

UNITED STATES OF AMERICA

ATOMIC ENERGY COMMISSION

In the Matter of)

Consumers Power Company)

(Midland Plant Units 1 and 2))

) Docket Nos. 50-329A

) 50-330A

MOTION TO COMPEL THE
PRODUCTION OF DOCUMENTS

To: Jerome Garfinkel, Chairman, The Atomic Safety
and Licensing Board

The Interveners^{*/} in the above-captioned case, pursuant to paragraph 10 of the Board's Prehearing Conference Order dated August 7, 1972, request the Board to order Consumers Power Company to produce the documents predating 1960 as described below. In support of this motion, the Interveners state as follows:

1. The first informal request for these documents

*/ 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.

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was contained in a letter from Mr. Fairman to Mr. Ross dated September 21, 1972. This informal approach was stressed by the Chairman in a telephone conference with the counsel for parties on August 29, 1972. It was not until Consumers Power filed its objections to document requests on October 26, 1972 that the informal document requests were raised (pages 16 to 23), in which specific reference was made to the Fairman to Ross letter of September 21, 1972. Consumers Power then requested the Board to order that these document requests be denied (page 21).

2. Interveners answered the Consumers Power Objections on November 1, 1972 and devoted discussion to the relevance of the pre-1960 document requests (pages 14 - 18) and attached examples of the types of documents sought as Appendix A. The September 21, 1972 letter listing the requests for documents was attached as Appendix B. These appendices are incorporated herein by reference.
3. The document requests as listed in the September 21, 1972 letter and their relevance to the issues in controversy are as follows:

- (1) Documents relating to the company's proposal for and electric service to the General Electric Manufacturing plant in Holland, Michigan (1951 - 1954).

Relevance:

These documents relate to the relevant matters in controversy as defined by the Board in the Prehearing Conference Order issued August 7, 1972 and particularly to paragraph (b) "applicant has used this power in an anti-competitive fashion against the smaller utility systems;". The documents concerning the GE plant in Holland would demonstrate the power of the company to take over service areas served by the utility system.

- (2) Documents comprising or relating to feasibility studies, proposals, negotiations and discussions between the company and members or employees of the Holland Board of Public Works or other city officials for interconnection or electric service (1952 - 1960).

Relevance:

This request grows out of request Number 1 and the documents relating to the interconnections with Holland form the basis of current agreements which include a reserve clause far more stringent than that imposed on either Consumers Power or Detroit Edison in similar agreements. These documents would also show that Consumers Power refused to coordinate

with the City of Holland until forced to do so by G.F. who wanted standby reserve power and directly relate to paragraph (a) of the Board's Order of August 7, 1972.*

- (3) Documents comprising or relating to discussions, negotiations and proposals to interconnect, sell or interchange electric service with Traverse City (1955 - 1960).

Relevance:

The Traverse City story reveals to what extent Consumers Power would deal when faced with a possible REA-Municipal interconnection. These attempts by the company to limit competition in transmission service and coordination are directly related to paragraph (a), (b) and (c) of the Board's Order of August 7, 1972. The past policies and practices of Consumers Power directly relate to the company's present coordination with the Interveners.

- (4) Documents comprising or relating to a wholesale power agreement between

*/ "C. Relevant Matters in Controversy

6. 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 relevant matters in controversy is as herein outlined."

Wolverine Electric Cooperative and the Company for interchange of power at White Cloud, Michigan, effective August 12, 1949 (1949 - 1952).

Relevance:

This request relates to the basic agreement between Consumers Power and Wolverine and its subsequent termination in 1952. The problems relating to current coordination are founded in this past relationship with the Company and the reasons for its termination, after which the Company acquired territory and customers in the White Cloud areas, and are related to paragraph (b) of the Board's Order of August 7, 1972.

- (5) Documents comprising or relating to discussions, negotiations, feasibility studies and proposals for (a) standby service to Wolverine Electric Cooperative and (b) the Company's contract for electric service to Wolverine dated March 4, 1956 (1955 - 1960).

Relevance:

These requests relate directly to Consumers Power's control of bulk power and transmission facilities and the methods of wholesaling this bulk power to a competitor. The requested documents relate directly to the current relationship between Consumers Power and Wolverine, and this inter-venor's attempts to acquire nuclear energy generation facilities. The requested documents directly relate to paragraph (a) of the Board's Order of August 7, 1972.

- (6) Documents comprising or relating to discussions, feasibility studies, proposals and negotiations between the Company and members or employees of the Coldwater Board of Public Utilities or other city officials for the acquisition of the city's electric plant, the furnishing of wholesale electric service to the city and the securing of authorization for service by the Company within the city (1950 - 1960).

Relevance:

These documents relate to the Company's anticompetitive practices in the municipality of Coldwater, as well as to attempts to set up "barriers to entry" into the market. The requested documents relate to the relevant matters in controversy as defined by the Board.

- (7) Documents relating to discussions, studies, invitations and proposals to acquire the electric system facilities owned by the City of Grand Haven (1958 - 1959).

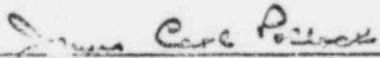
Relevance:

These documents relate to Consumers Power's attempts to expand its monopoly position by buying out a competitive system. The request also relates to the present policies and practices of the Company with respect to coordination, monopoly of the Michigan market, and attempts to maintain their monopoly position.

4. The seven document requests are narrowly defined as to particular interveners and should not require a sweeping search of the company files to produce. Furthermore, the requests relate specifically to the antitrust issues with respect to the interveners. Attempts by the Company to buy-out municipals, to abort attempts by the municipals and cooperatives to increase generation capacity and coordinate, and to force industrial customers to purchase electric energy from the Company are clearly relevant to the issues in controversy established by the Board.

WHEREFORE, for the foregoing reasons, the intervening municipals and cooperatives respectfully request the Board to order the production of documents, as set forth herein, within 30 days of the issuance of such order.

Respectfully submitted,


James Carl Pollock

Attorney 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.

January 26, 1973

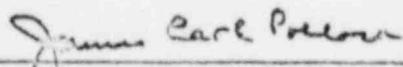
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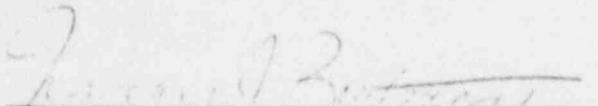
DISTRICT OF COLUMBIA, SS;

James Carl Pollock, being first duly sworn, deposes and says that he is an attorney for the Electric Departments or Boards of Public Works of Holland, Grand Haven, Zeeland, Coldwater and Traverse City, Michigan; Norther Michigan Electric Cooperative, Wolverine Electric Cooperative and the Michigan Municipal Electric Association; and that as such he has signed the foregoing Motion To Compel The Production Of Documents for and on behalf of said parties; that he is authorized by them 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 Carl Pollock

Subscribed and sworn to before me
this 26th day of January 1973.



Notary Public

My commission expires: September 30, 1974.