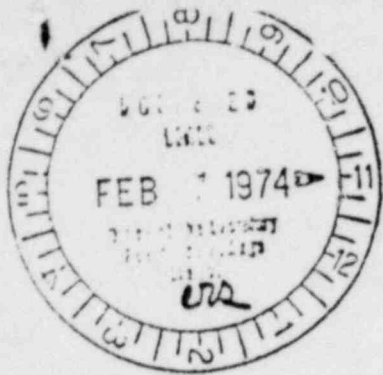


50-329



LAW OFFICES
JENNER & BLOCK
ONE IBM PLAZA
CHICAGO, ILLINOIS 60611
222-9350
AREA CODE 312
February 4, 1974

THIS DOCUMENT CONTAINS
POOR QUALITY PAGES

Secretary of the Commission
U. S. Atomic Energy Commission
Washington, D.C. 20545

Re: Midland Nuclear Power Plant

Dear Mr. Secretary:

This letter is being addressed to you although I fully intend that it be directed to all entities of the Commission which may have jurisdiction over the matters raised here, as well as the Commissioners themselves and the Director of Regulation.

As you know, there is pending a petition to have a hearing on revocation of the construction permits because of significantly changed facts dealing with the Environmental Impact Statement and the cost-benefit analysis.

I have just learned that Dow Chemical has, in fact, signed a contract with Consumers Power Company for the purchase of electricity and steam from the nuclear power plant. However, to my knowledge, the new contract substantially alters the cost-benefit ratio earlier used as a justification for the plant. Since the National Environmental Policy Act and the Council on Environmental Quality Guidelines require a continuing review by the agency, it is incumbent, as noted in our earlier petition, to reexamine these facts.

While I have not seen a copy of the contract (by carbon copy of this letter I am requesting a copy of the new Dow Chemical contract), I have learned that it is fundamentally different in the approach formerly taken by Dow Chemical and Consumers. Whereas originally Dow Chemical was to have shut down all of its fossil fuel steam and electric capacity at the commencement of operation of the nuclear

8007250 707

G

Secretary of the Commission

February 4, 1974

Page Two

nuclear facilities, this is no longer true and the Dow contract permits Dow to continue its own capability. Thus, Dow's purchase of steam and electricity will be reduced from the original proposal, drastically altering the necessity for the plant. Indeed, I understand that Dow will purchase steam not only for process purposes but also for the generation of electricity. Since substantial reliance in the Impact Statement was predicated upon the reduction of fossil fuel pollution (under the assumption that Dow's facilities would be closed) and since now those benefits, in substantial part, are no longer available, the need for the plant has got to be reanalyzed. The Atomic Energy Commission has an obligation to reanalyze proposals when significant changes occur notwithstanding a prior and approved Impact Statement concerning the projects. See Sierra Club v. Froehlke - F.Supp. - 5 ERC 1033 (D. Tex. 1973) and Controller General Report to the House of Representatives Subcommittee on Fisheries and Wildlife Conservation of the Committee on Merchant Marine and Fisheries, "Improvements Needed in Federal Efforts To Implement The National Environmental Policy Act of 1969," May 18, 1972. Thus, the law requires a reevaluation now of the construction permits to determine if the cost of abandonment of the project outweighs the alleged benefits and, if not, the proposed project is not supportable under law.

As your agency is no doubt aware, the entire purpose for the Midland Plant was predicated upon use by Dow Chemical of electricity and steam on the condition that Dow would shut down its facilities at some point. Indeed, this matter was so significant that both the Impact Statement and the record of the Midland hearing disclosed that it would be uneconomical solely to generate electricity from the plant if Dow did not make its commitment to shut down its facilities. This significant fact has now been altered. Since the latest Compliance Division Inspection Report indicates less than 2% completion of construction, it is clear, under applicable law, that a re-

Secretary of the Commission
February 4, 1974
Page Three

analysis must be made in light of these changed facts.

There is no warrant for the Commission's continuing to ignore these changed circumstances. Additionally, the Commission should take immediate steps to see to it that the new Dow contract is made public immediately so that an analysis can be made by the public and all state and federal agencies concerning the continued viability of the proposed project. See, for example, Natural Resources Defense Council v. Morton, 458 F.2d 827 (D.C. Cir. 1971) and particularly on remand 337 F.Supp. 170 (D. D.C. 1972).

If the Commission believes that the Midland project should be continued notwithstanding these drastically changed circumstances, then it is obligated to make such decision based on existing facts giving all relevant interests an opportunity to be heard.

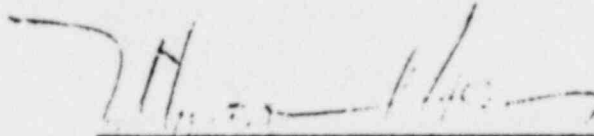
This letter is intended as one or more of the following:

- A. A request for reassessment by the Commission or the Director of Regulation of the construction permits in light of significantly changed facts which drastically alter the cost-benefit analysis; or
- B. Additional authority to the Atomic Energy Commission in connection with the pending petition for hearing on cost-benefit reexamination; or
- C. A petition to reopen the issuance of construction permits on the grounds of drastically changed circumstances not known to the Commission at the time of final approval of the construction permits.

Secretary of the Commission
February 4, 1974
Page Four

These comments, therefore, are requested to be directed both to the Commissioners and the Director of Regulation for further consideration. These comments are tendered in letter form rather than under a case caption solely for procedural, communication and time reasons and not because we do not fully intend to have these comments and requests addressed to the Commission in a formal, legal manner.

Respectfully submitted,



Myron M. Cherry, Counsel for In-
tervenors and Petitioners in con-
nection with the Midland Nuclear
Power Plant.

MMC:I

cc: Director of Regulation
Commissioners, AEC
Counsel for Dow Chemical Company
Counsel for Regulatory Staff
Counsel for Consumers Power Company
Counsel for Mapleton Intervenors
Council on Environmental Quality
Honorable John D. Dingell