

DOCKET NUMBER
PROD. & UTIL. FAC. 50-329,330

UNITED STATES OF AMERICA
ATOMIC ENERGY COMMISSION

IN THE MATTER OF)
)
CONSUMERS POWER COMPANY) Docket Nos. 50-329
) 50-330
MIDLAND PLANT UNITS 1 AND 2)

RESPONSE OF SAGINAW, ET AL. INTERVENORS TO
MOTION OF DOW CHEMICAL COMPANY TO CONSOLIDATE

We have examined the "motion" filed by Dow Chemical. It states that it is made pursuant to Sections 2.713, 714, 718, 730, 752 and 756 of the Rules of Practice. Initially we note that Section 2.713 is inapplicable in that it does not deal with consolidation. It deals with the standard of conduct of attorneys, and we do not read Dow Chemical's motion as asserting that counsel for Saginaw (or any other attorney) should be disciplined pursuant to that rule. The reasons why counsel for the Saginaw, et al. Intervenor is not at the hearing are well known and have been set forth in an Affidavit filed earlier.

Section 2.714 deals with how a person intervenes. Saginaw and others intervened and we do not see how this Board can issue retroactive judgments with respect to a petition already approved for intervention.

Section 2.752 deals with prehearing conferences and 2.756 deals with informal procedures. We are not in a prehearing

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conference and we do not see how an effort by Dow to attempt to minimize the abuse of due process which has already taken place in scheduling the hearing so as to prevent the Saginaw, et al. Intervenors from participating can be characterized as an "informal procedure."

Rules 2.718 and 2.730 deal generally with the filing of motions. Although they do not deal specifically with the substance of the motion filed by Dow Chemical, presumably and in theory a motion can be filed pursuant to the broad provisions of those rules.

The motion and affidavit of Mr. Wessel make the following points:

1. That Mapleton and the Saginaw Intervenors and their respective counsel have talked to each other on one or more occasions (presumably so have all counsel--does that mean that all parties are merged into one?);
2. That a Mapleton representative was at one time a Saginaw consultant;
3. That said Mapleton representative sits next to the Mapleton attorney;
4. That Mr. Like made an argument dealing with the use of the Dow effluent releases and in such argument stated that Mr. Like and Mr. Cherry have had conversations and an exchange of information on such matter; and
5. That rules not yet adopted by the Commission (and query whether or not they could be adopted retroactively) provide

for consolidation under certain circumstances.*

There is nothing in the Dow motion to support the position it attempts to take.

The very simple fact is that the ASLB entered an order requiring that this hearing go forward when it knew full well that Saginaw Valley Intervenors' attorney (the lead group and lead attorney in these proceedings) was scheduled and engaged in another Commission matter. The validity of that decision will stand or fall on its own merits and not upon whether Dow Chemical attempts to formulate trumped-up charges with respect to the conduct of the hearing and the friendliness of Mr. Like and Mr. Cherry. Indeed, the newspaper article attached to Mr. Wessel's affidavit is further evidence of the attempt by Dow to try to "p / down" what we believe to have been a denial of due process. The newspaper article is not evidence and further does not accurately reflect Mrs. Sinclair's conversation with that newspaper reporter. If the Board grants an order consistent with Dow Chemical's motion, it will only further aggravate the situation already in existence. It cannot undo the wrong that has occurred without permitting Saginaw Valley Intervenors to participate in these hearings under realistic ground rules which permit them to be represented by their attorney who has spent almost two years in preparing their position.

Attached hereto is the Affidavit of Myron M. Cherry in

*The fact that the Commission is now proposing a rule dealing with consolidation would indicate at least prima facie that the rules do not presently permit such action.

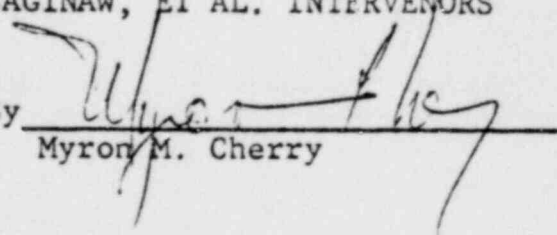
further opposition to the Dow Chemical motion.

WHEREFORE, we request that Dow's motion be denied.

DATED: May 24, 1972.

SAGINAW, ET AL. INTERVENORS

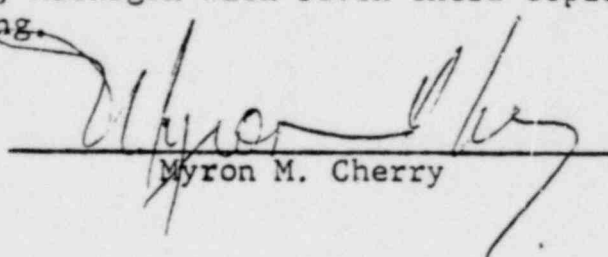
By



Myron M. Cherry

CERTIFICATION

I certify that copies of the foregoing document and the attached Affidavit of Myron M. Cherry were mailed to the Board members, the Secretary of the Commission and all counsel of record, postage prepaid, at their regular addresses, on May 24, 1972. In addition, the Chairman of the Board was served at the Holiday Inn in Midland, Michigan with seven extra copies for distribution at the hearing.



Myron M. Cherry