

UNITED STATES OF AMERICA
ATOMIC ENERGY COMMISSION



REG. & UTIL. DIV. 50-329,330

In the Matter of

CONSUMERS POWER COMPANY

(Midland Plant, Units 1 and 2)

Docket No. 50-329
50-330

5-9-72

MEMORANDUM OF MAPLETON INTERVENORS IN
OPPOSITION TO APPLICANT'S MOTIONS WITH
RESPECT TO MAPLETON'S AREAS TO BE COVERED
IN THE MIDLAND HEARING

I.

Mapleton intends to cross-examine on the environmental impact of those aspects of the Midland project identified in the statement accompanying the letter of Mapleton's counsel dated May 1, 1972.

The areas identified are discussed in environmental submissions of applicant and Staff, and Mapleton has the right to cross-examine as to the applicant's and Staff's conclusions, supportive data and reasoning contained in such materials. The Board's prior rulings do not foreclose Mapleton from inquiring into applicant's and Staff's environmental conclusions and their substantiation.

Areas numbered 3, 4, 5, 9, 11, 18, 24 and 29 have not

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been ruled out of the proceeding insofar as Mapleton's right to inquire into their environmental consequences. Each of the plant's effluents - non-radioactive solid wastes (#3), sanitary wastes (#4), radioactivity (#5), (#29) causes an environmental effect.

The Staff has a duty to make an independent determination on the project's impact on water quality. Hence it is not concluded by the certification of the Michigan Water Resources Commission certification (#9).

It is self-evident that major floods (#11) and chemical explosions (#18) are environmentally significant events and a proper subject for interrogation.

The ability of applicant to predict the postoperative environmental impact of its radioactive, non-radioactive and thermal pollution (#24) depends on the scope and adequacy of its surveillance programs, an area properly open to Mapleton's inquiry.

II.

It is difficult to understand on what rational ground applicant seeks to preclude Mapleton from questioning into areas 12, 14, 15, 19, 20, 30 and 31.

Applicant's environmental materials deal with each of the areas and express the conclusion that no adverse en-

environmental consequences may be anticipated from any factors relevant to these areas.

Assuming, as applicant does, that these areas are unrelated to Mapleton's earlier contentions, Mapleton's right to cross-examine is not dependent on its earlier contentions. It derives from the fact that:

- 1 - applicant and Staff have the environmental burden of proof on which issue is joined, and Mapleton has the right to cross-examine into whether they can meet such burden of proof;
- 2 - Mapleton's environmental contentions, alone, and in combination with those filed by Saginaw intervenors and EDF, have framed the substantive questions involved in the listed areas.

III.

Mapleton does not interpret the Board's previous rulings as foreclosing further evidentiary hearings on areas 16, 17, 18, 21, 23, 25, 28, 29 and 2.

Although radiological, health, safety, and synergism matters may have been concluded as such issues per se, they have not been litigated in terms of their environmental impact and the cost-benefit analysis mandated by the National

Environmental Policy Act, Calvert Cliffs, and the AEC's implementing regulations.

Radiological health, safety, and synergistic questions must now be heard by the Board in their environmental context, and Mapleton is entitled to cross-examine into the cause-effect relation between these and environmental factors.

Finally, applicant's objection to area No. 7 is without merit. Inquiry into alternative methods of meeting Midland's alleged power needs is clearly permitted by NEPA, Calvert Cliffs, and is discussed at length in applicant's environmental submissions.

IV.

Applicant has failed to show surprise or prejudice entitling it to the draconian relief of virtually silencing all opportunity of Mapleton to exercise its due process right to cross-examine.

The listed areas sufficiently apprise the applicant of the areas it must prepare on and the witnesses it must present for cross-examination.

Applicant must be ready to defend its position on each subject discussed in its environmental reports.

It is not feasible to provide applicant with a mail order cross-examination in advance of the hearings. Applicant is in reality requesting written interrogatories, a procedure not required by the Board's order of March 27, 1972.

Mapleton's list of cross-examination areas have sufficiently identified the type of questions to be asked, and they are in a form capable of factual answer.

V.

Mapleton opposes the convening of a pre-hearing conference on May 13, 1972, as an unnecessary harassment and a waste of the time of the Board and the parties. The instant motion can be decided on the memoranda without need of oral argument. The Board may also issue an order prescribing the order of proofs at the environmental hearings. Mapleton requests the following as the logical sequence:

Applicant's direct case
 Cross-examination by Staff
 Cross-examination by Mapleton
 Applicant's redirect
 Recross, if necessary

Staff's direct case
 Cross-examination by Applicant
 Cross-examination by Mapleton
 Staff's redirect
 Recross, if necessary

Reasonable adjournment

Mapleton's environmental proofs

Cross-examination by applicant

Cross-examination by Staff

Mapleton's redirect

Recross, if necessary

The above sequence may of course be interrupted at any time by the Board's questions.

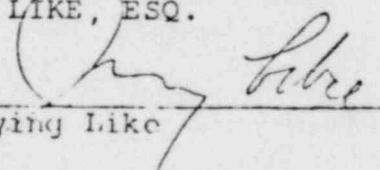
For the reasons stated, Mapleton requests that applicant's motion to preclude and for the convening of a further prehearing conference be denied.

Dated: May 9, 1972.

Respectfully submitted

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by:


Irving Like

Attorneys for Mapleton
Intervenors

CERTIFICATION

I certify that a copy of the foregoing document was mailed May 9, 1972, postage prepaid and properly addressed, to the members of the Atomic Safety and Licensing Board, the Secretary of the Commission, and all counsel of record.

Irving Like

Attorney for Mapleton Intervenors