

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. 50-329  
50-330

MEMORANDUM

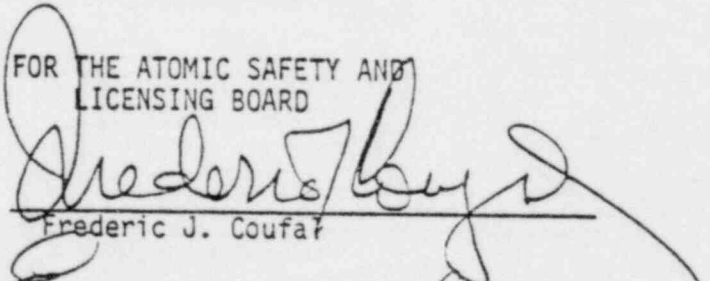
During the Midland suspension hearings, two documents that were introduced into the record by the Licensee and one document that resulted from a discovery request by the intervenors other than Dow may describe a "situation inconsistent with the antitrust laws." This Board has no antitrust jurisdiction (see In Re Houston Lighting and Power Co., et al., South Texas Project, Units 1 and 2, ALAB-381, March 1977). However, the Midland Antitrust Board still has jurisdiction because the Commission has not directed that the record be certified to it for final decision nor rendered a final decision, nor has the Midland Antitrust Board disqualified itself (see 10 CFR § 2.717a). If the initial decision of the Midland Antitrust Board was not before the Appeal Board, we would simply refer the matter to the Midland Antitrust Board for whatever action that they deemed appropriate. Because the antitrust decision is before the Appeal Board, we deem it prudent

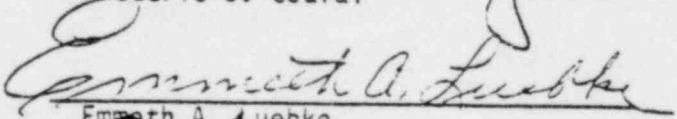
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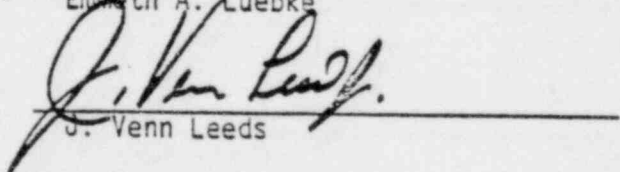
to refer the matter to the Appeal Board so that they may act on the matter on their own or remand the matter to the Antitrust Board for appropriate action. We would respectfully suggest that the matter be remanded to the Licensing Board with instructions to reopen the record.

The two documents introduced into this record by the Applicant are the Steam and the Electric Contracts between Consumer Power and Dow (Testimony of Mr. Howell following Tr. 2074). On page 3 of the Electric Contract, Dow is prevented from reselling electricity. On page 28 of the Steam Contract, Dow is prevented from reselling steam. The discovery document is Dow's minutes of a meeting between the Licensee and Dow held on February 24, 1976. These minutes appear to reflect the Licensee's intent to prevent municipalities and/or competitors from selling power to Dow after having purchased that power from the Licensee. (For the Appeal Board's convenience, copies of page 3 of the Electric Contract, page 28 of the Steam Contract and pages 6, 7 and 18 of the meeting minutes are enclosed.)

FOR THE ATOMIC SAFETY AND  
LICENSING BOARD

  
Frederic J. Coufar

  
Emmeth A. Luebke

  
J. Venn Leeds

Dated at Bethesda, Maryland  
this 15th day of June, 1977.

- Enclosures: 1) Ltr. to Chase R. Stephens, Chief,  
Docketing and Service Branch,  
Office of the Secretary
- 2) P. 3 of Electric Contract,  
p. 28 of Steam Contract, and  
pp. 6, 7 and 18 of Minutas

Exhibit To

AGREEMENT FOR ELECTRIC SERVICE  
BETWEEN  
CONSUMERS POWER COMPANY  
AND  
THE DOW CHEMICAL COMPANY

3. Dow shall pay for such energy in accordance with Consumers Power's Rate "F." By reason of the character of the proposed use of service, it is also subject to the provisions of Rule 12(1) - Auxiliary or Standby Service, of Consumers Power's Standard Electric Rules and Regulations. A copy of said Rate and Sheet No. 5.06 and Sheet No. 5.07 containing said Rule are attached hereto and made a part hereof. Said service shall also be subject to such future revisions and amendments to said Rate or Rule, or both, supplements thereto, or substitutes therefor as are hereafter filed with and approved by the Michigan Public Service Commission.

4. It is further agreed that:

(a) Dow's contract demand for such service shall be established at 300,000 kilowatts. Such service is for the sole use of Dow, for the purposes aforesaid, and shall not be transmitted elsewhere or shared or resold. Said energy may be used by Dow as auxiliary to electric energy generated by Dow by its own generating facilities existing and operating or operable as of January 15, 1974. It is a condition of Consumers Power's agreement to serve Dow hereunder that Dow may repair, but shall not replace or add to, Dow's said generating facilities. Dow may generate and utilize in its Midland Plant such portion of Dow's Midland Plant electrical power requirements as may be supplied incidentally from chemical processes at Dow's Midland Plant. Consumers Power agrees to permit Dow, when Dow so desires, to operate Dow's electric generating facilities in parallel with Consumers Power's electric system; provided, however, that such parallel operation shall at no

Exhibit 7c

CONTRACT FOR STEAM SERVICE  
BETWEEN  
CONSUMERS POWER COMPANY  
AND  
THE DOW CHEMICAL COMPANY

of authority or regulation by governmental or military authorities. Whenever there shall be any interruption in service or variation in pressure or other service characteristics due to the aforementioned causes or conditions, Dow shall use all reasonable efforts to remove such causes or conditions.

10. Steam supplied to Dow hereunder shall be for the sole use of Dow, for the purpose aforesaid, and shall not be transmitted elsewhere, or shared or resold.

11. Dow may generate and utilize in its Midland Plant the following supplies of steam, and the same shall be excluded from Dow's obligation to purchase all of its Midland Plant steam requirements from Consumers Power as provided in Section 1:

- a. from all of its facilities at Dow's Midland Plant which are operating or operable as of January 15, 1974, any amount of steam, as standby or auxiliary to the steam to be provided by Consumers Power; provided, however, that Dow may repair, but shall not replace or add to, its steam-producing facilities at the South and West Power Houses at its Midland Plant; and provided, further, that upon retirement of said Power House facilities Dow may generate and utilize in its Midland Plant an amount of steam not exceeding 1,000,000 lbs/hr of steam at a pressure not exceeding nominal 175 psig from any facilities owned and operated by Dow, as standby or auxiliary to the steam to be provided by Consumers Power. The foregoing amounts of steam shall be deemed to include,

610-012

DOW CONFIDENTIAL

DOW-CONSUMERS NUCLEAR PROJECT MEETING

February 24, 1976

Jackson, Michigan

Present:

Dow

Parke Brown  
Jim Burroughs  
Lee Nute  
Joe Temple  
Mac Whiting

Consumers

Judd Bacon  
Steve Howell  
Gil Keeley  
Russ Youngdahl

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Ten Year Power: Consumers wants a firm contract for ten years commencing when the nuclear steam contract goes into service to sell Dow all the power that Dow purchases. Consumers would sell this power at their then current system industrial rate. They would not be required to meet a rate offered to Dow by any competitive source that might wish to sell power to Dow. The reason for taking this position is that Consumers does not want to find themselves in the position of selling part of their Midland plant to municipalities and/or cooperatives and then have them turn around and sell power to Dow cheaper than Consumers can because of their different tax situation.

Consumers said that, in summary, these were the two conditions that Consumers wanted Dow to agree to if Consumers would allow Dow to have a year-to-year electrical contract and the right to generate its own power. First, that the cost of any change in facilities built to serve Dow as a result of capacity reservations will be charged to Dow. Second, Consumers shall also have the right of first refusal to sell to Dow any purchased power Dow wishes to buy over what Dow agrees now to purchase beginning when Consumers' commercial steam delivery to Dow starts and Consumers wants that right for ten years.

Dow replied that Dow does not want to be discriminated against except for what is specifically defined in the contract. Consumers said that Consumers is not trying to discriminate against Dow versus other industrial concerns such as General Motors and that the only difference from present system rate restrictions that apply to everyone would be the 10 year 100% purchase requirements clause.

Deregulation: Dow commented that we could understand why Consumers wanted to be protected from unfair competition that is caused by built in tax advantages. However, Dow couldn't understand why Consumers shouldn't be competitive with other utilities such as Detroit Edison, Toledo Edison, etc., all of whom have essentially the same tax situation and might be willing and able to sell power to Dow.

Therefore, Dow would like to see a clause in the contract that Dow would not be restricted from purchasing power from someone else if the real world changes during the 10 year period and there are no regulations preventing other reputable sources of supply of electricity from competing with Consumers for Dow's business. A clause allowing Consumers to retain Dow's business by meeting the competitive price is reasonable. Dow is reluctant to agree to Consumers' proposal unless there is a competitive price clause since Dow believes Consumers ought to be competitive with other public utilities.

Consumers replied that they had no concern with a clause such as Dow suggested provided that Consumers was totally deregulated. They pointed out that the municipalities and cooperatives are not regulated in Michigan and this creates unfair competition.

Dow reiterated that we were interested in the possibility of deregulation in the future and that we feel that this certainly needs to be a part of any electric contract that runs out into the 1990's.

Antitrust: Dow commented that we thought there could be antitrust problems with a 10 year 100% requirement to purchase power, especially one without even a competitive price clause. Dow asked if Consumers had considered this. Consumers said yes. Dow asked whether if, in their opinion, this was a problem. Consumers replied that "they are aware of the problem and have looked at it." Dow will investigate the matter further and suggested Consumers do likewise.

#### PURCHASE POWER COST.

Current 1982 Estimate: Consumers is now predicting that Dow's power cost in 1982 for 300MW @ 100% load factor will be 31 mills/KWH versus 30 mills estimated last April. This estimate includes the impact of their latest fuel cost estimates but does not include the impact of their latest estimate of the Midland nuclear plant's cost. Also it is based on obtaining their 12.12% authorized rate of return on equity in 1982. However, if they should get a 14% return, Dow's power cost would increase to 32 mills. In Consumers' latest rate increase request, Consumers asked for a 14-1/2% return but the MPSC (Michigan Public Service Commission) Staff is recommending that 13-1/2% be authorized.

Current Rate Structures: In the last two rate requests the MPSC granted Consumers, they redefined rate structures. Currently, assuming an overall rate cost index of 100, the residential rate would be 80, the industrial 100, and commercial rates would be over 100. In Consumers' opinion, Dow's and General Motor's intervention in rate cases has been very positive in protecting the cost of service concept.

Time of Day Rate: Consumers has been investigating time of day rate structures (higher rates during peak demand periods). However, the feedback they have received from industrial users indicates this type of rate structure would not be of much value for shifting load demand. Industrial users indicated that if there was too large a time of day penalty, they might move out of the State.

Consumers doesn't think time of day pricing would have much impact on industrial users if it is based on cost of service. However, there is a real hazard in that Consumers might be required to set peak demand costs on some other bases.

Life Line Rates: Throughout the country there has been quite a push for life line rates for the poor. These rates allow people to purchase a minimum of about 300KWH at an artificially low cost. If this happens in Michigan, the industrial and commercial users can be expected to make up the cost deficiencies. Consumers opposes this concept because lower income people are not necessarily low power users.

power from Consumers. Dow proposed to pay the contract price for the 4,050M#/hr. of steam plus a conversion fee including a profit to Consumers for that part of the steam demand that was converted by Consumers into power for Dow. Dow would pay for the steam on a take or pay bases, but if we didn't get the steam we required and the amount of power agreed upon we would pay only for what we did get -- a true "take or pay".

Consumers commented that they have never sold unit power from a power plant. They voiced concern that in working out a conversion cost they did not discriminate against other electric customers. Dow asked if the City of Lansing and Oldsmobile weren't doing this? Consumers didn't know.

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Consumers concluded by saying they hadn't thought of this proposition, were interested, and would give it serious consideration.

CLEAN BILL OF HEALTH.

Both companies agreed there was no point in discussing a clean bill of health at present. The general consensus was that this should be done only after everything else was agreed upon. Dow restated that Consumers should not undervalue this item in the negotiations.

SITE RELATED COSTS.

Consumers asked Dow if Dow wanted them to consider as a separate item the \$1,500,000 designated in the contract as the price for acquiring land for a typical power generating site or include this item as part of the total site related costs problem. Dow agreed it should be part of the overall site related cost problem.

Consumers stated that they did not think that the time should be taken during these negotiations to solve this whole problem because it was too involved. Dow agreed.

DOW SELL STEAM.

Dow commented that at the last meeting the question was left unanswered as to whether Consumers would allow Dow to sell nuclear steam. Consumers replied that Consumers didn't care how Dow used nuclear steam but hadn't intended for Dow to sell any of the steam. Consumers still doesn't want Dow to sell steam but will consider this question as part of the total package. They stated that if Dow commits to a certain quantity of steam on a take or pay basis, Consumers could see no great advantage, realistically, in restricting what Dow does with the steam within that demand -- including its sale.

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document(s) upon each person designated on the official service list compiled by the Office of the Secretary of the Commission in this proceeding in accordance with the requirements of Section 2.712 of 10 CFR Part 2 - Rules of Practice, of the Nuclear Regulatory Commission's Rules and Regulations.

Dated at Washington, D.C. this  
16<sup>th</sup> day of June 1977.

PA. Sullivan  
Office of the Secretary of the Commission

Served also on 50-329, -330

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