

11/27/86

SHEARON HARRIS NUCLEAR POWER PLANT, UNIT 1
OPERATING LICENSE ANTITRUST REVIEW
FINDING OF NO SIGNIFICANT CHANGE

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 licensees' 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 to the Director, Office of Nuclear Reactor Regulation. Based upon an examination of the events since issuance of the Shearon Harris construction permits to the Carolina Power and Light Company, the staffs of the Planning and Resource Analysis Branch, Office of Nuclear Reactor Regulation and the Antitrust Section of the Office of the Executive Legal Director, hereafter referred to as "staff", have jointly concluded, after consultation with the Department of Justice, that the changes that have occurred since the antitrust construction permit review are not of the nature to require a second antitrust review at the operating license stage of the application.

In reaching this conclusion, the staff considered the structure of the electric utility industry in both North and South Carolina, the events relevant to the Shearon Harris construction permit review and the related Brunswick operating license review and the events that have occurred subsequent to these reviews:

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

"Carolina Power and Light (CPL) and the North Carolina Eastern Municipal Power Agency (NCEMPA) are joint owners of the Shearon Harris Nuclear Power Plant (Harris). CPL is a relatively large, fully integrated investor owned utility system serving in North Carolina and South Carolina. NCEMPA is a joint action agency, representing over thirty municipal electric utility systems in North Carolina. CPL supplies wholesale power to NCEMPA, and contractually provides transmission service between NCEMPA and its members. CPL also provides wholesale service to eighteen electric membership cooperatives, four other municipal electric utilities, and one private utility.

"The Department of Justice (Department) rendered antitrust advice to the Commission in 1972 following the Department's review of CPL in connection with CPL's construction permit (CP) application for Harris. In that advice letter, the Department noted that it had received separate complaints regarding CPL's practices, one from a group of fourteen municipal electric distribution utilities, and a second from EPIC, Inc., an agency representing both municipals and cooperatives in the area. In addition, the Department noted several objectionable restrictive provisions in CPL's wholesale contracts. CPL denied any anticompetitive intent or actions, but agreed to remove the alleged restrictive contract provisions, and agreed to accept certain procompetitive conditions in the Harris licenses in exchange for a "no hearing" advice letter from the Department.

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"Subsequent to the Harris CP antitrust review, the Department reviewed, (1) CPL with respect to the Brunswick operating license (OL) application, and (2) NCEMPA with respect to its ownership participation in Harris. In neither instance, did the Department express any further antitrust concerns.

Staff's review of changes in load forecasts, generation and transmission additions, power delivery points, and rate schedules does not suggest any significant anticompetitive effects. Further, CPL's purchases of the Domestic Electric Company and of Pinehurst, Inc., indicate reasonable business transactions which had no significant consumer or local regulatory opposition. Finally, staff views CPL's sale of an ownership share in Harris to NCEMPA and the associated service arrangements as consistent with antitrust conditions contained in other nuclear power plant licenses, and the transmission service arrangements consistent with its Harris antitrust license conditions. Although negotiations for transmission service arrangements between CPL and the North Carolina Electric Membership Corporation (NCEMC) have not been completed, any subsequent problems that may arise therewith may be treated under the Commission's rules for enforcement of license conditions. In conclusion, staff does not recommend a "significant change" finding for the Harris OL application."

Based upon staff's analysis, it is my finding that a formal operating license antitrust review of the Shearon Harris Power Plant, Unit 1, is not required.

Original Signed by
H. R. Denton

Harold R. Denton, Director
Office of Nuclear Reactor Regulation

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SHEARON HARRIS NUCLEAR POWER PLANT, UNIT 1

CAROLINA POWER & LIGHT COMPANY AND NORTH CAROLINA

EASTERN MUNICIPAL POWER AGENCY

DOCKET NO. 50-400A

FINDING OF NO SIGNIFICANT ANTITRUST CHANGES

Shearon Harris Nuclear Power Plant
Operating License Application
Significant Change Analysis

	<u>Page</u>
A. Introduction	1
B. Background	2
1. Electric Utility Systems	
2. Harris Construction Permit Antitrust Review	
3. Brunswick Operating License Antitrust Review	
4. Ownership Transfer in Brunswick and Harris	
C. Analysis of Changes Since the Harris Construction Permit Review	11
1. Physical System Changes	
2. Organizational Changes	
3. Service Changes	
4. Contractural Changes	
D. Summary and Conclusions	15

HARRIS STATION
UNIT 1
SIGNIFICANT CHANGE ANALYSIS

A. Introduction

Section 105c(2) of the Atomic Energy Act of 1954, as amended, provides for an antitrust review of an operating license application if significant changes in the licensee's activities or proposed activities have occurred since the construction permit (CP) antitrust review. Authority to make the significant change determination was delegated to the Director, Office of Nuclear Reactor Regulation (NRR) for reactors. The Nuclear Regulatory Commission (Commission) in a Memorandum and Order (CLI-80-28) dated June 30, 1981 set forth three criteria upon which to base a "significant change" determination. These criteria are as follows:

1. The change or changes must have occurred since the previous construction permit review;
2. The change or changes must be attributable to activities or proposed activities of the licensee; and
3. The changed situation must have antitrust implications which would likely warrant a Commission remedy.

In connection with the Harris operating license application, the staff* has reviewed the post construction permit activities and proposed activities of the applicants, the Carolina Power and Light Company (CPL) and the North Carolina Eastern Municipal Power Agency (NCEMPA). It is the staff's conclusion that no "significant changes" have occurred subsequent to the CP reviews for the two applicants.

* The Planning & Resource Analysis Branch, Planning & Program Analysis Staff, Office of Nuclear Reactor Regulation and the Antitrust Counsel of the Office of the Executive Legal Director in consultation with the U.S. Department of Justice.

B. Background

In order to analyze the significance of the changes that have occurred since the CP antitrust review, a general knowledge is required of the electric utility systems that operate in proximity to the applicants' service areas. Also, the results of the CP antitrust reviews are fundamental in establishing a baseline for determining the changes that have occurred subsequent to those reviews. This background is discussed below.

1. Electric Utility Systems

CPL is a member of the Virginia-Carolina Subregion (VACAR) of the Southeastern Electric Reliability Council (SERC). There are six other electric utilities in VACAR; Duke Power Company (Duke), South Carolina Electric and Gas (SCEG), South Carolina Public Service Authority (SCPSA), Southeastern Power Administration (SEPA), Virginia Electric and Power Company (VEPCO), and Yadkin Inc (Yadkin). These utilities are strongly interconnected with each other and with surrounding utilities in the other SERC subregions and in the East Central Area Reliability Council (ECAR).*

CPL is headquartered in Raleigh, North Carolina and serves approximately 30,000 square miles of territory in North Carolina and in the lower Piedmont section of South Carolina. Duke is to the west, VEPCO to the northeast and SCEG to the south.

CPL has high voltage interconnections and power exchange agreements with Duke SCEG, SCPSA, TVA, VEPCO and Yadkin.**

* Southeastern Electric Reliability Council, Coordinated Bulk Power Supply Program, 1984-2003. Submitted by the Chairman of SERC, April 1, 1984, to the Department of Energy.

** Moody's Public Utility Manual, 1983 Vol. 1

SEPA serves no retail customers but generates electric power solely for sale to other electric utilities. Yadkin serves one industrial customer only, Alcoa. The other five utilities of VACAR are fully integrated utilities having generation, transmission and distribution facilities for service at wholesale and retail. SCPSA is a State agency^{*}, whereas the other four are investor owned utilities. As measured by peak load, Duke is the largest, VEPCO next, followed by CPL, SCEG and SCPSA. Of all the investor owned utilities in the U.S., CPL ranked 16th in terms of peak load in 1981.^{**}

There are 72 municipalities in North Carolina which own and operate distribution systems.^{***} Thirty-one of these systems are located in CPL's service area, 16 in VEPCO's service area, and 23 in Duke's service area. One is served by TVA and one by Nantahola Power and Light Company.

In May 1975, joint action legislation was passed by the North Carolina General Assembly allowing municipal electric systems in the State to jointly plan, develop, construct and operate generation and transmission facilities. In 1977, an amendment to the Constitution of North Carolina permitted joint power agencies to participate as joint owners with private utilities and rural electric cooperatives.

* Moody's Municipal & Government Manual, 1982, Vol. 2.

** Electric Light and Power, August 1982.

*** Mr. J.A. Jones, Vice Chairman, CPL, September 3, 1981, letter and attachment to Mr. Harold R. Denton, Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission.

Three joint agencies were formed - North Carolina Municipal Power Agencies Numbers 1, 2, and 3. As of September, 1981, Power Agency No. 1 was composed of 20 municipalities which purchased wholesale power from Duke. Power Agency No. 2 was composed of 15 municipalities that purchased wholesale power from VEPCO. Power Agency Number 3 was composed of 22 municipalities that purchased wholesale from CPL. Fourteen of the Agency 3 municipalities also belonged to Power Agency No. 2. * Thirty two members of Power Agency No. 3 chose to participate in the ownership of the Harris and Brunswick nuclear units; 11 of which were full requirements customers of VEPCO. This group of participating municipalities became the North Carolina Eastern Municipal Power Agency. **

CPL has electrical connections with numerous municipal and cooperative electric distribution systems which obtain their wholesale requirements directly from CPL or indirectly from SEPA or the North Carolina Eastern Municipal Power Agency (NCEMPA). CPL also contractually provides wholesale power to NCEMPA which in turn has power supply agreements with its members to supply their full power requirements, other than power supplied by SEPA or by self-generation. NCEMPA has no transmission system of its own; delivery of power to its members is accomplished using CPL's transmission system. CPL also transmits power from NCEMPA to CPL's interconnection points with VEPCO for subsequent delivery of power by VEPCO to distribution systems in its service area. In addition to providing delivery service for NCEMPA, CPL supplied full requirement wholesale service to 18 electric membership corporations and 3 municipal utilities as of February 16, 1984. CPL also supplied partial requirements wholesale service to another municipality and to one private distribution utility. ***

* Ibid.

** Mr. M.A. McDuffie, Senior Vice President, Nuclear Generation, CPL, February 16, 1984, to author.

*** Ibid.

The North Carolina Electric Membership Corporation (NCEMC) is a cooperative non-profit electric membership corporation incorporated under North Carolina Statutes on January 20, 1949. NCEMC has 27 member cooperatives served at wholesale by the following neighboring utilities: Duke, CPL, VEPCO and Nantahala Power and Light Company (Nantahala). In addition, NCEMC receives a small allotment of hydroelectric power from SEPA; power wheeled to NCEMC members by the neighboring utilities. NCEMC has an annual peak demand of approximately 2000 MW.

Ten (10) of NCEMC's members are served by Duke, six (6) by VEPCO, seventeen (17) by CPL and one (1) by Nantahala. This totals to more than 27 because six (6) members are served by more than one utility.

Until recently, NCEMC only administered the wholesale contracts between its members and the neighboring utilities. It had no generation or transmission facilities of its own. However, it has now entered into arrangements with Duke to purchase a 56.25% ownership share in the Catawba Nuclear Station, Unit 1. Under the arrangement, NCEMC will contractually supply the total power requirements of those members electrically connected with Duke. Contractual delivery of the power will be over Duke's transmission system. Power will also be contractually delivered over VEPCO's transmission system to those NCEMC members electrically connected to VEPCO. Negotiations for contractual delivery of power from NCEMC to its members presently served by CPL have not been successful to date.* (This is discussed in greater detail subsequently under "Contractual Changes.")

* Telephone contact with John Romano, Director of Rates for NCEMC, September 5, 1984.

2. Harris Construction Permit Antitrust Review

On August 18, 1972, the Department of Justice (DJ or Department) advised the Commission of the results of its construction permit antitrust review for the Shearon Harris Station, Units 1, 2, 3, and 4. The Department noted that CPL's numerous interconnection agreements enabled CPL to obtain the full benefits of reserve sharing, exchange of power, and coordinated development with other utilities; benefits which are necessary to maximize service economies and reliability. The Department further noted that numerous municipal and cooperative distribution systems, and two small privately owned systems, depended almost entirely on CPL for their wholesale requirements. The only exceptions noted were: (1) that most of the systems obtained a very small portion of their requirements from SEPA, wheeled to them by CPL, and (2) two cooperatives on the borders of CPL's territory received a portion of their requirements from Duke and VEPCO.

The Department stated that it had received complaints concerning CPL's practices from two sources:

1. A group of 14 North Carolina municipalities, who had petitioned to intervene before the Atomic Energy Commission with respect to CPL's Brunswick CP application, complained that CPL had not undertaken to discuss with them their request to participate in the Brunswick plant; and
2. EPIC, Inc. a group of North Carolina electric cooperatives and municipalities* complained that CPL had not responded to requests by EPIC for bulk power supply coordination, including the possibility of sharing in the ownership of bulk power generation facilities.

*EPIC, Inc. was organized in the late 1960's to study the feasibility of building its own generation and transmission system. EPIC represented all of the cooperatives and all but one of the municipalities which were wholesale customers of CPL.

The Department also noted that CPL's wholesale contracts contained restrictive provisions inhibiting its customer's ability to compete at wholesale and retail by imposing limitations on the geographical area where purchased power could be resold, as well as restrictions against connecting with other power sources and against resale to customers with larger than stipulated loads.

CPL denied any anticompetitive intent stating that the restrictions were meant to protect its wholesale customers from obligations to serve loads for which their systems were not designed. CPL stated that it was removing such restrictions when requested to do so and had never enforced the restrictions. As to CPL's refusal to allow participation in Brunswick, CPL stated that no request had been made to CPL except through a request by the municipalities to intervene in the Brunswick application proceeding. CPL stated further that its alleged refusal to deal consisted solely of an answer to the petition, challenging the Commission's jurisdiction under then existing law.

Although CPL denied that its actions were taken with any intent to monopolize, CPL agreed with the Department on certain conditions that could be attached to the Harris licenses. Briefly, these conditions stated that CPL would:

1. Interconnect and coordinate reserves with other entities in the service area,
2. Purchase from or sell bulk power to other entities,
3. Facilitate the exchange of bulk power over CPL's transmission system,
4. Sell power in bulk to other entities, and
5. Remove anticompetitive restrictions from wholesale contracts.

The above conditions were to be implemented on reasonable terms and conditions consistent with the Federal Power Act and all other lawful regulation and authority.

The Department declined to require CPL to provide participation in Harris on the basis that no requests had been made. With respect to Brunswick, the Department noted that the municipalities would have "grandfather" rights in the Brunswick operating license proceeding under section 105c(3) of the Atomic Energy Act, as amended.* The Department noted that the merits of the municipalities request for participation could be brought before the Commission when CPL applied for the Brunswick operating licenses.

The Department recommended that no antitrust hearing was necessary for Harris if the conditions agreed to by CPL were included in the licenses to be issued. The Department's advice letter was published in the Federal Register on September 6, 1972.

In response to the Federal Register notice, EPIC Inc. filed a motion on September 15, 1972, to extend the time for it to file a petition to intervene. EPIC stated that it was negotiating with CPL with respect to those matters that would be subject to an antitrust hearing and that it would not be in position to state the need for the hearing within the allotted time. There is no record of action by the NRC on the extension request, nor any further action by EPIC.

During 1973, 1974 and part of 1975, prior to issuance of the Harris CPs in 1978, the NRC staff, CPL and the Department negotiated explanatory notes to the license conditions. These explanatory notes were deemed necessary because of misunderstandings that had occurred regarding the meaning of similar license conditions associated with the Waterford 3 CP antitrust review. After agreement by all of the parties on the explanatory notes to be added, CPL was notified** that the conditions and the explanatory notes would be attached to the Harris licenses.

* Petitioners seeking to intervene in CP applications prior to the 1970 amendments to the Atomic Energy Act were given the right to petition at the operating license review stage.

** Mr. Edson G. Case, Acting Director, Office of Nuclear Reactor Regulation, April 16, 1975, letter to Sherwood Smith, Jr., Executive Vice President, Administration, CPL.

3. Brunswick Operating License Antitrust Review

CPL's application for a construction permit for the Brunswick nuclear units was not subject to an antitrust review because the application preceded the 1970 amendments to the Atomic Energy Act. However, the 1970 amendments contained a provision giving anyone who had petitioned to intervene in the construction permit the right to request an antitrust review at the operating license review stage. As discussed previously, a group of North Carolina municipals had petitioned to intervene with respect to the CP application. Thus, Brunswick was subject to an antitrust review of its operating license application.

Receipt of the Brunswick operating license application was noticed in the Federal Register on October 25, 1972. This was followed on November 11, 1973, by a joint request by a group of municipalities in North Carolina for an antitrust review. A joint request dated November 24, 1972, by EPIC, Inc, and four county Electric Membership Corporations (EMCs) for an antitrust review was also received.

Upon review of the antitrust information* submitted with the OL application, and subsequent information requested by the attorney General regarding CPL's position on granting intervenors participation in Brunswick, the Attorney General recommended no antitrust hearing provided CPL adhered to the Harris antitrust conditions..

No intervention requests were received in response to the publication of the Attorney General's advice in the Federal Register on April 18, 1973. As is discussed below, CPL has granted ownership participation to the NCEMPA in both the Brunswick and Harris nuclear plants.

* As specified in Appendix L of 10 CFR 50.

4. Ownership Transfers in Brunswick and Harris.

CPL applied* for an amendment on September 3, 1981, to its Harris CPs to add North Carolina Municipal Power Agency No. 3 (NCMPA3) as a co-owner of the facilities. Concurrently, an application for an amendment to the Brunswick OLs to include NCMPA3 as a co-owner in the Brunswick facilities was filed.

NRC's rules and regulations require that an application for an amendment follow the form prescribed for original applications.** Normally, this would require an antitrust review similar to that conducted for the CP. However, NRC normally exempts certain de minimus applicants from some of the requirements of an antitrust review.*** Although NCMPA3 had no generating capacity and met the de minimus requirements, CPL still supplied the Appendix L information along with other information.

The granting of ownership by CPL to NCMPA3 in the Brunswick and Harris facilities, along with arrangements for delivery of the power to the NCMPA3 members, was consistent with CPL's commitments made during the CP antitrust reviews of the applications. The information submitted raised no antitrust concerns with the Department of Justice or the NRC staff. Accordingly, the amendments were issued on September 15, 1981, for Brunswick and November 3, 1981 for Harris. Subsequently, the name NCMPA3 was changed to the North Carolina Eastern Municipal Power Agency (NCEMPA).

* Jones, September 3, 1981, Loc. cit.

** 10 CFR 50.90

*** 10 CFR 50.33a(a) (3). An applicant for a construction permit for a nuclear power reactor with electrical generating capacity of 200 mw(e) or less, is not required to submit the information described in Appendix L unless specifically requested by the Commission.

C. Analysis of Changes Since the Harris Construction Permit Antitrust Review

Subsequent to the construction permit antitrust review for Harris, CPL submitted information on September 3, 1983, in connection with the change in ownership amendment;^{*} on February 16, 1984, in response to NRC's Regulatory Guide 9.3;^{**} and on March 20, 1984, in response to verbal questions posed by staff at a meeting on February 16, 1984.^{***} Changes since the Harris CP review are grouped and discussed below by category designated as Physical System Changes, Organizational Changes, Service Changes and Contractual Changes.

1. Physical System Changes

Since the CP antitrust review, CPL has reduced its forecasts of future load growth, cancelled plans to construct certain generating units and delayed in-service dates for other generating units. In particular CPL has cancelled plans to construct Harris units 2, 3, and 4 and has delayed the projected in-service date for Harris 1 from 1984 to 1985. Concurrently, CPL has advanced the projected in-service date of Mayo Unit No. 2, a planned coal-fire unit. CPL gives several reasons for these changes: (1) changing economic conditions, (2) changes in customer usage patterns, (3) implementation of intensified Conservation and Load Management programs, (4) changes in cost escalation due to inflation, and (5) changes in regulatory requirements and uncertainty regarding future regulatory requirements. Staff accepts the reasons given for the changes as reasonable and discerns no anticompetitive motives or impacts due to these changes.

* Jones, September 3, 1981, Loc. cit.

** McDuffie, February 16, 1984, Loc. cit.

*** M.A. McDuffie, Senior Vice President, Nuclear Generation, CPL, March 20, 1984, to author.

CPL remains a member of VACAR and SERC and notes no significant changes in the structure or objectives of these organizations. CPL lists several changes in transmission interconnections, most of which represent increases in capacity. CPL also lists several additional points of delivery for its resale customers, particularly for distribution cooperatives. Staff recognizes these changes as normal changes in response to load or generation increases and discerns no anticompetitive implications in them.

2. Organizational Changes

The most significant organizational change was the establishment of the North Carolina Municipal Power Agencies, as discussed previously, in response to joint action legislation in North Carolina.

Staff views the formation of these agencies as having the positive aspects of improving competition and overall operating efficiency in the area. Staff's investigation and analysis of the formation of the agencies has disclosed no action on CPL's part to hinder the formation of the agencies. In contrast, CPL has allowed NCEMPA to participate in the ownership of the Brunswick and Harris units, and has contracted with NCEMPA to provide transmission and delivery service to NCEMPA's members.

3. Service Changes

CPL currently provides wholesale service to NCEMPA, 18 Electric Membership Corporations (EMCs), 3 full requirements municipal utilities, 1 partial requirement municipal utility, and 1 private distribution utility. CPL also provides transmission service from NCEMPA to NCEMPA's 32 participating utilities, including delivery service to the 21 utilities in CPL's service area. During the CP antitrust review, CPL served at wholesale 18 co-ops, 24 municipal systems and 2 small privately-owned systems.* The most

* Bruce B. Wilson, Acting Assistant Attorney General, Antitrust Division, Department of Justice, August 16, 1972, to Marcus A. Rowden, Associate General Counsel, U.S. Atomic Energy Commission.

significant change is that CPL has lost, at least contractually, 21 full requirement municipa; utilities to NCEMPA while gaining wholesale service and transmission service for NCEMPA. From a physical or load serving standpoint, there has been little change. From a contractual standpoint, there has been a change of considerable significance. However, as discussed previously, staff views this change as having positive aspects for competition and performance.

CPL now transmits power (contractually) from NCEMPA and delivers power to the Town of Ayden. Previously, Ayden was supplied by the City of Greenville which in turn was supplied by VEPCO. Staff views the change as a normal service rearrangement having negligible competitive implications. Staff's investigation and analysis of this change has disclosed no activity on CPL's or NCEMPA's part that would suggest an anticompetitive activity or result.

On April 18, 1978, the North Carolina Utilities Commission (NCUC) approved the purchase by CPL of Domestic Electric Company which owned an electric distribution system serving an area in and around Rocky Mount, North Carolina. At the same time, the NCUC approved the exchange and reassignment of customers between CPL and the City of Rocky Mount. Former Domestic Electric customers inside the city were reassigned to Rocky Mount, whereas former Rocky Mount customers located outside the city limits were reassigned to Domestic Electric.

Prior to the purchase, Domestic Electric Company was a private company which obtained its full requirements from the City of Rocky Mount which in turn was a full requirements customer of CPL. Thus, the effect of the purchase was to decrease CPL's wholesale load and increase its retail load with no overall change. Staff views the exchange of customers inside and outside the city as a logical exchange resulting in increased overall efficiency.

After specific inquiry by the staff regarding the purchase of the distribution system, CPL advised the staff* that since Domestic was a private system, the sale was not subject to a vote by its customers. However, public notice of the proposed sale was given, and no complaints were received and therefore no

* McDuffie, March 20, 1984, Loc. cit.

hearing was held before the NCUC. Staff views the sale of the privately owned distribution system as a reasonable business transaction without any antitrust implications, and under the purview of the state utility commission.

On October 19, 1982, the NCUC approved the purchase by CPL of the electric distribution system owned by Pinehurst, Inc., which provided service in the Pinehurst, North Carolina area. Prior to the purchase, CPL supplied Pinehurst at wholesale, such that the sale resulted in no net change in load. Staff's investigation of the sale disclosed generally the same events, effects and conclusions as described above for Domestic.

4. Contractual Changes

The sale to NCEMPA by CPL of an ownership interest in the Brunswick and Harris plants required several contractual arrangements between CPL and NCEMPA and between NCEMPA and its participating members. In addition to the construction and ownership agreement (sales agreement) between CPL and NCEMPA, there is a Power Coordination Agreement and an Operating and Fuel Agreement. There are also agreements between NCEMPA and its participants pertaining to power from the nuclear plant (the Project Power Sales Agreement) and the Supplemental Power Sales Agreement to provide for the supplemental power needs of the NCEMPA members.

Essentially, the contractual agreements between CPL and NCEMPA, VEPCO and NCEMPA and between NCEMPA and its participants jointly provide the long term baseload and supplemental power supply needs of NCEMPA and its participating members. Staff's investigation and analysis of these contractual arrangements have disclosed no antitrust implications.

In contrast to the municipal power agency, negotiations between CPL and the cooperative's organization (NCEMC) have not been successful. Staff's contacts with personnel of NCEMC indicate that the parties have been unable to agree on the terms and rates for transmission services or for generation ownership. While staff views this as unfortunate, it does not appear to represent a "significant change" under the Commission's criteria.

As discussed previously, the Department of Justice did not require CPL to provide participation in Harris during that CP antitrust review, nor in Brunswick during the OL review. With respect to transmission services, CPL's antitrust license conditions contained in the Harris CP (and to be carried forward into the OL) require CPL to provide such service. The remedy for failure to provide such services lies in a compliance proceeding, not in a significant change finding.

CPL notes several changes in its rate schedules since the CP antitrust review. In 1977, CPL filed a single tariff that was applicable to all resale customers. As a result of a settlement among the parties, the one tariff was separated into two tariffs, one applicable to electric cooperatives and the other to municipal and private distribution utilities. In 1984, after a revised filing of the two tariffs, a settlement in 1983 among the parties resulted in three tariffs: one applicable to cooperatives, a second to full requirement municipals and privately owned utilities, and a third to partial requirement utilities. Staff's review of the rate schedules has disclosed no antitrust concern. Because of varying customer demand characteristics, the imposition of different rate schedules for different classes of customers represents reasonable utility practice.

Since rate determinations are under the jurisdiction of FERC, the NRC staff does not usually review these rates, unless special circumstances suggest there may be antitrust implications. Nothing in this case indicates that a special review is necessary.

D. Summary and Conclusions

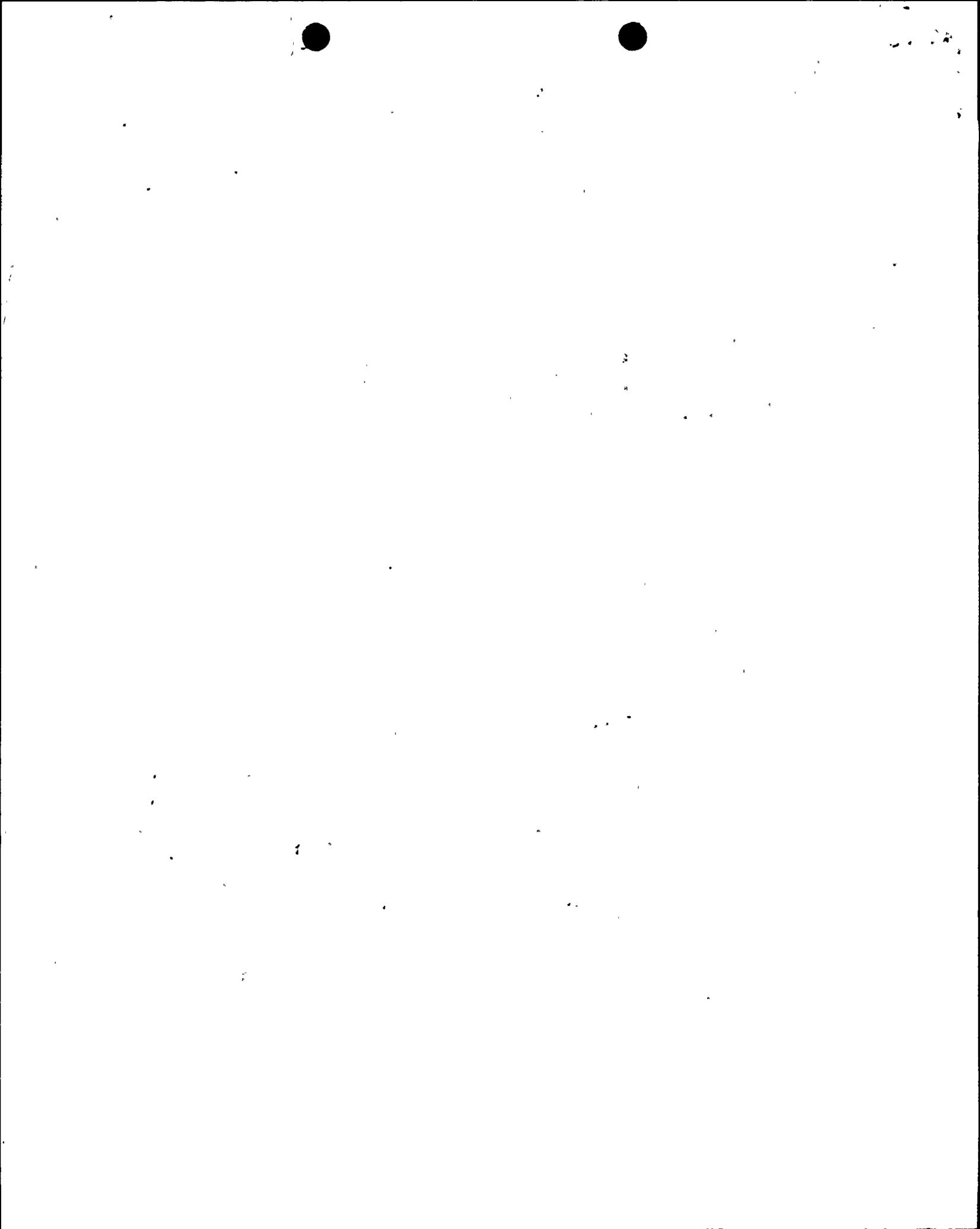
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Staff's review of changes in load forecasts, generation and transmission additions, power delivery points, and rate schedules does not suggest any significant anticompetitive effects. Further, CPL's purchases of the Domestic Electric Company and of Pinehurst, Inc., indicate reasonable business transactions which had no significant consumer or local regulatory opposition. Finally, staff views CPL's sale of an ownership share in Harris to NCEMPA and the associated service arrangements as consistent with antitrust conditions contained in other nuclear power plant licenses, and the transmission service arrangements consistent with its Harris antitrust license conditions. Although negotiations for transmission service arrangements between CPL and the North Carolina Electric Membership Corporation (NCEMC) have not been completed, any subsequent problems that may arise therewith may be treated under the Commission's rules for enforcement of license conditions. In conclusion, staff does not recommend a "significant change" finding for the Harris OL application.





UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555

June 19, 1984

Docket No. 50-400A

Docketing and Service Section
Office of the Secretary of the Commission

SUBJECT: CAROLINA POWER & LIGHT COMPANY, ET AL
SHEARON HARRIS NUCLEAR POWER PLANT, UNIT 1

One

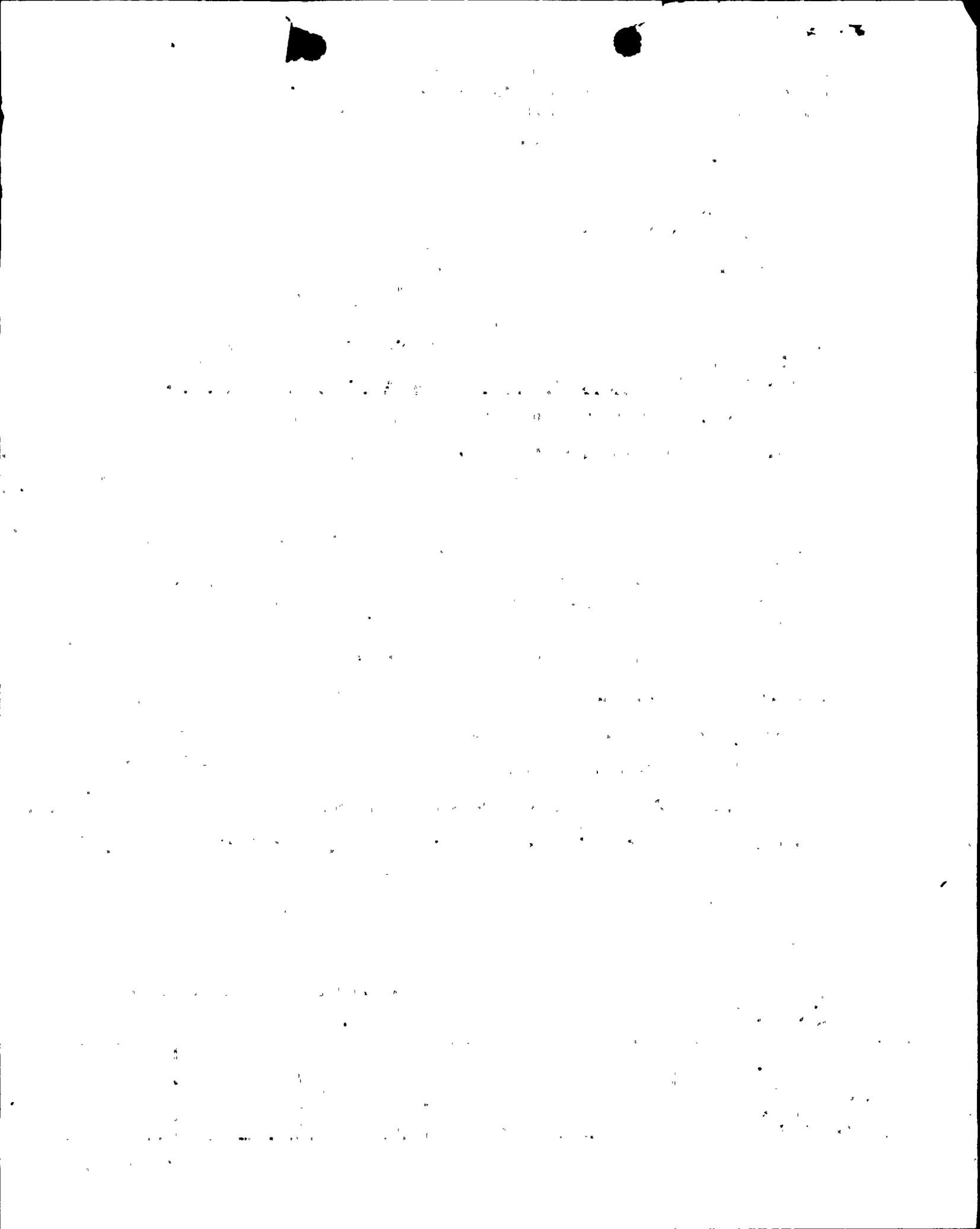
Two signed originals of the Federal Register Notice identified below ~~is~~ enclosed for your transmittal to the Office of the Federal Register for publication. Additional conformed copies (6) of the Notice are enclosed for your use. Please arrange for publication on June 29, 1984.

- Notice of Receipt of Application for Construction Permit(s) and Operating License(s).
- Notice of Receipt of Partial Application for Construction Permit(s) and Facility License(s): Time for Submission of Views on Antitrust Matters.
- Notice of Availability of Applicant's Environmental Report.
- Notice of Proposed Issuance of Amendment to Facility Operating License.
- Notice of Receipt of Application for Facility License(s); Notice of Availability of Applicant's Environmental Report; and Notice of Consideration of Issuance of Facility License(s) and Notice of Opportunity for Hearing.
- Notice of Availability of NRC Draft/Final Environmental Statement.
- Notice of Limited Work Authorization.
- Notice of Availability of Safety Evaluation Report.
- Notice of Issuance of Construction Permit(s).
- Notice of Issuance of Facility Operating License(s) or Amendment(s).
- Other: Notice of Receipt of Antitrust Information, dtd 6/15/84

Enclosure:
As Stated

Office of Nuclear Reactor Regulation

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UNITED STATES NUCLEAR REGULATORY COMMISSION

DOCKET NO. 50-400A

CAROLINA POWER & LIGHT COMPANY

NORTH CAROLINA EASTERN MUNICIPAL POWER AGENCY

NOTICE OF RECEIPT OF ANTITRUST INFORMATION

Carolina Power & Light Company has submitted antitrust information related to its application for an operating license for a pressurized water reactor (Shearon Harris Nuclear Power Plant, Unit 1) located in Wake and Chatham Counties, North Carolina, approximately 20 miles southwest of Raleigh. The data submitted contains antitrust information for review pursuant to NRC Regulatory Guide 9.3 necessary to determine whether there have been any significant changes since the completion of the antitrust review at the construction permit stage. The construction permit holders for Shearon Harris are Carolina Power & Light Company and North Carolina Eastern Municipal Power Agency.

On completion of the staff's antitrust review, the Director of Nuclear Reactor Regulation will issue an initial finding as to whether there have been "significant changes" under Section 105c(2) of the Atomic Energy Act. A copy of this finding will be published in the Federal Register and will be sent to the Washington, D. C. and local public document rooms and to those persons providing comments or information in response to this notice. If the initial finding concludes that there have not been any significant changes, requests for reevaluation may be submitted for a period of 30 days after the date of the Federal Register notice. The results of any reevaluation that is requested will also be published in the Federal Register and copies sent to the Washington, D. C. and local public document room.

A copy of the general information portion of the application for an operating license and the antitrust information is available for public examination and copying for a fee at the Commission's Public Document Room, 1717 H Street, N. W., Washington, D. C. 20555, and at the local public document room at the Wake County Library, 104 Fayetteville Street, Raleigh, North Carolina 27601.

Any person who desires additional information regarding the matter covered by this notice or who wishes to have his views considered with respect to significant changes related to antitrust matters which have occurred in the applicant's activities since the construction permit antitrust review should submit such requests for information or views to the U. S. Nuclear Regulatory Commission, Washington, D. C. 20555, Attention: Chief, Site Analysis Branch, Office of Nuclear Reactor Regulation, on or before July 30, 1984 .

Dated at Bethesda, Maryland, this 15th day of June, 1984 .

FOR THE NUCLEAR REGULATORY COMMISSION



Victor Nerses, Acting Branch Chief
Licensing Branch No. 3
Division of Licensing