

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))

10/23/77

Docket Nos. 50-329
50-330

MOTION FOR FILING INSTANTER
A REPLY TO STAFF'S ANSWER
TO PETITION FOR RECONSIDERATION

Intervenors other than Dow Chemical Company move the Board for permission to file this document instanter. This reply is necessary because of inexcusable and improper statements made in the Staff's Answer to Petition for Reconsideration filed under date of October 18, 1977.

Reply

1. The Regulatory Staff raises the question that the Petition for Reconsideration will not prejudice us. This is flatly wrong because we have relied upon paragraphs 9, 10, and 11 of the initial decision on suspension both before the Appeal Board and the Commission regarding internal appeals as well as before the Court of Appeals in the District of Columbia in our Motion to Enforce Mandate;

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2. We see no reason for reconsidering those portions of the decision dealing with the "ploys" and "stratagems" of Consumers and its attorneys. The Board made the finding based upon exhibits (which even the Regulatory Staff believes are important, Staff Answer at p. 5-6) and the Board's overall view of the hearing and evidence. There is no warrant for changing the Board's findings and we view the Staff's answer as another cog in its overall plan to assist Consumers any way it can;

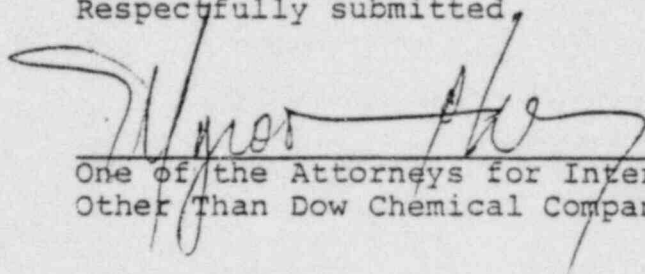
3. At page 3, footnote 1 of the Staff's response, the Staff states that the Commission's Office of Inspector and Auditor has given Consumers a clean bill of health on the Temple Testimony, but more is involved in the Board's Findings than merely the Temple Testimony. Further, we were not privy to the review of the OIA and we have no confidence in that review. We are all privy to the ploys and stratagems which took place at the Hearing Board and Consumers had every opportunity to call witnesses who attended the meeting which was the subject of the Nute notes and it refused to do so; and

4. While perhaps the Board may have to give Consumers' attorneys a hearing before it issues sanctions against the attorneys, the Board need not vacate its findings and we urge the Board not to do so. The fact of the matter is that Consumers has exhibited itself in these hearings in a quite shabby manner and nonetheless has

secured the continuation of construction (although we believe improperly so). For the Board to vacate its important findings in paragraphs 9, 10, and 11 would truly be the addition of insult to injury and the ultimate reward for dishonesty.

WHEREFORE, we request the Board deny Consumers' Petition for Reconsideration.

Respectfully submitted,

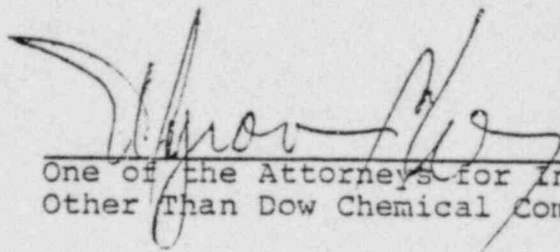


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PROOF OF SERVICE

I certify that copies of the foregoing document were mailed, postage prepaid and properly addressed, to the Secretary of the Nuclear Regulatory Commission, the Atomic Safety and Licensing Board, and counsel for Consumers Power Company, the Nuclear Regulatory Staff and Dow Chemical Company on October 23, 1977.



One of the Attorneys for Intervenors
Other Than Dow Chemical Company

