SEP 20 1991

Docket No. 50-390A

Mr. Dan A. Nauman
Senior Vice President, Nuclear Power
Tennessee Valley Authority
6N 38A Lookout Place
1101 Market Street
Chattanooga, Tennessee 37402-2801

Re: Watts Bar Nuclear Plant, Unit 1: Antitrust
Operating License Review--No Significant Change Finding

Dear Mr. Nauman:

Pursuant to the antitrust review of the captioned nuclear unit, the Director of the Office of Nuclear Reactor Regulation has made a finding in accordance with Section 105c(2) of the Atomic Energy Act of 1954, as amended, that no significant antitrust changes have occurred subsequent to the antitrust construction permit review of Unit 1 of the Watts Bar Nuclear Plant.

This finding is subject to reevaluation if a member of the public requests same in response to publication of the finding in the Federal Register. A copy of the notice that was transmitted to the Federal Register and a copy of the Staff Review pursuant to Unit 1 of the Watts Bar Nuclear Plant are enclosed for your information.

Sincerely,

Original signed by
W. Lambe

William M. Lambe
Antitrust Policy Analyst
Policy Development and Technical
Support Branch
Program Management, Policy Development
and Analysis Staff
Office of Nuclear Reactor Regulation

Enclosures:
As stated

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UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

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As stated

[7590-01]

NUCLEAR REGULATORY COMMISSION

DOCKET NO. 50-390A

TENNESSEE VALLEY AUTHORITY

WATTS BAR NUCLEAR PLANT, UNIT 1

NOTICE OF NO SIGNIFICANT ANTITRUST CHANGES

AND TIME FOR FILING REQUESTS FOR REEVALUATION

The Director of the Office of Nuclear Reactor Regulation has made a finding in accordance with Section 105c(2) of the Atomic Energy Act of 1954, as amended, that no significant (antitrust) changes in the licensee's activities or proposed activities have occurred subsequent to the antitrust construction permit review of Unit 1 of the Watts Bar Nuclear Plant by the Attorney General and the Commission. The finding is as follows:

Section 105c(2) of the Atomic Energy Act of 1954, as amended, provides for an antitrust review of an application for an operating license if the Commission determines that significant changes in the licensee's activities or proposed activities have occurred subsequent to the previous construction permit review. The Commission has delegated the authority to make the "significant change" determination to the Director, Office of Nuclear Reactor Regulation. Based upon an examination of the events since the previous operating license review of TVA's activities conducted in 1979 in connection with the Watts Bar Nuclear Plant, Unit 1, the staffs of the Policy Development and Technical Support Branch, Office of Nuclear Reactor Regulation and the Office of the General Counsel, hereafter referred to as

"staff", have jointly concluded, after consultation with the Department of Justice, that the changes that have occurred since the construction permit review are not of the nature to require a formal antitrust review at the operating license stage of the application.

In reaching this conclusion, the staff considered the structure of the electric utility industry in the Tennessee Valley and adjacent areas, the events relevant to the Watts Bar construction permit review and the previous operating license review of Watts Bar.

The conclusion of the staff analysis is as follows:

> Due to construction delays on the Watts Bar facility, the staff reviewed TVA's activities in 1979, 1983 and again in 1990 to determine whether there have been changes in TVA's activities since the completion on the construction permit antitrust review in 1972 that would create or maintain a situation inconsistent with the antitrust laws. Several types of changes were identified in each of the earlier post construction permit reviews; however, it was determined that none of the changes resulted from abuse of TVA's market power.
>
> In its review of TVA's activities in the 1990 operating license review, the staff again found no evidence of changed activity associated with abuse of its market power. Although TVA is free to conduct normal business operations within its service area, it is restricted by the TVA Act from engaging in full-scale competition with neighboring electric systems. In many ways,

the TVA Act has insulated TVA from the competitive pressures of the market that a utility of TVA's size would experience without such restrictions.

Given the restrictive nature of Section 15d(a) of the TVA Act, any scrutiny of potential anticompetitive acts or practices would focus primarily on TVA's dealings with distributors within its service area in terms of moving power or energy in or out of its service area or with entities outside of its service area attempting to move power or energy through its system, i.e., the use of TVA's transmission grid. The staff has not identified any instance wherein TVA has refused to cooperate, within the confines of its Section 15d(a) restriction, with other power entities requesting services or use of TVA's transmission facilities. As a result, the staff does not believe that any changed activity attributed to TVA since the 1979 operating license review is "significant" in terms of the Commission's Summer decision. The staff recommends that the Director of the Office of Nuclear Reactor Regulation find that no significant antitrust changes have occurred in TVA's activities since the previous antitrust operating license review completed in July of 1979.

Based upon the staff analysis and recommendation, it is my finding that there have been no "significant changes" in the licensee's activities or proposed activities since the completion of the previous antitrust review.

Signed on August 15, 1991 by Thomas E. Murley, Director of the Office of Nuclear Reactor Regulation.

Any person whose interest may be affected by this finding, may file, with full particulars, a request for reevaluation with the Director of the Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555 within 30 days of the initial publication of this notice in the Federal Register Requests for reevaluation of the no significant change determination shall be accepted after the date when the Director's finding becomes final, but before the issuance of the OL, only if they contain new information, such as information about facts or events of antitrust significance that have occurred since that date, or information that could not reasonably have been submitted prior to that date.

Dated at Rockville, Maryland, this 16, day of August 1991.

FOR THE NUCLEAR REGULATORY COMMISSION

Anthony Gody, Chief
Policy Development and Technical Support Branch
Program Management, Policy Development
and Analysis Staff
Office of Nuclear Reactor Regulation

WATTS BAR NUCLEAR PLANT, UNIT 1

TENNESSEE VALLEY AUTHORITY

DOCKET NO. 50-390A

STAFF RECOMMENDATION

NO SIGNIFICANT ANTITRUST CHANGES

NOVEMBER 1990

CONTENTS

I. Introduction

A prospective operating licensee is not required to undergo a formal antitrust review unless the Nuclear Regulatory Commission (NRC or Commission)* determines that there have been "significant changes" in the licensee's activities or proposed activities subsequent to the review by the Attorney General and the Commission at the construction permit (CP) stage. Concentration on changes in the applicant's activities since the previous antitrust review expedites and focuses the review on areas of possible competitive conflict heretofore not analyzed by the Attorney General or the Commission.

In its Summer decision,** the Commission has provided the staff*** with a set of criteria to be used in making the significant change determination for operating license (OL) applicants:

> The statute contemplates that the change or changes (1) have occurred since the previous antitrust review of the licensee(s); (2) are reasonably attributable to the licensee(s); and (3) have antitrust implications that would most likely warrant some Commission remedy.****

To warrant a significant change finding, i.e., to trigger a formal OL antitrust review, the particular change(s) must meet all three of these criteria.

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* The Commission has delegated the responsibility for making a significant change determination to the Director of Nuclear Reactor Regulation.

** Virgil C. Summer Nuclear Station Unit 1, Docket No. 50-395A, June 26, 1981 at 13 NRC 862 (1981).

*** "Staff" hereinafter refers to the Policy Development and Technical Support Branch of the Office of Nuclear Reactor Regulation and the Office of the General Counsel.

**** Commission Memorandum and Order, p. 7, dated June 30, 1980 (CLI-80-28).

Due to the substantial lapse of time since the previous antitrust review of changes since the construction permit review in 1979 and the fuel load date for Unit 1 of the Watts Bar Nuclear Plant (Watts Bar) which is now scheduled for December of 1992, the staff has undertaken an updated review of the licensee's activities since the previous operating license review. As a result of this review, the staff has determined that none of the changes that were identified were significant in an antitrust context. The staff recommends that the Director of the Office of Nuclear Reactor Regulation issue a finding pursuant to TVA's application for an operating license for Watts Bar that no "significant changes" have occurred since the previous antitrust review.

II. Tennessee Valley Authority

The licensee of the Watts Bar Nuclear Plant, Unit 1 (Watts Bar), is the Tennessee Valley Authority (TVA). TVA is an independent, corporate agency of the federal government created by the TVA Act on May 18, 1933. TVA was established by Congress to develop the Tennessee River and to assist in the development of other resources of the Tennessee Valley. One of TVA's responsibilities includes supplying electric power to an area of approximately 80,000 square miles -- covering most of Tennessee, portions of northern Alabama, northeastern Mississippi, southwestern Kentucky and smaller portions of Georgia, North Carolina and Virginia.

TVA's electric power operations provide wholesale power to three principal customer groups: (1) local municipal and cooperative systems (distributors); (2) directly served industries; and (3) directly served federal agencies. Distributors include 110 municipalities and counties and 50 cooperatives. Most

industries are served by the distributors and there are 46 directly served commercial and industrial customers, most of which have large or unusual power requirements.

A. TVA's Customers

Municipal customers and rural electric cooperatives account for the bulk of TVA's load. Five municipal customers account for approximately 30% of total power sales revenues. The sales contracts with these distributors are for terms of twenty years with provision for termination by either party after ten years upon four years advance notice. The contracts with these customers expire in 1997, 2000, 2004, 2008, and 2009. One of the customers, the City of Memphis, Tennessee, which represented 9% of TVA power sales in fiscal year 1989, recently considered other power supply options but decided to sign a contract with TVA. Althoug TVA's rates are similar to or slightly higher than those of neighboring utilities, Memphis (and other municipalities) are not statutorily compelled to purchase power from TVA. Memphis and similarly situated utilities are free to select other suppliers once their long term contracts expire.

At the industrial level, there is the potential loss of load from outmigration of existing large customers and the expansion of multi-area industrial customers outside the TVA area. TVA takes this threat seriously since it has a significant number of very large industrial customers who have the flexibility to leave the TVA area, expand in non-TVA areas, or use self generation or cogeneration. TVA is vigorously attempting to hold the line on rate increases to retain its price sensitive industrial load.

Sales of electric power to the Department of Energy's (DOE) gaseous diffusion enrichment plants, principally in the form of demand charges for power not taken (rather than energy supplied), amounted to 10% of TVA's power sales in fiscal years 1987-1989. In accordance with contract provisions, DOE exercised its right prior to fiscal year 1987, through notices eight years in advance, to reduce the amount of electric power to be purchased by 1000MW each year beginning in December 1989, until reaching a contract demand of 485MW from December 1992 until contract expiration in 1994. DOE's payment obligations are being satisfied through a series of payments to TVA for demand not taken totaling over $1.8 billion. DOE currently takes very little energy from TVA.

Despite the almost complete elimination of TVA as a supplier to the diffusion plants, DOE still wishes to maintain the option of purchasing power from TVA. Although TVA's price for long term firm power to the enrichment plants is approximately 36-37 m/kWh compared to current supplies in the 16-20 m/kWh range, this relationship could change significantly with the anticipated stringent acid rain emission controls to be imposed on fossil-fueled generating plants. Consequently, DOE does not want to foreclose any potentially important power supply options.

B. Section 15d(a) of the TVA Act

By virtue of its incorporation under the TVA Act,* TVA operates under certain competitive restrictions that are not found among most other utilities. The key restriction is found in Section 15d(a) of the Act which reads as follows:

* Tennessee Valley Authority Act of 1933, as amended, [48 Stat. 58-59, 16 U.S.C. sec. 831].

> Unless otherwise specifically authorized by Act of Congress, the Corporation (i.e., TVA) shall make no contracts for the sale or delivery of power which would have the effect of making the Corporation or its distributors, directly or indirectly a source of power supply outside the area for which the corporation or its distributors were the primary source of power supply on July 1, 1957, and such additional area extending not more than five miles around the periphery of such area as may be necessary to care for the growth of the Corporation and its distributors within said area.

However, TVA can engage in power exchanges with organizations with which it had such exchange arrangements on July 1, 1957.

As a practical matter, section 15d(a) permits TVA to serve distributors in its original service area but does not permit neighboring distributors to purchase power from TVA. There is, however, no prohibition on customers in TVA's service area from purchasing power from other utilities. This statutory limitation on TVA's ability to compete for load outside its designated service area played a significant role in the staff's analysis of the competitive effects of the changes in TVA's activities since the 1979 operating license review.

III. Previous Antitrust Reviews

TVA's application for a construction permit and an operating license for Watts Bar have been the subject of three previous antitrust reviews. In connection with the construction permit review in 1972, the Department of Justice (Department or Attorney General) found no antitrust problems that would require a hearing. In subsequent operating license reviews in 1979 and 1983, the staff found "no significant changes" that would warrant a formal operating license antitrust review.

A. Construction Permit Review

On August 23, 1971, the Atomic Energy Commission (AEC) requested the Attorney General's advice pursuant to whether a hearing should be held in conjunction with TVA's application for a construction permit for the Watts Bar nuclear plant. In responding to the AEC's request, the Department in its 1972 advice letter* emphasized two limitations imposed by section 15d(a) of the TVA Act on TVA's ability to compete: the limitation on the "...geographic areas in which TVA could market bulk power supply" and the prohibition on "...TVA's interconnection and coordination with adjacent bulk power suppliers except as to those with which it was interconnected as of July, 1957."

In addition, although the antitrust review by the Department described TVA as the "...sole bulk power supplier [in Tennessee]...except for Kingsport Power Company...", no anticompetitive activity was noted. Only with respect to coordination arrangements with other electric utility systems did the Department indicate reason for caution. The letter from the Attorney General indicated that, "It is not presently clear the exact extent to which amended Section 15d(a) of the TVA Act restricts TVA in its ability to enter into coordination arrangements with other electric utility systems." The letter cautioned that "the statute would not justify TVA in discriminating in the establishment or operation of coordination arrangements among similarly situated electric systems." No discrimination was noted and the antitrust review by the Department found no anticompetitive problems.

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* Attached as Appendix A.

B. Operating License Reviews

In looking specifically at coordination arrangements, the staff's 1979 review found that only two actions of TVA suggested a "...possible anticompetitive effect: refusal to engage in diversity interchange with the city of Clarksdale, Mississippi and refusal to wheel (transmit) power for Big Rivers Electric Corporation and Jackson Purchase RECC."*

However, the staff concluded that "Each of the above refusals were seemingly justified on the basis that such actions could be illegal or at least inconsistent with section 15d(a) of the Tennessee Valley Authority Act." As noted earlier, the overall conclusion of the staff's 1979 review was that "...no significant changes of an antitrust nature have occurred that would warrant an operating license antitrust review."

In 1983 the staff followed up its 1979 review by contacting the three utilities noted above and reported that satisfactory arrangements between TVA and these utilities had been reached. The staff described these arrangements as follows:

> Big Rivers now has an additional interconnection and a wheeling agreement with TVA which permits it to wheel power through the TVA and Mississippi Power and Light Company systems to Clarksdale, Mississippi and to and from the Cajun Electric Cooperative. The Jackson Purchase Electric Cooperative does not deal directly with TVA but obtains indirect benefits by working through Big Rivers. Similarly, Clarksdale does not deal directly with TVA but obtains indirect benefits by working through Mississippi Power and Light. While Clarksdale, Big Rivers and Jackson Purchase would each like to buy power from TVA, they recognize that TVA is restricted by law from selling power external to its established boundaries.**

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* Staff Review attached as Appendix B.
** Staff Review attached as Appendix C.

Moreover, the staff noted that "...no one has come forward with any antitrust allegations regarding TVA since our 1979 review." Subsequent to these discussions, the staff, in its 1983 review, concluded that no new information has surfaced that would suggest a change in the original [1979] no significant change finding for Watts Bar. Moreover, no additional comments from Big Rivers or Clarksdale were received.

C. Other TVA Antitrust Licensing Reviews

Within four years after requesting advise on TVA's construction permit application for Watts Bar, the staff requested the Attorney General's advice pursuant to three additional construction permit applications by TVA. The first of these advice letters, dated December 17, 1973, pertained to the now deferred Bellefonte Plant. The second letter, dated March 24, 1975, pertained to the now canceled Hartsville Plant. The third letter, dated April 30, 1976, pertained to the now canceled but then unnamed nuclear units X-24 and X-25 (subsequently named Yellow Creek). In each of these letters, the Department, relying heavily on its recently completed Watts Bar review, concluded that "...there are no antitrust problems which would require a hearing by your Commission on the instant application."

D. Updated Operating License Review

Watts Bar experienced several delays in construction since a construction permit was issued for the plant in the early 1970's. Although there were several factors that contributed to these delays, the most significant was the decrease in projected load requirements for TVA, primarily the near elimination of DOE and its fusion plants as a customer. As a result, several baseload generating plants

were canceled or deferred by TVA during the 1980's. Construction on Watts Bar was delayed, not canceled, and when the decision was made by TVA to resume construction on the plant, the staff sent out an updated request dated September 27, 1989, for information pursuant to Regulatory Guide 9.3 -- "Information Needed by the AEC Regulatory Staff in Connection with its Antitrust Review of Operating License Applications for Nuclear Power Plants." The staff requested TVA to provide updated Regulatory Guide 9.3 information beginning where TVA's 1979 response to Regulatory Guide 9.3 ended. The focus of this updated review was on changes in the licensee's activities since the operating license review completed in July 1979. The 1979 operating license review was based upon changes that were identified in responses to the original Regulatory Guide 9.3 request. (Although an interim review was conducted in 1983, after the licensee announced delays in its scheduled fuel load for Watts Bar, this interim review was not based upon responses to an in-depth data request such as Regulatory Guide 9.3.)

TVA furnished the staff with responses to this updated request by letter dated December 5, 1989 as well as a clarification of its response to Regulatory Guide 9.3 via letter dated July 5, 1990. Based upon the changes noted by the licensee as well as other data available to the staff, the staff conducted an updated antitrust operating license review for Watts Bar.

IV. Changes Since the Operating License Review

Section 105c(2) of the Atomic Energy Act of 1954, as amended, requires a second antitrust review (similar to the type conducted at the construction permit stage) to be conducted at the operating license stage if "significant changes" in the

licensee's activities or proposed activities have taken place since the completion of the construction permit review. The staff, in its review of the available data in this proceeding, has identified several areas in which the licensee's activities have changed since the July 1979 operating license review.*

A. Market-Based Changes

Many of the changes identified by the staff are "competition neutral", i.e., they have no appreciable affect upon competition in bulk power services throughout TVA's service area. For example: TVA added the necessary transmission links and interconnections to incorporate several baseload power plants added to its system since 1979. Rate schedule changes were implemented in 1983 and 1986 to more accurately reflect TVA's costs. [TVA is not subject to state or federal electric rate jurisdiction and sets its rates to reflect both its costs and competing power suppliers in the region.] Three nuclear plants (totaling eight units) were canceled and one deferred (two units) since the late 1970's.

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* It is significant to note that the Commission in its South Texas Memorandum and Order dated June 15, 1977 (5 NRC 1303), determined that future "significant change" determinations should be made by staff.

> The making of a significant change determination triggering a referral to the Attorney General for his advice on its antitrust implications is a function which could and perhaps should be delegated to the regulatory staff. (5 NRC 1318)

The Commission implemented this procedural change in a memorandum dated September 12, 1979 to Harold Denton, Director of the Office of Nuclear Reactor Regulation and William J. Dircks, Director of the Office of Nuclear Material Safety and Safeguards. (The Director of NRR was delegated the authority to make the "significant change" determination for power reactors and the Director of NMSS was delegated the same authority for production or non-reactor facilities.)

For the most part, the cancellation or deferral of these plants was the result of lower than expected load growth for the region. The loss of the DOE gaseous diffusion enrichment load, totaling in the thousands of megawatts, was the principal factor in TVA's reduced nuclear program. Excessive construction costs for nuclear units were the second most important reason for plant cancellations. TVA's problems however, were no different from those of large neighboring nuclear utilities except that the magnitude of the problem of reduced demand and load growth was and continues to be greater for TVA than for any other domestic utility. TVA's reactions to market forces in its service area during the review period were not atypical of a large electric utility and do not appear to reflect activity that would create or maintain inconsistencies with the antitrust laws.

B. Requests for Coordination or Electric Services

Since the 1979 antitrust review, approximately thirty-five utilities made various offers to purchase power from or sell power to TVA or to purchase, lease, or jointly build capacity with TVA. There were also requests for wheeling and interchange of power. Sixteen utilities made requests that TVA did not consider prohibited by Section 15d(a) of the TVA Act. These requests as well as the requests TVA considered prohibited by Section 15d(a)* are addressed below.

* TVA's interpretation of the prohibitions contained in Section 15d(a) has only been challenged once in court. The challenge was unsuccessful. Jackson Purchase Rural Electric Cooperative. v. Tennessee Valley Authority and Kentucky Utilities Co. CA No. 1275. (U.S. District Court, Western District of Kentucky, Sept. 19, 1967).

1. Requests and Offers Not Prohibited by Section 15d(a)

a. Offers of Power to TVA

TVA reported offers of power from eight utilities. TVA agreed to purchase power from one of the utilities and an agreement with a second utility appears imminent. For the other utilities, TVA reported either legitimate business reasons for the lack of any agreement or a lack of interest by the other utility after the initial offer. No pattern of anticompetitive conduct was discernible from TVA's responses to these offers of power.

TVA reported that on January 4, 1982 Hoosier Energy Rural Electric Cooperative, Inc. offered surplus capacity to TVA. On February 12, 1982, the parties reached an agreement for Hoosier to sell TVA surplus energy and short term power. No transactions have taken place under this agreement.

TVA reported that in May, 1989 it sent Gulf States Utilities Company a proposed agreement providing for the sale of excess power by GSU to TVA. GSU provided comments on the proposed agreement and TVA has reviewed them. Discussions were continuing as of July 1990.

With respect to the other utilities that offered power to TVA, TVA provided the following information:

> Alabama Electric Cooperative: TVA refused the offered power because, it "...had offers of power from others at considerably lower prices." TVA did, however, request "...test schedules...so that if TVA needed power, Alabama EC could be contacted and power scheduled as the need arose."

Big Rivers Electric Corporation: Applicant reported being offered short-term capacity by Big Rivers on June 5, 1980 for the period December, 1980 through February, 1982. TVA, on July 11, 1980 advised Big Rivers that "...a review of TVA's power requirements and supply indicated that no additional capacity was needed during that period."

East Kentucky Power Cooperative: Applicant reported two offers to sell power from East Kentucky. To both offers, TVA responded that it had no need to purchase power. As described in Section d. below, East Kentucky and TVA did exchange power during the period 1980 to date. On balance, TVA was primarily a purchaser of power from East Kentucky.

Mitex, Inc.: Applicant reported an inquiry from Mitex in March, 1985 to sell power to TVA. TVA reported that although there were initial discussions "...there was no follow-up contact with TVA about pursuing the project."

Santee Cooper: Applicant reported an offer of long- or short-term capacity from Santee Cooper. TVA declined the offer citing no need for additional long- or short-term capacity.

Southern Illinois Power Cooperative: TVA reported an offer from Southern Illinois of first refusal on 75MW of surplus capacity for the period November 1, 1979 through October 31, 1980. TVA explained that it first advised Southern Illinois that it "...did not need surplus capacity for the full period but probably could use 30MW on a weekly basis during the summer of 1980." In subsequent negotiations, "...TVA was reluctant to commit itself for short-term power for an entire year rather than on weekly basis..." and that "Southern Illinois preferred to find a market for the power on an annual basis."

b. Requests to Purchase Power or Lease Capacity

TVA reported requests to purchase power from two utilities and an inquiry about the purchase or lease of capacity from a third. No inference of anticompetitive conduct is possible from TVA's responses to these requests. A power exchange agreement has been in effect since 1980 with one of the utilities, East Kentucky. A second utility decided against power purchase because of costs. A third utility apparently lost interest in pursuing its initial inquiry.

The East Kentucky Power Cooperative made three inquiries about purchasing power from TVA, however, none resulted in a purchase agreement. Although, as noted

above, East Kentucky and TVA did exchange power during the period 1980 - 1989. These exchanges consisted mainly of TVA purchases of power from East Kentucky.

In reply to East Kentucky's first inquiry of December 21, 1979, TVA indicated that "...furnishing of East Kentucky's power requirements on a long-term basis would raise certain legal questions under the TVA Act." TVA further explained that it would not have surplus power available on a firm basis during the 1984-87 period but that it might have short-term power available. Moreover, TVA replied to East Kentucky "...that it is also a winter peaking system...which precludes seasonal diversity exchanges between the systems...."

TVA replied to East Kentucky's 1980 inquiry, by stating that "...it may have some energy available on a non firm basis beginning in the mid-1980's." TVA did not report why no agreement was subsequently reached. In response to an inquiry in 1981 by East Kentucky about purchases of power from TVA should TVA defer its Smith Unit 1 plant, "...TVA indicated that the power would probably be available."

TVA reported a 1982 inquiry from the Louisiana Energy and Power Authority about the availability of surplus energy. No agreement was reached because "Louisiana E & PA thought TVA's energy cost[s] would be lower than it was."

TVA also reported an inquiry in May of 1983 from Alabama Electric Cooperative about "...the feasibility of their leasing or purchasing TVA capacity." TVA reported that it expressed a willingness to discuss this matter but was not subsequently contacted by Alabama Electric about a meeting.

c. Wheeling and Transmission Requests

TVA reported receiving requests for wheeling or transmission services from eleven utilities. Agreements were reached (or pending) with five utilities, however, wheeling agreements were not put into effect for the other six, mainly for reasons detailed below. Given TVA's record of providing wheeling services and the absence of complaints from the utilities with which no agreements were reached, there is no basis for an inference of anticompetitive conduct on the part of TVA.

In the case of Big Rivers Electric Corporation, TVA reported that "in August 1989, TVA began transmission service with Big Rivers for delivery of 200MW of power across the TVA system to Oglethorpe. This agreement provides for the deliveries to continue through July 1992." TVA also reported that possible transmission service arrangements with Cajun Electric Power Cooperative, Inc. are under consideration but no agreement had been signed as of July, 1990.

Earlier in 1981, TVA reported reaching a wheeling agreement with the Municipal Energy Agency of Mississippi (MEAM). A 1983 inquiry regarding wheeling from a consulting firm employed by MEAM produced no agreement. TVA responded to the inquiry by stating that it had adequate transmission capacity but that "...comprehensive technical studies involving metering, relaying operations and losses would need to be performed..." TVA reported that MEAM did not pursue the matter. Finally, TVA reported that it provided wheeling services to the East Kentucky Power Cooperative and to the Southern Illinois Power Cooperative.

TVA reported that no wheeling agreement had been reached with the following utilities:

1) Citizens Energy Cooperation: TVA reported that in September, 1988 Citizens requested information on the availability of transmission capacity and charges for wheeling power from Union Electric to Georgia Power for the months of November through March for 1988 through 1993. Although an agreement was prepared by TVA and transmitted to Citizens, TVA reported the latter did not execute the agreement and has not contacted TVA further. No explanation was given for the apparent change of mind on the part of Citizens.

2) Clarksdale Public Utilities Commission: TVA reported that in July, 1980, Clarksdale inquired as to TVA's ability and willingness to wheel power for Clarksdale from Alabama Electric Cooperative if Clarksdale would be unable to get Mississippi Power Company to wheel the power for them. TVA reported that it suggested that Clarksdale contact them again if their efforts with Mississippi failed. No additional contact or inquiry was reported by TVA. The 1983 antitrust review discussed above indicated that Clarksdale was able to make wheeling arrangements with Mississippi Power.

3) MIP, Inc.: TVA reported that in June, 1989 MIP contacted TVA regarding TVA wheeling power across its system for MIP. Although discussions took place, no discussions have occurred since February, 1990.

4) Mitex, Inc.: TVA reported that in March, 1985, Mitex inquired about TVA's willingness to wheel power from a proposed hydroelectric project to be built on the Ohio River. TVA reported that after initial discussions there was no followup by Mitex about pursuing the project.

5) Portland General Exchange: TVA reported an inquiry pursuant to wheeling by Portland General Exchange in June, 1988. TVA reported that a tentative draft agreement had been prepared but that Portland did not pursue the matter further.

6) South Mississippi Electric Power Association: TVA reported that SMEPA inquired about wheeling services in April, 1987 but that after a meeting in which the possibility was reviewed, SMEPA "...decided not to pursue this matter."

d. Interchange Requests

TVA's willingness to engage in power interchanges is evident from its arrangements with the East Kentucky Power Cooperative and Entergy Services, Inc. By letter of July 5, 1990, TVA reported annual totals since 1980 for its power interchanges with the East Kentucky Power Cooperative. For the years

1980 to 1989, TVA received a total of 13.6 billion kWh and delivered 27.4 million kWh to East Kentucky.

In February, 1984, Louisville Gas and Electric requested TVA to review interchange opportunities. Although TVA indicated to LGE that it would be in a position to make power available during 1985 and 1986, it was also determined that both utilities anticipated a power surplus subsequent to 1986. No further action was taken.

A request by Entergy Services, Inc. resulted in an agreement between TVA and Entergy that became effective in August, 1989. Under this agreement, for the period September, 1989 through April, 1990, TVA purchased 298.4 million kWh from Entergy and sold 26.7 million kWh to Entergy.

e. Joint Ownership and Other Proposals

TVA reported in its letter of July 5, 1990 that two companies, Quadrex and CMS enterprises Company, had "...approached TVA with preliminary proposals to complete its Bellefonte nuclear plant under various arrangements with TVA. TVA has evaluated these proposals but has not altered its plans for TVA to itself complete and operate Bellefonte."

TVA also reported that in 1981 MEAM inquired if TVA would be interested in joint ownership of a generating unit and possible banking arrangements for energy from MEAM's low-head hydro facilities. TVA deferred comment on this proposal until studies were completed. It further explained that MEAM, subsequent to its inquiry, entered into arrangements to purchase power from Big Rivers and,

as a consequence, dropped its pursuit of joint ownership and banking arrangements with TVA.

Neither of these proposals detailed above suggests anticompetitive conduct.

2. Requests and Offers Prohibited by Section 15d(a)

TVA reported that nineteen utilities inquired about a purchase or interchange of power that TVA regarded as prohibited by section 15d(a) of the TVA Act.*

Sixteen of the inquiries pertained to the purchase of power. Two utilities, the City of Greenwood, Mississippi and MEAM, were interested in both the purchase and interchange of power. Because all refusals to purchase or sell power or energy were based upon a statutory prohibition and because none of the utilities subsequently alleged a misinterpretation of Section 15d(a), there was no inference of anticompetitive conduct.

C. Competitive Effects of Changed Activity

TVA is a large electric power company with operations not unlike adjacent electric systems serving the southeast. In this light, TVA identified several

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* The nineteen utilities are: Alabama Municipal Electric Authority; Cajun Electric Power Cooperative, Inc.; Central Illinois Light Company; Commonwealth Edison Company; Duke Power Company; Florida Power and Light Company; French Broad Electric Membership Corporation; Great Lakes Electric Consumers Association; City of Greenwood, Mississippi; Jackson, Mississippi; City of Metropolis, Illinois; Municipal Energy Agency of Mississippi; Ozark Foothills Regional Planning Commission; Paragould, Arkansas; City of Ruson, Louisiana; South Mississippi Electric Power Association; Tampa Electric Company, Town of Waynesville, North Carolina; and Virginia Power Company.

market-based changes that were characteristic of normal business operations associated with large electric utility companies. The staff recognized these changes as such and did not categorize these changes as "significant changes" as envisioned by the Commission in its Summer decision.

Although from a physical standpoint, TVA is similar to neighboring electric systems, TVA is distinctly different from neighboring electric systems in that it is limited by its charter from selling power outside of its designated service area. TVA was charged with developing the electric resources within the Tennessee Valley for the use and benefit of those living within the Tennessee Val ley. This restriction severely limits and in some cases prohibits TVA's ability to actively compete for customers outside of its service area that otherwise might be willing to furnish or exchange bulk power services with TVA. TVA cited several instances where it denied requests for services or exchanges from entities outside of its service area because of the 15d(a) restriction in its charter. Given TVA's significant market position in the southeastern bulk power services market, the staff would have been concerned with TVA's pattern of denials for electric services had there been no provision in its charter requiring such denials. Given the Section 15d(a) restrictions, the staff did not consider these denials to be abuses of market power.

Several requests for electric service(s) from TVA were identified by the staff that were not prohibited by 15d(a). The staff reviewed these requests and determined that in each instance, the request was either granted, dropped or when denied, denied because of valid business reasons not adverse to the competitive process in bulk power supply throughout TVA's service area.

Moreover, notice of receipt of Regulatory Guide 9.3 information was published in the Federal Register. The notice provided an opportunity for public comment on the antitrust matters associated with TVA's changed activity. No comments were received. A copy of the Federal Register notice was published in various nationally circulated trade journals. No comments were received as a result of these publications.

Based on the review of the changes in TVA's activities since the 1979 antitrust operating license review, it is the staff's opinion that none of the changes satisfies all three Summer criteria and consequently, none of the changes is "significant" in terms of the Commission's Summer decision.

V. Summary and Conclusions

Due to construction delays on the Watts Bar facility, the staff reviewed TVA's activities in 1979, 1983 and again in 1990 to determine whether there have been changes in TVA's activities since the completion of the construction permit antitrust review in 1972 that would create or maintain a situation inconsistent with the antitrust laws. Several types of changes were identified in each of the earlier post construction permit reviews; however, it was determined that none of the changes resulted from abuse of TVA's market power.

In its review of TVA's activities in the 1990 operating license review, the staff again found no evidence of changed activity associated with abuse of its market power. Although TVA is free to conduct normal business operations within its service area, it is restricted by the TVA Act from engaging in full-scale

competition with neighboring electric systems. In many ways, the TVA Act has insulated TVA from the competitive pressures of the market that a utility of TVA's size would experience without such restrictions.

Given the restrictive nature of Section 15d(a) of the TVA Act, any scrutiny of potential anticompetitive acts or practices would focus primarily on TVA's dealings with distributors within its service area in terms of moving power or energy in or out of its service area or with entities outside of its service area attempting to move power or energy through its system, i.e., the use of TVA's transmission grid. The staff has not identified any instance wherein TVA has refused to cooperate, within the confines of its Section 15d(a) restriction, with other power entities requesting services or use of TVA's transmission facilities. As a result, the staff does not believe that any changed activity attributed to TVA since the 1979 operating license review is "significant" in terms of the Commission's Summer decision. The staff recommends that the Director of the Office of Nuclear Reactor Regulation find that no significant antitrust changes have occurred in TVA's activities since the previous antitrust operating license review completed in July of 1979.

APPENDIX A

ASSISTANT ATTORNEY GENERAL
ANTITRUST DIVISION

Department of Justice
Washington, D.C. 20530

DEC 1 1972

Marcus A. Rowden, Esquire
Associate General Counsel
U. S. Atomic Energy Commission
Washington, D. C. 20545

Re: TENNESSEE VALLEY AUTHORITY
Watts Bar Nuclear Plant, Units 1 and 2
AEC Docket No. 50-390A, 50-391A
Department of Justice File 60-415-43

Dear Mr. Rowden:

On August 23, 1971, Mr. Bertram H. Schur of your Commission forwarded to the Attorney General, for his antitrust review pursuant to Section 105c of the Atomic Energy Act of 1954, 68 Stat. 919, 42 U.S.C. 2011-2296 as amended by P.L. 91-560, 84 Stat. 1472 (December 19, 1970), an application filed by the Tennessee Valley Authority (TVA) for a permit to construct the Watts Bar Nuclear Plant, Units 1 and 2. Although TVA was asked to supply information to the Department to be utilized in its antitrust review pursuant to 42 U.S.C. 2135c(4), TVA initially failed to do so. Since the information for our review was not thereafter provided for some period of time, we deemed the statutory time for rendering antitrust advice to be tolled while we awaited the necessary information.

The Watts Bar units, each with a capacity of 1,269,900 kilowatts, are presently scheduled for operation for 1977 and 1978 or soon thereafter. They are proposed to be integrated as a part of TVA's bulk power supply system and will form a significant addition to TVA's ability to market firm capacity and to engage in coordination with neighboring power systems in the coordinated regional bulk power supply.

TVA markets bulk power supply throughout the State of Tennessee; it is the sole bulk power supplier in that state, except for Kingsport Power Company, an American Electric Power subsidiary, through which an AEP operating company markets bulk power supply in Kingsport and five smaller communities. It also markets bulk power supply in areas of Mississippi, Kentucky, Alabama, North Carolina, and a portion of Georgia. Its electric power functions are limited principally to supply of electric power in bulk for resale at retail by independent distributors

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of electric power, who are almost exclusively nonprofit agencies such as municipalities and cooperatives. TVA makes some sales at retail to federal government agencies and also makes direct sales to large private industries. Further, it engages in significant interchange and sale of power with other electric utilities. Of 1971 total electric operating revenues of approximately $575 million, approximately $380 million was obtained by sales to independent distribution systems; $62 million from sales to federal agencies; $125 million from direct sales to very large industries; and $10 million from interchange of power with other bulk power suppliers.

While other federal governmental agencies' authority to market power is ordinarily limited to the sale of surplus hydroelectric power generated at federal water resource development projects, TVA is unique among federal government agencies in having bulk power supply public utility responsibility and statutory authority to install steam generation facilities in order to meet such responsibility for growing loads.

TVA's 1972 system peak load was 16,664,000 kilowatts. As of that date it had a system dependable capacity of 18,595,000 kilowatts consisting of 14,671,000 kilowatts of thermal capacity and 3,924,000 kilowatts of hydroelectric capacity integrated by an extensive high voltage transmission system operating principally at 161 kv with some elements of 500 kv. Its annual increments of increase in load are in excess of 1,500 megawatts over the next 10 years and its large system size assisted by its interconnections with other systems enables it economically to justify addition of nuclear generating units of the sizes contemplated in the instant application.

Prior to 1959, TVA's operating and constructing budget was dependent upon annual appropriations by Congress. Under those circumstances TVA's ability to supply power in bulk in competition with other bulk power supply sources was regulated directly by Congress in the annual appropriations process. In 1959 Congress permitted TVA to obtain additional construction funds from the private money market but imposed a limitation on the geographic areas in which TVA could market bulk power supply. Additionally, it restricted TVA's interconnection and coordination with adjacent bulk power suppliers except as to those with which it was interconnected as of July, 1957. Section 15d(a) TVA Act, 16 U.S.C. 831n-4; Hardin v. Kentucky Utility Co., 390 US 1 (1967)

It is not presently clear the exact extent to which amended Section 15d(a) restricts TVA in its ability to enter into coordination arrangements with other electric utility systems. However, we are persuaded that, in any event, the statute would not justify TVA in discriminating in the establishment or operation of coordination arrangements among similarly situated electric systems.

On the basis of information obtained from the Applicant and presently available from other sources, we find no antitrust problems which would require a hearing by your Commission on the instant application.

Sincerely yours,

BRUCE B. WILSON
Acting Assistant Attorney General
Antitrust Division

APPENDIX B

JUL 3 1973

Docket Nos. 50-390A
50-391A

MEMORANDUM FOR: C. Stahle, License Project Manager, LWR 4

FROM: A. Toalston, AIG

SUBJECT: WATTS BAR UNITS 1 & 2, OPERATING LICENSE ANTITRUST REVIEW

Section 105c(2) of the Atomic Energy Act of 1954, as amended, provides for an Antitrust review of Operating License Applications if the Commission determines that significant changes in the licensee's activities or proposed activities have occurred subsequent to the previous review in connection with the construction permit. Based upon examination of events that have transpired since issuance of the construction permits for the captioned nuclear units, it is our conclusion that no significant changes of an antitrust nature have occurred that would warrant an operating license antitrust review. The Office of the Executive Legal Director concurs in this conclusion.

Attorney General Review

The Tennessee Valley Authority (TVA) filed its application for construction permits for Watts Bar 1 and 2 on May 24, 1971. The Commission's rules and Regulations at that time did not list the information required for antitrust review. Consequently, initial antitrust information was requested on July 14, 1971 and additional information on July 22, 1971. TVA responded partially to the information requests on August 17, 1971 but declined to furnish the majority of the information requested on the basis that the antitrust laws did not apply to TVA.

The initial application and the August 17, 1971 letter was forwarded to the Assistant Attorney General on August 23, 1971, requesting his advice in accordance with Section 105c of the Atomic Energy Act of 1954, as amended.

In subsequent discussions between TVA and the Department of Justice, TVA allegedly took the position that it would furnish the requested antitrust information only if it received assurances from the Justice Department

that TVA was not subject to the antitrust laws. The Justice Department declined to give such assurances, stating that in its view TVA's status under the antitrust laws was not at issue and that the question was whether TVA was excused from compliance with the provisions of the Atomic Energy Act. The Department of Justice stated that it would not render antitrust advice on TVA's application until the requested information was furnished by TVA.1/

In June 1972, the AEC received from TVA the information requested by the Attorney General and this was immediately transmitted to the Department of Justice. Subsequently, the advice letter, which was received on December 11, 1972, recommended no hearing. The advice letter stated:

> "Prior to 1959, TVA's operating and constructing budget was dependent upon annual appropriations by Congress. Under these circumstances TVA's ability to supply power in bulk in competition with other bulk power supply sources was regulated directly by Congress in the annual appropriations process. In 1959 Congress permitted TVA to obtain additional construction funds from the private money market but imposed a limitation on the geographic areas in which TVA could market bulk power supply. Additionally, it restricted TVA's interconnection and coordination with adjacent bulk power suppliers except as to those with which it was interconnected as of July, 1957. Section 15d(a) TVA Act, 16 U.S.C. 831n-4; Martin v. Kentucky Utility Co., 390 US 1 (1967)."

The advice letter continued:

> "It is not presently clear the exact extent to which amended Section 15d(a) restricts TVA in its ability to enter into coordination arrangements with other electric utility systems. However, we are persuaded that, in any event, the statute would not justify TVA in discriminating in the establishment of operation of coordination arrangements among similarly situated electric systems."

1/ April 25, 1972 letter from J. J. Saunders to [redacted].

Thus, the Justice Department in its advice letter appeared to focus its concerns on two aspects of TVA's ability (or inability) to exercise its dominance or to otherwise act in an anticompetitive manner:

1. limits on territory expansion; and
2. limits on its ability to discriminate against other electric utilities.

Although the Justice Department in its advice letter did not so state, the concerns of the Justice Department were apparently limited to those listed above as compared to other aspects of TVA's dominance. Presumably, this limited concern was because TVA's business is principally to supply electric power in bulk for resale by independent distributors, who are almost exclusively non-profit agencies, such as municipalities and cooperatives.

The Attorney General's advice on Watts Bar was published in the Federal Register in December 1972. No petitions for intervention on antitrust matters were received.

Subsequent to the antitrust review of Watts Bar, TVA applied for construction permits for the Bellefonte Nuclear Plant, Units 1 and 2. After review of information submitted with this Application, the Justice Department again advised on December 27, 1973 that no hearing was required, stating:

> "We have examined the information submitted by applicant in connection with the present application, as well as other pertinent information with respect to Applicant's competitive relationships, which has become available during the past year. None of the foregoing information provides any basis for changing the conclusions which we set forth with regard to the Watts Bar application."

During the Commission's 30 day period which allows intervention requests following publication of the advice letter in the Federal Register, no petitions to intervene on antitrust matters with respect to Bellefonte were received.

Later in March 1975, advice was received from the Justice Department with respect to TVA's Hartsville Nuclear Plant, in July 1975 with respect to the Phipps Bend Nuclear Plant and in April 1976 with respect to the Yellow Creek Nuclear Plant. In each case the advice was almost identical to the Bellefonte advice, stating that no information had come to the attention of the Justice Department that would cause it to change its previous advice. Similarly, in each subsequent case no petitions to intervene with respect to antitrust matters were received.

Changes Since Construction Permit Antitrust Review

Construction permits Nos CPPR-91 and CPPR-92 were issued on January 23, 1973 for Watts Bar Units 1 and 2 respectively. Approximately four years later, on October 4, 1976, the FSAR applications for operating licenses were docketed. Initially, TVA resisted submittal of the antitrust information specified in Regulatory Guide 9.3 as being unnecessary and duplicative. However, by letter dated August 31, 1978, it submitted the information for both Watts Bar and Bellefonte. The changes in TVA's system and operations listed in TVA's submittal can be summarized as changes in load projections, additions in transmission, and changes in rate schedules. There have also been a number of inquiries and discussions regarding power exchanges between TVA and neighboring electric utilities. There have been no acquisitions or mergers by TVA, no changes in the contractual allocation or output of Watts Bar, and no changes in TVA's service area or in its wholesale customers. Each of these individual changes are discussed below. ...

TVA's projected load has decreased compared to that projected at the time of the construction permit antitrust review. The Watts Bar start-up date has been correspondingly postponed more than two years, consistent with the decrease in load growth. Decreases in load growth have occurred throughout the electric utility industry since the oil embargo in 1973 and such reductions of load in the absence of any connected anticompetitive activity are not considered to have any antitrust significance.

Transmission additions at 500 kv have been made with respect to the transmission of power from the Cumberland and Widows Creek power plants. Transmission additions within the TVA service area such as the aforementioned are expected as a normal growth of the system and likewise do not suggest any antitrust implications.

Also, in response to Regulatory Guide 9.3, TVA indicates a revision in its rate schedules in 1977, stating:

> "The revision which includes changes in design, provisions, and conditions of rate schedules, became effective in January 1977 and was developed to permit rates and charges to reflect existing cost conditions, to improve the relationship between wholesale power costs and retail revenue, and to provide a more suitable allocation of the costs of subtransmission service in the rate structure."

TVA's rate schedule of 1970 for Wholesale Power (Rate Schedule A) was replaced in 1977 by Schedule WS; rate schedules of 1970 for residential customers (Schedules R through R-9) were replaced in 1977 by Schedules RS-1 through RS-12; and rates schedules of 1970 for [illegible] and

industrial customers (Schedules C through C-9) were replaced in 1977 by Schedules GS-1 through GS-12.1/

Wholesale power contracts between TVA and the individual distributors identify the applicable level of resale rates. The higher numbered schedules have lower rates in both the 1970 and 1977 versions. TVA, in consultation with its distributors, selects a rate for each distributor which will allow the distributor to remain on a self-supporting and financially sound basis. This would correspond to criteria used by regulatory agencies to permit a reasonable rate of return.

A comparison of TVA's 1977 rate schedules to its 1970 rate schedules indicates higher rates in 1977 and a rate structure that is more energy related, i.e., the total cost is more related to total usage than to the kw demand requirement. Both the higher rate and energy related aspect would be expected because of inflation and because of the rapid rise in fuel costs which has even exceeded the inflation rate during this period.

Both the 1970 and 1977 wholesale rates have an adjustment clause (adjustment 2) that adds to a distributor's wholesale bill if the distributor has large customers. Since this occurs in both the 1970 and 1977 schedules, it does not represent a significant change. It could, however, have a competitive impact if a TVA distributor and TVA itself were competing for a large industrial load, and TVA's retail rate was less than its wholesale rate as adjusted for large customers thereby increasing the propensity for a price squeeze. A comparison of billing for a single large load served under the wholesale rate schedule MS to the billing for a large load served under TVA's industrial rate schedule GS-8 showed the wholesale rate to be about 3 percent less. For more than one large load, or a combination of large and small loads, the differential would be greater. Thus, there would not normally be any price squeeze. In response to an inquiry to TVA as to the reason for the adjustment for large loads charged to its distributors, TVA indicated that the adjustment reflected the advantage (lower cost) of supplying large concentrated loads. This is a reasonable explanation and as there is no price squeeze involved, it can be concluded that the large customer adjustment has no anticompetitive effect or intent.

Since the construction permit antitrust review, there have been several inquiries of TVA by other electric systems for various coordination and power supply arrangements. The TVA Act prohibits TVA from entering into contracts that would make TVA a source of power supply outside the areas

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1/ The TVA Board sets retail rates for its distributors as well as wholesale and large industrial rates for itself.

for which the Corporation or its distributors were the primary source of power supply on July 1, 1957. Because of this, the inquiries are conveniently grouped to distinguish those that may make TVA a supplier of power, as follows:

1. those requesting TVA to sell power;
2. those requesting TVA to buy power;
3. those requesting TVA to engage in joint projects; and
4. those requesting TVA to wheel power.

While the TVA Act restrains TVA from territorial expansion, it does not completely restrict TVA from growth within its area even though that growth may involve newly established customers or customers previously served by another electric utility, provided that TVA had been the primary source of power supply in the area.1/

Alabama Electric Cooperative, Big Rivers Electric Corporation, Southern Illinois Power Cooperative and South Mississippi Electric Power Association have each approached TVA at various times regarding power sales to TVA. TVA agreed to buy power some of the time and declined at other times depending on the price and its needs at the time. Review of these purchase opportunities did not disclose any pattern of refusal to deal that would indicate anticompetitive action.

Big Rivers Electric Corporation, the City of Clarksdale, East Kentucky Power Cooperative, East Mississippi Electric Power Association, and Jackson Purchase RECC have each approached TVA at various times regarding power purchases from TVA. In each instance TVA declined, stating that the TVA Act precluded it from selling power to or entering into other arrangements that would have the effect of making it a source of power supply for these areas. AIG and DELD agree that the TVA Act would prohibit such sales.

Big Rivers Electric Corporation inquired if TVA would be interested in Big Rivers' participating in the installation of a nuclear unit on TVA's

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1/ In Harding v. Kentucky Utility Co., 360.US1 (1967), the Supreme Court ruled that TVA could supply through its Tennessee distributors two small villages in which the Kentucky Utilities Company had previously been the primary source of supply. The ruling was based on the fact that TVA was the primary source of supply in Claiborne County, the county in which the villages were located. Thus the Court in essence ruled that "Area" as used in the Act was not so small as a village or even two villages plus their immediate areas.

system or TVA's participating in the installation of a coal-fired generating unit on the Big Rivers' system. TVA declined both proposals — the first on the basis that its generation had at that time (December 1973) already been planned through 1983, and the second proposal on the basis that TVA would have adequate power supply. Although this appears to be an instance in which TVA's refusal to construct generation jointly was not strongly supported by the circumstances, TVA has never constructed jointly owned units. This, therefore, does not appear to indicate a change in TVA's policies or practices since the construction permit antitrust review.

The City of Clarksdale, Mississippi inquired as to the possibility of entering into arrangements with TVA for seasonal diversity capacity of 10 Mw. TVA responded that, under the TVA act, TVA could only enter into power exchange arrangements with other generating organizations with which it had exchange agreements on July 1, 1957. Section 15d.(a) of the TVA act contains a special proviso regarding exchange power. It states:

> "Nothing in this subsection shall prevent the Corporation, when economically feasible, from making exchange power arrangements with other power-generating organizations with which the corporation had such arrangements on July 1, 1957....."

It is noted that the above proviso does not specifically forbid TVA from entering into exchange arrangements with others with which it had no such arrangements on July 1, 1957. The proviso simply reinforces one thing that TVA can do, but does not in itself limit TVA with respect to those it can deal with as long as such arrangements do not have the effect of expanding TVA as a source of supply into new areas. Thus, it is possible that TVA could exchange diversity power with other entities as long as TVA did not become a source of power supply.

Even if an exchange of diversity power did not represent a net supply of kw hrs. over a given time period, such a transaction could be considered as a temporary source of power for both demand and energy. An inquiry of TVA, as to whether its interpretation had been tested in the courts, brought a reply that it had not been tested. In view of this, Staff cannot say that TVA acted anticompetitively by refusing to enter into a diversity exchange that could be controversial with respect to the legality of such an action.

Big Rivers Electric Corporation and Jackson Purchase REC each asked TVA about possible wheeling services. In each instance, TVA responded that any wheeling arrangements could not conflict with the [illegible] limitation of

the TVA Act. On further inquiry from the NRC Staff as to what type of arrangements would conflict with the area limitation, TVA responded:

> "contributions of power from TVA's system if and when the initial source (of wheeled power) is interrupted for any reason would appear to be inconsistent with the provisions of the Act"

AIG made further telephone inquiry of Mr. William Thorpe, General Manager of Big Rivers Electric Corporation, regarding wheeling arrangements with TVA. He indicated that they are currently working on arrangements for transmission that would be consistent with the TVA Act for delivery of power to one of Big Rivers' customers. He indicated further that TVA has been cooperative and that working relations between TVA and Big Rivers have been good.

Summary

The Attorney General recommended no antitrust hearing for Watts Bar Nuclear Units 1 and 2 in 1972. Subsequently, "no hearing" recommendations were received with respect to Bellefonte, Hartsville, Phipps Bend and Yellow Creek nuclear plants in 1973, 1975, 1975 and 1976, respectively. In each subsequent antitrust review after Watts Bar, the Attorney General advised that there was no basis to change the conclusions with respect to Watts Bar.

For Watts Bar, and for each nuclear plant application thereafter, no requests for intervention on antitrust matters or other antitrust complaints were lodged with the NRC against TVA.

Staff has reviewed the materials furnished by TVA in response to Regulatory Guide 9.3 and in response to specific follow-up questions asked of TVA and Big Rivers Electric Corporation. None of TVA's actions since the Watts Bar construction permit review suggests an anticompetitive intent. Only two actions suggest a possible anticompetitive effect:

> 1. Refusal to engage in diversity interchange with the City of Clarksdale, Mississippi and
> 2. refusal to wheel (transmit) power for Big Rivers Electric Corporation and Jackson Purchase RECC. --

Each of the above refusals were seemingly justified on the basis that such actions could be illegal or at least inconsistent with Section 15d.(a) of the Tennessee Valley Authority Act. In any event, such refusals do not represent changes in TVA's policy or actions subsequent to the antitrust review with respect to the Watts Bar Construction

APPENDIX C

WATTS BAR UNITS 1 AND 2

OPERATING LICENSE ANTITRUST RE-REVIEW

The operating license antitrust review for significant changes for Watts Bar Units 1 and 2 was completed on July 3, 1979.[1] That review was conducted prior to establishment of the Commission's procedures[2] and final rule[3] for OL antitrust findings.

The 1979 OL antitrust review concluded:

"None of TVA's actions since the Watts Bar construction permit review suggests an anticompetitive intent. Only two actions suggest a possible anticompetitive effect:

1. Refusal to engage in diversity interchange with the City of Clarksdale, Mississippi, and
2. Refusal to wheel (transmit) power for Big Rivers Electric Corporation and Jackson Purchase RECC.

Each of the above refusals were seemingly justified on the basis that agreement by TVA to provide the requested services could be illegal or at least inconsistent with Section 15.d(a) of the Tennessee Valley Authority Act".

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[1]Memorandum from Toalston to Stahle, dated 7/3/79

[2]Memorandum from Hendrie to Denton and Dircks, dated 9/12/79

[3]March 3, 1982, 47 FR 9983

OFFICE ▶						
SURNAME ▶						
DATE ▶						

Since considerable time often elapses, as it has for Watts Bar 1 & 2, between the completion of an OL antitrust review and the actual issuance of the operating license, AEAP reviews various publications and makes periodical contacts with affected parties during the interim. Accordingly, the following individuals were contacted on 12/10/82 by telephone to determine if any significant antitrust changes may have occurred subsequent to the previous Watts Bar OL antitrust review:

Mr. William Dalton
Acting Manager
Jackson Purchase Electric Cooperative Corporation
Paducah, Kentucky

Mr. William H. Thorpe
General Manager
Big Rivers Electric Corporation
Hendersen, Kentucky

Mr. P. M. Webster, Jr.
Mayor
Clarksdale Public Utilities Corrission
Clarksdale, Mississippi

The above individuals were contacted as representative of those entities discussed in the 1979 OL antitrust review and those most affected by TVA's actions or policies. In each case, there was no indication of anticompetitive behavior by TVA. Big Rivers now has an additional interconnection and a

Memorandum from Haller to Volume, dated 12/7/82						

wheeling agreement with TVA which permits it to wheel power through the TVA and Mississippi Power and Light Company systems to Clarksdale, Mississippi and to and from the Cajun Electric Cooperative. The Jackson Purchase Electric Cooperative does not deal directly with TVA but obtains indirect benefits by working through Big Rivers. Similarly, Clarksdale does not deal directly with TVA but obtains indirect benefits by working through Mississippi Power and Light. While Clarksdale, Big Rivers and Jackson Purchase would each like to buy power from TVA, they recognize that TVA is restricted by law from selling power external to its established boundaries.

The above described contacts and our continuing review of various publications have disclosed no information that would suggest a need for further investigation at this time regarding our original conclusion of no significant antitrust changes for Watts Bar 1 & 2. Further, no one has come forward with any antitrust allegations regarding TVA since our 1979 antitrust review.