

CLINTON NUCLEAR POWER STATION, UNIT 1
ILLINOIS POWER COMPANY, SOYLAND POWER COOPERATIVE, INC. AND
WESTERN ILLINOIS POWER COOPERATIVE, INC.

DOCKET NO. 50-461

UPDATED FINDING OF NO SIGNIFICANT ANTITRUST CHANGES

8509130191 850910
PDR ADOCK 05000461
M PDR

CONTENTS

- I. Introduction
- II. Structure of the Electric Power Industry in Illinois
 - A. Applicant Systems
- III. Previous Antitrust Reviews of Clinton
 - A. Construction Permit Review
 - B. Operating License Review
 - C. Monitoring Review
- IV. Changes Since the Initial Operating License Review
 - A. Interconnections
 - B. Wholesale Power Developments
 - C. Proposed Mergers and Acquisition Involving Applicant Systems
 - D. Miscellaneous Changes
- V. Summary and Conclusion

Appendices:

- A. Clinton Nuclear Power Station, Unit 1 -- Finding of No Significant Antitrust Changes.
- B. Clinton Nuclear Plant Unit 1 -- OL Monitoring Review.
- C. Letter dated February 21, 1985 Pursuant to Updated Regulatory Guide 9.3 Information from F. A. Spangenberg, Director of Nuclear Licensing and Configuration, Illinois Power Co., to Wm. H. Regan, Chief, Site Analysis Branch, Nuclear Regulatory Commission.
- D. Letter dated January 29, 1985 Pursuant to the Proposed Merger of Soyland Power Cooperative and Western Illinois Power Cooperative from John T. Ward, of Wasker, Sullivan & Ward to Sheldon A. Zabel, of Schiff, Hardin & Waite.
- E. Coordination and Operation Agreement Between Soyland Power Cooperative and Western Illinois Power Cooperative, dated July 24, 1984.

I. Introduction

A prospective operating licensee is not required to undergo a formal antitrust review unless the Nuclear Regulatory Commission (NRC or 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 antitrust review expedites and focuses the review on areas of possible competitive conflict heretofore not analyzed by the Attorney General or the Commission.

In its Summer decision,** the Commission 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 change or 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.

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

***"Staff" hereinafter refers to the antitrust staffs of the Office of Nuclear Reactor Regulation and the Executive Legal Director.

****Commission Memorandum and Order, p. 7, dated June 30, 1980 (CLI-80-28).

To warrant a significant change finding, i.e., to trigger a formal OL antitrust review, the particular change(s) must meet all three of these criteria.

On February 23, 1982, the Director of the Office of Nuclear Reactor Regulation issued a finding pursuant to the antitrust operating license review for Unit 1 of the Clinton Nuclear Power Station (hereinafter Clinton), recommending that no formal operating license antitrust review was required for Clinton.* Since the Director's initial finding in 1982, the fuel load date for Clinton was changed twice, from January of 1983 to January of 1984 and from January 1984 to January 1986. The original change in the fuel load date created a gap in staff's antitrust operating license review and antiquated much of the data used by staff in its original review procedure. Consequently, staff initiated a "monitoring review" of Clinton which was completed in January of 1983.** Staff's monitoring review "found no reason to amend its 'no significant change' determination pursuant to Unit 1 of the Clinton Nuclear Station."***

As a result of the change to the most recent fuel load date, i.e., January of 1986, applicant's original (and most comprehensive) data submission would be almost six years old at the time of fuel load and staff felt not an adequate reflection of the current status of applicants' activities in central

* Clinton Nuclear Power Station, Unit 1 - Finding of No Significant Antitrust Changes. Hereinafter, "No Significant Change Finding." (Attached as Appendix A.)

** Clinton Nuclear Plant Unit 1 - OL Monitoring Review. Hereinafter, "Monitoring Review." (Attached as Appendix B.)

*** Ibid., p. 5.

and southern Illinois. For this reason staff requested updated data responses from all applicants pursuant to changed activity since the original OL antitrust data response in May of 1980. After reviewing these data and after contact with members of the electric power industry in Illinois, staff recommends that no affirmative significant change finding be made pursuant to Unit 1 of the Clinton Nuclear Power Station.

II. Structure of the Electric Power Industry in Illinois

The basic structure of the electric power industry in Illinois has not changed since staff's original significant change review. The state is still separated into Chicago area and non-Chicago area components with large investor owned utilities dominating each segment. The Chicago area is served by one of the largest domestic electric power companies, Commonwealth Edison Company. The remainder of the state, from the north central portion to the southern tip of the state, is served by a group of power companies including municipal, cooperative and private power companies.

The relevant marketing area for the Clinton power station focuses on the central and southern portions of the State of Illinois, i.e., the area in which the incidence of any anticompetitive practices associated with the activities of the owners of Clinton will have the greatest impact. This is the area in which the three applicants serve and the area where the use of the power and energy generated by the Clinton plant will be most concentrated.

A. Applicant Systems

Illinois Power Company, with approximately 82% ownership of the plant, is the lead applicant responsible for construction and operation of the plant. The remaining 18% of the plant is owned by two cooperative power systems, Western Illinois Power Cooperative (WIPCO) and Soyland Power Cooperative (Soyland).

Illinois Power Company is a fully integrated power system (i.e., engaged in generation, transmission and distribution of electric power and energy) serving primarily the central and southern portions of the State of Illinois. Western Illinois Power Cooperative is a G&T cooperative -- engaged primarily in the generation and transmission of electric power and energy serving distribution cooperative members in the west central portion of the state. Soyland Power Cooperative was established by a group of 15 distribution cooperatives specifically to acquire an ownership interest in Clinton. The members currently provide service to retail loads in central and southern portions of Illinois. (See Appendix A for a more detailed description of applicant systems.)

III. Previous Antitrust Reviews of Clinton

A. Construction Permit Review

The initial antitrust review of Clinton was conducted by the Department

of Justice (Department or DOJ) and the Commission at the construction permit (CP) stage in the early 1970's. During the construction permit review,

"... the staffs of the Department of Justice (DOJ) and the AEC/NRC became aware of certain allegations of misconduct by Illinois Power in conjunction with its dealings with cooperative and municipal power systems in or adjacent to Illinois Power's service area."*

After additional data was collected and the anticompetitive concerns were fully aired, the applicant agreed to a set of policy commitments intended to prohibit any future refusals to deal or similar anticompetitive conduct by Illinois Power Co. in its dealings with other power entities in or adjacent to its service area. These policy commitments later became license conditions that were attached to the Clinton construction permits.** Based upon the policy commitments agreed to by Illinois Power and the inclusion of these commitments as license conditions to the Clinton construction permits, the Department issued an advice letter to the Commission dated

April 29, 1974 recommending no hearing. No petitions to intervene were received and the CP antitrust review was effectively completed with the publication of the advice letter in the Federal Register in May of 1974.

*No Significant Change Finding, p. 7.

**Illinois Power received construction permits for both Units 1 and 2. Unit 2 has since been cancelled.

B. Operating License Review

As indicated supra, the Commission's operating license review focuses only on changes in the applicants' activities since the antitrust review at the construction permit review stage. After reviewing the data submitted by the applicants pursuant to changes since the CP review, talking to members in the industry and reviewing various public documents,

"Staff identified a number of changes that, (1) have occurred since the construction permit antitrust review, and (2) are reasonably attributable to the licensee(s). [Thereby meeting two of the Summer criteria necessary for a "significant change."] However, many of these changes are in conformance with the construction permit antitrust license conditions and have had positive performance effects on the availability of bulk power supply and on competition in the area generally. Other changes which have occurred have not had significant negative antitrust implications that would warrant a Commission remedy, and therefore do not warrant a significant change finding.**

Staff completed its initial operating license review in February of 1982 and found no reason to recommend that the Director of NRR issue a significant change finding. The review concluded that,

"Based upon the successful implementation of CP license conditions and the lack of any detrimental conduct or activity..., staff recommends that no affirmative significant change determination be made pursuant to the application for an operating license for Unit 1 of the Clinton Nuclear Power Station."**

* No Significant Change Finding, p. 17

** Ibid.

C. Monitoring Review

Subsequent to staff's initial significant change analysis in February of 1982, the fuel load date for Clinton was changed from January of 1983 to January of 1984. Staff felt such a development necessitated a "fresh look" at the Illinois electric bulk power industry and any changes in the activities of the Clinton applicants in particular. The staff monitoring review was not intended as an in depth significant change analysis, but more of a flash review, intended to pick up flagrant changes in conduct or particular complaints from affected parties engaged in or interested in the Illinois electric power industry. (The formality and extensive data requests that characterize the significant change analysis are not a part of the monitoring review process.) Staff's monitoring review for Clinton was completed in January of 1983. The review concluded,

"In sum: Because of a delay in issuing the Clinton Unit 1 OL, staff has reviewed Illinois Power's activities since last conducting its significant change analysis approximately a year ago. No one has come forth to request reevaluation of staff's significant change determination, nor have there been any submissions of complaints or views of affected parties during the interim since February 1982. After reviewing industry trade journals and initiating contact with power entities in the relevant areas, staff, as of this date, has found no reason to amend its 'no significant change' determination pursuant to Unit 1 of the Clinton Nuclear Station."*

Both the initial significant change analysis and staff's monitoring review concluded that there have been no significant changes in the applicants'

*Monitoring Review, p. 5.

activities since the antitrust construction permit review that would warrant a hearing recommendation pursuant to the applicants' application for an operating license for Clinton.

IV. Changes Since the Initial Operating License Review

Considering the most recent delay in fuel loading from January of 1984 to January of 1986, and the fact that staff's broad data base of the Illinois electric power industry is based upon dated information, i.e., that provided by the applicant in 1980, staff decided to request updated responses to Regulatory Guide 9.3* from the applicants and conduct a supplemental significant change analysis, focusing on those changes which have taken place since the initial operating license review was completed in 1982. This supplemental significant change review, in conjunction with staff's 1982 and 1983 reviews, encompasses all of applicants' changed activity (with competitive implications) since the antitrust review at the construction permit stage.

From the applicants' updated responses to Regulatory Guide 9.3** and information gathered from public print sources as well as contacts with governmental agencies and members of the electric power industry, staff has

*"Information Needed by the AEC Regulatory Staff in Connection with its Antitrust Review of Operating License Applications for Nuclear Power Plants," October 1974.

** Data submitted by letter dated March 12, 1984.

identified several changes associated with the applicants' conduct and activity since the initial significant change review.

Among the three applicant systems, Illinois Power Company has experienced the greatest number of changes (with possible competitive implications) since the initial OL review. As evidenced during the original OL review, these changes have come about largely through new interconnections and sales of wholesale power by Illinois Power Company to smaller power systems in Illinois.

A. Interconnections

The trend toward new interconnections involving all applicant systems and particularly Illinois Power evidenced during the initial OL review has continued. Illinois Power has consummated a number of interconnections, with both large and small systems, since 1982.

1. Illinois Power Co./Southern Illinois Power Coop. -- In September of 1984 Illinois Power energized a 138 kV interconnection with the Southern Illinois Power Cooperative (SIPC). Representatives of both parties began discussions pursuant to the feasibility of an interconnection between the two systems that, according to SIPC, would eliminate the need for SIPC to construct approximately 16 miles of 69 kV line. The two systems are presently interchanging short term and economy power over the intertie and according to

SIPC, the interconnection agreement also includes provisions for wheeling over Illinois Power's lines, but the coop has not had a need to activate that provision of the agreement to date.

2. Illinois Power Co./Western Illinois Power Coop. -- On June 25, 1982 a 138 kV interconnection between Illinois Power and one of its co-applicant systems in the Clinton project, Western Illinois Power Cooperative (WIPCO), was completed. The interconnection was initiated by WIPCO primarily to serve one of its customers, a coal company.

Another 138 kV interconnection between Illinois Power and WIPCO was completed on August 30, 1982. The interconnection was initiated by WIPCO according to Illinois Power "in order to improve service to the 69 kV system in the area."

3. Illinois Power Co./Kentucky-Utilities Co. -- By agreement dated January 1, 1983, Illinois Power entered into an interconnection agreement with the Kentucky-Utilities Co. The agreement provides for various power transactions between the parties.

4. Illinois Power Co./Central Illinois Public Service Co. -- A 345 kV interconnection was energized on October 25, 1983 between Central Illinois Public Service Co.'s Kansas Substation and Illinois Power's Sidney Substation.

5. Illinois Power Co./Farmer City -- An interconnection to provide wholesale power service to the Farmer City electric system was energized in October of 1984.

Illinois Power Co. has energized numerous interconnections since the initial OL antitrust review in 1982. New agreements have been consummated with both large, fully integrated power systems as well as smaller municipal and cooperative power systems. The new interconnections identified by staff represent a continuation of a trend toward interconnection which was stimulated by the antitrust license conditions attached to the Clinton construction permit as well as general reliability and service requirements imposed upon a large public utility system. It is staff's view that applicants' interconnections since the CP antitrust review have had a procompetitive effect upon the bulk power services market in central and southern Illinois. To the extent that new interconnections have increased reliability of participating power systems and broadened access to power supply alternatives for Illinois power entities, staff would encourage applicants to continue the development of new interconnections and interconnection agreements evidenced since the completion of the construction permit review.

B. Wholesale Power Developments

The applicants, principally Illinois Power Co., have been responsible for a series of power supply developments at the wholesale level since the CP antitrust review.

1. During the period 1981-82, the City of Flora, Illinois expressed an interest in purchasing wholesale for resale power from Illinois Power. According to a representative of the City, Illinois Power offered to supply the City; however, the City managed to negotiate a more favorable agreement with another bulk power supplier.
2. As a result of the newly energized interconnection between Illinois Power and Farmer City, Illinois (see "Interconnections"), the City requested and received full requirements wholesale power from Illinois Power beginning on October 4, 1984.
3. According to Illinois Power's Regulatory Guide 9.3 response, the City of Red Bud, Illinois expressed interest in obtaining wholesale service from Illinois Power. When contacted, the City representative stated that Red Bud had no interest in service from Illinois Power.
4. The Mt. Carmel Public Utility Co. began taking partial requirements wholesale service from Illinois Power on January 1, 1983. Illinois Power delivered power under this Purchase Power Agreement to Central Illinois Public Service Co., which in turn provided transmission service for delivery of the power to Mt. Carmel. Effective January 1, 1984, Mt. Carmel transferred to a full requirements wholesale Purchase Power Agreement and began taking all of its power requirements from Illinois Power Co. over the transmission lines of Central Illinois Public Service Co.

5. Once the interconnection between Illinois Power and the Southern Illinois Power Cooperative was energized in September of 1984 (see "Interconnections"), the coop began purchasing blocks of short term wholesale power from Illinois power, reportedly utilizing the full 40 MW capacity of the intertie.

6. The Wabash Valley Power Association was involved in discussions with Illinois Power in the spring/summer of 1984 pursuant to the purchase of a large block of short term power. The generation and transmission cooperative did not consummate a power purchase agreement with Illinois Power because Wabash was able to negotiate a more favorable purchase agreement with another supplier.

7. On May 24, 1983, Western Illinois Power Cooperative entered into a new three year agreement for purchase of power from Illinois Power Co. The agreement will terminate upon commercial operation of the Clinton nuclear plant. The agreement provides supplemental power to WIPCO until such time that WIPCO, a co-owner of the Clinton nuclear plant, can begin taking power from the plant once it begins to produce commercial electric power.

8. The Western Illinois Power Cooperative has anticipated various power shortages through 1993 and plans to meet any deficiencies with new generation (i.e., Clinton) and power purchases through its interchange agreements with Illinois Power and the Springfield (Illinois) City, Water, Light and Power electric system.

9. As part of a FERC rate settlement reached with its wholesale power customers on November 18, 1983, Illinois Power agreed to a Short Term Energy Transmission Agreement and a long term Electric Transportation Service Agreement. These particular service agreements now allow Illinois Power's smaller wholesale customers to more effectively shop for competitively priced power in both the market for "spot" or short term economy and diversity power and energy, as well as longer term (more than 5 years) power from various power suppliers interconnected with the Illinois Power system. These two transmission agreements complement agreements reached earlier between Illinois Power and its wholesale customers that enabled these customers to take partial requirements power from Illinois Power. (See Appendix F of the initial antitrust operating license review.) These two transmission agreements represent positive, procompetitive developments since the earlier OL antitrust review, allowing smaller power systems to compete more effectively with the larger, fully integrated power systems for the most efficient sources of power and energy in and adjacent to the Illinois bulk power market.

Those changes attributable to the applicants which have taken place in the Illinois wholesale power market since the initial Clinton operating license review have for the most part been representative of a continuum which began after the completion of the antitrust construction permit review. Power systems, both large and small, have continued their efforts to minimize costs by "shopping" for the most cost efficient

source of power to meet their individual loads. The Wabash Valley Power Cooperative and the City of Flora expressed interest in purchasing wholesale power from Illinois Power but managed to negotiate more favorable agreements with other suppliers. The Mt. Carmel Public Utility Co. (a private power company located in Mt. Carmel, Illinois), the Southern Illinois Power Cooperative and the Farmer City electric system all have begun taking wholesale power from Illinois Power since the original OL review. Moreover, the Western Illinois Power Cooperative has negotiated new interconnection and wholesale power agreements with Illinois Power that will enable WIPCO to meet anticipated load deficiencies until Clinton comes on line.

All of these developments in the Illinois wholesale bulk power market point toward the continuation of increased coordination and competition among industry members evidenced during the initial operating license antitrust review. Staff encourages industry members to continue to "test the market" and explore new alternative sources of power supply. The wholesale power developments identified since the original OL antitrust review have come about largely as a result of the antitrust license conditions attached to the Clinton construction permit and for the most part have resulted from procompetitive forces at work in the Illinois wholesale bulk power market.

C. Mergers and Acquisition Involving Applicant Systems

Since the initial OL antitrust review was completed in 1982, staff has identified two proposed mergers and one acquisition involving applicant systems.

1. Early in 1981, Illinois Power Company began discussions with the Cedar Point Light & Power Company regarding a merger of the two systems. On March 29, 1985, Illinois Power purchased the assets of Cedar Point Light & Power. Cedar Point was a privately owned electric distribution system serving approximately 180 customers in the Illinois town bearing the same name. Prior to the acquisition, Cedar Point purchased 100% of its power requirements from the Illinois Power Company.

2. Illinois Power and the Mt. Carmel Public Utility Company executed a stock exchange merger agreement late in 1981. The companies are presently awaiting federal and state regulatory approval before proceeding with the merger.*

*Illinois Power and the Mt. Carmel Public Utility Company filed the merger agreement with the Illinois Commerce Commission (ICC) on December 7, 1981. The Central Illinois Public Service Co. intervened and protested the proposed merger. The ICC initially ruled against the Illinois Power/Mt. Carmel merger, indicating that greater cost efficiencies would result from a Mt. Carmel/Central Illinois Public Service Co. merger. The case was introduced into the judicial system at the circuit court level where the ICC ruling was upheld--ruling against the Illinois Power/Mt. Carmel merger. Both Illinois Power and Mt. Carmel appealed the decision which was overruled by the appellate court. The State of Illinois appealed the appeals court ruling to the State Supreme Court where the case is now pending.

The Illinois Power/Mt. Carmel merger is also awaiting approval before the Federal Energy Regulatory Commission (FERC), Docket No. EC82-4-00. At the request of Illinois Power Company, the FERC delayed a ruling on the merger pending a resolution at the State level; however, the FERC has recently decided to proceed with its own hearings and not wait for the ruling by the Illinois State Supreme Court.

3. By letter dated February 21, 1985,* Illinois Power acting as agent for the owners of the Clinton nuclear plant, forwarded information pertaining to the planned merger of Western Illinois Power Cooperative and Soyland Power Cooperative. A copy of a "Coordination and Operation Agreement" between Soyland and WIPCO dated July 25, 1984 was included along with the February 21 letter. According to the "General Provisions" of the Agreement,

"As of January 1, 1985, Soyland Power Cooperative (Soyland) and Western Illinois Power Cooperative (WIPCO[]) will 'pool' all electric power and energy and transmission capacity available from their respective facilities so that the electric power and energy and transmission capacity will be utilized as though the two cooperatives were merged as of January 1, 1985. The Agreement goes on to provide that a plan of merger will be prepared, and that the formal merger under Illinois law will take place effective as of July 1, 1986."**

Staff does not believe that the Cedar Point acquisition or the proposed Mt. Carmel merger pose significant anticompetitive problems in the Illinois bulk power market. Both systems serve small municipalities and were wholesale customers of Illinois Power prior to being acquired. (The Mt. Carmel/Illinois Power merger is still pending.) The proposed Soyland/WIPCO merger represents a marriage of convenience and appears to provide the surviving system significant operating economies not available to

*Letter to Wm. H. Regan, Chief, Site Analysis Branch (NRC) from F. A. Spangenberg, Director, Nuclear Engineering and Configuration (Illinois Power Co.). (Attached as Appendix C.) This letter was precipitated by a letter from Wm. H. Regan, dated January 16, 1985, requesting all information pertaining to the merger or proposed merger between Soyland and WIPCO.

**Cited from letter to Sheldon A. Zabel (counsel for Illinois Power) from John T. Ward (counsel for Soyland) dated January 29, 1985. (Attached as Appendix D.)

either system standing alone. For example, the Coordination and Operation Agreement between Soyland and WIPCO provides for a joint pooling of the resources of each system,

"... in order that adequate supplies of electric power and energy be delivered to load centers of the distribution cooperative member-consumers of Soyland and WIPCO on a cooperative not-for-profit basis at the lowest feasible cost through the coordination and use of the facilities and capabilities of both Soyland and WIPCO acting as a single entity."*

Soyland's member systems are located primarily in central and southern Illinois, while WIPCO's member systems primarily serve the western counties of Illinois. The combination of the two systems should result in cost efficiencies normally associated with membership in an operating pool once Soyland becomes a generating entity, i.e., when Clinton comes on line. The more efficient Soyland/WIPCO has the potential to provide stronger competition in the Illinois bulk power industry, particularly in its dealings with larger more fully integrated power systems.** Staff sees no significant anticompetitive effects befalling the Illinois bulk power market as a result of the acquisition or proposed mergers which have occurred since the original OL antitrust review.

*Coordination and Operation Agreement between Soyland and WIPCO dated July 24, 1984, page 3. (Attached as Appendix E.)

**A possible extension of the Soyland/WIPCO Pool involves a recent power supply study by the combined cooperative pursuant to the benefits, if any, associated with joint participation in any of Illinois Power's existing fossil-fired generating units.

D. Miscellaneous Changes

Staff has identified additional, unrelated, changes in applicants' conduct and activity since the initial OL review, none of which have resulted in significant negative competitive impact upon the Illinois bulk power industry.

1. Co-owners Soyland Power Cooperative and Western Illinois Power Cooperative initially agreed to a combined 20% ownership share in the Clinton nuclear plant. Due to cost overruns associated with the construction of the plant, Soyland and WIPCO have placed a dollar limit on their participation in the plant of \$450 million. According to Illinois Power, this sum now amounts to an ownership interest of approximately 18%.

2. During 1983 Illinois Power Co. entered into discussions with the City of Peru, Illinois pursuant to a request by the City to transport energy for the City from its proposed Starved Rock Hydro Plant to the City's distribution facilities. Illinois Power made a proposal to transport the power, however, the City cancelled its plans to build the hydro facility and consequently no transmission agreement was consummated with Illinois Power.

3. Effective June 8, 1983, eight members of the Soyland Power Cooperative, which had been purchasing their wholesale power requirements directly from Illinois Power Co., had their wholesale power

contracts assigned to Soyland (at Soyland's request). Subsequent to this date, these eight distribution coop members have been served directly through the parent, Soyland. The rationale for this change-over, according to Soyland, was to realize administrative efficiencies associated with a more closely monitored power supply for all of its member systems. (Presumably, these administrative efficiencies would become operating efficiencies once Soyland became a generating entity with the commercial operation of the Clinton power station.)

None of these miscellaneous changes have had any significant negative impact on the Illinois bulk power market. Co-owners Soyland and WIPCO have assessed their commitment and ability to financially participate in the Clinton project and have reached a business decision to limit their participation in the plant to \$450 million. Though Illinois Power will retain any ownership rights over and above the Soyland/WIPCO commitment, staff believes that the co-owners made a business decision based upon their ability to pay for their share of the plant and were not pressured into giving up a portion of the plant to Illinois Power. Moreover, the decision by Soyland to consolidate its wholesale power contracts and the decision by the City of Peru not to build a hydro facility have not had significant detrimental effects upon the Illinois bulk power industry.

V. Summary and Conclusion

Staff completed its initial antitrust operating license review of the Clinton Nuclear Power Station (Clinton) in February of 1982. Several changes in the

applicants' activities since the original construction permit (CP) review in 1974 were identified; however, staff concluded that,

"Based upon the successful implementation of CP license conditions and the lack of any detrimental conduct or activity (to the competitive process in central and southern Illinois) on the part of Illinois Power Company, Soyland Power Cooperative or Western Illinois Power Cooperative, staff recommends that no affirmative significant change determination be made pursuant to the application for an operating license for Unit 1 of the Clinton Nuclear Power Station." (Clinton "Finding of No Significant Antitrust Changes," March 11, 1982, Federal Register, p. 10655.)

Since the staff completed its initial antitrust operating license review in February of 1982, there have been construction delays necessitating changes in scheduled fuel load dates for the Clinton plant. Fuel loading is now scheduled for January of 1986, approximately four years after the staff completed its initial antitrust review. Staff felt this four year period created a "review vacuum" and requested updated information from the applicants pursuant to any changed activity since the initial antitrust operating license review.

After reviewing the updated Regulatory Guide 9.3 information and contacting various electric utility representatives in Illinois and other interested parties, staff identified several changes in the applicants' activities (principally those of Illinois Power Company) since the initial operating license review. Many of the changes, e.g., new interconnections and partial requirements wholesale power sales, by Illinois Power Company, represented extensions of those changes identified in the original operating license review and have provided additional procompetitive stimuli to the Illinois

bulk power industry. Smaller power systems in Illinois have been able to successfully "shop" for alternative sources of power and energy. Applicants Illinois Power Company, Soyland Power Cooperative, Inc. and Western Illinois Electric Power Cooperative, Inc. have initiated a study to determine whether or not future jointly owned generating facilities would be economically feasible. New transmission agreements have been consummated between Illinois Power and its wholesale power customers that provide these smaller power systems with the means to take advantage of the benefits normally associated with larger, fully integrated power systems, e.g., access to short term economy and diversity power and energy sales and access to transmission for long term block purchases of power and energy from a number of different power suppliers. Increased coordination between those fully integrated power systems and the smaller, less diversified power systems has led to greater competition in the Illinois bulk power industry. This trend toward greater coordination among industry participants began with the institution of antitrust license conditions at the construction permit review stage.

The changes that have been identified since the construction permit review have by and large provided momentum for greater coordination, and consequently increased competition, between all groups of power supply systems in central and southern Illinois. Staff observed this trend toward increased competition among bulk power suppliers in its initial antitrust operating license analysis. This trend has continued since 1982 and consequently staff sees no reason to change its recommendation that "no affirmative significant change determination be made pursuant to the application for an operating license for Unit 1 of the Clinton Nuclear Power Station."

APPENDIX A