

POOR ORIGINAL

UNITED STATES OF AMERICA
BEFORE THE
ATOMIC ENERGY COMMISSION

In the Matter of

DUKE POWER COMPANY
(Oconee Units 1, 2 & 3
McGuire Units 1 & 2)

Docket Nos. 50-246A, 50-270A,
50-287A, 50-369A,
50-370A

MOTION OF THE ATOMIC ENERGY COMMISSION
STAFF AND THE DEPARTMENT OF JUSTICE TO
AMEND LICENSES FOR OCONEE UNITS 1, 2 AND 3 AND
MCGUIRE UNITS 1 AND 2 BY ADDING LICENSE CONDITIONS

The Applicant Duke Power Company, has agreed by letter of April 26, 1974, from William H. Grigg, its Vice President and General Counsel, to Thomas E. Kauper, Assistant Attorney General in charge of the Antitrust Division, Department of Justice, to accept a statement of commitments included with that letter as conditions to the Atomic Energy Commission licenses for its Oconee, McGuire and Catawba nuclear power plants. A copy of Applicant's letter and the commitments is attached hereto.

Applicant's commitments constitute its undertaking to enter into various types of transactions in electric power with neighboring electric systems in the Piedmont Carolinas. The types of transactions include: (1) interconnection and coordination of reserves by means of the sale and exchange of

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emergency and scheduled maintenance bulk power, with such power to be provided to the fullest extent available and desired, and the coordination to be premised upon a minimum installed reserve of 15% of a participant's estimated peak load responsibility; (2) sale and exchange of short-term power and energy, limited term power and energy, economy energy, non-displacement energy and emergency capacity and energy; (3) sale of partial requirements firm power and energy to accommodate systems who may choose to generate power to supply part or all of their own requirements; (4) sale of full requirements electric power to new municipal distribution systems; (5) transmission (wheeling) of electric power over its transmission facilities between and for other electric systems, including the planning and construction of new facilities necessary to accommodate such transmission; and (6) discussion of load projections and system development plans with other systems, including notification of the proposed construction of nuclear units. Neighboring systems are entitled to call upon Applicant to engage in these transactions so long as Applicant recovers the cost of the transaction and suffers no demonstrable net detriment therefrom. The commitments, of course, speak for themselves.

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These are procompetitive commitments. The Department believes their implementation would serve to preserve and promote competition in electric power markets in the Piedmont Carolinas. They would provide electric systems who are now full-requirements wholesale customers of the Applicant access to alternative sources of power supply. Those systems could then choose to avail themselves of these arrangements and enter into the business of producing part or all of their own power supply, or they might seek to buy part or all of their requirements from other suppliers. They would no longer need to depend on Applicant for their full power requirements, and Applicant's full-requirements wholesale rate would then no longer be the sole possible determinant of their power supply costs. Implementation of these commitments is consistent with our representation of the public interest in the application of antitrust law and policy to the licensing of nuclear power plants under the Atomic Energy Act.

In accordance with Section 105c(1) of that Act, the Department had previously advised the Atomic Energy Commission that antitrust hearings would be required on Duke Power Company's Oconee, McGuire and Catawba license applications. In view of Applicant's undertaking of the instant commitments, however, the Department concluded that our recommendations for

antitrust hearings should be withdrawn, and we so advised Mr. Howard K. Shapar, Associate General Counsel of the Commission, in a supplemental letter of advice dated April 26, 1974. A copy of that letter is also attached hereto.

Pursuant to Section 2.730 of the Commission's Rules, the Department now moves the Atomic Safety and Licensing Board issue an order directing that the licenses (i.e., operating licenses and/or construction permits as applicable) for Oconee Units 1, 2 and 3 and McGuire Units 1 and 2 be amended to attach the commitments included with Applicant's April 26, 1974, letter to the Department as conditions to those licenses. */ The Atomic Energy Commission Staff joins in this motion.

Applicant, per its April 26, 1974, letter, has agreed to the attachment of these commitments as conditions to the Oconee and McGuire licenses, while at the same time reserving the right to oppose the imposition of any different or additional conditions by the Board in the event an evidentiary hearing subsequently would occur.

The municipal Intervenor have not joined in this motion, and we do not undertake to state their position here. We note, however, that our motion does not affect any right those Intervenor may have to an antitrust hearing on the Oconee and McGuire applications, including the right to obtain any relief to which they may be found entitled by the Board after such a hearing. Just as Applicant may oppose the imposition

*/ The instant motion embraces only the attachment of conditions to the Oconee and McGuire licenses. At the appropriate time, steps will be taken to have similar conditions included in the Oconee construction permit. What, if any, action the Department may take pursuant to further recommendations in our supplemental letter of advice is still under consideration.

of any different or additional license conditions after hearing. The Intervenor is free to endeavor to establish that issuance of the Oconee and McGuire licenses would create or maintain a situation inconsistent with the antitrust laws and to seek the imposition of whatever relief they may desire following a hearing. This is not a motion for summary disposition of the Oconee-McGuire proceedings, the granting of which would settle the rights of all parties therein. Settlement here would be partial, limited to the claims of the AEC staff and the Department for relief against the Applicant.

Accordingly, the fundamental question for the Board in determining whether to grant this motion must be: Would amendment of the Oconee and McGuire licenses to attach the agreed-upon license conditions at this time prejudice any rights of a party who does not choose to agree to those conditions to have its claims heard? We believe the answer is clearly "no," and we urge the Board to require any party opposing this motion to show affirmatively how it would be prejudiced in this proceeding by the granting of the motion.

We believe this position is in accord with Section 2.759 of the AEC Rules of Practice which states:

The Commission recognizes that the public interest may be served through settlement of particular issues in a proceeding or the entire proceeding. Therefore, to the extent that it is not inconsistent with hearing requirements in section 189 of the Act (42 U.S.C. 2239), the fair and reasonable

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settlement of contested initial licensing proceedings is encouraged. It is expected that the presiding officer and all of the parties to those proceedings will take appropriate steps to carry out this purpose.

The granting of our motion would terminate the prosecutorial role of the AEC staff and the Department in this proceeding; we would neither present evidence nor seek the imposition of any different or additional license conditions by the Board. However, because of our statutory responsibilities in the administration and enforcement of Section 105c of the Atomic Energy Act and because this is one of the initial proceedings under that section, so long as the proceeding remains pending and it is uncertain what issues may arise, we believe it necessary that the AEC staff and the Department remain parties in the proceeding so that our views may be made known to the Board if appropriate. The roles of Applicant and intervenors in the proceeding would, of course, remain unchanged.

We strongly urge the granting of this motion.

Respectfully submitted,

Benjamin H. Vogler

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AEC Regulatory Staff

May 13, 1974
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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of

HOUSTON LIGHTING & POWER COMPANY
PUBLIC SERVICE BOARD OF SAN ANTONIO
CITY OF AUSTIN
CENTRAL POWER AND LIGHT COMPANY
(South Texas Project, Unit Nos.
1 and 2)

NRC Docket Nos. 50-498A
50-499A

TEXAS UTILITIES GENERATING
COMPANY, et al.
(Comanche Peak Steam Electric
Station, Units 1 and 2)

NRC Docket Nos. 50-445A
50-446A

CERTIFICATE OF SERVICE

I hereby certify that copies of NRC STAFF COMMENTS ON AND MOTION FOR APPROVAL OF SETTLEMENT LICENSE CONDITIONS in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class, or, as indicated by an asterisk, through deposit in the Nuclear Regulatory Commission's internal mail system, this 3rd day of December 1980.

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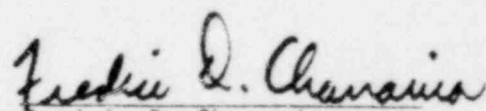
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