

2/2/78

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board  
For Special Proceeding

In the Matter of	)	
	)	
CONSUMERS' POWER COMPANY	)	Docket No. 50-329)
	)	50-330)
Midland Plant, Units 1 and 2	)	(Special Proceeding)

STATEMENT OF MYRON M. CHERRY  
WITH REGARD TO FILING OF CERTAIN MOTIONS

At the January 9, 1978 pre-hearing conference in this matter, counsel for Mr. Myron M. Cherry expressed the intention of filing a number of preliminary motions. January 9, 1978 Transcript, at 26. This Special Board ordered that any jurisdictional motions be filed by Friday, February 3, 1978. Id. at 103.

In the course of the January 9 conference, counsel for Mr. Cherry noted that this proceeding had a number of highly unusual features, including the wholesale recusal of the Appeal Board; the Commission's willingness only to finance the prosecution of those charges preferred by the Midland Board with which the

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staff agreed; and the possible application to the members of this Special Board of the same considerations which led the members of the Appeal Board to recuse themselves. See, e.g., January 9, 1978 Transcript at 11, 13, 19-20. Since the date of the pre-hearing conference, this proceeding has taken on an additional unusual aspect.

On January 30, 1978, the Chairman of the Commission -- on the basis of information, the precise nature of which was not specified -- wrote to the Chairman of this Special Board with copies to all parties to this proceeding. While the letter is not entirely clear in this regard, it appears that the Commission has revoked or intends to revoke this Special Board's power to deal with any matters other than settlement.

The January 30 letter does not specifically abrogate this Board's January 9, 1978 orders on filing dates. However, it now appears appropriate to hold in abeyance a number of motions which we would have filed had it been intended that this Board continue to preside over this matter. Accordingly, we are submitting herewith three motions to dismiss

charges against Mr. Cherry for lack of jurisdiction,  
as required under the February 3 filing deadline.  
This filing is without prejudice to the submission of  
additional preliminary motions in the event that this  
proceeding continues.

Respectfully submitted,

*Rosalind C. Cohen*

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Dated: February 2, 1978