

Before The
UNITED STATES ATOMIC ENERGY COMMISSION

DOCKETS NOS. 50 - 269, 50 - 270, and 50 - 287

MATTER OF THE APPLICATION OF DUKE POWER COMPANY
FOR LICENSES UNDER THE ATOMIC ENERGY ACT OF
1954 AS AMENDED
FOR THE CONSTRUCTION AND OPERATION OF
OCONEE NUCLEAR STATION, UNITS 1, 2 and 3

MOTION OF
PIEDMONT CITIES POWER SUPPLY, INC., and ELEVEN PIEDMONT ELECTRIC
CITIES TO DISMISS THE APPLICATION OF DUKE POWER COMPANY FOR
RESEARCH AND DEVELOPMENT LICENSES UNDER SECTION 104 (b) OF THE
ATOMIC ENERGY ACT FOR THE CONSTRUCTION AND OPERATION OF
OCONEE NUCLEAR STATION, UNITS 1, 2 and 3
FOR LACK OF JURISDICTION

Piedmont Cities Power Supply, Inc.
City of Statesville, North Carolina
City of High Point, North Carolina
City of Lexington, North Carolina
City of Monroe, North Carolina
City of Shelby, North Carolina
City of Albemarle, North Carolina
Town of Cornelius, North Carolina
Town of Drexel, North Carolina
Town of Granite Falls, North Carolina
Town of Newton, North Carolina
Town of Lincolnton, North Carolina

Movants

Jack R. Harris
J. O. Tally, Jr.
Spencer W. Reeder

Attorneys for Movants

7912160/33

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OF JURISDICTION

Now come Piedmont Cities Power Supply, Inc., a corporation not for profit, duly organized and existing under the laws of the State of North Carolina; Cities of Statesville, High Point, Lexington, Monroe, Shelby, and Albemarle, North Carolina; the Town of Cornelius, Drexel, Granite Falls, Newton, and Lincolnton, North Carolina ("Movants"); and for the grounds of their motion to dismiss the application of Duke Power Company for research and development licenses under Section 104 (b) of the Atomic Energy Act of 1954, as amended, for the construction and operation of Oconee Nuclear Station, Units 1, 2 and 3, for lack of jurisdiction, respectfully state that:

1. Duke Power Company has applied for research and development licenses under Section 104 (b) of the Atomic Energy Act of 1954, as amended, for the construction and operation of Oconee Nuclear Station, Units 1, 2 and 3. Said application, as supplemented and amended, discloses upon its face that the Oconee Nuclear Station, for which 40 year licenses are applied, with its proposed capacity of over 2,600,000 kilowatts, capable of meeting over 60% of the maximum integrated net demand on Duke Power Company's system for the year ended December 1, 1966, and estimated to cost over \$340 million, is not a research and development activity, either in its proposed construction or in its proposed operation. Duke's application further discloses that the Company seeks to build said station for commercial purposes, and not for research and development purposes.

2. Duke's application for the Oconee Nuclear Station, Units 1, 2 and 3, as amended and supplemented, is not for a commercial license under Section 103 of the Atomic Energy Act of 1954 as amended, (42 USC 2133).

Duke's application for research and development licenses discloses however that Duke has defined its proposed Oconee Nuclear Station as a "commercial nuclear station" as contrasted with the Parr Plant, at Parr, S. C., which Duke correctly dubs "experimental"; that Duke proposes to finance the Oconee Nuclear Station as a "commercial nuclear station" and not as an experimental nuclear station; that Duke has applied for licenses good for 40 years to construct and operate the said 260 million kilowatt, \$340 million, more-profitable-than-coal-fired Oconee Nuclear Station

under the guise of an experimental plant, for which only a "research and development" license would be required under Section 104 of the Act, in order to escape and circumvent the Congressional requirements which would be attendant upon a truthful labeling of Oconee as a proposed "commercial" nuclear station, which can only be lawfully licensed as a "commercial nuclear station" under Section 103 of the Atomic Energy Act of 1954 as amended.

On July 25, 1967, the eleven Piedmont electric cities aforesaid addressed a communication to the Commission herein entitled "Protest of Piedmont Electric Cities Against Duke Power Company's Application for Unconditional Licenses Under the Atomic Energy Act of 1954, as amended, " and the same was duly filed by the Secretary in these dockets. Said "Protest" is incorporated herein by reference as a part of the history of this Motion to Dismiss. On July 31st, 1967, the A.E.C. Regulatory Staff filed a document entitled "Response of Piedmont Electric Cities Against Duke Power Company's Application for Unconditional Licenses". Said "Response" is incorporated herein by reference as a part of the history of this Motion to Dismiss.

On July 28, 1967, Duke filed a document entitled "Answer of Duke Power Company to Protest of Piedmont Electric Cities Against Duke Power Company's Application for Licenses for the Oconee Nuclear Station, Units 1, 2 and 3." Said "Answer" is incorporated herein by reference as a part of the history of this Motion to Dismiss.

Both the response of the A.E.C. Regulatory Staff and the answer of Duke Power Company to the Protest of the Piedmont electric cities against Duke Power Company's application for unconditional licenses stated that the Protest could not be heard by the Commission in this proceeding arising upon Duke's application for research and development licenses under Section 104 (b) of the Act, for the reason that the provisions of the Act relied upon by the Protestants for the protection of the public with respect to antitrust and other matters, are not applicable to research and development license proceedings, but are only applicable in proceedings related to applications for commercial licenses.

It is regrettable that the applicant, Duke Power Company, by filing its application for research and development licenses which the Commission has no jurisdiction to issue in this case under Section 104 (b) of the Act, has made necessary the filing of this Motion to Dismiss said research and development license application herein, in order to preserve for Movants and the public the protection against monopoly, contracts, combinations, and conspiracies in restraint of trade and other evils which Congress has vouchsafed to the public for the protection of Movants' interest in a commercial license application proceeding.

3. Since Duke Power Company cannot satisfy the jurisdictional requirements of the Atomic Energy Act, Section 104, for a research and development license, it must apply for a finding of practical value as to the type of reactor employed under Section 102 and otherwise comply with the

requirements for a commercial license under Sections 103 and related sections of the Atomic Energy Act, as adopted by the Congress for the protection of the public.

4. Piedmont Cities Power Supply, Inc., a corporation not for profit, duly organized and existing under the laws of the State of North Carolina, and the eleven Piedmont electric cities of North Carolina for whose benefit said corporation has been formed, hereby offer to support Duke in obtaining jurisdictional commercial licenses under Section 103 of the Atomic Energy Act.

The conditions attached to this offer, which is made for the purpose of expediting the Oconee Nuclear project in a sound and jurisdictional manner are:

(1) That Duke show an equal interest in expedition by abandoning its attempt to obtain non-jurisdictional research and development licenses not authorized under Section 104, and;

(2) Offer Piedmont Cities Power Supply, Inc., an opportunity to buy its fair share in the Oconee Nuclear Station coupled with a satisfactory wheeling arrangement whereby its share of the Oconee energy may be transmitted for hire from the Oconee Plant in South Carolina to the said eleven Piedmont electric cities in North Carolina under Federal Power Commission jurisdiction.

5. The United States Atomic Energy Commission has no jurisdiction, power, or authority, to issue to Duke the pretended research and

- development license applied for under Section 104 (b) of the Atomic Energy Act.

The "Memorandum in Support of Motion of Piedmont Cities Power Supply, Inc., and Eleven Piedmont Electric Cities to dismiss the Application of Duke Power Company for Research and Development Licenses Under Section 104 (b) of the Atomic Energy Act of 1954, as amended, for the construction and operation of the commercial Oconee Nuclear Station, Units 1, 2 and 3", hereto attached and made part hereof, is incorporated herein as a part of this motion as fully as though physically rewritten herein.

WHEREFORE, Piedmont Cities Power Supply, Inc., and the Eleven Piedmont Electric Cities aforesaid hereby respectfully move to dismiss for want of jurisdiction over the subject matter the application of Duke Power Company for research and development licenses under Section 104(b) of the Atomic Energy Act of 1954 as amended, for the construction and operation of Oconee Nuclear Station, Units 1, 2 and 3.

Respectfully submitted,

Jack R. Harris
Suite 207 - Stimpson-Wagner Bldg.
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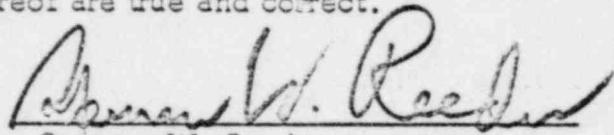
Spencer W. Reeder
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Attorneys for Movants

VERIFICATION

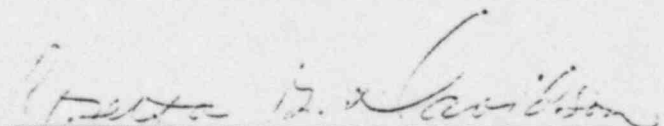
STATE OF NORTH CAROLINA)
COUNTY OF IREDELL) ss:
)

SPENCER W. REEDER, being first duly sworn,
states that he is an attorney duly admitted to the practice of law in
Maryland, the United States, Ohio, New York and the District
of Columbia; that he has been employed as Special Counsel
by each and all of the Movants herein; that he has read the
foregoing document and knows the contents thereof; that he has
subscribed and executed said document as a duly authorized
attorney for said Movants; that he has been duly authorized by
each and all of the Movants to file the aforesaid document;
and that the contents thereof are true and correct.


Spencer W. Reeder

Subscribed and sworn to before me, a Notary
Public in and for the State and County aforesaid, this the 10th
day of August, 1967.

My commission expires:
May 23, 1969.


Notary Public

~~7912160/35~~