



Department of Energy
Washington, D.C. 20585

July 19, 1979

Honorable Joseph.M. Hendrie
Chairman
Nuclear Regulatory Commission
Washington, D.C. 20555

Dear Mr. Chairman:

Certain municipal and cooperative electric utilities located in Louisiana have recently made allegations to the Department of Energy (DOE) that Louisiana Power and Light Company (LP&L)--a member of the Middle South Utilities Holding Company (MSU)--is engaging in anti-competitive activities. We understand that the Nuclear Regulatory Commission (NRC) is currently conducting Operating License (OL) antitrust reviews in connection with two members of MSU--LP&L and Mississippi Power and Light Company (MP&L). Further, it is our understanding that both LP&L and MP&L have had antitrust license conditions attached to their construction permits of the Waterford and Grand Gulf nuclear units, respectively.

In light of both NRC's previous experience concerning the competitive relationships among Louisiana electric utilities and its ongoing OL antitrust reviews concerning LP&L and MP&L, a separate investigation by DOE would be unnecessarily duplicative. Consequently, we request that you consider during your OL reviews of the MSU members whether the events and allegations listed below constitute either non-compliance with their antitrust license conditions or a "significant change" as specified in Section 105c(2) of the Atomic Energy Act of 1954, as amended.

- (1) Changed fuel situation. Until recently, Louisiana utilities were heavily dependent upon natural gas for boiler fuel. Recent and projected gas curtailments will force the utilities to seek alternative

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7/26.. To EDO for Prepare reply for signature of EDO. Date due Comm: Aug. 10.
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fuel sources. The Assistant Attorney General, Antitrust Division noted in his letter to the Commission dated February 21, 1978, concerning changed circumstances in connecting with the South Texas Project that similar events were occurring in Texas. The Assistant Attorney General concluded that the "changing fuel situation has had a significant impact on the competitive posture of the various utilities in Texas. . . . In order to maintain their competitive viability these (smaller) systems must engage in a degree of coordinated operation and development that has not heretofore existed in the State of Texas." (p.7). Does the situation in Louisiana parallel the Texas situation in this regard?

- (2) The proposed acquisition of Central Louisiana Electric Company (CLECO) by Gulf States Utilities. CLECO has several interconnection points with LP&L including one 500 kv and two 230 kv lines (McGraw Hill Directory). Thus, CLECO could have been an alternative power source for smaller utilities, and a potential competitor of LP&L. Does elimination of a potential competitor represent a "significant change"?
- (3) Apparent refusal by LP&L to sell partial requirements firm power. The Waterford license conditions require LP&L to provide a variety of bulk power services, but do not specifically require sales of partial requirements firm power. Would a refusal to supply such power be in compliance with the staff's understanding of the intent of the Waterford license conditions? Alternatively, would such a refusal represent a change in the company's policies toward its competitors, and if so, a "significant change"?
- (4) Allegations that the MSU selectively passes through certain costs, e.g., fuel adjustment and transmission charges, to its subsidiaries to the competitive detriment of other utilities. As the Commission is currently conducting OL reviews of two members of the holding company, this allegation could be subject to investigation. If the allegation is verified, would this be indicative of a "significant change"?

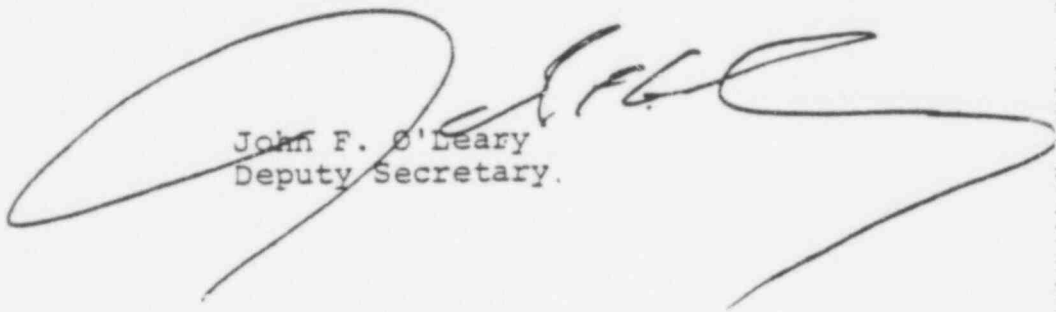
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- (5) Since the construction permit review, LP&L has obtained lease-purchase agreements with at least five of its municipal competitors. This alone is not necessarily indicative of anticompetitive behavior. However, when considered in the context of the (1) changed fuel situation, (2) the proposed elimination of a potential competitor, (3) apparent refusal by LP&L to sell partial requirements firm power, and (4) alleged selective cost pass throughs by the parent holding company MSU, would these potential acquisitions have anticompetitive aspects, and if so, would this indicate a "significant change"?

I will appreciate being kept informed as to whether any of the above concerns are revealed to have anticompetitive implications during the course of your OL reviews, and also the status of these reviews as they progress.

Thank you for your attention to this matter.

Sincerely,



John F. O'Leary
Deputy Secretary.

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