



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

UNITED STATES OF AMERICA  
ATOMIC ENERGY COMMISSION

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

*2-11-72*  
Docket Nos. 50-329-  
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50-330

DOW RESPONSE TO SAGINAW ENVIRON-  
MENTAL CONTENTIONS

This memorandum is submitted pursuant to Section 4B(3) of the Hearing Board's December 22, 1971 Order, in response to the Saginaw Statement of Environmental Contentions.

The fact that the Statement does not pinpoint and define the matters to be litigated in traditional fashion does not reduce its value. Despite its lateness, the Saginaw Statement is clearly the result of hard work and attention to the Board's mandate. It should be received.

We differ vigorously and fundamentally on almost every issue, yet it would be a mistake to treat the Statement as frivolous, for it helps to chart a future litigation course, by highlighting even further a number of important points.

First, the gulf between the parties is enormous. It is measured in light years and millenia. Viewed

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realistically, the parties are talking about different ways of life--different approaches to existence on this planet.

Examples of Saginaw statements in this regard (selected to point up the differences and not by way of reductio ad absurdum), are:

(a) Decreasing electrical demand

"...the possibility of changing the present social stimuli to society which could result in decreased demand for electricity, thereby not requiring the production of electricity from the proposed Plant." (p.23)

"From a long range environmental standpoint, the social and scientific stimuli currently being injected into our economy encouraging peak uses of electricity must be eliminated." (pp.48-9)

"Social and philosophical effects of the displacement of people as a result of the construction and operation of the proposed Plant;" (p.68)

(b) Future of Midland

"There is no discussion, however, as to whether the Midland Community should encourage expanding industry or whether other uses should be found for the land and resources which will be required in such expansion." (p.24)

(c) Desirability of Dow Products

"...if it is determined that the character and type of the Dow Chemical expansion will result in undesirable products, such as, for example, the creation of chlorinated hydrocarbons or 2-4-5-T, then the subsidization of Dow Chemical by virtue of

the construction and operation of the proposed Plant results in additional costs to the environment without any concurrent benefits." (p.25)

(d) Nuclear Power Alternatives

"Proliferation of nuclear power plants and the building of the proposed Plant deter persons, firms, corporations, and government from research and development into alternatives to nuclear power." (p.38)

(e) Results of Environmental Movement

"Applicant has not adequately assessed the fact that there is a national and state-wide conservation movement which may severely inhibit increases in industry." (p.52)

Second, a corollary to the foregoing is that the issues which Saginaw considers relevant to the controversy are for practical purposes without limit. They concern everything involved in every pending AEC litigation and every other attack on government environmental action, from the FCCF controversy to the dispute regarding whether the AEC may constitutionally engage in multiple governmental activities. Examples (similarly selected) are:

(a) Entire Uranium Fuel Cycle

"Environmental submissions by Applicant and Regulatory Staff have failed completely to discuss or analyze the absolute and incremental effects upon the environment (including cost-benefit and risk-benefit considerations) of the entire uranium fuel cycle, including the production of uranium by means and methods not presently developed, such as, for



example, the Liquid Fast Metal Breeder Reactor ('Breeder')." (p.11)

"Since the proposed Plant may rely upon nuclear fuel created by a Breeder, the risks and costs of the development and operation of Breeders must be analyzed against any alleged or asserted benefits, if any, that may be gained by construction and operation of the proposed Plant." (p.17)

(b) Every U.S. and Canadian Power Source

"...one must analyze and consider the short and long-term construction program of every available source of power in the United States and Canada." (p.32)

(c) Fuel Resources

"...not only are there sufficient supplies of coal, oil, and gas (and insufficient supplies of uranium), but also that supplies of coal, oil, and gas, are or would be at the time of completion of construction of a fossil fired plant, readily available to Applicant." (p.36)

(d) Staff/Argonne Relationship

"...whether Argonne was requested to do independent analysis or whether, as appears from the Draft Statement, Argonne and the Regulatory Staff have only accepted, uncritically, submissions by the Applicant." (p.45)

(e) Future of Mass Transit

"...many metropolitan areas, including those in the State of Michigan, are encouraging the development of mass transit which would result in a relative decrease in the production of automobiles." (p.55)

Third and finally, in large measure much if not most of the arguments and evidence in support of the Saginaw contentions are known to them. They are ready for trial.

Examples of allegations which show a detailed and specific knowledge of the facts and arguments Saginaw intends to adduce are:

(a) Required Size of Cooling Pond

"Based upon objective engineering data, the cooling pond is of a size insufficient adequately to cool the water dissipated from the Plant during normal operations..." (p.3)

(b) Midland Meteorology

"Because of the meteorological conditions occurring at various times of the year in the geographical vicinity of the Plant, it is improbable, and, therefore, there exists no reasonable assurance, that sufficient make-up water for the cooling pond will be available. These meteorological conditions include inadequate rainfall, insufficient ground water, low relative humidity, sustained, high wind velocities, and sustained lack of cloud cover leading to increased solar input." (p.4)

(c) Cooling Towers

"...dry cooling towers, represent a better alternative than does the inadequate cooling facilities presently planned by Applicant." (p.39)

(d) Applicant's Projected Electrical Demand

"...demand figures, which Applicant has admitted are no longer up to date, are being used to support the claim for demand for electricity from the proposed Plant." (p.51)

"Applicant has misanalyzed the projected growth of its major users of electricity such as General Motors and Dow Chemical." (p.55)

"Applicant has incorrectly stated the current demand for electricity in light of reports by the Edison Electric Institute and the Association of Electrical Illuminating Companies." (p.56)

(c) Electrical Demand Generally

"...demand for electricity will decrease on an absolute and percentage basis." (p.51)

The discovery procedures employed beginning December 1, 1970, were inadequate to deal with the comparatively well-defined radiological issues tried during the Spring and Summer of 1971. It is accordingly even less likely that pre-hearing efforts along similar traditional lines will be useful with respect to the far more difficult environmental issues.

Despite superhuman efforts by the Commission and perhaps the courts, the conceptual problems posed by NEPA and Calvert Cliffs are so staggering that final satisfactory guidelines may not be available for a long time. Accordingly, we hope that the Board will approach its herculean task from the procedural rather than the conceptual point of view.

The Board still has general control over procedural matters, including the order of proof. It also continues vested with a large measure of discretion as to what is remote or material, and the weight to be given to the evidence. We believe that instead of trying to resolve conceptual problems, the Board should approach the issues on a step-by-step basis, breaking each part of the litigation down into its most intimate



components, and thereafter dealing with the specifics of each problem on a case-by-case basis.

For example, although conceptually noise pollution might be an issue under some circumstances (e.g., an unusual plant with a special high frequency squeal, located next to a hospital for ear diseases or a training school for dogs), in the Midland case noise pollution appears to be de minimis. Similarly, if the Dow Chemical Company's world renowned waste disposal system properly becomes an issue, it can and will be dealt with quickly and easily in terms of the real world.

The Board's December 22, 1971 Order fixes March 15, 1972, as the last date for service of the final detailed statement of environmental considerations. We believe the hearing should proceed promptly thereafter on a day-to-day basis, until concluded. In the interim the Board should consider requests for interim relief (such as applications with respect to the invalidity of the draft environmental statement) and hear whatever issues are ready for trial.

## CONCLUSION

Our objective is to prevent Midland from becoming the environmental Dreyfus case.

We are reminded of the prisoner in the old Smith & Dale story, on his way to the electric chair, telling the guard of his lawyer's advice, "Don't pay the \$2."

We would far prefer to pay the \$2 and try issues which are not issues, than engage in interminable debate preparatory to producing a test case for the United States Supreme Court.

We want to try this case in the context of the special Midland facts -- none other.

It may well turn out incidentally, in stare decisis fashion, that a trial of Midland in such a fashion will for the first time produce answers to the difficult conceptual problems being faced by all parties in nuclear power and other environmental proceedings.

But whatever the incidental consequences, we urge the Hearing Board to begin its Hearing and continue on until it has satisfied itself on the merits and the



parties have completed their presentations.

Dated: New York, New York  
February 11, 1972.

Respectfully submitted,

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