

DOCKET NUMBER

PROD. & UTIL. FAC. 50-319A, 330AUNITED STATES OF AMERICA
ATOMIC ENERGY COMMISSION

ATOMIC SAFETY AND LICENSING APPEAL BOARD

Alan S. Rosenthal, Chairman
William C. Parler, Member
Michael C. Farrar, Member

REC PUBLIC DOCUMENT ROOM

In the Matter of)

CONSUMERS POWER COMPANY)

(Midland Plant, Units 1 and 2))

Docket Nos. 50-329A
50-330AMr. Robert A. Jablon, Washington, D.C.
for the non-party municipalities,
Bay City, Michigan, et al.Mr. Wm. Warfield Ross, Washington, D.C.
(with whom Mr. Keith S. Watson and
Ms. Toni K. Golden were on the brief)
for the applicant, Consumers Power CompanyMEMORANDUM

(ALAB-118)

Following a recess at the conclusion of the oral argument of the appeal in this proceeding (see ALAB-111, April 4 1973), this Board issued from the bench an oral ruling. The text of that ruling is:

Based upon its consideration of the record, the briefs submitted by the parties and the oral argument this morning, this Board has determined that the applicant is

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entitled to the discovery which the Licensing Board has allowed. Contrary to the assertions of the appellants, we are satisfied that the information ordered disclosed is possibly relevant to the issues which have been raised by the parties before the Licensing Board and that appellants have not established that the purpose of the discovery is harassment. We are further satisfied that much of the sought information is not readily available to the applicant from other sources.

At the same time, however, this Board is concerned with respect to the burden which may be imposed upon the appellants in complying with the discovery orders -- an issue which was properly raised by appellants before the Licensing Board. In this connection, we have particular reference to the depositions on written interrogatories. Additionally, we are not in entire agreement with the disposition made by the Licensing Board of appellants' claim respecting the disclosure of the assertedly confidential information sought by two of the document requests and six of the interrogatories. While we concur in the Licensing Board's conclusion that the applicant's need for the information is manifest, we do not agree with that Board's view that the statutory and/or common law of the

State of Michigan foreclosed any consideration of a protective order designed to assure the maintenance of its confidentiality.

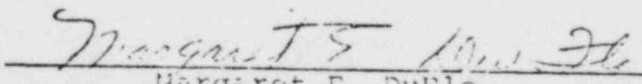
Our concerns in these respects do not lead us to the conclusion that discovery should be denied. But, as counsel are undoubtedly aware, we are authorized by Section 2.740(c) of our Rules of Practice to take various kinds of action -- short of an outright denial of discovery -- to protect against undue burden or expense or to preserve confidentiality.

If it becomes necessary, we are prepared ourselves to consider whether, and if so in what manner, Section 2.740(c) should be invoked. We think it appropriate, however, for the parties first to make a good faith endeavor to reach an agreement between themselves. Accordingly, we are hereby requesting that negotiations be commenced promptly and that any agreement reached be submitted to this Board in writing no later than the close of business on Friday, May 4. Failing such agreement, counsel for each party is to submit a written report by the same date. That report shall contain a detailed statement of the areas of agreement and disagreement, together with the reasons for the disagreement.

It must be reiterated that what the parties are to discuss is not whether the applicant should obtain the discovery which the Licensing Board has allowed. As has been indicated, we are answering that question in the affirmative. Rather, the discussion is to center upon (1) possible alternative means of accomplishing the discovery; and (2) possible feasible measures for handling the information claimed by the appellants to be confidential. And, as should need not be stressed, it will be to the mutual advantage of the parties if an agreement is reached. This would obviate the need for this Board to enter its own order, the terms of which may prove less suitable than those which the parties might work out between themselves.

The separate appeal of the Village of Paw Paw is denied on the ground that the allegedly improper service made upon the officials of that village was not raised before the Licensing Board.

FOR THE ATOMIC SAFETY AND LICENSING
APPEAL BOARD


Margaret E. DuFlo
Secretary to the
Appeal Board

Dated: April 24, 1973

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UNITED STATES OF AMERICA
ATOMIC ENERGY COMMISSION

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

CERTIFICATE OF SERVICE

I hereby certify that copies of MEMORANDUM dated April 24, 1973 in the captioned matter have been served per the attached Service List by deposit in the United States mail, first class or air mail, this 24th day of April 1973.

Regina C. Downing
Office of the Secretary of the Commission

Attachment: Service List

cc: Mr. Garfinkel
Mr. Rutberg
Mr. Braitman
ASLBP
Reg. Files
ASLAB

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ATOMIC ENERGY COMMISSION

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SERVICE LIST

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

Hugh K. Clark, Esq.
P. O. Box 127A
Kennedyville, Maryland 21645

Wallace E. Brand, Esq.
U.S. Department of Justice
P. O. Box 7513
Washington, D. C. 20044

David A. Leckie, Esq.
Public Counsel Section
Antitrust Division
Department of Justice
Washington, D. C. 20530

Dr. J. V. Leeds, Jr.
P. O. Box 941
Houston, Texas 77001

Joseph Rutberg, Esq.
Benjamin H. Vogler, Esq.
Antitrust Counsel
Office of the General Counsel
U. S. Atomic Energy Commission
Washington, D. C. 20545

William Warfield Ross, Esq.
Keith S. Watson, Esq.
Toni K. Golden, Esq.
Wald, Harkrader, Nicholson & Ross
1320 19th Street, N. W.
Washington, D. C. 20036

George Spiegel, Esq.
James Carl Pollock, Esq.
2600 Virginia Avenue, N. W.
Washington, D. C. 20037

Mr. Abraham Braitman, Chief
Office of Antitrust and Indemnity
Directorate of Licensing
U. S. Atomic Energy Commission
Washington, D. C. 20545

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

Joseph J. Saunders, Esq., Chief
Public Counsel and Legislative
Section
Antitrust Division
U. S. Department of Justice
Washington, D. C. 20530

William T. Clabault, Esq.
Antitrust Division
P. O. Box 7513
Washington, D. C. 20044