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April 27, 1979

4/27/79

Michael C. Farrar, Esq.
Atomic Safety & Licensing
Appeal Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555



Re: Consumers Power Company
Midland Plant, Units 1 and 2
Dkt. Nos. 50-329, 50-330 (Remand Proceeding)

Dear Mr. Farrar:

I write to you because you are familiar with the circumstances surrounding the request of the Intervenors (other than Dow Chemical Company) in the above proceeding for a rescheduling of the prehearing conference set for May 1, 1979, and for certain other relief. I wish to place before you and the Appeal Board certain events which have occurred since the Board, this morning, ruled on Intervenors' Motion concerning the prehearing conference.

As Intervenors stated in their Motion papers before the Appeal Board, it was our understanding that the Licensing Board had originally declined to reschedule the prehearing conference on the sole ground that it was precluded from doing so by prior Orders of the Appeal Board. This morning the Appeal Board--in what we, at least, viewed as a suggestion to the Licensing Board to arrive at some equitable resolution of the problem--clearly advised the Licensing Board that it should consider the rescheduling request free from any perceived impediment arising from prior Appeal Board rulings. Less than a half hour after I learned by telephone of that Appeal Board ruling, and without any further communication with the Licensing Board from Intervenors (or, so far as I know, from anyone else), I was advised by telephone that the Licensing Board had again refused to reschedule the prehearing conference or grant any other relief. It hardly seems fair that the Licensing Board has, in effect, denied Intervenors' request before Intervenors even had an opportunity formally to present it following the Appeal Board ruling.

We have dispatched to the Licensing Board, and of course, other parties, a Motion formally requesting rescheduling. I enclose a copy of that Motion. We have also advised each member of the Licensing Board by telegram that the Motion would be delivered by Express Mail, as quickly as possible.

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The Motion was read, in its entirety, to both counsel for Consumers and counsel for the Commission Staff. As the Motion papers assert, neither Consumers nor the Staff opposes a rescheduling of the May 1 prehearing conference, though the parties are some two weeks apart in terms of agreeing on a rescheduled date. In light of this lack of objection, and in light of the fact that it is quite simply impossible for Intervenors' counsel to be present on May 1, I am at a loss to understanding why the Licensing Board has summarily refused rescheduling without even allowing Intervenors to state their position formally. The effect of refusing rescheduling is to insist on conducting a prehearing conference without the participation of the parties (and their counsel) who were instrumental in bringing to light the very conduct and issues presently before the Licensing Board. And the effect of rejecting (again, summarily and without allowing Intervenors formally to state their position) Intervenors' request that the prehearing conference and further proceedings be held in Chicago is to effectively condition Intervenors' further participation upon payment of a financial penalty, in the form of the not inconsiderable expense of travel to and from Washington by Intervenors' counsel. Under the circumstances, including Intervenors' extremely limited funds and the fact that the proceedings do not result from any alleged wrongdoing on the part of Intervenors, this appears remarkably unfair.

If the Licensing Board rejects Intervenors' Motion, of which a copy is enclosed, and which will be in the hands of the Board and the parties on Monday morning, we shall have no alternative but to seek emergency relief from the Appeal Board. In view of the fact that no one objects to a rescheduling, however, and in light of the inability of Intervenors' counsel to be present at a May 1 prehearing conference, we are both puzzled and disturbed by the Licensing Board's apparent unwillingness equitably to resolve the matter.

Respectfully,

Peter Flynn

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enclosures
cc: Service List