9-23-71

UNITED STATES OF AMERICA

ATOMIC ENERGY COMMISSION

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

APPLICANT'S MEMORANDUM IN RESPONSE TO THE END-OF-SEPTEMBER SUBMISSIONS OF THE OPPOSING INTERVENORS AND TO THE TWELVE MOTIONS OF THE SAGINAW INTERVENORS

On September 28 and 30, 1971, all of the intervenors opposing the application submitted what purported to be their preliminary statements of their views on environmental questions. Included in these were criticisms of the Board's order of August 26, 1971. The Saginaw Intervenors also made twelve motions (numbered 1 through 5 and 7 through 13). This memorandum is submitted in response to both those statements and to the twelve motions.*

* Applicant's time to respond to the twelve motions was extended to October 23, 1971 by stipulation with the Saginaw Intervenors and with the Chairman's approval.

I.

APPLICANT'S GENERAL RESPONSE TO INTERVENORS' SUBMISSIONS.

The Board's order of August 26th provided in part (at p.4):

> "In addition, the Board hereby requests that all opposing intervenors file by September 30, 1971, a preliminary statement of their views on environmental questions. Such statements should cover at least the following:
>
> 1. Identify those aspects of the environment, e.g., air quality, water quality, land use, etc. which they presently believe would be adversely affected by the proposed plant and specify in detail the nature of each adverse effect as they presently perceive it.
>
> 2. The alternatives to the proposed plant which should be considered by the Board and the reasons, in detail, why they consider any of those alternatives to be preferable to the proposed plant.
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> 3. Identify the facts which should be considered by the Board in its "risk-benefit" analysis with particular attention to the importance to be attached by the Board to the effect of the decision."

In response to this, the Saginaw Intervenors stated, not contentions, but "broad issues" (Exhibit B to their twelve motions of Sept. 30th at p.1) which they "believe must be considered in connection with a so-called NEPA analysis." They acknowledged that this was not a preliminary statement of contentions, stating (ibid.): "We are unable, because of the lack of information in the hands of Applicant, Dow Chemical Company and the Regulatory Staff, to set forth in any specific detail, even our preliminary views on environmental questions."

Unfortunately, Saginaw intervenors did not set forth even any general contentions as to what they regard as adverse environmental effects. Their Appendix B is largely a statement of the kinds of issues they assert (in our view erroneously) to be cognizable in this proceeding. No contentions as to the merits of such matters are set forth.

Under the Board's order of August 26, 1971, under repeated Commission decisions, under the provisions of 10 C.F.R. Part 2 (AEC rules of practice), as well as all concepts of fair procedure, applicant has a right to be advised whether intervenors have any contentions and the basis for them.

It is obvious that all intervenors are avoiding the specification of contentions with respect to any alleged adverse environmental effects and are arrogating to themselves the functions of the Board.* Consequently, they should be precluded from the assertion in the future that the construction permit should be denied because of adverse environmental affects, leaving open for future determination only the question whether there is any violation of procedural requirements of NEPA or of Appendix D (10 C.F.R. Part 50) of which intervenors may complain.

The Mapleton Intervenors, in their letter of September 28th, state, in effect, that every conceivable environmental issue should be considered and that they concur with the Saginaw Intervenors' views as to the environmental issues involved in this proceeding.

The Environmental Defense Fund (EDF) has filed a "Statement of Issues" which states no issues at all. It merely recites EDF's objectives in entering this proceeding and argues (p.2) that intervenors have a right to refrain from "taking a formal position on all issues" until after the filing of the detailed NEPA statement and the completion of all discovery. EDF also filed a "Statement of Subjects Which Must Be Thoroughly Explored As Part Of And Included in the Applicant and Staff Environmental Analysis." A "statement of subjects" to be explored is obviously not a statement of contentions and this one reads just like a set of interrogatories.

Thus, at most, intervenors complied with part 3 of the items specified for inclusion in the preliminary statements at page 4 of the August 26th order. They most certainly did not comply with all of parts 1 and 2, despite the fact that the order stated that "such statements should cover at least" those three items. (Emphasis added). Ibid.

In addition, despite the fact that paragraph IA2 of the August 26th order required the intervenors to file their written evidence with respect to outstanding issues other than

ECCS by September 15, 1971, none of the intervenors did so.* Yet, the Saginaw Intervenors, in Mr. Cherry's letter to the Board of September 30, 1971 at pp. 1 to 3, nonchalantly treat such issues as being still open and subject to the possible submission of further evidence at some unspecified future time. The Saginaw Intervenors attempt to shift their own failure to submit evidence on quality assurance and quality control to the Board by suggesting (letter, pp.2-3) that the Board initiate its own inquiry into these subjects.

The foregoing submissions and failures to submit of the intervenors are very disturbing to the Applicant for several reasons.

The EDF and Saginaw Intervenors have been complaining since almost the beginning of this proceeding about the exclusion of environmental issues from the hearing process under the old Appendix D to Part 50. They argued repeatedly that there ought to be a hearing on such issues. While we grant that intervenors may be permitted to supplement their contentions after discovery, we think it only fair that they should be required to state now whether or not they at present assert

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* The Mapleton Intervenors filed an affidavit by Charles W. Huver on September 2 [illegible] but it is patently irrelevant to this case because it ignores the fact that the plant will have an essentially zero liquid radioactive waste release system and a cooling pond which will eliminate any significant thermal pollution. They also filed an affidavit by E.R.A. Eckert on September 14th but that related to a NEPA subject.

that Midland plant should not be built because of any adverse effects that it will have on the environment. The identification of such alleged adverse effects now--if there are any, and we do not believe there are--might enable Applicant to take steps to satisfy intervenors' concerns about them. At the very least it would expedite discovery and all parties' preparation for hearing.

EDF states (Statement of Issues, pp. 1 and 4) that it intervened in this proceeding to assert the public right to have the proceeding conducted in compliance with NEPA and "to ensure that if environmental issues were allowed to be raised, the analysis of these issues by the Applicant and the Staff would be as through as required by NEPA." It ought to be required to forthrightly state whether it has any substantive contentions on NEPA issues or is merely remaining in the case to continue its role of procedural watchdog.*

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* The Mapleton Intervenors have offered the testimony of Dr. Ernst Eckert which does relate to an alternative to the Midland site. However, we do not understand the purpose behind the filing of his testimony. The point of Dr. Eckert's testimony is that it is technically feasible to transport process steam from a nuclear power plant to Dow over a greater distance than that between the proposed nuclear plant site and Dow and that Dow's need for process steam can be met by coal gas or oil power units at the Dow plant. Not only has Applicant not denied the technical feasibility of transporting steam over greater distances but, on May 20, 1971, in its response to comments of the Assistant Secretary of Commerce on the draft environmental statement, it computed the cost of such transportation. Applicant's awareness that process steam can be produced by fossil-fired units is obvious in light of the fact that Dow has been producing process steam from such plants for many, many years and that the purpose of the nuclear plant is to replace such plants. The reasons for replacing the fossil-fired Dow units and for Dow's decision to get its steam from Applicant's nuclear units were discussed in the following filings by Applicant: (continued)

e second major element in the intervenor's submissions which disturbs us (and this is to be found primarily in their failure, in large part,** to comply with the September 15th and 30th due dates for the filing of discovery motions on NEPA issues, for the filing of written evidence on outstanding issues other than NEPA and ECCS and for filing preliminary statements of views on environmental questions) is their disdain for the Board's August 26th order -- their attitude that its directives are meaningless and may be ignored with impunity.

Accompanying this attitude is the veiled fist -- the threat that, if the Board should ever attempt to enforce the deadlines and requirements of its orders, its decision would be reversed by a Court of Appeals, just as happened in

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(continuation)*

Environmental Report, July 24, 1970, Page 9

Response to Assistant Secretary of Commerce, May 20, 1971

Response to Department of Interior, May 20, 1971.

Therefore, the filing of testimony by the Mapleton Intervenors in order to prove the technical feasibility of transporting process steam over greater distances and of producing process steam from fossil-fired units serves no purpose here. Applicant has already stated that to be the case and has explained its rejection of these alternatives, not on technical grounds, but on economic or environmental grounds. The Eckert testimony does not address itself to these questions.

** The Saginaw Intervenors have submitted discovery motions on NEPA issues but thay are the only intervenors to have done so. In addition, all intervenors have filed statements of sorts about NEPA but, as we have stated, they did not express views as to particular environmental factors which would warrant the denial of a construction permit in this case.

Calvert Cliffs. See EDF's Statement of Issues at p.3, Mapleton Intervenors' letter to the Chairman of September 28, 1971 at p.1. Far be it from Applicant to urge the Board to do anything that is likely to lead to a Court of Appeals reversal in the event a construction permit is granted, for Applicant would have the most to lose from such a reversal. However, it is important to remember that an administrative agency's power to regulate the course of its own quasi-judicial proceedings is both inherent and fundamental. There is absolutely nothing in the D.C. Circuit's decision in Calvert Cliffs which negates that power in any way.

The Chairman's letter of October 8th stated that the Board

> "does not intend to adhere strictly to the various filing dates previously prescribed. In particular, the Board would like to note that it was not its intention by its August 26th, 1971, Order to foreclose any further discovery on environmental matters."

Of course, we have no objection to the filing of discovery motions after September 30, 1971 if, as a result of the filing of the supplemental environmental report and the detailed statement, new matters arise concerning which intervenors could not reasonably have been expected to seek discovery before. Indeed, it was our understanding with intervenors' counsel that the first round of NEPA discovery would be without prejudice to later discovery of this type. See Applicant's Memorandum In Opposition to the Mapleton Intervenors' Objections to the Board

Order of August 26, 1971, dated September 23, 1971 at pp. 8-9. For the convenience of the Board, we are annexing a copy of that brief hereto as Exhibit A. No reason has been shown as to why that understanding should not be adhered to. The purpose of fixing the September 30th date was to assure that the proceeding would not be unnecessarily delayed by postponing discovery which could be done before the filing of the supplemental environmental report and detailed environmenal statement.

In addition to fixing dates for discovery, a major objective of the August 26th order was to conclude all issues other than ECCS and NEPA. It would be a step backward if the Board were to nullify paragraphs IA2, 3 and 4 of the order* by reopening these questions for the submission of additional evidence. No reason has been advanced which would afford a proper basis for reopening them.

Finally, we are disturbed by these submissions of the intervenors because they reflect the attitude of some of them that they can tie up the proceedings by flurries of motions, some frivolous, such as Saginaw Intervenors' motions 2, 8, 12 and 13, and some rearguing matters which have already been decided, such as Saginaw Intervenors' motions 1, 7, 12, 13 and part of 5,** and motions of different groups of intervenors

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* These paragraphs provided for the filing of written evidence on outstanding non-NEPA and non-ECCS issues by all parties in September and the closing of the record thereafter with respect to all such issues not reopened by Appeal Board rulings.

** We will respond to each of these motions below.

made at different times which partly cover the same ground. Compare the Saginaw Intervenors' letter of Sept. 30th and attached motions with the Mapleton Intervenors' letter of September 14th. In a similar vein was the Mapleton Intervenors' appeal from that part of the August 26th order denying their motion concerning manufacture of the reactor pressure vessel when they clearly had no right to appeal it under the Commission's rules. Surely, motions for reconsideration should be sparingly used and frivolous motions should not be made at all.

II.

THE TWELVE MOTIONS OF THE SAGINAW INTERVENORS

Motion No. 1

This motion is for rescission of that paragraph of the Board's August 26th order which states: "No further oral evidence will be received except by leave of the Board." This motion is similar to a point made in the Mapleton Intervenors' letter of September 14th and is therefore answered in Applicant's Memorandum of September 23rd, at pp.2-4, annexed hereto as Exhibit A. We respectfully refer the Board to those pages. The Saginaw Intervenors allege (Motions, p.2) that §2.743 of the Commission's rules of practice grants every party "...the right to present...oral... evidence...." They add (ibid.): "Although Section 2.743(b)

provides for written testimony that rule is in the nature of a suggestion rather than a deprivation of a party's absolute right to submit oral evidence.* This is not an accurate characterization of §2.743(a) and (b). They provide, insofar as is relevant:

> "§2.743 Evidence. (a) General. Every party to a proceeding shall have the right to present such oral or documentary evidence and rebuttal evidence and conduct such cross-examination as may be required for full and true disclosure of the facts.
> (b) Written testimony. Where the interest of any party will not be prejudiced, the parties are encouraged to submit all or part of the direct testimony of witnesses in written form, unless objections are presented and unless otherwise ordered by the presiding officer.... Whenever it is deemed necessary or desirable, the Commission or the presiding officer may direct that proposed testimony be reduced to written form and be served and offered in the manner described in this paragraph, allowing a reasonable time for the preparation of the written testimony." (Emphasis added).

The Saginaw Intervenors (Motions, p.2) make the unsupported contention that 5 U.S.C. §556(d) permits written evidence only if the Board makes findings, based on substantial evidence, that no prejudice will result. This is in direct contradiction to the holding of the three-judge Court in Long Island RR v. United States, 318 F. Supp. 490, 498-500 (E.D.N.Y. 1970), cited at p.3 of our Sept. 23rd brief, that the burden is on the party claiming he was prejudiced by being required to present his evidence in writing to show that prejudice. In claiming the denial of a right to cross-examine (Motions, pp.3-5), the Saginaw Intervenors fail to deal with the cases to the contrary cited in the footnote at p.3 of our brief of Sept. 23rd.*

* Attached hereto as Exhibit A.

Finally, the Saginaw Intervenors seem to be unaware of the fact that the sentence in the August 26th order dealing with oral evidence was in the part of the order concerned with "issues other than ECCS and environmental issues". These issues are either issues as to which there already has been an oral hearing or which challenge Commission regulations and therefore require a substantial written showing under the Commission's Calvert Cliffs Memorandum before they may even be considered.

For all these reasons, Motion No. 1 should be denied.

Motion No. 2

This motion is to dismiss the application or require Applicant and the Staff to show cause why it should not be dismissed, because Applicant and Staff have not been able to demonstrate the acceptability of the Midland ECCS or that they will be in a position to resolve "problems" with the ECCS. This is a rehash of a motion made by the Saginaw Intervenors at the beginning of the hearing and denied then, subject, of course, to renewal after the hearing on the ECCS (Tr. 1543-44, 1557-59, 1564-76, 1584, 1882). We have stated above that it is frivolous. It should be denied again.

The Saginaw Intervenors repeat the charge (Motions, pp. 5-6) that Applicant's ECCS failed to meet the Interim Criteria.

This is not so. Appendix A to the Criteria listed three acceptable evaluation models for PWR's. The criteria stated (in paragraph IVB):

> "Each reactor shall be evaluated in accordance with the general criteria of Section IV.A, and using a suitable evaluation model. Examples of acceptable evaluation models are described in Appendix A.2/ These evaluation models are acceptable to the Commission but their use is not mandatory. Other evaluation models may be proposed by applicants for review in individual cases."

Thus, the Criteria expressly stated that the use of the three models in Appendix A was not mandatory, that other models may be proposed for review in individual cases and that a B&W model was already under review.

The Saginaw Intervenors also charge (Motions, p.6) that the motion should be granted because more than 2-1/2 years passed after the filing of the application "during which time Applicant had failed to satisfy" the AEC with respect to its ECCS. This is also not true. The Staff Safety Evaluation indicated that the Staff was satisfied with the ECCS before publication of the results of the Idaho tests. The Interim Criteria were issued on June 19, 1971, many months later, and Babcock & Wilcox has been doing a lot of time-consuming computer work to devise an analytical evaluation model which

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"2/Westinghouse Electric Corporation proposals for subatmospheric and ice condenser containments, and proposals from The Babcock and Wilcox Company and Combustion Engineering, Inc., are under review by the AEC."

will confirm the reliability of its ECCS. Although Applicant had hoped that B&W's additional submission would be in by September 1st (Tr. 4407), unfortunately that proved to be impossible. We are informed that Babcock & Wilcox filed three proprietary topical reports with the Commission on October 6, 8, and 11, 1971 and that it expects to file its fourth and final submission some time during the week of October 26th. After that, the final Staff Evaluation can proceed. With the Staff's review of the ECCS so close to completion, there is no reason to dismiss the application for failure to complete it sooner.

By letters dated October 5 and 6, 1971, Applicant offered to make the October ECCS submissions of Babcock & Wilcox available to counsel for the Mapleton and Saginaw Intervenors under the terms of the protective order of June 14, 1971.* When we receive their commitment to accept these reports subject to the protective order, we will forward the reports to them.

Motion No. 3

The August 26th order provides in paragraph B, "that within 15 days after the receipt of the applicant's next filing on ECCS, the Mapleton and Saginaw intervenors shall file a

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* There has been no reply to applicant's letters.

detailed statement of the nature of the affirmative evidence which they intend to offer in sufficient detail to provide Applicant an opportunity to prepare to meet it." The Saginaw Intervenors now move (Motions, p.11) that they be given 90 days after receipt of Applicant's and Staff's submissions on ECCS "to request and secure discovery, if necessary, and prepare for cross-examination and affirmative submissions."

The Saginaw Intervenors have had information on the Midland ECCS for a long time now. Considerable information about it was included in the PSAR and the Staff Safety Evaluation which were available to them at the start of this proceeding. On April 13, 1971 Applicant filed answers to interrogatories of the Saginaw Intervenors. The answers to interrogatories 33, 35, 36, 44, 50, 51, 75, 86, 89, 111, 196 and 229 contained information on the ECCS. With an airmail special delivery letter dated June 10, 1971 from John K. Restrick, Esq. to Kenneth R. McCue, Saginaw's nuclear engineering expert, Applicant submitted detailed drawings of the insides of the reactor for study by the Saginaw Intervenors of the ECCS adequacy. A copy of that letter is annexed hereto as Appendix B. These drawings were requested on an urgent basis by the Saginaw Intervenors at the June 7, 1971 conference (see Tr. 1248-65). There counsel stated that the drawings were needed to permit their experts

to analyze the effectiveness of the ECCS (Tr. 1-48-49, 1254). He represented that the analysis had to be made very soon so that he could complete his preparation for the hearing beginning June 21st (see Tr. 1248-56 generally and especially 1254). On May 21, 1971, the Staff sent the Saginaw Intervenors all of the Idaho Nuclear Corporation's monthly reports from November 1970 through March 1971. On June 10, 1971, the Staff sent them the monthly report for April 1971. On July 15, 1971, Mr. Kartalia supplied the Saginaw Intervenors with a lengthy document entitled "Semi-Scale Tests, 845 through 851", dated June 29, 1971 and prepared by the Idaho Nuclear Corporation (Tr. 3707-08). On April 6, 1971, Applicant gave the Saginaw Intervenors a copy of BAW Topical Report No. 10,015. On either June 21 or June 22, 1971, they were furnished with a copy of Supplement No. 1 to that Report (Tr. 1533-34).

Thus, Saginaw Intervenors have had substantial information on the ECCS for quite a while and their experts have had ample opportunity to study it. While B&W's final submissions to the Task Force on ECCS are not quite complete and the Staff has not yet evaluated them, they only deal with an analytical model for evaluating ECCS effectiveness under various conditions. The system itself, as to which the Saginaw Intervenors have had detailed information for a long time, is still the same. There is no reason, therefore, why they should not be

required to tell us now (putting aside the question of the analytical model) in what respects they contend our ECCS is deficient and the basis for those contentions. By the same token, if their analysis to date has revealed no deficiencies in the system, they should be forthright enough to tell us that, too, without prejudice to any contentions they might make based on B&W's October submissions to the Task Force, any forthcoming supplement to the Staff Safety Evaluation or any other document produced subsequently by Applicant or the Staff.

We agree that 15 days may not be enough time in which to analyze all of the materials concerning the analytical model. However, they have been and are being made available to the interested intervenors as they appear and so the analysis of them should begin even before the Staff's evaluation is issued. After that time, we think that the Board should allow more than 15 days for the intervenors to file a response, but, if a substantial period of time is granted, we think that that response should be intervenors' written evidence on ECCS and not mere preliminary contentions. Applicant should be given a reasonable period of time thereafter in which to file its written evidence in response to that of the intervenors and then the Board can decide whether there should be oral cross-examination. To

allow discovery on ECCS to be put off until a three month period after the Staff's evaluation is issued, as the Saginaw Intervenors request, would cause major and unnecessary delay in this proceeding. Both the Saginaw and the Mapleton intervenors have already made discovery motions on the ECCS and we think that the Board should fix a cutoff date in the very near future for any such additional motions.

Motion No. 4

This motion is for an order requiring the Staff to produce certain documents concerning ECCS designated "ROL". As it is a motion addressed to the Staff, we assume the Staff will respond to it.

Motion No. 5

This motion is "for the entry of an Order requiring the Board, upon its own initiative, to reexamine further matters of quality assurance and quality control with respect to these dockets" (Motions, p.13). The motion later explains (id. at 15-16) that what it wants is an independent investigation by the Board of these subjects. The Saginaw Intervenors had ample opportunity to conduct discovery on this subject before the hearing commenced on June 21st. They conducted extensive cross-examination concerning it at the hearing in July. The August 26th order (paragraph IA2(b)) gave them the opportunity to put in their own written evidence on quality

assurance and quality control by September 15th, an opportunity which they chose to ignore. This subject is now completely closed and the motion should be denied in all respects. Of course, they are free to propose any finding that they wish concerning the evidence on quality assurance and quality control which is already in the record and the Board is free to examine that evidence and draw its own conclusion from it.

Motion No. 7

This motion is for an order permitting intervenors to file discovery motions on NEPA issues up to 90 days after the detailed statement comes out or to rescind the deadline set in the August 26th order and not set new ones until the parties supporting the application file preliminary statements on environmental questions, as requested in Motion No. 8.

Our views on NEPA discovery were stated supra at p. 7 and in applicant's motion to fix a final date and to preclude. This motion is a transparent attempt to substantially delay the proceedings.*

Motion No. 8

This motion is to require Applicant, the Staff and Dow to file preliminary statements on environmental matters. This motion is frivolous. Applicant and the Staff have a statutory

*It is also inconsistent with the understanding which we reached with intervenors' counsel and which is set forth at p.9 of our Memorandum of September 23, 1971 (Appendix A hereto).

obligation under NEPA to do much more than file preliminary contentions; they must respectively file an environmental report and a detailed environmental statement. Moreover, the demand for equal treatment is even more brazen in view of the fact that the Saginaw Intervenors did not even file their preliminary views or contentions on any specific environmental questions concerning the Midland plant (see p.1 of Exhibit B to their Motions) but merely pontificated about general subjects which they allege should be considered in this proceeding.

The motion should be denied.

Motion No. 9

This motion seeks the production of twenty-six categories of documents (designated A through Z) from Dow, the Applicant and the Staff.* We will only address ourselves to those documents as to which we have an objection. Our failure to object to any of these categories or to any of the interrogatories covered by motions 10 and 11 should not be deemed an admission that they relate to any relevant issues in this proceeding. We are merely trying to cooperate as much as possible in order to expedite matters.

A. This category is far too broad and too vague to be permitted. It is not clear what would be covered other than

*We feel fortunate that the alphabet only has twenty-six letters.

legal documents such as statutes, the Federal Register, Congressional committee report nd privileged memoranda of counsel.

B. We object to this category. This subject is too broad and very remote to the facts of this case. Moreover, abundant information on the subject is available in magazines, trade publications and other open literature, which is publicly available in libraries and elsewhere. Most of Applicant's documents in this category would not be in files connected with the Midland plant but would be scattered all over its files, not only in its headquarters but also in its plants and field offices. Because of the great burden which an order to produce it would put on Applicant and the ability of the Saginaw Intervenors to get this information elsewhere, we ask that this category not be permitted.

C. In this category, we object with respect to documents concerning amounts of money spent to promote use of electricity or "to create a need", on the ground that this is patently irrelevant. The issue with respect to need for electricity is only what that need is or is likely to be.

D. We object to this category. We fail to understand what the Saginaw Intervenors are after. If what they want are documents concerning alternatives to meeting the need for electricity, we contend that such documents would not be relevant to any issue properly in this proceeding. We

know of no company from which electricity could be purchased as an alternative to its being generated by the Midland plant and therefore object to producing documents demanded in the last sentence of category D.

F. We object to this category on the ground that it is too broad and irrelevant, except insofar as it requests such documents for the period beginning in May 1977, the projected startup date for the Midland plant.

G. We object to the documents requested in the second sentence because we are not relying on the fast breeder for a supply of fuel for the Midland plant.

J. We have produced our original and supplemental environmental reports and our other environmental submissions to the Commission, which would appear to come within this category and we don't think that we have any other documents of this type. However, we are not certain that we understand precisely what the meaning of the category is. Certainly resource analyses with respect to any plants other than Midland are not relevant in this proceeding. We object to "J."

K. We object to this category on the grounds that Dow has much more complete information on this subject than Applicant and the request for it from Applicant duplicates the request for it from Dow.

L. We object to this category on the ground that the information requested is too broad in scope and is not relevant to any issues properly before this Board. Even if it were relevant, we object on the ground that Dow has much more information on this subject than Applicant and that the request for it from Applicant duplicates the request for it from Dow.

M. We object to this category on the ground that is relates to a safety issue and that the hearing on such issues has been concluded. We object on the further ground that Dow has much more complete information on this subject than Applicant and that it has been requested from Dow, as well.

N. We object to this category on the ground that the information requested is not relevant to any issues properly before this Board. Even if it were relevant, we object on the ground that Dow has much more information on this subject than Applicant and that the request for it from Applicant duplicates the request for it from Dow.

O. This is far too broad and burdensome. It covers every non-hydroelectric power plant in the United States. Moreover, it would require production of all detailed documents dealing with or showing the reliability of every non-hydroelectric generating unit in Applicant's system. Many of these documents are at the various power plants themselves. There has been no showing of good cause to support this category.

P. This category is extremely broad and its relationship to the issues in this case is too remote. The burden on Applicant to produce all of these documents would be enormous. No good cause has been shown for it. This category should therefore not be allowed.

Q. This request is not relevant. If it is relevant, however, Dow has far more complete information on the subject and the request for these documents from Applicant duplicates the request for them from Dow. We object to "Q."

R. The Saginaw Intervenors have already had discovery on this issue from Applicant. See Applicant's answers to interrogatories 180, 181, 182 and 188. Moreover, the August 26th order gave the Saginaw Intervenors until September 15, 1971 to file their written evidence on this subject and thus make a showing as to the validity of Part 20 as applied to the facts of this case. They failed to file any such evidence. They had earlier ignored a similar deadline of June 7, 1971 set in paragraph 2 of the Board's order dated May 18, 1971. This issue is now closed and should remain so. We object to "R."

S. Applicant's analyses of the proposed Midland units under NEPA are contained in Applicant's Environmental Report and supplemental environmental filings, copies of which have already been sent to the Saginaw Intervenors.

T. We do not object to providing documents dealing with thermal or other environmental effects. We do object to providing documents dealing with "other effects of any kind"; this is too broad.

V. We think that such a vague and broad category is improper. If there are any documents which the Saginaw Intervenors desire to see and which are not covered by the other categories set forth in the present motion, they should identify them clearly. We object to "V."

W. We object to that part of the category dealing with off-site disposal and off-site storage of radioactive waste products and spent fuel. These are matters too remote from applicant's proposed activities under the application before this Board. Moreover, any question which would pertain to the safety or environmental effects of such off-site disposal or storage would be for consideration in connection with the licenses with respect to such activity rather than in the present proceeding. Moreover, off-site disposal and storage of radioactive wastes are not within the Commission guides issued to license applicants for the preparation of NEPA reports. For an additional statement concerning the bases for our objection, we respectfully refer the Board to Point 1 of Applicant's Answer to the Petition to Intervene of the State of Kansas, dated October 11, 1971.

X. The issue to which this category relates was ruled out of the case by Part II of the Board's August 26th order, the appeal from which was dismissed by the Appeal Board by its order of October 18, 1971. We object to "X."

Y. This category is far too broad. All radiological health and safety issues have been closed except for ECCS. There has been no showing of good cause to support this category. Even if the category were confined to those letters or parts thereof pertaining to ECCS, it is doubtful that they would be relevant to the ECCS for the Midland units. It would have to be further limited to documents concerning the Midland ECCS and as to those Saginaw Intervenors have those documents which applicant has. We object to "Y."

Z. We object to this category. This category is far too broad. All radiological health and safety issues have been closed except for ECCS. There has been no showing of good cause to support this category. Even if the question were confined to those asterisked items pertaining to ECCs, it is doubtful that they would be relevant to the ECCS for the Midland Units. In any event, Applicant has no ACRS reports or ACRS communications concerning the Midland Units which have not been made available to intervenors.

Motion No. 10

We do not here object to any of the interrogatories to the Staff or Dow but we may wish to comment after hearing the positions which the Staff and Dow take with respect to those interrogatories.

We have the following objections to the interrogatories addressed to Applicant:

24. We answered this interrogatory on April 13, 1971 and the subject was explored at length at the hearing last summer. Moreover, the interrogatory relates to a safety issue as to which the record is now closed.

78. We answered this interrogatory on April 13, 1971 and dealt with it in our answers to the Board's questions dated July 20, 1971 (Applicant's Exhibit 36). Moreover, it relates to a health issue, with respect to which the hearing has been concluded.

81. We answered this extensively on April 13, 1971 but omitted the temperature of the water discharged to the river. However, this information is discussed in our environmental filing of June 21, 1971 and in our Supplemental Environmental Report filed October 19, 1971.

183. We answered this in part on April 13, 1971. In any event, the entire question is completely irrelevant to any issue in this proceeding and the Board held it to be both extremely burdensome and irrelevant in sustaining our objection to it on April 2, 1971 (Tr. 792).

187. This is completely irrelevant to any issues in this proceeding and the Board so held in sustaining our objection to it on April 2, 1971(Tr. 792).

195. We answered all of this except the last two sentences on April 13, 1971. The Board sustained our objection to the last two sentences on April 2 on the ground that they are extremely burdensome (Tr. 793-94). In any event, it relates to safety matters, the hearing with respect to which has been concluded.

Motion No. 11

We do not here object to any of the interrogatories to the Staff or Dow but we may wish to comment after hearing the positions which the Staff and Dow take with respect to those interrogatories.

We do not object to part a of Interrogatory 233. We do object to parts b, c and d. We object to b because of the vagueness of the category, because of its remoteness to any issue in the proceeding and because of the large numbers of people with whom there have been "contacts" in Government agencies and other organizations; moreover, no good cause is shown. C is objectionable because there is no description of the subject matters to be covered and therefore no limitation

to matter concerned with any issue in the case; in addition, there is no showing of good cause. We object to d because of the large numbers of individuals involved, because there is no limitation with respect to subjects involved in this proceeding and because there is no showing of good cause. We are prepared to and will furnish the names of our principal witnesses on the principal environmental subjects. We furnished a list of witnesses with respect to radiological issues in the radiological portion of this proceeding.

Motions Nos. 12 and 13

These motions are another example of the Saginaw Intervenors' attempts to bog down this proceeding by attempting to resuscitate dead issues. The matters raised by these motions were decided by this Board, certified to the Appeal Board and resolved by the Appeal Board. These motions should be denied.

CONCLUSION

As is apparent from all of the foregoing, the Saginaw Intervenors' motions, to the extent that they are objected to by Applicant, are lacking in merit and should be denied.

Dated: October 23, 1971

Respectfully submitted,

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