

September 12, 1979

ATTACHMENT D

MEMORANDUM FOR: Harold R. Denton, Director
Office of Nuclear Reactor Regulation

William J. Dircks, Director
Office of Nuclear Material Safety and
Safeguards --

FROM: Joseph M. Hendrie, Chairman Original _____ and By
Joseph M. Hendrie

SUBJECT: DELEGATION OF AUTHORITY TO MAKE "SIGNIFICANT CHANGE"
DETERMINATION FOR OPERATING LICENSE ANTITRUST REVIEW

The Commission hereby delegates the authority to make the "significant change" determination under Section 105c(2) of the Atomic Energy Act of 1954, as amended, 42 U.S.C. §2135c(2), for the purpose of obtaining the Attorney General's advice pursuant to section 105(c)(1) of that Act to either the Director, Office of Nuclear Reactor Regulation (for reactors) or the Director, Nuclear Material Safety and Safeguards (for production facilities), as appropriate. This delegation is made in connection with the revised Operating License Antitrust Review Procedures (attached to this Memorandum) which shall control the method of determining whether there have been "significant changes" in the licensee's activities or proposed activities subsequent to the previous antitrust review by the Attorney General and the Commission in connection with the construction permit.

The above delegations are in accordance with Commission action taken in connection with SECY-79-353 and reflected in the Commission Secretary's Memorandum dated July 26, 1979. This delegation will be appropriately reflected in the NRC Management Directive System.

Enclosure:
As stated

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ATTACHMENT D

1. Upon docketing of an application for a facility operating license, the Office of Nuclear Reactor Regulation (NRR) or the Office of Nuclear Material Safety and Safeguards (NMSS), as appropriate, will cause to be published a "Notice of Receipt of Operating License Application and Request for Antitrust Information" in the Federal Register and in appropriate trade journals. This Notice would invite the submittal to the NRC of comments or information concerning the antitrust aspects of the application to assist the NRC Staff in determining whether significant changes in the licensee's activities or proposed activities had occurred since the completion of the antitrust review at the construction permit stage, pursuant to Section 105c of the Atomic Energy Act of 1954, as amended.

2. Copies of the facility operating license application, including the antitrust information provided by the applicant under Regulatory Guide 9.3, will be transmitted to both the Office of the Executive Legal Director (OELD) and to the Antitrust and Indemnity Group of NRR (AIG) for review to determine whether there have been any significant changes since the completion of the antitrust review at the construction permit stage. Each of these reviews will take into account comments or information received in response to the published Notice and also any information regarding the applicant obtained informally from the Department of Justice.

3. Upon completion of its review, AIG will transmit the results to OELD together with a recommendation as to whether or not there have been significant changes. OELD will then complete its own review. AIG and OELD reviews will be completed within a reasonable time after the operating license application has been submitted.

4. If, as a result of their reviews, it is concluded that there have been no significant changes since the completion of the antitrust review at the construction permit stage, a document in the form of a finding will be prepared jointly by OELD and AIG for the signature of the appropriate Office Director (NRR or NMSS). This document will set forth the bases for the finding. Copies of this document will be sent to the Commission, to the NRR or NMSS licensing project manager for the facility involved, to those persons providing comments or information in response to the Notice, and to the Washington and local public document rooms.

A copy of this document will also be published in the Federal Register, together with a notice stating that a request for reevaluation of the proposed determination should be submitted within 60 days of publication of the notice. If no requests are received within that time, the proposed determination shall become the NRC's final determination. Requests for a significant changes determination shall be accepted after the date when the NRC determination becomes

final only if they contain new information such as information of facts or events of antitrust significance that had occurred since that date, or information that could not reasonably have been submitted prior to that date.

5. If, as a result of their reviews, it is concluded that significant changes have occurred since the completion of the antitrust review at the construction permit stage, a document in the form of a finding will be prepared jointly by AIG and OELD for the signature of the appropriate Office Director (NRR or NMSS). This document will set forth the bases for the finding. This document, together with a copy of the application and the information submitted under Regulatory Guide 9.3, will be transmitted to the Attorney General by OELD with a formal request for antitrust advice, pursuant to Section 105c(1) and (2) of the Act. Copies of the Office Director's finding and the request addressed to the Attorney General will be transmitted to the Commission, the NRR or NMSS licensing project manager, those persons providing comments or information in response to the Notice, and to the Washington and local public document rooms.

6. If a finding is made by an Office Director that there have been no significant changes since the completion of the antitrust review at the construction permit stage and there is a subsequent request

from a member of the public for a determination that significant changes have occurred, then the finding will be reevaluated by OELD and AIG in light of any new information contained in the request. If, as a result of the reevaluation, it is determined that there has been no significant change, then the Office Director shall deny the request, and issue a notice that contains his finding of no significant changes. Such notice and finding shall become the final NRC decision 30 days after being made and only in the event that the Commission has not exercised its sua sponte review power. Copies of the notice shall be published in the Federal Register, and shall also be transmitted to the NRR or NMSS licensing project manager, and to the Washington and local public document rooms.

If, however, as a result of the reevaluation, it is determined that there has been a significant change, OELD shall so inform the ~~Attorney General~~ and formally request his antitrust advice, pursuant to Section 105c(1) and (2) of the Act. Copies of the notice setting forth the revised Office Director's finding along with copies of the license application, the information submitted under Regulatory Guide 9.3, and the information and request received from the member of the public shall be transmitted to the Attorney General. Copies of the notice setting forth the revised Office Director's finding and the request for advice addressed to the Attorney General will be transmitted to the Commission, the NRR or NMSS licensing project manager, the requesting member of the public, and to the Washington and local public document rooms.

ATTACHMENT E

The Honorable Morris K. Udall, Chairman
Subcommittee on Energy and the Environment
Committee on Interior and Insular Affairs
United States House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

Enclosed for your information are copies of minor amendments to the Commission's Rules of Practice for Domestic Licensing Proceedings, 10 CFR Part 2 and conforming amendments to 10 CFR Part 1 (Statement of Organization and General Information), to be published in the Federal Register as proposed rule changes. The amendments would implement the Commission's delegation of its authority under Section 105(c)(2) of the Atomic Energy Act to make a "significant changes" determination to the Director of Nuclear Reactor Regulation and the Director of Nuclear Material Safety and Safeguards.

Sincerely,

Howard K. Shapar
Executive Legal Director

Enclosure:
As stated

cc: Representative Steven Symms

Attachment E

Identical letters sent to:

The Honorable John D. Dingell, Chairman
Subcommittee on Energy and Power
Committee on Interstate and Foreign Commerce
United States House of Representatives
Washington, D. C. 20515

cc: Rep. Clarence J. Brown

The Honorable Toby Moffett, Chairman
Subcommittee on Environment, Energy
and Natural Resources
Committee on Government Operations
United States House of Representatives
Washington, D. C. 20515

cc: Rep. Paul N. McCloskey, Jr.

The Honorable Gary Hart, Chairman
Subcommittee on Nuclear Regulation
Committee on Environment and Public Works
United States Senate
Washington, D. C. 20510

cc: Sen. Alan Simpson