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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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| In the Matter of | ) | |
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| OHIO EDISON COMPANY | ) | |
| | ) | |
| (Perry Nuclear Power Plant, Unit 1) | ) | |
| and | ) | Docket Nos. 50-346A<br>50-440A |
| THE CLEVELAND ELECTRIC ILLUMINATING COMPANY | ) | |
| THE TOLEDO EDISON COMPANY | ) | |
| | ) | |
| (Perry Nuclear Power Plant, Unit 1, and Davis-Besse Nuclear Power Station, Unit 1) | ) | (Applications for Suspension of Antitrust Conditions): ASLBP No. 91-644-01-A |

# ALABAMA ELECTRIC COOPERATIVE'S COMBINED CROSS-MOTION FOR SUMMARY DISPOSITION AND RESPONSE TO APPLICANTS' MOTION FOR SUMMARY DISPOSITION

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March 9, 1992

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## I. INTRODUCTION

Alabama Electric Cooperative, Inc. (AEC), a limited intervenor in this proceeding, requests this Atomic Safety And Licensing Board (Board) (1) to deny Applicants' Motion as described below, (2) to deny Applicants' request for any further hearing regarding Applicants' requested removal of their antitrust licensing conditions, and (3) to affirm the Director's denial (56 Fed.Reg. 20057, May 1, 1991) of Applicants' applications to amend their operating licenses by removing the antitrust license conditions therefrom.

The procedural history and background leading up to Applicants' Motion and the responses thereto by AEC and others may be found in (1) the NRC Staff evaluation of Applicants' request to have their antitrust license conditions removed (see Director's letter to Applicants and attachment (April 24, 1991)); and (2) the Licensing Board's Prehearing Conference Order, LBP-91-38, 34 NRC 229 (October 7, 1991).[1/]

Applicants' effort to now remove the antitrust license conditions to which they must presently adhere is bottomed on the singular proposition that if they demonstrate that the power from their nuclear facilities is now more costly than power from alternative sources, then the Commission automatically loses antitrust jurisdiction over Applicants with the result that the Commission must remove the antitrust conditions from Applicants' licenses.[2/]

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1/ That Order permitted AEC to intervene for purposes of presenting legal argument in response to Applicants' contentions. 34 NRC at 240-251. That is the purpose of this submission.

2/ Those conditions restrain Applicants from using their monopoly power with respect to wholesale power and coordination services to condition resales, from restricting competition or the pursuit of legal rights by small competitors; and they compel Applicants to offer interconnections and wheeling; offer membership in the regional system pool; to sell various specific forms of energy on a non-discriminatory basis; to engage in non-discriminatory reserve sharing; and also, to offer access -- including

Applicants contend that "the Commission [is] without authority as a matter of law under Section 105 of the Atomic Energy Act to retain antitrust license conditions contained in an operating license if it finds that the actual cost of electricity from the licensed nuclear power plant is higher than the cost of electricity from alternative sources, all as appropriately measured and compared."[3/]

As Applicants express it in their Motion, their nuclear "facility costs are determinative of the NRC's authority to impose antitrust license conditions."[4/] Applicants argue that the legislative history of the antitrust amendments to the Atomic Energy Act and Commission precedent establish that there is a "truism . . . at the heart of Section 105(c) [of the Act, which] is a necessary predicate to the exercise of antitrust authority by the NRC," and that "truism" is that "a licensed facility must produce low-cost power in order for licensed activities to 'create or maintain a situation inconsistent with

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ownership, at the small competitor's option -- to nuclear units. Toledo Edison, ALAB-560, 10 NRC 265 at 296-299 (1979).

3/ See Letter from R. Goldberg and C. Strother, Jr., Counsel for the City of Cleveland, to Judges Miller, Bechhoefer, and Bollwerk setting forth the parties' stipulated issue (Nov. 7, 1991).

4/ Applicants' Motion at 11.

the antitrust laws'."[5/] Also, according to Applicants, if the statute is not read to require such a finding, then it denies them equal protection under the law.

There is no merit to Applicants' contentions. As we show below, (1) Applicants are raising this argument more than a decade too late; (2) in any event Section 105(c) of the Act cannot rationally bear the burden of the imaginative -- but unsupported -- gloss which Applicants attempt to thrust upon it; and (3) Applicants' equal protection argument is frivolous.

## II. ARGUMENT

Aside from the lack of merit to Applicants' belatedly raised contention, it should not be entertained by the Commission at this late date. Both the relevant statutory language and the judicial interpretation thereof negate the Applicants' contention. The legislative history of the Atomic Energy Act offers no support to Applicants. Applicants equal protection argument, which is premised on a misreading of the statute, is wholly without merit.

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[5/] Id. at 16.

1. It Is Far Too Late In The Day For Applicants To Be Resurrecting Discredited Contentions As To What Constitutes A Situation Inconsistent With The Antitrust Laws

Applicants contend that as a matter of law the NRC is without jurisdiction to impose or continue antitrust license conditions unless NRC evidentiarily establishes that the Applicants' nuclear facility produces lower cost electricity than do alternative sources. Principles of fundamental fairness and adjudicatory finality require Applicants to have raised such a basic argument at the time of their antitrust review which took place in the mid-1970's. Applicants should not be permitted to sit back for years after losing their long and arduous litigation and hold secret this radical contention as to the legal interpretation of the Atomic Energy Act until this late date. While Applicants' contention is devoid of merit, it is also evident it should not be entertained by the Commission at this late date.

It is simply too late by any reasonable standard to be raising claims as to alleged fundamental limitations on what constitutes a situation inconsistent with the anti-trust laws. Principles of res judicata and collateral estoppel are applicable here and they foreclose Applicants' efforts to narrow the Commission's scope of review under its antitrust jurisdiction. Alabama Power Co., ALAB-182, 7

AEC 210 (1974), affirmed in pertinent part, CLI-74-12, 7 AEC 203. See also Astoria F.S & L. Assn. v. Solimino, 501 U.S. ____, 111 S.Ct. 2166, 2169-2170, 115 L.Ed 2d 96, 104-105 (1991).

The contention belatedly raised by Applicants goes equally to the Commission's authority to impose its original antitrust license conditions as to the asserted need to suspend them. Hence, this is not a case where circumstances were so far removed from present conditions as to make rational any soft-peddling of the argument by Applicants during their original antitrust review. Applicants, no more than intervenors, should not be permitted to stand on the sidelines and then later press a claim which easily could have been raised years ago in the antitrust review. Not only do principles of finality and issue preclusion prohibit Applicants' effort to rebite the apple -- so does the special and particular emphasis in Section 105(c) on a one-step antitrust review. Houston Lighting & Power Co. (South Texas), CLI-77-13, 5 NRC 1303 (1977). "Orderliness, expedition, and finality in the [administrative] adjudicating process are appropriate weights in the scale as reflecting a public policy which

has authentic claims of its own." Valley Telecasting Co. v. F.C.C., 336 F.2d 914, 917 (D.C. Cir. 1964).6/

7. Both The Language Of The Atomic Energy Act And Its Judicial Interpretation Negate Applicants' Contentions.

The pertinent statutory language is found in those portions of Section 105(c) of the Act (42 U.S.C. §2135(c)(5) and (6)) which read:

> (5) Promptly upon receipt of the Attorney General's advice, the Commission shall publish the advice in the Federal Register. Where the Attorney General advises that there may be adverse antitrust aspects and recommends that there be a hearing, the Attorney General or his designee may participate as a party in the proceedings thereafter held by the commission on such licensing matter in connection with the subject matter of his advice. The Commission shall give due consideration to the advice received from the Attorney General and to such evidence as may be provided during the proceedings in connection with such subject matter, and shall make a finding as to whether the activities under the license would create or maintain a situation inconsistent with the antitrust laws as specified in subsection (a) of this section.
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> (6) In the event the Commission's finding under paragraph (5) is in the affirmative, the Commission shall also consider, in determining

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6/ What was quoted by the Court in Valley Telecasting in the context of factual claims is even more applicable here. "Certainly '[w]e cannot allow the appellant to sit back and hope that a decision will be in its favor, and then, when it isn't, to parry with an offer of more evidence. No judging process in any branch of government could operate efficiently or accurately if such a procedure were allowed.' Colorado Radio Corp. v. Federal Communications Com'n, 73 App.D.C. 225, 227, 118 F.2d 24, 26 (1941)." Valley Telecasting, 336 F.2d at 917.

> whether the license should be issued or continued, such other factors, including the need for power in the affected area, as the Commission in its judgment deems necessary to protect the public interest. On the basis of its findings, the Commission shall have the authority to issue or continue a license as applied for, to refuse to issue a license, to rescind a license or amend it, and to issue a license with such conditions as it deems appropriate.

The "express language of the statute" offers no support to Applicants' claim that the economics of power from their nuclear facilities must be determined in order to make an affirmative Section 105(c)(5) finding.[7/] The Eleventh Circuit in Alabama Power emphasized that the "statute clearly calls for a broad inquiry and common sense does not allow interpretations to the contrary."[8/] Based on the clear meaning of the statute, the Court rejected Alabama Power's contention that a proper NRC antitrust review focused narrowly on the nuclear plant, and the Court dismissed Alabama Power's claim that "the NRC overstepped its authority in looking past the direct effects of the nuclear plant on the present or prospective competitive situation . . . ."[9/] The contention as articulated by

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7/ Alabama Power Co. v. N.R.C., 692 F.2d 1362 at 1367 (11th Cir. 1982) cert. denied, 464 U.S. 816 (1983). This is the only judicial review of an NRC antitrust review.

8/ Id. at 1368.

9/ Id. at 1367.

Alabama Power Company, which the Court rejected on the basis of the language of the statute, was "Congress undoubtedly intended for NRC to assess solely the impact of the economics of power from the nuclear facility upon the power generation cost situation existing at the time the license was granted and that would exist thereafter."[10/] Applicants' effort here to resurrect this same long-discredited and judicially-interred contention should be dismissed as firmly by this Board as the original articulation of this contention was rejected in Alabama Power by the Court of Appeals.

The Eleventh Circuit firmly rejected Alabama Power's effort to keep the NRC's antitrust review shackled by a myopic focus on the economics of power from the nuclear facility. The Court went even further and also strongly emphasized the broad delegated discretion inherent in the statutory mandate to the Commission to conduct antitrust reviews. 692 F.2d at 1368-1370. The Court recognized that the Congress had directed the Commission to look to potential, as well as actual, anticompetitive situations and to condition licenses in situations "which would not if

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10/Brief of Petitioner Alabama Power Company in Alabama Power Co. v. N.R.C., supra, at 38. This rejected contention was reiterated in Alabama Power Company's Reply Brief in the Eleventh Circuit at 7-9.

left to fruition, in fact violate any antitrust law." Id. at 1368. Plainly, the possibility of evolving and changing economic realities was contemplated by Congress, which had determined that for NRC antitrust review purposes "a traditional antitrust enforcement scheme is not envisioned, and a wider one is put in its place." Id. In affirming the license conditions in the Alabama Power case, the Court concluded that they "are specifically fashioned to address the anticompetitive situation which could arise from an unconditional license grant." (Emphasis added.) Id. at 1367. The Court readily accepted that an ownership access condition is "indeed extreme," but recognized that Congress had conferred on the NRC "wide powers." Id. at 1369-1370. Applicants' claim here for the need for periodic reviews of the economics of its power production facilities is wholly contradicted by the scope and breadth of the Commission's antitrust reviews as required by Section 105(c) and as affirmed by the Court.

Had Congress desired the comparative economics of power from nuclear facilities at any point in time to be the decisive issue in antitrust reviews, it could have clearly and simply articulated that requirement. It did not do so. It chose instead not to hem in the specific

applications of antitrust policies by the Commission as assisted by the Department of Justice.

For instance, had Congress considered -- as Applicants contend it did -- the comparative economics of power from Applicants' facilities to be of unique and determinative importance (as opposed to one of a myriad of factors to be reviewed), Congress presumably would have directed that such information be the core subject of the Attorney General's initial review and advice.[11/] It did not do this. Rather, Congress broadly mandated that the Attorney General make a discretionary determination as to what information was to be appropriate for review and advice. 42 U.S.C. §2135(c)(4). The antitrust amendments to the Act

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11/An implicit, but fundamental, error permeating Applicants' arguments is the mistaken assumption that the linchpin of antitrust considerations is cheap inputs. Rather it is the availability of options and choices that drives the antitrust policies. "The policies underlying the antitrust laws require the freedom to choose between alternatives even, at the expense of choosing the less desirable alternative." Toledo Edison, LBP-77-1, 5 NRC 133 at 249 n. 164 (1977). It is no accident that the Davis-Besse/Perry license conditions are couched in terms of making available access to nuclear facilities and that ownership is "at the option" of the smaller competitor. ALAB-560, 10 NRC 265 at 298-299 (1979). At the time of the 1970 Amendments, nuclear power had become a new major generation option which Congress determined should not be denied to competitors through anticompetitive market structures and conduct. There is no basis for contending, as Applicants do, that Congress desired nuclear powered generation to be doled out on the basis of NRC comparative cost analyses.

are silent as to the very factor which Applicants argue is at the heart of those provisions. Applicants' belated contention is plainly lacking in any support from the statute and, in fact, already has been judicially rejected.

3. The Legislative History Of Section 105(c) Affords Applicants No Comfort

In this dispute resort to the legislative history of Section 105(c) should be unnecessary. The language of the statute and the clear rejection of Applicants' theory by the Court of Appeals should properly end the matter. However, since Applicants rest the basis of their case on highly selected quotations of witnesses before the Joint Committee on Atomic Energy, some brief discussion of the legislative history is warranted to counter Applicants' misuse of it.12/

The "best source of legislative history is the Joint Committee . . . Report."13/ There the authors of the 1970

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12/Applicants also offer very misguided glosses on a number of NRC decisions. Applicants' Motion at 47-75. To avoid redundancy, we adopt the discussions of the NRC Staff and the Department of Justice regarding these NRC decisions.

13/Alabama Power, supra, 692 F.2d at 1368, referring to Amending the Atomic Energy Act of 1954, As Amended, to Eliminate the Requirement for a Finding of Practical Value, to Provide for Prelicensing Antitrust Review of Production and Utilization Facilities, and to Effectuate Certain Other Purposes Pertaining to Nuclear Facilities, Report by the Joint Committee on Atomic Energy, H.R. No. 91-1470, 91st Congress, 2nd Session (1970).

legislation certainly did not intimate any intention to fix the Section 105(c)(5) standard to any particular finding such as the economics of power from the nuclear facility. Rather, the Report makes clear that the Commission is to make judgments based on the factual record as to probable future inconsistencies with antitrust law and even underlying policies.14/ This is an invitation to the Commission to exercise discretion and judgment on a broad canvas -- not a directive to make a cost-of-power analysis.

Applicants' highly selective reliance on excerpts of testimony in the voluminous Joint Committee hearings is of no moment where, as here, the statutory language and the Court's decision affirming the broad scope of the Commission's antitrust review thoroughly negate Applicants' peculiar thesis. The testimony of legislative witnesses is particularly unpersuasive in the instance of the 1970 antitrust amendments. The Manager of the bill on the Senate floor went out of his way to emphasize that the final bill, which became law, was the compromise product of the Joint Committee and did "not represent the position,

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14/Joint Committee Report at 14.

the preference, or the input of any of the special pleaders inside or outside of the government."15/

Thus, while the legislative testimony offers, at best, evidence of the concerns brought to the attention of the Joint Committee, it also indicates a range of concerns, and was clearly not solely limited to the economics of power produced by nuclear facilities. Applicants' imaginative effort to convert the Commission's antitrust review authority to a comparative cost exercise is simply without any rational support in the legislative history.

4. The Applicants' Equal Protection Argument Is Frivolous

Applicants go so far as to argue that the economics of power from nuclear units is the only rational Congressional basis for NRC antitrust reviews, and unless a unit subject to such review is shown to produce cheap power, then owners of nuclear units are unconstitutionally discriminated

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15/Statement of Senator Pastore, 116 Cong. Rec. 39619 [S19253 daily ed.] (December 2, 1970). It is also evident that witnesses before the Joint Committee -- in particular NRC and Department of Justice witnesses -- expressed concern with a broad array of anticompetitive concerns, such as undue economic concentration, arrangements which suppress competition, the extension of existing monopoly power, exclusions from regional power pools, contracts restricting competition and access to transmission, -- concerns which became a major subject of inquiry as the NRC antitrust reviews were undertaken. Prelicensing Antitrust Review of Nuclear Power Plants: Hearings Before the Joint Committee on Atomic Energy, 91st Cong., 1st Sess., Pt. 1 at 8, 9, 11, 73, 121 and 128 (1969).

against vis a vis other electric power producers. This argument is frivolous. It grossly misstates the legislative concerns leading to the requirement of antitrust reviews.

The Court in Alabama Power articulated "Congress' basic policies toward the nuclear power industry" as reflected in the NRC antitrust review provisions as follows:16/

> When the Atomic Energy Act was passed in 1954 it allowed private entry into the nuclear field for the first time. In the preceding years, scientific and technological nuclear know-how had been held exclusively by the government. This bank of information had been compiled over the years from research and development which had been financed by the American public. In turning this publicly held wealth of knowledge and scientific progress over to private enterprise, Congress felt that strict restraint should be included to prevent unfair advantage for those with the greatest resources. Those who had worked with the government were not to be the unbridled beneficiaries of the windfall head start they would have when private parties were allowed into nuclear power production. The unique potential and critical dangers of this new resource justified tight control to ensure safety and prevent unfair monopolization. See Adams, Atomic Energy: The Congressional Abandonment of Competition, 158 Colum.L.Rev. 55 (1955); Cosway, Antitrust Provisions of the Atomic Energy Act, 179 Vand.L.Rev. 12 (1958).

Congressional policy underlying the antitrust review requirements had been summarized in Alabama Power,

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16/ Alabama Power, supra, 692 F.2d at 1368-1369.

ALAB-646, 13 NRC 1027, 1102-1103 (1981), where the Appeal Board stated:

> One of the basic foundations on which the Atomic Energy Act rests is the principle of free competition in private enterprise. This principle is manifested at the very outset of the Act by the policy declaration that the "development, use, and control of atomic energy shall be directed so as to ... strengthen free competition in private enterprise (footnote omitted)." This policy finds manifestation again in Section 105 of the Act. In that Section, the Congress made it clear that the national antitrust laws were to continue in full force and effect with respect to atomic energy matters. It did so by explicitly providing that "[n]othing contained in the Act shall relieve any person from the operation" of the antitrust laws (subsection 105a); and by following with a provision (subsection 105c) which calls for an antitrust review of every nuclear power plant prior to its construction. Thus, through the mechanism of the antitrust laws, the Congress sought to protect free competition in private enterprise in the development and use of atomic energy. Nor did Congress stop with the protection afforded by the antitrust laws. It significantly widened the area of potential Commission action by directing that the policies underlying the antitrust laws must be given effect as well. As a further measure of protection, the legislation was not limited to situations involving actual violations of the antitrust laws or the then-underlying policies. Situations involving the reasonable probability of contravention of those laws and the policies clearly underlying them were also made subject to remedial action by the Commission.244
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> The remedial action the Congressional authors had in mind was that "except in an extraordinary situation, Commission-imposed

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244 Report of the Joint Committee on Atomic Energy on S4141, S. Rep. No. 91-1247, 91st Cong., 2d Sess., p. 14 (1970), discussed in Midland, supra, 6 NRC at 926-27.

> conditions should be able to eliminate the concerns entailed in any affirmative finding under paragraph (5)."245 And as we emphasized earlier (p. 1114, supra), this concept is consistent with settled tenets of antitrust practice as manifested by the actions of the courts and the federal agencies which deal with those laws: relief in an antitrust case must be effective to redress violations and to restore competition.246
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> 245 S. Rep. No. 91-1247 (see fn. 244) at p. 31. In placing the responsibility on the Commission to fashion the appropriate remedy where the antitrust situation was found wanting, these same Congressional authors recognized that "there is not a clear boundary between antitrust considerations in relation to the strengthening of free competition in free enterprise and measures to accomplish such objective for reasons other than the antitrust laws or underlying antitrust policy." Rather than trying to legislate the boundaries of the antitrust considerations, the Joint Committee left it to the Commission to decide. In the Joint Committee's words: "the Commission will have to exercise discretion and judgment." id. at p. 15.
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> 246 Davis-Besse, supra, 10 NRC at 292.

The rational legislative purpose is clear. It is a much more broadly-based policy concern than Applicants would have this Board believe. Applicants' equal protection contention is, like their other arguments, fatally based on a false characterization of legislative purpose and intent.

It is to be noted that the Equal Protection Clause, being a part of the Fourteenth Amendment, is binding on the States but not on Congress. Sunshine Anthracite Coal Co. v. Adkins, 310 U.S. 381, 400-401 (1940). We assume, accordingly, that Applicants must be referring only to such

aspects of "equal protection" principles as may be carried over by implication into the Due Process Clause of the Fifth Amendment. See Bolling v. Sharpe, 347 U.S. 497 (1954); District of Columbia v. Carter, 409 U.S. 418, 424 (1973); Washington v. Davis, 426 U.S. 229. 239 (1976); San Francisco Arts & Athletics v. U.S.O.C., 483 U.S. 522, 542 note 21 (1987). But in any event, even if the full measure of the Equal Protection Clause were applicable, Applicants' contention would be frivolous.

Section 105(c) as written by Congress clearly complies with what would be the most rigorous of Equal Protection Clause standards as having a rational relationship between the classification established and a legitimate government objective. In cases challenging Acts of Congress, the Supreme Court has made it clear that "social and economic legislation is valid unless 'the varying treatment of different groups or persons is so unrelated to the achievement of any combination of legitimate purposes that [a court] can only conclude that the legislature's actions were irrational'. This is a heavy burden . . . ." Hodel v. Indiana, 452 U.S. 314, 332 (1981). The legislative history of Section 105(c) demonstrates Congressional concern for potential anticompetitive practices, and the requirements of that Section are rationally related to the

prevention of such practices. Congress was aware that it was establishing a requirement on nuclear power plant applicants that would not be imposed on other utilities, and that requirement was a compromise of competing viewpoints.[17/] Clearly, Congress was aware of the issues surrounding Section 105(c) and had a rational basis for enacting the legislation that it did.

Applicants' argument, that "changed circumstances" have undermined the rationale for the law, is without merit. The Court in Chastleton Corp. v. Sinclair, 264 U.S. 543 (1924),[18/] invalidated a rent control statute explicitly based on a specific exigency -- a "wartime emergency." On the other hand, the antitrust analysis required by Section 105(c) is in not premised on such a specific factual situation. As demonstrated above, the actual existence of low-priced nuclear energy, is not a necessary precondition for the Section 105(c) antitrust

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17/"[T]he committee is intensely aware that around the subject of prelicensing review and the provisions of subsection 105 c., hover opinions and emotions ranging from one extreme to the other . . . . [T]here are those who point out that it is unreasonable and unwise to inflict on the construction or operation of nuclear power plants and the AEC licensing process any antitrust review mechanism that is not required in connection with other types of generating facilities . . . . The Joint Committee does not favor, and the bill does not satisfy, either extreme view." Joint Committee Report, supra note 12, at 14.

18/See Applicants' Motion at 79.

inquiry. Moreover, the Supreme Court has sustained the validity of economic regulation even when "changed circumstances" have occurred, making it clear that relief, if any, lies with the legislature. In East New York Savings Bank v. Hahn, 326 U.S. 230 (1945), the Court upheld a New York moratorium law restricting mortgage foreclosures, originally passed to mitigate the harshness of the Depression, even though the Depression had ended. The Court stated, "Merely to enumerate the elements that have to be considered shows that the place for determining their weight and their significance is the legislature and not the judiciary." 326 U.S. at 234.[19/] Similarly here, if Applicants are dissatisfied with the broad scope of the antitrust provisions of the Atomic Energy Act, then they should address their plea to Congress -- where, one could reasonably expect, they would be likely to meet with a cool reception.

## CONCLUSION

All of Applicants' contentions are based on versions of the same defective premise -- that Congress intended the

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19/ The Court's analysis concerned primarily whether a New York law violated the Contract Clause of the Constitution, Article I, §10, Clause 1. This analysis is somewhat comparable to the "rational basis" test under "equal protection" analysis.

NRC antitrust reviews to be contingent upon findings as to the economics of power from the subject nuclear facility. As has been amply demonstrated above, that is a false assumption as to the meaning and purposes of the antitrust provisions of the Atomic Energy Act. For the reasons we have summarized, as well as those being advanced by other parties opposed to Applicants' position, Applicants' effort to be excused from continued compliance with their NRC antitrust license conditions should be rejected as unfounded in law. In addition, Applicants' request for further hearing should be denied, and the Director's denial of Applicants' request for suspension of its license conditions should be affirmed.

Respectfully submitted,

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March 9, 1992

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CERTIFICATE OF SERVICE

I hereby certify that copies of the Alabama Electric Cooperative's Combined Cross-Motion for Summary Disposition and Response to Applicants' Motion for Summary Disposition in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class, or, as indicated by an asterisk, through deposit in the Nuclear Regulatory Commission's internal mail system, or as indicated, this 9th day of March, 1992.

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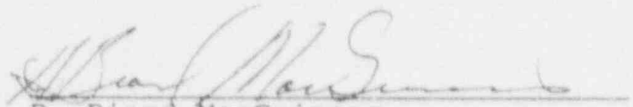

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