



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

December 19, 1990

Robert A. Jablon, Esq.
Spiegel & McDiarmid
1350 New York Avenue, N.W.
Washington, D.C. 20005-4798

Dear Mr. Jablon:

SUBJECT: PALISADES PLANT - TRANSFER OF PALISADES PLANT OWNERSHIP

This letter is in response to your September 21, 1990 letter, on behalf of the Michigan Municipal/Cooperative Group, requesting reconsideration of our decision not to conduct an antitrust review regarding the proposed transfer of ownership interests in the Palisades Plant to the Palisades Generating Company. You had originally requested that the Commission initiate an antitrust review in connection with this application. On August 22, 1990, we responded and advised you that no antitrust review would be conducted because the license for the Palisades facility was issued under Section 104b of the Atomic Energy Act, as amended, and that Section 104b licenses are not subject to the antitrust review required for Section 103 licenses. We also stated that the replacement of the steam generators which you referred to in your September 27, 1989 correspondence would not qualify Palisades as a new facility that would require a new license to be issued pursuant to Section 103.

Your request for reconsideration is based upon your belief that the transfer of a Section 104b license to a new owner must be treated as an application for a new license under Section 103 since, in your opinion, a license is granted to a licensee rather than to a facility and there is no basis for transferring the exemption. As a further basis for concluding that an antitrust review is required for this transfer, you also refer to a number of changes to the Palisades facility, in addition to the steam generator replacement that you previously reported, which you contend would require a new license to be issued.

These arguments do not provide a basis for the Staff to reconsider its decision that an antitrust review for the pending Palisades application is not required. There is nothing in the language of the Act or in its legislative history to suggest that Congress intended that Section 104b licensed facilities, which are not subject to an antitrust review, would require this review when new owners are involved. When Sections 103 through 105 of the Act are read in their entirety, it would appear from the plain meaning of this language that subsequent owners would not be subject to antitrust reviews and that a Section 104b facility will remain not subject to the antitrust review. In this regard, Section 102a

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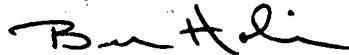
states that "any license hereafter issued for a utilization or production facility for industrial purposes . . . shall be issued under subsection 104b." (Emphasis added). And Section 104b states that in issuing 104b licenses, "the Commission shall impose the minimum amount of such regulations and terms of license as will permit the Commission to fulfill its obligations under the Act.

Your comments concerning modifications to the Palisades facility also do not establish a basis for antitrust review. The additional modifications listed in your August 22, 1990 letter include changes to or installation of safety parameter display systems, post-accident sampling and monitoring systems, emergency preparedness areas, added vents and pumps, alternate scram systems, additional plant security, new spent fuel racks, and revisions to heat disposal/condenser cooling. Although this list perhaps represents a significant number of changes or improvements, these modifications would neither individually, or in their entirety, require the issuance of a construction permit. See *Virginia Electric and Power Co.* (Surry Power Station, Units 1 and 2), DD-79-19, 10 NRC 625, 654-661 (1979).

For these reasons, your request for reconsideration has not changed our initial determination that an antitrust review is not warranted for the Palisades application. In your letter, you have requested that if the staff fails to grant this review, proceedings be held to determine whether antitrust review is appropriate, and notice be placed in the Federal Register of such proceedings. Such a procedure is neither provided for nor contemplated in the Commission's regulations. Furthermore, in view of the fact that Congress specifically determined that there should be no antitrust review of Section 104b licenses it would be inappropriate to initiate the procedure that you suggest.

Accordingly, for the reasons stated in my August 22, 1990 letter and set forth above, the staff will not conduct an antitrust review of the Palisades facility in connection with the change in ownership.

Sincerely,



Brian Holian, Project Manager
Project Directorate III-1
Division of Reactor Project-III
IV, and V
Office of Nuclear Reactor Regulation

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Vice President
Palisades Generating Plant
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 Division of Reactor Project-III
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 Office of Nuclear Reactor Regulation

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Brian Holihan, Project Manager
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 Division of Reactor Project-III
 IV, V & Special Projects
 Office of Nuclear Reactor Regulation

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