856

DOCKETED USNRC

February 28, 1985

'85 MAR -4 A11:08

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Appeal Board

In the Matter of	)	
	)	
LOUISIANA POWER & LIGHT COMPANY	)	Docket No. 50-382 OL
	)	
(Waterford Steam Electric Station, Unit 3)	)	

APPLICANT'S ANSWER TO JOINT INTERVENORS' MOTION FOR LEAVE TO FILE SUPPLEMENTAL MEMORANDUM AND RESPONSE TO SUPPLEMENTAL MEMORANDUM

On February 25, 1985, Joint Intervenors filed a supplemental memorandum ("Supplement") in support of their November 8, 1984 motion to reopen the record in this proceeding. Accompanying it was a motion seeking leave to file the Supplement ("Motion").1/ The Supplement contains allegations advanced by Joint Intervenors in support of the contention in their motion to reopen that Applicant lacks the necessary character and

1/ Applicant and the NRC Staff filed answers to the motion to reopen on November 30 and December 21, 1984, respectively. Joint Intervenors filed a reply to the answers on January 25, 1985, along with a motion for leave to file the reply. Applicant responded to the reply on February 1, 1985, and the Staff responded on February 12 and 28, 1985.

8503050284 850228
PDR ADOCK 05000382
G PDR

DS03

competence to safely operate the Waterford Steam Electric Station, Unit 3, in accordance with NRC regulatory requirements. Motion at 1.

Joint Intervenors have not shown good cause for the need to file the Supplement. The filing is suspiciously untimely. Further, it consists primarily of arguments which represent Joint Intervenors' positions on current public debates in southeastern Louisiana which have nothing to do with the safe operation of Waterford 3. These debates concern the proposed allotment to LP&L and New Orleans Public Service Inc. (NOPSI) of the power generation from the Grand Gulf 1 nuclear power plant, the extent to which the City of New Orleans has regulatory authority over NOPSI, and the appropriateness of the rotating blackout procedures used during the power outage caused by the freezing weather in January. None of the public debates bears any rational relationship to the operation of Waterford 3 or to the character and competence of Applicant to operate the plant. None of Joint Intervenors' allegations is supported by competent evidence, and they rely on an extraordinary degree of misleading innuendo, factual distortion, and unsupported conclusions.

Applicant urges that the motion for leave to file the Supplement be denied, and that the proffered Supplement be rejected.

I. JOINT INTERVENORS HAVE NOT SHOWN GOOD CAUSE TO FILE SUPPLEMENTAL ARGUMENTS

The Commission's rules on motion practice are clearly set forth in 10 C.F.R. § 2.730(c). The rules provide a simple procedure: a movant files his motion, the respondant and other parties file their reply briefs, and the Appeal Board makes a decision on the basis of the filings. As discussed in Applicant's Answer in Opposition to Joint Intervenors' Motion for Leave to File Reply, February 1, 1985 at 2, reply briefs can only be filed with leave from the Appeal Board. Such leave will only be granted sparingly and only upon a showing of good cause. The same requirements apply to "supplemental" argument. See Consumers Power Company (Big Rock Point Nuclear Plant), ALAB-636, 13 N.R.C. 312, 322 (1981); Cincinnati Gas & Electric Company (William H. Zimmer Nuclear Station), LBP-79-22, 10 N.R.C. 213, 218, n.5 (1979). The purpose of the rule is to avoid an unending exchange of argument and counter-argument between movant and respondant. The rule also insures that parties will come forth with their complete position in a single submission so that the Appeal Board can make a decision without having to wait for additional filings.

Joint Intervenors' Supplement is at odds with these considerations. The Supplement represents Joint Intervenors' second attempt to add support to their November 8 motion to reopen the record. Their first attempt, filed as a "reply" on January 25, has already spawned one round of counter-filings. It is

now well over three months since Joint Intervenors' motion to reopen was filed, and Joint Intervenors wish to make still more allegedly supporting arguments. By continuing to add additional arguments, Joint Intervenors can indefinately postpone resolution of the issues. This process must come to an end. In light of the fact that all of their filings, including the original motion to reopen, have been late, and in light of the fact that Joint Intervenors have already once asked for leave to file additional arguments, they must show some compelling reason justifying the filing of the Supplement.

Joint Intervenors have given no such compelling reason. They have made no showing of good cause. Their only attempt in this regard is their statement that they learned of the information forming the basis of their supplement only "within the last few weeks." Motion at 1. In fact, the "new information" upon which the Supplement draws has been available for about a month or more. Joint Intervenors' motion to reopen and the initial responses have been before the Board since December, 1984. Under these circumstances, it is unreasonable for Joint Intervenors to have waited a month to make a supplemental filing at this late date, and Joint Intervenors have offered no excuse for doing so.

Given the length of time the information was in their possession, the timing of Joint Intervenors' filing is intriguing. On February 19, 1985, Board Notification 85-016 advised the Appeal Board that the Staff would recommend to the Commission in

a briefing to take place on February 26 that Waterford 3 be allowed to ascend to full power. Joint Intervenors served their Supplement on February 25, the day before the scheduled briefing.2/ This is suspiciously similar to procedural tactics employed in the past by the Government Accountability Project (GAP), Joint Intervenors' counsel, in the Calloway and Diablo Canyon proceedings and in this proceeding when they filed their untimely motion to reopen just days after Applicant had announced that Waterford 3 was physically complete and ready for fuel loading. See Applicant's Answer to Motion to Reopen at 7.

Joint Intervenors have not explained why the information being profferred is necessary to supplement the hundreds of pages of material they have already submitted. Moreover, they have not even addressed the issue of whether the new arguments raised have a reasonable nexus to the basemat issue from which the Appeal Board's jurisdiction in this matter is derived. See ALAB-792 and ALAB-797. While the Appeal Board noted the difficulty involved in determining which of the many issues raised in the motion to reopen were unrelated to the basemat issue for purposes of determining jurisdiction, ALAB-797 at 2-3, it is difficult to see how the issues raised in the Supplement would have any conceivable relationship to the basemat issue. At the very least, Joint Intervenors should have addressed this point as part of their burden to show good cause for their untimely filing.

2/ The briefing has since been rescheduled for March 6, 1985.

Joint Intervenors have clearly failed to demonstrate good cause for submitting supplemental argument, and the motion for leave to file the Supplement should therefore be denied.

II. NOPSI SECURITIES OFFERING

The first of the four allegations presented in the proffered Supplement is a startling example of factual distortion and misleading omissions by Joint Intervenors. They allege that Middle South Utilities, Inc., and NOPSI failed to disclose, in a Form U-1 Application-Declaration to the Securities and Exchange Commission, the City of New Orleans' legal position that the City's approval was needed for a securities offering by NOPSI. Supplement at 1-2. This, Joint Intervenors assert, casts doubt on the "honesty and integrity" of Middle South. Id. at 2. In support of the allegation, Joint Intervenors provided a newspaper clipping (JI Exhibit 1) and the December 21, 1984 Form U-1 (JI Exhibit 1A).

In fact, far from being concealed, the City's legal position was specifically and directly disclosed in the Form U-1, and the matter has been extensively and publically aired in conjunction with the offering. Exhibits F-1, F-1(a) and F-2 of the Form U-1 are opinions and memorandum of counsel which discuss in detail the legal controversy that Joint Intervenors accuse Middle South of failing to reveal in the Form U-1. Joint Intervenors did not acknowledge the existence of the exhibits, and even though they were a part of the Form U-1 Application-

Declaration, Joint Intervenors unaccountably failed to include them in JI Exhibit 1A. The Form U-1 Exhibits F-1, F-1(a) and F-2 are attached hereto as Applicant Exhibits 1, 2 and 3, respectively.

It gets worse. Joint Intervenors also failed to reveal that the issue was thoroughly addressed in a special public proceeding before the SEC in which the City of New Orleans intervened. Following the disclosure in the Form U-1 in accordance with the provisions of the Public Utility Holding Company Act of 1935, the SEC published a notice affording opportunity for public comment and intervention in the proceeding. SEC Release No. 23563, File 70-7069, January 4, 1985, 50 Fed. Reg. 1659 (January 11, 1985), attached hereto as Applicant Exhibit 4. The City of New Orleans filed a Notice of Appearance and Comments on January 29, in which it briefed its position on the City's right to regulate the sale of securities by NOPSI. Applicant Exhibit 5, attached. The companies' February 5, 1985 response to the City, and the SEC's Memorandum and Opinion (SEC Release No. 23612, File 70-7069, February 21, 1985) sustaining the companies' position, are attached as Applicant Exhibits 6 and 7, respectively.

In addition, NOPSI had filed on February 1, 1985, a Form 8-K Current Report with the SEC pursuant to the public disclosure provisions on the Securities Exchange Act of 1934. The filing reported the current positions of the New Orleans City Council with respect to recapturing regulatory jurisdiction and

taking over NOPSI, and the law suits brought by the City and NOPSI ratepayers. Applicant Exhibit 8, attached.

Aside from the allegation of nondisclosure being demonstrably false, it is not relevant to this proceeding. Applicant is not a party to the securities offering.

III. STATEMENTS OF VICE PRESIDENT

Joint Intervenors allege that remarks made by Applicant's Senior Vice President, Roth S. Leddick, support their proposed contention on management competence. Supplement at 2-3. Their allegation is based entirely on their interpretation of statements paraphrased in a newspaper account of the meeting. (JI Exhibit 2).

The newspaper article paraphrases Mr. Leddick as saying after a meeting with a local Rotary Club that changes in NRC regulatory requirements caused large increases in the cost of Waterford 3, and that the utility spent a large sum of money in response to the NRC investigation effort begun in April 1984, but it did not make the plant safer. Solely on the basis of this article, Joint Intervenors assert that Mr. Leddick's attitude toward NRC regulation is one of disrespect, that he does not understand the seriousness of quality assurance, that he believes that the inspection efforts were a "waste of time," and that he does not have the willingness or desire to carry out future programs. Supplement at 3. In no way can the newspaper article be construed to support Joint Intervenors' assertions.

As the article itself makes clear, Mr. Leddick was addressing the Rotary Club for the purpose of explaining the costs of Waterford 3. His statement that increases in costs can be attributable to changes in NRC regulation is a view widely held by industry and was made in the context of explaining costs. It was not intended, as Joint Intervenors imply, to be an indictment of the NRC. The words in the article stating that the NRC "investigation cost LP&L $150 million but it did not make the plant safer," which Joint Intervenors claim have great significance, are actually the words of the reporter paraphrasing Mr. Leddick. JI Exhibit 2. Even if Mr. Leddick said those exact words, when viewed in context it is obvious that Mr. Leddick was referring to the fact that the $150 million investigation demonstrated that the plant had been properly constructed such that substantial physical modifications were not required.

Applicant's extensive and comprehensive program undertaken in response to the NRC's concerns, and the satisfactory resolution of those concerns, under the direction of Mr. Leddick himself, graphically demonstrate the exact opposite of Joint Intervenors's unsupported charges concerning Mr. Leddick. <u>See</u> Applicant's November 30, 1984 Answer to Motion to Reopen at 30 and attached Responses to Specific Allegations in the Joint Intervenors' Motion to Reopen the Record at 77-79, Item C; <u>see also</u> NRC Staff's Response to Motion to Reopen at 17.

This Appeal Board has repeatedly cautioned Joint Intervenors' against reliance on undocumented newspaper articles such as Exhibit 2 in support of their arguments. Louisiana Power & Light Company (Waterford Steam Electric Station, Unit 3), ALAB-753, 18 N.R.C. 1321, 1330, n.16 (1983); Id., ALAB-732, 17 N.R.C. 1076, 1089 (1983); Memorandum and Order, February 28, 1984 at 3 (unpublished). Such articles do not rise to the level of competent evidence, Pacific Gas & Electric Company (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-775, 19 N.R.C. 1361, 1366-67 (1984), and cannot serve as a basis for Joint Intervenors' motion to reopen the record. Memorandum and Order, supra.

IV. JANUARY 21 POWER OUTAGE

Misleading innuendos and unsupported leaps in logic characterize Joint Intervenors' third allegation concerning the loss of power that occurred on Applicant's system during the freezing weather in January of this year. Supplement at 3-5. The thrust of the allegation is that, because the power outage occurred, Applicant is not competent to operate Waterford 3. There is no support, in logic or in fact, for such an allegation. Applicant's technical competence to operate Waterford 3 safely has not been brought into question by these events, and not even the Joint Intervenors' newspaper clippings -- which do not constitute competent evidence -- make such a suggestion.

The only link suggested between the power outage and the Waterford 3 facility is the assertion that individuals who had once been involved in the project, but no longer are, were in charge of operation of the fossil units which lost power as a result of the cold weather. Supplement at 5. There is no evidence whatsoever that the loss of power was caused by technical incompetence, and certainly no relationship demonstrated between the events surrounding the power outage and the construction of Waterford 3. In any event, the contention in Joint Intervenors' motion to reopen which the Supplement seeks to support is that Applicant lacks the requisite character and competence to operate the plant. Motion to Reopen at 15. Joint Intervenors' have established by affidavit that the individuals they would like to blame for the power failure are not involved in the operation of Waterford 3. Supplement at 5; see JI Exhibit 9.

In addition, Joint Intervenors attempt to leave the impression that there is a real question in the minds of the New Orleans City Council of whether Applicant deliberately "orchestrated" the power failure. Supplement at 4. The charge is obviously frivolous. A careful reading of Joint Intervenors newspaper accounts indicates that no such allegation was made by the City Council, not even at the council meeting in which the chairman of Middle South Utilities, Inc., was present to discuss the power failure. See JI Exhibit 4, column 7. That allegation, much heralded by the press, was apparently made unofficially by a single councilman. Id.

In the same light, Joint Intervenors state that the City Council "has begun an investigation to determine the causes of the blackout and whether LP&L and NOPSI management deliberately caused the blackout to promote the need for Grand Gulf 1 and Waterford 3." Supplement at 4. Nothing in the newspaper articles cited in support of that statement, JI Exhibits 4 and 5 (incorrectly cited as Exhibit 7), or any of Joint Intervenors other exhibits, even remotely lends credence to such an outrageous allegation. See, e.g., JI Exhibit 4, column 2, which states that "[t]he New Orleans City Council called for an investigation of whether rotating blackouts -- ordered by LP&L and its sister power company, New Orleans Public Service Inc., after the generating failures -- were necessary."

Joint Intervenors then say that "[i]t appears that the New Orleans City Council's investigations may find that LP&L management either deliberately, or through gross mismanagement, caused a blackout of New Orleans..." Supplement at 4. There is not a shred of support for such a statement in any of Joint Intervenors' exhibits. In fact, the report of that investigation3/ makes no suggestion of such intent and does not otherwise support the allegation.

3/ See "Second Report on Loss of Electric Power in City of New Orleans on January 21, 1985," January 29, 1985 (attached to, but unrelated to, JI Exhibit 9 and not cited in the Supplement).

V. ALLOCATION OF GRAND GULF GENERATION

Joint Intervenors' final allegation is that Middle South Utilities, Inc., rather than Applicant, will be ultimately responsible for the management of Waterford 3. Supplement at 5-7. The allegation is unsupported, is contrary to the facts of record, and is irrelevant to safety concerns.

The management responsibilities for Waterford 3 are clearly set out in the operating license application. Applicant is an operating company subsidiary of Middle South Utilities, a public utility holding company. Each operating company of the Middle South system operates the facilities in its service area. Amended Application for Licenses, General Information, at 2. Applicant, as owner of Waterford 3, is responsible for the design, construction, and operation of the plant. FSAR, § 1.4. There has been no showing that Middle South has been, or is inclined to be, involved in the management of Waterford 3, or that there would be any reason to suspect that safety at Waterford 3 would be subordinated to other considerations.

Joint Intervenors only basis for the charge is, once again, a newspaper account, and, once again, an account which has not been accurately characterized. Joint Intervenors' allege that an LP&L executive testified that the chairman of Middle South had coerced the president of LP&L to purchase a larger share of the power from Grand Gulf 1 by threatening him with dismissal. The newspaper article itself, however, JI

Exhibit 10, puts a somewhat different slant on the story. The executive's deposition testimony was tentative and uncertain on the subject, and represented only the witness' impression. JI Exhibit 10, column 4. In counterpoint, the article reported that the Middle South chairman and the LP&L president both categorically denied the story.

More to the point, however, a parent utility holding company making its wishes known to the subsidiary operating companies concerning financial arrangements for allocation of power resources has no bearing on the management of one of the operating company's generating stations. Joint Intervenors do not allege that such plant management involvement has happened in the past, and provide no basis for assuming that it will happen in the future. Moreover, there is no reason to suppose that the parent company could, or would have any reason to, override the management of the operating company in any way that would compromise the public health and safety.

The allegation is contrary to the record and is totally without support or relevance to the safe operation of Waterford 3.

VII. CONCLUSION

Joint Intervenors have attempted to supplement their motion to reopen by advancing four new allegations in support of their contention on Applicant's character and competence. The untimeliness of the allegations is strategically suspicious,

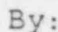
and none bears any reasonable relationship to, or casts doubt upon, Applicant's character or competence to operate Waterford 3 safely. Moreover, none of the allegations bears any nexus to the basemat issue upon which this Appeal Board's jurisdiction is defined.

The allegations are not supported by competent evidence. Most of Joint Intervenors' exhibits are newspaper clippings. The only two that are not consist of an SEC filing in which the portion contradicting the allegation was withheld, and an uncited investigation report which undermines the allegation that the power outage was deliberately orchestrated. The documents and the newspaper clippings were mischaracterized to such an unconscionable extent that serious doubt must be entertained with respect to the totality of Joint Intervenors' motion to reopen.

For all of the foregoing reasons, Applicants respectfully submit that Joint Intervenors' motion for leave to file the Supplement should be denied and the Supplement should be rejected.

Respectfully submitted,

SHAW, PITTMAN, POTTS & TROWBRIDGE



By: ______________________

Bruce W. Churchill, P.C.
Dean D. Aulick, P.C.
Alan D. Wasserman

Counsel for Applicants

1800 M Street, N.W.
Washington, D.C. 20036
(202) 822-1000

Dated: February 28, 1985

App. Exhibit 1

Exhibit F-1

MONROE & LEMANN

ATTORNEYS AND COUNSELLORS AT LAW

(A PROFESSIONAL CORPORATION)

WHITNEY BUILDING

NEW ORLEANS 70130

TELEPHONE 586-1900

AREA CODE 504

CABLE ADDRESS

"RONCAL"

TWX 810-951-5106

MALCOLM L. MONROE
THOMAS B. LEMANN
ANDREW P. CARTER
STEPHEN B. LEMANN
BENJAMIN R. SLATER JR.
BAT P. SULLIVAN JR.
D. DOUGLAS HOWARD
MELVIN I. SCHWARTZMAN
WALTER J. SUTHON III
NIGEL E. RAFFERTY
JERRY A. BROWN
EUGENE G. TAGGART
W. MALCOLM STEVENSON
RICHARD P. WOLFE
J. THOMAS LEWIS
ANDREW S. ZENGEL
JOHN D. WOGAN
RICHARD W. BUSSOFF
J. WAYNE ANDERSON
MICHAEL R. O'KEEFE III
KENNETH P. CARTER
RICHMOND M. EUSTIS
BENJAMIN R. SLATER III
GEORGE F. RIESS

LYNN M. ALLAIN
WILLIAM N. NORTON
LAURA JUNGE CARMAN
McCHORD CARRICO
TERRENCE G. O'BRIEN
NEIL ANN PARKS
EDWARD T. MEYER
GREGORY C. THOMAS
LINTON W. CARNEY JR.
MARK G. OTTS
JAMES R. MORTON
CARL S. GOODE
GERARD A. BOS
CHARLES A. NUNMAKER
JOHN H. TURNER JR.
STEFAN KAZMIERSKI
J. PATRICK MADIGAN III
PERRY R. STAUB JR.
ROBERT B. NICHOLS JR.
C. THEODORE ALPAUGH III

DOCKETED USNRC '85 MAR -

OFFICE OF SECRETARY DOCKETING & SERVICE BRANCH

December 20, 1984

Securities and Exchange Commission
Washington, D.C. 20549

Dear Sirs:

With respect to the joint Application-Declaration on Form U-1 which is to be filed on or shortly after the date hereof by New Orleans Public Service Inc. ("NOPSI") and Middle South Utilities, Inc. ("Middle South") contemplating the issuance and sale by NOPSI, from time to time not later than December 31, 1985, of not more than $40,000,000 in aggregate principal amount of its First Mortgage Bonds (the "Bonds") and not more than 200,000 shares of its Preferred Stock, Cumulative, $100 par value (the "Preferred Stock"), each in one or more series, and the issuance and sale by NOPSI to Middle South, from time to time not later than December 31, 1985, of not more than 4,000,000 additional shares of NOPSI's Common Stock, $10 par value (the "Additional Common Stock"), we advise you that in our opinion:

(1) NOPSI is a corporation duly organized and validly existing under the laws of the State of Louisiana.

(2) In the event that the proposed transactions are consummated in accordance with said Application-Declaration, as it may be amended, and within the limits specified in NOPSI's Mortgage and Deed of Trust, as supplemented and as proposed to be further supplemented, and its Restatement of Articles of Incorporation, as amended and as proposed to be further amended:

(a) All state laws which relate or are applicable to the proposed transactions (other than so-called "blue sky" laws or similar laws, upon which we do not pass herein) will have been complied with. A Memorandum in this connection is filed herewith as Exhibit F-1(a).

(b) The Bonds will be valid and binding obligations of NOPSI in accordance with their terms, except as limited by bankruptcy, insolvency or other laws affecting enforcement of mortgagees' and other creditors' rights.

(c) The Preferred Stock and the Additional Common Stock will be validly issued, fully paid and non-assessable, and the holders thereof will be entitled to the rights and privileges appertaining thereto set forth in NOPSI's Restatement of Articles of Incorporation, as amended and as proposed to be further amended.

(d) The consummation of the proposed transactions will not violate the legal rights of the holders of any securities issued by NOPSI.

Our consent is hereby given to the use of this opinion as an exhibit to the Application-Declaration on Form U-1.

Very truly yours,

Monroe + Lemann

MONROE & LEMANN

DOCKETED
USNRC

'85 MAR -4 A11:08

RE: New Orleans Public Service Inc.

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

MEMORANDUM

New Orleans Public Service Inc. ("NOPSI") provides gas service throughout the City of New Orleans ("City") and electric service throughout the City except for the Fifteenth Ward thereof, and has done so for many years.

Prior to January 1, 1982, NOPSI's utility services in the City (which then included transit as well as gas and electric) were regulated by the City, through its Council, pursuant to Sections 4-1604 and 4-1605 of Chapter 16 (Department of Utilities) of the City's Home Rule Charter, effective May 1, 1954 (before that, pursuant to Section 1(g) of the City's predecessor "charter", Act 159 of 1912, as amended) and, with respect to the specific matters set forth therein, pursuant to Ordinance No. 6822, Commission Council Series, as amended, of the City, dated April 21, 1922, known and hereinafter referred to as the "Settlement Ordinance", a copy of which is attached as Exhibit A hereto. The transit operations of NOPSI were divested and NOPSI terminated its transit business effective at midnight on June 30, 1983.

By virtue of Ordinance No. 8264, Mayor Council Series of the City (the "Amending Ordinance"), which was approved by the electorate of the City at an election held on November 28, 1981, all of the regulatory powers of the City with respect to electric and gas utilities operating in the City were transferred to the Louisiana Public Service Commission ("LPSC") effective January 1, 1982, and such ordinance, by its terms, amended Section 4-1604 of the City's Home Rule Charter to:

(A) exclude references to "electric light, gas, heat, power" as being subject to "the exercise of its [City's] powers of supervision, regulation and control";

(B) include a proviso that "beginning January 1, 1982 the City's powers of supervision, regulation and control shall not extend to nor include gas, heat, power and electric public utilities" (Emphasis added);

(C) include specific and limiting references to the City's powers with regard to public utilities "subject to its [City's] powers of supervision, regulation and control"; and

(D) add a new subsection (subsection (4)) to Section 4-1604, which new subsection provides that the LPSC "shall regulate New Orleans Public Service, Inc. and Louisiana Power and Light Company, their respective successors and assigns" and that the City Council shall furnish to the LPSC "all information, records, documents and such other materials as shall be necessary and proper for the transfer of regulatory powers" from the said Council.

Section 4-1605 was also changed by the Amending Ordinance, consistently with the foregoing, to reflect that the Department of Utilities may inspect only the books and plants of any public utility "subject to regulation by the City".

These specific language changes to Sections 4-1604 and 4-1605 not only mechanically and legally effected the desired changes but also conveyed an accurate reading of the legislative intent of the Council (as affirmed and approved by the electorate), i.e., the transfer from the City to the LPSC of all regulatory powers of the City pertaining to gas and electric utilities. This clear manifestation of legislative intent is also reflected in the language in the introductory paragraph of the Amending Ordinance which calls for certain proposed amendments to the Home Rule Charter "relative to surrender of the Council of the City of New Orleans' powers of supervision, regulation and control over gas, heat, power and electric public utilities within the City of New Orleans to the Louisiana Public Service Commission." (Emphasis added)

Title 33 of the Louisiana Revised Statutes of 1950, as amended, deals with Municipalities and Parishes. Chapter 10 thereof, Part IV of such Chapter 10, and Sub-Part A of such Part IV deal, respectively, with Public Utilities, Regulation of Public Utilities, and Surrender to Public Service Commission of Power to Regulate Municipal and Parish Utilities. Sub-Part A is composed of R.S. 33:4491 through 4496 and R.S. 33:4491 contains an introductory paragraph which provides that:

> "Any town, city, or parish exercising powers of supervision, regulation, and control over any local public utility, desiring to surrender those powers to the Louisiana Public Service Commission may submit the question of surrendering these powers to the qualified electors of the town, city, or parish, . . ." (Emphasis Added)

It should be noted that the underscored words are identical to those used in the Amending Ordinance.This conclusively evidences an intent on the part of the City to comply with that portion of the Louisiana Revised Statutes which provides for surrender of

supervision, regulation and control over any local public utility to the LPSC.

R.S. 33:4493 provides for the form of ballot to be used in the election and it is particularly instructive to observe that the only separation of surrender of powers of control permitted in the ballot is that of separation of surrender of control over certain kinds of public utilities (gas, electric, water works, etc.) so as to surrender control only of the particular kind or kinds of public utilities specified in the ballot, and not certain functions of an individual public utility. The entirety of this concept is carried through in R.S. 33:4494 and R.S. 33:4495 dealing with divestiture and reinvestiture of such control. In providing for the canvassing of returns, declaring the result of the election and vesting control in the LPSC, R.S. 33:4494 provides that upon the filing of certain papers with the LPSC, the powers of control theretofore vested in the town, city or parish government over any class of public utility which a majority of the qualified electors surrendered in the manner hereinabove provided, shall thereupon vest in the LPSC until such time as the municipal or parish government reinvests itself with such powers of supervision, regulation and control. R.S. 33:4495 merely provides for the election process to be used to reverse the election contemplated and addressed by R.S. 33:4494. Nowhere in this Sub-Part is there any contemplation of, or any provision for, partial divestiture or partial reinvestiture of the powers of supervison, regulation and control over a class of public utility. This statutory approach is eminently reasonable and practical.

The Amending Ordinance and the results of the election it called for are necessarily subject to Article 23 of the Louisiana Civil Code, which provides in part as follows with respect to express or implied repeal of laws:

> "The repeal is either express or implied:
>
> It is express, when it is literally declared by a subsequent law;
>
> It is implied, when the new law contains provisions contrary to, or irreconcilable with those of the former law."

An interpretation of this Article is found in State v. St. Julian, 221 La. 1018, 61 So. 2d 464 (1952) wherein the Supreme Court of Louisiana discusses particular principles of statutory interpretation applicable to the Amending Ordinance and the Settlement Ordinance and supportive of the conclusion that the November 28, 1981 election operated to completely divest the City of any electric or gas regulatory control over NOPSI.

One such principle of statutory interpretation deals with repeal by implication and concludes that while repeal by implication is not favored, where the obvious purpose of the law is to

cover the whole subject matter therein dealt with, such statute supersedes all prior pertinent legislation. This is the exact situation existent with regard to the Amending Ordinance, i.e., it addresses the entirety of regulatory divestiture and, in doing so, not only uses the exact language set out in the Revised Statutes for such divestiture procedure but reflects the true intent of the Amending Ordinance. Consequently, any provision of an ordinance in conflict, such as Section 9(g) (quoted and discussed hereinafter) of the Settlement Ordinance, with the Amending Ordinance change of the Home Rule Charter, must fall, without even considering the priority of Home Rule Charter provisions over mere implementing ordinances, or the later adoption of the Amending Ordinance (1981) as opposed to the Settlement Ordinance (1922). See also W. E. Perry v. City of Monroe, et al., 360 So. 2d 1352 (La. App. 2d Circuit 1978) which, while holding that a provision of a proposed electric utility operating agreement prohibiting the citizens of Monroe or their governing body from taking any action (including the calling of an election) to reinvest the city with regulatory power over the electric system during the term of a franchise to a public utility was not contrary to constitutional and statutory provisions governing reinvesting of regulatory power, also observed, at page 1362, that "implied repeals are not favored and ... will not be resorted to except where the inconsistency is too clear and plain to be reconciled." Certainly, the inconsistency between the Amending Ordinance and the Settlement Ordinance is "too clear and plain to be reconciled."

Under Louisiana statutory law (R.S. 45:1175), a public utility, the security issues of which are subject to regulation by the Securities and Exchange Commission ("SEC") under the Public Utility Holding Company Act of 1935, is exempted, as to the issuance of securities, from regulation by the LPSC. NOPSI is, of course, regulated as to its security issues by the SEC under the last mentioned Act. Absent more, therefore, there could be no question that all State and local laws applicable to NOPSI with respect to the proposed transactions (issuances and sales by NOPSI of its Common Stock, Preferred Stock and First Mortgage Bonds) will have been complied with upon the issuance of an order of the SEC granting the joint Application-Declaration of NOPSI and Middle South Utilities, Inc. with respect to such proposed transactions and permitting said Application-Declaration to become effective and upon the consummation of such transactions in accordance with the Application-Declaration and such order.

It is noted that Section 9(g) of the Settlement Ordinance provides as follows:

> "No securities of the new Company, other than evidences of debt having maturities of twelve months or less and securities issued as stock dividends neither of which has any effect on the rate base, shall be issued without the previously obtained approval of the Council."

However, study of the provisions of the Settlement Ordinance in the light of the circumstances set forth herein leads inescapably to the conclusion that the Settlement Ordinance is a regulatory ordinance and that it (and particularly Section 9 thereof) has been impliedly but effectively repealed by the adoption of the Amending Ordinance calling for ". . . surrender of the . . . powers of supervision, regulation and control over gas, heat, power and electric public utilities within the City of New Orleans . . .".

It is noted first in this connection that the Settlement Ordinance, at the beginning thereof, premises everything which follows by commencing:

> "Be It Ordained, That in the exercise of its powers of regulation, supervision and control over the street railway, electric and gas properties in the city now owned by the New Orleans Railway & Light Company, the Commission Council of the City of New Orleans does hereby find and order as follows:" (Emphasis added)

It should further be noted that, commencing with "powers", the underscored words are those also used in R.S. 33:4491 et seq., and in the Amending Ordinance, all of which indicates that in the Amending Ordinance there was a conscious intent to surrender such regulation, supervision and control. Also, Section 2 of the Settlement Ordinance, dealing with fares, rates and charges, states in part that:

> "The Commission Council shall, under its regulatory power, make such rules in respect to service and operations as may be necessary or proper; . . ." (Emphasis added)

Even more enlightening and to the point with respect to the present question, however, is the precise introductory language of Section 9 itself. The first paragraph of Section 9, which applies to and governs all of the lettered subparagraphs found later in Section 9, reads as follows:

> "So long as the City of New Orleans or its successors as the regulatory authority with supervision, regulation and control of the company and its properties --- shall not disturb, interfere with or change the valuation or rate of return herein fixed, the conditions and restrictions hereinafter set out shall be and continue in full force and effect and shall be binding upon and observed by the Company, its successors and assigns." (Emphasis added)

Again, the second unnumbered paragraph of said Section 9, which likewise appears before the lettered subsections dealing with specific matters and, therefore, applies to all of said subsections, provides in pertinent part that:

> ". . . it is a condition hereof that each and all of the stipulations, restrictions and conditions hereinafter contained or provided for shall be, remain and continue in effect only so long as the City of New Orleans or its successor as the regulatory authority, shall not change or modify the provisions hereof concerning the rate base and the rate of return; and if said regulatory authority . . ." (Emphasis added)

It is concluded, therefore, that the Settlement Ordinance and particularly Section 9 and the specific provisions set forth in the lettered subsections of Section 9 were meant to apply and applied to the City only in its capacity as regulatory authority, and that when the electorate of the City surrendered and transferred the City's regulatory powers and jurisdiction over electric and gas utilities in the City to the LPSC, the Settlement Ordinance, and particularly Section 9 thereof, was impliedly and effectively repealed, i.e., nullius juris.

Therefore, insofar as NOPSI and its participation in the proposed transactions are concerned, in the event that the transactions proposed by NOPSI are consummated in accordance with the Application-Declaration and an order of the SEC granting the Application-Declaration and permitting it to become effective, then all State and local laws applicable to NOPSI with respect to the proposed transactions will have been complied with.

Monroe + Lemann

December 20, 1984

Monroe & Lemann

Mayoralty of New Orleans.
City Hall, April 21st, 1922.
Calendar No. 7053.

NO. 6822 COMMISSION COUNCIL SERIES

Be It Ordained, That in the exercise of its powers of regulation, supervision and control over the street railway, electric and ga properties in the city now owned by the New Orleans Railway & Light Company, the Commission Council of the City of New Orleans does hereby find and order as follows:

VALUATION FOR RATE-MAKING

Section 1. Valuation for Rate-Making (Rate Base) of the properties of the New Orleans Railway & Light Company and its subsidiaries, as of December 31, 1920, shall be the aggregate sum of $44,700,000.00 (divided into Gas Department $8,652,000.00, Electric Department $15,256,557.00, Railway Department $20,791,443.00) and the value for rate-making (Rate Base) at any date subsequent to December 31, 1920, shall be the said aggregate sum (and said respective departmental sums), and in addition thereto the following:

(a) New construction and other expenditures subsequent to December 31, 1920, and chargeable to "Capital or Investment" account, under the Interstate Commerce Commission or other standard classification of public utility accounting, approved by the Commission Council, plus the balance of proceeds, if any, from the sale of securities approved by the Commission Council and held in escrow for the payment of expenditures chargeable to said "Capital or Investment" account; said balance to be adjusted for the amount of said expenditures. if any, applicable for payment from funds so held in escrow.

(b) From said rate base of $44,700,000.00 as of December 31, 1920, as hereinbefore defined, there shall be deducted the then cash value of any property of any description, that in the future, for any reason, purpose or cause, shall be disposed of by the Company or its successors; provided, that if said cash value shall be re-invested in expenditures chargeable to said "Capital or Investment" account, then no amount shall be added to nor deducted from the Rate Base.

(c) There shall be added or deducted (as the facts may show) the average increase or decrease, if any, in current working capital and investment in materials and supplies over or under the average working capital and investment in materials and supplies for the calendar year 1920, such increase or decrease to be determined by the standard classification accounting referred to above.

(As Amended by Ordinance No. 8423 C.C.S., May 2, 1925).

FARES, RATES AND CHARGES

Sec. 2. Fares, rates and charges for the respective services shall be such as to produce a net revenue (after operating expenses, taxes and adequate renewal and replacement and other reserves, necessary to maintain the operating efficiency of the property at all times) equivalent to 7½ per cent per annum allowable rate of return on said Rate Base. The Commission Council shall, under its regulatory power, make such rules in respect to service and operations as may be necessary or proper; and it will at all times require the properties to be efficiently and economically managed and operated.

FINANCIAL PLAN

Sec. 3. Subject to the approval of the Federal Judge, who has jurisdiction of the existing receivership, the financial plan of the new Company shall make disposition in reference to existing outstanding securities of the New Orleans Railway & Light Company as follows:

(a) Outstanding underlying bonds to remain undisturbed.

(b) Present outstanding 4½ per cent General Mortgage Bonds, due July 1, 1935 (for subordinate of their lien so as to provide for future betterments and improvements and for necessary refunding operations through a new first and refunding Open Mortgage Bond Issue) shall be exchanged for 25% in cash and the remaining 75% in New General Lien 4½ per cent Bonds, due July 1, 1935, in the form of a closed mortgage. The said new 4½ per cent mortgage shall rank immediately after and be subordinated to, the said New First and Refunding Open Mortgage.

(c) The present outstanding Refunding and General Lien 5% Bonds, due November 1, 1949, with defaulted interest thereon, to be refunded by $5,129,000.00 Income Bonds, due November 1, 1949, bearing 6% per annum interest (adjusted for defaulted interest subsequent to June 1, 1922).

(d) The present outstanding defaulted 7% Gold Notes and defaulted interest thereon, to be refunded by $3,955,000.00 Preferred 7% Cumulative Stock (adjusted for defaulted interest subsequent to June 1, 1922).

(e) The balance (after the issuance of securities to provide for Receiver's Certificates and the expenses of the Receivership) up to the amount of the allowable Rate Base, at the date of re-organization, shall be common stock issue to represent the equity in the property, now represented by stock.

(f) Said re-organization into said new company to be accomplished at the earliest possible date and within six months from the date of the passage of this ordinance

by the Council, subject to legal delays, beyond control; provided, however, that if said re-organization shall not be accomplished within nine months from said date, then the Commission Council reserves the right to abrogate this arrangement.

RATES FOR TEST PERIOD

Sec. 4. Upon the termination of the existing receivership and the re-organization into the new company, the following rates and charges will be adopted as a test for a twelve-month period:

Car fare .... 7 cents

Gas .... $1.30 net per 1000 cubic feet

Domestic and Retail Light and Power, Electric Rates .... As at present.

The general transfer system, now in effect upon the railway system shall continue subject to modifications according to future exigencies under the regulatory powers of the Commission Council.

BOOKKEEPING AND REPORTS

Sec. 5. The books of account of the new company shall be kept in accordance with a standard accounting system, applicable to similar utilities, and approved by the Commission Council. Quarterly reports showing details of the operations, revenues and expenses, and resources and liabilities of the Company shall be filed with the Commission Council and made public documents, subject to public inspection in the office of the Commissioner of Public Utilities. The accredited representatives of the city shall have access at all reasonable times to the books of account and records of the Company and also to its power houses and car barns and gas plant and other properties.

DISPOSITION OF REAL ESTATE

Sec. 6. Any real estate not now used nor reasonably likely to become useful in the operations of the properties shall be sold as soon as practicable and the proceeds thereof shall be reinvested in property useful for the Company's purposes.

PERPETUAL OPTION

Sec. 7. The City shall have the perpetual option to purchase the properties at the sum of $44,700,000.00 as of December 31, 1920, plus or minus additions or deductions hereinafter provided for, divided into:

All property and assets of every description, including net current assets (including cash) owned by the New Orleans Gas Light Company on December 31, 1920 .... $8,652,000.00

All property and assets of every description, including net current assets (including cash) owned by the Electric Light & Power Department of the New Orleans Railway & Light Company on December 31, 1920 .... $15,256,557.00

All property and assets of every description including net current assets (including cash) owned by the Railway Department of the New Orleans Railway & Light Company on December 31, 1920 .... $20,791,443.00

And the City shall have a perpetual option to purchase one or more of said departmental properties at the said respective figures, plus or minus an amount equal to the additions or deductions to or from the Rate Base of said one or more properties (determined and defined in Section 1 of Ordinance No. 6822 C. C. S., as changed and amended by this Ordinance) subsequent to December 31, 1920, and up to the date of the exercise of the option.

(As Amended by Ordinance No. 8423 C.C.S., May 2, 1925).

FRANCHISES

Section 8. (a) The City and the New Company (or those responsible for organization prior to the organization thereof) will agree to details covering necessary new franchises or extensions of old franchises, the arranging of new routes and the making of any other changes in the physical property which will contribute to more economical and satisfactory operation.

(b) As soon as the revenues of the street railway property make it feasible within the limitations of the provisions hereof to reduce the fares for school children attending public and parochial schools, a reduced fare for such school children will be inaugurated.

FIXED VALUATION

Section 9. So long as the City of New Orleans or its successors as the regulatory authority with supervision, regulation and control of the company and its properties —shall not disturb, interfere with or change the valuation or rate of return herein fixed, the conditions and restrictions hereinafter set out shall be and continue in full force and effect and shall be binding upon and observed by the Company, its successors and assigns.

While nothing herein contained shall be or is intended to be construed as affecting or impairing the police powers of said City of New Orleans, or its successors, in respect to any matter or thing within its jurisdiction as regulatory body or as constituting any agreement on the part of the City to forego the exercise of any of its lawful powers or functions, nevertheless it is a condition hereof that each and all of the stipulations, restrictions and conditions

hereinafter contained or provided for shall be, remain and continue in effect only so long as the City of New Orleans or its successor as the regulatory authority, shall not change or modify the provisions hereof concerning the rate base and the rate of return; and if said regulatory authority should change or alter either of said factors, then these conditions, stipulations and restrictions shall cease and become inoperative and the Company and its successor, at its option, shall be released from the obligations in respect to same. Said restrictions and conditions are as follows:

(a) The total par value of the outstanding securities of the new company in the form of capital stock, funded debt and other evidences of debt having greater than twelve months' maturity, including underlying bonds (less deduction for unamortized discount on said securities, sold with the approval of the Commission Council) shall never exceed the rate base determined as defined in Section 1 hereof.

(b) Two-thirds of the members of the Board of Directors shall be residents of New Orleans and representative citizens, and the president shall at all times reside in New Orleans.

(c) Before any disbursements in any fiscal year can be made out of earnings or surplus to securities, junior in rank to the new 4½ per cent bonds, there shall be created a fund of $200,000, out of which fund 50 per cent shall be invested in betterments and improvements and 50 per cent shall be utilized for the purchase and retirement (by lowest bid) of said new 4½ per cent bonds; provided that said fund may be created either out of earnings or by the sale of securities junior in rank to said new 4½ per cent bonds. Said securities to be issued in accordance with Paragraph G of this section.

(d) Furthermore, before any disbursement in any fiscal year can be made on the preferred stock herein referred to in sub-section (d) of Section 3, there shall also be created an additional fund of $100,000. Said fund shall be used for the purpose and under the conditions, and shall be created in the manner provided in sub-section (c) hereof for the said $200,000 therein referred to.

(e) (Repealed by Ordinance No. 1443 M.C.S., Aug. 21, 1958).

(f) All dividends declared on the common stock issued at the time of reorganization, as provided in paragraph (e) of section 3 hereof, shall be reinvested in the property by the purchase of common stock at par until the aggregate amount of dividends declared shall equal 40 per cent on said stock.

(g) No securities of the new Company, other than evidences of debt having maturities of twelve months or less and securities issued as stock dividends neither of which has any effect on the rate base, shall be issued without the previously obtained approval of the Council.
(As Amended by Ordinance No. 1443 M.C.S., Aug. 21, 1958).

RATE BASE AND RATE OF RETURN AGREEMENT

Sec. 10. The Company binds itself never to infringe or violate or go contrary to any of the provisions of Sections 7 and 9 so long as the City shall not change or disturb the rate of base and/or rate of return.

DISPOSITION OF SUIT

Sec. 11. The suit of J. D. O'Keefe and others against the City of New Orleans now pending in the United States District Court shall be held in beyance. Upon putting the within plan in operation. said litigation shall be dismissed. Meanwhile no prejudice to any party to said litigation shall result by reason of this arrangement, so that if the plan is not carried into operation, said litigation may be revived and continued without prejudice.

METHOD OF ACCEPTANCE

Sec. 12. This Ordinance shall take effect only upon written acceptance and approval by the Creditors of the New Orleans Railway & Light Company and other parties at interest who may have the legal right to accept same, which acceptance must be made not later than fifteen (15) days after the final passage of this Ordinance by the Commission Council.

App. Exhibit 3

Exhibit F-2

REID & PRIEST

40 WEST 57TH STREET
NEW YORK, N. Y. 10019
212 603-2000

'85 MAR -4 A11:08

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

WASHINGTON OFFICE
1111 19TH STREET, N. W.
WASHINGTON, D.C. 20036
202 828-0100
FACSIMILE: 202 466-2327

NEW YORK OFFICE
CABLE ADDRESS: "REIDAPT"
TELEX: 7105816721 RDPT NYK
220534 RDPT UR
FACSIMILE: 212 603-2298
DIRECT DIAL NUMBER

December 20, 1984

Securities and Exchange Commission
450 Fifth Street, N. W.
Washington, D. C. 20549

Dear Sirs:

With respect to the joint Application-Declaration on Form U-1 which is to be filed on or shortly after the date hereof by New Orleans Public Service Inc. ("NOPSI") and Middle South Utilities, Inc. ("Middle South") contemplating the issuance and sale by NOPSI, from time to time not later than December 31, 1985, of not more than $40,000,000 in aggregate principal amount of its First Mortgage Bonds (the "Bonds") and not more than 200,000 shares of its Preferred Stock, Cumulative, $100 Par Value (the "Preferred Stock"), each in one or more series, and the issuance and sale by NOPSI to Middle South, and the acquisition by Middle South, from time to time not later than December 31, 1985, of not more than 4,000,000 additional shares of NOPSI's common stock, $10 Par Value (the "Additional Common Stock"), we advise you that in our opinion:

(1) NOPSI is a corporation duly organized and validly existing under the laws of the State of Louisiana.

(2) In the event that the proposed transactions are consummated in accordance with said Application-Declaration, as it may be amended, and within the limits specified in NOPSI's Mortgage and Deed of Trust, as supplemented and as proposed to be further supplemented, and its Restatement of Articles of Incorporation, as amended and as proposed to be further amended:

(a) all state laws which relate or are applicable to the proposed transactions (other than so-called "blue sky" laws or similar laws, upon which we do not pass herein) will have been complied with;

(b) the Bonds will be valid and binding obligations of NOPSI in accordance with their terms, except as limited by bankruptcy, insolvency or other laws affecting enforcement of mortgagees' and other creditors' rights;

(c) the Preferred Stock and the Additional Common Stock will be validly issued, fully paid and non-assessable, and the holders thereof will be entitled to the rights and privileges appertaining thereto set forth in NOPSI's Restatement of Articles of Incorporation, as amended and as proposed to be further amended;

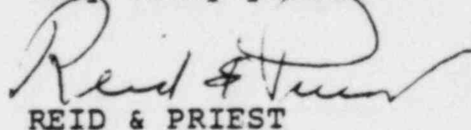
(d) Middle South will legally acquire the Additional Common Stock; and

(e) the consummation of the proposed transactions will not violate the legal rights of the holders of any securities issued by NOPSI or Middle South or any associate company thereof.

We are members of the New York Bar and do not hold ourselves out as experts on the laws of any other state. In giving this opinion, we have relied, without independent investigation or verification, as to all matters governed by the laws of the State of Louisiana, upon an opinion of even date herewith addressed to you by Monroe & Lemann (A Professional Corporation), of New Orleans, Louisiana, General Counsel for the Company, which is to be filed as an exhibit to the Application-Declaration on Form U-1.

Our consent is hereby given to the use of this opinion as an exhibit to the Application on Form U-1.

Very truly yours,



REID & PRIEST

App. Exhibit 4

DOCKETED USNRC

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

'85 MAR -4 A11:08

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 23563 / January 4, 1985

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

In the Matter of :

NEW ORLEANS PUBLIC SERVICE INC. :
317 Baronne Street
New Orleans, Louisiana 70112 :

MIDDLE SOUTH UTILITIES, INC. :
225 Baronne Street
New Orleans, Louisiana 70112 :

(70-7069) :

NOTICE OF PROPOSAL TO ISSUE AND SELL PREFERRED STOCK AND FIRST MORTGAGE BONDS, AND TO CAPITALIZE SUBSIDIARY

New Orleans Public Service Inc., ("NOPSI"), and its parent Middle South Utilities, Inc. ("MSU"), a registered holding company, have proposed a transaction to this Commission pursuant to Sections 6(a),7, 9(a), 10 and 12(f) of the Public Utility Holding Company Act of 1935 ("Act"), and Rules 43 and 50(a)(3) thereunder.

NOPSI proposes to issue and sell up to $40,000,000 principal amount of its First Mortgage Bonds ("New Bonds") pursuant to Rule 50 procedures, as set forth in HCAR No. 22623, dated September 2, 1982. The New Bonds will be issued in one or more series from time to time not later than December 31, 1985. The price, exclusive of accrued interest, to be paid to NOPSI for each series of the New Bonds will be within a range specified by it to prospective purchasers of not more than five percentage points, but shall not exceed five percentage points above or below 100% of the principal amount of such series of New Bonds.

The New Bonds are to be issued under NOPSI's Mortgage and Deed of Trust, dated as of July 1, 1944, as supplemented and to be further supplemented. Each series of the New Bonds will mature within five to thirty years. None of the New Bonds of a particular series will be redeemed for a period of either four or five years, depending upon the term of that series, at a regular redemption price if such redemption is for the purpose or in anticipation of refunding such bond through the use, directly or indirectly, of funds borrowed by NOPSI at an effective interest cost to it of less than the effective interest cost to it of such series of New Bonds.

Secondly, NOPSI proposes to establish one or more new series of its serial preferred stock having a par value of $100 per share, which shall consist in the aggregate of not more than 200,000 shares ("New Preferred Stock"), and to issue and sell, in one or more series from time to time not later than December 31, 1985, the New Preferred Stock, subject to Rule 50. By appropriate corporate action, NOPSI intends, with the consent of its parent MSU, to amend its Charter, to authorize each series of the New Preferred Stock, which, except as to designation, dividend rate, redemption prices and the terms and amount of sinking fund requirements, if any, will have the same characteristics as, and rank pari passu with, the presently outstanding 60,000 shares of 4.36% Preferred Stock, 60,000 shares of 5.56% Preferred Stock and 150,000 shares of 15.44% Preferred Stock.

The price to be paid to NOPSI for each series of the New Preferred Stock will be not less than $100 nor more than $102.75 per share, plus accrued dividends, if any. The terms of each series of the New Preferred Stock will include a prohibition for five years against refunding any shares of such series, directly or indirectly, with funds derived from the issuance of debt securities at a lower effective interest cost or from the issuance of other stock, which ranks prior to or on a parity with such series as to dividends or assets, at a lower effective dividend cost.

NOPSI may include provisions for a sinking fund for any series of the New Preferred Stock designed to redeem annually, commencing a specified period of time after initial issuance, at $100 per share plus accumulated dividends, a number of shares equal to a specified percentage of the total number of shares of such series, with NOPSI possibly having a noncumulative option to redeem annually an additional number of shares up to a specified percentage of the total number of shares of such series.

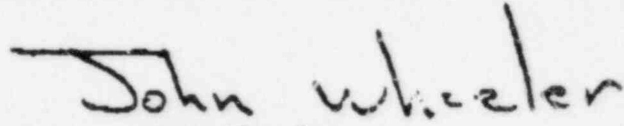
NOPSI also proposes to issue and sell to MSU, and MSU proposes to acquire from NOPSI from time to time through December 31, 1985 up to 4,000,000 shares of its common stock (par value, $10) ("Additional Common Stock") at par for an aggregate cash consideration of up to $40,000,000. NOPSI's Charter presently provides for 7,000,000 authorized shares of common stock of which 5,935,900 shares, are issued and outstanding and owned by MSU. Accordingly, NOPSI proposes, by appropriate corporate action and with the consent of MSU, further to amend its Charter to increase its authorized common stock from 7,000,000 to 10,000,000 shares.

NOPSI will use the proceeds to pay, in part, short-term borrowings; to finance, in part, its 1985 construction program, which provides for expenditures of approximately $39,300,000; and to pay, in part, NOPSI's obligations to MSU under a Power Purchase Advances Payment Agreement.

The proposal and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by January 29, 1985, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicants

at the addresses specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the proposal, as filed or as it may be amended, may be authorized.

For the Commission, by the Office of Public Utility Regulation, pursuant to delegated authority.



John Wheeler
Secretary

App. Exhibit 5

LAW OFFICES
VERNER, LIIPFERT, BERNHARD, McPHERSON AND HAND
CHARTERED
SUITE 1000
1660 L STREET, N. W.
WASHINGTON, D. C. 20036

RICHARD J. MORVILLO
DIRECT DIAL NUMBER
(202) 775-1086

CABLE ADDRESS, VERLIP
TELEX 90-4124 VERLIPWSH

USNRC
'85 MAR -4 A11:08
OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

January 29, 1985

Securities and Exchange Commission
450 Fifth Street, N.W.
Room 1004 - File Desk
Washington, D.C. 20549

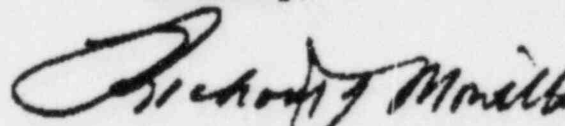
Re: In the Matter of New Orleans Public Service, Inc., et al., File No. 70-7069

Gentlemen:

Enclosed for filing please find an original and eight (8) copies of Notices of Appearance and the Comments of New Orleans with reference to the above-referenced proceeding.

Kindly stamp and return one copy to our representative.

Sincerely,



Richard J. Morvillo

RJM/dlk

cc: John Brandenberg, Esq.

UNITED STATES OF AMERICA
BEFORE THE
SECURITIES AND EXCHANGE COMMISSION

IN THE MATTER OF New Orleans Public Service, Inc. 317 Baronne Street New Orleans, Louisiana and Middle South Utilities, Inc. 225 Baronne Street New Orleans, Louisiana	File No. 70-7069

NOTICE OF APPEARANCE

Notice is hereby given by the City of New Orleans, through its undersigned counsel, of its appearance as a party to this proceeding pursuant to Section 19 of the Public Utility Holding Company Act and Rule 9(a) of the Commission's Rules of Practice.

The City of New Orleans is a municipal corporation and political subdivision of the State of Louisiana whose approval, contrary to the assertions made by applicants, is required prior to the issuance of securities by New Orleans Public Service, Inc. The City of New Orleans has filed comments with the Commission relating to the proposed transactions and intends to participate in any further proceedings herein. Accordingly, the City of New Orleans requests that it be given notice of and the right to appear at all future hearings and conferences and

otherwise to participate in these proceedings as a party. Communications concerning this proceeding should be addressed to Richard J. Morvillo, Esq. at the address provided below.

Respectfully submitted,

Richard J. Morvillo, Esq.
Clinton A. Vince, Esq
Glen L. Ortman, Esq.
Verner, Liipfert, Bernhard,
McPherson and Hand, Chartered
1660 L Street, N.W.,
Suite 1000
Washington, D.C. 20036
(202) 775-1000

Counsel to City of New Orleans

Dated: January 29, 1985

UNITED STATES OF AMERICA
BEFORE THE
SECURITIES AND EXCHANGE COMMISSION

IN THE MATTER OF New Orleans Public Service, Inc. 317 Baronne Street New Orleans, Louisiana and Middle South Utilities, Inc. 225 Baronne Street New Orleans, Louisiana	File No. 70-7069

NOTICE OF APPEARANCE

Pursuant to Rule 2(d) of the Commission's Rules of Practice, the following counsel enter their appearances on behalf of the City of New Orleans in the above-referenced proceeding.

Clinton A. Vince
Glen L. Ortman
Richard J. Morvillo
Verner, Liipfert, Bernhard, McPherson
and Hand, Chartered
1660 L Street, N.W., Suite 1000
Washington, D.C. 20036
(202) 775-1000

Respectfully submitted,

Richard J. Morvillo
Verner, Liipfert, Bernhard,
McPherson and Hand, Chartered
1660 L Street, N.W.,
Suite 1000
Washington, D.C. 20036

Counsel to City of New Orleans

Dated: January 29, 1985

UNITED STATES OF AMERICA
BEFORE THE
SECURITIES AND EXCHANGE COMMISSION

IN THE MATTER OF New Orleans Public Service, Inc. 317 Baronne Street New Orleans, Louisiana and Middle South Utilities, Inc. 225 Baronne Street New Orleans, Louisiana	File No. 70-7069

COMMENTS OF THE CITY OF NEW ORLEANS

The City of New Orleans ("New Orleans") respectfully submits the following comments with respect to the Application-Declaration filed by New Orleans Public Service, Inc. ("NOPSI") and Middle South Utilities, Inc. ("MSU") in this proceeding.

Introduction

On December 21, 1984, NOPSI and MSU filed the instant Application-Declaration seeking an order of the Commission permitting consummation of the following transactions:

(1) the sale by NOPSI of up to $40,000,000 in principal amount of its First Mortgage Bonds;

(2) the issuance and sale of one or more new series of its serial preferred stock, $100 par value per share, consisting of no more than 200,000 shares; and

(3) the issuance and sale to MSU of not more than 4,000,000 shares of NOPSI's common stock, par value $10 per share, at a price of $10 per share.

New Orleans submits that the proposed transactions raise a fundamental legal issue that must be resolved before the Commission may lawfully declare the Application-Declaration effective. Moreover, disclosure deficiencies concerning this and other aspects of the proposed transactions should impel the Commission to seek more complete information from NOPSI and MSU in the course of this proceeding.

State Law Considerations

New Orleans is a municipal corporation and political subdivision of the State of Louisiana operating under a Home Rule Charter, effective May 1, 1954 (and formerly operating under a home rule charter embodied in Act 159 of the Louisiana Legislature of 1912). The Council of the City of New Orleans (the "Council") is the governing authority of New Orleans.

NOPSI is a franchisee of New Orleans under a franchise for the use of public streets and other public places for the conduct

of its business as a public gas and electric utility. 1/ NOPSI's franchise is governed by, inter alia, various ordinances of New Orleans, including Ordinance No. 6822 Commission Council Series, as amended, 2/ (sometimes collectively referred to as the "Settlement Ordinance"). In addition, the franchise is governed by Sections 4405 and 4406 of Title 33 of the Revised Statutes of Louisiana (1950), as amended. 3/

For many years, NOPSI has been providing gas service throughout New Orleans as well as electric service to all parts of the City, except the Fifteenth Ward. New Orleans itself is a rate-payer and consumer of NOPSI's services.

Until recently, NOPSI did not dispute that New Orleans, through its Council, has had jurisdiction to regulate various NOPSI activities pursuant to the City's Home Rule Charter and the Settlement Ordinance. Nor did NOPSI deny that New Orleans' jurisdiction encompassed the sale of securities such as those at

---

1/ The franchise was granted pursuant to Sections 2-101 and 4-1602 of the Home Rule Charter and pursuant to La. Rev. Stat. Ann. §§ 33:4405 and 33:4506.

2/ A copy of Ordinance No. 6822 is attached to Exhibit F-1(a) to the Application-Declaration and at page 3 of Exhibit A to the Petition attached hereto as Attachment 1.

3/ It should be noted that, in accordance with the Settlement Ordinance, the Revised Statutes of Louisiana and the NOPSI franchise, New Orleans has a perpetual option to buy the property and assets of either or both of the electric or gas departments of NOPSI for a sum certain to be adjusted for alterations to NOPSI's "Rate Base" as defined and determined by the Settlement Ordinance. See Section 1 of Ordinance No. 6822.

issue here. As NOPSI recognizes, Section 9(g) of the Settlement Ordinance specifically provides:

> No securities of [NOPSI], other than evidences of debt having maturities of twelve months or less and securities issued as stock dividends neither of which has any effect on the rate base, shall be issued without the previously obtained approval of the Council.

Nevertheless, NOPSI would now eschew compliance with the process contemplated by the foregoing provision, contending that it is no longer operative. In fact, NOPSI and MSU state in their Application-Declaration that no state regulatory body or agency has jurisdiction over the proposed transactions. NOPSI and MSU offer no judicial or other authoritative precedent in support of their contentions. Instead, they rely exclusively on an opinion of their counsel to the effect that (1) New Orleans surrendered its authority to the Louisiana Public Service Commission ("LSPC") by virtue of the passage of Ordinance No. 8264, Mayor Council Series (M.C.S.), and (2) the proposed transactions are exempt from regulation by the LSPC under Louisiana law. See Exhibits F-1 and F-1(a) to the Application-Declaration.

New Orleans has a different view. New Orleans asserts that, Ordinance No. 8264 notwithstanding, its sphere of influence over the affairs of NOPSI continues and that, as a consequence, NOPSI cannot effect the proposed securities transactions without

securing the Council's prior approval. Indeed, Ordinance No. 8264, by its terms, contemplates that:

> All rates, regulations, controls, and other pending matters on December 31, 1981 shall continue with the same force and effect thereafter subject to any further action by the Louisiana Public Service Commission.

The LPSC has not taken any action to repeal, rescind, or modify any part of the Settlement Ordinance. Thus, its provisions, including, most significantly, those of Section 9, continue to be effective. 4/

Having only recently learned that NOPSI and MSU dispute its continuing jurisdiction,5/ on January 28, 1985, New Orleans commenced a civil action against NOPSI in the Civil District Court for the Parish of Orleans, State of Louisiana (No. 85-05162) seeking declaratory and injunctive relief to preclude

---

4/ Beyond that, New Orleans simply did not surrender authority over matters, such as the issuance and sale of securities, closely related to NOPSI's franchise and the perpetual option mentioned in footnote 3, <u>supra</u>. If consummated, the proposed transactions will have the effect of altering the "Rate Base" and thereby impairing the value of the New Orlean's perpetual option. For this additional reason, the Council's prior approval is required by the Settlement Ordinance and by law.

5/ According to information currently available to New Orleans, this is the first time in seventeen yers that NOPSI has sought to issue additional securities. Thus, the issue discussed herein has not surfaced previously.

NOPSI and others from consummating the proposed transactions without the Council's prior approval. [6]

Resolution of that dispute is critical to these proceedings. If, as New Orleans expects to establish, NOPSI's right to sell securities continues to be subject to the prior approval of the Council, New Orleans would fall within the definition of "State commission" set forth in Section 2(a)(26) of the Public Utility Holding Company Act of 1935 (the "Act"). NOPSI's failure to secure such approval, then, would be in contravention of applicable State law. Accordingly, the Commission could not, consistent with the directive of Section 7(g) of the Act, declare the Application-Declaration effective until NOPSI complies with this facet of state governance.

New Orleans is confident that its position will prevail. Until that controversy is resolved, the Commission cannot conclude that all applicable State law has been complied with and, consequently, may not lawfully permit the proposed transactions to go forward.

Adjudicating the scope of New Orleans' authority will require familiarization with the evolution of the regulatory relationship between New Orleans and NOPSI and interpretation of

---

6/ A copy of the petition filed in that action is attached hereto as Attachment 1.

Louisiana law. As the Commission assuredly recognizes, these are matters beyond its special competence and expertise and are more appropriately and conveniently considered by the Louisiana tribunal. Thus, the Commission need not -- and should not -- assume the added burden of untangling an issue local to Louisiana.

At the same time, the Commission should not facilitate NOPSI's and MSU's attempt to complete an end run around the Council's scrutiny. Clearly, the Commission is not now in a position to determine, as required by Section 7(g) of the Act, that there has been compliance with State law. In view of the litigation pending in Louisiana, the Commission should defer action on the Application-Declaration until this State law issue has been finally resolved in an appropriate forum.

Disclosure Issues

The Act shares in common with its companion securities acts the fundamental purpose of ensuring full disclosure. SEC v. Capital Gains Research Bureau, Inc., 375 U.S. 180, 190 (1963). While in exercising its jurisdiction under the Act the Commission has declined, in appropriate circumstances, to analyze truly collateral issues, we believe that where, as here, significant disclosure issues are raised that have a reasonable nexus to the Commission's jurisdiction, the Commission must explore them

further. See City of Lafayette, Louisiana v. SEC, 454 F.2d 941, 956 (1971), aff'd. sub. nom. Gulf States Utilities Co. v. FPC, 411 U.S. 747 (1973).

Obviously, a substantial disclosure question is presented by the assertion by NOPSI and MSU that no state regulatory authority -- including New Orleans -- has jurisdiction over the proposed transactions. That question has implications beyond the instant proceeding, for it appears that other MSU affiliates have fostered a similar misimpression concerning New Orleans' jurisdiction in investor-oriented documents. For example, a registration statement recently filed by Middle South Energy, Inc. in connection with a proposed bond offering makes disclosures similar to those contained in the Application-Declaration. See Exhibit C-3, p. 18, to Amendment No. 6 to Application-Declaration (filed on December 7, 1984), Commission File No. 70-1021.

Additionally, we believe that the Application-Declaration inadequately discloses the uses NOPSI expects to make of the proceeds it will receive. Without quantifying or otherwise providing reasonable details concerning these matters, the Application-Declaration simply states that NOPSI will apply the proceeds to pay short-term borrowings, to finance part of a $39,300,000 construction program, to satisfy obligations under a Power Purchase Advance Payment Agreement and "to other corporate purposes." In discharging its obligations under Sectin 7(c)(2)

of the Act, the Commission should obtain more meaningful and detailed disclosure.

While we would encourage the Commission to require NOPSI and MSU to supplement the Application-Declaration in this regard, that act will not resolve the critical legal question discussed above. For this reason, the Commission should defer further action on this matter pending resolution of that issue by the Louisiana court.

Respectfully submitted,

Richard J. Morvillo
Clinton A. Vince
Glen L. Ortman
Verner, Liipfert, Bernhard, McPherson and Hand, Chartered
1660 L Street, N.W.,
Suite 1000
Washington, D.C. 20036
(202) 775-1000

Counsel to City of New Orleans

Dated: January 29, 1985

CERTIFICATE OF SERVICE

I hereby certify that I have this ___ day of January, 1985 served by first class mail, postage prepaid, copies of the foregoing Notices of Appearance and the Comments of the City of New Orleans upon:

James M. Cain
New Orleans Public Service, Inc.
317 Baronne Street
New Orleans, LA 70112

Edwin Lupberger
Senior Vice President
Middle South Utilities, Inc.
225 Baronne Street
New Orleans, LA 70112

Melvin I. Schwartzman, Esq.
Monroe & Lemann
1424 Whitney Building
New Orleans, LA 70130

Thomas J. Igoe, Jr., Esq.
Reid & Priest
40 West 57th Street
New York, NY 10019

Stephen K. Waite, Esq.
Winthrop, Stimson, Putnam & Roberts
40 Wall Street
New York, NY 10005

Richard J. Morvillo

DOCKETED
USNRC

'85 MAR -4 A11:08

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

UNITED STATES OF AMERICA
BEFORE THE
SECURITIES AND EXCHANGE COMMISSION

- - - - - - - - - - - - - - - - - -X

In the Matter of MIDDLE SOUTH UTILITIES, INC. NEW ORLEANS PUBLIC SERVICE INC. File No. 70-7069	: : : :	RESPONSE OF APPLICANTS-DECLARANTS, MIDDLE SOUTH UTILITIES, INC. and NEW ORLEANS PUBLIC SERVICE INC. TO NOTICE OF APPEARANCE

- - - - - - - - - - - - - - - - - -X

INTRODUCTION

Applicants-Declarants, Middle South Utilities, Inc. ("MSU") and New Orleans Public Service Inc. ("NOPSI"), seek authorization from the Securities and Exchange Commission ("Commission") pursuant to the Public Utility Holding Company Act of 1935 ("Act") for NOPSI to issue and sell, and MSU to acquire, not more than 4,000,000 shares of NOPSI's Common Stock ("Common Stock") for an aggregate cash consideration of not more than $40,000,000. NOPSI also seeks authorization to issue and sell, in one or more series, not more than 200,000 shares of its Preferred Stock ("Preferred Stock"), having a par value of $100 per share (or an aggregate par value of $20,000,000), and, in one or more series, not more than $40,000,000 in principal amount of its First Mortgage Bonds ("Bonds").

Public notice of these proposals was issued on January 4, 1985. New Orleans Public Service Inc., et al., SEC Holding Co. Act Release No. 23563 (January 4, 1985). The Applicants-Declarants are seeking to have their Application-Declaration, as amended, made effective pursuant to Sections 6, 7, 9, 10 and 12 of the Act and pursuant to Commission Rule 50 thereunder.

In response to the joint Application-Declaration, as amended, a Notice of Appearance was filed by the City of New Orleans ("City") in which it requested that the Commission defer action in this matter until resolution of an alleged legal question by a Louisiana court.

The alleged legal question results from the initiation by the City on January 28, 1985 of a suit in the Civil District Court for the Parish of Orleans against NOPSI, MSU and certain of their officers, seeking both preliminary and permanent injunctions against the issuance of the Common Stock, the Preferred Stock and the Bonds on the asserted basis that the Council of the City of New Orleans ("Council") has jurisdiction to approve the issuance thereof.[1]

1/ The state court action was removed to the United States District Court for the Eastern District of Louisiana on February 5, 1985.

DISCUSSION

A. Section 7(g) of the Act.

Apparently, the City's comments relate to alleged concerns that state laws have not been complied with, and, consequently, the Commission cannot make, due to the constraints of Section 7(g) of the Act, the Application-Declaration, as amended, in this File effective. This argument is fatally flawed for a number of reasons:

First, the Council is not a "state commission" or a "state securities commission" within the meaning of Sections 2(a)(26) and 2(a)(27) of the Act.

The electorate of the City voted, on November 28, 1981, to transfer all of the regulatory powers of the Council with respect to electric and gas utilities operating within the City to the Louisiana Public Service Commission ("LPSC") effective January 1, 1982. In addition, on June 30, 1983, NOPSI disposed of its entire interest in its transit business to a regional transit authority. In view of these developments, the Council has no further regulatory powers over NOPSI, as discussed further below.

The Applicants-Declarants stand on their statements in Item 4 of the joint Application-Declaration in this File that no state regulatory body or agency has jurisdiction over the transactions proposed in this proceeding. This statement is based upon an opinion of coun-

sel, together with a memorandum, which clearly demonstrate that the Council has no jurisdiction over the proposed transactions. Copies of the opinion and memorandum are attached to this response as Exhibits A and B. The memorandum of NOPSI's counsel addresses all of the City's comments on its asserted jurisdiction and concludes, after extensive legal analysis of the laws of the State of Louisiana, that regulatory jurisdiction over NOPSI has been transferred to the LPSC. As noted in the memorandum, regulation of NOPSI's security issues is left to the Commission, by exemption, under the Louisiana statutes. Nothing further needs to be added to the discussion of the jurisdictional issue.2/

The Council is clearly neither a "state commission" (that position being occupied by the LPSC) nor is it a "state securities commission" since the Council does not have jurisdiction to regulate, approve or control the issue or sale of a security by NOPSI.

2/ MSU and NOPSI would point out that if the City is so anxious to preserve its alleged jurisdiction over security transactions, it should at least be mindful of those security issues which it previously approved. The City in its comments, Note 5, states that "this is the first time in seventeen ye[a]rs that NOPSI has sought to issue additional securities". Since 1978 alone, with the approval of the Council and the Commission, NOPSI has issued $30,000,000 of securities, including $15,000,000 of preferred stock and $15,000,000 of first mortgage bonds. See Ordinance Nos. 6873 M.C.S. and 7498 M.C.S. of the City of New Orleans and HCAR Nos. 20728 and 21472.

Section 7(g) of the Act requires, by its very terms, that a "state commission" or "state securities commission", having jurisdiction over the transactions, such as the ones proposed in this proceeding, is the only entity entitled to raise the issue as to whether applicable state laws have been complied with. The City may not raise the issue since the Council is neither a "state commission" nor a "state securities commission" nor does it have, for the reasons noted above, jurisdiction over the transactions proposed in this proceeding.

Second, assuming _arguendo_ that there is a valid dispute as to the proper interpretation of applicable state law, on numerous occasions the Commission has stated that, in making its required determinations as to whether or not to approve proposed transactions under the applicable Federal requirements of the Act, including a determination of whether the Commission is satisfied as to compliance with state laws pursuant to Section 7(g) of the Act, the Commission is not required to resolve disputed issues of state law and has proceeded to issue orders while matters of state law were in dispute. _See_ _Middle South Utilities, Inc., et al._, SEC Holding Co. Act Release No. 23579 (January 23, 1985); _Middle South Energy, Inc._, SEC Holding Co. Act Release No. 23526 (December 12, 1984); _Middle South Utilities, Inc., et al._, SEC Holding Co. Act

Release No. 23495 (November 23, 1984); Central and South West Corporation, et al., SEC Holding Co. Act Release No. 22635 (September 16, 1982); and Massachusetts Utilities Associates, 2 SEC 98 (1937). Indeed, the Commission has in the past issued an order authorizing a proposed transaction relating to the acquisition of securities on the basis of opinions of counsel that state laws have been complied with, even in the face of equity proceedings pending in state court. Massachusetts Utilities Associates, supra. In the Massachusetts Utilities Associates case the Commission reasoned that it would be inappropriate to withhold approval of the proposed securities acquisition transaction pending the outcome of the related state court equity proceeding, for the withholding of such approval would amount, in effect, to the granting of an injunction in accordance with the prayer presented in the state proceeding. Massachusetts Utilities Associates, supra at 109.

NOPSI and Middle South believe that the reasoning in Massachusetts Utilities Associates, supra, is no less applicable in the instant proceeding. In the event the Commission were to delay action in this proceeding pending final resolution of the state law issues in the courts, financing needed by NOPSI to carry on its business could be significantly delayed to the grave detriment of

NOPSI. *See Middle South Utilities, Inc., et al.*, SEC Holding Co. Act Release No. 23579 (January 23, 1985). NOPSI needs the funds to be derived from the securities which are the subject of this proceeding to finance its on-going business and to meet its current obligations. Any further delay in receipt of the Commission's order would jeopardize the liquidity and financial position of NOPSI.

Moreover, owing to these on-going financing needs, the Act was written, and has been consistently construed, to limit the scope of the Commission's inquiry into security issuance transactions under Sections 6(a) and 7 of the Act, as in the subject proceeding, to the satisfactory terms and conditions of the securities to be issued and not to the use of proceeds or collateral issues. *See The Southern Company*, SEC Holding Co. Act Release No. 21766 (October 29, 1980), *aff'd*, *without opinion*, *sub nom*. *Herring v. SEC*, 672 F.2d 894 (D.C. Cir. 1981); *Georgia Power Company*, SEC Holding Co. Act Release No. 21737 (October 1, 1980), *aff'd*, *sub nom*. *Herring v. SEC*, 673 F.2d 1191 (11th Cir. 1982); *City of Lafayette, Louisiana v. SEC*, 454 F.2d 941 (D.C. Cir. 1971). The policy to restrict inquiry in security issuance transactions under the Act and avoid delay is equally applicable in the instant proceeding.

B. Other Collateral Issues.

1. Disclosure.

The City's comment, on page 8, with respect to the Registration Statement of Middle South Energy, Inc. ("MSE") filed under the Securities Act of 1933 ("Securities Act") is neither correct, nor appropriate, in this proceeding. The City insinuates that investors are left with a misimpression from the statement in MSE's Registration Statement, namely that NOPSI believes that the City no longer has regulatory jurisdiction over NOPSI. As is clear from the opinion and the memorandum of NOPSI's counsel in this proceeding, as well as the consent of NOPSI's counsel as expert filed as an exhibit to MSE's Registration Statement, NOPSI has a sound basis for its belief, as expressed in MSE's Registration Statement, that the Council no longer has jurisdiction. Raising insinuations under the Securities Act, moreover, is inappropriate in this proceeding. The Act is not a disclosure act like the Securities Act. Under the principles and decisions of the courts and the Commission discussed above, issues collateral to a proceeding under the Act may be summarily dealt with and ignored. See, e.g., Middle South Utilities, Inc., et al., SEC Holding Co. Act Release No. 23579 (January 23, 1985).

2. Use of Proceeds.

The City indicates that NOPSI may have inadequately disclosed the proposed use of proceeds from the sales of the Common Stock, Bonds and Preferred Stock. As noted above, it is not within the scope of the inquiry of the Commission under the Act to explore the use of proceeds. That is not the mandate under Sections 6 and 7. See, e.g., Middle South Utilities, Inc., et al., SEC Holding Co. Act Release No. 23579 (January 23, 1985). The format which NOPSI used to describe the proposed use of proceeds is followed in the vast majority of applications or declarations filed under Section 6 or 7 of the Act and has not been found inadequate since 1935. It should not be found inadequate now.

CONCLUSION

The City has no standing to raise issues under Section 7(g) of the Act since it is neither a "state commission" nor a "state securities commission". Moreover, the City has failed to raise any issues which need to be addressed by the Commission.

The record clearly supports, and the financing requirements of NOPSI necessitate, the prompt issuance of an order of the Commission permitting the Application-Declaration, as amended, to be granted and permitted to

become effective pursuant to Sections 6, 7, 9, 10 and 12 of the Act and pursuant to Commission Rule 50 thereunder.

Respectfully submitted,

MIDDLE SOUTH UTILITIES, INC.
and NEW ORLEANS PUBLIC
SERVICE INC.

By /s/ Thomas J. Igoe, Jr.
Thomas J. Igoe, Jr.
Their Attorney

Charles A. Read
William T. Baker, Jr.
James K. Mitchell
Reid & Priest
40 West 57th Street
New York, New York 10019

Attorneys for
Applicants-Declarants

William D. Meriwether, Jr.
Mark W. Hoffman
Middle South Services, Inc.
225 Baronne Street
New Orleans, Louisiana 70112

Attorneys for MSU

Arthur J. Waechter, Jr.
Charles W. Lane, III
Jones, Walker, Waechter,
Poitevent, Carrere & Denegre
225 Baronne Street
New Orleans, Louisiana 70112

Attorneys for MSU

Andrew P. Carter
Melvin I. Schwartzman
Monroe & Lemann
(A Professional Corporation)
1424 Whitney Building
New Orleans, Louisiana 70130

Attorneys for NOPSI

February 5, 1985

App. Exhibit 7

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

DOCKETED
USNRC

'85 MAR -4 A11:08

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 23612 / February 21, 1985

In the Matter of :

MIDDLE SOUTH UTILITIES, INC. :
NEW ORLEANS PUBLIC SERVICE INC.
New Orleans, Louisiana :

(70-7069) :

MEMORANDUM OPINION AND ORDER AUTHORIZING THE ISSUANCE AND SALE OF PREFERRED STOCK, FIRST MORTGAGE BONDS, COMMON STOCK; RESERVATION OF JURISDICTION

Introduction

New Orleans Public Service Inc. ("NOPSI"), and its parent Middle South Utilities, Inc. ("MSU"), a registered holding company, filed an application-declaration with this Commission, pursuant to Sections 6(a), 7, 9(a), 10 and 12(f) of the Public Utility Holding Company Act of 1935 ("Act"), and Rules 43 and 50(a)(3) thereunder, on December 21, 1984. 1/ NOPSI and MSU ("Parties") sought authority for the sale by NOPSI of up to $40 million in principal amount of its first mortgage bonds ("Bonds"); up to $20 million of its serial preferred stock, par value $100 ("Preferred"); and for the issuance and sale to MSU of up to 4 million shares of NOPSI's common stock, $10 par value, at a price of $10 per share ("Common").

Thereafter, on January 28, 1985 the City of New Orleans ("City") filed an action in the Civil District Court for the Parish of Orleans, naming NOPSI, MSU and certain officers as defendants, and seeking preliminary and permanent injunctions against the issuance of the Bonds, Preferred and Common stock. 2/ On January 29, 1985, the City filed comments in this proceeding, requesting that this Commission defer action pending final order in the state matter. NOPSI and MSU filed a response.

Issues

The only issue presented to the Civil District Court was whether the issuance, sale and purchase of the securities by the parties require prior authorization by the City. In its comments in this proceeding, the

---

1/ New Orleans Public Service, Inc., et al., See HCAR No. 23563, 32 SEC Docket 379, (January 4, 1985).

2/ The City of New Orleans v. New Orleans Public Service Incorporated, et al., Civil District Court for the Parish of Orleans, No. 85-01562 (January 28, 1985). The state court action was removed to the United States District Court for the Eastern District of Louisiana on February 5, 1985.

City claims that this Commission is not in a position to determine the jurisdictional issue raised in the state court, so that Section 7(g) of the Act should operate to delay an order herein, pending final order. The City has also raised collateral issues in this proceeding regarding disclosure by the parties of the City's jurisdiction in this matter and of the use of proceeds.

Jurisdiction of the State and Local Authorities

The City is a municipal and political subdivision of the state of Louisiana operating under a Home Rule Charter, effective May 1, 1954. The Council of the city of New Orleans ("Council") is the governing authority of the City. NOPSI is a franchisee of the City under a franchise for the use of public streets and other public places for the conduct of its business as a public gas and electric utility. 3/ The franchise is governed by Title 33 Sections 4405-06 of the Revised Statutes of Louisiana (1950), as amended. In addition, prior to January 1, 1982, NOPSI's utility services were regulated by the City pursuant to Sections 4-1604 and 5 of Chapter 16 of the City's Home Rule Charter, and an enabling Ordinance No. 6822, Commission Council Series of the City, as amended, and dated April 21, 1922 ("Settlement Ordinance"). 4/

The Settlement Ordinance vested complete regulatory authority in the City over NOPSI's operations, including ratemaking, recordkeeping and a perpetual option to purchase the utility at a price based on a fixed valuation, and adjusted for additions to, and deductions from a Rate Base. The City relies solely on Section 9(g) of the Settlement Ordinance for its authority to regulate the securities' issuances in controversy. Section 9(g) provides:

> No securities of [NOPSI], other than evidences of debt having maturities of twelve months or less and securities issued as stock dividends neither of which has any effect on the rate base, shall be issued without the previously obtained approval of the Council.

Ordinance No. 8264, Mayor Council Series of the City ("Amending Ordinance") was approved by referendum on November 28, 1981, purporting to remove regulatory powers of the City, as of January 1, 1982, regarding electric and gas utilities operating there, and to transfer such authority to the Louisiana Public Service Commission ("LPSC"). 5/ The referendum was provided for by state statute which permitted:

3/ The franchise was established pursuant to revisions of Sections 2-101 and 4-1602 of the Home Rule Charter of the City of New Orleans, and pursuant to La. Rev. Stat. Ann., §§ 33:4405 and 33:4506 (1950).

4/ A copy of Ordinance No. 6822 is attached to Exhibit F-1(a) to the application-declaration.

5/ Cited in pertinent part in Exhibit F-1(a) to the application-declaration.

Any town, city or parish exercising powers of supervision, regulation, and control over any local public utility, desiring to surrender those powers to the Louisiana Public Service Commission may submit the question of surrendering these powers to the qualified electors of the town, city, or parish. . . ." (Emphasis Added) 6/

The effect of the Amending Ordinance, by its terms, was first to amend Section 4-1604 of the City's Home Rule Charter to exclude references to "electric light, gas, heat [and] power as being subject to "the exercise of its [City's] powers of supervision, regulation and control". A proviso was added that "beginning January 1, 1982 the City's powers of supervision regulation and control shall not extend to nor include gas, heat, power and electric public utilities." A new subsection (4) was added which provided:

Beginning January 1, 1982 the Louisiana Public Service Commission shall regulate New Orleans Public Service, Inc. and Louisiana Power and Light Company, their respective sucessors [sic] and assigns, within the Parish of Orleans, and the Council of the City of New Orleans shall furnish to said Public Service Commission all information, records, documents and such other materials as shall be necessary and proper for the transfer of regulatory powers from the said council.

All rates, regulations, controls, and other pending matters on December 31, 1981 shall continue with the same force and effect thereafter subject to any further actions by the Louisiana Public Service Commission. (Emphasis Added). 7/

Section 4-1605 was also changed by the Amending Ordinance, consistently with the foregoing, to reflect that the Department of Utilities may inspect only the books and plants of any public utility "subject to regulation by the City."

The intent of the Amending Ordinance is expressed in its introductory paragraph, which calls for the specific amendments to the Home Rule Charter, mentioned above, relative to:

. . . surrender of the Council of the City of New Orleans' power of supervision, regulation and control over gas, heat, power and electric public utilities within the City of New Orleans to the Louisiana Public Service Commission. (Emphasis added) 8/

6/ La. Rev. Stat. Ann. § 33:4491 (1950).

7/ The underscored language is what the City relies on in support of its argument that the Amending Ordinance did not repeal its regulatory jurisdiction under the Settlement Ordinance.

8/ Note here that the underscored language is identical to that used in the statute providing for the referendum, R.S. 33:4491, Fn. 6, above; and the words "powers of regulation, supervision and control" are found in the introductory paragraph of the Settlement Ordinance, Fn. 4, above.

The City contends that the last sentence of the new subsection (4) of Section 4-1604 of the City's Home Rule Charter operates to reserve to the City jurisdiction over the proposed issuance and sale of securities.

> All rates, regulations, controls, and other pending matters on December 31, 1981 shall continue with the same force and effect thereafter subject to any further actions by the Louisiana Public Service Commission.

Its rationale is that the LPSC "has not taken any action to repeal, rescind, or modify any part of the Settlement Ordinance." 9/ The Parties assert that the Amending Ordinance mechanically and lawfully effected the transfer of the regulatory powers of the City to LPSC, with respect to utilities operating in the City, by repealing the Settlement Ordinance and amending the City's charter pursuant to a state statute, which specifically provided for such a transfer.

Applicability of Section 7(g) of the Holding Company Act

The proposed issuance and sale of securities in this matter is subject to Section 7 of the Act, and subsection (g) thereunder provides that:

> If a State commission or State securities commission, having jurisdiction over any of the acts enumerated in subsection (a) of section 6, shall inform the Commission, upon request by the Commission for an opinion or otherwise, that State laws applicable to the act in question have not been complied with, the Commission shall not permit a declaration regarding the act in question to become effective until and unless the Commission is satisfied that such compliance has been effected.

Section 7(g) limits the Commission's authority to issue orders approving securities transactions, when it is notified by a competent state or local agency, 10/ with concurrent jurisdiction over the subject matter of the filing, that the transaction is not in compliance with state or local

---

9/ Comments of the City of New Orleans, p.5 (January 29, 1985).

10/ Section 2(a)(26) provides: "State commission" means any commission, board, agency, or officer, by whatever name designated, of a State, municipality, or other political subdivision of a State which under the law of such State has jurisdiction to regulate public-utility companies.

Section 2(a)(27) provides: "State securities commission" means any commission, board, agency, or officer, by whatever name designated, other than a State commission as defined in paragraph (26) of this subsection, which under the law of a State has jurisdiction to regulate, approve, or control the issue or sale of a security by a company.

law. Jurisdiction in a state or local agency to raise a noncompliance issue with this Commission can only be premised on the existence of authority at that level to regulate those acts enumerated in Section 6(a) of the Act. The nature of this limitation is such that it imposes a duty on the Commission to make a preliminary determination as to the existence of prerequisite Section 6(a) jurisdiction in the intervening agency 11/, and in those instances when jurisdiction is found, not to issue an order until it has "satisfied" itself that compliance has been effected.

The City simply claims that because the LPSC took no "further action" under subsection (4) of the Amending Ordinance as to "pending matters", the Settlement Ordinance was not effectively repealed, and Section 9(g) thereunder continued to provide the City with jurisdiction over the securities issuance. The premise of the City's argument is that under a state statute R.S. § 33:4491, an ordinance repealing local charter provisions for utility regulation and transfering that authority to the LPSC by amending that charter, following a referendum, still required LPSC action or conduct to achieve its intended purpose.

The Legislative scheme set out in R.S. § 33:4491 provides no support for this argument. The legislature devised a method for any "town, city or parish" that currently exercised "powers of supervision, regulation and control" over local utilities to "surrender" that power to the LPSC, only upon submitting the question to the electors. The statute is clear on its face that the authority to divest a locality of utility regulatory functions is exclusively with the voters, and is in no way dependent on ratification by the LPSC.

The newly adopted language of subsection (4) of Section 4-1604 of the City's Home Rule Charter is procedural, and intended to protect the interests of parties to regulatory proceedings, pending the transfer of authority from the City to the LPSC. The failure of the LPSC to act in a particular proceeding cannot be interpreted as the exercise of legislative authority affecting local regulation repeal efforts under R.S. § 33:4491. The legislature specifically placed that authority in an exclusive class consisting of electors of Louisiana subdivisions exercising regulatory powers over utilities within their boundaries.

The next question of whether the November 28, 1981 referendum effectively transferred the City's regulatory authority over NOPSI to the LPSC depends upon the scope of the authority to transfer granted by the legislature, and the exercise of that authority by the City in this instance. These matters were dealt with by the legislature in Louisiana Revised Statutes §§ 33:4491 through 4496. R.S. § 33:4491 allows any "town, city, or parish" presently exercising "powers of supervision, regulation, and control" over a "local public utility" to "surrender" that power to the LPSC pursuant to a referendum. This statute provides the only procedure for a local government in Louisiana to relinquish utility regulatory authority.

11/ Public Service Commission of New York v. SEC, 166 F.2d 784, 787 (2d Cir.), cert. denied, 334 U.S. 838 (1948).

Pursuant to these statutes, the City Council adopted the Amending Ordinance, amending its Home Rule Charter to "...surrender...powers of supervision, regulation and control over gas, heat, power, and electric public utilities within the City of New Orleans..." The underscored portion of the language used by Council in amending its charter is identical to that used by the legislature in its enabling acts. R.S. § 33-4491-96. This identity strongly evidences the intent of Council to comply with those acts.

The Settlement Ordinance of 1922, which amended the Home Rule Charter, to provide for the City's regulatory authority again contained the same language.

> Be It Ordained, That in the exercise of its powers of regulation, supervision and control over the street railway, electric and gas properties in the city now owned by the New Orleans Railway & Light Company, the Commission Council of the City of New Orleans does hereby find and order as follows: (Emphasis added)

Thus, all these legislative actions affecting the City's authority to regulate utilities within its borders use the same language, i.e. "powers of regulation, supervision and control". The operative language used in R.S. § 33:4491 (authority to transfer power), the Amending Ordinance (amending charter to actually transfer power), and the Settlement Ordinance (implementing power) addresses the same subject matter.

That the term "powers" was used the same way, and was intended to express an entire concept is clear from a reading of various portions of the enabling legislation. For instance, R.S. § 33:4493 provides for the form of ballot to be used in the election, and the only separation of surrender of powers of control permitted in the ballot is that of separation of surrender of control over certain kinds of public utilities (e.g. gas, electric, water works) so as to surrender control only of the particular kind or kinds of public utilities specified in the ballot, and not certain functions of an individual public utility. The entirety of this concept is carried through in R.S. § 33:4494 and R.S. § 33:4495 dealing with divestiture and reinvestiture of such control. In providing for the canvassing of returns, declaring the result of the election and vesting control in the LPSC, R.S. § 33:4494 provides that:

> . . . upon the filing of certain papers with the LPSC, the powers of control theretofore vested in the town, city or parish government over any class of public utility which a majority of the qualified electors surrendered in the manner hereinabove provided, shall thereupon vest in the LPSC until such time as the municipal or parish government reinvests itself with such powers of supervision, regulation and control.

R.S. § 33:4495 merely provides for the election process to be used to reverse the election contemplated and addressed by R.S. § 33:4494. Nowhere in this legislation is there any contemplation of, or any provision for, partial divestiture or partial reinvestiture of the powers of supervision, regulation and control over a class of public utility. This statutory approach is eminently reasonable and practical.

Because the Amending Ordinance did not expressly repeal the Settlement Ordinance including Section 9(q), the issue remains whether that was achieved by implication. Article 23 of the Louisiana Civil Code provides in pertinent part that:

> The repeal is either express or implied:
>
> It is express, when it is literally declared by a subsequent law;
>
> It is implied, when the new law contains provisions contrary to, or irreconcilable with those of the former law.

The Supreme Court of Louisiana in State v. St. Julian discussed Article 23 and held that repeal by implication was not favored, but where the obvious purpose of the law is to cover the entire subject matter in question, such legislative action supersedes, all related prior legislation. 12/ As discussed above, the investment in and divestiture from the City of utility regulatory powers by the Settlement and Amending Ordinance, respectively, dealt with the same subject matter in its entirety. Consequently, the Settlement Ordinance, including Section 9(g), was repealed by implication following adoption of the Amending Ordinance by referendum.

In W.E. Perry v. City of Monroe, et al., the Louisiana Appellate Court for the Second Circuit again expressed displeasure with implied repeals, but found that resort to be acceptable "where the inconsistency is too clear and plain to be reconciled." 13/ Here the purposes of the two ordinances are more than mutually inconsistent, they are opposite so that the Settlement Ordinance must fail in its entirety.

Conclusion

The Commission is, therefore, satisfied that Ordinance No. 8264, as approved by the voters of New Orleans, operated to amend the City's Home Rule Charter so as to fully divest the City of regulatory authority over NOPSI as of January 1, 1982, transfer that authority to the LPSC, and repeal by implication the Settlement Ordinance entirely, including Section 9(g), upon which the City relies for authority to regulate the securities' issuances herein.

Because of this lack of authority, the City is not a State Commission or State Securities Commission, as defined in Sections 2(a)(26) and (27) of the Act, respectively, and thus lacks standing to raise compliance issues under Section 7(g) with this Commission.

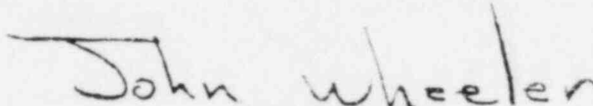
Due notice of the filing of the proposal, as amended, has been given in the manner prescribed in Rule 23 promulgated under the Act (HCAR No. 23563), and no hearing has been requested of or ordered by the Commission. Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and rules thereunder are satisfied:

12/ 221 La. 1018, 61 So. 2d 464 (1952).

13/ 360 So. 2d 1352 (La. App. 2d Circuit (1978).

IT IS ORDERED, accordingly, that the application-declaration of NOPSI and MSU proposing the issuance and sale of preferred stock, first mortgage bonds, and the common stock of NOPSI be granted, and permitted to become effective forthwith, subject to Rule 24, and jurisdiction is reserved with respect to fees and expenses.

By the Commission.



John Wheeler
Secretary

App. Exhibit 8

REID & PRIEST

40 WEST 57TH STREET
NEW YORK, N. Y. 10019
212 603-2000

WASHINGTON OFFICE
1111 19TH STREET, N. W.
WASHINGTON, D.C. 20036
202 828-0100
FACSIMILE 202 466-2327

NEW YORK OFFICE
CABLE ADDRESS "REIDAPT"
TELEX: 7105816721 RDPT NYK
220534 RDPT UR
FACSIMILE 212 603-2296
DIRECT DIAL NUMBER

DOCKETED
USNRC

'85 MAR -4 A11:08

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

New York, New York
February 1, 1985

Securities and Exchange Commission
450 Fifth Street, N. W.
Washington, D.C. 20549

Re: New Orleans Public Service Inc.
File No. 1-1319

Gentlemen:

On behalf of New Orleans Public Service Inc. (the "Company"), we enclose for filing one executed and two conformed copies of a Current Report on Form 8-K of the Company. Pursuant to the General Instructions to Form 8-K, we also enclose five additional copies of this Report.

We would appreciate your acknowledging receipt of the enclosed Report by stamping and returning to us the copy of this letter enclosed for that purpose.

Very truly yours,

REID & PRIEST, Counsel for
New Orleans Public Service Inc.

By /s/ William T. Baker, Jr.
William T. Baker, Jr.

Enclosures

FORM 8-K

SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D.C. 20549

CURRENT REPORT

PURSUANT TO SECTION 13 OR 15(d) OF THE

SECURITIES EXCHANGE ACT OF 1934

DATE OF REPORT (Date of earliest event reported) January 23, 1985

NEW ORLEANS PUBLIC SERVICE INC.
(Exact name of registrant as specified in its charter)

Louisiana	1-1319	72-0273040
(State or other jurisdiction of Incorporation)	(Commission File Number)	(IRS Employer Identification Number)

317 Baronne Street, New Orleans, Louisiana 70112
(Address of principal executive offices)

Registrant's telephone number, including area code: (504) 595-3100

Item 5. Other Events.

(1) As previously discussed in the Annual Report on Form 10-K for the year ended December 31, 1983, effective January 1, 1982, regulatory jurisdiction over the electric and gas service of New Orleans Public Service Inc. ("NOPSI") was transferred from the Council of the City of New Orleans ("Council") to the Louisiana Public Service Commission ("LPSC"). On January 29, 1985, the Council adopted an ordinance directing submission to the voters of the City of the question of whether regulatory jurisdiction should be retransferred to the Council. The referendum on this issue is scheduled to be held on May 4, 1985. NOPSI intends to take whatever actions are appropriate to oppose the retransfer of regulatory jurisdiction to the Council.

(2) As previously discussed in the Annual Report on Form 10-K, the Council has undertaken studies to consider the take-over of NOPSI by the City of New Orleans ("City"). On January 24, 1985, the Council adopted a resolution proposing to establish a public power authority for the purposes, among other things, of acquiring and operating electric power utilities within the City. Public hearings on this matter have been scheduled for February 28, 1985. NOPSI believes that any take-over by the City or any public power authority would not be in the best interests of NOPSI, its investors and customers, and will take all actions necessary to oppose such a take-over.

(3) On January 28, 1985, the City filed a Petition for Declaratory and Injunctive Relief in the Civil District Court for the Parish of Orleans, State of Louisiana, against NOPSI and Middle South Utilities, Inc. ("Middle South") seeking (1) preliminary and permanent injunctions against NOPSI's proposed issuance and sale of $40,000,000 aggregate principal amount of its first mortgage bonds and $20,000,000 aggregate par value of its preferred stock, and the proposed issuance and sale by NOPSI to Middle South of $40,000,000 aggregate par value of NOPSI's common stock (collectively, the "Securities") and against the issuance of any other securities of NOPSI, and (2) a declaration that issuance by NOPSI of the Securities is unlawful without the approval of the Council. The City based its request for a declaration that issuance of the Securities is unlawful and its request for injunctive relief on certain City ordinances (the "Ordinances"), which provided for regulatory jurisdiction of the Council over NOPSI's electric, gas and transit operations and stated, among other things, that no securities of NOPSI (except short-term debt and stock

dividends) shall be issued without the previously obtained approval of the Council. NOPSI believes, and Louisiana Counsel for NOPSI has previously expressed its opinion, that the Ordinance provisions with respect to approval of securities issuances were effectively annulled by virtue of (a) the transfer of regulatory jurisdiction over electric and gas utilities in the City from the Council to the LPSC on January 1, 1982, and (b) NOPSI's subsequent disposal of its entire interest in the transit business on June 30, 1983. (Reference is made to the Annual Report on Form 10-K for further information with respect to transfer of regulatory jurisdiction to the LPSC and NOPSI's disposal of its transit business.) The City further alleges, in support of its request for a preliminary injunction, that it will suffer irreparable harm if the Securities are issued. NOPSI and Middle South intend to take all necessary and appropriate defensive action.

(4) On January 23, 1985, a purported class action suit was filed against NOPSI in the Civil District Court for the Parish of Orleans, State of Louisiana, by several individuals on behalf of NOPSI's ratepayers, claiming damages totalling $100,000,000 for loss of personal and business property, broken pipes and personal discomfort due to a power outage of an alleged eight hours' duration occurring in the City on January 21, 1985. NOPSI intends to deny liability and to defend the suit vigorously. In the opinion of NOPSI, the final disposition of this matter will not have a material adverse effect upon NOPSI's financial condition or results of operations.

SIGNATURE

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

NEW ORLEANS PUBLIC SERVICE INC.
(REGISTRANT)

By /s/ Edwin Lupberger
Edwin Lupberger
Assistant Treasurer and
Assistant Secretary

Date: January 31, 1985

DOCKETED
USNRC

'85 MAR -4 A11:08

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

UNITED STATES CF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Appeal Board

In the Matter of	)	
	)	
LOUISIANA POWER & LIGHT COMPANY	)	Docket No. 50-382
	)	
(Waterford Steam Electric Station,	)	
Unit 3)	)	

CERTIFICATE OF SERVICE

This is to certify that copies of the foregoing "Applicant's Answer to Joint Intervenors' Motion For Leave to File Supplemental Memorandum and Response to Supplemental Memorandum" were served, by deposit in the United States mail, first class, postage pre-paid, to all those on the attached Service List, except those marked with an asterisk were served by hand delivery this 28th day of February, 1985.

Bruce W. Churchill, P.C.

Dated: February 28, 1985

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Appeal Board

In the Matter of	)	
	)	
LOUISIANA POWER & LIGHT COMPANY	)	Docket No. 50-382 OL
	)	
(Waterford Steam Electric Station, Unit 3)	)	

SERVICE LIST

* Christine N. Kohl
Administrative Judge
Chairman, Atomic Safety and Licensing Appeal Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

* W. Reed Johnson
Administrative Judge
Atomic Safety and Licensing Appeal Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

* Howard A. Wilber
Administrative Judge
Atomic Safety and Licensing Appeal Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

* Sherwin E. Turk, Esquire
Office of the Executive Legal Director
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Atomic Safety and Licensing Appeal Board Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Sheldon J. Wolfe
Administrative Judge
Chairman, Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Harry Foreman
Administrative Judge
Atomic Safety and Licensing Board
Director, Center for Population Studies
Box 395, Mayo
University of Minnesota
Minneapolis, MN 55455

Walter H. Jordan
Administrative Judge
Atomic Safety and Licensing Board
881 West Outer Drive
Oak Ridge, TN 37830

Docketing & Service Section (3)
Office of the Secretary
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Mr. Gary Groesch
2257 Bayou Road
New Orleans, LA 70119

Carole H. Burstein, Esq.
445 Walnut Street
New Orleans, LA 70118

Lynne Bernabei, Esq.
Government Accountability Project
1555 Connecticut Avenue, N.W.
Suite 202
Washington, DC 20009