

NUCLEAR REGULATORY COMMISSION  
DOCKET NOS. 50-528A, 529A  
ARIZONA PUBLIC SERVICE COMPANY, ET. AL.  
NOTICE OF FINDING OF NO SIGNIFICANT ANTITRUST CHANGES  
AND 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 licensees' activities or proposed activities have occurred subsequent to the previous construction permit reviews of Palo Verde 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.

"Participating in the Palo Verde Nuclear Generating Station, Units 1 and 2, are Arizona Public Service Company, Salt River Project Agricultural Improvement and Power District, Public Service Company of New Mexico, El Paso Electric Company, Southern California Edison Company, Los Angeles Department of Water and Power, and Southern California Public Power Authority, collectively referred to as "licensees". Based upon examination of events since issuance of the Palo Verde Nuclear Generating Station construction permit to the licensees, 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 reviews are not "significant" in an antitrust context to require a second formal antitrust review at the operating license stage of the application for licenses. Staff has concluded that those 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. In reaching this conclusion, the staff considered the structure of the electric utility industry in the southwestern United States, the events relevant to the Palo Verde construction permit antitrust reviews and the events that have occurred subsequent to those permit reviews.

"The Conclusion of the staff's analysis is as follows:

'The staff has applied the Commission's "significant change" criteria in examining the antitrust implications of the activities and proposed activities of all of the applicants for the Palo Verde 1 and 2 operating licenses subsequent to the Commission's previous construction permit antitrust reviews.



'Arizona Public Service Company (APS) and Salt River Project Agricultural and Improvement District (SRP), two of the four remaining original applicants for the Palo Verde construction permit, had agreed to the inclusion of a wheeling license condition in the construction permit so as to mitigate potential anticompetitive problems arising from contracts with smaller utilities. In the period since the construction permit review, both APS and SRP have provided, in staff's view, wheeling services consistent with the intent of the license condition. Further, APS and SRP have continued to provide other types of bulk power services to smaller utilities not dissimilar to those offered prior to the completion of the construction permit review. Public Service Company of New Mexico (PSNM) and El Paso Electric Company (EPE), the other two remaining original Palo Verde applicants, were not subjected to any license conditions at the construction permit stage. Nonetheless, PSNM and EPE have continued to offer and provide to smaller utilities wholesale power service, wheeling service and various other coordination services on a scale comparable to, and perhaps even larger than, that undertaken prior to the construction permit review.

'Subsequent to the filing of the original CP application, Southern California Edison Company (SCE), Los Angeles Department of Water and Power (LADWP) and Southern California Public Power Authority (SCPPA) became participants and the M-S-R Public Power Agency became a tentative participant in Palo Verde. The construction permit review of SCE, completed in 1976, did not reveal a need to impose license conditions on SCE's participation in Palo Verde. Still later, in 1981, an examination by staff of SCE's activities since the issuance of the San Onofre 2 and 3 construction permits resulted in a staff finding that no "significant changes" in SCE's activities had occurred with respect to the San Onofre 2 and 3 operating license application. In the brief time period since the issuance of the San Onofre 2 and 3 operating license finding, the staff has not obtained any information that would suggest a contrary finding of "significant change" with respect to the Palo Verde 1 and 2 operating license. LADWP and SCPPA became owners of Palo Verde in 1981. The construction permit review of LADWP and SCPPA which terminated on April 8, 1982, disclosed no antitrust problems and M-S-R recently withdrew its participation as a result of voter decisions. In the extremely brief period of time since the completion of the construction permit reviews of LADWP and SCPPA the staff has not become aware of any actual or potential antitrust problems.



'Based on the foregoing analysis, the staff has concluded that the changes in the applicant's activities since the completion of the Palo Verde construction permit antitrust reviews do not have any antitrust implications and, thus, do not require a further, formal antitrust review at the operating license stage with respect to Palo Verde 1 and 2.'

"Based on the staff's analysis, it is my finding that a formal operating license antitrust review of the licensees with respect to the Palo Verde Nuclear Generating Station, Units 1 and 2, is not required."

Signed on January 28, 1983, 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, D. C. 20555 by (30 days). Requests for a reevaluation of the no significant changes determination shall be accepted after the date when the Director's finding becomes final but before the issuance of the OL only if they contain new information, such as information about facts or events of antitrust significance that have occurred since that date, or information that could not reasonably have been submitted prior to that date.

FOR THE NUCLEAR REGULATORY COMMISSION

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