

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING APPEAL BOARD



In the Matter of
CONSUMERS POWER COMPANY
(Midland Plant, Units 1 & 2)

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9-8-75

NRC Docket Nos. 50-329A
50-330A

NRC REGULATORY STAFF'S EXCEPTIONS
TO THE INITIAL DECISION

Pursuant to 10 CFR Section 2.762, the NRC Regulatory Staff (Staff) hereby takes the following exceptions to the initial decision rendered by the presiding Atomic Safety and Licensing Board (Board) on July 18, 1975.

Although we have identified 140 specific exceptions, our supporting brief will to the extent possible, treat these exceptions in subject groups. This will eliminate repetitive discussion, focus the argument on the significant issues presented and assure a more orderly presentation. We will, of course, clearly identify the numbered exceptions involved in any consolidated discussion.

The exceptions are stated so as to correspond to the format of the initial decision.

I. Definitions

A. General

(1) The Board erred in its definition of terms. (pp. 10-13).

B. Specific

(2) The Board erred in finding that "'Bulk power' is power supplied by a utility either (1) to its own distribution system, or (2) to a wholesale customer." (p. 11).

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(3) The Board erred in finding that "Wheeling" is limited to "...the transportation of wholesale power between the facilities of two utilities over the transmission system of a third utility". (p. 11).

(4) The Board erred in finding that "'Coordination' means mutual assistance in the electric utility industry." (p. 11).

(5) The Board erred in finding that "'Coordination' means the interchange of beneficial services between cooperating electric utilities through an agreement which confers on each party a net benefit not attainable by such electric utilities operating independently." (p. 11).

(6) The Board erred in finding that a "'Coordination Agreement' is a mutual assistance agreement in the electric industry which confers on each party a net benefit." (p. 11).

(7) The Board erred in finding that "'[o]perational Coordination' means the interchange or sharing of one or more of the following: Reserve sharing, emergency energy or power, maintenance energy or power, economy energy or power, dump energy or power, seasonal or time-diversity energy or power, unified control of generation transmission facilities." (p. 12).

(8) The Board erred in finding that "firm power" can be adequately defined as "highly reliable" power. (p. 13).

(9) The Board erred in finding that "...unit power is a species of interruptible power". (p. 13).

II. Conceptual Conclusions

(10) The Board erred in finding that "[s]upplying power from large generating units to achieve lower energy cost is in conflict with achieving a reliable system with adequate reserves." (p. 21).

III. Relevant Matters in Controversy

(11) The Board erred in finding that the relevant issues in controversy are all concerned with coordination as defined by the Board. (pp. 22-29).

IV. Burden of Proof

(12) The Board erred in finding that the burden of proof exclusively rests upon the Justice, Staff and the Intervenors. (pp. 30-31).

V. Basic Legal Concepts

A. General

(13) The Board erred in its analysis of the Basic Legal Concepts in this proceeding. (pp. 31-105).

(14) The Board erred in finding that the Legislative History accompanying Section 105 of the Atomic Energy Act is not clear. (pp. 31-33).

B. Situation Inconsistent With The Antitrust Laws

(15) The Board erred in finding that the "[t]he elimination of one or more competitors by competitive conduct is not inconsistent with the Sherman Act." (p. 34).

(16) The Board erred in finding that under the Federal Trade Commission Act emphasis was to be placed on consumers and competitors, regardless of whether the forbidden activities affect competition. (p. 36).

(17) The Board erred in finding that injury to stockholders was on the same level as injury to competition, competitors, and consumers. (p. 36).

(18) The Board erred in finding that an inconsistency under the antitrust laws must be comprised of either a scheme or a conspiracy. (p. 37).

(19) The Board erred in finding that "[t]he cases dealing with violation of the Sherman Act and the Clayton Act provide little guidance in the selection of appropriate criteria for determining anti-competitive conduct which does not amount to a violation of antitrust laws." (p. 37).

(20) The Board erred in finding "that a 'situation inconsistent with the antitrust laws' must mean anticompetitive conduct". (p. 37).

(21) The Board erred in finding that the prohibited conduct under Section 5 of the Federal Trade Commission Act is restricted to a narrow definition of anticompetitive conduct and to practices heretofore determined to be unfair. (pp. 38-40).

(22) The Board erred in finding that the appropriate precedent for determining the meaning of violation of the antitrust laws will be found exclusively in "authoritative federal court opinions". (p. 41).

C. Causal Connection - Nexus

(23) The Board erred in finding that the matter of nexus must be resolved as to each alleged anticompetitive practice. (p. 42).

(24) The Board erred in limiting its analysis of nexus to the decisions in Gulf States and LP&L. (p. 43).

(25) The Board erred in finding that the granting of a license creates a "right" to conduct licensed activities which are immune from the antitrust laws. (p. 43).

(26) The Board erred in finding that the lawful use of the licensed activities are immune from the antitrust laws. (p. 43).

(27) The Board erred in finding that intent is an important factor in weighing alleged anticompetitive conduct under 105(c). (p. 44).

(28) The Board erred in its analysis of the "nexus" question and in finding that nexus exists between otherwise lawful activities under a license or proposed license and a situation inconsistent with the antitrust laws if and only if the said activities are misused so as to be a material element and a substantial factor in a scheme or conspiracy, the purpose or effect of which is to cause creation or maintenance of the said situation. (pp. 41-51).

D. Misuse of Activities Under the License

(29) The Board erred in finding that patent law forms the best analogy for interpreting Section 105c of the Atomic Energy Act. (p. 51).

(30) The Board erred in finding "...the public automatically has access to and receives benefits by the availability of electric energy from the activities under the license". (p. 53).

(31) The Board erred in finding that the provisions of labor law are analogous to proceedings brought under 105(c). (pp. 56-60).

(32) The Board erred in finding that a grant of immunity regarding the licensed activity will be terminated when the activity is misused, but only if that misuse is a material element and a substantial factor in a scheme or conspiracy. (p. 60).

(33) The Board erred in finding "...that the use of activities under a Federal grant within the scope and for the very purpose contemplated by the grant is immunized from the antitrust laws". (p. 60).

(34) The Board erred in finding that "[n]exus exists between otherwise lawful activities under a proposed license and a situation inconsistent with the antitrust laws, if, and only if, the said activities are misused so as to be a material element and a substantial factor in a scheme or conspiracy the purpose or effect of which is to cause the creation or maintenance of said situation." (p. 60-61).

(35) The Board erred in finding that "[a]ctivities under a license issued by the Commission pursuant to statute per se cannot create or maintain a situation inconsistent with the antitrust laws." (p. 61).

(36) The Board erred in finding that "[a]ctivities under a license issued by the Commission pursuant to statute, can create or maintain a situation inconsistent with the antitrust laws, if, and only if, such activities constitute a material element and a substantial factor in a scheme or conspiracy the purpose or effect of which is to cause the creation or maintenance of a situation inconsistent with the antitrust laws." (p. 61).

E. Time Periods

(37) The Board erred in finding that "[t]he only relevant and material facts of record will be those tending to prove or disprove the existence of a scheme or conspiracy to create such situation by said misuse." (p. 62).

F. Mootness

(38) The Board erred in finding that if a situation inconsistent with the antitrust laws was found, but had ceased to exist prior to the date of the close of the record, then a situation inconsistent with the antitrust laws cannot be maintained. (p. 63).

(39) The Board erred in finding that the applicant's contracts with other utilities are now under the present jurisdiction of the FPC, which must consider antitrust aspects of the matters submitted to it. (p. 65-66).

G. Coordination - Net Benefits

(40) The Board erred in finding that as a matter of law a net benefit to the applicant is required before the applicant is obligated to coordinate with the smaller utilities. (p. 67).

(41) The Board erred in finding that "...officers and directors should enter into coordination arrangements if the benefit to the utility results," but that "[t]hey do not have an obligation to enter into alleged coordination agreements from which no net benefit results." (pp. 70-72).

(42) The Board erred in finding that the net benefit standard is applicable in this proceeding. (pp. 70-71).

(43) The Board erred in finding "...that the management of Applicant is forbidden from entering into alleged coordination agreements which said management believes will result in a net detriment to the Applicant." (pp. 71-72).

H. The Gainesville Formula

(44) The Board erred in finding that the Federal Power Commission has exclusive jurisdiction to approve coordination agreements. (p. 81).

I. Refusal to Coordinate

(45) The Board erred in finding that the antitrust laws are primarily concerned with acts as opposed to refusals to act. (p. 81).

(46) The Board erred in finding that "[t]he reason that a refusal to give aid is not unlawful is that he who refuses to help does not cause injury." (p. 83-84).

(47) The Board erred in finding that "...the refusal [to coordinate] does not cause whatever difficulties the smaller utility may have". (p. 83).

(48) The Board erred in finding that if extrinsic factors were the cause of the lack of competitive ability on the part of a smaller utility and that those causes were not directly related to a dominant or large utility, then the large utility could not be charged with the obligation of undertaking an affirmative duty to coordinate or to render other aid, in the absence of a statutory duty. (pp. 83, 86).

(49) The Board erred in finding that under the antitrust laws, a party need not aid its competitor. (p. 84).

(50) The Board erred in finding that "[u]nder the antitrust law mutual assistance agreements between competitors are suspect." (p. 84).

(51) The Board erred in finding that "[v]oluntary coordination is permissive and not mandatory. No other statute is known to us and none has been called to our attention which makes it a duty to engage in voluntary coordination." (p. 85).

(52) The Board erred in finding that "...as a matter of law, that unilateral refusals to assist competitors, per se is not anticompetitive conduct...." (pp. 85-86).

(53) The Board erred in finding "...that unilateral refusal to enter voluntarily into coordination agreements with competitors per se is not anticompetitive conduct and is not a scheme or conspiracy the purpose or effect of which is to cause the creation or maintenance of a situation inconsistent with the antitrust laws. Such refusal causes no injury to competitors". (p. 86, 86).

(54) The Board erred in finding that "[i]f a utility has an anticompetitive scheme, such as monopolization, and if its unilateral voluntary refusal to coordination with its actual or potential competitor is a material element and a substantial factor in said scheme, then there is a misuse of its otherwise lawful refusal to coordinate." (p. 86).

(55) The Board erred in finding that certain coordination agreements could be required "...provided that the third party brings to the arrangement such contribution as to result in net benefits to all three parties". (p. 88).

(56) The Board erred in relying on Section 1 conspiracy cases in this proceeding. (p. 88).

J. Refusal to Wheel

(57) The Board erred in finding that since Congress chose not to require wheeling by legislative mandate that that is dispositive of that particular subject. (pp. 90-91).

(58) The Board erred in finding "...as a matter of law that unilateral refusal to wheel power for competitors per se is not anticompetitive conduct and is not a scheme or conspiracy the purpose or effect of which is to cause the creation or maintenance of a situation inconsistent with the antitrust laws". (p. 92).

(59) The Board erred in finding that "...as a matter of law, that the bottleneck situation applies only to conspiracies and hence, is inapplicable to a unilateral refusal to wheel". (p. 95, 165).

(60) The Board erred in finding that the Otter Tail decision stands for the proposition that the refusal to deal, or the refusal to wheel are not sufficient to find a monopolistic scheme or conspiracy when such refusals are not part of a larger scheme. (p. 95).

(61) The Board erred in finding that "[t]he antitrust laws deal only with anticompetitive business conduct." (p. 96).

(62) The Board erred in finding that the facts in Otter Tail fit the Board's analysis of the nexus question. (p. 96).

K. Refusal of Access to Nuclear

(63) The Board erred in finding that the use of activities under a grant authorized by Congress are immune from the reach of the antitrust laws. (p. 98).

(64) The Board erred in finding that as a matter of law that "...if an Applicant for a license intends to construct and operate a nuclear power facility solely for the purpose of supplying power to its customers, unilateral refusal to provide its competitors with access to

such facilities is not anticompetitive conduct...." (p. 99).

L. Expert Opinions

(65) The Board erred in finding there was to be "...little weight given to opinion testimony of experts relying on hypothetical fact situations which have no basis in the record". (p. 99-104).

VI. Background Facts

A. General

(66) The Board erred in its analysis of the "Background Facts". (pp. 105-173).

B. Specific

(67) The Board erred in finding that "[a]lthough there are no exclusive franchises in Michigan..., the unwillingness of The Michigan Public Service Commission (MPSC) to approve a franchise to any applicant utility in the service area of another utility in the absence of unsatisfactory service indicates that Applicant probably would not be permitted to expand its service area in Michigan even if it so desired...." (p. 110).

(68) The Board erred in finding that the municipals "... have been able, tough and aggressive competitors of Applicant for a long time." (p. 115).

(69) The Board erred in finding that the estimated system wide cost for the Midland Units will be somewhat higher than system average when the Midland Unit goes into effect. (pp. 118-119).

(70) The Board erred in finding that "...there is no evidence that Midland power will be cheaper..." than system average cost. (p. 119).

(71) The Board erred in finding that the applicant is entitled to apply the entire output of the Midland plant to serve its requirements. (p. 119, 145).

(72) The Board erred in finding relevant the computation of cost of the experimental 75 megawatt unit at Big Rock. (pp. 120-121).

VII. Search of The Record For Possible Situations Within The Relevant Matters In Controversy Which Might Be Created Or Maintained By Activities Under The Licenses

A. General

(73) The Board erred in finding that there were no situations inconsistent with the antitrust laws which were created or maintained by the activities under the licenses, and which were within the relevant matters in controversy. (pp. 125-148).

B. Situation 1: Prevention of Coordination By Contract Provision

(74) The Board erred in finding that "Mr. Brush's interpretation of the language [regarding]... coordination between Lansing and the M-C Pool is completely unrealistic." (p. 126).

(75) The Board erred in finding that the insertion of "provision 9" in applicant's contracts did not give it the power to grant or deny coordination among the smaller utilities. (p. 127).

(76) The Board erred in concluding as a matter of law that no situation inconsistent with the antitrust laws exists by the virtue of the existence of "provision 9". (p. 127).

(77) The Board erred in finding that "there is no nexus between the activities under the license and..." the situation regarding "provision 9". (p. 127).

C. Situation 2: Prevention of Operational Coordination
By Refusal of Applicant To Coordinate

(78) The Board erred in finding that "...access to coordination has [is limited to] two facets: (1) coordination between the Applicant and one or more of the smaller utility systems in the relevant geographic market; (2) coordination between two or more of the smaller utility systems in the relevant geographic market." (p. 128).

(79) The Board erred in finding that the applicant's refusals to enter into coordination agreements with Northern Michigan, Wolverine and Traverse City were "clearly correct". (p. 130).

(80) The Board erred in finding that "as a matter of law" the applicant's management had a duty to its customers and stockholders to refuse operational coordination. (p. 131).

(81) The Board erred in finding that "...[a]pplicant could find no net benefit in reserve sharing with them [Northern Michigan or Wolverine]." (p. 132).

(82) The Board erred in finding that the record shows "...no smaller utility in the relevant geographic market which has adequate

reserves to support a coordination agreement". (p. 133).

(83) The Board erred in finding that "...Applicant has never refused operational coordination with a smaller utility in the relevant geographic market and that Applicant has operational coordination agreements with every smaller utility in the relevant geographic market capable of coordinating". (p. 133).

(84) The Board erred in finding "...as a matter of law that there is no situation inconsistent with the antitrust laws arising out of Applicant's alleged refusal to voluntarily operationally coordinate with the smaller utilities". (pp. 133-134).

(85) The Board erred in finding that "...there is no nexus between the said activities under the license and..." the situation regarding the prevention of operational coordination by refusal of Applicant to coordinate. (p. 134).

D. Situation 3: Prevention of Coordination by Exclusion
From the Michigan Pool

(86) The Board erred in finding that while the applicant had the power to exclude any other entity from joining the Michigan Pool, since the power was never exercised there was no situation inconsistent with the antitrust laws. (pp. 136-137).

(87) The Board erred in finding "...as a matter of law that there is no situation inconsistent with the antitrust laws arising out of Applicant's alleged use of its power to exclude the smaller utilities from

the Michigan Pool. (p. 137).

(88) The Board erred in finding "...as a matter of law that there is no nexus between said activities..." under the license and the prevention of coordination by exclusion from the Michigan Pool. (p. 137).

E. Situation 4: Prevention of Coordination By Refusal of Applicant To Wheel Between or Among The Smaller Utilities

(89) The Board erred in finding that "[t]he Applicant's transmission system is not a unique facility, without which the smaller systems cannot coordinate among themselves....". (p. 138).

(90) The Board erred in finding that "...it is fair to conclude that M-C Pool deemed 138 kv transmission to be adequately high voltage for its needs and that the M-C Pool deemed the construction of over 500 miles of such line over new rights-of-way (not economizing by use of old rights-of-way) to be economically feasible". (p. 139).

(91) The Board erred in finding that "...Mr. Steinbrecker... gave the impression of being quite self-satisfied with the plans of the M-C Pool to have its own transmission system". (p. 139).

(92) The Board erred in finding that the M-C Pool management would not deem the transmission system of the applicant "a 'unique facility' as this term is used in the bottleneck cases". (p. 140).

(93) The Board erred in finding that the testimony of the experts regarding the "uniqueness" of high voltage transmission systems

was to be disregarded. (p. 140).

(94) The Board erred in finding that the smaller utilities are incapable of coordination because of their lack of reserves. (p. 140).

(95) The Board erred in finding "...that Applicant does not have the power to grant or deny operational or planning coordination between or among the smaller utility systems capable of coordination". (p. 141).

(96) The Board erred in finding any relevance in the fact that "[t]here is no evidence that any two or more of the smaller utilities ever agreed to coordinate subject to obtaining wheeling, or requested wheeling from Applicant and were denied". (p. 141).

(97) The Board erred in finding that "...Applicant's refusal to wheel was [not] part of a larger scheme or conspiracy to bring into being a situation inconsistent with the antitrust laws". (p. 142).

(98) The Board erred in finding "...as a matter of law that there is no situation inconsistent with the antitrust laws arising out of Applicant's refusal to wheel for the smaller utilities". (p. 142).

(99) The Board erred in finding "...that there is no nexus between the activities under the license and..." the prevention of coordination by refusal of applicant to wheel between or among the smaller utilities. (p. 143).

F. Situation 5: Prevention of Coordination By Applicants
Refusal to Grant Unit Power or Joint Venture Access To
Midland Plant, Units 1 & 2

(100) The Board erred in finding that "...none of the smaller utilities requested participation in the Midland Plant". (p. 145).

(101) The Board erred in finding that the municipalities' request for participation, coming four years after the publicized date of construction initiation in 1967, were improper requests. (pp. 145-147).

(102) The Board erred in finding that "...each party binds itself at the beginning of the project as to the terms of participation in the projected facility". (pp. 145-146).

(103) The Board erred in finding as a matter of fact that "...there is no surplus power to be sold". (p. 146).

(104) The Board erred in finding that it was relevant that the applicant may be "short" of planned power if the smaller utilities were to enjoy some of the benefits of the Midland Units. (p. 146).

(105) The Board erred in finding that the applicant would be disadvantaged if it was forced to buy wholesale power to cover power shortages caused by the municipalities participating in the Midland Units. (p. 146).

(106) The Board erred in finding that "...the grant of access to either unit power or joint venture would result in a detriment and a financial burden to Applicant and, hence would NOT be coordination...." (p. 146).

(107) The Board erred in finding that the refusals to grant unit power or joint venture access to Midland were not refusals to engage in developmental coordination with the smaller utilities. (p. 147).

(108) The Board erred in finding that the applicant does not have a duty to offer or agree to grant to the small utilities access to the unit. (p. 147).

(109) The Board erred in finding that the only duty on the part of the applicant to share the facility with its competitor arises under the "good Samaritan" principle. (p. 147).

(110) The Board erred in finding that the applicant need not share with its smaller competitors the benefits of the applicant's size and financial assets which allow it to have nuclear power. (p. 147).

(111) The Board erred in finding that the antitrust laws and the policies underlying them do not require the applicant to grant coordination and access to other utilities within the relevant geographic area. (p. 147).

(112) The Board erred in finding that since the applicant never used its dominance in an anticompetitive fashion against smaller utilities there was no situation inconsistent with the antitrust laws. (p. 148).

(113) The Board erred in finding that "...there is no situation inconsistent with the antitrust laws arising out of Applicant's alleged use of such power to prevent developmental coordination between the Applicant and said smaller utilities". (p. 148).

(114) The Board erred in finding that the applicant intends to use the license activities for the very purpose which the license was authorized under the statute. (p. 148).

(115) The Board erred in finding "...as a matter of law that there is no nexus between the activities under the license..." and the prevention of coordination by applicant's refusal to grant unit power or joint venture access to the Midland Plant, Units 1 and 2. (p. 148).

VIII. Situations Not Within the Relevant Matters in Controversy and Not Within the Relevant Market

A. General

(116) The Board erred in the analysis of situations which the Board deemed outside the relevant matters in controversy. (pp. 150-168).

B. Situation 6: Attempt to Monopolize the Entire Retail and Wholesale Markets

(117) The Board erred in finding that there must be not only intent but the power to carry out the scheme to find an inconsistency with Section 2 of the Sherman Act. (pp. 155-156).

(118) The Board erred in finding that the applicant did not have the power to carry out a scheme or pattern of acquisition, and that therefore no situation inconsistent with the antitrust laws arose. (p. 156).

(119) The Board erred in finding "...as a matter of law that there is no nexus between the activities under the licenses and the..." attempt by the Applicant "...to monopolize the entire retail and wholesale markets". (pp. 157, 150).

C. Situation 8: The Regional Power Exchange Market

(120) The Board erred in finding that "Justice and Intervenors contend that such smaller utilities have the right to insist that Applicant enter the wheeling business...." (p. 165).

(121) The Board erred in finding that there was no requirement that the applicant enter into the wheeling business to give smaller utilities a wider choice of sources of wholesale power. (p. 165).

(122) The Board erred in finding that the "...Applicant's transmission system was not a bottleneck". (p. 166).

(123) The Board erred in finding that "...the smaller utilities have no such right [to wheeling and] if, in fact, such right exists, this is the wrong forum for enforcement thereof". (p. 166).

(124) The Board erred in finding that the right to wheeling is not within the relevant matters in controversy to be considered in this proceeding. (p. 166).

IX. Summary of Situations Alleged to be Inconsistent With The Antitrust Laws

(125) The Board erred in finding that "The record in this proceeding does not disclose substantial evidence of any fact or facts within the relevant matters in controversy which constitute a scheme or conspiracy the purpose or effect of which is to cause the creation or maintenance of a situation inconsistent with the antitrust laws." (p. 168).

(126) The Board erred in finding that the "Applicant's activities under the Midland licenses are not a material element and significant factor in any actual or alleged scheme or conspiracy the purpose or effect of which is to cause the maintenance of a situation inconsistent with the antitrust laws." (p. 168).

(127) The Board erred in finding that "No nexus exists between Applicant's activities under the Midland licenses and any actual or alleged situation inconsistent with the antitrust laws." (p. 168).

X. Miscellaneous Topics

A. General

(128) The Board erred in its analysis of the miscellaneous topics. (pp. 169-180).

B. Relation of Public Interest to this Opinion

(129) The Board erred in finding that behavior contrary to the public interest is not necessarily inconsistent with the antitrust laws. (p. 169).

C. Influence of Minimum Plant Size on Decision

(130) The Board erred in finding that "...there is only heresay evidence..." to support the proposition that a nuclear unit can not be economically sized at below 500 megawatt capacity. (p. 173).

(131) The Board erred in finding that it would be inappropriate for them to consider the matter of size of a nuclear power unit as it relates to the question of access thereto. (p. 173).

(132) The Board erred in finding that the 75 megawatt Big Rock type nuclear plant is viable and practicable and would serve or could serve as an alternative source of generation. (p. 174).

(133) The Board erred in finding that "...[t]here is no substantial evidence in the record of this proceeding that the smaller utilities are precluded from building their own nuclear power facilities because of size limitations." (p. 174).

D. Wholesale Power As Adequate Access to the Midland Plant

(134) The Board erred in finding that those consumers and competitors who do not enjoy the benefits of nuclear power do so "...at their choice or at the choice of the management of the smaller utilities supplying power to them". (p. 176).

(135) The Board erred in finding that the smaller utilities would be creating a public harm if their choice of access were to result in a higher cost of power to applicant's customers. (p. 176).

(136) The Board erred in finding that the sale of retail and wholesale power at existing rates was adequate to and the equivalent of access to nuclear power. (p. 175).

E. Applicant's Monopoly Power

(137) The Board erred in finding that "...[t]he only evidence involving situations of possible unlawful use of or extension of monopoly power by Applicant in the wholesale and retail market were dealt with..." in the opinion of the Board. (p. 178).

(138) The Board erred in finding that "[t]he only evidence involving situations of possible use of monopoly power in the transmission field were dealt with..." in the opinion of the Board. (p. 178).

XI. Decision and Order

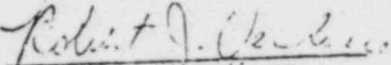
A. General

(139) The Board erred in its decision and order. (pp. 181-183).

B. Specific

(140) The Board erred in finding that "... As to the broad issue, we hold that activities under the licenses will not create or maintain a situation inconsistent with the antitrust laws as specified in Subsection 105a of the Atomic Energy Act of 1954, as amended." (p. 182).

Respectfully submitted,


Robert J. Yerdisco
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Dated at Bethesda, Maryland
this 8th day of September 1975.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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CONSUMERS POWER COMPANY
(Midland Plant, Units 1 and 2)

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} NRC Docket Nos. 50-329A
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CERTIFICATE OF SERVICE

I hereby certify that copies of NRC REGULATORY STAFF'S EXCEPTIONS TO THE INITIAL DECISION, dated September 8, 1975, in the captioned matter, have been served upon the following by deposit in the United States mail, first class or air mail, this 8th day of September 1975:

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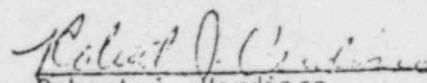
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