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September 8, 1997

S. C. PUBLIC SERVICE COMMISSION
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S. C. PUBLIC SERVICE COMMISSION
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The Honorable Charles W. Ballentine
Executive Director
Public Service Commission of SC
111 Doctor's Circle
Columbia, SC 29203

Re: Blue Ridge Electric Cooperative, Inc. vs. Duke Power Company, n/k/a Duke Power, a division of Duke Energy Corporation (Docket No.: 97-153-E)

Dear Mr. Ballentine:

Enclosed for filing, please find the original plus ten (10) copies of a Brief of Duke Power, a division of Duke Energy Corporation, regarding the above referenced matter. Please return the additional stamped copies to me in the self addressed, stamped envelope provided.

If you should have any questions or need additional information, please do not hesitate to contact me. With kind personal regards, I am

Very truly yours,

Richard L. Whitt

RLW:tct
Enclosures

cc: The Honorable Gary E. Walsh (w/enclosures)
F. David Butler, Esquire (w/enclosures)
Jefferson D. Griffith (w/enclosures)
Steven W. Hamm (w/enclosures)

POSTED 9/17/97

S.C. PUBLIC SERVICE COMMISSION
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BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

DOCKET NO.: 97-153-E

S.C. PUBLIC SERVICE COMMISSION
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UTILITIES DEPARTMENT

Blue Ridge Electric Cooperative, Inc.,	)
Petitioner,	)
vs.	)
Duke Power Company, n/k/a Duke Power, a division of Duke Energy Corporation,	)
Respondent.	)

BRIEF OF DUKE POWER, A DIVISION OF DUKE ENERGY CORPORATION

Duke Power, a division of Duke Energy Corporation, (hereinafter, "Duke"), respectfully submits this brief to the Public Service Commission of South Carolina (hereinafter, the "Commission"), in the above-captioned matter.

PROCEDURAL HISTORY

1. This docket was opened upon the April 11, 1997 Emergency Petition of Blue Ridge Electric Cooperative, Inc., (hereinafter, "Blue Ridge").

2. Duke filed a Response thereto on May 2, 1997.

3. Subsequently, Duke and Blue Ridge participated in a hearing, which was held before the full Commission on August 14, 1997.

4. Upon agreement of the parties, and with the guidance of F. David Butler, Esquire, General Counsel of the Public Service Commission of South Carolina, a Briefing Schedule was set requiring Briefs to be completed in this Docket on September 8, 1997.

FACTS

Nason Manufacturing Company, (hereinafter, "Nason"), the customer at dispute herein, has requested in writing that Duke provide its electrical service. Nason's representative appeared at the August 14, 1997 Commission hearing held in this matter and reiterated this request. Nason's premises is located partially within three hundred (300') feet of Duke's 44 KV electric conductor as it existed on July 1, 1969. Nason's premises is located partially within the service territory assigned to Blue Ridge. This Commission's Order No. 16,394, dated September 5, 1972, in Docket No. 15,972 designated Duke's 44 KV line, on the Exhibit relied on by agreement of Duke and Blue Ridge, as a protected line in this Docket, which designated those areas to be assigned and left unassigned in Oconee County.

ARGUMENT

Duke contends that Section 58-27-620(1)(d)(iii) grants Duke the right to serve the Nason premises. Section 58-27-620(1)(d) defines an electric supplier's rights to serve a new premises located partially within three hundred feet of its line and partially within the service area of another electric supplier. Under Section 58-27-620(1)(d)(iii), an electric supplier has the right to serve such a premises if the following conditions are met. First, the new premises must be located partially within three hundred feet of a line of the electric supplier as it existed on July 1,

1969. Second, the premises must be located partially within the service area assigned to another supplier. Third, the customer must choose the electric supplier over the other supplier. Duke maintains that it has satisfied all these conditions, and that under Section 58-27-620(1)(d)(iv), the Commission must honor Nason's decision to be served by Duke.

Duke satisfies the first condition because the Nason plant is located partially within three hundred fee of Duke's 44 KV electric conductor as it existed on July 1, 1969. There is no dispute over the location of the 44 KV conductor on July 1, 1969, or that the Nason plant lies partially within three hundred feet of that location. The dispute is over whether Duke's 44 KV electric conductor is a "line".

Duke contends that the 44 KV electric conductor, which was in place in April, 1969, is a "line" within the meaning of Section 58-27-610(3). Under that provision, any electric conductor operating at a normal voltage level of less than 48 KV qualifies as a "line". The first clause of Section 58-27-610(3) provides that at the term line includes any electric conductor operating at a nominal voltage level of 25 KV or less. Under the first proviso of the subsection, the term "line" also includes electric conductors operating at a nominal voltage level in excess of 25 KV, but less than 48 KV if it is agreed or the Commission finds that the primary purpose and use of the conductor is for the distribution of electric power and not the transmission of bulk power. Finally, the second proviso of Section 58-27-610(3) provides that the term "line" also includes any other conductor operating at a nominal voltage in excess of 25 KV and less than 48 KV.

Section 58-27-610(3) does draw a distinction between lines operating at a nominal voltage level of 25 KV or less and lines operating at a nominal voltage level in excess of 25 KV, but less than 48 KV. This distinction, however, is relevant **only** in determining the right of an electric supplier to serve a premises located wholly within three hundred feet of its line. If an electric conductor qualifies as a line because its nominal voltage level is 25 KV or less, the

supplier has an exclusive right to serve a premises wholly within three hundred feet of the line. [See Section 58-27-620(1)(b)]. If an electric supplier's conductor qualifies as a line because it operates at a nominal voltage in excess of 25 KV and less than 48 KV, under the provisos of Section 58-27-610(3), a supplier obtains the exclusive right to serve a premises wholly within three hundred feet of its line only if there is an agreement or a Commission finding that "the primary purpose and use of such conductor is for the distribution of electric power and not the transmission of bulk power..." If the primary purpose of a 25 KV to 48 KV conductor is the transmission of bulk power, the conductor is still a line but the supplier's service rights for a premises located wholly within three hundred feet of the line are not exclusive. Significantly, whether the primary purpose of 25 KV to 48 KV conductor is to distribute or transmit electric power is relevant only in determining whether an electric supplier has an exclusive right to serve premises located wholly within three hundred feet of the line.

Duke has met the second condition under Section 58-27-620(1)(d)(iii) because Public Service Commission of South Carolina Order No. 16,394 (September 5, 1972, in Docket No.: 15,972) establishes that the Nason premises are located only partially in the service area assigned to Blue Ridge. In 1972, Blue Ridge, Duke and Haywood Electric Membership Cooperative submitted a Joint Application seeking a territorial assignment from the Commission based upon the parties' mutual agreement as to those areas in Oconee County to be assigned to each supplier, and those areas to be left unassigned. Exhibit A to the Joint Application was a map of Oconee County depicting the proposed territorial assignments. The Exhibit also included the existing lines of the suppliers including Duke's 44 KV line here in issue. Blue Ridge and Duke signed Exhibit A, which bears the legend "(l)ine data approved as being correct as of June 25, 1970..."

In response to the parties' Joint Application, the Commission issued Order No. 16,394, which stated:

> **"The verified Application and attached, Exhibit A, indicate the areas in Oconee County to be assigned to each applicant and the areas to be left unassigned... NOW THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that the Application is approved, and the areas in Oconee County situated more than three hundred (300') feet from the lines of any electric supplier and outside the corporate limits of any municipality are assigned to the respective applicants or designated unassigned, all shown on Exhibit A incorporated herein by reference and made a part of this Order as fully as if set out herein"** (emphasis supplied).

Duke maintains that this Order excepted from the territorial assignment to Blue Ridge an area of three hundred feet on either side of Duke's 44 KV line. The term "lines" in the Commission's Order must be defined by reference to the statutory definition of the term now set forth in Section 58-27-610(3) (73 AM JUR, 2d, Statutes §225, at 413); (Weston v. Carolina Res. & Dev. Found., 401 S.E.2d 161 (S.C. 1991)). As discussed above, under the second proviso of Section 58-27-610(3) any electric conductor with a nominal voltage level in excess of 25 KV and less than 48 KV qualifies as a "line" without regard to whether the line was used for the distribution or transmission of electric power. Therefore, Duke's 44 KV line depicted in Exhibit A qualifies as a "line" for purposes of the Order, and the Order did not assign to Blue Ridge the area within three hundred feet of the line. Since Nason's plant is partially located in this three hundred foot area, the plant is only partially located in the serve area assigned to Blue Ridge.

Duke has clearly met the final condition for the right to serve Nason under Section 58-27-620(1)(d)(iii). Nason has explicitly requested that Duke rather than Blue Ridge serve its plant.

Since Duke has met all the conditions of Section 58-27-620(1)(d)(iii), it has the right to serve the Nason plant. Blue Ridge, however, has advanced three arguments in an attempt to defeat Duke's right to serve Nason. None of these arguments has merit.

First, Blue Ridge alleges that Duke's 44 KV conductor was originally intended primarily for the transmission of bulk electric power and therefore cannot qualify as a line. Although Duke contends that its 44 KV conductor was constructed to be available for both the distribution and transmission of electric power, the conductor's primary purpose is not relevant in determining whether the conductor is a line under Section 58-27-610(3). As discussed above, all electric conductors operating a nominal voltage level of less than 48 KV qualify as lines. Whether a conductor is used primarily for distribution as opposed to the transmission is relevant only in determining whether a supplier has the exclusive as opposed to a nonexclusive right to serve a premises located wholly within three hundred feet of the conductor - an issue not raised in this case. Duke does not assert that it had an exclusive right to serve the Nason premises under Section 58-27-620(1)(c). Rather Duke asserts that it has the right to serve the Nason premises under Section 58-27-620(1)(d)(iii) because Nason chose Duke over Blue Ridge.

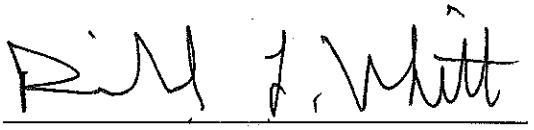
Blue Ridge's second argument appears to be that because Duke moved its 44 KV line in 1974, Blue Ridge is entitled to extend its service area to include the three hundred foot corridor left unassigned by Public Service Commission of South Carolina Order 16,394. Duke asserts that the location of its 44 KV line on July 1, 1969, and on September 5, 1972, when the Commission issued Order 16,394, constitutes a geographic marker that fixes the boundary of Blue Ridge's service area and defines that area within which Duke can serve a premises when chosen by the customer. If we carry Blue Ridge's argument to its logical conclusion, when a geographic marker, for example, a river changes its course, such a change would be a basis for Blue Ridge to argue before this Commission that the Territorial Assignment boundaries had

also changed. The September 5, 1972 Order was a "snapshot", which set geographical boundaries as of that date. That Duke moved or replaced the original 44 KV line after the Commission assigned Blue Ridge its service area provides no basis for enlarging that service area.

Blue Ridge's final argument appears to be that Duke should be denied its right to serve the Nason plant because Duke does not plan to use its 44 KV line to serve the plant. Duke contends that once a supplier's right to serve the premises is established, the manner in which the supplier serves the premises is irrelevant. Duke has the right to serve the Nason plant under Section 58-27-620(1)(d)(iii) because the plant is located partially within three hundred feet of Duke's 44 KV line as it existed on July 1, 1969, and Nason has chosen Duke. That Duke can serve the plant more efficiently through use of a "line" other than its current 44 KV line does not undercut its right to serve premises. Duke can and should provide electric services to Nason in the most efficient means available, consistent with its Public Service obligations.

In summary, Duke has the right to serve the Nason plant under Section 58-27-620(1)(d)(iii). Moreover, under Section 58-27-620(1)(d)(iv), Nason's choice of Duke is "controlling" and the Commission has no authority to order Nason to accept service from Blue Ridge.

Respectfully Submitted,



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Attorneys for Duke Power, a division of
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Dated: September 8, 1997

Columbia, SC

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BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

DOCKET NO.: 97-153-E

S.C. PUBLIC SERVICE COMMISSION
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Blue Ridge Electric Cooperative, Inc.,	)	
	)	
Petitioner,	)	
	)	
	)	
vs.	)	**CERTIFICATE OF SERVICE**
	)	
Duke Power Company, n/k/a Duke Power, a division of Duke Energy Corporation,	)	
	)	
Respondent.	)	
	)	
	)	

I, the undersigned, an employee of Austin, Lewis & Rogers, P.A., do hereby certify that I have served the foregoing Brief of Duke Power, a division of Duke Energy Corporation, by placing a copy of the same in the United States mails, first class postage prepaid and addressed to the following individual:

Steven W. Hamm, Esquire
Richardson, Plowden, Howser, Carpenter & Robinson
1600 Marion Street
Columbia, SC 29201

Tanya C. Taylor

Tanya C. Taylor

Dated: September 8, 1997

Columbia, SC