

CITY OF WASHINGTON)
)
DISTRICT OF COLUMBIA) ss.

Keith S. Watson, being duly sworn, deposes and says:

that he is one of the attorneys for the Applicant, Consumers Power Company, in antitrust proceedings before the Atomic Energy Commission involving the Midland Units;

that during the period here involved, he has had supervisory responsibility with respect to actions by Applicant's Washington counsel responding to orders of the AEC Hearing Board with regard to discovery demands against Applicant by other parties;

that he is familiar with the actions of Applicant's own personnel, from personal knowledge and on information and belief, in complying with such discovery demands by other parties;

that the attached statement is true and accurate, to the best of his knowledge, information and belief.

Keith S. Watson

Keith S. Watson

Subscribed and sworn to before me this 9th day of July 1973.

Carl J. Indiana

Notary Public

My Commission Expires:

Sept. 14, 1976

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Statement of Keith S. Watson

1. The various document demands from opposing parties imposed upon the Applicant the task of searching, extracting, evaluating, and producing an enormous bulk of documentary material within a relatively short period of time. As has already been reported to the Board, it is reliably estimated that over four million document pages were scrutinized during this process. Due to the shortage of experienced Company personnel, it was determined at the outset that in order to meet the deadlines assigned by the Board and to ensure the comprehensiveness and accuracy of the production, that the principal judgment factors would be supplied by Washington counsel. In other words, the primary work of analysis and evaluation would be undertaken in Washington by specialized counsel, rather than in Michigan by Company personnel. Thus, the extraction process which took place in the Company's headquarters and field offices was designed and carried out to ensure that any and all possible documents that could possibly be called for by the various demands were sent forward to Washington for analysis and production by Washington counsel. In order to ensure this, it was

necessary to utilize lawyers to supervise the extraction process, and this was done. However, as stated, the exercise of judgment and discrimination, which led inevitably to a substantial winnowing of the document flood, took place at the second stage of the process. Thus, when the analysis was completed by Washington counsel, a rather large number of documents which were physically extracted from the Company files were found to be either not called for or else exact copies of other documents. This is the basic reason why a large number of documents forwarded to Washington were not produced.

2. The following details of this process, of which I am personally aware, may be of help to the Board in evaluating the foregoing points:

(a) The file search was conducted by approximately fourteen Company employees on the basis of instructions by Washington counsel concerning the method and substance of the file search process. It is my best estimate that approximately 55,000 document pages were forwarded to Washington.

(b) The Company's file search supervisor (Mr. Judd Bacon) and three of the other file searchers

are attorneys. The other ten are professional employees, but are not attorneys.

(c) The file searchers, particularly the non-attorneys, were expressly instructed to, and did err substantially on the side of inclusion. For this reason, much irrelevant or unresponsive material was extracted. For example, I have ascertained that at least 2,000 extracted document pages were dated prior to 1960, and were not otherwise producible. In the time available, I have not been able to determine the total number of document pages that fall into this category.

(d) A very large number of documents not produced were duplicates. The file searchers were not able to prepare and maintain a current document index permitting determination whether a duplicate document had been previously extracted. Preparation of such a list, and the necessary comparisons, would have been so time consuming as to make it completely impossible to complete production in the time directed by the Board. With regard to intra-office materials (the bulk of the extracted documents), the author's copy, the addressee's copy, plus various carbon copies typically would be

located in different files, often searched at widely separated times. Due to the size of the Company, a large number of copies (often as many as six) of such documents were typically extracted from various headquarters files. Reports sent to the Divisions were typically found in each of the files of the twenty-six division offices. Every such copy would be extracted, except possibly in rare instances where a file searcher may have recalled having previously extracted its exact duplicate -- a statistically remote event given the number of searchers and documents, and the extent of time covered by the search.

To the maximum feasible extent in the time available, Washington counsel excluded duplicates in making production to opposing counsel. This was done in accordance with the Joint Document Request which called for such exclusion (except where the duplicate was individually annotated). In the short time available I have been able to identify more than 7,000 pages transferred to Washington counsel which were exact copies of other extracted documents and were therefore not produced.

(e) The file search was begun immediately upon receipt of the Joint Document Request of July 26, 1972. Thus, documents responsive to many discovery items later modified or deleted as a result of meetings of counsel in late September and as a result of the Board's order of November 28, 1972, were extracted and transmitted to Washington counsel. The file search was at least one-third complete at the time of the Board's order of November 28 which considerably narrowed the scope of the document demand.

I have not been able to quantify the number of documents extracted but not produced for this reason, although I believe it to be substantial. For example, in response to Item 4 of the Joint Document Request, the Company was asked to provide all Michigan Pool Committee reports. These were extracted and sent to Washington counsel, but the Board's order of November 28 limited the discovery to Pool Committee reports relating Applicant's power to grant or deny access to coordination. Over 6,000 pages of such Reports were transferred to Washington counsel and were subsequently found to be not responsive to Item 4, as modified by the Board.

(f) The file searchers were instructed to ignore questions of privilege. For the sake of uniformity and accuracy, such questions were decided by Washington counsel. Documents deemed by Washington counsel to be privileged were withheld from submission, and a list of these documents and an explanation of the nature of privilege claimed were sent to opposing counsel on April 26, 1973. These documents involved about 1,200 pages of material.

(g) The document search was not confined to documents responsive to opposing party document demands, but covered documents of possible relevance to the Applicant's affirmative and defensive case. The file searchers were instructed to extract a number of categories of documents of interest to Company counsel but not sought by any document demand; e.g., documents relating to municipal "tying" practices. These documents are included in the total document pages which have been referred to as being transferred to Washington counsel.

3. To recapitulate: an inspection of the documents in the time available since the July 6 informal conference indicates the following:

(1) About 55,000 document pages were transferred to Washington counsel from Applicant's headquarters and field offices. (No exact count was maintained.) Of these, approximately 26,000 pages were produced.

(2) Of the balance, we have been able to establish that

(a) a minimum of 7,000 pages were duplicates of produced documents

(b) a minimum of about 6,000 pages were not called for as a result of a later modification of the Joint Demand by Board order

(c) 1,200 pages were classified as privileged, and parties so advised.

(d) a minimum of 2,000 pages were pre-1960 documents not called for under the Board's order.

It is my opinion, based on my detailed knowledge of the Washington process, that the balance, or less than 13,000 pages, constituted documents which were not produced for one or more of the following reasons: (i) not called for by the extensively modified demand, (ii) extracted in response to the Applicant's requirements,

(iii) were further duplicates, or (iv) Washington counsel disagreed with the imputed judgment of the extractor that the document was (or might be) called for. These pages represented less than 24 per cent of the total volume. It would not be possible, without a complete review of the non-produced documents, to determine the number of documents falling into each of the foregoing categories.

UNITED STATES OF AMERICA
ATOMIC ENERGY COMMISSION

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

Docket Nos. 50-329A
50-330A

AFFIDAVIT

Judd L. Bacon of Jackson, Michigan, being first duly sworn,
deposes and states upon information and belief as follows:

1. I am a Senior Attorney in the Legal Department of Consumers Power Company and my responsibilities include supervision of the Company file search initiated pursuant to this proceeding.

2. Following receipt of document requests of July 26, August 16, September 21, and September 25, 1972, the requests were reviewed by outside and Company counsel and discussed with appropriate Company employees. In view of the nature of the document requests, it was determined that the file search would require review of a substantial percentage of the Company's files.

3. The file search focused initially upon the asterisked items of the Joint Document Request, but also included a search for responses

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to the other requests. Two attorneys were assigned to the search on a full-time basis while I and nonlegal personnel also contributed significantly in time and effort.

4. By the time of the prehearing conference in October 1972, review of the files of the Marketing and Rate Departments, including files of the vice presidents in charge of those Departments, had been completed. Moreover, review of the files containing documents responsive to the asterisked items had also been substantially completed. Based on that experience, the file searchers estimated at that time that the search could be completed by the first of the year if favorable rulings were obtained on all of the Company's objections to the document requests. However, the search has since proven more time consuming than originally anticipated. While the asterisked requests generally called for relatively easily identifiable reports and analyses, the remaining requests, often calling for all documents "relating" or "referring" to certain broad categories, required time consuming searches of correspondence, interoffice memos and the like. The actual extent of the remaining files, as well as the time required for reading, indexing and review of already extracted documents, also has proven greater than had been anticipated. To date, approximately 39,000 document pages have been extracted by Company personnel and transmitted to Washington counsel for review. It is extremely difficult to estimate the number of document pages that remain to be reviewed before the search is completed. Approximately one-half of the persons and departments having files that need to be examined have been examined. However, I expect that less material that is germane will be found in the files yet to be searched than has been

found in those already examined. My rough estimate of the number of document pages yet to be reviewed is 20,000. This figure does not include field office documents.

5. To deal with this situation, another Company attorney was committed on December 4, 1972 to work full time on the project, and all three attorneys engaged in the file search have been ordered to work overtime on the project as well. One week later, three nonlegal employees were assigned to assist these attorneys on a full-time basis; one of these employees is also devoting overtime to the search. To date the search has consumed approximately 1,760 legal man-hours and 1,400 nonlegal man-hours and has resulted in the review of files of the following offices:

- All officers except Chairman of the Board and the President
- Marketing Department
- Executive Manager Electric Planning
- Power Resources and System Planning Department (substantially complete)
- Director, Power Resources and System Planning
- Senior Supervisory Engineer, Interconnection Planning
- Interconnection Coordinator
- Rate Research Department
- Data Control Department (partial)
- Rates Department
- Executive Director of Rates, Research and Data Control
- Data Control Supervisor (partial)
- Legal Department
- Electric Engineering Department (partial)

6. The files of the following headquarters offices remain to be searched:

- Chairman of the Board and President
- Executive Committee
- Director of Division Administration
- Executive Assistant to Vice President in Charge of Divisions
- Manager of Marketing
- General Supervisor of Commercial Electric and Governmental Services
- General Governmental Services Engineer

Area Development Department
Director of Area Development
Executive Manager of Electric Transmission and Distribution
Principal Engineer, Power Facilities Planning
Bulk Power Production Department
Manager of Bulk Power Production
System Operations Superintendent
Project Manager, Kern Units 3 and 4
Project Manager, Ludington
Project Manager, Midland
Project Manager, Palisades
Manager of Electric Engineering
Electric Transmission and Distribution Department
Manager of Electric Transmission and Distribution
Electric Transmission and Distribution Coordinator
Assistant Controller
Assistant Secretaries (2)
Assistant Treasurers (3)
Director of Government Affairs
Director of Civic Affairs
Director of Economic and Financial Planning
Personal Attorney Files
Director, Public Information

I estimate that another 1,500 man-hours will be required to complete this effort. I also estimate that it is unlikely that the headquarters file search can be completed prior to February 16, 1973.

7. It is not possible to state with certainty the time and resources necessary to complete a field office file search. The Company has 12 division headquarters and 26 local district offices having electric service responsibilities located throughout the Lower Peninsula of Michigan--offices which are as far as 250 miles from Jackson, Michigan. These offices employ more than 1,100 executive, professional and administrative employees who have electric service responsibilities. The Company's General Office headquarters in Jackson has about 1,000 such employees (or less than one-half of the total of such employees). The files located in a division headquarters are approximately comparable in bulk to those in a major department of the General Office headquarters in Jackson.

8. The field office file search process would require trained General Office personnel to supervise and coordinate the search with field office personnel and would also require transporting documents to Company headquarters for processing. I estimate that the field office file search will require at least until May 1, 1973.

9. Absent a thorough file search, it is not possible to state categorically what documents are, or are not, located in the field office files. However, given the nature of the issues raised in this proceeding, I believe that such a search would primarily produce duplicative or cumulative documents, and is not required to develop an adequate record in this case.


10. The Company's policies concerning coordination are formulated, initiated, and overseen by officers and other Company officials, all of whom are located in the Company's Jackson headquarters. For example, negotiations with other utilities are conducted and policy determinations concerning such subjects as wholesale power, interconnection, pooling, reserve sharing, or wheeling are made and supervised by headquarters personnel.

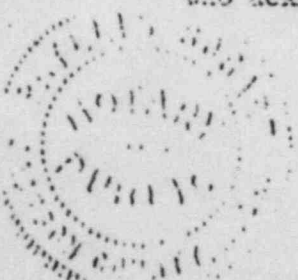
Further deponent says not.


Judd L. Bacon

STATE OF MICHIGAN)
) SS.
COUNTY OF JACKSON)

On this 22nd day of December, 1972, before me, a Notary Public in and for said County personally appeared Judd L. Bacon, to me known to be the same person described in and who executed the within instrument, who acknowledged the same to be his free act and deed.


Phyllis Bogart
Notary Public, Jackson County, Michigan
My Commission Expires April 20, 1974



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 INTERVENORS' MOTION FOR RECONSIDERATION AND MOTION TO COMPEL, dated July 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 July, 1973:

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Keith S. Watson