

UNITED STATES OF AMERICA
ATOMIC ENERGY COMMISSION

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

ORDER RULING ON APPLICANT'S OBJECTIONS
TO DOCUMENT REQUESTS, THE DEPARTMENT OF
JUSTICE'S MOTION TO COMPEL THE PRODUCT-
ION OF FOUR CATEGORIES OF DOCUMENTS,
AND APPLICANT'S MOTION FOR PROTECTIVE ORDERS

Before ruling on the specific matters raised by the parties, a brief statement by this Board dealing with the appropriate scope of discovery would be apropos. The Department of Justice is given 180 days during which to obtain facts from which it can draw conclusions for transmittal to the Atomic Energy Commission in the form of a "Letter of Advice". The Commission's Rules of Practice contemplate that the Board in the first prehearing conference will reach agreement with the parties as to the relevant matters in controversy and will set them forth in the prehearing conference Order. Under Section 2.740 of the Restructured Rules, discovery with regard to such relevant matters in controversy may be had by the parties. It is not the purpose of discovery to explore matters not

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in controversy. With these principles in mind, we now turn to the specific items before us.

Applicant's first objection is to request no 2 -- file indexes and documents describing Applicant's filing system. Unless we take the position that all of Applicant's files are relevant to the matters in controversy, a position we do not take, then this request calls for irrelevant material. The Department of Justice argues that the data requested will enable it to locate relevant material. We do not agree. With the issues clearly drawn, the Department should be able to frame requests appropriately limited to relevant material. Accordingly, Applicant's objection to this request is sustained.

Applicant next objects to requests for documents relating to Applicant's political activities (Request 3(e)). The Department argues that under the guise of appropriate political activities, the Applicant may have practiced a mere sham to engage in forbidden activities. Whether or not Applicant has engaged in unfair practices through political maneuvers is a matter not relevant to the issues in controversy; more particularly, issues pertaining to

coordination. Under the Commission's Notice of Antitrust Hearing, dated April 11, 1972, this Board may not address itself to matters not in controversy. Consequently, we agree with Applicant's arguments concerning the invalidity of the request. The objection is sustained.

The next matter relates to request no. 4, calling for minutes of pooling and coordination committee meetings. All parties agree that the requested documents include many which are irrelevant. The Department of Justice argues that it cannot tell what is relevant without examining all of the files. This type of argument, if carried to its logical conclusion, would give the Department of Justice access to all of Applicant's documents, a procedure forbidden by Section 2.740. The request is hereby limited to those documents which deal with Applicant's power to grant or deny access to coordination, and those documents dealing with the use of this power against smaller utility systems. As so limited, Applicant is required to produce the documents.

Applicant objects to the production of documents relating to its gas operations on the ground that they are not relevant. Possibly, Applicant may have used its gas operations to

unfairly compete with the smaller utility systems. However, even if it has done so, it is not a relevant matter in controversy. Misbehavior not directly related to coordination activities is not relevant. Therefore, the objection is sustained.

Applicant objects to the request for all documents in certain files - - request no. 10 - - pertaining to each wholesale customer. The Department of Justice argues that the main thrust of the inquiry concerns the various means and techniques by which Applicant is believed to have retained and expanded its monopoly of bulk power supply at the expense of these very wholesale customers. The theory appears to be that, by refusing coordination with its wholesale customers, Applicant has been able to achieve and expand a monopoly in bulk power supply. All documents in these files relating to or discussing attempts of the wholesale customers to obtain coordination are relevant to the matters in controversy. Such documents must be produced. The remaining documents in these files are irrelevant. As to them, Applicant's objection is sustained.

Request no. 23 - - Applicant's income tax returns. Applicant has indicated that it will attempt to show healthy competition between itself and the smaller utility systems and, as an item in such showing, tax differentials will be discussed. Income tax returns are not privileged, as Applicant admits. There is no burden in producing them and they are an appropriate sources of tax information. The objection is overruled.

The Department of Justice has filed a Motion to Compel Production of Documents which predate January 1, 1960. Applicant strenuously objects to the production of such documents as burdensome and irrelevant. It is the opinion of the Board that the Applicant's present economic position and the nature of its recent activities can be shown adequately with documents dated on and after January 1, 1960. However, it is recognized that the negotiations which form the basis of executed agreements may have encompassed a substantial period of time. Thus, in this case, contracts executed after January 1, 1960, may have had their origins prior to that date. Since negotiations may explain the intricacies of a written contract, the request of the Department of Justice is valid. Therefore, Applicant is

required to produce documents prior to January 1, 1960, which form part of the records of negotiations of each coordination contract executed by Applicant after January 1, 1960. As thus modified, the motion is granted.

Lastly, the Applicant objects to the production of those portions of three manuscripts relating to events prior to January 1, 1960, although the manuscripts themselves were prepared subsequent to January 1, 1960. In all likelihood, many documents dated past January 1, 1960, will mention events prior to that date. This is inherent in any agreed upon date. Applicant's objection is contrary to the agreed upon scope of discovery and is denied.

Based on the foregoing rulings, the Board sees no need at this time in granting Applicant's motion for protective orders.

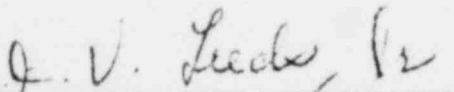
In reaching our decision on the objections, we gave no weight to the supplemental memoranda filed by the Applicant without leave of the Board - - although a motion for leave was filed with each memorandum. At this point, we wish to indicate our unfavorable reaction to a motion for leave to file supplemental memorandum and, at the same time, have

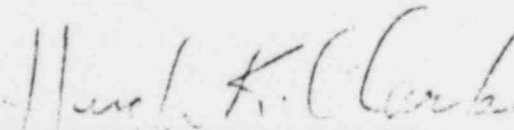
the memorandum attached. This approach presumes that the motion will be granted. On the other hand, if not granted, it will be difficult to alter the impression that the Board was influenced by an unacceptable document. Accordingly, in the future, any motion for leave to file a supplemental memorandum will not be accompanied by that document. Only upon the granting of the motion, will the memorandum be filed.

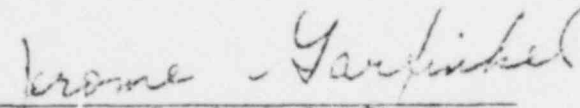
No reasonable need has been shown for an oral argument and Applicant's request therefor is denied.

IS IS SO ORDERED.

THE ATOMIC SAFETY AND
LICENSING BOARD


J. V. Leeds, Jr., Member


Hugh K. Clark, Member


Jerome Garfinkel, Chairman

Issued at Washington, D. C.,
this 28th day of November, 1972

UNITED STATES OF AMERICA
ATOMIC ENERGY COMMISSION

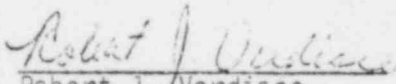
In the Matter of)
CONSUMERS POWER COMPANY) AEC Docket No. 50-329A
(Midland Plant, Units 1 and 2)) 50-330A

NOTICE OF APPEARANCE

Notice is hereby given that the undersigned attorney herewith enters an appearance in the captioned matter. In accordance with §2.713, 10 CFR Part 2, the following information is provided:

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Washington, D. C. 20545

Respectfully submitted,


Robert J. Verdisco
Counsel for AEC Regulatory Staff

Dated at Bethesda, Maryland
this 22nd day of November, 1972.

UNITED STATES OF AMERICA
ATOMIC ENERGY COMMISSION

In the Matter of)
CONSUMERS POWER COMPANY) Docket No. 50-329A
(Midland Plant, Units 1 and 2)) 50-330A

CERTIFICATE OF SERVICE

I hereby certify that copies of NOTICE OF APPEARANCE, dated November 22, 1972, in the above captioned matter have been served on the following by deposit in the United States mail, first class or air mail, this 22nd day of November 1972:

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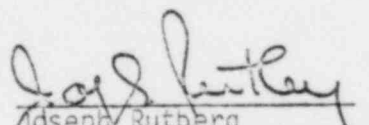
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UNITED STATES OF AMERICA
ATOMIC ENERGY COMMISSION

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

Docket No. 30-329A, 330A

CERTIFICATE OF SERVICE

I hereby certify that copies of an ORDER RULING ON APPLICANT'S OBJECTIONS TO DOCUMENT REQUESTS, THE DEPARTMENT OF JUSTICE'S MOTION TO COMPEL THE PRODUCTION OF FOUR CATEGORIES OF DOCUMENTS, AND APPLICANT'S MOTION FOR PROTECTIVE ORDERS dated November 28, 1972, in the captioned matter have been served on the following by deposit in the United States mail, first class or air mail, this 28th day of November 1972:

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