

NUCLEAR REGULATORY COMMISSION  
[Docket Nos. 50-329 and 50-330]  
CONSUMERS POWER COMPANY  
(Midland Plant, Units 1 and 2)

Issuance of Director's Decision Under 10 CFR 2.206

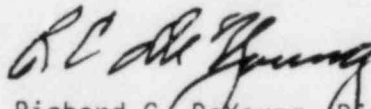
Notice is hereby given that the Director, Office of Inspection and Enforcement, has issued a decision concerning a petition dated February 10, 1984, filed by the Government Accountability Project on behalf of the Lone Tree Council and others. The petition had requested that the Nuclear Regulatory Commission take action to require Consumers Power Company to (1) broaden the ongoing Construction Completion Plan to include other aspects of plant construction; (2) remove Consumers from managerial responsibilities for quality assurance and quality control at Midland and institute an independent third-party in its place; and (3) increase NRC staffing for Midland. The Director, Office of Inspection and Enforcement, has decided to deny the petitioner's request.

The reasons for this decision are explained in a "Director's Decision under 10 CFR 2.206" (DD-84-17), which is available for public inspection in the Commission's public document room, 1717 H Street, N.W., Washington, D.C., and in the local public document room for the Midland Plant at the Grace A. Dow Memorial Library, 1910 W. St. Andrews Road, Midland, Michigan 48640.

A copy of the decision will be filed with the Secretary for the Commission's review in accordance with 10 CFR 2.206(c).

Dated at Bethesda, Maryland, this 24th day of July 1984.

FOR THE NUCLEAR REGULATORY COMMISSION



Richard C. DeYoung, Director  
Office of Inspection and Enforcement

ACCORDS - 1

GOVERNMENT ACCOUNTABILITY PROJECT

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February 10, 1984

Honorable Chairman Nunzio Palladino  
Honorable Victor Gilinsky  
Honorable James Asseltine  
Honorable Thomas Roberts  
Honorable Frederick Bernthal  
United States Regulatory Commission  
Washington, D.C. 20555

Re: In the Matter of Consumers Power Company  
Midland Nuclear Power Plant, Units 1 and 2  
Docket Nos. 50-329/330 (10 C.F.R. 2.206)

Dear Commissioners:

On June 13, 1983, the Government Accountability Project (GAP) filed a Petition pursuant to 10 CFR 2.206 (Petition) on behalf of the Lone Tree Council and others (Petitioners), requesting specific items of relief regarding the Midland Nuclear Power Plant (Midland). The Petition has been granted in part and denied in part in Director's Decision DD 83-16 and DD 84-02. On January 27, 1984 pursuant to 10 CFR 2.772, the Commission extended the time within which the Commission may act to review the Director's Decision until February 10, 1984.

On the basis of the information provided in the Petition, and with the consideration of the additional facts and argument provided in this letter we request that the Commission take review of the Director's Decision.

Specifically, we renew our request for the Commission to:

- (1) Require that all ongoing activity, including the "soils work" <sup>1/</sup> be included under the Order of Modification of Consumer's Power Company's (CPCo) construction permit for the Midland Plant. (Petition, page 13 - 15.)
- (2) Remove CPCo from managerial responsibility of the QA/QC function at the Midland plant, replacing them with an independent third-party with the responsibility to report simultaneously to both the NRC and CPCo. (Petition, page 20 - 22).
- (3) Increase NRC staffing for the Midland Office of Special Cases (OSC). (Petition, page 22 - 23.)

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<sup>1/</sup>"Soils work" in this letter refers to all activity, including underpinning of safety related buildings on the site, undertaken by CPCo following the December 1979 Stop Work Order issued by the Nuclear Regulatory Commission (NRC).

BASIS

The Government Accountability Project (GAP) filed a detailed request pursuant to 10 CFR 2.206 on June 13, 1983. The Inspection and Enforcement Manual, Chapter 0800, §0860-04 requires that, in order for a request to be granted, it must specify the action sought by the Petitioners and "set out the facts that constitute the basis for the request." <sup>2/</sup>

GAP assumes that the Director did not see the need for an expansion by Petitioner of the factual basis for its requests, since no request for further information was received. Moreover, since the request has been substantially granted (except for the items enumerated in this letter for which we renew our request), we assume that the supporting documentation and/or explanations provided the Director with an accurate portrayal of the basis upon which submitted our request.

However, much has happened at the Midland Project since the Petition was filed.

In determining whether or not the Commission should take review of the two Director's decisions issued in response to the Petition we believe that it is necessary to update the factual basis upon which our original petition was based. (This submittal is not an appeal or request for review of items granted in DD 83-16 and 84-02, Petitioner recognizes that there is no procedure for appeal of Commission decisions under 10 CFR 2.206. Instances where the Directors' decision differs from our request which are not mentioned in this submittal can be construed as acceptable to Petitioners, unless stated otherwise in previous correspondence; i.e., our continuing skepticism toward Stone and Webster's competence and independence in their role as third-party overviewer.)

UPDATE SUMMARY

Since June, 1983, CPCo's Midland project has suffered from a series of financial, construction, legal, and regulatory setbacks. Petitioners believe that the cumulative effect of these setbacks, described below, provides additional basis for our original requests for (1) Institutionalizing all reinspection programs under the Construction Completion Program (CCP), (2) Removal of CPCo from primary responsibility for the QA/QC function at the plant, and (3) the assignment of more NRC personnel to the Midland OSC.

## 1. DOW PULLOUT

In July 1983 the Dow Chemical Corporation (Dow) cancelled its steam contract with CPCo, and brought legal action against CPCo in Midland County District Court. The Dow suit alleges that CPCo

- made fraudulent misrepresentations and nondisclosures;
- made material breaches of its contractual and fiduciary

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<sup>2/</sup> Nuclear Regulatory Commission Inspection and Enforcement Manual, Chapter 0800, Section 0860-04, "Guidance for Accepting or Denying Requests for Enforcement Action," November 15, 1978.

obligations to Dow; and demonstrated its inability to complete the Midland Nuclear Facility within any reasonable time or cost.

Allegations contained in the Dow complaint point to a "dual cost and schedule" kept by CPCo since 1978. The Dow allegations are the subject of a Atomic Safety and Licensing Board (ASLB) contention which is expected to be litigated in late spring 1984.

## 2. STOCKHOLDER SUITS

Four stockholders suits have been filed to date by shareholders of CPCo stock. These suits have been filed against CPCo pursuant to provisions of the Securities Exchange Act. Essentially they allege that CPCo made certain material omissions in prospectus, made false statements to its stockholders, and willfully concealed information about the cost and completion schedule for the Midland plant. They accuse CPCo of deceiving potential investors about the stability of its construction project and inducing them to purchase stock that they would not have bought had CPCo disclosed known to them, or that should have been known to them, at the time.

Of particular interest to the Commission should be the Weiland suit, included as Attachment 1, which relies in great part on information provided from CPCo to the NRC at its April Caseload Forecast Panel (CLFP) meeting. <sup>3/</sup>

## 3. CASELOAD FORECAST PANEL CONTROVERSY

The NRC CLFP for Midland announced on December 20, 1983 that CPCo's schedule estimate (based on CPCo's April 1983 CLFP presentation) was "off" by at least 16 months. The December 20, 1983 letter from Thomas M. Novak, Assistant Director for Licensing of the Division of Licensing to Mr. J.W. Cook of CPCo designates that the NRC intends to use September 1986 as the "planning date for completing the Licensing review process for Unit 2." <sup>4/</sup>

Internal disputes between the members of the CLFP and NRR management succeeded in keeping the NRC's knowledge about the expected delay from public disclosure for over seven months. Included as Attachment 2 to this letter is an affidavit from the undersigned, with exhibits, which detail the impropriety of the staff actions in withholding significant information regarding the incredulity of CPCo's completion schedule estimates given in April, 1983.

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<sup>2/</sup> The text of the suit confuses the CLFP and the CCP, particularly with respect to meetings. However, it should be obvious to a knowledgeable reader whether plaintiff Weiland is referring to CCP activities or CLFP information.

<sup>3/</sup> Richard A. Weiland versus Consumers Power Company, et al. (ED Michigan)

<sup>4/</sup> U.S. NRC letter, Thomas M. Novak to J.W. Cook, CPCo, December 20, 1983.

Certain agency staff members "stonewalled" the release of the CLFP review, completed in mid-May 1983. (see Attachment 2, Exhibit 4) and prevented its disclosure to the Atomic Safety and Licensing Board (ASLB), and the public. CPCo management officials, however, did have knowledge of the CLFP's May estimates and successfully managed to get NRC release of the information quashed.

Had the CLFP information been disclosed at either the ASLB hearing or at the planned (but cancelled) public meeting CPCo would not have been able to portray false and misleading information to potential investors.

#### 4. DIESEL GENERATOR BUILDING RE-REVIEW

A re-review of the acceptability of the Diesel Generator Building by a combined team of professional soils and geo-technical engineers from the Brookhaven National Laboratory, the NRC, and an outside consultant was conducted. It concluded, essentially, that the DGB could not meet federal regulatory standards for the Midland project, but that it would probably be acceptable.

The impasse continues over the DGB with a seemingly unresolvable controversy between numerous professionals. Of critical importance for the Commissioners consideration at this time in the non-negotiable position of the U.S. Corps of Engineers, who have refused to certify the building as safe.

The DGB review which was issued October 21, 1983 by the NRC, a December 2, 1983 Memorandum from J. Kane of the Division of Nuclear Reactor Regulation, and several drafts and supporting memorandum, of the report issued to the undersigned under Freedom of Information Act (FOIA) request No. 83-\_\_\_\_\_ give insight into the preposterousness of the "mysterious" sixth conclusion of the DGB Re-review in the final report.

That conclusion, which was added after several levels of internal dispute, states:

While significant cracking has occurred in the DGB, it is our opinion that the structure will continue to fulfill its functional requirement. This conclusion is based on the fact that stresses induced in the structure by all other extreme loadings are small.

However, the original Brookhaven report contained a conclusion six that was totally opposite the final, publicly issued, version. That "bottom line" stated

It is recommended that a repair program be developed and implemented.

It is our understanding that, in fact, several repair recommendations were in the development stage by the team that did the reanalysis. Those recommendations were, however, never disclosed or even discussed.

The ASLB OM hearings must also conclude that there is a reasonable assurance that the public health and safety of the Midland/Saginaw/Bay City area would be protected under any conditions. That may not be possible, regardless of how many staff "edits" are made of the truth about the DGB.

#### 5. FAILURE OF CPCo TO MAP AUXILIARY BUILDING CRACKS

The NRC discovered in January 1984 that CPCo has not mapped all of the cracks in the Auxiliary Building (Aux Building), and that neither CPCo nor the NRC know the extent or the seriousness of the cracks in the building.

On February 8, 1984 CPCo provided the NRC OSC team with a package of documentation in an attempt to explain away the problems. At the monthly public meeting between Stone and Webster, the NRC, and CPCo Mr. J. Mooney gave a detailed presentation of the new crack monitoring program. They also presented a weak explanation of why the entire building had not been monitored for cracks for the past five years.

Their explanation, that certain "hairline cracks" weren't required to be mapped or included in the crack mapping, and that crack mapping was never intended to cover certain "inaccessible" parts of the Aux Building, defys reason.

A preliminary review of NRC/NRR time and effort that has gone into an evaluation of the Aux Building indicates that slightly over half of all recent efforts have gone into technical work on the Aux Building. The money spent by the agency is now largely wasted. Re-evaluations, more engineering analysis, more staff inspections will be required. All of that could have been avoided had CPCo demonstrated any regulatory responsibility.

The ASLB OM hearings will probably now also have to be reopened into the Aux Building. (That motion is pending before the Board at this time.)

Other problems with the Aux Building as the underpinning effort continues plague CPCo. For example, the summary of an audit held on January 4 - 6, 1984 (Report No. 50-329/84-01(OSC); 50-330/84-01(OSC) concluded that upward building movement limits established by the contractor and proposed by CPCo in response to unanticipated upward building movement were unacceptable.

#### 6. ENFORCEMENT ACTION, RE: VIOLATION OF BOARD ORDER/NRC STAFF

An Office of Investigations (OI) investigation into a July 1982 incident where CPCo deliberately drilled into a deep-Q duct bank, and removed soils in order to lay certain cables, concluded that CPCo had excavated the soil without the required prior NRC authorization.

As a result of those findings the Region recommended a civil penalty of \$100,000.00 be levied on CPCo. That Enforcement Action was almost issued as

Enforcement Notice 83-69. However, after an unannounced meeting between the Director and CPCo Counsel M. Miller, and subsequent discussions between the Regional Director and the Director --but not with the RIII staff--the Civil Penalty was withdrawn.

Instead DD 84-02 was issued which incorporated an Order for CPCo to submit to an independent management audit. GAP vehemently protested the withdrawal of EN 83-69, and the misrepresentation that the management audit (which was first proposed in the Petition and which CPCo agreed to in October 1983) was an adequate response to the OI findings.

Our foremost complaint about the handling of the Violation of the Board Order is that the OSC team and regional management made a firm recommendation for a civil penalty. (Presumably this was based on their cumulative experience with CPCo's blatant disregard for regulatory requirements that are inconvenient to CPCo.) Then, exhibiting CPCo's infamous ability to seek out and find someone in the NRC who will agree with CPCo's best interests, a meeting was arranged between the lawyer (not management) who was responsible for litigating the very same issue in front of the ASLB and the Director. No opportunity was provided for factual rebuttal by the OSC team, even though members of the team were present to observe the actual violation of the order.

#### RENEWED REQUESTS

Petitioners requested six specific actions in the original June Petition. These were requested "to protect the future public health and safety of central Michigan residents..." For the same reason, and additionally based on information summarized above, we renew our request for three of the original six items.

1. Require that all ongoing activity, including the "soils work," be included under the Order of Modification of CPCo's construction permit for the Midland Plant. (Petition, page 13 - 15)

The Director's Decision, issued October 6, 1983, responded to that request as follows

It should be noted that the CCP does not include the remedial soils program, nuclear steam supply system installation, HVAC installation, and the reinspection of pipe hangers and electrical cable. The remedial soils activities are being closely inspected under the conditions of the construction permits which implement the Atomic Safety and Licensing Board's April 30, 1982 order and work authorization procedure. Therefore, the staff does not consider it necessary to require the remedial soils activities to be included in the CCP. Controls over the soils work have been implemented under a separate program.



Similarly, reinspection of the pipe hangers and electrical cable were not included in Phase I of the CCP because that reinspection is being done under a separate commitment to the NRC...Nuclear Steam Supply System installation and HVAC installation were not drawn into question by the diesel generator building inspection. (DD 83-16, at 7.)

Since the decision was issued in October CPCo activities regarding the soils program, the HVAC installation, and pipe hanger and electrical cable reinspection programs have demonstrated that the staff's position was premature. In fact, the Decision should have clarified which part of the staff was being represented in that statement.

Each of the above listed systems and the soils work have undergone major reviews, and Petitioner acknowledges that construction completion will occur under the Construction Implementation Overview (CIO), however, given recent disclosures and identified problems (such as the identification of cracks in the Aux building), it is no longer acceptable to "take CPCo's word for it," in regard to critical systems.

The HVAC reinspection program, and the NRC HVAC inspection, have been on-going for almost two years. Yet, new witnesses that GAP has interviewed who worked as field engineers on the system disclose that problems were being actively "covered up" by CPCo instead of being repaired. These witnesses would have talked to NRC inspectors, had they been independently interviewed, however -- no one contacted them. GAP investigators are in the process of reviewing their concerns and will submit affidavits upon the completion of the same. The message is clear, however, that CPCo continues to view the NRC as capable of identifying only a limited amount of the problems, and unless forced to by inclusion under DD 83-16 will not comply with the voluntary disclosure of hardware problems.

Both the pipe hanger and the electrical inspections conducted by CPCo also failed to disclose information given to the NRC by other sources, including several GAP witnesses.

GAP urges the Commission to re-review this request and include the information from the OSC team regarding problems in the exempted systems.

2. Remove CPCo from managerial responsibility of the QA/QC function at the Midland Plant, replacing them with an independent third-party with the responsibility to report simultaneously to both the NRC and CPCo. (Petition, page 20 - 22)

The Director's Decision responded to that request as follows:

While it might be permissible under Appendix B to 10 CFR Part 50 for CPCo to retain an independent organization to execute the QA/QC program, the licensee remains ultimately responsible for the establishment and execution of the program. As stated above, the

Staff considers the strengthening of MPQAD to be a positive step in improving CPCo's capability to assure the quality of construction of the Midland facility. In view of the relatively short existence of the MPQAD, there does not currently exist any justification for requiring CPCo to retain an outside organization to execute the QA/QC program. (Emphasis added)

That response was based upon the information contained in the June 1983 Petition. At that time, besides the historical references, there were three on going Office of Investigations investigations into deliberate misconduct by CPCo. Two of the three have now been completed, both which point the finger squarely at CPCo management for misleading the NRC regarding important safety related activities.

First, the Boos investigation, concluded that at least one CPCo official knew that the representation made at a Bethesda meeting between NRR/RII and CPCo was not true. No enforcement action was taken as a result of that incident. Mr. Keppler, RIII Director, commented at a public meeting that this incident was the last time he would give CPCo the benefit of the doubt.

The second incident, drilling through the deep-Q duct bank in violation of the board order about work authorization permits was the next incident. As discussed previously in this letter, Mr. Keppler did recommend strong enforcement action after the OI investigation concluded that CPCo had violated the board order. Unfortunately, the Director decided to "give them one more chance, and dismissed the civil penalty recommendation.

The third investigation, still on-going, into CPCo's withholding of information about an internal quality assurance breakdown of the Zack Company is expected to be issued in the near future. Regardless of the technical findings it is unlikely that CPCo will be able to weasel out of the simple facts surrounding their failure to notify the NRC. They did not.

Finally, as also discussed previously in this letter, CPCo management has now conceded that no one, not even CPCo, knows the number or extent of the thousands of cracks in the Aux Building. This despite the fact that they have permitted the NRC to spend hundreds of thousands of taxpayer dollars on evaluations of the safety of the building.

Contained in the Dow and stockholder suits are numerous examples of CPCo deceit of shareholders, business partners, investment companies and the public at large. Discovery in these cases is revealing, on a daily basis, the extent to which CPCo has been willing to go to protect its survival as a company.

At Timmer the NRC withheld approval of a reinspection program that contained a plan for the H.J. Kaiser company to continue as prime contractor because they were under investigation! Here the Company has been under investigation, and multiple investigations for the past two years. Some of those investigations have concluded that CPCo was guilty of what it was accused of. Surely the staff

cannot continue to pretend that there is not now justification for requiring CPCo to retain an outside organization to execute the QA/QC program.

At a minimum that responsibility should be transferred to a third-party until the completion of the management audit.

This request, the removal of CPCo management officials from the QA/QC function for the Quality Verification Program (QVP) is of immediate concern. The QVP is just beginning. At the February 9, 1984 public meeting Stone and Webster officials reported that the first QVP report was issued on February 3, 1984. Of the thirteen work packages reviewed by S&W three non-conformances were written and another eight findings were discovered. GAP, nor the NRC, have yet received that report. However, as S&W begin to step up their QVP operations this month it is critical that they (or another party) have an institutionalized responsibility for reportability under 10 CFR to the NRC.

If it were possible to indict one person or group of persons for the problems which CPCo has had over the past 15 years the solution would be a simple one. However, that is not the case. GAP's experience with the management audit of Cincinnati Gas and Electric (CG&E) officials gives some insight into the types of problems that can be discovered for the faults that CPCo has suffered from. Yet, the identification of the root of the problem of a poor managerial attitude and inadequate regulatory relationships cannot guarantee the single issue which the Commission is responsible for - certifying that the Midland Nuclear Power Plant is safe.

Any error in deciding this request should be made on the side of prudence towards public health and safety -- not concern for the corporate financial viability of CPCo.

3. The increase in NRC staffing for the Midland Office of Special Cases (Petition at 22 - 23.)

The Director's decision responded

The fifth issue relates to a matter of internal Commission organization and staffing, namely the allocation of staff to inspection of facilities. The staff is expecting to augment inspect inspection personnel available to work on Midland. However, the creation of positions within the Office of Special Cases is a matter that will be determined by the Commission budget process. For these reasons, the staff is not considering this aspect of the request in this decision.

We renew our request for increased assignment of personnel to the OSC team. We understand that there has been the assignment of one additional inspector within the past week to the OSC team. We are relieved that the Commission recognizes the need for increased staffing and has appropriated funds for an additional inspector. However, there simply is much more work than even six inspectors can handle.

February 10, 1984

With recent events in Region III (i.e., the cancellation of Marble Hill and Zimmer) we assume that resources are currently available for designation to Midland. GAP staff did a review of the inspection-hours expended on the Marble Hill and Zimmer projects during the calendar year of 1983. According to the Regional inspection reports there were 2,989 inspection hours for Zimmer and 1,895 inspector hours for Marble Hill. A review of the assigned personnel indicated a full-time Project Manager for both plants in the Office of Nuclear Reactor Regulation and other technical resources not identified by Project in NRR. According to NRC files Zimmer had two resident inspectors and one senior resident inspector, and Marble Hill had one senior resident inspector.

By comparison, Midland has one senior resident inspector and one resident inspector, and also one Project Manager (NRR). At Midland during 1983 there were 2,501 inspection hours (that does not include the 734 inspector hours spent on the DGB inspection in late 1982). Those inspections were conducted when the majority of safety-related construction was halted (from December 1982 - through the end of 1983) <sup>57</sup>

If, as the NRC Regional Director and the Director of IE maintain, the public confidence in the CCP should be based on the oversight of the NRC inspectors than there must be more inspectors. The S&W representative indicated at the February 9 public meeting that based on workload S&W would increase its personnel as the QVP operation increased. It is simply impossible for five or six inspectors, with limited technical resources, to keep up a regular regulatory program, deal with allegations and information provided by workers and others, overview a floating inspection program, continue oversight of the underpinning efforts, and monitor the most complicated construction program on going in the nuclear industry.

GAP has a great deal of confidence in the OSC team assigned to Midland. Yet we recognize the limitations of a 24-hour day, and a seven day week. We urge the Director to do the same

#### CONCLUSION

This submittal summarizes our renewed request for three items not responded to in DD 83-16 and DD 84-02. If the Commission does not take review of these items under the provisions outlined in this letter GAP requests that it be considered as a separate request filed pursuant to 10 CFR 2.205.

Our concern for the continuing deterioration of the Midland construction project heightens every day. We recognize, as should the Commission, that this project is out of control. With the recent events in the nuclear industry that have occurred at plants with late-discovered quality assurance breakdowns it is inexcusable that troubled projects, such as Midland, not receive the extra measures of assurance that the agency is capable of providing.

We look forward to your response.

Sincerely,

*Billie Ruth Gardner*

SERVICE LIST

Attachment 10  
2/10/84 ltr. fm.  
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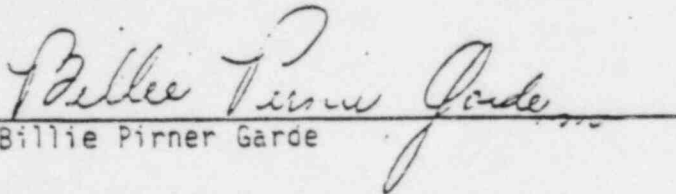
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Billie Pirner Garde

\*Hand-Delivered February 13, 1984.

CIVIL COVER SHEET

ATTACHMENT 1

The 22-44 civil cover sheet and the information contained herein neither pleadings or other papers as required by law, except as provided by local Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of indexing the civil docket sheet. (For more detailed instructions, see separate instruction sheet.)

FILED  
RICHARD A. WEILAND, on behalf of himself  
and others similarly situated  
83 CV 575 FRA  
1983 NOV 18 PM 12:25

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CHARLES W. JOINER

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(EXCEPT IN U.S. PLAINTIFF CASES) Ohio

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT Mich.  
(IN U.S. PLAINTIFF CASES ONLY)  
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED 20015

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(PLACE AN X IN ONE BOX ONLY) BASIS OF JURISDICTION  
 1 U.S. PLAINTIFF  2 U.S. DEFENDANT  3 FEDERAL QUESTION (U.S. NOT A PARTY)  4 DIVERSITY  
IF DIVERSITY, INDICATE CITIZENSHIP ON REVERS (28 USC 1332, 1441)

CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE)  
Securities Act (15 U.S.C. §77k, 77l(a); 77o, 77p and 77v). Defendants misrepresentations and omissions inflated the value of stock to plaintiff's detriment.

NATURE OF SUIT (PLACE AN X IN ONE BOX ONLY)

		ACTIONS UNDER STATUTES			
CONTRACT	TORTS	CIVIL RIGHTS	FORFEITURE/PENALTY	LABOR/EMPLOY	OTHER STATUTES C
<input type="checkbox"/> 118 INSURANCE <input type="checkbox"/> 120 MARINE <input type="checkbox"/> 138 MILLER ACT <input type="checkbox"/> 144 NEGOTIABLE INSTRUMENT <input type="checkbox"/> 150 RECOVERY OF OVERPAYMENT & ENFORCEMENT OF JUDGMENT <input type="checkbox"/> 151 MEDICARE ACT <input type="checkbox"/> 152 RECOVERY OF DEFAULTED STUDENT LOANS <input type="checkbox"/> 153 RECOVERY OF OVERPAYMENT OF VETERANS BENEFITS <input type="checkbox"/> 160 STOCKHOLDERS SUITS <input type="checkbox"/> 190 OTHER CONTRACT <input type="checkbox"/> 195 CONTRACT PRODUCT LIABILITY	<input type="checkbox"/> 310 AIRPLANE <input type="checkbox"/> 311 AIRPLANE PRODUCT LIABILITY <input type="checkbox"/> 320 ASSAULT, LIBEL & SLANDER <input type="checkbox"/> 328 FEDERAL EMPLOYERS LIABILITY MARINE <input type="checkbox"/> 326 MARINE PRODUCT LIABILITY <input type="checkbox"/> 327 MOTOR VEHICLE <input type="checkbox"/> 329 MOTOR VEHICLE PRODUCT LIABILITY <input type="checkbox"/> 360 OTHER PERSONAL INJURY <input type="checkbox"/> 362 PERSONAL INJURY-MED MALPRACTICE <input type="checkbox"/> 363 PERSONAL INJURY PRODUCT LIABILITY	<input type="checkbox"/> 441 VOTING <input type="checkbox"/> 442 JOBS <input type="checkbox"/> 443 ACCOMMODATIONS <input type="checkbox"/> 444 WELFARE <input type="checkbox"/> 448 OTHER CIVIL RIGHTS	<input type="checkbox"/> 610 AGRICULTURE <input type="checkbox"/> 620 FOOD & DRUG <input type="checkbox"/> 628 LABOR LAWS <input type="checkbox"/> 640 R.R. & TRUCK <input type="checkbox"/> 650 AIRLINE REGS. <input type="checkbox"/> 660 OCCUPATIONAL SAFETY/HEALTH <input type="checkbox"/> 690 OTHER	<input type="checkbox"/> 420 TRUSTEE <input type="checkbox"/> 421 TRANSFER (1930) <input type="checkbox"/> 422 APPEAL (801) <input type="checkbox"/> 820 COPYRIGHT <input type="checkbox"/> 830 PATENT <input type="checkbox"/> 840 TRADEMARK <input type="checkbox"/> 851 AGRICULTURE ACTS <input type="checkbox"/> 852 ECONOMIC STABILIZATION ACT <input type="checkbox"/> 853 ENVIRONMENTAL MATTERS <input type="checkbox"/> 854 ENERGY ALLOCATION ACT <input type="checkbox"/> 855 FREEDOM INFORMATION ACT <input type="checkbox"/> 856 APPEAL OF DETERMINATION UNDER ACCESS TO JUSTICE <input type="checkbox"/> 857 CONSTITUTIONAL STATE ST <input type="checkbox"/> 858 OTHER STATUTE ACTIONS	<input type="checkbox"/> 450 COMMERCE RATES, ETC <input type="checkbox"/> 460 DEPORTATION <input type="checkbox"/> 810 SELECTIVE SERVICE <input type="checkbox"/> 850 SECURITIES COMMODITY EXCHANGE <input type="checkbox"/> 851 AGRICULTURE ACTS <input type="checkbox"/> 852 ECONOMIC STABILIZATION ACT <input type="checkbox"/> 853 ENVIRONMENTAL MATTERS <input type="checkbox"/> 854 ENERGY ALLOCATION ACT <input type="checkbox"/> 855 FREEDOM INFORMATION ACT <input type="checkbox"/> 856 APPEAL OF DETERMINATION UNDER ACCESS TO JUSTICE <input type="checkbox"/> 857 CONSTITUTIONAL STATE ST <input type="checkbox"/> 858 OTHER STATUTE ACTIONS
REAL PROPERTY	PERSONAL PROPERTY	PRISONER PETITIONS	LABOR	TAX SUITS	OTHER STATUTES
<input type="checkbox"/> 210 CONDEMNATION <input type="checkbox"/> 220 FORECLOSURE <input type="checkbox"/> 230 RENT LEASE & EJECTMENT <input type="checkbox"/> 240 TORTS TO LAND <input type="checkbox"/> 245 TORT PRODUCT LIABILITY <input type="checkbox"/> 299 ALL OTHER REAL PROPERTY	<input type="checkbox"/> 370 OTHER FRAUD <input type="checkbox"/> 371 TRUTH IN LENDING <input type="checkbox"/> 360 OTHER PERSONAL PROPERTY DAMAGE <input type="checkbox"/> 365 PROPERTY DAMAGE <input type="checkbox"/> 366 PRODUCT DAMAGE <input type="checkbox"/> 367 PRODUCT LIABILITY	<input type="checkbox"/> 510 VACATE SENTENCE (2256) <input type="checkbox"/> 530 HABEAS CORPUS <input type="checkbox"/> 540 WANDAMUS & OTHER <input type="checkbox"/> 550 CIVIL RIGHTS	<input type="checkbox"/> 710 FAIR LABOR STANDARDS <input type="checkbox"/> 720 LABOR/MGMT. RELATIONS <input type="checkbox"/> 730 LABOR/MGMT REPORTING & DISCLOSURE ACT <input type="checkbox"/> 740 RAILWAY LABOR ACT <input type="checkbox"/> 790 OTHER LABOR LITIGATION <input type="checkbox"/> 791 EMPL. RET INC SECURITY ACT	<input type="checkbox"/> 870 TAXES <input type="checkbox"/> 871 IRS-THIRD PARTY 26 USC 7809 <input type="checkbox"/> 873 CUSTOMER CHALLENGE 12 USC 3410 <input type="checkbox"/> 400 STATE REAPPORTIONMENT <input type="checkbox"/> 410 ANTI-TRUST <input type="checkbox"/> 420 BANKS AND BANKING	<input type="checkbox"/> 859 CONSTITUTIONAL STATE ST <input type="checkbox"/> 858 OTHER STATUTE ACTIONS

(PLACE AN X IN ONE BOX ONLY) ORIGIN  
 1 Original Proceeding  2 Removed from State Court  3 Returned from Appellate Court  4 Returned or Reopened  5 Transferred from another court (3007)  6 Multi-state Litigation  7 Other

### CIVIL COVER SHEET (Reverse Side)

The JS-AAC civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of indexing the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)

INSTRUCTIONS: After completing the front side of form JS AAC, complete the information requested below.

CITIZENSHIP OF PRINCIPAL PARTIES (IF DIVERSITY)	
CITIZEN OF THIS STATE	<input type="checkbox"/>
INCORPORATED THIS STATE	<input type="checkbox"/>
FOREIGN CORPORATION/PRINCIPAL	<input type="checkbox"/>
PLACE OF BUSINESS IN (STATE)	<input type="checkbox"/>
OTHER NON-CITIZEN OF THIS STATE	<input checked="" type="checkbox"/>

Check/Fill in if demanded in complaint:

<input checked="" type="checkbox"/> CHECK IF THIS IS A CLASS ACTION UNDER P.R.C.P. 23	DEMAND \$	OTHER
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Check YES only if demanded in complaint:

JURY DEMAND:  YES  NO

RELATED CASE(S) IF ANY

JUDGE Joiner DOCKET NUMBER 83CV64483

CIVIL CASES ARE DEEMED RELATED IF PENDING CASE INVOLVES:

- 1. PROPERTY INCLUDED IN AN EARLIER NUMBERED PENDING SUIT
- 2. SAME ISSUE OF FACT OR GROWS OUT OF THE SAME TRANSACTION
- 3. VIOLATION OR INFRINGEMENT OF THE SAME PATENT COPYRIGHT OR TRADEMARK

DATE  
11/18/83

SIGNATURE OF ATTORNEY OF RECORD  
*[Handwritten Signature]*

COMMENTS (Use if additional space is required):



NOTICE TO ATTORNEYS FILING CASES WITH  
UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN

Pursuant to Local Rules 8(c)(3)(i) and (ii), the following certification is required when filing a case in this district:

PURSUANT TO LOCAL COURT RULE 8(c)(3)(i)

- (a) IS THIS A CASE THAT HAS BEEN PREVIOUSLY DISCONTINUED OR DISMISSED WITHOUT PREJUDICE OR REMANDED TO A STATE COURT?  YES  NO

- (b) IF YES GIVE THE FOLLOWING INFORMATION:

CASE NO: \_\_\_\_\_

COURT: \_\_\_\_\_

ASSIGNED JUDGE: \_\_\_\_\_

PURSUANT TO LOCAL COURT RULE 8(c)(3)(ii)

- (a) OTHER THAN STATED ABOVE, ARE THERE ANY PENDING OR PREVIOUSLY DISCONTINUED OR DISMISSED COMPANION CASES (cases in which it appears substantially similar evidence will be offered at trial or the same or related parties are present and the cases arise out of the same transaction or occurrence) IN THIS OR ANY OTHER COURT, INCLUDING STATE COURT?  YES  NO

- (b) IF YES GIVE THE FOLLOWING INFORMATION:

CASE NO: \_\_\_\_\_

COURT: \_\_\_\_\_

ASSIGNED JUDGE: \_\_\_\_\_

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

83CY6454AA

1983 NOV 18 - PM 12:29

----- x  
RICHARD A. WEILAND, on behalf of  
himself and all others similar ~~CHARLES W. JOHNSON~~ Civil Action No.  
situated,

Plaintiff, ----- JUDGE -----

-against-

CONSUMERS POWER COMPANY, JOHN D. : COMPLAINT  
SELBY, JAMES B. FALAHEE, : (Class Action)  
RUSSELL C. YOUNGDAHL, WALTER R. :  
BORIS, A. H. AYMOND, ROBERT E. :  
DEWAR, JOHN C. SUERTH, DON T. :  
McKONE, ROBERT B. WHITE, E. : PLAINTIFF DEMANDS A  
NEWTON CUTLER, JR., RICHARD M. : TRIAL BY JURY  
GILLETT, WILLIAM M. HUBBARD, JR., :  
JOHN W. HANNON, JR., PAUL S. :  
MIRABITA, MORGAN, STANLEY & CO., :  
INCORPORATED, Individually and as :  
Representatives of a Defendant :  
Underwriter Class, :

Defendants. -----

----- x

Plaintiff for his Complaint ("Complaint") alleges as follows:

1. All allegations made in this Complaint are based on information and belief, except as to those allegations which pertain to the named plaintiff and his counsel, which are based upon personal knowledge. Plaintiff's information and belief is based upon, inter alia, the investigation made by and through his attorneys.

## JURISDICTION AND VENUE

2. This Court has jurisdiction of this action under:

(a) Section 22 of the Securities Act of 1933, as amended ("1933 Act"), 15 U.S.C. §77v.

(b) Section 27 of the Securities Exchange Act of 1934, as amended ("1934 Act"), 15 U.S.C. §78 aa.

3. Plaintiffs bring this action under and pursuant to:

(a) Sections 11, 12, and 15 of the 1933 Act, 15 U.S.C. §§77k, 77l, and 77o et seq.

(b) Sections 10(b) and 20 of the 1934 Act, 15 U.S.C. §§78j(b) and 78t, and Rule 10b-5 of the 1934 Act, 17 C.F.R. 24; 10b-5 adopted by the Securities and Exchange Commission ("SEC").

4. Many of the acts charged herein, including the dissemination of a registration statement, prospectus and various SEC public filings which contained materially false and misleading statements and omitted to state material facts, occurred in the Eastern District of Michigan. In addition, defendants inhabited, transacted business, or resided in this judicial district during the Class Period as defined infra in paragraph 14. Moreover, many of the prospective witnesses to the acts alleged herein reside in this district.

5. In connection with the acts alleged in this Complaint, the defendants, directly or indirectly, used the means and instrumentalities of interstate commerce, including the mails and telephone communications and the facilities of the national securities exchanges.

## PARTIES

6. Plaintiff Richard A. Weiland ("Weiland") is a resident of the State of Ohio. On June 22, 1983, during the Class Period as defined infra in paragraph 14, plaintiff Weiland purchased 200 shares of common stock of Consumers Power Company ("Consumers Power") issued pursuant to a June 22, 1983 registration statement and prospectus (the "Registration Statement" and the "Prospectus") and certain other materials incorporated by reference thereto.

7. Defendant Consumers Power is a Michigan corporation with its principal executive offices located at 212 West Michigan Avenue, Jackson, Michigan. Consumers Power is a public utility company engaged in the generation, purchase, transmission, distribution and sale of electricity, and in the purchase, production, storage, transmission, distribution and sale of gas, in the Lower Peninsula of the State of Michigan.

8. Defendants John D. Selby ("Selby"), Russell C. Youngdahl ("Youngdahl") and Walter R. Boris ("Boris") are individuals who are and, at all relevant times have been, members of the Board of Directors and senior officers of Consumers Power. Defendant Selby signed the Registration Statement on behalf of Consumers Power as Chairman of the Board and President of the company.

9. Defendants Selby, Youngdahl, Boris, A. H. Aymond ("Aymond"), Robert E. Dewar ("Dewar"), John C. Suerth ("Suerth"), Don T. McKone ("McKone"), Robert B. White ("White"), E. Newton Cutler, Jr. ("Cutler"), Richard M. Gillett ("Gillett"),

William M. Hubbard, Jr. ("Hubbard"), John W. Hannon ("Hannon"), and Paul S. Mirabita ("Mirabita") (collectively referred to as the "Defendant Directors"), are individuals who are, and at all relevant times were, members of the Board of Directors of Consumers Power and each, with the exception of defendant Hannon, signed the Registration Statement.

10. By reason of their management positions and/or membership on Consumers Power's Board of Directors, the defendant directors were controlling persons of Consumers Power within the meaning of Section 20 of the 1934 Act, and Section 15 of the 1933 Act, and had the power and influence to cause Consumers Power to engage in the unlawful conduct complained of herein. Because of their executive and/or managerial positions with Consumers Power and/or their positions as members of Consumers Power's Board of Directors, each of the Defendant Directors had access to adverse non-public information about the business, finances and future business prospects of Consumers Power. Each Defendant Director acted to conceal the same as particularized herein. All of the Defendant Directors participated in, aided and abetted, conspired to effect and/or consciously or recklessly pursued the unlawful conduct herein alleged.

11. Defendant Morgan, Stanley & Co., Incorporated ("Morgan, Stanley") is an investment banking company with its principal offices in New York City, New York. Defendant Morgan, Stanley was lead underwriter of Consumers Power's June 22, 1983 offering of 5 million shares of common stock at \$20.625 per share (the

"Public Offering"). The public paid approximately \$103 million to acquire shares in Consumers Power pursuant to such public offering. The proceeds of such offering were applied, inter alia, to payment of fee of over \$3 million to the defendant underwriters, proceeds of \$8 million received by Morgan, Stanley through a "piggy-back" sale of shares of Consumers Power common stock it had previously acquired and Consumers Power received the balance of approximately \$92 million as the net proceeds of the said Public Offering.

12. Morgan, Stanley, in part through its counsel, conducted or participated in an investigation (known as a "due diligence" investigation) into the business operations and prospects, financial accounting and management control systems and the construction program of Consumers Power. In the course of such investigation defendant Morgan, Stanley and its counsel either obtained knowledge of or recklessly disregarded the facts set forth infra in paragraph 45. Defendant Morgan, Stanley pursued a conspiracy and common course of conduct with other defendants and aided and abetted the making of the false statements complained of herein in part to obtain \$8 million as Selling Shareholder in the Public Offering of Consumers Power common stock and in part to obtain its share of the \$3 million in underwriting fees from the Public Offering.

### CLASS ACTION ALLEGATIONS

13. This action is brought as a class action pursuant to Rule 23(b)(3) of the Federal Rules of Civil Procedure.

14. The class represented by plaintiff includes all persons and entities, other than defendants named herein and their immediate families, who purchased or otherwise acquired shares of the common stock of Consumers Power pursuant to the Registration Statement and Prospectus and on the open market, from June 22, 1983 through November 9, 1983, inclusive (the "Class Period"). The named plaintiff is a member of the Plaintiff Class.

15. Because several million shares of Consumers Power common stock were purchased during the Class Period, the members of the class are so numerous that joinder of all members is impracticable. Although the exact number of class members can only be determined by appropriate discovery, plaintiff believes that class members number in the thousands.

16. Plaintiff's claims are typical of the claims of the members of the class. Plaintiff and all members of the class sustained damages as a result of defendants' wrongful conduct complained of herein.

17. Plaintiff will fairly and adequately protect the interests of the members of the class and has retained counsel competent and experienced in class and securities litigation.

18. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. Since the damages suffered by individual class members may be relatively small, the expense and burden of individual litigation makes it impossible for the class members individually to seek redress for the wrongful conduct herein alleged.

19. Common questions of law and fact exist as to all members of the class and predominate over any questions affecting solely individual members of the class. Among the questions of law and fact common to the class are:

(a) Whether the federal securities laws were violated by defendants' acts as alleged herein;

(b) Whether defendants participated in and pursued the concerted actions herein alleged;

(c) Whether documents, releases, prospectuses and statements disseminated to the investing public and the shareholders omitted and/or misrepresented material facts about the business affairs of Consumers Power;

(d) Whether the defendants acted willfully, recklessly, or negligently in omitting to state and/or misrepresenting material facts, or in aiding and abetting the making of such omission and/or misstatements;

(e) Whether the offering price and/or market prices of Consumers Power common stock during the Class Period were artificially inflated due to the nondisclosures and/or misrepresentations of material facts complained of herein;  
and



(f) Whether the members of the class have sustained damages, and, if so, the proper measure of damages.

20. Plaintiff knows of no difficulty which will be encountered in the management of this litigation which would preclude its maintenance as a plaintiff class action.

#### UNDERWRITER CLASS ACTION ALLEGATIONS

21. With respect to Counts I and II herein, defendant Morgan, Stanley is sued both individually and as a representative of a defendant class consisting of all underwriters who, pursuant to a single Underwriting Agreement, participated in the Public Offering and sale of Consumers Power's stock on or about June 22, 1983 (the "Underwriter Class"), for which they were paid fees in excess of \$3 million.

22. The members of the Underwriter Class are so numerous--approximately 118 underwriters--that joinder of all such class members is impracticable.

23. There are questions of law or fact common to members of the Underwriter Class, including whether the Registration Statement and Prospectus used in the Public Offering to disclose material facts or misrepresented material facts omitted and whether the lead underwriters exercised "due diligence" in investigating the financial condition, operating results, construction program and profitability reported by Consumers Power in said Registration Statement and Prospectus.

24. The defenses of the representative of the Underwriter Class will be typical of the defenses of all class members, and the named representatives will fairly and adequately protect the interests of the Underwriter Class.

25. A class action is superior to other available methods for the fair and efficient adjudication of this controversy.

26. As to plaintiff's claims for violation of Section 11 of the 1933 Act (Count I), the questions of law or fact common to the members of the Underwriter Class predominate over any questions affecting only individual members. As to claims for violation of Section 12(2) of the 1933 Act (Count II) plaintiffs will seek certification of a single issue defendant class to adjudicate the question whether the Registration Statement and Prospectus were materially misleading.

27. Plaintiff knows of no difficulty which will be encountered in the management of this litigation which would preclude certification of the defendant Underwriter Class.

FACTS UPON WHICH CLAIMS  
FOR RELIEF ARE BASED

28. In 1968, Consumers Power began construction of a nuclear power plant in Midland, Michigan (the "Midland plant"). At that time, completion was expected in seven years and at a cost of \$349 million.

29. While the Midland plant was in the planning and design stage, prior to December 1966 Consumers Power began negotiations with Dow Chemical Co. ("Dow") concerning the supply of steam to Dow from the Midland plant. On or about December 13, 1967 Consumers Power and Dow executed an agreement under which Consumers Power agreed to supply steam to Dow on completion of the Midland plant (the "1967 Dow Agreement").

30. Thereafter the construction of the Midland plant encountered a number of delays. These delays resulted in promulgation of financing, quality controls and federal regulatory safety requirements by the Nuclear Regulatory Commission ("NRC"). As a result of these delays, a dispute between Consumers Power and Dow over the 1967 Dow Agreement arose and on or about June 21, 1978 a new agreement was entered into between Consumers Power and Dow which replaced the 1967 Dow Agreement (the "1978 Dow Agreement").

31. Under the 1978 Dow Agreement, Dow was to purchase as much as four million pounds of cogenerated steam an hour from the Midland plant beginning by the end of 1984. Pursuant to the 1978 Dow Agreement, if the Midland plant was not to be completed prior to December 31, 1983, Dow had the option to terminate the 1978 Dow Agreement. Consumers Power was obligated by the 1978 Dow Agreement to keep Dow currently informed of Consumers Power's construction schedules, the progress of engineering design and construction, and proposed changes in engineering design, construction, and operating and maintenance practices and procedures that would significantly affect the aggregate cost of process steam to Dow.

32. Prior to and during the negotiation of the 1978 Dow Agreement, Consumers Power had discovered, but failed to disclose material adverse information regarding the construction of the Midland plant, the material information which Consumers Power failed to disclose to Dow or the investing public, including the following:

(a) that the 30 feet of fill soil on which the Midland plant was being constructed was inadequate for construction of a nuclear power plant;

(b) that the administration building under construction at the Midland plant, a structure not subject to NRC safety reporting requirements, was experiencing sinking problems in 1977;

(c) that an informal investigation conducted by Consumers Power in 1977 had confirmed that the serious deficiencies in the fill soil was present throughout the Midland plant site;

(d) that Consumers Power was issuing false and misleading test results to the NRC certifying that the fill soil was meeting NRC standards;

(e) that at least three audits conducted by Consumers Power during the period 1974-1977 found numerous instances of failure to meet proper procedures or specifications in the laying and compacting of the fill soil; and

(f) that continued construction without first correcting these fill soil deficiencies would result in prolonged delay and substantial additional costs.

33. Thereafter in 1978, after a structure subject to NRC reporting requirements began sinking at the Midland plant, Consumers Power finally disclosed that a sinkage problem existed at the Midland plant.

34. As early as January 1980, Consumers Power knew or should have known that the 1984 completion date of the Midland plant and the cost of completion estimated to be \$3.39 billion which Consumers Power was disseminating at the time to the public, could not be met, particularly in light of the following:

(a) that the NRC had rejected Consumers Power's plan for remedying its fill soil problems and had ordered a halt to the remedial fill soil work;

(b) that design and engineering changes had added significantly to the cost and time of the project;

(c) that construction and quality assurance problems were increasing, thus requiring substantial rework and reinspection of the facility;

(d) that the NRC was imposing new regulatory requirements as a result of the Three Mile Island incident in March, 1979 and was imposing delays in the licensing process for the Midland plant; and

(e) that a report generated by the Bechtel Corporation ("Bechtel"), the Midland plant construction company, had informed Consumers Power that the Midland plant could not be completed until 1985. X

35. Notwithstanding Consumers Power's knowledge of the problems set out supra in paragraph 34, Consumers Power failed to disclose to the investing public until April 11, 1983 Consumers Power's inability to declare the Midland plant operational by the end of 1984 and that its expected costs to complete the construction of the plant would be substantially more than the previously estimated \$3.39 billion.

36. In December, 1982 Consumers Power halted all construction on safety related portions of the Midland plant structure. Consumers Power modified its construction plans. These modifications were set forth in an internal plan, the Construction Completion Plan ("CCP"). During this same time, the NRC conducted an investigation of the Midland plant construction and determined that Consumers Power had failed to follow mandated construction procedures, that certain equipment and structural appendages were improperly installed and Consumers Power's quality control inspectors and supervisors had failed to examine properly some of the construction work which had been improperly done and that due to the excessive deficiencies in the installation, inspection and supervision of the Midland construction, levied a civil penalty of \$120,000 against Consumers Power.

37. On April 11, 1983 Consumers Power, pursuant to its completed CCP, raised its cost estimates for completion of the Midland plant to \$4.43 billion and moved the completion date of Unit 2, the first of the two generators scheduled for completion from December 1984 to February 1985 and the completion date of Unit 1 was moved back from July 1984 to August 1985.

38. In the same public announcement of the new cost and completion time estimates, defendant Selby stated the reasons for the delay were the discovery by Consumers Power in 1978 of the fill soil sinkage problems and delays in coming to an arrangement regarding these problems with the NRC.

39. The April CCP cost and completion time estimates allowed for an extremely narrow margin for delay or cost overruns (the April CCP referred to the allowance for such delays and overruns as the "float"). These estimates were unreasonably optimistic. In fact, the "float" was exhausted early in June 1983. Moreover, at the time the "float" was exhausted in June 1983, the NRC had not yet issued all the necessary approvals Consumers Power would require for completion of the fill soil repairs.

40. Contemplating that Consumers Power's April CCP predictions of the cost and completion time were overly optimistic, Dow began requesting information from Consumers Power regarding the construction and completion of the Midland plant, including the information upon which the April CCP was based. At the time, Consumers Power management organized a committee to report about the possible consequences of Dow's termination of the 1978 Dow Agreement and internally concluded that, inter alia, Dow would likely terminate the 1978 Dow Agreement. On July 14, 1983 Dow indeed terminated the 1978 Dow Agreement, refused to pay certain termination payments required by said contract and initiated a Declaratory Judgment action against Consumers Power for a sum in excess of \$60 million alleging, inter alia, that:

(1) the 1978 Dow Agreement be discharged on account of Consumers Power's misrepresentations and non-disclosures; (2) that Consumers Power had breached the contract and its fiduciary duties to Dow; and (3) that Dow be discharged on the basis of frustration of performance and commercial impracticability. The claims set forth above are currently the subject of litigation, however, the facts set forth supra in paragraphs 31 through 39 above and infra in paragraphs 41 and 42 establish a strong likelihood that Dow's claims are meritorious and that Dow will prevail.

41. The April CCP also omitted to include a realistic estimate of the time required to solve the fill soil problem and omitted to forecast the additional costs that would be incurred in executing its planned solution of the fill soil problem, which included the following: (1) manual digging, often with pick and shovel type equipment, tunneling under existing buildings, some as long as three hundred yards; (2) placing the existing buildings on stilts; (3) filling the tunnels with cement; and then (4) dropping the buildings from the stilts. This plan was expected to be extremely time consuming, has been fraught with excessive delays, and substantially increased the cost of the Midland plant.

42. In December 1982 and numerous times thereafter, the NRC informed Consumers Power that the NRC would require a 100% reinspection of the Midland plant. Such reinspection was reasonably expected in light of both the NRC's comments and the history of Consumers Power safety unit construction design, inspection and supervision deficiencies. Nonetheless, the April CCP omitted to estimate delays or cost which would result from the NRC's planned reinspection of the Midland plant.



43. On February 19, 1983, Consumers Power announced that it had filed a preliminary registration statement with the SEC pursuant to obtain SEC approval to issue 5 million shares of common stock. Consumers Power stated the proceeds of such sale could be used primarily for construction costs related to the Midland plant. Pursuant to a final Registration Statement which became effective on or about June 22, 1983, Consumers Power commenced the Public Offering. The Registration Statement was prepared with the participation, acquiescence, encouragement and assistance of each of the defendants and their counsel.

44. Said 5 million shares were offered and sold to thousands of public investors nationwide, through a formal underwriting syndicate formed, managed and represented by Morgan, Stanley & Co. which realized some \$8 million from the public offering as a selling shareholder in addition to its portion of the \$3 million underwriting fees.

45. The Registration Statement and the Prospectus prepared and disseminated in connection with the June 22, 1983 Public Offering, as well as Consumer Power's Annual Report on Form 10-K for the year ended December 31, 1982, the company's quarterly report on Form 10-Q for the quarter ended March 31, 1983 and Consumer Power's current reports on Form 8-K dated February 15 and April 12, 1983, all of which were incorporated by reference in such Prospectus and were deemed to be a part thereof (collectively referred to as "Offering Materials") contained untrue statements of material fact and omitted to state material facts

necessary to make the statements made, in light of the circumstances in which they were made, not misleading. The Offering Materials were misleading in at least the following respects:

(a) Plaintiff and the Plaintiff Class relied upon the integrity of Consumers Power to make honest, fair and precise estimations with regard to the cost, completion time and operation of the Midland plant, but instead Consumers Power's April CCP cost estimate of \$4.43 billion and scheduled completion for the year 1985, recited in numerous portions of the Offering Materials, were false and Consumers Power knew or should have known they were false in that:

(1) The "float" in the April CCP was unreasonably narrow in light of Consumers Power's previous history of delay and cost overrun. As such, the entire cost estimate was intentionally underestimated by Consumers Power in the Offering Materials.

(2) The "float" in the April CCP was exhausted or substantially exhausted in early June 1983, and Consumers Power knew or should have known as early as May 1983 that the \$4.43 billion estimated cost of completion was inaccurate and substantially underestimated.

(3) The "float" in the April CCP was exhausted or substantially exhausted in early June 1983 and Consumers Power knew or should have known that the 1985 completion date was inaccurate, unrealistic for at least the following reasons:

i) The NRC had informed Consumers Power that it would conduct a 100% reinspection of the site and that such reinspection would substantially delay operation of the Midland plant.

ii) From the start, Consumers Power was experiencing delays in implementing its solution to the fill soil problem and such delays were at least partially responsible for exhausting the entire float in less than two months.

iii) Consumers Power knew or should have known in April 1983 that unresolved NRC construction safety and licensing problems were certain to delay completions and operation of the plant until well into 1986.

iv) Consumers Power knew prior to November 1983 that the NRC step by 100% reinspection program would substantially delay completion and operation and materially increase the costs of the Midland plant.

v) In June 1983, Consumers Power knew or should have known that there was a possibility that the plant's welds were under specifications and too weak to receive NRC approval and that repair of the weld problem would cause a substantial delay in completion and materially increase the cost of the Midland plant.

vi) In June 1983 Consumers Power knew or should have known that the Midland plant had problems with improper wiring and that repair of the wiring problem would cause a substantial delay in completion and materially increase the cost of the Midland plant. X

vii) In June 1983 Consumers Power knew or should have known that the reactor cooling pipes were improperly braced and that redesign and reinstallation of the cooling braces would cause a substantial delay in completion and materially increase the cost of the Midland plant. T

(4) Consumers Power knew or should have known that any substantial delay in completion of the Midland plant would materially increase the cost of completing the construction and that Consumers Power knew that the April CCP cost estimate was unrealistic in light of the certainty of additional construction and inspection delays as set forth in subparagraph 3 above.

(b) Statements on page of Consumers Power's March 31, 1983 10-Q, which is incorporated by reference into the Offering Materials, are false and misleading as follows:

(1) The statement that:

In 1978, the Company discovered foundation soils problems at the Midland plant and reported the discovery to the Nuclear Regulatory Commission (NRC). Some remedial work related to the soils problems and to more stringent NRC seismic requirements began in April 1982. Additional cost attributable to this remedial work is included in the cost estimate for the Midland plant. On April 30, 1982, the Atomic Safety Licensing Board (ASLB) issued an order that the construction permits for the plant be amended to require specific NRC staff approval before proceeding with certain soils-related activities. Various issues relating to the soils work are the subject of contested public hearings before the ASLB. The Company estimates that the remedial soils work will be completed in February 1985,

is false and misleading in that:

i) Consumers Power discovered the fill soil problem in 1977 and concealed the existence of the problem from the public and the NRC until a safety related building subject to NRC reporting requirements began to sink in 1978.

ii) The statement implies that NRC regulations had delayed completion of the fill soil work, when, in fact, the Consumers Power's plan for solving the fill soil problem is so cumbersome and haphazard that a February 1985 estimated completion date was unrealistic and known by Consumers Power to be such.

iii) The reason for the NRC amending Consumer Power's construction permit was because NRC staff members had expressed doubts that Consumer

Power's plan for solving the fill soil problem would be effective and that the problem could be beyond repair.

iv) Consumers Power had doubts, based upon reports of engineers and construction professionals, that the fill soil problem could be solved in compliance with NRC construction and safety requirements.

v) The delays in construction and ensuing cost overruns were not attributable to stringent NRC safety regulations, but rather, as Consumers Power has admitted to the NRC, to Consumers Power, which was at fault because of a breakdown in control of construction design and inspection which necessitated NRC intervention.

(2) The statement that:

The Company's decision to continue design and construction of the plant assumes that necessary regulatory approvals will be obtained. The Company is vigorously pursuing efforts to identify and favorably resolve matters which could cause delays and cost increases. There can be no assurance, however, that further delays and further cost increases will not occur.

is false and misleading in that:

i) Consumers Power, due to its long history of design, installation, inspection and construction deficiencies, could not reasonably assume it could obtain the necessary regulatory approvals for completion and operation of the Midland plant without considerable additional delays

and costs

ii) Consumers Power knew or should have known that design and construction deficiencies known to the company, but as yet undisclosed to the public or the NRC, would substantially delay completion and materially increase the cost of the Midland plant.

iii) Consumers Power knew or should have known that design and construction deficiencies known to the company, but as yet undisclosed to the public or the NRC, would substantially delay and/or jeopardize receiving the necessary regulatory approvals for completion and operation of the plant.

(3) The statement that:

The Company's contract with Dow provides that if commercial operation of the plant for process steam service to Dow cannot begin until after December 31, 1984, Dow would have the right to terminate its agreement with the Company for such service; however, Dow would be obligated to pay an amount estimated to range from \$410 million at March 31, 1983 to \$640 million if the plant were completed at a cost of \$4.43 billion. Should Dow terminate the agreement for such cause, the remaining portion of the investment in equipment allocable to process steam service may not be salvageable. That portion is estimated to range from \$305 million at March 31, 1983 to \$480 million if the plant were completed at a cost of \$4.43 billion.

is false and misleading in that it omits to disclose that:

i) Dow had already begun requesting information regarding, inter alia, the basis upon which Consumers Power made its April CCP estimates.

ii) Consumers Power had already formed a committee to determine the effects on Consumers Power's future financial position if Dow terminated the contract, but Consumers Power failed to disclose the existence of such committee estimates or the findings of the committee.

iii) Consumers Power had already determined that Dow would, in fact, terminate the 1978 Dow Agreement.

(4) The statement on page 15 in Consumers Power's March 31, 1983 10-Q which is incorporated by reference into the Offering Materials which states:

In April 1983, the Board of Directors approved new estimated completion dates and a new cost estimate for the Midland plant. Commercial operation for Unit 2, the first unit to go on-line, is scheduled for February 1985. Unit 1 is scheduled for commercial operation in August 1985. The cost of the project is now estimated at \$4.43 billion.

Previously, Unit 2 had been scheduled to go into commercial operation in December 1983 and Unit 1 in July 1984. The cost estimate based on that schedule was \$3.39 billion.

is false and misleading in that it fails to disclose that, as set forth supra in paragraphs 32 to 34,



Consumers Power knew as early as January 1980 that the Midland plant could not be completed by 1984. Said omission is particularly misleading in that it induced the public, including plaintiff and the Plaintiff Class, into believing that Consumers Power's April CCP cost and completion time estimates were the product of a reliable and honest calculation made in good faith, when in fact Consumers Power had been disseminating intentionally false and misleading cost estimates since at least 1977. Additionally, the statement above regarding Consumers Power's April CCP updated cost and completion time estimates is misleading in that it expressly implies that the new estimates are a well considered and accurate approximation including all the relevant factors currently known to the company or substantially certain to occur. In fact, the April CCP failed to consider the impact of numerous delays and extra costs which Consumers Power was already aware would be encountered at the Midland plant.

(5) The discussion on pages 18 and 19 of the Consumers Power's June 30, 1983 10-Q concerning the litigation between Consumers Power and Dow is false and misleading in that:

i) Due to misrepresentations, concealments and generally negligent manner in which the Midland plant construction has been conducted by Consumers Power, it is likely Dow will prevail in its Declaratory Judgment actions against Consumers Power.

ii) Consumers Power does not and cannot expect to recover any sums of money from Dow and Consumers Power knows or should know that it expects a disastrous adverse effect on the company's financial future.

c) The Prospectus and Registration Statement disseminated in connection with the public offering omits any discussion whatsoever of the difficulties--past, present or future--which Consumers Power has encountered, or expects to encounter in regard to the construction of the Midland plant. Instead, in small plain face type on page 2, the Prospectus states:

#### INCORPORATION OF CERTAIN DOCUMENTS BY REFERENCE

The following documents, which have heretofore been filed by the Company with the Commission pursuant to the Securities Exchange Act of 1934 (the "1934 Act"), are incorporated by reference in this Prospectus and shall be deemed to be a part hereof:

- (1) The Company's Annual Report on Form 10-K for the year ended December 31, 1982.
- (2) The Company's Quarterly Report on Form 10-Q for the quarter ended March 31, 1983.
- (3) The Company's Current Reports on Form 8-K, dated February 15 and April 12, 1983.

All documents filed by the Company with the Commission pursuant to Sections 13(a), 13(c), 14 or 15(d) of the 1934 Act subsequent to the date of this Prospectus and prior to the termination of the offering made by this Prospectus shall be deemed to be incorporated herein by reference and shall be deemed to be a part hereof from the date of filing of such documents.

(1) The above mentioned SEC filing documents were not included in the materials disseminated to prospective purchasers of Consumers Power shares, but were only available upon special request. By omitting from the materials generally available to prospective purchasers of Consumers Power Public Offering all relevant information regarding the problems in connection with the Midland plant, including without limitation, details of the fill soil problem, NRC regulatory difficulties and the foreseeable Dow litigation, Consumers Power succeeded in burying and hiding material adverse information from the plaintiff and the Plaintiff class.

(2) In any event, as described above, each of those documents which was incorporated by reference into the Offering Materials contained materially misleading statements and omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

46. On November 9, 1983, less than seven months after publication of the April CCP, Consumers Power disclosed that it could not complete the Midland plant until mid 1986 and that the cost of the Midland plant would rise well above the previous April CCP estimate of \$4.43 billion to an amount not capable of estimation.

47. As a result of the dissemination of the aforementioned false and misleading Offering Materials and other communications, the market price of Consumers Power's common stock was artificially inflated throughout the Class Period. In ignorance of the adverse facts concerning Consumers Power's business and financial condition, in particular the problems relating to the Midland plant, which were concealed by defendants, plaintiff and the members of the Plaintiff Class purchased Consumers Power's common stock at such artificially inflated prices and were damaged thereby. Had plaintiff and the members of the Plaintiff Class known of the materially adverse information not disclosed by the defendants, they would not have purchased Consumers Power's common stock at the artificially inflated prices they did.

#### COUNT I

##### SECTION 11 OF THE 1933 ACT

48. Plaintiff incorporates by reference and realleges paragraphs 1 through 47 as though set forth fully herein.

49. This Count is asserted against all defendants, including the underwriter defendants, individually and in their representative capacity, and is based on Section 11 of the 1933 Act, 15 U.S.C. §77k.

50. The Defendant Directors, the underwriters and the Underwriter Class owed to those who acquired shares of common stock of Consumers Power, including plaintiff and the Plaintiff Class, the duty to make a reasonable and diligent investigation of the statements contained in the Registration Statement, to insure that said statements were true and that there was no omission to state a material fact required to be stated in order to make the statements contained therein not misleading. These defendants knew or, in the exercise of reasonable care, should have known of the misstatements and omissions contained in the Registration Statement, some of which are set forth in paragraph 45 supra. As such, these defendants are liable to plaintiff and the Plaintiff Class.

51. Defendant Consumers Power owed to those who acquired shares of common stock of Consumers Power, including plaintiff and Plaintiff Class, the duty to insure that the statements contained in the Registration Statement were true and that there was no omission to state a material fact required to be stated in order to make the statements contained therein not misleading. By virtue of the misrepresentations and omissions contained in the Registration Statement, some of which are set forth in paragraph 45 supra, defendant Consumers Power is liable to plaintiff and the Plaintiff Class.

52. Defendants negligently and/or recklessly issued, caused to be issued, participated in the issuance of and/or aided and abetted the issuance of materially false and misleading

written statements to the investing public which were contained in the Offering Materials including the Registration Statement and the Prospectus misrepresented or failed to disclose the facts set forth in paragraph 45 supra. By reason of the conduct herein alleged, each defendant violated Section 11 of the 1933 Act. As a direct and proximate result of defendants' wrongful conduct, the market price for Consumers Power common stock was artificially inflated, and plaintiff and the Plaintiff Class suffered substantial damage in connection with the purchase of Consumers Power common stock during the Class Period.

53. No securities issued pursuant to the Offering Materials, including the Registration Statement or Prospectus were bona fide offered to the public prior to the effective date of said Registration Statement, i.e., June 22, 1983. This action was commenced less than three years after the securities were first bona fide offered to the public, and the claims asserted herein were brought by plaintiffs within one year after discovery of the untrue statements and omissions alleged herein and omissions alleged herein and within three years after the securities were bona fide offered to the public.

#### COUNT II.

##### SECTION 12(2) OF THE 1933 ACT

54. Plaintiff incorporates by reference and realleges paragraphs 1 through 53 as though set forth fully herein.

55. This Count is asserted against all defendants, including the underwriter defendants individually and in their representative capacity, and is based on Section 12(2) of the 1933 Act, 15 U.S.C. 771(2).

56. Each of the defendants were substantial, necessary participants and factors in the sale of Consumers Power common stock to the investing public and they conspired and aided and abetted one another in connection with the preparation of the false and misleading Offering Materials including the Prospectus and Registration Statement used in conjunction with the sale of Consumers Power common stock. Each of the defendants owed to the purchasers of said Consumers Power common stock, including plaintiff and members of the Plaintiff Class, the duty to make a reasonable and diligent investigation of the statements contained in the Offering Materials including the Prospectus and Registration Statement to insure that said statements were true and that there was no omission to state a material fact required to be stated in order to make the statements contained therein not misleading. These defendants knew or, in the exercise of reasonable care, should have known of the misstatements and omissions contained in the Prospectus and Offering Materials, including Registration Statement as set forth in paragraph 45 supra. As such, each of the defendants is liable to plaintiff and the members of the Plaintiff Class.

57. None of the false and misleading statements and omissions contained in the Offering Materials including the Prospectus and Registration Statement and described herein were known to plaintiff and the members of the Plaintiff Class at the time they acquired Consumers Power common stock.

58. Plaintiff, on behalf of himself and all those members of the Plaintiff Class similarly situated, does hereby offer to tender to the defendants the shares of Consumers Power common stock acquired through the Public Offering in return for the consideration paid for said shares with interest thereon.

COUNT III

SECTION 10(b) OF THE 1934 ACT AND RULE 10(b)-5

59. Plaintiff incorporates by reference and realleges paragraphs 1 through 58 as though set forth fully herein.

60. This Count is asserted against defendant, Consumers Power and the Defendant Directors and is based on Section 10(b) of the 1934 Act, 15 U.S.C. §78j(b) and Rule 10(b)-5 promulgated thereunder.

61. From or about June 22, 1983 through November 9, 1983 defendant Consumers Power and the Defendant Directors individually and in concert, directly and indirectly, engaged and participated in or aided and abetted a continuous course of conduct and conspiracy to conceal adverse material information about the financial condition and future business prospects of Consumers Power as specified herein. Defendants employed devices, schemes and artifices to defraud and engaged in acts, practices and a course of conduct as alleged herein in an effort to maintain an artificially high market price for the securities of Consumers Power. This included the formulation, making of and/or participation in making of untrue statements of material facts and omitting



to state material facts necessary to make the statements made about Consumers Power, its financial condition and future business prospects, in the light of the circumstances under which they were made, not misleading, and engaged in transactions, practices, and a course of business which operated as a fraud and deceit upon the purchasers of Consumers Power common stock during the class period.

62. During the class period, Consumers Power and the Defendant Directors issued the Offering Materials as well as other public reports, releases and statements, including the statements set forth herein, which were materially false and misleading in violation of §10(b) of the 1934 Act and the Rules promulgated thereunder. Said Offering Materials, reports, releases and statements were materially false and misleading in that they omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading. Some of the misstatements and omitted material facts not disclosed by defendants during the class period are set out in paragraph 45 supra.

63. As a result of the deceptive practices, false and misleading statements and omissions, plaintiffs and the class purchased Consumers Power common stock, relying on the integrity of the market and/or the statements made, and have and will sustain losses and damages therefrom.

64. Defendants had actual knowledge of the materially false and misleading statements and omissions set forth herein or acted with such reckless disregard for the truth that they failed to ascertain and disclose such facts.

65. By virtue of the foregoing, defendants have violated Section 10(b) of the 1934 Act and Rule 10b-5 promulgated thereunder and Section 20 of the 1934 Act.

66. Each of the defendants, by acting as hereinabove described, did so knowingly or recklessly. With knowledge or reckless disregard of the true financial and operating condition of Consumers Power, they caused the Offering Materials, reports, statements and releases to contain misstatements and omissions of material fact as alleged herein.

67. Each of the Defendant Directors is liable as a direct participant in and as an aider and abettor of the wrongs complained of herein. The Defendant Directors, because of their positions of control and authority as executives or operating officers and directors of the company were able to and did directly or indirectly, control the contents of the Offering Materials, reports, statements and press releases of the company. As officers and directors of a publicly-held company, the Defendant Directors had a duty to disseminate promptly accurate and truthful information with respect to the company's operations, finances and future business prospects. The defendants participated in the wrongdoing complained of in order to continue and prolong the illusion of the company's continued growth and profitability, and to conceal the adverse facts concerning the company's operations, finances and future business prospects.

68. As a result of the dissemination of the aforementioned false and misleading statements and releases, the

market prices of Consumers Power's equity securities were artificially inflated throughout the class period. Plaintiff and the members of the class purchased Consumers Power common stock at those artificially inflated prices and relied upon the integrity of the market and/or upon the statements disseminated by Consumers Power and were damaged thereby.

69. Had plaintiffs and the members of the class known of the materially adverse information not disclosed by the defendants, they would not have purchased Consumers Power common stock at the artificially inflated price that they did.

WHEREFORE, plaintiff, on behalf of himself and the class and/or classes they seek to represent, demand judgment against defendants as follows:

(a) Declaring this action to be a proper plaintiff class action and a proper defendant class action;

(b) As to Count I, judgment against all of the defendants jointly and severally, in such amount as shall be proved by the plaintiff and by all members of the class, in accordance with the formula prescribed in Section 11 of the 1933 Act;

(c) As to Counts II and III, judgment against all of the defendants, jointly and severally, for damages in an amount determined to have been sustained by plaintiff and the other class members;

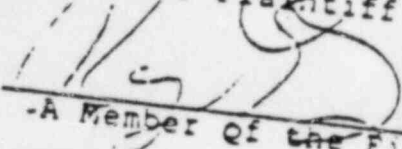
(d) On all Counts, an award of appropriate interest, costs and disbursements of this action, including reasonable attorneys' and expert witness fees;

(e) For an award of punitive damages against each defendant;  
and

(f) For such other and further relief as the Court may  
deem just and proper.

Dated: Cincinnati, Ohio  
November , 1983

Roger E. Craig, Esq.  
CRAIG, FARBER & DOWNS, P.C.  
Attorneys for Plaintiff

By:   
-A Member of the Firm

1217 First National Building  
Detroit, Michigan 48226  
(313) 963-8155

OF COUNSEL:

Gene Mesh  
Richard S. Wayne  
MESH CO., L.P.A.  
333 Burnet Avenue  
Cincinnati, Ohio 45229  
(513) 221-8800

JURY DEMAND

Plaintiff requests a trial by jury on all Counts.

  
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UNITED STATES OF AMERICA  
 NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

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

I Billie Garde, being duly sworn, do depose and say:

1. I am Director of the Citizens' Clinic for Accountable Government of the Government Accountability Project ("GAP").

2. Based on conversations with Nuclear Regulatory Commission staff I was informed that the initial Caseload Forecast Panel meeting for Midland was requested for October, 1982. That meeting was cancelled at the request of CPCo and rescheduled to "three to four months later." (See Telecon Record dated October 5, 1983, attached and incorporated herein as Exhibit 1.) The meeting was rescheduled for April 19-20, 1983 in Midland, Michigan.

3. Although I did not personally attend that meeting I have had the opportunity to review in detail information about the meeting made available on the public record and through documents GAP obtained under the Freedom of Information Act ("FOIA"). The digest of these FOIA documents is attached and incorporated herein as Exhibit 2.

4. At that meeting Consumers Power Company revised its estimated cost and completion schedule for the Midland plants. It announced a revised cost of \$4.43 billion, up from \$3.39 billion, and completion dates of October, 1984 for Unit 2, and February, 1985 for Unit 1. See meeting summary of April 20, 1983, attached and incorporated herein as Exhibit 3.

5. After this meeting the Case Load Forecast Panel completed its review of the schedule information provided it by Consumers. It then forwarded a draft memo to the Office of Nuclear Reaction Regulation ("NRR") by mid-May, 1983. By May 17, 1983, Darl Hood prepared a handwritten draft of a letter to be sent by Thomas Novak, Assistant Director of NRR, to James Cook, Consumers' Vice-President. See Handwritten Novak Letter, attached and incorporated herein as Exhibit 4.

6. On May 25, 1983, a typed copy of the same letter was prepared for signature by Mr. Novak. The concurrence blocks on this draft letter indicate that entire Caseload Forecast Panel concurred in the letter, including Darl Hood, J. Harrison, Ron Gardner and William Lovelace.

7. Upon information and belief the NRC Staff urged its attorney to inform the Atomic Safety and Licensing Board of its schedule estimates since they differed substantially from Consumers' projected schedule.

8. On June 3, 1983, the Dow Chemical Company ("Dow") sent a letter to Consumers indicating concern over the revised cost and schedule estimates that Consumers announced in April and requesting documents. See June 3, 1983 Dow Letter, attached

and incorporated herein as Exhibit 5.

9. The NRC scheduled a public meeting on the Caseload Forecast Panel schedules estimates for June 23, 1983, at the Quality Inn in Midland, Michigan. This meeting was postponed and rescheduled for July, 1983.

This tentatively-scheduled July meeting was later postponed until August.

No public meeting was held in August. An August 9, 1983, letter written by Mr. Novak to Consumers' Power indicated that a public meeting would be held in September but no meeting has been noticed up to this date.

10. Based on conversations with NRC Staff and Consumers' employees I understand that soon after receiving the June 3, 1983 Dow letter, Consumers' requested a meeting with NRC officials to discuss the upcoming June 23, 1983 public meeting and the wide divergence in NRC and Consumers' completion dates. Upon information and belief Consumers' also wished to lobby to change the members of the Caseload Forecast Panel.

Upon information and belief Consumers told the NRC that the Caseload Forecast figures were much less significant to the NRC than to Consumers. The NRC simply used the figures as a manpower management tool whereas public release of the completion dates would have serious financial consequences for Consumers.

11. Upon information and belief the NRC did not schedule a meeting but instead held a telecon in which Mr. Novak of NRR,


and other NRC staff participated. Subsequent to that telephone conversation the June public meeting was cancelled and rescheduled for August.

12. On July 11, 1983, I made a FOIA request for all documents related to the Caseload Forecast Panel April meeting. See FOIA request, attached and incorporated herein as Exhibit 6.

On August 8, 1983, I contacted the NRC FOIA Office and was informed that the documents would be released the following day. On August 9, 1983, I picked up the documents. I was informed by FOIA Officer Carol Ann Reed that the NRC released all documents except an early draft of the Novak letter, prepared by the Caseload Forecast Panel members.

13. On August 9, 1983, Mr. Novak released a letter he wrote to Consumers in which he revised the Caseload Forecast Panel's estimated completion dates for the Midland plants. The completion dates cited in the August 9, 1983 Novak letter are 12 months earlier than the original estimates contained in the draft Novak letter concurred in by the panel in May, 1983.

In addition, the tone of the final, August 9, 1983 Novak letter differs from the draft in that it does not contain the statement: "The panel's estimate includes no provision for delay associated with future plant financing."



Billie Pirner Garde

Director of Compliance

Submission of                      to                     

on                                          

April, 1983



TELECON RECORD - DATE Oct 5, 1982

ParticipantsCompanyCopies to: UFI:F J Sullivan  
D HoodCP Co  
NRCJWCook  
MIMiller, IL&B  
PSteptoe, IL&B  
JEBrunner  
DBMiller BWMargug  
RAWells RWEuston  
JAMooney ARMollenk  
GSKeeley  
File: 0505.18/0650Route to: DMBudzik/LSGibson/BLHarshe/DASommersSUBJECT: Independent Review Program -  
Caseload Forecast Panel VisitXC:  
W Paton  
W. Lovelace  
J. Novak  
E Adelman  
R. Herman  
D. EisenhutDISCUSSION:

I called Darl Hood to discuss the scheduling of meetings on the subject topics. I informed him that our Independent Review Program Plan submittal would be to NRC by Oct 5. He said that he had discussed the need for a meeting within the Staff but would await our submittal to schedule a meeting. I emphasized the importance of an early meeting to allow us timely completion of the program, particularly industry's commitment to complete INPO-type evaluation this year.

In response to D Hood's earlier proposal of a Caseload Forecast Panel visit on Nov 16 - 19, 1982, I pointed out a number of reasons why CP Co feels this is inappropriate:

- CP Co needs to receive and review the forthcoming soils SSER.
- The soils work is controlling however CP Co has not been released to initiate the work and this activity should take precedence for both CP Co and NRC.
- It would be beneficial to get into the soils work to better assess production rates, construction sequences, etc.
- The current situation is not amenable to normal Caseload Forecast Panel assessment and requires more preparation on the part of both NRC and CP Co and the key people who need to do this work are currently fully occupied trying to remove remaining constraints to initiate the soils remedial activities.

As an alternative I indicated that CP Co intends to notify the ASLB this month that the 7/83 fuel load date will not be met due to our inability to initiate the soils work and that the precise date is indeterminate pending issuance of the SSER, NRC release of the soils work, and CP Co's detailed review of production rates, construction sequences, etc, based on the above. CP Co would be prepared to support a Caseload Forecast Panel visit approximately 3 months following initiation of soils remedial measures (auxiliary building) and a more precise target fuel load date could be provided to the ASLB at that time.

D Hood felt the Board might want a more definitive schedule but agreed that the proposed approach seems reasonable and that he should discuss it within the Staff. He indicated the soils SSER should issue this week.

Exhibit 2



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

AUG 09 1983

ocket Nos. 50-329/330

Ms. Billie Pirner Garde  
Government Accountability Project  
Institute for Policy Studies  
1901 Que Street, N.W.  
Washington, DC 20009

IN RESPONSE REFER  
TO FOIA-83-397

Dear Ms. Garde:

This is in response to your letter dated July 11, 1983, in which you requested, pursuant to the Freedom of Information Act, all documents relating to the Caseload Forecast Panel meeting held April 19, 1983 regarding the Midland Nuclear Power Plant.

The documents listed on Appendix A are subject to your request. These documents, with the exception of item 3, are being placed in our Public Document Room, 1717 H Street, N.W., Washington, DC.

On August 5, 1983, you agreed to pay reproduction charges. The cost of reproducing documents is five cents (\$0.05) per page, as specified in 10 CFR 9.14(a). Accordingly, the cost of reproducing 857 pages is \$42.85. You will be billed for this amount by our Division of Accounting.

Document 3 on the Appendix is being withheld in its entirety from public disclosure pursuant to exemption (5) of the Freedom of Information Act (5 U.S.C. 552(b)(5)) and 10 CFR 9.5(a)(5) of the Commission's regulations. This draft was prepared as part of the agency's deliberative process for developing an independent estimate of construction completion for resource planning purposes. Disclosure of this draft would impede the future frank and candid exchange of views between members of the NRC staff in the development of these independent staff estimates of reactor construction completion. There are no reasonably segregable portions of this document.

Pursuant to 10 CFR 9.9 of the Commission's regulations, it has been determined that the information withheld is exempt from production or disclosure, and that its production or disclosure is contrary to the public interest. The persons responsible for this denial are the undersigned and Mr. Harold Denton, Director, Office of Nuclear Reactor Regulation.

This denial may be appealed to the Commission's Executive Director for Operations within 30 days from the receipt of this letter. As provided in 10 CFR 9.11, any such appeal must be in writing, addressed to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should clearly state on the envelope and in the letter that it is an "Appeal from an Initial FOIA Decision."

Sincerely,

J. M. Felton, Director  
Division of Rules and Records  
Office of Administration

APPENDIX A

1. 4/6/83 Memo for Elinor G. Adensam from Darl S. Hood re: NOTICE OF MEETING AND TOUR BY CASELOAD FORECAST PANEL TO ASSESS CONSTRUCTION COMPLETION SCHEDULES - MIDLAND PLANT, UNITS 1 AND 2 w/enclosure (8 pages)
2. 4/19/83 Handouts and Viewgraph slides Remaining after preparation of meeting report (36 pages)
3. Undated Draft Letter to J. W. Cook from Thomas M. Novak re: CASELOAD FORECAST PANEL ESTIMATE OF CONSTRUCTION COMPLETION SCHEDULE (2 pages)
4. 5/17/83 Handwritten Note to J. Cook from T. Novak re: CASELOAD FORECASE PANEL ESTIMATE OF CONSTRUCTION COMPLETION (2 pages)
5. 4/15/83 Daily News Article by Paul Rau re: NRC TO MAKE OWN ESTIMATE ON N-PLANT (1 page)
6. 4/20/83 Midland Daily News Article by Lorie Shane re: SOILS, PIPE HANGER WORK CRITICAL TO N-PLANT COMPLETION (3 pages)
7. 4/83 Activity Schedule (1 page)
8. 6/29/83 Dialy News Article by Paul Rau re: UTILITY MAY BE FAR FROM NUCLEAR PLANT COMPLETION (1 page)
9. Undated Draft by Darl Hood re: SUMMARY OF APIRL 19-21, 1983 CASELOAD FORECAST PANEL MEETING w/enclosures (7 pages)
10. 5/16/83 Draft by Darl Hood (Handwritten) re: SUMMARY OF APRIL 19-21, 1983 CASELOAD FORECAST PANEL MEETING w/enclosures (9 pages)
11. 4/19/83 Handwritten Notes re: CASELOAD VISIT MEETING - MIDLAND 1 & 2 (13 pages)
12. 4/24/83 Handwritten Note to G. Bachi from Darl Hood re: CLEARANCES BETWEEN MIDLAND CONTROL CABINETS AND PANELS (1 page)
13. 4/19/83 Handwritten List re: Meeting Attendants (1 page)
14. 4/20&21/  
1983 Handwritten Notes re: Master Punch List Item Effect (7 pages)
15. 4/20/83 CASELOAD PANEL PRESENTATION DATA (138 pages)
16. 4/12/83 TEST PROGRAM STATUS AND REVISION 12 - TEST SCHEDULE (98 pages)

APPENDIX A

17. 3/22/83 MILESTONE CONSTRUCTION SCHEDULE - PRELIMINARY - CHART (1 page)
18. 4/14/83 MILESTONE CONSTRUCTION SCHEDULE - BASE SCHEDULE - CHART (1 page)
19. 6/21/83 Letter to J. W. Cook from T. M. Novak re: CLEARANCES BETWEEN CLASS 1F PANFIS AND CABINETS (5 pages)
20. 9/22/82 Memo for Harold S. Bassett from Darrell G. Eisenhut re: REQUEST FOR CASELOAD PANEL VISIT FOR MIDLAND PLANT (1 page)
21. 4/19/83 Midland - List of Critical Systems w/chart (4 pages)
22. 4/83 April 1983 Appointment Calendar (1 page)
23. 6/1/83 Consumers Power Company - Midland Plant, Units 1 and 2, re: SUMMARY OF APRIL 19-21, 1983 CASELOAD FORECAST PANEL MEETING (111 pages)
24. 6/29/83 Midland Daily News Article re: Utility May Be Far From Nuclear Plant Completion by Paul Rau w/attached articles (3 pages)
25. 7/15/83 Preliminary Notification re: DOW CHEMICAL TERMINATES STEAM CONTRACT WITH MIDLAND NUCLEAR PLANT (1 page)
26. 6/16/83 Preliminary Notification re: WORKER LAYOFF (1 page)
27. 6/21/83 Preliminary Notification re: AUTHORIZATION OF FIRST MAJOR UNDERPINNING WORK UNDER SAFETY-RELATED BUILDING (1 page)
28. 6/29/83 Preliminary Notification re: RESUMPTION OF SAFETY-RELATED WELDING WORK ON HVAC SYSTEM (1 page)
29. 4/19&21/1983 MIDLAND PLANT UNITS 1 & 2 NRC CASE LOAD FORECASE PANEL SUMMARY AGENDA (1 page)
30. 4/14/83 CERTAIN HANDOUTS AT THE MEETING (30 pages)
31. 4/22/83 Letter to J. G. Keppler from James W. Cook re: CONSTRUCTION COMPLETION PROGRAM (18 pages)
32. 4/13/83 Ongoing Transmission Service Request to Kim Lovelace from Ron Cook re: NEWS RELEASE - CPCO MIDLAND CONST. SCHEDULE (3 pages)
33. 4/12/83 Memo to H. Denton et. al. from Darl Hood re: DAILY HIGHLIGHT w/enclosed Press Release (5 pages)

APPENDIX A

34. 3/24/83 Memo for The Atomic Safety and Licensing Board for the Midland Plant, Unit 1 and 2 from Thomas M. Novak re: NOTIFICATION OF CONSTRUCTION EVALUATION BY MANAGEMENT ANALYSIS COMPANY w/enclosures (4 pages)
35. 1/31/83 CONSTRUCTION PROJECT EVALUATION OF CONSUMERS POWER COMPANY MIDLAND ENERGY CENTER PROJECT - UNITS 1 AND 2 (199 pages)
36. 10/1/81 - Schedule for Site Visits (1 page)  
9/30/83
37. 3/22/83 Midland Review - Volume 2, Number 13, Operations Moves Into Control Room Area (1 page)
38. 3/14/83 Midland Review - Volume 2, Number 12, Pier 9 Excavation Begins w/attached Phase II of Aux. Bldg. Underpinning (2 pages)
39. 3/11/83 Memo for Elinor G. Adensam from Ronald W. Hernan re: NOTICE OF MEETING - MIDLAND PLANT, UNITS 1 AND 2 (2 pages)
40. 3/4/83 Letter to R. Gene Clark from A. R. Mollenkopf re: QUARTERLY PROGRESS REPORT ON STATUS OF REACTOR CONSTRUCTION (3 pages)
41. 2/23/83 Daily News Article - by Paul Rau (1 page)
42. 2/8/83 News Announcement 83-08 re: NRC STAFF PROPOSES \$120,000 FINE FOR QUALITY ASSURANCE VIOLATIONS AT MIDLAND NUCLEAR POWER STATION (2 pages)
43. 1/20/83 Midland Review - Volume 2, Number 8 re: Hard Hat Protection in Containment (2 pages)
44. 2/3/83 Notification of Enforcement Action re: PROPOSED IMPOSITION OF CIVIL PENALTY - \$120,000 (1 page)
45. 1/29/83 News Announcement 83-03 re: CONSTRUCTION COMPLETION PROGRAM (1 page)
46. 1/12/83 Letter to James W. Cook from C. J. Paperiello re: Inspection Report w/enclosure (7 pages)
47. 12/28/82 Daily News Article re: Test of Emergency Plans at N-Plant Postponed by Paul Rau w/attached articles (3 pages)
48. 12/3/82 Note to Darl Hood from Ron Cook re: Articles from the Midland Daily News w/attachments (6 pages)
49. 11/29/82 Article - High Court to Consider Waste Disposal Influence on Licensing w/attachments (3 pages)

APPENDIX A

50. 12/22/82 Midland Review, - Volume 2, Number 5 - Construction of Pier 12 East Initiated (1 page)
51. 12/3/82 Midland Review - Voluem 2, Number 2 - Turnover Status (1 page)
52. 12/3/82 Preliminary Notification re: MAJOR REDUCTION IN SAFETY-RELATED WORK (3 pages)
53. 12/3/82 Draft re: Completion Plan at the Midland Nuclear Plant (2 pages)
54. 11/17/82 Article re: Underpinning Work Delays Scheduling by Lorie Shane (2 pages)
55. 11/10/82 Memo for H. Denton et. al. from Darl Hood re: Daily Highlight w/enclosed Press Release (5 pages)
56. 10/29/82 Preliminary Notification re: Potential 50.55(e) Report - Improper Cables (1 page)
57. 10/26/82 News Announcement 82-84 re: Resumption of the Midland Nuclear Power Station Operating License/Soil Settlement Hearings (1 page)
58. 9/82 Midland Reactor - Various Articles (10 pages)
59. 10/5/82 Telecon Record re: Independent Review Program - Caseload Forecast Panel Visit (1 page)
60. 9/27/82 Preliminary Notification re: Stop Work Order on Remedial Soils Work (1 page)
61. 9/20/82 Preliminary Notification re: Defective Radiation Monitoring Modules (1 page)
62. 9/22/82 IE Information Notice No. 82-40: Deficiencies in Primary Containment Electrical Penetration Assemblies (4 pages)
63. 9/17/82 Memo for Thomas M. Novak from Ronald W. Hernan re: Fire Protection Site Survey - Midland Plant (3 pages)
64. 8/19/82 Midland Review - Volume 1, Number 39 - Operating License Hearing Contentions Established (1 page)
65. 8/27/82 Midland Review - Volume 1, Number 40 - Following Procedures Properly - Goal for All Workers (1 page)
66. 9/2/82 Midland Review - Volume 1, Number 41, Saginaw/Bay Counties Moving Toward Full Siren System Approval (1 page)

June 1, 1983

Packet Nos. 50-329/330

APPLICANT: Consumers Power Company  
FACILITY: Midland Plant, Units 1 & 2  
SUBJECT: SUMMARY OF APRIL 19-21, 1983 CASELOAD FORECAST  
PANEL MEETING

On April 19 and 21, 1983, members of the NRC Caseload Forecast Panel met with Consumers Power Company (CPCo) and Bechtel to review construction completion schedules which CPCo completed February 18, 1983 and announced April 12, 1983 for Midland Plant, Units 1 & 2. On April 20, 1983 the Panel toured the plant to observe construction progress. The purpose of the meeting and tour is to provide for an assessment by the Panel of construction completion. Meeting attendees are listed in Enclosure 1. Enclosure 2 is the meeting and tour agenda. Enclosure 3 shows some of the slides used during CPCO's presentations.

CPCO's previous and revised estimates are:

	<u>7/80 Estimate</u>	<u>4/83 Estimate</u>	<u>Difference (Mos.)</u>
Unit 2	7/83	10/84	14
Unit 1	12/83	2/85	13

Overall plant completion is estimated by CPCo to be about 83% complete; engineering is about 76% complete; design 94%; and underpinning 4%.

CPCo finds there are three separate critical paths for construction completion: (1) a so called "aboveground" pathway, (2) auxiliary building underpinning, and (3) the licensing/hearing pathway.

#### Aboveground Pathway

This pathway is primarily based upon rework of large and small bore pipe supports. However, installation of three HVAC systems, penetration sealing, and installation of mirror type pipe insulation also presently have zero or negative schedule float.

A letter of March 29, 1983, notes CPCO's intent to reinspect all installed safety related pipe supports without regard to the time of their installation or turnover. CPCo estimated the new support reinspection procedure, training and certification of inspection personnel, QA program revisions, and other support activities would be in place in time to commence reinspections during the week of April 11, 1983. CPCo plans to use three inspection teams (about 50 inspectors) and expects to complete hanger reinspections in June 1983. Only two inspectors had been certified as of April 15, 1983 and had started hanger inspections. The hanger reinspection pathway is the critical path for the "Construction Completion Plan" (CCP) described in CPCo's letters of January 10 and April 6, 1983 (and subsequently on April 22, 1983).

CPCo noted that 544 of 850 total subsystems (64%) have been turned over and accepted. Some systems were accepted with multiple "exceptions" (punchlist open items such as design changes, and corrective actions). CPCo's schedule for preoperational testing, acceptance testing, flushing and specific tests for both units provides a total duration of 14 months. Forty-five percent of the systems have been initially checked out. About 4% of the total of 683 tests have been completed as of March 31, 1983. Of these 683 tests, CPCo plans to complete 95% of the 268 preoperational tests and 128 acceptance tests prior to the Unit 2 fuel load. Currently, no preoperational tests have been completed (two are in progress); one acceptance test has been completed and none are in progress. The testing program for about 134 systems were noted to be constrained by the CCP. The present schedule assumes little rework of hanger (about 850 out of 7000) will be needed for both units.

At least seven 50.55(e) reports are considered by CPCo to have some potential for schedule impact in that reviews and tests are not complete and cannot be fully assessed at this time. These seven are:

	<u>50.55(e) Report No.</u>	<u>Management Corrective Action Report (MCAR) No.</u>	<u>Subject</u>
1.	80-04	4	High-energy line break analysis (HELBA) pipe whip restraints
2.	80-09	45B	Low alloy quenched and tempered bolting
3.	82-12	63	Design of steel embedments that use tension bars and shear lugs
4.	81-01	46	Deficiencies of Limitorque valve operators
5.	82-01	55	Deficiencies in electrical components associated with main steam isolation valve actuators, and non-safety related equipment wired as Class 1E



- |    |       |    |   |
|----|-------|----|---|
| 6. | 82-07 | 59 | Safety related equipment cooled by non-safety related HVAC system |
| 7. | 83-02 | 67 | Clearances between electrical control cabinets and panels         |

#### Auxiliary Building Underpinning Pathway

Six of the 57 underpinning piers have been installed since December 13, 1983, and a pier load test (pier W-11) was in progress. The construction sequence will utilize an existing Utility Access Tunnel (UAT) to gain early access beneath the southern corners of the Control Tower. The revised construction scheme utilizing the UAT is reflected in CPCO's current completion forecasts.

CPCO's schedule assumes NRC will approve loading of fuel immediately after transfer of the EPA load to the permanent wall (i.e. in advance of EPA and FIVP soil consolidation beneath the wall; pier lockoff and grouting; replacing of backfill beneath EPA and FIVP; and structural stiffening at critical elevation 659 feet). CPCO estimates that these latter activities will be completed by late January 1985.


#### Licensing/Hearing Pathway

CPCO considers that completion of the present soils "OM" hearing and "OL" hearing is also critical to the new Unit 2 fuel load estimate. CPCO's estimated need dates for the hearing are:

Complete "OM" hearing session	August 1, 1983
Initial Decision on "OM" matters	Mid October 1983
Completion of "OL" hearing session	Mid May 1984
Initial Decision on "OL" matters	Early July 1984

#### Staff Conclusions

The Caseload Panel noted that the information provided during the meeting and observations made during the site tour would be further reviewed before the Panel's completion estimates are reached.

  
Darl Hood, Project Manager  
Licensing Branch No. 4  
Division of Licensing

Enclosures:  
As stated

cc: See next page

J. Cook

Subject: Caseload Present Panel Estimate of Construction Completion Date

On April 19-21, 1983 the NPC Caseload Present Panel visited the Millard Plant to evaluate construction completion schedules. The meeting discussed in detail the basis for Consumer's revised estimates of October 1984 (Unit 2) and February 1985 (Unit 1). On April 20, 1983 the Panel conducted an extensive tour of both units to observe construction progress. The Panel has <sup>now</sup> completed its own evaluation of construction completion schedules for Millard Plant, Units 1 & 2.

The Panel concludes that some months beyond the second quarter of 1986 is the earliest date that completion of Unit 2 can reasonably be expected. The critical pathway involves reinspection and rework of pipe supports, followed by execution of ~~the~~ preoperational and acceptance testing.

The Panel believes that Consumer's estimate of 14 months to complete preoperational and acceptance testing for both units is unduly optimistic. The record for a <sup>recent</sup> single unit to date has been about <sup>24</sup> 25 months. Using a more realistic, but slightly optimistic, duration for two units, <sup>and Consumer's present status</sup> results in a completion date in the second quarter of 1986. However, the Panel also believes that Consumer's forecast does not realistically account for large uncertainties in the ~~critical path~~ work which must precede start of critical-path testing, and that this can

Unit 1 is expected to be completed about 6-9 months thereafter.

L PDR  
NSIC  
PRC System  
LB#4 Rdg  
MDuncan  
DHood  
OELD  
ACRS (16)  
ELJordan, IE  
JMTaylor, IE

Mr. J. W. Cook  
Vice President  
Consumers Power Company  
1945 West Parnall Road  
Jackson, Michigan 49201

Dear Mr. Cook:

Subject: Caseload Forecast Panel Estimate of Construction Completion Schedule

On April 19-21, 1983, the NRC Caseload Forecast Panel visited the Midland Plant to evaluate construction completion schedules. The meeting discussed in detail the basis for Consumer's revised estimates of October 1984 (Unit 2) and February 1985 (Unit 1). On April 20, 1983 the Panel conducted an extensive tour of both units to observe construction progress. The Panel has now completed its own evaluation of construction completion schedules for Midland Plant, Units 1 & 2.

The Panel concludes that some months beyond the second quarter of 1985 is the earliest date that completion of Unit 2 can reasonably be expected. Unit 1 is expected to be completed about 6 to 9 months thereafter. The critical pathway involves reinspection and rework of pipe supports, followed by execution of preoperational and acceptance testing.

The Panel believes that Consumer's estimate of 14 months to complete preoperational and acceptance testing for both units is unduly optimistic. The record for a recent single unit to date has been about 24 months. Using a more realistic, but slightly optimistic, duration for two units and Consumer's present status results in a completion date in the second quarter of 1986. However, the Panel also believes that Consumer's forecast does not realistically account for large uncertainties in the work which must precede start of critical path testing, and that this can be expected to add some months to Consumer's schedule. The Panel believes that completion of reinspections of large and small bore pipe hangers and the amount of rework resulting from this effort is a notable example of the items expected to delay start of critical path testing by some months.

ICI							
SURNAME							
DATE							

The Panel's estimate includes no provision for delay associated with future plant financing.

Sincerely,

Thomas M. Novak, Assistant Director  
for Licensing  
Division of Licensing  
Office of Nuclear Reactor Regulation

cc: See next page

*RM's CE LD*  
*R. Sarogian*  
*2 phone calls*  
*R. Sarogian*  
*covered by*  
*phone 5/25/83*  
*with comment*

LB#4	LB#4	RM	R111	AD/L		
DHUC	EAdensam	WLoveace	JHarrison	TMNOVAK		
5/5/83	5/ /83	5/5/83	5/25/83	5/ /83		

GOVERNMENT ACCOUNTABILITY PROJECT

Institute for Policy Studies

701 Que Street, N.W., Washington, D.C. 20009

EXHIBIT 6

(202) 234-9382

July 11, 1983

Director  
Office of Administration  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

To Whom It May Concern:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. §552, the Government Accountability Project (GAP) of the Institute for Policy Studies requests copies of any and all agency records and information, including but not limited to notes, letters, memoranda, drafts, minutes, diaries, logs, calendars, tapes, transcripts, summaries, interview reports, procedures, instructions, engineering analyses, drawings, files, graphs, charts, maps, photographs, agreements, handwritten notes, studies, data sheets, notebooks, books, telephone messages, computations, voice recordings, and other data compilations, interim and/or final reports, status reports, and any and all other records relevant to and/or generated in connection with the Case Load Forecast Panel Meeting held April 19, 1983 regarding the construction of the Midland Nuclear Power Plant. This includes all items above regarding preparation for the meeting, the meeting itself, and items made subsequent to the meeting.

Specifically, GAP requests all the documents (addressed above) between the Office of Nuclear Reactor Regulations (NRR) the Office of Inspection and Enforcement (IE) and the Region III office of Inspection and Enforcement, and Consumers Power Company regarding the Case Load Forecast Panel Meeting. This should include the drafts and any final --but unreleased--NRC analysis of the Consumers proposals, as well as any notes, letters, telephone logs, etc. generated by Consumers Power contacts with the NRC.

If any records have been destroyed and/or removed, please provide all surrounding records, including but not limited to a list of all records which have been or are destroyed and/or removed, a description of the action(s) taken, relevant date(s), individual, office and/or agency-wide policies and/or justification(s) for the action(s), identification of all personnel involved with the action(s), and any and all records relevant to, generated in connection with, and/or issued in order to implement the action(s).