September 15, 1972

UNITED STATES OF AMERICA

ATOMIC ENERGY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

IN THE MATTER OF	)	
	)	Docket Nos. 50-329
CONSUMERS POWER COMPANY	)	50-330
	)	
(Midland Plant, Units 1 and 2)	)	

SAGINAW VALLEY ET AL. INTERVENORS' PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

I

Environmental Matters

At the last conference among counsel, the Board set September 15, 1972 as the date on which the Saginaw Valley et al. Intervenors should submit their Proposed Findings and Fact and Conclusions of Law. Counsel for the Saginaw Valley et al. Intervenors was not at the last Pre-hearing Conference but was informed of its substance and requirements after the fact. Neither counsel for Saginaw Valley et al. Intervenors nor Saginaw Valley et al. Intervenors participated in the environmental phase of this hearing. The reasons, therefore, have been stated earlier in our submissions. Thus, we believe it basically and intrinsically

unfair for the Atomic Energy Commission (for it is the Commission, since this Board is merely an agent of the Commission) to schedule hearings on the Midland reactors at a time when Saginaw Valley et al. Intervenors' attorney was pursuing work on behalf of segments of the public interest at the National ECCS Hearings. We also believe that the scheduling is all the more so unreasonable in view of the fact that the Midland hearing raised ECCS issues prior to the adoption of the Interim Acceptance Criteria and issue was joined, therefore, more than six months ahead of the Commission's regulations. In this context, for the Commission to permit the Midland hearing to go on unabated without permitting Saginaw Valley et al. Intervenors the benefit of counsel, while at the same time not permitting ECCS issues to be raised at the Midland hearing on the grounds they are being raised at the National Hearings, results in a very anomalous position. Thus, the Commission encouraged Saginaw Valley et al. Intervenors (and their counsel) to go to the National Hearings and receive their rights with respect to those issues, while at the same time penalizing Saginaw Valley et al. Intervenors (and their counsel) for having so participated and, thus, not being available for the environmental phase of this proceeding.

Since, in our judgment, Saginaw Valley et al. Intervenors were unreasonably and unlawfully prohibited from participating in the environmental phase of the proceeding, [1] they have no conventional findings of fact to set forth. Instead, Saginaw Valley et al. Intervenors refer to their Statement of Environmental Contentions as to each of which Saginaw Valley et al. Intervenors believes the Board must make findings.

Our understanding of the evidence placed in the record by Applicant and the Regulatory Staff lead us to believe that conclusions favoring Applicant and the Regulatory Staff on environmental matters cannot be permissibly drawn. Therefore, we shall await the decision, if any, by the Atomic Safety and Licensing Board and review it for its support and legality. See e.g. Tr. 821. In the event that such a decision does not comport with our view of the applicable law, we intend to submit, on a timely basis, exceptions to such initial decision, and seek such further appellate review as may be required.

We believe that the exclusion by the Board of environmental matters which it did not hear is sufficient in and of itself to condemn any conclusion which holds that the National Environmental Policy Act has been satisfactorily analyzed.

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[1] As noted before, Saginaw Valley et al. Intervenors tried without success to retain an attorney other than their present counsel.

II

Radiological Health and Safety Matters

We have reviewed the Applicant's Proposed Findings of Fact and Conclusions of Law, and we believe Applicant's submission is voluminous and serves as a starting point to lay the basis for the claim we make in this section of our Proposed Findings of Fact and Conclusions of Law. Applicant would have the Board, an entity set up by the Atomic Energy Commission pursuant to the authority of the Atomic Energy Act, accept the fact that the regulatory agency and utility industry have decided that the Midland Plant should be built and that is that. We are more convinced now than we were two years ago that the real difficulty with analyzing a nuclear reactor lies in the overwhelming commitment that is made before no one really has an opportunity to make an analysis. Perhaps this is all the law requires, although we think otherwise. Perhaps also the Atomic Energy Commission's promotional and regulatory functions do not create a bias, if you will, an intrinsic and inherent bias against those who challenge nuclear safety; but we think not.

We begin this section by alluding to various comments by the Board members which we believe support our position of such inherent bias against Intervenors. While

we are not prepared to state that the bias we urge is personal or peculiar to the Intervenors in this case, we are prepared to say, as we have said before, that Board members have a long and successful relationship with the development of nuclear power; an inherent (almost genetic) feeling that a loss of coolant accident will never happen; and that any safety or environmental problem raised during the course of licensing hearings can be resolved at some point before it is too late.

Witness, for example, the role of the Advisory Committee on Reactor Safeguards (a Committee of which Dr. Hall was a member). That Committee consistently salves its conscience by alluding to unresolved safety problems, but nonetheless makes recommendations in favor of construction and operation of nuclear power plants. They do so in the continual context and knowledge that problems noted several years ago continue to be unresolved. Did Dr. Hall come to this hearing with an open mind about alteratives to nuclear power? We think not. See, for example, Dr. Hall's pronouncement that it was the Intervenors who had to convince him of the lack of safety rather than what the law requires that the Applicant and Regulatory Staff prove objectively the merit of their assertions. See Tr. 1019-48. See also Tr. 1923, 162, 380-81.

Did Dr. Goodman come to this hearing with an open mind about the alternatives to nuclear power? We think not, and we respectfully observe some of the comments made by Dr. Goodman and particularly his opening remarks at the hearing congratulating the people of Midland upon the acquisition of their soon to be built dual purpose power plant. See, e.g., Tr. 1233, 1289, 1347, 1456, 1922, and 2697.

Even Chairman Murphy was susceptible to what we regard as the "occupational hazard" in the nuclear industry. Thus, Chairman Murphy, at numerous times, required that Intervenors disprove long-standing assumptions before they would be permitted to cross-examine and interrogate in such areas. See, e.g., Tr. 1880 and 2099. See also Tr. 2958 and 3048.

Although we have through the months found the Board's position and rulings understandable in light of the Board members' historical relationship with nuclear power and the industry itself, we find them nonetheless unacceptable. Given, for example, a continuation of the collective positions of Drs. Hall and Goodman, we believe that ECCS technology would be in even a far worse state than it is now and that the laboratory scientists who finally had the courage to speak up would still be silenced. The so-called "experts" would

by deciding everything, among themselves, without the kind of healthy criticisms that can only come from outside sources.

We have not, therefore, chosen to search the record and respond to this proceeding by submitting citations of matters which we believe were proved or disproved. Such a task, aside from the fact that rulings prohibited us from pursuing our position, would necessarily detract from the fact that whatever occurred below, it was not and cannot be regarded as an exposition of the relevant issues. We are quick to add that perhaps the blame is to be shared equally, although we believe it is the Commission's responsibility to provide a basis for adequate hearing, if it wishes to hold hearings. What has happened is that the Atomic Energy Commission, so disturbed with its obligation to hold hearings on decisions already made and incapable of reversal, and so fearful of emerging as a proponent against public hearings, has reacted irrationally at every turn; and its agent, including the Board members here, have unfortunately not taken issue with such irrationality. We do not make these statements in personal disrespect of the Board members. We do maintain the belief, however, that the responsibility of Board members toward assuring a check upon Regulatory Staff and industry decisions must go beyond that which was demonstrated below.

Unfortunately, everyone has been disserved by the lack of independence. Thus, Dow Chemical has been disserved. It blindly relies upon Consumers Power which in turn blindly relies upon Babcock and Wilcox which in turn is blindly regulated

by the Regulatory Staff, an arm of the agency understaffed in talent and manpower and unwilling or unable to listen to the advice of its hired experts; Consumers Power has been disserved. Thus, without independent examination, it made its commitment to nuclear power several years ago so much so that economics prevent reexamination; and last but not least the many Intervenors and "little people" who took abuse for exercising their statutory rights have been disserved. These people were then condemned for not having had the expertise to raise and resolve problems which still perplex the "experts."

Each of these occurrences has resulted from the fact that industry members were not self-critical, and did not ask what other alternatives there are to construct a nuclear power plant at a time when significant safety items are unresolved, and we do not know what we will do with the "bloody mess" when the natural life of the plant has expired.

We set forth below significant areas of legal concern which compel us to conclude that no positive conclusions can be drawn in favor of Applicant and the Regulatory Staff on this record regarding such issues. We set forth these areas not as an exhaustive list but as a sufficiently responsible list. And, as set forth in our environmental findings, we intend to pursue our legal remedies in the event that it is necessary in respect to any initial decision which may be rendered by the Board.

A. The Board first agreed that the emergency plans of the Applicant were insufficient and, indeed, woefully inadequate. The Applicant then filed a lot of papers and that was the end of that. In fact, the Board never received even the Regulatory Staff's view on the emergency plans. Why? Because no one thinks the accident will ever happen.

B. The Board was unimpressed with the quality assurance and quality control methods of the Applicant and literally agreed that the Applicant's procedures would not comply with the relevant regulations. Indeed, it was determined at the hearing that QA and QC were nonexistent during the fabrication of the pressure vessel and that the Compliance Division had not even inspected the pressure vessel until it was more than 90% completed. Yet no significant changes were ordered.

C. The Advisory Committee on Reactor Safeguards Letter was admitted into evidence over objection to show that the ACRS issued a favorable recommendation regarding the Midland Units. The Board allowed as how the ACRS Letter was "not evidence." Yet as we read Applicant's Proposed Findings of Fact and Conclusions of Law, great pains are taken to point out that the ACRS approved the Units and that the Applicant is busily engaged in attempting to resolve items which were noted as unresolved in the Letter. But no

more was done. Why? We suppose it is because no one knows the answers to many of the unresolved safety matters.

D. Emergency Core Cooling System effectiveness was an issue in this proceeding long before the Commission's Interim Acceptance Criteria of June, 1971. All of a sudden, Intervenors around the country were sent to Washington with lesser rights and the assurance that the ECCS hearings would last just long enough to license every plant whose application was on file with the Regulatory Staff as of June, 1971. We must commend the Board and particularly Chairman Murphy for his honest attempt to resolve the procedural issues and denial of substantive rights inherent in depriving Intervenors here the right to raise ECCS issues, while nonetheless applying the existing ECCS regulation. However, AEC "policy" barred even the Chairman's efforts.

E. Surely this Board and particularly Drs. Hall and Goodman are aware of the Reactor Operating Experience Reports ("ROE") published by the Atomic Energy Commission. Did either of the scientific members of the Board inquire of the Applicant or the Regulatory Staff whether the industry and, particularly, the

Applicant, has taken cognizance of these experiences or asked what steps Applicant intends to take to assure no reoccurrence of silly and sometimes near disastrous accidents?

F. The design of the Units and some of its more sophisticated safety systems are as yet incomplete. When will Intervenors get an opportunity to determine whether the final design meets acceptable safety standards - at the operating stage where they will be accused of delaying the completed facility and it is too late to offer a substitute system or design? Such a result makes no sense but again, we suppose, in the Commission's view, it is progress.

G. In one of the very early orders of this Board (May 17, 1971) certain interrogatories to Applicant and the Regulatory Staff dealing with reactor pressure vessel failure and integrity were disallowed upon the grounds that reactor pressure vessel failure, if a credible accident, would require denial of a construction permit. We assume that the Board had decided by administrative fiat that reactor pressure vessel failure was incredible. Where is the evidence for such a conclusion? Has the Board read the ACRS reports dated August 17, 1972 on Zion Units 1 and 2

and Forked River Unit 1 which raise again the issue of reactor pressure vessel failure and allow as how research has to be done to determine whether such an accident is credible? Has the Board read the Regulatory Staff's Brief in Indian Point Unit 2 where it allows, in argument to the Appeal Board, that reactor pressure vessel integrity is indeed an issue in licensing proceedings and is required to be analyzed pursuant to the definition of a Loss of Coolant Accident as set forth in Appendix A to Part 50? Is the Board now prepared to suspend the issuance of a construction permit until such time as the question of credibility of reactor pressure vessel failure is resolved?

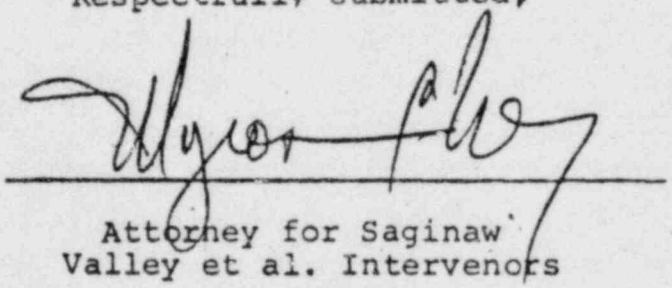
CONCLUSION

We trust the Board members will not take umbrage at the tone of this submission. The remarks made herein are evidence of the frustration that one group of Intervenors has experiened before one administrative agency. The fault lies with the Commission, the industry and their promotional perspective.

Of course, some issues are more important than others and, unfortunately, the hearing failed to deal with the three most significant issues: that is, ECCS effectiveness, reactor pressure vessel failure, and the unalterable commitment to an industry about which we do not know enough.

We would ask the Board to deny the issuance of a construction permit on the grounds that the Applicant has not demonstrated that the public health and safety will be protected and that an insufficient and inadequate environmental analysis has been made.

Respectfully submitted,



Attorney for Saginaw Valley et al. Intervenors

Myron M. Cherry
109 North Dearborn
Suite 1005
Chicago, Illinois 60602
312/641-5575

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CERTIFICATION

I certify that copies of the foregoing Proposed Findings of Fact and Conclusions of Law of Saginaw Valley et al. Intervenors were mailed to the Members of the Atomic Safety and Licensing Board, the Secretary of the Atomic Energy Commission, and all counsel of record on September 15, 1972.

Myron M. Cherry