

RETURN TO REGULATORY CENTRAL FILES
ROOM 016

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

FIRST RESPONSE OF THE DEPARTMENT OF JUSTICE
TO APPLICANT'S INTERROGATORIES

The Department of Justice submits the following answers to interrogatories served upon it by Applicant Consumers Power Company in this proceeding. Answers made herein are complete to the knowledge and belief of the undersigned representative of the Department as of March 1, 1973; they will be supplemented as necessary to comply with Section 2.740(e) of the Commission's Rules of Practice, 10 C.F.R. Part 2. Interrogatories not treated herein will be answered subsequently, within the time limit directed by the Board. We have advised Applicant, by letter of this date, that the documents it requested are available in substantial part for inspection.

INTERROGATORIES AND ANSWERS

1. (a) Describe in detail each activity engaged in by Applicant which the Department alleges or will allege to be inconsistent with the antitrust laws. The response should include, but not be limited to:

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- (i) The time period in which Applicant engaged in such activity;
- (ii) The nature of the activity;
- (iii) The basis for its being deemed "inconsistent with the antitrust laws";
- (iv) The statute or policy with which it is alleged to be inconsistent.

Answer: Applicant has acquired, by internal consolidation and by combination with others, the power to exclude, has excluded, and is excluding its competitors and potential competitors in the retail and wholesale bulk power supply market from the area or regional power exchange market by refusing to coordinate with them on fair terms, particularly with regard to reserve sharing coordination and coordinated development. (These matters, as well as other information subsequently discussed in this response, are described more completely in the Request for Admissions served upon Applicant by the Department on February 12, 1973. To the best of the Department's knowledge and belief its requested admissions are true, and they are incorporated herein by reference to amplify the answers now provided.)

To the best of the Department's knowledge and belief, the Applicant has engaged in such activity from its inception, and at least since 1960; and the Department has specific knowledge of instances in which requests were made to Applicant for coordination, as reflected in the documents this

date made available to Applicant for inspection. See the attached affidavit of John Keen and the documents referred to therein (Exhibit A hereto), documents supplied to the Department by Edison Sault Electric Co. (Department of Justice documents [DJ] 3704-92) and the City of Lansing (DJ 10090-131). See also the request of A. E. Steinbrecher to engage in coordinated development, dated July 20, 1971, a similar or associated request by J. D. Wolfe, and Applicant's memorandum regarding it. (Applicant's documents [CP] 013180-84.)

Applicant has engaged also in other activities which indicate the intent and effect of such exclusions from the area or regional power exchange market. Exclusion of competitors or potential competitors from the area or regional power exchange market is a violation of the Sherman Act, Sections 1 and 2, if done with the intent or the anticipated effect of restraining competition in the retail power supply and bulk power supply markets for firm power. In any event it is inconsistent with Sections 1 and 2 of the Sherman Act and the underlying policies thereof.

1. (b) As to each activity specified in response to subpart (a), state whether the Department claims or will claim that the granting of the licenses applied for herein will maintain a situation inconsistent with the antitrust laws.

Answer: Yes.

1. (c) Identify each activity of Applicant "which make[s] possible its activities under the license."

Answer: The activities of the Applicant which make possible its activities under the license include the following. Applicant has acquired ownership and control of many of the formerly separate businesses offering central station electric service in Michigan's lower peninsula. It has integrated those businesses by high-voltage and extra-high-voltage transmission lines, enabling it to install large base-load generating units and thereby sell electric power of low cost and good quality (reliability), but also resulting in monopoly of the area power exchange market. It has connected by high-voltage transmission lines and extra-high-voltage transmission lines to the transmission lines of adjacent companies who have engaged in similar activities; this enhances its ability to install large base-load units, but the resulting market structure creates an oligopoly in the regional power exchange market. The resulting market structure enables the Applicant to use base-load nuclear generating units and to preclude its competitors from doing so, and to that extent it can restrain competition in the sale of bulk power supply at wholesale. With control over wholesale bulk power supply, it achieves a better position to compete at retail, as is shown by its acquisition over the years of smaller independent public and privately owned electric utilities in its area of Michigan.

2. (a) Define the geographic and product market in which Applicant is alleged to have "substantial market power vis-a-vis its smaller competitors," including in such response a definition of the following terms, and where appropriate, the standards and data used by the Department in alleging that:

(i) Applicant has "control" of bulk power facilities in lower Michigan;

(ii) Applicant has "a monopoly of bulk power supply in the market";

(iii) Applicant has control of "all or substantially all transmission in the market";

(iv) Applicant is "abusing its control over transmission to retain and extend its bulk power supply monopoly";

(v) Members of the Michigan Pool control the vast majority of the bulk power generation and transmission facilities in Michigan.

2. (b) Provide all data on which the Department based its allegations set forth in subpart (a).

Answer: The product markets in which Applicant has substantial market power consists of the following: (1) the retail market for firm power, (2) the wholesale market for firm power, and (3) the area or regional power exchange market or "third market." The economic feasibility of central station electric service depends generally on the size of load (including the anticipated rate of growth of load) and the distance

from existing facilities. The geographic market thus includes areas in which Applicant presently serves or has actual or potential competition and areas where Applicant can compete or potentially could compete. The reference to potential competition means those situations where there is some substantial possibility of competition.

The geographic area is defined more specifically in the Request for Admissions (Nos. 230-232).

The Department uses the term "control" of bulk power facilities in lower Michigan to mean legal and physical control. Both the City of Lansing and the Michigan Municipal and Cooperative Power Pool (hereinafter M-C Pool), for example, are electrically interconnected by high-voltage transmission lines to Applicant's area transmission system. This connection could provide a throughpath for electrical transmission between the M-C Pool and Lansing. Lansing and the M-C Pool thus potentially can engage in transactions in the third market; these transactions are possible only by purchasing transmission service from Applicant (also in the third market). Applicant's legal control enables it to refuse to engage in such transactions contractually, and its physical control enables it to open up its interconnections with either of the parties or take other action (such as to install load limiting devices) should the other parties attempt to engage in power exchange transactions with each other. Applicant also maintains a method of control of electric generators

generally known as "area control," using electronic computers at the so-called "control centers" which telemeter "raise" and "lower" generation signals to generating units throughout a large area of Michigan's lower peninsula. Furthermore, it has personnel at such control centers to monitor interconnections, direct the operation of the generating facilities, and dispatch Applicant's transmission system by voice communications and by remote switching devices. Applicant has the legal authority to direct these personnel in the operation of its system facilities (and other facilities it has, by contract, the right to use). Applicant's control permits it to exclude or restrain intervenors and other electric systems from engaging in power exchange transactions for emergency power or power and energy incident to coordinated developments.

The term "monopoly of bulk power supply in the market" indicates that Applicant serves more than a specified percentage of the relevant retail market, that it serves more than a specified percentage of the relevant wholesale market, and that it has the power to exclude others from the relevant power exchange market. The Department's reference to "all or substantially all transmission in the market" is explained in the Request for Admissions (Nos. 168-171). The Request for Admissions used 1970 data. In 1971 Applicant substantially increased its extra-high-voltage transmission system, and at the end of that year it operated 787.08 circuit miles (396.89 pole miles) of 345 kv transmission.

It is obvious to the Department by reference to FPC maps of electric facilities in Michigan's lower peninsula that members of the Michigan Pool control the vast majority of bulk power transmission and generation facilities in Michigan.

"Abusing its control over transmission to retain and extend its bulk power supply monopoly" consists of precluding or restraining access to regional power exchange transactions on reasonable terms and conditions.

2. (c) Provide all documents which refer to, describe, evaluate or comment upon:

(i) Competition in any of the markets defined in subpart (a);

(ii) The status of an electric utility as a natural monopoly;

(iii) Territorial allocations of retail or wholesale customers by any utility providing electric service in the State of Michigan.

Answer: (Documents provided separately.)

3. Provide all documents which refer to, discuss, evaluate or comment upon the structure or operation of the electric utility industry in the State of Michigan at any time since the late nineteenth century to date, or to the purchase of, or negotiations involving the possible purchase of, any electric system by Applicant. Such documents should include, but not be limited to documents relating to:

(a) The decision by Applicant not to purchase a system;

(b) The decision by any system to reject or accept an offer by Applicant to purchase its system;

(c) The plans, intentions, desires or decision by any system to initiate or seek an offer from Applicant or any other system to purchase its system.

Answer: (Documents provided separately.)

4. (a) Identify each provision in any of Applicant's tariffs, rate schedules or agreements which the Department alleges or will allege "to have some anti-competitive impact," including, but not limited to:

(i) Provisions of the Michigan Pool contract which "seem on their face to have the effect of limiting the freedom of either of the pool members to negotiate bulk power supply coordination with third-party utilities in Michigan";

(ii) Each provision of each of Applicant's wholesale contracts which may "restrict the right of the purchaser to resell any of the power to a third utility or to interconnect with third utilities";

(iii) Each provision contained in each of Applicant's wholesale power contracts which "contain a provision limiting the amount of firm capacity which the customer may obtain";

(iv) Each rate contained in any of Applicant's wholesale or retail tariffs, rate schedules or agreements which the Department claims or will claim to be anticompetitive.

4. (b) Describe in detail each instance in which Applicant has sought to enforce or rely on each provision specified in response to subpart (a), or each instance in which the impact alleged by the Department was effected. The response should include, but not be limited to:

(i) The date and identity of the parties involved in each instance;

(ii) The nature of the communications between said parties relating to each instance;

(iii) The relevant circumstances and facts of each such instance;

(iv) The source of the Department's information with respect to each such instance.

Answer: (To be answered at a later date.)

4. (c) Provide all documents referring or relating in any way to each of the provisions set forth in response to subpart (a) of this question, including, but not limited to, the intent or effect of each such provision.

Answer: (Documents provided separately.)

5. Provide all documents which refer to, describe, evaluate or comment upon:

(a) The actual or potential use of nuclear or fossil fuel for the generation of electricity in:

(i) The lower peninsula of Michigan;

(ii) The State of Michigan;

(iii) FPC Power Supply Area No. 11 (East Central Region);

(b) Projected future growth of electric power consumption in the lower peninsula of Michigan;

(c) Actual or potential costs of constructing or operating a nuclear power plant in Michigan or elsewhere;

(d) Actual or potential outages or other technical difficulties which are or may be encountered in the construction or operation of a nuclear power plant.

Answer: (Documents provided separately.)

6. Specify in what ways Applicant is gaining, will gain, or has gained in the past, the benefits of the nuclear technology that has been developed by the federal government. The response should include an explanation of the amount and proportion of tax money used to develop such technology, and a description of the technology so developed.

Answer: The legislative history of the Atomic Energy Act of 1954 refers repeatedly to \$12 billion as the sum spent on nuclear technology to that time. To the extent that

Applicant is itself able to utilize nuclear generating capacity while preventing or restraining others from doing so (by denying them access to the market), it reaps the benefits of those expenditures by the Government and denies them to its competitors.

7. Define and describe the standards used by the Department in alleging that Applicant could not install and operate either of the Midland units without integrating the unit with its own system and without participating in pooling or other coordinated efforts with other electric systems. The response should include, but not be limited to, identification of "the economic factors which determine the ability of any system to undertake either sole or joint responsibility for a nuclear generating unit" and a detailed explanation of the premises on which the following allegations were based:

(a) The "economic framework" provided by "Applicant's participation in the Michigan Pool" supports "the feasibility of installing such large-scale base-load generating units";

(b) The bulk power supply system created by combining the Midland Units, "through high-voltage transmission lines as the integrating and coordinating medium, with the other generating units owned by Applicant and others," "will provide necessary low cost insurance against the risk of forced outage of the nuclear unit";

(c) "Applicant could market no firm power from either nuclear unit if operated in isolation from the remainder of Applicant's system";

(d) "Only 50% of the combined power available from both [Midland] Units could be marketed as firm power if those units remained physically and/or contractually isolated from other units either in Applicant's system or elsewhere";

(e) "The economic feasibility of each Midland Unit depends on use of the unit in conjunction with a high-voltage and extra-high-voltage transmission network which is capable of furthering sufficient load growth to fully load the capacity of the units in a relatively short time."

Answer: (7) The standards used by the Department in stating that Applicant could not install and operate either of the Midland Units without integrating the unit with its own system and without participating in pooling or other coordinated efforts with other systems are the generally acceptable methods of planning bulk power supply, including the standards for determining the frequency and duration of electric power outages and a comparison of capacity and energy costs of the existing system with the nuclear unit added against the costs of the existing system with other, probably smaller, units added. Another important factor is the annual increment of load growth of the utility or pool in which the unit is to be installed as compared with the size of the unit.

7. (a) The opportunities for reserve sharing and coordinated development provided by Applicant's participation in the Michigan Pool support "the feasibility of installing such large-scale base-load units" as reflected by the following statement in an engineering study supplied by Applicant:

Nuclear installation in Michigan continues to be evaluated. It appears that sizes of 500 to 600 ^{mw} are necessary to enjoy competitive capital costs and that in order to not have an adverse impact on reserve requirements large third party interconnections are necessary at present load levels before large unit sizes can be added. (CP 009412)

This would include the reserve sharing and load growth pooling benefits of the interconnections between Applicant and other systems beyond the Michigan Pool.

7. (b) By the "necessary low-cost insurance against the risk of forced outage of the nuclear unit," we referred in the first instance to the outage experience derived by Applicant in applying the Halperin and Adler method to a system containing nuclear units of the size of the Midland Units. The unit forced outage data is combined mathematically to generate statistics regarding frequency and duration of forced outages on the system. Such statistics, when compared to anticipated levels of reserves, will indicate how frequently and for what duration a system can expect brown-outs. Should the frequency and duration of such brown-outs be below reasonable standards, the system would no longer be marketing firm power. Discovery from Applicant indicates that a loss of capacity with an interval of five years is acceptable. (CP 012986)

(Apparently Applicant considers this as equivalent to a loss of load once [sic: one day?] in 20 years.) Applicant's document indicates that, with an expansion program using such comparatively large base-load units as the Midland Units, its reserves at time of summer peak will rarely exceed 20%.

(CP 012987) Integrating units such as the Midland Units with other units through high-voltage transmission lines provides a diversity of the risks of forced outage, and reserve sharing provides a medium in which a specified percentage of reserves is in effect a premium exchanged for the uncertainties of unit outage. For base load coal-fired or nuclear units in the 830-1150 mw range, Applicant indicates that it utilizes 8% forced outage ratings for the first 2 years and 5% thereafter, with duration of 1 1/2 days (CP 013248).

7. (c) "Applicant could market no firm power from either nuclear unit if operated in isolation from the remainder of Applicant's system" because the forced outage rating of each unit would exceed 8% at first and 5% thereafter, and that would not be acceptable as firm power. Customers would be dissatisfied if their power were unavailable 5 days out of 100 or 17 days per year [excluding maintenance, which might remove the unit from service for an additional 30 days per year].

7. (d) A maximum of 50% of the combined power available from both units could be marketed as firm power if those units remain physically and/or contractually isolated from other units

either in Applicant's system or elsewhere since for a system consisting of two units the single largest unit down standard would be the requirement for reserves. Assuming both units had an equal dependable capacity, one unit would be required for standby and therefore only half the dependable capacity would be for sale as firm power. If the extraction of steam from one of the units gave one of them lesser dependable capacity than the other, only its capacity could be marketed as firm since the other unit would qualify only as standby or reserve.

7. (e) The economic feasibility of the Midland Units is dependent on their comparison with other possible programs of generation expansion. See e.g. discovery from Applicant, documents CP 013083-013160. If the distribution systems to which the Midland Units were to be attached had annual growth increments of 10 mw, it might be 80 years before one of the units became fully loaded. The fixed charges, however, during this entire 80-year period would so increase the cost of power that it would become uneconomic in comparison with smaller units such as small steam turbines, gas turbines (oil or gas fired), or diesels (assuming availability of fuel).

7. (a) [Sic: 8 (a)?] Describe and define the economic benefits of interconnection and coordinated development as the same exist, or potentially may exist, for both larger and smaller utilities. The response should include, but not be limited to, a description and definition of:

(i) The standards used in determining that "reserve sharing, coordinated development and other types of coordination available through high-voltage and extra-high voltage transmission makes possible economies of scale in bulk power supply to systems participating in such coordination";

(ii) Each advantage which might accrue to Applicant through each possible form of coordination with a cooperative or municipal system in Michigan, or any group thereof.

Answer: The economic benefits of interconnection and coordinated development as the same exist, or potentially may exist, for both larger and smaller utilities include the items listed in discovery from Applicant, Document 011275, Paragraph II, except for item f, "Tail-end Charlie":

General Advantages of Interconnections

- a. Reduction in generating reserve requirements.
- b. Permit larger generating units at lower cost per kilowatt.
- c. Flexibility to purchase or sell firm capacity and thereby more closely match load requirements.
- d. Opportunities to exchange energy, and share the resulting savings, during times of differences in energy costs (daily, weekly, seasonally).
- e. Increased feasibility of large pumped storage plant at Ludington site.
- f. Tail-end Charlie.

The standards used in determining whether or not such advantages exist include the end cost in mills per kilowatt hour of power sold and the continuity of service provided, as measured by the anticipated loss of load expressed as a percentage of time (expressed ordinarily as "one day in x years") or by frequency (interval) or duration of anticipated system outages of "m" megawatts (or "m" megawatts or more), where "m" is related to some constant risk forced outage requirement (per Halperin and Adler).

These advantages would accrue to Applicant from coordination with small systems, but would be comparatively less significant than the advantages to small systems of coordinating with Applicant since Applicant has already obtained the largest part of the advantages of interconnection and coordinated development through its own integration--and its coordination with Detroit Edison as a member of Michigan Pool.

7. (b) [Sic: 8 (b)?] Provide all relevant data and all documents which refer to, describe, evaluate or comment upon:

(i) The existence or absence of economies of scale in the generation, transmission or retail distribution of electric power generally or by Applicant or any other municipal, cooperative or investor-owned utility in Michigan, or

(ii) The competitive benefits or disadvantages of reserve sharing, pooling, joint planning, wheeling or coordination by Applicant with any other system or group of systems.

Answer: (Documents provided separately.)

9. Define and describe the standards used in determining that "there appears to be an irreducible minimum of cooperation among competing utilities which is essential to the long-term competitive viability of each of them." The response should include, but not be limited to:

(a) The name of each utility studied in making such determination;

(b) The nature of the competition between them;

(c) The type and extent of cooperation deemed essential at a minimum;

(d) A definition of the number of years included in the phrase "long-term."

Answer: The standard used in determining that an irreducible minimum of cooperation among competing utilities is essential to the long-term competitive viability of each of them is essentially that of survival as a separate system. The Department's view is based principally on our own experience in studying the electric power industry, specifically the Commonwealth Edison-Central Illinois Electric & Gas

merger, but includes also the 1930 study of H. B. Dorau, which has been supplied (DJ 10365-473). No special study was made in order to reach this conclusion.

The nature of competition between utilities may be on a house by house and street by street basis. Or it may be a competition only for larger loads; e.g., in excess of 25 to 75 kw of peak demand. Or there may be no short-run competition, but only a long-run competition in which a smaller, isolated utility competing with a major integrated system initially may abandon bulk power supply functions and ultimately abandon the electric utility business entirely.

The nature and extent of competition in Michigan is detailed in the Department's Request for Admissions (Nos. 179-207).

The type and extent of cooperation deemed essential as a minimum is that which will obtain coordinating power and energy sufficient to provide a participating utility with an optimum mix of generation and transmission, enabling it to sell power at the lowest possible cost. One form of cooperation is access to coordinated development. With restraints on access to appropriate supplies of coordinating energy, an actual competitor may be restrained from competing in a market to the extent he otherwise could. Ultimately he may have to leave the market. Potential competitors are restrained from entering the market.

Long term is 35-50 years. This is relative, depending on the life of the power facilities involved.

10. (a) Describe the effect in Michigan on smaller utilities of larger utilities entering into joint unit or pooling arrangements, including identification of the utilities and arrangements involved.

Answer: The effect in Michigan on smaller utilities of larger utilities entering into joint unit or pooling arrangements is to give the larger utilities even greater advantages of scale as compared to the smaller ones. We refer particularly to the Michigan Pool arrangement, the reserve sharing between the Michigan Pool and Ontario Hydro and the reserve sharing (and some coordinated development) between Michigan Pool systems and systems in Illinois, Indiana and Ohio, under MIIO. See also Applicant's document 012987, which lists sales and purchases from other systems.

10. (b) Identify the "evidence" which indicates that "the smaller the utility, the more critically important is its access to the unique economic benefits of interconnection and coordinated development with other utilities." The response should set forth, but not be limited to, (1) the size of the utility defined by the word "smaller", (2) the elements comprising "the unique economic benefits" considered, and the source of the Department's "evidence".

Answer: The evidence which indicates that "the smaller the utility the more critically important is its access to the unique economic benefits of interconnection and coordinated development with other utilities" is the generally accepted engineering view of the relationship between the following four factors: (a) unit size; (b) system size; (c) reserves; (d) reliability. It also includes the general engineering awareness of the relationship between unit size and annual increments of growth. An illustration of the general knowledge of the importance of base load units is a recent advertisement by the Curtiss-Wright Company showing the need for base load plants (supplied herewith as Exhibit B), and a second piece of evidence is the graph computed by engineers for Applicant indicating the relationship of base load unit size to cost of power (CP 010078).

10. (c) Provide all documents discussing or relating in any way to the importance of access by a "smaller" utility to the economic benefit of interconnection and coordinated development.

Answer: (Documents provided separately.)

11. (a) Define the City of Lansing's "large degree of access" and "economic benefits to coordination". The definitions should include, but not be limited to, (1) a specification of those provisions in Lansing's contract with Applicant

which provide each such form of access and/or benefit, (2) the financial and other standards utilized to determine that these contract provisions provide such access or benefit, and (3) all relevant data relating to the determination described in (2).

Answer: The present access to coordination by the City of Lansing is limited to reserve sharing. In Lansing's May 15, 1964, contract with Applicant, paragraphs 1 and 2 appear on their face to provide good access to the benefits of reserve sharing; however, it is not clear whether the rated capacity of the interconnection was sufficient to provide such full access as of that time. In a 1970 contract between the Applicant and Lansing the reserve sharing provisions are scattered through the contract; however, they generally include Article I, paragraph 2; Article IV, paragraphs 1, 2, 3, 4, 5, and 6; and Article V, Service Schedules A and B. One favorable provision of the contract is that for short-term power with demand billing for power actually used under a billing rate of cents per day. The economy energy provision and the provision in Service Schedule D give the City of Lansing some access to coordination. The provisions for mutual emergency support capacity provide some access to reserve sharing coordination, but not to the same degree that it would obtain under the Gainesville formula. The short-term power provisions being so advantageous, it is probable that Lansing's optimum mutual emergency support level would be

zero. Under those circumstances the setting of the mutual emergency support capacity levels in paragraphs 3, 4, and 5 may not be advantageous to Lansing. It is extremely difficult to separate one portion of a coordinating contract from other portions as these provisions are all interrelated -- the end test is the reserve maintained by Lansing as a percentage of peak load, and this appears excessive, particularly when compared with units the size of Lansing's. See the Department's Request for Admissions (Nos. 143-146).

11. (b) Provide all documents which refer to, describe, evaluate or comment upon coordination between Applicant and the City of Lansing.

Answer: (Documents provided separately.)

12. (a) Provide all documents discussing or related in any way to the drafting, proposal, operation or contemplated effect of each provision of the contract(s) proposed by MMCPP or Applicant during the course of the negotiations.

(b) Provide all documents comprising, discussing, or relating to, communications with the Rural Electrification Administration, Justice Department, or any other governmental entity or any employee thereof concerning the proposed contracts or negotiations pursuant thereto.

Answer: (Documents provided separately.)

13. (a) Define and describe "the degree of access to coordination which [MMCPP members] will require for their long term competitive viability."

Answer: M-C Pool members will require reserve sharing, transmission coordination (or wheeling), and coordinated development for their long-term competitive viability. It is possible that they may be able to survive without this degree of access to coordination; even so, lack of such access could unreasonably restrain their growth.

13. (b) Identify and describe information of the Department with respect to whether the terms proposed by Applicant in the MNCPP negotiations were or are "calculated or had the effect over the long run to deprive MNCPP of the degree of coordination which it would require to support an economical [sic] viable bulk power supply program."

Answer: This information is contained in the Department's Request for Admissions (Nos. 132-142).

13. (c) Provide all documents which discuss or relate in any way to the intent or contemplated effect of any proposal of the Applicant or the MNCPP in the MNCPP negotiations.

Answer: (Documents provided separately.)

14. (a) Describe in detail each method or instance in which Applicant sought to deny access to coordination by

cooperative systems in Michigan. The response should include, but not be limited to, a description of the relevant dates, sources of information, means of communication, identification of entities involved, and all-pertinent facts and definitions on which each of the following assertions is based:

(i) "Wolverine Electric Cooperative and Northern Michigan Electric Cooperative attempted to obtain coordination contracts with Applicant prior to 1969" which "would have recognized their status as utility systems in the area" or "have provided for mutual support obligations between the cooperative and Applicant to assist each other in the event of emergencies";

(ii) "Applicant made clear that it was only willing to contract with the cooperatives as a wholesale supplier of substantially all of the latter's future load growth requirements";

(iii) The cooperatives determined to reject "applicant's offer" to be the cooperatives' wholesale supplier and to "undertake the expansion of their own generation";

(iv) "Applicant's offer" was "unsuited" to the cooperatives' "long term bulk power needs";

Answer: These are described in detail in the attached affidavit of John Keen (Exhibit A).

14. (a) (v) Applicant made an effort "to prevent the governmental approvals which were necessary prerequisites" to expansion of the cooperatives' generation capacity.

Answer: This refers to offers to sell power at a cost claimed to be below that available to the cooperatives by self-generation. Under REA Bulletin 20-6, if Applicant was successful in persuading REA officials or members of Congress that the cost of self-generation was greater than the cost of purchased power, the cooperatives could not obtain necessary financing for an independent expansion program. We are aware of a letter from Applicant to a former REA administrator and other materials showing a campaign in opposition to the financing of cooperative generation. See also 90th Cong. 2d Sess. Joint Committee on Atomic Energy Participation by Small Electrical Utilities in Nuclear Power, Part 2, June 11-13, 1968, pp. 865-874, 969-975.

15. Specify in what ways Applicant has refused to offer coordinating arrangements on terms approved in Gainesville Utilities Department v. Florida Power Corporation, 402 U.S. 515 (1971).

Answer: Applicant has offered terms including use of the Holland formula, rather than the Gainesville formula, in a proposal to the M-C Pool. It also insisted on the formula incorporated in its 1970 agreement with Lansing, rather than agreeing to a Gainesville formula arrangement as initially suggested by the City of Lansing. It has further refused to deal on Gainesville formula terms with Edison Sault Electric Co.

16. Provide all documents which refer to, describe, evaluate or comment upon the following aspects of coordination by Applicant:

(a) Participation by third-party utilities (or groups thereof) in the Michigan Pool or to negotiations between any pool member and any third-party utility concerning bulk power supply coordination;

(b) Reserve requirements, reserve sharing, pooling, interconnection, wheeling, coordination, or joint planning involving actual or potential activities of Applicant with any other system;

(c) The effect or consequences on competition, rates, or quality of service of:

(i) Any existing pooling agreement entered into by a utility (or group thereof) serving in the lower peninsula of Michigan, including, but not limited to, the Michigan Pool and the Michigan Municipals and Cooperatives Power Pool; or

(ii) Any potential pooling agreement between any electric utility in the lower peninsula of Michigan and any other utility, including, but not limited to, a possible agreement between Applicant and MICPP.

Answer: (Documents provided separately.)

17. (a) Define and describe the standards the Department would use or has used to determine whether Applicant was or was not granting "fair and non-discriminatory access" to its bulk power facilities and provide all relevant data relating to such standards.

Answer: The standards the Department would use and has used to determine whether Applicant was or was not granting "fair and non-discriminatory access" to its bulk power facilities are terms and conditions for the exchange of coordinating power and energy which appear in coordinating contracts where the parties have more or less equal bargaining power. These would include: (1) for reserve sharing, the Gainesville formula; (2) for coordinated development, participation in new units or transactions in power and energy at the cost of new power supply; (3) for economy energy, a split-the-savings basis; (4) for a short-term wheeling, an incremental cost basis for transmission facilities; and (5) for long-term wheeling, an average cost basis for transmission facilities. These are explained generally in Applicant's documents 012568-73.

17. (b) Define and describe the standards and data used by the Department in alleging that there is a "lack of any economically feasible alternatives to the MMCP members dealing with Applicant." The response should include, but not be limited to, a definition of the term "economically feasible" and a specification of the alternatives which the Department claims are lacking.

Answer: Economically feasible alternatives for M-C Pool members dealing with Applicant would include self-generation on an isolated basis and purchase of power in bulk at wholesale from a bulk power supply system that has access to the benefits of coordination but is not a retail competitor. It means practicable and competitive.

17. (c) Provide all documents which refer to, describe, evaluate or comment upon the efforts, desirability or feasibility of electric systems in the lower peninsula of Michigan (jointly or severally) to compete with Applicant for retail load, to obtain alternative coordination arrangements or to obtain alternative sources of bulk power supply.

Answer: (Documents provided separately.)

18. State whether the installation of the Midland units will maintain Applicant's cost advantage vis-a-vis its competitors. If so, describe and provide all documents describing the nature of the cost advantage effected and how it will be maintained, and state how such advantage will prevent the intervenors in this proceeding or other lower Michigan electric systems from installing their own large units.

Answer: Yes. The advantage is in cost of power sold and reliability of power supply. It will not prevent the intervenors in this proceeding from installing their own large units. It is Applicant's control over transmission and its refusal to coordinate with the intervenors in this proceeding that prevents them from installing their own large units.

19. Identify each actual or potential competitor which was prevented from entering the electric generation, transmission or distribution business, or was restrained in the conduct of its electric generation, transmission or distribution business, by Applicant. The response should include, but not

be limited to the following:

- (i) The nature of the preventive or restraining effect;
- (ii) The time period in which the effect took place; and
- (iii) The activity by Applicant which had the alleged preventive or restraining effect.

Answer: Michigan law permits entry into the retail distribution and bulk power supply business by municipalities. Michigan law also permits distribution cooperatives to enter into the bulk power supply business. Except for the City of Zeeland, we know of no municipal or other system that has entered the retail electric utility business in competition with Consumers Power Company since 1920. This includes the rural electric cooperatives, which are permitted by law to supply electric power only where central station service is not available. The nature of the preventive or restraining effect, we believe, is the inability to obtain a competitively priced bulk power supply that is the result of exclusion from the area or regional power exchange market or of restraints in that market. This result obtained through concentration of control over a number of formerly isolated systems by Applicant, creating a situation where Applicant had little incentive to make offers of coordinating power and energy to the remaining systems. For example, according to Applicant's document 01346: "In the early years, when the company was a newly formed collection of smaller companies and without

modern communication complete division autonomy was possible. . . ." No plant superintendent enters into coordinating contracts.

20. (a) Define "long-term competitive viability."

The definition should set forth, but not be limited to:

- (i) The number of years included in the words "long-term";
- (ii) The financial or other standards utilized to determine competitive viability in each market; and
- (iii) All relevant data relating to past, present, or future competitive viability of Applicant's "competitors".

Answer: Long-term competitive viability, in our view, would be 35-50 years. The standards utilized to determine competitive viability are the prospect for survival and the prospect of increasing market share in the competitive markets. The relevant data relating to the past, present, and future competitive viability of Applicant's "competitors" is contained in the appendices to the Department's Request for Admissions and other documents provided by the Department.

20. (b) Provide all documents which refer to, describe, evaluate or comment upon the financial, operating, or past, present or future "competitive viability" of Applicant's "competitors," including, but not limited to, documents which reflect the revenues, expenditures, rates, cost of

service, bill frequency analyses, cost or profitability analyses by customer class, peak load, load factor, load diversity or generating capacity of any such "competitor" alone, in conjunction with other "competitors" or in comparison to Applicant.

(c) Provide all documents discussing or relating in any way to the desirability, effort, or feasibility of Applicant's "competitors" (jointly or separately) to construct, finance, own, or operate electric generation units, transmission facilities, or distribution systems, or portions of such units, facilities or systems.

(d) Provide all documents which in any way relate to the actual or potential competition (including, but not limited to, price competition) between Applicant and any other electric system for wholesale or retail customers, including, but not limited to:

(i) The effect of any local or state law or constitutional provision on the ability of any municipal or cooperative system in the lower peninsula of Michigan, or any group thereof, to compete with Applicant for existing or potential wholesale or retail customers, to construct, own (severally or jointly) or finance the construction of system facilities, or to interconnect, coordinate, or integrate in any way with another system;

(ii) Tax, low interest or other financial advantages benefiting municipal or cooperative electric systems in Michigan;

(iii) Tax or other financial advantages benefiting Applicant.

Answer: (Documents provided separately.)

21. (a) Identify and describe each instance in which any person or entity has communicated with any employee or agent of the Department about Applicant, including, but not limited to, Applicant's efforts or proposed efforts to construct, finance, or obtain necessary governmental approval for operation of the Midland units. (Communications between Department of Justice attorneys whose content had not been revealed to any other person need not be identified.) The response should include, but not be limited to:

(i) The date and the identity of the parties involved in each instance;

(ii) The nature of the communications between said parties;

(iii) The relevant circumstances and facts of each such instance; and

(iv) The source of the respondent's information with respect to each such instance.

Answer: The undersigned, as representative of the Department of Justice, has had personal and/or telephone communications about Applicant with the following persons. Except as indicated, the undersigned cannot now state the dates or details of these communications. The communications generally described competitive relationships, the ability of

small systems to obtain access to coordination and the history of power supply in Michigan. This listing exhausts the recollection of the undersigned at the present time and will be supplemented insofar as possible:

John N. Keen, Manager, Wolverine Electric Cooperative; James O. Wood, Wolverine Electric Cooperative; Arthur E. Steinbrecher, Manager, Northern Michigan Electric Cooperative; Robert J. Daverman, of Daverman Associates, Engineering Consultants to M-C Pool; A. J. Hodge of Daverman Associates; Joseph D. Wolfe, former Electric System Manager, Traverse City, now with Lansing Electric System; A. L. (Roy) Edwards, Electric System Manager, Grand Haven; Clifford F. Pfaff, City Council, Grand Haven; J. Taber, System Operator for Wolverine Electric Cooperative; Guy Bell, Robert Riemersma and Ron Rainson, all of Holland Electric Utility; J. R. Endicott, Coldwater Electric System Manager; J. B. Sims, Consulting Engineer and former Grand Haven Electric System Manager; "Harold" Foote, retired head of Commonwealth Associates (nephew of W. A. Foote and son of J. B. Foote); Robert L. Kline, Vice Chairman of Board and Chief Executive Officer, Edison Sault Electric Co.; one other official of that company, name presently unknown; Charles Menmuir, attorney in Traverse City, formerly attorney for the city; Hugh Anderson, Assistant Attorney General for Michigan, and some of his associates; Mr. Croy and other staff personnel of the Michigan Public Service Commission; Mr. Hasper in the Michigan

Legislature; Claude Ver Duin, formerly with Michigan Municipal Association; Don Potter, Michigan Municipal Association; Joe Lower, former Manager, Southeast Michigan Cooperative; Bob Badner, REA Field Representative; Dan R. Bruggeman, attorney for Southeast Michigan Cooperative; Harry T. Running, attorney in Traverse City representing Cherryland Cooperative; Roger Westenbrook, Cherryland Cooperative; Mr. Lambert and Mr. Johnson of Cherryland; James F. Fairman, Jr. and other attorneys in the law firm of George Spiegel; Mr. Ryan, attorney in Kalamazoo; Mr. William Morris, REA (several times concerning status of negotiations between Applicant and M-C Pool and other matters in REA files concerning its dealings with Applicant with respect to cooperatives); G. L. Decker, Dow Chemical Company; an employee of the Chelsea Municipal Electric System (in which the Department learned that the sale of power at wholesale by Applicant to Chelsea may have been conditioned on Applicant's obtaining a franchise to sell power to larger customers in Chelsea; and two conversations we believe are protected by the informer's privilege.

21. (b) Provide all documents comprising, reflecting or related to communications between any employee or agent of the Department and any person or entity about Applicant's activity or proposed activity as an electric utility, including, but not limited to, Applicant's efforts to construct, finance or obtain necessary governmental approval for the operation of the Midland units. All documents attached or enclosed

with any such communication should also be provided. (Communications between Department of Justice attorneys whose content has not been revealed to any other person are not included in this request.)

Answer: (Documents provided separately.)

22. Describe each condition to Applicant's license which the Department seeks in the event it is ultimately determined that the granting of the license to Applicant would maintain a situation inconsistent with the antitrust laws.

Answer: The Department proposes the following license conditions: (1) Requirement to sell bulk power at wholesale for resale to any person engaging or proposing to engage in the sale of electric power at retail; (2) Requirement to interconnect and share reserves with any electric utility engaging or proposing to engage in the generation transmission of electric power, on fair reserve sharing principles equivalent essentially to those required by the Federal Power Commission in the Gainesville decision; (3) Requirement to engage in coordinated development with any electric utility engaging or proposing to engage in bulk power supply with which Applicant is interconnected, or which has the right to interconnect with Applicant under license condition (2), by incorporating the load requirements of such utility or utilities into the load requirements of Applicant and/or the Michigan Pool and cooperating in

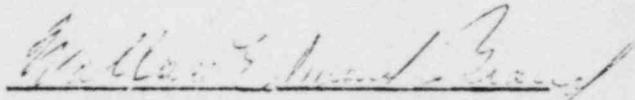
planning and constructing large base-load units to satisfy the pool load growth requirement, where Applicant's share of the cost of such cooperative venture would not exceed Applicant's cost without such coordination; and to provide, for reasonable charges, the transmission services associated with such coordinated developments; (4) Requirement to provide wheeling services so that independent systems and others may coordinate development one with the other, or as a group, for short terms based on Applicant's incremental costs, or over longer terms (longer than five years) at average system costs; (5) Requirement to provide other coordinating arrangements, such as maintenance power, on fair terms.

23. Except as otherwise described in answers to the foregoing questions, identify and describe with the specificity required in a subpoena each source or material which forms the basis of, or was used in, the preparation of each allegation contained in the advice letter. Provide all documents utilized in such preparation.

Answer: Except as otherwise described in the answers to the foregoing questions, the source for material which forms the basis of or was used in the preparation of each allegation contained in the Department's letter was the knowledge and experience of the undersigned concerning the engineering, economics, and law of electric power supply and the personal library of the undersigned.

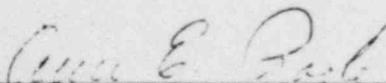
24. Except as otherwise disclosed in answer to this discovery request, state whether the information furnished is within the personal knowledge of the affiant answering the interrogatories, and, if not, the name, address, occupation and title of each person to whom the information is a matter of personal knowledge, if known, or from whom information was obtained upon which said answer or a part thereof was based.

Answer: Except as otherwise disclosed, the information furnished herein is from the personal knowledge of the undersigned and from Professor Harold Wein of Okemos, Michigan.



WALLACE EDWARD BRAND
Attorney, Antitrust Division
Department of Justice
Washington, D.C. 20530

Subscribed and sworn to before
me on the 2d Day of March, 1973.



Notary Public

My Commission Expires March 31, 1974