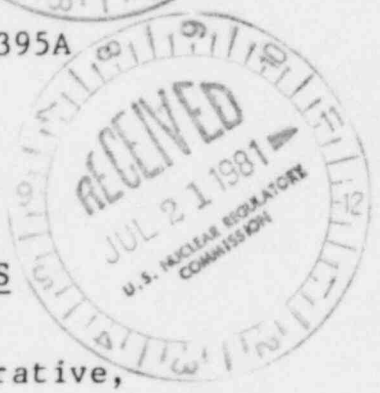
UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of	)	
	)	
South Carolina Electric & Gas Company	)	
	)	
and	)	Docket No. 50-395A
	)	
South Carolina Public Service Authority (Virgil C. Summer Nuclear Station Unit No. 1)	)	



CENTRAL ELECTRIC POWER COOPERATIVE'S
AMENDED PETITION FOR REHEARING

Petitioner Central Electric Power Cooperative, Inc. ("Central"), pursuant to 10 C.F.R. §2.771, respectfully submits this amended petition for reconsideration of the Commission's Order, issued June 26, 1981, denying Central's petition for antitrust review of the subject license in accordance with 42 U.S.C. §2135(c)(2).

On July 6, 1981, Central filed its Petition for Rehearing. In an Order dated July 10, 1981, the Commission authorized Central to file any amendment to its July 6, 1981 Petition for Rehearing by July 20, 1981.

I. RESPECTS IN WHICH THE ORDER IS ALLEGED TO BE ERRONEOUS AND GROUNDS OF ALLEGED ERRORS

1. The Commission's "Significance" Criterion is inconsistent with the scheme of §105(c).

In its Order of June 30, 1980, the Commission stated that the changes alleged by Central would be deemed "significant" for purposes of §105(c) only if those changes were found to have "antitrust implications that would likely

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warrant some Commission remedy."1/ The Commission reaffirmed this criterion in its Order of June 26, 1981,2/ and elaborated it further to require that the alleged changes also be so "apparent" as to enable a petitioner for review to establish a "factual basis" or "specific facts" supporting them without the benefit of discovery.3/

The Commission's criterion plainly requires a stronger showing -- without the benefit of discovery -- to trigger antitrust review under §105(c)(2) than is required to trigger an antitrust hearing under §105(c)(5) -- after discovery pursuant to §105(c)(4). Indeed, the criterion stops little short of the ultimate question presented under §105(c), namely whether, "the activities under the license would create or maintain a situation inconsistent with the antitrust laws."

It is evident that the Commission's "significance" criterion imposes a substantially greater obstacle to review under the operating license proviso of §105(c)(2) than §105(c) interposes to a hearing after review.

Under §105(c)(5), a hearing is triggered by the Attorney General's advice, after review, that "there may be adverse antitrust aspects." Under the Commission's "significance"

1/ (CLI-80-28 at pp. 7, 8, 23-26.)

2/ (CLI-81-14 at pp. 16-17, 21)

3/ (CLI-81-14 at pp. 17-18.)

criterion, the review which the Act requires the Attorney General to perform before rendering such advice is triggered only if it is shown that changes in the Applicants' activities "have antitrust implications that would be likely to warrant Commission remedy." The difference between the two criteria is principally between the Act's language "may be" and the Commission's "would be likely". While the Act provides for a hearing after a determination that there exists a possibility of the need for remedial action, the Commission would condition that determination upon a prior showing that there exists a probability of the need for remedial action. That is, under a statutory scheme that contemplates threshold, intermediate and ultimate determinations.4/ Central is obliged to establish at the threshold more than needs be established at the intermediate stage. The effect of such a regime, of course, is to turn the statutory scheme on its head.

As the Department of Justice pointed out in its comments on the Commission's June 30, 1980 order, the Commission's "significance" criterion departs from Congress's intent in enacting §105 in its present form. 5/ The Department perceived, correctly, that the effect of the Commission's criterion is to require an antitrust review prior to a

4/ See CLI-80-28 at p. 5 nn.11 & 13.

5/ Response Of U.S. Department Of Justice To The N.R.C.'s Request For Comment, etc., filed Oct. 10, 1980, at pp. 3-7.

request for the Attorney General's review and advice, despite Congress's express provision that no such review be conducted until the "significant change" determination is made by the Commission.6/ The Department also observed that there is no mechanism for obtaining necessary information from the applicants at the pre-review stage.7/

The department suggested that the appropriate measure of the "significance" of alleged changes in the applicants' activities should be whether those changes constitute "substantial changes within the competitive environment." 8/ The Department observed that its proposed criterion would properly reserve resolution of the precise competitive effects of the changes, whether the changes would warrant license conditions and whether the commission could grant appropriate relief, until the review stage and the hearing stage, if any.9/

The Department recognized the appeal of the view that changes in the competitive environment, in order to be "significant" must be "in some sense, adverse."10/ At

6/ Id. at p. 5.

7/ Id. The Department pointed out that discovery under 10 C.F.R. §50.33a is available only as part of formal antitrust review. Of course, this regulation merely implements §105(c)(4) of the Act, which, similarly, applies to the review-and-advice stage of antitrust proceedings.

8/ Id. at pp. 5-6.

9/ Id. at p. 6.

10/ Id. at p. 6 n.12.

the same time, however, it recognized that this generally cannot be determined without formal antitrust review. 11/ In its response to the Commission's Order of January 15, 1981, the Department again addressed the tension between the threshold character of the "significant change" determination and the ultimate issue presented under §105(c). This time, the Department concluded that its criterion should be elaborated to include an inquiry "whether an antitrust review would serve no useful purpose." 12/ More specifically, the Department suggested that review should not be sought "if it is abundantly clear that an antitrust review would conclude that an antitrust hearing is not necessary."13/

Especially in light of the Commission's recognition that Congress intended that it consult with the Department in reaching a significant change determination,14/ the Commission's Order of June 26 accorded singularly little weight to the Department's view of the "significance" criterion.

The Order nowhere analyzed the Department's suggested criterion. Instead, it merely characterized the Department's view as representing one pole of two divergent

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11/ Id.

12/ Comments Of The Department Of Justice, etc., filed Feb. 6, 1981 at p. 3 n.3.

13/ Id. (emphasis added.)

14/ CLI-80-28 at p. 29, citing H.R. Rep. No. 91-1470, 91st Cong. 2d Sess., reprinted in [1970] U.S. Code Cong. & Ad. News, 4981.

views.15/ Moreover, evidently recognizing the force of the Department's argeement that the statutory scheme does not contemplate a pre-review antitrust review, the Commission appears to have appropriated it and deflected it merely to justify foreclosing discovery, while at the same time insisting that Central prove more at the pre-review stage than is required to be shown at the review stage.16/ That is, because Congress did not intend to burden applicants with a proceeding to determine whether to have a proceeding, Central may not engage in discovery; at the same, and on the same grounds, however, Central is obliged to prove at the threshold more than would have to be proved at the second stage of the proceeding in order to warrant the final stage. Similarly, whereas the Department suggested that the Commission could legitimately inquire at the threshold whether it is "abundantly clear" that review would not result in a hearing; the Commission held that Central must show that it is probable not only that review would result in a hearing but also that the hearing would result in remedies.

None of the available indicia of Congressional intent supports the Commission's "significance " criterion. On the contrary, comparison with other language in §105(c), the role of the proviso containing the term "significant changes" in

15/ CLI-81-14 at p. 16.

16/ CLI-81-14 at p. 17.

the scheme of §105(c) and the pertinent legislative history all point directly toward the Department's criterion.

The parties and the Commission appear to agree, at a minimum, that in order for changes in an applicant's activities to be "significant" for the purposes of §105(c) they must have significance for competition. That is, they must appear to affect the competitive environment. This inference is clearly warranted by fact that the term is employed in an enactment concerned with the preservation of competition.

The Department has most recently suggested that the changes in question must not be so obviously procompetitive or trivially anticompetitive as to make it "abundantly clear" that review would not likely lead to a hearing. While not as strictly compelling as the first inference, this position has the virtue of relieving the tension between the proviso's aim of preventing needless review and the threshold character of the determination.

Moreover, this added dimension of meaning does not arrogate to the term "significant changes" the meaning of the term "adverse antitrust aspects". The Commission's "significance" criterion does. Congress used two words, "significant" and "adverse". In construing the statute, the Commission is obliged to give effect to each word.17/ "Adverse" is surely the more definite term and thus "more"

17/ Sands, 2A Sutherland Statutory Construction §46.06 and cases cited at n.1.

than "significant". The Commission's criterion, however, confounds them and in so doing reads the "lesser" term out of the statute.

The Commission's criterion is equally unsupportable when it is cast against the background of the scheme of §105(c). Congress enacted two provisions by way of conditions upon a hearing to determine whether a license should be conditioned at the OL stage: §§105(c)(2) and 105(c)(5). The Commission is obliged to give effect to each.18/ The Commission's "significant changes" criterion, however, more than anticipates the "adverse aspects" determination delegated to the Attorney General at the review-and-advice stage. In so doing it renders the Attorney General's review under §105(c)(5) superfluous. The Supreme Court has held that an elementary canon of construction is that a statute should not be interpreted so as to render one provision largely superfluous or redundant. Colautti v. Franklin, ___ U.S. ___, 99 S. Ct. 675, 684 (1979).

Analyzed against the pattern of the statute, the Commission's criterion violates fundamental canons of construction in another way. The "significant changes" language is contained in a portion of the statute that is provisional on its face. That is, the "significant changes" proviso of §105(c)(2) represents an exception to that subsection's general command that "[§105(c)1] shall apply to

18/ Id. and the cases cited at n.2.

an application for a license to construct or operate a utilization or production facility under [§103]." As such, and in view of the indefiniteness of the proviso's language, the proviso should be strictly construed to ensure that the exception does not swallow the rule.19/

Finally, recourse to the pertinent legislative history does not assist the Commission's "significance" criterion. While it is perfectly true that the Joint Committee's report on the 1970 amendments to §105 evinces concern that applicants not be subjected to antitrust review at the OL stage unless developments after a CP review warrant it, it is equally clear that the committee considered that the dimension of the "significant changes" determination relating to causation furnished this safeguard. The report stated:

> The term "significant changes" refers to the licensees' activities or proposed activities; the committee considers that it would be unfair to penalize a licensee for significant changes not caused by the licensee or for which the licensee could not reasonably be held responsible or answerable.20/

The Commission itself recognized that this language (and it is the only definition of "significant changes" contained in the report) goes to the "causation" criterion.21/ While the

19/ Id. at §4708 and cases cited at n.3.

20/ H.R. Rep. No. 91-1470, supra, at p. 29.

21/ CLI-80-28 at p. 21.

quoted passage bears offers ample support for the Commission's the "causation" criterion, it cannot also bear the freight of the Commission's "significance" criterion.

Moreover, the Commission's unwarrantedly expansive reading of the word "significant" to achieve prohibitively stringent "significant changes" criteria overlooks the most fundamental aspect of the legislative history of the 1970 amendments to the Act. The underlying purpose of the amendments to §105(c) was to afford more opportunities for scrutiny of the competitive effects of utilities' employment of a federally-developed resource. The commission's overly restrictive "significance" criterion achieves precisely the opposite result. This result is all the more unreasonable in this case because one of the applicants, SCPSA, will have escaped antitrust review altogether if the Order of June 26 is affirmed.

2. Contrary to the Commission's Order, SCE&G's successful use of monopoly power in the power exchange product market to coerce a substantial alteration in competitive conditions in the marketplace constitutes a significant change.

The Commission erred in its finding that Central's papers contained "insufficient substance" and submitted only "generalized hearsay" to support Central's allegation that SCE&G used access to the Summer Nuclear unit as a club to coerce SCPSA's behavior.22/ Mr. Kelly Smith submitted an affidavit to the Commission that contained the following statement:

22/ CLI-81-14 at p. 25.

> About March 20, 1973, Mr. Lucas Padgett informed me (and said he had just informed Mr. E.V. Lewis) that the bill was to be introduced in the Senate Judiciary Committee the following day in hopes it would become a committee bill. Mr. Padgett stated that this legislation was necessary in order for Santee Cooper to conclude its negotiations with SCE&G on the nuclear plant." 23/

Mr. Padgett is a Vice President of SCPSA. 24/ Mr. Smith's testimony concerning this statement made by Mr. Padgett would not be excluded in a federal court on hearsay grounds but would be admissible as an admission under Rule 801(d)(2), Fed. R. Evid. See, United States v. Matlock, 415 U.S. 164, 172n.8 (1974); United States v. Rios Ruiz, 579 F.2d 670, 676 (1st Cir. 1978); United States v. Rosenstein, 474 F.2d 705, 711n.2 (2nd Cir. 1973).

The credibility of Mr. Smith's testimony is reinforced by the timing of the territorial legislation in relation to the conclusion of the Summer sale agreement. The territorial legislation was presented to the Senate

23/ Affidavit of Kelly Smith at p. 4, attached to Reply Brief of Central In Response to Motions to Dismiss its Amended Petition, dated March 19, 1979 (emphasis added). This testimony is consistent with the statement contained in the business record authored by Mr. Smith in early 1973 that "Electric and Gas representatives at the State House have been telling that Electric & Gas is not going to sell the Authority power out of the nuclear plant and then have it compete with Electric & Gas." A statement made by a representative of a party opponent is classified as an admission by the Federal Rules of Evidence--not as hearsay. Rule 801(c)(2)(A).

24/ Affidavit of Lucas Padgett, at ¶1, attached to Reply of SCPSA To Amended Petition, dated March 7, 1979. SCPSA never submitted another affidavit from Mr. Padgett rebutting the testimony of Mr. Smith.

Judiciary Commission in March 1973 25/ and was approved by the Governor of South Carolina on July 9, 1973. SCE&G executed a Joint Ownership Agreement with SCPSA on October 18, 1973, providing for the sale of a one-third ownership interest in the Summer unit to SCPSA.26/

The Commission erred in failing to consider documents submitted by Central that establish that SCE&G, in collaboration with Carolina Power & Light Company ("CP&L") and Duke Power Company ("Duke"), had historically attempted to coerce SCPSA to relinquish its trade freedom as a condition precedent to SCPSA's access to the regional power exchange market.27/ SCE&G's express reason for linking territorial integrity with access to power exchange was SCE&G's recognition that the competitive position of both SCPSA and the cooperatives would improve if SCPSA could acquire the economic benefits of power pooling.28/ It was error for the Commission to ignore the historical linkage forged by SCE&G, CP&L and Duke between territorial integrity and SCPSA's access to the CARVA pool in resolving the disputed factual issue of whether SCE&G "used access to a nuclear facility as a club to coerce" SCPSA's behavior.

25/ Affidavit of Lucas Padgett, at ¶4; Affidavit of Kelly Smith, at ¶ 4.

26/ Attachment 2, attached to NRC Staff Response to Amended Petition of Central, dated march 19, 1979.

27/ Exhibits 6-9, attached to Comments of Petitioner Central Electric Power Cooperative, Inc., dated August 25, 1980.

28/ Exhibits B and C, attached to Reply Brief of Central In Response to Motions to Dismiss its Amended Petition, dated March 19, 1979.

These documents provide cogent evidence that SCE&G continued to insist on a territorial agreement before executing the Joint Ownership Agreement on the Summer Unit. The significant change for purposes of 42 U.S.C. §2135(c)(2) is that SCPSA finally caved in to the persistent, anticompetitive demands of SCE&G and others in 1973 after resisting them as contrary to its best interest for several years.

Further, while SCE&G submitted affidavits from its President and Chairman of the Board, 29/ neither affidavit controverted Central's basic allegation that SCE&G agreed to sell to SCPSA an interest in the Summer Unit in consideration of the territorial agreement submitted to the legislature. 30/

As Central has advised the Commission,31/ there are other publicly available documents supporting Central's allegations on this issue and others, but Central's counsel has been precluded from submitting them to the Commission as a result of SCE&G's filing of a motion for a protective order on August 13, 1980, in the District Court

29/ Affidavits of Arthur M. Williams and Virgil C. Summer, attached to SCE&G's Motion to Dismiss, dated December 21,1978.

30/ Petition for a Finding of Significant Change and Request for Antitrust Hearing on Operating License, dated December 6, 1978 at p. 2.

31/ Comment of Central, etc., dated January 23, 1981 at p. 15; Opposition of Central to Motion of SCE&G To Defer Ruling On Petition For Significant Change Determination, dated Dec. 9, 1980, at p. 5; Comments of Petitioner Central, etc., dated Aug. 25, 1980 at pp. 15-16; Affidavit of Wallace E. Brand at p. 2, ¶5 attached to Motion for Extension of Time dated July 24, 1980; Letter of Wallace E. Brand to the Honorable Samuel J. Chilk dated Sept. 11, 1980 and attachments thereto.

for the Middle District of North Carolina, Greensboro Division.32/ The District Court in Greensboro has yet to act on this motion. The pending motion for a protective order in this related federal court proceeding precludes neither the staff of the NRC nor the Justice Department from securing publicly available documents even if the District Court had already granted SCE&G's motion. However, since the staff and Justice are apparently unwilling to secure the documents and Central is presently unable to transmit them under the circumstances, SCE&G should have no objection to Central's use of a limited number of documents produced by SCE&G in the federal court case to assist the Commission's reconsideration of its Order, unless, of course, such documents would cast considerable doubt on the contentions made by both SCE&G and SCPSA in this proceeding.33/

32/ Many of the documents are contained in the files of the United States District Court for the Middle District of North Carolina, North Carolina Electric Membership Corp., et al. v. Carolina Power & Light Co. & South Carolina Electric & Gas Co., No. C-77-396G, and of the United States Court of Appeals for the Fourth Circuit, North Carolina Electric Membership Corp., et al. v. Carolina Power & Light Co. & South Carolina Electric & Gas Co., No. 81-1057.(Interlocutory appeal from a discovery order)

33/ Central's counsel has furnished copies of these documents to SCE&G as well as a sixteen page single-space summary of the documents contents illustrating the use which Central intended to make of them in its comments of August 25, 1980. Central requested SCE&G to waive its objections to the use of documents produced from its files in a related Federal District Court proceeding. Letter of Edward E. Hall to Joseph B. Knotts and Edward C. Roberts, dated July 13, 1981. SCE&G refused this request, and charaterized the summary as "highly inaccurate and misleading." Letter of Leonard W. Belter to Mr. Edward E. Hall, dated July 15, 1981. Of course, the documents speak for themselves and the accuracy of the summary would be for this Commission to decide based upon a review of SCE&G's documents and after hearing the parties' views respecting them. This, however, will not occur unless SCE&G permits Central's counsel to transmit the documents which SCE&G adamantly refuses to do.

It was therefore error for the Commission to resolve this controversial issue of fact in the present posture of this proceeding. The testimony of Kelly Smith concerning his conversation with Mr. Padgett of SCPSA, the historical link between access to power exchange and territorial integrity, the timing of the legislation in relation to the conclusion of the Summer Unit sale and other facts discussed above, establish that, contrary to the Order, there is "sufficient substance" to Central's allegation to warrant further investigation by the Justice Department. (See also, Affidavit of Patrick Allen, at ¶5 attached to Amended Petition of Central for a Finding of Significant Change, dated Jan. 31, 1979.)

The use of monopoly power in the power exchange market to coerce a viable competitor to agree to a substantial alteration in competitive relations in the power exchange, wholesale and retail product markets in South Carolina and even outside of South Carolina can only be characterized as a significant change.

3. Contrary to the Commission's Order, the aiming of the group boycott in the power exchange product market at Central rather than at SCPSA constitutes a significant change.

The Commission erred in its finding that the alleged territorial agreement between SCPSA and SCE&G is protected by the state action doctrine enunicated in Parker v. Brown, 317 U.S. 341 (1943) and its progeny. (CLI-81-14 at pp. 22-23.) There is no state or federal law that compels or even sanctions an agreement between SCPSA and SCE&G that gives SCPSA the exclusive right to sell power exchange services to

Central 34/ or to supply Central with firm bulk power.

Both SCE&G and SCPSA recognize that the 1973 territorial law does not prohibit the sale of power exchange services by SCE&G, Duke or CP&L to Central. SCE&G has offered to sell to Central a few megawatts of capacity. (See pp. 18-19 infra). Article IV of the Power System Coordination and Integration Agreement between SCPSA and Central permits Central to acquire capacity from third parties and to have any such recourse designated as an "Eligible Capacity Resource" for the purposes of the provisions relating to resource integration and supplemental power sales. (See pp. 29-30 infra). As a result of the allocation of customers and territory in the power exchange product market, Central has been denied the benefits of competition in its efforts to secure arrangements for the coordinated development of generation.

Evidence of such a horizontal market allocation can be found in the minutes of meeting of the Executive Committee of the Virginia-Carolinas group (VACAR) held on September 24, 1976. 35/ At this meeting, Duke informed representatives of SCPSA, SCE&G, and CP&L that it

34/ Central includes arrangements for the coordinated development of generation and wheeling in its definition of power exchange services.

35/ Exhibit 2, attached to Comment of Central Power Cooperative, Inc., dated January 23, 1981.

would not permit ElectriCities, a group of North Carolina municipalities, to transfer power from the cities' ownership interest in Catawba outside of Duke's retail service area (i.e. to municipal electric systems served by CP&L and SCE&G). The only reason for such a discussion at a VACAR Executive Committee meeting was to assure the other members of the committee that Duke was honoring a pre-existing customer allocation agreement which prohibited one member of the boycott from selling capacity to wholesale customers served by another member of the boycott. Other evidence of an agreement to horizontally allocate customers can be found in the minutes of a Carolinas-Virgina Pool ("CARVA") Executive Committee meeting held on June 20, 1967, where it is stated that the territorial integrity of the companies must be maintained (i.e. territorial integrity of Duke, CP&L and SCE&G must be protected from encroachments by SCPSA).36/ Territorial integrity could not be maintained if it did not already exist. The basic problem faced by the members of the CARVA Pool was to convince SCPSA to recognize the territorial integrity of the private companies, a problem that would be aggravated if SCPSA became a member of the CARVA pool. As noted by the Justice Department in a pleading filed in another NRC proceeding, SCPSA "was asked

36/ Exhibit 6 at p. 5 attached to Comments of Petitioner Central Electric Power Cooperative, Inc., dated August 25, 1980.

to agree to a limitation on its service area" as a prerequisite to its admission to the CARVA Pool, but this "agreement was never consummated." 37/ The significant change in the marketplace is not that the former CARVA pool members insisted on a territorial allocation as a prerequisite to SCPSA's access to power pooling both before and after the dissolution of CARVA in 1970, but that SCPSA was coerced into agreeing to the scheme in 1973 and the scheme was thereafter aimed at Central rather than SCPSA. (See pp. 28-30 infra). The territorial legislation drafted by these companies and approved by the legislature, however, did not give SCPSA the exclusive right to sell power exchange services to Central but simply denied SCPSA the right to serve municipal electric systems and cooperatives that were not members of Central.

Circumstantial evidence of the market allocation is provided by SCE&G's offer to enter into a joint ownership arrangement with Central but limiting the sale of capacity to a few megawatts corresponding to that part of Central's load served by SCE&G at wholesale. That is, SCE&G would not sell sufficient capacity to Central to enable Central to displace wholesale firm power sales to it by SCPSA.

SCE&G's offer is consistent with the allocation discussed at the VACAR meeting on September 24, 1976. Central requested a proposal from SCE&G on a joint ownership arrangement that would include more capacity than the isolated

37/ Exhibit E, attached to Reply Brief of Central In Response to Motions to Dismiss its Amended petition, dated March 19, 1979.

load of Berkely Electric Cooperative served by SCE&G 38/ No such proposal has ever been forthcoming from SCE&G. It would therefore be futile for Central to pursue the matter further, given SCE&G's unwillingness to sell capacity in excess of the load served by it at wholesale. See, Wilder Enterprises, Inc. v. Allied Artists Pictures Corp., et al., 632 F.2d 1135, 1142 (4th Cir. 1980).

The anticompetitive effect of a horizontal market allocation scheme, and the rationale for its classification as a per se violation of the Sherman Act, is that such a restraint denies the victim of the conspiracy the benefits of competition, including a more favorable purchase price or terms and conditions of sale from an alternative seller or sellers. See, Gainsville Utilities v. Florida Power & Light Co., 573 F.2d 292 (5th Cir. 1978), cert. denied, 439 U.S. 966 (1978); Toledo Edison Company et al., 10 NRC 255, 359-361 (1979). The Fourth Circuit condemned price fixing and wholesale territorial agreements among electric utilities in a decision rendered in 1950. Pennsylvania Water & Power, et al v. Consolidated Gas, Electric Light & Power Co., 184 F.2d 552, 556-558 (4th Cir. 1950), cert. denied, 340 U.S. 906 (1950). Another anticompetitive affect of a horizontal customer allocation is that the victim of the conspiracy is placed in a poor bargaining position in negotiations with

38/ Letters of P. T. Allen to T. C. Nichols, dated May 15, and June 19, 1979, contained in Attachment 3 to NRC Staff Response To Commission Request For Comments, dated August 29, 1980.

the seller to whom it has been allocated by the other members of the conspiracy. Having failed in its effort to secure an alternative proposal from SCE&G for meaningful coordinated development of generation, Central's only remaining alternative was SCPSA.

4. Contrary to the Commission's Order, SCPSA's refusal to deal with Central on reasonable and practicable terms constitutes a significant change.

The Commission erred in its assessment of the heavy financial burdens imposed by SCPSA on Central's participation in the Summer Unit.39/ SCPSA insisted on imposing a 30%-of-cost penalty on Central for participation in the Summer Unit by requiring it to absorb all the costs of retiring a $70-million senior security issue without any offset for the benefits that would accrue to SCPSA as a result of changing the majority of its securities from second mortgages to first mortgages.40/ Central has repeatedly maintained that SCPSA's offer would not permit Central to acquire an interest in the Summer Nuclear Unit.41/ The fact that Central did not exercise the option to acquire up to thirty three and one-third per cent undivided ownership interest in SCPSA's

39/ CLI-81-14 at p. 28.

40/ Power System Coordination and Integration Agreement Between SPSA and Central at Article III A, p.12.

41/ Affidavit of Patrick Allen at ¶10 attached to Amended Petition Of Central For A Finding Of Significant Change dated Jan. 31, 1979. Comments of Petitioner Central Electric Power Cooperative, Inc., at pp. 11-12, dated August 25, 1980. SCPSA's explanation of this penalty is contained in the merger proposal submitted by SCPSA to Central in October, 1978. Exhibit A, attached to Affidavit of Patrick Allen.

share of the Summer Unit is owing to the heavy financial burdens imposed by SCPSA.

The draft of the Agreement submitted by SCPSA to this Commission on January 14, 1981 would have required Central to exercise the option "by January 1, 1981." 42/ In an Order issued on January 15, 1981, the Commission found the Agreement submitted by SCPSA "provides among other thing an opportunity for Central to purchase an ownership share in the Summer facility." REA approved the agreement on January 19, 1981. The REA extended the deadline for exercising the option from January 1, 1981 to January 20, 1981.43/ The foregoing illustrates the illusory nature of the option.

Thus, access to the Summer Unit is involved in this "significant change" proceeding in two ways. First, SCPSA's access to the unit was conditioned on its willingness to forfeit its trade freedom. Second, Central's access to the Unit was precluded altogether by SCPSA's insistence on unreasonable terms and conditions that destroyed economic feasibility of the purchase by Central.44/

42/ Power System Coordination and Integration Agreement Between SCPSA and Central, at Article III C, p. 11 attached to letter from Hugh P. Morrison to Mr. Chilks, dated January 14, 1981.

43/ Power System Coordination Agreement, at Article II C, p. 12, attached to letter of Wallace Brand to the Honorable Samuel J. Chilk, dated February 12, 1981.

44/ In a concentrated market, where there are a limited number of alternative sellers and each buyer is assigned to a particular seller, the market allocation results in a series of monopolies in the submarkets created by the allocation. As a result, each seller can deal with its allocated captive customer as it sees fit and may either exact monopolistic price, terms and conditions or simply refuse to deal altogether.

The Commission erred further in its conclusion that the Agreement between SCPSA and Central "laid to rest" Central's allegations that SCPSA has refused to provide Central with power exchange services on practical terms.45/ Prior to 1979, SCPSA refused Central's request for an ownership interest in SCPSA's bulk power transmission.46/ The Agreement reserves to SCPSA the right to construct and own bulk transmission. The Agreement does not permit Central to construct transmission lines to integrate its own generating resources, to integrate its own load centers or to connect its own generation directly to its own load centers when that would be more economical for Central than wheeling through SCPSA's transmission system. (Definitions, B p. 4, Act VII, Paragraph E 2, 3, p. 22; see also paragraph D at p. 20). This maintenance of SCPSA's transmission bottleneck plainly restricts competition. See, Pennsylvania Water & Power et al. v. Consolidated Gas, Electric Light & Power Co., supra.

Furthermore, the Agreement's provision for SCPSA's monopoly of transmission inhibits Central's ability to employ the benefits of the Agreement to secure the membership of additional cooperatives. To avoid extending this monopoly, Central was obliged to insist upon a provision excluding service to any new members from the coverage of the Agreement. (Appendix B, Article I ¶C, p.66; Definition E, p.4; Article VI, ¶A, p.19.) As a consequence of avoiding the burden of SCPSA's transmission monopoly, Central has thus been forced

45/ CLI-81-14 at pp. 23-24.

46/ Affidavit of Patrick Allen at ¶ 10.

to forego even the limited benefits of the Agreement in competing for new loads and must, instead, try to compete by starting from scratch in areas not covered by the Agreement.

The Agreement does not incorporate Central's proposal to share existing generation and to have each party bear separately the costs of new power supply associated with the growth of each. Central's proposal would have made the cost of growth through ownership (as compared with growth through firm power purchases) economically feasible. Under this proposal, Central would be comparing the cost of power produced from new, inflated-price plants with the cost of additional firm power produced from Santee Cooper's comparably-priced new plants. Under the arrangement insisted upon by the Authority and contained in the Agreement, however, Central will be comparing the cost of power produced from new units with the cost of power produced from old as well as new units on Santee Cooper's system. (Article V, pp. 17-18; Appendix A and Exhibits 1 and 2 thereof, pp. 62-64; Appendix E, p. 81). That is, it will be comparing the cost of new capacity with the cost of mixed old and new capacity. This comparison is the bottom line of the feasibility showing that Central must make in order to obtain financing for the new units purportedly available under the new Agreement. Assuming the continuation of general inflation, even at moderate rates, this comparison will never be

favorable. Both Central's proposed method and the Agreement's method would recover Santee Cooper's costs. Central's method would maximize joint ownership opportunities as well. The Agreement, however, minimizes such opportunities. It therefore raises unnecessary barriers to competition. See, United States v. United Shoe Machinery Corp., 110 F. Supp. 245, 340 (D. Mass. 1953) aff'd, 347 U.S. 521 (1954) (per curium). In Alabama Power Company (Joseph M. Farley Nuclear Plant, Units 1 & 2), Docket Nos. 50-348A, etc. (ALAB June 30, 1981), at pp. 98-99, the Appeals Board held that the REA financing requirements for generation was an important consideration in the Board's finding that Alabama Power's wholesale rate reductions were anticompetitive.

The Commission nowhere addressed Central's contention that the purported opportunity to own portions of generating units is merely "pie-in-the-sky" if, as a practical matter, Central cannot, under these circumstances, get REA approval for financing.

Offering to deal on impracticable or unreasonable terms is tantamount to a refusal to deal. See, Consumers Power Company, 6 NRC 892, 1044-1046, 1065-1079 (1977) (rejecting "Holland formula" for reserve sharing and Consumer's post hearing formulation of wheeling conditions); Toledo Edison Company, et al., 10 NRC 265, 321-322, 360-362 (1979) (holding that CEI's proposal to Cleveland for joint ownership contained unreasonable and anticompetitive terms); Florida Power &

Light Company, 18 Federal Power Service 783, at 814 (FERC Opinion No. 57, 1979); Eastman Kodak Co. v. Southern Photo Materials Co., 273 U.S. 359 (1927) (refusal to sell to plaintiff at dealer's discounts).

Moreover, the Agreement permits SCPSA to charge Central for plant which SCPSA may wish to construct at some point in time, or what may be called "wishful work in progress." Appendix A, Exhibit I, Paragraph VI, at p. 60 and Paragraph VII at pp. 60-61.

These provisions, along with the terms attached to Central's participation in Summer, are to be expected when a potential entrant into the bulk power supply business is denied the opportunity to negotiate with more than one existing bulk power supplier. The failure of the Commission to examine the terms and conditions of the Agreement in relation to the totality of circumstances is plain error.47/

5. Contrary to the Commission's Order, SCE&G's refusal to wheel for Central and SCE&G's unwillingness to negotiate meaningful arrangements for coordinated development of generation with Central constitute significant changes.

47/ The Commission erred in its legal conclusion that SCPSA's charter obliges it to supply power at cost of service and compounded this error by failing to assess the anticompetitive terms and conditions of the Agreement as well as the circumstances surrounding its execution. The Charter of SCPSA provides that the rates must "at least" be sufficient to recover cost of service. S.C. Code 58-31-30(13). The charter obliges SCPSA to charge no less than the cost of service but does not prohibit SCPSA from charging a rate in excess of such cost. Moreover, the role of the NRC is to focus on the anticompetitive nature and effect of a joint ownership agreement or proposal rather than cost of service issue. See generally, Toledo Edison Company, et al., supra, 10 NRC at 321-322, 360-362; 5 NRC 633. The Commission abandoned the role of evaluating competition and instead attempted to assume the role of the F.E.R.C. in assessing the reasonableness of an offer from a monopoly seller.

The Commission erred in accepting SCE&G's assurances that it will wheel for Central.48/ For the past four years, Central has made general and specific requests for wheeling services to SCE&G and has received no wheeling. The only conclusion to draw is that SCE&G will not perform any wheeling service for Central. Central made a general request for wheeling services in the proposed licensing conditions furnished to SCE&G in February 1977. 49/ SCE&G rejected this proposal 50/ but offered to "consider" specific wheeling proposals on a case-by-case, point-to-point basis. Point-to-point wheeling would frustrate Central's ability to supply bulk power.51/ Central nevertheless "made further inquiries in one case where point-to-point wheeling might prove helpful to see whether there was anything to their [SCE&G's] proposal."52/ Mr. Allen testifed that no response had been received to Central's request.53/ The specific wheeling request referred to by Mr. Allen was made in 1977 and involved Berkeley Electric Cooperative.

48/ CLI-81-14 at pp. 26-27.

49/ Affidavit of Patrick Allen, at ¶13; Affidavit of David Springs, at ¶7, attached to Reply Brief of Central In Response To Motions To Dismiss its Amended Petition, dated March 19, 1979.

50/ Id.

51/ Id.

52/ Affidavit of Patrick Allen, at ¶13.

53/ Id. Mr. Allen's affidavit was executed on January 26, 1979.

SCE&G has also assured this Commission that it will consider wheeling for Central from SCPSA to Berkeley Electric Cooperative, a member of Central. As shown in the Affidavit of Mr. T.C. Nichols of SCE&G, Central has made several requests to SCE&G for wheeling services in connection with this isolated load.54/ On August 6, 1980, representatives from Central and SCE&G met to discuss wheeling to Berkeley. SCE&G stated at that meeting that a wheeling tariff for Berkeley was in the mill. SCE&G further agreed to submit a counterproposal to Central's formulation of licensing conditions submitted to SCE&G in February, 1977.

It has now been almost one year since this meeting and, needless to say, SCE&G has not submitted its wheeling tariff for Berkeley or its counterproposal on licensing conditions. The Commission has not stated how many years or even decades must pass before it can reasonably infer that SCE&G has absolutely no intention of wheeling for Central in any case, specific, general or otherwise. At the same meeting Central reiterated its interest in a meaningful joint ownership arrangement with SCE&G.55/

54/ Letter of T.C. Nichols to Samuel Chilk, dated Aug. 25, 1980.

55/ (See p. 18, supra.) SCE&G argued that SCPSA's agreement to wheel "from specified point to specified point" and SCE&G's "willingness to wheel on a case-by-case basis" obviated any need "for the NRC to conclude that there remain anticompetitive implications for it to resolve." Comments of South Carolina Electric & Gas Company In Response To Commission Order of January 15, 1981, dated January 23, 1981, at p. 8, n.7. Staff merely echoes SCE&G. NRC Staff Response To Commission's Order of January 15, 1981, dated February 10, 1981, at p. 9. While Central disagrees with the conclusion reached by both SCE&G and Staff, Central accepts their implicit admission that an opposite result would be required if SCE&G was unwilling to wheel for Central.

Documents directly contradicting SCE&G's willingness to wheel for Central, even on a point-to-point, case-by-case basis, are publicly available, but Central's counsel is precluded from transmitting it at the present because of SCE&G's strategic filing of a motion for a protective order in a related district court proceeding. SCE&G refused a recent request made by Central's counsel that would have permitted Commission review of these documents.

A significant change finding may be based upon the existence of a group boycott or horizontal allocation between Duke, CP&L, SCPSA and SCE&G that has denied Central an alternative supplier of power exchange services other than SCPSA. Central did not seek joint ownership and power pooling arrangements prior to 1973 and was therefore shielded by SCPSA, which was making such efforts, from the anticompetitive activities and demands by the CARVA cartel. It was Central's concern over SCPSA's changed role in the marketplace that caused Central in 1974 to seek on its own initiative, power exchange services and facilities in order to secure "opportunities for bulk power supply alternatives apart from continued purchase of firm power in bulk from Santee Cooper." (Affidavit of Patrick Allen, at ¶¶8,9,10,13.) Thus, a significant change is Central's new role in the marketplace and the aiming of the boycott at Central, rather than SCPSA. The remedy, of course, would be to impose license conditions on SCE&G requiring it to deal with Central.

In a competitive power exchange market, Central would have had the opportunity to negotiate with two or more alternative sellers and select the most favorable offer or offers. Central has been denied this opportunity. With the execution of the Agreement, Central could still acquire an interest in SCE&G's generating facilities. Nothing in the Agreement prohibits Central from concluding such an arrangement. Article IV D of the Agreement provides in pertinent part as follows:

> "Central may construct or otherwise acquire and own generation resources to serve all or a portion of Central's power and energy requirements, (i) Central has made all of the arrangements necessary, in the opinion of the Planning Committee, to have the output of such resources delivered to Authority's transmission system; and (ii) Central has made all of the arrangements necessary, in the opinion of the Planning Committee, to have such resource dispatched by Authority pursuant to Article X hereof; and (iii) the connection of such resource will not, in the opinion of the Planning Committee, compromise the security or integrity of the combined Authority-Central system".

The Planning Committee is composed of two representatives from both SCPSA and Central (Article II B1, at p. 9).

As a practical matter, Article IV, Section F limits the use of this paragraph to resources proposed in writing ten years in advance of the commercial operating date or five years in advance if the planned territorial reserve margin would not be changed by more that 2%. If the resource is jointly owned with the Authority or the Planning

Committee determines that the addition of such resource will not have an adverse impact upon the reliability of the "Combined Authority-Central System and the economics of both parties," no notice need be given and the resource would qualify as an "Eligible Capacity Resource."

Although the agreement permits Central to buy into SCE&G's resources, this opportunity is an illusory one since SCE&G and SCPSA have colluded to allocate the power exchange product market to mirror the existing wholesale firm power market. Central will be unable, therefore, to avail itself of the benefits of competitive alternatives available on paper in Article IV D. and F. 56/

6. The Commission erred in refusing to permit Central to engage in limited discovery.

The Commission erred in refusing to allow Central discovery to further document its allegations.57/ (Order at pp. 17, 18n.44). The prejudicial effect of this error is compounded by the Commission's imposition of an inappropriately stringent standard of proof upon Central. (See pp. 32-35, infra.)

56/ By way of example, Central might abe able to obtain in January 1986 part of SCE&G's interest in the Summer Unit without incurring the 30% of cost penalty. SCE&G could replace its position by purchase of Summer unit power from the Authority in the "same amount". Under those circumstances, each party would benefit. SCE&G would benefit substantially by obtaining its generation back at a significantly lower fixed charge rate. Central would benefit by being able to enjoy unit ownership. The net result under such an arrangement would leave reserve margins unchanged.

57/ CLI-81-14 at pp. 17, 18 n.44.

First, the Commission's order ignores the familiar precept that summary disposition of allegations concerning a conspiracy without the benefit of discovery is inappropriate because the proof of the conspiracy is almost invariably in the hands of the conspirators. Poller v. Columbia Broadcasting System, Inc., 368 U.S. 464, 473 (1962). Central is not a member of the conspiracy and the conspirators do not disclose their communications to Central.

Second, as Central has advised the Commission repeatedly, 58/ denial of discovery is particularly egregious in this case because proof directly contradicting crucial representations of both applicants is readily available to everyone in the world except Central. The documents in question were discovered from the files of SCE&G in an antitrust suit pending in the Middle District of North Carolina. Central's counsel, who are also counsel to the plaintiffs in the North Carolina case, tendered the documents in question to the Department of Justice on August 6th, 1980. Thereupon SCE&G, one of the defendants in the North Carolina action, lodged a motion for a protective order seeking to prohibit plaintiffs' counsel (and hence, Central's counsel) from employing the documents in this or any proceeding other than the antitrust action. In view of this development, although the documents were at that time, and are still, publicly available in the files of the District Court, 59/ the

58/ See n.31, supra.

59/ See n.32, supra.

pendency of SCE&G's motion to date has prevented Central from presenting the documents to the Commission.60/

The Commission could have remedied (and can still remedy) this situation by calling upon SCE&G in a technical order to produce documents, which would not require SCE&G actually to produce anything but merely to relinquish its objections to Central's Counsel's transmission of the documents in question for inspection by the Commission. This procedure would avoid entirely the reason the Commission expressed as the basis for its denial of discovery, namely imposition of an undue burden upon the Applicants. SCE&G can have no reason to oppose such a procedure unless is has something to conceal.

7. The Commission applied an inappropriately stringent burden of proof or misapplied an appropriate standard.

The Commission's order held Central had failed to meet its burden of proof.61/ Whether this occurred because the Commission imposed an inappropriately stringent standard of proof upon Central 62/ or erroneously concluded that Central's showing did not meet a proper standard 63/ is not entirely clear from the

60/ Justice returned the documents to Central's counsel unopened. When the documents had been delivered to Justice, SCE&G had given no indication of its intention to file a motion for a protective order. The motion for a protective order filed by SCE&G would not have prevented Justice from examining these documents or serving them on the parties even if the motion had been granted by the district court.

61/ Burden of proof refers to the quantity and quality of the proof sufficient to support a significant change finding. As such, the burden of proof issue is separate and distinct from, albeit related to, the earlier discussion concerning the proper definition of "significant" (see pp. 1-10, supra.)

62/ CLI 81-14 at pp. 17-18.

63/ CLI 81-14 at pp. 21-28.

Order. At page 17 the Order states that the changes referred to by the statute must be "reasonably apparent". Conceivably, that might suggest that the Commission considers that a petitioner's proof must be self-evident and uncontrovertible, or "clear and convincing". Because Central was given no prior notice of such an extraordinary standard, it assumes that this test was not employed. It seems more likely that the Commission may have employed a "preponderance of evidence" test 64/ more stringent than that ordinarily associated with summary disposition. On the other hand, if the Commission employed a standard such as the standard of whether there exists a genuine controversy over facts material to the disposition of the matter--more suitable to a summary disposition such this--then the Commission erred in applying that standard to the facts.65/

The employment of a standard more stringent that that ordinarily associated with summary disposition is manifestly inappropriate at this stage. As the Department of Justice pointed out 66/ and the Commission expressly recognized, 67/

64/ CLI-81-14 at p. 25 ("we do not find sufficient substance in the papers filed by Central to support" [its allegations that SCE&G coerced SCPSA to seek territorial legislation as the price for access to the Summer unit.].

65/ See, e.g. rule 56(c) Fed. R. Civ. P.; 10 C.F.R. §2.749 (contemplating that discovery has occurred, following standard of Rule 56(c), Fed. R. Civ. P.)

66/ Response of U.S. Department of Justice to NRC's Request for Comment, etc., dated Oct. 10, 1980 at pp. 5-6.

67/ CLI-81-14 at p. 17.

the statute does not appear to require a full-dress trial to determine whether to have a trial. One consequence of this conclusion, however, apparently eluded the Commission: if a full trial may not be had, less than the proof required to prevail at trial must be allowed to suffice. Stated differently, the Applicants cannot have it both ways: if they are to be spared the burden of trying fully the question of "significant change",68/ they must live with the results of an inquiry less critical of the opposition's proof than that to which they would be entitled at trial. To the extent that the Commission's conclusions go further than to decide whether there has been shown to exist a genuine dispute as to material issues of fact, therefore, they exceed the proper bounds of this preliminary inquiry.

If, on the other hand, the order represents an application of the appropriate standard for summary disposition, it ignores plainly competent evidence controverting material issues. The most obvious example is Central's evidence respecting its allegation that SCE&G coerced SCPSA into seeking territorial legislation as the price of access to the Summer plant. An affidavit submitted by SCPSA denied the allegation. An affidavit submitted by Central controverted SCPSA's denial with an admission against interest of SCPSA's affiant. This was buttressed with memoranda of meetings prepared by SCE&G personnel plainly establishing that SCE&G and other CARVA members would not give SCPSA

68/ See CLI-81-14 at p. 18.

access to power exchange until the matter of territory and customers was first settled and others showing SCE&G was concerned with competition by Central and its members. Nonetheless, the Order states that the Commission does not "find sufficient substance in the papers filed by Central to support this claim.".69/ Similarly, with regard to Central's allegation that SCE&G refused to wheel, SCE&G represented that it would entertain requests for transmission services on an ad hoc basis. 70/ Central submitted an affidavit controverting the bona fides of SCE&G's commitment. 71/ However, the Commission's order nowhere refers to this affidavit 72/ but, instead, simply accepts SCE&G's representations as true despite the Commission's knowledge that after four years, SEC&G "policy" has not resulted in a single wheeling transaction.73/

In short, if the Commission has employed a standard of proof appropriate for a summary proceeding such as this, it has ignored amply documented disputes as to material issues of fact.

8. The Commission drew an unwarranted inference that Central chose between antitrust remedies in August, 1977.

69/ CLI-81-14 at p. 25.

70/ See CLI-81-14 at p. 26.

71/ See pp. 26-27, supra.

72/ See CLI-81-14 at pp. 26-27.

73/ CLI-81-14 at p. 27.

The statement in footnote 46 of the Commission's June 26 decision (p. 19) reflects an incorrect and unwarranted inference, apparently drawn from Central's comments submitted on August 25th, which the Commission presumably interpreted as "indicating that as early as August, 1977 Central chose to exercise whatever rights it had in this forum". Nothing in the comments justifies that inference, and in fact it is completely unwarranted.

It is true that Central did make a choice of forums. That choice was made late in 1978, long after the North Carolina parties filed their antitrust complaint. The choice was not whether to join in filing the complaint or file with the Commission. Rather, it was to seek to intervene in an ongoing antitrust proceeding or file with this Commission. The reason Central chose not to join in the Complaint on August 1977 was because it wanted to continue to negotiate for power exchange services until any prospect was completely hopeless.

An affidavit of Wallace E. Brand, counsel for Central in this proceeding and for the North Carolina parties in the Greensboro proceeding, filed with the Greensboro Court on September 4, 1980 in connection with the plaintiff's Opposition to SCE&G's Motion for a Protective Order more fully explains this at Paragraphs 3, 4, and 5.74/ The affidavit

74/ This affidavit is attached to the letter of Wallace E. Brand to Samuel Chilk, dated September 11, 1980.

states generally in ¶¶ 3 and 4 that (1) in 1976 an antitrust investigation was commenced, and (2) in August 1977 the North Carolina parties filed suit in the Greensboro court. Paragraph 5 states as follows:

> Central initially attempted further negotiation with the electric power systems in its area but finally decided to assert rights it learned it had under Section 105(c) of the Atomic Energy Act by filing a petition with the Nuclear Regulatory Commission in December, 1978."(emphasis added)

That affidavit more fully reflects the facts, and nothing in the more abbreviated statement in the comments of August 25, 1980 at pages 14-15 is inconsistent with that statement or justifies an inference that a choice was made at an earlier time.

9. The Commission erred in failing to assess the significance of SCPSA's acquisition offers.

The Commission erred in failing to consider the significance of SCPSA's offer to acquire Central's bulk power supply function and SCPSA's offer to acquire Berkeley Electric Cooperative, a member of Central. (Order at pp. 23-24.) Both offers show anticompetitive intent. Moreover, SCPSA's offer to acquire Central was made at a time when SCPSA and Central were discussing Central's participation in SCPSA's share of the Summer Unit. 75/ Contrary to the Commission's ruling, the anticompetitive nature of the merger offer is not cured by the Agreement but lends additional support to Central's contention that the Agreement is anticompetitive in nature and effect.

75/ Exhibit A, attached to Affidavit of Patrick Allen.

10. The Commission erred in considering the alleged significant changes in isolation.

The Appeals Board held recently "that the evidence must be viewed in its entirety and not with the eye focused only on isolated segments as though they were independent of each other." Alabama Power Company (Joseph M. Farley Nuclear Plant, Units 1 and 2), supra, at p. 89.

SCE&G's unwillingness to engage in meaningful coordinated development of generation with Central, SCPSA's acquisition offers, and the anticompetitive terms and conditions of the Agreement between SCPSA and Central are not isolated events. Central's lack of any alternative other than SCPSA explains how SCPSA was able to impose unreasonable terms on Central's participation in joint ownership arrangements and the restrictions on transmission ownership. The acquisition offer explains why unreasonable terms were insisted upon by SCPSA.

11. The terms and effect of the Agreement between SCPSA and Central are to reinforce the realignment of market forces.

If Central's allegations respecting the effects of the horizontal territorial allocation between SCE&G and SCPSA are correct, it is clear that there has been a realignment of forces in the South Carolina market. These allegations add up to one that SCPSA has joined a preexisting scheme to eliminate Central as a competitive factor in the South Carolina market. The Agreement is entirely consistent with this conclusion and, in fact, reinforces it. This realignment

represents an indisputably significant change in the competitive situation and fully warrants the Commission's review.

RELIEF REQUESTED

1. For the foregoing reasons, Central submits that reconsideration of the Order is warranted.

2. Central further submits that prior to conducting its reconsideration, the Commission must obtain the documents produced by SCE&G in the North Carolina district court proceeding which, Central maintains, bear materially upon factual issues in controversy in this proceeding. The Commission can easily accomplish this without imposing any burden upon the Applicants by calling upon SCE&G to give its assent to production of a limited number of these documents to the Commission by Central's counsel. Alternatively, the Commission can direct staff to investigate the public record of the North Carolina proceedings and furnish the Commission with copies of the pertinent documents.

3. Central has expressed its willingness to waive its right to a pre-licensing hearing, provided that its rights are fully preserved in every respect except the timing of the hearings. Central requested that this procedure be implemented if necessary to avoid delaying operation of the Summer Unit. Central sought to secure from both SCE&G and SCPSA a stipulation assenting to post-licensing antitrust review if the Commission finds that there has been a "significant

change" and it concludes that a hearing is warranted. SCPSA and SCE&G, of course, have been unwilling to enter into any such stipulation. In the event the Commission determines that a significant change finding is warranted, Central is still willing to forego its right to pre-licensing review provided its rights are fully preserved in every respect except the timing of the hearing.

4. Finally, Central submits that reconsideration of the Order in light of all the evidence, including the aforementioned documents, must result in a finding of "significant change" for purposes of 42 U.S.C. §2135(c)(2).

Respectfully submitted,

Wallace E. Brand

Wallace E. Brand

Edward E. Hall /pm STB

Edward E. Hall

Sean T. Beeny

Sean T. Beeny

BRAND & HALL
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DATED: July 20, 1981

VERIFICATION

DISTRICT OF COLUMBIA, SS:

Sean T. Beeny, being first duly sworn, deposes and says that he is an attorney for Central Electric Power Cooperative, Inc., and that as such, he has signed the foregoing Amended Petition for Rehearing and that the matters and things therein set forth are true and correct to the best of his knowledge, information, and belief.

Sean T. Beeny

Subscribed and sworn to
before me this 20th day
of July, 1981.

Notary Public

My Commission Expires
on My Commission Expires October 14, 1984

CERTIFICATE OF SERVICE

I, Sean T. Beeny, hereby certify that I have caused to be served a copy of the foregoing Central Electric Power Cooperative's Amended Petition For Rehearing on the persons listed below by depositing a copy thereof, postage prepaid, in the United States mail this 20th day of July, 1981.

Sean T. Beeny

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