

UNITED STATES OF AMERICA
ATOMIC ENERGY COMMISSION

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

Docket No. 50-269A, 270A,
287A, 369A, 370A

CERTIFICATE OF SERVICE

I hereby certify that copies of Prehearing Conference Order of the Atomic Safety and Licensing Board dated September 7, 1972 in the captioned matter have been served on the following by deposit in the United States mail, first class or air mail, this 8th day of September 1972:

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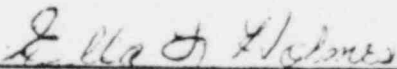
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 Reg. Files



DOCKET NUMBER 50-269A, 270A, 287A
PROD. & MISC. EAC. 369A, 370A

UNITED STATES OF AMERICA
ATOMIC ENERGY COMMISSION

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

PREHEARING CONFERENCE ORDER
OF THE ATOMIC SAFETY AND LICENSING BOARD

This Atomic Safety and Licensing Board (Board) held a prehearing conference on September 6, 1972, pursuant to a Notice of Order for Prehearing Conference, dated July 14, 1972. Counsel for all the parties were present and participated in said prehearing conference in which the following action was taken:

A. THE PETITIONS TO INTERVENE

Timely petitions were filed by the following North Carolina Municipalities, the Cities of Statesville, High Point, Lexington, Monroe, Shelby and Albemarle; and the Towns of Cornelius, Drexel, Granite Falls, Landis, Lincolnton, and Newton. All parties agreed to the intervention. The Board order permitted the joint intervenors to participate in all aspects of this antitrust hearing subject to the following conditions: That one attorney will speak for all the intervenors on any single day;

there will be one cross-examination and one direct examination for all intervenors; there will be one set of objections, one brief, and one submission of proposed findings; and discovery by the intervenors will be coordinated with the Department of Justice and the AEC Staff so that there is no duplication.

B. THE ISSUE TO BE CONSIDERED

The ultimate issue to be considered by this Board under the notice of hearing of the Atomic Energy Commission dated June 28, 1972, is whether the activities of the applicant under the permits and licenses respectively in question would create or maintain a situation inconsistent with the antitrust laws as specified in Subsection 105c of the Atomic Energy Act of 1954.

The Department of Justice, when questioned whether or not it intended to contend that the granting of the permits and licenses would create a situation inconsistent with the antitrust laws, took the position that there was a pre-existing situation inconsistent with such laws which would be maintained and aggravated by the activities under the licenses and permits in question; and that also the extent of the nuclear energy activity which the applicant proposed to engage in was such that

this might be regarded as the creation of a new situation also inconsistent with such laws. The Department stated that it was not attacking the market structure of the applicant but the use of the power which it possessed for activity of an anti-competitive nature.

The intervenors took the position that they thought that the granting of the licenses and permits in this case would tend to create as well as to maintain a situation inconsistent with the antitrust laws.

C. RELEVANT MATTERS IN CONTROVERSY

The Board reiterated that it was the purpose of the prehearing conference to establish a clear and particularized identification of those matters related to the issue in this proceeding which are in controversy. The parties reported that they had met in accordance with the notice and order for prehearing conference; that several attempts had been made to agree upon the specific issues; and, that a draft had been agreed to by the Department of Justice, the Intervenors, and the Atomic Energy Commission's Staff. This was then presented to the Board and given to counsel for the applicant. Counsel for the applicant indicated that he had received information concerning the proposed draft but that he would require a few days to go over it to see whether or not he then could agree to it. The Board accordingly ruled that

the applicant should either agree to the proposed draft or state its position of disagreement within seven (7) days from the date of the hearing. If no agreement is reached, the Board will determine on the basis of the proposals of the parties what the issues are, of both fact and law, and promulgate an order to that effect.

There was extended discussion on the basis of the issues apparently raised in the answer to the notice of hearing and in the replies thereto which were compared with information contained in a proceeding before the Federal Power Commission in order to assist the parties in the final formation of the issues or matters in controversy.

D. DISCOVERY

The Department of Justice filed its first joint request of Department of Justice--AEC Regulatory Staff, and Intervenors, for production of documents by applicant for period since January 1, 1960, pursuant to an agreement among the parties reach July 26, 1972. The applicant indicated it required additional time to examine the request and attempt to clarify or limit the same by conference. The Board directed that he undertake to do this within the next two weeks and if there were areas

of disagreement or matters which must be brought to the attention of this Board by way of limitation he would do so within twenty-one (21) days from the date of this order. It was determined that applicant should have ninety (90) days from the date of this order to complete the production of documents called for thereby; and that a second request for additional documents would be made and completed within thirty (30) days thereafter; and that other means of discovery such as, interrogatories or depositions addressed to the applicant, would also be accomplished within 120 days from the date of this order. Extensions of time would be granted only on affidavit showing good cause.

Applicant stated that he desired to issue interrogatories and a request for document production to the intervenors within the next week. The Board granted the intervenors two weeks after the receipt of such request to attempt to clarify and limit the same by conference and one week thereafter within which to move either to suppress or limit such request.

The Board has taken the position that it will require a complete record before it determines whether or not Section 1.5c (5) of the amended Atomic Energy Act permits a review of applicant's activities prior to or unrelated to its construction and operation of the plants in question. Accordingly, it will not rule on that matter.

until the close of the proceeding. The parties agreed that they would attempt to resolve any disputes which might arise in connection with the requested discovery before requesting resolution of such disputes by the Board.

Copies of all discovery requests and responses thereto will be furnished the Board Members.

A second prehearing conference to determine the status of the discovery process will be held at a date and time to be later fixed by the Board.

E. STIPULATIONS

It was stipulated that the authenticity of material filed by the applicant with any regulatory agency would be admitted, as would be all documents received from its files. The applicant, however, reserves the right to object on grounds of competency and relevancy. The applicant agrees to the authenticity of the documents filed in a binder entitled "Exhibits to the Initial Prehearing Statement of the Municipalities of High Point, Lexington, Monroe, Shelby, Albemarle, Drexel, Granite Falls, Landis and Lincolnton, North Carolina", but reserves the right to object to the relevancy or competency of any such documents.

F. SCHEDULES FOR FURTHER PREHEARING
AND HEARING

It is contemplated by the Board that a further prehearing will be held on or about January 10, 1973, and that the evidentiary hearing will commence on or about February 7, 1973, at a place and time to be later designated by order of the Board.

G. CONDUCT OF HEARING

The following determinations were made by the Board and agreed to by the Parties.

1. The new AEC Rules (10 CFR Part 2, amended July 23, 1972) are to be applied in connection with all matters arising in the future.
2. Cross-examination will be limited to matters which have been raised on direct examination.
3. One attorney will conduct the examination or cross-examination on behalf of each party.
4. Receipt of evidence will conform to the normal Federal rules in non-jury proceedings.
5. Requests for official notice of Government reports, State laws, Municipal laws, and other documents must be accompanied with copies of such documents in such quantities as are necessary to comply with the service requirements of Sections 2.701 and 2.703 of the Rules of Practice of the Atomic Energy Commission.