

UNITED STATES OF AMERICA
BEFORE THE
ATOMIC ENERGY COMMISSION

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

APPLICANT'S ANSWER TO MOTION
TO PRODUCE NON-PRIVILEGED
DOCUMENTS

Pursuant to Section 2.730(c) of the Commission's Rules of Practice, 10 C.F.R. Part 2, Consumers Power Company ("Applicant") answers and opposes the Motion of the Interveners to produce all of the "non-privileged" documents which repose in the files of Applicant's Washington counsel.

For nearly six months, the Interveners have sought to impugn the bona fides of Applicant's compliance with their discovery demands, particularly the Joint Document Request of July 26, 1972. Although we believe, and have urged, that the Interveners made no prima facie showing of the inadequacy of the file search process, the Board's September 25 order permitted them to review Applicant's counsel's instructions about the file search and to "sample" 20% of the documents provided by the Company to its Washington counsel.

Despite serious reservations about the lawfulness of the September 25 order, Applicant duly complied with it. The results of releasing the file search instructions and the 20%

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sample more than confirm the bona fides of Applicant's file search and production processes and completely refute the efforts of the Intervenors (and the Department of Justice) to discredit the veracity of Applicant's many affirmations of compliance.

I.

A review of the file search instructions reveals why a substantial number of documents were sent to Washington counsel for review but were not produced. First, the instructions urged the Company file searchers to err on the side of inclusion: the instructions of June 21, 1972, stress that "all judgments by the reviewing [Company] attorney should be weighted toward inclusion of borderline documents" (Emphasis in the original) (pp. 3-4). (See also instructions dated August 31, 1972: The searchers "should be instructed to err on the side of inclusion in case of doubt", p. 1).

Second, counsel's instructions of September 21, 1972, recommended that "the file search continue pending the outcome of discussions of counsel and the Board's action on our objections." (p. 1) (A copy of the instructions is appended hereto as Attachment C.) Since the Board's order modifying a number of requests did not come down until November 28, 1972, -- months after commencement of the search -- many documents were extracted which were subsequently deemed irrelevant by the Board.^{1/}

^{1/} Although the instructions of September 21 recommended that documents responsive to challenged requests not be extracted and that their presence merely be noted, this proved impractical and such documents were, in fact, extracted during the file search.

II.

The "sampling" process ordered by the Board verifies that the Company transmitted many documents to Applicant's counsel which were not responsive to the Joint Document Request, as modified by agreements of counsel and the Board's order. Of the more than 2,500 pages of documents sampled by the Intervenors, only a small fraction, i.e., 121 documents, are claimed in their Motion to be responsive. Moreover, our review of these claims reveals no more than five to be arguably responsive to the Joint Request, and in these instances we submit that counsel's explanation why the document was not produced is manifestly reasonable.

We have appended hereto (as Attachment A) an explanation as to why the 121 documents listed by the Intervenors are not responsive to the items of the Joint Request set forth in their Motion. In many instances, the claims are patently frivolous. For example, the Intervenors term many letters and memos responsive to items 3(a) to 3(d) -- items which are restricted to "letters and memoranda to and from Company officers" -- even though neither the author, addressees, or other noted recipients of the document are officers.

Similarly, the Intervenors cite items such as 3(e), 5(a), and 10(b) which were either explicitly deleted or modified by the Board's order of November 28, 1972, or by agreement of counsel. Intervenors apparently would have the Board ignore

the fact that its order and agreement of counsel substantially narrowed the scope of the Joint Document Request.

Thus, we submit, at most, five documents, or less than one percent of the sampled documents, can arguably be deemed responsive to discovery; and even as to those, Applicant's explanation as to why they are not responsive demonstrates the reasonableness and good faith of the document production process.

III.

In view of the foregoing, the Intervenors' Motion to inspect the remaining documents in the files of Applicant's counsel is clearly unreasonable and unlawful. We have previously outlined the substantial prejudice to Applicant which will result should the Intervenors be permitted to embark upon the course they propose. See "Applicant's Motion to Stay and Reconsider Order of the Board," filed October 1, 1973, pp. 5-8. Since the bona fides of the file search have now been verified through disclosure of counsel's instructions and through the "sampling" process, there is no reason to subject Applicant to such prejudice.

In addition, permitting the Intervenors to roam through counsel's files with the hope of finding a handful of documents possibly germane to this proceeding flies in the face of Sections 2.740 and 2.741 of the Commission's Rules. These

sections require that each requested document or document category be described "with reasonable particularity" -- a standard which explicitly proscribes the "fishing" expedition which the Intervenors here propose. Section IV, Appendix A, 37 F.R. 15134.

IV.

The Motion also seeks to secure production of the 121 documents which were culled from Applicant's sampled materials. As we have shown, these documents are not responsive to the Joint Document Request. However, the Intervenors' Motion argues that they should be produced because they are "relevant" to their case.

The purpose of the sampling process was not to permit the Intervenors to review the documents it failed to demand in the Joint Document Request or to engage in additional out-of-time discovery. Rather, once the Board has established that a document is not responsive to the Joint Request, no further inquiry as to "relevance" is appropriate. The Intervenors' efforts to amend and broaden their document request under the guise of "sampling" should not be countenanced by the Board.

V.

Applicant has previously expressed its concern about unwarranted disclosure of its documents and about the prospect of delay in these proceedings because of a failure to finally terminate discovery. We believe that all parties have been afforded reasonable opportunity for discovery, that each party

has sufficient information in its possession to present its case, and that further delay of this proceeding would be contrary to the interests of the Applicant and the public interest.

We submit that Applicant's compliance with the September 25 order demonstrated with finality the good faith of our compliance with the Joint Document Request.

Wherefore, Applicant urges that the Motion to Produce Non-Privileged Documents be denied.

Respectfully submitted,

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November 21, 1973

Of Counsel:

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<u>Document Page</u>	<u>Claimed Joint Request Numbers</u>	<u>Explanation Why Not Produced</u>
6-7	5(a)	5(a) refers to "new electric loads," but the Essexville Plant load referenced in this document is an <u>existing</u> load seeking "service" improvements (p. 2, ¶ 2).
	3(c)	3(c) refers to Board of Directors and executive committee minutes or "letters and memoranda to or from <u>Company officers</u> ," but this document is a memo to and from non-officials. (A list of Company officers and their dates of service is attached hereto as Attachment A).
9	5(a) and 3(c)	Not produced for the reasons set forth in explanation accompanying document numbers 6-7.
11	5(a) and 3(c)	Not produced for the reasons set forth in explanation accompanying document numbers 6-7.
12-13	5(a)	Not produced for the reason set forth in explanation to 5(a) accompanying document numbers 6-7.
19-20	5(a)	5(a) refers to "new electric loads," but the Northwind Apartments referenced in this document is an <u>existing</u> load of Consumers which is complaining about service.
21		5(a) refers to "new electric loads," but the Northwind Apartments references in this document is an <u>existing</u> load of Consumers which is complaining about service.

<u>Document Page</u>	<u>Claimed Joint Request Numbers</u>	<u>Explanation Why Not Produced</u>
23-49	5(f) (2)	5(f) (2) refers to "inquiries invitations, negotiations and proposals for the <u>acquisition of electric power facilities,</u> " but this document consists merely of the minutes of a state senate committee meeting discussing the sale of a hospital heating plant not an electric power facility.
	5(h)	5(h) relates to " <u>the Company's cost of fuel,</u> " while their document refers to the <u>state hospital's cost of steam generation.</u>
	5(j)	Although these state senate committee minutes contain a "cost analysis" referenced in 5(j), it is presented in the context of "political" activity by Applicant and thus exempt under the Board's order of November 28, 1972 (p. 2).
50-63	5(f) (2)	Not produced under 5(f) (2) for the reasons set forth with respect to 5(f) (2) discussion under document numbers 23-49.
	5(h)	Not produced under 5(h) for the reasons set forth with respect to 5(h) discussion under document numbers 23-49.
	5(j)	5(j) calls for " <u>cost analysis</u> " of other systems' operation but this document consists only of state senate committee minutes.
69-71	5(f) (2)	5(f) (2) relates to "acquisition" of electric power facilities, but this document makes no mention of acquisition of electric power facilities, only steam heat facilities.

<u>Document Page</u>	<u>Claimed Joint Request Numbers</u>	<u>Explanation Why Not Produced</u>
	5(h)	Not produced under 5(h) for the same reasons as set forth in document numbers 23-49.
	5(j)	5(j) calls for "cost. . . analysis" of other systems' operations, but this document consists only of a summary of state senate committee minutes.
72-73	5(f)(2)	Not produced under 5(f)(2) for the same reasons as set forth in document numbers 69-71.
	5(h)	Not produced under 5(h) for the same reasons as set forth in document numbers 23-49.
	5(j)	Not produced under 5(j) for the same reasons set forth in document numbers 69-71.
75-76	5(f)(2)	Not produced under 5(f)(2) for the reasons set forth in document numbers 69-71.
	5(h)	Not produced under 5(h) for the reasons set forth in discussion about document numbers 23-49.
	5(j)	Not produced under 5(j) for the same reasons set forth in document numbers 69-71.
84-86	3(c)	Not producible under 3(c) for the same reasons set forth in document numbers 6-7, <u>i.e.,</u> no officers involved in this memo.
	5(a)	Through agreements of counsel (see Attachment B hereto) only documents which <u>on their face</u> indicate that a "new load" may be served by another electric utility are called for by this request. Since no mention of other electric utilities is mentioned in this document, it is not

<u>Document Page</u>	<u>Claimed Joint Request Numbers</u>	<u>Explanation Why Not Produced</u>
		responsive to 5(a).
97-100	3(f)	3(f) calls for Board of Directors and executive committee minutes or "letters and memoranda to or from Company officers," but this document is a memo to and from non-officers (A list of Company officers and their dates of service is attached hereto as Attachment D).
	5(j)	5(j) calls for " <u>comparisons of . . . rates . . . of the Company vis a vis other utilities,</u> " but this document refers only to another utility's rates.
102-3	8(j)	Not produced for the same reason set forth in discussion about 8(j) concerning document numbers 97-100.
149-152	3	The Motion does not specify which of the six subjects of item 3 it deems the document responsive. In any event, item 3 generally refers to " <u>minutes of meetings of the Board of Directors and the executive committee of the Company,</u> " while this document relates to a <u>planning committee of the Michigan Pool.</u>
153-155	5(n); (o); 9(a)	The Board's order of November 28, 1972, limited "minutes of pooling and coordination committee meetings" to "those documents which deal with Applicant's power to grant ordering access to coordination and those documents dealing with the use of this power against smaller utility systems." (p. 3). This document consists

<u>Document Page</u>	<u>Claimed Joint Request Numbers</u>	<u>Explanation Why Not Produced</u>
		of minutes of a coordination committee meeting, but it does not deal with the topics set forth in the Board's order about these minutes.
424-425	5(f)(2)(i)	Not produced under 5(f)(2)(i) for the reasons set forth with respect to document number 108, <u>i.e.</u> , no mention of " <u>acquisition of electric power facilities.</u> "
108	5(f)(2)(i)	5(f)(2)(i) relates to " <u>acquisition of electric power facilities</u> " which include "offers to serve at wholesale," but this document makes no mention of <u>acquisition of any facilities.</u>
111	5(f)(2)(i)	Not produced under 5(f)(2)(i) for the reasons set forth with respect to document number 108.
112-3	5(f)(2)(i)	Not produced under 5(f)(2)(i) for the reasons set forth with respect to document number 108.
144	5(j)	5(j) calls for "cost analyses" of other systems operations, but this document is merely a short <u>Forbes</u> magazine article about Detroit Edison's Company.
424-428	5(j)	5(j) refers to "cost analyses and estimates" and "comparisons of costs," but this document makes only passing reference to costs and refers to no specific systems.
429-431	3(c); (f)	3(c) and (f) call for "letters and memoranda to or from Company officers," but this document is a letter between non-officers.

<u>Document Page</u>	<u>Claimed Joint Request Numbers</u>	<u>Explanation Why Not Produced</u>
442-446	5(c)	5(c) refers to "allocation of wholesale or retail service areas," but the document relates to legislation which does not allocate territories but only specifies the <u>amount</u> of energy municipals may sell outside of the municipal limits, not the <u>area</u> in which energy may be sold. In addition, this document concerns the Company's "political" views and is thus exempted from production under the Board's order of November 28, 1972 (p. 2).
447-448	5(1)(b)	5(1)(b) relates to studies of joint membership or other participation unordered. . ." with respect to transmission facilities, and counsel agreed that "other participation" included only sales of unit or deficiency power. This document does not discuss joint ownership or such "other participation" of transmission facilities. In addition, opposing counsel agreed to nulify part (b) of this request in response to objectives about over-breath, but such modifications were never forthcoming. (See Attachment B hereto).
449-465	3(a); 5(i)	3(a) calls for documents "relating to interconnection plan, proposals or negotiations" but these documents relate only to the Company's testimony before Congress about the REA bank bill. 5(i) calls for documents relating to "activities of the Company to offset the cost of <u>fuel</u> " of other persons, but this document deals with the Company's testimony about the REA bank bill, <u>i.e.</u> , cooperative systems' cost of <u>capital</u> .

<u>Document Page</u>	<u>Claimed Joint Request Numbers</u>	<u>Explanation Why Not Produced</u>
466-70	3(c)	3(c) calls for documents "relating to competition of wholesale and retail", but this document relates to Lansing's annexation policy and makes only passing, oblique reference to competition possibilities.
	3(d)	3(d) calls for letters and answers relating to " <u>acquisitions</u> " by the Company, but these documents relate only to annexation efforts by the Lansing system.
	5(q)	5(q) calls for documents about "line extension policy" -- an industry term of art relating to a system's willingness to construct distribution lines to look-up customers. This document makes no reference to any such policy.
471	10(b)	10(b) calls for documents "comprising the individual files pertaining to each wholesale customers" which include "retail or wholesale competition relating to such customers." This document makes no mention of any wholesale customer or competition therewith. In any event, item 10 was modified by the Board's November 28 order (p. 4).
472-474	5(f)(2)	5(f)(2) calls for documents relating to the Company's "acquisition proposals," but this document states explicitly that the Company is "not prepared at this time to make a proposal to purchase facilities and serve." (last ¶, p. 2). In

<u>Document Page</u>	<u>Claimed Joint Request Numbers</u>	<u>Explanation Why Not Produced</u>
		addition, this document merely summarizes testimony constituting "political" activities of the Company and is thus exempt under the Board's order of November 24, 1972. (p. 2).
	5(b)	5(b) calls for documents relating to franchises, and this document does not relate to franchises. In any event, 5(b) was substantially limited by agreement of counsel (See Attachment B).
	5(g)	5(g) relates to "acquisition of Company facilities," but this document makes no reference to the acquisition of Company facilities.
475	5(c)	5(c) refers to "policies or practices, understanding or arrangements . . . as to allocation of wholesale or retail service areas", but this document makes no reference to any aspects of allocating service areas and certainly there is evidence of "understandings" in this regard.
478	8(a), (b)	This document is a report by the Company's legislative representative about proposed legislation before the Michigan legislature. Thus, it is exempted from production by the Board's order of November 28, 1972, relating to "political" activities.
583-587	3(c)	3(c) calls for documents relating to "competition at retail and wholesale", but this document does not mention competition and relates entirely to system load factor and electric space heating.

- 588-590 3(f) 3(f) is confined to "wholesale electric rates", while this document refers only to retail rates.
- 885-889 5(h) 5(h) was limited by agreement of counsel to certain sample "fuel cost" documents; this document was not part of the sample.
- 893-907 5(o) 5(o) is confined to "studies or analyses" about coordination, while this document is merely an outline of agreements reached at Michigan Pool meetings and simply contains excerpts from such studies. Moreover, the Board ruled on November 28 (p. 3) that pool minutes and reports need not be produced unless they deal with Applicant's power to grant or deny access to coordination or with the use of such power against smaller utility systems; this document does not relate to such matters.
- 908-924 5(l) 5(l) is confined to "studies", but this document is not a study only but only a capsule of the Company's load and reserve projections.
- 933-934 21(d) 21(d) calls for escalation factors and counsel agreed that any single document could be supplied which furnished this information. This document does not show escalation factors and, in any event, all responsive documents to 21(d) were supplied long ago.
- 1035-1042 5(1)(a) 5(1)(a) calls for studies of joint ownership or "other participation", which agreements of counsel limited to unit and deficiency power arrangements. This document

is a summary of Pool committee meetings, not a study and does not relate to joint ownership or "other participation" in facilities. Moreover, as a Pool committee minutes reports, this document is not responsive for the reasons set forth with respect to document 893-907.

1042-1063 9(a), 9(b) 9(a) and 9(b) are confined to communications "in connection with the Michigan Pool agreement" relating to "its formation", "evaluation", or "participation by third parties". This document does not relate to the Michigan Pool agreement or to its formation, evaluation, or third party participation.

1089-1093 8(c) 8(c) calls for documents relating "pooling arrangements", but this document relates solely to the creation of "additional energy classifications" for the Michigan Pool not to pooling arrangements, as such.

1113-1115 8(b) 8(b) calls for documents dealing with "interconnection arrangements", but this document deals only with accounting procedures between two systems, not with the interconnection arrangements as such.

1116-1131 19 The Motion does not specify which of the four subparts of 19 this document is purportedly responsive. In any event, 19 calls for "reports and analyses", while this document consists of minutes of a M110 planning committee. In addition, as a interconnection committee report, this document is not responsive for the

		reasons set forth with respect to document 893-907.
1139-1145	19	Not produced for all of the reasons set forth with respect to document #1116-1131.
1181-1202	19	Applicant objected to producing all "reports of each committee under . . . coordination arrangements . . . or task force thereof" under item 4 of the Joint Request. The Board limited the request, or described in explanation accompanying document 893-907. This document as a task force report which does not relate is not responsive to the gloss that the Board's order of November 28 placed upon the requirement to produce such interconnection reports.
1213-1223	19	Not produced for the reasons set forth with respect to document #1116-1131.
1247-1248	3(c)	3(c) calls for documents "relating to competition at wholesale and retail". This document is concerned with obtaining a company suite, does not relate to competition, and makes only passing reference to another system.
1252-1321	9	9 calls for "communications . . . in connection with the Michigan Pool", while this is the draft of an agreement between the Pool parties. In any event, the final version of the agreement of which this is the draft has already been provided to all parties, and, in fact, has been exchanged as one of the Department's exhibits in this proceeding.
1361-1363	19(e)	This document is dated September 8, 1972 and is therefore subsequent to and not called for by the Joint Document Request.

1364-1373	19(e)	This document is the <u>summary</u> of a 79-page study which was produced to the Intervenor as document numbers 13081-13160 in response to 19(e). Production of the summary would have been clearly duplicative.
1374-1376	10(c)	The Joint Request, dated July 26, 1972, limits the documents sought to those "dated, prepared, sent or received during the period <u>January 1, 1960 to date</u> ". This document, dated August 15, 1972, is thus beyond the date included in the request.
1379-1381	5f(2)	This document discusses factors that the Company proposes to advise the Grayling citizens that the citizenry should consider in voting whether or not to sell their electric system. The Board ruled on April 5 that it "does not see the relevancy of inquiry into Applicant's advice to the town voters" (p. 9). This affirms the Board's ruling of November 28 with respect to the Company's "political" activities.
1382-1394	19(e)	19(e) seeks "reports and analyses" of " <u>comparative or alternative programs</u> of generation and transmission expansion", but this document merely evaluates bids to construct a given unit and does not relate to <u>comparative programs of generation</u> . Moreover, this document, dated September 7, 1972, is beyond the date of responsive documents for the reasons set forth in document numbers 1374-1376.

1505-1509	10; 5(k) (viii)	The Motion does not specify which of the six subparts it deems this document responsive. In any event, the Board's November 28 order (p. 4) limited the requested documents to those "relating to or discussing attempts of the wholesale customers to obtain coordination", while this document makes no reference to any such attempt. This document is unrelated to any activities by the Company to obtain favorable government action. [5(k) (viii)]
1603-1605	3(a)	3(a) is confined to "letters and memoranda to or from Company officers". This is a document whose addressee and author are not officers; this copy of the document was sent to Mosley, who was not then an officer.
1638	5(j)	5(j) calls for " <u>cost</u> analyses or estimates", while this document merely mentions other systems' reserves and generation capability.
1779-1769	5(e) (b)?; (perhaps refers to 5(l) (b))	Not produced under 5(l) (b) for the reasons set forth with regard to document 447-448. Moreover, as interconnection committee minutes, this document is not responsive for the reasons set forth with respect to document numbers 893-907.
1795-1783	5(e) (b)?; (perhaps refers to 5(l) (b))	Not produced for all of the reasons set forth with regard to document 447-448.
1809-1796	20	20 has two subparts and the Motion does not specify which it deems responsive. In any event, both subparts deal with reserve obligations

		<p>while this document relates to transmission charges. Also, as interconnection committee minutes, the document is not responsive for the reasons set forth with respect to document numbers 893-907.</p>
1812-1810	8(a)	<p>8(a) is confined to documents found in certain files and which relate to "long-term competitive aspects . . ." This document was not found in such files and does not relate to long-term competition.</p>
1820-1818	3(a)	<p>3(a) is confined to "letters and memoranda to or from Company officers", but this document is neither to or from a Company officer.</p>
1830-1829	3(a)	<p>Not produced for the same reason as set forth in document 1812-1810.</p>
1837-1836	3(e)	<p>3(e) was excised from the request by the Board's November 28 order relating to "political" activities. (pp. 2-3). In any event, 3(e) calls for documents "to or from Company officers" and this document is neither to or from an officer.</p>
1851	3(a)	<p>Not produced for the same reason set forth with respect to document number 1820-1812; i.e., not to or from a Company officer.</p>
1853-1852	3(a)	<p>Not produced for the same reason set forth with respect to document number 1820-1812; i.e., not to or from a Company officer.</p>

1854	5(b)	This document is a draft statement of views upon proposed legislation and is covered by the Board's November 28 order concerning "political" matters (pp. 2-3). In addition, through agreement of counsel 5(b) was narrowed to exclude documents such as this one.
1924	8(e)	8(e) is confined to documents found in the files of certain specified individuals, but this document is not from those files.
1927-1928	5(c)	This document was withheld from production as privileged, but through clerical error was not included in Applicant's list of privileged documents. Both the author and addressee are Company attorneys and the author's parenthetical comments are, in effect, expressions of legal views.
1968-1930	6(a)	6(a) calls for documents about certain actions or activities "by <u>any</u> municipal and electrical cooperative utility". This document relates to proposed REA bank legislation and mentions no specific utility, as 6(a) calls for.
1993-1983	3(a)	Not produced for the same reasons as set forth in document numbers 1820-1818; i.e., not to or from a Company officer.
1994	3(a)	Not produced for the same reasons as set forth in document numbers 1820-1818; i.e., neither the addressee, recipients or author are Company officers.

1998-1986	3(a)	Not produced for the same reasons as set forth in document numbers 1820-1818; i.e., not to or from a Company officer.
2001-2003	3(c)	3(c) calls for documents "relating to competition at wholesale and retail", but this document relates only to repair and construction work, not to competition.
2007-2008	8(a)	8(a) calls for documents found in the files of specified individuals, but this document was not found in such files.
2015	21(d)	Not produced for the same reasons as set forth with respect to document numbers 933-934; i.e., no mention of escalation factors and item limited by agreements of counsel.
2037-2038	5(f)(2)	5(f)(2) calls for documents relating to the " <u>acquisition</u> of electric power <u>facilities</u> ", but this document makes only a passing reference to a " <u>leasing</u> " proposal.
2039-2040	5(f)(2)(iii)	5(f)(2)(iii) calls for documents relating to acquisition of electric power facilities which include a reference to "activities sponsored by citizen or taxpayer committees". This document makes no reference to acquisitions or any such activities.
2041-2042	3(d)	3(d) calls for "letters and memoranda to or from Company officers" which relate to "acquisitions by Company of electric utilities properties.

This document is not to or from Company officers and makes no reference to any acquisition by the Company.

2073	5(a)	5(a) was limited by agreement of counsel to documents which <u>in their face</u> indicate that the area may be served by another electric supplier. This document contains no reference to other suppliers.
	3(e)	3(e) is confined to "letters and memoranda" to or from Company officers, but this document is not to or from a Company officer.
2074	5(a); 3(c)	Not produced under 5(a) and 3(c) for the reasons set forth in document number 2074.
2075	5(a); 3(c)	5(a) refers to " <u>new</u> " loads but the second sentence of this document reveals that the load was already being served by another utility; i.e., it is an <u>existing</u> load. 3(c) not produced under 3(c) for the reasons set forth in document numbers 2073.
2089-2091	3(d)	3(d) calls for "letter and memoranda to or from Company offices", but this document is not to or from a Company officer.
2045	6(b)	6(b) calls for "correspondence between the Company" and "certain entities and persons outside of the Company". This document is an internal memo to and from two Company employees.

2055	6(b)	6(b) is confined to correspondence between the Company and certain entities, including "any electric utilities". In the context of this item, counsel read the quoted phrase to be limited to privately-owned utilities -- a reading orally confirmed by the Department of Justice. Thus, the document is not responsive.
2058	5(f)(2)(i)	5(f)(2)(i) calls for documents relating to "acquisitions of electric power facilities" which include "offers to serve at wholesale", but this document makes no mention of acquisition.
2102-2106	3(c)	3(c) calls for "minutes of the Board of Directors and the executive committee of the Company" and certain letters and memoranda. This document consists instead of minutes of the "joint engineering, marketing and operating departments."
2107-2111	6(a)	6(a) calls for correspondence between, or documents relating to, specified entities and persons. This document is not correspondence between, nor does it relate to, said entities or persons.
21113	6(a)	Not produced for the same reasons as set forth with regard to document number 2107-2111.
2114-2122	6(a)	This document relates to the Company's position on legislation under consideration by the State Legislature. As such, they are exempt from production under the Board's

November 28 ruling concerning "political" activities. (pp. 2-3)

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| 2123 | 5(f)(2) | Although this letter contains reference to the Village Council's solicitation of an offer to buy its system, it is presented in the context of "political activity by Applicant and thus exempt under the Board's order of November 28, 1972 (p. 2). |
| 2129-30 | 5(j) | 5(j) calls for "cost analyses" and "comparisons". This memo contains neither. |
| 2131 | 3(b)(2) | 3(b)(2) is confined to the minutes of certain meetings and "letters and memoranda to or from <u>Company officers</u> ". This memorandum was neither sent nor received by a Company officer. |
| 2132 | 5(d) | 5(d) calls for documents related to the "sale by the Company of natural gas . . ." This document contains no reference to that subject. |
| 2151 | 3(c) | 3(c) calls for minutes of certain meetings and "letters and memoranda to or from Company officers." This memorandum was neither sent nor received by a Company officer. |
| 2156 | 3(c) | 3(c) calls for minutes of certain meetings and "letters and memoranda to or from Company officers." This memorandum was neither sent nor received by a Company officer. |

2157	3(c)	This document is apparently called for by 3(c). It is our belief that when this document was reviewed the last sentence was not seen as an actual proposal to acquire.
2160-2161	5(j)	This document is apparently called for by 5(j). It is our belief that when this document was reviewed it was mistaken for a study of the costs that the Company would face if it undertook to serve the City of Hart at wholesale.
2166-2169	3(c)	3(c) calls for minutes of certain meetings and "letters and memoranda to or from Company officers." This letter was neither sent nor received by a Company officer.
2170	3(f)	3(f) calls for minutes of certain meetings and "letters and memoranda to or from Company officers." This memorandum was neither sent nor received by a Company officer. While Mr. David H. Gerhard was for some time an officer, Mr. M.H. Gerhard was an employee but never an officer.
2176	5(k)	This document was not produced because of the agreement among counsel reflected in K.S. Watson's memo of December 4, 1972 (Attachment C-4) that counsel would proceed through interrogatories.
2202-2203	5(i)	5(i) calls for documents related to the Company's activities relating to other systems' <u>cost of fuel</u> . This document is altogether unrelated

2206-2213	3(c)	<p>to anyone's cost of fuel.</p> <p>3 calls only for the minutes of certain meetings and for "letters and memoranda to or from Company officers." 3(c) calls for such documents relating to competition. 2209 and 2213 are nothing but copies of newspaper articles not incorporated in any other of these documents. 2206-2207 and 2209-2212 deal with the details of the Company's participation in local elections and therefore come within the Board's ruling of November 28, 1972, with respect to the Company's "political" activities.</p>
2214-2215	3(c) 5(b)	<p>3(c) calls for minutes of certain meetings and "letters and memoranda to or from Company officers." This memorandum was neither sent nor received by a Company officer.</p> <p>5(b) was limited by agreement among counsel so that, instead of producing such a document as this, the Company supplied a full list of its franchises.</p>
2216-2217	3(c)	<p>3(c) calls for minutes of certain meetings and "letter and memoranda to or from Company officers." Neither this letter nor this memorandum was sent to or received by a Company officer.</p>
2219-2249	3(c)	<p>3(c) calls for minutes of certain meetings and "letters and memoranda to or from Company officers." There is, among the documents here referred to, no such document.</p>

These letters and memoranda were neither sent nor received by a Company officer. Many of these documents are neither minutes, letters nor memoranda at all.

2263-2264 3(f)

3(f) calls for minutes of certain meetings and "letters and Memoranda to or from Company officers." This letter was neither sent nor received by a Company officer.

2310-2351 5(1) (b)

5(1) (b) calls for studies. This document is the minutes of a Michigan Pool Planning Committee meeting, not a study. Moreover, as a Pool committee minutes, this document is not responsive for the reasons set forth with respect to document 893-907.

2353-2376 19
 20

This document is the minutes of a meeting of the Michigan Pool Planning Committee. As such, it is not responsive for the reasons set forth with respect to document 893-907. Moreover, all parts of 19 (it has not been specified which part is alleged to call for this document) are limited to "reports and analyses". This document is not a report or an analysis, but rather the minutes of a meeting. 20 calls for documents relating to the Company's pooling or interchange arrangements "which show" the method of setting or determining reserve requirements or the method of related funds flow. This document shows neither.

2377-2387	20(b)	20(b) calls for documents "which show" the method of funds flow related to reserve obligations under pooling or interchange arrangements. This is not such a document.
2413-2421	3(a)(2) 5(b)(2) 19(a)	There is no 3(a)(2). 3(a) calls for the minutes of certain meetings and "letters and memoranda to or from Company officers." These memoranda were neither sent nor received by a Company officer. Moreover, they relate only to "the revised Palisades Plant costs and related charges". They are not "reports and analyses . . . pertaining to . . . joint transmission studies of Michigan-Ontario interconnections" [19(a)], nor are they related to any Company activities seeking to obtain favorable governmental action on the Palisades Plant [5(k)(2)].
2430	5(o)	5(o) calls for "studies or analyses of full generation and/or generation transmission integration or coordination." This memorandum lacks the formality of either a "study" or an "analysis".
2501-2505	6(d)	6(d) calls for certain documents related to "wholesale or retail territorial or customer <u>allocations</u> ." The references in these documents are not to territorial allocations but to territorial disputes.

2528	5(f)(2)	This document comes within the Board's ruling of November 28, 1972, with respect to the Company's "political" activity.
2531	3(c)	3(c) calls only for the minutes of certain meetings and for "letters and memoranda to or from Company officers." This memorandum was neither sent nor received by a Company officer.
2532	3(c), (d)	3 calls only for the minutes of certain meetings and for "letters and memoranda to or from Company officers." This letter was neither sent nor received by a Company officer. Note that Mr. M.H. Gerhard has never been a Company officer.
2533	3(d)	3(d) calls only for the minutes of certain meetings and for "letters and memoranda to or from Company officers." This letter was neither sent nor received by a Company officer.
2534-2535	3(d)	3(d) calls only for the minutes of certain meetings and for "letters and memoranda to or from Company officers." This memorandum was neither sent nor received by a Company officer.
2536-2541	3(d)	3(d) calls only for the minutes of certain meetings and for "letters and memoranda to or from Company officers." This memorandum was neither sent nor received by a Company officer.

2552-2554

5(f)(2)

This document is privileged and should not have been made available as part of this sample. Mr. J.B. Falahee is an attorney for the Company. This document was submitted to the Board for in camera inspection on September 10, 1973 as No. 56 and was not designated by the Board in its Order of September 25, 1973 as being outside the purview of the attorney-client privilege.

2565

3(d)

This document discusses the Company's provision to the citizens of Grayling of its advice for their consideration in voting whether or not to sell their electric system. The Board ruled on April 5 that it does not see the relevancy of inquiry into Applicant's advice to the town voters" (p. 9). This affirms the Board's ruling of November 28 with respect to the Company's "political" activity.

2566-2575

5(f)(2)

This document sets out to the citizens of Grayling those factors which the Company advises them to consider in voting whether or not to sell their electric system. The Board ruled on April 5 that it "does not see the relevancy of inquiry into Applicant's advice to the town voters" (p. 9). This affirms the Board's ruling of November 28 with respect to the Company's "political" activities.

ATTACHMENT B

Agreements Between Opposing Counsel
Concerning Modification Of
Joint Document Request

- B-1 Letter dated September 12, 1972, from Watson to Bacon enclosing memo of meeting of counsel dated September 11, 1972.
- B-2 Letter dated September 21, 1972, from Watson to Graves enclosing memo of meeting of counsel dated September 20, 1972.
- B-3 Memorandum from Watson to Consumers Power Co. re: meeting of counsel dated October 5, 1972.

September 12, 1972

Judd Bacon, Esq.
Consumers Power Company
212 West Michigan Avenue
Jackson, Michigan 49201

Dear Judd:

Last Friday, Bill Ross and I met with opposing counsel in the Midland antitrust case to discuss the Joint Document request of July 26, 1972.

I am enclosing a memo which indicates that some of the requests have been limited in scope as a result of the meeting. We agreed to meet again this Friday before going to the Board with our objections.

In preparation for Friday's meeting we need to ascertain some information from the Company and would appreciate your assistance in this regard. That part of the enclosed memo which appears in brackets sets forth those areas in which we need your assistance.

We also need guidance on the four additional discovery requests made on August 16, 1972, relating to pre-1960 documents. Wayne has provided considerable background concerning question 3 and some with respect to questions 1 and 2. However, elucidation is needed concerning question 4, particularly with reference to the 1951 President's Committee.

Since the meeting is scheduled for Friday, please be in touch with us by the close of business on Thursday.

Sincerely,

Keith S. Watson

KSW:asl

Enclosure

cc: Harold P. Graves, Esq.
Wayne Kirkby, Esq.

September 11, 1972

MEMO TO: Consumers Power File
FROM : KSW
SUBJECT: Discovery by Intervenors and Justice

KWR and KSW met with counsel for the Intervenors (Fairman and Pollack) and for Justice (Brand and Leckie) to discuss the Joint Document Request of July 26, 1972. The following requests were discussed:

- 3(f)* Only documents relating to policy matters and technical implementation thereof need be produced in response to this question. All wholesale rate schedules used since 1960 should be produced.
- 19(d)* This request may be satisfied by producing annual reports of running base and contingencies cases which discuss planning or additional transmission requirements. The underlying studies need not be produced.
- As to such reports dealing with lower voltage facilities, only reports discussing transmission needs after 1969 should be produced. All such reports prepared since 1960 which deal with higher voltage facilities should be produced.
- 21.* This request may be satisfied by producing any document(s) which show(s) the most recent cost estimates of major components of facilities, e.g., cost per kw of a transformer, cost of switch gear, cost of land.
2. This request may be satisfied by producing documents which show document filing classifications of material contained in Company files. [Prior to compliance, the amount of documents which fall within this request should be ascertained.]
- 3(d). This request may be satisfied by substituting the word "systems" in place of "properties".
4. Preliminarily, a list of the committees described in the request and their function will suffice. [The parties will then seek to limit the request to certain committees]. With respect to the

words "documents relating thereto", the word "thereto" refers to the words "minutes" and "reports" and only documents relating to major policy matters need to be produced.

- 5(a). The phrase "new electric loads" refers only to major loads, e.g., not individual residential loads. The words "in areas . . . Company" modify all three categories in subpart (a).

Only documents which on their face indicate that the area is, or may be, served by another electric utility should be produced in response to this question.

[Appropriate Company officials should be asked whether the phrase "in areas . . . Company" denotes ascertainable geographic areas to them. If not, please provide an explanation].

- 5(b). In addition to the franchises themselves, all documents relating to securing, renewing or terminating franchises will satisfy the request. Where a group of franchises is similar except in name, a sample may be provided with a list of others which are similar to it.

Preliminarily, a list of franchises and termination dates may be provided. [Since only interest is in areas where there is actual or potential competition, this request may be further limited once a list is furnished.]

- 5(d). Counsel could not agree to limit this question, but agreed to discuss it later. [Prior to such discussion, we need to ascertain whether how much material this request encompasses.]

- 5(e). Only documents relating to policy questions need be produced in response to this request. Counsel agreed that on the gas side of the Company only the senior vice president(s) need be searched unless the officer indicates that relevant documents may be found in other gas files. Counsel will discuss this question further. [Before such discussions, inquiry should be made of Mr. Simpson whether responsive documents are likely to be found in gas files other than his own.]

- 5(g) This request refers to the purchase by another person of generation, transmission, or distribution systems (not parts or equipment) owned by the Company.
- 5(h). Upon a showing what types of material are available, this request may be limited to a particular year, month, and day. [We must ascertain from the Company whether studies of cost of fuel are available which would satisfy this request].
- 5(k). This question need not be satisfied at this time since Justice will seek to obtain the same information through interrogatories.
- 5(l). The words "other participation" in this request refer only to sales of unit or deficiency power. With respect to Luddington, only important studies, particularly those related to issues which were subject to bargaining between the parties, should be produced at this time. [The subject areas of other studies relating to Luddington should be listed and may be produced later in response to this question].
- With respect to part (b) of this question, Justice will provide the Company with an amendment to this request which defines its scope more narrowly.
- 5(o). This question seeks studies or analyses that provided the basis for Company bargaining with Detroit Edison concerning the Michigan Pool or provide the basis of negotiations with the MMCPP Pool. [If the Company desires, opposing counsel will consider methods to keep certain material from Detroit Edison].
- 5(q). This request may be satisfied by providing tariff filings relating to Company line extension policy and all documents which reveal interpretations or modifications of such policy.
6. The documents called for in subparts (a) through (d) are limited to correspondence between or documents referring to the entities described in the first paragraph.
- In subpart (a) the phrase "by any . . . Company" modifies and limits each of the five categories which proceeds the phrase in the subpart.

7. We have declined to answer this question because of privilege and relevance and the question will be discussed further by the parties. The intervenors argue that the Company has often retained all of the better attorneys in a given area and that such attorneys have often organized taxpayer groups and the like in support of the Company. [It would be useful to ascertain the extent of the Company's retentions in this regard before discussing the matter further].

9(a) & (c) As in question 5(1), this question may be satisfied by providing documents relating to major policy considerations (including major engineering or other major technical considerations). [However, a list of other documents responsive to this question should be maintained and such a list may be produced at a later time.]

10. This question relates to files which are identified by a particular wholesale customer's name.

The parties could not agree concerning the relevance of this question. We argue that much material contained in such files is not relevant. [We need to know from the Company how many such files exist throughout the Company and we need examples of material in such files which are not relevant.]

17. Any single document or group of documents that generally describes how this system works will satisfy this request.

18. "Dispatch of transmission system" refers to the method by which certain transmission lines go in or out of service temporarily.

The request may be satisfied by providing the most recent instructions which provide a summary of relaying scheme and the general philosophy relating thereto.

22. Opposing counsel contend that the Company has asserted, and continues to assert in some filings, that some of its activities are not subject to FPC or state regulatory jurisdiction. If so, they contend, such assertions would be inconsistent with Company assertions in this proceeding and that the AEC lacks jurisdiction over certain activities because other regulatory bodies have jurisdiction. The question will be discussed with counsel again. [Before discussing this question, we need to ascertain the extent to

which the Company has asserted lack of jurisdiction by various regulatory bodies].

23. This request may be satisfied by producing federal and state income tax returns since 1960 and local governmental income and property tax returns for one sample year since 1960.

September 21, 1972

Harold P. Graves, Esquire
Vice-President and
General Counsel
Consumers Power Company
212 West Michigan Avenue
Jackson, Michigan 49201

Dear Mr. Graves:

On Monday, Bill Ross and I met with Wallace Brand and James Fairman, counsel for the Justice Department and the intervenors respectively. Our discussions were aimed at limiting further the scope and burden of the Joint Document request to the Company.

The attached memorandum summarizes the results of our discussions. We believe that significant limitations have been achieved with respect to some questions; concerning others, it is clear that resort to the hearing Board will be necessary. We plan one more meeting with opposing counsel in hopes of resolving as many problem areas as possible before going to the Board.

We recommend that the file search continue pending the outcome of counsel's discussions and the Board's action on our objections. If possible, files not likely to contain documents responsive to requests to which we still object should be searched at this time. Where such documents are found, we suggest that they not be copied, but that their presence be noted on a separate log.

Harold P. Graves, Esquire
September 21, 1972
Page 2

During your absence, Judd, Wayne and Paula were most helpful to us and appear to be making substantial headway in their efforts. It is good to have you back at the front lines of our battle.

Sincerely,

Keith S. Watson

KSW:asl

cc: Judd Bacon, Esq., w/o encl.
Wayne Kirkby, Esq., w/ encl.
Paula Hosick, Esq., w/ encl.

Enclosure

September 20, 1972

MEMO TO: Consumers Power (Midland) File
FROM : KSW
RE : Discussion of Joint Production Request with
Opposing Counsel (Brand, Leckie and Fairman)
on September 18, 1972.

The discussion was held with respect to the following questions to resolve issues left unresolved after the first meeting of counsel:

- A.2. "Documents" were defined in the request to include those in the files of members of the Board of Directors who are not Company employees. Opposing counsel said that their interest was limited to the files of Messrs. Cutler and Hamilton and that a file search need not be conducted if those individuals verified that no responsive documents were likely to be found in their files.
- [The Company has subsequently advised that it does not wish such an inquiry to be made absent a Board order compelling same.]
4. Discussion of this request was deferred pending opposing counsel's review of the list of committee names and functions. [We will serve this list on opposing counsel within several days.]
- 5(a). Counsel agreed that this request may be satisfied by producing responsive documents which on their face indicate competitive significance. The Justice Department will entertain Company requests for confidential treatment of material relating to present competition between the Company and another utility for a customer.
- WWR agreed to furnish opposing counsel a written statement explaining why the Company declines to respond to this request with respect to documents which do not on their face reveal competitive significance.
- 5(b). WWR agreed to furnish a list of electric franchises and to indicate thereon which are terminable at will.

5(d) & (e) Opposing counsel would not agree to eliminate documents relating to the gas operations of the Company and the issue must be resolved by the Board.

5(h). Opposing counsel would be satisfied with documents relating to all of the year 1972 and to one sample month (to be selected by the Company, but a different month for each year) for each year since 1960. If reports summarizing monthly sales, but revealing the costs of each particular shipment of fuel, are available this would satisfy the request.

[Subsequent to the meeting Miss Hosick informed KSW that even the request as limited herein would require production of 200 vouchers (of 20-30 pages each) for each month; in light of this information further discussion with opposing counsel and/or the Board will be necessary.]

7. Opposing counsel suggested deferring consideration of this question until later discussions in order to give them time to consult with their clients.

8. According to opposing counsel, subparts (a) and (b) of this question are directed to the files of Messrs. B. G. Campbell and W. A. Hedgecock and subpart (c) is directed to the files of Messrs. Aymond, Wall, James Campbell, Mosley, Kaiser; and Heins.

With respect to those above Mr. Mosley in the Company's organizational structure, opposing counsel agreed to consider producing samples of types of documents that are repetitive or duplicative of many others and to supply lists of documents called for by the document which the Company does not consider germane to this proceeding. [Inquiries should be made, of appropriate Company personnel, to determine the feasibility of this approach.]

19(d). The Justice Department has amended this question with the attached request. [Appropriate Company personnel should be consulted to determine the feasibility of response.]

22. KSW requested that consideration of the question be deferred. [The Company has subsequently advised concerning its objection to this question.]
23. Opposing counsel agreed that this request could be satisfied by producing federal income returns, state income and/or property tax returns, and statements showing a summary of annual local property tax assessments.

Mr. Brand suggested that if his representatives were permitted to inspect the Company's financial records the request would be deleted.

WWR agreed only to discuss this request further with the Company in light of these discussions.

October 5, 1972

MEMO TO: Consumers Power (Midland) File

FROM : KSW

RE : Meeting of WWR and KSW with Opposing Counsel
(Brand, Leckie, Clabault, Fairman, Verdisco),
October 5, 1972

Discussion was held at the above-referenced meeting of counsel concerning the following questions in the Joint Document Request.

A.2 "Documents" need not include those documents relating solely to physical construction or design of facilities. In addition, documents need not be produced which reflect only the purchase by the Company of facilities or other items, except as specifically provided by a certain request, e.g., cost of fuel vouchers.

B. WWR agreed to complete production of asterisked document requests by October 15, 1972. We also said that we hope to file objections to the Board by the same date. The other production schedule dates will be discussed soon in a telephone conference.

The parties did not agree concerning the terms and conditions of document production. Pending resolution of the issue by the Board, WWR agreed to furnish the Justice Department one copy. Should the Board rule in our favor, Brand agreed to return the documents one week after such ruling.

C.3(b). Part I of this subquestion, as it relates to transmission expansion, need not include documents relating to projects costing less than \$1 million. Provided, however, that this limitation does not apply to expansions made specifically for the purpose of serving any wholesale customer or any load covered by question 5(a).

With respect to Part 2 of this subquestion, the limitation does not apply. [The Company should ascertain the burden involved in responding to 3(b)(2)].

4. We submitted lists of the committees called for. However, no agreement was reached concerning this question and the matter will go to the Board.
- 5 (b). We agreed to furnish samples of monthly summaries of fuel purchases and a sample of one typical day's vouchers reflecting fuel purchase. After furnishing same, counsel will discuss the question further.
19. According to Brand, the request of September 25, 1972 is a supplement to, not a substitute for, this question.
22. In place of this question, Brand is willing to accept stipulation concerning MPSC jurisdiction and a stipulation that sets forth those areas that the Company believes are (1) within, (2) not in, or (3) in a "grey area" of jurisdiction by the FPC.
23. No agreement was reached concerning production of income tax returns and the matter will be submitted to the Board.

ATTACHMENT C

File Search Instructions
From Washington Counsel To Applicant

- C-1 Memorandum dated June 21, 1972, from Washington Counsel re: guidance for file review.

- C-2 Letter dated August 14, 1972, from Watson to Graves enclosing memo re: interpretation of Joint Document Production Request, dated August 23, 1972.

- C-3 Memorandum from Ross to Consumers Power Co. re: marketing file search, dated August 31, 1972.

- C-4 Memorandum from Watson to Consumers Power Co. re: current status of document requests, dated December 4, 1972.

WALD, HARKRADER & ROSS

MEMORANDUM FOR CONSUMERS POWER COMPANY
June 21, 1972

Re: Midland - Guidance for File Review

This memorandum is intended as a guidance document to assist Company attorneys in conducting the company-wide file review in preparation for the conduct of the Midland antitrust proceeding. We recommend that the file review be carried out in the following manner:

1. The file review should be conducted by counsel and the review of each particular file or set of files should be preceded by an interview with a person knowledgeable concerning the subject matter. Such an individual may be the secretary or file custodian who actually maintains the file, but often it will be advisable to interview the company official concerned.

2. Files maintained personally by individual officials or their secretaries are subject to review. Many such files may be of a personal or private nature and it may be possible to exclude such files on the basis of interviews with the official concerned or with his secretary. Examples of such files would be various private financial, insurance, club membership, community association or similar files maintained by an individual in

his or her private capacity, or personnel data or similar company-related files maintained by company officers or supervisory personnel. It is important to stress, however, that all documents, whatever their source and however limited their circulation, which are called for in the Specifications should be reviewed. A document called for in the Specifications which is maintained in an officer's "private" or "personal" file is nonetheless a document within the Company's "possession, custody or control" and would be called for in any similar document request submitted by the Justice Department or any other Government agency.

3. The file review should be carried out by not more than two Company attorneys, who should be responsible for the entire review. A high degree of judgment is required in the review of numerous documents, many of which undoubtedly will be in "borderline areas" and will present problems of interpretation, frequently of a subjective nature. We have found that it is important to maintain a certain consistency of judgment, and that the more reviewers are involved, the more difficult it is to do so.

4. If two Company attorneys cannot be assigned to the file review on a substantially full-time basis until completed, we recommend that one attorney be so assigned and that another be generally familiar with the subject matter and progress of the review, and be available for

consultation with the reviewing attorney as needed. We have found that on a major review such as this, an individual's review criteria may vary over time, and that the judgment of a second attorney tends to maximize the uniformity of criteria applied throughout the search.

5. Because of the subjective nature of a file review, all judgments by the reviewing attorney should be weighted toward inclusion of borderline documents in the collection. Once the initial review is completed and the documents assembled, other Company counsel and WH&R attorneys will review the entire collection, probably several times. Borderline documents once included can later be excluded from a collection if determined to be not called for. The contrary is not true, for WH&R and other Company counsel will have little or no opportunity to know of, much less analyze, any document not selected in the initial review. On the other hand, a document which might be considered "borderline" in the context of the Specifications may well be precisely called for by a Justice Department request cast in different language, or it might already have been produced by one of the Muni-Coops or some other person. In addition, other discovery techniques, such as depositions or inquiries in the nature of interrogatories could result in the disclosure of such a document's existence. For all

those reasons, and for the basic reason that the principal purpose of this review is to permit an accurate assessment of the factual situation, it is very important that the review be as thorough as possible and that any subjective judgments be on the side of inclusion rather than the opposite.

6. All copies of documents should be collected.

It may not be necessary ultimately to produce numerous identical copies of the same document, but it may be important to know who had copies in the first place.

(See below and the attached sample document log for suggested document control techniques.) In this connection, it should be noted that any writing on a document, such as a handwritten comment or the names or initials of "copy" or "information" addresses, is enough to make it a separate document and not merely the copy of another.

7. All documents attached to called-for documents should be assembled as found. The mere fact of attachment can be of some significance, and the ultimate judgment as to the handling of such a document should be deferred until all called-for documents have been assembled and analyzed.

8. Documents are not always where they appear to be in an organizational chart or file index. The reviewing attorney should make his own investigations and *should* make clear to Company personnel the need for an independent check by counsel.

August 14, 1972

Harold P. Graves, Esq.
Vice President &
General Counsel
Consumers Power Company
212 West Michigan Avenue
Jackson, Michigan 49201

Dear Mr. Graves:

I am also enclosing a memo reflecting our interpretation of those document requests which I discussed with Company personnel during my Jackson visit. We do not believe that these requests require further discussion with opposing counsel.

We recommend that the Company file search continue pending resolution of the questions raised in the attached summary. Documents responsive to those requests not challenged in the enclosed summary should be collected. Documents responsive to challenged requests should not be collected, but their existence should be noted by those conducting the file search.

Harold P. Graves, Esq.
August 14, 1972
Page 2

I believe that last week's meeting was very productive. Please let me know if I can be of any further assistance in this regard.

Sincerely,

Keith S. Watson

KSW:asl

Enclosures

August 23, 1972

MEMO TO: CONSUMERS POWER (MIDLAND) FILE
FROM: KSW
SUBJECT: INTERPRETATION OF JUSTICE DOCUMENT
PRODUCTION REQUEST

On August 10, 1972, KSW met with various Consumers personnel to discuss the Department of Justice document production request. The following interpretations of the request were authorized:

1(b). The word "directors" refers to members of the Board of Directors. The phrase "Department managers" refers to those who hold the title of manager or director of variation thereof, e.g., executive manager.

Except for the names of the members of the Board of Directors, the various editions of General Order No. 2 since January 1, 1960 will satisfy requests 1(a), 1(b), and 1(c).

3(b). The words "transmission system" as used here and elsewhere refer only to facilities of 138 kv and above.

4. The word "reports" refers only to those reports to which the Company is a party, e.g., helped prepare or signed. ECAP Committees are not included in this request.

5(b). This request refers only to documents written since 1960. If a 1923 franchise was renewed in 1963, only the renewal need be produced.

5(i). Refers only to Company activities whose purpose was to affect the cost of fuel for others.

5(l)(b). Refers only to electric transmission facilities at 138 kv or above.

5(m). "Pooling" does not include interconnection arrangements.

5(n). The word "planned" refers to activities proposed within Company ten-year plans and the like.

13. Documents should only cover the period from the present to 1980.

15. The documents should relate only to the system peak day of each year from 1972 to 1980.

17. Each press release or press article describing the control center will satisfy this request.

20. The words "or indirectly" should be deleted from the request.

26. "Under consideration" refers to matters discussed between officers of each Company relating to definite proposals for modification put forward in writing by one of the parties.

27. Refers to all contracts executed since 1960 which are either not presently in effect or not presently on file at the FPC.

cc: GAA
KSW
TKG

ATTACHMENT C-3

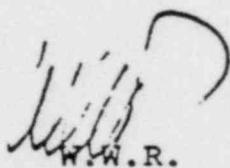
August 31, 1972

MEMORANDUM TO THE CONSUMERS POWER COMPANY MIDLAND

Harold Graves advised me today that Consumers has encountered great delays in undertaking the broad file search contemplated by our protocol. He has assigned two lawyers to it, and they have not yet been able to complete the central office marketing file search, even though they have been engaged in it for approximately one month. He has advised me that it has been impossible for him to locate additional legally trained personnel to conduct a preliminary search of the file both in the central office and in the branch offices, in order to winnow out materials which do not comply with the protocol. He asked our reaction.

I said that there was nothing inherently wrong with using non-legally trained personnel to provide a preliminary screening of files, provided that they were adequately instructed and supervised by lawyers, and that they possess the necessary personal qualifications to make the judgments which are required. I said that such techniques were used in conducting large-scale file searches and, providing the foregoing conditions were met, produced satisfactory and legally sustainable results. I emphasized, however, that not every non-legal person could be successfully instructed in making such screening, since a certain level of ability to read and discriminate was required. Furthermore, it was essential that they be carefully instructed both orally and in writing, and that their activities be closely supervised until such time as a supervising lawyer was satisfied that they were correctly distinguishing between materials included in the protocol and those outside it. Also, they should be instructed to err on the side of inclusion in case of doubt. I further suggested that it would be desirable to collect a cadre of such persons to work throughout the company, rather than attempting to have the screening made by persons within individual departments. The reasons for this, as I articulated them were: a) this was necessary to control the capability of the person conducting the initial screening, since administrators in the various departments would tend to assign to such a task the least competent person reporting to them, in order to minimize the burden on their operations, b) a small cadre of para-legal personnel would assure uniformity of results, and would reduce the burden on the lawyer supervisors in training and monitoring and c) the use of a small independent cadre, instead of persons working in various departments, would minimize the tendency of the latter to be "protective" about their files and to suppress production of materials, if any, which they considered to be confidential, embarrassing, or contrary to the company's interest.

The conversation closed with my urging him to see that the instructions were as clear and comprehensive as possible, and to attempt to establish procedures for adequate monitoring by the lawyer supervisors of the searches made by the persons selected in each of the various departments within the company. I offered our assistance in developing these instructions, or in any other aspect of setting up this preliminary screening program.


W.W.R.

December 4, 1972

MEMO TO: Consumers Power (Midland)
FROM : KSW
RE : Current Status of Document Requests.

The status of the following document request items merits attention since they either remain unresolved or were the subject of the Board's rulings on our objections:

A. Joint Document Request

2. Since our objection to this request was sustained, no documents responsive to it should be produced.
- 3(e) and other questions related to political and legal activity. Although our objection appears to have been sustained, documents responsive to this request should continue to be extracted.
4. As a result of the Board's modification of this question, the only documents called for by this request are those which on their face deal with either Applicant's power to grant or deny access to coordination or with the use of such power against smaller utility systems.
- 5(b). This question is still under discussion with opposing counsel. Pending the outcome of such discussions, all documents called for by this request, as previously modified, should be extracted.
- 5(d)(e) and (i). The Board sustained our objections to producing any documents relating to gas operations. Thus, unless documents are found which are responsive to this question but do not relate to gas operations, no production in response to the request should be made.
- 5(h). Opposing counsel are still discussing this question. Pending the outcome of these discussions, only the samples to be provided by Wayne Kirkby need be produced in response to this item.

- 5(k). Since the Department has agreed to pursue the information it seeks by this item through interrogatory forms, no documents responsive to this request need be extracted.
- 5(l)(b). This item is in an uncertain status. Until later possible modification, no documents responsive to this request need be extracted.
7. Since opposing counsel appears to have abandoned this question, no documents responsive to it need be produced.
10. As a result of the Board's ruling modifying this item, only documents in the files specified by this question which discuss or relate to attempts of wholesale customers to obtain coordination with the Company should be produced in response to this question.
23. Our objection was overruled. Federal and state returns should be produced and summaries of local taxes, as set forth in a previous modification, should be produced.

The other requests in the Joint Document Request should be satisfied, subject, of course, to previous modification.

B. Pre-1960 Documents

The Board substantially limited pre-1960 requests to documents which form part of the records of negotiations of each coordination contract executed by the Company since 1960. (Only the 1962 Michigan Pool agreement appears to be relevant here but this should be verified.) Although the Board's ruling explicitly referred only to the Department's pre-1960 requests, it can be assumed that the Intervenor's pre-1960 requests are covered by this ruling as well.

N.B.: The Department's "Motion to Compel . . ." of August 16, 1972, covered post-1960 as well as pre-1960 documents. The Board's ruling modifying said motion related, only to pre-1960 documents.

C. Historical Manuscripts

This objection was overruled. We have the Luther Hardy manuscripts and will make them available. However, our copy of Future Builders has been annotated so that the Company should send us the latest draft of this publication.

ATTACHMENT D

PERSONS SERVICING AS OFFICERS OF CONSUMERS
POWER COMPANY SINCE JANUARY 1, 1960, AS OF 1973

Allen, Robert D.	- 5-1-60 to 5-8-70
Aymond, Alphonse H.	- 1-1-58 to Present
Boris, Walter R.	- 6-1-56 to Present
Bretting, Ralph C.	- 5-1-65 to 7-1-72
Briggs, Robert P.	- 1-24-52 to 4-30-68
Campbell, Birum G.	- 1-15-58 to Present
Campbell, James H.	- 4-26-56 to 1-24-72
Fisher, Floyd C.	- 5-1-67 to Present
Gerhard, David H.	- 1-1-62 to 7-31-64
Graves, Harold P.	- 1-23-58 to Present
Hedgecock, W. Anson	- 5-1-65 to Present
Hedges, Eugene B.	- 6-7-72 to Present
Howell, Stephen H.	- 6-7-72 to Present
Karn, Dan E.	- 11-29-51 to 5-1-60
Kettner, Robert E.	- 7-23-64 to 6-15-68
Kluberg, John W.	- 1-18-51 to Present
Lamley, Roland A.	- 6-7-72 to Present
McDivitt, James A	- 6-7-72 to Present
Mosley, Jack W.	- 7-2-69 to Present
Mulligan, Claude A.	- 11-24-53 to 12-31-64
Olmstead, George E.	- 2-1-58 to 7-1-64
Palmer, Herbert J.	- 7-1-64 to Present
Perry, Paul A.	- 5-1-68 to Present
Richmond, Stanley H.	- 1-24-52 to 5-31-64
Schmidt, Walter C.	- 5-1-60 to 10-31-67
Simpson, John B.	- 1-15-58 to Present
Wall, Harry R.	- 10-28-54 to Present
Wheeler, E. Romney	- 4-14-70 to Present
Youngdahl, Russell C.	- 8-2-67 to Present.

UNITED STATES OF AMERICA
ATOMIC ENERGY COMMISSION

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

CERTIFICATE OF SERVICE

I hereby certify that copies of APPLICANT'S ANSWER TO MOTION TO PRODUCE NON-PRIVILEGED DOCUMENTS, dated November 23, 1973, in the above-captioned matter have been served on the following by deposit in the United States mail, first class or air mail, this 23rd day of November, 1973:

Jerome Garfinkel, Esq., Chairman
Atomic Safety and Licensing Board
Atomic Energy Commission
Washington, D. C. 20545

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Keith S. Watson