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Statement Before the U.S. Nuclear Regulatory Commission
April 25, 1984

On April 10, 1984, at their annual stockholders' meeting, Consumers Power Co. (CPCo) announced that Unit 2 of the Midland nuclear plant can be completed, licensed and placed in commercial operation by December, 1986.

Using this construction completion date, CPCo is applying pressure on Michigan state officials to increase rates substantially to pay for continuing construction since other sources of financing have dried up.

Those of us who are involved in this case as citizen intervenors, and who follow the documentation closely on what is happening at the Midland nuclear plant, have serious reservations about the accuracy of this construction completion date.

We base our concerns on the many unforeseen serious problems that have developed at the site since the last Caseload Forecast Panel met to evaluate the construction schedule at Midland (April 19-21, '83) all of which indicate the December, 1986, schedule given by CPCo cannot be met and even raise the question as to whether the plant will be licensable.

Among the problems are:

1) The discovery that the bearing capacity of the base soils for the underpinning is 1/2 that used in the original analysis (BN83-174).
2) The discovery of incorrect and unconservative calculations of differential settlement between the auxiliary building and the control tower (BN83-174).
3) The continuation of repeated drilling incidents despite past controls and commitments intended to rectify this problem (BN83-155 Stop Work and 10/5/83 memo).
4) Alert levels for cracking and possible movement have been exceeded and not properly reported to the Nuclear Regulatory Commission (NRC) (Stone and Webster meeting, 11/10/83, and 10/5/83 memo).

5) Water seepage that threatens the integrity of the concrete piers, despite installation of a freezewall intended to control water problems.

The estimates for completion of the soils underpinning work made in December, 1982, when it was started, was 18 months. The current estimate, made 16 months since that prediction, is that the soils work is now only 34% complete.

It should be noted that Mr. James Keppler, in a meeting with CPCo management in Jackson, stated that the soils work was so complex as to be equivalent to building a third reactor simultaneously (June 21, 1982).

Two NRC inspectors, Ron Cook and Dr. Ross Lansman, have testified that the workmanship is "shoddy" and represents a hazard to the public health and safety of the tri-county area of Midland, Saginaw and Bay City (TR 15117, April 28, 1983).

The special task force team formed to do an in-depth inspection of Midland was ready to recommend the project be shut down in November, 1982, following the extensive findings of quality control deficiencies during the diesel generator building (DGB) inspection of October, 1982 (TR 15071, April 28, 1983).

In 1978, when CPCo decided to preload the DGB as a solution to its sinking and cracking in poorly compacted soil, NRC's Midland project manager, Darl Hood, told the utility it was proceeding at its own risk and that the building would have to meet or exceed the FSAR requirements to be licensable (Meeting notes 12/4/78).

In June, 1983, the Congressional Committee investigating the Midland nuclear plant requested an independent review of the diesel generator building which Inspector Dr. Ross Landsman said was not adequate. The Brookhaven Task Force was chosen to review the work. They essentially agreed with the on site inspectors, and also noted that the DGB could not meet FSAR requirements.

Furthermore, in January, 1984, a report (MCAR 78, January 6, 1984) stated that Bechtel's engineering designs of the piping equipment, conduits and pipe supports failed to allow for requirements for differential settlement between the DGB structure and DGB pedestals. These facts raise grave doubts about the licensability of this building.

Given these extraordinary serious problems, there is now grave concern in Michigan on the part of CPCo's chief industrial customers, such as General Motors, Ford Motor Co., Chrysler Motor Co. and Great Lakes Steel, who in viewing these serious problems with their considerable management expertise, have questioned its viability as a safe and reliable source of power in the foreseeable future.

These industrial leaders have joined with the Public Service Commission (PSC), the Attorney General and Michigan Citizens' Lobby in questioning near term completion of this project.

Since the NRC has the expertise to evaluate plant completion forecasts, I have filed a motion before the Atomic Safety and Licensing Board to require a new Caseload Forecast at Midland to confirm or refute the December, 1986, completion date set by CPCo.

Last year's Caseload Forecast Panel's results were suppressed and not made public because of internal disputes between the members of the Caseload Forecast Panel and NRR management. Thus, investors relying on CPCo forecasts were grossly misled about the actual construction completion timetable (See Weiland vs. CPCo filed November 18, 1983).

Therefore, I am asking that the Commission personally follow through on the work of the Caseload Forecast Panel and the expeditious publication of the results of their evaluation of the construction schedule at Midland.

member of the Kiwassee

Midland Daily News, 6/22/82
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Special team formed to inspect plant site

Continued from page 1

Keppler said communications may be a big part of the problem. "We don't have the same difficulty communicating with the other utilities in the region. We have failed to convince you there are bigger problems on that site than you feel there are.

"We feel you need to be less defensive about things. Either convince us our concerns are wrong, or focus the necessary attention to correct them," he told Consumers.

PRESSED BY REPORTERS after the meeting to more fully define the problems at Midland, Keppler said the large amount of work underway at the plant may be preventing Consumers from paying enough attention to quality. The utility is struggling to finish the $3.39 billion plant in time to honor an end-of-1984 steam contract with the Dow Chemical Co.

He said the extensive work to fix the soil problems is the equivalent, in his view, of a third reactor being built on the site. "Maybe there's too much work going on. It's the only site being restored to what it was intended to be. There should be little left to second-guessing as to how well the work is being done.

"I don't feel they (Consumers) are going the extra yard right now," Keppler told reporters.

He said the problem apparently does not originate with Cook, who he said has a "good attitude." But Keppler added, "It sounds like he's not getting the full story from his people as to what's happening at the site."

Cook left at the meeting's conclusion without commenting. But the man in charge of QA for the Midland plant, Walter R. Bird, said Consumers needs to "sit down, think about it and come up with the best positive plan of action to get it resolved, as Mr. Keppler said."

KEPPLER HAD proposed another meeting with Consumers after he talks to his inspectors. Keppler also said he plans to talk to Harold Denton, NRC director of nuclear reactor regulation, about the Midland situation. It was Denton who recently convened a special meeting of nuclear experts to study the soil problems.

Last summer, during a federal hearing on the soil problems, Keppler testified that he believed future QA at Midland will be adequate to protect public safety despite the past problems.

Because of the recent problems, Keppler said Monday he now feels "very uneasy" about that testimony and may have to return before an Atomic Safety and Licensing Board panel to clarify or change his statement.

"I've led that hearing board (ASLB) to believe the remedial work is proceeding with the satisfaction of the (NRC) staff. At the moment, that isn't so," Keppler said.

"It seems like every time we stick our nose into an area (while inspecting), we aren't happy," Keppler told Consumers. He later told reporters, "I'm almost embarrassed to be sitting here with this degree of discomfort about the project."

Military flight area set over Lake Huron

A temporary aviation Military Operating Area (MOA) known as the Huron MOA, has been established over Lake Huron northeast of Alpena, Michigan. This area is established to provide separation between civil aircraft and military aircraft practicing high speed tactical maneuvers below 10,000 feet.

The purpose of the Huron MOA is to provide training airspace for fighters from June 3 through July 9. The average use will be two days a week, 4 hours a day. The military will notify Federal Aviation Administration Flight Service at least two hours before using the MOA, so airmen may determine if the MOA is in use by contracting the nearest FAA Flight Service Station.

A corridor, known as the Gore Bay Corridor, has been established through the MOA between Alpena VORTAC and

adopted

By DON WYATT
Daily News staff writer

An alternate proposal requiring specific educational programs to be made available for trainable mentally impaired (TMI) and other special education students was approved by the Special Education Advisory Council Monday by a 5-0 vote.

The proposal now will be taken to the Board of Education of the Midland Intermediate School District for approval July 8, according to William J. Leppien, chairman of the SEAC and also chairman of the Parent Advisory Committee, the group which drafted the proposal.

The PAC is a group of parents of handicapped children from throughout Midland County.

The SEAC is made up of representatives from each of the four school districts in the county, the PAC and the MISD board. Its responsiblity is to review the proposed special education services and programs each year for the county, and make recomendations to the MISD board.

The SEAC approved the alternate proposal after rejecting, 5-1, the origina proposal Feb. 15. At that time representatives to the SEAC from various school districts in the county said that the PAC proposal to requir specific programs for TMI students wa already covered by a full continuum o programs already considered for eac child.

The new proposal is a much mor general guideline, addressing the spec trum of special education prograr options, according to Jim Clark, directc of curriculum for MPS and a represer tative to the SEAC.

TMI students generally have IQ leve between 30 and 55, and are characterize as showing below-average developme intellectually, a lack of developme primarily in the cognitive (thinkin area and impairment of adapti behavior.

Currently, TMI students in Midla County are served through Midla Public Schools. Most of those studen attend Ashman School, a school ope ated exclusively for TMI students. Son TMI students, however, are placed programs for the educable menta impaired (EMI), a higher-level spec education program, in other buildings the school district.

Currently there are not any T programs in settings other than A man.

What the proposal basically would is to require the Midland Public Scho to offer programs in settings other th Ashman School.

Those settings would include placin

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April 27th, and I'm reading from Transcript Page 14433

MS. BERNABEI: Excuse me, Mr. Paton, what was that page?

MR. PATON: 14433.

BY MR. PATON:

Q Mr. Marshall is interrogating Dr. Landsman, and he asks Dr. Landsman:

"Would you agree, sir, that, as a member of your panel has already testified, there's work that's shoddy down there?

"WITNESS LANDSMAN: I would agree with that.

"Q And don't you think that Midland is entitled to something better than shoddy work at a nuclear power plant?

"A (WITNESS LANDSMAN) Yes.

"Q And don't you think, sir, that it is liable to jeopardize the public health and safety, the people of the City of Midla

"A (WITNESS LANDSMAN) Yes.

"Q And the surrounding counties?

"A (WITNESS LANDSMAN) Yes."

Do you agree with Dr. Landsman's statement that the shoddy work at the plant is liable to jeopardize the public health and safety?

sites, to a much different degree, however.

Q But there have been, in fact, problems on other nuclear sites with something as simple as soils, haven't there?

A To a much lesser extent. The degree of the problem is what's important here. The extent of what has occurred at the Midland facility is unprecedented at any other facility.

Q The point remains, however, that other people have had some problems with something as simple as soils, or haven't they?

A Yes, of course.

Q In fact, a recent bulletin has been issued covering not only Midland but other plants as well, is that right?

A I wrote the bulletin.

Q So the answer is that, yes, a recent bulletin has been issued with regard to soils for not only this plant, but others?

A Excuse me. It was a circular; Inspection and Enforcement Circular.

Q To someone like me, they're the same. I'm sorry.

A It has a different regulatory posture.

Q So your answer is, yes, in fact ...

EXHIBIT #

Q Does any member of the panel know about any opinions expressed at that meeting for the reason to shut the plant down?

A (WITNESS GARDNER) That particular meeting?

Q That particular meeting or thereafter.

A (WITNESS GARDNER) Personally, I would agree with what Mr. Shafer said in that we had already found substantial evidence of noncompliance.

Previously in September we had considered recommending shutdown, and only based on the fact that we did not have sufficient evidence did we decide not to.

Now we had evidence that indicated a fairly widespread noncompliance, and I think about this time it was unanimous among the team that we had the evidehce that we did not have in September and, therefore, we could recommend a shutdown.

Q Now, was that recommendation carried to Mr. Keppler?

A (WITNESS SHAFER) A recommendation at that time? No, I don't believe Mr. Keppler was involved in that.

Q Was a recommendation carried to anyone else at or near that time?

Current Status of Construction Completion Plan
Report by Nuclear Regulatory Commission Inspector
April 23, 1984

The new Construction Completion Plan was approved on October 22, 1983. However, almost simultaneously 9 Stop Work Orders were issued dealing with deficiencies in drawing and design control.

This had to do with correcting improper procedures for Field Change Notices (FCR's). These Stop Work Orders affected almost all of the Quality Assurance and safety-related activities at the plant, including safety-related work by Zack, Babcock and Wilcox, Bechtel, Consumers Power Co. and the newly reorganized Midland Plant Quality Assurance Department (MPQAD). Thus, work was shut down in most areas of the plant from October, 1983, to the end of February, 1984.

At this point, only 2% of the Quality Verification Program called for in the Construction Completion Plan, with newly trained quality control inspectors, has been completed.

EXHIBIT 5

Detroit News Mar. 28 '87

Our Opinions

The Game Is Over

Nothing in the law says that Consumers Power Co. must abandon the Midland nuclear power plant project and accept the "survival proposal" it received in Lansing last Friday. The company nevertheless would be foolish to shrug off the formidable group of sponsors who offered the proposal.

The company says it can best serve consumers' interests by finishing the first Midland reactor, which is 85-percent complete. That seems questionable, however. The program already has cost $4 billion more than originally estimated and construction has fallen nine years behind schedule. Consumers Power officials guess that the total bill will come to $4.43 billion, but even that's tentative. Directors and shareholders will get a new completion estimate on April 10, and some members of the Public Service Commission (PSC) staff expect the number to reach $6 billion. If expenses get that high for a complex that was supposed to cost $339 million (the 1972 estimate), the PSC may order the company to kill it and take the loss.

Indeed, Atty. Gen. Frank J. Kelley recently wrote the company and demanded abandonment. The company replied in statewide advertising that this would be unthinkable. Consumers President John B. Selby then met quietly in Lansing with Mr. Kelley, and they decided to ask the staffs of the company, the attorney general's office, and the PSC to exchange views on the subject.

After two sessions the company received a survival plan endorsed by Atty. Gen. Kelley, the PSC staff, the Michigan Citizens' Lobby and a consortium of 22 large industries, including General Motors, Ford, Dow Chemical Co., and Great Lakes Steel. The group proposed that the company abandon the plant. It also outlined a way to pay the debt incurred during construction. The plan would not affect preferred stocks and bonds, but it would require suspension of dividends on common stock for a three-to-five-year period. For that, the regulators would guarantee the company sufficient rates to maintain service, fend off bankruptcy, and return to normal financial health in eight to 10 years.

Shareholders wouldn't take the bath alone, of course. Consumers also would pay higher electricity costs. Indeed, the rate of increase for domestic customers would, for most domestic customers, outstrip the state income tax hike that produced so much heat last year, not to mention two successful recall elections.

This "passion play" (as Mr. Kelley characterized it) takes place against a backdrop of utility disasters elsewhere. In recent months the Nuclear Regulatory Commission (NRC) has refused to grant an operating license for a completed $3.3-billion Illinois nuclear plant; Cincinnati Gas and Electric officials decided to turn their $1.7-billion Zimmer reactor into a coal-burning facility, and two Indiana nuclear plants in which $2.5 billion has been sunk have been abandoned in despair.

Why? No utility has any assurance now that it will get an operating license from the NRC after it finishes a reactor. The companies invest billions in construction and do not recover a dime until they produce power. Consumers management has bet the company against this risk, and customers and the regulators have rebelled; they think the odds have become impossible.

The arguments used to justify the project when it was proposed were sound and the price was right. But the situation today is completely different. A serious recession and conservation shaved the need for power and federal regulators inflated costs by changing construction and certification rules. Finally, when the NRC denied an operating permit for a completed plant, it delivered the *coupe de grace* to nuclear power in this country. No sane manager would undertake such a project now and face that kind of uncertainty.

What should Consumers do? It seems to us the company has no other choice but to abandon the project and strike the best deal it can make with its customers and the regulators. The decision should not be viewed as a referendum on nuclear power, which remains a safe source of energy, but instead as an admission that the costs of building and permitting the Midland plant have become prohibitively high. After a decade of steadily escalating prices, the Midland game is over.

ATTORNEY GENERAL v MICHIGAN PUBLIC SERVICE COMMISSION

Docket Nos. 67938, 67944, and 67945. Argued October 15, 1981 (Calendar Nos. 23, 24, and 25).—Decided January 27, 1982.

Docket Nos. 67944, 67945. The Detroit Edison Company sought the approval of the Michigan Public Service Commission for the issuance of $625 million in securities, part of which would finance the continued construction of the Enrico Fermi 2 nuclear-powered generating plant and the Belle River coal-fired generating plants, and part of which would retire maturing short-term and long-term debt. A year later, Edison sought approval of the issuance of an additional $1.996 billion in securities, primarily to finance continued construction of the power plants and to retire existing short-term and long-term debt.

Docket No. 67938. Consumers Power Company sought the approval of the Michigan Public Service Commission for the issuance of $564 million in securities, primarily to finance the continued construction of the Midland nuclear-powered generating plant and to retire maturing short-term and long-term debt.

In all three cases, the Attorney General and the Michigan Citizens Lobby intervened at the commission's hearings on the applications for approval. They argued in each case that the power plants under construction were unnecessary and unreasonably costly, and that the commission should not approve issuance of the securities insofar as the proceeds would be used to finance their construction. In each case the commission declined to consider evidence relating to the need for the power plants, and authorized issuance of the securities. While appeals by the intervenors were pending in the Court of Appeals, the

REFERENCES FOR POINTS IN HEADNOTES

[1, 2, 4-8, 10-13] 64 Am Jur 2d, Public Securities and Obligations §§ 107, 181.

64 Am Jur 2d, Public Utilities §§ 225, 264.

[3] 64 Am Jur 2d, Public Securities and Obligations § 96.

[9] 2 Am Jur 2d, Administrative Law §§ 233, 241, 243.

[11-13] 64 Am Jur 2d, Public Utilities § 240 *et seq.*

Supreme Court granted leave to appeal prior to decision by the Court of Appeals and ordered the three cases consolidated for argument.

In an opinion by Justice Levin, joined by Chief Justice Coleman and Justices Kavanagh, Fitzgerald, and Ryan, the Supreme Court *held*:

In a proceeding under the utility securities act as written, the inquiry is limited to whether there is a need to issue securities to obtain funds for a lawful purpose of the utility and does not extend to whether, to accomplish that purpose, there is a need for the project to which the funds will be devoted. The inquiry is the need for the funds, not the need for the project. It may be wise, in this era of multi-billion-dollar power plants, for the commission to pass upon the necessity for any such plant before construction begins, but the policy question whether approval by the commission should be required before construction begins is properly for the Legislature, and not for the Court, to decide.

1. The statute requires that in the opinion of the commission the use of the capital to be raised by the issuance of securities is reasonably required for the purposes of the utility. The intervenors argue that this means that the commission must find that the underlying projects are reasonably required, not only whether the funds are reasonably required for the projects. But two other uses of the word "purposes" in the statute show that it means "the acquisition of property, the construction, completion, extension or improvement of facilities or * * * the improvement or maintenance of service or * * * the discharge or lawful refunding of obligations". No one has argued that construction of additional generating capacity is not a lawful utility purpose. It is a separate question whether the utility needs the additional generating capacity, as it is whether the additional capacity should be fossil- or nuclear-fueled or whether the proposed plant is cost-efficient or reasonable.

2. The act does not give the commission discretion to inquire into immaterial subjects in determining whether it should grant the authority to issue the securities. The Michigan cases cited by the intervenors show that a securities issue proceeding is limited to a review of the financial decisions of the utility, and does not go into the reasonableness of the underlying projects. The utilities statutes of other jurisdictions offer little guidance in construing the Michigan act; some are too dissimilar, and others contain language given diverse interpretations.

3. The intervenor's assumption that the utility securities act

provides the only means of inquiry into the reasonableness of plants during construction is inaccurate. Ongoing construction is evaluated during rate hearings under the electricity transmission act approximately yearly, and, in addition, the utility can request that construction work in progress be included in the rate base. Moreover the commission, in the exercise of its supervisory powers, may conduct pre-construction review without regard to whether the utility seeks to have the plant's costs included in the rate base.

4. The Court cannot confidently predict that the Legislature would today conclude that the reasonableness of a utility construction project should be made the subject of a pre-construction hearing. The Legislature might conclude that the public interest is better served by the present system which requires a utility, its shareholders, and its bondholders to carry the risk involved in deciding to construct additional generating capacity. If they have made erroneous decisions and the cost of the addition is not included in the rate base, stockholders or bondholders or both would lose, but the ratepayers would be largely unaffected.

The orders of the commission authorizing the issuance of securities are affirmed in all three cases.

Justice Williams, joined by Justice Moody, writing separately, would hold that the intention of the Legislature was that there should be a complete feasibility examination both at the time of the original financing application and at the time of ratemaking, that is, when it is determined whether the plant should be included in the utility's rate base. At the time of a subsequent financing application a complete feasibility examination is not necessary and the more limited determination of the necessity of the financing is adequate. Their opinion is based both on the construction of the statute and on consideration of policy implications. The Legislature, by requiring property for which securities were to be issued to be reasonably required for the purposes of the utility, intended two things: 1) that the property be employed, in this use, "for the * * * completion of facilities", and 2) that the property be reasonably required for a utility purpose within the overall context of utility regulation, namely property that would adequately serve consumers at a reasonable rate and make a reasonable return for the utility. The latter determination will be achieved if the MPSC makes a complete feasibility examination at the time of the original application for financing and later evaluates the costs of the project when the utility requests inclusion in the rate base. It was not the legislative intent to allow a utility's