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File A.T.

February 3, 1971

Honorable John H. Mitchell  
Attorney General

Attention: Richard W. McLaren, Esq.  
Assistant Attorney General  
Antitrust Division

Dear Mr. Mitchell:

In accordance with subsections 105 c. (1), 105 c. (3) and 105 c. (8) of the Atomic Energy Act of 1954, as amended (the Act), we are enclosing the application filed by the Duke Power Company to operate three nuclear power reactors known as Oconee Units 1, 2 and 3, near Seneca, South Carolina. The application is transmitted for your review pursuant to section 105 c. of the Act and for such advice to the Commission as you determine to be appropriate to the finding to be made by the Commission as set forth in subsection 105 c. (5) of the Act. Upon your request, we shall furnish or cause to be furnished to you such information as you determine to be appropriate in connection with your review and the rendering of your advice.

This proceeding is subject to the special provision made in subsection 105 c. (3) of the Act for operating license applications in cases where intervenors or petitioners for leave to intervene in the earlier proceeding on the construction permit sought to obtain a determination of antitrust matters or advance a jurisdictional basis for such determination. Persons in the described class have the right to request an antitrust review under section 105 c. within 25 days after publication in the Federal Register of a notice of filing of an application for an operating license.

Such a 25-day notice with respect to the three Oconee units was published in the Federal Register on December 29, 1970 (35 F.R. 19708). Pursuant to the notice, eleven North Carolina municipalities, who were joint intervenors in the construction permit proceedings and who had sought to advance a jurisdictional basis

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for the determination of antitrust matters, have filed a timely joint petition requesting an antitrust review. For your information, I am also enclosing a copy of the joint petition and the AEC regulatory staff's reply to the petition.

As you may recall, the eleven municipalities appealed to the U. S. Court of Appeals for the District of Columbia from the Commission's denial of exceptions to the initial decision (C.A.D.C. No. 21, 706 Dec. 5, 1969).

The three Oceanic units are scheduled for operation at approximately one year intervals, with Unit 1 expected to be ready for operation this spring. A Notice of Proposed Issuance of an Operating License for Unit 1 was published in the Federal Register on January 8, 1971 (36 F.R. 296). Whether or not a public hearing is held on the matter of an operating license for Unit 1, it appears probable that, apart from antitrust considerations, the license would otherwise be ready for issuance prior to the completion of antitrust review pursuant to section 105 c. of the Act. After consultation with Joseph J. Saunders, Esq., of your staff, it has been determined that if in fact a license is otherwise ready for issuance, prior to completion of the procedures with respect to antitrust matters, the license may be issued pursuant to subsection 105 c. (8) of the Act, subject to conditions, as set forth in 10 CFR 50.55(b), to assure that any subsequent findings and orders of the Commission with respect to antitrust matters will be given full force and effect.

If I can be of further assistance in this matter, please do not hesitate to call upon me.

Sincerely,

Bertram H. Schur  
Associate General Counsel

Enclosures:

- 1. Application and pertinent amendments
- 2. Joint Petition
- 3. AEC Reply to Petition

Distribution:

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bcc: Carl Horn, Jr., Esq.  
Roy B. Snapp, Esq.  
William Ross, Esq.  
J. O. Tally, Jr., Esq.

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