

Washington Nuclear 2 (Hanford 2) OL
Antitrust Review (Docket No. 50-397A)
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 licensee's activities or proposed activities have occurred after the previous review conducted in connection with the application for a construction permit. After examining the events that have transpired since the construction permit antitrust review, we conclude that no significant changes have occurred that would now warrant an operating license antitrust review. The Office of the Executive Legal Director concurs with this conclusion.

On August 10, 1971, the Washington Public Power Supply System (WPPSS), filed an application for a construction permit and facility license to construct a 1100 MWe boiling water reactor nuclear unit on the U.S. Department of Energy's Hanford Reservation on the Columbia River near the City of Richland in southeastern Washington. Notice of receipt of the application was published in the Federal Register on September 22, 1971.

On January 24, 1972, the Attorney General advised the NRC's predecessor, the Atomic Energy Commission, that "It does not appear that the issuance of the proposed license for Hanford No. 2 will create or maintain a situation inconsistent with the antitrust laws and we see no need for an antitrust hearing." In support of this conclusion, the Attorney General noted that:

There has been and continues to be substantial cooperation and coordination in bulk power supply among the various utilities, large and small, in the Pacific Northwest. Hanford No. 2 is one of several generating units resulting from a program in which all utilities in the same area have been invited to participate. Pursuant to this program both public and private utilities have planned and coordinated the addition of new generating capacity in the area.

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The vast majority of small, publicly-owned utilities in the Pacific Northwest will participate in Hanford No. 2 and thereby obtain access to low cost power.

The Attorney General's advice letter was published in the Federal Register on February 2, 1972. No petitions for leave to intervene or requests for hearing on antitrust aspects of the application were subsequently received.

The Attorney General has also reviewed the antitrust information submitted by WPPSS as part of its applications to construct and operate four other nuclear plants -- namely, WPS-1, WPS-3, WPS-4, and WPS-5. Separate advice letters for each plant were tendered on April 19, 1974, January 29, 1975, February 13, 1975, and July 12, 1976, respectively. Ownership in each of the plants has varied somewhat, but for each application the Attorney General found a high degree of coordination among the various utilities in the region. The Attorney General noted only one problem in any of these applications, which concerned allegations that the City of Tacoma, Washington refused to wheel power from Bonneville to the Pierce County Cooperative Power Association (PCCPA). This problem has since been resolved by Tacoma's agreement to wheel such power to PCCPA, which it has been doing since July 1, 1974. In any event, this problem was and is not directly relevant to WPPSS's Hanford 2 application since Tacoma is not a participant in Hanford 2.

On March 19, 1973, the Atomic Energy Commission issued Construction Permit No. CPPR-93 to WPPSS authorizing construction of Hanford 2. Subsequently, WPPSS submitted antitrust information on July 14, 1977 in accordance with NRC Regulatory Guide 9.3 relating to NRC's operating license antitrust review.^{1/} WPPSS tendered its application for an operating license for Hanford 2 on March 24, 1978. Notice of the NRC's acceptance of the OL application was published in the Federal Register on July 11, 1978.

Based on information submitted by WPPSS in response to information requested in Regulatory Guide 9.3, there have been no major changes in WPPSS's activities occurring since the construction permit was issued.

^{1/} WPPSS itself has submitted answers to all questions posed in Regulatory Guide 9.3. However, at the request of the NRC staff, answers to questions 1.c(2), 1.c(3), 1.e., 1.f., 1.g. and 1.h were submitted only for those participants in Hanford 2 that have facilities to transmit bulk power to wholesale customers. There are three such participants: Consumers Power, Inc. (a cooperative); Public Utility District #1 of Grays Harbor County; and Public Utility District #1 of Okanogan County. WPPSS refers to these three entities as "transmission participants."

In response to question 1.a. of R.G. 9.3, WPPSS has submitted the 1977 "West Group Forecast of Power Loads and Resources" published by the Pacific Northwest Utilities Conference Committee on February 15, 1977. To supplement this forecast, WPPSS also submitted testimony of Robert B. Gallup which had been previously submitted in the construction permit proceeding for WNP-3 and WNP-5. This testimony was updated by three affidavits, of which the most relevant to the operating license antitrust review is that dated March 18, 1977. In that affidavit, Mr. Gallup indicates that the 1977 load forecasts show a net decrease from the 1976 forecasts for loads in 1984-85 of 2.8% and 3.0%, respectively. This decrease in projected demand is more than compensated for by delays in construction of new generating capacity. The combined effect of these forecasts is to increase the projected deficit of resources required to meet loads in the earlier years of the planning horizon (i.e., 1983-5). Because this net deficit excludes reserves and assumes adverse stream flow conditions, the reserve situation does not appear critical. In any event, staff does not foresee any adverse antitrust implications that would result from the slower load growth and corresponding delay in generator additions.

With regard to question 1.b., of R.G. 9.3 there have been minor changes in the membership of the power and coordinating groups in which WPPSS participates. However, because membership in such organizations is open and voluntary to the extent that all utilities desiring to participate may do so, any such changes are not viewed as presenting potential antitrust problems. WPPSS has indicated that Public Utility District #1 of Okanogan County became a member of WPPSS in 1976, which raised the membership of WPPSS to 22. However, PUD #1 of Okanogan County was already a participant in Hanford 2 by virtue of its being a statutory preference customer of the Bonneville Power Administration. Its participation in Hanford 2 has thus been in no way affected by its joining WPPSS.

There have been no changes of the type queried by staff in question 1.c through 1.f of R.G. 9.3. pertaining to changes in transmission, ownership in Hanford 2, rate schedules, customers, service area, or mergers or acquisitions other than noted below.

With respect to question 1.g., WPPSS and the "transmission participants" in Hanford 2 are also participating in varying amounts in WNP #1, WNP #3, WNP #4, and WNP #5. Consumers Power, Inc. is also purchasing 10% of the Boardman coal plant being constructed by Portland General Electric Company. In addition to participation in the nuclear units, PUD #1 of Okanogan County is also participating in the Wells Dam hydroelectric plant with such participation increasing from 0.6% now to 8% by 1988.

With respect to question 1.h. of R.G. 9.3, neither WPPSS nor the "transmission participants" in Hanford 2 have received "requests or indications of interest by other electric wholesale or retail distributors... for any type of electric service or cooperative venture or study" relevant to NRC's antitrust review.

Question 2 of R.G. 9.3 does not pertain to WPPSS and thus no response was given.

The NRC staff also asked Applicant why certain statutory preference customers of the Bonneville Power Administration did not participate in Hanford 2. WPPSS responded that all entities who were such customers at the time subscriptions to Hanford 2 were being offered, were offered part ownership in Hanford 2. For various reasons, 16 eligible utilities chose not to participate initially and seventeenth (the City of Tacoma) chose subsequently to withdraw from participation. Following the initial subscription to ownership in Hanford 2, four more utilities have become statutory preference customers of Bonneville, thus boosting the total of non-participants to 21. WPPSS has indicated to the NRC staff that a majority of these 21 non-participants have been offered "assignment agreements"^{2/} for power from those current Hanford 2 participants whose power requirements have decreased. Because offering secondary participation in Hanford 2 to some utilities and not others could be an indication of possible inconsistencies with the antitrust laws, NRC staff asked counsel for WPPSS how such assignment agreements were made and why some current non-participants but not others were offered subsequent participation. WPPSS, through its counsel, replied that such subsequent offers were made informally by individual members of WPPSS who are participants in Hanford 2 and who had what they judged to be excess capacity to neighboring entities. Depending on the energy needs of certain Hanford 2 participants and their geographical proximity to Hanford 2 non-participants, some non-participants would have been offered subsequent participation while others would not have been. There appear to be no adverse antitrust implications in this situation.

The staff has also examined the docket files of the Federal Energy Regulatory Commission to determine whether any complaints relative to anti-competitive activity had been lodged against WPPSS or the participating statutory preference customers of Bonneville since the construction

^{2/} WPPSS has indicated that these "assignment agreements" are, in effect, direct transfers of ownership in Hanford 2 from current participants. Hanford 2 has a unique ownership arrangement whereby each participant assigns to the Bonneville Power Administration its share of the electrical output from Hanford 2. In consideration of these assignments, Bonneville will credit the amounts paid by the Hanford 2 participants for power and services purchased under contracts with Bonneville.

permit antitrust review. The staff found no such complaints relevant to its antitrust review.

In sum, the staff concludes that changes in the applicants' activities occurring since the construction permit antitrust review do not represent "significant changes" that would now warrant another antitrust review at the operating license stage.



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Regulation