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**Consumers
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May 24, 1971

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In the Matter of Consumers Power Company
Midland Plant, Units 1 and 2
Docket Nos. 50-329 and 50-330

Gentlemen:

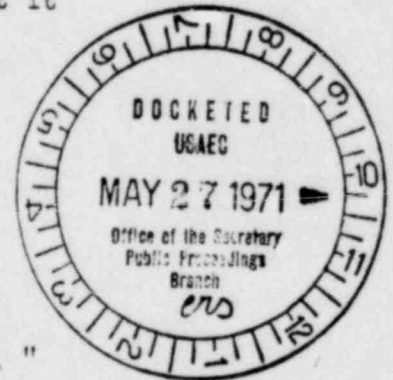
The Board's order of May 18, 1971 provides that it
"believes that all parties have had reasonable
opportunity to obtain evidence and prepare for
the hearing."

The order further provides that:

". . ., the Board believes that the principle
of advance submission by all parties is sound
and consistent with the requirements of fair-
ness and the Administrative Procedure Act . . . "

and that therefore intervenors should by June 7, 1971 file their direct
evidence on a limited number of issues. However, the Board ruled that
with respect to issues of nuclear safety intervenors will not be required
to file any direct evidence prior to the commencement of the hearing.

Applicant by the attached motion requests that the Board re-
consider its blanket exemption of intervenors from the presentation of
direct testimony prior to commencement of the hearing in regard to
issues of nuclear safety.



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hearing

Applicant's testimony, the PSAR, has been available to intervenors for two years. During the course of this proceeding, intervenors have had adequate opportunity to raise questions as to the contents of this PSAR through the use of interrogatories and to examine into the basis of this PSAR through the examination of documents. A summary of the material available to intervenors follows:

1. Three-volume PSAR - Available since January 13, 1969 with amendments thereto available as filed.

2. Applicant's files from which Saginaw intervenors have received copies of in excess of 8,000 pages of documents, viewed over double that number of pages and had available to them an even greater quantity of material - Available to intervenors since December 1, 1970.

3. Applicant's two-volume set of answers to approximately 210 interrogatories filed on April 13, 1971 in response to interrogatories filed March 22, 1971 (originally ordered by Board on November 25, 1970 to be filed by January 7, 1971 but deadline extended on request of Saginaw intervenors to March 22, 1971).

4. All documents on file in the AEC Public Document Room - Available at all times.

5. The Staff Safety Evaluation - Available since November 12, 1970.

6. A list of 159 documents upon which the staff relied in preparation of the Staff Safety Evaluation, all but eight of which were publicly available (the eight being available in the documents applicant made available December 1, 1970) - List furnished to intervenors in early December 1970.

7. Collection of 136 documents furnished by AEC to intervenors in April of 1971.

8. List of 51 documents in the possession of Dow Chemical Company - List furnished December 3, 1970 but no motion for production supported by good cause made to date.

9. Answers by Dow Chemical Company, filed March 30, 1971, to 22 interrogatories received March 22, 1971 (originally ordered by Board on November 25, 1970 to be filed by January 7, 1971 but deadline extended on request of Saginaw intervenors to March 22, 1971).

This is almost certainly the greatest amount of material ever made available to an intervenor prior to a hearing before an Atomic Safety and Licensing Board. Intervenors have had full opportunity to evaluate most of this material. They have had available to them, at a minimum, the services of Mr. Comey and two nuclear engineers to review this material.

On the basis of their review of this material, intervenors must have been able to come to some conclusion as to the adequacy of the Midland Plant. Applicant believes that there are two areas in which intervenors should be required to present their direct testimony on issues of nuclear safety prior to the hearing. There are numerous statements and conclusions in the PSAR and the Staff Safety Evaluation regarding which intervenors have addressed no interrogatories to the AEC or have addressed interrogatories in such a general form as to constitute a mere fishing expedition, e.g., Interrogatory 292. Obviously intervenors' investigations in these areas have not been hindered by the delays caused by the dispute over the interrogatories addressed to the AEC. If they are intending to controvert any such statements, they should be compelled to come forward at this time with their direct testimony. Upon failure to do so, they should be limited at the hearing on cross-examination and direct presentation to those areas upon which they have sought information in the interrogatories directed to the AEC.

Additionally, based on information contained in applicant's answers to interrogatories, information in documents made available to intervenors by applicant and the AEC, or information otherwise presently available to intervenors, intervenors may seek to controvert statements or conclusions contained in the PSAR or the Staff Safety Evaluation. This controversion should be made by the filing of direct testimony at this time even if an interrogatory on this subject has been asked of the AEC. Failure to file such direct testimony should preclude intervenors' controversion except to the extent new information available to the intervenors from the AEC after this date is the basis of the controversion.

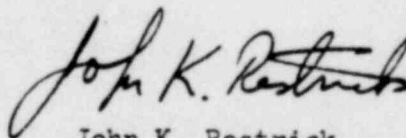
It would appear that in neither of these two areas mentioned above has the delay regarding interrogatories directed to the AEC hindered intervenors. In addition, the interests of a fair, orderly hearing will best be served by getting written testimony in these areas on the table prior to the commencement of the hearing. The interests of a fair, orderly hearing are not served by allowing intervenors to hang back with evidence on issues now known to them, waiting to surprise applicant or the AEC at some point during the course of the hearing. Intervenors are not prejudiced by the proposed course of action. Should additional evidence which raises new issues be brought to light through proper discovery of the AEC, intervenors would be permitted to present a case on such issue. However, to the extent any evidence is presently available to intervenors, which they allege supports a position contrary to that taken by applicant or the AEC, now is the proper time to present such position. Intervenors have been aware of the likelihood of their

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having to present a direct case since early December and have been under order to do so since March 3, 1971. It would certainly not come as a great surprise to intervenors, nor prejudice them, if the Board amended its order of May 18, 1971 in accordance with the motion attached hereto. It could, however, greatly expedite the course of the hearing by delineating the issues, having the basic testimony filed prior to the hearing and preventing surprise at the hearing.

Yours very truly,



John K. Restruck

JKR/pb

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