



UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

7/8/77

In the Matter of )

CONSUMERS POWER COMPANY )

Midland Plant Units 1 and 2 )

Docket Nos. 50-329  
50-330

MOTION FOR LEAVE TO FILE THE RESPONSE OF  
CONSUMERS POWER COMPANY TO FILINGS OF  
INTERVENORS DATED JUNE 27, 1977

1. By letter dated June 27, 1977, the Intervenor  
in this proceeding filed:

(1) An Answer to Motions of Consumers  
Power Company (Licensee) Objecting to the  
Introduction of Intervenor's Exhibits (dated  
June 8, 1977);

(2) An Answer to Licensee's Request  
to Admit Interrogatory Answers (dated June 1,  
1977);

(3) An Answer to Licensee's Motion  
Requesting Admission of Certain Exhibits  
Previously Identified in the Record (dated  
June 7, 1977);

(4) A Motion to Admit Board Exhibits  
1 and 2; and

(5) An Answer to Licensee's Motion to  
Strike the Testimony of Richard J. Timm (dated  
June 13, 1977) and Motion to Strike the Rebuttal  
Affidavit of Richard J. Timm (dated June 21,  
1977).

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2. With regard to all of these filings except for the Motion to Introduce Board Exhibits 1 and 2, 10 CFR 2.730(c) does not provide Licensee a right to reply except as permitted by a presiding officer. Licensee respectfully requests that this Board grant Licensee the right to respond to Intervenor's filings instanter.

3. The basis for this request is that Intervenor's filings contain numerous mischaracterizations of facts and law. These mischaracterizations, coupled with the Atomic Safety and Licensing Appeal Board's recent decision regarding an attorney's responsibility to correctly cite documents and law [Tennessee Valley Authority (Hartsville Nuclear Plant, Units 1A, 2A, 1B and 2B), ALAB-409, NRCI 77/7 (March 31, 1977)] call for a response from Licensee.

4. One example of the mischaracterizations which appear in Intervenor's filings can be found in their Answer to Licensee's Objection to Exhibits 67 and 68. Intervenor's cite, as an example of Licensee's legal arguments to the Board being "disengenuous" the following portion of a sentence:

. . . that conditions and needs are different today and all issues have to be re-resolved in that light.

Intervenors' counsel then states that this "admission by Consumers . . . totally undercuts the statements by Consumers' lawyers made to the Board time and time again." Indeed, the full paragraph of the document from which that portion of a sentence is taken reads as follows:

Consumers replied that Cherry will ask the question -- are conditions between Dow and Consumers different now? If so, these conditions need to be made public and examined by the Hearing Board. He will also point out that the contract arrangements are different. Cherry will also ask questions such as -- does Dow want to have all its eggs in one basket? Is Dow still behind the project? Does Dow still want to deal with an "incompetent utility"? Cherry can go into questioning in great detail and it could last for weeks. He will say that conditions and needs are different today and all issues have to be re-resolved in that light.

Thus, it could not be clearer that the statement which Intervenors quote as an admission of Licensee in reality refers to the bogus arguments made by counsel for Intervenors in this proceeding. This type of advocacy cannot be allowed to go unchallenged.

Based on the above, Licensee respectfully requests that this Board accept Licensee's included response instanter.

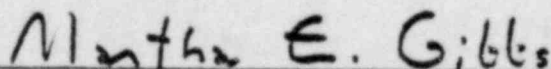
Respectfully submitted,

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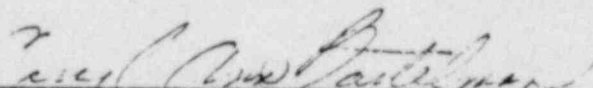
David J. Rosso



R. Rex Renfrow III



Martha E. Gibbs



Caryl Ann Bartelman