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PROD. & UTIL. FAC. 50-267,270,287

UNITED STATES OF AMERICA
ATOMIC ENERGY COMMISSION

In the Matter of)
)
DUKE POWER COMPANY)
)
(Cconee Nuclear Station)
Units 1, 2 and 3)

Docket Nos. 50-269
50-270
50-287

ANSWER OF THE AEC REGULATORY STAFF
IN OPPOSITION TO PETITION OF PIEDMONT CITIES
POWER SUPPLY, INC. FOR RECONSIDERATION
OF THE COMMISSION'S FINAL DECISION



I

Introduction

On January 3, 1968, the Atomic Energy Commission (Commission) issued its Decision in this proceeding upon exceptions which were filed by Piedmont Cities Power Supply, Inc. (Piedmont),^{1/} to an Initial Decision of an atomic safety and licensing board (board) dated November 3, 1967. On January 12, 1968, Piedmont filed a petition for Commission reconsideration of its Decision, requested oral argument and requested specified relief.

In an order, dated August 28, 1967, the board denied the intervention of Piedmont on the grounds that Piedmont did not have an interest sufficient to intervene, but granted intervention to eleven North Carolina municipalities on the grounds that they, as customers of Duke Power Company, had sufficient interest. This

1/ Exception on Behalf of Piedmont Cities Power Supply, Inc., to Initial Decision of Atomic Safety and Licensing Board and Request for Oral Argument, November 22, 1967.

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order was affirmed in the board's Initial Decision.^{2/} Piedmont filed an exception to the Initial Decision with respect to the denial of its petition for leave to intervene alleging, among other things, that its interests and those of the municipalities were "identical and unitary".^{3/} Both the AEC regulatory staff and the applicant filed briefs in opposition to this exception.

The Commission in its Decision declined to overturn the board's denial of intervention and denied Piedmont's exception stating that "[u]nlike the cities, Piedmont has no existing economic interest related to the jurisdictional issue but only seeks to acquire such an interest," and that such a claim of interest is "a remote and tenuous one at best and does not warrant a grant of intervention".^{4/} The Commission further stated that it failed to see how Piedmont was prejudiced by being denied intervention since the jurisdictional contentions which Piedmont sought and was permitted to assert were fully presented to the board by the municipalities.^{5/}

^{2/} Board's Initial Decision, 4-6 (August 28, 1967).

^{3/} Piedmont's Exception, supra, 4.

^{4/} The eleven North Carolina municipalities were permitted to intervene on what the Commission deemed "to be a sound exercise of administrative discretion". Commission Decision, 15 (January 3, 1968).

^{5/} Commission Decision, 15 (January 3, 1968).

Piedmont now claims that the Commission's Decision with respect to it is erroneous in that: (1) the Commission has, contrary to law, added a requirement for intervention not prescribed by § 189 a. of the Atomic Energy Act of 1954, as amended (Act), or 10 CFR § 2.714 of the Commission's "Rules of Practice" that an "interest" justifying intervention must be a "present interest"; (2) the Commission has failed to recognize that Piedmont had an independent right to intervene and that, if allowed to intervene, could present evidence, issues, and considerations different from and additional to those of the municipalities; and (3) the law gives Piedmont an absolute right to intervene.

II

Argument

A.

Piedmont's Contentions that the
Commission's Decision Was Erroneous
Are Without Merit

The allegation presented by Piedmont that, contrary to law, the Commission has added a new requirement for standing to intervene in Commission proceedings by determining that Piedmont does not have a "present" interest to intervene is without substance. In its Decision, the Commission stated that Piedmont had no "existing economic interest" related to the jurisdictional issue, which was the basis for the admission of the municipalities, but only sought to acquire

such an interest.^{6/} Section 189 a. of the Act provides in part that in any Commission proceeding under the Act for the granting of a construction permit:

"... the Commission shall grant a hearing upon the request of any person whose interest may be affected by the proceeding, ..." (Emphasis added)

Subsection 2.714(a) of the Commission's "Rules of Practice", 10 CFR Part 2, implements this statutory provision. The most reasonable construction of the statutory provision and of 10 CFR § 2.714(a) is that the stated interest of a person seeking to intervene in a Commission proceeding must be an existing or present interest and not a speculative or prospective interest.

Piedmont has stated that its purpose is to acquire an interest in the applicant's Oconee Nuclear Station, as well as a right "in the capacity and energy developed by" the Station in order to contract to sell power from the Station at cost.^{7/} There is no evidence in the record of this proceeding that this purpose is capable of fulfillment other than the mere assertions of Piedmont. There is, however, some indication that the expressed purpose of Piedmont may well

^{6/} Commission Decision, 15 (January 3, 1968).

^{7/} Joint Petition to Intervene, 2 (August 10, 1967).

be difficult, if not impossible to achieve under existing laws.^{8/ 9/}

The substance of the two remaining contentions of Piedmont is identical to the above contention. In view of the position we have taken with respect to that initial contention, we believe that the two remaining contentions of Piedmont are similarly without merit. However, to completely dispose of these remaining contentions, they will be briefly discussed below.

Piedmont's second contention is that it had an independent right to intervene and that it could have presented evidence, issues and considerations different from and additional to those of the municipalities. First, it should be noted that the Commission admitted the municipalities as intervenors in this proceeding not as a matter of right but as a matter of "administrative discretion" for the purpose of contesting the licensing jurisdiction of the Commission.^{10/} Thus, if the municipalities were not admitted as a matter of right, Piedmont, with its remote and tenuous interest claim, can hardly expect to be admitted as a matter of right.

^{8/} Brief of Applicant Duke Power Company in Opposition to the Exceptions of Piedmont Cities Power Supply, Inc., and Eleven North Carolina Municipalities to the Initial Decision of the Atomic Safety and Licensing Board, 19-20 (November 30, 1967).

^{9/} Board's Order, 3-4 (August 28, 1967).

^{10/} Commission Decision, 14-15 (January 3, 1968).

Secondly, Piedmont itself stated that its interests and those of the municipalities "are identical and unitary".^{11/} In its Decision, the Commission took this into consideration. The Commission stated that:

We fail to see, moreover, how Piedmont was prejudiced in any practical way by its being denied intervention. ... The two groups filed a joint petition to intervene and motion to dismiss raising the same contentions, and both were, and still are, represented by the same counsel. This identity of interest, position and representation would indicate that the jurisdictional contentions which Piedmont sought to assert were, in fact, fully presented to the board and to us by the joint petitioners. ^{12/}

Finally, Piedmont contends that the law gives Piedmont an absolute right to intervene in this proceeding. The AEC regulatory staff in its brief in opposition to Piedmont's exceptions to the board's Initial Decision stated its position at length that as a matter of law Piedmont was not entitled to intervene.^{13/} The conclusion of that brief, which is reaffirmed here, was that the stated economic interest of Piedmont in this proceeding was not an adequate interest for intervention in this proceeding. The affected interest must be related to matters of radiological health and

^{11/} Piedmont's Exceptions, 4 (November 22, 1967).

^{12/} Commission Decision, 15 (January 3, 1968).

^{13/} Reply Brief of Regulatory Staff in Opposition to Exceptions to Initial Decision of Piedmont Cities Power Supply, Inc., December 4 1967.

safety or common defense and security since these are the only matters which may be considered in a proceeding on an application submitted pursuant to § 104 b. of the Act. In view of the foregoing, Piedmont is not entitled as a matter of law to intervene in this proceeding.

B.

Piedmont States No Basis for Commission
Reconsideration of Decision

In its petition for reconsideration, Piedmont has offered no new evidence in support of its contentions. The Commission's Decision makes clear that it considered the evidence offered by Piedmont and the arguments presented by Piedmont in support of its exceptions to the Initial Decision.^{14/} Since no new evidence in support of its contentions is now offered, the Commission is justified in declining to reconsider its Decision.^{15/}

In effect, Piedmont's petition for reconsideration merely presents arguments as to why it is dissatisfied with the Commission Decision. The fact that Piedmont finds the result unsatisfactory to it does not provide a basis upon which it can expect the Commission to reconsider the Decision.^{16/}

^{14/} Commission Decision, 13-15 (January 3, 1968).

^{15/} City of Dallas v. C.A.B., 221 F.2d 501 (D.C. Cir. 1960).

^{16/} North Central Airlines v. C.A.B., 281 F.2d 18 (D.C. Cir. 1960).

C.

Piedmont's Request for Oral Argument
Should be Denied

Piedmont has requested that oral argument on its petition for reconsideration be granted by the Commission. The AEC regulatory staff believes that the matters raised by Piedmont have been or are capable of being adequately explored in written arguments and the underlying record and that oral presentation is unnecessary.

III

Conclusion

For the reasons set forth above, the petition for reconsideration of the Commission's Decision filed by Piedmont and its request for oral argument and other specified relief should be denied.

Respectfully submitted,

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Dated at Bethesda, Maryland,
this 22nd day of January, 1968.