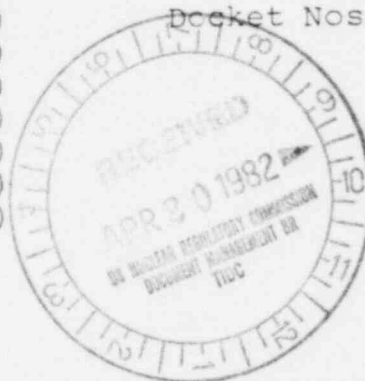


UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING APPEAL BOARD

IN THE MATTER OF  
CONSUMERS POWER COMPANY  
(Midland Plant,  
Units 1 & 2)

Docket Nos. 50-329 CP  
50-330 CP



MOTION OF THE DOW CHEMICAL COMPANY  
FOR RECONSIDERATION OF APPEAL BOARD  
ORDER DATED APRIL 13, 1982 DENYING  
LEAVE TO FILE REPLY BRIEF

THE DOW CHEMICAL COMPANY moves this Appeal Board for re-consideration of its Order dated April 13, 1982 in which the Board denied Dow leave to file a brief in reply to a Brief filed herein by Consumers Power Company. In support of said Motion, Dow says:

1. This is an appeal by Intervenor Saginaw Valley Nuclear Study Group from a decision of an Atomic Safety and Licensing Board dated December 22, 1981. Intervenor Saginaw Valley Nuclear Study Group filed its "Brief In Support Of Exceptions To Partial

Initial Decision Dated December 22, 1981" with this Board on February 22, 1982.

2. On or about March 22, 1982, Dow filed its Brief in reply to the Brief of Intervenor Saginaw Valley Nuclear Study Group.

3. On or about April 5, 1982, Consumers Power Company filed its Brief in reply to the Brief of Intervenor Saginaw Valley Nuclear Study Group. In that Brief, Consumers took exception to certain findings of fact made by the Licensing Board and continued a line of argument first raised before the Licensing Board: that any problems which surfaced during the 1976 hearings were caused by conduct of The Dow Chemical Company and its counsel and not by any conduct of Consumers Power Company and its counsel.

4. On April 9, 1982, Dow filed a Motion with this Board for an extension of time within which to file a brief in reply to the Consumers Power Company Brief.

5. On April 13, 1982, this Board entered an Order in which it treated Dow's Motion for extension of time as a

motion for leave to file a reply brief to the Consumers' Brief. This Board went on to deny Dow's Motion on the ground that Dow was aligned on the same side of the case as Consumers and therefore could not reply to arguments contained in Consumers' Brief.

6. Dow acknowledges that in the usual case before this Board, parties on the same side should not be permitted to argue against each other. However, Dow submits that the issues involved before the Licensing Board in this matter and which are now coming before this Board are unique and require different treatment than the Appeal Board would normally be inclined to provide. Specifically, Dow asks this Appeal Board to review the Brief filed by Consumers below as well as the Brief filed with this Board. Both Briefs argue at length that Dow and its counsel engaged in improper activity during the preparation of testimony for the 1976 hearings. This charge is emphatically denied by Dow. On this issue, it is very clear that Dow and Consumers are not on the "same side" and do not have "essentially the same interest in the ultimate outcome of the case." (Appeal Board Order of April 13, 1982, pp. 1, 2) In fact, their points of view are diametrically opposed.

7. The Board's Order dated April 13, 1982, states in part as follows:

"Here, Dow has failed to provide sufficient cause for departing from the traditional

scheme of briefing. Further, its concern with Consumers' treatment of certain factual matters is not well-founded: we are satisfied that we will be able to discern fact from fiction upon our review of the record and authorized briefs -- without additional briefing as Dow proposes." (emphasis supplied)

The difficulty with this conclusion of the Appeal Board is that no party presently before it on appeal has dealt in their Brief with this difference of opinion between Dow and Consumers concerning how the 1976 testimony was prepared. Only Consumers has discussed this matter and it has continued its argument that Dow has engaged in improper conduct. Unless this Board permits Dow to file a reply brief, these charges will go unanswered and Dow will clearly be denied a fair and impartial hearing before the Appeal Board upon its review of the Licensing Board Decision.

8. Dow cannot help but note the anomalous result of the Board's April 13, 1982 Order. The decision of the Licensing Board below dated December 22, 1981, which is now before this Board for review, strongly criticized Consumers, Dow and their respective counsel for failing to bring to the Licensing Board's attention matters indicating areas of disagreement and differences of opinion between Dow and Consumers. Now, when Dow is trying to bring to this Board's attention areas of disagreement between itself and Consumers, concerning testimony preparation for the 1976 hearings, it is told that this

Board has no wish to hear Dow but rather the Board will decide the important issues which affect Dow in view of Consumers allegations " ... upon our review of the record and authorized briefs -- without additional briefing as Dow proposes." Dow is left to wonder what this Commission and its subsidiary boards want to hear from Dow and when regarding this matter.

Moreover, this Appeal Board in an Order dated April 8, 1982, has granted a nonparticipant in the hearings below, The Lawyers Committee Steering Group of the Atomic Industrial Forum, Inc., leave to file a brief in this matter and has also granted another nonparticipant in the proceedings below (Saginaw Valley Nuclear Study Group) leave to file a reply brief. Thus, the Board has permitted two "nonparticipants" permission to file briefs in this matter and has at the same time denied a participant (Dow) the right to respond to serious charges made against it in a Brief by another participant (Consumers). Dow submits that the Appeal Board's Orders of April 8, 1982 and April 13, 1982 are inconsistent.

9. In its Order dated April 8, 1982, the Board stated as follows:

"Because this proceeding involves important issues relating to the integrity of the hearing process and the standards for attorney conduct generally, we intend to review the entire Board Decision sua sponte ... ."

Dow cannot understand how this Appeal Board can proceed to conduct such hearing and at the same time deny Dow the right to respond to charges made by Consumers Power Company in its Brief before this Board regarding the conduct of Dow's counsel in preparation for the 1976 hearings. Due process alone requires that Dow be given the right to respond to Consumers' allegations in writing through a reply brief.

WHEREFORE, THE DOW CHEMICAL COMPANY prays that the Board reconsider its Order of April 13, 1982 and thereafter grant the Motion of The Dow Chemical Company to file a reply to the Brief of Consumers Power Company in substantially the form attached hereto.

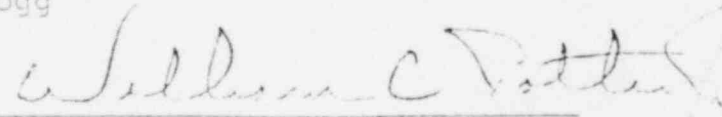
DATED: April, 5, 1982

Respectfully submitted,

T. J. Cresswell, Esq.  
Division Counsel  
Michigan Division  
The Dow Chemical Company  
47 Building  
Midland, Michigan 48640  
(517) 636-4781

Fischer, Franklin, Ford, Simon  
& Hogg

By:



William C. Potter, Jr.  
1700 Guardian Building  
Detroit, Michigan 48226  
(313) 962-5210

Attorneys representing  
The Dow Chemical Company