



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

June 13, 2000

SECRETARY

COMMISSION VOTING RECORD

DECISION ITEM: SECY-00-0096

TITLE: FINAL RULE -- CLARIFICATION OF
REGULATIONS TO EXPLICITLY LIMIT WHICH
TYPES OF APPLICATIONS MUST INCLUDE
ANTITRUST INFORMATION

The Commission (with all Commissioners agreeing) approved the subject paper as noted in an Affirmation Session and recorded in the Affirmation Session Staff Requirements Memorandum (SRM) of June 13, 2000.

This Record contains a summary of voting on this matter together with the individual vote sheets, views and comments of the Commission.

Annette L. Vietti-Cook
Secretary of the Commission

Attachments:

1. Voting Summary
2. Commissioner Vote Sheets

cc: Chairman Meserve
 Commissioner Dicus
 Commissioner Diaz
 Commissioner McGaffigan
 Commissioner Merrifield
 OGC
 EDO
 PDR

VOTING SUMMARY - SECY-00-0096

RECORDED VOTES

	APRVD	DISAPRVD	ABSTAIN	NOT PARTICIP	COMMENTS	DATE
CHRM. MESERVE	X				X	5/16/00
COMR. DICUS	X				X	5/25/00
COMR. DIAZ	X					5/10/00
COMR. McGAFFIGAN	X				X	5/10/00
COMR. MERRIFIELD	X				X	5/8/00

COMMENT RESOLUTION

In their vote sheets, all Commissioners approved the staff's recommendation and some provided additional comments. Subsequently, the comments of the Commission were noted in an Affirmation Session as reflected in the Affirmation Session SRM issued on June 13, 2000.

AFFIRMATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook
Secretary of the Commission

FROM: CHAIRMAN MESERVE

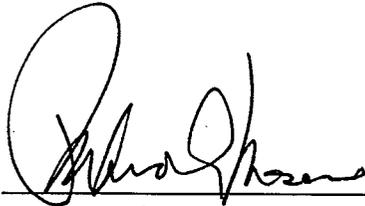
SUBJECT: SECY-00-0096 - FINAL RULE -- CLARIFICATION OF
REGULATIONS TO EXPLICITLY LIMIT WHICH TYPES OF
APPLICATIONS MUST INCLUDE ANTITRUST
INFORMATION

Approved x Disapproved _____ Abstain _____

Not Participating _____ Request Discussion _____

COMMENTS:

See attached minor edits to the Federal Register notice and the
Congressional letters.



SIGNATURE

May 16, 2000

DATE

Entered on "AS" Yes No _____

SUPPLEMENTARY INFORMATION:**I. Background**

In a license transfer application filed on October 27, 1998, by Kansas Gas and Electric Company (KGE) and Kansas City Power and Light Company (KCP&L) (Applicants), Commission approval pursuant to 10 CFR 50.80 was sought of a transfer of the Applicants' possession-only interests in the operating license for the Wolf Creek Generating Station, Unit 1, to a new company, Westar Energy, Inc. Wolf Creek is jointly owned by the Applicants, each of which owns an undivided 47 percent interest. The remaining 6 percent interest is owned by Kansas Electric Power Cooperative, Inc. (KEPCo). The Applicants requested that the Commission amend the operating license for Wolf Creek pursuant to 10 CFR § 50.90 by deleting KGE and KCPL as licensees and adding Westar Energy in their place. KEPCo opposed the transfer on antitrust grounds, claiming that the transfer would have anticompetitive effects and would result in "significant changes" in the competitive market. KEPCo petitioned the Commission to intervene in the transfer proceeding and requested a hearing, arguing that the Commission should conduct an antitrust review of the proposed transfer under Section 105c of the Atomic Energy Act, 42, U.S.C. 2135(c). Applicants opposed the petition and request for a hearing.

By Memorandum and Order dated March 2, 1999, CLI-99-05, 49 NRC 199 (1999), the Commission indicated that although its staff historically has performed a "significant changes" review in connection with certain kinds of license transfers, it intended to consider in the Wolf Creek case whether to depart from that practice and "direct the NRC staff no longer to conduct

clarified and revised subsection 105 c. refer to the initial application for a construction permit, the initial application for an operating license, or the initial application for a modification which would constitute a new or substantially different facility, as the case may be, as determined by the Commission. The phrases do not include, for purposes of triggering subsection 105 c., other applications which may be filed during the licensing process.

See id. at 458, quoting Report By The Joint Committee On Atomic Energy: Amending The Atomic Energy Act of 1954, As Amended, To Eliminate The Requirement For A Finding Of Practical Value, To Provide For Prelicensing Antitrust Review Of Production And Utilization Facilities, And To Effectuate Certain Other Purposes Pertaining To Nuclear Facilities, H.R. Rep. No. 91-1470 (also Rep. No. 91-1247), 91st Cong., 2nd Sess., at 29 (1970), 3 U.S. Code and Adm. News 4981 (1970) ("Joint Committee Report") (quoting from legislative history of 1954 Act).

In summary, the Commission concluded that neither the language of the Commission's statutory authority to conduct antitrust reviews nor its legislative history support any authority to perform antitrust reviews of post-operating license transfer applications and certainly cannot be interpreted to require such reviews.

The Commission's *Wolf Creek* decision is published in its entirety at 64 FR 33916 June 24, 1999, and in the NRC Issuances at 49 NRC 441 (1999).

jurisdiction to consider antitrust issues associated with the addition of new construction permit applicants was affirmed by the Commission's Appeal Board. *The Detroit Edison Company* (Enrico Fermi Atomic Power Plant, Unit No. 2), ALAB-475, 7 NRC 752, 755 n.7 (1978). (The Commission explicitly noted its agreement with this result in *Wolf Creek* at 362 n.15.) It is not clear, however, that the Appeal Board endorsed the Licensing Board's rationale that APPA urges the Commission now adopt. The Appeal Board in *Fermi* devoted only one footnote of its opinion to the issue of the Commission's antitrust review authority for the addition of new construction permit applicants and found it "sufficient simply to note our essential agreement with the decision on this point." *Id.* (emphasis added). What this means with respect to the Appeal Board's opinion of the Licensing Board's reasoning is and must remain a matter of speculation. It does suggest, however, something less than full agreement with everything the Licensing Board said on the issue and literally may reflect only "essential agreement" with the decision and little or no agreement with the rationale. Be that as it may, as explained above, the Commission addressed this rationale in its *Wolf Creek* decision and found it unsound for determining its antitrust review authority over post-operating license transfers.

APPA states that "there is a difficulty in interpreting the statute to require a 'significant changes' review" for post-operating license transfers, but the Commission erred in its analysis and its conclusion that the statute does not require such reviews. APPA Comments at 15.

APPA offers this analysis:

It is obvious that there can be no "significant changes" review of the activities of a transferee that is new to an operating license, because there was no prior review against which to measure changes. With respect to a transfer of a license to a new entity, the Commission rejects (sic) a forced interpretation of the



operating license” as that phrase is used in this explanation in the Joint Committee Report. But is it? It may appear to be included at first thought, but only if the last sentence of the Committee’s explanation is ignored. The last sentence makes clear that “the initial” applications subject to antitrust review were those filed during the traditional, two-step licensing process eventually leading to the issuance of the initial operating license for the facility: “The phrases do not include, for purposes of triggering subsection 105 c, other applications which may be filed during the licensing process.” (Emphasis added.) While APPA might argue that the post-operating license transfer application is an application filed during the licensing process because its review constitutes a “licensing action,” such a characterization clearly is not the two-step licensing process which Congress addressed when it provided the antitrust review authority contained in Section 105c and focused it on the antitrust situation which existed prior to the initial operation of the facility. Post-operating license transfer applications certainly fall outside the two-step licensing process and, therefore, are not applications included in the statute or intended to be included by any explanation in the legislative history.

APPA’s construction of the statute amounts to reading three types of applications into the scope of Section 105c: (1) applications for facility construction permits, (2) applications for facility operating licenses for which a construction permit antitrust review had been conducted, and, to use APPA’s description, (3) “with respect to a new licensee, the application for transfer is properly viewed as not falling within the proviso of Section 105c(2) at all. That is, such a transfer application is not an application for a license to operate a facility for which a construction permit was issued, because the applicant in question was never issued a construction permit.” It is this third type of application which APPA equates to a post-operating license transfer application in order to avoid the inherent problem it acknowledges exists in

treating post-operating license transfer applications as type (2) applications subject to the requirement that “significant changes” be measured from the previous construction permit review. There are two fundamental problems with this construction. First, it literally makes no sense because it treats a post-operating license transfer application as “not an application for a license to operate a facility for which a construction permit was issued, because the applicant in question was never issued a construction permit.” (Emphasis added.) But under the two-step licensing process existing when the statute was passed, every facility issued an operating license is a “facility for which a construction permit was issued.” Second, this construction is inconsistent with the language of the statute. The statutory language in the Section 105c(2) *proviso* links the issuance of the construction permit to the facility (“facility for which a construction permit was issued), not to the applicant, as APPA’s construction requires. And third, this construction would result in an unconditional, full-blown antitrust review perhaps even decades after initial operation of the facility, a prospect that is wholly unsupported by the legislative history, which specifically reflects Congress’s rejection of a proposal for an unconditional operating license review even before initial operation of the facility. See *Wolf Creek* discussion at 457-58.

Finally, assuming we accept APPA’s concession that “there is a difficulty in interpreting the statute,” the Commission’s interpretation in *Wolf Creek* certainly is no less reasonable than APPA’s has been shown above to be, and the Commission adheres to it. See *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984). In this regard, it is important to emphasize that the Commission’s decision in *Wolf Creek* to no longer conduct antitrust reviews of post-operating license transfers rested on two alternative grounds, either one of which is sufficient to support that decision: First, the Commission’s analysis of the

relevant statutory provisions and their legislative history led it to conclude that the scope of its antitrust authority does not include post-operating license transfer reviews; second, even if its antitrust authority is concluded to be broad enough to include such reviews, no reasonable reading of the statute warrants a conclusion that such reviews are mandatory, and the Commission, therefore, has chosen, for the reasons stated in *Wolf Creek*, to not conduct such reviews as a matter of sound policy. See *Wolf Creek* at 463-65.

APPA's final argument that the Commission's *Wolf Creek* analysis is wrong involves the Commission's statement that, absent Section 105, the Commission would have no antitrust authority. APPA Comments at 21. There is no need to argue this academic point of *dicta* in *Wolf Creek*, since the Commission was given very specific and limited antitrust authority in Section 105. As noted in *Wolf Creek*, a statutory duty to act under certain specifically-defined circumstances does not include the discretion to act under different circumstances unless the statute warrants such a reading. *Wolf Creek* at 454, citing *Railway Labor Executives' Association v. National Mediation Board*, 29 F.3d 655, 671 (D.C. Cir. 1994) (*en banc*). For the reasons explained in *Wolf Creek* and herein, the Commission has concluded that its specific antitrust authority does not include antitrust reviews of post-operating license transfers.¹

¹ The Commission's specific antitrust authority does include, however, and is unaffected by the *Wolf Creek* decision, other authority which applies as equally to the post-operating license conduct of its licensees as to conduct occurring before issuance of the operating license. Specifically, even after issuance of the facility operating license, the Commission will refer to the Justice Department any information it has suggesting that a licensee is in violation of the antitrust laws and, upon a finding of an antitrust violation, has clear authority to fashion a license-related remedy if warranted. See Sections 105a and b of the Act. This same authority is available should the Commission encounter a situation where an operating license is transferred from antitrust-compliant licensees to a transferor who may be violating the antitrust laws. If such were the case, it would be brought to the attention of the Justice Department (and perhaps other antitrust law enforcement agencies), the aggrieved parties could bring a private antitrust action, and, if any court found a Commission licensee in violation, a Commission-imposed licensing remedy could be sought.

NOTE: Footnote numbering needs to be fixed throughout FR notice

Comment: APPA believes that, even if the Commission's *Wolf Creek* statutory analysis is correct for license transfers in general, the Commission would err if it eliminates antitrust filing requirements for license transfers where there are existing antitrust license conditions, since such conditions must be dispositioned in conjunction with the license transfer.

Response: It is true that there may be a number of post-operating license transfers that involve nuclear facilities whose (transferor) licensees are subject to antitrust license conditions imposed by the NRC as a result of the construction permit (or initial operating license) review. In such cases, consideration must be given to the appropriate disposition of the existing license conditions. This was addressed in the *Wolf Creek* decision. The Commission ^{stated} ~~indicated therein~~ that, ~~in such cases,~~ it would entertain proposals by the ~~relevant,~~ interested parties as to the proper treatment of existing license conditions. *Wolf Creek* at 466. In fact, that is precisely what the Commission did in the *Wolf Creek* transfer case itself, although, because the parties reached a settlement, no decision was required by the Commission. The Commission continues to believe that this approach is workable and that retention of the reporting rule for all post-operating license transfer cases where there are existing antitrust conditions is unnecessary. For example, the proper disposition of existing antitrust conditions may be obvious and agreeable to all involved in some cases, or in other cases may be satisfactorily accomplished after considering submissions by the applicants and others much less burdensome than the full scope reporting urged by APPA. In other cases, such reporting might be unnecessary for some transfer applicants, or could be burdensome out of proportion to the benefits. While the possibility cannot be ruled out that the entirety of the information covered by the current rule may be useful or even necessary in some cases to achieve proper disposition of antitrust license conditions, that does not warrant a generally applicable rule that

Commission's *Wolf Creek* decision made clear that if the statute does permit such reviews, it does not mandate them, and therefore the Commission could cease performing them for the policy and practical reasons explained therein. *See Wolf Creek* at 463-65. Contrary to APPA's assertion that the Commission relied on statutory and regulatory developments which postdate the 1970 amendments to the Atomic Energy Act to reach its conclusion about the scope and intent of those amendments, APPA Comments at 18-19, the Commission considered those developments not in interpreting its statutory authority but rather only in partial support for what would be an appropriate policy decision to terminate antitrust reviews of post-operating license transfers if it had statutory authority to conduct them but was not required to do so. The Commission recognizes that APPA views the competitive and regulatory climate as being more hostile to the antitrust interests of it and its members. But as explained in *Wolf Creek, id.*, there are other antitrust authorities and forums with far greater antitrust expertise than the Commission to address potential antitrust problems with proposed mergers and acquisitions of owners of nuclear power facilities.

Subsequent to the *Wolf Creek* decision and the publication of the proposed rule notice, the issue of multijurisdictional merger notification and review in the United States was addressed in the Final Report of the International Competition Policy Advisory Committee to the Attorney General and Assistant Attorney General for Antitrust (February 28, 2000) (*ICPAC Report*). As stated therein, ^[E] "The majority of Advisory Committee members believe that the overlapping review in the United States is more often than not a defect of the U.S. system and that a more rational or sensible approach would be to give exclusive federal jurisdiction to determine competition policy and the competitive consequences of mergers in federally regulated industries to the DOJ and FTC." ICPAC Report at 143. In a discussion of the cost

AFFIRMATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary

FROM: COMMISSIONER DICUS

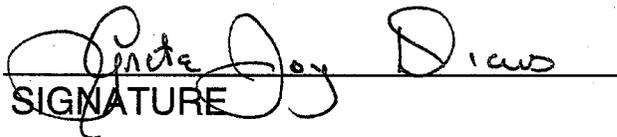
SUBJECT: **SECY-00-0096 - FINAL RULE -- CLARIFICATION OF REGULATIONS TO EXPLICITLY LIMIT WHICH TYPES OF APPLICATIONS MUST INCLUDE ANTITRUST INFORMATION**

Approved Disapproved Abstain

Not Participating

COMMENTS:

See attached edits.


SIGNATURE

5-25-00
DATE

Entered on "STARS" Yes No

would be a breach of its responsibility, the Commission is equally mindful that it also would be irresponsible to act beyond the scope of its statutory authority. That is precisely what the Commission decided in the *Wolf Creek* case about its past practice of performing antitrust reviews of post-operating license transfers, and why that practice must cease.

Comment: CAN asserts that the proposed rule would create regulatory gaps in the NRC's approval of highly dangerous activities, citing licensees' financial obligations, cost cutting by nuclear power plant owners in the competitive environment, potentially serious accidents triggered by overtime patterns, foreign ownership of nuclear power plants, and increased regulatory burdens on the NRC resulting in an inability to inspect large-scale licensees for health and safety violations.

Response: This rule will not result in any gaps in the Commission's regulation of its licensees to ensure adequate protection of the public health and safety. ~~Only by a complete misunderstanding of the limited nature of this rule could anyone suggest that it could lead to such consequences as mentioned by CAN.~~ This rule, which is narrowly confined to relieving certain applicants of filing antitrust information, will not change one iota the Commission's review of proposed license transfers for all other purposes, such as operational safety, foreign ownership, financial qualifications, and for every other purpose that such reviews are conducted. Commission reviews and oversight in those and all other areas of Commission responsibility will continue unabated and are unaffected by this rule. Neither will this rule affect in any way the Commission's inspection capabilities or practices. In fact, by freeing up resources no longer utilized for unauthorized and unnecessary antitrust reviews, the Commission actually will be better able to perform its core mission of regulating to protect the

delete

gjo
5-25-00

public health, safety and environment. As far as the Commission's ability to inspect large-scale licensees, that too is unaffected by this narrow-rule and, in any event, is being separately addressed as part of the Commission's oversight of the nuclear power industry's deregulation and consolidation. There simply is no basis to believe that this rule could result in any of the consequences identified by CAN.

Comment: CAN asserts that the NRC has failed to evaluate the health and safety and national security consequences of the proposed rule.

Response: This comment seems to be related to CAN's previous comment that this rule will result in gaps in the Commission's regulatory program to protect public health and safety and to review license transfers to ensure that the prohibition on foreign ownership of nuclear power plants is met. As explained above, there will be no such gaps and no health and safety or national security consequences of the rule. ~~No "analysis" is necessary since the rule has no effect whatsoever on public health and safety or national security.~~ e

Comment: CAN asserts that the NRC has failed to evaluate the environmental impacts of the proposed rule, in violation of NEPA.

Response: For the same reasons that this rule will have no impact on the Commission's public health and safety responsibilities, it will have no environmental impacts. The rule simply relieves some applicants of the need to submit antitrust information for a review which no longer will be conducted and in no way affects the Commission's environmental obligations or those of its licensees. The Commission has fully complied with the National Environmental Policy Act of

gjed
5-25-00

AFFIRMATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary
FROM: COMMISSIONER DIAZ
SUBJECT: **SECY-00-0096 - FINAL RULE -- CLARIFICATION OF REGULATIONS TO EXPLICITLY LIMIT WHICH TYPES OF APPLICATIONS MUST INCLUDE ANTITRUST INFORMATION**

Approved XX *[initials]* Disapproved _____ Abstain _____
Not Participating _____

COMMENTS:

No comments.

[Handwritten Signature]

SIGNATURE

5.10.00

DATE

Entered on "STARS" Yes X No _____

AFFIRMATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary
FROM: COMMISSIONER MCGAFFIGAN
SUBJECT: **SECY-00-0096 - FINAL RULE -- CLARIFICATION OF REGULATIONS TO EXPLICITLY LIMIT WHICH TYPES OF APPLICATIONS MUST INCLUDE ANTITRUST INFORMATION**

Approved Disapproved _____ Abstain _____

Not Participating _____

COMMENTS: *See minor edits (attached). I commended the staff work on this rulemaking and on the prior Golf Creek license transfer proceeding.*

Edward Mc Gaffigan

SIGNATURE
May 10, 2000

DATE

Entered on "STARS" Yes No _____

for Nuclear Power Plants,” and NUREG-1574, “Standard Review Plan on Antitrust Reviews,” also be clarified.

On November 3, 1999 (64 FR 59671), the Commission published for comment a proposed rule to clarify its regulations consistent with its *Wolf Creek* decision. Substantive and timely comments were received from (1) the law firm of Akin, Gump, Strauss, Hauer & Feld, on behalf of the FirstEnergy Nuclear Operating Company (FENOC), the licensed operator of the Perry, Davis-Besse, and Beaver Valley nuclear power plants, for the subsidiary owners of those facilities, namely Ohio Edison Company, The Cleveland Electric Illuminating Company, the Toledo Edison Company, and Pennsylvania Power Company, (2) the Nuclear Energy Institute (NEI), on behalf of the nuclear energy industry, (3) the law firm of ShawPittman on behalf of Western Resources, Inc., Kansas Gas and Electric Company, Wisconsin Electric Power Company, Public Service Electric and Gas Company, and Rochester Gas and Electric Corporation (ShawPittman Utilities), (4) Florida Power & Light Company (FPL), the owner and operator of the St. Lucie and Turkey Point nuclear power plants, (5) the law firm of Spiegel & McDiarmid, on behalf of the American Public Power Association, the City of Cleveland, Ohio, the Florida Municipal Power Agency, the City of Gainesville, Florida, Public Citizen, and the American Antitrust Institute (collectively APPA), and (6) Florida Power Corporation. In addition, late comments were received from (7) Jonathon M. Block on behalf of Citizens Awareness Network, Inc. (CAN).

jurisdiction to consider antitrust issues associated with the addition of new construction permit applicants was affirmed by the Commission's Appeal Board. *The Detroit Edison Company* (Enrico Fermi Atomic Power Plant, Unit No. 2), ALAB-475, 7 NRC 752, 755 n.7 (1978). (The Commission explicitly noted its agreement with this result in *Wolf Creek* at 362 n.15.) It is not clear, however, that the Appeal Board endorsed the Licensing Board's rationale that APPA urges the Commission now adopt. The Appeal Board in *Fermi* devoted only one footnote of its opinion to the issue of the Commission's antitrust review authority for the addition of new construction permit applicants and found it "sufficient simply to note our essential agreement with the decision on this point." *Id.* (emphasis added). What this means with respect to the Appeal Board's opinion of the Licensing Board's reasoning is and must remain a matter of speculation. It does suggest, however, something less than full agreement with everything the Licensing Board said on the issue and literally may reflect only "essential agreement" with the decision and little or no agreement with the rationale. Be that as it may, as explained above, the Commission addressed this rationale in its *Wolf Creek* decision and found it unsound for determining its antitrust review authority over post-operating license transfers.

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AFFIRMATION VOTE

RESPONSE SHEET

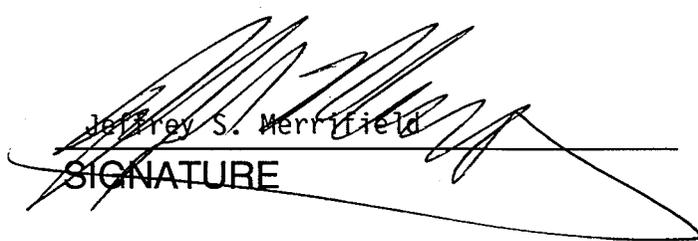
TO: Annette Vietti-Cook, Secretary
FROM: COMMISSIONER MERRIFIELD
SUBJECT: **SECY-00-0096 - FINAL RULE -- CLARIFICATION OF REGULATIONS TO EXPLICITLY LIMIT WHICH TYPES OF APPLICATIONS MUST INCLUDE ANTITRUST INFORMATION**

Approved Disapproved Abstain

Not Participating

COMMENTS:

Approved subject to attached edits.


Jeffrey S. Merrifield
SIGNATURE

May 8, 2000
DATE

Entered on "STARS" Yes No

operating license” as that phrase is used in this explanation in the Joint Committee Report. But is it? It may appear to be included at first thought, but only if the last sentence of the Committee’s explanation is ignored. The last sentence makes clear that “the initial” applications subject to antitrust review were those filed during the traditional, two-step licensing process eventually leading to the issuance of the initial operating license for the facility: “The phrases do not include, for purposes of triggering subsection 105 c, other applications which may be filed during the licensing process.” (Emphasis added.) While APPA might argue that the post-operating license transfer application is an application filed during the licensing process because its review constitutes a “licensing action,” such a characterization clearly is not the two-step licensing process which Congress addressed when it provided the antitrust review authority contained in Section 105c and focused it on the antitrust situation which existed prior to the initial operation of the facility. Post-operating license transfer applications certainly fall outside the two-step licensing process and, therefore, are not applications included in the statute or intended to be included by any explanation in the legislative history.

awk

APPA’s construction of the statute amounts to reading three types of applications into the scope of Section 105c: (1) applications for facility construction permits; (2) applications for facility operating licenses for which a construction permit antitrust review had been conducted, and, to use APPA’s description, (3) “with respect to a new licensee, the application for transfer is properly viewed as not falling within the proviso of Section 105c(2) at all. That is, such a transfer application is not an application for a license to operate a facility for which a construction permit was issued, because the applicant in question was never issued a construction permit.” It is this third type of application which APPA equates to a post-operating license transfer application in order to avoid the inherent problem it acknowledges exists in

treating post-operating license transfer applications as type (2) applications subject to the requirement that “significant changes” be measured from the previous construction permit review. There are two fundamental problems with this construction. First, it literally makes no sense because it treats a post-operating license transfer application as “not an application for a license to operate a facility for which a construction permit was issued, because the applicant in question was never issued a construction permit.” (Emphasis added.) But under the two-step licensing process existing when the statute was passed, every facility issued an operating license is a “facility for which a construction permit was issued.” Second, this construction is inconsistent with the language of the statute. The statutory language in the Section 105c(2) *proviso* links the issuance of the construction permit to the facility (“facility for which a construction permit was issued), not to the applicant, as APPA’s construction requires. And third, this construction would result in an unconditional, full-blown antitrust review perhaps even decades after initial operation of the facility, a prospect that is wholly unsupported by the legislative history, which specifically reflects Congress’s rejection of a proposal for an unconditional operating license review even before initial operation of the facility. See *Wolf Creek* discussion at 457-58.

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