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BEFORE THE UNITED STATES
ATOMIC ENERGY COMMISSION

IN THE MATTER OF

PIEDMONT CITIES POWER SUPPLY, INC.

MOTION OF DUKE POWER COMPANY
TO DISMISS APPLICATION
OR REJECT SAME FOR FILING

The movant Duke Power Company is the applicant for construction permits and operating licenses for its proposed Oconee Nuclear Station, Units 1, 2 and 3, in Docket Nos. 50-269, 50-270 and 50-287. Duke Power Company's interest in the above-captioned matter, which permits it to make this motion to dismiss, is that the purported "Application for Licenses" attempted to be filed by Piedmont Cities Power Supply, Inc., (hereinafter called Piedmont) on September 12, 1967, is in fact not an application for license to construct and operate a nuclear reactor at all, but is a request to be given a 4% undivided interest in Duke Power Company's Oconee Nuclear Station, Units 1, 2 and 3, which are the same reactors for which Duke is seeking construction permits and operating licenses in AEC Docket Nos. 50-269, 50-270 and 50-287.

Piedmont is a "paper corporation" formed on the eve of public hearings by the eleven North Carolina municipalities which were permitted

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by the Atomic Safety and Licensing Board to intervene at the August 29 et seq. public hearings of Duke Power Company's Oconee Nuclear Station, Units 1, 2 and 3. At the September 12, 1967, closing session of these hearings the Atomic Safety and Licensing Board properly refused to permit this so-called "Application" to be introduced in evidence in those proceedings.

The purported "competing application" of Piedmont is the latest in a long series of dilatory tactics being employed by the eleven North Carolina municipalities in an attempt to delay issuance of construction permits for Duke's Oconee Nuclear Station long enough to endanger the adequacy of Duke Power Company's generating capacity in 1971, 1972 and 1973, in the hope that the eleven cities may thereby bludgeon Duke into granting them a rate reduction which Duke has previously refused to grant. Duke has offered to litigate the reasonableness of its wholesale rate to these eleven municipalities before the Federal Power Commission, the proper forum.

1. THE SO-CALLED "APPLICATION FOR LICENSES" WHICH PIEDMONT ATTEMPTED TO FILE WITH THE COMMISSION ON SEPTEMBER 12, 1967, IS NOT AN APPLICATION FOR LICENSES AT ALL, BUT SEEKS SOMETHING BEYOND THE COMMISSION'S JURISDICTION.

The paper labeled "Application for Licenses" seeks relief which the Commission is not empowered to grant: condemnation, at a price fixed by the proposed condemnor (Piedmont), of a 4% undivided interest in an electric generating plant owned by a public utility company. Neither the Atomic Energy Act of 1954, nor the laws of South Carolina or North Carolina provide

for such condemnation. Duke Power Company is unwilling to sell Piedmont, or the eleven North Carolina towns which created Piedmont, any part of the plant, for reasons hereinafter stated. Duke Power Company will not under any circumstances "design, construct and operate" the plant as "representative" of Piedmont, as suggested in Piedmont's so-called "Application for Licenses", and cannot be forced to do so under any law of the land.

2. THE APPLICATION OF PIEDMONT SHOULD BE DISMISSED (OR REJECTED FOR FILING) BECAUSE IT DOES NOT COMPLY WITH THE REQUIREMENTS OF THE COMMISSION FOR THE ISSUANCE OF LICENSES UNDER SECTIONS 103 AND 104 OF THE ATOMIC ENERGY ACT.

The so-called application completely ignores the requirements of 10 CFR Sections 50.30 and 50.34 with respect to the required technical qualifications of an applicant for licenses and the technical information required to be submitted in support of an application. Moreover, the "application" shows on its face a total lack of financial qualifications to engage in the proposed activities as required by 10 CFR Section 50.33(f). It does not allege ownership of a single asset. It states its intention to purchase a 4% interest in the Oconee Nuclear Station from Duke Power Company from the proceeds of tax-exempt revenue bonds it expects to sell. These bonds are proposed to be secured by power contracts not yet in existence. Piedmont is an instrument of the eleven North Carolina cities and towns listed on page 11 of the "application". As such, it is prohibited by the laws of the State of North Carolina from owning a generating facility in the State of South Carolina. McGuinn vs. High Point, 217 N.C. 449, 8 S.E. 2d 462 (1940). The issuance of revenue bonds for that purpose would clearly be illegal.

3. THE APPLICATION IS ATTEMPTED TO BE FILED UNDER SECTION 103 OF THE ATOMIC ENERGY ACT, AND THE COMMISSION CANNOT AT PRESENT ISSUE LICENSES UNDER THAT SECTION.

On page 3 of the "application" it is stated that "Applicant has a right to file this Application, and the Commission has a statutory duty to accept the same for filing, if the Commission has made a finding in writing that the pressurized water type of reactor utilization facility has been sufficiently developed to be of practical value for industrial or commercial purposes, within the meaning of Section 102 of the Act." On December 21, 1966, the Commission in Docket No. PRM-102-B refused to make a finding of practical value with respect to pressurized and boiling light water, nuclear power reactors. In its Order the Commission said:

> "Pending the completion of scaled-up plants, and the information to be obtained from their operation, the Commission remains of the view that there has not yet been sufficient demonstration of the cost of construction and operation of light water, nuclear electric plants to warrant making a statutory finding that any types of such facility have been sufficiently developed to be of practical value within the meaning of Section 102 of the Act."

In a Memorandum and Order dated September 8, 1967, entered in Docket Nos. 50-269, 50-270 and 50-287, the Commission stated that there "appears to be no basis at the present time for altering this view".

The enumeration of nine reactors on pages 3 - 5 of the "application", together with a listing of certain findings, decisions and construction permits on pages 6 and 7, all of which Piedmont contends constitute a finding by the Commission in writing of the practical value of the pressurized water type reactor,

is totally and completely irrelevant. Of the nine reactors cited by Piedmont, only the Indian Point Station Unit 1 reactor, the San Onofre reactor and the Yankee Nuclear Power Station reactor have been constructed and operated. The capacity of each of the Oconee reactors will be several times greater than the largest of these. Moreover, reports of operating experience on these three reactors issued by the Federal Power Commission show that the generating costs per kwh of these reactors, including production expense and fixed charges or investment, is substantially greater than the generating cost of any Duke Power generating plant and would not therefore be economically feasible or competitive with other types of generating plants.

Piedmont states on page 7 of its "application" that "the jurisdiction of the Commission to grant this application depends upon the question whether the three reactors to be employed in the Oconee Nuclear Station, Units 1, 2 and 3, are in fact the same type of pressurized water reactor which the Commission has previously found in writing as aforesaid to be sufficiently developed to be of practical value for commercial or industrial use." Inasmuch as the Commission as recently as September 8, 1967 expressly reaffirmed its refusal to make a finding of practical value pending completion and operation of plants such as Oconee, Piedmont's "application" is patently defective.

4. THE RELIEF SOUGHT IN THE "APPLICATION" CANNOT BE GRANTED WITHOUT THE CONSENT OF DUKE POWER COMPANY, WHICH CONSENT WILL NOT BE GIVEN.

On page 2 of its "application" Piedmont states that "Applicant authorizes Duke Power Company to act as its representative to design, construct and operate under a lawful license, said three Oconee Pressurized Water Type

Reactors, in their entirety, but seeks herein solely upon applicant's own behalf a license to acquire, own and use an undivided 4% interest as tenant in common without right or partition in each of said three PWR's". In its application filed in Docket Nos. 50-269, 50-270 and 50-287, Duke stated that it was "making this Application in its own behalf and not as agent or representative of any other person". This statement is hereby reaffirmed, and Duke Power Company will not design, construct or operate the Oconee Nuclear Station, or any portion thereof, as the representative of Piedmont or any other person, firm or corporation. Duke has further stated to attorneys for Piedmont that it will not sell or convey any interest in the Oconee Nuclear Station, or power generated by that Station at cost, to Piedmont or to any of the eleven North Carolina cities and towns for the reason that to do so would provide them discriminatory access to what is expected to be low cost power at the expense of Duke's other customers. As Duke has repeatedly stated, to permit any customer, or class of customers, to single out Duke's most modern and most efficient generating plant and purchase an interest in it or power from it at cost, thus leaving the company's remaining customers to bear the greater expense of operating the older, less efficient plants of its system, would be to grant an unfair preference to the customers singled out for such treatment. Under vigilant rate regulation by the Federal Power Commission of wholesale rates, and by the North Carolina Utilities Commission and the Public Service Commission of South Carolina of residential, general service and industrial rates, the savings resulting from large scale generation, including those which, although not demonstrated, are expected to result from the operation of the Oconee Station, will be shared by all customers of Duke, and not just a preferred few.

5. EVEN IF THE "APPLICATION" OF PIEDMONT IS CONSIDERED A "COMPETING APPLICATION" IT DOES NOT AFFORD ANY STATUTORY PREFERENCE TO PIEDMONT.

The only provision of the Atomic Energy Act which provides for consideration of competing applications is Section 182d. That section provides as follows:

> "The Commission, in issuing any license for a utilization or production facility for the generation of commercial power under section 103, shall give preferred consideration to applications for such facilities which will be located in high cost power areas in the United States if there are conflicting applications for a limited opportunity for such license. Where such conflicting applications resulting from limited opportunity for such license include those submitted by public or cooperative bodies such applications shall be given preferred consideration".

By its express terms, Section 182d applies only to applications under Section 103 of the Act. Duke's Application is filed under Section 104b. However, even if Duke's Application were filed under Section 103, Piedmont would have no right to file a competing application in this case for the reason that there is no "limited opportunity" for a license within the meaning of Section 182d. The legislative history underlying the enactment of Section 182d indicates that Congress anticipated the possibility of a scarcity of special nuclear material for nuclear power plants. See Commission Staff Memorandum filed with and made a part of the Commission's Decision in Docket Nos. RM-102-1 and PRM-102-A. Such scarcity, it was felt, could create a "limited opportunity" for licenses for utilization or production facilities. In such case, Section 182d affords preferred consideration to applications in high cost power areas and, in the case of conflicting applications, to applications submitted by public or cooperative bodies.

As the Staff Memorandum referred to above points out, there is no longer any scarcity of special nuclear material. Consequently, there is no "limited

opportunity" within the meaning of Section 182d. Piedmont, therefore, has no right under existing conditions to file a competing application under any section of the Atomic Energy Act for a license for all or any part of the Oconee Nuclear Station, and no right to the statutory preference.

6. THE SO-CALLED "APPLICATION" OF PIEDMONT WAS NOT FILED IN GOOD FAITH, BUT ONLY FOR THE PURPOSE OF DELAY IN ANOTHER PROCEEDING (DOCKET NOS. 50-269, 50-270 and 50-287) AND SHOULD THEREFORE BE SUMMARILY REJECTED BY THE COMMISSION.

The eleven North Carolina cities and towns to whom Piedmont proposes to sell power from the Oconee Station are all wholesale customers of Duke Power Company. After publicly announcing their intention to institute proceedings before the Federal Power Commission for a wholesale power rate reduction they instead filed on July 25, 1967 a protest against the issuance of licenses to Duke for the Oconee Station, alleging violations of certain federal anti-trust laws. In their protest they stated that "the granting of the relief prayed for in this protest is an appropriate way to bring about a substantial reduction in protestants' cost of bulk power to which protestants are entitled".

On August 9, 1967 the Atomic Safety and Licensing Board designated by the Commission to conduct the hearing on Duke's Application for construction permits denied the protest on the grounds that the matters it raised were beyond the issues specified by the Commission for determination at the hearing. Two days later, on August 11, 1967, a Joint Petition was filed by these same cities and towns and by Piedmont requesting intervention in the matter before the Atomic Safety and Licensing Board for the purpose of making a Motion to dismiss Duke's Application as being improperly filed under Section 104b of the Atomic Energy Act. Intervention was granted the eleven cities and towns.

As part of the Opening Statement of Attorneys for the intervening municipalities at the hearing on August 29 - 30, Attorney Spencer W. Reeder stated:

> "Now we do not say that we are entitled to a license to operate or to a license to construct any part of this Oconee Nuclear Station, Units 1, 2 and 3. All we say is that we are entitled to a license to acquire a part ownership in this system as tenants in common . . ." (Transcript, p. 220)

Two weeks after this statement was made Piedmont's so-called application was submitted for filing. It is submitted that it is clear both from its content and from the record of the proceedings in Docket Nos. 50-269, 50-270 and 50-287 that the "application" is nothing more than another in a long series of dilatory tactics designed to accomplish a reduction in the cost of power to the intervening cities and towns. This is a matter for the Federal Power Commission, not the Atomic Energy Commission.

As hereinbefore stated, the public hearing on the matter of Duke's Application for licenses for the Oconee Station, originally scheduled for August 29, 1967, was not concluded until September 12, 1967. The Chairman of the Atomic Safety and Licensing Board has granted the Intervenors until October 10, 1967 to file Proposed Findings of Fact and Conclusions of Law. A decision of the Atomic Safety and Licensing Board concerning construction permits must necessarily follow that date. The delays already imposed by the intervention of the eleven towns and cities threatens the adequacy and reliability of the future power supply of the Piedmont Carolinas. The filing of a purported competing application by Piedmont poses an additional threat. Duke must make arrangements at the earliest possible date to assure that the

Oconee Nuclear Station, Unit 1, or an equivalent generating capability, is available by June, 1971. It is therefore respectfully requested that consideration be given to the matter of Piedmont's "application" and this Motion at the earliest possible date.

WHEREFORE, Duke Power Company, for the reasons hereinbefore set forth, hereby respectfully moves that the Application of Piedmont Cities Power Supply, Inc. for licenses to acquire an undivided interest in Duke Power Company's proposed Oconee Nuclear Station, Units 1, 2 and 3, be promptly dismissed, or rejected for filing.

Respectfully submitted,

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September 18, 1967