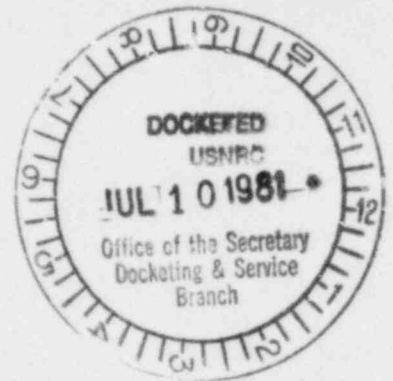


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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Commission



In the Matter of)
ALABAMA POWER COMPANY)
(Joseph M. Farley Nuclear)
Plant, Units 1 and 2)

Docket Nos. 50-348A
50-364A



MOTION FOR EXTENSION OF TIME LIMIT
FOR FILING PETITION FOR COMMISSION
REVIEW OF APPEAL BOARD ANTITRUST DECISION

Pursuant to 10 C.F.R. § 2.711, Alabama Power Company (hereinafter "Applicant") hereby requests an extension of the time limit established by 10 C.F.R. § 2.786(b)(1) for filing a petition for review by the Commission of an anti-trust decision of the Atomic Safety and Licensing Appeal Board (hereinafter "the Appeal Board"), ALAB-646, issued June 30, 1981. Applicant specifically hereby requests that the deadline for filing a petition for review of ALAB-646 be extended 60 days so that the petition is due September 19, 1981.

Applicant is the holder of an operating license for the Joseph M. Farley Nuclear Plant, Units 1 and 2 (Docket Nos. 50-348A and 50-364A) (hereinafter "the Farley Plant"). In ALAB-646, the Appeal Board reviewed a two phase antitrust decision rendered by the Atomic Safety and Licensing Board (LBP-77-24, 5 NRC 804; LBP-77-41, 5 NRC 1482) (hereinafter "the Licensing Board") pursuant to section 105(c) of the

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Atomic Energy Act of 1954, as amended, (42 U.S.C. § 2135(c)) to determine whether the granting of a license to Applicant "would create or maintain a situation inconsistent with the antitrust laws". ALAB-646 modified the decision rendered by the Licensing Board by finding additional anticompetitive conduct and refashioning the remedy in accordance with the additional findings. In particular, but among other things, ALAB-646 imposed additional license conditions on Applicant's operating license requiring it to "offer to sell" to Alabama Electric Cooperative (hereinafter "AEC") an undivided ownership interest in the Farley Plant. ALAB-646 at A-1.

Applicant intends to petition the Commission for review of ALAB-646 pursuant to 10 C.F.R. § 2.736. Already, Applicant has filed a notice of appeal of ALAB-646 with the United States Court of Appeals for the Fifth Circuit. See Docket No. 81-7547.*

*Applicant was able to file its notice of appeal with the Court of Appeals for the Fifth Circuit because the form used for appealing agency decisions in a Court of Appeals is much different from the petition for review required by the Commission pursuant to 10 C.F.R. § 2.786. A notice of appeal in the Court of Appeals serves only the purpose of notifying the parties to ALAB-646 that petitioner intends to pursue an appeal. The specific grounds for the appeal need not be addressed in a petition for review. Federal Rules of Appellate Procedure, Rule 15; 28 U.S.C. § 2072; American Paper Institute, Inc. v. Interstate Commerce Commission, 607 F.2d 1011 (D.C. Cir. 1979). In contrast, a petition for review by the Commission requires, among other things, a statement of the specific points on which the Appeal Board erred and references to the record of the Appeal Board decision. 10 C.F.R. § 2.786(b)(2).

Applicant's filing a petition for review with the Commission will demonstrate Applicant's intention to seek relief through invocation of the full range of potential administrative process within the Nuclear Regulatory Commission, without affecting that the action of the Appeal Board in ALAB-646 is, and will remain after Commission review is sought, subject to judicial review.

Accordingly, Applicant shows the following as good cause for granting the requested extension:

1. The 15 day time limit for filing a petition for review established by 10 C.F.R. § 2.788 is not sufficient for such a case as that decided in ALAB-646. The decision is long, containing 164 pages. It emanates from and incorporates findings found in an even longer two-phase decision of the Licensing Board containing a total of 186 printed pages in the Nuclear Regulatory Commission Reports. Both decisions considered "nearly 30,000 pages of transcribed testimony" with hundreds of exhibits. ALAB-646 at 5 n.10.

2. Proper consideration by Applicant of the multitude of legal and factual antitrust issues contained in ALAB-646 require additional time. Incorporation of a selected number of these issues in a petition for review, limited in length by the Commission, increases the difficulty for counsel in exercising professional judgment on behalf of Applicant. Additional time for Applicant to select the proper issues to be incorporated in a petition for review will also benefit

the Commission and other parties by providing a clearer, more precise focus on the issues to be reviewed.

3. Applicant is unguided by past Commission rulings since "to this day, neither the Commission itself nor the courts have spoken about the merits of an NRC antitrust case." ALAB-646 at 3 n.6. The absence of direction from past rulings by the Commission or reviewing courts forces Applicant to speculate on the specific kinds of antitrust issues considered sufficiently important by the Commission to warrant further review. Given the nature and length of the materials Applicant must review, as noted above, the absence of past rulings to direct Applicant in preparing the petition for review multiplies the difficulty created by the present short time limit.

4. Granting Applicant's motion to extend the time limit for filing a petition for Commission review of ALAB-646 would have the effect of extending the time allowed for Commission review pursuant to 10 C.F.R. § 2.786. The Commission itself might find useful additional time to consider the multitude of legal and factual antitrust issues contained in ALAB-646.

WHEREFORE, Applicant requests the Commission to set September 19, 1981, as the date by which Applicant's petition seeking Commission review of ALAB-646 must be filed. In the alternative, Applicant requests that the Commission grant such partial relief from the time limit set by 10 C.F.R. § 2.786(b) as it deems advisable.

Respectfully submitted this 9th day of July, 1981.

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Motion for Extension of Time Limit on behalf of Alabama Power Company have been served on the following counsel for parties to the agency proceeding by hand delivery to those indicated by asterisk and by United States Mail, postage prepaid, to the remainder this 9th day of July, 1981.

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