

ISHAM, LINCOLN & BEALE  
COUNSELORS AT LAWTHREE FIRST NATIONAL PLAZA  
CHICAGO, ILLINOIS 60602  
TELEPHONE 312 558-7500  
TELEX: 2-5288DOCKETED  
USNRCEDWARD S. ISHAM: 1872-1902  
ROBERT T. LINCOLN: 1872-1889  
WILLIAM G. BEALE: 1885-1923

'85 AUG 12 A10:28

WASHINGTON OFFICE  
1120 CONNECTICUT AVENUE, N.W.  
SUITE 840  
WASHINGTON, D.C. 20036  
202 833-9730

August 9, 1985

OFFICE OF SECRETARY  
DOCKETING & SERVICE  
BRANCH

Mr. Alan S. Rosenthal, Chairman  
Mr. Thomas S. Moore, Administrative Judge  
Atomic Safety and Licensing Appeal Board  
United States Nuclear Regulatory Commission  
Washington, D. C. 20555

Re: In the Matter of  
Consumers Power Company  
Midland Plant Units 1 and 2  
Docket Nos. 50-329 OL&OM and 50-330 OL&OM

Dear Chairman Rosenthal and Administrative Judge Moore:

In accordance with our obligations under the McGuire case, Duke Power Company, (William B. McGuire Nuclear Station, Units 1 & 2) ALAB 143, 6 AEC 623 (1973), we hereby submit the following information regarding Consumers Power Company's Midland Plant:

Enclosed is Attachment 1 to Revised Exhibit D of the Revised Compliance Filing and Application for Authorization to Issue Securities filed with the Michigan Public Service Commission (MPSC) on June 20, 1985. The filing was made to comply with an MPSC order granting a rate increase upon certain conditions. The Attachment sets forth a tax plan which is a requirement of certain agreements reached with a number of banks to restructure \$1.2 billion of outstanding debt. Restructuring the debt is a condition of the rate order.

At page 5 of the Attachment the Company describes its plans to abandon in 1985 the process steam equipment, systems and facilities at the Midland Plant which could only be used for the purpose of producing and delivering process steam to The Dow Chemical Company. A study is being undertaken to determine the steps necessary to accomplish this. It is possible that for an abandonment of the process steam facilities to be effective for tax purposes, certain non-safety related equipment necessary

8508120746 850809  
PDR ADOCK 05000329  
G PDR

DS03

Mr. Alan S. Rosenthal, Chairman  
Mr. Thomas S. Moore, Administrative Judge  
August 9, 1985  
Page 2

to the operation of the units for electric generating purposes would have to be relocated in the event either or both of the units are later completed. Whether or not that will be necessary will not be known until the abandonment study has been completed and a decision made respecting the abandonment of the process steam facilities.

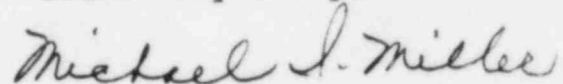
At page 7 of the Attachment the Company discusses its options with respect to minimization of its tax liability in 1986 and thereafter. These options include the abandonment of all or a portion of the Midland project.

By an order dated July 24, 1985, the MPSC accepted the Revised Compliance Filing and provided that the rate increase in question could be put into effect on or after the date of closing on the agreements to restructure the bank-related debt. That closing date is expected to be August 24, 1985.

After the closing date, the Company expects to initiate the steps necessary to claim an abandonment loss in 1985, for tax purposes, of the process steam equipment, systems and facilities.

Another exhibit to the Revised Compliance Filing and Application for Authorization to Issue Securities is Mr. Selby's statement regarding the circumstances under which construction might be resumed at Midland. This statement, dated November 1, 1984, has previously been made a part of the record before the Appeal Board.

Yours very truly,



Michael I. Miller

MIM:es

enc.

cc Service List w/enc.

CONSUMERS POWER COMPANY TAX PLAN

June 1, 1985

Reference is hereby made to the Restructuring Credit Agreement dated as of June 1, 1985 between Consumers Power Company (the "Company") and Bankers Trust Company, First Interstate Bank of California, Morgan Guaranty Trust Company of New York, National Bank of Detroit, and Security Pacific National Bank, as Syndication Managers, Citibank, N.A., as Agent, and the Banks (the "Restructuring Agreement"). Capitalized terms not otherwise defined herein shall have the meanings set forth in the Restructuring Agreement.

This Tax Plan is furnished pursuant to Section 3.01(e) of the Restructuring Agreement, which provides:

On or before June 3, 1985, the Company shall have submitted to the Agent and each Bank a plan (such plan, as the same may be amended or modified from time to time by action of the Board of Directors of the Company referred to in Section 5.01(1), being the "Tax Plan") setting forth (i) specific target dates for the implementation of appropriate actions for the recognition of losses (relating to the Midland Project or otherwise) against taxable income of the Company during the term of

this Agreement, and (ii) decisions implemented or to be implemented with respect to the abandonment or sale of the Midland project or otherwise so as to (A) minimize the Company's income tax liabilities during the term of this Agreement, and (B) avoid claiming investment tax credit ("ITC") relating to the Midland Project on the Company's 1985 or later income tax returns which would require a cash payment of ITC recapture tax upon the sale or abandonment of the Midland Project.

#### RECITALS

##### 1. TAXABLE INCOME

During 1985 and 1986, the Company anticipates that it will generate net taxable income from its operations of \$243 million and \$294 million, respectively, before recognition of losses on the sale or abandonment of major assets. Assuming a 46% tax rate, this would give rise to a tax liability of \$112 million and \$135 million in 1985 and 1986, respectively, before the use of investment tax credit.

##### 2. INVESTMENT TAX CREDIT

During years prior to 1985, the Company made "qualified investment" in "section 38 property," as those terms are defined in the Internal Revenue Code of 1954, as

amended (the "Code"), which qualifies for "Investment Credit" ("ITC") under section 46 of the Code. A portion of this investment made by the Company during those years was in the form of "qualified progress expenditures", as defined in the Code, in the Midland Project. This investment in the Midland Project has been includible for the purpose of determining the amount of ITC for 1976 and subsequent years. For all years prior to 1985, the Company has claimed against its taxable income ITC arising from its investment in the Midland Project in the amount of \$39,528,000.

The amount of ITC generated for the years prior to 1985 exceeded the amount which the Company could use on its tax returns for such years, resulting in the carryback of up to 3 years and the carryforward of up to 15 years of unused ITC pursuant to section 39 of the Code. At December 31, 1984, as reflected in the Company's federal income tax returns for the years to and including 1983 and in the amounts anticipated to be shown on the Company's 1984 federal income tax return, the Company had a carryover to 1985 of the following amounts of ITC:

(Thousands of Dollars)

	<u>Midland</u>	<u>Non-Midland</u>	<u>Total</u>
Generated 1975-1984	\$250,097	\$233,435	\$483,532
Utilized 1975-1984	<u>39,528</u>	<u>84,471</u>	<u>123,999</u>
Carryover to 1985	<u>\$210,569</u>	<u>\$148,964</u>	<u>\$359,533</u>

In addition, the Company expects to generate approximately \$11,000,000 in non-Midland ITC during 1985.

### 3. MIDLAND TAX BASIS

The tax basis of the Midland Project is about \$3.0 billion as shown below:

<u>Asset</u>	<u>Tax Basis</u>
Nuclear Fuel	\$ 168,000,000
Process steam systems	\$ 148,000,000
Unit 1	\$ 759,000,000
Unit 2 (including common facilities)	<u>\$1,905,000,000</u>
Total	<u>\$2,980,000,000</u>

### TAX PLAN

#### 1985

During 1985, the Company has taken or plans to take the following two steps with respect to its investment in the Midland Project:



A. Nuclear Fuel

In May, 1985, the Company entered into contracts to scrap the initial fuel assemblies which were fabricated for the Midland Project and dispose of the enriched uranium contained in the fuel assemblies. In return for the enriched uranium, the Company will receive (i) enriched uranium for its Big Rock and Palisades power plants, (ii) natural uranium, and (iii) rights to enrichment services. The Company is completing contracts to sell the natural uranium in July or August, 1985, and anticipates selling the rights to enrichment services as soon as possible.

The tax basis of the Midland nuclear fuel is approximately \$168 million. The fair market value of the enriched uranium, natural uranium and rights to enrichment services received in exchange is approximately \$71 million. The Company, therefore, expects a tax loss of approximately \$97 million in 1985 on the Midland nuclear fuel.

B. Process Steam Facility

During 1985, the Company plans to abandon the process steam equipment, systems and facilities (sometimes called "unusable steam facilities") which could only be used for the purpose of producing and delivering process steam to The Dow Chemical Company. To accomplish this abandonment, between June 1, 1985 and November 1, 1985, the Company will take the following steps: (i) conduct engineering and

accounting studies to determine the salvage value, if any, of the unusable steam facilities, the most feasible means of conducting the abandonment at minimal cost to the Company, and the tax basis of the facilities abandoned; (ii) present to the Board of Directors a resolution to be adopted abandoning the facilities; (iii) take steps to render unusable or physically separate such abandoned facilities from the remainder of the Midland Project; (iv) begin to offer the salvageable facilities, if any, for sale; (v) reduce or remove all maintenance, surveillance or other similar activities with respect to the abandoned facilities which cannot be salvaged, and (vi) at the time the 1985 federal income tax return is filed, claim the abandonment loss on the Company's 1985 tax return.

Based upon preliminary evaluations, the Company estimates that the abandonment of the process steam facilities will result in a tax loss of between \$120 and \$130 million in 1985.

Based on the Company's sale of the Midland nuclear fuel and plans to abandon the process steam facility, the Company estimates that it would have essentially no tax liability during the year 1985. Attached as Exhibit A is a projection of the effect on the Company's 1985 tax liability of the nuclear fuel transactions and the abandonment of the process steam facilities.



### 1986 and Subsequent Years

During 1986 and subsequent years, the Company has basically five options to minimize its tax liability; (i) offset its tax liability with non-Midland ITC, (ii) abandon portions of the Midland Project, such as Midland Unit 1, (iii) abandon the Midland Project as a whole, (iv) sell the Midland Project, or (v) sell or abandon other assets. The Company believes that abandonment of the Midland Project as a whole can be accomplished by taking certain appropriate steps which will result in a tax loss to the Company of approximately \$2.6 billion. However, the possibility of abandoning only Unit 1 or some other assets is still under study, and the Company may request an IRS ruling or rulings on this. In addition, the Company is considering proposing legislation that would allow a tax loss on the Midland Project without requiring action that would render the plant useless. The Company will decide before October 1 of each year what actions it will take to minimize taxes.

### Accountant's Opinion

In any case that involves an abandonment of all or a portion of the Midland Project in 1985 and thereafter, the Company will obtain an opinion of Arthur Andersen & Co or other independent public accountants of recognized national standing that the abandonment actions to be taken by the Company will result in the reasonable likelihood of a loss

deduction. This opinion will be available in preliminary form by October 1 and in final form by December 1 of the year of the abandonment.

EXHIBIT A

CONSUMERS POWER COMPANY AND SUBSIDIARIES  
1985 Tax Planning

Estimated 1985 taxable income before losses arising from abandonment or disposition of Midland assets	\$ 243,000
Estimated loss on disposition of nuclear fuel pellets	( 97,000)
Estimated loss on abandonment of process steam systems*	<u>( 125,000)</u>
Estimated 1985 taxable income after losses arising from abandonment or disposition of Midland assets	\$ 21,000 <u>x .46</u>
Estimated 1985 income tax before investment tax credit	\$ 9,660
Investment tax credit (85%)	<u>8,211</u>
Estimated net 1985 income tax	<u><u>1,449</u></u>

\*Although the tax basis of the process steam systems is approximately \$148,000,000 a conservative amount of \$125,000,000 is used in this example.