

MYRON M. CHERRY

ONE IBM PLAZA

CHICAGO, ILLINOIS 60611

(312) 565-1177

January 4, 1978



Valentine B. Deale, Esq.  
Chairman  
Atomic Safety & Licensing Board  
1001 Connecticut Avenue, N.W.  
Washington, D. C. 20036

Dear Mr. Deale:

Some time ago, you telephoned me to establish a date to discuss procedure in connection with alleged charges brought against me and which you represented were assigned to you in your capacity as Chairman of a Special Licensing Board. I told you that in connection with those alleged charges I was represented by counsel, and I referred you to Mr. Milton V. Freeman of the Washington law firm of Arnold & Porter.

Thereafter, but prior to your notice of December 19, 1977, I understood that Mr. Freeman was to meet with you on January 9, 1978. Because of financial and other considerations I did not plan to attend that meeting in Washington and became otherwise occupied in the course of my legal duties. In fact, I have been for some time scheduled in depositions in California on that date (and thereafter throughout January 1978 in California and New York) and also in a hearing before a Federal District Court Judge in the Central District of California. Thus I cannot be in Washington on January 9.

Thereafter I received the December 19, 1977 Order which established a rigid procedure imposing upon the Saginaw Intervenors certain requirements. In fact, that Order attempts to require the Saginaw Intervenors (or myself) to make certain filings on January 5, 1978 concerning the charges preferred by the Midland Licensing Board against the Regulatory Staff. We believe that your Order is improper and without admitting the jurisdiction of your Order are asking the Board to rescind it.

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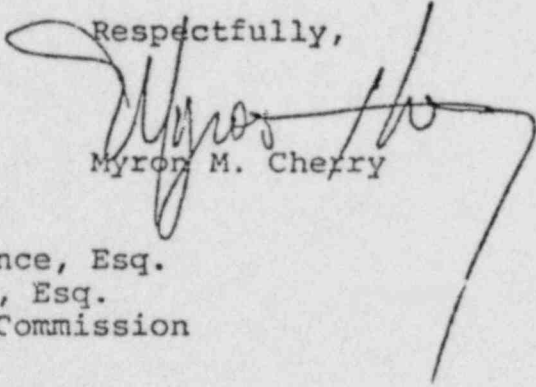
Valentine B. Deale, Esq.  
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January 4, 1978

Your Order apparently requires the Saginaw Inter-  
venors (or myself), upon pain of losing rights, to finance  
implementation of charges brought by the Licensing Board  
against the Regulatory Staff without any understanding of  
the implications or costs or fairness of that procedure.  
As the NRC has known for some time, the Saginaw Intervenor  
are without funds and have been participating in proceedings  
on a very precarious basis. See for example, Order of  
Midland Licensing Board, Dockets 50-329 and 50-330, February  
25, 1977, where the Licensing Board so held.

Accordingly, the procedure adopted by your Order  
places both my clients and myself in an untenable position.

In addition, since there are numerous jurisdictional  
problems (which I understand will be brought to your atten-  
tion on January 9), I believe it both inappropriate and  
unfair for Saginaw to be required to make filings on  
January 5. By this letter Saginaw is not waiving any rights  
it has or waiving or abandoning any positions it has pre-  
viously taken. We are, however, alerting you to the dis-  
advantageous and unfair impact of your Order on December 19,  
1977 so that you and other members of the Board are so advised.

Respectfully,

  
Myron M. Cherry

MMC:es

cc: Margaret M. Laurence, Esq.  
Gary L. Milhollin, Esq.  
Secretary of the Commission

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

Before The Atomic Safety And Licensing Board  
For Special Proceeding

In the Matter of )  
)  
CONSUMERS POWER COMPANY ) Docket Nos. 50-329 ) S.P.  
) 50-330 )  
(Midland Plant, Units 1 and 2 )

CERTIFICATE OF SERVICE

I certify that copies of the foregoing MOTION TO DISMISS  
have been served on the following parties by first-class  
mail this 17th day of January, 1978:

Valentine B. Deale, Esquire  
Chairman, Atomic Safety and  
Licensing Board  
1001 Connecticut Avenue, N.W.  
Washington, D. C. 20036

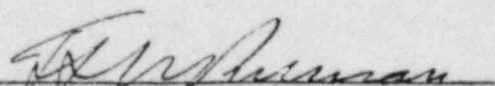
Miss Margaret M. Laurence  
Atomic Safety and Licensing  
Board  
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Atomic Safety and Licensing  
Board  
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Arnold & Porter  
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Office of Executive Legal  
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Commission  
Washington, D. C. 20555

  
T. S. L. Perlman

Attorney for Milton J. Grossman  
and James R. Tourtellotte