UNITED STATES OF AMERICA
ATOMIC ENERGY COMMISSION

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

Applicant's Objections to Document Requests and Motion for Protective Orders

Consumers Power Company (hereinafter "Applicant") hereby files objections to the following document requests contained in the "Joint Document Request", served upon it July 26, 1972, by the other parties to this proceeding, and moves the Board for protective orders with respect to same.[1/] Applicant also objects, and seeks protective orders with respect, to pre-1960 documents requested in the Department of Justice's Motion to Compel Production of Four Categories of Documents, dated August 16, 1972, and the Intervenors' letter from Fairman to Ross, dated September 21, 1972. This pleading is filed pursuant to Section 2.740(c) of the Commission's

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1/ In accordance with the suggestion of the Board, counsel met on several occasions in an effort to resolve informally Applicant's objections to the Joint Document Request. While language of some requests was revised to the satisfaction of all parties, agreement was not reached with respect to the requests discussed in this pleading. In addition, several requests are still being discussed among the parties and this pleading should not be deemed to waive Applicant's right to object to those requests.

Rules of Practice, 10 C.F.R. Part 2, as amended.[2/]

Applicant moves the Board to direct that oral argument be heard on this Motion, pursuant to Section 2.730(d) of the Commission's Rules of Practice.

A. Joint Document Request

1. Applicant's Filing System

Applicant objects to request 2 of the Joint Document Request which seeks production of "all file indexes and documents" describing the Applicant's filing system.[3/] The request is improper since it constitutes no more than a fishing expedition.

According to the Commision's Rules of Practice which govern the scope of discovery, document requests must be limited to those which are "relevant to the subject matter involved in the proceeding" and "reasonably calculated to lead to the discovery of admissible evidence". Section 2.740(b)(1)

2/ Nothing in this pleading should be deemed to waive Applicant's right to object to the production of such privileged or irrelevant documents as may come to light in the course of Applicant's file search (see Section 2.741(a) and (c) of the Rules) or to seek further orders under appropriate circumstances, pursuant to Section 2.740(c).

3/ Request 2 reads in full as follows: "File indexes and documents describing the filing system utilized by the Company, its departments, divisions and subunits, pertaining to active, inactive or stored files and records."

of the Commission's Rules of Practice, 10 C.F.R. Part 2, as amended, 37 F.R. 15133. The Commission and the Board herein have made clear that this language should not be construed so as to permit "fishing" expeditions. Thus, in its Statement of General Policy and Procedure which accompanied enactment of the newly-amended Rules of Practice, the Commission stated:

> "In no event should parties be permitted to use discovery procedures to conduct a 'fishing expedition' . . . ."4/

The Chairman of the hearing Board herein also made clear that at the Prehearing Conference that a fishing expedition would not be tolerated in this proceeding. (Tr. 51.)5/

A fishing expedition would be particularly inappropriate in this proceeding. Applicant has responded to extensive interrogatories posed by the Justice Department and the

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4/ Section IV(a), Appendix A, Statement of General Policy and Procedure, 37 Fed. Reg. 15139.

5/ At the Prehearing Conference of July 12, 1972, the Chairman stated:

CHAIRMAN GARFINKEL: "One of my concerns is that you have to find out what your case is going to be to determine the scope of discovery.

MR. BRAND: Yes, your honor.

CHAIRMAN GARFINKEL: In the administrative proceeding we don't want any fishing expedition. What we are looking for is first a determination of the issues, and then we can focus on the scope." (Emphasis supplied.)

AEC staff during the last eighteen months; Applicant's replies were also made available to the Intervenors.[6/] In addition, the other requests contained in the Joint Document Request are clearly so broad in scope as to sweep into their dragnet every document conceivably germane to any issue raised in the proceeding.

Given the ample opportunity of the Justice Department and the other parties to obtain information about the Applicant, there is no justification for permitting them to engage in an open-ended and undirected invasion of the privacy of Applicant's filing system. Since request 2, on its face, is an effort to "fish" for additional issues or evidence, it should be stricken from the Joint Document Request.

2. Applicant's Political Activity

Applicant objects to the production of documents relating to its constitutionally-protected right to petition

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6/ The responses to the Justice Department inquiries were filed as Amendment No. 19 to the Midland Units Application on March 22, 1971. Additional information was provided in response to Justice Department inquiries in June and October, 1971. See letter from Brand to Youngdahl of June 4, 1971; letter from Graves to Saunders of June 23, 1971; letter from Brand to Watson of October 29, 1971; and letter from Watson to Brand of June 29, 1972. Extensive interrogatories by the staff were served on November 11, 1971 and answered by Applicant during the next several months.

legislative, executive, administrative and judicial officials and tribunals. At least seven of the document requests[7/] seek such documents on their face while many other requests will undoubtedly sweep such material into their broad ambit.

The very nature of Applicant's operations as a public utility in Michigan serves to thrust Applicant into the political process with great frequency. In the first place, Applicant is subject to pervasive federal and state executive, legislative and administrative regulation. Moreover, Applicant serves many local jurisdictions only at the sufferance of the elected officials and/or the voters of such jurisdictions. In the second place, its wholesale customers and several of other neighboring utility systems are publicly owned, operated and financed.

Thus, through its frequent interaction with various executive, legislative, administrative and judicial forums and officials, Applicant inevitably participates in a signi-

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7/ See Requests 3(e)(legislation and constitutional revision); 5(f)(2)(ii)(communications with elected officials, etc.); 5(f)(2)(iii)(activities of citizen or taxpayer committees); 5(k)(activities to obtain "favorable action" from any governmental entity); 10(e)(communications with "persons in elective or appointive office"); 10(f)(documents concerning tax payer's committees and similar groups); 22(issues regarding FPC or Michigan Public Service Commission jurisdiction).

ficant way in the political and legal arena. The public power entities, including but not limited to the municipal and cooperative Intervenors in this proceeding, also frequently resort to political and legal processes to achieve their goals. For example, the Michigan municipals and their Association - a party herein - have actively lobbied recently for legislation designed to revise the 25% limitation on municipal sales outside of municipal boundaries.

When Applicant speaks out or acts within the political or legal process, it is exercising precious and specially protected Constitutional rights. The Supreme Court has held that such activity before executive, legislative, administrative and judicial tribunals and officials is protected by the First Amendment and is therefore immune from scrutiny under the antitrust laws. Eastern R. R. President's Conf. v. Noerr, 365 U.S. 127, (1961), United Mine Workers v. Pennington, 381 U.S. 657 (1965). According to the Court, even efforts before governmental entities which seek to maintain or improve one' economic position at the expense of a competitor are immune. 8/

8/ In California Motor Transport Co. v. Trucking Unlimited, 404 U.S. 508 (1972), the Court made clear that the constitutional protections of Noerr and Pennington include efforts before judicial tribunals. 404 U.S. at 510-11. The contrary view on this question set forth in United States v. Otter Tail Power Company, 331 F. Supp. 54, 62 (D.C. Minn. 1971), has clearly been implicitly overruled by California Motor.

Antitrust law, the Court reasoned in Noerr, is aimed at essentially dissimilar commercial practices, not at participation in the political or other governmental process. 365 U.S. at 136-137.

These cases make it clear that antitrust liability cannot arise from the exercise of Constitutionally protected rights in the legislative, judicial, and administrative spheres. However, that protection becomes a hollow mockery if one must fear to exercise those rights because those with whom he is contending in those spheres can seize the advantage of access to his internal discussions merely by claiming an antitrust violation. Thus, there can be no question that discovery of documents relating to Applicant's participation in the political and legal process obviously serves to deter and otherwise "chill" the exercise of its First Amendment Noerr-Pennington prerogatives. The Board should not countenance such a result.

It is well-settled that, absent a compelling state interest, a governmental entity cannot compel disclosure of internal records where the consequence of such disclosure is to deter the exercise of constitutionally-protected activity. Thus, in NAACP v. Alabama, 357 U.S. 449, 460-462 (1958), the Court held that a document production order for the NAACP's

membership lists by a state court "trepasses upon fundamental freedoms" because:

> It is hardly a novel perception that compelled disclosure of affiliation with groups engaged in advocacy may constitute as effective a restraint on freedom of association as the forms of governmental action in the cases above were thought likely to produce upon the particular constitutional rights there involved". 357 U.S. at 462.9/

Even where constitutional rights are not at stake, a party is not required to produce documents under Rule 34, F.R. Civ. P.,10/ where such production would discourage activity which is in public interest. Thus, in Bredice v. Doctors Hospital, Inc., 50 F.R.D. 249, 250 (D.D.C. 1970),11/

9/ The principles expressed in NAACP v. Alabama have been reaffirmed in cases striking down a state statute requiring teachers to disclose associational ties, Shelton v. Tucker, 364 U.S. 479 (1960), and in later membership list cases, Gibson v. Florida Legislation Investigating Committee, 372 U.S. 539 (1963)(legislative committee subpoena); Bates v. City of Little Rock, 361 U.S. 516 (1960)(municipal ordinance).

10/ Rule 34, F.R. Civ. P., is virtually identical in language to Section 2.741 of the Commission's Rules of Practice relating to document production.

11/ Other cases to the same effect are Banks v. Lockheed-Georgia Company, 53 F.R.D. 283 (N.D. Ga. 1971)(business' equal opportunity program records); Arlington Glass Co. v. Pittsburgh Plate Glass Co., 24 F.R.D. 50 (N.D. Ill. 1959)(grand jury testimony); and Richards v. Maine Central Railroad, 21 F.R.D. 595 (D. Maine 1957)(post-accident discipline of employee).

the court held that the plaintiff in a malpractice suit could not discover the reports of the hospital staff physicians because:

> "To subject these discussions and deliberations to the discovery process, without a showing of exceptional necessity, would result in terminating such deliberations."

Where constitutional rights are involved, as here, application of the privilege is even more compelling. Thus, in Smith v. Crown Publishers, 14 F.R.D. 514 (S.D.N.Y. 1953), the court ruled that discovery procedures could not be utilized to inquire into a Senator's voting record and reasons therefor.

In view of the chilling impact upon Applicant's First Amendment rights which would result from providing broad access to Applicant's internal discussions of its protected activities, together with the lack of any special necessity for the disclosure of such documents, Applicant requests that the Board refuse to permit discovery of any documents relating to Applicant's political, administrative or adjudicatory activities.

3. Pooling and Coordination Committee Meetings

Applicant objects to request 4. This request calls for documents relating to the minutes and report of each committee, subcommittee, or task force formed under every pooling or

coordination agreement to which Applicant is a party.[12/]

The request is fatally defective since its designation sweeps into its dragnet many irrelevant documents, contrary to the requirements of Section 2.740(b)(1). For example, the Operating Committee of the Michigan Pool meets frequently to discuss details relating to the day-to-day operation of the Pool. The documents reflecting such meetings fill many file drawers and few are relevant to this proceeding. Those few relevant documents, of course, are already included in those items of the Joint Document Request to which Applicant does not object in this Motion.

Applicant has pressed the Joint Discoverers to limit the documents called for by item 4 to subject headings defined with "reasonable particularity", as required by Section 2.741(c) of the Rules. Thus, for example, Applicant would not object to documents under question 4 relating to a third party participation in the Michigan Pool. However, as presently worded, the request constitutes little more than a fishing expedition which the Rules forbid (See Part 1, supra,)

12/ The request reads in full as follows: "Minutes of meetings and reports of each committee established under pooling or coordination agreements to which Company is a party, those of each subcommittee or task force thereof, and documents relating thereto prepared or circulated within the Company."

and which burden Applicant with the production of thousands of documents of no interest or relevance to this proceeding. The Board should therefore strike question 4 of the Joint Document Request.

4. Documents Relating to Gas Operations

Applicant objects to requests 5(d), 5(e) and 5(i) which relate to Applicant's operations as a natural gas utility.[13/] Documents relating to the sale of natural gas are wholly irrelevant to this proceeding and requiring their production would oppressively burden Applicant and jeopardize its ability to make timely production under the Joint Document Request.

Issues concerning Applicant's gas operations have never been raised in this proceeding. They were not mentioned

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13/ The requests read in full as follows: "Documents relating to:

5(d) sale by the Company of natural gas as boiler fuel to electric utilities which are wholesale electric customers of the Company (except invoices);

5(e) competition between natural gas sold at retail by the Company and electric power in areas where the Company sells gas and electric service is furnished by other electric utilities;

5(i) activities of the Company to affect the cost of fuel for electric power generation by other persons in Michigan;"

in the Justice Department's advice letter or the Intervenors' Petitions to Intervene. Nor were they listed among the issues set forth in the Justice Department's statement of issues of July 12, 1972, or identified in the Board's Prehearing Conference Order of August 7, 1972. See Section 2.740(b)(1) of the Commission's Rules of Practice. This proceeding concerns the issuance of construction permits for nuclear electric generating units, which units have absolutely no operating or other relationship to Applicant's gas business. Thus, even assuming the broad scope of this proceeding urged by the Justice Department, documents relating to the sale of natural gas are irrelevant to the issues raised herein.

Extending the scope of discovery to Applicant's natural gas operations would be particularly burdensome in the instant circumstances. These operations are extensive: Applicant derives nearly one-half of its revenue from the sale of natural gas. Also, most of Applicant's employees work exclusively in either the electric or gas "side" of the Company. Furthermore, the service areas of the electric and gas operations are not identical so that Applicant sells natural gas in many Michigan counties where it does not provide electric service. Thus, to permit discovery into gas operations would require an extensive inquiry into documents which are wholly segregated from, and irrelevant to, electric

operations.

Since there is no possible justification for expanding the already excessively-broad scope of this proceeding, the Board should strike questions 5(d), (e) and (i) and make clear that Applicant's activities as a natural gas utility are beyond the scope of this proceeding.

5. Request for All Documents in Certain Files

Applicant objects to request 10 which calls for all documents "comprising the Company's individual files" pertaining to each of Applicant's wholesale customers.[14/] Here the

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14/ The request reads in full as follows: "Documents comprising the Company's individual files pertaining to each wholesale electric customer of the Company (excluding billing data) including but not limited to

(a) files identified by specific customer name;

(b) retail or wholesale competition relating to such customers;

(c) interconnection or coordination with and sale or purchase of electric power or facilities to or from each customer;

(d) analysis or study of each customer's system operations, rates, finances, expansion proposals and programs; including but not limited to any maps and diagrams of customer's transmission system;

(e) communications with officials or members of boards of directors of wholesale customers which are or were cooperatives or private corporations, and with managers and persons in elective or appointive office, who are or were responsible for the operations of each such municipal wholesale customer;

(f) communications to or from, or internal documents concerning any taxpayers' committee or any similar group, and any action taken or proposed to be taken by such committee or group with respect to matters affecting a wholesale customer."

Joint Discoverers abandon any attempt to particularize their inquiry and simply demand that entire files be turned over to them. According to Section 2.741(a) and (c) of the Commission's Rules, a party may request production of "designated documents" and must describe each item and category with "reasonable particularity". (Emphasis supplied.) Contrary to this Rule, question 10 fails to designate or describe the documents which it seeks other than by their location within certain "files".

Files relating to Applicant's wholesale customers are, of course, voluminous since they reflect the day-to-day contact that such customers have had with Applicant over the past twelve years. It is therefore obvious that much material wholly irrelevant to this proceeding is contained in such files.

Again, like requests 2 and 4 discussed above, any relevant documents contained in these files will be produced in response to other unchallenged questions of this expansive Joint Document Request. The Discoverers are clearly not entitled to production of any other documents since to permit a general search of certain files would constitute a fishing expedition. Schwimmer v. United States, 232 F.2d 855 (8th Cir. 1956).[15/] As set forth in Part 1,

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15/ In Schwimmer, the Court quashed a grand jury subpoena which called for, inter alia, all the files of a (cont.)

supra, the Rules do not permit such expeditions.

6. Income Tax Returns

Applicant objects to request 23 which calls for all duplicate tax returns filed by the Applicant since 1960. Presumably, the request includes local and state property and income tax returns as well as federal income tax returns.

Although no absolute privilege attaches to copies of tax returns, the courts have been understandable reluctant to order production of these eocuments:

> "People are normally opposed to the invasion of their privacy by exposure of the details contained in an income tax return. In the hands of the Government, these returns are confidential . . ..16/ Unless clearly required in the interests of justice, litigants ought not to be required to submit such returns as the price for bringing or defending a lawsuit". Wiesenberger v. W.E. Hutton & Co., 35 F.R.D. 556, 557 (S.D.N.Y. 1964).

15/ (cont.) certain individual, i.e., "four cardboard boxes and four cabinet drawers". 232 F.2d at 861. Even though the court conceded that grand jury subpoenas could be considerably broader in scope than discovery in adjudicatory proceedings, it still held the request for all files and documents in the possession of a certain individual to be an "abstract hunt" and a "fishing expedition". 232 F.2d at 862.

16/ Similarly, no property tax statements filed under Michigan law are allowed to be used for "any other purpose except the making of an assessment for taxes as herein provided or for enforcing the provisions of the act." See. Mich. Comp. Laws ¶211.23 (1948).

Here, there is no justification for the proposed invasion of Applicant's tax returns since any relevant information contained therein is "readily obtainable otherwise". Richland Wholesale Liquors v. Joseph E. Seagram and Sons, 40 F.R.D. 480, 482 (D.S.C. 1966) and cases cited therein at 482, 483. Form 1's and other material on file at the Federal Power Commission contain financial information and tax data about Applicant, and, to the extent that such data is insufficient, Section 2.740b of the Rules provides means to obtain it. Therefore, there is no justification for requiring production of Applicant's tax returns.

B. Pre-1960 Document Requests

Applicant objects to the document requests contained in (1) the Department of Justice's "Motion to Compel the Production of Four Categories of Documents . . .", August 16, 1972, and (2) the Intervenors' letter from Fairman to Ross, dated September 21, 1972, to the extent that they require production of pre-1960 documents. The pre-1960 documents called for in these requests are not relevant to this proceeding and thus are not subject to discovery under Section 2.740(b)(1) of the Rules.

In its Prehearing Conference Order, the Board limited discovery to January 1, 1960, but offered to entertain motions relating to production of prior documents (p.4).

That order arose out of discussions at the Prehearing Conference on July 12, 1972, at which opposing counsel discussed discovery at some length. Counsel for the Justice Department and the Intervenors found the proposed 1960 cut-off date to be "adequate" (Tr. 96) and "appropriate" (Tr. 100) respectively, although each reserved the right to seek prior material of "very narrow issues" (Tr. 96) and "specific items" (Tr. 100), respectively.

When pressed by Board member Clark to explain what "narrow issues" he had in mind, counsel for the Justice Department replied:

> ". . . Now it is quite possible that there may be other sources, and we are going to try to exhaust these sources before we go to Consumers. For example, the files of the Federal Power Commission. Their forms go back a certain period of time, but there may be laps and gaps. Their rules change. Transmission maps are very hard to come by. It may be that we might have to go to Consumers for a transmission map in a particular year." (Tr. 96).

The requests of the Justice Department and the Intervenors to which Applicant objects bear no resemblance to the material described in the foregoing quotation. They call not for specific transmission maps and the like but rather for all documents relating to broad subject categories dating, in some cases, from 1947 to the present. In nearly all instances, the requests are so broad as to require a Company-wide file search and thus to further burden an already over-burdened file search process.

The commentary which accompanies the pre-1960 discovery requests of the Justice Department and the Intervenors offers no justification for a burdensome and open-ended inquiry into pre-1960 material. Indeed, no justification exists since this proceeding is concerned with the present day maintenance of a 'situation' in an antitrust context, not with prior history.

Events which transpired prior to 1960 have no relevance to the present 'situation' under review. Significantly, in discussing Applicant's conduct, the Justice Department's advice letter mentioned only post-1960 events: the interconnection agreement with Lansing (signed in October 1970); the coordination negotiations between Applicant and two generation rural electric cooperatives (in 1963-64); the coordination negotiations with MMCPP (from 1969 to present); and the Michigan Pool agreement and operation (since 1962).

Concerning the issues raised by the Intervenors, it is noteworthy that every wholesale, coordination and pooling agreement to which Applicant is presently a party became effective within the last ten years. Thus, the negotiations and other pre-1960 subject areas referenced in the Justice and Intervenors' requests relate to proposals and agreements which have been long since superseded.

The only possible rationale for a broad-scale

pre-1960 inquiry which Justice and the Intervenors seek must rest on the hypothesis that Applicant unlawfully acquired (as opposed to maintains) its allegedly monopoly power. However, at the Prehearing Conference, counsel for the Justice Department conceded that he possesses "no evidence" (Tr. 61) that Applicant acquired its monopoly by unlawful means and stressed that the Department's case related to Applicant's present use of alleged monopoly power (Tr. 60-61). The Intervenors have also neither alleged, nor come forward with evidence related to, unlawful acquisition. To permit inquiry into pre-1960 material for the purpose of searching for such evidence would constitute the classic "fishing" expedition which the Commission rules proscribe. See Part I, supra.[17/]

17/ At the Prehearing Conference Chairman Garfinkel and Board member Clark posed two questions suggesting their concern with such a fishing expedition:

"CHAIRMAN GARFINKEL: How could we permit you discovery on something that you are really not contending? That is if there is discovery and you seek discovery on the question of the activities which maintained the situation inconsistent, and you are not indicating that they illegally used this monopoly power -- that is illegally obtained it -- how are you going to get evidence endeavoring to show that the applicant illegally obtained the power to foreclose, say, the municipals from participating in joint coordination?" (Tr. 61).

"MR. CLARK: Isn't it the antitrust law, that it doesn't matter whether the monopoly was legally or illegally acquired if you are using it in violation of the antitrust laws -- isn't that really an immaterial matter as far as we are concerned? Do we care how they got the monopoly as long as they are using it illegally now?" (Tr. 61-62).

At the Prehearing Conference the Board wisely denied general discovery prior to January 1, 1960 - nearly thirteen years ago. The date chosen is more than fair to the Joint Discoverers: typically, discovery in antitrust cases has been limited to ten years. See, e.g., U.S. v. Maryland and Virginia Milk Producers Association, 20 F.R.D. 441 (D.D.C. 1957); Stanzler v. Loew's Theatre and Realty Corp., 19 F.R.D. 286 (D.R.I. 1955). The reasonable discovery limitation imposed by the Board, which is more liberal than that normally permitted in antitrust cases, should not be abandoned without a far more specific showing of relevance and need than that put forward by the Justice Department and the Intervenors.

Finally [illegible]ant submits that efforts to seek broad inquiry into pre-1960 material misconceive the nature of this proceeding. The Commission is charged under Section 105(c) of the Atomic Energy Act with "anticipatory" antitrust review. Statesville v. AEC, 441 F.2d 962, 974 (D.C. Cir. 1969); letter from Hart to McLaren, dated November 9, 1970, 116 Cong. Rec. S. 19257 (emphasis supplied). The JCAE Report which accompanied the 1970 amendments to Section 105(c) made clear that the Commission's mandate under the statute was to examine the situation under review and to conclude:

> whether, in its judgment, it is reasonably probable that the activities under the license would, when the license is issued or thereafter, be inconsistent with any of the antitrust laws . . .." (em-

phasis supplied). 1970 U.S. Cong. and Admin. News. 91st Cong. 2d Sess., p. 4994.

The parties to this proceeding have offered their divergent views to the Board concerning the proper interpretation of the words "activities under the license" i.e., the causal nexus between Applicant's general conduct and licenses to construct and operate nuclear units. There can be no disagreement, however, that the "activities" subject to review are events in the future -- "when the license is issued or thereafter". While an examination of Applicant's conduct in the immediate past may be necessary to put its proposed future "activities under the license" into a meaningful context, such a examination obviously does not require general inquiry into pre-1960 conduct.

Applicant therefore respectfully requests the Board to order that the pre-1960 documents sought by the Justice Department's Motion of August 16, 1972, and the Intervenors' letter of September 21, 1972, not be subject to discovery in this proceeding.

C. Pre-1960 Historical Manuscripts

Applicant's files contain three manuscripts discussing the history of the Company. The manuscripts, which have not been published, were prepared in 1970-72, 1963 and 1956-62, respectively. Applicant is prepared to produce those portions

of the manuscript relating to events since 1960, but objects to the production of pre-1960 material.[18/]

Technically, the manuscripts are called for by the Joint Document Request since they were "dated" and "prepared", at least in part, since 1960[19/] and contain several passages which may be considered responsive to certain items in the Request. Applicant submits, however, that in this regard, the Request exceeds the limits of discovery permitted under the Board' Prehearing Conference Order of August 7, 1972. According to the Board's order (p.4):

> Discovery will be permitted back to January 1, 1960. Requests for data prior to 1960 will be directed to the Board in the form of a motion for decision.

We read the Board's order as providing that where a document relates to pre-1960 data or events, it is not subject to discovery -- even where the documents happen to have been dated or prepared since 1960. Thus, under the Board's order, it is the date of the data or the event in question that is controlling, not the date on the document.

18/ Since the authors of these works had no first-hand knowledge of all of the events they describe, the manuscripts are hearsay and are not admissible in this proceeding. However, Applicant recognizes that inadmissibility is not sufficient grounds in and of itself for objection to discovery production.

19/ The Joint Document Request calls for documents "dated, prepared, sent or received" since January 1, 1960.

In the context of the manuscripts objected to herein, the Board's order is eminently reasonable. As discussed in Part B, supra, this proceeding is concerned with the present and future situation, not with data or events in the remote past.

To require production of documents relating to Applicant's pre-1960 corporate history would therefore not only burden this proceeding with irrelevant material, but would constitute the first step in an inevitable broadening of the scope of the hearing to include all of Applicant's conduct from the nineteenth century to the present. Such a result would impose an extreme burden on the Board, as well as the parties, and insure an unmanageable, elephantine record.

Applicant therefore requests the Board to order that only those portions of the aforementioned historical manuscripts relating to post-1960 data and events need be produced for inspection in this proceeding.

CONCLUSION

For the foregoing reasons, Applicant moves the Board for protective orders striking or modifying those portions of the three document requests discussed herein. Applicant also moves that the Board direct oral argument

upon the instant Motion.

Respectfully submitted,

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October 26, 1972

ATTACHMENT A

VOLUME IV NUMBER 10
October - 1971

MICHIGAN MUNICIPAL ELECTRIC ASSOCIATION

Wattstopper

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KEEP WORKING

As the Michigan Legislature moved into high gear for the Fall Session, two bills strongly supported by the Michigan Municipal Electric Association began to show some signs of making it through the legislative machinery at long last.

Thanks to almost hourly attention by MMEA Legislative Agent Jim Hayes, certain technical amendments were worked out on SB 962, which would permit municipal electrics to make short term loans on bold securities. At press time, the bill was on the Senate calendar. Chief sponsor Senator Phil Pittenger, (R-Lansing) who attended the MMEA Board of Directors meeting October 28 to brief Board members on the bill, is optomistic on the subject of Senate passage. However, the bill faces a difficult road in the House, and every effort by members must be made to get the Representatives to give this measure the high priority it deserves.

HB 4942, the so-called 50% bill continues to frustrate. Chief sponsor Rep. DeForrest Strang and Public Utilities Committee Chairman Barney Hasper also met with the Board of Directors October 28 to report on the status of this vital measure. The answer continues to be pressure from MMEA members. The Association staff wishes to thank all members who have written to Representative Strang and other Representatives on behalf of this bill. If you have not taken the time to write, do it now before it is too late.

We have come too far and worked to hard to let our legislative program bog down for lack of a letter and an eight cent stamp.

NUCLEAR NEWS

A meeting was held in Grand Rapids on October 16th, attended by James Indiecott, Coldwater; Guy Bell and Bob Rienersma of Holland; A.L. Edwards, Grand Haven; Marty Hieftje, Zeeland; Joe Wolfe, Traverse City; Art Stienbrucker, Northern Michigan Co-op; John Keen, Wolverine Electric Co-op; and Mr. [illegible] Fairman, legal counsel from Washington, D.C.

Elected officers of this group were Joe Wolfe, President; Art Stienbrucker, Treasurer, and Roy Edwards, Secretary.

Purpose of the meeting was to discuss the pending intervention in the so-called Midland One and Two cases. At issue in the action before the Atomic Energy Commission is the right to buy a part of a nuclear power facility; the right to wheel power over major transmission facilities; and fair and equitable wholesale power rates.

Attorney Fairman suggested that the affected companies should consider each utility's five or ten year future needs, reliability of service, and the effect of Consumers Power policy on future operations. The possible date for pre-trial hearings is estimated as January, 1972.

In their report to the MMEA Board of Directors, Mr. Rienersma and Mr. Hieftje pointed out that the positive effects of this intervention would accrue to every municipal electric operation in the state, regardless of whether they were actual intervenors.

Joe Wolfe and John Keen attended a meeting in Washington October 29 to go over the issues with the Atomic Energy Commission staff. It now appears that the Justice Department is most interested in the questions of coordinating the power supply in the state, Consumers Power control of the transmission system in Lower Michigan, and possible misuse of that power to maintain a monopoly.

Much work needs to be done before the interested parties are ready for trial. The cost of this suit will not be small, but the issues involved should be obvious to everyone who is interested in municipal electric ownership. To put the matter on the line, this is one case that municipals and others cannot afford to lose. The stakes may well be higher than even those involved in the case imagine.

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Motion for Protective Orders and Objections to Document Requests have been served on the following by deposit in the United States mail this 20th day of October, 1972:

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