

Oct. 12, 1982

Docket No. 50-382A

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Mr. D. L. Aswell, Vice President
Louisiana Power & Light Company
142 Delaronde Street
P. O. Box 6008
New Orleans, Louisiana 70174

Dear Mr. Aswell:

RE: WATERFORD NUCLEAR UNIT NO. 3 -- NO SIGNIFICANT CHANGE FINDING

With reference to the operating license antitrust review of the captioned nuclear unit, the Director of Nuclear Reactor Regulation has made a finding, in accordance with Section 105c(2) of the Atomic Energy Act of 1954, as amended, that no significant (antitrust) changes in the licensee's activities or proposed activities have occurred subsequent to the previous construction permit review.

The Director's initial finding is subject to reevaluation if a member of the public requests same in response to publication of this finding in the Federal Register. A copy of the notice that is being transmitted to the Federal Register and a copy of the staff review are enclosed for your information.

Sincerely,
/s/ A. L. Toalston

Argil Toalston, Chief
Antitrust and Economic Analysis
Branch
Division of Engineering

Enclosures:

- 1. Federal Register Notice
- 2. Staff Review

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DATE	7/29/82	9/13/82				

WATERFORD UNIT NO. 3
DOCKET NO. 50-382A
OPERATING LICENSE REVIEW

FINDING OF NO SIGNIFICANT ANTITRUST CHANGES

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A. INTRODUCTION

Section 105c(2) of the Atomic Energy Act of 1954, as amended, provides for antitrust review of an application for an operating license if the Commission determines that significant changes in the licensee's activities or proposed activities have occurred subsequent to the previous construction permit review. The Commission has delegated authority to make the "significant change" determination with respect to nuclear reactors to the Director, Office of Nuclear Reactor Regulation.

The Commission in its recent Summer¹ decision suggested specific criteria to be followed in making a significant change:

"The statute contemplates that the change or changes (1) have occurred since the previous antitrust review of the licensee(s); (2) are reasonably attributable to the licensee(s) and (3) have antitrust implications that would most likely warrant some Commission remedy."

Based upon examination of the events that have transpired since the initial antitrust review and issuance of the Waterford 3 construction permit, it is the staff's ² conclusion that no "significant changes," as described above, have occurred subsequent to that time.

B. STRUCTURE OF THE ELECTRIC UTILITY INDUSTRY IN LOUISIANA

There are five investor-owned electric utilities located fully or partially in Louisiana. These are Central Louisiana Electric Company, Inc., with a

¹ 11 NRC 817,824 (1980). See also 13 NRC 862 (1981)

² The Antitrust Sections of the Antitrust and Economic Analysis Branch and the Office of the Executive Legal Director.

peak load of approximately 1100 MW; Louisiana Power and Light Company (LP&L), with a peak load of approximately 4900 MW; New Orleans Public Service Inc. (NOPSI), with a peak load of approximately 1000 MW; Southwestern Electric Power Company with a peak load of approximately 2300 MW; and Gulf States Utilities Company with a peak load of approximately 5300 MW. These investor-owned utilities have extensive generation, transmission and distribution systems and are strongly interconnected with each other and with other electric utilities in bordering states. LP&L and NOPSI are operating subsidiaries of the Middle South Utilities, Inc. (MSU) holding company. Other operating subsidiaries of MSU are Arkansas Power and Light Company, Arkansas-Missouri Power Company and Mississippi Power and Light Company.

There are several rural electric cooperatives in Louisiana, many of which are served from LP&L's Transmission system but contractually receive their power supply from Cajun Electric Power Cooperative Inc. (formerly Louisiana Electric Cooperative), a generation and transmission cooperative. Cajun has a peak load of approximately 1000 MW and 230 MW of gas fired generation and two recently completed 540 MW coal-fired generators.

Municipal electric utilities in Louisiana with electrical connections with LP&L are as follows:³

- Houma Light & Water Plant
- Jonesville Light & Power Department
- Minden Utilities System
- Monroe Utilities Commission
- Plaquemine City Light & Water Department
- Ruston Utilities System
- Vidalia Electric Department
- Winnfield Utilities Department

³ A listing of municipal electric utilities in Louisiana whose power requirements are not supplied by LP&L, along with their approximate peak loads, self-generation and principal wholesale supplier is shown in Appendix 1.

The following municipal utilities are now considering or have considered interconnecting with LP&L:

Franklin Municipal Power Plant
 Morgan City Municipal Power Plant
 Natchitoches Light and Water Department

The following former municipal electric utilities which were interconnected with LP&L have entered into agreements providing for the operation of their systems by LP&L with an option of ultimate acquisition of the systems by LP&L:

Lake Providence Electric Department
 Thibodaux Municipal Light and Power Plant
 Homer Light and Water Plant
 Rayville Light Plant
 Jonesborro Power and Light Department

An application filed with the Securities and Exchange Commission by Monroe Utilities Commission for a similar operating arrangement with LP&L with an option of ultimate acquisition is still under consideration by that agency.

Of the above municipals, Jonesville, Vidalia and Winnfield have minimal generation of their own and purchase full requirements power from LP&L. Although Minden has generation equal to about half of its peak load, it also, until recently, purchased part of its power from LP&L under a full requirements rate schedule. Minden now generates part of its power, purchases some from Ruston and some from LP&L. The other municipals have generation in excess of their peak loads.⁴ Essentially all of the municipal generation is from relatively small oil or gas fired units.

The Electric Power Systems Association (EPSA), a planning group, consisting initially of the Cities of Alexandria, Homer, Houma, Jonesboro, LaFayette,

⁴ Appendix 2 summarizes the approximate load, generation and type of service the municipals have received in the past and are now presently receiving from LP&L.

Plaquemine, Rayne, Rayville, Ruston, Thibodaux and Monroe, was formed (about 1975) so that its members could pool their resources in planning for their future power needs. Since its formation, Monroe has withdrawn its membership from EPSA. The electric systems of Rayville, Homer and Thibodaux and Jonesboro are being operated by LP&L.

In elections on December 8, 1979, residents of six Louisiana cities voted to dissolve EPSA which was merely a planning group and join the Louisiana Energy and Power Authority (LEPA). Since that time four additional cities have joined LEPA. The ten members are as follows:

Alexandria	Winnfield
Houma	Opelousas
Jonesville	Plaquemine
Lafayette	Rayne
New Roads	Morgan City

Authorization to form LEPA came in July of 1979 when Louisiana Governor Edwin W. Edwards signed legislation allowing municipally owned electric utilities to join together to finance and construct generating facilities. Prior to that time, legislation permitted the cities to individually form Power Authorities thereby facilitating joint ownership of generating facilities with investor owned utilities. However, this legislation did not enable the municipals and IOUs to join together to finance and construct joint facilities. The 1979 legislation paved the way for the group to elect officers, hire a general manager, and proceed with an engineering study of power supply alternatives. LEPA has henceforth found a coordinating partner in Central Louisiana Electric Company (CLECO) and has reached agreement to purchase a 20% ownership entitlement in CLECO's 530 MW Rodemacher fossil fired plant. LEPA is also considering building transmission where existing transmission is not available and possible construction of lignite fired generation.

C. THE WATERFORD 3 ANTITRUST PROCEEDING

Louisiana Power and Light Company (LP&L) submitted its application for a construction permit on December 31, 1970 and submitted antitrust information as Amendment No. 2 on June 11, 1971. The Waterford 3 unit was scheduled for operation in 1977. During the construction permit antitrust review, the Attorney General furnished advice letters to the Commission on three different occasions - August 18, 1972, March 30, 1973, and November 27, 1973. The first advice letter recommended that no hearing was required if nine separate commitments agreed to by LP&L were attached as conditions to the Waterford license. The second advice letter stated that the Department of Justice had learned that its interpretation of the license commitments differed from that of LP&L and that certain additional explanatory notes to the commitments would be needed to avoid a hearing. At that point LP&L had not yet agreed to the explanatory notes. The third advice letter indicated that the Department of Justice was unable to come to an understanding with LP&L and that the Department was withdrawing its original no-hearing advice and was now recommending a hearing.

The Department stated that it would not attempt to set forth in detail all of its differences with LP&L. The Department stated that the Applicant would have to agree to reserve sharing relief and either third party wheeling or coordinated development and that the Applicant was adamant in its opposition to wheeling. The Department stated:

"Since without wheeling, the smaller entities could not coordinate generation capacity planning with each other, the only alternative which would provide effective relief was coordinated development between them and the Applicant."

Following the Federal Register Notice of the first advice letter, various entities petitioned for hearing and leave to intervene on the basis that the nine commitments agreed to by LP&L were inadequate. Petitions were received from the Cities of Lafayette and Plaquemine, Louisiana (Cities), Cajun Electric Power Cooperative, Inc. (Cajun), then called Louisiana Electric Cooperative, Inc. (LEC), the Louisiana Municipal Association Utilities Group (LMAUG) and

the Dow Chemical Group (Dow). The Commission established an Atomic Safety and Licensing Board (ASLB) with instruction to report to the Commission on the need for a hearing. The ASLB issued a Memorandum and Opinion on April 24, 1973 in which it concluded that there was no meeting of the minds and hence no agreement among Justice and LP&L about the proposed license conditions and that the conditions would not provide the relief the other parties asserted was needed.

The principal issue identified by the ASLB in April of 1973 was:

Whether Applicant alone or together with others had the ability to hinder or prevent:

- (1) smaller electric entities from achieving access to the benefits of coordinated operation either among themselves or with Applicant or other electric utilities;
- (2) smaller electric entities from achieving access to the benefits of economy of size of large electric generating units by coordinated development either among themselves or with Applicant or other electric utilities.

The ASLB stated that all of the petitions for intervention should be granted subject to the amendment of some of them with respect to certain deficiencies.

By order of September 28, 1973, the Commission remanded the case to ASLB for further proceedings with direction to the staff to use all appropriate means to assist in the search for a voluntary solution. Thereafter, negotiations were carried out among the staff, Justice, LP&L, and the intervenors toward amending the LP&L license commitments in a way that would be acceptable to all parties. After extensive negotiations and separate motions for summary disposition - c.e by the staff and one by LP&L - agreement was reached by all parties except the Cities.

The ASLB, by order of June 20, 1974, ordered the Cities to show cause why the relief afforded by the negotiated license conditions would not be adequate. After hearings on the "show cause" order, the ASLB suggested changes to the proposed license conditions which it said would resolve the matter if LP&L accepted the changes. LP&L accepted the changes, and the Construction Permit CPPR-103 was issued on November 14, 1974 with license conditions as modified by the ASLB.

Following issuance of the Construction Permit, the Department of Justice filed an Exception to the ASLB modifications on the basis that the modifications decreased the effectiveness of the license conditions previously agreed to by the Department. Subsequently, an Atomic Safety and Licensing Appeal Board (ASLAB) considered the matter and suggested further license conditions changes to which all parties agreed. CPPR-103 was then amended in accordance with Decision ALAB-258 dated February 3, 1975.⁵

Briefly, the license conditions required LP&L to interconnect and share reserves, provide emergency and maintenance power, purchase and sell unit and deficiency power, transmit power over its transmission facilities, sell power under its rate schedules, and offer unit power access in Waterford 3 and in future nuclear units. For future nuclear units, an offer of ownership participation would be required if joint action legislation was passed in the state.

D. EVENTS SUBSEQUENT TO WATERFORD CONSTRUCTION PERMIT REVIEW

Following the Waterford construction permit review, several events have occurred that have combined to decrease the availability and increase the costs of the power supply sources of the municipal electric utilities in Louisiana. This squeeze resulted in financial pressures on these municipalities to either raise their rates substantially to cover the costs of up-grading their generation facilities and paying for the increased costs of new power supply or enter into arrangements with LP&L for the operation of their systems on a temporary or permanent basis.

⁵ A copy of the amendment and the antitrust license conditions prior to the amendment are attached herewith as Appendix 3.

During the construction permit antitrust review, the intervenors, NRC staff and the Department of Justice believed that power supply options should be opened up to those electric utilities in Louisiana that were not large enough to individually construct their own generation or transmission facilities. Access to economically-sized nuclear units, to transmission service, and to other coordinating services such as emergency and maintenance power was believed to be essential in allowing these small utilities to develop an economic power supply. At that time, little emphasis was placed on full requirement or partial requirement wholesale service because it was reasonably priced and was already available to those electric utilities that wanted it. Staff is unaware of any instances in which LP&L had refused to provide such wholesale service.

Following the construction permit review, wholesale service, particularly partial requirement service, became very important when natural gas, on which many of the smaller utilities depended for firing their generating units, was curtailed. At the same time, the price of light weight fuel oil, which served as an alternative to the natural gas, climbed rapidly following the 1973 oil embargo by the OPEC cartel. LP&L was also impacted by the shortage of natural gas and oil, but to a lesser extent than the smaller electric utilities because of its greater diversification of fuel supply sources and its more efficient generating units.

Moreover, after 1973, labor and equipment costs escalated rapidly. As a result of the rapidly increasing fuel costs and construction costs, the incremental cost of power became significantly higher than the system average cost of power. Thus, whereas the incremental cost of power may have appeared attractive as compared to system average (wholesale power) cost in 1974 when the Waterford construction permit was issued, the reverse was true a few years later.

The events discussed above form the framework against which LP&L's activities vis a vis its smaller competitors will be measured in the following analysis. These changes in the market place have occurred as a result of market forces which were beyond LP&L's control. Similarly, decisions made by LP&L's competitors during the review period to deal with the changes reflect their determinations and were beyond LP&L's control. The following discussion should be considered in that context.

1. Cancellation of St. Rosalie Units 1 and 2

On July 3, 1974, LP&L submitted early antitrust information with respect to its St. Rosalie Generating Station, Units 1 and 2. These units had projected operation dates of December, 1982 and June, 1984, respectively. This initial submittal was followed by a formal application on December 20, 1974. LP&L cancelled the unit on June 25, 1975 prior to receipt of the Attorney General's antitrust device with respect to that application.

Various municipal and cooperative electric utilities were advised by letter from LP&L on or about July 7, 1975 of the cancellation of St. Posalie. In this same letter, LP&L inquired as to whether the utilities were interested in unit power from Waterford 3.⁶ Some of the responses inquired whether LP&L would be willing to allow joint ownership in Waterford 3 in view of passage of legislation in Louisiana providing for joint ownership.⁷ LP&L declined to allow joint ownership, stating that Waterford 3 was fully committed and that its license conditions required it to consider joint ownership only in future units.⁸

A formal request by LP&L of interest in unit power participation in Waterford 3 was sent to 27 municipal electric generating entities and one cooperative

⁶ See Appendix 4 attached of a typical letter from Mr. E. A. Rodrigue, President of LP&L, to Mr. M. L. Burgin, General Manager of Cajun Electric Power Cooperative, Inc.

⁷ See Appendix 5 attached for an example (letter dated October 6, 1975, to Mr. E. A. Rodrigue from Mr. S. J. Richard, Director of Utilities of the City of Lafayette).

⁸ See Appendix 6 attached for an example (letter dated October 6, 1975 from Mr. E. A. Rodrigue to the Mayor of the City of Monroe).

generating entity by registered mail dated August 27, 1975.⁹ None of the municipal or cooperative electric utilities chose to purchase unit power from Waterford.

Staff is unaware of any analysis by the municipals or cooperatives as to whether ownership participation in St. Rosalie would have been an economic option. In staff's opinion, it is unlikely that such an analysis was ever made as the cancellation of St. Rosalie occurred at about the same time as joint legislation was passed. As to River Bend¹⁰ only Cajun in Louisiana (and Sam Rayburn Dam Electric Cooperative in Texas) chose to participate. Thus, it is unlikely that the other municipals or cooperatives would have chosen to participate in St. Rosalie if it had not been cancelled. Therefore, the cancellation had no direct effect on the economic viability of the cooperatives or municipals.

2. Wholesale Service By LP&L

In 1970, LP&L entered into an agreement with Louisiana Electric Cooperative, Inc. (LEC) (now Cajun Electric Power Cooperative, Inc.) to serve the delivery points of Cajun's distribution cooperatives under Rate Schedule REA-8A.¹¹ This provided for firm full-requirement service to Cajun's distribution cooperatives for a contract period of ten years. This wholesale service was to be replaced effective May 29, 1980 by an interconnection agreement between LP&L and Cajun.¹² The interconnection agreement contains five service schedules

⁹ See Appendix 7 attached of LP&L's answer, page B-8, in response to NRC Regulatory Guide 9.3.

¹⁰ River Bend is a nuclear plant in Louisiana being constructed by Gulf States Utilities. St. Rosalie was to be a larger plant than River Bend (1164 MW versus 934 MW) with possibly a later starting time of about one year such that the costs per MW of the two units would presumably have been comparable.

¹¹ See Appendix 9 for first page of the agreement with LEC and Schedule REA-8A.

¹² See Appendix 10.

providing for Emergency Assistance, Supplemental Power, Surplus Power, Economy Energy and Transmission Service.

When this interconnection agreement went into effect, Cajun ceased to receive firm wholesale power from LP&L. Cajun has added additional generation and has become self sufficient in its generation needs and will use the interconnection agreement only for coordination services such as emergency and maintenance backup, transmission service to its distribution cooperatives and for occasional power purchases or sales as required to balance out its generation shortages or excesses from time-to-time.

The discontinuance of firm wholesale system requirement power from LP&L was not as detrimental to Cajun as to municipal systems in Louisiana. This is because Cajun is of sufficient size that it has been able to plan and construct large scale base load generating units of its own and has transmission arrangements with Gulf States Utilities to deliver this power to its members. Cajun's ability to plan and build large units is exemplified by its two recently completed 540 MW coal fired units and a third 540 MW unit planned for later operation. Still, it was alleged that when the first two units were to go into service, Cajun's wholesale cost would double.¹³

This is not unexpected because when a municipal or cooperative electric system first enters the generation supply business its costs reflect the higher investment and interest costs of today as compared to the lower embedded costs of previous years enjoyed by an electric utility that has been in the business for several years. Over the long term, the costs for the municipal or cooperative electric system is expected to approach those of the utility that has been in business for some time as the latter's proportion of embedded costs decrease.

¹³ See Appendix 11, December 20, 1978 letter to Mr. John O'Leary, Deputy Secretary, Department of Energy from Dalton L. Knight, Vice President, National Rural Electric Cooperative Association.

The costs of a municipal or cooperative system may even become lower in the long term as compared to an investor owned utility because of the former's non-profit type of operation.

At the time of the construction permit antitrust review for Waterford 3, LP&L provided various power supply services to municipal electric utilities as summarized in Appendix 2. It provided full requirements service to municipal electric utilities under its rate schedule LPU-7.¹⁵ For municipals with minimal amounts of self-generation, LP&L provided full requirement service under its rate schedule LPU-7 and attached rider.¹⁶ This rider gave credit for self-generation up to 1 MW, provided that the generation was kept in operable condition and was only operated during periods of emergency or as requested by LP&L.

At the time of the construction permit antitrust review, municipals interconnected with LP&L with self-generation in excess of their peak demand requirements, could obtain emergency assistance under LP&L's rate schedule EAS-2.¹⁷

In 1975, LP&L entered into an agreement with the City of Minden¹⁸ to sell it wholesale power under LP&L's rate schedule LPU-7. This type of power was made available to Minden even though Minden did not take full requirement service from LP&L. A minimum charge based on 540 kwh per kw of demand assured that the service would be taken at a high load factor. Although the contract was to run through June 1, 1980, it was withdrawn on May 15, 1979 and replaced by an inter-connection agreement resulting in a tripling of Minden's wholesale power costs.¹⁹

¹⁵ See Appendix 12.

¹⁶ See Appendix 13 for Rider Schedule 1.

¹⁷ See Appendix 14.

¹⁸ See Appendix 15.

¹⁹ Telephone contact with personnel at the Federal Energy Regulatory Commission. The reasons for the replacement were not known.

Following the completion of the Waterford construction permit antitrust review in February of 1975, LP&L entered into interconnection agreements with the Cities of Ruston and Monroe, and the Towns of Rayville, Homer, and Lake Providence.²⁰ Since provided under the interconnection agreements differed substantially from the firm wholesale service provided to Minden under the LPU-7 rate schedule. The interconnection agreements²¹ contained seven service schedules providing for Emergency Assistance, Reserve Capacity, Supplemental Power, Surplus Power, Economy Power, Long Term Transmission Service and Short Term Transmission Service. The service schedules do not provide for firm system requirement power at average system cost as did the Minden agreement.

In a proceeding before the Federal Energy Regulatory Commission (FERC) it was alleged that LP&L would not sell firm base load power on an average system cost basis to the City of Monroe.²² Also, a consultant's report²³ to Monroe states that service only under the interconnecton agreement would be provided, and a letter to the Department of Energy alleges that LP&L would no longer furnish wholesale power to electric cooperatives after 1979.²⁴ Staff notes that although LP&L apparently would not voluntarily provide such service, it was required to in at least one instance by the Federal Energy Regulatory Commission.²⁵

20 The agreements with Homer, Lake Providence and Rayville have since been cancelled as LP&L is now operating these systems with an option to purchase the systems. Similarly, LP&L is presently operating the Monroe system under an emergency operating agreement and has applied to the Securities and Exchange Commission for permanent operation with an option to purchase that system.

21 See Appendix 16.

22 Page 5 of June 8, 1978 complaint by Concerned Citizens Against Power Monopoly filed before the FERC in Docket No. EL-78-30. See Appendix 17.

23 Page 18 of October 4, 1976 report by Ford, Bacon & Davis. See Appendix 18.

24 See Appendix 11.

25 Order dated December 11, 1981, in Docket Nos. ER-81-457 and EL-81-13.

The interconnection agreements described previously provide for sales only at incremental cost on a non-firm basis. In its filing with the Federal Power Commission, now the FERC, LP&L described this latter type of power as follows:

"SERVICE SCHEDULE 'C'", "Supplemental Power" provides supplemental power to either party desiring to purchase supplemental power and energy from the other when the supplying party has such power and energy available, which contracts for such power and energy in accordance with the terms of this Agreement."²⁶

In addition to a monthly demand charge, the Interconnection Agreement contains an energy charge as follows:

"The rate for energy shall be the greater of the following:

- (a) 6.0 mills per kilowatt-hour per month for all energy delivered, or
- (b) (the incremental cost per kwh of fossil fuel) plus 4 mills per kwh times 1.06."

Service based on this type of incremental cost is not economical for base load power. In particular, it is noted that the rate is based on the cost of fossil fuel, nuclear power is not considered in deriving the rate.

Staff understands that Counsel for LP&L has taken the position at FERC that the Waterford 3 antitrust license conditions prohibit the sale of wholesale power at average system cost. In support of this contention, antitrust license condition number 3 has been cited:

- (3) The Applicant will purchase (when needed) or sell (when available) "unit power" or "deficiency power" at mutually agreed upon delivery points on or adjacent to its transmission system from or to any entity engaging in or proposing to engage in electric

²⁶ See Appendix 19 showing August 18, 1976 letter from W. C. Montgomery, Director of Rates and Research to Kenneth F. Plumb.

generation and/or bulk power purchases at the cost (including a reasonable return) of new power supply, as distinguished from average system cost, when such transaction would serve to reduce the overall cost of new bulk power supply for itself and the other participant to the transaction. (Emphasis added)

However, antitrust license condition number 6 states:

- (6) The applicant will enter into arrangements mutually agreed upon for the sale of power and energy under its effective [rate schedule] tariffs to any entity that owns an electric distribution system and has or may feasibly have a physical interconnection within the State of Louisiana. In connection with such arrangements, the applicant shall not be required to construct facilities which will be of no demonstrable present or future benefit to the applicant.

Although license conditions (6) does not state that the sales would be at average system cost rather than incremental cost, it is noted that:

- (a) license condition (6) provides an additional and different type of service than license condition (3), and
- (b) LP&L's effective rate schedule for sales to distribution systems, i.e., LPU-7, was based on system average costs at the time of the construction permit review.

Thus, staff does not believe that wholesale power at average system cost is inconsistent with the Waterford 3 antitrust license conditions, if FERC finds such a rate is appropriate.

Many self-generating entities have been hit with high fuel costs before they were able to plan and construct new base load generator. These factors were brought out in a memorandum to the mayor of the City of Monroe from Mr. Brown, the Chairman of the Energy Committee. In summarizing a consultant's report, Mr. Brown notes:

"Fuel cost is our present problem. The technology of nuclear and coal utilization mentioned is beyond our financial capacity.

"The analysis in this paragraph of joint participation does not sound hopeful. The time element as stated by Ford, Bacon & Davis,²⁹ is ten (10) years. This would throw it totally out of the picture."

Similarly, as LEPA was being formed, Jonesboro Mayor Richard Zuber recommended to city voters the sale of the Jonesboro electrical system to LP&L after concluding that LEPA would have saved the city utility five or six years previously but that it was too late then - citing Jonesboro's high rates resulting from exorbitant fuel expenses.

In 1975, entities with minimal generation received wholesale power from LP&L under rate schedule LPU-7. An attached rider to the schedule gave them a credit for their own generation for those months during which the generation was not operated as well as for those months when it was operated at the request of LP&L during times of emergency. The rider contains the following clause:

"Applicable to Rate Schedule LPU-7 when Customer owns and maintains in operating condition generating equipment that can be operated at any time."³⁰

The Rider to LPU-7 containing the above clause had been in effect since 1964. Until recently, LP&L never enforced the clause regarding maintaining the equipment in operating condition. Lately, LP&L cancelled the Rider credit on those units that were not in operating condition until those units are put back into operating condition and requested retroactive charges from 1969 to 1979.³¹ Whether LP&L, in acting to terminate the Rider credit

²⁹ See Appendix 21.

³⁰ See Appendix 13 attached, Emergency Plant Operations, Rider Schedule 1 to Rate Schedule LPU-7.

³¹ See September 13, 1979 letters from LP&L to the Mayors of the Towns of Vidalia, Jonesville, and Winnfield, Appendix 22.

³² Telephone conversation with personnel of the Federal Energy Regulatory Commission.

with respect to these units, was acting in a reasonable manner has been resolved by settlement or litigation at FERC. Staff understands³² that LP&L has settled with Vidalia for half the back charges, has replaced its LPU-7 type service to Jonesboro with an interconnection agreement based on incremental rates, and filed to replace its LPU-7 type service to Winnfield with a similar interconnection agreement. The latter was contested at the Federal Energy Regulatory Commission (FERC) and after

extensive litigation led to an order by FERC to provide wholesale service at fully allocated costs.³³

Although LP&L's withdrawal and attempted withdrawal of wholesale power at average system cost has impacted adversely, at least temporarily, on municipal and cooperative systems in the area, staff does not consider this action as meeting the Commission's criteria for a significant change determination. Staff considers that the present Waterford 3 antitrust license conditions require LP&L to provide wholesale service and that the establishment of the appropriate rates thereof is under the jurisdiction of the Federal Energy Regulatory Commission (FERC).

Staff believes that any remedy addressing the rates for firm wholesale service can more appropriately be resolved as in the case of Winnfield before the Federal Energy Regulatory Commission (FERC). Similarly, in Opinion No. 57, the FERC rejected the proposal of Florida Power and Light to limit the availability of firm wholesale requirements to certain named and existing customers. That opinion was upheld in Opinion 57-A.³⁴ Another restriction on firm wholesale power availability was resolved by FERC in Central Vermont Public Service Corporation by an order issued

³² Telephone conversation with personnel of the Federal Energy Regulatory Commission.

³³ Order dated December 11, 1981 in Docket Nos. ER 81-457 and EL 81-13.

³⁴ Issued October 4, 1979 in Docket Nos. ER-78-19 (Phase 1) and ER-78-81.

³⁵ See Appendix 29.

January 26, 1981 in Docket No. EL 80-5.³⁵ Staff believes that the issue of firm wholesale power from LP&L is similar to the above cases.

3. Acquisition of Municipal Electric Utilities

Subsequent to the Waterford 3 construction permit review, LP&L has executed Operating Agreements with the option of ultimate acquisition³⁶ of the electric facilities with the Towns of Jonesboro, Lake Providence, Homer, Thibodaux, and Rayville.³⁷ LP&L is also operating the electric system of the City of Monroe under an Emergency Interim Agreement³⁸ and has applied to the Securities and Exchange Commission for permission to enter into a permanent Operating Agreement with the option of purchasing that system.

Staff is unaware of any organized opposition to LP&L's takeover of Jonesboro, Lake Providence, Homer, Thibodaux, or Rayville. In answer³⁹ to a staff question regarding any organized opposition to these arrangements, LP&L's reply indicated that the voters of the towns heavily favored the arrangements. However, there has been considerable controversy regarding the proposed takeover of Monroe's electric utility system by LP&L. Although the citizens voted approximately 7 to 1 to enter into the Operating Agreement,⁴⁰ there have been complaints by "Concerned Citizens Against Power Monopoly" filed before the Federal Energy Regulatory Commission⁴¹ and the Securities and Exchange Commission.⁴² It is understood that these complaints have not been resolved as yet.

³⁶ See Appendix 13 for example of Securities and Exchange Commission notice and copy of the agreement with the Town of Homer.

³⁷ LP&L response p. A-6 to NRC Regulatory Guide 9.3 and informal staff inquiry to Securities and Exchange Commission.

³⁸ See Appendix 24.

³⁹ P. 7 of December 5, 1978 letter to the NRC from Mr. D. L. Aswell of LP&L. See Appendix 25.

⁴⁰ P. 8 of December 5, 1978 letter to NRC from Mr. D. L. Aswell of LP&L.

⁴¹ Complaint dated June 8, 1978, Docket EL-78-30, attached as Appendix 17.

⁴² Protest dated May 15, 1978, Docket No. 70-6147, attached as Appendix 26.

A letter from the Department of Energy requested the NRC to consider, among other things, the changed fuel situation, the apparent refusal by LP&L to sell partial requirements firm power and the lease-purchase agreements of LP&L with its municipal competitors. The letter stated:

"In light of both NRC's previous experience concerning the competitive relationships among Louisiana electric utilities and its ongoing OL antitrust reviews concerning LP&L and MP&L,⁴³ a separate investigation by DOE would be unnecessarily duplicative."

As discussed previously, documentation indicates that the reason Monroe desired to sell its system was (1) high fuel costs, (2) unavailability from LP&L of wholesale for resale service at average system costs, (3) the length of time before other sources of economic base load power would be available and (4) recommendation by consultants that Monroe sell its facilities and (5) a vote by the citizens of Monroe in excess of seven to one in favor of the sale.

While the purchase of municipal electric systems by LP&L may have potential antitrust implications, in a broad legal analysis, the staff believes that these purchases approved by the citizenry and the Securities and Exchange Commission are not significant within the NRC's jurisdiction as described on page one supra.

4. Louisiana Electric Power Association

The emergence of the Louisiana Electric Power Association (LEPA), after state legislative action in 1979, has opened up opportunities for municipal electric

⁴³ Letter dated July 19, 1979 to Joseph M. Hendrie from John F. O'Leary. See Appendix 27.

utilities in Louisiana to jointly plan and construct their own power supply resources. Although LEPA was too late to save some municipals such as Jonesboro from acquisition by LP&L, the organization appears to now be viable and growing. It has recently acquired additional members, is acquiring ownership participation in large base load generation facilities, and is exchanging power among its members using the transmission facilities of LP&L and others. Staff discussion with the General Manager of LEPA indicates that although there are still some problems to be worked out with LP&L regarding its transmission service schedules, particularly the scheduling of power transfers, that LP&L's wholesale power costs are rapidly approaching those available to the cities from other sources (primarily because the expiration of some of LP&L's low cost gas contracts). The above factors reinforce staff's belief that the changes that have occurred since the CP antitrust review regarding LP&L's purchases and wholesale power policies are not significant under the Commission's criteria.

E. SUMMARY AND CONCLUSIONS

At the time of the Waterford construction permit antitrust review, LP&L was furnishing wholesale power at system average cost to municipals and cooperatives having minimal or no self-generation. Those municipals having self-generation were looking forward to future economic base load generation from nuclear and other large generating units in which they planned to obtain access from LP&L or through coordination services supplied by LP&L. The license conditions negotiated by the parties and accepted by the ASLB contained provisions for access to nuclear generation, coordination services, and wholesale power services from LP&L.

Following the construction permit review of Waterford 3, the municipals and cooperatives declined unit power purchases from Waterford and pursued instead interconnection and coordination arrangements with LP&L. The interconnection contracts provided for power only on a non-firm basis at LP&L's incremental cost of fossil fuel. Meanwhile the fuel situation worsened such that operation of oil fired municipal generation became uneconomical

and alternatives for future generation were too distant in the future to be of immediate advantage. Therefore, many of the self-generating municipals, faced with higher fuel costs and rising labor and equipment costs required to maintain their systems, entered into agreements for immediate operation and ultimate purchase of their systems by LP&L.

The cooperative and municipals with minimal self-generation fared better. Cajun continued to receive its power requirements at LP&L's system average cost. Vidalia, Winnfield, and Jonesboro continued to receive their full requirements at LP&L's system average cost and in addition received some credit for generation which was not running. Minden received some baseload power at LP&L's system average cost.

Recently, LP&L has 1) withdrawn the firm wholesale power from the cooperatives and from Minden, 2) ceased to provide credit to Vidalia, Winnfield and Jonesboro for their inoperable generation, and 3) requested retroactive payments from these entities dating back to 1969. The effect of these actions was to dramatically increase the operating cost of these utilities with the resulting pressures to enter into agreements with LP&L to operate their systems.

The above factors have made the provisions of wholesale for resale power to full and partial requirement customers of importance to their survival to a degree that did not exist during the time of the Waterford construction permit review. This is evidenced by LP&L's purchase of several municipal systems caused in part by their high production costs as compared to direct service by LP&L.

With respect to the purchases by LP&L, staff believes that these purchases, approved by the citizenry and the Securities and Exchange Commission, do not provide a basis for concluding that a significant change has occurred since the construction permit review. The staff also believes that the questions dealing with firm wholesale service at average system cost can more appropriately be resolved before the Federal Energy Regulatory Commission. Similar wholesale disputes involving LP&L were resolved before

that agency in Docket No. EL 80-5, in combined Docket Nos. ER-81-457 and EL-81-13, and in combined Docket Nos ER-78-19 (Phase 1) and ER-78-81. Further, the unavailability of firm wholesale power at average system cost from LP&L has been counter-balanced since the CP antitrust review by the emergence of the Cajun Electric Power Cooperative and the Louisiana Energy and Power Authority. These joint action agencies have the potential of increasing competition in the area of bulk power supply by expanding the opportunities available to cooperatives and municipals to work together independently of LP&L in establishing economic power supplies. For these reasons, the changes that have occurred since the construction permit antitrust review are not significant in the context of 105c of the Atomic Energy Act, as amended, and do not warrant action by the Nuclear Regulatory Commission.