UNITED STATES OF AMERICA NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

2/3/78

In the Matter of

CONSUMERS POWER COMPANY
(Midland Plant, Units 1 and 2)

NRC Docket Nos 50-329A

STAFF'S REPLY TO COMMENTS OF CONSUMERS POWER COMPANY

The NRC Staff hereby replies to the Comments of Consumers Power

Company ("Consumers") in Response to the Commission Order of January

13, 1978. For the most part, the points raised by Consumers have been previously addressed in the Staff's own response to the Commission's

January 13th Order, and need no further discussion. However, the

IN RESPONSE TO COMMISSION ORDER OF JANUARY 13, 1978

the adverse impact of Commission review of ALAB-452 and NRC antitrust

Staff believes it necessary to reply to Consumers' allegations about

standards upon electric utility decisions for nuclear plant construction.

In the Staff's view, Consumers' representations regarding the adverse impacts are incorrect because there is no factual basis to support them. A brief review of certain salient aspects of the NRC's antitrust review program under the Atomic Energy Act of 1954, as amended, makes this clear.

Since 1970, eighty-nine applications for nuclear units have undergone antitrust review under the Atomic Energy Act. These eighty-nine applications involve seventy-four out of the largest one hundred electric utilities in the United States. These seventy-four utilities own 77% of the

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^{1/} Comments of Consumers Power Company in Response to Commission Order of January 13, 1978, at pages 3-4.

total generation of electric power in the United States.

During this period, seventeen Department of Justice advice letters were issued in which antitrust hearings were recommended, twenty-four advice letters were issued in which no hearings were recommended because of the imposition of certain license conditions, and forty-eight advice letters were issued in which no hearings and no license conditions were found to be necessary. To date, thirty-four NRC (or AEC) licenses have issued which have included various antitrust conditions. Of these thirty-four licenses, twenty-nine were issued to electric utilities which are among the largest one hundred in the United States.

A cursory view of the facts, as presented above, makes it clear that a large portion of the major electric utilities in the United States are familiar not only with the nature, scope and standards of antitrust review under the Atomic Energy Act, but also with the nature of NRC antitrust license conditions. Accordingly, the Staff believes

^{2/} Peak load figures were taken from Electrical World, "Annual Statistical Report," Vol.185, No. 6 (March 15, 1976). While some upward growth of these figures has occurred, they still provide a useful comparative figure.

^{3/} These figures represent the latest compilation by the NRC Staff.

Some figures depend, in a minor fashion, on characterization of the status of certain applications at this time. For example, the potential license conditions which are found in the Farley and Perry, Davis-Besse proceedings have not been included in the 34 licenses with antitrust conditions, since both are on appeal to the Appeal Board.

that the Commission, in reaching its decision on whether to defer review of ALAB-452, should not consider the unsupported statements of Consumers regarding the alleged adverse impacts of deferral on the electric utility industry.

Respectfully submitted,

Benjamin H. Vogler

Deputy Director

Antitrust Division, OELD

Fredric D. Chanania Counsel for NRC Staff

Dated at Bethesda, Maryland this 3rd day of February 1978.

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CERTIFICATE OF SERVICE

I hereby certify that copies of STAFF'S REPLY TO COMMENTS OF CONSUMERS POWER COMPANY IN RESPONSE TO COMMISSION ORDER OF JANUARY 13, 1978, in the above captioned proceeding have been served on the following by deposit in the United States mail, first class or air mail, or, as indicated by an asterisk, through deposit in the Nuclear Regulatory Commission's internal mail system, this 3rd day of February 1978.

Alan S. Rosenthal, Chairman Atomic Safety and Licensing Appeal Board U.S. Nuclear Regulatory Commission Washington, D.C. 20555 *

Michael C. Farrar Atomic Safety and Licensing Appeal Board U.S. Nuclear Regulatory Commission Washington, D.C. 20555 *

John F. Farmakides
Atomic Safety and Licensing
Appeal Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555 *

Hugh K. Clark, Esq. Atomic Safety and Licensing Board P.O. Box 127A Kennedyville, Maryland 21645

Dr. J.V. Leeds, Jr. P.O. Box 941 Houston, Texas 77001

William Warfield Ross, Esq. Keith S. Watson, Esq. Wald, Harkrader & Poss 1320 19th Street, N.W. Washington, D.C. 20036 Jerome Saltzman, Chief Antitrust and Indemnity Group U.S. Nuclear Regulatory Commission Washington, D.C. 20555 *

Donald L. Flexner, Esq. David A. Leckie, Esq. Forrest Bannon, Esq. P.O. Box 481 Washington, D.C. 20044

Honorable Frank Kelly Attorney General State of Michigan Lansing, Michigan 48913

George Spiegel, Esq. Robert A. Jablon, Esq. James Carl Pollock, Esq. 2600 Virginia Avenue, N.W. Washington, D.C. 20037

Atomic Safety and Licensing Board U.S. Nuclear Regulatory Commission Washington, D.C. 20555 *

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

Melvin G. Berger, Esq. Janet R. Urban, Esq. Antitrust Division Department of Justice P.O. Box 14141 Washington, D.C. 20044 Chairman Hendrie
Office of the Commission
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555 *

Commissioner Gilinsky
Office of the Commission
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555 *

Commissioner Kennedy
Office of the Commission
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555 *

Commissioner Bradford
Office of the Commission
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555 *

Fredric D. Chanania Counsel for NRC Staff