(ATTACMENT NO. 2)

UNITED STATES OF AMERICA
ATOMIC ENERGY COMMISSION

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

ORDER ON JOINT MOTION OF THE REGULATORY STAFF OF THE ATOMIC ENERGY COMMISSION AND THE DEPARTMENT OF JUSTICE TO PLACE CONDITIONS ON OCONEE AND McGUIRE LICENSES

By Joint Motion dated May 13, 1974 with attachments,[1] the Department of Justice and the Atomic Energy Commission Regulatory Staff requested this Board to direct that all licenses[2] for the Oconee and McGuire nuclear power plants be amended to include as conditions certain commitments made by Applicant, Duke Power Company, in its "Statement of Commitments" attached hereto. By these proposed license conditions Applicant agrees to enter into various types of transactions and activities with electric power entities in the Piedmont Carolinas.

1/ Attachments consist of letter dated April 26, 1974, from Thomas E. Kauper to Howard K. Shaper; letter dated April 26, 1974, from William M. Grigg to Thomas E. Kauper with "Statement of Commitments" attached thereto.

2/ "Licenses" refers to both construction permits and operating licenses.

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The Joint Motion sets out the types of transactions and activities involved and the reasons why both the Department of Justice and the Atomic Energy Commission Regulatory Staff believe the public interest would be served by conditioning to the Oconee and McGuire licenses at this time.

By response dated May 20, 1974, Applicant states that it has no objection to the Joint Motion, and additionally requests that: (a) various actions be taken in the Catawba proceeding;[3/] (b) the Board act with respect to the status of the Department of Justice and the Atomic Energy Commission Regulatory Staff in any further proceedings (The Board defers ruling on this request at this time); (c) the Board "acknowledge" the withdrawal of the Department of Justice advice letters for the Oconee, McGuire and Catawba units. In view of the statement and position of the Department of Justice

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3/ Applicant's response, however, is captioned and filed only in the Oconee-McGuire consolidated proceeding and is so considered in view of the Joint Motion to which Applicant's response relates.

on this last point made to the Board at the Catawba Prehearing Conference on May 13, 1974, this Board considers that said advice letters as to Oconee-McGuire have been further supplemented in accordance with the commitments made in letters set forth in footnote #1, above.

After careful review of the Joint Motion and the attachments thereto, all the related pleadings and record to date in this proceeding, the Board finds that the proposed conditions contained in the attached Applicant's "Statement of Commitments" were made to resolve the differences as between the Department of Justice, the AEC Regulatory Staff, and the Applicant and are a reasonable settlement of said differences within the public interest. Accordingly, the Board grants said Joint Motion and hereby directs that the commitments attached

to this Order be made conditions to all permits and licenses issued or to be issued by the Atomic Energy Commission with respect to the Oconee and McGuire nuclear reactors.

IT IS SO ORDERED.

ATOMIC SAFETY AND LICENSING BOARD

Joseph F. Tubridy, Member

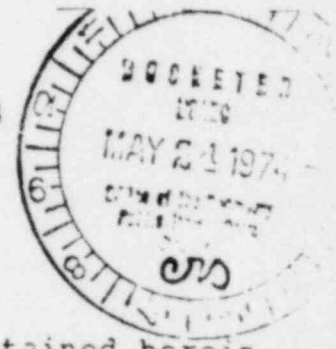
George R. Hall, Member

John B. Farmakides, Chairman

Issued at Bethesda, Maryland,
this 24th day of May 1974.

ATTACHMENT TO LETTER DATED APRIL 26, 1974
FROM WILLIAM H. GRIGG TO THOMAS E. KAUPER

STATEMENT OF COMMITMENTS



Applicant makes the commitments contained herein, recognizing that bulk power supply arrangements between neighboring entities normally tend to serve the public interest. In addition, where there are net benefits to all participants, such arrangements also serve the best interests of each of the participants. Among the benefits of such transactions are increased electric system reliability, a reduction in the cost of electric power, and minimization of the environmental effects of the production and sale of electricity.

Any particular bulk power supply transaction may afford greater benefits to one participant than to another. The benefits realized by a small system may be proportionately greater than those realized by a larger system. The relative benefits to be derived by the parties from a proposed transaction, however, should not be controlling upon a decision with respect to the desirability of participating in the transaction. Accordingly, Applicant will enter into proposed bulk power transactions of the types hereinafter described which, on balance, provide net benefits to Applicant. There are net benefits in a transaction if Applicant recovers the cost of the transaction (as defined in ¶1(d) hereof) and there is no demonstrable net detriment to Applicant arising from that transaction.

1. As used herein:

(a) "Bulk Power" means electric power and any attendant energy, supplied or made available at transmission or sub-transmission voltage by one electric system to another.

(b) "Neighboring Entity" means a private or public corporation, a governmental agency or authority, a municipality, a cooperative, or a lawful association of any of the foregoing owning or operating, or proposing to own or operate, facilities for the generation and transmission of electricity which meets each of the following criteria: (1) its existing or proposed facilities are economically and technically feasible of interconnection with those of the Applicant and (2) with the exception of municipalities, cooperatives, governmental agencies or authorities, and associations, it is, or upon commencement of operations will be, a public utility and subject to regulation with respect to rates and service under the laws of North Carolina or South Carolina or under the Federal Power Act; provided, however, that as to associations, each member of such association is either a public utility as discussed in this clause (2) or a municipality, a cooperative or a governmental agency or authority.

(c) Where the phrase "neighboring entity" is intended to include entities engaging or proposing to engage only in the distribution of electricity, this is indicated by adding the phrase "including distribution systems."

(d) "Cost" means any appropriate operating and maintenance expenses, together with all other costs, including a reasonable return on Applicant's investment, which are reasonably allocable to a transaction. However, no value shall be included for loss of revenues due to the loss of any wholesale or retail customer as a result of any transaction hereafter described.

2. (a) Applicant will interconnect and coordinate reserves by means of the sale and exchange of emergency and scheduled maintenance bulk power with any neighboring entity(ies), when there are net benefits to each party, on terms that will provide for all of Applicant's properly assignable costs as may be determined by the Federal Power Commission and consistent with such cost assignment will allow the other party the fullest possible benefits of such coordination.

(b) Emergency service and/or scheduled maintenance service to be provided by each party will be furnished to the fullest extent available from the supplying party and desired by the party in need. Applicant and each party will provide to the other emergency service and/or scheduled maintenance service if and when available from its own generation and, in accordance with recognized industry practice, from generation of others to the extent it can do so without impairing service to its customers, including other electric systems to whom it has firm commitments.

(c) Each party to a reserve coordination arrangement will establish its own reserve criteria, but in no event shall the minimum installed reserve on each system be less than 15%, calculated as a percentage of estimated peak load responsibility. Either party, if it has, or has firmly planned, installed reserves in excess of the amount called for by its own reserve criterion, will offer any such excess as may in fact be available at the time for which it is sought and for such period as the selling party shall determine for purchase in accordance with reasonable industry practice by the other party to meet such other party's own reserve requirement. The parties will provide such amounts of spinning reserve as may be adequate to avoid the imposition of unreasonable demands on the other party(ies) in meeting the

normal contingencies of operating its (their) system(s). However, in no circumstances shall such spinning reserve requirement exceed the installed reserve requirement.

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

(e) Interconnection and reserve coordination agreements will not embody provisions which impose limitations upon the use or resale of power and energy sold or exchanged pursuant to the agreement. Further, such arrangements will not prohibit the participants from entering into other interconnection and coordination arrangements, but may include appropriate provisions to assure that (i) Applicant receives adequate notice of such additional interconnection or coordination, (ii) the parties will jointly consider and agree upon such measures, if any, as are reasonably necessary to protect the reliability of the interconnected systems and to prevent undue burdens from being imposed on any system, and

(iii) Applicant will be fully compensated for its costs. Reasonable industry practice as developed in the area from time to time will satisfy this provision.

3. Applicant currently has on file, and may hereafter file, with the Federal Power Commission contracts with neighboring entity(ies) providing for the sale and exchange of short-term power and energy, limited term power and energy, economy energy, non-displacement energy, and emergency capacity and energy. Applicant will enter into contracts providing for the same or for like transactions with any neighboring entity on terms which enable Applicant to recover the full costs allocable to such transaction.

4. Applicant currently sells capacity and energy in bulk on a full requirements basis to several entities engaging in the distribution of electric power at retail. In addition, Applicant supplies electricity directly to ultimate users in a number of municipalities. Should any such entity(ies) or municipality(ies) desire to become a neighboring entity as defined in Paragraph 1(b) hereof (either alone or through combination with others), Applicant will assist in facilitating the

necessary transition through the sale of partial requirements firm power and energy to the extent that, except for such transition, Applicant would otherwise be supplying firm power and energy. The provision of such firm partial requirements service shall be under such rates, terms and conditions as shall be found by the Federal Power Commission to provide for the recovery of Applicant's costs. Applicant will sell capacity and energy in bulk on a full requirements basis to any municipality currently served by Applicant when such municipality lawfully engages in the distribution of electric power at retail.

5. (a) Applicant will facilitiate the exchange of electric power in bulk in wholesale transactions over its transmission facilities (1) between or among two or more neighboring entities including distribution systems with which it is interconnected or may be interconnected in the future, and (2) between any such entity(ies) and any other electric system engaging in bulk power supply between whose facilities Applicant's transmission lines and other transmission lines would form a continuous electric path, provided that permission to utilize such other transmission lines has been obtained. Such transaction shall be undertaken provided that the

particular transaction reasonably can be accommodated by Applicant's transmission system from a functional and technical standpoint and does not constitute the wheeling of power to a retail customer. Such transmission shall be on terms that fully compensate Applicant for its cost. Any entity(ies) requesting such transmission arrangements shall give reasonable notice of its (their) schedule and requirements.

(b) Applicant will include in its planning and construction program sufficient transmission capacity as required for the transactions referred to in subparagraph (a) of this paragraph, provided that (1) the neighboring entity(ies) gives Applicant sufficient advance notice as may be necessary reasonably to accommodate its (their) requirements from a functional and technical standpoint and (2) that such entity(ies) fully compensates Applicant for its cost. In carrying out this subparagraph (b), however, Applicant shall not be required to construct or add transmission facilities which (a) will be of no demonstrable present or future benefit to Applicant, or (b) which could be constructed by the requesting entity(ies) without duplicating any portion of

Applicant's existing transmission lines, or (c) which would jeopardize Applicant's ability to finance or construct on reasonable terms facilities needed to meet its own anticipated system requirements. Where regulatory or environmental approvals are required for the construction or addition of transmission facilities, needed for the transactions referred to in subparagraph (a) of this paragraph, it shall be the responsibility of the entity(ies) seeking the transaction to participate in obtaining such approvals, including sharing in the cost thereof.

6. To increase the possibility of achieving greater reliability and economy of electric generation and transmission facilities, Applicant will discuss load projections and system development plans with any neighboring entity(ies).

7. When Applicant's plans for future nuclear generating units (for which application will hereafter be made to the Atomic Energy Commission) have reached the stage of serious planning, but before firm decisions have been made as to the size and desired completion date of the proposed nuclear units, Applicant will notify all neighboring entities including distribution systems with peak loads smaller than Applicant's

that Applicant plans to construct such nuclear units. Neither the timing nor the information provided need be such as to jeopardize obtaining the required site at the lowest possible cost.

8. The foregoing commitments shall be implemented in a manner consistent with the provisions of the Federal Power Act and all other lawful local, state and Federal regulation and authority. Nothing in these commitments is intended to determine in advance the resolution of issues which are properly raised at the Federal Power Commission concerning such commitments, including allocation of costs or the rates to be charged. Applicant will negotiate (including the execution of a contingent statement of intent) with respect to the foregoing commitments with any neighboring entity including distribution systems where applicable engaging in or proposing to engage in bulk power supply transactions, but Applicant shall not be required to enter into any final arrangement prior to resolution of any substantial questions as to the lawful authority of an entity to engage in

the transactions. In addition, Applicant shall not be obligated to enter into a given bulk power supply transaction if: (1) to do so would violate, or incapacitate it from performing, any existing lawful contracts it has with a third party; (2) there is contemporaneously available to it a competing or alternative arrangement which affords it greater benefits which would be mutually exclusive of such arrangement; (3) to do so would adversely affect its system operations or the reliability of power supply to its customers, or (4) if to do so would jeopardize Applicant's ability to finance or construct on reasonable terms facilities needed to meet its own anticipated system requirements.

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connection therewith.

Only the Cities and Applicant intend to call witnesses. Cross-examination may be undertaken by all parties, and cross-examination will extend to all admissible testimony pertinent to the aforesaid nine points, regardless of the scope of the direct examination. This was agreed to in the sixth prehearing conference. See pages 693 and 746.

The Cities will present their case first. After the parties have completed examination and cross-examination of the witness, the Board may have some questions. If so, the matter of whether the parties will be given additional time after the Board's questions will be settled as to each situation, and the Board will give such time as it deems appropriate.

The Staff's motion of 25 July 1974: In this motion the Staff equates this case to the situation in Duke, and the Board does not understand that to be the situation. In other words, the Staff appears to be of the opinion that the Department of Justice, and Staff, and the Applicant have agreed on the proposed conditions as being minimum conditions which will be acceptable to the Applicant, regardless of the outcome of the Applicant's motions or any further hearings or any further action in this case.

As the Board understands the matter, the case before us is on a motion of Applicant, two motions of Applicant, and

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these motions relate to these conditions and the assumptions, armendo, apply only to these conditions and for the purpose of this motion.

Before ruling, therefore, on the motion of the Staff, we would like Counsel for Applicant to advise us as to their understanding of the posture between themselves, the Staff, and Justice.

MR. CARTER: Mr. Chairman, it is our understanding that the Staff and Justice and ourselves are in agreement that the license conditions are sufficient.

CHAIRMAN CLARK: I understand that, but the Staff seems to go further and to be under the impression that if we were to deny your motion that you would still take the position that you would be willing to grant these conditions, regardless of what further conditions the Board might see fit to impose at the end of further proceedings as occur.

Now that was the case in Duke. We do not understand it to be the case here but we are asking you.

MR. CARTER: No, Mr. Chairman. That would not be the case here. We would not be agreeable to that.

CHAIRMAN CLARK: Thank you, Mr. Carter.

In other words, as the Board understands the matter and as confirmed by Counsel for Applicant, if the Board were to refuse the motions -- that is, the motions before the Board on behalf of the Applicant, and we were then to proceed

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with the case and the Applicant is not willing to say that these conditions would be the minimum.

Would the Staff care to comment before we rule, or would Justice care to comment?

MR. LECKIE: Your Honor, let me state for the record that that is not our understanding of our agreement with the Applicant, and I would refer to a pleading, the answer of the Department of Justice and AEC Regulatory Staff to Applicant's motion for reconsideration. This was dated June 17th, 1974.

We stated in that pleading, and I quote:

> "We have been authorized by the Applicant to state that it is agreeable to attachment of these conditions to any Waterford No. 3 license, not only if the Board grants summary disposition but also if the Board determines to conduct a hearing with respect to any Intervenor's claim for further or additional relief."

That has been our understanding.

CHAIRMAN CLARK: That was what I was under the impression was your understanding.

MR. CARTER: Mr. Chairman, excuse me, but Mr. Stevenson reminds me that I have misspoken myself and what Mr. Leckie has just reported is correct.

CHAIRMAN CLARK: Then as the record now stands,

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Mr. Carter, if the Board were to deny the Applicant's motions, the Applicant would still be willing to accept these conditions, regardless of what further conditions might be imposed as a result of further proceedings?

MR. CARTER: That is correct.

CHAIRMAN CLARK: We'll take a one-minute recess.

(Pause.)

CHAIRMAN CLARK: With the record in its present posture, the Board will grant the Staff's motion.

The next point has to do with the stipulation of facts. Has the stipulation of facts been completed?

MR. DEWEY: Your Honor, it is almost completed. It will be necessary that we have a meeting, either at lunch time or after the hearing today, and hopefully we can get the signatures by the parties on the stipulation.

I believe Mr. Vogler reminded the Board the last time we have not got information for every stipulation. Mr. Goldberg's group left the hearing and we do not have the information for them, and in a few other instances we don't have the information but it is almost complete.

CHAIRMAN CLARK: But the number of facts will be slightly less than you had originally anticipated. We understand that.

MR. DEWEY: That's correct.

CHAIRMAN CLARK: Suppose you report again tomorrow