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	)	50-370A
McGuire Units 1 and 2)	)	

APPLICANT'S SUPPLEMENTAL MATERIALS
REGARDING INTERROGATORY MOTIONS

On January 15, 1974, Duke Power Company ("Applicant") filed three motions pertaining to inadequacies in interrogatory responses by the Department of Justice and the Intervenors. [1] Applicant hereby submits a compilation of the questions and responses referred to in the schedules A, B & C attached to the motions. [2]

Respectfully submitted,

George A. Avery

Thomas W. Brunner

WALD, HARKRADER & ROSS
1320 Nineteenth Street, N.W.
Washington, D. C. 20036

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[1] Applicant's Motion to Establish a Final Date for the Filing of Supplemental Answers to Applicant's Interrogatories and to Prohibit Use at Hearing of Matters Sought by Said Interrogatories But Not Timely Submitted; Applicant's Motion to Compel Responses to Interrogatories by The Department of Justice; Applicant's Motion to Compel Responses to Applicant's Interrogatories and Document Requests to Each Intervenor.

[2] All other parties have consented to the filing of this material.

Schedule A

Responses by the Intervenors

1.(a) Define the geographic boundaries of each product market relevant to this proceeding.

(1) If a geographic market boundary corresponds precisely to Applicant's service area provide a map of the service area on which the Intervenors rely. (The geographic market boundary then may be defined as "the Applicant's service area.")

(2) Unless the geographic market boundary of each product market corresponds precisely to Applicant's service area, the boundaries of each geographic market should be indicated on a large scale map.

(b) As to each product market defined in response to (a) identify and describe each factor considered in determining that it is an appropriate market for antitrust analysis in this proceeding.

(c) As to each geographic market boundary defined in response to (a), identify and describe each factor considered in determining that it is an appropriate market boundary for antitrust analysis in this proceeding.

1. The product markets relevant to this proceeding are: (i) the regional power exchange market; (ii) the wholesale firm power market; and (iii) the retail firm power market, and particularly the large industrial power submarket.

(a) Geographic boundaries of these markets.

(i) The regional power exchange market is a market in such transactions as exchanges of economy energy, short- and long-term power and energy, emergency back-up service, and various other kinds of transactions customary among utilities engaging in the bulk power business. It is carried on by means of the transmission systems and interconnections of two or more utilities. Because of the fact that nearly all of the major utilities east of the Rocky Mountains are interconnected to a sufficient degree that they operate in parallel, the theoretical geographic limits of the power exchange market cover most of the contiguous United States. However, for purposes of this proceeding Intervenors believe that the relevant <u>regional</u> power exchange market is that encompassing the territories of the following bulk power suppliers:

Applicant
Carolina Power and Light Company (CP&L)
Virginia Electric and Power Company (VEPCO)
South Carolina Electric and Gas Company (SCERG)
South Carolina Public Service Authority ("Santee-Cooper")

(ii) The wholesale firm power market is the market in which Intervenors are presently purchasers from Applicant. It is characterized by a single main type of transaction: that in which a utility owning and operating bulk power facilities sells firm power at wholesale to cover all the requirements of a retail distribution system. The wholesale firm power market as it exists today for purposes of the proceeding contains only one

(1 cont'd)

seller: Applicant. All of Intervenors purchase all of their requirements from Applicant. The geographical extent of this market may be defined as the area encompassed by Applicant's transmission and subtransmission system, together with such "fringes" as might reasonably be served by Applicant's transmission and subtransmission systems, taking into account the economic and technical feasibility of serving particular loads in such fringes. It is possible for an additional supplier to enter a market such as this, if transmission service (wheeling) can be obtained; this is the case with respect to some distribution utilities (not parties herein) which receive power from the Southeastern Power Administration over Applicant's transmission system. Inasmuch as the Applicant controls the only transmission system through which such entry is potentially achievable, it is not appropriate to extend the boundaries of this market beyond the area defined above.

(iii) The retail firm power market and its large industrial submarket, for purposes of this proceeding, are generally coterminous with Applicant's service area; that is, the area encompassed by its existing wholesale and retail sales, plus such "fringe" areas as it might reasonably serve, taking into account the economic and technical feasibility of serving particular loads and any legal constraints (such as the North Carolina legislation governing allocation of retail territory) on service at particular points.

The boundaries of an electric utility's service area are not fixed. The question whether a service area will be extended to include a particular load depends on the following factors:

-- size of the load

-- distance of the load from existing facilities

-- relation between the cost of necessary new facilities and revenues expected from the new load, at the time the question arises

-- prospects for growth of the new load

as well as on legal constraints such as franchise conditions, territorial legislation, etc. Consequently, it is impossible to illustrate precisely on a map the boundaries of a service area without involved studies to ascertain, inter alia, the pattern of load flows on the existing system, the potential ways in which the system's facilities could be expanded outward, the cost of doing so, and the interaction of these factors with any legal constraints on retail sales in particular areas. In any event, the size, location, timing, and growth potential of new loads would necessarily be a matter of conjecture. Intervenors have made no such studies, having neither any reason nor adequate resources to do so.

(b) Appropriateness of the enumerated markets.

(i) The regional power exchange market is relevant to this proceeding as a market from which Intervenors and other systems similarly situated have been totally excluded by the conduct of Applicant, alone or in conjunction with others. Certain barriers to entry erected by Applicant have prevented and may in future continue to prevent these systems from obtaining ownership or control of bulk power facilities. Without such facilities they are not in a position to engage in regional power exchange transactions. These transactions, engaged in by Applicant, its neighboring integrated utility systems, and in indeed, practically all similar systems in the country, are beneficial to the participants because they make possible

such economic advantages as reduction of reserves, construction of large generating units, improved reliability, and other economies. In addition to the barriers to entry erected by Applicant, Intervenors and other similarly situated systems have been hindered from increasing their loads and improving their load factor (thereby making more feasible the installation of generating facilities) by a consistent price squeeze in the relation between Applicant's wholesale and retail (particularly, large industrial retail) rates.

(ii) The relevance of the wholesale firm power market to the present proceeding is demonstrated by the fact that this market is the one in which Applicant and Intervenors are presently participants. The pricing practices of Applicant in this market have made it difficult or impossible for Intervenors to compete for large industrial retail customers. Such customers are especially desirable in that they improve the load factor and efficiency of the system and contribute greatly to its total load. The pricing practices complained of, including the price squeeze referred to above, have been possible because of the monopoly enjoyed by Applicant in this market.

(iii) The retail firm power market, and particularly the large industrial submarket, are appropriate for consideration in this proceeding because it is in those markets that Applicant and Intervenors are presently in competition.

(c) Appropriateness of the market boundaries described.

The description of the regional power exchange market as given in (a)(i), above, is appropriate because the suppliers there listed made up the former CARVA Pool, an instrumentality for achieving the types of transactions characteristic of the regional power exchange market.

(1 cont'd)

The geographic definition of the wholesale firm power market is discussed in (a)(ii). The geographic description of the retail market is appropriate because all of Intervenors (together with a number of other small systems similarly situated) lie within Duke's service area and, in general, competition for retail loads exists in the immediate vicinity of such systems.

5. In the Initial Prehearing Statement of the Municipalities, dated August 9, 1972 ("Initial Statement"), Intervenors stated that Duke, CP&L, SCE&G and VEPCO "among themselves monopolize the generation . . . of bulk power over a substantial area in the Carolinas and Virginia." (p. 3)

(b) State whether the quoted statement is intended to include undeveloped hydroelectric sites.

(f) If the response to (b) is not "no", then as to each of the following undeveloped hydroelectric project sites, state whether the Intervenors regard it as being economically feasible.

(5 cont'd)

(f) Intervenors have made no study of these sites to determine their feasibility. We note that Applicant's Vice President, Mr. W.S. Lee, testified to the infeasibility of all, or virtually all, remaining undeveloped sites in Applicant's area. (Intervenors will furnish the page citations when they receive their copy of the deposition transcript.

8.(a) Cite specifically each rate and each provision in any rate schedule filed by Applicant with the Federal Power Commission or any other regulatory agency which the Intervenors claim to have been anticompetitive.

(c) As to each rate or provision identified in (a), state whether the Intervenors contend that Applicant (1) intended the alleged anticompetitive consequences or (2) anticipated that they might arise. If the Intervenors contend either intent or anticipation, identify the specific sources of the information upon which the Intervenors rely in making such contention or contentions.

(8 cont'd)

(c) Without attempting to distinguish between intent and anticipation of effect (which distinction is believed to be legally meaningless), Intervenors do contend that as to each of the matters identified above Applicant intended or anticipated anticompetitive effects. To the extent that the discovery so far completed permits we here indicate the documents giving grounds for this belief.

Document number 33,268 et seq., dated 23 March 1965, demonstrates awareness of the close relationship between wholesale and retail industrial rates in the context of public charges that Applicant was pursuing anticompetitive ends.

Document number 33,270 dated 24 March 1965, supplements the proceding item.

Document number 49,979 et seq., dated 24 April 1972, summarizes Applicant's position on the price squeeze issue. It appears to be a public statement to the Edison Electric Institute.

Document number 59,842, dated 23 July 1962, reports on a study designed to estimate the margins available to High Point if the city "should serve these [industrial] customers at the same rates on which they are now served by Duke".

Document number 76,567 et seq., dated 10 June 1963, considers the margins available to the Town of Highlands if served on Duke's municipal wholesale rate, quantifies the increase in the Town's retail rates necessary to maintain the same margin as it enjoyed in the past, and comments on the relationship of this situation to a possible sale of the Highlands system to Applicant.

The matters referred to in response to other interrogatories (specifically, Item 51) regarding Applicant's unwillingness to see publicly owned systems enjoy the economic benefits of power pooling also tend to show why Applicant has not made coordination services generally available.

Such further specific documents or sources of information as may come to light during the remaining portion of discovery will be furnished as a supplemental response.

We may note, in addition to the citations above, that ElectriCities of North Carolina (of which all of Intervenors are members) has consistently argued in the various FPC rate cases cited above that Applicant's rates were anticompetitive in their effect.

25 (c) To the extent the response to any item listed in (a) is not "no," identify and describe each factor considered in determining Applicant's activities with regard to that item which constituted a sham.

(1) To the extent the factors include actions of Applicant, the response should include, but not be limited to:

(i) the representative or representatives of Applicant and any other entity involved in the action;

(ii) the specific action or actions that the Intervenors contend demonstrates the existence of a sham, the method employed in each action, and the date of each action;

(iii) as to each action listed in response to (ii) a quotation of the precise words relied upon as demonstrating the existence of a sham or, if the Intervenors relied on an account or accounts that does not include a precise quotation, the text of the account or accounts of the statement relied upon; and

(iv) the specific sources the Intervenors rely on in describing the statement.

(2) As to facts that are derived primarily from objective data about Applicant's operations, the response should include, but not be limited to:

(i) a specification of each item of data relied upon and the source from which it is obtained; and

(ii) a statement outlining the analysis by which it is concluded that the data demonstrate the existence of a sham.

(d) State as to each of the activities cited in the numbered clauses of subpart (a) of this question, whether the Intervenors will contend that the activity was an attempt by Applicant to deny access to others to the legislative or adjudicatory process.

(e) If the response to (d) is not "no," identify each action or representation by Applicant that it is contended constitutes or evidences such attempt. As to each action or representation which allegedly constitutes or evidences such attempt:

(1) state each element of the action or representation that constitutes or evidences the attempt by Applicant to deny access to others to the legislative or adjudicatory process,

(2) identify the source of the information the Intervenors rely upon in making these contentions, and

(3) produce all documents pertaining to that action or representation and to the factual

basis for contending that it evidenced or constituted an attempt by Applicant to deny access to others to the legislative or adjudicatory process.

(f) If the response to (d) is not "no," state whether Applicant intended by its activities to deny access to others to the legislative or adjudicatory process.

(g) If the response to (f) is not "no," state which activities or what incidents the Intervenors contend demonstrate such intent. 6/

C (1)-(2) There are two competitive relationships involved in the appropriations controversy respecting the 1952 and 1953 SEPA proposals: (1) Applicant's relationship with SEPA as a competing supplier of wholesale firm power, and (2) Applicant's relationship with Greenwood County Electric Power Commission as a retail distributor of power. As regards the first, Applicant's vice president, Mr. Cocke, told the Committee in the 1953 hearings (Intervenors' Exhibit 3 to Initial Prehearing Statement, at 1542):

> We feel that SEPA's continued insistence on an appropriation for this and other transmission lines; its request for funds to purchase firm stram-generated power for resale, thus filling out the irregular hydro power produced by the Government hydroelectric plants, and thereby departing, from the mere marketing of energy produced at Government dams, into the broad activity of engaging in the business of purchasing and selling electricity as a business enterprise; and finally SEPA's effort to start the line to Greenwood County in disregard of the instructions from Congress with reference to use of the 1952 appropriations for this line, all show a plain intent on the part of SEPA and the Interior Department to build an electric transmission network in the southeastern part of the United States and operate a tax-free Federal power business in competition with private taxpaying utilities.

As to the second relationship, Mr. Cocke in 1952 made the following statement (Exhibit 2 to Initial Prehearing Statement, at 1030):

> Senator ELLENDER: How much further would you be affected if they were to connect with the present facilities in Greenwood? You do not have any there now?
>
> Mr. COCKE: We have some facilities there. We have got some customers out there in the immediate vicinity.
>
> Senator ELLENDER: You are afraid by permitting the construction of this line it will further decrease your business in regard to Clark Hill?
>
> Mr. COCKE: It probably would.

The Intervenors' belief regarding the purpose of this opposition is also confirmed by a statement in the Duke Power Magazine, which was the subject of a part of the recent deposition of Mr. J. P. Lucas, Applicant's Vice President for Public Affairs. A citation to the page and exhibit number will be

(25 cont'd)

furnished when Intervenors' copy of the transcript of this deposition is delivered.

(3) Until completion of discovery, Intervenors cannot supply the answer to this part.

28. In the Initial Statement (pp. 6-7), it is stated "Duke has . . . imposed a price squeeze upon the municipal systems. . . ."

(h) Identify and describe all instances known to the Intervenors, or any of them, in which a wholesale customer of Applicant has declined to serve a potential industrial customer or has been unable to serve an industrial customer because of an insufficient margin between the rate it could obtain and the cost of electricity obtained from Applicant. As to each instance:

(1) name the wholesale customer unable or unwilling to serve and the potential industrial customer involved,

(2) state the date on which service was sought by or first discussed with the potential industrial customer,

(3) describe the anticipated maximum demand and load factor of the potential industrial customer,

(4) list each factor known to the Intervenors to have been considered by either the wholesale customer or the potential industrial customer in determining who the retail supplier should be,

(5) identify the sources of the Intervenors' information relied upon in describing each instance, and

(6) produce all documents pertaining to each instance.

(33 cont'd)

(g) See previous subitem.

(h) Collection of information on this point is not yet completed. We will furnish details of any such instance as a supplemental response as soon as they are available.

33.(a) State whether the Intervenors contend that any enactments of the legislatures of North or South Carolina regarding electric service are invalid under Federal law.

(b) If the response to (a) is not "no," identify and describe each enactment that is invalid in whole or in part under Federal law. As to each enactment, the response should include but not be limited to:

(1) a specific citation to the enactment and to the provision or provisions that are invalid, and

(2) a specific citation to the provisions of Federal law that invalidate each provision of a legislative enactment.

33 and 34. Pending the completion of discovery, Intervenors are unable to state whether any enactments of the legislatures of North or South Carolina, or any of Applicant's actions undertaken in alleged reliance thereon, violate federal law. Such a determination requires, in Intervenors' view, examination of the practical effects of the state legislation in question as well as of the statutory terms.

The Intervenors will transmit their conclusions, if any, as a supplement to this answer in accordance with the Commission's Rules of Practice.

34(a) State whether the Intervenors contend that Applicant has entered into any agreement which, although on its face represents that it is undertaken pursuant to or in anticipation of action by the North Carolina Utilities Commission or the South Carolina Public Service Commission or in specific compliance with any law of North Carolina or South Carolina relating to electric service, contravenes Federal law.

(b) If the response to (a) is not "no," identify and describe each such agreement that contravenes Federal law. As to each agreement, the response should include, but not be limited to:

(1) the name or title of the agreement and the date on which it was executed,

(2) the other party or parties to the agreement,

(3) a specific citation to the provision or provisions that contravene Federal law, and

(4) a specific citation to the provision or provisions of Federal law contravened.

33 and 34. Pending the completion of discovery, Intervenors are unable to state whether any enactments of the legislatures of North or South Carolina, or any of Applicant's actions undertaken in alleged reliance thereon, violate federal law. Such a determination requires, in Intervenors' view, examination of the practical effects of the state legislation in question as well as of the statutory terms.

The Intervenors will transmit their conclusions, if any, as a supplement to this answer in accordance with the Commission's Rules of Practice.

35. At the prehearing conference on November 17, 1972, counsel for the Intervenors contended (Tr. 191) that retail territorial assignment pursuant to the statutes of North Carolina and South Carolina is being used to allocate wholesale customers between generating utilities. Identify and describe each instance in which generating utilities in North Carolina and South Carolina have so utilized the retail territorial assignment statutes. As to each instance, the response should include, but not be limited to:

(a) The generating utilities so allocating wholesale customers;

(b) The wholesale customers allocated;

(c) The title or name of the specific agreement by which each wholesale customer was allocated and the date of each agreement;

(d) The specific action or actions of each utility relied upon as demonstrating the intent to allocate wholesale customers, including the representative or representatives of each utility taking the action, the method employed in the action and the date of the action;

(e) A statement as to each action listed in response to (d) identifying and describing each factor considered in determining that the action evidences an intent to allocate wholesale customers; and

(f) The specific sources that Intervenors relied upon in describing the allocation of wholesale customers (Tr. 191-193).

35. Until discovery is completed, Intervenors will not be able to state whether such allocations have occurred. As to any instance so discovered of such allocation, Intervenors will provide the requested details in a supplemental response.

36. In the Answer of the Cities . . . to Applicant's Motion for Protective Order, dated July 30, 1973, (p. 2) Intervenors contend that the acquisition by Duke of the University of North Carolina "distribution system would have a substantial adverse affect on competition."

(a) State whether Intervenors will contend that the acquisition of other suppliers of electricity in its service area by Applicant has had a "substantial adverse affect on competition."

(b) If the answer to (a) is not "no", list each acquisition by Applicant that the Intervenors contend had such a substantial adverse effect on competition.

(d) Except for those acquisitions listed in response to (b), list each acquisition or attempted acquisition of an electric distribution system or a substantial part thereof that the Intervenors contend is relevant to this proceeding and on which the Intervenors intend to rely. As to each partial acquisition, the response should indicate the date of each acquisition. As to attempted acquisitions, the response should include:

(1) the facilities involved,

(2) the date on which acquisition was attempted,

(3) the specific document by which the attempt was made or, if no such document is known to the Intervenors, the factual basis on which it was concluded that an attempt was made, and

(4) the date on which the attempt was rejected or, if not expressly rejected, lapsed and the specific document, if any, by which the attempt was rejected.

(d) The attempted or contemplated acquisitions of which Intervenors have knowledge, and on which they now intend to rely, are:

(i) Applicant's offer, made jointly with Carolina Power and Light Company and South Carolina Electric and Gas Company, to purchase all the rural electric cooperatives in South Carolina.

(ii) An offer to acquire the South Carolina Public Service Authority.

(iii) An apparent intention or plan to acquire all of the "foreign systems" in Duke's area.

Any further plans or attempts to acquire which Intervenors consider to fit the category requested by this item will be listed in a supplementary response when discovery is further advanced.

(1) In each case, so far as Intervenors are aware, Applicant intended to acquire all the facilities owned and/or operated by the target system.

(2) The offer to purchase all the South Carolina cooperatives was made on 20 August 1963. The offer to acquire the South Carolina Public Service Authority was made 22 July 1964. The plan to acquire all of the foreign systems in the area appears to have been current in 1960, to judge by the date of the date of the first document (production number 75,460) discussing it. Another document (number 75,243) indicates that in 1960 Applicant's district managers were polled by its general management on the possibility of taking over such systems. That the same, or a similar, policy was in effect in 1965 appears from a similar memorandum to district managers dated 6 April of that year (document number 75,465). Whether such policy was directed toward all foreign systems does not appear from the last two documents, but no limitations are expressed in them.

(36 cont'd)

A further memorandum of 16 November 1960 refers to Applicant's efforts "to acquire as many foreign electrical distribution systems as possible" (number 76,738).

(3), (4) The documents, other than those cited next above, which are requested in these subitems have not yet been located. When Intervenors have done so, they will supplement this response in accordance with the AEC Rules of Practice.

(h) answered under (g).

(i) The only document cited herein not obtained from Applicant is the Petition to Intervene in Project No. 2700, which has been furnished with the Initial Prehearing Statement. Intervenors do not presently know of any other documents bearing on acquisitions (other than those produced by Applicant), but will furnish any that may come to light.

43.(a) State whether the Intervenors will present evidence on or inquire into any contracts to which Applicant is a party or has been a party at any time during the period of January 1, 1960, to date which Intervenors deem to be full requirements contracts.

(b) If the response to (a) is not "no", identify each contract as to which Intervenors will present evidence or make inquiry. The response should include the caption or title, date and parties of each contract.

43. All of the contracts listed in Exhibit 8/1 are deemed by Intervenors to be full requirements contracts. Intervenors may also wish to make inquiry into, or present evidence on, other contracts between Applicant and any Intervenor (viz., High Point, Lexington, Shelby, Landis, Albemarle, Lincolnton, and Monroe) executed on or after 1 January 1960. To the best of Intervenors' knowledge, these contracts (which are executed on printed forms) are entitled "Electric Power Contract", in some cases with the subtitle "Resale Service-Municipalities and Public Utility Companies". Intervenors have not yet determined the specific contracts (by date) which will be the subject of inquiry or evidence.

If in the further course of discovery any contracts other than the category described above appears to be a necessary subject of inquiry or the presentation of evidence, Intervenors will supplement this response accordingly.

45. In the Initial Statement, it is stated that "Duke has constructed and evidently intends to construct the nuclear units here at issue in the expectation of enjoying the same access to the wholesale market." (p. 8) Further, in the Joint Petition, it is stated "the necessity of large-scale construction permits Duke access to this low-cost source only through its interconnection and exchange agreements with other named utilities. . . . Duke, a giant utility, is unable alone to reap the full economic benefits of nuclear power." (p. 4)

(a) State whether Intervenors contend that access to the "wholesale market" is a prerequisite to constructing the Oconee and McGuire units.

(c) If the response to (a) is not "no", describe the express or implied statement or statements of position by Applicant relied on by Intervenors in making these contentions. As to each express or implied statement of Applicant relied on, the response should include but not be limited to:

(1) the representative or representatives of Applicant or any other entity making the statement;

(2) the specific transaction regarding which the statement was made, including the name or title and date of each agreement initiating a transaction (or if the transaction was not initiated by a written agreement, a specification of the action by which the transaction was initiated, the method used in that action and its date) and the general terms of the transaction as understood by Intervenors;

(3) the specific communication (oral or written) in which each statement was made, the date of each communication, and the method employed in the communication;

(4) a description of how the statement relates

to the degree of reliance that Applicant expects to place on the "wholesale market" in the future;

(5) a quotation of the precise words that are related to the degree of reliance placed by Applicant on the "wholesale market," or if the Intervenors rely on an account that does not include a precise quotation, the text of the account of the statement relied upon; and

(6) the specific sources Intervenors rely on in describing the statement.

45) (c) A publication entitled The Duke Power Story, issued by Applicant in 1969, describes the CARVA Pool, of which Applicant was then a member, as enabling utilities to build larger units than would otherwise be possible. No specific officer of Applicant is identified as the author of this statement.

Discovery document number 33,320, an internal report of Applicant on proposed generation in 1967-70, expresses similar views. In particular (page 33,322): "Larger generating units are economic because, within a coordinated pool, units can be sized for the total pool load without a large increase in reserve on any one system". There is a similar statement at document page 51,698, in the context of a report on the CARVA pool beginning at page 51,695.

Pending completion of discovery, Intervenors cannot say that there are not more statements of this kind. Any such will be furnished as supplemental responses.

45 (f) Describe each factual circumstance not described in response to (c) on which Intervenors rely in making the contention that "Duke has constructed . . . the nuclear units . . . in the expectation of enjoying the same access to the wholesale market." As to each circumstance that involves analysis by Intervenors of objective data regarding Applicant's operations, the response should include, but not be limited to:

(1) a specification of each item of data relied upon and the source from which it is obtained; and

(2) a statement explaining the analysis by which it is concluded that the data suggests the "expectation of enjoying the same access."

(45 cont'd)

(f) In addition to the matters discussed in (c), Applicant is referred to the "Notices of Obligation" of the CARVA Pool, documents number 30,096 and number 46,744. These documents indicate that the first and second Oconee units were to be "participation units" in the Pool. (See also Deposition of F.W. Beyer, Transcript pages 524-527.) The designation of a unit as a CARVA participation unit would be meaningless if it did not imply the expectation of access to the regional power exchange market and, specifically, the CARVA Pool.

The same reservation regarding completion of discovery made in (c) also applies here.

52. In the Joint Petition (p. 4), filed after the termination of the CARVA Pool, it is stated "Petitioners have no access to the 'pool' in which Duke, CP&L, VEPCO and SCE&G are effective participants."

(a) Define "'pool'" as used in the quoted passage.

(b) Define "effective participant" as used in the quoted passage, including particularly the significance of the term "effective".

(c) Identify and describe each contract or other arrangement constituting an element of the "'pool'". As to each arrangement, the response should include, but not be limited to:

(1) the name or title of each agreement and the date executed;

(2) a citation to the specific provisions relied upon as establishing a "'pool'" relationship between the utilities. The provisions cited should

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14/ The response should include a description of each incident demonstrating the existence of each purpose or a company's motivation by it. The description should include (1) the representative or representatives of each Pool company including Applicant involved, (2) other entities or persons involved, (3) the specific action or actions demonstrating a listed purpose or purposes of the CARVA dissolution, by whom taken and by what means and on what date, (4) the precise way in which each action demonstrates the existence of a listed purpose or purposes, and (5) a specification of the sources on which the Intervenors rely in describing the incident.

include those (i) providing for joint planning and coordinated development, (ii) charges for energy and accounting formulas, (iii) required reserves and (iv) procedures in the event of power shortages. Provisions pertaining to each lettered topic should be separately cited;

(3) a statement as to each provision cited in response to (2) explaining how it evidences a "'pool'" relationship between the utilities.

(d) Identify and describe each factor considered in determining who are "effective participants" in the "'pool'".

(e) State specifically as to each listed utility, (Duke, CP&L, VEPCO and SCE&G) which factors identified in response to (d) established that it was an "effective participant."

(f) Explain, through the application of the factors listed in response to (d), whether the South Carolina Public Service Authority and the Southeastern Electric Power Administration of the United States Department of the Interior are "effective participants" in the "'pool'".

(g) Identify and describe each factor considered in determining that the Intervenors have no access to the "'pool'". The response should include but not be limited to the factual basis for each factor considered. To the extent that factual

basis includes any incidents in which Intervenors were denied access or advised that they would be denied access, the description of the factual basis should include, but not be limited to:

(1) the entity or entities involved in the incident and the representative or representatives of each entity involved,

(2) the subject matter of the transaction in which the incident occurred,

(3) the specific actions by which access was denied, the method employed in each action and the date of each action,

(4) a quotation of the precise words by which access was denied or Intervenors advised that access would be denied, or if the Intervenors do not rely on an account or accounts that includes the precise words, a quotation of the account or accounts that Intervenors do rely on.

52. (a) Intervenors were referring to the VACAR arrangement.

(b) An "effective participant" is one who participates actively in all or substantially all of the affairs of a group, whose interests are habitually considered and accomodated as far as possible by the other members, and whose rights as a member are equal to those of the member(s) possessing the greatest rights (or, in case of weighted voting or other rights, are determined by the same formula).

(c) "Reliability Agreement -- Virginia-Carolinas Reliability Group", dated 1 May 1970.

Until completion of discovery, Intervenors cannot state that the following list is exhaustive. A factual analysis of the way in which the contract terms have been implemented will necessarily influence the meaning assigned them.

Joint planning and coordinated development: §§ 0.4, 3.1, 4.5.

Charges for energy and accounting formulas: none identifiable.

Required reserves: §§ 0.2, 0.4, 4.5.

Power shortages: 0.2, 0.4, 4.5.

Intervenors would now characterize this organization as being, insofar as its actual character is reflected by the agreement cited, something less than a power pool in the strict (economic) sense. As stated above, Intervenors reserve the right to rely on further factual discovery to demonstrate that the members have in fact coordinated to a greater extent than is called for by the agreement.

(d) See definition above.

(3) The contract referred to appears to give all four companies equivalent formal rights, and the documents examined by Intervenors in this connection (discovery documents number 162 et seq., 322 et seq., 385 et seq.,

(52 cont'd)

and 485 et seq.) all show participation by all four in study activities of the VACAR group.

(f) Intervenors believe they are not. Intervenors' copy of the VACAR agreement shows that membership for these entities was contemplated, but they do not appear to have signed the agreement. Nor is their participation in the studies mentioned above evident from the reports thereon.

(g) Since the membership qualifications for VACAR are the same as for SERC, the same reasons for its unavailability to Intervenors exist. (See VACAR Agreement, § 6.5.)

53. In the Joint Petition, Intervenors stated that "Duke, CP&L, SCE&G and VEPCO together monopolize the generation of electric power over a substantial geographic area in North Carolina, South Carolina and Virginia." (p. 4) Further, in the Initial Statement (p. 3), Intervenors stated that Duke, CP&L, SCE&G and VEPCO "among themselves monopolize the generation and transmission of bulk power over a substantial area in the Carolinas and Virginia."

(a) State whether the Intervenors contend that these four utilities have entered into a conspiracy to monopolize generation and transmission of bulk power;

(b) If the response to (a) is not "no", identify and describe each incident relied upon by the Intervenors as constituting or evidencing a conspiracy or possible conspiracy to monopolize generation and transmission of bulk power. As to each incident, the response should include, but not be limited to:

(1) the representative or representatives of each utility involved;

(2) the specific action or actions evidencing an intent to monopolize, the method employed in each action and the date of each action;

(3) as to each action listed in response to (2), a quotation of the precise words used by the representatives of the various utilities that constitue or evidence a conspiracy to monopolize or, if the Intervenors are relying on an account or accounts not including a precise quotation, a quotation of the passage of each account purportedly describing the conspiratorial actions; and

(4) the specific sources upon which the Intervenors rely in describing the incident.

53.

(c) If the answer to (a) is "no", define and describe each standard the Intervenors use in determining that the listed utilities "together monopolize" generation and transmission of bulk power.

(d) If the answer to (a) is "no", describe each pattern of activity or other behavior by which the listed utilities "together monopolize" electric generation and transmission.

(e) If the answer to (a) is "no", describe the significance for this proceeding of the purported circumstances that the utilities "together monopolize" electric generation.

53. (a) The statements quoted by Applicant refer to a shared monopoly of generation and transmission. Until discovery is completed, Intervenors cannot say whether there has also been a conspiracy to monopolize among the companies or any two or more of them.

54. Provide all documents, not previously produced in this proceeding, which refer to, describe or evaluate:

(b) the purchase by Applicant of land on the Green River which Intervenors claim comprises a part of the proposed site of FPC Project No. 2700.

54.

(b) The only document of which Intervenors presently know which relates to Applicant's purchase of land on the Green River, and which has not been produced, is the "Answer of Duke Power Company, Respondent-Defendant", filed 20 April 1973 in North Carolina Consumers Power, Inc. v. Duke Power Co., Superior Court of Cleveland County, N.C., No. 71 CVS 1734, page 2. This pleading was signed by Applicant's counsel Joyner & Howison, Raleigh, N.C.; Horn, West, Horn & Wray, Shelby, N.C.; and Fleming, Robinson & Bradshaw, P.A., Charlotte, N.C., and therefore is presumably in Applicant's possession. As soon as a review of our files can be completed, we will furnish as a supplemental response citations to any other pleadings which refer to this matter.

55. At the Prehearing Conference on November 17, 1972, counsel for the Intervenors contended "since EPIC filed for the pump storage project about two years ago, the first thing . . . that met us . . . was an effort to declare a certain position [sic] of it to be a scenic river under a North Carolina Scenic River Act. That specific portion of the river which would have been declared scenic was between two hydroelectric projects operated by Duke and would have encompassed the dam site of our present project." (Tr. 233)

(a) State whether Intervenors contend that Applicant sought to have the Green River site declared a scenic river area.

(b) If the response to (a) is not "no", state whether it is contended that Applicant's efforts were motivated by an intent to block the construction of the EPIC facility.

(c) If the response to (a) is not "no", identify and describe each incident relied upon in asserting that Applicant contributed to efforts to block the Green River pump storage project. As to each incident, the response should include, but not be limited to:

(1) the representative or representatives of Applicant or any other entity involved,

(2) the specific action or actions of Applicant that demonstrates Applicant's participation in efforts to have the Green River area declared a scenic river, the method employed in each action and the date of each action,

(3) a statement as to each action listed in response to (2) identifying and describing each factor considered in determining that the action demonstrates Duke's participation in an effort to have the Green River site declared a scenic river,

(4) a quotation of the precise words, if any, that Intervenors contend demonstrates an intent on the part of Applicant to have the Green River site declared a scenic river for the purpose of blocking its development by EPIC, or, in the event the Intervenors do not rely on an account or accounts that does not include a precise quotation of the words used by Applicant, a quotation of the account or accounts, if any, on which Intervenors rely and contend that Applicant was so motivated, and

(5) the specific sources upon which the Intervenors rely in describing Applicant's efforts to have the Green River site declared a scenic river.

55. Intervenors have no further information on this point. If any such information comes to light in the course of further discovery, it will be communicated in a supplemental response. At the present time, therefore, Intervenors cannot say whether this contention will be made.

56. At the Prehearing Conference of November 17, 1972, counsel for the Intervenors stated (Tr. 235) "We would love to find a statement in Duke's internal memoranda of Board of Directors meeting, of the Executive Committee or so on explaining how they came about to buy this land in the Green River, what their intent was in buying the land, explaining their intent in entering this litigation."

(a) State whether, in Intervenors' view, any documents produced by Applicant or otherwise in the possession of the Intervenors indicate either:

(1) the steps followed by Applicant in acquiring the land on the Green River,

(2) the intent of Applicant in acquiring the land on the Green River or

(3) Duke's intent in the Green River FPC proceedings.

(b) Identify by Applicant's document production number (or if obtained from sources other than Applicant's document production, by author, recipient, date and title or subject) each document in Intervenors possession that is pertinent to any of the three numbered items in (a) and state as to each document to which of the three numbered items in (a) it is pertinent.

(c) Provide all documents listed in response to (b) not provided in Applicant's document production and not provided in response to question 54.

56. Until discovery is completed, Intervenors cannot finally answer this Item. We have referred in responding to Item 54 to a pleading filed in the North Carolina Superior Court which bears on Applicant's acquisition of the land in question. Subject to the qualification above, Intervenors are not presently aware of any other documents dealing with the steps followed in acquiring the Green River tract or Applicant's intent in doing so.

Applicant's intentions in the FPC licensing proceedings are quite clear from its petition to intervene therein, which has been furnished as Exhibit 13 to Intervenors' Initial Prehearing Statement.

57.(a) Identify and describe in detail any information known to the Intervenors as to any instances in which Applicant sought to affect the price of fuel for other operators of electric generation in North or South Carolina. Such description should specify the sources from which the Intervenors obtained their information.

(b) Produce all documents pertaining to any instance identified in response to (a).

57. Intervenors do not at present have any such information. If any comes to light during the remainder of discovery it will be conveyed as a supplemental response.

58.(a) Describe each activity engaged in by Applicant on the basis of which the Intervenors allege or will allege that a situation inconsistent with the antitrust laws has been created or maintained. The response should include, but not be limited to:

(1) the time period in which Applicant engaged in such activity,

(2) the nature of the activity,

(3) the basis for its being deemed "inconsistent with the policies of the antitrust laws,"

(4) the statute or policy with which it is alleged to be inconsistent.

(b) As to each activity specified in response to (a), state whether the Intervenors claim or will claim that the granting of the licenses applied for herein will maintain a situation inconsistent with the antitrust laws.

(c) As to each activity identified in response to (a), state whether the Intervenors contend that Applicant deliberately sought to create "a situation inconsistent with the policies of the antitrust laws."

(d) As to each activity listed in response to (a), to which the response to (c) was not "no," identify and describe each incident or instance of conduct upon which the Intervenors rely in contending that Applicant deliberately sought to create such a situation. As to each incident or instance of conduct, the response should include, but not be limited to:

(1) the representative or representatives

of Applicant involved,

(2) other persons or entities involved,

(3) the specific subject matter of the incident or instance,

(4) the specific action or actions of Applicant demonstrating this intent, the method by which the action was taken and the date or dates on which taken,

(5) a statement as to each action describing how the action demonstrates the intent, and

(6) the sources of the information on which the Intervenors rely in describing the incident or instance.

58 and 59. The other detailed responses to these interrogatories respond to these two as well. To the extent that Applicant is unclear about the precise applicability of any of them we will attempt to clarify the matter, but as stated these Items are repetitious and cumulative, and so, improper.

59. In the Prehearing Brief for Intervenors. . . On the Effect of the Decision of the Federal Power Commission on the Present Proceeding, dated February 15, 1973, Intervenors stated that there is "evidence of monopoly consciously acquired or maintained in the past" by Applicant. (p. 2)

(a) Identify and describe each instance in which Applicant has "consciously acquired or maintained" monopoly. As to each instance, the response should include, but not be limited to:

(1) the identity of the representative or representatives of Applicant manifesting a conscious intention to acquire or maintain a monopoly;

58 and 59. The other detailed responses to these interrogatories respond to these two as well. To the extent that Applicant is unclear about the precise applicability of any of them we will attempt to clarify the matter, but as stated these Items are repetitious and cumulative, and so, improper.

54

(2) the identity of any other person or entity involved;

(3) the specific transaction in which the intent to maintain or acquire a monopoly was manifested;[15/]

(4) the specific action or actions that manifested an intent to acquire or maintain a monopoly, the method employed in each action and the date of each action;

(5) a quotation of the precise words used by Applicant that manifests an intent to acquire or maintain a monopoly, or in the event the Intervenors are relying on an account that does not include the words used, a quotation of the account relied on; and

(6) the specific sources used by the Intervenors in describing the instance.

15/ As to any transaction evidenced by a written agreement, the transaction may be identified by a citation of the title or name of the agreement and the date executed. As to all other transactions the reply should specify the subject matter of the transaction, the date on which the transaction commenced and the date on which it terminated, and the general terms of the transaction as understood by the Intervenors.

64. In the Initial Statement (p. 7), Intervenors stated "Duke has . . . employed the substantial differentials already existing in its own internal costing to skim the cream of the retail market."

(a) Describe and define what the Intervenors contend is "the cream of the retail market." The response should include the type of customer which constitutes "the cream", the standards used in making that determination, and the period of time involved. Where those standards are quantifiable (e.g., load size, load factor, distance from existing facilities), they should be expressed in numeric terms.

(b) As to each type of customer identified in response to (a):

(1) identify those costs (as defined in the FPC System of Accounts) which the Intervenors contend were not but should have been allocated to each such type of customer, and

(2) identify the customer class or type of customer to which those costs were allocated by Applicant.

(c) State whether the Intervenors will contend that the Applicant intended to "skim the cream of the retail market."

(d) If the answer to (c) is not "no", describe each activity of Applicant that evidences an intent to "skim the cream of the retail market." As to each activity, the response should include:

(1) the representative or representatives of Applicant participating in the activity;

(2) the specification or action constituting the activity that evidenced an intent to "skim the cream of the retail market", the date of each action and the method employed;

(3) the precise words used in each action listed in response to (2) by which Applicant evidenced an intent to "skim the cream" or, if the Intervenors do not rely on an account or accounts that records the words employed, the precise language of each account on which the Intervenors do rely; and

(4) a specification of the sources relied on by the Intervenors in describing the activity.

64. (a) Intervenors referred, in the passage quoted, to large, high load factor customers. These would in general be industrial customers, and might also include large general service customers. (We here follow the distinction apparently used by Applicant, which is that an industrial customer is engaged principally in manufacturing, while a general service customer, whose load characteristics may be otherwise similar, is not.) Intervenors believe that this situation has existed at least since 1 January 1960. The characteristics of such customers are not precisely quantifiable, for the general guidance of Applicant (and without waiving the right to instance different cases) Intervenors will state that they were referring to customers of 5mw or more at 500 or more hours use. Intervenors consider such customers to be the "cream" of the retail market because they provide the most efficient utilization of the investment devoted to serving electric customers. This is true at all levels of the utility industry, and consequently implies that not only the Intervenors, and other similar systems presently engaged only in distribution, but also any such systems or groups of systems that in future install generation and transmission facilities, would benefit by having a fair share of such retail customers.

(b) Intervenors have made no studies which would permit the specification here requested of misallocation of costs by Applicant.

(c) Yes.

(d) The matters discussed in Item 8(c) above are likewise applicable to this inquiry. They deal directly with the margins available to Intervenors and systems similarly situated should they attempt to serve industrial customers. Applicant has also employed direct contractual limitations on resale to large customers. See Item 8(a)(i) and Exhibit 8/1. In general,

(64 cont'd)

as stated in responding to Item 8, "[t]he matters described * * * as constituting or contributing to a price squeeze affect the retail market directly, in that Intervenors are disabled from competing for the most desirable class of customers."

To the extent that further specific matters responsive to this question are uncovered in the completion of discovery they will be supplied as supplements to this answer.

69. In the Joint Petition it is stated "as each petitioner operates an electric system much smaller than Duke's none of petitioners is able alone (or by combination with one another) effectively to enjoy the benefits of this low-cost source of power [nuclear generation]." (p. 4)

(d) State whether each Intervenor is a participant in EPIC as of the date of reply.

(e) As to each Intervenor for which the answer to (d) is "yes",

(1) state the date on which the Intervenor first participated in EPIC and the action (i.e., City Council resolution or contract) by which participation was initiated;

(2) describe the extent to which representatives of Intervenor have participated in EPIC activities as through attendance at meetings, membership on committees, etc.;

(3) provide all documents relating to the determination by the Intervenor to begin participation in EPIC or to continue participation.

(69 cont'd)

(e) It is believed that this item has already been answered through the first-round document production and the subpoena served on EPIC. The materials provided by EPIC to Applicant in response to the subpoena are not presently available to Intervenors. If specific items or categories of information here demanded were not so supplied, Intervenors will furnish them as a supplemental response on being informed of the precise materials required.

70. At the March 7, 1973 Prehearing Conference, counsel for the Intervenors stated "I think that we are going to build an evidentiary record of attempts by Duke Power Company to interfere with the activities of the electric systems here represented by its attempts to influence the City Councilmen who are elected in those cities." (Tr. 800-01)

(a) Identify and describe each instance upon which Intervenors intend to rely in which Applicant sought to interfere with the activities of the Intervenors. As to each instance, the response should include, but not be limited to:

(1) the representative or representatives of Applicant or any other entity involved,

(2) the City Councilmen and city involved,

(3) the subject matter of the transaction regarding which the interference was attempted,

(4) the specification or action by which the interference was attempted, the method employed in each action and the date of each action, and

(5) the sources upon which the Intervenors rely in describing the attempted interference.

70. (a) Exhibits 11, 12, and 18 to the Intervenors' Initial Prehearing Statement show attempts to influence the decisions of municipal officials (in one case, officials of a former Intervenor, Statesville). As discovery is still in progress, further instances may be discovered and such instances will be described in supplemental responses.

71. In the Joint Petition, it is contended that Applicant is presently a party to agreements providing for "joint planning among the four companies." (p. 4)

(a) Identify by name or title and date of execution, and, if the document was produced by Applicant during discovery in this proceeding, the production number of the document, each agreement to which Applicant is presently a party which provides for joint planning.

(b) Cite specifically each provision of each agreement identified in response to (a) which is relied upon as providing for joint planning.

71. (a) and (b) The Southeastern Electric Reliability Council (SERC) agreement of 1970, which appears as Intervenors' Initial Prehearing Statement, Exhibit 16. See particularly § 2.01.

The "Reliability Agreement" of the Virginia-Carolinas Reliability Group (VACAR), dated 1 May 1970. See §§ 0.4, 3.1, 4.5 and 4.6.

The "Agreement Terminating Carolinas Virginias Power Pool Agreement", dated 9 July 1970, page 1.

Any other document evidencing such agreement which comes to light during the remainder of discovery will be similarly described in a supplemental answer.

72. In the Answer of the Cities . . . to Applicant's Motion to Amend Paragraph B(2)(b) of Prehearing Order Number Two, it is stated "Municipalities that own electric systems are both governmental entities and proprietors of a business enterprise." (p. 2)

(a) List by name and title each elected or appointed official of each municipal Intervenor in this proceeding whose duties have at any time since January 1, 1960, included the setting of policy for or executive direction of the electric activities of the said municipality and as to each person listed state whether the duties of that person are entirely proprietary, entirely governmental or partly proprietary and partly governmental.

(b) As to any person whose duties are described as partly proprietary and partly governmental in response to (a), identify and describe each substantial duty of the person that is governmental and each substantial duty that is proprietary.

(c) Provide all documents setting forth the general duties or responsibilities regarding electric activities of any person or persons listed in response to (a).

72, 74, 76, 77-87. Collection of material from Intervenors' files to reply to these items is not yet complete. To the extent that the responses and documents demanded do not duplicate materials already furnished in the first round of discovery, they will be supplied as soon as available.

74.(a) Identify and describe each element of any line extension policy or practice applied by any Intervenor in effect at any time during the period January 1, 1960, to date.

(b) Produce all documents pertaining to any such line extension policy or practice.

72, 74, 76, 77-87. Collection of material from Intervenors' files to reply to these items is not yet complete. To the extent that the responses and documents demanded do not duplicate materials already furnished in the first round of discovery, they will be supplied as soon as available.

76.(a) State the current (or most recent) level of annual carrying charges for each Intervenor's actual and proposed electric plant investment which is utilized by it or by any of its consultants.

(b) State separately the annual carrying charge levels used for:

(1) the cost of debt capital;

(2) the cost of funds from retained electric system surplus or of equity capital provided by the municipality;

(3) taxes or payments in lieu of taxes;

(4) depreciation;

(5) fixed operation and maintenance expenses; and

(6) other charges used by the Intervenor in relation to its electric system.

72, 74, 76, 77-87. Collection of material from Intervenors' files to reply to these items is not yet complete. To the extent that the responses and documents demanded do not duplicate materials already furnished in the first round of discovery, they will be supplied as soon as available.

77. State for each Intervenor whether, in any of its financial, economic or engineering planning or analyses, it or any of its consultants utilizes or has utilized at any time since January 1, 1960, a target or desired rate of return on investment by the electric system. If so, state the most recent level of any such target or desired rate of return so utilized.

72, 74, 76, 77-87. Collection of material from Intervenors' files to reply to these items is not yet complete. To the extent that the responses and documents demanded do not duplicate materials already furnished in the first round of discovery, they will be supplied as soon as available.

78.(a) State for each Intervenor whether during the period January 1, 1960, to date it ever urged that, as a result of a customer's or potential customer's large size or unusual electricity requirements, such customer or potential customer take service from another electric system. Incidents described in response to interrogatory 54 of Applicant's Initial Interrogatories and Request for Documents, dated September 13, 1972, need not be considered in responding to this interrogatory.

(b) If the response to (a) is not "no", identify and describe each instance in which such a suggestion was made. The response should include, but not be limited to:

(1) the representative or representatives of the Intervenor, customer or potential customer or any other entity involved;

(2) the specific service sought by the customer or potential customer and the date or dates on which such service was sought;

(3) the specific action taken by the Intervenor in urging the customer or potential customer to seek service from another system, the method by which the action was taken and the date or dates on which taken;

(4) the identity of the other system from which the Intervenor suggested that service be taken; and

(5) a statement setting forth the basis on which the Intervenor concluded that it would urge the customer or potential customer to be served by another system.

72, 74, 76, 77-87. Collection of material from Intervenors' files to reply to these items is not yet complete. To the extent that the responses and documents demanded do not duplicate materials already furnished in the first round of discovery, they will be supplied as soon as available.

79.(a) State for each Intervenor whether at any time during the period January 1, 1960, to date, it has had a policy or practice of seeking to recover a fixed or target rate of payments or services in lieu of local taxes from its electric system. If so, state each such rate contemplated, the time period in which that rate policy or practice was followed and the factors considered in establishing said rate.

(b) State the dollar amount or rate of payment in lieu of taxes for each year 1960 to date which was the goal of any policy cited in response to (a).

72, 74, 76, 77-87. Collection of material from Intervenors' files to reply to these items is not yet complete. To the extent that the responses and documents demanded do not duplicate materials already furnished in the first round of discovery, they will be supplied as soon as available.

80. For the year 1972 to date, furnish:

(a) A copy of each Intervenor's Form 1-M and Form 12-A reports filed with the FPC;

(b) A copy of Form MU filed by each Intervenor with the North Carolina Utilities Commission; and

(c) A copy of each Intervenor's audit report.

72, 74, 76, 77-87. Collection of material from Intervenors' files to reply to these items is not yet complete. To the extent that the responses and documents demanded do not duplicate materials already furnished in the first round of discovery, they will be supplied as soon as available.

81. For the period September 1972 to date, furnish copies of any changes effected in any Intervenor's electric rate schedules, tariffs, rate contracts or agreements, conditions and terms of service or any other statement of rates applicable to each customer class served by it.

72, 74, 76, 77-87. Collection of material from Intervenors' files to reply to these items is not yet complete. To the extent that the responses and documents demanded do not duplicate materials already furnished in the first round of discovery, they will be supplied as soon as available.

82.(a) State whether at any time in the period September, 1972 to date, any Intervenor, or any of its employees or agents, proposed to, or discussed with, any customer the possibility of proposing any electric rate schedule, tariff, rate contract or agreement, conditions and terms of service or any other statement of rates other than those furnished in response to interrogatory 81.

(b) If the response to (a) is not "no", describe in detail any proposal made, including the identity of all persons and entities involved, the date or dates involved, and the actual terms proposed.

(c) Furnish any documents relating to any proposals described in response to (b).

72, 74, 76, 77-87. Collection of material from Intervenors' files to reply to these items is not yet complete. To the extent that the responses and documents demanded do not duplicate materials already furnished in the first round of discovery, they will be supplied as soon as available.

83.(a) Furnish copies of all fuel, purchased power, materials, commodity, tax, wage or other adjustment clauses or surcharges applicable to each rate schedule, tariff, rate contract or agreement in effect at any time during the period September, 1972 to date.

(b) State the adjustment level applicable on January 1, 1973 and June 30, 1973 and explain the basis on which each adjustment was determined.

72, 74, 76, 77-87. Collection of material from Intervenors' files to reply to these items is not yet complete. To the extent that the responses and documents demanded do not duplicate materials already furnished in the first round of discovery, they will be supplied as soon as available.

84.(a) Furnish copies of all documents relating in any way to cost of service studies, bill frequency analysis, cost or profitability analyses by customer class and/or for the Intervenor's electric system as a whole prepared by or for each Intervenor during the period September, 1972 to date.

(b) Describe any similar or related studies presently being prepared by or for any Intervenor, including in such response:

(1) the date on which such study was initiated;

(2) the name of the Intervenor's employee responsible for the preparation of such study or, if the study is being prepared by an individual or organization retained by or on behalf of the Intervenor, the name and address of such entity;

(3) the planned completion date of the study; and

(4) a general description of the purposes and subject matter of the study.

72, 74, 75, 77-87. Collection of material from Intervenors' files to reply to these items is not yet complete. To the extent that the responses and documents demanded do not duplicate materials already furnished in the first round of discovery, they will be supplied as soon as available.

85.(a) As to each Intervenor, state whether it now has or has had in effect at any time during the period January 1, 1960, to date, an arrangement, policy or practice of not providing or not offering electric service to retail customers located in a particular area or territory, notwithstanding the Intervenor's legal ability to serve such customers.

(b) If the response to (a) is not "no", identify and describe each such arrangement, policy or practice. The response should include, but not be limited to:

(1) the specific terms of the arrangement, policy or practice and the date or dates when in effect;

(2) the other entities, if any, and their representative or representatives involved; and

(3) a statement setting forth the circumstances which led to the initiation of the arrangement, policy or practice and if the impetus for the arrangement, policy or practice came from a person or entity other than the Intervenor, the identity of each person or entity seeking to effect the arrangement, policy or practice.

(c) If any arrangement, policy or practice identified in response to (b) is no longer in effect, describe in detail the circumstances which led to its being terminated, including the date or dates of termination and persons and entities involved.

(d) Provide all documents relating to any arrangement, policy or practice identified in response to (b).

72, 74, 76, 77-87. Collection of material from Intervenors' files to reply to these items is not yet complete. To the extent that the responses and documents demanded do not duplicate materials already furnished in the first round of discovery, they will be supplied as soon as available.

86. Produce any audit or accounting report for the years 1960 through 1972 prepared by or for any Intervenor which segregates information pertaining to any Intervenor's electric operations, revenues or expenditures.

72, 74, 75, 77-87. Collection of material from Intervenors' files to reply to these items is not yet complete. To the extent that the responses and documents demanded do not duplicate materials already furnished in the first round of discovery, they will be supplied as soon as available.

87. Produce all documents pertaining to instances described in response to interrogatory 78(b).

72, 74, 76, 77-87. Collection of material from Intervenors' files to reply to these items is not yet complete. To the extent that the responses and documents demanded do not duplicate materials already furnished in the first round of discovery, they will be supplied as soon as available.

Schedule A

With regard to the answers to the following interrogatories, the Justice Department has indicated that the response will be supplemented as additional relevant information comes to light:

21, 22(a)(b), 23, 25(b)(5) and (d), 26(b)(3), 37(a)(b); 47(a).

21.(a) Identify and describe each incident in which "Duke spokesmen have reportedly stated publicly that they would oppose Duke's interconnecting its system with EPIC for the joint meeting of emergency load needs ...." (Oconee advice letter, p. 4) As to each incident, (including both oral and written communications), the response shall include, but not be limited to:

(1) the spokesman or spokesmen of Applicant involved,

(2) a description as to whether the statement was made orally or in writing,

(3) the precise event at which each statement was made including the location, date and type of event,

(4) the precise words purportedly used by the spokesman or spokesmen or, if the Department does not rely on a purported precise quotation, the exact language of each account of each statement the Department relies upon, and

(5) the specific sources from which the Department obtained the information upon which it relies in responding to this question.

(b) Produce all documents pertaining to each incident described in response to (a).

21. At a meeting of the High Point, North Carolina, City Council called by Mayor Robert Davis on or shortly before October 13, 1969, Mr. John D. Hicks, at that time Secretary and Assistant General Counsel of Applicant, was reported by the High Point Enterprise (Monday, October 13, 1969) to have made the following statement:

> Finally, he was faced with the question from Councilman Fred Swartzberg, if, in the long run, EPIC should prove feasible and come into existence, would Duke be willing to tie in with its system as it does with other private power companies for joint meeting of emergency load needs? Hicks responded that he was speaking only on his own account but that if asked for a recommendation from his company, it would be, 'Absolutely not!'

Hicks is currently Vice President, Corporate Affairs, Director and a member of the Executive Committee of the Duke Power Company. A copy of the foregoing newspaper article is incorporated in Exhibits to the Initial Prehearing Statement as part of Exhibit 12 which has been supplied to the Applicant by the Intervenors.

Other public statements of Duke Company officials regarding interconnections with EPIC may be uncovered as discovery progresses. Applicant will be notified of these instances in accordance with the Department's duty to supplement as outlined in the Atomic Energy Commission's Rules of Procedure.

22.(a) Identify the "[e]vidence" available to the Department which "tends to indicate that on occasion Duke has bluntly warned North Carolina municipal electric systems that the efforts and funds that the latter could expend in seeking relief before regulatory agencies would be overwhelmed by Duke's resources and resistance." (Oconee advice letter, p. 4) As to each piece of "evidence" available:

(1) state whether it is contained in a document or whether it was conveyed orally;

(2) if the statement was contained in a document, furnish the document;

(3) if the statement was made orally, identify by whom it was made, to whom it was made, and when it was made.

(b) Identify and describe each incident constituting an "occasion" on which Duke has purportedly so warned North Carolina municipal electric systems. As to each incident, the response should include, but not be limited to:

(1) the representative or representatives of Applicant involved,

(2) the municipality or municipalities involved and the specific representatives of each municipality involved,

(3) the subject matter regarding which the warning was purportedly given,

(4) the specific actions of Applicant constituting the warning and the date or dates of such actions,

(5) the precise words purportedly used by the representative or representatives or, if the Department does not rely on a purported precise quotation, the exact language of each account of each incident the Department relies upon, and

(6) the specific sources from which the Department obtained the information upon which it relies in describing the incident.

22. (a) (b). The joint affidavit of L. C. Williams, Robert Van Sleen and Robert T. Beck dated July 28, 1971, describing a meeting called by the Duke Power Company in Charlotte, North Carolina, on June 22, 1967, is evidence which indicates Duke representatives have "bluntly warned North Carolina municipal electric systems that the efforts and funds that the latter could expend in seeking relief before regulatory agencies would be overwhelmed by Duke's resources and resistence." As of July 28, 1971, Mr. Williams was Director of Utilities for the City of High Point, North Carolina, Mr. Van Sleen was Director of Utilities for the City of Shelby, North Carolina, and Mr. Beck was Electric Superintendent of the City of Lexington, North Carolina. The affidavit states in part:

> Such meeting was held on June 22, 1967, and a large number of municipal officials were in attendance, including the undersigned [Williams, Van Sleen, and Beck] and Dr. Hubert Plaster, Mayor of Shelby, Mr. Phil Horton, III, City Manager of Shelby, Hon. Robert Davis, Mayor of High Point, Knox Walker, Esq., City Attorney of High Point, Fred Swartzburg, City Councilman of High Point, Hon. J. Garner Bagnal, Mayor of Statesville, Hon. Eric Morgan, Mayor of Lexington. Many field representatives of Duke Power Company were present along with officials of the company, including Mr. Carl Horn, Jr., then Vice President and General Counsel (now President of the company), Glen A. Coan, Vice President, Rates, Douglas W. Booth, then Vice President in charge of Marketing, (now Senior Vice President in charge of Retail Operations), E. R. Davis, and William H. Grigg, then Assistant General Counsel (now Vice President and General Counsel). Messrs. Horn, Booth and Coan addressed the meeting.

> The Duke officials opined that their municipal customers were not entitled to a wholesale rate reduction, and indeed, might be liable for a rate increase should a proceeding be commenced before the Federal Power Commission. The Duke officials said that Duke's wholesale rates were among the lowest in the nation, and cited those present at the recently concluded rate negotiations between the City of Fayetteville and Carolina Power and Light Company. It was stated that the result of the negotiations was a rate to Fayetteville of 7.8 mills per kwh, and Duke's rate was already lower than that.
>
> Mr. Horn said that the $200,000.00 budget considered by the cities was grossly inadequate for prosecuting a rate proceeding and all subsequent court appeals, and that a rate proceeding would cost
>
> the cities at least twice that amount, or $400,000.00. Mr. Horn predicted that proceedings at thirteen administrative and judicial levels would be required before final decision in any rate complaint proceedings instituted by the cities. He predicted that five to seven years would be consumed by these proceeding[s], and stated that at the conclusion of all this the original data would be obsolete and the cities would be in the position of having to start all over again factually. He said, to our best recollection, 'Duke cannot make any reduction in rates to municipalities, and will fight as long and hard as possible.'

A copy of the affidavit is incorporated in the Exhibits to the Initial Prehearing Statement as Exhibit 18 which has been supplied to the Applicant by the Intervenors.

Other evidence of this type may be uncovered as discovery progresses. Applicant will be notified of this evidence in accordance with the Department's duty to supplement outlined in the Atomic Energy Commission's rules of procedure.

23.(a) Identify and describe each instance upon which the Department intends to rely and in which Duke has refused to deal, whether wholly or with regard to particular transactions, arrangements or terms, with any of its retail competitors. The response should include, but not be limited to:

(1) the competitor or competitors involved by name,

(2) a statement as to the markets, as defined in response to question 'd), in which these entity or entities compete with Applicant,

(3) the type of service, transaction or other arrangement which Applicant refused to provide or enter into,

(4) the representative or representatives of Applicant involved in the refusal,

(5) any other persons or entities involved in or potentially involved in the refusal or in the service, transaction or other arrangement refused,

(6) the specific actions taken by the competitor in which it sought to obtain the service or enter into the transaction refused,

the date or dates of each action and the method employed in taking the action,

(7) the specific actions taken by Applicant that constitute a refusal to deal, the date or dates of each action and the method employed in taking the action,

(8) the precise words purportedly used by the representative or representatives of Applicant or, if the Department does not rely on a purported precise quotation, the exact language of each account of each action the Department relies upon as constituting or demonstrating the refusal to deal, and

(9) the specific sources from which the Department obtained the information upon which it relies in describing the instance.

(b) Produce all documents relating to any such refusal to deal.

23. Certain North Carolina municipalities (Duke's competitors in the retail market) directly requested participation in Duke's nuclear generating program. These requests are detailed at length in the case of City of Statesville, et al. v. Atomic Energy Commission, 441 F.2nd 325, which is incorporated herein by reference. See also our response to Question 30. Additional instances of refusals to deal, upon which the Department intends to rely, may be uncovered as discovery progresses. Applicant will be notified of these instances in accord with the Department's duty to supplement outlined in the Atomic Energy Commission's Rules of Procedure.

25. Identify and describe each instance in which Applicant has used or attempted to use its "market power to grant or deny access to coordination." (Oconee advice letter, p. 2) The response should include, but not be limited to:

(b) a listing of each existing or former coordination arrangement to which Applicant presently has or has had the power to grant or deny access;

25(b) (1) The Duke Power Company itself resembles a coordinating arrangement through integrated ownership of bulk power supply facilities. Through acquisition and merger, Duke has foreclosed smaller electric entities in its service area from opportunities to bargain for coordinating arrangements with the smaller systems which have been absorbed into the present Duke Power Company.

(2) The CARVA Pool.

(3) The VACAR arrangements.

(4) Miscellaneous coordinating arrangements with adjacent companies in contracts listed by Applicant in response to Question No. 12 of the Attorney General.

(5) Other coordinating arrangements may be uncovered by the Department as discovery progresses.

25 (d) as to each entity listed in response to (c), a description of the incident or incidents in which Applicant granted or denied access to coordination, including:

(1) the representative or representatives of Duke and of the other entity involved, and

(2) the specific action or actions by Duke which granted or denied access, the date or dates of each action and the method employed to take the action;

25(d) On August 29, 1967, at a public hearing conducted by the Atomic Energy Commission Safety and Licensing Board in Wahalla, South Carolina, Mr. Jack Harris, City Attorney of Statesville, North Carolina, requested on behalf of Piedmont Electric Cities, Inc., a 4 percent undivided interest in Duke's Oconee units. Of course, implicit in such a proposal is a request for coordination necessary to insure the technical feasibility of the intended arrangements. This request was rejected three days later on September 1, 1967, by Carl Horn, then Vice President (Finance) and General Counsel of the Duke Power Company. Details of the request and subsequent rejection can be found in the September 1, 1697, letter from Horn to Harris which is Exhibit 9 in the Exhibits to the Initial Prehearing Statement supplied to Applicant by the Intervenors. Details of oral requests for coordination made by EPIC, Inc., to the Duke Power Company are currently being investigated by the Department.

The City of Belhaven and other cities in North and South Carolina in the area served by wholesale by the Virginia Electric Power Co., sought admission to the CARVA Pool. The Duke Power Company, acting through the Executive Committee of CARVA Pool joined in denying Belhaven's request for coordination.

It is not surprising that requests for coordination have not been numerous given the Duke Power Company's well-known unwillingness to coordinate. See our answers to Questions 21 and 30. However, other requests for coordination may be uncovered as discovery progresses and the Applicant will be notified of these requests in accordance with the Department's duty to supplement as outlined in the Atomic Energy Commission's Rules of Procedure.

26. On page 9 of the Reply of the Department of Justice to Applicant's Answer and Motion of July 24, 1972, the Department states "Applicant has refused and refuses to coordinate its nuclear generation expansion program with its neighboring competitor utilities on non-discriminatory terms."

(b) Identify and describe each instance in which Applicant has refused or refuses to coordinate its nuclear generation expansion plans with its neighboring competitor utilities on nondiscriminatory terms. The response should include, but not be limited to:

(3) the type of "coordination" transactions or arrangements sought,

26B (3) Other refusals to coordinate may be uncovered as discovery progresses. Applicant will be notified of this information in accordance with the Department's duty to supplement as outlined in the Atomic Energy Commission's Rules of Procedure.

37.(a) Identify and describe every instance upon which the Department intends to rely and in which Applicant has opposed "applications of other utilities for project licenses." (Oconee Advice Letter, p. 4, fn. 1) As to each instance:

(1) name the project involved and the utility making the application,

(2) state the body or bodies, if any, before which Applicant opposed the application and cite the proceeding by docket number or similarly specific identification,

(3) identify the document filing or other action, if any, by which Applicant first indicated its opposition to the project to the body and the date on which the action was taken,

(4) if it is contended that Applicant never publicly indicated its opposition to the project, describe fully in what way the Department contends Applicant opposed the project,[13/]

(5) state whether the Department contends that Applicant's opposition to the project is

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13/ Such description should include, but not be limited to, a description of each incident known to the Department in which Applicant evidenced its active opposition to the project including as to each incident (1) the representative or representatives of Applicant involved, (2) the body or persons approached or influenced, (3) the date or dates and the method of the approach, (4) the specific content of the communication made by Applicant, and (5) the sources of all information used by the Department in describing the incident.

a sham in whole or in part,

(6) if the Department contends that Applicant's opposition is a sham, in whole or in part, identify each action or representation by Applicant that it is contended constitutes or evidences a sham. As to each action or representation that it is contended constitutes or evidences a sham in whole or in part,

(i) state each element of the action or representation that constitutes or evidences a sham,

(ii) identify the source of the information the Department relies upon in contending that a sham was evidenced or perpetuated, and

(iii) produce all documents pertaining to that action or representation and to the factual basis for contending that it evidenced or constituted a sham;

(7) state whether the Department contends that Applicant's opposition to the project was an attempt to deny access to others to the legislative or adjudicatory process,

(8) if the Department contends that Applicant's opposition was an attempt to deny access to others

to the legislative or adjudicatory process, identify each action or representation by Applicant that it is contended constitutes or evidences such attempt. As to each action or representation that it is contended constitutes or evidences such attempt,

(i) state each element of the action or representation that constitutes or evidences the attempt by Applicant to deny access to others to the legislative or adjudicatory process,

(ii) identify the source of the information the Department relies upon in contending that an attempt by Applicant to deny access to others to the legislative or adjudicatory process was evidenced or perpetuated, and

(iii) produce all documents pertaining to the action or representation and to the factual basis for contending that it evidenced or constituted an attempt by Applicant to deny access to others to the legislative or adjudicatory process;

(9) if the response to (7) is not "no," state whether Applicant intended in its opposition to the project to deny access to others to the legislative or adjudicatory tribunal, and

(10) if the response to (9) is not "no," state which activities or what incidents the

Department contends demonstrates such intent.[14/]

(b) Identify and describe each instance in which it is alleged that Applicant made "threats to engage in extensive litigation to block such projects." (Oconee Advice Letter, p. 4, fn. 1) As to each instance,

(1) name the project involved and the entity proposing or considering the project,

(2) identify the representative or representatives of Applicant making the threat or threats, and the place or document in which the threat was made,

(3) state the specific action or actions constituting the threat or threats, the method employed for each action and the date of each action,

(4) quote the precise words of the threat or threats made or, if the Department is relying on an account or accounts not including a precise quotation, quote the passage of each account

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14/ As to each activity or incident the response should include, but not be limited to, (1) the representative or representatives of the entities involved, (2) the specific actions taken by Applicant, the date or dates of each action and the method employed, (3) the precise manner in which the incident demonstrates the intent to deny access to others to the legislative or adjudicatory process, and (4) the specific sources from which the Department obtained its information.

purportedly describing the threat or threats,

(5) state whether, in the Department's view, the instance constituted or evidenced a sham, and

(6) state whether, in the Department's view, the threatened litigation if undertaken would have constituted a sham, and

(7) identify the sources of the information relied upon in describing the instance. As to each action or representation that it is contended constitutes or evidences a sham in whole or in part,

(i) state each element of the action or representation that constitutes or evidences a sham,

(ii) identify the source of the information the Department relies upon in contending that a sham was evidenced or perpetuated, and

(iii) produce all documents pertaining to that action or representation and to the factual basis for contending that it evidenced or constituted a sham.

37. (a) Applicant opposed the construction of the Green River Pumped Storage Project by EPIC, Inc., before the Federal Power Commission. Details of Applicant's opposition can be found in Exhibit 13 in Exhibits to the Initial Prehearing Statement supplied to Applicant by the Intervenors. The Department will not contend that this opposition was a sham or an attempt to deny access to others to the legislative or adjudicatory process.

Other examples of Duke's opposition to applications of other utilities for project licenses may be uncovered as the Department searches the 100,000 documents supplied by Applicant to the Department in this case. The Department will supplement this response in accordance with the AEC rules.

(b) In testimony before the North Carolina Utilities Commission on February 18, 1970, Carl Horn, Applicant's President, warned that there would be "considerable litigation" if the EPIC project ever got out of the planning stage. Details of this warning can be found in Exhibit 14 in Exhibits to the Initial Prehearing Statement supplied to Applicant by the Intervenors. Also, see our response to Question 22. Since the threat was a general one, we are unable to determine whether this would constitute a sham.

Other "threats to engage in extensive litigation to block such projects" may be uncovered as discovery progresses and Applicant will be supplied with this information in accordance with the Atomic Energy Commission rules.

47. In its "Answer ... to Applicant's Motion to Amend Prehearing Order Number Two," dated July 30, 1973, the Department stated that "Applicant's prolific efforts [regarding acquisition of other systems] are admitted" and "Applicant [has engaged in] a concerted program to acquire competing electric distribution systems in its area." (p. 3).

(a) List each acquisition or attempted acquisition of an electric distribution system or a substantial part thereof that the Department contends is relevant to this proceeding and on which the Department intends to rely. As to each partial acquisition, the response should indicate the date of each acquisition. As to attempted acquisitions, the response should include:

(1) the facilities involved,

(2) the date on which acquisition was attempted,

(3) the specific document by which the attempt was made or, if no such document is known to the Department, the factual basis on which it was concluded that an attempt was made, and

(4) the date on which the attempt was rejected or, if not expressly rejected, lapsed and the specific document, if any, by which the attempt was rejected.

47. (a) The following acquisitions or attempted acquisitions of electric distribution systems are relevant to this proceeding:

(1) The attempt to acquire the Mantahala Power & Light Company--offer made January 31, 1959; offer expired after 1960.

(2) Pisgah Mountain Electric Company, acquired on July 17, 1964.

(3) Belton Light and Power Company, acquired on November 13, 1963.

(4) Town of Ninety-six, acquired on October 1, 1969.

(5) Kershs Power and Light Company, acquired August 17, 1970.

(6) City of Greenville and County of Greenville (formerly Donnellson Air Force Base), acquired May 11, 1964.

(7) Greenwood County, acquired July 1, 1966.

(8) Clemson Agricultrual College of South Carolina, acquired December 15, 1964.

(9) The Electric Company, Incorporated, of Fort Mill, South Carolina, acquired September 21, 1972.

(10) Applicant offered to buy the Laurens Electric Cooperative, Inc., Broad River Electric Cooperative, Inc., Newberry Electric Cooperative, Little River Electric Cooperative, Blue Ridge and York Electric Coop on August 20, 1963.

(11) Applicant has offered to buy the South Carolina Public Service Authority power complex in July, 1964.

(12) Duke Discovery Document 75460 indicates Duke's intention to purchase all 116 foreign systems in its area. This document is dated June 27, 1960, and is a memo from Henry L. Cranford to Mr. P. D. Huff.

(13) Other attempts to acquire competing retail distribution systems and bulk power suppliers may be uncovered as discovery progresses.

The trend of concentration of ownership recited above shows how a monopoly of the bulk power supply can lead to a monopoly at the retail distribution level.

Schedule A

With regard to the answers to the following interrogatories, the Justice Department has indicated that a response will be provided upon completion of discovery:

44, 45, 46, 48(c)(d), 68(a) and supplemented response 8(e).

44.(a) State whether the Department contends that any enactments of the legislatures of North or South Carolina regarding electric service are invalid under Federal law.

(b) If the response to (a) is not "no," identify and describe each enactment that is invalid in whole or in part under Federal law. As to each enactment, the response should include but not be limited to:

(1) a specific citation to the enactment and to the provision or provisions that are invalid, and

(2) a specific citation to the provisions of Federal law that invalidate each provision of a legislative enactment.

44. Until discovery has been completed, the Department is unable to formulate any contentions concerning the validity under federal law of enactments of the legislatures of North Carolina or South Carolina regarding electrical services. The Department will supplement this response in accord with the Atomic Energy Commission's Rules of Practice.

45.(a) State whether the Department contends that Applicant has entered into any agreement which, although on its face represents that it is undertaken pursuant to or in anticipation of action by the North Carolina Utilities Commission or the South Carolina Public Service Commission or in specific compliance with any law of North Carolina or South Carolina relating to electric service, contravenes Federal law.

(b) If the response to (a) is not "no," identify and describe each such agreement that contravenes Federal law. As to each agreement, the response should include, but not be limited to:

(1) the name or title of the agreement and the date on which it was executed,

(2) the other party or parties to the agreement,

(3) a specific citation to the provision or provisions that contravene Federal law, and

(4) a specific citation to the provision or provisions of Federal law contravened.

45. Until discovery has been completed, the Department cannot formulate any contentions as to the validity under federal law of any agreement Applicant has entered into which on its face represented that it was undertaken pursuant to or in anticipation of state action. The Department will supplement this response in accord with the Atomic Energy Commission's Rules of Practice.

46.(a) State whether the Department contends that Applicant has ever entered into, proposed or agreed to an agreement or understanding to allocate wholesale customers or to allocate the right to serve wholesale customers on a territorial basis.

(b) If the answer to (a) is not "no," identify and describe each agreement or understanding or proposed agreement or understanding so allocating territory or customers.

(1) As to each allocation by formal agreement the response should include, but not be limited to:

(i) the name or title of the agreement and the date executed or, if not executed, the date proposed,

(ii) the other entity or entities entering into the agreement, or if not executed, contemplated as entering into the agreement, and

(iii) a specific citation to the provision or provisions allocating wholesale customers. In addition, the response should include, but not be limited to, as to any proposed formal agreement not executed by Applicant,

(aa) a statement indicating the entity originating the proposed agreement,

(bb) a description of each incident in which Applicant agreed to or otherwise supported the proposed agreement[17/] and

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17/ This description should include, but not be limited to, (1) the representative or representatives of Applicant involved, (2) the other entities involved, and (3) the specific actions taken by Applicant that constituted or demonstrated agreement or support, the method employed in each action and the date or dates of each action.

(cc) a specification of the sources of the information the Department relies upon in answering the questions in this subpart (1).

(2) As to any understanding or proposed understanding not recorded in a formal agreement and as to any proposal for an agreement for which no draft is presently available, the response should include, but not be limited to:

(i) the representative or representatives of Applicant involved in discussions relating to the allocation or proposed allocation,

(ii) the names of other entities involved in such discussions and their representatives,

(iii) a statement indicating the origin of the proposal to allocate customers or territory,

(iv) all specific actions by which Applicant participated in discussions relating to the allocation or proposed allocation, the method employed in each action and the date of each action,

(v) a listing of each action listed in response to (iv) in which Applicant agreed to or supported the allocation of territory or customers,

(vi) the precise words used in each

action listed in response to (v) in which Applicant agreed to the allocation of territory or customers or, if the Department does not rely on an account or accounts that records the words employed, the precise language of each account on which the Department does rely, and

(vii) a specification of the sources relied on by the Department in responding to the questions posed in each subpart of this interrogatory.

(c) Produce all documents relating to any actual or proposed agreement or understanding to allocate customers or territory identified in response to (b) and all documents relating to any transaction in which any actual or proposed allocation of customers or territory listed in response to (b) arose.

46. Until discovery has been completed the Department is unable to formulate any contention concerning territorial allocation agreements entered into by Applicant. The Department will supplement this response in accord with the Atomic Energy Commission's Rules of Practice.

48. In the Kauper speech (p. 4), it is stated that competition is preferable to regulation in allocating scarce resources "where sufficient firm rivalry necessary for competitive markets exists...."

(c) Identify each market or submarket as defined in response to question 1(d) in which any action, enactment, agreement or understanding listed in response to questions 43, 44, or 45 had an anticompetitive effect.

(d) State as to each market or submarket listed in response to (c) whether on the effective date of each action, enactment, agreement or understanding "sufficient firm rivalry necessary for competitive markets" existed or would have existed except for the action, enactment, agreement or understanding. A separate response for each market or submarket on each date should be provided.

48 (c) (d) Until the completion of our discovery, the Department is unable to evaluate the anticompetitive effects of the actions, agreements, and understandings in question.

68. The Department has contended that "the same kinds of transactions are carried out" through VACAR as were formerly conducted through CARVA. (Tr. 492)

(a) Identify and describe the kinds of transactions under each arrangement which the Department contends are the same.

68. (a) Forms of coordination are found both under the VACAR arrangements and the CARVA Pool Agreement with the CARVA arrangement tending more toward power pooling. They are significantly different in that the limited-term schedule of VACAR makes it an unattractive arrangement for small systems as compared with the arrangement for participation units under CARVA. A more definitive answer to this question cannot be given until discovery is completed. Not only must documents be examined, but witnesses must be deposed to see just how, in fact, the terms of these complex agreements have been implemented.

8. In the Oconee advice letter (p.2), the Department states "Duke now owns or controls substantially all the water powers [sic] in its area."

(e) Identify the hydroelectric facilities in the area now not owned or controlled by Applicant and define the standards the Department applied in determining that such hydroelectric facilities are not "substantial."

8(e) The Department currently knows of no hydroelectric facilities not owned or controlled by the Applicant in the area other than those facilities owned by Yadkin, Inc. We believe the Yadkin facilities have no surplus power available for central station service.

Schedule A

With regard to the answers to the following interrogatories, the Justice Department has indicated that a response will be provided upon completion of the Department's analysis of material currently in its possession:

14, 24, 26(b)(1), 28, 38, 55(e), 67, 68(b) 71(b), 82(a)(c)(d)(e) "supplemental" interrogatory and supplemental responses 13, 16(f).

14.(a) Cite specifically each rate provision, including any rate schedule filed by Duke with the Federal Power Commission or any other regulatory commission, in effect at any time from January 1, 1965, to date which the Department claims had "the possible effect of perpetuating the market allocation effected" between Duke and its wholesale customers. (Oconee advice letter, p. 3).

(b) State how each such rate provision specified in (a) had the effect or the possible effect of allocating any market. The response should include, but not be limited to:

(1) the identification of each market as defined in response to question 1(d) which has been or may have been sc allocated;

(2) an identification as to each market identified in response to (1) of all electric entities other than Duke affected by such allocation; and

(3) a statement describing how the provision effects a market allocation.

(c) State whether the Department contends that Applicant intended to perpetuate a market allocation by imposing the rate provisions specified in response to (a);

(d) If the Department contends that Applicant intended to perpetuate a market allocation by imposing such rates, identify the specific sources of information upon which the Department relies in making this contention.

14. The Department is currently examining changes in Applicant's rate design which possibly had the effect of perpetuating the market allocation between Applicant and its wholesale customers. Dr. Herschel Jones, the Department's rate consultant, is presently examining Applicant's rate design.

26. On page 9 of the Reply of the Department of Justice to Applicant's Answer and Motion of July 24, 1972, the Department states "Applicant has refused and refuses to coordinate its nuclear generation expansion program with its neighboring competitor utilities on non-discriminatory terms."

(b) Identify and describe each instance in which Applicant has refused or refuses to coordinate its nuclear generation expansion plans with its neighboring competitor utilities on nondiscriminatory terms. The response should include, but not be limited to:

(1) the other utility or utilities involved,

26(b) (1) Applicant refused to coordinate with the South Carolina Public Service Authority (Santee-Cooper) unless that utility agreed to territorial limitations on its service area so as not to compete at retail or wholesale with the Applicant. Details of these transactions are now being compiled as the Department examines the nearly 100,000 documents produced by the Applicant in this proceeding and makes further specific inquiry. Part of the Department's inquiry hereto has been blocked thus far by Applicant's refusal to supply materials it contends are protected from scrutiny under the Noerr-Pennington doctrine.

28.(a) State whether the Department will contend that Applicant has refused to wheel power for any other electric entity.

(b) If the response to (a) is not "no," identify and describe each instance in which Applicant has refused to wheel power for any other electric utility. As to each instance, the reply should include but not be limited to:

(1) the other entity or entities involved;

(2) the specific wheeling transaction sought;

(3) the representative or representatives of Applicant involved;

(4) the specific action or actions by which wheeling was sought, the method employed in each action and the date of each action;

(5) the specific action or actions by which Applicant refused to wheel, the method employed in each action and the date of each action; and

(6) the sources upon which the Department relies in describing the instance.

28. The Department presently believes and proposes to show that Applicant has refused to wheel power for EPIC, Inc., and Yankee-Dixie, Inc. Details of these refusals to deal are now being compiled as the Department examines the nearly 100,000 documents produced by Applicant in this proceeding.

38. The Department has indicated that it will contend that Applicant has imposed a "price squeeze" or "rate squeeze" on its wholesale customers who compete with it for industrial loads.[15/]

(a) State whether the Department will contend that Applicant has imposed such a "price squeeze."

(b) If the answer to (a) is not "no,"

(1) state the date on which the squeeze first arose;

(2) identify each wholesale and retail industrial rate schedule in effect at any time since the date indicated in response to (1) which establishes rates which create or contribute to the squeeze;

(3) as to each rate identified in response

15/ Reply Brief of the Department of Justice on Relationship Between AEC's Proceeding ... and FPC's Proceeding ..., dated February 26, 1973, pp. 3-12.

to 38(b)(2), specify whether the said rate creates the squeeze, contributes to the squeeze, or evidences an intent to create a squeeze; and

(4) as to each rate identified in response to question 38(b)(2), state:

(i) whether the Department contends that Applicant deliberately set such rate in order to create a squeeze, and

(ii) whether the Department contends that such rate is not justified by the principles of cost of service utility rate making, stating where the Department does so contend, the basis for this claim.

(c) For each rate identified in response to question 38(b)(2) and for each of the 58 independent distribution systems identified in response to question 4:

(1) describe specifically the load characteristics (including billing demand, load factor and any other assumption used) of the smallest new industrial customer from which the system would be unable to obtain revenues sufficient to recover the cost of power;

(2) describe the formula or methodology by which the answer to 38(c)(1) was determined;

(3) state whether the formula or methodology described in response to 38(c)(2) would be used consistently for any size load in determining whether revenues would exceed the cost of power;

(4) if the response to 38(c)(3) is not "yes", describe any changes in the formula or methodology for varying load sizes, and state the load size or sizes to which each variation applies.

(d) Describe and define the standards by which one can determine that margin over and above the cost of power which is sufficient to recover all properly allocable costs of serving a customer.

(e) Identify and describe all instances known to the Department in which a wholesale customer of Applicant has declined to serve a potential industrial customer or has been unable to serve an industrial customer because of an insufficient margin between the rate it could obtain and the cost of electricity obtained from Applicant. As to each instance:

(1) name the wholesale customer unable or unwilling to serve and the potential industrial customer involved,

(2) state the date on which service was sought by or first discussed with the potential industrial customer,

(3) describe the anticipated maximum demand and load factor of the potential industrial customer,

(4) list each factor known to the Department to have been considered by either the wholesale customer or the potential industrial customer in determining who the retail supplier should be,

(5) identify the sources of the Department's information relied upon in describing each instance, and

(6) produce all documents pertaining to each instance.

38. The Department is presently conducting an extensive study to determine if such a price squeeze exists. An answer to the question will have to await completion of that study which is being conducted by Dr. Herschel Jones of the engineering consulting firm of Cornell, Howland, Hayes & Merryfield (Bellevue, Washington).

68. The Department has contended that "the same kinds of transactions are carried out" through VACAR as were formerly conducted through CARVA. (Tr. 492)

(b) Identify and describe each factor considered in determining that the transactions carried out through VACAR are the same kind of transactions formerly conducted through CARVA. In this connection, discuss separately the apparent differences between the two arrangements regarding:

(1) membership or participation,

(2) joint planning and coordinated development,

(3) charges for energy and accounting formulas,

(4) required reserves,

(5) procedure in the event of power shortage, and

(6) decision-making procedures and requirements.

68(b) The reasons asserted by Applicant are discussed in the deposition, taken by the Department, of Applicant's Vice President for Systems Planning, Franz W. Beyer. The Department must await the completion of its examination of the discovery documents before formulating its position regarding the role which these asserted reasons played in the decision.

55. On page 10 of the Baker speech, an incident is described as an instance of actual competition in which "pressure from an alternative supplier had enabled municipal systems to secure lower prices and deliveries at higher voltages than had previously been possible."

(e) Identify and describe any instances in North Carolina or South Carolina in which pressure from an alternate supplier (including self-generation) has enabled municipal, cooperative or other public power systems to secure lower prices or deliveries at higher voltages than had previously been possible. As to each instance, the response should include, but not be limited to:

(1) the entity or entities receiving the new advantage,

(2) the date on which the benefit was first received,

(3) a statement describing the basis on which the Department contends the benefit had previously been withheld,

(4) a statement as to the basis on which the Department contends that pressure from the alternate supplier was responsible for the availability of the new advantage, and

(5) the sources from which the Department obtained the information it relies upon in describing the instance.

55 (e) Materials in the Duke discovery documents indicate that Applicant has been concerned with the possibility of cooperatives switching to self-generation and that in order to prevent the construction of such generation, Applicant may have priced power to these coops at below average cost. Applicant has also provided transmission services to the Southeastern Power Administration at a rate which did not provide a reasonable return on investment in order to prevent SEPA from building its own transmission. Details of these transactions are currently being compiled as the Department completes its examination of the Duke discovery documents. The response will be supplemented in accordance with the Atomic Energy Commission Rules of Practice.

71. In its Joint Petition for Leave to Intervene, dated September 29, 1971 ("Joint Petition"), Intervenors stated that "Duke, CP&L, SCE&G and VEPCO together monopolize the generation of electric power over a substantial geographic area in North Carolina, South Carolina and Virginia." (p. 4)

(a) Does the Department agree with this contention by Intervenors?

(b) If the response to (a) is not "no,"

(1) state whether the Department contends that these four utilities have entered into a conspiracy to monopolize electric generation;

(2) if the response to (1) is not "no," identify and describe each incident relied upon by the Department as constituting or evidencing a conspiracy or possible conspiracy to monopolize electric generation. As to each incident, the response should include, but not be limited to:

(i) the representative or representatives of each utility involved;

(ii) the specific action or actions evidencing an intent to monopolize, the method employed in each action and the date of each action;

(iii) as to each action listed in response to (ii), a quotation of the precise words used by the representatives of the various utilities that constitute or evidence a conspiracy to monopolize or, if the Department is relying

on an account or accounts not including a precise quotation, a quotation of the passage of each account purportedly describing the conspiratorial actions; and

(iv) the specific sources upon which the Department relies in describing the incident.

(3) If the answer to (1) is "no," define and describe each standard the Department uses in determining that the listed utilities "together monopolize" electric generation.

7/ (b) The Department is currently evaluating the evidence as to whether these four utilities, during the existence of the CARVA and thereafter, notwithstanding the dissolution of that pool, entered into a conspiracy to monopolize electric generation by resisting jointly all requests for coordination from prospective competitors.

82. In the Initial Statement, Intervenors stated "Duke has ... employed the substantial differentials already existing in its own internal costing to skim the cream of the retail market."

(a) Does the Department agree with this contention by Intervenors? Unless the response is "no":

(b) Describe and define what the Department contends is "the cream of the retail market." The response should include the type of customer which constitutes "the cream", the standards used in making that determination, and the period of time involved. Where those standards are quantifiable (e.g., load size, load factor, distance from existing facilities), they should be expressed in numeric terms.

(c) As to each type of customer identified in response to (b):

(1) identify those costs (as defined in the FPC System of Accounts) which the Department contends were not but should have been allocated to each such type of customer, and

(2) identify the customer class or type of customer to which those costs were allocated by Applicant.

(d) State whether the Department will contend that the Applicant intended to "skim the cream of the retail market."

(e) If the answer to (d) is not "no", describe each activity of Applicant that evidences an intent to "skim the cream of the retail market." As to each activity, the response should include:

82. (a) The Department may agree with the Intervenors that "Duke has employed the substantial differentials already existing in its own internal costing to skim the cream of the retail market." This is still under study.

(b) Large commercial and industrial loads are "the cream of the retail market" because per unit distribution costs are less. Prior to 1964, Applicant employed restrictions in its contracts with its wholesale customers on resales to large loads. Since 1964, Applicant has changed its rate design, and these changes may have produced the same effect.

(c) The Department currently has this matter under study.

(d) The Department may contend that Applicant intended to " skim the cream of the retail market." This is still under study.

(e) The Department currently has this matter under study.

13.(a) Identify the date and contracting parties of each contract in which the Department claims Duke Power Company and Southern Power Company allocated markets between themselves and their wholesale customers (Oconee advice letter, p. 3) and cite the specific provisions in each contract by which such allocation was effected.

(b) State as to each contract identified in response to (a), whether the Department contends that such contract is relevant in this proceeding and whether the Department intends to present evidence on or inquire into such contract.

(c) As to each contract which the Department contends is relevant and intends to present evidence on or into which it intends to make inquiry, state whether the Department contends that such contract has a continuing anticompetitive effect:

(1) if so, identify the market or markets as defined in response to question 1(d) in which that effect is felt, and as to each market, state what that anticompetitive effect is and how it can be detected or measured;

(2) if any anticompetitive effect no longer affects any pertinent market, state when such effect ceased, the market which had been affected, and the factors which resulted in the elimination of such effect.

(d) Identify and describe each instance in which Applicant specifically asserted such an allocation identified in response to (a) in any transaction with any other electric entity or actual or potential customer. The response should include, but not be limited to:

(1) the representative or representatives of Applicant involved;

(2) the other electric entities and actual or potential customers, and their respective representatives involved;

13. (a) The allocation of markets between Applicant and its wholesale customers was accomplished by contractual restrictions on end use and limitations on the size of retail customers that could be served. The discovery documents provided by Applicant indicate Applicant has compiled a list of each such limitation, and that list is more complete than any other information in our possession.

(b) These contracts are relevant as an illustration of the effects on retail distribution when a vertically integrated entity has a monopoly of the wholesale bulk power supply market.

(c) These contracts do not have a continuing anti-competitive effect because of Applicant's agreement with the FPC to terminate these contractual provisions.

(d) The Department currently knows of no such assertion.

Supplemental Response

13. The Department is currently examining documents provided on discovery by the Applicant for examples of market allocations effected through contractual restrictions on end use and limitations on the size of retail customers that could be served.

16(e) State whether any provision in Duke's wholesale rate schedules or contracts in effect at any time from January 1, 1960, to date, has discouraged any wholesale customer of Duke from installing or operating generating capacity.

(f) If the answer to (e) is not "no," identify each electric entity which has been so discouraged and as to each:

(1) describe the specific generation project or projects discouraged,

(2) state the date on which each project was first proposed,

(3) identify the provision in the rate schedule or contract which the Department claims had such a discouraging effect and state the facts relied on by the Department in contending that such provision discouraged each such project, including a description of each incident known to the Department in which the provision was cited as an impediment to any generation project, and

(4) state the specific sources of the information the Department relied upon in responding to this question.

Supplemental Response

16(f) The Department is currently examining documents provided by the Applicant for specific instances where Applicant's wholesale rate provisions discouraged the installation of new generation.

Schedule A

With regard to the answers to the following interrogatories, the Justice Department has indicated that a response will be provided upon completion of the Department's "investigation" of the relevant area:

16(c), 25(d), 30(d)(e)(f), 54 [contention not yet "determine"] 60(b)(c) [Department presently evaluating its position], and supplemental responses, 25(e)(f)(g)(h), 26 (b)(2), 41 (b)(5)(6) [Department has not "formulated its intentions" here].

16(c) State whether any wholesale customer of Duke has been discouraged from installing or operating generating capacity because of the ratcheted demand feature identified in subpart (a) of this interrogatory.

16 (c) Any wholesale customer which has considered a generation project has been discouraged from installing generating capacity because of the "ratcheted demand" provision. The Department is currently investigating the effect of this provision on potential entrants. It should be noted that when Duke evaluated the possibility of entry into generation by others, it never assumed that such systems would obtain standby reserve sharing arrangements with Duke. Rather Applicant assumed that a potential entrant would rely on its wholesale-for-resale rate schedule containing the ratchet demand feature.

25. Identify and describe each instance in which Applicant has used or attempted to use its "market power to grant or deny access to coordination." (Oconee advice letter, p. 2) The response should include, but not be limited to:

(d) as to each entity listed in response to (c), a description of the incident or incidents in which Applicant granted or denied access to coordination, including:

(1) the representative or representatives of Duke and of the other entity involved, and

(2) the specific action or actions by Duke which granted or denied access, the date or dates of each action and the method employed to take the action;

25 (d) On August 29, 1967, at a public hearing conducted by the Atomic Energy Commission Safety and Licensing Board in Wahalla, South Carolina, Mr. Jack Harris, City Attorney of Statesville, North Carolina, requested on behalf of Piedmont Electric Cities, Inc., a 4 percent undivide interest in Duke's Oconee units. Of course, implicit in such a proposal is a request for coordination necessary to insure the technical feasibility of the intended arrangements. This request was rejected three days later on September 1, 1967, by Carl Horn, then Vice President (Finance) and General Counsel of the Duke Power Company. Details of the

request and subsequent rejection can be found in the September 1, 1697, letter from Horn to Harris which is Exhibit 9 in the Exhibits to the Initial Prehearing Statement supplied to Applicant by the Intervenors. Details of oral requests for coordination made by EPIC, Inc., to the Duke Power Company are currently being investigated by the Department.

The City of Belhaven and other cities in North and South Carolina in the area served by wholesale by the Virginia Electric Power Co., sought admission to the CARVA Pool. The Duke Power Co pany, acting through the Executive Committee of CARVA Pool joined in denying Belhaven's request for coordination.

It is not surprising that requests for coordination have not been numerous given the Duke Power Company's well-known unwillingness to coordinate. See our answers to Questions 21 and 30. However, other requests for coordination may be uncovered as discovery progresses and the Applicant will be notified of these requests in accordance with the Department's duty to supplement as outlined in the Atomic Energy Commission's Rules of Procedure.

26. On page 9 of the Reply of the Department of Justice to Applicant's Answer and Motion of July 24, 1972, the Department states "Applicant has refused and refuses to coordinate its nuclear generation expansion program with its neighboring competitor utilities on non-discriminatory terms."

(b) Identify and describe each instance in which Applicant has refused or refuses to coordinate its nuclear generation expansion plans with its neighboring competitor utilities on nondiscriminatory terms. The response should include, but not be limited to:

(2) the facilities of Applicant potentially involved in the coordination arrangement,

26(b)(2) Details of oral requests for coordination made by EPIC, Inc., to the Applicant are currently being investigated by the Department.

30 (d) State whether, in the Department's view, Piedmont Electric Cities, its constituent members, or any other group or organization of municipals or cooperatives, ever proposed to Applicant that they be allowed to purchase unit power from any of Applicant's nuclear facilities.

(e) If the answer to (d) is not "no," identify the specific letter or letters or oral statement or statements or other communication that constituted such a request for unit power. Such identification shall include the author or spokesman making the request, and the group or organization involved, the representative(s) of Applicant to whom the request was made, the date on which the request was made, and the substance, in detail, of the request.

(f) If the answer to (d) is not "no," identify the specific letter or letters or oral statement or statements or other communication that, in the Department's view, constituted Applicant's response to the request. Such identification shall include the author or spokesman making the response, the date on which the response was made, the substance, in detail, of the response, and the person or entity to whom it was made.

30 (d) (e) (f) We have no knowledge of any request of Applicant for the purchase of unit power from any of its nuclear facilities. However, this matter is still under investigation. Supplementation of this request in accordance with Atomic Energy Commission Rules can be expected if further information is uncovered.

41. In the Joint Petition of . . . Municipalities . . . for Leave to Intervene, dated September 29, 1971, it is stated that "Nuclear energy ... offers when utilized on a large scale, a source of energy lower in cost than any now available to Duke." (p. 4)

(a) Does the Department agree with this contention by Intervenors?

(b) If the response to (a) is not "no," then:

(5) state what the Department contends is the present "cost of energy" from the Oconee plant and identify the source of the information used in defining that cost;

(6) state what the Department contends will be the "cost of energy" from the McGuire plant and identify the source of the information used in defining that cost;

41(b)(5)(6) The Department has not formulated contentions with regard to the "cost of energy" from the Oconee and McGuire plants. We would expect to rely on current data supplied by Applicant in this regard.

54. In the Kauper speech, it is stated that the application of antitrust principles will lead to increased efficiency in the electric industry and, in particular, to savings in fuel. (p. 15)

(a) State whether those contentions will be made in this proceeding.

(b) If the answer to (a) is not "no," describe and define the standards used in projecting increased efficiency as a result of the application of antitrust principles in the electric industry.

(c) Apply those standards to each of the remedies proposed in this proceeding.

(d) Explain as to each proposed remedy how it will contribute to savings in fuel.

54. The Department has not yet determined whether these contentions will be made in this proceeding. However, the Department does believe that the application of antitrust principles will lead to a more efficient allocation of resources. The battery of remedies proposed in this proceeding will lead to increased efficiencies with access to the regional power exchange for all actual and potential suppliers of bulk power. All suppliers desiring control over their bulk power supply will be able to install larger scale units than they would otherwise use. Larger units are a more efficient source of energy for meeting new loads in that they have a better heat rate than small units. They are cheaper per kilowatt and thus more efficient in that they use less capital resources to achieve the same output.

60. The Department has stated (Tr. 14) "if the competitive advantage becomes so much greater because of the addition of nuclear power that it is a new kind of competitive advantage" then the addition of nuclear power plants may create a new situation inconsistent with the antitrust laws.

(b) State whether the Department contends that a new situation inconsistent with the antitrust laws is created by the erection of the Oconee units, and, if so, explain how a new situation is created through the application of the standards defined in response to (a)(2).

(c) State whether the Department contends that a new situation inconsistent with the antitrust laws is created by the erection of the McGuire units, and, if so, explain how a new situation is created by application of the standards defined in response to (a)(2).

25. Identify and describe each instance in which Applicant has used or attempted to use its "market power to grant or deny access to coordination." (Oconee advice letter, p. 2) The response should include, but not be limited to:

(e) a listing of any potential coordination relationship in "the same area" to which Applicant has the power to grant or deny access;

(f) for each potential coordination arrangement listed in response to (e), a listing of each electric entity to which Applicant has denied access;

(g) as to each entity listed in response to (f), a description of the incident or incidents in which Applicant denied access to coordination, including

(1) the representative or representatives of Duke and of the other entity involved, and

(2) the specific action or actions by Duke which denied access, the date or dates of each action and the method employed to take the action; and

(h) as to each section of this question, the specific sources of information relied upon by the Department in responding to that section of this question.

25(e)(f)(g)(h) Applicant could coordinate its facilities with the proposed facilities of EPIC, Inc. Details of oral requests for coordination made by EPIC, Inc., to the Applicant are currently being investigated by the Department.

Schedule A

With regard to the answers to the following interrogatories, the Justice Department has indicated that the Department possessed no relevant information "currently" (but might at a later time):

13, 25(c), 32, 37(c)(d) 58, 73

and supplemental responses:

8(e), 41(b) (7).

13.(a) Identify the date and contracting parties of each contract in which the Department claims Duke Power Company and Southern Power Company allocated markets between themselves and their wholesale customers (Oconee advice letter, p. 3) and cite the specific provisions in each contract by which such allocation was effected.

(b) State as to each contract identified in response to (a), whether the Department contends that such contract is relevant in this proceeding and whether the Department intends to present evidence on or inquire into such contract.

(c) As to each contract which the Department contends is relevant and intends to present evidence on or into which it intends to make inquiry, state whether the Department contends that such contract has a continuing anticompetitive effect:

(1) if so, identify the market or markets as defined in response to question 1(d) in which that effect is felt, and as to each market, state what that anticompetitive effect is and how it can be detected or measured;

(2) if any anticompetitive effect no longer affects any pertinent market, state when such effect ceased, the market which had been affected, and the factors which resulted in the elimination of such effect.

(d) Identify and describe each instance in which Applicant specifically asserted such an allocation identified in response to (a) in any transaction with any other electric entity or actual or potential customer. The response should include, but not be limited to:

(1) the representative or representatives of Applicant involved;

(2) the other electric entities and actual or potential customers, and their respective representatives involved;

(3) the specific geographic area, class of customers or individual application for service involved;

(4) the specific actions taken by Applicant that constitute the assertion of those allocations, the date or dates of each action and the method employed, and

(5) the specific sources from which the Department obtained the information upon which it relies in describing each instance.

13. (a) The allocation of markets between Applicant and its wholesale customers was accomplished by contractual restrictions on end use and limitations on the size of retail customers that could be served. The discovery documents provided by Applicant indicate Applicant has compiled a list of each such limitation, and that list is more complete than any other information in our possession.

(b) These contracts are relevant as an illustration of the effects on retail distribution when a vertically integrated entity has a monopoly of the wholesale bulk power supply market.

(c) These contracts do not have a continuing anti-competitive effect because of Applicant's agreement with the FPC to terminate these contractual provisions.

(d) The Department currently knows of no such assertion.

25. Identify and describe each instance in which Applicant has used or attempted to use its "market power to grant or deny access to coordination." (Oconee advice letter, p. 2) The response should include, but not be limited to:

(a) a definition of "market power";

(b) a listing of each existing or former coordination arrangement to which Applicant presently has or has had the power to grant or deny access;

(c) for each arrangement listed in response to (b) a listing of each entity to which Applicant has granted or denied access to the arrangement, indicating as to each whether access was granted or denied;

25 (c) Duke has continuously, at least from January 1, 1960, denied access to coordination to all potential entrants to the wholesale bulk power supply market in its service area. There are three exceptions to this statement that we are currently aware of:

(1) A coordination arrangement with the South Carolina Public Service Authority (Santee-Cooper) may have been entered into by Duke on the condition that Santee-Cooper restrict its market area.

(2) The Southeast Power Administration (SEPA) was granted access to limited coordination by Duke so as to prevent the construction of high-voltage transmission and thermal generation by SEPA if access were denied.

(3) Yadkin, Inc., has been granted coordination; but it has no "retail customers" and serves only Alcoa's industrial needs.

32.(a) State whether the Department contends that Applicant now is a party or has ever been a party to an interconnection or coordination agreement in which it agreed to joint ownership of any of its generating units with any other party, or in which it agreed to sell unit power to any other party.

(b) If the response to (a) is not "no," identify and describe each such interconnection or coordination agreement. The response as to each agreement should include, but not be limited to:

(1) the precise name or title of agreement and the parties thereto,

(2) the effective dates of the agreement,

(3) citation of the specific provision or provisions, if any, by which joint ownership is provided,

(4) the party or parties, if any, obtaining a joint ownership interest,

(5) citation of the specific provision or provisions, if any, by which the sale of unit power is agreed to, and

(6) the party or parties, if any, entitled to purchase unit power.

32. The Department currently has no knowledge as to whether Applicant now is a party or has ever been a party to an interconnection or coordination agreement in which it agreed to joint ownership of any of its generating units with any other party or in which it agreed to sell unit power to any other party other than its obligations under the CARVA agreement as detailed in executed Notices of Obligation. These would include agreement for sale of unit power from Oconee Nuclear Units 1 and 2.

37(c) Identify and describe each instance not described in response to questions 22(c), 36(a) or 37 in which, in the Department's view, Applicant has engaged in conduct constituting or evidencing a sham attempt to influence governmental action in whole or in part. As to each instance, the response should include but not be limited to:

(1) the subject matter of the governmental action,

(2) the representative or representatives of Applicant involved,

(3) other entities or persons associated with Applicant, if any, and

(4) the specific actions or representations constituting the purported sham, the method employed in each action or representation and the date or dates of each action or representation. As to each action or representation that it is contended constitutes or evidences a sham in whole or in part,

(i) state each element of the action or representation that constitutes or evidences a sham,

(ii) identify the source of the information the Department relies upon in contending that a sham was evidenced or perpetuated, and

(iii) produce all documents pertaining to that action or representation and to the factual basis for contending that it evidenced or constituted a sham.

37(d) Identify and describe each instance not described in response to questions 22(c), 36(d) or 37 in which, in the Department's view, Applicant has attempted to deny others access to the legislative or adjudicatory processes. As to each instance, the response should include but not be limited to:

(1) the subject matter of the legislative or adjudicatory process,

(2) the representative or representatives of Applicant involved,

(3) other entities or persons associated with Applicant, if any, and

(4) the specific actions or representations constituting the purported attempt, the method employed in each action or representation and the date or dates of each action or representation. As to each action or representation that it is contended constitutes or evidences an attempt to deny access to the legislative or adjudicatory process,

(i) state each element of the action or representation that constitutes or evidences such an attempt,

(ii) identify the source of the information the Department relies upon in contending

that such an attempt was evidenced or perpetuated, and

(iii) produce all documents pertaining to that action or representation and to the factual basis for contending that it evidenced or constituted such an attempt.

37 (c) The Department has no knowledge currently of conduct engaged in by Applicant which would constitute a sham attempt to influence governmental action.

(d) The Department has no knowledge currently of any attempt by Applicant to deny others access to the legislative or adjudicative processes.

58. In the Baker speech (p. 15), the Department states that long term, full requirements contracts in which the supplier is a monopolist or a near monopolist are "generally illegal."

(a) State whether the Department will contend that any contracts to which Applicant is a party or has been a party at any time during the period of January 1, 1960, to date are illegal, full requirement contracts.

(b) If the response to (a) is not "no," define and describe the standards used in determining when a wholesale electric supply contract or retail electric franchise is deemed "illegal."

(c) Identify any contracts entered into by Applicant that are "illegal" under those standards. The response should include the caption or title, date and parties of each contract.

58. The Department currently knows of no contracts to which Applicant is a party or has been a party at any time during the period of January, 1960, to the present which are illegal because they are full requirement contracts.

73.(a) Identify and describe in detail any information known to the Department as to any instances in which Applicant sought to affect the price of fuel for other operators of electric generation in North or South Carolina. Such description should specify the sources from which the Department obtained its information.

(b) Produce all documents pertaining to any instance identified in response to (a).

73. The Department has no current knowledge as to any instances in which Applicant sought to affect the price of fuel for other operators of electric generation in North or South Carolina.

8(e) The Department currently knows of no hydroelectric facilities not owned or controlled by the Applicant in the area other than those facilities owned by Yadkin, Inc. We believe the Yadkin facilities have no surplus power available for central station service.

8. In the Oconee advice letter (p.2), the Department states "Duke now owns or controls substantially all the water powers [sic] in its area."

(e) Identify the hydroelectric facilities in the area now not owned or controlled by Applicant and define the standards the Department applied in determining that such hydroelectric facilities are not "substantial."

41(b)(5)(6) The Department has not formulated contentions with regard to the "cost of energy" from the Oconee and McGuire plants. We would expect to rely on current data supplied by Applicant in this regard.

(7) The Department currently has no knowledge whether the "cost of energy" from future nuclear plants (1978-1984) will be lower than the "cost of energy" from the McGuire plant.

41. In the Joint Petition of . . . Municipalities . . . for Leave to Intervene, dated September 29, 1971, it is stated that "Nuclear energy ... offers when utilized on a large scale, a source of energy lower in cost than any now available to Duke." (p. 4)

(a) Does the Department agree with this contention by Intervenors?

(b) If the response to (a) is not "no," then:

(7) state whether the Department contends that the "cost of energy" from nuclear plants to be placed in service on the Applicant's system in the period from 1978 through 1984 will be lower than the "cost of energy" from the McGuire plant. State the basis for the Department's position in this regard; and

Schedule B

10. In the Oconee advice letter, the Department states:

> "Since Duke owns virtually all of the water power projects on economically attractive sites in its area, other electric entities seeking entry into bulk power supply cannot resort to hydro-electric production which can be economically developed as isolated projects not requiring interconnection with other generating sources." (p. 2)

(b) Define and describe the standards the Department used in evaluating what are "economically attractive sites." These standards should be stated in terms that will facilitate comparison to the standards used by the Army Corps of Engineers.[8/]

(1) State whether those standards correspond precisely to those used by the Army in evaluating the feasibility of hydroelectric projects;

(2) If the answer to (1) is not "yes," describe each variation between its standards and those of the Army and explain why the Department believes its standards to be more appropriate.

8/ See Federal Power Commission, Development of Water Resources in Appalachia, Appendix B (Power Supply and Requirements), June 1968.

10. (b) Economically attractive sites are those sites with sufficient water flow to be able to meet the base load and peaking requirements of a distribution system with a load factor of between 45 and 70 percent. The Army Corps of Engineers in preparing its cost-benefit analysis of hydroelectric sites assumes the use of public capital at a substantially reduced interest rate rather than private capital. The Corps also assumes that coordination with other systems on reasonable terms will be available. The Department's analysis does not make the latter assumption.

Supplemental Response

10(b)2. The Department believes that its standards are more appropriate than those used by the Army Corps of Engineers because coordination with other systems on reasonable terms is not always available to an entity constructing a hydroelectric site. The Army Corps of Engineers assumes such coordination is available.

13.(a) Identify the date and contracting parties of each contract in which the Department claims Duke Power Company and Southern Power Company allocated markets between themselves and their wholesale customers (Oconee advice letter, p. 3) and cite the specific provisions in each contract by which such allocation was effected.

(b) State as to each contract identified in response to (a), whether the Department contends that such contract is relevant in this proceeding and whether the Department intends to present evidence on or inquire into such contract.

(c) As to each contract which the Department contends is relevant and intends to present evidence on or into which it intends to make inquiry, state whether the Department contends that such contract has a continuing anticompetitive effect:

(1) if so, identify the market or markets as defined in response to question 1(d) in which that effect is felt, and as to each market, state what that anticompetitive effect is and how it can be detected or measured;

(2) if any anticompetitive effect no longer affects any pertinent market, state when such effect ceased, the market which had been affected, and the factors which resulted in the elimination of such effect.

(d) Identify and describe each instance in which Applicant specifically asserted such an allocation identified in response to (a) in any transaction with any other electric entity or actual or potential customer. The response should include, but not be limited to:

(1) the representative or representatives of Applicant involved;

(2) the other electric entities and actual or potential customers, and their respective representatives involved;

(3) the specific geographic area, class of customers or individual application for service involved;

(4) the specific actions taken by Applicant that constitute the assertion of those allocations, the date or dates of each action and the method employed, and

(5) the specific sources from which the Department obtained the information upon which it relies in describing each instance.

13. (a) The allocation of markets between Applicant and its wholesale customers was accomplished by contractual restrictions on end use and limitations on the size of retail customers that could be served. The discovery documents provided by Applicant indicate Applicant has compiled a list of each such limitation, and that list is more complete than any other information in our possession.

(b) These contracts are relevant as an illustration of the effects on retail distribution when a vertically integrated entity has a monopoly of the wholesale bulk power supply market.

(c) These contracts do not have a continuing anti-competitive effect because of Applicant's agreement with the FPC to terminate these contractual provisions.

(d) The Department currently knows of no such assertion.

20. The Department agrees with the Intervenors that "Duke has erected barriers to entry at the generation and transmission levels in an attempt to preserve its monopoly." The principal barrier to entry is the inability of a potential entrant to gain access to the regional power exchange in the area. A consequence of this denial of access is that all competing systems in the Duke service area had abandoned their generation function prior to January 1, 1960. With access to the regional power exchange, an entrant (1) can dispose of surplus energy, (2) can obtain needed supplies of deficiency power, and (3) can obtain needed transmission services. Applicant's policy decision to wheel and firm SEPA power insured the continuation of Duke's monopoly of transmission by foreclosing the construction of new publicly owned transmission facilities. Other barriers to entry may include (1) Applicant's wooing away of potential participants in EPIC, Inc., and (2) Applicant's ratcheted demand provision discussed in the Department's response to Question 16.

22.(a) Identify the "[e]vidence" available to the Department which "tends to indicate that on occasion Duke has bluntly warned North Carolina municipal electric systems that the efforts and funds that the latter could expend in seeking relief before regulatory agencies would be overwhelmed by Duke's resources and resistance." (Oconee advice letter, p. 4) As to each piece of "evidence" available:

(1) state whether it is contained in a document or whether it was conveyed orally;

(2) if the statement was contained in a document, furnish the document;

(3) if the statement was made orally, identify by whom it was made, to whom it was made, and when it was made.

(b) Identify and describe each incident constituting an "occasion" on which Duke has purportedly so warned North Carolina municipal electric systems. As to each incident, the response should include, but not be limited to:

(1) the representative or representatives of Applicant involved,

(2) the municipality or municipalities involved and the specific representatives of each municipality involved,.

(3) the subject matter regarding which the warning was purportedly given,

(4) the specific actions of Applicant constituting the warning and the date or dates of such actions,

(5) the precise words purportedly used by the representative or representatives or, if the Department does not rely on a purported

precise quotation, the exact language of each account of each incident the Department relies upon, and

(6) the specific sources from which the Department obtained the information upon which it relies in describing the incident.

(c) Identify and describe each instance of litigation or other attempt to influence regulatory action which, in the Department's view, carries out any warning given to a municipal customer by Applicant identified in reponse to (b). Such description should include:

(1) the specific incident or incidents described in response to (b) at which the threat carried out through the litigation or other action was made,

(2) a citation to the litigation or other action,

(3) a statement as to whether the litigation or other action was a sham in the Department's view, and

(4) a statement as to whether the litigation or other action was an attempt by Applicant to deny access to others to the legislative or adjudicatory process.

(d) Produce all documents relating to the "evidence" and incidents described in response to this interrogatory.

22. (a) (b). The joint affidavit of L. C. Williams, Robert Van Sleen and Robert T. Beck dated July 28, 1971, describing a meeting called by the Duke Power Company in Charlotte, North Carolina, on June 22, 1967, is evidence which indicates Duke representatives have "bluntly warned North Carolina municipal electric systems that the efforts and funds that the latter could expend in seeking relief before regulatory agencies would be overwhelmed by Duke's resources and resistence." As of July 28, 1971, Mr. Williams was Director of Utilities for the City of High Point, North Carolina, Mr. Van Sleen was Director of Utilities for the City of Shelby, North Carolina, and Mr. Beck was Electric Superintendent of the City of Lexington, North Carolina. The affidavit states in part:

> Such meeting was held on June 22, 1967, and a large number of municipal officials were in attendance, including the undersigned [Williams, Van Sleen, and Beck] and Dr. Hubert Plaster, Mayor of Shelby, Mr. Phil Horton, III, City Manager of Shelby, Hon. Robert Davis, Mayor of High Point, Knox Walker, Esq., City Attorney of High Point, Fred Swartzburg, City Councilman of High Point, Hon. J. Garner Bagnal, Mayor of Statesville, Hon. Eric Morgan, Mayor of Lexington. Many field representatives of Duke Power Company were present along with officials of the company, including Mr. Carl Horn, Jr., then Vice President and General Counsel (now President of the company), Glen A. Coan, Vice President, Rates, Douglas W. Booth, then Vice President in charge of Marketing, (now Senior Vice President in charge of Retail Operations), E. R. Davis, and William H. Grigg, then Assistant General Counsel (now Vice President and General Counsel). Messrs. Horn, Booth and Coan addressed the meeting.

25. (a) "Market power" is an economic term used to express the ability of a particular firm in a supply or demand market to control price, output, and entry. Firms with a large degree of market power in supply markets are said to have monopoly power. Those in demand markets are said to have monopsony power. Duke derives its extensive "market power" from its monopoly of bulk power supply facilities and high-voltage transmission. With this market power Duke has the ability to prevent other electric utilities from enjoying the efficiencies of large scale units--in the past Duke has utilized its monopsony power through control over transmission to control water power.

(b) (1) The Duke Power Company itself resembles a coordinating arrangement through integrated ownership of bulk power supply facilities. Through acquisition and merger, Duke has foreclosed smaller electric entities in its service area from opportunities to bargain for coordinating arrangements with the smaller systems which have been absorbed into the present Duke Power Company.

(2) The CARVA Pool.

(3) The VACAR arrangements.

(4) Miscellaneous coordinating arrangements with adjacent companies in contracts listed by Applicant in response to Question No. 12 of the Attorney General.

(5) Other coordinating arrangements may be uncovered by the Department as discovery progresses.

(c) Duke has continuously, at least from January 1, 1960, denied access to coordination to all potential entrants to the wholesale bulk power supply market in its service area. There are three exceptions to this statement that we are currently aware of:

(1) A coordination arrangement with the South Carolina Public Service Authority (Santee-Cooper) may have been entered into by Duke on the condition that Santee-Cooper restrict its market area.

(2) The Southeast Power Administration (SEPA) was granted access to limited coordination by Duke so as to prevent the construction of high-voltage transmission and thermal generation by SEPA if access were denied.

(3) Yadkin, Inc., has been granted coordination; but it has no "retail customers" and serves only Alcoa's industrial needs.

(d) On August 29, 1967, at a public hearing conducted by the Atomic Energy Commission Safety and Licensing Board in Wahalla, South Carolina, Mr. Jack Harris, City Attorney of Statesville, North Carolina, requested on behalf of Piedmont Electric Cities, Inc., a 4 percent undivided interest in Duke's Oconee units. Of course, implicit in such a proposal is a request for coordination necessary to insure the technical feasibility of the intended arrangements. This request was rejected three days later on September 1, 1967, by Carl Horn, then Vice President (Finance) and General Counsel of the Duke Power Company. Details of the

request and subsequent rejection can be found in the September 1, 1697, letter from Horn to Harris which is Exhibit 9 in the Exhibits to the Initial Prehearing Statement supplied to Applicant by the Intervenors. Details of oral requests for coordination made by EPIC, Inc., to the Duke Power Company are currently being investigated by the Department.

The City of Belhaven and other cities in North and South Carolina in the area served by wholesale by the Virginia Electric Power Co., sought admission to the CARVA Pool. The Duke Power Company, acting through the Executive Committee of CARVA Pool joined in denying Belhaven's request for coordination.

It is not surprising that requests for coordination have not been numerous given the Duke Power Company's well-known unwillingness to coordinate. See our answers to Questions 21 and 30. However, other requests for coordination may be uncovered as discovery progresses and the Applicant will be notified of these requests in accordance with the Department's duty to supplement as outlined in the Atomic Energy Commission's Rules of Procedure.

Supplemental Response

25(e)(f)(g)(h) Applicant could coordinate its facilities with the proposed facilities of EPIC, Inc. Details of oral requests for coordination made by EPIC, Inc., to the Applicant are currently being investigated by the Department.

27.(a) State whether the Department will contend that Applicant has ever refused to interconnect with any other electric entity.

(b) If the response to (a) is not "no," identify and describe each instance in which Applicant has refused to interconnect with any other electric utility. As to each instance the reply should include but not be limited to:

(1) the other entity or entities involved;

(2) the specific types of interconnection transactions or arrangements sought;

(3) the representative or representatives of Applicant involved;

(4) the specific action or actions by which interconnection was sought, the date of each action and the method employed in each action;

(5) the specific action or actions by which Applicant refused to interconnect, the method employed in each action and the date of each action; and

(6) the sources upon which the Department relies in describing the instance.

27. We know of no instance where Duke has refused to interconnect for purposes of selling bulk power at wholesale.

47. In its "Answer ... to Applicant's Motion to Amend Prehearing Order Number Two," dated July 30, 1973, the Department stated that "Applicant's prolific efforts [regarding acquisition of other systems] are admitted" and "Applicant [has engaged in] a concerted program to acquire competing electric distribution systems in its area." (p. 3).

(a) List each acquisition or attempted acquisition of an electric distribution system or a substantial part thereof that the Department contends is relevant to this proceeding and on which the Department intends to rely. As to each partial acquisition, the response should indicate the date of each acquisition. As to attempted acquisitions, the response should include:

(1) the facilities involved,

(2) the date on which acquisition was attempted,

(3) the specific document by which the attempt was made or, if no such document is known to the Department, the factual basis on which it was concluded that an attempt was made, and

(4) the date on which the attempt was rejected or, if not expressly rejected, lapsed and the specific document, if any, by which the attempt was rejected.

(b) As to each acquisition or attempted acquisition listed in response to (a), state whether Applicant engaged in any predatory or unfair practices in acquiring or attempting to acquire the system or facilities.

(c) As to each acquisition or attempted acquisition

for which the response to (b) is not "no," identify and describe each incident that demonstrates that Applicant engaged in predatory or unfair practices. As to each incident, the response should include, but not be limited to:

(1) the representative or representatives of Applicant and any other entity involved;

(2) the specific action or actions constituting or evidencing predatory or unfair practices, the method employed in each action and the date of each action; and

(3) the specific sources on which the Department relies on in describing the incident.

(d) As to each acquisition or attempted acquisition listed in response to (a), state whether Applicant's actions had an anticompetitive or monopolistic intent.

(e) As to any acquisition or attempted acquisition for which the response to (d) is not "no," identify and describe each factor considered in determining that Applicant had an anticompetitive or monopolistic intent. To the extent that those factors include instances of conduct by Applicant, the description of the factor should include, but not be limited to:

for which the response to (b) is not "no," identify and describe each incident that demonstrates that Applicant engaged in predatory or unfair practices. As to each incident, the response should include, but not be limited to:

(1) the representative or representatives of Applicant and any other entity involved;

(2) the specific action or actions constituting or evidencing predatory or unfair practices, the method employed in each action and the date of each action; and

(3) the specific sources on which the Department relies on in describing the incident.

(d) As to each acquisition or attempted acquisition listed in response to (a), state whether Applicant's actions had an anticompetitive or monopolistic intent.

(e) As to any acquisition or attempted acquisition for which the response to (d) is not "no," identify and describe each factor considered in determining that Applicant had an anticompetitive or monopolistic intent. To the extent that those factors include instances of conduct by Applicant, the description of the factor should include, but not be limited to:

(1) the representative or representatives of Applicant and any other entity involved,

(2) the specific action or actions evidencing an anticompetitive or monopolistic intent, the method employed in each action and the date of each action,

(3) as to each action listed in response to (2), a quotation of the precise words used by Applicant that evidences an anticompetitive intent, or in the event the account or accounts upon which the Department relies in describing the conduct does not include the precise words used, a quotation of the portion of the account or accounts relied upon as evidencing an anticompetitive or monopolistic intent, and

(4) the sources upon which the Department relies in describing the conduct.

(f) Provide all documents, not obtained from Applicant in response to the Joint Document Request, relating to Applicant's acquisition or attempted acquisition of any electric distribution system or a substantial portion thereof.

47. (a) The following acquisitions or attempted acquisitions of electric distribution systems are relevant to this proceeding:

(1) The attempt to acquire the Nantahala Power & Light Company--offer made January 31, 1959; offer expired after 1960.

(2) Pisgah Mountain Electric Company, acquired on July 17, 1964.

(3) Belton Light and Power Company, acquired on November 13, 1963.

(4) Town of Ninety-six, acquired on October 1, 1969.

(5) Kersha Power and Light Company, acquired August 17, 1970.

(6) City of Greenville and County of Greenville (formerly Donnellson Air Force Base), acquired May 11, 1964.

(7) Greenwood County, acquired July 1, 1966.

(8) Clemson Agricultrual College of South Carolina, acquired December 15, 1964.

(9) The Electric Company, Incorporated, of Fort Mill, South Carolina, acquired September 21, 1972.

(10) Applicant offered to buy the Laurens Electric Cooperative, Inc., Broad River Electric Cooperative, Inc., Newberry Electric Cooperative, Little River Electric Cooperative, Blue Ridge and York Electric Coop on August 20, 1963.

(11) Applicant has offered to buy the South Carolina Public Service Authority power complex in July, 1964.

(12) Duke Discovery Document 75460 indicates Duke's intention to purchase all 116 foreign systems in its area. This document is dated June 27, 1960, and is a memo from Henry L. Cranford to Mr. P. D. Huff.

(13) Other attempts to acquire competing retail distribution systems and bulk power suppliers may be uncovered as discovery progresses.

The trend of concentration of ownership recited above shows how a monopoly of the bulk power supply can lead to a monopoly at the retail distribution level.

(b) Applicant has engaged in several kinds of predatory or unfair practices in acquiring the above systems:

(1) A policy to refrain from coordination with existing or potential bulk power suppliers.

(2) The construction of preemptive lines against coops even though in areas where no current loads served by Duke existed.

(3) A possible price squeeze in Duke's wholesale rate schedule which may have insured that competing systems would not be able to serve large industrial customers. See response to Question 38.

(4) Applicant's policy of determining new distribution delivery points for sales to REA cooperatives and ownership of transmission for such delivery points.

51. In the Oconee advice letter (p. 3), the Department states that Applicant's position regarding the relevance of the financing and tax advantages available to other actual or potential generation and transmission systems in the Carolinas is "somewhat conflicting" with Applicant's stated position regarding interconnection with those systems (such as EPIC).

(a) State whether the Department is contending that Applicant's stated position regarding interconnection with other systems is a false statement of its actual policy.

(b) State whether the Department contends that Applicant's stated position regarding interconnection is deceptive.

(c) If the answer to (b) is not "no," identify and describe each element of Applicant's position that is deceptive and every element of its actual position whose exclusion from its stated position is deceptive.

(d) Unless the response to both (a) and (b) is "no," specify the sources of the information the Department relies upon in contending that Applicant's position is false or deceptive and produce all documents used by the Department in responding to (a), (b) and (c).

(e) Define and describe the standards used by the Department in concluding that Applicant's positions are "somewhat conflicting" and describe the application of each standard.

19/ Id. at p. 14.

5/ (d) Examples of Applicant's refusal to coordinate have been recited at length in our answer to Question 34.

55 (e) Identify and describe any instances in North Carolina or South Carolina in which pressure from an alternate supplier (including self-generation) has enabled municipal, cooperative or other public power systems to secure lower prices or deliveries at higher voltages than had previously been possible. As to each instance, the response should include, but not be limited to:

(1) the entity or entities receiving the new advantage,

(2) the date on which the benefit was first received,

(3) a statement describing the basis on which the Department contends the benefit had previously been withheld,

(4) a statement as to the basis on which the Department contends that pressure from the alternate supplier was responsible for the availability of the new advantage, and

(5) the sources from which the Department obtained the information it relies upon in describing the instance.

55(e) Materials in the Duke discovery documents indicate that Applicant has been concerned with the possibility of cooperatives switching to self-generation and that in order to prevent the construction of such generation, Applicant may have priced power to these coops at below average cost. Applicant has also provided transmission services to the Southeastern Power Administration at a rate which did not provide a reasonable return on investment in order to prevent SEPA from building its own transmission. Details of these transactions are currently being compiled as the Department completes its examination of the Duke discovery documents. The response will be supplemented in accordance with the Atomic Energy Commission Rules of Practice.

56. On page 12 of the Baker speech certain "general principles" are set forth. Among these are "Those who control a dominant power pool or generation facility cannot refuse equal access to all systems."

(a) State whether the Department will seek to apply that "general principle" in this proceeding.

(d) If the answer to (a) is not "no," define and describe the standards used in determining what is "equal access." In addition to the general description here sought, state specifically:

(1) whether "equal access" can be provided if a membership standard is imposed in a power pool requiring a participating utility to have available generating capacity of potential benefit to other pool members; if not, why not; and

(2) whether equal access to a dominant generating facility or power pool can be provided through a fair wholesale rate; if not, why not.

56 (d) Equal access means access on terms available to utilities who bargain from positions of nearly equal strength. Equal access cannot be provided if a membership standard is imposed in a power pool requiring a participating utility to have available generating capacity of mutual benefit to other members in equal amounts where the systems are vastly different in size. A fair wholesale rate will also not provide equal access because a generating entity will generally need access to coordinating arrangements, not firm power.

59. In the Baker speech (p. 21) it is stated in a discussion of the scope of §105c of the Atomic Energy Act that "interconnection of units and coordinated development is necessary to achieve economies of scale, and this applies regardless of whether the interconnected units are the Applicant's own or any other entities with which it is (or might be) interconnected."

(a) State whether the Department contends that interconnection with other entities will be necessary in utilizing the Oconee and McGuire units.

(b) If the response to (a) is not "no,"

(1) define and describe the standards applied in determining that inter-entity interconnection will be necessary in utilizing the Oconee and McGuire units, and

(2) describe each element of the factual basis on which it is concluded that inter-entity interconnection is necessary in utilizing the Oconee and McGuire units, and

(3) state the sources of the data used in responding to (2) including, where applicable, citations by title, author, date and production number of relevant documents obtained from Applicant in response to the Joint Document Request.

(c) State whether the Department contends in this proceeding that the term "activities under the license" includes activities of other utilities that are interconnected with Duke.

(d) If the answer to (c) is not "no," name each other electric utility whose activities the Department contends are pertinent to determining whether "activities under the license will create or maintain a situation inconsistent with the antitrust laws."

(e) If the answer to (c) is not "no," identify and describe each activity that is pertinent.

(f) As to each activity listed in response to (e):

(1) identify each market or submarket as defined in response to 1(d) to which it is pertinent,

(2) state the time period (including any prospective time period) during which it occurred and/or will occur, and

(3) describe each factor considered in determining that it is pertinent to this proceeding.

59. (a) (b) The Department has conducted no studies as to the necessity for interconnecting the Oconee and McGuire units with other entities. Applicant's own system, developed through acquisition and merger as well as internal expansion, may be sufficiently large to sustain these units without interconnection. However, as late as 1969, Applicant's representatives were claiming that one of the advantages of CARVA Pool was that it made possible the installation of larger size units. Whether Applicant, in the absence of the CARVA Pool or other strong interconnection would have decided to build the units is uncertain. It seems likely that having a certain market for the surplus power from those units made Applicant's projections of the cost of future bulk power supply more dependable and thus improved its competitive position.

(c) (d) (e) (f) The Department does not contend that "activities under the license" include the activities of other utilities interconnected with Applicant.

59. (a) (b) The Department has conducted no studies as to the necessity for interconnecting the Oconee and McGuire units with other entities. Applicant's own system, developed through acquisition and merger as well as internal expansion, may be sufficiently large to sustain these units without interconnection. However, as late as 1969, Applicant's representatives were claiming that one of the advantages of CARVA Pool was that it made possible the installation of larger size units. Whether Applicant, in the absence of the CARVA Pool or other strong interconnection would have decided to build the units is uncertain. It seems likely that having a certain market for the surplus power from those units made Applicant's projections of the cost of future bulk power supply more dependable and thus improved its competitive position.

(c) (d) (e) (f) The Department does not contend that "activities under the license" include the activities of other utilities interconnected with Applicant.

60. The Department has stated (Tr. 14) "if the competitive advantage becomes so much greater because of the addition of nuclear power that it is a new kind of competitive advantage" then the addition of nuclear power plants may create a new situation inconsistent with the antitrust laws.

(d) If the Department states that the Oconee and/or the McGuire units create a new situation, state the significance for this proceeding of the creation of a new situation inconsistent with the antitrust laws rather than the maintenance of an existing situation.

60 (d) Applicant may have made rate concessions to its wholesale customers to prevent their self-generation. With the addition of nuclear power and the present supply and the recent change in interest rate for REA cooperatives, market in oil,/these concessions may no longer be necessary.

66.(a) Define the terms "regional power exchange" and "sub pool" as used in the Transcript at page 492.

(b) Describe and define the standards used to determine whether a utility is a "regional power exchange" or a "sub pool."

66. (a) A power exchange is a market where various kinds of coordinating power and energy and transmission services are bought and sold. A sub-pool is one portion of a power exchange; it might be considered a small power exchange.

(b) Geographic scope is the principal standard used to differentiate a power exchange from a sub-pool.

69.(a) State whether EPIC as presently planned will be "a regional power exchange market" or a "regional power exchange," as defined in response to question 66(a).

(b) Describe "Yankee-Dixie." Such description should state the date and circumstances of commencement of activities by this project, list all participants and the dates of their participation as set forth in the plans and actual operations of the project, explain the legal and technical relationship between participants, and state specifically the sources of the Department's information.

69. (a) EPIC, Inc., might be a regional power exchange market.

(b) A description of Yankee-Dixie, Inc., can be found in the documents supplied to the Department by the Applicant.

74.(a) Describe each activity engaged in by Applicant on the basis of which the Department alleges or will allege that a situation inconsistent with the antitrust laws has been created or maintained. The response should include, but not be limited to:

(1) the time period in which Applicant engaged in such activity,

(2) the nature of the activity,

(3) the basis for its being deemed "inconsistent with the policies of the antitrust laws,"

(4) the statute or policy with which it is alleged to be inconsistent.

(b) As to each activity specified in response to (a), state whether the Department claims or will claim that the granting of the licenses applied for herein will maintain a situation inconsistent with the antitrust laws.

(c) As to each activity identified in response to (a), state whether the Department contends that Applicant deliberately sought to create "a situation inconsistent with the policies of the antitrust laws."

(d) As to each activity listed in response to (a), to which the response to (c) was not "no," identify and describe each incident or instance of conduct upon which the Department relies in contending that Applicant deliberately sought to create such a situation. As to each incident or instance of conduct, the response should include but not be limited to:

(1) the representative or representatives of Applicant involved,

(2) other persons or entities involved,

(3) the specific subject matter of the incident or instance,

(4) the specific action or actions of Applicant demonstrating this intent, the method by which the action was taken and the date or dates on which taken,

(5) a statement as to each action describing how the action demonstrates the intent, and

(6) the sources of the information on which the Department relies in describing the incident or instance.

74. The Department contends that the activities under the Oconee and McGuire licenses will maintain--i.e., continue, carry on, support, sustain, uphold, keep up--and indeed exacerbate an anticompetitive situation.

The activities necessarily include the integration of 5000 megawatts of nuclear power into Applicant's system for marketing in the area of the Piedmont Carolinas where Applicant is located. That 5000 megawatts of nuclear power--supported by the tying of Applicant's system into the regional power exchange--will be the cheapest available power to serve new and growing loads in 1977. Such a 5000 megawatt generation addition is hardly insignificant--33 percent of Applicant's total generation capacity when installed, and an even greater percentage of its baseload capacity (i.e., generating units projected to operate nearly full time). Installation of the already-applied-for Catawba units in 1979 and 1980 will increase the percentage of Applicant's generating capacity represented by nuclear units to 41 percent, and still further installations of large-scale nuclear generation are anticipated after Catawba.

The low-cost, large-unit, baseload nuclear power to be supplied by the Oconee and McGuire units will strengthen and expand Applicant's system and the regional power exchange of which it is a part. This strengthening and expansion will increase Applicant's future ability to install and obtain low-cost power from large units. Yet, concurrent with Applicant's action of installing and planning to operate the Oconee and McGuire units to strengthen and expand its system and the regional exchange and support its installation of the Catawba units and further large generating units, the Applicant continues to refuse reasonable access to the regional power exchange by its potential competitors in the wholesale-for-resale firm-power market. It thus forecloses them from applying for licenses to install their own large, low-cost, baseload nuclear generation--and from obtaining the benefits of the nuclear technology developed by the Federal government--and it denies them the low-cost power they will need to compete with Applicant's Oconee and McGuire power in supplying the rapidly growing electric requirements of the Piedmont Carolinas and to support their own subsequent competitive installations of large generating units. Construction and operation of the Oconee and McGuire units and marketing of the power from those units through integration into Applicant's system and the regional power exchange demonstrably furthers Applicant's monopolization of the wholesale-for-resale firm-power market--thus maintaining and exacerbating a situation clearly inconsistent with the antitrust laws.

74.(a) Describe each activity engaged in by Applicant on the basis of which the Department alleges or will allege that a situation inconsistent with the antitrust laws has been created or maintained. The response should include, but not be limited to:

(1) the time period in which Applicant engaged in such activity,

(2) the nature of the activity,

(3) the basis for its being deemed "inconsistent with the policies of the antitrust laws,"

(4) the statute or policy with which it is alleged to be inconsistent.

(b) As to each activity specified in response to (a), state whether the Department claims or will claim that the granting of the licenses applied for herein will maintain a situation inconsistent with the antitrust laws.

(c) As to each activity identified in response to (a), state whether the Department contends that Applicant deliberately sought to create "a situation inconsistent with the policies of the antitrust laws."

(d) As to each activity listed in response to (a), to which the response to (c) was not "no," identify and describe each incident or instance of conduct upon which the Department relies in contending that Applicant deliberately sought to create such a situation. As to each incident or instance of conduct, the response should include but not be limited to:

Schedule C

11. Provide all documents referring to or relating to each of the contracts, rate schedule provisions or rates identified in response to questions 8, 9 or 10, or to any generating facility identified in response to questions 9(e) and 10(b).

11. Intervenors are constrained to object to this item unless some reasonable limitation of its breadth can be imposed. The responses to Items 8 - 10 necessarily include reference to all of Applicant's wholesale and retail industrial and large general service rates over the past 14 years. "All documents referring to or relating to" each of these would constitute a massive quantity of material, much of it unrelated to the more or less specific issues raised in Items 8, 9, and 10. So far as the documents we have referred to specifically are concerned, many of them are contained in Applicant's document production and are so cited. The others are Applicant's own rate schedules and wholesale power contracts, which are presumably still in its possession. Copies of cited parts of the motion in FPC Docket No. E-7720, referred to in the response to Item 8(b), will be furnished, if required, although as stated above this document should be in Applicant's possession. Otherwise, the Item is objected to as unreasonably burdensome and overbroad.

21. Counsel for the Intervenors has contended that Applicant has facilitated Yadkin Incorporated's "access to . . . things very advantageous to it." (Tr. 431-433). Identify and describe each transaction, arrangement or term (such as the sale of off-peak power or the sale of dump power) between Yadkin, Inc. and Applicant to which Intervenors statement refers. As to each transaction, arrangement or term, the response should include, but not be limited to:

(a) The name or title and date of each agreement in effect at any time since January 1, 1960, and the specific provision or provisions of each agreement that reflects the transaction, arrangement or term involved;

(b) A statement describing each factor considered in determining that the transaction, arrangement or term is relevant to this proceeding, and

(c) A description of all incidents, if any, relating to the transaction, arrangement or term which affect the relevance of such transaction, arrangement or term to this proceeding. 5/

5/ As to each incident, the description should include, but not be limited to, (1) the representative or representatives of each entity involved, (2) the specific action or actions of each entity that affect the pertinence of the aspect to the proceeding, the method employed in each action and the date of each action, (3) as to each action listed in response to (2), a statement describing each factor considered in determining the action as it affects the pertinence of the aspect to this proceeding, and (4) the sources used by the Intervenors in describing the incident.

21. Applicant's arrangements with Yadkin are contained in Applicant's FPC Rate Schedule No. 11. */ We refer in particular to Service Schedules A, B, and C attached thereto, which provide respectively for Emergency Service, Surplus and Dump Energy, and a group of services including Maintenance Power and Energy, Off-peak Power and Energy, and Intermittent Power and Energy. These arrangements are relevant to the present proceeding because they exemplify the kind of coordinating arrangements which Applicant has withheld from other systems, and in particular from those systems which compete with it (as Yadkin, being a generating subsidiary of ALCOA, does not).

We may note that the arrangements between Applicant and Yadkin have recently been made the subject of a rate proceeding at the FPC. We understand that the change involved is the addition of a 15 mw firm capacity commitment in addition to the other services offered to Yadkin. FPC Order, Docket No. E-8082, issued 1 June 1973, page 1. Intervenors have not further studied the matters included in that FPC docket.

*/ Note that this is the number assigned by the FPC; this rate schedule is not the same as Applicant's "Rate Schedule 11", which is for wholesale service to rural electric cooperatives.

25.(a) State as to each of the following activities of Applicant whether the Intervenors will contend that the activity was a sham attempt to influence government action, or sham litigation:

(1) Duke's opposition to the 1952 appropriation for the Southeastern Power Administration.

(2) Opposition to the 1953 appropriation for the Southeastern Power Administration.

(3) Applicant's activities at any time regarding the Carter's Island-Trotter Shoals Project on the Savannah River.

(4) Applicant's attempt to obtain regulatory approval for its acquisition of the Nantahala Power & Light Company.

(5) Applicant's efforts to dissuade North Carolina municipalities from participation in EPIC.

(6) Applicant's submission of an application for a license for a hydroelectric project on the Green River (FPC Project No. 2563) and opposition to the application for a hydroelectric project submitted by EPIC (FPC Project No. 2700).

(7) Applicant's statements (e.g., testimony of Carl Horn, Esq. before the North Carolina Utilities Commission, Intervenor's Exhibit 14 to the Initial Statement; "Bond Prospectus, dated August 5, 1970," Intervenor's Exhibit 15 to the Initial Statement) anticipating the likelihood of Duke litigation regarding EPIC.

(8) Purported statements by Applicant regarding anticipated litigation concerning wholesale rates, made on June 22, 1967.

(9) Applicant's support in 1959 for territorial limitations upon the operation of the Tennessee Valley Authority.

(b) As to each item listed in (a) for which the response is "no", describe the significance for this proceeding, if any, of the activities of Applicant described by the item.

(c) To the extent the response to any item listed in (a) is not "no," identify and describe each factor considered in determining Applicant's activities with regard to that item which constituted a sham.

(1) To the extent the factors include actions of Applicant, the response should include, but not be limited to:

(i) the representative or representatives of Applicant and any other entity involved in the action;

(ii) the specific action or actions that the Intervenors contend demonstrates the existence of a sham, the method employed in each action, and the date of each action;

(iii) as to each action listed in response to (ii) a quotation of the precise words relied upon as demonstrating the existence of a sham or, if the Intervenors relied on an account or accounts that does not include a precise quotation, the text of the account or accounts of the statement relied upon; and

(iv) the specific sources the Intervenors rely on in describing the statement.

(2) As to facts that are derived primarily from objective data about Applicant's operations, the response should include, but not be limited to:

(i) a specification of each item of data relied upon and the source from which it is obtained; and

(ii) a statement outlining the analysis by which it is concluded that the data demonstrate the existence of a sham.

(d) State as to each of the activities cited in the numbered clauses of subpart (a) of this question, whether the Intervenors will contend that the activity was an attempt by Applicant to deny access to others to the legislative or adjudicatory process.

(e) If the response to (d) is not "no," identify each action or representation by Applicant that it is contended constitutes or evidences such attempt. As to each action or representation which allegedly constitutes or evidences such attempt:

(1) state each element of the action or representation that constitutes or evidences the attempt by Applicant to deny access to others to the legislative or adjudicatory process,

(2) identify the source of the information the Intervenors rely upon in making these contentions, and

(3) produce all documents pertaining to that action or representation and to the factual

basis for contending that it evidenced or constituted an attempt by Applicant to deny access to others to the legislative or adjudicatory process.

(f) If the response to (d) is not "no," state whether Applicant intended by its activities to deny access to others to the legislative or adjudicatory process.

(g) If the response to (f) is not "no," state which activities or what incidents the Intervenors contend demonstrate such intent. 6/

6/ As to each activity or incident, the response should include, but not be limited to, (1) the representative or representatives of the entities involved, (2) the specific actions taken by Applicant, the date or dates of each action and the method employed, (3) the precise manner in which the incident demonstrates the intent to deny access to others to the legislative or adjudicatory process, and (4) the specific sources from which the Intervenors obtained their information.

25. (a), (b).

(1) and (2) These legislative activities may have been a "sham" attempt to influence governmental action undertaken "to cover what is actually nothing more than an attempt to interfere directly with the business relationships of a competitor and [to which] the application of the Sherman Act would be justified." Eastern Railroad Presidents' Conf. v. Noerr Motor Freight, Inc., 365 U.S. 127, 144 (1961). They may also show the character and motivation of other actions of Applicant.

(3) Intervenors cannot presently determine whether this action was a sham.

(4) No, but the attempt itself was anticompetitive in design.

(5) Yes. These activities, in the first place, are not even protected by the Noerr and Pennington doctrine. Geo. R. Whitten Jr., Inc. v. Paddock Pool Builders, Inc., 424 F.2d 25 (CA 1, 1970). Even if they were not within the Paddock case, they would still, in Intervenors' view, be within the "sham" exception to Noerr.

(6) Applicant's request for a license to construct a project on the Green River was not, to the best of Intervenors' knowledge, a sham. Its opposition to the EPIC application for a preliminary permit may have constituted a sham. The Federal Power Commission ruled (EPIC, Inc., Project No. 2700, Order issued 31 January 1972, page 4):

> * * * intervention in this proceeding was granted to Duke Power Company.
>
> The matters raised in the petition to intervene relate to the construction of the proposed project and are appropriate for consideration in a proceeding for an application for license and not in a proceeding for a preliminary permit, the purpose of which is noted above.

(25 cont'd)

While the FPC's rejection of Applicant's arguments admittedly does not establish that the intervention was a "sham" in the Noerr-Pennington sense, it is one indication that, taken together with certain of the arguments themselves, such was Applicant's intention.

(7) The statements referred to do not themselves constitute a "sham" in the sense of vexatious and repetitive litigation, but they convey the intent and design of Applicant to pursue such litigation. Mr. Horn's 1970 statement to the North Carolina Utilities Commission was, however, a direct approach to a body which will eventually have to consider certificate applications filed by EPIC and may constitute an attempt to influence that body by announcing in advance a course of complete opposition to the project. All of these statements are appropriate to show the nature and intent of Applicant's other activities.

(8) These statements may have been attempts to influence directly the business decisions of its retail competitors, which in Intervenors' view constitutes a "direct interference" in the Noerr sense. The statements in question were made to a group of municipal officials including representatives of High Point, Lexington, and Shelby (Intervenors herein) and Statesville (formerly an Intervenor). In addition, these statements show the intent and nature of other activities of Applicant (including an intent to engage in vexatious and repetitive litigation and thereby deny Intervenors access to the judicial and administrative process).

(9) Intervenors are not aware of any indication that Applicant's support for the 1959 TVA legislation was a sham, and do not expect to make this contention.

(c) Matters discussed hereunder have the same numbers as in (a)-(b), above.

(25 cont'd)

(1)-(2) There are two competitive relationships involved in the appropriations controversy respecting the 1952 and 1953 SEPA proposals: (1) Applicant's relationship with SEPA as a competing supplier of wholesale firm power, and (2) Applicant's relationship with Greenwood County Electric Power Commission as a retail distributor of power As regards the first, Applicant's vice president, Mr. Cocke, told the Committee in the 1953 hearings (Intervenors' Exhibit 3 to Initial Prehearing Statement, at 1542):

> We feel that SEPA's continued insistence on an appropriation for this and other transmission lines; its request for funds to purchase firm stram-generated power for resale, thus filling out the irregular hydro power produced by the Government hydroelectric plants, and thereby departing, from the mere marketing of energy produced at Government dams, into the broad activity of engaging in the business of purchasing and selling electricity as a business enterprise; and finally SEPA's effort to start the line to Greenwood County in disregard of the instructions from Congress with reference to use of the 1952 appropriations for this line, all show a plain intent on the part of SEPA and the Interior Department to build an electric transmission network in the southeastern part of the United States and operate a tax-free Federal power business in competition with private taxpaying utilities.

As to the second relationship, Mr. Cocke in 1952 made the following statement (Exhibit 2 to Initial Prehearing Statement, at 1030):

> Senator ELLENDER: How much further would you be affected if they were to connect with the present facilities in Greenwood? You do not have any there now?
>
> Mr. COCKE: We have some facilities there. We have got some customers out there in the immediate vicinity.
>
> Senator ELLENDER: You are afraid by permitting the construction of this line it will further decrease your business in regard to Clark Hill?
>
> Mr. COCKE: It probably would.

The Intervenors' belief regarding the purpose of this opposition is also confirmed by a statement in the Duke Power Magazine, which was the subject of a part of the recent deposition of Mr. J. P. Lucas, Applicant's Vice President for Public Affairs. A citation to the page and exhibit number will be

furnished when Intervenors' copy of the transcript of this deposition is delivered.

(3) Until completion of discovery, Intervenors cannot supply the answer to this part.

(5) The various municipalities' participation in EPIC is a business relationship with which Applicant's campaign was a direct interference. Both EPIC and the municipalities concerned are competitors (one potential, the others existing) of Applicant in the wholesale and retail markets respectively. As stated above, Intervenors believe the "sham" doctrine to be inapplicable to any event to these incidents. But Exhibits 10-12 to the Initial Prehearing Statement are such direct interferences with the relationship referred to that, in the absence of such distinction, they would fall within the "sham" exception.

(6) See the discussion of this item in part (a)-(b) above.

(8) The intent of these statements appears to have been to dissuade the municipalities concerned from contesting Applicant's rate level. This was an attempt to control directly business decisions on the part of the municipalities. This intent appears from the following portion of Exhibit 18 to the Intervenors' Initial Prehearing Statement:

> Mr. Horne [sic] said that the $200,000.00 budget considered by the cities was grossly inadequate for prosecuting a rate proceeding and all subsequent court appeals, and that a rate proceeding would cost the cities at least twice that amount, or $400,000.00. Mr. Horne predicted that proceedings at thirteen administrative and judicial levels would be required before final decision in any rate complaint proceedings instituted by the cities. He predicted that five to seven years would be consumed by these proceedings, and stated that at the conclusion of all this the original data would be obsolete and the cities would be in the position of having to start all over again factually. He said, to our best recollection, "Duke cannot make any reduction in rates to municipalities, and will fight as long and hard as possible."

(25 cont'd)

The Mr. Horne referred to is Mr. Carl Horn, Jr., at that time Vice President and General Counsel of Applicant. Other officers of Applicant who were present are identified in the Exhibit.

(d) None of these incidents was itself an attempt to deny access to the adjudicatory process. Intervenors are not clear as to what Applicant means by "access * * * to the legislative * * * process", and request clarification thereof.

28. In the Initial Statement (pp. 6-7), it is stated "Duke has . . . imposed a price squeeze upon the municipal systems. . . ."

(a) State the date on which the squeeze first arose.

(b) Identify each wholesale and retail industrial rate schedule of Applicant in effect at any time since the date indicated in response to (a) which establishes rates which create or contribute to the squeeze or which evidence an intent to create a squeeze;

(c) As to each rate identified in response to (b), specify whether the said rate creates the squeeze, contributes to the squeeze, or evidences an intent to create a squeeze.

(d) As to each rate identified in response to (b), state whether the Intervenors contend that such rate is not justified by the principles of cost of service utility rate making, stating where the Intervenors do so contend, the basis for this claim.

(e) Unless no rate has been identified in response to (c) as evidencing an intent to create a squeeze, describe each incident relied upon as demonstrating an intent to impose a price squeeze, including:

(1) the representative or representatives of Applicant or any other entities involved;

(2) the specific customer or customers, if any, involved;

(3) the specific action or actions evidencing an intent to impose a price squeeze, the date of each action and the method employed;

(4) as to each action listed in response to (3), a quotation of the precise words used by the representatives of Applicant that evidence an intent to impose a price squeeze or, if the Intervenors are relying on an account or accounts not including a precise quotation, a quotation of the passage of each account purportedly describing the conspiratorial actions;

(5) as to each action listed in response to (3), a statement listing each factor considered in determining that the action evidenced an intent to impose a price squeeze; and

(6) the specific sources upon which the Intervenors rely in describing the incident.

(f) For each rate identified in response to (b) and for each Intervenor:

(1) describe specifically the load characteristics (including billing demand, load factor and any other assumption used) of the smallest new industrial customer from which the system would be

unable to obtain revenues sufficient to recover the cost of power;

(2) describe the formula or methodology by which the answer to (1) was determined;

(3) state whether the formula or methodology described in response to (2) would be used consistently for any size load in determining whether revenues would exceed the cost of power;

(4) if the response to (3) is not "yes", describe any changes in the formula or methodology for varying load sizes, and state the load size or sizes to which each variation applies.

(g) Describe and define the standards by which one can determine that margin over and above the cost of power which is sufficient to recover all properly allocable costs of serving a customer.

(h) Identify and describe all instances known to the Intervenors, or any of them, in which a wholesale customer of Applicant has declined to serve a potential industrial customer or has been unable to serve an industrial customer because of an insufficient margin between the rate it could obtain and the cost of electricity obtained from Applicant. As to each instance:

(1) name the wholesale customer unable or unwilling to serve and the potential industrial customer involved,

(2) state the date on which service was sought by or first discussed with the potential industrial customer,

(3) describe the anticipated maximum demand and load factor of the potential industrial customer,

(4) list each factor known to the Intervenors to have been considered by either the wholesale customer or the potential industrial customer in determining who the retail supplier should be,

(5) identify the sources of the Intervenors' information relied upon in describing each instance, and

(6) produce all documents pertaining to each instance.

28. (a) Intervenors believe that the squeeze has existed at least since 1 January 1960.

(b), (c) The wholesale rate to municipal customers, generally identified as Rate Schedule 10, and the retail industrial rate (Rate 1) and the large general service rate (Rate GA) in effect in North Carolina, are those which create, contributes to, and evidence intent to create, a price squeeze. */

(d) This subitem is ambiguous, in that it assumes the existence of only one set of cost of service ratemaking principles, which are not further defined. Unless Applicant will state with more particularity the principles it is here invoking, Intervenors will object to the question. There is, however, one respect in which the relationship between Applicant's wholesale and retail rates is indefensible under any set of ratemaking principles with which Intervenors are acquainted. That is the fact that no fuel adjustment clause has been imposed on the retail class, whereas such a clause was put into effect in Applicant's wholesale rate proceeding in FPC Docket No. E-7720, and is still in effect.

(e) Please refer to Item 8(c) for the details requested herein.

(f) So far as such studies and investigations have been performed, they have been incorporated in ElectriCities' testimony and exhibits in the several FPC rate cases */, all of which material is already in Applicant's hands. Intervenors' expectation would be that the method there employed would be used for any size load.

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*/ "1" and "GA" are the present designations of these rates. We are referring, of course, to the rates themselves throughout the period in question.

*/ FPC Dockets No. E-7557, E-7720, and E-7994.

(g) See previous subitem.

(h) Collection of information on this point is not yet completed. We will furnish details of any such instance as a supplemental response as soon as they are available.

32. The Department of Justice has indicated that actions by the North Carolina Utilities Commission and the South Carolina Public Service Commission may have been in contravention of Federal law.[8/] Do the Intervenors agree with this contention by the Department? If so, identify and describe each action of either Commission that the Intervenors contend contravenes Federal law. As to each action:

(a) Cite the docket number and the date of the final decision or order in the said docket;

(b) Identify the parties, if any, to the proceeding leading to the action;

8/ Justice Reply Brief of July 24, 1972, p. 10.

(c) Specify (by precise citation, if possible) the provisions of the action that contravene Federal law, and

(d) Cite the provision of Federal law contravened.

35½. (a) Except for those instances identified in response to interrogatory 35, state whether the Intervenors contend that Applicant has ever entered into, proposed or agreed to an agreement or understanding to allocate wholesale or retail customers or to allocate the right to serve wholesale or retail customers on a territorial basis. The response need not include allocations which purport on their face to be pursuant to the North Carolina or South Carolina territorial assignment laws.

(b) If the answer to (a) is not "no", identify and describe each agreement or understanding or proposed agreement or understanding so allocating territory or customers on which the Intervenors will rely in this proceeding.

(1) As to each allocation by formal agreement the response should include, but not be limited to:

(ii) the other entity or entities entering into the agreement, or if not executed, contemplated as entering into the agreement, and

32. Intervenors do not interpret the Department's brief as charging that actions of the North Carolina and South Carolina Commissions have violated federal law.

35 1/2. [Note: This question and the next were both numbered "35" in the Interrogatories as submitted. We have renumbered this question to avoid confusion.]

(a) Yes.

(b) (i) Beginning in July of 1962, Blue Ridge Electric Membership Corporation attempted to initiate a wholesale power supply arrangement with Appalachian Power Company. Applicant was notified of this attempt and its Executive Vice President wrote to Appalachian stating, inter alia:

> This is one of the largest cooperatives in our area and we have had good relationships throughout a number of ars. I believe it would help, when you reply to is letter, to suggest that they contact us for the further power supply.

It is Intervenors' understanding that Appalachian and Applicant arranged for Appalachian to make this sale for Applicant's account. The documents illustrating this transaction are numbers 80,394 through 80,409. See also numbers 22,611 - 22,630.

This transaction antedated the North Carolina territorial legislation of 1965.

(ii) With respect to a subdivision near the City of Albemarle (an Intervenor herein and wholesale customer of Applicant), Applicant's responsible officer recommended that the company not assist Albemarle in securing the subdivision in competition with Carolina Power & Light Company. This recommendation is contained in document number 16,185, and is elaborated on in the deposition of Henry L. Cranford. (Transcript page citation will be furnished when Intervenors receive their copy of the transcript.)

(36 1/2 cont'd)

(iii) In its wholesale power contracts with some of its customers, Applicant inserted limitations on resale which had the effect of allocating retail customers to it. These limitations are discussed in item 8 above.

(c) All documents of which Intervenors are presently aware that have a bearing on this item are from Applicant's document production and have been cited above.

37. In the Answer of the Cities . . . to Applicant's Motion for a Protective Order, dated July 30, 1973, (p. 2), it is suggested that "Duke is willing to pay more than a reasonable price for the facilities [of other suppliers of electricity] in order to prevent their acquisition by a consumer-owned competitor. . . ."

(a) State whether the Intervenors contend that Applicant has paid more or offered to pay more than a reasonable price for the facilities of any other supplier of electricity, and if it is so contended, list each supplier for whose facilities an excessive payment has been made or offered.

(b) As to each supplier of electricity which is listed in response to (a), state:

(1) each objective or motive that Intervenors contend prompted Applicant to pay more or offer more than a reasonable price for the facilities of the supplier; and

(2) describe the factual basis for attributing each objective or motive to Applicant. To the extent that this factual basis includes statements made by

Applicant, the response should include, but not be limited to:

(i) the representative or representatives of Applicant making the statement,

(ii) an identification of the specific document in which the statement was made, or, in the event that the statement was made orally, the occasion on which the statement was made (including the place and date of the statement and those to whom the statement was made),

(iii) a quotation of the precise words used by Applicant that demonstrated the objective or motive, or in the event the Intervenors relied upon an account or accounts which does not include the precise words used, a quotation of the account or accounts upon which the Intervenors relied, and

(iv) the specific sources upon which the Intervenors rely in describing the objective or motive.

(c) As to each supplier of electricity listed in response to (a), describe the formula or methodology by which it was determined that the price paid or offered was more than reasonable.

37. The quoted statement was made in a discussion of the pending procedures for disposal of the electric and other utility properties now owned by the University of North Carolina at Chapel Hill. These procedures have not, thus far, advanced sufficiently for Intervenors to determine whether Applicant intends to offer more than a reasonable price of the Chapel Hill system.

We may also note that, at Applicant's request, the discovery documents dealing with this transaction have not been made available to Intervenors. See Prehearing Order 7, issued 9 August 1973, at page 6.

38.(a) As to each market defined in response to question 1, state whether the Intervenors contend that the flow of resources is free of distortions despite the existence of special financing assistance (such as low interest loans or tax exempt status for interest paid on borrowings) available to some other electric entities or the complete or partial tax exemption of those entities.

(b) As to each market defined in response to question 1, state whether such distortions would result from that special assistance and tax exemption, if the relief sought by the Intervenors is granted.

(c) If the answers to (a) and (b) are not "no," describe the distortions that arise and state their significance for this proceeding. If it is contended that these distortions have no significance for this proceeding, state the basis for that conclusion.

38. Intervenors believe that the existence of "special financing assistance (such as low interest loans or tax exempt status for interest paid on borrowings) * * * or complete or partial tax exemption" is entirely irrelevant to these proceedings. The existence of any such financing and tax arrangements is not a defense to allegations of anticompetitive conduct. Given the lawful existence and use of such financing methods and tax policies, Intervenors see no reason to characterize the resulting flow of resources as "distorted", but in any event, they object to the entire item on grounds of relevancy.

41. In the Initial Statement (pp. 5-6), Intervenors state that an appropriate remedy would include "[r]equiring Duke to treat intervenors, and any other entities which enter, or propose to enter, the bulk power market, as coequals with rightful access to all aspects of the wholesale power market."

(a) Define and describe the standards used to determine whether an entity is a "coequal". In addition to the general description here sought, state specifically:

(2) whether "rightful access" to a dominant generating facility or power pool can be provided through a fair wholesale rate; if not, why not.

(b) Define what is meant by the term "rightful access".

41. (a) In general, access to the wholesale power market as a coequal implies access to the regional power exchange market and to the wholesale firm power market as a seller. It includes participation in all existing pooling and coordination arrangements on the same terms as the existing members, and implies such reasonable expansion or alteration of the structure of such arrangements as may be necessary.

(2) This subitem cannot be answered unless Applicant will define more precisely what is meant by a "fair" wholesale rate. Intervenors will object to it unless it is so restated.

(b) Rightful access is that access which is enjoyed by a party having coequal status.

( ) Intervenors believe that any other degree of access would constitute, prima facie, a situation inconsistent with the antitrust laws. It is axiomatic that where competition exists, as Intervenors believe that it does in the wholesale power markets, the competitors should start from a position of equality. The policy of the antitrust laws is to promote this ideal situation by preventing artificial restraints imposed by one competitor on another.

(d), (e), (f) The policy of Applicant, alone or in conjunction with others, appears to have been to exclude any and all publicly owned power systems from the CARVA Pool. This policy is discussed fully with citations to documents in the response to Item 51.

The position stated by Mr. Hicks, an office of Applicant, with respect to interconnection with EPIC (see response to Item 19) also ranks as a refusal of access to a pool, since such access is impossible without interconnection.

The SERC Agreement (see Item 23), being inconsistent with the standard explained in (a)(i) above, also meets this criterion, if SERC is considered by Applicant to be a "pool" for purposes of this question.

Consistently with the views expressed in (a) through (c) above, Intervenors regard these incidents as denials of access inconsistent with the antitrust laws.

42. In the Joint Petition, it is stated "Petitioners' ability to offer electrical energy at retail rates competitive with those of Duke . . . is . . . dependent on their opportunity to enjoy . . . [equal] access to . . . nuclear electric generation." (p. 5)

(b) Define and describe the standards used in determining what is "equal access." In addition to the general description here sought, state specifically:

(2) whether equal access to nuclear electric generation can be provided through a fair wholesale rate;

42. (a) Nuclear generation is now the lowest cost method of power generation available for new construction. Applicant is heavily committed to a program of nuclear generation, as its license applications for the Oconee, McGuire, and Catawba Plants demonstrate. Intervenors must sell electricity at retail in competition with Applicant, and cannot, obviously, succeed in doing so if the cost of electricity to them is higher than the (internal) cost of electricity to Applicant's distribution systems. As more nuclear capacity is added to the Duke system, this situation becomes increasingly exigent.

With respect to the Oconee and McGuire Plants in particular, the exceptionally low costs projected for them add still more to Applicant's competitive advantage.

(b) In the pleading quoted from by Applicant in this interrogatory, Intervenors described their proposal to own a "fair share" of the plants in question as an arrangement whereby they would purchase from Applicant a share of the ownership and capacity of the plants, and

> * * *acquire, by purchase, construction, lease, contract or otherwise, any and all reasonably required or appropriate subsidiary or additional facilities so as, fully and fairly, to integrate themselves and their fair share of these facilities into the electric generation here involved.

(Joint Petition, page 5.) The fair share referred to is a share bearing the same proportion to the Intervenors' total load as the licensed facilities bear to Applicant's total load. Intervenors would bear the full investment cost of their share. This arrangement, together with ancillary arrangements as described in Part VI of the Intervenors' Initial Prehearing Statement (pages 13 et seq.) would constitute "equal access" in the present context.

(1) This subitem appears to refer not to "equal access" to the plants specifically here in issue, but to power pools generally. The answer is accordingly, the same as in Item 41(a)(1).

61. (a) The structure and operation of the electric industry in the Carolinas prior to 1 January 1960 is relevant, in Intervenors' view, only insofar as it sheds light on the structure existing as of that date. Intervenors do not expect to present evidence on or inquire into the pre-1960 matters described in this item.

(b) Intervenors object to this part of Item 61 as overbroad and unreasonably burdensome. The demand for all documents, without limitation to any particular utility or utilities and apparently without any limitation as to time, bearing on the structure or operation of the industry in the Carolinas is precisely the sort of sweeping request which is inappropriate at this stage of discovery.

63. Provide all documents in the possession of any of the Intervenors regarding:

(a) The sale or possible sale of the facilities of any Intervenor's or other municipal or cooperative electric system or any substantial portion thereof to any other electric entity, including any documents pertaining to the possible discontinuance of electric operation by any Intervenor or other municipal or cooperative electric system;

(b) The acquisition of electric facilities by any Intervenor or other municipal or cooperative electric system from Applicant or any other investor owned utility;

(c)(i) The intent with which rate levels or design were initiated or maintained by a wholesale customer of Applicant or (ii) the contemplated affect of such rate level or design, and

(d) Electric service franchises for service at retail and any applications, renewals or terminations thereof.

63. This item is objected to on the grounds stated under Item 60. In addition, we may point out that the scope of this item is particularly, and irrelevantly, broad: It calls for "all documents * * * regarding" sales or acquisitions of facilities by any municipal or cooperative system to or from any other system.