

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL POWER COMMISSION

In the Matter of)
)
APPALACHIAN POWER COMPANY)

Project No. 2317

BRIEF ON EXCEPTIONS OF INTERVENORS
ASHE COUNTY, NORTH CAROLINA
AND ALLEGHANY COUNTY, NORTH CAROLINA
ON REOPENED HEARING

February 23, 1974

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I.

STATEMENT OF CASE

These parties except to the Initial Decision, the Supplemental Initial Decision and the Additional Supplemental Initial Decision, and appeal to the Commission as provided in Rule 1.31.

We incorporate herein by reference all briefs heretofore filed, particularly the Brief on Exceptions dated July 16, 1971; the Brief Opposing Exceptions dated September 30, 1971; the Comments on the Staff Draft Environmental Impact Statement dated April, 1973; the Initial Brief on Reopened Hearing dated September 10, 1973; and the Reply Brief dated October 22, 1973. This Brief addresses itself to the Additional Supplemental Initial Decision dated January 23, 1974. These parties have not abandoned any of their previously stated positions as outlined in the several briefs, comments, responses and other documents heretofore filed in this proceeding, and reaffirm each and every position previously stated and incorporate them into this Brief by reference.

II.

SUMMARY OF BASIC POSITION

1. As stated in our Initial Brief dated September 10, 1973; incorporated herein by reference.

2. The Blue Ridge Project license has been recommended in an orchestrated proceeding designed to exaggerate and overemphasize those factors favoring a license while suppressing, minimizing and ignoring the much larger body of evidence proving that the project ought not to be licensed. As discussed below, the Decision stands in violation of the Environmental Policy Act, the Federal Power Act and the Commission's own rules.

3. The numerous environmental and economic objections we have raised in our briefs have not been dealt with. They include:

- a. Highway and secondary roads relocations are inadequate.
- b. The land involved produces more economic benefits as agricultural land than it can ever produce as reservoirs.
- c. Residents to be relocated would be only partially compensated.
- d. Local and state governments would have to spend substantial sums to deal with a variety of economic and environmental problems.

III.

ARGUMENT

The Draft and Final Environmental Impact Statements were not the work of the Commission Staff, but slightly altered reproductions of Applicant's statement; staff's contribution was insignificant. Staff's adoption of Applicant's studies and views do not satisfy NEPA.

The North Carolina Department of Natural and Economic Resources is eminently more qualified than staff to judge the needs of the project area, and to draw conclusions as to what is best for the region. It is significant that there has been no meaningful treatment of North Carolina's views.

There has been a "crisis" approach in the management of these hearings. Each time an intervenor has raised a serious issue, Applicant and staff have rushed to patch up the "record". The Administrative Judge has then promptly proclaimed that the challenge was "specifically answered", and Applicant and staff were right, intervenors wrong. The most recent example of this was the belated filing of comments by EPA, followed by hasty contradiction of EPA by Applicant and staff, followed by the Administrative Judge's strong agreement with staff. Never have Applicant, staff and the Administrative Judge disagreed on any important issue in this proceeding.

The Administrative Judge makes several statements in his Additional Supplemental Initial Decision of January 23, 1974, which are not borne out by a reasonable assessment of the record, as follows:

1. That the FEIS was " . . . subject(ed) to extensive cross-examination" (p. 3) (emphasis added) is an exaggeration. The Administrative Judge's rulings at the hearings prevented counsel for intervenors from asking staff witnesses questions designed to bring out their lack of knowledge of both the FEIS and whatever evidence might

exist in the record. In spite of this effort to shield Staff from penetrating cross-examination, several areas of ignorance and incompetence on the part of staff appear in the record of that cross-examination (See Argument, p. 2, et seq, of our Initial Brief dated September 10, 1973.)

2. It is true that "No additional evidence, other than the FEIS (Ex. 282), was presented at the reopened hearing and no additional witnesses, other than Staff, were examined." (pp. 3-4). The Administrative Judge refused to permit testimony of "other witnesses" in his ground rules for the hearing. This statement makes it appear that the opportunity was offered but not accepted by the intervenors. The truth is that much additional evidence would have been presented had there been the opportunity. Furthermore, the statement leaves the impression that the twenty-two comments filed on the Draft Environmental Impact Statement were not given the status of "evidence", apparently so that they might be rejected out of hand by the Administrative Judge.

3. The statement that ". . . Applicant has agreed to limit itself at all times to a maximum drawdown of ten feet in the upper reservoir, thus meeting the concerns of Virginia and North Carolina regarding the adverse impact on recreational use of drawdown in excess of ten feet at any time." (p. 5), carries the false implication that Virginia and North Carolina are satisfied with that drawdown. North Carolina regards the ten feet as highly objectionable and has repeatedly said so.

4. Reference ". . . the desirability of including at least 130,000 acre feet of storage in the lower reservoir for low flow augmentation downstream "to enhance recreation and fishing downstream and provide a needed industrial water supply at Radford, Virginia." (p. 5) (emphasis added): Here the Administrative Judge would grant an opportunity to increase water pollution at Radford and below without the support of the necessary environmental impact statement and a determination that the proposed industry can meet current water and air quality standards. Thus we have an exaggerated, highly speculative claim of need thrown in to buttress the fallacious argument that Blue Ridge would be a "comprehensive" project. The feigned concern for "fishing downstream" ignores the fact that New River is a very fine, presently existing fishery which Blue Ridge would destroy forever.

5. The Administrative Judge's interpretation of NEPA and Greene County (p. 7) is too narrow, and is erroneous. We do not believe his wishful thinking will infect the Courts. Staff's adoption of Applicant's conclusions simply do not meet the test of NEPA. Staff witness Houck's "field studies" (p. 8) consisted of a short trip down to Virginia and conversations with a fisherman or two. If this is representative of staff's research techniques, the credibility of all its work is undermined. Calling the FEIS "exhaustive" and saying that staff has "specifically answered" the criticisms of the twenty-two comments filed (p. 8), and stating that intervenors indicate "continuing disagreement . . . rather than the alleged inadequacy or insufficiency of staff's analysis.",

(p. 8), is rhetoric. Intervenors have established several substantial inadequacies. Intervenors "choose to ignore" nothing. The master of that technique is the Administrative Judge.

6. The discussion of a recommendation for a relocation advisory service (p. 9) fails to mention that the Relocation Study referred to (which is on file with the Commission) recommends that Applicant not be connected with the service because of public hostility and mistrust. What would be needed in Article 55 is a plan whereby Applicant would finance a service provided by an independent agency. Moreover, our long-standing position that the license cannot legally be granted unless provision is made for full compensation of landowners is not dealt with.

7. The statement that EPA's charges ". . . that the proposed project would require more coal and emit more pollutants than a modern alternative coal fired plant.", is "without support in the record" and that "the FEIS concludes without evidentiary challenge," etc., (pp. 10-11), can be made only if the Presiding Judge chooses not to accept EPA's comments as "evidence". Again, he sets up a differentiation between "comments" and "evidence", and picks and chooses among the rules of evidence and the rules of the Commission. He refused to permit "evidentiary challenge", thus keeping the record "clear". The conclusion that ". . . The record is clear that the Blue Ridge Project will permit electric generation by the AEP system with less air and thermal pollution than the system would

otherwise generate with any other feasible alternative." (p. 11), is reached after all "evidence" to the contrary is ignored, suppressed or excluded, thus sterilizing the "record". The truth, of course, is that EPA's comments have been twisted by Applicant, Staff and the Administrative Judge to reach the "right" result. (EPA's comments were suppressed for several months and then belatedly filed after the suppression was exposed. An emasculated version was filed after a "conference" between EPA officials and Applicant's representatives, to which intervenors were not invited.)

8. The comment that ". . . EPA ignore(s) other values such as power, flood control, and low flow augmentation and the record shows that the recreational uses will increase with the project over present relatively limited uses." (p. 14) (emphasis added), ignores a literally overwhelming body of evidence in the record which demonstrates that flood control, low flow augmentation and recreation "benefits" have been greatly exaggerated. The record proves convincingly that the only real purpose to be served by the proposed license is power. Other "benefits" are window-dressing designed to add justification to Applicant's cause. The quotation out of context of an obscure statement by a Virginia recreation witness named Scruggs (p. 14) is amusing to the experienced observer of this proceeding.

9. The statement that the "unchallenged testimony" showed this or that about coal consumption is the last step in the orchestration process. To the extent that it was not offered, the Administrative Judge did not permit challenging testimony.

10. Tossing the bone of "overall recreation benefits" to North Carolina (p. 16), the Administrative Judge attempts to conceal the well-known fact that the project would heap huge, permanent penalties on North Carolina while giving her nothing in return. We again emphasize that it is illegal to penalize North Carolina for the benefit of some midwestern states served by the AEP system, with whom North Carolina has no economic ties.

11. The citation of the "total national interest" (p. 16) is to inflate this proceeding and give it unmerited status as a matter of "national interest". The issues here debated do not have the quality of pressing national interest, because Applicant has failed to prove a pressing need for the relatively small amount of power to be generated by Blue Ridge.

12. The Administrative Judge's outrageous agreement with Applicant's position "that there was nothing improper 'in communicating with or providing information regarding Blue Ridge to any other person or entity.'" (p. 17), is the last chapter in the long record of allowing Applicant a free hand while oppressing the intervenors.

13. The citation of "critical regional need" (p. 17) for the peaking energy which might be generated by Blue Ridge is not borne out by the record, except to the extent that Applicant has asserted such a need and staff has agreed. The fact is that Applicant has not and cannot scientifically establish any such need.

14. The characterization of the opposition as composed of selfish local residents, again citing the "national interest" and "voluminous evidence (p. 19) ignores the fact that only Applicant and staff favor licensing Blue Ridge

15. As to the ADDITIONAL FINDINGS AND CONCLUSIONS
(p. 20):

(5) "The project will help to maintain an environment which supports diversity and variety of individual choice,".

The exact opposite is the truth, since the project would destroy one of the last free-flowing rivers in the east and one of its best smallmouth bass fisheries, and replace it with still another sterile reservoir in a region already crowded with them.

(6) Does "substantial flexibility for project design" imply a future nuclear facility at Blue Ridge?

(7) The "reliable power supply" is not a pressing need. It is established that the flood control and low flow regulation would serve a minimal, marginally useful purpose. More recreational development and fishing opportunities would be destroyed than enhanced, and the potential water supply would encourage more pollution.

(8) The conclusion that "the project will complement and enhance existing and planned recreational and scenic areas in the vicinity of the project.", is ludicrous, since the record establishes that the opposite would be the case. The dozen or so existing and planned reservoirs in the vicinity of Blue Ridge are not mentioned.

The Administrative Judge's sprinkling of such argumentative phrases as "extensive cross-examination", "no additional evidence", "long proceeding", "specifically answered", "continuing disagreement", "choose to ignore", "the record is clear", "the record shows", "unchallenged testimony", "aggregate effect", "total national interest", "critical regional need", "voluminous evidence", "long-term productivity", throughout the Additional Supplemental Initial Decision demonstrates that it was actually written for the eyes of the many who will read it and rely on it without having had the opportunity to read what intervenors have said. It serves as a public argument as well as its statutory quasi-judicial purpose. Furthermore, the use of all those argumentative phrases betrays the weakness of the author's position.

IV.

CONCLUSION

1. The overwhelming preponderance of evidence in the record points unerringly to the conclusion that the project should not be licensed.
2. The National Environmental Policy Act has not been complied with in this proceeding.
3. It is unlawful to penalize one region for the benefit of another.

Respectfully submitted,



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Alleghany County, North Carolina
Ashe County, North Carolina

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Project No. 2317

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list complied by the Secretary in this proceeding in accordance with the requirements of Section 1.17 of the Rules of Practice and Procedure.

Dated at Sparta, North Carolina, this 23 day of February, 1974.



Edmund I. Adams

Of Counsel for
Alleghany County, North Carolina
Ashe County, North Carolina