

UNITED STATES OF AMERICA
ATOMIC ENERGY COMMISSION

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BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of

GEORGIA POWER COMPANY

(Edwin I. Hatch Nuclear Plant,
Unit No. 2)

}
AEC Docket No. 50-366A
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MOTION FOR RECONSIDERATION

On June 3, 1974, a "Motion to Withdraw Interventions and Joint Motion to Dismiss and Terminate This Proceeding" was filed by all the parties involved in this matter. This motion was filed following an extended period of negotiations which resulted in an agreement among all parties as to certain license conditions which would be imposed upon any license issued to the applicant with respect to the above application. In the opinion of all the parties including the Staff and the Department of Justice, these license conditions resolve the antitrust contentions that have been raised and serve the public interest. There are now no matters in controversy among the parties and no outstanding requests for a hearing.

Subsequently, the presiding Atomic Safety and Licensing Board (Board) issued an Order dated June 21, 1974, stating that it was "unable at this time to conclude that the license conditions will resolve the antitrust issues raised and will advance the public interest." Accordingly, the Board directed the AEC Regulatory Staff and the Department of Justice to submit a Memorandum under oath explaining how the agreed upon license conditions will satisfy the antitrust issues and how the public interest will be served thereby.

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It is respectfully submitted that this action on the part of the Board is not required by the Atomic Energy Act of 1954, as amended, or by the Rules and Regulations of the Commission. In the instant matter, all intervenors have withdrawn their request for a hearing, the Department of Justice has withdrawn its recommendation for a hearing, and the Staff has indicated that there is no further requirement for a hearing. This is analagous to an operating license proceeding wherein if no request for a hearing is made no further adjudicatory proceedings are required.

While this is a procedural matter of first impression in the antitrust area there is ample precedent established by Atomic Safety and Licensing Boards, and Atomic Safety and Licensing Appeal Boards, in proceedings concerned with operating licenses. These Orders make it clear that where all parties to the matter have withdrawn and there are no matters in controversy, there is no need for further proceedings. ^{1/}

^{1/} In the Matter of Baltimore Gas & Electric Co., (Calvert Cliffs Nuclear Power Plant Units 1 & 2), AEC Dkt. Nos. 50-317 & 50-318, Order dated May 10, 1973; In the Matter of Wisconsin Public Service Corporation, et al. (Kewaunee Nuclear Power Plant), AEC Dkt. No. 50-305, Order dated October 23, 1973; In the Matter of Metropolitan Edison Company, et al. (Three Mile Island Nuclear Station, Unit 1) AEC Dkt. No. 50-289, Order issued November 16, 1973; In the Matter of Sacramento Municipal District (Rancho Seco Unit 1), AEC Dkt. No. 50-312, Order dated Dec. 11, 1973; Petition for Derating of Certain Boiling Water Reactors, AEC Dkt. Nos. 50-219, 50-237, 50-249, 50-254, 50-265, 50-220, 50-245, 50-263, 50-293, Order Issued January 9, 1974; In the Matter of Vermont Yankee Nuclear Power Corporation (Vermont Yankee Nuclear Power Station), AEC Dkt. No. 50-271, Order issued January 22, 1974.

The "Notice of Antitrust Hearing on Application for Construction Permit" issued in this case ^{2/} clearly delineates the scope of the Board's responsibility. Specifically, the Commission directed the Board, in its Notice of Hearing, to "decide those matters relevant to that issue [whether activities under the permit would create or maintain a situation inconsistent with the antitrust laws] which are in controversy among the parties and make its findings on the issue."

(Emphasis Added.)

It may be that the action requested of the Board in the Joint Motion was misconstrued by the Board. The moving parties do not seek approval of the license conditions by the Board. This is because, as indicated above, the agreement reached by all the parties to this proceeding renders moot the matters in controversy which underlay the Commission's delegation of this case to the Board for hearing, namely, whether the issuance of a construction permit would create or maintain a situation inconsistent with the antitrust laws and, if so, what conditions should be imposed on the license to remedy such a situation. In the event that the Joint Motion inadvertently misled the Board, it should be made clear that the moving parties sought only to have the withdrawal of the intervenors recognized and the issuance of an appropriate order terminating the proceeding.

In this connection, it is to be noted that the Commission's Rules of Practice encourage settlements by the parties of matters in controversy. ^{3/} Where, as here, all parties have agreed that a license should be issued with certain conditions attached thereto and that the proceeding should be terminated, and where, as here, it is clear that substantial antitrust

^{2/} Docket No. 50-366A, Order dated November 29, 1972.

^{3/} 10 CFR 2.759

relief is incorporated in the agreed upon license conditions, it is respectfully submitted that the Board's function ceases and that the Board should issue the requested order terminating the proceeding.

In the instant matter, the Director of Regulation will include the antitrust license conditions, as agreed upon, on any license to be issued in this matter. In view thereof, it is respectfully submitted that the public interest will be served by a termination of these proceedings. The motions to withdraw intervention should be accepted and an appropriate order terminating the proceeding should be entered.

Respectfully submitted,

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Dated at Bethesda, Maryland
this 28th day of June 1974.