

VOL. CXCINO. 48

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Nuclear Nemesis

Using the Law's Delay, Myron Cherry Attacks Atomic-Power Projects

Tying Up Utilities in Court
Is His Strategy; Regrets
At Consumers Power Co.

'Bright, Dedicated and Mean'

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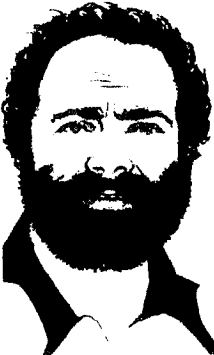
MIDLAND, Mich. — For seven years, Myron Cherry has been doing everything he can to stop Consumers Power Co. from building a nuclear generating plant in this small industrial town.

The 39-year-old Chicago attorney, representing a group of local citizens, has fought the project through hundreds of hours of government regulatory hearings and a long court proceeding. He has bullied, badgered and outraged a small legion of adversaries—in one instance, nearly coming to blows with a Consumers Power official. So far, he hasn't stopped the project.

But that doesn't mean Mr. Cherry hasn't been a success. Just ask Consumers Power president John Selby. "He has been a real thorn in our side," says Mr. Selby, who gives Mr. Cherry a generous share of blame for the fact that the project is eight years behind schedule and nearly five times above its original cost estimate of \$350 million. Indeed, so great have been the problems that Mr. Selby says he now regrets ever beginning the Midland plant. "And I'd be very reluctant to put shareholders' money into another nuclear plant in the future," he adds.

Thus, as Mr. Cherry loses battle after battle, he just may, as Mr. Selby's remarks indicate, be slowly winning the war. And that's happening more and more these days as the so-called "antinuclear movement" wages a relentless fight against expanded use of nuclear-power plants.

For while nuclear-power critics generally have failed whenever they have sought sweeping restrictions on atomic energy through legislative lobbying or in public referenda, their consistent opposition—often taken through legal channels as each proposed new plant comes along—is clearly having major impact. "We've stopped nuclear power from being the miracle energy cure, and shown it to be a controversial,



problem-ridden power source," says Daniel Ford of the Union of Concerned Scientists, a leading antinuclear group.

Nuclear-power supporters unhappily agree. Carl Goldstein, assistant vice president of the Atomic Industrial Forum, a trade group, calls the antinuclear movement a "psychosis... that sustains itself largely on fear-mongering issues." Nonetheless, he concedes, "like the poor soul at the bottom of the heap in a tavern brawl," nuclear power is "taking it on the chin for now."

Once a Panacea

There's no denying that. Nuclear power, once considered the panacea for the nation's future energy needs, has fallen on hard times. Grandiose plans to dot the landscape with 1,000 atom-powered generating plants by the year 2000 are only memories now. Today, projections call for only 400 such plants by the end of the century, including 67 already completed. Even that may be too optimistic. In the past three years, utilities have ordered only 12 new reactors; in the decade before that, they were placing orders at the rate of 20 a year.

Nuclear power's problems aren't simply the result of vocal criticism, of course. There are unresolved questions related to reactor safety, the disposal of nuclear-plant waste and the availability of nuclear fuel. Moreover, cost overruns and construction problems at many plants, along with unexpected slowdowns in the growth rate of demand for electrical power, have increased the economic risk of building big nuclear plants.

What nuclear opponents have done, however, is focus attention on these problems. And perhaps more important, they also have learned the intricacies of government nuclear-plant licensing procedures, turning what's often a thicket of red tape to their own advantage.

Trial by Combat

Thus, what was once a bureaucratic formality is now likely to resemble a "trial by combat," with opponents vigorously fighting a proposed plant at every turn, says Marcus Rowden, former chairman of the federal Nuclear Regulatory Commission. The extra years this struggling adds to the time between when a nuclear plant is proposed and when it begins operation can mean tens of millions of dollars in additional costs. "That has to affect a utility's decision on what kind of plant to build," says Mr. Rowden.

Fear of costly delay is just what an opponent like Mr. Cherry banks on. In his view, "We should shut down the nuclear plants we have and not build any new ones." But since neither the utilities nor the government agree, the next best thing, as far as Mr. Cherry is concerned, is to make building a nuclear plant "as painful and expensive as possible for a utility" so that it will reconsider the idea.

And as Mr. Cherry will unabashedly point out, probably no one inflicts pain and expense on utilities as effectively as Myron Cherry. Even his enemies—who are numerous—concede that the pugnacious, bearded attorney is a formidable foe. "He's an obnoxious S.O.B., but unfortunately, he's also

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the best trial lawyer I've ever seen," says an official at one utility that has wrangled with the attorney.

Mr. Cherry has been honing that double-edged reputation since 1970, when he took his first nuclear-power case. At the time, he was a successful antitrust lawyer with a big Chicago law firm. "I'd never heard of nuclear power," he recalls.

That all changed when a partner in Mr. Cherry's firm started worrying about a nuclear plant Consumers Power was building on the shores of Lake Michigan. The partner, who had a home in the area, tried questioning the utility about the plant, but was repeatedly rebuffed. So in response, Mr. Cherry says, the law firm dispatched him to spend a few days "making a little trouble" for the utility at a routine hearing on the plant's operating license.

He stayed nine months and made lots of trouble. Mr. Cherry became counsel for a group of local environmentalists and fishermen who feared that the Consumers Power plant would damage marine life in the area. When federal regulators ruled they didn't have authority over such matters, Mr. Cherry changed tack and began raising hundreds of safety-related questions the government couldn't ignore. "We were determined to drag that hearing out until something was done for my clients," he says.

First, he demanded mountains of technical documents from the plant's builders and then used them to challenge the adequacy of the construction; one group of witnesses was kept on the stand nearly three months defending the plant's design. When he suffered a back ailment during the hearings, Mr. Cherry continued to question witnesses while propped in a chair and, occasionally, while lying flat on the floor. And when he discovered that an opposing attorney had a heart problem and didn't like loud noises, Mr. Cherry shouted at every opportunity. "I was an advocate trying to get an edge," he explains.

Finally, Consumers Power capitulated. It agreed to install \$28 million worth of added environmental safeguards at the Lake Michigan facility in return for an agreement by Mr. Cherry's clients to withdraw their opposition. "We had a \$130 million plant standing idle and needed to get it running," says Mr. Selby, the utility's president.

With that success, Mr. Cherry was off and running. He quit the Chicago law firm, and soon appeared in Washington to participate in the government's first major public hearings on nuclear-reactor safety. At about the same time, he also joined environmentalists in pressing a lawsuit that eventually forced federal nuclear-power regulators to include environmental considerations in their decisions on nuclear-plant licenses.

Favored Clients

Most of Mr. Cherry's antinuclear efforts, however, have involved fighting individual plant projects. So far, he has represented clients in about two dozen licensing battles from Rhode Island to Wisconsin. Today, about half of his law practice is devoted to such cases, with the remainder, primarily securities and antitrust matters, in effect subsidizing the antinuclear practice. For instance, Mr. Cherry says he charges business clients upwards of \$100 an hour; his nuclear-power clients, however, are billed anywhere from nothing to \$65 an hour, depending on their ability to pay.

This isn't to say that Mr. Cherry is a total altruist in his labors against nuclear power. Clients' lack of money has caused him to drop out of some cases early and take only limited roles in others. Also, he says he has turned down about six cases because he didn't think the would-be clients had the money. "It takes about \$100,000 to fight a big nuclear-plant case," Mr. Cherry says. "Some people call up and want to hire you with \$800. You take enough of those cases and you go bankrupt."

Mr. Cherry hardly appears in danger of insolvency. He won't disclose his income—"I do make a very nice living," he says—but it's enough to support his taste for expensive clothes, fancy restaurants and good cigars. ("My cigars," he quips, "must cost me more than \$10,000 a year.")

But however flashy his private life or his courtroom demeanor might seem, Mr. Cherry's strategy in fighting nuclear plants is decidedly down to earth. The key, he explains, is "to hold up funding, for once a utility starts pouring millions of dollars into a project, it is almost impossible to stop." In the case of a plant proposed by New England Electric Power Co., for instance, Mr. Cherry has managed to delay the project by getting a court to block the U.S. government from selling the proposed site, a former Navy base, to the utility. The government, Mr. Cherry argued, didn't meet its legal obligation to explore other uses for the federal land.

His Biggest Fight

Mr. Cherry's biggest nuclear-plant fight, though, involves the Consumers Power project in Midland. He was hired by local opponents, who concluded "he was just what we needed: bright, dedicated and mean," says Mary Sinclair, a founder of the Midland group.

They haven't been disappointed. Mr. Cherry started by fighting the utility's request for a plant-construction license, and when one was granted in 1972, he appealed the decision all the way to the U.S. Court of Appeals in Washington, where he won new licensing hearings. That victory forced a preliminary hearing on whether construction should be stopped during the new licensing hearings. That victory forced a preliminary hearing on whether construction should be stopped during the new licensing hearings.

Mr. Cherry's conduct during that proceeding typifies his often abrasive operating style in which regulatory officials as well as utility representatives are subjected to a steady verbal assault. For instance, at one point in the Midland hearings, which ended last year, Mr. Cherry suggested that attorneys for the Nuclear Regulatory Commission "should be sued by the public for their last two years of pay since they haven't done anything to earn it."

On another occasion, he so infuriated one government attorney that the frustrated lawyer responded with an obscene hand gesture during the public proceedings. And a Consumers Power public-relations executive nearly came to blows with Mr. Cherry, who had been taunting the official for days with comments such as, "You are so ugly your wife deserves combat pay."

The rambunctious advocate's antics do yield some serious results, of course. James G. Keppler, Midwest director for the Nuclear Regulatory Commission, concedes that while he might not approve of Mr. Cherry's style, the lawyer's criticisms have pushed his agency to undertake tougher inspection procedures. "He puts you in a big fishbowl and looks for all your mistakes," the official says. "I think that makes for better regulation."

Also, during the preliminary hearings on the Midland plant, Mr. Cherry did extract from his adversaries reams of new evidence about the project, including confidential documents that raised questions about the economic feasibility of the plant and the utility's ability to manage it. (Besides Mr. Cherry, the project has been plagued by financing problems and changes in government regulations that have forced additional delays.)

Mainly, however, Mr. Cherry is persistent. When the regulatory commission ruled that construction on the Midland plant could proceed pending a rehearing on the plant's license, Mr. Cherry promptly appealed the decision through both the regulatory commission and the courts. More recently, he appeared before the U.S. Supreme Court to argue against a Consumers Power request that the appeals-court order for the rehearing be overturned.

If the Supreme Court declines to overturn the appeals court, Mr. Cherry will be able to fight the plant again at the new construction-license hearing. But even if he loses, there eventually will be still more hearings when the utility seeks a second license to begin operating the plant. And Mr. Cherry plans to be there. "They're never going to get rid of me," he says.