

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 ✓
50-330A

THIS DOCUMENT CONTAINS
POOR QUALITY PAGES

MOTION FOR EXTENSION OF TIME,
MOTION FOR A PROTECTIVE ORDER,
OR, IN THE ALTERNATIVE,
MOTION TO QUASH SUBPOENA DUCES TECUM
ISSUED AGAINST ROBERT J. DAVERMAN

To: Jerome Garfinkel, Esquire, Chairman, Atomic Safety Licensing
Board

Pursuant to Sections 2.711, 2.720(f) and 2.740 of the
Atomic Energy Commission's Rules of Practice, 10 C.F.R., Part 2,
Intervenors ^{*/} and Robert J. Daverman, through their counsel,
respectfully request the Chairman, or the Commission, to grant an
extension of time until January 14, 1973 to further respond to
the subpoena issued against Robert J. Daverman. In addition, the
documents sought by this subpoena should be either placed under
a strict protective order of confidentiality, if furnished, or the
subpoena should be quashed. In support of these requests, petitioners
state as follows:

*/ Coldwater, Grand Haven, Holland, Traverse City, and Zeeland,
Michigan, the Michigan Municipal Electric Association, the Northern
Michigan Electric Cooperative and the Wolverine Electric Cooperative.

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724-TRUST

1. MOTION FOR AN EXTENSION OF TIME

Counsel for Intervenors and Mr. Daverman was informed late on December 31, 1973, that the subject subpoena had been issued with a return of service on January 2, 1974. This was the first time we had been informed of this action by Consumers Power Company. On January 2, 1974, counsel for Consumers Power Company agreed to withdraw the subpoena until Monday, January 7, 1974. In the meantime he would ascertain whether or not Consumers Power Company would agree to treating these documents as confidential, in accordance with ALAB-122 and the Board's earlier ruling on similar documents. During this time we were to examine the documents requested and determine the degree of sensitivity involved. Counsel for Consumers Power Company also agreed to ascertain if the Company would be willing to produce all power supply studies prepared for the Consumers Power Company subsequent to July 1, 1972, and also the Company files relating to the negotiations with the MMCPP and its member systems subsequent to July 1, 1972. We agreed to not object to the subpoena if confidentially and full reciprocity by Consumers Power would be afforded.

As of this time, we have not received a copy of the files requested. Therefore, we must seek an extension of time until January 14, 1974, in order to examine the documents requested. Counsel for Consumers Power advised today that while the Company might agree as to confidentially, they would not voluntarily

reciprocate with current power supply studies. Accordingly, we are forced to respond preliminarily, requesting, inter alia, an extension of time to January 14, 1974, to further respond if we deem it necessary.

2. MOTION FOR A PROTECTIVE ORDER

If the documents requested are to be furnished, they should be placed under a strict protective order as sensitive confidential material. A brief discussion with Mr. Daverman concerning five of the requests indicates the following:

(a) Document 7207-3

This is a joint power supply study prepared on behalf of Northern Michigan and Wolverine Electric Cooperative and delivered in 1973. It was prepared specifically because these two G&T cooperatives had been in extended negotiations with Consumers Power Company for an interchange agreement. It is our understanding that it contains alternative proposals and projections relative to these system's generation requirements.

(b) Document 6912-6

This is a file containing memoranda and reports concerning the negotiations carried on with Consumers Power Company, and meetings concerning those negotiations held between the member systems of the Michigan Municipal Cooperative Power Pool. Counsel

for Consumers Power Company has amended the subpoena to request only documents up to July 26, 1972, and has stated that the Company has furnished comparable documents up to that date. We would agree, after an examination, to furnish such documents so long as they are under a protective order of confidentiality.

(c) Document 7204-17

This document is an incompleated wholesale rate study which was begun on behalf of the Northern Michigan Electric Cooperatives. Mr. Daverman informs us that the information in this file is so incomplete that it would be relatively meaningless. It is, however, information which Northern Michigan would consider confidential and thus it should be protected since it may relate directly to Northern's cooperative members current ability to compete with Consumer Power Company for specific customers.

(d) Document 7209-22

This is a system plan prepared for O&A Electric Cooperative delivered to this system in 1973. Its intent and purpose is to project system construction in accordance with cost requirements. Without an examination we cannot state the degree of confidential information contained therein, but since it is obviously a current working plan it should be protected.

(e) Document 7309-9

This document is a Power Supply Study prepared on behalf of Traverse City. It was delivered to the systems during the last week of 1973. It should be noted that Traverse City, in addition to being a member of the MMCPP, is involved in house-to-house competition for customers with Consumers Power Company. The document specifically states the alternative power supply available to the City and should be protected from Consumers Power Company. (Compare the confidentiality granted the Lansing Power Supply Study).

3. MOTION TO QUASH

Consumers Power Company has established July 1, 1972 as a cut-off date for discovery against Company documents. It has consistently refused to produce documents beyond that date. During the depositions of Intervenors and non-party municipal personnel, counsel for intervenors offered to exchange current documents with Consumers Power Company. This offer was refused. We again renew our offer to negotiate a fair exchange of documents with Consumers Power Company. If Intervenors are forced to reveal documents which pertain directly to current power supply studies, Consumers Power Company should likewise furnish Intervenors, the Department of Justice and the Regulatory Staff with all of the Consumers Power power supply studies dated subsequent to July 1, 1972. The Company should also furnish all correspondence, memoranda, reports, studies, minutes or other documents relating to the negotiations with the MMCPP or to any of its member systems. Unless Consumers Power Company is willing to reciprocate, this subpoena should be quashed.

4. THE QUESTION OF RELEVANCE

While pre-trial discovery has been granted under a lesser standard of relevance than would be required as a evidentiary matter, discovery sought after trial has begun should

be permitted only upon a showing that the requested material is relevant to the trial issues. We have serious doubts concerning the latest request by Consumers Power Company. It should also be noted that Intervenors have objected to the deferral of rulings on relevancy for trial purposes in order to prevent the protracted trial that is now taking place.^{*/} However, assuming that the Trial Board adheres to its decision not to rule on issues of relevance before completion of the trial, at the least the Trial Board should not allow further discovery without a strong showing of relevancy. For these reasons, we believe Consumers Power Company should be forced to demonstrate the relevancy of these documents they have requested. If the Board should grant this discovery, Intervenors should receive full reciprocity.

CONCLUSION

WHEREFORE, for the foregoing reasons, Intervenors and Robert J. Daverman, through their attorneys, respectfully request the Chairman, or the Commission, to grant the following motions:

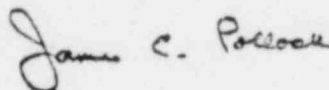
1. An extension of time to further respond to the merits of the subpoena duces tecum until January 14, 1974.

^{*/} See, e.g., Opening Statement of Robert Jablon, Esq. (Tr. 840-851). We respectfully suggest that the Trial in session could be limited by the Board's ruling on issues of relevancy at the present time.

2. If the documents are to be furnished, the Board should order that they be protected in accordance with ALAB-122 and the Board's ruling at R-650-652.
3. The Board should order full reciprocity with respect to the documents produced, or the subpoena should be quashed.

We again note that after examination of the documents and discussion among counsel, we may find that we do not object to supplying all or part of the subpoenaed documents, but due to the failure of Consumers Power Company to consult with us before obtaining the subpoena and the short return date, we cannot determine that to be the case at the present time.

Respectfully submitted,



James Carl Pollock
Attorney for Robert J. Daverman
and Joint Intervenors.

January 7, 1974

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ATOMIC ENERGY COMMISSION

In the Matter of)
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Midland Plant, (Units 1 and 2))

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document in the above-captioned matter was served upon the following by deposit in the United States mail, first class postage prepaid, this 7th day of January, 1974.

Alan S. Rosenthal, Esq., Chairman
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Panel
U.S. Atomic Energy Commission
Washington, D. C. 20545

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James Carl Pollock

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AFFIDAVIT

DISTRICT OF COLUMBIA, SS:

James Carl Pollock, being first duly sworn, deposes and says that he is the attorney for Robert J. Daverman and the Cities of Coldwater, Grand Haven, Holland, Traverse City, and Zeeland Michigan, the Michigan Municipal Electric Association, the Northern Michigan Electric Cooperative and the Wolverine Electric Cooperative and that as such he has signed the foregoing Motion for Extension of Time, Motion for a Protective Order, or, in the Alternative, Motion to Quash Subpoena Duces Tecum Issued Against Robert J. Daverman for and on behalf of said parties; that he is authorized so to do; that he has read said Motion and is familiar with the contents thereof; and that the matters and things therein set forth are true and correct to the best of his knowledge, information or belief.

James C. Pollock
James Carl Pollock

Subscribed and sworn to before me

this 2nd day of January, 1974.

Henry J. Zentgraf
Notary Public

My commission expires September 30, 1974.

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