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July 30, 1984

Mr. Nunzio J. Palladino
Chairman
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Re: Mississippi Power & Light Company, et al.
(Grand Gulf Nuclear Station, Units 1 & 2),
Docket Nos. 50-416-OL and 50-417-OL

Dear Mr. Chairman:

Mississippi Power & Light Company ("MP&L") hereby responds to the letter filed in this docket on July 25, 1984, by William J. Guste, Jr., Attorney General of Louisiana, advising that he planned to file a petition to intervene and request that hearings be held prior to approval of full power operating authority for Grand Gulf Unit 1. Mr. Guste further requested that no action be taken by NRC until such a petition was filed. This request comes six years after the notice of opportunity for hearing and just days before the Commission is scheduled to meet for a discussion and possible vote on the full power operating license for Grand Gulf.

MP&L opposes this extraordinarily late request for a hearing. While we recognize that states and their political subdivisions are granted special rights of participation in NRC licensing proceedings,^{1/} the Attorney General has presented no reasons justifying a hearing and has made no attempt to show good cause under 10 C.F.R. §2.714(a)(1) for the extreme lateness of

^{1/} See, e.g., Nuclear Fuel Services, Inc. and New York State Atomic and Space Development Authority (West Valley Reprocessing Plant), 1 NRC 273 (1975). It has come to our attention that the Governor of Louisiana has informed the Commission that he does not support the Attorney General's request and that it should not be considered to represent the position of the State of Louisiana. Nevertheless, since we understand that the Attorney General's letter has not been formally withdrawn, we will address his allegations herein.

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his request.^{2/} The only reason given by the Attorney General for a hearing at this late date is the allegation that "there are a number of unresolved issues in connection with the [Grand Gulf] station which should be addressed before a full power license is granted" (July 25, 1984 letter at 1). According to the Attorney General's letter, these allegedly unresolved issues relate to diesel generators, operator training and technical specifications.

As the Commission well knows, however, any such issues have now been resolved. With respect to the diesel generators, MP&L has completed the disassembly, inspection, replacement of certain components, reassembly and testing of the diesel generators in accordance with a directive from the NRC. Furthermore, MP&L has adopted a comprehensive augmented diesel generator surveillance program directed at early detection of potential operational problems and is participating in a longer term industry Owner's Group whose purpose is further confirmation of the quality of the diesel generators. MP&L has also completed an intensive technical specification review and verification program, and a number of proposed changes have been submitted to the Staff. As to operator training, MP&L has conducted intensive retraining and oral examination of all the operators at Grand Gulf to ensure that they satisfy NRC requirements. In these circumstances, it is disingenuous to claim at this extremely late date that there are unresolved issues requiring a hearing.

Even if some unresolved concerns that might warrant a hearing still remained, the Attorney General's request comes far too late in the administrative process. The Attorney General has made no showing that the issues on which he seeks a hearing could not have been raised before now. Indeed, all the subjects of the concerns described in his letter have long been public knowledge. Even the cryptic allegation at page 2 of his letter concerning the treatment of changes to technical specifications could have been presented to the Commission well before the eve of its decision on full power. The Attorney General, of course, cannot claim to have been unaware of developments in this case. In fact, he has followed this case with interest in the past. He

^{2/} It also appears from the Attorney General's letter that at least part of the interest he seeks to protect is not within the cognizance of the NRC. He states that he seeks to ensure that the citizens of Louisiana "are not assessed any inappropriate charges in any ratemaking process based on costs attributable to management imprudence." (July 25, 1984 letter at 1). This, of course, is a matter for ratemaking authorities, not the NRC. Thus, the Attorney General lacks standing to raise this issue here. The Detroit Edison Company, (Enrico Fermi Atomic Power Plant, Unit No. 2), ALAB-475, 7 NRC 752 (1978).

iled a petition to intervene in this matter in July of 1982, then already nearly four years out of time, which was rejected by the Licensing Board then as "inexcusably late." LBP-82-92, 16 NRC 1376, 1384 (1982). In so ruling the Licensing Board, in language relevant here, observed (16 NRC at 1384):

We . . . find that it would be unfair and unjust to permit Louisiana to wait until a low power operating license is issued in an uncontested matter and then appear, without any showing of good cause for its failure to act on time, and delay the issuance of a full power license while an adjudicatory proceeding is fabricated.

The Appeal Board affirmed, stating that in the absence of good cause for late filing, a petitioner must make a "compelling showing" on the other four factors contained in 10 C.F.R. § 2.714(a)(1) governing late intervention, which the Attorney General had failed to do.

In similar situations, the courts have affirmed the rejection of attempts by procrastinating parties to intervene at the last moment in administrative proceedings. See, e.g., South Carolina Electric & Gas Co. et al. (Virgil Summer Nuclear Station, Unit 1), ALAB-642, 13 NRC 881 (1981), aff'd sub nom. Fairfield United Action v. NRC, 679 F.2d 261 (D.C. Cir. 1982). See also: Red River Broadcasting Co. v. FCC, 98 F.2d 282, 286-287 (D.C. Cir. 1938), cert denied, 305 U.S. 625;

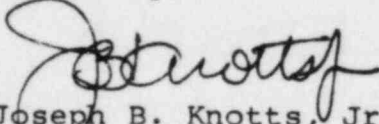
Apart from the fact that the Attorney General's request is inexcusably late, it is clear that MP&L would be greatly prejudiced by the granting of the requested delay pending the filing of a petition and even more so by the requested hearing. Such a hearing would substantially delay the operation of Grand Gulf Unit 1, which now stands ready to commence power ascension leading to full power operation, and would thus impose significant additional costs on the owners and, ultimately, the customers who are to be served with power from Grand Gulf.

Notwithstanding the above, on July 27, 1984 representatives of Mississippi Power & Light met with representatives of the Attorney General of Louisiana and Mr. Robert Pollard of the Union of Concerned Scientists to discuss the issues raised in Mr. Guste's letter of July 25, 1984. Following that meeting, Mr. Guste advised the President of MP&L's parent company, Middle South Utilities, Inc., that the Attorney General does not intend to file a Petition or otherwise pursue this matter further.

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For these reasons, we respectfully submit that the Attorney General's request for a hearing should be denied or deemed withdrawn.

Sincerely,


Joseph B. Knotts, Jr.
Bishop, Liberman, Cook,
Purcell & Reynolds

Attorney for Mississippi
Power & Light Company

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