

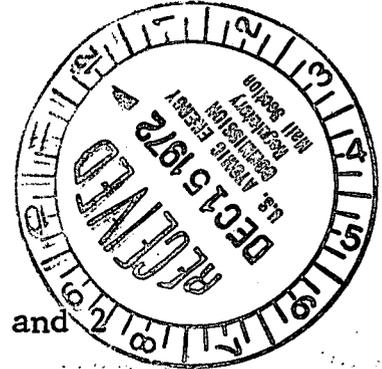
Department of Justice  
Washington, D.C. 20530

*Class II*  
*Rutberg / Vogler / Verdisco*

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DEC 11 1972

Marcus A. Rowden, Esquire  
Associate General Counsel  
U. S. Atomic Energy Commission  
Washington, D. C. 20545



Re: TENNESSEE VALLEY AUTHORITY  
Watts Bar Nuclear Plant, Units 1 and  
AEC Docket No. 50-390A, 50-391A  
Department of Justice File 60-415-43

Dear Mr. Rowden:

On August 23, 1971, Mr. Bertram H. Schur of your Commission forwarded to the Attorney General, for his anti-trust review pursuant to Section 105c of the Atomic Energy Act of 1954, 68 Stat. 919, 42 U.S.C. 2011-2296 as amended by P.L. 91-560, 84 Stat. 1472 (December 19, 1970), an application filed by the Tennessee Valley Authority (TVA) for a permit to construct the Watts Bar Nuclear Plant, Units 1 and 2. Although TVA was asked to supply information to the Department to be utilized in its antitrust review pursuant to 42 U.S.C. 2135c(4), TVA initially failed to do so. Since the information for our review was not thereafter provided for some period of time, we deemed the statutory time for rendering antitrust advice to be tolled while we awaited the necessary information.

The Watts Bar units, each with a capacity of 1,269,900 kilowatts, are presently scheduled for operation for 1977 and 1978 or soon thereafter. They are proposed to be integrated as a part of TVA's bulk power supply system and will form a significant addition to TVA's ability to market firm capacity and to engage in coordination with neighboring power systems in the coordinated regional bulk power supply.

TVA markets bulk power supply throughout the State of Tennessee; it is the sole bulk power supplier in that state, except for Kingsport Power Company, an American Electric Power subsidiary, through which an AEP operating company markets bulk power supply in Kingsport and five smaller communities. It also markets bulk power supply in areas of Mississippi, Kentucky, Alabama, North Carolina, and a portion of Georgia. Its electric power functions are limited principally to supply of electric power in bulk for resale at retail by independent distributors

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of electric power, who are almost exclusively nonprofit agencies such as municipalities and cooperatives. TVA makes some sales at retail to federal government agencies and also makes direct sales to large private industries. Further, it engages in significant interchange and sale of power with other electric utilities. Of 1971 total electric operating revenues of approximately \$575 million, approximately \$380 million was obtained by sales to independent distribution systems; \$62 million from sales to federal agencies; \$125 million from direct sales to very large industries; and \$10 million from interchange of power with other bulk power suppliers.

While other federal governmental agencies' authority to market power is ordinarily limited to the sale of surplus hydroelectric power generated at federal water resource development projects, TVA is unique among federal government agencies in having bulk power supply public utility responsibility and statutory authority to install steam generation facilities in order to meet such responsibility for growing loads.

TVA's 1972 system peak load was 16,664,000 kilowatts. As of that date it had a system dependable capacity of 18,595,000 kilowatts consisting of 14,671,000 kilowatts of thermal capacity and 3,924,000 kilowatts of hydroelectric capacity integrated by an extensive high voltage transmission system operating principally at 161 kv with some elements of 500 kv. Its annual increments of increase in load are in excess of 1,500 megawatts over the next 10 years and its large system size assisted by its interconnections with other systems enables it economically to justify addition of nuclear generating units of the sizes contemplated in the instant application.

Prior to 1959, TVA's operating and constructing budget was dependent upon annual appropriations by Congress. Under those circumstances TVA's ability to supply power in bulk in competition with other bulk power supply sources was regulated directly by Congress in the annual appropriations process. In 1959 Congress permitted TVA to obtain additional construction funds from the private money market but imposed a limitation on the geographic areas in which TVA could market bulk power supply. Additionally, it restricted TVA's interconnection and coordination with adjacent bulk power suppliers except as to those with which it was interconnected as of July, 1957. Section 15d(a) TVA Act, 16 U.S.C. 831n-4; Hardin v. Kentucky Utility Co., 390 US 1 (1967)

It is not presently clear the exact extent to which amended Section 15d(a) restricts TVA in its ability to enter into coordination arrangements with other electric utility systems. However, we are persuaded that, in any event, the statute would not justify TVA in discriminating in the establishment or operation of coordination arrangements among similarly situated electric systems.

On the basis of information obtained from the Applicant and presently available from other sources, we find no antitrust problems which would require a hearing by your Commission on the instant application.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Bruce B. Wilson", written over a horizontal line.

BRUCE B. WILSON  
Acting Assistant Attorney General  
Antitrust Division

