

UNITED STATES OF AMERICA
ATOMIC ENERGY COMMISSION

In the Matter of)
) Docket Nos. 50-329A
Consumers Power Company) and 50-330A
(Midland Plant, Units 1 and 2))

To the Atomic Safety and Licensing Board:

MOTION FOR LEAVE TO FILE
APPLICANT'S RESPONSE TO
STATEMENT OF PETITIONERS
AND REPLY OF JUSTICE DEPARTMENT

On June 9, 1972, the Petitioners for leave to intervene in this proceeding filed a Statement in Reply to Applicant's Answer to Notice of Hearing (hereinafter "Petitioners reply"); on the same date the Department of Justice filed a Reply on Issues other than Disqualification Raised by Applicant's Answer of May 9, 1972 (hereinafter "Justice reply"). Consumers Power Company (hereinafter "Applicant") hereby moves for leave to file a response to these replies of Petitioners and the Department of Justice within ten days following the grant of this motion.

The Commission's Rules of Practice are silent concerning the filing of responses to replies to Answers. However, the situation here is analogous to responses to an opposing party's answer to a motion which may be "permitted by the presiding officer or the Commission", pursuant to Section 2.730(c) of the Commission's Rules of Practice.

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Such permission would be in the public interest under the circumstances present here. Applicant's Answer set forth Applicant's positions in this proceeding, pursuant to Section 2.705 of the Commission's Rules, for the purpose of putting other parties to the proceeding on notice as to its positions. Applicant's Answer did not seek to rehearse exhaustively the factual and legal bases for its position statement.

The replies of the Petitioners and the Department of Justice deal in great detail with the issue of the scope and nature of the instant proceeding, and include a particularly extensive review of the legislative history of those sections of the Atomic Energy Act under which this proceeding has arisen. By contrast, the Reply of the AEC Regulatory Staff to Applicant's Answer to Notice of Hearing, filed May 24, 1972, merely expressed disagreement with Applicant's position in this regard and observed that it would be "addressed and resolved at forthcoming hearings." (p.2).

In view of the effort of the Petitioners and the Justice Department to establish, at this early stage of the proceeding, a complete record concerning the issue of the nature and scope of this proceeding, Applicant should be afforded the opportunity to set forth the precedential material and reasoning supporting its position on this issue. Applicant submits that absent this opportunity, the Commission will not be fully advised of all the circumstances bearing on a proper resolution of the important question here involved.

Applicant has been authorized to state that counsel for the Petitioners and the Commission antitrust staff do not object to the grant of the instant Motion.

Wherefore, Applicant moves for leave to file a response to the aforementioned replies of the Petitioners and the Justice Department within ten days following the grant of this Motion.

Respectfully submitted,

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June 13, 1972

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Motion for leave has been served on the following deposit in the United States mail this 13th day of June, 1972:

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