

DOCKET NUMBER 50-57
PROD & UTIL. FAC. 50-330

UNITED STATES OF AMERICA
ATOMIC ENERGY COMMISSION



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

Docket Nos. 50-329
50-330

ORDER

THIS DOCUMENT CONTAINS
POOR QUALITY PAGES

I. Schedule of Further Proceedings.

A. Issues Other Than ECCS and Environmental Issues.

1. No further oral evidence will be received except by leave of the Board.
2. On or before September 15, 1971:
 - (a) Saginaw intervenors shall file their written evidence with respect to the validity of Part 20 (including evidence as to the synergistic effects of Dow effluents).
 - (b) Saginaw intervenors shall file their written evidence with respect to quality assurance and quality control in the limited areas specified at transcript pages 4168 and 4177.
 - (c) Mapleton intervenors shall file their written evidence with respect to their contentions numbered 3 and 4.
 - (d) Applicant shall serve its written responses to the Saginaw intervenors' questions as to the

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diesel power system.

3. By September 30, 1971, all parties shall serve written responses, if any, to the submissions filed under paragraph 2, above.

4. In view of the fact that the ECCS issues and environmental issues have not yet been heard, and that there are certified questions not yet resolved, the Board does not feel it would be useful to set a date for "closing the record" with respect to any issues. However, the Board believes that adequate opportunity has been given to all parties to present evidence and cross-examine with respect to all issues except ECCS and environmental issues. Accordingly, unless the rulings of the Appeal Board on presently pending questions^{1/} or developments in the course of the hearing on other issues makes additional airing of such issues appropriate, the Board does not contemplate additions to the record on such issues after September 30, 1971.

5. The Board does not presently intend to prepare findings of fact and conclusions of law on these questions in advance of the completion of the ECCS issues. However, the Board believes that early submission of proposed findings of fact and conclusions of law would be useful and invites

1/ Saginaw intervenors do have the right to limited cross-examination on chemical additives even if the Appeal Board sustains the ASLB.

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such submissions by all parties with respect to any or all of these questions after September 30, 1971.

B. ECCS Issues.

The Board does not believe it is useful at this time to try to schedule the steps with respect to consideration of the ECCS issues. The Board will reconsider the schedule when Applicant has completed its next filing with respect to ECCS. However, the Board would like to advise all parties that in its view, the ECCS issues seem likely to be such as to be best covered by written exchange of testimony; in addition, it is ordered that within 15 days after the receipt of the applicant's next filing on ECCS, the Mapleton and Saginaw intervenors shall file a 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.

C. Environmental Issues.

Pending the further steps contemplated by the August 4, 1971, Statement of the Atomic Energy Commission, the Board will not attempt to draw up a schedule for the environmental issues. The Board is concerned, however, lest delay in completion of discovery unnecessarily postpone the hearing and, accordingly, it is ordered that all parties serve and file all motions for discovery concerning issues arising under the National Environmental Policy Act permitted under 10 CRF §2.740, 2.741, and 2.744 by no later than September 30, 1971.

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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.
3. Identify the factors 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.

II. The Mapleton Intervenors' Motion to Dismiss the Application, and Saginaw Intervenors' Motion of August 3, 1971, with Respect to Further Procurement and Construction.

A. The Mapleton Intervenors' motion to dismiss the application is denied. The motion is based on the erroneous argument that procurement of the pressure vessel in advance of a construction permit is a violation of the Atomic Energy Act. It is not. The practice of advance procurement has

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been expressly sanctioned by the Commission and is not inconsistent with safe construction. Finally, the argument that advance procurement will add pressure on the Board to permit construction is simply a new formulation of the argument rejected by the Supreme Court in PRDC v. International Union, 367 U.S. 396(1961) and in countless Board decisions since that time.

B. The Saginaw Intervenors' motion to prevent additional construction and procurement is denied. To the extent it refers to procurement it is not substantially different from the motion considered in II A, above, and is denied for the same reasons. Those reasons probably apply to the portion of the motion dealing with construction but that question, as set forth in Applicant's Memorandum of August 13, is presently academic.

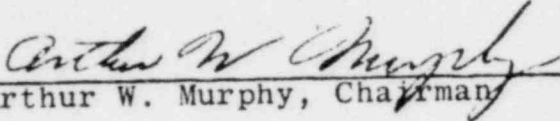
III. Saginaw Intervenors' Motion for Subpoenas to Other Reactor Manufacturers.

The motion for subpoenas duces tecum to other manufacturers is flatly inconsistent with the Board's ruling in connection with iodine spray systems that a proposed reactor need not incorporate "the best available technology." Accordingly, pending a contrary conclusion by the Appeal Board, the request is denied. The Board does not, however, mean to preclude a request for such documents on a showing, at an appropriate time, of need for the purpose of testing the

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adequacy of the ECCS system in this proceeding.

For the Atomic Safety and Licensing Board


Arthur W. Murphy, Chairman

August 26, 1971

UNITED STATES OF AMERICA
ATOMIC ENERGY COMMISSION

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1971

In the Matter of)
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CONSUMERS POWER COMPANY) Docket No. 50-329, 330
(Midland Plant, Units 1 and 2))

CERTIFICATE OF SERVICE

I hereby certify that copies of the ORDER issued by the Board dated August 26, 1971 in the captioned matter have been served on the following by deposit in the United States mail, first class or air mail, this 26th day of August 1971:

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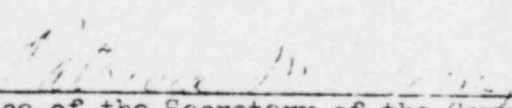
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