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MAY 2 5 1984

Docket No. 50-413A

Robert Guild, Esq.
Counsel for Palmetto Alliance, Inc.
Post Office Box 12097
Charleston, South Carolina 29412

Dear Mr. Guild:

Your request for reevaluation of my finding of no significant antitrust changes with respect to the Catawba Unit No. 1 Operating License Application has been received.

Although my finding of no significant antitrust changes was with respect to Unit No. 1, the interest of your client, the Palmetto Alliance, Inc., and the supporting data for reevaluation concerns Unit No. 2. Your client opposes the participation of Piedmont Municipal Power Agency (PMPA) in Unit No. 2. Since PMPA is not participating in Unit No. 1 and the Unit No. 2 antitrust analysis has not yet started, please resubmit your request for reevaluation at a later date.

In view of your interest in the matter, we are enclosing a copy of the staff's analysis for Unit No. 1 and will keep you apprised of significant staff actions for Unit No. 2. If you do not agree with my findings for Unit No. 2, you may request a reevaluation of that finding.

Sincerely,

Original Signed by
H. R. Denton

Harold R. Denton, Director
Office of Nuclear Reactor Regulation

Enclosure: As stated

Retyped in Vollmer's office 5/18/84

*See Previous Concurrence

H 5/21/84

OFFICE	*DE:SAB	*DE:SAB	*OELD	*DE:AD:MCET	DE:DIR	NRR:DD	NRR:D
SURNAME	AToalston	WRegan	BVogler	WJohnston	RVollmer	ECase	HDenton
DATE	4/ /84	4/ /84	4/ /84	5/15/84	5/18/84	5/ /84	5/21/84

CATAWBA NUCLEAR STATION, UNIT 1

DUKE POWER COMPANY, SALUDA RIVER ELECTRIC COOPERATIVE, INC.

AND NORTH CAROLINA ELECTRIC MEMBERSHIP CORPORATION

DOCKET NO. 50-413A

FINDING OF NO SIGNIFICANT ANTITRUST CHANGES

CONTENTS

I. Introduction

Prospective operating licensees are not required to undergo formal antitrust reviews unless the NRC staff has made the determination that there have been "significant changes" in the licensee's activities or proposed activities subsequent to the review by the Attorney General and the Commission at the construction permit (CP) stage.* Concentration on changes in the applicant's activities since the previous review process expedites the review and focuses attention on areas of possible competitive conflict heretofore not analyzed by the Attorney General or the NRC Staff.

The Commission in Summer** has provided the staff with a set of criteria to be used in making the significant change determination for prospective operating license (OL) applicants:

> "The statute contemplates that the change or changes, (1) have occurred since the previous antitrust review of the licensees; (2) are reasonably attributable to the licensees; and (3) have antitrust implications that would most likely warrant some Commission remedy."***

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* Section 105c(2) of the Atomic Energy Act, as amended.

** Virgil C. Summer Nuclear Station, Unit 1, Docket No. 50-395A, June 26, 1981, 13 NRC 862 (1981).

*** Ibid.

To warrant an affirmative significant change finding, i.e., to trigger a formal OL antitrust review, the particular change(s) must meet all three of these criteria. Staff has documented several "changes" in its analysis of the Catawba OL application that warrant analysis under Summer. However, staff has determined that none of the documented changes meets all three Summer criteria and consequently is not recommending a formal OL antitrust review.

To view the significant change analysis in its proper perspective, it is helpful to first review the applicant systems associated with the Catawba Nuclear Station as well as their interactions within a pertinent geographic area. Using this data base and the initial construction permit antitrust review as a benchmark, it is then possible to apply the Summer criteria to all changes attributable to the applicant(s) and determine which changes, if any, are significant in an antitrust context.

II. Geographic Area of Review and Applicant Systems

Unit 1 of the Catawba Nuclear Station (Catawba) is located in the north central portion of South Carolina, approximately ten miles from Charlotte, North Carolina. The relevant marketing area for power and energy (and ancillary services) associated with Catawba encompasses most of the states of North and South Carolina, but is concentrated in what is termed the

Piedmont area, i.e., the area in which the incidence of any anti-competitive practices associated with the activities of the Catawba Applicants will have the greatest impact. This is the area in which the three applicants serve (or will serve once Catawba is operational) and the area where the use of power and energy generated by the Catawba Station will be most concentrated.

A. Duke Power Company

The company responsible for constructing and operating Catawba, the lead applicant, is Duke Power Company (Duke), headquartered in Charlotte, North Carolina. Duke was the sole applicant when the construction permit (CP) application was tendered to the Commission in 1972.

Duke's service area, approximately two thirds of which lies in North Carolina and the remainder in South Carolina, covers an area of almost 20,000 square miles with an estimated population of four million people.*

Duke is a large, vertically integrated investor owned electric utility company with extensive generation, transmission and distribution facilities serving over a million customers. In 1980, Duke had generating capability of approximately 12,000 MW, almost 12,000 circuit miles of transmission line (74% of which is rated at 100 Kv or more) and a winter peak load of 9,844 MW. Duke's operating revenues totalled $1.672 billion in 1980.

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* See Appendix A.

On July 1, 1980 Duke, acting as the lead applicant, filed an application before the Commission to amend its construction permit by including two new co-owners and co-applicants for Unit 1 of the Catawba Nuclear Station. This amendment became effective on December 23, 1980 thereby including the Saluda River Electric Cooperative, Inc. and the North Carolina Electric Membership Corporation as co-applicants and co-owners for purposes of Commission review.

B. Saluda River Electric Cooperative, Inc.

Saluda River Electric Cooperative, Inc. (Saluda River) is an electric cooperative which was incorporated under the laws of South Carolina on November 21, 1958. Saluda River (headquartered in Laurens, South Carolina) is composed of five member cooperatives, all of whom receive power and energy from Duke through wholesale power contracts.* Essentially, Saluda River members represent all of Duke's rural electric cooperative customers located in South Carolina.

Saluda River does not own any generation or transmission facilities and is a "paper" G & T at present.** Once Catawba becomes operational, Saluda River will own almost 19% (215 MW)*** of the nuclear unit and will become a wholesale supplier to its member cooperatives.

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* Saluda River members are listed in Appendix A.

** The combined peak demand of Saluda River's member coops amounted to approximately 236 MW in 1979. (Saluda River is a generation and transmission coop, i.e., a G&T, as distinguished from those coops engaged solely in the distribution of energy at the retail level.)

*** Saluda River will own 18.75% of Catawba Unit 1 and 9.375% of the ancillary support facilities.

C. North Carolina Electric Membership Corporation

Under North Carolina statue, on Janaury 20, 1949, the North Carolina Electric Membership Corporation (NCEMC) was incorporated as a cooperative non-profit electric membership corporation. NCEMC is composed of twenty-six member cooperatives, of which ten presently have wholesale power contracts to receive power and energy from Duke. These ten members will directly participate and own approximately 56% (645 MW) of Catawba Unit 1* and will be considered synonymous with NCEMC for purposes of this review. Just as Saluda River represents all of Duke's coop customers in South Carolina, NCEMC represents all of Duke's coop customers in North Carolina.

NCEMC's combined peak demand for 1979 was approximately 640 MW. At present, NCEMC does not own any generation facilities and its members are supplied at wholesale by Duke, Virginia Electric & Power Co., Carolina Power & Light Co. and Nantahala Power & Light Co. In addition, NCEMC members receive small amounts of hydro-electric allotments from the Southeastern Power Administration.

III. The Construction Permit Antitrust Review

In order to make a "significant change" determination it is necessary to have some benchmark from which to measure change. A resume of the results of the CP review should provide an adequate framework in which changes, as viewed under Summer, can be analyzed.

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*NCEMC will own 56.35% of Catawba Unit 1 and 28.125% of the ancillary support facilities. See Appendix B for a list of member participants.

Duke Power Company applied for a construction permit for the Catawba station in July of 1972. Like all other non-grandfathered nuclear applicants (applicants seeking CPs or OLs after the 1970 amendment addressing antitrust issues), Duke had to undergo an antitrust review at the CP stage to insure that its actitivies in connection with the construction of the plant did not "create or maintain a situation inconsistent with the antitrust laws" -- as specifically prescribed by Congress in Section 105c of the amended Atomic Energy Act of 1954.

At the time Duke tendered its CP application for Catawba, it had two applications pending before the Commission: an application for an operating license for the Oconee Station, Units 1, 2 and 3; and a CP application for the McGuire Station, Units 1 and 2.* The Department of Justice reviewed both applications and advised the Commission to hold an antitrust hearing to determine whether or not Duke was engaged in activities that may create or maintain a situation inconsistent with the antitrust laws. The Department reviewed the Catawba CP application

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*Although both the CP and OL applications for Oconee were submitted to the Commission prior to the 1970 amendment requiring antitrust review, Section 105c(3) of the amendment provides for an antitrust review when "any person who intervened or who sought by timely written notice to the Commission to intervene." This Section was invoked in Oconee and as a result, the Department of Justice issued an advice letter to the Commission on August 2, 1971.

and issued an advice letter to the Commission dated May 1, 1973* also recommending that the Commission hold a hearing.

A. Department of Justice Advice Letters

Although the Department of Justice's (DOJ) three advice letters spanned a period of almost three years, there seemed to be a common thread of alleged anticompetitive conduct by the Duke Power Company expressed in each DOJ review, as summed up in the Catawba advice letter:

> "Except for the somewhat increased costs for these units, the facts upon which our advice regarding the Catawba units must be based are identical to those stated in our letters on earlier applications."

The picture portrayed by DOJ was that of Duke as a large vertically integrated power supplier doing business primarily in the "Piedmont Carolinas", with significant market power in the generation and transmission of power and energy throughout the region. According to the advice letters, Duke apparently abused its market power in its dealings with or lack of dealings with smaller power entities in its marketing area. The Department's list of charges included:

*See DOJ advice letters for Oconee dated August 2, 1971; McGuire dated September 29, 1971; and Catawba all included as Appendix D.

a) territorial market allocations by Duke and a neighboring power entity, which allocated larger customers to Duke;

b) refusals to deal, coordinate services and interconnect with neighboring entities;

c) development of restrictive rate schedules containing demand ratchets that could "serve effectively to discourage installation of thermal generating capacity by its wholesale customers";

d) lack of any provision for reserve sharing, thereby possibly discouraging entry into self-generation;

e) refusals to share ownership or other types of participation in Duke's nuclear facilities; and

f) the use of political and regulatory arenas in an attempt to prohibit the formation of proposed municipal and cooperative ventures into the electric power industry.

The apparent similarities in all three letters prompted DOJ to recommend one consolidated hearing for all three of Duke Power's licensing applications.

B. Petitions to Intervene

During the review process associated with all three of Duke's applications discussed above, the Commission received petitions to intervene in each case. During the Catawba CP proceeding, there were two petitions to intervene both dated June 7, 1973, one by a group of Duke's wholesale municipal customers in North Carolina* and the other, a joint petition by Duke's wholesale cooperative customers in North Carolina represented by the North Carolina Electric Membership Corporation.**

All of the municipal intervenors "are captive wholesale customers of applicant Duke" and the cooperative intervenors "depend totally, preponderantly or substantially upon Duke for its wholesale supply."*** Generally, both

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* Comprised of the Cities of High Point, Lexington, Monroe, Shelby, Albemarle and the Towns of Landis and Lincolnton, North Carolina.

** Comprising all but one of Duke's North Carolina Coop customers.

*** "Municipal" Petition to Intervene, p. 3 and "Cooperative" Petition to Intervene, p. 2, both dated June 7, 1973.

sets of petitioners sought alternative means of supplying their power requirements in an effort to lessen the market dominance of their principal supplier, Duke Power Co. Each requested that Duke's license to construct Catawba,

> "be denied or conditioned upon provision to petitioners of opportunity to purchase a fair share of these facilities and to be afforded such other rights as may be necessary to prevent monopolization."*

After extensive negotiations involving the Applicant, DOJ and the Commission staff, Duke agreed to a set of licensing commitments that effectively resolved the concerns of anticompetitive conduct expressed by DOJ in all three advice letters pertaining to Duke Power Co.**

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* Ibid, p. 5 and p. 6 respectively.

** Letter from William H. Grigg, Vice President Duke Power, to Thomas E. Kauper, Assistant Attorney General, dated April 26, 1974, depicting commitments to DOJ, is attached as Appendix E.

C. License Conditions

The "commitments" provided by Duke Power Co. addressing various competitive concerns by DOJ and the Commission staff were made formal license conditions and attached to the McGuire and Catawba construction permits and the Oconee operating licenses.

Generally, the license conditions* provided the smaller power entities in Duke's marketing area with viable alternatives in power supply selection and helped to ensure a more competitive process throughout the Piedmont Carolinas.

In a more narrow perspective, the license conditions addressed specific concerns expressed throughout Duke's marketing area by various smaller power entities. For example, the following types of power and services have been made available to all neighboring entities:**

a) ownership access was granted to the Catawba Nuclear Station,

b) coordination of reserves and interconnections were provided for,

c) emergency service and/or scheduled maintenance service would be provided,

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* See Appendix F for a complete listing of the license conditions.

** "Neighboring entity" is rigidly defined in the commitments, but it generally includes all power entities or potential power entities that are "economically and technically feasible of interconnection with those [facilities] of the Applicant."

d) partial requirements firm power and energy would now be available to more entities,

e) transmission services would be provided even if Duke is not the power supplier (i.e., wheeling services), and

f) equal access was offered to power entities of all services provided by the Applicant, as now (or in the future) filed under contract before the Federal Energy Regulatory Commission.

As a result of the negotiated license conditions, the Department of Justice withdrew its advice letters in all three cases and recommended terminating the antitrust proceedings which were triggered by the initial DOJ advice letter on August 2, 1971.*

In sum: Applicant, Duke Power Company, represents one of the largest electric power entities serving in the states of North and South Carolina and particularly in the Piedmont Carolinas. Duke is a vertically integrated electric utility with extensive generation and transmission facilities supplying wholesale and retail customers throughout its service area. Through its high voltage interconnections with neighboring power systems, Duke is able to coordinate its operations with the major power systems in the southeastern portion of the United States. Given these structural characteristics, Duke has managed over the years to develop a significant degree of market

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* See Supplemental Advice Letter from the Department of Justice, dated April 26, 1974 and attached as Appendix G.

power in the electric power industry, particularly in the Piedmont Carolinas relative to other electric entities buying or selling power and energy in this area.

During the antitrust review associated with Duke's nuclear power plant applications, it became apparent that Duke had developed a pattern of dealing with smaller power entities in its service area that was anti-competitive and resulted from Duke abusing its market power. Refusals to coordinate with other power entities, demand ratcheted rate schedules which tended to discourage entry into thermal generation by its wholesale customers, lack of reserve sharing and refusing to offer access to its nuclear plants were practices attributed to Duke Power Company prior to and during the Commission's antitrust review process. Duke agreed to cease these practices (while at the same time not admitting any guilt or wrong doing) and was bound to do so by the set of license conditions attached to each of its nuclear permits -- Oconee, McGuire and Catawba -- ultimately issued by the Commission after the antitrust license conditions had been agreed upon by Duke.

The Catawba construction permit antitrust review encompassed all of Duke Power Company's applications before the Commission. The negotiated license conditions pre-empted formal litigation in all of the applications and enhanced the competitive process among power entities in Duke's service area in large part by providing smaller power entities more options in choosing sources of optimal power supply for their customers.

The Attorney General's supplemental advice letter of April 26, 1974 addressed the commitments agreed upon by Duke and recommended attaching the commitments as license conditions to Duke's Oconee, McGuire and Catawba licenses and terminating the scheduled antitrust proceedings for all three plants. On June 24, 1974, the Board approved this settlement and ordered the commitments attached as license conditions to the permits of all three Duke Power Co. plants. After further settlement negotiations involving the intervening parties, the municipal and cooperative intervenors accepted the settlement on March 31, 1975 and on August 7, 1975 Duke Power Co. was issued its construction permit thereby terminating the Commission's CP review of the Catawba Nuclear Station.*

IV. Changes Since the Construction Permit Review

The Commission's Regulatory Guide 9.3 for OL applicants requests data pertaining to changed activities since the CP antitrust review:

> "This Regulatory Guide identifies the type of information that the Regulatory staff considers germane for a decision as to whether a second antitrust review is required at the operating license stage".**

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*Reviews were also conducted on the two new applicants, Saluda River and NCEMC after the license conditions were attached to Duke's CP, however, the primary thrust of the Commission's antitrust review process at the CP stage for Catawba was completed with Duke's review which ended in 1975. (Justice recommended no hearing in the Saluda River and NCEMC reviews.)

** Regulatory Guide 9.3, p.1

By letter dated March 31, 1981, Duke Power Company, the principal applicant, submitted its initial response to Reg. Guide 9.3. After follow-up inquiries by the staff, Duke submitted additional data by letter dated May 24, 1982. Two additional power entities, Saluda River Electric Cooperative, Inc. and North Carolina Electric Membership Corporation became co-owners of Catawba since Duke's initial 1981 data response and Duke, acting as agent for the new co-owners, included the new owners' initial 9.3 data response in conjunction with its 1982 supplementary response.

Although there are now three co-applicants applying for an operating license for Catawba, the changes that have taken place since the CP review for the two new cooperative applicants have been insignificant from an antitrust standpoint. Both Saluda River and NCEMC are wholesale customers of Duke and will not become power suppliers until McGuire or Catawba becomes operational. In evaluating significant changes, staff is most concerned with changes that address an applicant's market power and an applicant's ability to affect bulk power supply (i.e., generation and transmission). Consequently, the significant change analysis for Catawba will primarily address the changed activity attributed to Duke Power Co., i.e., of the three applicants, Duke is the applicant most likely to possess market power.

A. Changes Conforming to License Conditions

Many of the changes which have occurred in the electric utility industry in North and South Carolina since 1975 have resulted from extensive negotiations (initiated during the Commission's CP antitrust review process) between many different industry members including Duke Power, smaller municipal

and cooperative systems and various governmental agencies. The fruits of these negotiations have been realized by many of the smaller power systems throughout the Piedmont Carolina area and have generally impacted favorably upon the competitive process in the area. For example:

1) Nuclear Access - On February 6, 1981, Duke's coop customers in South Carolina, represented by Saluda River Electric Cooperative, Inc., and Duke's coop customers in North Carolina, represented by North Carolina Electric Membership Corporation, became co-owners of Catawba Unit 1 with ownership shares of 18.75% and 56.25% respectively.

   In addition, the North Carolina Municipal Power Agency #1, representing Duke's North Carolina municipal customers, purchased 75% of Unit 2 of the Catawba station on November 29, 1978. Moreover, the Piedmont Municipal Power Agency, representing Duke's South Carolina municipal customers, is presently negotiating with Duke for the sale of the remaining interest in Unit 2, but no final agreement of sale has been consummated to date.*

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* According to Duke's supplemental 9.3 data response dated May 24, 1982, "The South Carolina Supreme Court issued its decision in February, 1982, upholding the constitutionality of the legislation authorizing the Piedmont Municipal Power Agency (PMPA) to purchase a 25% interest in Unit No. 2 of the Catawba Nuclear Station. Favorable negotiations are continuing on this matter."

At the time Catawba becomes commercially operational (or if McGuire precedes Catawba operation*), the North Carolina Electric Membership Corporation and the Saluda River Electric Coop will both become wholesale power suppliers meeting portions of their members' power requirements heretofore supplied by Duke Power Co.

2) Transmission Services - Duke's cooperative and municipal customers now have, as a result of the negotiated license conditions, access to Duke's transmission system facilities. Transmission agreements recently negotiated with the Piedmont Municipal Power Agency pursuant to its purchase of a portion of Unit 2 of the Catawba plant also provide for delivery of power to Piedmont members utilizing Duke's transmission facilities.

Implementation of the transmission licensing condition has resulted in an increase in the wheeling capacity for the Southeastern Power Authority over Duke's transmission lines from 61.5 MW to 118.5 MW, effective December 20, 1981.

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* "Through the McGuire reliability exchange agreement with Duke, NCEMC [and Saluda River] will share the output of both Duke's McGuire Nuclear Station and the Catawba Station, although it will only own a portion of Catawba Unit 1 and Support Facilities. NCEMC [and Saluda River] will have the option of triggering the reliability exchange on the previously scheduled commercial operation dates of each Catawba Unit (Nov. 1, 1983 and May 1, 1985) thereby ensuring that it will receive exchange entitlements irrespective of when Catawba actually commences operation." Supplemental 9.3 data response dated, May 24, 1982, p. 2.

Access to Duke's nuclear power plants and transmission system were primary concerns raised by the intervening parties during the reviews of Duke Power Company's Oconee OL review and the McGuire and Catawba CP reviews. These concerns have essentially been met by the negotiated license conditions. Changes in Duke's activities brought about by these conditions have been noted above and will continue to materialize as Duke's cooperative and municipal customers become wholesale power suppliers beginning with the commercial operation of the McGuire and/or Catawba nuclear plants.

The granting of access to Duke's nuclear power stations and its transmission grid, provided smaller power systems in the Piedmont Carolinas with a viable alternative means of power supply for their customers and enabled previously captive wholesale customers of Duke to branch out and become wholesale suppliers themselves. Although this changed activity occurred subsequent to the CP antitrust review and was attributable to the applicant, the changes were procompetitive in nature and warranted no Commission remedy.

B. Requests for Wholesale Power

Duke has received two requests for wholesale power service since the completion of the Catawba CP review in 1975.

1) According to Duke's 9.3 data response, the Town of Camden, South Carolina requested service from Duke which led to a meeting of Duke representatives and both the Camden Mayor and City Manager on January 27, 1982. Duke responded to

this request by informing "the town that it was unwilling to provide service due to possible shortages of power in the 1990's when it is estimated that the Company will have inadequate reserves and possibly even negative reserves."* The Town did not pursue its request after its January meeting with Duke.

2) In January of 1979, Duke received a request from the Town of Winnsboro, South Carolina for a tie-in to Duke's system for the purpose of taking wholesale power from Duke. Duke denied this request stating that the proposed tie "would have placed an undue financial burden on Duke."**

Moreover, Duke stated in its 9.3 response that,

"To meet its existing obligations, Duke was already committed to a program of expansion involving primarily baseload nuclear plants which (1) require a regulatory lead time of more than ten years, (2) have been embroiled in regulatory delays, and (3) were constantly faced with increased capital costs which makes

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* Supplemental 9.3 response dated May 24, 1982, p. 5.
** Ibid., p. 4.

> the Company's financial program difficult and burdensome. For these reasons, Duke believed that it would add to the burden of meeting load growth in its present public service obligation to take on any new requirements such as those proposed by Winnsboro."*

The licensing conditions attached to Duke's nuclear permits provide for access to its system (by neighboring entities) through many means. The wholesale service requested by the Town of Winnsboro and the City of Camden represents one mode of access to Duke's system that was explicitly provided for by the license conditions. Duke's refusal to supply power to these two systems represents a change in the applicant's proposed activities since the CP review.

In light of Duke's willingness to take on new wholesale cooperative power customers (see Section C), and extend its service area in the process, staff was concerned with Duke's denial of service to the two South Carolina towns. However, after additional inquiries to both Duke and the towns in question, it became apparent that Duke was attempting to reduce its capital cost expenditures

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* Ibid.

during the current recessionary cycle and avoid taking on new loads that required capital expenditures outside of its present public service obligation. The towns in question have alternative sources of power available to them* and do not disagree with Duke's reasons for denying their requests for service.

Duke's refusal to provide service to two towns requesting wholesale service occurred since the CP review, however, these refusals do not significantly impair the competitive process in the relevant area and consequently do not warrant a Commission remedy. If these refusals were to continue and become part of a pattern that necessitated additional inquiry and eventually required Commission remedy, the remedy would be determined in the context of a compliance proceeding not an OL proceeding because the refusal pattern would be in violation of existing license conditions attached to Duke's Catawba construction permit.

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*Each town was about to renew its existing wholesale contract with South Carolina Electric & Gas Co., which apparently precipitated the search for new, lower cost suppliers.

C. Other Changes

Staff has also identified additional changes in Duke's activities since the CP review that may appear to have an antitrust impact in the relevant area of study.

1) New Interconnections - Although Duke was required to interconnect under the license conditions, Duke's new interconnections since the CP review have been with neighboring investor owned systems* at 230 Kv and above -- i.e., not the type of system interconnections that orginally necessitated inclusion of an "interconnection" provision in the license conditions.**

2) New Delivery Points - Additional delivery points to electric cooperatives in Duke's service area have been established since the CP review.

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*These systems include: Georgia Power Co., Carolina Power & Light Co., and South Carolina Electric & Gas Co.

**Often, interconnections are required by smaller systems during the CP review procedure and are important in the systems' overall scheme of alternative bulk power supply.

3) New Wholesale Customers - Duke has contracted to serve the Wake Electric Membership Corporation of Wake Forest, North Carolina, effective March 21, 1977.

4) Changes in Duke's Service Area - The areas served by the new delivery to Wake Electric Membership Corp. and an imminent new delivery to Pee Dee Electric Membership Corp. are now included in Duke's area of planning for generation and transmission capacity.

5) Acquisitions or Mergers - Duke acquired the electric facilities of the Town of Davidson, North Carolina on November 20, 1975; the facilities supplying the University of North Carolina (Chapel Hill) on January 1, 1977; and the Cannon Mills distribution facilities in Kannopolis, North Carolina on March 20, 1979.

These changes in Duke's activities since the CP review have resulted largely from Duke's growth as an electric company since 1975. New interconnections and delivery points to Duke's system generally increase reliability and serviceability to existing and new customers. The addition of a new wholesale cooperative customer and the concommitant broadening of service area does not

appear to be anticompetitive in that, Wake Electric Coop represents a relatively small load (26MW) and is presently served by two other major bulk power suppliers (Carolina Power & Light and the Southeastern Power Administration). Duke's three acquisitions of electric generating systems (or facilities) since the CP review do not foreclose significant portions of the bulk power supply market nor do these acquisitions appear to be part of a pattern or concerted effort by Duke to eliminate significant numbers of smaller competing systems serving in or adjacent to Duke's service area.

Although all of the above changes (Sections A-C) have occurred since the CP review and are attributable to the lead applicant, none warrant Commission antitrust remedy and consequently none satisfy the third Summer criterion. In order for staff to make an affirmative significant change recommendation, all three Summer crtieria must be met by the change(s) in question.

V. Summary and Conclusion

The principal applicant, Duke Power Company, represents the largest power system in the relevant marketing area. Additions of large baseload power plants such as Catawba and necessary increases in attendent transmission facilities accompanying large nuclear plants, generally tend to increase the oversight or planning role of the larger systems in a particular marketing area, i.e., usually enhancing any existing market power of the system.

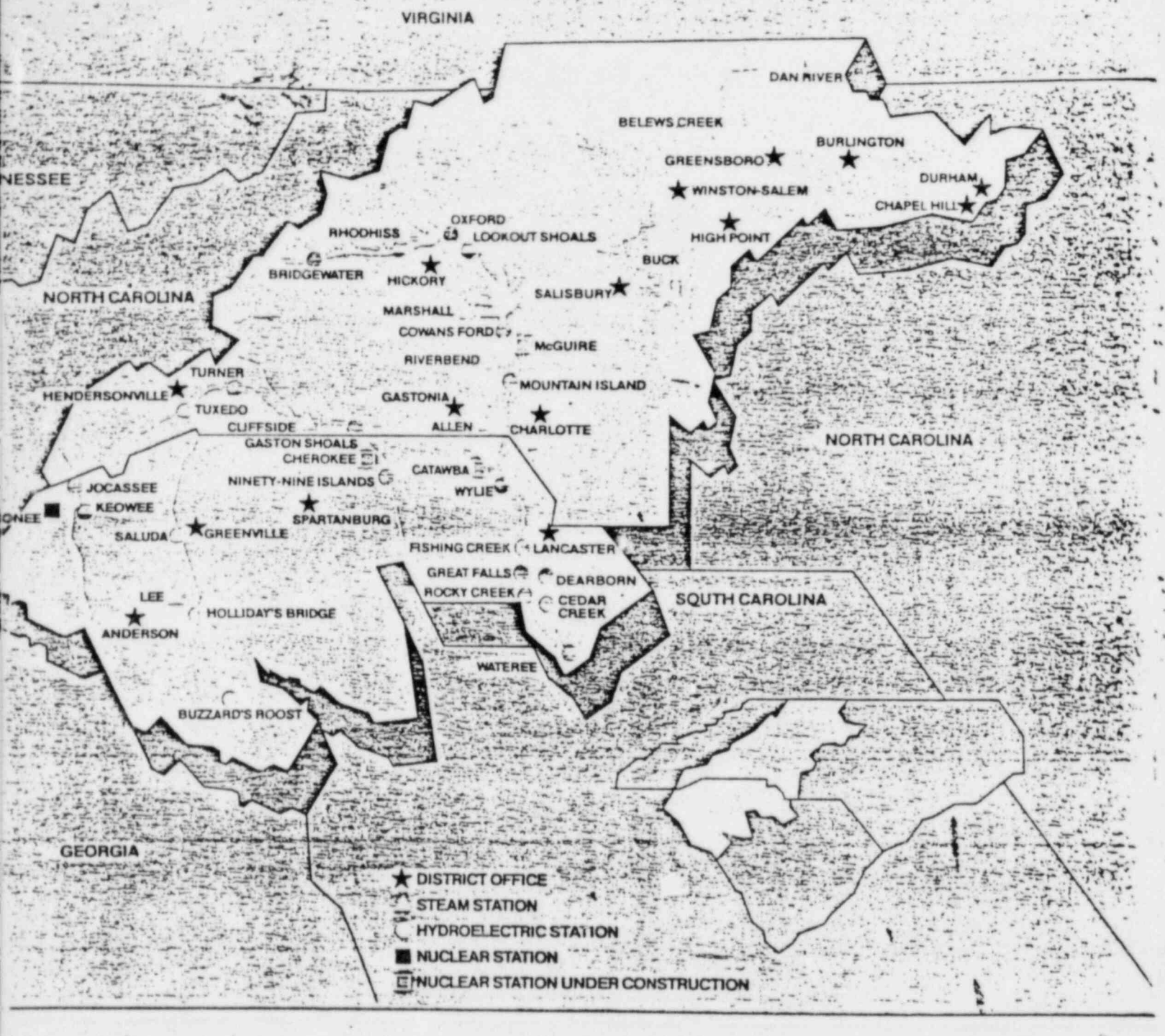
By subjecting all nuclear applicants to an antitrust review at the CP stage, the NRC via its Section 105c charge, prevents the economies associated with large baseload nuclear plants from being captured by only the largest power systems throughout the country, thereby thwarting increases in existing market power. During the Catawba CP antitrust review, it became apparent that Duke Power had been less than cooperative with smaller power systems in its service area and adjacent areas. Consequently, a set of antitrust license conditions was attached to the Catawba construction permit (as well as the Oconee and McGuire OLs) which was designed to implement greater coordination between Duke Power and smaller municipal and cooperative systems in the relevant area - thereby furthering the competitive process among all of the power systems in the area. The economies associated with the Catawba nuclear plant and those linked to Duke Power's integrated network of power supply were subsequently made available to smaller systems in the area.

Staff has identified a number of changes that, (1) have occurred since the construction permit antitrust review, and (2) are reasonably attributable to the principal licensee. However, many of these changes are in conformance with the construction permit antitrust license conditions and have had positive performance effects on the availability of bulk power supply and on competition in the area generally. Other changes which have occurred, have not had significant negative antitrust implications that would likely warrant a Commission remedy, and therefore do not warrant a significant change finding.

Based upon the successful implementation of the CP license conditions and the absence of any significant detrimental conduct or activity since the CP review on the part of Duke Power Company, Saluda River Electric Cooperative, Inc. or the North Carolina Electric Membership Corporation (licensees and co-applicants), staff recommends that no affirmative significant change determination be made pursuant to the application for an operating license for Unit 1 of the Catawba Nuclear Power Station.

APPENDIX A

ke Power Service Area



out Your Company

Power Company is an investor-owned electric utility
g approximately 1.3 million customers in North Carolina
outh Carolina. The Company's service area encom-
s about 20,000 square miles through the Piedmont sec-
of the two states. Retail customers are served locally
gh 96 district and branch offices.

dition to selling electricity directly to its own retail
mers, the Company sells bulk electricity to 55 major
sale customers, primarily municipal electric systems
ural electric cooperative systems.

During the 12 months ended Decernber 31, 1980, Duke's electric revenues were $1.7 billion, of which approximately 70 percent was derived from sales in North Carolina and 30 percent from sales in South Carolina.

Duke Power has five active subsidiaries — Crescent Land & Timber Corp. (land management); Mill-Power Supply Company (wholesale distributor of electrical equipment and purchasing agent for Duke); Eastover Land Company (coal property management); Eastover Mining Company (coal mining); and Western Fuel, Inc. (exploration and development of uranium ore deposits).

APPENDIX B

North Carolina Electric Membership Corporation Participants

Blue Ridge Electric Membership Corp.
Crescent Electric Membership Corp.
Davidson Electric Membership Corp.
Haywood Electric Membership Corp.
Pee Dee Electric Membership Corp.
Piedmont Electric Membership Corp.
Rutherford Electric Membership Corp.
Surry-Yadkin Electric Membership Corp.
Union Electric Membership Corp.
Wake Electric Membership Corp.

APPENDIX C

Saluda River Electric Cooperative, Inc. Participants

Blue Ridge Electric Cooperative, Inc.
Broad River Electric Cooperative, Inc.
Laurens Electric Cooperative, Inc.
Little River Electric Cooperative, Inc.
York Electric Cooperative, Inc.

APPENDIX D

NATIONAL ADVISORY COUNCIL ON ENVIRONMENTAL EDUCATION

Notice of Public Meeting

Notice is hereby given, pursuant to section 10(a)(2) of the Federal Advisory Committee Act, Public Law 92–463, that the next meeting of the full membership of the National Advisory Council on Environmental Education will be held commencing at 7:30 p.m. on Thursday, May 17, 1973, at the YMCA Insulon Lodge in Estes Park, Colo. Advisory Council members will participate in an environmental education master planning workshop at the same location, May 16–18, 1973.

The National Advisory Council on Environmental Education is established under section 3(c)(1) of the Environmental Education Act (Public Law 91–516). The Council is established to advise the Commissioner of Education on the review of the administration and operation of programs relating to the administration of the act.

The meeting of the Council shall be open to the public. Records shall be kept of all proceedings and shall be available for public inspection at the Office of Environmental Education, located in room 4124, Reporters Building, Seventh and D Streets SW., Washington, D.C.

Signed at Washington, D.C., on May 4, 1973.

WALTER BOGAN,
Director,
Office of Environmental Education.

[FR Doc.73–9193 Filed 5–8–73;8:45 am]

Office of the Secretary

MEDICAL FACILITY CONSTRUCTION

Reallotment of Amounts for Loans and Loan Guarantees

In accordance with part B of title VI of the Public Health Service Act (42 U.S.C. 291k–q) the Secretary of Health, Education, and Welfare in fiscal year 1971 allotted among the States $500 million of principal of loans to be made or guaranteed by the Secretary for the construction and modernization of hospitals and other medical facilities. Such allotments are available for obligation by the States through June 30, 1973, except that, purusant to section 622(b) of the Act (42 U.S.C. 291l(b)), amounts remaining unobligated by any State after June 30, 1972, may, with the consent of such State, be reallotted "on such basis as the Secretary deems equitable and consistent with the purposes" of such title VI.

Accordingly, notice is hereby given that, in order to achieve the maximum benefit from the authorized principal amount available, amounts previously allotted to each State for fiscal year 1971 for which no commitment for a loan or loan guarantee has been made will, with the consent of such States, be withdrawn and reallotted to other States which have a need therefor as follows:

1. Each of the 10 regions of the Department of Health, Education, and Welfare will be allocated an amount which bears the same ratio to the amount of funds to be reallotted as the sum of the population weighted per capita income of each of the States in such region (excluding those States from which loan principal is withdrawn) bears to the sum of the population weighted by per capita income of all States (excluding those States from which loan principal is withdrawn). Such computations will be based on the latest available published data of the Bureau of the Census.

2. The States in each region (excluding those States from which loan principal is withdrawn) will be ranked in order of each such State's population weighted per capita income.

3. Applications for loans and loan guarantees will be solicited by each regional office from the States in such region (excluding those States from which loan principal is withdrawn) for loans or loan guarantees with respect to (a) projects for construction or modernization of outpatient facilities, and (b) projects for modernization (including replacement) of other facilities for the treatment of ambulatory patients, such as outpatient and emergency departments of general hospitals. Such applications shall be submitted through the respective State agencies, in accordance with State plans, at such time as the Secretary shall prescribe.

4. To the extent that loan principal is available for each region, the Secretary will approve, prior to July 1, 1973, applications submitted in accordance with paragraph 3 above which meet the requirements of the applicable statute (42 U.S.C. 291 et seq.) and regulations (42 CFR part 53).

(a) Applications in category 3(a), from each State in order of such State's population/per capita income ranking as determined pursuant to paragraph 2 above.

(b) Applications in category 3(b), from each State in order of such State's population/per capita income ranking as determined pursuant to paragraph 2 above.

Dated May 3, 1973.

CASPAR W. WEINBERGER,
Secretary.

[FR Doc.73–9217 Filed 5–8–73;8:45 am]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. D–73–232]

ACTING REGIONAL ADMINISTRATOR

Designation

The employees appointed to the following positions in region IV (Atlanta) are hereby designated to serve as Acting Regional Administrator, region IV, during the absence of the Regional Administrator, with all the powers, functions, and duties redelegated or assigned to the Regional Administrator, provided that no employee is authorized to serve as Acting Regional Administrator unless all other employees whose titles precede his

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[illegible]ay 4, 1962 [illegible]ment In- 1966).)

[illegible] of April

[illegible]R, Jr.,
Acting Regional Administrator.

[FR Doc.73–9116 Filed 5–8–73;8:45 am]

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

ASSOCIATE ADMINISTRATOR FOR TRAFFIC SAFETY PROGRAMS

Delegation of Authority

By authority vested in me by section 9(e) of the Department of Transportation Act (Public Law 89–670, 9(e), October 15, 1966, 80 Stat. 944; 49 U.S.C. 1657(e)) effective immediately and until further notice, I hereby delegate to James E. Wilson, Associate Administrator for Traffic Safety Programs of the National Highway Traffic Safety Administration, all functions previously delegated to the Administrator of the National Highway Traffic Safety Administration.

Issued in Washington, D.C., on May 7, 1973.

CLAUDE S. BRINEGAR,
Secretary of Transportation.

[FR Doc.73–9321 Filed 5–8–73;8:45 am]

ATOMIC ENERGY COMMISSION

[Dockets Nos. 50–413A, 50–414A]

DUKE POWER CO.

Notice of Receipt of Attorney General's Advice and Time for Filing of Petitions To Intervene on Antitrust Matters

The Commission has received, pursuant to section 105c of the Atomic Energy Act of 1954, as amended, the following advice from the Attorney General of the United States, dated May 1, 1973:

You have requested our advice pursuant to the provisions of section 105 of the Atomic Energy Act of 1954, 68 Stat. 919, 42 U.S.C. 2011–2296 as recently amended by Public Law 91–560, 84 Stat. 1472 (Dec. 19, 1970), in regard to the above-cited application.

A description of the applicant, its history and structure, conduct with respect to smaller systems and our conclusions based thereon was transmitted to you on August 2, 1971, in connection with your request for our advice on Duke Power Co.'s application to operate Oconee units 1, 2, and 3, AEC dockets Nos. 50–269A, 50–270A, and 50–287A. We reaffirmed our findings and conclusions therein and found them equally applicable to Duke Power Co.'s application to construct its McGuire Nuclear Station, units 1 and 2, AEC dockets Nos. 50–369A and 50–370A on Sep-

tember 29, 1971. For your convenience we attach copies.

Power from the Catawba units is not proposed to be marketed separately, but it is to be added to applicant's integrated system as is the power from the Oconee and McGuire units. Applicant's answers to the Attorney General's questions indicate an estimated fixed cost for the Catawba units and associated bulk transmission at $47.34 per kilowatt per year (6.703 mills/kWh) as compared with $34.10 per kilowatt per year (4.37 mills/kWh) for its McGuire units and $26.75 per kilowatt per year (3.82 mills/kWh) for the Oconee units. Production expenses are estimated to escalate to 2.25 mills/kWh as compared with the 1.95 mills/kWh estimated for Oconee and McGuire.

Except for the somewhat increased costs for these units, the facts upon which our advice regarding the Catawba units must be based are identical to those stated in our letters on the earlier applications. We note that changes in fossil fuel supplies appear to increase the importance of nuclear power generation as a source of bulk power supply.

We therefore recommend that a hearing be held to determine whether the licensee's proposed activities under the subject license will create or maintain a situation inconsistent with the policies of the antitrust laws.

Section 2.716 of your Commission's rules of practices appears to permit consolidation of proceedings in certain circumstances. We believe you may find those circumstances exist with respect to proceedings in connection with the McGuire, Oconee, and Catawba applications.

Any person whose interest may be affected by this proceeding may, pursuant to § 2.714 of the Commission's rules of practice, 10 CFR part 2, file a petition for leave to intervene and request a hearing on the antitrust aspects of the application. Petitions for leave to intervene and requests for hearing shall be filed on or before June 8, 1973, either (1) by delivery to the AEC Public Document Room at 1717 H Street NW., Washington, D.C., or (2) by mail or telegram addressed to the Secretary, U.S. Atomic Energy Commission, Washington, D.C. 20545, attention: Chief, Public Proceedings Branch.

For the Atomic Energy Commission.

ABRAHAM BRAITMAN,
Chief, Office of Antitrust and Indemnity, Directorate of Licensing.

ENCLOSURE I

AUGUST 2, 1971.

You have requested our advice pursuant to the provisions of section 105 of the Atomic Energy Act of 1954, 68 Stat. 919, 42 U.S.C. 2011–2296 as recently amended by Public Law 91–560, 84 Stat. 1472 (Dec. 19, 1970), in regard to the above-cited application.

APPLICANT

Applicant is one of the major electric utilities in the eastern United States. I am advised that its electric system serves the Piedmont Carolinas, in an area about 100 miles wide and 260 miles long, extending from Virginia on the northeast to Georgia on the southwest, having a total area of about 20,000 mi² and serving a population of about 3,300,000. Its total assets as of December 31, 1970, exceeded $1¾ billion. Its electric operating revenues for 1970 were $386,138,000. Its total utility plant exceeded $2 billion before depreciation and its net utility plant was $1,628,677,000. In 1970, it had a total generating capacity of 6,743,789 kW consisting of about 5,650,000 kW of steam capacity, 860,000 kW of hydroelectric generating capacity and relatively smaller amounts of gas turbine capacity and internal combustion capacity. Its 1970 system peak demand was 6,284,000 kW. Of this, approximately 700,000 kW was supplied to 58 independent distribution systems serving at retail in the general area described above.

Duke's many generating stations are integrated into a single bulk power supply system by a high voltage transmission network which includes 1,535 circuit miles of 230 kV, 5,130 circuit miles of 100 kV, and 2,591 circuit miles of 44 kV. Its total high voltage transmission as of December 31, 1970, was 9,481 circuit miles. It is also vertically integrated, distributing electric power at retail throughout most of this area. It presently operates over 43,000 pole miles of distribution lines.

Duke's bulk power supply system is further interconnected and coordinated with other major systems on its periphery. These include high voltage ties to the American Electric Power System through Appalachian Power Co. on its north, to Carolina Power & Light on the east, to South Carolina Electric & Gas on the south, and to the Southern System on the southwest through Georgia Power Co., and also ties with projects of the Southeastern Power Administration on the Savannah River. It is also interconnected with Yadkin, Inc., an industrial power supply.

HISTORY AND STRUCTURE

Duke's early base was in the development of water powers on the Catawba and Wateree Rivers which are in the Santee Basin in the Carolinas. It soon added steam generation which it integrated with its hydrogeneration by high voltage transmission lines. Its evolution can be traced through a series of amalgamations and purchases which had the effect of providing it control over many of the water powers in the area. At about the same time a similar company called Southern Public Utilities Co., was developing along parallel lines but operating extensive retail distribution properties, and the interests of these companies were first closely associated and then completely joined.

Duke now owns or controls substantially all the water powers in its area. 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 hydroelectric production which can be economically developed as isolated projects not requiring interconnection with other generating sources.

Duke also owns and controls all high voltage transmission in the area, and owns or controls substantially all thermal generation in the same area. Hence, it has the market power to grant or deny access to coordination which is essential for a competitive thermal bulk power supply in today's power economy. This is spelled out in some detail in our letter of June 28, 1971, regarding Consumers Power Co.

ANTICOMPETITIVE CONDUCT

From almost its inception, Southern Power Co.'s and Duke's contracts contained market allocations which allocated larger customers to Duke. Duke claims these allocations never resulted in precluding its purchasers in bulk from selling to any customer, and in November 1964, removed the provisions from all its rates schedules filed with the Federal Power Commission, see docket No. E-7122, 20 FPC 524, 32 FPC 594 (1964) and 32 FPC 1253. Shortly thereafter, on Jan. 1, 1965, Duke filed changed rate schedules modifying its rate design, with the possible effect of perpetuating the market allocation effected by the earlier provisions. Wholesale customers of Duke are now making substantially this claim to the Federal Power Commission, before the Federal Power Commission docket No. E-7557. Duke denies that its wholesale rate design has this effect or was instituted with this intent.

While its earlier rates schedules had other features which may have been anticompetitive, its present schedules contain a feature of ratcheted demand, which could serve effectively to discourage installation of thermal generating capacity by its wholesale customers. Lack of any provision for reserve sharing could also serve to discourage entry into self generation.

Duke claims it has never refused a proposal to coordinate. On the other hand, it takes the somewhat conflicting position that should it coordinate with any actual or potential competitor, its survival would be threatened because of the tax and financing advantages enjoyed by many of the smaller systems in its area which are municipally owned, or which are borrowers from the Rural Electrification Administration. At present it refuses to coordinate its nuclear generation expansion program with nine municipalities, proposed interveners herein, which wish to participate in that program by purchasing an interest in or power supply from the Oconee units. Such a purchase could serve to give them ownership and hence control over a portion of their bulk power supply costs.

A group entitled Electric Power In Carolinas (EPIC) which is proposed and under study by a number of municipals and cooperatives in the Carolinas also desires to coordinate its power supply plans and operations with those of Duke. 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 as it does with other electric systems. There were indications that Duke might utilize its substantial resources in a legislative campaign and before regulatory and judicial tribunals to frustrate EPIC's entry into the power business. Evidence available to us 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.

An electric power system's refusals to deal and its dealing on discriminatory terms with its retail competitors is conduct that may well fall within the purview of section 2 of the Sherman Act as discussed in greater detail in our recent letters to you on the applications of Virginia Electric & Power Company (AEC dockets Nos. 50-338A and 50-339A) and Southern California Edison Company (AEC dockets Nos. 50-361-A and 50-362-A).[1]

CONCLUSION

As a result of the foregoing, we concluded that the facts revealed by our preliminary study of the instant application indicate substantial questions regarding the applicant's activities and probable activities under the license which would need to be resolved by a hearing before your Commission. When we informed Duke that our advice to the Commission would be to this effect, Duke, although denying that its conduct had contravened antitrust principles, represented to us that it will henceforth hold itself out to interconnect and coordinate with EPIC and any other entities where the possibilities for interconnection and coordination exist. However, this undertaking does

APPENDIX E

not include all the kinds of coordination which Duke has heretofore carried out with other electric systems in the Southeast. It would exclude joint ownership of Oconee units and unit power sales from Oconee on terms under which unit power sales are normally made in the electric power industry, i.e., at the cost of new power supply. While Duke has made power sales from new units at new unit costs in the past, it now advises that it has changed its policy in this regard. The fact that this change in policy comes at a time when small systems are pressing for coordination with Duke may itself have anticompetitive implications.

We therefore recommend that a hearing be held to determine whether the licensee's proposed activities under the license will create or maintain a situation inconsistent with the policies of the antitrust laws.

ENCLOSURE II

SEPTEMBER 29, 1971.

You have requested our advice pursuant to the provisions of section 105 of the Atomic Energy Act of 1954, 68 Stat. 919, 42 U.S.C. 2011–2296 as recently amended by Public Law 91–560, 84 Stat. 1472 (Dec. 19, 1970), in regard to the above cited application.

A description of the applicant, its history any structure, conduct with respect to smaller systems and our conclusions based thereon was recently transmitted to you in connection with your request for our advice on Duke Power Co.'s application, to operate Oconee Units 1, 2, and 3, AEC dockets Nos. 50–269, 50–270, and 50–287. For your convenience we attach a copy.

Power from the McGuire units is not proposed to be marketed separately, but it is to be added to applicant's integrated system as is the power from the Oconee units. Applicant's answers to the Attorney General's questions indicate an estimated fixed cost for the McGuire units and associated bulk transmission at $34.10 per kW per year (4.87 mills/kWh) as compared to $26.75 per kW per year (4 mills/kWh) for the Oconee units. The production expense estimated for the units in both applications was the same: 1.95 mills/kWh. Except for the higher fixed charges estimated for the McGuire units, the facts upon which our advice regarding the McGuire units must be based are identical to those stated in our letter on the earlier application. We note that a number of North Carolina municipals who expressed their interest in antitrust issues concerning the Oconee units express identical interests herein.

We therefore recommend that a hearing be held to determine whether the licensee's proposed activities under the subject license will create or maintain a situation inconsistent with the policies of the antitrust laws.

Section 2.716 of your Commission's rules of practices appears to permit consolidation of proceedings in certain circumstances. We believe you may find those circumstances exist with respect to proceedings in connection with the McGuire and Oconee applications.

[FR Doc.73-9118 Filed 5-8-73;8:45 am]

[1] Applicant's conduct of consistently opposing applications of other utilities for project licenses and its alleged threats to engage in extensive litigation to block such projects could with evidence of other conduct constitute proof of intent to unlawfully monopolize even if much of the former conduct is itself protected from prosecution by the first amendment. United Mine Workers of America v. Pennington et al., 381 U.S. 657, 670 fn. 3 (1964). A pattern of vexatious litigation may form part of conduct proscribed by the antitrust laws. See Trucking Unlimited v. California Motor Transport Co., F. 2d 755 (CA 9, 1970) cert. granted June 71.

[Docket No. 50-309]

MAINE YANKEE ATOMIC POWER CO.

Notice of Evidentiary Hearing Before Atomic Safety and Licensing Board

In the matter of Maine Yankee Atomic Power Co. (Maine Yankee Atomic Power Station) docket No. 50-309.

Pursuant to agreement among the parties and the Board, an evidentiary hearing in this case will be held on Friday, May 11, 1973, commencing at 9:30 a.m., local time in suite 500, Postal Rate Commission, 2000 L Street NW., Washington, D.C. 20268.

It is so ordered.

Issued at Washington, D.C., this 4th day of May 1973.

The Atomic Safety and Licensing Board.

JOHN B. FARMAKIDES,
Chairman.

[FR Doc.73-9155 Filed 5-8-73;8:45 am]

[Docket No. 50-346]

TOLEDO EDISON CO. AND CLEVELAND ELECTRIC ILLUMINATING CO.

Notice and Order for Special Prehearing Conference Before Atomic Safety and Licensing Board

In the matter of the Toledo Edison Co. and the Cleveland Electric Illuminating Co. (Davis-Besse Nuclear Power Station) docket No. 50-346.

In our memorandum and order dated March 30, 1973, we held that the petition to intervene filed by Mrs. Evelyn Stebbins, for the Coalition for Safe Nuclear Power, failed to meet the requirements of section 2.714 of the Commission's rules of practice. Mrs. Stebbins was granted an additional 20 days within which to resubmit a petition in conformance with said requirements relating to the environmental matters covered by appendix D to part 50.

By letter dated April 16, 1973, Mrs. Stebbins submitted an amended petition to intervene. Both the applicants and staff have responded. While the petition, as amended, attempts to comply with the requirements of § 2.714, it is still vague, unclear and ambiguous. Nevertheless, the Board, mindful of the fact that Mrs. Stebbins is without benefit of counsel, and recognizing that the failure to comply may stem from a misunderstanding on the part of the proposed intervenors as to the facts needed to meet the requirements of section 2.714, has decided to hold a Special Prehearing Conference to clarify and resolve the matter.

The Board hereby directs the parties to appear at a Special Prehearing Conference as noted below to discuss for the benefit of the Board:

(1) The interests of the proposed intervenors.

(2) Their contentions and basis therefor.

(3) Such other matters as may aid in the disposition of this proceeding.

The proposed intervenors should be fully prepared to respond to the observations and objections noted by the staff and the applicants in their respective responses to the amended petition. In addition, the Board will require that the petitioner further clarify and specify in greater detail the basis for the contentions proposed.

Accordingly, a Special Prehearing Conference shall be held on May 22, 1973, at the Cleveland City Hall, City Council Chambers, second floor, 601 Lakeside Avenue, Cleveland, Ohio 44114, commencing at 9:30 a.m. local time.

It is so ordered.

Issued at Washington, D.C., this 4th day of May 1973.

The Atomic Safety and Licensing Board.

JOHN B. FARMAKIDES,
Chairman.

[FR Doc.73-9156 Filed 5-8-73;8:45 am]

CIVIL AERONAUTICS BOARD

[Docket 23333; Order 73-5-8]

INTERNATIONAL AIR TRANSPORT ASSOCIATION

Order Relating to Specific Commodity Rates

An agreement has been filed with the Board pursuant to section 412(a) of the Federal Aviation Act of 1958 (the Act) and part 261 of the Board's economic regulations, between various air carriers, foreign air carriers, and other carriers embodied in the resolutions of Traffic Conference 3 of the International Air Transport Association (IATA), and adopted pursuant to the provisions of Resolution 590 dealing with specific commodity rates.

The agreement names additional specific commodity rates, as set forth below, reflecting a reduction from general cargo rates; and was adopted pursuant to unprotested notices to the carriers and promulgated in an IATA letter dated April 25, 1973.

Specific commodity *Item No.*	*Description and rate*
0005	Foodstuffs including spices and beverages. 14.00 U.K. pence (approximately 36.4 U.S. cents) per kg. minimum weight 500 kg. 13.00 U.K. pence (approximately 33.8 U.S. cents) per kg. minimum weight 1000 kg. From Sydney to Pago Pago.

Pursuant to authority duly delegated by the Board in the Board's regulations, 14 CFR 385.14, it is not found that the subject agreement is adverse to the public interest or in violation of the Act, provided that approval is subject to the condition hereinafter ordered.

Accordingly, it is ordered, That:

Agreement CAB 23652 be and hereby is approved, provided that approval shall not constitute approval of the specific commodity description contained therein for purposes of tariff publication; provided further that tariff filings shall be marked to become effective on not less than 30 days' notice from the date of filing.

Persons entitled to petition the Board for review of this order, pursuant to the Board's regulations, 14 CFR 385.50, may

APPENDIX E

DUKE POWER COMPANY
LEGAL DEPARTMENT
P. O. Box 2178
CHARLOTTE, N. C. 28242

WILLIAM H. GRIGG
VICE PRESIDENT & GENERAL COUNSEL

(704) 374-4531

April 26, 1974

The Honorable Thomas E. Kauper
Assistant Attorney General
Antitrust Division
Department of Justice
Room 3109
Washington, D. C. 20530

Re: Oconee Nuclear Station
(Units 1, 2 & 3), AEC Docket
Nos. 50-269A, 50-270A, 50-287A;
McGuire Nuclear Station,
(Units 1 & 2), AEC Docket
Nos. 50-369A and 50-370A;
Catawba Nuclear Station,
(Units 1 & 2), AEC Docket
Nos. 50-413A and 50-414A.

Dear Mr. Kauper:

I enclose herewith a Statement of Commitments on behalf of Duke Power Company. The statement of these commitments reflecting Duke's policies is the product of recent discussions with attorneys of the Antitrust Division and of the Atomic Energy Commission staff.

In AEC licensing proceedings involving the Oconee, McGuire and Catawba plants, the Department of Justice is contending that activities under these licenses would maintain a situation inconsistent with the antitrust laws. Duke Power Company has denied, and continues to deny, all of the allegations made by the Department of Justice, the AEC staff, and the intervenors in those proceedings in support of the claimed need for license conditions, and Duke reserves the right to assert such denial in these proceedings or in any other proceeding or forum. Specifically, Duke denies that a situation inconsistent with the antitrust laws would be maintained or would be created by the issuance of licenses for the Oconee, McGuire or Catawba plants. Duke further denies that any conditions to the licenses are necessary.

The Honorable Thomas E. Kauper

However, Duke feels that it is in the public interest, and in Duke's own interest, to terminate these proceedings promptly so that licenses for these plants, particularly the Catawba plant, can be issued without delay. Duke has been informed that the Department of Justice is willing to withdraw its recommendation that hearings be held on the need for antitrust related conditions if the attached commitments stating Duke's policies are made conditions t the Oconee, McGuire and Catawba licenses.

Accordingly, Duke is willing to accept these commitments as conditions to the licenses to be issued by the Atomic Energy Commission for Duke's Oconee, McGuire, and Catawba plants. Duke reserves the right to oppose the imposition of any different or additional conditions. All of the commitments made by Duke are contained in the attachment to this letter.

Sincerely yours,

William H. Grigg

WHG:cd

APPENDIX F

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.

APPENDIX G

ASSISTANT ATTORNEY GENERAL
ANTITRUST DIVISION

Department of Justice
Washington, D.C. 20530

April 26, 1974

Howard K. Shapar, Esquire
Associate General Counsel
U. S. Atomic Energy Commission
Washington, D. C. 20545

Re: Duke Power Company
Oconee Units 1, 2 and 3,
McGuire Nuclear Station Units 1 and 2,
Catawba Nuclear Station, Units 1 and 2;
AEC Docket Nos. 50-269A, 270A, 287A, 369A, 370A, 413A and 414A;
Department of Justice File Nos. 60-415-27, 33 and 64

Dear Mr. Shapar:

This constitutes a supplemental letter of advice concerning the captioned nuclear power plant license applications as to which our advice was requested by the Atomic Energy Commission pursuant to the provisions of Section 105 of the Atomic Energy Act, as amended. In letters dated August 2, 1971, September 29, 1971, and May 1, 1973, respectively, we recommended to the Commission that antitrust hearings be held on the Oconee, McGuire, and Catawba applications.

As you know the consolidated hearing on the Oconee and McGuire applications is scheduled to begin May 15, 1974. In recent weeks, the parties to that proceeding have undertaken serious discussions concerning resolution of antitrust questions raised by the Oconee, McGuire and Catawba applications. As a result of these discussions, the Applicant has informed the Department by letter of April 26, 1974, of its willingness to accept the statement of commitments enclosed in that letter as conditions to its licenses for the Oconee, McGuire and Catawba nuclear plants. Applicant's letter and the commitments are attached hereto.

Given Applicant's undertaking to accept these commitments as license conditions, the Department now believes antitrust hearings will not be necessary with regard to the Oconee, McGuire and Catawba license applications. We therefore withdraw our previous letters of advice concerning those three applications and recommend that appropriate steps be taken to terminate the scheduled antitrust proceedings thereon.

Sincerely yours,

Thomas E. Kauper

THOMAS E. KAUPER
Assistant Attorney General
Antitrust Division