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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD



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

NRC STAFF ANSWER TO MAPLETON INTERVENTION PETITION

I.
Introduction

Wendell H. Marshall filed a petition dated September 9, 1978 requesting leave to intervene in this operating license proceeding on behalf of an organization titled Mapleton Intervenors. The NRC Staff does not oppose the petition at this time.

II.
Background

Mapleton Intervenors were admitted as a party in the construction permit proceeding. They were later consolidated with other intervenor groups of like interest and represented by Myron Cherry, Esq. During the pendency of proceedings resulting from a Court of Appeals remand of the decision granting a construction permit to Consumers Power Company, Mapleton Intervenors indicated that it no longer wished to be represented by Mr. Cherry. (See November 16, 1977 Memorandum of Telephone Call, Atomic Safety and Licensing Appeal Board). Mr. Cherry, however, indicated at oral argument on November 17 before the Appeal Board that he still represented Mapleton. (Tr. 6). No further action was taken on the matter.

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On April 17, 1978, Steven A. Varga, Chief Light Water Reactors Branch 4, Division of Project Management of the NRC Staff sent a letter to Consumers Power Company informing it that its application had been accepted for review and enclosing a copy of the notice which was being forwarded to the Federal Register for publication. Also enclosed was a notice for opportunity for public participation which was to be published in the Saginaw News, Midland News, The State Journal, and Grand Rapids Press. A copy of Mr. Varga's letter was sent to the then official service list in the CP proceeding which included Mr. Cherry but did not include any other member of either Saginaw or Mapleton Intervenors.

Mr. Marshall contends in essence that his petition should not be treated as late filed since neither he nor any other member of Mapleton was listed on the distribution of the Notice of Hearing for the Operating License Proceeding.

III.

Good Cause for Failure to File on Time

The Notice of Hearing for this proceeding was published on May 4, 1978 (43 Fed. Reg. 19304). The last date for filing timely intervention petitions was stated as June 5, 1978. Federal Register notice constitutes actual notice to all persons as a matter of law. In addition, Notice was also published in local newspapers in the plant's vicinity. The Commission's

Rules of Practice provide that late petitions must demonstrate Good Cause for failure to file on time. Grant of a late petition then depends upon the Board's balancing of several factors, viz, the availability of other means to protect petitioner's interest, the expectation that petitioner may be reasonably expected to assist record development, the extent to which petitioner's interest will be represented by existing parties and whether petitioner's participation will broaden the issues or delay the proceeding.

While Mapleton can be held to have had actual notice of this proceeding, it was not unreasonable of it to have expected the same courtesies extended to other parties to the CP proceeding. Therefore, it can be concluded that Mapleton has shown sufficient good cause at this early stage for its late filing.

Since no contentions have been admitted and no prehearing conferences have been held, it is impossible to determine whether Mapleton's participation will broaden issues. Mapleton certainly will not delay the start of the proceeding. Therefore this factor must weigh in Mapleton's favor.

While the petitions of Mary Sinclair and the State of Michigan have been found to reflect adequate interest to participate in this proceeding, neither party has a presently admitted contention. Thus since it is not

yet possible to determine whether a contention will be admitted and a hearing held, it cannot be said that petitioner's interest will be represented by existing parties or by other means in this proceeding.

There is nothing in the Mapleton petition which would enable one to determine whether Mapleton possesses any expertise which would materially contribute to the development of the record. While this factor tends to weigh against Mapleton, on balance it cannot be concluded that it outweighs the others.

Although Mapleton has not made a particularly strong showing of good cause for late intervention, no significant prejudice to the other parties appears. Therefore the Staff believes Mapleton's petition should be treated on the merits.

IV. Petitioner's Interest

This Board has determined that the standards for determining cognizable interests in this proceeding will be the Commission's current rule 10 C.F.R. §2.713 and associated decisions. (Memorandum and Order dated August 14, 1978).

Mr. Marshall states that he lives approximately 1-1/2 miles downwind downriver from the Midland site. He states that other Mapleton Intervenors live in the same area. He alleges several "aspects" of the proceeding in which he is interested including radiological effluents to the air and water and ice and fog hazards which may occur around roads and bridges in the vicinity.

Mr. Marshall's letter is sufficient to establish his interest in the proceeding, however, it fails to identify with sufficient detail the names and addresses of other members of the Mapleton organization. No indication appears that any member has authorized Mr. Marshall to represent them in this proceeding although he is apparently president of the group. In this regard, while Mr. Marshall may participate individually, he should be required to supplement his petition as to Mapleton so that organizational interests can be established.

V.
Conclusion

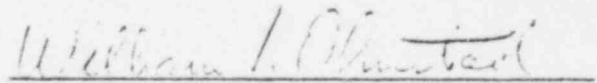
Mr. Marshall should be admitted as an intervenor in this proceeding conditioned on his filing an acceptable contention fifteen days prior to the first prehearing conference. He should be allowed to amend his petition during the same time to reflect the specific members of his organization who authorize him to speak in their behalf.

Respectfully submitted,

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Counsel for NRC Staff

Dated at Bethesda, Maryland
this 3rd day of October, 1978

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