

of Consumers and the Nuclear Regulatory Commission ("NRC") Staff failed to adequately respond to these issues. (April 5, 1985 Order, pp. 2-4). The NRC Staff and Consumers were given until April 19, 1985 to file supplemental responses by the April 5, 1985 order of the Appeal Board.

On April 19, 1985, the City and County of Midland, State of Michigan, filed a Motion for Leave to Participate as Amicus Curiae under 10 CFR 2.715(d), seeking to be allowed to address the issues raised in the Appeal Board's Motions of March 13 and April 5, 1985. This Memorandum constitutes Midland's response to the issues raised by the Appeal Board.

II. MIDLAND'S INTEREST IN THIS PROCEEDING

The City and County of Midland, as municipal corporations, purchase electrical power from Consumers, as do all business enterprises and all natural persons located within their boundaries. The City and County of Midland are responsible for the continuing economic vitality of the residential, commercial, and industrial users of electrical powers within their boundaries. Both the City and County of Midland are concerned that their future development -- industrial, commercial, and residential -- will be threatened by the absence of a sufficient supply of power if the Consumers' Midland nuclear project is not completed. In this regard, Roger Fischer, Chief of the Michigan Public Service Commission Staff, has given testimony in Rate Case

No. U-7830 (Midland), before the Michigan Public Service Commission, that the Midland nuclear project should be completed to ensure that Michigan will have sufficient power for its citizens in the 1990's and beyond.

In addition, both the City and County of Midland have greatly benefitted from the Consumers' nuclear project in terms of property tax revenues since 1969. The property taxes which Consumers has paid to both the City and County of Midland have constituted a major source of the total budgets of each. The Midland nuclear facility, even in its shutdown state, has produced major revenues, which revenues continue to have an enormous, if not critical impact, on the economic vitality of the City and County of Midland.

With the shutdown of the Midland project in July, 1984, the City and County have become actively involved in protecting the interests of their citizens. This involvement has included intervening, and presenting evidence, in Michigan Public Service Commission Rate Case No. U-7830 and U-7830 (Midland), both of which have addressed, either directly in terms of construction costs or indirectly in terms of immediate rate relief to Consumers, the impact of the Midland facility on Consumers and its rate payers. Further, the City and County of Midland have expended, and continue to spend, substantial sums on a study to analyze the feasibility of some entity other than Consumers completing the Midland project.

It is within this framework that the City and County submit this Memorandum.

III. THE PUBLIC INTEREST WILL NOT BE SERVED BY VACATING THE LICENSING BOARD'S DECISION WITH RESPECT TO THE CONSTRUCTION PERMIT MODIFICATION NOR BY ORDERING THE DISMISSAL OF CONSUMERS' APPLICATION FOR AN OPERATOR'S LICENSE

Although the Appeal Board has described the Midland nuclear damage as "at the very least deeply comatose", the City and County of Midland believe that there are good prospects for finding a purchaser of the Midland facilities who will complete the project. This belief also appears to be held by both state and federal regulators. To a large extent, however, the ability of the City and County of Midland and Consumers to interest potential investors in the purchase of the nuclear facilities turns on their ability to show potential investors that construction of the facilities can be completed and an operator's license obtained for the plant. The feasibility study which the City and County of Midland are currently undertaking is premised on the notion that any potential purchaser of the nuclear facilities will be able to complete the construction within the parameters of the construction permit as ordered modified by the Licensing Board. If the Licensing Board's decision is vacated, it would likely be impossible to attract investors for the nuclear facilities. A ninety-six day evidentiary hearing has already occurred on the permit modification

issue, and these hearings should not have to be repeated by a potential purchaser of the Midland facilities.

Similarly, Consumer's application for an operator's license should not be dismissed at this time as it would send the wrong signal to potential investors. The dismissal would preclude a purchaser from merely assuming Consumers' position on a myriad of issues relating to whether an operator's license should be issued, e.g., data on safeguards against radiation hazards. Although the City and County of Midland recognize that any potential operator of the Midland nuclear facilities would be required to provide substantial data about itself to obtain an operator's license, dismissal of Consumer's application would likely dissuade potential purchasers from making an offer for the facilities.

It is likely, then, that if the Appeal Board follows through with its proposal to vacate the decision of the Licensing Board, any chance for the sale and completion of the plant will be lost. To foreclose this chance when the Midland facility is at least 85% complete, and after four billion dollars has been expended on the project, would be inimical to the public interest, would likely foreclose the use of the Midland facility as an option for Michigan's future energy needs, and constitute a colossal waste of money.

The situation which currently faces this Appeal Board is similar to that which it confronted in Georgia Power

Company (Alan W. Vogtle Nuclear Plant, Units 1 and 2, Docket Nos. 50-424 and 50-425), ALAB-276, Nuclear Regulatory Reporter (CCH), ¶ 30,001.01 (1975). There, the Licensing Board rendered its decision to authorize the issuance of construction permits to the Georgia Power Company. The Appeal Board embarked upon a sua sponte review of this decision. Prior to the time set for oral argument, however, Georgia Power Company informed the Appeal Board that it was cancelling construction of two of four units and suspending construction of two others "pending further consideration" of possible deferment or cancellation. Almost a year after the permits were issued, by Order of the Appeal Board dated June 11, 1975, the parties were asked to address, inter alia, whether the construction permits should be suspended and subject to reinstatement only upon the satisfaction of certain conditions. Thereafter, the Georgia Power Company filed to amend construction permits to reflect a proposed change in ownership in the nuclear facility. At the time this application was filed, no sale had yet been consummated. In light of this new development, the Appeal Board chose not to suspend the construction permits but, rather, remanded the matter to the Licensing Board to conduct a supplemental hearing encompassing the issue of the changed ownership. Georgia Power Company (Alan W. Vogtle Nuclear Plant, Units 1 and 2, Docket Nos. 50-424 and 50-425), ALAB-285, Nuclear Regulatory Reporter (CCH), ¶ 30,001.02 (1975).

Although no agreement in principle has yet been reached with respect to the purchase of the Midland nuclear facilities, as in Georgia Power Company, these proceedings should be maintained in the status quo as the City and County of Midland are actively engaged in seeking a purchaser for the facilities. The decision to strip the Licensing Board's construction permit modification order of its precedential value and to dismiss Consumer's application for an operator's license will virtually ensure that the Midland project will not be completed.

IV. GIVEN THE POINT TO WHICH THE MIDLAND PROJECT HAS PROGRESSED, AND ITS IMPORTANCE FOR MICHIGAN, IF THERE EXISTS ANY POSSIBILITY OF COMPLETING THE PROJECT, THE STATUS QUO SHOULD BE MAINTAINED

As both Consumers and the NRC have noted in their earlier memoranda to the Appeal Board, Consumers has not abandoned the Midland nuclear facilities. Indeed, Consumers contends that it has in place a surveillance and maintenance program to ensure compliance with federal nuclear regulations so as to permit the resumption of construction should the facilities be sold or should Consumers be in a position to complete the project.

The Midland facilities are at least 85% complete. Considering the four billion dollars already sunk into the project, it would be a foolish and tragic waste for the Appeal Board to issue an order which would constitute the "knockout blow" for the project. There is no doubt that the plant is needed to meet Michigan's future energy needs. The

Midland project has the support of the Michigan Public Service Commission, the United States Nuclear Regulatory Commission Staff, and the United States Department of Energy.

Any soils problem is correctible. The Licensing Board's Order modifying construction permits resolved the adequacy of acceptance criteria for the construction of safety-related soils and foundation systems. This fact underscores that the plant can be safely completed.

Given that the Midland project is essential to meet Michigan's future power needs, is at least 85% complete, and can be safely completed, the Appeal Board should not issue the Order which it contemplates, as such Order would be the death knell for the project.

V. CONCLUSION

The City and County of Midland adopt the suggestion made at pages 5-6 of the NRC Staff's Response to Appeal Board Order of March 13, 1985, as to the appropriate manner for the Appeal Board to proceed. Specifically:

In view of the fact that CPC has indicated that it intends to keep its options open and that it plans to resolve the question of the future of the plant by 1987, the Staff suggests that this Board (1) hold its sua sponte review in abeyance and (2) direct CPC to file periodic reports with the Licensing Board and the Appeal Board regarding CPC's intent with respect to completion or termination of the Midland facility. In the event that the decision is

ultimately made to terminate this facility, it would then be appropriate for the Appeal Board to vacate the Licensing Board's decision and remand the operating license portion of the proceeding to the Licensing Board with instructions to take appropriate action.

If, however, the decision is made not to terminate the Midland facility, the Appeal Board can then conduct its sua sponte review. The Staff believes that this approach would (1) prevent further expenditure of public resources on appellate consideration of LBP-85-2, (2) provide a mechanism for the appropriate response when events clarify that the facility will either be completed or terminated and (3) prevent any unnecessary economic detriment to the Applicant.

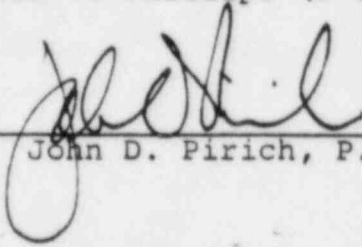
For the reasons stated herein, the City and County of Midland believe that the procedures set forth in the Appeal Board's order of March 13, 1985, are inappropriate and

concurs with the NRC staff's alternative recommendation,
quoted above.

Respectfully submitted,

MILLER, CANFIELD, PADDOCK AND STONE
John D. Pirich, P.C. (P-23204)
Thomas C. Phillips (P-24113)

Dated: 4/19/85

By 
John D. Pirich, P.C.

Dated: _____

By _____
Thomas C. Phillips

Business Address:
One Michigan Avenue, Suite 900
Lansing, Michigan 48933
(517) 487-2070

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TCPE:039
4/18/85

MILLER, CANFIELD, PADDOCK AND STONE

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
USNRC

BEFORE THE ATOMIC SAFETY AND LICENSING APPEAL BOARD

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In the Matter of

CONSUMERS POWER COMPANY

(Midland Plant, Units 1 and 2)

OFFICE OF SECRETARY
DOCKETING & SERVICE

BRANCH

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

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PROOF OF SERVICE

STATE OF MICHIGAN)
: ss.
COUNTY OF INGHAM)

Melissa Jo Norman, being first duly sworn, deposes and says that on the 19th day of April, 1985, she served copies of the attached Motion For Leave To Participate As Amicus Curiae and Memorandum of the City and County of Midland, State of Michigan With Respect to Appeal Board Orders of April 5, 1985 and March 13, 1985 on

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

Mr. Myron M. Cherry, Esq.
Cherry & Flynn
3 First National Plaza
Suite 3700
Chicago, IL 60602

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

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

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

Mr. William Clements (2)
Docketing & Services
U.S. Nuclear Regulatory
Commission
Office of the Secretary
Washington, DC 20555

Mr. Charles Bechhoefer, Esq.
Atomic Safety & Licensing
Board Panel
U.S. Nuclear Regulatory
Commission
East-West Towers
Room E-413
4350 East-West Highway
Bethesda, MD 20014

Dr. Frederick P. Cowan
Atomic Safety & Licensing
Board Panel
6152 N. Verde Trail
Apt. B-125
Boca Raton, FL 33433

Mr. Michael Miller, Esq.
Isham, Lincoln & Beale
3 First National Plaza
Suite 5200
Chicago, IL 60602

Mr. Frederick C. Williams
Isham, Lincoln & Beale
1120 Connecticut Ave., N.W.
Suite 325
Washington, DC 20036

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

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

Secretary
U.S. Nuclear Regulatory
Commission
Washington, DC 20555
ATTN: Chief,
Docketing & Service Section

Ms. Mary Sinclair
5711 Summerset Street
Midland, MI 48640

Dr. Jerry Harbour
Atomic Safety & Licensing
Board Panel
U.S. Nuclear Regulatory
Commission
East-West Towers
Room E-454
4350 East-West Highway
Bethesda, MD 20014

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

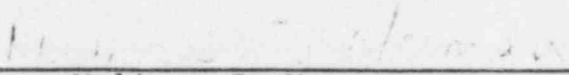
Mr. William D. Paton, Esq.
Counsel for the NRC Staff
U.S. Nuclear Regulatory
Commission
Washington, DC 20555

Mr. P. Robert Brown, Jr.
Clark, Klein & Beaumont
1600 First Federal Building
1001 Woodward Avenue
Detroit, MI 48226

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


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

by enclosing same in a sealed envelope addressed as above indicated, and depositing same in the United States mail with first-class postage fully prepaid thereon.



Melissa Jo Norman

Subscribed and sworn to
before me a Notary Public
this 19th day of April, 1985



Joy E. Robinson, Notary Public
Ingham County, Michigan
My Commission Expires: 4/27/86

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