

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Appeal Board

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

MOTION TO RESCHEDULE PRE-HEARING CONFERENCE

Intervenors other than Dow Chemical Company herein respectfully move that the Appeal Board enter an Order directing the Licensing Board in this case to re-schedule the pre-hearing conference pertaining to disposition of the issues remanded to the Licensing Board by the Appeal Board, presently scheduled for May 1, 1979, and adjust the schedule for briefing pending motions accordingly; and to conduct the pre-hearing conference and all further proceedings herein in Chicago, Illinois.

In support of this Motion, Intervenors state:

1. Counsel for Consumers Power Company and counsel for the NRC Staff have no objection to the re-scheduling requested herein.
2. The rescheduling requested herein is necessary because Myron M. Cherry, counsel for Intervenors other than Dow, is presently engaged in a lengthy and intense trial in Federal Court. That trial began in late February; it is nowhere near a conclusion. For this reason, Mr. Cherry



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will be unable to participate in a pre-hearing conference held on May 1, 1979.

3. In view of the position taken by counsel for Consumers and the Commission Staff and the fact that Consumers itself previously obtained a continuance of other matters without objection from any party, it is apparent that rescheduling the pre-hearing conference will not prejudice any party herein. Under the circumstances, a re-scheduling also will not impair the ends of justice. Rather, proceeding with a pre-hearing conference in the absence of Mr. Cherry--the only lawyer sufficiently familiar with this case to participate on behalf of Intervenor, and the lawyer chiefly responsible for bringing the material facts to the Commission's attention--would be unjust.

4. In addition, it is not feasible, financially or otherwise, to attempt adequately to familiarize another lawyer with the massive record in these proceedings on short notice, in order to permit some other lawyer to take Mr. Cherry's place at the pre-hearing conference. Intervenor has extremely limited funds.

5. Notwithstanding all of the foregoing, the Licensing Board has refused to grant Intervenor's request for a postponement and rescheduling of the May 1, 1979 pre-hearing conference and briefing schedule, on the ground that it lacks the ability to do so as a result of the Appeal Board's instructions to it. Accordingly, we are presenting

this Motion to the Appeal Board, and we respectfully request that the Appeal Board direct the Licensing Board to vacate the May 1, 1979 pre-hearing conference date and work out a revised pre-hearing conference and briefing schedule such that Mr. Cherry can participate.

6. In addition, Intervenor request that both the pre-hearing conference and further proceedings herein be held in Chicago, Illinois. Intervenor's counsel is located in Chicago, Illinois (which is also substantially closer to the plant site in Midland, Michigan than is Washington, D.C. or Bethesda, Maryland), and Intervenor cannot afford multiple trips by their counsel to Washington. Further, a number of the potential witnesses are located in Chicago, Illinois, in the offices of Consumers' former counsel. Also, the Licensing Board had previously ordered that proceedings on the issues remanded by the Court of Appeals--of which this present proceeding is an outgrowth--be held in Chicago, Illinois. No valid reason exists why that decision of the Licensing Board should be abruptly changed.

Respectfully submitted,

Myron M. Cherry  
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One of the Attorneys for Intervenor other than Dow Chemical Co.

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PROOF OF SERVICE

I certify that I served the foregoing Motion on all of the persons named on the Service List attached hereto, at the addresses given therein, by first class mail, postage prepaid, this 24th day of April, 1979.

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