

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

In the Matter of:

SOUTH CAROLINA ELECTRIC & GAS )  
COMPANY and )  
SOUTH CAROLINA PUBLIC SERVICE )  
AUTHORITY )  
(Virgil C. Summer Nuclear Station, )  
Unit 1) )

Docket No. 50-395A

REPLY OF SOUTH CAROLINA ELECTRIC & GAS COMPANY  
TO CENTRAL ELECTRIC POWER COOPERATIVE'S  
LETTER OF FEBRUARY 12, 1981

On February 12, 1981, counsel for Central Electric Power Cooperative, Inc. ("Central") sent a letter to the Secretary of the Commission attaching a copy of the final Power System Coordination Agreement ("Agreement") between itself and the South Carolina Public Service Authority ("Authority").

In this letter, Central made several statements reviewing the proceeding, discussing prior submissions of other parties, and urging certain actions on the Commission. This letter should be viewed as an unauthorized pleading, and SCE&G has moved to strike or in the alternative, for leave to reply. If it is to remain on the record, and such leave is granted, there are two points which South Carolina Electric & Gas Company ("SCE&G") believes warrant reply.

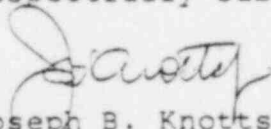
First, we have difficulty understanding how Central can claim the benefits of the Agreement with the Authority and recommend its approval by REA, and then come before this Commission to argue that what it bargained for is "illusory". In technical legal terms, there is in these circumstances an estoppel of Central from challenging the contract it so recently made, and the approval of which it urged on another federal agency, unless it claims fraud or duress, which are not alleged.

Second, as to Central's claim that license conditions are required, it is clear from the Atomic Energy Act and the Commission's practice that license conditions are only appropriate when there is some past conduct which warrants the inference that such conditions are needed to preclude the creation or maintenance of a situation inconsistent with the antitrust laws. Central has yet to make such a threshold showing. It has never alleged, much less shown, any specific transaction in which there has been a refusal to provide so-called power exchange services by SCE&G to Central and/or its members. The Staff stated in its February 10, 1981 comments in response to the Board's January 15 order, that it "has not seen any factual material that would lead to the conclusion that SCE&G is explicitly or constructively refusing, in an anti-competitive manner, to provide Central with power or services." (p. 12). Central itself acknowledges in its January 23, 1981

comments that SCE&G has offered to deal on a case-by-case basis in the area of transmission services and has offered it unit participation. (p. 5-6).

Staff further noted in its February 10 comments that Central has in the Agreement the remedies that have generally resulted from other NRC antitrust proceedings. It is difficult to see why license conditions should be even considered at this stage absent any showing of competitive impact and when the "remedies" that such conditions would impose already exist. Since nuclear plant access and related transactions are no longer a factor in the case, if Central has a grievance regarding specific transactions, the proper forum for its complaint would be the FERC, not this Commission. FERC can now order wheeling, for example, under the PURPA Amendments to the Federal Power Act, should parties be unsuccessful in the future in negotiating voluntary arrangements.

Respectfully submitted,

  
Joseph B. Knotts, Jr.  
Counsel for South Carolina Electric &  
Gas Company

Date: February 20, 1981

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CERTIFICATE OF SERVICE

I hereby certify that copies of "Motion by South Carolina Electric & Gas Company to Strike Letter from Counsel for Central Electric Power Cooperative, Inc. of February 12, 1981 or, in the Alternative, for Leave to File a Reply" and "Reply of South Carolina Electric & Gas Company to Central Electric Power Cooperative's Letter of February 12, 1981" in the above captioned matter, were served upon the following persons by deposit in the United States mail, first class postage prepaid this 20th day of February, 1981:

Chairman Ahearn  
Office of the Commission  
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Washington, D.C. 20555

Commissioner Gilinsky  
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Commissioner Bradford  
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Samuel J. Chilk  
Secretary of the Commission  
U. S. Nuclear Regulatory  
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Washington, D.C. 20555

Docketing and Service Section  
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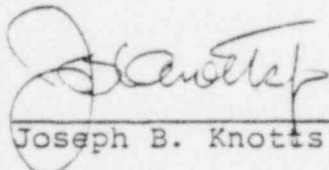
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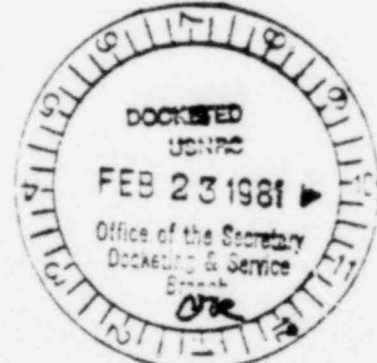
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THOMAS A. ZIERK



December 5, 1980

- \* RESIDENT PARTNERS WASHINGTON OFFICE
- \* RESIDENT PARTNERS LONDON OFFICE
- \* ADMITTED TO THE DISTRICT OF COLUMBIA BAR

Mr. Samuel J. Chilk  
Secretary  
United States Nuclear Regulatory  
Commission  
Washington, D.C. 20555

Re: Niagara Mohawk Power Corporation  
Nine Mile Point Unit #1  
Docket No. 50-220

Dear Mr. Chilk:

This firm represents the above-named licensee in matters before the Nuclear Regulatory Commission.

In a letter dated November 26, 1980 from Victor Stello, Jr., Director of the Office of Inspection and Enforcement, to Niagara Mohawk's President, certain matters were discussed relating to NUREG-0578, "TMI-2 Lessons Learned Task Force Status Report and Short Term Recommendations" and certain actions were taken by Mr. Stello on behalf of the Commission.

Among the many matters discussed in NUREG-0578 was Category A Item 2.1.8.b which relates to the stack monitor for the purpose of measuring certain noble gases which might be emitted from a facility in the event of an incident.

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Mr. Samuel C. Chalk  
December 3, 1980  
Page Two

Niagara Mohawk hereby requests that the acceptance criteria for such monitors be developed and disseminated as soon as possible within the Commission by the Division of Nuclear Reactor Regulation ("NRR") be given to Niagara Mohawk in order that it may better prepare its response to the November 26 letter. In addition Niagara Mohawk requests that the date of such distribution be made available to it.

Very truly yours,

LESCEUR, LAMB, LEIBY & MACRAE

By *Eugene B. Thomas, Jr.*  
Eugene B. Thomas, Jr.  
Partner  
Attorneys for Niagara Mohawk  
Power Corporation

cc: Howard K. Shagat  
Harold H. Denton  
Victor Stello, Jr.  
James J. Cummings