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UNITED STATES OF AMERICA
ATOMIC ENERGY COMMISSION

Before The
ATOMIC SAFETY AND LICENSING APPEAL BOARD

In the Matter of

CONSUMERS POWER COMPANY

(Midland Plant, Units 1 and 2)

Construction Permit
Nos. 81 and 82
(Show Cause)

RESPONSE OF BECHTEL POWER CORPORATION AND
BECHTEL ASSOCIATES PROFESSIONAL CORPORATION
TO SAGINAW-SIERRA'S MOTION FOR EXTENSION OF TIME

Bechtel Power Corporation and Bechtel Associates Professional Corporation ("Bechtel") object to Saginaw-Sierra's motion for an extension of time within which to file exceptions to the Initial Decision in this proceeding and request that this Appeal Board deny the motion for the following reasons:

1. The Commission's Rules of Practice, 10 CFR §2.762(a), provide that exceptions to an Initial Decision may only be filed within seven (7) days after service of the initial decision.

2. Saginaw-Sierra alleges that it received a "copy of an incomplete Initial Decision," and that an "appropriate letter was sent to all concerned requesting a complete decision." Bechtel received no such letter and, to the extent that Saginaw-Sierra determined that Bechtel was not sufficiently "concerned" as to warrant receiving Saginaw-Sierra's "appropriate letter," Bechtel states that its concern has been demonstrated by its participation throughout this proceeding and that it should have received any communication

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from Saginaw-Sierra in this matter. Accordingly, Bechtel requests that this Appeal Board determine that the "appropriate letter" violates the "ex parte communications" rule of 10 CFR §2.780¹ and, therefore, is not entitled to toll the running of the seven day period.

3. Section 2.730(b) of the Commission's Rules of Practice require that motions, "shall be accompanied by any affidavits or other evidence relied on." Saginaw-Sierra's motion is not only unsworn to but also contains no information or specification as to how the Initial Decision was "incomplete." Thus, it would appear that the instant motion is but another dilatory tactic on the part of Saginaw-Sierra to disrupt the orderly resolution of issues raised in the show cause hearing.

4. Saginaw-Sierra's motion also requests an extension until its motions for reconsideration of the Initial Decision and/or to reopen the record are decided by the Licensing Board. Bechtel's response to those motions is attached to this response and Bechtel requests that this Appeal Board deny Saginaw-Sierra's request on the grounds that the only avenue open to Saginaw-Sierra, insofar as contesting the Initial Decision, is the filing of exceptions. Since the Commission's Rules of Practice do not sanction, at this juncture, either a petition for reconsideration or a motion to reopen, this Appeal Board has no authority to extend time in which to file exceptions to the Initial Decision.

¹ Counsel for Saginaw-Sierra was previously cautioned about its practice of communicating with the licensing board by ex parte correspondence during the course of the proceeding. Tr. pp. 89-91.

The Rules of Practice, 10 CFR §2.730(a), provide that motions may be addressed to a presiding officer only when a proceeding is pending. The Initial Decision ordered, at page 59, that the proceeding was terminated. Thus, the licensing board, having issued its decision, terminated its jurisdiction. The proceeding is, therefore, no longer pending before the licensing board. Accordingly, the licensing board is without authority to consider the Motions to Reopen and/or for Reconsideration² and there is thus no reason for this Appeal Board to extend the time within which Saginaw-Sierra may file exceptions to the Initial Decision.

Additionally, a petition for reconsideration is only proper where there is a final decision, 10 CFR §2.771(a). The Initial Decision in this proceeding was not, consistent with 10 CFR §2.760(a) and its own language, a final decision. Thus, the filing of a petition for reconsideration at this time was procedurally improper.

5. This motion, to the extent it requests an extension until such time as the licensing board decides the Motions to Reopen and/or for Reconsideration, relies on matters previously determined to be irrelevant and immaterial by the licensing board. As such it is yet another effort by Saginaw-Sierra to obfuscate the purpose for this show cause proceeding and serves only to show Saginaw-Sierra's disdain for the efforts of the various parties and the licensing board toward the resolution of relevant issues in this proceeding.

² This conclusion is supported by the appointment of this Appeal Board, 39 Federal Register 35198-35199 (September 24, 1974) and by the provisions in the Initial Decision's Order that any party may file exceptions to the Appeal Board.

Bechtel incorporates by reference its discussion of relevance and materiality contained in its Response to Saginaw-Sierra's Motions to Reopen and/or for Reconsideration, including prior pleadings cited therein, and will not, therefore, repeat that discussion here. Suffice it to say, however, that since the relevance of the construction of the Palisades plant, insofar as the Midland Show Cause proceeding is concerned, has already been decided against Saginaw-Sierra, the motions to the licensing board and to this Appeal Board have no merit.

6. The record in this proceeding was closed on July 25, 1974. Counsel for Saginaw-Sierra was given every conceivable opportunity prior to that date to introduce relevant matters for consideration by the licensing board. Not only did Saginaw-Sierra choose not to file written testimony before the board, but they refused to participate in the hearing,³ filed no request that the board take official notice of documents, filed no proposed findings of fact and conclusions of law, and filed no reply findings. In addition, Saginaw-Sierra refused to participate responsibly in the discovery stage of this proceeding. Saginaw-Sierra nevertheless seeks to reopen this proceeding or to have the Initial Decision reconsidered on the grounds that certain information was deliberately ignored or withheld by Consumers, Bechtel and maybe even the regulatory staff and because the licensing board did not "ferret out" this information despite its promise to do so.

³ Saginaw-Sierra's allegation that it was without the financial means to actively participate in this proceeding was determined by the Commission to be unfounded. Memorandum and Order (July 10, 1974) IAI-74-7 p. 1.

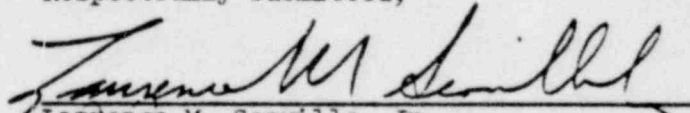
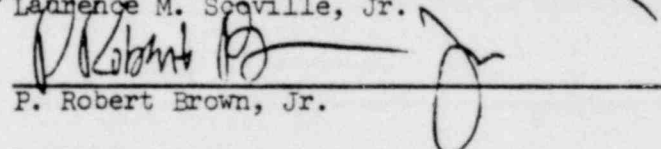
7. Proceedings before any court of law or administrative tribunal are not intended to remain open ad infinitum. The purpose of any proceeding is to consider the issues raised by the precipitating cause of the proceeding; upon resolution of those issues, the proceeding necessarily terminates. The instant proceeding considered and resolved all of the relevant issues raised by the Show Cause Order. The Show Cause hearing is over; all appeals must be confined to the matters considered therein. If it were otherwise, there could never be an orderly end to a particular proceeding, and the parties who are forced time and again to come back and defend each new allegation on the grounds that they are somehow relevant to the initial proceeding would be severely prejudiced. Saginaw-Sierra's present attempt to inject a lawsuit filed by Consumers against Bechtel, among others, claiming damages for allegedly faulty design and/or construction of Consumers' Palisades Plant as relevant to a determination of quality assurance implementation at Consumers' Midland Plant epitomizes the extent to which a particular proceeding could be maintained were it permitted to remain open indefinitely.

8. Counsel for Saginaw-Sierra claims to be an experienced practitioner before the Atomic Energy Commission and a member of several different bar associations. He must, therefore, be held knowledgeable of the fact that the Commission's Rules of Practice provide for only one avenue of appeal from an initial decision such as rendered by the licensing board in this matter. That avenue is the filing of exceptions to that decision. Saginaw-Sierra's counsel's instant motions, both before this Appeal Board and before the licensing board, are obvious attempts to circumvent the Rules of Practice and thereby extend the time for appeal beyond that provided in the regulations. This is not the first instance of Saginaw-Sierra counsel's

disregard for the rules and orders in this proceeding, a fact which he has previously been cautioned against.⁴ Inasmuch as the Saginaw-Sierra motions amount to procedural nullities, it is requested that they be denied forthwith and that no time, in addition to that afforded by the Commission's Regulations, be awarded Saginaw-Sierra for the purpose of filing exceptions which should and could have been filed some time ago.

WHEREFORE, Bechtel requests that this Appeal Board deny Saginaw-Sierra's Motion for an Extension of Time on the grounds that it is procedurally deficient, that the Appeal Board lacks authority to act on the motion and that it relies on matters determined to be irrelevant and immaterial to the issues of present and future compliance by Consumers and Bechtel with quality assurance requirements at Midland.

Respectfully submitted,


Lawrence M. Scoville, Jr.

P. Robert Brown, Jr.

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Dated: October 10, 1974.

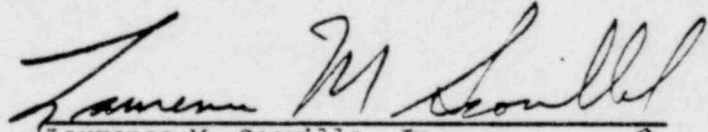
⁴ Tr. pp. 89-91, 124-125.

AFFIDAVIT

LAURENCE M. SCOVILLE, JR., being duly sworn does depose and say as follows:

I am an attorney-at-law and represent BECHTEL POWER CORPORATION and BECHTEL ASSOCIATES PROFESSIONAL CORPORATION in the Midland Show Cause proceeding. I am, therefore, entitled to receive all correspondence from all parties relating to said proceeding.

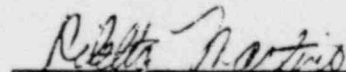
I received no letter or other communication from counsel for Saginaw-Sierra indicating the manner in which his copy of the Initial Decision was claimed to be deficient or requesting that Saginaw-Sierra be furnished with a complete copy of the Initial Decision rendered by the Licensing Board in this proceeding.



Laurence M. Scoville, Jr.

STATE OF MICHIGAN)
) ss.
COUNTY OF WAYNE)

Subscribed and sworn to before me, a Notary Public, this 10th day of October, 1974, in and for said County.



Diletta Martino, Notary Public, Wayne County, Michigan.
My Commission Expires: 2-22-76.

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CERTIFICATE OF SERVICE

I hereby certify that copies of the attached "Response of Bechtel Power Corporation and Bechtel Associates Professional Corporation to Saginaw-Sierra's Motion for Extension of Time" dated October 10, 1974 in the above captioned matter have been served on the following in person or by deposit in the United States mail, first-class, or airmail, this 10th day of October, 1974.

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