10-1-73

UNITED STATES OF AMERICA
ATOMIC ENERGY COMMISSION

Duke Power Company (Oconee Units 1, 2 & 3; McGuire Units 1 & 2)	)))	Docket Nos. 50-269A, 50-270A, 50-287A, 50-369A, 50-370A

MOTION OF INTERVENORS FOR CLARIFICATION OR IN THE ALTERNATIVE FOR EXTENSION OF TIME

Intervenors (Cities of High Point, et. al.) hereby move for clarification or, in the alternative, for extension of the time limit for response to the second-round interrogatories and additional requests served on them by Applicant - Duke Power Company. In support and further specification whereof, Intervenors respectfully show to the Board:

I.

1. The Board's Prehearing Order Number 7 sets, as the date for completion of discovery, 14 December 1973.

2. The Rules of the Atomic Energy Commission, §2.740b(b), require that

> * * * The party upon whom the interrogatories were served shall serve a copy of the answers and objections upon all parties to the proceeding within 14 days after service of the interrogatories, or within such shorter or longer period as the presiding officer may allow.

3. The interrogatories and additional requests referred to above were served on Intervenors on 17 September 1973. No date for compliance was specified in them.

II.

Intervenors believed, and still believe, that by fixing the 14 December deadline for completion of discovery the Board meant to fix a "longer period" as contemplated in the rule quoted above. Apparently the other parties, have not so interpreted the Board's action. Accordingly, we are requesting the Board either to confirm this interpretation if it is correct, or to grant a corresponding extension to and including 14 December 1973, if it is not.

Applicant's "Supplemental Interrogatories and Document Production Request to Each Municipal Intervenor" 1/ is a 114-page document containing 88 separate items. It is comparable in scope to Applicant's initial document request, and by its nature calls not only for the production of papers but also for the preparation of wirtten responses, many of them quite extensive. We submit that it is quite impossible to respond within 14 days. We understand from discussions among counsel that both the Department of Justice (on whom Applicant served equally exhaustive interrogatories) and Applicant (on whom the Department, the AEC Staff, and Intervenors served a joint set of interrogatories and document requests) intend also to ask for extensions. The Department and the

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1/ Which is only one, though by far the largest, of the discovery papers served on Intervenors on 17 September.

38. The Department will contend that Applicant has imposed a rate squeeze on its wholesale customers. Applicant's wholesale rate schedules 10, 11 and 11-A and industrial rate schedules I and 2-C since 1965 have been studied and compared. The assumptions for the cases studied were a 16,000 kw load served under Applicant's wholesale rate schedules with a monthly load factor of 60 percent. The cost of this customer purchasing power from Applicant in this situation was computed. Next it was assumed that the wholesale customer added an industrial load of 5000 kw at 85 percent load factor and computed the wholesale customer's power bill after that load had been added. The first bill was then subtracted from the second bill to determine the incremental cost of power. This figure was then compared with the cost to an industrial customer of purchasing power directly from Applicant under one of its industrial rate schedules. In all cases, the incremental cost of power to the wholesale purchaser was either greater than the retail cost to the industrial customer, or the margin of difference between the two bills was not sufficient to allow the wholesale customer to serve a new industrial load without losing money, when his distribution costs are taken into consideration. It is believed that similar results would be obtained assuming the addition of any new high-load-factor load to an existing wholesale load. The Department's contention is without

or any other group of cooperatives or municipalities to Applicant.

31. The requests discussed in the instant responses to interrogatories 26(b) and 30(a)(b)(c) were all made in a timely fashion.

36(a)(b)(3). The Department does not contend that Applicant's opposition to the construction of the Carters Island-Trotters Shoals Project was a sham attempt to influence governmental action or sham litigation. However, evidence of such activities may be admissible to show the purpose and character of other conduct.

37. Applicant, as a member of the CARVA pool, opposed the application of the Belhaven group in competition with VEPCO for a license to build a pumped storage facility at Marble Valley. Stanley Ragone, vice-president of VEPCO, presented a statement to the Federal Power Commission on August 1, 1967, relating an approved CARVA pool position on efforts of the Belhaven group to use the Marble Valley project as a basis for admission to the CARVA pool. The Department does not contend that Applicant's opposition to a Marble Valley license for the Belhaven group was a sham.

The Department withdraws the sentence, "Since the threat was a general one, we are unable to determine whether this would constitute a sham," in its initial response to interrogatory 37(b). Mr. Horn's warning was a direct attempt to intimidate Applicant's competitors, and not an effort to influence governmental action.

when Applicant files rate increases with the state regulatory commissions and approval is granted, while the wholesale rate will be increased as fuel prices increase. The resultant time lag handicaps Applicant's wholesale customers in competing for new industrial loads.

26(b). The Department hereby withdraws its prior answer to this question. Other than requests made by the Intervenors in this proceeding and the Intervenors in the Catawba proceeding, and requests for admission to the CARVA pool in which the Oconee and McGuire units were intended to be participation units, the Department knows of no refusals by Applicant to coordinate its nuclear expansion generation programs.

27. The Department knows of no instances not recited in answers to other questions where Applicant has refused to interconnect with any other electric entity.

28. The Department will not contend that Applicant refused to wheel power for Yankee-Dixie, Inc. See our answer to Interrogatory 10(e) for an instance of Applicant refusing to wheel.

30(a)(b)(c). The Department considers the interventions of the municipal Intervenors in the McGuire proceeding and of the municipal and cooperative Intervenors in the Catawba proceeding as requests for ownership participation in the McGuire and Catawba plants.

30(d)(e)(f). The Department knows of no requests for unit power purchases made by the Piedmont Electric Cities

15. The Department believes that the following rate provisions in rate schedules filed by Applicant with the Federal Power Commission are anticompetitive:

(1) Absence of a High-Voltage Discount - Applicant prices its power without regard to the delivery voltage requested by the customer. This failure to offer a high-voltage discount in its wholesale rate makes it uneconomical for its wholesale customers to take delivery at a high voltage and step the voltage down to distribution voltage. Therefore Applicant's wholesale customers have not constructed high-voltage transmission lines or transformers, and Applicant has constructed those facilities in areas it otherwise would not have. By making it uneconomic for wholesale customers to install such facilities, Applicant has also reduced the feasibility of these entities installing self-generation. High-voltage transmission would make it more feasible for the wholesale customers to interconnect with neighboring systems to share diversity and reserves and accumulate sufficient load to make self-generation economic.

(2) Fuel Adjustment Clause - Applicant has a fuel adjustment clause in its wholesale rates but not its retail rates with the result that wholesale rates will be increased more frequently than rates to Applicant's industrial customers. The industrial rate will only be increased

(d). The Department knows of no instances where Applicant found it necessary to assert these contractual provisions.

14. The introduction of a three-month ratcheted demand provision in Applicant's wholesale power rates in 1970 makes it more difficult and expensive for the wholesale customer to attract and serve certain industrial loads, in particular seasonal industrial loads. The effect of this provision was to allocate those loads to Applicant. The Department does not know whether this was Applicant's intent in introducing the ratcheted demand provision. See also our response to Interrogatory 38.

are relevant to this proceeding and will present evidence on such contracts.

(c). The Department will contend that these contractual provisions have a continuing anticompetitive effect in market (a), submarket (a)(1) and market (b) listed above in response to Interrogatory No. 1.

During the early growth of municipal distribution systems in the Piedmont Carolinas, load limitations were inserted into the municipal systems' power purchase contracts with Applicant with the result that large loads, particularly industrial loads, were served by Applicant. Assured of these large loads, Applicant constructed facilities into municipal service areas where they did not have franchises to serve. Despite the deletion of these provisions from Applicant's wholesale contracts in 1964, these facilities remain and place Applicant in a favorable position to compete with municipal systems for new industrial loads. Despite the absence of a franchise, Applicant can, under state law recognizing the rights of "secondary suppliers," continue to compete for new industrial loads which are within a certain distance of its existing facilities. Further, when a municipality does not serve large industrial loads within its service areas, it is economically handicapped if its wishes to install its own generation. These contracts were not submitted to the Federal Power Commission prior to 1963.

realistically turn to Applicant for the provision of these services. Therefore, both the regional coordinating services market and the Piedmont Carolinas coordinating services market are relevant to this proceeding.

10(e). In 1952, the Southeastern Power Administration asked Applicant to wheel Clark Hill hydroelectric power to the Greenwood County Electric Power Commission and to other SEPA preference customers on a system-wide basis. The Secretary of the Interior concluded from Applicant's response and subsequent communications that "the Duke Power Company has refused to enter into a contract for system-wide transmission of electric power and energy from Government projects to preferred customers." Thereafter, SEPA decided to construct its own transmission line to Greenwood County. See DJ Discovery Document Nos. 1116-1117 and 1130-1131.

12. The Department believes that the University of North Carolina owns thermal generation, within the geographic boundaries of the relevant market, which is substantial.

13(a). A listing of contracts in which Applicant and its wholesale customers allocated markets between themselves can be found in a Federal Power Commission Order To Show Cause, issued August 21, 1963, in Docket No. E-7122. See Appendix A at 30 FPC 526. In addition, Applicant's wholesale contract with the City of High Point contained a horsepower limitation which is discussed at 32 FPC 594.

(b). The Department will contend that these contracts

system. The retail distribution system is no different than any manufacturer who purchases raw materials for fabrication. The transmission- and subtransmission-voltage bulk power will be transformed to a distribution voltage. Retail distribution systems in the Piedmont Carolinas can realistically turn for their bulk power supply only to systems who operate or have access to transmission within the Piedmont Carolinas. A seller cannot realistically supply a retail distribution system in this market unless he has transmission or access to transmission in the Piedmont Carolinas.

(c) The market for coordinating services for sale to generating entities within the Piedmont Carolinas. Coordinating services is a cluster of products (firm power, nonfirm power, reserves, maintenance power, emergency energy, economy energy, and wheeling services) which together compose a distinct product with a distinct end use -- for example, commercial banking as was the fact situation in U. S. v. Philadelphia National Bank. This product is used by generating entities in the production of firm power. Generating entities are both buyers and sellers in this market. The geographic scope of this market is both regional and local. Applicant can turn to companies operating over a large area of the Southeast for the provision of these services. However, potential generating entities in the Piedmont Carolinas can only

and 1973), to eliminate or modify these restrictions on competition. Further, and most important, the state law in no way limits the very real competition over who will own or operate the one distribution system entitled to serve a particular area. For example, the members of a rural electric cooperative may at any time decide to sell all or part of their distribution system to the Applicant because their rates are too high, notwithstanding the territorial protection they enjoy. Conversely, if the Applicant finds it unprofitable to provide service to an area state law entitles it to serve, it may sell its facilities in the area to another distribution system, or agree that another system may extend its lines into the area.

(5) The market for distribution-voltage firm electric power for sale to consumers in areas where franchises have been granted which will not expire within five years. This is a market where competition plays a lesser role in insuring the provision of the lowest cost possible electricity.

(b) The market for transmission- and subtransmission-voltage bulk power for sale to retail distribution systems in the Piedmont Carolinas. While this product is sought by retail distribution systems to meet the distribution-voltage requirements of their customers, the consumer of this higher voltage product is the retail distribution

regard to whether or not Applicant's rates are properly related to cost. Nevertheless, we believe the present rate differential is unjustified under the principles of cost of service rate making. No specific standards were devised to determine "that margin over and above the cost of power which is sufficient to recover all properly allocable costs of servicing a customer," as the margin was either negative or de minimis in all cases studied.

examined in camera; (3) if in camera inspection is ordered, appoint a special master to inspect the documents and rule on the claims; and, (4) if clause 1 of Applicant's motion is granted, extend the time for response by Applicant to the Department's motion to eight days following the Department's submission pursuant to clause 1, or, if clause 1 of the motion is denied, eight days after the denial of that clause (Applicant's motion, pp. 2-3).

The Department opposes the first three parts of Applicant's motion for reasons set forth below. As to the fourth, the Department has no objections subject to condition that any answer by Applicant to the Department's original motion be limited to advice or argument to aid the Board in its conduct of the requested in camera inspection, with further objections to the procedure of in camera inspection not permitted.

I. THE DEPARTMENT IS NOT REQUIRED TO SPECIFY ON A DOCUMENT BY DOCUMENT BASIS THE GROUNDS ON WHICH IT CHALLENGES THE CLAIM OF PRIVILEGE

Applicant states that without a document by document listing of the grounds for which the Department challenges the claim of privilege, neither Applicant nor the reviewing tribunal would be able to understand the basis for our challenge to the privilege claims. Applicant suggests "[a] simple chart denoting which portions of its (Justice's)

general discussion apply to a particular document would probably be sufficient." (Applicant's motion, p. 10)

The Department submits that such a procedure is unnecessary, not required by law, would be of no help to Applicant or the Board, and that in any event this information was substantially provided in our original motion.

Applicant says that "[u]nless Justice does this on a document by document basis, Applicant has no way of responding to its attack on the privilege claim." (Applicant's motion, pp. 5-6) Despite this assertion, the only response Applicant need make is to submit the document to the Board for in camera inspection along with an argument of legal principles on the scope of the privilege, contracts of retainer for outside counsel, certificates of bar membership for house counsel, memoranda revealing the care and custody of confidential documents within the corporation, and any other information which could assist to the Board in its examination.

Each document must satisfy each element of the requirement for privilege by a preponderance of the evidence. In re Bonanno, 344 F.2d 830, 833 (2d Cir. 1965). We outlined in our original motion several reasons why we view Applicant's privilege claims skeptically. Pages 6-9 of our motion discuss the dual roles of corporate attorney and corporate officer played by Messrs. Horn, Hicks, Grigg, and Griffith.

We indicated our concern that business, rather than legal communications may have been improperly withheld, and we cited documents involving these four men as possible examples. A hasty check of the documents we listed in Appendix A reveals that of the 164 documents listed, only 24 do not involve communications to or from these four officer-employees. 1/

Pages 9-12 of our motion dealt with the confidentiality prerequisite for a claim of attorney-client privilege. We asked the Board to pay particular attention to those documents dealing with the CARVA Pool, since many such documents were written by, circulated among, or addressed to officers and attorneys of neighboring electric utilities. We submit that these are not privileged documents. Even those purely internal documents concerning CARVA are not privileged if the matters discussed internally by Applicant were also discussed with other CARVA members. 2/

1/ Those documents in Appendix A not involving communications with Messrs. Horn, Hicks, Grigg, or Griffith are as follows: List I - DOJ Nos. 1, 11, 19, 20, 37, 41, 42, 91, 92, 102, 107, 120, 121, 122, 124, 125, 126, 128, 130, 145, 150, 151. List II - DOJ Nos. 11, 12. Thus 140 of the 164 documents involve communications with these individuals.

2/ The CARVA documents total 60 of the 164 listed. In addition, DOJ Nos. 59, 133, 134, 136, 137, 82, 108, and 150 were discussed individually as illustrative of our concerns. To these we would add DOJ Nos. 22, 24, 26, 52, 83, 147, and 148 which are communications with Charles W. Smith, whom Applicant describes as a well-known member of the FPC bar (cont'd on next page)

Further, pages 12-14 of our motion discussed the legal principles to be used to determine which of Applicant's employees may be considered the "corporate client." The law clearly requires all employees to be either "control group" members or to satisfy the test of Harper & Row Publishers, Inc. v. Decker, 423 F.2d 487 (7th Cir. 1970), aff'd by equally divided court, 400 U.S. 348 (1971). We stated that Messrs. Henry L. Cranford, George Q. Heinzerling, Ben A. Washam (see Appendix B of our motion for their respective titles) and F. W. Beyer (before becoming a vice president) may not properly be considered control group members and Applicant would have to satisfy the Harper & Row test for each communication before it could be privileged. These men are mentioned only because their names appear frequently in Applicant's lists. Numerous other lower level employees, branch managers, supervisors, rate engineers, etc., also appear and Applicant would likewise have to satisfy the Harper & Row test with respect to them. Thus, documents

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2/ (cont'd)

from Baltimore, Md. Applicant's list does not state that Mr. Smith was retained as outside counsel by Applicant, but if this is the case Applicant should provide the Board with a copy of his retainer or other evidence showing that an attorney-client relationship existed. If Applicant has simply corresponded with a knowledgeable attorney without establishing an attorney-client relationship, the documents are not privileged. Similar evidence of an attorney-client relationship should be furnished with regard to DOJ Nos. 27 and 125 for communications with Bernhard G. Bechhoefer, of Scharfeld, Bechhoefer & Baron, and Cameron F. MacRae, of LeBoeuf, Lamb, & Leiby.

involving these employees outside the control group should be considered with particular reference to the corporate client aspect of the privilege.

Clearly, we have already provided the information Applicant seeks in the first clause of its motion. A compilation of the 140 documents involving the four men holding dual positions as attorney and corporate officer, the 60 CARVA documents, the numerous documents involving employees not in the control group, and the miscellaneous documents discussed individually (there is some overlap between these various categories) adds up to substantially all of the documents listed. The only documents not in the above categories are DOJ Nos. 1, 102, 107, 122, 124, and 128 of List I, Appendix A. DOJ Nos. 102, 107 and 128 are documents for which either the author or addressee or both are unspecified, thus clearly requiring inspection. DOJ No. 1 is a document from the Industrial Power Dept. to the Legal Dept. which raises "corporate client" questions since no control group member of the Industrial Power Dept. is specified. With regard to DOJ Nos. 122 and 124, we simply ask that they be examined in the light of all the traditionally recognized limitations on the scope and application of the privilege.

Applicant cites United States v. Johnson, 465 F.2d 793 (5th Cir. 1972), Jack Winter, Inc. v. Koratron Co., Inc.,

54 F.R.D. 44, 46 (N.D. Cal. 1971), and Consumers Power Co. (Midland Plant) Dkt. Nos. 50-329A and 50-330A, ALAB-111, April 4, 1973, as authority for the proposition that the Department is required to list a specific ground for which it objects to the claim of privilege for each document. None of these cases even refer to such a procedure. The Johnson and Jack Winter cases merely hold that the court should make its determination on a document-by-document basis. The reference to the ALAB Order in Consumers is puzzling since we cannot see how this order even remotely applies to the instant matter. Further, Applicant cites no case, and we know of none, which requires, discusses, or even mentions such a procedure. In any event, our motion gave Applicant the information it now seeks.

II. THE LAW DOES NOT REQUIRE A SHOWING OF GOOD CAUSE PRIOR TO IN CAMERA INSPECTION OF DOCUMENTS CLAIMED AS PRIVILEGED BY REASON OF ATTORNEY-CLIENT PRIVILEGE -- THE DEPARTMENT HAS MADE SUCH A SHOWING NEVERTHELESS

Applicant cites two categories of cases, those involving work product and executive privilege, as requiring a preliminary showing of good cause by the Department before the Board may examine in camera Applicant's documents claimed as privileged by reason of the attorney-client relationship. Neither line of cases has any applicability to attorney-client privilege.

Every case cited on pages 11-13 of Applicant's motion is an executive privilege case. These cases generally require a preliminary showing of necessity before a court may order in camera inspection of documents claimed as privileged by an appropriate governmental official. Such a requirement is founded upon the public interest in maintaining "the integrity of the executive decision-making process." Committee for Nuclear Responsibility, Inc. v. Seaborg, 463 F.2d 788, 792 (D.C. Cir. 1971). This important principle is to be contrasted with the very different policy reasons underlying the attorney-client privilege, as discussed on pages 3-4 of our original motion. Because executive privilege and attorney-client privilege are totally separate and distinct privileges, based upon dissimilar reasons of policy and law, the cases cited here by Applicant are not precedents, but rather analogies, tenuous in logic and inapposite in application.

Applicant relies heavily upon Commonwealth Edison Co. v. Allis-Chalmers Mfg. Co., 211 F. Supp. 736 (N.D. Ill. 1962). Here, the court found it "unnecessary at this stage to consider defendants' claims of the attorney-client confidential communications privilege. . ." (Id., at 740) because it had just upheld claims of work product protection for the same material.

Applicant also relies upon Dura Corp. v. Milwaukee Hydraulic Products, Inc., 37 F.R.D. 470 (E.D. Wis. 1965), Natta v. Zletz, 418 F.2d 633 (7th Cir. 1969), and United States v. Schmidt, 343 F. Supp. 444 (M.D. Pa. 1972). The Natta case is clearly contrary to Applicant's position since the objection to in camera inspection came from the party challenging the privilege, not the party claiming it. The challenging party felt that in camera inspection prevented any meaningful challenge on its part to the claims of privilege. The court disagreed with this contention while noting two general reservations to in camera inspection: (1) in camera inspection may place too great a burden on the trial judge, and (2) it may hinder accurate determination of issues of basically adversary nature. 418 F.2d at 636. Neither reservation is applicable here. We do not feel that inspection of 164 documents would be unduly burdensome on the Board. Likewise, we are not contending that in camera inspection deprives us of an adversary challenge to the claimed privilege. On the contrary, the Department feels that the Board will make a proper and objective determination after inspection of the documents.

The Dura case, supra, upheld privilege claims of trial preparation materials. To the extent that Dura upheld claims of attorney-client privilege without in camera inspection,

this procedure is at variance with the normal practice of courts. A reading of the cases leads us to conclude that in camera inspection of documents claimed as privileged under attorney-client privilege, is largely done as a matter of course. We share the view of the court in Deering Milliken Research Corp. v. Tex-Elastic Corp., 320 F. Supp. 806, 809 (D. S.C. 1970), that in camera inspection may well be the only way to resolve the question. For example, how, other than by in camera inspection, could we secure an impartial determination that the 140 documents involving communications with those holding dual positions of attorney/corporate officer contain predominantly legal rather than business advice? As the court stated in United States v. Johnson, 465 F.2d 793, 796 (5th Cir. 1972), ". . . the documents themselves may well be the best evidence of their confidential and privileged nature." Similarly, in Continental Coatings Corp. v. Metco, Inc., 50 F.R.D. 382, 384 (N.D. Ill., 1970), the court found:

> In camera inspection of the requested documents is an appropriate procedure by which the documents can be tested against the various requirements of the attorney-client privilege. Sperry Rand v. International Business Machine Corp., 45 F.R.D. 287, 291 (D. Del. 1968); Hogan v. Zletz, 43 F.R.D. 308 (N.D. Okla., 1967).

In the Schmidt case, supra, the controversy was not over documents, but over testimony by an accountant who had

refused on grounds of attorney-client privilege to answer questions pursuant to an Internal Revenue Service summons. The court ruled the most equitable way to resolve the question was to require the accountant to submit an affidavit in camera answering the questions. 343 F. Supp. at 446. Applicant's reliance on this case is misplaced since it clearly supports the Department's position.

Applicant asserts that the lists of documents which it submitted to the Department amount to a prima facie showing of attorney-client privilege. The only authority cited for this absurd proposition is the Allis-Chalmers case, supra. As previously noted, Allis-Chalmers expressly applies only to work product, not attorney-client privilege. We are aware of only one circumstance where any kind of prima facie showing is required with regard to contesting a claim of attorney-client privilege. Legal communications, otherwise privileged, are not privileged "where the communication involves advice in furtherance of a criminal or fraudulent transaction." Natta v. Zletz, 418 F.2d at 636. In this circumstance, a prima facie case of wrongdoing or fraud must be shown to defeat the privilege. We have not suggested here that the Board reject any of Applicant's privilege claims on this ground.

Applicant's approach is contrary to the principle that the party claiming privilege has the burden of establishing

the existence of the privilege, and demonstrating that each element required for its application is present -- including the initial showing that an attorney-client relationship existed to which the privilege could attach. (See our original motion, p. 5, n. 5) As the Second Circuit stated in In re Bonanno, 344 F.2d 830, 833 (2d Cir., 1965):

> That burden is not, of course, discharged by mere conclusory or ipse dixit assertions, for any such rule would foreclose meaningful inquiry into the existence of the relationship, and any spurious claims could never be exposed.

Even though a showing of good cause is not required to obtain in camera inspection of documents, the Department has made such a showing here. Our original motion discussed in detail the dual roles of Applicant's attorneys, the CARVA documents, the documents concerning employees outside the control group, and other miscellaneous documents. Our concerns are well founded and can only be resolved by in camera inspection of the documents themselves. We note also that our position is consistent with the approach taken by the Atomic Safety and Licensing Board in the Consumers Power Co. (Midland Plant) proceeding, Dkt. Nos. 50-329A, 50-330A, Transcript, p. 406.

III. THE APPOINTMENT OF A SPECIAL MASTER TO EXAMINE THE DOCUMENTS IN CAMERA IS UNNECESSARY AND CONTRARY TO COMMISSION PRACTICE

Part 3 of Applicant's motion asks that a special master be appointed to conduct any in camera inspection and rule on the disputed assertions of privilege. Such a procedure has been used in federal courts where the volume of documents involved would impose "an undue burden on the court." Collins and Aikman Corp. v. J. P. Stevens & Co., 51 F.R.D. 219, 221 (D. S.C. 1971). However, in this proceeding, only 164 documents are involved, making such action unnecessary. 3/

Further, we are advised by the Commission regulatory staff that Applicant's requested procedure has never been done in licensing proceedings; in environmental matters Boards have conducted the inspection and made the determination themselves. In addition, there is no specific provision in the Commission's rules authorizing this procedure.

3/ See e.g. Jack Winter, Inc. v. Koratron Co., Inc., 54 F.R.D. 44 (N.D. Cal. 1971), where the court examined 315 documents in camera.

CONCLUSION

For the reasons submitted above, the Department urges that parts 1, 2 and 3 of Applicant's motion be denied. We have no objection to the granting of part 4 of this motion, subject to the condition specified on page 2 of this answer.

Respectfully submitted,

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Dated: October 18, 1973

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 and 3	)	50-287A, 50-369A,
McGuire Units 1 and 2)	)	50-370A

CERTIFICATE OF SERVICE

I hereby certify that copies of ANSWER OF DEPARTMENT OF JUSTICE TO APPLICANT'S MOTION TO DETERMINE PROCEDURE FOR REVIEW OF ATTORNEY-CLIENT PRIVILEGE CLAIMS, dated October 18, 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 18th day of October:

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