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PLANT NAMES: OCONEE, UNITS 1, 2 & 3
McGUIRE, UNITS 1 & 2

ENCLOSURES:
HEARING TRANSCRIPTS for Oconee, Units 1, 2 & 3 and McGuire, Units 1 & 2

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2-8-73

UNITED STATES OF AMERICA

BEFORE THE

ATOMIC ENERGY COMMISSION

In the Matter of	)	
	)	
DUKE POWER COMPANY	)	Docket Nos. 50-269A, 50-270A,
(Oconee Units 1, 2 & 3	)	50-287A, 50-369A,
McGuire Units 1 & 2)	)	50-370A

AFFIDAVIT OF WALLACE EDWARD BRAND
IN SUPPORT OF MOTION FOR RECONSIDERATION
OF BOARD'S ORDER OF JANUARY 8, 1973

WALLACE EDWARD BRAND, being first duly sworn, deposes and says:

I am an attorney employed by the United States Department of Justice, in the Antitrust Division. I am the attorney primarily responsible for preparation and presentation of the Department's case in the above-captioned proceeding. In this capacity, I formulated and requested the Atomic Safety and Licensing Board to issue the subpoenas duces tecum which were the subject of the Board's Order of January 8, 1973, and the Department's letter to Chairman Walter W. K. Bennett of January 15, 1973, treated by the Board as a motion for reconsideration.

The nature and extent of Applicant Duke Power Company's monopoly power in relevant markets is at issue in this proceeding. One measure of the monopoly power possessed by a seller (in this case Duke) is whether buyers in its area (in this case, actual or potential bulk power suppliers, and retail

distribution systems which now deal or could deal with Duke) have feasible alternatives to dealing with that seller. One possible alternative for these buyers might be to deal for coordinating power and energy or bulk power supply with one or more large, coordinated electric utilities located on the periphery of Duke's system.

Issue of the subpoenas duces tecum now objected to was requested solely to obtain documentary evidence of the existence and nature of this alternative, or its absence--i.e., to ascertain to what extent, if any, each of the subpoenaed electric utilities is a potential seller in the relevant markets.

I have had experience in other matters involving the electric power industry, including investigating and preparing for prelicensing antitrust hearings concerning electric utilities elsewhere in the United States. Through this experience, I became aware that small electric utilities located within the "service area" of and dealing with a large coordinated electric utility have sought--on infrequent occasions (usually at the time a long-term contract or franchise has expired), and for the most part unsuccessfully--to deal instead with another large electric utility having facilities reasonably close by. This gave me reason to believe, when preparing these subpoenas, that certain of the small electric utilities in Duke Power Company's "service area" may at some time have sought to deal with one or more of Duke's large neighbors.

Examination of the responses submitted by Virginia Electric and Power Co., Carolina Power & Light Co., South Carolina Electric & Gas Co., and Georgia Power Co. (a Southern Company subsidiary) to the Attorney General's Question 13 in their recent nuclear license applications did not reveal any requests for coordination or power sales directed to those companies by small systems who dealt with Duke. However, Carolina Power & Light's response in its Shearon Harris Plant application (February 18, 1972) stated that it had received and rejected requests for bulk power from two municipal systems, one served by VEPCO and the other by a larger municipal system. This response, a copy of which is attached hereto as Appendix A, indicated a policy by one of the subpoenaed utilities not to sell power to a small system already receiving power from another electric utility--and, further, that it was not unreasonable to expect VEPCO and other large systems in the area to have received similar requests from customers of Duke and to have evolved similar policies, over the course of the past 33 years.

When preparing these subpoenas, I was also aware of the Yankee-Dixie coordinated power plan, developed by municipal and cooperative electric utilities in the mid-1960's, and that its economic feasibility depended on privately owned utilities for lower-voltage transmission and subtransmission to serve anticipated loads--and that not a single privately owned utility had agreed to permit the use of its transmission or subtransmission

for that purpose. This gave me reason to believe that the subpoenaed companies would have documents regarding a decision not to permit Yankee-Dixie to use their transmission to serve customers in Duke's area. I also had reason to believe, based on our participation in prelicensing antitrust review of the nuclear license applications of those subpoenaed parties, that similar documents would exist relating to EPIC's search for coordinating partners in its efforts to compete with Duke in the supply of bulk power.

The documents generated as a result of the anticipated few occasions when a "customer" or potential competitor of Duke Power Company may have sought to deal with one of the subpoenaed companies in order to obtain its electric power needs are the heart of what the Department sought to obtain through these subpoenas. From such specific occasions would necessarily flow the other documents called for--any agreements, understandings, policies, consideration of the acquisition of a wholesale customer of Duke, establishment of boundaries or spheres of influence, and any resulting conditioning of interconnection or coordination agreements between the subpoenaed companies and Duke.

The seminal requests from small systems would probably take the form of correspondence to the division or district managers of the subpoenaed companies located nearest the small systems. Memoranda to company officers responsible for marketing would be the next step. These documents should indicate

the nature and location of any further documents--agreements, understandings, boundary discussions, conditions to interconnections, etc.--that may have resulted therefrom.

I deny that the Department of Justice was engaged in a "fishing expedition" when it sought issuance of these subpoenas.

Wallace E. Brand
Attorney, Antitrust Division
Department of Justice
Washington, D. C. 20530

Subscribed and sworn to before me on the 8th day of February, 1973.

Notary Public

My Commission Expires July 14, 1973

Item 13

List and describe all requests for, or indications of interest in, interconnection and/or coordination and for purchases or sales of coordinating power and energy from adjacent utilities listed in Item 9 since 1960 and state applicant's response thereto. List and describe all requests for, or indications of interest in, supply of full or partial requirements of bulk power for the same period and state applicant's response thereto.

Response to Item 13

The only systems listed in Item 9 which have generating capability are South Carolina Electric & Gas Company (SCE&G), Southeastern Power Administration (SEPA), Yadkin, Inc., Nantahala Power & Light Company and South Carolina Public Service Authority (SCPSA). The interconnection agreements with SCE&G, SEPA and Yadkin, Inc., are identified in applicant's response to Item 8. Applicant and SCPSA are presently conducting studies to determine whether establishment of interconnection(s) would provide mutual advantages to the two systems. Applicant has received no request from Nantahala Power & Light Company with respect to possible establishment of an interconnection. Sales and purchase of capacity and energy between applicant and SEPA, SCE&G and Yadkin, Inc., are governed by the terms of the pertinent interconnection agreements. Applicant has, without exception, honored all requests from these adjacent utilities where capacity and/or energy were available.

The 18 electric membership corporations which purchase power from the applicant are served at 93 separate delivery points. Since 1960, applicant has received numerous requests from these electric membership corporations relative to the addition, removal, relocation or reconstruction of delivery points. Within the limits of the contracts in force between the electric membership corporations and applicant, applicant has complied with these requests of the electric membership corporations. Applicant has also responded positively to requests by municipal systems and other wholesale purchasers for changes in their bulk power supply requirements in accordance with the contracts in force between applicant and these suppliers.

Applicant has acted affirmatively to supply all the power supply requirements of all electric membership corporations, municipalities and private utilities which purchase all or a part of their power requirements from applicant, and, when energy was available, the power requirements of adjacent bulk power suppliers. To furnish a complete listing of all requests for power supply from those systems since 1960 with statements as to the disposition of such requests would involve extensive research of applicant's records and would result in repetitive statements which would not differ from the summary statement above.

Since 1960 two systems which applicant does not serve and which purchased their bulk power supply from sources other than applicant indicated an interest in the possible purchase of power from the applicant. In 1966 the Town of Ayden, a wholesale customer of the City of Greenville, made inquiry with respect to the substitution of applicant's service for that of the City of Greenville. Applicant responded that it did not believe the North Carolina Utilities Commission would permit it to extend its service area to serve the Town at wholesale unless the Town could demonstrate that it was not receiving adequate service from the City of Greenville. Ayden did not pursue its initial request. In 1969 the City of Greenville requested a discussion about obtaining two points of delivery in Pitt County, North Carolina. Applicant declined to enter into discussions with Greenville with respect to its request since Greenville purchased its entire power requirements from Virginia Electric and Power Company (VEPCo), and the contract between Greenville and VEPCo, filed with the Federal Power Commission, provided that the electricity furnished by VEPCo could not be used by Greenville in conjunction with any other source of electricity without the consent of VEPCo. Since the prior written consent of VEPCo had not been obtained, the applicant could not have sought to furnish a portion of Greenville's power supply without interfering with the rights of the parties to the contract. Greenville has not renewed its request, and applicant is of the opinion that Greenville no longer desires service from applicant.

UNITED STATES OF AMERICA

BEFORE THE

ATOMIC ENERGY COMMISSION

In the Matter of	)	
	)	
DUKE POWER COMPANY	)	Docket Nos. 50-269A, 50-270A,
(Oconee Units 1, 2 & 3	)	50-287A, 50-369A,
McGuire Units 1 & 2)	)	50-370A

CERTIFICATE OF SERVICE

I hereby certify that copies of AFFIDAVIT OF WALLACE EDWARD BRAND IN SUPPORT OF MOTION FOR RECONSIDERATION OF BOARD'S ORDER OF JANUARY 8, 1973, dated February 8, 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 8th day of February, 1973:

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Chairman, Atomic Safety and Licensing Board
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Pinehurst, North Carolina 28374

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Washington, D. C. 20016

Honorable John B. Farmakides
Atomic Safety and Licensing Board
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David A. Leckie
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1/11/73

UNITED STATES OF AMERICA
ATOMIC ENERGY COMMISSION

In the Matter of	)	Docket Nos. 50-269A, 50-270A
	)	50-287A
DUKE POWER COMPANY	)	50-369A, 50-370A
	)	
(Oconee Units 1, 2, & 3; McGuire Units 1 & 2)	)	

MOTION OF EPIC, INC. TO QUASH
OR MODIFY SUBPOENA DUCES TECUM
AND TO EXTEND TIME FOR RESPONSE

On 18 December, 1972, EPIC, Inc. (EPIC) was served with a subpoena duces tecum issued by the Atomic Safety and Licensing Board (Board) at the instance of Duke Power Company (Applicant), in connection with its application for licenses in these dockets. Pursuant to Section 2.720(f) of the Atomic Energy Commission's Rules of Practice (10 CFR §2.720(f)), EPIC hereby submits to the Board a Motion to Quash or Modify the subpoena, and moves as well for an extension of time in which to comply with such parts of the subpoena as are not objected to, or which this Board may require to be answered notwithstanding EPIC's objections. The subpoena is a lengthy one, consisting of 33 separate inquiries, many of them multifariously subdivided and others general in the extreme.[1/] Even a quick perusal of the questions makes clear the heavy burden of compliance, especially for an organization which has a staff of two and a decidedly modest budget. The requested extension of time would be appropriate even if none of the questions were subject to objections. As it is, the majority of

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1/ In one or two cases, the wording of the questions is so unclear or ambiguous that neither an adequate compliance nor a responsive objection is possible.

the demands are subject to objection on one or more grounds. We therefore believe it especially appropriate for the Board to extend the time for response, in order to avoid the potentially useless, and certainly costly and time-consuming task of preparing responses to questions which may be stricken as improper.

Section I of this motion develops a general objection to many of the questions contained in the subpoena. Section II deals, on a question-by-question basis, with the entire document, setting forth the objections to each and the reasons therefor.

I

A large number of the specific demands made in the subpoena are objectionable, on grounds of relevancy or otherwise, and EPIC hereby requests the Board to quash such items. Before reciting in detail the items to which we object and our reasons for doing so, we should discuss briefly the limits within which the existence and activities of EPIC can be considered relevant to this proceeding.

Applicant has stated (Application for Issuance of Subpoena Duces Tecum, pp. 1-2):

> * * * While it [i.e., EPIC] is not a party to this proceeding, its presence is clearly felt, and Applicant's activities in regard to EPIC have been placed squarely at issue. * * * almost every pleading filed in this proceeding, make[s] repeated reference to EPIC and to Applicant's attitudes and activities concerning EPIC. * * *.
>
> The intervenors have characterized EPIC as a potential competitor of Applicant. They also apparently claim that EPIC has been hindered in its development by Applicant. * * *.
>
> The documents requested will assist Applicant in developing a full record which will reflect the validity of the claims made by the Department of Justice and the intervenors. It will enable Applicant to demonstrate EPIC's

> history, plans, and present status. It will thereby enable this Board to appropriately assess the potential role of EPIC in supplying bulk power and the role which Applicant's activities have played in the existing or potential viability of EPIC.

The Board has the power to quash or modify a subpoena "if it is unreasonable or requires evidence not relevant to any matter in issue." 10 CFR §2.720(f). The rather generalized recital quoted above being Applicant's only effort to demonstrate the relevancy of the information demanded, it must be examined in light of the nature of this proceeding in order to determine relevancy.

EPIC is not a party to this proceeding. It seeks no relief from the Board. The parties who are seeking relief -- several North Carolina cities and the Department of Justice -- desire to establish that the granting of an unconditioned license to Applicant for the Oconee and McGuire developments would create or maintain a situation inconsistent with the antitrust laws. That inuqiry is taking place in the context of competition, or attempted competition, between Applicant and the intervening municipalities, which are its captive all-requirements wholesale customers. This competition takes place at the retail level. The EPIC system, if it is constructed, will introduce competition as well at the wholesale level, by providing an alternative bulk power source for the intervening municipalities and other publicly- or cooperatively-owned utilities similarly situated. That event, however, is not less than ten years in the future. The present inquiry cannot deal with competition between EPIC and Applicant directly, for there has been none; rather, insofar as EPIC is relevant at all, it must deal with Applicant's defensive

activities designed to prevent or retard the building of the EPIC system. These activities in turn bear on the presently existing competition between Applicant as a retailer of electricity and the various municipally-owned distribution systems, some of which are parties here. The cities have alleged that the monopoly presently enjoyed by Applicant in bulk power supply permits Applicant to increase its competitive advantage at the retail level. They therefore allege that Applicant not only seeks to retain its monopoly but to use it offensively against its municipal retail competitors. The allegations of activity directed against EPIC raise the question of a course of conduct or design to thwart competition, of which such activities would be probative evidence. Now the activities of a monopolist calculated to prevent the entry of a potential competitor are not less subject to proof and remedy under the antitrust laws if they are based on a counterfactual assessment of the competitive situation. If the anti-EPIC activities here took place as alleged, it does not matter whether they were based on an exact prediction of EPIC's competitive potential. It is the motivation that is important. By the same token, it does not matter whether the activities have succeeded in retarding the entry of the potential competitor into the market-place. If EPIC -- or for that matter the several municipal distributors -- were seeking money damages in this proceeding, such questions might be relevant. But since the relevance of EPIC and Applicant's alleged efforts to block it is simply to show a design and course of behavior on Applicant's part calculated to maintain its monopoly, no such question need

arise. The reaction of a monopolist to an imaginary threat may, in such a context, be quite as probative as its reaction to a real one of which it has formed an accurate assessment.

Placed thus in the real context of this case, Applicant's attempted showing of relevance largely vanishes. The "validity of the claims made by the Department of Justice and the intervenors" depends not on a detailed analysis of EPIC, but on a showing of Applicant's activities. Those claims do not rest on an allegation that, if constructed, the EPIC system will supply bulk power to particular customers on particular terms, but on the allegation that Applicant has perceived EPIC as a competitive threat and has acted to thwart it. Likewise, there is no need for this Board to "assess the potential role of EPIC in supplying bulk power". Applicant, it is alleged, has already done that; and what is in issue is the course of conduct to which that judgment has led Applicant.

II

We turn next to the specific demands contained in the subpoena to which objection is made. In dealing with these questions, we have made one assumption, which we believe to be correct: that where the subpoena speaks of "members" of EPIC, it means to refer to the various municipalities and cooperatives that are or will be signatories of EPIC power supply contracts. EPIC, which is a nonprofit corporation organized under the nonprofit corporation statutes of North Carolina, has no members in the strict sense.

We will also be referring in this section to the EPIC Feasibility Study and the Complaint in North Carolina Consumers Power, Inc. v. Duke Power Co., Superior Court of Cleveland County, No. 72 CvS 1734. These documents, which contain a great deal of the information requested herein, have been offered to Applicant in lieu of the responses called for in the subpoena, in an effort to find an expeditious compromise solution.[2/] Applicant has not accepted this offer, but EPIC would still be willing to attempt to reach a solution on this basis.

Item 1. Subsections (b) through (f) are objected to for the reasons detailed above.

Item 3. Subsection (a) is objected to not only because a complete documentary history of the financing of EPIC would be vastly disproportionate to the utility of such information in this proceeding, given the scope of inquiry discussed above, but also because of the unreasonableness of requiring a potential competitor to disclose to a present monopolist information of this kind on its future financing. Where a competitor such as Applicant has given the clearest possible public indications of its intention to exclude any rival, a potential rival should not be required to make the job easier by turning over data of this kind.

Subsection (b) calls for irrelevant information in that the individual signatories (cities and cooperatives) will not be borrowing in order to construct EPIC facilities. Besides,

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2/ Applicant is, of course, already in possession of at least one copy of the Complaint, since it has been served as a party defendant. We would supply further copies to Applicant's Washington counsel, who apparently do not now possess it.

Applicant has already requested and obtained the credit ratings of the cities which are parties to this case by way of its initial discovery request.

Subsection (c) again calls for irrelevant information; no REA or National Rural Utilities Cooperative Finance Corporation (CFC) money is intended to be used for construction of the EPIC system. Details on this subject can be found in the Feasibility Study and Complaint referred to above.

Subsection (d) again calls for information outside the proper scope of this inquiry, as well as being the subject, as to the cities intervening herein, of extensive discovery by Applicant.

Subsection (e) is subject to the same objection as (b) and (c).

Subsections (f) through (m) are, once again, demands for a great deal more factual detail than can be put to any use in this proceeding. Subsections (g) and (h) are further subject to the same objection raised in connection with subsection (a). A considerable amount of the information asked for here is conveniently available in the Feasibility Study and/or the Complaint, which have been offered to Applicant as described above.

Subsection (n) is irrelevant for another reason. The contractual exhibit to the Complaint referred to above contains the rate design on which EPIC relies to attract customers. It is on that rate structure that competition, if any, between EPIC and Applicant will take place. Accordingly, previous rate-design plans have no relevance whatever to the issues in this proceeding.

Item 4 deals, in the broadest possible sense, with the marketability of EPIC power. Several of the subsections deal with technical questions (load growth, peak demands, benefits of various kinds of power and energy exchanges, etc.). Subsections (a) through (d) fall into this category. Given the scope of the present proceeding, there is surely no need for a detailed production of data on these topics. They are in no way relevant to the factual questions (i) whether Applicant has improperly interferred with entry of EPIC into the bulk power market and (ii) its reasons for doing so.

Subsection (e) has perhaps some relevance, but is so broadly expressed as to sweep into its ambit topics that are not merely irrelevant but factually impossible. There can be no wholesale competition between "members" of EPIC, as none of them possesses bulk power facilities. Nor would such competition be relevant if it did exist. Competition between an EPIC participant or participants and Applicant is perhaps relevant here, but the question is not limited to that; it asks for data on competition between EPIC participants and any other utility whatsoever. We therefore urge that if subsection (e) is not stricken, it should be limited appropriately in the light of the subject matter of this proceeding.

Subsections (g) through (j) have only the most remote connection with the present issues. It may safely be taken for granted (as, to judge by the cities' allegations, Applicant itself has done) that EPIC will seek to develop loads in the area

it ultimately serves at wholesale. This is to say no more than that it intends to compete with Applicant, a judgment Applicant has apparently made already. The question here is what Applicant has done to defend its present dominant position, and why. Accordingly, these subsections should be stricken.

Subsection (k), as written, is so unclear as to be unanswerable; by the same token, we cannot presently tell whether it is objectionable. The question does not indicate by whom the electricity is to be obtained or whose energy requirements are intended. Until this question is clarified, we request leave to withhold comment upon it.

Subsection (l) cannot be relevant insofar as it seeks data on any analyses or comparisons of companies other than Applicant. There is no necessity, in this proceeding, to evaluate the competitive ability of EPIC participants other than those which are parties (or at the most, those that are served at wholesale by Applicant).

Insofar as it seeks to obtain the legal advice rendered by counsel to EPIC or any other entity, subsection (m) is objectionable on grounds of privilege.

Item 5. By far the greatest part of this item has no bearing whatsoever on the issues properly under scrutiny in this proceeding. The argument for that proposition, made at length above, will not be repeated here. Subsection (e), which has perhaps some bearing on the remedy appropriate in this proceeding, is not object to, insofar as it concerns the Oconee and/or McGuire plants. Otherwise,

item 5 is objectionable for reasons already explained. We may note parenthetically that the Feasibility Study referred to earlier would give this Board a more than adequate working knowledge of the matters covered in this item.

Item 6 does deal with matters that have a place in this proceeding, but there is no reason for the production of documents dealing with interconnection and coordination with entities other than Applicant or regional organizations such as CARVA or VACAR to which Applicant belongs. Item 6 should therefore be limited to production of data on that appropriately narrowed basis.

Item 7 has no visible relevance to the issues of Applicant's activities with regard to EPIC or to their motivation, and is objected to.

Item 8 not only has no such relevance, but is not even limited to surveys undertaken by or on behalf of EPIC. It is so unreasonably broad as to include questions to the public about such issues as the environmental impact of transmission lines or homeowners' preferences for electric over gas appliances. This item is objected to on both grounds.

Item 9, by referring to press releases "about" EPIC, would require the production of documents composed by and in the possession of an indefinite number of other entities, including Applicant itself. It should, at least, be limited to "press releases issued by or on behalf of EPIC".

Item 10 is subject to the same objection as item 9.

Item 11 is, if nothing else, unreasonably broad in view of the scope of this case. EPIC must deal with other electric utilities

besides Applicant, and documents dealing with such other entities have no relevance in assessing Applicant's conduct. There may be numerous documents which do not in any way bear on that conduct. This item should be limited to require only the production of documents which bear upon efforts by Applicant to interfere with the progress of EPIC.

Item 12. Once again, there is no visible connection between the studies referred to in this item and any course of conduct on Applicant's part designed to impede EPIC. In addition, the question calls for studies concerning utilities (whether EPIC participants or investor-owned entities) which are not parties and are in no way related to this proceeding.

Item 13. This Board has already stricken items from Applicant's discovery requests to intervenors dealing with these non-electric utility services. Tr. 261-271. There is no justification for this attempt to obtain the same data from another source. Moreover, these matters are even less relevant in the context of Applicant's alleged activities directed against EPIC than in the general context of competition between Applicant and the intervening municipalities, where the question arose previously.

Item 14. The documents requested here have no relevance to Applicant's alleged opposition to EPIC. There is no connection shown between municipal or cooperative ownership in general and any issue before this Board with respect to EPIC. We may also note that some, at least, of this information has already been sought from the intervening municipalities directly.

Item 17. This item evidently deals with the price-squeeze argument advanced by the municipal intervenors herein as part of their general allegation of anticompetitive conduct on the part of Applicant. Apart from the fact that the price relationships of municipal and cooperative systems which purchase their wholesale power from suppliers other than Applicant are not in issue here, there is no question before this Board respecting the price relationships of those wholesale customers of Applicant which are not parties. The inquiry is therefore unreasonably broad in its scope and calls for much irrelevant information. In addition, the present ability or inability of these municipalities to compete at retail with Applicant has no direct bearing on Applicant's alleged opposition to EPIC. The entire item is objected to for that reason.

Item 18. This item seeks information with respect to franchised utilities other than Applicant, and to that extent is overly broad for the purposes of this case.

Item 19 is subject to the same objection as item 18.

Item 20 is also subject to the same objection.

Item 21 has no relevance to the issues in this proceeding having to do with EPIC, insofar as it deals with cooperative efforts between EPIC participants or between EPIC and any participant. The first part of the question (dealing with "exchange of information") is so vague as to be unanswerable with any assurance of adequacy, as well as being of no visible relevance to the issues adverted to. EPIC objects to the entire item.

Item 22. Insofar as this item may be read to demand production of documents not in the "possession, custody, or control" of

EPIC, it is not only improperly addressed to EPIC, but is contradictory of Applicant's own definition of "documents" (Attachment to Subpoena Duces Tecum, p. 1). Insofar as it attempts to reach documents dealing with competition, interconnection, coordination, or pooling with utilities other than Applicant (or at the most, in connection with interconnection, coordination and pooling, with other entities than multi-utility groups of which Applicant is part), it is irrelevantly over-broad for purposes of this proceeding.

Item 23. Applicant has successfully sought discovery of the financial and operating reports and analyses of the municipalities intervening herein. The reports of cities or cooperatives which are not parties here but are participants in EPIC have no relevance to the issues before this Board. Item 23 is therefore objected to as irrelevant in part, and, so far as it may be relevant, unnecessary.

Item 24 is subject to the same objection as item 23, and in addition, to the extent it asks for documents in the files of EPIC's consultants, exceeds the proper scope of this subpoena (see comment on item 22, supra).

Item 25 is subject to the same objection as item 23.

Item 26 is not entirely clear as to the first sentence: if the "service area" referred to is that of EPIC itself, it should be pointed out that as yet EPIC has no service area. If the phrase refers to the respective retail service areas of EPIC participants, the relevance of such efforts to the questions involving EPIC in this proceeding is not apparent. The same comment applies to the second sentence (which also refers to "either of the purposes

specified in the first sentence," although but one purpose appears there).

Item 29 does not appear to have any relevance to the alleged activities of Applicant in opposition to EPIC. In addition, it may call for the production of privileged documents furnished by counsel; to the extent that it does, it is objected to also on that ground.

Item 30. The same objection regarding the proper scope of this subpoena which has been made as to item 22, applies here as well. In addition, since this case deals with competition between Applicant and the various municipal systems, data on loss or attachment of industrial or commercial customers by systems purchasing at wholesale from suppliers other than Applicant are irrelevant.

Item 31 appears to be a backstop to earlier questions requesting technical, financial, and operating information, and is subject to similar objections.

Item 32. This item could be relevant only in the event that decisions and efforts involving EPIC participation were in some way affected by those activities of Applicant here under scrutiny. The question should therefore be limited to occurrences where such involvement existed, or, at most, to occurrences involving wholesale customers of Applicant.

Item 33. The questions concerning technical and economic feasibility of EPIC have been discussed above, and our objections thereto explained. Since this question appears to seek documents ancillary to those mentioned above, it is subject to the same objection as to relevancy.

WHEREFORE, EPIC respectfully requests that this Board

(i) grant the motion to quash in accordance with the objections expressed herein; and

(ii) extend the time for responding to such questions as have not been objected to, and to any questions the objections to which may be overruled by this Board, to and including 1 March, 1973.

Respectfully submitted,

Crisp & Bolch
P.O. Box 751
Raleigh, North Carolina 27602

Tally, Tally & Bouknight
P.O. Box 1660
Fayetteville, North Carolina 28302
and
429 N Street, S.W., Suite S-311
Washington, D.C. 20024

David F. Hover

Attorneys for EPIC, Inc.

Washington, D.C., this 11th day of January, 1973.

UNITED STATES OF AMERICA
ATOMIC ENERGY COMMISSION

In the Matter of	)	Docket Nos. 50-269A
	)	50-270A
DUKE POWER COMPANY	)	50-287A
	)	50-369A
(Oconee Units 1, 2, and 3; McGuire Units 1 and 2)	)	50-370A

CERTIFICATE OF SERVICE

I hereby certify that copies of the attached MOTION, dated 11 January 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 January, 1973.

Honorable Walter W.K. Bennett
Chairman, Atomic Safety and
Licensing Board
Post Office Box 185
Pinehurst, North Carolina 28374

Honorable Joseph F. Tubridy
4100 Cathedral Avenue, N.W.
Washington, D.C. 20016

Honorable John B. Farmakaides
Atomic Safety and Licensing
Board Panel
U.S. Atomic Energy Commission
Washington, D.C. 20545

William Warfield Ross, Esquire
George A. Avery, Esquire
Keith Watson, Esquire
Toni K. Golden, Esquire
Wald, Harkrader & Ross
1320 Nineteenth Street, N.W.
Washington, D.C. 20036

Troy B. Conner, Esquire
Reid & Priest
1701 K Street, N.W.
Washington, D.C. 20006

Carl Horn, Esquire
President
Duke Power Company
Charlotte, N.C. 28200

William H. Grigg, Esquire
Vice President and
General Counsel
Duke Power Company
422 Church Street
Charlotte, N.C. 28201

W.L. Porter, Esquire
Duke Power Company
422 South Church Street
Charlotte, N.C. 28201

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

Joseph Rutberg, Esquire
Benjamin H. Vogler, Esquire
Antitrust Counsel for AEC
Regulatory Staff
U.S. Atomic Energy Commission
Washington, D.C. 20545

Mr. Abraham Braitman, Chief
Office of Antitrust and
Indemnity
U.S. Atomic Energy Commission
Washington, D.C. 20545

Mr. Frank W. Karas, Chief
Public Proceedings Branch
Office of the Secretary of
the Commission
U.S. Atomic Energy Commission
Washington, D.C. 20545

Chairman, Atomic Safety and
Licensing Appeals Board
U.S. Atomic Energy Commission
Washington, D.C. 20545

Wallace E. Brand, Esquire
Antitrust Division
Department of Justice
P.O. Box 7513
Washington, D.C. 20044

TALLY, TALLY & BOUKNIGHT

David F. Stover

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Docket Nos. 50-269A
-270A
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S. Robinson, Chief
Public Filings & Proceedings Branch
Office of the Secretary

FEDERAL REGISTER NOTICE

Two signed originals of a Federal Register Notice identified as follows are enclosed for your transmittal to the Office of the Federal Register for filing and publication:

ATOMIC ENERGY COMMISSION

DOCKET NOS. 50-269A, 50-270A, and 50-287A

DUKE POWER COMPANY

NOTICE OF RECEIPT OF ATTORNEY GENERAL'S ADVICE AND TIME FOR FILING OF PETITIONS TO INTERVENE ON ANTITRUST MATTERS

Twelve additional conformed copies of the notice are enclosed for your use.

Lyall Johnson, Director
Division of State and
Licensee Relations

Enclosure:
As stated above

OFFICE ▶	SLR ABraitman/hh	SLR LJohnson	OGC RELiedquist			
SURNAME ▶	8/27/71	8/27/71	8/27/71			
DATE ▶						

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ANTI-TRUST

Docket Nos. 50-269A
270A
287A

AUG 30 1971

Duke Power Company
Attn: Mr. Austin C. Thies
Vice President
P. O. Box 2178
422 So. Church Street
Charlotte, North Carolina 28201

Gentlemen:

This is to advise you that the enclosed notice has been transmitted to the Office of the Federal Register for publication. The notice relates to the Attorney General's antitrust advice concerning Oconee Nuclear Station, Units 1, 2 and 3.

Sincerely,

(Signed) Lyall Johnson

Lyall Johnson, Director
Division of State and
Licensee Relations

Enclosure:
As stated

cc: William L. Porter, Esq.
Duke Power Company
P. O. Box 2178
422 So. Church Street
Charlotte, N. C. 28201

OFFICE ▶						
SURNAME ▶						
DATE ▶						

Form AEC-318 (Rev. 9-53) AECM 0240 U. S. GOVERNMENT PRINTING OFFICE : 1970 O - 405-346

ANTI-TRUST

Docket Nos. 50-269A
270A
287A

AUG 30 1971

Tally, Tally & Boukmight, Esqs.
P. O. Box 1660
Fayetteville, North Carolina 28302

Gentlemen:

This is to advise you that the enclosed notice has been transmitted to the Office of the Federal Register for publication. The notice relates to the Attorney General's antitrust advice concerning Oconee Nuclear Station, Units 1, 2 and 3.

Sincerely,

(Signed) Lyall Johnson

Lyall Johnson, Director
Division of State and
Licensee Relations

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Docket Nos. 50-269A
270A
287A

AUG 9 1971

Tally, Tally & Bouknight, Esqs.
P.O. Drawer 1660
Fayetteville, No. Carolina 28302

Gentlemen:

With reference to the construction permit application filed by Duke Power Company to construct and operate the Oconee Nuclear Station, Units 1, 2 and 3, the Attorney General has furnished the Commission antitrust advice pursuant to subsection 105c. of the Atomic Energy Act of 1954, as amended.

In view of your joint petition to intervene on antitrust matters filed on behalf of Statesville, High Point, Lexington, Monroe, Shelby, Albemarle, Cornelius, Drexel, Granite Falls, Newton, and Lincolnton, North Carolina, a copy of the Attorney General's letter dated August 2, 1971 is enclosed for your information.

In his letter, the Attorney General refers to his antitrust advice with respect to applications by Consumers Power Company, Virginia Electric & Power Company and Southern California Edison Company dated June 28, July 2, and July 12, 1971, respectively. A copy of each letter is enclosed for your reference.

Sincerely,

(Signed) Lyall Johnson

Lyall Johnson, Director
Division of State and Licensee Relations

Enclosure:
Attorney General's Ltrs. (4)

OFFICE ▶						
SURNAME ▶	See attached yellow for previous concurrences					
DATE ▶						

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Docket Nos. 50-269A
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Tally, Tally & Bouknight, Esqs.
P. O. Drawer 1660
Fayetteville, No. Carolina 28302

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Sincerely,

Lyall Johnson, Director
Division of State and Licensee
Relations

Enclosure:
Attorney General's Ltrs. (3)

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SURNAME ▶	ABraitman/hh	LJohnson				
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Docket Nos. 50-269A
270A
287A

Duke Power Company
Attn: Mr. Austin C. Thies
Vice President
P. O. Box 2178
422 So. Church Street
Charlotte, North Carolina 28201

Gentlemen:

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The antitrust review function of the Atomic Energy Commission has been assigned to the Division of State and Licensee Relations. Future correspondence dealing with antitrust matters should be addressed to this Division.

Sincerely,

(Signed) Lyall Johnson

Lyall Johnson, Director
Division of State and Licensee
Relations

Enclosure:
Attorney General's Ltrs. (4)

cc: William L. Porter, Esq.
Duke Power Company
P.O. Box 2178
422 So. Church Street
Charlotte, N.C. 28201

OFFICE ▶						
SURNAME ▶	See previous yellow copy for concurrences					
DATE ▶	8/6/71					

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Docket Nos. 50-269A
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Duke Power Company
Attn: Mr. Austin C. Thies
Vice President
P. O. Box 2178
422 So. Church Street
Charlotte, North Carolina 28201

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Sincerely,

Lyall Johnson, Director
Division of State and Licensee
Relations

Enclosure:
Attorney General's Ltrs. (3)

cc: William L. Porter, Esq.
Duke Power Company
P.O. Box 2178
422 So. Church Street
Charlotte, N.C. 28201

OFFICE ▶	SLR	SLR				
SURNAME ▶	ABraitman/hh	LJohnson				
DATE ▶						

April 1, 1971

Joseph J. Saunders, Esq.
Chief, Public Counsel and
Legislative Section
Antitrust Division
Department of Justice

In the Matter of Duke Power Company
Oconee Nuclear Station, Units 1, 2, and 3
Docket Nos. 50-269A, 50-270A, and 50-287A

Dear Mr. Saunders:

Transmitted herewith are five copies of Amendment No. 26 to the application for licenses in the above-referenced matter.

Sincerely yours,

/s/ Bertram H. Schur

Bertram H. Schur
Associate General Counsel

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ATTACHMENT

Definitions

"Applicant" means the entity applying for authority to construct or operate subject unit and each corporate parent, subsidiary and affiliate. Where application is made by two or more electric utilities not under common ownership or control, each utility should set forth separate responses to each item herein.

"Subject unit" means the nuclear generating unit or units for which application for construction or operation is being made.

"Electric utility" or "system" means any entity owning, controlling or operating facilities for the generation or transmission or distribution of electric power.

"Coordination" means any arrangment betweeen two or more systems for generation and transmission planning, or operation of two or more interconnected electric

utilities not under common ownership or control, including but not limited to arrangements for sharing operating and installed reserves, arrangements for joint or staggered construction of generating facilities, economy energy transactions, capacity transactions based on load diversities, thermal-hydro generation pooling, common maintenance arrangements, and joint use of transmission facilties or wheeling.

"Coordinating power and energy" means energy transmitted in accordance with an arrangement for coordination including but not limited to emergency power, economy energy, deficiency power and associated energy, and maintenance power and energy.

Except where specifically mentioned otherwise, the term "reserve generating capacity" or "reserves" shall refer to installed reserves in contrast to spinning or operating reserves.

1. State separately for hydroelectric and thermal generating resources applicant's most recent peak load and dependable capacity for the same time period. State applicant's dependable capacity at time of system peak for each of the next ten years for which information is available. Identify each new unit or resource.

2. State applicant's estimated annual load growth for each of the next 20 years or for the period applicant utilizes in system planning.

3. State estimated annual load growth of companies or pools upon which the economic justification of the subject unit is based for each of the next 20 years or for the period applicant utilizes in system planning. Identify each company or pool member.

4. For the year the subject unit would first come on line, state estimated annual load growth of any coordinating group or pool of which the applicant is a member (other than the coordinating group or pool referred to in the applicant's response to Item 3) which has generating and/or transmission planning functions. Identify each company or pool member whose loads are indicated in the response hereto.

5. State applicant's minimum installed reserve criterion (as a percentage of load) 1/ for the period when the subject unit will first come on line. If applicant shares reserves with other systems, identify the other systems and provide minimum installed reserve criterion (as a percentage of load) 1/ by contracting parties or pool for the period when the proposed unit will first come on line.

6. Describe methods used as a basis to establish, or as a guide in establishing the criteria for applicant's and/or applicant's pool's minimum amount of installed reserves. [e.g., (a) single largest unit down, (b) probability methods such as loss of load one day in 20 years, loss of capacity once in 5 years, (c) other methods and/or (d) judgment. List contingencies other than risk of forced outage that enter into the determination.]

7. Indicate whether applicant's system interconnections are credited explicitly or implicitly in establishing applicant's installed reserves.

1/ Indicate whether loads other than peak loads are considered.

8. List rights to receive emergency power and obligations to deliver emergency power, rights or obligations to receive or deliver deficiency power or unit power, or other coordinating arrangements, by reference to applicant's Federal Power Commission (FPC) rate schedules (i.e., ABC Power & Light Co., FPC Rate Schedule No. 15 including supplement 1-5) 2/, and also by reference to applicant's state commission filings. Where documents are not on file with the FPC, supply copies, or where not reduced to writing describe arrangements. Identify for each such arrangement the participating parties other than applicant. Provide one line electrical and geographic diagrams of coordinating groups or power pools (with generation or transmission planning functions) of which applicant's generation and transmission facilities constitute a part.

9. List non-affiliated 3/ electric utility systems with peak loads smaller than applicant's which serve either at wholesale or at retail

---

2/ List separately and identify certificates of concurrence.

3/ Systems not in the same holding company system.

adjacent to areas served by applicant. Provide a geographic one line diagram of applicant's generation and transmission facilities (including subtransmission), indicating the location of adjacent systems and as to such systems indicate (if available) their load, their annual load growth, their generating capacity, their largest thermal generating unit size, and their minimum reserve criteria.

10. List separately those systems in Item 9 which purchase from applicant (a) all bulk power supply and (b) systems which purchase partial bulk power supply requirements. Where information is available to applicant, identify those Item 9 systems purchasing part or all of their bulk power supply requirements from suppliers other than applicant.

11. State as to all power generated and sold by applicant the most recent average cost of bulk power supply experienced by applicant (a) at site of generating facilities, (b) at the delivery points from the primary transmission (backbone) system, (c) at delivery points from the secondary transmission system, and (d) at delivery points from the distribution system, in terms of dollars per kilowatt per year, in mills per kilowatt-hour,

and in both the kilowatt costs and kilowatt hour costs divided by the kilowatt hours. If wholesale sales are made at varying voltages, indicate average cost at each voltage.

(12) State (a) for generating facilities and (b) for transmission subdivided by voltage classes, the most recent estimated cost of applicant's bulk power supply expansion program of which the subject unit is a part, in terms of dollars per kilowatt/per year, in mills per kilowatt hour and in both the kilowatt costs and kilowatt hour costs divided by the kilowatt hours.

(13) List and describe all requests for interconnection and/or coordination and for purchases or sales of coordinating power and energy from adjacent utilities listed in Item 9 since 1960 and state applicant's response thereto. List and describe all requests for supply of full or partial requirements of bulk power for the same period and state applicant's response thereto.

(14) List (a) agreements to which applicant is a party (reproducing relevant paragraphs) and (b) state laws (supply citations only), which restrict or preclude coordination by, with, between, or among any electric utilities or systems identified in applicant's response to Items 8 and 9. List (a) agreements to which the applicant is a party (re-

producing relevant paragraphs) and (b) state laws (supply citations only) which restrict or preclude substitution of service or establishment of service of full or partial bulk power supply requirements by an electric utiliity other than applicant to systems identified in Items 8 and 9. Where the contract provision appears in contracts or rate schedules on file with a federal agency, identify each in the same form as in previous responses. Where the contract has not been filed with a federal agency, a copy should be supplied unless it has been supplied pursuant to another item hereto. Where it is not in writing, it should be described.

(15) State, at point of delivery, average future costs of power purchased from applicant to adjacent systems identified in applicant's response to Item 9 in terms of dollars/month/kw for capacity, mills/kwh for energy and mills/kwh for both power and energy at purchaser's present load factor (a) at present load, (b) at 50% increase over present load, (c) at 100% increase over present load, and (d) at 200% increase over present load. [All costs should be determined under present rate schedules.] Where sales are made under contracts or rate schedules on file with a federal agency and not included in the response to Item 9, identify each in the same