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November 18, 1971



Arthur W. Murphy, Esq., Chairman
Atomic Safety and Licensing Board
Columbia University School of Law
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In Matter of Consumers Power Company
Midland Plant, Units 1 and 2
Docket Nos. 50-329 and 50-330

Dear Chairman Murphy:

This is with reference to your letter to counsel of record dated November 4, 1971. In the letter you requested that your attention be called to any open matters not dealt with in the Draft Proposed Order which you transmitted. It appears to us that the following matters are not dealt with in the Order:

1. Applicant's Motion for Order Requiring Intervenors to State their Contentions, and the Bases Therefor, and for a Preclusion Order, dated October 23, 1971.
2. Applicant's Motion to Strike the Written Testimony of Dr. Charles W. Huver, dated November 2, 1971.
3. Applicant's Motion to Refer Questions to the Commission, dated November 5, 1971, and the supplement thereto dated November 9, 1971. Of course, these were filed after your letter of November 4, 1971. Nevertheless, it would appear to be appropriate to include them among the items to be discussed at the meeting of counsel.

Since your letter expresses an intention to "discuss all items at that meeting", it occurred to us that it might be useful to prepare an agenda for the meeting. We are

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hearing

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therefore transmitting herewith, and to all counsel of record by copy, a proposed agenda. In addition, it appears appropriate to comment on several matters related to the Draft Proposed Order.

First, the Draft Proposed Order, at pp. 2-3, denies the petition to intervene of the State of Kansas but grants Kansas permission to join in the interventions already pending, under specified conditions. On November 5th, a day after you mailed the Draft Order, Applicant served its Motion to Refer Questions to the Commission. One of the questions (number 4) includes the issue of the transportation and storage of high level radioactive waste under NEPA, which the Board, in the Proposed Order at p. 3, finds is the only issue raised in the Kansas petition which may possibly be appropriate for exploration in this proceeding. Accordingly, we suggest that the Board defer any action on the Kansas petition until it acts on our motion to refer. If question number 4 is referred to the Commission, action should be further deferred until such time as the Commission rules on the matter.

Second, on October 7, 1971, the Mapleton Intervenors moved for the production of all documents which will be relied on by the Staff in its reevaluation of the Midland ECCS and for "permission to visit the National Reactor Testing Station in Idaho to take the deposition of the personnel who conducted such tests and experiments [i.e., tests 845-850], and to examine and receive copies of the documents and data generated by such tests and experiments." The Board, in the Draft Order, grants the motion for production of documents. As for the request for depositions, the Draft Order states (at p. 11):

"The Board does not believe that any useful purpose would be served by taking formal depositions. However, the Board believes that the personnel of the National Reactor Testing Station should be made available for purposes of questioning by Mr. Webb. Obviously, however, such an inquiry should not be duplicated by other intervenors and, therefore, the proposed visit and inquiry by Mr. Webb is conditioned upon agreement among the opposing intervenors that the proposed visit will be in lieu of any similar requests on their behalf."

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We are somewhat puzzled by the foregoing language. To the extent that it suggests voluntary action on the part of the AEC Staff and the Intervenor the language seems to be unobjectionable. That is to say, we would have no basis for objecting if the AEC voluntarily made personnel of the National Reactor Testing Station available for questioning by Mr. Webb and if the Intervenor voluntarily agreed that this would be in lieu of similar proposed visits and questioning sessions by others. However, the quoted language gives us considerable difficulty to the extent that it appears to be an order to produce Staff for questioning by Mr. Webb in a context which does not constitute the taking of a deposition and lacks the procedural safeguards applicable to the taking of depositions. We know of no authority to order such a procedure.

Third, at the outset, the Draft Proposed Order notes that the AEC Staff response to the Applicant's filings with respect to the major outstanding issues -- emergency core cooling system and environmental matters -- "has not been received, and that no purpose would be served by a hearing prior to receipt of those responses." The draft goes on to note that this language is not meant to be a criticism of the Staff but merely a recognition that new regulations have burdened the Staff with new responsibilities which it will take time to meet. However, even if this should be so, it would be appropriate to set dates by which time the parties must satisfy their responsibilities.

For example, we see no impediment to the Board now setting an early date for Intervenor to file a statement specifying their contentions, and the basis for their contentions, as to ECCS adequacy. We suggest December 15.

Similarly, substantial steps could now be taken with respect to environmental matters. In that connection, the Draft Proposed Order provides for the postponement of all questions respecting environmental matters "until after the receipt of the Applicant's revised environmental statement." (p. 12) However, that statement was served on October 19, 1971. In addition, in a "Response of Environmental Defense Fund", etc., dated November 8, 1971, counsel for that Intervenor states that "[b]y the first week in December we

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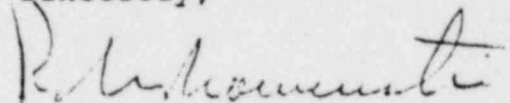
expect to have completed our review of this document..." and that it plans a "submission in December" identifying the inadequacies, if any, in the document and taking a position as to those issues "for which sufficient data is presented". EDF also states it intends to "follow a similar route with respect to the Draft Environmental Statement and the Final Detailed Environmental Statement."

Of course, we do not agree with all of the details of the timetable and procedure suggested by EDF and reserve our right to object or suggest alternatives at the appropriate time. Nevertheless we do believe that the EDF Response illustrates that completion of review of the document by the first week of December is feasible, and the Board should fix a date by which time all of the Intervenor will present their positions on the environmental issues. We suggest that December 15 would also be an appropriate date for this purpose.

We believe the foregoing considerations to be relevant to the disposition of Applicant's motion of October 23, 1971 - Item No. 1, above. Moreover, grant of that motion would be consistent with orders recently issued by ASLBs in similar proceedings. See, for example, the order dated November 10, 1971 (Point Beach 2, Docket No. 50-301), requiring Intervenor to specify their environmental contentions based upon information now available. The order does not preclude the Intervenor from raising further contentions when additional documents become available, "but only to the extent that these documents discuss matters, information, or data that were not described previously..." in earlier submissions. As the Board pointed out in Point Beach, "early particularization will...expedite the proceeding." We submit that the same consideration governs the instant proceeding.

Copies of this letter and the attachment have been sent to all of the individuals whose names appear on the attached list.

Sincerely,


Robert Lowenstein

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Attachments



Applicant's Proposed Agenda for
the Conference of November 23, 1971

1. ECCS
 - a. Mapleton Intervenor's motion for discovery dated October 6, 1971.
 - b. The setting of a date for the submission of the Staff's reevaluation of the ECCS.
 - c. The setting of dates for the submission of written evidence on ECCS by the Mapleton and Saginaw intervenors, for the submission of evidence in reply by parties supporting the application and for a decision by the Board as to whether an oral hearing will be necessary.
 - d. Statements of opposition intervenors contentions.
2. NEPA issues
 - a. Applicant's Motion for Order Requiring Intervenor's to State Their Contentions, and the Bases Therefor, and for a Preclusion Order, dated October 23, 1971.
 - b. Setting a timetable for submission of the Staff's detailed environmental statement, conclusion of NEPA discovery, submission of contentions and written evidence in advance of the hearing and the hearing itself.
 - c. Saginaw Intervenor's pending motion of September 30, 1971 for production of documents.
 - d. Saginaw Intervenor's pending motions of September 30, 1971 for requiring answers to interrogatories and the objections filed to those interrogatories.
3. Applicant's Motion to Refer Questions to the Commission, dated November 5, 1971, and its Supplement thereto dated November 9, 1971.
4. The State of Kansas' petition to intervene.
5. Discussion of basic legal questions regarding environmental matters, including the relationship of radiological questions and environmental questions.
6. Issues other than ECCS and Environmental Issues.
 - a. Whether or not the deadlines set in the August 26, 1971 Order for the filing of written evidence on such issues should be extended.

- b. Applicant's Motion to Strike the Written Testimony of Dr. Charles W. Huver, dated November 2, 1971.
 - c. The Westinghouse documents.
 - d. Setting a schedule for a hearing on the iodine removal spray system.
- 7. Mapleton Intervenors' request for a referral under §2.730(f) of the denial of their motion to dismiss the application.
 - 8. Issuance of supplemental notice of hearing re environmental matters.
 - 9. Other matters.

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