UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

In the Matter of	)	
	)	Docket Nos. 50-329-OM
CONSUMERS POWER COMPANY	)	50-330-OM
	)	50-329-OL
(Midland Plant, Units 1 and 2)	)	50-330-OL
	)	

CONSUMERS POWER COMPANY'S FIRST SET OF INTERROGATORIES TO INTERVENOR WENDELL H. MARSHALL

Pursuant to 10 CFR §2.740b and the Atomic Safety and Licensing Board's Memorandum and Order of May 7, 1982, Consumers Power Company ("Consumers Power") requests Intervenor Wendell H. Marshall to answer separately and fully in writing under oath or affirmation, each of the following Interrogatories regarding contentions admitted for purposes of discovery, within 14 days of service.

INSTRUCTIONS AND DEFINITIONS

1. As used in these Interrogatories, whenever appropriate, the singular form of a word shall be interpreted as plural and the masculine gender shall be deemed to include the feminine.

2. As used in these Interrogatories, the term "and," as well as "or," shall be construed either disjunctively or conjunctively as necessary to bring within the scope of these Interrogatories any information which might otherwise be construed to be outside their scope.

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3. As used in these Interrogatories, the term "person" includes, without limiting the generality of its meaning, every natural person, corporate entity, partnership, association, governmental body or agency.

4. As used in these Interrogatories, the term "identification" of a person or entity includes stating his, her, or its full name, his or her most recent home address and telephone number, his, her, or its most recent known business address and telephone number, his or her present position, and his, her, or its connection or association with any party to this proceeding.

5. If any of the information contained in the answers to these Interrogatories is not within the personal knowledge of the person signing the Interrogatory, so state and identify each person, document and communication on which he relies for the information contained in answers not solely based on his personal knowledge.

6. If you cannot answer any portion of the following Interrogatories in full, after exercising diligence to secure the information to do so, so state and answer to the extent possible, specifying your inability to answer the remainder and stating whatever information or knowledge you have concerning the unanswered portions.

7. If you claim privilege with respect to any information which is requested by these Interrogatories, specify the privilege claimed, the communication and/or answer as to which that claim is made, the parties to the

communication, the topic discussed in the communication and the basis for your claim.

8. A copy of Intervenor Contentions and the Atomic Safety and Licensing Board "Special Prehearing Conference Order" of February 23, 1979, ruling on the admissibility of contentions, is attached for reference.

INTERROGATORIES

1. With respect to the Contention advanced by Intervenor Wendell H. Marshall which has been admitted by the Atomic Safety and Licensing Board in the above-captioned proceeding, subject to restatement, list the following:

a. a concise statement of the facts supporting the Contention together with references to the specific sources and documents and portions thereof which have been or will be relied upon to establish such facts;

b. the identity of each person expected to be called as a witness at the hearing;

c. the subject matter on which the witness is expected to testify;

d. the substance of the witness's testimony.

2. With respect to each witness identified in Intervenor's response to Interrogatory No. 1 above, identify each document which the witness will rely upon in whole or in part in the preparation of his testimony or in the development of his position.

3. With respect to each witness identified in Intervenor's response to Interrogatory No. 1 above, identify the witness's qualifications to testify on the subject matter on which the witness will testify.

4. Identify all persons who participated in the preparation of the answers, or any portion thereof, to these Interrogatories.

Philip P. Steptoe
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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of CONSUMERS POWER COMPANY (Midland Plant, Units 1 and 2)	Docket Nos. 50-329-OL 50-330-OL

SPECIAL PREHEARING CONFERENCE ORDER

Pursuant to notice[1/] and the provisions of 10 CFR §2.751a, the Board conducted a special prehearing conference in this proceeding on December 14, 1978 in Midland, Michigan. All parties or their counsel appeared. The Board considered each intervention petition, identification of the key issues, a schedule for further actions in the proceeding and all other matters required to be considered by §2.751a. As a result of the special prehearing conference and subsequent consideration by the Board the following action is taken.

Mary Sinclair's Petition to Intervene

Mary Sinclair was admitted as an intervening party by the board designated to rule upon intervention petitions in its order of August 14, 1978. As permitted by the Rules of Practice, Mrs. Sinclair amended her petition on October 31, 1978 by submitting additional and superseded contentions. We rule now upon these contentions.

1/ 43 F.R. 48089, October 18, 1978 and 43 F.R. 54148, November 20, 1978.

Contentions 1. and 2. These related contentions assert that Applicant will not comply with NRC rules, regulations, and the Atomic Energy Act of 1954 absent constant monitoring from the NRC Staff, but that there is no assurance that the Staff will do so adequately. No specific failure by the Staff is alleged; intervenor contends that the Staff is generally inadequate to perform its statutory and regulatory functions.

The contention fails for each of three reasons. First the Commission, by statute, has the authority to perform its functions through staff offices. 42 U.S.C. 5841, 5843, 5844. It has implemented its authority in 10 CFR, Part 1, and has staffed its offices pursuant to the statute and regulations. There is a presumption of regularity attendant to the Commission's staffing, which the Intervenor has not addressed. In fact, in the construction licensing aspect of this very proceeding, the adequacy of the Staff review has, in major respects, been considered and found adequate upon an adjudicative evidentiary record. Consumers Power Company (Midland Plant, Units 1 and 2), LBP-74-71, 8 AEC 584 (1974), affirmed, ALAB-283, 2 NRC 11 (1975), clarified, ALAB-315, 3 NRC 101 (1976). See also Commission's Memorandum and Order dated November 6, 1978.

Second the contentions are not amenable to resolution in an evidentiary hearing. They are almost impossible to defend against. Finally, the bases submitted by Mrs. Sinclair simply do not factually support the contentions.[2/]

Contention 4

This contention is rejected since it is no more than an argument for appropriate treatment of the unresolved generic issues. These have been separately covered by subsequent contentions.

Contention 5

This contention is basically an unsupported extension of Contentions 1 and 2 to a generalized allegation that the Staff does not conduct impartial and independent inquiries into the validity of the Applicant's submissions. The only matter specifically cited by Intervenors is currently before a different Board. The contention is therefore rejected.

Contentions 6 & 7

These contentions are rejected, subject to possible resubmission as stated below. Counsel for the Intervenor has identified the question

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2/ "L. V. Gossick, et al., Atomic Energy Commission Task Force Report: Study of the Reactor Licensing Process (October, 1973), and the recently released General Accounting Office Report No. EMD-78-80, 'The NRC Needs to Aggressively Monitor and Independently Evaluate Nuclear Plant Construction' (September, 1978)."

as being whether there is competence for quality assurance and quality control (Tr. 151). The Commission found, in its Memorandum and Order of November 6, 1978, that Intervenor had not sustained its burden there of demonstrating the possibility of a significant issue warranting a requested reopening. Similarly, no such demonstration has been made before this Board. Although the burden of justifying a contention in an operating license proceeding may be less than that of justifying reopening of a completed construction permit proceeding, even the lesser burden is not met by a bald assertion that the Applicant's record is "characterized by shoddy performance and a tendency ... to argue with the Staff and make excuses..." The Board will, however, permit Intervenor to carry out discovery directed to current operation of the Quality Assurance Program (including the alleged "doctoring" of welding certificates) and will entertain a suitably specific contention on the matter upon the conclusion of discovery.

Contention 8

This also is rejected as a contention. Treatment of unresolved generic issues is required pursuant to the directions of the Appeal Board in Gulf States Utility Company (River Bend Station, Units 1 & 2), ALAB-444, 6 NRC 760 (1977), and subsequent decisions. Such treatment makes a generalized contention such as this one unnecessary. To the

extent that the proposed contention is specifically directed towards the ACRS report, the discussion of the matter in the Commission's November 6, 1978 Memorandum and Order is dispositive.

Contention 9

Again, the Commission's ruling of November 6 is dispositive of the matter and this contention is rejected. The Commission's ruling was made in full knowledge of the new agreement between Dow and Consumers and endorses the Appeal Board finding that Dow presently intends to live up to its contract. Moreover, the essence of the Commission's ruling was Dow's intent, not the specific contract.

Contention 10

The contention is rejected. The Appeal Board findings in ALAB-458 established that need for power existed at the time of that opinion and no showing has been made of substantial changes since that time as required by 10 CFR 51.21 and 51.23(e).

Contention 11

As with proposed Contention 9, this contention is rejected as it was disposed of by the Commission's Order.

Contention 12

This contention is rejected on the basis of lack of specificity and as a challenge to the regulations regarding accidents less probable

than the design basis accident. In addition, the implication that the previous analyses have been improper based on the Rasmussen Report must be rejected since the original CP review predated that report.

Contention 13

This contention deals with financial qualifications. Intervenors assert that changes in Applicant's financial situation have occurred since issuance of the Construction Permit. The Staff would have us reject the contention on the basis that it cites for its basis 1977 testimony on "the remand proceedings on which a final decision has been rendered." The testimony in that proceeding is not before this Board and we find nothing relevant in the Order resulting from that proceeding (6 NRC 482) or in the Appeal Board's review thereof (7 NRC 155). The Staff's objection appears to be unsupported. The Applicant did not see fit to respond to this proposed contention at all. The Board will therefore accept Contention 13 with the limitation that it shall apply only to the qualifications of Consumers to operate the plant, the qualifications to construct not being before this Board.

Contention 14

To the extent that it involves quality assurance, this is rejected for the same reasons as contentions 6 and 7 which deal with the same subject. With respect to managerial competence to operate the facility

the contention is not sufficiently specific. As with the preceding contention, the question of competence to complete construction is not before this Board.

Contention 15

This is a restatement of several earlier contentions and is rejected for the same reasons.

Contentions 16-19

These four "contentions" appear to all concern need-for-power and to consist of argument revolving around the unsupported assertion in proposed Contention 16 that the facility is not needed for at least the next decade. In view of the previous determinations of need-for-power in this case and the lack of any showing of a substantial change, these contentions must be rejected.

Contentions 20 and 21

These contentions are essentially a challenge to the Commission's fuel cycle rule and as such must be rejected on that basis. In addition, they are not admissible in operating license proceedings lacking special circumstances.

Contention 22

This contention, which simply asserts an inadequate discussion of the character and effects of low-level radioactive wastes, is rejected as being insufficiently specific.

Contention 23

This contention must be rejected as non-specific. The only specific example cited--that certain questions were unanswered at the time of preparation of the contention--is a normal situation at that stage of a proceeding and not an adequate basis for a contention.

Contention 24

This contention, not objected to by any party, is accepted except to the extent that the first sentence refers to previously rejected Contention 9. This acceptance, however, is further conditioned by our agreement with the Staff's comment (November 28, 1978 response, page 6) that the question appears not to be one of site suitability, but rather of the type of material used by the Applicant under the building in question. A suitable restatement of the contention shall be provided by the Intervenor at the time required by the schedule below for submission of other restated contentions.

Contention 25

The contention is rejected. Issuance of a 402 permit is not a prerequisite for NRC licensing. Philadelphia Electric Company (Peach Bottom Atomic Power Station, Units 2 and 3), ALAB-216, 8 AEC 13, 58 (1974). It has not been alleged that issuance of the 402 permit is likely to introduce factors significantly affecting the cost-benefit balance previously reached in the construction permit proceeding.

Contention 26

This contention is rejected. It asserts that no buyers or potential buyers of an interest in the plant are listed as applicants. There is no requirement that potential buyers be included and the Applicant has stated that at such time as there are buyers they will be included as co-applicants.

Contention 27

This contention asserts that no adequate evacuation plans exist. The contention is accepted.

Contentions 28-50[3/]

These proposed contentions appear to each seize upon one or more unresolved generic problems identified in NUREG-0410 and, in most cases, in testimony prepared by the Staff in another recent case and propose these problems as appropriate contentions in this case. The Applicant's response posed no objection to any of these nor did the Applicant do so in the prehearing conference. The Staff, in its response, objected to lack of specificity of several. These objections have been taken into account in our considerations.

The Board has examined, in a cursory manner, a new report on unresolved generic problems issued by the Staff during the time this Order was being prepared. This new report, identified as NUREG-0510, recategorizes the problems and identifies those considered by the Staff to represent "unresolved safety issues". These latter issues would appear to be closely related to the matters with which the Appeal Board was concerned in its River Bend and subsequent decisions. The Board requests the parties, in carrying out the procedures described below, to confer to assure that any restatement of the contentions would, to the extent practical, take the new listings into account. In addition, the Staff's testimony on uncontested issues should, when

3/ In Intervenor's petition the numbering of contentions inadvertently triplicates use of number 45 and duplicates use of 44, 46, 47 and 48. The Board has used 45' to refer to the second 45 (on pages 30-31) and 44a, 45a, 46a, 47a, and 48a to identify the replications appearing on pages 32, 33 and 34. Treatment of all of these is included in this section of our order.

combined with the testimony on issues in contention, be fully responsive to the Appeal Board's concerns.

Contentions 28 through 50 appear to the Board, based on the material thus far available, to be based upon appropriate subject matter areas, although the Board agrees that many (including some not specifically identified by the Staff) are not sufficiently specific.[4/] In addition, the Board considers it likely that by the time that the Staff review of these matters is completed and the results are documented and available to the other parties and discovery is completed, the parties will agree that some are, for one reason or another, no longer appropriate for litigation. The Board will allow discovery to proceed on each of proposed Contentions 28 through 50. Such discovery shall start as soon as practicable and shall be completed in accordance with a schedule to be set forth below. Upon completion of discovery, the Intervenor will be required to restate the contentions she proposes to continue to pursue, in each instance omitting arguments but setting forth sufficient specificity and detail to demonstrate applicability to this proceeding and to permit the other parties to prepare responsive

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4/ The Board recognizes that the Staff has objected to certain contentions in this group on any of several bases. We have not, however, rejected them at this stage because in each case the contention is connected with one or more of the Staff's "unresolved generic problem" tasks and it is not clear that that in itself is not sufficient reason for admitting them. Final decision must await the restatement of contentions and argument thereon.

testimony. After opportunity for response by the other parties, the Board will make final determination of the admissibility.

Contention 51

Proposed Contention 51, to which Applicant does not object, deals with electrical wiring matters which Staff asserts are not applicable to Midland. During discovery Intervenor will have access to the information upon which Staff bases this assertion. The contention will therefore be treated in the same way as 28-50.

Contention 52

This proposed contention is rejected. It appears to the Board to be a summary type statement presenting no litigable issue.

Contention 53

This does not appear to present a suitable issue and is rejected. In actuality, the adequacy of the Environmental Report is primarily based on whether it can be used by the Staff to provide information for the Staff's environmental statement.

Contention 54

This is rejected for the same reason as 53.

Contention 55

This matter--synergism--was thoroughly considered in the construction permit hearing and is rejected here on the ground of res judicata.

Contention 56

This contention is rejected. It presents no litigable issue and is simply an attempt by the Intervenor to retain certain rights already adequately treated by the Commission's rules.

Mapleton Intervenors and
Wendell Marshall's Petition to Intervene

Mr. Marshall filed a petition dated September 8, 1978 on behalf of himself and Mapleton Intervenors. In our Memorandum and Order of October 12, 1978 we pointed out certain deficiencies in the petition with respect to interest and indentity of Mapleton Intervenors and Mr. Marshall's authority to represent that association in this proceeding. The Board provided an opportunity until 15 days before the special prehearing conference for Mapleton Intervenors to file an amended petition conforming with the Board's observations. Mapleton did not file a responsive amended petition. The defects of its original petition remain uncorrected. The petition with respect to Mapleton Intervenors is therefore denied.

In its Memorandum and Order of October 12, the Board recognized Mr. Marshall's interest in the proceeding, but noting that the petition was late and that the Applicant asserted that all aspects (9 contentions) of his petition were res judicata, the Board granted temporary intervenor status to Mr. Marshall until these problems could be considered. The Board granted an opportunity to the Applicant to document its then unsupported argument that the

"aspects" as to which Mr. Marshall sought to intervene were res judicata. We stated that we agreed with the logic of Applicant's position that if, because of res judicata, there were no litigable aspects of the petitions, the petition is invalid under 10 CFR §2.714(a)(2) as revised.

On October 31, 1978 the Applicant filed its brief in support of its res judicata position. Mr. Marshall did not answer the brief. The Applicant addressed each of the nine contentions ("aspects"). With respect to the first 8 contentions, Applicant carefully detailed where in the construction permit phase of this proceeding the subject matter was adjudicated. The ninth contention asserted that the Midland plant is a general nuisance and will interfere with human rights and dignity. Applicant stated that contention is inadequate because it was vague, not very intelligible, and was not a proper subject matter for this proceeding. Applicant argued also that the matter was res judicata in the Michigan courts.

As we discuss below we are now persuaded that the first 8 contentions were not suitable aspects for intervention because of res judicata, and that the ninth was not suitable on the basis of subject matter, not reaching the issue of res judicata in the Michigan court proceeding. Thus the

original petition did not satisfy the "aspects" requirements of the revised intervention rules and had Applicant initially supported its argument by its October 31 brief the petition might have been denied in our previous ruling.

Also in our October 12 ruling, Mr. Marshall was given the opportunity provided under 10 CFR §2.714(a)(3) to amend his petition by submitting new contentions up to 15 days before the special prehearing conference convened under §2.751(a). Mr. Marshall filed such an amended petition on October 31. This petition contained a contention relating to settling of the generator building, which, all parties concede, raises a valid issue and satisfies the "aspect" requirement of the rule. In view of this, Mr. Marshall's petition will be considered as a late but otherwise valid petition, despite the fact that we may have led the Applicant to expect that, if it could be established that the Marshall petition was invalid as originally submitted, it would be dismissed.

Late petitions to intervene must be considered under the provisions of §2.714(a)(1) of the Rules of Practice.[5/]

5/ In pertinent part: "Nontimely filings will not be entertained absent a determination by the Commission, the presiding officer or the atomic safety and licensing board designated to rule on the petition and/or request, that the petition and/or request should be granted based upon a balancing of the following factors in addition to those set out in paragraph (d) of this section:

(i) Good cause, if any, for failure to file on time.

(ii) The availability of other means whereby the petitioner's interest will be protected.

(iii) The extent to which the petitioner's participation may reasonably be expected to assist in developing a sound record.

(iv) The extent to which the petitioner's interest will be represented by existing parties.

(v) The extent to which the petitioner's participation will broaden the issues or delay the proceeding."

Mr. Marshall asserted as his cause for late filing that he did not observe the notice of opportunity to intervene in the Federal Register. Normally we would not accept this as a controlling reason, but Mr. Marshall states that as a party (Mapleton Intervenors) to the Midland construction permit proceeding, he expected that he would have been served with notice of the operating license application. It is difficult to evaluate this reason. We indicated in our Memorandum and Order of October 12 that the Board would defer ruling upon good cause for late filing until the special prehearing conference, intending to take that occasion to explore the matter further. Unfortunately Mr. Marshall because of illness did not attend and his attorney could not provide additional information. Tr. 8, 9. Based on the available information, we regard Mr. Marshall's reason for late filing to be good cause, but rather weak good cause. Thus he has a greater burden under the other four tests of late petitions.

There are no other means by which his interest in this proceeding will be adequately protected. This factor weighs in favor of admitting him.

There is considerable question concerning the extent to which his participation may reasonably be expected to assist in developing a sound record. Mr. Marshall was too ill to

attend the special prehearing conference. His attorney hopes that "...at some of the hearing at least he can come personally." Tr. 10. But, he is under doctor's medication and for him to participate even in his home town, Midland, "...in terms of being in the hearing room is most difficult." Tr. 79. He would have to depend upon his attorney, who is not sure if he can continue, and who is not familiar with the proceedings. His other representative Mr. Gadler, who lives in Minnesota, could not attend. Some of Mr. Marshall's communications, his mailgrams, with the Board have been partly unintelligible, but other filings have been well written and organized. Apparently he depends upon others.

The one contention demonstrating Mr. Marshall's interest and accepted by the Board is also a contention of Mrs. Sinclair. From our observation of the proceedings, there is every reason to believe that this contention, diesel generator building settling, will be diligently pursued by her. Also, his general interest, living in close proximity to the plant, is an interest shared by Mrs. Sinclair. This factor weighs against Mr. Marshall's intervention.

Admitting Mr. Marshall on the basis of the single contention will not broaden the issues. This favors intervention. Mr. Marshall's health could delay the proceeding if the proceeding were to be scheduled around his health problems. This factor weighs heavily against intervention.

These factors are not precisely quantifiable and weighing is difficult. Mr. Marshall lives within 1½ miles of the facility and has had a long interest in the construction permit proceedings. Without these strong factors the Board would deny his petition. As a matter of discretion the Board grants his petition to intervene, but rules that pursuant to 10 CFR §2.714(f), his right to affirmative participation shall be limited to the single issue discussed below.[6/] Any participation shall not be permitted to delay the proceedings, or control the location or time of the hearings, and shall be at the discretion of the Board. This limitation is a material aspect of the exercise of the Board's discretion in permitting intervention.

Mr. Marshall submitted two amended petitions on October 31, 1978. One, a mailgram, was partially unintelligible. The Board regards the second amendment, the letter of October 31, to be the intended contentions.

6/ This ruling assumes that Mr. Marshall will not appropriately assert valid contentions later in this proceeding. See, e.g., our ruling on Contention 5, below.

Contention 1

This contention asserts that radioactive spills from Palisades Plant indicate that the same experience will take place at Midland. It is denied for irrelevancy, lack of basis, and because the issue of radiological releases from Midland is res judicata.

Contention 2

This is the same issue as Sinclair contention 24. It is accepted as it relates to settling of the Midland diesel generator building.

Contentions 3 and 4

These are rejected. They restate a common law nuisance contention and raise no issue cognizable by the NRC.

Contention 5

Contention 5 relates to the icing and fogging potential from the Midland cooling system. The issue appears to be res judicata. As Applicant stated in its res judicata brief of October 31, this issue of fogging and icing in the area around the cooling pond was decided by the construction permit hearing board. 5 AEC 214, 226-28. See particularly Initial Decision paragraphs 69, 72, and 77. See also ALAB-123, 6 AEC 331, 354.

However, some confusion exists about this contention. The Staff did not oppose this contention because, according to counsel, the original proceeding anticipated cooling towers which were later eliminated from the design. Tr. 64. Applicant agreed that this was the case. Tr. 73. Mr. Marshall's counsel could not state in which way, if any, the operating license consideration of cooling system would differ from the construction permit phase. Tr. 53-56.

The construction permit board decided that use of a cooling pond for condenser water was suitable. ¶77. The FES issued March 1972 described a cooling system whereby heated water from the condenser passes directly to the cooling pond. However the design also anticipated a relatively small amount of heated service water cooled by blowdown cells. FES III 5-8 and Fig. III-2. The elimination of these cells, if such has indeed occurred, would not appear to provide an adequate basis for Mr. Marshall's contention. The Staff somewhat cryptically states in its response to Contention 5 that the contention is based upon Mapleton Intervenors' observations of discussions between the NRC Staff and local Midland officials last summer.

In the absence of a demonstration that the fogging and icing issue depends upon circumstance materially changed

since the construction permit proceeding, the Board views Contention 5 as res judicata. Within 21 days following the service of the Final Environmental Statement for this proceeding Mr. Marshall may file support for this contention demonstrating changed circumstances, or the parties may stipulate that Contention 5 raises a valid issue for hearing.

Contention 6

This contention relates to the storage of spent fuel rods at the Midland plant site. A spent fuel storage system was a part of the original plant design, of course. The express decision by the construction permit licensing board not to consider the fuel cycle aspect of spent fuel was affirmed by the Appeal Board and that decision with respect to the construction permit proceeding is now res judicata. In this operating license proceeding, the fuel cycle rule, Table S-3, prohibits an independent evaluation of the fuel cycle effects. This contention is therefore rejected.

Contention 7

Contention 7 asserts that present technology prevents nuclear plant operation with zero emissions, thus there is a health hazard. Zero emissions are not required by law or regulation. At the prehearing conference, Intervenors' counsel attempted to amend Contention 7 by asserting that

an international agreement with Canada has imposed a moratorium on any source of radioactive discharge into the Great Lakes. Even the language cited by counsel does not support his position. The standard in the cited language is "... the lowest practicable levels and in any event should be controlled to the extent necessary to prevent harmful effects on health." Michigan's authority, still unexercised, to adopt legislation prohibiting discharges of airborne radioactivity does not impact upon this proceeding nor does this proceeding "tie the hands of the State of Michigan" under the Clean Air Act. Contention 7 is rejected.

Place of Hearing

Mrs. Sinclair is represented by Myron M. Cherry, Esq. of Chicago. Mr. Cherry requests that the evidentiary hearings be held in Chicago, advancing several reasons in support. First, Mrs. Sinclair who relies upon volunteer funding, cannot afford large legal or witness expenses and Mr. Cherry cannot afford personally to make a large contribution of time or money. He will rely upon witnesses scattered throughout the United States and Chicago is more convenient to them. Mr. Cherry has voluntary legal assistance in Chicago but none in Midland. Many of Mrs. Sinclair's

contentions are generic and there is no particular reason why they should be heard in Midland. Applicant's outside counsel is a Chicago firm. Mr. Marshall has retained legal counsel from Minnesota which is also where his technical consultant, Mr. Gadler, resides. Chicago would also be more convenient for Staff counsel and the members of the Board according to Mr. Cherry. Chicago has better hearing facilities. He stated that he would not be able to represent Mrs. Sinclair nor would witnesses be as available if the hearings were held in Michigan. Tr. 90-93.

Mr. Cherry argued further that he and Mrs. Sinclair have in the past been the principal driving forces in the construction permit proceeding and are likely to be the main factors in the operating license proceeding. Tr. 95. All other parties oppose Chicago hearings on the basis that a hearing involving a Michigan reactor and Michigan parties should be held in Michigan.

The Attorney General of Michigan, admitted as an interested State under 10 CFR §2.15(c), has not filed contentions. The Board in its memorandum of August 14, 1978 explained to the Attorney General that, in a discretionary hearing such as an operating license proceeding, a State could face the danger of having no forum for its views if

the intervening parties' participation should terminate. Counsel for the Attorney General was requested to consider what its position would be in this proceeding if Mrs. Sinclair would be forced to withdraw or if her participation would be sharply reduced because of the expense of hearings in Midland. Counsel explained that the State of Michigan regards Mrs. Sinclair's contentions as important, they should be heard, and perhaps the Attorney General would file similar contentions if Mrs. Sinclair's participation would be curtailed. Tr. 85 et seq.

Mr. Cherry responded that the Attorney General did not express interest in Mrs. Sinclair's participation in the construction permit proceeding and has not offered any assistance for Mrs. Sinclair in this proceeding. Tr. 93-94.

The Board believes that counsel for the Attorney General does not have a realistic understanding of the Commission's intervention rules with respect to late intervention petitions. Whether the Attorney General could and would serve as an effective advocate of Mrs. Sinclair's contentions is speculative.

The Staff concedes that in the event of the loss of Mr. Cherry's services, or the loss of Mrs. Sinclair's participation, it would not be in a position to advance her contentions. Tr. 88.

Mr. Cherry has a national reputation as an expert in nuclear regulation. He is known to this Commission as a strong and experienced advocate of the general views held by Mrs. Sinclair. He has been able to enlist the service of an experienced technical advisor, Mr. Robert Pollard. We believe it quite likely that if some accommodation is not made, Mr. Cherry will in fact withdraw or sharply reduce his participation. A better record on the important issues admitted into controversy in this proceeding will result if Mr. Cherry is able to continue to represent Mrs. Sinclair. There is no substitute known to the Board for Mr. Cherry's talents and the resources available to him.

The Commission's rule favors hearings at the plant site. If this were a mandatory construction permit hearing, that consideration would be paramount. But in this proceeding, without Mrs. Sinclair's petition, there would survive only the one contention of Mr. Marshall relating to the diesel generator building. We believe, therefore, that a compromise is appropriate. After discovery and motions for summary disposition and when the contentions are refined, the Board intends to set approximately half of the hearing days in Chicago and half in Midland. Mr. Marshall's contention or contentions and other contentions which are

site-specific will be heard in Midland. Opportunities for limited appearances will be offered as necessary. In selecting contentions to be heard in Chicago, the Board will give full consideration to any suggestions or requests of Mrs. Sinclair or her counsel.

SCHEDULE

As indicated in the section of this Order covering the Sinclair Contentions, discovery activities may be commenced at the convenience of the parties. Periods of time allowed for responses to discovery requests shall be those prescribed by the Commission's rules unless otherwise established by mutual agreement of the parties involved. Disputes as to timing, objections, requests for protective orders, motions to compel and similar procedural matters shall be promptly referred to the Board. Copies of interrogatories and responses to interrogatories should not be provided to the Board, except that the proponent of a motion for a protective order or a motion to compel discovery should provide the material to the extent necessary for the Board to take action.

The current schedule of the Staff is, to the best of the Board's information, to issue the DES on February 9, 1979 and the FES on June 27, 1979. Discovery on environmental matters shall be completed by June 1, 1979. Supplemental discovery based upon material in the FES different from the corresponding information in the DES or not contained in the DES may be carried out if it is requested of opposing parties within fourteen days of service of the FES. All such discovery shall be completed within 30 days of service of the FES. Restatement of contentions shall be submitted within 10 days after completion of each

phase of discovery, as appropriate. Responses by other parties are due five days after service of restated contentions, but may be omitted if contentions are mutually agreed upon prior to submittal.

Similarly, the scheduled date for issuance of the SER is May 1, 1979 and that for issuance of the Supplement is August 1, 1979. Discovery on radiological health and safety matters shall be completed by July 6, 1979 and supplemental discovery based on the SER Supplement by 30 days after service (requests 14 days after service). Restated contentions shall be due as set forth for environmental matters, but based on issuance dates of safety documents.

If any of the above dates for Staff document issuance are changed substantially, the Board will, upon request by any party, review the dates established above and make any appropriate changes.

Upon issuance of the FES and the SER Supplement the Board will by separate orders establish dates for submission of motions for summary disposition. These dates will be approximately 60 days after issuance of the relevant Staff documents. Dates will also be established upon issuance of those documents for further prehearing conferences, approximately two weeks after the final date for motions for summary disposition. Although not established at this time, parties may anticipate the start of hearing about 30 to 60 days after the prehearing conference with prepared written testimony at an appropriate earlier date. A determi-

nation by the Board as to whether or not environmental and health and safety matters will be heard at separate hearings will abide further progress in issuance of the Staff documents.

This Order grants and denies intervention status. Therefore, pursuant to 10 CFR §2.714a this Order may be appealed within ten (10) days after service.

SO ORDERED.

FOR THE ATOMIC SAFETY AND
LICENSING BOARD

Ivan W. Smith, Chairman

Dated at Bethesda, Maryland
this 23rd day of February 1979.

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MAPLETON INTERVENORS
Route 2
Midland, Michigan 48640

September 8, 1978

Nuclear Regulatory Commission
Washington, DC 20555

Dear Sirs:

It has come to the attention of the Mapleton Intervenors that they were inadvertantly left off of the service list concerning the oncoming licensing proceedings for the Consumer Power Company's Midland Nuclear Power Plant at Midland, Michigan.

Justice David Bazolon, Chief Justice of the Federal District Court of Appeals, Washington, DC, by his order, consolidating the Mapleton and Saginaw Intervenors, resulted in Myron Cherry being attorney for both groups. However, Mr. Cherry was notified of his severence by letter dated 2nd of February, 1977, from the Executive Secretary, Steve J. Gadler, P.E., of the Mapleton Intervenors. The NRC was notified of this fact by myself by phone call to NRC in Washington and by appearance of our new attorney, Norton Hatlie, Esq. of Minneapolis, MN, at the on-going hearing in Chicago, IL at that time. Since it is possible that NRC failed to take notice of these facts, we were probably left off of the service list, thus an over-sight.

In accordance with 10 CFR 2.714, the Mapleton Intervenors requested mission as intervenors as explained in the Federal Register #43 on the 4th of May, 1978, Page 19304. I, as President of the Mapleton Intervenors, live approximately 1-1/2 miles downwind and downriver from the nuclear plant. The other Mapleton Intervenors live in the same general vicinity.

Under the rules, the Mapleton Intervenors contend that:

1) Radiological releases from the nuclear plant will interfere with their health and safety and violates their constitutional rights;

   1a) the air will be contaminated with airborne radioactive nuclides,

   1b) these nuclides may combine with discharges from Dow Chemical Company to synergestically complicate and add greater dangers because of increased toxicity and hazards to downwind residences,

   1c) discharges (radioactive) to the Tittabawasse River will interfere with health, safety and mental tranquility.

2) The possible contamination of Dow Products from nuclear plant steam; as an example, aspirin is manufactured by a steam process and has great safety and health implications for the general public and for the Mapleton Intervenors, since we use Dow products.

3) The danger from the transportation of radioactive materials over the various roads leading into the City of Midland. These roads include both Federal, State, City and County.

4) Ice hazard, especially during winter, caused by condensation and icing of the roads and bridges downwind from the plant and the "cooling pond".

5) The fog hazards to highway driving for the same reason as Item 4 above.

6) Spent fuel. Since the Federal Government does not now nor in the foreseeable future have disposable or reprocessing facilities, the spent fuel must be stored at plant site probably in expanded fuel pools which will create serious danger to the City of Midland and to the people therein and to the persons and residences of the Mapleton Intervenors, which includes myself.

7) The plants location within Midland City and Midland County with its large population areas violates the Nuclear Regulatory Commission siting rules.

8) The plant releases of radiological nuclides both to the air and water environments will subject us to radiation endangering our health and safety and our well being.

9) The general nuisance that will be created by the operation of the plant will interfere with our human rights, with our dignity and with the rights we have to maintain our health and safety.

For the above reasons we respectfully request to be admitted as Intervenors.

Yours very truly,

Wendell H. Marshall

Wendell H. Marshall
President
Mapleton Intervenors

WHM:mc

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IVAN W SMITH, CHAIRMAN
ATOMIC SAFETY AND LICENSING BOARD
NUCLEAR REGULATORY COMMISSION
WASHINGTON DC 20555

DEAR MR SMITH,

IN COMPLIANCE WITH THE REQUEST BY MR. WILLIAM OLMSTEAD OF THE COMMISSION, AND IN COMPLIANCE WITH PERTINENT REGULATIONS 2.714 THE MAPLETON INTERVENORS CONTEND

1. NRC IS PREVENTED BY MICHIGAN LAW TO ISSUE A LICENSE THAT WILL CREATE A NUISANCE. CITE CASE MARSHALL VS CONSUMERS POWER CO IN THE MICHIGAN COURT OF APPEALS.
2. ILLEGAL DISCHARGES AND SPILLS OF RADIOACTIVITY FROM PALLISADES NUCLEAR PLANT OPERATION.
3. GEOLOGICAL CONDITIONS THAT THE MIDLAND NUCLEAR PLANT WHICH IS CAUSING THE PLANT TO SETTLE.
4. ICING AND FOGGING WILL INTERFERE WITH MAPLETON INTERVENORS PERSONS AND WILL DAMAGE THEIR PROPERTY.
5. STORAGE OF SPENT FUEL RODS WILL IMPOSE A HEALTH AND SAFETY HAZZARD TO MAPLETON INTERVENORS.
6. PRESENT TECHNOLOGY PREVENTS NUCLEAR PLANTS FROM OPERATION WITH ZERO EMISSION.

WENDELL H MARSHALL, PRESIDENT
THE MAPLETON INTERVENORS
ROUTE 10 MIDLAND MI 48640

21:24 EST

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

In the Matter of	)	
	)	Docket Nos. 50-329-OM
CONSUMERS POWER COMPANY	)	50-330-OM
	)	50-329-OL
(Midland Plant, Units 1 and 2)	)	50-330-OL

CERTIFICATE OF SERVICE

I, Philip P. Steptoe, one of the attorneys for Consumers Power Company, hereby certify that a copy of "Consumers Power Company's First Set of Interrogatories to Intervenor Wendell Marshall" was served upon all persons shown in the attached service list by deposit in the United States mail, first class, this 16th day of June, 1982.

Philip P. Steptoe

SUBSCRIBED AND SWORN before me this 16th day of June, 1982.

Mary Evanson
Notary Public

My Commission Expires December 2, 1985

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