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1775 K Street, Northwest, Washington, D.C. 20006
(202) 833-2300

September 14, 1971

Bertram H. Schur, Esquire
Associate General Counsel
U. S. Atomic Energy Commission
Washington, D. C. 20545

Re: Georgia Power Company
Edwin I. Hatch Nuclear Plant Unit No. 2
AEC Docket No. 50-366A
Department of Justice File 60-415-37

Dear Mr. Schur:

By various letters dated August 1971, Assistant Attorney General Richard W. McLaren requested the comments of certain Georgia Power Company customers regarding antitrust aspects of the operations of the Georgia Power Company in conjunction with his investigation of the Company's application to the Atomic Energy Commission for a nuclear fueled electric power generating plant license. The Power Section of the Georgia Municipal Association has undertaken to respond to that letter and to you directly on behalf of 48 municipalities[1/] in the State of Georgia which currently operate their own electric power systems and purchase electric energy at wholesale from the Georgia Power Company. A copy of this letter is being forwarded to Mr. McLaren.

1/ The Cities of Acworth, Adel, Albany, Barnesville, Blakely, Braselton, Brinson, Buford, Cairo, Calhoun, Camilla, Cartersville, College Park, Commerce, Covington, Doerun, Douglas, East Point, Elberton, Ellaville, Fairburn, Fitzgerald, Forsyth, Fort Valley, Grantville, Griffin, Hogansville, Jackson, LaFayette, LaGrange, Lawrenceville, Mansfield, Marietta, Monroe, Monticello, Moultrie, Newman, Norcross, Palmetto, Quitman, Sandersville, Sylvania, Sylvester, Thomaston, Thomasville, Washington, West Point, and Whigham.

As demonstrated below, the Georgia Power Company has achieved and maintained its monopoly position in the electric energy supply market in Georgia in violation of the antitrust laws. We, therefore, request that the Commission schedule a full hearing on this matter and pre-condition any nuclear plant license on the Company's termination of its unlawful restraints on trade in the power supply market in Georgia.

1. The Electric Energy Industry in the State of Georgia

The supply of electric energy in the State of Georgia is totally dominated by the Georgia Power Company. The Company, an operating affiliate in the Southern Company holding company system,[2/] sells electric power in Georgia at wholesale to 50 municipalities and 39 electric membership corporations and at retail to customers in 645 communities. As the sole supplier of electric energy to wholesale purchasers in Georgia, the Company has a complete monopoly on the State's bulk power supply system and effectively controls the sale of electric energy to all consumers of electric energy.

The Company also monopolizes the generation of electric energy in Georgia. It has acted in concert with its sister operating companies since the 1920's to coordinate the development of nearly all sources of steam electric energy generation facilities and since 1930 has engaged in central load dispatching, creating what is commonly referred to as "the Southern Pool."

During the 1940's the federal government began developing a series of hydro electric generating facilities in the Southeastern United States. In accordance with federal "preference laws" (16 U.S.C. 825s) the surplus power generated at these government dams was made available by the Southeastern Power Administration (SEPA) to publicly owned electric systems of Georgia. Due to the lack of municipally owned transmission facilities adequate to deliver the energy to load centers served by municipal systems, a series of contracts were entered into between SEPA, the municipally owned systems and the Georgia Power Company. The sum and substance of these contracts was and remains that the Company delivers to the public systems a firm energy supply at rates which take cognizance of the municipal systems' entitlement to

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2/ The Southern Company owns all of the common stock of Gulf Power Company, Mississippi Power Company, Alabama Power Company and Georgia Power Company. The latter two companies each own 50% of Southern Electric Generating Company which owns and operates a 1,000,000 KW steam electric generating plant in Alabama.

low cost SEPA energy. In return, the Company receives all non-firm capabilities of the facilities and is also allowed to schedule and take the energy output of the SEPA dams to suit its overall system needs.

The Georgia Power Company remains today as the sole entity in bulk power supply industry in Georgia. It controls all facilities to generate and transmit electric energy in the State. As is demonstrated below, its monopoly position is maintained by the contractual details of its arrangements with SEPA and the municipal systems which purchase wholesale energy from the Company.

2. Competitive Implications of Georgia Power Company Activities

Beyond the assumption of its role as sole firm in the bulk power supply market in Georgia, the Georgia Power Company has continually pursued an active policy to maintain its monopoly position. Through its critical role as the delivery agent for SEPA power, the Company has imposed many anti-competitive restraints on publicly owned systems which are unrelated to its transmission function. These anti-competitive restraints have had the effect of not only preventing municipal systems from developing facilities to reduce their own energy costs or develop alternative sources of energy but also of making the consequences of an attempt to develop such alternatives so catastrophic as to preclude their consideration.

These anti-competitive restraints have been imposed upon the municipal systems by various contractual arrangements over a span of years. They are presently contained in four contracts which are attached hereto as exhibits:

Exhibit 1:	SEPA-Georgia Power Contract (June 19, 1970)
Exhibit 2:	SEPA-Municipal Contract (June 20, 1970)
Exhibit 3:	"WR-4" Rate Schedule[3/]
Exhibit 4:	"WR-6" Rate Schedule[3/] and other excerpts from Tariff filed June 1, 1970, FPC Doc. No. E-7548

3/ These are rate schedules under which the Company sells energy to publicly owned systems. The Company has proposed a rate increase pending now before the FPC (Doc. No. E-7548) which would supplant the WR-4 Schedule with higher rates contained in the WR-6 Schedule.

Should a public system breach any of the following contractual provisions, the Company may, within 20 days, cease all electric service to that system.

a. "Full Requirements" Clause. The most onerous anti-competitive restriction to which the municipal systems have been subjected is the "full requirements" clause.[4/] It essentially disables municipal systems to the point where they cannot seriously compete with the Company for new industrial customers at the retail level.

The full requirements clause precludes municipal systems from looking to any alternative sources of wholesale power which include self generation or purchase from TVA and power companies in South Carolina, Florida and Alabama. The terms of the interlocking SEPA-Company and SEPA-Municipal contracts would cause the municipalities to lose their SEPA allocations should they in any way seek to improve their power costs by obtaining any portion of their system requirements from a source other than the Georgia Power Company. Thus, under the contracts, the municipalities may neither separately or together generate energy to meet future loads nor "peak shave" to reduce their current energy costs.

b. "Ratcheted" Demand. The company employs a ratchet[5/] in its rate schedules to determine the municipal customers' peak demand which compounds the burden of the prohibition against "peak shaving." We note that such a ratchet was viewed as a potentially dangerous anti-competitive device by the Justice Department in its letter to the Atomic Energy Commission of August 2, 1971, relating to the Duke Power Company. We believe it has equally serious implications in this case.

c. Restricted Voltages and Delivery Points. The Company has restricted the voltage level it will deliver energy to municipal purchasers[6/] which further limits any competitive force that municipal systems might otherwise exert. The Company supplies energy at no more than 12.5 KV to wholesale customers at multiple delivery points. Due to the distance limitation on the transmission of large blocks of energy at such low voltages, when additional service is needed for a large new customer or for general load growth new delivery points become necessary. New industrial customers

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4/ Exhibit 1, p. 13, §4.2; Exhibit 2, p. 5 §1(a)(3); Exhibit 3, p. 1; Exhibit 4, First Revised Sheet No. 23 and Second Revised Sheet No. 35.

5/ Exhibit 3, p. 2; Exhibit 4, First Revised Sheet No. 24.

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often demand service at higher voltages, from 34.5 KV to 69 KV, and this voltage restriction severely limits the Company's wholesale purchasers from competing for these new industrial loads. The Company has also been reluctant to establish new delivery points further impairing the municipal systems' ability to serve their customers.

These practices create three additional burdens on the municipalities. First, they force the municipalities to sectionalize their systems and operate them in isolation for each delivery point because no single delivery point is capable of handling the load of any other delivery point in the event of outages. Thus, a municipality is prevented from providing effective internal service protection. Second, the proliferation of delivery points creates an excessive capital cost burden on wholesale service which is directly charged to the municipalities. Third, as a municipality grows and delivery points proliferate, the municipal system becomes completely surrounded by the Company's distribution facilities which are then used to serve new areas which would normally constitute the anticipated growth areas of the municipal system.

d. Resale Limitations. Finally, the Company further restricts its wholesale customers by prohibiting them from reselling any energy beyond the Georgia Power Company service area.[7/] Thus a municipal system has very little, if any, opportunity to successfully achieve coordination with another energy source beyond the Georgia service area since it would be prohibited from selling energy.

3. Conclusion

When the effects of these anti-competitive restrictions are analyzed against the background of the electric energy industry which now exists in Georgia, one is compelled to conclude that the Georgia Power Company not only possesses monopoly power but has willfully maintained that power through the imposition of anti-competitive contractual restrictions on its wholesale customers. Such conduct is clearly within the scope of conduct prohibited by Section 2 of the Sherman Act.[8/] Freedom of access into and out of the market place is a prime yardstick for measuring competitive performance, and we

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7/ Exhibit 4, First Revised Sheet No. 23.

8/ United States v. Grinnell Corporation, 384 U.S. 563, 571 (1966); United States v. United Shoe Machinery Corporation, 110 F. Supp. 295, 344, 345, (D. Mass., 1953), affirmed per curiam 347 U.S. 521.

submit that under any construction of the law the practices of the Georgia Power Company must be seen as aimed at preventing municipal systems from entering the electric energy generation market in Georgia. From generation to high voltage transmission to delivery voltage the Company has pursued a policy of restricting its wholesale customers to doing only what they are currently doing. Thus, the Company faces no test of its own ability to compete in meeting the energy needs of the future and deprives the electric consumer of any yardstick by which to measure the Company's performance.

Under the Company's proposed tariff in its pending rate proceeding (FPC Docket No. E-7548) all of these complained of practices would be continued. The municipal systems which purchase wholesale power from the Company would again be barred from posing any competitive threat to the Company. The issue here goes beyond a simple refusal by the Company of a municipal system's request to gain access to the bulk power supply market; rather, the municipal system is prevented by contract and practices of the Company from even seeking any such arrangement.

The effect of these restrictive practices becomes even more burdensome as the Company constructs new exclusively owned generation facilities. The Atomic Energy Commission Act now provides an opportunity whereby applicants for nuclear generation facilities must demonstrate that their activities are in the best interests of a competitive economy. We submit that the Georgia Power Company cannot meet this test and that a full scale hearing under the Act is required to determine what modifications must be made to the Company's current policies to insure that as an AEC licensee the Company would not further pursue the illegal restraints on trade which characterize its current operations.

Respectfully submitted,

DUNCAN, ALLEN and MITCHELL

By: _____
C. Emerson Duncan, II

HEARD, LEVERETT & ADAMS

By: L. Clifford Adams, Jr.
L. Clifford Adams, Jr.

Attachments

Attorneys for Power Section,
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File-WEB

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