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UNITED STATES OF AMERICA
BEFORE THE
ATOMIC ENERGY COMMISSION

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

Docket Nos. 50-329A ✓
50-330A

ANSWER OF THE DEPARTMENT OF JUSTICE
TO APPLICANT'S MOTION FOR ORDER
MODIFYING PROCEDURAL SCHEDULE

The Department of Justice hereby answers Applicant Consumers Power Company's Motion for Order Modifying Procedural Schedule filed in this proceeding on December 22, 1972.

At the second prehearing conference on October 25, Applicant stated that it "should be able to complete the full company file search in about two months" and that the joint discoverers "would have essentially all of [Applicant's] documents by the end of [1972]." Transcript, p. 118. Accordingly, we were astonished to learn Applicant now represents that documentary production from its central office alone will require until February 16, 1973, and that the total production originally called for, including a search of Applicant's field offices, "cannot possibly be completed any earlier than May 1, 1973." Motion, pp. 1-2.

Based upon our experience with the time required for documentary production of similar scope by other electric utilities under the civil investigative demand procedure,

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15 U.S.C. §§1311-1314, we question seriously whether Applicant might not have far more expeditiously complied with the first joint request for documents in this proceeding. However, our lack of specific knowledge concerning Applicant's files, the conduct of its document search and the complications that might possibly arise were more people employed in making the search leaves us unable effectively to challenge Applicant's present representation of the need for additional time.

Further, we are unable to accede at this time to exclusion of Applicant's field offices from the file search. Applicant, quite understandably, cannot assure us that its field offices do not possess relevant documents not duplicative of those in the central office, and we believe the field offices may well have many such relevant documents--particularly those documents relating to preliminary negotiations, operating-level discussions and day-to-day contacts with competing small electric utility systems. To exclude the field office files from our discovery--especially now when Applicant has already had over five months to search them--would certainly deprive us of the thorough compliance to which Applicant agrees we are entitled. Motion, p. 3.

In view of our inability to verify Applicant's expressed need for more time, and our desire that the field office search not be compromised, we are reluctantly forced to accept Applicant's proposed dates of February 16, 1973, for complete production of the central office documents and May 1, 1973,

for total production under the first joint request, including all relevant field office documents. Were the antitrust hearing on this construction permit application not controlled as it is by the "grandfather" provision of Section 105c(8) of the Atomic Energy Act, so that further delay of the hearing might delay commencement of construction of the Midland Plant and, as a result, delay also the meeting of Michigan's electric power needs, the Department could not, of course, agree to Applicant's requested delay. Accordingly, for the reasons indicated, the Department of Justice acquiesces in the schedule now proposed by Applicant and respectfully requests that the Board formally order Applicant to produce the requested documents in accordance with that schedule, with substantial interim production from now until February 16 and between February 16 and May 1.

Acceptance of these dates for compliance would require modification of other procedural dates previously set by the Board. The Department of Justice accordingly proposes that the time frames scheduled for further proceedings in anticipation of Applicant's finishing joint request/document production by December 31, 1972, be retained, using instead, however, the May 1, 1973, final production date as the starting point. The schedule as thus revised would be (1) June 15: completion of all discovery; (2) July 9: final prehearing conference/submission of documentary evidence; (3) August 6: pretrial briefs

in the Board's hands; and (4) August 13: commencement of hearing. The Department believes that this procedural schedule will provide the necessary time for our case preparation following Applicant's May 1, 1973, completion of all joint request document production.

Respectfully submitted,


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January 8, 1973
Washington, D. C.

UNITED STATES OF AMERICA

BEFORE THE

ATOMIC ENERGY COMMISSION

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

CERTIFICATE OF SERVICE

I hereby certify that copies of ANSWER OF THE DEPARTMENT OF JUSTICE TO APPLICANT'S MOTION FOR ORDER MODIFYING PROCEDURAL SCHEDULE, dated January 8, 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 8th day of January, 1973:

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