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UNITED STATES OF AMERICA

ATOMIC ENERGY COMMISSION

In the Matter of)

Consumers Power Company)

(Midland Plants, Units 1 and 2))

Docket Nos. 50-329A
50-330A

TO: Jerome Garfinkel, Esquire, Chairman
Atomic Energy Safety and Licensing Board

MOTION TO COMPEL

Intervenors^{*/} request that in addition to a statement of compliance, counsel for Consumers Power provide the names of the persons who gathered the documents from Consumers Power's files and who determined that such documents were within the scope of the Joint Document Requests, as modified by the Board's orders. We further request that Consumers Power provide the instructions given to all persons involved in the gathering and supplying of documents. This may avoid the need for calling as witnesses (or otherwise deposing) the persons who worked on the discovery request.

^{*/} Municipals of Coldwater, Grand Haven, Holland, Traverse City and Zeeland, Michigan; Northern Michigan Electric Cooperative, Wolverine Electric Cooperative, and the Michigan Municipal Electric Association.

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A statement of compliance and providing the instructions to those working on discovery is a necessary part of discovery and is not burdensome.

Counsel's statement of compliance made by letter April 2, 1973, is ambiguous. It states: "Subject to the Board's orders and understandings of counsel,^{*/} this submission completes production of non-privileged documents . . .". (Letter from Keith S. Watson to Wallace E. Brand, April 2, 1973, emphasis added). This statement warrants explanation. Without knowing these instructions, we have no way of ascertaining the extent of compliance. The parties are entitled to this basic information to enable them to make their own judgment.

Intervenors have referenced the documents supplied to Consumers Power's document request numbers.^{**/} This enables Consumers Power to compare intervenor document requests (or interrogatories) and the responses. Consumers Power has stated to the Board that it has no such index.^{***/} (We assume that this statement referred to both counsel and the Company) and the

^{*/} The understandings have not been reduced to writing.

^{**/} The Department of Justice submitted an affidavit of compliance.

^{***/} By an "index", as the intervenor motion made clear, intervenors meant only some reference to the Joint Document Request.

Board held that Consumers Power could not be compelled to produce one. Order Denying Motion To Compel Production Of Index (April 9, 1973), "Applicant's Answer To Motion To Compel Production Of Index", (April 4, 1973). However, the failure to provide any reference of the responses to the questions provides additional reason why the other parties have a right to know what Consumers Power interpreted as compliance. This is especially so in view of the limited time for additional discovery.

We do note, for example, that on December 22, 1972, in its Motion For Order Modifying Procedural Schedule, Consumers Power informed the Board that, in addition to the 2,724 pages of documents produced for inspection, Applicant sent 39,000 document pages to Washington counsel for review (pp.4-5). This is presumably after these documents had been subject to review by two company attorneys plus another "senior" attorney and non-legal personnel who contributed significantly in time and effort. Thus, the documents had already been sifted. Now, after the subsequent completion of the search of headquarter and field offices (see pp.6-7), we have received a total of less than 26,000 document pages (including duplications). This difference points out the need for a statement regarding the instruction.

We also note that Consumers Power stated on April 10, 1973,

that it had additional "confidential" documents which it had failed to supply previously. Appendix A. These documents were withheld apparently in connection with the Department of Justice refusal to provide the "Daverman" document sent to the Department by mistake. While the Board has subsequently ruled that insofar as these documents pertain to current negotiations, they do not have to be supplied, the question is raised why these documents came to light only after the issue was raised by the "Daverman" document and after the date for completion of initial discovery. At the time initial discovery was to have been completed, Consumers Power apparently was claiming that such documents were witnin the scope of proper discovery, but no mention of the documents was then made.

While we have not been able to correlate Consumers Power's discovery to the questions, as of yet, there appears to be few documents showing contacts leading to requests by various cities to Consumers Power relating to takeover attempts. These are examples of factors demanding that parties have a means of ascertaining compliance and a clear statement from counsel regarding compliance.

We further request that the origin and meaning of the handwritten numbers on the bottom of discovery documents be explained.

We have informally made these requests to Consumers Power before requesting this Motion To Compel and have been refused. Appendix B.

Respectfully submitted,

Robert A. Jablon

Robert A. Jablon

One of the attorneys for the Electric Departments or Boards of Public Works of Holland, Grand Haven, Zeeland, Coldwater and Traverse City, Michigan; Northern Michigan Electric Cooperative, Wolverine Electric Cooperative, and the Michigan Municipal Electric Association

May 1, 1973

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