UNITED STATES OF AMERICA
ATOMIC ENERGY COMMISSION

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

MOTION FOR ORDER STRIKING IN ITS ENTIRETY
THE STATEMENT OF PROPOSED CROSS-EXAMINATION
SET FORTH IN SAGINAW INTERVENORS' LETTER DATED
JUNE 10, 1971

Applicant, Consumers Power Company, moves the Board for an order striking in its entirety from the record of this proceeding the statement contained in the letter dated June 10, 1971, as described in the letter, "areas which we [i.e., Saginaw Intervenors] will cover in our cross-examination."

For the convenience of the Board the "areas" referred to are described below, together with applicant's reasons why the Saginaw intervenors' statement is not adequate to fulfill the directives of this Board or to comply with the rules of practice of the Atomic Energy Commission.

1. Section "1" of the letter dated June 10, 1971, states that Saginaw "Intervenors will begin cross-examination of the analysis

underlying the proposed site in light of Part 100 and TID-14844." This section of the letter, however, sets forth no contention of Saginaw intervenors with regard to the suitability of the proposed site under the Commission's regulations and sets forth no other contentions with regard to the suitability of the site. The letter also fails to apprise the Board of the respects in which the application is allegedly inadequate.

That the intervenors have in mind nothing more than an effort at further discovery proceedings is plain from the text of the letter:

> "This cross-examiantion will attempt to ascertain from the Applicant precisely what credit or reliance is placed upon each specific safeguard system, and whether or not the factors underlying Part 100 and TID 14844 have been followed, and if not, whether, pursuant to Section 100.1, the Applicant can demonstrate the applicability and significance of such other factors.
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> "In connection with examination of the Regulatory Staff witnesses, we would expect such witnesses to be able to testify concerning the credits permitted by the Regulatory Staff, if any, with respect to its analysis of the Applicant's assertion that it has complied with Part 100 and TID 14844, or has justified the applicability of a deviation from such guidelines."

If the foregoing quotation did not suffice to make clear that Saginaw intervenors are not asserting any particular

insufficiency or inadequacy, but are merely seeking evidence--in other words, a further effort at discovery--there can be no doubt in view of the following statement:

> "In analyzing the underlying basis for site selection by Applicant and its apparent approval by the Regulatory Staff, we would hope to determine which safeguard systems are being relied upon to justify the siting of a reactor so close to a population center. The obtaining of this information is important to determine further areas of inquiry. Accordingly, this analysis is necessary to determine whether or not the conclusion of reasonable assurance of no undue risk is legally and factually supportable."

2. Similarly, the second "area of cross-examination" identified in Mr. Cherry's letter is not a statement of contentions, but is a description of areas for further discovery proceedings. The second area he describes "will be directed to having the Applicant and the Regulatory Staff give a sequential statement and analysis of the Design Basis Accident."

Here, too, no specific contentions are made. As before, the letter fails to apprise the Board or the applicant of the respects in which the application is allegedly inadequate.

> "Intervenors will attempt to demonstrate during this cross-examination that Applicant and the Regulatory Staff have not analyzed reasonably the safety implications of the failure of a specific system or systems at various specific times during

> the total time history of the Design Basis Accident. This phase of the cross-examination will not necessarily touch upon the integrity of a given safeguard system, but will seek out the safety implications if such a safeguard system fails at any specific point. Intervenors would anticipate that this examination, as well as No. 1 above, would aid the Board in focusing carefully upon which specific systems should be analyzed more thoroughly to determine that system's contribution, if any, to an overall conclusion of reasonable assurance of no undue risk." [Emphasis added.]

As in the case of the "areas of cross-examination" discussed in Section 1, intervenors are not here asserting any deficiencies but merely propose to extend the scope of discovery proceedings in a generalized "fishing expedition". Indeed, this is acknowledged by them in the statement quoted above.

3. In the third section of his letter, Mr. Cherry states that "the next area of cross-examination will concern the integrity of specific systems." The letter states that "Intervenors will question and examine the integrity of the following systems in the following order in an effort to demonstrate that they do not adequately contribute to a conclusion of reasonable assurance of no undue risk."

The letter designates "The Emergency Core Cooling System" (3.A.), "The Iodine Spray Removal System" (3.B.), "The Emergency Power System and its Reliability" (3.C.), and finally "All other safeguard systems which are demonstrated

to be significant or important to the siting of the plant or the analysis of the Design Basis Accident" (3.D.).

By reason of the catch-all reference to "All other safeguard systems" the areas referred to in Section 3 of Mr. Cherry's letter are so broad and general as to serve no limiting function; indeed, it is so broad as to make it possible later for Mr. Cherry to cross-examine with regard to almost any system in the plant.

Here, too, there is no identification of contentions, no identification of the bases for contentions, no specification of respects in which the design of the proposed plant systems will be inadequate or will contravene AEC regulations or criteria. Here, too, the matters described serve merely to identify proposed additional areas of discovery.

4. In this section of his letter Mr. Cherry states:

> "The next area of cross-examination, to the extent that it has not overlapped with any of the Paragraphs above, will be an inquiry into those safeguard systems which have not yet been designed by Applicant or analyzed by the Regulatory Staff, but which are asserted to be resolvable during the period of construction. Intervenors, after ascertaining the nature and extent of such safeguard systems and their related research programs, will attempt to demonstrate that certain safeguard systems not yet designed contain problems which cannot be resolved given the current state of the art, and accordingly, require the denial of a construction permit."

The foregoing quotation constitutes the totality of Mr. Cherry's identification of the so-called area of cross-examination." We do not know even to what systems Mr. Cherry refers. In addition, as in the case of the prior sections, there is no identification of contentions, no identification of the bases for contentions, no specification of the respects in which the design of the proposed plant systems will be inadequate or will contravene AEC regulations or criteria. It, too, is so general as to serve no function in describing or limiting the issues to be considered by the Board.

5. Finally, Mr. Cherry's letter advises that:

> "This list is by no means intended to be exhaustive and Intervenors will, from time to time and substantially in advance of their consideration, delineate such further areas as they will be covered in the hearing. Obviously, some of the areas later to be considered will include the two kinds of synergistic effects which could occur as a result of siting the proposed Units next to a chemical-industrial complex."

As in the previous sections of his letter, the material here quoted identifies no contentions or bases for contentions and fails to identify any respect in which the application is not in accord with AEC regulations and criteria or is otherwise inadequate or insufficient.

The final sentence of the quotation above shows Saginaw intervenors' deliberate disregard for the Board's

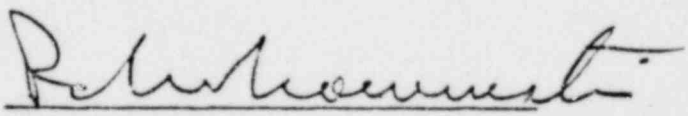
orders which require, before an attack may be made on Appendix D, an offer of proof within the criteria enumerated by the Commission in Calvert Cliffs.

## CONCLUSION

For the foregoing reasons, and for the reasons set forth in applicant's letter to the Board dated June 19, 1971, the Saginaw intervenors' letter dated June 10, 1971 should be stricken from the record of this proceeding, their leave to intervene should be revoked, and their petitions for leave to intervene should be dismissed.

June 19, 1971

Respectfully submitted,



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