10-23-73

UNITED STATES OF AMERICA

BEFORE THE

ATOMIC ENERGY COMMISSION

In the Matter of	)	
	)	
DUKE POWER COMPANY	)	Docket Nos. 50-269A, 50-270A
(Oconee Units 1, 2 and 3	)	50-287A, 50-369A
McGuire Units 1 and 2)	)	50-370A

BRIEF OF THE DEPARTMENT OF JUSTICE TO ASSIST BOARD IN DETERMINING IMPACT OF COMMISSION'S MEMORANDUM AND ORDER (DOCKET 50-382A) UPON THIS PROCEEDING

The Atomic Energy Commission recently issued a Memorandum and Order in its Louisiana Power and Light Company Waterford Unit 3 antitrust review proceeding.*/ The Licensing Board in the Waterford case had recommended granted petitions to intervene and holding a hearing on designated antitrust issues. The Commission, in its Memorandum and Order, accepted the Board's recommendations. In the course of its opinion, the Commission commented on the scope of prelicensing antitrust review under Section 105c of the Atomic Energy Act. At Applicant's instance the Board has called a prehearing conference to consider the effect of this Memorandum and Order on the conduct of this proceeding.

The Department of Justice believes the antitrust hearing on Duke Power Company's Oconee and McGuire units must

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*/ Memorandum and Order in the matter of Louisiana Power and Light Company (Waterford Steam Electric Generating Station, Unit 3), Docket No. 50-382A, September 28, 1973.

go forward as scheduled with its scope unchanged from that previously adopted by this Board.*/ Nothing the Commission has said or done requires otherwise.

Section 105c(5) of the Atomic Energy Act requires the Commission (and here by delegation the Board) to make "a finding as to whether the activities under the license would create or maintain a situation inconsistent with the antitrust laws." The Commission's Memorandum and Order emphasizes that there must be a meaningful nexus between the activities under the nuclear license and the situation alleged to be inconsistent with the antitrust laws in order for those activities to be found to create or maintain that situation. The Department agrees entirely. We allege and we will present evidence showing that there exists today in the Piedmont Carolins a situation inconsistent with the antitrust laws and that the activities under the Oconee and McGuire licenses, if issued, would affirmatively maintain, indeed exacerbate, that situation.

The statutory finding required here of the Board is concerned with the relationship or nexus between two things: (1) "A situation inconsistent with the antitrust laws"; and (2) "Activities under the license." The requisite nexus is simply that the activities must "create or maintain"

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*/ Prehearing Conference of September 6, 1972 (Transcript, pp. 125-126); Order Setting Forth Matters in Controversy (September 20, 1972); Prehearing Order Number Six (March 22, 1973).

the situation. We will now examine the situation, activities, and nexus as they exist in this proceeding.

In the present context, the Board must accept our factual allegations as true--the proper analogy is to a court's consideration of a plaintiff's case upon a defendant's demurrer or motion to dismiss for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6). That some of the facts may be controverted is irrelevant to the Board's appraisal of our claim of nexus at this point in the proceeding, with no evidence in the record.

THE SITUATION

What is the situation inconsistent with the antitrust laws that the Department alleges now exists in the Piedmont Carolinas? Briefly stated, we will show a situation wherein Applicant has monopolized the wholesale-for-resale firm-power market over a large area of the Piedmont Carolinas and uses its monopoly power to restrict competition in the retail-distribution firm-power market in that area. We allege this situation to be inconsistent with the antitrust laws and the policies underlying those laws, i.e., the avoidance of monopolies and restraints upon freedom of competition.*/

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*/ E.g.: "The purpose was . . . to make . . . a competitive business economy." United States v. South-Eastern Underwaters Ass'n, 322 U.S. 533, 559 (1944); "The heart of our national economic policy long has been faith in the value of competition. In the Sherman and Clayton Acts, as well as in the Robinson-Patman Act, Congress was dealing with competition, which it sought to protect, and monopoly, which it sought to prevent." Standard Oil Co. v. FTC., 340 U.S. 231, 248-49 (1951); "Basic to the faith that a free economy best promotes (continued on p.4)

The following factual allegations underlie the charge of monopolization. To compete in the wholesale-for-resale firm-power market, an electric utility requires a low-cost bulk power supply. Nuclear power is cheaper now than any other kind of available power to meet the tremendous growth in electric requirements anticipated in the Piedmont Carolinas. Nuclear power, however, may be economically produced only from large units, i.e., units with over 500 megawatts capacity. Large units are economic sources of firm electric power only if tied by high-voltage and extra-high voltage transmission to an integrated system of generating units and/or to the regional power exchange. Applicant now owns practically all the central station power sources in its area of the Piedmont Carolinas. Through ownership of all the extra-high-voltage (345 kv and higher) transmission and nearly all the high-voltage (44-345 kv) transmission in its area, Applicant controls access to the regional power exchange there. Applicant has refused and continues to refuse other electric utilities in this area coordinating access to its system and to the regional power exchange. This has precluded those other electric utilities from installing the large units -- the nuclear units -- necessary to become actual, rather than merely potential competitors of Applicant as sellers

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*/ (continued from p. 3) the public wealth is that goods must stand the cold test of competition; that the public, acting through the market's impersonal judgment, shall allocate the nation's resources and thus direct the course its economic development will take." Times-Picayune Publishing Co. v. United States, 345 U.S. 594, 605 (1953).

in the wholesale-for-resale firm-power market. Applicant's exclusion of other potential nuclear power plant licensees from the regional power exchange thus preserves its monopoly of the wholesale-for-resale firm-power market. This continuing monopolization of the wholesale-for-resale firm-power market has the further effect of restricting competition in the retail-distribution firm-power market which Applicant also dominates--alternative sources of bulk power supply are denied to competing distribution systems, and Applicant is able to impose a price squeeze upon them. This is the anticompetitive situation.

THE LICENSE ACTIVITIES

What will be the activities under the Oconee and McGuire licenses? Applicant will be entitled to operate the Oconee units and to construct and subsequently to operate the McGuire units. The purpose of this construction and operation (as well as the basis upon which necessary financing was obtained) is the marketing of the electric power produced by the nuclear units. The Oconee and McGuire license applications are pursuant to Section 103 of the Act--i.e., the nuclear plants are to be used for commercial purposes. According to Section 50.22 of the Commission's Rules,*/ Section 103 licenses are issued to applicants to use nuclear facilities for commercial purposes. Section 50.33 directs that license applications

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*/ 10 C.F.R. §50.22 (1973).

state the use to which the nuclear facility will be put and "[i]nformation sufficient to demonstrate . . . the financial qualifications of the Applicant to carry out . . . the activities for which the permit is sought." That section goes on to require additional information "[i]f the proposed activity is the generation and distribution of electric energy under a class 103 license" (emphasis added). Applicant's McGuire license application made this statement as to use: "The facilities will be used as a part of Applicant's electric utility plant for the generation of electric energy." (p. 7). There can be no doubt whatever that marketing power from the Oconee and McGuire units will be an activity under the licenses.

The Oconee and McGuire units will produce 5000 megawatts of large-unit, base-load, nuclear electric power for marketing over Applicant's system. This power will not and cannot be marketed in isolation; its successful marketing necessarily depends upon the reliability and economies that result from integration of the nuclear units into Applicant's system and coordination of that system with the regional power exchange. The Oconee and McGuire units will represent approximately one-third of Applicant's total generating capacity in 1977; they will be substantial--indeed among the largest--components of Applicant's power marketing capability.

Any argument that "activities under the license" do not extend so far also flies in the face of clear

Congressional intent that Section 105c prelicensing antitrust review reach the marketing of electric power. The legislative history leaves no doubt that Congress was very much concerned with the effect of nuclear generation upon competition in electric power markets.*/

THE NEXUS: THE ACTIVITIES WILL MAINTAIN THE SITUATION

The Department will show that the activities under the Oconee and McGuire licenses would maintain--i.e., continue, carry on, support, sustain, uphold, keep up--and indeed exacerbate the anticompetitive situation described above--and thus that the nexus required by Section 105c is present in this case.

The activities, as we have seen, necessarily include the integration of 5000 megawatts of nuclear power into Applicant's system for marketing in the area of the Piedmont Carolinas where Applicant is located. That 5000 megawatts of nuclear power--supported by the tying of Applicant's system into the regional power exchange--will be the cheapest available power to serve new and growing loads in 1977. Such a 5000 megawatt generation addition is hardly insignificant--33 percent of Applicant's total generation capacity when installed, and an even greater percentage of its base load

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*/ Congressional intent regarding the scope of prelicensing antitrust review was discussed in detail in the Reply of the Department of Justice to Applicant's Answer and Motion (August 3, 1972), specifically in the material incorporated by reference therein at page 4. We hereby incorporate our August 3, 1972, Reply into the present brief by reference.

capacity (i.e., generating units projected to operate nearly full time). Installation of the already-applied-for Catawba units in 1979 and 1980 will increase the percentage of Applicant's generating capacity represented by nuclear units to 41 percent, and still further installations of large-scale nuclear generation are anticipated after Catawba.

The low-cost, large-unit, base-load nuclear power to be supplied by the Oconee and McGuire units will strengthen and expand Applicant's system and the regional power exchange of which it is a part. This strengthening and expansion will increase Applicant's future ability to install and obtain low-cost power from large units. Yet, concurrent with Applicant's action of installing and planning to operate the Oconee and McGuire units to strengthen and expand its system and the regional exchange and support its installation of the Catawba units and further large generating units, the Applicant continues to refuse reasonable access to the regional power exchange by its potential competitors in the wholesale-for-resale firm-power market. It thus forecloses them from applying for licenses to install their own large, low-cost, base-load nuclear generation--and from obtaining the benefits of the nuclear technology developed by the Federal Government--and it denies them the low-cost power they will need to compete with Applicant's Oconee and McGuire power in supplying the rapidly growing electric requirements of the Piedmont Carolinas and to support their own subsequent competitive

installations of large generating units. Construction and operation of the Oconee and McGuire units and marketing of the power from those units through integration into Applicant's system and the regional power exchange demonstrably furthers Applicant's monopolization of the wholesale-for-resale firm-power market--thus maintaining and exacerbating a situation clearly inconsistent with the antitrust laws.

Applicant may contest our factual allegations. For example, it may suggest that the municipal and cooperative systems who are attempting to control their own bulk power supply and to enter the wholesale-for-resale firm-power market as competitors to Applicant have no business doing so, but instead should be satisfied to remain Applicant's customers in that market. It may contend that installation of the Oconee and McGuire units will not increase its competitive advantages vis-a-vis these municipals and cooperatives because they can obtain the full benefits of nuclear power simply by purchasing full-requirements, firm, wholesale power from Applicant's system. Argument over such factual matters is not called for, however, under the present posture of this proceeding. We have alleged facts showing that Applicant's marketing of Oconee and McGuire power as part of its system and the regional exchange will strengthen its monopolization of the wholesale market. Applicant may deny that Oconee and McGuire will have any such effect. If so, the issue of nexus would be ripe for evidentiary hearing.

THE DEPARTMENT DOES NOT RELY ON MERE COMMINGLING OF POWER TO ESTABLISH NEXUS

The Commission's Memorandum and Order emphasizes that the mere commingling of power from the nuclear unit (for which a license is sought) with power from other generating facilities on an applicant's system should not be construed as supplying the required nexus. We agree. While it is true that power from the Oconee and McGuire units must be (not merely will be) commingled with power from the remainder of Applicant's system (and the regional power exchange) to make installation of those units economically feasible so that firm power can be marketed from those units, we do not contend that this fact alone establishes the necessary nexus here. The nexus--the one required by Section 105c--is that the marketing of Oconee and McGuire power will affirmatively maintain the antitrust-inconsistent situation whereby Applicant monopolizes the wholesale-for-resale firm-power market by denying others access to the regional power exchange and thus denying them access to large-unit nuclear generation.

SECTION 105c COMPELS INQUIRY INTO ANY SITUATION INCONSISTENT WITH THE ANTITRUST LAWS THAT WOULD BE MAINTAINED BY THE LICENSE ACTIVITIES

Applicant has suggested that Congress' only concern in amending Section 105c in 1970 was to prevent the exclusion of small utilities from joint ventures owning and operating nuclear power reactors and that the statute was not intended to reach situations where, as here, proposed units are owned

by a single utility.*/ Section 105c cannot be read so narrowly, however; its plain language requires the Commission to inquire into any situation inconsistent with the antitrust laws that would be maintained by activities under the license. The sitatuion here is more complicated that that of exclusion from access to nuclear power because of exclusion from a joint venture nuclear plant, but the anticompetitive effect is the same. Denying other systems access to the regional power exchange just as surely results in denying them access to nuclear power--while Applicant proceeds to install the Oconee and McGuire units. We have pleaded this to be a situation inconsistent with the antitrust laws. Applicant may contend that it is not because it disputes our application of antitrust law and policy to those facts; however, its argument that Congress meant to restrict the "situations inconsistent with the antitrust laws" to restrictions on access to joint units is itself inconsistent with the language chosen and its legislative history.

THE PREEXISTING COMPETITIVE SITUATION MUST BE ANALYZED

We are concerned that there be no confusion between the statutory phrase, "activities under the license"--which relates to construction and operation of the nuclear units and marketing power from them--on the one hand and the variety

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*/ Answer to Notice of Hearing, July 24, 1972, pp. 18-19.

of Applicant's past or present activities which must be inquired into as facets or elements of the competitive situation into which the licensed activities will be thrust. The language of Section 105c does not contemplate that "activities under the license" shall be considered in a vacuum. Moreover, the statutory test is not whether the licensed activities are themselves inconsistent with the antitrust laws. The activities must be evaluated in the context of a preexisting "situation"--more specifically, the competitive framework in which the license applicant operates: how it relates to its competitors, its customers, neighbors, and regulators, In this proceeding, our analysis of the competitive situation in the Piedmont Carolinas necessarily involves consideration of Applicant's activities vis-a-vis smaller privately owned, municipal and cooperative electric systems in its area, including the nature of interconnection with them, if any, competition for wholesale and retail customers, acquisition of other systems, etc. Applicant's coordinating relationships under the VACAR coordinating arrangements (and formerly under the CARVA Power Pool) and with other neighboring systems are also important elements of this competitive situation. The effect of federal and state laws and regulation upon electric utility competition likewise has to be taken into account.

Many such facts or activities must be considered and evaluated by this Board in determining whether there exists a situation inconsistent with the antitrust laws as

alleged by the Department. The statute does not require that each such fact or activity itself be an "activity under the license," nor does it require that there be any direct relationship between each such fact or activity considered in isolation and the licensed activities. The only nexus necessary is that the situation allegedly inconsistent with the antitrust laws be maintained by the licensed activities.

A concrete example of our efforts to discover the existing competitive situation in the Piedmont-Carolinas--and of Applicant's twisting the Waterford Memorandum and Order to justify thwarting such proper discovery--occurred during our deposition of Franz W. Beyer, Applicant's vice president for system planning, last week in Charlotte. At one point Mr. Brand asked the following questions, and Mr. Beyer gave the following responses without objection:

> Q. When you say in your response, most systems are able to obtain the economies of scale without a formal pooling arrangement, what systems were you referring to when you said most systems in the southeast. I am not asking you to name the individual systems, but were you referring for example, generally to privately owned systems?
>
> [Discussion between counsel omitted.]
>
> A. I was thinking of the major bulk power suppliers in the Southeast, but under the contractual terms of the VACAR agreement, almost any bulk power supplier can avail himself today of whatever economies of scale he thinks are available.
>
> Q. Would you include the City of High Point for example as one of them that could?

A. I do not look at the City of High Point as a bulk power supplier. But if it was one, I would think it would have availability to it, I am certain it would have availability to it the VACAR contracts. (Deposition Transcript, Volume 2 at pp. 144-145)

Applicant's counsel apparently deems it within the proper scope of this antitrust review proceeding for Mr. Beyer to point out the availability of coordinating advantages to bulk power suppliers under the VACAR arrangements. Yet when Mr. Brand sought to ascertain whether the purpose or anticipated effect of Applicant (and other large electric utilities) in replacing the formal CARVA Pool with the VACAR contracts was to deny coordinating advantages to smaller systems, Applicant's counsel directed Mr. Beyer not to answer on grounds that such inquiry was impermissible under the Waterford Memorandum and Order:

Q. [Referring to Applicant's Document No.] 22900. Economic consideration. It is in the second paragraph. The fourth line from the bottom.

MR. AVERY: He is ready now, Counsel.

Q. I would like to restate the question because I used economic concession and I should have used economic consideration. I wonder if you could define for us what you mean when you used the term economic consideration in this document?

A. The contractual provisions with regard to rates, for the sale and purchase of power and energy.

Q. Well, if you mean here that admitting, for example, to an agreement to coordinate for reliability, would not appeal to them because they wouldn't get any economic benefit out of it.

A. No.

Q. What did you mean when you said that, sir?

MR. AVERY: When you said that, the sentence which contains the words economic consideration.

Q. Let me read the sentence. To offer an entity for example, S.C.P.S.A.; is that what it says?

MR. AVERY: It says -- yes.

Q. Which I believe is South Carolina Public Service Authority and people often refer to that as Santee-Cooper. An agreement to coordinate for reliability while leaving out the economic consideration which are what Santee-Cooper really desires, has little or has little or no appeal to them and then it goes on as long as proposed legislation contains provisions which intermix reliability with economic. And could you further explain that sentence to me, sir?

MR. AVERY: Counsel, the reason I am pausing here is I am trying to make up my mind whether the question we started out on a general area which sufficiently indicated earlier is an area permissible without establishing the nexis as indicated by Louisiana Power and Light.

The way you originally phrased the question it fit into the general theoretical framework would have been discussing which I think is proper under the Louisiana Power and Light.

You now asked him what he means about what by this specific sentence which I believe leads into the specific CARVA pooling arrangement and the relationship between the CARVA Pool and others.

MR. BRAND: It doens't mention the CARVA Pool in that sentence.

MR. AVERY: I agree with that. I wasn't saying that it was in that sentence. I said it leads into that area. If you can ask the question generally, without getting into the

CARVA pooling arrangement, then I think I would permit an answer to the question. (Emphasis added. Deposition Transcript, Volume 1, at pp. 182-184)*/

The Waterford Memorandum and Order surely cannot be construed to permit Applicant on the one hand to extol the coordinating advantages available under the VACAR contracts, while on the other to deny legitimate inquiry designed to substantiate allegations that the substitution of those contracts for the CARVA Pool in 1971 was done with the anticompetitive purpose and had the anticompetitive effect of continuing to deny municipal and cooperative systems meaningful coordinating access to Applicant's system and/or the regional power exchange. We must not be denied our necessary discovery of the existing competitive situation in the Piedmont Carolinas.

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*/ Other examples of Mr. Beyer's directed refusal to respond on similar grounds appear in the Deposition Transcript on pages 38-44 of Volume 1 and on pages 127-128, 134-135, and 146 of Volume 2.

THE NEED TO CONSIDER THE BROAD COMPETITIVE SITUATION IS NOT UNIQUE TO SECTION 105c PROCEEDINGS

The need to consider a broad competitive situation, not all elements of which bear directly upon a licnese or other regulatory end, is not unique to prelicensing antitrust review under Section 105c. Competition is the nation's fundamental economic policy. United States v. Philadelphia National Bank, 374 U.S. 321, 372 (1963).*/ Regulation and competition are not mutually exclusive but rather are recognized as complementary means to the same goal of proper resource allocation; regulators must as a general rule consider the impact of their decisions upon competition. Denver & R. G. W. R. Co. v. United States, 387 U.S. 485 (1967); Northern Natural Gas Co. v. F. P. C. 399 F.2d 953, 959 (D.C.Cir. 1968). A good example is the recent case of Gulf States Utilities Co. v. F. P. C., 411 U.S. 747 (1973). Gulf States sought Federal Power Commission authorization of a bond issue. The FPC could authorize the the issue on finding it to be for some lawful purpose and compatible with the public interest. Two municipal electric systems in Gulf States' area opposed the FPC authorization on grounds that proceeds of the bond issue would be used to

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*/ Even aside from the prelicensing antitrust review provisions of Section 105c, the Atomic Energy Act explicitly reaffirms the fundamental national policy of competition by charging the Commission to develop the use of atomic energy so as to "strengthen free competition in private enterprise," Section 1(b), 42 U.S.C. 2011(b), and states a purpose of the Act to provide for "a program to encourage widespread participation in the development and utilization of atomic energy for peaceful purposes." Section 3(d), 42 U.S.C. 2013(d).

finance or refinance a broad range of anticompetitive activities similar in many respects to those we have inquired into here.*/ The FPC denied their request for hearing on the basis that the allegations were irrelevant to the securities authorization. The Court of Appeals reversed and remanded the case for consideration of the allegations raised, and the Supreme Court affirmed its decision. The preexisting situation--the history of anticompetitive activities--had to be examined to determine if the securities issue would have an anticompetitive result. In the instant proceeding, of course, the need to inquire into the preexisting situation to determine the effect of licensing is even more clear, for the mere maintenance of a preexisting anticompetitive situation by the license activities would justify an adverse antitrust finding by the Board.

THE COMMISSION APPROVED THE INTERVENTION PETITIONS AND THE ISSUES IN THE WATERFORD CASE

In assessing the implications of the Waterford Memorandum and Order, it should not be forgotten that the Commission accepted its Licensing Board's recommendations that the petitions to intervene in the Louisiana Power and Light Company Waterford proceeding be granted and an antitrust

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*/ Many of the very same anticompetitive activities involving electric utilities in Louisiana were alleged in support of the petitions to intervene in this Commission's Louisiana Power and Light Waterford proceeding, AEC Docket No. 50-382A.

hearing be ordered. The Licensing Board's recommendations were based on findings which included the following:

(1) Petitioners and Intervenors have alleged with sufficient particularity situations that may be inconsistent with the antitrust laws or the policies underlying those laws.

(2) There are nexi between activities under the proposed license and (a) said situation and (b) proposed relief.*/

The Commission also ruled that Issues I and II listed by the Board were appropriate for purposes of commencing the hearing. These issues are:

I. A. Whether Applicant alone or together with others has the ability to hinder or prevent:

(1) smaller electric entities from achieving access to the benefits of coordinated operation 4/ either among themselves or with Applicant or other electric utilities;

(2) smaller electric entities from achieving access to the benefits of economy of size of large electric generating units by coordinated development, 5/ either among themselves or with Applicant or other electric utilities.

B. Whether a situation or situations inconsistent with the antitrust laws or the policies clearly underlying these laws has resulted or will result from the exercise of such ability.

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*/ Memorandum and Order of Board with Respect to Petitions to Intervene in an Antitrust Hearing, Docket No. 50-382A, April 24, 1973, p. 1. The nexus alleged was that power from Waterford (activities under the license) would strengthen the ability of Louisiana Power and Light to maintain or exacerbate existing antitrust-inconsistent situations.

II. Whether Applicant's policy not to sell unit power or ownership shares in Waterford Station Unit 3 deprives smaller electric utilities that are connected or could be connected with Applicant, of the benefit of power from Waterford 3 and thereby results in a situation inconsistent with the antitrust laws or the policies clearly underlying these laws.

4/ Coordinated operation refers to such activities as reserve sharing, emergency power exchanges, deficiency power sales and other coordination of existing facilities.

5/ Coordinated development refers to joint planning and investment. It includes staggered investment and joint investment in new plants of such size as to achieve the economies of scale.
(Memorandum and Opinion of Board, Docket No. 50-382A, April 24, 1973, p. 6)

They are similar in content to the issues this Board adopted for the present proceeding, "after due consideration and upon the briefs and arguments of the parties," in Prehearing Order Number Six (March 22, 1973).

CONCLUSION: THE BOARD MUST HEAR THE EVIDENCE

The Commission has commented upon the difficulty of delineating the scope of Section 105c antitrust review in the abstract, with evidentiary records not yet developed in the initial proceedings under that statute (Memorandum and Order, p. 5). Duke Power--Oconee/McGuire--will be only the second prelicensing antitrust review proceeding to reach the evidentiary hearing stage. Discovery has proceeded substantially --for over a year. Many thousands of documents have been

produced. Depositions are underway, and final interrogatory responses are being prepared. The hearing is not far off. In short, there is every reason for this Board to carry through with its original intention to decide this case, including issues of scope and nexus, on a full evidentiary record.*/ The Midland Licensing Board reaffirmed its own intention to develop just such an evidentiary record after giving consideration to the Commission's Waterford Memorandum and Order at a prehearing conference on October 19, 1973.

The Department has shown here that its direct evidentiary case falls clearly within the scope of Section 105c, with factual allegations of a meaningful nexus between the Oconee and McGuire license activities and a situation inconsistent with the antitrust laws. This is most emphatically not a proceeding to be disposed of summarily without first hearing the evidence.

Respectfully submitted,

Wallace E. Brand
WALLACE E. BRAND

David A. Leckie
DAVID A. LECKIE

Attorneys, Department of Justice

Washington, D. C.
October 23, 1973

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*/ MR. ROSS: All right, sir. I would hope also that the Board --and again perhaps this is clear on the record--that the Board in deferring consideration of our arguments which are very seriously advanced and will be pursued in all appropriate ways as to the proper scope of the issues to be considered, is not--is going at some point to consider those arguments seriously and I would hope pass upon them.
CHAIRMAN BENNETT: We are, sir, but only on a complete record.
MR. ROSS: All right, sir. I want to urge that they not be lost sight of. (Transcript, pp. 125-126; emphasis added.)

UNITED STATES OF AMERICA

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CERTIFICATE OF SERVICE

I hereby certify that copies of BRIEF OF THE DEPARTMENT OF JUSTICE TO ASSIST BOARD IN DETERMINING IMPACT OF COMMISSION'S MEMORANDUM AND ORDER (DOCKET 50-382A) UPON THIS PROCEEDING, dated October 23, 1973, in the above-captioned matter have been served on the following by deposit in the United States mail, first class or air mail, this 23rd day of October, 1973:

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