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May 13, 1971

Arthur W. Murphy, Esq., Chairman
Atomic Safety and Licensing Board
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Dear Chairman Murphy:

This letter is in response to your telegram of May 13, 1971, with respect to Staff interrogatories and to a telegram from John K. Restrick, counsel for Consumers Power Company, also of May 13, 1971.

Chairman Murphy's telegram: We understand the Board has directed the Staff to answer interrogatory 240 in its entirety; 250 to the extent that information is sought as to why the calculation is not required at this time; 265 and 267(c) in their entirety; 268 to the extent that it requests a description and reference to appropriate research and development programs; 284, 289 and 316 in their entirety.

We are in the process of making an analysis as to why the Board chose to direct the Staff to answer these questions and not other interrogatories of a similar nature as to which there was also no objection. We understand the Board will not make its final decision until after receipt of our reply brief; however, it would be helpful to us at some point, no matter what the Board's decision (unless in the unlikely event the Board orders the Staff to answer all the interrogatories), to understand why the Board selected these specific interrogatories. We cannot understand, unless time is an overriding consideration to all issues, including an adequate exploration of the evidence and adequate prehearing discovery required by law and provided for by the Rules of Practice, why the Board only saw fit to require answers to a miniscule percentage of the interrogatories addressed to the Staff.

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John K. Restrick's telegram: Mr. Restrick's telegram indicates that Consumers Power supports our motion for the production of documents in connection with the emergency core cooling system tests at the Idaho Reactor Test Facility. As the Board will recall, a formal motion for the production of these documents was made by letter of May 11, 1971.

We wish to point out to the Board that by our motion we are requiring production of all of the documents which relate to the development of the test, the running of the test, the results of the test and the evaluation insofar as it affects the Midland Units. We are unable to be more specific because the Atomic Energy Commission has not seen fit to make public announcements prior and subsequent to the tests. Although our own research indicates that the test may be one of the 900 series of the ECCS project tests and may also be related to tests 831 and 834 of the 800 series test, we cannot without further interrogation of the Atomic Energy Commission be more specific. Accordingly, we trust that in the resolution of this motion the Board will not only require the production of documents immediately but will also require the Regulatory Staff to set forth by affidavit a specific listing of all of the documents as encompassed by our discription herein and a statement why certain documents are not produced or why portions are deleted if either of those instances occur.

After this information is secured, we would hope the Board will direct itself (or we shall by motion) to other sources of information which are pertinent to the ECCS question. Thus, information compiled by Applicant, B & W, Bechtel and other vendors of like ECCS systems should be produced as soon as possible. We trust that other parties to this proceeding will cooperate in this effort in a manner similar to Applicant's May 13 telegram.

This morning when I received Mr. Restrick's telegram, I called him and asked him what he meant by the sentence:

> If issue develops with regard to effectiveness of emergency core cooling systems for Midland Units, Applicant will be prepared to introduce evidence which will demonstrate adequacy and effectiveness of these systems.

The Board should know that issue has already developed with respect to the effectiveness of the Midland ECCS. I asked Mr. Restrick if his sentence meant that Consumers was withholding information on the ECCS, thereby being in violation of complete and frank answers to our interrogatories, as well as in violation of the Rules governing a description of that system in the PSAR.

Mr. Restrick said that Consumers had no further information but that Babcock & Wilcox was presently meeting with the ACRS to discuss the design of the ECCS system proposed to be installed at Midland. Mr. Restrick was careful to point out that the ACRS and B & W were discussing another plant but indicated that the ECCS system on "the other plant" was identical to the one proposed at Midland. Accordingly, there is no question but that the conversations and their results between B & W and the ACRS are intended to apply to and will eventually be used in the Midland Units' hearing.

Mr. Chairman, this is a contested case, and we will not permit communications with respect to the issues to be heard between the vendor of the Applicant and the Atomic Energy Commission without our having knowledge and indeed without a representative of Intervenors being present at any meetings.

Accordingly, by this letter we make the further motion pursuant to the Rules of Practice that the Board Order that no further communications between the ACRS, the AEC and anyone connected with the Midland Plant be held without full and complete disclosure to all parties. We further move the Board to Order that a complete transcript of any communications thus far had 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 immediately produced for inspection and copying by Intervenors.

We would ask the Board to render a decision with respect to these motions as soon as possible.

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Finally, we have received the Board's telegram postponing the May 17 hearing date. We trust that this means the Board is in earnest in resolving discovery problems fairly and

before the hearing in accordance with our suggested proposed order submitted with our letter of May 5, 1971.

We would add that the delay of the Staff in responding to our interrogatories and the failure of the Board to require the Staff to join issue by posing specific objection have further hampered us in our preparation. Thus, for example, we cannot adequately prepare a motion for production of documents, such as inspection reports of reactors similar to the proposed Midland Units, until we know which reactors (and to what extent) were relied upon by the Staff for comparative analysis.

We again urge the Board to recognize that an ill-prepared hearing would be meaningless for all and would result in denials of due process. See 10 C.F.R. Part 2, App. A, sec. VI(c).

Respectfully submitted,

Myron M. Cherry

MMC/sm
cc: Dr. David B. Hall
Dr. Clark Goodman
Mr. Stanley T. Robinson, Jr., Sec'y
All Counsel of Record