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January 3, 1977

Dr. J. Vann Leeds, Jr.
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Dr. Emmeth A. Luebke
Atomic Safety & Licensing Board
Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Frederic J. Coufal, Esq.
Chairman
Atomic Safety and Licensing Board
Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Re: Midland Proceeding - Schedule for Presentation of Evidence

Gentlemen:

Pursuant to this Board's order of December 23, 1976 regarding the schedule for presentation of evidence beginning on January 18, 1977, Counsel for Consumer Power Company contacted Counsel for the NRC Regulatory Staff and Counsel for all Intervenor except Dow on December 29, 1976. Counsel for Licensee was able to reach agreement on the schedule for witnesses with Counsel for the Staff but was not able to reach agreement with Counsel for all Intervenor except Dow.

Licensee proposes to present the following witnesses' direct testimony and have their cross examination completed in the following order:

1. Gilbert S. Keeley, parts 1 and 2 (status of construction and ACRS);
2. Steven H. Howell (Licensee's contract with the Dow Chemical Company);
3. Joseph G. Temple. (Remainder of cross-examination on the Dow Chemical Company's contract with Licensee);
4. Roy A. Wells (Environmental Impacts);
5. Gordon L. Heins (Need for Power); and
6. Gilbert S. Keeley, parts 3 and 4 (Cost of Delay and Cost of Abandonment).

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Messrs. Vann Leeds, r., Coufal
and Luebke


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In addition, Licensee would not object to testimony by and completion of cross-examination of any further Dow witnesses which the Board wishes to be called at the conclusion of Mr. Temple's testimony. Licensee believes that by proceeding in this manner, its direct case and pertinent cross-examination will be presented to the Board in the most logical fashion.

Counsel for Intervenors has stated that while he would stipulate Licensee's testimony into the record, he wishes to cross-examine A.H. Aymond, Chairman of the Board of Licensee, R.C. Youngdahl, Executive Vice-President of Licensee, and the remainder of the Dow employees he has requested during the first week of the resumed hearings. Licensee cannot agree to this schedule for two reasons. First, as reflected in pages 755 and 756 of the transcript, it is the Licensee's position that Mr. Howell will be able to answer any questions of the parties or the Board concerning negotiations with Dow and, as reflected by the Board's order at those pages, the Board will entertain, following Mr. Howell's testimony, a motion to exclude Mr. Aymond and Mr. Youngdahl from testifying. Second, as this Board has previously stated, Licensee has the burden of proof in this matter. The order of presentation of its witnesses to meet that burden must therefore be left to Licensee. Once this burden is met, the burden of going forward then shifts to parties opposing Licensee's position. Logically, it would be at that time that those parties' case should be presented. This is true even though the opposing parties' case will consist of examination of Licensee's employees. Counsel for the Regulatory Staff have no objection to proceeding in the manner requested by Licensee.

Sincerely yours,



R. Rex Renfrow, III

RRR:dm

c.c. Service List