

LAW OFFICES

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August 4, 1976



Mr. Bernard C. Rusche  
Office of the Director of  
Nuclear Regulation  
Nuclear Regulatory Commission  
Washington, D.C. 20555

Re: 73-1776 and 73-1867

Dear Mr. Rusche:

Immediately upon receipt of the July 21, 1976 judgment of the D.C. Court of Appeals in the Midland case, I telephoned Peter Strauss and asked him to initiate procedures which would result in the immediate halting of construction at Midland since such an action would be consistent with the decision by the Court of Appeals.

In a telephone call this morning from Mr. Strauss, I was informed of your response to Anthony Roisman regarding his request on behalf of his clients to terminate, pending further hearings, the Vermont Yankee operating license. I understand that you informed Mr. Roisman that the Nuclear Regulatory Commission was not obligated to set aside the Vermont Yankee license but rather, it was the NRC's view, that the Court of Appeals had given the NRC discretion in connection with the setting aside of the Vermont Yankee license.

I gather that the purpose of Mr. Strauss's telephone call was to inform me that if I wrote you a letter similar to Mr. Roisman's, I would very likely receive a similar response. Accordingly, you may treat this letter as a request to shut down Midland (our Dockets 50-329 and 330) pursuant to the judgment of the Court of Appeals on July 21, 1976, although I appreciate that I will shortly receive a negative response from you.

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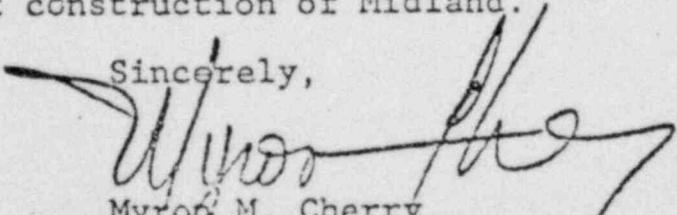
I might say that I find (quite apart from technical questions regarding the NRC's receipt of the mandate or NRC's consideration of further appeal procedure) a decision not to shut down Midland as somewhat astounding. As I read the Court of Appeals in Midland, it requires at a minimum, (1) a revised ACRS letter which in turn would give my clients an opportunity to raise further safety contentions; (2) further consideration of energy conservation including environmental analysis of the end-use of the electricity to be generated, which matters were not considered below; (3) detailed consideration of changed circumstances because of Dow Chemical's earlier decision not to terminate and shut down its fossil fuel plants, a factor not fully explored below; (4) detailed consideration of fuel cycle matters erroneously excluded below; and (5) a revised or amended Environmental Impact Statement and cost-benefit analysis.

As you can see, unless the Nuclear Regulatory Commission is going to treat the remanded hearings as other than a serious inquiry into whether the Midland plant ought to be built, any one of the concepts listed above could opt very strongly against the building of the plant in Midland. Therefore, it seems clear to me that it is impossible to have proceedings in conformity with the Midland decision without having the Midland plant shut down. And, I can tell you that my clients would not feel very comfortable (or fairly treated) if remanded hearings were to take place while Consumers Power cheerfully continues to build the plant now under attack.

While I fully appreciate the argument that Consumers Power "is at risk," I think such an argument, when we are talking about hundreds of millions of dollars, is fatuous and certainly, from my clients' vantage point, unbelievable. Indeed, the case of Calvert Cliffs and its progeny underscores the necessity not to make huge investments in advance of decision-making, and under that concept, construction also ought to be halted.

Accordingly, apart from technical questions involving the mandate, I think Midland should be shut down and at the very minimum, the Commission ought promptly to inform Consumers to go slow in connection with construction pending final receipt of the mandate from the Court of Appeals, if the NRC wishes to wait a few days. Considering the enormous problems in construction which have plagued Midland (not too surprisingly, given the fact that Bechtel is involved) I would think the Commission would welcome an opportunity to halt construction of Midland.

Sincerely,



Myron M. Cherry  
Attorney for Petitioners

MMC/vmh

cc: Peter L. Strauss, Esq.  
Honorable Vern Miller