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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:

This letter is in response to certain matters raised in the May 11 and May 13, 1971, letters to the Atomic Safety and Licensing Board Chairman from counsel for intervenors Saginaw Valley Nuclear Study Group et al.

The letters of May 11 and May 13 both contain "motions" from the intervenors for copies of results of certain tests relating to emergency core cooling systems. Under cover of a letter of May 21, 1971, to the Chairman, with copies to all parties, we have transmitted five reports dealing with these tests which were prepared by the Idaho Nuclear Corporation. We are unaware of any reports on this matter which relate specifically to the Midland Plant. The reports transmitted to the Chairman and the intervenors on May 21 would appear to satisfy the request for information contained in these motions, thus obviating the necessity of any further action by the Board on these motions.

In the intervenors' May 13 letter a motion is made for a Board order that no further communications between the AEC, the Advisory Committee on Reactor Safeguards (ACRS) and "anyone connected with the

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Midland Plant" be permitted without full and complete disclosure to all parties. There is no basis in the Commission's regulations for any such limitations on these contacts. The only regulation limiting contacts of parties in pending proceedings is found in 10 CFR §2.780, "Ex parte communications." This regulation makes clear that it does not apply to the type of contacts contemplated by this motion.

Furthermore, the intervenors have provided no justification for such an extreme request. One of the means by which the AEC regulatory staff fulfills its continuing responsibilities to protect the health and safety of the public is to conduct discussions with applicants and vendors of nuclear systems and components with respect to the design, construction and operation of nuclear plants. To permit members of the public to participate in such meetings would seriously jeopardize the effectiveness of such contacts. In our view this motion is patently unreasonable and should be denied.

It is clear from the context of the May 13 letter in which this motion is contained that the motion is directed to the matter of the emergency core cooling system. The intervenors will have an adequate opportunity during the course of this proceeding to examine the staff's and applicant's witnesses regarding the adequacy of this system. If, as a result of the staff's reevaluation of emergency core cooling systems, supplemental testimony is offered in this proceeding, the intervenors will then have an opportunity to examine appropriate witnesses. The denial of this motion will in no way prejudice the intervenors' right to a full and complete hearing on the matters of alleged concern to them.

Also contained in the intervenors' May 13 letter is a motion that a "complete transcript" of any communications thus far between the "AEC and the ACRS and the applicant or B & W or Bechtel concerning or involving the Midland Units, whether involving the ECCS system or not," be produced.

While we are not clear what is intended by a "complete transcript" we assume that the motion is directed to documents in the files of the AEC. Letters between the AEC and the applicant in connection with the Midland Plant are a matter of public record and are on file in the Commission's Public Document Room. Letters between the AEC and others regarding the Midland Plant are either in the Midland Plant public docket file or are a matter of public record and available, if identifiable, upon request. The intervenors have had access to all of these documents for many months.

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With respect to other documents covered by this motion, they are subject to the provisions of 10 CFR §2.744. Such being the case, the motion is obviously deficient since it fails to comply with the requirements set forth in 10 CFR §2.744 in that it does not set forth the need of the intervenors for such documents and the relevancy thereof to the issues in this proceeding. More importantly, however, the motion is essentially duplicative of an earlier motion for the production of AEC records. In our letter of April 29, 1971, to the Board we have responded to that motion.

For the reasons stated above, we are opposed to the granting of these motions.

Sincerely,

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