

11-10-72

UNITED STATES OF AMERICA
BEFORE THE
ATOMIC ENERGY COMMISSION

THIS DOCUMENT CONTAINS
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In the Matter of
Consumers Power Company
(Midland Plant, Units
1 and 2)

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Docket Nos 50-329A
50-330A

APPLICATION FOR ISSUANCE OF SUBPOENAS DUCES TECUM

The Department of Justice respectfully requests the issuance of the attached subpoenas duces tecum pursuant to the Regulations of the Atomic Energy Commission, 10 CFR 2.720 and Section 2.740f(3) as amended 37 F.R. 15133 in which the following companies as defined in the schedules attached thereto would be required to produce the documents referred to in the schedule for inspection and copying by the Department of Justice.

W. G. Meese, President
Detroit Edison Co.
2000 Second Avenue
Detroit, Michigan 48226

D. C. Cook, President
American Electric Power Co., Inc.
2 Broadway
New York, New York 10004

C. D. Rees, President
Northern Indian Public Service Co.
5265 Hohman Avenue
Hammond, Indiana 46325

J. R. Davis, President
Toledo Edison Company
420 Madison Avenue
Toledo, Ohio 43601

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The initial prehearing conference order dated August 7, 1972, states as the relevant matters in controversy:

The basic thrust of Justice's case is that (a) applicant has the power to grant or deny access to coordination; (b) applicant has used this power in an anticompetitive fashion against the smaller utility systems; (c) applicant's said use of its power has brought into existence a situation inconsistent with the antitrust laws, which situation would be maintained by activities under the licenses that applicant seeks. Neither the intervening parties nor the Atomic Energy Commission's regulatory staff enlarge this scope. Hence, the scope of the relevant matters in controversy is as herein outlined.

The documents referred to in the schedule would assist in confirming the existence of that power by establishing the existence or lack of other bulk power supply coordinating alternatives to actual or potential bulk power suppliers in Michigan's lower peninsula or other, independent sources of bulk power supply to retail distribution systems in Michigan's lower peninsula.

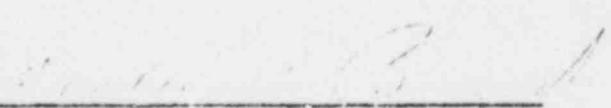
As the Supreme Court said in United States v. El Paso Gas Co., 376 U.S. 651 (1963) speaking of the utilities industry: "This is not a field where merchants are in a continuous daily struggle to hold old customers and to win new ones over from their rivals." The number of episodes of actual or potential competition of the type for which documents are requested herein are relatively few; and accordingly, production of such documents made or dated on January 1, 1940, and thereafter relating to competition at wholesale in Michigan's lower peninsula, should not be a substantial burden to the addressee companies, while producing the number

of episodes necessary to indicate a policy or pattern.

December 5, 1972, the time for return, is reasonable.

On request of the subpoenaed persons, we will, of course, waive personal appearance in Washington, and would even be agreeable to return by mail accompanied by an appropriate certificate of compliance by the persons named.

Respectfully submitted,



WALLACE E. BRAND

DAVID A. LECKIE

WILLIAM T. CLABAULT

Attorneys,
Department of Justice

Washington, D. C.
November 10, 1972

SCHEDULE

A. Definitions.

1. "Company" "you" or "your" means the company that is the addressee of this subpoena, its subsidiaries or affiliates, predecessor companies and any entities providing electric service at wholesale, the properties or assets of which have been acquired by the addressee company.

2. "Documents" means all writings and records of every type made or dated January 1, 1940, or thereafter, in the possession, control or custody of the company, its directors, officers, employees or agents, including but not limited to memoranda, correspondence, reports, surveys, tabulations, charts, books, pamphlets, photographs, maps, bulletins, minutes, notes, diaries, log sheets, ledgers, transcripts, microfilm, computer printouts, vouchers, accounting statements, engineering diagrams ("one-line" diagrams), mechanical and electrical recordings, telephone and telegraphic communication, speeches, and all other records, written, electrical, mechanical or otherwise.

"Documents" shall also mean copies of documents, even though the originals thereof are not in possession, custody or control of the Company, and every copy of a document which contains handwritten or other notations or which otherwise does not duplicate the original or any other copy.

3. "Wholesale customer" means any entity such as a private corporation, municipal corporation, or rural electric cooperative engaging in or proposing to engage in the distribution and sale of electric power at retail, including but not limited to entities additionally or solely engaging in or proposing to engage in the generation and transmission of power in bulk and/or those purchasing or proposing to purchase firm power or coordinating power and energy from other electric utilities, including but not limited to the Consumers Power Company.

4. "Supply of bulk power" includes the furnishing of firm full requirements bulk power supply service at wholesale for resale by any company or the interchange or supply of coordinating power and energy.

5. "Coordination" and "coordinating" shall include, but are not limited to, reserve sharing, economic dispatch or economy interchange, and pooling of load growth for joint or staggered additions of generating or transmission facilities.

"Coordination" and "coordinating" shall also mean joint ventures or the sharing of participation in the ownership, operation or output of generating facilities and the sharing of ownership, construction, or use of transmission facilities.

6. "Michigan Power Pool" means the Consumers Power Company and the Detroit Edison Company.

B. Documents Requested.

1. Documents reflecting your basis for determining whether the supply of bulk power by your company to a wholesale customer in Michigan's lower peninsula would be economically feasible based on the size of load, rate or growth and distance from existing facilities and/or any other factors considered in the determination of economic feasibility.

2. Documents concerning or reflecting (a) agreements or understandings, or (b) unilateral policies--not to compete with other electric utilities in specified areas or for specified wholesale customers in Michigan's lower peninsula for supply of bulk power, including but not limited to restricting use of your transmission facilities which might permit others such as Buckeye Power, Inc., to compete for such supply of bulk power. Documents concerning or reflecting your policy or policies based on other considerations (apart from technical or economic feasibility) on whether or not to make such supply of bulk power to wholesale customers in Michigan's lower peninsula [or to permit others such as Buckeye Power, Inc., to make such supply of bulk power by utilizing your transmission facilities] including but not

limited to interpretations of state or federal law or interpretations of state or federal administrative action.

3. Documents reflecting your consideration of the acquisition of wholesale customers in Michigan's lower peninsula including but not limited to documents which reflect a boundary line, or understanding, or arrangement concerning the respective spheres of influence of your company and the Consumers Power Company or the Michigan Power Pool. Please exclude documents related wholly to consideration of the cost of such acquisition and documents implementing or carrying out any determination to acquire such wholesale customer.

4. Documents concerning the tying or conditioning of any interconnection or coordination between your company and the Consumers Power Company to any such agreements, arrangements or understandings, in paragraphs 2 and 3, supra.

5. Documents concerning competition between your company and the Consumers Power Company for wholesale customers in Michigan's lower peninsula and any request for a supply of bulk power by any wholesale customer now served by Consumers Power Company or located generally within its service area.

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CERTIFICATE OF SERVICE

I hereby certify that copies of APPLICATION FOR ISSUANCE OF SUBPOENAS DUCES TECUM, dated November 10, 1972, in the above captioned matter have been served on the following by deposit in the United States mail, first class or air mail, this 10th day of November.

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Chairman, Atomic Safety and
Licensing Board
U. S. Atomic Energy Commission
Washington, D. C. 20545

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