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December 1, 1989

Ms. Eileen M. McKenna
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U.S. Nuclear Regulatory Commission
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Re: Louisiana Power & Light Co., NRC Docket No. 50-382A,
Comments on Antitrust Matters

Dear Ms. McKenna:

Pursuant to the Commission's notice of November 1, 1989, 54 Fed. Reg. 46163, the City of New Orleans, Louisiana ("New Orleans") submits these comments with respect to the antitrust issues raised by the application of Louisiana Power & Light Company ("LP&L") to amend the operating license for the Waterford 3 Steam Electric Station Unit 3 ("Waterford 3"). In its application, LP&L proposes that its license be amended to designate Entergy Operations, Inc. ("EOI"), a new management company not yet formed, as the licensed operator of Waterford 3.

For the reasons discussed below, it is New Orleans' position that the Commission should (1) clarify that the antitrust conditions set forth in Appendix C of the Waterford 3 license will continue to apply to LP&L and (2) direct that such conditions would apply to EOI upon that company's assumption of the role of licensed operator. This action would ensure the continued protection of the rights and interests of Louisiana entities engaging, or proposing to engage, in the sale and distribution of electricity, and would be in the public interest.

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1. LP&L's Application

LP&L's application^{1/} is part of a plan of Entergy Corporation ("Entergy") that EOI operate the three nuclear plants currently owned and operated by LP&L and two of its affiliates. Entergy owns all of the common stock of these and other companies, and proposes to own all of the common stock of EOI. LP&L states in its application that EOI, as agent for LP&L, would assume operating responsibility for -- but not ownership of -- Waterford 3 through an operating agreement between the two companies. Appl. at 2. LP&L asserts that implementation of this proposal would not impact "existing plant ownership or entitlements to capacity or energy." Id.

The antitrust conditions in LP&L's license initially were implemented in LP&L's construction permit for Waterford 3 granted on November 14, 1974. The conditions were agreed to by LP&L after allegations of antitrust violations and lengthy proceedings and negotiations involving the Department of Justice and affected Louisiana entities. In 1982, the Commission reevaluated LP&L's activities and concluded that there were no significant changes to warrant modification to the antitrust conditions. Finding of No Significant Antitrust Changes, NRC Docket No. 50-382-A, Oct. 12, 1982. The conditions were repeated in LP&L's operating license issued by the Commission on March 16, 1985.

The conditions are provided for the benefit of certain "entities," which generally are defined to include entities that own, or propose in good faith to own, generation facilities; are or will be public utilities; and have physical interconnections with LP&L in Louisiana. License, App. C, para. 1. The antitrust conditions obligate LP&L, under certain conditions, to interconnect and share reserves, including the provision of emergency and scheduled maintenance service; sell unit power and deficiency power; grant participation in Waterford 3 and future nuclear generating units; transmit power and energy over its transmission facilities; and sell power and energy. Id., paras. 2 - 6.

In its application, LP&L makes ostensibly contrary representations with respect to the application of these antitrust conditions. At page 15 of the application, LP&L states:

[T]he proposed license amendment to designate EOI as the entity authorized to possess, use and operate Waterford 3 will not alter the existing antitrust license conditions applicable to LP&L. Those conditions will remain applicable to LP&L.

^{1/} Louisiana Power & Light Co., Application to Amend Facility Operating License No. NPF-38 ("Appl.") (Aug. 15, 1989).

(Emphasis added.) However, in the proposed "mark-up" of the license, LP&L changes the provision which now reads "The licensee shall comply with the antitrust conditions in Appendix C to this license," to "EOI shall comply with the antitrust conditions in Appendix C to this license." Attachment 2 at 3. (emphasis added.)

2. New Orleans' Jurisdiction and Interest

By virtue of Article 4, Section 21(C) of the Louisiana Constitution and Section 4-1604 of the Home Rule Charter of the City of New Orleans, the New Orleans City Council is vested with regulatory authority over the operations of LP&L conducted within the municipal boundaries of New Orleans. The Council is also vested with regulatory authority over the entirety of the operations of New Orleans Public Service Inc. ("NOPSI"), another utility subsidiary of Entergy.

On August 18, 1989, LP&L filed an application with the Council for review of the proposed transfer of Waterford 3's operations to EOI. Subsequently, the Council issued a public notice announcing its intent to hold a hearing with respect to the application following the parallel hearing of the Louisiana Public Service Commission ("LPSC") regarding the same matter. The LPSC hearing is scheduled for December 5 and 6, 1989.

As a regulatory authority with jurisdiction in Louisiana, New Orleans has an interest in this proceeding to ensure that the interconnection and transmission markets in Louisiana are not adversely affected by the disposition of the antitrust issues herein. The viability of those markets, in the Council's opinion, is enhanced by the application of the antitrust conditions in the Waterford 3 operating license.^{2/}

3. Application of the Antitrust Conditions

In light of the confusing representation in LP&L's application as to whether the antitrust conditions would continue to apply to LP&L, the Commission should provide clarification that LP&L will remain subject to the conditions. There is nothing in the record before the Commission that warrants or even suggests that LP&L should be relieved of these obligations and, indeed, LP&L does not dispute this conclusion. In its response to the inquiries of the Commission's staff, LP&L states that:

^{2/} As a result of ongoing negotiations with Entergy to purchase the electric facilities of NOPSI and LP&L existing within the City, New Orleans itself may become a participant in these markets. In that event, the application of the antitrust conditions would be vital to New Orleans because the City is entirely surrounded by LP&L's transmission system and has no direct access to other sources of power supply.

LP&L will remain the owner of the unit and therefore will remain licensed "to possess" Waterford 3. The antitrust conditions on the licensee will remain applicable to LP&L.

Attachment to Letter of R.F. Burski to NRC, Oct. 27, 1989, at 2 (emphasis added.) Continued application of the antitrust conditions to LP&L would be consistent with the Commission's approval of an amendment to the Wolf Creek Generating Station license designating a new operating agent where the owner licensees remained subject to the original antitrust conditions. See Kansas Gas & Electric Co., Amendment to Facility Operating License, License No. NPF-42, Docket No. 50-482, Nov. 4, 1986.

Additionally, the Commission should extend the antitrust conditions to EOI. LP&L, however, contests such extension, stating that "the amendments need not include new antitrust conditions applicable to EOI." Oct. 27 letter at 4. LP&L's position is supported by a legal opinion which concludes that "it is legally unnecessary to make EOI subject to the present antitrust conditions. . ." Attachment to letter of David A. Repka to NRC, Oct. 30, 1989, at 2.

LP&L concedes, by implication, that the NRC could impose the antitrust conditions on EOI and provides no affirmative reason as to why the Commission should not so impose those conditions on EOI. EOI would become the licensed operator of the plant; to the extent that EOI is able to commit antitrust violations, it should be subject to those conditions for the same reasons that compelled their original application to LP&L. The Commission may ensure that there is no diminution of the protections afforded the public in the existing antitrust conditions by simply directing that EOI assume the same obligations as its affiliated co-licensee.^{3/}

LP&L does not expressly deny the possibility that EOI alone (in its proposed form as delineated in the operating agreement between EOI and LP&L) could cause non-compliance with the antitrust conditions. More important, perhaps, is the possibility that Entergy would empower EOI to take actions not currently contemplated in the operating agreement. This possibility is suggested, in part, by the substantial corporate restructuring now underway on the Entergy system. Entergy is attempting to consolidate its nuclear operations in EOI; it is also attempting to form an independent power producer ("IPP")

^{3/} In the Kansas Gas proceeding cited above, the question of whether the new Wolf Creek operating company should be subject to the antitrust obligations of the owner licensees apparently was not raised before the Commission. Thus, to the best of New Orleans' knowledge, the instant matter is one of first impression.

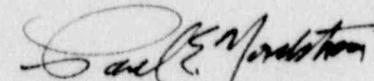
subsidiary and "spin-off" existing system generating facilities to that subsidiary; it has engaged in sale/leaseback arrangements with respect to its largest assets; and it is contemplating selling substantial electric assets and all of its gas assets to New Orleans. Given this dynamic condition, as well as the possibility of modifications to the operating agreement that might occur beyond NRC oversight, the Commission should act cautiously and apply the antitrust conditions to EOI in order to discourage possible arrangements with EOI that might circumvent those conditions.

New Orleans requests that the following be served with copies of all future correspondence in this proceeding:

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Respectfully submitted,



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