

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD 83 NOV -3 11:59

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

MOTION TO COMPEL AND APPLICATION
FOR ENFORCEMENT OF SUBPOENAS
AGAINST GAP DEONENTS

Consumers Power Company ("Consumers"), by and through its attorneys, moves pursuant to 40 C.F.R. §§2.720(g) and 2.740(f)(1), for an order compelling Thomas Devine, Lewis Clark, Billie F. Garde and Lucy Hallberg ("the GAP deponents") to produce any and all documents as requested in the subpoenas for deposition, and an order authorizing the Commission to seek judicial enforcement of the subpoenas, including sanctions. Consumers further seeks an order from the presiding officer shortening the time in which any response from the GAP deponents must be made in order to resolve any issues before the November 10, 1983 scheduled deposition. As grounds therefor, Consumers states:

1. Thomas Devine, Lewis Clark and Billie P. Garde were served on May 10, 1983 with subpoenas requiring their appearance for depositions.
2. The subpoenas requested that the deponents

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produce certain documents and materials. A copy of the Schedule of Documents Requested is attached as Exhibit A.

3. The GAP deponents moved to quash the subpoenas. The Board denied that motion on August 31, 1983 but entered a protective order pursuant to which the depositions were to proceed. After extending the filing date, the Licensing Board on October 6, 1983 denied the Motion for Reconsideration and Request for Stay filed by the GAP deponents. The GAP deponents filed a Notice of Appeal with the Appeal Board on October 21, 1983. The GAP deponents also sought a stay from the Appeal Board, a request which was denied on October 26, 1983.

4. During the telephone conference of October 5, 1983, Mr. Karr, counsel for the GAP deponents represented that he would reply to Consumers' counsel "shortly" with dates when his clients would be available in order to establish a schedule for the depositions.

5. On October 12, 1983, Consumers' counsel wrote to Mr. Karr, requesting a response. A copy of that letter is attached as Exhibit B.

6. Mr. Karr, by letter dated October 18, 1983 stated merely that Mr. Clark would not appear for his deposition on October 18, 1983. A copy of Mr. Karr's letter is attached as Exhibit C.

7. Having made repeated attempts to establish a

mutually convenient schedule and having received no cooperation from counsel for the GAP deponents, Consumers' counsel, on October 19, 1983, sent a Notice of Deposition setting such a schedule. A copy is attached as Exhibit D.


8. On October 27, 1983, the GAP deponents failed to appear at the deposition scheduled to produce the requested documents, failed to produce the documents in lieu of appearing and failed to notify Consumers or its counsel that the GAP deponents had no intention of appearing or complying with the Notice or the subpoenas. A copy of the transcript of the proceeding on October 27, 1983 is attached as Exhibit E.

9. On October 27, 1983, no stay of the Board's order denying the motion to quash had been entered and the subpoenas were, accordingly, fully effective. Consumers is entitled to recover its costs incurred in connection with that deposition and the preparation of this motion seeking enforcement of the Board's subpoenas and orders.

10. Consumers is, further, entitled to an order compelling the deponents to appear on the dates set forth in the Notice of Deposition, Exhibit D, on penalty of having sanctions imposed for, among other items, any costs incurred in preparing for and attending those depositions in the event that the GAP deponents again chose to ignore the commands of this Board.

WHEREFOR, Consumers moves that this Board enter an order compelling deponents Lewis Clark, Thomas Devine, Billie P. Garde and Lucy Hallberg to appear at the times and on the dates set forth in the Notice of Deposition and requesting that the Commission seek judicial enforcement of the subpoenas in the event that the deponents fail to appear as commanded. Consumers further seeks an order from the presiding officer shortening the time in which any response from the GAP deponents must be filed in order to resolve any issues before the November 10, 1983 scheduled deposition.

Respectfully submitted,

By 
One of the Attorneys For
Consumers Power Company

David M. Stahl, Esq.
Susan D. Proctor, Esq.
ISHAM, LINCOLN & BEALE
Three First National Plaza
Suite 5200
Chicago, Illinois 60602
(312) 558-7500

DATED: November 2, 1983

SCHEDULE OF DOCUMENTS REQUESTED

I. Definitions

1. "Communication" means and includes, but is not limited to, all discussions, conversations (personal, telephonic or by any other medium), inquiries, negotiations, meetings, understandings, notes, drafts, agreements, letters, telegrams, "telex", or other forms of oral or written interchange.

2. "Document" means the original, any copies when an original is unavailable and any non-identical copies (whether different from the original because of notes made on such copies or otherwise), regardless of origin or location, of any handwritten, typewritten, printed, recorded, transcribed, punched, taped, photocopied, photostatic, "telexed", filmed, microfilmed or otherwise prepared matter, however produced or reproduced, including, but not limited to, all papers, letters, correspondence, telegrams, telexes, cables, memoranda or minutes of meetings or conversations (personal or telephonic), desk pads, calendars, diaries, telephone pads, travel and expense records, reports, summaries, surveys, analyses, ledgers, journals, and other formal or informal books of records or accounts, bulletins, instructions, agreements, legal documents, billing records, drafts, notebooks, worksheets, time records, vouchers, and writing of every description, including drawings, charts, photographs, films, recordings, computer tapes and printouts and other

data or compilations from which information can be obtained and translated, if necessary, by deponent into reasonable usable form.

II. Documents Requested

1. All statements and affidavits supplied to the Nuclear Regulatory Commission by the Government Accountability Project ("GAP"), relating to work or conditions at Consumers Power Company's Midland plant, with the affiant's name and any information which would disclose the affiant's identity deleted.

2. All documents relating to GAP's investigation of the Midland project, including but not limited to all documents provided to GAP by affiants, all statements of present or former employees of Consumers Power Company at the Midland plant taken by GAP which were not supplied to the NRC and all drafts of statements given to GAP by present or former employees of Consumers Power Company at the Midland Plant.

3. All communications between Barbara Stamiris or Mary Sinclair on one hand and GAP, representatives of GAP, Billie P. Garde, Lewis Clark, Lucy Hallberg or Thomas Devine on the other.

ISHAM, LINCOLN & BEALE
COUNSELORS AT LAW

THREE FIRST NATIONAL PLAZA
CHICAGO ILLINOIS 60602
TELEPHONE 312 558-7500
TELEX 2-5288

EDWARD S. ISHAM 1872-1902
ROBERT T. LINCOLN 1872-1889
WILLIAM G. BEALE 1885-1923

WASHINGTON OFFICE
1120 CONNECTICUT AVENUE N.W.
SUITE 840
WASHINGTON D.C. 20036
202 633 9730

October 12, 1983

BY TELECOPY AND MESSENGER

John W. Carr, Esq.
Karr & Lyons
625 Washington Building
15th Street & New York Avenue, N.W.
Washington, D.C. 20005

Dear Mr. Karr:

In keeping with your representation during the telephone conference of October 5, 1983 that you would determine whether Mr. Clark would be available for deposition on October 18, 1983, when may we expect a reply? Absent a response by the end of this week, we will merely establish a deposition schedule and expect your clients to appear.

Very truly yours,


Susan D. Proctor

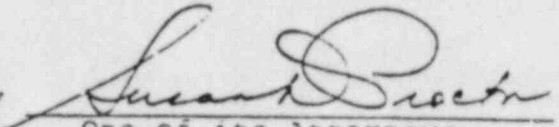
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EXHIBIT "B"

Thomas Devine - December 1, 1983

Billie P. Garde - December 15, 1983

CONSUMERS POWER COMPANY

By 
One of its Attorneys

Isham, Lincoln & Beale
Three First National Plaza
Suite 4900
Chicago, Illinois 60602
(312) 558-7500


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BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

CERTIFICATE OF SERVICE

I, Susan D. Proctor, hereby certify that copies of my Notice of Deposition in the above-captioned proceeding have been served upon all persons shown in the attached service list and to John W. Karr, Esq., Karr & Lyons, 625 Washington Building, 15th Street & New York Avenue, N.W., Washington, D.C. 20005, by deposit in the United States mail, first-class postage prepaid, this 19th day of October, 1983.



Susan D. Proctor

Isham, Lincoln & Beale
Three First National Plaza
Suite 4900
Chicago, Illinois 60602
(312) 558-7500

SERVICE LIST

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

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

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

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

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

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

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

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

Steve Gadler
2120 Carter Avenue
St. Paul, Minnesota 55108

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

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

Ms. Mary Sinclair
5711 Summerset Street
Midland, Michigan 48640

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

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

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

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

ORIGINAL

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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	:	
CONSUMERS POWER COMPANY	:	Docket Nos. 50-329 OM
(Midland Plant, Units 1 & 2)	:	50-330 OM
	:	Docket Nos. 50-329 OL
-----	:	50-330 OL

Depositions of Thomas Devine,
Billie P. Garde and Lewis Clark

Date : Thursday, October 27, 1983

EXHIBIT "E"

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UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

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

Thursday, 27 October 1983

Isham, Lincoln & Beale
1120 Connecticut Ave. N.W.
Suite 840
Washington, D.C. 20036

The depositions of THOMAS DEVINE, BILLIE P. GARDE and LEWIS CLARK were called for examination by counsel for Consumers Power Company to commence at 10:00 a.m., pursuant to notice.

APPEARANCE:

On behalf of the Applicant:

FREDERICK C. WILLIAMS, Esq.
Isham, Lincoln & Beale
1120 Connecticut Avenue, Suite 840
Washington, D.C.

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EXHIBIT:

IDENTIFICATION

Exhibit No. 1

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P R O C E E D I N G S

10:30 a.m.

2 MR. WILLIAMS: On the record.

3 This record is established to indicate that no
4 deponent appeared to produce documents at a scheduled deposi-
5 tion in this proceeding. The initial subpoenas for deposition
6 were issued on May 9, 1983 by the Licensing Board. These
7 subpoenas were issued to Thomas Devine, Billie Garde and
8 Lewis Clark.

9 These depositions were originally scheduled for
10 May 23, 1983. They were later continued, and ultimately were
11 rescheduled according to a notice of deposition issued on
12 behalf of Consumers Power Company and signed by Susan D.
13 Proctor, one of the Consumers Power Company attorneys.

14 This notice of deposition indicated that records
15 were to be produced, but no testimony taken today, October 27,
16 1983 at 10:00 a.m. Copy of this notice of deposition is
17 attached to the transcript as Exhibit 1.

18 (The document referred to was
19 marked Exhibit No. 1 for
20 identification.)

21 No deponent or other agent of the Government
22 Accountability Project having appeared, we adjourn the

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deposition at this time.

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(Whereupon, at 10:31 a.m., the deposition was

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adjourned.)

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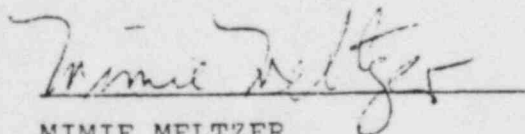
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1 DISTRICT OF COLUMBIA, to wit:

2 I, Mimie Meltzer, the officer before whom
3 the foregoing deposition was taken, do hereby certify
4 that the examination was recorded by me, and this
5 transcript is a true record of the proceedings.

6 I further certify that I am not of counsel to
7 any of the parties, nor an employee of counsel, nor
8 related to any of the parties, nor in any way interested
9 in the outcome of this action.

10 As witness my hand and notarial seal this
11 27th day of October 1983.

12
13 


14 MIMIE MELTZER
15 Notary Public

16
17 MY COMMISSION EXPIRES:

18 9/14/84
19
20
21
22

Thomas Devine - December 1, 1983
Billie P. Garde - December 15, 1983

CONSUMERS POWER COMPANY

By 
One of its Attorneys

Isham, Lincoln & Beale
Three First National Plaza
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Chicago, Illinois 60602
(312) 558-7500

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Three First National Plaza
Suite 4900
Chicago, Illinois 60602
(312) 558-7500

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Frank J. Kelley, Esq.
Attorney General of the
State of Michigan
Carole Steinberg, Esq.
Assistant Attorney General
Environmental Protection Div.
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Lansing, Michigan 48913

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Chicago, Illinois 60602

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4625 S. Saginaw Road
Midland, Michigan 48640

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

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

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

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

Barbara Stamiris
5795 North River Road
Route 3
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2120 Carter Avenue
St. Paul, Minnesota 55108

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5711 Summerset Street
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William D. Paton, Esq.
Counsel for the NRC Staff
U.S. Nuclear Regulatory Comm.
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CERTIFICATE OF SERVICE

I, Susan D. Proctor, one of the attorneys for Consumers Power Company, hereby certify that a copy of Consumers Power Company's Motion To Compel And Application For Enforcement Of Subpoenas Against GAP Deponents was served upon all persons shown in the attached service list by deposit in the United States mail, first-class. Three copies were Federal Expressed to Charles Bechhoefer, Atomic Safety & Licensing Board Panel, c/o Quality Inn, 1815 South Saginaw Road, Midland, Michigan, 48640. An original and two copies were Federal Expressed to Scott M. Stucky, Chief, Docketing & Services, U.S. Nuclear Regulatory Commission, Washington, DC, for filing, and a copy of the same was Federal Expressed to John W. Karr of Karr & Lyons, 625 Washington Building, 15th Street & New York Avenue, N.W., Washington, DC, 20005, this 2nd day of November, 1983.



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

DATED: November 2, 1983

SERVICE LIST

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

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

Mr. Wendell H. Marshall
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Counsel for the NRC Staff
U.S. Nuclear Regulatory Comm.
Washington, DC 20555

Atomic Safety & Licensing
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