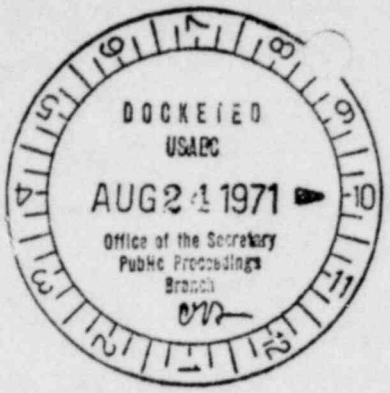

MYRON M. CHERRY
SUITE 1005
109 NORTH DEARBORN STREET
CHICAGO, ILLINOIS 60602
312-641-5575

August 20, 1971

Arthur W. Murphy, Esq., Chairman
Atomic Safety and Licensing Board
Columbia University School of Law
Box 38, 435 West 116th Street
New York, New York 10027

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

Dear Mr. Chairman:

There is now pending before the Board a Motion of the Saginaw Intervenors to require a rescinding of the exemption for site construction and to prohibit further procurement and manufacture of components for the proposed facility. The Mapleton Intervenors and the Environmental Defense Fund have joined in this Motion.

There is also pending before the Board a Motion of the Mapleton Intervenors to dismiss the Application upon certain grounds, and the Saginaw Intervenors have joined in this Motion.

In addition, there are questions concerning certification, the effects of the Calvert Cliffs case, and environmental policy considerations. Notwithstanding the pendency of these Motions, and in an effort in good faith to move the proceedings to a conclusion (without, however, prejudicing their legal position), the Saginaw Intervenors filed on August 10, 1971 a long letter with the Board setting forth their position as to the legal issues to be considered and requesting the initiation of informal discovery on environmental matters.

Saginaw Intervenors believe that the law requires a detailed environmental statement in advance of restricting Intervenors' rights to discovery; however, Intervenors were by their letter of August 10, 1971 willing to pursue informal methods in an effort to bring these proceedings along in an orderly fashion.

By letter dated August 18, 1971, Applicant has filed a Motion requesting that all environmental discovery motions be filed by September 7, 1971. Not only is Applicant's suggestion of a time limit unreasonable, the very fact that Applicant did not address itself to the legal issues now pending, that Applicant ignored the pendency of certain Motions, and also that Applicant does not opt to pursue environmental discovery informally, suggests to us, as it should to the Board, that Applicant by intention, negligence, or ineptness is causing and contributing to a further delay of these proceedings.

Moreover, the Calvert Cliffs decision makes clear that Applicant has not yet completed its "application," and by its counsel's own admission, Applicant is preparing to amend the PSAR at this moment. There can be no requirement to join issue now before Applicant has taken an environmental position. Accordingly, we suggested an informal approach because it seemed fair to all sides.

We do not see how any time limit can now be placed upon discovery, particularly since we have heard no word from the Regulatory Staff as to how long the required NEPA review will take.

We urge the Board to ignore Applicant's Motion filed under date of August 18, 1971, to issue prompt rulings, to the extent possible, upon Intervenors' Motions now pending, and to order the parties to begin discovery and performance in accordance with the suggestions of our earlier letter. Otherwise, Intervenors will reluctantly be in the position of having to move the Board for a fair and reasonable time to produce discovery motions on environmental matters after the Regulatory Staff has completed its work.

Alternatively (but without agreeing to a cut-off date), if Applicant wishes to proceed "formally," we ask the Board to order the parties to produce the documents listed in our letter of August 10, 1971.

Respectfully,

Myron M. Cherry
Attorney for Intervenors

MMC:mk

cc: ASLB Members
Secretary, Atomic Energy Commission
All Counsel of Record