

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION



In the Matter of
SOUTH CAROLINA ELECTRIC & GAS
COMPANY

and

SOUTH CAROLINA PUBLIC SERVICE
AUTHORITY

Docket No. 50-395A

(Virgil C. Summer Nuclear
Station Unit No. 1)



COMMENTS OF THE DEPARTMENT OF JUSTICE
IN RESPONSE TO THE NUCLEAR REGULATORY COMMISSION
ORDER OF JANUARY 15, 1981

The Department of Justice ("Department") hereby submits its
Comments in response to the Nuclear Regulatory Commission's
("Commission") Order of January 15, 1981 ("Order"). The
Commission's Order requested the views of the parties, the
Department and the Commission Staff on the effect on the "issue
before the Commission" of the Power System Coordination
Agreement ("Agreement") that has been reached between South
Carolina Public Service Authority ("Santee Cooper") and Central
Electric Cooperative ("Central"). Order at ~~2~~ 1/

In the Response of the U.S. Department of Justice to the
Commission's Request for Comment On Its "Significant Changes"
Criteria and the Application of those Criteria ("Response"),

1/ This Agreement was approved by the Rural Electrification
Administration on January 19, 1981.

8102100 468

M

DS08
S 0/1

the Department set forth three criteria which it asserted the Commission should use in determining whether "significant changes" had occurred within the meaning of Section 105(c)(2) of the Atomic Energy Act, 42 U.S.C. § 2135(c)(2) ("Act"). Two of these criteria were consistent with those suggested by the Commission in its June 30, 1980 Order. 2/ As to the third criterion, however, the Department disagreed with the Commission. The Department suggested that a criterion must be established which would allow for a determination of significant changes without a preliminary antitrust review since, under the Act, no antitrust review of an application for an operating license could be conducted by the Department without a Commission finding of significant change. The Department proposed that "the licensee's activities or proposed activities be considered significant if, and only if, they constitute substantial changes within the competitive environment (i.e., changes in the structure of the market or in the conduct of the licensee with respect to the construction or

2/ The Department agreed with the Commission that the changes must have occurred since the previous antitrust review of the licensees and that the changes must be reasonably attributable to the licensees.

operation of the licensed plant.)" Response at 5-6. 3/

Santee Cooper & SCE&G urge that the Agreement fully satisfies Central's power requirements; rendering moot any concern over competition and eliminating any possible need for the imposition of conditions on the operation of the Summer plant. In these circumstances they reiterate the view that additional antitrust review would be unwarranted.

Central urges that the Agreement does not obviate all of the competitive concerns that currently exist, citing what it believes are possible problems with the implementation of the Agreement and arguing in effect that even if carried out in its entirety the Agreement would not necessarily cure all of the anticompetitive effects that allegedly result from a concerted refusal to deal with it.

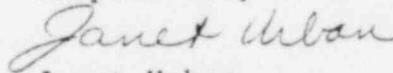
The Department is not in a position to comment on the correct resolution of the factual issues before the Commission, in particular, the question of whether any alleged concerted

3/ In making this determination the Commission should take into account whether an antitrust review would serve no useful purpose and, thus, would be inconsistent with the Congressional intent that antitrust reviews at the operating license stage not be lightly undertaken. Thus, contrary to the contentions in Santee Cooper's response to the Commission's Order, Response of South Carolina Public Service Authority to the Nuclear Regulatory Commission's January 15 Order Requesting Comment on the Agreement between Central and the Authority, 5-6, the Department does not believe that the Commission should request the Department to conduct an antitrust review if it is abundantly clear that an antitrust review would conclude that an antitrust hearing is not necessary.

conduct among the licensees and any other parties has significantly changed the competitive environment since the Commission last examined this matter, and the question of whether the Agreement is sufficient to, in effect, eliminate any such change that may have occurred. 4/

Thus, whether there has in fact been a significant change in the competitive environment appears to turn on disputed factual issues that the Commission itself must resolve. We believe that it is appropriate for the Commission to consider the effects of the Agreement in reaching a determination on the issues before it and on the advisability of an antitrust review in these circumstances.

Respectfully submitted,



Janet Urban
Attorney
Energy Section
Antitrust Division

4/ In its earlier Response the Department focused on 1973 Changes in South Carolina law as a possible origin of significant changes in the competitive environment that might be attributable to one or more of the licensees. Judging from certain of the comments now submitted to the Commission, particularly those of Central that "the 1973 South Carolina territorial statute does not authorize or contemplate . . . allocation [of Central exclusively to Santee-Cooper]," that statute may be of less competitive significance to Central than may have appeared at first blush. The Department's Response did not mean to imply a view that the passage of the 1973 statute compels a factual finding of significant change, or a view on the factual issue of whether that statute should be deemed to be attributable to the licensees. Finally, the Department is not in a position to comment on whether the 1973 statute may have competitive significance to entities other than Central.