



Washington, D.C. 20530

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Joseph Rutberg, Esquire
Chief, Antitrust Division
Nuclear Regulatory
Commission
Washington, D.C. 20555

Re: Pennsylvania Power & Light Company (Susquehanna
Units 1 and 2) Docket Nos. 50-387A and 50-388A

Dear Mr. Rutberg:

You have requested the Department of Justice ("Department") to provide you its view on whether there has occurred a significant change since the issuance of the construction permit in the above captioned proceeding on November 2, 1973 (as amended on January 10, 1978) which would warrant an antitrust review pursuant to section 105(c)(2) of the Atomic Energy Act of 1954, as amended, ("the Act"), prior to the issuance of a license to Pennsylvania Power & Light Company ("PP&L") to operate the Susquehanna Units 1 and 2.. 1/

The Nuclear Regulatory Commission ("Commission") issued a Memorandum and Order, CLI-80-28, on June 30, 1980, that contained criteria for the "significant changes" determination. In order to be considered significant, the change or changes: (1) must have occurred since the previous antitrust review of the licensee(s); (2) be reasonably attributable to the licensee(s); and (3) have antitrust implications that would likely warrant some Commission remedy.

Based on the factual matters set forth in the information you transmitted to the Department and other information

1/ On January 10, 1978, Amendment No. 1 to the construction permits was issued reflecting the purchase by Allegheny Electric Cooperative, Inc. ("AEC") of a 10% ownership interest in each of the Susquehanna units. PP&L and AEC are hereinafter referred to as "Applicants."

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available to us, it appears that the changes that have occurred since issuance of the construction permits are: (1) the acquisition of Hershey Electric Company by PP&L in 1976; (2) additions to and modifications of the Pennsylvania-New Jersey-Maryland ("PJM") Agreement and other interconnection agreements; (3) negotiations between the Applicants and other systems relating to power supply arrangements.

Applying the Commission's criteria to these changes, the Department concludes that these are not significant changes within the meaning of Section 105(c)(2) of the Act. 2/

First, PP&L's acquisition of Hershey Electric Company ("HEC") does not have antitrust implications that would likely warrant some Commission remedy. The Department has no reason to believe that PP&L acted with an anticompetitive purpose in making this acquisition, nor does it appear that this acquisition would have a substantial impact on affected markets.

The second category of change referred to above was certain additions and modifications to the PJM Agreement and other interconnection agreements. These have been approved by the Federal Power Commission or its successor agency, the Federal Energy Regulatory Commission. The Department does not view these changes as significant.

Thirdly, the Applicants have engaged in various negotiations and consummated certain agreements with other systems. The information you provided the Department does not reveal unreasonable conduct on the part of PP&L or AE indicating substantial competitive problems warranting an antitrust review.

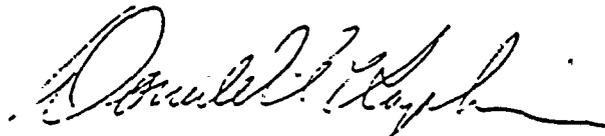
2/ The Department filed a Response to the Commission's proposed "significant change" criteria with the Commission on October 10, 1980, in South Carolina Electric and Gas Company and South Carolina Public Service Authority (Virgil C. Summer Nuclear Station, Unit No. 1) NRC Docket No. 50-395A. The Department suggested a third criterion different from that proposed by the Commission. The Department's proposed third criterion would require significant changes in the competitive environment (i.e., changes in the structure of the market or in the conduct of the licensee with respect to the construction or operation of the licensed plant). Even under this different criterion, the Department views the present situation in Pennsylvania as not constituting a significant change. See also the Comments of the Department of Justice in Response to the Nuclear Regulatory Commission Order of January 15, 1981, filed on February 6, 1981.

Lastly, PP&L thus far has fulfilled in good faith the commitments it made to the Department in connection with the Department's antitrust review at the construction permit stage. ^{3/} PP&L has offered an ownership interest in the nuclear units to Allegheny Electric Cooperative ("AEC") and UGI Corporation ("UGI"). AEC has purchased a 10% share of each unit. UGI has not yet decided to purchase an ownership share and there is no indication that PP&L has not acted in good faith in its negotiations with UGI. The second commitment made by PP&L to the Department was elimination of provisions in certain agreements with wholesale customers which (1) prohibited certain municipal customers from using power purchased from PP&L to serve customers outside their current service areas or to sell to other utilities and (2) unreasonably prohibited parallel operation with the customer's own generation resources. The Department understands that these agreements have been re-written to eliminate the objectionable features and that eight of the ten agreements have been executed and filed with the Federal Energy Regulatory Commission. The Boroughs of Watsonstown and Olyphant have failed to execute the remaining two agreements through no apparent fault of PP&L.

As PP&L thus far has used its best efforts to fulfill the commitments made to the Department, there has been no significant change in these commitments.

In light of the above, the Department perceives no significant change since the prior antitrust review. Accordingly, no antitrust review is warranted at this time in connection with the application for an operating license for the subject units.

Respectfully,



Donald A. Kaplan
Chief, Energy Section
Antitrust Division

^{3/} See Letter to Marcus A. Rowden, Associate General Counsel, U.S. Atomic Energy Commission from Walker B. Comegys, Acting Assistant Attorney General, Antitrust Division, dated April 29, 1972.