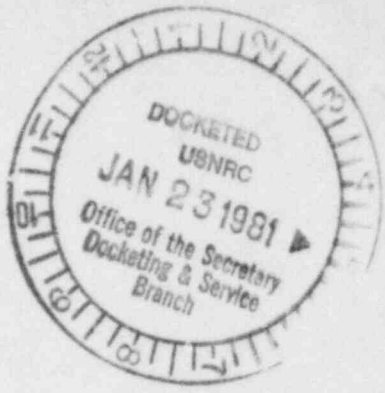
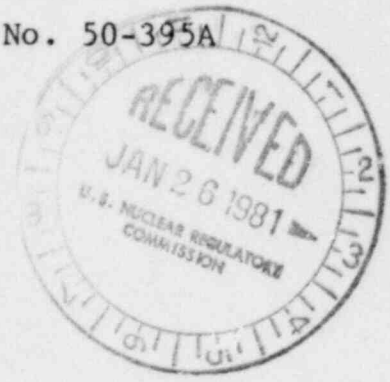


UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of	)	
South Carolina Electric & Gas Company	)	
and	)	Docket No. 50-395A
South Carolina Public Service Authority (Virgil C. Summer Nuclear Station Unit No. 1)	)	



COMMENT OF CENTRAL ELECTRIC POWER COOPERATIVE, INC.

Introduction

By order of January 15, 1981 the Commission noted that it had been advised of a Power System Coordination Agreement (agreement) between Central Electric Power Cooperative, Inc. (Central) and the South Carolina Public Service Authority (SCPSA). It requested the comments of the parties and Commission staff on the effect of the agreement, if any, on the issues before the Commission. These comments are submitted pursuant to that order and will discuss: (1) the status of the agreement; (2) impact of the agreement on Central; (3) impact of the agreement on competition; (4) status of present negotiations with SCE&G; and (5) Central's willingness to accept modified procedures under Section 105(c). For the reasons stated in papers already submitted to the Commission, and further summarized below, the Commission should find that the agreement does not eliminate the reasons for a finding of significant change, and should order antitrust review so that Central, its members, and

retail electric consumers in South Carolina may obtain the benefits of a competitive electric power market guaranteed by Section 105(c) of the Atomic Energy Act.

I. Status of Agreement

This will affirm that the agreement transmitted to the Commission by Mr. Morrison was entered into by SCPSA and Central. Subsequently, on Monday, January 19, 1981 the agreement, with minor modifications in language, was approved by the R.E.A. We are advised that the changes have been accepted by both parties.

Although the agreement is now final, it contains an important condition subsequent, contemplating a request for an opinion of the Internal Revenue Service as to whether or not the provisions of the agreement will result in treatment of any obligation of the Authority as an industrial revenue bond for tax purposes. See Article XIV Section P. The provisions of the agreement most likely subject to scrutiny under the Industrial Bond Act and pertinent regulations are those relating to joint ownership of generating units and those relating to provision of supplemental power requirements. Either of these may possibly be questioned by IRS, and such a question would, even pending a successful appeal, defeat the transactions contemplated. If the agreement in its entirety must be abandoned, under Section P. 2, the parties revert to power supply under pre-existing contracts.

II. Effect of the Agreement on Central

The effect of the agreement on Central necessarily will vary depending on the opinion of IRS. The worst case for Central would result if the agreement in its entirety were discarded. The best case would result if the agreement is preserved in its entirety.

A. Impact of the Worst Case

As noted above, under the worst case the agreement in its entirety would be eliminated and the pre-existing contracts substituted under Article XIV Section P. 2. Under those contracts Central would lose 90% of its projected power supply from SCPSA in 1987 and the remaining 10% in June, 2005. Under that case Central would be no better off than when it initially filed its petition. An example of the effect of this uncertainty was demonstrated recently when one of its members lost the load of a Michelin Tire plant to SCE&G after SCE&G recited these circumstances as an important reason for Michelin to purchase electric service from SCE&G.1/

B. Impact of the Best Case

Under the best case Central can and must obtain all its power requirements for the next 30 years from SCPSA with the following exceptions.

1/ Letter of Edward C. Roberts (SCE&G) to Charles T. Roy (Michelin Tire Corporation), dated May 24, 1979, attached hereto and marked as Exhibit 1. This letter was not obtained through discovery in any civil action.

1. Power obtained from SEPA

Power obtained from the Southeastern Power Administration (SEPA) is a small portion of Central's power supply and is never likely to be a large portion because it is dependent on the availability of economic sites for hydroelectric power development which are naturally limited in supply.

2. Power required for any new members of Central

This is not now at issue since at present there are no new applicants for membership. The present contract does not provide for the supply of power to Central for service to new members outside the present service territory of Central's existing members, nor is Central required to take such service from SCPSA.

3. Power obtained from eligible capacity of Central and units jointly owned with SCPSA

Central's right to take power from "eligible capacity" of its own other than from units jointly owned with SCPSA, is limited as a practical matter, with respect to base load units, to units which can be coordinated with other large power suppliers. Under the agreement, Central can coordinate with parties other than SCPSA the development of units outside the SCPSA system, but only if the power can be delivered to the Authority's transmission network. Article IV Section D. Given the economics of transmission, Central's alternatives for participation in generation

with bulk power suppliers other than SCPSA would be opportunities for coordinated development with SCE&G, the Carolina Power and Light Company (CP&L), and possibly with Duke Power Co. (Duke) or with such other parties as can be reached through the transmission systems of those utilities.

III. Impact of the Agreement on Competition

In the worst case, Central has essentially no practical power supply alternati available to it following 1987 and may have to leave the marketplace following 1987, thus diminishing competition.

In the best case, as noted above, Central is tied to the pricing or coordination terms of a single party, SCPSA, for a period of thirty years unless it can obtain: (1) contracts for coordination of base load units with SCE&G or CP&L, and possibly Duke Power Company or (2) the agreement of SCE&G, CP&L, or possibly Duke to wheel power from other parties which are in a position to coordinate units with Central.

However, SCE&G, CP&L and Duke are the very firms that Central has charged with a group boycott calculated to allocate Central exclusively to SCPSA. It bears repeating that the 197? South Carolina territorial statute does not authorize or contemplate such an allocation. That is, there is nothing to prohibit SCE&G from dealing with Central. To the contrary, the pleadings show SCE&G has offered to deal

with Central, at least in transmission services, "on a case-by-case" basis and has offered unit participation to the extent of Central's wholesale load now served by SCE&G. But there is no present proposal outstanding, as is further discussed below. Even when the loads of SCPSA and Central are combined, the total is not such as to permit them to be a self-sufficient power exchange--rather, even in combination they will require new power exchange, from time to time, as they grow.

Section 1 of the Sherman Act outlaws conspiracies in restraint of trade. A conspiracy to allocate customers or territory in any product market is a per se violation of Section 1. U.S. v. Topco Associates, 405 U.S. 596 (1972). Hobart Brothers Co. v. Malcom T. Gilliland, 471 F.2d 894 (5th Cir. 1973), cert. denied, 412 U.S. 923 (1973).

It is not a defense to a charge that Section 1 has been violated to establish that one of the conspirators is supplying the victim. The essence of the offense is the artificial restriction of offers by the other or others in the market which, if they had been made, could have resulted in the victim's securing a better price, terms or conditions than that obtained by acceptance of the offer made.

Two cases are exactly in point. In Gainesville Utilities v. Florida Power & Light Co., 573 F.2d 292 (5th Cir. 1978), cert. denied, 439 U.S. 966 (1978), the City of Gainesville municipal electric system sought a reserve sharing interconnection with Florida Power Corporation

(Florida Corp.) and Florida Power & Light Company (FP&L). The City ultimately secured a reserve sharing interconnection from Florida Corp. as a result of action by the Federal Power Commission.2/ This was past history when Gainesville took its private antitrust case to the United States Court of Appeals for the Fifth Circuit. The fact that Gainesville had obtained and was operating under a power exchange contract with Florida Corp. was irrelevant to Gainesville's charge that it had been denied the benefits of competition between FP&L and Florida Corp.

Such a denial of the benefits of competition in power exchange services has also been found by an Atomic Safety and Licensing Appeal Board of this Commission to constitute activity under a license which would create or maintain a violation of the antitrust laws under Section 105(c) of the Atomic Energy Act. Toledo Edison Company et al. (Davis Besse Nuclear Power Station, Units 1, 2 and 3) and Cleveland Electric Illuminating Company, et al. (Perry Nuclear Power Plant, Units 1 and 2) 10 NRC 255, 359 (1979). In that case, the City of Cleveland municipal electric light plant (MELP) had attempted to obtain proposals for nuclear participation from the various members of the CAPCO Pool, including Cleveland Electric Illuminating (CEI), Toledo Edison and others. Its requests were jointly considered

2/ See, Gainesville Utilities Dept. v. Florida Power Corp. 402 U.S. 515 (1971).

at a meeting of the CAPCO executive committee held on December 7, 1973. The minutes of the meeting revealed that the parties combined a negative response on CAPCO membership with a suggestion that MELP negotiate for power exchange with CEI. 10 NRC at 359. Based on that evidence and on other corroborating evidence, the Board held:

> "the decision of the applicants other than CEI in effect refusing to deal with Cleveland with respect to their share of CAPCO nuclear plants but, instead, relegating the city to negotiate with CEI for a piece of CEI's share in those plants, was an unreasonable restraint of trade in violation of Section 1 of the Sherman Act. Even as individual decisions, they constituted monopolization under Section 2 of that Act. These applicants had monopoly power in the coordination services market in the CAPCO region and they had ownership shares and other rights in all the nuclear plants in that region. By jointly deciding to put Cleveland's fate in the hands of its arch rival in the retail market which had been very hostile to the city for many years, these companies acted in an anticompetitive manner which tended to maintain their own monopolistic positions. 10 NRC at 360-61.

The Atomic Licensing and Appeals Board recognized that CEI had in fact made a proposal to the City of Cleveland for nuclear participation, 10 NRC at 361, but did not find that the existence of such a proposal was a defense to the Section 1 violation.

In comments filed August 25, 1980 Central summarized previous pleadings filed with the Commission and, after setting forth detailed facts, grouped these facts into three claims: (1) a concerted refusal to deal, (2) a unilateral refusal to

deal by SCE&G, and (3) a horizontal territorial allocation. Claims 1 and 3 are based on violations of Section 1 of the Sherman Act. The fact that one of the parties to the conspiracy eventually entered into a transaction with the victim of the conspiracy is simply irrelevant.

Moreover, nothing in the South Carolina territorial law of 1973 shields this Section 1 violation from the operations of the antitrust laws because the law does not prohibit competition between SCPSA and SCE&G for the supply of electricity to Central. SCE&G acknowledges that it made a proposal to Central for unit participation but that proposal was limited in amount to the few megawatts of load which SCE&G now serves in bulk at wholesale. Is it only by coincidence that SCE&G's proposal does not result in SCE&G's power being used to compete in the sub-market now served at wholesale by SCPSA?

If Central is provided an opportunity to do so, it will show this is not simply a coincidence. The attached Exhibit No. 2 was obtained on discovery in a related proceeding from the files of the Carolina Power & Light Co. It is the minutes of the VACAR Executive Committee meeting on September 26, 1976. Item 5 refers to Duke Power Company's negotiations with a group of municipalities in its area. Significantly, the VACAR executives were reassured that "Duke has a restriction in the agreement with the Electri-Cities that all power sold

from the Catawba Plant must go to customers within Duke's service area." The restriction on resale is a manifestation of an underlying conspiracy in the VACAR region to horizontally allocate customers and territory in the power exchange market. Since the VACAR Executive Committee is allegedly concerned with the reliability of bulk power supply, there is no legitimate reason for discussion of a restriction on resale at a reliability meeting, especially when Duke was to maintain operational control. 3/

Inquiry into the question of a group boycott, one not mandated by state law, has not been rendered unnecessary by an agreement with one of the group. In any such territorial or customer allocation scheme there is always a proposal from one member of the conspiracy.

IV. Status of Present Negotiations with SCE&G

On August 6, 1980 there was a meeting between SCE&G and Central in Central's office. The participants in the meeting were George Fischer, Esquire, Vice President and General Counsel of SCE&G, T. C. Nichols, Vice President and

3/ VACAR is a subgroup within the Southeastern Reliability Council (SERC). SERC is a reliability organization. When ElectriCities of North Carolina was contemplating a purchase of an undivided interest in Duke's Catawba facility, ElectriCities requested a change in the SERC agreement to permit it to become a voting member of this organization. In responding to this request, the members of SERC indicated that the partial ownership of generation operated by another system would have no impact on reliability. (See collective Exhibit No. 3). These documents were produced by CP&L in a related proceeding.

Group Executive, Power Production & System Operation, SCE&G, Mr. Patrick T. Allen, Executive Vice President and General Manager, Central, and C. Pinckney Roberts, Esquire, General Counsel, Central. This meeting has been described in SCE&G's statement of August 25th. In Central's opinion the meeting has not been properly described or characterized.

The representative of SCE&G, at the outset of the meeting, asked if the solution to wheeling might lie in the single isolated case involving Central's John's Island, S.C., load and whether that would be a complete solution to the instant proceeding. Central replied that it would not, and SCE&G's representatives indicated they were not surprised. Central told them that while that single specific instance of wheeling would be a good start or be a good faith first step, it was by no means a complete relief. Mr. Fischer then asked exactly what it was that Central wanted, and whether it was possible to arrive at a solution independent of the antitrust suit pending in North Carolina. Central told him that North Carolina was not involved in this proceeding and that a solution could be determined without consideration of the North Carolina matter. Central indicated to him that on two occasions Central had presented SCE&G with terms it felt would be adequate for relief and on both occasions had either failed to receive any response or had received a total rejection with no counter-proposals.

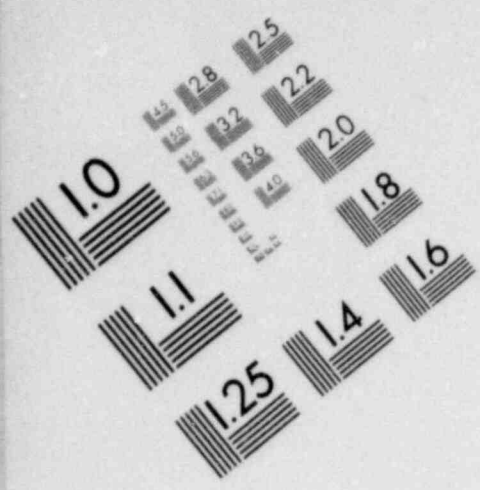
In the matter of generation ownership, Central did not, at that time or any time, suggest that Central

had no interest in joint ownership. Central has repeatedly said it is not interested in ownership limited only to a small isolated load like the John's Island load; however, Central has repeatedly stated that it would be most interested in discussing meaningful participation in future generating plants with SCE&G.

In the August 25th report of SCE&G to this Commission, SCE&G represents that it is considering some wheeling arrangement for Central. Certainly if this is so, it is only because they say it is so. SCE&G has been saying so for years, and as yet Central has still to receive any offer for wheeling in any case, specific, general or otherwise.

Central did express interest in being included in future planning.

What Central considers a reasonable settlement is in fact known to SCE&G, and at the August 6th meeting Central told SCE&G to consider the request previously made as a valid offer to be considered in this case. The principal conclusion reached in the meeting was that SCE&G representatives would take another look at Central's offer and consider some counter-proposal. No such proposal has been submitted to date. Mr. Patrick T. Allen, will submit an affidavit on the foregoing facts if the Commission so requests.



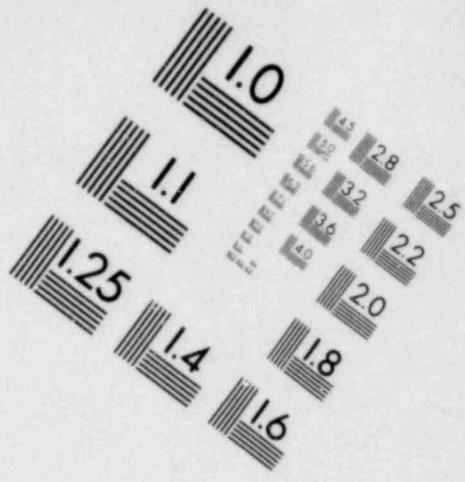
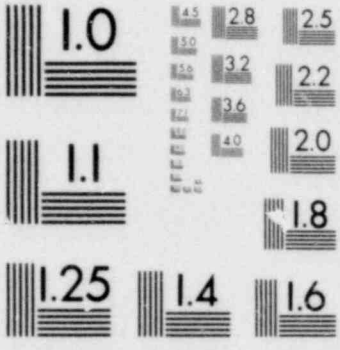
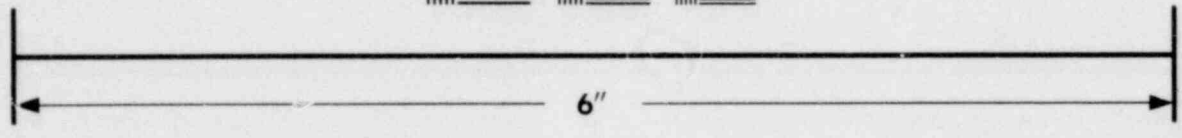
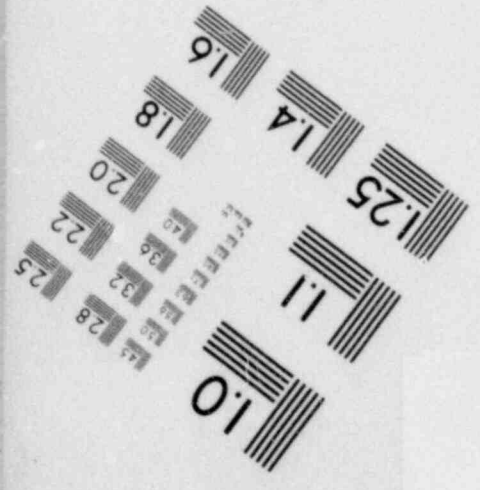
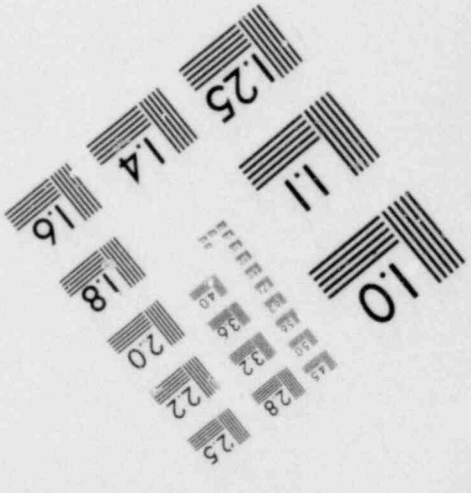


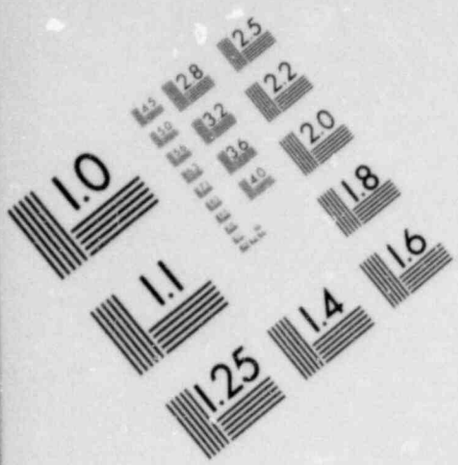
IMAGE EVALUATION TEST TARGET (MT-3)

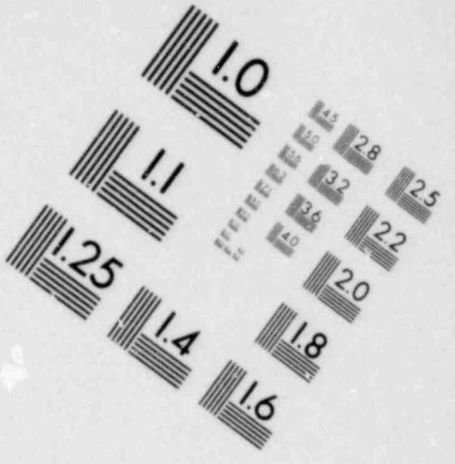












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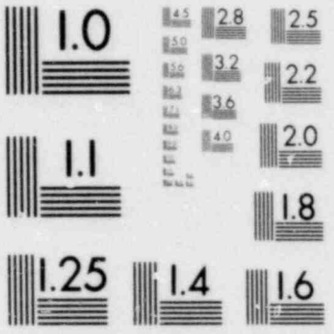

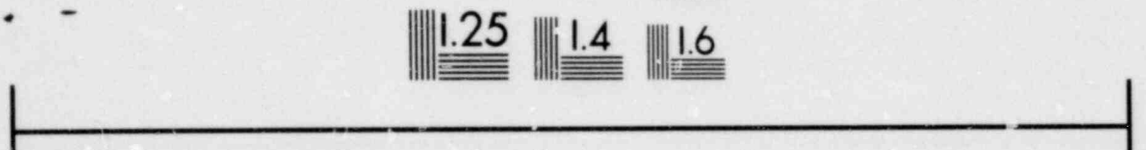

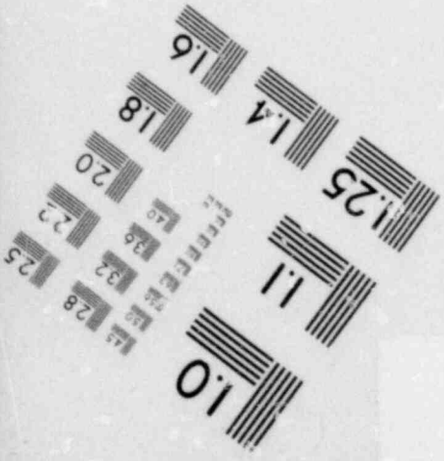

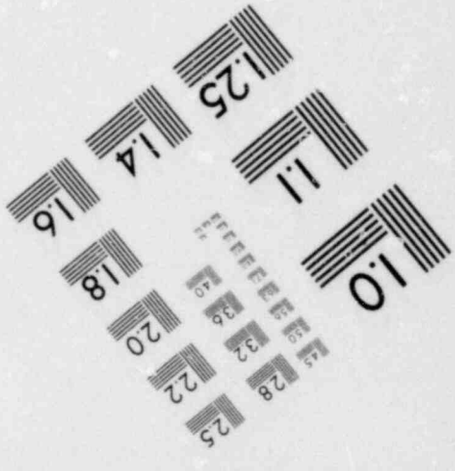

V. Central's willingness to accept a modified procedure under Section 105(c)

Section 105(c) requires a "pre-licensing" hearing. Central is willing, however, to waive its right to a pre-licensing hearing, provided that its rights are fully preserved in every respect except the timing of the hearings.

There is authority for the suggested procedure in Commission precedent. In Florida Power & Light Co. (St. Lucie Plant, Unit No. 2), 7 NRC 939 (1978), the Commission noted with evident approval an agreement among the parties allowing issuance of a construction permit prior to completion of §105(c) review. 7 NRC at 943 and n.3. See also, Florida Power & Light Co. (St. Lucie Plants, Units 1 and 2) & Florida Power & Light Co. (Turkey Point, Units 3 and 4), 5 NRC 789, 800-01 (1977). Also, in Louisiana Power & Light Co. (Waterford Steam Electric Generating Station, Unit 3), 6 AEC 48, (1973); 6 AEC 619, (1973), the Commission appears to have suggested that such post-permit review would be permissible if agreed to by the parties. 6 AEC at 50 N. 2; 6 AEC at 621-22.

Because of the uncertainty of its future power supply, Central has heretofore pursued its rights to an antitrust review looking toward a pre-licensing hearing. As shown above, the 30-year agreement recently concluded holds some promise of solving that uncertainty, but still contains

some risks that Central may have nothing more than what is essentially a six-year contract for its power supply.

Central has been advised by its counsel that by agreeing to modified procedure, it becomes vulnerable to delaying tactics on the part of the Applicants. Nonetheless, by this comment Central indicates its willingness to agree to a modification of the procedure under Section 105(c) to permit post-licensing antitrust review under that Section if that procedure in fact becomes necessary to avoid delaying operation of the Summer unit at a time when it would otherwise be ready for commercial operation.

Having shown its willingness to place the public interest above its own interest, Central respectfully requests the Commission, after adopting the requested finding of significant change, and in the event of a hearing or antitrust review being found necessary, to:

1. Call upon SCE&G to voluntarily agree to accept the same license conditions that the Commission has imposed on many other licensees and which Central has already sought SCE&G to accept in the form attached hereto as Exhibit No. 4. If SCE&G were to accept these conditions no hearing would be necessary.

2. In the alternative, call upon SCE&G voluntarily to agree to wheel on a case-by-case basis for all technically and economically feasible requests made before the conclusion of a hearing under Section 105(c), the wheeling to continue,

however, (limited to those cases) even after the conclusion of the hearing -- no matter what the outcome may be.

3. Adopt expedited discovery procedures in recognition of the fact that substantial discovery has already been had in a related proceeding, taking fullest advantage of the time already spent in that proceeding for the collection and production of documents. In this connection, Central should remind the Commission that SCE&G has filed a motion for a protective order in a related proceeding in the Middle District of North Carolina that was timed to foreclose Commission scrutiny of inculpatory documents discovered in that case. If SCE&G is truly concerned to expedite the instant proceeding, it should be willing to permit Commission examination of these documents at this time.

4. Instruct any licensing board to adopt procedures promoting the most expeditious antitrust hearing possible, consistent with due process.

Respectfully submitted,

CENTRAL ELECTRIC POWER COOPERATIVE, INC.

By _____
Wallace E. Brand

_____
Edward E. Hall

_____
Sean T. Beeny
BRAND & HALL
1523 L Street, N.W.
Washington, D.C. 20005

CERTIFICATE OF SERVICE

I, Wallace E. Brand, hereby certify that I have served a copy of the foregoing Comments of Central Electric Power Cooperative, Inc. on the persons listed below by depositing a copy thereof, postage prepaid in the United States mail this 23rd day of January, 1981.

Wallace E. Brand

C. H. McGlothlin, Jr.
South Carolina Public
Service Authority
223 N. Line Oak Drive
Moncks Corner, S.C. 29461

U.S. Nuclear Regulatory Commission
Office of the Secretary
Attn: Docketing and Service Branch
Washington, D.C. 20555

U.S. Nuclear Regulatory Commission
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SOUTH CAROLINA ELECTRIC & GAS COMPANY
POST OFFICE BOX 764
COLUMBIA, SOUTH CAROLINA 29218

EXHIBIT # 1

EDWARD C. ROBERTS
SENIOR ATTORNEY

May 24, 1979

Charles T. Roy, Jr., Esquire
Michelin Tire Corporation
Manufacturing Division
Post Office Box 2846
Greenville, South Carolina 29602

Re: Service to Proposed Michelin Plant
in Lexington County, South Carolina

Dear Mr. Roy:

Bargain is the proper end of economic activity. But there can be no true bargain unless the participants in an enterprise are able to determine the economic advantage that will accrue to each on the basis of full disclosure of all material facts and applicable economic legal rules. South Carolina Electric & Gas Company (SCE&G) is pleased to have this opportunity to supplement the economic record compiled by Michelin and to explain the advantage of receiving electric service from SCE&G for Michelin's Lexington County plant.

A legal issue concerning the authorized electric supplier for the premises of the plant has arisen. SCE&G believes that by the Order of The Public Service Commission of South Carolina, Order No. 16,439, October 11, 1972, SCE&G was granted the franchise to serve the area in which the Michelin Plant is to be located. A copy of the PSC Order, a map of the assigned territories in Lexington County, and a statement of our interpretation of the applicable legal principles are found in Appendix 1 hereto. Even if the choice of electric supplier is open, SCE&G believes that economic benefit to Michelin favors SCE&G as the electric supplier for the plant.

Whatever conflict SCE&G may have with Mid-Carolina Electric Cooperative, Inc. ("Mid-Carolina"), it sees no reason that such disagreement should impede the construction and operation of the plant. SCE&G believes that Mid-Carolina will concur with this position.

In prior correspondence between Michelin and SCE&G, there has been comment concerning the problem of preferential and discriminatory tariffs that may have been offered

to Michelin by Mid-Carolina. We have attached Appendix 2 which briefly discusses these legal issues. Important as the prohibition against preference and discrimination are to the law of public utilities, SCE&G believes that any such preferences and any advantages from them would be shortlived and are indeed ephemeral. The long-term adverse economic impact upon a consumer of such proposal is likely to be veiled by promises of short-term gain. SCE&G believes that both over the short term and the long term the interest of Michelin will be better served by electric service from SCE&G because SCE&G service offers stability, dependability, accountability, and security.

SCE&G is a vertically integrated electric power supplier. It controls its own generation, transmission and distribution operations. It is comprehensively regulated as to its rates and service by The Public Service Commission of South Carolina ("PSC"). A copy of SCE&G's Annual Report for the year ended December 31, 1978 on Form 10-K and its Quarterly Report for the quarter ended March 31, 1978 are found in Appendix 3. In addition, SCE&G will furnish Michelin with a copy of its preliminary Prospectus for $50,000,000 principal amount First and Refunding Mortgage Bonds ____% Series due June 1, 2009, for which a Registration Statement has just been filed with the Securities Exchange Commission.

In contrast with SCE&G, Mid-Carolina is not regulated as to the amount of its rates or as to its service by the PSC, and it is not vertically integrated. It is the bottom tier of a three-tier power supply situation. Mid-Carolina purchases all power requirements (except for a small portion supplied by SCE&G), from Central Electric Power Cooperative, Inc. ("Central"). Central purchases all electric power (except for a small allocation from Southeastern Power Administration) from South Carolina Public Service Authority ("PSA") which is a public power generating authority established under the laws of the State of South Carolina. See §58-31-10 et seq. S.C. Code (1976).

Central is responsible for purchasing electric power from the Public Service Authority's generating stations and transmitting it to its constituent members. Central's power contract with PSA is known as the "F" contract and through October 22, 1987 obligates PSA to supply Central's full requirements for electric power subject to appropriate notice provisions for increase of requirements which must be

accepted by PSA. A copy of the original "F" Contract is found in Appendix 4 (there have been several amendments, but SCE&G does not have copies of them; current terms of the "F" Contract are summarized at pp. 11 and I-10 of the PSA Official Statement in Appendix 5.) Commencing October 23, 1987 the full requirements provisions of the contract expire and thereafter Central is entitled only to 600,000,000 kwh per annum through the year 2005. The amount of power lost upon expiration of the requirments provisions is approximately 90% of Central's expected electric power load. (Affidavit of P. T. Allen, Appendix 6.) To replace this lost electric power, Central has adopted a plan by which it would enter into joint ownership agreements with PSA and with SCE&G to own as a tenant in common a portion of new power plants to be constructed during the 1980's and thereafter. (Appendices 7, 8, 9.)

The impact of Central's proposed construction budget on Central's rate and Mid-Carolina's rates to Michelin could be substantial. As noted hereafter Central and Mid-Carolina are both obligated by regulations of the Rural Electrification Administration of the United States Department of Agriculture provision to pass through the increased costs of power to the ultimate consumer. (Appendix 1.)

Central's new plants would be built with capital priced at market rates for the costs of debt capital. (Prospectus of National Rural Utility Finance Corporation at p. 15, Appendix 12.) The cost of the new plants will be substantially in excess of the average cost of existing plants (see Appendix 5 at p. 17), hence the average cost of power supplied from them will be higher in price. Power from the new plants will replace PSA's power which is produced from plants built with capital substantially below the cost of capital available to Central or any other utility because PSA as a municipality is able to issue municipal bonds upon which the interest is exempt from all income taxation under the laws of the United States of America. Over the years this has provided PSA with a substantial advantage. (See 1978 Annual Report of PSA, Appendix 10). Recently, PSA sold Forty Year Bonds at an interest rate of 6-7/8% (see Official Statement of PSA. (Appendix 11.) In contrast, Central's lending agency, the National Rural Utilities Cooperative Finance Corporation, which would provide a loan for a generation facility has recently sold bonds at an interest rate of

9-3/4%. When Central borrows from this bank, it will be required to pay market rates which normally would mean the bank's cost of money plus an administrative margin (Appendix 12 at p. 15). (Margins on the London Euro-dollar Market typically range from 7/8% to 1-1/4% for prime borrowings). Thus, it can be readily inferred that Mid-Carolina and its power transmission and marketing agent, Central, will incur significantly increased costs for electric power during the 1980's which will be passed on to Michelin. The impact on customers of Mid-Carolina and Central will be dramatic because Central and Mid-Carolina will be replacing average costs of power generated from plants financed with tax-exempt bonds by increments of power generated from costly new plants financed at the marketing costs of capital. Because the amount of power from the new plants on the Central-Mid-Carolina system probably will be proportionately greater than the increments of power from new plants on the SCE&G system, the financial impact from construction of new plants on rates to Central and Mid-Carolina's customers is likely to be significantly greater than the impact of new plant construction on SCE&G rates. (Compare data in Appendix 5 at p. 17 with data in Appendix 3.)

Although SCE&G does not at this time have access to the rates and the terms and conditions of service quoted by Mid-Carolina to Michelin, SCE&G suspects that if not prohibited by law as being preferential and discriminatory (see Appendix 2), such rates are not likely to be applicable by the time the Michelin plant is completed and in operation and any changes would be passed on to Michelin under the Standard Coop Contract (Appendix 2). Several factors lead to this conclusion. First, the "F" Power Contract between Central and PSA, which is the underlying basis for Mid-Carolina rates, has been and is currently the subject of a rancorous dispute between Central and PSA. PSA claims that the contract does not provide for payment of the costs of service of providing electric power (Appendix 11, Affidavit of R. S. Davis). Whenever PSA's consent is needed for Central to undertake a new project, such as the establishment of a new service point for an industrial customer such as Michelin, PSA refuses to give consent until Central renegotiates the rates. This occurred in 1972 when Pee Dee Electric Cooperative wished to serve a large textile plant. Moreover, the fuel adjustment provisions of the "F" Contract do not provide for rapid pass-through of the cost of fuel and make no

provision for the pass-through of the lower costs of nuclear fuel. PSA has publicly indicated that it will not agree to pass-through the cost of nuclear fuel to Central unless the "F" Contract is revised to provide for recovery of the full costs of service for providing electric power unde the contract.

This dispute has surfaced in a variety of forums and presently is raging in the anti-trust review proceedings that are a part of the proceeding by Nuclear Regulatory Commission to license the V. C. Summer Nuclear Station jointly owned by SCE&G and PSA (NRC Docket No. 50-395-A). (See Appendix 11, affidavit of R. S. Davis, Chairman of the Board of Directors of PSA, Appendix 11, and of P. T. Allen, General Manager of Central, which were filed in the NRC If the Fuel Clause is changed, Mid-Carolina as a customer of Central will receive the benefits of the lower costs of nuclear fuel. However, the base rates of Central to Mid-Carolina (and ultimately to Michelin) would be increased by an overall rate of approximately 8%. And it could be expected that PSA's projected rate increase of 12.3% for 1981 would also be passed through to Michelin (see Appendix 5 PSA Official Statement at p. 13). Of additional interest is the offer of PSA to merge with Central. (Appendix 6.) Although such a proposal may be a negotiating tactic, should it occur the "F" Contract could then easily be revised.

An important factor in the need for rate increases is a utility's construction program. As noted above, Central and Mid-Carolina have already adopted a program to build new plants to supply their existing electric power requirements and also their requirements which are the result of growth. In this age of inflation and increasing cost of construction, each time a utility brings a new plant on line, it may be anticipated that there will be an increase in the utilities' base rates. In the case of the PSA the projected increases for 1981 of 12.3% are primarily attributable to bringing on line PSA's Winyah #3 unit. Winyah No. 4 Plant is scheduled for completion in December 1981. In addition, PSA currently projects a massive construction program in the 1980's which will cause construction of four 450 MW plants at Cross, South Carolina which are scheduled to be completed in 1983, 1985, 1987 and 1989. The 1983 plant, known as Cross #2, will cost $397,000,000 (exclusive of interest costs during construction). (Appendix 5, PSA Official Statement at pp. 19-20.)

By contrast, SCE&G has almost completed its major construction projects for the new few years and will not bring any base load generating plants (other than Summer Nuclear Station in December, 1980) on line until the latter part of the 1980's (probably 1987). (These plants are presently forecast to have a capacity of 550 MW). SCE&G expects to add in the mid 1980's some internal combustive turbine generators for peaking purposes. In light of revised load forecasts SCE&G Company has revised its construction program for the next five years and has reduced it by almost half. SCE&G's revised construction program is discussed in its preliminary Prospectus for its $50,000,000 bond issue which is being registered with the Securities Exchange Commission ("SEC"). A copy of the preliminary Prospectus will be delivered next week to Michelin when it is available.

SCE&G anticipates that its rates will increase from time to time as a result of inflationary pressures and also as a result of bringing a completed plant on line. However, it believes that both over the short term and the long term the impact of SCE&G's construction program on its rates will tend to be less than the impact of a construction program undertaken by Mid-Carolina's suppliers because the proportion of SCE&G new generation capability to its total system capability (approximately 4000 MW in 1985) will be less than that of the Mid-Carolina suppliers. (See Appendix 5, at pp. 17-20.).

Finally, SCE&G believes that Michelin's interests will be better protected if it receives electric power from a supplier that is comprehensively regulated as to its rates services by The Public Service Commission of South Carolina ("PSC"). The problems of preferential and discriminatory rates have been previously discussed. Today's preference can just as easily become tomorrow's discrimination. SCE&G's rate designs are already required by Orders of the PSC not only to be just and reasonable as to the amounts charged but also that they be nondiscriminatory. (See extract of PSC Order No. 18,394, June 16, 1975 in Appendix 1.) If SCE&G violates the requirements of the law, the PSC can "fix" or prescribe the proper rate for an SCE&G customer. However, because the PSC has no power to prescribe the rates of an electrical cooperative, it does not have the same power to remedy an overcharge to the cooperative's customers. Its

sole power is to order the cooperative to cease the discrimination or the preference and a dissatisfied customer would be required to seek his remedy in court. It should also be noted that there is no regulation of any of the rates of the PSA. Moreover, there is no governmental body directly charged with the jurisdiction over the long term rate d[illegible]e between Central and PSA.

The process by which SCE&G's rates are determined is also more favorable to Michelin. SCE&G rates are prescribed as the result of an evidentiary hearing on the record. SCE&G files its Application together with elaborate schedules of supporting data. The PSC Staff cross-examines all utility witnesses and also sponsors its own expert witnesses. Any customer may protest or may intervene as a party and cross-examine the witnesses. There is no guarantee that the SCE&G can obtain all or even a part of the requested increase. In contrast, Mid-Carolina's rates are promulgated as the result of action by its Board of Directors. As we understand Mid-Carolina's corporate polity, Michelin as a corporate entity is not a "member" of the cooperative with voting rights and would have difficulty challenging action of the Board. There is no opportunity for cross-examination to test any underlying assumption of the proposed rates or to expose any discrimination or preference in them. The PSA is completely exempt from any rate regulation. Its rates are also promulgated by its Board of Directors. The potential for conflict is substantial.

Because of the comprehensive regulation of SCE&G as an electric utility and as a corporation subject to the 1934 Securities Exchange Act, SCE&G is under several different obligations to file detailed operating and financial reports with the PSC, SEC and Federal Energy Regulatory Commission. These reports are available to SCE&G customers.

SCE&G hopes that the information that it has supplied to Michelin concerning the economic and legal forces at work in the market for electric power in Lexington County, South Carolina, has filled the gap in the economic record. Where we have made factual assumptions or have not had the complete data to support our opinions or the inferences to be drawn from the facts as we believe them to be, we have tried to disclose such assumptions or gaps in knowledge. If there

remain areas of uncertainty or errors of fact, SCE&G stands ready to discuss these matters with the staff of Michelin so that Michelin will have the benefit of full disclosure in determining which electric supplier is in the best interests of Michelin.

Sincerely,

Edward C. Roberts

ECR:kc

Enclosures

APPENDIX 1

Service area assignment under the Territorial Assignment Act.

In 1969 the General Assembly of South Carolina enacted the Territorial Assignment Act, §58-27-610 S.C. Code (1976), which attempted to bring order to the chaotic and wasteful extension and duplication of facilities by electric utilities and electric power cooperatives. §58-27-640 provided for the assignment of service areas on the basis of public convenience and necessity. An "electric supplier", which includes "electric utilities" and "electric cooperatives" is authorized to serve all "premises" in its assigned service area, §58-27-640(1)(e), subject to certain exceptions intended to protect the existing investment of electric suppliers in facilities for electric service in existence on July 1, 1969. The Act provided further in §58-27-620(2) that an industrial customer with a connected load of 750 KW or larger could request an "electrical utility", such as SCE&G, to provide service to any industrial premises even though such industrial premises might be located within 300 feet of existing lines of another supplier or even within an assigned service area. No corresponding right of choice by an industrial customer was extended to an "electric cooperative".

By Order No. 16,439, October 11, 1972, Docket No. 16,222, The Public Service Commission of South Carolina assigned the tract upon which Michelin intends to locate its plant to the service area of SCE&G. This Order and a map of assigned area in Lexington County are included in the Appendix. The area is described as area no. 15 at pp. 47-48 of the Order.

SCE&G believes that the Order of the PSA controls service rights to an industrial premises on the tract unless an exception under §58-27-620(a) S.C. Code (1976) is applicable. These exceptions involve the proximity of the premises or industrial premises to lines existing on July 1, 1969, or to a service area assigned pursuant to §58-27-640. (Included in this Appendix is a Memorandum Agreement among electric utilities and electric cooperatives relating to administration of the Act.)

SCE&G cannot presently provide a definitive answer as to whether the exceptions are applicable without making certain factual assumptions which could prove erroneous. A plan of the proposed layout is necessary to make this determination.

Moreover, SCE&G believes that such "premises" or "industrial premises" must be the principal buildings used for manufacturing, processing, assembling, fabrication or related

work which is conducted by the business at the plant site. Outbuildings or support facilities would not bring the exception into play because they are not functionally related and subordinate to the "premises" or the "industrial premises" of the business being conducted on the tract of land. SCE&G welcomes the opportunity to meet with Michelin to discuss whether the exceptions may be applicable.

APPENDIX 2

Rate Discrimination and Preference

A basic principle in utility ratemaking is that electric rates should be nondiscriminatory among classes of customers that are similarly situated. §58-27-840, S.C. Code (1976). A corollary of this proposition is that no customer should be preferred over another customer similarly situated. The policies of nondiscrimination in electric utility rates are not unlike the policies underlying the prohibition against noncost justified pricing under the Robinson-Pactman Act.

SCE&G as a competing utility has no desire to harm any person purchasing from a competitor. SCE&G does wish to be able to compete on fair and nondiscriminatory terms with its competitors. Its position in this respect is not unlike that of the injured plaintiff in a price discrimination case. See, e.g., Utah Pie v. Continental Baking, 386 U.S. 685 (1967).

Both SCE&G and Mid-Carolina are subject to the prohibition against discriminatory or preferential tariffs. However, as discussed in the accompanying letter, it is more difficult to obtain a satisfactory remedy against Mid-Carolina. The danger remains that today's preference will be tomorrow's discrimination.

SCE&G believes that Mid-Carolina may be offering Michelin a preferential contract in an attempt to obtain a binding commitment. Michelin must be on guard against "bait and switch" tactis. The proposed rate has not been filed with the PSC as the basis of information available to SCE&G, required by PSC regulations §103-303(D), Vol. 26 S.C. Code. Such contract could well be in violation of Mid-Carolina's mortgage with the Rural Electrification Administration of the United States Department of Agriculture. It should be noted that REA policies as set forth in REA Bulletin, "Large Power Rates and Contracts" 112-6 (9-1-72) in part III-A at p. 1 prohibits preferential rates for large power loads. The bulletin further requires in paragraph IV-A, for REA approval for service to loads with demands of 1,000 KW or more and for service agreements to be written on standard REA contract on REA Form 320 attached which in paragraph 2(d) requires that the seller have a right to pass through the costs of wholesale power. A copy of this bulletin is attached.

As noted in the body of the letter the competitive situation with regard to Mid-Carolina and Central and PSA is muddled because of the problems arising out of the F Power Contract

between Central and PSA. (In this context it should be noted that the "F" Power Contract probably would require PSA consent to the connection of the Michelin load, thereby offering PSA the opportunity again to insist upon an increase in Central rates.)

On the basis of information reported by PSA in its latest Official Statement (Appendix 5 at p. 11 and I-10), the average cost of power to Central under the "F" Contract is approximately the average cost of PSA's industrial service. This suggests that there may be a natural equality between the wholesale and the industrial rate. (At this time SCE&G does not have information concerning the load factor.) Moreover, as a result of issues raised in the case of FPC v. Conway 426 U.S. 271 (1976) in which a wholesale customer of a power company alleged that it had been placed in a "price squeeze" and could not compete at retail with a power company for industrial customers because the power company's wholesale rate to the wholesale customer was in excess of its industrial rate for the power company's retail customers, there has been an additional tendency for the wholesale and industrial rates to achieve identity.

If the current PSA industrial rate were to be applied to Michelin, it is apparent that service from PSA would be substantially higher than service from SCE&G. (Copies of the PSA industrial rate and SCE&G's Rate 23 are attached.) If the "F" Power Contract is revised to become a cost of service agreement as insisted upon by PSA, it would seem that the rate to Central would be approximately the same as the PSA industrial rate. To this cost Central must add a markup on its power costs before it re-sells to Mid-Carolina, which in turn must add a markup before it re-sells to Michelin. Although Mid-Carolina may base its quoted rate on Central's current "F" Contract rate, it would seem, therefore, that Mid-Carolina has offered a preferential contract to Michelin. Even without an increase in the "F" Power Contract Mid-Carolina's rate to Michelin should be at least close to SCE&G's.

The impact of increased rates from PSA to Central and the impact of Central's proposal to own its own generating plants would substantially increase any rate offered by Mid-Carolina to Michelin. In view of the fact that the cooperative standard form of service agreement must include a pass-through for increase of cost of purchased power, it is likely then that the expected cost increases of PSA power to Central will flow through to Michelin.

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