



Docket File

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)
DUKE POWER COMPANY)
Oconee Nuclear Station, Units Nos. 1, 2)
and 3)

Dockets Nos. 50-269 ✓
50-270
and 50-287

ORDER

I.

The Duke Power Company (the licensee), is the holder of Facility Operating Licenses Nos. DPR-38, DPR-47 and DPR-55 which authorize the operation of the nuclear power reactors known as Oconee Nuclear Station, Units Nos. 1, 2 and 3 (the facilities, or Oconee 1, 2 and 3), at steady state power levels not in excess of 2568 megawatts thermal (rated power) for each unit. The facilities are Babcock & Wilcox (B&W) designed pressurized water reactors (PWR's) located at the licensee's site in Oconee County, South Carolina.

II.

In the course of its evaluation to date of the accident at the Three Mile Island Unit No. 2 facility, which utilizes a B&W designed PWR, the Nuclear Regulatory Commission staff has ascertained that B&W designed reactors appear to be unusually sensitive to certain off-normal transient conditions originating in the secondary system. The features of the B&W design that contribute to this sensitivity are: (1) the design of steam generators to operate with relatively small liquid volumes in the

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secondary side; (2) the lack of direct initiation of reactor trip upon the occurrence of off-normal conditions in the feedwater system; (3) reliance on an integrated control system (ICS) to automatically regulate feedwater flow; (4) actuation before reactor trip of a pilot-operated relief valve on the primary system pressurizer (which, if the valve sticks open, can aggravate the event); and (5) a low steam generator elevation (relative to the reactor vessel) which provides a smaller driving head for natural circulation.

Because of these features, B&W designed reactors place more reliance on the reliability and performance characteristics of the auxiliary feedwater system, the ICS, and the emergency core cooling system (ECCS) performance to recover from frequent anticipated transients, such as loss of offsite power and loss of normal feedwater, than do other PWR designs. This, in turn, places a large burden on the plant operators in the event of off-normal system behavior during such anticipated transients.

As a result of a preliminary review of the Three Mile Island Unit No. 2 accident chronology, the NRC staff initially identified several human errors that occurred during the accident and contributed significantly to its severity. All holders of operating licenses were subsequently instructed to take a number of immediate actions

to avoid repetition of these errors, in accordance with bulletins issued by the Commission's Office of Inspection and Enforcement (IE). In addition, the NRC staff began an immediate reevaluation of the design features of B&W reactors to determine whether additional safety corrections or improvements were necessary with respect to these reactors. This evaluation involved numerous meetings with B&W and certain of the affected licensees.

The evaluation identified design features as discussed above which indicated that B&W designed reactors are unusually sensitive to certain off-normal transient conditions originating in the secondary system. As a result, an additional bulletin was issued by IE which instructed holders of operating licenses for B&W designed reactors to take further actions, including immediate changes to decrease the reactor high pressure trip point and increase the pressurizer pilot-operated relief valve setting. Also, as a result of this evaluation, the NRC staff identified certain other safety concerns that warranted additional short-term design and procedural changes at operating facilities having B&W designed reactors. These were identified as items (a) through (e) on page 1-7 of the Office of Nuclear Reactor Regulation Status Report to the Commission on April 25, 1979.

After a series of discussions between the NRC staff and the licensee concerning possible design modifications and changes in operating procedures, the licensee agreed in letters dated April 25, 26, and May 4, 1979 to perform promptly the following actions:

- (a) Install automatic starting of the interconnected emergency feedwater system so that all three pumps will receive a start signal from any affected unit, and test the system for stability. The emergency feedwater pump discharge flow will be connected to the interconnection headers such that each or all emergency feedwater pumps can supply water to any unit. Until these modifications and tests are completed, operating personnel have been stationed at each emergency feedwater pump with a direct communication link to that unit's control room. In addition, the following procedural changes, put into effect on April 25, 1979 to enhance the reliability of the emergency feedwater system, will remain in force:

- (1) The discharges of these pumps have been tied together by alignment of manual valves such that each and all of the pumps can supply emergency feedwater to any Oconee Unit requiring it.

- (2) Administrative controls have been established so that in the event of loss of both main feedwater pumps on an affected unit, that unit's emergency feedwater pump will start automatically, backed up by remote manual start from the control room. If the pump fails to start automatically, the operator stationed at that pump will start the pump locally, and has been trained to do so. In addition, the other two available emergency feedwater pumps will be started remotely from their unit's control room or locally if required to provide two more redundant sources of feedwater to the affected unit.
- (3) Emergency feedwater flow to the steam generators will be assured by the control room operator who has been trained to maintain the necessary level.
- (b) Develop and implement operating procedures for initiating and controlling emergency feedwater independent of Integrated Control System control.
- (c) Implement a hard-wired control-grade reactor trip on loss of main feedwater and/or turbine trip.

- (d) Complete analyses for potential small breaks and develop and implement operating instructions to define operator action.
- (e) All licensed reactor operators and senior reactor operators will have completed the TMI-2 simulator training at B&W.
- (f) Station in the control room an additional full-time Senior Reactor Operator (SRO) (or previously licensed SRO) with Three Mile Island training for each operating unit to assist with guidance and possible manual action in case of transients until items (a) through (e) are completed.

In its letters the licensee also stated that (1) Oconee 3 would be shut down on April 28, 1979, and remain shutdown until (a) through (e) above are completed (the facility was shut down on April 28, 1979 as stated); (2) a second Oconee unit would be shut down on May 12, 1979, if items (a) through (e) have not been previously accomplished and remain shut down until items (a) through (e) have been completed; and, (3) a third Oconee unit would be shut down on May 19, 1979, if items (a) through (e) have not been previously accomplished and will remain shut down until completion of items (a) through (e).

In addition to these modifications to be implemented promptly, the licensee has also proposed to carry out certain additional long-term actions to increase the capability and reliability of the reactors to respond to various transient events. These are:

- The licensee will install two motor driven pumps for each Oconee unit, as more particularly described as Part III of a letter from W.O. Parker to the NRC of April 25, 1979, to provide greater assurance of emergency feedwater supply. The licensee will submit this system concept and analysis to the NRC staff for review.
- The licensee will submit a failure mode and effects analysis of the Integrated Control System to the NRC staff as soon as practicable. The licensee states that this analysis is now underway with high priority by B&W.
- The reactor trip on loss of the main feedwater and/or trip of the turbine to be installed promptly pursuant to this Order will thereafter be upgraded so that the components are safety grade. The licensee will submit this design to the NRC staff for review.
- The licensee will continue reactor operator training and drilling of response procedures to assure a high state of preparedness.

- 8 -

The Commission has concluded that the prompt actions set forth as (a) through (e) above are necessary to provide added reliability to the reactor system to respond safely to feedwater transients and should be confirmed by a Commission order. The immediate procedural changes to assure redundant sources of auxiliary feedwater that were put into effect on April 25 at the two operating Oconee units, as described in paragraph (a) above, and the immediate additions to the operating staff, as described in paragraph (f) above, provide the bases for continued safe operation of those facilities during the interim period until May 12 and May 19, 1979, respectively. The Commission finds, however, that operation of all units should not be resumed or continued on an indefinite basis until actions described in paragraphs (a) through (e) above have been satisfactorily completed.

For the foregoing reasons, the Commission has found that the public health, safety and interest require that this Order be effective immediately.

III.

Copies of the following documents are available for inspection at the Commission's Public Document Room at 1717 H Street, N.W., Washington, D.C. 20555, and are being placed in the Commission's local public document room at the Oconee County Library, 201 South Spring, Walhalla, South Carolina 29691:

- 9 -

(1) Office of Nuclear Reactor Regulation Status Report on Feedwater Transients in B&W Plants, April 25, 1979.

(2) Letter from W. S. Lee (Duke Power Company) to Harold Denton (NRR), dated April 25, 1979.

(3) Two letters from W. O. Parker, Jr. (Duke Power Company) to Harold Denton (NRR), dated April 25, 1979.

(4) Letter from W. H. Owens (Duke Power Company) to Roger J. Mattson (NRR), dated April 25, 1979.

(5) Letter from W. S. Lee (Duke Power Company) to Harold Denton (NRR), dated April 26, 1979.

(6) Letter from W. O. Parker, Jr. (Duke Power Company) to James P. O'Reilly (IE), dated May 4, 1979.

IV.

Accordingly, pursuant to the Atomic Energy Act of 1954, as amended, and the Commission's Rules and Regulations in 10 CFR Parts 2 and 50, IT IS HEREBY ORDERED THAT:

- (1) The licensee shall take the following actions with respect to Oconee 1, 2 and 3:
 - (a) Install automatic starting of the interconnected emergency feedwater system so that all three pumps will receive a start

- 10 -

signal from any affected unit, and test the system for stability. The emergency feedwater pump discharge flow will be connected to the interconnection headers such that each or all of the emergency feedwater pumps can supply water to any unit. Until these modifications and tests are completed, operating personnel will be stationed at each emergency feedwater pump with a direct communication link to that unit's control room. In addition, the following procedural changes, put into effect on April 25, 1979 to enhance the reliability of the emergency feedwater system, will remain in force:

- (1) The discharges of these pumps have been tied together by alignment of manual valves such that each and all of the pumps can supply emergency feedwater to any Oconee Unit requiring it.
- (2) Administrative controls have been established so that in the event of loss of both main feedwater pumps on an affected unit, that unit's emergency feedwater pump will start automatically, backed up by remote manual start from the control room. If the pump fails to start automatically, the operator stationed at that pump will start the pump locally, and has been trained

to do so. In addition, the other two available emergency feedwater pumps will be started remotely from their unit's control room or locally if required to provide two more sources of feedwater to the affected unit.

- (3) Emergency feedwater flow to the steam generators will be assured by the control room operator who has been trained to maintain the necessary level.
- (b) Develop and implement operating procedures for initiating and controlling emergency feedwater independent of Integrated Control System control.
- (c) Implement a hard-wired control-grade reactor trip on loss of main feedwater and/or turbine trip.
- (d) Complete analyses for potential small breaks and develop and implement operating instructions to define operator action.
- (e) All licensed reactor operators and senior reactor operators assigned to the Oconee control rooms will have completed the TMI-2 simulator training at B&W.

- 12 -

- (f) Station in the control room an additional full-time Senior Reactor Operator (SRO) (or previously licensed SRO) with Three Mile Island training for each operating unit to assist with guidance and possible manual actions until items (a) through (e) are completed.
- (2) The licensee shall maintain Oconee 3 in a shut down condition (the facility was shut down on April 28, 1979) until items (a) through (e) in paragraph (1) above are satisfactorily completed and such completion has been confirmed by the Director, Office of Nuclear Reactor Regulation.
- (3) The licensee shall shut down a second of the three Oconee units on May 12, 1979, unless items (a) through (e) in paragraph (1) above have been satisfactorily completed and the completion has been confirmed by the Director, Office of Nuclear Reactor Regulation, before that date. In the event the second unit is shut down on May 12, 1979, it will remain shutdown until items (a) through (e) in paragraph (1) above are satisfactorily completed and such completion has been confirmed by the Director, Office of Nuclear Reactor Regulation.

- 13 -

- (4) The licensee shall shut down the third of the three Oconee units on May 19, 1979, unless items (a) through (e) in paragraph (1) above have been satisfactorily completed and the completion has been confirmed by the Director, Office of Nuclear Reactor Regulation, before that date. In the event the third unit is shut down on May 19, 1979, it shall remain shut down until items (a) through (e) in paragraph (1) above are satisfactorily completed and such completion has been confirmed by the Director, Office of Nuclear Reactor Regulation.
- (5) The licensee shall as promptly as practicable also accomplish the long-term modifications set forth in Section II of this Order.

Satisfactory completion of items (a) through (e) in paragraph (1) and in paragraphs (2) through (4) above will require confirmation by the Director, Office of Nuclear Reactor Regulation, that the actions specified have been taken, the specified analyses are acceptable, and the specified implementing procedures are appropriate.

V.

Within twenty (20) days of the date of this Order, the licensee or any person whose interest may be affected by this Order may

request a hearing with respect to this Order. Any such request shall not stay the immediate effectiveness of this Order.

FOR THE NUCLEAR REGULATORY COMMISSION


Samuel J. Chirik
Secretary of the Commission

Dated at Washington, DC
this *7th* day of *May* 1979.

UNITED STATES OF AMERICA
ATOMIC ENERGY COMMISSION

In the Matter of)
)
DUKE POWER COMPANY) Docket Nos. 50-269
) 50-270
(Oconee Nuclear Power Station,) 50-287
Units 1, 2, and 3))

ORDER FOR MODIFICATION OF LICENSE

I.

The Duke Power Company (the licensee) is the holder of facility licenses DPR-38, DPR-47 and DPR-55, which authorize operation of the Oconee Nuclear Power Station, Units 1, 2, and 3, respectively, in Oconee County, South Carolina. These licenses provide, among other things, that they are subject to all rules, regulations and orders of the Commission now or hereafter in effect.

II.

Pursuant to the requirements of the Commission's regulations in 10 CFR § 50.46, "Acceptance Criteria and Emergency Core Cooling Systems for Light Water Nuclear Power Reactors", on August 5, 1974, the licensee submitted an evaluation of ECCS cooling performance calculated in accordance with an evaluation model developed by the Babcock and Wilcox Company ("the vendor"), along with certain proposed technical specifications necessary to bring reactor operation into conformity with the results of the evaluation.

The evaluation model developed by the vendor has been analyzed by the regulatory staff for conformity with the requirements of 10 CFR Part 50, Appendix K, "ECCS Evaluation Models". The regulatory staff's evaluation of the vendor's model is described in two previously published documents: Status Report by the Directorate of Licensing in the Matter of Babcock and Wilcox ECCS Evaluation Model Conformance to 10 CFR Part 50, Appendix K, issued October 15, 1974, and a Supplement to the Status Report, issued November 13, 1974. Based on its evaluation, the regulatory staff has concluded that the vendor's evaluation model was not in complete conformity with the requirements of Appendix K and that certain modifications described in the above-mentioned documents were required in order to achieve such conformity. The regulatory staff assessments were reviewed by the Commission's Advisory Committee on Reactor Safeguards in meetings held on October 26, 1974, and November 14, 1974.

In its Report to the Chairman of the AEC, dated November 20, 1974, the Advisory Committee has concluded that "the four light-water reactor vendors have developed Evaluation Models which, with additional modifications required by the Regulatory Staff, will conform to Appendix K to Part 50".

Since the licensee's evaluation of ECCS cooling performance is based upon the vendor's evaluation model, the licensee's evaluation is similarly deficient. The regulatory staff has assessed the effect of the changes required in the evaluation model upon the results of the evaluation of ECCS performance for

Oconee facilities submitted on August 5, 1974 and September 20, 1974. This is described in the Safety Evaluation Report of the Oconee Nuclear Station Units 1, 2, and 3, Docket Nos. 50-269, 50-270 and 50-287, dated December 27, 1974. On the basis of its review, the regulatory staff has determined that changes in operating conditions for the plant, in addition to those proposed in the licensee's submittal of September 20, 1974 and August 5, 1974, are necessary to assure that the criteria set forth in § 50.46(b) are satisfied. These additional changes, which are set forth in Appendix A to the Safety Evaluation Report, consist of modifications to the linear heat generation rate. These further restrictions will assure that ECCS cooling performance will conform to all of the criteria contained in 10 CFR § 50.46(b), which govern calculated peak clad temperature, maximum cladding oxidation, maximum hydrogen generation, coolable geometry and long term cooling.

These further restrictions were established on the basis of studies of the effect of model changes on the previously submitted evaluations. The regulatory staff believes that these restrictions should be verified by a re-analysis based upon an approved evaluation model, in conformity with 10 CFR § 50.46 and Appendix K. During the interim, before an evaluation in conformity with the requirements of 10 CFR § 50.46 can be submitted and evaluated, the regulatory staff has concluded that continued conformance to the requirements of the Commission's Interim Acceptance Criteria,* and conformance to the restrictions contained in the licensee's September 20, 1974 and August 5, 1974 submittals, together with the additional limitations set forth in Appendix A of the Staff Safety Evaluation Report, will provide

*Interim Acceptance Criteria for Emergency Core Cooling Systems for Light Water Power Reactors, 36 F.R. 12247, June 29, 1971, as amended

reasonable assurance that the public health and safety will not be endangered. These additional restrictions are set forth as Appendix A to this Order.

III.

In view of the foregoing and, in accordance with the provisions of § 50.46(a)(2)(v), the Acting Director of Licensing has found that the evaluation of ECCS cooling performance submitted by the licensee is not consistent with the requirements of 10 CFR § 50.46(a)(1) and that the further restrictions set forth in this Order are required to protect the public health and safety. The Acting Director of Licensing has also found that the public health, safety, and interest require that the following Order be made effective immediately. Pursuant to the Atomic Energy Act of 1954, as amended, the Commission's regulations in 10 CFR §§ 2.204, 50.46, and 50.54.

IT IS ORDERED THAT:

1. As soon as practicable, but in no event later than six months from the date of publication of this order in the FEDERAL REGISTER, or prior to any license amendment authorizing any core reloading, whichever occurs first, the licensee shall submit a re-evaluation of ECCS cooling performance calculated in accordance with an acceptable evaluation model which conforms with the provisions of 10 CFR Part 50, § 50.46. Such evaluation may be based upon the vendor's evaluation model as modified in accordance with the changes described in the Staff Safety Evaluation Report of the Oconee Nuclear Power Station, dated December 27, 1974. The evaluation

shall be accompanied by such proposed changes in Technical Specifications or license amendments as may be necessary to implement the evaluation results.

2. Effective immediately, reactor operation shall continue only within the limits of:

(a) The requirements of the Interim Acceptance Criteria, the Technical Specifications, and license conditions imposed by the Commission in accordance with the requirements of the Interim Acceptance Criteria, and

(b) The limits of the proposed Technical Specifications submitted by the licensee on September 20, 1974 and August 5, 1974, as modified by the further restrictions set forth in Appendix A, attached hereto.

The license shall conform operation to the foregoing limitations until such time as the proposed Technical Specifications required to be submitted in accordance with paragraph 1 above are approved or modified and issued by the Commission. Subsequent notice and opportunity for hearing will be provided in connection with such action.

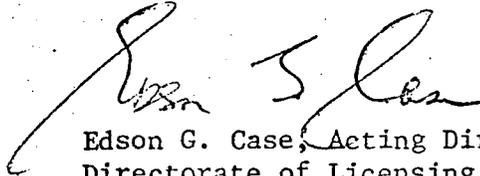
IV.

Within thirty (30) days from the date of publication of this Order in the FEDERAL REGISTER the licensee may file a request for a hearing with respect to this Order. Within the same thirty (30) day period any other person whose interest may be affected may file a request for a hearing with respect to this Order in accordance with the provisions of 10 CFR § 2.714 of the Commission's Rules of Practice. If a request for a hearing is filed within the time prescribed herein, the Commission will issue a notice of hearing or an appropriate order.

For further details with respect to this action, see (1) the licensee's submittals dated September 20, 1974 and August 5, 1974 and vendor's topical reports referenced in the licensee's submittals, which describe the vendor's evaluation model, (2) the Status Report by the Directorate of Licensing in the Matter of Babcock and Wilcox ECCS Evaluation Model Conformance to 10 CFR 50, Appendix K, (3) Supplement 1 thereto dated November 13, 1974, (4) the Safety Evaluation Report dated December 27, 1974, and (5) Report of the Advisory Committee on Reactor Safeguards dated November 20, 1974. All of these items are available at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., and at the Oconee County Library, 201 South Spring Street, Walhalla, South Carolina 29691. A single copy each of items (2) through (5) may be obtained upon request addressed to the U.S. Atomic Energy Commission, Washington, D.C. 20545, Attention: Deputy Director for Reactor Projects, Directorate of Licensing, Regulation.

Dated at Bethesda, Maryland this 21 day of December, 1974.

FOR THE ATOMIC ENERGY COMMISSION



Edson G. Case, Acting Director
Directorate of Licensing

NOTICE OF AVAILABILITY

Copies of Appendix A to Order for Modification of License, dated December 27, 1974, are available for public inspection at the Commission's Public Document Room, 1717 H Street, N. W., Washington, D. C., or may be obtained upon request addressed to the Deputy Director for Reactor Projects, Directorate of Licensing, U. S. Atomic Energy Commission, Washington, D. C. 20545.

APPENDIX A

OPERATING RESTRICTIONS

The Regulatory staff has reviewed the methods used by Babcock and Wilcox to derive the LOCA-related operating limits for its plants. The review considered the basic calculation method, the range of operating conditions calculated, the types of uncertainties and their magnitude, and the instrumentation provided to monitor plant operation. Based on this review, we conclude that sufficient monitoring instrumentation is present to provide assurance that the plant may be operated within LOCA-related operating restrictions. We further conclude that operation of Oconee Units 2 and 3 within the restrictions shown on Figures A-1 through A-3, which were a part of the August 5, 1974 proposed Technical Specifications from the licensee, will assure that the heat generation limits of Figure A-6 will not be exceeded. For Unit 1, Figure A-4 already incorporates both criteria. For Oconee Unit 1, we further conclude that the heat generation limits of Figure A-6 will not be exceeded if Unit 1 is operated within the Technical Specifications for cycle 2, provided that the following additional operating restrictions pursuant to the authority contained in 10 CFR 50.46 are imposed:

1. The power level cutoff indicated in Figure 3.5-2-1A1 of the licensee's September 20, 1974 submitted shall be reduced from 94 percent of rated power. The power level cutoff is defined as the maximum power at which the reactor can operate without regard to the reactivity held by xenon.

2. Power level shall not be greater than 92 percent (power level cutoff) unless one of the following requirements is met:
 - a. Quadrant tilt is less than or equal to 2.5 percent and the xenon reactivity is within 10 percent of the value for operation at steady-state rated power.
 - b. Quadrant tilt is greater than 2.5 percent and the xenon reactivity is within 5 percent of the value for operation at steady-state rated power.
3. Operation shall be within the control rod withdrawal limits as shown in Figure A-4.
4. Operation shall be within the power imbalance envelope as shown in Figure A-5.

1. ROD INDEX IS THE PERCENTAGE SUM OF THE WITHDRAWAL OF THE OPERATING GROUPS.
2. THE ADDITIONAL RESTRICTIONS ON WITHDRAWAL (HASHED AREAS) ARE MODIFIED AFTER 100 FULL POWER DAYS OF OPERATION.

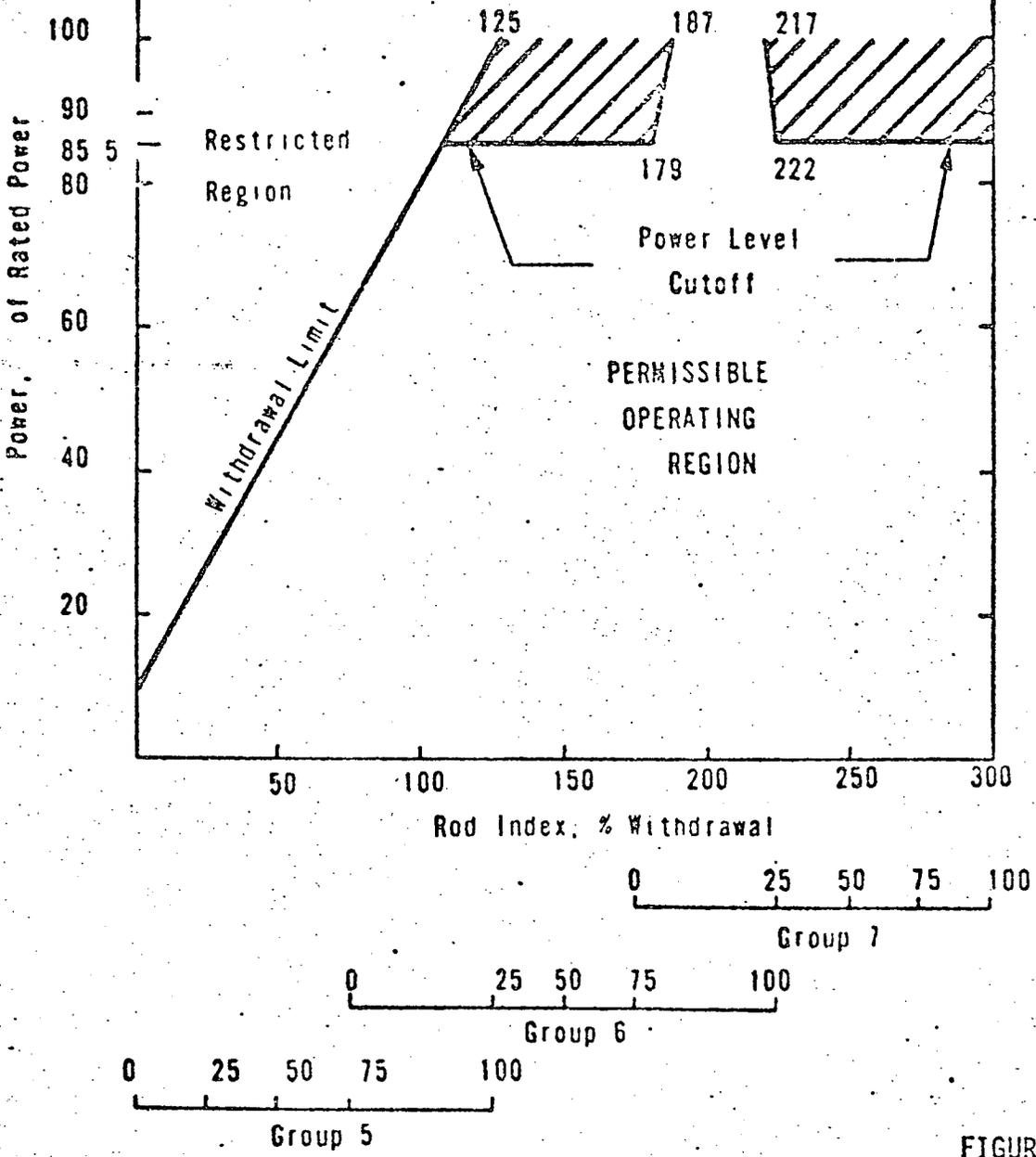


FIGURE A-1

CONTROL ROD GROUP WITHDRAWAL LIMITS
FOR 4 PUMP OPERATION - UNITS 2, 3

1. ROD INDEX IS THE PERCENTAGE SUM OF THE WITHDRAWAL OF THE OPERATING GROUPS.
2. THE ADDITIONAL RESTRICTIONS ON WITHDRAWAL (HASHED AREAS) ARE IN EFFECT AFTER 100 FULL POWER DAYS OF OPERATION. RESTRICTIONS ON WITHDRAWAL (HASHED AREAS) ARE FURTHER MODIFIED AFTER 435 FULL POWER DAYS OF OPERATION.

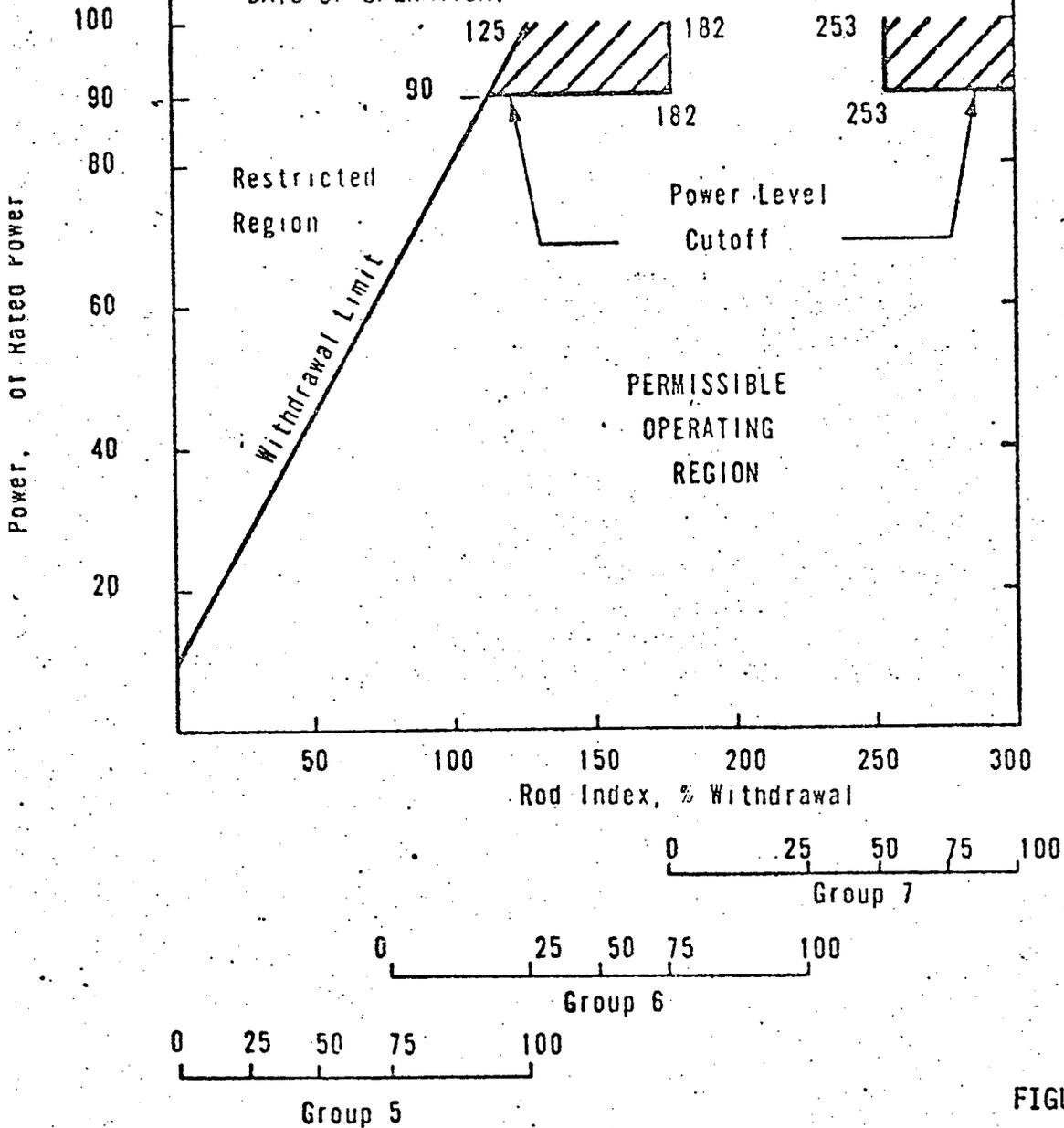


FIGURE A-2

CONTROL ROD GROUP WITHDRAWAL LIMITS
FOR 4 PUMP OPERATION - UNITS 2, 3

1. ROD INDEX IS THE PERCENTAGE SUM OF THE WITHDRAWAL OF THE OPERATING GROUPS.
2. THE ADDITIONAL RESTRICTIONS ON WITHDRAWAL (HASHED AREAS) ARE IN EFFECT AFTER 435 FULL POWER DAYS OF OPERATION.

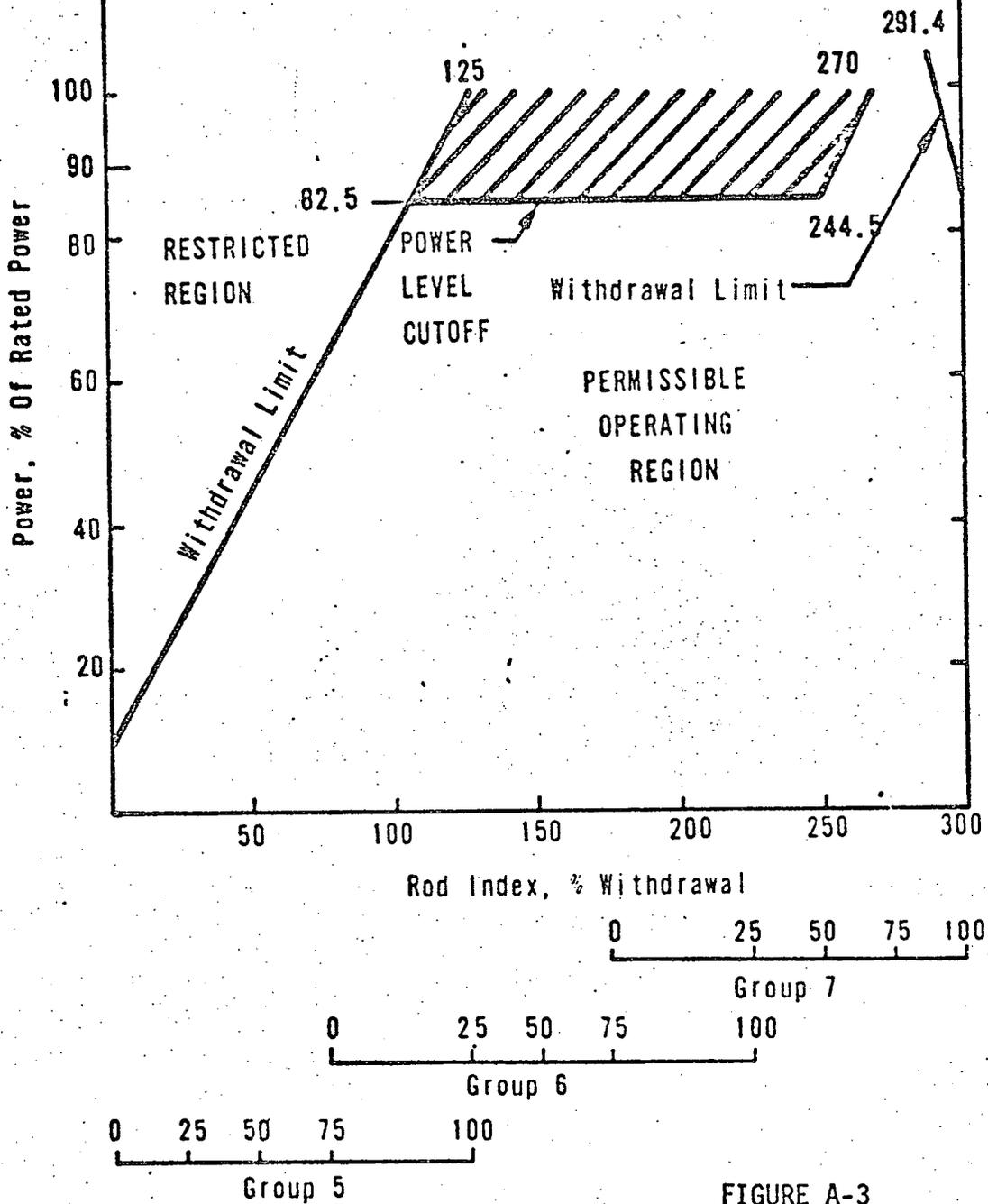


FIGURE A-3

CONTROL ROD GROUP WITHDRAWAL
LIMITS FOR 4 PUMP OPERATION
UNITS 2, 3

groups.

- The withdrawal limits be modified after 250 ± 5 full power hours of operation.

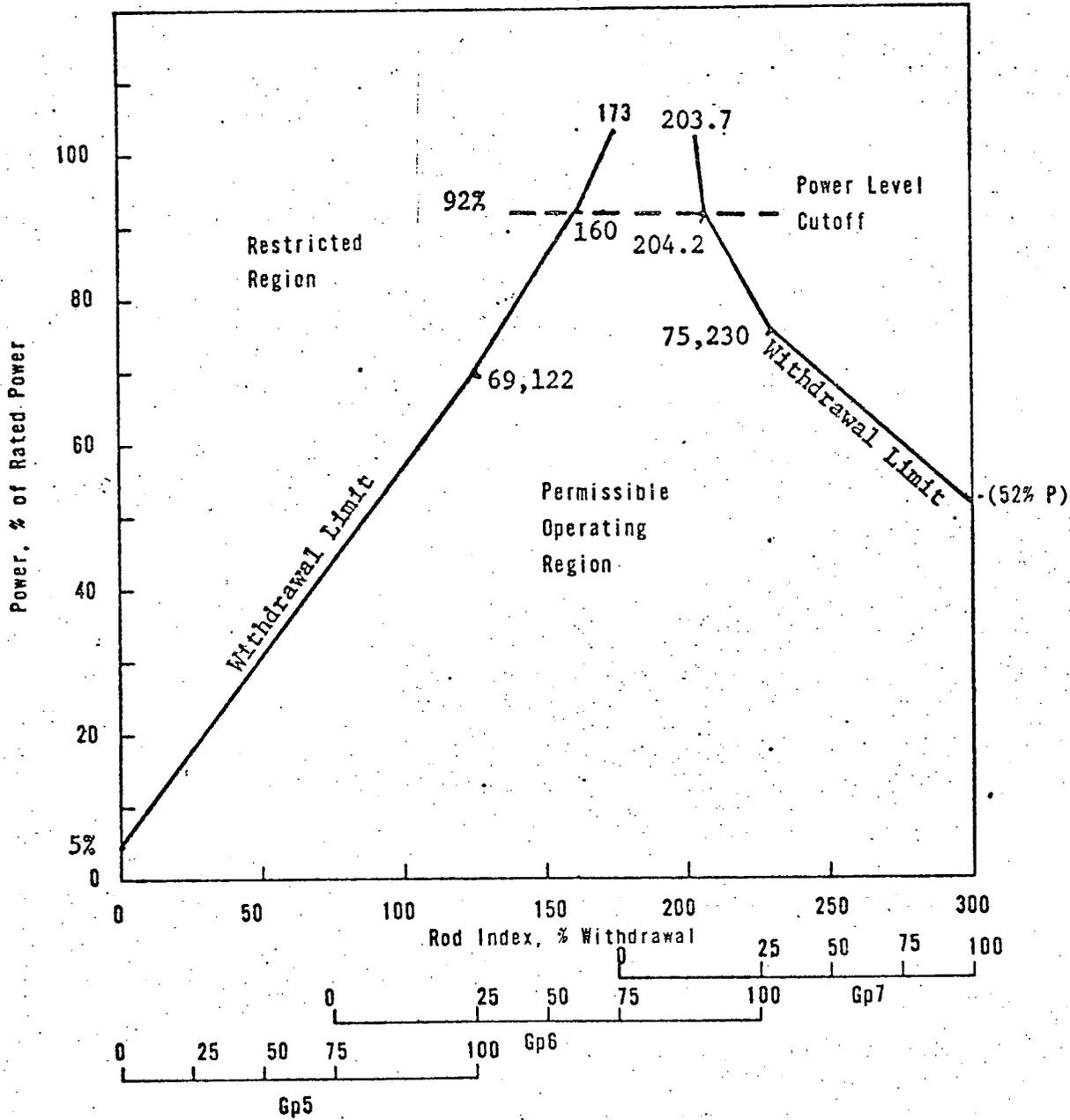


FIGURE A-4

CONTROL ROD GROUP WITHDRAWAL LIMITS FOR
4 PUMP OPERATION

UNIT 1

Power, % of 2568 MWt

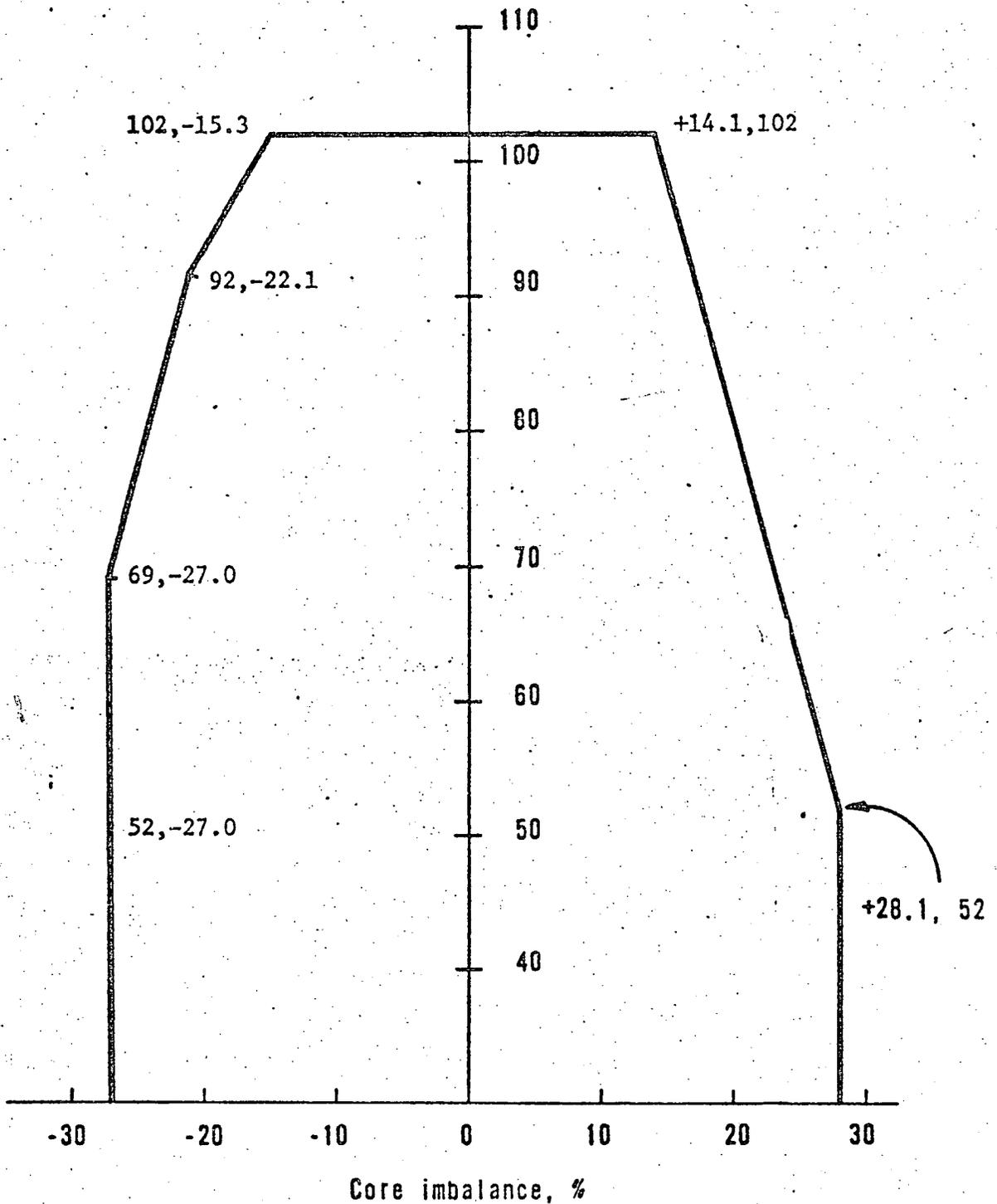


FIGURE |A-5|

OPERATIONAL POWER IMBALANCE ENVELOPE

UNIT 1

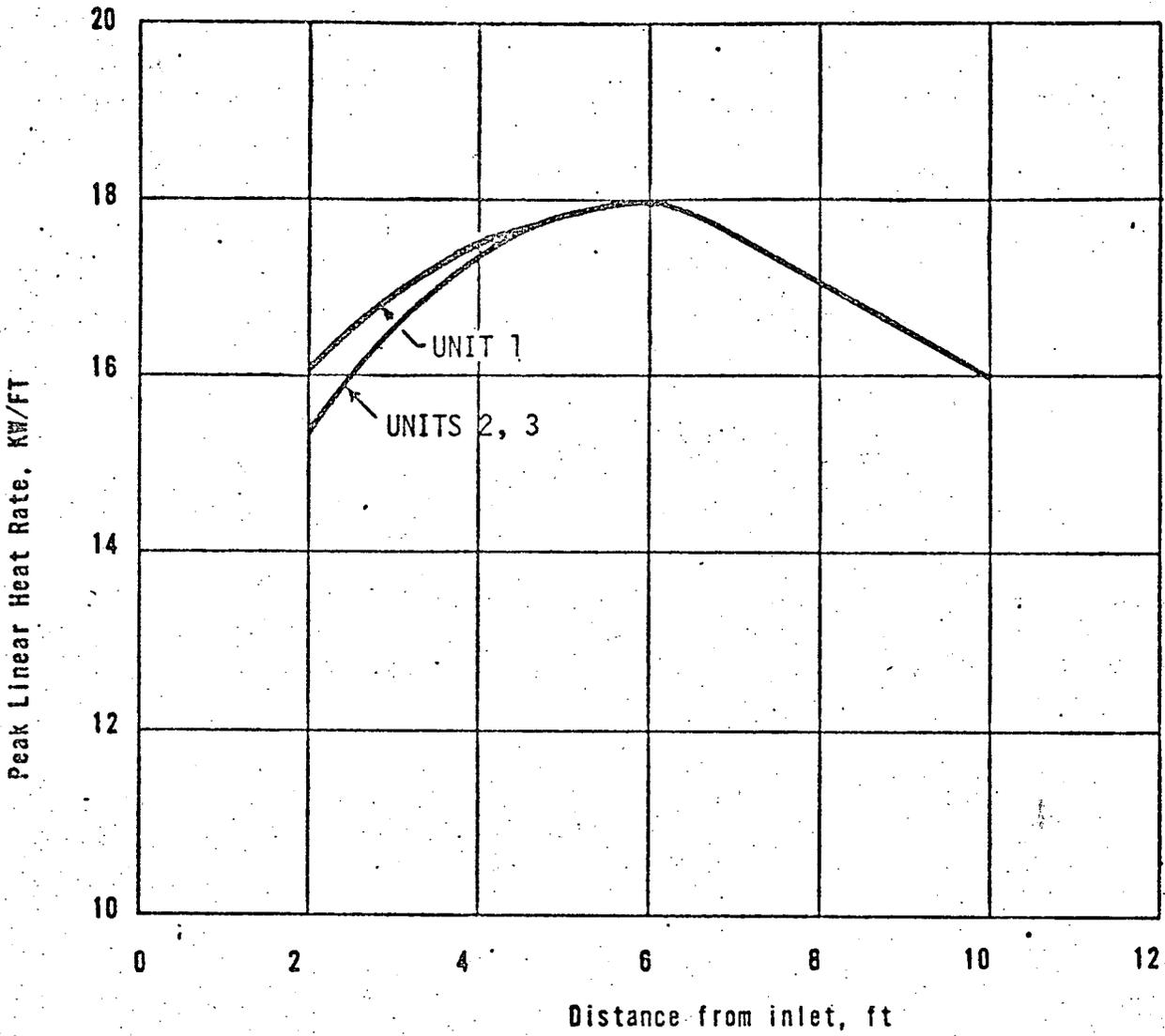
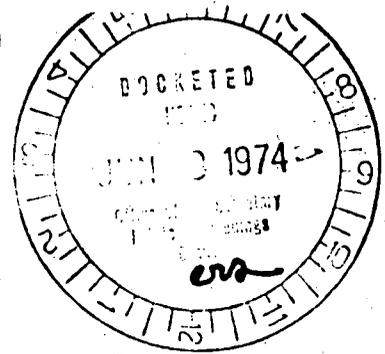


FIGURE A-6

LOCA LIMITED MAXIMUM ALLOWABLE LINEAR
HEAT RATE

UNITED STATES OF AMERICA
ATOMIC ENERGY COMMISSION



In the Matter of)
)
DUKE POWER COMPANY)
)
(Oconee Units 1, 2 & 3)
McGuire Units 1 & 2))

Docket Nos. 50-269A, 50-270A
50-287A, 50-369A,
50-370A

ORDER ON MOTION TO SUSPEND PROCEDURAL SCHEDULE

By motion dated May 29, 1974, the Municipal Intervenors, with the authorization and concurrences of the Applicant, Department of Justice, and the AEC Regulatory Staff, moved the Board to suspend the procedural schedule in this matter, confirming the commitments and statement made to the Board by telephone conference on May 28, 1974. For ample good cause shown as recited in the Intervenor's Motion to Suspend, the Board hereby suspends and cancels all the procedural dates, remaining, in the above-captioned matter.

This order is made subject to the agreement of the Municipal Intevenors, as stated in their motion, to notify

the Board of the status of ongoing settlement matters by July 1, 1974, or if such final settlements are completed prior to that time, then immediately upon such completion.

IT IS SO ORDERED.

ATOMIC SAFETY AND LICENSING BOARD



John B. Farmakides, Chairman

Issued at Bethesda, Maryland,

this 31st day of May 1974.

the Board of the status of ongoing settlement matters by July 1, 1974, or if such final settlements are completed prior to that time, then immediately upon such completion.

IT IS SO ORDERED.

ATOMIC SAFETY AND LICENSING BOARD



John B. Formanides, Chairman

Issued at Bethesda, Maryland,

this 31st day of May 1974.

UNITED STATES OF AMERICA
ATOMIC ENERGY COMMISSION

Suppl.
2-29-68

In the Matter of)
)
DUKE POWER COMPANY)
(Oconee Nuclear Station,)
Units 1, 2 and 3))

Docket Nos. (50-269)
50-270
50-287

CERTIFICATE OF SERVICE

I hereby certify that copies of a MEMORANDUM AND ORDER issued by the Commission on February 29, 1968 have been served on the following by deposit in the United States Mail, first class or air mail, this twenty-ninth day of February, 1968:

Thomas F. Engelhardt, Esq.
Robert E. Turtz, Esq.
Regulatory Staff
U. S. Atomic Energy Commission
Washington, D. C. 20545

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State Health Officer
State Board of Health
J. Marion Sims Building
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William H. Grigg, Esq.
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Duke Power Company
422 South Church Street
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Mr. W. T. Linton
Executive Director of Pollution
Control Authority
State Board of Health
Columbia, South Carolina 29201

Roy B. Snapp, Esq.
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Mr. William F. Ponder
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Mr. Henry C. Schultze, Director
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State Development Board
P. O. Box 927
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Mr. William S. Lee
Vice President, Engineering
Duke Power Company
General Office
Charlotte, North Carolina 28201

Honorable Daniel K. Moore
Governor, State of North Carolina
State Capitol
Raleigh, North Carolina 27601

Honorable Robert McNair
Governor, State of South Carolina
State House
Columbia, South Carolina 29201

Honorable Lester Maddox
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Patricia A. Kuring

Office of the Secretary

cc: T. F. Engelhardt
A. A. Wells
✓ H. E. Steele
H. I. Smith

UNITED STATES OF AMERICA
ATOMIC ENERGY COMMISSION

COMMISSIONERS:

Glenn T. Seaborg, Chairman
James T. Ramey
Gerald F. Tape
Wilfrid E. Johnson

In the Matter of
DUKE POWER COMPANY
(Oconee Nuclear Station
Units 1, 2 and 3)

DOCKET NOS. 50-269
50-270
50-287

MEMORANDUM AND ORDER

On January 3, 1968, the Commission issued a Decision in this matter upon exceptions which had been filed, by eleven North Carolina municipalities and by Piedmont Cities Power Supply, Inc., to an initial decision of an atomic safety and licensing board. On January 12, 1968, the municipalities and Piedmont filed petitions for reconsideration of our Decision and requested oral argument thereon. The applicant and the staff have submitted briefs opposing these petitions.

In its initial decision, the board ordered that provisional construction permits be issued under Section 104 b. of the Atomic Energy

Act to the Duke Power Company, the applicant herein, to build three pressurized water reactors at the applicant's site in Oconee County, South Carolina. The eleven municipalities, which had been granted intervention in this proceeding by the board, grounded their exceptions to the initial decision on the basic contention that the Commission is without jurisdiction to issue construction permits for the three Oconee reactors under Section 104 b. of the Act. Piedmont Cities Power Supply, Inc., to whom the board had denied intervention, excepted to that denial and asked that we order it to be made a party to the proceeding and that the hearing be reopened so that it might participate therein. Our Decision of January 3, 1968, which we are now asked to re-examine, denied the appellants' exceptions in all respects.

We are satisfied that the petitioners' filings and the responses by the staff and the applicant adequately set forth the arguments bearing on the present petitions and that oral argument is unnecessary. For the reasons stated below, we believe that the petitions for reconsideration should be denied.

The municipalities, while requesting that we again consider all of the arguments previously made in support of their exceptions, basically contend that our Decision failed to comply with the provisions of 10 CFR § 2.770(b)(1) in that it did not rule upon every issue of fact, law or discretion presented by the intervenors' exceptions and

state the bases for such rulings. They further contend that we erred in failing to take into consideration antitrust aspects in the licensing determination. These contentions, in our view, are without merit.

Section 2.770(b)(1) of our Rules of Practice, 10 CFR § 2.770(b)(1), provides as follows, in relevant part:

"(b) * * *

The final decision will be in writing and will include:

(1) A statement of findings and conclusions, with the basis for them on all material issues of fact, law or discretion presented;"

This provision parallels language contained in Section 8(b) of the Administrative Procedure Act (APA), which language has been the subject of considerable authoritative commentary. It is clear, under the APA, that agencies may issue their opinions in narrative and expository form without making separate findings of fact and conclusions of law; the purposes of the subject requirement are met if an agency's opinion indicates its findings and conclusions on material issues of fact, law or discretion with such specificity as to advise the parties and any reviewing court of their record and legal basis. ^{1/} It is further established that an agency need not treat every issue or supporting

^{1/} Attorney General's Manual on the Administrative Procedure Act,
p. 86, (1947).

argument raised by the parties to a proceeding. Only material issues of fact, law or discretion need be dealt with, and an agency is not required to make findings and conclusions and give reasons therefor on collateral issues or issues not relevant to its decision. ^{2/} In this regard, the legislative history of the APA is explicit that "A particular conclusion of law may render certain issues and findings immaterial, or vice versa." ^{3/}

As the staff points out, the contentions which the municipalities have raised respecting the proper application of Section 2.770(b)(1) lie in the area of statutory interpretation. The question, therefore, is whether our Decision directly ruled upon or rendered immaterial the various matters of law presented by the municipalities' earlier exceptions and, in so doing, adequately stated the bases for the positions taken by the Commission. The answer to this, as our discussion below shows, must be in the affirmative.

Dealing, seriatim, with the contentions raised by the municipalities' petition, it is clear, as respects their first claim of error, that our Decision rejected the standard urged in their exceptions for determining whether or not a type of reactor has demonstrated practical value

^{2/} Minneapolis and St. Louis Railway Co. v. United States, 361 U. S. 173; Deep South Broadcasting Co. v. F.C.C., 278 F. 2d 264 (CADG); Stauffer Laboratories, Inc. v. F.T.C., 343 F. 2d 75 (C.A.9); Brotherhood of Maintenance of Way Employees v. United States, 221 F. Supp. 19 (E.D.Mich.), affirmed, 375 U. S. 216.

^{3/} Sen. Rep. 572, 79th Cong., 1st Sess., pp. 24-25.

and explained at some length our own position in this regard. The municipalities' contention that our Decision was deficient because we cited no statutory or decisional law in support of our interpretation of the Atomic Energy Act, is plainly misplaced. We would think it beyond dispute that, as the agency charged with responsibility for implementing and administering the provisions of the Atomic Energy Act, our interpretation of the Act is not only relevant but entitled to substantial weight. Power Reactor Development Co. v. International Union, et al. 367 U. S. 396.

As to the municipalities' interpretation of the term "research and development", the ground for their second claim of error, the Decision confirmed our previous holding that the term covers a demonstration that will provide a basis for commercial evaluation, and related our interpretation to the matter in issue. We further stated our agreement with the board that research and development needed to complete the design of certain components for the Oconee units evidenced an experimental purpose concomitant with the purpose of economic demonstration.

The municipalities next contend that our Decision did not properly treat with their exception relating to licensability of the Oconee facilities under Section 104 b. It is sufficient to note, in this regard, that the Decision expressly held "the proposed Oconee reactors are

properly to be licensed under Section 104 b." and that, as is the case with the other exceptions, it gave reasons therefor which either directly rejected or rendered immaterial the arguments advanced by the municipalities in support of a contrary conclusion.

As respects the municipalities' further general contention that the Decision's "overruling of each and all of the Intervenors' Exceptions was contrary to law", they acknowledge that underlying these exceptions "are the interpretations which Intervenors have given . . . the interrelated sections of the Atomic Energy Act". We think it clear that our interpretation of the Act and treatment of the central question of jurisdiction to issue construction permits under Section 104 b. has removed the bases of these exceptions.

The municipalities finally contend that "the Commission erred in failing to take into consideration antitrust aspects in the total of its licensing responsibilities." The staff and the applicant have responded that the municipalities' request for our consideration of antitrust matters at this stage is untimely and, further, that in a proceeding for permits to construct nuclear power reactors of the type specified in Section 104 b., the Commission has no regulatory authority under the Act to deny or condition a permit because of antitrust considerations. ^{4/}

4/ Cited in this regard are Section 105 of the Act and the following references in the legislative history bearing on Commission consideration of antitrust issues in licensing matters: Vols. II and III, Legislative History of the Atomic Energy Act of 1954, pp. 1923, 2042, 2132, 2266, 2267, 2350, 2559 and 3637.

We are in agreement with the staff and the applicant that the request for our consideration of antitrust matters at this late stage is not timely. Although the municipalities had asserted antitrust arguments in the "Protest" which they originally filed with the board, following the board's dismissal of that "Protest" for lack of jurisdiction to consider the matters raised therein, their ensuing petition to intervene and accompanying motion to dismiss focused on the jurisdictional issue of whether the application was properly within the scope of Section 104 b. The latter became the only contested issue in the proceeding and the only one presented to us on appeal. The assertion of antitrust contentions in connection with the instant petition is manifestly untimely. 10 CFR Section 2.762(a).

While the ground stated above is dispositive here as regards the municipalities' antitrust contentions, we believe the staff and the applicant are further correct that, in a proceeding for permits to construct nuclear power reactors of the type specified in Section 104 b., the Commission has no regulatory authority under the Act to deny or condition a permit because of antitrust considerations.

The petition for reconsideration filed by Piedmont Cities Power Supply, Inc., presents nothing which would lead us to alter our previous holding that denial of intervention was proper. We remain of the view that the interest claimed by Piedmont is remote and tenuous at best and that it affords neither a basis for entitlement to intervene under our Act nor one warranting a grant of intervention in the sound exercise of administrative discretion, as was the case with the municipalities.

In our Decision we also observed that, in view of the professed identity of interest between Piedmont and the municipalities as well as their common contentions and representation, we failed to perceive how Piedmont was prejudiced in any practical way by its being denied intervention. Piedmont's petition responds that its "role and interests in participating in this proceeding, while inseparable from those of the Cities in certain basic respects, are nevertheless not entirely co-extensive, either as a matter of assisting the Commission in uncovering antitrust problems or in helping it fashion the appropriate relief for Piedmont and the eleven intervenor Municipalities." We find this unpersuasive. There is no need to repeat what was earlier stated respecting present consideration of antitrust matters; as for fashioning appropriate relief, it suffices to say that what both Piedmont and the municipalities sought in their joint petition to intervene and motion to dismiss was dismissal of the Oconee application for lack of jurisdiction under Section 104 b., a matter we dealt with in ruling on the contentions which the municipalities pursued.

It is therefore ORDERED that the petitions for reconsideration filed by the eleven municipalities and by Piedmont Cities Power Supply, Inc., are denied.

By the Commission.



F. T. Hobbs
Acting Secretary

Dated February 29, 1968

1-3-68

UNITED STATES OF AMERICA
ATOMIC ENERGY COMMISSION

COMMISSIONERS:

Glenn T. Seaborg, Chairman
James T. Ramey
Gerald F. Tape
Wilfrid E. Johnson

Regulatory Suppl File C/A

In the Matter of
DUKE POWER COMPANY
(Oconee Nuclear Station
Units 1, 2 and 3)

DOCKET NOS. 50-269
50-270
50-287

DECISION

This matter comes before the Commission upon exceptions which have been filed, by eleven North Carolina municipalities and by Piedmont Cities Power Supply, Inc., to an initial decision of an atomic safety and licensing board dated November 3, 1967. In its initial decision, the board ordered that provisional construction permits be issued under Section 104 b. of the Atomic Energy Act to the applicant, Duke Power Company, to build three closed-cycle pressurized water reactors at the applicant's site in Oconee County, South Carolina.

The eleven municipalities, which had been granted intervention in this proceeding by the board, ground their exceptions on the basic contention that the Commission is without jurisdiction to issue construction permits and licenses for the three Oconee reactors under Section 104 b. of the Act. In their view, these reactors are not utilization facilities ". . . involved in the conduct of research and development activities leading to the demonstration of the practical value of such facilities for industrial or commercial purposes . . .", within the meaning of Section 104 b. Piedmont Cities Power Supply, Inc., which had been denied intervention by the board, excepts to that denial and asks that we order it to be made a party to the proceeding and direct reopening of the hearing so that it may participate therein. Both the applicant and the staff have filed briefs opposing the above exceptions.

The three proposed reactors will be substantially similar pressurized water facilities, each having an initial power rating of 2,452 thermal megawatts (839 electrical megawatts) and an ultimate expected power level of 2,568 thermal megawatts (874 electrical megawatts). The Oconee facilities will contain a number of design features and systems for the protection of plant employees and the public. Each reactor unit is to be housed in a massive steel-lined concrete containment structure, which will

minimize discharge to the environment of accidentally released radioactive fission products. Numerous engineered safeguard systems, described in the initial decision, are also incorporated in the design to assure core and containment integrity and to permit emergency functions to be carried out even with component failure.

Both the regulatory staff and the Advisory Committee on Reactor Safeguards have concluded, based on their reviews, that there is reasonable assurance the proposed Oconee reactors can be constructed and operated without undue risk to the health and safety of the public. No question has been raised in this appeal respecting the board's finding that issuance of permits for the construction of the Oconee facilities will not be inimical to the health and safety of the public or to the common defense and security and we are satisfied from our own review that this finding is amply supported by the record.

In light of the foregoing, we focus herein on the questions of jurisdiction and intervention presented by the exceptions which have been filed. While the appellants have requested oral argument on their exceptions, we believe that the matters raised are adequately explored in the written arguments which have been submitted and the underlying record and that oral presentations are unnecessary. (10 CFR Section 2.763).

We address our attention first to the jurisdictional contentions underlying the exceptions of the intervening North Carolina municipalities. It will be recalled, in this regard, that our Memorandum and Order of September 8, 1967, which responded to the board's referral of its ruling on the intervenors' motion to dismiss, spoke preliminarily to the municipalities' jurisdictional assertions. We there stated our agreement with the board that the definition of "research and development" in the Act and our regulations is sufficiently broad that it encompasses as "development" a demonstration that will provide a basis for commercial evaluation. The Memorandum and Order went on to hold that the construction and operation of the proposed Oconee facilities would be sufficiently related to the demonstration of the practical value of such reactors for commercial purposes to permit the proceeding to be conducted under Section 104 b. We further stated that, from the pattern established by the Act for the licensing of utilization facilities, Section 104 b. is the appropriate section for the licensing of facilities of the type covered by this application and cited, in connection therewith, the conclusion which attended our Section 102 rule making proceedings on "practical value".

Our Memorandum and Order confined itself to Units 1 and 2 because the board's order, which dealt with a preliminary motion

to dismiss, had deferred a ruling on Unit 3. We deemed it appropriate, in that context, to reserve our decision regarding Unit 3 until the board had spoken thereon. This the board has now done, its initial decision concluding that the "proposed nuclear utilization facility including Oconee Units 1, 2 and 3 are properly subject to license under Section 104 b. of the Act".

We are in agreement with the conclusion that the proposed Oconee reactors are properly to be licensed under Section 104 b. Our earlier Memorandum and Order, as we have recounted, contained certain preliminary declarations respecting this jurisdictional question. In view of the fact that the parties have since had the opportunity fully to develop their respective positions on the record and to brief those positions to us, it is appropriate that we amplify our views as regards Section 104 b. and relate them to the present appeal.

Inquiry into the application of Section 104 b. properly begins, of course, with the language of that section itself. Insofar as is here relevant, Section 104 b. authorizes the Commission to license thereunder ". . . utilization . . . facilities involved in the conduct of research and development activities leading to the demonstration of the practical value of such facilities for industrial or commercial purposes . . .". We have already stated our view that the "research and development" about which Section 104 b. speaks encompasses as

"development" a demonstration that will provide a basis for commercial evaluation. Such "commercial evaluation", in terms of earlier relevant declarations, means an evaluation of the economic competitiveness of the nuclear facility with conventional power plants. ^{1/}

In the context, then, of the statutory language and our construction of it, until there has been a "demonstration of the practical value of such facilities for industrial or commercial purposes", utilization facilities which will provide a basis for commercial evaluation in connection therewith (i.e., "leading to" such "demonstration") may be licensed under Section 104 b. As the discussion below shows, this clearly places the Oconee reactors within the compass of Section 104 b.

^{1/} Our position as respects the foregoing is in accord with the position we have taken concerning the meaning of "practical value". We have formally stated in the latter regard that, based upon our interpretation of the Act, the "statutory finding of practical value, while pre-supposing a determination of technical feasibility, also involves economic considerations, the essential economic test being the competitiveness of the nuclear power plant with conventional power plants". Determination Regarding Statutory Finding of Practical Value, 31 F. R. 221, January 7, 1966; see also, the Commission's notice announcing certain preliminary determinations respecting a finding of "practical value", 29 F. R. 9458, July 10, 1964.

Our Memorandum and Order of September 8, 1967, noted that the Commission has considered on two occasions in rule making proceedings the question of whether a finding of "practical value" should be made with respect to some type or types of light water, nuclear power reactors. We concluded in the first proceeding, following receipt and consideration of extensive public comments, the holding of a legislative-type public rule making hearing, and a careful evaluation of all relevant factors, that "[p]ending the completion of scaled-up plants, and the information to be obtained from their operation", there "has not yet been sufficient demonstration of the cost of construction and operation of light water, nuclear electric plants to warrant making a statutory finding that any types of such facilities have been sufficiently developed to be of practical value". ^{2/} This conclusion was reaffirmed in connection with our denial of a petition for rule making approximately one year ago. ^{3/}

^{2/} Determination Regarding Statutory Finding of Practical Value, 31 F. R. 221, January 7, 1966.

^{3/} Notice of Denial of Petition for Rule Making, 31 F. R. 16732, December 30, 1966.

It is worth restating at this point the circumstances which we took into account in arriving at our rule making determinations. In conjunction with our initial determination, we outlined these circumstances as follows:

"Currently operable light water, nuclear electric plants range up to about 200 net MW(e) and are not economically competitive. In 1962 the Commission encouraged the construction of scaled-up plants by requesting authorization under the Power Demonstration program for plants in the 400-500 net MW(e) range. Operating experience, including maintenance and availability, from the plants for which Congress authorized appropriations in these intermediate sizes is not available, since none of them is completed. More recently, plants in sizes exceeding 600 net MW(e) are being designed and constructed without Government financial assistance. The Commission has examined in some detail whether the information provided by the award of contracts for the construction of scaled-up plants without Government assistance is sufficient to support, without further demonstration, a finding of practical value under the Act. Without the operating information the intermediate sized plants are expected to provide, we are not prepared to make a statutory finding on the basis of demonstrated results of the currently operable plants that plants at least three times larger than 200 net MW(e) are of practical value within the meaning of section 102."

We were faced with like circumstances at the time of our second rule making action and, while two of the intermediate-sized plants have now been licensed for operation, essentially the same situation as regards "demonstration" obtains today. ^{4/} In this context, we think it manifest that large-scale utilization facilities, such as the Oconee reactors, by contributing to the as yet incomplete basis for a reliable estimate of economic competitiveness, are involved in the conduct of activities encompassed by Section 10⁴ b. and, thus, are properly to be licensed thereunder.

In their exceptions to us, the intervenors maintain that the proper standard for determining whether the type of utilization facility to be employed by the applicant has demonstrated practical value is whether or not it is being sold by the manufacturer and bought by the purchaser, without Government

^{4/} The Connecticut Yankee Atomic Power Plant and the San Onofre Nuclear Generating Station, both in the 400-500 net MW(e) range, were licensed for operation within the past year. The former has very recently been brought to full power operation and the latter is approaching that stage. The Oyster Creek plant of the Jersey Central Power & Light Company, the first of the plants in sizes exceeding 600 net MW(e) which has been licensed for construction, has not been completed as yet.

subsidy to either, for use in the large scale generation and sale of electrical energy in the regular course of business. From what we have previously stated, it should be clear that we cannot accept this as the basis for determining applicability of Section 104 b.; nor does such an absolute standard constitute the test for a finding of "practical value" under Section 102, although business factors of the type referred to are relevant for consideration in the latter regard.

It is worth noting, in the above connection, that we addressed ourselves to a similar proposition in the first rule making determination regarding a finding of practical value. We there concluded, after examining the underlying data in some detail, that while certain economic evaluations governing the award of contracts for scaled-up plants not involving Government assistance provide strong indications that economic competitiveness will be achieved, we should await a reliable estimate of the economics based upon a demonstration of the technology and plant performance before making the statutory finding.

Analytical support for the above approach is contained in the Staff Memorandum accompanying our determination. The staff there stated:

"Although the willingness of utilities and equipment companies to accept the business risks involved is an impressive indication of the probabilities of successful operation at anticipated levels, it is not alone a sufficient basis to support a statutory finding of practical value by the Commission. [6] The manufacturers of nuclear reactors compete for the business of utilities which are considering the purchase of power plants, and are motivated to offer incentives such as warranties as to certain features in order to obtain the award of a contract. The willingness of utilities to purchase nuclear plants and of reactor manufacturers to warrant the plants is a reflection of the acceptance of what may be considered reasonable business risks, but does not necessarily constitute a sufficient assurance that the plants will in fact perform as warranted or will otherwise meet expectations."

In our second rule making determination, we gave further consideration to this matter when we took specific note of announcements of new light water reactors to be constructed, the type of business arrangements being negotiated between reactor manufacturers and utilities and the fact that utilities have decided upon nuclear plants on the basis of comparative economic studies. Our determination stated that while these developments are further strong indications that economic competitiveness will be achieved we continued to believe that we should await a reliable estimate of the economics based upon a demonstration of the technology and plant performance.

The intervenors, in their exceptions, have also sought to emphasize the experimental facet of the terms "research and development" and to argue therefrom that the Oconee facilities do not properly fit within the statutory language. While we believe these arguments are answered by the statements already made respecting the role of economic demonstration under Section 104 b., it is appropriate further to note the following passage in the previously-referenced Staff Memorandum:

"A substantial extrapolation of demonstrated results from currently operable plants, which range up to about 200 net MW(e), is necessary in order to determine anticipated technological and economic performance in plants currently being built and sold without Government financial assistance in size ranges of 600 net MW(e) and above. Since the gap involves an increase in reactor size by a factor of three, many technical and engineering problems must be resolved and demonstrated."

The initial decision has additionally enumerated a number of aspects of research and development needed to complete the design of certain components for the Oconee units. Mentioned in this regard are: "a proposed once-through steam generator test, the control rod drive line test, self-powered in-core neutron detector tests, thermal and hydraulic programs, . . . and the fuel assembly heat transfer and fluid flow test." We agree with the board that the foregoing, individually and in combination, evidences an experimental purpose concomitant with the purpose of economic demonstration.

One additional observation is in order before we leave the jurisdictional question. The licensing authority under Section 103 of our Act is only applicable as respects facilities of a type which the Commission has found, in accordance with Section 102, to have been sufficiently developed to be of practical value for industrial or commercial purposes. The approach we have taken regarding the construction of Section 104 b. is consistent with the premise that the finding of "practical value" under Section 102 separates the issuance of developmental licenses under Section 104 b. and the issuance of commercial licenses under Section 103. This, we think, is in keeping with the scheme of the Act and its legislative history. ^{5/}

We turn now to the question of intervention. As earlier indicated, Piedmont Cities Power Supply, Inc. has excepted to the board's denial of its petition to intervene. Piedmont disputes the statement in the initial decision that it did not have a present interest sufficient to warrant intervention and

^{5/} The intervenors' contentions that prior licensing actions of the Commission can be deemed to constitute Section 102 findings of "practical value" and the further suggestion that such a finding might accompany the issuance of construction permits here, are misplaced. In our Memorandum and Order of December 5, 1967, in the Matter of Philadelphia Electric Company, we pointed out that a finding of "practical value" under Section 102 is to be made as to a "type" of utilization facility and not as to a specific proposed facility and that it can properly be made only through rule making procedures in which all interested persons would have an opportunity to participate.

claims that it had as much economic, public and other interest in this proceeding as had the eleven cities. In this connection, Piedmont asserts an economic interest in its plan to own a "fair share" of the Oconee plant and to sell its share of the electricity at cost to the eleven municipalities and declares that its interests and those of the municipalities are identical and unitary.

Before treating with the Piedmont exception, it is appropriate that we comment on the status of the eleven municipalities. Our Memorandum and Order of December 5, 1967, in the Matter of Philadelphia Electric Company, had occasion to remark on the Duke board's grant of intervention to the municipalities since a similar intervention request by the City of Dover was pending before the board in the Philadelphia Electric proceeding and the latter was seeking our guidance thereon. We stated in the Memorandum and Order that, while the question is not free from doubt, we thought the grant of intervention by the Duke board was correct, and that the municipal customer seeking intervention in Philadelphia Electric should be permitted to intervene for the stated purpose of contesting licensing jurisdiction under Section 104 b . We went on, however, to declare our view that "the matter of legal entitlement to intervene in the somewhat novel circumstances is less clear than certain of the statements in the Duke initial decision would

imply" and that we preferred to "rest our holding on what we deem to be a sound exercise of administrative discretion as applied to the particular circumstances here presented". Thus, our sanctioning of intervention as respects the municipalities in both proceedings rests on the narrow grounds stated.

The circumstances with regard to Piedmont are substantially different than those dealt with above. Unlike the cities, Piedmont has no existing economic interest related to the jurisdictional issue but only seeks to acquire such an interest. This interest claim, in our view, is a remote and tenuous one at best and does not warrant a grant of intervention.

We fail to see, moreover, how Piedmont was prejudiced in any practical way by its being denied intervention. As earlier stated, Piedmont's exception to the Commission describes the economic and other interests of the corporation and the eleven cities as identical and unitary. The two groups filed a joint petition to intervene and motion to dismiss raising the same contentions; and both were, and still are, represented by the same counsel. This identity of interest, position and representation would indicate that the jurisdictional contentions which Piedmont sought to assert were, in fact, fully presented to the board and to us by its joint petitioners.

In sum, we perceive no sound basis for overturning the board's denial of intervention to the corporation.

It is therefore ORDERED that the exceptions of the eleven municipalities and of Piedmont Cities Power Supply, Inc., are denied in all respects.

By the Commission.



W. B. McCool
Secretary

Dated: January 3, 1968

UNITED STATES OF AMERICA
ATOMIC ENERGY COMMISSION

Regulatory Suppl File Cy.

In the Matter of

DUKE POWER COMPANY
(Oconee Nuclear Station
Units 1, 2 and 3)

Docket Nos 50-269
50-270
50-287

CERTIFICATE OF SERVICE

I hereby certify that copies of a DECISION issued by the Commission on January 3, 1968 have been served on the following by deposit in the United States Mail, first class or air mail, this third day of January, 1968:

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