

September 29, 1977

RELATED CORRESPONDENCE

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board



In the Matter of  
CONSUMERS POWER COMPANY  
(Midland Plant, Units 1 and 2)

Nos. 50-329  
50-330

CONSUMERS POWER COMPANY'S RESPONSE TO BOARD'S REQUEST  
REGARDING DISCOVERY RULINGS AND REMAND HEARING SCHEDULES

In accordance with this Board's September 12, 1977 order, Consumers Power Company (Licensee) advises the Board regarding discovery requests presently awaiting a ruling and submits a proposed schedule for the "remanded proceedings" to be conducted pursuant to the decision of the Court of Appeals in Aeschliman v. NRC, 547 F.2d 622 (D.C. Cir. 1976).

I. DISCOVERY REQUESTS AWAITING A RULING

Licensee, by letter of its in-house counsel, submitted a discovery request to The Dow Chemical Company (Dow) on January 18, 1977, pertaining to documents indicated to be available by Dow's December 17, 1976 communication to the parties regarding "Priority 5 Documents". Copies of the request were previously sent to the Board and the parties; the request is also attached to this filing as Exhibit A. Dow, by L. F. Nute's January 25, 1977 letter to David J.

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Rosso, objected to the request as burdensome and oppressive and as requesting documents irrelevant to the subject matter of the proceeding, referencing the reasons set forth at Tr. 238-240, 718-719 which include Dow's desire to receive only specific document requests. Licensee was unable to make more specific requests based on the general nature of Dow's "Priority 5 Documents" listing. Licensee has requested documents which it considered relevant to the matters of costs of and schedule for Dow's alternatives to the supply of steam and electricity by the Midland plant, including auxiliary or back-up systems. Specifically, Licensee would require those documents pertaining to the alternatives indicated in the document marked (and admitted into evidence) as Midland Intervenors Exhibit 26 and to any alternatives being considered at the present time. This information is clearly relevant to Licensee's cost-benefit analysis of the Midland project.

Licensee also recognizes that this Board has not yet ruled regarding certain documents which Licensee has claimed to be proprietary. The documents were transmitted to the Board by letter of February 22, 1977, accompanied by a Charles E. Bayless supporting affidavit of February 18, 1977. The bases for the claims were asserted at the hearing on February 18, 1977 (e.g., Tr. 4333-39). In addition, there has been no ruling with regard to several documents also claimed to be proprietary which Licensee transmitted to

the Board by letter of March 14, 1977; the transmittal referenced the aforementioned Bayless affidavit and counsel's argument.

## II. PROPOSED SCHEDULE FOR THE REMANDED PROCEEDINGS

October 14, 1977

Prehearing Conference, Agenda to include:

- (a) final determination\* of schedule for the remanded proceedings
- (b) ruling\* on all pending discovery matters
- (c) resolution\* of Board's concern regarding Advisory Committee on Reactor Safeguards (ACRS) question\*\*
- (d) issue clarification\* regarding ACRS question\*\*\*

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\* Rulings by the Board to be preceded by oral argument, if permitted.

\*\* This Board has questioned the adequacy of the response of the ACRS to the Board's October 14, 1976 request for clarification of the original Midland ACRS report in connection with the court's decision in Aeschliman, supra. (Tr. 1434-38). By letter of January 28, 1977, the Board requested additional clarification of the ACRS. The adequacy of the ACRS' March 16, 1977 response has not yet been determined. (See also, Consumers Power Company's letter to Board of April 20, 1977; NRC Staff's letter to Board of April 8, 1977; Intervenors' letter to Board of March 29, 1977.) Licensee believes it is necessary for this Board to resolve the question of the report's adequacy and determine any measures necessary to remedy an inadequacy (including providing for argument on the subject) well in advance of the submission of testimony in the remanded proceeding.

\*\*\* There has been disagreement between the parties regarding the scope of the ACRS issue, which Licensee considers unresolved by the Board's September 23, 1977 Order. Specifically, there remain the questions of whether the parties must make evidentiary presentations regarding the eleven ACRS items set forth in the clarification letters and whether evidence must be presented regarding ACRS topics not raised by those letters.

November 1, 1977	Amendment No. 4 to Licensee's Environmental Report Supplement filed
November 15, 1977	Motions for Summary Disposition filed
November 28, 1977	Responses to Motions for Summary Disposition filed
"R"* (December 7, 1977)	Board's ruling on Motions for Summary Disposition
"R" plus 1 week (December 14, 1977)	Additional prehearing conference, if necessary
"R" plus 2 weeks (December 21, 1977)	Filing of prepared testimony by all parties
"R" plus 4 weeks (January 4, 1978)	Hearing commences to run continuously, except for Saturdays, Sundays and holidays, until completed

Licensee hereby requests the Board to consider the above discovery matters awaiting ruling, and to adopt its proposed schedule, including the requested agenda for the pre-hearing conference.

Respectfully Submitted,

*Michael I. Miller*  
 Michael I. Miller

*Caryl A. Bartelman*  
 Caryl A. Bartelman

Counsel for Consumers Power Company

September 29, 1977  
 Isham, Lincoln & Beale  
 One First National Plaza  
 Chicago, Illinois 60603

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\* Because it is impossible to schedule a ruling on the Motions for Summary Disposition and because Licensee believes that the subsequent scheduled items should be keyed to that ruling, Licensee proposes indefinite dates for the remainder of the schedule. However, Licensee shows possible dates in parentheses in order to provide a framework for decisionmaking.

January 18, 1977



Mr. Lee Nute  
Dow Chemical Company  
Legal Department  
Building No. 47  
Midland Division  
Midland, Michigan 48640

Dear Lee:

At today's session of the Midland suspension hearing, I advised you that I would like to have someone from our office look at Dow's "Priority 5 Documents". These are documents indexed in your December 17, 1976 communication to the parties under the headings "Listing of Documents in Vault" and "Nuclear Project Files". You stated that, after I have identified the documents desired, you will have someone review them for claims of privilege and then make the rest available for inspection at Midland. That arrangement is suitable, and I trust you will make your review for privilege promptly.

Without waiving any right to later request the review of the remainder, or any other documents, I hereby request the opportunity to review the following files, referenced in accordance with the drawer and item numbers listed in your December 17 index:

I. Documents in Vault

A. Drawer No. 1

1. List of Files (no dividers): Items 32, 35, 37 through 41.
2. Divider: "Reserved Steam Demands": Items 1 and 3

B. Drawer No. 2

1. Divider: "1974 Nuclear Project Evaluation": binder file and Item No. 2
2. Divider: "1975 Cost Data and Studies: all 14 items
3. Divider: "1975 Steam Power Costs Demand": all 24 items

C. Drawer No. 3: all items

D. Drawer No. 4:

1. Divider: Miscellaneous Information
2. Divider: Miscellaneous Information On Consumers Power Company
3. Divider: Miscellaneous Studies

E. Drawer No. 5:

1. Items 3 and 4
2. Divider: "Nuclear Authorization, Fall 1974"

F. Drawer No. 11: all items

G. Drawer No. 12: all items

H. Boxes: Item No. 4

I. Notebooks:

1. Notebook 12-1: all
2. Notebook 12-2: all
3. Notebook 12-3: all
4. Notebook 12-4: all
5. Notebook 12-5: all
6. Notebook 2: all
7. Notebook 6: all
8. Notebook 7: all
9. Notebook 10: all
10. Notebook 13: Item 16
11. Notebook 16: Item 7: "Internal Dow Correspondence",  
Item 9: "Internal Dow Meetings",  
Item 11: "Consumers-Dow Meetings",  
Item 28: "Miscl. Meetings-Others",  
Item 30: "Miscl. Correspondence-Others".
12. Notebook 17: Item 7: "Internal Dow Meetings",  
Item 9: "Consumers-Dow Meetings",  
Item 28: "Miscl. Meetings-Others",  
Item 30: "Miscl. Correspondence-Others".
13. Notebook 35: Item 26: "June 12, 1974 Dow-CPCo Meeting"
14. Notebook 36: all
15. Notebook 37: all
16. Notebook 38: all
17. Notebook 39: all

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18. Notebook 40: all

II. Nuclear Project Files

A. Dow Corporate Headquarters: Items 3 and 4

Your prompt attention to this matter will be appreciated.

Yours very truly,

Judd L. Bacon

JLB:mkc

cc: F. J. Coufal, Esq.  
E. A. Luebke, Esq.  
J. V. Leeds, Esq.  
Atomic Safety & Licensing  
Board Panel  
Atomic Safety & Licensing  
Appeal Board  
C. R. Stephens  
Lawrence Brenner, Esq.  
D. J. Rosso, Esq.  
M. M. Cherry, Esq.