



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

CPG DEP. EX. NO. 3
FOR ID. AS OF 1/6/81

January 6, 1981

*Region
Director
1-page*

MEMORANDUM FOR: Chairman Ahearne
Commissioner Gilinsky
Commissioner Hendrie
Commissioner Bradford

FROM: William J. Dircks, Executive Director for Operations

SUBJECT: DAILY STAFF NOTES, JANUARY 5, 1981

IE

1. Consumers Power Company (Midland Nuclear Power Station) - Proposed Imposition of Civil Penalties - \$38,000 (EN-80-58).
2. Brunswick Unit 1 (Carolina Power & Light Co.) - Malfunction of Target Rock Safety Relief Valve, (PNO-II-81-01).
3. Dresden 2 (Commonwealth Edison) - Minor Release of Contaminated Steam During Isolation Condenser Testing, (PNO-III-81-01).
4. Industrial Inspection Industries, Inc., North Canton, Ohio - Stolen Radiographic Camera, (PNO-III-81-02).
5. Fort St. Vrain (Public Service Co. of Colorado) - Malfunction of the Main Steam Hot Reheat Valves, (PNO-IV-81-01).
6. Atlas Minerals Corporation, Moab, Utah - Uranium Mill Fire, (PNO-IV-81-02).

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CNL*

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CPCO DEP. EX. NO. 4
FOR ID., AS OF 1/6/81

LAW OFFICES
MYRON M. CHERRY
ONE IBM PLAZA
CHICAGO, ILLINOIS 60611
(312) 588-1177

20: MM-24712
5-12
[REDACTED]

November 20, 1978

Mr. J. G. Keppler, Regional Director
Office of Inspection and Enforcement
U. S. Nuclear Regulatory Commission
Region III
799 Roosevelt Road
Glen Ellyn, Illinois 60137

Re: CONSUMERS POWER COMPANY
(Midland Plant, Units 1 and 2)
Docket Nos. 50-329 and 50-330
(Operating Licenses Proceeding)

Dear Mr. Keppler:

I have received from Mr. Olmstead of the Nuclear Regulatory Commission a copy of a letter and report from Consumers-Bechtel to you, which were attached as enclosures to my copy of his November 16th letter to the Licensing Board. The report from Bechtel-Consumers is dated September 22, 1978 and accompanied your cover memorandum to Mr. Thornberg dated November, 1978. At page 2 of your November 1, 1978 letter to Mr. Thornberg you state:

"In our view, this deficiency [that is, the deficiency in connection with the diesel generator building settlement] has the potential for affecting the design adequacy of several safety related structures at the Midland site."

In view of the seriousness of this statement and the enormous sums of money which Consumers continues to spend, I should like a more full explanation, including a submission or a listing of all memorandums, communications, letters and reviews, whether formal or informal, which form the basis for the Region III's conclusions made by you. Please also tell me how you justify continued construction, in view of this serious breach of quality control, unless, of course,

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Mr. J. G. Keppler
November 20, 1978
page two

you are content to permit "magic" to ensure safety. I am most concerned over what appears to be a cavalier attitude towards construction. Can it be that your organization (whether intentionally or otherwise and whether conscious or unconscious) is affected by the amounts of money Consumers has spent so that you blind your eyes to reality. If so, you do a disservice not only to the people of the United States but also to the utilities who unfortunately take advantage of such lax enforcement. Do we need a serious accident before enforcement, in your mind at least, equals the importance of monetary investment?

Also attached with your letter to Mr. Thornberg of November 1 were communications sent to you from Consumers Power Company, in particular a letter from Howell dated September 29, 1978 and a September 22, 1978 Interim Report No. 1, apparently issued by Mr. Martinez of Bechtel to Mr. Keeley of Consumers Power Company.

In connection with the last mentioned report, page 3 has a significant deletion whereby Consumers Power or Bechtel apparently deleted information submitted regarding what you labeled as a serious safety problem, i.e. the diesel building settlement. The report states:

"This portion of the Bechtel Report is deleted because it contains a premature discussion of possible corrective action options."

In view of the lackluster performance at Consumers' Midland site, the history of the defects and bad workmanship at the Palisades site, and the overall shenanigans of Consumers (including the allegations of dishonesty), I am surprised and astounded that Region III compliance would permit Consumers or Bechtel to delete information on a serious safety issue without even a whimper being heard from the Nuclear Regulatory Commission.

Please let me know whether you plan to follow up with Consumers and obtain the information which they have withheld. It simply is incredible that this issue has to be raised by me (or anyone outside of the NRC) and was not followed up on by anyone at the NRC.

Mr. J. G. Keppler
November 20, 1978
page three

I also wish to inform you that my lines of communication have reported to me that the resident inspector currently on the Midland site may not be doing his job and may, in fact, have been co-opted by Midland personnel. Before I take any action, I would like you to make your own investigation to determine whether this person should be replaced and whether the resident inspector operation is working.

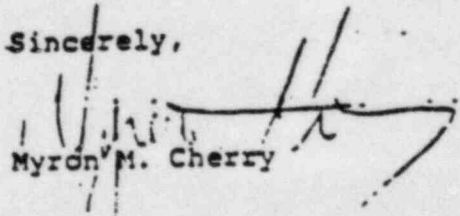
I am requesting all of the information in this letter on an immediate timeframe. If it is necessary for me to make a Freedom of Information Act request or take other steps to secure the information, please let me know immediately.

In view of all of these situations I should also like to request advance notice of any inspection which Region III intends to make at the Midland plant, so that either I or a representative on my behalf can make arrangements to be in attendance. If any inspection is to be surprise in nature, I will pledge my confidence to maintain the confidentiality of any such unannounced on-site visitation and inspection. I would appreciate sufficient advance notice to permit me to arrange my schedule so as to conform with any upcoming inspection (or to permit making arrangements for the attendance on my behalf, of a representative). Please let me know at your earliest convenience whether such arrangements will be made.

I realize this is a harsh and direct letter. But these problems at Midland have been repetitive so long that I can no longer believe that anyone takes them seriously. If you and others at the NRC worry about what shutting down Midland will do to the development of nuclear power more than what eventually will occur throughout the U.S. nuclear industry, if Consumers becomes the example to follow, then such persons should resign and join the industry, letting others more concerned with good government replace them.

I don't mind my principles losing in an honest adjudication. I have no respect, however, when I or my clients' interest cannot get a fair deal.

Sincerely,


Myron M. Cherry

MMC/ay



CPD
FOR ID, AS OF

DDP. EX. NO. 5

1/6/81

UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION III
799 ROOSEVELT ROAD
GLEN ELLYN, ILLINOIS 60137

November 24, 1978

MEMORANDUM FOR: H. D. Thornburg, Director, Division of Reactor
Construction Inspection, IE

FROM: James G. Keppler, Director

SUBJECT: LETTER FROM MYRON CHERRY - MIDLAND

The attached letter from Mr. Cherry regarding the Midland construction project is provided for your information. Region III is preparing a response to this letter and will discuss it with you prior to issuance.

I discussed Mr. Cherry's charges regarding the resident inspector (page 3) with Morris Howard (Acting Director) earlier today and asked him whether we should turn this matter over to OIA immediately or whether we should solicit more specific information from Mr. Cherry in our response to him. Morris indicated he would discuss the matter with OIA and get back to me.

James G. Keppler
James G. Keppler
Director

Attachment:
Letter, Cherry to Keppler, dtd 11/20/78

cc w/attachment:
J. G. Davis, IE
E. M. Howard, IE
W. J. Olmstead, ELD

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Myron M. Cherry

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Enclosure:
Information Requested by
Myron Cherry w/attachments

cc w/enclosure and Incoming
Letter

J. G. Davis, IE
H. D. Thornburg, IE
W. J. Olmstead, ELD
R. Fortuna, OLA
R. S. Boyd, NRR
PDR
Local PDR

1. Requested Information

"In view of the seriousness of this statement^{1/} and the enormous sums of money which Consumers continues to spend, I should like a more full explanation, including a submission or a listing of all memorandums, communications, letters and reviews, whether formal or informal, which form the basis for the Region III's conclusions made by you."

Summary Response

The Resident Inspector was initially informed by Consumers Power Company of a possible problem with the settlement of the Diesel Generator Building on August 21, 1978. Subsequently, on September 7, 1978, Region III was informed that the settlement was considered reportable pursuant to 10 CFR 50.55(e). A listing of correspondence generated in connection with this matter is provided as Attachment 1. (Copies of the listed correspondence are provided)

The concerns which prompted me to raise this problem as a potential safety issue can be summarized as follows:

- a. Evidence of settlement in excess of design specifications has been observed with the Diesel Generator Building. This building is a safety related structure in that it houses the emergency diesel generators, which are required to provide emergency power to equipment important to nuclear safety in the event of loss of normal offsite power. Our concern was that proper operability of the diesel generators could be affected by the excessive settlement.
- b. The excessive settlement of the Diesel Generator Building appears to be related to the fact that sufficient compaction of the supporting soil was not achieved. This, in turn, appears to result from random fill material being used to support the structure rather than "controlled, compacted cohesive soils" (FSAR commitment). Several other buildings or portions of foundations are also supported by random fill material. As such, although no excessive settlement of these structures had been observed to date, we are concerned that the potential may exist for excessive settlement which could possibly affect the operability of safety related equipment.

^{1/} Statement in memorandum from J. G. Keppler to H. D. Thornburg dated November 1, 1978 --- "In our view, this deficiency has the potential for affecting the design adequacy of several safety related structures at the Midland site."

In that the issue is a design question and one which involves the design criteria initially reviewed and accepted by the NRC, we recommended that this problem be evaluated by the NRC's Office of Nuclear Reactor Regulation --- the NRC Office responsible for assuring that the facility design meets the General Design Criteria contained in Appendix A of 10 CFR Part 50. This transfer of review responsibility was formally completed on November 17, 1978.

2. Requested Information

"Please also tell me how you justify continued construction, in view of this serious breach of quality control, unless, of course, you are content to permit "magic" to ensure safety. I am most concerned over what appears to be a cavalier attitude towards construction. Can it be that your organization (whether intentionally or otherwise and whether conscious or unconscious) is affected by the amounts of money Consumers has spent so that you blind your eyes to reality. If so, you do a disservice not only to the people of the United States but also to the utilities who unfortunately take advantage of such lax enforcement. Do we need a serious accident before enforcement, in your mind at least, equals the importance of monetary investment?"

Summary Response

As discussed in my letter, the NRC has not yet determined fully the fundamental cause(s) that has resulted in the excessive settlement of the Diesel Generator Building --- nor have we established the time frame associated with the problem. We have initiated an investigation to determine the facts associated with the problem and will base our enforcement actions on the findings from this investigation.

With respect to the safety implications of continued construction, the following considerations are important:

- a. The underlying philosophy of the design of nuclear power facilities and the NRC regulation of them is the defense-in-depth concept. This concept consists of three levels of safety involving: (1) the design for safety in normal operation, providing tolerances for system malfunctions, (2) the assumption that incidents will nonetheless occur and the inclusion of safety systems in the facility to minimize damage and protect the public, and (3) the inclusion of systems to protect the public based on the analysis of very unlikely accidents.

In the safety design of nuclear power plants, the objective is to achieve a competent design at each level and for each physical barrier provided to prevent the release of radioactivity from the plant. At the same time, it is realized that, although extensive efforts are made to obtain high quality, perfection can never be achieved because of the normal deficiencies in all processes involving man and materials. In fact, it is the realization that deficiencies will occur that has led the safety design of reactors to be based on the defense-in-depth concept.

Saying it another way, nuclear facilities are protected by exacting standards of design and construction, independent safety systems and redundant safety systems to provide protection in the unlikely event of multiple failures. Because of "defense-in-depth," nuclear reactors do not require perfect performance and perfect quality for the protection of the health and safety of the public.

- b. The excessive settlement problem with the Diesel Generator Building is recognized and will have to be resolved to the satisfaction of the NRC.
- c. The settlement of other safety related structures is within design specifications and is being monitored continuously. As such, there is no problem at this time. However, this matter will be considered as part of the NRC's overall evaluation of this problem.
- d. Excluding this soils foundation problem, which is being investigated, deficiencies identified at Midland since the cadwelding problems (1973-1974) have not been indicative of a serious breakdown in the quality assurance or quality control programs.
- e. The amount of money spent by Consumers Power Company has not been a factor in our inspection and enforcement decisions.

With respect to your comments about what you characterize as our "cavalier attitude towards construction," I want you to know that while public health and safety is not predicated on error-free construction, my staff and I are every bit as concerned as you are that nuclear power plants are built with proper attention to quality. The NRC has the authority to stop construction or operation of a facility if there is sufficient cause to do so

and, in fact, has taken such action at Midland. As you know, I testified before the Midland Atomic Safety and Licensing Board in July 1974: "I want to go on record as saying that it is my position that if the Company fails to live up to its obligations that we're not afraid to step in and stop construction just like we did this time." I continue to stand behind that statement.

3. Requested Information

"In connection with the last mentioned report, page 3 has a significant deletion whereby Consumers Power or Bechtel apparently deleted information submitted regarding what you labeled as a serious safety problem, i.e., the diesel building settlement Please let me know whether you plan to follow up with Consumers and obtain the information which they have withheld."

Summary Response

The interim report on the settling of the Diesel Generator Building was submitted in accordance with the requirements of 10 CFR 50.55(e). This regulation provides that an interim report on a reportable deficiency be provided if the final report can not be submitted within the 30-day period.

The written report of a reportable construction deficiency is to include a description of the deficiency, an analysis of the safety implication and the corrective actions taken, and sufficient information to permit analysis and evaluation of the deficiency and of the corrective action. The final report will contain the above information. It should be noted that no corrective action had been taken at the time Consumers Power Company submitted the interim report and, as such, I have no basic problem with the deletion of the preliminary discussion from the Bechtel Report.

My staff has seen the full Bechtel report at the site, including the deleted section. I will assure you that the final report will satisfy the requirements of 10 CFR 50.55(e).

4. Requested Information

"In view of all of these situations I should also like to request advance notice of any inspection which Region III intends to make at the Midland plant, so that either I or a representative on my behalf can make arrangements to be in attendance. If any inspection is to be surprise in nature, I will pledge my confidence to maintain the confidentiality of any such unannounced on-site visitation and inspection. I would appreciate sufficient advance notice to permit me to arrange my schedule so as to conform with any upcoming inspection (or to permit making arrangements for the attendance on my behalf of a representative). Please let me know at your earliest convenience whether such arrangements will be made."

Summary Response

The NRC has, for some time, permitted government representatives or interested members of the public to accompany NRC inspectors during an inspection. To accompany the inspector an individual must agree to follow the "Protocol for Accompaniment on NRC Inspections" (a copy is enclosed)(Attachment 2) and obtain permission from the licensee for access to the site.

The resident inspector is routinely at the site 40 hours a week, and his inspection effort is supplemented by inspections by personnel from the Regional office. The inspections by Regional Office personnel are usually scheduled about a week in advance.

It would not be practical to routinely notify you of inspections sufficiently far in advance to make the necessary arrangements to accompany our inspectors. If you would inform us of the general time you are interested in accompanying our inspectors, we could probably adjust inspection schedules to accommodate you.

Most inspections are not announced to the licensee in advance. Your making arrangements with the licensee to enter the construction site would no doubt indicate an inspection were imminent. In the past, however, this has not proved to be an obstacle in permitting the accompaniment.

ATTACHMENT 1

Docket No. 50-329
Docket No. 50-330

CORRESPONDENCE RELATED TO DIESEL GENERATOR BUILDING SETTLEMENT

- 09/07/78 - Verbal notification and tracking form for licensee reports per 10 CFR 50.55(e) (Site inspector notified of possible settlement problem on 8/21/78)
- 09/08/78 - IE Morning Report item
- 09/29/78 - Interim report from licensee, Howell to Keppler
- 10/24/78 - Acknowledgement letter for 9/29/78 interim report
- 11/01/78 - Memo, Keppler to Thornburg, w/attachments requesting transfer of lead responsibility
- 11/03/78 - Transmittal letter, Appendix A, and IE Report Nos. 50-329/78-13 and 50-330/78-13
- 11/03/78 - Memo, Olmstead to Vassallo
- 11/07/78 - Second interim report from licensee, Howell to Keppler
- 11/08/78 - Transmittal letter and IE Report Nos. 50-329/78-14 and 50-330/78-14
- 11/09/78 - Memo, Thornburg to Gower
- 11/13/78 - Memo, Vassallo to Engelhardt
- 11/13/78 - Memo, Bryan to Vassallo
- 11/17/78 - Transmittal letter and IE Report Nos. 50-329/78-12 and 50-330/78-12
- 11/17/78 - Transfer of lead responsibility, Reinmuth (IE) to Vassallo (NRR)
- 11/22/78 - Acknowledgement letter for 11/7/78 interim report

ATTACHMENT 2

Protocol for Accompaniment on NRC Inspections

Persons who accompany on inspections, conducted by the Nuclear Regulatory Commission, Office of Inspection and Enforcement, do so under the following terms and conditions:

1. Persons accompanying on NRC inspections are present during the inspection as observers, not as participants. Specific approval for the accompaniment must be obtained from the Office of Inspection and Enforcement prior to an observer accompanying an NRC inspector.
2. Accompaniment is to observe typical NRC inspection activities and techniques and is not an inspection by the observer of the NRC nor of the licensee. Hence, accompaniment is limited to no more than two observers on any single inspection and to not more than ten percent of NRC inspections at any licensed facility.
3. Observers accompanying on NRC inspections shall not, in any manner, interfere with the orderly conduct of the inspection. NRC inspectors are authorized to refuse to permit continued accompaniment by any individual whose conduct interferes with a fair and orderly inspection or whose conduct does not follow the terms and conditions included within this protocol.
4. Observers accompanying on NRC inspections must stay physically present with an NRC inspector throughout the course of the inspection.
5. Observers accompanying on NRC inspections may be present during any discussion by the NRC inspector with the licensee with regard to inspection of matters covered by the accompaniment. This includes the discussion with licensee management at the conclusion of the inspection.
6. Observers receiving information of a proprietary or physical security nature shall safeguard such information such that it is not disclosed to unauthorized persons.
7. Observers accompanying on NRC inspections do so at their own risk. The Nuclear Regulatory Commission will accept no responsibility for injuries and exposure to harmful substances which may be received during the inspection and will assume no liability of any kind for action to or by the accompanying individual. Observers accompanying on NRC inspections agree to waive all claims of liability against the Commission.

Protocol for Accompaniment
on NRC Inspections

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8. The NRC will not make arrangements for the persons accompanying the NRC inspector to gain access to the licensee's facility but will inform the licensee that the NRC has no objection to the specific individuals accompanying the NRC inspectors as observers. Specific arrangements to gain access to the licensees' facilities must be made directly by the accompanying individual.

Signature of Accompanying Individual

Date