

BEFORE THE
UNITED STATES NUCLEAR REGULATORY COMMISSION
DOCKET NOS. 50-416 AND 50-417

IN THE MATTER OF
MISSISSIPPI POWER & LIGHT COMPANY,
MIDDLE SOUTH ENERGY, INC.

AND
SOUTH MISSISSIPPI ELECTRIC POWER ASSOCIATION

APPLICATIONS FOR AMENDMENT OF CONSTRUCTION
PERMIT NOS. CPPR-118 AND CPPR-119 TO ADD CO-OWNER

Mississippi Power & Light Company (MP&L) and Middle South Energy, Inc. (MSE) are presently the holders of Nuclear Regulatory Commission (NRC or Commission) Construction Permit Nos. CPPR-118 and CPPR-119. By this application, MP&L, MSE, and South Mississippi Electric Power Association (SMEPA) respectfully request that the NRC amend the Construction Permits to include SMEPA as a co-owner of the Grand Gulf Nuclear Station, Units Nos. 1 and 2 (Grand Gulf) and as an applicant for the issuance of operating licenses and other necessary licenses, to own, use, and operate Grand Gulf. MSE will act as the agent for SMEPA with regard to

Grand Gulf, and MP&L, on behalf of MSE and SMEPA, will retain sole responsibility for the overall technical direction in the licensing, design, construction, operation, management, maintenance and decommissioning of the facility. MSE and SMEPA will own 90% and 10% of Grand Gulf, respectively.

In support of the request for amendment to Application for Licenses and to Construction Permits Nos. CPFR-118 and CPFR-119, the following information is supplied:

1. SMEPA will acquire a ten percent (10%) undivided ownership interest in Grand Gulf. The acquisition will be governed by the terms of a Joint Construction, Acquisition and Ownership Agreement to be entered into between MSE and SMEPA (Ownership Agreement) [Exhibit A, hereto]. MSE and SMEPA will also enter into an Operating Agreement, which provides, among other things, for the sole operation of Grand Gulf by MP&L, on behalf of MSE and SMEPA, [Exhibit B, hereto] and a related Substitute Power Agreement [Exhibit C, hereto].

The Closing is expected to occur on or about June 1, 1980, and is contingent, among other things, upon receipt of all necessary regulatory approvals, including approval by the NRC of this transaction and receipt by SMEPA of a satisfactory financing commitment from lenders.

SMEPA has delegated to MSE the authority to act in its behalf with regard to this amendment to the Application for Licenses and request for Amendment of Construction Permits No. CPPR-118 and CPPR-119 and in prosecuting such further facility and materials license applications and amendments as may be required by law or regulation.

2. The general information required by 10 C.F.R. § 50.33 and 50.37 for SMEPA is as follows:^{1/}

(a) Name of Applicants [Section 50.33(a)]

The Applicants are MSE, MP&L and SMEPA. MSE and SMEPA will own an undivided 90% and 10% ownership interest in Grand Gulf, respectively. MP&L, on behalf of MSE and SMEPA, is responsible for all matters relating to the design, construction, operation and maintenance of Grand Gulf.

(b) Address of Proposed Co-owner [Section 50.33(b)]

The address of SMEPA is:

South Mississippi Electric Power Association
Post Office Box 1589
Hattiesburg, Mississippi 39401

^{1/} The general information for MSE and MP&L is contained in Amendment No. 24 to the Application for Licenses, to the extent not modified by this request. Upon completion of the transaction and approval by the NRC, the Application for Licenses will be conformed.

(c) Description of Business of Proposed Co-owner
[Section 50.33(c)]

South Mississippi Electric Power Association (SMEPA) is an operating public utility engaged exclusively in the generation and transmission of electric energy for its seven (7) member Rural Electric Cooperatives in the State of Mississippi. SMEPA presently serves from its transmission system the total requirements of two (2) of its members and partial requirements for two other members. This service area encompasses approximately 9300 square miles, having a population of approximately 342,000 people.

SMEPA operates in 19 counties in Mississippi and as of December 31, 1979, provided electric service to approximately 76,260 ultimate consumers through its members. In addition, two (2) of SMEPA's members purchase their total electric requirements and one (1) of its members purchases its partial electric requirements from Mississippi Power & Light Company. As of December 31, 1979, these three cooperatives served approximately 41,205 consumers. Also, SMEPA purchases from Mississippi Power Company the total requirements of one (1) and the partial requirements of one (1) of its members who as of December 31, 1979, served approximately 53,372 consumers.

Soon after the Closing, four (4) additional rural electric distribution cooperatives will join SMEPA as members. The four (4) new member cooperatives will be:

Coahoma Electric Power Association
Post Office Box 188
Lyon, Mississippi 38645

Delta Electric Power Association
Post Office Box 935
Greenwood, Mississippi 38930

Twin County Electric Power Association
Post Office Box 158
Hollandale, Mississippi 38748

Yazoo Valley Electric Power Association
Post Office Box 8
Yazoo City, Mississippi 39194

These cooperatives are all located in northwestern Mississippi, and as of December 31, 1979, served approximately 42,495 electrical consumers. These four (4) cooperatives do not have any generating capacity and presently purchase substantially all of their total electrical requirements from MP&L. However, shortly after the cooperatives become members of SMEPA, SMEPA plans to assume generation responsibility for approximately 12 percent of their electrical load, and plans to periodically over the next three (3) years assume additional amounts of their electrical load, until such time as all of the new cooperatives' load is supplied by SMEPA.

Furthermore, in addition to assuming generation responsibilities for the four (4) new members, SMEPA also, plans shortly after the Closing, to assume the total generation requirements of three of its present members - Magnolia Electric Power Association, Southern Pine Electric Power Association, and Southwest Mississippi Electric Power Associa-

tion (these three members had a total load demand in 1979 of approximately 126 MW). All three of these cooperatives are located in southwestern Mississippi. Magnolia Electric Power Association and Southwest Mississippi Electric Power Association are presently being served their total electrical requirements by MP&L. Southern Pine Electric Power Association is partially served by SMEPA.

SMEPA's electric revenues from its members in 1979 was \$83,113,000 (this figure does not include Coast EPA which was not a member of SMEPA in 1978). In the one year period ending December 31, 1979, SMEPA experienced a growth in electric revenues of approximately 18%. The total mwh sales decreased from 2,243,868 mwh to 2,227,098 mwh during the same period, a decrease of 0.8%. (These figures do not include Coast EPA.) For the five previous years, SMEPA's load growth, measured by the increase over the preceding year in the total mwh sold by SMEPA to its members, has been as follows: 1974 - 5%; 1975 - 10%; 1976 - 8%; 1977 - 9%; and 1979 - 6.6%.

The total installed generation capability of SMEPA's electric utility plant as of December 31, 1979, was 573,000 kw consisting of five (5) steam electric units and two (2) combustion turbine units. Virtually all SMEPA's capital investment has been financed through loans from the Rural Electrification Administration (REA), the National

Rural Utilities Cooperative Finance Corporation, and REA guaranteed loans from the Federal Financing Bank. The peak demand on SMEPA's system in 1979 was 266,000 kw. This reflects a decrease of 2.2% from the 1978 peak demand.

On December 31, 1979, SMEPA's transmission system consisted of approximately 1247 miles of line of which 881 miles was 69 KV, 52 miles was 115 KV and 314 miles was 161 KV. On that date, SMEPA operated ten (10) substations with a total transformer capacity of 1,722,200 Kva.

SMEPA is a member of the Southeastern Electric Reliability Council (SERC), whose primary purpose is to insure the reliability and adequacy of the electric bulk power supply in the Southeast region of the United States. SERC is a member of the National Electric Reliability Council (NERC).

(d) Organization and Management of Applicant
and Proposed Co-Owner [Section 50.33(d)]

SMEPA is a corporation, incorporated under the laws of the State of Mississippi as a non-profit electric power association. SMEPA's office is located in Hattiesburg, Mississippi at the address previously stated.

SMEPA's directors and principal officers are all citizens of the United States. Their names and addresses are as follows:

Directors

Name and Address

R. D. Morrow, Sr.
102 Glenartney Street
Brandon, MS 39042

W. W. Bond
Route 1
Perkinston, MS 39573

C. C. Clark
Ruth, MS 39662

L. G. Pierce
Route 1
Moselle, MS 39459

H. M. Little
P. O. Box 67
Carpenter, MS 39050

D. R. Ware
Neely, MS 39461

J. A. Rester
Route 1, Box 301
Picayune, MS 39466

W. T. Shows
916 West Avenue
Columbia, MS 39429

J. T. Dudley, Sr.
P. O. Box 767
Lucedale, MS 39452

Robert L. Graham
Route 1
Shubuta, MS 39360

Blaine H. Eaton
Front Street
Taylorsville, MS 39168

E. C. Parker
P. O. Box 747
McComb, MS 39648

Robert St. John
P. O. Box 421
Port Gibson, MS 39150

Henry L. Thomas
P. O. Box 311
Bay St. Louis, MS 39520

Principal Officers

Name and Address

R. D. Morrow, Sr., President
102 Glenartney Street
Brandon, MS 39042

C. C. Clark, Vice President
Ruth, MS 39662

D. R. Ware, Secretary/Treasurer
Neely, MS 39461

George B. Taylor, General Manager
Beverly Lane
Hattiesburg, MS 39401

SMEPA is not owned, controlled or dominated by any alien or any foreign government.

(e) Class and Period of License Applied For And
Use to Which Facility Will Be Put
[Section 50.33(e)]

The class of License applied for is Class 103 pursuant to Section 103 of the Atomic Energy Act of 1954, as amended, authorizing MP&L to possess, use and operate and MSE and SMEPA to possess the utilization facilities which will be used for the generation of electric energy to be transmitted over the respective electric systems of the Applicants.

MP&L, MSE and SMEPA, further apply for such additional source, special nuclear and by-product material licenses and any other licenses as may be necessary or appropriate to the construction, acquisition, possession, use and operation of Grand Gulf.

(f) Financial Qualifications [Section 50.33(f)]

The financial qualifications of SMEPA are shown by data contained in SMEPA's Annual Report of 1978, attached hereto as Exhibit D. These may be summarized as follows:

<u>Assets as of</u> <u>12/31/78</u>	<u>Net Patronage Capital</u> <u>or Margins for 1978</u>
\$277,563,374	\$1,290,404

It is SMEPA's intent to finance its undivided interest in Grand Gulf Nuclear Station, Units 1 and 2, under a loan guarantee agreement from the Rural Electrification Administration with financing from the Federal Financing Bank.

Copies of the loan commitment notice from the Federal Financing Bank and of the loan guarantee agreement from the Rural Electrification Administration will be submitted as part of this Application as soon as they become available. In further support of the financial qualifications of SMEPA, additional information is provided in Exhibit E attached hereto.

As of December 21, 1979, the total estimated cost of Grand Gulf, excluding nuclear fuel, is \$3,049,000,000, and as of March 4, 1980, the estimated nuclear fuel inventory cost for the first core of Unit No. 1 is \$88,463,127 and for the first core of Unit No. 2 is \$133,092,406. The above estimates represent current dollar values. The annual report and other information submitted herewith show that SMEPA has reasonable assurance of obtaining funds necessary to cover its share of estimated construction costs and related fuel cycle costs of Grand Gulf.

(h) Completion Dates [Section 50.33(h)]

By Order of the Commission dated October 30, 1979, the earliest and latest completion dates of Grand Gulf were extended as follows:

	<u>Earliest</u>	<u>Latest</u>
CPPR-118	September 1, 1980	March 1, 1982
CPPR-119	April 1, 1983	October 1, 1984

(i) Regulatory Agencies and Publications
[Section 50.33(i)]

SMEPA and its members are each subject to regulation by the Mississippi Public Service Commission with respect to the location of and the need for new generation and transmission facilities, and its members are subject to regulation with respect to the scope of their service areas. SMEPA's rates, however, are regulated by its directors and

are not subject to regulation by the Mississippi Public Service Commission, with the exception of those retail rates which SMEPA's members may charge to consumers inside municipalities which are also served by another electric utility.

Notice of this Application will be sent to the trade publications and newspapers described in Amendment 24 to the Application for Licenses. Additional News Publications which are considered appropriate to give reasonable notice of the Application to those municipalities, private utilities, public bodies, cooperatives and entities which might have an interest in Grand Gulf are as follows:

1. Clarksdale Press Register
Clarksdale, Mississippi 38614
2. The News-Commercial
Collins, Mississippi 39428
3. The Greenwood Commonwealth
Greenwood, Mississippi 38390
4. The Leland Progress
Leland, Mississippi 38756
5. The Yazoo City Herald
Yazoo City, Mississippi 39194

(j) Restricted Data [Section 50.33(j) and
Section 50.37]

This application does not involve any Secret and Confidential National Security Information and/or Restricted Data and it is not expected that any will become involved. If it does, it will be appropriately segregated and safeguarded

as required by law. The Applicants agree that they will not permit any individual to have access to Secret and Confidential National Security Information and/or Restricted Data until the Office of Personnel Management shall have made an investigation and report to the Nuclear Regulatory Commission on the character, associations, and loyalty of such individual, and the NRC shall have determined that permitting such person to have access to restricted data will not endanger the common defense and security.

3. In accordance with Section 103 of the Atomic Energy Act of 1954, as amended, and Appendix L to Part 50 and 10 C.F.R. Sections 2.101(a)(5) and 50.33a of the Commission's regulations, the Appendix L information entitled "Antitrust Information for South Mississippi Electric Power Association" is filed herewith on behalf of SMEPA in a separate document.

4. The requested amendment will have no effect on safety related matters heretofore reviewed, and, accordingly, does not involve a significant hazards consideration. Since the requested Amendment of the Construction Permits involves no significant hazards consideration, it is requested that the NRC dispense with the advance notice publication requirements as permitted under the Atomic Energy Act of 1954. The issuance of the requested amendment will not be inimical to the common defense and security or to the health and safety

of the public and will not result in any significant environmental impact.

5. It is requested that all communications pertaining to this Amendment to Application be sent to:

Mr. Norris L. Stampley
Vice President of Production and
Engineering
Mississippi Power & Light Company
P.O. Box 1640
Jackson, Mississippi 39205

In addition, it is requested that copies of each communication be sent to the following persons:

Mr. George B. Taylor
General Manager
South Mississippi Electric Power Association
Post Office Box 1589
Hattiesburg, Mississippi 39401

Mr. Robert B. McGehee
Attorney
Wise Carter Child & Caraway
P.O. Box 651
Jackson, Mississippi 39205

Mr. Troy B. Conner, Jr.
Attorney
Conner, Moore & Corber
1747 Pennsylvania Avenue, N.W.
Washington, D.C. 20006

THEREFORE, the Applicants request that the Commission determine that the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended, and the Commission's rules and regulations and that "the amendment involves no significant hazards considerations," and request that the Commission issue appropriate amendments

to Application for Licenses and to Construction Permits,
Nos. CPPR-118 and CPPR-119, to include SMEPA as co-owner of
Grand Gulf.

MIDDLE SOUTH ENERGY, INC.

BY: 

D. C. LUTKEN
VICE PRESIDENT

MISSISSIPPI POWER & LIGHT COMPANY

BY: 

N. L. STATLEY
VICE PRESIDENT

SOUTH MISSISSIPPI ELECTRIC
POWER ASSOCIATION

BY: 

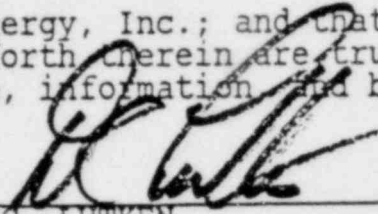
GEORGE B. TAYLOR
GENERAL MANAGER

STATE OF MISSISSIPPI

COUNTY OF HINDS

D. C. Lutken, being duly sworn, states that he is
a Vice President of Middle South Energy, Inc., and that he
is authorized on the part of said Company to sign and file
with the Nuclear Regulatory Commission this Amendment to
Application for Licenses and request for Amendment to Con-
struction Permits, and exhibits attached thereto; that he
signed the foregoing Amendment to Application for Licenses
and request for Amendment of Construction Permits, as Vice

President of Middle South Energy, Inc.; and that the statements made and matters set forth therein are true and correct to the best of his knowledge, information and belief.


D. C. LUTKEN

SUBSCRIBED AND SWORN TO before me, a Notary Public, in and for the County and State above named, this 31st day of March, 1980.


NOTARY PUBLIC

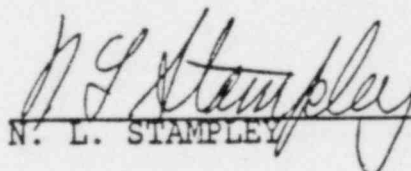
My Commission Expires:

My Commission Expires Jan. 18, 1984

STATE OF MISSISSIPPI

COUNTY OF HINDS

N. L. Stampley, being duly sworn, states that he is a Vice President of Mississippi Power & Light Company, and that he is authorized on the part of said Company to sign and file with the Nuclear Regulatory Commission this Amendment to Application for Licenses, and request for Amendment to Construction Permits, and exhibits attached thereto; that he signed the foregoing Amendment to Application for Licenses and request for Amendment to Construction Permits as Vice President of Mississippi Power & Light Company; and that the statements made and matters set forth therein are true and correct to the best of his knowledge, information, and belief.


N. L. STAMPLEY

SUBSCRIBED AND SWORN TO before me, a Notary Public,
in and for the County and State above named, this 31st day
of March, 1980.

Debra Mitchell
NOTARY PUBLIC

My Commission Expires:

My Commission Expires Jan. 18, 1984

STATE OF MISSISSIPPI

COUNTY OF Forrest

George B. Taylor, being duly sworn, states that he is the General Manager of South Mississippi Electric Power Association, and that he is authorized on the part of said Company to sign and file with the Nuclear Regulatory Commission this Amendment to Application for Licenses, and request for Amendment to Construction Permits, and exhibits attached thereto; that he signed the foregoing Amendment to Application for Licenses and request for Amendment to Construction Permits as General Manager of South Mississippi Electric Power Association; and that the statements made and matters set forth therein are true and correct to the best of his knowledge, information, and belief.

George B. Taylor
GEORGE B. TAYLOR

SUBSCRIBED AND SWORN TO before me, a Notary Public,
in and for the County and State above named, this 1 day
of April, 1980.

Penny Diane Branton
NOTARY PUBLIC

My Commission Expires:

My Commission Expires Aug. 24, 1981

Appendix F



MISSISSIPPI POWER & LIGHT COMPANY

Helping Build Mississippi

P. O. BOX 1640, JACKSON, MISSISSIPPI 39205

NORRIS L. STAMPLEY
VICE PRESIDENT

June 18, 1980

Harold R. Denton, Director
Office of Nuclear Reactor
Regulation
U. S. Nuclear Regulatory
Commission
Washington, D.C. 20555

Dear Mr. Denton:

On behalf of Mississippi Power & Light Company ("MP&L") and Middle South Energy, Inc. ("MSE"), I hereby respond to the Notice of Violation issued by the Office of Nuclear Reactor Regulation on May 29, 1980. For the reasons discussed below, MP&L does not believe it is in violation of construction permit antitrust conditions 4(a), 5(a) and 6. However, as suggested at the end of this discussion, MP&L believes it may be in the best interests of all the parties to achieve a settlement of the matter to avoid any possible delay in the licensing of the Grand Gulf Nuclear Station.

I.

MP&L believes that it has complied with antitrust condition 4(a), relating to access to the Grand Gulf facility. This condition requires as follows:

Licensees and any successor in title shall offer an opportunity to participate in the Grand Gulf Nuclear Units and any other nuclear generating unit(s) which they or either of them, may construct, own and operate in the State of Mississippi, severally or jointly, during the term of the instant license, or any extension or renewal thereof, to any entity(ies) in the Western Mississippi Area by either a reasonable ownership interest in such unit(s), or by a contractual right to purchase a

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reasonable portion of the output of such unit(s) at the cost thereof if the entity(ies) so elects. In connection with such access, Licensees will also offer transmission service as may be required for delivery of such power to such entity(ies) on a basis that will fully compensate Licensees for their cost. [Emphasis added.]

The Staff found "that MP&L has violated and continues to violate this license condition by refusing to offer the City of Clarksdale, Louisiana [sic], MEAM, and MEAM's other members the opportunity to participate in Grand Gulf." 1/

We believe that the access issue should be put in some historical perspective. In accordance with the practice of the NRC, all interested parties were given notice by publication in the Federal Register, 39 Fed. Reg. 32641 (September 10, 1974), that construction permits for Grand Gulf had been issued. The permits were available for public inspection and stated MP&L's commitment to offer participation. The Notice of Receipt of Attorney General's Advice and Time for Filing Petitions to Intervene on Antitrust Matters, 38 Fed. Reg. 14877 (June 6, 1973), also recited MP&L's commitment "to offer an opportunity to participate in the Grand Gulf nuclear units." Numerous accounts of MP&L's intention to build the Grand Gulf facility were published in local newspapers throughout Mississippi. The Department of Justice, pursuant to its responsibilities for antitrust review under Section 105 of the Atomic Energy Act of 1954, as amended, wrote each utility in Western Mississippi on July 17, 1972, inquiring, inter alia, whether any utility was interested in ownership participation in the Grand Gulf Nuclear Station. Clarksdale responded by letter dated August 25, 1972, expressing no interest in participating in the ownership of that facility. Later, in August 1973, Greenwood expressed some interest in ownership, but dropped the matter after being furnished cost data by MP&L.

By letter dated December 8, 1976 from R. W. Beck & Associates, Clarksdale first sought preliminary information

1/ Notice of Violation at 3.

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regarding participation in Grand Gulf. The letter dated July 19, 1977 from the Mayor of Clarksdale was the initial statement of interest by any Municipal Energy Agency of Mississippi ("MEAM") member in negotiating access. Although MP&L met with Clarksdale and corresponded on several subsequent occasions, Clarksdale never requested participation and apparently dropped its consideration of the matter.

We submit that the Staff's finding of a violation of antitrust condition 4(a) is based on an erroneous construction of the condition's language. While the permit condition itself requires an offer of an "opportunity to participate" in the Grand Gulf facility, the Staff's finding drops the concept of an "opportunity" and charges that MP&L "has not actually offered [Clarksdale and MEAM] participation." 2/ Contrary to the language of the permit condition, the Staff later states that it "requires MP&L to offer participation to entities such as these cities. . . . MP&L has not offered participation to Clarksdale or MEAM." 3/

The Staff's conclusion thereby adopts the same misconstruction of the permit condition contained in MEAM's letter to the NRC, dated May 29, 1979, that "so far as Clarksdale's records showed, no offer of participation in Grand Gulf Nuclear Unit had been made to Clarksdale." We believe, however, that MP&L was under no obligation by virtue of permit condition 4(a) to prepare individual offers to participate for MEAM's members or any other prospective part owner. Each utility had full notice of the option to participate on the occasions described above, and the initiative lay with any interested parties to inquire further. Until MP&L had been given some outline of the manner and degree of participation desired, it could do nothing more to comply with its obligation to "offer an opportunity to participate in the Grand Gulf Nuclear Units." (Emphasis added.) MP&L has provided this opportunity, as the Staff itself has recognized. 4/

2/ Id. at 4.

3/ Id. at 5 (emphasis in original).

4/ The Staff notes that "MP&L has provided data to [MEAM's members] at various times," and does not suggest that MP&L has been nonresponsive or uncooperative or acted in bad faith with respect to any inquiry from a MEAM member regarding participation in the facility. Notice of Violation at 4.

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We also believe that the Staff incorrectly found that MEAM's belated interest in participation is timely. Although Clarksdale and Greenwood had enough time to negotiate for participation in the Grand Gulf facility, they failed to do so. MEAM cites the July 19, 1977 letter from the Mayor of Clarksdale as an expression of active interest. That inquiry came five years after the Department of Justice letter asking Clarksdale if it wished to participate and almost three years after issuance of the construction permits and publication in the Federal Register of notice that the permits had been issued. The Licensing Board in Toledo Edison Company (Davis-Besse Nuclear Power Station, Units 1, 2 and 3), LBP-77-1, 5 NRC 133, 259 (1977), aff'd, ALAB-560, 10 NRC 265, 389-90 (1979), by comparison, required that utilities seeking access to the Davis-Besse facility must make a commitment regarding participation within two years after the Board's decision became final, and within two years after a license application had been filed for future units. 5/ Compared with the circumstances regarding the Grand Gulf facility, we believe that MP&L cannot be fairly criticized for its reluctance to commence what might only be the start of negotiations seeking part ownership in the facility almost three years after the issuance of its permits.

The Staff has acknowledged that "it may be appropriate to infer some reasonable time limitation on MP&L's obligation to accept additional participation," 6/ but found that such a time limit would not apply to MEAM and its members under the facts of this case. As support, it has cited the fact that SMEPA is acquiring a ten percent ownership interest in Grand Gulf, noting that both Clarksdale and SMEPA "expressed active interest" 7/ in the facility in 1976. We submit, however, that their situations were in fact different. As noted, it was not until the letter of December 8, 1976 from R. W. Beck & Associates that Clarksdale sought information preliminary to negotiations. MP&L promptly responded

5/ In fact, the Appeal Board modified the deadline to extend only three months past the filing of the application where the applicants had given detailed written notice of the plan to construct a nuclear facility to interested parties two years prior to filing.

6/ Id. at 5. The Staff again misstated the requirements of antitrust condition 4(a) by saying, without qualification, that MP&L had an obligation to accept additional participation.

7/ Id.

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on January 17, 1977, with the requested data. 8/ The response explicitly stated:

In the absence of a specific request by the City of Clarksdale concerning the amount of power desired, the point of delivery and service requirements, it is difficult to quote terms and conditions. If you would like us to quote terms and conditions for one or more alternate proposals we would be pleased to do so.

Clarksdale replied on July 19, 1977, but did not specify any proposal for participation, or state the capacity required or the terms of delivery and service. In its letter of October 18, 1977 to MP&L, Clarksdale again asked that MP&L, not Clarksdale, assume responsibility for tendering an offer. 9/ Apparently, Clarksdale felt it had nothing to lose by protracted delay because it believed that "there was no restriction placed upon the time within which MP&L was required to make such an offer," which would therefore leave negotiations open "until the plant was complete or nearly complete." A series of meetings between MP&L and Clarksdale subsequently occurred, 10/ but Clarksdale never stated that it wished to participate in the ownership of the Grand Gulf facility.

By contrast, the negotiations with SMEPA and WMEPA have been far more serious and productive. Early in 1972, MP&L publicly announced its plans to build the Grand Gulf Nuclear

8/ We have shown that the Staff does not contend that this response or any other reply to any MEAM members was inadequate.

9/ For the first time, Clarksdale identified a 10 MW capacity requirement, but failed to specify any other technical details.

10/ These meetings and correspondence correct the inference in the Notice of Violation that MP&L cut off all negotiations by its letter of August 18, 1977. The Staff quotes from the letter that Clarksdale's delay would make participation "difficult - if not impossible." Rather than foreclosing participation, MP&L stated that "we are willing to discuss this matter with you further if you desire," which indeed it did.

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Station. Approximately two weeks after this public announcement, SMEPA, on February 7, 1972, informed MP&L by letter that it requested participation in the nuclear units. Likewise, in response to a Department of Justice letter asking whether they were interested in ownership participation in Grand Gulf, WMEPA wrote MP&L on August 15, 1972 and requested participation in the plant. These requests marked the beginning of negotiations between MSE and SMEPA and MSE and WMEPA for the sale to them respectively of a nine percent and ten percent ownership interest in Grand Gulf. These negotiations intensified in early 1976 and have culminated by the WMEPA cooperatives deciding to join SMEPA as members and by SMEPA agreeing to acquire a ten percent interest in the facility. The various agreements by which SMEPA will acquire its interest in Grand Gulf have been executed by the parties, effective as of May 1, 1980.

Accordingly, the record shows that Clarksdale and SMEPA were given the same consideration and treated on a fully equal basis. There is no reason to infer a violation of permit condition 4(a) simply because SMEPA's inquiries were more focused, more detailed and resulted in an ownership interest in the Grand Gulf facility.

II.

MP&L believes that it has complied with antitrust condition 5(a), which requires facilitating transmission of power. This condition states as follows:

Licensees shall facilitate the exchange of bulk power by transmission over its transmission facilities between or among two or more entities in the Western Mississippi Area with which it is interconnected; and between any such entity(ies) and any entity(ies) engaging in bulk power supply outside the Western Mississippi Area between whose facilities Licensees' transmission lines and other transmission lines would form a continuous electrical path, provided that (1) permission to utilize such other transmission lines has been obtained, and (2) the arrangements reasonably can be accommodated from a functional and technical standpoint. Such

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June 13, 1980
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transmission shall be on terms that fully compensate Licensees for their cost. Any entity(ies) requesting such transmission arrangements shall give reasonable advance notice of its (their) schedule and requirements. (The foregoing applies to any entity(ies) to which Licensees may be interconnected in the future as well as those to which they are now interconnected.)

As it has previously expressed, MP&L views the existence of an interconnection agreement as a logical and practical prerequisite to any obligation to wheel power under permit condition 5(a). In this regard, MP&L filed with FERC on February 29, 1980, an unsigned "bare bones" interconnection agreement between Gulf States Utilities ("GSU") and MP&L in order to facilitate the transfer of bulk power between the Cities of Clarksdale and Greenwood and the City of Lafayette, Louisiana and on March 11, 1980, notified both Clarksdale and Greenwood that MP&L was then prepared to receive energy from GSU for transmission to them. MP&L did not attach any conditions to its commitment.

On April 14, 1980, FERC notified MP&L that MP&L's filing of the MP&L-GSU Interconnection Agreement was not complete and that the conditions necessary to complete the filing requirements were (1) the filing by GSU of either a rate schedule or a certificate of concurrence in MP&L's submittal, and (2) the filing of service schedules, together with the rates and costs support therefor, proposed for the services to be rendered by each party. On May 13, 1980, MP&L responded to the FERC deficiency letter and requested that FERC reconsider the request of its letter of April 14, that specific service schedules, rates and cost support be furnished to FERC at this time. The basis for MP&L's request for reconsideration was that to accomplish the proposed transmission services, it is not necessary for MP&L or GSU to provide services for, or charge rates to, each other. Further, the transmission service which may be provided by MP&L for Clarksdale and Greenwood and by GSU for Lafayette and the rates and charges for such services are already set forth in rate schedules on file with FERC. The matter is pending.^{11/}

^{11/} At the meeting with our counsel on June 12, 1980, Mr. Toalston inquired as to whether MP&L was seeking

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By letter dated May 29, 1980, MEAM informed MP&L that it had made arrangements with the City of Lafayette, Louisiana for the purchase of 15,000 KW of power and associated energy to be delivered for MEAM at various points on MP&L's system and requested that MP&L advise MEAM of the earliest date at which MP&L could accept delivery of this power and energy from GSU. On June 6, 1980, MP&L responded to MEAM's letter and stated, among other things, that at this time MP&L was prepared to commence transmission service from the MP&L-GSU interconnection for Clarksdale and Greenwood "under the rates, terms and conditions contained in the Transmission Service Schedules on file with the FERC which are part of the Interconnection Agreements between MP&L and Clarksdale and MP&L and Greenwood." MP&L also stated that upon request it was prepared to provide Yazoo City with similar transmission service.12/

11/ (continued)

to obtain any compensation for Louisiana Power & Light Company ("LP&L") with regard to transmission. As a result of MP&L's agreeing to provide Clarksdale and Greenwood with firm transmission service under its Service Schedules E on file with FERC, the matter alluded to by the Staff in its Notice and at the meeting with counsel with regard to LP&L acting as MP&L's agent for providing services is no longer in issue. Thus, if the unexecuted "bare bones" interconnection agreement between MP&L and GSU is not ultimately accepted for filing by FERC, unless prohibited from doing so by FERC or by any other regulatory body having jurisdiction thereof, MP&L will provide transmission services for MEAM from the MP&L-GSU interconnection, without an interconnection agreement with GSU.

12/ As to the other matters relating to antitrust condition 5(a) mentioned by the Staff in the Notice of Violation, MP&L feels that they were settled under the Settlement Agreement among MP&L, Clarksdale, Greenwood and MEAM, approved by FERC on December 4, 1979, and submitted to the NRC by letter dated October 19, 1979. Under the Settlement Agreement, MP&L agreed, among other things, (1) that when Clarksdale or Greenwood has power for transmission to its system delivered from outside MP&L's service territory to any electrically adequate enclosed point of interconnection with MP&L's facilities, Clarksdale or Greenwood would receive capacity credit under

(Ft. 12/ continued on next page)

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III.

MP&L also believes that it has complied with antitrust condition 6, regarding the sale of wholesale power for resale. This condition reads as follows:

Licensees will sell power for resale to any entity(ies) in the Western Mississippi Area now engaging in or proposing to engage in retail distribution of electric power.

The Staff has found a violation of condition 6 on the ground that MP&L wishes to sell partial requirements wholesale power to new customers under interconnection agreements at rates reflecting other than the system-wide average costs which are the basis of the municipal wholesale rates (MW-15) on file with FERC for existing municipal full requirements customers.

It is submitted that the language of condition 6 does not support the Staff's interpretation. In contrast to the other provisions cited by the Staff, condition 6 is silent on rates to be charged. Thus, the NRC did not assert in permit condition 6 any regulatory jurisdiction over wholesale rates, a matter over which FERC has exclusive jurisdiction under the Department of Energy Organization Act, 42 U.S.C. §7172(a)(1)(B). Further, the Atomic Energy Act itself disavows jurisdiction over rates. Section 271 of the Act, 42 U.S.C. §2018, provides:

Nothing in this chapter shall be construed to affect the authority or regulations of any Federal, State, or local agency with

12/ (continued)

its interconnection agreement with MP&L for such power that is delivered to Clarksdale or Greenwood by MP&L in accordance with the terms and conditions of the settlement Service Schedules; and (2) that under the Service Schedules E for Clarksdale and Greenwood, firm transmission service will be provided in lieu of what was called "interruptible" in the original filing.

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respect to the generation, sale or transmission of electric power produced through the use of nuclear facilities licensed by the Commission: Provided, that this section shall not be deemed to confer upon any Federal, State, or local agency any authority to regulate, control, or restrict any activities of the Commission.

Also, Section 272, 42 U.S.C. §2019, provides:

Every licensee under this chapter who holds a license from the Commission for a utilization or production facility for the generation of commercial electric energy under section 2133 of this title and who transmits such electric energy in interstate commerce or sells it at wholesale in interstate commerce shall be subject to the regulatory provisions of the Federal Power Act. 13/

The NRC itself recognized its limited jurisdiction in framing Grand Gulf antitrust condition 7, which states:

The foregoing conditions shall be implemented in a manner consistent with the provisions of the Federal Power Act and the Mississippi Public Utilities Act of 1956 and all rates, charges or practices in connection therewith are to be subject to the approval of regulatory agencies having jurisdiction over them.

Accordingly, we do not believe that the NRC may exercise jurisdiction to determine the legality or reasonableness of MP&L's rates. Certainly, the fact that MP&L

13/ Regulatory jurisdiction over rates has been transferred from the Federal Power Commission to the Federal Energy Regulatory Commission by the Department of Energy Organization Act, discussed supra.

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and MSE have, at the request of the Department of Justice, voluntarily accepted certain other permit conditions relating to rates would not confer regulatory jurisdiction upon the NRC as to a provision that is altogether silent on rates. Since MEAM does not allege a refusal by MP&L to furnish partial requirements wholesale power, but only challenges the rate structure, it is submitted that the issue properly belongs within the jurisdiction of FERC, not the NRC.^{14/}

IV.

As stated above, MP&L and MSE deny any violation of law or of their permit conditions as alleged in the Staff's Notice of Violation. However, in view of MP&L's commitments to its bondholders and banks and its schedule for the receipt of operating licenses and the commercial operation of Units No. 1 and No. 2, the timely completion of the Grand Gulf Nuclear Station is critical to MP&L, MSE, the other companies in the Middle South Utilities System as well as the prospective new co-owner, SMEPA. Because hearings on the matters set forth in the Notice could interfere with the financing, licensing and construction of the nuclear facility, we hereby propose to completely settle all of the matters set forth in the Notice of Violation under the following general conditions:

(1) Subject to obtaining all necessary regulatory approvals, MP&L and MSE would allow MEAM and its members to acquire in the aggregate up to a 2.48% undivided ownership interest in the Grand Gulf Nuclear Station ^{15/} as follows:

A) MEAM and its members will acquire their ownership interest in Grand Gulf under the same terms and conditions, to the extent such terms and conditions are applicable to them, by which South Mississippi Electric Power Association (SMEPA) is acquiring a ten percent undivided ownership interest in Grand Gulf.

^{14/} See MP&L's Response to NRC Letter to MP&L of January 10, 1979, Question 4.

^{15/} See MEAM letter to Mr. Donald C. Lutken, dated November 21, 1978.

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B) As appropriate, MEAM and each of its members will become parties to the Joint Construction, Acquisition and Ownership Agreement, the Operating Agreement, the Income Tax Indemnification Agreement, and each Special Warranty Deed, Conveyance and Adjustment Agreement, all between MSE and SMEPA, and to the Substitute Power Agreement among MP&L, MSE and SMEPA; will take such other action MP&L and MSE deem reasonably appropriate to accomplish the objective of (A) above; and will assume pro rata the rights and obligations of MSE in such Agreements, in proportion to their ownership interest in Grand Gulf.

C) MEAM and each of its members shall have until September 1, 1980 to notify MP&L in writing of their intention to acquire in the aggregate up to a 2.48% undivided ownership interest in the Grand Gulf Nuclear Station under the conditions in (A) and (B) above. If MEAM and its members so notify MP&L on or before September 1, 1980, then MEAM and its members shall have until January 1, 1981, by issuing bonds or using whatever other methods it may desire, to obtain the funds necessary to acquire their ownership interest in Grand Gulf, and MP&L and MEAM agree to use their best efforts to obtain before January 1, 1981, all necessary regulatory approvals and to take all other action which may be necessary to allow MEAM and its members to begin acquiring an ownership interest in Grand Gulf by February 1, 1981. If MEAM and its members do not notify MP&L on or before September 1, 1980, of their intention to acquire an ownership interest in Grand Gulf or if by some action or inaction of MEAM or of any of its members, they fail to obtain on or before January 1, 1981, the funds necessary to acquire an interest in Grand Gulf, MP&L and MSE will have no further obligation to allow MEAM or any of its members to participate in the ownership of or to acquire unit power from the Grand Gulf Nuclear Station.

D) MEAM and each of its members will each agree that this opportunity to acquire up to a 2.48% undivided ownership interest in Grand Gulf fulfills MP&L's and MSE's commitments to MEAM and to each of its members under Grand Gulf License Condition 4(a) and that MEAM and each of its members have no further right to request from MP&L or from MSE either an opportunity to participate in the ownership of or to purchase unit power from the Grand Gulf Nuclear Station. The NRC would agree that by offering MEAM

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and its members this opportunity to acquire an ownership interest in the Grand Gulf Nuclear Station, MP&L and MSE had complied in full with License Condition 4(a) and that the time had now passed in which MP&L and MSE were required to offer entities in the Western Mississippi area an opportunity to participate in the ownership of or to purchase unit power from Grand Gulf Units No. 1 and No. 2.

(2) MP&L would file with FERC a rate schedule under which partial requirements wholesale electric service would be made available to Clarksdale, Greenwood, and to any other members of MEAM with which MP&L has an interconnection agreement. Because of the questions raised by your representatives at the meeting with counsel on June 12, 1980, we believe that the best way to resolve the matter will be to prepare a specific rate schedule which will be fair to our existing customers and to members of MEAM. This will be filed with FERC upon MEAM's acceptance of this settlement proposal, or as soon thereafter as possible, and forwarded to you. The rates, terms and conditions contained in such filing would be subject to regulatory jurisdiction of FERC, and according to the rules and regulations of FERC, MEAM and any of its members could intervene in such a filing to question the reasonableness of such rates, terms and conditions. The NRC would agree that upon acceptance for filing by FERC the undertaking by MP&L to file such partial requirements wholesale rate schedule with FERC would satisfy as to MEAM and its members the requirements of permit antitrust condition 6.

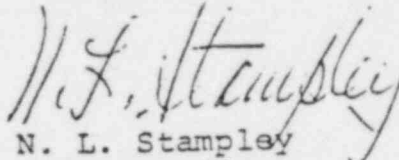
(3) Upon acceptance by MEAM and by each of its members of this settlement offer, MP&L, MSE, MEAM, and each of MEAM's members, for themselves and for their successors and assigns, would mutually agree with one another to finally and forever release, discharge, disclaim and abandon each and every claim, demand, cause of action, contingent claim, future claim whether now known or not, and every other claim of every nature and kind whatsoever which is or may be based upon or arise out of any matter upon which the Notice of Violation is based.

By copy of this Response, MP&L and MSE are also notifying MEAM, Clarksdale and Greenwood of the terms of this settlement offer. This settlement offer should not be construed as a disclaimer or waiver by MP&L or MSE of any right or remedy before the Nuclear Regulatory Commission,

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June 18, 1980
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the Federal Energy Regulatory Commission, the Department of Justice, or any other agency or court of law with jurisdiction to decide any dispute as to the interpretation of MP&L's and MSE's permit conditions or matters relating thereto.

Sincerely,


N. L. Stampley
Vice President

cc: Troy B. Conner, Jr., Esq.
Robert C. McDiarmid, Esq.
Mr. Charles M. Mathews
Hon. Richard M. Webster, Jr.



MISSISSIPPI POWER & LIGHT COMPANY

Helping Build Mississippi

P. O. BOX 1640, JACKSON, MISSISSIPPI 39205

NORRIS L. STAMPLEY
VICE PRESIDENT

June 18, 1980

The Honorable Richard M. Webster, Jr.
Chairman, Municipal Energy Agency of
Mississippi
City of Clarksdale
Clarksdale, Mississippi 38614

Dear Mayor Webster:

Enclosed is a copy of the response of Mississippi Power & Light Company dated June 18, 1980, to the notice of alleged violations issued by the Nuclear Regulatory Commission on May 29, 1980. I am forwarding this response to you in your dual capacity as Chairman of MEAM and Mayor of Clarksdale.

As you will observe, MP&L restates its position that no violation of any license condition has occurred. Nevertheless, in an effort finally to resolve this matter, we are proposing a settlement agreement to you and to the NRC. The terms of our proposal are set forth in our response beginning at page 11.

In essence, we will agree to your request that MEAM and its members be permitted to acquire in the aggregate up to a 2.48% undivided ownership interest in the Grand Gulf Nuclear Station, under certain necessary time constraints. We will further agree, upon your acceptance of the settlement, to file a partial requirements wholesale electric rate schedule, which will be fair to our existing customers and to members of MEAM.

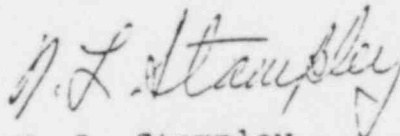
The third item in the NRC's notice relates to the wheeling of power. As you know, by our letter dated June 6, 1980, we have agreed to provide you transmission service as set forth therein.

Our counsel has discussed the proposed settlement agreement with representatives of the NRC. Because time is of the essence in resolving this matter, the Staff has agreed to begin the necessary antitrust review required by the Atomic Energy Act on an informal basis. Essentially, if

The Honorable Richard M. Webster, Jr.
June 13, 1980
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MEAM believes it will accept this settlement, it should submit the information required by 10 C.F.R. Part 50, Appendix L, for its member municipalities as soon as possible. The NRC has suggested that you or your counsel contact the Staff to work out the details of what is required. The Staff indicates that the submittal of this material should be made through MP&L, the responsible licensee, as in similar cases.

Sincerely,



N. L. Stampley
Vice President

Enclosure

cc: Robert C. McDiarmid, Esq.
Mr. Charles M. Mathews
Troy B. Conner, Jr., Esq.

Appendix G

ATOMIC ENERGY COMMISSION

[Docket No. 50-247]

CONSOLIDATED EDISON CO. OF
NEW YORK, INC.Order Designating Date and Place for Oral
Argument

On April 26, 1973, at a session of evidentiary hearings in this proceeding, the Atomic Safety and Licensing Board considered with the parties and thereafter ordered that an oral argument should be convened, at a date and place later to be designated, after the completion of the submittal and filing of proposed findings and conclusions.

Wherefore, it is ordered, in accordance with the Atomic Energy Act, as amended, and the rules of practice of the Commission, that oral argument shall be had in this proceeding respecting the contentions of the parties, together with their proposed findings and conclusions, and the session of this proceeding for the oral argument shall convene at 9 a.m. on Monday, July 2, 1973, at courtroom 2106, U.S. District Court, Third and Constitution Avenue NW., Washington, D.C.

Issued May 31, 1973, Germantown, Md.

ATOMIC SAFETY AND LICENS-
ING BOARD,

SAMUEL W. JENSCH,

Chairman.

[FR Doc-73-11227 Filed 6-5-73; 8:45 am]

[Dockets Nos. 50-416A, 50-417A]

MISSISSIPPI POWER & LIGHT CO.

Notice of Receipt of Attorney General's
Advice and Time for Filing of Petitions
To Intervene on Antitrust Matters

The Commission has received, pursuant to section 103a of the Atomic Energy Act of 1954, as amended, a letter of advice from the Attorney General of the United States, dated May 24, 1973, a copy of which is set forth below as appendix A below. Attached below as appendix B is the letter of the applicant which includes applicant's commitments.

Any person whose interest may be affected by this proceeding may, pursuant to § 2.714 of the Commission's rules of practice, 10 CFR part 2, file a petition for leave to intervene and request a hearing on the antitrust aspects of the application. Petitions for leave to intervene and requests for hearing shall be filed on or before July 6, 1973, either (1) by delivery to the AEC Public Document Room at 1717 H Street NW., Washington, D.C., or (2) by mail or telegram addressed to the Secretary, U.S. Atomic Energy Commission, Washington, D.C. 20545, attention: Chief, Public Proceedings Branch.

For the Atomic Energy Commission.

ABRAHAM BRAITMAN,

Chief, Office of Antitrust and
Indemnity, Directorate of Li-
censing.

APPENDIX A

MISSISSIPPI POWER & LIGHT CO. GRAND GULF
NUCLEAR STATION UNITS 1 AND 2[AEC DOCKETS NOS 50-416A AND 50-417A;
DEPARTMENT OF JUSTICE FILE 50-415-51]

MAY 24, 1973.

You have requested our advice pursuant to the provisions of section 103a of the Atomic Energy Act of 1954, as amended by Public Law 91-360, in regard to the above-captioned application.

Mississippi Power & Light Co. (Applicant) has applied for a construction permit for its Grand Gulf Nuclear Station, Units 1 and 2. The facility will be located in Claiborne County, Miss., near the Mississippi River. Operation of unit 1 has been scheduled for July 1979, with unit 2 following in January 1981.

Applicant—Mississippi Power & Light has generation, transmission, and distribution facilities providing retail electrical service to 465 communities and wholesale electric service to 6 municipalities and 8 rural electric cooperatives located in the western half of the State of Mississippi. Applicant serves some 240,578 customers through lines consisting of 12,027 pole miles of subtransmission and distribution lines, 209 cable miles of underground distribution lines, and 2,270 miles of 115 kv or above transmission lines. For the year ending October 31, 1972, Applicant had total energy sales of 7,721,078 MWh of which 7,177,122 MWh were generated by the 1,622 MW available dependable capacity¹ provided by its four thermal generating plants.²

Interconnection and coordination with others.—Applicant is an operating subsidiary of Middle South Utilities, Inc., a registered holding company under the Public Utility Holding Company Act. The other operating subsidiaries of the Middle South System are: Arkansas Power & Light Co.; Louisiana Power & Light Co.; New Orleans Public Service, Inc.; and Arkansas-Missouri Power Co. In 1972 the peak load for the Middle South System was 3,322 MW, and it had a total dependable capacity of 9,727 MW, including 1,419 MW of firm power available under contracts. From an operational standpoint, each subsidiary comprising the Middle South System constitutes a component of a totally integrated bulk power system. A central dispatcher controls all the facilities in the Middle South System and from moment to moment satisfies the system's demand by supplying energy available on the Middle South System on the basis of incremental generation and transmission cost. Generating reserve requirements are established for the system as a whole, and reserves are available to each subsidiary without restriction to meet any contingency on the Middle South System. Comprehensive coordinated planning of generation, transmission and interconnection of the integrated system with its large load enables each subsidiary to achieve the benefit of economies of scale. The principal mechanism used is the staggered construction of generation facilities with concomitant short-term sales of surplus power and purchases of deficiency power.

¹ In 1972 Applicant owned a generation capacity of 1,385 MW of which 163 MW's were committed to other affiliates in order to obtain the separate load/capacity ratio required to be maintained by each operating company in the Middle South System.

² Applicant has no hydroelectric facilities; Grand Gulf will be its first nuclear generation.

Applicant and its affiliates (excepting Arkansas-Missouri Power Co.), together with seven other privately owned public utilities operating in South Central United States have formed the South Central Electric Co.'s for purposes of entering into mutually beneficial bulk power arrangements with the Tennessee Valley Authority. This contractual arrangement provides for coordinated planning, joint studies on load growth and location of future facilities, and coordinated maintenance schedules. Under the contract between TVA and the association members, schedules are provided for economy energy sales, firm power purchases, emergency services and deferred diversity capacity. The most important item is the exchange of 1,500 MW of capacity made available by the seasonal diversity of load. Under the exchange the Middle South System receives 455 MW from TVA during its summer peak, of which Applicant takes 93 MW.

Applicant is a member of the Southwest Power Pool, a regional coordinating and planning group (not an operating pool). The Southwest Power Pool is composed of 31 electrical systems, including investor-owned companies, rural electric cooperatives and municipal systems.

In addition to its direct interconnection with TVA, Applicant is directly interconnected with Mississippi Power Co. Mississippi Power Co. is an operating subsidiary of the Southern Co., a registered public utility holding company. This direct interconnection is maintained pursuant to a reliability arrangement between the Southern System (the Southern Co.) and the Middle South System.

Structure of the bulk power market in Mississippi.—In terms of bulk power supply, the State of Mississippi may be divided roughly into three areas: The northeast quarter served by TVA, the southeast quarter served by Mississippi Power Co. and South Mississippi Electric Power Association, and the western half principally served by Applicant. TVA sells bulk power to a number of independent distributing rural electric cooperatives in northeast Mississippi. The TVA Revenue Bond Act of 1959, 73 Stat. 295, 16 U.S.C. § 831n-4 prohibits TVA from selling or interchanging power with any electrical system to which it did not provide services prior to enactment of the Act.

Mississippi Power Co. supplies both wholesale and retail customers in southeast Mississippi. In 1972 it had a generating capacity of 1,030 MW with a peak load of 966 MW.

The generation and transmission facilities of South Mississippi Electric Power Association (SMEPA) are located essentially in southeastern Mississippi, although some transmission lines are within some of the easternmost counties of Mississippi served by Applicant. SMEPA was organized in 1941 by a number of distribution rural electric cooperatives in south Mississippi and adjacent Louisiana to provide a more reliable and economic source of power. SMEPA was not able to begin operation until 1971, and

³ For the primary purpose of facilitating the exchange of power between TVA and Gulf States Utilities, Inc., Applicant has a direct 500 kV interconnection with Gulf States.

⁴ For a detailed discussion of the Southern Co. System please refer to our letter of advice of Aug. 10, 1972, on the Alabama Power Co., AEC Dockets Nos. 50-348 and 50-364, and our letter of advice of Aug. 2, 1972, on the Georgia Power Co., AEC Docket No. 50-366.

its members now consist of six rural electric cooperatives located in south Mississippi. Three members of SMEPA, Magnolia EPA, Southwest Mississippi EPA, and Southern Pine EPA, are located in southwest Mississippi, which Applicant serves. Applicant agrees to supply power to those distributing members of SMEPA in Applicant's area, although SMEPA acts as a purchasing agent.

There are three municipally owned generation and distribution systems in Applicant's area. Greenwood has a total generating capacity of 67 MW. Clarksdale has 68 MW, and Yazoo City has 31.5 MW. Only Yazoo City has an interconnection with Applicant, under which it purchases economy and emergency power. Both Yazoo City and Greenwood are connected to adjacent rural electric cooperatives to whom each wholesales a small amount of power. Clarksdale operates completely isolated.

Results of antitrust review.—As noted above, Applicant is the dominant bulk power supplier in western Mississippi and owns and controls virtually all the transmission facilities in the area. In the course of our antitrust review, certain allegations were received, the general import of which was that Applicant has misused its monopoly position in generation and transmission to restrain the competitive opportunities of smaller systems in western Mississippi. For its part, Applicant denied that its policies and practices have been or are inconsistent with the antitrust laws. However, in order to eliminate any questions as to the policies that it intends to follow during the period of the Grand Gulf license, Applicant indicated its willingness to formulate these policies and to have them included as conditions to the license. As a result of discussions with the Department, these policies have been articulated and are set out in the attachment to the letter of Applicant's president to the Department, dated May 22, 1973, which is attached hereto.

As its commitments, Applicant affirms that it will make the following type of arrangements with other bulk power suppliers in western Mississippi: access to the Grand Gulf nuclear unit; coordination and sharing of reserves; unit power sales and purchases which would reduce costs for the parties; and transmission services over its facilities. In our opinion, these should provide competitors of Applicant with competitive, alternative bulk power supply sources and substantially eliminate the grounds on which complaints made to the Department by the smaller systems were based. On the strength of these policy commitments, and with the expectation that the Commission will include them as conditions to the license, we conclude that an antitrust hearing will not be necessary with respect to the instant application.

APPENDIX B

MISSISSIPPI POWER & LIGHT CO. (APPLICANT) GRAND GULF NUCLEAR STATION, UNITS 1 AND 2 [AEC DOCKET NUMBERS 50-416A AND 50-417A; DEPARTMENT OF JUSTICE FILE 50-413-57]

Attached to this letter are commitments of Mississippi Power & Light Co., the applicant in the above styled and numbered cause, which we agree may be included as conditions to the construction permit and operating license to be issued by the Atomic Energy Commission in connection with the above-referenced application. These commitments represent a statement of policy for the future direction of Mississippi Power & Light Co. and are made with the understanding that the Department of Justice will recommend the Atomic Energy Commission that no antitrust hearing will be required.

The commitments herein made are subject to the following understandings:

(1) Applicant does not intend by these commitments to become a common carrier.

(2) Applicant reserves all rights and protection afforded it by law with respect to retail distribution of electricity in those areas in western Mississippi for which it holds a certificate of Public Convenience and Necessity from the Mississippi Public Service Commission.

(3) A major portion of western Mississippi constitutes the exclusive retail service area of a number of distributing electric power associations and municipal distributors and nothing contained herein should be construed to change or disturb in any respect the retail service areas of other entities.

(4) Mississippi Power & Light Co. and the Middle South System have a policy, which is expected to continue, of locating new generating capacity generally in accordance with the demand in the respective regions served by operating companies making up the overall system.

(5) All of the understandings and commitments of the applicant are contained in the commitments herein made and this cover letter.

(6) None of the commitments herein made shall be construed as a waiver by applicant of its right to contest whether or not a future factual situation is inconsistent with the commitments herein made.

POLICY COMMITMENTS OF MISSISSIPPI POWER & LIGHT CO. TO BE APPENDED AS CONDITIONS TO GRAND GULF NUCLEAR UNITS No. 1 AND No. 2 AEC LICENSE AEC DOCKETS Nos. 50-416A AND 50-417A

MAY 22, 1973.

1. As used herein:

(a) "Western Mississippi Area" means the counties of: Waltham, Lawrence, Jefferson Davis, Covington, Simpson, Smith, Scott, Leake, Attala, Choctaw, Montgomery, Grenada, Yalobusha, Panola, Tate, DeSoto, Pike, Amite, Wilkinson, Adams, Franklin, Lincoln, Copiah, Jefferson, Claiborne, Hinds, Rankin, Madison, Yazoo, Warren, Leflore, Sharkey, Humphreys, Holmes, Carroll, Leflore, Sunflower, Washington, Bolivar, Tallahatchie, Quitman, Coshocton, and Tunica. An entity shall be deemed to be in the "Western Mississippi Area" if it has electric power generation, transmission or distribution facilities located in whole or in part in the above-described area.

(b) "Bulk Power" means the electric power, and any attendant energy, supplied or made available at transmission or sub-transmission voltage by one entity to another.

(c) "Entity" means person, a private or public corporation, a municipality, a cooperative, an association, a joint stock association, or business trust owning, operating, or proposing to own or operate equipment or facilities for the generation, transmission, or distribution of electricity. Provided, That, except for municipalities or rural electric cooperative, "entity" is restricted to those which are or will be public utilities under the laws of the State in which the entity transacts or will transact business or under the Federal Power Act, and are or will be providing electric service under a contract or rate schedule on file with and subject to the regulation of a State regulatory commission or the Federal Power Commission.

(d) "Cost" means any operating and maintenance expenses involved together with any ownership costs which are reasonably allocable to the transaction consistent with power pooling practices (where applicable). No value shall be included for loss or revenues from sale of power at wholesale or retail by one party to a customer which another party might otherwise serve. Cost shall include a reasonable return on applicant's investment. The sale of a portion of the

capacity of a generating unit shall be upon the basis of a rate that will recover to the seller the pro rata part of the fixed costs and operating and maintenance expenses of the unit. Provided, That, in circumstances in which applicant and one or more entities in the western Mississippi area take an undivided interest in a unit in fee, construction costs and operation and maintenance expenses shall be paid pro rata.

2. (a) Applicant shall interconnect with and coordinate reserves by means of the sale and purchase of emergency and/or scheduled maintenance bulk power with any entity(ies) in the western Mississippi area engaging in or proposing to engage in electric bulk power supply on terms that will provide for applicant's costs in connection therewith and allow the other party(ies) full access to the benefits of reserve coordination.

(b) Emergency service and/or scheduled maintenance service to be provided by each party shall be furnished to the fullest extent available from the supplying party and desired by the party to need. Applicant and each party(ies) shall provide to the other emergency service and/or scheduled maintenance service if and when available from its own generation and from generation of others to the extent it can do so without impairing service to its customers including other electric systems to whom it has firm commitments.

(c) Applicant and the other party(ies) to a reserve sharing arrangement shall from time to time jointly establish the minimum reserves to be installed and/or provided under contractual arrangements as necessary to maintain in total a reserve margin sufficient to provide adequate reliability of power supply to the interconnected systems of the parties. If applicant plans its reserve margin on a pooled basis with other Middle South System companies, the reserves jointly established hereunder shall be on the same basis. Unless otherwise agreed upon, minimum reserves shall be calculated as a percentage of estimated peak load responsibility.

No party to the arrangement shall be required to maintain greater reserves than the percentage of its estimated peak load responsibility which results from the aforesaid calculation. Provided, That, if the reserve requirements of applicant are increased over the amount applicant would be required to maintain without such interconnection, then the other party(ies) shall be required to carry or provide for its (their) reserves the full amount in kilowatts of such increase.

(d) The parties to such a reserve sharing arrangement shall provide such amounts of ready reserve capacity as may be adequate to avoid the imposition of unreasonable demands on the other in meeting the normal contingencies of operating its system. However, in no circumstances shall the ready reserve requirement exceed the installed reserve requirement.

(e) Interconnections will not be limited to low voltages when higher voltages are available from applicant's installed facilities in the area where interconnection is desired, when the proposed arrangement is found to be technically and economically feasible. Control and telemetering facilities shall be provided as required for safe and prudent operation of the interconnected systems.

(f) Interconnection and coordination agreements shall not embody any restrictive provisions pertaining to intersystem coordination. Good industry practice as developed in the area from time to time (if no restrictive) will satisfy this provision.

3. Applicant will sell bulk power at its costs to or purchase bulk power from any other entity(ies) in the western Mississippi area engaging in or proposing to engage in generation of electric power when such transactions would serve to reduce the overall

costs of new-bulk power supply for itself or for the other party(ies) to the transaction. This refers specifically to the opportunity to coordinate in the planning of new generation, transmission, and related facilities. This provision shall not be construed to require applicant to purchase or sell bulk power if it finds such purchase or sale infeasible or its costs in connection with such purchase or sale would exceed its benefits therefrom.

4. (a) Applicant and any successor in title shall offer an opportunity to participate in the Grand Gulf nuclear units and any other nuclear generating unit(s) which they or either of them may construct, own, and operate in the State of Mississippi, severally or jointly, during the term of the instant license, or any extension or renewal thereof, to any entity(ies) in the western Mississippi area by either a reasonable ownership interest in such unit(s), or by a contractual right to purchase a reasonable portion of the output of such unit(s) at the cost thereof if the entity(ies) so elects. In connection with such access, applicant will also offer transmission service as may be required for delivery of such power to such entity(ies) on a basis that will fully compensate applicant for its cost.

(b) In the event that during the term of the instant license, or any extension or renewal thereof, applicant obtains participation in the ownership of or rights to a portion of the output of one or more nuclear generating units constructed, owned, and operated by any affiliate or subsidiary of the Middle South Utilities System other than applicant or by any successor in title to the Grand Gulf Nuclear Units, applicant shall exert its best efforts to obtain participation in such nuclear unit(s) by any entity(ies) in the western Mississippi area requesting such participation on terms no less favorable than the terms of applicant's participation therein.

5. (A) Applicant shall facilitate the exchange of bulk power by transmission over its transmission facilities between or among two or more entities in the western Mississippi area with which it is interconnected; and between any such entity(ies) and any entity(ies) engaging in bulk power supply outside the western Mississippi area between whose facilities applicant's transmission lines and other transmission lines would form a continuous electrical path; Provided, That: (1) Permission to utilize such other transmission lines has been obtained, and (2) the arrangements reasonably can be accommodated from a functional and technical standpoint. Such transmission shall be on terms that fully compensate applicant for its cost. Any entity(ies) requesting such transmission arrangements shall give reasonable advance notice of its (their) schedule and requirements. (The foregoing applies to any entity(ies) to which applicant may be interconnected in the future as well as those to which it is now interconnected.)

(b) Applicant shall include in its planning and construction program sufficient transmission capacity as required for the transactions referred to in subparagraph (a) of this paragraph; Provided, That any entity(ies) in the western Mississippi area give applicant sufficient advance notice as may be necessary to accommodate its (their) requirements from a functional and technical standpoint and that such entity(ies) fully compensate applicant for its cost. Applicant shall not be required to construct transmission facilities which will be of no demonstrable present or future benefit to applicant.

6. Applicant will sell power for resale to any entity(ies) in the western Mississippi area now engaging in or proposing to engage in retail distribution of electric power.

7. The foregoing conditions shall be implemented in a manner consistent with the provisions of the Federal Power Act and the Mississippi Public Utilities Act of 1936 and all rates, charges or practices in connection therewith are to be subject to the approval of regulatory agencies having jurisdiction over them.

[FR Doc.73-11226 Filed 6-5-73; 8:45 am]

[Docket No. PRM-30-54]

RAY BURNER CO.

Notice of Filing of Petition for Rulemaking

Notice is hereby given that the Ray Burner Co., 1301 San Jose Avenue, San Francisco, Calif., by letter dated May 18, 1973, has filed with the Atomic Energy Commission a petition for rulemaking. The petitioner requests that the Commission amend 10 CFR 30.15 of its regulations to exempt from licensing requirements spark gap irradiators containing not more than 1 μ Ci of cobalt-60 in plated or alloy form for attachment near spark gaps used for such purposes as electric ignitors (spark plugs) for fuel burning equipment.

The petitioner states that the device has been used for a number of years and is of definite benefit in electrically ignited fuel oil burners to enhance the reliability and safety during the ignition sequence of such burners on many types of boilers, powerplants, etc. The petitioner states further that the spark gap irradiator is not, in this instance, used in internal combustion engines.

A copy of the petition for rulemaking is available for public inspection in the Commission's Public Document Room, 1717 H Street NW, Washington, D.C. A copy of the petition may be obtained by writing the Rules and Proceedings Branch at the below address.

All interested persons who desire to submit written comments or suggestions concerning the petition for rulemaking should send their comments to the Rules and Proceedings Branch, Office of Administration—Regulation U.S. Atomic Energy Commission, Washington, D.C. 20545, on or before August 6, 1973.

Dated at Germantown, Md., this 31st day of May 1973.

For the Atomic Energy Commission.

GORDON M. GRANT,
Acting Secretary
of the Commission.

[FR Doc.73-11225 Filed 6-5-73; 8:45 am]

RESEARCH AND TEST REACTOR GUIDES

Notice of Issuance and Availability

The Atomic Energy Commission has issued a guide in its regulatory guide series. This series has been developed to describe and make available to the public methods acceptable to the AEC regulatory staff of implementing specific parts of the Commission's regulations and, in some cases, to delineate techniques used by the staff in evaluating specific problems or postulated accidents and to provide guidance to applicants concerning

certain of the information needed by the staff in its review of applications for permits and licenses.

The new guide is in Division 3, "Research and Test Reactor Guides." Regulatory Guide 2.1, "Shield Test Program for Evaluation of Installed Biological Shielding in Research and Training Reactors," describes a shield test program that is generally acceptable for evaluation of installed biological shielding in research and training reactors.

Comments and suggestions in connection with improvements in regulatory guides are encouraged and should be sent to the Secretary of the Commission, U.S. Atomic Energy Commission, Washington, D.C. 20545, attention: Chief, Public Proceedings Staff. Requests for single copies of issued guides or for placement on an automatic distribution list for single copies of future guides should be made in writing to the Director of Regulatory Standards, U.S. Atomic Energy Commission, Washington, D.C. 20545. Telephone requests cannot be accommodated. Regulatory Guides are not copyrighted and Commission approval is not required to reproduce them.

Other Division 3 Regulatory Guides currently being developed include the following: Development of Safety Envelopes for Experiments in Research Reactors.

(5 U.S.C. 552(a).)

Dated at Bethesda, Md., this 29th day of May 1973.

For the Atomic Energy Commission.

LESTER ROGERS,
Director of Regulatory Standards.
[FR Doc.73-11223 Filed 6-5-73; 8:45 am]

POWER REACTOR GUIDES

Notice of Issuance and Availability

The Atomic Energy Commission has issued two guides in its regulatory guide series. This series has been developed to describe and make available to the public methods acceptable to the AEC regulatory staff of implementing specific parts of the Commission's regulations and, in some cases, to delineate techniques used by the staff in evaluating specific problems or postulated accidents and to provide guidance to applicants concerning certain of the information needed by the staff in its review of applications for permits and licenses.

The new guides are in division 1, "Power Reactor Guides." Regulatory Guide 1.30, "Control of Preheat Temperature for Welding of Low-Alloy Steel," describes an acceptable method for implementing the Commission's regulations with regard to the control of welding for low-alloy steel components. Regulatory Guide 1.31, "Insertion Inspection of ASME Code Class 2 and 3 Nuclear Power Plant Components," describes acceptable methods of implementing the periodic inspection requirements for ASME class 2 and 3 components.

Appendix H



MISSISSIPPI POWER & LIGHT COMPANY

Helping Build Mississippi

P. O. BOX 1640, JACKSON, MISSISSIPPI 39208

NORRIS L. STAMPLEY
VICE PRESIDENT

February 7, 1979

Mr. Harold R. Denton, Director
U. S. Nuclear Regulatory Commission
Office of Nuclear Reactor Regulation
Washington, D. C. 20555

Dear Mr. Denton:

SUBJECT: Grand Gulf Nuclear Station
Units 1 and 2
Docket Nos.: 50-416 and 50-417
File 0250/L-860.0/15531
Anti-Trust Information
AECM-79/12

Pursuant to your letter of May 3, 1978, Mississippi Power & Light Company for itself and on behalf of Middle South Energy, Inc., herewith files an amendment to the Application for Licenses providing the information identified in Regulatory Guide 9.3, "Information Needed by the NRC Staff in Connection With Its Antitrust Review of Operating License Applications for Nuclear Power Plants." Additionally, this amendment includes responses to the questions about Mississippi Power & Light Company's dealings with the City of Clarksdale asked by the Nuclear Regulatory Commission in its letter of January 10, 1979 from Mr. Cyril Toalston. We are forwarding, eighteen (18) copies of "Anti-Trust Review Information" with three (3) sets being originals, the remainder being copies thereof.

Please address all correspondence on this matter as indicated in the "Communications" section of the "Amendment to Applications for Licenses" as previously submitted. There will be no additional distribution of copies at this time. In the event you wish additional copies mailed, we will do so upon receiving a mailing label from you.

Sincerely,

Norris L. Stampley

FMK/pa

cc: Mr. R. D. McGhee
Mr. J. B. Gasser
Mr. R. H. McEllymonds
Mr. A. Toalston

Dupe of 7903130367

BEFORE THE
UNITED STATES NUCLEAR REGULATORY COMMISSION
DOCKET NOS. 50-416 AND 50-417

In the Matter of
MISSISSIPPI POWER AND LIGHT COMPANY
AND
MIDDLE SOUTH ENERGY, INC.

AMENDMENT TO
APPLICATION FOR LICENSES

INFORMATION FOR ANTITRUST REVIEW OF
OPERATING LICENSE APPLICATION

Mississippi Power & Light Company (MP&L) for
itself and on behalf of Middle South Energy, Inc. (MSE)
(hereinafter sometimes jointly referred to as "Applicants")
hereby files this Amendment to their Application for Licenses
pursuant to the provisions of the Atomic Energy Act of 1954,
as amended, and the Nuclear Regulatory Commission's Rules
and Regulations.

This Amendment consists of the responses of Appli-
cants to the specific items listed in the Nuclear Regulatory
Commission's Regulatory Guide 9.3, "Information Needed by
the AEC Regulatory Staff in Connection with its Antitrust
Review of Operating License Applications for Nuclear Power

ANTITRUST INFORMATION
GRAND GULF NUCLEAR STATION

Plants," and to the related questions about MP&L's dealings with the City of Clarksdale asked by the Nuclear Regulatory Commission in its letter of January 10, 1979, from Mr. Argil Toalston to MP&L.

Respectfully submitted,

MISSISSIPPI POWER & LIGHT COMPANY

By


N. L. Stampley
Vice President

Date: February 2, 1979
Electric Building
P.O. Box 1640
Jackson, MS 39205

- 1d. Changes in the ownership or contractual allocation of the output of the nuclear facility. Reasons and basis for such changes should be included.

RESPONSE

Following the requests of SNEPA and West Mississippi Electric Power Association (WMEPA) of February 7, 1972 and August 15, 1972 respectively for participation in the ownership of Grand Gulf, representatives of MP&L, MSE, SNEPA, and WMEPA met to negotiate such an arrangement. From these negotiations, we anticipate that approximately 10% of the capability of Grand Gulf will be shared and owned by SNEPA and WMEPA. Negotiations are in the final stages and the closing is scheduled for July 1979. (See response to item 1(h) for further details.)

ANTITRUST INFORMATION
GRAND GULF NUCLEAR STATION

- 1f. List of all (1) new wholesale customers, (2) transfers from one rate schedule to another, including copies of schedules not previously furnished, (3) changes in licensee's service area, and (4) licensee's acquisitions or mergers.

RESPONSE

(1) On January 30, 1976, MP&L began serving at wholesale the Town of Itta Bena, Mississippi (FERC Rate Schedule NO. 233). New points of delivery to the several electric power associations are:

<u>MEMBERIC POWER ASSOCIATION</u>	<u>POINT OF DELIVERY</u>	<u>MP&L RATE SCHEDULE FERC NO.</u>
Itta Bena EPA	Acena	233
	Caplice	231
	Stringtown	235
Wagoner EPA	Gillsburg	227
	East McComb	244
Southern Pine EPA	Monticello	226 Sep 5
Southwest Miss EPA	Hebertville	240
Itta Bena	Itta Bena Industrial	231
MP&L Valley EPA	Midway	237

(2) There have been no transfers from one rate schedule to another.

(3) Licensee's certificated service area was changed on 1/30/76 to include the Town of Shaw, Mississippi (MP&L Order No. 1-262) and the service area previously served by Central Electric Power Association in Mississippi Public Service Commission Docket No. U-54.

(4) Effective April 1, 1973, MP&L acquired by purchase Capital Electric Power Association and on August 20, 1973, pursuant to a lease agreement, began serving at retail the Town of Shaw, Mississippi formerly a municipally operated utility.

make its final decision to participate with SNEPA in the purchase of an interest in the Grand Gulf Nuclear Station until after it has completed its cost analysis of the purchase, which is estimated to be in February 1979. The agreements being negotiated with SNEPA and WNEPA are:

1. A Sale, Construction and Ownership Agreement with MSE, which provides for the sale of an undivided ownership interest in the completed portion of the generating plant and the financing of construction of the remainder of the plant.

2. An Operating Agreement with MSE, for the operation of the units after their completion.

3. A Substitute Power Agreement with MP&L providing that in certain cases where Capacity and Energy are not available to SNEPA and WNEPA from the Grand Gulf Nuclear Station, such Capacity and Energy will be made available to them by MP&L.

4. A Coordination Agreement with MP&L to implement and administer the Substitute Power Agreement, the Interconnection Agreement, and any other future agreements between SNEPA or WNEPA and MP&L.

5. An Interconnection Agreement with MP&L establishing interconnections between SNEPA and MP&L systems and providing each other with certain mutual support and transmission services, including the supplying of emergency service, maintenance service, economy energy, transmission delivery service, and bulk transmission service. In conjunction with the negotiations with WNEPA and SNEPA for an ownership interest in the Grand Gulf Nuclear Station, MP&L also has offered to SNEPA and WNEPA an ownership interest in two 700 MW coal fired steam generating plants proposed to be built by MP&L in Mississippi in the mid to late 1980's.

In late 1975 and early 1976, MP&L and the City of Clarksdale negotiated an interconnection agreement, which was entered into on February 13, 1976. Although Clarksdale indicated that it thought of this interconnection agreement as an outgrowth of MP&L's policy commitments in the Grand Gulf Nuclear Station's construction permits, the City of Clarksdale expressed no interest whatever in an ownership interest in the Grand Gulf Nuclear Station during these discussions.

ANTITRUST INFORMATION
GRAND GULF NUCLEAR STATION

buy a portion of the Grand Gulf Nuclear Station. At the suggestion of the Antitrust Division of the Department of Justice, MP&L and MSE wrote the Department of Justice on September 25, 1978 asking for an interpretation of Paragraph 4(a) of the Grand Gulf license conditions which would exclude Clarksdale from ownership participation in the Grand Gulf Nuclear Station on the grounds that its request for participation was untimely.

The City of Clarksdale on September 22, 1978 wrote requesting the Department to review certain information to determine whether MP&L had acted toward the City of Clarksdale in a manner inconsistent with the antitrust laws and the Grand Gulf antitrust license conditions.

The City of Kosciusko, on May 9, 1978, and the City of Canton, on June 20, 1978, wrote MP&L requesting that the existing Municipal Wholesale Electric Service Agreement between each of them and MP&L be amended or terminated and renegotiated to convert each of the cities from a full requirements customer to a partial requirements customer and to permit each of them to sell, assign, or exchange electric energy with other entities in Mississippi with which they may cooperate under the provisions of the Mississippi Joint Municipal Electric Power and Energy Act. MP&L responded to Kosciusko on June 1, 1978, and to Canton on July 10, 1978, informing them that MP&L does not have a filed, partial requirements rate, but would give consideration to the development of new rates applicable to the changed characteristics of the service requirements of the two cities and to making necessary amendments to the existing agreement, and would meet with each of them to develop a plan to insure an adequate and dependable source of power within the State of Mississippi in the future.

On November 21, 1978, the Municipal Energy Agency of Mississippi (MEAM), which was recently organized by the Mississippi Cities of Clarksdale, Greenwood, Yazoo City, Leland, Kosciusko, Canton, Durant and Vicksburg, wrote MP&L requesting an offer from MP&L to sell it an ownership interest in the Grand Gulf Nuclear Station of at least 2.48% (approximately 62 megawatts). A copy of this letter is attached hereto as Exhibit E. MP&L responded to MEAM's request for an offer of an ownership interest in Grand Gulf on December 14, 1978, stating that MEAM's request for an ownership interest in Grand Gulf, made after the facility was built completed, was untimely, but that MP&L would discuss with MEAM (1) the possibility of joint participation between MP&L and the members of MEAM in a 700 MW coal-fired power plant

connection of the systems is a single 500,000 volt line segment. The City of Clarksdale has indicated to MP&L that it wants firm service over this path and is unwilling to take service on any other basis. MP&L has represented to the City of Clarksdale that MP&L will wheel power for the City of Clarksdale once the power is made available at MP&L's transmission system.

The City of Clarksdale presently has available the option of arranging to use the facilities of Louisiana Power & Light Company to get power to MP&L's transmission system, and MP&L is working on a special Interconnection Agreement with GSU, as discussed above, which should provide the City of Clarksdale with another option. Additionally, MP&L has several interconnections with TVA, Arkansas Power & Light Company and Mississippi Power Company, which could be used by the City of Clarksdale to get power to MP&L's transmission system. Transmission Service Schedule E would apply where delivery was made to MP&L's transmission system using any of the options discussed above.

(60) days following the mailing of such notice, the Corporate Trustee shall apply the pro-rata share of the holders of the First Series Bonds then Outstanding (based upon the ratio of the principal amount of the bonds of the First Series then Outstanding to the principal amount of all bonds outstanding) in such proceeds (but only to the extent such proceeds arise from the disposition of in excess of per centum (10%) of such capacity), to the redemption of First Series Bonds then Outstanding, and an appropriate principal amount of the bonds of the First Series then Outstanding shall be deemed to have been called for redemption as provided below. The Corporate Trustee shall promptly notify the Company and all the holders of bonds of the First Series then Outstanding in writing if such request has been received by it from the holders of at least sixty-six and two-thirds per centum (66-2/3%) in aggregate principal amount of bonds of the First Series then Outstanding, and all the appropriate principal amount of bonds of the First Series then Outstanding will be deemed called for redemption sixty (60) days following the date of such notice by the Corporate Trustee. If no such request from the holders of at least sixty-six and two-thirds per centum (66-2/3%) in aggregate principal amount of bonds of the First Series then Outstanding has been received by the Corporate Trustee, then such proceeds shall be applied as provided in Section 11.05 of the Indenture.

Each separate sale of an undivided interest in Grand Gulf by MSE in excess of 10% would trigger a potential redemption. Only the monies received for the portion of Grand Gulf representing more than 10% of its electrical generation capacity would have to be applied to the redemption of Bonds. The redemption would be at par and spread pro rata across all Bonds in accordance with procedures specified in the Mortgage. For example, if the money received from a sale for the portion of Grand Gulf representing more than 10% of its generating capacity was one million dollars, the entire one million dollars would have to be used to retire outstanding First Mortgage Bonds.

4. It is our understanding that MP&L terminated the partial requirements rate schedule and service to Yazoo City. Please supply a copy of the rate schedule, if available. Did Yazoo City concur in the termination? Are the Cities of Clarksdale, Greenwood and Yazoo in the "Western Mississippi Area" as defined in the Grand Gulf antitrust license conditions? Has MP&L filed with FERC or otherwise drafted or prepared a rate schedule suitable for full requirement and/or partial requirement service to entities in the "Western Mississippi Area?" If so, please supply a copy. If not, does MP&L propose to prepare one?

RESPONSE

We assume that the rate schedules you refer to were the filed schedules, which were withdrawn five years ago, for the exchange of reserved capacity and off-peak energy under MP&L's Interconnection Agreement with Yazoo City, dated September 26, 1962. These schedules were fixed rate schedules (except for fuel) and were cancelled by MP&L because changing costs due to inflation resulted in these fixed rates imposing an unfair burden on other MP&L customers. The withdrawal of these rates and the substitution of others is a normal function and was subject to the filing and review requirements of the Federal Power Commission. The City of Yazoo City did not intervene in the proceeding (FEC Docket No. E-8841). Copies of these rate schedules are attached as Exhibit H and Exhibit I.

The Cities of Clarksdale, Greenwood and Yazoo City are "entities" in the "Western Mississippi Area" as such terms are defined in the Grand Gulf license conditions. MP&L has executed an Interconnection Agreement with each of the named entities in substantially the form of the Agreement with the City of Clarksdale, attached hereto as Exhibit J. These Interconnection Agreements contain rate schedules under which these entities may purchase either full requirement or partial requirement service. Under schedules to the Interconnection Agreements, the Cities may purchase Reserve Capacity from MP&L to provide capacity under emergency conditions and during periods of scheduled maintenance of generating units; (1) purchase Firm Capacity from MP&L to either supplement or supplant their generating capability; and (2) purchase Economy Energy from MP&L on a "split the savings" basis. Each of these schedules and the Interconnection Agreements were executed by officials of the City or of the municipal utility, as the case may have been.

The transmission rate filing presently in effect, but subject to a hearing by the FERC, gives the Cities the additional option of using MP&L transmission lines (capacity permitting) if they can make more attractive arrangements with other systems to purchase power. We feel that these arrangements with the Cities of Clarksdale, Greenwood, and Yazoo City give them adequate alternatives for supplementing or supplanting their power supplies by either purchase from MP&L or from others.

MP&L has offered the Cities of Clarksdale, Greenwood, and Yazoo City an ownership share in a proposed coal-fired plant in DeSoto County, Mississippi, which is scheduled to be operational in 1985. Recently, MP&L received letters from the Municipal Energy Association of Mississippi and from the City of Greenwood wishing additional information about the coal-fired plant. A copy of the letter from Greenwood Utilities and MP&L's response thereto are attached hereto as Exhibit K and Exhibit L. [See Response to Reg. Guide 9.3, item 1(h) and the attached Exhibits E and F for additional information.]

Attached hereto as Exhibits M and N, respectively, are a copy of Mr. McDiarmid's letter to Ms. Urban, dated September 22, 1978; and a copy of Mr. Farkas' letter to Ms. Urban, dated October 16, 1978, which are relevant to this Amendment to Application for Licenses. You indicated in your letter of January 10, 1979, that you have been furnished a copy of Mr. Farkas' letter to Mr. Shenefield, dated September 25, 1978, and of Mr. Farkas' letter to Ms. Urban, dated November 17, 1978. Accordingly, copies of this correspondence has not been attached.

Appendix I

Docket Nos. 50-416

50-417

MAR 12 1979

Mississippi Power & Light Company
ATTN: Mr. Morris S. Stampley
Vice President - Production
Electric Building
Jackson, Mississippi 39205

Gentlemen:

GRAND GULF NUCLEAR STATION, UNITS 1 AND 2

Thank you for your submittal of February 7, 1979, providing information for the Operating License antitrust review of Grand Gulf. Review of this initial information has disclosed certain areas where we need some clarification or additional detail. Therefore, we would appreciate it if you could furnish information in response to the following questions.

1. Is the town of Itta Bena served under the MW-15 rate schedule? How and by whom was Itta Bena supplied prior to its supply by MP&L? What were the circumstances leading to the change in supply or supplier? Was there any organized opposition to the change in supply or supplier? If so, please describe. What is the approximate peak load of Itta Bena?
2. What were the circumstances leading to the purchase of Capital Electric Power Association? Was there any organized opposition to the purchase? If so, please describe.
3. Was there any organized opposition to the MP&L lease arrangement with the Town of Shaw? If so, please describe. Does the lease arrangement provide MP&L with the option of acquisition? If so, please describe.
4. Please describe SMEPA's transmission in terms of voltage, interconnections and extent of the transmission with respect to members connected and not connected. After SMEPA's interconnection with

Dupe of 7903280210

MP&L, will SMEPA also be interconnected with Mississippi Power Company in a closed loop fashion?

5. Does WMEPA own any transmission? If so, please describe in terms of voltage and extent of the transmission (e.g., with respect to members connected and not connected). Has WMEPA expressed any interest in an interconnection and transmission service schedule now or in the future similar (or dissimilar) to that which MP&L is negotiating with SMEPA? If so, please describe.
6. Does the Municipal Energy Agency of Mississippi (MEAM) own any transmission? If so, please describe in terms of voltage and extent of the transmission (e.g., with respect to members connected and not connected). Has MEAM expressed any interest in an interconnection and transmission service schedule similar to that which MP&L is negotiating with SMEPA? If so, please describe.
7. Is MP&L willing to include Short-Term Firm (transmission) service, similar to that of paragraph 16.06 of Service Schedule TS-2 with SMEPA, in Service Schedule E of its interconnection agreements with Clarksdale and others? If not, why not?
8. Has MP&L approached LP&L or other MSU affiliates to attempt to work out complementary transmission service arrangements? We note in your filed Service Schedule E, for providing transmission service to Clarksdale, the following Clause:

"If the requested transmission service involves transmission directly or indirectly over the facilities of a third utility system, City will make arrangements for the use of those facilities..." (emphasis added)

Since MP&L and LP&L are both interconnected to GSU and to each other, what is your view as to whether, under this clause, any transmission of power by MP&L or LP&L to or from Gulf States Utilities (GSU) would indirectly involve transmission over the other affiliate? Is it your view that an entity in LP&L's service area desiring to transmit power to GSU should pay both LP&L and MP&L for such service, and another entity in MP&L's service area desiring to transmit an equal amount of power to GSU, should also pay both LP&L and MP&L for that service? Have you developed a method to determine the direct and indirect portions of each power transmission, and would you charge accordingly? What difficulties and expenses would

be involved if interconnected utilities accepted indirect flows through their systems on a mutual exchange basis, in particular, when they are sister affiliates with single system generation dispatch?

9. We are still not clear as to the penalty that would occur to MSE if it were required to redeem some of the first mortgage bonds issued in connection with Grand Gulf. Since the bonds would be redeemed at par by funds from new owners, would there be any direct financial penalty to MSE even though the bond rates may now be higher for the new owners? Does the financial penalty to MSE of which you are concerned come about because MSE may have to issue new bonds for additional generation capacity to replace the generation capacity lost through granting access to additional owners? If so, what knowledge do you have or what is your estimate of the present market value of the bonds and the expected market value of bonds about one year from now as compared to the par value of the Grand Gulf bonds?

/s/ A. L. Toalston

Argil Toalston, Chief
Power Supply Analysis Section
Antitrust & Indemnity Group
Office of Nuclear Reactor Regulation

cc: Robert B. McGehee, Esq.
Troy B. Connor Jr., Esq.

2
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ANTITRUST INFORMATION
GRAND GULF NUCLEAR STATION

RESPONSE TO QUESTIONS ASKED
BY THE NRC IN ITS LETTER TO MP&L
DATED MARCH 12, 1979, IN CONNECTION
WITH THE NRC'S ANTITRUST REVIEW OF
APPLICANTS' OPERATING LICENSE APPLICATION
FOR THE GRAND GULF NUCLEAR STATION

QUESTION 1. Is the town of Itta Bena served under the MW-15 rate schedule? How and by whom was Itta Bena supplied prior to its supply by MP&L? What were the circumstances leading to the change in supply or supplier? Was there any organized opposition to the change in supply or supplier? If so, please describe. What is the approximate peak load of Itta Bena?

ANSWER. The Town of Itta Bena is served by MP&L under the MW-15 rate schedule. Prior to its being supplied power by MP&L, Itta Bena purchased service from the Delta Electric Power Association over a 13 KV distribution circuit. It is MP&L's understanding that the Town of Itta Bena purchased service from Delta Electric Power Association under an open, month-to-month type contract, and that Delta Electric Power Association purchased this power directly from the City of Greenwood for resale to Itta Bena. The Town of Itta Bena approached MP&L to discuss the possibility of MP&L providing Itta Bena wholesale service under a firm contract. At that time, MP&L was in a position to offer power to Itta Bena under a firm contract and entered into such a contract with them. To MP&L's knowledge, there was not any organized opposition to the change in power supply or the supplier. * The change was made with the complete cooperation of the Board of Aldermen of Itta Bena, the Delta Electric Power Association, and the Town of Itta Bena's consulting engineer, Mr. Jess Haley. The approximate peak load of Itta Bena in 1978 was 2,740 KW.

QUESTION 2. What were the circumstances leading to the purchase of Capital Electric Power Association? Was there any organized opposition to the purchase? If so, please describe.

ANSWER. As we have discussed, circumstances concerning the purchase by MP&L of Capital Electric Power Association were documented in detail and submitted to Mr. Joseph J. Saunders, Chief, Public Counsel and Legislative Section, Department of Justice, in connection with MP&L's and Middle South Energy, Inc.'s application for Construction

ANTITRUST INFORMATION
GRAND GULF NUCLEAR STATION

Permits for the Grand Gulf Nuclear Station. Since that time, there have not been any developments with regard to the purchase by MP&L of Capital Electric Power Association, except that the Supreme Court of Mississippi rendered an opinion on December 22, 1975, affirming the decision of a lower Court dismissing, as being without merit, a suit brought by a few members of the Capital Electric Power Association in December, 1972, against the Association and its Board of Directors to enjoin them from consummating the sale of the Association to MP&L. It is MP&L's understanding that in the event the files of the Department of Justice in this matter do not provide all the information you need, you will let us know.

QUESTION 3. Was there any organized opposition to the MP&L lease arrangement with the Town of Shaw? If so, please describe. Does the lease arrangement provide MP&L with the option of acquisition? If so, please describe.

ANSWER. To MP&L's knowledge, there was no organized opposition to the MP&L lease arrangement with the Town of Shaw. MP&L received excellent cooperation from the Board of Aldermen and the citizens of the Town of Shaw. The lease arrangement with the Town of Shaw does not provide MP&L with the option of acquisition.

QUESTION 4. Please describe SMEPA's transmission in terms of voltage, interconnections and extent of the transmission with respect to members connected and not connected. After SMEPA's interconnection with MP&L, will SMEPA also be interconnected with Mississippi Power Company in a closed loop fashion?

ANSWER. MP&L does not have detailed knowledge of SMEPA's transmission system or of its intentions to maintain its existing interconnection with Mississippi Power Company. However, it is MP&L's understanding that SMEPA's transmission system employs 69 KV and 161 KV transmission. The SMEPA transmission system does not connect with several existing points of delivery from MP&L to SMEPA's members, and SMEPA apparently does not intend to serve all of its members' requirements over its own transmission system after interconnection with MP&L because MP&L and SMEPA are presently negotiating an interconnection agreement which provides for "off-system" delivery from MP&L to SMEPA's members. MP&L understands that SMEPA will continue its interconnection with Mississippi Power Company because SMEPA has indicated to MP&L that it intends to establish its own control area for interconnected system operations.

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QUESTION 5. Does WMEPA own any transmission? If so, please describe in terms of voltage and extent of the transmission (e.g., with respect to members connected and not connected). Has WMEPA expressed any interest in an interconnection and transmission service schedule now or in the future similar (or dissimilar) to that which MP&L is negotiating with SMEPA? If so, please describe.

ANSWER. MP&L does not have knowledge of any transmission system or any other facilities owned by WMEPA. WMEPA has expressed an interest in possible ownership participation in the Grand Gulf Nuclear Station, and MP&L has engaged in negotiations on this matter in conjunction with the SMEPA negotiations. These negotiations include interconnection and transmission service schedules. WMEPA has not expressed interest in a separate interconnection and a transmission service schedule with MP&L.

QUESTION 6. Does the Municipal Energy Agency of Mississippi (MEAM) own any transmission? If so, please describe in terms of voltage and extent of the transmission (e.g., with respect to members connected and not connected). Has MEAM expressed any interest in an interconnection and transmission service schedule similar to that which MP&L is negotiating with SMEPA? If so, please describe.

ANSWER. MP&L does not have any knowledge of a transmission system or any other facilities owned by the Municipal Energy Agency of Mississippi (MEAM). MEAM has expressed an interest in interconnection and a transmission service schedule with MP&L. MP&L has expressed to MEAM a willingness to consider such an agreement, including an appropriate transmission service schedule, which would be filed with and approved by FERC.

QUESTION 7. Is MP&L willing to include Short-Term Firm (transmission) service, similar to that of paragraph 16.06 of Service Schedule TS-2 with SMEPA, in Service Schedule E of its interconnection agreements with Clarksdale and others? If not, why not?

ANSWER. As part of the settlement negotiations between the Cities of Clarksdale and Greenwood in FERC Docket ER 78-583 and ER 78-584, MP&L offered, as part of a settlement agreement, a transmission service schedule similar to the one proposed to SMEPA, which includes Short-Term Firm transmission service.

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QUESTION 8. Has MP&L approached LP&L or other MSU affiliates to attempt to work out complementary transmission service arrangements? We note in your filed Service Schedule E, for providing transmission service to Clarksdale, the following Clause:

"If the requested transmission service involves transmission directly or indirectly over the facilities of a third utility system, City will make arrangements for the use of those facilities. . ."
(emphasis added)

Since MP&L and LP&L are both interconnected to GSU and to each other, what is your view as to whether, under this clause, any transmission of power by MP&L or LP&L to or from Gulf States Utilities (GSU) would indirectly involve transmission over the other affiliate? Is it your view that an entity in LP&L's service area desiring to transmit power to GSU should pay both LP&L and MP&L for such service, and another entity in MP&L's service area desiring to transmit an equal amount of power to GSU, should also pay both LP&L and MP&L for that service? Have you developed a method to determine the direct and indirect portions of each power transmission, and would you charge accordingly? What difficulties and expenses would be involved if interconnected utilities accepted indirect flows through their systems on a mutual exchange basis, in particular, when they are sister affiliates with single system generation dispatch?

ANSWER. MP&L has not approached LP&L or other MSU affiliates in an attempt to work out complementary transmission service arrangements, except to inform LP&L of the proposed transmission of power from Lafayette, Louisiana, to Clarksdale, Mississippi, and to advise LP&L of the possibility that one of these cities may request transmission service over the facilities of LP&L. All of the MSU affiliates are aware of MP&L's filing of transmission service schedules for the Cities of Clarksdale and Greenwood and of the negotiations between Gulf State Utilities and MP&L of an interconnection agreement to accommodate this proposed transaction between the cities of Lafayette and Clarksdale.

It is MP&L's position that each entity whose transmission facilities are used to implement a particular transaction should be compensated for such use of its facilities. Entities which would be paid for transmission service would be determined on a case-by-case basis. MP&L has not attempted to develop a method to determine direct

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and indirect portions of power transmission. MP&L plans to make its entire transmission system available, and, in keeping with MP&L's understanding of accepted FERC procedures, to structure its transmission rates to accommodate indirect power transmissions.

It is MP&L's position that it does not have an obligation to determine the nature and extent of power flows outside the MP&L transmission system. The entities over whose system power of others is transmitted should agree with such other entities on the method of compensation for such transmission service. MP&L's obligation is to provide service over its own transmission facilities from the point of electrical interconnection with another system. In the case of power flows from Lafayette to Clarksdale, a non-firm schedule for such power flows over MP&L's single interconnection with Gulf States Utilities is contemplated with no power transfers at times when that interconnection is out of service. Obviously, any power flow permitted when that single interconnection is out of service would directly involve some other entity or entities. Furthermore, even under normal operating conditions, there may well be significant power flows over the facilities of others.

MP&L cannot speak for MSU affiliates with respect to indirect power flows. In the Middle South Utility system, each affiliate operating company owns the transmission in its area, and it is MP&L's position that each MSU affiliate should make its own arrangements for the use of its transmission system by other entities. (In answering this question, MP&L interprets "indirect transmission" to mean the flow of power on facilities of entities other than those directly engaging in a particular transaction.) It is also MP&L's position that single system generation dispatch in the Middle South Utility system does not bear on the question of whether compensation is equitable for the use of the transmission system of a particular MSU affiliate company by other entities.

QUESTION 9. We are still not clear as to the penalty that would occur to MSE if it were required to redeem some of the first mortgage bonds issued in connection with Grand Gulf. Since the bonds would be redeemed at par by funds from new owners, would there be any direct financial penalty to MSE even though the bond rates may now be higher for the new owners? Does the financial penalty to MSE of which you are concerned come about because MSE may

ANTITRUST INFORMATION
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have to issue new bonds for additional generation capacity to replace the generation capacity lost through granting access to additional owners? If so, what knowledge do you have or what is your estimate of the present market value of the bonds and the expected market value of bonds about one year from now as compared to the par value of the Grand Gulf bonds?

ANSWER. There is no penalty as such under Section 5.05(b) of the First Supplemental Indenture of MSE's Mortgage and Deed of Trust for redeeming MSE's 9-1/4% First Mortgage Bonds. The redemption price is 100% of the principal amount of any Bond redeemed thereunder. It should be noted, however, that on the basis of current market conditions, MSE's 9-1/4% First Mortgage Bonds would, in our opinion, have a market value of between 88-90% of their principal amount. It is our judgment that the interest rate on a similar security currently would be in the range of 10-3/8 to 10-1/2%. If any portion of the present capacity of the Grand Gulf Project is not available to the customers of the Middle South Utilities System and additional capacity would now be required to be constructed to serve those customers, the cost of the additional capacity would, based upon current interest and inflation rates, be substantially greater.

Appendix J

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May 29, 1979

Mr. Harold Denton
Director, Office of
Nuclear Reactor Regulation
Nuclear Regulatory Commission
Washington, D.C. 20555

Re: Mississippi Power & Light Co., Grand Gulf
Nuclear Station Units 1 and 2, NRC Docket
Nos. 50-416A, 50-417A

Dear Mr. Denton:

The Municipal Energy Agency of Mississippi ("MEAM"), hereby requests the Nuclear Regulatory Commission to commence proceedings pursuant to 10 CFR §2.202 to require the Mississippi Power & Light Company and its affiliate, Middle South Energy, Inc., to comply with the license conditions attached to the construction permit for the Grand Gulf Nuclear Station Units 1 and 2.

MEAM is a joint agency as defined in Section 77-3-705(c), Mississippi Code Annotated 1972; Chapter 363, Laws of Mississippi of 1978. As such it is empowered to own and operate generation and transmission facilities, to acquire power and energy, and to coordinate bulk power activity on behalf of its members. The members of MEAM are the following Mississippi cities: Canton, Clarksdale, Durant, Greenwood, Itta Bena, Kosciusko, Leland and Yazoo City. All of these cities are interconnected with Mississippi Power & Light Company and several are full requirements customers of MP&L. Clarksdale, Greenwood and Yazoo City provide generation sufficient to meet all or, in the case of Yazoo City, a part of the present capacity needs of their customer-owners.

On May 24, 1973, Thomas E. Kauper, then Assistant Attorney General, forwarded to the (then) Atomic Energy Commission the Department's Letter of Advice with respect to Mississippi Power & Light Company ("MP&L"), then the applicant for the construction permit for the above-captioned

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units, in accordance with the provisions of Section 105 of the Atomic Energy Act of 1954, as amended. That Advice Letter confirmed that the Department had reached agreement with the applicant as to license conditions which would resolve "any questions as to the policies that it intends to follow during the period of the Grand Gulf License" (Letter of Advice, page 5). The commitments themselves, attached to the letter of May 22, 1973, from Donald C. Lutken, then and now President, Mississippi Power & Light, to Mr. Kauper, provided, inter alia, that MP&L would:

(Commitment 2) interconnect with and coordinate reserves with other entities in the area;

(Commitment 4) "offer an opportunity to participate in the Grand Gulf Nuclear Units ... to any entity(ies) in the Western Mississippi Area by either a reasonable ownership interest in such unit(s) [sic], or by a contractual right to purchase a reasonable portion of the output of such unit(s) at the cost thereof if the entity(ies) so elects"

(Commitment 5) "facilitate the exchange of bulk power by transmission over its transmission facilities between or among two or more entities in the Western Mississippi Area with which it is interconnected; and between any such entity(ies) and any entity(ies) engaging in bulk power supply outside the Western Mississippi area between whose facilities Applicant's transmission lines and other transmission lines would form a continuous electrical path, provided that (1) permission to utilize such other transmission lines has been obtained, and (2) the arrangements reasonably can be accommodated from a functional and technical standpoint" and;

(Commitment 6) "sell power for resale to any entity(ies) in the Western Mississippi Area now engaging in or proposing to engage in retail distribution of electric power."

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MEAM believes MP&L to be in violation of commitments four, five and six, for reasons stated below. In all cases, MEAM and its members have sought to resolve their differences with MP&L by negotiations, and such negotiations have continued for approximately two years. It now seems, however, that MP&L has firmly determined not to conform to the conditions upon which it was licensed to construct the Grand Gulf Units.

- (a) MP&L is in violation of its license commitment to offer an opportunity to participate.

As early as 1972, MEAM member Greenwood requested information as to the terms, price and conditions under which MP&L might offer a portion of Grand Gulf to others. No response was ever furnished. Again, in December, 1976, a consultant for the City of Clarksdale inquired of MP&L as to the availability of partial requirements power from MP&L and of the likelihood of an offer of participation in the Grand Gulf units. The company responded that it did not propose to serve individual customers not previously served at wholesale and that:

"... the company does expect to fully comply with the Policy Commitments which it has made and which are set forth in the license for the Grand Gulf units. Item 4 of the appendage to that license addresses this matter. In the absence of a specific request by the City of Clarksdale concerning the amount of power desired, the point of delivery and service characteristics it is difficult to quote terms and conditions. If you would like us to quote terms and conditions for one or more alternate proposals we would be pleased to do so."

Following that letter and pursuant to the additional information therein, the City of Clarksdale proceeded with the interconnection then under construction with Mississippi Power & Light, which was completed by early summer of 1977.^{1/} MP&L filed the interconnection agreement between MP&L and Clarksdale on June 27, 1977, with the Federal Power Commission. On July 20, 1977, Clarksdale filed a petition to

^{1/} Prior to that time, Clarksdale had operated isolated.

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intervene in that docket, noting that the agreement in question was an outgrowth of MP&L's policy commitments appended as conditions of its AEC license and that in the view of Clarksdale the interconnection agreement met some of the requirements undertaken by MP&L but by no means all. Clarksdale specifically noted that the commitments required the sale of power for resale, provision of transmission capacity, and other matters within the jurisdiction of the FPC. Clarksdale noted that it was filing the intervention petition in order to give notice "of its belief that the interconnection agreement is inadequate and that it will seek the additional service schedules which are believed necessary which it hopes will then be filed voluntarily by the Company." On August 4, 1977, MP&L filed its Response of Mississippi Power & Light Company to Petition to Intervene of Clarksdale, Mississippi. MP&L, opposing the intervention of Clarksdale in that docket, stated that:

"... the FPC has not been established as the enforcement agency for license conditions included in nuclear power plant licenses. Rather, to the extent that Clarksdale may believe that MP&L has not fulfilled its obligation under its construction permits for the Grand Gulf Nuclear Plant, its remedy rests with the NRC, not with this Commission."

On July 19, 1977, the Mayor of Clarksdale, Richard M. Webster, Jr., had also directed a letter to Mr. Donald C. Lutken, President of MP&L. Mayor Webster noted, inter alia, that so far as Clarksdale's records showed, no offer of participation in Grand Gulf Nuclear Unit had been made to Clarksdale, and inquired when the process of making an offer or furnishing data preparatory to an offer would be made. On August 13, 1977, Mr. Lutken responded to Mayor Webster suggesting that Clarksdale had never expressed an interest before in participation in the Grand Gulf unit and therefore participation would be difficult if not impossible, but that the company was willing to discuss the matter further if desired. A series of negotiations followed, over the succeeding 13 months, in which MP&L has taken various positions, but it has now apparently firmly retreated to a position that its only obligation under the license commitments was to answer inquiries which might have been made as a result of newspaper stories at the time it received its license to construct the Grand Gulf units.

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In July, 1978, senior management and counsel of MP&L met with Donald L. Flexner, then Chief of the Antitrust Division, Energy Section, Department of Justice. MP&L requested an interpretation of its license conditions that would not require recognition of any expression of interest in ownership participation by the City of Clarksdale made more than 90 days after publication of the license conditions in the Federal Register. In its letter of confirmation of this meeting, dated September 25, 1978, MP&L stated that the effect of this interpretation would be to limit ownership participation in Grand Gulf "to the aggregate 10 percent participation currently in the final stages of negotiations with South Mississippi Electric Power Association ("SMEPA") and West Mississippi Electric Power Association ("WMEPA") and to exclude Clarksdale from such participation, inasmuch as it had not made a timely request." Clarksdale, Greenwood, and MEAM have made bonafide attempts to participate in the Grand Gulf units. MP&L has adamantly refused to make an offer of participation in any form, let alone a meaningful one. See, e.g., Louisiana Power & Light Company (Waterford Steam Generating Station Unit No. 3), 8 AEC 718, 743 (at n. 1). The Company has continued to hold out the possibility of participation, however, until recently. MP&L's last position, as reported to MEAM is that MP&L will not offer participation in Grand Gulf to MEAM or its members. Since no one contends that any offer has been made by MP&L to others than SMEPA and WMEPA, MEAM requests enforcement of License Condition 4.

- (b) MP&L has failed to observe the requirements of its commitment to transmit.

After a request for it so to do, and some discussions with MEAM and its members, MP&L filed a transmission rate applicable to Clarksdale in FERC Docket No. ER78-583, and one to Greenwood in Docket No. ER78-584, both on August 28, 1978. While Clarksdale and Greenwood, and MEAM, did not believe those filings to be fully in compliance with the Grand Gulf license conditions, nor just and reasonable, and thus intervened in the FERC with respect to those matters, Clarksdale believed that it would be able to utilize the transmission tariff to obtain some economic relief from the extremely high energy costs which it was forced to incur in procuring high cost oil to operate its units in a situation where base load power and energy were not available from any other source. Consequently, Clarksdale entered into

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an agreement with the City of Lafayette, Louisiana for the purchase of something more than 14 megawatts of capacity and the delivery of that power and energy (in unit contract form) from Lafayette to MP&L over the system of Gulf States Utilities Company, connected with MP&L by the 500 kv backbone transmission system in the area at the Gulf States' Willow Glen site and with Lafayette near the Lafayette transmission system proximate to Lafayette's Doc Bonin Generating Station. MP&L declined to transmit that power and energy on the ground that, although it had an interconnection with Gulf States at 500 kv, it had no "interconnection agreement", but rather "a coordination agreement", which it stated was inadequate.

Gulf States met several times with MP&L to attempt to negotiate the "interconnection agreement" which MP&L has stated it needs, and MEAM has been advised that Gulf States believed it had reached agreement with MP&L on such a negotiated "interconnection agreement," and furnished a copy to MP&L for execution, which has since been rejected by MP&L with the request that negotiations begin all over again. As a consequence, there has been no power or energy which MP&L has been willing to transmit to Clarksdale over this interconnection.

In addition to the self-imposed lack of an interconnection agreement, MP&L has stated to Clarksdale, Greenwood and MEAM that it would not in any circumstances consider power transmitted over a single 500 kv line to be available for reserve sharing and capacity credit. MP&L has represented that this is the case because it has only a single interconnection with Gulf States, even though that interconnection is at 500 kv and serves as a backbone for the entire Southwestern Power Pool System. MP&L has suggested that, in order for capacity credit to be claimed, it would be necessary to have yet a third transmission rate paid to its affiliate, Louisiana Power & Light Company, which has additional interconnections both with Gulf States and with MP&L. In order to seek to permit the basic transaction to proceed, Greenwood wrote to LP&L, proposing that, in light of the dispute, LP&L transmit whatever energy and capacity was needed when the Gulf States-MP&L interconnection was down. Louisiana Power & Light has stated that it would consider signing a further transmission agreement with the City of Lafayette, and would insist upon such an agreement (at full rates) in any circumstances since some of the power exchanges over the Gulf States lines would somehow impact the transmission loads on LP&L's system. In other words, Middle South, which has a single free flowing transmission pool among its members, insists on fully allocated transmission rates for each of its affected members. The effect of this insistence on a "layering" of unnecessary participants is to render both risky and potentially uneconomic a clearly beneficial agreement for the Southwestern Power Pool area.

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MP&L (or its parent, Middle South Utilities) is apparently attempting completely to reverse the usual industry practice of obtaining contractual paths for transmission flows. Since all of the transmission systems in the area are interconnected, of course any transaction will, from time to time, have some impact upon every other transmission system. Indeed, the electromagnetic unity of the Interconnected Systems Group in the East and Central United States would permit this argument to be made for all of the entities tied to the basic transmission grid in the country and it seems apparent that MP&L and Middle South are attempting to preclude any transactions by entities within their control area with any entity outside their control area, except at a prohibitive price. ^{1/} Since MP&L has refused to transmit even energy from Gulf States' lines without an "interconnection agreement", an exception not mentioned in its license commitments, and has refused to transmit power from Gulf States in any event, it is clearly in violation of its license commitments.

- (c) MP&L has not been willing to sell power for resale to other entities in the Western Mississippi area.

MP&L has on file with the FERC Rate schedules for service to REA cooperatives and municipalities. It has declined to make service under those rate schedules available on a partial requirements basis to municipalities such as Clarksdale and Greenwood, or to MEAM for resale to Clarksdale and Greenwood. Rather, it has offered to sell energy at incremental costs ^{2/} to Clarksdale and Greenwood under the terms of the interconnection agreements therewith. MEAM concedes that this may satisfy the commitment as to reserve sharing, but it clearly does not meet Commitment 6, which separately requires MP&L to sell power for resale to any entity in the Western Mississippi Area now engaging in or proposing to engage in retail distribution of electric power. Such a commitment would be meaningless if it permitted MP&L to sell at one rate to existing wholesale customers and at a much higher rate to new wholesale customers, as it proposes to do.

^{1/} It will be noted that MP&L under its basic agreement among the Middle South System Companies incurs no extra cost for transmission over other Middle South System Companies in like circumstances.

^{2/} Incremental costs appear to be defined as incremental to the Middle South System.

Mr. Harold Denton

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These matters have been detailed in an exchange of correspondence among counsel and the Department of Justice, which is attached. MEAM does not have unlimited resources, and cannot continue to expend monies in fruitless negotiations or in extended proceedings at FERC which may not resolve the basic issues. Attempting to deal with these matters elsewhere bids fair to exhaust both potential remedies and MEAM. MEAM believes that failure of MP&L to conform to the NRC license conditions to be clear. Consequently, MEAM requests that the Commission promptly commence proceedings to enforce its license conditions.

Very truly yours,

Robert C. McDiarmid
Attorney for the Municipal
Energy Agency of Mississippi
and its members

cc: Richard Merriman, Esq.
Reid & Priest

John H. Shenefield, Esq.
Assistant Attorney General
Antitrust Division
Department of Justice

Attachments:

MEAM Letter (Spiegel & McDiarmid to Department of Justice dated September 22, 1978.

MP&L letter (Reid & Priest) to Department of Justice dated September 25, 1978.

MP&L Letter (Reid & Priest) to Department of Justice dated October 16, 1978.

MEAM Letter (Spiegel & McDiarmid) to Reid & Priest dated October 31, 1978.

MP&L Letter (Reid & Priest) to Department of Justice dated November 17, 1978.

RCMcD:jos

Appendix K

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June 19, 1979

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Mr. Harold R. Denton
Director, Office of Nuclear
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U. S. Nuclear Regulatory
Commission
Washington, D. C. 20555

In the Matter of Mississippi Power & Light Company
(Grand Gulf Nuclear Station, Unit Nos. 1 and 2)
Docket Nos. 50-416 and 50-417

Dear Mr. Denton:

We have received a copy of your letter to Mr. McDiarmid, dated June 11, 1979, by which you acknowledge receipt of his petition by letter dated May 29, 1979 on behalf of the Municipal Energy Agency of Mississippi ("MEAM"). MEAM had sought the issuance of an order to show cause pursuant to 10 C.F.R. §2.202 "to require the Mississippi Power & Light Company and its affiliate, Middle South Energy, Inc., to comply with license conditions attached to the construction permit for the Grand Gulf Nuclear Station, Units 1 and 2." Your letter to Mr. McDiarmid indicates that the petition will be treated under 10 C.F.R. §2.206 and that appropriate action will be taken within a reasonable time.

Pursuant to the Notice filed for publication in the Federal Register, we make this response on behalf of Mississippi Power & Light Company ("MP&L"). As always, we wish to extend every effort to cooperate with the Commission in its review, and we will furnish any additional information that will assist you in your investigation. In this respect, we would note that MP&L has previously provided information in response to the NRC Staff's requests by letters dated January 10 and March 12, 1979 for additional information in connection with its antitrust review of the Applicants' operating license application. As discussed below, the information provided therein is dispositive of MEAM's allegations and refutes any allegation of a failure to comply with conditions of the construction permits for the Grand Gulf Nuclear Station.

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1. Clarksdale and Greenwood have been offered an opportunity to participate in the Grand Gulf facilities. MEAM claims that Clarksdale and Greenwood have been denied an opportunity to participate in the Grand Gulf facility. Nothing could be further from the truth. Although this portion of its letter contains many irrelevancies, such as possible interconnection between Clarksdale and MP&L and certain FERC proceedings, the gist of this allegation is that the Mayor of Clarksdale wrote a letter dated July 19, 1977 to the President of MP&L, stating that "no offer of participation in Grand Gulf Nuclear Unit had been made to Clarksdale," and inquiring for further information. In accordance with the practice of the NRC, all interested parties were given notice by publication in the Federal Register, 39 Fed. Reg. 32641 (September 10, 1974), that construction permits had been issued, which was available for public inspection and which clearly stated MP&L's commitment to offer participation. Moreover, the Notice of Receipt of Attorney General's Advice and Time for Filing Petitions to Intervene on Antitrust Matters, 38 Fed. Reg. 14877 (June 6, 1973), likewise recited MP&L's commitment "to offer an opportunity to participate in the Grand Gulf nuclear units." Numerous accounts of MP&L's intention to build the Grand Gulf facility were published in local newspapers throughout Mississippi.

MEAM does not now allege that Clarksdale, Greenwood or any other member of MEAM expressed a bonafied interest in participation. It is also noteworthy that the Department of Justice, pursuant to its responsibilities for antitrust review under Section 105 of the Atomic Energy Act of 1954, as amended, had written each utility in Western Mississippi on July 17, 1972, inquiring, inter alia, whether any utility was interested in ownership participation in the Grand Gulf Nuclear Station. Clarksdale responded by letter dated August 25, 1972, expressing no interest in participating in the ownership of that facility. Later, in August 1973, Greenwood expressed some interest in ownership, but dropped the matter after being furnished cost data by MP&L. Accordingly, MEAM and its members had full notice of an opportunity to participate but simply did not avail themselves of this option. After MP&L gave notice of its willingness to offer participation, the initiative clearly passed to any interested parties to take up the matter further. Once notice had issued, there was obviously little more MP&L could do with regard to an offer of participation until MEAM's members outlined the manner and degree of participation desired. MEAM's members had some 3-1/2 years to seek participation, but failed to do so. By contrast, in attaching antitrust conditions to a nuclear facility construction permit following adverse findings during a Section 105c(1) review, the Licensing Board in Toledo Edison Company (Davis-Besse Nuclear Power Station, Units 1, 2 and 3), LBP-77-1, 5 NRC 133, 259 (1977), required that entities requesting access to the licensed facilities must make a commitment regarding participation within two years after the decision became final, and within two years after a license

Mr. Harold R. Denton
June 19, 1979
Page Three

application had been filed for future units. Thus, the Licensing Board in Davis-Besse thought that two years was ample time for an interested entity, not merely to seek an offer of participation, but to evaluate its position and make a firm commitment.

MP&L's good faith in its dealings with MEAM is demonstrated by its response to a request by MEAM on November 21, 1978 for an offer of an ownership interest in the Grand Gulf facility that, while the request for an ownership interest in the nuclear facility was too late, MP&L would discuss with MEAM the possibility of joint participation in a 700 MW coal-fired power plant (expected to begin operation in 1985) as well as interconnection and other means to assure MEAM's members an adequate and dependable source of power at the lowest possible cost. Further, MP&L is about to conclude successful negotiations with WMEPA and SMEPA for a 10 percent ownership share of the Grand Gulf facility. All of these matters have been documented in MP&L's letter of September 25, 1978 to the Department of Justice as well as in Applicants' Response to Information Request 1h in the Antitrust Review Information filed by MP&L in this proceeding pursuant to Regulatory Guide 9.3.

2. MP&L has fulfilled its commitment to facilitate the exchange of bulk power by transmission over its facilities. In essence, MEAM contends that MP&L has refused to wheel power from Lafayette to Clarksdale over the system of Gulf States Utilities Company, which is connected with MP&L by a 500 KV transmission line. The stumbling block to accommodating Clarksdale's request that MP&L wheel power from Lafayette, however, has been Clarksdale's insistence upon firm service. Inasmuch as the wheeling arrangement suggested by Clarksdale involves transmission over the Gulf States system, and the only point of interconnection between the Gulf States and MP&L systems is a single 500 KV line segment, MP&L cannot guarantee Clarksdale's uninterrupted service on any other basis. Obviously, in view of MP&L's other commitments, MP&L cannot guarantee firm service to Clarksdale with only one 500 KV interconnection currently available to it with Gulf States if the wheeled power from Lafayette must travel through that single interconnection. This matter has already been addressed by MP&L in its Information for Antitrust Review (see Response to NRC Letter of March 12, 1979, Question 8 at p. 4); (Response to NRC Letter of January 10, 1979, Questions 1 and 2 at pp. 17-19).

The situation is further complicated by Clarksdale's insistence that Louisiana Power & Light Company ("LP&L") transmit the power from Lafayette over LP&L's system at no charge for the use of its facilities on the ground that LP&L is part of the Middle South Utilities system. MP&L has simply taken the position that the issue of fair compensation for the use of LP&L's facilities should be determined by LP&L and Clarksdale.

Mr. Harold R. Denton
June 19, 1979
Page Four

The conditions in the construction permit for the Grand Gulf facility do not require MP&L to make arrangements with utilities outside its service area, such as LP&L and Gulf States, for the transmission of bulk power between MEAM members and such other utilities. The only obligation imposed by the construction permits is that MP&L wheel power from the point of delivery in its system to other utilities, such as Clarksdale and Greenwood.

Additionally, as MP&L has pointed out before, it has several interconnections with TVA, Arkansas Power & Light Company, and Mississippi Power Company, which could wheel power to MP&L's transmission system under the applicable rate schedule already on file with FERC. In essence, however, MEAM insists that the Middle South members act, in their totality, as though they were a single utility, without regard to their separate corporate identity and operation in transmitting power to MEAM members over their separate facilities. Quite simply, it is MP&L's position that:

" each entity whose transmission facilities are used to implement a particular transaction should be compensated for such use of its facility. Entities which would be paid for transmission service would be determined on a case-by-case basis. MP&L has not attempted to develop a method to determine direct and indirect portions of power transmission. . . . [E]ach MSU affiliate should make its own arrangements for the use of its transmission system by other entities. . . . [S]ingle system generation dispatch in the Middle South Utility system does not bear on the question of whether compensation is equitable for the use of the transmission system of a particular MSU affiliate company by other entities."

See Response to NRC Letter of March 12, 1979, Question 8 at p. 4-5. It is important to note that appropriate rate schedules for the transmission of the bulk power desired by Clarksdale and Greenwood are already on file with FERC (Dockets ER 78-583 and ER 78-584) and became effective August 28, 1978. Thus, transmission of the bulk power over the MP&L system has been available to Clarksdale and Greenwood since that date. The only point of dispute by Clarksdale, therefore, does not relate to a service condition imposed by the construction permit, but rather a rate question within FERC jurisdiction. See Response to NRC Letter

Mr. Harold R. Denton
June 19, 1979
Page Five

of March 12, 1979, Questions 7 and 8 at pp. 3-5; Response to NRC Letter of January 10, 1979, Question 1 at p. 17.

3. MP&L has fulfilled its obligation to sell power for resale to any entity in the Western Mississippi area now engaging in or proposing to engage in retail distribution of electric power. MEAM also contends that MP&L has declined to make service available under applicable rate schedules on a partial requirement basis, but has instead offered to sell energy to Clarksdale and Greenwood at incremental cost under the terms of their interconnection agreements. Inasmuch as Clarksdale and MP&L were not interconnected prior to August 1970, MP&L had not taken Clarksdale into consideration in calculating its future base load capacity requirements. Therefore, Clarksdale's request for bulk power now imposes incremental costs which MP&L has every right to pass on to Clarksdale, subject to FERC approval. This is simply a cost-justified price differential. Moreover, since MEAM does not allege a refusal by MP&L to furnish bulk power, but only challenges the rate structure, the issue properly belongs within the jurisdiction of FERC, not the NRC. See MP&L's Response to NRC Letter to MP&L of January 10, 1979, Question 4.

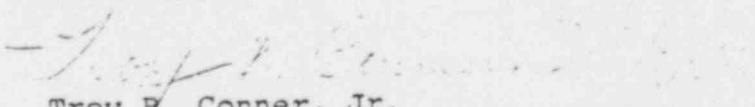
As is evident from a review of the letter of May 29, 1979 to your office, analyzed in conjunction with the earlier correspondence between MEAM and the Department of Justice in 1978, the matters raised herein are anything but new, and scarcely appropriate for action on an order to show cause. Significantly, the Department of Justice has not seen fit to take any action itself or recommend that the NRC take any action with respect to the allegations by MEAM in its earlier correspondence to Justice. Further, an examination of the antitrust information provided by MP&L to the NRC Staff pursuant to Regulatory Guide 9.3 and subsequent Staff questions clearly demonstrates the insufficiency of the present allegations to support an order to show cause, and further indicates that MP&L has completely responded to the allegations at hand. If any additional response is required, it should be submitted under the same format. Under the circumstances, there can be little doubt but that MEAM's request for an order to show cause on these old matters to which MP&L has already fully responded is intended only to pressure MP&L into accepting commercially unfair arrangements.

For the reasons expressed above and in those documents to which we have referred, the request for the issuance of an

Mr. Harold R. Denton
June 19, 1979
Page Six

order to show cause should be rejected. Please advise me if any further response is desired or if you would like to meet on the matter.

Sincerely,


Troy B. Conner, Jr.
Counsel for Mississippi Power &
Light Company

/dr

cc: Richard Merriman, Esq.
Robert C. McDiarmid, Esq.

Appendix L



DEPUTY ASSISTANT ATTORNEY GENERAL
ANTITRUST DIVISION

United States Department of Justice
WASHINGTON, D.C. 20530

MAY 21 1979

Mr. Harold Denton
Director, Office of Nuclear Reactor
Regulation
Nuclear Regulatory Commission
Washington, D.C. 20555

Re: Mississippi Power & Light Company, Grand
Gulf Nuclear Station Units 1 and 2, NRC
Docket Nos. 50-416A, 50-417A

Dear Mr. Denton:

By letter dated May 29, 1979, the Municipal Energy Agency of Mississippi ("MEAM") requested that the Nuclear Regulatory Commission ("NRC") commence proceedings pursuant to 10 C.F.R. § 2.202 to require the Mississippi Power & Light Company ("MP&L") to comply with the license conditions attached to the construction permits for the Grand Gulf Nuclear Station Units 1 and 2. The Department of Justice ("Department") hereby advises the NRC that it supports MEAM's request.

On May 24, 1973, Thomas A. Kauper, then Assistant Attorney General for the Antitrust Division, advised the Atomic Energy Commission by letter that on the basis of certain explicit representations made by MP&L to the Department, which were attached to Mr. Kauper's letter, and on the understanding that those representations would be embodied in the terms and conditions of the construction permits for the Grand Gulf Nuclear Units, the Department had concluded that an antitrust hearing would not be necessary with respect to the Grand Gulf Nuclear Units applications. In September, 1974, the NRC issued construction permits for the Grand Gulf Nuclear Units. The terms and conditions which the NRC attached to those permits incorporated MP&L's representations to the Department.

In its May 29, 1979, letter MEAM alleges that MP&L has violated several license conditions which require, respectively, that MP&L interconnect with and coordinate reserves with other entities in the area (condition 2); offer access

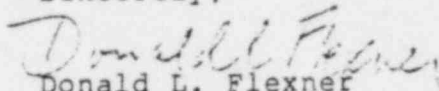
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to the Grand Gulf Nuclear Units to any entities in the western Mississippi area (condition 4); wheel power to or from entities in the western Mississippi area (condition 5); and, sell power for resale to any entity in the western Mississippi area now engaging in or proposing to engage in retail distribution of electric power. These license conditions reflect representations made by MP&L to the Department which were attached to Mr. Kauper's letter. After reviewing MEAM's May 29, 1979, letter, and the attachments thereto, including letters to the Department by counsel for MP&L, the Department believes that MEAM's allegations raise genuine issues of fact as to whether MP&L has violated the above described license conditions, which should be resolved through an adjudicative hearing.

Accordingly, the Department of Justice supports MEAM's request that the NRC commence proceedings pursuant to 10 C.F.R. § 2.202 to require MP&L to comply with the license conditions 2, 4 and 5.

Sincerely,



Donald L. Flexner
Deputy Assistant Attorney General
Antitrust Division

cc: Richard Merriman, Esquire
Troy B. Conner, Jr., Esquire
Robert McDiarmid, Esquire
Fredric Chanania, Esquire

Appendix M

May 29, 1980

File 60-417A
Sub

Mr. Donald C. Lutken
President
Mississippi Power & Light Company
P.O. Box 1640
Jackson, Mississippi 39205

Re: Mississippi Power and Light Company,
Grand Gulf Nuclear Station, Units 1
and 2, NRC Dkt. Nos. 50-416A and 50-417A

Dear Mr. Lutken:

By letter dated May 29, 1979, the Municipal Energy Agency of Mississippi ("MEAM") 1/ requested the Nuclear Regulatory Commission ("NRC") to take enforcement action, pursuant to 10 CFR 52.202, against Mississippi Power & Light Company ("MP&L") in connection with antitrust license conditions applicable to Grand Gulf Nuclear Station, Units 1 and 2 ("Grand Gulf"). MEAM has alleged that MP&L has not complied with the Grand Gulf license conditions relating to: (1) MP&L's obligation to offer an opportunity to participate in Grand Gulf (license condition #D4(a)); (2) MP&L's obligation to provide certain transmission services (license condition #D5(a)); and (3) MP&L's obligation to sell power for resale (license condition #D6).

Upon receipt of MEAM's request of May 29, 1979, the NRC informed MEAM that its request was being treated under 10 CFR 52.206 of the Commission's regulations. 2/ Prior to MEAM's request to the NRC, MEAM had inquired of the Department of Justice as to the status and interpretation of the same license conditions with regard to the same factual circumstances as were raised in MEAM's 52.206 request to the NRC. 3/ Both the MEAM request to the NRC and its

1/ The Municipal Energy Agency of Mississippi consists of the Mississippi cities of Canton, Clarksdale, Durant, Greenwood, Itta Bena, Kosciusko, Leland, and Yazoo City.

2/ Letter from Harold R. Denton, DNRR, to Robert C. McDiarmid, counsel for MEAM, dated June 11, 1979.

3/ Letter from Robert C. McDiarmid, counsel for MEAM, to Janet Urban, Esq., Antitrust Division of the U.S. Department of Justice, dated September 22, 1978. The Department of Justice has advised the NRC that it supports MEAM's request for enforcement. Letter dated November 21, 1979, from Donald L. Flexner, Deputy Assistant Attorney General of Antitrust Division, to Harold Denton, DNRR.

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earlier inquiry to the Department of Justice included a considerable amount of factual material. MP&L has responded to MEAM's inquiry to the Department of Justice, 4/ and has also submitted relevant factual material to the NRC, both as part of its submission of antitrust information related to its operating license application for Grand Gulf 5/ and also in response to additional inquiries made by the NRC Staff. 6/ The NRC also obtained other factual information from independent sources, such as the Federal Energy Regulatory Commission ("FERC").

As a result of our consideration of MEAM's request and the factual materials mentioned above, it appears that MP&L is not in compliance with antitrust license conditions 4, 5 and 6. More specifically, we believe that:

- (1) MP&L has violated and continues to violate Grand Gulf antitrust license condition 4(a) by refusing to offer the City of Clarksdale, MEAM, or the other members of MEAM the opportunity to participate in Grand Gulf;
- (2) MP&L has violated and continues to violate Grand Gulf antitrust license condition 5(a) by not facilitating the transmission of Lafayette, Louisiana power from the MP&L-Gulf States Utilities interconnection near Feips, Louisiana, to the City of Clarksdale; and
- (3) MP&L has violated and continues to violate Grand Gulf antitrust license condition 6 by refusing to sell partial requirements power for resale except at incremental costs.

We are therefore issuing the enclosed Notice of Violation to MP&L and its co-licensee, Middle South Energy, Inc.

MEAM also has alleged that in connection with MP&L's refusal to transmit Lafayette power to Clarksdale, MP&L would not consider any power transmitted over the MP&L-GSU interconnection to be available for generation capacity credit or for reserve sharing obligations because the MP&L-GSU interconnection is only a single 500 kv line. 7/ The Staff believes that such a position by

4/ Letters from L. Peter Farkas, counsel for MP&L, to Janet R. Urban, Department of Justice, dated October 16, and November 17, 1978.

5/ Letter from Norris L. Stampley, vice-president of MP&L, to Harold R. Denton, DNRR, dated February 7, 1979.

6/ Letter from Norris L. Stampley, vice-president of MP&L, to Harold R. Denton, DNRR, dated April 12, 1979.

<u>7/</u> MEAM	Enforcement request at 6.				
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MP&L is inconsistent with Grand Gulf license conditions 2(a),(c),(d) and (f). It appears, however, that this issue has been mooted by Article II of the October 2, 1979 Settlement Agreement between MP&L and MEAM in FERC Docket Nos. ER78-583 and ER78-584, which states, in relevant part, that "Clarksdale...shall receive capacity credit under its interconnection agreement with MP&L for such power that is delivered to Clarksdale...by MP&L..."

Your written twenty-day response to the Notice of Violation and any further actions proposed by MP&L will be considered in determining whether further enforcement action, including civil penalties or orders, will be required to assure compliance.

Very truly yours,

Original Signed by
H. R. Denton

Harold R. Denton, Director
Office of Nuclear Reactor Regulation

Enclosure:

Notice of Violation

cc: R. C. McDiarmid, Esq.
Donald L. Flexner, Esq.
Troy B. Conner, Jr., Esq.

Distribution:

Docket Files
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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Mississippi Power & Light Company

(Grand Gulf Nuclear Station,
Units 1 and 2)

Docket Nos. 50-416A
50-417A

Construction Permit Nos. CPPR-118
CPPR-119

NOTICE OF VIOLATION

As a result of (a) an investigation of the request^{1/} for enforcement of license conditions^{2/} by the Municipal Energy Agency of Mississippi ("MEAM")^{3/} dated May 29, 1979, (b) an analysis of certain provisions in rate schedules and interconnection and other agreements filed at the Federal Energy Regulatory

^{1/} Letter dated May 29, 1979, from Robert C. McDiarmid, Attorney for MEAM, to Harold Denton, Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission (hereinafter "MEAM Enforcement Request"). The Department of Justice has advised the NRC that it supports MEAM's request for enforcement. Letter dated November 21, 1979, from Donald L. Flexner, Deputy Assistant Attorney General, Antitrust Division, to Harold Denton, DNRR.

^{2/} The license conditions originated in a letter of May 22, 1973, from Donald C. Lutken, President of Mississippi Power & Light ("MP&L"), to Thomas E. Kauper, then Assistant Attorney General of the United States Department of Justice. In Mr. Lutken's letter, MP&L agreed to certain commitments set forth therein, which were to be attached as license conditions to the Grand Gulf construction permits. On the basis of MP&L's agreement, Mr. Kauper advised the NRC by letter of May 24, 1973, that, in the Department of Justice's view, no antitrust hearing would be necessary in connection with the Grand Gulf construction permits. See 38 Fed. Reg. 14877 (June 6, 1973). Construction Permits CPPR-118 and CPPR-119 for Grand Gulf Units 1 and 2 were issued on September 4, 1974, and included the commitments agreed to by MP&L.

^{3/} The Municipal Energy Agency of Mississippi consists of the Mississippi cities of Canton, Clarksdale, Durant, Greenwood, Itta Bena, Kosciusko, Leland, and Yazoo City.

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Commission ("FERC"),^{4/} and (c) a review of the correspondence and other documents submitted to the NRC and to the Department of Justice by both parties, it appears that Mississippi Power & Light Company ("MP&L") and Middle South Energy, Inc. ("MSE")^{5/} have violated antitrust license conditions 2, 4, 5, and 6 in Section D. of the Grand Gulf Nuclear Station (Units 1 and 2) construction permits CPPR-118 and CPPR-119 as set forth below:

4/ The relevant FERC materials are found in:

- a) Docket No. ER79-582: MP&L Revised Transmission Schedule E;
- b) Docket No. ER79-529: Interconnection Agreement between Mississippi Power & Light Co. ("MP&L") and South Mississippi Electric Power Agency ("SMEPA");
- c) Docket Nos. ER78-563, ER78-584: MP&L Transmission Schedule E;
- d) Docket No. ER77-478: Interconnection Agreement between MP&L and City of Clarksdale;
- e) Docket No. ER76-830: MP&L Service Schedule REA-15 and MW-15;
- f) Interconnection Agreement between MP&L and City of Greenwood (filed with the Federal Power Commission on September 19, 1975 as MP&L Rate Schedule 239.)
- g) Docket Nos. ER79-529, ER79-582, ER78-583, ER78-584: Settlement Agreement;
- h) Docket No. ER80-261: unexecuted "Interconnection Agreement" between MP&L and Gulf States Utilities Company dated February 29, 1980; MEAM's Petition to Intervene.

5/ Mississippi Power & Light Company and Middle South Energy, Inc. are co-licensees of Grand Gulf Nuclear Station (Units 1 and 2). Both MP&L and MSE are wholly-owned subsidiaries of Middle South Utilities, Inc., a registered holding company. MP&L is an electric utility company and was originally the sole owner and licensee of the Grand Gulf facility. In 1974, MSE was organized under Arkansas law to finance and own electric generating facilities for the Middle South Utilities System. In June 1974, MSE purchased all of MP&L's interests in Grand Gulf. However, MP&L is managing the construction and will eventually operate the Grand Gulf facility under contractual arrangements with MSE. MP&L has continued to represent both itself and MSE during antitrust reviews by the NRC.

I.

Antitrust license condition number 4(a) reads as follows:

Licensees and any successor in title shall offer an opportunity to participate in the Grand Gulf Nuclear Units and any other nuclear generating unit(s) which they or either of them, may construct, own and operate in the State of Mississippi, severally or jointly, during the term of the instant license, or any extension or renewal thereof, to any entity(ies) in the Western Mississippi Area by either a reasonable ownership interest in such unit(s), or by a contractual right to purchase a reasonable portion of the output of such unit(s) at the cost thereof if the entity(ies) so elects. In connection with such access, Licensees will also offer transmission service as may be required for delivery of such power to such entity(ies) on a basis that will fully compensate Licensees for their cost.

The NRC Staff has concluded that MP&L has violated and continues to violate this license condition by refusing to offer the City of Clarksdale, Louisiana, MEAM, and MEAM's other members the opportunity to participate in Grand Gulf. In particular, on August 18, 1977, MP&L informed Clarksdale that participation in Grand Gulf would be "difficult - if not impossible."^{6/} Subsequently, M&PL requested from the Department of Justice an interpretation of the Grand Gulf antitrust license conditions which would explicitly "exclude Clarksdale from such participation."^{7/}

^{6/} Letter dated August 18, 1977, from Donald C. Lutken, President of MP&L, to Richard M. Webster, Jr., Mayor of Clarksdale, at p. 3.

^{7/} Letter from L. Peter Farkas, counsel for MP&L, to Honorable John H. Shanefield, Assistant Attorney General, Antitrust Division, Department of Justice, dated September 25, 1978.

Presently, the only prospective participants in Grand Gulf other than MP&L and MSE are the South Mississippi Electric Power Association ("SMEPA") and the West Mississippi Electric Power Association ("WMEPA"). They initially expressed interest in Grand Gulf in February and August of 1972, respectively. It was not until about four years later, however, that active discussions commenced between MP&L and SMEPA and WMEPA concerning participation.^{8/} On April 3, 1980, MP&L submitted to the NRC an application for amendment to the Grand Gulf construction permits to include SMEPA as co-owner to the extent of ten percent of the total capacity of the facility.

However, MP&L accorded different treatment to other electric utilities in the Western Mississippi Area. Yazoo City made inquiries about participating in Grand Gulf in March of 1973,^{9/} and Greenwood expressed an interest in ownership in August of 1973.^{10/} Clarksdale's consultants, R. W. Beck & Co., requested financial data concerning Grand Gulf in December of 1976 and inquired whether MP&L would be willing to sell ownership or unit power participation to Clarksdale.^{11/} While MP&L has provided data to these cities at various times, it has not actually offered them participation.

^{8/} See Antitrust Information, Grand Gulf Nuclear Station (Units 1 and 2), at p. 11 (submitted by MP&L to the NRC on Feb. 7, 1979), (hereinafter referred to as "Antitrust Information").

^{9/} Id.

^{10/} Id.

^{11/} Id. at p. 13; see also the letter dated December 8, 1976, from Robert E. Batten of R. W. Beck and Associates, consultants for Clarksdale, to D. C. Lutken, President of MP&L.

Instead, MP&L has effectively refused to allow them to participate on the grounds of the lack of active pursuit of nuclear participation by these entities during various negotiations for interconnection agreements and the alleged untimeliness of their requests.^{12/}

The Staff believes that MP&L has not acted within the letter or the spirit of the antitrust license condition no. 4, which requires MP&L to offer participation to entities such as these cities. First of all, MP&L has not offered participation to Clarksdale or MEAM. Secondly, regarding MP&L's untimeliness argument, the Staff finds unreasonable MP&L's different treatment of SWEPA and WMEPA, which were granted access to Grand Gulf, and the City of Clarksdale, which has been refused access to Grand Gulf. All three of these entities expressed active interest in Grand Gulf during 1976. Although SWEPA and WMEPA initially expressed interest in 1972, no serious discussions took place until four years later in 1976, precisely when Clarksdale expressed its interest in Grand Gulf. Antitrust license condition 4 requires MP&L to offer an opportunity to all entities in the Western Mississippi Area (which includes, among others, Clarksdale and MEAM) to participate in Grand Gulf Units 1 and 2. No explicit time limitation concerning this opportunity is written into license condition 4. While it may be appropriate to infer some reasonable time limitation on MP&L's obligation to accept additional participation, and without attempting to define that limitation, the Staff believes that, under the facts of this case

^{12/} Antitrust Information, at 11-15; letter dated October 16, 1978, from L. Peter Farkas, counsel to Janet R. Urban, Esq., Department of Justice.

described herein, such a limitation certainly would not be such as to relieve MP&L of its obligation to grant access to Clarksdale and MEAM. Finally, in Staff's view, it is not reasonable to infer any limitations which would exclude Clarksdale, as argued by MP&L, either from other license conditions in CPPR's 118 or 119 or from other electric utilities' construction permits for other nuclear plants. Accordingly, the Staff also regards Clarksdale's and MEAM's requests for participation in Grand Gulf as timely,^{13/} and MP&L's refusal^{14/} to be unreasonable. Hence, as to Clarksdale and MEAM, MP&L is in violation of license condition 4.^{15/}

II.

Antitrust license condition number 5(a) reads as follows:

Licensees shall facilitate the exchange of bulk power by transmission over its transmission facilities between or among two or more entities in the Western Mississippi Area with which it is interconnected; and between any such entity(ies) and any entity(ies) engaging in bulk power supply outside the Western Mississippi Area between whose facilities Licensees' transmission lines and other transmission lines would form a continuous electrical path, provided that (1) permission to utilize such other transmission lines has

^{13/} See Antitrust Information, at p. 14.

^{14/} August 18, 1977 letter, *supra*; Antitrust Information at pp. 14-15; MEAM Enforcement Request at p. 5.

^{15/} While others, such as Yazoo City, had earlier made expressions of interest, the May 29, 1979 MEAM Enforcement Request did not mention any individual members except Clarksdale and Greenwood. Hence, the Staff is treating MEAM as acting in its representative capacity for its member systems as well as in its own interests as a separate entity.

been obtained, and (2) the arrangements reasonably can be accommodated from a functional and technical standpoint. Such transmission shall be on terms that fully compensate Licensees for their cost. Any entity(ies) requesting such transmission arrangements shall give reasonable advance notice of its (their) schedule and requirements. (The foregoing applies to any entity(ies) to which Licensees may be interconnected in the future as well as those to which they are now interconnected.)

The NRC Staff has concluded that MP&L has violated and continues to violate this license condition by not facilitating the transmission of Lafayette, Louisiana power from the MP&L-Gulf States Utilities interconnection near Felps, Louisiana to the City of Clarksdale. In particular, on September 15, 1978,^{16/} MP&L refused to provide firm transmission service to the City of Clarksdale in connection with a request by the City dated September 8, 1978,^{17/} for transmission of 14 MW of power from the City of Lafayette, Louisiana through the Gulf States Utilities ("GSU") system in Louisiana, over the MP&L-GSU 600 kv interconnection, and then over MP&L's transmission system to Clarksdale. MP&L stated that its refusal to transmit the Lafayette power was based on the ground that MP&L did not have an interconnection "agreement" with GSU. MP&L suggested that it might be able to provide interruptible transmission service to Clarksdale if Louisiana Power and Light Company ("LP&L"), which does have an interconnection agreement with GSU, agreed to act as MP&L's agent. MP&L further stated that it could not provide firm transmission service as requested by Clarksdale since MP&L had

^{16/} See letter dated September 15, 1978, from F.S. York, Jr., Vice-President and Secretary of MP&L, to Richard M. Webster, Jr., Mayor of Clarksdale.

^{17/} Letter dated September 8, 1978, from Richard M. Webster, Jr., of Clarksdale to Frank S. York, Jr., of MP&L.

only a single interconnection with GSU, but that it would consider providing firm service if Clarksdale obtained the permission of LP&L to backup the MP&L-GSU interconnection.^{18/} Such an arrangement would require Clarksdale to compensate LP&L in addition to MP&L.^{19/}

License condition number 5(a) requires MP&L to "facilitate" the transmission of power between entities in the Western Mississippi area "with which it is interconnected" (emphasis added) and between any entity in the Western Mississippi area and any entity outside that area between whose facilities MP&L's transmission lines and other's "would form a continuous electrical path." Thus the plain language of license condition 5(a) requires either an "interconnection" or a "continuous electrical path," but not an interconnection "agreement." Since MP&L is interconnected with GSU, and MP&L's transmission lines, along with the transmission lines of others, form a continuous electrical path between Lafayette, Louisiana and Clarksdale via the MP&L-GSU interconnection, it follows that MP&L's refusal to transmit the Lafayette power to Clarksdale (and Greenwood) from the MP&L-GSU interconnection violates license condition 5(a).

^{18/} See the September 15, 1978 letter, supra, and the following letters: Marvin L. Carraway (Clarksdale) to Tom Dallas (MP&L) dated September 20, 1978; Donald C. Lutken (MP&L) to Richard M. Webster, Jr. (Clarksdale) dated September 29, 1978; Donald C. Lutken (MP&L) to Richard M. Webster, Jr. (Clarksdale) dated October 3, 1978.

^{19/} See the letter dated April 12, 1979, from Morris L. Stampley (MP&L) to Harold R. Denton of the NRC (MP&L's answer to Question 8, p. 4 of attachment); the letter dated February 3, 1980 from Richard M. Webster, Jr. of Clarksdale to Jack Davey of LP&L; and the letter of February 25, 1980, from Jack Davey to Richard M. Webster, Jr.

The Staff further believes that MP&L's insistence on an interconnection "agreement" with GSU as a prerequisite to transmitting the Lafayette power to Clarksdale (and Greenwood) is unreasonable. First of all, MP&L and GSU apparently have a "coordination agreement".^{20/} Secondly, prior to Clarksdale's request for MP&L transmission service from the MP&L-GSU interconnection, MP&L apparently did not consider it necessary for MP&L and GSU to have an interconnection agreement.^{21/} Power transfers were scheduled and accounted for across the interconnection on a "net" basis between the Middle South System (of which MP&L is a part) and GSU control areas.^{22/} There is no valid reason why a similar procedure could not have been utilized to "facilitate" the transmission of Lafayette power to Clarksdale. Under the circumstances set forth above, the Staff believes that MP&L has failed to "facilitate the exchange of bulk power" as required by license condition 5(a).

III.

Antitrust License condition number 6 reads as follows:

Licensees will sell power for resale to any entity(ies) in the Western Mississippi Area now engaging in or proposing to engage in retail distribution of electric power.

^{20/} See the October 31, 1978 letter from Robert C. McDiarmid, attorney for MEAM, to Richard M. Merriman, attorney for MP&L.

^{21/} See the letter dated February 29, 1980 from Richard M. Merriman, attorney for MP&L, to FERC transmitting the unexecuted "Interconnection Agreement."

^{22/} Antitrust Information, at 19.

The NRC Staff has concluded that MP&L has violated and continues to violate this license condition by refusing to sell partial requirements power for resale except at incremental costs. In particular, although MP&L has a municipal wholesale rate (MW-15) on file at FERC for existing full-requirements customers, MP&L refuses to sell partial requirements wholesale power to new customers under comparable rates. Instead, MP&L will sell partial requirements wholesale power only under interconnection agreements at a rate based on incremental costs, rather than the systemwide average costs, which are the basis of schedule MW-15.^{23/}

The NRC Staff believes that license condition number 6 requires MP&L to sell "power for resale" on both a full requirements basis and on a partial requirements basis. Nothing in license condition 6 suggests that MP&L's obligation to sell "power for resale" is limited to only full requirements customers.

Neither does the Staff believe it is reasonable for MP&L to sell partial requirements wholesale power at rates based on incremental costs. This is clear by contrasting license condition 6 to other license conditions which traditionally do permit power sales at incremental costs. License condition number 2, for example, requires MP&L to sell emergency and maintenance

^{23/} See MEAM Enforcement Request at 7; MP&L's Antitrust Information at 14; letter dated July 19, 1977 from Richard M. Webster, Jr. of Clarksdale to Donald C. Lutken of MP&L; letter dated August 18, 1977 from Donald C. Lutken to Richard M. Webster, Jr.; letter dated September 22, 1978 from Robert C. McDiarmid, attorney for the City of Clarksdale, to Janet Urban of the Department of Justice; letter dated October 31, 1978, from Robert C. McDiarmid to Richard M. Merriman, attorney for MP&L.

power, and license condition number 3 requires MP&L to sell bulk power at cost to entities engaging in or proposing to engage in generation when such a transaction would reduce the overall costs to the parties. In addition, license condition number 3 specifically applies to the opportunity to coordinate in the planning of new generation. Both of these license conditions refer to types of short-term power occasionally called "opportunity" types of power, i.e., purchases or sales of capacity or energy that occur from time to time as the opportunity arises and as the economics favor. Such "opportunity" power is often used to coordinate and economize the planning and operation of generation. It is generally not provided on a firm, continuous basis, and is traditionally sold at a price based on the supplier's incremental costs.

In contrast to these license conditions, however, license condition number 6 pertains to continuous, firm power sales on a full or partial requirement basis, which power would be resold at retail to meet a system's firm loads. The pricing of full or partial requirements power for resale is normally based on the seller's system average costs as opposed to the incremental cost basis for "opportunity" types of power.

Accordingly, the Staff believes MP&L's failure to make partial requirements wholesale power available on an average, systemwide cost basis is unreasonable and constitutes a violation of license condition number 6. As noted above, MP&L has a municipal wholesale rate schedule (MW-15), filed at FERC. The Staff believes that it is reasonable to use that schedule as a basis

Appendix N