

ISHAM, LINCOLN & BEALE
COUNSELORS AT LAW

1120 CONNECTICUT AVENUE, N. W.
SUITE 325
WASHINGTON, D. C. 20036
TELEPHONE 202-833-9730

CHICAGO OFFICE
ONE FIRST NATIONAL PLAZA
FORTY-SECOND FLOOR
CHICAGO, ILLINOIS 60603
TELEPHONE 312-558-7500
TELEX: 2-5288



January 27, 1981

Herbert Grossman, Esquire
Atomic Safety and Licensing
Board Panel
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

Dr. Oscar H. Paris
Atomic Safety and Licensing
Board Panel
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

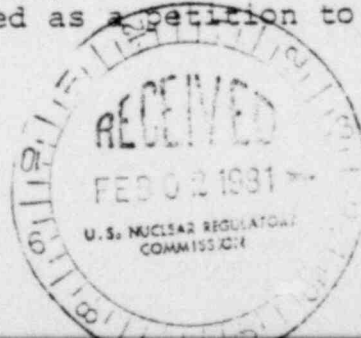
Mr. Frederick J. Shon
Atomic Safety and Licensing
Board Panel
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

Re: Consumers Power Company (Big Rock
Point Nuclear Power Plant), Docket
No. 50-155-OLA (Spent Fuel Pool
Expansion)

Gentlemen:

The Atomic Safety & Licensing Board ("Licensing Board") in this processing issued a Memorandum and Order on January 16, 1981 concerning a "Petition to Intervene" (hereinafter called "Petition") mailed to the Nuclear Regulatory Commission and others including the undersigned on or about November 13, 1980. The Petition was signed by Joanne Bier, Patrick Barnett and Shirley Johns. In its Memorandum and Order, the Licensing Board provided that responses could be filed within 15 days by any party or petitioner "who disagree with the Board's understanding [of the situation] and contend that the November 1980 petition was intended as a petition to intervene in this proceeding."

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Consumers Power Company ("Licensee") does not consider the Petition to be a filing on this docket, and therefore Licensee agrees with the Licensing Board's conclusion that no action need to be taken with respect to the Petition. However, Licensee does disagree with the Licensing Board's understanding of the situation as stated in its January 16 Order. Contrary to the reason set forth in the Order, Licensee refrained from submitting a reply to the Petition because the document (i) failed to disclose any connection with the Notice of Hearing or any other notice or order issued by the NRC in this proceeding, and (ii) objected to the continued operation of the Big Rock Point and demanded shutdown of the plant rather than opposing the expansion of the spent fuel pool capacity.^{1/} Furthermore, since Ms. Bier is already a joint party to this proceeding, it seemed reasonable to conclude that she was attempting to initiate some further action beyond this case rather than attempting to duplicate her party status in this proceeding. In any event, Licensee considered the Petition to be nothing more than another in the series of aimless mailings received on this docket concerning the operation of the Big Rock facility.^{2/}

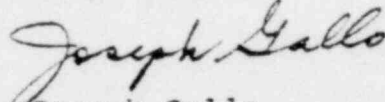
Licensee's position concerning the Petition was formulated in November of 1980, and the subsequent advice from Ms. Moore that petitioners did not intend to intervene in this proceeding was and still is irrelevant to that position. Ms. Moore was so advised during my conversation with her in mid-January 1981.

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- 1/ Contention 1. of the Petition concerns the spent fuel pool at Big Rock Point. However the contention does not focus on the issue of expansion of the pool. Instead it challenges the operating capability of the pool. The remaining contentions, and indeed the entire thrust of the Petition is directed at challenging the operation of the Big Rock facility.
- 2/ See, e.g., mailgram from Ms. Christa-Maria to Chairman Ahearne, dated April 1, 1980 and served on this docket on April 21, 1980; letter to Chairman Grossman from Mr. Donald Jadwin, dated May 9, 1980; letter to Chairman Grossman from Ms. Tracy Wallach dated May 23, 1980; letter to Chairman Grossman from Ms. Katherine Lampson, et al. received on this docket about August 11, 1980; and mailgram dated January 2, 1981 from Ms. Christa-Maria to the Big Rock Service List and others. See also letters of November 4, 1979 and January 6, 1980 from Ms. Bier and Ms. Johns which are being considered by the NRC as petitions under 10 C.F.R. § 2.206.

Licensee fully expected that the Licensing Board would likewise consider the Petition irrelevant to this docket; but that if it thought otherwise, it would, because of the obvious shortcomings of the document, either convene a conference call among the parties or issue an appropriate order inquiring into its status. Instead, the Licensing Board chose to obtain information from counsel for the NRC Staff. The NRC Staff enjoys no special position of neutrality on such matters, and appropriately, the views of the parties should have been determined by direct inquiry.

We assume that Licensee will have a further opportunity to reply should petitioners advise in response to the Licensing Board's Memorandum and Order that they wish to have their Petition considered in this proceeding.

Respectfully,


Joseph Gallo

One of the Attorneys for
Consumers Power Company

cc: Big Rock Point Service List