

NUCLEAR REGULATORY COMMISSIONDOCKET NOS. 50-387 AND 50-388PENNSYLVANIA POWER AND LIGHT COMPANY ANDALLEGHENY ELECTRIC COOPERATIVE, INC.NOTICE OF FINDING OF NO SIGNIFICANT ANTITRUST CHANGESAND TIME FOR FILING OF 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 the Susquehanna Nuclear Units 1 and 2 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 with respect to nuclear reactors to the Director, Office of Nuclear Reactor Regulation. Based upon examination of events that have transpired since issuance of the Susquehanna 1 and 2 construction permits to the Pennsylvania Power & Light Company and the Allegheny Electric Power Cooperative, Inc., the staffs of the Office of Nuclear Reactor Regulation and the Office of the Executive Legal Director, hereafter referred to as the "staff," have jointly concluded, after consulting with the Department of Justice, that the changes that have occurred since the antitrust construction permit review are not "significant" in an antitrust context to require a second antitrust review at the operating license stage of the application for licenses; i.e., the changes which have occurred either are not reasonably attributable to the licensees or do not have antitrust implications that would likely warrant some Commission remedy.

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"In reaching this conclusion, the staff considered the structure of the electric utility industry in Central and Eastern Pennsylvania, the events relevant to the Susquehanna 1 and 2 construction permit antitrust review, and the events that have occurred subsequent to that permit review.

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

'Staff has reviewed the changes and proposed changes in the activities of the Applicants (i.e., PP&L and AE) of the Susquehanna plant since their respective construction permit antitrust reviews.

'In order to conduct this operating license review, staff has obtained information from PP&L, FERC, SEC, and from other electric utilities that deal with the Applicants. The information received was evaluated using the criteria that the Commission set forth in its June 30, 1980 Memorandum and Order in Summer upon which to base a significant change determination.

'As a result of the analysis of the information obtained, staff finds that the activities and proposed activities of PP&L and AE since the CP review, taken individually and collectively, do not warrant a significant change determination.

'The Department of Justice has reviewed a draft analysis by the staff along with other material and has concurred in the staff's finding.'

"Based on the staff's analysis, it is my finding that an operating license antitrust review of the Pennsylvania Power and Light Company and the Allegheny Electric Power Cooperative, Inc., with respect to the Susquehanna Nuclear Units 1 and 2 is not required."

Signed on May 18, 1981 by Harold R. Denton, Director Office of Nuclear Reactor Regulation.

Any person whose interest may be affected pursuant to this initial determination may file with full particulars a request for reevaluation

with the Director of Nuclear Reactor Regulation, U. S. Nuclear Regulatory
Commission, Washington, DC 20555 by (60 days).

FOR THE NUCLEAR REGULATORY COMMISSION

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SUSQUEHANNA OPERATING LICENSE ANTITRUST REVIEW

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ANTITRUST REVIEW OF THE PENNSYLVANIA POWER & LIGHT COMPANY AND THE ALLEGHENY
ELECTRIC POWER COOPERATIVE, INC. IN CONNECTION WITH THE OPERATING LICENSE
APPLICATION FOR THE SUSQUEHANNA STEAM ELECTRIC STATION
DOCKET NOS. 50-387A AND 50-388A

A. Introduction

Section 105c(2) of the Atomic Energy Act of 1954, as amended, provides for an antitrust review of Operating License Applications if significant changes in the licensee's activities or proposed activities have occurred since the construction permit antitrust review. Authority to make the significant change determination was delegated to the Director, Office of Nuclear Reactor Regulation (NRR) (for reactors) and to the Director, Office of Nuclear Material Safety and Safeguards (NMSS) (for production facilities), as appropriate.^{1/}

The Nuclear Regulatory Commission in its Memorandum And Order (CLI-80-28) dated June 30, 1980,^{2/} set forth three criteria upon which to base a "significant change" determination. These criteria are:

1. The change or changes must have occurred since the previous construction permit (CP) antitrust review.
2. The change or changes must be attributable to activities (or proposed activities) of the licensee(s).

^{1/} See Exhibit A.

^{2/} The Virgil C. Summer Nuclear Station Unit No. 1 (Docket No. 50-395A) operating license (OL) antitrust proceeding began before the Commission delegated the significant change determination to the staff.

3. The changed situation must have antitrust implications which could be curable by Commission remedy.

Utilizing these criteria, the staff^{*/} has conducted a review of the activities and proposed activities of the Applicants of the Susquehanna Steam Electric Station, Docket Numbers 50-387A and 50-388A (Susquehanna). Based upon the staff's analysis of the activities of the Pennsylvania Power & Light Co. and the Allegheny Electric Cooperative, Inc. that have transpired since the issuance (and amendments) of the construction permits for the captioned nuclear units, it is the conclusion of the Director, Office of Nuclear Reactor Regulation that no "significant changes" have occurred.

The following will discuss the antitrust reviews conducted in connection with the licensing of Susquehanna.

B. Description of the Applicants

1. Pennsylvania Power & Light Company

The Pennsylvania Power and Light Company (PP&L) is an investor-owned electric utility which operates in central and eastern Pennsylvania. PP&L serves a total of 972,993 electric customers, had a 1978 winter

^{*/} The Antitrust Section of the Utility Finance Branch, Division of Engineering, Office of Nuclear Reactor Regulation and the Antitrust Counsel of the Executive Legal Director in consultation with the Department of Justice.

peak load of 4,701,00 kw, and total generation capacity as of January 1, 1979 of 6,876,660 kw.^{3/} PP&L is a member of the Pennsylvania-New Jersey-Maryland Interconnection (PJM). PJM is a power pool in which bulk power operation and planning functions of the member systems are coordinated. Besides PP&L, the membership of PJM includes:

- Public Service Electric and Gas Company (PSEG)
- Philadelphia Electric Company (Phil El)
- Delmarva Power & Light Company (DP&L)
- Baltimore Gas and Electric Company (BG&E)
- Atlantic City Electric Company (ACE)
- Jersey Central Power & Light Company (JCPL)
- Metropolitan Edison Company (Met Ed)
- Pennsylvania Electric Company (Pennelec)
- Potomac Electric Power Company (PEPCO)
- UGI Corporation (UGI)

PP&L has major transmission interconnections (230 kv and greater) with the Safe Harbor Water Power Corporation and with six of the above PJM members - PSEG, Phil El, BG&E, Met Ed, Pennelec and UGI.

2. Allegheny Electric Cooperative, Inc.

The Allegheny Electric Cooperative, Inc. (AE) "... is a non-profit federated cooperative association^{4/} whose members are rural electric

^{3/} Electrical World Directory of Electric Utilities 1979-1980.
88th edition, pp. 688, 689.

distribution cooperatives located primarily in rural areas of Pennsylvania.^{5/}
AE had a 1978 winter peak load of 376 MW.^{6/} In 1978, AE purchased
1,613,219 MW hr from the Power Authority of the State of New York (PASNY),
Pennelec, Met Ed, West Penn Power Company and JCPL.^{7/}

C. Construction Permit Antitrust Review

PP&L filed an application with the Atomic Energy Commission dated March 23, 1971 to construct and operate the proposed Susquehanna nuclear facility. This facility was to be located in Luzerne County, Pennsylvania and have an electrical output of approximately 1100 Mwe for each of two generating units.

By letter dated November 1, 1971, antitrust information submitted by PP&L was transmitted to the Attorney General (AG). The AG's advice was sought as to whether the licensing of Susquehanna would create or maintain a situation inconsistent with the antitrust laws.

By letter dated April 28, 1972, the Acting Assistant AG concluded^{8/} that:

"Our investigation reveals that UGI Corporation and Allegheny Electric Cooperative are the only entities which have requested

^{4/} Application For Amendment of Construction Permits Nos. CPPR-101 and CPPR-102, Docket Nos. 50-387 and 50-388, p. 2.

^{5/} One of its members, the Sussex Rural Electric Cooperative, is located in Sussex County, New Jersey.

^{6/} Electric World Directory of Electric Utilities 1979-1980, 88th edition, p. 701.

^{7/} Ibid.

^{8/} See Exhibit B.

ownership participation in the Susquehanna Units. PP&L has expressly stated -- both to UGI and Allegheny and to the Department -- that it is willing to permit both entities to obtain an ownership share of these units. Both UGI and Allegheny are too small to obtain the benefits and cost savings from economy of scale in bulk power supply without participation in units built by larger utilities. Access to the Susquehanna Units will provide an additional source of low cost power necessary for UGI and Allegheny to maintain their competitive posture in Pennsylvania.

PP&L has also committed itself to eliminate or revise the two types of provisions in its wholesale power contracts with municipal electric systems which unreasonably restrain the competitive operations of these wholesale customers. So long as PP&L proceeds promptly to file appropriately amended contracts with the Federal Power Commission, we recommend that the Commission need not conduct an antitrust hearing with respect to this application."

The "Notice of Receipt of Attorney General's Advice and Time for Filing of Petitions To Intervene on Antitrust Matters" was published in the Federal Register, Volume 37, No. 91 - May 10, 1972. No petitions to intervene were received during a 30 day public notice period.

Construction Permits Nos. CPPR-101 and CPPR-102, authorizing the construction of the Susquehanna Steam Electric Station, Units 1 and 2 were issued on November 2, 1973. There were no antitrust license conditions, only the commitments made by PP&L to the Department of Justice regarding contract amendments as described above.

On March 31, 1977, the U. S. Nuclear Regulatory Commission (NRC) received an application to amend construction permits Nos. CPPR-101 and CPPR-102

to reflect a 10% ownership sale of the Susquehanna facility to the Allegheny Electric Cooperative, Inc. (AE). By letter dated April 12, 1977 AE, through PP&L, submitted antitrust information pursuant to 10 CFR 50, Appendix L requirements. By letter dated May 26, 1977, this material was forwarded to the AG for his advice. The notice of "Receipt of Additional Antitrust Information; Time for Submission of Views on Antitrust Matters" was published in the Federal Register, Volume 42, Number 121, on June 23, 1977. No comments were received.

By letter dated July 28, 1977, the AG advised ^{9/} the NRC that

"...no antitrust hearing will be necessary with respect to Allegheny's acquisition of an ownership interest in Susquehanna Station."

The AG's advice letter was published in the Federal Register, Volume 42, Number 152 on August 8, 1977. No petitions to intervene were received.

Amendment No. 1 to construction permits CPPR-101 and CPPR-102 was issued on January 10, 1978 to reflect AE's 10% ownership interest in Susquehanna. No antitrust license conditions were attached.

^{9/} See Exhibit C.

D. Information on Changes Since the CP Antitrust Review

On April 10, 1978, PP&L tendered its application for operating licenses for the Susquehanna units and by letter dated August 31, 1978, submitted information^{10/} on behalf of AE and itself, pursuant to Regulatory Guide 9.3. Notice of receipt of the Reg. Guide 9.3 information was published in the Federal Register, Volume 44, No. 197 on October 10, 1979. No comments were received from the public.

After reviewing the submitted Reg. Guide 9.3 information, information was sought from the Securities and Exchange Commission (SEC) and the Federal Energy Regulatory Commission (FERC) on PP&L's and AE's activities in those two forums. By letter dated December 11, 1978 additional information was requested from PP&L concerning various negotiations for power supply arrangements and various acquisitions of electric facilities. This information was submitted by letter dated February 9, 1979.^{11/} Telephone interviews with managers and executives of various municipalities, REA Cooperatives and an investor-owned utility were subsequently held in May and June, 1980 to determine the status and substance of the ongoing negotiations between these entities and the applicants.^{12/} PP&L submitted additional information, by cover letter dated October 7, 1980, on the commitments made by PP&L to the AG at the construction permit stage and the details of the power supply arrangement between UGI and PP&L.^{13/}

^{10/} See Exhibit D (note: contracts contained in the submission are not included in this exhibit).

^{11/} See Exhibit E.

^{12/} See Exhibit F.

^{13/} See Exhibit G.

E. Analysis of the Changes Since the CP Review

The following represent the findings of staff's investigation:

(1) PP&L's Acquisition of Hershey Electric Company (HEC)

HEC, a subsidiary of Hershey Estates, was an investor-owned utility headquartered in and serving Hershey, Pennsylvania. In 1972, HEC sold at retail 279,231 kwhr of electricity.^{14/} At the time of its acquisition, HEC was a full-requirements customer of the Metropolitan Edison Company (Met Ed).

In 1975, Hershey Estates contacted representatives of PP&L and Met Ed, respectively, requesting them to submit proposals to purchase all of the outstanding capital stock of HEC. PP&L submitted a proposal dated October 7, 1975. In the 12 months before Hershey Estates requested the purchase proposals, it had not requested any new power arrangements from any entity.

By agreement dated December 1, 1975, PP&L, Hershey Estates and HEC entered an agreement on the sale of the HEC capital stock to PP&L. By a

^{14/} Electrical World Directory of Electric Utilities, 1974-75, 83rd edition, p. 669.

motion, dated March 26, 1976, PP&L applied to the SEC, under the Public Utility Holding Company Act of 1935, to acquire all of the outstanding shares of HEC capital stock.^{15/} By petition dated May 14, 1976 Met Ed requested "... Leave to Intervene and Request for Hearing" concerning PP&L's proposed acquisition of HEC (SEC File No. 70-5839). The primary reason for Met Ed's petition was:

"If Met-Ed were to cease to supply Hershey Electric's electric requirements in the near future and were to lose the revenues from such service, the impact on Met-Ed for the next few years would be to decrease its operating income and net income, without appreciably decreasing Met-Ed's capital requirements. Met-Ed has concluded that any wholesale for resale customers should be required to give at least three years' prior notice of its intentions to terminate the receipt of service, so as to permit Met-Ed to adjust its construction program and capital requirements to the changed conditions resulting therefrom."

A similar protest by Met Ed was filed before the Pennsylvania Public Utility Commission (PUC) concerning PP&L's application to get the PUC's approval to acquire all of the outstanding capital stock of HEC (Application Docket No. 99763). No other protests were filed by Met Ed or by any other entity.

Met Ed later withdrew its protests to PP&L's acquisition of HEC at both the SEC and the PUC. PP&L acquired the outstanding capital stock of HEC on December 31, 1976. Met Ed was to continue to serve HEC as a full-requirements customer until HEC could be integrated into the PP&L transmission system (mid-1980).

^{15/} See Exhibit H.

Staff finds the PP&L did not solicit the merger, nor did they influence the HEC to propose the merger. The merger was proposed by HEC to both PP&L and Met Ed. HEC decided on its own volition to accept the offer by PP&L. HEC had not made any complaints against PP&L in the few years before the merger. Therefore, staff believes that the acquisition of HEC by PP&L should not be viewed as an anticompetitive action by PP&L and does not connote a "significant change" in PP&L's activities.

(2) Modifications Made To The PJM Interconnection Agreement

PP&L identified a variety of changes made in their contractual arrangements since the CP review stage. The changed agreements identified were all related to PJM. The changes identified fall in the following categories:

- new interconnection arrangements between PJM and neighboring utilities (or groups of utilities);
- changes in existing interconnection arrangements between PJM and neighboring utilities (or groups of utilities);
- changes in the PJM Agreement.

All of the above changes received the approval of the Federal Power Commission or its successor the Federal Energy Regulatory Commission.

After reviewing the new or changed contracts, it is staff's opinion that the changes and additions to the PJM Agreements does not adversely affect competition in PP&L's area of operation and, therefore, does not constitute a "significant change."

(3) Negotiations Between The Applicants and Others

Responses to Regulatory Guide 9.3 and to subsequent staff inquiries to the Applicants and to others^{16/} indicate that PP&L and AE have been extensively involved with various municipalities, rural electric cooperatives, and investor-owned utilities on power supply arrangements:

- (a) In January 1978, PP&L sold AE a 10% undivided interest in Susquehanna. Subsequently, a section of the Susquehanna-Sunbury 500 kv line was sold to AE to facilitate this transaction.
- (b) In January 1978, the Atlantic City Electric Company expressed an interest in purchasing from PP&L capacity and associated energy in the amount of about 100 MW in 1983, increasing thereafter for an undefined period, or opting for an ownership interest in PP&L's generating stations. PP&L responded that an ownership interest in Susquehanna SES or firm purchases of capacity and associated energy from Martins Creek SES Units #3 and #4 and from Susquehanna SES could be considered.

^{16/} See Exhibits D, E, F, and G.



ACE has subsequently signed a power purchase agreement with PP&L granting ACE a unit power purchase from Susquehanna of about 125 MW until September 30, 1991. Arrangements have been made to deliver this power through a combination of wheeling arrangements and joint ownership of transmission lines.

- (c) In September 1977, the General Public Utilities Corporation expressed an interest in purchasing capacity in amounts up to 500 MW and associated energy from PP&L's Susquehanna SES from the period June 1981 through May 1984. As of 1978, negotiations involving this purchase were underway.
- (d) In February 1978, the City of Vineland (New Jersey) expressed an interest in purchasing 30 Mw of capacity and associated energy from PP&L's generating stations beginning in 1983 and continuing for an undefined period or, alternatively, purchasing an ownership interest in PP&L's generating stations. PP&L responded that an ownership interest in the Martins Creek Units #3 and #4 or from Susquehanna could be considered. The City of Vineland then expressed interest in purchasing an ownership interest in Susquehanna SES or purchasing capacity and associated energy from Susquehanna SES. As of 1978, negotiations involving this purchase were underway.

During a staff inquiry, a former manager of Vineland complained that PP&L was offering only unit power from Susquehanna and for

only a ten year period, rather than an ownership interest. PP&L in response to staff questions, states that Vineland's primary interest is in a firm purchase of capacity and energy rather than in an ownership interest. The present manager suggests that Vineland has still not reached a decision as to participation but believes that once it has, the details can be worked out with PP&L.

- (e) Southern Maryland Electric Cooperative, Inc. (SMECO) has recently requested information from AE on the possibility of joint ownership in future generating facilities. SMECO subsequently found that it was not economical for it to participate in Susquehanna or any other projects now being considered by AE primarily because of the transmission wheeling costs that would be associated with such participation.
- (f) In a letter dated December 17, 1979, PP&L offered to make Susquehanna capacity available to UGI through: (1) a sale of undivided ownership in Susquehanna, or (2) a firm sale of capacity and energy from the station. UGI has not indicated to PP&L an interest in accepting either option.
- (g) In September 1975, the Borough of Lansdale requested PP&L to submit a proposal to supply the electrical requirements to the Borough. Lansdale presently receives wholesale service from the Philadelphia

Electric Company. An outline of PP&L's proposal was submitted to the Borough in April of 1977 with discussions thereafter.

In response to staff's questions regarding the wholesale service from PP&L, the Manager of Lansdale has stated that Lansdale would need to build a five mile transmission line and that it was presently having difficulty in obtaining easements for such a line.

- (h) In August of 1978, the Borough of Lansdale requested discussions with regard to a wheeling service by PP&L for delivery of PASNY power. Although PP&L has agreed to provide such wheeling service, Philadelphia Electric Company has not.
- (i) In response to an inquiry in November 1975 from the Borough of Kutztown, PP&L made an offer to supply the total power requirements of the Borough. Kutztown has elected so far to continue to purchase its power needs from Metropolitan Edison Company. It is considering a possible transfer of suppliers from Met Ed to PP&L in about two years when its present wholesale contract with Met Ed is due to expire.
- (j) In December 1975, Allegheny Electric Cooperative, Inc. requested that PP&L review the possibility of providing 66kv service to a proposed substation of the Tri-County REC of Mansfield, Pennsylvania. Subsequently, service was requested at 12 kv. Tentative terms have been given for providing 12 kv service to Tri-County.

- (k) In May 1978, Allegheny Electric Cooperative requested PP&L to prepare a proposal to supply 12,000 volt service to Sullivan, County REC. Sullivan County presently receives its power supply from Pennelec. Although a proposal was submitted by PP&L, Allegheny, on behalf of Sullivan, has not been able to negotiate satisfactory terms with Pennelec to obtain about eight miles of transmission line which would be required for the transaction.
- (l) In June 1978, the Borough of Perkasio, a resale customer being served at 12 kv, requested PP&L to investigate serving the Borough at 66 kv. Although PP&L's response was favorable, Perkasio has not been able to complete the arrangement because of difficulties in obtaining right-of-way for a needed substation.
- (m) On May 26, 1978, the Borough of Mifflinburg, served by PP&L, elected to change the delivery voltage from 12,000 volts to 66,000 volts.
- (n) The Borough of Hatfield changed from a partial requirements to a full requirements customer on April 23, 1977.
- (o) On November 22, 1977, a contract was signed between PP&L and UGI Corporation to supply its Luzerne Electric Division with any needed electric requirements above that of their generating capacity. This arrangement extends to 1986 with diminishing supply thereafter

to terminate in 1989. This arrangement evolved from settlement negotiations and a settlement between the companies which was accepted by FERC.^{17/}

The above list of power supply activities indicates that PP&L and AE has acted reasonably in making bulk power supply services available to others and that there is active competition at the wholesale level in the area. Discussion with managers and directors of electric utilities in the area has indicated that they have been treated fairly by PP&L and AE. Accordingly, staff does not feel that power supply changes that have occurred in the area since the construction permit antitrust review have any anticompetitive significance.

(4) Commitments to the Department of Justice

As noted in the AG advice letter (see Exhibit B), PP&L made two commitments to the DOJ in connection with its construction permit antitrust review. The first commitment was to offer Susquehanna power to AE and UGI. PP&L has done this. (See Section E(3), (a) and (f) of this review.)

The second commitment made by PP&L was to revise various PP&L wholesale contracts containing certain restrictive provisions. The revision involved eliminating restrictive provisions on the use of purchased

^{17/} See Exhibit G for the settlement agreement, power agreement and supplements to each. Revised schedules A and B pertaining to costs and rates to be charged are not included here.

power and modifying provisions in wholesale contracts which unreasonably prohibited parallel operation of generation. The restrictive provisions were included in ten individual agreements. PP&L rewrote those agreements and transmitted the revised agreements to its wholesale customers in June 1972. Only eight of the ten revised agreements have been executed and filed with the FPC because, without explanation, the Boroughs of Watsontown and Olyphant have not executed the revised agreements.

NRC staff believes that PP&L has used its best efforts to fulfill the commitment made to the DOJ. Therefore, staff believes that, in respect to the commitments made to the DOJ, there has not been a "significant change" in PP&L's proposed activities.

F. Conclusions

Staff has reviewed the changes and proposed changes in the activities of the Applicants (i.e., PP&L and AE) of the Susquehanna plant since their respective construction permit antitrust reviews.

In order to conduct this operating license review, staff has obtained information from PP&L, FERC, SEC, and from other electric utilities that deal with the Applicants. The information received was evaluated using

the criteria that the Commission set forth in its June 30, 1980 Memorandum and Order in Summer upon which to base a significant change determination.

As a result of the analysis of the information obtained, staff finds that the activities and proposed activities of PP&L and AE since the CP review, taken individually and collectively, do not warrant a significant change determination.

The Department of Justice has reviewed a draft analysis by the staff along with other material and has concurred in the staff's finding.^{18/}

^{18/} See Exhibit I