



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

J. Kane 12/84
P. 328

Docket Nos. 50-329
and 50-330

FEB 28 1980

MEMORANDUM FOR: William S. Bivins, Acting Chief
Hydrology-Meteorology Branch, DSE

THRU: Terry L. Johnson, Acting Section Leader
Hydrologic Engineering Section, HMB, DSE

FROM: Raymond O. Gonzales, Hydraulic Engineer
Hydrologic Engineering Section, HMB, DSE

SUBJECT: MEETING AND SITE VISIT - MIDLAND PLANT,
MIDLAND, MICHIGAN

The site visit took place on February 27-28, 1980. The purpose was to acquaint NRC consultants with the plant and related soil settlement problems and to provide an opportunity for Consumers Power Company (CPCo) and its consultants to present an update of the soil settlement investigation program. An agenda of the meeting is provided on enclosure 1. Enclosure 2 is a list of attendees.

Although all aspects of the soil settlement problems were discussed, (See enclosure 1) only those related to hydrologic engineering, e.g., dewatering, are discussed in this report. The following items were discussed at the meetings.

The ends of the auxiliary building electrical penetration areas adjacent to the feedwater isolation valve pits are to be supported by caissons. Prior to this underpinning operation, the underlying work areas will have to be dewatered. A temporary dewatering system has already been installed. In addition, several pumping wells have been drilled inside the turbine building. This dewatering system is not in operation at the present time.

Another dewatering system has been installed just north of the Service Water Intake Structure. This system is being used to dewater a valve pit area and the area adjacent to a duct bank which was damaged during the soil boring operation. The valve pit area has been pumped dry and the withdrawal rate is averaging about 2 gallons per minute (gpm) per well. The capacity of each well is about 8 gpm.

The design of the permanent dewatering system is essentially complete and will be submitted to NRC later this month as an amendment to the FSAR. Pumping tests already conducted indicate that the source of groundwater recharge is seepage from the cooling pond through weep holes in the retaining walls adjacent to the Service Water Intake Structure (SWIS) and the Circulating Water Structure (CWS)

Change as of
XA 919

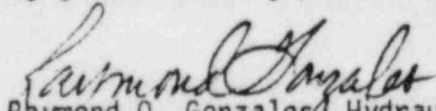
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Additional seepage appears to be coming through the natural and backfill sands in the vicinity of these retaining walls. The current proposal is to install 20 wells just north of the SWIS and the CMS. These will be six inch wells spaced 20 feet apart. Spacing however, will vary somewhat because of underground utilities. In addition, 20 backup wells will also be installed. These will be wired electrically so that one interruption does not affect all of the wells. This system will intercept the source of recharge from the cooling pond. To remove water that is already underneath the plant, it is proposed to install several area wells throughout the site. The majority of these wells will be located in areas bordering the diesel building and the railroad bay where loose fill sands have been identified.

Groundwater levels will be lowered permanently to elevation 595 feet mean sea level datum (msl). Based on the soils investigations conducted both before and after the soil settlement problems surfaced, the applicant's A-E, Bechtel, estimates that liquefaction is not a problem as long as groundwater levels are maintained below elevation 610 feet msl. In case of a total dewatering system failure, the current estimate is that it will take about 90 days for groundwater levels to rise from 595 feet msl to 610 feet msl. The applicant considers that this provides sufficient time to install a backup system so it is not necessary for the dewatering system to be a safety related item.

To monitor the dewatering system for pumping of fines, the applicant proposes to monitor and limit the content of fine material to 20 parts per million and to limit the total removal of fines at each well to a total of one cubic yard. Should this limit be exceeded, the well would be repaired or taken out of operation and plugged. Groundwater levels will be monitored by using piezometers and one inch observation wells to be installed in the gravel pack of each dewatering well.

Chemical analyses of the water being removed by the temporary dewatering system indicate that incrustation of the dewatering system could be a problem. To minimize this, consideration is being given to using plastic pipe for the system.


Raymond O. Gonzalez, Hydraulic Engineer
Hydrologic Engineering Section
Hydrology-Meteorology Branch, DSE

Enclosures:
As Stated

cc: See attached page

cc: Enclosures

D. Muller

W. Kreger

K. Jackson

L. Heller

J. Kane

D. Hood

R. Gallagher, Region III

R. J. Cook - NRC Resident Inspector - Midland

Local PDR

NRC PDR

ACRS (18)

R. Gonzales

1.0 INTRODUCTION	C. Harley
2.0 PRESENT STATUS OF SITE INVESTIGATIONS	I. COOKE
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2.2 Investigative Program	
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D. Utilities	
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4.4 Diesel Oil Tanks	
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8.0 SITE TOUR	All
9.0 CONSULTANTS SUMMARY	Peck/Hendron/ Gould/Davisson
10.0 DISCUSSION	All

ATTENDEES

Consumer Panel (CPG)

G. S. Keeley
T. C. Cooke
T. Thiruvengadam
D. E. Horn

CPG Consultants

R. B. Feck
A. J. Hendron, Jr.
C. H. Gould
M. T. Davisson

Bechtel

H. Burke
S. Afifi
D. Riat
B. Dhar
B. Paris
J. Rotz
J. Wanzeck
K. Wiedner
J. Rutgers
L. Curtis
A. Boos
C. McConnel
W. Ferris

NRC

L. Heller
J. Kane
T. Cappucci
F. Rinaldi
R. Gonales
D. Hood
G. Gallagher
R. Cook

NRC Consultants

US Army Corps of Engineers

N. Gehring
J. Grundstrom
B. Otto
W. Lawhead
P. Hadala
J. Simpson
J. Norton
R. Erickson

US Navy Weapons Center

P. Huang
J. Matra

E-TEC

P. Chen
J. Brammer

J. Kane

J. Kane
Rec'd 6/19/80

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ing Panel, will rule on the petition and the designated Atomic Safety and Licensing Board will issue a decision of hearing or an appropriate

requested by 10 CFR 2.714, a party for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and that interest may be affected by the results of the proceeding. The petition must specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of the order which may be entered in the proceeding on the petitioner's interest. The petition should also identify specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene and has been admitted as a party to amend his petition, but such amended petition must satisfy the procedural requirements described

that not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, the petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a

party permitted to intervene become a party to the proceeding, subject to any conditions in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the proceeding, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Licensing and Service Section, or may be delivered to the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. by the above date.

Amendments are filed during the last 30 days of the notice period, it is noted that the petitioner or representative for the petitioner must so inform the Commission by a

toll free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Steven A. Varga: (petitioner's name and telephone number); date petition was mailed; Indian Point Nuclear Generating Plant, Unit No. 2; and (publication date and page number of this Federal Register notice). A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Joseph D. Block, Esquire, Executive Vice President, Administrative, Consolidated Edison Company of New York, Inc., 4 Irving Place, New York, New York 10003, attorney for the licensee.

Untimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(i)-(v) and 2.714(d).

For further details with respect to this action, see the licensee application for increase in spent fuel storage capacity dated September 7, 1979, and the Final Design Report dated May 6, 1980 which are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C., and at the White Plains Public Library, 100 Martine Avenue, White Plains, New York 10601.

Dated at Bethesda, Maryland this 19th day of May, 1980.

For the Nuclear Regulatory Commission,
Steven A. Varga,
Chief, Operating Reactors Branch No. 1,
Division of Licensing.

(FR Doc. 80-16127 Filed 5-27-80; 5:45 am)
BILLING CODE 7550-01-M

(Docket Nos. 50-329 OM, 50-330 OM)

Consumers Power Co. (Midland Plant, Units 1 and 2); Amended Hearing on Order for Modification of CP

May 20, 1980.

On March 20, 1980 the Commission published a Notice of Hearing, 45 FR 18214, on certain issues relative to an Order Modifying Construction Permits of the Acting Director of Nuclear

Reactor Regulation and the Director of Inspection and Enforcement dated December 6, 1979, which would prohibit Consumers Power Company from performing certain soil-related activities pending approval of amendments to the construction permits Nos. CPPR 81 and CPPR 82 which authorize the construction of two pressurized water reactors in Midland, Michigan. Consumers Power Company requested a hearing on the Order. The Order of December 6, 1979 was not published in the Federal Register. This Atomic Safety and Licensing Board, which has jurisdiction of this matter pursuant to the Notice of Hearing (45 FR at 18214), has determined that there should be a publication of the December 6, 1979 Order, which is attached hereto. In addition to the information published previously, notice is given that by June 27, 1980 any person whose interest may be affected by this proceeding may file a petition for leave to intervene. The petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a petition for leave to intervene is filed, this Atomic Safety and Licensing Board will rule on the petition.

As required by 10 CFR § 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should explain specifically the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Atomic Energy Act, as amended, to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, or other time set by the board, the petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. A petitioner who fails to file such a supplement which satisfies these requirements with respect

to at least one contention will not be permitted to participate as a party.

Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend his petition, but such an amended petition must satisfy the specificity requirements described above. Such amended petitions may be filed no later than 15 days prior to the first pre-hearing conference or other time set by the board.

Untimely filings of petitions for leave to intervene, amended petitions, or supplemental petitions will not be entertained absent a determination by the Atomic Safety and Licensing Board that the petitioner has made a substantial showing of good cause for the granting of a late petition. That determination will be based upon a balancing of the factors specified in 10 CFR § 2.714(a)(i)-(v) and § 2.714(d).

A petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch or may be delivered to the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C., by June 27, 1980. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Michael I. Miller, Esq., Isham, Lincoln and Beale, One First National Plaza, Chicago, Illinois 60690, attorney for the Permittee.

Documents pertaining to this proceeding are available for examination in the Commission's Public Document Room, and in the custody of Mrs. Averil Packard, The Grace Dow Memorial Library, 1710 West St. Andrews Rd., Midland, Michigan. These documents include the Appendices A and B of the Order Modifying Construction Permits, reports and correspondence referred to in the order, and the Answer to Notice of Hearing dated April 16, 1980 by Consumers Power Company.

Any questions or requests for additional information regarding the content of this notice should be addressed to the Chief Hearing Counsel, Office of the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

Bethesda, Md., May 20, 1980.
For the U.S. Nuclear Regulatory Commission,
Ivan W. Smith,
Chairman, Atomic Safety and Licensing Board.

[Docket Nos. 50-329, 50-330]

Order Modifying Construction Permits

In the Matter of Consumers Power Company (Midland Nuclear Power Plant, Units 1 and 2).

I
The Consumers Power Company (the Licensee) is a holder of Construction Permits No. CPPR-81 and No. CPPR-82 which authorize the construction of two pressurized water reactors in Midland, Michigan. The construction permits expire on October 1, 1981 and October 1, 1982, for Unit 2 and Unit 1 respectively.

II
On August 22, 1978, the Licensee informed the NRC Resident Inspector at the Midland site that unusual settlement of the Diesel Generator Building had occurred. The Licensee reported the matter under 10 CFR 50.55(e) of the Commission's regulations by telephone on September 7, 1978. This notification was followed by a series of interim reports dated September 29, 1978, November 7, 1978, December 21, 1978, January 5, 1979, February 23, 1979, April 3, 1979, June 25, 1979, August 10, 1979, September 5, 1979, and November 2, 1979.

Following the September 1978 notification, inspectors from the Region III, Office of Inspection and Enforcement, conducted an investigation over the period of October 1978 through January 1979. This investigation revealed a breakdown in quality assurance related to soil construction activities under and around safety-related structures and systems in that (1) certain design and construction specifications related to foundation-type material properties and compaction requirements were not followed; (2) there was a lack of clear direction and support between the contractor's engineering office and construction site as well as within the contractor's engineering office; (3) there was a lack of control and supervision of plant fill placement activities which contributed to inadequate compaction of foundation material; (4) corrective action regarding nonconformances related to plant fill was insufficient or inadequate as evidenced by repeated deviations from specification requirements; and (5) the FSAR contains inconsistent, incorrect, and unsupported statements with respect to foundation type, soil properties and settlement values. The details of these findings are described in the inspection reports 50-329/78-12, 50-330/78-12 (November 14, 1978) and 50-329/78-20, 50-330/78-20 (March 19, 1979) which were sent to the Licensee on November 17, 1978 and March 22, 1979 respectively.

The items of noncompliance resulting from the NRC investigation are described in Appendix A to this Order. In addition, as described in Appendix B to this Order, a material false statement was made in the FSAR in that the FSAR falsely stated that "All fill and backfill were placed according to Table 2.5-9." This statement is material in that this portion of the FSAR would have

been found unacceptable without further Staff analysis and questions if the Staff had known that Category I structures had been placed in fact on random fill rather than controlled compacted cohesive fill as stated in the FSAR.

As a result of questions raised during the NRC investigation of the Diesel Generator Building settlement, additional information was necessary to evaluate the impact on plant safety caused by soil conditions under and around safety-related structures and systems in and on plant fill, and the Licensee's related quality assurance program. On March 21, 1979, the Director, Office of Nuclear Reactor Regulation, formally requested under 10 CFR 50.54(f) of the Commission's regulations information concerning these matters to determine whether action should be taken to modify, suspend or revoke the construction permit. Additional information was requested by the Staff in letters dated September 11, 1979 and November 19, 1979. The Licensee responded to these letters, under oath, in letters dated April 24, 1979, May 31, 1979, July 9, 1979, August 10, 1979, September 13, 1979, and November 13, 1979. The Licensee has not yet responded to the November 19, 1979 requests.

Several of the Staff's requests were directed to the determination and justification of acceptance criteria to be applied to various remedial measures taken and proposed by the licensee. Such criteria, coupled with the details of the remedial action, are necessary for the Staff to evaluate the technical adequacy and proper implementation of the proposed action. The information provided by the licensee fails to provide such criteria. Therefore, based on a review of the information provided by the Licensee in response to the Staff questions, the Staff cannot conclude at this time that the safety issues associated with remedial action taken or planned to be taken by the Licensee to correct the soil deficiencies will be resolved. Without the resolution of these issues the Staff does not have reasonable assurance that the affected safety-related portions of the Midland facility will be constructed and operated without undue risk to the health and safety of the public.

III

Under the Atomic Energy Act of 1954, as amended, and the Commission's regulations, activities authorized by construction permits or portions thereof may be suspended should the Commission find information which would warrant the Commission to refuse to grant a construction permit on an original application. We have concluded that the quality assurance deficiencies involving the settlement of the Diesel Generator Building and soil activities at the Midland site, the false statement in the FSAR, and the unresolved safety issue concerning the adequacy of the remedial action to correct the deficiencies in the soil construction under and around safety-related structures and systems are adequate bases to refuse to grant a construction permit and that, therefore, suspension of certain activities under

Construction Permits No. CPPR-81 and No. CPPR-82 is warranted until the related safety issues are resolved.

IV

Accordingly, pursuant to the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Parts 2 and 50, it is hereby ordered that, subject to Part V of this Order, Construction Permits No. CPPR-81 and No. CPPR-82 be modified as follows:

(1) Pending the submission of an amendment to the application seeking approval of the remedial actions associated with the soil activities for safety-related structures and systems founded in and on plant fill material and the issuance of an amendment to Construction Permits No. CPPR-81 and No. CPPR-82 authorizing the remedial action, the following activities are prohibited:

(a) Any placing, compacting, or excavating soil materials under or around safety related structures and systems.

(b) Physical implementation of remedial action for correction of soil-related problems under and around these structures and systems, including but not limited to:

(i) Dewatering systems,

(ii) Underpinning of service water building,

(iii) Removal and replacement of fill beneath the feedwater isolation valve pit area,

(iv) Placing caissons at the ends of the auxiliary building electrical penetration areas,

(v) Compaction and loading activities.

(c) Construction work in soil materials under or around safety-related structures and systems such as field installation of conduits and piping.

(2) Paragraph (1) above shall not apply to any exploring, sampling, or testing of soil samples associated with determining actual soil properties on site which has the approval of the Director of Region III, Office of Inspection and Enforcement.

V

The licensee or any person whose interest is affected by this Order may within 20 days of the date of this Order request a hearing with respect to all or any part of this Order. In the event a hearing is requested, the issues to be considered will be:

(1) Whether the facts set forth in Part II of this Order are correct; and

(2) Whether this Order should be sustained.

This order will become effective on the expiration of the period which a hearing may be requested, or in the event a hearing is requested, on the date specified in an Order made following the hearing.

Dated at Bethesda, Maryland, this 6th day of December, 1979.

For the Nuclear Regulatory Commission,

Edson G. Case,

Acting Director, Office of Nuclear Reactor Regulations.

Victor Stello, Jr.,

Director, Office of Inspection and Enforcement.

[FR Doc. 80-18128 Filed 5-27-80; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-409]

Dairyland Power Coop.; Issuance of Amendment to Provisional Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 20 to Provisional Operating License No. DPR-45, issued to Dairyland Power Cooperative (the licensee), which revised the Technical Specifications for operation of the LaCrosse Boiling Water reactor (LACBWR) located in Vernon County, Wisconsin. The amendment is effective as of its date of issuance.

The amendment allows a second extension to the current Cycle 6 operation by changing the fuel depletion limit on the lead fuel from 15,600 WD/MTU for all fuel assemblies to 15,600 MWD/MTU for any non-peripheral fuel assembly.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act) and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the application for amendment dated April 1, 1980, (2) Amendment No. 20 to License No. DPR-45 and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C., and at the LaCrosse Public Library, 800 Main Street, LaCrosse, Wisconsin 54601. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission,

Washington, D.C. 20555; Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 13th day of May, 1980.

For the Nuclear Regulatory Commission,

Dennis M. Crutchfield,

Chief, Operating Reactors Branch #3, Division of Licensing.

[FR Doc. 80-18121 Filed 5-27-80; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 40-2061]

Source Material License No. STA-583, Kerr McGee Chemical Corp.; Establishment of Local Public Document Room

Notice is hereby given that the Nuclear Regulatory Commission (NRC) has designated the West Chicago Public Library as the official NRC Local Public Document Room for materials relating to the proposed decommissioning of the Kerr McGee Chemical Corporation (Licensee) Rare Earths Facility in West Chicago, Illinois.

All documents related to the licensee's proposed decommissioning and all subsequent documents will be available for inspection and copying at the West Chicago Public Library, 322 East Washington Street, West Chicago, Illinois 60185. The Library's hours of operation are 10:00 am to 9:00 pm Monday through Thursday, and 10:00 am to 5:00 pm Friday and Saturday. Self-service reproduction facilities are available to the public at the cost of 15¢ per printed page.

For further information interested parties in the Chicago area may contact the LPDR directly through Mrs. Kay Sauer, Reference Librarian, telephone number (312) 231-1552. Parties outside the service area of the LPDR may address their requests for records to the NRC's Public Document Room at 1717 H Street N.W., Washington, D.C. 20555 telephone number (202) 634-3273. The cost of ordering records from the NRC Public Document Room is 8¢ per page, plus tax and postage.

Questions concerning the availability of documents, NRC's licensing procedures, or other questions concerning the Local Public Document Room Program should be addressed to Mrs. Jona L. Souder, Chief, Local Public Document Room Branch, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, telephone number (301) 492-7536.

Dated at Bethesda, Maryland, this 20 day of May, 1980.

TERA

MEMORANDUM

TO: Bob Reid **DATE:** May 19, 1980

FROM: Bernie Maguire *Bam* **COPIES TO:** Tom Novak
213 W

SUBJ: NRC DOCUMENT CONTROL SYSTEM
STATUS REPORT

June, 1980 marks the completion of the second year of TERA's contract to assist the NRC in the installation of its Document Control System. It has been eighteen months since our initial discussions with the Office of Nuclear Reactor Regulation during which TERA described the purpose of the Document Control System for all branches. It has been over twelve months since installation of the initial terminals in the Phillips Building.

The reorganization of NRR presents an appropriate opportunity to review the recent status of the NRC Document Control System and to discuss Document Control System products which may be of assistance in your forthcoming work efforts. These status meetings are being held with each NRR branch to expand the awareness of technical personnel about system capabilities.

I would like to invite you and members of your branch to a meeting in Mr. Denton's conference room (P-440 Phillips Building) at 1:30 p.m. on Wednesday, May 28. Should this time become inconvenient for your branch, please call me at x28600 to arrange a subsequent time.

I look forward to responding to any questions you may have concerning the Document Control System during our meeting.

BAM/lah

DD
PE
Dg
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RI
CB
KB

DV
HS

Forwarded copy to COE (Gehring) on 4/21/80
requesting comments

J. Kane
Rec'd 6/21/80

CPC filing to NOTICE of ASLB Hearing

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

II
MIDLAND

19/84

OLMSTEAD/

/PATON

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

FF

In the Matter of)

CONSUMERS POWER COMPANY)

(Midland Nuclear Power Plant,
Units 1 and 2))

Docket Nos. 50-329
50-330

ANSWER TO NOTICE OF HEARING

On December 6, 1979 the Acting Director of the Office of Nuclear Reactors^f Regulation and the Director of the Office of Inspection and Enforcement issued an Order Modifying Construction Permits No. CPPR-81 and No. CPPR-82 (the "Order"). On December 26, 1979 Consumers Power Company ("Licensee") filed a Request for Hearing pursuant to 10 CFR §2.204 and Part V of the Order. On March 14, 1980 the NRC issued a Notice of Hearing, appointing an Atomic Safety and Licensing Board and specifying the following issues for adjudication:

1. whether the facts set forth in Part II of the Directors' Order of December 6, 1979 are correct;
2. whether that Order should be sustained.

On April 9, 1980 Ivan W. Smith, Esq., Chairman of the Atomic Safety and Licensing Board, granted Licensee's request

Attached - Response by I&E to this Notice of Hearing

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16p.

for a one week extension in time to answer the Notice of Hearing, a request that had been agreed to by William J. Olmstead, Esq., counsel for NRC staff.

Pursuant to 10 CFR §2.705, Licensee answers the Notice of Hearing as follows.

I. Licensee's position with respect to the first issue is as follows:

(a) Licensee, without admitting that the following "facts" (to the extent they are facts and not opinions, conclusions or other non-factual allegations) are "material allegation[s] of fact" under 10 CFR §2.705, responds to the "facts" set forth in Part II of the Directors' Order of December 6, 1979:

(1) Admits the facts set forth in the first paragraph of page 1 and alleges that the Licensee also reported to the NRC and its consultants in other reports, meetings, telephone conversations, letters and other communications regarding soil conditions under and around safety related structures and systems, including responses to requests made by the Staff pursuant to 10 CFR 50.54(f).

(2) In regard to the second paragraph, at pages 1-2, admits that an investigation and inspection was made by NRC Inspectors from Region III and that the NRC promulgated the referenced reports and denies the remaining allegations of

that paragraph. Licensee does not interpret the last sentence in this paragraph, referring to the "details" of the NRC's findings as described in certain inspection reports, as material allegations of facts requiring Licensee to admit or deny them in this proceeding. Without restricting the generality of the foregoing and further answering that paragraph, Licensee denies that there was a "breakdown" in quality assurance, and with respect to subparagraph (5), Licensee alleges that the Staff in the July 18, 1979 meeting requested that Licensee not amend its FSAR but rather keep the Staff informed of the status of the soils work by means of 50.55(e) reports, which Licensee has done.

(3) Licensee's responses to the specific factual allegations set forth in Appendix A and Appendix B of the Directors' Order are set forth in the Appendix to this Answer.

(4) In regard to the paragraph that begins on the bottom of page 2 and continues to page 3, Licensee admits that the Director, Office of Nuclear Reactor Regulation, requested information under 10 CFR 50.54(f) and that Licensee responded to those requests. Licensee alleges that it also reported to the NRC and its consultants in meetings,

telephone conversations, letters, amendments to the construction permit and operating license and other communications regarding soil conditions under and around safety related structures and systems and remedial steps or proposed to be taken by Licensee. Licensee alleges that it has responded in a timely manner to the November 19, 1979 request.

(5) In regard to the concluding paragraph of page 3, Licensee admits the first and second sentence. Licensee denies the third and fourth sentences. Licensee alleges that the final sentence of the paragraph is not applicable since Licensee has provided the Staff information sufficient to resolve these issues. Therefore the Staff does have reasonable assurance that "the affected safety-related portions of the Midland facility will be constructed and operated without undue risk to the health and safety of the public."

(b) Licensee controverts the NRC Staff's characterization of the facts alleged in Appendix A of the Directors' Order as constituting "infractions." Licensee also denies that the facts alleged in Appendix B constitute a "material false statement" or a "violation."

II. Licensee's position with respect to the second issue specified in the Notice of Hearing is that the Order should not be sustained, for the following reasons which constitute affirmative defenses to the Order:

(1) Licensee has provided the staff and its consultants with all the information requested regarding the soil conditions under and around safety related structures and systems, including information relating to "the adequacy of the remedial action to correct the deficiencies in the soil construction under and around safety-related structures and systems."

Be prepared to identify what info has been received since issuance of the SHOW CAUSE ORDER & what is still required

(2) The information Licensee has provided and the remedial actions it has taken and proposes to take including those set forth in Amendment Nos. 72, 74 and 76 to its application for construction permits and operating licenses, and technical discussions with the NRC Staff and its consultants, resolves the "safety issues associated with remedial actions related to soil deficiencies."

April 1, 1980

Dec. 19, 1979

Feb. 28, 1980

Completing review of these amendments is necessary. Likely additional safety concerns may be identified & require resolution

(3) The information Licensee has provided and the remedial actions it has taken and proposes to take, including those set forth in Amendment Nos. 72, 74 and 76 to its application for construction permits and operating licenses, and technical discussions with the NRC Staff and its consultants, provides "reasonable assurance that the affected safety-related portions of the Midland facility will be constructed and operated without undue risk to the public health and safety."

To be decided upon completion of NRC & its consultant's review

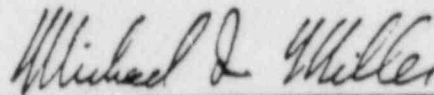
(4) Licensee contends that the alleged "quality assurance deficiencies involving the settlement of the

Diesel Generator Building and soil activities at the Midland site" and the alleged "false statement in the FSAR" form neither a logical nor a legal basis upon which the order's prohibition against the enumerated activities can be sustained.

To be determined
by ASLB

III. Licensee will appear by Counsel and present evidence.

Respectfully submitted,



Michael I. Miller
Attorney for Licensee

DATED: April 16, 1980

ISHAM, LINCOLN & BEALE
One First National Plaza
Suite 4200
Chicago, Illinois 60603
312/558-7500

APPENDIX

Licensee provides the following responses to the facts alleged in Appendix A of the Directors' Order:

Allegation 1 - Licensee admits that it is committed to ANSI N45.2 (1971). Licensee admits that a few "inconsistencies were identified in the license application and in other design basis documents." Licensee denies that in general measures established and executed were contrary to 10 CFR 50, Appendix B, Criterion III, CPCo Topical Report CPC-1-A, Policy No. 3, Section 3.4 and ANSI N45.2 (1971), Section 4.1.

(a) Licensee admits this allegation. Licensee alleges as set forth in its Response to Question 23, Part (1) [50.54(f)], Revision 4, 11/79, page 23-10 and 11, that:

When the FSAR was prepared and reviewed, the major backfill operations were complete. There were no known inconsistencies...related to FSAR Subsections 2.5.4 and 3.8.5; therefore, these subsections were essentially inactive and were not subject to any further review. The inconsistencies within the FSAR were not detected. The inconsistency between Subsections 2.5.4 and 3.8.5 with respect to the settlement values resulted because the two subsections were prepared by separate organizations (Geotechnical Services and Civil Engineering), neither of which were aware of the multiple display of similar information in the opposite subsection.

The inconsistencies between FSAR Subsections 2.5.4 and 3.8.5 have been corrected via FSAR Revision 18 (February 28, 1979).

(b) Licensee admits this allegation with respect to the diesel generator building. Licensee alleges,

as set forth in its response to NRC Preliminary Finding 9, that:

The diesel generator building spread footing foundation, which constitutes the design basis, was translated into the detail design. However, a design change to the foundation was not recognized to affect a previous settlement calculation, but this did not significantly affect settlement estimates.

Licensee denies this allegation with respect to the borated water storage tanks. Licensee's position is set forth in more detail in the following statement taken from its response to N.R.C. Preliminary Finding 9:

The borated water storage tanks are supported in part by a ring type spread footing, but most of the load is applied across the tank bottom, which is supported on fill (FSAR Figure 3.8-60). Settlement calculations discussed in FSAR Subsection 2.5.4.10.3 for the borated water storage tanks, conservatively used a uniform equivalent circular mat foundation having an applied soil pressure of 2,500 psf (FSAR Figure 2.5-47). The ring type spread footing pressure is 2,500 psf and the tank-applied pressure within the ring foundation is 2,000 psf. Because the actual pressure is 2,000 psf over most of the foundation area, this settlement estimate is conservative.

The assumptions used for the borated tank settlement calculations are appropriate for the type of design utilized.

- (c) Licensee admits this allegation.
- (d) Licensee admits that the wrong compressibility factor was used for settlement calculations, but alleges that it had a minor impact on the resultant values.
- (e) Licensee admits this allegation.

(f) Licensee admits this allegation.

Allegation 2 - Licensee admits that it is committed to ANSI N45.2 (1971) Section 6.

(a) Licensee denies that instructions provided to field construction for substituting lean concrete for Zone 2 material were contrary to 10 CFR 50, Appendix B, Criterion V, CPCo Topical Report CPC-1-A, Policy No. 5, Section 1.0 and ANSI N45.2 (1971), Section 6. Licensee denies that differential settlement of the Diesel Generator building was caused by substituting lean concrete for Zone 2 material. Licensee's position is set forth in more detail in the following statement taken from its response to NRC Preliminary Finding 11:

Drawings and specifications permit the use of Zone 2 random fill material in plant area fill. Structural backfill was placed in local excavations in accordance with Specification 7220-C-211. Lean concrete was used to replace structural backfill in confined areas as permitted by Specification 7220-C-211, Section 5.1.3 which states, "In absence of structural backfill materials described above... lean concrete, as specified in Specification 7220-C-230 may be used." Use of lean concrete in restricted areas is a normal construction practice and was controlled by the field engineer's approval after inspection of subgrade.

The diesel generator building settlement was restricted by the enlargement of the electrical duct banks. Concrete backfill was not used indiscriminately.

(b)

(1) Licensee admits this allegation.

(2) Licensee admits this allegation.

Allegation 3 - Licensee admits that it is committed to ANSI N45.2 (1971). Licensee denies that Quality Control Instruction C-1.02 is contrary to 10 C.F.R. 50, Appendix B, Criterion X, CPCo Topical Report CPC 1-A, Policy No. 10, Section 3.1 or ANSI N45.2 (1971). Licensee alleges, as stated in CPCo response to NRC Preliminary Finding 13, that:

Neither the characteristics subject to inspection or witnessing the type of inspection or witnessing were changed; the degree of inspection or witnessing was reduced by going to a surveillance (sampling) plan.

The decision to change to sampling inspection is questionable, in retrospect, recognizing that the bulk of the prior successful experience related to Canonie's activity and that a change was being made to have the activity performed by Bechtel.

The sampling (surveillance) plan was inadequate in that it did not specify conditions or criteria under which there would be increased sampling or a return to 100% inspection.

Allegation 4 - Licensee denies the general allegation that "measures did not assure that soils conditions of adverse quality were promptly corrected to preclude repetition." Licensee denies that its actions and measures were contrary to 10 CFR 50, Appendix B, Criterion XVI and CPCo Topical Report CPC-1-A, Policy No. 16, Section 1.0.

(a) Licensee denies this allegation to the extent that it is inconsistent with the following statement taken from Licensee's response to NRC Preliminary Finding 6:

Specification 7220-C-210, Section 12.6.1, states in part:

"Insofar as practicable...materials which require moisture control, shall be moisture-conditioned in the borrow areas.... The water content during compaction shall not be more than 2 percentage points below optimum moisture content and shall not be more than 2 percentage points above optimum moisture content...."

...after the placement of loose material on the embankment fill, the moisture content shall be further adjusted as necessary to bring such material within the moisture content limits required for compaction."

On July 22, 1977 Bechtel QA identified in QAR SD-40 that the field did not take moisture control measurements prior to and during placement of the backfill, but rather relied on the moisture results taken from the in-place (after compaction) soil density tests to control moisture.

As shown in Attachment 1, prior to August 1, 1977, there were no moisture measurements made at the borrow area or when the loose fill was placed prior to or during compaction. Moisture measurements were made after compaction, as were density tests, and the results of both served as the acceptance criteria.

From August 1, 1977, to the cessation of fill operation with the onset of the winter 1977-1978 season, there was a change. During this time, moisture measurements were made at the borrow area, but the measurements were not compared to laboratory standards. Again, no moisture measurements were made when the loose fill was placed prior to or during compaction. Moisture measurements were made after compaction and the data were used in conjunction with the density tests, the results of which served as the acceptance criteria. For this period, the data from moisture measurements made after compaction, in conjunction with the corresponding density tests, have been reviewed again and thirteen individual moisture measurements were found to be beyond $\pm 2\%$ of optimum.

For 1978, moisture measurements were made either in the borrow area or when the loose fill was placed prior to compaction, or both, but not during compaction. These measurements were compared to laboratory standards. Also during this period, moisture measurements were made after compaction and the data were used in conjunction with the density tests, the results of which served as acceptance criteria. Subsequently, moisture measurements made after compaction were reviewed again for this period and the cases for which the post-compaction moisture data indicate measurements beyond $\pm 2\%$ of optimum have been identified.

Moisture measurements for the three periods are now considered not to have met the intent of the specification regarding the location and time of the measurements. Prior to commencing fill operations for the 1979 season, this requirement will be redefined.

Final acceptance density criteria were clearly specified and were implemented from the inception of the project.

Moisture measurements were taken as a necessary part of the final density tests.

In-process moisture control criteria were not clearly specified and were not consistently implemented. Clarifications and interpretations of the specification were made without specification changes.

Licensee further alleges that prior to 1978, "During Compaction" was interpreted by personnel in the field as the entire process of placing, compacting and tamping.

(b) Licensee admits that the corrective action it initially took with regard to nonconformance reports related to plant fill did not prevent nonconformances at a later date in the area of plant fill construction.

Licensee alleges that its corrective action, including those it initially took, substantially reduced the number of nonconformances at a later date in the area of plant fill construction. Licensee's position is set forth in the pertinent portion of its response to NRC Preliminary Finding 8.

Licensee has the following response to Appendix B:

Licensee admits that the excerpts of documents cited at page 1 of Appendix B are correct. Licensee alleges, as set forth in its response to NRC Preliminary Finding 3, that:

FSAR Table 2.5-9 provides compaction criteria and zone designation both of which are design bases. Inadvertently omitted from this table was the number "2" in the column used for "Zone Designation" for the "Support of Structures." Also inadvertently omitted were the words "and sand" in the column used to designate the "Soil Type" for the "Support of Structures." FSAR Table 2.5-10 provides a definition of Zone 2 materials. These materials were used consistent with the recommendations contained in the Dames and Moore report included in the PSAR. FSAR Table 2.5-14 summarizes contact stresses, estimated bearing capacity and factors of safety for the supporting soils given in the table for each structural unit. However, some of these supporting soils specified in Table 2.5-14 were intentionally not the same as the design bases soils described (or intended to have been described) in Table 2.5-9. The supporting soils specified in 2.5-14 were those used for the conservative calculations given in that table.

FSAR Table 2.5-9 was revised to correct the inadvertent omissions and Table 2.5-14 was revised to reflect the design bases contained in the PSAR (as translated into the actual design) rather than to reflect the material used for calculational purposes.

Therefore, Licensee, denies that the excerpted information is "false."

Licensee admits that "materials other than controlled compacted cohesive fill were used to support the diesel generator building." Licensee alleges that only controlled and compacted fill was used to support the Diesel Generator Building. Licensee has no knowledge or information sufficient to form a belief as to whether "information presented concerning the supporting soils influenced the staff review of the FSAR."

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

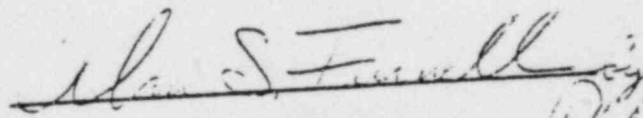
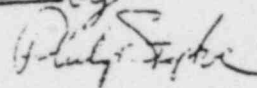
BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of
CONSUMERS POWER COMPANY
(Midland Nuclear Power Plant,
Units 1 and 2)

Docket Nos. 50-329
50-330

CERTIFICATE OF SERVICE

I, Alan S. Farnell, hereby certify that copies of my "Notice of Appearance" and of Applicant's "Answer to Notice of Hearing" were served upon the persons shown in the attached Service List by deposit in the United States mail, first class, this 16th day of April, 1980.


Alan S. Farnell 

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Washington, D.C. 20555



UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION III
799 ROOSEVELT ROAD
GLEN ELLYN, ILLINOIS 60137

J. Kane

D. HOOB
Phil 116-A

April 30, 1980

MEMORANDUM FOR: G. Fiorelli, Chief, Reactor Construction
and Engineering Support Branch

THRU: D. W. Hayes, Chief, Engineering Support Section 1 *H. For*

FROM: E. J. Gallagher, Reactor Inspector

SUBJECT: CONSUMERS POWER COMPANY MIDLAND UNITS 1 AND 2
ANSWER TO NOTICE OF HEARING

Ref: (1) NRC Order Modifying Construction Permits
dated December 6, 1979

(2) Consumers Power Company Answer to Notice of
Hearing

As per your request, the following are comments to Consumers Power Company (CPCO) submittal entitled "Answer to Notice of Hearing" regarding the Midland Unit 1 and 2 construction project:

1. CPCO response (pages 2-3) denies the statements made in the NRC order (pages 1-2) which states,"This investigation revealed a breakdown in quality assurance related to soil construction activities under and around safety-related structures and systems in that (1) certain design and construction specifications related to foundation-type material properties and compaction requirements were not followed; (2) there was a lack of clear direction and support between the contractor's engineering office and construction site as well as within the contractor's engineering office; (3) there was a lack of control and supervision of plant fill placement activities which contributed to inadequate compaction of foundation material; (4) corrective action regarding nonconformances related to plant fill was insufficient or inadequate as evidenced by repeated deviations from specification requirements; and (5) the FSAR contains inconsistent, incorrect, and unsupported statements with respect to foundation type, soil properties, and settlement values".

Comment:

A "breakdown in quality assurance" did substantially occur in the soil construction activities and the list of five items above were contributing factors to the failure of the licensee to control the backfill and its placement and compaction at the Midland site.

Copy of this memo forwarded 6/12/80 to Detroit (Ron Erickson)

300.
~~8-106070332~~

2. CPCO response (Appendix, page 2) denies the findings with respect to the Borated Water Storage Tanks and states that, "...The assumptions used for the borated tank settlement calculations are appropriate for the type of design utilized".

Comment:

A uniform rigid mat foundation will not behave in the same manner as a flexible circular ring wall foundation. The inspection finding indicated the lack of design control interface and verification between the geotechnical group who performed settlement calculations under the assumption of a uniform rigid mat foundation while the civil/structural group performed a design and analysis of the BWST using a flexible ring wall foundation.

3. CPCO response (Appendix, page 3) states, in part, that the .. "Licensee denies that instructions provided to field construction for substituting lean concrete for Zone 2 material were contrary to 10 CFR 50, Appendix B, Criterion V".

Comment:

Lean concrete material was permitted to be used indiscriminately by the Bechtel letter dated December 27, 1974 which states, "lean concrete backfill is considered acceptable for replacement of Zone 1 and 2". This instruction was given without proper consideration and coordination, and its effect on other design basis, i.e. settlement effects. The instruction which was implemented was therefore inadequate and contrary to Criterion V.

4. CPCO response (Appendix, page 4) states, in part, "...Licensee denies that Quality Control Instruction C-1.02 is contrary to 10 CFR 50, Appendix B, Criterion X, CPCO Topical Report CPC 1-A, Policy No. 10, Section 3.1 or ANSI N45.2 (1971)".

Comment:

QCI 1.02 (quality control instruction for soil placement) did not provide a comprehensive and adequate program of inspection of activities affecting the quality of safety-related structures. The QCI permitted a random surveillance of an activity which required 100% inspection in order to verify soils material was placed and compacted to design requirements.

April 30, 1980

5. CPCO response (Appendix, page 4) states, in part, that the... "Licensee denies the general allegation that "measures did not assure that soils conditions of adverse quality were promptly corrected to preclude repetition". Licensee denies that its actions and measures were contrary to 10 CFR 50, Appendix B, Criterion XVI".

Comment:

Adequate measures were not taken by the licensee to preclude repetitive nonconforming condition adverse to quality by virtue of recurring deviations of moisture control and the erroneous selection of laboratory standard used in attempting to achieve the required compaction.

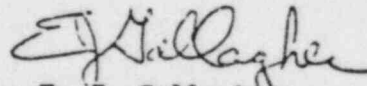
6. CPCO response (Appendix, page 8) states, in part, that the .."Licensee admits that "materials other than controlled compacted cohesive fill were used to support the Diesel Generator Building". Licensee alleges that only controlled and compacted fill was used to support the Diesel Generator Building".

Comment:

Material other than cohesive fill was used to support the Diesel Generator Building. The material was random fill, which was of any classification and consistency. However, controlled and compacted fill was not used. The compaction of material was not controlled by either its consistency or by the method of compaction. The equipment used in attempting to compact the fill was not qualified to a particular method of compaction, i.e., lift thickness, material type, and equipment used, and therefore not placed under controlled conditions. It was later determined that the method used could not be qualified to achieve the required density of the fill.

CPCO's response to the NRC order admits to a number of technical details of Appendix A of the order. The items admitted to are consistent with previous NRC findings.

If there are any questions regarding the above, please let me know.


E. J. Gallagher

cc:

J. G. Keppler
D. W. Hayes
R. C. Knop
T. Vandel
R. Cook

Carl - we plan to file
this Monday - pls help me
know if anything in here
gives you heartburn. Bill P.

~~Final 6-11-80~~
20/84

~~W.O. copy~~

KANE

HELLER

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

NRC STAFF RESPONSE TO CONSUMERS POWER
COMPANY'S MOTION FOR PARTIAL CONSOLIDATION

INTRODUCTION

On May 27, 1980, Consumers Power Company (Consumers) filed a motion to consolidate for discovery, evidentiary presentation and fact finding purposes, issues relating to soil conditions and plant fill material in three proceedings:

- (1) the hearing requested by Consumers with respect to a December 6, 1979 Order Modifying Construction Permits (for ease of reference, this will be referred to as the enforcement hearing);
- (2) the operating license hearing; and
- (3) any hearing which may be requested and ordered in connection with amendments filed in accordance with Paragraph IV(1) of

~~200120305~~

the December 6, 1979 Order (for ease of reference, this will be referred to as the construction permit amendment hearing).^{1/}

While the NRC Staff believes Consumers' motion is premature and should be held in abeyance pending the period during which petitions for leave to intervene may be filed and ruled on, it seems appropriate to identify at this time some of the procedural considerations which should be addressed by the parties and the Board in the event one or more proceedings are consolidated.^{2/}

DISCUSSION

1. Background

On December 6, 1979, the Acting Director of the Office of Nuclear Reactor Regulation and the Director of the Office of Inspection and Enforcement signed an order modifying the two construction permits held by Consumers for the Midland Plant.

The December 6, 1979 Order recites that in August 1978 Consumers had informed the Nuclear Regulatory Commission that unusual settlement of the diesel generator building had occurred (December 6, 1979 Order, p. 1.) The Order states that further investigation by the Office of Inspection and Enforcement revealed a breakdown in quality assurance related to soil construction

^{1/} Consumers Power Company "Motion for Partial Consolidation," p. 1.

^{2/} As is more fully discussed below, the three proceedings differ with respect to persons entitled to participate, the issues, and the burden of going forward with the evidence.

activities under and around safety related structures and systems. (December 6, 1979 Order, p. 1.) Appendix A to the Order sets out the items of noncompliance found by the NRC investigation. Appendix B to the Order sets out a material false statement alleged to have been made in the FSAR.

On March 21, 1979, the Director, Office of Nuclear Reactor Regulation, formally requested, under 10 C.F.R. § 50.54(f), information concerning the above matters to determine whether action should be taken to modify, suspend or revoke the construction permits. (December 6, 1979 Order, p. 3.)

The Staff concluded that the quality assurance deficiencies involving the settlement of the diesel generator building and soil activities, the false statement in the FSAR, and the unresolved safety issue concerning the adequacy of the remedial action to correct the deficiencies in the soil construction under and around safety related structures and systems were adequate bases to refuse to grant a construction permit and that, therefore, suspension of certain activities under the construction permits was warranted. (December 6, 1979 Order, p. 4.)

Consumer's construction permits were modified by prohibiting certain specified soil construction activities pending the submission of an amendment to the Application seeking approval of remedial actions associated with those soil construction activities and the issuance of an amendment to the construction permits authorizing the remedial actions. (December 6, 1979 Order, p. 4.)

In Part V of the Order, the Licensee or any person whose interest was affected by the Order were given 20 days to request a hearing with respect to all or any part of the Order. In the event of a hearing, the issues to be considered were stated: "(1) whether the facts set forth in Part II of this Order are correct; and (2) whether this Order should be sustained." (December 6, 1979 Order, p. 6.)

The Order was to become effective on the expiration of the period during which a hearing may be requested or, in the event a hearing was requested, on the date specified in an order made following the hearing. (December 6, 1979 Order, p. 6.)

On December 26, 1979, Consumers requested a hearing in accordance with Part V of the Order Modifying Construction Permits. On March 20, 1980, the Commission published in the Federal Register (45 Fed. Reg. 18214-5) a Notice of Evidentiary Hearing. In the Notice, the Commission stated that if Consumers moved to consolidate this proceeding with other NRC proceedings which involve substantially identical issues, the Board should consider whether such consolidation would adversely affect the expeditious resolution of the issues. Notice of opportunity for intervention was not provided in the Commission's March 20, 1980 Federal Register notice.

On May 28, 1980, the Chairman of the Atomic Safety and Licensing Board appointed by the Commission in its March 20, 1980 Federal Register notice caused to be published in the Federal Register an amended notice of evidentiary

hearing with respect to the order modifying construction permits (45 Fed. Reg. 35940). The May 28, 1980 Federal Register notice published as an attachment the December 6, 1979 Order and, in addition, gave notice that by June 27, 1980 any persons whose interest may be affected by this proceeding could file a petition for leave to intervene.

Consumers' motion envisions consolidation of issues in three proceedings: the hearing on the December 6th Order, the operating license hearing soil settlement contentions and any possible hearing on CP amendments which may be ordered in the future.

In the operating license hearing, two contentions related to the soil construction activities were accepted by the Board in a Special Prehearing Conference Order dated February 23, 1979. Contention No. 24 of Intervenor Mary Sinclair, as interpreted by the Board, relates to the type of material used by Consumers under one of the essential buildings. The contention was accepted conditioned on the Board's agreement with Staff's comment that the question appeared not to be one of site suitability, but rather of the type of material used by Consumers. In any event, the Board stated that a suitable restatement of the contention was to be provided by Intervenor.^{3/} Such a restatement has not been filed to date. In addition, the Licensing Board stated with respect to Contention 2 of the Mapleton Intervenors: "This is the same issue as Sinclair Contention 24. It is accepted as it relates to settling of the Midland diesel generator building."^{4/}

^{3/} Special Prehearing Conference Order, dated February 23, 1979, p. 8.

^{4/} Id., p. 21.

Paragraph IV(1) of the December 6, 1979 Order Modifying Construction Permits prohibits certain specified soil construction activities pending the submission of an amendment to the application seeking approval of remedial actions and the issuance of an amendment to the two construction permits. On December 19, 1979, Consumers filed amendment 72 to their application for construction permits and operating licenses. Amendment 72 contains a statement that it is submitted in accordance with Paragraph IV(1) of the Order Modifying Construction Permits dated December 6, 1979. That would indicate that the amendment is intended to be an application which would lead to the issuance of amendments to the construction permits. There is nothing on the face of amendment 72, however, to distinguish it from the many other amendments filed by Consumers for which construction permit amendments are not required.^{5/}

The December 6, 1979 Order required Consumers to submit an amendment to its application seeking approval of an amendment to its construction permits if it desired to undertake soil activity remedial actions. Consumers has requested a hearing on the Order but that request presumably should not be construed as a request for a hearing on any CP amendments which this Board ultimately may determine are necessary.^{6/} Thus, a question is posed

^{5/} Typically, detailed review of design changes by construction permit holders is deferred to the operating license review stage. "Although a sufficiently major change could warrant a construction permit amendment, a review of 88 extant construction permits indicated that none had been amended for a design change" Northern Indiana Public Service Company (Bailly Generating Station, Nuclear-1), CLI-79-11, 10 NRC 733, 735 (December 12, 1979).

^{6/} In fact Consumers indicates its uncertainty about such a contingency by urging consolidation of ". . . any hearing which may be requested" (emphasis added)

concerning whether this Licensing Board can take actions to consolidate issues which might arise in some future proceeding not now noticed or even determined to be required.

If the Licensing Board determines in the enforcement portion of this proceeding that amendment 72 does not give rise to a required amendment to the construction permits, there will be no CP amendment hearing to be consolidated. If it is determined that the construction permits require amendment, then arguably the third type of proceeding suggested by Consumers, i.e., a hearing which may be requested and ordered in connection with construction permit amendments, might arise. However, this Board could well determine to order the construction permits amended as a logical result of its hearing on the Order, thus obviating the need for further applications and approvals by Consumers. The course selected depends in part on the way in which issues are framed, parties' interests are defined and the Commission's delegations are interpreted.

2. The Issues

The issues in the hearing involving the Order Modifying Construction Permits are as stated on p. 6 of that Order: (1) whether the facts set forth in Part II of this Order are correct; (2) whether this Order should be sustained. The facts set forth in Part II are those which support the NRC's conclusion that the quality assurance deficiencies involving the settlement of the diesel generator building and soil activities at the Midland site, the false statement in the FSAR, and the unresolved safety issue concerning

the adequacy of the remedial action to correct the deficiencies in the soil construction under and around safety related structures and systems are adequate bases to refuse to grant a construction permit and that, therefore, suspension of certain activities under the two construction permits is warranted until the related safety issues are resolved. (December 6, 1979 Order, p. 4.)

The issues in the operating license hearing will be whether the remedial actions proposed by Consumers in amendments to their application for construction permits and operating licenses filed beginning on December 19, 1979 meet the regulatory requirements appropriate for the issuance of operating licenses. (10 C.F.R. § 50.57.)

The issue to be considered in any hearing which may be requested and ordered in connection with Paragraph IV(1) of the December 6, 1979 Order is whether the remedial actions proposed by Consumers in amendments to their application for construction permits and operating licenses filed beginning on December 19, 1979 meet the regulatory requirements appropriate to the issuance of construction permits (10 C.F.R. § 50.35) and amendments to construction permits (10 C.F.R. § 50.91).

Any consolidation order, therefore, would have to carefully delineate the issues and the application regulatory requirements upon which findings and conclusions must be made to insure that the appropriate evidentiary standards were met.

3. Standards of Evidence

In Consumers Power Company (Midland Plant, Units 1 and 2), ALAB-315, 3 NRC 101 (1976), the Appeal Board indicated that, with respect to the enforcement hearing, the Staff would have the burden of going forward with evidence sufficient to make out a prima facie case. The Appeal Board modified its discussion of the burden of going forward, however, by ruling that the burden must be met ". . . at a minimum . . ." by coming forward "initially with evidence sufficient to cause a reasonable licensing board to inquire further." (ALAB-315, supra at 112.) Based on its consideration of Consumers Power Company (Midland Plant, Units 1 and 2), CLI-74-5, 7 AEC 19 (1974), the Appeal Board reserved judgment on whether, in fact, it would be necessary to produce a prima facie case.

Although in the context of the evidentiary hearing this discussion may prove to be academic, all parties should at least be aware that the burden of going forward with the evidence is not the same for each of the hearings. The Staff would have no burden to go forward with the evidence in either the operating license hearing or the construction permit amendment hearing.

4. Parties in Interest

Another issue to be weighed in consideration of proceedings is whether the various interests of different participants will be appropriately recognized. The class of persons having an affected interest in one proceeding will not necessarily be the same class of persons having an affected interest in one

of the other proceedings. The determination of which interests are affected depends in part on the scope of the proceeding. While the notice of hearing for this proceeding and the notice for the OL proceeding are adequate to put persons affected by the results of those proceedings on notice, it does not necessarily follow that the entire class of persons affected by a future decision to modify the construction permits is on notice.

For example, if this Board determines to modify Consumers' construction permits on matters related to soil activities rather than suspend such activities as indicated in the December 6th Order, then all persons affected by the action have been properly notified and consolidation of issues and parties could enhance administrative efficiency. On the other hand, if the Board determines to sustain the Order in all its particulars, Consumers would require a separate amendment to its construction permits. The interests affected at that point might theoretically be different than those identified in this proceeding or in the OL proceeding. Res judicata and collateral estoppel doctrines could, of course, be argued but it is doubtful whether a consolidation order rendered at some prior time could be construed to have bound a party with interest who did not have actual or constructive notice that a result of this proceeding might be a remedy which went beyond the issues set forth in the December 6th Order.

CONCLUSION

The NRC Staff urges the Board to hold ruling on Consumers' motion in abeyance pending its ruling on any intervention petitions which may be received in this proceeding. In addition the Board should consider consolidation after an opportunity has been given to the parties to consider and brief the issues related to consolidation including but not limited to the considerations set out above.

Respectfully submitted,

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Dated at Bethesda, Maryland
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