

3/12/73

RETURN TO REGULATORY CENTRAL FILES
ROOM 016

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 Answer to Motion to Compel
Response to Request for Admissions and
Objections to Said Request

Pursuant to Sections 2.730(b) and 2.742(b) of the Commission's Rules, 10 C.F.R. Part 2, Consumers Power Company ("Applicant") answers the Motion to Compel Responses filed by the Department of Justice on March 2, 1973, and objects to certain items of the Department's Request for Admissions served on February 12, 1973.^{1/} On February 23, 1973, eight working days following the filing date of the Department's Request, Applicant advised the Department that many of the requests were objectionable under the Rules on ground of vagueness, relevance, lack of material factual content. This pleading confirms and completes its objections in this regard. (The letter to the Department was attached to Applicant's Motion To Extend Time, dated February 2., 1973.)

The Department's Request for Admissions includes 235 items, covers nearly fifty-typed pages, and, by the

^{1/} By order of the Chairman of the Board, this pleading is directed solely to the Department's Request for Admissions, not to the interrogatories which accompanied this Request. Applicant waives no rights to object to any such interrogatories at an appropriate juncture in this proceeding.

Department's own admission, constitutes practically its "whole case" (Tr. 356). Thus, it is clear that the Department misconstrues the nature of Admissions under Section 2.742 of the Commission's Rules and that most items in the Request are defective.^{2/} Like Rule 36 of the Federal Rules of Civil Procedure prior to the 1970 amendment thereof, one may only seek admission "of the truth of any specified relevant matter of fact" in requesting admissions under Section 2.742.^{3/} Professor Moore has summarized the significance of this restrictive language as follows:

". . . Rule 36 was designed to accomplish the relatively limited purpose of eliminating the necessity of putting on formal proof of essentially uncontroverted facts, not as a substitute for trial. Several principles emerged. First, of course, the matters with regard to which the admission is requested must be relevant and unprivileged. Second, the request must deal with matters essentially factual. That is to say it may not be a matter of pure opinion, or a conclusion of law. Third, it should be simple and clear enough so that it is capable of being admitted or denied without qualification or explanation. Fourth, the matter must be one that can

2/ In its aforementioned letter to the Department, Applicant offered to meet with the Department in the hope that the defects in the Request could be discussed and remedied informally without resort to the Board. However, the Department rejected this approach and chose instead to file a Motion to Compel a "full" response to its Request, on March 2, 1973.

3/ Section 2.742 is modeled on the pre-amendment version of Rule 36, which did not contain the word "specified". Rule 36 of the Federal Rules has since been revised to broaden its scope. Significantly, the Commission has not adopted this broader language in its recent revision of its Rules.

be answered by the person to whom the request is directed. That is to say that the information necessary to enable him to admit it or deny it must at least be reasonably available to him. . . . Finally, the rule is not designed to canvass the entire range of evidence to be presented, or to deal with the central controverted issues of the case." Moore's Federal Practice §36.04(1) (1970 edition) (footnotes omitted).

Applying these principles, Applicant submits that many of the requests for admission are improper and should be denied. Attachment A hereto lists Applicant's objections on an item-by-item basis, while the following sections discuss the bases for these objections in light of the five principles set forth in the above-quoted excerpt by Professor Moore.

1. Many of the requests are not relevant to this proceeding because they (a) pre-date 1960 and/or (b) are unrelated or not confined to the situation in lower Michigan.

Section 2.742 requires that requests for admissions be "relevant" matters of fact. The standard of relevance required for admissions is construed more strictly than that which governs other discovery. United States v. Watchmakers of Switzerland Information Center, 25 F.R.D. 203 (S.D.N.Y. 1960). But assuming arguendo that the same standards apply, requests which pre-date 1960 or which are unrelated to situation in lower Michigan should be denied as irrelevant.

- a. Pre-1960 requests: The Board has consistently

ruled^{4/} that matters which pre-date 1960 are irrelevant and immaterial to this proceeding. The propriety of these rulings seems beyond dispute since, under Section 105(c), the Commission is charged with concluding only whether "it is reasonably probable that the [Applicant's] activities under the license would, when the license is issued or thereafter, be inconsistent with any of the antitrust laws" Joint Committee on Atomic Energy Report on 1970 Amendments to Atomic Energy Act, 1970 U.S. Code and Administrative News, p.4994.

Although some resort to prior conduct or market structure may be necessary to evaluate the situation "when the license is issued or thereafter", there is no justification for inquiry into circumstances more than thirteen years in the past -- to say nothing of those requests which include reference to pre-1900 circumstances. As this Board has held, "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". Order Ruling on Objections dated November 28, 1972.^{5/} Therefore, Applicant

^{4/} Prehearing Conference Order, dated August 7, 1972 (p.4); Order Ruling on Objections, dated November 28, 1972 (p.5); and Third Prehearing Conference Order, dated February 16, 1973 (p.1).

^{5/} Applicant incorporates by reference its previous pleadings concerning pre-1960 discovery: Applicant's Objection to Document Request, filed October 26, 1972, pp. 16-21. Applicant's Reply, filed November 15, 1972, pp. 22-25; and Applicant's Answer to Interveners, filed February 7, 1972 (pp. 2-3).

submits that these requests specified in Appendix A should be denied as irrelevant and immaterial.

b. Requests unrelated to situation in lower Michigan:

In addition to the pre-1960 items, numerous requests are not relevant to the issues specified by the Board because they deal with hypothetical situations which are irrelevant (or not confined) to Applicant or any other electric system in the lower peninsula of Michigan. According to the Board's Prehearing Conference Order of August 7, 1972, the "relevant matters in controversy" are confined, inter alia, to Applicant's power and use of any such power "to grant or deny access to coordination" to smaller lower Michigan electric systems in an anticompetitive fashion (p.3).

Many of the requests, as set forth in Appendix A, refer to hypothetical generating units or systems and proceed to offer statements about these units and about an unidentified system of which these units are said to be a part. (See, e.g., requests 30 and 31). Many other requests propound statements about electric facilities and systems generally without reference or limitation to Applicant or to lower Michigan. Since these requests require Applicant to analyze the needs of a system about which Applicant knows nothing, no response to such requests is possible. But, even were a response is possible, Applicant is unaware of any systems in the lower peninsula of Michigan possessing such characteristics and submits that these requests are speculative

examples of no relevance to Applicant's alleged denial of access to coordination with certain neighboring systems and thus not germane to the "situation" in lower Michigan. Such requests might appropriately be pursued in the Department's brief, but are hardly appropriate in a formal admissions request.

The Board should therefore deny on grounds of relevancy those requests which inquire into pre-1960 matters or which concern hypothetical electric generating units or systems not limited, or relevant, to Applicant or any factual situation in the lower peninsula of Michigan.

2. Many of the requests do not seek admissions as to facts, but rather call for opinions about matters calling for large elements of judgment, or conclusions of law.

The Commission's Rules specify that a request for admission must be confined to a "matter of fact" Section 2.742(a) (emphasis supplied). Many of the items of the request are fatally defective on their face since they call for Applicant to provide (a) opinions about various circumstances, often hypothetical, and (b) conclusions or interpretations of law. Such inquiries are beyond the scope of Section 2.742. See, e.g., Lantz v. New York Central R.R., 37 F.R.D. 69 (N.D. Ohio 1963); Fuhr v. Newfoundland-St. Lawrence Shipping, Ltd., 24 F.R.D. 9, 13 (S.D.N.Y. 1959).

(a) Opinions: Many of these requests contain such conclusory language as "characterized by" (request 85), and "benefits be" (request 124) and "probably" (request 152).

The defective requests, together with the objectionable language, are set forth in Appendix A. These requests obviously do not call for admissions about "facts", as case law has defined that term. Thus, in Baldwin v. Hartford Accident and Indemnity Co., 15 F.R.D. 84, 85 (D. Neb. 1953), the court held that requests for admissions should not require the respondent "to agree or argumentatively or otherwise to dissent from, conclusions of its demanding adversaries". The principle is applicable here, and requires denial of many of the Requests.

(b) Conclusions of Law: Some of the requests require Applicant to provide the Department with an interpretation or conclusion of law, even though the Board has previously denied such inquiries (Tr. 227). For example, requests 121 to 123 refer to the Federal Power Commission's decision in the Gainsville^{6/} case and ask Applicant to interpret that decision and to provide a conclusion as to how coordination arrangements in that case compare with Applicant's interconnection arrangements with other systems, e.g., "similar",

^{6/} Gainsville Utilities Department v. Florida Power Corporation, 402 U.S. 515, 91 S. Ct. 1592 (1971). There, the court affirmed a Federal Power Commission decision ordering Florida Power Company to interconnect with the city of Gainsville's municipal system under certain terms and conditions. The Court rejected Florida Power challenge to the FPC action because, after extensive studies and hearings, the FPC had found that

"superior". Similarly, requests 210 to 212 require Applicant to offer its interpretation of federal and state law and the Gainsville case. According to one court, "a long line of decisional authority" has held such requests to be improper. Mahoney v. Doering, 260 F. Supp. 1006, 1008 (E.D. Pa. 1966).

Thus, it is clear that the Department ignores the limitation of Section 2.742(a) which confines admissions to "matters of fact" and proscribes those which require Applicant to venture opinions about disputable matters or to provide its interpretation of law. Those requests which are not confined to "specified facts" should therefore be denied.

3. Many of the request do not involve requests for admissions about "specified" facts, but rather are unclear and ambiguous statements which do not permit unqualified admission or denial.

Many of the requests for admission of "facts" are not stated with the specificity required by Section 2.742(a) of the Rules. That Rule requires admissions only as to "specified" matters of fact. This underlines that the Commission's

Fn. continued --

the interconnection would provide both parties "substantial and important benefits: electrical operating benefits, and corporate financial savings." 402 U.S. at 524, 525.

The Gainsville case arose under Section 202(b) of the Federal Power Act, 16 U.S.C. 824a(b), and involved no anti-trust issues. The Commission's decision, and the Court's affirmance, were confined to a unique and "highly technical" situation in central Florida. 402 U.S. at 528. Applicant questions its relevance to this proceeding. In any event, the discussion of the Gainsville case should be reserved for legal briefs in these proceedings and is not appropriate for requests for admissions.

Rules seek to limit the inquiry under Section 2.742(a) to matters which are unambiguous and which the respondent can admit or deny without qualifications. Significantly, even though the word "specified" has never appeared in Rule 36, requests for admissions are denied by Federal courts where they are ambiguous or cannot be answered without qualification. See, e.g., United States v. New Wrinkle, Inc., 16 F.R.D. 35 (S.D. Ohio 1954); Knowlton v. Atchison, T. & S.F. Ry. Co., 11 F.R.D. 62 (W.D. Mo. 1951).

Applicant submits that requests containing language, e.g., such as "relatively small" (request 54), "probably" (request 152) and "some reasonable relationship" (request 230) are insufficiently specified and are too ambiguous to permit a categorical admission or denial. Rather, they would require extensive qualification to explain under what circumstances the statement may (or may not) be true, and to interpret and define the ambiguous language. The admissions procedure does not contemplate this type of inquiry which would be more appropriate, if at all, for cross examination.

Even assuming arguendo that a request requiring extensive qualification is proper under Section 2.742, there is no justification for lack of specificity here. The Department has been receiving information from Applicant and other area electric systems for more than two years. Approximately one month ago, Applicant completed a massive and burdensome

document search of its headquarters files and, in substantial compliance with the Joint Document Request, has supplied the Department with nearly 18,000 document pages. Most of these documents were provided well before the instant request was served.

Thus, particularly here, the Board should deny those afore-mentioned requests which lack the "specificity" which the Rules require.

4. Some of the requests concern matters beyond the Applicant's knowledge.

Under Rule 36 of the Federal Rules prior to the 1970 amendments (which is the model for Section 2.742), there was an even split of authority as to whether one served with a request for admissions could refuse to respond on grounds that the matter was beyond his immediate personal knowledge. Compare Wirtz v. Texaco, Inc., 10 F.R. Serv. 2d 36 a. 21, Case 1 (N.D. Okla. 1966) with Goldberg v. International Testing Corp., 30 F.R.D. 367 (S.D. Cal. 1962). Under both interpretations, however, it is well settled that requests for admission should not require the respondent to make an "independent investigation" of the facts or to obtain information that is not readily "at hand". Criterion Music Corporation v. Tucker, 45 F.R.D. 435, 536 (S.D. Ga. 1968).

Many of the requests, as set forth in Appendix A, impose an undue burden on Applicant in obtaining knowledge

about the matters contained therein. The requests regarding events in the distant past (as much as 100 years ago) are not only irrelevant, but obviously beyond Applicants' practical ability to affirm or deny. Several requests inquire about the practices and characteristics of other systems about which Applicant knows relatively little. Assuming arguendo their relevance, such inquiries are better directed to those systems instead of Applicant.

It is well-settled that requests for admissions may not require burdensome investigations and, since the Department has already engaged in extensive discovery, there is no reason to deviate from that principle here. Those requests related to events prior to 1960 or to other electric utilities should therefore be denied.

5. Several requests deal with the controlling, disputed issues of this proceeding.

Under the pre-amendment Rule 36 of the Federal Rules, after which the Commission's Section 2.742 is fashioned, requests for admission were deemed improper where they constituted a "comprehensive summary" of the plaintiff's case or dealt with central issues in controversy between the parties. Syracuse Broadcasting Corporation v. Newhouse, 271 F.2d 910 (2d Cir. 1959); see also Lehmann v. Harner, 31 F.R.D. 303 (D. Md. 1962). The basis for this principle is that requests for admissions are "designed to eliminate the necessity of proving essentially undisputed and peripheral issues of fact". 271 F.2d at 917.

Here, the Department concedes that its requests constitute its "whole case" (Tr. 356). Some of the requested admissions explicitly refer to "access to coordination" or otherwise require Applicant to respond to inquiries about the very matters which the Board has held to be "matters in controversy" between the parties to this proceeding. Prehearing Conference Order of August 7, 1972 (p.3). Requests for admissions are clearly inappropriate vehicles for ascertaining Applicant's views as to these central issues, particularly so since other methods of discovery and trial briefs will provide the Department with adequate information in this regard.^{7/} They are also, and independently, inappropriate when Applicant has received substantially no discovery from intervenors in this proceeding.

The requests which relate to the central issues of this case should therefore be denied.

^{7/} The applicant has not sought such information of other parties to this proceeding. Its interrogatories directed to the Department of Justice inquired solely about past statements the Department had made, not about what its contentions will be at the hearing with respect to the contested issues of this proceeding.

CONCLUSION

WHEREFORE, Applicant answers the Justice Department's Request for Admission and objects to those requests set forth in Attachment A hereto.

Respectfully submitted,

.....

Wm. Warfield Ross

.....

Toni K. Golden

.....

Keith S. Watson

Attorneys for Consumers Power Company

WALD, HARKRADER & ROSS
1320 Nineteenth Street, N. W.
Washington, D. C. 20036

(202) 296-2121

Of Counsel:

Harold P. Graves, Esq.
Consumers Power Company
212 West Jackson Avenue
Jackson, Michigan 49201

March 12, 1973

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 MOTION TO COMPEL RESPONSE TO REQUEST FOR ADMISSIONS AND OBJECTIONS TO SAID REQUEST, dated March 12, 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 12th day of March, 1973:

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

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

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

William T. Clabault, Esq.
Joseph J. Saunders, Esq.
David A. Leckie, Esq.
Public Counsel Section
Antitrust Division
Department of Justice
Washington, D. C. 20530

James Carl Pollock, Esquire
2600 Virginia Avenue, N. W.
Washington, D. C. 20037

Joseph Rutberg, Jr., Esquire
Antitrust Counsel for
AEC Regulatory Staff
Atomic Energy Commission
Washington, D. C. 20545

Wallace E. Brand, Esquire
Antitrust Public Counsel Section
P. O. Box 7513
Washington, D. C. 20044

Atomic Safety and Licensing Board
Atomic Energy Commission
Washington, D. C. 20545

Keith S. Watson

APPENDIX A

Note: Each request objected to is identified by the number assigned to it in the request for admissions. Where a request is not referred to, it can be assumed that no objection is being made to it. For ready reference, the basis for the objection to each request is identified by a number which has been assigned to it in the general comments preceding this opinion as follows:

1. The request relates to a matter which is irrelevant to any issue in this proceeding either because it refers to events predating 1960, or to circumstances occurring outside of the state of Michigan, and thus outside the proper focus of this proceeding.

2. The request calls for conclusions and opinions, rather than relevant matters of fact, as required by Commission Rule 2.742.

3. The matter of fact in issue is not stated with sufficient specificity to permit admission or denial without qualification, as is required by the Rules.

4. The request seeks admission or denial of an alleged matter of fact beyond Applicant's knowledge, and thus is not susceptible of admission or denial.

5. The request seeks admission or denial of a controlling, disputed issue in this proceeding, and thus is an improper request under the Rules.

Request

Objection

1

(3) Not specified: The matter of fact is not stated with sufficient specificity to permit admission or denial. In particular, the terms "demand market" and "create a

demand market" are ambiguous and susceptible of multiple definition. The answer to this request may depend on the definition placed upon these terms, and thus the request cannot be admitted or denied in its present form.

2 (1) Not relevant: The request is irrelevant since it seeks the information prior to the 1880's and because it seeks information not related to the applicant's service area.

(4) No knowledge: Applicant lacks knowledge to respond to the request inasmuch as it seeks information "elsewhere" than Michigan.

3 (1) Not relevant: The request is irrelevant since it seeks information beginning in the 1880's.

(3) Not specified: The request lacks specificity since the terms "relatively close" and "economically feasible" are sufficiently ambiguous to permit of admission or denial.

(4) No knowledge: Applicant lacks sufficient knowledge to respond to the request relating to a period commencing in the 1880's and pertaining "throughout the United States."

4

(1) Not relevant: The request is irrelevant in relating apparently to pre-1900 events, and in lacking any discernible relationship to applicant's rates.

(3) Not specified: The request lacks specificity. The terms "larger loads", "ultimately were formulated" (when?, by whom?), "plant", and "kilowatt hour" (whose plant?, whose kilowatt hour?) are so ambiguous as to preclude an admission or denial of the request.

5

(1) Not relevant: Request is irrelevant since it apparently refers to events circa 1900 and has no discernible relationship to applicant.

(3) Not specified: The request lacks specificity since it does not relate to a specific time, area or circumstance.

(4) No knowledge: Applicant lacks sufficient knowledge of the events apparently circa 1900.

Note: The following requests 6-11 are all objectionable as relating to pre-1960 circumstances. In addition, they are specifically objectionable on other grounds.

6

(1) Not relevant: Irrelevant as referring to pre-1960 and also as a hypothetical unrelated to any Lower Michigan system.

(2) Not a fact: Seeks confirmation or denial of an opinion or conclusion rather than the existence or non-existence of a material fact.

(3) Not specified: The objection is so lacking in specificity that it cannot be affirmed or denied without extensive qualification or definition.

(4) No knowledge: The applicant lacks knowledge of the apparently circa 1900 period.

7

(1) Not relevant: Irrelevant as pertaining to the pre-1960 period and with no discernible relationship to applicant.

(3) Not specified: The request lacks specificity since it is not tied down to place, time or circumstances, and since the term "single crew" is ambiguous.

(4) No knowledge: The Applicant lacks knowledge of the apparently circa 1900 events.

8

(1) Not relevant: The words "were confined" (apparently circa 1900) are not confined to lower Michigan and relate to the remote past.

(3) Not specified: The words "were confined" (when? and by what?), "relatively small", "feasibly", "larger and larger" are too ambiguous to permit response.

(4) No knowledge: Since the request relates to events apparently circa 1900 and are not confined to lower Michigan, it is improper.

9

(1) Not relevant: The word "was" apparently relates to events circa 1900 and the request is not confined to lower Michigan. It is therefore improper.

(2) Not a fact: The words "important problem" call for an opinion by the respondent and are therefore improper.

(3) Not specified: The words "one important problem" and "isolated" are too indefinite in meaning to permit unqualified response.

(4) No knowledge: The request relates to events apparently circa 1900, too remote in the past to permit response without extensive investigation.

10

(1) Not relevant: The word "was" (apparently circa 1900) denotes events in the remote past; nor is the request confined to lower Michigan. Thus it is doubly defective.

(2) Not a fact: The words "a significant factor" call for an opinion by the respondent.

(3) Not specified: The words "was" (when?) and "significant factor" are ambiguous in this context.

(4) No knowledge: Extensive investigation would be required to ascertain existence of circumstances, apparently circa 1900, especially those not confined to lower Michigan.

11

(1) Not relevant: The request is not confined to units in lower Michigan.

(4) No knowledge: As to all units outside of lower Michigan, extensive investigation would be required to permit a categorical response.

12

(1) Not relevant: The request is not confined to Applicant's units; also, Applicant owns no diesel electric engines.

(2) Not a fact: The words "may keep" call for an opinion by respondent. The request therefore does not deal with factual questions.

(3) Not specified: The "generator sets" are ambiguous in this context (units?).

13

(1) Not relevant: The question is not confined to Applicant's units.

(3) Not specified: The words "smaller units", "larger units", "somewhat higher", are so indefinite as to be meaningless.

14

(1) Not relevant: The request is not confined to Applicant's units.

(2) Not a fact: The words "would normally" call for an opinion and therefore do not involve a question of fact as the Rules require.

15

(1) Not relevant: The request applies to circumstances "elsewhere in the United States"; also, Applicant has no "such generator" in its system.

16

(1) Not relevant: The request is not confined to Applicant's system.

(2) Not specified: The words "failure" and "element" are ambiguous in this context.

17

(1) Not relevant: The request is not confined to Applicant's units.

(2) Not a fact: The words "thus possible" call for an opinion and thus are not concerned with questions of fact.

18

(1) Not relevant: This hypothetical inquiry does not relate to a "specified relevant matter of fact", as the Rules require, and is therefore irrelevant to the actual circumstances or to the antitrust "situation" in lower Michigan.

19

(1) Not relevant: This hypothetical inquiry does not relate to a "specified relevant matter of fact", as the Rules require, and is therefore irrelevant to the actual circumstances or to the antitrust "situation" in lower Michigan.

20

(1) Not relevant: This hypothetical inquiry does not relate to a "specified relevant matter of fact", as the Rules require, and is therefore irrelevant to the actual circumstances or to the antitrust "situation" in lower Michigan.

21

(3) Not specified: The word "generator" (unit?) is ambiguous in this context.

22

(1) Not relevant: The request is not confined to lower Michigan systems.

(3) Not specified: The words "capacity marketable" is too unclear to permit a response without qualification.

23

(1) Not relevant: The request inquires into hypothetical circumstances, i.e., it is not relevant to actual lower Michigan electric systems.

(2) Not a fact: The words "are necessarily" call for an opinion, not a factual matter.

(3) Not specified: The words "isolated" and "commercially marketable" are unclear in this context.

24

(1) Not relevant: This hypothetical inquiry does not relate to a "specified relevant matter of fact", as the Rules require, and is therefore irrelevant to the actual circumstances or to the antitrust "situation" in lower Michigan.

25

(1) Not relevant: This hypothetical inquiry does not relate to a "specified relevant matter of fact", as the Rules require, and is therefore irrelevant to the actual circumstances or to the antitrust "situation" in lower Michigan.

(2) Not a fact: The words "would be possible" call for an opinion, contrary to the Rules.

(3) Not specified: The words "smaller units" and "possible" are ambiguous in this context.

26

(1) Not relevant: The request inquires into hypothetical circumstances, i.e., it is not rele-

vant to actual lower Michigan electric systems.

27

(1) Not relevant: This hypothetical inquiry does not relate to a "specified relevant matter of fact", as the Rules require, and is therefore irrelevant to the actual circumstances or to the antitrust "situation" in lower Michigan.

(2) Not a fact: The words "would probably" call for an opinion, contrary to the Rules.

(3) Not specified: The words "optimum", "economies of scale" and "quite rapidly" are all unclear.

28

(1) Not relevant: The request is not confined to Applicant's system planner or to its system.

(3) Not specified: The words "compromise", "economically optimal", "lesser extent", "small sizes", "often" and "points of need" and all unclear and ambiguous in this context.

29

(1) Not relevant: This hypothetical inquiry does not relate to a "specified relevant matter of fact", as the Rules require, and is therefore irrelevant to the actual circumstances or to the antitrust "situation" in lower Michigan.

(2) Not a fact: The words "particularly troublesome" call for an opinion by the respondent.

(3) Not specified: The word "troublesome" is

meaningless and thus the request must be denied.

30 and 31

(1) Not relevant: The request inquires into hypothetical circumstances, i.e., it is not relevant to actual lower Michigan electric systems.

32

(1) Not relevant: The request covers the 1880's to 1910's and is not confined to lower Michigan ("generally"). It is therefore doubly irrelevant.

(3) Not specified: The words "isolated", "large", "remote", and "lines" are all unclear and ambiguous.

(4) No knowledge: Extensive research is required to ascertain knowledge of events in the 1880's to 1910's.

33

(1) Not relevant: The request covers "1910 to 1920" and is not confined to Applicant's system. It is therefore not relevant to this proceeding.

(3) Not specified: The words "high voltage transmission line" can have multiple meanings and are therefore ambiguous.

(4) No knowledge: Burdensome research is required to ascertain knowledge of events from "1910 to 1920".

34

(1) Not relevant: The request relates to circumstances in 1906 and includes matters "else-

where in the country".

(2) Not a fact: The words "may have preceded" and "possibly" call for an opinion and thus are not issues of fact.

(3) Not specified: The words "this technology" are not clear in this context.

35 (1) Not relevant: This hypothetical inquiry does not relate to a "specified relevant matter of fact", as the Rules require, and is therefore irrelevant to the actual circumstances or to the antitrust "situation" in lower Michigan.

(3) Not specified: The words "a high voltage transmission line" must be more precise to permit response.

36 (1) Not relevant: The request inquires into hypothetical circumstances, i.e., it is not relevant to actual lower Michigan electric systems.

(2) Not a fact: The word "satisfactorily" requires an opinion; the request does not deal with a factual issue.

(3) Not specified: The word "satisfactorily" is ambiguous.

37 (1) Not relevant: This hypothetical inquiry does not relate to a "specified relevant matter of fact", as the Rules require, and is therefore

irrelevant to the actual circumstances or to the antitrust "situation" in lower Michigan.

(3) Not specified: The word "system" is ambiguous in this context. The request is not confined to lower Michigan systems.

38 (1) Not relevant: This hypothetical inquiry does not relate to a "specified relevant matter of fact", as the Rules require, and is therefore irrelevant to the actual circumstances or to the antitrust "situation" in lower Michigan.

(3) Not specified: The word "similar-size" is ambiguous in this context.

39 (1) Not relevant: The request inquires into hypothetical circumstances, i.e., it is not relevant to actual lower Michigan electric systems.

(2) Not a fact: The words "could interconnect" and "agree" call for an opinion. The question is therefore non-factual.

(3) Not specified: The words "could interconnect" are ambiguous.

40 (1) Not relevant: This hypothetical inquiry does not relate to a "specified relevant matter of fact", as the Rules require, and is therefore irrelevant to the actual circumstances or to the antitrust "situation" in lower Michigan.

(2) Not a fact: The words "may be taken" call for an opinion.

(3) Not specified: The words "benefits of interconnection" and "economic justification" are ambiguous in this context.

41

(1) Not relevant: This hypothetical inquiry does not relate to a "specified relevant matter of fact", as the Rules require, and is therefore irrelevant to the actual circumstances or to the antitrust "situation" in lower Michigan.

(3) Not specified: The words "greater reliability", "much lower" and "resulting in" (when?) are ambiguous.

42

(1) Not relevant: The request makes no reference and has no relationship to interconnections or arrangements between lower Michigan systems. Admission requests must be confined to "specified relevant matters of fact" at issue in this proceeding. This generalized, hypothetical statement is not here at issue, and thus need not be affirmed or denied.

(2) Not a fact: The words "in practice" and "usually" call for an opinion. The request does not concern a fact at issue in this proceeding.

(3) Not specified: The word "usually" is

ambiguous in this context.

43

(1) Not relevant: The request make no reference and has no relationship to interconnections or arrangements between lower Michigan systems. Admission requests must be confined to "specified relevant matters of fact" at issue in this proceeding. This generalized, hypothetical statement is not here at issue, and thus need not be affirmed or denied.

(2) Not a fact: The words "probably" and "equal" call for an opinion by the respondent.

(3) Not specified: The words "equal bargaining power" and "split the benefits equally" are meaningless in this context.

44

(1) Not relevant: The request makes no reference and has no relationship to interconnections or arrangements between lower Michigan systems. Admission requests must be confined to "specified relevant matters of fact" at issue in this proceeding. This generalized, hypothetical statement is not here at issue, and thus need not be affirmed or denied.

(2) Not a fact: The words "would require" call for an opinion. The request therefore does not relate to a factual matter.

(3) Not specified: The words "would require" are ambiguous in this context.

45

(1) Not relevant: The request makes no reference and has no relationship to interconnections or arrangements between lower Michigan systems. Admission requests must be confined to "specified relevant matters of fact" at issue in this proceeding. This generalized, hypothetical statement is not here at issue, and thus need not be affirmed or denied.

(2) Not a fact: The words "must" and "fair" require an opinion from the respondent.

(3) Not specified: The words "fair portion" are meaningless in this context.

46

(1) Not relevant: The request makes no reference and has no relationship to interconnections or arrangements between lower Michigan systems. Admission requests must be confined to "specified relevant matters of fact" at issue in this proceeding. This generalized, hypothetical statement is not here at issue, and thus need not be affirmed or denied.

(2) Not a fact: The words "bargaining strength" and "required" call for an opinion by the respondent.

(3) Not specified: The words "equal" and "required" are meaningless in this context.

47

(1) Not relevant: The request makes no reference and has no relationship to interconnections or arrangements between lower Michigan systems. Admis-

sion requests must be confined to "specified relevant matters of fact" at issue in this proceeding. This generalized, hypothetical statement is not here at issue, and thus need not be affirmed or denied.

(2) Not a fact: The words "may be stated" call for an opinion by the respondent.

(3) Not specified: The words "the reserve responsibility" and "may be" are ambiguous in this context.

48

(1) Not relevant: This hypothetical inquiry does not relate to a "specified relevant matter of fact", as the Rules require, and is therefore irrelevant to the actual circumstances or to the antitrust "situation" in lower Michigan.

(2) Not a fact: The words "would agree" call for an opinion, thus the request is not factual, as the Rules require.

(3) Not specified: The words "the reserve responsibility" and "commonly referred to" are ambiguous in this context.

49

(1) Not relevant: This hypothetical inquiry does not relate to a "specified relevant matter of fact", as the Rules require, and is therefore irrelevant to the actual circumstances or to the antitrust "situation" in lower Michigan.

(2) Not a fact: This request requires Applicant to provide a legal conclusion. Thus, it is unfactual, contrary to the Rules.

(3) Not specified: The words "the reserve responsibility" and "with slight modifications" are ambiguous in this context.

50

(1) Not relevant: This hypothetical inquiry does not relate to a "specified relevant matter of fact", as the Rules require, and is therefore irrelevant to the actual circumstances or to the antitrust "situation" in lower Michigan.

(2) Not a fact: The words "could continue" call for an opinion. Thus, the request does not relate to a matter of fact.

(3) Not specified: The words "such an agreement" and "Marketing 15 megawatts" are ambiguous in this context.

51

(1) Not relevant: This hypothetical inquiry does not relate to a "specified relevant matter of fact", as the Rules require, and is therefore irrelevant to the actual circumstances or to the antitrust "situation" in lower Michigan.

(2) Not a fact: The words "could rely" and "generally accepted" require an opinion. The request therefore does not deal with a matter of

fact.

(3) Not specified: The words "it", "could rely" and "generally accepted" are ambiguous in this context.

52

(1) Not relevant: This hypothetical inquiry does not relate to a "specified relevant matter of fact", as the Rules require, and is therefore irrelevant to the actual circumstances or to the antitrust "situation" in lower Michigan.

(2) Not a fact: The words "would enjoy" and "equal advantage" require the respondent to make an opinion. The request therefore does not concern a matter of fact.

(3) Not specified: The words "equal advantage" are ambiguous.

53

(1) Not relevant: The question has no reference or relevance to stations or systems in lower Michigan. It is therefore not germane to any issue in this proceeding.

(2) Not a fact: The words "critical factors" and "economic feasibility" call for an opinion.

(3) Not specified: The words "critical factors" and "economic feasibility" are ambiguous in this context.

54

(1) Not relevant: The question has no reference or relevance to stations or systems in lower Michigan. It is therefore not germane to any issue in this proceeding.

(2) Not a fact: The word "normally" requires an opinion to be provided by the respondent.

(3) Not specified: The words "relatively small" and "normally" are ambiguous.

55

(1) Not relevant: The question has no reference or relevance to stations or systems in lower Michigan. It is therefore not germane to any issue in this proceeding.

(2) Not a fact: The word "may" calls for an opinion.

(3) Not specified: The words "relatively great", "the . . . line", "may approach", "reserve sharing", and "other coordination" are all ambiguous and unclear in this context.

56

(1) Not relevant: This hypothetical inquiry does not relate to a "specified relevant matter of fact", as the Rules require, and is therefore irrelevant to the actual circumstances or to the antitrust "situation" in lower Michigan.

(2) Not a fact: The word "could" requires an opinion. The request therefore does not concern

a matter of fact.

(3) Not specified: The words "feasible distances", "share reserves", "market" and "entire pool" are ambiguous.

57

(1) Not relevant: This hypothetical inquiry does not relate to a "specified relevant matter of fact", as the Rules require, and is therefore irrelevant to the actual circumstances or to the antitrust "situation" in lower Michigan.

(2) Not a fact: The words "need maintain" and "can market" call for an opinion by the respondent.

(3) Not specified: The words "need maintain", "can market", "can make", and "system" are ambiguous in this context.

58

(1) Not relevant: The question has no reference or relevance to stations or systems in lower Michigan. It is therefore not germane to any issue in this proceeding.

(2) Not a fact: The words "may be carried out" call for an opinion. The request therefore does not relate to a factual matter.

(3) Not specified: The words "the reserve sharing arrangement" and "control" (by whom?) are unclear and ambiguous.

59

(1) Not relevant: This hypothetical inquiry does not relate to a "specified relevant matter of fact", as the Rules require, and is therefore irrelevant to the actual circumstances or to the antitrust "situation" in lower Michigan.

(2) Not a fact: The words "would need" call for an opinion by the respondent.

(3) Not specified: The words "equal terms" and "market" are unclear in this context.

60 and 61

(1) Not relevant: This hypothetical inquiry does not relate to a "specified relevant matter of fact", as the Rules require, and is therefore irrelevant to the actual circumstances or to the antitrust "situation" in lower Michigan.

(2) Not a fact: The words "would increase" call for an opinion by the respondent, contrary to the Rules.

(3) Not specified: The words "marketable" and "reserve responsibility" are ambiguous in this context.

62

(1) Not relevant: The request makes no reference and has no relationship to interconnections or arrangements between lower Michigan systems. Admission requests must be confined to "specified relevant matters of fact" at issue in this proceeding. This

generalized, hypothetical statement is not here at issue, and thus need not be affirmed or denied.

(2) Not a fact: The words "thus" and "will be shared equally" call for the respondent to offer an opinion.

(3) Not specified: The words "benefits" and "pooling reserves", "potential benefits" and "greater" are ambiguous.

63

(1) Not relevant: The request makes no reference and has no relationship to interconnections or arrangements between lower Michigan systems. Admission requests must be confined to "specified relevant matters of fact" at issue in this proceeding. This generalized, hypothetical statement is not here at issue, and thus need not be affirmed or denied.

(2) Not a fact: The words "might refuse" and "might permit" call for an opinion.

(3) Not specified: The words "might", "lion's share", "benefits" and "pooling reserves" are all ambiguous.

64

(1) Not relevant: This hypothetical inquiry does not relate to a "specified relevant matter of fact", as the Rules require, and is therefore irrelevant to the actual circumstances or to the antitrust "situation" in lower Michigan.

(2) Not a fact: Reference to the "Gainesville formula" requires a legal interpretation and conclusion of law concerning that case.

(3) Not specified: The words "Holland formula", "marketable" and "slightly more" are ambiguous in this context.

65 (1) Not relevant: The question has no reference or relevant to stations or systems in lower Michigan. It is therefore not germane to any issue in this proceeding.

(3) Not specified: The words "there comes a time" (when?) are too imprecise to permit a categorical response to this question.

66 (1) Not relevant: The question has no reference or relevance to stations or systems in lower Michigan. It is therefore not germane to any issue in this proceeding.

67 (3) Not specified: The word "include" is ambiguous.

68 (1) Not relevant: The question has no reference or relevance to stations or systems in lower Michigan. It is therefore not germane to any issue in this proceeding.

(2) Not a fact: The words "simpler standard" and "generally true" call for opinions by the

respondent.

(3) Not specified: The words "simpler" and "generally" are meaningless in this context.

69

(1) Not relevant: The question has no reference or relevance to stations or systems in lower Michigan. It is therefore not germane to any issue in this proceeding.

(3) Not specified: The words "small", "economic", "problem" and "reduced" are ambiguous in this context.

70

(1) Not relevant: This hypothetical inquiry does not relate to a "specified relevant matter of fact", as the Rules require, and is therefore irrelevant to the actual circumstances or to the antitrust "situation" in lower Michigan.

(3) Not specified: The words "isolated", "marketable" and "compromise" are ambiguous and unclear.

71

(1) Not relevant: The question refers to the market "throughout the United States" and is thus not confined to lower Michigan.

72

(1) Not relevant: The request is not confined to Applicant's system planner or to its system.

(2) Not a fact: The word "importance"

requires respondent to provide an opinion.

(3) Not specified: The words "importance" and "constraint" are ambiguous in this context.

73

(1) Not relevant: The request is not confined to Applicant's system planner or its system.

(3) Not specified: The word "burdened" is meaningless in this context.

74

(1) Not relevant: The question has no reference or relevance to stations or systems in lower Michigan. It is therefore not germane to any issue in this proceeding.

(3) Not specified: The words "can" and "economic penalty" are ambiguous in this context.

75

(1) Not relevant: This hypothetical inquiry does not relate to a "specified relevant matter of fact", as the Rules require, and is therefore irrelevant to the actual circumstances or to the antitrust "situation" in lower Michigan.

(3) Not specified: The words "could in the future" are too imprecise to permit a categorical response.

76

(1) Not relevant: This hypothetical inquiry does not relate to a "specified relevant matter of fact", as the Rules require, and is therefore irrelevant to the actual circumstances or to the

antitrust "situation" in lower Michigan.

77

(1) Not relevant: This hypothetical inquiry does not relate to a "specified relevant matter of fact", as the Rules require, and is therefore irrelevant to the actual circumstances or to the antitrust "situation" in lower Michigan.

(3) Not specified: The words "economies of scale" are ambiguous in this context.

79

(1) Not relevant: The request makes no reference and has no relationship to interconnections or arrangements between lower Michigan systems. Admission requests must be confined to "specified relevant matters of fact" at issue in this proceeding. This generalized, hypothetical statement is not here at issue, and thus need not be affirmed or denied.

(2) Not a fact: The words "obvious bargaining disadvantage" call for an opinion, and are argumentative.

(3) Not specified: The words "pooling" and "obvious bargaining disadvantage" are ambiguous in this context.

80

(1) Not relevant: The question has no reference or relevance to stations or systems in lower Michigan. It is therefore not germane to any issue in this proceeding.

(2) Not a fact: The words "may be accomplished" call for an opinion. Thus, the request does not relate to a factual matter.

(3) Not specified: The words "coordinated development", "pooling of load growth" and "but for the availability" are all meaningless in this context.

81 (1) Not relevant: The question has no reference or relevance to stations or systems in lower Michigan. It is therefore not germane to any issue in this proceeding.

(2) Not a fact: The words "will usually" call for an opinion by the respondent.

(3) Not specified: The words "equal bargaining strength" and "parties" are unclear in this context.

82 (1) Not relevant: The question has no reference or relevance to stations or systems in lower Michigan. It is therefore not germane to any issue in this proceeding.

(3) Not specified: The words "growth markets" are meaningless in this context.

83 (1) Not relevant: The question has no reference or relevance to stations or systems in lower Michigan. It is therefore not germane to any issue

in this proceeding.

(2) Not a fact: The word "important" calls for an opinion. The request therefore does not relate to a factual matter.

(3) Not specified: The words "reserve sharing", "coordinated development", "important" and "industry" are ambiguous and unclear.

84

(1) Not relevant: The question has no reference or relevance to stations or systems in lower Michigan. It is therefore not germane to any issue in this proceeding.

(3) Not specified: The words "hydro-thermal coordination" and "some not mentioned here" are imprecise and therefore meaningless in this context.

85

(1) Not relevant: The question has no reference or relevance to stations or systems in lower Michigan. It is therefore not germane to any issue in this proceeding.

(3) Not specified: The words "high voltage transmission" are too imprecise in this context.

Request

Objection

86. (1) Not relevant: The question is not confined to lower Michigan. There is little hydroelectric generation in lower Michigan today. Thus, it is obviously irrelevant.
- (3) Not specified because the words "economies of scale" and "as significant" are unclear and ambiguous.
87. (1) Not relevant: The question is not confined to lower Michigan. There is little hydroelectric generation in lower Michigan today.
- (3) Not specified: The words "hydrologic", "off peak surplus" and "increase the value" are unclear and ambiguous.
88. (1) Not relevant: The question is not confined to lower Michigan; also, there is little hydroelectric generation in Michigan today. Thus the question is doubly irrelevant.
- (3) Not specified: The words "economically feasible" are ambiguous.
89. (1) Not relevant: The question relates to events prior to 1910 and is clearly not germane.
- (3) Not specified: The words "sometime prior" are ambiguous and thus not susceptible to admission or denial.

<u>Request</u>	<u>Objection</u>
90 & 94.	(1) <u>Not relevant</u> : The questions relate to counts from 1910 to 1920 which are not germane to this proceeding.
95.	(1) <u>Not relevant</u> : The question relates, in large part, to "history" prior to 1960 which is not germane to any issue in this proceeding. (2) <u>Not fact</u> : The words "characterized by a continuing acquisition" are conclusionary and argumentative and requires the respondent to provide an opinion. (5) <u>Central issue</u> : The request seeks admission about the character of Applicant's history -- an issue which is a central, controverted issue of this proceeding.
96 to 99	(1) <u>Not relevant</u> : These questions relate to events prior to 1940, and in part to matters outside of lower Michigan. They are therefore doubly irrelevant. (4) <u>No knowledge</u> : Only through burdensome research, if at all, could Applicant verify the accuracy of the information contained in these questions relating to remote time periods.
100.	(1) <u>Not relevant</u> : This question relates to an event in the 1940's and is not material or germane.

Request

Objection

- (2) Not fact: The words "financial amalgamation" are conclusionary and argumentative and require the respondent to provide an opinion. The second sentence requires Applicant to interpret the Public Utility Holding Company Act; the Rules do not permit such inquiries concerning legal conclusions.
- 101 to 104 (1) Not relevant: These questions relate to events in the 1950's and are thus not germane to this proceeding.
108. (1) Not relevant: The item seeks information about events occurring in the 1930's -- too remote to be relevant in this proceeding.
- (4) No knowledge: Only through burdensome research, if at all, could Applicant ascertain whether PWA funds were used in the 1930's by Allegan.
109. (1) Not relevant: This questions information about another electric system and may, in addition, refer to pre-1960 events. It is therefore doubly defective on grounds of relevance.
- (3) Not specified: The word "thermal" is unclear in this context.
110. (3) Not specified: The words "immediately", "sought", and "reserve sharing interconnection" are vague and ambiguous. A more definite statement is

Request

Objection

required if Applicant is to respond to this vague inquiry.

111 & 112

(1) Not relevant: The question relates to alleged participation in the political process -- conduct which is privileged and which the Board has deemed irrelevant to this proceeding.

(3) Not specified: The words "urging", "advised", and "similar representation", are ambiguous and argumentative and do not sufficiently identify the events by date and participants involved to permit response.

114.

(2) Not a fact: The words "succeeded in persuading" is conclusionary and argumentative and requires Applicant to provide an opinion with extensive qualification.

(3) Not specified: The words "some cities" are vague and do not specify the cities or the parties to the events which are referred to.

(4) No knowledge: The question involves the conduct of other systems and is better directed to officials thereof.

115.

(1) Not relevant: The question relates to events prior to 1920 and is not limited to the lower peninsula of Michigan. It is therefore doubly irrelevant.

(3) Not specified: The words "power pool" are ambiguous in this context.

Request

Objection

116.

(1) Not relevant: The question, at least in part, relates to events in 1928 and is thus not germane.

(3) Not specified: The words "high voltage" require more precise definition; "after World War II" and "contract" are not sufficiently specified to permit response. The words "coordinate development" and "full access to benefits of coordination" are ambiguous.

(5) Central issue: The words "full access to the benefits of coordination" relate explicitly to the central, controverted issues of this proceeding and are therefore improper under the Rules.

117.

(2) Not a fact: The words "in substance" require an opinion of fact. Reference to the Gainesville case requires a legal interpretation and conclusion of that case. Both such inquiries are improper under the Rules.

(3) Not specified: The words "in substance" and "more detailed" are vague and ambiguous and are susceptible to a categorical response.

118.

(2) Not a fact: The words "access to the benefits of coordination" require Applicant to provide an

Request

Objection

opinion and a response would require extensive explanation and qualification.

(3) Not specified: The words "share reserves" and "access to the benefits" are vague and ambiguous in this context.

(5) Central issue: The words "access to the benefits of coordination" involve the central, controverted issues of this proceeding. The request is therefore improper under the Rules.

119.

(2) Not a fact: The last sentence of the question is conclusionary, i.e., "substantial burden" calls for an opinion.

(3) Not specified: The words "substantial burden" and "access to coordination" are ambiguous in this context.

(5) Central issue: The question involves "access to coordination" which is a central, controverted issue of this proceeding. The request is therefore improper.

120.

(2) Not a fact: The words "full access to the benefits" requires respondent to offer an opinion.

(3) Not specified: The words "share reserves", "coordination agreement", and "full access to the benefits" are ambiguous and unclear. (See also Applicant's objection to Request 157.)

(5) Central issue: The question involves "access" to coordination, a central, controverted issue in this proceeding.

121.

(2) Not a fact: The words "superior" and "benefits" require an opinion of fact. Reference to the Gainesville case requires a legal interpretation and conclusion of that case. Such inquiries are thus improperly formulated.

(3) Not specified: The words "nominally", "mutual emergency support arrangement", and "superior" are ambiguous in this context and the question could therefore not be answered without extensive qualification.

(5) Central issue: Since this question requires the extent to which Lansing and Holland are afforded "access" to coordination, it is obviously concerned with a central, controverted issue of this proceeding.

122 & 123

(1) Not relevant: These questions inquire about "usual" and "general" arrangements and are not confined to lower Michigan; indeed, they refer to an arrangement in Florida. These are therefore doubly defective.

(2) Not a fact: Reference to the Gainesville case requires a legal conclusion.

(3) Not specified: The words "sharing arrangements" are ambiguous in this context.

Request

Objection

124. (1) Not relevant: The question is not confined to lower Michigan and is therefore beyond the scope of the issues of this proceeding.

(2) Not a fact: The words "drastically", "greater", and "benefits" require the respondent to provide an opinion since these words are susceptible to a variety of interpretations. In addition, the question requires interpretation of the Gainesville case and is therefore improper.

126. (1) Not a fact: The "in effect" phrase makes the question conclusionary and thus improper.

(3) Not specified: The meaning of "interruptible power" is ambiguous in this context and is not susceptible to response as formulated.

127. (1) Not relevant: The question refers to a practice "in the electric power industry normally" and is thus not confined to Applicant or other lower Michigan systems.

(3) Not specified: The words "normally" and "sometimes" are unclear and ambiguous in this context.

128. (1) Not relevant: "The Gainesville formula" relates to an arrangement between Florida systems and is therefore irrelevant to this proceeding which involves the situation in lower Michigan.

Request

Objection

- (2) Not a fact: Reference to the Gainesville case requires a legal conclusion of that decision; therefore, this request is improper under the Rules.
131. (1) Not relevant: "The Gainesville formula" relates to an arrangement between Florida systems; it is not relevant to a proceeding involving Michigan systems.
- (2) Not a fact: Reference to the Gainesville case requires a conclusion of Federal law. This is proscribed by the Rules.
- (3) Not specified: The words "reserve requirement" and "justify economically" are ambiguous and unclear to Applicant in this context.
132. (3) Not specified: The words "consists of" and "relatively large" are ambiguous and require clarification.
- (4) No knowledge: Inquiry concerning the nature of a pooling arrangement to which Applicant is not a party would be better directed to officials thereof.
134. (3) Not specified: The words "over a period of years" and "sought" are insufficient to identify events and participants with the particularity necessary for a response to this question. The words "coordinating relationship" are ambiguous and unclear.

Request

Objection

135. (3) Not specified: The inquiry is not specific as to time (any time prior to "the last two or three years") and nature of the event and participants ("refused"). Therefore, Applicant can not respond to the question absent a more definite statement.
136. (3) Not specified: The words "ratcheted demand", "this" and "declining" are ambiguous and susceptible to a variety of interpretations. The request is therefore improperly formulated.
137. (3) Not specified: The words "interconnection arrangement" are not sufficiently specific to permit a response.
138. (3) Not specified: The words "Holland formula" are not clear in this context.
139. (3) Not specified: The words "could be", "less expensive", and "pricing decisions" are ambiguous and do not permit a response without considerable qualification and explanation.
140. (2) Not a fact: The question requires interpretation of the regulations of a government agency (REA). It also requires Applicant to provide an opinion about the relationship between this agency and other systems. It is therefore doubly improper.

Request

Objection

(4) No knowledge: The question concerns other systems and is better directed to officials thereof.

141.

(1) Not relevant: Since the Gainesville formula relates to arrangements in Florida, the hypothetical question has no relevance to this proceeding.

(2) Not a fact: Reference to the Gainesville case requires a conclusion of law by the respondent. The question is therefore improper.

(3) Not specified: The words "economically" and "larger-sized" are not clear and must be specifically defined to permit a response on that qualification.

142.

(3) Not specified: The words "reserve sharing and coordinated development" and "identical service" are ambiguous in this context.

143.

(2) Not a fact: Reference to the Gainesville case requires a conclusion of law by the respondent. The request is therefore improper.

(3) Not specified: The words "restricts", "ability", "formula" and "larger" are defectively ambiguous and would require a response with extensive explanation and qualification. Under the Rules, Applicant need not respond to such a request.

Request

Objection

144. (3) Not specified: The words "required", "integration" and "coordination" are unclear and ambiguous in this context.
145. (2) Not a fact: The reference to the Gainesville case requires Applicant to interpret that legal decision and to provide a conclusion of law. The Rules proscribe such an inquiry.
- (3) Not specified: The words "recent years" and "attempted" are too ambiguous and imprecise to identify the time, events, or participants of the subject of the inquiry. Applicant can not respond to such a question.
146. (2) Not a fact: The reference to the Gainesville case requires Applicant to provide a conclusion of law. The request is therefore improper.
- (3) Not specified: The words "terms", "could sell", "substantial", "surplus" and "other . . . systems" are ambiguous and unclear in this context.
147. (2) Not a fact: The question is conclusionary and argumentative; it is not a factual inquiry, as the Rules require.
- (3) Not specified: The word "used" does not describe the dates, events, or participants of the

Request

Objection

subject area of the question with sufficient specificity to permit a response. The words "encourage" and "principally" are also vague and unclear.

148.

(1) Not relevant: The inquiry relates to alleged participation in the political process -- conduct which is privileged and which the Board has deemed to be irrelevant to this proceeding.

(3) Not specified: The words "representatives", "over a period of years", and "urged" are insufficiently specific to identify the date, events, and participants concerning Applicant's alleged conduct referenced here. The request is therefore improper.

149.

(1) Not relevant: To the extent that "never" refers to events prior to 1960, the request is not germane to this proceeding.

(3) Not specified: The words "coordinating power and energy" are ambiguous and unclear in this context. The question is therefore improper under the Rules.

150 & 151

(3) Not specified: It is ambiguous whether the word "uses" connotes exclusive use of this method.

Request

Objection

152.

(2) Not a fact: The words "probably" and "unlikely" are conclusionary and require Applicant to provide an opinion on this subject.

(3) Not specified: The words "probably" and "burden" are ambiguous in this context.

- 153 (3) Not specified: The words "very small" and "significantly" are ambiguous and unclear in this context.
- 154 (3) Not specified: The words "such a case" refer to the preceding request which is ambiguous.
- 156 (2) Not a fact: The question calls for a conclusion and an opinion about the contents of a legal document, especially the words "comprehensive" and "exceptional."
- (3) Not specified: The word "contract" is ambiguous; Applicant has many contracts with Detroit Edison. Also, the words "comprehensive coordinated development," "individual development," and "exceptional" are ambiguous and susceptible to a variety of interpretations.
- 157 (2) Not a fact: The request calls for the respondent to provide a conclusion or opinion about the content of legal documents.
- (3) Not specified: The words "coordinated development" are ambiguous, particularly in light of Request 120 with which this question appears to be in conflict. The words "some of its contracts"

Request

Objection

and "provide the possibility" are also ambiguous in this context.

158

(2) Not a fact: The request calls for the respondent to provide an opinion and conclusion about legal documents -- here contracts with other systems.

(3) Not specified: The words "smaller" (than Applicant?), "coordinated development", and "contemplate" are ambiguous and unclear.

159

(1) Not relevant: The "programs" referenced in the question are not confined to cover Michigan or systems located therein.

(3) Not specified: The words "programs", "coordinated development", and "long run marginal cost" are ambiguous and unclear in this context.

160

(2) Not a fact: The words "claimed to be" are argumentative and unclear.

(3) Not specified: The words "claimed" and "smaller" (than Applicant?) are unclear and ambiguous in this context.

161

(1) Not relevant: The question is not con-

fined to lower Michigan and is therefore not germane to this proceeding.

(2) Not a fact: The words "significantly different" call for an opinion by the respondent.

(3) Not specified: The words "economic effect", "significantly different" and "rapidly growing [sic]" are unclear and ambiguous.

162

(1) Not relevant: The question is not confined to lower Michigan or to otherwise identified "arrangements" and is therefore not germane to this proceeding.

(2) Not a fact: The words "would permit" and "compete more effectively" call for the respondent to provide an opinion based upon a hypothetical situation.

(3) Not specified: The words "access", "coordinated development", "isolated", "compete", "more effectively", and "growth loads" are unclear and ambiguous in this context.

163

(2) Not a fact: The question is hypothetical and speculative and essentially non-factual in nature.

(3) Not specified: The words "coordinated development" and "compelled to coordinate" are ambiguous in this context.

- 164 (3) Not Specified: The word "these" appears to refer to the preceding request which is itself ambiguous.
- 165 (2) Not a fact: The questions seeks respondent's opinion about the possible course of action available to another system.
- (3) Not Specified: The words "coordinated development", "open", "other small electric utilities" (which ones?), "industries" (which ones?), "technically feasible", and "fair-portion" are ambiguous and unclear in this context.
- (4) No knowledge: The question requires Applicant to make an extensive assessment of the characteristics and feasibility of other systems' operations.
- 166 (1) Not relevant: The question is not confined to lower Michigan systems.
- (2) Not a fact: The words "may find" and those set forth in subpart (3) herein call for opinions which would require extensive qualification and explanation.
- (3) Not Specified: The words "small", "bulk power supply systems", "coordinated generation and transmission program", "infeasible", "coordination", "dominant", "relatively infeasible"

"joint transmission arrangements" and "improved".

(5) Central Issue: The subject of this question is a central, controverted issue of this proceeding.

167

(2) Not a fact: The question calls for an opinion concerning the alleged "effect" of contract provisions upon other systems.

(4) No Knowledge: The question calls for information about other systems which is available, if at all, only through independent investigation.

169

(3) Not specified: The words "short segment" and "small amount" are ambiguous and insufficiently defined in this context.

(4) No knowledge: The question calls for information about other systems which are available only through independent investigation.

170

(3) Not specified: The words "transmission system" are ambiguous since it is not clear whether the inquiry relates to the whole system and, if not, which part.

171

(3) Not specified: The words "coordinating" and "arrangements" are indefinite and ambiguous in this context.

177

(4) No knowledge: The question relates to

the characteristics of other systems which would require the respondent to undertake an independent investigation.

178

(2) Not a fact: The question is argumentative and essentially non-factual.

(3) Not specified: The words "reserve sharing", "coordinated development", "bargaining status", and "coordinated part" are ambiguous.

179

(2) Not a fact: The question calls for a conclusion of Michigan law.

(3) Not specified: The word "recently" is indefinite and ambiguous.

180

(2) Not a fact: The question is argumentative and calls for an opinion about the conduct of a governmental agency and other systems.

(3) Not specified: The words "certain electric cooperatives" are imprecise and ambiguous in this context.

181

(1) Not relevant: The question relates to participation in the political process - conduct which the Board has deemed irrelevant to this proceeding.

(3) Not specified: The word "requested" (to whom?) is ambiguous in this context.

(4) No knowledge: The question relates to

the conduct of other systems, would require an independent investigation by the respondent, and is better directed to officials of the referenced systems.

182

(1) Not relevant: The questions appear to relate to Applicant's participation in the political process which is privileged and which the Board has deemed irrelevant to this proceeding.

(3) Not specified: The question is too imprecise and ambiguous as to time, events, and participants to permit a categorical response. The word "unrestricted" is also ambiguous.

183

(2) Not a fact: The question calls for a conclusion of law about the regulation of a governmental agency.

(3) Not specified: The words "some regulation of competition" are vague and ambiguous in this context.

184

(2) Not a fact: The words "territorial allocation" require the respondent to characterize and provide a conclusion of law about the regulation of a government agency.

185

Appendix H has not been provided to Appli-

cant. Applicant reserves the right to object to this request when said document is supplied.

186

(3) Not specified: The question is undefined concerning the date, events, and participants relating to the conduct which the question alleges; it is too ambiguous to permit response. Also, the words "through the Michigan Electric Association" and "free and unrestricted" are ambiguous in this context.

187

(3) Not specified: The words "actually", "prefer" (compared to what?), "loads of 25 kilowatts", "more open", and "free and unrestricted competition" are ambiguous in this context.

188

(3) Not specified: The words "favors" (compared to what?), "competition", "the cooperatives", and "large loads" are unclear and ambiguous in this context.

189 to 192

(2) Not a fact: The questions call for the respondent to provide a conclusion of law concerning Michigan law.

193

(2) Not a fact: The question calls for the respondent to provide a conclusion of law about a federal statute.

(3) Not specified: The words "compete" and "minor exceptions" are unclear and ambiguous.

uous in this context.

194

(3) Not specified: The word "limitation" is ambiguous since it is not clear whether legal, economic, or technical obstacles are referenced. The words "coordinating power" are also ambiguous.

(4) No knowledge: Questions as to "limitation" upon the capabilities of other systems are better directed to officials thereof, not to Applicant.

195

(2) Not a fact: The words "free and open" require an opinion and "those cities" requires a conclusion of law relating to the Foote Act.

(3) Not specified: The words "free and open" and "those cities" are imprecise and ambiguous and are therefore improper.

196

(3) Not specified: The words "favors" (compared to what?) and "municipal electric utilities" (which ones?) are ambiguous and unclear in this context.

197

(2) Not a fact: The question on its face calls for a conclusion of law.

198

(1) Not relevant: The question relates to a situation "in general" and is not confined to loads in lower Michigan.

(3) Not specified: It is not clear whether "depend on" means exclusive dependence in this context; thus, the question is ambiguous.

199

(3) Not specified: The words "compete", "large loads", and "economically feasible" are ambiguous in this context.

200

(2) Not a fact: The words "Foote Act rights" call for a conclusion of law.

(3) Not specified: The words "seek to serve", "large loads", and "other cities" are imprecise and ambiguous.

201

(3) Not specified: The word "cases" is too imprecise as to time, events, and parties to permit a categorical response. The words "large loads" and "economically infeasible" are ambiguous in this context.

(4) No knowledge: The question concerns the conduct of other systems and municipalities and is better directed to officials thereof.

202 and 203

(3) Not a fact: The questions on their face call for a conclusion of law concerning Michigan statutes and regulations.

204

(1) Not relevant: The question is not confined to the situation in lower Michigan.

(3) Not specified: The words "a municip-

ality", "economically infeasible", "competitively priced" and "bulk power supply" are ambiguous and unclear in this context.

205

(1) Not relevant: To the extent that the inquiry seeks information about pre-1960 circumstances, it is irrelevant to this proceeding.

206

(1) Not relevant: The question, at least in part, relates to events prior to 1960; it is also not confined to lower Michigan. It is therefore doubly irrelevant.

(3) The words "several electric utilities" and "bulk power supply functions" are imprecise and ambiguous in this context.

207

(1) Not relevant: The question, as denoted by the words "in general", is not confined to lower Michigan and appears to inquire about pre-1960 events. It is therefore irrelevant to this proceeding.

(2) Not a fact: The words "in general" clearly reveal this question to call for an opinion by the respondent.

208 and 209

(2) Not a fact: The word "conceded" is argumentative and essentially non-factual; thus, these questions are improperly formulated according to the Rules.

210 to 212

(2) Not a fact: The questions on their face seek to require the respondent to state a conclusion of law.

213

(1) Not relevant: The question is not confined to lower Michigan and is therefore irrelevant to this proceeding.

(3) Not specified: The words "high voltage", "are said" (by whom?), and "fully" are ambiguous.

214 and 215

(1) Not relevant: The question is not confined to lower Michigan and is therefore irrelevant to this proceeding.

(3) Not specified: The words "fully", "share reserves", "other types of coordination short of coordinated development", and "are said" (by whom?), are unclear and ambiguous.

216

(3) Not specified: The words "representatives" and "have claimed" are too imprecise as to dates, events, and parties to permit a response. The question is therefore ambiguous and must be denied.

217

(3) Not specified: The words "high-voltage transmission" and "integrated" are ambiguous.

218

(3) Not specified: The words "financial feasibility", "the units", and "predicated" are imprecise and ambiguous.

219

(3) Not specified: The words "marketing

arrangements" are ambiguous and imprecise.

220

(3) Not specified: The words "several units", "are defined", and "coordinated development" are not defined and are therefore improperly ambiguous in this context.

221

(1) Not relevant: The question is not confined to systems located in lower Michigan.

(2) Not a fact: The words set forth in subpart (3) herein call for an opinion and are not factual in nature.

(3) Not specified: The words "very large", "fully integrated in themselves", "full access to coordination", "large base load", "market", "competitively priced", and "bulk power supply" are ambiguous and unclear in this context.

(5) Central Issue: The subject of this question - "full access to coordination" - is one of the central, controverted issues of this proceeding.

222

(2) Not a fact: The words set forth in subpart (3) herein call for an opinion and are not factual in nature.

(3) Not specified: The words "small", "generally coextensive", "reasonably close", "willing", "coordinate", "economical alternative",

"in bulk", "isolated", "bulk power supply", and "small . . . units" are unclear and ambiguous in this context.

223 (3) Not specified: The words "source", "integrated", "available", "generally coextensive" are imprecise and ambiguous.

224 (3) Not specified: The words "close to", "bulk power supply" and "integrated" are ambiguous.

(4) No knowledge: The question relates to arrangements or potential arrangements between systems other than Applicant and would be better directed to officials thereof.

225 (3) Not specified: The words "purchasers" and "near" are not defined or identified. The question is ambiguous and therefore improper under the Rules.

(4) No knowledge: The question relates to arrangements or potential arrangements between systems other than Applicant and would be better directed to officials thereof.

226 (2) Not a fact: The words "may find" call for Applicant to provide an opinion.

(3) Not specified: The words "purchasers", "near the periphery", "may find", "economically",

feasible", "large coordinated systems", "close by", "peripheral systems", "economically feasible", and "greater distances" are ambiguous and do not permit a response without extensive explanation and qualification.

(4) No knowledge: The question concerns hypothetical arrangements between systems other than Applicant and should be directed to officials thereof.

227

(2) Not a fact: The words "may be feasible" calls for an opinion about the conduct of other systems. The entire tone of the question is argumentative, e.g., "would even".

(3) Not specified: The words "feasible", "some", "systems", "policy", and "customers" are ambiguous and unclear.

(4) The question concerns the policy and future conduct of systems other than Applicant and is better directed to officials thereof.

228

(2) Not a fact: The words "could provide" call for the respondent to provide a speculative opinion about the operations of other systems.

(3) Not specified: The words "small", "groups", "access", "coordination", "same terms",

"could", "greater degree" and "competition" are ambiguous and unclear in this context.

(4) No knowledge: The question inquires into the operation of systems other than Applicant's and would be better directed to officials thereof.

229

(1) Not relevant: The question is not confined to the situation in lower Michigan.

(2) Not a fact: The words "relevant markets" is a legal definition which requires respondent to provide a conclusion of law.

(3) Not specified: The words "predominantly", "interruptible", "firm demand", "regional power exchange", "coordinating power and energy", "buyers" and "sellers" are ambiguous and unclear in this context.

(5) Central issue: The definition of the relevant market is a central, controverted issue in this proceeding.

230

(1) Not relevant: The question is not confined to lower Michigan.

(2) Not a fact: The words "relevant markets" is a legal definition which requires respondent to provide a conclusion of law.

(3) Not specified: The words "includes"