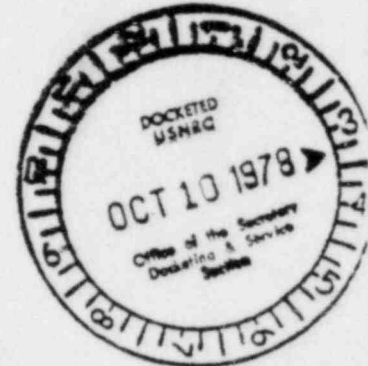


UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD



In the Matter of)
DUKE POWER COMPANY)
(William B. McGuire Nuclear)
Station, Units 1 and 2)

Docket Nos. 50-369
50-370

NRC STAFF'S RESPONSE IN OPPOSITION
TO THE ADMISSION OF INTERVENOR AFFIDAVITS

On the first day of the recent evidentiary hearings on the outstanding health and safety issues in this proceeding held in Charlotte, North Carolina^{1/}, Carolina Environmental Study Group (CESG) brought forth a document entitled "Supplemental Motion to Reopen An Issue Of Need For Power," (August 15, 1978). Attached to this motion was a copy of a memorandum from D. H. Sterrett of Duke Power Company to Mr. W. L. Porter of Duke Power Company.

The supplemental motion and supporting memorandum concerned matters related to "need for power". That is, CESG sought to have admitted into the record the peak loads experienced by Duke Power Company after the close of the environmental hearing in April, 1977.

^{1/} The hearings on environmental issues in this proceeding in which a need for power contention and a cost-benefit balance contention were considered were completed in April 1977, and the record was closed on environmental matters.

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Both the applicant and Staff objected to the supplemental motion as being untimely. However, the parties later stipulated that the information provided by CESG could be admitted as evidence. Tr. 1978. The stipulation also provided, however, that the Applicant would be allowed fifteen days to offer similar factual evidence and analysis. The Staff was allowed five days after the Applicant's offer to provide further factual evidence and analysis. Tr. 1978-79. There was no provision in this agreement among the parties for further rebuttal by CESG. The Licensing Board accepted the stipulation of the parties and admitted CESG's two documents as Intervenor's Exhibit 34 and Exhibit 35. Tr. 1979.

In accordance with the stipulation, Duke filed the "Affidavit of D. H. Sterrett" on September 14, 1978. The Staff filed "IIRC Comments on Carolina Environmental Study Group's (Carolina) Exhibits 34 and 35" and "Affidavit of Suzanne G. Koblusek" on September 25, 1978 in accordance with the same stipulation.

On September 13, 1978, a document was filed with the Licensing Board entitled "Affidavit of Jesse Riley Concerning Trends in Duke Power Company Base Load" and signed by Mr. Jesse Riley. Again, on September 20, 1978, a document entitled "Intervenor's Response to Affidavit of D. H. Sterrett" was filed over the signature of Jesse L. Riley. Neither

the Riley affidavit of September 13, 1978, nor the Riley response of September 20, 1978, attempts to cite authority from the Commission's Rules of Practice which supports its attempt to proffer additional evidence following the close of the record.

The Staff opposes the admission for consideration by the Board of these documents.^{2/}

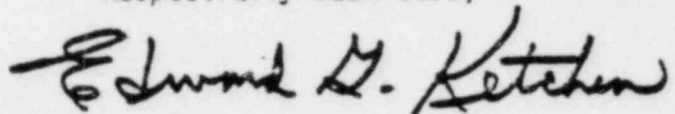
Except for allowing the Applicant and Staff to comment on CESC's Exhibits 34 and 35, the record was closed in this case on August 31, 1978. Yet, a stream of documents continues to flow from CESC on the need for power issue. On close scrutiny, these documents are simply reiterations of what CESC has filed before. These documents are argumentative and cumulative evidence and fall well within 10 CFR Part 2, Appendix A, V, (d)(3).

More important, however, the supplemental documents filed by CESC should be disregarded. A decision may not be based on factual material which has not been introduced into evidence. Tennessee Valley Authority

^{2/} We concur in "Applicant's Response to 'Affidavit of Jesse Riley Concerning Trends in Duke Power Company Base Load,' of September 28, 1978, which also opposes the admission of CESC's affidavit of September 13, 1978. We also concur in "Applicant's Response to 'Intervenor's Response To Affidavit of D. H. Sterrett'" of September 28, 1978, which opposes CESC's "Response to Affidavit of D. H. Sterrett" (September 20, 1978).

(Hartsville Nuclear Plant, Units 1A, 2A, 1B, and 2B), ALAB-463, 7
NRC 341, 352 (1978). And CESG has not shown that there are substantial
gaps in the record which need to be filled by additional evidence by
way of affidavits. Cf. Northern States Power Company (Prairie Island
Nuclear Generating Plant, Units 1 and 2), 2 NRC 197, 205-206 (1975).

Respectfully submitted,

A handwritten signature in cursive script that reads "Edward G. Ketchen".

Edward G. Ketchen
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 6th day of October, 1978.

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF'S RESPONSE IN OPPOSITION TO THE ADMISSION OF INTERVENOR AFFIDAVITS" dated October 6, 1978, in the above-captioned proceeding, have been served on the following by deposit in the United States mail, first class, or through deposit in the Nuclear Regulatory Commission's internal mail system, this 6th day of October, 1978.

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