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May 17, 1971

Arthur W. Murphy, Esq., Chairman
Atomic Safety and Licensing Board
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THIS DOCUMENT CONTAINS
POOR QUALITY PAGES

Re: Consumers Power Company,
Midland, Michigan, Units
1 and 2, Docket Nos. 50-329
and 50-330

Dear Mr. Chairman:

Enclosed herewith is the offer of proof by Intervenor,
Environmental Defense Fund, with respect to the validity of
10 CFR Part 50, Appendix D.

Although EDF has not taken a position with respect
to the merits of the safety issues in this proceeding, it
does feel compelled to speak out on the conduct of the proceed-
ing as related to those issues. The attitude of the applicant,
Dow Chemical, the Staff and the Board with respect to pre-
hearing discovery and the conduct of the hearings are indicative
of what EDF will encounter if and when it is allowed, with respect
to environmental issues, to pursue discovery and to participate
in the hearings. The AEC has acknowledged that contested
hearings require additional procedural guidelines and has pro-
posed such guidelines. See 36 Fed. Reg. 8379 (May 5, 1971).
We have substantial problems with those proposed guidelines
but not with one objective stated by the Commission:

The Commission recognizes that contested
facility licensing proceedings should be conducted
with the objective of developing an adequate
record for the resolution of the matters in
controversy.

In our view that objective is a pre-condition to any action by
the Atomic Safety and Licensing Board with respect to an appli-
cation for a construction permit or an operating license.

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In the present state of this proceeding no adequate record has been developed. Interrogatories submitted by the Saginaw Intervenors have not been specifically objected to or answered by the Staff. Objections to the completeness of the applicant's responses to interrogatories have not been ruled upon. Interrogatories submitted to the Dow Chemical Company have not been answered and it has been suggested that Saginaw Intervenors prove the rather clear relevance of those interrogatories, proof of which requires data which cannot be practically determined without answers to at least some of the interrogatories. These are only a few of the matters which are unresolved at this time.

Moreover, we cannot share the view of some parties to this proceeding which recklessly use the terms "unreasonable delay" as though the mere utterance of the terms provides an answer to any and all requests for discovery. The suggestion that public interest intervenors should become familiar with the "Midlands nuclear plant in a few months when the Staff and applicant have had several years of familiarity with nuclear plants in general and this plant in particular is absurd. The development of that familiarity, the formulation of interrogatories and requests for documents, the analysis of responses to those requests and the development of a case for hearings is a lengthy process. It is axiomatic that so long as the AEC persists in allowing the public to intervene in proceedings only after the applicant and the Staff have completed their review and are in fact ready to issue a construction permit and begin construction that delay will occur. But it is unconscionable for responsible parties who know the complexities of these matters to claim that such a delay is unreasonable.

The conduct of these proceedings would be materially improved if the Board ruled that substantive requests should be responded to substantively and not with procedural evasions. The Board should also determine that hearings not be begun until all discovery and objections related to discovery have been completed.

We also wish to advise the Board that in an effort to rush our preparation of the attached documents we were unable to provide counsel for the Saginaw Intervenors with a draft of these documents. However, the Saginaw Intervenors and EDF

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have worked together closely on all environmental issues and intend to continue to do so. Thus we request that the Saginaw Intervenor be allowed five days from today to file a document supporting or suggesting modifications in this offer of proof. EDF feels that much of the substantive input on environmental matters in this case has come and will come from the Saginaw Intervenor. We trust that the Board will allow them a reasonable time to add their support to our efforts with respect to the attached documents.

EDF has no comment on the suggestions by several parties regarding another pre-hearing conference. Issues raised by EDF's offer of proof can be dealt with by written responses and no oral presentation to the Board is requested by EDF.

EDF's analysis of the Draft Environmental Statement should be completed shortly and will be submitted to the Board and the parties. Applicant will be afforded an opportunity to comment on agency comments to the Draft. The applicant observes that the Staff cannot complete the Detailed Statement until at least two weeks after it has received the applicant's comments. (Proposed Order submitted May 4, 1971, by Applicant.) The comments by EDF should be available no later than the date on which Applicant completes its responses to the comments of Federal agencies.

Sincerely,

Anthony Z. Reisman
Counsel for the Environmental
Defense Fund

cc: All on Service List

BEFORE THE UNITED STATES OF AMERICA
ATOMIC ENERGY COMMISSION

In the Matter of)
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)

CONSUMERS POWER COMPANY)
Construction Permit Applications,)
Midland, Michigan Nuclear)
Reactors, Units Nos. 1 and 2)
)

Docket Nos. 50-329
50-330

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing letter to Arthur W. Murphy, Esq., Chairman of the Atomic Safety and Licensing Board, dated May 17, 1971 have been served on the following by deposit in the United States mail, on the 17th day of May, 1971:

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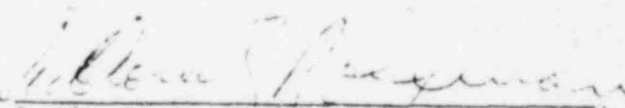
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May 18, 1971