In the Matter of)
CONSUMERS POWER COMPANY)
Midland Plant, Units 1 and 2)

Docket Nos. 50-329A 50-330A

RESPONSE OF THE DEPARTMENT OF JUSTICE TO THE JANUARY 13, 1978 ORDER OF THE NUCLEAR REGULATORY COMMISSION

On January 13, 1978, this Commission issued an Order in response to the Motion of Consumers Power Company for an extension of time in which to file a petition for review. In that Order the Commission requested that the parties address the issue of whether review of the Appeal Board decision in ALAB-452 should be deferred until after the decision on the remand ordered by the Appeal Board. The Department of Justice hereby responds.

Commission review of the Appeal Board decision should not be had until after a decision on relief has been made. In the interest of judicial economy it is best that the Commission review the above captioned matter in its entirety, after the issue of relief has been decided. This is because relief should be examined in light of the facts which justified a finding of a situation inconsistent with the antitrust laws. If a substantial period of time should elapse between Commission

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affirmance on the merits and a Commission review of a decision on relief, the Commission would have to take the time to refresh itself on the facts in order to conduct such a review.

For the foregoing reasons the Department urges the Commission to defer its review of the Appeal Board decision in the above captioned matter until such time as a decision on relief has been issued.

Respectfully submitted,

Donald L. Flexner Chief

Donald A. Kaplan Assistant Chief

Energy Section
Antitrust Division
Department of Justice

January 27, 1978

Melvin G. Berger

Janet R. Urban

Attorneys, Energy Section Antitrust Division Department of Justice

In the Matter of

CONSUMERS POWER COMPANY Midland Plant, Units 1 and 2 Docket Nos. 50-329A 50-330A

MOTICE OF APPEARANCE BY THE DEPARTMENT OF JUSTICE

Notice is hereby given that the undersigned attorney herewith enters an appearance on behalf of the Department of Justice in the captioned matter. In accordance with §2.713 of the Commission's Rules of Practice, the following information is provided:

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Name of Party:

United States Department of

Justice

Washington, D.C. 20530

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Melvin G. Berger

Attorney, Antitrust Division

Department of Justice

Dated: January 27, 1978



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CONSUMERS POWER COMPANY Midland Plant, Units 1 and 2

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NOTICE OF APPEARANCE BY THE DEPARTMENT OF JUSTICE

Notice is hereby given that the undersigned attorney herewith enters an appearance on behalf of the Department of Justice in the captioned matter. In accordance with §2.713 of the Commission's Rules of Practice, the following information is provided:

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Justice

Washington, D.C. 20530

Janet R. Urban

Attorney, Antitrust Division

Department of Justice

Dated: January 27, 1978

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Docket Nos. 50-329A 50-330A

CERTIFICATE OF SERVICE

I hereby certify that copies of RESPONSE OF THE DEPARTMENT OF JUSTICE TO THE JANUARY 13, 1978 ORDER OF THE NUCLEAR REGULATORY COMMISSION and NOTICES OF APPEARANCE BY THE DEPARTMENT OF JUSTICE have been served upon all of the parties listed on the attachment hereto by deposit in the United States mail, first class or airmail, this 27th day of Janaury 1978.

Attorney, Department of Justice

Antitrust Division

In the Matter of) 1

CONSUMERS POWER COMPANY) Docket Nos. 50-329A
Midland Plant, Units 1 and 2) 50-330A

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