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June 19, 1979

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Mr. Harold R. Denton
Director, Office of Nuclear
Reactor Regulation
U. S. Nuclear Regulatory
Commission
Washington, D. C. 20555

In the Matter of Mississippi Power & Light Company
(Grand Gulf Nuclear Station, Unit Nos. 1 and 2)
Docket Nos. 50-416 and 50-417

Dear Mr. Denton:

We have received a copy of your letter to Mr. McDiarmid, dated June 11, 1979, by which you acknowledge receipt of his petition by letter dated May 29, 1979 on behalf of the Municipal Energy Agency of Mississippi ("MEAM"). MEAM had sought the issuance of an order to show cause pursuant to 10 C.F.R. §2.202 "to require the Mississippi Power & Light Company and its affiliate, Middle South Energy, Inc., to comply with license conditions attached to the construction permit for the Grand Gulf Nuclear Station, Units 1 and 2." Your letter to Mr. McDiarmid indicates that the petition will be treated under 10 C.F.R. §2.206 and that appropriate action will be taken within a reasonable time.

Pursuant to the Notice filed for publication in the Federal Register, we make this response on behalf of Mississippi Power & Light Company ("MP&L"). As always, we wish to extend every effort to cooperate with the Commission in its review, and we will furnish any additional information that will assist you in your investigation. In this respect, we would note that MP&L has previously provided information in response to the NRC Staff's requests by letters dated January 10 and March 12, 1979 for additional information in connection with its antitrust review of the Applicants' operating license application. As discussed below, the information provided therein is dispositive of MEAM's allegations and refutes any allegation of a failure to comply with conditions of the construction permits for the Grand Gulf Nuclear Station.

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1. Clarksdale and Greenwood have been offered an opportunity to participate in the Grand Gulf facilities. MEAM claims that Clarksdale and Greenwood have been denied an opportunity to participate in the Grand Gulf facility. Nothing could be further from the truth. Although this portion of its letter contains many irrelevancies, such as possible interconnection between Clarksdale and MP&L and certain FERC proceedings, the gist of this allegation is that the Mayor of Clarksdale wrote a letter dated July 19, 1977 to the President of MP&L, stating that "no offer of participation in Grand Gulf Nuclear Unit had been made to Clarksdale," and inquiring for further information. In accordance with the practice of the NRC, all interested parties were given notice by publication in the Federal Register, 39 Fed. Reg. 32641 (September 10, 1974), that construction permits had been issued, which was available for public inspection and which clearly stated MP&L's commitment to offer participation. Moreover, the Notice of Receipt of Attorney General's Advice and Time for Filing Petitions to Intervene on Antitrust Matters, 38 Fed. Reg. 14877 (June 6, 1973), likewise recited MP&L's commitment "to offer an opportunity to participate in the Grand Gulf nuclear units." Numerous accounts of MP&L's intention to build the Grand Gulf facility were published in local newspapers throughout Mississippi.

MEAM does not now allege that Clarksdale, Greenwood or any other member of MEAM expressed a bonafied interest in participation. It is also noteworthy that the Department of Justice, pursuant to its responsibilities for antitrust review under Section 105 of the Atomic Energy Act of 1954, as amended, had written each utility in Western Mississippi on July 17, 1972, inquiring, inter alia, whether any utility was interested in ownership participation in the Grand Gulf Nuclear Station. Clarksdale responded by letter dated August 25, 1972, expressing no interest in participating in the ownership of that facility. Later, in August 1973, Greenwood expressed some interest in ownership, but dropped the matter after being furnished cost data by MP&L. Accordingly, MEAM and its members had full notice of an opportunity to participate but simply did not avail themselves of this option. After MP&L gave notice of its willingness to offer participation, the initiative clearly passed to any interested parties to take up the matter further. Once notice had issued, there was obviously little more MP&L could do with regard to an offer of participation until MEAM's members outlined the manner and degree of participation desired. MEAM's members had some 3-1/2 years to seek participation, but failed to do so. By contrast, in attaching antitrust conditions to a nuclear facility construction permit following adverse findings during a Section 105c(1) review, the Licensing Board in Toledo Edison Company (Davis-Besse Nuclear Power Station, Units 1, 2 and 3), LBP-77-1, 5 NRC 133, 259 (1977), required that entities requesting access to the licensed facilities must make a commitment regarding participation within two years after the decision became final, and within two years after a license

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application had been filed for future units. Thus, the Licensing Board in Davis-Besse thought that two years was ample time for an interested entity, not merely to seek an offer of participation, but to evaluate its position and make a firm commitment.

MP&L's good faith in its dealings with MEAM is demonstrated by its response to a request by MEAM on November 21, 1978 for an offer of an ownership interest in the Grand Gulf facility that, while the request for an ownership interest in the nuclear facility was too late, MP&L would discuss with MEAM the possibility of joint participation in a 700 MW coal-fired power plant (expected to begin operation in 1985) as well as interconnection and other means to assure MEAM's members an adequate and dependable source of power at the lowest possible cost. Further, MP&L is about to conclude successful negotiations with WMEPA and SMEPA for a 10 percent ownership share of the Grand Gulf facility. All of these matters have been documented in MP&L's letter of September 25, 1978 to the Department of Justice as well as in Applicants' Response to Information Request 1h in the Antitrust Review Information filed by MP&L in this proceeding pursuant to Regulatory Guide 9.3.

2. MP&L has fulfilled its commitment to facilitate the exchange of bulk power by transmission over its facilities. In essence, MEAM contends that MP&L has refused to wheel power from Lafayette to Clarksdale over the system of Gulf States Utilities Company, which is connected with MP&L by a 500 KV transmission line. The stumbling block to accommodating Clarksdale's request that MP&L wheel power from Lafayette, however, has been Clarksdale's insistence upon firm service. Inasmuch as the wheeling arrangement suggested by Clarksdale involves transmission over the Gulf States system, and the only point of interconnection between the Gulf States and MP&L systems is a single 500 KV line segment, MP&L cannot guarantee Clarksdale's uninterrupted service on any other basis. Obviously, in view of MP&L's other commitments, MP&L cannot guarantee firm service to Clarksdale with only one 500 KV interconnection currently available to it with Gulf States if the wheeled power from Lafayette must travel through that single interconnection. This matter has already been addressed by MP&L in its Information for Antitrust Review (see Response to NRC Letter of March 12, 1979, Question 8 at p. 4); (Response to NRC Letter of January 10, 1979, Questions 1 and 2 at pp. 17-19).

The situation is further complicated by Clarksdale's insistence that Louisiana Power & Light Company ("LP&L") transmit the power from Lafayette over LP&L's system at no charge for the use of its facilities on the ground that LP&L is part of the Middle South Utilities system. MP&L has simply taken the position that the issue of fair compensation for the use of LP&L's facilities should be determined by LP&L and Clarksdale.

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The conditions in the construction permit for the Grand Gulf facility do not require MP&L to make arrangements with utilities outside its service area, such as LP&L and Gulf States, for the transmission of bulk power between MEAM members and such other utilities. The only obligation imposed by the construction permits is that MP&L wheel power from the point of delivery in its system to other utilities, such as Clarksdale and Greenwood.

Additionally, as MP&L has pointed out before, it has several interconnections with TVA, Arkansas Power & Light Company, and Mississippi Power Company, which could wheel power to MP&L's transmission system under the applicable rate schedule already on file with FERC. In essence, however, MEAM insists that the Middle South members act, in their totality, as though they were a single utility, without regard to their separate corporate identity and operation in transmitting power to MEAM members over their separate facilities. Quite simply, it is MP&L's position that:

" each entity whose transmission facilities are used to implement a particular transaction should be compensated for such use of its facility. Entities which would be paid for transmission service would be determined on a case-by-case basis. MP&L has not attempted to develop a method to determine direct and indirect portions of power transmission. . . . [E]ach MSU affiliate should make its own arrangements for the use of its transmission system by other entities. . . . [S]ingle system generation dispatch in the Middle South Utility system does not bear on the question of whether compensation is equitable for the use of the transmission system of a particular MSU affiliate company by other entities."

See Response to NRC Letter of March 12, 1979, Question 8 at p. 4-5. It is important to note that appropriate rate schedules for the transmission of the bulk power desired by Clarksdale and Greenwood are already on file with FERC (Dockets ER 78-583 and ER 78-584) and became effective August 28, 1978. Thus, transmission of the bulk power over the MP&L system has been available to Clarksdale and Greenwood since that date. The only point of dispute by Clarksdale, therefore, does not relate to a service condition imposed by the construction permit, but rather a rate question within FERC jurisdiction. See Response to NRC Letter

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of March 12, 1979, Questions 7 and 8 at pp. 3-5; Response to NRC Letter of January 10, 1979, Question 1 at p. 17.

3. MP&L has fulfilled its obligation to sell power for resale to any entity in the Western Mississippi area now engaging in or proposing to engage in retail distribution of electric power. MEAM also contends that MP&L has declined to make service available under applicable rate schedules on a partial requirement basis, but has instead offered to sell energy to Clarksdale and Greenwood at incremental cost under the terms of their interconnection agreements. Inasmuch as Clarksdale and MP&L were not interconnected prior to August 1970, MP&L had not taken Clarksdale into consideration in calculating its future base load capacity requirements. Therefore, Clarksdale's request for bulk power now imposes incremental costs which MP&L has every right to pass on to Clarksdale, subject to FERC approval. This is simply a cost-justified price differential. Moreover, since MEAM does not allege a refusal by MP&L to furnish bulk power, but only challenges the rate structure, the issue properly belongs within the jurisdiction of FERC, not the NRC. See MP&L's Response to NRC Letter to MP&L of January 10, 1979, Question 4.

As is evident from a review of the letter of May 29, 1979 to your office, analyzed in conjunction with the earlier correspondence between MEAM and the Department of Justice in 1978, the matters raised herein are anything but new, and scarcely appropriate for action on an order to show cause. Significantly, the Department of Justice has not seen fit to take any action itself or recommend that the NRC take any action with respect to the allegations by MEAM in its earlier correspondence to Justice. Further, an examination of the antitrust information provided by MP&L to the NRC Staff pursuant to Regulatory Guide 9.3 and subsequent Staff questions clearly demonstrates the insufficiency of the present allegations to support an order to show cause, and further indicates that MP&L has completely responded to the allegations at hand. If any additional response is required, it should be submitted under the same format. Under the circumstances, there can be little doubt but that MEAM's request for an order to show cause on these old matters to which MP&L has already fully responded is intended only to pressure MP&L into accepting commercially unfair arrangements.

For the reasons expressed above and in those documents to which we have referred, the request for the issuance of an

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order to show cause should be rejected. Please advise me if any further response is desired or if you would like to meet on the matter.

Sincerely,

Troy B. Conner, Jr.
Counsel for Mississippi Power &
Light Company

/dr

cc: Richard Merriman, Esq.
Robert C. McDiarmid, Esq.

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