

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Nuclear Regulatory Commission

In the Matter of)
)
ALABAMA POWER COMPANY) Docket Nos. 50-348A
) 50-364A
(Joseph M. Farley Nuclear)
Plant, Units 1 and 2))

AFFIDAVIT OF ELMER B. HARRIS

1. My name is Elmer B. Harris. I am an Executive Vice President and Chief Financial Officer of Alabama Power Company ("APCo"). It is my responsibility to be familiar with the general operations of APCo, and I have overall responsibility for its financial operations. I therefore am intimately familiar with the problems confronting APCo in undertaking to raise funds in the capital markets to finance its capital improvements and operations. I am also active in the preparation of testimony and in supervising the preparation of testimony of others, in APCo rate cases before the Alabama Public Service Commission ("APSC") which actively regulates its rates for retail service and before the Federal Energy Regulatory Commission ("FERC") which actively regulates its rates and prices for wholesale service and interchange transactions with other utilities. I am currently involved in APCo's pending request with the APSC for increased retail rates of approximately \$325 million. I

have observed those proceedings since their inception, including statements made by and attitudes manifested by the three Commissioners comprising APSC as well as certain members of its staff.

2. I have studied the license conditions imposed by the Atomic Safety and Licensing Appeal Board of the Nuclear Regulatory Commission in ALAB-646 (Joseph M. Farley Nuclear Plant, Units 1 and 2, Docket Nos. 50-348A and 50-364A) ("Farley Plant"), and am familiar with certain of the significant effects of such conditions, if implemented.

3. I am also familiar with a proposal submitted to APCo on July 7, 1981 by the Municipal Electric Utility Association of Alabama ("MEUA") (only seven days after the order in ALAB-646) requesting APCo to sell and convey to MEUA or its members an undivided ownership interest of some 20% in the Farley Plant Unit #2 along with other electric plant facilities. This proposal, coming at the time it does, could set the stage for irresponsible contentions before the APSC that the proceeds from the sale of the plant, which MEUA would purchase, would in some way reduce the need for the increase requested in the pending case.

4. The requirement in license condition 2 that APCo offer to sell and convey to Alabama Electric Cooperative ("AEC") an undivided ownership interest in the Farley Plant, operating together with the above-mentioned proposal

from MEUA, could create undue pressure on the APSC to frustrate APCo's attempt to secure needed rate relief. The APSC is composed of three officials who are elected in statewide elections and who face severe political pressure to deny rate relief. These Commissioners have shown that they are sensitive to the concerns of their political constituency. In 1976, an earlier Alabama Commission ("APSC"), in response to a contention that APCo could sell to MEUA and AEC a portion of the Farley Plant then under construction, denied APCo timely rate relief which severely injured its financial position. While such APSC action was effectively reversed through appeals to the courts and subsequent APSC rulings, it created severe financial problems for APCo. License condition 2, if not stayed pending appeal or further review, may be viewed by the APSC as a reason to deny some or all of the rate relief APCo needs, even though such result would be contrary to the evidence in the case and in error. There is an unfortunate precedent for such an untoward action.

5. License condition 2, if not stayed, would also impose severe financial obligations on APCo simply to effect the sale it contemplates. Among the costs associated with such a transaction would be (a) the release of the Farley Plant property from the lien of the first Mortgage Indenture, entered into by APCo with Chemical Bank as trustee for the holders of the more than two billion dollar of outstanding bonds, (b) the negotiation of a contract of sale

and a complex deed of conveyance, (c) the negotiation of a complex agreement providing for the respective rights of the parties in the operation of the plant, (d) the revision of accounting procedures and (e) numerous regulatory filings with APSC, FERC, SEC, as well as this Commission, of which could require active agency proceedings. The costs of these matters will constitute extraordinary, and uneconomic expenditures for APCo to be ultimately borne by its ratepayers or investors. Further, assuming without admitting, that APCo would be able to reacquire the conveyed interest in the Farley Plant in the event of a reversal of such condition 2, the costs of reacquiring the interest in the Farley Plant so sold and conveyed to AEC after reversal on appeal would be additional costs and extremely burdensome to APCo, its ratepayers or investors. APCo will be forced to bear substantial costs in entering these various transactions, none of which would be fair or appropriate should ALAB-646 be held in error as to such condition.

6. Condition 2 fails to provide any explicit opportunity for APCo to obtain a reconveyance of the plant so sold and conveyed following a successful appeal. AEC, operating as a non-profit corporation under Alabama law, has only a relatively small net worth. It obtains practically all of its funds for acquisition of plant by borrowing from the Rural Electrification Administration ("REA") or by borrowing from other lenders with a guarantee of the loan by the

REA. Customarily, AEC conveys a security interest in its acquired facilities to REA or the other lending institutions or agencies from which it borrows. I am advised such lending agencies would take as "bona fide purchasers" for value. In the absence of a stay of condition 2, and, unless satisfactory reservations are provided in such conveyance which would in effect require AEC to reconvey its interest in the Farley Plant to APCo in the case of reversal on appeal, and unless AEC would cooperate in securing a release of such undivided interest from the lien of the security transactions with such lending agencies, it is apparent that APCo would be irreparably injured in that it would have conveyed an interest in the Farley Plant to AEC and yet would be unable to reacquire AEC's portion of the Farley Plant following a determination on appeal that the Atomic Safety and Licensing Appeal Board ("ASLAB") committed error in requiring the sale and conveyance in ALAB-646.

7. License conditions 3 through 7, if not stayed, may create serious problems for APCo in the financial markets. I have reviewed the testimony of Mr. Eugene Meyer, executive vice-president of Kidder Peabody Company, Inc. who testified in this proceeding before the Atomic Safety and Licensing Board, and understand from his testimony that the investment community assumes that a public utility, such as APCo has a stable market for its electric power production. Since the Tennessee Valley Authority ("TVA") episode of the

late 1930's and the subsequent United States Government financed Bonneville Power Administration takeover of power markets in the Pacific Northwest during the 1940 and 1950's, there has been little concern in the investment community with erosion of power supply markets as a result of competition. Rather, the assumption has been that electric utilities coming to the capital markets will be continuing to serve the loads in their respective franchised service areas. Mr. Meyer further testified that if the basis for these assumptions were eliminated, an adverse impact on the financial rating of the utility borrowers would result, and that if this risk again became substantial, affected utilities might be effectively denied access to the financial markets or that their cost of capital would increase. If conditions 3 through 7 were implemented to the point that competition from MEUA or AEC resulted in an erosion of the power sale markets of APCo, additional risks would be perceived by the financial market which could either impede APCo's access to such capital markets or increase its costs in acquiring such capital and the financial integrity of APCo would be adversely impacted.

8. The implementation of license condition 2, during the pendency of an appeal, would not enable AEC to offer its off-system member cooperatives power at lower rates. The charge for power by APCo to these member cooperatives under the wholesale rate, as regulated by the FERC,

is based on APCo's average system cost. Cost under the wholesale rate now and in the immediate future is expected to remain lower than the cost of power which AEC could realize through ownership of a portion of the Farley Plant, even with the tax exemptions and financing subsidies available to AEC because of its status as a non-profit REA borrower. During the appeal of ALAB-646, there is no harm to AEC or its member cooperatives in AEC not being part owner of the Farley Plant.

9. In addition, the sale of an ownership interest in the Farley Plant to AEC pursuant to condition 2, if implemented, will exacerbate AEC's current excess capacity problem. AEC currently has approximately 640 megawatts of capacity which it owns or to which it is entitled, excluding emergency standby power from SEPA. AEC's current load is approximately 425 megawatts. It is my understanding that AEC has sold for one year approximately 25 megawatts of power to utilities in Mississippi which is now being transmitted over APCo's transmission lines to the Mississippi state line. Thus, even with such power sale to utilities in Mississippi, AEC presently has unusually high generating reserves of about 50% of its load.

10. Finally, I have followed in general fashion the events following the incident at Unit No. 2 of the Three Mile Island nuclear plant owned by operating companies of General Public Utilities Corporation. The total cost of

cleanup and other remedial action in connection with such incident is estimated to cost in excess of \$1,400,000,000 compared to the total original cost of the unit of only approximately \$700,000,000. Thus, the cleanup and related costs amounted to approximately 200% of the total original cost.

If such an incident were to occur at the Farley Plant in circumstances in which AEC were a part owner, AEC is not likely to be in position to cover its part of the associated costs. As indicated above, AEC has relatively small net worth reflected on its balance sheet. I have been advised that AEC is required to operate as a non-profit corporation and is not authorized to accumulate funds or financial reserves of the magnitude that would be required to provide for its pro rata share of the costs such as those incurred as a result of a Three Mile Island-type incident. Under such circumstances in which AEC is part owner, APCo would therefore be put in the adverse position of having to cover the entire costs of such an incident even though APCo could own only a portion of the Farley Plant.



Elmer B. Harris

STATE OF ALABAMA)
 :
JEFFERSON COUNTY)

I, the undersigned, a Notary Public in and for said County and State, hereby certify that Elmer B. Harris, Executive Vice President of Alabama Power Company, being duly sworn, signed the foregoing affidavit and states that the information contained in the said affidavit is true and correct to the best of his knowledge.

This the 22nd day of July, 1981.

Paris L. Parrish
Notary Public

My Commission Expires: 6-20-83