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Docket Nos. 50-346A, 50-440A, 50-441A,
50-500A, 50-501A, 50-400A,
50-401A, 50-402A, 50-403A

The Honorable Jesse Helms
United States Senate
Washington, D.C. 20510

Dear Senator Helms:

This is in response to your letter of June 30, 1977 to which you attached a copy of a letter from your constituent, Mr. Mark F. Bennett of New Bern, North Carolina. Mr. Bennett had written concerning a recent antitrust decision by an Atomic Safety and Licensing Board of the Nuclear Regulatory Commission involving the Cleveland Electric Illuminating Company and others, (Dockets 50-346A, 50-440A, 50-441A, 50-500A and 50-501A) and that Board's consideration of the question of "price squeeze". Mr. Bennett also wished to be advised of possible courses of action at the NRC which might be available to the municipal electric system of New Bern in its rate relationship with Carolina Power & Light Company ("CP&L").

With respect to the Cleveland matter, on January 6, 1977, an Atomic Safety and Licensing Board issued an initial antitrust decision concluding that the issuance of an unconditioned license for the applied for nuclear units would create and maintain a situation inconsistent with the anti-trust laws. A copy of the decision, which is presently on appeal to the Atomic Safety and Licensing Appeal Board, is attached hereto. The question of "price squeeze" is discussed on pages 208 to 211 of that decision. Although the Licensing Board ordered the imposition of antitrust license conditions, it did not seek to adjust any rates. It should be noted that wholesale rates of electric utilities are set by the Federal Power Commission and industrial rates are determined by state public utility commissions. Pursuant to the recent Supreme Court decision in Federal Power Commission v. Conway Corp., 426 U.S. 271 (1976), the F.P.C. has authority to examine price squeeze allegations. While the FPC may not set retail rates, it may consider them in setting the wholesale rate.

CP&L has applied for licenses to construct and operate the Shearon Harris Nuclear Power Plant Units 1, 2, 3, and 4 (Docket Nos. 50-400A, 50-401A, 50-402A and 50-403A). CP&L has previously agreed to the imposition of antitrust license conditions (attached hereto) with respect to those units.

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The antitrust intervention period as set forth in the Commission's Rules of Practice during which New Bern could file a timely intervention petition expired in 1972. A subsequent antitrust review with respect to those units would only occur if the Commission found that significant changes in the proposed project exist. Of course, New Bern would have an opportunity to raise antitrust questions with respect to any future applications by CP&L for authorization to construct commercial nuclear power reactors.

If any further information on this matter is desired, please contact me.

Sincerely,

William J. Dircks
Assistant Executive Director
for Operations

Enclosures:

1. Initial Decision (Antitrust) Perry.
2. Commitments for CP&L.
3. Return of Incoming letter.

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UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

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Docket Nos. 50-346A, 50-440A, 50-441A,
50-500A, 50-501A, 50-400A,
50-401A, 50-402A, 50-403A

The Honorable Jesse Helms
United States Senate
Washington, D.C. 20510

Dear Senator Helms:

This is in response to your letter of June 30, 1977 to which you attached a copy of a letter from your constituent, Mr. Mark F. Bennett of New Bern, North Carolina. Mr. Bennett had written concerning a recent antitrust decision by an Atomic Safety and Licensing Board of the Nuclear Regulatory Commission ("NRC") involving the Cleveland Electric Illuminating Company (Dockets 50-346A, 50-440A, 50-441A, 50-500A and 50-501A) and that Board's consideration of the question of "price squeeze". Mr. Bennett also wished to be advised of possible courses of action at the NRC which might be available to the municipal electric system of New Bern in its rate relationship with Carolina Power & Light Company ("CP&L").

With respect to the Cleveland matter, on January 6, 1977, an Atomic Safety and Licensing Board issued an initial antitrust decision with respect to the applications to construct several nuclear facilities by the Cleveland Electric Illuminating Company, The Toledo Edison Company, Duquesne Light Company, The Ohio Edison Company, and The Pennsylvania Power Company. The Licensing Board concluded that activities under the applied for nuclear licenses would create and maintain a situation inconsistent with the antitrust laws. With respect to the Applicant Ohio Edison Company, the Licensing Board concluded that Ohio Edison charges municipal electric systems purchasing power at wholesale from it significantly higher, and in fact, discriminatory rates, when compared with similar sales to its industrial customers. This particular finding was but one element of the anticompetitive situation which the Licensing Board found to exist. Although the Board ordered that antitrust license conditions be imposed with respect to each of the five companies, it did not seek to adjust any wholesale or industrial rates. Various aspects of this decision are presently on appeal to the Atomic Safety and Licensing Appeal Board.

It should be noted that wholesale rates are set by the Federal Power Commission and industrial rates of electric utilities are determined by state public utility commissions. Pursuant to the recent Supreme Court decision in Federal Power Commission v. Conway Corp., 426 U.S. 271 (1976),

the F.P.C. has authority to examine price squeeze allegations, including, a comparison of a proposed wholesale rate with existing industrial and other retail rates. While the FPC may not set retail rates, it may consider them in setting the wholesale rate.

In response to Mr. Bennett's inquiry regarding antitrust intervention by the City of Cleveland in the Cleveland Electric Illuminating Co. matter, the City of Cleveland timely filed petitions to intervene in dockets 50-346A, 50-440A and 50-441A within the 30 day time period provided for in the Commission's Rules of Practice (10 CFR Part 2 et seq) after publication of the statutorily required Attorney General's anti-trust advice letter in the Federal Register.

With specific reference to pending applications of CP&L before the Commission, on August 18, 1972, the Attorney General through the Assistant Attorney General of the Antitrust Division of the Department of Justice, pursuant to the statutory procedure set forth in Section 105(c) of the Atomic Energy Act of 1954, as amended, advised the Commission that if CP&L agreed that certain antitrust license conditions would be included in licenses issued by the Commission for the Shearon Harris Nuclear Power Plant Units 1, 2, 3 and 4 (Docket Nos. 50-400A, 50-401A, 50-402A, and 50-403A) there would be no need for an antitrust hearing. CP&L has agreed to the imposition of those license conditions (attached hereto) and accordingly, the conditions will be attached to the construction permits for those units when issued. CP&L has previously deferred these units, but it is presently estimated that an initial construction permit for Unit 1, with the antitrust conditions attached, will issue in early 1978 if so authorized by the Licensing Board which presides over the safety and environmental phase of the hearing. Moreover, a subsequent antitrust review may occur prior to the issuance of an operating license if the Commission finds that significant changes in the proposed project have occurred since the construction permit antitrust review. Of course, any future applications by CP&L for authorization to construct commercial nuclear power reactors will be the subject of separate antitrust advice from the Attorney General and members of the public will have an opportunity to request a hearing on antitrust matters. Moreover, prior to rendering his advice, the Assistant Attorney General contacts by letter, and solicits the views of each electric system in the area served by the Applicant.

If any further information on this matter is desired, please contact me.

Sincerely,

Enclosures:

- 1. Commitments for CP&L.
- 2. Return of incoming letter

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Commitment No. 1

Licensee recognizes that it is generally in the public interest for electric utilities to interconnect, coordinate reserves, and engage in bulk power supply transactions, in order to increase electric system reliability and reduce the costs of electric power. Bulk power supply arrangements should be such as to provide benefits, on balance, each to Licensee and to other participant(s), respectively. The benefits to participants in such arrangements need not be equal and the benefits realized by a small system may be proportionately greater than those realized by a larger system. In implementing the commitments which it makes in the succeeding paragraphs, Licensee will act in accordance with the foregoing principles.

Explanatory Note*

- (a) Neither Licensee nor any other participant shall be obligated to enter into such arrangements (1) if to do so would violate, incapacitate, or limit its ability to perform any other existing contractual arrangement, or (2) to do so would adversely affect its system operations or the reliability of power supply to its customers, or (3) if to do so would jeopardize the applicant's ability to finance or construct on reasonable terms facilities needed to meet its own anticipated system requirements.

Commitment No. 2

Licensee will interconnect with and coordinate reserves by means of the sale and exchange of emergency bulk power with any entity or entities in its service area** engaging in or proposing to engage in electric bulk power supply on terms that will provide for Licensee's costs (including a reasonable return) in connection therewith; and allow the other participant(s), as well as Licensee, full access on a proportionate basis to the benefits of reserve coordination. ("Proportionate basis" refers to the equalized percentage of reserves concept rather than the largest single-unit concept, unless all participants otherwise agree.)

Explanatory Notes

- (a) Interconnections will not be limited to low voltages when higher voltages are available from Licensee's installed facilities in the area where interconnection is desired, when the proposed arrangement is found to be technically and economically feasible.

* In order to clarify the commitments, certain explanatory notes have been added.

** The use of the term "service area" as found in this commitment or in any other section of the commitments is intended to describe those areas in North Carolina and South Carolina where Licensee provides some class of electric service, but in no way indicates an assignment or allocation of wholesale market areas.

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- (b) Emergency service agreements will not be limited to a fixed amount, but emergency service, provided under such agreements will be furnished if and when available and desired where such supply does not impair or threaten to impair service to the supplier's customers due to capacity availability, fuel supply, system reliability or other good cause. Licensee, however, shall not be obligated to provide emergency service to another entity in lieu of such entity's maintaining its own adequate system reserves or fuel supply.
- (c) An example of the type of reserve sharing arrangement available to any participant and which would provide "full access on a proportional basis to the benefits of reserve coordination" would be one in which the following conditions would obtain:
- (i) The Licensee and each participant(s) shall provide to the other emergency power if and when available from its own generation, or through its transmission from the generation of others to the extent it can do so without disrupting or threatening to impair service to its own customers due to capacity availability, fuel supply, system reliability or other good cause.
 - (ii) The participants to the reserve sharing agreement, including Licensee, shall, consistent with Licensee's reserve policy as established from time to time by Licensee, determine a minimum percentage reserve to be installed and/or purchased by the participants, including Licensee, as necessary to maintain in total an adequate and reliable power supply on the interconnected system of Licensee and participant(s).

* * *

Commitment No. 3

Licensee will purchase from or sell "bulk power" to any other entity in its service area engaging in or proposing to engage in the generation of electric power in bulk at the seller's cost (including a reasonable return) whenever such transactions would serve to reduce the overall costs of new bulk power supply, each, for itself and other participant(s) to the transaction, respectively. ("Costs" refers to costs of bulk power supply determined in accordance with the seller's normal practices, without regard to the purchaser's intended use of the power or the status of the purchaser.) This paragraph refers specifically to the opportunity to coordinate in the planning of new generation transmission and associated facilities. If Licensee questions the desirability of a proposed transaction on the ground that it would not reduce its overall bulk power costs, it will make available upon request to the entity proposing the transaction such information as is relevant and reasonably necessary to establish its bulk power costs.

Explanatory Notes

- (a) It is not to be considered that this condition requires applicant to purchase or sell bulk power if such purchase or sale is technically infeasible or that the benefits therefrom do not exceed the costs in connection with such purchase or sale.

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Commitment No. 4

Licensee will facilitate the exchange of bulk power by transmission over its system between or among two or more entities with which it is interconnected on terms which will fully compensate it for the service performed, to the extent that such arrangements reasonably can be accommodated from a functional and technical standpoint.

Explanatory Notes

- (a) This condition applies to entities with which Licensee is interconnected in the future as well as those to which it is now interconnected.

Commitment No. 5

Licensee will sell power in bulk to any entity in the aforesaid area now engaging in or proposing to engage in the retail distribution of electric power.

Explanatory Notes

- (a) This is provided that Licensee has such power available for sale after making adequate provision for the capacity, fuel and other requirements of its service area customers.

Commitment No. 6

The implementation of these numbered paragraphs shall be in all respects on reasonable terms and conditions as consistent with the Federal Power Act and all other lawful regulation and authority, and shall be subject to engineering and technical feasibility for Licensee's system. Licensee will negotiate (including the execution of a contingent statement of intent) with respect to the foregoing commitments with any entity in its service area engaging in or proposing to engage in bulk power supply transactions, but Licensee shall not be required to enter into any final arrangements prior to resolution of any substantial questions as to the lawful authority of an entity to engage in the transactions.

Commitment No. 7

In contracts between Licensee and its wholesale customers, Licensee will not attempt to restrict such customers from electrically connecting with other sources of power if reasonable written notice to Licensee has been made and agreement reached by the parties on such measures or conditions, if any, as may be required for the protection and reliability of both systems.

APPROVED:

DATE:

Nuclear Regulatory Commission

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