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9/27/76
September 27, 1976



Daniel M. Head, Esq., Chairman
Atomic Safety and Licensing
Board Panel
U. S. Nuclear Regulatory Commission
Washington, D. C. 20555

Re: Consumers Power Company
(Midland Plant, Units 1 & 2)
Nos. 50-329 and 50-330

Dear Chairman Head:

I have attempted to resolve the extension request amicably but have been unable to do so.

I might add that in my telephone conversation Friday with Mr. Reis and Mr. Brown, Mr. Reis stated that he believed that a hearing on the Midland suspension issue could take as long as three to four days just for presentation of Consumers' direct case. I find such an estimate by Mr. Reis to be wholly out of line with the issues placed before the Board and it suggests to me that Mr. Reis is perhaps contemplating a hearing procedure which is somewhat different than I believe is necessary under the circumstances.

I enclose a motion requesting a modest extension of time with the reasons therefor. The extension request must be taken in the light of the fact that November 15 is the earliest date upon which I can be available for hearing in Midland and no other lawyer is prepared (or willing in light of the fact that Intervenors have little funds and their requests for fees have been continually ignored by the Nuclear Regulatory Commission), to represent Intervenors.

In response to the Licensing Board's orders of September 21, I confirm the following:

1. Intervenors stand on their brief filed by messenger on September 10 and do not intend to supplement any of the issues argued therein since we believe we have filed a brief adequate to comply with the Board's desire to have legal matters briefed by

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Daniel M. Head, Esq., Chairman
September 27, 1976
Page 2

September 29, 1976. Since the other parties have the benefit of our brief for some time, we would hope that they would deal with the issues as we view them, thus assisting the Board in its deliberation.

2. It is extremely impossible for me to determine how long any remanded hearings may take. To give you an idea of the complexity of the remanded hearings, I enclose a copy of a letter which I sent to Director Rusche which I adopt herein as a short summary of what I think the issues are. In addition, I point out that we will need information from Dow Chemical on its revised views about a nuclear power plant in Midland. Since major issues involve energy conservation and the effects on the environment of the end-use of energy, we will need discovery to determine Consumers' major customers (such as Dow and General Motors) to determine whether the NEPA ought to encourage or discourage those uses. Moreover, I cannot contemplate what discovery we will need in connection with a revised ACRS letter until I see the letter, determine whether we will wish to challenge those safety issues and then see what the record already has on that information. In connection with fuel cycle issues, we will obviously be getting involved in the status of any generic proceedings or resolution of the waste matters since the Court of Appeals has mandated that until both of these problems are resolved, the matters are open in licensing hearings and thus have a function in the cost-benefit analysis.

3. Finally, since the Aeschliman case mandates a new cost-benefit analysis, we will have to update costs and other figures and once again it is impossible to determine what these will be until the Board holds a prehearing conference (after it has decided the suspension question) to determine what legal issues it will permit opened at the remanded hearing. The summary above is as far as I can go at this point but I would be willing to discuss it further at the suspension hearings if they take place.

4. I think it is premature to discuss how long discovery will take place since that depends entirely on how willing the other parties are to produce documents and other information. I suggest that within 30 days after the Board has decided the suspension issues, it may be wise to have a prehearing conference to discuss these ultimate issues and set up a discovery schedule. At that point, I will be able to discuss in some depth what I believe the time limits are because presumably at that point Consumers, Dow and the Staff will have made known their intentions with respect to cooperation in discovery.

Daniel M. Head, Esq., Chairman
September 27, 1976
Page 3

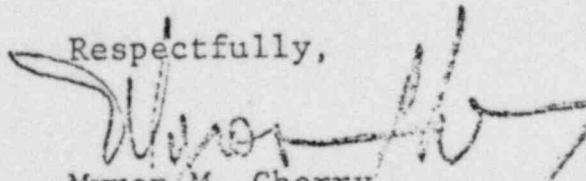
5. Since the function of a remanded hearing is a function of the issues and the length of time it takes to conclude discovery, it is beyond my present ability to guess how long the remanded hearings will take. I cannot conceive that the process will take less than six months, and it is entirely possible that it could take significantly longer; given the history of these proceedings and the constant refusal of the Staff and the other parties to produce information and Intervenor's financial problems, remanded hearings could take as long as two years.

* * *

This above statement represents my best good-faith effort at trying to respond at this juncture to the Board's requests with respect to a remanded hearing.

Because of Intervenor's views as to the absolute necessity to suspend Midland construction during remanded hearings, I must respectfully make known my intentions to take an immediate appeal to the Court of Appeals for the District of Columbia (or alternatively, show-cause contempt proceedings or mandamus proceedings) in the event that the NRC declines to obey the Aeschliman decision to halt construction pending remanded hearings, and I continue to suggest to all concerned that Consumers Power Company and the Regulatory Staff are presently permitting work to be done pursuant to an illegally obtained construction permit. I say this not out of any disrespect to the upcoming proceedings, but merely to reaffirm to the Licensing Board and others our views.

Respectfully,



Myron M. Cherry
Attorney for Saginaw and
Mapleton Intervenor's

MMC/ldh
Enclosure
cc: All Counsel, Members of
the Licensing Board and
Secretary

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September 27, 1976



Milton R. Wessel, Esq.
4 Little Lane
White Plains, New York 10605

James N. O'Connor, Esq.
The Dow Chemical Company
2030 Dow Center
Midland, Michigan 48640

Re: Consumers Power Company
(Midland Plant, Units 1 & 2)
Nos. 50-329 and 50-330

Gentlemen:

My latest information is that each of you are still representing or will be involved on behalf of Dow Chemical Company in connection with the suspension proceedings and remanded hearings. I enclose a copy of a motion which I just filed in connection with an extension of time request. I did not solicit either of your views in connection with an adjourned hearing, primarily because after Consumers Power Company had objected, it became necessary for me to file a motion in any event.

Because I wish any suspension hearings (and remanded hearings thereafter) to take place on a timely basis, I am asking if one of you will contact me to discuss the production of documents in the possession of Dow Chemical, which are relevant to the suspension and remanded proceedings.

I can generally state that the documents which I will ultimately want will include Dow's plans for processed steam (including whether it is no longer economic for Dow to rely upon processed steam for a nuclear facility) and documents concerning Dow's contract with Consumers Power Company, including correspondence and memorandums on these issues for the past several years.

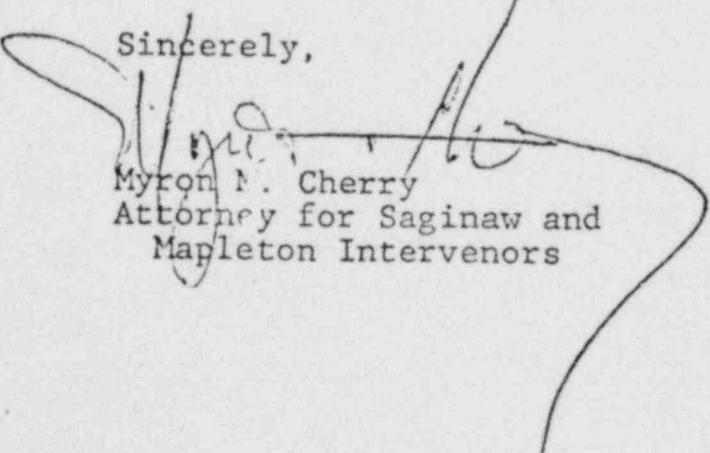
I hereby make request that in the event the Board schedules a suspension hearing (I have also asked for the hearings to be adjourned since they involve purely legal questions, but apparently the Board has different views), Dow be prepared to have available at said hearings the following:

Milton R. Wessel, Esq.
James N. O'Connor, Esq.
September 27, 1976
Page 2

1. Joe Temple to be available for questioning by Intervenor on the status of Dow's contractual relationships with Consumers Power on the Midland facility, and Dow's current views as to its ability to rely upon processed steam, in the economic nature, for that facility. I do not want to get into a lot of detail but only to confirm my belief that Dow no longer relies upon the Midland nuclear facility for processed steam in its immediate and near-term plans;
2. Dow contracts with Consumers regarding the Midland facility and any amendments thereto;
3. Correspondence, memos and other documents, initiated by, received by or in the possession of Dow Chemical Company concerning implementation of the Dow-Consumers contract and Dow's beliefs, opinions or views concerning processed steam to be generated by the nuclear power plant in addition to, as alternatives to or as standby reserve to processed steam from other sources including Dow's fossil fuel facilities. In this connection, I would also briefly ask questions about the necessity for Dow to comply, on a timely basis, with Michigan's Air Quality Standards, a compliance which I believe Dow must meet in advance of any building of the Midland nuclear facility on any basis.

If you have any questions, please let me know.

Sincerely,



Myron M. Cherry
Attorney for Saginaw and
Mapleton Intervenors

MMC/ldh

cc: Mr. C. R. Stephens
Richard Brown, Esq.
Howard J. Vogel, Esq.
Hon. Curt T. Schneider
Daniel M. Head, Esq.
Dr. Emmeth A. Luebke
Dr. J. Venn Leeds, Jr.
Harold F. Reis, Esq.