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UNITED STATES OF AMERICA
ATOMIC ENERGY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
	)	Construction Permit
CONSUMERS POWER COMPANY	)	Nos. 81 and 82
	)	(Show Cause)
(Midland Plant, Units 1 and 2)	)	

STAFF'S RESPONSE TO SAGINAW'S MOTION
FOR DISCOVERY IN AID OF ORAL ARGUMENT

On October 22, 1974 Intervenor (Saginaw) moved this Board to order discovery of certain Consumers Power Company and Bechtel documents so that Saginaw will be able to present adequate oral argument on November 18, 1974 on its motion for reconsideration or to reopen the record.

This new motion apparently represents an admission by Saginaw that the motion to reopen or reconsider is subject to summary denial without the aid of discovery.[1/] Saginaw must demonstrate with some particularity that discovery is likely to develop the basis for avoiding summary disposition of its motion to reopen.[2/] At this time Saginaw has failed to show that the items it seeks to discover will develop such a basis.

The show cause hearing is limited to the issues specified in the show cause order. In this proceeding the issues are:

1/ In the Matter of Vermont Yankee Nuclear Power Corporation, ALAB-138, RAI-73-7 at 524 (July 31, 1973).

2/ Id.

(1) Whether the licensee is implementing its quality assurance program in compliance with Commission regulations; and

(2) Whether there is a reasonable assurance that such implementation will continue throughout the construction process.

These issues relate to the Midland facility and not to the Palisades facility. Saginaw has already been denied discovery of matters involving the Palisades facility during the course of this proceeding and no showing has been made in the instant motion to warrant granting the request for documents relating to the Palisades facility.

However, Saginaw not only seeks to discover the contracts and correspondence which are the subject of the complaint involving Palisades but also seeks to discover contracts between Bechtel and Consumers regarding Midland. Saginaw does not explain why such contracts could not have been requested earlier in the course of this proceeding while the record was open.

A request Saginaw makes which could have merit is one for "correspondence if any, between Consumers and Bechtel (or any Bechtel affiliate) concerning the application to the Midland facility, if any, of any of the allegations or underlying facts alleged or asserted in the complaint dealing with the Palisades case..." (emphasis added) But, by use of such terms as "if any" Saginaw fails to establish with particularity grounds for believing the quality assurance program at Midland is not continuing to comply with Commission regulations.

Finally, it should be noted that, as the Commission stated in connection with another of Saginaw's requests for reopening "It is almost inevitable that particular facts may change ... between the close of administrative hearings, final agency action, and judicial review. If such changes were to trigger rehearings, 'there would be little hope that the administrative process could ever be consummated in an order that would not be subject to reopening'." 3/

Respectfully submitted,

William J. Olmstead
Counsel for AEC Regulatory Staff

James P. Murray, Jr.
Chief Rulemaking and Enforcement
Counsel

Dated at Bethesda, Maryland
this 1st day of November, 1974.

3/ In the Matter of Consumers Power Company, Memorandum and Order, CLI-74-7, RAI-74-2 at 148 (February 5, 1974) citing ICC v. Jersey City, 322 U.S. 503, 514 (1944).

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CERTIFICATE OF SERVICE

I hereby certify that copies of "Staff's Response to Saginaw's Motion for Discovery in Aid of Oral Argument" dated November 1, 1974 in the captioned matter have been served on the following by hand delivery or by deposit in the United States mail, first class or air mail, this 1st day of November, 1974.

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