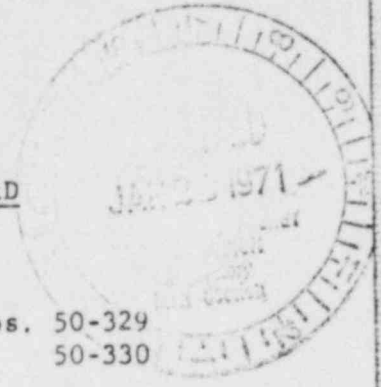


1-17-71.
UNITED STATES OF AMERICA
ATOMIC ENERGY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD



In the Matter of)
)
CONSUMERS POWER COMPANY)
)
(Midland Plant, Units 1 and 2))

Docket Nos. 50-329
50-330

ANSWER OF AEC REGULATORY STAFF TO
MOTION OF INTERVENORS
SAGINAW VALLEY NUCLEAR STUDY GROUP, ET AL.

Introduction

On January 7, 1971, Saginaw Valley Study Group, et al. ^{1/} (Saginaw Valley), intervenors in this proceeding, filed with the presiding atomic safety and licensing board (board) in this proceeding a "Memorandum of Certain Intervenor In Response to Applicant's Procedural Memoranda Regarding Pretrial Orders and Presentation of Evidence Filed on November 30, 1970 and December 4, 1970" (Memorandum). Incorporated in this Memorandum are five Saginaw Valley motions relating to this proceeding. These motions respectively seek orders from the board to (1) require the AEC regulatory staff to submit to all parties a list of certain documents and to undertake certain other action relating to documents; (2) require applicant to resubmit its list of witnesses; ^{2/}

1/ Saginaw Valley Nuclear Study Group, Citizens Committee for the Environmental Protection of Michigan, Sierra Club, United Auto Workers of America, Trout Unlimited, West Michigan Environmental Law Society

2/ Memorandum, p. 6.

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(3) require the AEC regulatory staff to submit additional information relative to its list of witnesses; (4) require intervenor Midland Nuclear Power Committee, if it proposes to offer witnesses or documents in this proceeding, to comply with the board's order of December 8, 1970, regarding such matters;^{3/} and (5) strike intervenor Dow Chemical Company's petition for leave to intervene or, in the alternative, require Dow Chemical Company to submit to all parties a list of its witnesses and information as to the evidence it intends to offer in this proceeding.

With respect to the motions briefly characterized in (2) and (3) above, the AEC regulatory staff would have no objections to the granting of such orders if the board believes they are warranted.

Answer to Saginaw Valley's Motion to Require the
AEC Regulatory Staff to Submit Certain Documents

In its Memorandum Saginaw Valley has moved the board for an order directing the AEC regulatory staff to submit on or before January 21, 1971, a list of documents in its possession or under its control, including internal memoranda and guidelines, dealing with its review of the applicant's Preliminary Safety Analysis Report (PSAR) and the preparation of its Safety Evaluation.^{4/} In this regard Saginaw Valley requests that the list of documents be keyed into the PSAR and the Safety Evaluation. As part of this motion, Saginaw Valley has also moved that

^{3/} Memorandum, p. 6.

^{4/} Memorandum, p. 4.

the AEC regulatory staff designate on or before January 21, 1971, which of the documents on the list are subject to a claim of privilege and to file, with respect to such documents, a memorandum of law in support of its claim.^{5/}

At the outset it should be noted that the AEC regulatory staff has already made available to Saginaw Valley and to the other parties to this proceeding, as well as to the board, a list of documents upon which it relied in preparing its Safety Evaluation and copies of the AEC Division of Compliance inspection reports for the Midland Plant.^{6/} In addition the applicant has provided to the board and all parties a list of documents which are on file in the Commission's Public Document Room relating to this application.^{7/} The documents in this latter category are, of course, available to Saginaw Valley for inspection in the Commission's Public Document Room and will, to the extent relevant to the issues in this proceeding, and during the course of this proceeding, be offered for identification as exhibits.

^{5/} Memorandum, pp. 3-4.

^{6/} Letter from Counsel for the AEC regulatory staff to the board dated December 10, 1970.

^{7/} Exhibit A to "Motion by Applicant Consumers Power Company for Orders Establishing the Prehearing Procedures..." filed on November 30, 1970.

The documents which have not yet been identified by the AEC regulatory staff, and to which we assume Saginaw Valley's motion is directed are AEC records and documents and AEC internal working papers as those documents are described in 10 CFR §§2.4(o) and (q). The availability of these documents, as well as a list of these documents, to Saginaw Valley is subject to the provisions of 10 CFR §2.744.^{8/}

Under 10 CFR §2.744(b) a procedure is established for a party to a proceeding to obtain copies of AEC records and documents which may not otherwise be available. Any request for such records and documents must set forth the need of the party for such documents and the relevancy thereof to the issues in the proceeding. These requirements of 10 CFR §2.744(b) apply equally to any list of such records and documents which may be requested.

The Saginaw Valley motion is defective in this respect since it fails to set forth either its need for the documents or their relevance to the issues in this proceeding. We are, however, in the interest of facilitating procedural matters in this proceeding, prepared to waive this defect in the motion. Accordingly, we are undertaking to prepare an appropriate list of the AEC records and documents, other than those

^{8/} It should be noted that 10 CFR §§2.4(o), (q) and 2.744 are contained in the amendment to 10 CFR Part 2 published in the Federal Register on December 23, 1970, (35 F.R. 19500) to be effective upon publication.

contained in the lists described above, as requested by Saginaw Valley.

The list of documents which we will prepare for submittal to the parties and the board will not, however, include internal working papers, as that term is defined in 10 CFR §2.4(o) or AEC records and documents of the type specified in 10 CFR §9.5, all of which are privileged and subject to disclosure only in accordance with 10 CFR §2.744(d) and (e). As provided in 10 CFR §2.744(d), the AEC regulatory staff will prepare a separate list of those documents which we believe to be privileged and will submit such a list to the board for its in camera inspection.

The AEC regulatory staff is presently assembling the lists of documents described above. With respect to the list which we have agreed to furnish to the parties, we will prepare such a list as soon as possible. The second list of documents which we consider to be privileged will also be prepared as soon as possible for submission to the board.

Since the AEC regulatory staff has agreed to furnish to Saginaw Valley the list of documents described above and to furnish to the board a list of documents which we consider exempt from disclosure, we believe that the Saginaw Valley motion should at this juncture in the proceeding be denied subject to appropriate renewal, if necessary, after the above lists have been submitted and appropriate determinations made.

Answer to Saginaw Valley Motion to Require the
AEC Regulatory Staff to Submit Additional Information
Relative to Its List of Witnesses

In its Memorandum Saginaw Valley has moved the board for an order to require the AEC regulatory staff to set forth in greater detail the scope of testimony of each of its proposed witnesses.^{9/}

In this proceeding the Safety Evaluation of the AEC regulatory staff which has previously been distributed to all parties to this proceeding, to the board, and to members of the public will constitute our testimony-in-chief. As noted in our letter to the board dated December 15, 1970, which was responsive to the board's order of December 8, 1970, we are prepared to present three witnesses as sponsors of this testimony. These three individuals, whose professional qualifications were submitted with our December 15, 1970, letter, were primarily responsible for the preparation of the Safety Evaluation and it is these three proposed witnesses that we would expect to respond to cross-examination questions on the Safety Evaluation. As necessary, we are prepared to bring to the hearing the AEC regulatory staff members whose names are appended to our letter of December 15, 1970, and who participated in various aspects of the review of the PSAR to respond to in-depth questions relating to technical matters.

With respect to the consultants' reports attached to the Safety Evaluation, we will, as necessary, have representatives of these organizations present to sponsor their reports and to respond to questions. In our letter

^{9/} Memorandum, p. 6.

of December 15, 1970, we identified these organizations and
10/
representatives.

We do not interpret the board's order of December 8, 1970, as requiring us to speculate as to the scope of testimony which might be necessary as the result of cross examination. In addition, at this juncture in the proceeding Saginaw Valley has not made known its case, and we have no indication as to what areas of our Safety Evaluation may be of interest to them. Pending further information in this regard from Saginaw Valley, we believe our response of December 15, 1970, met the intent of the board's order of December 8, 1970.

For the reasons stated above, we believe that the motion should be denied.

Answer to Saginaw Valley's Motion to
Strike Dow Chemical Company's Petition for Leave to Intervene

In its Memorandum Saginaw Valley has moved the board to strike intervenor Dow Chemical Company's petition for leave to intervene or, in the alternative, to require Dow Chemical Company to submit a list of the witnesses it proposes to use and to indicate the evidence it intends to offer. 11/

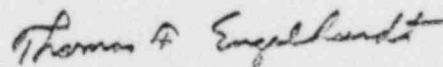
10/ At this time we do not have the name of the representative for the Fish and Wildlife Service.

11/ Memorandum, p. 8.

Saginaw Valley's arguments for excluding the Dow Chemical Company from this proceeding have been previously heard at length by this board (Tr. 30-34, 148-155) and the board has twice rejected them (Tr. 34, 155). This present motion presents no new arguments or grounds for the board to reconsider its prior rulings on this matter. Accordingly, the board should deny so much of this motion as related to striking the Dow Chemical Company's petition for leave to intervene.

We are, however, not opposed to the board's granting that portion of Saginaw Valley's motion which would require Dow Chemical Company to submit a list of witnesses it proposes to use in this proceeding and to indicate the evidence it intends to offer. This requirement has been levied upon the applicant and the AEC regulatory staff. It should have equal applicability to all other parties that intend to participate actively in this proceeding, including Saginaw Valley, which has not yet identified its witnesses or provided the parties with any information regarding its evidence.

Respectfully submitted,



Thomas F. Engelhardt
Trial Counsel

Dated at Bethesda, Maryland,
this 19th day of January, 1971.