

THIS DOCUMENT CONTAINS  
POOR QUALITY PAGES

UNITED STATES OF AMERICA  
BEFORE THE  
ATOMIC ENERGY COMMISSION



In the Matter of )

CONSUMERS POWER COMPANY )

(Midland Plant, Units 1 and 2) )

Docket Nos 50-329A  
and 50-330A

ERRATA TO CONSUMERS POWER COMPANY'S  
PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW  
AND BRIEF IN SUPPORT OF ITS PROPOSED FINDINGS  
OF FACT AND CONCLUSIONS OF LAW

Consumers Power Company submits the following corrections to its filing of October 8, 1974, in the above-captioned proceeding:

PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The sentence beginning at the tenth line on page 10, which now reads:

However, not all retail rates of the cooperatives' retail rates are equal to or below the Company's.

should read:

However, not all of the cooperatives' retail rates are equal to or below the Company's.

2. The citation beginning on the twenty-fourth line of page 49, which now reads:

. . . see also Attorney General's advice letter, August 16, 1971, Detroit Edison Co., (Enrico Fermi Unit 2), Dkt. No. 50-461A and 50-462A, 39 Fed. Reg. 15899 (May 6, 1974)].

should read:

. . . see also Attorney General's advice letter, August 16, 1971, Detroit Edison Co., (Enrico Fermi Unit 2), Dkt. No. 50-461A and 50-462A, 36 Fed. Reg. 17883 (1971).

8006110 40.5

M

3. Pages 93 and 94 are numbered incorrectly and are in reversed order.

Page 93 should follow page 94.

BRIEF IN SUPPORT OF ITS PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. A substitute page 81 is attached to this Errata.

2. The sentence beginning on line 10 of page 101, which now reads:

For example, in the areas immediately outside of the boundaries of the various municipalities which operate their own systems there is some duplication of facilities but, except but the areas surrounding Bay City and Traverse City, the number of retail power purchasers who have a choice of electric suppliers is very small.53/

should read:

For example, in the areas immediately outside of the boundaries of the various municipalities which operate their own systems there is some duplication of facilities but, except for the areas surrounding Bay City and Traverse City, the number of retail power purchasers who have a choice of electric suppliers is very small.53/

3. The sentence beginning on the second line of page 108 which now reads:

Although in one portion of this closed market, there is no possibility of the present supplier being replaced in the remaining areas, there is some possibility that retail power purchasers may have a choice of suppliers in the long run. .

should read:

Although in one portion of this closed market there is no possibility of the present supplier being replaced, in the remaining areas there is some possibility that retail power purchasers may have a choice of suppliers in the long run.

L

- 3 -

4. The sentence beginning on the first line of page 113 which now reads:

As we demonstrate below, however, the relevant markets are defined in this proceeding, the Company cannot be deemed to possess monopoly power because governmental regulatory authorities prevent the Company, as a matter of law, from controlling prices or excluding competition in either the retail power or bulk power markets.

should read:

As we demonstrate below, however the relevant markets are defined in this proceeding, the Company cannot be deemed to possess monopoly power because governmental regulatory authorities prevent the Company, as a matter of law, from controlling prices or excluding competition in either the retail power or bulk power markets.

5. The sentence beginning on the ninth line of page 120, which now reads:

Among the laws which deny the Company the ability to exclude other systems from its area is Section 202(b) of the Federal Power Act which authorizes the FPC to order the interconnection of two electric suppliers for bulk power supply purposes.<sup>35/</sup>

should read:

Among the laws which deny the Company the ability to exclude other systems from its area is Section 202(b) of the Federal Power Act which authorizes the FPC to order the interconnection of two electric suppliers for bulk power supply purposes.<sup>35/</sup>

6. The sentence beginning on the fourth line of page 126 which now reads:

In United States v. Columbia Steel Co., 334 U.S. 495, 527 (1948), evaluation of the "strength" of the other firms in the market place was identified as a necessary consideration in gauging whether a company with a high market share has acquired monopoly power.<sup>46/</sup>

should read:

In United States v. Columbia Steel Co., 334 U.S. 495, 527 (1948), evaluation of the "strength" of the other firms in the market place was identified as a necessary consideration in gauging whether a company with a high market share has acquired monopoly power.<sup>46/</sup>

7. The sentence beginning on the third line of page 174 which now reads:

This case involved an effort by large mine operators and union officials to influence the Secretary of Labor to prescribe minimum wages for companies selling coal to the Tennessee Valley Authority on long-term contracts, an action which would have the effect of driving smaller coal operators out of business.

should read:

This case involved an effort by large mine operators and union officials to influence the Secretary of Labor to prescribe minimum wages for companies selling coal to the Tennessee Valley Authority on long-term contracts, an action which would have had the effect of driving smaller coal operators out of business.

8. The sentence beginning on the sixth line of page 175 which now reads:

In California Motor Transport Co. v. Trucking Unlimited, 404 U.S. 508 (1972), the protection afforded advocacy with respect to the passage and enforcement of laws before legislature and the executive branch was extended to encompass advocacy in the context of adjudications before both courts and administrative agencies.

should read:

In California Motor Transport Co. v. Trucking Unlimited, 404 U.S. 508 (1972), the protection afforded advocacy with respect to the passage and enforcement of laws before legislatures and the executive branch was extended to encompass advocacy in the context of adjudications before both courts and administrative agencies.

9. The second sentence in footnote 28 on page 223, which now reads:

This is particularly the case, inasmuch the plant was sized in 1967, and no demand for access was received prior to the initiation of this proceeding.

should read:

This is particularly the case, inasmuch as the plant was sized in 1967, and no demand for access was received prior to the initiation of this proceeding.

10. The sentence beginning on the fourth line on page 229 which now reads:

Typically, such arrangements contain agreements to operate in parallel, to exchange emergency capacity — energy and to maintain certain reserve capacity levels.43/

should read:

Typically, such arrangements contain agreements to operate in parallel, to exchange emergency capacity and energy and to maintain certain reserve capacity levels.43/

Respectfully submitted,

---

Keith S. Watson

Attorney for Consumers Power  
Company  
WALD, HARKRADER & ROSS  
1320 Nineteenth Street, N.W.  
Washington, D. C. 20036

October 11, 1974

market should be analyzed with regard to three distinct geographic areas within and adjacent to the Company's service area.

According to the Supreme Court, the criteria used in defining the relevant product and geographic markets are "essentially similar"; i.e., both must correspond to "commercial realities".<sup>3/</sup>

Thus, as the Court emphasized, these definitions are not "formal" or "legalistic"; rather, the antitrust laws prescribe "a pragmatic, factual approach". In the following sections, we set forth the applicable principles of relevant market definition, with regard to the bulk power and retail power markets, and then apply those principles to the facts of the instant case.

A. Bulk Power Market.

There is only a single bulk power market relevant to this proceeding: that market in which the Company's small neighbors look for their bulk power supply requirements. By contrast, we understand the Department of Justice to contend that coordination power transmitted in the context of coordination arrangements is a separate product which is not part of the bulk power market and that the Company's bulk power requirements should be included within that market. As shown more fully below, the Department's position cannot be reconciled with basic principles of antitrust law or with the "commercial realities" of bulk power supply in

---

<sup>3/</sup> Brown Shoe Co. v. United States, 370 U.S. 294, 336-37 (1962).



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

CORRECTIONS IN TRANSCRIPT

<u>Page</u>	<u>Line</u>	<u>Correction</u>
828	16	"vionte-the-law" should be "violate-the-law"
829	5	"aftertimes" should be " of three kinds"
830	7-8	"did he say?" should be "do we see?"
830	12	"you present" should be "we present"
830	18	"attempt to monopolize" should be "intent to monopolize"
830	25	"violated anti-trust laws" should be "violate the anti-trust laws"
831	1	"to forward" should be "to go forward"
831	12	"per se" should be " <u>per se</u> "
872	2	"Hood" should "Foote Act"
872	3	"particulars" to "Intervenors"
878	1	"their" should be "those"
879	12	"underway cable" should be "underwater cable"
885	4	"D. G. Campbellton" should be "B. G. Campbell"
885	22	"as well as Duke" should be "as well as in Duke"
900	4	Delete "and Materials"; should read "National Association of Electric Companies"
900	18	"effect and a small system" should be "effect on a small system"
901	9	"but Dr. Leeds had asked" should be "that Dr. Leeds had asked"
905	2	"training organization" should be "lobbying organization"

*Anti Trust  
14-3*

<u>Page</u>	<u>Line</u>	<u>Correction</u>
905	22	"Judge Kline" should be "Judge Clark"
906	21	"inexplicably" should be "inextricably"
908	15	"industries own power pooling" should be "industries own view of power pooling"
922	5	"Daiber" should be "Daverman"
926	6	"Main" should be "Maine"
979	2	"might be elected, or are elected" should be "might be reluctant, or are reluctant"
1076	6	"step-tight" should be "step-type"
1078	24	"block-tight" should be "block type"
1078	24	"and separate demand" should be "and no separate demand"
1145	9	"deal with" should be "dealing with"
1213	14	"DJ 142" should be "DJ 42"
1219	21	"128,000" should be "138,000"
1221	1	"disputed" should be "distributed"
1241	20, 23, 25	"DJ No. 142" should be "DJ No. 42"
1242	12, 15	"DJ No. 142" should be "DJ No. 42"
1329	10	"advanced steam plant" should be "Advance steam plant"
1338	4	"Mr. Powell" should be "Mr. Paul"
1407	25	"Anderson Electric Institute" should be "Edison Electric Institute"
1409	2	"665-51" should be "65-51"
1428	17	"it has fallen?" should be "it has fallen out?"
1431	19	"confidences" should be "conferences"
1520	24	Should include "DJ 3" as received into evidence on page 1674.



<u>Page</u>	<u>Line</u>	<u>Correction</u>
1520-A	11, 12, 13	Should exclude DJ 47 through DJ 49 as these three exhibits were received into evidence on November 28, 1973.
1520-A	17-25	Should exclude DJ 53 through DJ 61 as these exhibits were received into evidence on November 28, 1973.
1520-B	2-4	Should exclude DJ 62 through DJ 64 as these exhibits were received into evidence on November 28, 1973.
1532	12, 14, 15	"Mr. Sanders" should be "Mr. Saunders"
1575	3	"I considered significant" should be "I mentioned considered significant"
1598	22	"planning in training" should be "training in planning"
1607	12	"transmitter of data" should be "transmittal of data"
1613	11	"those favorable" should be "those unfavorable"
1639	23	"set off to New York" should be "sent off to New York"
1670	18	"author of 71" should be "offer of 71"
1674	8	Should exclude DJ 47 through DJ 49 as these three exhibits were received into evidence on November 28, 1973.
1674	6	Should include DJ 3 as received into evidence.
1674	8	Should exclude DJ 53 through DJ 64 as these exhibits were received into evidence on November 28, 1973.
1700	5, 10, 13, 16	"heating" should be "peaking"
1701	10, 13, 14	"heating" should be "peaking"
1791	10	"has previously" should be "has not previously"
1860	1	"location RR" should be "designation RR"

<u>Page</u>	<u>Line</u>	<u>Correction</u>
1870	1	"It's a damage" should be "Can damage"
1870	19	"a lower loading" should be "a low loading"
2101	7	"Borrow Capacity" should be "Boiler Capacity"
2188	10	"Florida Power Commission" should be "Florida Power Corporation"
2235	12	"Embassy Pool" should be "M-C Pool"
2316	10	"nyoptic" should "myopic"
2395	18	"7070-megawatt" should be "70-megawatt"
2562	20	"outage for availability" should be "outage or availability"
2567	16, 17	"5 percent" and "15 percent" should be "5 megawatts" and "15 megawatts"
2567	20	"33 1/2" should be "33 1/3"
2572	10, 13	".004" should be ".0004"
2573	22	".004" should be ".0004"
2576	18, 19	Question presently reads, "Could you express one day as a percentage of the number of days in 10 years?" Should read, "Could you express a percentage of time as the number of days in 10 years?"
2576	21, 22	Question presently reads, "Could you express one day as a percentage of days in 20 years?" Should read, "Could you express a percentage of time as the number of days in 20 years?"
2581	10	"10" should be "2.5"
2608	21	"DJ 16" should be "DJ 17"
2623	13	"1,381,000.3 megawatts" should be "1,381,300 megawatts"
2624	3	"I would" should be "It would"
2652		[Something seems to be missing from transcript]
2654	24	"froming" should be "forming"

<u>Page</u>	<u>Line</u>	<u>Correction</u>
2669	25	"Commissions" should be "Conditions"
2922	9, 13, 19, 22, 23	"Mr. Hoffman" should be "Mr. Helfman"
2923	6, 10	"Mr. Hoffman" should be "Mr. Helfman"
2997	9	Page number 3126 should be listed under column marked "In Evidence" not listed under "Rejected" (DJ-246-A - D).
3102	9	"Professor Boris' law" should be "Professor Bork's law"
3573	3	"He said it was" should be "He sent us his"
3814	11	"and the Halsey" should be "in the Halsey"
3914	13	"AEC" should be "AEP"
3914	15	"my saying" should be "by saying"
3939	22	"1973" should be "1974"
4031	12	Delete "of Michigan"
4253	21	"Sandra Streigle" should be "Sandra Strebel"
4483	3	"50 to 20 percent" should be "15 to 20 percent"
4952	2, 3	" <u>Uncertainty Risk in Profit</u> " should be " <u>Uncertainty Risk and Profit</u> "
5222	9, 13	"sixteen-minute" should be "60-minute"
5620	18	"PP-1 rate" should be "TP-1 rate"
5621	6	"PP-1 rate" should be "TP-1 rate"
5858	23	"exceptions" should be "assumptions"
5861		Should be Applicant's Exhibit 12,008, not Intervenor's Exhibit.
5901	14	"in the densely populated areas" should be "in the less densely populated areas"

<u>Page</u>	<u>Line</u>	<u>Corrections</u>
7285	17	"a zoned reasonableness" should be "a zone of reasonableness"
7661	23	"IEA" should be "REA"
7694	14	Add "Journey" after "Drexel"
7697	4	"that was 500 less" should be "that was \$500,000 less."
8241	21	"conclude" should be "concluded"
8410	15	"1956" should be "1966"
8448	21	"DJ Exhibit No. 288" should be "DJ Exhibit No. 228"
8448	21	Page number 8592 should be listed under the column marked "In Evidence" not listed under "For Identification"
8592		Should be DJ Exhibit No. 228, not 288.
8710	18	"peak constants" should be "B constants"
8842	10	"the total savings and resources" should be "the total savings in resources"