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December 30, 1980

Mr. Harold R. Denton, Director
Office of Nuclear Reactor Regulation
U. S. Nuclear Regulatory Commission
Washington, D. C. 20555

Re: Rockford League of Women Voters' November 2, 1980
Request Pursuant to 10 C.F.R. 2.206 and 2.202

Dear Mr. Denton:

I am in receipt of your letter of December 22, 1980 denying in part and taking under advisement our earlier request for action.

I must say I find your response circuitous in the extreme.

First, you deny our request for an immediate shutdown of construction at Byron even though you full well know that the unresolved safety issues applicable to Byron are presently unresolved and that Byron is proceeding forward without factoring in these resolutions. Your reasoning that at some point in the future Byron will be required to factor in whatever resolutions deemed necessary by the NRC is unsupported by the history and past practices of your agency. Time and time again your agency when faced with the relatively easy task of choosing between halting improper and unsafe construction or operation practices or letting the reactor construction or operation continue, has always opted for the latter. Whether that practice (now applied to Byron by your letter of December 22, 1980) is gross negligence or simply irresponsible regulation, it is nonetheless illegal. Particularly is this so since your own agency, through the regulatory staff (as well as the Commission itself) forecloses issues such as we raised herein at the construction stage (on the grounds that it is too early), as well as at the operating stage (on the grounds that the issues are generic). Maybe in the enlightened environment of Washington, bureaucrats can find a base for this Catch-22 treatment, but we simply will not and do not accept it.

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Indeed under your rules and regulations, I do not believe you even have authority to have denied our shutdown request since our motion, supported by affidavit and unrefuted (based almost exclusively on NRC documentation) has set forth a prima facie case requiring prompt action. Accordingly, we herewith serve you notice that we intend to appeal from your ruling.

Your letter of December 22, 1980 advises us that our requests (a), (b) and (c) are being taken under advisement and that you will let us know whether you will grant the relief sought therein within a reasonable period of time. I find this action on your part to be equally indefensible. Certainly our papers raise a prima facie case (again, since the material we submitted is on sworn affidavit, remains undisputed, and is based almost exclusively on NRC documentation), and your letter itself indicates that these matters (or at least many of them) are presently unresolved. Under those circumstances you know that we are entitled to a hearing and time and time again (as recently as the last 90 days), courts have ordered the NRC to comply with law.

Accordingly, we renew our request and serve notice that if we do not hear from you by Friday, January 16, 1981, we will consider all of our requests denied and will promptly seek relief from the courts. Your request for a reasonable period of time would in our judgment be met by a January 16, 1981 deadline. By then you will have had almost 60 days to review our request, a request which apparently has been thoroughly analyzed even before December 22, 1980 the date of your letter to me, which states in part that your office has made "an examination [of the League's] Petition." Moreover, you admit in your letter that Commonwealth Edison's construction license was issued on December 31, 1975, well before these now-admitted serious safety problems arose. Accordingly, by definition, the problems we raise were never given any consideration at Byron.

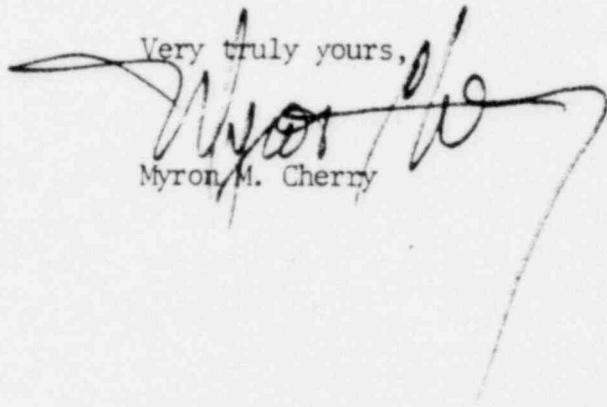
My long practice before the NRC has long since ceased to shock my sensibilities. However, in the beginning, I was of the judgment that fair requests to reasonable regulators might prove fruitful to the American public in its pursuit of honest regulation. That, of course, presumes the integrity of the regulator, an integrity which has been consistently lacking in your agency. In the advent of Three-Mile Island (an event deemed incredible by the NRC, but not others), you began to play an important role in reassuring the public of the NRC's honesty and integrity. Your letter of December 22, 1980 does little to foster that conclusion.

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Someday, maybe not now, but certainly tomorrow, persons in such a position as yours will be held responsible personally for dereliction of duties. I have often thought that elected or appointed officials owe such a duty to the public and that a breach thereof should be recompensed by damages levied personally against the official. Your office's conduct in connection with the pending request only suggests that that day be sooner than later.

I await your speedy reply.

Very truly yours,



Myron M. Cherry

MMC/es