

U. S. NUCLEAR REGULATORY COMMISSION
[10 CFR PARTS 2 AND 50]

RULES OF PRACTICE

LICENSING OF PRODUCTION AND UTILIZATION
FACILITIES

Antitrust Review Procedures

AGENCY: U. S. Nuclear Regulatory Commission

ACTION: Final Rule

SUMMARY: The Nuclear Regulatory Commission is hereby amending current regulations to reduce or eliminate the requirements for submission of antitrust information in certain "de minimis" instances and to clarify requirements for antitrust review of applications for licenses for class 103 facilities (commercial facilities) other than power reactors.

EFFECTIVE DATE: October 22, 1979

FOR FURTHER
INFORMATION
CONTACT:

Mr. Argil Toalston, Office of Nuclear Reactor
Regulation, U. S. Nuclear Regulatory Commission,
Washington, DC 20555, telephone 301-492-8339.

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SUPPLEMENTAL INFORMATION: Each applicant for a license for a production or utilization facility under section 103 of the Atomic Energy Act of 1954, as amended, is required by § 50.33a of 10 CFR Part 50, Licensing of Production and Utilization Facilities, to respond to a series of questions provided by the Attorney General of the United States in connection with the review of antitrust matters pursuant to section 105c of the Atomic Energy Act of 1954, as amended. In the case of a nuclear power reactor, several utilities may join in a single application for a license. Some of the participants will hold very small shares of the facility and will be entitled to only small percentages of the total output of electricity from the facility.

Generally, participants holding a small share entitling them to a small percentage of the electricity generated by the facility tend to be small entities not normally having a significant competitive impact in their general area. Consequently, on April 26, 1978, the Commission caused to be published in the Federal Register (43 F.R. 17830) a notice of proposed rule making waiving the requirement that "de minimis" participants in nuclear power plants submit antitrust information specified in Part 50, unless specifically requested by the Commission to do so.

The NRC received comments from the law firm of LeBoeuf, Lamb, Leiby & MacRae (LeBoeuf) addressing the Federal Register Notice. Based on these

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comments, the Commission has adopted LeBoeuf's suggestion that threshold levels for determining whether an electric utility may be considered "de minimis" for antitrust purposes should be based on the generating capacity of the applicant at the time of its application rather than its entitlement to electrical output from the facility. Using generating capacity would provide a more direct measurement of the relative size, and thus competitive impact, of an applicant.

Thus, the Commission has concluded that participants whose generating capacity at the time of application is 200 MW(e) or less are not required to submit information specified in Appendix L of Part 50, unless specifically requested by the Commission to do so. The Commission notes that the limit of 200 MW(e) of generating capacity would currently require approximately the 200 largest electric utilities in the United States to respond to all or a portion of NRC's antitrust questions. The Commission believes that utilities smaller than these generally would have a negligible effect on competition. However, under certain circumstances these smaller systems could also be required to submit the information set forth in Appendix L of Part 50 if possible antitrust problems become apparent.

The Commission has also concluded that participants whose generating capacity at the time of application is more than 200 MW(e) but not more than 1400 MW(e) are required to respond only to Question 9 in Appendix L

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of Part 50. Question 9 deals with neighboring, non-affiliated electric utility systems with peak loads smaller than applicant's. Such applicants could, of course, subsequently be specifically requested by the Commission to submit all the information required by § 50.33a. The Commission notes that the limit of 1400 MW(e) of generating capacity would currently require approximately the 100 largest utilities in the United States to respond to all of the antitrust questions.

These proposed changes would reduce the burden of preparing antitrust-related data on small applicants, while at the same time maintaining an adequate standard of antitrust review. The Antitrust Division of the Department of Justice has concurred in the Commission's proposed action.

Other commercial production and utilization facilities in addition to nuclear power reactors are subject to antitrust review requirements. Amendments are proposed to Parts 2 and 50 in order to clarify that the antitrust review associated with construction permit applications for uranium enrichment facilities and fuel reprocessing plants may also call for submission of information by the applicant.

Because this rule making action reduces the burden on the resources of both the NRC staff and certain applicants without increasing the burden on anyone else, good cause exists for omitting a value/impact analysis.

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Pursuant to the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974 and section 553 of title 5 of the United States Code, notice is hereby given that the following amendments to Title 10, Chapter 1, Code of Federal Regulations, Parts 2 and 50, have been adopted.

1. Paragraph 2.101(a) of 10 CFR Part 2 is amended to read as follows:

§ 2.101 Filing of application.

* * * * *

(a)(5) An applicant for a construction permit for a production or utilization facility which is subject to § 51.5(a) of this chapter, and is of the type specified in §§ 50.21(b)(2) or (3) or 50.22 of this chapter or is a testing facility may submit the information required of applicants by Part 50 of this chapter in three parts. One part shall be accompanied by the information required by § 50.30(f) of this chapter, another part shall include any information required by §§ 50.34(a) and, if applicable, 50.34a of this chapter and a third part shall include any information required by § 50.33a. One part may precede or follow other parts by no longer than six (6) months except that the part including information required by § 50.33a shall be submitted in accordance with

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time periods specified in § 50.33a. If an applicant for a construction permit for a nuclear power reactor is exempted pursuant to § 50.33a of this chapter from filing the information described by § 50.33a of this chapter, such applicant shall file with the first part of its application an affidavit setting forth facts as to the electrical generating capacity of its system. If it is determined that any one of the parts as described above is incomplete and not acceptable for processing, the Director of Nuclear Reactor Regulation or Director of Nuclear Material Safety and Safeguards, as appropriate, will inform the applicant of this determination and the respects in which the document is deficient. Such a determination of completeness will generally be made within a period of thirty (30) days. Except for the part including information required by § 50.33a, whichever part is filed first shall also include the fee required by §§ 50.30(e) and 170.21 of this chapter and the information required by §§ 50.33, 50.34(a)(1), and 50.37 of this chapter. The Director of Nuclear Reactor Regulation or Director of Nuclear Material Safety and Safeguards, as appropriate, will accept for docketing an application for a construction permit for a production or utilization facility which is subject to § 51.5(a) of this chapter, and is of the type specified in §§ 50.21(b)(2) or (3) or 50.22 of this chapter or is a testing facility where one part of the application as described above is complete and conforms to the requirements of Part 50 of this chapter. Additional parts will be docketed upon a determination by the Director of Nuclear Reactor Regulation or Director of Nuclear Material Safety and Safeguards, as appropriate, that they are complete.

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2. In § 50.33a of 10 CFR Part 50, paragraph (a) is amended and a new paragraph (e) is added to read as follows:

§ 50.33a Information requested by the Attorney General for antitrust review.

(a)(1) An applicant for a construction permit for a nuclear power reactor shall submit the information requested by the Attorney General as described in Appendix L, if the application is for a class 103 permit and if the applicant has electrical generating capacity exceeding 1400 MW(e).

(2) An applicant for a construction permit for a nuclear power reactor shall submit the information requested by the Attorney General as described in paragraph 9 of Section II of Appendix L if the applicant has electrical generating capacity exceeding 200 MW(e) but no more than 1400 MW(e). Upon request of the Commission, the applicant shall furnish the other information described in Appendix L.

(3) An applicant for a construction permit for a nuclear power reactor is not required to submit the information described in Appendix L unless specifically requested by the Commission to provide the information, if the applicant has electrical generating capacity of 200 MW(e) or less.

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(4) The information described in paragraphs (a)(1) and (2) of this section shall be submitted as a separate document prior to any other part of the license application as provided in paragraph (b) and in accordance with § 2.101 of this chapter.

(e) Any person who applies for a class 103 construction permit for a uranium enrichment or fuel reprocessing plant shall submit such information as may be requested by the Attorney General for antitrust review, as a separate document as soon as possible and in accordance with § 2.101 of this chapter.

3. In Appendix L of 10 CFR Part 50, paragraph I.1. is amended to read as follows:

APPENDIX L - INFORMATION REQUESTED BY THE
ATTORNEY GENERAL FOR ANTITRUST REVIEW
FACILITY LICENSE APPLICATIONS

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I. Definitions

1. "Applicant" means the entity applying for authority to construct or operate subject unit and each corporate parent, subsidiary and

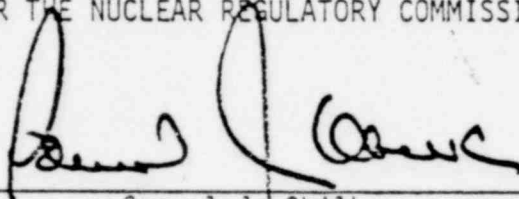
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affiliate. Where application is made by two or more electric utilities not under common ownership or control, each utility, subject to the applicable exclusions contained in § 50.33a, should set forth separate responses to each item herein.

(Secs. 103, 105, 161, Pub. L. 83-703, 84-1006, 68 Stat. 939, 938, 948, 70 Stat. 1069, 84 Stat. 1472 (42 U.S.C. 2133, 2135, 2201); Sec. 201, Pub. L. 93-438, 88 Stat. 1242 (42 U.S.C. 5841))

Dated at 15 Washington, DC this 15th day of October, 1979.

FOR THE NUCLEAR REGULATORY COMMISSION



Samuel J. Chilk
Secretary of the Commission

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