, Tr. 20994-20995.

262 Howell, Tr. 21103.

Paragraph 169. Mr. Howell further testified that he intends to review information from the past which has a bearing on the future so that he is assured that the controls and management which are in effect will prevent the kind of problems represented by the DGB Inspection findings.²⁶³

Paragraph 170. Intervenor again totally misstates Mr. Howell's testimony. Mr. Howell did not recall if Consumers Power informed the NRC that the review panel generally agreed with the Forecast 6. He further stated that internal reviews by lower level employees and study teams is not information which must necessarily be supplied to the NRC. However, he clearly was of the opinion that management's position on such matters, as well as major concerns or uncertainties, should be expressed to the Staff.²⁶⁴

Paragraph 171. Mr. Howell testified that Mr. Selby would remain as involved in the project as before in terms of his concern and understanding of the project.²⁶⁵

Paragraph 172. Mr. Harrison and Mr. R. Cook did not believe that the reorganization and the return of Mr. Howell would have an adverse impact on the Midland Project.²⁶⁶

263 Howell, Tr. 21019-21020.

264 Howell, Tr. 21044-21048. See also reply to paragraph 76 supra.

265 Howell, Tr. 21137.

266 Harrison and R. Cook, Tr. 21162-21163.

Paragraphs 173-175. Intervenor's conclusions in these proposed findings are unsupported and unsupportable.²⁶⁷

CONCLUSIONS OF LAW

Applicant continues to support the Conclusions of Law and the Order proposed in Consumers Power's January 27, 1984 filing.

²⁶⁷ See generally Consumers Power Company's Proposed Second Supplemental Findings at paragraphs 534-535.

APPENDIX

RESPONSES TO INTERVENOR'S CROSS-REFERENCE
TO PREVIOUSLY FILED PROPOSED FINDINGS

On May 11, 1984 Intervenor filed a document entitled "Cross-Reference to Intervenor Barbara Stamiris' Previously Filed Proposed Findings of Fact and Conclusions of Law." Applicant generally disagrees with the amendment to Intervenor's Proposed Findings. In addition, Applicant has the following specific comments:

Paragraph 72. Intervenor's assertion that the 1980 reorganization did not lead to greater management commitment to quality, and the speculation that it may have contributed to the QA breakdown the NRC discovered in late 1982 in its DGB inspection, are unsupported by the record. Her reference to an explanation "infra" is inadequate to identify where that explanation can be found.

Paragraph 153. Intervenor attempts to withdraw the concession she made in her December 10, 1981 proposed findings that the decisions referred to may have been made for reasons other than time and financial pressures. There has been no new evidence since 1981 supporting this change of position.

Paragraph 187. Intervenor attempts to withdraw the concession she made in her December 10, 1981 proposed findings that there is a lack of proof that the substitution of concrete

for zone II fill was due to time and financial pressures. (But see paragraph 186). There has been no new evidence since 1981 supporting this change of position.

Page 44. Intervenor seeks to delete a sentence which we cannot find on page 44 of Intervenor's Supplemental Findings dated March 29, 1982.

DOCKETED
USNRC

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

84 JUN 25 P12:17

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

DOCKETING & SERVICE
BRANCH

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

CERTIFICATE OF SERVICE

I, Rebecca J. Lauer, one of the attorneys for Consumers Power Company, hereby certify that copies of the following documents were served upon all persons shown on the attached service list by deposit in the United States mail, first-class, postage prepaid, this 22nd day of June, 1984:

1. Applicant's Reply to NRC Staff Further Supplemental Findings of Fact and Conclusions of Law Concerning Quality Assurance,
2. Applicant's Reply to Intervenor Barbara Stamiris' Second Supplemental Proposed Findings of Fact and Conclusions of Law on Quality Assurance and Management Attitude Issues, and
3. cover letter to the Administrative Judges, dated June 22, 1984.

Rebecca J. Lauer

Rebecca J. Lauer

ISHAM, LINCOLN & BEALE
Three First National Plaza
Suite 5200
Chicago, Illinois 60602
(312) 558-7500

DATED: June 22, 1984

SERVICE LIST

Frank J. Kelley, Esq.
Attorney General of the
State of Michigan
Carole Steinberg, Esq.
Assistant Attorney General
Environmental Protection
Division
720 Law Building
Lansing, Michigan 48913

Cherry & Flynn
Three First National Plaza
Suite 3700
Chicago, Illinois 60602

Mr. Wendell H. Marshall
4625 South Saginaw Road
Midland, Michigan 48640

Mr. Steve Gadler
2120 Carter Avenue
St. Paul, Minnesota 55108

Ms. Mary Sinclair
5711 Summerset Street
Midland, Michigan 48640

James E. Brunner, Esq.
Consumers Power Company
212 West Michigan Avenue
Jackson, Michigan 49201

Mr. D. F. Judd
Babcock & Wilcox
P.O. Box 1260
Lynchburg, Virginia 24505

Ms. Barbara Stamiris
5795 North River Road
Route #3
Freeland, Michigan 48623

Samuel A. Haubold, Esq.
Kirkland & Ellis
200 East Randolph Drive
Suite 6000
Chicago, Illinois 60601

Mr. Robert Brown, Jr., Esq.
Clark, Klein & Beaumont
1600 First Federal Bldg.
1001 Woodward Avenue
Detroit, Michigan 48226

John DeMeester, Esq.
Dow Chemical Building
Michigan Division
Midland, Michigan 48640

Charles Bechhoefer, Esq.
Atomic Safety & Licensing
Board Panel
U.S. Nuclear Regulatory Comm.
Washington, DC 20555

Dr. Frederick P. Cowan
6152 North Verde Trail
Apt. #B-125
Boca Raton, Florida 33433

Atomic Safety & Licensing
Appeal Board
U.S. Nuclear Regulatory Comm.
Washington, DC 20555

Mr. Scott W. Stucky
Chief, Docketing & Services
U.S. Nuclear Regulatory Comm.
Office of the Secretary
Washington, DC 20555

William D. Paton, Esq.
Counsel for the NRC Staff
U.S. Nuclear Regulatory Comm.
Washington, DC 20555

Atomic Safety & Licensing
Board Panel
U.S. Nuclear Regulatory Comm.
Washington, DC 20555

Mr. Jerry Harbour
Atomic Safety & Licensing
Board Panel
U.S. Nuclear Regulatory Comm.
Washington, DC 20555

Ms. Lynne Bernabei
Mr. Thomas Devine
Mr. Louis Clark
Government Accountability
Project of the Institute
for Policy Studies
1901 "Q" Street, N.W.
Washington, DC 20009

Frederick C. Williams, Esq.
Isham, Lincoln & Beale
1120 Connecticut Ave., N.W.
Suite 840
Washington, DC 20036