



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

March 9, 1984

Ms. Carol Rice, Attorney
Kirkland & Ellis
200 E. Randolph Drive
Chicago, IL 60601

Dear Ms. Rice:

The purpose of this letter is to inform you of the Nuclear Regulatory Commission's position with respect to providing witnesses in Dow Chemical Company's lawsuit against Consumers Power Company regarding the Midland nuclear power plant. Although I realize that you are aware of the NRC's views on this matter through our conversations, perhaps this letter can serve as a clearer basis for NRC's future involvement and our further conversations.

The NRC recognizes that private litigants will often see a need to request information or testimony from NRC employees. Because providing witnesses for private litigation diverts agency resources to a purpose that is peripheral to the agency's mission, the NRC must be assured that acceding to such requests will not become unduly burdensome. The NRC generally responds to requests for such information or testimony in the following manner. Parties should scrutinize the files of the Public Document Rooms maintained by NRC for pertinent information and then provide detailed information in the form of a discovery plan setting forth: (1) names of persons necessary to be deposed or interviewed; (2) the specific subjects to be covered; (3) the time away from duty involved; and (4) any documents to be examined during the deposition or interview. If the agency is satisfied that the discovery is not unreasonably burdensome or violative of any statute, regulation, policy, or privilege, informal interviews or formal depositions may be obtained.

The Office of the General Counsel has decided not to agree to your request for informal interviews with NRC employees at this time. At this point we have no reason to believe that granting these interviews would result in any savings in time spent by the agency in this lawsuit. It would appear that any voluntary NRC assistance provided to Dow could not reasonably be denied to Consumers Power should they request it, as they probably would. This would double the resources committed to the informal process unless discussions with both parties present were arranged.

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March 9, 1984

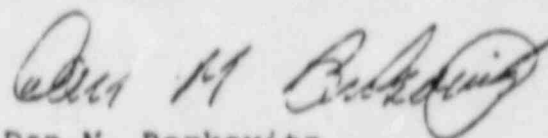
Because Consumers Power's application for an operating license is pending before the Commission and some of the issues in this lawsuit are related to those in the operating license hearing, invariably there would be requests from other participants in the licensing proceeding to be present at the interviews or to "discover" the information presented there. The matter thus promises to take on a complexity that could be unjustifiably burdensome for the NRC.

With respect to formal depositions, as noted above, under normal discovery rules the NRC is committed to providing relevant non-privileged testimony that is not unreasonably burdensome upon the agency. To determine whether NRC's involvement will be unreasonably burdensome, we will request that both parties provide the NRC with sufficient information along the lines described above before we agree to any depositions. If the agency determines there is unnecessary overlap in areas of inquiry, incorrect association of individuals with subject matter, or other unnecessary or privileged testimony being sought, we will seek to modify the plans. We believe that the preparation of such a plan is useful for both the agency and the parties. The information provided also can be used by each deponent to prepare for his deposition so that the actual time spent by each individual can be minimized.

We do not expect to treat these discovery plans as binding commitments limiting the scope of discovery. We do expect, however, that each party make reasonable estimates of the projected scope of discovery.

Unfortunately, NRC operates under severe budgetary and manpower constraints. The agency therefore must proceed with caution whenever involved with requests or responsibilities outside its primary duties. With an understanding of these concerns, I am sure we can proceed in a mutually satisfactory manner.

Sincerely,



Dan M. Berkovitz
Attorney
Office of the General Counsel