

March 17, 1975

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Myron H. Cherry, Esq.
One IBM Plaza
Chicago, Illinois 60611

In the Matter of Consumers Power Company
(Midland Plant, Units 1 and 2)
Docket Nos. 50-329 & 50-330

Dear Mr. Cherry:

This is in response to your letter of February 17, 1975 concerning the financial qualifications of Consumers Power Company to design and construct the Midland Plant, Units 1 and 2.

In December 1972, Consumers received permits from the then Atomic Energy Commission to construct the Midland Plant upon the basis of, *inter alia*, a finding that it was financially qualified to design and construct the licensed facilities. But as you note in your letter, Consumers encountered "substantial financial difficulty" during 1974. The Staff (then the AEC Regulatory Staff) in response to your letter of May 20, 1974 commenced an inquiry to determine whether the current financial situation of Consumers warranted the commencement of an action to modify, suspend or revoke the Midland construction permits.

The Staff's evaluation (copy enclosed), released on September 13, 1974, came to the conclusion that, although Consumers' financial condition clearly warranted continuing attention by the Staff, the company is "financially qualified to continue construction of the [Midland Plant] since it has reasonable assurance at this time of obtaining the necessary construction funds." This conclusion was based on an analysis of construction expenditures and funds available for construction during a "projection period" from June 1, 1974 through May 31, 1975. The Staff did not recommend any immediate action beyond the imposition on Consumers of certain new reporting requirements and the maintenance by the Staff of continued surveillance of Consumers' financial condition.

In your letter you suggest that the Staff's decision was not consistent with the Commission's duty, in your words "to make continual findings of safety." Your apparent position is that, consistent with this duty, the Staff was required in its September 1974 evaluation to make a finding that Consumers was either financially qualified or not qualified to design and construct the Midland Plant through the entire anticipated construction period, including the portion thereof after May 31, 1975.

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You ask, therefore, whether the Staff has made "a judgment as to the continuing financial ability to construct the Midland Plant facility during the period of postulated construction." If by this you mean to ask whether any de novo determination of financial qualifications for the entire construction period was made in connection with the Staff's September 1974 evaluation, the answer is no. It is important to add in this connection, however, that the required judgment of financial qualifications for the entire construction period was made on behalf of the Commission prior to the issuance of the Midland construction permits, and that, after careful consideration of Consumers' current financial difficulties (see the enclosed evaluation), the prior judgment remains in effect. What the Staff did in September 1974 was to determine whether the current financial situation of Consumers was adequate cause for seeking to overturn the Commission's prior judgment in a formal proceeding. No such cause was found.

As indicated above, the Staff's determination in this regard was based on a study of a one-year "projection period." A one-year period was selected in order to ensure that the Staff's determination would be based on the least speculative and hence most meaningful data. This was appropriate because it was apparent that Consumers' immediate financial condition was in flux and, therefore, of uncertain value for predicting the Company's financial condition over the long term. For example, as the Staff's evaluation makes plain, the long term financial condition of Consumers will depend largely on the willingness or unwillingness of the Michigan Public Service Commission to grant "relief" from existing authorized rates.

Your letter also raised the concern that the implementation of safety measures at the Midland Plant might be compromised by a lack of funds. One of the objectives of the Staff's review of Consumers' financial condition was to determine whether possible financial pressures resulted in a compromise of safety features. The Staff's review found no such compromise. However, reliance that there has been no compromise of safety features is not determined solely on the basis of a financial review, but rather on the basis of the Staff's overall defense in depth review, which, in addition to a financial evaluation, includes a comprehensive safety review and inspection during the plant's design, construction, testing and operation, implementation of a quality assurance program and continual surveillance and inspection by the NRC's Office of Inspection and Enforcement.

In closing, I want to emphasize that we are well aware of Consumers' financial condition. For this reason, we are continuing to monitor all developments which may have a significant impact on the Company's financial qualifications to design and construct the Midland Plant.

Sincerely,

Wicks					
LMO					
See next page.				David E. Kartalia Assistant Chief Hearing Counsel	

Enclosure

cc w/out encl.
Michael Miller, Esq.
Mr. William R. Rails
Mrs. Mary Sinclair
Mr. David Comey

bcc: HShapar
ECase
DSkovholt

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See attached concurrence list.

to monitor all developments which may have a significant impact on the Company's financial qualifications to design and construct the Midland Plant.

Sincerely,

David E. Kartalia
Assistant Chief Hearing Counsel

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