

APPENDIX B:

Letter from Keith S. Watson, Esq., to Joseph
Rutberg, Esq., (Juen 29, 1972) and attached
"Recital of Contested Issues of Fact and Law".

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CABLE ADDRESS: WALHARK

June 29, 1972

Joseph Rutberg, Esq.
Office of General Counsel
Atomic Energy Commission 20852

RE: Consumers Power Company, Midland Plant Unit
1 and 2, AEC Docket Nos. 50-329A, 50-330A,
Department of Justice File 60-415-20

Dear Mr. Rutberg:

As agreed at the meeting of counsel in this proceeding on May 8, 1972, we have prepared and enclosed a proposed recital of contested issues, in preparation for the Prehearing Conference on July 12, 1972.

We request that counsel forward any suggested revisions or additions to this proposal to this office so that they are received by us by Monday, July 10, 1972. If no comments are forthcoming, we shall assume the recital is acceptable as proposed.

We are informing Mr. Brand and Mr. Fairman of this request by copies of this letter.

Sincerely,

Keith S. Watson

KSW:asl

cc: Wallace Brand, Esq.
James Fairman, Esq.

UNITED STATES OF AMERICA
ATOMIC ENERGY COMMISSION

In the Matter of)
) Docket Nos. 50-329A
CONSUMERS POWER COMPANY) and 50-330A
(Midland Plant, Units 1 and 2))

RECITAL OF CONTESTED
ISSUES OF FACT AND LAW

In accordance with the mandate of Section 2(b) of the Notice and Order for Prehearing Conference, the parties and the proposed intervenors in this proceeding submit the following recital of contested issues of fact and law, which have been raised by one or more parties or proposed intervenors in this proceeding. The following is submitted without prejudice to the right to submit to later additions or modifications thereto and without prejudice to the right of any party to contend that a particular issue is not lawfully or properly before the Commission or Hearing Board:

1. What is the scope of the Commission's anti-trust review embodied in the 1970 amendments to the Atomic Energy Act?
2. What is the relationship between Consumers Power Company's (hereinafter "Applicant") general system activities which are allegedly inconsistent with the anti-trust laws and the proposed licensing of the Midland units; to what extent are issues relating to such activities (e.g., sales contracts, coordination arrangements) relevant to this

proceeding?

3. What is (are) the relevant geographic bulk power supply market(s)? What is (are) the relevant retail distribution market(s)?

4. Is there competition in the relevant bulk power supply market(s) and the retail distribution market(s); what is the effect of government regulation upon competition in these markets?

5. Does Applicant have a monopoly of, or has it monopolized, bulk power supply in the relevant market(s)?

6. Does Applicant own or control all or substantially all transmission in the market(s); if so, is that control a source of its alleged bulk power monopoly power or its alleged monopolization?

7. Is Applicant abusing its alleged control over transmission to retain and extend its alleged bulk power supply monopoly; can the Applicant use such alleged monopoly to retain and extend its alleged monopoly in the retail distribution markets?

8. Do Applicant's wholesale rate schedules and other contractual arrangements provide adequate access to the benefits of large-scale generation and transmission, if any, for its wholesale customers and others seeking such access? If not, are other alternatives, such as self-

generation and transmission, available to municipal and cooperative electric systems which would provide such access?

9. Do the existing governmental subsidies and tax and financing advantages of the municipal and electric cooperative systems place them in a position to compete unfairly with Applicant for wholesale and retail power loads; should the Commission take account of such advantages in determining to grant or condition the licenses involved in these proceedings?

10. Can the criteria of Sections 1 or 2 of the Sherman Act be applied mechanically to the electric power industry?

11. Are Applicant's neighboring municipal and electric cooperative systems financially viable?

12. Are the aforementioned municipal and electric cooperative systems able to compete effectively against Applicant in terms of their ability to attract new customers and their ability to operate efficiently and at reasonable profit margins? Are they able to take advantage of bulk power supplies for the benefit of their present customers?

13. To what extent does the law contemplate that municipal or cooperative electric systems should compete with other neighboring utilities and for what market(s)?

14. Has Applicant unreasonably prevented arrange-

ments which would allow the aforementioned municipal and cooperative systems to utilize Applicant's transmission facilities; has Applicant unreasonably prevented the coordination of growth and operations between Applicant and such systems?

15. What would be appropriate relief in the event of a Commission finding that unconditioned granting of the licenses would create or maintain a situation inconsistent with the antitrust laws?

16. As a condition of the licenses, should the Applicant be required to make available to the proposed intervenors any or all of the following:

- (a) ownership of an appropriate portion of the Midland units or power therefrom on an equivalent basis,
- (b) the necessary transmission services to transmit power on a non-discriminatory basis, and
- (c) specified coordination terms?

17. Would an arrangement granting some of Applicant's customers an ownership interest in or other forms of access to, the Midland units be unfair, discriminatory or unlawful under the laws of the State of Michigan and the Federal Power Act?

18. Would an arrangement providing for equal percentage of reserves between Applicant and some or all

aforementioned municipals and cooperatives be unfair to Applicant or its customers or be unlawful under the laws of the State of Michigan or the Federal Power Act?

19. Would the sale of unit power to, or participation in the Midland plant, by some or all of the aforementioned municipals or cooperatives be unfair to Applicant or its customers, or be unlawful under the laws of the State of Michigan or the Federal Power Act?

APPENDIX C:

Intervenors' proposed license conditions,
Midland Units 1 and 2.

INTERVENORS' PROPOSED LICENSE CONDITIONS
MIDLAND UNITS 1 AND 2

1. As used herein; (a) "Applicant" means Consumers Power Company; (b) "utility" means a public utility under federal or Michigan law; an REA Cooperative; a governmental (federal, state or municipal) unit or agency having an electric generation or distribution system; (c) "entity" means (1) a "utility"; or (2) any person or organization which is legally authorized to represent one or more utilities.

2. Consumers Power will interconnect with and coordinate reserves by means of the sale and exchange of emergency and maintenance power with any entity or entities in its service area^{*/} engaging in or proposing to engage in electric bulk power supply on terms that will provide for Applicant's costs (including a reasonable return) in connection therewith and allow the other participant(s) full access to the benefits of reserve coordination and reserve sharing.

^{*/} The use of the term "service area" in no way indicates an assignment or allocation of wholesale market areas. It is intended only as a general indication of an area within the State of Michigan where Applicant provides some class of electric service.

The participant(s) to the reserve sharing arrangement shall, jointly with Applicant, establish from time to time the minimum reserves to be installed and/or purchased, as necessary, to maintain adequate reliability of power supply on the interconnected system of Applicant and participant(s). The reserve responsibility thus determined shall be calculated as a percentage of peak loads and is not to be directly related to the size of generating units. Under no circumstances will minimum spinning or operating reserve requirements exceed the installed reserve requirement.

At the request of a participant or the Applicant, each shall, to the extent it has surplus available, sell and furnish spinning and/or operating reserve services to the other at terms which are compensatory, subject, however, that these terms be no higher than those charged to any other utility with which Applicant or the participant(s) is interconnected.

3. Interconnections will be made at the transmission voltage requested by the entity if such voltage is available on Applicant's installed or planned facilities in the area where interconnection is desired, if the costs to Applicant will not exceed Applicant's benefits. Where the entity pays

the full costs of the interconnection, the benefits to the Applicant will always be deemed to exceed the costs.

4. Mutual emergency and maintenance service provided under such agreements will be furnished by each party to the other to the fullest extent available as desired where such supply does not impair service to the supplier's customers. Reimbursement for these services shall be on a non-discriminatory basis and rates shall be no higher than those established with any other utility with which the supplier is interconnected.

The Applicant and each participant shall provide to the other emergency and maintenance power if and when available from its own generation, or through its transmission from the generation of others to the extent it can do so without disrupting service to its own customers.

5. Applicant will purchase from, or sell "bulk power" to any other entity or entities in the aforesaid area engaging in, or proposing to engage in, the generation or ownership of electric power in bulk, at its cost, including a reasonable return, when such transactions would serve to reduce the overall cost of new bulk power supply for Applicant or the other participant(s) to the transaction. This

refer specifically to the opportunity to coordinate in the planning of new generation, transmission, and associated facilities, including the joint ownership of new generation and transmission facilities or a portion of the capacity in such facilities.

In circumstances where coordinated planning results in any new generating unit(s) which Applicant owns, constructs, organizes, or is a joint participant with others, Applicant will, upon timely request, sell to any other entities who seek to participate in such planning, either an appropriate undivided interest in the plant in fee, or a portion of the plant capacity (i.e., unit power) upon the basis of a rate that will recover to the Applicant the average fixed costs (including a reasonable return) of the plant. In either event the utility receiving power will pay the associated energy and operating costs incurred for the power it receives, at rates and terms no greater than those charged to any other utility to whom such power is sold. The above shall include the right to participate on an equitable basis in the ownership of the Midland Units Nos. 1 and 2, or a portion of the capacity and associated energy thereof.

6. Applicant will provide transmission service over its system between or among two or more entities with which it is interconnected on the same terms as exist between Applicant and any other utility with which it is interconnected to the extent that subject arrangements reasonably can be accommodated from a functional and technical standpoint. This condition applies to entities with which Applicant may be interconnected in the future as well as those with which it is now interconnected.

Applicant is obligated under this condition to transmit bulk power for other entities on the terms stated above, and to include in its planning and construction programs sufficient transmission capacity as required therefor, provided that such other entities give Applicant sufficient advance notice as may be required to accommodate the arrangement from a functional and technical standpoint and that the other entities will be obligated to compensate applicant for the use of its system at rates and terms no higher than any other utility with which Applicant is interconnected.

7. Applicant will not directly or indirectly, enter into, adhere to, continue, maintain, renew, enforce or claim any rights under any contract, agreement, understanding, joint plan or joint program with entities to limit, allocate, restrict,

divide or assign, or to impose, or attempt to impose, any limitations or restrictions respecting the markets or territories in which either the Applicant or any other entity may hereafter sell or transmit electric bulk power supply.

8. Upon request the Applicant will sponsor the membership of any entity in its aforesaid area and will take all necessary and available steps to facilitate membership for said entity in utility planning organizations or power pools including the Michigan Power Pool and the Michigan Illinois Indiana Ohio ("MIIO") group with which the Applicant is or may become affiliated. Membership shall be sponsored on the basis of terms and conditions established herein.

9. To the extent that compliance with the foregoing conditions requires filings to be made under the provisions of the Federal Power Act or by the statutes of the State of Michigan or by any regulatory agency, the Company shall submit all necessary filings to the Federal Power Commission or to the MPSC or any other appropriate regulatory agency in accordance with the provisions of the respective laws, the regulations thereunder, and the provisions set forth therein.

10. Unless otherwise specified, should a dispute arise between the Applicant and an entity over obligations under

these license conditions, this Commission shall have continuing jurisdiction to resolve such dispute.

11. Should a dispute arise between the Applicant and an entity over the compensation to be received by the Applicant for services, it is obligated to provide hereunder, the Applicant will nonetheless provide the services and refund to the entity, or receive from the entity such amounts retroactively to the date of initiation of the service as determined by a final order of the Federal Power Commission to be either less than, or in excess of, a just and reasonable rate therefor.

APPENDIX D:

Consumers Power's Tax Advantages

Statement of Income

Consumers Power Company

YEAR ENDED DECEMBER 31

	1972	1971
OPERATING REVENUE (Note 5):		
Electric	\$416,994,066	\$364,229,770
Gas	332,085,528	286,091,455
Steam	1,373,540	1,295,582
Total operating revenue	<u>\$750,453,134</u>	<u>\$651,616,807</u>
OPERATING EXPENSES AND TAXES:		
Operation—		
Purchased and interchanged power	\$ 56,662,305	\$ 41,860,127
Fuel consumed in electric generation	91,968,446	84,206,180
Cost of gas sold	156,238,230	130,410,662
Other	139,620,402	122,509,544
Total operation	<u>\$444,489,383</u>	<u>\$378,986,513</u>
Maintenance	41,186,864	31,512,272
Depreciation and amortization	62,937,243	58,210,389
General taxes	48,203,909	43,872,856
Federal income taxes	11,370,815	14,468,669
State income taxes	3,216,119	3,064,885
Provision for deferred income taxes, net	18,972,411	14,300,164
Charge equivalent to investment tax credit, net	5,959,632	5,751,207
Total operating expenses and taxes	<u>\$630,336,375</u>	<u>\$550,166,955</u>
Net operating income	<u>\$114,116,759</u>	<u>\$101,449,852</u>
OTHER INCOME:		
Allowance for funds used during construction (Note 2)	\$ 25,454,643	\$ 21,861,822
Dividends from Michigan Gas Storage Company	1,920,000	1,897,500
Gain on reacquisition of long-term debt	1,418,488	1,260,352
Other, net	525,616	888,645
Net other income	<u>\$ 29,318,747</u>	<u>\$ 25,908,319</u>
INTEREST CHARGES:		
Interest on long-term debt	\$ 63,753,928	\$ 53,829,383
Other interest charges	1,503,433	1,749,029
Total interest charges	<u>\$ 65,257,361</u>	<u>\$ 55,578,412</u>
Net income	<u>\$ 78,178,145</u>	<u>\$ 71,779,759</u>
DIVIDENDS ON PREFERRED STOCK		
Net income after dividends on preferred stock	<u>11,251,533</u>	<u>7,107,903</u>
	<u>\$ 66,926,612</u>	<u>\$ 64,671,856</u>
EARNINGS PER SHARE OF COMMON STOCK		
BASED ON AVERAGE SHARES OUTSTANDING		
(24,583,838 shares in 1972 and 24,033,838 shares in 1971)	<u>\$2.72</u>	<u>\$2.69</u>

The accompanying notes are an integral part of this statement.

Statement of Retained Earnings

Consumers Power Company

	YEAR ENDED DECEMBER 31	
	1972	1971
RETAINED EARNINGS—Beginning of year	\$195,599,260	\$178,995,080
ADD—Net income after dividends on preferred stock	66,926,612	64,671,856
	<u>\$262,525,872</u>	<u>\$243,666,936</u>
DEDUCT—Cash dividends on common stock declared and paid in the amount of \$2.00 per share in 1972 and 1971	49,167,676	48,067,676
RETAINED EARNINGS—End of year (Note 8)	<u>\$213,358,196</u>	<u>\$195,599,260</u>

Statement of Source of Funds for Gross Property Additions

	YEAR ENDED DECEMBER 31	
	1972	1971
SOURCE OF FUNDS FOR GROSS PROPERTY ADDITIONS:		
Funds generated from operations:		
Net income after dividends on preferred stock	\$ 66,926,612	\$ 64,671,856
Add—Expenses not requiring current outlay of funds—		
Depreciation and amortization		
Per statement of income	62,937,243	58,210,389
Charged to other accounts	11,471,486	6,402,060
Deferred income taxes, net	18,972,411	14,300,164
Investment tax credit, net	5,959,632	5,751,207
	<u>\$166,267,384</u>	<u>\$149,335,676</u>
Less—		
Dividends declared on common stock	49,167,676	48,067,676
Retirement of long-term debt and preferred stock	11,738,000	10,538,000
	<u>\$105,361,708</u>	<u>\$ 90,730,000</u>
Funds obtained from new financing:		
Issuance of common stock (Note 4)	\$ 59,620,000	\$ —
Issuance of preferred stock	70,000,000	70,000,000
Issuance of first mortgage bonds	120,000,000	120,000,000
Increase (decrease) in other long-term debt	(4,417,219)	(4,239,197)
Increase (decrease) in notes payable	6,500,000	(36,500,000)
	<u>\$251,702,781</u>	<u>\$149,260,803</u>
Funds obtained from other sources:		
Increase in reserve for possible rate refunds (Note 5)	\$ 183,701	\$ 7,277,749
Increase in contributions in aid of construction	6,293,039	3,496,440
Change in net current assets and current liabilities	9,020,027	7,018,363
Other, net	2,040,419	62,061
	<u>\$ 18,346,186</u>	<u>\$ 17,854,613</u>
(Increase) decrease in investment in Northern Michigan Exploration Company (Note 3)	4,000,000	(4,000,000)
	<u>\$ 22,346,186</u>	<u>\$ 13,854,613</u>
GROSS PROPERTY ADDITIONS	<u>\$379,410,675</u>	<u>\$253,845,416</u>

() Denotes deduction.

The accompanying notes are an integral part of these statements.