ASSISTANT ATTORNEY GENERAL
ANTITRUST DIVISION

United States Department of Justice

WASHINGTON, D.C. 20530

17 [illegible]

Howard V. Shapar
Executive Legal Director
Nuclear Regulatory Commission
Washington, D.C. 20555

Re: Boston Edison Company, Pilgrim Nuclear Power Station, Docket No. 60-293A

Dear Mr. Shapar:

By letter dated October 24, 1979, you requested that the Department of Justice ("Department") render additional advice pursuant to Section 105c of the Atomic Energy Act of 1954 as amended, 42 U.S.C. §2135c, concerning the application by the Boston Edison Company ("BECO") for a license to operate its Pilgrim Nuclear Power Station.

On August 2, 1971, the Department advised the then Atomic Energy Commission that allegations advanced by certain Massachusetts Municipals, in petitions to intervene, with respect to antitrust matters, raised substantial questions which warranted an antitrust hearing pursuant to Section 105c. We noted at that time, however, that the competitive situation in New England was improving in that the municipal systems had gained access to some nuclear power plants and were participating in the efforts to form a New England power pool. We concluded by suggesting:

> It is possible that BECO and the intervenors may decide that their interests would be best served by mutual efforts to negotiate arrangements to ensure the intervenors reasonable access to low-cost power, and that a hearing might thereby be rendered unnecessary. We would of course be pleased to provide further advice to the Commission on the need for hearing if in light of subsequent developments the Commission should so request.

The petitions to intervene and our request for an antitrust hearing are still pending before the Nuclear Regulatory Commission.

On June 26, 1974, the Department rendered advice on Pilgrim Nuclear Generating Station, Units 2 and 3, Boston Edison Company, et al., AEC Docket Nos. 50-471A, 50-472A, and pointed out that BECO had demonstrated a commitment to allow municipal utilities in New England to gain access to bulk power from Pilgrim Units 2 and 3 on the same basis as is available to investor-owned utilities and that this represented a significant step toward improving the competitive situation in New England. The Department concluded that, therefore, an antitrust hearing would not be necessary. The Department also noted that because negotiations between BECO and various municipal utilities for access to Pilgrim Nuclear Power Station were ongoing, we would not change our advice with respect to that nuclear unit.

On April 20, 1978, in advising the NRC regarding additional applications for participation in Pilgrim Unit No. 2, the Department again concluded that no antitrust hearing would be necessary.

You have now informed us that the settlement negotiations between BECO and the Massachusetts Municipals have been concluded to the satisfaction of the parties and that the Massachusetts Municipals have filed a "Withdrawal of Intervention as Moot" with the Nuclear Regulatory Commission. You have asked us whether, in light of that information, the Department still believes that an antitrust hearing should be held.

Since the Department rendered its advice in 1978, we have received no new information which would indicate that issuance of an operating license to Boston Edison Company would "create or maintain a situation inconsistent with the antitrust laws." 42 U.S.C. §105(c). In light of this, because of the withdrawal of the Massachusetts Municipals' Petition to Intervene and based upon other information we have received, the Department is of the opinion that an antitrust hearing is no longer necessary with respect to the instant application.

Sincerely,

Sanford M. Litvack
Assistant Attorney General
Antitrust Division

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

| | | |
|---|---|---|
| In the Matter of | ) | |
| | ) | |
| BOSTON EDISON COMPANY | ) | NRC Docket No. 50-293A |
| (Pilgrim Nuclear Power | ) | |
| Station) | ) | |

CERTIFICATE OF SERVICE

I hereby certify that copies of NRC STAFF'S RECOMMENDATION THAT THE "WITHDRAWAL OF INTERVENTION AS MOOT" FILED BY THE MASSACHUSETTS MUNICIPALS BE GRANTED in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class, or, as indicated by an asterisk, through deposit in the Nuclear REgulatory Commission's internal mail system, this 31st day of March 1980:

Chairman Ahearne
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555 *

Commissioner Gilinsky
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555 *

Commissioner Kennedy
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555 *

Commissioner Bradford
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555 *

Commissioner Hendrie
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555 *

Samuel J. Chilk
Secretary of the Commission
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555 *

Docketing and Service Section
Office of the Secretary
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555 *

Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555 *

Atomic Safety and Licensing
Appeal Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555 *

Jerome Saltzman, Chief
Antitrust & Indemnity Group
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555 *

Robert C. McDiarmid, Esq.
Spiegel & McDiarmid
2600 Virginia Avenue
Washington, D.C. 20037

George Lewald, Esq.
Ropes & Gray
225 Franklin Street
Boston, Massachusetts 02110

George F. Bruder, Esq.
Bruder & Gentile
1201 Connecticut Avenue, N.W.
Washington, D.C. 20036

Boston Edison Company
ATTN: Mr. R. M. Butler
Nuclear Projects Manager
800 Boylston Street
Boston, Massachusetts 02199

Victor Kazanjian, Esq.
General Counsel
Boston Edison Company
800 Boylston Street
Boston, Massachusetts 02199

Jack R. Goldberg
Counsel for NRC Staff