

September 3, 1985

Mr. John F. Opeka, Senior Vice President
Nuclear Engineering and Operations
Northeast Nuclear Energy Company
P.O. Box 270
Hartford, CT 06141-0270

Re: Millstone Nuclear Power Station, Unit 3 Antitrust Operating License
Review -- No Significant Change Finding (Docket No. 50-423A)

Dear Mr. Opeka:

Pursuant to the antitrust review for the captioned nuclear unit, the Director of the Office of Nuclear Reactor Regulation has made a finding, in accordance with Section 105c(2) of the Atomic Energy Act of 1954, as amended, that no significant antitrust changes have occurred subsequent to the previous antitrust review at the construction permit stage.

This finding is subject to reevaluation if a member of the public requests same in response to publication of this finding in the Federal Register. A copy of the notice that is being transmitted to the Federal Register and a copy of the Staff Review are enclosed for your information.

Sincerely,

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

Enclosures:

1. Federal Register Notice
2. Staff Review

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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

Dr 8509040410

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

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Millstone Nuclear Power Station, Unit 3

Northeast Nuclear Energy Co. et al.

Docket No. 50-423A

Operating License Antitrust Analysis

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I. INTRODUCTION

Prospective operating licensees are not required to undergo formal antitrust reviews unless the Commission* determines that there have been "significant changes" in the licensee's activities or proposed activities subsequent to the review by the Attorney General and the Commission at the construction permit (CP) stage. Concentration on changes in the applicant's activities since the previous CP review expedites the staff's analysis for significant changes and focuses attention on areas of possible competitive conflict heretofore not analyzed by the Attorney General or the Nuclear Regulatory Commission (Commission).

The Commission in Summer** has provided the staff*** with a set of criteria to be used in making the significant change determination for operating license (OL) applicants:

"The statute contemplates that the changes (1) have occurred since the previous antitrust review of the licensee(s); (2) are reasonably attributable to the licensee(s); and (3) have antitrust implications that would most likely warrant some Commission remedy."****

*The Commission has delegated the responsibility for making a significant change determination to the Director of Nuclear Reactor Regulation (NRR).

**Virgil C. Summer Nuclear Station Unit 1, Docket No. 50-395A, June 26, 1981, 13 NRC 862 (1981).

***Staff hereinafter refers to the antitrust staffs of NRR and the Office of the Executive Legal Director.

****Commission Memorandum and Order, p.7 dated June 20, 1980 (CLI-80-28).

To warrant an affirmative significant change finding, i.e., to trigger a formal OL antitrust review, the particular change(s) must meet all three of these criteria. Staff has documented several changes in its analysis of the Millstone Unit 3 OL application that warrant consideration under Summer. However, staff has determined that none of these changes meets all three Summer criteria and consequently is not recommending that the Director of NRR institute a formal OL antitrust review.

To view the significant change analysis in its proper perspective, it is helpful to first picture the applicant systems and focus on the applicants' dealings with other power systems within a pertinent geographic area. Using this data base and the initial construction permit antitrust review as a benchmark, it is then possible to apply the Summer criteria to all changes attributable to the applicants and determine which changes, if any, are significant in an antitrust context.

II. GEOGRAPHIC AREA OF REVIEW AND RELEVANT POWER SYSTEMS

Millstone 3 is located on the north shore of Long Island sound, in the town of Waterford, Connecticut.* The nuclear unit is a regionally-owned power plant, owned by a consortium of public and private utility companies, all of which are members of the New England Power Pool (NEPOOL)**. Consequently, the

*Millstone 3 is a sister plant to Units 1 and 2, also located at the Waterford, Connecticut site.

**See Appendix A for a more detailed description of NEPOOL and a list of NEPOOL Members.

power and the energy associated with Millstone 3 will be shared by a widely diversified and dispersed group of utilities throughout the New England states. It is in this broad geographic area where the significance of any competitive activities attributable to the applicants will be most apparent.

The applicants fall into two groups: 1) those investor owned power companies that originally made firm commitments to build the unit, and 2) those municipally and cooperatively owned electric systems that were provided ownership rights to purchase shares of the unit through one of the investor owned utility company applicants.

Ownership shares of Millstone 3 are dispersed among the three types of electric systems as follows:

Investor Owned.....	89.8712%
Municipal.....	08.7353%
Cooperative.....	01.3935%

The Northeast Nuclear Energy Company, a subsidiary of Northeast Utilities has no ownership in Millstone 3, but acts as agent and representative of the owners in the design, construction and operation of the nuclear unit.

A. Investor Owned Power Systems

Northeast Utilities is a holding company with interest in Millstone 3 and in other operating power plants throughout New England. As of January 1, 1982, Northeast Utilities had a generating capability of approximately 6,000 MW with

a winter system peak load of approximately 4,100 MW. (Much of the reserve capacity is oil-fired and the system is presently pursuing selected retirement of these units when economically feasible.)

Northeast Utilities, through its wholly-owned subsidiaries, Connecticut Light & Power Co. (CL&P), Hartford Electric Light Co. (HELCO) (recently merged into CL&P) and the Western Massachusetts Electric Co. (WMECO), owns 64.85 percent of the Millstone 3 nuclear unit, by far the largest share owned by an single applicant.*

B. Municipal and Cooperative Power Systems

The largest of the five municipal applicants in terms of an ownership share is the Massachusetts Municipal Wholesale Electric Company (MMWECO)**. MMWECO is a joint action agency formed in 1976 and made up of 33 municipal electric systems in Massachusetts and one Rhode Island municipal electric system***.

Joint action agencies participating in large generating projects represent the collective interest of the owners of the shares in question; however, once power and energy become available from the plant, the power and energy are sold and distributed to individual members to meet the needs of each electric system.

*Other privately owned utility systems and their ownership shares of Millstone 3 are as follows: New England Power (12.205%); Montaup Electric Co. (4.009%); the United Illuminating Co. (3.685%); Public Service Co. of New Hampshire (0.6749%); Central Vermont Public Service Corp. (1.7303%); Fitchburg Gas & Electric Co. (0.217%); and Central Maine Power Co. (2.5%).

**MMWECO currently owns 7.4516% of Millstone 3.

***The Rhode Island system is participating on a power purchase contract basis as opposed to an ownership basis.

A similar grouping of municipal power systems, though on a much smaller scale, is represented by the Connecticut Municipal Electric Energy Cooperative (CMEEC). CMEEC is composed of the Connecticut cities of Norwich and Groton and the Borough of Jewett City. CMEEC owns a 1.0435% interest in Millstone 3.

The remaining non-private applicants and their ownership shares of Millstone 3 are: Chicopee Municipal Lighting Plant (0.87%); Burlington Electric Light Department (0.365%); Lyndonville Electric Department (0.0487%); and Vermont Electric Generation and Transmission Cooperative (0.35%).

III. THE CONSTRUCTION PERMIT ANTITRUST REVIEW

Prior to the CP antitrust review for Millstone 3, the Commission and the Department of Justice (Department or DOJ) conducted an antitrust review of the Boston Edison Company in connection with the Company's CP application for the Pilgrim Station, Unit 1. During the Pilgrim Station review, the Department noted that many of the smaller electric power systems, particularly those in Massachusetts, that are now co-applicants in the Millstone 3 nuclear unit, were experiencing competitive difficulties in their dealings with privately owned electric utilities in the New England region; difficulties that began in the mid 1960's. The Department made note of its concern in its Pilgrim 1 advice letter to the Atomic Energy Commission on August 2, 1971. The Pilgrim 1 antitrust advice letter was referred to by the Department in its antitrust advice for the Millstone 3 applicants.

A. Initial Millstone 3 Advice Letter

The Department of Justice issued its advice letter on Millstone 3 to the Atomic Energy Commission dated August 10, 1973. Although the advice letter did not recommend an antitrust hearing, it did note that allegations had been made by many of the public power systems in New England, principally those in the states of Massachusetts and Connecticut, alleging anticompetitive behavior on the part of the large, privately owned power systems in New England. The letter stated:

The thread which runs throughout the allegations of anti-competitive behavior is that the large systems have in various ways precluded the small systems from gaining access to low cost bulk power supply on the same basis as the large systems."*

In rendering its "no hearing" advice letter, the Department cited recent developments among both public and private power entities throughout the New England region that had improved markedly the past anticompetitive practices cited above. At the heart of these developments were negotiations concerning the formation of the New England Power Pool. The advice letter continued;

"The contending factions--principally municipal systems in Massachusetts and Connecticut and the larger privately owned companies--have resolved many of the disputes of the past and are presently negotiating those which remain. For example, over the past 7 years there have been intensive discussions and negotiations concerning the formation of a New England power pool (NEPOOL) which would play a key role in the development, apportionment, delivery and dispatch of future bulk power supply on a region-wide basis."*

*Department of Justice advice letter in Millstone 3, p. 3

According to the Department's advice letter, the NEPOOL agreement would assure:

"...that bulk power supply for the entire region will henceforth be planned on a truly regional basis by the pool, and that each electric system in the region, irrespective of size, form of ownership or location, now has an opportunity to participate on the same basis as the large privately owned systems in the development and utilization of future bulk power supply arrangements."**

The Department concluded that given the successful negotiations among most of the factions in the New England power industry and the willingness on the part of the larger privately owned power systems to share the benefits associated with production scale generation and transmission facilities with smaller entities throughout the region, that "an era of good feeling" among industry members was in the offering. The advice letter continued:

"The anticompetitive behavior formerly attributed to the larger systems by the municipals has ceased to exist in most important respects, and the agreements among the systems which gave rise to this change in circumstances suggest that such anticompetitive behavior is unlikely to recur. Given this greatly improved situation and given the fact that the planning and development of Millstone Unit No. 3 was conducted pursuant to the principles laid down in the recent agreements, there appears to be no need for a hearing on the antitrust impacts of Unit No. 3."***

The negotiations, discussions and agreements alluded to in the DOJ advice letter, that were instrumental in the Department's no hearing recommendation, evolved during early disagreements among some of the Massachusetts and Connecticut municipals and the larger private systems participating in Millstone 3. These negotiations culminated in a "settlement agreement" that was being circulated among the parties for signing at the time of the Department's advice letter.

* Ibid.

** Ibid., p.4

*** Ibid., (unnumbered p. 7)

The Department stated that the settlement agreement "... represents a compromise among the parties concerning the disputed portions of NEPOOL as filed with FPC."*

Had the municipal systems, principally those in Massachusetts, refused to agree to the principles of the NEPOOL agreement, as they threatened to do before the Federal Power Commission (FPC) prior to the settlement, the pooling agreement and all of the attendant benefits (to the competitive process generally, and individual systems specifically) would have been drastically lessened, if not emasculated, leaving the competitive situation in the region in much the same condition as before the institution of NEPOOL, i.e., the public vs. private, small vs. large dispute documented in the instant DOJ advice letter and in the Pilgrim advice letter.** The settlement agreement not only resolved some lingering problems of some of the municipal systems in the original NEPOOL agreements, it also paved the way for "smooth sailing", as it were, for all future NEPOOL nuclear power plant applications designated as pool-planned units.

* Ibid., p.4. Rather than address the issues in dispute before the Federal Power Commission (thereby incurring significant amounts of time and money by all parties), the parties agreed to resolve their differences in the form of a compromise "settlement agreement".

** DOJ advice letter dated August 2, 1971, Pilgrim Nuclear Power Station, Docket No. 50-293.

In the Millstone 3 advise letter, the Department noted that several of the municipal systems complained that Northeast Utilities' (NU) transmission rates were too high. However, there were no allegations that NU had refused to provide transmission services. The Department stated that in its judgement, the complaints about wheeling rates are more appropriately directed to the FPC. Similarly, the Department noted that a group of 6 municipal systems in Connecticut had filed an antitrust suit against CL&P, HELCO and NU. The Department connected the antitrust filing to a dispute over wholesale rates stating:

"The parties continued to negotiate about the rate, and it was in the midst of these negotiations that the antitrust complaint was filed."

The Department similarly connected a refusal by the 6 Connecticut municipal systems to sign the NEPOOL settlement agreement to the antitrust suit stating:

"The pendency of the antitrust suit prompted the 6 Connecticut municipal systems to refuse to sign the NEPOOL settlement agreement and to decline membership in NEPOOL."

The Department continued, stating:

"We do not think it appropriate to pass judgement upon the allegations in the antitrust complaint, which have been denied by the defendants. We note, however, that plaintiff's antitrust allegations are focussed upon the rates, terms and conditions of CL&P's wholesale service to them."

The Department's advice letter for Millstone 3 was published in the Federal Register on August 17, 1973. No petitions for a hearing were received in response to the Federal Register notice.* Thus, the CP antitrust review for the initial applicants was completed as of August 1973.

* All signatories to the "Settlement Agreement" agreed not to intervene in any nuclear power plant licensing proceeding for NEPOOL designated plants, including Millstone 3.

B. Subsequent Millstone 3 Advice Letters

The Attorney General rendered additional advice pertaining to Millstone 3 on August 25, 1977 as a result of the addition of a new applicant, Central Maine Power Company, and the increase of ownership shares of two existing applicants, Montaup Electric Company and the Massachusetts Municipal Wholesale Electric Co. The Department once again recommended against an antitrust hearing concluding that:

"Our review of the information submitted by Central Maine and MMWEC, as well as other relevant information, has not disclosed any basis upon which to change our earlier conclusion that an antitrust hearing will not be necessary in this matter."

Again, there were no petitions for an antitrust hearing in response to the Federal Register notice of the Department's advice.

In addition to the Department's supplemental review of 1977, the staff of the NRC received previous and subsequent requests for changes in ownership shares of existing and new applicants requiring amendments to the construction permit itself and to the operating license application for Millstone 3. These share changes were deemed by staff to meet its de minimis criteria.* Although the Department of Justice was notified of the changes, no advice pursuant to the competitive nature of the changes was solicited or received from the Department.

* In 1978 staff adopted the measure of a de minimis applicant (for purposes of antitrust review) as one proposing to own less than 20 MW of the particular unit under review. In September of 1979, this rule was formalized and changed to apply to prospective applicants that owned 200 MW or less of generating capability. An applicant termed to be de minimis is not required to submit Appendix L antitrust information normally required of prospective applicants unless specifically requested to do so. (See 10 CFR 50.33a).

IV. CHANGES SINCE THE CP ANTITRUST REVIEWS

The Commission's Regulatory Guide 9.3 requests data pertaining to changed activities attributable to the OL applicant(s) since the CP review. By letter dated October 29, 1982, Northeast Utilities, acting as agent for all co-applicants, submitted the data requested by Regulatory Guide 9.3. These data indicate three categories of change attributable to the applicants since the CP review that may have competitive consequences in bulk power supply in the New England region. They are as follows: 1) ownership share changes among existing and new applicants of Millstone 3; 2) acquisitions and/or mergers involving the applicants; and 3) the formation of joint action agencies.

A. Ownership Share Changes

Since the completion of the CP antitrust review in 1973, there have been numerous changes in ownership shares of existing applicants as well as the addition or deletion of applicants since the original CP was issued. As indicated earlier, the privately owned companies and the municipal and cooperative systems negotiated a sharing agreement during the CP review that enabled the non-private entities to exercise certain ownership rights to Millstone 3 during the licensing process. Consequently, the numerous ownership changes involving new applicants and existing applicants were to be expected. The vast majority of these changes involved small shares, usually less than two percent of the unit.

B. Acquisitions and Mergers

There have been four acquisitions and one merger involving applicant systems

since the CP antitrust review.

1. In 1981, Central Maine Power Co. acquired the Carrabassett Light & Power Co. of North Anson, Maine. The acquired territory included 520 electric customers in the City of North Anson and small parts of adjacent communities.

2. Two additional acquisitions involved the sale of portions of the retail business of the Public Service Company of New Hampshire (PSNH). In 1981, PSNH completed the sale of its retail properties and business in Maine, totaling approximately 6,700 customers, to the Central Maine Power Co., thereby effectively eliminating PSNH from the retail sale of electric power and energy in Maine. Similarly, the Citizens Utilities Company and PSNH have entered into an agreement for the sale of PSNH'S retail properties and business in Vermont which will result in PSNH no longer doing business in the state of Vermont.

3. A partial acquisition of properties occurred in 1977 when the Fitchburg Gas & Electric Light Co. purchased a transmission substation from the New England Power Co. and obtained the right to serve the associated industrial customers.

4. The merger of the Hartford Electric Light Co. (HELCO) and the Connecticut Light & Power Co. (CL&P) was consummated on June 30, 1982, with CL&P representing the surviving entity. Prior to the merger, both companies were wholly-owned operating subsidiaries of Northeast Utilities and co-owners of Millstone 3.

C. Formation of Joint Action Agencies

Because of charter restrictions, limitations on bond financing, or state law prohibiting public and private interests from jointly owning property, many smaller systems, typically municipally owned electric systems, have been prohibited, or at least restricted, from joining forces to participate in large scale power projects. Many of these restrictions, limitations or prohibitions have been eliminated in the past decade.

Moreover, changes in the organizational structure and character of the electric power industry over the past decade have resulted in additional incentives for smaller power entities to join forces to form joint action agencies in many states throughout the country. With the elimination of ownership restrictions and the development of economies of scale in power generation and high voltage transmission, more small power systems have begun to pool their resources and form groups with common interests that have enabled individual member systems to participate (usually with larger, privately owned power systems) in the benefits associated with large-scale generation and transmission facilities.

In Massachusetts, the state legislature passed legislation permitting municipal electric systems to issue bonds and to jointly own electric facilities with investor owned systems, thereby paving the way for municipal participation in NEPOOL and NEPOOL planned generating units. In 1976, the Massachusetts Municipal Wholesale Electric Company (MMWEC) was created specifically to seek out economic sources of bulk power supply for its individual municipal systems. MMWEC's membership has increased to 34 systems, 33 in Massachusetts and one in Rhode Island.

In 1980, three municipal systems in Connecticut joined together to form the Connecticut Municipal Electric Energy Cooperative (CMEEC). CMEEC is

"...an operating municipal joint action agency...established pursuant to Title 7, Chapter 101a of the General Statutes of the State of Connecticut. It is a public body corporate and politic of the State responsible for the financing, acquisition and construction of electric generating resources and implementation of power supply contracts for the purpose of furnishing electric power to its Participants. The Participants consist of the municipal electric systems of three Connecticut communities, the Cities of Norwich and Groton and the Borough of Jewett City."*

Each of these joint action agencies, MMWEC and CMEEC, has become a partial owner in Millstone 3 and each is now an active member of the regional power pooling organization, NEPOOL.

V. ANALYSIS OF CHANGES SINCE THE CP ANTITRUST REVIEWS

All of the changes addressed in the preceeding section have potential competitive significance in terms of assessing the applicant's ability to affect market behavior (and ultimately market performance) within the combined service areas of the applicant systems, i.e., most of the New England bulk power industry. As stated early in this review, staff has not identified any change which has taken place since the CP review that meets all of the Commission threshold criteria (as set forth in Summer) necessary to establish a "significant change" finding. The changes identified in this review have tended to mitigate the market power of the larger power systems throughout New England - a process that began with the institution and development of NEPOOL and the accompanying settlement agreement described herein. An analysis of these changes and their impact on the competitive process throughout the pertinent geographic area follows.

*Millstone 3,9.3 data response, p. 6-2.

A. Ownership Share Changes

Ownership shares of Millstone 3 have been in a state of flux since the private utility applicants agreed to the settlement agreement. In effect, the smaller publicly owned (or customer owned in the case of the cooperative applicant) power systems have been able to purchase as much of the unit as they needed and could afford to finance. By adopting this "open door" policy, the larger privately owned power systems have paved the way for the smaller systems in the area to benefit from any scale economies associated with Millstone 3.

In arriving at its decision not to recommend a hearing in the 1973 advice letter, the Department of Justice heavily emphasized the fact that Millstone 3 would be owned by a mix of different owners, large and small and private and public, with each group and each individual owner benefiting from the scale economies characteristic of large baseload nuclear units of the 1970's. The net effect of the share changes has been to increase the public participation in the unit.

The new owners participating in Millstone 3 characteristically purchased very small shares, usually less than two percent of the nuclear unit. These new owners possessed little, if any, generating capability prior to their purchase in Millstone 3, and have limited market impact on bulk supply in the area served by all of the Millstone 3 participants. The only non de minimis applicant (i.e., the only applicant capable of significantly affecting market performance) which has become a co-owner of Millstone 3 since the original CP antitrust review has been Central Maine Power Company. However, as discussed previously, the Department of Justice's advice letter to the Commission

provided favorable advice pursuant to Central Maine's share purchase of Millstone 3.

Staff believes the type of ownership changes that have occurred since the CP review represent pro-competitive forces at work in the market place. The smaller systems have been given the opportunity to participate as equals (in terms of access to available scale economies) in the competitive process associated with generation and transmission of bulk power supply in New England. These share changes represent the fruits of the negotiations (and were encouraged by the Department of Justice) at the CP stage of review. Staff and the Department not only anticipated these changes, but encouraged this type of interaction among applicants and prospective applicants to the extent economically feasible.

B. Acquisitions and Mergers

Neither the merger nor the acquisitions involving applicant systems have foreclosed significant portions of the bulk power industry in New England. The merger between Connecticut Light & Power and Hartford Electric Light merely consolidated operations of two wholly-owned subsidiaries of Northeast Utilities. The parent firm, Northeast Utilities, controls no greater share of the market after the merger than before the merger. Although the individual independence of the two former operating subsidiaries may have decreased following the merger, staff notes that market share concentration is less significant in the New England electric utility industry, than in the traditional sense, because of NEPOOL and the resulting pooling of resources and open market power exchanges. Also, the merger was duly considered and approved* by the Securities and Exchange

*Order Authorizing Merger of Utility Subsidiaries, HCAR No. 22471, April 23, 1982.

Commission (SEC) which has jurisdiction over holding companies. The SEC noted that the Connecticut Department of Public Utility Control (DPUC) had authorized the merger; that no other state or federal commission, other than the SEC, had jurisdiction over the proposed transactions; and that no hearing had been requested of or ordered by the Commission. Further, the SEC in its order authorizing the merger, noted that the companies to be merged were already integrated and interconnected as part of the Northeast Utility system, such that their operations were already largely consolidated.

Central Maine Power Co.'s acquisition of Carrabassett Light & Power does not significantly affect bulk power supply in the pertinent area of review. At the time of the acquisition, Carrabassett was a non-generating distribution entity serving only 520 electric customers in south central Maine with a peak load of approximately 1,300 kilowatts.

Two additional acquisitions involving portions of facilities and territories owned by Public Service Company of New Hampshire occurred primarily at the request of the New Hampshire public utility commission. Due in large part to PSNH's financial difficulty, the utility commission ordered PSNH to focus its service area in the state of New Hampshire and terminate retail operations in the states of Maine and Vermont. As a result of this order, PSNH sold its retail facilities in the state of Maine to Central Maine Power Co. and has entered into an agreement to sell its Vermont retail facilities to Citizens Utilities Co. (Connecticut division). These facilities represent retail electric load and the combinations do not significantly affect bulk power supply within the region. Moreover, said transactions have been ordered by and have been or will

be approved by local regulatory bodies in the region.

Portions of New England Power Co.'s industrial (retail) load were transferred to Fitchburg accompanying Fitchburg's purchase of the Flagg Pond substation from the New England Power. This transfer of retail load poses no significant anticompetitive effect upon bulk power supply in the region.

Market shares of generation and transmission facilities resultant from mergers or acquisitions (i.e., the summation of each entity's generation and transmission facilities taken as a percent of all such facilities in the relevant area) normally provide meaningful surrogates for measuring the degree of market power* of the surviving firm. Increases in market share resultant from the merger of two like producers usually results in an increase in the market power of the surviving firm. However, due to the open pooling concept inherent among NEPOOL members, market power is not significantly influenced by the market share possessed by individual power entities in New England. Because of the open pooling concept, the increases in market share that have resulted from mergers or acquisitions since the CP stage throughout New England have not significantly affected the ability of other power entities in the area to compete.

*The ability of a particular firm to affect prices or quantity of a product in the pertinent geographic area.

C. Formation of Joint Action Agencies

Municipal electric systems in Massachusetts and Connecticut have organized joint action agencies to provide their members with more economical, reliable sources of bulk power supply. Staff views the formation of these agencies as generally procompetitive. Member systems are now better able to seek out and negotiate the most efficient means of bulk power supply. Each municipal agency, the Massachusetts Municipal Wholesale Electric Co. and the Connecticut Municipal Electric Energy Cooperative, presently owns shares in Millstone 3. The formation and development of NEPOOL has assisted these agencies by providing them with the mechanism to effectively participate in economies associated with large scale generation and transmission facilities throughout the New England region. The agencies act as power brokers for their member systems and often are able to cut through layers of red tape associated with power purchase/sale agreements that often develop at the municipal level of decision making. Staff believes that the competitive process and competition in general have been enhanced by the creation of these agencies as well as the concomitant elevation of the smaller systems to bargaining levels heretofore only attained by the large, fully integrated power systems in the region.

D. Other Nuclear Plant Antitrust Reviews

Subsequent to the antitrust advice for Millstone 3, the Department of Justice 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 the Pilgrim 1 applications, respectively.* These applications involved many of the same participants holding ownership

*The Pilgrim 2 & 3, Montague, and New England 1 & 2 nuclear units were subsequently cancelled.

shares in Millstone 3. In each instance, the Department recommended against an antitrust hearing, 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.

E. Antitrust Litigation

In the Millstone 3 advice letter, the Department of Justice noted that 6 municipal systems in Connecticut had filed an antitrust suit against Northeast Utilities and its affiliates. At the time, the Department declined to pass judgement on the allegations but noted that they focused principally on rates, terms and conditions of Connecticut Light and Power Company's (CLP's) wholesale agreements.

The District Court dismissed all the allegations in its decision of August 1980*. Thereafter, three of the cities, Groton, Jewett City, and Norwich (members of the Connecticut Municipal Electric Energy Cooperative discussed previously) reached a settlement with CLP. However, the other three municipal systems (Wallingford and the Second and Third Taxing Districts of Norwalk) carried the case to the Appeals Court, which issued a decision in October, 1981.** The District Court, upheld by the Appeals Court, ruled against all of the municipals' allegations concerning the rates, terms and conditions of CLP's wholesale service, noting that these were subject to regulatory review by the Federal Energy Regulatory Commission (FERC). The Appeals Court

*497 F. Supp. 1040 (1980)

**662 F. 2d 921 (1981)

upheld the District Court also on issues related to refusals to wheel and to provide partial requirements service. The Appeals Court reversed the District Court on two issues. These were with respect to price-squeeze claims of the cities. The Appeals Court directed the District Court to examine and rule on two specific issues related to price-squeeze.

The staff finds the court rulings on the litigation pursued by the Connecticut cities to be dispositive of the issues raised. Thus, there is no remedy warranted by the NRC and no basis for a "significant change" finding.

On August 21, 1974, subsequent to the Department of Justice's antitrust review of the Millstone 3 construction permit application, the Town of Norwood, Massachusetts filed an antitrust suit in the U.S. District Court of Massachusetts against Boston Edison Company (BECo) and the New England Power Company (NEPCo). The essence of the allegations was that BECo and NEPCo had in combination structured their policies and entered into agreements to restrict wheeling to and purchases of firm power by the Town of Norwood. The case did not go to trial until 1983 and after the hearing was only a few days old, the judge urged the parties to settle their differences. Soon, thereafter, the parties reached a settlement. The staff finds the settlement to be dispositive of the issues raised, thus warranting no remedy by the NRC.

VI. SUMMARY AND CONCLUSION

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 judgement 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.

APPENDIX A: DESCRIPTION OF NEPOOL AND LIST OF MEMBERS

NEPOOL has been described as an open pool primarily because membership is open to all electric systems in New England, regardless of form of ownership. The NEPOOL agreement provides for coordination of the generation and transmission facilities of its members and incorporates generating capacity reserve obligations for its members. Provisions regarding the use of major transmission lines and payment for such use are also incorporated in the agreement. The NEPOOL agreement further provides for New England-wide central computer-controlled dispatch of generation through the operation of the New England Power Exchange (NEPEX) and its satellites.*

NEPOOL is an operating power pool as opposed to a pool designed primarily for planning purposes. As indicated, it is open to all systems in New England and currently represents approximately 99% of all generating capacity in New England. Its members include the following electric systems:

MEMBER SYSTEMS

(Those members grouped by line spaces indicate a single participant.)

Public Service Company of New Hampshire

Reading Municipal Light Department

Rowley Municipal Light Plant

Shrewsbury Electric Light Plant

South Hadley Electric Light Department

Sterling Municipal Electric Light Department

Taunton Municipal Lighting Plant

Templeton Municipal Lighting Plant

The United Illuminating Company

Wakefield Municipal Light Department

West Boylston Municipal Lighting Plant

Westfield Gas & Electric Light Department

*Moody's Public Utility Manual, 1983 edition, p. 4453

New England Power Company
Massachusetts Electric Company
Granite State Electric Company

Blackstone Valley Electric Company
Eastern Edison Company
Montaup Electric Company

Cambridge Electric Light Company
Canal Electric Company
Commonwealth Electric Company

Connecticut Municipal Electric Energy Cooperative
Jewett City Electric Light Plant
City of Groton Department of Utilities
City of Norwich Department of Public Utilities

The Connecticut Light and Power Company
Western Massachusetts Electric Company
Holyoke Water Power Company
Holyoke Power and Electric Company

Vermont Electric Power Company, Inc.
Burlington Electric Light Department
Green Mountain Power Corporation
Central Vermont Public Service Corporation
Vermont Marble Company
Village of Hardwick Electric Department
Vermont Electric Cooperative, Inc.
Village of Morrisville Vermont Water and Light Department
Citizens Utilities Company
Village of Northfield
Rochester Electric Light & Power Company
Washington Electric Cooperative, Inc.
Allied Power and Light Company
Village of Lyndonville
Village of Readsboro
Village of Stowe
Village of Johnson
Village of Orleans

Hudson Light and Power Department

Hull Municipal Lighting Plant

Ipswich Municipal Electric Department

Littleton Electric Light and Water Department

Mansfield Municipal Electric Department

Marblehead Municipal Light Department

Massachusetts Municipal Wholesale Electric Company

Merrimac Municipal Light Department

Middleborough Municipal Gas and Electric Department

Middleton Municipal Electric Department

The Narragansett Electric Company

Newport Electric Corporation

North Attleborough Electric Department

Pascoag Fire District

Paxton Municipal Light Department

Peabody Municipal Light Plant

Princeton Municipal Light Department

Village of Ludlow Electric Light Department
Village of Hyde Park, Inc. Water and Light Department
Village of Enosburg Falls
Village of Swanton
Vermont Electric Generation & Transmission Cooperative, Inc.

Ashburnham Municipal Light Plant

Bangor Hydro-Electric Company

Boston Edison Company

Boylston Municipal Light Department

Braintree Electric Light Department

Central Maine Power Company

Chicopee Municipal Lighting Plant

Concord Municipal Light Plant

Danvers Electric Department

Fitchburg Gas and Electric Light Company

Georgetown Municipal Light Department

Groton Electric Light Department

Hingham Municipal Lighting Plant

Holden Municipal Light Department

Holyoke Gas and Electric Department
