

April 8, 1988

Docket Nos. 50-348/364  
50-321/366  
50-424/425

Mr. Louis B. Long  
General Manager  
Southern Company Services  
P.O. Box 2625  
Birmingham, Alabama 35202

Dear Mr. Long:

SUBJECT: PROPOSAL TO FORM SOUTHERN NUCLEAR OPERATING COMPANY

Re: Farley Nuclear Plant, Units 1 and 2  
Hatch Nuclear Plant, Units 1 and 2  
Vogtle Electric Generating Plant, Units 1 and 2

The NRC staff met with representatives of Alabama Power Company, Georgia Power Company, and Southern Company Services in Rockville, Maryland on March 18, 1988 to discuss the types and extent of technical information that the staff would require in order to properly evaluate a proposal to form an operating company to handle operation of the Farley, Hatch and Vogtle nuclear plants. A summary of that meeting has been issued separately.

We did not discuss any matters relating to antitrust or financial qualification issues that would arise from the proposal to form an operating company. However, such issues would have to be considered in any application to license a new company as operator of the three nuclear plants. Preliminary staff questions regarding such financial qualification and antitrust issues are identified in the enclosure. Should you have questions regarding these matters, we would be happy to arrange a meeting to discuss them with you.

Sincerely,

Original signed by:

Elinor G. Adensam, Director  
Project Directorate II-1  
Division of Reactor Projects - I/II

Enclosure: As stated

cc: See next page

\*SEE PREVIOUS CONCURRENCES

\*PM:PDII-3  
LCrocker:pw  
3/22/88

\*PM:PDII-3  
JHopkins  
3/23/88

\*PM:PDII-1  
EReeves  
3/23/88

\*PMAS-PTSB  
WLambe  
4/4/88

\*PMAS-PTSB  
JPetersen  
4/1/88

*EW*  
D:PDII-1  
EAdensam  
4/8/88

\*OGC  
4/6/88

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P PDR

Docket Nos. 50-348/364  
50-321/366  
50-424/425

Mr. R. P. McDonald  
Senior Vice President  
Alabama Power Company  
P.O. Box 2641  
Birmingham, Alabama 35291-0400

Dear Mr. McDonald:

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Sincerely,

Elinor G. Adensam, Director  
Project Directorate II-1  
Division of Reactor Projects - 1/11

Enclosure: As stated

Identical letters sent to the following:

Mr. George F. Head  
Senior Vice President  
Georgia Power Company  
P.O. Box 4545  
Atlanta, Georgia 30302

Mr. Louis B. Long  
General Manager  
Southern Company Services  
P.O. Box 2625  
Birmingham, Alabama 35202

*see change  
on Anti-trust  
with his change  
OK JES  
4/6/88*

\*SEE PREVIOUS CONCURRENCES  
\*PM:PDII-3  
LCrocker:pw / /88

\*PM:PDII-3  
JHopkins / /88

\*PM:PDII-1  
EReaves  
4/1 /88

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WLambert  
4/1 /88

PNAS-PTS  
JPetersen  
4/1 /88

D:PDII-1  
EAdensam / /88

OGC  
/ /88

Insert A

The question of whether an antitrust review would be needed for SONOPCO to be authorized to operate the plants with current operating licenses, is under staff review. The addition of SONOPCO to the construction permit and to the operating license application for Vogtle Unit 2 appears to warrant a changed circumstances review.

Scinto comments  
4/6/88

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EKL

## ANTITRUST ISSUES

From this proposal, the Southern Nuclear Operating Company, Inc. (SONOPCO), as envisioned by the Southern Company, will assume operating responsibility for the licensed nuclear plants owned or co-owned by two of its operating subsidiaries, Alabama Power Company and Georgia Power Company. Reportedly, SONOPCO will not have any ownership interest in any of the units. Based upon the available data, there are several areas of concern from a competitive and/or antitrust standpoint that have arisen as a result of this proposal.

A. NRR sees two broad antitrust areas of concern resulting from the creation of SONOPCO:

1. Adherence to the provisions of Section 105c and the Commission's regulations during the amendment review, and
2. The maintenance of existing antitrust license conditions.

Regarding the first issue, the NRC's rules and regulations (10 CFR 50.33a) and Section 105c of the Atomic Energy Act, as amended in 1970, specifically require antitrust review of applicants that are going to construct or operate a class 103 license. ~~If SONOPCO is going to be a licensee (Farley, Hatch and Vogtle), it represents a new licensee and appears to require an antitrust review.~~ Insert A

Antitrust license conditions are attached to five of the six existing units in question. The other unit, Hatch 1, which was undergoing review prior to enactment of the 1970 amendment, was a "grandfathered" unit for purposes of antitrust review. The licensees that have been obligated to specific marketing requirements by the antitrust license conditions must continue to abide by these requirements after the formation of SONOPCO. If SONOPCO intends to be involved or becomes involved in the marketing or marketing decisions regarding power and energy produced from these five units, this factor must be considered in any antitrust review. If it is anticipated that SONOPCO will not be involved in the marketing of power and energy from these units, but will just operate the units, then the existing licensees, Alabama Power Company and Georgia Power Company, will remain licensees and continue to be obligated to existing antitrust license conditions. This separation of powers must be explicitly addressed in writing in any application for amendment of the existing licenses.

B. Ancillary problem areas may arise as a result of the formation of SONOPCO as now envisioned.

1. There is an ongoing 2,206 antitrust compliance proceeding involving one of the Southern Company operating companies, Alabama Power Company. To the extent a litigated decision or settlement is reached in this proceeding, the newly formed SONOPCO, to the extent applicable, will be subject to the conditions of the settlement.

Docket Nos. 50-348/364  
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50-424/425

Mr. George F. Head  
Senior Vice President  
Georgia Power Company  
P.O. Box 4545  
Atlanta, Georgia 30302

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Project Directorate II-1  
Division of Reactor Projects - I/II

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Senior Vice President  
Georgia Power Company  
P.O. Box 4545  
Atlanta, Georgia 30302

Mr. Louis B. Long  
General Manager  
Southern Company Services  
P.O. Box 2625  
Birmingham, Alabama 35202

*Rechanges on Antitrust with [unclear] 4/6/88*

\*SEE PREVIOUS CONCURRENCES  
\*PM:PDII-3 \*PM:PDII-3  
LCrocker:pw JHopkins  
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\*PM:PDII-1  
EReeves  
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EAdensam  
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\*PM:PDII-3 \*PM:PDII-3  
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with recording  
JG S R  
4/6/88*

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50-371/366  
50-424/425

Mr. R. P. McDonald  
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Birmingham, Alabama 35291-0400

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Sincerely,

Elinor G. Adensam, Director  
Project Directorate II-2  
Division of Reactor Projects - I/II

Enclosure: As stated

✓ cc: ~~J. Petersen~~  
~~W. Lamb~~

Identical letters sent to the following:

Mr. George F. Head  
Senior Vice President  
Georgia Power Company  
P.O. Box 4545  
Atlanta, Georgia 30302

Mr. Louis B. Long  
General Manager  
Southern Company Services  
P.O. Box 2625  
Birmingham, Alabama 35202

PM:PDII-3  
LCrocker:pw  
3/22/88

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JHopkins  
3/23/88

PM:PDII-1  
ERees  
3/23/88

✓ D:PDII-1  
EAdensam  
1/88

✓ Add for consultation:  
~~PMAS-PTSB~~ PMAS-PTSB  
W Lamb J Petersen  
OGC  
BVogler



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D. C. 20555

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Elinor G. Adensam, Director  
Project Directorate II-2  
Division of Reactor Projects - I/II

Enclosure: As stated

cc: ~~J. Geterson~~ Petersen  
~~W. Lambe~~

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Mr. George F. Head  
Senior Vice President  
Georgia Power Company  
P.O. Box 4545  
Atlanta, Georgia 30302

Mr. Louis B. Long  
General Manager  
Southern Company Services  
P.O. Box 2625  
Birmingham, Alabama 35202

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Docket File

NRC PDP

Local PDR

PDI-3 R/F

S. Varga

G. Lainas

E. Adensam

M. Rood

L. Crocker

J. Hopkins

~~OGG-WF~~ B Vogler, OGC

E. Jordan

J. Partlow J Petersen, PTSB

ACRS (10) W Lambe, PTSB

Hatch R/F

Vogtle R/F

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Enclosure:  
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~~cc: J. Peterson  
W. Lambe~~

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Birmingham, Alabama 35291-0400

Mr. Louis B. Long  
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Southern Company Services  
P.O. Box 2625  
Birmingham, Alabama 35202

PM:PDII-3  
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JHopkins  
3/13/88

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EReeves  
3/12/88

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W. Lamb~~

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Georgia Power Company  
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Atlanta, Georgia 30302

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JHopkins  
3/23/88

PM:FDII-1  
ERieves  
3/23/88

D:PDII-1  
EAdensam  
1/88

Joseph M. Farley Nuclear Plant

cc:

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Executive Vice President  
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State Health Officer  
State Department of Public Health  
State Office Building  
Montgomery, Alabama 36130

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General Manager - Nuclear Plant  
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Georgia Power Company

Edwin I. Hatch Nuclear Plant,  
Units Nos. 1 and 2

cc:

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George F. Head  
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Georgia Power Company  
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Mr. L. T. Gucwa  
Engineering Department  
Georgia Power Company  
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Atlanta, Georgia 30302

Nuclear Safety and Compliance Manager  
Edwin I. Hatch Nuclear Plant  
Georgia Power Company  
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Mr. Louis B. Long  
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Resident Inspector  
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Regional Administrator, Region II  
U.S. Nuclear Regulatory Commission  
101 Marietta Street, Suite 2900  
Atlanta, Georgia 30323

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Office of Planning and Budget  
Room 610  
270 Washington Street, S.W.  
Atlanta, Georgia 30334

Mr. J. Leonard Ledbetter, Commissioner  
Department of Natural Resources  
270 Washington Street, N.W.  
Atlanta, Georgia 30334

Chairman  
Appling County Commissioners  
County Courthouse  
Baxley, Georgia 31513

Georgia Power Company

Vogtle Electric Generating Plant

cc:

Mr. L. T. Gucwa  
Manager of Safety and Licensing  
Georgia Power Company  
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Atlanta, Georgia 30302

Resident Inspector  
Nuclear Regulatory Commission  
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Waynesboro, Georgia 30830

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Waynesboro, Georgia 30830

George F. Head  
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Atlanta, Georgia 30302

Regional Administrator, Region II  
U.S. Nuclear Regulatory Commission  
101 Marietta Street, N.W., Suite 2900  
Atlanta, Georgia 30323

## FINANCIAL QUALIFICATIONS REQUIREMENTS UNDER 10 CFR PART 50

The following areas of financial qualification review are required by the regulations based on the limited information provided by the Southern Company so far. When more details of the licensees' plan are known, the requirements may be adjusted based on the specific provisions of the plan.

10 CFR 50.2 Presumably licensees would like SONOPCO treated as an "electric utility" in that it will be a generation subsidiary, if it recovers the cost of this electricity, at least indirectly, through rates established for GPC and APC by State PUCs and by FERC.

Licensees should provide necessary information to demonstrate that SONOPCO qualifies to be considered an "electric utility" as that term is defined by 10 CFR 50.2.

10 CFR 50.33(f) If SONOPCO is an "electric utility," then the full financial qualifications review under 50.33(f) would not be required for the OL amendments, except that the requirements for newly-formed entities listed in 50.33(f)(3) apply (see below). A financial qualifications review will be required for the CP amendment on Vogtle 2 (50.33(f)(1); and Appendix C to Part 50). (See below.)

### Requirements for Newly-Formed Entities Such As SONOPCO (50.33(f)(3))

1. Licensees should describe legal and financial relationships among SONOPCO, GPC and APC.
2. Licensees should demonstrate that GPC and APC ratepayer revenues will continue to be the source of funds for all nuclear plant operating and maintenance costs and eventual decommissioning costs.
  - a. Staff will look for a demonstration that SONOPCO formation will in no way change GPC's and APC's commitment and obligation to provide their ownership share of all nuclear plant costs regardless of the

level of the costs or any increases in costs. (SONOPCO presumably has no other source to cover such costs other than GPC and APC, and the other joint owners of Vogtle and Hatch - i.e., Oglethorpe, MEAG and Dalton.) (APC is the sole owner of Farley.)

- b. Licensees should describe the flow of funds from APC and GPC (and from the other joint owners of Vogtle and Hatch) to SONOPCO. Provide copies of the operating agreement among SONOPCO and the owners and reference the provisions regarding payment of nuclear plant costs to SONOPCO.

Requirements for the CP Amendment (50.33(f)(1); and Appendix C, Part 50)

1. Licensees should demonstrate that SONOPCO has reasonable assurance of obtaining the funds to complete construction of Vogtle 2, and to cover fuel cycle costs for the first cycle.
2. Provide estimates of the remaining cost to complete construction and cost of the first fuel cycle.
3. Provide a detailed statement of the joint owners' sources of funds for completing Vogtle 2 and for the first fuel cycle.
4. Provide copies of the agreement between SONOPCO and the joint owners that covers payment of the above costs to SONOPCO. Reference pertinent provisions.

## ANTITRUST ISSUES

From this proposal, the Southern Nuclear Operating Company, Inc. (SONOPCO), as envisioned by the Southern Company, will assume operating responsibility for the licensed nuclear plants owned or co-owned by two of its operating subsidiaries, Alabama Power Company and Georgia Power Company. Reportedly, SONOPCO will not have any ownership interest in any of the units. Based upon the available data, there are several areas of concern from a competitive and/or antitrust standpoint that have arisen as a result of this proposal.

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Antitrust license conditions are attached to five of the six existing units in question. The other unit, Hatch 1, which was undergoing review prior to enactment of the 1970 amendment, was a "grandfathered" unit for purposes of antitrust review. The licensees that have been obligated to specific marketing requirements by the antitrust license conditions must continue to abide by these requirements after the formation of SONOPCO. If SONOPCO intends to be involved or becomes involved in the marketing or marketing decisions regarding power and energy produced from these five units, this factor must be considered in any antitrust review. If it is anticipated that SONOPCO will not be involved in the marketing of power and energy from these units, but will just operate the units, then the existing licensees, Alabama Power Company and Georgia Power Company, will remain licensees and continue to be obligated to existing antitrust license conditions. This separation of powers must be explicitly addressed in writing in any application for amendment of the existing licenses.

B. Ancillary problem areas may arise as a result of the formation of SONOPCO as now envisioned.

1. There is an ongoing 2.206 antitrust compliance proceeding involving one of the Southern Company operating companies, Alabama Power Company. To the extent a litigated decision or settlement is reached in this proceeding, the newly formed SONOPCO, to the extent applicable, will be subject to the conditions of the settlement.

2. Georgia Power Company may be required to undergo another operating license antitrust review of its Plant Vogtle. NRC staff procedures now require multi-unit licensees, e.g., Vogtle 1 and 2, to undergo separate operating license reviews when each unit is licensed more than eighteen months apart. The obvious rationale for this policy is that the licensee may have changed its marketing activities since the antitrust review of the initial unit and completion of the second unit eighteen months later. The Plant Vogtle 1 antitrust operating license review was completed on November 21, 1986 and the OL was issued on January 16, 1987. If the second Vogtle unit does not receive its operating license before July of 1988, a separate antitrust operating license review for Unit 2 could be conducted. (NUREG-0970, Section 3.1, p. 9). This is an issue of concern notwithstanding the creation of SONOPCO.

C. The Companies' Submissions To Date

The limited information provided to date by representatives of the Southern Company system, indicates that a newly created SONOPCO will not have any marketing control or responsibilities over distribution of the power and energy from the three nuclear plants in question. If this is the structure the Southern Company intends to pursue, it would allay many of the staff's concerns regarding any potential shifts in market power in the licensees' service areas as a result of the creation of SONOPCO.

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