

NRC PUBLIC DOCUMENT ROOM

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. 50-329CP  
50-330CP

BRIEF OF THE DOW CHEMICAL COMPANY  
IN REPLY TO BRIEF OF CONSUMERS POWER COMPANY

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	)	(Remand Proceeding)

BRIEF OF THE DOW CHEMICAL COMPANY  
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INTRODUCTION

The Dow Chemical Company ("Dow") has reviewed the Brief and Proposed Findings of Fact and Conclusions of Law filed by Consumers Power Company ("Consumers").<sup>\*/</sup> Dow believes that the Consumers Brief contains numerous requested findings of fact and conclusions of law for which either (a) there is no evidentiary support in the record, (b) the portions of the record cited do not support the requested finding and, in some cases, are contrary to the requested finding, or (c) the portions of the record cited totally ignore other portions of the record, including the testimony of Consumers' own witnesses, which are directly contrary to the

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<sup>\*/</sup> Dow is responding separately to the briefs filed by Consumers and the Staff.

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finding the Board is requested to make. While Dow agrees with the Staff and Consumers that there is no evidence in the record, viewed in its entirety, that would warrant any affirmative finding on any of the five issues articulated by the Board, it also believes that the Board's findings of fact and conclusions of law should be based on the true record and not on some distortion of it.

Dow will hereafter discuss the particular proposed findings of fact and conclusions of law of Consumers which it believes contain errors or distortions of the record. Any failure to discuss any particular finding of fact or conclusion of law does not mean that Dow agrees with such proposed finding of fact or conclusion of law but only that Dow does not believe that the record has been distorted or misstated to reach the finding of fact or conclusion of law argued for by Consumers.

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COMMENTS ON CONSUMERS' BRIEF

I.

Proposed Finding of Fact 17

In Proposed Finding of Fact 17, Consumers states that Joseph Temple told Consumers on September 13, 1976 that the official Dow position had not yet been taken "with respect to the question of continued participation in the Midland project." The proposed finding of fact goes on to state that Mr. Temple also told Consumers that, "in the interim", Dow continued to believe that the companies had a valid, binding contract which Dow intended to honor. None of the citations to the record support the statement that the official Dow position had anything to do with "continued participation in the Midland project." On September 13, 1976, Consumers was told that Dow considered that it had a valid and binding contract with Consumers Power Company but was questioning whether that contract was of any future benefit to Dow. Contrary to the inference suggested by Consumers in Proposed Finding of Fact 17 that Dow was considering repudiating the contract, Dow advised Consumers on September 13, 1976 that it considered the contract to be valid and binding. (Vol. 3, Tab 4, p. 11; Vol. 7, Tab 26, p. 2) It again advised Consumers of this view in a telephone call between Mr. Youngdahl and Mr. Temple on September 14, 1976

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(Vol. 3, Tab 10, pp. 3-4)<sup>\*/</sup> and in a telephone call between Mr. Nute and Mr. Bacon on September 17, 1976. (Vol. 3, Tab 17, p. 4; and see Dow's initial Brief, p. 15) It is clear that Consumers understood this statement from Dow since Mr. Youngdahl testified that he never understood the Michigan Division position to mean that Dow intended to repudiate the contract. (Youngdahl 53,812-814)

Thus, there is no evidentiary support for Proposed Finding of Fact 17.

## II.

### Proposed Finding of Fact 21

Consumers states that one of the purposes of the September 21, 1976 meeting was to provide an opportunity for a "freewheeling" discussion of strategies in which positions and strategies "are invariably advanced for no reason other than to satisfy those assembled that a full range of possibilities has been considered." Consumers then cites as support its Proposed Finding of Fact 19. However, a review of Proposed Finding of Fact 19 discloses no evidentiary support for Proposed Finding of Fact 21. In fact, the purpose of the

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<sup>\*/</sup> Mr. Temple again repeated this statement during the September 24, 1976 meeting with Consumers. (See Vol. 4, Tab 11, p. 1)

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September 21, 1976 meeting was to explain to Dow what would happen at the suspension hearing and the possible impact on the construction licenses of various positions Dow U.S.A. might take. (Renfrow 51,720; Bacon 52,006; Nute 50,726; Hanes 52,345-346)

Thus, there is no evidentiary support for Proposed Finding of Fact 21.

### III.

#### Proposed Finding of Fact 22

There is no evidentiary support anywhere in the record for Proposed Finding of Fact 22. It consists solely of argument and rhetorical comment by Consumers.

### IV.

#### Proposed Finding of Fact 23

In Proposed Finding of Fact 23, Consumers states that the Nute notes indicate that someone from Consumers suggested that "the parties" would be able to finesse the Dow-Consumers continuing dispute if no Intervenor appeared. However, a review of the Nute notes discloses no reference to "the parties" being able to finesse the Dow-Consumers continuing dispute. The relevant entry in the Nute notes reads as follows:

"B. Factors to be considered in suspension hearing (5) - Consumers assumes Cherry will not appear because of lack of funds - Consumers

says suspension hearing most critical - they believe that since there is no discovery, and probably no intervenor cross-examination - will be able to finesse Dow-Consumers continuing dispute." (Vol. 3, Tab 26, p. 2)

There being no evidentiary support for the proposed finding that "the parties" would be able to finesse the Dow-Consumers continuing dispute, there is no basis upon which the Board can make the requested finding as to "the parties". The notes indicate that the suggestion that the Dow-Consumers continuing dispute might be finessed under certain circumstances came from Consumers.

V.

Proposed Finding of Fact 24

In Proposed Finding of Fact 24, Consumers asks the Board to find as fact that the Nute notes "do not accurately portray the intentions of Consumers or its attorneys regarding their approach to the suspension hearing, nor do they accurately reflect the actual conduct of Consumers or their attorneys in the proceeding." There is no evidentiary support for the proposed finding of fact. It consists solely of argument and rhetorical comment by Consumers. Dow does note that by asking for such a finding, Consumers would have this Board ignore notes

taken by a Dow attorney during a meeting on September 21, 1976 and rely instead on the unrecorded mental recollections of Consumers' representatives some three years after the meeting occurred.\*/  
Dow believes that the record in the most recent hearing clearly demonstrates that the Nute notes of September 21, 1976 are an accurate summary of what occurred at that meeting.

## VI.

### Proposed Finding of Fact 25

In Proposed Finding of Fact 25, Consumers asks the Board to find that Mr. Renfrow did not suggest to Dow that there were certain circumstances under which the Dow-Consumers continuing dispute could be finessed. Consumers supports this proposed finding by referring to Mr. Renfrow's denial of having made such a statement and on Mr. Renfrow's subsequent conduct which Consumers claims

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\*/ In its Motion for Summary Disposition, Consumers questioned the accuracy of the Nute notes because it thought they were not taken contemporaneously with the meeting itself. (See pp. 8-9 of Consumers' Memorandum in Support of Motion for Summary Disposition) Now that the record clearly demonstrates that the notes were taken during the course of the meeting, Consumers has altered course and now attacks the notes because they are not "verbatim". (See Consumers' proposed Finding 27) In deciding what occurred in the September 21, 1976 meeting, it would seem that greater credibility should attach to a recorded summary of that meeting than to unrecorded recollections three years removed.

refutes any intention to "finesse" anything during the hearing. In suggesting this proposed finding to the Board, Consumers inexplicably ignores the testimony of another Consumers' witness, Judd L. Bacon. Mr. Bacon's testimony corroborates that portion of Mr. Nute's notes of the September 21, 1976 meeting which indicates that a Consumers' representative suggested that the Dow-Consumers continuing dispute could be finessed under certain circumstances. (Bacon 52,009-011; and see Dow's initial Brief, pp. 11-14)

Moreover, Consumers argues that Mr. Renfrow's subsequent conduct belies any intention to "finesse" any matter that might come before the Board at the suspension hearing. However, Mr. Renfrow testified that he did not know whether Mr. Cherry was going to appear as counsel for Intervenor until he actually appeared at the hearing. (Renfrow 51,722) Thus, Mr. Renfrow had no choice other than to prepare to deal with issues that might arise if an Intervenor appeared at the hearing. There is nothing in the record that will answer the question of what Consumers would have done in terms of presentation of their case if Mr. Cherry and the Intervenor had not appeared.

Thus, there is no evidentiary support for Proposed Finding of Fact 25.

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## VII.

### Proposed Findings of Fact 26 and 27

In Proposed Findings of Fact 26 and 27, Consumers requests the Board to find as fact that Mr. Renfrow did not request a less than knowledgeable witness from Dow at the September 21, 1976 meeting. In suggesting such a proposed finding, Consumers states that "others in attendance testified at the hearing that they recalled the conversation on this subject somewhat differently from Nute, or not at all." Consumers fails to note, however, that the testimony of Mr. Hanes and Mr. Klomprens at the hearing corroborated Mr. Nute's notes and his testimony that a less than fully knowledgeable witness was requested. (See Dow's initial Brief, pp. 15-18)

In Proposed Finding of Fact 26, Consumers also asks the Board to find that Dow made comments in the September 21, 1976 meeting and before that meeting expressing concern over using Joseph Temple as a witness because of Mr. Temple's "personal dissatisfaction with the project." However, such a proposed finding has no evidentiary support in the record. Mr. Bacon testified that he could not recall hearing any comments from Dow prior to the September 21, 1976 meeting which expressed any concern over using Mr. Temple as a witness. (Bacon 52,008) Mr. Bacon could not recall any comments from Dow of this nature being made during the meeting of September 21, 1976. (Bacon 52,156-160) Mr. Falahee did recall hearing Mr. Nute state that "it might be a problem with

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Mr. Temple as a witness." (Falahee 52,265-266) However, Mr. Falahee did not understand Mr. Nute to be in any way reluctant to use Mr. Temple as a witness but rather "he wanted us to be aware that that had been said." (Falahee 52,327)

Thus, there is no evidentiary basis for Proposed Findings of Fact 26 and 27.

#### VIII.

##### Proposed Findings of Fact 28 through 30

In Proposed Findings of Fact 28 through 30, Consumers requests the Board to find that Consumers did not suggest that there might be circumstances under which Consumers would attempt to delay the NRC hearing. Consumers states that such a statement was recalled "by none of the other participants." This, however, ignores the record since both Mr. Hanes and Mr. Klomparens testified that they heard some conversation regarding circumstances where Consumers would benefit if they could keep construction going pending the hearings. (See Dow's initial Brief, pp. 19 and 20) Indeed, Mr. Klomparens described the thrust of Mr. Renfrow's remarks as " ... I guess it's the situation that if I got the ball and I'm running, you've got to stop me. If you get the ball and you're running, I've got to stop you, type of thing." (Klomparens 53,723-724) While Consumers suggests that there is no circumstance in which Consumers would have benefitted by the tactic

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of delay, Mr. Cherry apparently thought to the contrary and claimed to foresee a scenario in which it would become increasingly more difficult for the Board to suspend a construction license when the licensee had invested tremendous sums in the project.

In Proposed Finding of Fact 29, Consumers again asserts that, at the time of the September 21, 1976 meeting, "Dow had under active consideration whether or not to continue its participation in the nuclear plant." Such statement is a distortion of the record since the testimony clearly indicates that Consumers was told, time and again, that Dow considered the contract to be valid and intended to honor it. Moreover, Mr. Youngdahl understood the Michigan Division position to affirm the contract. (See pp. 3-4, supra)

There is therefore no evidentiary basis for the Board to find as fact Proposed Findings of Fact 28 through 30.

## IX.

### Proposed Findings of Fact 35 and 36

In Proposed Finding of Fact 35, Consumers relates its version of Mr. Nute's understanding of statements made by Mr. Falahee at the September 21, 1976 meeting regarding Dow's duty to support the contract. Then, in Proposed Finding of Fact 36, Consumers asks the Board to find that "none of the other participants in the meeting understood the statements by Mr. Falahee

in quite the same way." What Consumers does not state is that Mr. Hanes and Mr. Klomparens both testified that they understood Mr. Falahee to say that Dow would be sued if it was not supportive of Consumers in the hearing and that Mr. Falahee did not regard the Michigan Division position as being supportive of Consumers. (See Dow's initial Brief, pp. 26-29) Thus, the testimony does not support the inference put forward by Consumers that Mr. Nute alone understood Mr. Falahee to say that Dow must be supportive of Consumers or risk a lawsuit.

There is no evidentiary basis to support Consumers' Proposed Findings of Fact 35 and 36.

X.

Proposed Finding of Fact 39

In Proposed Finding of Fact 39, Consumers requests the Board to find that Dow should not have been surprised " ... to hear that a decision to repudiate or frustrate its contract with Consumers would likely result in substantial litigation." However, the record clearly indicates that Consumers was never told that Dow intended to repudiate or frustrate the contract with Consumers. Indeed, Consumers was told that Dow considered the contract to be valid and binding although no longer beneficial in the opinion of Dow's Michigan Division. (See Dow's initial Brief, pp. 24-25; pp. 3-4, supra) Mr. Youngdahl of Consumers did not understand

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the Michigan Division position to mean that Dow intended to repudiate or frustrate the contract. (Youngdahl 53,812-814) The record also indicates that Dow was not simply told that it would be sued if it breached or repudiated the contract, but that it would be sued if it was not supportive of Consumers and if it adopted the Michigan Division position and that in turn resulted in a suspension of the license. (See Dow's initial Brief, pp. 26-30) Such a threat goes far beyond simply telling a company that it will be sued if it repudiates or frustrates a contract.\*/

Thus, there is no evidentiary basis to support Proposed Finding of Fact 39.

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\*/ Consumers states in its Proposed Finding of Fact 39 that it "cannot imagine that a company having the size, experience and business acumen of Dow could have been too surprised to hear that a decision to repudiate or frustrate its contracts with Consumers would likely result in substantial litigation." As noted above, Consumers' threat went far further than that characterized in the Consumers Brief. Moreover, if the threat was nothing more than that a suit would be filed against Dow if it repudiated or frustrated the contract, why did Consumers find it necessary to communicate the "obvious" to Dow twice in the span of three days -- once by its General Counsel and again by its Chairman of the Board?

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XI.

Proposed Finding of Fact 40

In Proposed Finding of Fact 40, Consumers asks the Board to find that Mr. Aymond, during the September 24, 1976 meeting, did not advise Dow to support the Midland project at the suspension hearing even if it determined that the project was no longer good for Dow. Dow agrees that Mr. Aymond did not give this specific advice to Dow but does point out that Mr. Aymond did tell Dow that there was "a need to say the project is good for Dow even if close to the neutral point." (Vol. 7, Tab 8, p. 3)

In Proposed Finding of Fact 40, Consumers again characterizes the threat as simply "... alerting Dow to the potential for court litigation with Consumers if the decision of the Dow U.S.A. Board was ... to abandon the project." If this Board reviews the entire record in this hearing, it will find that the threat went far beyond simply telling Dow that it would be sued if it repudiated the contract.

There is no evidentiary basis to support Consumers' Proposed Finding of Fact 40.

XII.

Proposed Finding of Fact 44

In Proposed Finding of Fact 44, Consumers states that Consumers' counsel did not appreciate, at least initially, "the



personal animosities that the Dow negotiators felt toward certain of their Consumers' counterparts," thereby implying that only Dow personnel shared these feelings. A review of the transcript sections cited to support this contention shows that there is no testimony to support it. The only testimony that even closely approximates the proposed finding is that of Mr. Renfrow who made a reference to "four pigheaded people" involved in contract negotiations. (Renfrow 51,462) A review of Mr. Renfrow's entire testimony indicates that the reference to the "four pigheaded people" was to Messrs. Youngdahl, Bacon, Temple and Nute. (See Renfrow 51,639-640; 51,699)

Consumers also asks the Board to find that Messrs. Renfrow and Rosso entered testimony preparation meetings with Dow fully anticipating a "spirit of cooperation" from Dow. While this may have been the state of mind of Messrs. Renfrow and Rosso, the record indicates that there was no reason why they should have entertained such a state of mind in view of the fact that Mr. Renfrow knew that Dow had been threatened with litigation if it was not supportive of Consumers in the forthcoming hearings (he attended the September 21, 1976 meeting where Mr. Falahee made his comments and was aware of Mr. Aymond's presentation at the September 24, 1976 meeting - Renfrow 51,772) and had suggested to Dow that it use a less than knowledgeable witness. Dow believes that the record will not justify a finding that Messrs. Renfrow and Rosso could reasonably entertain a



belief that Dow should meet with them "in a spirit of cooperation" in view of the circumstances that transpired at the September 21, 1976 meeting of which Mr. Renfrow was fully aware.

There is no evidentiary basis to support Proposed Finding of Fact 44.

### XIII.

#### Proposed Finding of Fact 45

In Proposed Finding of Fact 45, Consumers asks the Board to find that Mr. Wessel "actively promoted the idea of initiating a lawsuit against Consumers to secure release from the steam and electric contracts on the ground that Consumers had failed to comply with the "best efforts clause", thereby inferring that Mr. Wessel was trying to counsel Dow to repudiate the contract. However, a review of the portions of the transcript cited for this proposed finding indicates that Mr. Wessel was advising Dow to consider litigation against Consumers not to get out of the contract with Consumers but rather to prod Consumers to negotiate changes in that contract desired by Dow. (Wessel 52,478; 52,862-863; 52,865)

In Proposed Finding of Fact 45, Consumers also asks the Board to find that Mr. Wessel was aware of Consumers' statements in the September 21, 1976 and September 24, 1976 meetings "concerning a possible damages action against Dow for breach of contract if

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Dow's repudiation or frustration of the existing contracts caused suspension of the Midland permits." A review of the portions of the transcript cited in support of this proposed finding indicates that Consumers has again mischaracterized the nature of the threat made to Dow and conveyed to Mr. Wessel. What the transcript indicates is that Mr. Wessel was told that the threat was not simply that Dow would be sued if it breached or frustrated the contract but rather that Dow would be sued if it didn't act in the proceeding in a way which supported Consumers. (Wessel 52,988)

There is no evidentiary basis to support Proposed Finding of Fact 45.

#### XIV.

##### Proposed Finding of Fact 46

In Proposed Finding of Fact 46, Consumers characterizes the October 15, 1976 letter agreement entered into between Isham, Lincoln & Beale and Dow as imposing a condition on Isham, Lincoln & Beale that they refuse to represent or advise Consumers in any subsequent contract negotiations with Dow. In fact, the letter agreement of October 15, 1976 imposed a far greater obligation on Isham, Lincoln & Beale in which they agreed not only to refuse to represent Consumers in any future negotiations with Dow but also refuse to represent Consumers "in any controversy" that might

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arise between Dow and Consumers out of the contract between the parties. (Vol. 4, Tab 28)

In Proposed Finding of Fact 46, Consumers also asks the Board to find that Mr. Wessel contended that Dow negotiating information was "privileged". The portion of the transcript cited in support of this contention does not bear it out. A review of the transcript indicates that Mr. Wessel did not think the material was privileged but rather he wanted to preserve the argument that the Board should treat the material as if it was privileged with respect to Consumers because of the sensitive relationship the information referred to.

Consumers contends that Mr. Wessel attempted to keep the information from Consumers, the Board and the Intervenors. The testimony of Mr. Wessel on this point, however, states that, while he was opposed to turning over negotiating data to Consumers itself without being granted access to Consumers' negotiating data, he had no objection to turning over documentary information to Mr. Cherry and the Board unless it was in fact privileged.

(Wessel 52,731) Indeed, Mr. Wessel prepared a letter in response to Mr. Cherry's September 27, 1976 discovery request and Consumers made changes in Mr. Wessel's letter which Mr. Wessel viewed as an indication on the part of Consumers that they were going to restrict the information given to Mr. Cherry. (Wessel 52,553-557; 53,065)

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XV.

Proposed Finding of Fact 47

In Proposed Finding of Fact 47, Consumers refers to the Dow position that it was not a party to the suspension proceeding and then states that Consumers did not agree with this position. Dow has no way of knowing what Consumers actually thought about the legal position that Dow was not a party to the suspension proceeding but the record does indicate that Mr. Renfrow told the Board at the beginning of the suspension proceeding that it was in agreement with Dow's position on this point. Mr. Renfrow then stated as follows:

Mr. Renfrow:

"We might as well address the Dow Chemical problem. My understanding is from my conversation with Mr. Wessel, and documents that have been filed, that Dow Chemical has withdrawn as a party to this proceeding. I understand there is some loose understandings, but perhaps we could address that as we approach those issues, because Dow as a withdrawn party, which I believe they are they may not wish to be involved in it."

(suspension hearing transcript, pp. 116-117)  
(emphasis supplied)

Dow believes there is no evidentiary support for the proposed finding that Consumers did not agree with Dow's position that it was not a party to the suspension proceeding.

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XVI.

Proposed Finding of Fact 43

In Proposed Finding of Fact 48, Consumers asks the Board to find that Mr. Wessel "took steps to insure that Consumers' counsel alone would appear ultimately responsible for the preparation of the direct written testimony of Joseph Temple." A review of the portions of the transcript and the documents cited in support of this proposed finding discloses however that Mr. Wessel was trying to actually get Consumers to prepare the written testimony and was not simply trying to make it "appear" that they did.

There is no evidentiary basis to support Proposed Finding of Fact 48.

XVII.

Proposed Findings of Fact 51 through 55

In Proposed Findings of Fact 51 through 55, Consumers discusses the October 12, 1976 meeting with Dow counsel, the discussion of the Temple testimony during that meeting and the subsequent decision by Consumers to omit reference to the Michigan Division position in the direct testimony. Again, Consumers creates the inference that they were constantly seeking information and Dow was not providing that information. Consumers fails to mention that, during the October 12, 1976 meeting, Dow

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outlined in detail Mr. Temple's reasons for reaching the Michigan Division position. (Vol. 5, Tab 9, pp. 3-9) Subsequent to that meeting, Dow also made available for Mr. Renfrow's review all the data that he requested relating to the Michigan Division position and the corporate review. (Nute 51,325)

There is no evidentiary basis to support the inferences in Proposed Findings of Fact 51 through 55 that Dow counsel failed to disclose to Consumers information it sought to prepare the Temple testimony.

#### XVIII.

##### Proposed Finding of Fact 56

In Proposed Finding of Fact 56, Consumers asks the Board to find that its counsel determined to make available to the NRC Staff and the Midland Intervenors "all documents they had in their possession" discussing or "having reference to" the Michigan Division interim position. Dow has no knowledge whether this was the actual "determination" of Consumers' counsel but it does note that the Aymond outline prepared for the September 24, 1976 meeting was not produced at any time prior to the suspension hearing. (Tr. 564; 570) That outline referred to the Michigan Division position and, indeed, indicated that Consumers did not consider the position to be consistent with Dow's contractual obligations.\*

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\*/ While Consumers produced the Dow notes of the September 13, 1976 meeting which Dow had given Consumers, it elected not to disclose the notes of Mr. Youngdahl and Mr. Keeley which were taken during the same meeting.

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XIX.

Proposed Findings of Fact 62 and 63

In Proposed Findings of Fact 62 and 63, Consumers refers to the October 22, 1976 outline prepared by Mr. Rosso and emphasizes that it consisted of two parts, the latter part being devoted to the Michigan Division position. What Consumers does not offer as a proposed finding is the fact that Mr. Rosso did not intend the second part of the October 22, 1976 draft to be a part of Mr. Temple's testimony. (Rosso 53,366) It therefore was not unreasonable for Mr. Nute and Mr. Wessel to focus "only on the first part of Mr. Rosso's two-part draft."

There is no evidentiary basis to support Proposed Findings of Fact 62 and 63.

XX.

Proposed Finding of Fact 64

In Proposed Finding of Fact 64, Consumers states that Mr. Wessel had no substantive objection to the Rosso draft of testimony dated October 22, 1976 but thought that others not familiar with the events and circumstances might be misled into believing that it told the "complete story" of the relationship between Dow and Consumers. Dow believes that an inference is

created that there were no substantive inaccuracies in the October 22, 1976 draft. This is not the case since both Mr. Nute and Mr. Temple, who were far more familiar with the details contained in the draft than Mr. Wessel, had substantive objections to the October 22, 1976 draft. (Nute 51,003-015; Temple 53,460-462) Moreover, Consumers asks the Board to find that Mr. Wessel's concern that the draft might be viewed by others as "misleading or disingenuous" was intended "more for effect" than anything else. A review of the portions of the transcript cited in support of this proposed finding indicates that Mr. Wessel was genuinely concerned that the Board might be misled and he genuinely wanted changes in the draft to avoid such a result. (See particularly Wessel 52,764-768)

There is no evidentiary basis to support Proposed Finding of Fact 64.

## XXI.

### Proposed Finding of Fact 65

In Proposed Finding of Fact 65, Consumers asks the Board to conclude that Dow prepared the October 29, 1976 draft of testimony in the third person "to give the appearance they desired, i.e., that the testimony was Consumers Power's doing and not Dow's." A review of the documents cited in support of

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this proposed finding does not bear out the contention that Dow was trying to create the "appearance" that the testimony was responsive to Consumers' request but rather that Dow was substantively attempting to make it clear that the information in the Temple testimony was that requested by Consumers and not that volunteered by Mr. Temple or Dow.

There is no evidentiary basis to support Proposed Finding of Fact 65.

## XXII.

### Proposed Findings of Fact 73 and 74

In Proposed Findings of Fact 73 and 74, Consumers requests that the Board find it "curious" that neither Mr. Temple nor the Dow lawyers told Messrs. Renfrow and Rosso that Dow considered Consumers' threats of litigation as a serious factor to be weighed in reaching the Dow U. S. A. position. At the outset, both Mr. Temple, Mr. Nute and Mr. Wessel thought that Messrs. Renfrow and Rosso knew about the threats of litigation made by their client against Dow if Dow's testimony was not supportive of Consumers, particularly in view of the fact that Mr. Bacon, Mr. Renfrow and Mr. Falahee attended the September 21, 1976 meeting and Mr. Bacon and Mr. Falahee attended the September 24, 1976 meeting. (Wessel 52,794; 52,924-927; Temple 53,529; Nute 51,325-326) Neither Mr. Renfrow nor Mr. Rosso asked what impact

the threats had on Dow's decision-making process. (Temple 53,529) Moreover, Mr. Wessel repeatedly told Messrs. Renfrow and Rosso during the Temple testimony preparation period of his concerns that Consumers would sue Dow if Dow wasn't supportive of Consumers and a suspension resulted. (See Dow's initial Brief, p. 57)

Consumers, in a footnote on page 57 of its Brief, states that "the litigation slide" shown to the Dow U.S.A. Board was left out of the package of slides shown to Messrs. Renfrow and Rosso, citing testimony of Messrs. Renfrow and Rosso. While Mr. Rosso did testify that he never saw the slide, Mr. Renfrow did not so testify. Mr. Renfrow stated, referring to the "litigation" slide:

"I don't remember seeing this. It doesn't mean that I haven't seen it, but I don't remember seeing it before."  
(Renfrow 51,961) (emphasis supplied)

Thus, Mr. Renfrow's testimony is not, as represented by Consumers, that he never was shown the slide but rather that he could not remember if he had been shown it. Mr. Nute testified that the slide was shown to Mr. Renfrow when Mr. Renfrow alone visited Midland to review certain Dow documents. (Nute 51,325; see Dow's initial Brief, p. 57)

Dow believes that the Board should find it "curious" that Consumers should expect Dow to come back and advise Consumers' attorneys that the threats that had been made by Consumers had

affected Dow's decision-making process, especially when Consumers made the threats with the express purpose of influencing that decision. (Aymond 54,029) During the corporate review, Consumers was invited to comment on the possible legal impact on Consumers of the Michigan Division position if adopted by Dow U.S.A. Consumers chose to make its input through its Chairman of the Board whose appearance at Dow came only three days after its General Counsel had come to Dow and advised Dow of the circumstances under which Dow would face litigation from Consumers. It borders on the ridiculous for Consumers to contend now that Dow should have advised it of what impact the threats of litigation had on the Dow U.S.A. decision. The Consumers' input into the corporate review focused on the "legal aspects" of the Michigan Division position and was intended to influence the ultimate Dow U.S.A. decision. Consumers intended it to have the effect that it did.

There is no evidentiary basis to support Proposed Findings of Fact 73 and 74.

#### XXIII.

##### Proposed Conclusion of Law 4

In Proposed Conclusion of Law 4, Consumers asks the Board to conclude that Consumers' subsequent conduct refutes Mr. Nute's notes regarding the "finesse" statement. Again, Consumers ignores

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the testimony of its own witness, Judd L. Bacon, who confirmed that Mr. Renfrow made such a statement. (See p. 8, supra) Moreover, Consumers' subsequent "diligence" in preparing for the hearing and making certain information available in Jackson to those who wished to view it does not disprove any desire to "finesse" anything at the hearing if Intervenor's did not choose to view the material (as they did not) and did not appear at the hearing (which they did).

There is no evidentiary basis to support Proposed Conclusion of Law 4.

#### XXIV.

##### Proposed Conclusions of Law 27 and 28

In Proposed Conclusions of Law 27 and 28, Consumers requests the Board to conclude that Messrs. Renfrow and Rosso were not told by Dow of the effect of the threats on the decision-making process of Dow U.S.A. As noted supra at pp. 24-25, Messrs. Renfrow and Rosso knew that the threats had been made. There was no duty or reason for Dow, after being threatened with litigation to obtain its support in the hearing, to advise

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Consumers what effect the threats had had upon it.<sup>\*/</sup> (See pp. 25-26, supra)

There is no evidentiary basis to support Proposed Conclusions of Law 27 and 28.

XXV.

Proposed Conclusion of Law 29

In Proposed Conclusion of Law 29, Consumers again asks the Board to conclude that the nature of the threat of litigation was only that Dow would be sued if it breached the contract.

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<sup>\*/</sup> Dow finds it amazing that Consumers, after having successfully influenced Dow with a two-phased effort to force Dow's attention on litigation by Consumers and potential legal liability to Consumers, would even suggest that Dow failed in some duty to advise Consumers' attorneys that such threats had a major impact on the Dow U.S.A. decision. The subject of litigation and legal liability was, after all, the only area in the Dow corporate review where Mr. Aymond felt compelled to personally convey Consumers' message.

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The testimony in this record clearly shows that the Consumers threat of litigation went far beyond this simple statement of the law. Dow was told that it would be sued if its testimony was not supportive of Consumers and a suspension resulted. (See Dow's initial Brief, pp. 26-44) Moreover, Consumers was continually told that Dow considered the contract to be valid although no longer advantageous to Dow. Mr. Youngdahl testified that he never understood the Michigan Division position to mean that Dow was going to repudiate its contractual obligations. He understood that Dow intended to abide by the terms of the contract and saw no difference between the Michigan Division position and the Dow U.S.A. Board decision. (Youngdahl 53,812-814)

There is no evidentiary basis to support Proposed Conclusion of Law 29.

XXVI.

Proposed Conclusions of Law 33 and 34

In Proposed Conclusions of Law 33 and 34, Consumers asks the Board to conclude that it doesn't know why Mr. Wessel and Mr. Nute thought that the Rosso draft of October 22, 1976 might be viewed by others as misleading and disingenuous. The record on this point is clear and there is no way the Board could reach such a conclusion. Mr. Wessel testified that he

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thought the draft might be viewed by others unfamiliar with the events as misleading and disingenuous because it appeared, with all its detail, to tell the "whole story" about the Dow-Consumers relationship (and painted a rather rosy picture of that relationship) when in fact it did not. (Wessel 52,759; 52,766; 52,957; 52,980-981) Messrs. Nute and Temple thought the draft was misleading because it contained factual misstatements, including statements that Dow had concluded that Consumers could be relied upon to deliver steam on time and in quantities contracted for. (Nute 51,003-015; Temple 53,460-462) During the course of the October 12, 1976 meeting, Messrs. Renfrow and Rosso were told of Mr. Temple's lack of confidence in Consumers. Mr. Rosso then prepared a draft of testimony which described a harmonious relationship between the companies and a belief by Dow that Consumers could be relied upon to fulfill its contractual obligations in a timely manner. The draft included some "flavoring" added by Mr. Rosso as well as some conclusions not contained in the Nute informational response dated October 6, 1976. (Rosso 53,248-250) Dow was properly concerned that others unfamiliar with the full details might be misled by the draft. Mr. Nute and Mr. Wessel acted properly to correct what they felt were misstatements of fact. The October 29, 1976 draft was prepared to correct misstatements contained in the October 22, 1976 draft and to make it clear that the entire

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history of the Dow-Consumers relationship was not being described in that draft.

There is no evidentiary basis to support Proposed Conclusions of Law 33 and 34.

XXVII.

Proposed Conclusion of Law 40

In Proposed Conclusion of Law 40, Consumers again invites the Board to conclude that the threat of litigation was simply that Dow would be sued if it repudiated or frustrated the contract. The record clearly indicates that the threat was far broader than that. Dow was told that it would be sued if its actions in the hearing were not supportive of Consumers and a suspension resulted.

Consumers also invites the Board to conclude that Messrs. Renfrow and Rosso were not told of the effect of the threats of litigation on the Dow U.S.A. Board decision. As noted supra, Messrs. Renfrow and Rosso were aware of the threats and there was no obligation on the part of Dow to tell Consumers what impact the threats that Consumers had made had on the Dow U.S.A. Board decision-making process.

There is no evidentiary basis to support Proposed Conclusion of Law 40.

XXVIII.

Proposed Conclusion of Law 41

In Proposed Conclusion of Law 41, Consumers again invites the Board to conclude that the threat of litigation was simply that Dow would be sued if it abandoned the contract. As noted supra, the record establishes that the threat was far broader than that.

There is no evidentiary basis to support Proposed Conclusion of Law 41.

XXIX.

Proposed Conclusion of Law 44

In Proposed Conclusion of Law 44, Consumers asks the Board to conclude that "it is troubled by certain conduct of Dow's outside counsel." Consumers goes on to request the Board to conclude that Mr. Wessel misled the Board in his oral presentation on December 3, 1976 and in a Dow Brief filed on December 22, 1976 and tried to create an impression that Consumers' attorneys had, from the outset, resisted Dow's efforts to include information in the direct testimony and had refused to follow Dow's advice to produce documents on discovery. As support for this allegation, Consumers cites Wessel 52,825-827 and the Dow Brief. A review of the portion of the transcript cited discloses no evidence in

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support of the allegation made by Consumers nor does Dow, for reasons hereinafter set forth, believe that Mr. Wessel misled the Board in any way in his oral presentation on December 3, 1976 and in the Dow Brief filed on December 22, 1976.\*/

There is no evidentiary basis to support Proposed Conclusion of Law 44.

XXX.

Proposed Conclusion of Law 45

In Proposed Conclusion of Law 45, Consumers requests the Board to conclude that Mr. Wessel has now admitted that "he misperceived the relationship between himself and Consumers' attorneys during the preparation and presentation of Temple's testimony as being 'adversarial' in nature." Again, the portions of the record cited in support of such proposed conclusion do not support it. On the contrary, Mr. Wessel never altered his conception of the adversarial environment that existed between Dow

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\*/ If Consumers genuinely felt that the Dow Brief would mislead the Board, one wonders why they did not address this "problem" in their own brief which was filed with the Board eight (8) days after the Dow brief was filed or why they did not file a reply brief to clarify the alleged "misimpression".

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and Consumers during the Temple testimony preparation period and which was caused by threats of litigation made by Consumers against Dow if Dow was not supportive of Consumers in the forthcoming hearings. (Wessel 52,598; 52,600; 52,821) What did change, in Mr. Wessel's mind, was his conception that Mr. Rosso and Mr. Renfrow were aware of certain conduct by Consumers that antedated the Court of Appeals remand and the suspension hearing. (Wessel 52,992-993) Thus, there is no basis in the record for the Board to conclude that Mr. Wessel ever changed his mind and felt that he had "misperceived" the adversarial relationship that existed between Dow and Consumers as a consequence of the threats of litigation by Consumers against Dow. In view of the threats of litigation by Consumers against Dow, the conduct of Mr. Nute and Mr. Wessel which was designed to protect Dow's interests in the event that Consumers might subsequently bring suit against Dow was entirely proper.

There is no evidentiary basis to support Proposed Conclusion of Law 45.

XXXI.

Proposed Conclusion of Law 46

In Proposed Conclusion of Law 46, Consumers requests the Board to find that Mr. Wessel wanted it to "appear" as though Consumers, not Dow, was making all the major decisions in the

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suspension proceeding. Again, the portions of the record cited by Consumers in support of this proposed conclusion do not bear it out. In fact, the record clearly demonstrates that it was Mr. Wessel's intention throughout to actually get Consumers to make the major decisions and draft the testimony so that Dow would not be subsequently accused of volunteering information which Consumers might have felt was detrimental to its interests. (Wessel 52,538; 52,548; 52,718; 52,980) The record demonstrates that Mr. Wessel, in an effort to get Consumers to assume the drafting role, took the position that Dow was not a party to the proceeding and prepared an incomplete testimony outline in the September 29, 1976 draft. As noted in Dow's initial Brief at pages 52-56, there was nothing improper in Dow's taking the position that it was not a party to the suspension proceeding. Neither was there anything improper in the preparation of an incomplete response to the factual requests received from Mr. Bacon during the September 27, 1976 telephone call between Messrs. Bacon and Wessel. Mr. Wessel testified that the September 29, 1976 informational response was prepared in an incomplete manner to cause Consumers to assume the role of drafting the testimony. (Wessel 52,911) He viewed the Consumers request to be a ruse under which Consumers was proceeding to obtain "free discovery" to be used either in the contract negotiations with Dow or "against us if anything went wrong, or whatever." (Wessel 52,708) At the time the September 29, 1976 informational response was prepared, it was never Mr. Wessel's

intention that the document be filed with the ASLB. (Wessel 52,699; 52,977) The document was designed "to try to elicit from Consumers a revised draft." (Wessel 52,699; 52,977) There was no intention on the part of Dow or Consumers that the September 29, 1976 informational response be filed as the written testimony of the Dow witness. (Wessel 52,699; Renfrow 51,517-518; Rosso 53,327) It was Mr. Wessel's intention to prepare an informational response that was obviously incomplete and Consumers recognized it as such (Renfrow 51,518-519; Bacon 52,105; 52,107-108) -- shortly thereafter assuming the drafting duties. (Rosso 53,224-225) In view of the circumstances that existed at the time the September 29, 1976 informational response was prepared, it was understandable and proper for Mr. Wessel to attempt to shift the Temple testimony drafting duties to Consumers. There was no impropriety in preparing an obviously incomplete response which was recognized as such by Consumers.

Consumers also asks the Board to conclude that Mr. Wessel deliberately over-reacted in a negative fashion to the Consumers testimony draft of October 22, 1976 in order to get agreement on certain suggested changes. Again, the portion of the record cited in support of this proposed conclusion does not bear it out. Mr. Wessel never testified that he deliberately over-reacted to the October 22, 1976 draft. He did state that the draft could be viewed by others as "misleading or disingenuous"

and he made such a statement because he was genuinely concerned that the draft might mislead the Board and he wanted changes made to prevent that from occurring. (Wessel 52,767; 52,980-981)

There is no evidentiary basis to support Proposed Conclusion of Law 46.

XXXII.

Proposed Conclusion of Law 47

In Proposed Conclusion of Law 47, Consumers asks the Board, by inference, to conclude that Mr. Wessel was engaged in improper conduct when he did not disclose to Messrs. Renfrow and Rosso that he considered them to be adversaries, that he did not disclose any more information to them than was absolutely necessary and kept memoranda of conversations had with Consumers' counsel. Consumers, for understandable reasons, again fails to state that this conduct took place after Dow had been threatened with substantial litigation if Dow's conduct in the suspension hearing was not supportive of Consumers' position. Against this background, Mr. Wessel's conduct was entirely proper in view of his professional obligation as an attorney to protect Dow against the threatened litigation.

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In footnote 56 under this proposed conclusion, Consumers states that Mr. Wessel and Mr. Nute were involved in the preparation of the initial informational responses in order "to preserve an argument that the drafts were attorneys' work product and thus not discoverable." However, when the portion of the transcript cited in support of this statement is read, it discloses instead that the reason why these attorneys were involved in the preparation of informational responses was to prevent statements in them from being construed as admissions against Dow in any subsequent litigation by Consumers against Dow. (Wessel 52,696-697) The footnote goes on to note that Messrs. Wessel and Nute did not inform Mr. Renfrow and Mr. Rosso at the time of the October 12, 1976 meeting of (a) the less than knowledgeable witness statement that had been made at the September 21, 1976 meeting; (b) the effect that the threat of litigation had on the Dow U.S.A. Board decision, and (c) the underlying reasons for the Michigan Division position. As noted supra, Messrs. Nute and Wessel rightfully assumed that (a) Messrs. Renfrow and Rosso knew about the less than knowledgeable witness statement since Mr. Renfrow was the one who made it, and (b) there was no need to advise them of what impact the threat of litigation by Consumers against Dow had on the Dow U.S.A. Board decision since they were aware that the threat had been made (Mr. Renfrow was present when it was made and was subsequently shown the "litigation" slide and their client had made the threat for purposes of influencing the Dow

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U.S.A. Board decision. (Aymond 54,029) As to the allegation that Consumers was never adequately told of the underlying reasons for the Michigan Division position, any balanced reading of the transcript discloses that this is not so. The reasons for the Dow Michigan Division position are fully set forth in the Dow notes of the September 13, 1976 meeting and appear in Mr. Youngdahl's notes of that meeting (Vol. 3, Tab 9) and Mr. Keeley's notes of that meeting (Vol. 7, Tab 26).

There is no evidentiary basis to support Proposed Conclusion of Law 47.

XXXIII.

Proposed Conclusion of Law 48

In Proposed Conclusion of Law 48, Consumers asks this Board to conclude that Dow's Brief dated December 22, 1976 conveyed the impression to the Board that Consumers rejected every effort by Dow to draft Temple's testimony in a manner satisfactory to the witness. Consumers does not cite any particular section of the Brief to support this allegation. Dow believes that the Brief, when read in its entirety and considered in conjunction with statements made to the Board by Mr. Nute and Mr. Wessel on December 2 and December 3, 1976, (see infra pp. 43-44) did not convey the impression that Consumers contends it did.

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There is no evidentiary basis to support Proposed Conclusion of Law 48.

XXXIV.

Proposed Conclusion of Law 49

In Proposed Conclusion of Law 49, Consumers requests the Board to conclude that the December 22, 1976 Dow Brief conveyed the impression that the phrase "misleading and disingenuous" used by Mr. Wessel and Mr. Nute referred to the manner in which Mr. Rosso dealt with the official Dow position in the October 22, 1976 draft. Again, there is no support for the requested conclusion either in Dow's Brief or in the record itself. As noted supra, the use of the phrase "misleading and disingenuous" by Mr. Nute and Mr. Wessel did not relate to the treatment of the official Dow position in the October 22, 1976 draft. Mr. Wessel used the phrase because of his genuine concern that the draft appeared to tell the whole story of the relationship between Dow and Consumers when it did not. He was concerned that the Board might be misled and he wanted the draft changed so that it did not convey any erroneous impression. Mr. Nute and Mr. Temple thought there were factual inaccuracies contained in the October 22, 1976 draft which made the draft misleading. Thus, the objections of Dow counsel to the October 22, 1976 draft and their expressed concern that it could be viewed by

others as "misleading and disingenuous" did not relate to the official Dow position as stated by Consumers.

Consumers also requests the Board to conclude that the December 22, 1976 Dow Brief conveys the impression that Dow suggested the use of the "question and answer" format rather than Mr. Rosso. Consumers cites page 6 of the Dow Brief as the place where this "impression" is created. Dow has read the Brief in its entirety and believes that no such impression is created. It concedes that Mr. Rosso did suggest the "question and answer" format and does not believe that the December 22, 1976 Brief conveys any impression to the contrary.

There is no evidentiary basis to support Proposed Conclusion of Law 49.

XXXV.

Proposed Conclusion of Law 50

In Proposed Conclusion of Law 50, Consumers requests the Board to conclude that the December 22, 1976 Dow Brief conveys the impression that it was Dow and not Consumers who favored a voluntary production of all relevant documentation. It asks the Board to conclude that Mr. Wessel voiced the strongest resistance in turning over documents unless compelled to do so. The testimony

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of Mr. Wessel on this point however discloses that, while he was opposed to turning over negotiating data to Consumers itself without being granted access to Consumers' negotiating data, he had no objection to turning over documentary information to Mr. Cherry and the Board unless it was privileged. (Wessel 52,731; see also Tr. 190; 275-277) Indeed, when Mr. Wessel prepared a letter response to Mr. Cherry's September 27, 1976 discovery request, Consumers made changes in Mr. Wessel's letter which Mr. Wessel viewed as an indication on the part of Consumers that they were going to restrict the information given to Mr. Cherry. (Wessel 52,553-557; 53,065) Thus, if Dow's Brief does convey the impression that it favored a voluntary disclosure of documents, it is because it indeed believed in such a position with respect to Mr. Cherry and the Board -- and Consumers also, if they were willing to disclose to Dow their negotiating data.

Consumers asks the Board to conclude that it was a "curiosity" when Mr. Wessel abandoned his position at the outset of the hearing. Dow believes that if the Board reviews the transcript of November 30 through December 3, 1976, it will see that Mr. Wessel's decision to disclose documents for which a privilege either had been claimed or could have been claimed was prompted by his concern that the Board was being misled as to the circumstances surrounding the preparation of the Temple

testimony. (See particularly Tr 663-664) Mr. Wessel's conduct was thus clearly proper. <sup>\*/</sup>

There is no evidentiary basis to support Proposed Conclusion of Law 50.

XXXVI.

Proposed Conclusion of Law 51

In Proposed Conclusion of Law 51, Consumers asks the Board to conclude that Mr. Wessel's oral presentation to the Board and the December 22, 1976 Dow Brief were not forthright and candid. Again, Dow does not believe the record supports the conclusion requested by Consumers.

At the outset, there was a colloquy on December 2, 1976 during which Messrs. Renfrow, Nute and Rosso explained to the Board how the various drafts of testimony had been prepared.

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<sup>\*/</sup> It is anomalous that Consumers, while proclaiming in their Brief that they wanted to voluntarily turn over "all" relevant documents, nonetheless finds fault in Mr. Wessel's voluntary disclosure of documents.

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(See Tr. 447-502) That explanation clearly set forth the involvement of Dow's attorneys in the actual preparation of the Temple testimony. (See also "History of the Preparation of Mr. Temple's Testimony" as Disclosed in Documents Produced Pursuant to the Protective Order, Staff Ex. 10, Part II.) There is no way the Board could have been misled into believing that Consumers alone was involved in the preparation of the Temple testimony. On December 3, 1976, Mr. Wessel made an oral presentation to the Board in an attempt to clarify and explain the situation that existed at the time the Temple testimony was prepared. Mr. Wessel explained to the Board that both Dow and Consumers were considering litigation against each other and were adversaries at the time that the Temple testimony was being prepared. (Tr. 664, 674) Mr. Wessel outlined to the Board the threat of litigation made by Consumers against Dow. (Tr. 664) Mr. Wessel explained that both he and Mr. Nute dealt with Mr. Renfrow and Mr. Rosso as adversaries in view of this threat of litigation. (Tr. 665) Mr. Wessel explained to the Board that every step taken by Dow counsel during the Temple testimony preparation period was taken with the view in mind that it might constitute an admission against Dow in subsequent litigation with Consumers. (Tr. 666) Mr. Wessel explained that he and Mr. Nute were involved in the preparation of the Temple testimony drafts to avoid an admission against Dow which would occur if Mr. Temple had prepared the testimony. (Tr. 666-667) Mr. Wessel also

explained that he was concerned over possible litigation with Consumers influencing the document production (Tr. 669-672) and concluded by telling the Board that Dow's counsel and Consumers' counsel were working at odds with each other during the Temple testimony preparation. (Tr. 676) When these portions of the record are read in conjunction with the Dow Brief of December 22, 1976, Dow believes that the Board was not misled in any way concerning the manner in which the Temple testimony was prepared and the role of Dow's attorneys in the preparation of that testimony.

There is no evidentiary basis to support Proposed Conclusion of Law 51.

#### CONCLUSION

In this Reply Brief, Dow has attempted to correct what it conceives to be errors contained in the proposed findings of fact and conclusions of law proffered by Consumers Power Company. As noted in its initial Brief, it believes that the evidence from the entire record clearly shows no wrongdoing on the part of Dow or any of its counsel in the preparation of the Temple testimony or in the preparation for the hearing or in the conduct of the hearing itself.

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Based on the facts as elicited at the hearing of this matter and as discussed above, Dow believes that the Board must conclude that, with respect to Dow and its counsel:

1. There was no attempt by Dow or its attorneys to prevent full disclosure of, or to withhold, relevant, factual information from the Licensing Board at the suspension hearings.
2. There was no failure by Dow or its attorneys to make affirmative, full disclosure on the record of the material facts relating to Dow's intention concerning performance of its contract with Consumers.
3. There was no attempt by Dow or its attorneys to present misleading testimony to the Licensing Board concerning Dow's intentions.
4. There was no attempt by Dow or its attorneys to mislead the Licensing

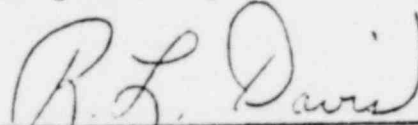
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Board concerning the preparation or  
presentation of the Temple testimony.

5. No sanctions should be imposed against  
Dow or any of its counsel.

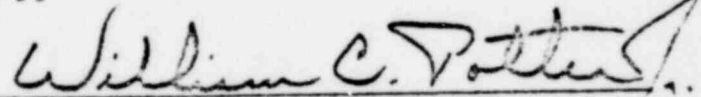
DATED: November 5, 1979

Respectfully submitted,



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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

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

CERTIFICATE OF SERVICE

The undersigned, an employee in the offices of Fischer, Franklin, Ford, Simon & Hogg, attorneys for The Dow Chemical Company in the above Remand Proceeding, hereby certifies that on the 5th day of November, 1979, he personally served the individuals listed below with copies of The Dow Chemical Company Reply Brief to Consumers Power Company Brief and The Dow Chemical Company Reply Brief to NRC Staff Brief, to-wit:

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DATED: November 5, 1979

Philip E. Chaffee  
Philip E. Chaffee

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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

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

CERTIFICATE OF SERVICE

The undersigned, an employee in the offices of Fischer, Franklin, Ford, Simon & Hogg, attorneys for The Dow Chemical Company in the above Remand Proceeding, hereby certifies that on the 5th day of November, 1979, she personally served each of the individuals listed below with copies of The Dow Chemical Company Reply Brief to Consumers Power Company Brief and The Dow Chemical Company Reply Brief to NRC Staff Brief, by first class mail, postage fully pre-paid, to-wit:

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