

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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USNR

'84 JUL -3 P3:47

Before the Commission

In the Matter of)
ALABAMA POWER COMPANY) Operating Licenses
(Joseph M. Farley Nuclear Plant)
Units 1 and 2) Nos. NPF-2 and NPF-8
)

PETITION OF ALABAMA
POWER COMPANY FOR A
DECLARATORY ORDER

Alabama Power Company ("APCO") respectfully requests that the Commission institute proceedings leading to the issuance of a declaratory order clarifying APCO's obligations under antitrust condition number 2.F.(2) contained in APCO's Operating Licenses Nos. NPF-2 and NPF-8, as such licenses were amended on August 10, 1981. ("License Condition"). The License Condition, imposed following the antitrust review which was conducted pursuant to Section 105c of the Atomic Energy Act, requires APCO to offer to sell to Alabama Electric Cooperative, Inc. ("AEC") an ownership interest in the Joseph M. Farley Nuclear Plant, Units 1 and 2 ("Farley Plant"), at a price to "be established by the parties through good faith negotiations" which "will fairly reimburse Licensee for the proportionate share of its total costs ...including, but not limited to, all costs of construction, installation, ownership and licensing"

APCO makes this request because APCO and AEC have differing opinions concerning the proper interpretation of the License Condition and have been unable to agree on the essential terms of the sale of the ownership interest in the Farley Plant. A declaratory order issued by the Commission would be the most efficient and expeditious means of resolving the differences.

The Commission clearly has the authority to render a declaratory order, and declaratory relief is particularly appropriate in this instance. The original antitrust proceeding before the Commission lasted over 9 years, involved 170 days of hearings, and culminated in a 157 page initial decision and an 87 page Appeal Board decision. Judicial review added another 3 years to the process. In fairness to the parties and in the interest of administrative efficiency and economy, this issue should be resolved as expeditiously as possible by the Commission itself without setting in motion still another round of adjudicatory hearings that would prolong the uncertainty over the ownership interests in the Farley Plant and divert the valuable time and resources of the NRC Staff and the other parties from other, more pressing tasks. Moreover, the issues presented involve important policy questions that can, and should, be resolved by the Commission. As demonstrated below, the procedures here suggested would make it possible for the Commission to resolve those questions without instituting burdensome and lengthy administrative proceedings and without unduly involving itself in matters of detail.

In further support of its petition, APCO submits the following:

I. Need for a Declaratory Order

The License Condition was imposed by the Atomic Safety and Licensing Appeal Board ("Appeal Board") in its order dated June 30, 1981, 1/ and was incorporated in amendments to the operating licenses for the Farley Plant issued on August 10, 1981. In pertinent part, it reads:

2. Licensee shall offer to sell to AEC an undivided ownership interest in Units 1 and 2 of the Farley Nuclear Plant. The percentage of ownership interest to be so offered shall be an amount based on the relative sizes of the respective peak loads of AEC and the Licensee (excluding from the Licensee's peak load that amount imposed by members of AEC upon the electric system of the Licensee) occurring in 1976. The price to be paid by AEC for its proportionate share of Units 1 and 2, determined in accordance with the foregoing formula, will be established by the parties through good faith negotiations. The price shall be sufficient to fairly reimburse Licensee for the proportionate share of its total costs related to the Units 1 and 2 including, but not limited to, all costs of construction, installation, ownership and licensing, as of a date, to be agreed to by the two parties, which fairly accommodates both their respective interests. The offer by Licensee to sell an undivided ownership interest in Units 1 and 2 may be conditioned at Licensee's option on the agreement by AEC to waive any right

1/ Alabama Power Company (Joseph M. Farley Nuclear Plant Units 1 and 2), ALAB-646, 13 NRC 1027 (1981), aff'd, Alabama Power Company v. Nuclear Regulatory Commission, 692 F.2d 1362 (11th Cir. 1982), cert. denied, 104 S.Ct. 72 (1984).

of partition of the Farley plant and to avoid interference in the day-to-day operation of the plant.

Soon after the Appeal Board Order became effective, APCO began to provide information for AEC's review. AEC indicated a desire to review a substantial amount of financial and other data before commencing substantive negotiations over acquisition of an interest in the Farley Plant. 2/ In March 1983, AEC indicated that it was prepared to proceed with negotiations, and in April 1983 APCO communicated its initial offer to sell an interest in the plant to AEC. (See Appendix 7). Negotiations have continued until the present, 3/ and Appendices 10, 11 and 12 are copies of the Purchase and Ownership Agreement, the Operating Agreement, and the Nuclear Fuel Agreement that comprise APCO's current offer to AEC. These negotiations have failed to resolve several fundamental issues as to the interpretation of the License Condition.

While the parties to the negotiations undoubtedly hold different perceptions concerning the reasons for this disagreement, it is primarily due to conflicting interpretations of the broad, general terms of the License Condition. It is APCO's position that AEC has exhibited a persistent unwillingness to compromise on a number of critical issues set forth in the

2/ See Appendices 5 and 6. Appendices 1 through 4 reflect AEC's requests for, and APCO's provision of, data for review by AEC's consultants.

3/ See Appendices 8 and 9, summarizing the positions of the parties in the fall of 1983. More recently, the parties' exchange of positions is reflected in Appendices 13 and 14.

agreements that were to be "established by the parties through good faith negotiations" and on a basis that "fairly accommodates both their respective interests." (Some of these issues are described in greater detail in Section III, below.) In any event, further negotiations between the parties do not seem likely to resolve the differences.

As a result of the dispute over interpretation of the License Condition, APCO remains obligated to comply with the License Condition and yet faces uncertainty as to when and whether AEC will ever actually purchase an ownership interest. This uncertainty leads to an unfair situation in which APCO continues to be responsible for all the costs associated with the Farley Plant, while AEC, on the other hand, retains what is in effect an option to buy an ownership interest while it avoids sharing any of the risks or costs associated with continued reliable operation of the Farley Plant. 4/

4/ The current state of uncertainty may also serve AEC's economic interest. According to APCO's studies, if AEC were to purchase an ownership interest in the Farley Plant in 1984 at any price equal to or greater than APCO's cost attributable to the interest transferred, under any of several assumptions, AEC's average power cost would increase in the near term. A "cross-over" point would probably be reached at some time in the late 1980s or early 1990s, and thereafter ownership of the Farley Plant would probably reduce AEC's average power costs. This situation exists because any interest in the Farley Plant acquired by AEC would be used to replace wholesale power now purchased by members of AEC from APCO. APCO's wholesale rates are very low at the present time because a large percentage of the generation used by APCO consists of coal plants installed at the lower costs that prevailed in the 1950s, 1960s, and 1970s. As new capacity is acquired by APCO, its wholesale rates will increase. On the other hand, absent the need for major repairs or capital improvements, the fixed costs

The uncertainty is clearly unfair to APCO and can only be removed by the Commission's clarification of the precise meaning of the terms of the License Condition and a determination by the Commission of what APCO is required to do in order to comply with the License Condition.

II. Authority to Issue A Declaratory Order

The Commission clearly has the authority to issue a declaratory order in this situation. Under Section 181 of the Atomic Energy Act of 1954, as amended, the provisions of the Administrative Procedure Act apply to all "agency actions" taken by the Commission under the Atomic Energy Act. 42 U.S.C. § 2231. Under the terms of the Administrative Procedure Act the Commission "may issue a declaratory order to terminate a controversy or remove uncertainty." 5 U.S.C. § 554(e). The Commission itself has previously held that it "has undoubted authority" to issue such orders. Kansas Gas and Electric Company (Wolf Creek 1) CLI-77-1, 5 NRC 1, 4 (1977). As a policy matter, the Commission has also encouraged the use of declaratory relief in NRC proceedings in order to permit the "early resolution" of issues. Id. at 5.

Other federal regulatory agencies have utilized their declaratory powers to clarify prior rulings and orders and to interpret the terms and conditions of their own licenses and certificates. See e.g., Atlantic Freight Lines, Inc., 51 MCC 175

attributable to the Farley Plant should remain relatively constant over the life of the Plant.

(ICC, 1949) (holding that an agency may properly issue an interpretation of its own order); Western Radio Corp., 14 Ad L 2d 479, 481 (FTC, 1963) (holding that a respondent may request the Commission's advice as to whether a contemplated course of action will constitute compliance with an outstanding cease-and-desist order); Archie's Motor Freight, Inc. (ICC, Div. 1, 1957) (holding that the ICC may on proper request interpret a certificate previously granted by it to a motor carrier). Reviewing courts have also approved of the regulatory agency practice of granting declaratory relief to licensees seeking clarification of prior orders or seeking to remove uncertainties concerning activities permissible under their licenses. See Southern Railway Co. v. United States, 412 F. Supp. 1122 (D.D.C. 1976), where the court approved the ICC's issuance of a declaratory order resolving a dispute among carriers as to interpretation of a prior ICC order approving shipping contracts. See also Chisholm v. F.C.C., 583 F.2d 349 (D.C. Cir. 1976) (FCC action in issuing a declaratory order modifying its previous interpretation of the "equal time" provisions of the Communications Act is valid where taken to eliminate uncertainty.)

As the recent correspondence between the parties (See Appendices 13 and 14) illustrates, and as Section III of this petition amply demonstrates, controversy and considerable uncertainty exist here, arising out of a conflict as to the proper interpretation to be given a License Condition imposed under a prior NRC order. In such circumstances, the issuance of

declaratory order by the Commission would be particularly helpful and appropriate. Issuance of a declaratory order affords, by far, the most efficient and expeditious method for resolving the controversy in this case and providing the parties with a mechanism for settling their differences over the proper interpretation of the License Condition.

The License Condition and the resulting negotiations between APCO and AEC followed one of the most complex and extensive proceedings ever conducted by the Commission. Attempting to resolve the differences between APCO and AEC regarding the proper interpretation of the License Condition by means of another formal adjudicatory proceeding, 5/ would benefit

5/ AEC has filed a request, dated June 29, 1984, for enforcement action pursuant to 10 C.F.R. § 2.206. An enforcement proceeding is perhaps the most inefficient procedure imaginable for interpreting the License Condition. It is likely to involve lengthy consideration by the Commission Staff followed by an evidentiary proceeding before an Atomic Safety and Licensing Board, further proceedings before the NRC's Appeal Board, and, ultimately, review by the Commission.

APCO does not seek to avoid answering for its efforts to date to implement the License Condition; the Commission is always free to seek to punish a licensee for a deliberate violation of its license obligations. However, to delay a Commission decision interpreting the License Condition until the enforcement process has run its course would be inefficient and unfair. After the Commission has issued a declaratory order interpreting the License Condition, the Commission, or its delegate, can consider whether any punitive action against APCO is warranted, in light of the guidance provided by the declaratory order. APCO is confident that whoever decides that question will conclude that no such action is justified.

Accordingly, APCO urges that any question of action under 10 C.F.R. Part 2, Subpart B be held in abeyance until the Commission has issued the requested declaratory order.

no one. There is simply no need to resort to another time-consuming, personnel-consuming and resource-consuming trial type adjudicatory proceeding in order to resolve the matter at hand.

We recognize, however, that the Commission will require additional information concerning the various interpretations of the License Condition that have been proposed by the parties before it will be in a position to issue a declaratory order. APCO therefore proposes that the Commission issue a notice of receipt of this Petition which would provide an opportunity for submission of comments by all interested parties and direct that all such interested parties file memoranda, together with any supporting affidavits and exhibits, relating to the issues raised by this Petition, in accordance with the following schedule:

APCO Memorandum -- 30 days after date of publication of the notice.

Memoranda by interested parties, including AEC, other than the NRC Staff -- 60 days after date of publication of the notice.

NRC Staff Memorandum -- 90 days after date of publication of the notice.

APCO Reply Memorandum -- 120 days after date of publication of the notice.

The Commission could then appoint a special master, perhaps an Administrative Law Judge of the NRC, to review the memoranda submitted and conduct any further investigation of the issues deemed necessary by the Commission. The Commission could empower the special master with authority to require or permit the submission of such additional information or memoranda as

appropriate, to create a record on which the Commission can resolve the issues presented in this petition. Upon completion of the fact gathering process, the special master would submit a report to the Commission. This report could clarify the issues for Commission decision and contain proposed findings as to any factual matters that need be resolved in order for the Commission to reach and dispose of these issues. Thus, the Commission itself could decide the basic questions concerning the meaning of the License Conditions without expending any unnecessary time on subsidiary matters. 6/

The designated special master could take evidence and require additional submittals from the parties, but he would not be required to conduct a formal adjudicatory proceeding with the attendant rights of discovery, testimony, and cross-examination that generally prevail in NRC adjudicatory proceedings. A less than full-fledged procedure, characterized as "investigative" in nature, was previously approved by the Commission in Consolidated Edison Company (Indian Point 2), CLI-81-1, 13 NRC 1, 5, ft. 4 (1981). See also Consolidated Edison Company, CLI-81-23, 14 NRC 610 (1981), revising footnote 4.

6/ The interpretation ultimately given the License Condition involves basic policy questions of fairness to two groups of ultimate customers, APCO's and AEC's. We urge that these judgments be made by the Commission itself and not be delegated, even in the first instance to the special master. Thus, APCO's proposal is that the special master prepare a report that enables the Commission to reach the policy questions efficiently, not an initial decision in which he undertakes to recommend policy.

Since a declaratory proceeding to resolve conflicting interpretations of an NRC license condition would not involve "the granting, suspending, revoking, or amending of any license or construction permit . . .", 42 U.S.C. § 2239(a)(1), neither the Atomic Energy Act nor the Administrative Procedure Act require procedures more formal than those proposed. 7/ The Commission has the authority, therefore, to fashion fair and efficient informal procedures, which do not offend the requirements of due process. 8/

The adoption of the foregoing schedule by the Commission would comport with all applicable legal requirements, provide all interested parties with an opportunity to be heard, and, just as importantly, ensure that this issue is resolved in a timely and efficient manner.

7/ The trial type hearing procedures specified in the APA apply only to adjudications "required by statute to be determined on the record after opportunity for an agency hearing." 5 U.S.C. § 554(a). Where, as here, 42 U.S.C. § 2239(a) does not apply, an "on the record" hearing is not required, and the APA is silent as to adjudicatory procedures. Illinois v. NRC, 591 F.2d 12, 13-14 (7th Cir. 1979). The procedural requirements contained in the Commission's Rules of Practice, 10 C.F.R. Part 2, Subpart G, are also inapplicable. Id. See 10 C.F.R. § 2.700, defining the scope of the subpart.

8/ Even when a proceeding involves an amendment to a license and thus is subject to Section 189 of the Atomic Energy Act, 42 U.S.C. § 2239(a)(1), informal notice and written comment procedures have been held to satisfy the demands of due process as well as the mandates of the Atomic Energy Act and its implementing regulations. City of West Chicago v. NRC, 701 F.2d 632, 646-47 (7th Cir. 1983).

III. Matters in Dispute Between APCO and AEC

The following is a summary of the principal matters that APCO believes are in active dispute between APCO and AEC concerning the terms and conditions of the Purchase and Ownership Agreement. ^{9/} It is not APCO's purpose here to argue the merits of these issues; that would be done by all parties in the memoranda submitted to the Commission as described in Section II, above. The purpose of the following is to acquaint the Commission with the nature of the principal matters clearly in dispute and to demonstrate the need for declaratory relief.

1. Ownership Interest to be Transferred

APCO's offer to sell an ownership interest is based on a sale of 6.26% of the Farley Plant. AEC contends the figure should be 6.70%. The difference reflects a dispute over the interpretation of the License Condition, which bases the share to be sold on the relative sizes of the peak loads of AEC and APCO, not those of other parties. AEC derives its higher percentage by including firm power sales by the Southeastern Power Administration to certain of AEC's wholesale customers within the firm load served by AEC. APCO's method measures firm load commitments of AEC and APCO at the time of their respective peaks in 1976.

^{9/} As Appendices 8, 9, 13 and 14 reflect, other, less fundamental disagreements also exist between the parties.

2. Initial Sale Price

The price contained in APCO's initial offer was \$1568.00 per kilowatt predicated on the nameplate rating of the plant, which is well below the reasonable value of the completed plant. The price gave weight to APCO's actual costs, as well as to the fact that APCO's investment was made in 1970-1981 dollars, while the sales price will be paid in considerably less valuable 1984 dollars. It also reflected that APCO suffered the considerable risks of financing and constructing the nuclear plant to completion.

AEC has responded to this initial offer, not with a counter offer, but with a statement of philosophy. Notwithstanding the language of the License Condition, AEC has refused to agree to payment of a price even approaching APCO's actual costs. Rather, it asserts that it will pay only that amount which it would have paid had it purchased, in 1971, a 6.7% interest in the plant at AEC's cost. While AEC has not revealed what this figure might be, it is beyond question that the amount will not even compensate APCO for its actual costs to date.

3. Security Arrangements

AEC's balance sheet reflects that it has a "negative equity" - that is, its liabilities exceed its assets. ^{10/} APCO has therefore requested that AEC provide some security for its share of the future ongoing operating costs of the plant, as well

^{10/} APCO has in excess of \$1 billion in equity standing behind its obligations, compared to the negative equity position of AEC.

as the decommissioning costs once the plant stops producing electricity. Several methods of providing security have been suggested. AEC has failed to provide any concrete response on this issue.

4. Participation in Day-to-Day Operation of the Farley Plant

AEC insists that it be permitted to station a representative at the Farley Plant site on a permanent basis. APCO believes that this would inevitably result in "interference in the day-to-day operations of the plant," in violation of the License Conditions. APCO has offered to provide AEC with other means of keeping closely informed of plant operations, including periodic reports and site visits which do not interfere with APCO's operation of the Farley Plant or jeopardize safety. In the interest of safety and efficiency of plant operations, APCO is convinced that only one owner/operator should be on site. AEC has made no attempt to justify its insistence on the most intrusive alternative.

IV. Terms of the Proposed Declaratory Order

APCO requests that the Commission declare the following:

(1) APCO's offer to sell a 6.26% undivided interest in the Farley Plant for a price of \$168,865,000.00 and on the terms and conditions provided in the Purchase and Ownership Agreement,

the Operating Agreement, and the Nuclear Fuel Agreement appended hereto is a reasonable, good faith business offer which complies with APCO's obligation under the License Condition.

(2) If the Commission is unable to reach, without qualification, the conclusion stated in (1), above, APCO requests, in the alternative, that the Commission provide guidance as to the additional or different terms that APCO is required to offer in order to effect compliance with the License Condition.

(3) In either event, APCO requests that the Commission declare that APCO's obligations under the License Condition shall be fulfilled by offering to AEC, within sixty (60) days of the effective date of the Commission's final order on this Petition, a copy, executed by APCO, of each of a Purchase and Ownership Agreement, an Operating Agreement, and a Nuclear Fuel Agreement in the form appended hereto, modified to the extent necessary to comply with any ruling of the Commission in response to item (2), above, unless, within sixty (60) days of its receipt thereof, AEC accepts such offer by delivering to APCO such tendered agreements, fully executed by AEC.

V. Conclusion

For the foregoing reasons, APCO respectfully requests that the Commission adopt procedures similar to those suggested in Section II, above, and, following such proceedings as may be appropriate, issue a declaratory order addressing the issues raised in this Petition.

Respectfully submitted,

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Robert A. Buettner

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By: Harold F. Reis
Harold F. Reis

July 3, 1964

UNITED STATES OF AMERICA
BEFORE THE
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

In the Matter of §
§
ALABAMA POWER COMPANY § Operating Licenses
(Joseph M. Farley Nuclear Plant) §
Units 1 and 2) § Nos. NPF-2 and NPF-8

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BRANCH

NOTICE OF APPEARANCE

Notice is hereby given that the undersigned attorneys herewith enter their appearance by this notice in the captioned matter on behalf of Alabama Power Company. In accordance with Section 2.713, 10 CFR Part 2, the following information is provided:

Names: Robert A. Buettner
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United States Court of
Appeals for the District
of Columbia Circuit
United States Court of Appeals
for the Eleventh Circuit

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Supreme Court of the United
States
District of Columbia Court
of Appeals
United States Court of Appeals
for the District of
Columbia Circuit
United States Court of Appeals
for the Eleventh Circuit

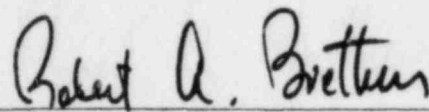
Harold F. Reis:
Supreme Court of the United
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District of Columbia Court
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United States Court of Appeals
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Columbia Circuit


Name and Address
of Party:

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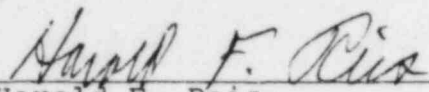
Respectfully submitted,



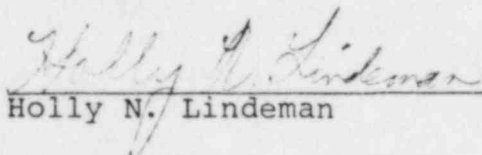
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July 3, 1984

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OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

CERTIFICATE OF SERVICE

I hereby certify that copies of

- 1) Letter to the Commissioners of this date,
- 2) Petition of Alabama Power Company for
a Declaratory Order,
- 3) Notice of Appearance

in the above-captioned proceeding were served on the
foregoing by deposit in the United States mail, first class,
properly stamped and addressed, on the date shown below:

Docketing and Service Section
Office of the Secretary
U. S. Nuclear Regulatory Commission
11th Floor
1717 H Street, N.W.
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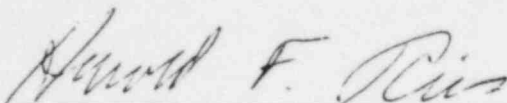
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Dated this 3rd day of July, 1984.



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October 23, 1981

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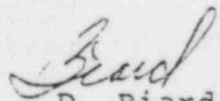
Dear Bob:

Since you responded on behalf of Alabama Power Company to Alabama Electric Cooperative's letter of July 17, 1981, requesting the Company to furnish AEC with detailed cost information relating to the Farley Nuclear Units, I am addressing this letter on the same subject matter to you.

As you are aware, the Nuclear Regulatory Commission has now refused the Company's request to review ALAB-646. Further, it has denied the Company's request to stay the effectiveness of the antitrust license conditions. In these circumstances the continued refusal by the Company to enter into good faith negotiations regarding AEC's ownership share in the nuclear units would violate the terms of the NRC operating permits for those units.

AEC reiterates its request that the Company promptly furnish AEC with detailed data as to the cost of each of the Farley units, so that meaningful negotiations may get underway.

Sincerely yours,


D. Biard MacGuineas

BALCH, BINGHAM, BAKER, HAWTHORNE, WILLIAMS & WARD

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October 30, 1981

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C. WILLIAM GLADDEN, JR.
MARSHALL TIMBERLAKE
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RODNEY O. MUNDY
JAMES T. HUGHEY, JR.
EDWIN W. FINCH, III
S. EASON BALCH, JR.
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WILLIAM E. SHANKS, JR.
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STEVEN F. CASEY
ELEANOR S. GATHANY
RALPH F. MACDONALD, III
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RICHARD L. PEARSON
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Washington, D.C. 20006

Dear Biard:

I have been involved in preparing responsive pleadings and engaged in other work associated with the complaint filed by one of the members of Alabama Electric Cooperative, Inc. ("AEC") before the Alabama Public Service Commission seeking to prohibit Alabama Power Company from competing with that member cooperative and seeking to require Alabama Power Company to discontinue service to customers who have requested the Company's service pursuant to a franchise granted by a municipality, so that those customers will be required to take service from the member cooperative. It is an interesting proceeding involving, as it does, the expression of the true feelings of AEC's members concerning competition; however, it has delayed me in responding to your October 23, 1981 inquiry concerning negotiations with Alabama Electric Cooperative, Inc. for the sale of an ownership interest in the Joseph M. Farley Nuclear Plant.

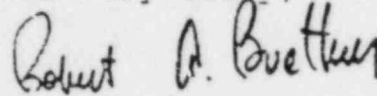
As you can imagine, the Company was disappointed that the NRC failed to grant our request for a stay of the effectiveness of the Appeal Board decision, and even refused to hear our complaints as to the errors of that decision. We are currently in the process of pursuing the appeal of that decision in the Eleventh Circuit and, in connection with that appeal, have decided to seek a stay of certain of the conditions, including condition number 2. This request for stay will be filed soon.

Mr. D. Biard MacGuineas
October 30, 1981
Page 2

Notwithstanding such appeal, and pending a ruling on the stay petition, the Company is willing to share with AEC the data requested in your letter. The Company has been in the process of reviewing the costs which it has incurred in the struggle to bring the nuclear plant on line. Those costs include more than the mere book numbers which the Company is permitted to include under the accounting constraints imposed by the Uniform System of Accounts. Indeed, the replacement of the capacity represented by the nuclear plant which will be needed to serve the Company's customers would constitute a cost well in excess of the cost reflected on the Company's books for the plant.

With that caveat, the Company will be forwarding to AEC shortly the costs reflected on the books and records of the Company.

Yours very truly,



Robert A. Buettner

RAB/jw

VOLPE, BOSKEY AND LYONS

WORLD CENTER BUILDING
918 16TH STREET, N. W.
WASHINGTON, D. C. 20006

JOSEPH VOLPE, JR.
BENNETT BOSKEY
ELLIS LYONS
EDWARD A. GROOBERT
D. BIARD MACGUINEAS
EDWIN E. HUDDLESON, III
EVA F. SHERMAN

(202) 737-6580

January 6, 1982

Mr. Robert A. Buettner
Balch, Bingham, Baker,
Hawthorne, Williams & Ward
600 North 18th Street
Birmingham, Alabama 35203

Dear Bob:

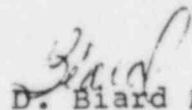
With respect to the cost summaries for the Farley nuclear units attached to your letter of November 16, 1981, would you kindly have Alabama Power Company furnish responses to the enclosed questions. The Company's responses should be sent to Jeff Parish at Southern Engineering of Georgia.

Please note that the phrase "this year to date" in the enclosed questions refers to 1981. Also in any instance where actual data is available, please furnish same in response to any portion of a question requesting estimated data.

Your prompt attention to this matter is most appreciated.

Best wishes for the New Year.

Sincerely yours,


D. Biard MacGuineas

Enclosure

BALCH, BINGHAM, BAKER, HAWTHORNE, WILLIAMS & WARD

600 NORTH 18TH STREET

POST OFFICE BOX 306

BIRMINGHAM, ALABAMA 35201

(205) 251-8100

January 22, 1982

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ROBERT M. COLLINS
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ROBERT A. BUETTNER
JAMES O. SPENCER, JR.
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Mr. D. Biard MacGuineas
Volpe, Boskey and Lyons
918 - 16th Street, N.W.
Washington, D.C. 20006

Dear Biard:

I received your letter dated January 6, 1982 relating to supplying further cost information as to the Farley Nuclear Plant on the eve of the ice storm here in Birmingham, and did not get an opportunity to focus on this request until the first of this week.

We have reviewed the information requested with personnel of Alabama Power Company and they will be undertaking to develop responses to such request. Certain of the data requested does not exist in any form which is conveniently available. After developing the responses which can be generated with some ease, we shall forward this information to Mr. Parish at Southern Engineering as you requested and will get with him as to the approach to be followed in developing additional information needed.

Yours very truly,

Robert A. Buettner

Robert A. Buettner

cc: Mr. Jeff Parish
Southern Engineering Company
of Georgia
1000 Crescent Avenue N.E.
Atlanta, Georgia 30309

Alabama Power Company
600 North 18th Street
Post Office Box 2641
Birmingham, Alabama 35291
Telephone 205 250-1000

JESSE S. VOGTLE
Executive Vice President



Alabama Power

the southern electric system

May 6, 1982

Mr. Charles R. Lowman
General Manager
Alabama Electric Cooperative, Inc.
P. O. Box 550
Andalusia, Alabama 36420

Dear Mr. Lowman:

We have been in communications with Mr. Jeff Parish of Southern Engineering concerning cost data relating to the Joseph M. Farley Nuclear Plant. We understand that he and his organization are representing AEC in preparing for discussion concerning implementation of License Condition 2F(2) which has been imposed upon the Farley Plant Operating License and, in addition to sending certain information to him, we have invited him to review the cost records about which he has inquired. In this connection, we are writing you to obtain your ideas concerning the license conditions as they involve relations between Alabama Power and AEC including the following questions:

1. Condition 2F(2) requires negotiations to establish the price to be paid for an ownership share in the Farley Plant. As you are aware, the sale of plant as required by this license condition will result in the need to replace the capacity sold with capacity costing in the thousands of dollars per kilowatt. This additional cost must then be recovered in our rates to our customers. We would be interested in getting your views as to how the price of the capacity to be sold to AEC should be established in view of the additional cost burden which the sale will impose on our customers.

2. We would also be interested in your views as to provisions to be included in any agreement for sale dealing with how such sale could be reversed at a later date should Alabama Power's appeal of the decision requiring imposition of the condition be successful. In this connection, we would appreciate your addressing the following questions: (a) From which entity would AEC borrow funds to secure the purchase price for the plant? (b) Would such lender require a mortgage on the property in connection with the loan; and if so, could advance agreement be reached with respect to release of such property from the mortgage upon

Mr. Charles R. Lowman
May 6, 1982
Page 2

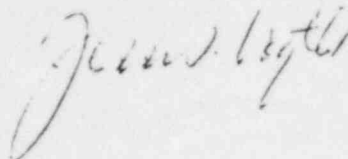
reconveyance of the property to Alabama Power? (c) Would such lender agree to an early repayment of the loan upon any subsequent reversal of the decision on appeal?

3. We need records and data reflecting the loads of AEC's wholesale customers in Alabama at the time of AEC's peak in 1976. As you are aware, the Appeal Board order penalizes the retail and other wholesale consumers of Alabama Power by accepting AEC's argument and requiring a sale which would allocate part of the Farley Plant to AEC's customers which the plant was not designed to serve. This was done not only by including in the calculation loads of AEC which were never intended to be served by the Farley Plant, i.e., the "on system" customers, but also, by allocating the plant on the basis of the non-coincident peak load of AEC rather than the coincident peak demand of Alabama Power's customers. While AEC has always rejected any notion that wholesale power cost should be allocated on non coincident peak demand, it ignores inconsistency with this principle when it seeks to penalize other customers in Alabama. We do need, however, to know what that non-coincident peak demand was in order to determine how much of a penalty the customers for whom the plant was designed to serve will have to suffer.

4. We would also be interested in your ideas concerning the timing of a sale. We would assume that if the response to this question were predicated on a rational economic evaluation, AEC would not be interested in any immediate sale since it would result in increased power costs over and above the power costs which AEC would otherwise experience. Nevertheless, we need to know your ideas in this respect.

If you would reflect on these matters and advise me of your thinking at your convenience, I would appreciate it. I would also appreciate your suggestions of a time, after Mr. Parish has satisfied himself with respect to cost data and after you have had a chance to respond to the above questions, that preliminary discussions could be held.

Yours very truly,



JSV/st

Alabama Electric Cooperative, I

POST OFFICE BOX 550

Andalusia, Alabama 36420

June 4, 1982

Mr. Jesse S. Vogtle
Executive Vice President
Alabama Power Company
P. O. Box 2641
Birmingham, Alabama 35291

Dear Mr. Vogtle:

This is in response to your letter of May 6, 1982. Jeff Parish has contacted the Company regarding his visit to its offices to gather the information needed by AEC, and not yet furnished by the Company, for meaningful discussions regarding AEC's purchase of an undivided share of Farley Nuclear units 1 and 2. In response to your specific questions, we offer the following comments:

1. The claim in your letter that a sale of a share of the Farley units to AEC (which would enable the Company to be on belated compliance with its licenses to operate these units) would place a cost burden on the Company's customers is ludicrous. The Company has and will have excess capacity in substantially greater amounts than will be sold to AEC from the nuclear units.

AEC's capacity entitlement represents less than 1.5% of the Company's capacity at a time when the Company enjoys a 23.2% reserve margin and the Southern System pool has a 30% reserve margin. The Southern Companies subregion of SERC projects reserves from 39% to 30% for the 1982-1991 period. Most impressive are the high export sales being made by the Company and its affiliates--from 350 mw to 2000 mw to Florida Power and Light for 1983-1995; from 300 mw to 500 mw to the Jacksonville Electric Authority for 1983-1993; and 500 mw to Gulf States Utilities for 1984-1992. It is evident that the Company and the System are and will be capacity fat in the next decade.

Further, the Company has been on explicit notice from the Commission since the receipt of its construction permit for Farley unit 1 that it must conduct its planning and other activities taking into consideration the possible future imposition of conditions granting access to the Farley units to other systems. Thus, if the Company

Mr. Jesse S. Vogtle

June 4, 1982

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management has deliberately ignored the Commission's warning, with the result that the sale of AEC's share of the nuclear units would produce any negative economic impact on the Company, that is a product of APCo's own management decision for which the Southern Company, as stockholder, must pay the price.

In no event will AEC compensate, or make whole, the Company for its management's decision to ignore the notice given it by the Commission. No replacement capacity needs of the Company may be taken into consideration in the cost to AEC of AEC's portion of the units. To do so would be contrary to the license conditions imposed on the Company because of its anticompetitive conduct. The purchase price of AEC's share in the units must be set at a level that avoids any economic penalty to AEC for the Company's anticompetitive refusal to grant access to the units from the early 1970's to the time of consummation of the sale.

However, if the Company persists in its claim that it has replacement capacity problems, AEC would be willing to discuss with the Company the early termination of Company service to certain distribution cooperative delivery points as a means of freeing up embedded-cost capacity to alleviate the Company's purported problem.

2. While it is extremely unlikely that the NRC's decision will be reversed on appeal, the Company's concerns can easily be resolved on this matter. It is our understanding that numerous joint ownership agreements provide for reconveyances under certain circumstances and so could the Farley ownership agreement. For example, the Wansley and Hatch Ownership Agreements between Georgia Power Company and Oglethorpe Power Corporation provide for reconveyance as do the Detroit Edison, Northern Michigan Electric Cooperative, and Wolverine Electric Cooperative Agreements regarding units Enrico Fermi Nuclear units No. 2. Similar clauses are contained in the Crystal River unit 3 and Catawba joint ownership agreements regarding units constructed by Florida Power Corporation and Duke Power Company, respectively. With respect to the contingency of extinguishing the right of a third-party security holder advancing funds to AEC, such security holder would be obligated to release such lien when the loan funds are repaid. For example, it is normal practice for the REA to have such clauses in its mortgages including those used to assist in the financing by cooperatives of nuclear joint ownership participation arrangements with investor-owned utilities.

Mr. Jesse S. Vogtle
June 4, 1982
Page 3

AEC plans to borrow funds from the FFB through REA. A mortgage would be required and an advance agreement would be reached with respect to the release of property from the mortgage if a reconveyance to the Company were to become necessary.

3. Regarding paragraph 3 of your letter which addresses AEC's percentage ownership, your quibbles with the formula for ownership in the license conditions were best addressed to the NRC's Appeal Board when the matter was pending before it. We see no reason to debate the existing license conditions, and we hope that the Company intends to comply with them. Again, as we have said above, any economic "penalty" claimed by the Company is the direct result of its management's decision to take steps contravening the antitrust laws and should not be borne by AEC or the Company's customers.

We have calculated that AEC's peak load for use in computing percentage of ownership interest would be 410.9 megawatts. This was arrived at by taking the 60-minute system peak demand of 243.9 megawatts established on July 21, 1976, adding a calculated coincidental peak demand of 207 megawatts for the "off-system" member load, and subtracting 40 megawatts calculated as the Florida and industrial load contribution to the integrated system demand. Calculations and other data on this matter can be covered in detail when preliminary discussions begin.

4. Our review of the Parley nuclear units costs, which is not completed, indicates at this point that AEC would achieve favorable economies from the present acquisition of its share of the units.

After Mr. Parish completes his review of data in Birmingham, we shall contact you to establish a time and place for discussion of the acquisition.

Sincerely yours,

Charles R. Lowman
Charles R. Lowman
General Manager

CRL:elf

Alabama Power Company
600 North 18th Street
Post Office Box 2641
Birmingham, Alabama 35291
Telephone 205 250-1000

H. Allen Franklin
Senior Vice President



Alabama Power

the southern electric system

April 29, 1983

C O N F I D E N T I A L

Mr. Charles R. Lowman
General Manager
Alabama Electric Cooperative, Inc.
P. O. Box 550
Andalusia, Alabama 36420

Dear Mr. Lowman:

Section 2.F.(2) in each of the Operating Licenses issued by the Nuclear Regulatory Commission for Units 1 and 2 of Alabama Power Company's nuclear plant requires Alabama Power Company ("APCO") to offer to sell Alabama Electric Cooperative, Inc. ("AEC") a joint ownership interest in those units. In discussions with your counsel, it was agreed that we meet with you on May 24, 1983 to discuss such an offer. We are furnishing you in this letter the outline of an offer which APCO is making solely as a response to these license conditions.

As you are aware, APCO continues to disagree with the necessity for any license conditions to be imposed, and with the propriety of the conditions imposed, particularly the one requiring forced sale of the plant to AEC. Because of our disagreement, the appeal of the decision of the Eleventh Circuit Court of Appeals will be pursued. This letter and the discussions which follow between APCO and AEC shall not constitute a waiver of APCO's position with respect to the ongoing litigation. The outline of terms and conditions set forth herein forms the basis on which APCO proposes to sell an ownership interest in both units of the nuclear plant to AEC. Actual sale of such ownership interest shall be subject to a condition precedent that APCO's appeal of the Atomic Safety and Licensing Board's order is unsuccessful and the United States Supreme Court fails to require alteration of the requirements of Section 2.F.(2) of the licenses.

As you are aware, APCO has expressed concern for the past ten years that the sale of a joint ownership interest in the plant to AEC could result in increased costs to APCO and decreased nuclear plant safety because of shared managerial

Mr. Charles R. Lowman
April 29, 1983
Page 2

responsibilities. We have been told repeatedly that neither concern is well founded. To assure that this involuntary sale of the ownership interest in the plant to AEC will actually avoid these problems (i.e., provides assurance that AEC's interest will not increase risks and avoids assumption by APCO of any risk of costs associated with the ownership share of the plant conveyed to AEC), the contractual arrangements will have to be carefully structured. With this objective in mind and subject to the reservations set forth above, as well as any other matters which may arise during negotiations that are necessary to achieve this objective, APCO is setting forth below an outline of the basis on which APCO will sell an ownership interest in its nuclear plant to AEC. This outline is subject to revision during negotiations to reflect matters not heretofore recognized as problems associated with the proposed joint ownership arrangement.

A. Sale of Ownership Interest in Plant Facilities:

APCO will convey to AEC an undivided ownership interest in Units 1 and 2 of the nuclear plant; the property constituting the plant to be conveyed being described generally below. The amount of the ownership interest to be conveyed shall be 5.95% which has been determined in accordance with the following formula:

$$\% \text{ Interest} = \frac{A}{A + B}$$

Where A = The sum of the 1976 peak hour loads of the wholesale for resale customers of AEC in Alabama served directly by AEC and the peak hour loads of the wholesale for resale members of AEC served by APCO.

B = APCO's 1976 territorial peak hour load (exclusive of loads of members of AEC served by APCO).

The sale of the property shall be based on payment at closing of the amount reflected on Exhibit 1 attached hereto. The price developed on Exhibit 1 considers both the reasonable value of the nuclear plant and all costs to APCO related to the plant. As you are aware, the Eleventh Circuit, in affirming the order of the Atomic Safety and Licensing Appeal Board requiring an offer for sale of an interest in the plant, stated that "AEC would, of course, pay the reasonable value for this

Mr. Charles R. Lowman
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Page 3

interest." We have secured from EBASCO Services, Incorporated, an engineering services organization which has expertise in nuclear plant costing methodologies, an estimate of the reasonable value of the plant. This estimate reflects a conservative judgment of the reproduction cost of the plant less depreciation. As you are aware, this methodology is commonly used for the valuation of utility property and is less than the amount which some jurisdictions have held just compensation in cases of forced sales of utility property.

APCO has also developed the total cost of the plant to APCO. Both the cost to APCO and the estimated reasonable value are shown on Exhibit 1. To arrive at the price at which the plant is being offered to AEC, we have averaged the EBASCO determination of reasonable value and the cost of the nuclear plant to APCO.

In addition, Exhibit 1 shows the breakdown of the price for the nuclear fuel component. All of these prices on Exhibit 1 are predicated on a June 30, 1983 basis and will, of course, have to be adjusted to the actual date of closing.

The contract for sale and deed shall be predicated on the following general principles:

1. Fee title only to land constituting the Security Protected Area of the nuclear plant site will be included in the sale. At APCO's option, AEC shall reconvey this interest in land to APCO for nominal consideration upon complete decommissioning. Facilities to be conveyed will be those improvements on the entire site, which shall include all facilities necessary for operations of Units 1 and 2. Included in the sales price shall be an amount necessary to acquire a contract right to AEC's pro rata portion of nuclear fuel (and nuclear fuel ingredients not yet incorporated in nuclear fuel).
2. All facilities shall be sold by quit claim deed on an "as is, where is" basis, with an express assumption by AEC of all risks associated with ownership, operation, and future maintenance of the facilities. In addition, there shall be an explicit negation of all expressed or implied warranties as to the condition and quality of the facilities.

Mr. Charles R. Lowman
April 29, 1983
Page 4

3. AEC shall agree to accept the terms and conditions of, and agree to be bound by, all contracts which have been entered into or will be entered into by APCO or others on APCO's behalf in connection with the construction, operation and maintenance of the facilities or purchase of nuclear fuel or contract relating to any step in the nuclear fuel cycle. In the event APCO incurs any incremental costs under such contracts because of the sale of the interest in the nuclear plant to AEC, AEC shall bear the total responsibility for such incremental costs.
4. AEC shall be responsible for the total costs of any requirements for changes or alterations of the plant, APCO's accounting system or any other aspect of APCO's operations which result from AEC's acquisition of an ownership interest, such as, the cost of complying with requirements of REA as lender to AEC.
5. APCO, its agents, contractors and their employees shall be held harmless by AEC against any claim by AEC, its members or purchasers, their customers, and any other party for any cost or liability of any character as a result of the condition of the nuclear plant, including any patent or latent defects or any other condition of the facilities (including nuclear fuel) transferred, whether or not APCO, its agents, contractors and their employees are aware of such condition at the time of sale and whether or not such condition has been revealed to AEC prior to the sale of the plant. After sale of the interest in the plant to AEC, AEC shall be responsible for its pro rata portion of any liability to third persons which results from the plant whether or not such liability is traceable to causes which occurred before the sale of the interest in the plant to AEC.
6. APCO, its agents, contractors and their employees shall not be liable to AEC in any way as a result of the damages, costs or liability which AEC may incur as a result of any violation or infringement of a patent, trademark, service mark or proprietary agreements associated with the facilities to be conveyed.

Mr. Charles R. Lowman
April 29, 1983
Page 5

7. AEC shall also be responsible for a pro rata portion of all cost of making capital improvements and additions, operation, maintenance and decommissioning of the nuclear plant as well as the acquisition of nuclear fuel for such plant, all as more explicitly dealt with in the Operating Agreement.
8. AEC shall waive the rights to partition, or sale in lieu of partition, normally associated with joint ownership of property under Alabama law. In addition, it shall waive all other rights which are normal incidents of joint ownership at common law. AEC's rights as joint owner shall be limited to those expressly stated in the sales contract and operating agreement.
9. AEC shall not have the right to assign, sublet, sell or otherwise dispose of the jointly owned property since to do so could place APCO at additional risk. In the event AEC desires to dispose of its interest in the plant, a mechanism will be developed to give APCO the right, at its election, to purchase AEC's interest in the plant, and establish the price for such transfer.
10. AEC shall indemnify APCO against the adverse impact on APCO arising from tax legislation, or interpretation of tax laws, which impact would arise because of the joint ownership arrangement, i.e., as a result of either the sales agreement or the operating agreement.

B. Operating Agreement:

APCO and AEC shall enter into an Operating Agreement for the operation by APCO of the jointly owned plant. The Operating Agreement shall grant AEC the right to receive its pro rata portion of the energy generated at the plant at the time such generation occurs; however, it shall provide complete and absolute authority in APCO to determine the total operations of the plant, without responsibility on the part of APCO to consult with, or seek agreement of, AEC as to the plant operations, its maintenance, the making of capital improvements, its level of operations, its cessation of operations or the timing or methods of its decommissioning. The Agreement shall provide for the payment, at a minimum, of the costs and fees set forth below.

1. Responsibility of APCO, as Operator, to AEC - Sharing of Costs - Allocation of Risk of Loss of Plant and Damage or Injury to Third Parties.

- (a) AEC shall pay, in advance, a pro rata share of all costs associated with operating and maintaining the plant, making capital improvements and additions, acquiring nuclear fuel, participation in nuclear industry organizations determined by APCO to be in the interest of the plant, and for an allocation of general corporate expenses (including but not limited to administrative and general expenses and general plant costs). These obligations shall continue regardless of plant performance or periods of prolonged outage or permanent shutdown. AEC shall agree to accept the terms and conditions of, and agree to be bound by, all contracts associated with construction, operation and maintenance of the plant or the acquisition of nuclear fuel which APCO or others on APCO's behalf have entered into prior to a sale to AEC or which are entered into thereafter. The costs to be shared by AEC shall be those required by regulatory bodies or determined by APCO (in its sole judgment) to be desirable. APCO shall have no liability to AEC for costs of any nature associated with the decision to make such alterations or improvements or to incur such operating or maintenance expense. AEC shall contribute funds in advance from time to time, necessary to acquire nuclear fuel (or its ingredients) during the fuel cycle. Such payments shall be on a pro rata basis. AEC will not be granted title to the fuel or its ingredients but will have contract rights and obligations resulting from such payments.
- (b) Fees for operating and maintaining the plant, shall be \$1.0 million per year, escalated each year based on an acceptable Government index. A fee shall also be assessed equal to 15% of AEC's pro rata share of all direct and indirect expenditures associated with the making of any capital improvements. A fee equal to ten percent (10%) of AEC's pro rata share of the annual fuel costs shall also be assessed. These

Mr. Charles R. Lowman
April 29, 1983
Page 7

fees have been set on the assumption that APCO will have no responsibility to AEC for any loss associated with the plant, arising out of operations, maintenance, making of improvements or nuclear fuel acquisition activities.

- (c) AEC shall be responsible for the total cost of all incremental operating, maintenance, capital improvements or nuclear fuel acquisition activities which result from AEC's ownership interest and which would not have been incurred except for AEC's acquisition of an interest.
- (d) AEC shall defend and indemnify APCO for a pro rata portion of costs associated with third party claims arising out of operation of the plant by APCO and for all costs resulting from claims of third parties (such as, claims of AEC's members or customers) which would arise because of AEC's ownership of a portion of the plant.
- (e) Provision will be included to exclude liability on the part of APCO for losses or costs to AEC for conduct of APCO, its agents, contractors or employees even though such conduct is alleged or determined to be willful, wanton, reckless or merely negligent.
- (f) Provision will be included which will exclude, in any circumstance, liability of APCO to AEC for damages of any nature including those in the character of consequential, special, incidental or indirect damages.
- (g) AEC shall be responsible for a pro rata share of all costs associated with the decommissioning of the facilities and disposal of nuclear fuel in accordance with requirements of laws, regulations or mandates of regulatory bodies, and any other costs necessary or desirable, in APCO's sole judgment, for the restoration of the site at the time of the shut-down of the plant. Provisions shall be included in the Operating Agreement to assure that APCO does not incur any additional risk for decommissioning or nuclear fuel waste disposal associated with AEC's interest in the plant.

Mr. Charles R. Lowman
April 29, 1983
Page 8

- (h) AEC shall be responsible for a pro rata share of all fines or penalties of any nature, under any law or regulation, associated with the operation, maintenance or decommissioning of the plant, including those imposed by NRC, EPA, other federal, state or local regulatory bodies, or by federal, state or local courts.
- (i) The Operating Agreement shall continue in effect until such time that (1) all decommissioning associated with the plant has been completed, (2) all liability for disposal of waste produced or created by the plant has terminated, and (3) the plant site has been returned to a condition acceptable to APCO after decommissioning.

2. Insurance - Liability and Property coverages.

- (a) APCO will procure insurance to the extent determined appropriate by APCO (from companies chosen by APCO and under standard policies for such purposes) to cover property damage and public liability (both general liability and nuclear energy hazard insurance). AEC shall bear its pro rata portion of such insurance costs. Such insurance may require AEC to become a member of one or more of the insurance pools in which APCO is a member, such as Nuclear Mutual Limited. APCO shall, in its sole judgment, determine the amount of deductible which will be maintained on insurance.
- (b) Mechanisms must be developed to protect against AEC's failure to come up with its pro rata portion of any self-insurance under public liability policies and the Price-Anderson Act.
- (c) Similar mechanisms shall be developed to protect against inability or failure of AEC to come up with any retrospective premium adjustments under insurance policies, deductible under property insurance or excess over property insurance necessary to cover entire loss.
- (d) In the event it is necessary for AEC to procure insurance associated with replacement power

costs during prolonged outage in order for APCO to be able to maintain such insurance without any increase in cost, then procurement of such insurance by AEC shall be a prerequisite.

3. Failure to Live up to Agreement - Definition and Consequences of Default.

(a) Events of default:

- (1) Failure to fund pro rata portion of capital expenditures for improvements, replacements, fuel, etc. Delay in funding that can result in delays in accomplishing the improvement of the plant or the purchase of fuel.
- (2) Failure to contribute to working capital fund with sufficient amounts necessary to cover obligations for expenses.
- (3) Failure to fund insurance under Price-Anderson.
- (4) Failure to provide pro rata share of any retrospective premium adjustments under insurance policies, deductible under property insurance or excess over property insurance necessary to cover entire loss.
- (5) Failure to indemnify as required.
- (6) Failure to make any other monetary payment when due under the Agreement.
- (7) Failure to abide by the requirements of regulatory bodies having jurisdiction over the plant.
- (8) Failure to provide adequate assurance of performance by AEC of future obligations where reasonable grounds for insecurity arise.

Mr. Charles R. Lowman
April 29, 1983
Page 10

- (9) Disclosure of information which is proprietary to APCO, its suppliers, contractors or agents.
 - (10) Requirement by APCO, because of court decision, regulatory order or otherwise, to bear more than its pro rata share of the total cost or expense associated with the plant, or which increases APCO's risk, such as, refusal of a court to enforce AEC's obligation to reimburse APCO for fines and penalties of any nature.
 - (11) Delay by AEC in performance of any action required under the Agreement.
- (b) Range of Remedies for Default - Remedies Shall Be Cumulative and not Exclusive of Other Remedies Which May Be Provided by Law.
- (1) In any event of default by AEC, it shall be denied its pro rata share of capacity and energy from the plant during continuation of default. APCO shall have the right to sell or use energy from AEC's portion of the plant. AEC would buy replacement capacity and energy at APCO's incremental costs or obtain it from other sources.
 - (2) AEC would be obligated to pay interest on any monetary amount in default until the default is cured.
 - (3) AEC shall pay all incremental costs attributable to its default, such as, APCO's replacement power costs resulting from delay.
 - (4) If a default is not cured within 90 days, APCO would have option to purchase AEC's interest in the plant at AEC's cost less depreciation, less additional costs associated with AEC's default and less APCO's costs associated with transfer and any amounts owed by AEC to APCO. For defaults of the character described in Paragraph B.3(a)(10) above, no period of cure shall be allowed.

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- (5) In addition to, or in lieu of, right to purchase, APCO would have the right to collect amounts owed, in the past or in the future, by AEC under the Agreement from distribution cooperative members of AEC. Such entities shall enter into contracts which obligate these entities to assume liability for such amounts on a joint and several basis.
- (6) REA shall guarantee the contingent liabilities of AEC associated with its ownership interest in the nuclear plant and its responsibility for payment of costs and expenses under the Operating Agreement.
- (7) AEC's obligations under the Agreement shall be secured by a second mortgage on AEC's system.

We would note further that in view of our offer made in this letter, we are hereby withdrawing our offer made in 1974 to negotiate the sale of unit power to AEC from the nuclear plant.

Arrangements will be made for our meeting at 9:00 A.M. on May 24, 1983 in the Sixth Floor Conference Room at APCO's General Office Building. We would appreciate your advising us in advance of the representatives you expect to be attending.

Respectfully,



H. Allen Franklin

HAF/iw
Attachments

C O N F I D E N T I A L

EXHIBIT I

AEC PAYMENTS TO APCO AT CLOSING (a)
(Closing Assumed 6/30/83)
(In Thousands of Dollars)

1. Estimated Reasonable Value of the Plant (b)	2,965,000'
2. APCO's Costs Related to the Plant (c)	2,430,047
3. Average of Items 1 and 2	2,697,524
4. Nuclear Fuel Costs (d)	<u>303,885</u>
5. Total for 100% of Units	<u>3,001,409</u>
6. Sub-Total to be Paid by AEC @ 5.95% Ownership Interest (e)	<u>178,584</u>
7. Adjustment: Transfer of Ownership Costs (f)	
8. Total to be Paid by AEC (Item 6 plus Item 7)	<u> </u>

NOTES:

- (a) Data to be revised and adjusted to actual closing date. Cost estimates rounded to nearest 1,000 dollars.
- (b) EBASCO Services, Incorporated estimate of reproduction cost less depreciation.
- (c) Details of these costs are on Exhibit I, page 2.
- (d) Details of these costs are on Exhibit I, page 3.
- (e) This price will be adjusted for any unforeseen adverse tax impacts.
- (f) Transfer of ownership costs include filing and recording fees, proration of certain taxes, proration of certain prepaid items, APCO cost of negotiating and implementing sales/operating agreements, etc. (to be determined based on actual transaction costs).

EXHIBIT I

APCO'S COSTS RELATED TO THE FARLEY NUCLEAR PLANT (a)
(Closing Assumed 6/30/83)
(In Thousands of Dollars)

Net Adjusted Investment @ 6/30/83	1,420,721
Capital costs during construction in excess of booked	463,328
Adjustment for Income Tax Effect (b)	245,656
Entitlement Fee (c)	170,071
Other adverse financial consequences associated with building Plant Farley	114,200
Construction Work in Progress	<u>16,071</u>
TOTAL	<u>2,430,047</u>

NOTES:

- (a) Data to be revised and adjusted to actual closing date. Cost estimates rounded to nearest 1,000 dollars.
- (b) The estimated income tax effect will be actualized to reflect any unforeseen adverse impact.
- (c) "Entitlement Fee" is an amount to be paid by AEC in consideration of construction planning, construction management, plant design, labor supervision, site licensing, use of a valuable scarce site, and AEC's entitlement to the Company's contracts for major equipment.

EXHIBIT I

NUCLEAR FUEL COSTS (a)
(Closing Assumed 6/30/83)
(In Thousands of Dollars)

Net Adjusted Investment	78,119
Capital costs during fabrication in excess of booked	45,704
Adjustment for Income Tax Effect (b)	8,915
Construction Work in Progress	<u>171,147</u>
TOTAL	<u>303,885</u>

NOTES:

- (a) Data to be revised and adjusted to actual closing date. Cost estimates rounded to nearest 1,000 dollars.
- (b) The estimated income tax effect will be actualized to reflect any unforeseen adverse impact.

Alabama Power Company
600 North 18th Street
Post Office Box 2641
Birmingham, Alabama 35291
Telephone 205 250-1000

JESSE S. VOGTLE
Executive Vice President



September 26, 1983

Mr. Charles R. Lowman
Alabama Electric Cooperative, Inc.
P. O. Box 550
Andalusia, Alabama 36420

Dear Mr. Lowman:

In our meeting on September 1, 1983 we agreed that we would undertake to set forth the status of negotiations being conducted between Alabama Power Company and Alabama Electric Cooperative, Inc. pursuant to Section 2.F(2) of the Operating Licenses for the Joseph M. Farley Nuclear Plant Units 1 and 2. In doing so, we discovered three basic categories of issues which have been raised to date: (1) those as to which the parties are in agreement; (2) those as to which the parties understand the positions and are in agreement in principle but reserve their rights to look at the issue in greater detail as negotiations progress; and (3) those as to which the parties are in fundamental disagreement at the present time. We are identifying and categorizing these issues below.

A. SALE OF PLANT

1. Amount of Joint Ownership Interest to be Sold to AEC under Section 2.F(2): APCO originally set forth its understanding of the requirements of the license condition which would have resulted in an offer to AEC of 5.95% of the plant, that is, approximately 102 megawatts of nameplate capacity. AEC countered stating its disagreement. No explicit entitlement was specified by AEC, however, from the principles stated in its disagreement with APCO's methodology, AEC appears to be claiming entitlement to approximately 6.75%, or 116 megawatts of nameplate capacity. APCO examined AEC's objections and has agreed that transmission losses in the computation of the demand of AEC off system customers served by APCO were handled inconsistently and

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that recalculation based on the available data showed the entitlement to be offered AEC under the license condition should be 6.26%, or 108 megawatts. AEC still maintains that the Appeal Board intended to require division of the plant not just on the ratio of AEC sales to its members compared to total sales of AEC and APCO, but it also wished to increase AEC's share of the plant entitlement based on sales made by Southeastern Power Administration to AEC's members which power was wheeled over APCO's lines to such members.

APCO continues to reject this argument. The Joseph M. Farley Plant was designed in the late 1960's to serve the load in Alabama which APCO was under a duty to serve. Of that expected load no more than 4% was load of distribution cooperatives which are now off system members of AEC. Thus, on the basis of normal allocation methodologies utilized by regulatory bodies, only approximately 4% of the Farley Plant (and the associated costs) would have been available to AEC's members. Even though AEC came into the picture long after plans for the unit had been finalized, AEC argued successfully before NRC that it should be entitled to purchase greater than pro rata share of this resource. The erosion is dramatic. In 1969 when plans were developed for the Farley Plant (including fixing the size of the units) at least 96% of the plant was intended for provision of service to the customers of the company other than those of AEC. When the Licensing Board ordered the APCO to provide unit power access to AEC in 1976, the requirement would have resulted in AEC having an allocation of 5% of the plant. 95% would have been retained for service to APCO's other customers. The Appeal Board's efforts result in the erosion of an additional 1.26% of plant allocation so that only 93.74% is available for service to APCO's customers. Now, AEC wants to go further to expand its interest to nearly 7% leaving slightly more than 93% for APCO's customers. It appears inconsistent for AEC to take the position which it is taking today in light of the representations which were made to the Eleventh Circuit Court of Appeals by counsel for Department of Justice (in the presence of AEC) that the order would result in the sale of approximately 4% to 6% of the plant.

In summary, while APCO has moved from its initial position, AEC has not yet indicated a willingness to budge from its insistence on access to approximately 7% of the plant. In addition to the above, we would note that the figures which have been used in developing the ratios are, in some instances, estimates. This estimation is required because of missing data at some delivery points. We also

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would note that AEC has not supplied any back-up for its statement of coincident peak demand of its Alabama wholesale customers.

2. Sales Price: APCO's understanding of the basis for the sales price was set forth in its letter to AEC dated April 29, 1983. AEC has vehemently rejected such basis and has countered stating it would not pay more than what it would have incurred on a computed basis had APCO sold AEC an ownership interest at the time it first sought such an interest. AEC should clearly recognize this as a punitive measure which would permit it access to ownership in the plant significantly below APCO's costs. APCO has rejected that concept and the parties are in fundamental disagreement on this issue.

3. Amount of Real Property Conveyed and Conveyance Mechanism: APCO originally offered to convey by quit claim deed a joint interest in all of the improvements constituting the plant exclusive of the underlying fee in the property except for the fee underlying the ten acre tract comprising the Security Protected Area. AEC objected to a quit claim deed on the basis of REA requirements as lender even though the U.S. Government will not normally convey property other than by quit claim deed. APCO has agreed to convey by statutory warranty deed an ownership interest in all improvements on the plant site which are part of the Farley Plant together with joint ownership in a surface area of approximately 115 acres on which the majority of those facilities constituting the Farley Plant are located. APCO has also offered to include contract provisions which would allow AEC to purchase an interest in any future improvements in Farley Units 1 and 2 without the necessity of purchasing additional property. AEC has agreed to review this proposal for compatibility with REA lending requirements. APCO continues to be concerned with any requirement that it sell an ownership interest in fee simple to portions of the site which are not directly related to the Farley Plant. Unrelated uses which APCO may wish to make of such property should not be encumbered because of principles of joint ownership under which AEC might claim participation rights. APCO has also stipulated that any rights in land conveyed to AEC shall be reconveyed to APCO for nominal considerations after complete decommissioning. AEC has agreed to this reconveyance at a "fair price".

4. Sale of Nuclear Fuel: Because of the complications in the title to nuclear fuel which APCO has leased for financing purposes, APCO originally suggested that it not be

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required to convey an ownership interest in the fuel. Rather APCO suggested AEC's interest could be protected through a contract right to a pro rata portion of energy produced by the fuel. AEC objected stating that REA would probably want AEC to have a joint ownership interest in the fuel itself. APCO has investigated the possibility of making the conveyance to accommodate AEC's position and feels that, while it will be time consuming and complicated to straighten out the title situation with APCO's third party lessors, it can probably be done. Some "work out" period may be required, however. While the details of this conveyance have not been fleshed out and are expected to be complex, we do not expect there to be any insurmountable problems conveying a joint ownership interest in existing fuel inventories to AEC. AEC has agreed to explore further whether REA needs title to nuclear fuel as security for loans made to pay for such fuel, or whether some other interest could suffice.

5. Warranties: APCO noted in its original offer that the facilities conveyed to AEC would be conveyed in an "as is, where is basis" with negation of express and implied warranties. AEC has agreed and has submitted a draft provision for that purpose. AEC's clause is an acceptable starting point for development of contract language. Enclosed is a redraft of that clause. You will note that the issue of rights with respect to third party contracts is dealt with in 6 below.

6. Acceptance of Contracts: APCO has requested AEC to accept the terms and conditions of contracts which APCO has entered into, prior to the sale, in connection with the plant construction, operation and maintenance, or the purchase of nuclear fuel or other fuel cycle related contracts. AEC has not expressed objection to this requirement. A clause entitled "Contracts with Third Parties" dealing with these matters as it relates to plant facilities has been developed and is enclosed. A similar clause will be developed for fuel related issues.

7. Incremental Costs Incurred under Third Party Contracts: APCO has proposed, and AEC objected to, recognition of the principles that, if under contracts with third parties relating to the facilities to be conveyed, there results additional costs solely because of the sale of an ownership interest in the plant to AEC, AEC should bear that incremental cost. We are not aware of any actual cases of incremental costs which would result from contracts, but we have difficulty understanding why the principle is

unacceptable to AEC. In this category of potential incremental costs, we are strictly talking about cost items which will be identified by the third party contractor as being imposed solely because of the addition of AEC to an ownership interest. Thus, AEC's concern is unfounded that APCO will attempt to make an improper cost allocation. An example of the type of charge which could be imposed would be a charge for increased insurance premiums incurred by the contractor because of the addition of AEC as an owner, assuming of course, that the contractor has a right to pass on such a charge to APCO pursuant to the contract. We would request AEC to reassess its position on this matter.

8. Incremental Costs of Accounting or Plant Changes Resulting from AEC Ownership: APCO also requested that if, solely because of a sale of an ownership interest to AEC, APCO is required to incur additional costs, the incremental cost experienced should be for AEC's account. Examples of such costs would include costs of installing additional computer equipment to maintain books and records in a way different from the way APCO currently is accounting for costs, or costs to put additional equipment in the plant which costs arose solely because of an REA requirement relating to the environment which would not have otherwise been imposed on APCO as a result of the regulation of other governmental agencies. AEC has taken the position that these potential cost increases resulting solely from its acquisition of an ownership interest should be borne jointly by the parties in proportion to their interest. APCO continues to feel that it is unfair for it and its customers to be required to pick up any additional costs which arise solely to accommodate an ownership interest to AEC.

9. Liability to AEC: APCO has indicated its unwillingness to accept responsibility to AEC for the plant which AEC purchases regardless of the cause of any damage to AEC. We understand from AEC's willingness to purchase the plant "as is" that it has no objection to waiving claims for damages which it might claim as a result of the condition of the plant. There should be no ambiguity that if damage occurs to property in which AEC has joint ownership interest, AEC shall have no claim against APCO for damages it suffers under any theory including but not limited to contract, tort (including strict liability and misrepresentation) or laws of real property. Rather such costs resulting from such damage shall be borne pro rata between the joint owners on the basis of their ownership interests.

10. Indemnification against Third Party Claims: APCO requested that AEC also indemnify APCO against claims of AEC's wholesale purchasers or their customers for matters dealt with in the "as is" clause of the contract. AEC initially rejected this approach; however, it is presently reviewing the indemnification concept embodied in APCO's proposed Liabilities of the Parties clause and characterizes the proposal as "getting close". That clause would protect each owner against claims by the other owner's customers arising from plant outages and other problems.

11. Liability to Third Parties: APCO has requested recognition by AEC of its pro rata responsibility for liability to third parties (other than claims by customers of the other joint owner dealt with in 10 above). AEC's response has been that if APCO incurs any liability to any third party in the performance of its duties of plant operation, the amount paid by APCO will be considered an operating cost and apportioned between the parties. We take that to be an affirmative response which covers not just liability arising from performance of duties in operating the plant but also liability from defects in plant sold.

12. Waiver of Right of Partition: APCO has requested AEC waive not only its right as a joint owner seeking partition of the jointly owned property or sale for division, but also waive other common law incidents of joint ownership. The rights which AEC will have as to the properties will be set forth in the agreement. AEC has agreed to waive its right of partition, but wishes to explore waiver of other rights. There is a broad range of rights of joint owners which appear particularly inappropriate to force upon competitors. For instance, the common law right to participation in profits from the jointly held property would be repugnant to the forced arrangement currently being negotiated. The right of a joint owner to make use of property which does not interfere with use of such property by the other owner also is objectionable. These common law rights of joint owners are not appropriate in the context of the present relationship. Rather, the parties should concentrate on assuring that AEC has the appropriate rights necessary for it to enjoy the output of the Farley Plant resulting from its purchase and not spend endless hours assuring elimination of the rights of joint owners which are intended to apply only where the parties are engaged in a partnership effort to their mutual profit.

We are also concerned in connection with this and other areas of the proposed agreements with the potential

for AEC to argue later that agreements entered into are void for public policy reasons. For example, notwithstanding AEC's present willingness to waive its right of partition, we feel vulnerable to a later assertion that such restraint on alienation of property is unenforceable because of public policy in Alabama. This concern leads us to the conclusion that some mechanism must be included in the agreements to preclude such later assertions of unenforceability. We are exploring, for instance, the inclusion of a provision which permits termination of the agreement if either party seeks to have a court hold any provision of the agreement to be unenforceable. The unique, forced arrangement which has been ordered must be structured in a way in which the parties rights are clearly stated and the performance of the obligations are not frustrated by WPPSS type declarations of unenforceability.

13. Waiver of Right of Eminent Domain: AEC has requested that a provision be included so that the parties waive any right of eminent domain with respect to the other's interest in the Farley Plant. APCO does not object to such a provision but, by such waiver, does not wish to be understood as admitting that such a right actually exists.

14. Sale of Interest in Plant by AEC: APCO has requested, and AEC has agreed, that if AEC desires to transfer its interest in the plant to a third party, other than a transfer pursuant to mortgage or other financing arrangement, APCO shall have a right to purchase the plant at a price to be determined pursuant to a formula set forth in the agreement for sale of plant. AEC does not desire to agree on methodology for resale of the plant until the initial price for its purchase of the plant has been established. AEC has also stated it would not want a mortgage, lease back, merger, acquisition, etc. to be considered a sale. The clarification of this provision hopefully would not present a problem.

15. Incremental Taxes: APCO has requested, and AEC has indicated disagreement with, provisions for payment by AEC of any increased tax costs which APCO experiences and which result solely from entering into the joint ownership arrangement. If any such tax liability arises, it would be unconscionable for APCO to be forced to bear such costs. APCO continues to insist on this provision and AEC continues to refuse. In addition to its refusal to consider impacts of future taxes, AEC has indicated its unwillingness to pay for any income tax liability of APCO resulting from the sale to the extent such liability is offset by tax credits from

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other portions of APCO's business. APCO requests that AEC reevaluate this position since the parties are in basic disagreement.

B. OPERATING AGREEMENT

1. APCO's Right to Determine Plant Operations and Maintenance: APCO has requested that it be given absolute authority, as agent for AEC, to make all determinations as to the operation of the plant. It has further requested AEC to commit to pay its pro rata share of costs of operation, capital improvements, acquisition of nuclear fuel, etc. Under the operating agreement which APCO would propose, AEC would agree to be bound by any agreement APCO enters into on behalf of the construction, operation and maintenance of the plant. Finally, APCO has requested AEC to waive any claims of any type which it might assert against APCO arising out of exercise of these operations.

APCO's basic position is that the plant was built by APCO to provide electric service to its customers in Alabama which it has a duty to serve. APCO has built and developed what it considers to be an extremely capable team to operate and manage the plant. It has not sought AEC's participation in the plant management and has expressed concern that such participation could not only be disruptive, it could be dangerous. AEC has agreed that it is not seeking direct participation in plant management, and that decisions relating to when the plant will be run, whether capital improvements are needed, and all other operational decisions of any nature, shall be vested solely in APCO. AEC has requested (and APCO has agreed) that it be informed in a timely fashion of major decisions, particularly those which affect AEC's budgeting process. AEC has also asked that APCO commit to make "no adverse distinction" in plant operation because of its ownership interest. APCO has agreed in a revised contract clause earlier sent to AEC.

The second issue is the right of AEC, after-the-fact, to question the decision made by APCO's employees in the operations of the plant. APCO has agreed that it will not operate the plant different from the manner it would otherwise have operated because of AEC's ownership position. AEC has asked, in addition, that APCO's operation of the plant be tested, after-the-fact, using a standard of conformity to "good utility practice". APCO views this standard as inherently inequitable given the circumstances of AEC's participation in the Farley Nuclear Plant. APCO rejects this "good utility practice" provision. Under the

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scintilla rule in Alabama, AEC would most likely be able to present a jury question as to whether APCO exercised "good utility practice" in almost every case. Thus, in a situation similar to the incident which occurred at Unit 2 of the Three Mile Island Nuclear Plant, AEC could argue that there was a failure by APCO to use "good utility practice" and APCO must bear the cost, not only of its share of the clean-up, but also AEC's pro rata share as well. Were that to be permitted, APCO would be placed in the inequitable situation of having less than 100% ownership interest in the plant, and the right to enjoy less than 100% of the output of the plant, but would be forced to bear 100% of the risk of operation of the plant. APCO understands that AEC has expressed an understanding of the Company's problems with this clause.

A related issue involves the rights of AEC to recover from APCO for damages resulting from operations of the plant whether the damages are characterized as resulting from negligence, wantonness, or willfulness on the part of APCO employees. APCO has asked AEC to waive its right to seek damages against APCO for damages to or destruction of its interest in the plant facilities as a consequence of plant operations - regardless of the asserted basis for such damage. Thus, AEC would be precluded from seeking to have APCO pay for AEC's share of the cost even though AEC might assert that such damage resulted from a negligent, grossly negligent, wanton, reckless, or even willful act of APCO or one of its employees, agents or contractors.

This approach could be undermined, however, if AEC were to assert that such a waiver, even though agreed to, is void as against public policy. Some courts have held that contracts entered into at arms length in which one contracting party shifts the entire responsibility for his willful or wanton misconduct to the other contracting party are void as against public policy. The rationale for this rule is the judiciary's desire to avoid creating an attitude on the part of the indemnitee that he is not going to be held accountable for his actions. Here, since APCO has liability for in excess of 90 per cent of the consequences of its plant operations, the judicial concern that the contract would absolve APCO of responsibility for its conduct does not apply. Moreover, the risk sharing arrangement involved in the present transaction will be entered into pursuant to the NRC mandate that all costs be apportioned according to the parties' respective ownership shares.

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APCO is convinced that the provision is not contrary to public policy in light of the foregoing, and seeks AEC's concurrence in that conviction. Even if such concurrence is forthcoming, however, because the courts have not directly spoken to an arrangement of this nature, more protection is needed to assure the costs associated with operating the plant are shared by the parties in proportion to the benefits they enjoy.

The second mechanism for avoiding the inequitable result, which was suggested by Mr. Rogers in our last meeting, is to place a cap on the amount of liability which would be owed by APCO to AEC under any theory of liability. APCO feels such a provision, similar to those which Westinghouse and General Electric include in all of their contracts for sale of electric equipment, should be included. We would agree that this type of clause, together with a clause of the type discussed in Paragraph 5 below, would be helpful in permitting the parties to close the gap in negotiations.

The third mechanism, a variation on the second, would be to predetermine the sole and exclusive remedy for any action on the part of APCO in operating the plant in a manner which a court later finds to be grossly negligent, wanton, reckless or willful.

Finally, as noted earlier in this letter, we are exploring additional means of assuring that provisions of the contract are enforced in accordance with the stated agreements of the parties. We would appreciate AEC's comments on these matters and its advice as to how the desired result can be achieved.

2. Payment of Pro Rata Share of Operating Costs: AEC has agreed on a "pay-as-you-go" basis, to share pro rata all costs associated with operation and maintenance of the plant, the making of capital improvements and additions, the acquisition of nuclear fuel, the costs of participation in nuclear industry organizations which are deemed desirable by APCO, and an appropriate allocation of APCO general corporate expense. AEC's caveats to this agreement are: (a) AEC does not want to make funds available for payment of such costs much in advance of APCO's payment of the cost; (b) AEC does not want to pay A&G expense if it is somehow covered in other rates or sales by the Company; and (c) AEC will accept and be bound by contracts which APCO enters on behalf of the plant operations but wants to be a partial assignee of such contracts. Caveat (a) and (c) should

present no insurmountable problems. Caveat (b) must be explored in greater depth with AEC to assure we are not caught in the regulatory lag trap that would suggest that since 100% of A&G has been allocated in rate cases to retail, wholesale or off-system sales customers, AEC has no responsibility for A&G expenses.

3. Operating Fees: APCO has proposed that it be paid a reasonable operating fee for running the plant on behalf of AEC. AEC has stated it feels that APCO should work for AEC for nothing. APCO has indicated its willingness to negotiate the level of the fees; however, AEC has steadfastly refused to recognize any responsibility to pay more than out-of-pocket expenses for services performed.

4. Incremental Costs Resulting Solely from AEC's Ownership Interest: APCO has requested provisions in the operating agreement under which AEC would be responsible for any incremental cost of operations which result solely from AEC having purchased an ownership interest in the plant. AEC has stated that all costs of operations should be viewed as project costs even though they would not have been incurred had AEC not had an ownership position.

5. Exclusion of Liability for Consequential Damages: AEC has agreed that a provision may be inserted in the agreement which would exclude liability for any consequential, special, incidental or indirect damages. This, as noted in Paragraph 1 above, may form part of the solution for the problems discussed there.

6. Decommissioning Cost and Cost of Disposal of Nuclear Fuel: AEC stated its willingness to pay its pro rata share of decommissioning and spent fuel disposal costs so long as their responsibility was recognized from the date of closing. APCO has agreed to AEC's criterion by adjusting the sales price to give AEC a pro rata credit for the decommissioning funds collected prior to the closing date, with AEC having responsibility for a pro rata share of total decommissioning costs. The arrangement for pro rata sharing of spent fuel disposal costs originally proposed by APCO, along with current legislation, will result in AEC paying disposal costs only for that portion of the fuel used to generate AEC's energy output for Plant Farley.

7. Fines and Penalties: AEC has also agreed that it would be responsible for its pro rata portion of any fines and penalties which arise out of plant operation where the imposition arises after the acquisition by AEC of an

ownership interest based on assertions made after such date. APCO will accept AEC's conditions; however, this too is an area which must be discussed further in light of a potential claim by AEC after the contract has been executed that the provision is void because it is contrary to "public policy". It must also be recognized that members of AEC being served by APCO prior to the acquisition and by AEC after the acquisition would be responsible for their pro rata portion of any fines and penalties regardless of the timing of assertions.

8. Term of Operating Agreement: The parties are in agreement that the operating agreement shall continue in effect until (1) all decommissioning associated with the plant has been completed; (2) all liability for waste produced or created by the plant has terminated, and (3) the plant site has been returned to a condition acceptable to APCO after decommissioning.

9. Insurance Coverage - Responsibility for Future Unquantifiable Expenses and Contingent Liabilities Not Covered by Insurance: The parties are in agreement on division of cost of the standard insurance coverages that shall be provided. APCO has requested that mechanisms be developed to assure AEC can come up with its pro rata share of self insurance under public liability insurance policies and Price Anderson Act requirements; retrospective premium adjustments, deductibles, and excess over limits under property insurance policies; as well as source of funds for contingencies not covered by insurance and future decommissioning costs, the amount of which is difficult to ascertain. AEC said it would explore development of such protection, but later withdrew its willingness to do so. In our latest meeting, AEC agreed to pursue, objectively, seeking REA's guarantee of the future unquantifiable expenses and contingent liabilities. Such a guarantee would relieve APCO's concern that AEC's lack of any equity in its business exposes APCO to the risk and costs associated with the contingent liabilities and presently unquantifiable expenses.

10. Defaults: AEC has suggested that defaults under the operating agreement be categorized as (1) failure of AEC to pay amounts owed when due, and (2) breaches of other obligations under the agreement. We have no problem with such categorization but would add one additional category, i.e., situations in which no actual breach has yet occurred but is imminent, such as bankruptcy petitions being filed or insolvency proceedings being initiated. The more important issue revolves around the remedy for breach. In the case of a

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failure to pay money owed when due, AEC has suggested that default would not exist until the payment was at least 15 days late. APCO cannot accept that principle. The default exists if the payment is not made on time. The remedy for the default may involve a negotiated grace period within which AEC could cure the default by payment of the money due, plus interest and any additional costs incurred by APCO as a result of the default. It must be recognized that in some circumstances, where plant operation is jeopardized because of default on AEC's part to produce the money due, APCO and its customers can be severely damaged. This exposure may be relieved by AEC's maintenance of revolving funds which are available for draw by APCO, and recognition that failure to maintain such reserves would itself constitute default.

Notwithstanding our agreement as to categorization of defaults, we would note the need for a provision similar to that specified in Paragraph B.3(a)(10) of APCO's April 29, 1983 letter. As has been indicated earlier, we feel there should be a provision which permits the other party to terminate the arrangement if either party seeks to avoid obligations stated in the agreement on grounds of unenforceability of the agreement.

There does not appear to be any dispute about the range of remedies available in the event of default, only whether particular remedies listed should be available for less serious contract breaches by AEC. We are willing to explore these distinctions with AEC.

11. Budgeting and Cost Accounting Information: APCO has agreed to provide budgets and cost projections as well as cost accounting and financial and operating statistics which APCO generates in the course of its operations and planning for the Farley Plant.

12. Ad Valorem Tax Clause: APCO will accept the concept in the tax clause suggested by AEC under which AEC would assess its ownership interest in the Farley Plant separately for ad valorem tax purposes and for the purpose of any other taxes payable directly on the plant itself. APCO continues to insist on its position with respect to potential tax increases associated with sale of the interest in the plant to AEC and the income tax impact of such sale on APCO.

13. Audits of Cost: APCO agrees that language should be developed giving AEC appropriate audit rights, at its expense, to examine costs it is obligated to pay.

14. Regulatory Approval - Affirmative Obligation to Cooperate: APCO is willing to assure AEC that it will furnish AEC any information which APCO has that is needed for AEC to process any application for necessary approvals. APCO is unwilling to commit that it will forego any right or duty that it may have to object to the approval. It will make any formal application to NRC that may be required for NRC to determine whether AEC should become a licensee; however, in so doing it shall not waive its right to comment as it sees fit during the approval process.

15. Notice of Outages and Maintenance Periods: APCO agrees that it will notify AEC of planned maintenance and refueling outages in advance. APCO has also agreed that it will provide a signal to AEC, at AEC's expense, to permit AEC to monitor the output of the Farley Plant on an hourly basis.

16. AEC Access to Plant Farley: APCO has agreed that it would provide AEC reasonable rights to visit the plant provided such visits would not interfere in APCO's operations of the plant. AEC, in response, has stated it wished the right to station personnel at the plant full time, including provision of office space, to permit it to monitor plant operations. APCO objects to this request since, inter alia, such personnel are bound to try to justify their continued employment in such role by initiating continual inquiries of plant personnel as to what is going on. Such involvement in plant operations would only serve to direct the attention of plant personnel away from operating the plant.

17. REA Required Social Clauses: AEC has submitted several "social clauses" which are represented to be required by REA before it will loan money to AEC to finance purchase of an interest in the plant. We address each of these separately:

(a) Equal Opportunity Clause: APCO has, in its contract to supply electricity to federal buildings, an obligation in almost identical language to the obligations which would be imposed under the clause and APCO fully intends to perform such obligation. Paragraph (6) of the clause appears to permit AEC the right to terminate or cancel or suspend performance of the agreement if APCO is in

non-compliance with the Equal Opportunity Clause. Non-compliance with the clause by APCO should not permit AEC to avoid its obligations as joint owner under the operating agreement. Although we have reservations about including any clause that could affect the status of the agreement because of any incident of this character, if this clause must be inserted in the operating agreement, it must be made clear that any termination, cancellation or suspension of the contract pursuant to that clause shall not relieve AEC of its obligations to make payments for obligations incurred to that point in time and for future costs, such as decommissioning costs, which are attributable to AEC's period of ownership which arise after that point in time. Moreover, provision must be made for transfer by AEC to APCO of AEC's ownership interest in the plant should such provision for termination, cancellation or suspension of the contract be exercised by AEC.

(b) Non-Segregated Facilities Clause: The REA clause suggested by AEC is virtually identical to that of the clause APCO has entered with GSA. As such, we have no objection to the concept. We note that APCO's "breach" of this clause could also result in termination, cancellation or suspension of the operating agreement. Thus, we have the same reservations about this clause affecting the status of the agreement and the same post-termination provisions must be included as set forth above.

(c) Kickbacks Clause: APCO is not in a position to assure that it is familiar with all applicable statutes, rules and regulations relating to the "kickback" statute. Please furnish us a list of all statutes and a copy of all regulations which are relevant.

(d) Public Officials Not to Benefit Clause: We would like to explore with AEC and REA the obligations and limitations which would be created by this clause with respect to operations of the plant.

(e) Flood Insurance Act: APCO has no objection to this clause as long as it is recognized that if AEC does not pay for a portion of the plant facilities (such as the river intake structure which is partially submerged) because of the operation of this clause, AEC shall not be entitled to any of the output of the plant. Moreover, to the extent APCO becomes obligated through such clause to purchase flood insurance coverage that it would not otherwise have procured, such costs shall be for AEC's account.

(f) Historic Places Clause: Again, subject to the same conditions set forth in (e) above, APCO does not object to the inclusion of this clause in the operating agreement.

(g) Safety Clause: We object to inclusion of this clause since it could be interpreted as establishing a contractual obligation to AEC which is even more stringent than the "good utility practice" clause which has been discussed earlier.

(h) Buy American Clause: APCO will agree to negotiate the inclusion of this clause with AEC and REA but only with the condition that AEC shall be responsible for the incremental costs which result from the operation of the clause if, because of the clause, higher costs were experienced in plant operations.

(i) Environment Clause: APCO will agree to include a clause of this type in the operating agreement if it is made clear that AEC is responsible for incremental costs to APCO resulting from its operations. We would note that APCO has no present obligation to operate the plant in accordance with the Environmental Impact Statement prepared by NRC under NEPA. Rather, it is obligated to operate in accordance with its operating licenses.

C. OTHER AGREEMENTS

1. Sale of Short Term and Long Term Power: AEC has indicated its desire to discuss, as an integral part of the negotiations for purchase of an interest in the Farley Plant, the purchase of other bulk power from APCO. APCO has an existing contract with AEC to provide short term power, at a rate identified in the agreement. APCO has provided AEC voluntarily with a wheeling rate under which it may import power from third parties over APCO's lines. AEC is also interconnected with others at the Walter F. George Bus and is currently building an interconnection with SMEPA. APCO has also indicated to AEC its willingness to sell long term power to AEC on a basis similar to those which it is offering to other utilities. AEC has not been specific as to what it wants. In any event, APCO does not see this as a matter which should become enmeshed in the current negotiations.

2. Wheeling Agreement: AEC is to identify any needed changes which it feels must be made to the current agreements for provision of wheeling to AEC's off-system

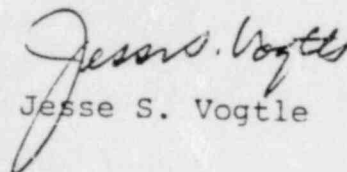
Mr. Charles R. Lowman
September 26, 1983
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wholesale customers in order to accommodate the purchase of a joint ownership interest in the Farley Plant.

3. Termination of Wholesale Power Agreements: APCO, at AEC's request, has agreed to waive the two year notice provision under the wholesale power supply agreements which APCO has with certain retail distribution cooperatives so that AEC can implement its 40 year all requirements contracts with those customers. The conditions for such waiver are: (a) APCO and AEC reach negotiated agreement for the sale of a percentage ownership interest; (b) the total load terminated without proper notice does not exceed AEC's negotiated share of the plant divided by 1.2; (c) AEC utilizes the Farley Plant power in serving such load lost by APCO; and (d) such waiver shall not be construed as a waiver of the notice provision in the future. In our last meeting, Mr. Rogers indicated that REA, as part of the procedure in determining whether a loan should be guaranteed by REA, will be inquiring whether power is available from any alternative sources. You should be aware, of course, that APCO stands ready and willing to continue to provide the same wholesale service to the distribution cooperatives which it is now serving at rates and under terms and conditions regulated by the Federal Energy Regulatory Commission.

We feel the above accurately sets forth the status of the parties' positions raised during negotiations to date. It should be recognized that other matters not covered in the parties' discussions to date are likely to be raised in future negotiations. We would invite your comments on these matters and your suggestions as to the next step in our negotiations. In that connection, Mr. Parish has written to request that a meeting be set up to discuss the income tax calculations reflected in APCO's initial offer as well as other cost matters. We shall do so and shall be in touch shortly with suggested times for such a meeting.

Sincerely,


Jesse S. Vogtle

Enclosures

cc: Mr. D. Biard MacGuineas
Mr. Jeff Parish

"AS IS" SALE WITHOUT WARRANTY: THE FACILITIES TO BE SOLD UNDER THIS AGREEMENT SHALL BE SOLD ON AN "AS IS - WHERE IS" BASIS. APCO MAKES NO WARRANTY OR REPRESENTATION WHATSOEVER, EXPRESS, IMPLIED OR STATUTORY, AND DISCLAIMS ANY AND ALL WARRANTIES, INCLUDING, WITHOUT LIMITATION, ANY REPRESENTATION OR WARRANTY AS TO THE VALUE, QUANTITY, QUALITY, CONDITION, SALABILITY, OBSOLESCENCE, MERCHANTABILITY, FITNESS OR SUITABILITY FOR USE OR WORKING ORDER OF ALL OR ANY PART OF SAID FACILITIES. NOTWITHSTANDING THE FOREGOING, AEC SHALL HAVE THE BENEFIT, IN PROPORTION TO AEC'S PERCENTAGE OWNERSHIP INTEREST, OF ALL MANUFACTURERS', VENDORS' AND CONTRACTORS' WARRANTIES AND ALL PATENTS AND LICENSES, IF ANY, RUNNING TO APCO IN CONNECTION WITH THE FACILITIES TO BE SOLD UNDER THIS AGREEMENT, SUBJECT TO THE PROVISIONS OF SECTION _____ HEREOF DEALING WITH CONTRACTS WITH THIRD PARTIES.

CONTRACTS WITH THIRD PARTIES

1. Acceptance of Contract Provisions: AEC recognizes that APCO has entered into contracts with numerous parties in connection with the construction, operation and maintenance of the facilities covered by this agreement and in such contracts has agreed to certain matters including, but not limited to, limitations on the liability of such contractors for work performed or materials furnished, restrictions on warranties, agreements to indemnify the contractors from liability and other provisions. AEC agrees to accept and be bound by the provisions of all such agreements and further agrees that it waives any claims against APCO for having entered into such contracts or agreed to the provisions thereof. AEC also recognizes that a number of the APCO contracts relating to the facilities contain provisions that require APCO to obtain from any assignee or transferee prior to any assignment of rights under such contract or any transfer of materials, equipment or work product, or any interest therein obtained by APCO pursuant to such a contract, an agreement by such assignee or transferee that it will be bound by all of the requirements for financial protection, waivers, releases, indemnifications, limitations of liability and further transfers or assignments that bind APCO under such contracts. AEC agrees that it will be so bound by the requirements for financial protection, waivers,

releases, indemnification, limitation of liability and further transfers that bind APCO as they now exist or may in the future be with respect to all contracts relating to the facilities.

2. Enforcement of Rights Under Contracts: AEC covenants that, without the written consent of APCO, it will not threaten suit or bring suit against third parties or otherwise make any claim under any contract or arrangement relating to the facilities and AEC recognizes that APCO has complete and exclusive authority, under the agreements, with respect to all such matters. If AEC desires for suit to be threatened or brought or otherwise for any claim to be made, or desires that such action contemplated by APCO shall not be taken, AEC shall, by written notice to APCO, request APCO so to act or refrain from acting. Upon receipt of such notice the parties shall arrange for consultation on the questions raised within 10 working days thereafter, or such lesser period of time as APCO, in its sole discretion, shall specify in the light of circumstances requiring a more expeditious determination. APCO shall not make its determination until after such consultation but such determination by APCO shall be final and binding on AEC.

Charles R. Lowman
General Manager



October 11, 1983

Mr. Jesse S. Vogtle
Executive Vice President
Alabama Power Company
P. O. Box 2641
Birmingham, Alabama 36202

Dear Mr. Vogtle:

We are in receipt of your letter of September 26, 1983, and it is currently under review. While we cannot accept some of your characterizations of the positions previously expressed by AEC, we will respond in detail at a later date when review of your letter has been completed.

Without going into detail at this time, it is clear that a number of the Company's positions with regard to a joint ownership and operating agreement are unreasonable and inconsistent with the Company's obligations under its NRC license and ALAB 646, e.g.:

1. AEC's percentage ownership entitlement is expressly governed by License Condition 2 and ALAB 646, 13 NRC at 1107-1108, and contrary to the Company's position AEC's percentage share is to be measured by the 1976 peak load--not the amount of that load furnished by the Company.
2. The pricing of AEC's interest in the units is governed by License Condition No. 2 and ALAB 646, id. at 1103-1106 which make evident that AEC's share of the units is to be purchased at AEC's cost, and that the Company is not entitled to recover its cost of capital (profit) from AEC or to realize profits over and above your costs from the imposition of various "fees."
3. While AEC has agreed that the Company shall have the sole authority for operation of the plant, the Company's insistence that it be immune from any liability to AEC for even wanton, reckless, willful or criminally negligent operation of the plant verges on overreaching.

Mr. Jesse S. Vogtle
October 11, 1983
Page 2

4. While AEC has agreed to waive its right of partition to the units, the Company's insistence that AEC waive all other unspecified rights or incidents of joint ownership is unreasonable.

5. As we understand it, the Company insists that AEC indemnify the Company for any tax liability that the Company might incur from the sale to AEC of its ownership interest. We further understand the Company to include in this indemnification not only actual tax payments made by the Company, but also any tax liability reflected on the Company's books even though not actually paid. This position is also manifestly unreasonable, particularly since the Company has been on notice since receipt and acceptance of its construction permits that its licenses might be subject to antitrust conditions. Any costs to the Company of compliance with the law and its NRC licenses must be borne by the Company.

6. The Company's refusal to agree to assist in the administrative process of licensing AEC as a co-owner is hardly consistent with a willingness on the Company's part to comply with its NRC licenses.

7. The Company's contention that License Condition No. 6 is inapplicable to AEC and its members and that the Company has no obligation to make available to AEC and its members partial requirements power upon reasonable terms and conditions is unsupportable.

8. The position of the Company that AEC must establish cash accounts for future expenses relative to its ownership interest in the nuclear units is unreasonable in the absence of any similar practice by the Company.

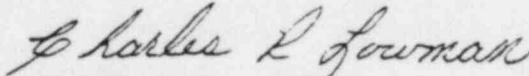
While these matters outlined above do not exhaust our areas of disagreement, they do seem to concretely raise substantial questions as to the seriousness of the Company's willingness to comply with its obligations under its NRC licenses. Now that the Company's petition for certiorari has been denied, we hope serious efforts at arriving at a reasonable joint-ownership and operating agreement can go forward.

At our meeting on September 1, 1983, in Montgomery, the Company represented that it would furnish us with a list of,

Mr. Jesse S. Vogtle
October 11, 1983
Page 3

and copies of, its various budgets and projections of costs relevant to the Farley units together with the preparation date and time frame covered by such budgets-and projections. We would appreciate your sending these along to Jeff Parish at Southern Engineering.

Sincerely,



Charles R. Lowman
General Manager

CRL:elf

cc: Robert A. Buettner, Esq.

PURCHASE AND OWNERSHIP AGREEMENT FOR JOINT OWNERSHIP
INTEREST IN THE JOSEPH M. FARLEY NUCLEAR
PLANT UNITS ONE AND TWO BETWEEN ALABAMA
POWER COMPANY AND ALABAMA ELECTRIC
COOPERATIVE, INC.

PURCHASE AND OWNERSHIP AGREEMENT
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PURCHASE AND OWNERSHIP AGREEMENT FOR JOINT OWNERSHIP
INTEREST IN THE JOSEPH M. FARLEY NUCLEAR
PLANT UNITS ONE AND TWO BETWEEN ALABAMA
POWER COMPANY AND ALABAMA ELECTRIC
COOPERATIVE, INC.

THIS AGREEMENT is made and entered into as of the _____
day of _____ 1984, by and between Alabama Power Company
(APCO), an Alabama corporation with its principal office at
600 North 18th Street, Birmingham, Alabama, and ALABAMA
ELECTRIC COOPERATIVE, INC. (AEC), an electric cooperative or-
ganized under Alabama law with its principal office at _____
_____, Andalusia, Alabama:

WITNESSETH

WHEREAS APCO is an electric utility organized and
existing under the laws of the State of Alabama; and

WHEREAS APCO has constructed and operates a nuclear plant
near Dothan, Alabama, referred to as the Joseph M. Farley
Nuclear Plant, Units 1 and 2, (the "Farley Nuclear Plant")
subject to the requirements of the licenses issued by the
Nuclear Regulatory Commission; and

WHEREAS AEC is a generation and transmission cooperative
organized and existing under the laws of the State of
Alabama; and

WHEREAS, on August 10, 1981, the Nuclear Regulatory Commission amended APCO's license for the Farley Nuclear Plant by requiring APCO to offer to sell to AEC an undivided ownership interest in the Farley Nuclear Plant; and

WHEREAS, in accordance with the foregoing, APCO has offered to sell to AEC, on the terms and conditions set forth herein, a 6.26 percent undivided ownership interest in the Farley Nuclear Plant; and

WHEREAS, the parties recognize that the transactions contemplated hereby were solely the product of administrative and judicial decrees designed to satisfy certain antitrust concerns by providing AEC with access to power generated by the Farley Nuclear Plant, and that such decrees were not intended to provide AEC with other incidents of joint ownership not explicitly granted herein which might otherwise accompany the sale of such an ownership interest; and

WHEREAS, AEC has agreed to the purchase from APCO on the terms and conditions set forth here, a 6.26 percent undivided ownership interest in the Farley Nuclear Plant.

WHEREAS, the parties agree that the undertakings contemplated by the Basic Agreements satisfy the requirements of the August 10, 1981 license condition amendment.

NOW, THEREFORE, in consideration of the premises and mutual obligations hereinafter stated, the parties hereto agree as follows:

ARTICLE I

Definitions

1.01 Actual Cost of Funds During Construction. The Actual Cost of Funds During Construction shall be that amount equal to the average cost of money to APCO during the period during which funds were invested by APCO in the Facilities being constructed.

1.02 Agreement. This Agreement for the sale of an ownership interest in the Joseph M. Farley Nuclear Plant Units 1 and 2 dated as of _____ between APCO and AEC.

1.03 Affiliates. Any corporation or other entity which controls, is controlled by, or is under common control with any party to this Agreement.

1.04 Basic Agreements. This Agreement, the Operating Agreement, and the Nuclear Fuel Agreement.

1.05 Capacity. The capability of producing energy, measured in megawatts.

1.06 Capability. The net summer or winter (as applicable) rating of Farley Unit 1 or Farley Unit 2, measured in megawatts, as determined by APCO.

1.07 Common Facilities. All those facilities, exclusive of Farley Unit 1, Farley Unit 2, Nuclear Fuel and Operating Inventory, which are purchased, leased or otherwise obtained only in connection with the construction, operation and maintenance of more than one nuclear unit located at the Joseph M. Farley Nuclear Plant. Common Facilities are more specifically described as of the date hereof in Exhibit "A".

1.08 Facilities. Farley Unit 1, Farley Unit 2, the Common Facilities and the Operating Inventory, but excluding Nuclear Fuel, which is the subject of the Nuclear Fuel Agreement.

1.09 Farley Plant. The nuclear generating plant located in Houston County, Alabama, which, for the purpose of this Agreement shall mean Farley Unit 1, Farley Unit 2, the Common Facilities and the Operating Inventory but excluding Nuclear Fuel which is the subject of the Nuclear Fuel Agreement. It is intended that this term be identical in meaning with the term "Facilities."

1.10 Farley Unit 1. The nuclear generating unit located in Houston County, Alabama, and designated as Farley Unit 1 (more specifically described in Exhibit "B" hereto), including the

surface interest in the land on which such unit is located, but excluding the Common Facilities, the Nuclear Fuel, the Operating Inventory, and Farley Unit 2.

1.11 Farley Unit 2. The nuclear generating unit located in Houston County, Alabama, and designated as Farley Unit 2 (more specifically described in Exhibit "C" hereto), including the surface interest in the land on which such unit is located, but excluding the Common Facilities, the Nuclear Fuel, the Operating Inventory, and Farley Unit 1.

1.12 Immediately Available Funds. Funds which are good and available to the payee on the date when paid.

1.13 Indenture. The Indenture dated as of January 1, 1942, from APCO to Chemical Bank, as trustee, as supplemented from time to time.

1.14 Interest Rates.

(a) The Special Interest Rate. A rate per annum equal to the prime rate of AmSouth Bank, N.A., Birmingham, Alabama, or its successor, in effect from time to time plus three percentage points (3%).

(b) The Regular Interest Rate. An interest rate per annum equal to the actual weighted cost of APCO's short term financing for the period in question or, if APCO has no short term financing outstanding at the time, the prime rate of

AmSouth Bank, N.A. as in effect from time to time. Short-term financing shall be all debt financing other than long term debt as defined by the Uniform System of Accounts.

1.15 Lien. Any encumbrance, lien, charge or security interest upon or in any of the facilities.

1.16 Members of AEC. For the purpose of this agreement those presently existing or future rural electric distribution cooperatives and municipal corporations and utility boards, and others which are members of AEC, their successors and assigns. For the purposes of this agreement, the presently existing AEC members shall mean those cooperatives, municipal entities and corporations, together with their respective delivery points, listed in Exhibit "D".

1.17 New Investment. The net book cost to APCO for all additions, improvements, betterments and replacements related to the Facilities incurred after the closing date, accounted for by APCO as utility plant under the uniform system of accounts. New investments shall not include Actual Cost of Funds During Construction in the case where AEC is paying its proportionate share of New Investment in accordance with the provisions of the Operating Agreement but shall include such Actual Cost of Funds in the case where APCO has previously incurred such a cost.

1.18 NRC. The Nuclear Regulatory Commission including any successor governmental agency having jurisdiction over the operation of the Farley Plant.

1.19 Nuclear Fuel. For the purpose of this agreement, nuclear fuel shall have the meaning defined in the Nuclear Fuel Agreement.

1.20 Nuclear Fuel Agreement. The Nuclear Fuel Agreement between APCO and AEC of even date herewith.

1.21 Operating Agreement. The Operating Agreement between APCO and AEC of even date herewith.

1.22 Operating Inventory. Equipment, spare parts (including spare parts in which APCO may have an interest because of an agreement for pooling of inventory with others), tools, goods and supplies (excluding Nuclear Fuel) which may be used for the operation, maintenance, modification of the Facilities and recorded on APCO's books of account in accordance with the Uniform System of Accounts.

1.23 Percentage Ownership Interest of AEC. Except as otherwise modified by the operation of the provisions of Articles XV and XVI hereof, an undivided ownership interest in the Facilities equal to 6.26% in each of Farley Unit 1, Farley Unit 2, the Common Facilities and the Operating Inventory.

1.24 Percentage Ownership Interest of APCO. Except as otherwise modified by the operation of the provisions of Articles XV and XVI hereof, an ownership interest equal to 93.74% in each of Farley Unit 1, Farley Unit 2, the Common Facilities and the Operating Inventory.

1.25 REA. The Rural Electrification Administration.

ARTICLE II

Purchase of AEC's Percentage Ownership Interest

2.01 Purchase of AEC's Percentage Ownership Interest in the Facilities at Closing. At Closing, subject to the terms and conditions set forth herein, APCO shall sell and convey and AEC shall purchase and pay for AEC's percentage ownership interest in the facilities at the Closing Date.

2.02 Conveyances. At Closing, APCO shall consummate the transfer of the Percentage Ownership Interest of AEC by delivery of:

- (a) A statutory warranty deed substantially in the form of Exhibit "E" hereto making APCO and AEC tenants in common but subject to the limitation on such tenancy in common as specified therein and in Section 2.03 hereof;

- (b) An assignment agreement substantially in the form of Exhibit "F" hereto transferring an undivided ownership interest in APCO's rights and obligations under those certain contracts, licenses and permits listed in Exhibit "F" hereto for the purchase, repair, construction, ownership and operation of the Facilities;
- (c) A bill of sale substantially in the form of Exhibit "G" hereto conveying an undivided ownership interest in all property listed thereon;
- (d) Releases of such undivided ownership interests in the Facilities from the lien of the Indenture of Mortgage.

2.03 Limitation on AEC's Rights as Tenant in Common. The parties recognize that the sale of an ownership interest in the Farley Nuclear Plant to AEC is the product of administrative and judicial orders designed to satisfy antitrust concerns by providing AEC with an ownership interest in the Facilities and not because APCO and AEC mutually determined that it would be in their respective best interests to enter into the arrangement contemplated hereby. Accordingly, APCO and AEC agree that the normal incidents of tenancy in common shall not be applicable to the conveyance of AEC's Percentage Ownership Interest, and that AEC shall have no rights as

tenant in common other than those specifically enumerated in the Basic Agreements.

2.04 Entitlement to Available Capacity. (a) After closing, except as otherwise provided in this Agreement, AEC and APCO shall be entitled to the available capacity of Farley Units 1 and 2 as follows:

APCO:	93.74%
AEC:	6.26%

(b) With respect to Farley Units 1 and 2, AEC shall be entitled to AEC's Percentage Ownership Interest of the available capacity in each such unit. Available capacity is defined as that capacity of the particular unit that is available for operation as determined by APCO. Reductions in unit capacity arising from any cause, including but not limited to, operating limitations or regulatory requirements, during any hour in a billing period, shall result in proportional reduction in AEC's share of the available capacity.

2.05 Modification of Capacity Entitlement. Notwithstanding the foregoing sections of this Article II, the parties' entitlement to available capacity and associated energy may be modified from time to time in accordance with the operation of Articles XV and XVI hereof and the procedures set forth in Article ____ of the Operating Agreement.

2.06 Second Mortgage Lien. In consideration of APCO's obligations to AEC under the Basic Agreements, AEC agrees to grant to APCO, at the Closing, a second mortgage lien on all property of AEC, including the Facilities, to secure the payment by AEC of those amounts due APCO pursuant to this Agreement, the Operating Agreement and the Nuclear Fuel Agreement. Such second mortgage lien shall be evidenced by a second mortgage and deed of trust substantially in the form of Exhibit "H" hereto. As set forth in Exhibit "H", the parties agree (i) that any default in the payment of money under AEC's first mortgage shall (after the expiration of the grace period provided for in Exhibit "H") be a default under the second mortgage granted hereunder, and (ii) that upon any such default under AEC's first mortgage, APCO shall be given timely notice by AEC of the occurrence of such default and APCO shall have the right to cure such default.

2.07 Future Property Conveyances. If, in the future, additional facilities must be built so as to constitute part of Farley Unit 1 or Farley Unit 2 on land to which AEC does not have an ownership interest, APCO shall convey to AEC its Percentage Ownership Interest in the surface of such land for an amount equal to AEC's Percentage Ownership Interest times APCO's total book costs. Should APCO desire to construct facilities, or make other use of any real property conveyed to AEC under this Agreement which facilities or use is not related to the Farley Plant, and should such facilities or use

not interfere with the Farley Plant operations, then AEC shall reconvey its ownership interest in that real property, free of any lien or encumbrance, at AEC's original cost of such land prorated on a per acre basis over all land acquired by AEC at closing. After the Farley Plant has been decommissioned, as determined by APCO, AEC shall, at APCO's option, reconvey its ownership interest in the real property, free of any lien or encumbrance, at AEC's original cost of such land prorated on a per acre basis over all land acquired by AEC at closing. AEC further agrees, at APCO's option, to convey to APCO, free of any lien or encumbrance, all interest in real property which has theretofore been conveyed to it which constitutes part of the Farley Plant, in the event of any default by AEC, such conveyance to be made in accordance with and under the circumstances described in Articles XV and XVI hereof. AEC hereby appoints APCO its attorney-in-fact to execute on its behalf any deed, or other instrument, in order to consummate any such conveyance.

ARTICLE III

Payments for AEC's Percentage Ownership Interest

3.1 Payment. (a) The purchase price of the Facilities shall be in the amount of _____ Dollars (\$ _____), which is allocated among the various elements constituting the price as reflected in Exhibit "I". At the Closing, AEC shall pay to APCO the purchase price for

AEC's Percentage Ownership Interest as prescribed in Exhibit "I" hereto.

3.02 Payments for Retirements and Decommissioning Costs: Option to Purchase the Facilities. (a) APCO shall have the authority to determine when the any or all of the Facilities shall no longer be used or useful in the operation of the Farley Plant and when they shall be retired from service, with or without replacement. Cost of retirements and salvage credits from the sale or other uses, if any, shall be shared by the parties in proportion to their respective Percentage Ownership Interest; provided, however, APCO shall have a right to set-off any such salvage credits against any amount owed by AEC to APCO under the Basic Agreements or any other agreement between APCO and AEC.

(b) APCO shall retain such powers hereunder as shall be necessary for the disposition of all tangible and intangible property (excluding the land constituting a part of that facility) and shall dispose of such property as promptly as practicable. Upon such disposition, APCO shall distribute the proceeds thereof, if any, to AEC in accordance with its percentage ownership interest hereunder; provided, however, APCO shall have a right to set-off any such proceeds against any amount owed by AEC to APCO under the Basic Agreements or and other agreement between APCO and AEC.

(c) Upon the issuance of a lawful and enforceable order terminating the operation of any portion of the Facilities, from the Government of the United States or from the State or any of the departments, agencies, officials or courts thereof having jurisdiction, or upon a determination by APCO that the whole or any portion of the Facilities should be retired, the Parties shall bear all costs incurred for decommissioning in proportion to their respective Percentage Ownership Interests, as they may change from time to time (based on the principles governing such changes as reflected in Section 11.03), for whatever period of time is necessary, whether pursuant to regulatory requirements or otherwise, and to provide for any restoration of the site deemed appropriate by APCO, to complete the decommissioning and retirement process so that, in APCO's sole judgment, no further expenditure of funds is required. As security for payment of its obligation ultimately to pay its share of such decommissioning costs, AEC shall at all times maintain the agreements provided for in Section 4.02(b) and 4.02(e) in addition to the security provided in Section 2.06 hereof. Decommissioning costs shall include, but not be limited to, any costs which must be provided for in advance of decommissioning, and any additional costs which are incurred during or after decommissioning, including monitoring of the site, whether such costs shall result from regulatory requirements or otherwise.

(d) After decommissioning when either unit, or any portion of the real property constituting a part of the Facilities is to be retired, APCO will furnish written notice of such retirement and decommissioning to AEC. APCO shall have the option, which may be exercised by the giving of thirty (30) days written notice to AEC, to purchase such real property from AEC at the original cost to AEC for the land.

(e) After the decision to decommission has been made, APCO shall proceed with the decommissioning unless the Parties agree to enter into a separate agreement to decommission the Facilities. Any such agreement shall contain no provision which is inconsistent with any term of this Agreement.

3.03 Payment for Other Costs. The Parties agree to pay those costs relating to their respective ownership interests that are not otherwise provided for herein if such costs are incurred in the planning, design, engineering, construction, procurement, making of new investment, modification, ownership (including payment of any ad valorem or other taxes), retirement or decommissioning of the Facilities. To the extent possible, each party shall separately report, file returns with respect to, and be responsible for and pay all ad valorem, franchise, business, or other taxes and fees, except payroll and sales and use taxes, arising out of each party's ownership of Farley Plant. However, to the extent that such taxes or fees may be levied on or assessed against the total plant, or

its operation, or on the parties in such a manner so as to make impossible the carrying out of the foregoing provisions, or upon mutual agreement of the parties, then such taxes or fees shall be shared pro rata based upon the respective ownership percentages of the parties. AEC shall pay (or reimburse APCO if APCO has incurred) incremental costs experienced by APCO solely as a result of the sale to AEC of an ownership interest in the Farley Plant including, but not limited to: (a) the adverse impact on APCO of any tax legislation, or interpretation of tax laws; (b) special accounting requirements; (c) requirements of REA, or other governmental agency, which APCO would not have incurred but for AEC's participation.

3.04 Methods of Payment. All payments required to be made by either Party under this Agreement in excess of \$10,000 shall be paid on or before the payment date in immediately available funds by delivery (before 11:00 a.m., Birmingham time) of either a Federal Reserve check or evidence of bank wire to the other Party's account, at a bank designated by such Party. If any such payment is to be made by bank wire, the Party entitled to the payment shall advise the other Party of the appropriate bank and account number at least one business day before the payment is due. All other payments required to be made under this Agreement may be made by check deposited in the United States Mail three (3) days prior to the date due, first-class postage prepaid, and addressed to Treasurer,

Alabama Power Company, P. O. Box 2641, Birmingham, Alabama, 35291, if payable to APCO, and addressed to General Manager, Alabama Electric Cooperative, Inc., P. O. Box 550, Andalusia, Alabama, 36420, if payable to AEC unless a different addressee or address shall have been designated by either Party by notice in writing to the other Party.

ARTICLE IV

Representations and Warranties

4.01 Representations and Warranties of APCO. APCO represents and warrants as follows:

(a) APCO is a corporation duly incorporated and validly existing, in good standing, under the laws of Alabama.

(b) APCO has, or at the Closing will have, power to convey, by statutory warranty deed, title to AEC's Percentage Ownership Interest in the real estate and fixtures constituting the Facilities, free and clear of all liens, except for such exceptions as may exist in the titles acquired by APCO and Permitted Encumbrances.

4.02 Representations and Warranties of AEC. AEC represents and warrants as follows:

(a) AEC is a generation and transmission cooperative duly incorporated and validly existing, in good standing,

under the laws of Alabama; is duly qualified and authorized to do business; and is in good standing in each jurisdiction where the character of its properties or the nature of its actions makes such qualification necessary, and has the corporate power to carry on its business as now being conducted; and possesses all Federal and State authority and local franchises necessary for the maintenance and operation of its properties and business with such minor exceptions as will not materially interfere with the ownership and operation of the Facilities.

(b) Consummation of the transactions contemplated hereby and performance of the obligations imposed by the Basic Agreements by AEC will not result in violation of any laws, ordinances, or governmental rules to which it is subject. AEC either has obtained, or at the Closing Date shall have obtained, all necessary governmental approvals and consents (including the approval of REA) in connection with the consummation by AEC of the transactions hereby contemplated and the performance by it of the Basic Agreements and REA has entered into and will be bound by the Guaranty Agreement set forth in Exhibit "J" attached hereto.

(c) The consummation of the transactions hereby contemplated and the performance by AEC of the Basic Agreements will not result in the breach of, or constitute a default under,

the Articles of Incorporation or By-Laws of AEC or any indenture, mortgage, deed of trust, bank loan or credit agreement, or other agreement or instrument to which AEC is a party or by which AEC or its properties may be bound or affected, or result in the creation of any lien, charge, security interest or encumbrance upon any property of AEC (other than any lien, charge, security interest or encumbrance created by AEC as a result of its purchase of AEC's Percentage Ownership Interest at the Closing and other than Permitted Encumbrances), and AEC is not in default under any term of any such agreement or instrument.

(d) On the date hereof there exists, as to AEC, no Event of Default or event or condition which, with the giving of notice or the lapse of time or both, would constitute an Event of Default.

(e) Each of AEC's Members has entered into and will be bound by the Special Guaranty Agreement set forth in Exhibit "K" attached hereto on the Closing Date.

4.03 Survival. All representations and warranties made by the Parties in or under the Basic Agreements (and all representations and warranties contained in any certificate or other instrument delivered by any of the Parties pursuant to the Basic Agreements) shall survive the execution and delivery of the Basic Agreements and any action taken or documents delivered pursuant thereto.

ARTICLE V

The Closing and Closing Date

5.01 Time and Place. The Closing shall be held commencing at 10:00 a.m., Birmingham, Alabama time, on such date on or before December 31, 1984 as the Parties shall agree, at 600 North 18th Street, Birmingham, Alabama, provided that, pursuant to Article VI hereof, all conditions precedent to Closing have occurred, unless waived by the Party benefitted thereby. AEC hereby agrees to close promptly upon obtaining the financing that it has covenanted to obtain in accordance with Section 9.02 hereof. Since time is of the essence, the Closing shall not be later than December 31, 1984.

5.02 Termination of Liability. If the conditions specified in Article VI hereof shall not have been satisfied on or before December 31, 1984, all liability of the Parties under this Agreement shall terminate other than each Party's liabilities for its own expenses.

ARTICLE VI

Conditions to Closing

6.01 Conditions Precedent to APCO's Obligations. All obligations of APCO to AEC are subject to the fulfillment, on or prior to the Closing, of each of the following conditions:

(a) All instruments relating to the sale and purchase of AEC's Percentage Ownership Interest, and all proceedings taken on or prior to the Closing in connection with the performance of the Basic Agreements shall be satisfactory to APCO and APCO shall have received copies of all such documents or other evidence as it may reasonably request in order to establish the rightful consummation of such transactions and the taking of all necessary action in connection therewith, in form (as to certification and otherwise) and substance satisfactory to APCO.

(b) All representations and warranties of AEC in or under the Basic Agreements (and all representations and warranties contained in any certificate or other instrument delivered by AEC pursuant to the Basic Agreements) shall be true with the same effect as though such representations and warranties had been made on and as of such date (except as affected by transactions contemplated by the Basic Agreements) and AEC shall have performed all agreements on its part required by the Basic Agreements to be performed on or prior to such date; and APCO shall receive a certificate, dated such date, of the President and General Manager of AEC and by a nationally recognized independent accounting firm, to such effect.

(c) APCO shall have obtained all necessary releases and other required documents from the trustee under the Indenture

of Mortgage permitting the conveyances pursuant to Article II hereof, accompanied by an opinion of counsel of the trustee substantially to the effect that such trustee has the corporate power and authority to execute and deliver such releases and other documents and that such releases and other documents have been duly executed and delivered and constitute the legal, valid and binding obligations of such trustee enforceable against it in accordance with their terms.

(d) The following governmental and regulatory approvals required to be obtained prior to the Closing by APCO and AEC shall have been obtained and shall not have been modified (unless any such modification shall have been accepted in writing by the Parties) or rescinded, are in full force and effect and all appeal periods shall have expired, such approvals to be evidenced by the delivery to APCO and AEC of certification of the governmental approvals referred to in this Article:

The Alabama Public Service Commission

The Alabama Department of Finance

REA

NRC

and such approvals shall not contain any conditions unacceptable to APCO.

(e) APCO shall have received a written ruling from the Internal Revenue Service satisfactory in form and content to

APCO, to the effect that for Federal income tax purposes only (i) the arrangement created by the Basic Agreements will be treated as a partnership and not as an association taxable as a corporation and that APCO and AEC may elect to exclude such arrangement from the application of Subchapter K of the Internal Revenue Code of 1954, as amended, and (ii) as a result of the Basic Agreements APCO will not be denied the right to any investment tax credits, liberalized depreciation or other available tax benefits with respect to its ownership interest.

(f) AEC and each of AEC's Members shall have executed and delivered to APCO a release and covenant not to sue, substantially in the form of Exhibit "L" hereto, together with certified resolutions of the respective Boards of Directors authorizing such execution and delivery.

(g) APCO shall have received a satisfactory certificate or certificates, each signed by appropriate officers of AEC and dated as of the Closing Date, as to all questions of fact involved in the conditions set forth in this Section 6.01.

(h) APCO shall have received the Special Guaranty Agreements of AEC's Members and the Guaranty Agreement of REA.

(i) APCO shall have received opinions of counsel for AEC, dated the Closing Date, substantially in the forms of Exhibits "M" and "N" hereto.

(j) APCO shall have received a certified copy of resolutions duly adopted by the Board of Directors of AEC ratifying or approving all of the transactions contemplated by the Basic Agreements.

(k) AEC shall have made available in immediately available funds the purchase price required to be paid at the Closing, as required by Section 3.01.

(l) All actions required to be taken by REA to permit the consummation of this Agreement shall have been taken and APCO shall have received evidence, satisfactory to it, that a loan agreement between AEC and the REA or other lender(s) satisfactory to APCO has been duly executed and is a legal, valid and binding obligation of AEC, the REA or other lender(s) sufficient to finance AEC's Percentage Ownership Interest at the time of Closing, in the Facilities.

6.02 Conditions Precedent to AEC's Obligations. All obligations of AEC to APCO are subject to fulfillment, on or prior to the Closing, of each of the following conditions:

(a) All instruments relating to the sale and purchase of AEC's Percentage Ownership Interest and all proceedings taken on or prior to the Closing in connection with the performance of the Basic Agreements shall be satisfactory to AEC and AEC shall have received copies of all such documents.

(b) All representations and warranties by APCO in or under the Basic Agreements (and all representations and warranties contained in any certificate or other instrument delivered by APCO pursuant to the Basic Agreements) shall be true with the same effect as though such representations and warranties have been made on and as of such date (except as affected by transactions contemplated by the Basic Agreements), and APCO shall have performed all agreements on its part required by the Basic Agreements to be performed on or prior to such date; and AEC shall receive a certificate, dated such date, of an Executive Vice President and a principal financial or accounting officer of APCO to such effect.

(c) APCO shall have obtained all necessary releases and other required documents from the trustee under the Indenture permitting the conveyance pursuant to Article II hereof.

(d) The following governmental and regulatory approvals required to be obtained prior to the Closing by APCO and AEC shall have been obtained and shall not have been modified (unless any such modification shall have been accepted in writing by the Parties) or rescinded, are in full force and effect and all appeal periods shall have expired, such approvals to be evidenced by the delivery to APCO and AEC of certification of the governmental approvals referred to in this Article:

The Alabama Public Service Commission

The Alabama Department of Finance

REA

NRC

and such approvals shall not contain any conditions unacceptable to AEC.

(e) AEC shall have received a written opinion of its counsel, satisfactory in form and content to AEC to the effect that for Federal income tax purposes only (i) the arrangement created by the Basic Agreements will be treated as a partnership and not as an association taxable as a corporation and that AEC and APCO may elect to exclude such arrangement from the application of Subchapter K of the Internal Revenue Code of 1954, as amended, and (ii) as a result of the Basic Agreements (provided AEC otherwise qualifies for such tax benefits) AEC will not be denied the right to any investment tax credits, liberalized depreciation or other available tax benefits with respect to its ownership interest.

(f) AEC shall have received a satisfactory certificate or certificates, each signed by appropriate officers of APCO and dated the Closing Date, as to all questions of fact involved in the conditions set forth in this Section 6.02.

(g) The Special Guaranty Agreements of AEC's Members and the Guaranty Agreement of REA shall be in full force and effect.

(h) AEC shall have received an opinion of counsel for APCO, dated the Closing Date, substantially in the form of Exhibit S hereto.

(i) AEC shall have received a certified copy of resolutions duly adopted by the Board of Directors of APCO ratifying or approving all of the transactions contemplated by the Basic Agreements.

ARTICLE VII

Nuclear Fuel

7.01 Sale and Purchase of Nuclear Fuel. The sale by APCO and the purchase by AEC of Nuclear Fuel is provided for in the Nuclear Fuel Agreement and not by this Agreement, except to the extent that (a) provisions of this Agreement specifically refer to Nuclear Fuel or the Nuclear Fuel Agreement, or (b) provisions of this Agreement are incorporated by reference in the Nuclear Fuel Agreement.

ARTICLE VIII

Management of the Facilities; "As-Is" Sale; Liability and Allocation of Risk; and Contracts for the Facilities

8.01 APCO as Agent for AEC. (a) AEC hereby appoints APCO (such appointment shall be irrevocable, for the term of this

Agreement, and coupled with an interest) its sole agent subject only to AEC's right of reasonable inspection through authorized representatives at times agreeable to APCO, to act on its behalf for the planning, design, engineering, construction, procurement and making of New Investment, and the modification, operation, maintenance, retirement and decommissioning of the Facilities and authorizes APCO in the name of and on behalf of AEC to take all actions which, in the discretion and judgment of APCO, are deemed necessary or advisable to effect the planning, design, engineering, construction, procurement, making of New Investment, modification, operation, maintenance, retirement and decommissioning of the Facilities, including, without limitation, the following:

(i) The making of such agreements and modifications of existing agreements and the taking of such other action as APCO deems necessary or appropriate, in its sole discretion, or as may be required under the regulations or directives of such governmental bodies and regulatory agencies having jurisdiction, with respect to the construction, acquisition and completion of any additions, improvements, betterments and replacements related to the Facilities, or the procurement, replacement, modification or renewal of all or any part of the Farley Plant, and if necessary, the retirement, disposal, decommissioning or salvaging of any part thereof.

(ii) The execution and filing with such governmental bodies and regulatory agencies having jurisdiction of applications, amendments, reports and other documents and filings for or in connection with licensing and other regulatory matters with respect to Facilities; and

(iii) The receipt on AEC's behalf of any notice or other communication from any governmental body or regulatory agency having jurisdiction, as to any licensing or other regulatory matter with respect to Facilities.

(iv) Subject to Section 8.03, the right to bring suit on behalf of AEC or AEC and APCO jointly for any cause of action arising out of or in connection with rights or obligations under the Basic Agreements.

(b) As relates to all third parties, this agency designation shall be binding on AEC and such appointment shall be deemed in effect by each third party until termination of this Agreement pursuant to the terms hereof and such third party receives written notification from APCO of any termination thereof.

(c) APCO accepts such appointment.

(d) AEC shall promptly take all necessary action to execute any agreements with respect to the Facilities as and when requested by APCO.

(e) AEC expressly agrees that APCO does not, by this Agreement, assume any risks or liabilities with respect to AEC's Percentage Ownership Interest and that the amounts paid and payable to APCO under the Basic Agreements are determined on the basis that APCO does not assume any such risks or liabilities.

8.02 "AS IS" SALE. THE FACILITIES TO BE SOLD UNDER THIS AGREEMENT SHALL BE SOLD ON AN "AS IS - WHERE IS" BASIS. APCO AND APCO'S AFFILIATES MAKE NO WARRANTY OR REPRESENTATION WHATSOEVER, EXPRESS, IMPLIED OR STATUTORY, AND DISCLAIM ANY AND ALL WARRANTIES, INCLUDING, WITHOUT LIMITATION, ANY REPRESENTATION OR WARRANTY AS TO THE VALUE, QUANTITY, QUALITY, CONDITION, SALABILITY, OBSOLESCENCE, MERCHANTABILITY, FITNESS OR SUITABILITY FOR USE OR WORKING ORDER OF ALL OR ANY PART OF SAID FACILITIES. NOTWITHSTANDING THE FOREGOING, AEC SHALL HAVE THE BENEFIT, IN PROPORTION TO AEC'S PERCENTAGE OWNERSHIP INTEREST, OF ALL MANUFACTURERS', VENDORS', AND CONTRACTORS' WARRANTIES AND ALL PATENTS AND LICENSES, IF ANY, RUNNING TO APCO IN CONNECTION WITH THE FACILITIES TO BE SOLD UNDER THIS AGREEMENT, SUBJECT TO THE PROVISIONS OF SECTION 8.03 HEREOF DEALING WITH CONTRACTS WITH THIRD PARTIES. NEITHER AEC NOR AEC'S MEMBERS SHALL HAVE ANY RIGHT OF ACTION AGAINST APCO OR

APCO'S AFFILIATES UNDER ANY THEORY, INCLUDING, BUT NOT LIMITED TO, NEGLIGENCE, STRICT LIABILITY, WARRANTY (EXPRESS OR IMPLIED) BREACH OF CONTRACT, FRAUD OR MISREPRESENTATION, BASED ON THE CONDITION OF THE FACILITIES AT CLOSING.

8.03 Contracts with Third Parties.

(a) Assignment. APCO has acquired or executed, and will in the future acquire or execute, certain contracts, permits, authorizations, licenses, or other intangible rights relating to the Farley Plant. By execution of this Agreement, APCO shall, as of the Closing, be deemed to have granted, conveyed, and assigned to AEC, to the extent permitted by law, contract, or otherwise, an undivided interest in such existing or future contracts, permits, authorizations, licenses, or other intangible rights with respect to the Farley Plant, equal to the Percentage Ownership Interest of AEC, and AEC shall be deemed to have been granted such an undivided Percentage Ownership Interest of the benefits, and to have accepted and assumed a Percentage Ownership Interest of the obligations, of all such contracts, permits, authorizations, licenses, or other intangible rights. AEC agrees to be bound by the terms of all contracts, permits, authorizations, or licenses relating to the Farley Plant (including any provisions that limit or protect against liability, nuclear and non-nuclear, or exclude any warranties) to the same extent as if AEC were an original signatory to such contract, permit, authorization or license or otherwise a party thereto.

(b) Acceptance of Contract Provisions. APCO in such contracts has agreed to certain matters including, but not limited to, limitations on the liability of such contractors for work performed or materials furnished, restrictions on warranties, agreements to indemnify the contractors from liability and other provisions. AEC waives any claims against APCO for having entered into such contracts or agreed to the provisions thereof. AEC also recognizes that a number of the APCO contracts relating to the Farley Plant contain provisions that require APCO to obtain from any assignee or transferee prior to any assignment of rights under such contract or any transfer of materials, equipment or work product, or any interest therein obtained by APCO pursuant to such a contract, an agreement by such assignee or transferee that it will be bound by all of the requirements for financial protection, waivers, releases, indemnifications, limitations of liability and further transfers or assignments that bind APCO under such contracts. AEC agrees that it will be so bound by the requirements for financial protection, waivers, releases, indemnification, limitation of liability and further transfers that bind APCO as they now exist or may in the future be with respect to all contracts relating to the Farley Plant or Nuclear Fuel.

(c) Enforcement of Rights Under Contracts. AEC covenants that, without the written consent of APCO, it will not threaten suit or bring suit against third parties or otherwise

make any claim under any contract or arrangement relating to the Farley Plant and AEC recognizes that APCO has complete and exclusive authority, under the Agreements, with respect to all such matters. If AEC desires for suit to be threatened or brought or otherwise for any claim to be made, or desires that such action contemplated by APCO shall not be taken, AEC shall, by written notice to APCO, request APCO so to act or refrain from acting. Upon receipt of such notice the Parties shall arrange for consultation within ten (10) working days thereafter on the questions raised, or such lesser period of time as APCO, in its sole discretion, shall specify in the light of circumstances requiring a more expeditious determination. APCO shall not make its determination until such consultation but such determination by APCO shall be final and binding on AEC.

8.04 Liabilities of the Parties. (a) All liability to third parties other than liability for Willful Misconduct as defined in paragraph (b) hereof, whether arising in contract (including breach of warranty), tort (including fraud, negligence, strict liability, breach of fiduciary duty or any other theory of tort liability), under the laws of real property or otherwise, or as a result of fines or other penalties imposed by NRC or any other federal or state agency, which results from or is in any way connected with construction, operation, maintenance, modification, or decommissioning of the Facilities shall be shared and apportioned between APCO and AEC in

proportion to their respective Percentage Ownership Interests. To the extent of their respective Percentage Ownership Interests, APCO and AEC each shall indemnify and hold harmless the other, their agents, servants, employees, affiliates or insurers from and against any and all claims, losses, damages, expenses and costs of any kind, other than those attributable to Willful Misconduct of either APCO or AEC as defined in paragraph (b) hereof, whether direct or indirect, on account of or by reason of bodily injuries (including death) to any person or persons or property damage arising out of or occurring in connection with the construction, operation, maintenance, modification or decommissioning of the Facilities, whether or not such claims, losses, damages, expenses or costs were caused by or alleged to have been caused by or contributed to by the active, passive, affirmative, sole or concurrent negligence or by breach of any statutory or other duty (whether non-delegable or otherwise) of APCO or AEC or their agents, servants, employees or affiliates.

Except as expressly authorized in this paragraph (a) and by the provisions of the Basic Agreements, APCO and AEC and their affiliates, servants, employees, agents and insurers hereby release, acquit and forever discharge the other, their agents, servants, employees, affiliates and insurers from any and all claims, causes of action, damages or expenses of whatever kind or nature, which are in any manner connected with the design, engineering, construction, operation, modification

or decommissioning of the Facilities, whether arising in tort (including fraud, negligence, strict liability, breach of fiduciary duty or any other theory of tort liability), contract (including breach of warranty), under the laws of real property or otherwise, or as a result of any fine or other penalty imposed by NRC or any other federal or state agency.

(b) As used in this Agreement, the term Willful Misconduct shall mean any act or omission by APCO or AEC or their affiliates, agents, servants or employees, which is performed or omitted consciously with actual knowledge that such conduct is likely to result in damage or injury to persons or property; provided, however, that no such act or omission, if performed or omitted by an employee, servant, agent, or affiliate of a party, shall be deemed Willful Misconduct of a party unless an employee or officer of such party at or above the level of Vice President in the case of APCO or _____ in the case of AEC shall have expressly authorized such act or omission.

Liability attributable solely to the Willful Misconduct of either APCO or AEC shall not be shared pro rata in accordance with paragraph (a) hereof but shall instead be borne by the party committing such willful act or omission. All other misconduct of any kind or nature shall be apportioned between the parties in accordance with paragraph (a) hereof.

(c) Notwithstanding paragraphs (a) and (b) hereof, in no event shall either party or their affiliates be liable to the other party for any indirect, special, incidental or consequential damages including, without limitation, (1) loss of profits or revenues, (2) damages suffered as a result of the loss of the use of its power system, production facilities or equipment, (3) cost of purchase of replacement power (including any differential in fuel costs), (4) cost of capital, or (5) any other damages resulting from non-operation of the Facilities with respect to any claim based on or in any way connected with the Basic Agreements whether arising in contract (including breach of warranty), tort (including fraud, negligence, strict liability, breach of fiduciary duty or any other theory of tort liability), under the laws of real property or otherwise, or as a result of any fine or other penalty imposed by NRC or any other federal or state agency.

AEC shall indemnify and hold harmless APCO and APCO's affiliates from and against any claim by the AEC Members or member-consumers of AEC Members for any such indirect, special, incidental or consequential damages arising out of any performance or failure to perform under the Basic Agreements. APCO shall indemnify and hold harmless AEC from and against any claim by APCO's customers (other than AEC or AEC Members) for any such indirect, special, incidental or consequential damages arising out of any performance or failure to perform under the Basic Agreements.

ARTICLE IX

General Covenants

9.01 Covenants to Provide Information. Each of the Parties will, from time to time, provide such information as the other Party may reasonably require in connection with the issuance or sale of any bonds or securities or evidences of indebtedness, whether public or private. Each Party further agrees that it will make available to the other Party, upon reasonable request, then-current architectural and construction engineering reports, if any, setting forth the design of the Facilities, the status of any required licenses and permits, estimates of construction costs and construction schedules and reports on the operation of the Facilities.

9.02 AEC's Covenant to Obtain Financing. AEC has applied to REA for guarantees of loans adequate for the permanent financing of AEC's Percentage Ownership Interest in the Facilities. AEC agrees to pursue such application diligently and to use its best efforts to obtain this or other adequate permanent financing and to close by December 31, 1984. Upon granting of the REA loan guarantee commitment, AEC covenants and agrees to accept such loan guarantee commitment and to take all steps within its power to issue bonds or other securities or other evidences of indebtedness, or otherwise to obtain sufficient funds in a timely manner, in order to provide the amounts due from and payable by AEC at the Closing

under the terms of the Basic Agreements. AEC further covenants and agrees that at all times it will use its best effort to obtain sufficient funds in a timely manner, on terms satisfactory to AEC in its reasonable and good faith judgment, to fulfill its obligations under the Basic Agreements. AEC further covenants and agrees that it shall take no action that would prevent, hinder or delay the issuance of any bonds or other securities or evidence of indebtedness, and that it will make all payments and perform all obligations required of it under the indentures or other instruments relating to such bonds or securities or evidences of indebtedness. AEC further covenants and agrees that it shall not incur, create, assume or permit to exist any Lien for borrowed money upon any of the Facilities unless each creditor secured by such Lien has theretofore agreed in a writing addressed to APCO that (a) any interest acquired by APCO in the Facilities, pursuant to either Section 15.02 or 16.01 as a result of a Section 15.02 Event of Default, shall be released by such creditor from, and shall be free and clear of, such Lien upon (i) payment of the purchase price to AEC as provided in Section 15.02(c), in the case of a purchase, or (ii) notice to AEC as provided in Section 16.01, in the case of an automatic adjustment of AEC's Percentage Ownership Interest.

9.03 Financial Statements and Other Documents. (a) APCO covenants and agrees that it will furnish to AEC promptly

after the same are available, copies of all such proxy statements, financial statements and reports as APCO shall send to the holders of its Common Stock and copies of all regular and periodic reports that APCO may file with the SEC.

(b) AEC covenants and agrees to furnish APCO promptly after the same are available, copies of all annual and periodic financial reports that AEC may file with the Alabama Department of Finance, REA or FERC or shall send to the AEC Members, including proxy statements or the equivalent thereof. In addition, AEC shall furnish APCO promptly with copies of all draft agreements and executed agreements relating to the arrangements referred to in Section 9.02.

9.04 Other Covenants. (a) Each Party covenants and agrees that if any event shall occur or condition shall exist which constitutes, or which after notice, lapse of time, or both, would constitute an Event of Default hereunder, it shall immediately (and thereafter on a prompt, continuing basis) notify the other Party thereof, specifying the nature of the Event of Default and any action taken or proposed to be taken with respect thereto.

(b) AEC covenants and agrees that at the Closing it will notify APCO in writing of the names and addresses of each trustee under any instruments of indebtedness and it further covenants and agrees that at all times while this Agreement

remains in effect, it will promptly notify APCO in writing of the names and addresses of all substitute or additional trustees.

(c) AEC covenants that so long as any of the Basic Agreements remain in effect, it will not dissolve. AEC further covenants that it will not consolidate or merge with or acquire any other entity unless it has provided APCO with a certificate to the effect that, (i) as a result of such consolidation, merger, or acquisition, the successor formed by or resulting from such consolidation or merger or the transferee to which such sale shall have been made shall be a solvent corporation organized under the laws of the United States of America or a state thereof, (ii) such successor or transferee corporation shall expressly assume in writing all of the obligations of AEC under the Basic Agreements to the same extent as if such successor or transferee corporation had originally executed the Basic Agreements in the place of AEC, (iii) immediately after such consolidation, merger, sale, or transfer, such successor or transferee shall have a credit worthiness and financial capability to perform its obligations under the Basic Agreements substantially equal to the credit worthiness or financial capability of AEC, and (iv) there shall be no Event of Default or event which, with the giving of notice or the lapse of time or both, could become an Event of Default under the Basic Agreements.

(d) Subject to APCO's rights under Sections 3.02, 8.01 and 13.01(b), APCO covenants to use its best efforts to maintain in effect, and to renew when necessary, all NRC permits and licenses required for the ownership and operation of the Facilities.

(e) APCO covenants to permit officers, directors, employees and proper agents of AEC to have access to and to inspect the Facilities at reasonable times; provided (i) AEC shall give APCO advance notice of any visit to the Facilities and to coordinate with APCO to minimize or avoid any interference with APCO's activity at the Facilities, (ii) APCO may require that any such visit be escorted by APCO personnel, and (iii) such visits shall be made in accordance with all APCO, NRC and other governmental agency regulations, procedures and requirements.

ARTICLE X

Waiver of Partition and Other Rights

10.01 Waiver by AEC. AEC, on its own behalf and on behalf of its successors and assigns, hereby waives any right, whether pursuant to statute or common law, to partition the Facilities, or any portion thereof, and any right to petition for sale for division of the Facilities, and such waiver shall continue in effect until the later of (a) the termination of this Agreement pursuant to Section 17.01 during which APCO may

exercise the option provided for in Section 2.07, or (b) December 31, 2084. AEC agrees not to commence during such period any action of any kind seeking any form of partition or sale for division with respect thereto. AEC agrees to incorporate this waiver in all deeds, deeds of trust, and instruments of conveyance relating to the Facilities, whether delivered at the Closing or thereafter.

10.02 Waiver of other Rights of Joint Tenancy. AEC further waives all other incidents of joint ownership, including but not limited to the right to share in profits from the jointly owned property and accounting therefor, right to use or occupy the premises for uses which do not interfere with any joint use being made of the property, and the right to make expenditures for the benefit of the property and associated rights to demand contribution by APCO to AEC as a result of such expenditures. AEC shall enjoy, nevertheless, all rights associated with its joint ownership which are provided for in the Basic Agreements.

10.03 Waiver of Exercise of Eminent Domain. Both parties agree to waive any right to exercise the power of eminent domain that either party may have with respect to the other party's interest in the Farley Plant. The inclusion of this provision of this Agreement does not acknowledge or admit that either party has the right of eminent domain over the other party.

ARTICLE XI

Assignment

11.01 AEC's Right to Assign. This Agreement and the other Basic Agreements shall be binding upon, and shall inure to the benefit of AEC and APCO, and their respective successors and assigns. AEC shall have the right, subject to the last sentence of Section 9.02, to convey a security interest or interests in AEC's Percentage Ownership Interest to the United States Government or any agency thereof solely to secure loans, or bonds or other evidences of indebtedness issued or to be issued by it, if (a) the proceeds from such loans, bonds or evidences of indebtedness are to be used first to meet AEC's due and unpaid obligations under the Basic Agreements, and (b) immediately after the conveyance of any such security interest, the aggregate amount of all Liens then existing against all of AEC's real and personal property, including the Facilities, shall not exceed ninety percent (90%) of the then aggregate fair market value of all AEC's real and personal property, including the Facilities, with such fair market value to be certified by an independent engineer satisfactory to the Parties. In addition, AEC may request APCO to consent to the assignment of AEC's rights under this Agreement to other parties, solely for financing purposes, and APCO agrees that it will not unreasonably withhold its consent, taking into consideration all aspects of the proposed assignment at that time, including but not limited to consideration of the

last sentence of Section 9.02. AEC shall notify APCO in writing as soon as possible after learning that any Lien has been or will be imposed upon AEC's Percentage Ownership Interest or has reason to believe that any such Lien is under discussion with a possible lender or other entity and shall furnish APCO promptly with all draft copies and executed copies relating thereto. In addition, AEC shall have the right to assign the obligations and benefits under the Basic Agreements to the REA, pursuant to law, for the benefit of the AEC Members. No other succession to or assignment of any rights hereunder or under the other Basic Agreements or any rights in the Facilities shall take place without the prior written consent of APCO.

11.02 Restriction on AEC's Rights to Sell or Otherwise Dispose of Facilities. (a) Unless otherwise agreed to in writing by APCO, or as provided in this Section 11.02, AEC shall not have the right to sell or otherwise dispose of any or all of the Facilities to any party other than APCO, its successors or assigns. Should AEC desire to sell or otherwise dispose of any or all of the Facilities, AEC shall notify APCO of such desire in writing. Upon receipt of any such notice, APCO shall have sixty (60) days from receipt of the notice in which to determine whether it wishes to acquire from AEC any percentage of any of the Facilities then owned by AEC. If APCO determines that it wishes to purchase any or all of such Facilities, it shall have the right to do so at the price

determined in accordance with subsection 11.02(b) below. If APCO elects to purchase the Facilities, Closing for such purchase shall be conducted on a date mutually agreeable to the parties, not in excess of ninety (90) days from the date APCO elects to purchase the Facilities. AEC shall convey such Facilities to APCO by statutory warranty deed. If APCO elects not to purchase any or all of the Facilities, AEC may secure offers to purchase from third parties for the acquisition of AEC's interest therein. Such offers must be received by AEC and copies of such offers must be transmitted to APCO within one hundred twenty (120) days after any election by APCO not to purchase. If any offer desired to be accepted by AEC is less than the amount which APCO would have paid under subsection 11.02(b), AEC shall notify APCO of such desire in writing prior to the expiration of such one hundred twenty (120) day period. APCO shall have the right to purchase such Facilities at the price offered by such third party, such election to be made by APCO within sixty (60) days after notice thereof is given by AEC of its desire to sell at such lower price. In the event APCO elects to purchase at such lower price, the sale of such Facilities shall be conducted within ninety (90) days after APCO elects to purchase. In the event an offer desired to be accepted by AEC is more than that which APCO would have paid under subsection 11.02(b), or in the event such offer is lower and APCO elects not to purchase as provided above, AEC shall have the right to sell its Percentage Ownership Interest in the Facilities or portion thereof not

sold to APCO to a third party. In the event any such sale to a third party is not completed within one (1) year after AEC first gives notice of its desire to sell, AEC shall not be entitled to make such sale until the procedure set forth herein has been complied with in full. In the event a sale is made by AEC of its interest to a third party pursuant to the provisions hereof, the same restrictions on alienation or assignment of its interest in the plant shall be applicable to such third party. In no event of sale to a third party shall AEC be relieved of the obligations to be performed by AEC under the Basic Agreements except to the extent such obligations are actually satisfied by the third party to whom such Percentage Ownership Interest is conveyed.

(b) The purchase price for such interest as APCO elects to acquire shall be an amount equal to the aggregate of the purchase price made or owed by AEC with respect to the Facilities or portions thereof to which such election relates, including appropriate allowances for Actual Cost of Funds During Construction of New Investments less the sum of (i) an amount equal to the revenues required (based on the then allowed rate of return for Alabama jurisdictional customers) to support any amount in default (such amount to be stated without taking any depreciation into account) for the entire period of any such default, less an adjustment for any interest theretofore paid on account of the amount in default, (ii) taxes paid by AEC and included in the Purchase Price or

otherwise paid with respect to the Facilities and additional taxes incurred as a result of the repurchase, (iii) depreciation and amortization accrued on the books of account of AEC, comprised of depreciation reflected in the determination of the Purchase Price (but depreciation reflected in the determination of the Purchase Price shall not be deleted a second time in the application of this Subsection (iii)) and depreciation subsequent thereto determined in accordance with the same methodology used by APCO, excluding amortization applicable to taxes reflected in (ii) above, (iv) any amount, including taxes not included in (ii) above, owed by AEC under the Basic Agreements to AFCO, (v) any costs or expenses incurred by APCO, excluding the cost of any debt incurred to finance such acquisition, in connection with such purchase and any indebtedness secured by Liens with respect to the interest in the Facilities being acquired and any other obligation assumed or paid by APCO in order to obtain good title, (vi) any retirements applicable to AEC's Percentage Ownership Interest in the Facilities, and (vii) the Decommissioning Adjustment to Transfer Price calculated in accordance with Section 11.03 hereof.

11.03 Decommissioning Adjustment to Transfer Price. With respect to any transfer hereafter of an interest between the parties hereto which alters the Percent Ownership Interest of the parties in any or all of the Facilities, the price at

which such transfer is made shall be adjusted for decommissioning costs associated with such transferred Facility in an amount equal to:

(1) The amount that the acquiring party would have collected for decommissioning costs for the portion of the Facility being transferred had that party been the owner of such Facility being transferred for the period of time that the other party held ownership title to such portion of the Facility; or

(2) Any other amount reasonably determined by the acquiring party to be necessary to cover fully the then current estimate of decommissioning cost associated with the portion of the Facility being transferred during the period of time that the selling party held ownership title to such portion of the Facility being transferred; or

(3) Any amount specified by applicable legislation or regulatory agencies with appropriate jurisdiction which fixes the total exposure of the acquiring party for future liability for nuclear plant decommissioning, such amount to be prorated over the period of time that the selling party held ownership title to such portion of the Facility being transferred.

11.04 APCO's Right to Assign. So long as it shall have obtained all necessary governmental approvals, APCO shall be

free to assign, transfer or convey any or all of its interest in the Facilities and in this Agreement and the other Basic Agreements at any time without the consent of AEC but no such assignment, transfer or conveyance shall diminish AEC's Percentage Ownership Interest or diminish any other rights of AEC or the obligations of APCO hereunder.

ARTICLE XII

Insurance

12.01 General. During the term of this Agreement, APCO will make reasonable efforts to obtain and maintain in force, in the name of the Parties (naming AEC as a named insured), as their interest may appear, insurance covering the Facilities as described in this Article XII.

12.02 Nuclear Property Insurance. APCO shall, during the period of this Agreement, obtain and maintain in force all-risk nuclear property insurance, available from the American Nuclear Insurers (ANI) and Mutual Atomic Energy Reinsurance Pool (MAERP) or Nuclear Mutual Limited (NML) or other equivalent coverage from some other equivalent insurer. The limit and the deductible of such insurance will be the appropriate amounts as determined by APCO and available from the pools or NML or other equivalent insurer and any deductible will be for the account of the Parties as their interest may appear.

12.03 Nuclear Liability Insurance. APCO will carry insurance to cover the legal obligation to pay damages because of bodily injury or property damage caused by the nuclear energy hazard, the policy to be provided by ANI and Mutual Atomic Energy Liability Underwriters (MAELU) or equivalent coverage from some other equivalent insurer. The limits will be in the amounts required by the Atomic Energy Act of 1954, as amended. APCO will continue to carry such insurance against the foregoing risks with coverage and limits as may be required by the Nuclear Regulatory Commission.

12.04 General Liability Insurance. APCO will carry insurance to cover the legal obligations to pay damages because of bodily injury or property damage caused by other than the nuclear energy hazard. The limit and the deductible of such coverage shall be the appropriate amounts as determined by APCO.

12.05 Workmen's Compensation Insurance. APCO qualifies as a self insurer in Alabama but will provide an umbrella policy to cover benefits in excess of its assumed liability for workmen's compensation and employers liability.

12.06 Additional Insurance. In the event APCO at any time or from time to time shall have elected to participate in supplemental insurance programs to cover costs from nuclear risk including decontamination or property damage and other costs

arising therefrom or replacement power costs, due to a prolonged outage (including but not limited to the insurance programs then offered by Nuclear Electric Insurance Limited (or any similar successor organization in which APCO is a participant), the costs of such protection shall be in proportion to the ratio of the ratable exposure represented by AEC's Percentage Ownership Interest to the total ratable exposure of the Facilities. In lieu of participating in any such additional insurance coverage which APCO may provide for the Facilities, AEC may secure separate coverage from other sources so long as such separate coverage (a) provides at least as much protection as would have been provided if AEC had participated in APCO's additional insurance coverage, and (b) such separate coverage shall be of equal quality and reliability and shall have been recognized by APCO, in writing, to be satisfactory to it. AEC may, at its sole expense, purchase and take out any additional insurance for its sole use and benefit as AEC may deem appropriate, provided the interests of AEC are not thereby adversely affected. AEC shall advise APCO of the terms of any such additional insurance prior to entering into any contract therefor.

12.07 Waiver of Subrogation - Allocation and Payment of Premiums. All of the insurance policies obtained by either party shall contain waivers of subrogation against the other party, if obtainable from the insurer. The aggregate cost of all insurance, including supplemental coverage as set forth in

Section 12.06 applicable to the Facilities and procured pursuant hereto, shall be considered an operating expense, consistent with the Uniform System of Accounts. The allocation of premiums, taxes on premiums, deductibles, assessments, retrospective premium calls and any other additional insurance shall be in proportion to the ratio of the ratable exposure represented by AEC's Percentage Ownership Interest to the total ratable exposure of the Facilities. In the event that any of the foregoing insurance policies is cancelled by either Party, that Party shall give written notice of such cancellation to the other Party sixty (60) days prior to the effective date of such cancellation.

ARTICLE XIII

Destruction; Condemnation

13.01 Destruction. (a) If the Facilities or any portion thereof should be damaged or destroyed to the extent that the cost of repairs or reconstruction is estimated by APCO to be equal to or less than the aggregate amount of insurance coverage (including any deductible) carried pursuant to Article XII hereof, then, subject to APCO's rights under Sections 3.02 and 8.01, APCO shall, unless otherwise mutually agreed, cause such repairs or reconstruction to be made so that the Facilities or portions thereof shall be restored to substantially the same general condition, character or use as existed prior to such damage or destruction, and APCO and AEC shall share the cost

not reimbursed by insurance in proportion to their respective ownership interests.

(b) If the Facilities or any portion thereof should be damaged or destroyed to the extent that the cost of repairs or reconstruction is estimated by APCO to be more than the aggregate amount of insurance coverage (including any deductible), APCO may cause such repairs or reconstruction to be accomplished, although APCO shall have no obligation to make such repairs or reconstruction if it chooses not to do so. The Parties shall share such costs, if incurred, proportionately to their ownership interests.

(c) Should APCO elect not to repair or reconstruct such Facilities or any portion thereof, AEC shall not have the right to do so but such Facilities or any portion thereof shall be retired.

13.02 Condemnation. During the term of this Agreement, if there shall occur a loss of title to, or ownership of, or use and possession of, the Facilities or any portion thereof, as the result of, or in lieu of, or in anticipation of, the exercise of the right of condemnation or eminent domain pursuant to any law, general or special, the affected Party will promptly give notice thereof to the other Party, generally describing the nature and extent of such proceedings or negotiations. APCO and AEC shall have the right to participate

fully in any such proceedings or negotiations and each Party shall bear its proportionate share of all reasonable costs, fees and expenses incurred in connection with any condemnation proceedings or negotiations. If no Event of Default shall have occurred and be then continuing, all awards and payments received by APCO or AEC on account of any condemnation (less the actual cost, fees and expenses incurred in collection thereof) shall be paid to the Parties in proportion to their respective ownership interests. For purposes of this Agreement, all amounts paid pursuant to any agreement with any condemning authority which has been made in connection with any condemnation proceeding or negotiation shall be deemed to constitute an award on account of such condemnation.

ARTICLE XIV

Force Majeure

14.01 Force Majeure. In addition to all other limitations on liability contained in this Agreement, APCO shall not be liable or responsible for any delay in the performance of, or the ability to perform, any duties or obligations required by the Basic Agreements when such delay in performance or inability to perform results from a Force Majeure occurrence, except that the obligation of either Party to pay money to the other Party in a timely manner is absolute and shall not be subject to the Force Majeure provisions. Force Majeure as used herein

shall mean any event or cause which is not within the reasonable control of APCO including, without limitation, the following: Acts of God, strikes, lockouts or other industrial disturbances; acts of public enemies; orders, or absence of necessary orders and permits of any kind which have been properly applied for, from the Government of the United States or from any state or territory, or any of their departments, agencies or officials, or from any civil or military authority; extraordinary delay in transportation; inability to transport, store, reprocess or dispose of spent nuclear fuel; unforeseen soil conditions; equipment, material, supplies, labor or machinery shortages; failure of suppliers to conform to obligations in a timely fashion; epidemics; landslides; lightning, earthquakes; fire; hurricanes; tornadoes; storms; floods; washouts; drought; war; civil disturbances; explosions; breakage or accident to equipment, machinery, transmission lines, pipes or canals; failure of Nuclear Fuel assemblies; partial or entire failure of utilities; breach of contract by any supplier, contractor, subcontractor, laborer or materialman; sabotage; injunction; blight; famine; blockade; or quarantine.

14.02 Remedy. If APCO suffers an occurrence of Force Majeure, it shall remedy with all reasonable dispatch the cause or causes preventing APCO from carrying out its agreement; provided, that the settlement of strikes, lockouts and other industrial disturbances shall be entirely within the

discretion of APCO, and it shall not be required to make settlement of strikes, lockouts or other industrial disturbances by acceding to the demands of the opposing party or parties when such course is unfavorable in the judgment of APCO.

ARTICLE XV

Default

15.01 Events of Default. Each of the following shall be "Events of Default" under the Basic Agreements:

(a) The failure by AEC to make any payment then due as required by any of the Basic Agreements within ten (10) days of the date when such payment became due.

(b) Failure by AEC to perform any other obligation to APCO, other than obligations for the payment of money, provided that AEC shall have been given not less than sixty (60) days' notice by APCO of such failure and AEC shall have failed to correct such breach of its obligation or shall have failed to use its reasonable best efforts to correct such breach of its obligations. In the event, notwithstanding such efforts, AEC is unable to correct such breach of its obligations within one hundred twenty (120) days, an Event of Default shall be considered to have occurred.

(c) (i) The insolvency or bankruptcy of AEC or its inability or admission in writing of its inability to pay its debts as they mature, or the making of a general assignment for the benefit of, or entry into any composition or arrangement with, its creditors, other than AEC's mortgagee; or

(ii) The application for, or consent (by admission of material allegations or a petition or otherwise) to, the appointment of a receiver, trustee or liquidator for AEC or for all or substantially all of its assets, or its authorization of such application or consent, or the commencement of any proceeding seeking such appointment against it without such authorization, consent or application, which proceedings remain undismissed or unstayed for a period of sixty (60) days; or

(iii) The authorization or filing by AEC of a voluntary petition in bankruptcy or application for, or consent (by omission of material allegations of a petition or otherwise) to the application of any bankruptcy, reorganization, readjustment of debt, insolvency, dissolution, liquidation or other similar law of any jurisdiction, or the institution of such proceedings against AEC without its authorization, application or consent, which proceedings remain undismissed or unstayed for sixty (60) days, or which result in adjudication of bankruptcy or insolvency within such time.

(d) The willful failure by AEC to pay any amount when due under any obligation to a third party (other than an obligation for borrowed money) incurred in connection with AEC's performance under the Basic Agreements, and such failure shall continue for thirty (30) days thereafter (or if such payment is being contested in good faith, for thirty (30) days after the resolution of such contest).

(e) The failure by AEC to pay any amount when due under any obligation to a third party for borrowed money incurred in connection with the financing of AEC's performance under the Basic Agreements, and such failure shall permit the third party to whom such amount is owed to accelerate such obligation or otherwise to exercise legal or equitable remedies against AEC.

(f) If any representation or warranty made by AEC in the Basic Agreements or any other document or instrument between AEC and APCO securing the Basic Agreements shall not be true and correct in all material respects as of the date when made.

15.02 Remedies for Late Payments. (a) Failure of AEC to make any payment on the date required under the Basic Agreements shall obligate AEC then to pay APCO (i) the unpaid amount, (ii) interest on the unpaid amount at the Special Interest Rate from the date such payment was due until the amount is paid, (iii) the expenses incurred by APCO in

collecting the unpaid amount including but not limited to the expenses of counsel, and (iv) any other expenses incurred by APCO because of the delay such as cost of replacement power because of the inability to operate the Facilities because of such late payment.

(b) Should AEC's failure to make payment not be cured by payments required under Section 15.02(a) above within ten (10) days from the date such payment was due, in addition to incurring penalties under Section 15.02(a), AEC's rights to the available capacity from its Percentage Ownership Interest in the Facilities shall be subject to the option specified in Section 15.04.

(c) If AEC shall fail to make any payments due to APCO after Closing under the Basic Agreements and if such failure shall have continued for a period of forty-five (45) days (including any applicable grace period) without all sums then due (plus interest and penalties due within such forty-five (45) day period) having been paid to APCO, there shall then exist a Class 1 Event of Default. If at the time of or during the continuation of any Class 1 Event of Default, APCO, either by itself or in conjunction with others, shall have the following rights which may not be defeated by any offer or tender made in an attempt thereafter to cure the default.

(i) APCO shall have the right (but shall not be required) to purchase, free and clear of all liens and encumbrances, the entire AEC Percentage Ownership Interest in the Facilities or any percentage of any of the Facilities then owned by AEC. The purchase price for such interest shall be an amount equal to the aggregate of the purchase price paid by AEC applicable to the Facilities to be acquired from AEC, including, with respect to New Investments in the Facilities, appropriate allowances for Actual Cost of Funds During Construction (which Actual Cost shall have been determined using rates no higher than the rates used by APCO for the same period) less the sum of (i) an amount equal to the revenues required (based on the then allowed rate of return for Alabama jurisdictional customers) to support the amount in default (such amount to be stated without taking any depreciation into account) for the entire period of the default, less an adjustment for any interest theretofore paid on account of the amount in default, (ii) taxes paid by AEC and included in the Initial Purchase Price or otherwise paid with respect to the Facilities and additional taxes incurred as a result of the repurchase, (iii) depreciation and amortization accrued on the books of account of AEC, comprised of depreciation reflected in the determination of the Purchase Price (but depreciation reflected in the determination of the Purchase Price shall not be deleted a second time in the application of this Subsection (iii)) and depreciation subsequent thereto determined in accordance with the same methodology used by APCO, excluding

amortization applicable to taxes reflected in (ii) above, (iv) any amount, including taxes not included in (ii) above, owed by AEC under the Basic Agreements to APCO, (v) any costs or expenses incurred by APCO, excluding the cost of any debt incurred to finance such acquisition, in connection with such purchase and any indebtedness secured by Liens with respect to the interest in the Facilities being acquired and any other obligation assumed or paid by APCO in order to obtain good title, (vi) any retirements applicable to AEC's Percentage Ownership Interest in the Facilities, and (vii) the Decommissioning Adjustment to Transfer Price calculated in accordance with Section 11.03 hereof.

(ii) Upon exercise by APCO of its right to purchase AEC's Percentage Ownership Interest in the Facilities pursuant to Section 15.02(c), (i) APCO shall give notice of such election in writing to the trustee or trustees (as named by AEC pursuant to Section 9.04(b) hereof) of AEC's bonds or of other evidences of indebtedness, and (ii) APCO (and where applicable, any other purchasers) shall then be deemed to have purchased AEC's Percentage Ownership Interest in the Facilities, free and clear of all liens and encumbrances, and shall be entitled to all of AEC's rights in the Facilities. Any purchase of AEC's Percentage Ownership Interest in the Facilities pursuant to this Section 15.02(c) shall be subject to the obtaining of applicable governmental and regulatory approvals (other than REA) and AEC shall take all necessary

actions and shall execute, and file where appropriate, all legal documents that shall reasonably be requested by APCO to complete any transaction contemplated by this Section 15.02(c).

(iii) A closing to consummate the purchase by APCO pursuant to this Section 15.02(c) shall be held at a time and place to be determined by APCO.

(d) Should AEC's failure to make payments not be cured by payments under Section 15.02(a), within ten (10) days APCO may exercise its rights under Section 16.01.

15.03 Acceleration. If an Event of Default under Section 15.01 shall have occurred, the entire unpaid amounts owing to APCO, together with any accrued and unpaid interest thereon, shall become immediately due and payable without the necessity of any action by APCO.

15.04 Impact of Default on Entitlement to Capacity until Cure. If any Event of Default has occurred, in addition to other remedies and the Special Remedy provided in Section 16.01, AEC shall not be entitled to the available capacity from its Percentage Ownership Interest in the Facilities. During any period this remedy is in effect, AEC shall continue to be responsible to APCO for any cost of AEC's Percentage Ownership Interest due to be paid to APCO, including operating

costs and cost of New Investments under the Operating Agreement and cost of Nuclear Fuel under the Nuclear Fuel Agreement. At APCO's option, (i) the continuing costs may be foregone by APCO's exercise of its Special Remedy set forth in Section 16.01 with respect to such continuing costs, or (ii) APCO may utilize the energy associated with the available capacity from AEC's Percentage Ownership Interest and credit AEC with the amount of energy so utilized times APCO's average cost of energy from the Farley Plant during the six (6) months preceding the month in which the default occurred; however, in the event unusual circumstances have caused such cost not to represent normal operation, such average cost shall be adjusted downward to reflect energy costs expected during normal operation.

15.05 Remedies Not Exclusive. If an Event of Default under Section 15.01 shall have occurred, the rights and remedies provided in this Article XV shall not be exclusive but shall be in addition to any other remedy available under the Basic Agreements and, to the extent permitted by law, be cumulative and in addition to all other rights and remedies existing at law, in equity or otherwise, including the right to enforce performance or to recover damages by appropriate proceedings, judicial, administrative or otherwise. In addition, APCO shall have the right to offset any and all amounts owed while any such Event of Default is continuing. No delay or omission to exercise any rights or remedy shall impair such right or

remedy or constitute a waiver of the default or an acquiescence therein. Every right and remedy given by the Basic Agreements, by law or in equity or otherwise, may be exercised from time to time, and as often as may be deemed expedient, by APCO.

ARTICLE XVI

Special Remedies

16.01 Special Remedy. If there exists any default by AEC pursuant to Section 15.01(a), or circumstances described in Section 15.04, then, upon notice to AEC by APCO, at APCO's option, AEC's Percentage Ownership Interest in the Facilities shall automatically be adjusted in accordance with the following formula, applied separately to each of the Facilities, to wit, Farley Unit 1, Farley Unit 2, Common Facilities, and the Operating Inventory:

$$(F)AOI = (F)OI \times \frac{(B-A)}{B}$$

Where (F)AOI equals the adjusted AEC's Percentage Ownership Interest in any of the Facilities, immediately subsequent to the cumulative adjustment effected by this Section 16.01;

(F)OI equals AEC's Percentage Ownership Interest in any of the Facilities at Closing;

A equals the cumulative aggregate amount of all payments then owed (or previously owed to APCO and which were previously a component of A under this

formula) to APCO under Article III or Section 15.03 hereof, including interest at the Interest Rate due thereon for the entire period of the default less taxes owed to APCO with respect to amounts then owed pursuant to Article III or operating or maintenance expenses under any other Agreement between the parties; and

B equals AEC's initial purchase price paid pursuant to Section 3.01 plus the aggregate amount of all payments previously made and the amounts then owed pursuant to the Operating Agreement for New Investment including appropriate allowances for Actual Cost of Funds During Construction (determined in accordance with the provisions of Section 15.02(c)(i) less the sum of the following:

(i) amounts AEC may have paid as penalties, if any have been previously included in this item B; (ii) depreciation and amortization accrued to the books of account of AEC applicable to the Facilities, comprised of depreciation reflected in the determination of the Initial Purchase Price (but depreciation reflected in the determination of the Initial Purchase Price shall not be deleted a second time in the application of this Subsection (ii) and depreciation subsequent thereto determined in accordance with the same methodology used by

APCO, excluding depreciation and amortization applicable to all taxes reflected in (ii) above, and (iii) any retirements applicable to AEC's Percentage Ownership Interest in the Facilities.

Thereafter, each successive Event of Default covered under this Section in any month shall similarly further decrease AEC's Percentage Ownership Interest in the Facilities, unless and until APCO shall have exercised its right to purchase AEC's Percentage Ownership Interest pursuant to Section 15.02.

16.02 Rights and Obligations upon Repurchase or Transfer of Title. (a) In the event of any transfer of or purchase of or adjustment of ownership interest pursuant to this Agreement, AEC shall execute and deliver further documents of title (conforming to the document requirements of Section 2.01) conveying to APCO the interest in the Facilities required by this Agreement, free and clear of all liens and encumbrances, but subject to payment or assumption as provided in the last sentence of Section 9.03.

(b) In the event of any adjustment of ownership interest pursuant to this Article XVI, (i) any loss or expenses incurred by APCO in connection with such acquisition shall be due to APCO from AEC, (ii) APCO shall give notice of such election in writing to the trustee or trustees of AEC's bonds or other evidences of indebtedness, and (iii) a closing to

consummate the acquisition pursuant to this Article shall be promptly held at a time and place determined by APCO.

(c) Any acquisition pursuant to this Article shall be subject to the obtaining of applicable governmental and regulatory approvals and AEC shall take all necessary actions and shall execute, and file where appropriate, all legal documents that shall reasonably be requested by APCO to complete any transaction contemplated by this Article XVI.

ARTICLE XVII

Term of Agreement

17.01 Termination. This Agreement shall terminate at the earlier of (a) when, at the sole judgment of APCO, all the Facilities shall have been retired and decommissioned, when all payments required have been made, when all liability for disposal of waste has terminated, when the plant site has been returned to a condition acceptable to APCO (or when the Parties have entered into a final, definitive, further agreement providing for the permanent care of the Facilities, as permitted by such Section 3.02), and when APCO's option to purchase AEC's Percentage Ownership Interest pursuant to Section 3.02 hereof shall have expired, (b) December 31, 2100, or (c) December 31, 1984 if the Closing shall not have been consummated.

17.02 Measuring Lives. If and to the extent that any of the rights and privileges granted under the provisions of this Agreement would, in the absence of the limitation imposed by this Section, be invalid or unenforceable as being in violation of the rule against perpetuity or any other rule of law relating to the vesting of interests in property or the suspension of the power of alienation of property, then it is agreed that notwithstanding any other provision of this Agreement, said options, rights and privileges, subject to the respective conditions governing the exercise of such options, rights and privileges, shall be exercisable only during (a) a period which shall end twenty-one (21) years after the death of the last survivor of the officers and members of the Board of Directors of APCO named in Exhibit ___ hereto, together with all such persons' children and grandchildren who are living on the date of the execution of this Agreement, or (b) the specific applicable period of time expressed in this Agreement, whichever is shorter.

ARTICLE XVIII

Accounting Matters

18.01 General Accounting Matters. Determinations by APCO on all accounting matters related to the transactions contemplated by the Basic Agreements will be in accordance with Generally Accepted Accounting Principles and FERC's Uniform

System of Accounts, utilizing the accrual method of accounting, unless otherwise specifically provided in the Basic Agreements or mutually agreed by the Parties or as prescribed by other regulatory agencies having jurisdiction, as in effect from time to time. The accounting system and procedures designed to implement and operate this Agreement and the other Basic Agreements will be developed with APCO's resources and/or through a consultant. All costs incurred for the design, development and initial implementation of this system are to be borne by AEC.

18.02 Right to Inspect Records, Etc. During normal business hours and subject to conditions consistent with the conduct by APCO of its regular business affairs and responsibilities, APCO will provide AEC, the Authorized AEC Representative(s) or any auditor utilized by AEC reasonably acceptable to APCO or any nationally recognized accounting firm retained by AEC, access to APCO's books, records, and other documents directly related to the performance of APCO's obligations under the Basic Agreements (but excluding internal memoranda, records and documents relating to such matters and minutes of meetings of the Board of Directors and committees thereof) and, upon request, copies thereof, which set forth (a) costs applicable to the construction, operation, maintenance and retirement of the Facilities to the extent necessary to enable AEC to verify the costs for which AEC is billed pursuant to the provisions

of this Agreement, (b) matters relating to the design, construction and operation and retirement of the Facilities in proceedings before any regulatory body or governmental agency having jurisdiction. AEC will bear the cost of any copying, review or audit of such books and records.

During normal business hours and subject to conditions consistent with the conduct by AEC of its regular business affairs and responsibilities, AEC will provide APCO, the Authorized APCO Representative(s), or any auditor utilized by APCO reasonably acceptable to AEC or any nationally recognized accounting firm retained by APCO, access to AEC's books, records, and other documents, and, upon request, copies thereof, which relate to the Basic Agreements (but excluding internal memoranda, records and documents relating to such matters and minutes of meetings of the Board of Directors and committees thereof). APCO will bear the cost of any copying, review or audit of such books and records. Notwithstanding the foregoing, however, neither Party shall be required to make available to the other Party any reports and information relating to personnel practices, staffing or labor relations (including internal memoranda, records and documents relating to such matters as minutes of meetings of the Board of Directors and committees thereof).

18.03 Other Audits. AEC recognizes that APCO is subject to audits by various Federal and State regulatory agencies.

Should any adjustment be required by such audit which affects the Purchase Price or New Investment under this Agreement, the Parties agree to share such adjustment in proportion to their respective ownership interests. AEC also agrees to pay its pro rata share of legal and other expenses incurred by APCO in appealing any adjustment resulting from any such audit, which affects the Purchase Price or New Investment under this Agreement. Any decision to appeal shall be subject to the provisions of Article VIII hereof.

ARTICLE XIX

Consultations and Mutual Cooperation;

Authorized Representatives

19.01 Consultations and Mutual Cooperation. At least annually APCO will meet with representatives of AEC at 600 North 18th Street, Birmingham, Alabama, or such other place as the Parties may agree, to report on the operation of the Facilities.

19.02 Authorized AEC Representatives. At the Closing, AEC shall designate, in writing, not more than two (2) Authorized AEC Representatives to act on its behalf with respect to all matters contemplated by this Agreement. The person or persons so designated by AEC as Authorized AEC Representatives may be changed, in the sole discretion of AEC and from time to time, by at least ten (10) days' prior written notice to APCO.

19.03 Authorized APCO Representatives. At the Closing APCO shall designate, in writing, not more than four (4) Authorized APCO Representatives to act on its behalf with respect to all matters contemplated by this Agreement. Any of the Authorized APCO Representatives may be changed, in APCO's sole discretion and from time to time, by at least ten (10) days' prior written notice to AEC.

ARTICLE XX

Miscellaneous

20.01 Non-Exclusive Sale. APCO shall have the right to sell to others joint interests in any or all of its remaining interest in the Facilities upon such terms and conditions as APCO may choose, but no such sale shall diminish AEC's Percentage Ownership Interest in the Facilities or diminish any other rights and interests of AEC hereunder.

20.02 No Arbitration; Resolution of Disputes. No Party shall have the right to arbitrate any dispute that might arise with respect to any of the Basic Agreements. Any disagreement between the Parties as to their rights or obligations under this Agreement shall first be addressed by consultation between the Authorized APCO Representatives and the Authorized AEC Representatives. In the event such representatives are unable to satisfactorily resolve their disagreement, they shall refer to the matter to their respective management. No dispute as to

the payment of an invoice rendered by either Party pursuant to any of the Basic Agreements shall permit the other Party to delay payment of the disputed invoice, in full, on its payment date. If the invoiced Party shall have paid any such disputed invoice, in full, on or before its payment date and if the Authorized APCO Representatives and the Authorized AEC Representatives, or a court of competent jurisdiction, should later determine that a disputed invoice was for an amount in excess of the correct amount due, then the invoicing Party shall be obligated to refund the difference to the invoiced Party within ten (10) days of such determination with interest at the Regular Interest Rate, if any, upon such amount.

20.03 Notices. Any notice, request, consent or other communication permitted or required by this Agreement (other than payments) shall be in writing and be deemed given when delivered by hand or when deposited in the United States mail, first class, postage prepaid, and if to APCO, addressed to:

Alabama Power Company
P. O. Box 2641
Birmingham, Alabama 35291

Attention: President

with copies to: The Authorized APCO
Representatives designed by APCO
pursuant to Section 19.03 hereof

and if to AEC, addressed to:

Alabama Electric Cooperative, Inc.
P. O. Box 550
Andalusia, Alabama 36420

Attention: General Manager

With copies to: The Authorized AEC
Representatives designated by AEC
pursuant to Section 19.02 hereof

unless a different officer or address shall have been designated by either Party by notice in writing to the other Party.

20.04 Holidays, Business Days. Any obligation to perform under this Agreement, including payment obligations, which shall become due on a non-business day shall become due upon the next business day. The term "business day" shall mean any day other than a day on which banking institutions in the City of Birmingham, Alabama are authorized by law to close.

20.05 Entire Agreement. This Agreement, together with the other Basic Agreements, constitutes the entire understanding between the Parties hereto, superseding any and all previous understandings, oral or written, pertaining to the subject matter contained herein and therein. No Party hereto has relied or will rely upon any oral or other written representation or oral or other written information made or given to such Party by any representative of the other Party or anyone on its behalf.

20.06 Amendments. This Agreement may not be amended, modified, or terminated, nor may any obligation hereunder be waived, orally, and no such amendment, modification, termination or waiver shall be effective for any purpose unless it is

in writing, and signed by both Parties and all necessary regulatory approvals, including the Administrator of REA, have been obtained.

20.07 Relationship of the Parties. The duties, obligations and liabilities of the Parties are intended to be several and not joint or collective, and nothing herein contained shall ever be construed to create an association, trust, joint venture or partnership or impose a trust, fiduciary or partnership duty, obligation, or liability on or with regard to the Parties, although the Parties acknowledge that the ownership and operation of the Facilities may constitute a partnership for tax purposes. The Parties shall be individually responsible for their own obligations as provided herein. Neither Party shall have the right or power to bind the other Party except as expressly provided in this Agreement.

20.08 Tax Election. APCO and AEC hereby agree that they will both elect to exclude the arrangement created by this Agreement from the application of Subchapter K of the Internal Revenue Code of 1954, as amended, and execute all documents required by either Party to effect that result.

20.09 Governing Law. This Agreement is made under and shall be construed under and governed by the laws of the State of Alabama.

20.10 No Waiver. The failure of either Party to enforce at any time any of the provisions of this Agreement, or to require at any time performance by the other Party of any of the provisions hereof, shall in no way be construed to be a waiver of such provisions, nor in any way to affect the validity of this Agreement or any part thereof, or the right of such Party thereafter to enforce each and every such provision.

20.11 Captions. The descriptive captions of the various Articles and Sections of this Agreement have been inserted for convenience of reference only and shall in no way modify or restrict any of the terms and provisions hereof.

20.12 Counterparts. This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

20.13 Singular and Plural; Gender. Throughout this Agreement, whenever any word in the singular number is used, it should include the plural unless the context otherwise requires; and whenever the plural number is used, it shall include the singular unless the context otherwise requires. The use of the masculine shall include the feminine.

20.14 REA Required Clauses - Incremental Cost of Compliance; Remedies for Non-compliance. (A) AEC has represented to APCO

that REA will not loan, or guarantee the loan of, money to AEC for its investment in the Farley Nuclear Plant unless APCO agrees to the inclusion of the provisions set forth as Items (C)(1) through (7) of this Section 20.14. APCO has agreed to the inclusion of these items with the express understanding and agreement (and acknowledgement by REA) that their inclusion is subject to the conditions and limitations set forth in Section 20.14(B) below.

(B)(1) In the event APCO experiences any increase in its costs because of any of the provisions set forth in Section 20.14(C), the entire burden of such increase in cost shall be borne by AEC and AEC shall pay such increase in cost upon receipt of invoice as provided in Article V of the Operating Agreement.

(2) In no event shall any breach by APCO of any of the provisions of Section 20.14(C)(1) through (7) give AEC (or any party claiming rights hereunder through AEC) the right or opportunity to terminate the Basic Agreements or any of them, or diminish the obligations of AEC (or any party claiming rights through AEC) under the Basic Agreements.

(C)(1) Buy American. The parties covenant that in the performance of this Agreement (i) at least AEC's Percentage Ownership Interest in the total cost of the Farley Nuclear Plant, including the total of all of the unmanufactured

articles, materials and supplies used or to be used in the construction of or otherwise made a part of the Farley Nuclear Plant shall have been mined or produced in the United States, and (ii) at least AEC's Percentage Ownership Interest in the total cost of the Farley Nuclear Plant, including the total cost of all of the manufactured articles, materials, and supplies used or to be used in the construction of or otherwise made a part of the Farley Nuclear Plant shall have been manufactured in the United States substantially all from articles, materials, or supplies mined, produced, or manufactured, as the case may be, in the United States. If an article, material, or supplies are partially mined, produced, or manufactured in the United States (said part being hereinafter called the "American Made Portion") and partially mined, produced, or manufactured somewhere other than in the United States, then only the cost of the American Made Portion shall be used in determining whether the requirements of the preceding sentence have been satisfied. At the Closing and from time to time thereafter when requested by AEC or the REA Administrator, the parties shall supply the REA Administrator or the party so requesting with information and documentation demonstrating that the Farley Nuclear Plant was constructed in accordance with the requirements of this Section, provided AEC shall reimburse APCO all costs incurred by APCO in providing such information and documentation, including reimbursement, at usual hourly rates, the cost of the time of personnel engaged in any such supply of information and documentation.

AEC shall further reimburse APCO for any cost which APCO incurs in complying with this provision in lieu of procuring goods or services outside the United States.

(2) Historic Places. The parties shall not, without approval in writing by the REA Administrator, use any portion of the funds made available to APCO by AEC pursuant to the terms of this Agreement to construct any facilities which will involve any district, site, building, structure or object which is included in the National Register of Historic Places, maintained by the Secretary of the Interior pursuant to the Historic Sites Act of 1935 and the National Historic Preservation Act.

(3) Flood Insurance Act. Notwithstanding anything contained in this Agreement, neither party shall be under any obligation to advance any funds to the other party to finance the construction or acquisition of any building in any area heretofore identified by the Secretary of Housing and Urban Development, pursuant to the Flood Disaster Protection Act of 1973 (the "Flood Insurance Act") or any rules, regulations or orders issued to implement the Flood Insurance Act ("Rules"), as an area having special flood hazards, or to finance any Facilities or materials to be located in any such building, or in any building owned or occupied by APCO or AEC located in such flood hazard area unless and until there have been compliance with all other conditions of this Agreement which are

precedent to such advances, and the REA Administrator has determined that (i) the community in which such area is located is then participating in the national flood insurance program, as required by the Flood Insurance Act and any Rules, and (ii) APCO and AEC have obtained flood insurance coverage with respect to such building and contents as may then be required pursuant to the Flood Insurance Act and any Rules, AEC being responsible for the entire cost of any such insurance. In the event, because of this provision, AEC fails to pay for any portion of the Facilities, AEC shall not be entitled to its Percentage Ownership Interest in any output of the Farley Nuclear Plant.

(4) Public Officials Not to Benefit. No member of or delegate to the Congress of the United States shall be admitted to any share or part of this Agreement or to any benefit to arise herefrom other than the receiving of electric service on the same terms accorded other consumers and other than benefits, if any such person is an APCO or The Southern Company shareholder, that may accrue to such shareholders generally.

(5) Kickbacks. In the acquisition, construction and completion of Facilities pursuant to this Agreement, APCO and AEC shall comply with all applicable statutes, rules and regulations pertaining to the so-called "Kickback" Statute (48 Stat. 948, 18 U.S.C. Sec. 874 and 40 U.S.C. Sec. 276C).

(6) Equal Opportunity Clause. During the term of this Agreement, the parties agree as follows:

(i) The parties will not discriminate against any employee or applicant for employment because of race, color, religion, sex, age or national origin. The parties will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, age or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The parties agree to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this Equal Opportunity Clause.

(ii) The parties will, in all solicitations or advertisements for employees placed by or on behalf of either party, state that all qualified applicants will receive consideration for employment without regard to color, religion, sex, age or national origin.

(iii) The parties will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract of understanding, a

notice to be provided advising that said labor union or workers' representatives of the parties' commitments under this Section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(iv) The parties will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations and relevant orders of the Secretary of Labor.

(v) The parties will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations and relevant orders of the Secretary of Labor, or pursuant thereto, and will permit access to their books, records and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

(vi) In the event of either party's noncompliance with this Equal Opportunity Clause of this Agreement or with any of the said rules, regulations or orders, the party may be declared ineligible for further government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, such being the sole and exclusive remedy applicable

under this Agreement for noncompliance herewith, it being recognized that the parties have executed other Agreements under which broader remedies for such noncompliance has been recognized.

(vii) The parties agree that, unless exempted by the rules, regulations or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, all subcontracts and purchase orders are subject to Executive Order 11246 and such provisions will be binding upon each subcontractor and vendor. The parties shall take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event the party becomes involved in, or is threatened with litigation with a subcontractor or vendor as a result of such direction by the administering agency, that party may request the United States to enter into such litigation to protect the interests of the United States.

(7) Nonsegregated Facilities. The parties certify that they do not maintain or provide for their employees any segregated facilities at any of its establishments, and that it does not permit their employees to perform services at any location, under their control, where segregated facilities are maintained. The parties certify further that they will not

maintain or provide for their employees any segregated facilities at any of their establishments, and that they will not permit their employees to perform their services at any location, under their control, where segregated facilities are maintained. The parties agree that a breach of this certification is a violation of the Equal Opportunity Clause in this Agreement and that the sole and exclusive remedy for breach of this certification is the sole and exclusive remedy set forth in the Equal Opportunity Clause of this Agreement. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, timeclocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment area, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, or national origin, because of habit, local custom, or otherwise. The parties agree that (except where they have obtained identical certifications from proposed subcontractors for specific time periods) they will obtain identical certifications from proposed subcontractors prior to the award of subcontracts exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity Clause, and that they will retain such certifications in their files.

IN WITNESS WHEREOF, the parties have hereto caused this Agreement to be signed and sealed as of _____, 1984 by their duly authorized representatives.

ALABAMA POWER COMPANY

By _____

ATTEST:

Corporate Secretary

ALABAMA ELECTRIC COOPERATIVE,
INC.

By _____

ATTEST:

STATE OF ALABAMA:
JEFFERSON COUNTY to-wit:

The foregoing instrument was acknowledged before before me this ____ day of _____, 1984 by _____ and _____, President and Corporate Secretary, respectively, of Alabama Power Company, an Alabama corporation, on behalf of the Corporation.

My commission expires: _____

Notary Public

STATE OF ALABAMA:
COVINGTON COUNTY to-wit:

The foregoing instrument was acknowledged before me this _____ day of _____, 1984 by _____, of Alabama Electric Cooperative, Inc. an Alabama corporation, on behalf of the Corporation.

My commission expires: _____

EXHIBIT A

COMMON FACILITIES
JOSEPH M. FARLEY NUCLEAR PLANT

[Description to be developed of all facilities at the Farley Plant considered Common Facilities as of the date of the Purchase and Ownership Agreement]

EXHIBIT B

FARLEY UNIT 1
JOSEPH M. FARLEY NUCLEAR PLANT

[Description to be developed of the facilities included
within the Farley Plant which constitute Farley Unit 1]

EXHIBIT C

FARLEY UNIT 2
JOSEPH M. FARLEY NUCLEAR PLANT

[Description to be developed of the facilities included
within the Farley Plant which constitute Farley Unit 2]

EXHIBIT D

MEMBERS OF ALABAMA ELECTRIC COOPERATIVE, INC.
AS OF _____, 1984

City of Andalusia
Baldwin County Electric Membership Corporation
City of Brundidge
Central Alabama Electric Cooperative
Choctawhatchee Electric Cooperative
Clarke-Washington Electric Membership Corporation
City of Elba
Escambia River Electric Cooperative
Gulf Coast Electric Cooperative
Nicolas Cotton Mills
City of Opp
Opp Cotton Mills
Pea River Electric Cooperative
Pioneer Electric Cooperative
South Alabama Electric Cooperative
Southern Pine Electric Cooperative
Tallapoosa River Electric Cooperative
West Florida Electric Cooperative
Wiregrass Electric Cooperative

EXHIBIT E

STATUTORY WARRANTY DEED

[Statutory Warranty Deed to be developed consistent with Section 2.02(a) conveying to AEC an undivided ownership interest in real property to be conveyed under the Agreement]

EXHIBIT F

ASSIGNMENT OF CONTRACTS, LICENSES
AND PERMITS

[Document to be developed assigning to AEC, to the extent possible, an undivided ownership interest in APCO's rights and obligations under those certain contracts, licenses and permits listed herein for the purchase, repair, construction, ownership and operation of the Facilities]

EXHIBIT G

BILL OF SALE

[Bill of Sale to be prepared conveying undivided
ownership interest in all property listed thereon]

EXHIBIT H

SECOND MORTGAGE AND DEED OF TRUST

[Document to be prepared evidencing second mortgage lien on property of AEC as security for obligations owed by AEC to APCO under the Basic Agreements]

EXHIBIT I

PURCHASE PRICE FOR AEC'S
PERCENTAGE OWNERSHIP INTEREST

[Document to be prepared stating purchase price and showing allocation among the various elements constituting the price]

EXHIBIT J

GUARANTY AGREEMENT

[Guaranty Agreement, binding REA, to be prepared to guarantee AEC's performance of the Basic Agreements]

EXHIBIT K

SPECIAL GUARANTY AGREEMENT

FOR AND IN CONSIDERATION of Ten Dollars (\$10.00) and other good and valuable considerations, the receipt and sufficiency of which is hereby acknowledged, the undersigned, for themselves, their successors and assigns (hereinafter "Guarantors"), being members of ALABAMA ELECTRIC COOPERATIVE, INC., a corporation organized under the laws of the State of Alabama (hereinafter "AEC"), hereby each guarantees to ALABAMA POWER COMPANY, its successors and assigns (hereinafter "APCO") full payment and/or performance of all costs, liabilities and obligations of AEC to APCO, including payment of accrued interest if any, arising out of or resulting from that certain Purchase and Ownership Agreement between APCO and AEC dated _____, 1984, that certain Nuclear Fuel Agreement between AEC and APCO dated _____, 1984, and that certain Operating Agreement between AEC and APCO dated _____, 1984 (hereinafter collectively referred to as "Basic Agreements"), to which true copies of this Special Guaranty Agreement are affixed, or arising out of or resulting from a violation by AEC of any of the covenants contained in the Statutory Warranty Deed and Bill of Sale to be delivered by APCO to AEC pursuant to the Basic Agreements ("guaranteed items"). Notwithstanding anything to the contrary herein contained, the liability of each of the undersigned is limited to

that percentage of the entire liability hereunder which is set forth below, as follows:

City of Andalusia	_____%
Baldwin County Electric Membership Corporation	_____%
City of Brundidge	_____%
Central Alabama Electric Cooperative	_____%
Choctawhatchee Electric Cooperative	_____%
Clarke-Washington Electric Membership Corporation	_____%
City of Elba	_____%
Escambia River Electric Cooperative	_____%
Gulf Coast Electric Cooperative	_____%
Micolas Cotton Mills	_____%
City of Opp	_____%
Opp Cotton Mills	_____%
Pea River Electric Cooperative	_____%
Pioneer Electric Cooperative	_____%
South Alabama Electric Cooperative	_____%
Southern Pine Electric Cooperative	_____%
Tallapoosa River Electric Cooperative	_____%
West Florida Electric Cooperative	_____%
Wiregrass Electric Cooperative	_____%

1. This guaranty is unconditional, provided only that each Guarantor may assert any defense that would be available to AEC under the Basic Agreements and that has not been resolved against AEC pursuant to the final decision of a court of competent jurisdiction.

2. This guaranty shall be deemed continuing and irrevocable, notwithstanding any subsequent withdrawal of any or all of the Guarantors as members of AEC, provided that an express release given by APCO to AEC shall also constitute a release of each of the Guarantors hereunder. Guarantors hereby waive demand of payment, presentment, protest and notice of protest on any and all of the guaranteed items and consent to alteration, amendment, or modification of any obligations under the Basic Agreements without necessity for notice to Guarantors or agreement by Guarantors. Payments by the Guarantors to APCO pursuant to this guaranty shall be made at the principal place of business of APCO, in lawful money of the United States.

3. The obligations of each Guarantor may be enforced without regard to the enforcement of the obligations of any other Guarantor, and without regard to the validity or invalidity of any obligations of another Guarantor. Any amounts received by APCO from whatsoever source on account of the AEC's indebtedness or liabilities, and in such order of application, as APCO may from time to time elect; and, notwithstanding any payments made by or for the account of the undersigned pursuant to this guaranty, the undersigned shall not be subrogated to any rights of APCO until such time as this guaranty shall have been discontinued as to all of the undersigned and APCO shall have received payment of the full amount of all indebtedness or liabilities and of all obligations of all of the undersigned hereunder.

4. Guarantors hereby consent to APCO from time to time extending the time of payment or performance in whole or in part of any and all of the aforesaid items for such time or times as APCO may determine and hereby waive notice to or obtaining the consent of the Guarantors. Such extension of extensions may be longer than the time for payment or performance of the original obligation. Guarantors further agree that this guaranty shall apply with equal force and effect to any renewal or renewals of any of the aforesaid items. Guarantors further consent to the subsequent sale by APCO of participation interests in the Farley Plant to persons other than AEC, or to APCO otherwise dealing with the Farley Plant, and agree that such shall not impair this guaranty, and hereby waive notice thereof to or obtaining the consent therefor of the Guarantors. Guarantors hereby consent to the partial or total release of other persons (except AEC) primarily or secondarily liable, and to the release of all or part of any security that may be held by APCO all without notice to Guarantors. APCO shall not be obligated to acquire any security or substitute security because of the release of other security. If at any time all or any part of any payment theretofore applied by APCO to any indebtedness or liability of AEC is or must be rescinded or returned by APCO for any reason whatsoever (including without limitation the insolvency, bankruptcy or reorganization of AEC) such indebtedness or liability shall for the purpose of this guaranty, to the extent that such payment is or must be rescinded or returned,

be deemed to have continued in existence notwithstanding such application by APCO, and this guaranty shall continue to be effective or be reinstated, as the case may be, as to such indebtedness or liability as though such application by APCO had not been made.

5. Notice by APCO of the acceptance of this guaranty is hereby waived. No act or omission of any kind (except express written release of the AEC) by APCO shall affect or impair this guaranty and APCO shall have no duties to the Guarantors. The Guarantors hereby agree that their obligations hereunder shall be absolute and primary and shall be complete and binding as to each Guarantor upon this guaranty being executed by it and subject to no conditions precedent or otherwise. This guaranty contains the full agreement of the Guarantors and is not subject to any oral conditions.

6. No modification or waiver hereof shall be binding on APCO unless in writing signed by an officer of APCO. This guaranty shall be construed in accordance with and governed by the laws of the State of Alabama. Wherever possible each provision of this guaranty shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this guaranty shall be prohibited by or invalid under such law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this guaranty.

EXHIBIT L

RELEASE AND COVENANT NOT TO SUE

[Document to be prepared for execution by AEC and each AEC Member, together with certified resolutions of the Board of Directors of each entity authorizing execution]

EXHIBIT M

OPINION OF COUNSEL FOR AEC

EXHIBIT N

OPINION OF COUNSEL FOR AEC

OPERATING AGREEMENT FOR JOINT OWNERSHIP INTEREST
IN THE JOSEPH M. FARLEY NUCLEAR PLANT UNITS ONE AND TWO
BETWEEN
ALABAMA POWER COMPANY
AND
ALABAMA ELECTRIC COOPERATIVE, INC.

OPERATING AGREEMENT
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OPERATING AGREEMENT FOR JOINT OWNERSHIP INTEREST
IN THE JOSEPH M. FARLEY NUCLEAR PLANT UNITS 1 AND 2
BETWEEN
ALABAMA POWER COMPANY
AND
ALABAMA ELECTRIC COOPERATIVE, INC.

THIS OPERATING AGREEMENT is made and entered into as of _____, _____, between ALABAMA POWER COMPANY ("APCO"), an Alabama corporation with its principal office at 600 North 18th Street, Birmingham, Alabama, and ALABAMA ELECTRIC COOPERATIVE, INC. ("AEC"), an electric cooperative organized under Alabama law, with its principal office at _____, _____, Andalusia, Alabama.

WHEREAS, APCO, an electric utility organized and existing under the laws of the State of Alabama, has constructed and operates a nuclear plant near Dothan, Alabama, referred to as the Joseph M. Farley Nuclear Plant (the "Farley Plant"), subject to the requirements of the licenses issued by the Nuclear Regulatory Commission; and

WHEREAS, AEC is a generation and transmission cooperative organized and existing under the laws of the State of Alabama; and

WHEREAS, simultaneously herewith, APCO and AEC have entered into a Purchase and Ownership Agreement for Joint Ownership Interest in the Farley Nuclear Plant ("Purchase and Ownership Agreement") and a Nuclear Fuel Agreement, under which APCO will sell and AEC will purchase an ownership

interest in Farley Unit 1, Farley Unit 2, Common Facilities, Operating Inventory and the Nuclear Fuel used or to be used for Farley Units 1 and 2; and

WHEREAS, pursuant to the Purchase and Ownership Agreement, APCO is to sell to AEC a joint interest in the Facilities described in such Agreement and, through this Operating Agreement, has agreed to operate AEC's portion of such Facilities, supplying to AEC such electricity as is generated from AEC's portion of these Facilities; and

WHEREAS, AEC agrees to compensate APCO, in the manner provided herein, for the operation of the Facilities and conduct of other activities including, but not limited to, maintenance, construction, refurbishment, and modification of the Facilities or additions thereto as may be required or desirable.

NOW, THEREFORE, in consideration of the premises and the mutual obligations hereinafter stated, the parties hereto agree to the following Operating Agreement governing the Farley Plant.

ARTICLE I

APCO's Authority and Responsibility with Respect to Operation of AEC's Percentage Ownership Interest

1.01 APCO as Agent of AEC.

(a) AEC hereby reaffirms its appointment of APCO (such appointment to be irrevocable for the term of this

Operating Agreement and coupled with an interest) as its sole agent as provided in Section 8.01 of the Purchase and Ownership Agreement, to act on behalf of AEC with respect to all matters specified in such Section 8.01.

(b) As relates to all third parties, this agency designation shall be binding on AEC, and such appointment shall be deemed in effect by each third party until such third party receives written notification from APCO of any termination thereof.

(c) APCO accepts such appointment. APCO shall have the right to exercise such authority granted to it by AEC through a contractor or agent selected by APCO. In any such event, the authority of such contractor or agent shall be coextensive with the authority granted APCO and such contractor and agent shall be an additional beneficiary of all provisions of this Operating Agreement and the other Basic Agreements including, but not limited to, those relating to responsibility of the operator of the facility and payment of cost. In discharging all of its duties and responsibilities hereunder, APCO will not, solely because of AEC's Percentage Ownership Interest in the Facilities, make any adverse distinction between any of the Facilities and any other generating unit or facilities in which APCO has an ownership interest, provided nothing herein shall require APCO to perform (or make it liable to AEC for performing) in any manner different from the manner it would have performed had AEC not

obtained a percentage ownership in the Facilities. In connection with any claim by AEC that APCO has made an adverse distinction solely because of AEC's percentage ownership, the burden of making such demonstration shall be on AEC. APCO's duties and responsibilities under this Operating Agreement shall include, but not be limited to, establishing organizational structure and manpower requirements, maintaining an adequate work force through APCO's personnel administration policies, arranging and procuring necessary or desirable materials and services for operation of the Facilities, determining scheduled outages for routine inspections, refueling and general maintenance, scheduling, dispatching and loading of the Facilities, preparing and filing applications, reports and other documents relating to operation of the Facilities, establishing reasonable rules for visits to the Facilities, and determining the need for, and subsequently constructing, any capital additions or modifications to the Facilities. Nothing herein shall interfere with APCO's authority and responsibility for the operation of, maintenance of, modifications to, fueling of, and improvements to all of its other generation facilities. APCO shall make available upon request by AEC regularly prepared monthly reports which contain specific information on the Facilities, including, but not limited to, operating expenses, maintenance expenses, fuel expenses, generating statistics, fuel reports, operating statistics, and other information reasonably available. APCO

will also have the right to submit data relating to operation of the Facilities to any other entity. APCO shall also provide AEC oral notice of scheduled and emergency outages of Farley Unit 1 or Farley Unit 2 in a manner and at times convenient to APCO. Should AEC desire to have capability for determining automatically the current level of generation at the Farley Plant, AEC shall bear the full cost incurred by APCO on installing, operating, and maintaining equipment necessary to provide such capability and shall reimburse APCO for any cost expended by APCO in connection therewith.

(d) AEC agrees that it will take all necessary action in a prompt manner to execute any agreements with respect to the operation, maintenance, modifications and fueling of the Facilities as and when requested by APCO to permit APCO to carry out its authority and responsibilities pursuant to this Section 1.01.

(e) AEC expressly agrees that APCO does not, by this Operating Agreement, assume any risks or liabilities with respect to AEC's Percentage Ownership Interest and that the amounts paid and payable to APCO under the Basic Agreements are determined on the basis that APCO does not assume any such risks or liabilities.

1.02 AEC's Review of Plant Activities. APCO shall, upon receipt of reasonable notice from AEC in advance, make arrangements for visitation by representatives of AEC at the plant provided such visits shall not, in the sole opinion of

APCO, interfere with APCO's operation of the plant or jeopardize plant safety. During any such visit by AEC representatives, APCO personnel may accompany such AEC representatives at all times. AEC shall assure that its representatives comply with all applicable rules and regulations in effect at the Farley Plant whether imposed by governmental authority or by APCO.

ARTICLE II

Entitlements to Output

2.01 Entitlements of the Parties to Output. Subject to the provisions of Articles XI, XV and XVI of the Purchase and Ownership Agreement, AEC shall be entitled to its Percentage Ownership Interest of the output from Farley Units 1 and 2 at the time generation in such units occurs. Subject to the provisions of Articles XI, XV or XVI of the Purchase and Ownership Agreement, APCO shall be entitled to the balance of the output from each unit.

2.02 Determination of Output - Responsibility for Station Service and Losses. Output of the Farley Plant shall be the gross generation of Farley Units 1 and 2, less station service requirements, and less adjustments for losses experienced. In the event the output is negative, that is, the station service and losses exceed the gross generation, AEC shall pay APCC for its share of the energy consumed or lost at the plant during such period on the basis of APCO's incremental energy cost at that time.

ARTICLE III

Delivery of Power

3.01 Delivery of Power. APCO shall deliver to AEC the output to which it is entitled under Article II, such delivery to be made at the points where the 500 and 230 kilovolt transmission lines connect to bus bars in the transmission substation at the Farley Plant. Transmission of such output by APCO for AEC shall be governed by the provisions of a separate agreement.

3.02 Metering.

(a) No special metering shall be installed at the Farley Plant, it being understood that the output to which AEC is entitled pursuant to Article II hereof shall be determined by appropriately adjusting the metered quantities to reflect the capacity and energy delivered to AEC at the point of delivery described in Section 3.01. AEC shall bear the costs of any additional metering or data acquisition equipment which is required to measure accurately the delivery of power to AEC from the Farley Plant.

(b) The meters will be sealed and seals will be broken only by APCO and only when meters are to be tested or adjusted. The meters will be tested at suitable intervals and the accuracy of registration shall be maintained. At AEC's request, a special test of any meter will be performed. All costs of such a test will be borne by AEC. Representatives of AEC shall be afforded the opportunity to be present at all routine or special tests.

ARTICLE IV

Costs

4.01 Operating Costs. On or before the first day of January of each year during the term of this Operating Agreement, APCO shall provide to AEC a monthly estimate of operating costs for the twelve (12) month period commencing on that January 1. APCO will also provide to AEC, upon request, such estimates of operating costs for future years as APCO shall have prepared for its own use. The estimate shall not be binding on APCO but shall be provided solely to assist AEC in planning. During the term of this Operating Agreement, AEC shall pay to APCO its pro rata share of the costs of operating and maintaining the Facilities in accordance with Appendix A hereto. The pro rata share of AEC shall be subject to change from time to time in accordance with Articles XI, XV or XVI of the Purchase and Ownership Agreement. The operating costs shall be paid on an estimated basis as provided in Article V hereof, subject to adjustment based on actual cost.

4.02 New Investment Costs.

(a) On or before the first day of January of each year during the term of this Operating Agreement, APCO shall provide to AEC a monthly estimate of New Investment for the twelve (12) month period commencing on that January 1. APCO will also provide to AEC, upon request, such estimates of New Investment for future years as APCO shall have prepared for its own use. The estimate shall not be binding on APCO but

shall be provided solely to assist AEC in planning for its capital requirements.

(b) At the times specified in Section V hereof, APCO will submit an invoice to AEC for its share (as provided in Section 4.02(d) below) of the next month's estimated expenditures for New Investment. Such cost will be as described in Appendix B hereto. When the actual expenditures for New Investment for that month have been determined by APCO and recorded on its books of account, an adjustment shall be made by APCO to reflect a credit or additional charge to AEC.

(c) APCO shall also furnish AEC monthly, in addition to the estimate of expenditures for New Investment during the next month, the then current estimates of the New Investment for each of the remaining months in that calendar year (unless there is no change), which estimates may be different from the monthly estimate originally furnished on or before January 1 pursuant to Section 4.02(a). The delivery of such estimates (which estimate shall not be binding upon APCO but shall be provided solely to assist AEC in planning for its capital requirements) of New Investment for the remaining months of the calendar year shall constitute notice by APCO to AEC of any change in APCO's estimate. APCO agrees, however, to use reasonable efforts to give AEC as much advance notice of New Investment estimate changes as is practicable, particularly in the case of changes which may substantially increase the amount AEC must pay for its share of New Investment in a future month.

(d) AEC's share of New Investment to be paid to APCO each month shall be a percentage of New Investment for such month equal to AEC's Percentage Ownership Interest in the Facilities as such specified Percentage Ownership Interest shall be modified in accordance with the provisions of Articles XI, XV or XVI of the Purchase and Ownership Agreement.

4.03 Incremental Costs. Any incremental costs due to be paid by AEC under any of the Basic Agreements after Closing shall be paid by AEC each month based on APCO's estimate of such incremental costs to be incurred during the next month. When such actual incremental costs for that month have been determined by APCO, an adjustment shall be made by APCO to reflect a credit or additional charge to AEC.

4.04 Costs Not Susceptible to Precise Quantification.

(a) In addition to paying its pro rata share of all costs as described in Section 4.01, AEC shall pay APCO a monthly amount equal to ten percent (10%) of the operating and maintenance cost payable pursuant to Section 4.01 to cover costs to APCO which are not susceptible to precise quantification.

(b) In addition to paying its pro rata share of all New Investment as described in Section 4.02, AEC shall pay APCO ten percent (10%) of the monthly charges to AEC associated with such New Investment to cover costs to APCO which are not susceptible to precise quantification.

(c) The amounts provided for herein shall be reflected on the bills rendered in accordance with Article V relating to estimated costs and shall be due and payable as of the time specified therein. Such amounts shall be adjusted at the times actual expenditures have been determined.

ARTICLE V

Billing

5.01 Billing Methods. Billing for all payments due under this Operating Agreement shall be in the format provided in Appendix C.

5.02 Rendering Bill. APCO shall render to AEC monthly a billing statement no later than the twentieth (20th) day of each month, transmitted by wire or delivered by courier, covering the estimated amounts due for the next succeeding month for (a) operating costs pursuant to Section 4.01; (b) New Investment costs pursuant to Section 4.02; (c) incremental costs pursuant to Section 4.03; and (d) costs specified in Section 4.04. When the actual expenditures for operating costs, New Investment costs and incremental costs for that month have been determined by APCO and recorded on its books of account, an adjustment shall be made by APCO to reflect a credit or additional charge to AEC and such credit or additional charge shall appear, with interest at the Regular Interest Rate payable to the appropriate party, on the monthly invoice next delivered after determination of the actual

expenditures. A credit or additional charge shall also be made because of the impact which any such adjustment to actual cost would have on charges under Section 4.04.

5.03 Payment. Payment for items billed under Section 5.02 shall be due on the first day of the month following the month in which the bill is presented. The obligation to make payments as specified herein shall continue notwithstanding the capability (or lack of capability) of the Farley Plant to produce power, for any reason. If payment is not received by such due date, interest at the Special Interest Rate will accrue from date due until payment is received. In the event payment is made in an amount less than the amount due pursuant to the bill rendered, the monies paid to APCO by AEC shall be applied, first, to any interest due to APCO under the Basic Agreements; second, to incremental costs pursuant to Section 4.03; third, to AEC's share of operating and maintenance expenses of the Facilities pursuant to Section 4.01 and other costs specified in Section 4.04(a); and fourth, to New Investment costs pursuant to Section 4.02 and other costs specified in Section 4.04(b).

5.04 Methods of Payment. All payments required to be made by AEC under this Operating Agreement in excess of \$10,000 shall be paid on or before the due date in immediately available funds by delivery (before 11:00 a.m., Birmingham time) of either a Federal Reserve check or evidence of bank wire to APCO's account, at a bank designated by APCO. If any

such payment is to be made by bank wire, APCO shall advise AEC of the appropriate bank and account number at least one business day before the payment is due. All other payments required to be made under this Operating Agreement may be made by check deposited in the United States mail three (3) days prior to the date due, first-class postage prepaid, and addressed to Treasurer, Alabama Power Company, P. O. Box 2641, Birmingham, Alabama, 35291.

5.05 No Arbitration; Resolution of Disputes. Neither party shall have the right to arbitrate any dispute that might arise with respect to this Operating Agreement. Any disagreement between the parties as to their rights or obligations under this Operating Agreement shall first be addressed by consultation between the Authorized APCO Representatives as determined in accordance with Section 19.03 of the Purchase and Ownership Agreement and the Authorized AEC Representative as determined in accordance with Section 19.02 of the Purchase and Ownership Agreement. In the event such representatives are unable to resolve satisfactorily their disagreement, they shall refer the matter to senior management of each party. No dispute as to the payment of an invoice rendered by APCO shall permit AEC to delay payment of the disputed invoice, in full, on its payment date. If AEC shall have paid any such disputed invoice, in full, on or before its payment date and if the Authorized APCO Representative and the Authorized AEC Representative, or the parties' senior management, or a court

of competent jurisdiction, should later determine that a disputed invoice was for an amount in excess of the correct amount due, then APCO shall be obligated to refund the difference to AEC with interest, if any, upon such amount as follows:

(a) If such difference resulted from a deviation from an estimate not caused by error or bad faith, interest shall be payable at the Regular Interest Rate;

(b) If such difference resulted from an error, interest shall be payable at the Regular Interest Rate; and

(c) If such difference resulted from bad faith, such interest shall be payable at the Special Interest Rate.

5.06 Billing Adjustments. Billing errors or adjustments to estimates of \$5,000 or more discovered through (i) resolution of billing disagreements pursuant to Section 5.05, (ii) audit, or (iii) normal billing procedures, will be adjusted and interest will accrue at the Regular Interest Rate, unless otherwise determined pursuant to Section 5.05, from the date of payment of the original bill through the date of payment of the adjustment. Adjustments of less than \$5,000 will be made, but no interest will accrue.

ARTICLE VI

Accounting Matters and Access to Books and Records

6.01 Responsibility and Method of Accounting. All accounting related to the transactions contemplated by this

Operating Agreement shall utilize the accrual method of accounting and shall be in accordance with Generally Accepted Accounting Principles, FERC's Uniform System of Accounts or as prescribed by other regulatory agencies having jurisdiction all as in effect from time to time.

6.02 Confidentiality. During the term of this Operating Agreement, it may become necessary or desirable, from time to time, for one Party to provide to the other Party information which is either confidential or proprietary. The Party desiring to protect any such information (the labelling Party) may label such information as either confidential or proprietary and thereafter the other Party will not reproduce, copy, use or disclose (except when required by governmental authorities) any such information in whole or in part for any purpose without the written consent of the labelling Party. In disclosing confidential or proprietary information to governmental authorities, the disclosing Party shall cooperate with the labelling Party in minimizing the amount of such information furnished. At the specific request of the labelling Party, the other Party will endeavor to secure the agreement of such governmental authorities to maintain specified portions of such information in confidence.

ARTICLE VII

Management of the Facilities;
Liability and Allocation of
Risk; and Contracts for the Facilities

The provisions of Article VIII of the Purchase and

Ownership Agreement are incorporated herein by reference and shall apply as if set forth herein in full.

ARTICLE VIII

General Covenants

The provisions of Article IX of the Purchase and Ownership Agreement are incorporated herein by reference and shall apply as if set forth herein in full.

ARTICLE IX

Waiver of Partition

The provisions of Article X of the Purchase and Ownership Agreement are incorporated herein by reference and shall apply as if set forth herein in full.

ARTICLE X

Assignment

The provisions of Article XI of the Purchase and Ownership Agreement are incorporated herein by reference and shall apply as if set forth herein in full.

ARTICLE XI

Insurance

The provisions of Article XII of the Purchase and Ownership Agreement are incorporated herein by reference and shall apply as if set forth herein in full.

ARTICLE XII

Destruction; Condemnation

The provisions of Article XIII of the Purchase and Ownership Agreement are incorporated herein by reference and shall apply as if set forth herein in full.

ARTICLE XIII

Force Majeure

The provisions of Article XIV of the Purchase and Ownership Agreement are incorporated herein by reference and shall apply as if set forth herein in full.

ARTICLE XIV

Default

The provisions of Article XV of the Purchase and Ownership Agreement are incorporated herein by reference and shall apply as if set forth herein in full.

ARTICLE XV

Special Remedies

The provisions of Article XVI of the Purchase and Ownership Agreement are incorporated herein by reference and shall apply as if set forth herein in full.

ARTICLE XVI

Term of Agreement

The provisions of Article XVII of the Purchase and Ownership Agreement are incorporated herein by reference and shall apply as if set forth herein in full.

ARTICLE XVII

Accounting Matters

The provisions of Article XVIII of the Purchase and Ownership Agreement are incorporated herein by reference and shall apply as if set forth herein in full.

ARTICLE XVIII

Consultations and Mutual Cooperation;
Authorized Representatives

The provisions of Article XIX of the Purchase and Ownership Agreement are incorporated herein by reference and shall apply as if set forth herein in full.

ARTICLE XIX

Miscellaneous

19.01 The provisions of Article XX of the Purchase and Ownership Agreement are incorporated herein by reference and shall apply as if set forth herein in full.

19.02 Terms used in this Operating Agreement which are defined in the Purchase and Ownership Agreement shall have the same meaning.

IN WITNESS WHEREOF, the parties have hereto caused this Operating Agreement to be signed and sealed as of _____, 1984 by their duly authorized representatives.

ALABAMA POWER COMPANY

By _____

ATTEST:

Corporate Secretary

ALABAMA ELECTRIC COOPERATIVE,
INC.

By _____

ATTEST:

STATE OF ALABAMA:

to-wit:

JEFFERSON COUNTY

The foregoing instrument was acknowledged before me this _____ day of _____, 1984 by _____ and _____, President and Corporate Secretary, respectively, of Alabama Power Company, an Alabama corporation, on behalf of the Corporation.

My commission expires: _____

Notary Public

STATE OF ALABAMA:

to-wit:

COVINGTON COUNTY

The foregoing instrument was acknowledged before me this _____ day of _____, 1984 by _____ and _____, _____ and _____, respectively, of Alabama Electric Cooperative, Inc., an Alabama corporation, on behalf of the Corporation.

My commission expires: _____

Notary Public

NUCLEAR FUEL AGREEMENT

NUCLEAR FUEL AGREEMENT
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NUCLEAR FUEL AGREEMENT

THIS NUCLEAR FUEL AGREEMENT is made and entered into as of the _____ day of _____, 1984, by and between Alabama Power Company (APCO), an Alabama corporation with its principal office at 600 North 18th Street, Birmingham, Alabama, and ALABAMA ELECTRIC COOPERATIVE, INC. (AEC), an electric cooperative organized under Alabama law with its principal office at _____, Andalusia, Alabama:

WITNESSETH

WHEREAS, APCO is an electric utility organized and existing under the laws of the State of Alabama; and

WHEREAS, APCO has constructed and operates a nuclear plant near Dothan, Alabama, referred to as the Joseph M. Farley Nuclear Plant (the "Farley Plant") subject to the requirements of the licenses issued by the Nuclear Regulatory Commission; and

WHEREAS, AEC is a generation and transmission cooperative organized and existing under the laws of the State of Alabama; and

WHEREAS, on August 10, 1981, the Nuclear Regulatory Commission amended APCO's license for the Farley Plant by

requiring APCO to offer to sell to AEC an undivided ownership interest in the Farley Plant; and

WHEREAS, in accordance with the foregoing, APCO has agreed to sell to AEC and AEC has agreed to purchase, on the terms and conditions set forth in the Purchase and Ownership Agreement between AEC and APCO of even date herewith, a 6.26 percent undivided ownership interest in the Farley Plant; and

WHEREAS, the parties recognize that the transactions contemplated hereby were solely the product of administrative and judicial decrees designed to satisfy certain antitrust concerns by providing AEC with access to power generated by the Farley Plant, and that such decrees were not intended to provide AEC with other incidents of joint ownership not explicitly granted herein which might otherwise accompany the sale of such an ownership interest; and

WHEREAS, APCO and AEC, as a part of such arrangement, have agreed on the terms and conditions set forth for the sale to AEC of a 6.26 percent undivided ownership interest in the Nuclear Fuel for the Farley Plant, as well as the basis on which Nuclear Fuel shall be acquired, owned, managed, installed and disposed of in the future;

NOW, THEREFORE, in consideration of the premises and mutual obligations hereinafter stated, the parties hereto agree as follows:

ARTICLE I

Definitions

The words and terms used herein shall have the following meanings and the provisions of Article I of the Purchase and Ownership Agreement are incorporated by reference herein and shall apply as if set forth herein in full except as otherwise defined herein.

1.01 AEC Nuclear Fuel. AEC Nuclear Fuel shall be the AEC Ownership Interest in Nuclear Fuel and shall be calculated as follows: (i) for Designated Nuclear Fuel, a percentage equal to the Percentage Ownership Interest of AEC in each respective Unit for which the Designated Nuclear Fuel is designated, as that percentage is modified from time to time in accordance with Articles XI, XV or XVI hereof and (ii) for Undesignated Nuclear Fuel, the percentage calculated in accordance with the provisions of Section 7.02 hereof, as that percentage is modified from time to time in accordance with Articles XI, XV or XVI hereof.

1.02 Designated Nuclear Fuel. The individual fresh and irradiated nuclear fuel assemblies and associated burnable poison rod assemblies for Farley Units 1 or 2, whether in storage or in use in any such Unit, and any Nuclear Fuel in process, any of which is designated by APCO on its books of

account for use in Farley Units 1 or 2 including, but not limited to, uranium in inventory being converted or enriched and being fabricated or shipped, together with all replacements thereof and additions thereto.

1.03 Facilities. As used herein (and as used in provisions of other of the Basic Agreements incorporated herein by reference), the term "Facilities" shall mean Nuclear Fuel.

1.04 Nuclear Fuel. The Designated Nuclear Fuel and Undesignated Nuclear Fuel (including Spent Nuclear Fuel) described in Exhibit A hereto.

1.05 Nuclear Fuel Contracts. Those contracts for Nuclear Fuel described in Exhibit B hereto.

1.06 Spent Nuclear Fuel. Nuclear Fuel which APCO determines has completed its useful life and which will be stored, transported and reprocessed or disposed of, temporarily or permanently.

1.07 Spent Nuclear Fuel Disposal Costs. Any cost or credit associated with contracts for disposal of Spent Nuclear Fuel.

1.08 Undesignated Nuclear Fuel. All of APCO's uranium inventory and any burnable poison rod assemblies not yet designated by APCO on its books of account for use in any particular nuclear unit, whether acquired for Farley Units 1 or 2 or any other undesignated unit.

1.09 Undesignated Unit. Any nuclear unit owned by APCO, or in which APCO has an ownership interest, other than Farley Units 1 and 2, and any nuclear unit owned by another entity with which APCO has agreed to pool Nuclear Fuel.

ARTICLE II

Purchase of AEC's Percentage Ownership Interest

2.01 Purchase of AEC Nuclear Fuel at the Closing.

Subject to the terms and conditions herein set forth, at the Closing, APCO agrees to sell and convey and AEC agrees to purchase and pay for the AEC Nuclear Fuel. Prior to or at the Closing, APCO will secure a release of the AEC Nuclear Fuel from the lien of the Indenture and from any ownership arrangement with Lessors of such fuel to APCO. APCO shall convey title to the AEC Nuclear Fuel by the delivery of a Bill of Sale, substantially in the form of Exhibit C hereto, conveying such undivided ownership interest in all property listed thereon and an Assignment Agreement, substantially in the form of Exhibit D hereto, assigning such undivided ownership interest in APCO's rights, duties and obligations under the Nuclear Fuel Contracts. The parties agree that all assignments under this Section are subject to the provisions of Section 8.03 hereof.

2.02 APCO as Agent of AEC.

(a) AEC hereby reaffirms its appointment of APCO (such appointment to be irrevocable for the term of this Nuclear Fuel Agreement and coupled with an interest) as its sole agent as provided in Section 8.01 of the Purchase and Ownership Agreement, to act on behalf of AEC with respect to all matters specified in such Section 8.01.

(b) As relates to all third parties, this agency designation shall be binding on AEC, and such appointment

shall be deemed in effect by each third party until such third party receives written notification from APCO of any termination thereof.

(c) APCO accepts such appointment. APCO shall have the right to exercise such authority granted to it by AEC through a contractor or agent selected by APCO. In any such event, the authority of such contractor or agent shall be co-extensive with the authority granted APCO and such contractor and agent shall be an additional beneficiary of all provisions of this Nuclear Fuel Agreement and the other Basic Agreements including, but not limited to, those relating to responsibility of the party procuring or utilizing the Nuclear Fuel, and payment of cost. APCO's duties and responsibilities under this Nuclear Fuel Agreement shall include, but not be limited to, establishing organizational structure and manpower requirements, designing or arranging for the design of Nuclear Fuel and arranging and procuring necessary or desirable Nuclear Fuel including all materials and services associated therewith. Nothing herein shall interfere with APCO's authority and responsibility for the operation of, maintenance of, modifications to, fueling of, and improvements to all of its other generation facilities.

(d) AEC agrees that it will take all necessary action in a prompt manner to execute any agreements with respect to the procurement of Nuclear Fuel, including any materials or services associated therewith, as and when requested by APCO to permit APCO to carry out its authority and

responsibilities pursuant to this Section 2.02; however, AEC recognizes that it shall be bound by any such agreement entered into by APCO notwithstanding its not having executed such agreement.

(e) AEC expressly agrees that APCO does not, by this Nuclear Fuel Agreement, assume any risks or liabilities to AEC with respect to design, procurement, transportation, handling, management, utilization, or disposal of AEC's Nuclear Fuel and that the amounts paid and payable to APCO under the Basic Agreements are determined on the basis that APCO does not assume any such risks or liabilities.

2.03 Limitation on AEC's Rights as Tenant in Common.

The parties recognize that the sale of an ownership interest in the Nuclear Fuel to AEC is the product of administrative and judicial orders designed to satisfy antitrust concerns by providing AEC with an ownership interest in the Nuclear Fuel and not because APCO and AEC mutually determined that it would be in their respective best interests to enter into the arrangement contemplated hereby. Accordingly, APCO and AEC agree that the normal incidents of tenancy in common shall not be applicable to the conveyance of AEC's Percentage Ownership Interest, and that AEC shall have no rights as tenant in common other than those specifically enumerated in the Basic Agreements.

ARTICLE III

Payments for AEC Nuclear Fuel

The provisions of Sections 3.02 through 3.04 of the Purchase and Ownership Agreement are incorporated herein by reference and shall apply as if set forth in full.

3.01 Payment for AEC Nuclear Fuel at the Closing. At the Closing, AEC shall pay to APCO for the AEC Nuclear Fuel being purchased at the Closing the amount resulting from the application of the calculations and subject to the adjustment, both as prescribed in Exhibit E hereto.

3.02 Payments For New AEC Nuclear Fuel. AEC shall be required to make estimated payments for new AEC Nuclear Fuel pursuant to the form of Estimated Expenditures Invoice that is attached hereto as Exhibit F in the same manner, and at the same times, as AEC is required to make payments for New Investment pursuant to Section 4.02 and Article V of the Operating Agreement. Such amounts shall be adjusted at the time actual expenditures have been determined in the same manner as is specified in Section 5.02 of the Operating Agreement, including adjustment for the impact which such actual costs would have on charges under Section 3.03 hereof.

3.03 Incremental Costs. AEC shall be responsible for any incremental costs experienced by APCO associated with the design, procurement, transportation, handling, management, utilization, or disposal of Nuclear Fuel which arises solely as a result of the sale to AEC, or its acquisition, of an ownership interest in the Nuclear Fuel hereunder.

3.04 Costs Not Susceptible to Precise Quantification.

In addition to paying its pro rata share of all costs as described in Section 3.02, AEC shall pay APCO a monthly amount equal to one percent (1%) of the cost payable pursuant to such Section 3.02 to cover costs to APCO associated with Nuclear Fuel procurement for AEC which are not susceptible to precise quantification.

3.05 Adjustment for Westinghouse Settlement. As a result of the litigation between APCO and Westinghouse Electric Corporation ("Westinghouse") over the failure of Westinghouse to furnish uranium associated with Regions 4 and 5 of Farley Unit 1, APCO is entitled to receive future benefits associated with Nuclear Fuel in the form of credits and avoidance of inventory carrying charges. AEC shall be entitled to such benefits to the extent of the ratio of purchases of energy from Farley Unit 1 by AEC Members to total energy of purchases by all of APCO's wholesale and retail customers from such Unit 1 during the period Regions 4 and 5 were in Farley Unit 1. Adjustment shall be made and AEC shall pay APCO for any such benefits it receives because its Percentage Ownership Interest is greater than the ratio described above.

ARTICLE IV

Representations and Warranties

The provisions of Article IV of the Purchase and Ownership Agreement are incorporated herein by reference and shall apply as if set forth herein in full.

ARTICLE V

The Closing and Closing Date

The provisions of Article V of the Purchase and Ownership Agreement are incorporated herein by reference and shall apply as if set forth herein in full.

ARTICLE VI

Conditions to Closing

The provisions of Article VI of the Purchase and Ownership Agreement are incorporated herein by reference and shall apply as if set forth herein in full.

ARTICLE VII

Nuclear Fuel

7.01 Financing of Nuclear Fuel. The parties agree that either party may elect to lease or own its respective ownership interest in Nuclear Fuel. Any such decision to lease or own Nuclear Fuel may be made independently with the result that one party may own its percentage interest in Nuclear Fuel while the other party leases its ownership interest in Nuclear Fuel. Accordingly, the parties retain the right to enter into transactions (whether by lease, heat supply contract or otherwise) for the financing of Nuclear Fuel. The cost of any additional instrumentation required in connection with the financing of Nuclear Fuel shall be the sole responsibility of the party entering into such transaction.

7.02 Undesignated Nuclear Fuel. In the event APCO acquires any other nuclear unit other than Farley Unit 1 or Unit 2, or any interest in any such other unit, or APCO determines that it is in the best interest of APCO to place Nuclear Fuel under a pooling arrangement with nuclear fuel for any other unit, including units owned or operated by others, APCO shall be permitted to do so in its sole discretion. In such event AEC's Percentage Ownership Interest in Undesignated Nuclear Fuel shall be computed in accordance with the following formula:

$$\text{POI UNF} = \frac{\text{PF1} \times \text{POI Unit 1} + \text{PF2} \times \text{POI Unit 2}}{\text{PO} + \text{PF1} + \text{PF2}}$$

where:

- P = Thermal power level in Megawatts
- F = Appropriate Farley Unit
- O = Other nuclear unit
- POI = AEC's percentage ownership interest at that time in specified unit
- POI UNF = AEC's percentage ownership interest in undesignated Nuclear Fuel

When any nuclear unit stated in the above formula is permanently removed from service, or if any unit's power level is derated or uprated, the formula as well as the adjustments required by Section 7.04 hereof, will be appropriately adjusted.

7.03 Spent Nuclear Fuel

(a) Subject to the provisions of this Section, AEC will take title to and assume full financial responsibility for its AEC Nuclear Fuel interest in Spent Nuclear Fuel Disposal Costs for all Spent Nuclear Fuel. AEC shall pay APCO

for its portion of such Costs ten (10) days prior to the date APCO must pay such Costs under the disposal contract.

(b) No reduction in the AEC Nuclear Fuel interest pursuant to Articles XI, XV or XVI hereof shall reduce the AEC Nuclear Fuel interest in Nuclear Fuel that is Spent Nuclear Fuel at the time of the adjustment.

(c) As to any future assessment under disposal contracts for the AEC Nuclear Fuel that is Spent Nuclear Fuel as of the Closing Date, the parties agree that AEC will only be responsible for Spent Nuclear Fuel Disposal Costs in excess of that already paid by AEC's Members in wholesale rates in the same proportion as was represented in wholesale rates of such AEC Members. Such amount shall be based on the percentage determined by dividing the total energy purchased by AEC Members from APCO during the period such Spent Fuel was in the reactor by the total energy sold by APCO to all its retail and wholesale customers during such period. For Spent Nuclear Fuel Disposal Costs for Nuclear Fuel that becomes Spent Nuclear Fuel after the Closing Date, the parties will be responsible for a percentage equal to their respective ownership interests in the appropriate Unit.

7.04 Title and Investment Adjustments Whenever Undesignated Nuclear Fuel is Designated.

(a) Any time a batch of Undesignated Nuclear Fuel is designated for a unit other than Farley Unit 1 or Farley Unit 2, APCO shall pay AEC an amount so that the AEC investment (i.e., the amount paid by AEC to APCO for such Nuclear

Fuel, undepreciated, unless otherwise specified in the pooling agreement) in that batch is \$0. AEC agrees to execute such title and release documents as are required by Section 16.02 hereof.

(b) Any time a batch of Undesignated Nuclear Fuel is designated for a Farley Unit, AEC shall pay APCO an amount so that the percentage of the total investment (i.e., the amount paid for such Nuclear Fuel, undepreciated, unless otherwise specified in the pooling agreement) of each party in the batch being designated is equal to the respective party's current Percentage Ownership Interest in the Unit for which it is designated. APCO agrees to execute such title and release documents as are required by Section 16.02 hereof.

ARTICLE VIII

Management of the Facilities;
Liability and Allocation of
Risk; and Contracts for the Facilities

The provisions of Article VIII of the Purchase and Ownership Agreement are incorporated herein by reference and shall apply as if set forth herein in full.

ARTICLE IX

General Covenants

The provisions of Article IX of the Purchase and Ownership Agreement are incorporated herein by reference and shall apply as if set forth herein in full.

ARTICLE X

Waiver of Partition

The provisions of Article X of the Purchase and Ownership Agreement are incorporated herein by reference and shall apply as if set forth herein in full.

ARTICLE XI

Assignment

The provisions of Article XI of the Purchase and Ownership Agreement are incorporated herein by reference and shall apply as if set forth herein in full.

ARTICLE XII

Insurance

The provisions of Article XII of the Purchase and Ownership Agreement are incorporated herein by reference and shall apply as if set forth herein in full.

ARTICLE XIII

Destruction; Condemnation

The provisions of Article XIII of the Purchase and Ownership Agreement are incorporated herein by reference and shall apply as if set forth herein in full.

ARTICLE XIV

Force Majeure

The provisions of Article XIV of the Purchase and Ownership Agreement are incorporated herein by reference and shall apply as if set forth herein in full.

ARTICLE XV

Default

The provisions of Article XV of the Purchase and Ownership Agreement are incorporated herein by reference and shall apply as if set forth herein full.

For purposes of incorporation by reference herein of Article XV of the Purchase and Ownership Agreement, Farley Units 1 and 2 shall include that portion of the Designated Nuclear Fuel used or to be used by that Unit. The AEC Percentage Ownership Interest in the Undesignated Nuclear Fuel shall be adjusted by replacing the 0.0626 in the formula in Section 7.02 hereof with the adjusted AEC Percentage Ownership Interest in each Unit.

ARTICLE XVI

Special Remedies

The provisions of Article XVI of the Purchase and Ownership Agreement are incorporated herein by reference and shall apply as if set forth herein in full.

For purpose of incorporation by reference herein of Article XVI of the Purchase and Ownership Agreement, Farley

Units 1 and 2 shall include that portion of the Designated Nuclear Fuel used or to be used by that Unit.

ARTICLE XVII

Term of Agreement

The provisions of Article XVII of the Purchase and Ownership Agreement are incorporated herein by reference and shall apply as if set forth herein in full.

ARTICLE XVIII

Accounting Matters

The provisions of Article XVIII of the Purchase and Ownership Agreement are incorporated herein by reference and shall apply as if set forth herein in full.

ARTICLE XIX

Consultations and Mutual Cooperation;
Authorized Representatives

The provisions of Article XIX of the Purchase and Ownership Agreement are incorporated herein by reference and shall apply as if set forth herein in full.

ARTICLE XX

Miscellaneous

The provisions of Article XX of the Purchase and Ownership Agreement are incorporated herein by reference and shall apply as if set forth herein in full.

IN WITNESS WHEREOF, the parties have hereto caused this Agreement to be signed and sealed as of _____, 1984 by their duly authorized representatives.

ALABAMA POWER COMPANY

By _____

ATTEST:

Corporate Secretary

ALABAMA ELECTRIC COOPERATIVE,
INC.

By _____

Attest:

STATE OF ALABAMA:

to-wit:

JEFFERSON COUNTY

The foregoing instrument was acknowledged before me this
____ day of _____, 1984 by _____ and
_____, President and Corporate Secretary,
respectively, of Alabama Power Company, an Alabama
corporation, on behalf of the Corporation.

My commission expires: _____

Notary Public

STATE OF ALABAMA:

to-wit:

COVINGTON COUNTY

The foregoing instrument was acknowledged before me this
___ day of _____, 1984 by _____,
of Alabama Electric Cooperative, Inc., an Alabama corporation,
on behalf of the Corporation.

My commission expires: _____

Notary Public

EXHIBIT A

[This shall consist of a description of all Nuclear Fuel in which AEC will acquire an interest as of the Closing Date.]

EXHIBIT B

[List of Contracts for Nuclear Fuel cycle elements, e.g., U_3O_8 contracts, conversion contract, etc.]

EXHIBIT C

[Form of Bill of Sale to be Prepared.]

EXHIBIT D

[Agreement to assign pro rata share of rights, duties and obligations under Nuclear Fuel Contract.]

EXHIBIT E

[PRICE - TO BE NEGOTIATED]

EXHIBIT F

[Form of Invoice for AEC's share of estimated Nuclear Fuel expenditures for fuel in the future.]

Alabama Electric Cooperative, Inc.
Post Office Box 550
Andalusia, Alabama 36420
(205) 222-2571

Charles R. Lowman
General Manager



June 12, 1984

Mr. B. J. Crawford, Manager
Government & Wholesale Service
Alabama Power Company
P. O. Box 2641
Birmingham, Alabama 36202

Dear Bob:

This is to confirm our meeting on Wednesday, June 20, 1984 at 10:00 a.m. at the AREA offices in Montgomery, Alabama to discuss AEC's ownership participation in the Farley Nuclear Plant.

It is important that the Company understand that we view the Company's past proposals, in particular with respect to pricing, ownership percentage, second mortgage requirement, incremental costs, REA guaranty, special guarantees by AEC members, APCo's refusal to cooperate in obtaining regulatory approvals, refusal to permit a permanent on-site AEC representative, among others, to be conclusive evidence of less than good faith efforts on APCo's part to comply with its NRC license requirements. Therefore, if meaningful progress is to be made, it will be necessary for APCo to seriously reconsider its positions regarding these and other matters.

Sincerely yours,

A handwritten signature in cursive script that reads "Charles R. Lowman".

Charles R. Lowman
General Manager

CRL:elf

cc: Mr. James A. Vann, Jr.

Alabama Power Company
600 North 18th Street
Post Office Box 2641
Birmingham, Alabama 35291
Telephone 205 250-1000



Alabama Power

the southern electric system

June 19, 1984

Mr. Charles R. Lowman
General Manager
Alabama Electric Cooperative, Inc.
P. O. Box 550
Andalusia, Alabama 36420

Dear Charles:

This is to acknowledge your letter dated June 12, 1984 concerning further negotiations in connection with sale of an interest in the Farley Nuclear Plant to AEC. We are happy that you are willing to meet with Joe Connor and me Wednesday to explore this matter from a different angle.

We are disappointed as to your statements concerning past proposals of Alabama Power. We would certainly deny that the positions you mention were evidence of lack of good faith on the part of the Company. Rather, the positions taken have been designed to avoid exposing the Company and its customers to costs resulting from AEC's joint ownership which properly should be borne by AEC. Certainly you cannot characterize such efforts as being made in bad faith. AEC has taken the position in the past that it would not even consider paying an amount which approximates the investment Alabama Power has in the plant. Moreover, after initially recognizing a need to provide security for AEC's obligations under the Operating Agreement, AEC has retreated from that position. Alabama Power has not refused to cooperate with AEC in obtaining regulatory approval. It has simply told you it would not join in advocating any such proposal before a regulatory body and would reserve the right to answer truthfully any inquiry which is made of the Company. In view of AEC's complete refusal to display any flexibility on any of these issues, we are puzzled as to AEC's real intent at this stage.

We feel the meetings which we have requested will permit the parties to avoid such useless speculation and focus on trying to get this matter resolved. We hope you will approach these discussions with the same attitude.

Sincerely,

Bab

B. J. Crawford, Manager
Governmental Services

BJC/jw