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CLASS: U/PROP INFO		INPUT	NO CYS REC'D		DOCKET NO: <u>50-269A</u> 50-270A, 50-287A, 50-369A, 50-370A.		
DESCRIPTION: No ltr of trans rec'd with Hearing Transcript  Oconee, Units 1-2-3 PLANT NAMES: McGuirre, Units 1 & 2			ENCLOSURES: HEARING TRANSCRIPT ON ANTI-TRUST consisting of... PAGES: 132 -345, dtd 11-17-72  (3 cys rec'd)				

FOR ACTION/INFORMATION 11-28-72 fod

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WOODWARD/H. ST.	NEWMARK/BLUME/AGABIAN	Rm C-427, GT)
16-CYS ACRS HOLDING		1-RD...MULLER...F-309GT

UNITED STATES OF AMERICA  
BEFORE THE  
ATOMIC ENERGY COMMISSION

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

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

APPLICATION FOR ISSUANCE OF SUBPOENAS DUCES TECUM

The Department of Justice respectfully requests the issuance of the attached subpoenas duces tecum pursuant to the Regulations of the Atomic Energy Commission, 10 CFR 2.720 and Section 2.740f(3) as amended 37 F.R. 15133 in which the following companies as defined in the schedules attached thereto would be required to produce the documents referred to in the schedule for inspection and copying by the Department of Justice.

Virginia Electric and Power Co.  
7th and Franklin Streets  
Richmond, Virginia 23209

American Electric Power Co., Inc.  
2 Broadway  
New York, New York 10004

Carolina Power and Light Co.  
336 Fayetteville Street  
Raleigh, North Carolina 27602

South Carolina Electric & Gas Co.  
328 Main Street  
Columbia, South Carolina 29201

The Southern Company  
3390 Peachtree Road, N.W.  
Atlanta, Georgia 30326

The Board's "Order Setting Forth Matters in Controversy" dated September 20, 1972, adopts as the relevant matters in controversy the statement of issues framed by the parties which includes:

Does Applicant have substantial monopoly power in, or has it monopolized bulk electric power supply in the relevant markets(s)?

The documents referred to in the schedule would assist in measuring the extent of that monopoly power by establishing the existence or lack of other bulk power supply coordinating alternatives to actual or potential bulk power suppliers in the Piedmont Carolinas or other, independent sources of bulk power supply to retail distribution systems in that area of North and South Carolina.

As the Supreme Court said in United States v. El Paso Gas Co., 376 U. S. 651 (1963) speaking of the utilities industry: "This is not a field where merchants are in a continuous daily struggle to hold old customers and to win new ones over from their rivals." The number of episodes of actual or potential competition of the type for which documents are requested herein are relatively few; and accordingly, production of such documents made or dated on January 1, 1940, and thereafter relating to competition at wholesale in the Piedmont Carolinas, should not be a substantial burden to the addressee companies, while producing the number of episodes necessary to indicate a policy or pattern. December 15, 1972, the time for return, is reasonable.

On request of the subpoenaed corporations, we will, of course, waive personal appearance in Washington by a representative of the corporation and would even be agreeable to return by mail accompanied by an appropriate certificate of compliance by the chief executive officer of the corporation.

Respectfully submitted,

WALLACE E. BRAND

DAVID A. LECKIE

WILLIAM T. CLABAULT

Attorneys,  
Department of Justice

Washington, D. C.  
November 16, 1972

## SCHEDULE

### A. Definitions.

1. "Company" "you" or "your" means the company that is the addressee of this subpoena, its subsidiaries or affiliates, predecessor companies and any entities providing electric service at wholesale, the properties or assets of which have been acquired by the addressee company.

2. "Documents" means all writings and records of every type made or dated January 1, 1940, or thereafter, in the possession, control or custody of the company, its directors, officers, employees or agents, including but not limited to memoranda, correspondence, reports, surveys, tabulations, charts, books, pamphlets, photographs, maps, bulletins, minutes, notes, diaries, log sheets, ledgers, transcripts, microfilm, computer printouts, vouchers, accounting statements, engineering diagrams ("one-line" diagrams), mechanical and electrical recordings, telephone and telegraphic communication, speeches, and all other records, written, electrical, mechanical or otherwise.

"Documents" shall also mean copies of documents, even though the originals thereof are not in possession, custody or control of the Company, and every copy of a document which contains handwritten or other notations or which otherwise does not duplicate the original or any other copy.

3. "Wholesale customer" means any entity such as a private corporation, municipal corporation, or rural electric cooperative engaging in or proposing to engage in the distribution and sale of electric power at retail, including but not limited to entities additionally or solely engaging in or proposing to engage in the generation and transmission of power in bulk and/or those purchasing or proposing to purchase firm power or coordinating power and energy from other electric utilities, including but not limited to the Duke Power Company.

4. "Supply of bulk power" includes the furnishing of firm full requirements bulk power supply service at wholesale for resale by any company or the interchange or supply of coordinating power and energy.

5. "Coordination" and "coordinating" shall include, but are not limited to, reserve sharing, economic dispatch or economy interchange, and pooling of load growth for joint or staggered additions of generating or transmission facilities.

"Coordination" and "coordinating" shall also mean joint ventures or the sharing of participation in the ownership, operation or output of generating facilities and the sharing of ownership, construction or use of transmission facilities.

6. "CARVA" or "VACAR Pool" means the utilities comprising those pools: Duke Power Company, Carolina Power and Light Company, South Carolina Electric and Gas Company, Virginia Electric and Power Company.

B. Documents Requested.

1. Documents reflecting your basis for determining whether the supply of bulk power by your company to a wholesale customer in the Piedmont Carolinas would be economically feasible based on the size of load, rate of growth and distance from existing facilities and/or any other factors considered in the determination of economic feasibility.

2. Documents concerning or reflecting (a) agreements or understandings, or (b) unilateral policies--not to compete with other electric utilities in specified areas or for specified wholesale customers in the Piedmont Carolinas for supply of bulk power, including but not limited to restricting use of your transmission facilities which might permit others such as Yankee-Dixie or EPIC to compete for such supply of bulk power. Documents concerning or reflecting your policy or policies based on other considerations (apart from technical or economic feasibility) on whether or not to make such supply of bulk power to wholesale customers in the Piedmont Carolinas [or to permit others such as Yankee-Dixie or EPIC to make such supply of bulk power by utilizing your transmission facilities] including but not limited to interpretations of state or federal law or interpretations of state or federal administrative action.

3. Documents reflecting your consideration of the acquisition of the facilities of wholesale customers in the Piedmont Carolinas including but not limited to documents which reflect a boundary line, or understanding, or arrangement concerning the respective spheres of influence of your

company and the Duke Power Company or members of CARVA or VACAR. Please exclude documents related wholly to consideration of the cost of such acquisition and documents implementing or carrying out any determination to acquire such wholesale customer.

4. Documents concerning the tying or conditioning of any interconnection or coordination between your company and the Duke Power Company to any such agreements, arrangements or understandings, in paragraphs 2 and 3, supra.

5. Documents concerning competition between your company and the Duke Power Company for wholesale customers in the Piedmont Carolinas and any request for a supply of bulk power by any wholesale customer now served by Duke Power Company or located generally within its service area.

6. Documents concerning joint efforts to restrict sales of bulk power supply by TVA by any method which would restrict it from marketing bulk power supply in the Piedmont Carolinas.



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50-287A  
50-369A, 50-370A

CERTIFICATE OF SERVICE

I hereby certify that copies of APPLICATION FOR ISSUANCE OF SUBPOENAS DUCES TECUM, dated November 16, 1972, in the above captioned matter have been served on the following by deposit in the United States mail, first class or air mail, this 16th day of November.

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

Honorable Joseph F. Tubridy  
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Washington, D. C. 20016

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Washington, D. C. 20545

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the Commission  
U. S. Atomic Energy Commission  
Washington, D. C. 20545  
Chairman, Atomic Safety and  
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Washington, D. C. 20545

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