

12/6/72

UNITED STATES OF AMERICA
ATOMIC ENERGY COMMISSION

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

APPLICANT'S INTERROGATORIES
AND DOCUMENT PRODUCTION REQUEST TO
THE DEPARTMENT OF JUSTICE

Consumers Power Company (hereinafter "Applicant") .
propounds the attached Interrogatories and Document Production
Request to the Department of Justice with the request that the
interrogatories be answered under oath and the documents re-
quested be produced, both to be completed on or before the
16th day of January, 1973.

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By: _____
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December 6, 1972

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UNITED STATES OF AMERICA
ATOMIC ENERGY COMMISSION

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CONSUMERS POWER COMPANY) Docket Nos. 50-329A
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DEFINITIONS

As used herein, "Department" refers to the Department of Justice and any department or subdivision thereof, and any persons employed by, acting for, or on behalf of the Attorney General or the Department of Justice.

As used herein, the term "documents" means memoranda, correspondence, recordings, transcripts, contracts, agreements, books, booklets, pamphlets, catalogues, lists, periodicals and articles therefrom, newspapers and articles therefrom, letters, messages, reports, tabulations, notes, studies, analyses, pictures, charts, surveys, statistical compilations, polls, censuses, minutes of meetings, and all other writings of any kind or nature, and copies thereof, including, specifically, questionnaires, letters or other written inquiries or requests from the Attorney General and all responses thereto. The term "responses" includes all letters, memoranda, forms, and other writings of any nature containing or setting forth a respondent's answers to a questionnaire or written or oral inquiry

or request; all documents submitted by a respondent; and all memoranda and other writings, including any documents prepared by any employee or agent of the Attorney General or Department of Justice which records or recorded a respondent's oral answer to any inquiry or request.

This request extends to all relevant, non-privileged documents presently or hereafter within the possession, custody or control of the Department of Justice, whether in connection with this or any other case, proceeding, or investigation, except that it shall not be necessary, unless otherwise indicated, to produce (1) documents furnished to the Department of Justice by Applicant in this proceeding; or (2) documents which were prepared prior to January 1, 1960. The Department also need not submit documents contained in the Federal Power Commission's 1970 National Power Survey, except that where the information from the Survey would be responsive, the appropriate page reference should be specified.

If any document requested is available, but is withheld by reason of any assertion of privilege or other claim, describe each such document, including the name, address and position of the person preparing and receiving it, the form of the document, its title (if any) and the matter to which it relates. In addition, provide a brief statement of the grounds on which privilege or other claim is being asserted.

In any case where a refusal to respond to an interrogatory is based on an assertion of privilege or other claim, provide a brief statement of the circumstances involved, the name and address of any person concerned and the grounds on which privilege or other claim is being asserted.

Except where otherwise noted, the words or phrases in quotations refer to excerpts from the "advice" letter from Richard W. McLaren to Bertram H. Schur dated June 28, 1971.

SCHEDULE

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:

- (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.

(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.

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

(d) Identify each activity "which Applicant engages in as a result of the market power which the activities under the license will maintain."^{2/}

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";^{3/}

(iii) Applicant has control of "all or substantially all transmission in the market";^{4/}

(iv) Applicant is "abusing its control over transmission to retain and extend its bulk power supply monopoly";^{5/}

1/ Quotation from page 3 of the Reply of the Department of Justice on Issues Other than Disqualification Raised by Applicant's Answer of May 9, 1972, dated June 9, 1972. [Hereinafter, "Department Reply."]

2/ Ibid.

3/ Quotation from page 1 of the Justice Department's Suggested Outline of Issues attached to a letter from Wallace E. Brand to Robert Liedquist, dated November 23, 1972.

4/ Ibid.

5/ Ibid.

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

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

(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.

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.^{7/} Such document should include, but not be limited to, documents relating to:

6/ The allegation to which this question refers is contained in page 6 of the Justice Department's Motion to Compel, dated August 16, 1972.

7/ While Applicant regards the events prior to 1960 to be irrelevant, the Department apparently intends to offer evidence the historic development of the electric utility industry Michigan. Prehearing Conference, Oct. 25, 1972, Tr. 139. This inquiry is made without waiving the right to object to the admission of that evidence.

(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.

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-part, utilities in Michigan";

(ii) Each provision of each of Applicant's wholesale contracts which may "restrict the right of the pur-chaser 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 pro- vision 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 anti-competitive.

(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.

(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.

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.

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.

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";^{8/}

(c) "Applicant could market no firm power from either nuclear unit if operated in isolation from the remainder of Applicant's system";^{9/}

(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";^{10/}

(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

8/ Quotation from page 26 of the Department Reply.

9/ Id. at 26-27.

10/ Id. at 27.

capable of furthering sufficient load growth to fully load
11/
the capacity of the units in a relatively short time."

7. (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.

(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

11/ Quotation from page 27 of the Department Reply.

coordination by Applicant with any other system or group of systems.

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".

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.

(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".

(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.

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).

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

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.

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

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

(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 MMCPP in the MMCPP negotiations.

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 or 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";

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

(b) Provide all documents which refer to, describe, evaluate or comment upon any instance or method mentioned in response to subpart (a) of this question.

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).

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 MMCPP.

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.

(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 MMCPP 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.

(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.

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.

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.

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 or ...ve viability in each market; and

(iii) All relevant data relating to past, present or future competitive viability of Applicant's "competitors".

(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.

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.

(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.)

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.

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.

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.

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ATOMIC ENERGY COMMISSION

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CONSUMERS POWER COMPANY) Docket Nos. 50-329A
(Midland Units, 1 & 2)) and 50-330A

CERTIFICATE OF SERVICE

I hereby certify that copies of Applicant's Interrogatories and Document Production Request to the Department of Justice, dated December 6, 1972, in the above-captioned matter, have been served on the following by deposit in the United States mail, first class or air mail, this 6th day of December, 1972:

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