

RELATED CORRESPONDENCE

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-OM
50-330-OM
50-329-OL
50-330-OL

CONSUMERS POWER COMPANY RESPONSE
TO 4/28/81 SUMMARY OF INTERVENOR
OUTSTANDING DISCOVERY REQUESTS AND
TO MS. STAMIRIS' MOTIONS TO COMPEL;
CONSUMERS POWER COMPANY MOTION FOR PROTECTIVE
ORDER ON CERTAIN PENDING AND ALL FUTURE DISCOVERY BY STAMIRIS

Pursuant to 10 CFR 2.740, Consumers Power Company ("Consumers Power") hereby responds to Motions to Compel Responses to Interrogatories, or leadings which could be interpreted as such, on the part of Ms. Barbara Stamiris, contained in the following four documents: (1) "4/23/81 Intervenor Follow-up Request to 1/14/81 Discovery Request Against Applicant and to Applicant's Response to Interrogatories 2 and 3 According to 3/20/81 Compromise;" (2) "Intervenor Answer to Applicant's Objection to my 3/27/81 Discovery Request;" (3) "Summary of Intervenor's Outstanding Discovery Requests (4/28/81)," and (4) letter, Stamiris to Bechhoefer and Consumers Power Company Attorneys, 4/28/81. In addition, Consumers Power moves the Atomic Safety & Licensing Board ("Board") for a protective order upon pending discovery contained in Stamiris'

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4/23/81 discovery submittals to Consumers Power, and upon all future discovery by Stamiris.

I. Background

Although the history of discovery undertaken by Ms. Stamiris is long and complicated, an understanding of it is necessary for a proper appraisal of Ms. Stamiris' and Consumers Power's motions. It should be pointed out at the outset that it has been Ms. Stamiris' practice to file "responses" in the form of replies containing an unusual and highly confusing mixture of alleged "follow-up questions," comments on previously filed answers, and motions to compel.

As an aid to understanding the large amount of time and effort Consumers Power has expended in answering Ms. Stamiris' unending discovery requests the following is a chronology of the discovery.

Chronology of Discovery Sought by Ms. Stamiris and Consumers Power's Responses

<u>Author</u>	<u>Date</u>	<u>Title & (Description)</u>
Stamiris	12/4/80	Intervenor Requests of CPCo. (Interrogatories and document requests including Nos. 2 and 3)
Stamiris	1/14/81	Intervenor Request of CPCo. (Interrogatories and Document Requests)
Consumers Power	1/16/81	Response to Intervenor Requests of CPCo. (Response to 12/4/80 Request)

<u>Author</u>	<u>Date</u>	<u>Title & (Description)</u>
Stamiris	1/26/81	Intervenor Response to Consumers 1/19/81 Discovery Reply for Notice of the Board (Intervenor Reply to 1/16/81 Response, containing alleged follow-up requests, questions, and comments)
Consumers Power	2/27/81	CPCo. Response to Intervenor [Barbara Stamiris] Discovery Request of 'Response of January 26, 1981' (Response to 1/26/81 Document)
Consumers Power	3/20/81	Letter, Brunner to Stamiris on questions 2 and 3 of 12/4/80 Request
Consumers Power	3/23/81	Follow-up to 3/20/81 letter
Stamiris	3/23/81	Intervenor Response to CPCo's 2/27/81 Reply and Motion to Compel Response to Questions 5b - 5e of 1/26/81 (Motion to Compel, Questions 5b - 5e of 1/26/81 Reply, plus additional interrogatories)
Stamiris	3/27/81	3/27/81 Intervenor Discovery Request of CPCo. (Interrogatories and document requests)
Consumers Power	4/2/81	CPCo Objections to B. Stamiris's 3/27/81 Discovery Request (Objections to 3/27/81 Document)
Consumers Power	4/2/81	CPCo. Response to Intervenor Requests, 1/14/81 (Response to 1/14/81 Document)
Consumers Power	4/2/81	Response to Stamiris Interrogatories 2 and 3 (Final response to questions 2 and 3)
Consumers Power	4/22/81	Response to Intervenor Discovery Submittal and Motion to Compel Dated 3/23/81 (Response to Motion to Compel on questions 5b - 5e)
Stamiris	4/23/81	Intervenor Follow-up Request to 1/14/81 Discovery Request Against Applicant, etc. (Additional questions purportedly relating to Nos. 2 and 3)

<u>Author</u>	<u>Date</u>	<u>Title & (Description)</u>
Stamiris	4/23/81	Intervenor Follow-up Request to 1/14/81 Discovery Request Against Applicant, etc. (Reply to 4/2/81 containing comments and further questions)
Stamiris	4/23/81	Intervenor Answer to Applicant's Objection to My 3/27/81 Discovery Request (Response to Objections)
Stamiris	4/28/81	Summary of Intervenor Outstanding Discovery Request (Summary of intervenor discovery requests and attached letter)

Ms. Stamiris' first discovery request, containing both document requests and interrogatories, was filed on 12/4/80. [Stamiris 12/4/80 request] Among the interrogatories included in this request were two questions asking Consumers Power to identify any "recommendations" upon which Bechtel's consultants disagreed, any recommendations "changed" or "not followed." These questions (numbers 2 and 3 of the 12/4/80 Request) later became the subject of an agreement between Consumers Power and Ms. Stamiris.

Consumers Power responded to the 12/4/80 Request, including questions 2 and 3, on 1/16/81 (Consumers Power 1/16/81 response), by answering the interrogatories and tendering documents as requested. Responding to the document requests in the 12/4/80 Request required considerable time and expense. For example, Ms. Stamiris requested all documents relating to cost or schedule impacts of soils settlement

matters. To respond Consumers Power and Bechtel had to conduct a substantial search of their records. Also, since Bechtel was in the process of updating schedule information at the time, rather than disrupt that process by attempting to produce working draft documents, Consumers Power agreed to send Ms. Stamiris a copy of the resulting final schedule and cost data. Consumers has met that commitment.^{1/}

On 1/26/81, Stamiris filed the first of her many Responses to Consumers Power's response. To avoid linguistic confusion, Consumers Power will refer to this 1/26/81 "Response" as a "Reply," although it contained both comments and additional questions. One series of additional questions dealt with the cost and schedule documents requested in the 12/4/80 Request. Questions 5b - 5e of this Reply, which were the subject of a motion to compel filed on 3/23/81 and responded to on 4/22/81, dealt with remedial actions proposed for the Administration Building. That building was also the subject of a document request in the 12/4/80 "Request." The comments dealt chiefly with interrogatory responses, especially the responses to questions 2 and 3 of the 12/4/80 Request.

With respect to questions 2 and 3, Ms. Stamiris indicated that she was dissatisfied with the responses. Consumers Power, however, had properly responded to the questions, reasonably interpreting the word "recommendation"

^{1/} So far, Bechtel's efforts in this respect have produced no new cost information. However, Consumers Power will send Stamiris a copy of relevant portions of its latest cost data when it is complete.

as the formal recommendation of a consultant, as contrasted with suggestions, comments, or passing statements made during the many meetings held on soils problems. It appeared to Consumers Power that the parenthetical phrase "including tentative stages" was inconsistent with the word "recommendations." To avoid confusion Consumers Power made it clear that it had not interpreted the question as including preliminary or minor differences of opinion. Stamiris responded by stating that Consumers Power had not satisfactorily answered the questions. However, n after the 1/16/81 Response, Consumers Power was unsure whether Ms. Stamiris' question covered recommendations or suggestions, comments, notes in passing, etc. For Consumers Power to respond to such an ambiguous question was an invitation to confusion and further argument. As a result, when Consumers Power responded to the questions and commen's in the 1/16/81 Reply, it objected to questions 2 and 3, as amended in the 1/16/81 Reply, but invited discussions with Ms. Stamiris on ways to clear up the confusion.

Such discussions did occur, and questions 2 and 3 became the subject of an agreement commemorated in two attached letters from James E. Brunner to Barbara Stamiris dated 3/20/81 and 3/23/81. In another document in the nature of a Reply, dated 3/27/81,^{2/} Ms. Stamiris admitted that the 3/20/81 Brunner letter properly stated the agreement on questions 2 and 3.

^{2/} Intervenor Response to Consumers Power 2/27/81 Reply and Motion to Compel Response to 5b - 5e.

In the meantime, Consumers Power filed a Response to the additional questions and comments contained in the 1/26/81 Stamiris Reply.^{3/} At that point, Consumers Power had responded to all of the unambiguous alleged follow-up questions to the 12/4/80 Request, and had made a bonafide effort to clear up ambiguities in questions 2 and 3. Consumers Power 2/27/81 submittal included a large number of documents in respect of the administration building, as well as the aforementioned follow-up responses.

Consumers Power's final response to the cleared up and agreed to version of questions 2 and 3 came on 4/2/81. An enormous amount of effort was put into this response, which required a substantial search of Bechtel's and Consumers Power's records, as well as time spent by a number of engineers and a paralegal. Questions 2 and 3 covered nearly all aspects of the diesel generator building pre-load and the other proposed remedial fixes.

On 1/14/81, Ms. Stamiris filed another discovery request containing questions and document requests. This request was completely separate from her 12/4/80 request in that it did not reference the 12/4/80 request but it did include the same subject matters as those set forth in the 12/4/80 request and its progeny. While that filing occurred

^{3/} Consumers Power Response to Intervention (Barbara Stamiris) Discovery Request or "Response" of January 26, 1981, dated 2/27/81 (Consumers Power 2/27/81 Responses).

after the date set for the close of discovery, the Board permitted it. The 1/14/81 Discovery Request included a document inspection request calling for all QA audits on soils concerns not presented to the NRC. Consumers Power's response, requiring yet another large search of Consumers Power's records, this time on the part of QA personnel, was submitted on 4/2/81. The time involved in responding to this late request was due to the large search necessitated and the time involved in answering the plethora of additional requests Ms. Stamiris had filed regarding her 12/4/80 request.

On 3/23/81 Stamiris filed the previously referred to "Motion to Compel Responses to Questions 5b - 5e," which were contained in her 1/26/81 "Response." As far as Consumers Power can determine, Stamiris' only complaint with respect to the 12/4/80 Request, the 1/26/81 Reply questions, and questions 2 and 3 was with respect to questions 5b - 5e, the subject of her motion to compel. Stamiris also included a series of questions styled as follow-up to her 12/4/80 question 4. Consumers Power objected to these questions on 4/22/81.

Ms. Stamiris' next move was to file another discovery request on 3/27/81, containing another series of questions and document requests. This last request is at least as broad as her previous ones. Consumers Power responded with its objections on 4/2/81 in a document entitled "Consumers Power Company's Objections to Barbara Stamiris' March 27, 1981 Discovery Request."

The penultimate step in the discovery chain came on 4/23/81 when Stamiris filed a document in the nature of a motion to compel entitled "Intervenor's Answer to Applicant's Objection to My 3/27/81 Discovery Request." On that date she also filed yet another series of questions, styled as follow-up to Applicant's 3/27/81 Response to the 1/14/81 submittal, and, unbelievably, further follow-up questions on numbers 2 and 3 of the 12/4/80 Request.

The final discovery item submitted by Ms. Stamiris was the 4/28/81 Summary of Intervenor Outstanding Discovery Requests.

II. Discovery Parameters Set by the Board at the January 28-29, 1981 Prehearing Conference.

The only discovery open to Ms. Stamiris after the January 28-29, 1981 Prehearing Conference was of a very limited nature since initial discovery had concluded at that point. As stated by the Board to Ms. Stamiris:

"We will also allow you to follow up on questions that you may have and again as soon as possible, relating to the matters which they -- you can follow up on ambiguities or questions you have arising from the answers you receive. So, you may follow up along those lines, but we again urge you all to do it as soon as possible." (Prehearing transcript p.814.)

The Board's ruling made it clear that only questions relating to ambiguities arising from answers to past discovery requests could be filed in the future by Ms. Stamiris. A

clear distinction was made between new, initial requests, which were prohibited, and requests directed at clearing up ambiguities, so called "follow-up" requests, which were permissible.

Unfortunately, Ms. Stamiris adopted a definition of follow-up request which was completely opposite that set forth by the Board. The clearest example of her definition of follow-up was demonstrated at the April 27, 1981 Prehearing Conference. There Ms. Stamiris passed out what she termed "follow-up questions" to some of her previous requests. At transcript p.912 she states:

"These questions are related -- they are not clarifying -- in other words, they are not clarifying questions in the narrowest sense that I'm asking them what did you mean by the word primary, something like that. They're not that type of question, but they are related questions. They are follow-up questions in the sense that they are related to the same subject matter area and they could be interpreted as further questions but on the same subject. So, in that sense they are related and are follow-up questions."

To Ms. Stamiris any question that is "related to the same subject matter area" is a follow-up question. That is not a reasonable definition for follow-up questions, and is directly contradictory to the Board's desire to prohibit open ended discovery after the January 28-29, 1981 Prehearing Conference.

This ban on open ended discovery was especially significant in that discovery had been open since September 1980 and the parties were in the process of reviewing the

information provided and developing testimony for the hearing. This ban is even more significant today, a mere month from the date testimony is due to be submitted. If Consumers Power has to respond to Ms. Stamiris' discovery requests it will be severely handicapped in preparing its case.

III. Ms. Stamiris' Outstanding Document Requests Are Improper, Untimely and Should be Denied.

A detailed examination of Ms. Stamiris' outstanding discovery requests follows. Consumers Power assumes that the 4/28/81 "Summary" is an exhaustive rendition of all outstanding discovery matters between it and Stamiris. For convenience, Consumers Power has numbered the pages of the 4/28/81 Summary. Since one of the pages in the "Summary" was missing in the original mailing Consumers Power has attached that page as per the instructions of Ms. Stamiris as the "second to the last page" of the "Summary." The Summary as numbered by Consumers Power, along with a letter indicating the proper location of the previously missing page, is attached hereto for the convenience of the Board.

PAGE 1 PARAGRAPH NUMBERED 2 OF STAMIRIS' SUMMARY

This question was discussed on page 4 of this answer. Applicant has met or is meeting the demands in this paragraph as per the footnote on page 4, supra.

PAGE 1 PARAGRAPH NUMBERED 4 OF STAMIRIS' SUMMARY

This series of questions evolved out of original question 4 in Stamiris' 12/4/80 Discovery Request. That question asked for documents relating to discussions of possible lawsuits arising from the soils problem. Consumers Power responded on 1/16/81 by supplying one document and claiming privilege with respect to others. Upon request, Consumers Power identified the one privileged document, a memorandum between law firms, and thought the matter was closed as of 2/27/81. Ms. Stamiris, still dissatisfied, decided to submit some new questions and a document request^{4/} on a loosely related subject (in her 3/23/81 submittal), and greatly expanded the scope of her inquiries.

Consumers Power submits that it answered the original question #4 on 12/9/80 and the follow-up request on 2/27/81. Ms. Stamiris' 3/23/81 questions are not follow-up, and are outside the scope of permissible discovery set forth at the January pre-hearing conference. Hence, this "motion" should be denied.

PAGE 2, PARAGRAPH NUMBERED 5.I. OF STAMIRIS' SUMMARY

Stamiris' April 28, 1981 letter and this item of the Stamiris' "Summary" deal primarily with questions 5b - 5e of Stamiris' 1/26/81 Discovery Submittal, contending that

^{4/} From Stamiris' 4/28/81 "Summary" Applicant is unable to determine whether or not this request has been withdrawn.

such questions are relevant and proper. Applicant responded to Stamiris' motion to compel responses to these questions on 4/22/81, but, in light of the additional arguments made in the Stamiris letter, uses this opportunity to respond to same.

While Stamiris indicates that her discovery is directed towards her contention on the Administration Building, the questions (5b - 5e) themselves deal with aspects of the remedial measures chosen for that building. Those remedial measures simply have no bearing on "whether the building should have served as a quality indicator."

Stamiris also contends that her latest series of questions and requests on the Administration Building are essential to her case, and that a great deal of information has not come out because Consumers Power regards the building as "irrelevant to this proceeding."

Stamiris incorrectly states Consumers Power's view, and, as a result, draws an incorrect conclusion. All of the documents requested by Stamiris on the Administration Building in the past have been produced, which includes the great majority of all Administration Building documents in Consumers Power's possession. Those documents relate to investigation done by it or Bechtel to determine the cause

and extent of the problem. Since those documents are relevant to Stamiris' contention, they were produced without objection.

The bulk of the latest round of Stamiris' discovery on the Administration Building^{5/} is objected to not because it is irrelevant, but because it is untimely and not within the scope of further discovery authorized at the January pre-hearing conference. (See succeeding sections of this brief) Also, it should be noted that Ms. Stamiris obtained all of her documents respecting the Administration Building as a result of a question asked on 1/14/81, which would have been too late to meet the original discovery closure date in the absence of a Board extension. Had she not been so slow in starting discovery on this structure, she might have had sufficient time to complete her many rounds of additional questions. Since Ms. Stamiris must have known that her method of conducting discovery requires substantial additional questions, she did not properly anticipate the scope of her effort.

STAMIRIS SUMMARY,
PAGE 2, UNDER "INTERROGATORIES: FOLLOW-UP 2 and 3 WHICH
INCLUDE ITEMS 1 - 6 ON THE BOTTOM OF PAGE 2 THROUGH
THE TOP OF PAGE 3"

The Interrogatories supposedly involving questions 2 and 3 (of the 12/4/80 Stamiris Request) are beyond the

^{5/} See items on pp. 3 and 4 of "Summary". These items are addressed specifically in Appendix B under their respective numbers.

scope of allowed discovery. The history of these two questions, and the response to them, is long and torturous.^{6/} Ms. Stamiris has already had one round of follow-up questions, plus several telephone discussions concerning them. It seems incredible to Consumers Power that she still has questions on the matter, but this serves to point out the quasi-depositional, stream of consciousness discovery approach which Stamiris has taken to interrogatories.

Moreover, the agreements between James E. Brunner and Ms. Stamiris^{7/} disposed finally of questions 2 and 3. The written terms of the agreement contain no mention of further follow-up, questions, and the clear intent of the agreement, which itself evolved out of follow-up questions, was to dispose of the matter completely. By asking additional questions on these matters, Ms. Stamiris has violated this agreement.

In any event, these questions are not proper follow-up under the terms of the Board's Order, since they do not seek to clarify ambiguities in the final response to questions 2 and 3.

^{6/} See pp. 5-6, supra.

^{7/} See Appendix C.

STAMIRIS' SUMMARY,
PAGE 3, UNDER "FOLLOW-UP QUESTIONS TO 1/14/81 REQUEST, ETC."

At the prehearing conference on April 27, 1981, Stamiris hand-delivered her latest discovery request entitled "Intervenor Follow-up Request to 1/14/81 Discovery Request against Applicant" dated 4/23/81. This discovery request is clearly untimely and should be disallowed.^{8/}

This discovery request is styled in the form of follow-up to Applicant's Response to Stamiris 1/14/81 Discovery Request, of follow-up to Applicant's Response to the final version of Stamiris' Questions 2 and 3 of the 12/4/80 Request, and of "questions not related to answers given."

None of the questions pertaining to the Applicant's Response to the 1/14/81 Request are follow-up in nature, according to the terms of the Board's Order. Instead, these questions delve into a wide variety of new subjects. Consumers Power analyzes these questions on an individual basis in Appendix B to this submittal.

In addition to submitting a wide variety of questions, Ms. Stamiris attempts to use this discovery reply

^{8/} As per her usual practice, Stamiris has interspersed some additional questions with comments and document requests. Applicant interprets only one comment as a "motion to compel." That comment, number 10, is addressed under separate heading below.

to supplement document requests previously made. For example, she improperly requests documents bearing certain Bechtel number stamps which are not within the scope of a previous request and which have no necessary relevance (other than proximity of numbering in Bechtel's numbering system) to her previous questions.^{9/}

STAMIRIS' SUMMARY, PAGE 4, PARAGRAPH NUMBERED 10

Consumers Power regards this item as a "motion to compel" with respect to Question 10 of Stamiris 1/14/81 Request, to which Applicant objected on 4/2/81 in "CPCo's Response to Intervenor Requests 1/14/81".

The original request number 10 of the 1/14/81 "Intervenor Requests" reads:

"Amendment 3 of the FSAR eliminated the original site dewatering plan. Provide document relevant to this decision."

Request 10 seeks documents relating to the early decision by the Midland Project to eliminate the permanent dewatering system. Such a system was part of the original design, was eliminated in FSAR amendment 3, and, after identification of a potential liquefaction problem, was reinstated as a design proposal.

^{9/} See Question 5, 4/23/81 Submittal.

This request relates to the earlier decision not to use the dewatering system, which would have resulted in a different design than is now proposed. Because of that, this Stamiris question is like the NRC Staff interrogatories relating to the driven pile underpinning scheme for the service water pump structure, also a scrapped design proposal. Consumers Power hereby incorporates its arguments with respect to that Staff interrogatory, contained in its "Response to NRC Staff Motion to Compel Answers to Interrogatories" dated 4/10/81.

In addition, since no one contends that the absence of a dewatering system is a more conservative design than the presence of such a system, this Stamiris question seeks to delve into the reason for going to a less conservative design in the past. Such an inquiry is not relevant to the present, when Consumers Power has proposed the more conservative design.

Finally, this request would require yet another document search on the part of Bechtel. In view of the absence of any likelihood that useful or relevant information would come from the endeavor, it seems particularly unfair and wasteful to require that it be undertaken.

For the reasons set forth above, Stamiris' motion to compel a response to Request #10 of her 1/14/81 Submittal should be denied.

PAGE 6, UNDER "THE 3/27/81 DISCOVERY REQUEST, ETC."

Ms. Stamiris did not include the question submitted on 3/27/81 in her "Summary." The questions on page 6 of the Summary relate only to the second part of the heading, i.e. "Questions on Consultant Recommendations and Communications of C.J.D."

Stamiris' 3/27/81 questions are not proper follow-up and should be disallowed. That these questions are not follow-up is conceded by Ms. Stamiris in her "Motion to Compel" (i.e. in her 4/23/81 "Answer"), in which she stated that her 3/27/81 questions "Are related to my earlier questions in that they represent an attempt to seek information about the same time frame and subject matter as the earlier ones." That is a telling comment, which indicates that her questions, though related to the same subject matter as previous questions, are not follow-up in nature within the Board definition. In addition, Consumers Power reviewed the Stamiris 3/27/81 questions, and finds that while they all deal with subjects within the scope of these proceedings, there appears to be not narrower limitation on their breadth. Ms. Stamiris herself admitted as much when she stated that some of the questions sprang from a review of documents other than those provided by Consumers Power in discovery submittals.^{10/}

^{10/} See Letter, Stamiris to Bechhoefer and CPCo Attorneys, dated 3/27/81. A detailed analysis of the Stamiris 3/27/81 questions is contained in Appendix A hereto.

Moreover, the entire 3/27/81 Discovery Submittal is beyond the scope of discovery, since it purports to follow-up on Consumers Power's 2/27/81 submittal, which was already made in response to follow-up questions to the 12/4/80 Stamiris request. Hence, the 3/27/81 Discovery Submittal is follow-up to follow-up and is outside the scope of the Board's Order.

PAGE 6, UNDER QUESTIONS ON CONSULTANT RECOMMENDATIONS
AND COMMUNICATIONS OF C.J.D.

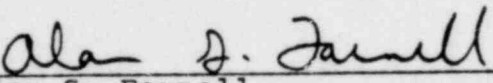
Ms. Stamiris' "questions on consultant recommendations and communications C.J.D. is untimely and should be disallowed. Stamiris prefaces these questions with the remark that they were occasioned by a slow response to the 12/4/80 Request. The Response to the 12/4/80 Request and its follow-up questions came on 1/16/81 and 1/21/81 respectively. If, in making this comment, Stamiris is referring to the Questions 2 and 3 Response, the amount of time in reaching the ultimate conclusion of that matter was entirely the fault of Ms. Stamiris' unclear, ambiguous and self-contradictory initial questions. In any event, Consumers Power fails to understand how these questions have anything at all to do with the 12/4/80 Interrogatories including, but not limited to, Questions 2 and 3.^{11/} These questions are clearly unrelated to any past discovery and constitute totally new matter. As such, they are untimely and beyond the scope of allowable discovery.

^{11/} Applicant would analyze these questions individually, but since Applicant can find no basis upon which they are even arguably follow-up, such an effort would be fruitless.

IV. CONCLUSION

For the aforementioned reasons Ms. Stamiris' outstanding discovery requests are not within the parameters of discovery set by the Board at the January 27 and 28, 1981 pre-hearing conference, are underly burdensome in light of the large amount of discovery already provided to Ms. Stamiris, are untimely in that they would seriously interfere with Consumers Power's preparation for the Hearing, and therefore should be denied in their entirety. In addition, Consumers Power moves the Board for a protective order upon pending discovery contained in Stamiris' 4/23/81 discovery submitted to Consumers Power, and upon all future discovery by Stamiris.

Respectfully submitted,



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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

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CONSUMERS POWER COMPANY)	Docket Nos. 50-329-OM
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(Midland Plant, Units 1 and 2))	50-329-OL
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CERTIFICATE OF SERVICE

I, Alan S. Farnell, hereby certify that a copy of Consumers Power Company Response to 4/28/81 Summary of Intervenor Outstanding Discovery Requests and to Ms. Stamiris' Motions to Compel; Consumers Power Company Motion for Protective Order on Certain Pending and All Future Discovery by Stamiris was served upon all persons shown in the attached service list by deposit in the United States mail, first class, this 6th day of May, 1981. In addition a copy was sent Federal Express to Judge Bechhoefer.

Alan S. Farnell
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APPENDIX A

ANALYSIS OF PARTICULAR QUESTIONS IN STAMIRIS MARCH 27, 1981
DISCOVERY REQUEST

The following particular analyses are supplemental to those made in the text. Consumers Power holds the view that the entire 3/27/81 Discovery Submittal is beyond the scope of discovery, since it purports to follow up on Applicant's 2/27/81 submittal, which was already made in response to follow-up questions to the 12/4/80 Stamiris request. Hence, the 3/27/81 Discovery Submittal is follow-up to follow-up and is outside the scope of the Board's Order.

Document Requests

Request #1 - The question arose out of tab. 24, Vol. III, of the 50.54f Volumes which have been on file since the start of discovery and before. As such, it is clearly not follow-up.

Request #2 - This has been provided.

Request #3 - This question is not follow-up. In any event, Consumers Power has already indicated to Ms Stamiris that there are no such discussions recorded in writing. (See Response to Question #8 in Consumers Response to Intervenor Requests of 1/14/81, dated 4/2/81.)

Request #4 - This is not follow-up; subject was never discussed before in Stamiris discovery.

Request #5 - This is clearly not follow-up. The only previous document request in the QA area by Stamiris was for audit findings not presented to the NRC. (See Stamiris 1/14/81 Request #2.)

Interrogatories

1. Although Stamiris has asked numerous questions about the "D.G.B." (sic), this particular subject has not been in her previous discovery, and is not follow-up.
2. Like Question #1, this is an entirely new subject.
3. Ms Stamiris has undertaken extensive past discovery on the Administration Building. Questions concerning that building have, to our knowledge, been included in every discovery submittal she has filed. She has had ample opportunity for follow-up. In any event, this particular question is a new one, and addresses no ambiguity or lack of clarity in previous responses. (Note: Consumers Power has objected to some of the questions raised by Stamiris on this structure. Such questions were irrelevant and beyond the scope of this hearing. Nevertheless, Consumers Power has provided Ms Stamiris with its and Bechte's entire files on the Administration Building relating to investigation of the problem, determination as

- to its scope, and corrective actions taken.)
4. This is an entirely new question on the Administration Building. Stress analysis for it have never been addressed before. In addition, the question is irrelevant and immaterial. The Administration Building is not a Category I Structure, so that stresses in it caused by its settlement are not relevant to these proceedings.
 5. While it arguably relates to the subjects Stamiris has taken up in the past, this question does not address any unclearness or ambiguity in previous responses. As such, it is not follow-up.
 6. This is an entirely new subject. In addition, the answer to it is contained in the 50.54f submittals made by Consumers Power.
 7. This is an entirely new subject.
 8. Consumers has no document bearing the number identified by Ms. Stamiris.
 9. Although it deals with a subject Stamiris has taken up in the past, i.e., the Administration Building, this question does not address any ambiguity or lack of clarity in previous responses, and is a new question.
 10. This question asks Consumer Powers to explain a reference in a provided document. If it were to entertain such questions at this late state in these proceedings, there would literally be no end to

discovery. Since Ms Stamiris is not schooled in the technical subjects of this case, her reading of supplied documents is bound to lead to new questions, regardless of whether she did her reading in the past, or does it in the present or future. Her question here deals with a new subject which she has not addressed in the past, and is not follow-up in nature.

APPENDIX B

DETAILED ANALYSIS OF STAMIRIS 4/23/81 QUESTIONS, CONTAINED IN "INTERVENOR FOLLOW UP REQUEST TO 1/14/81 DISCOVERY REQUEST AGAINST APPLICANT, ETC."

Question 4 - The "settlement" part of this question has already been answered. The "stress" part is entirely new, except that Stamiris has an objectionable and untimely question on stress in her 3/27 submittal. (See Appendix A, #4) "Stresses" in the Administration Building are outside the scope of this hearing.

Question 5 - This request includes specific pages from Bechtel's file. Since Consumers Power has completely responded to past Stamiris document requests, the particular pages are not within the scope of previous requests, and Ms Stamiris' request for them does not represent follow-up on some subject, but merely a new fishing expedition into Bechtel's files.*

The final two sentences of this request ask for "all studies, reports, information, or test results relating to plant area soils

*Some of these documents are repeats in Bechtel's files of those already provided.

between August 1977 and January 1979 not already in the 50.55e; 50.45f or other possession of NRC" etc. This request is not follow-up, is burdensome, and given the stage of these proceedings is totally untimely and uncalled for. The last sentence of question #5 relates to document previously supplied to Ms Stamiris. For the reasons set forth in #10 in Appendix A, this question is outside the scope of present discovery and not follow-up in nature.

Question 6 - Although it relates to past discovery, this request is not follow-up in nature, and is burdensome. Given the stage of these proceedings, there is simply no excuse for issuing a large document request which could easily have been presented in September of 1980. Documents on file at that time on the public record evidenced the existence of the foundation data survey program. See 10 CFR 50.55e Interim Report #1, dated 9/22/78 at pp. 1, so that this request is untimely and totally uncalled for.

The second half of this question is unintelligible, and is not follow-up in that

it does not address ambiguities or unclarities in previous Applicant responses.

- Question 7 - This question was already answered. See Applicant's 4/2/81 Response to 1/14/81 Request #6.
- Question 8 - Already answered. See 4/2/81 Response, supra Request #8.
- Question 12 - The response to the question addressed design parameters, which, though not strictly requirements, are input to the design. No NRC regulation governs this matter. There are no requirements as to ground water monitoring, although Consumers Power presently monitors ground water levels to assist in the design of the dewatering system.
- Question 13 - These questions are not follow-up in nature, although they deal with subjects taken up by Stamiris in the past. They are new questions, unrelated to previous ambiguities. In addition, the phrase "relatively minor" would make such a question burdensome even if it had been presented in timely fashion. Ms Stamiris has already received information on this subject.

Question 16 - This apparently represents an effort to correct an objectionable element in a previous question. The new question is still objectionable as burdensome and irrelevant. For example, the new question is not limited to soil matters. In any event, attempts at correcting past objectionable questions is not within the scope of allowed follow-up. (It should be remembered that these questions are attempts at follow-up on the 1/14/81 requests, which had already been filed after the original discovery closure date.)

APPENDIX C



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General Offices: 212 West Michigan Avenue, Jackson, MI 49201 • (517) 788-0550

March 20, 1981

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

Dear Ms. Stamiris:

Confirming our recent telephone calls on the subject of Interrogatories 2 and 3 of your 12/4/80 Discovery Request, my understanding of the Agreement which was reached is as follows:

We will attempt to respond to your questions concerning differences of recommendations submitted by Bechtel's Consultants, changes in recommendations by the same persons, or recommendations which were not followed, limited to the specific items which you raised by way of example in your Discovery Reply dated 1/26/81, and the nine suggestions made by Dr. Hendron at his October 8, 1978, site visit as documented in Tab 8 of Volume 4 to the 10 CFR 50.54 Responses.

In addition, you indicated that there were a few more items which you wished to be addressed, and that you would specify those items by Monday, March 23, 1981.

Our responses will consider suggestions and comments as well as actual recommendations.

If the above is not consistent with your understanding, please notify me as soon as possible.

Very truly yours,

James E. Brunner
James E. Brunner

- LEGAL DEPARTMENT**
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Vice President and General Counsel
 - Arld L. Dixon
 - Allen B. Buss
 - O. K. Peterson
 - William E. Wisner
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 - Charles D. Dawson
 - James W. Dempsey
 - John P. Dickey
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 - Laurie H. Horvath
 - Wayne A. Kirkby
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 - David A. Mikolons
 - Paula H. Mills
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March 23, 1981

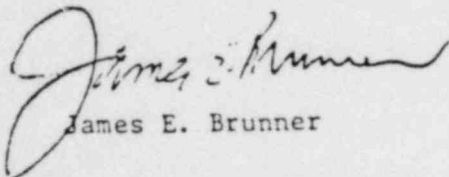
Ms. Barbara Stamiris
5795 North River Road
Route 3
Freeland, Michigan 48623

Dear Ms. Stamiris:

Confirming our telephone call of Monday, March 23, 1981, you indicated to me that my letter of March 20, 1981 accurately stated the substance of our agreement concerning Interrogatories 3 and 4 of your December 4, 1980 Discovery Request. You also stated that you had no more specific items to add to the list spelled out in the March 20 letter. Our initial agreement also contemplated that we would not limit our review of documents in answering these questions to the documents contained in the 50.54f volumes, but that we would also examine other project files.

Thank you for your cooperation in this matter.

Very truly yours,


James E. Brunner

RECEIVED
MAY 11 1981
C. P. Co. Legat

Apr. 30, 1981

Dear Mr. Brunner,

This is the page I inadvertently omitted with my 4/28/81 Summary of Intervention Outstanding Discovery Requests.

It belongs second to the last page. I am sorry for the inconvenience involved.

Sincerely,

Barbara Stein

RECEIVED
C. P. Co. Legal

U.S. NUCLEAR REGULATORY COMMISSION

In the matter of
C.P. Co. Midland Plant
Units 1 & 2

Docket Nos. 50-329
50-330
OM & OL

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

4/28/81

SUMMARY OF INTERVENOR OUTSTANDING DISCOVERY REQUESTS

Document Requests and Interrogatories of
12/4/80 REQUEST, REVISED 1/26/81

DOCUMENT REQUESTS: UNANSWERED

2. What are the most recent estimates for total soil settlement costs...? Applicant's 2/27/81 reply stated Bechtel was developing "additional cost and schedule projections." I have received additional schedule projections only. I want the most recent total cost projections, including estimates for Borated WST and Service Water Building revisions when they are ready.

4. I requested documentation of "discussions or considerations concerning possible lawsuits involving soil settlement matters" on 12/4/80. On 3/23/81 I accepted the claim of attorney client privilege for the one document cited in Applicants 2/27/81 response, beyond the one provided. Questions 4a, b, c of 3/23/81 require

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simply a yes or no answer to confirm or deny the existence of the documents described. Part d requests identification of documents objected to here.

5. I requested documents regarding the Administration Building settlement and did receive such documents. In our March compromise conversations, (regarding interrogatories 2 and 3) Mr. Brunner indicated that he had given me the whole file on the Administration Bldg. and thought I would find answers to my own questions therein. I did not, and filed the 3/23/81 motion to compel 5b-5e, which answers are still outstanding.

INTERROGATORIES: FOLLOW UP

2. and 3. These questions regarding consultant differences, and changes to consultant recommendations, respectively, were answered according to our 3/81 compromise conversations on March 30.

The following questions represent my first opportunity to ask any follow up or clarifying questions to these answers, combined in Applicants March 30 Response.

1. Who made up the decision making Bechtel/CPCo "task group" as it functioned in 1978?
2. On what basis were these individuals appointed?
3. Describe in detail the "management review" process.
4. How has this group and its management review changed or evolved since 1978 (regarding members, function or other changes)?

5. Were all decisions of the task group subject to this management review? If not, describe who determined which decisions were so reviewed and on what basis.

6. Who were the management individuals involved in this review in 1978-79, and at the present time?

FOLLOW UP QUESTIONS TO 1/14/81 REQUEST
1ST ANSWERED BY APPLICANT 3/30/81
(numbers correspond to original request)

4. Were any attempts made to measure settlement or stress at the Administration Building between the Sept. 1977 remediation and the Sept. 1978 settlement monitoring program?

5. The reports provided were numbered SB 13752- SB 13956 although not in that sequence and with many pages missing. It appears that these Bechtel reports stemming from the Administration Building settlement problem have to do with plant area fill soils and as such are important to this proceeding. Please provide these file pages: SB 13770, 13771, 13790-13794, 13816, 13817, 13818, 13820-13854, 13867-13912, 13920-13953, 13955 and any beyond SB 13956 in this series on soils.

Please provide all studies, reports, information, or test results initiated in 1977 or 1978 relating to plant area soils which have not already been presented to the NRC as 55e or 54f reports, or requests. Do such documents exist that you consider not related to this proceeding?

4

6. When specifically were the Bechtel specifications and drawings issued which established the foundation data survey program for the DGB? Were other settlement monitoring programs established or revised in 1977. If yes, when? Did these relate in any way to studies following the Administration Building settlement?

7. Were there any scribe marks or benchmarks for DGB foundation prior to May 1978? Describe and give dates of such.

8. In the Sept. 28, 1978 meeting notes, tab 1 Vol.3 50-54f, item 3b. mentions the excavation at the Administration Building. Was the reason for this excavation explained or discussed with Dr. Peck at this meeting? If so relate the details of this disclosure.

9. According to Mr. Gallagher, this information is not correct.

10. In seeking these documents, I hoped to find out on what basis the original dewatering plan was eliminated. This is related to a matter in controversy as set forth in discovery provision 2.740(1). Documents concerning the basis for this elimination decision should be provided.

11. No questions.

12. The response does not answer the question asked. The Sept. 28, 1978 meeting, tab 1 Vol.3 50-54f, item 4 states "no long term records of ground water are available for the Midland site." Are there not requirements for such information established by the NRC or the Applicant, which demand that groundwater levels be known? What are these requirements?

2nd to last page sent later)

5

13. What work was done between Dec. 6, 1979 and the end of Apr. 1980 on the DGB or its foundation? Please discuss any excavations however minor, sealing of cracks, or other work related directly or indirectly to soil or soil settlement. Give the dates of such work and whether or not the NRC was notified. Provide the communication to the ASLB regarding temporary dewatering. Describe the location and the work mentioned regarding curbs and grade slabs. (I incorrectly remembered the date of the voluntary stopwork announcement when asking for work since April. If there are additions to the information provided for the post April time frame in view of the above requests, please provide such additions.)

16. Provide the names and addresses of CA or CC personnel, or management who have terminated their employment with CPCo. or Bechtel in 1980-81. Give job titles.

FURTHER OUTSTANDING REQUESTS:
THE 3/27/81 DISCOVERY REQUEST (OBJECTED TO 4/16/81, ANSWERED 4/23/81)

AND

QUESTIONS ON CONSULTANT RECOMMENDATIONS & COMMUNICATIONS OF C.J.D.

(These questions are not related to answers given, but had my 12/4/80 requests been answered sooner, I believe I would have come up with these questions within a few weeks of such answer. I realize they are beyond the scope of the March compromise agreements, and therefore seek to ask them only with the Boards

1. The Oct. 18, 1978 meeting notes (tab 5 Vol.3 50-54f) item 10 states " Installation would need to be manned by Bechtel due to current GZD work load?" a) What were the qualifications and experience of the Bechtel personnel involved? b) Did SRI approve Bechtels installation plan and work? c) What was the reason (according to CJ Duncliff) that he sent the SRI CA manual for Marshall to "acknowledge or return"? (Nov. 1, 1978 CJD memo, tab 10 Vol.3 54f) d) What were Bechtels decisions on settlement gages as discussed in items 6 and 7 in 11/1 memo? e) Why didn't Bechtel await SRI personnel accomplishment of installation work? f) Were these and other instrumentation and installation decisions made and reviewed by the "task group" process described in the previous question 2? g) When were the two piezometers installed, discussed in item 8 of the Nov. 6, 1978 (tab 10 Vol.3 54f)? Give dates of any earlier CJD instrumentation installed. h) What was the dollar amount of equipment ordered from SRI or its suppliers prior to Nov. 7, 1978?