

AFFIDAVIT

Charles R. Lowman, being duly sworn, deposes and says:

1. I am the General Manager of Alabama Electric Cooperative, Inc. (AEC). In this capacity I have been actively involved in the Farley antitrust proceeding before the Nuclear Regulatory Commission (Docket Nos. 50-348A and 50-364A). I testified as a witness in the proceeding and am familiar with the current status of the proceeding.

2. I have read the "Application For An Order Staying Pendente Lite The Effectiveness Of The Antitrust Conditions," and the related Affidavit of Elmer B. Harris dated July 22, 1981, filed before the Commission by Alabama Power Company (APCo).

3. AEC opposes APCo's stay application for a number of reasons. A stay if granted to APCo would deprive AEC, for an indefinite period of time, of the important benefits which AEC has been determined to be entitled to by the Appeal Board's decision, ALAB-646. This antitrust proceeding has been a long, drawn-out proceeding, hard fought and involving an extensive record. For the very substantial period of time while the proceeding has been pending, AEC has had to wait for the relief which the Appeal Board's decision shows AEC to be so clearly entitled to.

4. In 1972, when the construction permits for Units 1 and 2 of Farley were under consideration, the question arose whether the construction permits should be issued despite the fact that the important antitrust issues were still not resolved. At that time AEC felt that the public interest favored permitting the Plant's construction to begin, subject to incorporating appropriate conditions in the construction permits so as to assure that any antitrust conditions subsequently imposed on APCo would become effective. Accordingly, AEC consented to such a procedure. As a result, the construction permits which were granted on August 16, 1972 (CPPR-85 and CPPR-86) set forth such conditions in detail, and expressly stated that APCo and others who may be affected were thereby put on notice as to such matters and that "In the course of its planning and other activities, applicant (APCo) will be expected to conduct itself accordingly." But in furnishing its consent to such a course of action in order to help expedite the Farley project and to make available low-cost nuclear power to the region as a whole, AEC was in no way consenting that the denial of antitrust relief to AEC should go on indefinitely to AEC's continuing injury. Yet this seems

exactly what APCo is seeking in this application for stay. It is the position of AEC that the point has now been reached where the line must be drawn, that indulgence of APCo's anti-competitive conduct should extend no further, and that APCo should be required to afford to AEC without delay the necessary relief set forth in now-effective license conditions.

5. The legal issues raised by APCo's stay application--and the question whether (as AEC submits) APCo has totally failed to establish a legal justification for the granting of such a stay--are matters which I leave to AEC's counsel to discuss in our Opposition which this affidavit accompanies. I do, however, wish to comment on certain factual assertions in the APCo stay application which appear to me to be seriously in error.

6. The APCo stay application (pp. 9-10; see also pp. 6-7 of the Harris Affidavit accompanying it) claims that AEC will not be harmed by the granting of a stay. This is not the case.

A. From the standpoint of both short-range planning and long-range planning, it is important to AEC to get on with ownership participation in Farley. AEC has sought to obtain such ownership participation, and the economic and other benefits that would flow from it, at least since 1971. But at

every turn AEC's efforts on this have been rebuffed by APCo. The Appeal Board decision fully establishes AEC's right to such ownership participation, and we feel it would be unjust to keep us waiting any longer. A stay would at AEC's expense, reward APCo for having been so consistently hard-nosed in flouting the antitrust laws and policies.

B. AEC recognizes that, even assuming complete good-faith negotiations on the part of APCo, a significant period of time will be required for AEC to complete negotiations with APCo relating to AEC's acquisition of a proportionate ownership interest in Farley. Accordingly, shortly after the Appeal Board's decision had been issued, I wrote to the President of APCo on July 17, 1981, requesting that

"pursuant to the decision of the Atomic Safety and Licensing Board of NRC issued June 30, 1981 (ALAB-646), Alabama Power Company promptly begin discussions with AEC concerning the drafting of appropriate contracts regarding the Farley Nuclear Plant to the end that the Company comply with the NRC license conditions which the Appeal Board decision makes applicable to the two units of that Plant."

My letter went on to say:

"In this regard, and in order to enable the negotiations to be fully meaningful, we request that the Company as soon as possible furnish AEC with detailed cost information relating to each of the two units."

I have received a reply from APCo counsel dated July 23, 1981, informing AEC that:

"This matter, of course, is still in litigation. The Company has determined to seek review of that decision and, because of our advice that such review is likely to result in reversal, the Company is also seeking a stay of the operation of certain of the license conditions, including condition 2. In view of this situation, we feel it is premature to initiate discussions now."

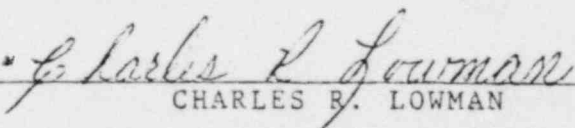
A stay, if granted, would give APCo an excuse for currently persisting in its ten-year-old refusal to embark on such negotiations. Hence there is a strong probability that a stay would have the effect of greatly delaying--well beyond any final decision in the courts--the time when AEC would begin to obtain the benefits of its entitlement in the Farley nuclear units. This would be highly unfair and injurious to AEC.

C. The granting of a stay would seriously delay and impede AEC's finalizing of plans for arranging financing for AEC's acquisition of a proportionate ownership share of Farley.

D. Not only would a stay allow APCo to continue APCo's unlawful anticompetitive conduct, which as confirmed by both the Licensing and Appeal Boards is harmful to AEC; but the anticompetitive situation would shortly be further aggravated

because, as I understand it, Unit 2 of Farley has recently received a full-power authorization and is on the verge of full operation.

E. APCo now claims (Application, p. 9) that Farley capacity and energy would be "nonremunerative" to AEC. It is true that a "nonremunerative" situation might occur if APCo were permitted to refuse to wheel some of that power for AEC to AEC's off-system members and possibly also to other systems. But apart from assuming that such conduct would be engaged in by APCo (which a stay might encourage), I am not aware of any grounds for concluding that Farley capacity and energy would be "nonremunerative" to AEC over the period (I am advised it may easily last two years or more) which remains until this litigation is finally concluded.


CHARLES R. LOWMAN

Sworn and subscribed to before me this 28th day of July,
1981.


Notary Public

My Commission expires:

Notary Public, State of Alabama at Large
My Commission Expires February 4, 1984