

NUCLEAR REGULATORY COMMISSION  
DOCKET NO. 50-423A  
NORTHEAST NUCLEAR ENERGY COMPANY, ET AL.  
NOTICE OF FINDING OF NO SIGNIFICANT ANTITRUST CHANGES  
AND TIME FOR FILING REQUESTS FOR REEVALUATION

The Director of Nuclear Reactor Regulation has made an initial finding in accordance with Section 105c(2) of the Atomic Energy Act of 1954, as amended, that no significant (antitrust) changes in the licensees' activities or proposed activities have occurred subsequent to the previous construction permit review of Unit 3 of the Millstone Nuclear Power Station by the Attorney General and the Commission. The finding is as follows:

"Section 105c(2) of the Atomic Energy Act of 1954, as amended, provides for an antitrust review of an application for an operating license if the Commission determines that significant changes in the licensee's activities or proposed activities have occurred subsequent to the previous construction permit review. The Commission has delegated the authority to make the "significant change" determination to the Director, Office of Nuclear Reactor Regulation. Based upon an examination of the events since issuance of the Millstone 3 construction permit to Northeast Nuclear Energy Company, et al., the staffs of the Antitrust and Economic Analysis Section of the Site Analysis Branch, Office of Nuclear Reactor Regulation and the Antitrust Section of the Office of the Executive Legal Director, hereafter referred to as "staff", have jointly concluded, after consultation with the Department of Justice, that the changes that have

occurred since the antitrust construction permit review are not of the nature to require a second antitrust review at the operating license stage of the application.

"In reaching this conclusion, the staff considered the structure of the electric utility industry in New England, the events relevant to the Millstone 3 construction permit review and the events that have occurred subsequent to the construction permit review.

"The conclusion of the staff's analysis is as follows:

'The Millstone Nuclear Power Station, Unit No. 3 (Millstone 3) is jointly owned by 15 electric utilities in Connecticut, Massachusetts, Maine and Vermont. The Northeast Nuclear Energy Company, a subsidiary of the Northeast Utilities holding company, has no ownership in Millstone 3, but acts as agent and representative of the owners in design, construction and operation of the nuclear unit. Northeast Utilities has the largest ownership share in Millstone 3, approximately 65%, shared by two of its operating subsidiaries, Connecticut Light and Power Company with approximately 53% and Western Massachusetts Electric Company with slightly over 12%. The remainder of the unit is shared by other investor owned utilities (over 25%), municipal utilities (approximately 9%) and electric cooperatives (over 1%).

'The Department of Justice (Department), in connection with the construction permit antitrust review of Millstone 3, rendered antitrust advice to the Commission by letter dated August 10, 1973 (Federal Register, Vol. 38, No. 159, p. 22249, August 17, 1973).

The Department's advice letter noted that while there had been allegations that the large electric utility systems had in various ways precluded the small systems in the area from gaining access to low cost bulk power supply on the same basis as the large systems, the situation had markedly improved with the formation of the New England Power Pool (NEPOOL). Although, several municipal systems had contested certain provisions of the power pool agreement, a settlement agreement had been reached representing a compromise among most of the parties concerning the disputed portions of NEPOOL as filed with the Federal Power Commission (FPC).

'In the Millstone 3 advice letter, the Department also noted that there had been complaints by several municipal systems that the transmission rates of Northeast Utilities (NU) were too high. The Department considered these complaints as a rate matter, more appropriately under the jurisdiction of the FPC. The Department also advised that a group of 6 municipal systems in Connecticut had filed an antitrust suit against NU and its Connecticut operating subsidiaries. The Department chose not to pass judgment upon the

allegations in the antitrust suit, but noted that most of the allegations focused upon the rates, and terms and conditions of wholesale service to the municipal systems, matters which the Department presumably considered to fall primarily under the jurisdiction of the FPC.

'Following the Millstone 3 construction permit antitrust advice letter, the Department furnished antitrust advice in June 1974, January 1975, November 1975, December 1978, and March 1980 related to the Pilgrim 2 and 3, Montague, New England 1 and 2, Seabrook 1 and 2, and Pilgrim 1 applications, respectively. These applications involved many of the same applicants in Millstone 3. In addition, the Department conducted numerous antitrust reviews at various times for changes in ownership in Millstone 3 and in the other nuclear plant applications. In each instance, the Department recommended that no antitrust hearing was required, often pointing to the dramatic improvement in the relations among the various segments of the electric power industry in New England following the formation of NEPOOL and the associated settlement agreement.

'Similarly, the suit filed by the 6 Connecticut municipal electric utilities, which the Department referred to in its Millstone 3 antitrust advice letter, has been resolved. The District Court dismissed all allegations in its decision of August 1980.

Thereafter, three of the cities reached a settlement with Connecticut Light and Power Company. The other three cities carried the case to the Appeals Court, which issued a decision in October 1981. The NRC staff finds the settlement agreement and the court rulings to be dispositive of the issues raised. Likewise, a settlement agreement in 1983 among the Town of Norwood, Massachusetts, the Boston Edison Company and the New England Power Company has disposed of issues raised by the Town of Norwood before the U.S. District Court of Massachusetts.

'In addition to the issues raised in the various court proceedings, the Department of Justice antitrust review of Millstone 3 and its subsequent antitrust reviews of other nuclear power plant applications, the NRC staff has reviewed the data provided by applicants and attendant information associated with and accompanying the Millstone 3 construction permit and operating license applications. In the process of this review, staff identified three groups of changes that could have had possible competitive implications on bulk power supply in the New England region. These changes involved certain mergers and transfers of facilities among electric utilities in the area, transfers of ownership rights in Millstone 3 and the formation of joint action agencies in the region. After analyzing these changes, in conjunction with developments that were initiated prior to and during



the construction permit (CP) antitrust review (i.e., the development of NEPOOL and the associated settlement agreement), staff found no significant anticompetitive effects resulting from these changes.

'On the contrary, staff has found that the period during and following the CP review for Millstone 3 has been characterized by significant competitive improvements in the way bulk power is allocated in New England. The development of the New England Power Pool and its open pooling concept established the region as a model of how cooperation among all bulk power suppliers in the region has promoted competition among large systems and small systems alike. The fruits of negotiations and compromise that characterized the period during and after the CP review are now being realized by all systems - particularly the smaller systems - throughout New England. Consequently, staff does not recommend that the Director of Nuclear Reactor Regulation issue a significant change finding pursuant to the operating license for Unit 3 of the Millstone Nuclear Power Station.'

"Based on the staff's analysis, it is my finding that a formal operating license antitrust review of the Millstone Nuclear Power Station, Unit 3 is not required."

Signed on August 30, 1985 by Harold R. Denton, Director of the Office of Nuclear Reactor Regulation.

Any person whose interest may be affected by this finding may file with full particulars a request for reevaluation with the Director of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555 for 30 days from the date of the publication of the Federal Register notice.

Requests for a reevaluation of the no significant changes determination shall be accepted after the date when the Director's finding becomes final but before the issuance of the OL only if they contain new information, such as information about facts or events of antitrust significance that have occurred since that date, or information that could not reasonably have been submitted prior to that date.

FOR THE NUCLEAR REGULATORY COMMISSION

Donald P. Cleary, Acting Chief  
Site Analysis Branch  
Division of Engineering  
Office of Nuclear Reactor Regulation

JFC	:DE:SAB	:DE:A/C:SAB	:	:	:	:	:	:
NAME	:Atoalston:js:D. Cleary	:	:	:	:	:	:	:
DATE	:08/30/85	:08/30/85	:	:	:	:	:	:

OFFICIAL RECORD COPY