

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD



In the Matter of)

CONSUMERS POWER COMPANY)

(Midland Plant, Units 1 and 2))

Docket Nos. 50-329CP
50-330CP

(REMAND PROCEEDING)

MOTION OF THE DOW CHEMICAL COMPANY
TO REOPEN THE RECORD TO ADMIT AN
ADDITIONAL EXHIBIT

THE DOW CHEMICAL COMPANY moves the Atomic Safety and Licensing Board to enter an order reopening the record in the above-entitled cause and admitting as Dow Exhibit 4 a memorandum dated September 21, 1976 to Donald S. Young from Teresa D'Arms regarding a conversation she had with Judd Bacon of Consumers Power Company on or before September 21, 1976.

Undersigned counsel has contacted both counsel for the Staff and counsel for Consumers Power Company and is authorized to state that they have no objection to the reopening of the record for the purpose of admitting into evidence the September 21, 1976 memorandum attached hereto as Dow Exhibit 4.

DATED: August 21, 1979

FISCHER, FRANKLIN, FORD, SIMON & HOGG

By: William C. Potter, Jr.

William C. Potter, Jr.

1700 Guardian Building

Detroit, Michigan 48226

(313) 962-5210

Attorneys for The Dow Chemical Company

R. L. Davis, Esq.

Counsel for The Dow Chemical Company

Midland, Michigan 48640

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September 21, 1976

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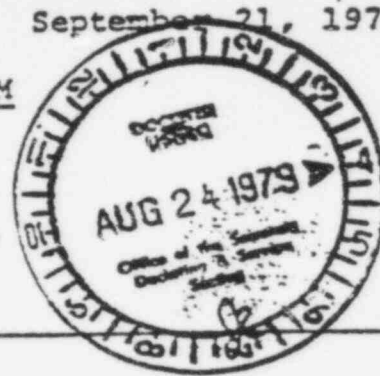
MEMORANDUM

To: Donald S. Young

From: Teresa D'Arms

Re: Consumer Power Midland Construction

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The fact situation as explained to me by Mr. Bacon, and as it emerges from the files, is that in 1967 a General Agreement and contract was entered into between Dow and C.P. under which Dow was to sell C.P. a site in the vicinity of its Midland Plant on which CPC would construct a two unit nuclear power plant so that CPC could furnish Dow with electric energy and steam pursuant to service contracts to be executed later. The property has been conveyed. Dow has a right of repurchase under the contract if CPC elects to sell. In January 1974 the three service contracts anticipated by the General Agreement were also executed.

Initially, some work had been carried out, clearing the land, etc., of a sort permitted under AEC procedures before permit is obtained. In 1971-72 there was a contest before the AEC for the permit, which lead to a suspension of work. After the Atomic Safety and Licensing Board authorized the construction permits, which were then confirmed, construction proceeded. In late fall of 1974 there was an almost complete shutdown of work on the construction due to CP's failure to obtain financing.

The intervenor from the AEC contest appealed to the D.C. Circuit Court after a 2 year delay the Court handed down an opinion in July 1976 which considered three different AEC cases together and struck down part of the AEC's rule making procedure. In response, the NRC has initiated a study to produce new rule making procedures and has suspended new licensing. The case was remanded to the Agency for a determination after new cost/benefit and environmental impact analysis and the Court threw in that a re-examination changes in Dow's needs for steam power to replace and augment fossil fired power, should be considered. At the moment CP is still engaged in construction at a rate of \$200 Million per year. However, the board will consider whether to suspend their permit while determining the remanded issues.

In November 1974, when CP suspended work on the construction due to failure to obtain financing, Dow sent a letter to CP alleging that the delays would postpone completion and service commitments by CP and demanding adequate assurance of performance.

Initial delays while awaiting A.E.C. approval, for which under

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the contract then would clearly seem to be no liability on the part of C.P. and for which no liability has been asserted, plus delay. In 1974-75, due to C.P.'s financing problems, have increased the total estimated cost of the project from \$350 Million (1967 estimate) to 1.67 Billion. Dow is clearly concerned about this vast increase in costs, which will be reflected in its rates. Perhaps even more serious for Dow is the 1980 deadline to meet the Michigan Air Quality Standards. If Dow can not get a waiver on meeting these standards and if energy is not obtainable from the new nuclear plants, as it is now clear that it will not be, Dow will have to spend enormous sums to make their existing fossil-fired energy production meet clean air requirements.

What has happened now is that at the time when NRC Agency proceedings are being reopened and C.P.'s permit seems in some jeopardy, and Dow and C.P. are going to have to testify on cost/benefit ratios, etc. C.P. has learned from Dow that Midland Dow has concluded that the nuclear plant is no longer in its best interests. The Corporate Dimension of Dow has appointed a task force to decide what to do about this recommendation.

It is possible that Dow will declare the contract in default; or that when it shortly goes before the Commission, it will either testify denoting that it is seeking to terminate the contract for breach, or that the nuclear plant cost/benefit ratio has changed and can no longer be advocated.

The contract questions on which Mr. Bacon wanted us to work are attached. C.P. legal staff were meeting with Dow legal staff today, Tuesday. C.P. are meeting Friday with Dow Corporate Division and want something from us before that meeting analyzing the contract questions listed.

CONTRACT QUESTIONS

1. Has CPCo defaulted on its obligations under its steam service contract (or its other contracts with Dow) by virtue of delays in schedule or increases in cost?
2. If so, what are (or were) Dow's rights with respect to such default?
3. Did Dow, by failing to exercise those rights while permitting CPCo to expend millions on the project, or by the passage of time, or by negotiating contract changes since then, lose its rights with respect to CPCo's default, if any?
4. If there is a further delay in schedule, or material change in design, or material increase in cost, will that constitute a default on CPCo's part,
 - (a) If due to CPCo's choice?
 - (b) If due to CPCo's inability to finance?
 - (c) If due to NRC or court order?
 - (d) If due to NRC or court order as a result of Dow statements in the remanded NRC proceeding?
5. Do the contracts permit Dow to make public statements which adversely affect completion of the project as planned?

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing "Motion of The Dow Chemical Company To Reopen The Record To Admit An Additional Exhibit" were served on the following, by deposit in the United States Mail, first class postage prepaid, on the 21st day of August, 1979:

Marshall E. Miller, Esq.
Chairman, Atomic Safety and Licensing Board
U. S. Nuclear Regulatory Commission
Washington, D. C. 20555

Dr. J. Venn Leeds, Jr., Esq.
Atomic Safety and Licensing Board
10807 Atwell
Houston, Texas 77096

Dr. Emmeth A. Luebke
Atomic Safety and Licensing Board
U. S. Nuclear Regulatory Commission
Washington, D. C. 20555

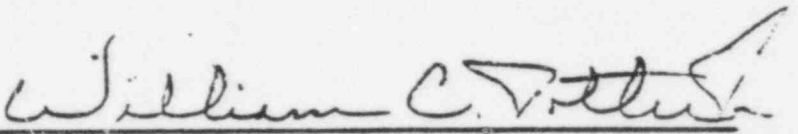
William J. Olmstead, Esq.
Counsel for NRC Staff
U. S. Nuclear Regulatory Commission
Washington, D. C. 20555

Brad Reynolds, Esq.
Shaw, Pittman, Potts & Trowbridge
1800 M Street, N.W.
Washington, D. C. 20036



Docketing and Service Section
Office of the Secretary
U. S. Nuclear Regulatory Commission
Washington, D. C. 20555

DATED: August 21, 1979


WILLIAM C. POTTER, JR.

FISCHER, FRANKLIN, FORD, SIMON & HOGG
1700 GUARDIAN BUILDING
DETROIT, MICHIGAN 48226

POOR ORIGINAL

First Class

FROM
FISCHER, FRANKLIN, FORD, SIMON & HOGG
1700 GUARDIAN BUILDING
DETROIT, MICHIGAN 48226

TO

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Office of the Secretary
U. S. Nuclear Regulatory Commission
Washington, D. C. 20555

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