

NUCLEAR REGULATORY COMMISSIONDOCKET NO 50-414ADUKE POWER COMPANY, NORTH CAROLINA MUNICIPAL POWER AGENCY 1,AND PIEDMONT POWER AGENCYNOTICE OF FINDING OF NO SIGNIFICANT ANTITRUST CHANGESAND 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 licensee's activities or proposed activities have occurred subsequent to the previous construction permit review of Unit 2 of the Catawba 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 Catawba 2 construction permit to the Duke Power 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.

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"In reaching this conclusion, the staff considered the structure of the electric utility industry in the Piedmont Carolinas, the events relevant to the Catawba 2 construction permit reviews and the events that have occurred subsequent to the construction permit reviews.

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

'During the construction permit antitrust reviews of Duke Power Company's (Duke's) nuclear plant applications, the Attorney General and the petitioners for antitrust hearings were primarily concerned with Duke's dominance in the relevant market. The thrust of the review centered upon any increase in that dominance that would occur by the addition of the Oconee, McGuire and Catawba nuclear units to Duke's integrated electrical system, and Duke's refusal to allow smaller electrical systems in the area where Duke serves to share in the ownership of the nuclear units or to interconnect with Duke and coordinate power supply services. Following negotiations, Duke agreed to a set of antitrust commitments which were to be attached as antitrust license conditions to its nuclear plant construction permits and operating licenses. These license conditions required Duke to interconnect and provide power supply services to smaller electric utilities in the area where it serves, including notification of plans to construct future nuclear units, but did not specifically require Duke to provide ownership access to the Oconee, McGuire or Catawba nuclear units.

'Subsequently, Duke entered into agreements with municipal and cooperative power agencies in both North Carolina and South Carolina, providing these agencies with ownership interests in Catawba Units 1 and 2, and with ancillary services to make this ownership economical. Specifically, the North Carolina Electric Membership Corporation and the Saluda River Cooperative, Inc. have been provided an ownership interest in Catawba 1. Similarly, the North Carolina Municipal Power Agency 1 and the Piedmont Municipal

Power Agency have been provided an ownership interest in Catawba 2. The ownership agreements have been supplemented by interconnection agreements which provide (1) interim power supply from Duke's other nuclear units prior to commercial operation of the Catawba units (2) emergency backup power among the nuclear units whereby each nuclear unit is supported by the others, (3) a buy-back arrangement by Duke to allow the municipals and cooperatives to gradually increase their capacity allotments, (4) transmission services, and (5) supplemental purchases and sales by Duke to permit the municipals and cooperatives to match their energy requirements from hour to hour.

'The NRC staff believes that the above changes are consistent with the commitments made by Duke during the construction permit antitrust negotiations and are consistent with the Department of Justice and Nuclear Regulatory Commission desires to enhance the competitive process in bulk power supply markets. Staff's investigations and analysis have disclosed no anticompetitive connection between the activities of the applicants and the changes that have occurred since the construction permit application reviews for Catawba 2. The changes that have occurred in rate schedules, inquiries regarding power purchases and sales, and changes in membership and nuclear plant ownership shares of the municipal and cooperative organizations have had negligible competitive impact upon the bulk power supply in the Piedmont Carolinas. Accordingly, the NRC staff is not recommending a "significant change" finding with respect to the Catawba 2 operating license application.'

"Based on the staff's analysis, it is my finding that a formal operating license antitrust review of the Catawba Nuclear Power Station, Unit 2 is not required."

Signed on November 19, 1985 by Harold R. Denton, Director of 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 publication of this Federal Register notice. Requests for a reevaluation of the no significant change determination shall be accepted after the date when the Directors' 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

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