UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of	)	
	)	
ALABAMA POWER COMPANY,	)	Docket Nos. 50-348A
Notice of Violation of	)	50-364A
Antitrust License Condition	)	
(Joseph M. Farley Nuclear	)	
Plant, Units 1 and 2)	)	

Before the Director,
Office of Nuclear Reactor Regulation

REPLY OF ALABAMA ELECTRIC COOPERATIVE, INC.
TO ALABAMA POWER COMPANY'S RESPONSE TO
THE NRC'S NOTICE OF VIOLATION OF
ANTITRUST LICENSE CONDITION

Alabama Electric Cooperative, Inc. (AEC) hereby replies to the "Response of Alabama Power To Notice of Violation" which APCo submitted to the Director on August 27, 1986.1/

On June 16, 1986, the Director, Office of Nuclear Reactor Regulation determined that APCo has violated its Antitrust License Condition by proposing unreasonable terms and conditions for the required APCo offer to AEC of the sale of a proportionate share of the Farley nuclear units. After obtaining two extensions of time, APCo filed its Response to the Director's Notice of Violation.

1/AEC's Reply also answers the contentions in the letter of August 12, 1986 from APCo counsel J.A. Bouknight, Jr. to NRC Staff counsel Benjamin H. Vogler, since the contentions in that letter are essentially duplicated in portions of APCo's "Response".

I. APCo's Claimed Justifications for Its License Condition Violations Offer Nothing New for the Director's Consideration

The introduction and Section I of APCo's Response (pp. 1-19) constitutes an apologia and rationalization for its various positions with respect to the price, terms and conditions of its involuntary proposal to sell a share of the Farley units. The Director has already found many of APCo's positions to be unreasonable and in violation of its License Condition. Little would be accomplished towards curing APCo's non-compliance and towards achieving a responsible resolution of APCo's ongoing refusal to grant reasonable ownership access by further point-by-point refutation of APCo's redundant rhetoric and generalized efforts at justification, which have been rejected by the NRC Staff after giving APCo numerous opportunities to explain and support its positions over a twenty-three month period prior to the NRC Staff's issuance of the Notice of Violation. AEC has responded to APCo's purported justifications in AEC's pleadings and correspondence, and in meetings with the NRC Staff, so that the NRC Staff is well aware of AEC's positions on the material areas of APCo's continuing non-compliance.

Likewise, AEC sees no practical purpose to be served by a detailed reply to the APCo Response's hyperbolic mischaracterizations of AEC's positions and motives in the discussions between the Company and AEC, which AEC had hoped would lead to

compliance by APCo with ALAB-646 [2/] and the License Conditions, which were imposed on APCo as a result of APCo's anticompetitive conduct over a period of decades. APCo's transparent effort, through the use of vitriol and misstatement, to cloud the facts of its noncompliance and of its efforts to delay compliance[3/] does not merit response.

Instead, what we do address below are APCo's claims that its current specific positions constitute compliance with its antitrust obligations, and we reply to APCo's continuing refusal to comply in several important respects.

II. APCo's New Positions

This Section addresses APCo's Response, pp. 19-34, wherein APCo sets forth its claimed modified or changed positions, which APCo asserts are designed to bring it into compliance with its obligations under its License Conditions.

1. Price: original (book) cost less depreciation.

AEC has no dispute with the price formulation set forth in the Notice of Violation at p. 6, as we understand it. However, APCo's response (pp. 20-21) erroneously claims that APCo is in

---

[2/] In the Matter of Alabama Power Company, ALAB-646, 13 NRC 1027 (1981), Commission review denied, 14 NRC 795 (1981), affirmed Alabama Power Co. v. Nuclear Regulatory Com'n, 692 F.2d 1362 (11th Cir. 1982), rehearing and rehearing en banc denied 698 F.2d 1238 (1983), certiorari denied 464 U.S. 816 (1983).

[3/] See the events set forth in letter dated June 29, 1984, with attachments from Charles R. Lowman, General Manager of Alabama Electric Cooperative, Inc. to Richard C. DeYoung, Director, Office of Inspection and Enforcement, U.S. Nuclear Regulatory Commission.

compliance using an original cost, less depreciation basis which includes (p. 20):

> "a financing cost component which includes the weighted average cost of debt and preferred stock financing recorded in APCo's books during the period in which Farley was constructed, 1968-1981, together with an amount necessary to reimburse APCO for the total net income tax effect of the sale."

Neither of these elements is consistent with the price criteria adopted in the Notice of Violation; and neither represents a reasonable effort to comply with APCo's antitrust obligations. Both these unreasonable pricing elements are discussed below (in Section III with respect to the "financing cost component" and in Item 3 of this Section II with respect to the income tax factor).

2. Improper "ownership risk" element.

The Notice of Violation (p. 12) rejects APCo's claim that it is reasonable to inflate the purchase price by some "ownership risk" element. APCo appears to accede to the Director's determination (APCo Response, pp. 21-22). However, the Director's rejection of the "ownership risk" element is not limited to "any separate mark-up" or to "past ownership risks", as a reading of APCo's Response (p. 22) might imply. To try to use "ownership risk" as a pricing factor would be unreasonable in any manifestation and in reference to any period of time. Any price element purportedly reflecting such an amorphous and hypothetical factor would open up the possibility of APCo deriving significant profits from its anticompetitive behavior. Unless APCo now clarifies its position and renounces any such

claim in its entirety, it has not fully acceded to the Director's determination on this point.

3. Unreasonable income tax factor.

AEC strongly urges that there should be no obligation to reimburse APCo for any income taxes with respect to AEC's purchase of its share of the plant. If AEC had been allowed by APCo to invest in Farley units during construction prior to completion, there would have been no arguable income tax consequences to APCo. If APCo is required to make any income tax payments because of the sale to AEC, this would be the result solely and exclusively of a profit or gain realized because of APCo's continuing violation of Section 105(c) of the Atomic Energy Act. Under such circumstances it would be unconscionable to require AEC to reimburse APCo for any taxes paid by APCo.

Furthermore, to permit APCo to pass along to AEC any income tax liability incurred by APCo as a result of the sale would deprive AEC of the tax advantages conferred on rural electric cooperatives by Congress. To avoid depriving AEC of these tax advantages was a primary reason for the Appeal Board's reversal of the Licensing Board's decision to order unit power--rather than ownership access to the units. As the Appeal Board stated:

> "the action of the [Licensing] Board in ordering unit power did not leave AEC in its normal competitive position; its real effect was to deprive AEC of its normal financing advantages in connection with the power it would obtain from the Farley plant. These tax and other financing advantages were accorded the

> cooperatives by the Congress as a matter of governmental policy....we know of no sound reason why we should act to keep AEC from enjoying them.[footnotes omitted]"

To burden AEC with APCo's income tax liability and to thereby deprive AEC of its Congressionally-conferred advantages in this regard would be arbitrary and capricious and in direct conflict with the controlling law of this case.

In any event, to the degree, if any, that Staff deems permissible the collection of some income taxes from AEC on the sale, such reimbursement should related only to those taxes actually paid by the Company and not to some theoretical cost. This position is supported by the Notice of Violation which contemplates only consideration of "income taxes assessed" and only those taxes which are "actual costs". "APCo's hypothetical taxes...are not actual costs." Notice of Violation, p. 8 and n. 8. The Notice of Violation (p. 8) also clearly requires the reduction of any tax reimbursement by the amount of "any deferred taxes or investment tax credits realized by APCo on AEC's pro rata share."

APCo's Response (pp. 22-23) is couched in broad and sweeping terms and, therefore, offers no assurance that APCo's actual position is in compliance with the Notice of Violation.

From previous discussions and correspondence with APCo on this issue, AEC is convinced it will take accountants expert in the field of public utilities and taxation to resolve the details of this issue. AEC's position on taxes continues to be as stated in the September 30, 1985 letter to Benjamin Vogler

from O. Franklin Rogers and the AEC memorandum of September 30, 1985 to Mr. Argil Toalston "Taxes on Sale of Farley Plant."4/ At most, the principle governing income taxes should be that AEC is responsible only for the actual net effect of any income taxes due to (1) the difference in price between APCo's booked cost including booked AFUDC and the cost basis for income tax purposes without recognition of AFUDC (cost), (2) deferred taxes associated with the difference between booked straight line depreciation and accelerated depreciation for income tax purposes (either cost or credit), and (3) investment tax credits received by APCo on the portion of the plant to be sold to AEC, but not recaptured under the tax laws (credits). These components should be netted, with proper treatment given to the time value of money and to ordinary income versus capital gains portions under applicable tax laws, to determine the true net actual tax liability of the Company. No inflation of APCo's net tax liability for any claimed tax-on-tax effect should be permitted. These criteria adhere to the directive of the Notice of Violation that AEC reimburse APCo for "only actual costs" relative to income taxes.

Again it is AEC's primary position that any income taxes related to the sale to AEC is the product of APCo's unlawful refusal to grant ownership access to AEC. The tax burden of such unlawful conduct is properly placed on APCo and its owner, The Southern Company; and the Appeal Board's decision in this

---

4/These documents are attached hereto as Tab A.

case requires APCo to bear its own income tax liabilities.

4. "Entitlement fee" and "depressed" stock factor.

APCo appears to have abandoned its previous effort to improperly inflate the cost of the Farley units by these hypothetical factors. APCo Response, p. 23. We read this as a full abandonment of the claim, and hence agree that the issue is no longer in the proceeding.

5. Non-quantifiable operations and maintenance costs.

The Notice of Violation unequivocally rejected APCo's pricing demands for (1) a percentage surcharge for unidentified operating and maintenance costs, (2) a surcharge on new investment, and (3) a percentage surcharge on fuel costs.5/ Only itemized, actual, properly allocated costs are permissible. Notice of Violation, p. 10.

While APCo claims to be in compliance with the Notice of Violation, APCo's proposed contract language (APCo Response, p. 25) clearly does not comply. It is open-ended and non-specific, and is simply an open invitation to APCo to misallocate costs. For instance, APCo's proposed language appears to be an attempt to improperly treat administrative and general expenses as Farley unit operating expenses. APCo has had years in which to identify and quantify these alleged operating costs, yet it has failed to do so. The implicit assumption underlying APCo's effort to transfer costs to AEC's share of

---

5/APCo does appear to have abandoned its claims for fuel and new investment surcharges, although APCo's Response is less than specific on these issues.

the units, or to the units themselves, is that APCo has been improperly accounting for these costs in its past filings with the ratemaking agencies. In light of this prolonged failure to specify and quantify the claimed costs, it would be unreasonable to subject AEC to the open-ended clause now proposed by the Company.

6. Form of conveyance.

The Notice of Violation has determined that if APCo "continues to insist on contract terms that are ultimately not acceptable to REA this would be tantamount to a refusal to allow ownership access by AEC in the Farley Plant and violation of APCo's license condition." Notice of Violation, p. 12. In this context and in light of APCo's position expressed in its Response at pp. 26-28, a commitment by APCo to convey an appropriate quantum of property (discussed below in Item 7 of this Section II) by statutory warranty deed, if such form is acceptable to REA, or by such form as is acceptable to REA if a statutory warranty deed is not, would constitute compliance with APCo's license.

7. Amount of land to be conveyed.

AEC's position with respect to the amount of land to be conveyed has been clearly articulated in the course of the negotiations between the parties. For instance, Mr. Lowman's letter of October 31, 1983 to Jesse Vogtle[6/] stated the concept after conferring with REA "... that the land to be conveyed

---

[6/] A copy of this letter is attached hereto as Tab B.

shall be that necessary for the operation of the units including the land surrounding intake structures." REA does not necessarily require AEC to acquire title to a proportionate share of all of the property acquired by APCo which surrounds the plant site; much of this property operates as a buffer zone. However, the NRC staff should be fully aware that the Company proposes to charge AEC its ownership share of the Company's cost for all the land APCo acquired. AEC would be willing to pay for its ownership share of all of this land even though it does not acquire title to all of this land, if the ownership agreement were to provide that AEC would be granted an ownership interest in any land underlying future improvements associated with the plant at no additional cost, since APCo has already acquired such land and AEC will have paid a pro rata share of the cost of that land. AEC is interested only in acquiring the ownership interest in the land underlying those facilities necessary to make the plant an operating entity and those facilities for which AEC pays its ownership share.

APCo is asking AEC to pay an ownership share for all improvements and investments on the site, but APCo appears unwilling to convey an interest to AEC in all such improvements and investments. AEC believes that the requisite land includes not only the area indicated on APCo's maps attached to Mr. Vogtle's letter of July 18, 1986, to Mr. Vogler, but areas encompassing other facilities as well. These additional

facilities include the water intake pipes between the plant and the river as well as the intake structures, the switch yard, the training and emergency operations building, and the facilities associated with the service water piping and reservoir. Moreover, it is to be expected that conveyance to AEC of an ownership share in these additional facilities and underlying land will be required by REA for financing the project. AEC would be willing to covenant with APCo that AEC would not interfere with or object to the non-conflicting use of the land by APCo. Attached as Tab C are copies of the maps furnished by APCo with Mr. Vogtle's letter of July 18, 1986 to Mr. Vogler. Indicated in red are the areas which constitute the land necessary for the operation of the units including the land surrounding the intake structures. Failure of APCo to convey to AEC an undivided ownership interest in the designated land and facilities would be patently unreasonable. This is particularly so in light of the facts that such conveyance would not serve to hinder APCo's non-conflicting use of the land, and that APCo's book cost price to AEC includes compensation for more than the land designated.

8. Nuclear fuel.

APCo in its Response, pp. 28-29 appears to have clarified the ambiguities created by its draft proposed contract language and by APCo's statements in the course of negotiations with AEC. The Company has previously tried to mark up the cost of nuclear fuel in some of the same ways it has tried to mark up

the price of the plant--for example, by the use of "gross incremental AFUDC", and by hypothetical ownership risk and income tax factors. APCo now appears willing to sell to AEC an undivided ownership interest in all the fuel at APCo's net book cost without trying to inflate the cost by various factors. If this is the case, agreement as to nuclear fuel pricing should be readily achievable. Conveyance of an "undivided ownership share percentage" of all Farley nuclear fuel would constitute compliance. Letter of August 12, 1986 from Mr. MacGuineas to Mr. Vogler.7/

9. Alleged "incremental" costs.

APCo continues to refuse to comply with its license condition as clarified by the Notice of Violation with respect to alleged "incremental costs."

APCo's articulations of this APCo demand are quoted in the Notice of Violation at pp. 12-13, and are flatly rejected in the Notice at pp. 13-14. APCo's Response (pp. 31-33) seriously mischaracterizes the language and determination of the Notice, and APCo suggests proposed contract language which is completely inconsistent with the Director's determination that, "Charges against AEC for total costs are contrary to the license condition." Notice of Violation, p. 13. The contract

---

7/However, this is not to be construed as concurrence with APCo's draft proposed nuclear fuel agreement. APCo's draft was received subsequent to the filing of AEC's request for enforcement on June 29, 1984. It has not been the subject of detailed discussion between the parties. But, it is clear from the face of the draft that it contains significant unreasonable terms and conditions which would have to be modified.

language proposed by APCo would arrogate to the Company the unilateral right to allocate costs to AEC and to determine their magnitude. APCo ignores the Notice of Violation requirement that it must "be established that the costs [incurred by the individual owners] are not plant related." Instead, APCo proposed language which encompasses any costs which APCo wishes to attribute to AEC as "not...considered as plant costs" (emphasis added). The language "not...considered as plant costs" (APCo Response, p. 33) is an open invitation to dispute, and is clearly inconsistent with the determination of the Director (Notice of Violation, p. 14) that:

> "Where costs are related specifically to one of the owners, and not to construction or operation of the Farley plant, the proportionate share of the total costs could be interpreted to mean in proportion to the costs incurred by the individual owners. Staff would support this concept where it can be established that the costs are not plant related."

This would seem to contemplate that where AEC and APCo each individually incur non-plant-related costs of the same nature, each owner's costs would abide with the respective owner; such costs would not be summed and then pro-rated in accordance with the ownership ratio. Such costs might include financing costs, and costs of participation in this antitrust proceeding. This would mean that APCo would be required to factor out of its price to AEC any such costs incurred by it in such categories. On the other hand, any cost for a physical alteration to the

Farley units whether imposed by the NRC or REA8/ is indisputably a plant-related cost as contemplated by the Notice of Violation, and such cost would be shared pro-rata by the joint owners. While there may be some problems resulting from the need to distinguish between plant-related and non-plant-related costs, it is patently obvious the APCo's response does not comply with the language or intent of the Notice of Violation.

The final two sentences of APCo's proposed clause (Response, p. 33) are totally unreasonable and unacceptable to AEC.9/ Income taxes on the sale are addressed elsewhere, so it must be assumed that these two sentences refer primarily to ad valorem or similar taxes.

To eliminate future disputes regarding costs exclusively associated with each party, it will be necessary to share all operating costs associated with the plant pro rata except possibly insurance and taxes other than income.10/ AEC would share in insurance costs covering both AEC and the Company, but

---

8/AEC is aware of no such plant costs to be required by REA. And APCo in its discussions with AEC has been unable to identify any such costs.

9/It should be noted that APCo proposes to add its proposed section regarding sharing of cost in an ownership agreement, but would leave in other language regarding incremental cost in proposed Section 4.03 of APCo's proposed operating agreement, which would allow APCo to unilaterally determine those incremental costs.

10/Obviously, financing costs and income taxes are costs to be born individually by each party; they are not normally considered operating costs in any case. These costs are those which ALAB-646 has recognized that AEC should bear individually on its portion of the plant. APCo's financing and income taxes should be born exclusively by APCo.

should have no obligation to share costs for which it receives no benefit, such as replacement power cost insurance benefiting only APCo. AEC should be entitled to take out any insurance of its own above the coverage provided on the plant by the Company.

AEC has proposed reasonable contract language that addresses taxes such as ad valorem, franchise, or business related taxes. Each party should report and pay such taxes on its portion of the plant to the proper authorities, unless the taxes are assessed in such a manner as to make it impossible to separate them. To avoid disputes in this area, each party must be allowed to report its own investment share of the plant and pay the ad valorem taxes due on such share. AEC should not be made responsible for what a tax assessor charges APCo for its share, and AEC will bear its obligation with respect to ad valorem taxes on its own share. The tax clause and sharing-of-costs clauses proposed by AEC accomplishes this objective.11/

10. Default provisions

APCo now proposes default provisions which it claims are comparable to the provisions in an agreement not involving a generation and transmission cooperative (Response, pp. 33-34). However, APCo's proposed provisions completely ignore some of the important criteria contained in the Notice of Violation

---

11/A copy of these two clauses are attached hereto as Tab D. They were included in AEC's proposed agreement which was submitted to APCo on January 20, 1984. APCo has refused to comment on, or respond to, this specific proposal.

(pp. 16-17). The Notice rejected APCo's original proposal as containing several major defects; e.g., (1) after only ten days late payment APCo could withhold energy entitlements or adjust ownership percentage, (2) APCo could reacquire ownership at pricing principles inconsistent with those applicable to the pricing to AEC, and (3) if late payment were to exceed forty-five days, APCo could reacquire all of AEC's ownership interest based upon inconsistent pricing principles and without opportunity for AEC to cure any default.

As the Notice of Violation correctly points out (p. 16):

> "Under normal circumstances, the worth of AEC's energy entitlement will exceed the associated costs of producing such energy, and APCo can recover any payments due by simply withholding the corresponding amount of energy. Under such circumstances, APCo should not have the option of reacquiring AEC's ownership rights and thus defeating the license condition."

The Notice also points out that in the event that this method of recovering any past due amounts owned by AEC is not sufficient to recover the cost, any reduction in AEC's ownership share should not be irrevocable. Further, AEC should be allowed to reacquire its initial ownership rights upon correction of any default. A comparison of APCo's proposal with the standards set forth in the Notice of Violation makes evident that APCo's proposed default provisions are unreasonable and not in compliance with APCo's License Condition.

Attached hereto as Tab E are proposed default provisions modeled in large degree on those contained in the St. Lucie agreement between Florida Power & Light Company and the Florida

Municipal Power Agency, and consistent with the criteria articulated in the Notice of Violation. This default clause eliminates various events of default proposed by APCo not found in the St. Lucie agreement. It incorporates a 10-day period after a payment due date before a default is triggered. This language was contained in the original proposals by both APCo and AEC regarding a payment default. Such a delay is common to allow for inadvertent failure on the part of the parties or a third party to make, transfer, recognize or confirm payment. AEC's proposed language regarding decommissioning costs in the event of a default resale to APCo (Tab E, D.03(c)(4)(iv)) is designed to be consistent with the handling of the decommissioning reserve in the purchase price for AEC's share. This approach is consistent with the purchase price concept and with APCo's proposed ownership agreement (Section 11.03 (1), "Decommissioning Adjustment to Transfer Price").12/ AEC's proposed language is designed to incorporate the criteria set forth in the Notice of Violation that the withholding of energy by APCo would produce a revenue offset to any AEC payment default. It also provides for income tax allocation in the event of a sell back. Otherwise, the default provision proposed by AEC is virtually identical to that in the St. Lucie agreement. APCo cannot reasonably object to this proposed language, which meets the criteria of the Notice of Violation,

---

12/ This does not imply in any way that AEC could agree with the vague and ill-defined terms proposed by APCo in Sections 11.03 (2) and (3) of APCo's draft agreement.

is consistent with industry norms and fully protects APCo's legitimate interests. APCo's proposal on the other hand should be rejected as without reasonable basis in industry practice.

III. AFUDC

APCo in its Response (pp. 35-44) continues to claim to be entitled to an inflated, hypothetical AFUDC factor which it misleadingly labels, "actual cost of financing". The Company's efforts to inflate the purchase price by designing a supposed incremental gross AFUDC element has been rejected by the NRC Staff. As stated in the Notice of Violation (p.7):

> "APCo has improperly computed the incremental cost related to financing the nuclear plant by using incremental costs of financing AFUDC rather than the embedded rate for debt and preferred stock during the period of construction and by assuming for equity financing that the Farley plant was perceived by investors as being more risky than APCo as a whole. In Staff's opinion, the word "reimburse" as used in the license conditions does not provide for such hypothetical costs."

APCo appears to be continuing in its attempt to unreasonably inflate both the equity and the debt/preferred elements of its AFUDC.

APCo claims (Response P.21 n.20; p.37 n.34) that there is now no dispute regarding the equity component of AFUDC. However, since APCo is still trying to support its "incremental gross AFUDC" concept which APCo has described to AEC representatives in various meetings, APCo also may still be trying to claim a higher return on equity than the actual recorded returns used during the construction periods. During the course of negotiations the Company appeared to be contending

that it was entitled to a hypothetical equity rate. For instance, in the context of negotiations with AEC APCo claimed an applicable return on equity of 18.00% for capital additions to the plant in 1982.13/ However, APCo's FERC Form 1 for 1982 showed an AFUDC common equity rate of 13.00%.14/ APCo's response to the Notice of Violation is ambiguous. Only if APCo has abandoned its hypothetical return on equity, which it presented to AEC during negotiations, and is now agreeing to the use of its actual equity returns as annually reported to FERC, would it appear that the equity element of the AFUDC issue can be agreed upon.

Overall, APCo's attempt to substitute incremental gross AFUDC for the net embedded rate actually booked when the Farley units were constructed is yet another attempt to artificially and improperly inflate the price of the units. This effort by APCo attempts to inflate the price of the units by nearly $400 million. It attempts to inflate by some $25 million the price of AEC's share, which properly is priced at net book at less than $100 million. As noted above, the Notice of Violation

---

13/See Tab C to the Lowman letter of June 29, 1984 to Mr. De Young, supra, APCo response to AEC Data Request Item 6, seventh unnumbered page.

14/APCo FERC Form 1 for 1982, page 212, "Computation of Allowance for Funds Used During Construction Rates," Line 1(5) ("Common Equity"), Column (d)("Cost Rate Percentage"). The Form 1 instructions state, "For line 1(5), column (d) below, enter the rate granted in the last rate proceeding. If such is not available, use the average rate actually earned during the preceding three years."

correctly recognized that the License Condition does not permit such hypothetical costs. The Company is simply attempting to profit from its wrongdoing by substituting a higher cost component for that actually booked by APCo during construction. The financing cost of the plant to the Company is at most that already booked on its records using a proper net of tax embedded AFUDC rate.

APCo inaccurately claims (Response, p.41) that "FERC did not recommend the NRC rely upon that FERC accounting convention." In fact, FERC took no position on what the price should be.15/ It clearly did not recommend against using the net book price with booked AFUDC. In fact, FERC recognized that any sale above the net book cost of the plant would produce a profit to APCo.

Other factors demonstrating the impropriety of using a gross incremental cost of capital rather than net embedded book cost are pointed out in the Southern Engineering Company memorandum of April 1, 1985, "Example Illustrating Alabama Power Company's Contemporaneous Recovery in Rates of its incremental Cost of Capital." A copy of the memorandum is attached hereto as Tab F. This memorandum describes how APCo recovers any incremental cost of money in the normal course of the ratemaking process. To any extent that APCo was not capitalizing the incremental cost of capital associated with

---

15/ Meeting of October 28, 1985, among representatives of NRC Staff, FERC Staff, and AEC and APCo.

the construction of Farley units, those incremental costs were being substantially recovered through the then current rates, including, among other, its wholesale rates charged to AEC and its members. The interest on money borrowed during the period of construction of Plant Farley (and any other APCo on-going construction projects) prior to its commercial operation actually was being recovered through the ratemaking process from wholesale and retail customers including AEC and its members. From a ratemaking perspective this higher cost money increased the weighted cost of capital which was applied to APCo's net rate base. Thus, the incremental cost of money associated with Plant Farley was being recovered from 1968 through the time the first Farley unit went commercial in 1977 and the time the second Farley unit went commercial in 1981.

Furthermore, since the units have been commercial, the ratemaking process has been recovering the incremental cost of money associated with the units from wholesale and retail customers. The average cost of capital applied to average rate base, which is the widely accepted wholesale and retail ratemaking convention, recovers both average and any incremental cost of money applied to a rate base, including Farley and all other plants of the Company after their commercial operation. Money borrowed to finance other construction of the Company, such as the incomplete Miller 3 and 4 coal units has raised APCo's average embedded cost of capital even further;

that higher average cost of capital has been and is being applied to APCo's net rate base including Farley, thereby recovering interest associated with its construction. To allow the Company to substitute a special incremental cost of funds for APCo's average booked cost for AEC's purchase of its share of the Farley units would break this chain of consistency, which recovers costs of financing including any incremental costs. APCo's approach would allow the Company to twice recover incremental costs of money, which have already been recovered once through the ratemaking process. Such a double recovery clearly should not be allowed.

Contrary to the contention implicit in APCo's Response (pp. 42-43), the sale to AEC does indeed benefit APCo. APCo's contention erroniously views the sale in a vacuum without any effect or implications for other aspects of APCo's operations such as past and future ratemaking. Just as APCo has been recovering its incremental cost of money both prior to and since Farley has been in commercial operations, there will be a beneficial future impact on APCo and on its wholesale and retail ratepayers when AEC pays APCo for its share of the plant. APCo (Response, pp.42-43) disingenuously views this sale in a vacuum--ignoring the historical fact that it has been recovering its actual financing costs through the net rate base and average cost of capital ratemaking conventions, and that these conventions will still continue to be applied in future wholesale and retail ratemakings. There is a real economic

benefit to its wholesale and retail ratepayers from the nearly $100 million payment AEC would make for its share the plant. Obviously, this payment could in fact be used for new construction and thereby reduce the need for future financing; it could be used to help retire existing high cost debt; or for other beneficial uses.16/

In short, APCo's contention that use of some incremental gross AFUDC is appropriate is inconsistent with the License Condition, and it irrationally fails to recognize that APCo has been collecting from its ratepayers the incremental cost of money from the early days of Farley construction, and continues to do so through the present, and finally that there are future economic benefits to APCo from this transaction. To allow APCo to arbitrarily and hypothetically inflate the price of the plant to AEC in this manner would permit APCo to double-recover its financing costs.

Finally, the FERC decisions17/ relied on by APCo in its Response (p.40) are by their own terms inapplicable to this sale of an ownership interest in the Farley units. In both cases the purchaser of unit power had agreed to pay a hypothetical "incremental" return on equity. Both decisions

---

16/APCo's 1985 FERC Form 1 shows 18.25% bonds due in late 1989 in the amount of $100 million; 14.75% bonds due in 1991 in the amount of $100 million; 15.25% bonds due in 2010 in the amount of $150 million; and 17.375% bonds due in 2011 in the amount of $75 million.

17/ Connecticut Light & Power Co., FPC Opinion No. 701, 52 FPC 175 (1974); see also Delmarva Power & Light Co., 12 FERC (CCH) ¶61,002 (1980).

involved rates of return on equity with respect to unit power sales--neither of which is involved here. "A unit sale consists of the sale or lease of the output of a unit and dedication of its capacity, rather than the sale or lease of facilities themselves." Delmarva, supra, 12 FERC ¶61,002 at p. 61,002. In ALAB-646 unit power was rejected as a viable antitrust remedy:

> "We find it would neither strengthen free competition in the applicant's market area nor eliminate the antitrust concerns which we found to exist in that market.
>
> "In a unit power arrangement, the purchaser is charged for all of the owner's costs of providing that power, including the costs of capital, of construction, and of fuel and operation. Where the owner is a private utility such as the applicant here, the charge to the purchaser includes a rate of return on the owner's investment. [footnote omitted] This means that were AEC to purchase power from the applicant on a unit power basis, it would lose the benefits of the advantageous financing otherwise available to it for the capital costs attributable to its share of the plant." [emphasis added] ALAB-646.

If the NRC were to accept APCo's contentions that the rate of return methodologies which FERC found appropriate--and which both purchasers had agreed to for the particular unit power sales--were also appropriate here, such a decision would be unlawfully arbitrary and capricious in the face of the controlling holding in ALAB-646.

IV. AEC member guarantees

APCo's demands for guarantees from AEC's members remain unreasonable. As the Notice of Violation puts it (p. 17):18/

18/See also Notice of Violation, pp. 11-12, and 14.

"In any event, guarantees by the REA, AEC's members, or by second mortgages on AEC's system are not in order. Other ownership agreements which the NRC staff has reviewed do not contain these requirements. The nuclear property insurance, liability insurance, workman's compensation insurance and other insurance and decommissioning funds, all of which AEC must carry its pro rata share, provide for those events not covered by the value of the Farley Plant."

By making such demands APCo is arrogating for itself the status of a secured creditor, when in fact it is advancing no credit to AEC whatsoever. In light of the fact that AEC is paying cash on the barrelhead for its capital interest and for operating expenses, APCo's insistence on creditors' guarantees is patently unreasonable and dramatically evidences APCo's tactic of demanding unreasonable terms as conditions to ownership participation in an effort to indefinitely delay APCo's compliance with its license obligation. Any legitimate APCo interest in timely payment by AEC would be protected by reasonable default provisions.19/ Since APCo is in no way advancing funds or otherwise acting as a banker for or creditor of AEC or its members, APCo clearly overreaches in its demand for guarantees from AEC's members. This demand is inconsistent with any rational construction of ALAB-646 and License Condition No. 2 and is unreasonable. APCo's demand is part and parcel of its long-lived anticompetitive policy "to resist to the last selling an ownership share of the plant to AEC." ALAB-646, 13 NRC at 1084.

19/Such reasonable provisions are discussed above in Item 10 of Part II.

APCo's letter of August 12, 1986 from Mr. Bouknight to Mr. Vogler attempts to rationalize APCo's demand for guarantees by arguing that AEC's contracts with its members offer no future assurance that the members will support AEC's revenue needs. Even if this argument were correct, it would not constitute a justification for APCo's unreasonable demand. But in any event, APCo's argument collapses because Mr. Bouknight's discussion is based on contract form language which differs materially from the actual language of the contracts between AEC and its members.

A comparison of AEC's contracts with its members (samples furnished to NRC Staff on February 24, 1986) with the blank "Form 444" furnished and discussed by Mr. Bouknight in his letter demonstrates that AEC's contracts differ significantly from the language relied on by Mr. Bouknight. In particular, in AEC's contracts its members are required to purchase the "power and energy" available (¶3 "General", p. 5). However, this obligation to purchase is not conditioned upon the availability of any AEC "facilities", as is the obligation in the form contract as characterized in Mr. Bouknight's August 12, 1986 letter. Furthermore, in AEC's contracts, "As used herein the words 'power and energy available' mean that power and energy available (1) from Supplier's integrated electric System, and (2) from the electric lines or conductors of a system other than that of Supplier flowing through a conductor or other electrical equipment, all or a portion of which is

owned by Supplier or Consumer but which does not form a part of Supplier's integrated electric System" [AEC/member contract ¶1(a), p. 2].20/

AEC's obligation to sell and its members' obligations to purchase are not conditioned upon the existence of AEC's own "facilities", as APCo appears to claim. Of particular interest is ¶6(b) in the actual AEC/member contracts which provides in pertinent part:

> "The Board of Trustees of the Supplier [AEC} at such intervals as it shall deem appropriate, but in any event not less frequently than once in each calendar year, shall review the rate for electric power and energy available hereunder and under similar agreements with other Consumers and, if necessary, shall revise such rate so that it shall produce revenues which shall be sufficient, but only sufficient, with the revenues of the Supplier from all other sources to meet the cost of operation and maintenance (including, without limitation, replacements, insurance, taxes and administrative and transmission system and related facilities of the Supplier; the replacement of items of equipment with an estimated service life shorter than the term of this Agreement; the cost of any power and energy purchased for resale by the Supplier; the cost of transmission service; the cost of power supply from other sources of all Members, as defined hereinabove; to make payments on account of principal of and interest on all indebtedness of the Supplier; and to provide for the establishment and maintenance of reasonable reserves, including reserves for the financing, construction, or acquisition of additional facilities, to the extent determined by the Board of Trustees.

* * *

20/ It should be noted that in the form contract erroneously relied on by Mr. Bouknight, the word "seller" refers to the generation and transmission cooperative. AEC's members are not excused from payment "when the Seller's facilities have been disabled or retired from service" as Mr. Bouknight contends; he simply bases his contention on language different from that in AEC's contracts.

> "The Consumer agrees that the rate from time to time established by the Board of Trustees of the Supplier shall be deemed to be substituted for the rate herein provided and agrees to pay the Supplier after the effective date of any such revisions at such revised rates; provided, however, that no such revision shall be effective unless approved in writing by the Administrator; and provided, further, that wholesale rates to all Cooperative Members under similar agreements shall be uniform."

Thus, due to his reliance on language different from that in the AEC contracts and his failure to address the actual language of AEC's contracts, Mr. Bouknight's characterization of the AEC contracts is unfounded. In fact, AEC's members are committed under the long-term contracts to pay rates which will produce the revenues necessary to meet AEC's costs whether related to AEC's own production facilities or to other power sources. Further, AEC's contracts have never been interpreted relieving its members from their obligation to pay rates sufficient to cover AEC's costs for plant maintenance repair or retirement.

APCo's mischaracterizations of the affidavit of Charles B. Gill, Governor and Chief Executive Officer of the National Rural Utilities Cooperative Finance Corporation (CFC),21/ have been commented on and rebutted by Governor Gill in a letter dated September 3, 1986 to Mr. Lowman, General Manager of AEC. A copy of Mr. Gill's letter is attached hereto at Tab H.

Here again it must be pointed out that APCo's underlying

21/ Mr. Gill's affidavit was furnished to the NRC Staff on February 28, 1986; a copy is attached hereto at Tab G.

presumption is that it is somehow entitled to the security interest of a mortgagor or lender. This presumption is completely fallacious since APCo is not advancing any funds or credit to AEC.

We also point out that APCo's demand is highly aberrational and contrary to the industry norm. As the NRC Staff is aware from the letter of February 6, 1986 from Donald L. Olsen of the Rural Electrification Administration to Benjamin H. Vogler,22/

> "In the nuclear plant joint ownership and operating agreements that REA borrowers are involved there is no instance in which an electric distribution member cooperative of a generation and transmission cooperative has contracted to guarantee the payment or undertaking of the generation and transmission cooperative with respect to the jointly owned nuclear plant."

Further, Southern Engineering Co. undertook a survey and review of all nuclear unit joint ownership arrangements in which generation and transmission cooperatives participate. As the February 20, 1986 affidavit of O. Franklin Rogers, President, Southern Engineering Co.,23/ demonstrates:

22/ A copy of Mr. Olsen's letter is attached hereto as Tab I. APCo's claim that REA "has no firm position regarding guarantees", based on the letter from the REA Administrator to Mr. Balch (APCo Response, p.51 and Tab E), is frivolous. The Administrator's letter does not even imply that the issue of guarantees was raised by APCo with the REA. Further, the claim by APCo (Response, p.51) that REA's position is irrelevant is equally frivolous since, "if APCo continues to insist on contract terms that are ultimately not acceptable to REA this would be tantamount to a refusal to allow ownership access by AEC in the Farley Plant and a violation of APCo's license condition." Notice of Violation, p. 12.

23/A copy of Mr. Roger's affidavit is attached hereto as Tab J.

> "There is no instance in which an electric distribution member cooperative of a generation and transmission cooperative has contracted to guarantee the payment or undertaking of a generation and transmission cooperative."

See also, Governor Gill's letter of September 3, 1986, attached as Tab G.

APCo's August 12, 1986 letter seems to imply that the industry norm should be discounted because of new concerns raised by the Three Mile Island event of March 1979. However, the facts are that numerous joint ownership agreements have been entered into subsequent that that event (e.g.,Comanche Peak, Riverbend, Grand Gulf, Catawba, Wolf Creek, North Anna), and none of them contains a requirement similar to the "guarantees " demanded by APCo. For instance, in the Catawba agreement of October 14, 1980 between the North Carolina Electric Membership Corporation (NCEMC) and Duke Power Company, NCEMC merely agrees to implement and continue in effect its wholesale power contracts with its members and to enforce such contracts in accordance with their terms (Article 9, §9.1(b)). In the North Anna agreement of December 28, 1982 between Old Dominion Electric Cooperative and VEPCO, Old Dominion simply warrants that its wholesale power contracts were in full force and effect at the time of closing (Article VI, §6.01(i)). APCo's demands for member guarantees are so drastically out of line with the terms normally found in joint venture agreements between investor owned utilities and generation and transmission cooperatives throughout the country as to fully justify

the conclusion that APCo is intent on achieving further delay and prolonging APCo's noncompliance with its operating licenses.

It is most instructive to note that prior to the imposition of the ownership access requirement on APCo, counsel for APCo (Mr. Balch) contended before the Appeal Board that a minority-interest owner such as AEC would be taking a terrible risk that APCo would not be able to fulfill APCo's end of the bargain to construct and operate the units:

> "CHAIRMAN FARRAR: The New England situation is that some of those plants are owned by 20 different companies, and I assume they -- or have not historically all been best friends.
>
> "MR. BALCH: Well, I do know, if we had a joint ownership arrangement with either AEC or the municipalities in the case of the Farley Plant, it would now be just a disastrous situation, in that Alabama Power Company, even though it has got about $500 million in the plant, has to shut it down because it can't pay the tradesmen and the materials men, and the manufacturers who are supplying equipment.
>
> "It has just shut the project down. I don't know how we would ever work out of the obligation that we might have to anybody who is a joint owner if we were joint owning with them at this time." Oral Argument before the Appeal Board, Tr. 53, in Alabama Power Co. Antitrust Docket Nos. 50-348A and 50-364A, March 8, 1979.

Now that the Farley units are built and operating, and APCo--rarely hobbled by concerns of consistency--is finally faced with the requirement to offer ownership, APCo argues the reverse of its previous position. The facts are, as candidly admitted by counsel for APCo, that it is AEC which is assuming the potential risk of APCo's ability to perform in the future--not the other way around. Yet APCo has never offered to

furnish AEC guarantees from APCo's parent, The Southern Company, or from APCO's co-member affiliates in The Southern Company System, and obviously APCo would voice the most strenuous objections if AEC were to make a demand for any such guarantees.

In light of all these circumstances, APCo's demand for guarantees is plainly unreasonable.

* * * * *

In conclusion it is evident that APCo's Response demonstrates APCo's continuing refusal to comply with its License Condition in a number of significant respects:

(1) insistence on guarantees from AEC members;

(2) use of a hypothetical "incremental" gross AFUDC element to inflate the price of AEC's share of the units;

(3) an ambiguous response as to what degree APCo has abandoned any claim to a price-inflating ownership risk element;

(4) a claim for reimbursement for income taxes from an improper profit or gain from the sale of AEC's share, and highly ambiguous descriptions of how the amount of any such taxes should be calculated, if any are allowed;

(5) an effort to inflate the price of operating the units by retention of the option to charge for non-specific, unidentified and unquantified operating costs;

(6) a continuing refusal to convey to AEC an interest in the land and facilities necessary for the operation of the units, while attempting to charge AEC for more land and facilities than APCo is willing to convey;

(7) a continuing effort to inflate the cost of the units and their operating by attempting to charge for hypothetical, unidentified and unquantified "incremental costs"; and,

(8) a continuing insistence on unconscionable and unreasonable default provisions.

At a minimum, further enforcement action by the NRC is required with respect to these areas of APCo's significant non-compliance with its Antitrust License Condition.

Respectfully submitted,

D. BIARD MACGUINEAS

BENNETT BOSKEY

Volpe, Boskey and Lyons
World Center Building
918 16th Street, N.W.
Washington, D. C. 20006

Attorneys for Alabama Electric Cooperative, Inc.

October 17, 1986

Southern Engineering Co.
1800 Peachtree St., NW
Atlanta, GA 30367-8301
(404) 352-9200

Southern Engineering

September 30, 1985

Benjamin H. Vogler, Esquire
Deputy Antitrust Counsel
Office of Executive Legal Director
United States Nuclear Regulatory Commission
Maryland National Bank Building - Room 8211
7735 Old Georgetown Road
Bethesda, Maryland 20014

Dear Ben:

Attached is a memorandum regarding the treatment of taxes upon the purchase of an ownership interest in the Farley Nuclear Plant by the Alabama Electric Cooperative from the Alabama Power Company. This relates to item number four of the issues as listed by you between Alabama Power Company and Alabama Electric, although we believe the issue is broader than now listed in item four as explained in the memorandum.

It is important to note that all tax consequences are caused by the failure of Alabama Power Company to allow Alabama Electric to purchase an ownership interest in the early seventies. The burden considered in item four increases every day the Company continues to delay. We strongly feel this violates the letter and spirit of Section 105 (c) and the license conditions to allow a situation created by the Company's anti-competitive conduct to impose an expense on Alabama Electric, and further, to allow the Company to increase this burden by continued delaying tactics.

It is nothing short of outrageous, however, to call for this burden and not allow the offsetting ITC credit to AEC. The Company's refusal to sell allows two things to happen: (1) a benefit to the Company ITC and, (2) a tax burden as considered in item four.

It is no mystery that the Company called for reimbursement of taxes but made no mention of ITC -- this is a credit. There can be nothing more inequitable, no more dangerous precedent, than to provide a Company with

an incentive to delay than to (1) allow the Company to take an action that will incur certain taxes but hold them harmless at the expense of an innocent party, and (2) at the same time, when this same act creates certain tax credits, to allow the Company to keep all of those credits. In addition to the inconsistency and inequity, every Company will delay as long as possible in order to not only receive a benefit but also to impose a burden on the other party.

AEC does not believe any tax should be imposed because of the Company's delays, but, as a minimum, any tax credit should be used to offset any tax burden. AEC simply cannot accept in any proposed settlement these tax burdens without corresponding tax credits as an offset. Should the tax credits exceed the tax liability, AEC would agree to limit the credits to an amount equal to all tax liability.

Yours very truly,

SOUTHERN ENGINEERING COMPANY

Franklin

O. Franklin Rogers
President

OFR:cj

cc Argil L. Toalston

Southern Engineering Co.
1800 Peachtree St., NW
Atlanta, GA 30367-8301
(404) 352-9200

Southern Engineering

MEMORANDUM

DATE: September 30, 1985

TO: Mr. Argil Toalston

FROM: Alabama Electric Cooperative, Inc.

SUBJECT: Taxes on Sale of Farley Plant

We believe there are three tax issues associated with a sale of Farley by Alabama Power Company to AEC at net book cost: 1) the tax impact of the equity AFUDC capitalized which is not recognized as book cost for tax basis purposes in determining the gain on the sale (referred to as AFUDC taxes); 2) the tax impact of the book (i.e., straight-line)/tax (i.e., accelerated depreciation) differences which have occured since the plant became commercial (referred to as deferred taxes); and, 3) the tax impact of investment tax credits associated with the portion of Farley sold to AEC (referred to as ITC taxes). While the Company has provided some information to AEC on the calculation of items one and two, the information was in a format that precludes derivation of the actual tax impact on the Company of a sale at net book value. No information on ITC taxes has been provided to AEC by APCO. Unfortunately, for this reason we are not able to separately identify each of the three tax elements associated with the sale at net book cost.

The following discussion addresses each of the three tax components identified above. This discussion should be considered a discussion of the technical matters related to the calculation of taxes and should not be taken as an indication that AEC concedes its position that it should not pay taxes on the sale since (at this point) no taxes would have been incurred had AEC been a participant in Farley from the outset.

AEC recognizes there is a tax impact to the Company associated with AFUDC. AEC is less certain that there is any real tax impact to the Company due to book/tax depreciation differences which create deferred taxes. AEC further believes the Company never addressed the investment tax credit impact because it recognizes the ITC's as a substantial offset to taxes it would otherwise have to pay.

We estimate the Company will have a net benefit from investment tax credits on AEC's percentage of the plant of six million dollars. AEC believes the Company recognizes this large benefit, and this is the reason it so "mangnanimously" is willing to forego the investment tax credit and deferred tax issues.

Finally, we do not understand why the Company's ratemaking treatment of the ITC's is relevant to the issue of taxes on the Farley sale. A company such as Alabama Power either flows through the entire benefit of ITC's directly to the rate payer in the year taken (i.e., the "flow-through" method), or it "normalizes" the tax benefit for tax purposes by ratably amortizing the ITC credit in rates over the life of the plant. Alabama Power Company does the latter. Therefore, only a small portion of these benefits have been passed on to the rate payer because only a small portion of the life of the plant has been utilized. There is a tremendous time value of money to the Company to be able to take all the credits as construction is accomplished, but credit them to rate payers over the life of the plant. This time value of money should be recognized for the benefit of AEC.

In summary, AEC's basic position on Item 4 is that the Company should bear any tax consequences associated with the sale, but if AEC has to bear some of the tax cost of the sale, NRC should recognize all of the additions and credits associated with the sale including the benefits of ITC's to the Company on AEC's portion of the plant. (Should AEC's ITC credit result in an overall net credit to AEC on taxes, we propose AEC only get credit enough to zero out the overall tax issue.)

We are convinced that the tax issue is sufficiently complex that it will take very detailed analyses to determine the proper dollar amount. AEC strongly urges that if NRC supports the Company's position on tax impact on the sale, it should be a statement of principle recognizing all the tax impact, plus and minus, on the sale, and it should allow the utilities' tax accountants to work together to calculate a final net number. If there is a question as to whether the ITC's have been "flowed through," the accountants can resolve this and address the effect on the calculation.

I am enclosing a tabulation of the investment tax credit recapture schedules.

Finally, we are proposing Attachment A as a proposed finding and Attachment B as an alternative finding on the tax issues.

cc: Mr. Benjamin Vogler

INVESTMENT TAX CREDITS

If Sold Within Years Below	Until 1981 Recapture %	After 1980 Recapture %
1	100	100
2	100	80
3	66.6	60
4	66.6	40
5	33.3	20
6	33.3	0
7	0	0

Unit 1 in service in 1977 (Dec. 1, 1977).
Unit 2 in service in 1981 (July 30, 1981).

Attachment A

Proposed Findings on Taxes

The tax impact of the sale, if any, will be borne by the Company.

Attachment B

Alternative Finding on Taxes

The net present worth tax impact of the sale, if any, charged to AEC shall be jointly determined by the parties' tax experts considering (1) AFUDC taxes, (2) deferred taxes, if any, and (3) less the net ITC tax benefit of the Company on AEC's share. Should the calculation indicate a positive net present worth tax impact on the Company, AEC will bear the cost of the impact. Should the calculation indicate a negative net present worth tax impact (i.e., a credit), AEC will forego the amount of the credit in determining the sales price (i.e., the credit shall not reduce the price below net book).

Alabama Electric Cooperative, Inc.
Post Office Box 550
Andalusia, Alabama 36420
(205) 222-2571

Charles R. Lowman
General Manager

AEC

October 31, 1983

Mr. Jesse S. Vogtle
Senior Vice President
Alabama Power Company
600 North 18th Street
Birmingham, Alabama 35203

Dear Mr. Vogtle:

At your request we have raised the question with the Rural Electrification Administration as to whether the REA would "guarantee AEC's performance" with respect to post-purchase capital and expense contributions relative to AEC's ownership interest in the Farley nuclear units. REA's response was that such guarantees would be impossible.

REA representatives also noted that the amount of land offered to be conveyed in your letter (and map) of August 16, 1983 does not comply with REA's policy that the land to be conveyed shall be that necessary for the operation of the units including the land surrounding intake structures. They also noted that your proposal for AEC to become a joint-owner of any future improvements "without the necessity to purchase any additional land," would prohibit AEC from obtaining a loan guaranty for capital investment in any future improvement requiring additional land. This, of course, is unacceptable.

Sincerely,

Charles R. Lowman

Charles R. Lowman
General Manager

CRL:elf

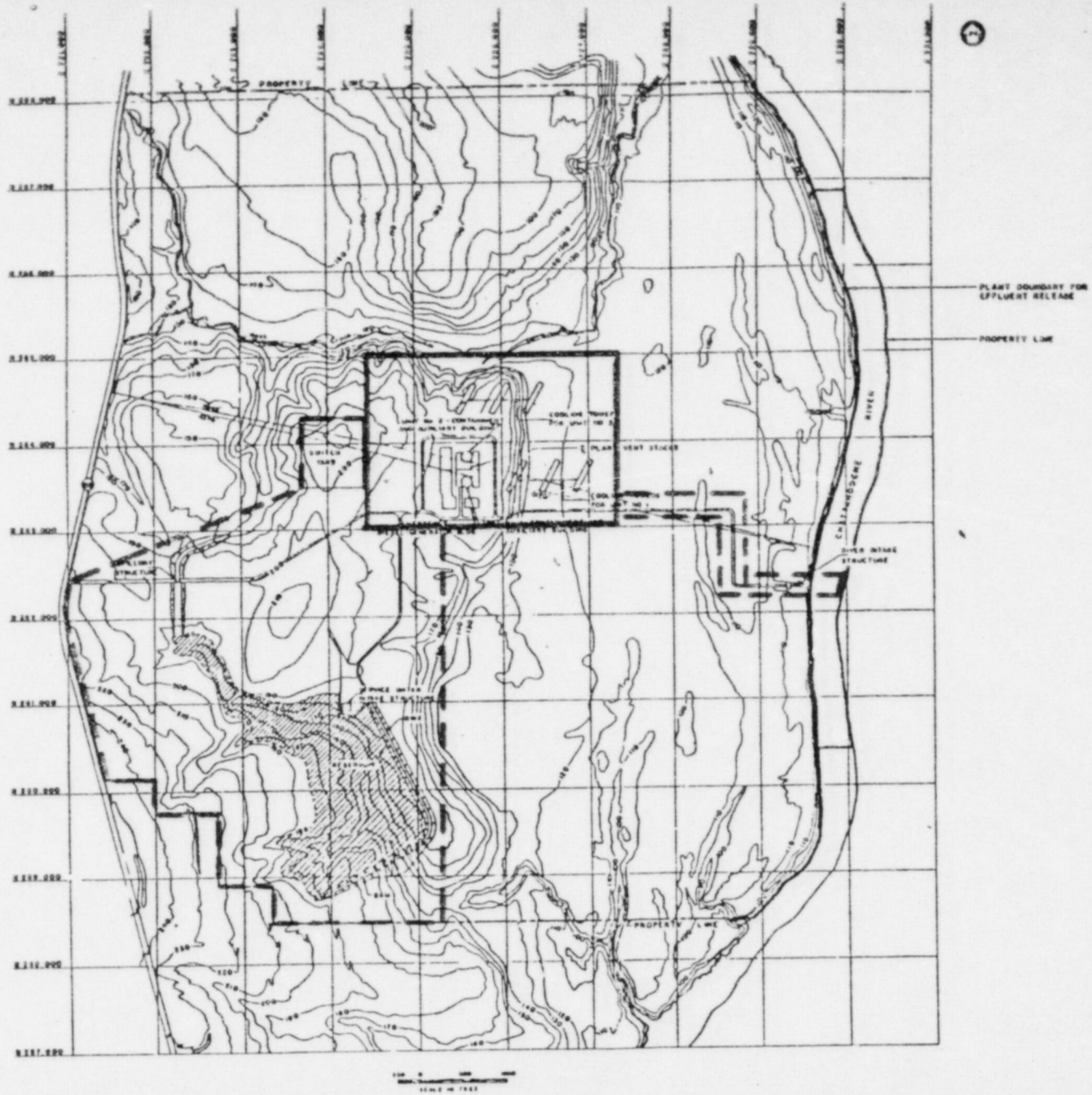
cc: Robert A. Buettner, Esq.

bc: D. Biard MacGuineas, Esq.
Mr. M. J. Parish
Mr. James A. Vann, Jr.
George C. Douglas, Jr., Esq.
Mr. Ray Clausen

NOTE:

Solid heavy lines enclose area proposed by APCO for AEC to own.

Dashed heavy lines enclose additional area believed by AEC to be required.



Alabama Power

JOSEPH M. FARLEY
NUCLEAR PLANT
UNIT 1 AND UNIT 2

4440-1

D R A F T

As of January 1984

JOSEPH M. FARLEY NUCLEAR PLANT

JOINT OWNERSHIP, OPERATING, AND NUCLEAR FUEL AGREEMENT

Between

ALABAMA POWER COMPANY

And

ALABAMA ELECTRIC COOPERATIVE, INC.

Dated as of _____, 1984

Section 5.04. Taxes. To the extent possible, each party shall separately report, file returns with respect to, and be responsible for and pay, all ad valorem, franchise, business or other taxes and fees, except payroll and sales and use taxes, arising out of each party's Ownership Share of Plant Farley. However, to the extent that such taxes or fees may be levied on or assessed against the total plant, or its operation, or on the parties in such a manner so as to make impossible the carrying out of the foregoing sentence, or upon mutual agreement of the parties, then such taxes or fees shall be shared pro rata based upon the respective Ownership Shares of the parties.

Section 5.05. Sharing of Costs. From the Closing date

forward, all costs of Plant Farley, unless otherwise specifically noted in this Agreement, will be shared in proportion to the Ownership Shares of the parties. These costs will include, but not be limited to, operation and maintenance, administrative and general expenses, fuel expenses, capital additions, fuel disposal cost, and decommissioning.

Administrative and general expenses properly incurred or allocated to Plant Farley shall be shared by the parties in proportion to their Ownership Shares. However, these administrative and general costs assigned to Plant Farley will be deducted from total administrative and general costs prior to allocating remaining administrative and general costs to any other cost of service affecting AEC or its Members.

AEC shall have no responsibility for storage or disposal costs associated with Nuclear Fuel burned prior to Closing, but will only incur fuel storage and disposal costs with respect to its Ownership Share of fuel burned after Closing.

Should any cost incurred by APCO in connection with Plant Farley be such that it is only for the benefit of APCO, such as replacement power cost insurance that would be paid to APCO in case of a prolonged outage, but would result in no payment or benefits to AEC, then such cost shall be borne totally by APCO and shall not be shared by the parties in accordance with the Ownership Shares of each.

AEC's decommissioning cost shall be its Ownership Share of total decommissioning cost multiplied by a factor equal to

the number of years of ownership by AEC divided by the number of years of commercial operation of Plant Farley.

ARTICLE D

D.01 Events of Default. The following shall be events of default.

(a) Failure of AEC to make any payment to APCO as required under this Agreement. Such default shall not be deemed to have occurred unless and until AEC has been properly notified of such payment due date and amount in accordance with the terms of this Agreement and until 10 days have elapsed from the due date of said funds and APCO has notified AEC of any delinquency in payment.

(b) Failure by AEC to perform any of the obligations under this Agreement to APCO, other than the payment of money, provided AEC shall have been given not less than 60 days notice by APCO of such failure and AEC shall have failed to correct such breach of its obligation or shall have failed to use its reasonable best efforts to correct such breach of its obligations.

In the event of default by AEC, APCO shall be free to invoke such remedies at law or in equity as may be available to it, and the provisions of Section D.03 shall be in addition to, and not to the exclusion of, such rights.

D.02 Late Payments. AEC shall remain responsible for all its obligations under this Agreement except as otherwise provided in Section D.03. AEC shall be responsible for interest on any late payments based upon the prime rate plus 5% per annum until paid,

provided, however, that in no event shall interest accrue or be payable in excess of the highest rate allowed by law. AEC shall also be responsible for any costs, including expenses and attorneys' and other professional fees, incurred by APCO in connection with such default. The prime rate shall be that listed in the Wall Street Journal on the last day of the month prior to the default.

D.03 Remedies for Default. In the event of a default by AEC, APCO shall have the following rights in addition to other rights provided in the Agreement.

(a) If AEC is in default for non-payment as provided in Section D.01(a) and has failed to cure such default within 30 days after APCO has provided written notice to AEC, or if there is a good faith dispute whether AEC is in default, within 30 days after issuance of a final order or decision declaring AEC in default, APCO may suspend the right of AEC to receive all or any part of AEC's Ownership Share of the Output (energy) until the cumulative net value (total value defined below less variable operating costs attributable directly to energy production) of said Output of the plant, including any capacity and energy value, equals the amount owed by AEC including amounts under D.02. The default shall then be considered cured, and AEC shall again commence receiving its Ownership Share of the Output from the plant. The total value of the Output under this clause shall be the greater of (1) the variable operating costs attributable directly to

energy production at the Farley plant, (2) the avoided cost to APCO (the cost to APCO of capacity and/or energy avoided from another source because of its use of AEC's Output), or (3) the revenue associated with any sale of the capacity and/or energy associated with AEC's Output. AEC shall continue, during and notwithstanding any suspension, to be responsible for its Ownership Share of all costs.

(b) The suspension of AEC shall be terminated and its rights restored after cure of its default, including payments under Section D.02.

(c) If any default by AEC under Section D.01(a) continues for 180 days after APCO has provided notice of default, APCO shall have the option, but no obligation, to purchase AEC's Ownership Share. Such option to purchase shall be exercisable by the service of written notice of intent to purchase to AEC. The notice shall specify the date requiring AEC to convey its interest in the Farley Plant to APCO, which date shall not be less than 30 days after the giving of said notice; provided, however, if there is a good faith dispute as to whether AEC is in default, such notice of termination shall not be effective until 60 days after issuance of a final decision of a court of competent jurisdiction declaring AEC in default. Upon the date of such acquisition by APCO:

(1) AEC shall cease having rights in the capacity and Output of the Farley Plant or any other rights

under this Agreement except as set forth in this Section D.

(2) Upon the conveyance described in paragraph 4 below, APCO shall succeed to all of AEC's rights and obligations under all contracts and instruments relating to the Farley Plant, except as set forth in this Section D.

(3) AEC shall pay to APCO all amounts then owed by AEC under the terms of the Agreement including the amounts owed pursuant to Section D.02.

(4) Subject to obtaining necessary regulatory approvals and mortgage indenture releases where applicable (which AEC agrees to use its best efforts to obtain), AEC shall convey, tranfer and assign to APCO, free and clear of all liens and encumbrances other than those which existed at the time of conveyance to AEC, all its right, title and interest in the Farley Plant and all contracts, leases or other instruments relating to the Farley Plant. Upon the delivery of such conveyance, transfer or assignment, APCO shall pay to AEC (or to the extent required to obtain all necessary releases, to the holders of all liens and encumbrances on AEC's interests in or relating to the Farley Plant) an amount equal to (i) AEC's net investment in the Farley Plant plus (ii) net

income taxes, if any, imposed on AEC due to the sale, less (iii) all amounts owed APCO pursuant to the terms of D.03(c)(3) above, and (iv) an adjustment for decommissioning equal to the amount APCO would have collected on AEC's Ownership Share during that period if APCO had owned all of the plant, only to the extent this decommissioning amount differs from or has not been subtracted in determining AEC's net investment. If the amount required to be deducted under clauses (iii) and (iv) of the preceding sentence is greater than the amount described in clauses (i) and (ii), AEC shall remain liable for the deficiency, plus interest on the deficiency until paid, at the rate provided in Section D.02. Upon the completion of such conveyance, transfer or assignment, APCO shall release AEC from all costs, liabilities and obligations under the Agreement, provided only that AEC shall remain liable for the excess, if any, of the amount to be required to be deducted under clauses (iii) and (iv) over the amount described in clauses (i) and (ii), plus interest on the deficiency until paid, at the rate provided in Section D.02.

(5) The parties agree that the purpose of this section D.03(c) is to provide APCO the option of

rescinding this Agreement upon the happening of defaults specified in the first paragraph of Section D.03(c).

D.04 Non-Waiver of Rights. Failure of APCO to: (i) enforce any of the provisions of this Agreement or (ii) require performance by AEC of any of the provisions of the Agreement shall not release AEC of any of its obligations under the Agreement and shall not be deemed a waiver of any rights of APCO to insist upon performance thereof, or of any of APCO's rights or remedies under the Agreement or by law, and shall in no way affect the validity of these terms and conditions or any part thereof, or the right of the party thereafter to enforce each and every provision hereof. No purported modification or recision of the Agreement by any employee or agent of APCO shall operate as a waiver of any of the provisions hereof.

VOLPE, BOSKEY AND LYONS
WORLD CENTER BUILDING
918 16TH STREET, N. W.
WASHINGTON, D. C. 20006

JOSEPH VOLPE, JR.
BENNETT BOSKEY
ELLIS LYONS
EDWARD A. GROOBERT
D. BIARD MACGUINEAS
EDWIN E. HUDDLESON, III

EVA F. SHERMAN
PATRICIA A. MAYER

(202) 737-6580

April 5, 1985

Benjamin H. Vogler, Esquire
Office of Executive Legal Director
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Dear Ben:

Enclosed is the memorandum from Steve Daniels of Southern Engineering Company of Georgia in response to the question raised by Argil Toalston at our March 7, 1985 meeting. I apologize for the delay in getting this to you.

Sincerely yours,

D. Biard MacGuineas

D. Biard MacGuineas

Enclosure

cc: (with enclosure)
Argil L. Toalston
Ann Hodgdon, Esquire

Southern Engineering Co.
1800 Peachtree St., NW
Atlanta, GA 30367-8301
(404) 352-9200

Southern Engineering

April 1, 1985

MEMORANDUM

Example Illustrating Alabama Power Company's
Contemporaneous Recovery in Rates of its
Incremental Cost of Capital

The attached analysis illustrates the fact that Alabama Power Company recovered, or could have recovered, through its then-current rates the incremental costs of new capital issues associated with the construction of the Farley Nuclear Plant. In reviewing this analysis several key points must be kept in mind. One, the analysis assumes that no construction work in progress is included in rate base for determining revenue requirements. Two, the FERC-allowed AFUDC rate for any given year is equal to the embedded cost of capital (excluding short-term debt) as of December 31 of the preceding year. Three, the capital structure has been held constant in the analysis to avoid the impact which equity dilution might otherwise have, and which would have been caused by factors quite apart from the construction of the Farley Plant. Examples of these extraneous factors might be inadequate retail regulatory relief, or failure to file timely rate applications. Four, the attachment uses illustrative numbers for simplicity and to avoid the use of actual data which would have been impacted by regulatory lag, inadequate retail rate relief, equity dilution due to financial factors beyond the control of Alabama Power Company, or any other factors irrelevant to this analysis.

The illustration is developed as follows. Section I shows the embedded cost of capital (excluding short-term debt) as of December 31 of year one (19X1). Based upon the capital structure and component costs shown, the weighted cost of capital is 10.5%. This weighted cost of capital would also represent the FERC-allowed AFUDC rate for the following year (excluding short-term debt).

Section II develops the embedded cost of capital for the next year (19X2) assuming $200 million of additional capital were generated and used for Farley CWIP. The capital structure was held constant from the preceding year (19X1) to the first future year (19X2). The additional capital was shown as $110 million of debt at 15%, $20 million of preferred stock at 16%, and $70 million of additional common equity generated through retained earnings and capital infusion. These incremental capital additions increased the weighted cost of capital to 11.96% for 19X2.

Section III shows that the return on rate base in 19X2 if the incremental capital additions had not occurred would have been 10.5%, i.e., the embedded cost of capital as of December 31, 19X1. Given this assumption and assuming that the net rate base was equal to 80% of the outstanding capital, then the net return on rate base for the 19X2 year would be $84 million.

Section IV shows that the allowable rate of return on rate base in 19X2 would increase to 11.96% if the additional securities assumed in Section II, were issued to fund the $200 million of construction. The net return at this higher cost of capital for 19X2 would be $95,680,000 (the same $800 million rate base multiplied by the new embedded cost of capital of 11.96% which includes the impact of the incremental capital costs).

Section V shows that the allowable net return would increase by $11,680,000 ($95,680,000 - $84,000,000 = $11,680,000) due solely to the incremental increase in the costs of capital. Had Alabama Power Company filed for timely rate relief, this incremental net return associated with the issuance of securities to fund CWIP would have been recovered through current rates. It should be emphasized that if Alabama Power Company did not seek timely rate relief, those events or failures on Alabama Power's part are no basis whatsoever for requiring AEC to pay Alabama Power a mark-up in the price of AEC's share of the Farley Plant.

Section VI calculates the net after-tax cost of capital associated with the new securities issuances. This calculation reflects the fact that the incremental debt cost is deductible for income tax purposes; therefore, the after-tax cost is approximately 50% less than the gross cost of the new debt.

As can be seen from this illustration, to the extent Alabama Power Company was not capitalizing the incremental cost of capital associated with the construction of the Farley Plant, the incremental costs were being substantially recovered through current rates, including, among others, its wholesale rates charged to AEC and its members. The recovery of the incremental costs, of course, will be a function of the net rate base allowed by the rate-making, or rate-approving, agency relative to the total capital outstanding. Also, in the second future year (19X3) the allowable AFUDC rate will include the incremental costs of capital incurred during the first future year.

One final observation is important with regard to the entire concept of whether the embedded cost of capital or an incremental cost of capital is appropriate for the capitalization of AFUDC. Alabama Power Company's rates include depreciation (or a return of capital). Since the Company does not retire its capital (either its long-term bonds, preferred stock, or common stock) as it collects cash from its ratepayers for depreciation,

this cash becomes internally generated funds, a large portion of which goes back into the Company's construction program. Thus, these internally generated funds now represent funds associated with embedded costs capital; therefore the use of an embedded cost of capital AFUDC rate in part reflects the utilization of funds associated with the outstanding capital.

SOUTHERN ENGINEERING COMPANY

Stephen Page Daniel

Stephen Page Daniel

SPD:esp
Attachment

ALABAMA POWER COMPANY

Farley Sale

Illustration of Recovery of Incremental
Cost of Capital in Rates

I. Cost of capital as of 12/31/19X1 (AFUDC rate excluding short-term debt for year 19X2).

	Amount Outstanding	Ratio	Component Cost	Weighted Cost
Debt	$ 550,000,000	55%	10%	5.5%
Preferred	100,000,000	10%	10%	0.1%
Common Equity	350,000,000	35%	14%	4.9%
	$1,000,000,000	100%		10.5%

II. Cost of capital for 19X2 assuming addition of $110,000,000 of debt @ 15% and $20,000,000 of preferred @ 16% with equity held at 35% of total capital.

	Amount Outstanding	Ratio	Component Cost	Weighted Cost
Debt	$ 660,000,000	55%	10.83%*	5.96%
Preferred	120,000,000	10%	11.00%**	1.10%
Common Equity	420,000,000	35%	14.00%	4.90%
	$1,200,000,000			11.96%

III. Return on 19X2 rate base in 19X2 based upon embedded cost of capital as of 12/31/19X1.

Rate Base (Net)	$800,000,000
Cost of Capital @ 12/31/19X1	10.5%
Net Return @ 12/31/19X1 Cost of Capital	$ 84,000,000

IV. Allowable return on rate base in 19X2 based upon embedded cost of capital as of 12/31/19X2.

Rate Base (Net)	$800,000,000
Cost of Capital	11.96%
Net Return @ 12/31/19X2 Cost of Capital	$ 95,680,000

V. Increase in net return allowable due to incremental increase in cost of capital.

Incremental Net Return Increase Due to Increment Cost of Capital Increase	$11,680,000

VI. Increase in net after-tax cost of capital of new issuance

	Capital Cost	Factor	After Tax Cost****
Debt	$16,500,000	0.473***	8,695,500
Preferred	3,200,000	N/A	3,200,000
			11,895,500

Footnotes:

	Amount	Rate	Interest
	$550,000,000	10.00%	$55,000,000
*	110,000,000	15.00%	16,500,000
	$600,000,000	10.83%	$71,500,000
	$100,000,000	10.00%	$10,000,000
**	20,000,000	16.00%	3,200,000
	$120,000,000	11.00%	$13,200,000

*** APCo Weighted (State and Federal) Income Tax Rate
**** (1-Tax) Times Capital Cost

VOLPE, BOSKEY AND LYONS
WORLD CENTER BUILDING
918 16TH STREET, N. W.
WASHINGTON, D. C. 20006

JOSEPH VOLPE, JR.
BENNETT BOSKEY
ELLIS LYONS
EDWARD A. GROOBERT
D. BIARD MacGUINEAS
EDWIN E. HUDDLESON, III

EVA F. SHERMAN
PATRICIA A. MAYER

(202) 737-6580

February 28, 1986

Benjamin H. Vogler, Esquire
Office of Executive Legal Director
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Re: Alabama Power Co.--AEC
Petition For Enforcement
Of Antitrust License Conditions

Dear Mr. Vogler:

This is in further regard to the issue of APCo's request for "guarantees" from AEC's members of AEC performance or financial commitments relative to AEC's joint ownership of a proportionate share of the Farley Nuclear Units.

The enclosed affidavit of Charles B. Gill, Governor and Chief Executive Officer of the National Rural Utilities Cooperative Finance Corporation (CFC) further makes abundantly clear the unreasonableness of APCo's position on this issue, particularly when it is kept in mind that the primary source for AEC's capital contributions relative to the Farley Units is expected to be CFC.

Sincerely yours,

D. Biard MacGuineas

D. Biard MacGuineas

Enclosure

cc: Charles R. Lowman
O. Franklin Rogers

NATIONAL RURAL UTILITIES
COOPERATIVE FINANCE CORPORATION

DISTRICT OF COLUMBIA

I certify that the following statements are true and correct to the best of my knowledge and belief.

My present position is Governor and Chief Executive Officer of the National Rural Utilities Cooperative Finance Corporation (CFC).

CFC is a nonprofit, cooperative financing institution. Its purpose is to provide members an independent source of financing as a supplement to financing provided by the Rural Electrification Administration. Incorporated in 1969, CFC is owned by more than 900 members, including 60 power supply systems. CFC's loans and guarantees to its members total approximately $6.0 billion.

There are many instances in which generation and transmission electric cooperatives (G&T) own an undivided ownership interest in generating units constructed and operated by privately owned power companies in which the companies also retain an undivided ownership interest. In these joint ownership and operating arrangements, to the best of my knowledge there is no instance in which an electric distribution member cooperative of a G&T contracts with the power company owner or others to guarantee the payments or undertakings of the G&T with respect to the joint ownership arrangements.

From CFC's position it is imperative that the electric distribution member cooperatives in these instances not enter into such guaranty undertakings. The all-requirements power contract between the G&T and the distribution systems has been the base security instrument underpinning $45 billion of investment at the G&T level. Any arrangement, including guarantee, subordination, or other obligation of the member, that would undermine this basic agreement would jeopardize existing relationships as well as place lenders at a disadvantage relative to future lending arrangements. Without this security to the lender, G&Ts may not be able to obtain necessary debt capital to fund future facilities. Such obligations of the member system to a third party would also adversely affect the security of the member and its ability to obtain future loans for capital additions. The direct attachment of the revenue stream of the distribution member, whether subordinated or not, would create possible similar demands from other non-lending credit sources, further complicating the future borrowing for that system and its operation.

Charles B. Gill

Subscribed and sworn to before me
this 7th day of January 1986

Claudia L. Phillips

Notary Public Claudia L. Phillips

My Commission Expires November 30, 1989

File

NATIONAL RURAL UTILITIES
COOPERATIVE FINANCE CORPORATION

1115 30th STREET, N.W., WASHINGTON, D.C. 20007 • (202) 337-6700

September 3, 1986

Mr. Charles Lowman
General Manager
Alabama Electric Cooperative, Inc.
P. O. Box 550
Andalusia, Alabama 36420

Dear Charles:

Thank you for your letter of August 26, 1986 enclosing the correspondence from the Alabama Power Company to the Nuclear Regulatory Commission. The author of the letter raises some questions about the facts stated in my affidavit to the Commission. I am not certain a comment on this letter is necessary, however I thought I might clarify the matter with you.

The quotes taken from the Form 10-K filed by CFC with the Security and Exchange Commission (SEC) are obviously correct, however, the interpretation needs clarification.

Due to the pervuasiveness of the REA mortgage, a lender must require a ratable position with REA in order to achieve an equal access to the revenue stream of the G&T. The REA mortgage involves not only the physical assets of the G&T, but all of its revenues as well. Considering the relatively low equity position of most G&Ts, access to revenues as assured by the all-requirements contract is essential to a given loan or guarantee. Due to the current financial condition of most G&Ts, CFC's guarantee provides for a higher ("AA") rating than might be available otherwise. In most cases, the rating for a G&T would be "A" or "BBB".

Several G&Ts have financed in the private market without CFC or REA guarantees. In those instances, no guarantee by the distribution members has been used as security. Again, in those instances, a shared lien on the REA mortgage was required to allow access to the all-requirements contract and the resulting revenue stream.

In the case of the Seminole loan which was quoted in the letter, the difference here involves a debt service reserve fund. CFC's mortgate does not provide for a remedy position for a one-year period, thus, it became apparent that a debt service cushion equivalent to approximately one year was a prudent step in the credit consideration.

CFC stands behind its affidavit. I would again indicate that no other utility has requested such assurances from distribution

systems, whether the contractual relationship between the G&T and the utility company involved a fossil or nuclear plant. CFC would object to any form of guarantee by the distribution system which would place its security arrangement with AEC in jeopardy.

I hope this clarifies our position. We would be more than happy to discuss this with you in more detail, if necessary.

Sincerely,

Charles B. Gill
Governor

CBG:sld

bcc: Rich Bulman
John List

United States
Department
of Agriculture

Rural
Electrification
Administration

Washington
D.C.
20250

-6 FEB 1980

Mr. Benjamin H. Vogler, Esquire
Deputy Antitrust Counsel
Nuclear Regulatory Commission
Washington, D.C. 20555

Dear Mr. Vogler:

Mr. Charles Lowman, General Manager of Alabama Electric Cooperative of Andalusia, Alabama, asked that I correspond with you regarding certain arrangements between Rural Electrification Administration (REA) borrowers and others where they are joint owners of nuclear units.

In the nuclear plant joint ownership and operating agreements that REA borrowers are involved there is no instance in which an electric distribution member cooperative of a generation and transmission cooperative has contracted to guarantee the payment or undertaking of the generation and transmission cooperative with respect to the jointly owned nuclear plant.

Sincerely,

DONALD L. OLSEN

DONALD L. OLSEN
Acting Assistant Administrator - Electric

cc: Mr. Charles Lowman, Manager
Alabama Electric Cooperative

SOUTHERN ENGINEERING COMPANY

FULTON COUNTY
ATLANTA, GEORGIA

AFFIDAVIT

Personally appeared before the undersigned, authorized to administer oaths, O. Franklin Rogers, who, upon being duly sworn, states:

I certify that the following statements are true and correct to the best of my knowledge and belief.

My present position is president of Southern Engineering Company located in Atlanta, Georgia. I have participated in numerous arrangements involving joint ownership of nuclear power plants by generation and transmission cooperatives. I have been involved in the Farley proceedings since their beginning in the early 1970s.

There are fifteen nuclear generating plants in the United States constructed and operated by privately-owned power companies in which undivided ownership interests have been acquired by generation and transmission cooperatives with electric distribution cooperative members. There were twenty such generation and transmission cooperatives since some of the nuclear plants have more than one generation and transmission cooperative participant. The Wolverine and Northern Michigan generation and transmission cooperatives have since merged leaving nineteen such participating cooperatives. Some of the nuclear units are not in commercial operation. All of the above-described arrangements

are listed on the attached list. Southern Engineering Company has reviewed all of the ownership and operating agreements in these arrangements. There is no instance in which an electric distribution member cooperative of a generation and transmission cooperative has contracted to guarantee the payment or undertaking of a generation and transmission cooperative.

All of the generation and transmission cooperatives received loans from, or through, the Rural Electrification Administration (R.E.A.). In such cases, and in all of these arrangements, R.E.A. requires long-term all-requirements power contracts among the generation and transmission cooperative and its member distribution cooperatives. In some instances, the distribution cooperatives have small generating resources of their own which they are allowed to retain but, for all practical purposes, these are all-requirements long-term power supply contracts. These contracts almost invariably run for thirty to forty years. This has been the practice of R.E.A. for decades. Alabama Electric Cooperative has such agreements with its members. A sample is attached.

It is ironic that Alabama Power Company, contrary to the universal industry practice in all other existing arrangements for participation by cooperatives, is seeking guarantees from Alabama Electric's members since it is Alabama Electric that must come to the closing with approximately $100 million.

In the arrangements to which we have referred, many of the agreements have substantial obligations of the majority investor-owned owner running to the cooperative which have not been requested here. They include: (1) obligations of the majority owner to "buy back" capacity and energy at a price greater than the cooperative's cost during the early years, (2) obligations of the majority owner to sell an equal block of system power to the minority owner if the plant is not completed by a date certain, and (3) obligations of the majority owner to sell an equal block of power to the minority owner at the estimated cost of the nuclear plant's power if the plant is not completed or operated due to lower cost energy being available to the majority owner.

Alabama Power Company points to very few generation and transmission cooperatives it considers to be financially unsound. A number of privately-owned companies are considered to be in financial difficulty. However, the investor-owned companies and generation and transmission cooperatives throughout the country who are in financial difficulty are those that (1) could not sustain or complete an expensive generation construction program or (2) completed large generation construction projects that left them with excessive reserves. AEC is in neither of these circumstances nor in danger of either of them. AEC has no generation projects under construction. Its reserve requirement is 20%, and its projected reserve level for the summer of 1986 is 26.2%. The North American Electric Reliability Council indicates reserves for the United States for the summer of 1986 to be 35.1%. The

Southeastern Electric Reliability Council, of which Alabama Electric and Alabama Power Company are members, projects reserves for the summer of 1986 of 33.0%.

The average equity percentage of the nineteen generation and transmission cooperative nuclear participants was 1.8% at the end of 1984. AEC was 0.4% at the end of 1985. Equity of a generation and transmission cooperative has not been an important consideration in these agreements, and it has not been an important consideration in obtaining loans from the Rural Electrification Administration or from the National Rural Utilities Cooperative Finance Corporation.

O. Franklin Rogers

O. Franklin Rogers

Subscribed and sworn to before me
this 20th day of February, 1986

Curtis R. Bass

Notary Public

Notary Public, Gwinnett County, Georgia
My Commission Expires Aug. 15, 1989

JOINTLY OWNED NUCLEAR UNITS BY
GENERATION AND TRANSMISSION COOPERATIVES

Plant Name	Primary Owner	G&T Cooperative Owner
Duane Arnold	Iowa Electric Light & Power	Central Iowa Power Corp. Corn Belt Power Coop.
Vogtle	Georgia Power Company	Oglethorpe Power Corp.
Hatch	Georgia Power Company	Oglethorpe Power Corp.
Grand Gulf	Middle South Energy (Mississippi Power & Light and Middle South Utilities)	South Mississippi Electric Power Association
Clinton	Illinois Power Company	Soyland Power Coop. Western Illinois Power Coop.
Black Fox	Public Service Company of Oklahoma	Associated Electric Coop. Western Farmers Electric Coop.
Marble Hill	Public Service of Indiana	Wabash Valley Power Association
North Anna	Virginia Electric Power Co.	Old Dominion
Crystal River 3	Florida Power Corp.	Seminole Electric Coop.
Fermi 2	Detroit Edison	Northern Michigan Electric Coop. Wolverine Electric Coop.
River Bend	Gulf States Utilities	Cajun Electric Power Coop.
Wolf Creek	Kansas Gas & Electric Co.	Kansas Electric Power Coop.
Susquehanna	Pennsylvania Power & Light	Allegheny Electric Coop.
Catawba	Duke Power Company	North Carolina EMC Saluda River Electric Coop.
Comanche Peak	Texas Power and Light	Tex-La Electric Cooperative of Texas Brazos Electric Power Coop.