

4/9/73

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))

APPLICANT'S MOTION TO COMPEL
PRODUCTION OF DOCUMENT

Pursuant to Section 2.740(f)(1) of the Commission's Rules of Practice, 10 C.F.R. Part 2, Consumers Power Company ("Applicant") moves the Board for an order compelling production of an "internal memorandum" of the Michigan Municipal and Cooperative Power Pool ("MMCPP") which the Department of Justice refuses to provide Applicant.

Although this document is responsive to Applicant's discovery requests to the Department served on December 6, 1972, the Department objected to its production for the first time in a letter to Applicant's counsel on April 2, 1973. According to the letter, the document relates to "current negotiations" between Applicant and the MMCPP and "disclosure of this document would be unfair even if limited to Applicant's attorneys in this proceeding" (p.1).

Having never seen the document in question, Applicant is unable to comment on its content. However, from the Department's cryptic description, the document appears to relate to discussions between Applicant and MMCPP members

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concerning an interconnection agreement. These discussions were referred to in the Department's "advice" letter of June 28, 1971 (pp. 6-7) and are still in progress.

The Department does not explain why it would be "unfair" to disclose the document -- even to Applicant's counsel under a confidentiality agreement. Contrary to the Department's letter, Applicant has provided the Department and the Intervenors (who include MMCPP members) with more than fifty documents relating to negotiations between Applicant and MMCPP member systems. (See document pages 12,628 to 12,883). Since many of the documents are internal memorandum concerning the Applicant's views about the matters under negotiation, Applicant has sought (and received) a confidentiality agreement from opposing counsel.

Applicant submits that if the document is as sensitive as the Department claims, such an agreement would be equally satisfactory with regard to the document which the Department refuses to produce.

The Department's letter of April 2, 1973 states that the document will not be produced except pursuant to a Board order. Since the document is relevant, nonprivileged, and responsive to a discovery demand to which the Department has not objected, the Department is not justified in refusing to produce it. Rather, if it deems disclosure to be "unfair", it must seek a protective order pursuant to Section 2.740(c) and meet the "good cause" standards enunciated therein. In any event, nothing in the Department's letter of April 2, 1973,

suggests there is good cause for its refusal to disclose the document to Applicant under appropriate terms and conditions.

WHEREFORE, the Applicant moves the Board for an order compelling the Department of Justice to produce the document withheld pursuant to the Department's letter of April 2, 1973.

Respectfully submitted,

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April 9, 1973

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CERTIFICATE OF SERVICE

I hereby certify that copies of APPLICANT'S MOTION TO COMPEL PRODUCTION OF DOCUMENTS, dated April 9, 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 9th day of April, 1973:

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