PROD. & UTIL. FAC. 50-329,330

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September 30, 1971

Arthur W. Murphy, Esq., Chairman
Atomic Safety and Licensing Board
Columbia University School of Law
435 West 116th Street
New York, N.Y. 10027

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

Dear Chairman Murphy:

We have now been furnished a copy of the Mapleton September 14 application for a further extension of time and other relief (as well as copies of other documents which do not require further response).

Opposing Intervenors' position is epitomized by their first claim:

> "I.A.1a) Intervenors claim the right at any time to offer oral evidence on any issue, subject only to valid objection on grounds of competency, relevancy and materiality, or other appropriate grounds for exclusion" (letter, p. 1, underlining added).

Neither laches nor even violation of earlier Hearing Board Orders or Mapleton's own prior representations would prevent reopening of the evidence under this claim, at least assuming application of the rule of ejusdem generis. Thus, for example, they now assert that "Mapleton's Contentions III and IV raise environmental issues" (letter, p.2), in sharp contrast to and despite their contrary statements when the testimony of Mr. Watson and Dr. Epstein was offered and received, over objections.

Arthur W. Murphy, Esq. September 30, 1971

Those supporting the nuclear plant application must have constantly in mind (should they be successful), the inevitability of future appeals, interlocutory and final. For this reason as well as to expedite the final determination, we again urge the Hearing Board to fix an early date for a conference on procedural matters, at which a schedule for further proceedings can be fixed. We believe that in this manner the time available between now and submission of the final environmental statement can be used constructively, both to complete as much as possible, as earlier suggested, and to flush out, place on the record and deal with applications and objections of the present character. Of course we cannot anticipate all that Opposing Intervenors will do in the future, but at least the nature of their tactics will become more and more apparent on appeal if the record is developed in this fashion.

Our earlier objections to offers of proof, such as the testimony of Dr. Tamplin, were predicated far more upon the delay which at that time seemed inevitably to result, than the immateriality to the issues which then appeared. If Dr. Tamplin is now to testify, fine -- but let it be now, at a time when delay is inevitable in any event because of the need to wait for the ECCS and environmental submissions. Indeed, it may be that scheduling his testimony (such as for a day in October to suit the Board's convenience, not his), will reveal the bluff. If not, no harm other than the time and expense involved in listening will result from hearing what all parties already know he will say.

Finally, we think it important to emphasize that no one supporting the Application has ever called for moving the proceedings forward "to the maximum extent possible" (letter, p.6). We have always insisted upon urgency, in the interests of the public as well as all the parties, but only "to the maximum extent proper and possible." There is a vast difference, and the public -- which receives press releases of such statements even before the parties -- should not be misled by such inaccurate quotations.

Respectfully,

Milton R. Wessel

MRW:skl

cc: As per attached Certificate of Service