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UNITED STATES OF AMERICA
ATOMIC ENERGY COMMISSION

11-4-71

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

Docket Nos. 50-329
50-330

MEMORANDUM OF AEC REGULATORY STAFF IN RESPONSE TO APPLICANT'S
MOTION OF OCTOBER 23 FOR AN ORDER REQUIRING STATEMENTS
OF ENVIRONMENTAL CONTENTIONS

On October 23, 1971, applicant Consumers Power Company served a motion for an order (1) directing Saginaw Valley Nuclear Study Group et al., the Mapleton intervenors,^{1/} and the Environmental Defense Fund (collectively "intervenors") to state by November 10, 1971, what, if any, adverse environmental effects they contend the proposed Midland Plant would cause and on what basis they so contend, and (2) precluding the subsequent assertion of such contentions with respect to adverse environmental effects as are not so stated, "without prejudice to a future determination as to whether there is violation of procedural requirements of NEPA or of Appendix D (10 CFR Part 50) as to which intervenors may complain."

Consistent with our previously expressed views on how environmental discovery should be controlled in this proceeding,^{2/} we believe that the environmental issues should be revealed and refined in stages

1/ Aeschliman et al.

2/ "Answer of AEC Regulatory Staff to Motion of Saginaw Valley, et al., Intervenors with Respect to Environmental Matters, Emergency Core Cooling Matters and the Board's Order of August 26, 1971," dated October 23, 1971, pp. 9-10.

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corresponding to the anticipated additions to the body of environmental information available to the intervenors with respect to the proposed Midland Plant. At each of these stages, the intervenors should be directed to state their environmental contentions as completely and as specifically as is reasonable under the circumstances, and under a clear admonition from the Board that "sandbagging" will not be tolerated. With good faith implementation by all parties and strict rulings when and if necessary by the Board, such a program would serve the interest of procedural efficiency without prejudicing any party. The rights of the intervenors would be adequately protected by permitting such additions and changes to the intervenors' contentions as they can justify at any particular stage on the basis of new information.

In connection with this proposal, we note that on October 19, 1971, the applicant submitted to the AEC, and simultaneously made available to all parties, a three-volume supplemental environmental report. Much of the information it contains was not available when, in response to the Board's order of August 26, 1971, the intervenors submitted their preliminary views on environmental matters. We have arrived therefore at a stage where further opportunity for specification of the intervenors' environmental concerns would be appropriate.

For the foregoing reasons, we are in general agreement with the applicant's motion to the extent it seeks a statement of the intervenors'

present contentions "as to any adverse environmental effects from the proposed plant, together with the bases for such contentions." Indeed, we believe that the intervenors should provide more than this. In our view, the Board should direct the intervenors to state all of their present environmental contentions. Such a statement would not be limited to contentions of adverse environmental effect, if any, but would include, for example, such contentions as the intervenors may have with respect to the adequacy of the record on environmental matters.

As the above discussion indicates, we believe that an order entered at this time requiring the intervenors to specify their environmental contentions should have preclusive effect only to the extent of barring contentions made after the deadline specified in the order which, considering the information theretofore available to the intervenors, could reasonably have been made on or before that deadline. Based on the applicant's comments in regard to supplementation of contentions after discovery,^{3/} it appears that the degree of preclusive effect contemplated by the applicant is consistent with the foregoing.

We urge the Board to grant substantially the relief sought in the applicant's motion consistent with the comments in this memorandum.

Respectfully submitted,

David E. Kartalia

David E. Kartalia
Counsel for AEC Regulatory Staff

Dated at Bethesda, Maryland
this 4th day of November, 1971

^{3/} "Applicant's Memorandum in Response to the End-of-September Submission of the Opposing Intervenors and to the Twelve Motion of the Saginaw Intervenors," dated October 23, 1971 pp. 5-6.