

LAW OFFICES  
MYRON M. CHERRY  
ONE IBM PLAZA  
CHICAGO, ILLINOIS 60611  
(312) 565-1177

August 18, 1976



Bernard C. Rusche, Esq.  
Director, Nuclear Reactor Regulation  
United States Nuclear Regulatory  
Commission  
Washington, D.C. 20555

Re: Palisades Nuclear Power Plant

Dear Mr. Rusche:

I enclose a copy of a self-explanatory letter to attorneys for Consumers Power Company. Just so the record is absolutely clear, I thought I would advise you of our view that Mr. Sewell's request to you of August 4, 1976 to amend the technical specifications in connection with the condenser cooling system of Palisades Nuclear Power Plant is a breach of and failure of performance regarding a certain Settlement Agreement entered into in connection with the Palisades hearings before the Atomic Energy Commission.

It is our opinion that the Nuclear Regulatory Commission has no power to entertain this request without the agreement of certain intervening persons. Since those persons have not given their agreement, we trust that you will ignore Consumers Power Company's request.

Should you or your counsel, Mr. Howard Shaper, have any further questions concerning our opinion, please feel free to contact me.

Sincerely,

  
Myron M. Cherry

MMC/ldh

cc: David Dinsmore Comey, Esq.  
Lewis D. Drain, Esq.  
Eric V. Brown, Esq.  
Mr. Ralph B. Sewell  
Howard K. Shapar, Esq.  
Mr. James G. Keppler  
Michael I. Miller, Esq.

8572

MYRON M. CHERRY

ONE IBM PLAZA

CHICAGO, ILLINOIS 60611

(312) 565-1177

August 18, 1976

Michael I. Miller, Esq.  
Isham, Lincoln & Beale  
Forty-Second Floor  
One First National Plaza  
Chicago, Illinois 60603

BY MESSENGER

Re: Proposed Change in Technical Specifications:  
Palisades Nuclear Power Plant

Dear Mr. Miller:

Under date of July 29, 1976, Mr. Ralph B. Sewell of Consumers Power Company ("Consumers"), made a request of Messrs. Brown, Cherry and Drain to approve, in their representative capacities, changes to technical specifications for a certain closed-cycle condenser cooling system in use at Consumers' Palisades Nuclear Power Plant. The request was purportedly made pursuant to the Palisades Plant Settlement Agreement between Consumers and Michigan Steelhead and Salmon Fishermen's Association, et al., dated March 12, 1971 ("Settlement Agreement").

This letter is in response to Mr. Sewell's request and is being made on behalf of the writer, as well as Messrs. Brown and Drain, who together represent all Intervenorors including Sierra Club, to whom the original request was made by Consumers. This letter is being addressed to you rather than Mr. P. A. Perry, Secretary of Consumers, in accordance with your letter of August 17, 1976 (a copy of which is attached hereto) that this reponse or notification may be made to you and will be treated as compliance with the notice provisions of the Settlement Agreement.

Please be advised that in accordance with §6.10 of the Settlement Agreement, Intervenorors are of the opinion that the proposed change in technical specifications regarding the condenser cooling system represent a breach of or failure of performance regarding the Settlement Agreement. Intervenorors further inform you that construction and operation of the condenser cooling system as required by the Settlement Agreement was an important, integral and paramount part of the Settlement Agreement, and unilateral changes thereof by Consumers, such as have been proposed by Mr. Sewell's July 29, 1976 request, would clearly deprive Intervenorors

August 18, 1976

of the benefit of their bargain and will not be dismissed lightly.

In fact, representatives of Consumers Power Company have recently acknowledged both to Mr. Drain and myself that Consumers is in accord with our view of the Settlement Agreement obligations with respect to the condenser cooling system, and we have been informed that Consumers acknowledges that implementation of the proposed changes in technical specifications referred to in Mr. Sewell's July 29, 1976 letter, without Intervenor's agreement, would be a clear breach of and failure of performance regarding the Settlement Agreement. In light of these admissions, we were very distressed to have learned, after the fact, that Consumers, during negotiations with us to seek our agreement regarding the proposed changes, had contacted the Nuclear Regulatory Commission ("NRC") to have it consider holding hearings regarding implementation of the proposed technical specification changes. For your information, we have advised NRC officials that it should not entertain your request to modify or change the condenser cooling system technical specifications without our agreement. We trust that the NRC will not entertain your request in light of the underlying facts and, in particular, the fact that the Atomic Energy Commission (the NRC's predecessor) became obligated and bound by the terms of the Settlement Agreement in specific relationship to the condenser cooling system technical specifications, all of which were part and parcel of Intervenor's willingness to withdraw from earlier proceedings before the AEC.

When we were first approached by Consumers to consider agreeing to the proposed change, we assumed that Consumers was acting in good faith. After all, Intervenor is not obligated to acquiesce in the request, but was willing to consider doing so in the context of good faith. However, these negotiations broke down for many reasons including, but not limited to, (a) Consumers' insensitivity to environmental values exemplified by its desire to go back on its promises and obligations pursuant to the Settlement Agreement; (b) Consumers' lack of candor with respect to its contacts with the NRC; (c) Consumers' failure to provide factual information to support its asserted conclusions in connection with the proposed changes; (d) Consumers' unwillingness to provide a fair mechanism to permit Intervenor to monitor any changes to the technical specifications without cost to the Intervenor who after all are public interest organizations with limited funds; and (e) Consumers' attitude that even though it acknowledges that implementation of the proposed technical specifications would be a breach of and failure of performance regarding the Settlement Agreement, unless Intervenor agreed, Consumers nonetheless believed it had the option of breaching the Settlement Agreement and forcing Intervenor once again to resort to the Courts to enforce the law.

Michael I. Miller, Esq.

-3-

August 18, 1976

Please be advised that in spite of the difficulties announced in this letter, Intervenor and their representatives have taken great pains fairly to evaluate your request of July 29, 1976, but we have concluded that we cannot agree to amend the technical specifications as proposed because of our opinion that the proposed change is a breach of or failure of performance pursuant to the Settlement Agreement.

If you believe any further meetings are necessary and if Consumers is willing to comport itself in good faith regarding such a meeting, please contact us.

Sincerely,

ERIC V. BROWN, MYRON M. CHERRY and  
LEWIS D. DRAIN

By: 

Myron M. Cherry, on behalf of  
the above representatives of  
all Intervenor including  
Sierra Club

MMC/ldh

cc: David Dinsmore Comey, Esq.  
Mr. Ralph B. Sewell  
Mr. P. A. Perry  
Bernard C. Rusche, Esq.  
Howard K. Shapar, Esq.  
R. Rex Renfrow, Esq.  
Mr. James G. Keppler  
Mr. Robert J. Courchaine  
Mr. D. H. Brant

RECEIVED by messenger a copy of this letter on August 18, 1976 prior to 5:00 p.m.

ISHAM, LINCOLN & BEALE

BY \_\_\_\_\_

# ISHAM, LINCOLN & BEALE

COUNSELORS AT LAW

EDWARD S. ISHAM, 1872-1902  
ROBERT T. LINCOLN, 1872-1889  
WILLIAM G. BEALE, 1885-1923

ONE FIRST NATIONAL PLAZA  
FORTY-SECOND FLOOR  
CHICAGO, ILLINOIS 60603

312-786-7500 TELEX: 2-5288

WASHINGTON OFFICE  
1050 17TH STREET, N. W.  
WASHINGTON, D. C. 20036  
202-833-9730

## ASSOCIATES

RALPH D. STEVENSON  
CHARLES A. BANE  
WALTER J. HARTMANN  
DEAN A. ESLING  
GENE C. DAVIS  
WILLIAM W. DARROW  
FREDERICK R. CARSON  
RICHARD G. FERGUSON  
RICHARD B. OGILVIE  
ROBERT E. CRONIN  
EILEEN STRANG  
ROBERT WOOD TULLIS  
RICHARD D. CUDAHY  
RICHARD E. POWELL  
ALEXANDER HEHMEYER  
OF COUNSEL

A. DANIEL FELDMAN  
PHILIP F. PURCELL  
SHARON L. KING  
JON R. LIND  
MICHAEL I. MILLER  
DONALD J. McLACHLAN  
DAVID J. ROSSO  
JOHN L. McCAUSLAND  
LAURENCE D. LASKY  
ROBERT A. YOLLES  
C. RICHARD JOHNSON  
PETER C. JOHN  
PAUL T. RUXIN  
GEORGE W. GILLMOR

MARLENE R. ABRAMS  
GEOFFREY A. ANDERSON  
MARGARET C. BAXTER  
EUGENE H. BERNSTEIN  
WILLIAM T. CAHILL  
JOHN G. CAMERON, JR.  
JOHN M. CHRISTIAN  
O. KIRBY COLSON, III  
HARLAN M. DELLSY  
CLARK EVANS DOWNS  
EISEL M. EADY, JR.  
THOMAS D. EISELE  
ROBERT L. ESTEP  
JAMES A. FLETCHER  
ROBERT E. GANJA  
MARTHA E. GIBBS  
REYNALDO P. GLOVER  
PAUL F. HANZLIK  
CHRISTINE McK. HEHMEYER  
DONALD B. HILLIKER

ROBERT W. KLEINMAN  
HUGH R. McCOMBS, JR.  
WILLIAM S. McKAY, JR.  
GERALD D. MINDELL  
TERRY F. MORITZ  
PAUL M. MURPHY  
GLENN E. NELSON  
JAMES N. NOWACKI  
GERRY D. OSTERLAND  
MICHAEL A. POPE  
R. REX RENFROW, III  
BERYN ROBERTS  
JOHN W. ROWE  
THOMAS GRADY RYAN  
PAUL W. SCHROEDER  
DAVID M. SPECTOR  
DAVID M. STAHL  
MARK H. VIRSHBO  
ROBERT H. WHEELER  
RONALD G. ZAMARIN

August 17, 1976

Mr. Myron M. Cherry  
One IBM Plaza  
Room 4501  
Chicago, Illinois 60611

Re: Proposed Change in Technical Specifications:  
Palisades Nuclear Power Plant

Dear Mike:

Our letter dated July 29, 1976 proposed technical specification changes for the Palisades Plant regarding the modified condensor cooling system. These changes were provided to you in accordance to Sections 6.10 and 16 of Palisades Plant settlement agreement. Under Section 6.10 of that agreement your clients are required to notify Consumers in writing in 15 days following delivery of the July 29th letter if the Intervenor is of the opinion that the proposed change is a breach of or failure of performance pursuant to the settlement agreement. Section 16 of the settlement agreement requires that the notice be sent to the Secretary of Consumers Power Company.

If your clients desire to notify Consumers pursuant to Section 6.10 of the settlement agreement with respect to the technical specification changes described above, they may do so by providing a notice to me as attorney for Consumers and otherwise in accordance with Sections 6.10 and 16 of the settlement agreement.

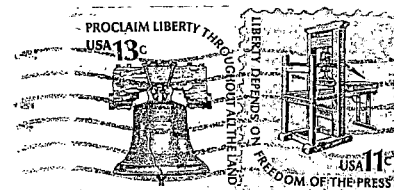
Sincerely,



Michael I. Miller

MIM:mc

LAW OFFICES  
MYRON M. CHERRY  
ONE IBM PLAZA  
CHICAGO, ILLINOIS 60611



*millie;  
I think this*

Bernard C. Rusche, Esq.  
Director, Nuclear Reactor Regulation  
United States Nuclear Regulatory Commission  
Washington, D.C. 20555

*is yours.*

*EC*