



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: )  
Antitrust Proceeding) )

Docket Nos. 50-348A  
50-364A

7/14/81

ANSWER OF ALABAMA ELECTRIC COOPERATIVE, INC.  
IN OPPOSITION TO ALABAMA POWER COMPANY'S  
"MOTION FOR EXTENSION OF TIME LIMIT FOR  
FILING PETITION FOR COMMISSION REVIEW  
OF APPEAL BOARD ANTITRUST DECISION"

Pursuant to 10 CFR §2.730(c) intervenor, Alabama Electric Cooperative, Inc. (AEC) strongly opposes Alabama Power Company's "Motion For Extension Of Time For Filing Petition For Commission Review Of Appeal Board Antitrust Decision" which the Company lodged with the Commission on July 9, 1981. AEC opposes for the reasons set forth below Alabama Power's effort to prolong and delay this proceeding unnecessarily and to AEC's prejudice.

Alabama Power seeks a sixty-day extension of the fifteen-day time limit established by 10 CFR §2.786(b)(1) for filing a petition for review of a decision of the Atomic Safety and

Licensing Appeal Board ("Appeal Board"), ALAB-646, issued June 30, 1981. 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, April 8, 1977; LBP-77-41, 5 NRC 1482, June 24, 1977) pursuant to section 105(c) of the Atomic Energy Act, as amended, (42 U.S.C. §2135(c)) to determine whether the granting of a licensing to Alabama Power "would create or maintain a situation inconsistent with the antitrust laws." ALAB-646 affirmed and modified the decision rendered by the Licensing Board by finding additional anticompetitive conduct on the part of Alabama Power Company and by amending the remedy in accordance with the additional findings. In ALAB-646, the Appeal Board:

"determined that the applicant enjoyed a dominant position in all three product markets. We also determined that the applicant had acted inconsistently with the antitrust laws and the policies thereunder in seven different instances, including its refusal to share ownership of the Farley plant with AEC. We found that this refusal to share in the ownership of Farley was in furtherance of the applicant's long held objective of preserving the dominant power which it enjoyed in all aspects of the electric power business in central and southern Alabama. Upon full consideration of the situation and the requirements and objectives of the Act, the conclusion we must reach is clear: To eliminate the concerns and to strengthen free competition in private enterprise, the license to the applicant for the construction and operation of the Farley plant must, as a minimum, include

conditions providing (1) AEC with an opportunity to obtain a proportionate share in the ownership of the plant and (2) reasonable transmission or wheeling services as may be needed by AEC and MEUA." (ALAB-646, pp. 147-148.)

Alabama Power now claims the Company requires eighty days in which to perfect and file a petition for review of decisions dealing with facts and issues the Company has been intimately familiar with for over a decade of litigation.<sup>1/</sup>

The Commission in 10 CFR §2.786 has spelled out with particular clarity and detail both the format and appropriate content of petitions for review. Given this detailed guidance, Alabama Power's claim that it needs eighty days within which to perfect and file a 10-page petition defies credibility. The Appeal Board in ALAB-646 affirmed in greater part the decisions of the Licensing Board, thereby eliminating from review pursuant to §2.786(b)(4)(ii)<sup>2/</sup> the great bulk of the

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<sup>1/</sup> ALAB-646 was issued June 30, 1981 and was docketed and served on July 1, 1981. Pursuant to §2.786(b)(1) and §2.710 of the Commission's rules, the Company has twenty days, or until July 21, 1981, in which to perfect its proposed petition for review. The Company delayed nine days before requesting the sixty-day delay it now seeks in order to have its petition due on September 19, 1981.

<sup>2/</sup> In promulgating 10 CFR §2.786(b)(4)(ii), the Commission determined, "that as to factual matters, two levels of decision within the agency are enough, and that there is no need for a third factual review by the Commission itself." 42 F.R. 22129 (May 2, 1977).

factual issues tried below. Therefore, the Company's claims as to the quantity and complexity of the material it needs to review before it can file its petition is grossly overstated.

The Company's ability to promptly consider and pursue what it perceives to be its legal rights regarding review was clearly demonstrated by its filing in the United States Court of Appeals for the Fifth Circuit a petition for review of ALAB-646 on the same day that it was issued and a day before it was docketed or served. In effectuating this petition, the Company utilized the combined services of three law firms: Troutman, Sanders, Lockerman & Ashmore; Balch, Bingham, Baker, Hawthorne, Williams & Ward; and Winthrop, Stimson, Putnam & Roberts. In addition, it used a fourth firm, Shaw, Pittman, Potts & Trowbridge, in effectuating the Motion here under consideration. In light of the resources at its call, the Company's claim of inability to meet the Commission's reasonable and normal deadline requirements is frivolous.

While the record below in this proceeding may be extensive, the truly significant, reviewable factual and legal issues are few in number, are easily identified, and have

been thoroughly articulated as issues in this proceeding for years. The claimed "difficulty for [Company's] counsel in exercising professional judgment . . . (Company's Motion, p. 3) regarding what issues to select for the Commission's attention is simply a function of the dearth of non-frivolous issues available to the Company.<sup>3/</sup> Such alleged "difficulty" is plainly no basis upon which to grant a grossly excessive sixty-day extension of time in which to file a 10-page petition.

Given the protracted nature of this antitrust adjudication and Alabama Power's multi-firm legal and advisory resources, the Company's claim that needs eighty days in which to identify the issues it wants reviewed is patently absurd. The issues considered below and litigated for over a decade were treated with clarity and precision in ALAB-646. There is simply no credible basis to support Alabama Power's claim that it needs eighty days to achieve a clear and precise focus

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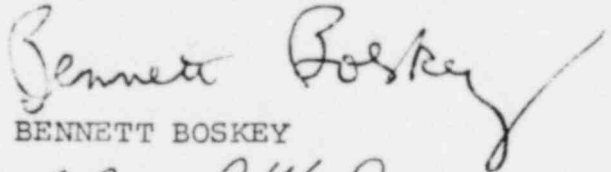
<sup>3/</sup> The Company's claim as to lack of guidance regarding the merits of an NRC antitrust case (Company's Motion, p. 4) is belied by Consumers Power Company (Midland Plants, Units 1 and 2), ALAB-452, 6 NRC 892 (1977), and also The Toledo Edison Company, et al., ALAB-560, 10 NRC 265 (1975), which the Commission declined to review.

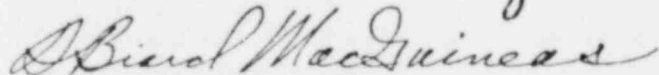
on the issues, if any, warranting review. The Company's Motion is devoid of support for the unconscionably excessive delay in the resolution of this proceeding which the Company is attempting to create.

The simple fact is that at least since 1971 the Company has been stonewalling AEC in every effort which AEC has made to obtain ownership participation in Farley. For reasons best known to itself, the Company has been seeking to put off as long as possible AEC's obtaining this important relief -- relief which the Appeal Board has unequivocally held AEC is entitled to. The Company's course of conduct in this respect has been determined by the Appeal Board to involve antitrust violations (ALAB-646, pp. 100-112). Fairness to AEC, as well as the proper vindication of the public interest, requires that the Company's exclusion of AEC from ownership participation in Farley be brought to a halt as soon as possible, within the time contemplated by established procedural rules. The Company's present effort to obtain the benefits of further delay are wholly without foundation and should receive no encouragement whatsoever from the Commission.

For these reasons Alabama Electric Cooperative, Inc.  
respectfully requests this Commission to deny Alabama Power's  
Motion for extension of time.

Respectfully submitted,

  
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July 14, 1981

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CERTIFICATE OF SERVICE

I hereby certify that copies of the attached document has been served on the following by hand delivery to those indicated by asterisk and by United States Mail, postage prepaid, to the remainder this ~~14th~~ day of July, 1981.

  
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