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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) )

12-17-71

Docket Nos. 50-329  
50-330

ANSWER OF AEC REGULATORY STAFF TO  
SAGINAW VALLEY INTERVENORS' FIVE MOTIONS OF DECEMBER 7, 1971

On December 7, 1971, intervenors Saginaw Valley Nuclear Study Group et al. (intervenors) filed a document entitled "Motions of Saginaw Valley et al. Intervenors" stating the five separate motions to which we respond below.

Motion No. 1

This is a motion for an order the thrust of which would be to prohibit the applicant or any of its vendors from engaging in any discussion with the AEC regulatory staff, the Advisory Committee on Reactor Safeguards (ACRS), any AEC national laboratory, or any other Federal agency about any actual or potential issue in this proceeding, unless prior notice and an opportunity to participate is given to all parties to this proceeding or, where that is impracticable, unless a "comprehensive and detailed summary" of the communication is distributed to all parties within three business days after the communication.

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Oral communication between the AEC regulatory staff and the nuclear industry is an established and, we believe, vital feature of the process by which the staff discharges its responsibilities. These communications, we would emphasize, are not ex parte contacts subject to the provisions of 10 CFR § 2.780. Nor does any rule of the Commission authorize a presiding Atomic Safety and Licensing Board to impose limitations or conditions on the conduct of such communication.

We believe that the utility of these communications from the staff's standpoint would be substantially diminished if the applicant were unable to meet with the staff without the participation of the applicant's adversaries in protracted and controversial litigation.

Motion No. 1 describes the ACRS and other Federal agencies as "agents or representatives" of the staff. This, of course, is not accurate. However, the considerations discussed above apply also to such communication as the applicant may have with these other entities.

For the above reasons, Motion No. 1 should be denied.

Motion No. 2

This is a motion for an order directing the staff to produce "copies of all correspondence or other documents sent by it to or received by it from any other person, firm or corporation including, but not limited to National Laboratories, which discuss or relate to preparation of Regulatory Staff positions on the Midland Units' Emergency Core Cooling System and for the Draft Detailed Statement".

Under 10 CFR § 2.744(d), an application for production of such documents must include a showing of need and relevancy to the issues in the proceeding. The intervenors have not made the requisite showings. We note in this connection that neither the ECCS nor the environmental issues in this proceeding have been defined.

For the above reasons, Motion No. 2 should be denied.

We note in passing that the list of documents that we shall produce in response to Motion No. 5 will identify, inter alia, the documents described in Motion No. 2.

Motion No. 3

This is a motion for an order authorizing two representatives of the intervenors "with the cooperation of the Regulatory Staff, informally to communicate with and to question agents, representatives or employees of the Regulatory Staff who are participating in the Midland Units' Emergency Core Cooling System review and the preparation of the Draft Detailed Statement.

As we indicated at the November 23, 1971, conference (Tr. 4862, 4864), intervenors in another pending proceeding recently met with representatives of the staff, and we are prepared to have a similar meeting with intervenors in this proceeding. In the other proceeding the intervenors met at our Bethesda, Maryland, offices with members of the staff. We are prepared to schedule a similar meeting with the intervenors at a time mutually satisfactory. At any such meeting we would be prepared to discuss, among other things, arrangements for such further meetings as may be mutually satisfactory, involving either AEC employees or employees of AEC national laboratories.

We believe that the foregoing proposal is responsive to the legitimate aims of Motion No. 3 and would enable the intervenors to make such contributions as they desire to make to the staff's ECCS and environmental reviews.

We are, however, opposed to Motion No. 3 as we understand it. An order by the Board authorizing the intervenors to "question" individuals

of their own choosing, including any and all potential witnesses in this proceeding, is essentially an order permitting informal depositions of a type proscribed by 10 CFR § 2.720(h). That section of the "Rules of Practice" makes clear that the Board lacks authority to order depositions of named AEC personnel. Additionally, even assuming that no circumvention of 10 CFR § 2.270(h) is intended, the intervenors have not made the good cause showing required of an application for an order authorizing such depositions of AEC personnel as the "Rules of Practice" permit.

Accordingly, Motion No. 3 should be denied.

Motion No. 4

This, in effect, is a motion for an order directing the staff to produce a comprehensive and detailed summary of each communication since July 23, 1971, between the applicant or any of its vendors and the staff or any of its "agents or representatives," as broadly defined in Motion No. 1, relating to an issue directly or indirectly involved or to be involved in this proceeding.

Essentially, this motion is an interrogatory. As such, we oppose it on the ground that the intervenors have not shown good cause for requiring an answer, including, but not limited to, a showing that the information sought is needed and relates to defined, contested issues in this proceeding.

We are, however, prepared to make available to the intervenors, subject to the deletion of privileged matter, if any, such minutes of meetings and records of telephone conversations between AEC employees or AEC national laboratory employees and the applicant or any of its vendors, relating specifically to the Midland docket, as may be in our possession or under our control for the period since July 23, 1971.

For the above reasons, Motion No. 4 should be denied.

Motion No. 5

This is a motion for an order directing the staff to produce "a list identifying each document, whether claimed privileged or not, it or its representatives relied upon, whether adopted or rejected, in the preparation of its Draft Environmental Report and its analysis of the Midland Units' ECCS issues." The order sought by this motion would further provide that such list be submitted within ten days and be updated "whenever a substantial amount of additional documents have come to [the staff's] attention or once every two weeks, whichever is earlier."

We have no objection to providing the intervenors with a list such as that described in Motion No. 5. We are prepared to submit the list within a reasonable period of time following publication of the draft

environmental statement, and thereafter to make a good faith effort to keep the list current until the Board has closed the record with respect to environmental matters.

We do, however, object to that portion of the motion which would require the staff to follow the time schedule proposed by the intervenors for us to provide the list. The time schedule proposed by the intervenors is both impracticable and unwarranted under the circumstances of this case.

Accordingly, Motion No. 5 should be denied on the understanding that the staff will produce the requested list in accordance with the representations made herein.

Respectfully submitted,

*David E. Kartalia*

David E. Kartalia  
Counsel for AEC Regulatory Staff

Dated at Bethesda, Maryland,  
this 17th day of December, 1971.