

Nantahala Power & Light Company, Complete Report On Controversies

by Chester Davis
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To understand - perhaps even solve - the controversial Nantahala Power and Light Company Case you need possess only the patience of Job and the wisdom of Solomon. Lacking these you are in a mess.

The word neatly sums up the current status of this case which, through a series of misadventures, has developed into a major head-butting between the forces of private and public power.

To understand the issues involved in this case -- and they are the real meat of the matter -- it is necessary first to reconstruct the factual skeleton from which those issues hang.

The story begins back in the late 1920s when the Aluminum Company of America (ALCOA) decided to go into the water-rich counties of Western North Carolina and, through a series of dams, harness the flowing rivers of the area to provide cheap hydroelectric power for its smelting and fabricating plant at Alcoa, Tenn.

In order to build the dams it was first necessary that the company obtain the right to use the power of eminent domain in its land acquisition program. This was essential. Without this power of condemnation, a handful of owners who refused to sell their land could block the company's dam construction program.

ALCOA obtained the power of eminent domain by creating the Nantahala Power and Light Company. Nantahala, a 100 per cent wholly owned subsidiary of Alcoa, was chartered as a public utility under North Carolina laws. This company was to serve the power needs of all or parts of five Western North Carolina counties; Cherokee, Swain, Macon, Jackson and Graham.

Between 1930 and 1955, Nantahala, using the power of eminent domain in those instances where it was necessary, acquired 13 dams (11 generating stations) on the Little Tennessee, Nantahala and Tuckasee rivers.

From the outset the Nantahala Power and Light Company was a two-headed operation. As a public utility it was required to meet the needs of its customers in Western North Carolina. As an arm of Alcoa it was required to feed the power needs of the aluminum smelters. In the early years this presented no real problem since the North Carolina customers required only about 10 per cent of the power, leaving some 90 per cent for Alcoa. In recent years, with the development of the area, the five counties have come to claim about 40 per cent of Nantahala's power output, leaving a shrinking 60 per cent for Alcoa. In short, the demands of the company's two masters began to conflict.

Certain general comments concerning Nantahala's operation over the past 30 years are necessary if you are to understand what has occurred within the past two years: The area served by Nantahala is mountain back-country. None of the towns in the area (Franklin, Bryson City, Sylva, Dillsboro, Andrews and Webster) has a population of as many as 2,500 people. It is an area of small -- most of them subsistence -- farms, forests and magnificent scenery. It traditionally has been -- and is today -- a depressed area marred by what traditionally have been the lowest per capita incomes in this low per capita income state. With one exception -- the Mead Paper Plant in Sylva -- there are no large industries in the area. Nantahala's customers -- there are something over 16,000 -- are small but enthusiastic users of power.

Over the past 30 years Nantahala has given its customers service of the very highest quality at rates lower than those offered by any other private power company in North Carolina or in the Southeastern states.

Nantahala has made a large (about \$35 million) investment in power generating facilities and in that investment it has never failed to meet the needs of its North Carolina customers fairly and well. As early as 1951, for example, Nantahala ranked No. 1 among the private power companies in North Carolina in terms of rural electrification. Even 10 years ago 95 per cent of the people living in this rural area were served by electric lines.

The fact remains, however, that throughout this period Nantahala served two masters in North Carolina customers and Alcoa. At least until 1959 neither master suffered in the arrangement. The customers were given top flight service and the lowest possible rates. In its own, Alcoa was supplied with power at rates that were lower than they properly should have been.

(This last fact was underscored in a court case brought by the Mead Paper Co. in 1953 to prevent a proposed Nantahala rate increase. In that case the Supreme Court of North Carolina held that Nantahala was selling primary power at that in firm, dependable, ground-the-clock meter -- to Alcoa at the very low rates that apply to secondary -- that is, non-essential, interruptible energy that may or may not be available

depending on water levels and river flows -- power.) It wasn't until 1955 -- after Nantahala completed its last dam -- that this company began to take a long, hard look at its responsibilities to its two masters.

At that time, as John Archer, president of Nantahala, says, the company woke up to the fact that the power demands of its North Carolina customers were growing at a rate far faster than anyone had anticipated. In the past decade Nantahala's sales of power to its North Carolina customers increased at an average of 11 per cent a year, (well above the national average) largely because of the expanding tourist industry in this area.

"It became clear to us," Archer says, "that unless we expanded our generating facilities that by 1965 Nantahala would have exhausted its supply of dependable, uninterrupted primary power."

Because of that prospect the company was faced with two alternatives:

1. Expand its generating facilities to meet probable future needs.
2. Get out of the public utility business.

The first alternative, while possible, was costly. Nantahala controlled the two remaining hydroelectric sites in the area. But, because of prevailing land and construction costs, developing these sites would be immensely expensive and the additional power obtained would be anything but cheap.

The company could, as most other power companies have done, turn from hydroelectric to steam generating plants. But this possibility was no answer for Nantahala. In the first place, the rail service in the area was inadequate to bring in the large amounts of coal required by a steam plant at the low prices necessary to make such a plant economical.

In the second place, a steam-generating plant produces cheap power only when it is large (say in the 200,000 kilowatt class). Nantahala could not justify a steam plant of anything like that size. And the plant it could justify in the 25,000 - 40,000 - kilowatt class -- simply would not be economical even if cheap coal were available.

"Because of these facts," John Archer says, "we came to the conclusion that it would be best for us and for the area if we retired from the public utility field. We concluded that a large public utility could come into this area and, over the long run, supply power at cheaper rates than we could do with our small operation."

Later in 1958 Nantahala began to negotiate with Duke Power. Early in 1959 the two companies entered into a contract for sale. Duke agreed to pay about \$4 million for Nantahala's distribution system. Nantahala would keep its dams and its generating plants. After the sale all of the power produced at those dams would go to Alcoa. (Archer says that the dams and generating plants were offered to Duke but that Duke did not want them, feeling that it could supply the area with power at cheaper rates from a steam-generating plant Duke proposed to build in South Carolina.)

In the original agreement Duke said that its rates for the five-county area would be based on the current schedules, Nantahala's or Duke's -- whichever were lowest in each rate category.

Later this was changed. Duke said that it would abide by Nantahala's very low rates for three years. After that Duke's higher rates would apply.

When the two companies entered into this contract it was their intention, after the completion of certain engineering studies, to make a public announcement of their agreement and file a formal application with the North Carolina Utilities Commission for approval of the sale.

But word of the contract leaked out. By late 1959 the five-county area was humming with protest. Stripped to its essentials, the protest stemmed from the fact that the replacement of Nantahala by Duke meant very substantially higher electric bills for the customers.

The two power companies apparently were surprised by the depth and the vehemence of this protest. Instead of filing a formal application for approval of the sale, they stalled and while they stalled they attempted through a massive public relations program, to sell the people of the area on the long-range desirability of the sale.

Public relations men, using every technique from personal button-holing to full page

ads in the newspapers of the area, hammered on the fact that service by big Duke, in the long haul would mean cheaper power. Duke, pointing to its record in Piedmont North and South Carolina, said it would do a better job of bringing new industry into the area. (The one criticism leveled at Nantahala down the years was that, in its concern over supplying Alcoa with sufficient power it had been less than aggressive in seeking new industry.) The newspapers were filled with statistics -- all of them confusing -- on what the sale to Duke would mean in terms of individual power bills.

While this effort rallied some support for the proposed sale -- about half the towns and counties in the area formally approved the sale -- the protest continued.

Duke and Nantahala continued to postpone filing a formal application with the Utilities Commission for approval for the sale. As they stalled a new factor -- the spectre of public power -- came into the picture.

Two rural electrification co-operatives -- both then serving portions of Nantahala's six county area -- began to indicate a lively interest in (1) purchasing the Nantahala distribution lines and (2) serving those lines with power purchased from the Tennessee Valley Authority.

This new thumb in the stew caused the power companies to get tough.

On Nov. 30, 1960 Nantahala went to the State Utilities Commission and requested a rate increase which averaged 32 per cent above the then prevailing rates.

In explaining this move John Archer says, "There was a possibility that the sale to Duke would not materialize. If that occurred, Nantahala would be forced to expand its generating facilities to meet the future power needs in the area. To do this would require a big investment in new and expanded generating facilities. Nantahala had to have the new rates to build up its reserves and to establish a credit to enable it to build those facilities should they become necessary."

In the area -- where the protest to the proposed new rates was immediate and, this time, unanimous -- people openly said (and they still say) that the proposed rate increase was simply a club used to force through the sale to Duke. This claim is based on the fact that the rates requested by Nantahala were substantially higher than Duke's system-wide rates. Counties and towns which had gone on record as approving the sale to Duke opposed the new rate proposal. Mead Paper, which endorsed the sale to Duke, pointed up money to help finance the fight against the proposed new rates. Citizens groups organized to fight the new rates and, all things considered, the fat went on the fire.

This move -- one which confronted the people in the area with the prospect of high rates if Nantahala sold to Duke and even higher rates if Nantahala continued to serve the five counties -- spurred interest in obtaining cheap TVA power either through the co-ops or, if possible directly from TVA itself.

Hearings on the proposed rate increase were set and then postponed several times. (One postponement was granted so that the state of North Carolina could investigate Nantahala's earnings.) Eight more months passed and, then, Nantahala, using a law passed during the mid 1930s, put its new rates into effect on July 16, 1961.

(The law under which this was done was passed to assist depression-hurt utilities. It permitted a public utility to raise or lower its rates under bond. In the case of a rate increase, if the Utilities Commission later disallowed the increase, in whole or part, the company could make the necessary refunds to its customers. Never before in history has a public utility used this law to put such a massive -- 32 per cent on the average -- rate increase into effect.)

Finally in September, 1961 more than two years after Duke and Nantahala entered in their contract -- the two companies filed a formal application with the State Utilities Commission requesting approval of the sale of Nantahala's distribution facilities to the Duke Power Company. This occurred within a matter of weeks after the new rates went into effect.

The rates Nantahala put into effect under bond have now been in effect more than one year. While the average increase was 32 per cent this

proved to be no more than an average. Many customers in the area found that their bills increased by 50 per cent to 100 per cent and even more.

For Mead Paper Co., the increase -- about \$140,000 a year -- amounted to 45 per cent.

Motels and restaurants in the area were hard hit. For the first time since it opened, the Boundary Tree Motor Court at Cherokee closed during the winter of 1961-62 because it could not afford the new costs of electricity.

Dairymen operating the 41 Grade A dairies in Macon County had to absorb what amounted to a doubling of their electric bills. They could not pass the increase on to their customers under the state's price fixing program for milk.

There is no question but that many people in the area were hard hurt by the new rates. In part, the hurt results from the fact that this is an area where dollars are short. In part, it results from the fact that this is an area where customers have tended to use electricity in a prodigal fashion (electric home heating for example) because of Nantahala's traditionally low rates.

One man -- who is salaried and who is budgeted right down to the last dollar -- said, "I heat with electricity. Before the increase my electric bill ran \$30 - \$35 a month. Since the increase my bills have gone as high as \$100. I simply don't have the money to meet that increase. I'll have to sell my home and that means a loss because no one wants an all-electric house with these new rates."

John Archer, freely admitting that Nantahala pulled a boner in failing to keep its rates up to date over the years argues that the new rates are justified in terms of return on investment. In net effect he says, "We spoiled the people in the area by maintaining too low rates for too long. The customers simply must wake up to the fact that the old low rates are gone forever."

But the people of the area have not wakened to that fact. They see another alternative; that of obtaining cheap TVA power for the area. (In all this talk of rates keep your eye on these facts: TVA rates are the lowest, Nantahala's old rates are next lowest, Duke rates come third and the rates Nantahala put into effect under bond on July 16, 1961 are the highest.)

Last month James E. Watson director of power marketing for TVA, told the five members of the State Utility Commission that TVA is ready, willing and able to sell power to Nantahala. This brings the third alternative into the picture; instead of expanding and staying in the business, or getting out of the business by selling to Duke Nantahala can, without expanding, purchase any excess power it needs from TVA and then retail that power to its customers.

That, then, is the complex story of how this case has unfolded. Let's turn, now, to a consideration of the issues that are presented by these facts.

I. The Moral Question.

In order to harness the rivers of Western North Carolina, Alcoa had to have the power of eminent domain. I acquired that right by creating the Nantahala Power and Light Co. As Governor Terry Sanford said in a letter to John Archer, "Thus Alcoa entered the utilities business through its wholly owned subsidiary, Nantahala, as a part of the price it was required to pay to acquire dam sites needed to generate Alcoa."

Now, having acquired this property, Nantahala proposes to sell its distribution lines (in effect, sell its customers) while keeping all of its power-generating facilities for the sole use of Alcoa.

This, it is contended, is morally improper. In his letter to Archer, Governor Sanford said, "The course taken by Nantahala gives the impression of a company interested in dropping its obligations to the public, keeping the fruits of the resources which originally belonged to the people and (through the new rates put into effect under bond) taking a last-minute increase profit as a going-away present."

The argument here is that the people of Western North Carolina entrusted the development of one of their greatest natural resources -- flowing water -- to Nantahala in the expectation that they would profit from the arrangement through the cheap power generated from that water. Now the company proposes to take this cheap power from them

and to give it, instead to a private corporation operating in Tennessee, leaving the customers to pay the much higher rates charged by Duke Power.

This moral question -- as Weimar Jones, editor of the Franklin Press, has said time after time -- is the root question of the controversy. The hollering about rates represents the battle. The question of the propriety of Nantahala withdrawing from the utility field, while still keeping all of its generating facilities for the use of Alcoa, represents the war.

Spokesmen for Duke and Nantahala have never answered this moral question squarely. John Archer's answer runs along this line:

The only obligations Nantahala owes to the area are: -- To meet the area's power need.

-- To provide the area's future power needs.

-- And to do both at rates that are fair to the area and to the investment Alcoa has made in the area.

Archer continues: "In the long run Duke, not Nantahala is in a better position to meet these obligations. If Nantahala stays in the field it's going to mean higher rates for the customers than would be necessary if Duke took over. This results from the long-range difference in the operating costs of a very small and a very large public utility."

Archer points out that the sale to Duke will not necessarily mean that the generating facilities belonging to Nantahala (or, more accurately, Alcoa) will be lost to the people of North Carolina. "Under the law," he says, "the state or any public utility chartered by the state to serve the area can take over these dams by condemnation. To do this all they have to show is that there is a need in the area for the power produced at these facilities."

Archer is impatient with the fact the moral argument is raised largely by those who oppose the sale to Duke. "People who favor bringing TVA power into the area don't rely on this argument," he says. "What they want is cheap power and they want that, even though the power is produced with a government subsidy and in competition with private enterprise. They don't really care what we do with our generating facilities if they get cheap power."

In the opinion of this reporter -- and in this controversy opinions come at a dime a dozen -- the moral issue can be boiled down to one observation and one question. The observation: It would be improper for Alcoa, using Nantahala to do the job, to acquire these dams through the state -- granted power of eminent domain and then, immediately after having acquired the last of the dams, to retire from the utility field and keep all of the power generated by those dams.

The question: Does the fact Nantahala has waited seven years -- the last dam was completed in 1955 -- to do this after that conclusion? If, as this reporter believes, the answer to the question is "No," then you must conclude that the sale to Duke is improper.

But if you reach that conclusion, have the people of the area won anything more than a Pyrrhic victory? Such a conclusion would compel Nan-

tahala to stay in the public utility field, in the long run it is not likely that a company as small as Nantahala can provide power to this fast-growing area as cheaply as a major utility like Duke. In net effect therefore, you compel Nantahala to live up to its moral obligation, but you do this at the price of maximum power rates for the area.

Because this is the probability, the people in the area are caught in a bind. The leaders -- don't like to talk about the other alternative -- that of supplying the area with TVA power. They don't like to be in a position of favoring government subsidized electric power over private enterprise. So they say, "I'm for any solution that will give the area the cheap power rates it needs to develop."

But the cheap power rates they have in mind -- rates as low as Nantahala charged up to one year ago -- are simply not in the cards if the area is to be served by a privately owned public utility. Those rates are possible only if TVA comes into the picture and serves the area with government-subsidized electric power. That brings us to the second great issue in this controversy. . . .

II. Public Versus Private Power.

Both Duke and Nantahala have made it plain that they would look on any extension of TVA power (either through REA co-ops or through TVA selling power directly to Nantahala) as "a matter of national concern."

Carl Horn, Duke attorney, made that plain when, during hearings on Nantahala's new rates, he said, "Any extension of TVA power will be fought bitterly, not only by our own utility company but by every utility company in the United States and by many other businesses which are vitally interested in protecting our capitalistic free enterprise profit system."

If the two REA co-ops, as has been proposed, purchased Nantahala's distribution lines and then served the area with TVA power, this would be a clear extension of the REA principle. REA was created to bring power to rural areas which had little or no power. The Nantahala territory is 100 per cent electrified. To permit the co-ops to take over the Nantahala territory would represent a basic expansion of the policy limitations now placed on REA. Duke, backed by every utility company in the nation, will fight such an extension for reasons too obvious to need underscoring.

The question of TVA's serving the area is not so clear cut. In 1959, when it passed the TVA revenue Bond Issue Act, Congress specifically ruled that TVA was prohibited from expanding into any area where it or its distributors, were not "the primary sources of power supply on March 1, 1957."

Duke contends that if TVA is permitted to serve the Nantahala area with power, it will be in plain violation of this 1959 law. To support that contention, Duke attorneys point out that TVA officials, TVA annual reports and TVA power-system maps make it clear that TVA was not the primary source of power in the Nantahala territory either

before or since March 1, 1957. Duke attorneys say, "until July 19, 1962 -- when TVA first offered to sell power to Nantahala, TVA never had claimed that this area was a part of the TVA power system in fact, they have specifically said that the Nantahala area was not a part of that system."

On its part TVA points to the fact that since 1945 TVA has, under an agreement with Nantahala, operated all Nantahala dams as a part of the TVA system. All power produced at those dams went into the TVA system and Nantahala was repaid, kilowatt for kilowatt, for that power.

Duke replies that this simply is a "swapping agreement" that was made to enable TVA to use Nantahala dams as a part of its flood control/navigation-water quality control program; that in terms

of power service the Nantahala area is not, and never was, a part of the TVA system.

This is a question of fact that undoubtedly will go into the courts for decision. In the opinion of this reporter the decision reached by the courts will not be based so much on the evidence as it will be based on the policy decision of whether or not it is desirable to enlarge the area in which public power competes with private power.

TVA says that selling power to the Nantahala area will not set a new precedent; that TVA presently is selling power to privately owned utilities in Bells and Franklin, Tenn.

While that is true, it scarcely provides an analogy to justify TVA's stepping into the Nantahala territory. The private utilities at Bells and Franklin are tiny as compared to Nantahala. The company at Bells, for example sold its 617 customers 10 million kilowatts of power in 1961 and that power was delivered to the customers over 10 miles of line. In 1961 Nantahala delivered 200 million kilowatts of power to its 16,000 customers over 1,800 miles of line.

You can stick a pin in the fact that TVA power is coming into the Nantahala territory by only one route and that is over Duke's dead body. This case represents a major collision between the concepts of public and private power. In such a collision there is, in the eyes of companies like Duke, no room for compromise.

In terms of time spent in hearings -- more than ten weeks -- and in terms of testimony -- something like 7,000 pages -- this is the longest and, perhaps, the most complex case ever to come before the State Utilities Commission.

It is complex, in part, because this case mixes matters of principle with expediency.

The first issue -- the propriety of Nantahala's retiring from the public utility field while retaining the fruits it originally obtained by entering that field -- presents a question of principle.

But, in this instance, if you follow principle to its logical conclusion, you end up denying Nantahala the right to retire from the utility field and, in so doing, you saddle the people of the six-county area with the maximum possible lower rates. (Just how high those rates

ultimately would be hard to say. Many claim they would not be as high as Nantahala's present bonded rates. John Archer, however, says future rates will be higher; that even if the bonded rates now in effect are 100 per cent approved by the Utilities Commission the company will need additional rate increases before 1965. It should be remembered that just what is a fair rate of return for Nantahala depends on two considerations: first, the net Nantahala now makes on its amortized (for tax purposes) investment and, second, the amount Alcoa has netted down the years through purchasing large blocks of very, very cheap power from Nantahala. There are two sides of the coin and in presenting its case for higher rates, Nantahala has tended to present only one side -- the first -- of that coin.)

This fact -- that keeping Nantahala in the utility field will mean maximum rates for the area -- has caused many leaders in the area (most of them who are loath to favor public over private enterprise) to look to the expedient solution; that of bringing cheap TVA power.

Whether that is a desirable solution depends on the answer you give to a simple -- although nationally important -- question . . . "Is it wise, as a matter of policy, to expand or restrict the area in which government-financed power operations like TVA and REA are permitted to compete with private power industries like Duke?"

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	TVA	Duke	Nantahala P&L Co.	
	Basic Rate	Power Co.	Present Rate	Proposed Rate*
Minimum	\$0.75	\$0.80	\$1.25	\$1.80
Kwh included	25	10	15	20
Kwh per month				
25	\$0.75	\$1.39	\$1.75	\$2.00
40	1.20	1.97	2.50	2.60
100	3.50	3.36	4.10	4.40
250	6.00	6.36	6.00	7.15
500	7.90	9.51	8.50	10.90
1,000	9.90	14.51	13.50	18.40

*New in effect under bond