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MYRON M. CHERRY
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December 29, 1976

Dr. Emmeth A. Luebke
Atomic Safety and Licensing
Board Panel
U. S. Nuclear Regulatory
Commission
Washington, D. C. 20555

Dr. J. Venn Leeds
10807 Atwell
Houston, Texas 77096

Frederic J. Coufal, Esq., Chairman
Atomic Safety and Licensing Board Panel
U. S. Nuclear Regulatory Commission
Washington, D. C. 20555

Re: Consumers Power Company
Midland Proceedings

Gentlemen:

I enclose a copy of a self-explanatory letter to Consumers' counsel. I do not know as of the writing of this letter whether Mr. Renfrow will agree to my proposed schedule, but I believe that my proposed schedule is consistent with the contemplation of the parties (and the Board's earlier rulings) and finds no objection, based on remarks in the transcript, from either the Regulatory Staff or Dow Chemical. Accordingly, in the event that Consumers does not accede to my reasonable request by January 5, 1977, I would ask that the Board order the schedule which I have outlined in the enclosed letter.

Finally, because of the schedules of all concerned, I had contemplated that the hearing would begin on the 18th and continue thereafter until completion. Yet the Board's order only apparently contemplates testimony during the week of January 18.

I hereby request the Board that if the suspension hearing is not completed during the week of January 18, 1977, it be continued the following week and thereafter without interruption until completed. I believe that such a schedule was contemplated by the prior Board and the parties, and I understood that the substitution of Chairman Coufal for Chairman Head was to enable the Board to sit continuously until completion.

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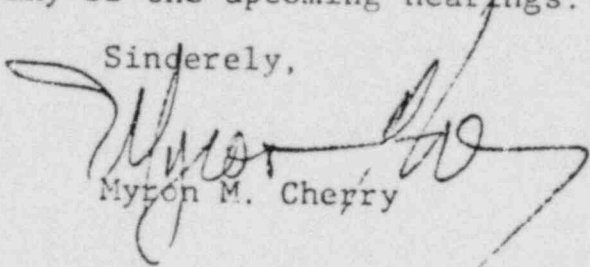
My present estimate is that the suspension hearing can be completed, based upon what I presently know, within 10 to 15 hearing days and I urge the Board to favorably consider my request since I believe that the evidence will show that the construction permit must be lifted and accordingly, each day

Drs. Luebke and Leeds and Mr. Coufal
Page Two
December 29, 1976

of continued construction is adverse to law and the public interest.

This request for a hearing schedule is without prejudice to our Brief to be filed under date of December 30, 1976 which supports our position that the Board presently has the authority and obligation to issue a suspension of the construction permit without the necessity of any of the upcoming hearings.

Sincerely,



Myron M. Cherry

MMC:es
enclosures

cc: Mr. C. R. Stephens ✓
Lawrence Brenner, Esq.
R. Rex Renfrow, III, Esq.
David J. Rosso, Esq.
L. F. Nute, Esq.
Mr. Steve J. Gadler
Mrs. Mary Sinclair

P.S. I have just been informed by Mr. Renfrow that Consumers Power Company objects to the hearing schedule set out in the enclosed December 29, 1976 letter, beginning at page 2 and continuing through page 4. In further support of the schedule I propose, I point out that none of the information that forms the basis for the cross-examination of Messrs. Aymond and Youngdahl appears in the direct testimony of any of Consumers' witnesses, including Messrs. Keeley, Howell and others. Accordingly, it is clear that asking Consumers' witnesses Howell, Keeley and others about matters within the direct personal knowledge of Messrs. Youngdahl and Aymond is not the way to proceed.

When I explained this matter to Mr. Renfrow, his position essentially, as I understood it, was that Consumers just doesn't want Aymond and Youngdahl to be cross-examined, which is contrary to the Board's order.

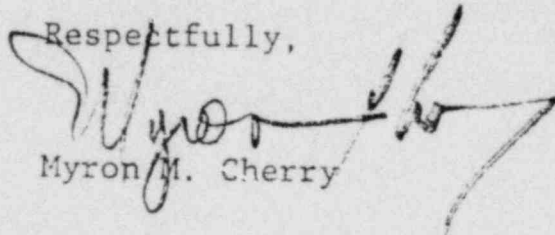
Based upon my present analysis, it is my belief that beginning with Aymond and Youngdahl will substantially lessen the hearing time and the cross-examination of other Consumers witnesses. Since I have agreed to

Drs. Luebke and Leeds and Mr. Coufal
Page Three
December 29, 1976

stipulate into the record Consumers' direct testimony (see my enclosed letter to Mr. Renfrow), and not Consumers Power Company should have the reasonable opportunity to schedule cross-examination.

I respectfully request a prompt ruling by the hearing Chairman ordering the schedule in accordance with the outline I have suggested in my letter to Mr. Renfrow enclosed.

Respectfully,

A handwritten signature in cursive script, appearing to read "Myron M. Cherry". The signature is written in dark ink and is positioned above the typed name.

Myron M. Cherry

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December 29, 1976

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Isham, Lincoln & Beale
Suite 4200
One First National Plaza
Chicago, Illinois 60670

RELATED CORRESPONDENCE

R. Rex Renfrow, III, Esq.
Isham, Lincoln & Beale
Suite 4200
One First National Plaza
Chicago, Illinois 60670

Re: Midland Interrogatories, Discovery
Matters, and Witness Schedule

Dear Messrs. Rosso and Renfrow:

In going over the Answers to Interrogatories which were served upon you by Messenger December 27, 1976, I find a few typographical errors which I set forth in this communication. I think that the typographical errors are clear upon their face, but I thought I would set them forth herein for your convenience.

- a) In Interrogatory 1(c), page 7, in the second to the last line and after the words, "or sale of electricity", insert the words "and steam".
- b) Interrogatory 5, at the end of the Interrogatory, add the following sentence: "If you have such contingency plans, set them forth in detail."
- c) At the end of Interrogatory 7, page 10, insert the following: "Also set forth the persons and details which are the subject of such negotiations or contemplated negotiations."
- d) Interrogatory 9, the sixth line, which is the second line on page 11, at the end of the line, insert the word "Midland".
- e) Interrogatory 13, line 9, page 14 top line, after the word "decommission" add to that word the letters "ing".

Messrs. Rosso and Renfrow
Page Two
December 29, 1976

- f) In the first line of Interrogatory 14 on page 14, insert the word "your" between the words "in" and "relationship".

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Since I want the answers to these Interrogatories as soon as possible, I agree to meet with you either in person or on the telephone to discuss any problems you may have in connection with these Interrogatories (including valid objections) in the event that will be helpful to you. Moreover, if you can answer some of the Interrogatories before the 14 day period, please do so.

I also confirm that the substance of this letter was given to you in a telephone conversation today at approximately 2:00 pm Chicago time.

I confirm my telephone request of you today to send me, in detail, the December, 1976 estimate for project costs and schedule for completion of the Midland Nuclear Facility received from the architect/engineer for the Midland Nuclear Facility. This revised estimate was referred to in Mr. Renfrow's letter to the Board of December 27, 1976. Since this is specifically relevant information and you have disclosed it to the Board, you agreed to provide me promptly with a copy of that estimate and its details as received by Consumers. You told me that you did not have it, but it was somewhere in Michigan in Consumers' office and you agreed to have a copy forwarded to me directly from Michigan to save time.

I also confirm that today we had a discussion concerning the status of witnesses. As you know, the schedule of witnesses should be geared with a good deal of flexibility for my proposed cross-examination, since none of your witnesses will be providing other than written testimony. For that reason and in order to shorten the actual hearing time, I made the following representations to you:

1. I would stipulate into evidence all of your witnesses' prepared testimony (except those portions as to which I have legal objection, but in such event the matter can be resolved on legal arguments by the Board) without the necessity of your having any witnesses in attendance at the hearing for these purposes. This would enable you to have in the record your direct case efficiently, quickly and promptly.

Messrs. Rosso and Renfrow
Page Three
December 29, 1976

2. I then stated that I wanted you to produce for cross-examination Mr. A. H. Aymond and Mr. Russell Youngdahl on January 18 beginning with Mr. Aymond or Mr. Youngdahl in any manner you prefer. As you recall, the Board ordered that these witnesses be produced for cross-examination pursuant to my motion and over your objection, and I believe that starting with these witnesses can substantially shorten the cross-examination.

3. After the completion of cross-examination of Youngdahl and Aymond, I would like to finish the cross-examination of Dow witness Temple and then the cross-examination of the remainder of the Dow witnesses as presently scheduled with Mr. Orrifice and the other persons who participated in the Dow corporate review.

4. After that, I would go back to cross-examining Consumers' witnesses Heins and then Messrs. Keeley, Howell, and Wells, in any order you find convenient so long as I begin with Mr. Heins.

Based upon my analysis, I believe that my suggestion provides for the most efficient hearing process and you informed me that you would get back to me after you have consulted with Mr. Rosso.

I also confirm your agreement to deliver to me today an index of negotiating and legal documents from your legal files for which you do not claim privilege and which you will make available shortly to me to inspect. I also confirm that I will receive in a few days an index or listing of the negotiations and legal documents upon which you claim privilege so that we can take the matter to the Board at the earliest possible time. I have received under date of December 24, 1976 an index of documents of a technical nature dealing with various aspects which you say are now available for inspection at your office. I will consult with Dr. Timm and advise you of when I or he will inspect these documents.

* * *

I can now give you more information concerning the projected schedule. The Board ruling with respect to production of Aymond and Youngdale is at the transcript 755-756. While there is a suggestion that Aymond and Youngdahl should be cross-examined after Mr. Howell (tr. 756, but no other Consumers witness), it is clear for my purposes that cross-examination of

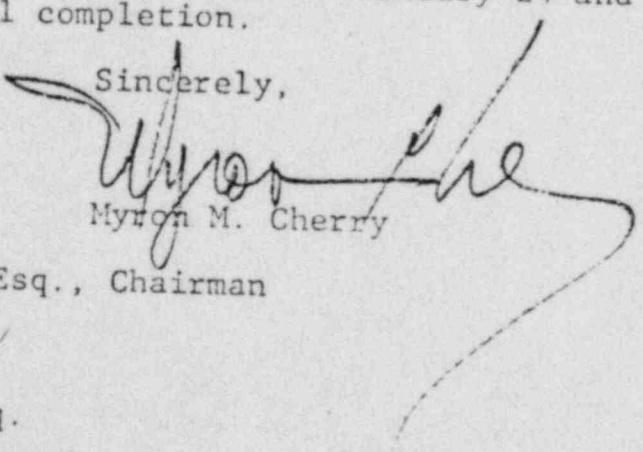
Messrs. Rosso and Renfrow
Page Four
December 29, 1976

Mr. Howell cannot provide the information that I wish from Aymond and Youngdahl. First of all, it was Youngdahl who was head of the negotiating team with Dow, not Howell, and Youngdahl who wrote to and received from Dow witness Temple approximately 25 letters which in part will be the subject of Youngdahl's cross-examination. It makes no sense to cross-examine Mr. Howell concerning a letter written by or to Mr. Youngdahl. Indeed, none of the letters I am speaking about show carbon copies to Mr. Howell or anybody else. Accordingly, it was Aymond who prepared the notes of the September 1976 meetings in which Dow was threatened with a lawsuit and it was Aymond who gave the threatening speeches as disclosed by witness Temple to Dow Chemical in December, 1976. It again makes no sense to cross-examine Howell concerning notes and statements made directly by Mr. Aymond. Accordingly, even if we were to proceed first with Mr. Howell, it is clear that he is not competent to provide, based on personal knowledge, the information sought from Aymond and Youngdahl who were making the decisions. Accordingly, I continue to suggest we start by cross-examining Mr. Aymond and Mr. Youngdahl.

The transcript also reflects (903-04, 969 and following) that there was an agreement to complete the Dow witnesses as soon as possible and in fact, Mr. Orrifice is presently available only on the 19th and 20th. I confirm today in a telephone conversation with Mr. Wessel that Dow also had contemplated that their witnesses would be called at the upcoming hearing, and I do not believe (although Dow can speak for itself) that Dow would have any objection to my beginning with Aymond and Youngdahl so as to set the stage and place in proper context the cross-examination of the Dow witnesses.

I also give you notice that I intend to petition the Board to continue the hearings the week of January 24 and hopefully thereafter until completion.

Sincerely,



Myron M. Cherry

MMC:es

cc: Frederic J. Coufal, Esq., Chairman
Dr. Emmeth A. Luebke
Dr. J. Venn Leeds
Mr. C. R. Stephens ✓
Lawrence Brenner, Esq.
L. F. Nute, Esq.