



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

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March 15, 1979

Docket Nos. 50-369A ←
50-370A

MEMORANDUM FOR: R. Birkel
Licensing Project Manager

FROM: Richard McClymonds, Electrical Engineer
Power Supply Analysis Section
Antitrust and Indemnity Group (AIG)

SUBJECT: OPERATING LICENSE ANTITRUST REVIEW - MCGUIRE NUCLEAR
STATION, UNITS 1 AND 2

I. Authority and Conclusions

Section 105(c), of the Atomic Energy Act of 1954, as amended, 42 U.S.C. § 2135c(2), provides for an antitrust review of an application for an Operating License if the Commission determines such review is advisable on the ground that significant changes in the licensee's activities or proposed activities have occurred subsequent to the previous review by the Attorney General in connection with the construction permit.

Based on the results of the investigation described below, the AIG Staff has found no changes in Duke Power Company's (Duke's) activities or proposed activities which would cause AIG to recommend that the Commission make a finding of significant changes regarding the antitrust aspects of Duke's application for an Operating License for the McGuire Nuclear Station, Units 1 and 2 (McGuire 1 and 2). The Office of the Executive Legal Director has reviewed this memorandum, has conducted an independent legal review, and concurs in this conclusion.

II. Background

In September of 1970, Duke filed an Application for Licenses [Construction Permits (CP's)] for McGuire 1 and 2. The Department of Justice (DOJ) recommended an antitrust hearing on the McGuire 1 and 2 CP's in September

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of 1971. The DOJ advice was published in the Federal Register on October 19, 1971, and on November 16, 1971, the cities of High Point, Lexington, Monroe, Shelby, and Ablemarle, and the towns of Drexel, Granite Falls, Landis, and Lincolnton, all in North Carolina (Intervenor Cities), intervened requesting an opportunity to purchase a "fair share" of the McGuire Units and "to be afforded such other rights as may be necessary to promote free competition and prevent monopolization."^{1/} Construction Permits CPPR-83 and 84 were issued on February 28, 1973, subject to the outcome of an ensuing antitrust hearing.

Between September, 1972, and April, 1974, several prehearing conferences were held among the parties [Duke, Intervenor Cities, DOJ, and the Atomic Energy Commission (AEC)]. In April, 1974, Duke, DOJ and the AEC Staff agreed to a negotiated set of license conditions. The Atomic Safety and Licensing Board (ASLB) approved the negotiated conditions of these parties on May 24, 1974. Intervenor Cities later agreed to these same conditions in March, 1975. On April 23, 1975, the ASLB issued an order approving the negotiated conditions as a complete settlement and terminated the proceeding.^{2/} The conditions were added to the McGuire Construction Permits in August of 1975 as Amendment No. 1. These conditions are attached herewith as Attachment A and must be included in the McGuire Operating Licenses.

III. Changes in Duke's Activities since April, 1975

Duke submitted the antitrust information requested by Regulatory Guide 9.3 in December of 1976. The NRC Staff requested additional information by letter dated September 15, 1978, from R. McClymonds of the NRC Staff

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- ^{1/} The McGuire 1 and 2 CP proceedings were consolidated with the Oconee 1, 2, and 3 Operating License (OL) proceeding in June of 1972. All dates noted after June of 1972 refer to the consolidated proceedings. All five nuclear generating units of the McGuire and Oconee plants are owned 100% by Duke.
- ^{2/} For the purpose of this Memorandum, the relevant date for examining any changes is the date of the final ASLB order on April 23, 1975, since we assume that any significant changes between April, 1974, and April 23, 1975, would have been brought to the Board's attention.

to W. Porter, Assoc. Gen. Counsel of Duke. Mr. Porter replied by letter to R. McClymonds, dated October 11, 1978. No inconsistencies in the information supplied by Duke came to light during the AIG review.

Duke reported several actual or proposed changes in its facilities or activities since April of 1975. These changes are itemized below.

1. Duke has rescheduled the following generating units to conform with reduced load projections between its 1973 forecast and its 1976 forecast resulting from the OPEC embargo and the ensuing economic recession.

TABLE 1

<u>Unit Name</u>	<u>MW</u>	<u>1973 Proposed Cut-in Date</u>	<u>1977 Proposed Cut-in Date</u>
Belews Creek #2	1143	1975	1976
McGuire 1	1180	1976	1978
McGuire 2	1180	1977	1979
Catawba 1	1180	1979	undetermined
Catawba 2	1180	1980	undetermined

Consistent with the scheduled delay in generating unit cut-in dates shown in Table 1, forecast peak loads, system capability and reserves have lessened as shown in Table 2 below.

TABLE 2

<u>Year</u>	<u>Peak</u>	<u>1973 Forecast</u>		<u>1976 Forecast</u>		
		<u>Sys. Cap.</u>	<u>Reserves</u>	<u>Peak</u>	<u>Sys. Cap.</u>	<u>Reserves</u>
1976	10,496 MW	14,616 MW	4,120 MW	8,601 MW	12,523 MW	3,922 MW
1977	11,426	15,674	4,248	10,041	12,523	2,482
1978	12,428	15,674	3,248	10,949	13,703	2,754
1979	13,509	16,854	3,345	11,764	14,883	3,119
1980	14,672	18,034	3,362	12,615	14,862	2,247

Note: System capability figures include changes in scheduled interchange in addition to new generating units.

A comparison of the two tables reveals that although the peak demand forecast has been substantially reduced, the corresponding delayed construction of the scheduled unit additions offsets any increase in reserves which might accrue from the lower peak loads. Consequently, there will be no excess reserve capacity, and in fact actual megawatt reserves under the 1976 schedule will be somewhat less than previously projected. For example, the 1980 reserves were projected in 1973 to be 3362 MW, or 22.9% of the forecast peak whereas the reserves for 1980 as projected in 1976 would be 2247 MW, or 17.8% of the forecast peak. While this value is less than Duke feels is desirable, it is within the lower limits of an acceptable range. The net effect of the reduced capacity with respect to load will be a reduction in overall system reliability, or an increase in the theoretical loss-of-load probability. In terms of operating the system, the effect of the reduced reserves may result in an increase in interchange from neighboring system(s) during the course of the year. The reduced reserve level does not mean that load will be dropped.

Further information from Duke in its letter of October 11, 1978, indicates that even if some load must be dropped, municipalities and cooperatives would be expected to lose electric power on an equitable basis when compared to Duke's retail customers. For this reason, the NRC Staff feels that this variation in forecasted peak loads, system capability, and reserves does not constitute a significant change in antitrust terms.

2. New delivery points to municipal and cooperative systems were added when requested and required by the growth of these systems. This change was primarily for the benefit of the municipal and cooperative systems rather than Duke. Accordingly, it is not a significant change in antitrust terms.
3. Duke changed its type of fuel cost adjustment clause, from a BTU type to a KWH type, in rate schedules for municipalities and other public utility companies within its service territory. As this change was a regulatory rate matter ordered by the Federal Power Commission, rather than unilaterally determined by Duke, it is not a significant change in antitrust terms.
4. Duke acquired the electric distribution system of the Town of Davidson, N.C., in November of 1975. Upon further inquiry by the AIG Staff, information from Duke showed that the initial contact

for the sale of the Davidson system was made by Davidson officials. The sale was widely publicized by the Davidson officials, and, as evidenced by the information reported by Duke, there appeared to be very little opposition to the sale by the people of Davidson. For these reasons, we feel this change is not significant in antitrust terms.

5. Duke sold 75% of the Catawba Nuclear Station, Unit 2, to the North Carolina Municipal Power Agency No. 1, and is presently negotiating with the North Carolina Electric Membership Corporation for 75% of the Catawba Nuclear Station, Unit 1. Duke's municipal customers in South Carolina are considering purchasing the remaining 25% of Catawba #2, and Duke's cooperative customers in South Carolina are considering purchasing the remaining 25% of Catawba #1. The North Carolina Municipal Power Agency No. 1's 75% share of Catawba #2 was finalized on November 29, 1978. All the other possible participations are in the negotiation phase.

Communication with some of these potential participants reveals that while there are some difficulties yet to be surmounted, negotiations are proceeding at a reasonable pace, and an agreeable solution seems quite possible. The NRC Staff believes that economies of scale and equitable sharing of nuclear power has been voluntarily made available by Duke to all public utilities within their service territory in North and South Carolina. Accordingly, the NRC Staff finds that this change is positive from an antitrust or competitive viewpoint.

IV. Actions Implementing License Conditions

Duke also reports, in its submittal under Regulatory Guide 9.3, the following specific actions directly related to the negotiated license conditions for McGuire Station which were adopted April 23, 1975 by the ASLB.

1. Duke is wheeling power over its transmission facilities from power sources of the Southeastern Power Administration (SEPA) to entities within its service area. This wheeling is in direct conformance with license condition No. 5.a.2.
2. Duke has established interconnections with the Blue Ridge Electric Membership Corporation. Joint studies have been made with that

entity in the past, leading to 100 kv interconnections. It is anticipated that a 230 kv interconnection will be made in the early 1980's, as the Blue Ridge system grows to the point where a higher voltage interconnection will be required. This is in direct conformance with license condition No. 2d.

While not specifically required by any particular license condition, the following actions support the view that Duke cooperates with and is willing to reasonably accommodate neighboring entities requesting bulk power supply and services.

1. Duke provides data relative to its future load projections, scheduled generation additions, and transmission facilities through the services of the Southeastern Electric Reliability Council (SERC) of which several neighboring entities are members. In addition, all of the SERC member companies receive continuing operating status reports through the facilities of a common teletype system.
2. Duke has signed a contract for delivery of power to the Wake Electric Membership Corporation which was formerly served from the transmission system of the Carolina Power and Light Company (CP&L). This was done at the request of that cooperative because its system will be split by the impoundment of water behind the Neuse River Dam. Wake was previously served solely by CP&L.
3. The Piedmont Electric Membership Corporation has requested a change in delivery points from CP&L near Roxboro, N.C., to the facilities of the Duke system at its Eno Substation. In this instance, the cooperative is purchasing transformers with taps suitable for service from the transmission lines of either Duke or CP&L, thus giving it the option to deal with either system.

V. Department of Justice

The Department of Justice was contacted on May 9, 1978, to see if any complaints had been filed against Duke Power Company from April, 1975, to that time. After checking the situation, DOJ reported on that date that no complaints of any kind had been received.

VI. Federal Energy Regulatory Commission (FERC)

Duke's rate filings from April, 1975, to present were reviewed to see if they reflected any significant changes. AIG learned that Duke had filed a considerable number of rate increases. Those that might have a bearing on this NRC inquiry had been consolidated by FERC into Dockets E-9453 (May, 1975) and ER 76-648 (April, 1976). The latter case (rate only) had no intervenors and the rate was put into effect. The former docket (rate only) had intervenors, but was settled by negotiation and certified by FERC in August of 1976. Staff has no basis to assume that there was or is any reason to question FERC's resolution of these dockets with respect to antitrust considerations.

VII. Municipalities

The original nine intervening towns and cities are now (together with others) part of the North Carolina Municipal Power Agency No. 1, with headquarters in Raleigh, N.C. A check by telephone on August 30, 1978, with their Acting General Manager, Fred Mills, indicated that he knew of no changes in Duke's activities detrimental to the interests of the municipalities. On the contrary, North Carolina Municipal Power Agency No. 1 appeared quite satisfied with their purchase of 75% of the Catawba #2 Nuclear Unit and the bulk power services which are included in the purchase contract.

VIII. Cooperatives

Although no cooperatives intervened directly in the McGuire dockets (or in the Oconee dockets either), the North Carolina Electric Membership Cooperative and the Blue Ridge Electric Membership Cooperative did intervene in the Catawba dockets. All three dockets were settled by negotiation in April of 1975, and were approved by the ASLB on April 23, 1975.

As stated previously, the North Carolina Electric Membership Corporation is presently negotiating with Duke Power Company to buy 75% of the Catawba #1 nuclear unit and to coordinate several bulk power services. Information received by telephone from T. Bolch, attorney for the cooperative, on July 20, 1978 and August 28, 1978, led Staff to believe that

there is a reasonably good probability of Duke and the NCEMC reaching agreement. Should agreement not be reached, NCEMC may still have other options to pursue against Duke in seeking nuclear participation in Catawba #1.

IX. Conclusions

Based on the results of the investigation set out above and an analysis of the changes reported by Duke since April of 1975, together with information gathered from other sources, AIG has found no changes in the activities or proposed activities of Duke Power Company which would cause AIG to recommend that the Commission make a finding of significant changes with respect to the antitrust aspects of Duke's application for an Operating License for the McGuire Nuclear Station, Units 1 and 2. The changes discussed above were considered collectively as well as individually by AIG in reaching this conclusion.

The Antitrust Division of the Office of the Executive Legal Director after reviewing the information herein and conducting its own review has assisted in preparing this Memorandum and concurs in this conclusion.

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Attachment:
As stated