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October 23, 1984

Dr. Harold R. Denton
Director
Office of Nuclear Reactor
Regulation
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

DOCKETING & SERVICE
PROD. & UTIL. FAC.

50-348A
50-364A
(2,206)

Re: Alabama Power Company
(Farley Nuclear Units Nos. 1 and 2):
Antitrust Enforcement Action

Dear Dr. Denton:

In order to assist the Staff in its determinations regarding Alabama Electric Cooperative's (AEC) request for antitrust enforcement action, we enclose copies of recent correspondence regarding the pricing of AEC's proportionate ownership entitlement to the Farley Nuclear Units and related matters. Specifically, there are enclosed a copy each of Mr. Lowman's letter of August 10, 1984 to Mr. Crawford, and Mr. Lowman's letter of October 18, 1984 to Mr. Crawford.

We are in receipt of Alabama Power Company's rather bulky Memorandum and attachments of October 15, 1984, filed in response to AEC's request for enforcement, which was filed one hundred and eight (108) days earlier, on June 29, 1984. The Company's filing is presently under review to determine whether it contains any matter warranting a response. Should the NRC Staff desire responses to any particular theories set forth in the Company's filing, please so notify us and we will be delighted to furnish such responses.

Sincerely yours,

D. Biard MacGuineas

D. Biard MacGuineas
Attorney for Alabama Electric
Cooperative, Inc.

cc: (with attachments)
As Per Attached
Service List

8410240065 841023
PDR ADOCK 05000348
M PDR

DS05

Charles R. Lowman
General Manager



August 10, 1984

Mr. B. J. Crawford, Manager
Government & Wholesale Service
Alabama Power Company
P. O. Box 2641
Birmingham, Alabama 35291

Dear Bob:

This is in further response to the letter to me dated July 23, 1984, signed by you. After further discussion of your letter with Jim Vann we have concluded that a response beyond what was stated in my letter to you of July 25, 1984 is appropriate in light of several of the remarkable statements in your July 23 letter.

Prior to our June 20 meeting, we made clear to you that indeed we could not feel from the Company's positions that APCo had been negotiating in good faith to comply with its antitrust license condition. However, we made equally clear that we would be willing to negotiate further in a small group if that is what APCo now desired, but that we would not delay seeking NRC assistance if necessary. I never expressed any intent to visit with NRC officials on an ex parte basis, or in any other manner.

As you are well aware, AEC has responded to APCo's "price proposal" of April, 1983, and has pointed out the numerous ways in which it violates the license condition and ALAB-646; we have responded both in meetings (May 24, 1983; June 29, 1983; at the September 1, 1983 meeting Mr. Vogtle opened by suggesting pricing not be discussed, and we went on to other matters), and in our correspondence (my letter to Mr. Vogtle of June 24, 1983; Mr. Parish's letter to Mr. Vogtle of September 20, 1983; my letter to Mr. Vogtle of October 11, 1983).

Mr. B. J. Crawford
August 10, 1984
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Moreover, Mr. Buettner advised us in his letter of April 11, 1984 that APCo's price for the sale was being revised and should be available by the end of the month. But this pricing had not been received by the June 20 meeting and when we requested it during the meeting, the Company would not agree to provide the pricing.

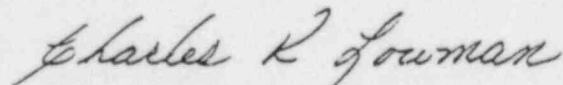
At our June 20, 1984 meeting I stated I did not have a dollar pricing proposal for discussion at the meeting. This should hardly have been surprising since the Company has consistently expressed a refusal to consider pricing based on AEC historical financing costs applied to the cost of the units, as required by ALAB-646.

At the meeting there was a discussion of AEC-receipt of Farley plant benefits in lieu of those coming from ownership. However, the claim in your letter that we suggested a unit power proposal is not correct. Company representatives requested AEC cost-of-interest data so APCo could make ownership and/or unit power proposals.

In the discussion of an alternative to ownership, I specifically stated that I did not think unit power alone was sufficient. And in response to your questioning about pricing or equivalent benefits, I stated on two occasions that we were negotiating and I could not say that there was not room for any movement on our part.

Finally, we have never received responses from the Company as to why, or in what respects, our January 20, 1984 proposed ownership, operating and nuclear fuel agreement, and wheeling amendments are unacceptable to the Company. These draft contracts are still on the table awaiting APCo's responses.

Sincerely,



Charles R. Lowman
General Manager

CRL:elf

cc: Mr. James A. Vann, Jr.

Charles R. Lowman
General Manager



October 18, 1984

Mr. B. J. Crawford, Manager
Government and Wholesale Service
Alabama Power Company
Post Office Box 2641
Birmingham, Alabama 35291

Dear Bob:

This is in response to the request in your letter of September 24, 1984, for elaboration of AEC's price proposal for its proportionate share (6.7%) of the Farley units. In our previous discussions of pricing, the Company explained that it had substituted its gross incremental cost of capital for its net book AFUDC rates on the units as one of the mark-ups used by the Company to arrive at its offering price. We then indicated that we had made our calculations using AEC's cost of money pursuant to ALAB-646. The Company rejected this concept and has never indicated any desire to know the results of our approach until the June 20, 1984 meeting with Jim Vann and myself. We did not have the numbers with us at that meeting.

An acceptable price to AEC for the units must be based on the following two primary principles inherent in ALAB-646: (1) that AEC must realize the benefits of its own financing availabilities as a rural electric cooperative and it must realize its usual tax advantages as a non-profit cooperative (ALAB-646, 13 NRC at 1103-1106); and (2) that AEC shall not suffer economic injury from APCo's anticompetitive behavior in denying AEC ownership access from the early 1970's through the present (ALAB-646, 13 NRC at 1084-1085). In sum, the price to AEC today for its 6.7% share in the units must be no greater than what the cost to AEC would have been had the Company complied with the antitrust laws and policies and permitted ownership access to AEC in the early 1970's. To charge AEC a higher price would only allow the Company to achieve the unlawful goal of its years of anticompetitive behavior--that goal being the economic injury of AEC. Thus, AEC's proposed price is consistent with ALAB-646 and is "sufficient to fairly reimburse Licensee for the proportionate share of its total costs...." (ALAB-646, 13 NRC at

Mr. B. J. Crawford, Manager
October 18, 1984
Page 2

1112) in that it precludes APCo from inflicting punitive economic injury upon AEC as a direct result of APCo's deliberate anticompetitive conduct in denying ownership access for over a decade.

The price to APCo which complies with these two governing principles is \$74,387,000 for AEC's 6.7% share in the two units. To arrive at this price, we have calculated AEC's total capitalized cost in the plant using AEC's interest during construction (IDC) rates, instead of the Company's AFUDC rates for the period 1973 through 1984. We have utilized the summary of actual construction expenditures by year on the Farley nuclear plant provided by Jim Elliott of APCo, received by Southern Engineering on July 20, 1982, as the primary source of APCo's investment costs. We have also utilized APCo's Form 1 and the summaries of net and gross investments for the Farley plant each year provided by Mr. Elliott. AEC formally requested to become a part owner of the Farley plant in 1971; our calculations assume that AEC began to invest money in the plant on January 1, 1973, and continued to furnish its prorata share of construction costs thereafter. Due primarily to capital additions and depreciation, the results of these calculations will necessarily change with time. Therefore, we have made these calculations to the end of calendar year 1984 estimating depreciation and capital additions to that plant.

Using AEC's IDC rates for the 1973 through 1984 period, AEC's investment in the units would have been \$101,660,000* by the end of 1984 had the Company complied with the anti-trust laws and their underlying policies. That figure is the ceiling on the cost to AEC of its 6.7% share as of the end of 1984. Associated with that net investment is AEC's weighted, historical long-term financing cost for the relevant time period of 8.719%.

* This figure is less depreciation, which must be accounted for in any event, but particularly so in these circumstances where AEC has been denied ownership access benefits of the units from the time they went on line through the present; the figure includes capital additions. However, we lack sufficient data from the Company to back-out from this figure illegitimate "costs" such as the expenses run up by the Company to deny AEC ownership access through litigation and lobbying.

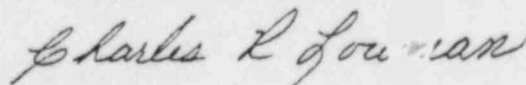
Mr. B. J. Crawford, Manager
October 18, 1984
Page 3

For a twenty-eight (28) year levelized loan** with quarterly payments at 8.719% interest, AEC's total interest cost on AEC's \$101,660,000 investment would be \$170,878,000. However, because of the Company's anticompetitive refusal to permit AEC ownership access in the early 1970's, the interest rate for a currently placed loan with the Federal Finance Bank will be approximately 12.5%. At this current rate, the interest cost portion of an AEC loan to produce the same total debt service becomes \$197,151,000--or \$26,273,000 greater than it would have been had the Company complied with the law. Thus, the price to APCo for AEC's proportionate interest in the units is \$101,660,000 less \$26,273,000, or \$75,387,000, which constitutes the fair value of the plant and fair reimbursement to APCo in light of the fact that APCo accepted the Construction Permits for the units subject to the future condition of potential joint ownership. It also represents the highest price to APCo which will disallow the Company from using the antitrust License Condition to economically injure AEC for the Company's anticompetitive purposes.

The above pricing relates to Farley Units 1 and 2 and related transmission substation. Any construction work in progress and unburned nuclear fuel at the time of closing would be priced in accordance with the same formula.

We are delighted that the Company has finally--now that the matter is actively before the NRC once again--expressed an interest in our pricing concept. We would be delighted to meet with you and other Company representatives to discuss it further.

Sincerely yours,



Charles R. Lowman
General Manager

CRL:elf

cc: Mr. James A. Vann, Jr.
Mr. M. J. Parish, III
D. Biard MacGuineas, Esq.

** Twenty-eight years is the remaining life of the plant as derived from the data furnished by Company representatives.

CERTIFICATE OF SERVICE

It is hereby certified that service of the attached document has been made by mailing or delivering* copies to the following on the 23rd day of October, 1984.⁸⁴

DOCKETED
OCT 23 P2:54

D. Beard MacGuineas
D. BIARD MACGUINEAS
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