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50-305

ANTI-TRUST

November 8, 1972

Mr. Robert Vollen, Esq.
 Businessmen for the Public Interest
 Suite 1001
 109 North Dearborn Street
 Chicago, Illinois 60602

Re: Kewaunee Nuclear Power Plant

Dear Bob:

Pursuant to our conversations on Monday, November 6, I am enclosing, for your information, a copy of the AEC Regulatory Staff's basic legal position on the antitrust aspects of the above referenced case. This position will also carry over to both the Zion Station, Units 1 and 2 and the Cook Nuclear Plant, Units 1 and 2.

After you have reviewed this document, I would be happy to discuss the matter with you.

Sincerely,



R. Rex Renfrow, III
 Counsel for AEC Regulatory Staff

cc: Gerald Charnoff, Esq. - w/encl.
 Michael Miller, Esq. - w/encl.
 Lewis Drain, Esq. - w/encl.

OFFICE ▶	OGC	OGC				
SURNAME ▶	RRRenfrow:jdr					
DATE ▶	11/8/72					

WISCONSIN PUBLIC SERVICE CO.

"KEWAUNEE" NUCLEAR PLANT - AEC Docket No. 50-305

On December 19, 1970, Section 105c of the Atomic Energy Act was amended by P. L. 91-560 to provide for antitrust advice by the Attorney General with regard to all construction permits pending on that date or filed thereafter. In those instances where the Attorney General advises that there may be adverse antitrust aspects and recommends a hearing, the AEC must make a finding as to whether the activities under the license would create or maintain a situation inconsistent with the antitrust laws.

Prior to the 1970 amendments, no prelicensing antitrust review was required if the license was issued under Section 104 of the Act. Only licenses issued under Section 103 of the Act required an antitrust review procedure; however, all licenses during the period 1954-1970 were issued under Section 104. The Kewaunee construction permit was issued by the AEC in 1968 and thus was issued under Section 104 of the Act.

The following two sections of the Atomic Energy Act, as amended in 1970, pertain to the Kewaunee application:

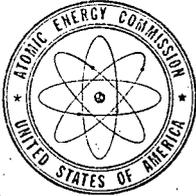
Section 102b - "Any license hereafter issued for a utilization or production facility for industrial or commercial purposes, the construction or operation of which was licensed pursuant to subsection 104b. prior to enactment into law of this subsection, shall be issued under subsection 104b."

Section 105c(3) - "With respect to any Commission permit for the construction of a utilization or production facility issued pursuant to subsection 104b. prior to the enactment into law of this subsection, any person who intervened or who sought by timely written notice to the Commission to intervene in the construction permit proceeding for the facility to obtain a determination of antitrust considerations or to advance a jurisdictional basis for such determination shall have the right, upon a written request to the Commission, to obtain

an antitrust review under this section of the application for an operating license. Such written request shall be made within 25 days after the date of initial Commission publication in the Federal Register of notice of the filing of an application for an operating license or the facility or the date of enactment into law of this subsection, whichever is later."

Thus the 1970 amendments to the Atomic Energy Act have declared, inter alia, that facility licenses for projects whose construction permits were issued under Section 104b should continue to be issued under that section (Section 102b) and amended section 105c(3) provides for antitrust review in such cases only when there was an unsuccessful attempt to intervene at the construction permit stage. Therefore, neither under the law prior to the 1970 amendments nor under the 1970 amendments is any antitrust review provided for in such cases as "Kewaunee."

PDR



UNITED STATES
ATOMIC ENERGY COMMISSION
WASHINGTON, D.C. 20545

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Sincerely,

A handwritten signature in cursive script, appearing to read "R. Rex Renfrow, III".

R. Rex Renfrow, III
Counsel for AEC Regulatory Staff

cc: Gerald Charnoff, Esq. - w/encl.
Michael Miller, Esq. - w/encl.
Lewis Drain, Esq. - w/encl.

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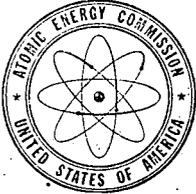
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an antitrust review under this section of the application for an operating license. Such written request shall be made within 25 days after the date of initial Commission publication in the Federal Register of notice of the filing of an application for an operating license or the facility or the date of enactment into law of this subsection, whichever is later."

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